Preliminary Evaluation of the State Board of Podiatric Medical Examiners

Recommendations: **Require a Follow-up Report by October 1, 2010**

Defer Decision on Whether to Waive from Full Evaluation Until Submission of the Required Report

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 Podiatric Medical Examiners (BPME) last underwent a preliminary evaluation in 1999. Based on those findings, LPC waived BPME from further evaluation. Chapter 143 of 2000 extended the board's termination date to July 1, 2012.

In conducting this preliminary evaluation, DLS staff reviewed minutes for both open and executive session board meetings, the Maryland Podiatry Act (Title 16 of the Health Occupations Article) and related regulations, prior full and preliminary sunset reviews for the board, the BPME complaint database for the past 10 years, and board licensing and financial information. In addition, DLS staff conducted interviews with the board's executive director, the board president, and the executive director of the Maryland Podiatric Medical Association and attended open and executive session board meetings, as well as an informal disciplinary meeting.

BPME 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 board comments may not reflect the final version of the report. Since receiving a draft of the report, the board has already begun to implement several DLS recommendations.

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December 2009

The Practice of Podiatry in Maryland

Maryland, along with all other states, regulates the practice of podiatry. Podiatric medicine was first regulated in this State in 1916, but at that time, it was referred to as "chiropody." BPME is one of 18 health occupations boards currently housed within the Department of Health and Mental Hygiene (DHMH). The board operates under the Maryland Podiatry Act.

Doctors of podiatric medicine, commonly known as podiatrists, are licensed in the State to "diagnose or surgically, medically, or mechanically treat the human foot or ankle, the anatomical structures that attach to the human foot, or the soft tissue below the mid-calf." The license does not authorize a podiatrist to surgically treat an acute ankle fracture or administer anesthesia, other than a local anesthetic. Podiatrists treat a variety of ailments, ranging from bunions to tendon strains. Podiatrists also perform surgery, fit corrective devices, prescribe drugs, and administer physical therapy. In addition, they may identify early manifestations of systemic disorders such as heart disease and diabetes for referral to a medical doctor.

The State Board of Podiatric Medical Examiners

The board is composed of seven members. Five members are licensed podiatrists, and two members are consumers. The Governor appoints the podiatrist members, with the advice of the Secretary of Health and Mental Hygiene, from a list of names submitted by the Maryland Podiatric Medical Association. Since 2003, podiatrist members have been required to have peer review experience. This qualification was added because the podiatric members engage in peer review as part of a complaint investigation.

The term of a member is four years, and the member may not serve more than two consecutive full terms. The Governor is required, to the extent possible, to fill any vacancy on the board within 60 days. All board members receive a per diem of $100 for each board meeting, case hearing, and any other board-related meeting, as well as mileage reimbursement. The board generally meets every month except August. Compensation is not received by board members for any work done outside of board-related meetings, such as reviewing medical records in connection with a complaint investigation.

The board has 2.5 authorized positions to support its activities: an executive director, an administrative assistant, and a licensing coordinator. The executive director is a part-time position for the board, as the individual also works for the Maryland Commission on Kidney Disease. Until recently, the position of licensing coordinator remained vacant due to a hiring freeze; however, the board was successful in petitioning the Secretary of Health and Mental Hygiene to re-open the position, which was filled in November 2009.

Other personnel who support the board also work for other boards. The Assistant Attorney General devotes about 25% of his time to the board. The board's investigator, who

works with four other boards, spends approximately 10% of his time on podiatry issues. The board also shares a regulations coordinator and fiscal and information technology personnel.

Statutory Changes Affecting the Board Since the 1999 Sunset Evaluation

Several legislative changes have affected the practice of podiatry and the board since the last preliminary sunset review. The major legislative changes are noted in **Exhibit 1**. Among those changes were:

- allowing certain surgical procedures performed by licensed podiatrists to be performed in an ambulatory surgical center;

- expanding the definition of "practice podiatry" to include the diagnosis or treatment of the soft tissue below the mid-calf; and

- increasing the criminal fine and civil penalty for practicing, attempting to practice, or offering to practice podiatry in the State without complying with the requirements of Maryland Podiatry Act.

