



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
Health Professionals Boards and Commission

4201 Patterson Avenue - Baltimore, Maryland 21215

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

January 3, 2012

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House, H-107
Annapolis, MD 21041

The Honorable Michael Busch
Speaker of the House of Delegates
State House, H-101
Annapolis, MD 21401

The Honorable Joan Carter Conway
2 West Miller Senate Office Building
Annapolis, MD 21401

The Honorable Peter Hammen
241 House Office Building
Annapolis, MD 21401

RE: HB 114 (Chapter 534, 2010) – Progress report

Dear President Miller, Speaker Busch, Senator Conway and Delegate Hammen:

Pursuant to House Bill 114 (Chapter 534, 2010) the Maryland Health Occupations Boards submit this report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on the Boards':

- Success in meeting the goals and requirements of the act; and
- Ways in which separation of the Board's disciplinary functions can be further achieved.

To address item one above, a chart is enclosed detailing the status of each Board's implementation of the bill's recommendations. It should be noted that of all the health occupations boards, only two have the statutory authority to conduct peer review standard of care violations: the Board of Physicians and the Board of Pharmacy. Both boards are in compliance with the statute. Additionally, the Board of Dental Examiners reported that while it does not have peer review statutory authority, its regulations give an accused licensee the right to examine all documents the Board plans to introduce at all hearings.

In response to the requirements of §1-609 of the Health Occupations Article, Annotated Code of Maryland, contained in the bill, also enclosed is a disclosure statement developed by the Office of the Attorney General which all the Boards observe and can post on their websites. It details the separation between the Office's role as legal counsel to the Boards, but also as prosecutor of licensees. The Boards take this separation very seriously in an effort to provide their respective licensees with the fairest treatment possible during the disciplinary process.

To address item two above, the Boards discussed and examined the possibility of grouping board investigators together in a single unit and allowing each investigator to specialize in investigating certain types of violations (i.e. sex crimes, or fraud) rather than the current arrangement whereby each Board employs an investigative staff to look into complaints solely for that Board. This idea was rejected because it is more feasible for an investigator to work under a single Board or a few boards, and to become an expert with only the statutes and regulations of those Boards, instead of having to learn all

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Boards' statutes and regulations, which can differ dramatically. Consequently, investigations are more thorough and efficient.

Additionally, a few Boards reported unintended consequences of the legislation:

- The Board of Pharmacy and the Board of Examiners of Psychologists both reported receiving pushback from their licensees about posting final orders on the respective board's website. In particular, the Board of Pharmacy has received complaints concerning public orders dating back to 1979 being posted online. Their licensees believe there should be a time limit on posting such orders, especially once conditions have been fulfilled and disciplinary actions have been lifted. In addition, the Boards hears complaints about deceased licensees having public orders posted, irrelevant orders being posted resulting in defamation and business deals falling through.
- The Board of Examiners of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists discovered that its Disciplinary Case Review Committee arrangement resulted in some individuals under the Board's jurisdiction not being notified of a complaint against them until the complaint was dismissed by the full Board due to the complaint being baseless. This has happened in very few cases and is not a regular occurrence. Steps are being taken to remedy this situation.

The Board of Chiropractic and Massage Therapy reported that while the bill has required some administrative work, its effects have been positive. In particular, the sanctioning guidelines will contribute to keeping the Board's disciplinary decisions fair and consistent. The Board of Examiners of Nursing Home Administrators also said one positive effect of the legislation was to increase, through its disciplinary committee, its interaction with licensees regarding survey findings from the Office of Health Care Quality.

I hope this information is helpful. If you have any questions regarding this report, please contact me at 410-764-5978.

Sincerely,

Kristen Neville
Legislation and Regulations Specialist
Health Occupations Boards and Commission

Cc: Members of the Senate Education, Health, and Environmental Affairs Committee
Members of the House Health & Government Operations Committee
Ms. Marie Grant
Ms. Sarah Albert

	Notification of all licensees of a Board vacancy (§1-215)*	Training for new Board members that includes cultural competency training offered (§1-216)	Collect racial & ethnic information about applicants for licensing, certification, or renewal (§1-218)	Disciplinary committee established (§1-602)	Program for licensees or certificate holders who commit single standard of care violations as alternative to formal hearing established (§1-605)	Sanctioning guidelines adopted (§1-606)	Final public orders for disciplinary sanctions posted on Board website (§1-607)
Board of Acupuncture	Yes; via Board newsletter and website	Yes. There is an annual training sponsored by all the Boards.	Yes	Yes	No program per se, but the Board usually requires training & mentorship for such violations	Yes	Yes
Board of Examiners for Audiologists, Hearing Aid Dispensers, & Speech-Language Pathologists	Yes; via e-mail, Board newsletter, and Board website	Yes. In addition to the annual training sponsored by all Boards, the Board is in the process of developing its own resource manual to include information on cultural competency	Yes	Yes	In progress, however, the Board has not had such a violation in the last 5 years.	Yes	Yes
Board for the Certification of Residential Child Care Program Professionals	Yes; via the Board's newsletter and website	Yes. In addition to the annual training sponsored by all the Boards, the Board puts articles in its newsletter.	Yes	Yes	In progress	In progress	Yes
Board of Chiropractic & Massage Therapy	Yes; via Board newsletter	Yes. There is an annual training sponsored by all the Boards	In progress. To be implemented by January 1, 2012	Yes	The Board utilizes the Case Resolution Conference process whereby mentoring and coursework can be required as an alternative sanction.	In progress	Yes
Board of Dental Examiners	Yes	Yes. In addition to the annual training sponsored by all the Boards, the Board distributes a comprehensive manual detailing Board member roles, responsibilities, & Board policies & procedures	Yes	Yes	The Board's sanctioning guidelines include a mitigating circumstance allowing the Board to minimize discipline if a licensee has committed no prior offense.	Yes	Yes
Board of Dietetic Practice	Yes; via Board newsletter and Board website	Yes. In addition to the annual training sponsored by all the Boards, the Board puts articles in its newsletter and does its own training for new members.	Yes	The Board uses a liaison system.	The Board has not had a standard of care case of this type in the last two years.	Yes	Yes
Board of Morticians and Funeral Directors	Yes; via the Board's website	Yes. There is an annual training sponsored by all the Boards.	Yes	Yes	N/A	Yes	Yes
Board of Nursing	Yes	Yes, plus the Board does its own orientation for new members. In addition, the Board has a link on its website to a free, online course on the subject as it relates to nursing.	Yes	Yes	Yes	Yes	Yes
Board of Examiners of Nursing Home Administrators	Yes; via the Board's newsletter and website	Yes. In addition to the annual training sponsored by all the Boards, the Board distributes its own orientation manual.	Yes	Yes	No, but the Board has increased its collaboration between the Disciplinary committee, Board office, and licensees.	Yes	Yes
Board of Occupational Therapy Practice	Yes	Yes. In addition to the annual training sponsored by all the Boards, the Board has its own Board-specific training process which includes cultural competency issues.	Yes	Yes	The Board usually offers training, mentoring, or other remediation as an alternative to a formal hearing.	Yes	Yes

