

Preliminary Evaluation of the State Board of Physical Therapy Examiners

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2022

Require Follow-up Report by October 1, 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 Physical Therapy Examiners (SBPTE) last underwent a preliminary evaluation as part of sunset review in 1999, having undergone a full evaluation in 1990. Based on the DLS recommendation in 1999 to waive a full evaluation, the General Assembly extended the termination date of this board to July 1, 2012.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations, recent relevant legislative and regulatory actions, prior evaluations of the board, the board’s recent operating budget history, board meeting minutes, licensing data, disciplinary action data, and other information provided by the board. DLS also examined data on national industry trends, attended a board meeting, and conducted interviews with board staff and board members.

SBPTE reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. 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 Physical Therapy

Physical therapy, as a profession, dates from the beginning of the twentieth century when advances in health care made possible the survival of people affected by polio and war injuries. Physical therapy is a health specialty that plans, organizes, and administers a wide range of physiotherapeutic treatments designed to restore functional mobility, relieve pain, and prevent or limit permanent disability for those suffering from a disabling injury or disease.

Therapists examine patients' medical histories, then test and measure strength, range of motion, balance and coordination, posture, muscle performance, respiratory function, and motor function. They also determine patients' abilities to be independent and reintegrate into the community or workplace after injury or illness. Physical therapists develop treatment plans based on the assessments that describe the treatment strategy, purpose, and anticipated outcome. After developing a treatment plan, physical therapists often delegate specific procedures to physical therapist assistants and aides; therefore, physical therapists are increasingly taking on supervisory roles.

There are several national organizations associated with physical therapy. The Commission on Accreditation of Physical Therapy Education (CAPTE) develops the credentials for accreditation of physical therapy schools. The American Physical Therapy Association (APTA) focuses on professional development and offers specialty certification examinations. The Federation of State Boards of Physical Therapy (FSBPT) is focused on public protection.

Physical Therapy Industry Expected to Continue to Grow Quickly

According to the U.S. Department of Labor's Bureau of Labor Statistics' *Occupational Handbook*, approximately 173,000 physical therapists were employed nationwide in 2006, and projections show that the industry will increase 27% by 2016 – much faster than the average for all occupations. Similarly, employment for physical therapist assistants and aides is anticipated to grow 32% and 24%, respectively. This growth is due, in part, to the increasing numbers of individuals with disabilities or limited function, including the growing elderly population. Physical therapy is also evolving to include new treatments and techniques as the science behind the practice develops. However, proposed federal legislation imposing limits on Medicare reimbursement for physical therapy services may restrict short-term employment prospects.

The State Board of Physical Therapy Examiners

The practice of physical therapy in Maryland is regulated by SBPTE. The board was created by the General Assembly in 1947 and is housed within the Department of Health and Mental Hygiene (DHMH). From the outset, the purpose of the board has been to license and regulate members of the profession to ensure that the public receives safe and healthful physical therapy.

SBPTE is composed of eight members. Five members are licensed practicing physical therapists, one member is a practicing physical therapist assistant, and two are consumers. Licensed members must have at least five years of experience. Consumer members may not have any connection with the practice of physical therapy. The licensed members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene, who selects the recommendations to the Governor from a list provided by APTA of Maryland. The Governor appoints the consumer members with the advice of the Secretary of Health and Mental Hygiene and the consent of the Senate. Members are appointed for staggered four-year terms and may not serve more than two consecutive terms. Generally, members continue to serve until a replacement is appointed. The board currently has no vacancies.

Meetings of the board are held monthly, and the minutes reflect that they are well attended. The minutes give a clear picture of what business was conducted during meetings, and open session minutes are easily accessible on the board's web site.

In Maryland, Some Chiropractors Are Authorized to Practice Physical Therapy

Until recently, there was a nationwide shortage of physical therapists. Due to the shortage, practitioners in other allied health professions expanded their scope of practice to include certain elements of physical therapy. Occupational therapists, athletic trainers, recreational therapists, physical fitness trainers, massage therapists, and nurse practitioners are a few of the health professions that receive training in some aspect of physiotherapeutics.

