

Preliminary Evaluation of the State Board of Chiropractic and Massage Therapy Examiners

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2022

Require Follow-up Reports by October 1, 2010 and 2011

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Chiropractic and Massage Therapy Examiners (BCMTE) last underwent a preliminary evaluation as part of sunset review in 1999. The preliminary evaluation recommended that the board be waived from full evaluation and that legislation be enacted to extend the board’s termination date by 10 years to July 1, 2012. The evaluation also recommended that the board submit specific follow-up reports in 2000 and 2001. The board submitted these reports, and Chapter 78 of 2000 extended the board’s termination date as recommended.

In conducting this preliminary evaluation, DLS staff reviewed minutes from BCMTE and Massage Therapy Advisory Committee meetings, licensing and complaint data, board publications, publications of national chiropractic associations, federal government publications, the prior sunset review of the board, Maryland General Assembly bill files, and DLS operating budget analyses and fiscal notes. DLS staff conducted personal and telephone interviews of board staff, board members, and board counsel, and attended a board meeting and disciplinary hearing.

BCMTE reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 3**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Practice of Chiropractic and Massage Therapy in Maryland

Maryland statute defines the practice of chiropractic as a “drugless system of health care” based on the principle that interference with the transmission of nerve impulses may cause disease. State law defines the scope of practice as the diagnosing and locating of misaligned or displaced vertebrae and, through the manual manipulation and adjustment of the spine and other skeletal structures, treating disorders of the human body. Blood tests and urinalysis are also within the scope of practice according to the Attorney General. Chiropractors are able to prescribe dietary and hygiene measures and diagnostic x-rays for their patients. Maryland also allows chiropractors to practice physical therapy after taking extra training in the field and passing a national physiotherapy examination. Most chiropractors opt for this expanded license since it broadens their patient base and the extra training hours required are already included in most chiropractic school curriculums. Maryland expressly prohibits chiropractors from using drugs or surgery or from practicing osteopathy, obstetrics, or any other branch of medicine.

Chiropractors are aided in their duties by chiropractic assistants, whose scope of practice is limited by board regulations. Without direct supervision, a chiropractic assistant may take vital signs and remove and apply assistive and supportive devices. With direct supervision, a chiropractic assistant may perform gait practice and ambulation, infrared ultraviolet irradiation and nonlaser light therapy, muscle stimulation, traction therapy, and ultrasound.

The practice of massage therapy is the use of manual techniques on soft tissues of the human body including stroking, kneading, tapping, stretching, compression, vibration, and friction, with or without the aid of heat, cold, water, or certain types of topical applications for the purpose of improving circulation, enhancing muscle relaxation, relieving muscular pain, reducing stress, or promoting health and well-being. The diagnosis or treatment of illness, disease, or injury and the adjustment, manipulation, or mobilization of the bone tissue of the body or spine are prohibited in the practice of massage therapy. Massage therapy is practiced by both certified massage therapists and registered massage practitioners, as discussed in greater detail later in this report.

The State Board of Chiropractic and Massage Therapy Examiners

In Maryland, as in all other states, Puerto Rico, and the District of Columbia, a regulatory board oversees the practice of chiropractic. The Maryland State Board of Chiropractic Examiners was created by the General Assembly in 1920. Chapter 678 of 1996 gave the board responsibility for certifying and regulating massage therapists and established a Massage Therapy Advisory

Committee. In 2008, this committee was repealed, massage therapists were added to the board membership, and the board was renamed the State Board of Chiropractic and Massage Therapy Examiners to reflect its full oversight authority. The purpose of the board is to license and regulate practitioners to ensure that the public receives safe and healthful chiropractic care and massage therapy.

BCMTE is composed of 11 members: 6 licensed chiropractors, 3 licensed massage therapists, and 2 consumer representatives with no ties to the profession. Chiropractors and massage therapists who serve on the board must have at least five consecutive years of experience. All members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene and the advice and consent of the Senate. Members serve staggered terms of four years and may not serve more than two consecutive terms. At the end of a term, a member continues to serve until a successor is appointed. There is currently one vacancy on the board for a licensed chiropractor member. According to the board, the Office of Executive Appointments has requested a list of nominees from the Maryland Chiropractic Association.

