

From: [Allison Taylor -DHMH-](#)
To: [Albert, Sarah](#)
Subject: State Board of Physicians Sunset Extension Annual Report (CH 401 of the Acts of 2013)
Date: Tuesday, September 30, 2014 2:21:22 PM

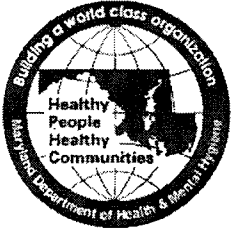
Dear Senator Conway and Delegate Hammen,

I wanted to inform you that the Board of Physicians Sunset Extension Annual Report, which is due October 1, will be submitted late. This report is required by Ch 401 of the Acts of 2013, section 2. The Board is in the process of refining the report and expects to submit it by November 1. If you have any questions about this, please don't hesitate to contact me.

Best,
Allison

Allison Taylor
Director, Office of Governmental Affairs
Department of Health and Mental Hygiene
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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 14, 2014

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 Chapter 401 of the Acts of 2013, "State Board of Physicians and Allied Health Advisory Committees – Sunset Extension and Program Evaluation," the Department 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.

Good morning, the Board received the forwarded request for information. Please respond within 24-48 hours and copy the response to Kim Jackson. Your prompt assistance is greatly appreciated. Thank you.

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

Sincerely,



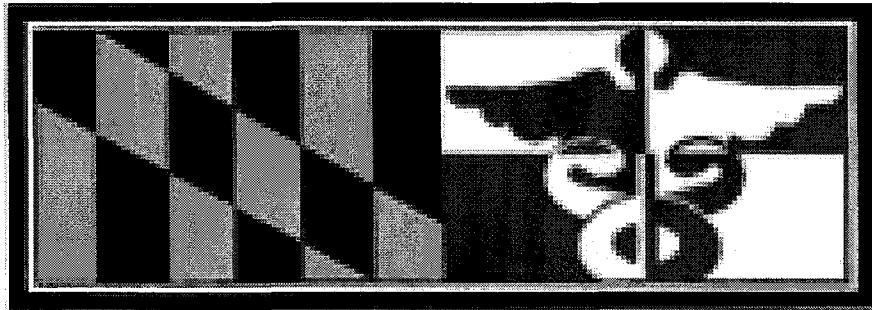
Devinder Singh, M.D.
Board Chair

Attachment:

Report on Progress of Implementing Sunset Evaluation Recommendations

cc: Joshua M. Sharfstein, M.D., Secretary
Laura Herrera, M.D., Deputy Secretary
Allison Taylor, Director of Governmental Affairs
Rianna Brown, Acting Chief of Staff, Assistant Secretary for Regulatory Affairs,
Office of the Secretary
Jennifer Ellick, Department of Legislative Services
Sara Fidler, Department of Legislative Services
Lisa Simpson, Department of Legislative Services
Christine A. Farrelly, Executive Director, Maryland Board of Physicians
Sarah Albert, MSAR #9782

Maryland Board of Physicians



Report on Progress of Implementing Sunset Evaluation Recommendations

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

Devinder Singh, M.D., Chair
Christine A. Farrelly, 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) codified 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, the 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.

The Board must report annually 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

Chapter 401 of the Acts of 2013 (House Bill 1096) requires the Board to provide ongoing, annual updates on several issues, on or before October 1, 2013. Annual updates are required thereafter for the next 5 years. Specifically, the 2013 Sunset legislation requires the Board to provide 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

Board members, leadership and staff have worked collaboratively to address the issues raised in the Board's Sunset legislation. During the interim legislative session, the Board has continued in its 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.

Updates on each of the items specified in the Sunset legislation are provided below:

1. Changes in Board's Disciplinary Process.

In response to the Sunset legislation, the Board has been working to streamline the Board's disciplinary processes to eliminate redundancies and improve investigative efficiencies. To date, the specific improvements include:

- Decreased response timeframe from 21 to 10 days for 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 has undertaken a variety of measures to improve communication with the OAG, thus expediting 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 Disciplinary Committee for Case Resolution (DCCR);
- Allowing flexibility for the settlement of cases post 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.

