



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
Office of the Inspector General, Thomas V. Russell, Inspector General
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Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

TO: Joshua Sharfstein, MD
Secretary Maryland Department of Health and Mental Hygiene

Devinder Singh, MD
Chair Maryland Board of Physicians

Thomas V. Russell
FROM: Thomas V. Russell, Inspector General

DATE: October 28, 2014

RE: Department of Health and Mental Hygiene- Office of the Inspector General (OIG)
Review of the Maryland Board of Physicians
OIG Case #550

The DHMH Office of the Inspector General was directed to conduct a review regarding the licensing practices of the Maryland Board of Physicians, after reports that Dr. William T. Dando had been issued a license to practice medicine in Maryland, despite a prior criminal conviction for sexual assault and use of a deadly weapon. The OIG conducted its review from June, 2014 through September, 2014.

The OIG has completed its review and the report is attached. If you have any questions, please feel free to contact me.

cc: Christine Farrelly
Executive Director Maryland Board of Physicians

File

Maryland Department of Health and Mental Hygiene
Office of the Inspector General

FINAL REPORT

**Review of the Board of Physicians’
Licensure Process for
Applicants with Prior
Criminal Convictions**

OIG Case # 550-2014

June - September 2014



Thomas V. Russell
Inspector General

October 28, 2014

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Executive Summary

Pursuant to a request from the Secretary of the Department of Health and Mental Hygiene (DHMH) and the in-coming and out-going Chairs of the Maryland Board of Physicians (MBOP), a review of the licensing practices of the Board of Physicians was conducted from June 24, 2014 through September 30, 2014, by the DHMH Office of Inspector General (OIG), Corporate Compliance Division. (Exhibit #1) The review was requested after it was reported that Dr. William T. Dando had been issued a license to practice medicine in 1996 by the Maryland Board of Physicians, even though he had a prior criminal conviction and incarceration for sexual assault with use of a deadly weapon. The OIG review was limited to the circumstances regarding the 1996 licensure of Dr. Dando, complaints filed against him, and Board of Physicians' processes related to applicants who self-disclosed prior criminal convictions.

Dr. Dando voluntarily disclosed the conviction on his initial medical license application, submitted in 1996, as was required. However, the explanation he provided was not an accurate representation of the facts pertaining to his arrest or the charges for which he was convicted. A concern regarding the licensing practices of the Board arose after a complaint was filed alleging that Dr. Dando had touched a female patient in an inappropriate manner during a physical examination. Shortly after the first allegation was reported by the media, a second patient filed a complaint against him. Upon further inquiry, the fact of his 1987 conviction for a sexual assault came to light. The specific area of inquiry for the OIG was whether Dr. Dando should have been issued a license to practice medicine in Maryland in 1996, given his 1987 conviction and incarceration for sexual assault with a deadly weapon.

Summary of Relevant Facts Regarding Dr. Dando:

In 1987, Dr. William T. Dando was convicted in Florida for sexual assault with the use of a deadly weapon, and served three and a half years of a 10-year sentence. In 1993, while in a residency training program at the University of Maryland Hospital, Dr. Dando entered into a Disposition Agreement with the Maryland Board of Physicians. In the Disposition Agreement, he agreed to undergo substance abuse treatment for five years (1993 - 1998).

In 1996, Dr. Dando applied to the MBOP for a license as a physician. On his application, he disclosed that he had been convicted in Florida for "assault while he was intoxicated." Based on his explanation, the Board approved his application for a physician's license in Maryland. However, the Maryland Board should have been on notice to carefully scrutinize Dr. Dando's application for a number of reasons. Firstly, he was already under a five-year Disposition Agreement with the Maryland Board for alcohol treatment. Secondly, when he made his application to the MBOP for licensure, a "correction" had to be made on the Educational Commission for Foreign Medical Graduates form. The "correction" note states, "Applicant listed year of graduation as December 1985. Diploma was issued in May of 1986." Lastly, in 1996 Dr. Lynn Carmichael from the University Of Miami School Of Medicine reported to the Maryland Board when it was verifying Dr. Dando's training as part of the review of his application, that "he was arrested in 1987, charged with a felony, and convicted." As a result, he withdrew from the Florida residency training program he was attending at the time.

Based on these facts and Dr. Dando's apparent attempt to obtain a license before he was fully qualified, the Board should have been on notice to proceed more cautiously with the review of his application. Instead, the Board wrote to the American Board of Family Practice requesting that he "be exempt from application procedures requiring evidence of a full and unrestricted license by June 1, 1996" so that he could sit for the July, 1996 American Board of Family Practice exam. This was done despite the fact that he had not yet been issued a Maryland license.

In 1997, Dr. Dando also applied for a physician's license from Georgia. The Georgia Board of Physicians notified Maryland it was going to permit Dr. Dando to withdraw his application for a physician's license rather than denying the application based on his conviction for sexual assault with a deadly weapon. (Denial of a medical license must be reported to the National Practitioner Data Bank and the Federation of State Medical Boards.)

Between March of 1999 and June of 2014, the Board received several complaints regarding Dr. Dando. In 2010 he was placed on probation for three years with conditions, but was allowed to retain his license. His probation was terminated in 2013 after having met all of the conditions of the 2010 probation. Based on new complaints filed against him in 2014 and after the Board summarily suspended his license, Dr. Dando voluntarily and permanently his Maryland physician's license on August 20, 2014.

Issues of the Review:

Issue #1: Did the Board of Physicians issue a medical license to Dr. Dando in a manner consistent with its legislative and statutory authority in 1996, after he responded in the affirmative to the question regarding prior criminal conviction?

Finding/Conclusion: Yes, based on the information available to it at the time, the Board of Physicians issued a license to practice medicine to Dr. Dando in a manner consistent with its statutory authority. However, the Board should not have issued a license to him without first obtaining all of the relevant information available regarding his 1987 conviction. The Board failed to conduct its own, independent investigation into the events leading to Dr. Dando's conviction before it issued a license to him in 1996. The Board should have investigated why he was convicted and incarcerated for 3.5 years (the original sentence was for ten years), for what Dr. Dando described as an "assault while under the influence of alcohol." The Board also should have obtained documents pertaining to his criminal conviction from the Florida Department of Corrections.

Issue #2: Did the Board of Physicians respond appropriately to information regarding the nature of and circumstances surrounding the 1987 criminal conviction of Dr. Dando for sexual assault with use of a deadly weapon (a) when the Board first received the information from the Georgia State Board of Physicians in 1997; and (b) when it received the same information for the second time from the Florida Department of Corrections in 2003?

Finding/Conclusion: No, based upon a review of the complaint file for Dr. Dando, the Board of Physicians did not respond appropriately in 1997 when it first received information detailing the circumstances of his 1987 conviction for sexual assault with use of a deadly weapon from the Georgia State Board of Physicians, or in 2003, when the Board requested and received the same information from Florida regarding his conviction. (Exhibit #2)

Issue #3: Are the licensing practices of the Board of Physicians regarding applicants or those who are renewing their licenses, and who self-disclose a prior criminal conviction, sufficient to accomplish its mission of assuring quality health care in Maryland, through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act?