Duties and Functions of the Board

BCMTE is part of the Department of Health and Mental Hygiene (DHMH). Statutory authority for the board is provided in the Maryland Chiropractic Act (Title 3 of the Health Occupations Article). BCMTE's oversight responsibilities for chiropractors, chiropractic assistants, massage therapists, and massage practitioners include:

- establishing qualifications for all applicants;
- approving the curriculum and teaching facilities of educational institutions preparing applicants for practice;
- promulgating rules and regulations for standards of practice, education requirements, and marketing of chiropractic and massage services;
- developing examinations to be given to chiropractic and chiropractic assistant applicants and as required for massage therapists and massage practitioners;
- developing regulations and the permitted scope of practice;
- issuing, suspending, or renewing licenses, certificates, and registrations;
- investigating complaints and taking disciplinary action;
- approving training and in-service supervision programs;
- approving and reviewing continuing education credits;

- approving trade names for the practice of chiropractic;
- establishing a Chiropractic Rehabilitation Committee and rehabilitation program;
- collecting and establishing license, certification, and registration fees; and
- maintaining the State Board of Chiropractic and Massage Therapy Examiners Fund.

Legislative and Regulatory Changes Affecting the Board Since the 1999 Sunset

The most significant legislative change affecting the board since the 1999 preliminary sunset evaluation is the statutory requirement that massage therapists be licensed. Other legislative changes include clarifications of the statutory definition of massage therapy and who is subject to massage therapy licensing requirements, as well as the inclusion of massage therapists as board members. For a detailed explanation of the major legislative changes since the 1999 preliminary sunset evaluation, see **Exhibit 1**.

Exhibit 1

Major Legislative Changes Since the 1999 Preliminary Sunset Review

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	78	Extends the termination date of the board by 10 years to July 1, 2012.
2001	131	Exempts from the definition of massage therapy the laying on of hands, consisting of pressure or movement on a fully clothed individual, to specifically affect the electromagnetic energy or energetic field of the human body.
	653	Repeals the exemption from certification or registration for individuals who practice massage in certain health clubs. Specifies that an individual working in a beauty salon may be exempt from certification or registration as a massage therapist only if the operator of the salon has a permit from the State Board of Cosmetology and the individual provides cosmetology and esthetic services.
2002	501	Prohibits an individual in Charles County from performing or offering to perform a massage for compensation unless the individual is certified or registered by the board. Authorizes Charles County law enforcement to demand proof of certification or registration. Authorizes county commissioners to adopt ordinances or regulations related to massage establishments and individuals who perform massage for compensation.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	317	Adds Washington County to the provisions of Chapter 501 of 2002.
2005	327	Authorizes specified individuals to meet educational requirements for certified massage therapists and registered massage practitioners if the applicant, on or after March 1, 2004, was enrolled in a board-approved school and graduated from that school no later than December 31, 2004.
2008	242, 243	<p>Requires massage therapists to be licensed rather than certified.</p> <p>Renames the State Board of Chiropractic Examiners as the State Board of Chiropractic and Massage Therapy Examiners.</p> <p>Repeals the Massage Therapy Advisory Committee.</p> <p>Adds three licensed massage therapists and one additional chiropractor to the board's membership and specifies criteria for the massage therapist board members.</p> <p>Alters the definition of massage therapy to include specified manual techniques affecting the electromagnetic energy or energetic field of the human body.</p> <p>Requires the board to establish advertising and soliciting standards for licensed massage therapists and registered massage practitioners.</p> <p>Authorizes a licensed massage therapist and registered massage practitioner to use a trade name in connection with the practice of massage therapy within specified limitations.</p> <p>Provides for waivers for a registered, certified, or licensed massage therapist from another state if he or she passes an examination approved by the board in addition to meeting other waiver requirements.</p> <p>Subjects licensed massage therapists to the same hearing and appeals process as chiropractors and conforms the criminal penalties for massage therapists to those for chiropractors.</p>
2009	312, 313	Authorizes the three massage therapy members and one additional chiropractor member added to the board under Chapters 242 and 243 of 2008 to begin their terms on May 1, 2009, rather than July 1, 2009.