In Maryland, the potential for scope of practice overlap is recognized in the Health Occupations Article by including "scope of title" provisions that do not limit the right of an individual to practice any health occupation that the individual is authorized to practice. However, in order to practice physical therapy in the State, an individual must be licensed by the appropriate State authorities. SBPTE licenses physical therapists and physical therapist assistants to practice physical therapy or limited physical therapy. Additionally, the State Board of Chiropractic and Massage Therapy Examiners licenses certain qualified chiropractors to practice chiropractic with physical therapy privileges. To qualify for physical therapy privileges, a chiropractor must complete at least 270 hours of physical therapy training in chiropractic college and satisfactorily complete a national physiotherapy examination administered by the National Board of Chiropractic Examiners.

Chiropractors have been permitted to practice physical therapy since SBPTE was established in 1947. However, some SBPTE members are concerned that chiropractic training may no longer be aligned with the practice of physical therapy. While there was no indication of problems with chiropractors practicing physical therapy in this preliminary evaluation, the two boards that license individuals to practice physical therapy have previously not collaborated on this issue. Since undergoing preliminary evaluation, they now have plans to meet.

Licensing Is Major Focus of Board Activity

The board's principal function is to issue and renew licenses for physical therapists and physical therapist assistants. Both new and renewal licenses are valid for a two-year period. Over the fiscal 2008-2009 biennial license renewal period, the board issued a total of 980 new physical therapist licenses and 402 new physical therapist assistant licenses, while renewing licenses for 3,758 physical therapists and 1,050 physical therapist assistants. The number of licenses issued by the board is shown in **Exhibit 1**.

Exhibit 1
Number of Licenses Issued
State Board of Physical Therapy Examiners
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
<u>Physical Therapists</u>						
New Licenses	348	397	316	546	494	486
Renewed Licenses ¹	1,922	1,841	1,952	1,501	1,642	2,116
Reinstated Licenses	39	29	27	8	88	73
Duplicate Licenses	5	6	3	11	8	27
Restricted Licenses ²	19	15	2	19	15	21
<u>Physical Therapist Assistants</u>						
New Licenses	79	129	94	151	256	146
Renewed Licenses ¹	437	456	465	426	468	582
Reinstated Licenses	6	13	8	2	22	24
Duplicate Licenses	2	3	0	1	1	0

¹ Licenses are renewed biennially.

² Restricted licenses are issued to physical therapists licensed in other states who wish to present continuing education courses where there will be hands-on demonstrations of treatments.

Source: State Board of Physical Therapy Examiners

One component of license renewal is monitoring the acquisition of continuing education units by licensees. Physical therapists and physical therapist assistants are expected to continue their professional development through continuing education courses. To maintain licensure in

Maryland, a physical therapist must earn three continuing education units (equal to 30 contact hours), while physical therapist assistants must earn two units (20 contact hours) per license renewal cycle. There are many opportunities to earn continuing education credits, and as a convenience for its licensees, the board maintains a list of approved and nonapproved courses on its web site.

Move to Doctoral Degree in Physical Therapy Largely Explains Fluctuations in Number of New Licenses Issued

In recent years, a national trend in physical therapy education has emerged. The degree typically offered to individuals seeking to enter the profession has escalated from a two-year master's degree to a three-year doctorate degree as the practice of physical therapy has evolved. As of July 2009, there were 212 accredited physical therapy programs nationally. Of the accredited programs, 95% offer doctorate degrees, while the remainder offer master's degrees.

In 2006, the two physical therapy programs in Maryland transitioned from offering master's degrees to offering only doctorate degrees. Only students opting to receive a master's degree graduated in 2006, while in 2007 students receiving both master's degrees and doctorate degrees graduated. This transition, in part, accounts for the decrease in new physical therapy licenses issued in fiscal 2006 and the large increase in new licenses issued in fiscal 2007.

