



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

**Maryland State Board of Dental Examiners**  
Spring Grove Hospital Center • Benjamin Rush Building  
55 Wade Avenue/Tulip Drive • Catonsville, Maryland 21228  
Mainline: 410-402-8501 • [health.maryland.gov/dental](http://health.maryland.gov/dental)

October 29, 2021

The Honorable Larry Hogan  
Governor  
100 State Circle  
Annapolis, Maryland 21401-1991

The Honorable Bill Ferguson  
President of the Senate  
State House, H-107  
100 State Circle  
Annapolis, Maryland 21401-1991

The Honorable Adrienne A. Jones  
Speaker of the House  
State House, H-101  
State Circle  
Annapolis, Maryland 21401

Senator Pamela G. Beidle  
James Senate Office Building, Room 202  
11 Bladen Street  
Annapolis, Maryland 21401

Senator Sarah K. Elfreth  
Senator James Senate Office Building, Room 202  
11 Bladen Street  
Annapolis, Maryland 21401

Delegate Ariana B. Kelly  
House Office Building, Room 425  
6 Bladen Street  
Annapolis, Maryland 21401

Re: Report to the Governor, President of the Senate, and Speaker of the House – Senate Bill 836, Chapter 361, Laws of Maryland 2021

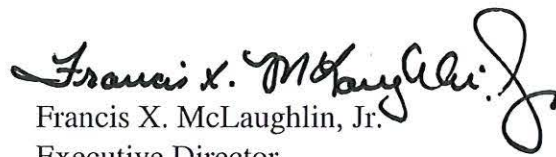
Dear Governor Hogan, President Ferguson, Speaker Jones, Senators Beidle and Elfreth, and Delegate Kelly:


Senate Bill 836 requires the State Board of Dental Examiners (the “Board”) to submit a report to the Governor and the General Assembly in accordance with § 2-1257 of the State Government Article. The report is quite extensive, and over the past several months, the Board has spent a considerable amount of time with its staff compiling the requested data and preparing thoughtful responses to the items that SB836 required.

Per SB836, the report was to be filed on or before November 1, 2021 – a due date that the Board was fully anticipating that it would meet. On October 18, 2021, however, the Board was made aware by the Department of Health’s Office of Governmental Affairs that the report had to undergo an internal review process prior to its formal submission, to include review by the Secretary of Health and the Governor’s Office.

The Office of Governmental Affairs completed its review on Friday, October 22, 2021, and it made several non-substantive suggestions, which the Board accepted on Monday, October 25. That same day, the report was forwarded to the Secretary of the Department of Health for his review, which has been completed. The report was recently forwarded to the Governor’s Office, and the Board expects to hear back very shortly. Once the Board receives the report from the Governor’s Office, it will be submitted to you promptly in accordance with the mandates of the bill.

The Board apologizes for any delay.

  
Francis X. McLaughlin, Jr.  
Executive Director

  
Arpana S. Verma  
President

cc: Sarah T. Albert, Mandated Report Specialist, Dept. of Legislative Services  
Webster Ye, Chief of Staff, MDH

Heather Shek, Director, Office of Governmental Affairs, MDH  
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Leslie E. Grant, D.D.S.  
Louis G. DePaola, D.D.S.  
Jane Phillips, R.D.H.



## DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

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November 1, 2021

The Honorable Larry Hogan  
Governor  
100 State Circle  
Annapolis, Maryland 21401-1991

The Honorable Bill Ferguson  
President of the Senate  
State House, H-107  
100 State Circle  
Annapolis, Maryland 21401-1991

The Honorable Adrienne A. Jones  
Speaker of the House  
State House, H-101  
State Circle  
Annapolis, Maryland 21401

**Re: Report to the Governor, President of the Senate, and Speaker of the House – Senate Bill 836, Chapter 361, Laws of Maryland 2021 – MSAR # 13320**

Dear Governor Hogan, President Ferguson, and Speaker Jones:

This report is submitted by the Maryland State Board of Dental Examiners (“the Board”) in accordance with Section 1 of SB 836, Chapter 361, Laws of Maryland 2021, and in accordance with the Annotated Code of Maryland, State Government Article, § 2-1257. References are to the Annotated Code of Maryland, Health Occupations Article, (“HO”), Annotated Code of Maryland, General Provisions Article, (“GP”), and the Annotated Code of Maryland, State Government Article, (“SG”).

## *Brief Summary*

A number of inquiries posed to the Maryland State Board of Dental Examiners by SB 836 concern the Board's complaint processes. Written complaints received by the Board are accepted by Board staff. On receipt, all information related to the respondent is redacted from the documentation to ensure an objective review of the materials. This redacted complaint is reviewed by the Board's Triage Committee. If the complaint alleges a prima facie violation of the Maryland Dentistry Act, the case is typically referred to the Board's investigative unit. The Board will mail a copy of the complaint to the respondent asking that he or she respond to the complaint. A subpoena is included that directs the respondent to provide the Board with records pertinent for Board review. At times, the respondent fails to respond, responds without the records, or responds with records that are illegible, thus making additional requests necessary.

