



# Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

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September 6, 2022

The Honorable Guy Guzzone  
Chair, Budget and Taxation  
3 West Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401-1925

The Honorable Maggie McIntosh  
Chair Emeritus, Appropriations  
Room 121 House Office Building  
Annapolis, MD 21401-1925

Dear Senator Guzzone and Delegate McIntosh:

The Maryland Board of Nursing (the “Board”) respectfully requests an extension of time to submit its report addressing the timeliness of investigations into complaints and the associated impediments caused by staffing issues, as required by the Joint Chairmen’s Report for Fiscal Year 2022 (pg. 98) (hereinafter the “JCR”). As stated in the JCR, the Board is required to submit a report addressing the following items: (1) an overview of the process by which investigations into complaints are handled, including each step from the receipt of the complaint to the conclusion; (2) the number of authorized positions dedicated to investigations and the number of positions filled from fiscal 2020 through 2022; (3) current data on timeliness of investigations through fiscal 2022; and (4) barriers faced by the Board including staffing or other resources.

The ongoing Maryland Department of Health (MDH) cybersecurity incident has impacted the Board staff’s ability to sufficiently evaluate the committee’s operational and data requests. The Board continues to remain at partial operational functionality despite its best efforts to prioritize workflow needs and readjust staffing capacities. The Board will need additional time to thoroughly review, finalize, and approve current investigative and complaints processes for submission to the Department of Legislative Services (DLS). A comprehensive report will be presented for approval on September 28, 2022, and will be subsequently submitted to MDH’s Office of Governmental Affairs for further revisions on October 15, 2022. The Board’s final report will be submitted to DLS on or before November 15, 2022.

Thank you for your time and consideration. If you have any questions please contact Ms. Iman Farid, Health Planning and Development Administrator, at [iman.farid@maryland.gov](mailto:iman.farid@maryland.gov).

Sincerely,



Gary N. Hicks  
Board President



Karen E. B. Evans  
Executive Director

Cc: Sarah Albert, Mandated Reports Specialist, Maryland Department of Legislative Services  
Gary Hicks, Maryland Board of Nursing President  
Megan Peters, Acting Director, Maryland Department of Health  
Morgan Smith, Policy Analyst, Maryland Department of Legislative Services



# Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

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November 15, 2022

The Honorable Guy Guzzone  
Chair, Budget and Taxation  
3 West Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401-1925

The Honorable Maggie McIntosh  
Chair Emeritus, Appropriations  
Room 121 House Office Building  
Annapolis, MD 21401-1925

Dear Senator Guzzone and Delegate McIntosh:

The Maryland Board of Nursing (the “Board”) respectfully submits this Fiscal Year (FY) 2022 Joint Chairmen’s Report (p. 98) detailing operations related to the timeliness of the investigations into complaints and the associated impediments caused by staffing issues.

## **I. An overview of the process by which investigations into complaints are handled, including each step from the receipt of the complaint to the conclusion**

### *Initial Complaint Intake*

A complaint is received by the complaints manager, who is responsible for collecting information. In the preliminary investigation, the following information is examined: full details are received; the priority of the complaint is identified and given to the Director of Enforcement for review; a criminal history check is conducted; and other disciplinary actions taken by the board or another state are reviewed. Each case is then assigned a complaint number, and a new file is created. Each complaint is logged into several different tracking locations, including My License Office (MLO), the incoming complaints log, and the master tracking log. Each complaint is then uploaded into the shared drive folder and prepped for the complaint triage committee. The committee convenes twice per month to review approximately one hundred and twenty (120) to one hundred and sixty (160) complaints. Each complaint is assigned a course track, which could include:

### *Refer to Safe Practice Program*

The Safe Practice Program is a confidential alternative to discipline program for individuals with substance use disorder. A memorandum is sent to the safe practice program coordinator, informing

them of the referral. The complaint is then transferred to the coordinator for further processing. If a case does not meet the requirements of the safe practice program, it will be referred back to the investigations unit as a priority one (1) case. If a participant in the program is expelled, the case is also referred to the investigations unit as a priority case, and a report will be drafted.

#### *Take No Action*

Cases categorized as “take no action” will be referred to the consent agenda for Board ratification. The case will be closed for investigation, and each respondent will receive a letter of case closure. The Board reviews approximately forty (40) to eighty (80) “take no action” cases per month.

