

Preliminary Evaluation of the State Acupuncture Board

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2025

Require Follow-up Report by October 1, 2013

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 also known as sunset review because most of the regulatory entities or activities subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 entities 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 further evaluation is waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Acupuncture Board last underwent a preliminary evaluation as part of sunset review in 2002. Based on that evaluation, DLS recommended that LPC waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2015. DLS also recommended that the board submit a follow-up report to LPC by October 1, 2003, regarding board resources and the outcome of the board's proposal to require an examination as a condition of licensure. Chapter 407 of 2003 extended the board's termination date and required DLS to conduct a sunset review of the board by July 1, 2014.

In conducting this preliminary evaluation, DLS staff reviewed statutory and regulatory changes related to acupuncture, legislative testimony, the prior sunset evaluation of the board, and board materials including minutes, newsletters, correspondence, and financial and complaint data. Additionally, DLS staff conducted interviews with the board's executive director, the board chairman, and a representative of the Maryland Acupuncture Society (MAS).

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

The Practice of Acupuncture

Originating in China over 3,500 years ago, acupuncture is a form of health care based on a belief that there are as many as 2,000 acupuncture points on the human body that are connected by pathways called meridians. Meridians conduct energy, or *qi* (pronounced “chee”), between the surface of the body and its internal organs. Each point has a different effect on the *qi* that passes through it. Acupuncture is believed to allow for the normal flow of *qi* throughout the body, thereby maintaining or restoring health.

As defined by the Maryland Annotated Code, the practice of acupuncture involves the use of oriental medicine therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health. In practice, acupuncture includes (1) the stimulation of points of the body by the insertion of very fine, solid needles just below the surface of the skin; (2) the application of moxibustion, heat produced by the burning of specific herbs; and (3) manual, mechanical, thermal, or electrical therapies. Maryland law also authorizes the practice of auricular detoxification (an acupuncture technique involving the needling of the ear to assist individuals undergoing detoxification) by certain qualified individuals.

There are many different traditions within the practice of acupuncture both nationally and internationally based on evolving interpretations and applications of ancient principles. Within the acupuncture profession in Maryland, there are two major approaches: 5-element and Traditional Chinese Medicine (TCM).

The 5-Element Approach

The 5-element approach to acupuncture is based on the relationships of the five elements: fire, earth, metal, water, and wood, and how to create balance in the relationships among the elements within a person. The 5-element acupuncture system, also known as Traditional Acupuncture, was developed by J.R. Worsley. Though the founding principles and techniques are based on Chinese medical classics, the 5-element system is a relatively recent approach to acupuncture first taught in England in the late 1960s.

Traditional Chinese Medicine

TCM, as practiced today, is based on several classic theories, including Yin and Yang, Five Phases, Eight Principles, Six Aspects, and Disease Cause Pattern Differentiation. TCM practitioners apply these theories to remedy the problems of the body, mind, and spirit.

Composition of Acupuncture Practitioners in Maryland

A unique aspect of the practice of acupuncture in Maryland is the composition of practitioners. Nationally, TCM practitioners comprise approximately 95% of practicing acupuncturists, while 5-element practitioners account for approximately 5%. Within Maryland, an estimated 60% to 70% of licensed acupuncturists utilize the 5-element tradition, while 30% to 40% practice TCM. The large proportion of 5-element practitioners in Maryland results from the fact that the Tai Sophia Institute, the first accredited school of acupuncture in the nation, is located in Maryland and offers an acupuncture program based on the 5-element tradition.

Maryland Acupuncture School

The Tai Sophia Institute is currently the only school of acupuncture in the State accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). The Tai Sophia Institute offers a three-year program utilizing the 5-element tradition as the basis for seeing the whole person and to provide students with a basic familiarity with all acupuncture traditions leading to the award of a Master of Acupuncture degree. Another school of acupuncture, the Maryland Institute of Traditional Chinese Medicine, closed in December 2002, after its accreditation was revoked by ACAOM. The Maryland Institute of Traditional Chinese Medicine offered a three-year program that included acupuncture, TCM, and some Western medicine and resulted in a Professional Diploma in Acupuncture.

The State Acupuncture Board

Chapter 620 of 1994 established the current licensing and regulatory process for the practice of acupuncture in Maryland and created the State Acupuncture Board in the Department of Health and Mental Hygiene (DHMH). The mission of the board is to protect the citizens of Maryland and to promote quality health care in the field of acupuncture by:

- licensing acupuncturists, registering auricular detoxification specialists (ADSs), and issuing certificates to practice acupuncture on animals;
- receiving and resolving complaints from the public, courts, employers, insurance companies, and other licensees regarding acupuncturists who may have violated the Maryland Acupuncture Act; and
- setting standards for the practice of acupuncture that reflect new and emergent developments in the practice of acupuncture through regulations and legislation.

