



STATE OF MARYLAND

DHMH

Board of Physicians

Maryland Department of Health and Mental Hygiene
4201 Patterson Ave • Baltimore, Maryland 21215

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

October 28, 2013

The Honorable Joan Carter Conway
Chair
Senate Education, Health and
Environmental Affairs Committee
2 West Miller Senate Building
Annapolis, MD 21401 -1991

The Honorable Peter A. Hammen
Chair
House Health and Government
Operations Committee
241 House Office Building
Annapolis, MD 21401 -1991

RE: CH 401 of the Acts of 2013 (HB 1096), State Board of Physicians
and Allied Health Advisory Committees – Sunset Extension and
Program Evaluation

Dear Chair Carter Conway and Chair Hammen:

Pursuant to CH 401 of the Acts of 2013, State Board of Physicians and Allied Health
Advisory Committees – Sunset Extension and Program Evaluation, the Board respectfully submits
this report of the Maryland Board of Physicians (“Board”) which provides an update on:

1. Any changes to the Board’s discipline process that have been implemented and the effect of those changes on the compliant backlog and compliant resolution times;
2. The progress of the Board in procuring and implementing a new information technology system to improve data management;
3. A long-term financial plan;
4. Financial data for the preceding fiscal year; and
5. The progress of the Board in implementing the recommendations made by the Department of Legislative Services in the November 2011 publication “Sunset Review: Evaluation of the State Board of Physicians and the Related Allied Health Advisory Committees and any statutory changes affecting the Board.

If you have any questions regarding this report, please contact Wynnee E. Hawk, Manager, Policy & Legislation, Maryland Board of Physicians at 410-764-3786.

Sincerely,



Andrea Mathias, M.D., M.P.H.
Board Chair

Attachment:

Report on Progress of Implementing Sunset Evaluation Recommendations

cc: Joshua M. Sharfstein, M.D., Secretary
Laura Herrera, M.D., Deputy Secretary for Public Health Services
Marie L. Grant, J.D., Director, Governmental Affairs
Jennifer Ellick, Department of Legislative Services
Sara Fidler, Department of Legislative Services
Lisa Simpson, Department of Legislative Services

Maryland Board of Physicians



Report on Progress of Implementing Sunset Evaluation Recommendations

As required by Chapter 401/HB1096
of the Acts of 2013

Andrea Mathias, M.D., M.P.H., Chair
Christine A. Farrelly, Acting Executive Director

INTRODUCTION

The Department of Legislative Services (DLS) completed a full sunset evaluation of the Maryland State Board of Physicians (“the Board”) and its advisory committees in November 2011, offering 46 recommendations related to licensing, complaint resolution, board resources, and other issues. As a result of the sunset findings, the Board entered into a memorandum of understanding with the University of Maryland, Baltimore (UMB) to conduct an independent review of the board.

In July 2012, UMB issued the Perman Report to the Board containing 18 recommendations, most of which related to the complaint resolution process. Chapter 401 of the Acts of 2013 (House Bill 1096) implemented most of DLS’ recommendations and the recommendations contained in the Perman Report to the Board. The bill also extended the termination date of the Board and its six allied health advisory committees by five years to July 1, 2018, and required DLS to conduct a direct full evaluation of the Board by October 30, 2016.

Most notably, the legislation established two disciplinary panels, each consisting of 11 members, through which allegations of grounds for disciplinary action must be resolved. To provide sufficient membership to divide the board into two disciplinary panels, total board membership was increased from 21 to 22 members by adding a second licensed physician with a full-time faculty appointment to serve as a representative of an academic medical institution in the State.

Further, the legislation requires a summary of charges filed against a licensee and a copy of the charging document be posted on the licensee’s online profile until the board takes action on or rescinds the charges. Board powers and duties are also consolidated and delineated. Starting in 2013 through 2018, the Board must annually report to specified committees of the General Assembly on the progress in addressing issues identified by the DLS sunset evaluation and the Perman Report.

A. REPORTING REQUIREMENT

The 2013 Sunset legislation requires the Board to provide ongoing, annual updates, on or before October 1, 2013, and annually thereafter for the next 5 years on several issues. Specifically, Chapter 401 of the 2013 laws of Maryland (HB 1096) requests information on:

1. Any changes to the Board's discipline process that have been implemented, and the effect of those changes on the complaint backlog and complaint resolution times;
2. The progress of the Board in procuring and implementing a new information technology system to improve data management;
3. A long-term financial plan;
4. Financial data for the preceding fiscal year; and
5. The progress of the Board in implementing the recommendations made by the Department of Legislative Services in the November 2011 publication "Sunset Review: Evaluation of the State Board of Physicians and the Related Allied Health Advisory Committees" and any statutory changes affecting the Board.