Licensing Trends Among Renewal Applicants Fluctuate

While the fluctuation in new licenses issued may be partially explained by the change in educational attainment by licensees, the number of renewal licenses issued has also varied. Licenses are renewed every two years. Thus, all licensees that renew in an even-numbered year, along with those individuals newly licensed that year, are expected to renew again in the following even-numbered year. For example, in fiscal 2006, 1,952 individuals renewed their physical therapy licenses and 316 individuals were issued new physical therapy licenses. All 2,268 of these individuals should have renewed their licenses in fiscal 2008. However, only 1,642 renewal licenses were issued in fiscal 2008. This figure suggests significant attrition of more than 600 licensees. These individuals may have retired, moved to another jurisdiction, chosen not to renew, or later sought to reinstate their licenses. According to the board, the physical therapy workforce is very fluid.

Responsibilities of Both Assistants and Aides Are Regulated; Only Assistants Must Be Licensed

Physical therapist assistants provide limited physical therapy services under the direction and supervision of a physical therapist. Most states, including Maryland, require physical therapist assistants to be licensed or certified. Physical therapist assistants are limited in what they do by State law and regulations. Generally, they may assist in providing physical therapy treatments after the patient has been evaluated and the plan of care has been developed by a

physical therapist. Physical therapist assistants are required to follow the direction and plan of care of the supervising physical therapist.

To become a physical therapist assistant in Maryland, an applicant must graduate from a program approved by APTA and satisfactorily complete the required clinical training. Physical therapist assistant programs are generally at the associate's degree level. There are five accredited physical therapist assistant programs in the State.

Physical therapy aides are not licensed and must work under the direct supervision of a licensed physical therapist. Physical therapy aides help make therapy sessions more productive and are also usually responsible for keeping the treatment area clean and organized, preparing the patient for therapy, and helping patients to or from a treatment area. Aides may also perform some clerical tasks such as ordering supplies, answering telephones, completing insurance forms, and maintaining patient records.

Statutory Changes Affecting the Board Since the 1999 Sunset Review

Exhibit 2 details the statutory changes affecting the board since the 1999 preliminary sunset review. In general, the board has kept pace with the legislative changes that have affected the practice of physical therapy through the timely promulgation of appropriate regulations. It has also worked to keep its regulations current. Its legislative committee meets regularly to make recommendations for statutory changes and to update regulations to implement changes to statute and the practice of physical therapy.

Temporary Licenses Eliminated in 2008

One of the most significant legislative changes for licensees was the elimination of temporary licenses by Chapter 657 of 2008. According to the board, the law that authorized temporary licenses was passed at a time when the national licensing examination was given only twice a year, allowing new graduates to work long before they took the examination. However, new graduates may now sit for the national examination immediately upon graduation, and licenses may be issued immediately to those who pass.

Foreign-educated Students Exempt from Preceptorship in 2004

Licensing of foreign-educated students has also changed; Chapter 518 of 2004 eliminated the requirement that foreign-educated applicants complete a supervised clinical experience known as a preceptorship. The preceptorship requirement was deemed to no longer be necessary because the quality of foreign physical therapy programs had improved. Chapter 518 also changed the education requirements for foreign-educated students to align with those of students educated in the United States.