Source: Laws of Maryland

Since 2008, Massage Therapists Must Be Licensed to Practice

Prior to 2008, the board certified massage therapists and registered massage practitioners. However, as a result of Chapters 242 and 243 of 2008, massage therapists must be licensed rather than certified by the board in order to practice massage therapy in the State. The regulation of

massage therapy in Maryland is differentiated by the setting in which it is practiced. If outside of a health care facility, it is deemed to be nontherapeutic massage, and the individual practicing must be a registered massage practitioner (RMP). Otherwise, a practitioner must be a licensed massage therapist (LMT). LMTs must complete 60 college credits in any subject matter and may practice massage outside of a health care facility. RMPs may not practice massage in a health care facility nor may health care providers refer patients to RMPs. Because a massage therapy license offers more flexibility than a registration, most massage therapy practitioners are LMTs. Chapters 242 and 243 also required the board to adopt rules and regulations to establish advertising and soliciting standards for LMTs and RMPs.¹

Chapters 242 and 243 renamed the board as the State Board of Chiropractic and Massage Therapy Examiners and repealed the Massage Therapy Advisory Committee. In lieu of this committee, the Acts required the addition of three licensed massage therapists and one additional chiropractor to the board's membership. The terms for these new members were to begin on July 1, 2009. However, Chapters 312 and 313 of 2009 authorized these new members to begin their terms on May 1, 2009.²

In addition to the legislative changes discussed above, major regulatory changes since the 1999 preliminary sunset include:

- regulations promulgated in 2002 require certified or registered massage therapy practitioners to participate in at least 24 hours of continuing education every 24 months; and
- regulations promulgated in 2003 limit the entities that can accredit or approve a massage therapy education program to the Commission on Massage Training Accreditation or the U.S. Department of Education.³

Licensing Is One of the Board's Primary Functions

One of the board's primary functions is to register massage practitioners and license chiropractors, chiropractic assistants, and massage therapists. Licenses are renewed every two years. Massage therapists renew in October of even-numbered years, chiropractic assistants in April of odd-numbered years, and chiropractors in September of odd-numbered years. **Exhibit 2** displays the number of licenses issued by the board since fiscal 2001.

¹ The board is preparing to begin work on these regulations and has been advised by DHMH that it has until November 2010 to promulgate the regulations.

² Nevertheless, the massage therapy members of the board were not appointed until August 2009.

³ Prior to these regulations, the board could also approve certain massage therapy programs.

Exhibit 2
Total Number of Individuals Licensed by the
State Board of Chiropractic and Massage Therapy Examiners
Fiscal 2001-2009

<u>License</u>	<u>Fiscal Years</u>								
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Chiropractors	624	660	696	704	736	743	781	753	797
Chiropractic Assistants	205	210	319	328	403	474	420	464	472
Licensed Massage Therapists	1,550	1,655	2,296	2,638	2,673	2,563	2,302	2,540	2,402
Registered Massage Practitioners	N/A	45	73	195	376	486	599	678	670

Note: A licensed massage therapist may work in any setting, including a health care facility, and must complete 60 college credits as part of the application process. A registered massage practitioner may not work in a health care facility and is not required to complete any college credits.

Source: State Board of Chiropractic and Massage Therapy Examiners

Number of Individuals Regulated by the Board Has Increased

As illustrated in Exhibit 2, the numbers of chiropractors, chiropractic assistants, licensed massage therapists, and registered massage practitioners regulated by the board have increased over the past nine years. Between fiscal 2001 and 2009, the number of chiropractors has increased by 28%, chiropractic assistants by 130%, and licensed massage therapists by 55%. Since first regulated by the board in fiscal 2002, the number of registered massage practitioners has increased nearly 15-fold.

Nationally, the number of chiropractors has also steadily increased. According to a report by the U.S. Bureau of Labor Statistics (BLS), approximately 53,000 chiropractors were employed in the United States in 2006, and this number is expected to grow to 60,000 by 2016. Despite this increase, there may be a slight decline in the number of licensed chiropractors in fiscal 2010. According to the board, as of December 2009, only 719 chiropractors have renewed their licenses for fiscal 2010. This may be a reflection of the economy since chiropractic is mainly a cash business that is often not covered by insurance and is dependent on disposable income.

