

Preliminary Evaluation of the Electrology Practice Committee

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2023

**Require Follow-up Reports by October 1, 2011, and
October 1, 2015**

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 approximately 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 practice of electrology in Maryland last underwent sunset review in 2002 when it was governed by the now defunct State Board of Electrologists. The 2002 evaluation recommended that the practice of electrology should continue to be regulated in Maryland; however, the declining number of licensees and financial challenges made it infeasible to continue an autonomous board. Therefore, DLS recommended that the State Board of Electrologists terminate in 2003 and be replaced by an Electrology Practice Committee (EPC). Chapter 422 of 2003 repealed the State Board of Electrologists and established EPC under the State Board of Nursing (the board) in the Department of Health and Mental Hygiene (DHMH). This is the first sunset evaluation of EPC, which is scheduled to terminate on July 1, 2013.

In conducting this preliminary evaluation, DLS staff interviewed EPC members, board staff, and members of the Maryland Association of Professional Electrologists (MAPE), the Maryland chapter of the American Electrology Association. In addition, staff attended an EPC meeting, attended a board meeting, and reviewed meeting minutes, financial data, complaint data, licensing data, relevant statutes and regulations, previous sunset evaluations, and other background information relating to electrology and hair removal.

This report includes a description of EPC and its functions, a fiscal history, and a discussion of the issues related to the effectiveness of EPC and the board in regulating electrologists in Maryland. EPC and the board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in EPC and board comments may not reflect the final version of the report.

The Practice of Electrology

Electrology, the science of permanent hair removal utilizing solid needle or probe devices, has been practiced since 1869. The practice entails the discharge of a small amount of electrical current by a fine sterile needle or probe into the base of a hair follicle. The electrical current destroys the regenerative capacity of the cells of the hair follicle. The remaining hair is then removed easily with sterile forceps, and the area is left to heal. When this is competently and skillfully accomplished, the chance for regrowth of that hair is permanently eliminated.

Three basic methods, called modalities, are used in the modern practice of electrology: electrolysis, thermolysis, and the blend. Electrolysis (also known as galvanic) uses direct current (DC) to achieve destruction of the hair follicle by chemical decomposition. One or more sterile needles or probes are used with electrolysis. Thermolysis uses alternating current (AC), sometimes referred to as high frequency or short-wave, to create heat that destroys the hair follicle. One sterile needle or probe is used for thermolysis. The blend (also referred to as dual modality) uses both DC and AC current simultaneously or sequentially to achieve dual action destruction of the hair follicle. Most often, a single sterile needle or probe is used for this procedure. No particular modality is considered the “best.” An electrologist must determine which modality to use on a case-by-case basis, taking into consideration patient tolerance for pain, coarseness of the hair, and chemical reactions in the body of individual clients.

The Impact of Laser Hair Removal

In the mid-1990s, a competing hair removal technology utilizing lasers to target the pigmentation of the hair began to be advertised as a revolutionary, effective, and painless new method for hair removal. Consumers sought this technology. As a result, some electrologists feared that electrolysis would be rendered obsolete. However, that has not been the case.

The U.S. Food and Drug Administration has authorized laser hair removal devices to be marketed as able to accomplish permanent hair “reduction” as opposed to permanent hair “removal.” The laser disables hairs that are in their active growth cycle at the time of treatment, working most effectively for individuals with pale skin and dark coarse hair. Since other hairs will enter their growth cycle at different times, several laser hair removal treatments are often necessary. Individuals with dark skin or with lighter or thinner hair have varying degrees of success with laser hair removal and regardless of skin and hair type, for some individuals, laser hair removal has no effect at all.

Despite the increasing popularity of laser hair removal, it seems unlikely that it will completely obviate the need for electrology. Though demand may be diminished, electrolysis remains the recommended method for hair removal for individuals with darker skin or lighter or thinner hair and individuals who have undergone initial laser treatments that did not successfully reduce hair growth.

The Electrology Practice Committee

Thirty-three states and the District of Columbia regulate electrologists. In Maryland, the practice of electrology has been regulated for more than 60 years by three different entities under two separate agencies. Prior to 1978, electrology was regulated by the State Board of Cosmetology under the (then) Department of Licensing and Regulation. From 1978 until 2003, electrologists were regulated by their own board, the State Board of Electrologists, under DHMH. Chapter 422 of 2003 repealed the State Board of Electrologists given low numbers of licensees and declining revenues, and established EPC under the State Board of Nursing.