The Maryland Medical Practice Act requires that complaints be resolved within 18 months after receipt. Md. Code Ann., Health Occupations Article, § 14-401.1(k). In February 2014, after months of planning and preparation, in accordance with § 14-401 of the Health Occupations Article, the Board implemented the two-panel disciplinary system, through which allegations of grounds for disciplinary action must be resolved. The objective of the new process was to eliminate the complaint investigation backlog. As a result of the process improvements, the Board significantly

¹ Grounds (21) and (24)

reduced the length of investigations, and the Compliance Unit investigators cleared all backlogged cases. As of July 1, 2014, there are no complaint investigation cases at the Board that are greater than eighteen months of age. Currently, no complaint investigation backlog exists.

A key recommendation of the Perman Report, and ultimately the Sunset legislation, was the establishment of two separate panels to hear disciplinary cases. The Board has worked diligently to identify and address the numerous procedural and operational changes needed to implement a two-panel system. Prior to implementation in February 2014 of the two-panel system, the Board met only once a month to resolve disciplinary cases. Each disciplinary panel now meets once a month to resolve disciplinary cases, therefore the frequency of meetings has doubled. All the disciplinary cases received at the Board are randomly divided and assigned by the Board's technology system to both disciplinary panels.

2. Procuring and Implementing a New Information Technology System.

The Board prepared an Information Technology Project Request that has been approved by both the DHMH Office of Information Technology and the Department of Information Technology. The Board is currently working to hire a Project Manager to define the system requirements and review the current and future business processes.

3. Long-Term Financial Plan.

In terms of the long-term financial plan, issues were raised 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. In its 2012 report, the Board provided the legislature with the data and analysis of that work. To build on those efforts, and further improve and track fiscal operations for the long term, the Board engaged the services of an independent Certified Public Accountant (CPA) firm through the state's procurement process to address an array of fiscal issues that comprise a long-term fiscal plan. The issues identified for the analysis included: the development of 1) 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, and 2) a system that will provide equitable reallocation of rehabilitation fees across all professions. The current methodology only assesses this cost to physicians and physician assistants; however, all licensed professions participate in the rehabilitation program, but do not contribute to the costs associated with maintaining the program.

The Board undertook the steps to execute a contract with an independent CPA firm to conduct a long-term financial analysis and submit recommendations. Board senior staff developed the statement of work, advertised a request for bids, evaluated submissions, and ultimately awarded the contract. Despite the extensive staff efforts, it became apparent early in the contract that the contractor did not have the breadth of experience to successfully perform and provide the in-depth analysis requested by the Board. In response, the Board actively monitored the contract and determined that the report contained valuable statistics that can be the basis of a more developed, comprehensive analysis.

The Board is currently evaluating the timing and implications of developing an additional procurement related to the Board finances. One option is to develop a new procurement directed to

a larger firm with extensive experience with other government agencies (federal or state), and a broader base of technical and financial expertise to conduct the analysis and to provide recommendations. However, given the anticipated dramatic, fundamental operational changes anticipated by moving to a new paperless computer system, the recommendations of a larger procurement run the risk of being irrelevant once the computer system is implemented. The Board would then possibly be in the position, given its new operational structure, of requiring yet another analysis, specifically related to the cost of services.

In FY14, the Maryland Board of Physicians collected \$9,115,349 in revenues from licensees to conduct the business of the Board. The total operating expenses for FY14 were \$7,453,134. Md. Code Ann., Health Occupations Article, §14-207(c)(2) requires the Board to transfer 12% (twelve percent) of the collected fees for the operation of the Health Personnel Shortage Incentive Grant and the Maryland Loan Assistance Repayment Program operated under Title 18, Subtitle 28 of the Education Article and administered by the Maryland Higher Education Commission.² For FY14, this assessment was \$1,093,289.

The Board is self-funded and is advised to maintain a fund balance of approximately 20-30% of its revenue (“target surplus”) to ensure that any unanticipated shortfalls would not impact its operations. In FY14, the Board’s surplus was \$478,926, or 5.3% of its revenue. While this is below the recommended “target surplus” level, the Board projects a viable financial position only because historically the Board’s income significantly exceeded expenses and it was able to carry over unused revenue from one fiscal year to the next. For the past five years, the Board’s fund balance has fluctuated between \$4.1 and \$5.8 million.