Exhibit 1

Major Legislative Changes Since the 1999 Preliminary Sunset Review

Year	Chapter	Change
2000	143	Extends the termination date of the board by 10 years to July 1, 2012.
2003	134	Authorizes the board to issue a temporary license.
		Expands the base of individuals eligible for a limited license for training.
		Clarifies the nonrenewal status of a license and establishes a process for reinstatement of expired and inactive licenses.
		Requires a licensee to notify the board of a change of address within 30 days and allows the board to assess a fee for failure to provide such notice.
		Requires licensed podiatrist members of the board to have peer review experience.
		Increases the maximum criminal fine from $200 to $5,000 for individuals found guilty of practicing without a license and increases, from $5,000 to $50,000, the civil fine for this offense and the board's administrative penalty if a licensee engages in certain criminal or unethical acts.
		Authorizes the board to take action against a licensee if the licensee was disciplined by another specified licensing or disciplinary authority.
2005	297	Expands the definition of "practice podiatry" to include the diagnosis or treatment of the soft tissue below the mid-calf.
		Allows certain surgical procedures performed by licensed podiatrists to be performed in an ambulatory surgical center if the licensed podiatrist meets certain requirements.
		Clarifies that an ambulatory surgical center may establish qualifications or delineate privileges for the performance of surgical procedures by licensed podiatrists.

Source: Laws of Maryland

Regulatory Changes Affecting the Board Since the 1999 Sunset Evaluation

There have also been several changes to the board's regulations since the last preliminary sunset evaluation. In 1999, the board adopted a regulation that requires a license applicant who claims a speech impairment to submit a written request to the board. The applicant must demonstrate the ability to effectively communicate with health care providers and patients. If the applicant is unable to do so, the board is prohibited from issuing or renewing the license. A new chapter was added to the board's regulations in 2000 that prohibited a podiatrist from engaging in sexual misconduct. These and other regulatory changes are outlined in **Exhibit 2.**

Exhibit 2
Major Regulatory Changes Since the 1999 Preliminary Sunset Review

Year	COMAR Provision	Change
1999	10.40.01.06	Authorizes the board to grant or renew a license to an individual with a properly claimed and documented speech impediment only if the applicant is able to effectively communicate with health care providers and patients.
2000	10.40.04.02	Prohibits podiatrists from engaging in sexual misconduct and authorizes the board to discipline a licensee and/or impose a penalty of up to $50,000 for sexual misconduct.
	10.40.05.03 and .04	Specifies prehearing procedures relating to mandatory discovery and discovery on request.
2001	10.40.05.10	Requires the board to impose a fee for hearing costs on a licensee if the licensee is found to have violated certain provisions of the Maryland Podiatry Act.
2002	10.40.09.01 - .03	Authorizes the custodian of investigative information to disclose the information if there is a compelling public purpose.
2003	10.40.03.02	Adds additional fees and increases various existing fees.
2008	10.40.03.02	Increases nearly all board fees.

Source: Code of Maryland Regulations, *Maryland Register*

Board Is Meeting Its Mandated Duties

In addition to other specified duties, § 16-205 of the Health Occupations Article requires the board to:

- keep a complete record of all its transactions;
- investigate all alleged unauthorized practice of podiatry;
- investigate written and signed allegations for possible violations of statute and provide notice as required to the podiatrist under investigation, as well as other interested parties; and
- conduct unannounced inspections of podiatrists' offices to determine compliance with the Centers for Disease Control and Prevention's (CDC) guidelines on universal precautions.

The board maintains complete records of meetings, licensing activity, complaint investigations, and disciplinary activity. The board, however, only conducts unannounced inspections of podiatrists' offices if a complaint warrants an inspection. The last such inspection was done in 2008 on the basis of a complaint regarding a CDC violation. Due to the board's limited resources, the board has narrowly interpreted the statute. It is unclear what the statutory intent is behind the inspection requirement or how frequently the inspections should be made. **The board should seek an Attorney General's opinion regarding the inspection requirement and, if necessary, introduce departmental legislation to clarify the law.**

Licensing Activity

An individual is required to have a license from the board to practice podiatric medicine in the State. To be granted a license, the individual must:

- be of good moral character;
- be at least 18 years old;
- be a graduate of a school or college of podiatry that is accredited by the Council on Education of the American Podiatric Medical Association and approved by the board;
- pass the National Board of Podiatric Medical Examiners examination and an examination given by the board;

- complete a postgraduate podiatric residency program or have practiced podiatry for at least five years immediately prior to applying for a Maryland license; and

- demonstrate oral competency in the English language.

The board requires each full license applicant to pass Parts I, II, and III of the national board examination with a passing score as set by the national board. The applicant is also required to take a jurisprudence and ethics exam, which is prepared and administered by the board. The exam covers State law, regulations, and scope-of-practice issues and is completed by the candidate at home, under the honor system. The exam is then returned to the board for scoring. When an applicant applies for a license, the original license fee is due, in full, when the application is made.

Full licenses are renewed every two years. Half of the renewal fee, however, is charged to the licensee over a two-year period, with half payable the year prior to expiration of the license and the remainder due at the time the podiatrist applies for license renewal. If the first half of the fee is not paid by the time the podiatrist applies for license renewal, the podiatrist is required to pay that amount, plus late fees, as well as the second half of the fee before the renewed license is issued.