Membership and Staff

The board consists of seven members appointed by the Governor, including five licensed acupuncturists and two consumer members. Chapter 387 of 2004 extended the length of board members' terms from three to four years, based on a recommendation in the 2002 preliminary

sunset evaluation. As a result, board members report that they are more comfortable in their roles and that institutional knowledge has been better preserved. Members may not serve more than two consecutive full terms. Currently, the board has a chairman and a vice chairman. Statute entitles board members to receive compensation in accordance with the budget of the board. Board members typically receive a per diem for attending board activities, as well as reimbursement for expenses.

The board is supported by a part-time (80%) executive director, a part-time (20%) board counsel, a full-time administrative specialist, and a full-time investigator that the board shares with five other boards (25% of the investigator's time is assigned specifically to the board). The number of board members and the number of staff appear appropriate to the number of licensees regulated by the board (a total of 939 as of June 30, 2012).

Board Meetings and Committees

The board, which meets every other month, accomplishes its work through several committees that meet on an informal basis via telephone or email to discuss board matters and provide recommendations back to the board for further action. The most active committees are the Scope of Practice Committee, which answers questions from both practitioners and the public on the appropriateness of certain acupuncture techniques and procedures, and the Discipline Committee, which reviews all complaints against licensees. There are usually one to two *ad hoc* committees at any given time based on the board's needs. In addition to these committees, the board has Budget, Foreign Applications, and Personnel committees that are called upon when necessary, as well as a designated representative/liaison to the Council of Boards and Commissions within DHMH.

Additional Board Activities

The board maintains a website at <http://www.dhmh.state.md.us/bacc> and publishes a newsletter, both of which provide information to licensees and the public. The board has also established its own set of operating procedures to ensure consistency in its actions. During this evaluation, the board decided to add a conflict of interest section to the operating procedures so current procedures are documented. Another important board activity has been participation in the Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA), which has provided the board with an opportunity to compare the regulation of acupuncture in various states. However, in the summer of 2010, FAOMRA's board of directors voted to fold after several years of canceled meetings due to a combination of lack of funds and lack of interest. Members of the board and the president of MAS hope that when funds are available FAOMRA can be reestablished.

Legislative Changes in the Practice of Acupuncture Since 2002

Several legislative changes have affected the practice of acupuncture and the board since the last sunset evaluation. Major legislative changes are noted in **Exhibit 1**. Among those

changes were (1) removing the termination provision from the ADS statute; (2) easing the requirements for ADS supervision by a licensed acupuncturist by repealing the definition of “direct supervision” and instead requiring more general supervision; (3) specifying the conditions for retroactive renewal and reinstatement of a license; (4) establishing additional grounds for disciplinary action against licensees and increasing the maximum misdemeanor penalties for practicing without a license; and (5) establishing standardized guidelines for all health occupations boards regarding discipline, board membership and training, and other administrative matters.

Exhibit 1
Legislative Changes Since the 2002 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2003	407	Extends the board’s termination date by 10 years to July 1, 2015. Requires DLS to conduct a sunset review of the board by July 1, 2014. Modifies the standards for education and training to qualify for a license.
2004	57	Allows specified individuals, such as substance abuse counselors and nurses in addition to licensed acupuncturists, to continue practicing auricular detoxification. Alters the requirement for supervision of individuals performing auricular detoxification by a licensed acupuncturist and requires the board to adopt regulations regarding the number of individuals who may perform auricular detoxification under a licensed acupuncturist’s supervision.
	387	Increases the maximum misdemeanor penalties to a \$5,000 fine and/or three years imprisonment for practicing without a license or misrepresentation as being authorized to practice acupuncture in the State. Prosecution of a misdemeanor offense must be instituted within three years after the offense was committed. Extends board members’ terms from three to four years. Provides an acupuncturist a 30-day grace period to retroactively renew a license under specified conditions. Prohibits the board from placing a licensee on inactive status for more than six years. Authorizes the board to reinstate a former licensee who has failed to renew the license if specified conditions are met. Prohibits the board from assessing a reinstatement fee on a person who has been on inactive status for more than six years if the person has maintained an active license in another state.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2010	533/534	<p>Set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and other administrative matters.</p> <p>Require each board, to the extent permitted by administrative and fiscal resources, to establish a disciplinary subcommittee to be responsible for the investigation of complaints and other aspects of the disciplinary process.</p> <p>Establish a six-year statute of limitations on the bringing of charges by a board against a licensee.</p> <p>Require boards to adopt sanctioning guidelines and post final public orders on the boards' websites.</p> <p>Require board membership to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State.</p> <p>Require boards to notify licensees of board vacancies.</p> <p>Require boards to develop a training process and materials for new board members.</p> <p>Require boards to collect racial and ethnic information about applicants.</p> <p>Authorize boards to establish a program that provides training, mentoring, or other forms of remediation to licensees who commit a single standard-of-care violation.</p> <p>Require the Secretary of Health and Mental Hygiene to confirm the appointment of an administrator or executive director to each board and establish goals for the timeliness of complaint resolution.</p>

Source: Laws of Maryland

To date, the board has implemented almost all of the requirements of Chapters 533 and 534 of 2010, many of which the board was already in compliance with prior to passage of the Acts. The board has a biannual newsletter that notifies licensees of board vacancies, posts final public orders on its website, has a discipline committee, adopted sanctioning guidelines in 2012, has a training process and materials for new board members, holds a yearly board member training session, and collects racial and ethnic information about applicants on initial licensure and renewal applications.

