



Maryland Department of Health (MDH) Health Professional Boards and Commissions

M00B0104

**Fiscal Year 2024 Operating Budget
Response to Department of Legislative Services Analysis**

**Senate Budget and Taxation Committee
Health and Human Services Subcommittee
Senator Cory McCray
February 10, 2023**

**House Appropriations Committee
Health and Social Services Subcommittee
Delegate Kirill Reznik
February 15, 2023**

The Department thanks the Governor, the Department of Budget and Management, and the Budget Committees for their support. We thank the Department of Legislative Services for its insightful budget analysis.

MDH should comment on steps taken to reduce vacancies at the boards and how these vacancies are impacting the operations of the boards. (pg. 5)

MDH Response: Each of the health occupation boards is statutorily independent of the Department. MDH supports each board in the same manner in which the MDH human resources (HR) office supports the other programs within MDH. MDH provides an HR Officer who serves the Boards in an advisory capacity and also to support them in completing the various HR processes. In the new Administration, our plan is to ensure that the State has strong HR systems and processes in place, including reducing vacancies and improving operations of the boards.

The Executive Directors, and the Boards that they report to, are the appointing authorities for their organizations and under that authority, they are to manage their vacant positions according to state required processes. Each Board employs at least one individual whose responsibilities include the facilitation of HR transactions, including recruitment, within their respective Board.

Each board has different vacancies; generally speaking, each vacancy will reduce the board's operations in that area until the position is filled and trained.

MDH should comment on efforts to assist the Board of Dental Examiners, the Board of Pharmacy, the Board of Physical Therapy Examiners, the Board of Professional Counselors and Therapists, and the Board of Social Work Examiners, as well as any other board who has not met its investigation goals for consecutive years, in meeting its MFR goals and steps taken to ensure timely investigations are taking place. (pg. 7)

MDH response: The Department is working with DBM and its internal human resources office to understand how staffing needs from the boards can be better addressed. In addition, through our Health Board liaison, Kim Link, meetings are held to help support the boards and identify specific areas where MDH can assist the Boards and Executive Directors.

Boards response:

- **Board of Dental Examiners:** Please see the response to the next prompt for more information, as well as the attached Joint Chairmen’s Report.

In response to the issues regarding the failure of the Dental Board to meet complaint investigation goals, the primary reasons are significant staffing obstacles, procedural constraints, and stakeholder cooperation. For several years the Board has experienced particular difficulties in filling investigator positions. Occasionally, candidates are offered positions but have in the interim taken positions elsewhere due to the lengthy approval process that can take 4 to 6 months. The Board is working closely with the Department of Health and the Department of Budget and Management to solve the staffing concerns.

In addition, there are procedural and stakeholder issues. If the Board issues subpoenas for records, which is universally done when conducting an investigation, and the respondent fails to provide a response, additional requests are made, and additional time is added to the investigation period. Also, if an investigation reveals that the respondent has violated dental laws that were not the subject of the initial complaint, those matters are investigated, and the period of the investigation is extended. Decisions of respondent dentists and their counsel to obstruct or delay investigations are not within the control of the Board. The Board has reviewed the procedural processes followed by its investigators and believes that the investigations are handled properly. That stated, the Board believes that additional investigative personnel will alleviate the problem.

- **Board of Pharmacy:** The dramatic decline in the percentage of disciplinary cases being closed within 180 days noted in this report is uncharacteristic of the Board of Pharmacy. Several unique factors contributed to delays in processing cases in a timely manner.
 1. The Board experienced a significant increase in the number of pharmacy facility violations and consumer complaints during the pandemic.
 2. Not only did the complaints increase, but the time required to investigate the complaints increased due to the severity of many of the issues involved.

3. Processing these cases through the OAG's office involved delays due to staffing issues and investigator shortages.
4. The pandemic added COVID testing and treatment to the duties that were already being done by pharmacists and technicians, which also included administration of COVID immunizations. These tasks were completed with limited staffing due to the lockdown and staffing decreases in the pharmacy.

With the effects of the pandemic decreasing the board has noted an increase in the efficiency of pharmacy clinical and customer services. We have set a target date of 4/30/23 to have all of the cases exceeding 180 days processed and closed, and the board anticipates once again reaching our average of 100% of our cases being resolved within 180 days by the end of the current fiscal year.

In addition, the board would like to note that the complaint resolution percentage for FY 2022 was submitted incorrectly; it should be 69%, not 41%. The board is working with MDH and DBM to update the Managing for Results (MFR) document to reflect this correction.