Finding/Conclusion: No, the Board of Physicians' licensing practices related to individuals applying for or who are renewing their licenses and who disclose a prior criminal conviction are not sufficient to assure quality health care in Maryland by protecting and educating clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act. This finding is based on the fact that the Dr. Dando incident was not an isolated one. There have been at least two other instances where it was known by the Board that an individual had misrepresented the nature of and circumstances surrounding a criminal conviction, in order to obtain a license to practice medicine in Maryland. (Exhibits #3 and #4)

Issue #4: Does the Board of Physicians currently have all of the resources necessary to ensure that applicants for initial licensure and license renewals who self-disclose prior criminal convictions have accurately reported the nature of and the circumstances surrounding those convictions?

Finding/Conclusion: No, the Board of Physicians does not currently have all of the resources necessary or available to ensure that applicants for initial licensure or license renewals who self-disclose prior criminal convictions have accurately reported the nature of and the circumstances surrounding their convictions.

Issue #5: Does the Board of Physicians currently have a process for conducting a proactive review and random sampling of applications for licensure and renewals to ensure that false information has not been provided regarding any of the items listed under Question #17 of the application/renewal form, to include the item related to prior criminal convictions?

Finding/Conclusion: No, the Board of Physicians does not currently have a process for the proactive review and random sampling of license applications and renewals, to ensure that all responses to Question #17 of the application are accurate, including the item related to prior criminal convictions. Specifically, the Board does not verify that "no" responses to Question #17 are accurate on any applications or renewals.

Issue #6: Are all licensees consistently charged with “fraudulently or deceptively obtaining a license” whenever it is determined that false or misleading information was provided either on an initial license application or on a renewal?

Finding/Conclusion: No, the Board currently has no information that will allow it to determine the number of individuals who fraudulently or deceptively obtained a license or license renewal based on false or misleading information. The Board is also unable to query its current software program, BPQA, in order to obtain the information because of limitations in the antiquated program.

Issue #7: Does the Board of Physicians’ current software program, BPQA, provide sufficient information to the Board and Board staff regarding possible trends in licensing and/or discipline, or have the capability of responding to specific ad-hoc inquiries that facilitate effective, data-driven decision-making?

Finding/Conclusion: No, the Board of Physicians’ current software program does not provide sufficient information to the Board, and to Board staff, regarding possible trends in licensing and/or discipline, and does not have the capability of responding to specific ad-hoc inquiries to facilitate effective, data-driven decision-making. For example, the current system is not able to identify all licensure applicants who self-disclosed prior criminal convictions, or to provide a list of all licensed practitioners who received a particular kind of discipline/sanction.

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INVESTIGATIVE ISSUES

Issue #1: Did the Board of Physicians issue a medical license to Dr. Dando in a manner consistent with its legislative and statutory authority in 1996, after he responded in the affirmative to the question regarding prior criminal conviction(s)?

Issue #2: Did the Board of Physicians respond appropriately to information regarding the nature of and circumstances surrounding the 1987 criminal conviction of Dr. Dando for sexual assault with use of a deadly weapon (a) when the Board first received the information from the Georgia State Board of Physicians in 1997; and (b) when it received the same information for the second time from the Florida Department of Corrections in 2003?

Issue #3: Are the licensing practices of the Board of Physicians regarding applicants or those who are renewing their licenses, and who self-disclose a prior criminal conviction, sufficient to accomplish its mission of assuring quality health care in Maryland, through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act?

Issue #4: Does the Board of Physicians currently have all of the resources necessary to ensure that applicants for initial licensure and license renewals who self-disclose prior criminal convictions have accurately reported the nature of and the circumstances surrounding those convictions?

Issue #5: Does the Board of Physicians currently have a process for conducting a proactive review and random sampling of applications for licensure and renewals to ensure that false information has not been provided regarding any of the items listed under Question #17 of the application/renewal form, to include the item related to prior criminal convictions?

Issue #6: Are all licensees consistently charged with “fraudulently or deceptively obtaining a license” whenever it is determined that false or misleading information was provided either on an initial license application or on a renewal?

Issue #7: Does the Board of Physicians' current software program, BPQA, provide sufficient information to the Board and Board staff regarding possible trends in licensing and/or discipline, or have the capability of responding to specific ad-hoc inquiries that facilitate effective, data-driven decision-making?

BACKGROUND INFORMATION

Investigators' Names and Title(s):

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The Secretary of Health and Mental Hygiene, Dr. Joshua Sharfstein, the in-coming Chair of the Maryland Board of Physicians, Dr. Devinder Singh and the out-going Chair of the Maryland Board of Physicians, Dr. Andrea Mathias, requested the DHMH Inspector General to conduct an investigation into the licensing practices of the Maryland Board of Physicians (MBOP). The specific concern was whether Dr. William T. Dando should have been granted a license to practice medicine in Maryland in 1996, given his 1987 conviction for sexual assault with the use of a deadly weapon, in light of recent allegations that he inappropriately touched two female patients.

The MBOP is the licensing and regulatory body responsible for ensuring that the Board accomplishes its mission "to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act." It has statutory authority under the Annotated Code of Maryland, Health Occupations Article, to issue licenses, to investigate complaints, and to sanction individuals licensed by the Board, including revoking licenses when appropriate.

As part of the investigation, staff from the DHMH Office of the Inspector General (OIG) interviewed a number of Board of Physician staff, attended two meetings of the Board of Physicians in which decisions are made regarding physician and allied health practitioner licensure as well as discipline and sanctions, reviewed pertinent Board documents and processes, and accessed information on the Board's Quality Assurance software data system, BPQA. As a part of this review, several discussions were held with the recently appointed Executive Director, Christine Farrelly. She indicated a number of changes have already been made that should make the Board more proactive in preventing problems regarding licensed practitioners with prior criminal convictions. For example, in order to hold staff more accountable for making required inquiries regarding applicants who disclose a prior criminal conviction, the Board is now using Investigative Plans to help to track the progression of a complaint through the system. (Exhibit #5)

We would like to take this opportunity to thank the Maryland Board of Physicians and the Board staff for their considerable support, cooperation, and contributions leading to the preparation of this report. Without exception, everyone was willing to provide information and to respond to questions. Their dedication to their work and toward the resolution of this investigation is commendable.

SCOPE OF REVIEW

The review by the OIG was limited in scope to circumstances regarding the 1996 licensure of Dr. Dando, complaints filed against him, and the Maryland Board of Physicians' processes related to applicants who self-disclosed prior criminal convictions. The specific focus was to determine whether Dr. Dando should have been issued a medical license in 1996 by the Board of Physicians given his 1987 conviction for sexual assault with a deadly weapon. The OIG also conducted a review of states that require criminal background checks and/or fingerprinting or Federal Bureau of Investigation checks prior to the issuance of a physician license, in light of the fact that Maryland does not currently require criminal background checks.

STATEMENT OF FACTS

Timeline of Events Re: Dr. William T. Dando, 1987-2014

1987- 1991- Convicted of and incarcerated for sexual assault with the use of a deadly weapon in Florida, while in a residency program in Florida. He never applied for or was issued a license to practice medicine in Florida.

1991- Released by the Florida Department of Corrections for good behavior, after serving 3.5 years of a ten year sentence.

September 1993 Complaint # 19940209 - MBOP received a complaint that Dr. Dando (at the time, a resident at the University of Maryland Hospital System and was not a licensed physician) was addicted to or habitually abusing narcotic/controlled dangerous substances. It is unclear whether he was required to disclose his conviction and incarceration to the University of Maryland when he applied for the residency program, as those records were destroyed as part of the Board's usual Retention/Disposal Schedule.