Regulatory Changes Since the 2002 Sunset Evaluation

In addition to statutory changes, there have been several regulatory changes since the last sunset evaluation of the board. The most significant regulatory changes implemented legislative changes regarding ADS supervision. Additional changes include alterations to continuing

education requirements and procedures and adoption of sanctioning guidelines as required by Chapters 533 and 534 of 2010. These and other regulatory changes are summarized in **Exhibit 2**.

Exhibit 2
Regulatory Changes Since the 2002 Sunset Review

<u>Year</u>	<u>COMAR Provision</u>	<u>Change</u>
2004	10.26.02.03	Requires applicants with foreign credentials to submit proof of educational equivalency to a course accredited by ACAOM and to submit a transcript that has been translated into English.
2005	10.26.02.05	Clarifies that a licensee must apply for inactive status and submit all requirements within 30 days after the expiration of a license.
	10.26.02.09*	Specifies the responsibilities for supervisors of auricular detoxification aides and changes the title of auricular detoxification aide to ADS.
2007	10.26.02.03	Alters the requirements for applicants to demonstrate proficiency in written and oral communication in English.
2009	10.26.02	Requires licensees to obtain at least three hours of continuing education in ethics or professional boundary training every four years.
		Eliminates reference to registration certificates issued by the Board of Physicians.
		Clarifies that ADSs must work directly with chemically dependent clients of a chemical dependency program.
	10.26.02.05	Authorizes licensees to earn continuing education credits for performing <i>pro bono</i> work.
2010	10.26.02.07	Alters the requirements for registration and supervision of ADSs.
2011	10.26.02.07	Authorizes the board to reinstate an ADS with an expired registration under specified conditions.
2012	10.26.02.05	Alters continuing education requirements and procedures, including revising the list of organizations through which continuing education may be obtained, changing the continuing education requirements for reinstatement and reactivation of a licensee, and allowing 10 hours of continuing education units to be obtained through published writing or articles on acupuncture or oriental medicine.
	10.26.04.10	Adds sanctioning guidelines for licensees and registered ADSs that violate the Maryland Acupuncture Act or board regulations.

*Regulations regarding auricular detoxification were recodified under 10.26.02.07 in 2009.

Source: Code of Maryland Regulations, *Maryland Register*

Licensing, Certification, and Registration

Before individuals may practice acupuncture in Maryland, they must be licensed by the board. The board issues both new and renewal licenses for the practice of acupuncture, certifies individuals to practice acupuncture on animals, and registers ADSs. Both initial and renewal licenses are valid for two years. The board accepts renewals twice annually.

Acupuncture License

To qualify for licensure as an acupuncturist, an applicant must be of good moral character, be at least 18 years old, and demonstrate the ability to communicate in English. Applicants must also meet *one* of the following standards for education, training, or demonstrated experience:

- graduate from an approved course of training of at least 1,800 hours (including 300 clinical hours) or its equivalent;
- achieve a diplomate in Acupuncture from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or pass an examination that is determined by the board to be equivalent to the NCCAOM examination; or
- hold an existing license in acupuncture in another state that has a reciprocity agreement with Maryland.

Maryland is one of only three states that regulate acupuncture (and the only health occupations board in Maryland) that *does not* require an examination as a condition of licensure. During the 2002 preliminary evaluation, the board expressed plans to introduce legislation to mandate passage of the NCCAOM examination as a licensure requirement. However, the board ultimately decided not require the examination based on objections from MAS that the NCCAOM examination, which is designed to test TCM, is “strongly biased” against the 5-element approach. Due to the large number of 5-element acupuncturists in Maryland, the board concluded that the examination requirement would be inappropriate. Unfortunately, no other national acupuncture examination is currently available. Given that preparation and administration of a State examination would be a time-consuming and costly process (and one that states such as California have found difficult and fraught with legal issues), the board continues to not require an examination as a condition of licensure.

Acupuncturists who renew their licenses must complete a minimum of 40 hours of continuing education in the two years preceding the expiration of their license, 25 of which must be specifically acupuncture related. Acupuncturists who seek reinstatement must either complete a minimum of 40 hours of continuing education for each renewal period lapsed, not to exceed 80 hours, or have passed the NCCAOM exam within four years prior to the date of reinstatement.