Licensing Trends Among Chiropractic Assistants and Massage Therapists Are Unpredictable

As shown in Exhibit 2, though the number of chiropractic assistants and massage therapists has increased, licensing trends among these professions have not reflected board expectations and have been difficult to predict. This poses a significant problem to the board with respect to accurately predicting licensing activity and fund balances. One of the reasons behind these fluctuations is the typical demographic for chiropractic assistants. Chiropractic assistants tend to be young women who have yet to complete their education. They enter the profession through part-time positions, and their employers typically pay their education and training costs. Eventually, they leave their jobs to pursue other careers or advanced education in other fields. As for massage therapists, though their educational requirements are more extensive, the profession does not follow economic trends, since it is still viewed by many as a potential source of supplemental income. Thus, even as disposable income decreases, the number of massage therapists can decrease due to a lack of available educational funds or increase because of a need for supplemental income or career change. For instance, even though the board and local massage therapy schools predicted a decrease in the number of new massage therapists in fiscal 2009, the board continued to receive a steady stream of new massage therapist applicants. The board recognizes the need for improved forecasting of licensing activity and is looking at new variables, such as the availability of scholarships, to predict licensing activity for these professions.

Board Staffing Appears Adequate, but Deputy Director Position Is Vacant

The board is staffed by an executive director, deputy director, two full-time investigators, four administrative support staffers, one part-time assistant to the investigators, and one attorney. By all accounts, current staffing levels are adequate to handle and investigate complaints. However, the board's deputy director position has been vacant since July 8, 2009. The board's request that the position be exempted from the current hiring freeze was granted. The board is in the process of interviewing applicants and anticipates that the vacancy will be filled by January 1, 2010. One of the board's senior investigators is serving as acting deputy director until a replacement is found.

Board's New Office Suite May Not Provide Adequate Privacy for Investigators

In 2007, the board moved into a new suite of offices. The suite primarily consists of cubicles and two individual offices. There appears to be adequate filing and functional space in the suite. Though the entrance to the suite is restricted by a coded entry system, the offices occupied by the board's two senior investigators do not have a door, which does not afford any privacy to the investigators to carry out their duties. The board attempted to obtain individual offices for the investigators but was told that the investigator positions were not at a salary grade high enough to qualify for individual offices. Other boards housed in the building were given the same response. As a result, multiple boards in the building must coordinate the use of a separate

interview room on the third floor. This situation has led to some inconvenience and tension among the boards housed in the building.

Board Is Special Funded by Fees on Licensees

Chapter 272 of 1992 made most health occupations boards special funded, effective fiscal 1993. Since then, the boards have been responsible for their own revenues and expenditures. The board derives income from fees paid by applicants and licensees and payment for other board services. **Appendix 1** provides the current fee schedules applicable to chiropractors, chiropractic assistants, and massage therapists and practitioners.

Fees go into the State Board of Chiropractic and Massage Therapy Examiners Fund. The fund is to be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board. Fund balances should normally be used only for unanticipated costs relating to legal expenses and legislative initiatives. Any unspent funds cannot be transferred or revert to the general fund. Neither can any other State money be used to support the fund. The board has designated the executive director as the administrator of the fund.

Exhibit 3 displays a fiscal history of the board from fiscal 2002 through 2010. The board has consistently maintained positive cash flow. With the exception of fiscal 2006 and 2008 (and projected figures for fiscal 2010), the board's annual revenues have exceeded expenditures. Board revenues have ranged from a low of \$667,477 to a high of \$1.1 million, with typically higher peaks in odd-numbered fiscal years when both chiropractors and chiropractic assistants renew their licenses (massage therapists renew in even-numbered fiscal years). Board expenditures have ranged from \$605,064 to a high of \$840,915.

In fiscal 2005, the board experienced an almost 14% increase in revenues and a 15% increase in expenditures. That same year, the number of chiropractic assistants increased by 23% over fiscal 2004. This increase, combined with new fees collected for supervising chiropractors and license verification, resulted in increased revenues. The increase in board expenditures was due to new furnishings and computers, as well as an increase in enforcement efforts to root out bogus massage practitioners and prostitutes posing as massage practitioners.

