



Sunset Review: Evaluation of the State Board of Nursing

**Presentation to the
House Health and Government Operations Committee
*Delegate Peter A. Hammen, Chairman***

**Health Facilities and Occupations Subcommittee
*Delegate Eric M. Bromwell, Chairman***

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

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Presentation Overview

- History, purpose, and composition of the State Board of Nursing (BON)
- Board workload and growth in regulated professionals
- Focus of the 2011 sunset evaluation
- Findings and recommendations relating to:
 - licensure and certification, criminal history records checks (CHRCs), complaint resolution, customer service, and board resources and administrative issues
- Conclusion



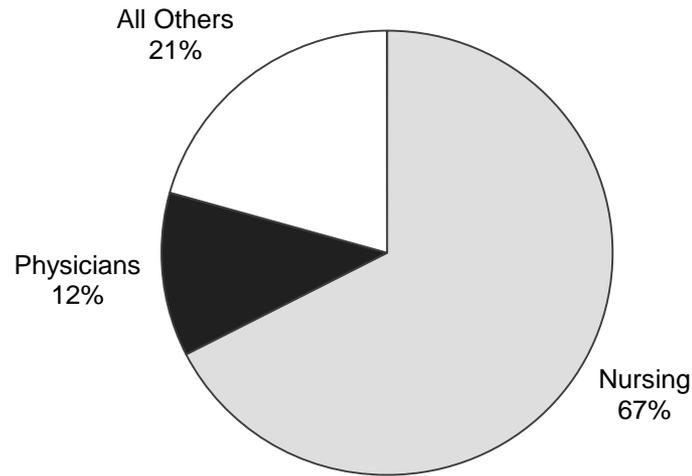
State Board of Nursing

- Established in 1904 to advance safe, quality care in Maryland
- Currently regulates registered nurses (RNs), licensed practical nurses (LPNs), certified nursing assistants (CNAs), certified medication technicians (CMTs), and electrologists
- Main objectives are to license and certify nursing professionals, set standards for the nursing industry, and receive and investigate complaints from the public
- Composed of 13 members: 8 registered nurses, 3 licensed practical nurses, and 2 consumers
- Meets monthly and has several committees and workgroups that meet on a monthly, quarterly, or as-needed basis



Board Workload

Active Licensees/Certificate Holders Governed by Maryland Health Occupations Boards Fiscal 2010



All Others = 21%

Pharmacy	15,730
Dental Examiners	15,280
Social Work Examiners	12,135
Physical Therapy Examiners	12,096
Chiropractic/Massage Therapy Examiners	4,757
Professional Counselors and Therapists	4,579
AUD/HAD/SLP*	3,356
Occupational Therapy Practice	3,075
Psychologists	2,600
Dietetic Practice	1,494
Morticians and Funeral Directors	1,411
Optometry	848
Acupuncture	832
Nursing Home Administrators	536
Podiatric Medical Examiners	410
Residential Child Care Program Professionals	173

*Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists

Source: Department of Health and Mental Hygiene

- Largest health occupations board in Maryland
- Regulates approximately two-thirds of all regulated health occupations professionals in the State

Growth in Regulated Professionals

Licenses and Certifications Held From the State Board of Nursing Fiscal 2005-2012

<u>Type of Activity</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Estimated FY 2012</u>
Licenses/Certificate Holders								
RNs	61,148	58,216	55,860	73,818	74,683	74,104	74,884	75,000
LPNs	12,150	10,607	11,063	15,283	14,820	15,283	14,605	15,500
CNAs	43,500	48,623	47,598	81,391	98,869	107,112	114,527	115,000
CMTs	32,618	40,721	15,643	20,384	57,354	62,744	69,246	69,000
Electrologists	110	110	108	111	98	85	74	60
Additional Workload Measures Related to Nurses								
Advanced Practice Certifications Held by RNs	4,252	3,127	3,831	4,003	5,912	4,932	4,598	5,000
Licensure by Endorsement	1,741	2,704	2,091	2,456	2,599	2,812	2,696	2,600
New Licensee/Exams	2,516	2,942	3,095	3,095	2,881	3,240	3,485	3,300

Notes: Though licensed by the board, a separate sunset evaluation of the Electrology Practice Committee was conducted in 2010. The number of electrologists licensed annually is included in this chart as an indicator of the board's workload. Licenses and certifications associated with nurses are currently issued annually whereas certifications for nursing assistants and medication technicians are issued biennially.