Board action: As a result of the above complaint, in 1993, Dr. Dando entered into a Disposition Agreement with the Board for five years (1993 - 1998), in which he agreed to undergo substance abuse treatment. The Disposition Agreement was not considered discipline because he voluntarily entered into the program and participation in the program is confidential. Since he was not licensed as a physician at the time that he signed the Agreement, he entered the treatment program as an "unlicensed medical practitioner" and not as a licensed physician. The Disposition Agreement was terminated in 1998, after it was reported that he had "completed" his monitoring contract and had fulfilled all requirements.

January 1996 - The Board received a fax from The Maryland State Medical Society (MedChi), indicating Dr. Dando had previously applied for a medical license in Maryland, but was told he was "ineligible" because he had not yet completed the required three years in his residency training program. At the time Dr. Dando was in a rehabilitation program for substance abuse operated by MedChi.

February 1996 - In a letter to the Board explaining his "yes" response to the prior criminal conviction question on his application for a medical license in Maryland, Dr. Dando stated, "In December of that year [1986], I awoke to the harsh reality that I had a drinking problem. During a short leave away from the hospital [he was in a residency training program at the time in Florida], I became intoxicated and was accused of assaulting someone. I subsequently turned myself in... made a plea agreement with the State of Florida to undergo alcohol rehabilitation and a period of incarceration". (Exhibit #6) This information contradicts the information that the Board later received from the Georgia Board of Physicians in 1997, and the Florida Department of Corrections in 2003. The states of Georgia and Florida reported Dr. Dando was arrested after he went to the police station to retrieve the wallet he dropped while he sexually assaulted a female after following her home, breaking into her house, and threatening her with a gun.

March 1996 Complaint # 19960733-The Board did initiate a review of Dr. Dando's application for medical licensure, based upon his "yes" response to the prior criminal conviction question. However, Dr. Dando did not reveal the true circumstances regarding his conviction in the letter he provided to the Board explaining his charges and incarceration. The Board then accepted his statements as true and approved his application for Maryland licensure without conducting any kind of inquiry to the Florida Department of Corrections.

Board Action: As per Board practice at the time, a review was conducted of his application. The following notation appears on his application: "Investigation complete, no need for any action by Compliance"; and Board records indicate the case was "Administratively Closed." It appears that the Board focused its attention on his stated "drinking problem" rather than investigating the true nature of the charges against him in 1987 and his subsequent incarceration, most likely because he was still under the 1993 Disposition Agreement for alcohol treatment. The review was initiated and then closed two days later. Also per Board practice, MBOP staff contacted the National Practitioner Data Bank and the Federation of State Medical Boards to determine whether they had any information regarding Dr. Dando. Both entities responded no reported information for the practitioner identified. (Exhibits #7 and #8)

September 1996 - MBOP issued a medical license to Dr. Dando, based on his false and misleading written explanation of his 1987 conviction, that he was "convicted of an assault while under the influence of alcohol."

Board Action: The Board did not seek information from the Florida Department of Corrections and did not have statutory authority to do a criminal background check. Instead, to the ultimate detriment of patients, the Board relied on his false written statement. The Board did check with the National Practitioner Data Bank and the Federation of State Medical Boards for information concerning Dr. Dando, but, because he never applied for or was issued a medical license in Florida, no information was available. However, the Board should have checked with the Florida Department of Corrections once he disclosed his conviction and incarceration, at least to clarify why someone presumably with no prior criminal convictions spent three and a half years in prison for "an assault."

October 1997 - MBOP was informed by the Georgia State Board that Dr. Dando was being "given the opportunity to withdraw, versus denial" of a license for him to practice in Georgia. The file does not indicate why Georgia took the action it did, but it is clear from notations in the file that they had the information regarding the nature of his 1987 conviction and subsequent incarceration in the Florida Correctional System. A notation in Dr. Dando's BPQA file indicated the following information from the Georgia State Board of Physicians: "re: convictions in FL ('87); DAF advised that Fed law may require reg[istration] of sex offenders." This was the first time that the MBOP had notice of the true nature of Dr. Dando's criminal conviction. In a separate note, the file also says, "DAF reviewed, printed, app for licensure info re: conviction of Respondent and his explanation. See PB file for details."

Board Action: There are no notations in the MBOP file indicating that they initiated any kind of investigation in 1997 into the false information Dr. Dando provided on his initial application for Maryland licensure, or that his 1996 application was reviewed to determine whether any Board action was required upon receipt of the information from Georgia.

October 1998 - The 1993 Disposition Agreement for alcohol treatment for Dr. Dando was terminated, after the MBOP received information from MedChi that he had satisfactorily completed all requirements.

March 1999 Complaint # 19990536- A patient filed a complaint that Dr. Dando refused to provide the patient with a copy of his or her x-ray.

Board Action: The Board decided the complaint would be “preliminarily closed”, with no action taken.

December 2003 Complaint # 20040380 - The MBOP received a complaint alleging that he was drinking and habitually intoxicated, taking Ritalin and Ambien, and had assaulted someone by trying to run over them with his car.

Board Action: Apparently, shortly after this complaint was filed, Board staff contacted the Florida Department of Corrections regarding his 1987 conviction and incarceration. The Board received a fax from the Department of Corrections clearly outlining what had happened in that case. Despite the fact that this was the second time the MBOP received information regarding the true circumstances surrounding the 1987 conviction, the Board still took no action after receiving this critical piece of information. Additionally, the Board did not decide that the new allegation of alcohol abuse merited investigation in light of the 1993 - 1998 Disposition Agreement regarding alcohol treatment. Instead, five years later, the Board decided to close the complaint alleging “habitual intoxication.” The Board did a “simple closure” in 2008 and sent a letter to Dr. Dando citing lack of evidence regarding these allegations.

April 2004 - The MBOP received a complaint that Dr. Dando had resumed drinking, that he was writing prescriptions in the name of a fictitious person, and had been pulled over for driving while under the influence of alcohol. This latest complaint was investigated as part of Complaint # 20040380.

Board Action: The file indicates that the Board contacted local law enforcement regarding any recent DUI/DWI arrests for Dr. Dando, and was told that there were no arrest records for the date in question. The complaint was closed without any further Board action. The Board did not take into consideration Dr. Dando's previous Disposition Agreement regarding alcohol treatment before closing the complaint.

May 2005 Complaint # 20050835 - The MBOP received a complaint from the daughter of a patient who had not seen Dr. Dando in over a year. The complaint alleged Dr. Dando was continuing to prescribe Xanax to the mother, despite the facts that he had not examined the mother in over a year, the dose was excessive, the mother was having symptoms associated with toxicity and had had several acute overdose episodes, and he was prescribing medications to other drug seekers.

Board Action: In December 2007, the Board sent a letter to Dr. Dando indicating that they were investigating this complaint. At the conclusion of the investigation in April 2010, a Consent Order was signed indicating Dr. Dando would be reprimanded, placed on probation for a minimum of 18 months, and subjected to peer review at the direction of the Board. He was also required to take an intensive course on controlled dangerous substance management, and a course on requirements for medical records. The Board concluded as a matter of law that Dr. Dando had failed to meet appropriate standards as determined by appropriate peer review for delivery of quality medical care, and had failed to keep adequate medical records also as determined by appropriate peer review. Information regarding his reprimand and the conditions of his probation were posted as a disciplinary action on the MBOP webpage. His probation terminated in February 2013.