All licenses currently issued will expire on December 31, 2009. The licensee can complete and file the renewal form online. To renew the license, the podiatrist must complete a total of 50 hours of continuing education during each two-year license renewal cycle. The credits completed must be submitted on the renewal application form and must be for courses that have been approved by the board. The podiatrist must maintain a complete record of the credits completed along with documentation to support the record. The board randomly audits about 10% to 20% of renewal applications to ensure compliance with the continuing education requirement.

In addition to full licenses, the board issues limited and temporary licenses. A limited license is for individuals who are completing their postgraduate training in the State. The term of a limited license is one year and may be renewed. The requirements for licensure are altered for those seeking a limited license. A temporary license is for individuals who are licensed in another state and who are seeking to practice or teach podiatry in Maryland on a temporary basis. The temporary license is issued for a term of three months and may be renewed.

The Number of Initial Full Licenses Issued Per Year Is Declining

The licensing trends of the board from fiscal 2005 through 2010 are shown in **Exhibit 3**. Although the board has seen an increase in initial full licenses issued in certain years, the net effect has been an overall decline in the number of initial full licenses issued per year. The projection for fiscal 2010 is that the board will issue 10 initial full licenses. This is a decrease of four licenses from the previous fiscal year and a decrease of nine licenses when compared with fiscal 2005.

Exhibit 3
Licensing Activity
Fiscal 2005-2010

License	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Projected FY 2010
Initial Full	19	14	18	11	14	10
Initial Limited	18	22	20	21	34	34
Temporary	0	0	1	0	0	0
Renewals	407	412	443	443	395	425
Total	**444**	**448**	**482**	**475**	**443**	**469**

Note: The numbers for renewals reflect the number of podiatrists paying the portion of the biennial renewal fee due in that fiscal year.

Source: State Board of Podiatric Medical Examiners

Two main factors contribute to the decline in initial full licenses. First, Maryland is home to only one podiatric residency program, housed at the Baltimore VA Medical Center. In the past, there were as many as four residency programs in the State; however, the programs were not generating sufficient income, so the sponsoring hospitals terminated the programs. Second, podiatrists in the State are not licensed to perform surgery on acute ankle fractures. This type of surgery is taught in podiatry school and is part of a podiatrist's scope of practice in several other states. The number of licenses being renewed is also declining. The main cause for the decline is retirements. The decline in licensing numbers has also impacted the board's fiscal situation because there are not enough new podiatrists coming into the State to replace those that are retiring. **The board should examine projected licensing trends to more fully assess the impact of a reduction in new licensees and the anticipated retirement of many existing licensees on the availability of podiatric services in Maryland and on board revenues.**

Complaint Resolution Process Appears Adequate

The board may deny a license application or reprimand, suspend, revoke, or place on probation any licensee or holder of a limited license for a violation of any of the 27 provisions listed in the Maryland Podiatry Act. Board disciplinary action may range from tracking the number of malpractice complaints to initiating formal charges against a podiatrist. A monetary penalty of up to $50,000 may also be levied by the board; fines are paid into the general fund. When assessing the severity of the penalties, the board considers willfulness, extent or potential extent of harm, investigative costs, the licensee's records, and whether the licensee received any financial gain from the violation.

Once a complaint is received by the board, the complaint information is sent to the podiatrist for a response, unless the board deems the podiatrist a risk to the public. One of the

podiatrist board members is assigned as a liaison. The liaison makes a recommendation to the board regarding whether further investigation, including issuance of subpoenas or interviews, is needed. If the board decides that further investigation is warranted, the board investigator handles any subpoenas and interviews the board has ordered. The investigator may also be used by the Office of the Attorney General if charges are filed.

Board Resolves Complaints in a Relatively Timely Fashion

The board appears to resolve complaints in a timely fashion. **Exhibit 4** details the board's complaint resolution for the past 10 years. The number of complaints received in a year has ranged from 28 to 73, with an average of 47 complaints each year. The time period in which complaints are typically resolved has dropped from a high of five to six months in 2001 to typically less than three months in subsequent years. For fiscal 2009, most complaints were resolved within one to two months after the board received the complaint. One factor that can increase the time it takes to resolve a complaint is that the board may survey the medical records of a podiatrist for whom a complaint has been filed. All files that are surveyed are reviewed by at least one podiatrist member of the board. A complaint may be filed by the board itself as a result of the survey, whether or not the original complaint was found to have merit.