In fiscal 2007, the board experienced a 25% increase in revenues and a 14% increase in expenditures due to significant increases in fees for licensing by credentialing, certification fees for supervising chiropractors, continuing education verification fees, and penalties for providing the board with an incorrect address. The board also incurred significant moving expenses related to the renovation of its current office, rent the board had to pay while its current office was unoccupied during the renovation, and the purchase of new furniture that would fit in the board's current office suite.

Exhibit 3
Fiscal History of the State Board of Chiropractic and Massage Therapy Examiners
Fiscal 2002-2010

	Fiscal Years								
	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Est.</u> <u>2010</u>
Authorized Positions	6	7	7	7	8	9	9	9	9
Beginning Fund Balance	\$59,328	\$190,851	\$268,947	\$301,410	\$334,260	\$283,460	\$297,635	\$172,831	\$517,269
Revenues Collected	<u>736,587</u>	<u>683,160</u>	<u>667,477</u>	<u>765,226</u>	<u>667,259</u>	<u>836,653</u>	<u>716,111</u>	<u>1,148,855</u>	<u>690,000</u>
Total Funds Available	795,915	874,011	936,424	1,066,636	1,001,519	1,120,113	1,013,746	1,321,686	1,207,269
Total Expenditures	605,064	605,064	635,014	732,376	718,059	822,478	840,915	804,417	870,000
Ending Fund Balance	\$190,851	\$268,947	\$301,410	\$334,260	\$283,460	\$297,635	\$172,831	\$517,269	\$337,269
Balance as a % of Expenditures	31.5%	44.4%	47.5%	45.6%	39.5%	36.2%	20.6%	64.3%	38.8%
Maximum Recommended Fund Balance (30% of Expenditures)	\$181,519	\$181,519	\$190,504	\$219,713	\$215,418	\$246,743	\$252,275	\$241,325	\$261,000

Source: State Board of Chiropractic and Massage Therapy Examiners

Board Fee Increase in 2008 Overcorrected for Anticipated Shortfall

As shown in Exhibit 3, in all but fiscal 2006 and 2008, board revenues collected exceeded expenditures. The board also maintained an average fund balance of 40.6% of expenditures. However, in fiscal 2008 the board's fiscal analyst advised that the board would have to raise its fees in order to avoid having an ending fund balance of only \$56,000 in fiscal 2009 and a projected deficit of \$110,000 in fiscal 2010. Thus, in fiscal 2008 the board raised its licensing fees for the first time since fiscal 1991.

According to the board, the projected revenue for fiscal 2009 with the fee increases was \$745,000; however, actual fiscal 2009 revenue with the fee increases was \$1.1 million. Prior to the fee increase, there were approximately 30 to 40 new applicants for massage therapy licenses each month. The new fees were determined based on the assumption that the influx of new massage therapists had leveled off and an anticipated decrease in the number of monthly new applicants. However, the number of new applicants remained steady. This trend, combined with the unexpected departure of an investigator and the board having to share its attorney with three boards rather than one, resulted in a carryover of \$517,000. Generally, the health occupations boards have set a target fund balance of 20% to 30% of expenditures. The fund balance protects boards from unexpected costs that may occur. With a fiscal 2009 budget of \$804,000, the maximum recommended carryover was \$241,200. In an effort to reduce the fund balance, renewal fees for chiropractors during the renewal cycle that expired on September 1, 2009, were temporarily reduced from \$700 to \$500. This fee reduction will reduce the board's fiscal 2010 fund balance by at least \$143,000. In a further attempt to align the board's fund balance with the 30% target, the board has reduced exam fees for both massage therapists and chiropractic assistants by \$100 in fiscal 2010.

The board correctly predicted that there would be a decrease in renewals for chiropractors and chiropractic licenses. As of December 2009, 719 of the 797 chiropractic licensees have applied for active renewals. In addition, the board's deputy director position has been vacant since July 2009. Despite both of these factors, the board anticipates and is willing to make further fee reductions as necessary in order to bring its fund balance within acceptable parameters.