If the response indicates that the respondent has substantial clinical standard of care issues the Board may again request by subpoena to review further records to determine if the deficiency is widespread. In addition, the initial investigation may discover facts that warrant further investigation, such as the licensee's inability to maintain adequate records. To not investigate further would certainly shorten the life span of the case, but to do otherwise would be a disservice to the citizens of Maryland.

Once all of the records are obtained the case goes to the Discipline Review Committee ("DRC") for its substantive review. After reviewing all materials received in the course of the investigation, the DRC makes a recommendation to the full Board. The DRC may direct that the case be closed, referred to the appropriate peer review committee (usually when the dispute is solely a fee dispute), or referred to the Office of the Attorney General ("OAG") for formal charging under the Dentistry Act and prosecution. At times the Board may write an Advisory Letter or Letter of Education to the respondent if the infraction is significant but not serious enough to warrant formal action. If referred to the OAG, the Board will ratify the charges once they are returned. Charges are served on the respondent who may engage the services of an attorney. The charging documents contain a cover letter that schedules the matter for a Case Resolution Conference (which is the Board's term for a settlement conference) and a hearing date. At all times during the process the Board is amenable to resolving the matter short of a formal hearing.

If settlement is not attained, the hearing may be heard by the Board itself or referred to the Office of Administrative Hearings ("OAH"). If heard by the Board, at the conclusion of the hearing and after the Board's deliberation and voting, the Board's counsel drafts a final hearing order for the Board's review. If there is a risk that the Board's decision may affect competition generally, the Board must refer the draft order to the OAH for antitrust review. The order is then forwarded to the respondent who may file a motion for reconsideration. If the matter was heard at the OAH, the Administrative Law Judge will issue a proposed order which is presented to the Board for review. The parties may file exceptions to that proposed order. In that event, an exceptions hearing is conducted before the Board. At the conclusion of the exceptions hearing, the Board deliberates the matter and votes on how to proceed. Per the Board's vote, the Board's counsel drafts a final order for the Board's review. If there is a risk that the Board's decision may affect



competition generally, the Board must rerefer the draft order to the OAH for antitrust review. Again, there is an opportunity for reconsideration.

Cutting across these processes are matters where the Board has found that the public health, safety, or welfare imperatively requires emergency action. Historically, these matters have concerned Centers for Disease Control (“CDC”) issues, (infection control), sexual boundary issues, and child pornography issues. The Maryland Administrative Procedure Act provides that any licensing board may order the summary suspension of a license if that unit (1) finds that the public health, safety, or welfare imperatively requires emergency action, and (2) the licensee is provided with written notice of the suspension and an opportunity to be heard.

All of the proceedings mentioned above take time. If the respondent fails to cooperate the times are prolonged.

Following a methodical investigative and review process is essential for the Board to be able to protect our citizens while also ensuring actions taken against licensees are warranted.

*The above is a summary only. The issues are discussed in greater detail below.*

#### **Issues that Affect Timeframes:**

- The Dental Board is not unique in being understaffed, but the situation has existed for approximately 5 years. The Board has experienced particular difficulties in filling investigator and clerical positions. Occasionally candidates are offered positions but have in the interim taken positions elsewhere due to the lengthy approval process that can take four to six months, The Board has requested additional investigators, an additional staff attorney, two paralegals, and additional clerical staff.
- Essential PINS (personal identification number) have been eliminated.
- Complexity of cases, especially those that uncover multiple violations of the Dental Practice Act, and lack of cooperation of the respondent.
- The extensive number of dentists who must be subpoenaed and/or interviewed in complex cases.
- Necessary inspections of dental offices.
- Failure of dentists to cooperate with a Board investigation.
- Dentists who abandon patient records in offices and basements.
- Failure of dentists to respond to subpoenas in a timely manner, alleging that they are not the custodian of records.
- Failure of dentists to comply with subpoenas; providing partial records, illegible records, or no records, necessitating further communication with respondents or threats of court action to compel compliance.
- Difficulty in obtaining expert reviewers, especially when the services of specialists are necessary in order to properly evaluate standard of care cases. The COVID-19 pandemic has exacerbated the situation. Some experts have simply quit, citing the difficulty and months long process to receive payment for their services. The Board is doing whatever it can to expedite the payment process. The Board continues to solicit qualified experts to aid the Board.

- The Board is working with the OAG to streamline the processing of cases.
- The Board whenever feasible will not merge different cases against the same respondent, which should result in faster handling of cases.

## **Board Responses**

The following are SB 836 directives and the Board's responses:

*a. The state Board of Dental Examiners shall:*

*(1) study:*

*(i). How many complaints are filed annually;*

*Response:* Board records are maintained on a fiscal year basis beginning on July 1 and ending on June 30th.

FY 2019: 158

FY 2020: 174

FY 2021: 193

FY 2022: 43 (Partial. July 1, 2021 through September 30, 2021)

*(ii). How a complaint is filed;*

*Response:* Under HO § 4-316(a) complaints are required to be filed in writing with the Board. The Board may vote to file a written complaint on its own initiative if it becomes aware of a possible violation of the dental laws from reports in the media or other publicly available sources of information.

*(iii). Who is eligible to file a complaint;*

*Response:* Any person who is familiar with the alleged facts may file a complaint. Typically, those persons are patients, patient's spouses, parents of minor patients, children of patients, other health care practitioners, state or federal agencies, and other boards. Insurers can also file complaints. See HO §4-316(a).