Certification to Practice Acupuncture on Animals

To obtain certification to practice acupuncture on animals, an applicant must possess a current license to practice acupuncture in Maryland and complete a board-approved specialty training program in animal acupuncture of at least 135 hours of theory and clinical training. To practice acupuncture on animals, the licensed acupuncturist must cooperate and consult with a veterinarian. There are currently 86 licensed acupuncturists certified to practice acupuncture on animals in Maryland, up from 60 in 2002. There have been only eight certifications issued in the last five years, all of which were issued in fiscal 2008. According to the board, only one school (Tai Sophia) offers an approved training program and, until recently, training had not been offered since 2008. However, in the fall of 2012, Tai Sophia offered the program again and the board has begun to receive applications for certification to practice acupuncture on animals.

Auricular Detoxification Specialist Registration

Chapter 317 of 2001 authorized licensed nurses, psychologists, clinical social workers, and certified or licensed substance abuse counselors to perform auricular detoxification – an acupuncture technique involving the needling of the human ear for the purpose of assisting a person who is undergoing detoxification to remove addictive substances from the body and restore health. Applicants must complete a 70-hour basic training program, provide verification of licensure or certification, and be under the supervision of a licensed acupuncturist. Currently, there are 53 registered ADSs in Maryland.

In an effort to raise the number of ADSs, the board has tried to ease regulations and decrease fees. Chapter 57 of 2004 eased ADS supervision requirements, and the fees for ADS initial registration and renewal were reduced by 50% in 2009. Despite these efforts to increase the number of ADSs through regulation changes and fee reductions, the number of ADSs has not grown significantly.

In 2010, new regulations were adopted that deleted the requirement that ADS supervisors be licensed for at least two years, but required supervisors to complete an ADS supervisor training course with specified topics and make on-site visits once every two months. The National Acupuncture Detoxification Association continues to assert that easing regulations will result in more people seeking ADS registration. The board is currently in the process of adopting regulations that remove the ADS supervisor training course requirement and change the on-site visit requirement from once every two months to once prior to renewal. The board states that there will still be sufficient oversight with these changes given that ADSs are licensed professionals and the technique of auricular detoxification is limited and routine (*i.e.*, an ADS is not permitted to deviate from the standard procedure without approval from the supervising acupuncturist).

Trends in Licensing Activity

Exhibit 3 displays the number of new acupuncture licenses issued, the total number of active acupuncture licenses held on June 30 of each fiscal year (including both new and renewal licensees), and the number of ADS registrations issued annually since fiscal 2008.

Exhibit 3 Licensing and Registration Activity Fiscal 2008-2012					
	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Acupuncture Licenses Issued					
Initial	76	89	78	88	77
Renewal	345	320	336	383	374
Total	421	409	414	471	451
Total Active Licenses Held¹	842	824	847	888	939
Auricular Detoxification Specialist Registration					
Initial	6	11	8	15	2
Renewal	6	4	9	14	16
Total	12	15	17	29	18

¹Total active licenses held represents all active licensees on record with the board as of June 30 of each fiscal year, including individuals with temporary licenses. As the figures are based on one point in time, they do not reflect the sum of licenses issued over the two-year licensure period.

Source: State Acupuncture Board

The board has seen an 11.5% increase in the number of total active licenses in the last five years, from 842 in fiscal 2008 to 939 in fiscal 2012, an average yearly increase of 2.8%. The number of initial licenses issued per year has demonstrated a cyclical pattern but it is not clear why. It is difficult to estimate long-term trends as the board implemented a new licensure system in fiscal 2008, and prior-year data were based on estimates rather than actual data.

The number of initial ADS registrations varies from year to year, but the number of renewals appears to be increasing slowly. The board has not tracked the total number of active ADS registrations per year in the past, but in fiscal 2012, there were a total of 53 active ADSs. **DLS recommends that the number of ADS registrations be consistently tracked by the board. The board should also explore potential reasons for the low number of ADS registrations, including looking at the experiences of other states.**

Since the last sunset evaluation, the board has implemented a new licensure system and now offers online renewal. This has decreased the workload for board staff and made analyzing

data easier. According to the board's Managing for Results (MFR) data, the board has met its performance target of issuing 100% of new licenses within 60 days for the past five years. The board must approve new applicants at a board meeting before licenses can be issued. Because the board meets every other month, applicants who submit a complete application for licensure that raises no questions or concerns on the part of the board are issued a temporary license number that can be used until the next board meeting. These temporary numbers are usually provided within five days. According to the trade organizations, licensees are grateful for the opportunity to begin practicing. License renewals do not need the formality of the board meeting; therefore, the board has also consistently met its MFR target of issuing 100% of renewal applications within five days.

Complaint Process and Trends in Complaint Activity

The board investigates and acts upon complaints against acupuncturists if the complaint involves violations of Title 1A of the Health Occupations Article. A description of the board's complaint review process and the complaint form are provided on the board's website. As shown in **Exhibit 4**, the board receives very few complaints about its licensees. Since fiscal 2008, the board has received fewer than a dozen complaints annually.