EPC consists of five members: four licensed electrologists or electrology instructors with at least five years of experience immediately prior to appointment and one consumer with no financial affiliation to any person regulated by the board. Among other duties, EPC makes recommendations to the board relating to requirements for licensure, continuing education, and a code of ethics. At the request of the board, EPC may also investigate complaints against licensees or conduct announced or unannounced inspections of electrology facilities. EPC members serve four-year, staggered terms. No member may serve more than two terms, though all serve until a successor is named. All EPC positions are currently filled.

EPC meetings take place at the request of the executive director of the board or as necessary to conduct business – typically at least four times per year. Staff services, including administrative support and the advice of an assistant Attorney General, are provided by the board. However, staffing has been inconsistent since the establishment of EPC due to personnel changes, periods of extended medical leave, a lack of clarity regarding the responsibility of the assistant Attorney General to EPC, and other factors. Consequently, some historical records and data relating to regulation of the profession are difficult to access or have been lost. **The board should evaluate the level and consistency of staffing provided to EPC in order to prevent further loss or inaccessibility of information relating to the regulation of electrologists.**

Statutory Changes to the Practice of Electrology Since the 2002 Sunset Review

There have been few legislative changes affecting EPC or the practice of electrology since the last sunset review in 2002. As shown in **Exhibit 1**, most legislation has made the regulation of electrology mirror that of other health professionals licensed by the board, including subjecting electrologists to criminal history records checks, making the term of licensure for electrologists annual, and adding additional grounds for discipline of an electrologist. The greatest legislative changes were part of Chapter 422 of 2003, discussed above, which repealed the State Board of Electrologists and established EPC.

Exhibit 1
Major Legislative Changes Since the 2002 Sunset Review

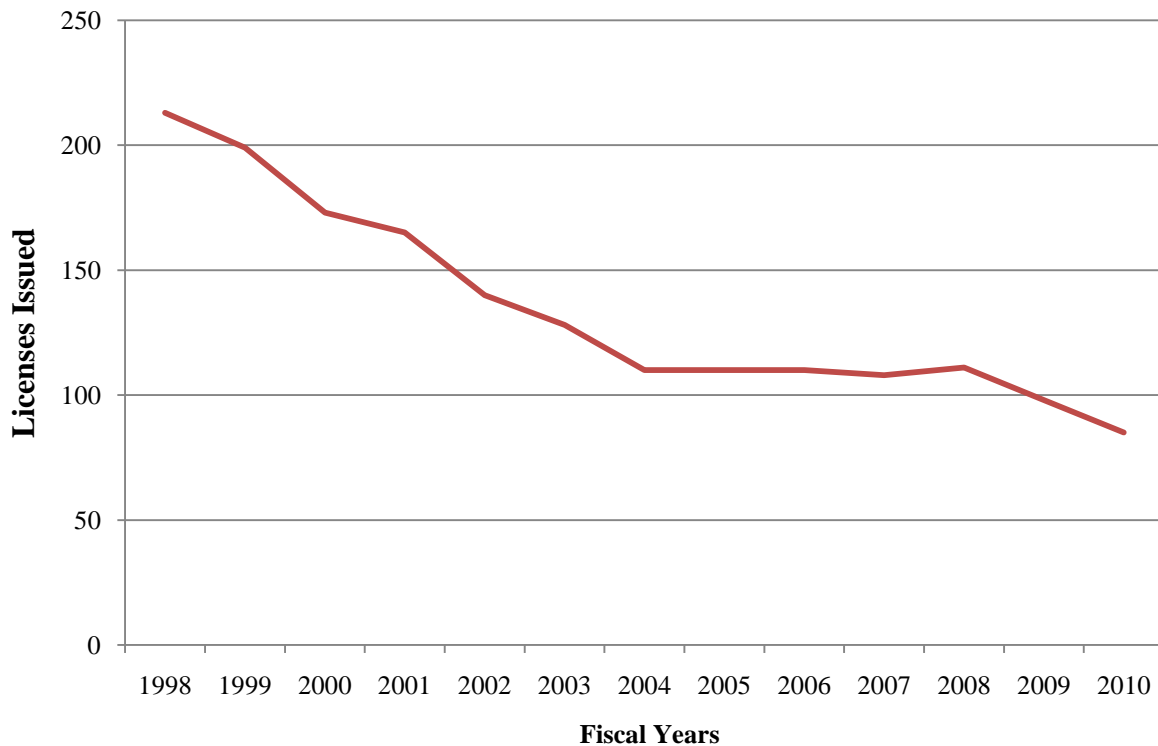
<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	422	Repeals the special-funded, autonomous State Board of Electrologists and instead establishes the Electrology Practice Committee under the State Board of Nursing.
2006	390	Requires electrologists to submit to a criminal history records check as a condition of licensure and license renewal and authorizes the board to take disciplinary action against an electrologist for failure to submit to a criminal history records check.
	481	Repeals the Electrologist Rehabilitation Committee and instead authorizes the board's Rehabilitation Committee to provide services to electrologists. Authorizes the board to issue advisory letters to electrologists.
	482	Alters the term of licensure from two years to one year. Requires the board to place electrologists who do not comply with continuing education requirements on inactive status. Authorizes the board to take disciplinary action against an electrologist for practicing without a valid license.
2010	48/49	Establish quorum, meeting, compensation, and reimbursement provisions for EPC. Alter examination requirements for applicants to include a national examination administered by the American Electrology Association and a clinical examination administered by the board. Authorize the option of using electronic notice of license renewal. Extend the commencement of the criminal history records check requirement until 2011 and extend the requirement for subsequent checks to be every 12 years thereafter, rather than every 10 years.