The Board may also file a complaint, as stated in (ii) above. For instance, the Board may file a complaint as a result of a response it receives from a prospective licensee on an initial application for licensure, or on an application that it receives on a renewal application. Each application contains a section devoted to "Character and Fitness" questions. Questions are asked about misdemeanor and felony convictions, disciplinary actions and investigations in other states, and drug and alcohol use. If the applicant responds in the affirmative to any of these inquiries, or if the Board becomes aware of any issues surrounding the applicant's fitness to hold a license, the Board may file a complaint and open an investigation.

*(iv). The length of time a complaint is open;*

The Board closes a complaint when all associated requirements set forth in a final order are fulfilled. Thus, the period of time that a case remains open depends upon a number of factors. The period may range from as little as 90 days to as many as several years. For example, if a case results in either an Order (which results from a formal hearing) or a Consent Order (an order whereby the respondent and Board agree on sanctions) the length of time that the case remains open is due in large part on the actions of the respondent. Both orders and consent orders contain findings of fact and conclusions of law. They contain provisions detailing the responsibilities of the respondent which may include probation, completion of remedial courses, payment of a monetary penalty, office inspections (both announced and unannounced), and records reviews. If a respondent fails to cooperate with any of their obligations, the case remains open.

To note, the point at which a complaint is closed differs across boards. For instance, there are boards that close a complaint at the issuance of a final order rather than waiting until after all requirements set forth in the final order are fulfilled.

*(v). The time frame to provide updates and a resolution to the complainant;*

*Response:* The Board's discipline unit provides written updates to the complainant every 90 days. Once a complaint is resolved, the Board notifies the complainant in writing within 7 days. If the case is closed with an Order, a copy of the Order is mailed to the complainant.

*(vi). The average time between steps in the disciplinary process, including:*

*1. The issuance of an Order of Summary Suspension;*

*Response:* 53 days. This timeframe includes investigations and inspections if necessary.

*2. A show cause hearing;*

*Response:* The Board does not have data for this metric, however, the Board's regulations require no more than 30 days between summary suspension and show cause hearing. In practice, the Board typically holds the show cause hearing at the meeting following the summary suspension.

*3. A Case Resolution Conference;*

*Response:* 18 days. (Average length of time between charges and a case resolution conference).



4. *Execution of a Consent Order;*

*Response:* Seven days. (Average length of time between case resolution conference and consent order).

5. *A full evidentiary hearing;*

*Response:* 49 days. (Average time between issuance of charges and a full evidentiary hearing when a hearing was necessary).

6. *Issuance of a final Board Order;*

*Response:* 48 days.

*vii. Instances in which the time between steps in the disciplinary process were longer than the averages studied under item (vi) of this item and explanations for why those instances deviated from the average;*

In **FY 2019**, the Board received 158 complaints. Of those, there were 11 cases that so seriously impacted public health, safety, and welfare as to warrant summary suspension and the issuance of charges. Those cases ultimately resulted in Consent Orders.

The data time frames averages were as follows:

- From receipt of the complaint to referral to the OAG for charging was 30 days (including investigation and the inspection of the dental office).
- From the OAG to the Board for summary suspension averaged 14.3 days.
- From the summary suspension vote to the appearance of the respondent at a case resolution conference averaged 19.5 days.
- From a case resolution conference to a final Consent Order averaged 7.1 days.
- In the event a respondent requested a show cause hearing, the Board averaged 9.2 days from the request to the show cause hearing.

There were 3 cases that deviated from the average.

- The first required 130 days to proceed from the receipt of the complaint to transfer to the OAG. This case was not a CDC case related to infection control, but rather involved a prescription drug monitoring issue. Multiple subpoenas for information had to be issued by the Board to receive pertinent records. In addition, the respondent was evaluated by an expert to determine if he was competent to practice dentistry. This action was necessary although it resulted in a significant delay.

- The remaining two cases averaged 43 and 56 days due to a delay in the receipt of inspection reports from experts.

In FY 2020 the Board received 174 complaints of which 7 resulted in Consent Orders. As a result of the pandemic the Board received numerous complaints regarding the wearing of masks in dental practices, as well as complaints regarding proper COVID-19 protocols.

The data time frames averages were as follows:

- From complaint receipt to referral to the OAG for charging was 34.4 days (including investigation and inspection of the dental office). An increase of 4.4 days.
- From the OAG to the Board for summary suspension averaged 32.1 days. An increase of 18 days. Once referred to the OAG the timeframe is outside of the Board's control.
- From the summary suspension vote to the appearance of the respondent at a case resolution conference averaged 15 days. A decrease of 4.5 days.
- From the case resolution conference to a final Consent Order averaged 7.4 days. An increase of 0.3 days.
- From summary suspension to a show cause hearing averaged 2 days. A decrease by 7.2 days.

There were 3 cases fell outside our average in FY 2020. These were related to delays in receipt of the inspection report from the expert. During this time the pandemic was in full swing and the availability of PPE for experts was scarce. In addition, the offices were sometimes not accessible for evaluation due to closure.