Exhibit 4
New Complaints Received
Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Total Complaints Received	8	11	6	7	7

Source: State Acupuncture Board

After a complaint has been considered by the board, it may be referred for substantive investigation. Once the board's investigator has examined the case and presented the findings to the board, the board must decide if the complaint is within its jurisdiction and either close the case without action, take informal or formal action, or refer the case to the Office of the Attorney General (OAG) for prosecution.

Exhibit 5 shows how the board has resolved complaints over the past five years. Most complaints are submitted by patients and range from simple billing disputes addressed with informal action, such as a letter of education to the licensee, to more serious charges of sexual misconduct that are sent to OAG for prosecution and are more likely to result in the suspension of a license.

While the majority of complaint cases are resolved within the same fiscal year, difficult or complex cases referred for prosecution may take several years. Complaints received by the board toward the end of the fiscal year often carry over as well. For example, three of the six cases that

were carried over from fiscal 2012 were received after May 1, 2012, while the other three are more serious cases that have been referred to OAG for prosecution.

Exhibit 5
Resolution of Complaints Received
Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Type of Action Taken					
Dismissed/Closed	3	2	4	7	2
Letter of Education	1	1	0	0	2
Cease and Desist Letter	0	3	0	0	0
Letter of Admonishment	3	0	2	0	0
Formal Action	2	1	2	0	0
Total Complaints Resolved¹	9	7	8	7	4
Complaints Carried Over ²	1	5	3	3	6

¹ Includes both new complaints received in a given fiscal year and complaints carried over from prior years but resolved in that fiscal year.

² Includes complaints carried over from prior fiscal years that were not resolved in that fiscal year.

Source: State Acupuncture Board

In fiscal 2001, the board's investigator was a part-time (50%) position shared with the State Board of Examiners of Psychologists. In fiscal 2006, the investigator became a full-time position shared among four boards, with 25% of the investigator's time allocated to the board. The position is currently split between six boards, with 20% of the investigator's time allocated to the board. The board indicates that the investigator is able to efficiently investigate complaints in a timely manner even with only one day per week dedicated to the State Acupuncture Board. The board has met its MFR target of investigating 100% of all complaints within 180 days for the past five years.

The board currently tracks complaint data in an Excel worksheet, which appears sufficient at this time given the low volume of cases presented to the board. **DLS recommends that the spreadsheet be made more user-friendly and searchable in order to support analysis.**

Policy Issues Surrounding the Practice of Acupuncture

As the board has become more established, it has taken a greater interest in policy issues on the periphery of acupuncture. The board seeks to empower practitioners and expand the methods

they may use to treat their patients while ensuring the safety of Maryland citizens. Two policy issues have emerged that have prompted the board to take a proactive role.

Herbal Medicine

Looking forward, the board is interested in regulating the practice of herbal medicine, a major component of TCM. In 2011, 26 states included Chinese herbs in the scope of practice for acupuncturists, and six states had active legislation pending regarding regulation of herbal medicine. The board would eventually like to issue herbal medicine certificates, similar to the way it provides certificates to practice acupuncture on animals. Regulation of herbal medicine would allow acupuncturists to use herbs to treat their patients. Regulation would also allow the board to track which acupuncturists have been properly trained and certified to utilize herbal medicine, enhancing patient safety.

In 2008, the board requested legislation (House Bill 234 of 2008) to change the definition of “practice acupuncture” to include “other oriental medicine therapies.” According to the board, the bill was intended to clarify that oriental medicine is included in the practice of acupuncture to be consistent with the terminology used by national acupuncture organizations. However, the bill was interpreted to be an *expansion* of the scope of practice of acupuncture to include herbal medicine. The General Assembly was resistant to changing the definition of acupuncture because of safety concerns after news stories of improper use of Chinese herbs in other countries. The board hopes to promote awareness of the benefits and limitations of herbal medicine in the next few years and revisit whether to issue herbal medicine certificates once there is more national recognition and understanding of the use of Chinese herbs.

Dry Needling

An area of concern for the board in recent years is the use of dry needling (also known as intramuscular manual therapy, trigger point dry needling, or intramuscular needling) by some physical therapists. The American Physical Therapy Association defines dry needling as a technique used to treat myofascial pain that uses a dry needle, without medication, that is inserted into a trigger point with the goal of releasing/inactivating the trigger point and relieving pain. According to the executive director of the Board of Physical Therapy Examiners (BPTE), dry needling is an advanced postgraduate technique that only a small percentage of physical therapists have studied as part of their continuing education. In 2010, after consulting with the Office of the Attorney General (OAG), BPTE determined that dry needling by physical therapists is permissible in Maryland, but that regulations are necessary.

