

# Welcome!

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41<sup>st</sup> Annual FARB Forum

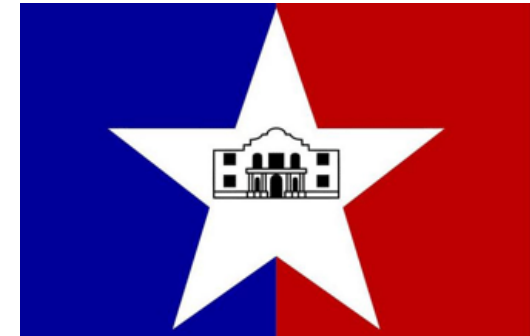
January 26-29, 2017

San Antonio, TX



# Welcome to San Antonio, Texas

- 2<sup>nd</sup> largest city in Texas
- Founded May 1, 1718, incorporated June 5, 1837
- Population of 1.4 million people
- 408 square miles (twice the size of Chicago)
- 650 feet above sea level
- Countless restaurants on the Riverwalk
- River ranges from 2 feet deep to 24 feet deep
- 30 inches of rain per year (it only rains *during* the FARB sessions)
- The first five air conditioned buildings in America were located in San Antonio
- The oldest bar on the River Walk, Esquire Tavern, opened on the day Prohibition was repealed - December 5, 1933





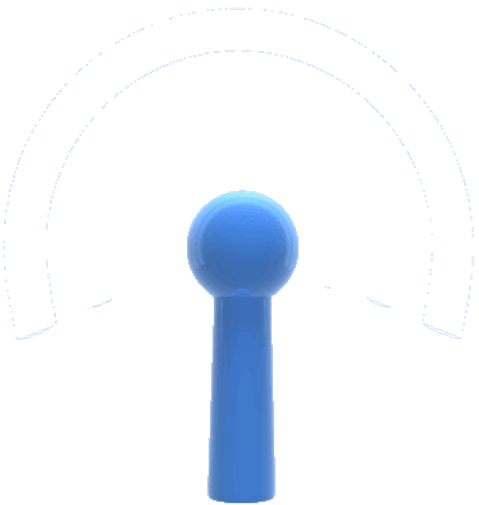
# Welcome

- First time attendees?
- First time visit to San Antonio?

# Wi-Fi Information

Username: Forum2017

Password: FARBForum  
(case sensitive)



# Meeting Materials and Evaluations

[www.farb.org/forum2017](http://www.farb.org/forum2017)

Please visit the registration desk if you are having trouble logging on.



# 2017 Forum Attendees

- 208 Attendees
- 33 States + D.C.
- 3 Canadian Provinces
- Nigeria and UAE
- 125 Organizations



# FARB's 21 Governing Members

American Association of Dental Boards  
 American Association of State Counseling Boards  
 American Association of Veterinary State Boards  
 Association of Appraiser Regulatory Officials  
 Association of Regulatory Boards of Optometry  
 Association of Social Work Boards  
 Association of State and Provincial Psychology Boards  
 Board of Certification for the Athletic Trainer  
 Council of Landscape Architectural Registration Boards  
 Federation of Chiropractic Licensing Boards  
 Federation of State Medical Boards  
 Federation of State Massage Therapy Boards  
 Intl Conference of Funeral Service Examining Boards  
 National Association of Barber Boards of America  
 National Association of Boards of Pharmacy  
 National Association of Long Term Care Administrator Boards  
 National Association of State Boards of Accountancy  
 National Association of State Contractors Licensing Agencies  
 National Association of State EMS Officials  
 National Board for Certification in Occupational Therapy, Inc.  
 National Council of Architectural Registration Boards

AADB  
 AASCB  
 AAVSB  
 AARO  
 ARBO  
 ASWB  
 ASPPB  
 BOC  
 CLARB  
 FCLB  
 FSMB  
 FSMTB  
 The Conference  
 NABBA  
 NABP  
 NAB  
 NASBA  
 NASCLA  
 NASEMSO  
 NBCOT  
 NCARB