One case deviated from the average from summary suspension to the show cause hearing. In that case, the respondent and their counsel requested multiple continuances, which the Board granted.

*(viii). The manner in which disciplinary action from the Board is publicly reported;*

*Response:* Disciplinary actions are reported on the Board's website as required by law and are available to the public. In addition, anyone may request a public order under the Maryland Public Information Act, as outlined in GP § 4-333(b)(6) and (c)(1) and (2).

*(ix). Whether a dentist should be required to carry malpractice insurance;*

*Response:* Under the present law dentists with general licenses are not required to carry malpractice insurance. The limited exception is for dentists who hold either a volunteer,

retired volunteer, or temporary volunteer dental license which permits the practice of dentistry at specific practice locations for the poor, elderly, or disabled, without compensation. See H.O. §4-308(c) and (d). The Board believes that dentists with general licenses to practice dentistry should either be required to carry malpractice insurance or be required to advise patients that the treating dentist does not carry malpractice insurance. The Board would then be aligned with the Maryland Board of Physicians. See HO §14-508.

*(x). Board rules and guidelines for show cause hearings, including when licensees may waive their rights to a show cause hearing;*

*Response:* Show cause hearings are scheduled for licensees who have had their license summarily suspended. SG § 10-226(c) provides in relevant part:

- (2) A unit may order summarily the suspension of a license if the unit:
  - (i) finds that the public health, safety, or welfare imperatively requires emergency action; and
  - (ii) promptly gives the licensee:
    1. written notice of suspension, the finding, and the reasons that support the finding; and
    2. an opportunity to be heard.

Under the Board's disciplinary regulations, COMAR 10.44.07.24A(2), a licensee whose license has been summarily suspended is provided with an opportunity for a show cause hearing before the Board at the Board's next regularly scheduled meeting, but not to exceed 30 days from the date of the respondent's request. A licensee may waive their right to a show cause hearing at any time.

*(xi). How the Board's disciplinary processes and actions compare to the processes and actions of other Boards established under the Health Occupations Article;*

*Response:* The Board's disciplinary processes and actions are quite similar to the processes and actions of other boards established under the Health Occupations Article. Each board has the statutory authority to reprimand a licensee, place a licensee on probation, or suspend or revoke a licensee's license. Similarly, each board has a section within the Maryland Code that delineates a number of specific grounds that would subject a licensee to discipline. For this Board, if a licensee violates one of the 37 specific grounds for discipline, § 4-315(a) of the Maryland Dentistry Act states:

[s]ubject to the hearing provisions of § 4-318 of this subtitle, the Board may deny a general license to practice dentistry, a limited license to practice dentistry, or a teacher's license to practice dentistry to any

applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist... .

In particular, the Board notes that § 4-315(a)(30) provides a ground for disciplinary action if the Board finds that a dentist “[e]xcept in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control and Prevention’s guidelines on universal precautions...” Section 4-315(b) of the Act provides nearly identical provisions for dental hygienists.

As stated, each board has a statute like § 4-315 in its respective subtitle of the Health Occupations Article with disciplinary grounds specific to the profession that it regulates. There are some disciplinary grounds that are common to all boards. For example, each board has a disciplinary ground for lying on a board licensure application. Likewise, each board has a disciplinary ground allowing for it to take reciprocal disciplinary action against a licensee if that licensee had disciplinary action taken against them in another state for an act or omission that would have been grounds for disciplinary action in Maryland.

As to disciplinary processes, each board is broadly consistent. Each board has a statute or regulation allowing for the public to submit complaints and for the board to investigate those complaints if the complaint alleges a prima facie violation of that board’s particular disciplinary grounds. Moreover, if the investigation does indicate that the violation more likely than not did occur and the board does decide to take disciplinary action, each board is required by both by the State Administrative Procedure Act and its respective practice act to provide the licensee with notice (often referred to as “charges”) that the board intends to take disciplinary action, the specific allegations of fact that the board is making against the licensee, and the specific statutory grounds upon which it is alleging the licensee violated. Once charges are issued, each board requires a hearing before it may take disciplinary action.<sup>1</sup>

While the path for disciplinary action is largely similar across all boards, certain boards have granular variations in process. The Board of Physician’s processes represent the most significant deviation from the processes shared by most boards. As a threshold matter, whereas most boards must consider and decide disciplinary matters as a full board (meaning having a quorum of the full board present), the Board of Physicians is divided into 2 “panels” for the purposes of considering and deciding its disciplinary matters. *See* HO § 14-401 *et seq.* On receipt of a complaint that alleges a prima facie violation of the Maryland Medical Practice Act, the complaint is assigned to one of the Board’s panels. The assigned panel oversees the conduct of the investigation. If, after the investigation, the panel votes to issue charges, the matter is referred to a case resolution committee to attempt to settle the matter prior to a hearing. If the matter does not settle, the case is referred to the other panel for delegation to the OAH for a hearing and the issuance of proposed decision. This delegation, required by the Board of Physicians’ regulations, marks another significant departure from this Board’s processes and that of the other boards that retain the discretion to hear the case on their own or delegate to OAH. After OAH issues its proposed decision, either the State or the licensee may take “exceptions”

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<sup>1</sup> This would not apply to summary suspension actions, which are described above in (x).

to that decision. Those exceptions are heard by disciplinary panel that delegated the matter to OAH. After the exceptions hearing, the panel deliberates the matter and issues the final decision and order on behalf of the full board. In theory, the Board of Physicians' panel system allows the Board of Physicians to process its disciplinary cases more nimbly as it effectively creates 2 boards to adjudicate disciplinary matters.