According to the Federation of State Boards of Physical Therapy (FSBPT), as of August 2012, 27 states have ruled that dry needling is allowed by physical therapists (including Maryland, Virginia, and West Virginia); while 7 states (including Pennsylvania) have ruled that it is not permissible. FSBPT indicates that there are currently no consistent profession-wide standards or competencies defined for the performance of dry needling.

During this evaluation, MAS and the Maryland State Medical Society expressed concerns that it is unclear what qualifications physical therapists have to perform dry needling. The board also noted that BPTE does not track which physical therapists have received training to perform dry needling and, therefore, cannot adequately ensure public safety. Acupuncturists were also concerned that if physical therapists are not subjected to the same level of training as acupuncturists (which can be costly for licensees), then they will have a competitive advantage.

BPTE, after consulting with the State Acupuncture Board and other concerned groups, recently proposed regulations regarding the appropriate training for dry needling by physical therapists. BPTE indicates that the regulations include requirements that are stricter than in any other state and that the board plans to ask physical therapists on renewal forms whether they practice dry needling. The State Acupuncture Board considered the initial regulations too weak to ensure accountability and public safety. MAS noted that the training requirements outlined in the regulations are far lower than those that physicians must meet to practice acupuncture.

Due to the dispute between the two boards, DHMH did not submit the regulations for publication in the *Maryland Register*, but instead solicited public comments on the regulations through the department's website. On November 9, 2012, after review of the substantial public comments received and the 2010 guidance from OAG, the Secretary of Health and Mental Hygiene sent correspondence to BPTE expressing tentative support for regulations that permit dry needling by physical therapists, provided that specific changes are made regarding the adequacy of training required, a transition plan for physical therapists already practicing dry needling in Maryland, and a plan for oversight of dry needling by physical therapists. The State Acupuncture Board concurs with the Secretary's recommendations and feels that such changes will ensure accountability and public safety. However, the board remains concerned that physical therapists are currently performing dry needling in the absence of regulations. **Given the intersection of the two boards' scopes of practice on this issue, DLS recommends that the State Acupuncture Board continue to work with BPTE, DHMH, and the affected professional associations to ensure appropriate regulation of dry needling.**

Financial Status

Since its inception in 1994, the board has been self-supported entirely by special funds raised through licensing fees. Section 1A-206 of the Health Occupations Article authorizes the board to set reasonable fees for the issuance and renewal of licenses and for other provided services. **Exhibit 6** displays the major fees currently charged by the board, compared with those fees effective in 2002. Only one fee (late application) has been increased since 2002.

Since 2002, the board has lowered the reinstatement fee because reinstatement is seen as a large financial burden on applicants due to the cost of completing continuing education requirements. The ADS registration and renewal fees have also been decreased by \$50 and \$25, respectively in order to attract more applicants. However, these reductions have not generated a significant increase in the number of ADS registrations.

Due to the board's position as a self-funded entity, fees were initially set high to cover the full cost of the board's expenses given the small number of licensees. Although the licensee base has grown, the board remains a smaller health occupations board. By contrast, boards with more licensees can allocate costs across a larger pool of licensees and thus charge lower licensing fees.

Exhibit 6
Comparison of Board Fees: 2002 Fees vs. Current Fees

	Fees Effective in 2002	Fees Effective in 2012
Acupuncture Licensure		
Initial Application	\$450	\$450
Renewal Application	525	525
Application for Inactive Status	100	100
Late Application	50	100
Reinstatement ¹	325	200
Auricular Detoxification Specialist²		
Registration	100	50
Renewal	50	25
Reinstatement ^{1, 3}	--	100

¹ Reinstatement fees are payable *in addition* to renewal fees.

² Prior to November 2005, this registration was known as Auricular Detoxification Aide.

³ This fee was added in 2011.

Source: State Acupuncture Board; Code of Maryland Regulations 10.26.01.03

Based on an informal survey, the board's fees are significantly higher than those charged in most surrounding states, as shown in **Exhibit 7**. Such fees range from \$30 to \$500 for an initial license and \$40 to \$425 for a renewal license. The only other neighboring state with an initial fee as high as Maryland is West Virginia (\$500). However, DLS notes that West Virginia is also the only other state that, like Maryland, has a separate board for the regulation of acupuncture. The remaining states have at least some form of consolidation with other boards or regulate acupuncture as part of a larger professional licensing division. Based on the range in the number of licensees in surrounding states, it appears that board consolidation likely plays a large role in the lower levels of fees in other states.

Exhibit 7
Acupuncture Licensure Fees by State
As of September 2012

	<u>MD</u>	<u>DE</u>	<u>NJ</u>	<u>PA</u>	<u>VA</u>	<u>WV</u>
Fee						
Initial fee ¹	\$450	\$165	\$370	\$30	\$130	\$500
Renewal fee ²	525	165	270	20/40	135	425
Number of Licensees	939	37	560	646	427	58
Separate Board ³	Yes	No	No	No	No	Yes

¹ Includes application fee.