Exhibit 2
Major Legislative Changes Since the 1999 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2000	365	<p>Allows the board to disclose information contained in a board record to any other health occupations regulatory board under certain circumstances.</p> <p>Allows the board to waive the preceptorship requirement for a physical therapy license if the applicant is licensed in another state.</p> <p>Expands the board's authority to deny a license or to reprimand or discipline a licensee to include unprofessional conduct or failure to meet accepted standards in limited physical therapy.</p> <p>Allows the board chair to delegate hearing authority to a committee consisting of three or more board members.</p>
2000	391	<p>Extends the termination date of the board by 10 years to July 1, 2012.</p>
2004	518	<p>Increases the misdemeanor penalty for a person convicted of violating any part of the Maryland Physical Therapy Act from a maximum fine of \$1,000 to a maximum fine of \$5,000 and/or three years imprisonment.</p> <p>Establishes a civil fine of up to \$50,000 for practicing physical therapy or limited physical therapy without a license.</p> <p>Requires an affirmative vote by a majority of the board before it can disclose information from records that would protect the public.</p> <p>Alters the application requirements for individuals educated in another country.</p> <p>Requires the board to elect a vice chairman.</p> <p>Requires ongoing rather than periodic supervision of licensed physical therapist assistants.</p>
2005	80	<p>Repeals the authority of the board to waive the preceptorship requirement for any physical therapy license applicant who currently is licensed in another state.</p> <p>Repeals the limitation that a licensed physical therapist must provide on-site supervision and instruction to a licensed physical therapist assistant practicing limited physical therapy.</p>
2008	657	<p>Repeals the authority of the board to issue temporary licenses.</p>

Source: Laws of Maryland

Increased Fines for Statutory Violations

Chapter 518 of 2004 also establishes a civil fine of up to \$50,000 for practicing physical therapy or limited physical therapy without a license, which allows the board to discipline those practicing without a license. In addition, the misdemeanor penalty for a person convicted of violating any part of the Maryland Physical Therapy Act was increased from a maximum fine of \$1,000 to a maximum fine of \$5,000 and/or three years imprisonment. Earlier, Chapter 365 of 2000 expanded the statutory authority for the board to deny a license or to reprimand or discipline a licensee to include unprofessional conduct or failure to meet accepted standards in limited physical therapy.

Complaints Have Increased; Some Require Extensive Time to Resolve

The board is charged with investigating and acting on complaints against licensed physical therapists and physical therapist assistants. The majority of complaints are from licensees, patients, staff, insurers, or other regulatory bodies. Complaints are submitted for such actions as inappropriate use of physical therapist assistants and aides, billing overcharges, fraud, malpractice, sexual misconduct, and poor recordkeeping. Federal law requires the board to report all disciplinary actions to the federal Centers for Medicare and Medicaid Services (CMS). To meet this requirement, the board has contracted with FSBPT to transmit its disciplinary actions to CMS once a final agreement is reached.

As shown in **Exhibit 3**, the number of complaints submitted to the board has increased in recent years. The significant peak in complaints in fiscal 2007 can be attributed to 180 complaints received against one individual who was practicing physical therapy without a license. Without these complaints, the board would have received only 52 complaints that year.

Exhibit 3 Resolution of Complaints Received Since Fiscal 2005 Fiscal 2005-2009

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
New Complaints	51	55	232	131	110
<i>Complaints Resolved</i>					
Within 1 Year	29	21	26	93	93
Within 2 Years	11	19	180	21	N/A
Within 3 Years	11	14	16	N/A	N/A
Within 4 Years	0	1	N/A	N/A	N/A
<i>Complaints Unresolved as of July 2009</i>	0	0	10	17	17

Source: State Board of Physical Therapy Examiners, Department of Legislative Services

According to the board, the increased number of complaints received since fiscal 2008 is attributable to patients and their families becoming more aware of the complaint process, as well as stricter adherence by licensees to the regulatory requirement that they report any incidents of unacceptable practice.

In addition to an increase in complaints received in recent years, DLS also found that some complaints take the board an extended period of time to resolve. Over the five-year period reviewed, 42 cases took more than three years to resolve. The board attributes the long resolution period to a lengthy appeals process, complicated cases, and delays once cases are submitted to the Office of the Attorney General for prosecution. Verifying the reasons for delay is difficult because data on the status of complaints through the disciplinary process has been inconsistently tracked and the terminology used to label complaints has shifted over time, prohibiting appropriate comparison or analysis in this preliminary evaluation. DLS notes that board staff has proactively improved the complaint tracking system in recent years. The board's records show that its investigations are comprehensive, and attendance at a board meeting confirmed the intensity of investigation necessary for the board to build strong cases. **Further investigation is required to determine the reasons behind delays in the complaint resolution process and to identify steps that could be taken to facilitate the process.**