# FARB Activities and Initiatives

- FARB Conferences
  - Forum
  - CEO Summit & Leadership Conference
  - Regulatory Law Seminar
- Model Documents
  - Uniform Model Practice Act
  - Model Code of Conduct for Board Members
  - Model Application for Licensure and Renewal
  - Model Consent Agreement
  - Model to Address Antitrust Issues

# FARB Activities and Initiatives

- FARB Focus Newsletter
- Comprehensive Regulatory Training (CRT)
- Top Regulatory Cases (TRC)
- FARB Look Up A License
- FARB Advocacy Efforts
- FARB Talking Points
  - Common Sense Regulation
  - Regulation for a Reason

# FARB Activities and Initiatives

- FARB Committees
  - Advocacy Committee
  - Model Documents Committee
  - Exam Security Committee
  - Governance Committee
  - Bylaws and Policies Committee
  - Business Development Committee
  - Finance Committee
  - Nominations Committee
  - Membership Committee

# FARB Friends



Many thanks for your generous contributions!

# SAVE THE DATE



25<sup>th</sup> Annual FARB RLS  
October 5 - 8, 2017  
Hyatt Regency Savannah  
Savannah, GA



42<sup>nd</sup> Annual FARB Forum  
January 25 - 28, 2018  
Loews Coronado Bay  
Coronado, CA



# News and Updates from FARB



@FARB.org



@FARB\_ORG

## Spread the word:

#FARBFORUM

# FARB Forum 2017

- Theme: ...acronym *KEY*
  - .....stands for?



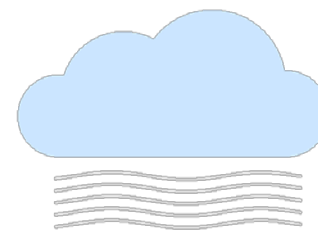
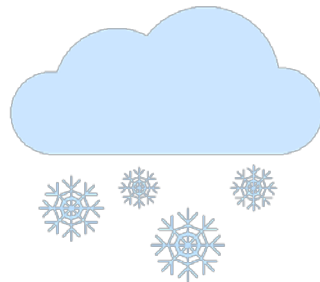
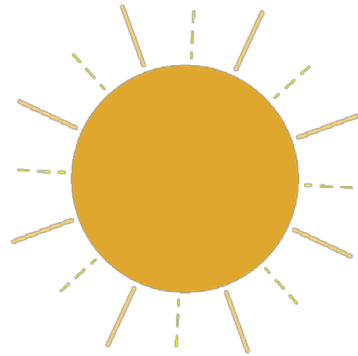
# FARB Forum 2017

- Theme:...acronym *KEY*
  - .....stands for?
  - **K**ee
  - **E**ducating
  - **Y**ourself



# Climate

- *Interesting political, legal and regulatory climate*



# THANK YOU TO OUR SPONSORS!

## Annual Sponsors:



ETHICS AND BOUNDARIES  
ASSESSMENT SERVICES LLC

## Forum Sponsors:



Partners in Protecting Communities  
from Fraud



# Special Thanks



# Thank You... Thank You... Thank You

- FARB BOD
- FARB Staff
- Speakers
- Texas and San Antonio as hosts
- Omni Hotel
- **ATTENDEES** as public protectors

• ***Please enjoy the 41<sup>st</sup> Annual FARB Forum 2017***

## Data for Decision Making: What information should be gathered and how is it put to use?

---

- Guillermo Ortiz De Zarate
- NCARB
- January 27, 2017
- 9:00am



# Data for Decision Making

What are we trying to decide?





# Problem Solving



# Challenge



# Understanding



# Solution Design

# Implementation

Is the challenge solved?

# understanding the challenge

People who think they know  
everything are a great annoyance to  
those of us who do.

- Isaac Asimov



If you know the enemy and know  
yourself you need not fear the results  
of a hundred battles.