July 2009 Complaint # 2010051 - Complaint filed against Dr. Dando by a former patient alleging that he had performed substandard plastic surgery and had refused to correct it after the patient disputed the bill.

Board Action: The complaint was sent for peer review. Because the peer review did not find any violation of the standard of care, in December 2009, a Close Out letter was sent to Dr. Dando and the complainant. No disciplinary action taken.

February 2014 Complaint # 20140654 - Complaint filed that Dr. Dando was overprescribing controlled dangerous substances.

Board Action: An investigation was initiated by contacting several pharmacies. In response to investigation into this and other complaints described below, Dr. Dando surrendered his license per his letter dated August 20, 2014. The Board accepted his permanent surrender of his license effective September 2, 2014. The complaint was closed.

May 2014 Complaint # 20140916 - A patient reported that Dr. Dando had performed an "inappropriate vaginal exam".

Board Action: Following an investigation, Dr. Dando's license to practice medicine in Maryland was Summarily Suspended in June 2014 and reports of the Board's action were sent to the National Practitioner Data Bank (NPDB) and the Federation of State Medical Boards (FSMB). This information was also posted on the MBOP webpage.

June 2014 Complaint # 20140958 - A former patient filed a complaint that Dr. Dando failed to diagnose a tumor on the patient's thyroid in 2004.

Board Action: June 2014, the Board sent the patient a Statute of Limitations letter indicating that no action could be taken on a complaint from 2004.

June 2014 Complaint # 20141000 - Complaint filed by a patient that Dr. Dando made an inappropriate comment during a GYN exam.

Board Action: In August 2014, during the course of the Board's investigation Dr. Dando wrote to the Board indicating he would voluntarily surrender his medical license. The Board accepted his permanent surrender. Voluntary surrender of a license is considered a form of discipline subject to public disclosure, and must be reported to the NPDB and the FSMB. This action should effectively bar Dr. Dando from obtaining a medical license in any other state. The information was also posted on the MBOP webpage.

Summary of the Complaints and Discipline

A number of complaints were lodged against Dr. Dando between 1993 and 2014. Many of the complaints were not adequately or thoroughly investigated and were eventually closed with no disciplinary action taken by the Board. Additionally, in most instances, it took the Board several years to make a determination that the complaints should be closed. Dr. Dando was formally disciplined twice. The first time he was disciplined was April 2010 in the form of a reprimand and probation for three years, with a number of conditions that had to be met before his probation could be terminated. Dr. Dando satisfactorily met all required conditions and the probation was terminated in February 2013. The next time he was disciplined was in 2014 based on the patient complaints of alleged inappropriate touching and subsequent information regarding his 1987 criminal conviction.

In May 2014, his license was Summarily Suspended (Exhibit #9). In September 2014, the Board accepted the voluntary and permanent surrender of his medical license in lieu of further prosecution, thereby resolving the pending complaints filed against him by the two female patients. (Exhibit #10) Both 2014 actions are considered to be discipline and have been reported to the NPDB and the FSMB as required. Based on his voluntary surrender of his license, he will not be eligible for his license in Maryland to be reinstated.

SIMILAR CASES OF THE BOARD NOT INVESTIGATING PRIOR CRIMINAL CONVICTIONS

#1. Dr. Nicole Riley was court-martialed and convicted, after pleading guilty to conduct unbecoming an officer in 1991. She was charged with (1) conspiring with others to commit forgery, larceny of personal property and criminal impersonation; (2) knowingly assuming a false or fictitious identity on two separate occasions and using those identities to provide false information with the intent to gain personal benefit and to defraud two jewelry stores with the further intent to purchase items of value; (3) with intent to defraud, falsely making the signature of a U. S. Army employee, and for stealing; and (4) with the intent to defraud, falsely making the signature of another Army employee to three credit purchase receipts on a credit account of that employee and theft of several store items. As a result, she was incarcerated for one year and subsequently was dishonorably discharged from the Army.

Dr. Riley applied for licensure as a Maryland physician in June 2010. Like Dr. Dando, she responded “yes” to the application question regarding prior criminal convictions and, as is required, provided an explanation of the circumstances surrounding her conviction. Also like Dr. Dando, she used false and deceptive statements to induce the Board into issuing a medical license to her. She stated:

The charges were conduct unbecoming an officer with conspiracy to commit fraternization, credit card fraud and subsequent criminal impersonation, due to fellow soldiers under my care using other peoples' credit cards. I failed to report them in a timely manner and was held accountable for my lack of action. I pled no contest and agreed to 30 months with a minimum of one year...with subsequent parole at my home in New York.

When asked to provide supporting documentation regarding her conviction she replied, “Unfortunately, all of my copies of the trial records were destroyed in a storage fire in 1995.” The Board accepted her explanation, made no attempts at the time to locate the information themselves, and did not require her to produce any evidence to substantiate her claim. Additionally, the Board failed to follow the 2009 regulation requiring any application that discloses a prior criminal conviction must be accompanied by all complaints, malpractice claims, adverse or disciplinary actions, arrests, pleadings, and judgments of final orders.

Dr. Riley also said, “The Army records are sealed due to my top secret security clearance at the time and the conviction did not prevent me from attending medical school, a residency program or obtaining a DEA or medical license.” (She was able to obtain a medical license in Utah using similar fraudulent and deceptive statements on her medical license application in that State). As in the Dando case, the Maryland Board relied upon false information from an applicant to make a decision regarding the issuance of a license. The Board did not make any efforts to obtain primary source verification of her statements until after a license had already been issued to her.

Dr. Riley was issued a Maryland license in July 2010, based upon the false and deceptive information she gave to the Board. In August 2010, four weeks after her license was issued, it was summarily suspended. The Board concluded that emergency action was required in order to protect the public, after a female patient who had sustained a uterine rupture and bowel perforation, was transported to a local emergency department in a private vehicle by Dr. Riley. Had the Board conducted an investigation into the true circumstances surrounding her 1991 court-martial, it probably would not have granted her a medical license and the patient would not have sustained the injuries she did at the hand of Dr. Riley.

The Board's summary suspension subsequently led to an investigation by the States of Utah and Wyoming regarding her truthfulness on the licensure applications in those states. As a result of the Maryland Board's summary suspension and charges in 2011, both Utah and Wyoming took actions against Dr. Riley based on the false statements in her licensure applications in those states. Her license to practice medicine in Maryland has since been permanently revoked, and this information was reported to the NPDB and FSMB. Based on Board of Physician actions in Maryland, Utah, and Wyoming, it is anticipated that she will be permanently barred from obtaining licensure in any other State.

Dr. Riley entered into a Stipulation and Order with the Utah licensing division in August 2011, after she admitted she had provided false information regarding her previous criminal conviction on her 2004 license application. She also admitted she provided false information regarding the availability of Army records pertaining to her court-martial. She received a public reprimand and a \$10,000 fine. Unfortunately, this information was not available to the MBOP prior to it rendering its decision to issue a medical license to her. However, the court-martial information could have been obtained in June 2010, if the MBOP had contacted the Army directly.