Exhibit 4
Resolution of Complaints Received
Fiscal 2000-2009

	Fiscal Year									
	2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
New Complaints Received	73	33	69	33	61	44	28	51	39	40
Complaints Resolved										
Within 6 Months	64	22	64	32	60	44	24	48	35	34
Require More than 6 Months	9	11	5	1	1	0	4	3	3	2
Average Months for Resolution	3-4	5-6	1-2	1-2	1-2	1-2	2-3	2-3	2-3	1-2
Complaints Unresolved as of July 2009	0	0	0	0	0	0	0	0	1	4
Disposition of Resolved Complaints										
Closed Without Action	56	18	30	9	17	15	3	29	16	19
Track Malpractice Claims	4	6	20	7	17	17	11	14	11	5
Letter of Education/Informal Letter	4	1	4	9	10	6	5	3	8	9
Formal Charges/Consent Order	3	3	1	1	3	2	4	1	1	1
Consent Agreement	1	3	3	3	2	2	3	0	0	1
Cease and Desist Order	1	0	8	1	6	0	1	0	0	0
Other	4	2	3	3	6	2	1	4	2	1

Note: The data only includes original complaints and does not reflect cases that were opened as a result of an investigation into the original complaint. A consent order is a public action, while a consent agreement is a nonpublic action.

Source: Department of Legislative Services, State Board of Podiatric Medical Examiners

As of July 2009, five complaints are pending with the board. One complaint, received in fiscal 2008, has not been resolved because the board is seeking an injunction to stop the unlicensed practice of podiatry. Of the four outstanding complaints from fiscal 2009, the complaints were received during the month of June and are in the process of being investigated.

Most Complaints Dismissed or Closed; Informal Action Most Common When Issues Found

Public sanctions are used rarely but appropriately. The most common public sanction is probation. Probation is accompanied by a requirement that the licensee meet with a mentor at least once a month. The mentor is required to submit reports to the board on the progress of the licensee in addressing the reason, such as the licensee's use of billing codes, for the probation. Three podiatrists are currently on probation.

As can be seen in Exhibit 4, the vast majority of complaints are dismissed or closed without action. When board action is taken, cases are typically resolved through informal action, such as informal meetings and educational letters. These methods are confidential and are used to inform, educate, and/or rehabilitate podiatrists.

Some complaints the board receives are medical malpractice complaints from the Health Care Alternative Dispute Resolution Office in the Office of the Attorney General. In those cases, the board examines the complaint to determine the severity of the alleged malpractice. If the allegation is severe, such as loss of limb, the board takes immediate action. If the allegation is not severe or if there are no other issues, such as billing or coding errors, the board tracks the number of malpractice complaints until the podiatrist has received three complaints in five years. Once the podiatrist has received the third complaint, the board investigates and takes disciplinary action against the podiatrist if warranted.

Under current law, physician profiles on the State Board of Physicians' web site are required to include certain information regarding disciplinary actions and medical malpractice claims. Specifically, the medical malpractice information that is included is (1) the number of final medical malpractice court judgments against the licensee within the most recent 10-year period; and (2) the number of medical malpractice settlements, if numbering three or more, with a settlement amount of $150,000 or greater within the most recent five-year period. **As a service to the public, the board should explore the possibility of providing similar information about malpractice claims against licensed podiatrists on its web site.**

Complaint Database Contains Minor Inconsistencies

The board keeps records of complaints through a computerized system. The complaint database has complaints dating from fiscal 1992 to the present and tracks information such as the complaint type, disposition, the date the complaint was received, and the disposition date. Each complaint the board receives is assigned a case number. Cases that are opened as a result of an investigation into an original complaint are also tracked. Historically, those cases were included in the board's complaint statistics as original complaints. This practice inflated the number of

original cases that were coming into the board. The board has, however, recently stopped including those types of cases in its complaint statistics with the introduction of StateStat, so that the State has a more accurate view of original complaints the board receives.

The disposition terminology used by the board in its complaint database is inconsistent. The term "closed" is used both to denote a case that has been dismissed without any disciplinary action taken by the board as well as when a podiatrist has completed the terms of any disciplinary agreement. Also, the term "consent agreement" is supposed to denote a nonpublic action by the board, while "consent order" notates a public action. However, the term "consent agreement" has been used even when the action of the board was public. The terms "information letter," "informal letter," "educational letter," and "letter of education" are all used by the board interchangeably. **The board should standardize and specifically define the disposition terminology that is used in the complaint database.**

Another inconsistency involves the notation of cases that are opened as a result of an investigation into an original complaint. The board may, during an investigation of an original complaint, survey other patients' medical records. As a result, the board may file a separate complaint based on what was discovered during the survey. The board has been inconsistent in the way it notes what complaints are original complaints and what complaints are a result of the survey. This has led to some complaints being counted as separate, original complaints when they were not. Also, the complainant is not always listed as the board; rather, the complainant is listed as the name of the patient whose file was surveyed even though the patient did not submit a complaint. **The board should more clearly identify what complaints are opened by the board as a result of an investigation into an original complaint and should list the complainant as the board.**

Board Fees Increased in 2003 and 2008

The board charges fees for a variety of services it provides to its licensees and to the public. The fees range from application fees to a fee for a duplicate license. **Exhibit 5** shows the current fees. These fees went into effect December 28, 2008, and have been charged by the board since that time. The board is required to be self-supporting because it is special funded. Because the board is a small board, it has had to increase its fees significantly to cover its costs. Unlike other boards with biennial license renewal cycles, BPME receives license renewal fee payments split over the two-year license period rather than in full at the time of renewal.