Board's Penalty Authority Against Practice Owners and Operators Limited

In Maryland, physical therapy practices may be owned and operated by individuals who are not licensed as physical therapists. As the board's disciplinary authority is limited to licensees and individuals practicing without a license, the board cannot discipline owners or operators of a physical therapy practice for inappropriate or illegal activities, such as fraudulent billing, in the same way that the board may discipline its licensees. The board may refer cases that involve owners and operators to other disciplinary authorities such as CMS, which pays Medicare claims, or DHMH's Office of Health Care Quality (OHCQ), which licenses physical therapy offices along with other health care facilities. However, there is no guarantee that other disciplinary authorities will take action or that such action will be timely. **Further investigation into this discord in the board's disciplinary authority is needed.**

Board Has Charged Lower Fees Than Authorized Under Regulation

All but one of the health occupations boards are entirely special funded by the fees collected for licensing, certification, registration, and other board services. In the case of SBPTE, all fees are deposited into the State Board of Physical Therapy Examiners Fund. The fee schedules for physical therapists and physical therapist assistants, set in regulation, are shown in **Exhibit 4**.

Exhibit 4
Regulatory Fees for Physical Therapists and Physical Therapist Assistants

Application fee for licensure	\$150
<i>Biennial renewal fee:</i>	
Physical therapist	325
Physical therapist assistant	300
Reinstatement fee	400
Restricted license	125
Duplicate license fee	75
Penalty for returned checks	40
Verification of licensure	25
Law booklet (free to applicants)	20
Approval for CEUs to course sponsor	50
Penalty for failure to maintain correct address with the board	100

CEU = continuing education unit

Source: Code of Maryland Regulations 10.38.07.02

While Exhibit 4 displays the fees authorized under regulation, for several years the board has chosen to charge licensees renewal fees less than those authorized in regulation in order to reduce its fund balance, which exceeded annual expenditures by 69% or more from fiscal 2004 through 2008. The actual license renewal fees charged by the board are listed in **Exhibit 5**.

Exhibit 5
Biennial Renewal Fees Charged for Physical Therapists
and Physical Therapist Assistants
Fiscal 2004-2009

	<u>FY 2004</u>	<u>FY 2005-2007</u>	<u>FY 2008-2009</u>
Physical Therapists ¹	\$225	\$175	\$225
Physical Therapist Assistants	200	150	170

¹Physical therapists also must pay a professional fee that is collected by SBPTE on behalf of the Maryland Health Care Commission. The professional fee was \$34 in fiscal 2009.

Source: State Board of Physical Therapy Examiners

Difference in Licensing Fees Small Considering Income Gap

Historically, the biennial license renewal fee charged physical therapists has been \$25 more than the fee charged physical therapist assistants. In fiscal 2008, the fee differential was increased to \$55 when the fees charged were raised for both types of licenses. **However, despite the increase, the fee differential is still small when it is noted that the average annual salary for physical therapists is almost double that of physical therapist assistants.**

Fund Balance Anticipated to Be Very Low in Fiscal 2010

Along with a full-time executive director, the board has five other full-time staff to handle the licensing function, secretarial/reception duties, and investigations. Legal support is provided by a part-time Assistant Attorney General and a part-time staff attorney. The board also shares the services of information technology staff, fiscal analysts, and legislative staff with other health occupations boards. Due to statewide fiscal constraints, until recently the board was unable to hire the number of staff it requires to carry out its mandated responsibilities. The appropriate numbers of staff are now authorized, and the board is currently trying to fill a vacant investigator position for a total of seven full-time staff.