B. UPDATES

The collaborative efforts of Board members, leadership and staff have been essential in making considerable progress on a majority of the issues addressed by the Board's Sunset legislation. The interim has involved continuous assessment of issues related to the implementation of an entirely new disciplinary process, improvements in communication and innovative ideas applied to Board operations. All of these efforts continue to advance and refine the work of the Board.

As to each item to be updated:

1. Changes in Board's Disciplinary Process.

The ongoing implementation work related to the Sunset legislation and the Board disciplinary processes involves eliminating redundancies and improving investigative efficiencies. To date, the specific improvement processes include:

- Decreased response timeframe from 21 to 10 days to subpoenas and investigator requests for other information;
- Increased use of the Board's internal medical consultant in conducting preliminary investigation reviews, preparation of a case summary and more availability to staff to assist with investigations, including probation cases;

- Additional investigative steps during the initial preliminary investigation;
- Simultaneous submission of cases to multiple panel agendas;
- Case assignment based on investigator strengths;
- More timely case assignment upon receipt and/or direction from panels;
- Resource development for investigators in conjunction with the Office of the Attorney General (OAG), such as a standardized investigative file format and comprehensive case summary;
- An expedited process for Continuing Medical Education cases and reciprocal action¹ disciplinary cases;
- Revised regulations regarding sanctioning guidelines and hearings (Code of Maryland Regulations 10.32.02); and
- Developing a Pilot Project with the Office of Administrative Hearings (OAH) to refer cases to the OAH within ten business days of failure to reach settlement. OAH issues a notice of a scheduling conference within thirty days of referral by the Board.

Additionally, the Board undertook a variety of measures to improve communication with the OAG, thus speeding up the process of case investigation and proceeding to closure or charging, as well as increasing opportunities for settlement. Specifically, the Board has worked with the OAG to improve the disciplinary process by:

- Delegating authority to the Administrative Prosecutor to sign and issue charges on the Board's behalf;
- Delegating authority to the Administrative Prosecutor to negotiate a pre-charge settlement in the form of a Public Consent Order on a case-by-case basis;
- Ongoing assessment and refinement of an investigative plan throughout the investigation;
- Encouraging joint settlement proposal submissions to the Case Resolution Conference (CRC)/Disciplinary Committee for Case Resolution (DCCR);
- Allowing flexibility for the settlement of cases post CRC/DCCR;
- Increased staff access to the OAG attorneys, including designated on-site office time and the opportunity for providing feedback to OAG supervisory personnel;
- Monthly docket review meetings with the OAG;
- Establishing case resolution goals for each stage of a case;
- Annual Board member training with presentations from Administrative Prosecutors, Board Counsel, OAH, and the State Ethics Commission;
- Transmitting Board investigative materials to the OAG electronically, including providing the prosecutor of the month with an iPad for access to downloaded materials;
- OAG participation in the Board charging agenda;
- Soliciting feedback from the OAG on issues related to the peer review process;
- Joint training sessions for OAG attorneys and board investigators; and
- Establishing a joint record extract for exceptions hearings.

¹ Grounds (21) and (24)

The Board has significantly reduced the length of investigations as a result of the combination of the enumerated process improvements. As of July 1, 2013, only one complaint at the Board was *not* resolved within 18 months, and currently no backlog exists.

A key recommendation of the UMB review, and ultimately the Sunset legislation, was the establishment of two separate panels to hear disciplinary cases. The Board has diligently worked to identify procedural and operational changes necessary to implement a two-panel system. The Board, however, has faced many challenges in transitioning to a new disciplinary system. Some of those challenges include:

- Changes in leadership;
- Key staffing vacancies;
- IT teleconferencing equipment and facility upgrades which have been slow to progress; and
- Only 20 of the 22 Board members required to implement the new process have been appointed to the board.

Although an overarching intent of the two-panel process was to improve Board efficiency, there is significant concern that the two-panel system will in fact involve more Board member and staff time. In order to understand all implications and complete its due diligence, the Board is proceeding cautiously and carefully considering all ramifications as it moves forward with implementation.

2. Procuring and Implementing a New Information Technology System.

The Board prepared an Information Technology Project Request (ITPR) that has been approved by the DHMH Department of Information Technology. That Department submitted the ITPR to the next level of approval, the Department of Information Technology (DoIT). Once approved, the Board will be able to move forward to procure the services of a vendor, examine various commercial off-the-shelf systems and identify a system that will meet the Board's immediate and future needs.