Pursuant to HO § 1-606, each health occupations board is required to have sanctioning guidelines. The Dental Board's guidelines are found in COMAR 10.44.31 *et seq.* These were the first sanctioning guidelines approved by the Secretary in January 2012 and served as a model for other boards in the creation of their respective guidelines.

*(xii). How the Board's disciplinary processes and actions compare to the processes and actions of boards that license, regulate, and discipline dentists and dental hygienists in other states;*

*Response:* The Board reviewed the disciplinary processes and actions of boards that license, regulate, and discipline dentists and dental hygienists in other states and found a number of similarities and dissimilarities. The Board found that dental boards throughout the country generally share the following processes for handling complaints:

1. Formal complaints are filed with the Board by a patient or a person in interest generally in writing on a board approved form, although there are limited exceptions for accepting oral complaints.
2. Complaints are logged in either by the Executive Director or a staff person. (In Maryland the complaints are logged in by a member of the discipline unit).
3. A preliminary determination is made to determine whether the board has jurisdiction over the respondent. Boards do not have jurisdiction over those who do not hold a license and matters which are clearly only fee disputes, claims for personal damages, personality conflicts, or rude behavior. Non-licensee complaints may be referred to the state's prosecutor's office. The prosecutor's office may request that the particular dental board aid in the investigation.
4. A letter is sent to the complainant indicating that the Board has taken the matter up for review, or the reasons that the Board lacks jurisdiction.
5. Boards may initiate a complaint in its own name when it becomes aware of a possible violation of the law through social media such as newspaper or television accounts of wrongdoing.
6. Initial review is performed either by the Executive Director, a single Board member, or a panel which is composed of either board members or board members and staff. Board prosecutors may also be involved. If board members are members of the panel the number is always less than a quorum.

7. If there is reason to believe that there is a violation of the state's dental practice act the matter is referred to an investigator who investigates and reports their findings to the Board or a committee of the board.
8. The entire Board then votes whether to commence the disciplinary action mechanism.
9. Decisions that the licensee has not violated the dental laws results in dismissal and closure of the case.
10. Any complaint that alleges imminent harm to the health, safety, or welfare of patients is given priority.
11. If referred to an investigator the investigator will request a response and patient records from the licensee by subpoena. If there are other dentists who examined the patient either before or after the respondent, and it is determined that their treatment is relevant to the treatment provided by the respondent, they too are requested to provide records to the Board.
12. The investigation may involve in person conversations with the complainant, the respondent, or the respondent's staff. At times the respondent may be interviewed formally where the respondent is placed under oath and testimony is recorded or a stenographer is present.
13. A board expert may be employed by the board to assist the board in determining whether the respondent has provided care which falls below the acceptable standard. This is most often done when the respondent is a specialist and board members do not possess expertise in the particular field.
14. The investigator prepares a report that is presented to the Board which decides whether disciplinary action is appropriate. The investigator may have met with the disciplinary panel or counsel before providing investigative findings to the Board.
15. Licensees may self-report issues such as drug or alcohol dependency.
16. If a licensee is found to have violated the dental laws, he or she is either charged or presented with an opportunity to settle the case through the negotiation of a consent order. If the matter is concluded through a consent order the case is referred to a compliance officer who monitors the licensee's obligations under the order. The order may mandate license revocation, suspension, reprimand, the payment of an administrative penalty, compliance with mandatory course work, attendance at a well-being committee, submission to testing for substance abuse, or announced or unannounced inspections of the licensee's office for a specified period. The latter is appropriate when the licensee has violated CDC Guidelines.
17. If the matter is not amicably resolved, the case is set in for hearing, either before the Board or an administrative agency. The respondent may appear, call witnesses, and be represented by counsel. At the conclusion of the hearing the board deliberates. If the respondent is found to have not violated the dental laws the matter is dismissed. If



found to have violated the dental laws the matter is referred to the compliance officer to monitor compliance with the final order. Occasionally, the respondent decides to voluntarily surrender their license either permanently or for a specified period.

18. The respondent has the right to appeal the board's decision in a contested case. In the absence of fraud, the respondent may not appeal a consent order since the respondent has reviewed the order, generally with counsel, and was under no obligation to consent to the order.

### **Maryland Dental Board Procedures**

Signed complaints verified by a person who is familiar with the alleged facts are filed with the Board on a Board complaint form and logged into the system by a member of the discipline unit. The Board may also file a complaint on its own initiative if it becomes aware of credible facts giving rise to a violation of the dental laws. The respondent's name is redacted from the complaint form so that the Triage Committee is unaware of the identity of the respondent. An acknowledgment letter is sent to the complainant. If the complaint alleges that a patient's health, safety, or welfare may be in jeopardy, the complaint process is expedited, and the complaint goes directly to the chair of the Triage Committee without delay.