- Sun Tzu

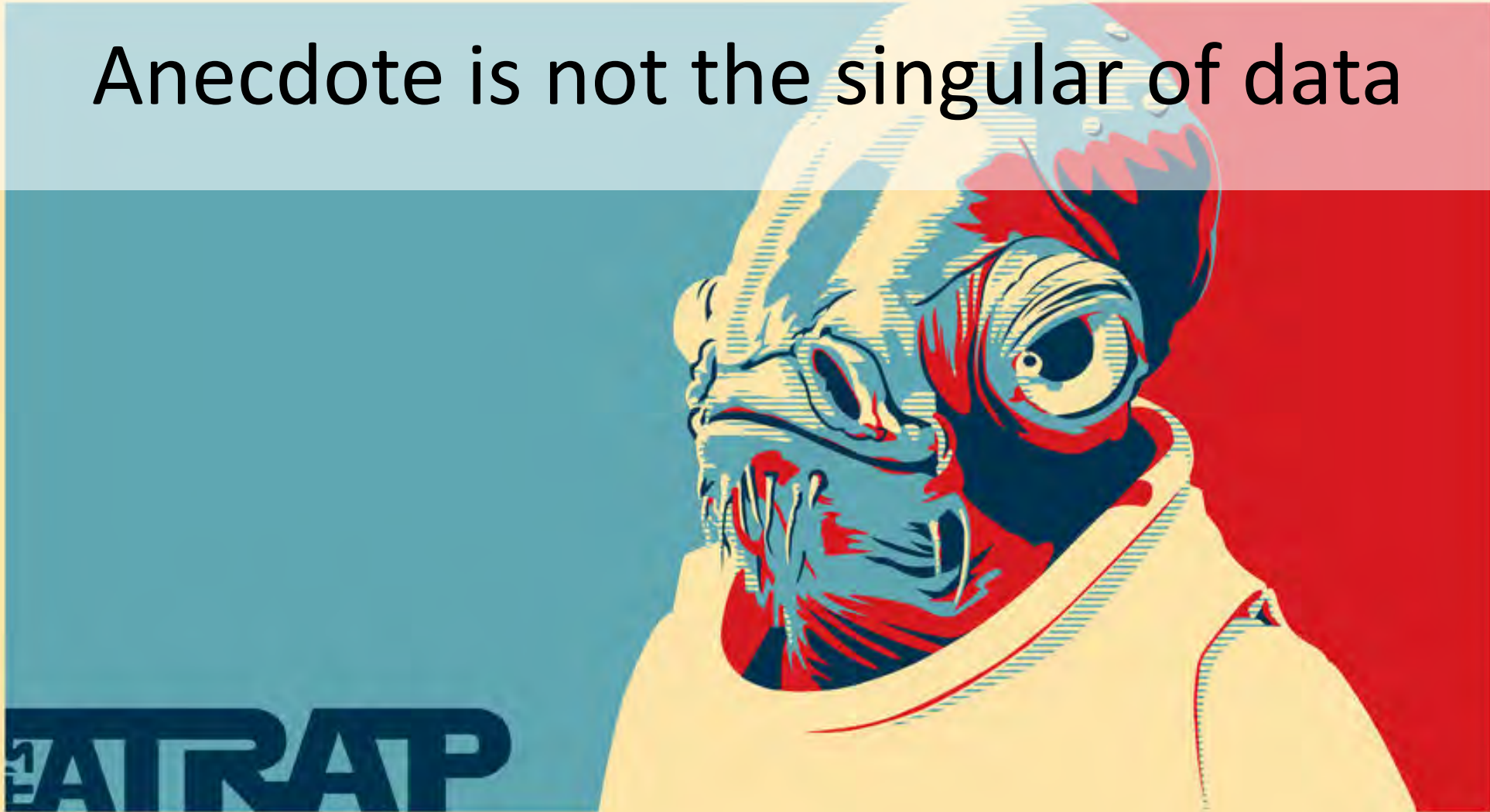


data can help

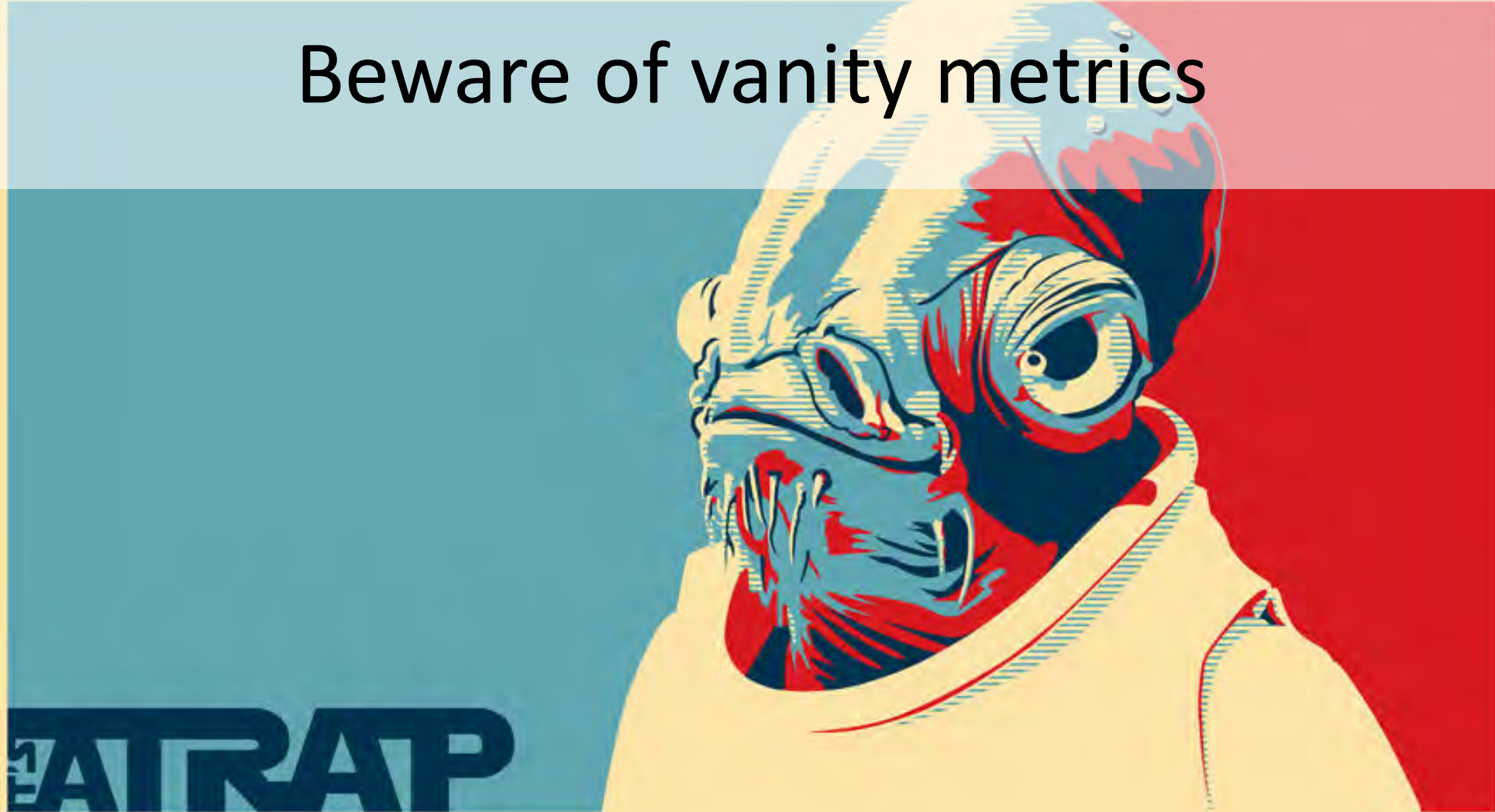
# data can help

- Understand the challenge
- Know when you solved it

Anecdote is not the singular of data



Beware of vanity metrics



vanity metrics

# facebook page likes



so what should we measure?



our mission



# What problem are you solving?

- Reducing the deaths from malaria
- Improving diversity representation
- Breaking a glass ceiling
- Protecting the health and safety of the public
- Stopping the deregulation movement

# Reducing the deaths from malaria

what would you measure to understand the  
problem is real and worth solving?