Exhibit 5 also shows changes in fees since the 1999 preliminary sunset evaluation. For the categories of fees that were in place in 1999, the largest increase was for the license fee for the reinstatement of an inactive or expired license – July issue, which increased $650. The board also added seven new categories of fees in 2003.

Fee increases are determined by licensing trends, as well as board expenses. As discussed below, board expenses have been increasing. This, combined with a decline in licensees, led the board to again increase fees in 2008. The Maryland Podiatric Medical Association was consulted by the board and approved of the board's actions. The increase in

fees resulted in the board having the highest fees of all the health occupations boards. For example, the biennial renewal fee for the Board of Physicians is $436, while the Board of Podiatric Medical Examiners' fee is $1,050. The board's fees are also much higher than those of neighboring states and the District of Columbia. In neighboring jurisdictions, the fees range from $179 in the District of Columbia, $225 in Delaware, $300 in West Virginia, $337 in Virginia, to $395 in Pennsylvania as shown in **Exhibit 6**. However, as noted above, Maryland practitioners pay the fee in annual installments.

Exhibit 5

History of Fees for the State Board of Podiatric Medical Examiners

	Fee in 1999	Fee in 2003	Fee Effective December 2008
License Fees			
Application	$0	$50	**$50**
Eligibility verification for PM Lexis examination	0	50	**50**
Original license – January issue	750	850	**1,050**
Original license – July issue	575	650	**850**
Limited license	50	50	**100**
Inactive license (initial application)	150	150	**150**
Reciprocity license	400	425	**425**
License Renewal Fees			
Biennial license renewal (payable in $525 annual payments)	$750	$850	**$1,050**
Inactive license renewal (payable annually)	25	25	**50**
Late renewal	25	100	**250**
Reinstatement Fees			
Reinstatement of inactive license processing	$0	$200	**$300**
Reinstatement of expired license processing	0	200	**500**
Reinstatement of inactive or expired license – January issue	750	850	**1,050**
Reinstatement of inactive or expired license – July issue	200	650	**850**
Other Fees			
Certification of license	$10	$25	**$30**
Duplicate license	25	25	**50**
Registration of professional corporation	50	50	**100**
Dispensing prescription drug permit (payable every 5 years)	5	25	**50**
Penalty for failure to maintain correct address with board	0	100	**300**
Roster of licensees	0	100	**500**
Request for copy of public orders	0	25	**50**

Source: November 1999 Preliminary Evaluation of the State Board of Podiatric Medical Examiners, *Maryland Register*, and Code of Maryland Regulations 10.40.03.02

Exhibit 6
Comparison of Board Fees in Surrounding States

State	Fee
Delaware	$225
District of Columbia	179
Maryland	1,050
Pennsylvania	395
Virginia	337
West Virginia	300

Note: The boards in other states may be part of larger boards (*i.e.*, Board of Physicians), may receive support services at no cost to the board, or may not be special funded.

Source: Department of Legislative Services

Board Expenditures Exceeded Revenues Until Fiscal 2010

The fiscal history of the board is shown in **Exhibit 7**. The board's expenditures consist of indirect and direct costs. Indirect costs consist of departmental costs such as information technology and human resources expenses and the Attorney General cost allocation. Direct costs are all other budget items. From fiscal 2005 through 2009, the average yearly increase in indirect costs was 9%. This is compared to an average increase in direct costs of approximately 14%. The board had high fund balances in fiscal 2006 and 2007. As a result, the board appropriately spent down that surplus. However, beginning in fiscal 2008, the board's fund balance decreased significantly. The board took appropriate action by revising its fees.

The revenues of the board consist solely of the fees the board collects, which are deposited into a special fund. Historically, most revenues are collected from the renewal fees, with the second highest amount coming from the verification of license fee. From fiscal 2005 to 2009, the revenues collected by the board increased an average of 7%. When compared to the increase in the board's expenditures during the same time period, the increase in revenues did not match the growth in expenditures. However, because of the increase in the amount of fees the board is charging, it is estimated that the revenues of the board will grow by 35% from fiscal 2009 to 2010, compared to a growth of 16% in the board's expenditures. The board's revenues are fairly stable even during the even-numbered years (those years when licenses are not up for renewal) because the board collects the renewal fee in two equal annual payments.