3. Long Term Financial Plan.

In terms of the long-term financial plan, issues raised were related to fees, revenues and expenditures. In 2012, the Board conducted an internal analysis comparing the fees for initial licensure, reinstatement and renewals charged to all the health occupations regulated by the Board with other states. The data and analysis of that work was provided to the legislature in the Board's 2012 Report. To build on that effort, and further improve and track fiscal operations for the long term, the Board is in the process of engaging the services of an independent accounting firm through the state's procurement process to address an array of fiscal issues that comprise a long-term fiscal plan. The issues include:

- The development of a cost allocation plan to match costs with revenues in order to assure more equitable licensing fees among all professions currently licensed by the Board;

- The cost allocation plan will develop a system that will provide equitable reallocation of rehabilitation fees across all professions, rather than the current methodology of only charging physicians and physician assistants for this cost. All licensed professions participate in the rehabilitation program, however, currently all do not contribute; and
- The cost allocation plan will also develop a long-term financial plan to ensure that the Board has adequate funds to support all programmatic needs. The long-term plan will provide useful plans for the expenditure of the Board's fund balance in addition to those currently underway (the purchase of a new integrated medical licensure and investigation software to enhance and improve information and the filling of vacancies to create greater efficiency of the Board's everyday operations).

4. Financial Data for the Preceding Fiscal Year (FY 13).

The financial data for the preceding fiscal year is provided in the table below:

Fiscal Data FY 13

Item	Value
Authorized Positions (FTE)*	70.1
Contractual Positions (FTE)	3.4 ²
Beginning Fund Balance	\$4,181,377
Revenues Collected**	\$10,724,385
Total Funds Available	\$14,905,762
Total Expenditures	\$7,964,843
Transfer to Scholarship Fund	\$1,262,743
Transfer to General Fund	\$320,392
Ending Fund Balance	\$5,357,784
Target Balance as % of Expenditures	20%
Actual Balance as % of Expenditures	67.2%

* Full Time Employees

** Excludes the funds transferred to the Maryland Health Care Commission in the amount of \$621,860. Board expenditures include both direct and indirect costs.

Source: Compiled from FMIS

The Board expected to be further along in facility renovations and procurement of a new IT system and equipment to modernize the Board's paper based system. As a result, the Board did not anticipate the fund balance represented above. The Board's fund balance has historically been approximately three million dollars, and the additional two million is unusual and directly related to staff vacancies and not purchasing the IT system. The purchase and installation of a new

² The 3.4 figure represents 0.9 FTEs at the Board and 2.5 FTEs at the Office of the Attorney General

information technology system, including a requirements analysis, configuration of a system to meet the needs of the Board, development, training, testing and implementation is imminent. Additionally, the Board anticipates the purchase of new audio/visual equipment that will facilitate telecommuting for Board members. Lastly, the Board anticipates additional hardware requirements due to converting some processes from paper to scanned documents.

5. The Progress of the Board in Implementing the Recommendations made by the Department of Legislative Services in the November 2011 Sunset Review Report and Any Statutory Changes Affecting the Board.

a. Status of Progress on the Recommendations

The Board has fully completed 31 of the 46 DLS Sunset recommendations and is in the process of completing the remaining 15. Many of the remaining issues relate to the Board's fiscal issues and long term financial plan and are the subject of the engagement of an independent accounting firm. Others involve IT procurement issues in process, as well as the promulgation of regulations that are also in process.

b. Statutory Changes Affecting the Board

Chapter 401 of the Acts of 2013 (HB 1096) - State Board of Physicians and Allied Health Advisory Committees - Sunset Extension and Program Evaluation (Sunset Bill) was passed by the General Assembly during the 2013 legislative Session. The highlights of this legislation are as follows:

- 1) Establishes two disciplinary panels, each consisting of 11 members, through which allegations of grounds for disciplinary action must be resolved. The Board Chair must assign each member of the Board to one of the panels and select a member of each panel to serve as the chair of the panel. A quorum of a panel is seven members.
- 2) Increases the total Board membership from 21 to 22 members by adding a second licensed physician with a full-time faculty appointment to serve as a representative of an academic medical institution in the State in order to provide sufficient membership to divide the board into two disciplinary panels.
- 3) Repeals the authority of the Board's executive director or another duly authorized investigator of the Board, based on a formal complaint, to enter at any reasonable hour private premises where the Board suspects that a person who is not licensed by the Board is practicing medicine. Instead, the Board, based on a complaint, may apply to a judge of the District Court or a circuit court for a search warrant to enter private premises where the Board or a disciplinary panel suspects the unlicensed practice of medicine.

- 4) Authorizes the Board to impose civil fines against alternative health systems that fail to report certain information so that the civil fine provisions related to reporting by hospitals and related institutions and alternative health systems are the same.
- 5) Requires that a summary of charges filed against a licensee and a copy of the charging document must be posted on the licensee's online profile until the Board takes action on or rescinds the charges.

