



MARYLAND Department of Health Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

March 12, 2018

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

The Honorable Shane E. Pendergrass,
Chair
House Health and Government
Operations Committee
241 House Office Building
6 Bladen Street
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**

Dear Chair Carter Conway and Chair Pendergrass:

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

Maryland Board of Physicians
Sunset Progress Report
Page 2

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

Sincerely,



Christine A. Farrelly
Executive Director

Attachment:

Report on Progress of Implementing Sunset Evaluation Recommendations

cc: Robert R. Neall., Secretary
Webster Ye, Director of Governmental Affairs
Damean W.E. Freas, D.O., Board Chair
David Lashar, Chief of Staff, Office of the Secretary
Sarah Albert, Department of Legislative Services ✓
Ryan Bishop, Department of Legislative Services
Sara Fidler, Department of Legislative Services
Lindsay Rowe, Department of Legislative Services

Maryland Board of Physicians



2017 Report on Progress of Implementing Sunset Evaluation Recommendations

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

Damean W.E. Freas, D.O., 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. A subsequent full sunset evaluation was conducted by DLS in 2016, and new legislation was enacted in 2017.

Chapter 401 of the Acts of 2013 (House Bill 1096) codified many recommendations and extended the Board’s termination date to July 1, 2018. 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.

Mission Statement

The mission of the Board of Physicians is to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act.

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 of each year for five years. Specifically, the 2013 sunset legislation requires the Board to report on:

1. Any changes to the Board’s disciplinary 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 2011 sunset evaluation and subsequent legislation. During the interim, the Board continuously assesses the disciplinary process, improvements in communication, and innovative ideas regarding Board operations. All of these efforts continue to refine and advance 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.

As noted in the 2016 sunset evaluation, "Despite Consistent Complaint Volume, Backlog Has Not Returned" (Sunset Report, page 23).

The Board is still engaging in continuous quality improvement regarding the disciplinary process, but there have been no significant changes in the disciplinary process in the last fiscal year.

2. Procuring and Implementing a New Information Technology System.

The Board continues to enhance its internal information technology (IT) system and features for online services. For the past few years, the Board had been re-evaluating the need for a new IT system. After internal discussions within the Maryland Department of Health and with the other health occupation boards, the Board ceded leadership of the IT project to the Board of Nursing and has withdrawn from the project. The new IT system is being planned as an enterprise system that, when developed and implemented, could be used by all of Maryland's health occupation boards.

3. Long-Term Financial Plan.

The Board continues to monitor fiscal processes and procedures to ensure financial records are accurate, reliable, sensible and consistent. Beginning in FY 2018, the Board will reconcile the revenue data embedded into BPQA (Board's IT system) with the revenue data maintained by the Fiscal Unit. Reconciling these two sources of revenue data will ensure that the Board's revenue data is accurate, reliable, and consistent, irrespective of the internal source of the data. During FY 2018, the Board will discontinue the use of cash transfers to redistribute revenue collected on the behalf of the Office of Controlled Substances Administration (OCSA). Instead, the Board will use a revenue transfer to redistribute revenue collected on behalf of OCSA. The use of a revenue transfer instead of a cash transfer will result in an accurate depiction of the Board's annual revenue totals. Prior to FY 2018, the Board's annual revenue was overstated by the amount of revenue

redistributed via cash transfer. Refining the financial records will make the Board’s financial position easier to explain and understand.

As a special funded agency, the Board is expected to maintain a financial environment where annual expenditures are consistently less than annual revenues. The Board continues to maintain a budget surplus in order to lessen its exposure to financial devastation. The budget surplus helps the Board comply with legislation that does not allot for revenue generating opportunities to offset increased expenses. The budget surplus also helps the Board fund technological enhancements that have the potential to gradually decrease operating expenses. If the budget surplus did not exist, it is likely that the Board would be forced to increase application fees to stay afloat. The Board has successfully maintained a budget surplus each fiscal year for at least the last five fiscal years.