#### *Invitation to Pre-Charge Committee*

A respondent will be invited to attend a pre-charge committee in an effort to resolve the complaint that has been filed against them. An informal meeting will take place between the respondent, a few board members, and board staff. If a settlement is not reached within the committee, the case will be referred to the investigations unit once again and assigned a priority number.

#### *Refer to another Agency*

Although rare, a complaint may be transferred to another organization for consideration. During the preliminary investigative stage, the complaints manager will review the complaint for legal jurisdiction and will forward the case to the appropriate licensing and/or regulatory Board. Another action that may be possible is for a complaint to be assigned to an investigator while also being forwarded to another agency, such as the local police department.

#### *Take No Action, But Leave Alert*

This process is similar to the “take no action” referral as stated above; however, the Board may program its internal database to alert the licensing or renewal departments in case the respondent attempts to renew their license or certificate. This applies primarily to reciprocal discipline cases.

#### *Offer Voluntary Surrender*

The Board may offer the respondent a letter to voluntarily surrender their license or certificate. The respondent will be given two (2) weeks to sign and return this letter. If the respondent refuses to voluntarily surrender their license, the case will be referred to the investigations department.

#### *Assign to Investigations with a Priority Number*

The complaint triage committee will assign a case a priority number between one (1) and four (4). A priority one case may represent an action that may cause the most harm to the public, and a priority four case may represent an action that causes the least risk to public safety. The Manager of Enforcement will assign the case based on several factors. An investigator will start the process of collecting information and interviewing the complainant, respondent, and witnesses.

### *Investigative Assignment*

A case may be assigned one or more investigative types (*see Appendix A for more information*). Each investigative type will be researched and analyzed using different methodologies depending on the constituent level of responsibility. For example, an individual that has failed to renew their certificate to practice as a certified nursing assistant will need to have their wages and earnings reviewed during the time they were practicing under a non-renewed certificate. This may require the investigator to subpoena employee records to confirm the individual's employment and the number of hours worked. The investigator will additionally need to determine if any patient harm or discipline occurred during the time of non-renewal. The complainant and respondent will be interviewed to determine if any attempts to renew were made.

### *General Investigations Process*

The respondent will be sent a contact letter informing them of the investigation and detailing the assigned investigator's contact information. At this time, the investigator will submit subpoenas for records related to the investigation, including facility investigative files, personnel records, facility policies and procedures, attendance records, medical records, Pyxis records, financial records, video surveillance, autopsy reports and death verifications, police reports, and true test court documents. While the investigator awaits documentation, interviews will additionally be conducted with the complainant(s), the respondent, and witnesses. All relevant medical and nursing records will be analyzed and synthesized to evaluate any applicable nursing practices. The investigator will also conduct thorough nursing research to determine best practices while utilizing clinical judgement to facilitate the investigation. The investigator will ask to obtain a written statement from the respondent as it relates to the allegations and will focus on any violations of the Nurse Practice Act. A comprehensive report of investigation will be written to document all investigative efforts and will be subsequently referred to the Board for review and action.

## **II. The number of authorized positions dedicated to investigations and positions filled from fiscal 2020 through fiscal 2022**

The investigations department is currently composed of three nurse investigators and one non-nurse investigator. There are a total of seven open job positions, including one nurse investigator, two non-nurse investigators, and four administrative staff, such as two enforcement coordinators, one enforcement specialist, and one office secretary. At full capacity, the investigations department should have a total of ten nurse investigators, four non-nurse investigators, a lead investigator, and four administrative specialists. The Board has previously attempted to reclassify a merit employee position as a non-nurse investigator. This role, however, was downgraded to a health occupations investigator and then subsequently frozen. The position is now on hold until the Department of Budget and Management's recruitment human resources officer can obtain information on whether the Board needs to submit another reclassification or if the position can be posted with different qualifications. This action has caused the investigations department significant strain as they are unable to start recruitment or interviews for this critical duty.

There have been substantial staffing changes from fiscal 2020 through fiscal 2022.

- A nurse investigator was transferred to another department on 11/2020.
- An investigations administrative specialist was transferred to another department in 07/2021.
- Two complaints coordinators resigned between 09/07/21 and 10/18/21.
- An investigations administrative specialist’s contract ended on 09/20/21.
- A nurse investigator retired in December 2021.

This position, in addition to other occupied nursing investigator positions, was subsequently frozen until a study was submitted. The classification for the nurse investigator was originally listed as a Health Facilities Nurse Surveyor I (grade 19). After review of the study results submitted by the Board, the position was upgraded to a Nurse Program Consultant–Nurse Administrator (grade 21). The classifications signify a difference between the roles assumed and the realistic duties and responsibilities performed by the employee.