Since enactment on May 2, 2013, the Board has been diligently working to implement the provisions of the Sunset legislation. The Board has:

- Deliberated and considered different options regarding implementation of the two-panel disciplinary system;
- Worked with the Secretary and Governor to fill the Board vacancies, as well as recruit the additional Board member to meet the new composition of 22;
- Is developing processes for search warrants; and
- Is developing regulations to define actions that require reporting by certain entities and the imposition of fines against those entities that fail to report certain information.

In addition, the Board maintains a public licensee profile that includes a summary of charges, the charging document, a description of any disciplinary action taken within the last 10 year period, with a disclaimer stating that a charging document does not indicate a final finding of guilt. The Board continues to work towards implementing statutory mandate of the law.

Chapters 154 and 155 of the Acts of 2013 (SB 273/HB 225) - Veterans Full Employment Act of 2013. This legislation expedites the occupational and professional licensing process for military service members, spouses and veterans. The Board implemented an expedited process that included developing a procedure to identify service members, veterans or military spouses. The process includes assigning an advisor to assist with the application process, and an expedited time-frame of issuance of a license within 15 business days after receipt of a completed application. For those not meeting requirements for licensure, a representative would be assigned to assist the applicant in identifying relevant programs and training. There is also a link on the Board website pertaining to information on the expedited licensing process for veteran applicants. The Board has already implemented the operational changes needed to accomplish the new law. As of September 30, 2013, the Board has not received any requests to expedite the process.

In addition, during the 2013 legislative session the General Assembly passed the following bills the Board introduced and the Governor signed into law.

Chapter 583 of the Acts of 2013 (HB 1313) - State Board of Physicians - Consultation, Qualification for Licensure, License Renewal, and Representation to the Public - allows an applicant, who has passed the requisite medical licensing

examination after failing the examination or a part of the examination three or more times, to qualify for a license if the applicant meets certain specified requirements. The Board is developing regulations to implement the legislation.

Chapters 596 and 597 of the Acts of 2013 (SB 981/HB 1296) - State Board of Physicians - Quasi-Judicial Powers and the Board of Review - Revisions - authorizes the Board to issue a cease and desist order or obtain injunctive relief against an individual for taking any action (1) for which the Board determines there is a preponderance of evidence of grounds for discipline under the Medical Practice Act, and (2) that poses a serious risk to the health, safety, and welfare of a patient. The bill authorizes the Board to order a licensee to cease performing a specific act (*i.e.* prescribing controlled dangerous substances) when the facts and circumstances of a particular case warrant such action rather than summarily suspending the entire license. In appropriate circumstances, a cease and desist order allows a licensee to continue a limited practice, while still protecting the public from dangerous practices. The Board is developing regulations to carry out the provisions of the new law, including hearing procedures and sanctions for noncompliance with a cease and desist order.

Chapters 585 and 586 of the Acts of 2013 (SB 951/HB 879) - Health Occupations - Polysomnographic Technologists - Licensure and Discipline - authorizes, rather than requires, the Board to reinstate, under specified circumstances, the license of a polysomnographic technologist; repeals the requirement that the Board place a licensed polysomnographic technologist on inactive status under specified circumstances; authorizes the Board, subject to a specified provision of law, to deny a license or take specified action against a licensee for failing to cooperate with a lawful investigation conducted by the Board. The Board has drafted the regulations to implement this legislation and they are currently working their way through the approval process.

Chapters 587 and 588 of the Acts of 2013 (SB 954/HB 980) - Maryland Board of Physicians - Authority to Issue Temporary Licenses and Radiation Therapy, Radiography, Nuclear Medicine Technology, and Radiology Assistance Advisory Committee - repeals the authority of the Board to issue temporary licenses to practice radiation therapy, radiography, or nuclear medicine technology and repeals specified provisions of law referring to specified temporary licenses. The regulations to implement this legislation have been drafted and are progressing through the internal approval process.

Chapters 307 and 308 of the Acts of 2013 (SB 690/HB 900) - Maryland Board of Physicians - Failure to Renew a License or Misrepresentation as a Licensed Person – Penalties - alters the penalties to which a person is subject if the person fails to renew a license to practice medicine or misrepresents to the public that the person is authorized to practice medicine in the State. The Board is developing regulations to implement the legislation.

Conclusion

The Board has made significant progress in implementing the 46 recommendations in the 2011 Sunset Review, the recommendations contained in the UMB-Perman Report, and the requirements of the 2013 Sunset legislation. The Board recognizes that improvement is ongoing and there is much more work to be done. However, given the sheer volume of tasks and the challenges faced over the past year, the Board appreciates the opportunity to provide this update to the legislature.