Complaints are initially referred to the Triage Committee that reviews the case. The Triage Committee may recommend that the licensee's license be summarily suspended, that the case be closed, referred to a peer review committee of the Maryland State Dental Association, request a response and records from the respondent, or that the case be investigated. The recommendations then go to the full Board for vote in Administrative Session. If referred for investigation, the case is assigned to an investigator.

The investigator may request that subpoenas be issued for a response and records from the respondent if they have not already been subpoenaed and received. The investigator may also request records from other dentists who have treated the complainant. Interviews of the respondent, the respondent's staff, or others in possession of relevant information may also be conducted. When the investigation is complete a report is prepared and presented to the DRC.

The DRC reviews the file and makes recommendations which include close the case, send a nonpublic letter of education or a nonpublic advisory letter, conduct further investigation, subpoena additional records, refer to an expert if the Committee believes that further expertise is required before a decision may be made, refer for prosecution, or refer the matter to a peer review society. A recommendation to the Board to refer the case to Peer Review may be made if there is an issue such as a fee dispute over which the Board does not have jurisdiction

The DRC presents its recommendations to the full Board in Administrative Session. The full Board may vote to accept the recommendations of the DRC or direct that other action be taken. Matters affecting the health, safety, and welfare of patients are given priority. If the Board determines that there is adequate reason to inspect a dental office the matter

is referred to an investigator and/or an independent Board inspector to inspect the dental office at the earliest possible time. These matters generally involve allegations of violations of CDC Guidelines. Licensees are subject to discipline, including summary suspension if appropriate, for the underlying violations.

If the Board votes to charge a licensee, the case goes to a prosecutor in the OAG for the drafting of the charges. The charging documents are presented to the Board for ratification. Once approved, charges are served upon the licensee. A hearing date is set as well as a date for the licensee and their attorney to attend a case resolution conference (“CRC”) with the Case Resolution Conference Committee. The respondent may be represented by counsel at all stages. If the matter is resolved prior to hearing a Consent Order is drafted and executed by the respondent and the Board. If the matter is not resolved the case is set in for hearing either before the Dental Board or the OAH at which time the Board is represented by a Board prosecutor in the OAG. The respondent is represented by his or her attorney and may call witnesses and present a defense. If the case is tried before the Board at the conclusion of the hearing the Board deliberates and votes whether the State has proven its case. In either event an Order is drafted by the Board’s counsel, and once approved by the Board is executed by the Board’s President.

If the matter is heard by the OAH, the administrative law judge prepares a recommended decision. Before the Board makes a final decision, the parties may file exceptions to the administrative law judge’s proposed findings of fact, proposed conclusions of law, and proposed sanction, as set out in the recommended decision. Each party then has the right to file exceptions with the Board within 15 days. A non-evidentiary exceptions hearing is then held before the Board. In making its final decision the Board may consider only the recommended decision and the record of the evidentiary hearing.

In all cases the State has the burden to demonstrate by a preponderance of the evidence that the licensee has committed a violation or violations of the Maryland Dentistry Act, or the regulations promulgated under the Act.

In a contested case, the matter may be appealed by the respondent. In the absence of fraud, the respondent may not appeal his or her execution of a Consent Order.

The Board posts all Consent Orders and Orders on its website. The Board also reports disciplinary action taken against its licensees to the National Practitioner Data Bank, maintained by the U.S. Department of Health and Human Services.

#### Variations in other states

**Connecticut:** Before a Statement of Charges is issued, a compliance letter is issued to the respondent. The letter informs the respondent that there is a case pending against him/her and provides the respondent with an opportunity to meet with the department to show cause why he/she did not breach any standard of care or engage in other inappropriate behavior. Settlement may also be negotiated. This is equivalent to the issuance of a pre-charge consent order in Maryland.

**Maine:** There is a document exchange. After the complaint is docketed, Board staff acknowledges receipt of the complaint and sends a copy to the licensee. The licensee is asked to respond within 30 days. Upon receipt of the licensee's response, a copy is sent to the complainant. The complainant is asked to reply within 10 days, but a reply is not mandatory. The complainant's reply, like the original complaint, is shared with the licensee.

**Missouri:** If the Board decides that a case warrants discipline, the Board will generally authorize settlement terms outlining discipline. A settlement offer is then sent to the licensee outlining the proposed terms. By law, the licensee has a minimum of 45 days to decide whether or not to accept the settlement offer. If the licensee accepts, then the terms of the discipline go into effect 15 days after the order is signed by the licensee and the Board.

If the licensee chooses not to accept the settlement offer, the Board must file a formal complaint with the Administrative Hearing Commission (AHC) and request a hearing on the case. The AHC is an independent body that will conduct a trial type hearing to determine if cause exists. Both the Board and the licensee will put on evidence at the hearing and may call witnesses and argue their case the same as in any other trial setting. The AHC will then make a ruling and issue an order stating whether or not the licensee has violated the law and is subject to discipline.

If the AHC rules that the licensee is subject to discipline, then the case is referred back to the Board who will then conduct a hearing to determine what the discipline should be.