- A nurse investigator was promoted to the position of Director of Enforcement. This employee now oversees five units within the enforcement division and two board paralegals.
- A non–nurse investigator was promoted to the position of Manager of Enforcement. This employee now performs additional duties and services within the complaints department.

The investigations department has been bifurcated to contain both cold and open case files. “Cold cases” are defined as any open investigative case that has been received by the Board since fiscal year 2018 or earlier. As of June 30, 2022, the department had approximately 5,038 cases. One (1) nurse investigator has been solely assigned to investigate approximately 2,800 cold case files. The team is only able to utilize three (3) investigators to review the remaining cases. Each investigator has been assigned approximately four hundred (400) to five hundred (500) files each. The Director of Enforcement additionally serves as a nurse investigator and has been assigned six hundred (600) open cases in addition to her other managerial job duties. The Manager of Enforcement assists the complaints department by processing complaints and facilitating six committee meetings monthly. The current staffing capacity has left approximately 1,500 cases unattended.

### **III. Current data on timeliness of investigations through fiscal 2022**

The tables below outline the approximate investigative timeframes for non–complex and complex complaints. Please note that the number of hours include continuous time spent working on a case.

#### *Non–Complex Case*

The time spent on a case may differ depending on its complexity. For example, a less complex file could include an allegation that an individual worked on a non–renewed license or certificate. The following table outlines the average amount of time spent conducting an investigation on a non–renewed allegation complaint. These types of cases are generally the easiest to complete.

<b>Task of Investigation Process</b>	<b>Average Time (mins) Spent to complete process</b>
Review Complaint and accompanying documents	30

Checking MYLO for Respondent information and renewal history	30
Adding the case to the investigators tracker	30
Researching Complaints contact information	60
Contacting complainant to schedule interview	15
Travel to interview	60  The Board has state-wide jurisdiction. It may take three hours to travel, one – way.
Research of what documents is needed for the case and where to send the subpoena	60
Creating and printing the subpoena to send, may require multiple subpoenas if Respondent worked multiple jobs, which is common.	45
Intake of subpoenaed documents and document review	120
Researching witnesses location/addresses	60
Contacting witness to schedule interview	15
Creating summons to appear if non-cooperative-Witness	60
Sending a second summons if non-cooperative-Witness	60
Conducting interviews	90
Researching Respondent’s contact information through various searches	120
Scheduling to interview Respondent	15
Creating summons to appear if non-cooperative-Respondent	60
Sending a second summons if non-cooperative –Respondent	60
Conducting the interview	120
Writing a comprehensive report of investigation	480
<b>Total Time</b>	26.5 hours

*Complex Case*

This table outlines the average time spent conducting an investigation on a complex complaint. An example may include drug diversion that involves multiple patients. Below is the estimated time to complete an investigation that involves five patients and six witnesses. This type of case is one of the most common received by the Board.

<b>Task of Investigation Process</b>	<b>Average Time (mins) Spent to complete process</b>
Review Complaint and accompanying documents	90
Checking MYLO for Respondent information and renewal history	30
Adding the case to the investigators tracker	30
Researching Complaints contact information	60
Contacting complainant to schedule interview	15
Travel to interview	60  The Board has state-wide jurisdiction. It may take three hours to travel, one – way.
Research of what documents is needed for the case and where to send the subpoena	120
Creating and printing the subpoena to send. This case type will require multiple subpoenas.	120
Review of Pyxis records	240
Selecting patients to subpoena medical records	120
Creating another subpoena for medical records for multiple patients	90
Intake of subpoenaed documents and document review	180/per patient. Average is 5 patients/case. 900 mins
Researching witnesses location/addresses	90
Contacting witness to schedule interview	15/per person. 90 mins per case
Creating summons to appear if non-cooperative-Witness	60
Sending a second summons if non-cooperative-Witness	60
Conducting interviews	90 per person. 540 mins
Researching Respondent's contact information through various searches	120
Scheduling to interview Respondent	15
Creating summons to appear if non-cooperative-Respondent	60
Sending a second summons if non-cooperative –Respondent	60
Conducting the interview	120



Writing a comprehensive report of investigation	1200 (avg. 20 hours)
<b>Total Time</b>	71 hours

Please note that not all cases fall directly within the two case types as outlined above. Time spent on each case may depend on the following factors: travel to the courthouse to obtain true test copies of case dispositions, waiting for the state medical examiner’s office to complete an autopsy report, collaborating with vital records to obtain death certificates. Investigators may also meet with other enforcement agencies such as the Office of Controlled Substances, the Drug Enforcement Agency, or the Federal Bureau of Investigation.

