

**Sunset Advisory Commission
2022 Board and Commission Questionnaire**

The Sunset Advisory Commission reviews every State board and commission and takes testimony regarding whether each board or commission should continue to operate or be eliminated and whether the powers and duties of any board or commission should be revised. Each board and commission has the burden of justifying its continued operation.

Please answer the following questions about the specific board or commission under review. If asked to testify before the Sunset Advisory Commission, please plan to provide concise recommendations regarding the continued operation of the board or commission under review and any revisions to its powers, duties, or membership.

Response from the Board of Medical Practice August 12, 2022

1. In general, how often does the board and commission meet? Provide specific information on how often the board or commission has met in the past two fiscal years. Provide information on where agendas and minutes of meetings can be found.

The full Board meets for one extended meeting each month and one abbreviated meeting most months. In FY 21 the full Board met 19 times. In FY 22 the full Board met 18 times. (The overall number of meetings was down in each of those years because the number of months in which an abbreviated meeting was not held was greater than normally. That is because there were special provisions allowing health care professionals to work in Vermont in some circumstances without obtaining a license during the COVID emergency. The second meeting is held to expedite licensure for applicants; the ability to work without having a license made it so in several months there was no need to hold that second meeting to issue licenses.)

The Board also has four standing committees (three separate Investigation Committees and the Licensing Committee). Each of the standing committees meets once per month. The standing committees also occasionally meet for special meetings, but that occurs only a couple of times in a typical year. The Board's minutes are posted on our website at: <https://www.healthvermont.gov/health-professionals-systems/board-medical-practice/board-meetings>.

2. Provide the names of members of the board or commission, their term length and expiration, their appointing authority, and the amount of any per diem they receive.

All members of the Board of Medical Practice are appointed by the Governor, pursuant to 26 V.S.A. § 1351. The normal term length is 5 years, but members may be appointed to less than a full term, which typically occurs when an individual is appointed to an unexpired vacancy. Members receive a per diem of \$50 per day for Board duties in accordance with 26 V.S.A. § 1351 and 32 V.S.A. § 1010(b).

There are 17 seats on the Board; nine physicians (MDs), one physician assistant (PA), one podiatrist (DPM), and six public members “not associated with the medical field.” 26 V.S.A. § 1351(a). At present 16 seats are filled.

In the following table of members five are shown as being past the expiration of their terms. All of those members have applied for reappointment and continue to serve. As provided by 3 V.S.A. § 2004, members of board appointed by the Governor continue to serve “until a successor has been appointed and qualified.”

Member	Type	Original Date of Appointment	Expiration Date
Sarah McClain	Public (current Chair)	8/8/2011	12/31/2018
Rick Hildebrant	Physician (current Vice Chair)	2/5/2019	12/31/2023
Marga Sproul	Physician (current Secretary)	1/1/2014	12/31/2018
Richard Bernstein	Physician	1/1/2014	12/31/2023
Maureen Bogosian	Public	1/24/2022	2/28, 2026
Gary Burgee	Physician	1/1/2014	12/31/2023
Richard Clattenburg	Physician	5/1/2015	12/31/2019
Gail Falk	Public	2/24/2021	12/31/2024
Matthew Greenburg	Physician	1/24/2022	12/31/2023
Patricia Hunter	Public	7/20/2012	12/31/2022
Suzanne Jones	Physician Assistant	8/30/2021	12/31/2024
Leo LeCours	Public	11/13/2012	12/31/2023
David Liebow	Podiatrist	1/22/2014	12/31/2018
Christine Payne	Physician	2/3/2015	12/31/2019

Margaret Tandoh	Physician	8/15/2019	12/31/2023
Robert Tortolani	Physician	2/5/2019	12/31/2023

3. Provide an overview of the board or commission’s purpose.

The Board’s purpose is to license and regulate the practice of medicine by physicians (MDs) and the other professionals licensed or certified by the Board (physician assistants, podiatrists, anesthesiologist assistants, and radiologist assistants). The Board is also tasked in law with investigating suspected incidences of unlicensed practice of medicine (which is a crime) and referring cases that are confirmed to the Attorney General or one of the State’s Attorneys.

4. Is that purpose still needed? What would happen if the board or commission no longer fulfilled that purpose?

Yes, oversight of medical practice is an important component of public health. The practice of medicine would no longer be regulated, which would be contrary to the promotion of health and welfare for Vermonters. Each of the States and US Territories regulates the practice of medicine; it is believed that every nation in the world regulates the practice of medicine in some way. Vermont has regulated the practice of medicine since 1905.