Also in 2011, and as a result of the Utah Board action, Wyoming investigated Dr. Riley's responses to the criminal conviction question on her application for a medical license with them. She was informed by the Wyoming Board that they would seek revocation of her license unless she voluntarily relinquished it, which she did. Although this information was not available to the MBOP when her license application was reviewed in 2010, the Board failed to use due diligence when it did not conduct its own investigation into the circumstances surrounding her admitted criminal conviction, and issued a license to her without any of the required supporting documents.

#2. Dr. John T. Tolliver also was able to obtain a license to practice medicine in Maryland in 1988 by providing false information to the Board. However, unlike Dr. Dando, who admitted his prior conviction, Dr. Tolliver responded "no" to the question regarding prior criminal convictions on his applications for licensure in Pennsylvania and in Maryland.

Dr. Tolliver was convicted of and sentenced for robbery in 1973 in New York. He was also convicted of and sentenced for second degree manslaughter in 1974. In 1992, Dr. Tolliver was charged with a violation of the Pennsylvania Medical Practices Act for "fraudulently or deceptively obtaining a Pennsylvania medical license," after a finding that he answered "no" to the question regarding whether he had ever been charged with any felony crime on his application for a license to practice medicine. His prior conviction in New York came to the attention of the Maryland Board only after he reported that he was under investigation by the Pennsylvania Medical Board for falsifying his application for licensure. In 1993, the Maryland Board charged him with deceptively obtaining a license to practice medicine. As a result, he was reprimanded and placed on probation for five years.

However, in 1996, he violated the Consent Order that outlined the conditions of his probation and subsequently voluntarily surrendered his license, which is considered a form of discipline. In 1998, he filed a petition for reinstatement of his license. The Board reinstated his license. As part of the Reinstatement Order, he was once again placed on probation for five years with conditions.

MARYLAND BOARD OF PHYSICIAN PROCESSES RELATED TO LICENSE APPLICATIONS, COMPLAINTS, AND DISCIPLINE

Licensure: The Board has a detailed process of review for all license applications, including a requirement that all required documents be received before a decision is made to license a practitioner. Effective 2009, a copy of all complaints, malpractice claims, adverse or disciplinary actions, arrests, pleadings, judgments or final orders are to be submitted with any license application that indicates a prior criminal conviction or other adverse actions against the applicant. However, the Board remains vulnerable to the misrepresentations of applicants who are less than honest in answering questions regarding prior criminal convictions. For example, Dr. Riley was successful in obtaining a license without submitting any of the documents required by telling the Board that her copies had been lost in a fire. She also told the Board that the documents would not be available from the Army due to her high security clearance. The Board should have attempted to obtain verification of the charges as well as the final disposition of the charges, as part of an independent investigation into Dr. Riley's court-martial.

Another area of concern is the fact that all licenses are renewed online and are not subject to any sort of scrutiny before the renewal is processed. Currently, the Board is required by law to issue a license once the licensee has paid the renewal fee and completed the renewal form. As a result, the Board would have no knowledge that a licensee had provided false information on the renewal unless and until a complaint is filed against the practitioner and the Board reviews the actual renewal form, which occurs after the renewal has been granted. The Board does have a process for reviewing completed renewal applications to determine whether the licensee responded "yes" to the criminal conviction question, but this is a retrospective review. If the licensee discloses a criminal conviction, the Intake Manager is notified so that an investigation can be initiated. However, the review by the Intake Manager does not prevent the renewal from being issued. This process also would not identify a licensee who falsely responds that there are no prior criminal convictions, since the Board currently is unable to conduct criminal background checks to verify the information provided. (Exhibit #11)

Complaints: The Board has made considerable strides in reducing the amount of time required to conduct investigations and to resolve complaints. The total number of complaints received in Fiscal Year 2012 was 2,072, but this included 870 that were carried over from the previous fiscal year. In Fiscal Year 2013, the total number of complaints was 1,242, but this included only 254 that were carried over from the previous fiscal year. All complaints are logged into the Board's BPQA system but the database has significant limitations and is vulnerable to user error. For example, several of the complaints listed in the file for Dr. Dando categorize the complaint as a failure to provide a patient with a copy of an x-ray. Upon closer review, we discovered that the issue was something different. Further, the exact nature of one complaint (#19990536) was difficult to ascertain because of blank data fields when the complaint was logged into BPQA.

There is also a concern regarding the extended periods of time required for the Board to investigate the various allegations and complaints lodged against Dr. Dando. In some instances, investigations continued for 4 - 5 years before closure, while the potential for harm to patients continued to exist. In at least one instance, Dr. Dando was not even informed that he was under Board investigation for questionable prescribing practices until well over a year and a half after the complaint had been filed.

The Board has managed to significantly reduce the time between the receipt of a complaint and the date that a determination is made regarding sanctioning.

Discipline: Board staff is working diligently to move cases through the system effectively and efficiently. There was a 64% increase in physician disciplinary actions between FY 2012 and FY 2013, even though the actual number of complaints filed in FY 2013 decreased. However, it is noteworthy that the percentage of complaints that were closed without any "Formal Disciplinary Action" has increased since FY 2011.

- In FY 2011, 34% of complaints filed were closed without "Formal Disciplinary Action".
- In FY 2012, 61% of complaints filed were closed without "Formal Disciplinary Action".
- In FY 2013, 51% of complaints filed were closed without "Formal Disciplinary Action".

The Board needs a software program that will allow it to track complaints and disciplinary actions in a way that will allow for comparison of complaints and the discipline imposed, and will help to ensure that the Board's disciplinary decisions are not subject to staff errors, failure to follow requisite procedures, or the whims and possible biases of Board staff or members. For example, the Tolliver and Riley cases resulted in a charge of fraudulently obtaining a license, but Dr. Dando was not thusly charged.

Consistent treatment of similar cases can be a deterrent to future applicants or licensees who renew their licenses by false or deceptive means. Any new software utilized by the Board should utilize prompts, automatic searches, etc. that prohibit the issuance of a license until all criteria/required information/items are resolved.

LEGISLATIVE HISTORY RE: CRIMINAL BACKGROUND CHECKS, 2011 SUNSET REVIEW, AND THE 2012 PERMAN REPORT

2007 Legislative Session: SB 225 and HB 282

The issue of MBOP obtaining statutory authorization to conduct criminal background checks was first addressed by the Department of Legislative Services in their 2006 Sunset Review. In the 2006 report, the Department of Legislative Services (DLS) recommended that the Board's authorizing statute be amended to include national and State criminal history checks on initial applications and license renewals, to increase the level of public protection. This was based on data suggesting that some physicians do not self-report convictions as required.

During the following 2007 Legislative Session, SB255 and HB 282 were introduced, proposing statutory authorization for the MBOP to complete criminal background checks on licensees, in addition to other MBOP-related statutory revisions. (Exhibit #12) In February 2007, MedChi objected to the proposed legislation, stating, "One of the more offensive recommendations of the Sunset Review is a suggestion that all physicians be fingerprinted and receive a criminal background check prior to being licensed or having an existing license renewed. This appears to be a solution in search of a problem which does not exist and has significant fiscal implications." (Exhibit #13, para. #3) As a result of a lack of support by the MBOP and of MedChi's stated opposition; the request for criminal background check authorization was removed from HB 282 (Exhibit #14) and SB 255 (Exhibit #15) by the respective Legislative Committees. Ultimately, the legislation was passed by the General Assembly without the criminal background check provisions for MBOP licensees.