- **Board of Physical Therapy Examiners** provides the following information and welcomes questions.
 1. From January 2022 to June 2022, the Board was without investigators. The lead investigator position was vacant as of 01/12/2022 and the other investigator position was vacant as of 01/25/2022. Both positions were marked urgent when submitted for recruitment. Hiring was completed on 06/01/2022.
 2. The Board has 3 contractual PINs that assist with the Board's investigations and licensing functions. The Governor's FY2024 allowance includes the conversion of two of these PINs from contractual to merit. The Board is currently recruiting to replace one of the contractual PINs that is vacant. Once the vacancy is filled and trained, the additional staff support and merit PINs should improve employee retention and improve Board operations, along with meeting MFR goals.
 3. The Board is working with MDH and DBM to update the Managing for Results (MFR) document to correct the FY 2022 timely complaint resolution percentage from 50% to 60%.

- **Board of Professional Counselors & Therapists** provides the following information and welcomes questions.

The Board has been operating with insufficient compliance/investigator staff while the number of those licensed has been steadily increasing with a significant upturn in 2019 that resulted in a 400% increase in investigations from that year forward to the present.

With that surge of investigations, the Board has been functioning with either the same amount or, at times, less than the number of compliance/investigator staff previous to 2019. In July 2022, one of the Board's contractual investigators left the full-time position to pursue an opportunity that would allow for a less demanding schedule and was recently hired by the Board of Social Work Examiners in a part-time contractual role. This left one compliance manager/investigator supervisor to perform all the functions and responsibilities of the unit including in addressing new complaints, conducting investigations, drafting reports and executing and processing any notices and orders issued by the Board. A full-time investigator was hired in a merit position in November 2022 but resigned in February 2023 out of desire for an entirely telework-only role which again will leave one compliance manager/investigator supervisor solely.

The unit has experienced ongoing difficulty with hiring and recently completed three rounds of recruitment for a full-time contractual investigator position with two candidates recently interviewed in total who met the position criteria, both of whom are currently requesting compensation well beyond the grade/step allowance.

The Board will continue to actively recruit to fill the full-time merit-based investigator position that will soon again be vacant along with the two full-time contractual investigator positions.

Please note that in September 2021, the Board fully implemented an electronic tracking software program that allows for real-time tracking of all open and closed complaints which has improved the unit's ability to manage investigations and follow through with all requisite elements. Additionally, the Board created the position of a full-time contractual compliance assistant who was hired in September 2022 and provides administrative support to further expedite the investigation process.

- **Board of Social Work Examiners** reports that it was hampered in its timely investigations due to two factors: (1) one issue was personnel-related, since resolved; and (2) staffing challenges addressing the case backlog as a result of the first issue. The Board of Social Work Examiners currently has 1 full-time investigator and 1 part-time investigator and is hiring for two vacancies. As an example of the difficulty in hiring personnel, the Board reports that they had a position posted and only got one applicant; that position has since been re-posted. The Board looks forward to working with the Department on meeting its MFR goals and would be pleased to provide further information to the budget committees upon request.

Given the continuing failure to meet established goals for licensing, renewals, and investigations and the failure to submit a timely report, DLS recommends adding language restricting funds until MDH submits a report outlining the reasons the Board of Dental Examiners is unable to meet its timeliness goals, plans to remedy its low percentage of completion across its objectives, a timeline for improvement, and, if applicable, accurate data for these measures for the last five fiscal years. (pg. 10)

MDH response: Please note that the referenced Joint Chairmen’s Report (pg. 96) was submitted on February 9, 2023. The Dental Board originally submitted this report for internal discussions with state agencies in November 2022.

Dental Board response:

For more information, please see the Board of Dental Examiners’ Joint Chairmen’s Report (pg. 96) - Report Addressing Failure to Attain Performance Goals by the Board of Dental Examiners, attached, and submitted originally November 2022 and re-submitted with updated letterhead on February 9, 2023 and attached.

There are significant concerns about the proposed Health Occupations Boards and Commissions remedy pertaining to the perceived shortfalls of the Dental Board. The premise of the language presumes that a response was not provided; however, it was provided in November 2022. It also fails to address that the MFR data was incorrect, which is the basis of the proposed corrective action.. The Dental Board’s response addressed the incorrect data, which demonstrated a moderate increase in initial licenses %, and a substantial increase in renewal licenses % and investigations.