Source: Laws of Maryland

Licensing Activity Continues to Decline

An electrologist must be licensed to practice electrology in Maryland. As shown in **Exhibit 2**, over the past 12 years, the number of licensed electrologists has steadily decreased in the State from a high of 213 in fiscal 1998, to 140 at the time of the last sunset review in fiscal 2002, down to a low of 85 in fiscal 2010. This decrease may be partly related to the fact that there are no electrology schools in Maryland; therefore, persons seeking electrology training must go out of State. Furthermore, there have been no new applicants for licensure since 2005. Additionally, fewer licensees are seeking renewal each year for a variety of reasons including approaching or attaining retirement age, a reduction in demand for electrology, and diminishing financial return. As of November 2010, the deadline for current license renewal, only 74 licensees had renewed their licenses.

Exhibit 2
Total Number of Licensed Electrologists
Fiscal 1998-2010



Source: State Board of Nursing

Challenges Complicate Licensure Process

Under current law, to obtain a license an applicant must be of good moral character, be at least 18 years of age, have earned a high school diploma or its equivalent, have completed a board-approved electrology education program, submit to a criminal history records check, submit applicable fees and forms, satisfy examination requirements, and meet any other requirements established by the board in regulation.

An approved electrology education program consists of 600 hours of instruction: at least 200 hours in the theory of electrology and at least 400 hours in the clinical practice of electrology. The theory program of instruction includes anatomy of skin and hair, bacteriology, dermatology, endocrine systems, hirsutism, and professional ethics. The clinical “hands-on” program of instruction includes electrolysis, thermolysis, and the blend; needle types and performance; sanitation; structure and dynamics of hair; State laws and regulations governing the practice of electrology; and other electrology-related concepts.

Following instruction, an applicant must satisfy examination requirements. Each applicant must take and pass a national examination administered by the American Electrology Association and a clinical examination administered by the board.

Issues Exist Regarding Examination Requirements

Although there have been no new applicants for licensure as an electrologist since fiscal 2005, DLS has identified several issues regarding the required examinations. Specifically, there is currently no State examination available, the board is not presently administering a State law portion of the examination, and the statutory and regulatory examination requirements of the board could be clearer.