Exhibit 7
Fiscal History of the State Board of Podiatric Medical Examiners
Fiscal 2006-2010

	FY 2006	FY 2007	FY 2008	FY 2009	Projected FY 2010
Beginning Fund Balance	$101,666	$119,727	$86,921	$40,703	$59,917
Revenues Collected	228,397	213,700	224,238	259,442	365,000
Total Funds Available	**$330,063**	**$333,427**	**$311,159**	**$300,145**	**$424,917**
Total Expenditures	**$210,336**	**$246,506**	**$270,456**	**$240,228**	**$358,513**
Direct Costs	164,677	198,180	212,083	187,987	303,685
Indirect Costs	45,659	48,326	58,373	52,241	54,828
Ending Fund Balance	**$119,727**	**$86,921**	**$40,703**	**$59,917**	**$66,404***
Balance as % of Expenditures	57%	35%	15%	25%	19%*
Target Fund Balance (30% of Expenditures)	$63,101	$73,952	$81,137	$72,068	$107,554

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

*The board anticipates receipt of an additional $50,000 toward its fiscal 2010 ending fund balance to correct an accounting omission. This would bring the board's fiscal 2010 balance to $116,404 or 32% of expenditures.

Source: Department of Health and Mental Hygiene

Board Fund Balance Has Declined Since Fiscal 2007

Growth in the board's expenditures has outpaced growth in revenues since fiscal 2007, resulting in a declining fund balance. The board appropriately spent down some of its fund balance because the balance was significantly more in fiscal 2006 and 2007 than the target fund balance. As can be seen in **Exhibit 8**, the board ended fiscal 2008 with a fund balance of $40,703, which was down from a balance of $119,727 in fiscal 2006. The board's fund balance in fiscal 2009 increased to $59,917. Several factors led to the increase. First, the board began collecting higher fees in January 2009. Second, there was a hiring freeze on the position of licensing coordinator. The person holding the position left the board in January 2009. Last, certain allocations in the budget are made to either ensure that the board can access certain

services, such as court reporters, or to meet statutory requirements. Historically, the board does not expend as much on those services as is budgeted for them. For example, in fiscal 2009, the board budgeted $9,000 for court reports but only spent $146. In other years, the board did not spend any of the budgeted amounts. Similarly, the board budgets the amount for per diems assuming that every board member will be at every meeting and that the board will hold a meeting every month. This is not usually what occurs, so the board does not spend the budgeted amount.

Exhibit 8
State Board of Podiatric Medical Examiners
Financial Status in Fiscal 2009 and 2010

Fund Balance	
Balance from Fiscal 2008	$40,703
Revenue in Fiscal 2009	259,442
Total Available Revenue	$300,145
Actual Expenditures	240,228
Fund Balance in Fiscal 2009	$59,917

Targeted Fund Balance*	
Projected Fiscal 2010 Expenditures	$358,513
Target Balance @ 30% of Budget	107,554
Projected Fiscal 2010 Ending Fund Balance	66,404
Excess Fund Balance	($41,150)

*The board anticipates receipt of an additional $50,000 toward its fiscal 2010 ending fund balance to correct an accounting omission. This would bring the board's fiscal 2010 balance to $116,404, a slight excess of $8,850 above the 30% target.

Source: Department of Health and Mental Hygiene

The board's projected fund balance for fiscal 2010 is $66,404, which is 19% of projected expenditures. As a percentage of expenditures, this is a decrease from fiscal 2009. However, the board anticipates receiving an additional $50,000 toward its fiscal 2010 ending fund balance to correct an accounting omission. This would bring the board's fiscal 2010 balance to $116,404, just slightly above the 30% target. The actual expenditures of the board in fiscal 2010 should be lower than what was budgeted. The board's expenditures for salaries will increase over fiscal 2009 because DHMH reopened the position of licensing coordinator in July 2009. The board has plans to share that position with the Maryland Commission on Kidney Disease so that the board

would only be paying 80% of the position cost. The board requires the majority of the licensing coordinator's time because the board must issue licenses and answer questions of credentialing hospitals in a timely manner. Other measures are being considered by the board to increase revenues without increasing existing fees. The board is looking into the possibility of certifying practice expanders (registered nurses who may perform delegated tasks and podiatric assistants) and pedorthists (a person who specializes in the design, manufacture, modification, and fitting of shoes and orthotics to treat foot problems). The board is also planning to offer educational seminars to its licensees on coding and recordkeeping, as a revenue-generating endeavor. **The board should continue to create a plan, including the possibility of certifying practice expanders, to ensure that the board remains fiscally solvent without relying solely on fee additions and/or increases. The board should project how long the board will be able to remain solvent without higher fee revenues. If the board is unable to maintain fiscal solvency given licensing trends, it may need to pursue other options for long-term viability such as merging with another board.**