Source: State Board of Nursing



Focus of the 2011 Sunset Evaluation

- This sunset evaluation explored issues that were raised in past reviews, including:
 - timeliness of the licensure and complaint processes
 - CHRCs
 - customer service
 - board fund balance
 - collection of data
- The Department of Legislative Services (DLS) recognizes the challenges the board faces and makes recommendations for improvement
- Based on our findings, DLS makes a total of 25 recommendations



Licensure and Certification: Certified Medication Technicians

- Since fiscal 2005, the number of CMTs has increased by 112%
- Dramatic delays in certifying medication technicians have resulted in legislative action
 - Chapter 653 of 2008 authorized CMTs to practice for up to 90 days after completing training
 - Chapter 123 of 2011 extended the 90-day timeframe to 180 days and required the board to study and submit a report by December 31, 2011, on the status of processing CMT applications
- As of October 20, 2011, the number of outstanding applications for medication technicians made in fiscal 2010 and 2011 totaled 20,962

Recommendation 1 (pg. 13): The board should continue to prioritize certification of medication technicians; any statutory or regulatory changes related to the certification of medication technicians should be based on the findings of the report required by Chapter 123 of 2011, particularly the required staffing analysis. The board should also include the provider community when developing policy related to the certification process and training requirements for medication technicians



Licensure and Certification: Recent Changes

- The board has implemented online renewal for all licensees and certificate holders and plans to have all initial applications online by early 2012
- In accordance with Chapters 585 and 586 of 2010, the board will change from annual to biennial licensure renewal in 2013
- Online processes and biennial renewal should lead to staffing efficiencies

Recommendation 2 (pg. 15): The board should monitor any staffing efficiencies related to the online licensure process and the movement to biennial licensure and reallocate staff accordingly



Criminal History Records Checks

- In recent years, board duties have expanded to include review of CHRCs for RNs, LPNs, CNAs, and electrologists
- On October 1, 2006, the board implemented the CHRC requirement on all new licensees and CNAs
- In June 2010, the board began reviewing CHRC information for licensees and CNAs seeking renewals
- The board now reviews CHRC results for three-fourths of all applicants for initial and renewal licenses and certificates
- CMTs are not subject to CHRCs, but they must self-disclose any criminal history as part of the application process



Criminal History Records Checks (Cont.)

- The board reviews more than 26,000 CHRC results annually
- In fiscal 2010, 86% of initial and renewal CHRC results were negative (no criminal history), 9% were positive (a criminal history was identified), and 5% were rejected
- Even when CHRCs reveal a criminal history, most positive results do not affect fitness for licensure or certification
- From fiscal 2007 through 2011, only 130 (0.2%) of RN, LPN, and CNA applications were denied due to positive CHRC results
- An additional 105 CMTs were denied certification due to self-reporting of a criminal history



Criminal History Records Checks (Cont.)

- The board does not routinely track the number of license and certificate denials resulting from positive CHRC results
- Information on denials is critical to determine whether and to what extent the CHRC requirement is furthering the board's mission of advancing safe, quality nursing care

Recommendation 3 (pg. 19): The board should maintain annual data on the number of RN, LPN, and CNA applicants that are denied licensure or certification based on positive CHRC results. Information should also be maintained on the number of applicants for certification as a CMT that are denied certification based on self-disclosure of a criminal history



Criminal History Records Checks (Cont.)

- Board policies and procedures for processing CHRC results are designed to maintain confidentiality and use multiple staff throughout the process (see Exhibit 3.2 on pg. 21), but many of these policies and procedures are not in writing

Recommendation 4 (pg. 22): The board should develop policy and procedure manuals on how the board handles positive CHRC results. These policies and procedures should be shared with board members and staff, and relevant policies should be published on the board's website



Criminal History Records Checks (Cont.)