Additionally, the proposed action should be a moot point based on the Dental Board’s response submitted in November 2022 and the updated data provided. The Dental Board respectfully does not concur with the proposed action of restricted funding and believes that doing so would be counterproductive to address the issues highlighted in the attached report.

MMCC should comment on the process for the transfer of their budget to ATC and an estimated date for the funding consolidation. (pg. 10)

MMCC response, in coordination with the Alcohol and Tobacco Commission (ATC): Specifically, the Analyst asked the MMCC to comment on the process for the transfer of the MMCC’s budget to the ATC and an estimated date for the funding consolidation. To ensure a continuation of cannabis regulation throughout the transition process into adult-use, the MMCC would recommend budget bill language ensuring that spending authority granted to the MMCC in fiscal 2024 will be conveyed to the new Cannabis Regulation and Enforcement Division. As introduced, HB 556/SB 516 is emergency legislation, and would transfer regulatory authority and personnel upon the Governor’s signature; accompanying budget bill language would signal clear intent that the current medical cannabis regulatory funding is to follow this regulatory authority. Specifically, Section 8 of HB 556/SB516 states that “the balance of the Natalie M. LaPrade Medical Cannabis Fund on the date immediately preceding the date this Act takes effect shall be credited to the Cannabis Regulation and Enforcement Fund, and that any funds credited to the Cannabis Regulation and Enforcement Fund may be used to cover the costs of implementing this Act and regulating the cannabis industry in Maryland.”



ATTACHMENT

Maryland

DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Acting Secretary

February 9, 2023

The Honorable Guy Guzzone, Chairman
Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Ben Barnes, Chairman
Appropriations Committee
House Office Building, Room 121
Annapolis, Maryland 21401

Re: 2022 Joint Chairmen's Report (p. 96) – Report Addressing Failure to Attain Performance Goals by the Board of Dental Examiners

Dear Chairmen Guzzone and Barnes:

The Maryland State Board of Dental Examiners (the Board) respectfully submits this report in accordance with the 2022 Joint Chairmen's Report p. 96 to address repeat audit findings. Specifically:

Failure to Attain Performance Goals by the Board of Dental Examiners: Given the consecutive failures to meet established goals for licensing, renewals, and investigations, the committees request that the Maryland Department of Health (MDH) Board of Dental Examiners submit a report detailing the reasons for its difficulty in meeting these goals, the board's plans to improve performance in these areas, and a timeline for completing these actions.

The findings that the Board has failed to meet its performance goals are based upon three Managing for Results ("MFR") findings which are set out below. There were significant factors which limited the Board's ability to meet the initial license issuance goals, the renewal of license goals, and the case closure goals. The majority of the factors were not within the Board's control. Most importantly, flawed data was mistakenly submitted. That corrected data is set forth in the revised Tables 1-3 below. Secondly, there were other significant factors which are explained immediately following Table 3.

¹The flawed data was derived from former staff that did not sufficiently review all of the data on file, which was discovered during data reconciliation. Documents supporting the correction will be included in the next MFR publication.

MFR Corrected Data

The MFR Objective 1.1 provides: “Annually issue initial licenses to 95 percent of qualified applicants within ten days of the last qualifying document, or to improve upon that standard if it has already been met.” Once adjusted with the correct data, there is a significant rise in the compliance rate for Objective 1.1.

Table 1. Update to Objective 1.1 - Initial licenses issued within 10 days

		2018	2019	2020	2021	2022
Total of New Licenses	Initially Reported	1,109	910	774	843	843
	Corrected	1,109	875	775	882	979
Licenses Issued Within 10 Days	Initially Reported	498	262	23	110	110
	Corrected	328	452	226	312	245
Flawed Compliance Rate		45%	29%	3%	13%	13%
Corrected Compliance Rate		30%	52%	29%	35%	25%

Objective 1.2 provides: “Annually issue renewal licenses to 90 percent of qualified Board of Nursing applicants and 95 percent of all other Board applicants within 5 days of receipt of the last qualifying document, or to improve upon that standard if it has already been met.” Once adjusted with the correct data, there is a significant rise in the compliance rate for Objective 1.2.

Table 2. Update to Objective 1.2 - Renewal Licenses issued within 5 days

		2018	2019	2020	2021	2022
Total of Renewal Licenses	Initially Reported	5,62	7,34	3,99	4,24	4,24
	Corrected	7,30	7,32	6,85	7,04	6,77
		4	8	3	2	1
Licenses Issued Within 5 Days	Initially Reported	573	370	112	124	124
	Corrected	6,22	6,81	6,85	6,23	6,18
Flawed Compliance Rate		10%	5%	3%	3%	3%
Corrected Compliance Rate		85%	93%	100%	89%	91%

Objective 2.1 provides: “Annually improve the percent of complaint investigations completed by the Board of Physicians and Board of Nursing to 90 percent within 540 days, and by all other boards and commissions to 100 percent within 180 days. Once adjusted with the correct data, there is a significant rise in the compliance rate for Objective 2.1.