Recommendations

The State has an interest in licensing podiatrists to protect the public from harm. The board was very helpful during the evaluation process. The staff of the board responded quickly to requests for information. DLS finds that the board is sufficiently meeting is mandated duties, including efficiently issuing licenses and taking disciplinary actions against licensees where warranted. Since receiving a draft of this report, the board has already begun to take action on several DLS recommendations. DLS is concerned, however, about the decline in the number of new licensees and the anticipated retirement of many existing licensees. Given these licensing trends, it is unclear whether the board can continue to maintain fiscal solvency without continuing to increase licensure fees, which are already the highest of any health occupations board in Maryland and significantly higher than those charged in neighboring states. **Therefore, DLS recommends that the State Board of Podiatric Medical Examiners:**

- create a plan, including the possibility of certifying practice expanders, to ensure that the board remains financially solvent without relying on further fee increases and determine how long the board can remain solvent without higher fee revenues, including possible alternatives for long-term viability; and

- identify potential means to encourage podiatrists to practice in the State so that the board can remain solvent and podiatric services will continue to be available to the public.

Furthermore, to address other operational issues identified during this preliminary evaluation, the board should:

- seek an Attorney General's opinion regarding the inspection requirement and introduce departmental legislation to clarify the statute, if needed; and

- complete the tasks identified in this preliminary evaluation, specifically regarding the potential to make malpractice claim information available to the public and standardization of terminology and the identification of complaints in the board's complaint database.

DLS recommends that the board submit a follow-up report addressing these issues to LPC, the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and DLS by October 1, 2010. This report should include final fiscal 2010 revenues and expenditures, projected licensing trends, and projected revenues and expenditures for fiscal 2011.

Based on this report, DLS should recommend to LPC in 2010 whether to waive the board from full evaluation and for what period of time to extend the board's termination date. If the report is not submitted, DLS should automatically conduct a full evaluation of the board during the 2011 interim.

Appendix 1. Written Comments of the State Board of Podiatric Medical Examiners

STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Board of Podiatric Medical Examiners

December 1, 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 Podiatric Medical Examiners (Board) has received and reviewed the draft copy of the preliminary evaluation of the Board that was prepared by the Department of Legislative Services (DLS). The Board and its staff appreciate the time and effort that Ms. Jodie Chilson spent in review of the Board's activities. Ms Chilson's professionalism merits notice. Minor factual corrections have been discussed and forwarded to Ms. Chilson.

The overall positive report by the Department of Legislative Services indicates that the Board has met its mandate in ensuring that the public is safe from harm. It is the Board's intention to alleviate DLS's fiscal concerns through the proposal of a two tier plan which will ensure the Board's long term solvency to the satisfaction of DLS. The plan will be addressed in the body of this letter.

Recommendations and comments by DLS:

The Board concurs with DLS's recommendation to seek an opinion from the Attorney General regarding the intent of the law as it refers to inspecting podiatric offices. The Board has already addressed this issue with the Attorney General seeking an opinion.

The Board has immediately addressed the comment in the DLS report regarding the correct citation to be placed on the Board's web site regarding the Code of Maryland Regulations 10.13.01, Dispensing Prescription Drugs by a Licensee. The website was corrected on November 18, 2009.

Regarding the Board's licensing activity, the total licenses issued vary by a very small percentage each fiscal year, thus the Board contends that the base of licensed podiatrists in Maryland is quite steady with small variations from year to year.

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As identified in Exhibit 3, the total number of licensees has increased from FY 2009 to FY 2010. The Board is projecting a higher number of initial full licenses to be issued in FY 2011 and through the next fiscal years, due to improved economic conditions and the development of new Podiatric Residency Programs. Having been denied funding for residency training, the state lost most of its post graduate training programs. The Board in conjunction with the Maryland Podiatric Medical Association is working on developing and reestablishing podiatric residency programs. Licensing trends and historical data indicate that active programs in the State will retain more licensees upon completion of their training. Parallel to an increase in the numbers of new licensees, the revenue to the Board will increase as well.

Assessing the anticipated retirement of actively practicing licensees will be done during FY 2010, with some current indicators to be employed at the conclusion of this renewal period ending on December 31, 2009.

The Board is confident and wants to assure DLS that the citizens of Maryland will always have access to ample podiatric care through the present licensee base and the very active Podiatric Residency Program at the Veterans Affairs Maryland Health Care System.

The Board has proposed regulations- COMAR 10.40.02 requiring Cardiopulmonary Resuscitation Certification, which are now with DHMH Secretary Colmers awaiting his signature. The website was corrected to reflect that CPR certification is encouraged, but voluntary, until such time as the regulations become final. The web site correction was done on November 18, 2009.

The Board appreciates the analyst's positive comments about the Board's complaint resolution process and the timeliness with which this process occurs when cases are disposed.