Though statute requires that an applicant for licensure be examined, there is currently no State licensure examination to be offered. Previously, the board purchased an examination from a private company and administered the examination itself. However, the current vendor insists that an indemnification clause (language which waives the company of any liability associated with the examination) be included in its contract. EPC and the board have resisted signing such a clause under advice of their assistant Attorney General. Given this contract dispute, there is no examination available if and when a new applicant presents for licensure. **The board should work to resolve this contract dispute, find another examination vendor, or explore preparing its own licensure examination.**

Although a separate State law portion of the examination has been administered by the board in years past, the board’s assistant Attorney General advises that the board lacks the statutory authority to do so. Thus, the State law portion of the examination has been discontinued. **The board should seek an Attorney General’s opinion or legislative clarification on its authority to administer a State law examination.**

Finally, the consistency of statutory and regulatory examination requirements could be improved. Although statute requires that an applicant pass a specified national examination and a clinical examination administered by the board, regulation requires an applicant to obtain 75% or higher on a “theory” examination and a clinical examination without mention of a national examination. **The board should coordinate and clarify examination requirements in regulation and statute to make them consistent and clear for future applicants.**

Completion of Continuing Education Required for Renewal

As a condition of license renewal, electrologists must complete 10 hours of continuing education units (CEUs) per year. CEUs may be obtained as follows: up to three CEUs in business management; up to three CEUs in cardiopulmonary resuscitation (CPR) or first aid; up to four CEUs by home study; up to four CEUs in alternative therapies; and up to four CEUs by lecture or published articles. A course, seminar, or speaker session is approved by the board if it is relevant to the clinical aspect of electrology and offered by an institution of higher education approved by the Maryland Higher Education Commission, a professional electrology association, an approved electrology education program, or a health department or hospital.

Other licensees regulated by the board are able to obtain continuing education credit based on practice experience, often logged at a hospital or other health care facility. For ease of administrative approval of electrology CEUs, the board proposed that CEUs for electrologists be changed to this method. However, EPC persuaded the board to maintain the current CEU method because electrologists do not typically work in a hospital or health care facility setting, many electrologists work part-time and would be unable to meet minimum practice experience requirements, and technological advances and equipment improvements would not be conveyed to licensees through regular practice experience. In October, the board approved EPC’s recommendation to maintain the current CEU attainment and approval process.

EPC Requests Legislative Change for Biennial License Renewal

Per Chapter 482 of 2006, a license to practice electrology is valid for one year. Prior to this Act, per statute, a license was valid for two years; however, in practice, EPC reports that licenses were renewed on an annual basis. The board recently approved “in concept” EPC’s recommendation that electrologists renew on a biennial license renewal schedule. Under a biennial license renewal schedule, the CEU requirement would become 20 hours every two years (rather than 10 annually). This change will require legislation.

The Relationship Between EPC and the State Board of Nursing

As discussed above, the statutory structure of the relationship between EPC and the board is such that EPC makes recommendations, and the board has final decision-making authority regarding regulation of the practice of electrology in the State. However, decisions made by the

board relating to the practice of electrology do not necessarily originate with EPC. DLS found that, during the past five years, there have been instances of the board approving both regulations and legislation without the consideration of or consultation with EPC.

This potential disconnect between EPC and the board could be improved with better training of and communication with EPC members. Currently, EPC members do not participate in any orientation or training; however, board staff is amenable to expanding existing board member orientations and trainings to include EPC members. Board members may also benefit from orientation or training relating to the role and function of EPC. **Going forward, the board should consult with EPC prior to making changes to statutes or regulations that relate to the practice of electrology.** EPC members offer an expertise in the field of electrology that the board does not otherwise have within its membership.

No Complaints in Past Five Years, but Consumer Outreach Could Improve

Historically, the entity responsible for preserving the public safety, health, and welfare as it relates to the practice of electrology has received very few complaints against licensees. Within the past five years, no valid complaint against a license has been received by EPC. This may be attributed to the rigorous requirements for licensure. As discussed in the 2002 evaluation, electrology associations advised that complaints could be limited for two other reasons. First, clients of electrology services often establish a rapport with an electrologist over the course of treatment and resist reporting a “friend” in order not to harm the electrologist professionally. Second, many women who use electrology may prefer to remain anonymous rather than report an electrologist. DLS notes, however, that the lack of complaints may also result from a lack of knowledge on the part of consumers about their ability to file a complaint. The board website contains neither a link to a complaint form nor information regarding the process by which a complaint may be made. **To facilitate consumers’ ability to file complaints if and when they arise, the board should include information on its website about how to file a complaint against an electrologist, including a link to a complaint form.**