According to statute, fees should reflect the operating costs of the board. Due to concerns about excessive fund balances in the late 1990s, the health occupations boards developed target fund balance levels based on a percentage of their annual budget. Boards with smaller budgets need larger fund balances because they have less ability to absorb unexpected expenses. Due to the size of its budget, SBPTE has a target fund balance of 30%. As shown in **Exhibit 6**, the fund balance greatly exceeded the targeted amount from fiscal 2004 to 2008. As mentioned previously, the board took appropriate action to reduce its fund balance by temporarily reducing license renewal fees from fiscal 2005 through 2007. Foreseeing increased expenditures, the board reinstated higher licensing fees in fiscal 2008; however, expenses were greater than anticipated and the fund balance is projected to be only 6% of anticipated expenditures in fiscal 2010. The fund balance needs to be rebuilt in order to meet future unforeseen expenditures.

One reason the fund balance significantly decreased is that, in fiscal 2008, the board faced approximately \$23,000 in unanticipated relocation and renovation expenses. In addition to these expenses, the board's rent increased by about \$30,000 annually due to the board increasing its total space to accommodate more staff, a \$3 per-square-foot increase in the building rental charge, and additional costs from a new building security contract.

Exhibit 6
Fiscal History of the State Board of Physical Therapy Examiners
Fiscal 2004-2010

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>Projected FY 2009</u>	<u>Projected FY 2010</u>
Authorized Positions ¹	6	6	6	6	6	7	7
Beginning Fund Balance	\$445,268	\$594,470	\$581,716	\$589,475	\$559,039	\$492,495	\$360,083
Revenues Collected	682,076	572,398	607,345	600,274	646,293	775,000	715,000
Total Funds Available	1,127,344	1,166,868	1,189,061	1,189,749	1,205,332	1,267,495	1,075,083
Total Expenditures	532,874	585,152	599,587	630,710	712,837	907,412	1,009,596
Direct Costs	366,712	421,008	473,933	517,395	562,196	754,044	843,092
Indirect Costs	166,162	164,144	125,654	113,315	150,641	153,368	166,504
Ending Fund Balance	\$594,470	\$581,716	\$589,475	\$559,039	\$492,495	\$360,083	\$65,487
Balance as % of Expenditures	112%	99%	98%	89%	69%	40%	6%
Target Fund Balance	\$159,862	\$175,546	\$179,876	\$189,213	\$213,851	\$272,224	\$302,879

¹In addition to authorized positions, the board shares the costs for the services of information technology staff, fiscal analysts, and legislative staff with other health occupations boards.

Note: Numbers may not sum to total due to rounding.

Source: State Board of Physical Therapy Examiners

Other expenditure increases include a one-time expense for a new digital imaging system to reduce the amount of paperwork that the board needs to keep in its files and the ongoing expense of an additional half-time staff attorney. The fiscal 2010 budget also contains a contractual position to evaluate applications from foreign-educated students and reflects cost estimates that are not based on actual expenditures in recent years.

The board has chosen to manage its anticipated low fund balance by closely controlling office expenditures and possibly limiting the number of spaces for its popular free continuing education class. The board is reluctant to raise licensing fees for fiscal 2010; however, it is charging its licensees less than the amount authorized under board regulations, and its licensing fees are less than those charged by other health occupations boards. Due to statewide budgetary constraints, it is likely that the board will spend less in fiscal 2010; thus, the board may be in a better financial situation at the end of the fiscal year. The board anticipates that the fund balance will increase by the end of fiscal 2011 to approximately 22% of expenditures. Furthermore, the board indicates that, if needed, board fees may be increased to support the fiscal 2012 budget.

Office Space Arrangement Has Led to Privacy Concerns

Based on a compliance advice memo from the Office of the Attorney General, the board became concerned with securing its files because many contain confidential medical information. With that in mind, the board requested that enclosed and locked areas for the investigators and other staff members be included in the office renovations. Despite being self-funded and being required to pay for the renovations, the board was not allowed to renovate the space to its desired specifications. Instead of enclosed offices, the building manager approved adding a lock for the entire suite.