The 2011 Sunset Review: The Board has worked diligently to address recommendations from the 2011 Sunset Review. During the 2011 review, the Board's statutory authority was extended only until July 2014, as per the 2011 Sunset Review (Exhibit #16, pp iii - iv). As a result, the Board should undergo another review before the end of 2014. The 2011 Sunset review indicated that the Board needed a complaint database that would allow it to track sanctions and to accurately list all grounds for which a licensee is charged. As was stated previously, in at least one instance, it was difficult to determine the exact nature of a complaint lodged against Dr. Dando because of blank data fields in BPQA, and the use of the same complaint information for multiple complaints. Additionally, the Board is still unable to query its system to get specific information, such as the number of licensees who replied "yes" to the question regarding prior criminal convictions.

It is noteworthy that the Sunset review of 2006 specifically mentions that the Board was not in agreement with the DLS recommendation for the Board to request authorization to perform nationwide criminal background checks on applicants for licensure or renewals. Per the Sunset review, the Board expressed concern regarding the potential cost and possible delays in issuing licenses as reasons for not requesting authorization to do nationwide criminal background checks. Additionally, the Board opined that criminal background check authority was not necessary, based on the likely low number of licensees with positive records. (Exhibit #16) As a result, this recommendation was amended out of the proposed legislation for the Board's 2006 Sunset Review. However, since 2006 the Board of Nursing has required registered nurses,

licensed practical nurses, certified nursing assistants and electrologists to submit to criminal background checks.

Additionally, since 2009, all other health-related boards have required criminal background checks for their licensees. In taking the stance for at least the last eight years that criminal background histories are not necessary, the MBOP has failed to appreciate the potential for adverse consequences for patients when individuals use falsehoods and deceptive information to cover their criminal past and to obtain a license. It is particularly disturbing that the Board did not change its position regarding the need for criminal background checks prior to 2014, in light of the fact that it knew at that time that at least one physician had provided false information to obtain a license, and subsequently placed the life of a female patient in significant jeopardy one month after being issued a Maryland license.

The 2012 Perman Report: In Fiscal Year 2012, an independent review team led by Dr. Perman from the University of Maryland in Baltimore was asked to conduct a comprehensive review of the MBOP's structure. The Perman Report made a number of substantive recommendations designed to enhance the way the Board operates, but was silent on the issue of whether the MBOP should have statutory authority to conduct nationwide criminal background checks on applicants or licensees. (Exhibit #17) The report did outline concerns regarding the amount of time required for the Board to conduct and complete investigations and to issue any action that might be required, including the discipline of licensees.

The Perman report did recommend the development of Sanctioning Guidelines to assure that Board action was consistently applied for similar complaints. The Board has successfully completed and implemented the Guidelines. (Exhibit #18) The OIG was unable to ascertain whether the Board has implemented all 18 of the recommendations contained in the Perman Report. However, the primary concern regarding the amount of time it took the Board to take final action on complaints has been addressed.

CURRENT AND PROPOSED BOARD ACTIVITIES TO OBTAIN CRIMINAL BACKGROUND INFORMATION

The Board has and continues to use Maryland Judiciary Case Search to obtain criminal background information on applicants. However, Maryland Judiciary Case Search does not provide criminal background information from outside of the state of Maryland. The Board also obtains information from NPDB and the FSMB. However, if the applicant was never licensed in another state, no information would be available in those systems. The current Executive Director has expressed interest in obtaining statutory authority to conduct criminal background checks on all applicants, in addition to using a number of other background systems. For example, the Board is interested in using Next Generation Identification (Exhibit #19), a program that is part of the FBI's biometric identification services and includes Rap Back, a system that allows authorized agencies to receive information regarding subsequent criminal activity (Exhibit #20); ACCURINT for Health Care a point-of-need system that provides data regarding provider licensure, sanctions, certifications and criminal background information; or a similar product.

The Board drafted a Pre-Proposal Concept Paper proposing statutory authorization to conduct criminal background checks, which it hopes will be introduced during the 2015 Legislative Session. (Exhibit #21) The OIG supports the proposed legislation outlined in the Board's Pre-Proposal Concept Paper. The Board also drafted a proposed regulation placing an affirmative duty on all licensure applicants to inform the Board within 30 days after the occurrence of:

- any administrative charges or violations,
- criminal charges or convictions,
- hospital actions involving investigations, disciplinary action, limitations on privileges,
- other State licensing or disciplinary board actions, or
- the development or occurrence of any physical or mental condition that impairs the physician's ability to practice medicine, and other related matters.

The new licensure regulations became effective September 29, 2014.

Use of the various criminal investigative systems coupled with passage of the proposed legislation authorizing criminal background checks could be highly instrumental in assisting the Board in fulfilling its mission to protect the public. The OIG supports and strongly recommends that the MBOP receive statutory authority to conduct criminal background checks on all initial applicants for licensure and all license renewals.

INFORMATION FROM THE FEDERATION OF STATE MEDICAL BOARDS REGARDING CRIMINAL BACKGROUND CHECKS

In 1998, the Federation of State Medical Boards (FSMB) first “recommended that boards conduct criminal background checks on physicians seeking full or partial licensure.” In 2012, Humayan Chaudhry, President of FSMB, said, “Criminal background checks are a useful element in the checks and balances that are available to state medical boards to protect the public and promote quality health care.”

The Association of American Medical Colleges has recommended such checks for all medical school applicants since 2006. Currently, Maryland is one of only 13 states that do not require criminal background checks as a condition of licensure, although each of the 13 states does require self-reporting of criminal convictions. Thirty-two state boards have access to the National Crime Information Center, a FBI database. Maryland is not included among those states. Twenty-eight boards require either fingerprints or at least a thumb print in order to obtain licensure. Maryland is not currently one of those states. (Exhibits #22, #23, #24 and #25)

DATABASE ISSUES

The current Board information system has been in operation since 1995. It is antiquated and it is extremely limited in the kind of the data it is able to generate. Generally, staff must resort to manually counting actions taken by the Board regarding complaints, investigations, discipline, and other Board actions. The current system is not able to respond to specific queries based on the totality of Board actions. In fact, the system required the name of a specific practitioner in order to get most of the information needed to conduct this investigation. Critical information such as the number of licensed practitioners who have a history of criminal convictions or the nature of those convictions is not available. The number of physicians who answered “yes” to the history of prior criminal convictions question on their initial license application or on their license renewal is also not available.

The kind of information the Board will need in order to complete its work will change over time. The current system is not meeting the needs of the Board for more complex information, or for information in response to specific incidents or complaints. The Board has submitted the paperwork needed to purchase a new information system that will meet its needs for information and is in the process of recruiting a project manager.

CONCLUSIONS AND RECOMMENDATIONS

Issue #1 Finding/Conclusion: The Board of Physicians did not exceed its statutory authority in issuing a license to practice medicine to Dr. Dando in 1996, based on the information the Board had at the time. However, the Board failed to conduct a crucial follow-up investigation to his self-disclosed conviction and incarceration for 3.5 years (the original sentence was for ten years), for what he described as an “assault while under the influence of alcohol.”