Electrologists Pay Comparatively High Licensure Fees for Regulation

The board is special funded and, therefore, required to generate self-supporting revenues. Statute specifically requires the board to set reasonable fees for the issuance and renewal of licenses for electrologists. These fees must produce funds that approximate the cost of maintaining licensure and other services for electrologists and must be used to cover actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board relating to electrologists. When EPC was established, the board lowered license renewal fees for electrologists from \$250 to \$150. However, as shown in **Exhibit 3**, when compared to the fees charged to other licensees and certificate holders regulated by the board and other allied health care professionals regulated by the State Board of Physicians, electrologist fees remain comparatively high. At \$150 per year, electrologist licensure fees are higher than those for

registered nurses, licensed practical nurses, certified nursing assistants, and medication technicians. Licensure fees for electrologists are also higher than the licensure fees for allied health professionals under the State Board of Physicians, including physician assistants, radiation therapy, radiography, and nuclear medicine technologists, and respiratory care practitioners.

Exhibit 3
Comparison of Electrology Fees with Other Selected Licensing Fees
Fiscal 2010

<u>License/Certificate</u>	<u>Initial Fee</u>	<u>Renewal Fee</u>
Electrologist	\$300	\$150 per year
Registered Nurse/Licensed Practical Nurse	\$100 or \$150	\$55 per year
Certified Nursing Assistant	\$20	\$40 (\$20 per year)
Medication Technician	\$20	\$30 (\$15 per year)
Physician Assistant	\$207	\$107 (\$53.50 per year)
Radiation Therapy, Radiography, Nuclear Medicine Technologist	\$107	\$82 (\$41 per year)
Respiratory Care Practitioner	\$182	\$82 (\$41 per year)

Source: *Code of Maryland Regulations*; State Board of Physicians; State Board of Nursing

Revenues Exceed Expenditures, but Accounting of Costs Could Be Improved

Revenues from the \$150 electrologist license fee (and other fees collected by the board related to electrology) accrue to the State Board of Nursing Fund. As the largest health occupations board in Maryland, total board revenues were \$6.7 million in fiscal 2010, with expenditures of \$5.9 million. As shown in **Exhibit 4**, estimated revenues associated with licensure of electrologists have ranged from \$12,750 to \$16,650, while expenditures have been about \$2,000 to \$3,000 annually.

Although these revenues and expenditures are a fraction of the larger board budget, estimated revenues consistently exceed expenditures by more than \$10,000 annually, despite the declining number of licensees. However, this “surplus” may be due to how the board accounts for expenditures. The board does not charge EPC for postage, staff salaries, assistant Attorney General advice, administrative support, or legislative support, but does use fee revenue to

reimburse EPC members for travel to meetings. It is unclear what the actual amount of charges to EPC would be for these and other services as the board does not track all EPC expenditures. It is possible that these charges would indeed approximate or even exceed revenues from electrologist licensure fees or that there is a lesser surplus of revenues over expenditures than is reflected in Exhibit 4.

Exhibit 4
Estimated Revenues and Reported Expenditures for the
Electrology Practice Committee
Fiscal 2006-2010

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>Total</u>
Revenues	\$16,500	\$16,200	\$16,650	\$14,700	\$12,750	\$76,800
Expenditures	2,526	1,662	2,546	3,249	2,128	12,111
Difference	\$13,974	\$14,538	\$14,104	\$11,451	\$10,622	\$64,689

Note: Revenues are estimated based on the number of license renewals and related fees for each fiscal year and do not reflect any other fees or fines that may have been remitted to the State Board of Nursing in that fiscal year. Expenditures are the reported board expenditures for the operation of EPC and the regulation of electrologists.

Source: State Board of Nursing; Department of Legislative Services

In order to provide a more accurate assessment of EPC revenues and expenditures, the board should, at a minimum, begin specifically tracking all expenditures relating to EPC to properly account for these services. Even if the board does not actually “charge” EPC for these services, it should ensure that fee revenues collected from electrologists produce funds that approximate the cost of maintaining licensure and other services for electrologists and that the fees are being used to cover the actual costs of fulfilling the statutory and regulatory duties of the board relating to electrologists, as required by statute. Furthermore, more accurate accounting would allow the board to review, and if necessary adjust, current licensure fees for electrologists.

If after more careful accounting of expenditures a revenue surplus continues, the board could consider a fee reduction or work with EPC to pursue other regulatory changes or actions such as maintaining a separate EPC website, developing online licensing for electrologists, or creating a Maryland-specific examination for licensure applicants.