# Reducing the deaths from malaria

# of malaria deaths  
in a specific population in time?

# Reducing the deaths from malaria

rate of malaria infections  
in a specific population in time?

# Reducing the deaths from malaria

rate of malaria deaths per infections  
in a specific population in time?

# Reducing the deaths from malaria

Is the problem the infections  
or early access to treatment?

# Reducing the deaths from malaria

Is it easier to stop infections  
or improve access to treatment?

# Reducing the deaths from malaria

which one is more effective?



# Reducing the deaths from malaria

we might need to answer more than one  
question to understand the problem

# Reducing the deaths from malaria

need same questions to check our progress

# Reducing the deaths from malaria

if no progress then  
we need to change **something**



**Insanity**  
doing the same thing and  
expecting different results



# Reducing the deaths from malaria

results are important  
not the initiatives



Defects



Overproduction



Waiting



Non-Utilized Talent



Transportation



Inventory



Motion



Extra-Processing

# The 8 Wastes



**The ~~8~~ Wastes~~X~~** that matters



stopping the deregulation movement



# Stopping the deregulation movement

what is the challenge?

# Stopping the deregulation movement

Is it the deregulation movement?

# Stopping the deregulation movement

is it the potentially unnecessary regulation of  
some professions?

# Stopping the deregulation movement

what could we measure?

# Stopping the deregulation movement

how about we look at the challenge  
one profession at a time



protecting the public's health and safety

protecting the public's health and safety

what could we measure?

protecting the public's health and safety

# health problems instances?



protecting the public's health and safety

rate of health problems instances per service  
delivered?

protecting the public's health and safety

rate of health problems instances  
originated when practicing without a license  
vs with a license?

protecting the public's health and safety

evidence of the existence of the **problem**

protecting the public's health and safety

evidence of the existence of the **solution**

protecting the public's health and safety

where is the data?

protecting the public's health and safety

primary or secondary research

primary research

new data collected specifically  
to answer a question

# secondary research

use of existing data or research publicly or  
privately available



# secondary research

is there any group or organization that is  
currently collecting this data?

# secondary research

find data that can show some correlation  
with your regulatory efforts

secondary research

potentially not available

# secondary research

good news is we can obtain the data ourselves

primary research

what data do we need?

primary research

**transactional over opinion data**

primary research

**health and safety over professional conduct**

primary research

how can we gather it?



# primary research

- identify the touch point opportunities
  - anonymous calls
  - investigations

# primary research

- facilitate data recording
  - provide resources
  - create the SOPs
- don't make it optional

nobody is more interested  
in the results than you are

questions?

Guillermo Ortiz de Zarate  
GOrtiz@ncarb.org

## Data for Decision Making: What information should be gathered and how is it put to use?

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- Guillermo Ortiz De Zarate
- NCARB
- January 27, 2017
- 9:00am



# FARB Survey Results

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- Mai Lin P. Noffke
- Atkinson & Atkinson, LLC
- Friday, January 27, 2017
- 9:45 am – 10:15 am