The Board should have been on notice to carefully scrutinize Dr. Dando’s application for a number of reasons. Firstly, he was already under a five-year Disposition Agreement with the Board for alcohol treatment. Secondly, when he made his application to the MBOP for licensure, a “correction” had to be made on the Educational Commission for Foreign Medical Graduates form. The “correction” note states, “Applicant listed year of graduation as December 1985. Diploma was issued in May of 1987.” Lastly, in 1996 Dr. Lynn Carmichael from the University Of Miami School Of Medicine reported to the Maryland Board when it was verifying his training as part of the review of his license application, “he was arrested in 1987, charged with a felony and convicted.” This caused him to withdraw from the Florida residency program he was attending at the time.

Based on these facts, and Dr. Dando’s apparent attempt to obtain a medical license before he was fully qualified, the Board should have been on notice to proceed more cautiously with the review of his application. Instead, the Maryland Board wrote to the American Board of Family Practice requesting that he “be exempt from application procedures requiring evidence of a full and unrestricted license by June 1, 1996” so that he could sit for the July, 1996 American Board of Family Practice exam. This was done despite the fact he had not yet been issued a Maryland license.

During an interview, the current Executive Director indicated that Board staff should have conducted a thorough investigation of Dr. Dando’s responses to the question regarding prior criminal convictions, on his initial license application. Additionally, an investigation should have been conducted once the Board received the information from the Georgia Medical Board in 1997 and from the Florida Department of Corrections in 2003.

Recommendation(s): The Board of Physicians should independently verify the nature and extent of any reported criminal conviction, guilty plea or *nolo contendere* by reviewing the actual criminal case documents. Additionally, the Board should exhaust all other possible sources of information regarding self-disclosed criminal convictions, and should not rely solely on the potentially self-serving reports of applicants for licensure. Toward that end, the Board has drafted legislation that would, if passed, authorize them to complete criminal background checks, and is considering the use of ACCURINT or a similar product to obtain additional criminal conviction information on applicants, as well as Next Generation Information (NGI) Rap Back - a system used by the Federal Bureau of Investigation and supported by the National Council of State Boards of Nursing.

Issue #2 Finding/Conclusion: Based upon a review of the complaint file for Dr. Dando, the OIG concludes that the Board of Physicians did not respond appropriately in 1997 when it first received information regarding Dr. Dando's conviction that conflicted with Dr. Dando's self-report, or in 2003 when the Board requested and received information regarding the nature of and the circumstances surrounding his 1987 conviction for sexual assault with the use of a deadly weapon. The Board has a document entitled "Procedures for Preliminary Investigations by the Licensure Analyst and Referrals from Licensure Unit to Compliance Unit," that became effective February 2003. (Exhibit #26) However, that procedure was not followed in 2003, when the Board received information regarding Dr. Dando's prior criminal conviction from the Florida Department of Corrections, or in 2010, when it issued a license to practice medicine to Dr. Riley. The Board now uses an Investigative Plan (Exhibit #5) that acts as a guide for staff in determining where complaints and investigations are in the system, timelines, and any needed follow-up action.

Recommendation(s): The "Procedures for Preliminary Investigations by the Licensure Analyst and Referrals from Licensure Unit to Compliance Unit," must be followed by staff every time that the Board requests and/or receives criminal conviction information on any individual applying for or renewing a license.

Issue #3 Finding/Conclusion: The Board of Physicians' licensing practices specifically related to individuals who self-disclose prior criminal convictions when applying for licensure or license renewals are insufficient to assure quality health care in Maryland by protecting and educating clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act. This conclusion is based on the fact that Dr. Dando was not the only individual who misrepresented the nature of and circumstances surrounding a criminal conviction, in order to obtain a license to practice medicine in Maryland. In 2010, Dr. Nicole Riley also misrepresented the circumstances surrounding her criminal court-martial in order to obtain a medical license. She was issued a Maryland license to practice medicine in July 2010 based upon her false representations. Four weeks later, complaints were filed against Dr. Riley after she transported a female patient with a ruptured uterus and perforated bowel to a local emergency department in a private vehicle.

Like Dr. Dando, Dr. Riley appropriately responded "yes" to the prior criminal conviction question on the medical license application. She then misled the Board when she explained the nature of and the circumstances surrounding her conviction, convincing the Board to issue a license for her to practice in Maryland

Recommendation(s): Again, the "Procedures for Preliminary Investigations by the Licensure Analyst and Referrals from Licensure Unit to Compliance Unit" needs to be followed by Board staff whenever they are determining whether to issue a license to an applicant who discloses a criminal conviction. Further, there needs to be sufficient supervisory oversight of this process to significantly reduce the possibility that someone who provides false information will become licensed or is able to renew a license based upon false information. The Board needs authority to conduct criminal background checks on all applicants, in addition to using Maryland Judiciary searches, NPDB, and the FSMB. Additionally, the Board needs access to on-going criminal conviction information on the individuals it licenses and those whose licenses are renewed; hence, any requests to obtain NGI and ACCURINT, or any similar products should be approved. The procurement of these criminal informational tools must also be expedited.

Issue #4 Finding/Conclusion: The Board of Physicians currently does not have all of the resources it needs to ensure that applicants for licenses who self-disclose prior criminal convictions have accurately reported the nature of and the circumstances surrounding their convictions.

Recommendation(s): The Board of Physicians needs to be able to do criminal background checks on all applicants for licensure, in addition to the current practice of contacting the National Practitioner Data Bank and the Federation of State Medical Boards, and conducting Maryland Judiciary searches. Additionally, it must be made clear to staff that their efforts must be focused primarily on ensuring that licenses are issued only after any affirmative responses to the numerous questions under item #17 have been thoroughly investigated, in addition to ensuring that licenses are issued within the statutorily mandated period.

Issue #5 Finding/Conclusion: The Board of Physicians does not currently have a quality assurance process for the proactive and random review of medical or allied health license applications and renewals, to ensure that all responses to Question #17 are accurate, including the question related to prior criminal convictions. The Board should verify that “no” responses to Question #17, especially the prior conviction question, are accurate on a designated percentage of applications and renewals.

In 1988, eight years before the Dr. Dando case, Dr. John T. Tolliver was able to obtain a medical license to practice medicine in Maryland by falsely stating that he had “no” prior criminal convictions. He was charged by the Pennsylvania Board in 1992 with a violation of the Pennsylvania Medical Practice Act, for “fraudulently or deceptively obtaining a medical license.”

Recommendation(s): The OIG strongly recommends statutory authority to direct the Board to conduct criminal background checks as part of the proactive processing of applications and renewals. If the Board is not granted the recommended statutory authority, then the Board must implement a process for proactive and random review of applications of new licenses and renewals. This is necessary to assure the provision of quality health care and to protect the public from individuals who falsely state that they have “no prior criminal convictions.”

Issue #6 Finding/Conclusion: The OIG was unable to determine whether all individuals who fraudulently or deceptively obtain a license are charged with that specific violation. Currently, the Board has no information available regarding the number of individuals who fraudulently or deceptively obtain a license or renewal using false or misleading information and it is unable to query BPQA in order to obtain the information because of limitations in the system.