The Need for Continued Regulation

Careful scrutiny of the techniques and equipment employed in electrology indicate that deregulation of the profession would not be in the best interest of public health and safety. In addition to the risk of scarring, the risk of transporting communicable and blood-borne diseases through the practice of electrology is very real. The instruments used in routine procedures frequently penetrate the skin and invariably become contaminated with blood, serum, or other material on the skin or in hair follicles. Other electrology procedures, such as probing for and removing ingrown hairs, are invasive and can result in considerable blood contamination of instruments and related surfaces as well as the electrologist's fingers and hands. There is a risk of transferring microorganisms between patient and electrologist or between patients if proper aseptic procedures are not followed.

Electrologists often must work cooperatively with an endocrinologist or dermatologist to achieve permanent hair removal since superfluous hair growth is often a presenting symptom of other diseases. Without the recommendations and expertise of EPC to guide the board and address consumer complaints if and when they arise, the State assumes the responsibility for the health and well-being of the consumer seeking electrology treatments.

Recommendations

EPC performs its statutory and regulatory functions in an effective and efficient manner. EPC members are committed to volunteering their time to meet as directed by the board or as needed to research and make recommendations regarding issues relating to licensure and renewal and to maintaining the health and safety of consumers of electrology services. Therefore, **DLS recommends that LPC waive EPC from full evaluation and that legislation be enacted to extend EPC's termination date by 10 years to July 1, 2023.**

To address issues raised in this evaluation, 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. The first report should be submitted by October 1, 2011, and update the committees on the board's actions to address the following issues:

- **Licensure Examination:** The board should resolve the issue of the lack of an examination for initial licensure by reconciling the controversy relating to the inclusion of an indemnification clause in the current vendor's proposed contract, seeking another vendor, or creating its own examination. Furthermore, the board should seek an Attorney General's opinion or legislative clarification relating to its authority to administer a State law section of the examination to prospective applicants. Finally, the board should coordinate and clarify its regulatory and statutory examination requirements.

- **Implementing Biennial Licensure Renewal:** The board has approved “in concept” EPC’s recommendation for a biennial license renewal cycle, a change that will require legislative action.
- **Relationship Between EPC and the Board:** The board should describe its efforts to improve the training of and communication with EPC members. Additionally, the board should advise of any change in the level or consistency of staffing provided to EPC.
- **Inform Consumers about Complaint Process:** The board should update its website to include a description of the complaint process with respect to electrologists and include a complaint form on the board website.
- **Revenues, Expenditures, and Fees:** The board should report on its reconciliation of the difference between the fee revenues generated from electrologist licensees and the reported actual cost of the board to regulate electrologists. The board should also indicate its plans if a revenue surplus continues and any plans to alter current fees.

The second report should be submitted by October 1, 2015, and update the committees on the status of EPC and the regulation of electrology in Maryland. This report should include (1) the number of electrologists licensed by the board between fiscal 2011 and 2015; (2) the number of complaints related to the practice of electrology received by the board, if any, and the disposition of such complaints; and (3) a summary of any major legislative or regulatory changes impacting electrology, including changes to fees charged by the board.

**Appendix 1. Written Comments of the
State Board of Nursing and
the Electrology Practice Committee**

STATE OF MARYLAND



MARYLAND BOARD OF NURSING

4140 PATTERSON AVENUE

BALTIMORE, MARYLAND 21215 -2254

December 3, 2010

Ms. Jennifer B. Chasse
Senior Policy Analyst
Department of Legislative Services
Office of Policy analysis
90 State Circle
Annapolis, Maryland 21401

Dear Ms. Chasse:

The Maryland Board of Nursing, the Board, is in receipt of the Exposure Draft of Sunset Evaluation Electrology Practice Committee. and appreciates the opportunity to review this report. The Board and the Electrology Practice Committee, the EPC, would like to thank the Department of Legislative Services for their recommendation that a full evaluation be waived. Further, the Board and the EPC appreciate the thorough analysis of the EPC conducted by Ms. Sara Fidler and the thoughtful recommendations made thereto.

The Board and the EPC have identified the concerns stated within the evaluation and are presently working to address them.

Sincerely,

Nancy D. Adams, MBA, RN
President

Patricia Ann Noble, MSN, RN
Executive Director