According to the Missouri Dental Board, if a case is filed with the AHC, the time lapse increases significantly. If the Board files a case with the AHC, the case will receive an initial hearing date approximately 6 months from the date the case is filed. This is due to a massive workload and backlog of cases at the AHC. The Commission not only hears licensing cases, but any type of administrative litigation conducted by any state agency. Often, it will take roughly a year before it actually gets heard by the Commission due to requests for continuances, scheduling conflicts, etc. For cases that go to the AHC, it is anticipated that it will take an average of eighteen months to two years before the case is finally resolved.

**Oregon:** If the Board has determined to pursue disciplinary action, the Board will offer the licensee a Consent Order and Notice of Proposed Disciplinary Action. The licensee may negotiate the terms of the Consent Order. If the licensee rejects the Consent Order and requests a hearing, a hearing is conducted, and the Board makes a final decision. If the licensee rejects the Consent Order and does not request a hearing, a report is prepared for the Board and the Board determines the appropriate terms of a Default Order.

*xiii. How the Board's disciplinary processes and actions compare to best practices established or recommended by policy experts;*

*Response:* The Board reviewed the “*Report to the Maryland Board of Physicians,*” July 2, 2012, (“*Report*”) to review the more significant recommendations of the report.

1. “The Maryland General Assembly should amend the Medical Practice Act to establish two separate panels to hear disciplinary cases, each acting separately. Each would have the authority to make a final determination in a case.”

*Comment:* The Discipline Review Committee makes recommendations to the full Board. Requiring the Board to have a second panel would necessitate an increase in Board staff including investigators to avoid bottlenecks in investigations. In addition, the Board has increased the number of administrative sessions per month to allow for better and more timely management of cases under discipline.

2. “The Board, under its existing authority should seek to implement and encourage additional informal processes for case resolution.”

*Comment:* The Board utilizes a case resolution conference. The scheduling of this conference is outlined in the cover letter with the charges that are served upon the respondent. The respondent is not required to wait until the case resolution conference to discuss the case with Board counsel. The Board is always willing to find a fair and equitable solution to its contested cases, even before charges are served. The documents served on the respondent encourage the respondent or their attorney to contact Board counsel.

3. “The Board should have available to it additional access to and time of attorneys within the OAG, both Board counsel and prosecutors, and have the opportunity to provide feedback to supervisory personnel at the OAG about the legal work that is performed by the prosecutors and Board counsel.”

*Comment:* The Board readily has access to communicating with Board counsel and Board prosecutors in the OAG. The Board does not believe that there are presently any communication issues between itself and the OAG.

*(2) Make recommendations regarding revisions to the disciplinary process and actions of the State Board of Dental Examiners that are necessary to improve the process of the disciplining of dentists in the State and disclosure of disciplinary actions.*

The Board makes the following recommendations:

*Response 1:* Under the existing law, it is unlawful to aid and abet the unauthorized practice of dental hygiene. However, it is not unlawful to aid and abet the unauthorized practice of dentistry. The Board suggests adding statutory language to prohibit the practice of dental hygiene and dentistry.

*Response 2:* The Board would like to have the authority to order a dentist, dental hygienist, or dental assistant to undergo a physical or mental examination when warranted. The Boards of Physicians, Nursing, Physical Therapists, and Social Work

Examiners have this authority. We suggest adding similar language to the Board of Dentistry statute.

*Response 3:* The Board recommends providing a penalty for aiding and abetting the unauthorized practice of dentistry to HO §4-606.

*Response 4:* The Board also suggests amending and adding language to HO § 4-315 to aid the Board in its disciplinary processes and align the statute with language in several other health occupations Boards in Maryland. Specifically, the Board recommends adding the authority to deny someone a license for several additional reasons including:

- Practicing dentistry under a false name
- Being disciplined by a branch of the uniformed services of the Veterans Administration
- Abandoning a patient
- Grossly overutilizing health care services
- Promoting the sale of devices to a patient to exploit the patient for financial gain
- Misrepresenting their qualifications, education, training, or clinical experience
- Offering to, undertaking, or agreeing to cure a treat a dental condition or disease by a secret method, treatment, or medicine
- Attempts to or actually does threaten or intimate a person to withhold or change their testimony in hearings or proceeding before the board, a disciplinary panel or committee, or those otherwise delegated to the office of administrative hearing
- Hindering a person from making information available to the board of disciplinary panel in furtherance of an investigation
- Being habitually intoxicated
- Suffering from a substance abuse disorder
- Selling, prescribing, giving away, or administering drugs for illegal or illegitimate dental or medical purposes
- Having a condition, illness, or disease that may impair their ability to perform dental services.

### **Board Improvements Implemented**

The Board notes that it has made a number of substantial improvements in its disciplinary process as a result of its 2009 Sunset Review. These include:

- To streamline the disciplinary process, the Board established a Triage Committee which consists of six Board members, staff member, and the dental compliance secretary. The Committee reviews all complaint cases the Board receives.
- The Board implemented a redacting policy in the early stages of the complaint review process. When a complaint is received by the Board, staff members redact identifying information before it is sent to the Triage Committee for review. This ensures that the decision to pursue or close a case is based solely on the merits of the case. If a case moves forward, the licensee's name and address is available to the Board.

- The Board has adopted detailed sanctioning guidelines within its regulations.