There are several purposes for regulating the profession. First, through regulation appropriate standards of qualification (education, training, and examination) and fitness (absence of evidence of immoral, unprofessional, or dishonorable conduct) are established to ensure that Vermonters are not subjected to the dangers of receiving medical care from unqualified or unfit individuals. Second, the Board provides ongoing oversight of all practitioners with the aims of encouraging high quality practice and responding when licensees are found to have engaged in unprofessional conduct. The process of regulatory oversight provides consumers of health care in Vermont the option of bringing complaints of unprofessional conduct to an informed and objective governmental body, while also providing licensees due process of law.

5. How well is the board or commission performing in executing that purpose? What evidence can you provide to substantiate that performance?

Evaluation of a medical board’s effectiveness is a challenging and complex undertaking. Ultimately, it can be argued that the best assessment of a medical board depends on a number of different factors that, viewed together, provide insight into how well the organization finds a balance in carrying out its duties. For instance, very high licensing standards might be seen as promoting safer practice, but if too high, they might deter physicians from becoming licensed and lead to problems with access to care. Lax licensing standards might promote large numbers of licensees and thus help with access to care, but could lead to greater rates of malpractice and incidences of unprofessional conduct. As discussed in detail below, Vermont has very strong physician workforce

numbers when compared to the rest of the United States, but at the same time ranks among the states with the lowest rates of malpractice. Some factors that suggest that the Board has found balance in executing its duties follow.

- a. **Strong Physician Workforce Numbers.** Multiple reports consistently show Vermont to have among the highest per capita physician rates in the nation. The American Association of Medical Colleges *2021 State Physician Workforce Data Report*¹ shows Vermont with the 4th highest number of active physicians per capita in the nation (page 6), the second highest per capita number of “active patient care” physicians (page 8), the highest per capita number of active primary care physicians of all the states (page 11), the highest per capita number of “active patient care” primary care physicians (page 13), and second most general surgeons per capita of all the states (page 16). Obviously, there are many factors that impact the decisions by physicians of where to practice, but these numbers support an inference that the Board has not advocated for too high a bar in the statutes that address qualification for medical licensure, nor set the bar too high in its regulations on qualification for medical licensure.
- b. **Low Rates of Malpractice.** Vermont has among the lowest rates of malpractice claims paid in the United States. Data shows that measured in terms of both the per capita number of medical malpractice cases with payments made (court awards and settlements) and in the per capita amount of claims, Vermont is among the states with the lowest rate of malpractice.² To be clear, the Board is not trying to claim a leading role among the forces that contribute to the malpractice numbers. However, the Board’s mission is to promote the health and welfare of Vermonters by setting appropriate standards through regulation, by preventing or removing from practice those physicians who pose a risk to Vermonters, and by disciplining physicians who do not meet appropriate standards.

The Board works hard to address malpractice. The Board annually enrolls in the National Practitioner Data Bank’s program known as Continuous Query. Every licensee is uploaded to the NPDB’s system, which ensures that every report of malpractice for every Vermont licensee is received by the Board as quickly as possible. When the Board receives those reports, they are acted upon – the Board has a process to review every report of adverse malpractice outcomes for every one of our licensees. When it is found that a malpractice case also presents unprofessional conduct by the licensee, the Board takes appropriate action to remove or remediate the licensee.

It is challenging to identify measures of effectiveness in achieving the Board’s goal of protecting the public. A low rate of malpractice is one indicator that the

¹ The cited pages are attached. The AAMC 2021 State Physician Workforce Data Report is available to download online at: <https://store.aamc.org/2021-state-physician-workforce-data-report.html>.

² An analysis of malpractice data showed that for the period for 2012-2016 Vermont had the fifth lowest per capita amount of medical malpractice payments and the eighth lowest number of malpractice claims resulting in payments among all U.S. jurisdictions. Copies of the tables showing the values for all States and the District of Columbia are attached.

Board has been effective. Conversely, a high rate of malpractice payments would be an indicator that a medical board was not being effective; fortunately, in Vermont there has been a low rate of medical malpractice payments.

c. Absence of Court Reversals of Board Decisions.

Administrative actions, such as medical board discipline cases, all are subject to appeal in some way. In Vermont, Board of Medical Practice decisions may be appealed directly to the Vermont Supreme Court. 26 V.S.A. § 1367. One indicator of the quality of a board's work could be whether the board's decisions stand up. Over several decades a lack of Vermont Supreme Court appeals shows that the Board's orders have been subjected to appeal on only very rare occasions, which suggests that the Board's decisions are sound. There has been only a handful of cases over decades, and only one case found that did not uphold the Board's decision. *In re Taylor*, 2015 VT 95 (2015). The outcome of that case was to return the matter to the Board to make additional findings, but ultimately did not reverse the outcome.

d. Medical Board Ratings.

An important function for the Board is to communicate information about its activities and licensees to the public, which empowers individuals to make informed decisions about their health care providers and their care. The Board has done well in rankings of how medical boards communicate with the public through their websites.