Board staff indicates that the locked suite does not adequately meet privacy needs. In addition to storing confidential medical information, board staff conducts sensitive telephone conversations. To deal with this situation, the investigators convinced the building manager to upgrade the enclosed conference room to include a phone with an outgoing line. The board has formally expressed its displeasure with the situation in a letter to the Secretary of Health and Mental Hygiene. **Further investigation is recommended to assess whether the board's privacy concerns present obstacles to the confidentiality of board operations.**

Recommendations

The board has a solid reputation and is clearly interested in ensuring that the public receives safe and healthful physical therapy. Throughout the evaluation process, the board and its staff were easy to work with, professional, and responsive. On its own, the board has continued to evaluate how it can best regulate the practice of physical therapy and improve its internal processes. In fact, many of the issues discussed in this preliminary evaluation were

identified by board members and staff themselves. **Therefore, the Department of Legislative Services recommends that the Legislative Policy Committee waive the State Board of Physical Therapy Examiners from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2022.** Thus, another preliminary evaluation will be conducted in 2019.

To further address concerns raised in this evaluation, DLS recommends that the board, in conjunction with DHMH, submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1, 2011. The follow-up report should address the following issues:

- **Fund Balance:** The board's fund balance has decreased in recent years. DLS recognizes that this decrease is due in part to unanticipated expenditures including moving and renovation expenses. However, it is important that the board have a sound fiscal plan and maintain a sufficient balance to cover future unanticipated expenses. The follow-up report should include board financial information for fiscal 2010 and 2011 and indicate how the board is balancing its finances to ensure a sufficient fund balance.
- **Practice of Physical Therapy by Chiropractors:** To address its concerns, the board needs data regarding the practice of physical therapy by chiropractors. The board should work with DHMH to examine the type of training chiropractors receive in physical therapy, the practice of physical therapy by chiropractors in other states, and the number and nature of complaints against chiropractors with physical therapy privileges in Maryland. In addition, the board and the State Board of Chiropractic and Massage Therapy Examiners should follow through on their plans to facilitate communication and collaboration about licensing individuals to practice physical therapy. The follow-up report should outline the board's findings and activities related to this issue.
- **Penalty Authority:** The board does not have authority to penalize physical therapy practice owners or operators who are not licensed by the board for offenses such as fraudulent billing practices. The board should work with DHMH to review the penalty authority of other Maryland health occupations boards and physical therapy boards in neighboring states over practice owners and operators. Options for gaining more authority over these individuals and for more effectively referring cases involving these individuals to entities with existing jurisdiction over the practice (*e.g.*, CMS and OHCQ) should also be explored. The follow-up report should update the committees on the status of this review and include any actions taken by the board or recommendations for statutory changes.
- **Complaint Resolution:** Although the board has a reputation of diligently researching complaints and appears to take appropriate disciplinary action, some complaints take

three or four years to be fully resolved. The follow-up report should provide an analysis of reasons behind delays in complaint resolution and steps that could be taken to accelerate the process.

- **Privacy Concerns:** Board staff indicates that the current office configuration does not adequately meet privacy needs. DHMH should assist the board, along with other health occupations boards housed in the same building, to address these privacy concerns. The follow-up report should include options or actions taken to enhance the ability of the boards to maintain confidentiality.

**Appendix 1. Written Comments of the
State Board of Physical Therapy Examiners**



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
Board of Physical Therapy Examiners

November 30, 2009

Ms. Jennifer B. Chasse, Senior Policy Analyst
Department of Legislative Services
Legislative Services Building
90 State Circle
Annapolis, MD 21401-1991

Dear Ms. Chasse:

The Maryland Board of Physical Therapy Examiners has received and reviewed the draft report on the preliminary evaluation of the Board that was prepared by the Department of Legislative Services. The Board and its staff appreciate the time and effort that Ms. Caroline Boice spent in review of the Board's activities. Minor factual corrections have been discussed with Ms. Boice.