The Department of Legislative Services (DLS) notes that in reality the complaint resolution process is more complicated and does not always proceed smoothly for a number of reasons. For example, if the Board does not receive requested records, it must send another request. If the request is ignored again, the Board must then issue a subpoena. In some cases, DRC requests more records to review or requests further investigation before making a recommendation to the full board on a case. Or, sometimes a case that the Board refers to OAG for prosecution is returned to the Board for more investigative work. All of these activities take time. For more information see *Sunset Review: Evaluation of the State Board of Dental Examiners, Department of Legislative Services, October 2009, p. 21.*

## **Conclusion**

Although the Board strives to conclude its disciplinary matters within a reasonable time frame, there are a number of factors beyond the Board's control that will prolong a final resolution. For example, if a complaint indicates that a dentist may have violated the Maryland Dentistry Act, the Board will typically vote to send the licensee a Board issued subpoena along with a copy of the complaint and a request that the complainant respond to the complaint in writing. The subpoena directs the dentist to provide the patient's original dental records to the Board within a specific time period, typically 18 days. Unfortunately, a number of dentists either ignore the letter and subpoena or send the requested information in late. Some of the custodians of large dental practices to whom the subpoenas are forwarded are not dentists and they do not readily have access to records, thereby expanding the response time. Occasionally the requested dental records are incomplete or illegible. If the Board receives a partial response or no response, the Board sends a second letter to the dentist, reminding the dentist that they are in violation of the law and that the Board could petition the circuit court to compel compliance or to find the dentist to be in contempt for failure to comply with the subpoena.

Once the records and the response are received the matter is sent to the Board's Discipline Review Committee for review. Occasionally the records indicate that the dentist is providing care that is so far below acceptable standards that the Board issues an additional subpoena for the dentist's appointment book and ultimately the records of other patients who have undergone similar treatment to determine if the dentist is placing other patients at risk. Once that is determined the case is forwarded to the entire Board along with the committee's recommendations. This process consumes additional time.

The complexity of investigations and the cooperation of the respondent will also affect the time that it takes to complete an investigation. During the course of an investigation an investigator may uncover a number of violations of which the Board was initially unaware, which consumes additional time.

Additionally, the Board has no control over the time that it takes the Office of Administrative Hearings to conduct an antitrust review of certain contested case hearing orders. In accordance with HO § 1-203(c), the Board may refer a proposed decision after conducting its own hearings to OAH for review to "prevent unreasonable anticompetitive actions by the board or



commission; and [d]etermine whether the actions of the board or commission further a clearly articulated State policy to displace competition in the regulated market.”

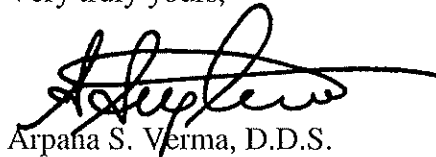
Therefore, it is the Board’s position that any bill that imposes disciplinary timeframes upon the Board will not be in the public’s best interest and may serve as an incentive to violators to ignore the Board’s lawful directives or to purposely postpone and hinder Board action.

With respect to staffing, the Board wishes to make the committees aware of the staffing issues that it has encountered. From the period April 2019 through November 2019, four of the Board’s five investigators departed, leaving the Board with a single investigator. Four months later the Governor declared a state of emergency in response to the COVID-19 pandemic. The sole investigator was charged with prioritizing his own files and those open files of those who had left. A great deal of his time was spent updating complainants and respondents in all of the open files, personally serving summary suspension notices at the risk of contracting COVID-19, and administrative work that was required to be completed. It was an overwhelming task, and understandably, the Board fell behind in its review of disciplinary cases. Although the Board acted in a timely manner to fill the vacancies, a second investigator was not hired until April 2021. For 17 months the Board had the single investigator. A third investigator was hired in August 2021.

The Board’s Compliance Manager who oversaw the Disciplinary Unit left the Board in July 2019. Again, the Board did all that it could to fill the position. A replacement was not hired for 7 months.

The combination of complexity of Board disciplinary cases, and the availability of staff are factors that influence the period of time that it takes for the Dental Board, or any health occupations board, to conclude disciplinary cases. There are times when what appears to be a relatively simple matter turns into something more when during the course of an investigation it becomes clear that the respondent may be guilty of numerous infractions which affect patient care and safety. Those matters must also be properly investigated. Consideration must be given to the complexity of the case, the level of cooperation or non-cooperation of the respondent or their attorney, the number of dentists who must be subpoenaed and/or interviewed, whether a license is summarily suspended, inspections of dental offices where infection control issues arise, whether and where a case goes to hearing, and the period for filing exceptions to proposed orders. These are factors that determine the length of time to conclude a case. Although the Board strives to conclude all of its cases in a timely manner, in the end, proper investigation and protection of the public should be the primary consideration for all concerned.

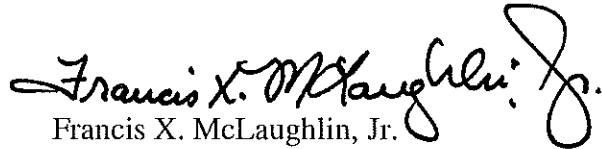
Very truly yours,



Arpana S. Verma, D.D.S.

President

State Board of Dental Examiners



Francis X. McLaughlin, Jr.  
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