A 2022 report issued by a group of patient advocacy organizations rated the Board of Medical Practice near the top of all the 65 State medical and osteopathic boards³ in the nation, tied for fifth place. The report, prepared by jointly by the Informed Patient Institute and the Patient Safety Action Network is available online at: <https://www.patientsafetyaction.org/wp-content/uploads/2022/03/Looking-for-Doctor-Information-Online-1-7-22.pdf>. A copy of the rankings is attached. The rating of the Board of Medical Practice website in part reflected efforts that were made to improve the Board's website after a 2015 project by Consumer Reports and the Informed Patient Institute that ranked all State medical and osteopathic boards' websites. In the 2015 survey the Vermont Board of Medical Practice ranked 29th out of 65 boards. A copy of the ratings is attached.

Another ranking by Public Citizen, a nonprofit consumer advocacy organization, focused on the rate at which medical boards discipline their licensees as compared to other boards. Vermont rated 8th in the nation for the most serious discipline actions per licensee. The full report is available online at: <https://www.citizen.org/article/report-ranking-of-the-rate-of-state-medical-boards-serious-disciplinary-actions-2017-2019/>. A copy of the table with the rankings is attached. A high number of actions does not necessarily mean that a board is doing a good job, but it is an indicator that a board does

³ The number of medical boards is greater than 50 because several States, including Vermont, have separate Boards for allopathic physicians (MDs) and osteopathic physicians (DOs). In Vermont the Board of Medical Practice regulates only MDs; osteopaths are regulated by the Board of Osteopathy, which is part of OPR.

not shy away from taking action when warranted. It also shows that the investigative work done by the Board effectively identifies unprofessional conduct and establishes the facts necessary to take a disciplinary action.

Together, these outside, independent reviews of all medical boards reflect positively on the Board of Medical Practice.

In sum, these data points and independent evaluations of medical board effectiveness show that the Board of Medical Practice is effectively serving the people of Vermont.

6. If the purpose is still needed, can State government be more effective and efficient if the purpose was executed in a different manner?

The Board submits that it could not. In order to carry out the quasi-judicial aspects of the Board's mission, it is necessary for the Board to exist as a semi-autonomous entity of appointed members and the staff that supports those members. The Vermont Department of Health is the ideal host for the Board of Medical Practice. Residing within the Department of Health emphasizes the public health role played by the Board in regulating the practice of medicine. There is strong synergy between the Board and the other divisions of VDH. The Board regularly collaborates with other Health Department staff on projects that are important to both the Board and to VDH. One example is the Board's participation in the formation of administrative rules that directly impact the practice of medicine and that have direct impact on public health, such as the Rule on Prescribing Opioids for Pain and the Vermont Prescription Monitoring System Rule. Another example is the collaborative work done by Board staff with staff from other VDH Divisions to offer clinician training events at hospitals all around Vermont. Finally, the Board has had a seat at the table during the development and refinement of the crisis standards of care, a project that has been led by VDH.

Regarding efficiency, it should be noted that the Board's fee for physician licenses, which generates most of the revenue, has not been increased in at least 15 years and the Board has not asked for any General Fund appropriation. The Board operates within the fees generated and has reserve funds available for capital projects.

7. If the purpose is still needed, do any of your board or commission's functions overlap or duplicate those of another State board or commission or federal or State agency? If so, is your board or commission still the best entity to fulfill the purpose?

The Board's work is not duplicative of work done by other entities. OPR also regulates several professions, but as discussed above the Department of Health is the appropriate location for the Board to carry out the public health function of regulating the practice of medicine.

8. Does the board or commission's enabling law continue to correctly reflect the purpose and activities of the board or commission?

Yes. The Board has worked with the Vermont General Assembly to create bills that significantly revised the laws regarding the Board in 2011 and again in 2020.

9. Provide a list of the board and commission's last fiscal year expenditures including staffing costs. How are these funded?

Board expenditures totaled \$1,371,031.70 in SFY22. Of this amount, \$1,221,600.90 was direct expenses (salary/fringe, legal services, operating expenses etc.) and the remaining \$149,430.81 was allocated indirect expenses. Of that, \$671,105.22 was for salary/fringe and \$221,319.40 was paid to the Attorney General's Office for legal services pursuant to a memorandum of agreement.

All of the Board's expenditures are paid from the Board's special fund. The vast majority of the funds in the special fund are from licensing fees; a very small amount is from administrative financial penalties that can be imposed on licensees in discipline cases. The use of the financial penalties is limited to education and training for licensees and Board members. 26 V.S.A. § 1374(b).

10. Is the board or commission required by law to prepare any reports or studies for the Legislature, the Governor, or any State agency or officer? If so, have those reports or studies been produced? Does the board or commission have ongoing reporting obligations? No.