	Notification of all licensees of a Board vacancy (§1-215)	Training for new Board members that includes cultural competency training offered (§1-216)	Collect racial & ethnic information about applicants for licensing, certification, or renewal (§1-218)	Disciplinary committee established (§1-602)	Program for licensees or certificate holders who commit single standard of care violations as alternative to formal hearing established (§1-605)	Sanctioning guidelines adopted (§1-606)	Final public orders for disciplinary sanctions posted on Board website (§1-607)
Board of Examiners in Optometry	Yes	Yes. There is an annual training sponsored by all the Boards	Yes	Yes	No. The Board has not had a case of this type in 10 years.	In progress	Yes
Board of Pharmacy	Yes; via the Board's newsletter and website	Yes. There is an annual training sponsored by all the Boards	Yes, once a new database system is implemented in FY 2012	Yes	Yes. The Board often requires and monitors licensees who commit such violations to receive additional continuing education in lieu of formal charges and/or subsequent formal actions. The Board also refers licensees who have been found to have committed substance abuse violations to a rehabilitation referral service. Participation in this service is voluntary and confidential.	In progress	Yes
Board of Physical Therapy Examiners	Yes; via the Board's newsletter and website	Yes. There is an annual training sponsored by all the Boards	Yes	No. A committee is not feasible due to the size of the Board.	Through the Case Resolution Conference process, training and mentoring are routinely ordered as remedial measures.	Yes	Yes
Board of Physicians	Yes; via the Board's newsletter and website	Yes. There is an annual training sponsored by all the Boards	Yes	Yes	No.	Yes	Yes
Board of Podiatric Medical Examiners	Yes; via the Board's website	Yes. There is an annual training sponsored by all the Boards	Yes	The Board uses a liaison system.	Yes. The Board has had a mentoring system in place for over 20 years.	Yes	Yes
Board of Professional Counselors & Therapists	Yes	Yes. There is an annual training sponsored by all the Boards	Yes	Yes	The Board has very limited authority in providing for an "alternative to a formal hearing," so the Board uses, at counsel's advice, Letters of Education or Letters of Admonishment.	In progress	Yes
Board of Examiners of Psychologists	Yes	Yes. In addition to the annual training sponsored by all the Boards, the Board has collaborated with the Maryland Psychological Association and the Office of Minority Services.	Yes	No. The Board uses a liaison system and full board process to handle complaints.	Informal resolutions focus on education and training through courses and mentoring/supervision.	Yes	Yes
Board of Social Work Examiners	Yes; via Board newsletter and emails to all licensees based on membership category.	Yes. In addition to the annual training sponsored by all the Boards, the Board sends new members to the Association of Social Work Boards new member training.	Yes.	Yes	The Board has very limited authority in providing for an "alternative to a formal hearing," so the Board uses, at counsel's advice, Letters of Education or Letters of Admonishment.	Yes	Yes

* All code references are to the Health Occupations Article of the Annotated Code of Maryland.

ROLE OF THE OFFICE OF THE ATTORNEY GENERAL DURING THE DISCIPLINARY PROCESS

By law, the Office of the Attorney General (the “Office”) represents each health occupations licensing board and prosecutes licensees before each board. To provide fair adjudications to those appearing before the boards and to avoid even the appearance of a conflict of interest, the Office has for decades separated the roles of, and maintained a conflicts “screen” between, board counsel and administrative prosecutors in the disciplinary process. More recently, the Office implemented an internal restructuring under which the administrative prosecutors now constitute a separate unit within the Office, with a Principal Counsel who reports not, as before, to the Principal Counsel for DHMH, but to the Deputy Attorney General. This restructuring is primarily a formal recognition of the historical separation that the Office has always maintained, and the board counsel and administrative prosecutors continue to carry out the functions they always have, as described below:

- Board counsel advise the boards throughout the disciplinary process.
- Administrative prosecutors review and present disciplinary cases to the boards.
- The board counsel and the administrative prosecutors have different supervisors.
- Once charges have been filed and until a final order is issued, an administrative prosecutor and board counsel may not discuss the substance of a specific case unless the licensee’s attorney or the licensee participates in the discussion.
- This prohibition on *ex parte* communications extends to the supervisors of the administrative prosecutors and board counsel.

A copy of the Office’s formal policy covering the roles of advisors (board counsel) and advocates (administrative prosecutors) may be obtained through the Attorney General’s website.