The overall positive report and conclusion of the Department of Legislative Services was that the Board has a solid reputation and has interest in ensuring that the public is safe from harm. Therefore, the Board respectfully requests that in lieu of a full review it provide the Legislature with a report in October 2010 that addresses the issues cited in the report.

Issues:

Licensing Trends and Board Resources

Applicants for initial licensure have remained stable. Renewal of licenses fluctuates. There are various reasons why licensees do not renew their licenses. For example, some are ill, retire, leave practice to raise a family, and move to other jurisdictions. The physical therapy workforce includes physical therapists and physical therapist assistants who are employed by companies providing temporary staffing. They obtain a Maryland license for the time they are assigned to a Maryland position. Once the assignment ends and they move on, they rarely renew the license to practice, preferring to reinstate that license if they are re-assigned to Maryland at some future date.

Department of Legislative Services

Re: Physical Therapy Board Preliminary Evaluation

Fund Balance

Through 2011 the Board will have 22% in its special fund balance. The Board feels that achieving a fund balance of 25% is unnecessary, at this time, since its budget reflects a line item for litigation. The Board remains cognizant of its mandated responsibility to collect sufficient funds to cover its costs. It will revisit its fee schedule for the 2012 budget.

Licensing Fees

The Board provides the same service to both physical therapists and physical therapist assistants. Fees charged to physical therapist assistants have consistently been lower than those fees charged to physical therapists.

Practice of Physical Therapy by Chiropractors

The Board echoes the concerns raised by the analyst that the Chiropractic Act allows chiropractors to practice the entire scope of physical therapy interventions under a chiropractor's license. The concern is based on the vast disparity between the physical therapy educational curriculum and professional examination versus the education and examination that chiropractors must complete in order to have "physical therapy privileges." As physical therapy practice continues to advance, these discrepancies in competency grow and raise questions about whether the public is adequately protected by the current law. The right to practice physical therapy was placed in the Chiropractic Act over 60 years ago as a concession to achieve licensure for physical therapists. Today, such concession appears to be outdated.

Board's Penalty Authority Against Unlicensed Practice Owners and Operators is Limited.

The Board concurs that more study into this issue is required. The problem lies with private practice owners who are not licensees and thus have no regulatory oversight.

Complaint Resolution

Reasons for a significant increase in the number of complaints are known by the Board. Patients and their families have become more aware of the complaint process. Licensees are adhering to the Board's regulation that they report any incidences of unacceptable practice. Third party payors, employers, law enforcement and the courts all report their complaints or findings to the Board for potential consideration. Further, the Board has improved its tracking system and reports in the State Stat process monthly. The Board's tracking system was changed to mirror the docket system in the Attorney General's office. Complaint resolution is handled as

Jennifer Chasse, Senior Policy Analyst

Department of Legislative Services

November 24, 2009

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Department of Legislative Services
November 24, 2009

Re: Physical Therapy Board Preliminary Evaluation

expediently as possible giving consideration to the coordination with the Office of the Attorney General, law enforcement, and staffing resources. All licensees are assured due process which often is lengthy.

Privacy Concern

The Board staff explored ways on how to comply with HIPAA regulations when its offices were moved in 2008. The solution from the Department of General Services is the configuration that the entire PT Board suite is locked. The Board remains concerned that the current locking system does not conform to the intent of HIPAA regulations especially in the investigative area where investigators are in open cubicles where their telephone conversations can be heard by others and their case files reside.

Board Request

The Board respectfully requests that due to the positive nature of the preliminary evaluation, these issues be addressed without a full Sunset Evaluation. Rather, the issues can be addressed in a full report to the Legislature in the fall of 2010.

The Board thanks you for this positive review.

Sincerely,



Margery F. Rodgers, PT
Board Chairperson



Ann E. Tyminski
Executive Director

Cc: Caroline Boice
Secretary John M. Colmers
Karl S. Aron, Executive Director, Legislative Services
Board Members
J. Aaron, Deputy Director, Physical Therapy Board