The Board concurs with DLS's comment to explore the feasibility of posting on the web site malpractice cases. Presently, the Board's statute does not address the publishing of malpractice cases on the web site. Many cases are just claims, are not adjudicated and are settled without merit. Malpractice cases are not filed with the Board, but with the Maryland Health Care Alternative Dispute Resolution Office. The Board is seeking Board Counsel's advice regarding this recommendation, since with the exception of the Board of Physicians, all the other Health Care Occupation Boards do not have this requirement in their statutes. Presently, in order to protect Maryland citizens' welfare and safety, the Board files all the Board issued Public Disciplinary Orders with the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank, the Federation of Podiatric Medical Boards, and publishes all such Public Orders in the Board's Newsletter **"*Toe the Line*".**

The Board concurs with DLS's recommendation to standardize and define the nomenclature used for the disposition of complaints/cases, and has already with Board Counsel advice accomplished such. Additionally, since 2002, the Board has clearly identified when they opened a complaint. The alpha-numeric identifiers have been consistently utilized when identifying charts reviewed in connection with practice audits. Although the name of the audited patient chart may be included in the space labeled with the gross heading, "Complainant", audited charts are clearly identified as such.

Exhibit 7-"Fiscal History of the Board of Podiatric Medical Examiners" identifies that at the end of FY 2010 the Board will have a projected Fund Balance of $66,404. The Board submits to DLS, that the projected Fund balance WILL BE INCREASED by $50,000.00, as the Department of Budget Management corrects their prior omission and credits the Board for a sum paid by the Commission on Kidney Disease for shared staff expenses.
The Board will be credited with this amount at the end of the Fiscal year. For logistical reasons, the Board's legislated budget includes three full time positions housed in the Board of Podiatry budget. The Board employs only two and a half positions, the other half position is reimbursed to the Board as shared staff by the Commission on Kidney Disease.

Additionally, it is of **utmost importance** to note that the Board is allowed to retain a MAXIMUM of 30% of the budget in the carry over Fund Balance. Managing the budget so that a fund balance **below** the permissible 30% is maintained is prudent and fiducially responsible. Historically, larger fund balances have always been subject to DHMH or General Assembly cuts. The Board contends that the budget is managed prudently with extreme fiscal responsibility. The Board continues to generate adequate revenue to meet expenditures while maintaining a Fund Balance with an adequate margin of safety. Inherent in the Budget there is always allocation to meet some extraordinary demand such as lengthy prosecutions. If such allocation is not used in a fiscal year, the expenditures are thus reduced accordingly.

Exhibit 8 identifies under "Targeted Fund Balance" a negative Excess Fund Balance of $47,637. That number is erroneous because it was predicated on the incorrect fact that the Board is required to attain a 30% Fund Balance; rather, the intent is that the Board shall not have a fund balance OVER 30%.

Although the Board respectfully submits that the projected revenues and expenditures for the next few years will run almost parallel, with a 10%-19% safety margin identified as a carryover Fund Balance, thus assuring solvency, the Board concurs with DLS's recommendation to develop a plan that will consistently and predictably enhance the Board's revenue, thus adding an additional layer of safety to maintain the Board's solvency.

Proposed Plan to enhance a sustainable revenue source

In the first tier of the proposed plan, the Board is considering a "Registry of Podiatric Medical Assistants (PMA)". This Registry would require the development of a scope of practice delegated by the supervising podiatrist, with educational requirements as eligibility for candidacy to become a registered PMA. A work group will be convened by the Board to develop the plan and the Registry's criteria. The Board will invite industry stake holders, including MPMA members, to join the work group. The Board estimates that minimally 500 PMA's would register with the Board, as registration would be a requirement for employment with expanded functions. When implemented, the Board projects a $50,000.00 increase in ANNUAL revenue collections.

The second tier of the plan would be considered subsequently, and that would include the certification or licensure of pedorthists, prosthetists and orthotists under the Board. Presently, in

Maryland, these practitioners are neither regulated nor licensed. Regulating these practitioners would also provide additional and sustainable revenue to the Board.

The Board is confident that present and future revenue collections **(Table 1)** at the higher fees schedule that became effective on December 28, 2008, will ensure the Board's continued fiscal solvency without increasing licensing fees, thus meeting DLS's recommendations.

Table 1

FY 2009 Actual Expenses	FY 2009 Carry Over Fund Balance into FY 2010	Actual FY 2010 – July 1, 2009 through December 1, 2009 5 months Collections
$240,228.00	**$59, 917.00**	**$240, 123.50**

To cement and assure the continued long term and permanent solvency of the Board projected out for the next 12-15 years, the Board includes the proposed two tier plan as identified in this response letter.

Having met its mandate, the Board respectfully requests that DLS recommend a waiver of full review at this time, with the mandated report to be provided by the Board by October 1, 2010. This report will fully address the outcome of the budgetary revenue adjustments and enhancements implemented by the Board.