4. Financial Data for the preceding Fiscal Year.

Fiscal Data FY14

Item	Value
Authorized Positions (FTE) ³	70.1
Contractual Positions (FTE)	1.85
Revenues Collected	9,115,349
Total Expenditures ⁴	7,543,134
Transfer to Scholarship Fund	1,093,289
Revenue over Expenditures	478,926
Target Balance as % of Revenue	20.0%
Actual Balance as % of Revenue	5.3%

During FY14, the Board experienced significant staff vacancies. There were, on average, 11 vacant positions. There was a 15% vacancy rate, including the key positions of Executive Director and Deputy Director. Moving forward, the Board’s fund balance (\$5,853,260 as of June 30, 2014⁵) will

² The assessment is required if the Governor does not include at least \$750,000 in the State budget, an allocation that has not occurred for at least the last ten years. Additionally, the Board has a biennial renewal cycle and revenues fluctuate each year.

³ Full Time Employees

⁴ Includes a transfer to Maryland Health Care Commission of \$567,804, (Board expenditures include both direct and indirect costs).

⁵ Includes carry-over funds from FY13.

be critical in achieving operational improvements and efficiencies throughout the agency. For example, in the Board's FY16 budget request, there is a single line item of approximately \$2,000,000 to fund efforts to upgrade the Board's antiquated operating system, converting it from a paper-based, labor intensive system to a web-based, efficient, user-friendly system. Accordingly, the Board's projected carry-over to the next fiscal year (FY17) will be reduced significantly to only \$2,824,359.

In addition, the purchase and installation of a new integrated medical licensure and investigation software system - which includes a requirements analysis, configuration, development, training, testing and implementation - will result in dramatic operational changes and corresponding expenditures. The Board anticipates that the facility renovations, including the purchase of new audio/visual equipment to facilitate telecommuting for Board members, will enhance efficiency and increase expenditure. Unfortunately, the Board expected to be further along in the facility renovations and procurement of a new IT system to modernize the Board's paper based system.

5. The Board's Progress in Implementing the Sunset Recommendations.

The Board has completed the majority of the DLS Sunset recommendations. The outstanding recommendations relate to the Board's fiscal issues and long-term financial plan, and are the subject of the engagement of an independent accounting firm. Additionally, the IT procurement is in process.

The Board has been diligently working to implement the provisions of the Sunset legislation. Specifically, in 2014, the Board has:

- Completely eliminated the complaint investigation backlog at the Board;
- Implemented the two-panel disciplinary system;
- Worked with the Governor and Secretary to fill the Board vacancies, as well as recruit the additional Board member to meet the new composition of 22;
- Initiated the procurement for the Information Technology Project Request which is progressing through the procurement process;
- Engaged the services of an independent Certified Public Accountant firm to address fiscal issues;
- Filled staff vacancies;
- Initiated the planning for audio/visual equipment to enable telecommuting for Board members;
- Promulgated regulations and initiated the promulgation of other regulations; and
- Implemented an expedited licensing process for veterans, military service members and their spouses.

Statutory Changes Affecting the Board

Chapters 399 and 153 of the Acts of 2014 (HB 402/SB 314) - State Board of Physicians-Naturopathic Doctors

Under the leadership of Delegate Peter A. Hammen, Chairman of the House Health and Government Operations Committee, a workgroup of stakeholders - including Board leadership and

staff, DHMH staff, the Maryland State Medical Society, and several naturopathic doctors and their representative - have worked through many issues and concerns that resulted in the passage of this bill. Through these meetings, extensive amendments were made to the bill often at the Board's request. Ultimately, an agreement was reached on education and testing requirements, scope of practice, collaboration, licensure issuance date, and disciplinary provisions. Another issue regarding whether and to what extent naturopathic doctors should have prescribing authority is to be addressed through a Formulary Workgroup led by the Board, which is to report to the legislature in 2015.

Chapter 626 of the Acts of 2014 (HB 959) - State Board of Physicians-Qualification for Licensure and Definitions

A Board bill introduced to clarify the "three fails" language in the physician licensure statute passed in the 2013 legislative session. The bill clarifies that an applicant must pass all components of the examination as a requirement for licensure. The bill also adds Canadian certification organizations to the definition of "Board Certified."

Chapter 609 of the Acts of 2014 (HB 692) - Maryland Perfusion Act-Revisions

This Perfusion Advisory Committee bill which passed during the 2014 Legislative Session expands the civil fine authority of the Board, alters the circumstances under which the board must reinstate their license, extends a temporary license prior to taking the national certifying examination, alters the display of a license requirement, alters the membership of the Perfusion Advisory Committee and corrects references to national organizations.

Conclusion

The Board has made significant progress in implementing the 46 recommendations in the 2011 Sunset Review and the requirements of the 2013 Sunset legislation. The Board recognizes that sustaining improvements is an ongoing process 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.