**IV. Identify barriers faced by the board including staffing or other resources**

*Staff Retention*

The Investigations Department is severely understaffed. The Board needs to employ qualified and competent staff members to conduct thorough investigations that are time-consuming.

Positions are generally vacant for long periods of time, salaries are not competitive, and roles and job responsibilities are misclassified. In order to recruit qualified applicants, the Board must offer adequate compensation to reflect the activities performed by a staff member. The Board of Nursing Fund is a special fund that is utilized to maintain administrative operations. The fund is comprised of fees collected through the initial, renewal, and endorsement processes. A review of the Board’s budget from fiscal year 2017 through 2022 indicates that expenditures (including staff salaries) have far exceeded revenues. Despite the Board receiving more license and certificate applicants per year, the revenues generated from these applications cannot sufficiently support current duties. The Board believes the most appropriate method to mitigate this challenge is to re-evaluate its fee schedule, which has remained unchanged since fiscal year 2008.

The Board additionally believes the current recruitment and interviewing process has contributed to potential candidates seeking other employment opportunities. It may take between four (4) and six (6) months for a position to be requested, approved, posted, and closed before the interview process can begin. For example, the Board submitted a contract for a health policy analyst position to the Department of Budget and Management on June 7, 2022. This position was then approved on August 16, 2022, and posted on employment forums on October 17, 2022. The Board has not yet begun interviewing as a final review of minimum qualifications must be completed. Another example includes the recruitment for a merit position for the Manager of Licensure. This position was submitted on May 11, 2022, and was subsequently approved on June 3, 2022. On October 14, 2022, the Board was informed that this position was frozen in 2019 and would need reclassification documents to be submitted for the position to be opened once again.

The Board believes a joint human resources task force should be formed in collaboration with the Department of Health and the Department of Budget and Management to address vacancies in staff. A customized approach to restoring normal operations is warranted. The task force would construct a temporary priority mission to fill existing vacancies and assist with adverse personnel

actions. Once these vacancies are filled, a six-month review period should commence to identify if more staff are needed, except for the investigations department, which has an urgent need.

### *Class Specifications Inconsistent with Board of Nursing Investigative Duties*

The state's current class specifications for investigators do not capture the duties performed by the Board's investigative department. As previously stated, the Board attempted to reclassify a merit employee position as a non-nurse investigator. This role was downgraded to a health occupations investigator. The health occupations investigator is responsible for conducting investigations of health care practitioners licensed and regulated by the Maryland Department of Health's Boards and Commissions. The class specification page requires an applicant to have at least six (6) years of criminal investigation experience. The minimum qualifications exclude individuals that have prior healthcare or healthcare investigative experience. The description of this position does not include the complexity of cases processed or the types of professions regulated by the Board.

The Board oversees several certificate and license holders, including licensed practical nurses, registered nurses, advanced practice registered nurses, medication technicians, certified nursing assistants, electrologists, licensed direct-entry midwives, licensed certified midwives, and dialysis technicians. Investigators must be well informed about the practice standards for each certificate and licensee holder, including their setting and practice area. For example, certified medication technicians are utilized in a variety of environments, such as home health, assisted living, juvenile services, daycares, and developmental disabilities. A medication technician practicing within a developmental disability setting is not allowed to administer PRN psychotropic medications to any patient, as this is considered a medical restraint. A medication technician practicing in an assisted living setting, however, is allowed to utilize PRN psychotropic medications. An investigator must be knowledgeable about the rules and regulations of each practice setting and the six (6) rights of medication administration, as one of the most common complaints received is medication error.

To serve as another example, a board investigator must also be well versed in conducting nursing research that is within the advanced practice arena. Advanced practice specialties can include, but are not limited to, certified nurse midwifery, nurse anesthesia, clinical nurse specialists, pain management, emergency medicine, acute care, primary care from infancy to geriatrics, neonatal, oncology, cardiology, nephrology, pediatric, psychiatry and mental health, women's health, and adult-gerontology acute care. Investigators often need to conduct extensive research on clinical care standards, morbidity and mortality, normalcy rates, labs and assessments, and best practices before conducting witness interviews or submitting subpoenas to further the investigation.