4. Financial Data for the preceding Fiscal Year.

Summary of Available Reserves

	Fiscal Year 17
Total Revenues	11,508,770
Total Expenditures	9,031,802
Excess (Deficiency) of Revenues Over Expenditures	2,476,968
Cash Transfers	
Fund Balance Transfers from Previous Years	4,701,828
Transfers to Maryland Higher Education Commission	(550,000)
Transfers to Office of Controlled Substances Administration	(199,000)
Transfers to Maryland IT Development Projects	(248,806)
Total Cash Transfers	3,704,022
Fund Balance	6,180,990
Reserves	
Reserves for Economic Uncertainties (20% of Expenditures)	1,806,360
Reserves for Potential Litigation Expenses	4,074,380
Total Reserves	5,880,740
Available Fund Balance / Available Reserves	300,249

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

In 2016, the Board underwent a full sunset evaluation that concluded that the “Previous Sunset Recommendations Largely Implemented By Board” (Sunset Report, page 5).

The 2017 Legislative Session – Statutory Changes Affecting the Board

The following is a summary of bills that most impacted the scope of the Board’s mission:

Program Evaluation (“Sunset Review”)

Senate Bill 549/House Bill 1265 extended the termination date of the Board and its related allied health advisory committees by five years to July 1, 2023, and generally implemented the recommendations of DLS’ December 2016 full sunset evaluation of the Board. The bills also added new reporting requirements for sexual misconduct cases and Criminal History Records Checks, repealed six-month reports under Health Occupations Article, §14-413 and §14-414 and shifted certain disciplinary proceedings from the Board to the Disciplinary Panels.

Guidelines for Prescribing Opioids

House Bill 1432 requires a health care provider providing treatment for pain, based on the clinical judgment of the provider, to prescribe the lowest effective dose of an opioid and a quantity that is no greater than what is needed for the expected duration of pain severe enough to require an opioid, with certain exceptions. A violation of the bill’s requirements is grounds for disciplinary action by the appropriate health occupations board. The bill also expressed the intent of the General Assembly that the Board and other health occupations boards work to educate practitioners to ensure that Maryland residents are aware of the risks associated with opioid drugs.

Supervision and Review of Board Decisions and Actions

In 2015, the U.S. Supreme Court held in *N.C. Board of Dental Examiners v. Federal Trade Commission* that, when a controlling number of the decision makers on a state licensing board are active participants in the occupation the board regulates, the board may only invoke state-action immunity if it is subject to active supervision by the state.

In response to the decision, **Senate Bill 517/House Bill 628** require the Secretary of each principal department to supervise each unit of State government within the Secretary’s jurisdiction that is composed, in whole or in part, of individuals participating in the occupation or profession regulated by the unit. The supervision is intended to prevent unreasonable anticompetitive actions by the unit and allow for the determination regarding whether the decisions and actions of the unit further a clearly articulated State policy to displace competition in the regulated market.

Teletherapy

Senate Bill 1106/House Bill 352 authorize health care practitioners who provide behavioral health services and are licensed by the State boards of Nursing, Physicians, Professional Counselors and Therapists, Psychologists, or Social Workers to use teletherapy if they meet specified requirements.

In accordance with the bills, the affected boards must adopt implementing regulations by April 1, 2018. The Board, in consultation with stakeholders, is in the process of amending its telehealth regulations.

Prohibition on Requiring Specialty Certification for Physician Licensure

Senate Bill 989/House Bill 1054 prohibit the State Board of Physicians from requiring, as a qualification for initial licensure or a condition of license renewal, (1) certification by a nationally recognized accrediting organization that specializes in a specific area of medicine or (2) maintenance of such certification that includes continuous reexamination to measure core competencies as a requirement for maintaining certification.

Medical Professional Liability Insurance

Senate Bill 195/House Bill 957 require the public practitioner profile for each licensed physician in the State maintained by the Board to include information as to whether the physician maintains medical professional liability insurance as reported by the physician to the Board. If a physician reports such information, the physician must, on request of the Board provide verification or other documentation of the information within 25 business days of the request. Each licensed physician practicing medicine in the State must notify a patient in writing, as specified, if the physician does not carry professional liability insurance coverage, or if the physician's coverage has lapsed for any period of time and has not been renewed. Each licensed physician who does not carry professional liability insurance coverage must conspicuously post such information where the licensee practices.

CONCLUSION

In 2016, the Board underwent a full sunset evaluation which changed certain reporting requirements. The Board recognizes that sustaining improvement is an ongoing process. The Board continues to move forward and appreciates the opportunity to provide this update to the legislature.