Table 3. Update to Objective 2.1 - Complaint investigations completed

		2018	2019	2020	2021	2022
Total of Complaints Investigated	Initially Reported	218	299	174	112	120
	<i>Corrected</i>	230	205	240	227	196
Investigations Completed	Initially Reported	174	188	46	41	41
	<i>Corrected</i>	196	156	199	180	68
Flawed Compliance Rate		80%	63%	26%	37%	34%
Corrected Compliance Rate		85%	76%	83%	79%	35%
Completion Within 180 Days		14%	13%	21%	20%	29%

Other Contributing Factors

There are a number of contributing factors that limit the Board’s ability to achieve its performance goals. They include significant staffing obstacles, procedural constraints, and stakeholder cooperation.

Staffing Obstacles

The Dental Board is not unique within the State government in being understaffed, but the Board’s 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 4 to 6 months. The Board has identified a need for additional staffing and is working closely with the Department of Health's Human Resources and the Department of Budget and Management to solve the staffing concerns. Until recently the Board was constrained to hire contractual employees, but is now moving toward the hiring of PIN employees to recruit more qualified individuals and reduce turnover.

Procedural Constraints

The expansive requirements to process a license can easily exceed the MFR timeline. Additionally, the Board processes multiple licenses and each possesses a certain set of circumstances or nuances that requires oversight across multiple organizational units. The following narrative explains some of these procedural constraints.

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. If necessary to further the Board's investigation, 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 incomplete records, or responds with records that are illegible, thus making additional requests and clarifications 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 patient records to determine if the deficiency is widespread. In addition, the initial investigation may discover facts outside of the scope of the original complaint that warrant further investigation, such as the licensee's inability to maintain adequate records. To not investigate further would certainly shorten the lifespan of the case, but to do otherwise would be a disservice to the citizens of Maryland and would be contrary to the Board's legislative mandate to protect the public.

Once all the records are obtained the case goes to the Board's Discipline Review Committee ("DRC") for its substantive review. The DRC, after reviewing all materials received during the investigation, 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 administrative prosecution. At times, the Board may write a non-public Advisory Letter or a non-public Letter of Education to the respondent if the infraction is meritorious but not serious enough to warrant formal disciplinary 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 (that is, 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 cannot be 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.

Other procedural constraints include:

- Complexity of cases, especially those that uncover multiple violations of the Dental Practice Act, and lack of cooperation of the respondent or their counsel;
- The extensive number of witnesses who must be subpoenaed and/or interviewed in complex cases;
- Necessary inspections of dental offices to ensure compliance with CDC guidelines; and
- Difficulty in obtaining expert reviewers, especially when the services of specialists are necessary 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.

Stakeholder Cooperation

Stakeholder cooperation is another contributing factor in achieving performance goals. They include failure of dentists to cooperate with Board investigations, abandonment of patient records in offices and basements, failure to respond to subpoenas in a timely manner (alleging that they are not the custodian of records), and failure to comply with subpoenas (including providing partial records, illegible records, or no records, necessitating further communication with respondents or threats of court action to compel compliance). There are also defense counsel who are purposefully dilatory to gain a procedural advantage.

All of the constraints mentioned above take time. 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.

Board investigators are aware of their performance goals. They are committed and have been trained to conduct thorough investigations in an efficient and timely manner. Their commitment to excellence and due diligence, at times, may prolong the investigatory process.

Board Corrective Actions

The Board continues to take any action necessary to meet the requirements of the performance goals. To date, the Board has taken the following actions:

1. The Board continues to work with the Department of Health and the Department of Budget and Management to fill vacancies with the intent to fill PINs in lieu of contractual positions to increase organizational recruiting and retention efforts;
2. The Board is working with the OAG to streamline the processing of cases;
3. The Board, whenever feasible, will not merge different cases against the same respondent, which should result in faster handling of cases; and
4. The Board has developed new operating procedures to ensure accurate data control.

If you would like to discuss the matter further, please contact me at 240-498-8159, arpana.singhverma@maryland.gov.

Very truly yours,



Arpana S. Verma, D.D.S.
President
State Board of Dental Examiners

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