Recommendations: The Board needs an updated software system that will allow it to trend licensure, complaint, and disciplinary actions efficiently and effectively, without resorting to manual counting methods.

Issue #7 Finding/Conclusion: The Board of Physicians' current software program does not provide sufficient information to the Board or Board staff regarding possible trends in licensing and discipline, and does not have the capability of responding to specific ad-hoc inquiries to facilitate effective, data-driven decision-making. For example, the current system is not able to identify all licensure applicants who self-disclosed prior criminal convictions, or to provide a list of all licensed practitioners who received a particular kind of discipline or sanction.

Recommendation(s): The Board of Physicians should obtain a software program that meets its needs in the current data-driven, decision-making environment. It also should obtain a program that can respond quickly, efficiently and effectively to new queries. The OIG believes the MBOP is severely limited by its current software program because it requires the Board to resort to the manual manipulation of data, and does not permit the Board to identify pertinent trends in licensure, discipline or Board actions. The Board is already in the process of procuring a new software program. (Exhibit #27) Currently, the Board is seeking a qualified project manager to oversee the procurement process. The OIG strongly recommends that the process of identifying, procuring, and implementing a new software program be expedited to the extent possible.

Table of Exhibits

Exhibit 1	Press Release dated June 5, 2014 suspending Mr. Dando's medical license
Exhibit 2	2003 Fax from the Florida Department of Law Enforcement Re. Dr. Dando's 1987 conviction
Exhibit 3	Final Decision and Order of the MBOP Re. Dr. Riley's false and deceptive statements regarding her 1990 conviction
Exhibit 4	Charges Under the Maryland Medical Practice Act Re. Dr. Tolliver's false statement denying any prior criminal convictions
Exhibit 5	Sample Investigative Plan from the MBOP
Exhibit 6	February 1996 letter from Dr. Dando explaining his "yes" response on his licensure application
Exhibit 7	Report from the Federation of State Medical Boards indicating there was "no reported information" on Dr. Dando
Exhibit 8	Report from the National Practitioner Data Bank indicating there was "no reported information" on Dr. Dando
Exhibit 9	2014 Order for Summary Suspension of License to Practice Medicine for Dr. Dando
Exhibit 10	2014 Letter from Dr. Dando Re. Permanent Surrender of License to Practice Medicine
Exhibit 11	Overview of information available on a criminal background check
Exhibit 12	Cover page for Senate Bill (SB) 255, 2007 Legislative Session
Exhibit 13	2007 MedChi memo stating opposition to the criminal background check portion of HB 282
Exhibit 14	Proposed Amendments House Bill (HB) 282

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Exhibit 15	Mark-up of SB 255and Removal of Criminal Background Check Request
Exhibit 16	Page 22 from the 2011 Sunset Review of the Professional Boards indicating the MBOP disagreed with the DLS recommendation that the Board complete criminal background checks on new applicants and practitioners who renew their licenses
Exhibit 17	2012 University of Maryland, Perman report of the MBOP
Exhibit 18	Current MBOP Sanctioning Guidelines
Exhibit 19	Information Re: Next Generation Identification for criminal background information
Exhibit 20	Next Generation Identification "Rap Back" Service Overview
Exhibit 21	MBOP Pre-Proposal Concept Paper - Potential 2015 Departmental Legislation
Exhibit 22	Federation of State Medical Boards information Re. states that do not conduct criminal background checks
Exhibit 23	United States map showing states that can access criminal background information, FBI databases and require fingerprints for licensure
Exhibit 24	State Medical Board-by-Board Overview Re. Criminal Background Checks
Exhibit 25	American Medical news Report Re. Criminal Background Checks
Exhibit 26	2003 MBOP "Procedures for Preliminary Investigations by the Licensure Analyst and Referrals from Licensure Unit to Compliance Unit"
Exhibit 27	FY2015 Information Technology Project Request from the MBOP for a new software program



STATE OF MARYLAND

DHMH

Board of Physicians

Maryland Department of Health and Mental Hygiene

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

November 12, 2014

Thomas V. Russell, Inspector General
Office of the Inspector General
Department of Health and Mental Hygiene
201 West Preston Street, Room 519
Baltimore, Maryland 21201

Dear Mr. Russell,

Thank you for the opportunity to respond to the Office of the Inspector General's Final Report: Investigation into the Licensing Practices of the Board of Physicians, OIG Case No. 550-2014. The Board, in conjunction with the Secretary, proactively requested that the OIG investigate these matters. The Board concurs with the findings, conclusions and recommendations contained in the report.

The Board acknowledges that errors were made during the licensure process involving Dr. Dando. Board staff should have thoroughly investigated the self-disclosure on the licensure application and independently verified it for accuracy. Even more disconcerting is the information revealed through the OIG's investigation that Board staff failed to act when they received knowledge of the actual circumstances of Dr. Dando's criminal conviction in 1997 and again in 2003. Board staff failed to convey this crucial information to Board members at appropriate times. In addition, the Board relied on the recommendations made by external entities that Dr. Dando's problems with alcohol abuse were sufficiently addressed and remediated in rehabilitation programs during his University of Maryland residency program and his participation in the rehabilitation program, operated at the time by Med Chi. Thus, staff errors, failure to follow requisite procedures, reliance on other entities, and the lack of thorough investigation is troubling and contrary to the mission of the Board to protect the public.

Beginning in 2012, the Board recognized numerous systemic issues related to licensure applications and complaint investigations. With respect to the issuance and renewal of licenses, the Board's oversight of these processes now includes significant changes to all preliminary and on-going investigations affecting all units of the Board. These improvements have eliminated the complaint backlog, improved the quality, thoroughness and timeliness of investigations and increased staff accountability. Staff in Licensure, Allied Health and Compliance all attended a nationally-recognized investigations training in 2013. Additionally, Licensure and Allied Health Analysts meet weekly with Compliance Staff to discuss licensure applications and Compliance Analysts are given clear expectations on completing thorough and timely investigations.

To resolve the pending complaints in Dr. Dando's case, the Board insisted that the surrender of his license be permanent so that he would never be eligible for reinstatement in Maryland in the future.

In addition to the process improvements and systemic changes that the Board has undertaken since 2012, the Board unanimously approved seeking statutory authority to conduct background checks at its June 11, 2014 meeting. In so doing, the Board recognized that only the legislative authority to complete criminal background checks will guarantee that individuals with a criminal conviction are fully scrutinized at the time of their licensure application. Board staff have drafted a bill that will require all applicants for licensure, renewal and reinstatement to submit to a criminal background check. The draft bill includes participation in the FBI rap-back system which will provide the Board with real-time notification of triggering events such as arrests and convictions of its applicants and licensees. The Board has discussed the proposed bill with stakeholders and legislators and anticipates that this bill will be enacted in the 2015 Legislative Session.

The Board recognized systemic issues in 2012 and with support of the Board and Executive Leadership began to address, at that time, many of the OIG's 2014 recommendations. As stated throughout the OIG's Report, the Board has made significant progress, but recognizes that improvement is ongoing and is committed to continuing to improve its processes. These changes have meaningfully improved the transparency of the Board's processes and future enactment of a criminal background check bill will further strengthen the Board's ability to protect the health, safety and welfare of the public through effective and efficient licensure.

Sincerely,



Devinder Singh, M.D.
Board Chair



Christine A. Farrelly
Executive Director