² In Pennsylvania, acupuncturists can be licensed by either the Board of Medicine or the Board of Osteopathic Medicine based on level of training and length of study.

³ Virginia and New Jersey have smaller acupuncture boards that share some responsibility with the primary licensing board.

Source: Maryland State Acupuncture Board, Delaware Board of Medical Licensure and Discipline, New Jersey Acupuncture Examining Board, Pennsylvania State Board of Medicine, Virginia Department of Health Professionals, and West Virginia Board of Acupuncture

Board Revenues and Expenditures

As shown in **Exhibit 8**, board revenues from licensure fees have remained fairly consistent over the past five fiscal years, with average annual revenues of about \$233,000. Revenues have shown an average annual increase of 1.9%. Revenue patterns reflect biennial license renewals.

Expenditures for the board have averaged about \$223,000, with an average annual increase of 5.0%. Expenses include indirect costs paid to DHMH for departmental costs such as information technology and human resources expenses and direct costs for personnel and all other expenses. The average annual increase in direct costs over the past four years was 6.3% and was mainly driven by increases in salaries and wages.

The increase in board expenditures from fiscal 2010 to 2011 was the result of increasing the part-time executive director position from 50% to 80%. The executive director explained that, although the board has long needed the position at 80%, the current director could not move up to 80% until 2011 for personal reasons. The executive director and the board felt it appropriate to increase the position to 80% at that time.

Exhibit 8
Financial History of the State Acupuncture Board
Fiscal 2008-2012

	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>
Beginning Balance	\$9,830	\$26,881	\$17,720	\$29,505	\$37,048
Revenues	225,751	215,621	221,708	243,031	241,711
Total Available Funds	235,581	242,502	239,428	272,536	278,759
Direct Costs	175,197	185,802	161,663	200,126	217,203
Indirect Costs	33,503	\$38,980	38,594	35,362	31,244
Total Expenditures	208,700	224,782	200,257	235,488	248,477
Transfer to General Fund			\$9,666		
Ending Fund Balance	\$26,881	\$17,720	\$29,505	\$37,048	\$30,282
Balance as % of Expenditures	12.9%	7.9%	14.7%	15.7%	12.2%
Target Fund Balance (20% of expenditures)	\$41,740	\$44,956	\$40,051	\$47,098	\$49,695

Source: State Acupuncture Board

Fund Balance

Each special-funded board maintains a fund balance of approximately 20% to 30% of annual expenditures to cover unanticipated expenditures or fluctuations in licensing volume and associated revenues. The board's executive director states that the board is comfortable with a target fund balance of 20% of expenditures. However, as shown in Exhibit 8, the board's fund balance has been below 16% of expenditures every year since fiscal 2008.

During the 2012 session, the budget committees expressed concern over the fund balances for various health occupations boards. The *Joint Chairmen's Report* (JCR) required DHMH to submit a report detailing five-year budget projections for the boards. **Exhibit 9** demonstrates the board's projected revenues, expenses, and fund balances for the next five years.

Based on these projections, the board's revenues are anticipated to increase beginning in fiscal 2014 due to the rising numbers of renewals each year. The board estimates there will be approximately 30 to 35 more renewals in 2014. However, board revenues and expenditures remain extremely close, preventing the board from building its fund balance up to or near the 20% of expenditures target, with the highest projected fund balance only 14% by the end of fiscal 2015.

Exhibit 9
Financial Projections of the Maryland Acupuncture Board
Fiscal 2013-2017

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Beginning Balance	\$30,310	\$25,546	\$31,707	\$37,691	\$33,394
Revenues	249,000	265,000	270,000	265,000	270,000
Total Available Funds	279,310	290,546	301,707	302,691	303,394
Total Expenditures	253,764	258,839	264,016	269,296	274,682
Ending Fund Balance	\$25,546	\$31,707	\$37,691	\$33,394	\$28,712
Balance as % of Expenditures	10%	12%	14%	12%	10%

Note: Fiscal 2013 figures reflect the current appropriation, while fiscal 2014 through 2017 figures are estimates.

Source: Department of Health and Mental Hygiene

Financial Considerations for the Board

As discussed above, board revenues have not kept pace with expenditures in recent fiscal years. In fiscal 2013, board expenditures will exceed revenues by \$5,503. Furthermore, the board's fund balance will be less than half of the targeted 20% of expenditures. Recently submitted projections for future years do not project an increase in the fund balance. Given this fiscal position, the board will need to take action to keep revenues and expenditures in line by either decreasing expenditures or increasing revenues. There are several options available to the board to accomplish this goal. For example, the board may wish to consider:

- **Reducing the Executive Director Position from 80% to 50%:** With an established board and regulatory system, the board could operate effectively under this change, while reducing expenditures by approximately \$25,000 annually. If the board pursues regulation of herbal medicine, this position may need to remain greater than 50%.
- **Increasing Fees:** Though the board is reluctant to increase licensing fees given the high fees already charged relative to other states, the board could explore increasing other fees such as instituting a duplicate license fee, raising the license verification fee, or raising the initial license fee to be equivalent to the renewal fee. Together such changes could yield additional annual revenues of approximately \$9,600. Alternatively, should the board choose to pursue regulation of herbal medicine, additional revenues could be collected through new fees for the issuance of herbal medicine certifications.
- **Sharing Additional Resources with Other Health Occupations Boards:** The board has expressed the desire to remain an independent board and, though small relative to other boards, the licensee base of acupuncturists is growing. However, to avoid increasing fees,

the board could share additional resources with other boards or explore the potential to pool funding with other smaller boards.