A change in fees requires a change in the regulations. The board needs to anticipate changes to the fund balance based on projected revenue and expenses and submit new proposed regulations in a timely manner to ensure that there is neither a deficit nor excessive fund balance.

Board Complaint Process Appears Organized and Timely

Approximately one-third of the board's time is spent handling complaints. The board usually receives complaints from patients and members of the public. Typical grounds for complaints involve billing and advertising issues. Formal complaints typically take 120 days from receipt to completion of investigation. However, cases involving complicated issues or

administrative/legal proceedings may take additional time to conclude. In general, the board only accepts written complaints. The board does not accept anonymous complaints unless the information provided can be independently verified. The board has an organized and detailed process in place for the handling of complaints from intake to resolution, including an investigation policy manual. The executive director serves as the chief of compliance and is assisted by the deputy director, who serves as the deputy compliance chief. The board also assists other law enforcement entities when needed. A history of disciplinary action taken by the board is provided in **Exhibit 4**.

Exhibit 4
Disciplinary Action by the State Board of Chiropractic
and Massage Therapy Examiners
Fiscal 2004-2010

	Fiscal Years						Est. 2010
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	
Complaints pending from previous year	17	17	42	37	23	14	27
New complaints	61	54	55	30	70	74	75
Total complaints	78	71	97	67	93	88	102
Cases referred to Attorney General	13	8	8	6	7	6	10
Cases closed without action	30	4	41	26	48	45	45
Formal action taken	10	11	5	7	9	4	11
Informal action taken	8	6	6	5	15	6	14
Unresolved complaints carried over	17	42	37	23	14	27	22

*Cases are typically closed without action due to a lack of board jurisdiction.

Source: State Board of Chiropractic and Massage Therapy Examiners

On average, the board receives 60 new complaints per year and carries over 25 complaints from one year to the next. From fiscal 2004 through 2006, the number of new complaints remained relatively consistent. However, in fiscal 2007, the number of new complaints dropped significantly, only to increase steadily since then. The board indicates that the drop in new complaints during fiscal 2007 may be due to a major joint effort between the board and law enforcement agencies to close illegal massage parlors. Once the board receives a complaint, the executive director reviews it to determine if the complaint falls within the board's jurisdiction. If the complaint does not fall within the board's jurisdiction, it is closed without action. If the complaint is out of the board's jurisdiction but falls within the jurisdiction of another board, the

complaint is formally referred to the appropriate board and the complainant is notified of the referral in writing. If the board has jurisdiction over the complaint, the complaint is referred to an investigator. Following an investigation, the investigator's report is forwarded to the board, which typically has three options: (1) dismiss the charges for lack of evidence; (2) handle the charges informally (*e.g.*, cease and desist orders, letters of education, or reprimands); or (3) formally refer the case to the Office of the Attorney General (OAG) for administrative prosecution. If the board pursues formal action, there is a formal administrative evidentiary hearing. However, a case resolution conference (CRC) is usually convened before the hearing. At a CRC, the licensee may reach a settlement with OAG on the charges without having to go through a formal hearing.

Board Complaint Carryover Rate Improving, but Still Requires Continued Attention

Though the board carried over a large number of complaints in fiscal 2006 and 2007, this trend appears to have stabilized. The ability to resolve complaints within a given fiscal year depends on when the complaint is received, the amount of time it takes to investigate the complaint, and the amount of time it takes OAG, if the case is referred for prosecution, to conclude the case.

Though the implementation of pre-charge orders (negotiated plea bargains in the form of formal, public orders issued prior to formal charges without a formal hearing) and case resolution conferences has helped move some cases along, the board expressed some difficulty in getting cases through OAG due to the large backlog of cases attributable to the larger health occupations boards. The board has informed OAG on numerous occasions of the time taken by their attorneys to review and process cases. The board advises that even though OAG has diligently attempted to reduce the backlog of health occupations board cases, OAG requires more staff attorneys to efficaciously handle increasing board caseloads in a timely manner.