- The board is considering seeking legislation in 2012 to extend the CHRC requirement to CMTs
- Could require the board to review up to 25,000 additional CHRC results and handle up to 2,250 additional complaints annually
- Employers are concerned with the impact on their ability to recruit and retain CMTs
- The board faces a significant backlog in processing CMT applications

Recommendation 5 (pp. 23-24): The board should delay seeking legislation to require CMTs to submit to CHRCs until it has (1) implemented online certification for CMTs; (2) analyzed the effectiveness in protecting the public of the current criminal history self-disclosure policy; (3) determined whether CHRCs are necessary in light of the self-disclosure policy; and (4) made any personnel changes relating to the certification of CMTs as a result of the personnel study recommended by this report



Criminal History Records Checks (Cont.)

- Current law authorizes RN, LPN, and CNA applicants to be waived from the CHRC requirement if they have completed a CHRC through another state board of nursing within the previous five years
- The board has been unable to utilize waiver authorization because federal law (P.L. 92-544) prohibits federal criminal records obtained by boards of nursing as part of the licensing process from being shared

Recommendation 6 (pg. 24): Statute should be amended to remove the authorization for RN, LPN, and CNA applicants to be waived from a CHRC if they have completed such a check through another state board of nursing within the five years preceding the date of their application

Complaint Resolution

- Since fiscal 2006, the total complaint volume handled by the board has doubled

Trends in Complaints Handled by the State Board of Nursing Fiscal 2006-2011

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
<u>RNs and LPNs</u>						
Pending Complaints	566	585	1,584	1,496	1,748	1,468
New Complaints	590	404	689	849	1,146	1,381
Subtotal	1,156	989	2,273	2,345	2,894	2,850
<u>Nursing Assistants</u>						
Pending Complaints	476	511	679	1,132	1,105	348
New Complaints	631	643	1,026	988	1,052	1,235
Subtotal	1,107	1,154	1,705	2,120	2,157	1,583
<u>Medication Technicians</u>						
Pending Complaints	0	358	394	467	201	83
New Complaints	486	347	423	301	274	301
Subtotal	486	705	817	768	475	384
Total	2,749	2,848	5,282	5,233	5,526	4,817

Note: The board received one complaint about a licensed electrologist in fiscal 2010, which is not included in the total.

Source: State Board of Nursing



Complaint Resolution (Cont.)

- From fiscal 2006 through 2011, the board's complaint backlog decreased significantly for every license and certificate category
- The board has implemented several policies to reduce the complaint backlog including (1) the establishment of a complaint review committee to prioritize serious cases; (2) conducting three (rather than one) settlement conferences per month; and (3) increasing the use of public advisory letters as an alternative to formal disciplinary action
- The board has continued its policy of hearing cases on one day per month
- The board policies streamlining the complaint review process are not in writing



Complaint Resolution (Cont.)

Recommendation 7 (pg. 29): The board, in consultation with the Office of the Attorney General, should develop a policy and procedure manual related to the complaint resolution process, including guidelines to be used by complaint review committees and in settlement conferences

Recommendation 8 (pg. 29): BON should continue to assess its complaint backlog and, as necessary, hold additional hearings



Complaint Resolution (Cont.)

- The board employs six nurse investigators and five non-nurse investigators
- DLS noted concern among board members that non-nurse investigators do not seek certain information because they lack a nursing perspective
- Hearings have been postponed in order to obtain additional information from non-nurse investigators

Recommendation 9 (pg. 29): Board members should meet with all investigative staff to discuss their expectations for investigations and should work with the nurse investigators to develop training for non-nurse investigators in order to prevent future delays



Complaint Resolution (Cont.)

- Chapters 533 and 534 of 2010 require all health occupations boards to adopt sanctioning guidelines and to report on the use of the guidelines by December 2011
- The purpose of the guidelines is to inform licensees and the public about action the board can take when a licensee violates a specific ground for discipline and to help ensure that the board is imposing consistent sanctions
- The board has submitted its sanctioning guidelines to the Administrative, Executive, and Legislative Review Committee

Recommendation 10 (pg. 30): The board should report again to the committees on its implementation and use of sanctioning guidelines by December 1, 2012 (by which time the board is expected to have been using the guidelines for about one year)



Complaint Resolution (Cont.)