Recommendations

The State has an interest in licensing acupuncturists, registering ADSs, and certifying individuals to practice acupuncture on animals to ensure the welfare of the citizens of Maryland. The board was very helpful and responsive during the evaluation process. The staff of the board responded quickly to requests for information and began implementing suggestions made by DLS. Furthermore, board members and staff made their own suggestions for improvement during the process.

DLS finds that the board is sufficiently meeting its mandated duties, including efficiently issuing licenses and taking disciplinary actions against licensees where warranted. The board has a good relationship with MAS, which described the board as responsive, communicative, and helpful. The board has been responsive to legislative changes, implementing them and updating regulations in a timely manner. **Therefore, DLS recommends that LPC waive the State Acupuncture Board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025.**

However, given the fiscal pressures on the board, **DLS recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and DLS by October 1, 2013. This report should build on the figures provided by the board in its JCR response and address the options suggested by DLS to keep revenues and expenditures in balance. Specifically, the report should note any fee increases, changes to the executive director position, and any options for sharing additional resources or pooling funding with other boards and how such changes would modify the board's fund balance.**

Appendix 1. Written Comments of the State Acupuncture Board



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

November 15, 2012

Mr. Warren G. Deschenaux
Director, Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Dear Mr. Deschenaux:

The Maryland Board of Acupuncture (the "Board") has received and reviewed the Department of Legislative Services (DLS) Exposed Draft Sunset Review Evaluation report of the Board. The Board concurs with the report and has the following comments to offer:

DLS recommends the board continue to work with BPTE, DHMH, and the affected professional associations to ensure appropriate regulation of dry needling.

The Board concurs and will continue to work with BPTE, DHMH and affected professional associations to ensure appropriate regulation of dry needling. Dr. Sharfstein recently solicited public comment on the draft regulation and subsequently provided recommendations for changes to the Physical Therapy Board. The Board agrees with his recommendations and believes that the changes will ensure accountability of the practice and will provide public safety. However, the Board remains very concerned that physical therapists continue to perform dry needling without the proper training as advised by the Attorney General's Office and more importantly, in the absence of regulations.

The Board should explore why there have not been any additional (animal acupuncture) certifications issued since fiscal year 2008.

The Board believes that the low rate of animal certifications processed by the Board remains two fold. In 1997, HB 277 required that licensed acupuncturists complete a training program in animal acupuncture that was approved by the Board and consisted of at least 135 hours by a school holding nationally recognized accreditation. To date, there is only one school in the country, TAI Sophia, which offers such a program. Unfortunately, the program is only offered on a triennial basis. The last animal acupuncture course offered by Tai Sophia was in 2008. TAI Sophia offered the program this fall and as a result, the Board recently received several applications.

Secondly, the program is costly. Students pay over \$7,200 for the 12 credit program. In this economy, licensed acupuncturists may find it difficult to finance the additional costs for books, supplies and a student loan to complete this program.

DLS recommends that the number of ADS registrations be consistently tracked by the board. The board should also explore potential reasons for the low number of ADS registrations, including looking at the experiences of other states.

The Board currently tracks the number of ADS registrations but has not included the information in the monthly State Stat report or the annual Managing for Results. The Board will ensure that these numbers are included in future reports. As suggested, the Board will exam potential reasons for the low number of ADS registrations and will request data from other states.

DLS recommends that the (disciplinary case) spreadsheet be made more user-friendly and searchable in order to support analysis.

As stated in the report, the Board currently receives between 6 and 10 complaints a year and finds that the current excel data base is sufficient to track such low number of cases. However, should the Board notice an increase in complaints, the Board will be certain to implement a more accessible database.

In addition the Board would like to express its appreciation to the DLS staff for their hard work in constructing this comprehensive report. Please do not hesitate to contact Ms. Penny Heisler, Executive Director, at 410-764-5925, if you require additional information or have further questions regarding the Board's comments.

Sincerely,



Steve Kaufman, L.Ac., Chair

cc: Secretary Joshua Sharfstein, MD, DHMH
Mr. Patrick D. Dooley, Chief of Staff
Mr. Karl S. Aro, Executive Director, DLS
Penny Heisler, Executive Director