Board Should Continue Its Progress on Timely Complaint Resolution

During the 2009 legislative session, DLS raised concerns over the board's ability to process disciplinary cases in a timely manner. The board was one of five health occupations boards that were unable to process complaints according to their respective target timeframes. According to Managing for Results, the board has a target of completing 40% of its investigations within 75 days. In fiscal 2008, the board investigated 22% of its cases within this 75-day period. However, upon further examination, the board's targeted timeframe is the second shortest of the 18 health occupations boards.⁴ While the goal for each board varies, the targeted goals are typically within a 180-day timeframe. A complete list of target goals for all of the health occupations boards can be found in **Appendix 2**.

⁴ The only board with a shorter targeted timeframe is the Board of Residential Child Care Administrators, whose goal is 100% of complaints investigated within 30 days.

The board advises that, while it completed 22% of its investigations within 75 days during fiscal 2008, it completed 67% of its investigations within 75 days during fiscal 2009. The board also notes that, though the goal of completing 40% of its investigations in 75 days is admirable, it does not account for the varying complexity of cases the board handles. Thus, commencing in fiscal 2010, the board will have a goal of completing 100% of its investigations within 180 days. One of the three main responsibilities of each health occupations board is to receive and resolve complaints from the public, courts, employees, insurance companies, and other licensees. Complaints must be investigated and resolved in a timely manner in order for the public and the professional community to have confidence in the board.

Summary and Recommendations

Based on this preliminary evaluation, DLS finds that the State Board of Chiropractic and Massage Therapy Examiners operates responsibly and efficiently. The board provided timely responses to all inquiries and was cooperative throughout the evaluation process. The board appears to have a good working relationship with the professions it regulates and is well regarded among its peers, as evidenced by its receipt of the 2003 Dr. Earl L. Wiley Outstanding Board Award by the Federation of Chiropractic Licensing Boards.

While this preliminary evaluation did note some areas of concern, the deficiencies are correctable within a short timeframe, and a full review is unlikely to provide additional value. **Therefore, DLS recommends that LPC waive the State Board of Chiropractic and Massage Therapy Examiners from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2022. Furthermore, DLS recommends that the board submit two follow-up reports to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee addressing the concerns identified in this evaluation, as specified below.**

While it is likely that the board's large fund balance in fiscal 2009 was due to increases in fees and variances between projected and actual licensing trends, confusion remains over the impact of licensing trends on the board's fiscal situation. **The board should submit a report to the specified committees by October 1, 2010, containing a detailed analysis and accounting of the board's fiscal 2009 financial activities that contributed to the fund balance, as well as any measures implemented during fiscal 2010 to decrease the fund balance (including any staff vacancies) and their impact.**

The board should also submit a report to the specified committees by October 1, 2011, on its progress in maintaining a more appropriate fund balance, meeting its revised Managing for Results goals for complaint resolution, and implementing formal routine data retrieval and analysis procedures. With respect to the board's fund balance, this report should discuss projected licensing trends, variance from previously projected licensing trends factors, vacant positions and the length of such vacancies, and any changes in fees.

Regarding complaint resolution, this report should include a summary of the number of complaints received, the basis for the complaints received, the length of time needed to complete investigations and to dispose of a case, the board's most recent complaint carryover statistics, and factors contributing to lengthened investigations or resolution of complaints.

The board had some difficulty producing accurate licensing data during the evaluation process. While these issues were resolved quickly, BCMTE should implement formal and routine data maintenance and reporting procedures. Routinely checking licensing data will assist the board in accurately spotting licensing trends as soon as possible and will allow the board to make any necessary changes in a timely manner. BCMTE advises that it has a new computerized database that allows board staff to conduct instant, accurate queries that were previously conducted manually. BCMTE further advises that one of its investigators is compiling monthly licensing statistics for review. These efforts will definitely assist the board in its routine functions. However, the report should include a detailed explanation of formal procedures implemented by board staff for regular data maintenance and reporting.