- My License Office, the software used by the board, has enhanced complaint tracking capabilities, including the ability to run reports; however, the board only runs data reports on request
- Tracking complaint data would enable the board to measure the impact of its streamlined complaint resolution policies

Recommendation 11 (pg. 30): The board should utilize its complaint tracking capabilities to develop, run, and maintain a catalog of complaint data reports on a regular basis and use the results to make staffing and automation changes to improve the overall complaint resolution process



Customer Service

- Historically, licensees, certificate holders, and the general public have had difficulty contacting the board by phone and email
- Additional staff have been hired and trained to answer phones and provide basic customer service, but they typically only forward calls or take messages
- Long wait times prior to speaking to board staff frequently lead to confrontation

Recommendation 12 (pg. 31): The board should ensure that staff have the appropriate training to handle frequently asked questions and that all staff who interact with the public are trained on phone etiquette for diffusing tense situations



Customer Service (Cont.)

- The structure of the board's website is difficult to navigate and fragmented

Recommendation 13 (pg. 32): The board should make the website easier to follow by placing everything needed for RNs under one link, LPNs under another link, and so on

- Chapters 533 and 534 require the health occupations boards to post final disciplinary orders online; however, DLS found that the disciplinary information posted on the board's website is inconsistent and misleading

Recommendation 14 (pg. 33): The board should ensure that posted disciplinary information is accurate, consistent, and up to date. In addition, the board should include descriptions of what information is available and directions as to how to access the information



Customer Service (Cont.)

- The board administers a customer service survey that is only available on its website and includes insufficient questions about the respondent's customer service experience with board staff

Recommendation 15 (pg. 34): The board should add questions to the survey that are specific to the respondent's interaction with staff. Further, the board should encourage more responses to the survey

- The board published its last online newsletter in September 2008

Recommendation 16 (pg. 35): The board should reestablish an online newsletter as an opportunity to enhance communications between the board, its licensees and certificate holders, and the public

Board Fiscal Resources

Fiscal History of the State Board of Nursing Fiscal 2007-2012

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Estimated FY 2012</u>
Beginning Fund Balance	\$778,084	\$986,817	\$1,633,578	\$1,884,048	\$2,405,680	\$2,302,855
Revenues Collected	5,444,330	5,851,923	5,964,037	6,773,441	6,854,822	7,100,000
Total Funds Available	6,222,414	6,838,740	7,597,615	8,657,489	9,260,502	9,402,855
Total Expenditures	5,186,925	5,205,162	5,213,611	5,946,260	6,662,549	7,408,777
Direct Costs	4,933,165	4,985,320	4,960,177	5,682,358	6,436,868	7,187,134
Indirect Costs	253,760	219,842	253,434	263,902	227,681	221,643
Ending Fund Balance	1,035,489	1,633,578	2,384,004	2,711,229	2,597,953	1,994,078
Transfer to General Fund			500,000	305,549	295,104	
Balance after Transfer as % of Expenditures	20%	31%	36%	40%	35%	27%
Target Fund Balance (20% of Expenditures)	\$1,037,385	\$1,041,032	\$1,142,722	\$1,189,252	\$1,332,510	\$1,481,755

Note: The board indicates that the discrepancies between the ending and beginning fund balance figures from fiscal 2007 to 2008 and fiscal 2009 to 2010 are due to accounting adjustments made by DHMH.

Source: Department of Health and Mental Hygiene



Personnel Resources

- Board staffing levels have increased along with licensure and certification responsibilities
- In fiscal 2011 and 2012, the board received 6 additional regular positions to help account for the increase in workload, but the additional staff does not appear to have fully addressed the impact of the increase in licensees and certificate holders since fiscal 2006
- The board has 4 vacant positions that it is in the process of filling
- The board's transition to a paperless application process may generate one-time assignments

Recommendation 17 (pg. 40): Rather than request additional regular positions, the board should consider hiring contractual employees to complete the transition to a paperless application process

Personnel Resources (Cont.)