The amount of work conducted per case is tremendous and often results in a report of investigation between twelve (12) and thirty (30) pages for a relatively simple case or up to fifty (50) to one hundred (100) pages for more complex cases. The effort to compile a comprehensive report is not being replicated by other health occupations boards; however, a comparison of investigative duties between boards is still occurring. The Board believes this comparison is inappropriate and serves as a mischaracterization of the tasks performed by staff to uphold public safety within the state.

Thank you for your time and consideration. If you have any questions please contact Ms. Iman Farid, Health Planning and Development Administrator, at [iman.farid@maryland.gov](mailto:iman.farid@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "G. Hicks", written in a cursive style.

Gary N. Hicks  
Board President

A handwritten signature in blue ink, appearing to read "Karen E. B. Evans", written in a cursive style.

Karen E. B. Evans  
Executive Director

Cc: Sarah Albert, Mandated Reports Specialist, Maryland Department of Legislative Services  
Gary Hicks, Maryland Board of Nursing President

## Appendix A

The following information is tracked for all cases and briefly outlines the step – by – step process.

The date the complaint was received; date of the incident; respondent’s name and demographics; respondent’s certification or license information, does the respondent have a multistate status (verified via NURSYS), the current assigned case or NIS number; if the respondent is a certificate holder, does the respondent hold an Advanced Practice license; is there a prior complaint, if so, what is the case number, complaint category and the complaint status; for the current complaint – what is the complaint category, the source of the complaint, a comprehensive narrative of the complaint, triage date, triage decision, assigned priority – if assigned to investigations, the assigned investigator; date the investigation was assigned; if there was an expert witness needed for the investigation, the date the expert witness was assigned and the date the expert witness submitted their report, if there was an a psychological evaluation needed for the investigation, the date psychological evaluation order was assigned and the date the psychologist or psychiatrist submitted their report, the date the investigation submitted their ROI; date that the CNA advisory or ROI review committee reviewed the ROI and their recommendation; date of full Board decision, date of Office of Attorney General (OAG) assignment, date that the case file was transferred to the OAG, Case Resolution Conference (“CRC”) date and CRC outcome, date of the hearing and the date of the final disposition. Finally, a calculation between the date the complaint was received and its final disposition.

### Investigative Types

Abandonment • Administrative • Aiding Unlicensed Practice • Alcohol Abuse • Audit • Board Discipline • Boundaries • Breach of Confidentiality • Criminal History Records Check • Chemically Dependent • Child Support • Committed for Psychiatric Care • Criminal • Criminal Conviction against Person • Criminal Conviction against Property • Criminal History • DX Errors (APRN) • Dangerous to Public • Discrimination – Client • Documentation Errors • Drug Abuse • Drug Diversion to Others • Drug Diversion to Self • Drug Use on Duty • Employee/Employer • Ethics • Expired Temp • Failure to Assess • Failure to Comply with Requirements • Failure to Intervene • Failure to Renew • Failure to Report Violations • Failure to Supervise • Failure to Follow Orders • False Documentation • False Information on Employment Apps • Felony • Fraud in Continuing Education • Fraud in Obtaining Degree, Diploma • Fraud in Obtaining License • Fraud in Obtaining Other Credentials • Fraudulent Billing • Impostor • Inappropriate Delegation • Inappropriate Orders Executed • Incompetent Practice • Leaving Duty Station • Medication Errors • Mental Abuse • Mental Inability to Practice • Mentally Ill • Mentally Incompetent • Minimal Standards Not Met • Misdemeanor • Misrepresentation • Neglect • Other (APRN) • Physical Abuse • Physical Inability to Practice • Positive Drug Screen • Practicing Beyond Scope (APRN) • Practicing Beyond Scope • Practicing Without a License • Presenting Illegal RX • Priority RX Errors (APRN) • Request for Investigation • Sale of Drugs • Sex with Client • Sexual Abuse • Sexual Language • Sexual Misconduct • Supplemental Renewal Form • TX Errors (APRN) • Theft • Theft from Client • Theft from Employer • Tobacco • Unsafe Practice • Verbal Abuse • Violating Board Orders • Violating Federal Rules • Violating Federal Statutes • Violating State Rules • Violating State Statutes • Wastage Errors • Workman’s Comp • Writing Illegal RX • Schools • OCSA (Office of Controlled Substance Administration)