Appendix 1. Current Fees Charged by the State Board of Chiropractic and Massage Therapy Examiners

Chiropractors

Application fee for licensure	\$200
Examination fee	300
Licensure fee	200
Reexamination fee	400
Renewal license	700
Late renewal fee (in addition to renewal fee)	500
Reinstatement fee	300
Duplicate license fee	50
Duplicate license fee (if ordered at time of renewal)	25
Inactive status renewal fee	350
Reactivation fee	200
Preceptorship application fee	300
Extern application fee	50
Licensure by credentials	750
Penalty for returned checks	50
Mailing labels or roster	200
Penalty for failure to maintain a correct address with the board	200

Chiropractic Assistants

Examination fee for chiropractic assistant	\$300
Application fee for supervising chiropractor	300
Registration fee for chiropractic assistant	100
Renewal fee for chiropractic assistant	250
Late renewal fee for chiropractic assistant	200

Massage Therapists

Application fee for licensure	\$150
Jurisprudence examination fee	200
Licensure fee	200
Renewal license	250
Late renewal fee (in addition to renewal fee)	200
Reinstatement fee	200
Duplicate license fee	40
Duplicate license fee (if ordered at time of renewal)	20
Inactive status fee	50
Reactivation fee	100
Extern application fee	50

Source: Code of Maryland Regulations, 10.43.06.02 and .03

Appendix 2. Target Goals for Investigation of Complaints by Health Occupations Boards in Fiscal 2008

<u>Board/Commission</u>	<u>Target Goal</u>
Acupuncture	100% in 180 days
AUD/HAD/SLP*	100% in 180 days
Chiropractic Examiners*	40% in 75 days
Dental Examiners*	85% in 180 days
Dietetic Practice	100% in 180 days
Kidney Disease	100% in 180 days
Morticians	100% in 90 days
Nurses	70% in 270 days
Nursing Home Administrators	100% in 195 days
Occupational Therapists	100% in 180 days
Optometry	100% in 180 days
Pharmacy	85% in 90 days
Physical Therapy Examiners	100% in 120 days
Physicians*	95% in 18 months
Podiatric	98% in 180 days
Professional Counselors and Therapists	100% in 180 days
Psychologists	100% in 180 days
Residential Child Care Administrators	100% in 30 days
Social Work*	95% in 190 days

AUD/HAD/SLP: Audiology, Hearing Aid Dispensers, Speech-language Pathologists

*Did not meet processing goal in fiscal 2008

Source: Department of Health and Mental Hygiene, Department of Legislative Services

Appendix 3. Written Comments of the State Board of Chiropractic and Massage Therapy Examiners



DHMH Board of Chiropractic & Massage Therapy Examiners

Maryland Department of Health and Mental Hygiene

4201 Patterson Ave., Baltimore, MD 21215-2299

Chiropractic: 410.764-4726 * Massage Therapy: 410.764-4738 * FAX: 410.358-1879

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

November 20, 2009

Department of Legislative Services
Office of Policy Analysis
Attn: Ms. Jennifer Chase, Senior Policy Analyst
Legislative Services Bldg.
90 State Circle
Annapolis, MD 21501-1991

Dear Ms. Chase:

The Board has received the draft *Preliminary Evaluation of the State Board of Chiropractic and Massage Therapy Examiners* on November 19, 2009. That Evaluation recommended Waiver from Full Evaluation and extending the termination date to July 1, 2022. The Board unanimously concurs with this recommendation and submits that the report accurately reflects the status and operations of this Board.

The Board commends the evaluator, Ms. Amy A. Devadas, J.D., for the professional, thorough, and cordial review and analysis. Ms Devadas was consistently friendly and tactful and insured that the Board staff was given ample opportunity to provide data, and insight to fully address questions and issues. Her patience with staff members is appreciated and it was a pleasure to work with her.

The Board acknowledges the recommendations of the draft Evaluation Report and the required follow-up reports due by this Board respectively in October 2010 and 2011. This Board will diligently commence procedures to address all recommendations and shall file the required reports in a timely manner. Should you or your staff have any questions or require further clarifications, please contact the undersigned at 410-764-5985.

Sincerely,

J. J. Vallone, J.D.
Executive Director
For Kay B. O'Hara, D.C.
By direction of the Board

cc: John Colmers, DHMH Secretary
Grant Gerber, Esq., Board Counsel

James J. Vallone, J.D., Executive Director

Chiropractic website: www.mdchiro.org * Massage Therapy website: www.mdmassage.org
Toll Free: 1-877-4MD-DHMH * TTY for Disabled – Maryland Relay Service 1-800-735-2258