Number of Authorized Staff State Board of Nursing Fiscal 2006-2012

<u>Fiscal Year</u>	<u>Total Individuals Licensed or Holding Certificates</u>	<u>Positions</u>		
		<u>Regular</u>	<u>Contractual</u>	<u>Total</u>
2006	158,277	49	11.91	60.91
2007	130,272	57	11.55	68.55
2008	190,987	53	9.56	62.56
2009	245,824	64	2.76	66.76
2010	259,328	68	1.70	69.70
2011	273,336	72	1.70	73.70
2012	274,560 (estimated)	75	0.51	75.51

Notes: The number of individuals licensed or certified by BON does not include advanced practice certifications held by registered nurses (RNs) as they are already counted as licensed RNs. Likewise, the process by which nurses achieve licensure (exam or endorsement) is not reflected. The total does, however, include electrologists.

Source: State Board of Nursing



Personnel Resources (Cont.)

- DLS finds it too soon to make a recommendation about the sufficiency of regular staffing
- The board cannot provide specific data to support need for additional staff
- Upcoming administrative and certification changes will impact staffing needs

Recommendation 18 (pg. 42): The board should contract with an independent entity to perform a personnel study to determine if and where additional staffing is needed. The study should be completed by October 1, 2013, and include an analysis of the board's workload in its major functions of licensure, certification, and complaint resolution



Administrative Issues

- The board has four members with expired terms

Recommendation 19 (pg. 43): The board should work with the Department of Health and Mental Hygiene and the Governor's Appointments Office to reappoint or replace board members

- The board's Nursing Assistant Advisory Committee was established to enable CNAs to have direct input into the certification and disciplinary processes, yet it does not include a CMT
- Several members need to be appointed to the advisory committee, and the role of the advisory committee is unclear

Recommendation 20 (pg. 44): Statute should be amended to alter the membership of the advisory committee to include at least one CMT and to require the advisory committee to meet at least once a month. In addition, the board should fill vacancies on the advisory committee and adopt regulations clarifying the advisory committee's role



Administrative Issues (Cont.)

- The board staff lacks cohesion, and communication should be improved

Recommendation 21 (pg. 44): The board should reinstate its policy of holding monthly staff meetings either with the entire staff or with division directors in order to enhance communication with and among board personnel

- Staff members are not cross-trained to perform another staff member's job or function, and there are no comprehensive policy and procedure manuals

Recommendation 22 (pg. 45): The board should conduct cross-training for employees, develop policy and procedure manuals, and update its organizational chart and job descriptions

Administrative Issues (Cont.)

- The board does not have sufficient technology to track the status of applications or how long an application remains at each step in the application process

Recommendation 23 (pg. 45): The board should develop an automated system for tracking applications that can generate reports on how long applications have been in the licensing system and how long the applications remain at each step of the licensing process

Administrative Issues (Cont.)

- Statute requires the board to submit an annual report to the Secretary of Health and Mental Hygiene and the Governor
- In recent years, rather than submit a specific report, the board has instead submitted its budget hearing testimony, which does not include data beyond the basic Managing for Results goals

Recommendation 24 (pg. 46): Statute should be amended to require the board to submit its annual report to the General Assembly, in addition to the Secretary of Health and Mental Hygiene and the Governor. The report should include specific data calculated on a fiscal-year basis in order to provide a clearer picture of the workload of the board



Conclusion

- There is a continued need for regulation of nursing by the State
- The board workload has increased significantly due to expanded licensure and certification responsibilities and implementation of CHRCs
- Staff resources have not increased at the same rate as board's workload
- The board has responded relatively well to its expanded workload, but there is room for improvement
- The board needs to address overall organization, collection of data, backlog of CMT applications, customer service, and public access to information
- Prospects for improving board operations are generally good



Conclusion (Cont.)

Recommendation 25 (p. 47): Legislation should be enacted to extend the termination date for the board by 10 years to July 1, 2023. Additionally, uncodified language should be adopted to require the board to report, by October 1, 2013, to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees on the implementation status of nonstatutory recommendations made in this report. In particular, the board should report on how it has improved its use of data collection and tracking for the licensure, certification, and complaint resolution processes