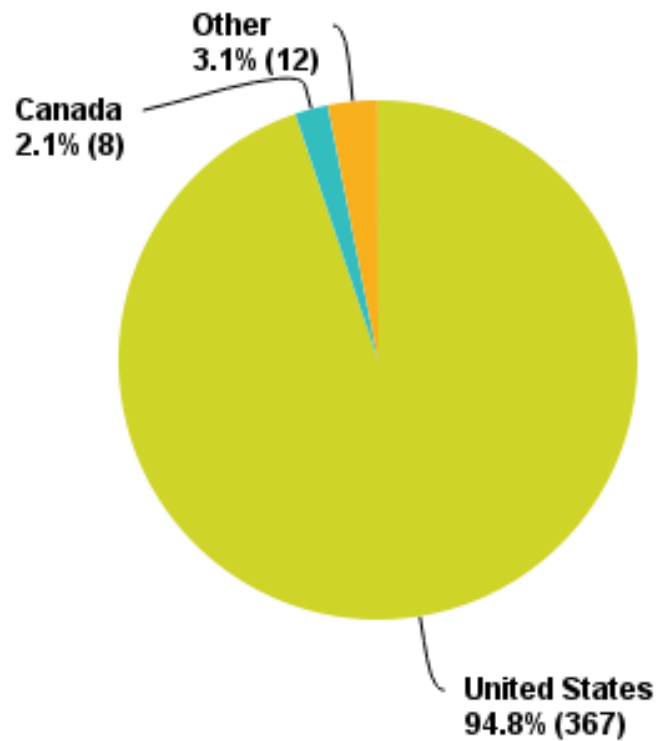


# FARB Survey Results

- 29 question survey sent to FARB mailing list and FARB Governing Members distributed survey link to their membership
- Responses collected between mid-December and beginning of January
- 390 Responses (not all respondents answered all questions)

## Q1: My Board is located in:

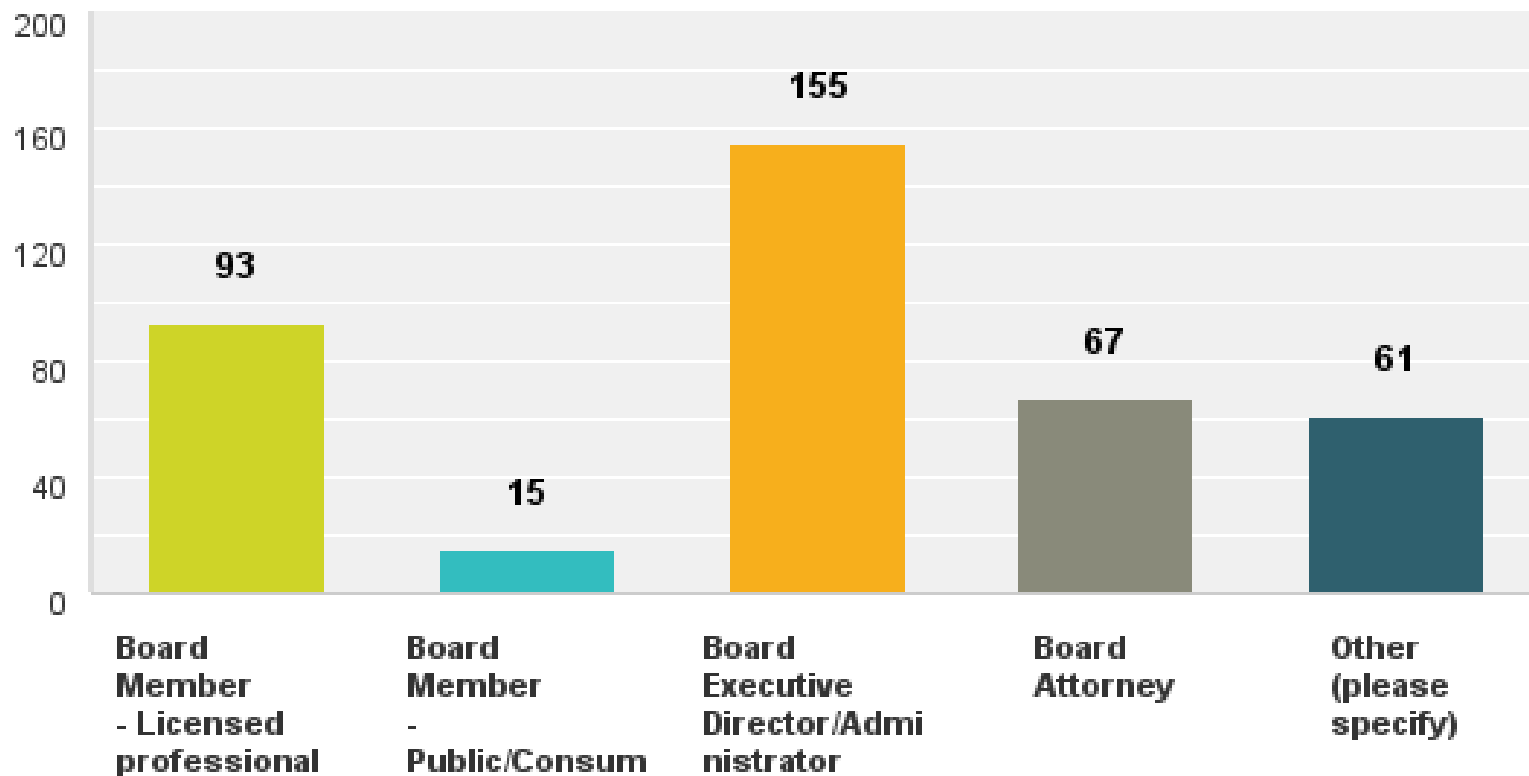
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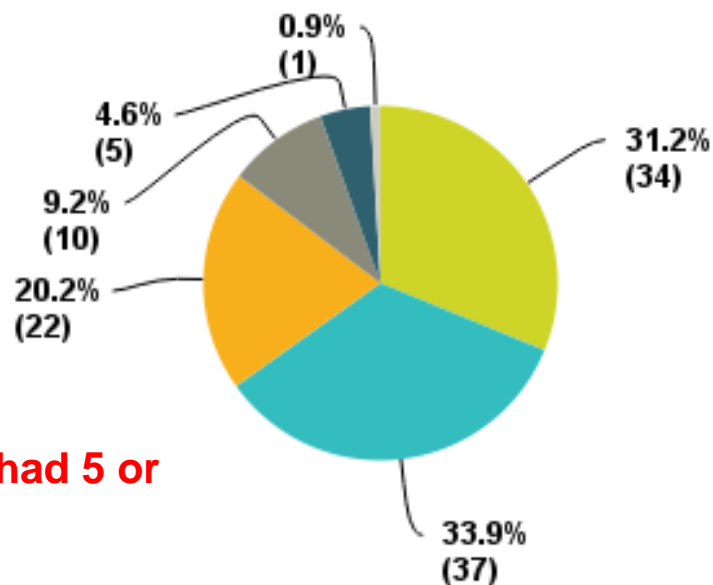
## Q2: I am a:

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#### Q4: Length of service in capacity noted above:

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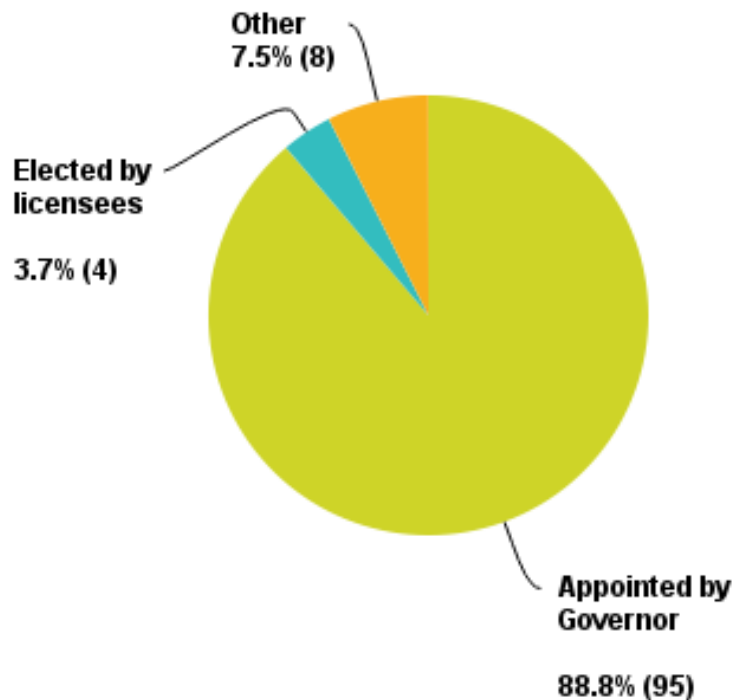


**Over 65% of respondents had 5 or more years of experience!**



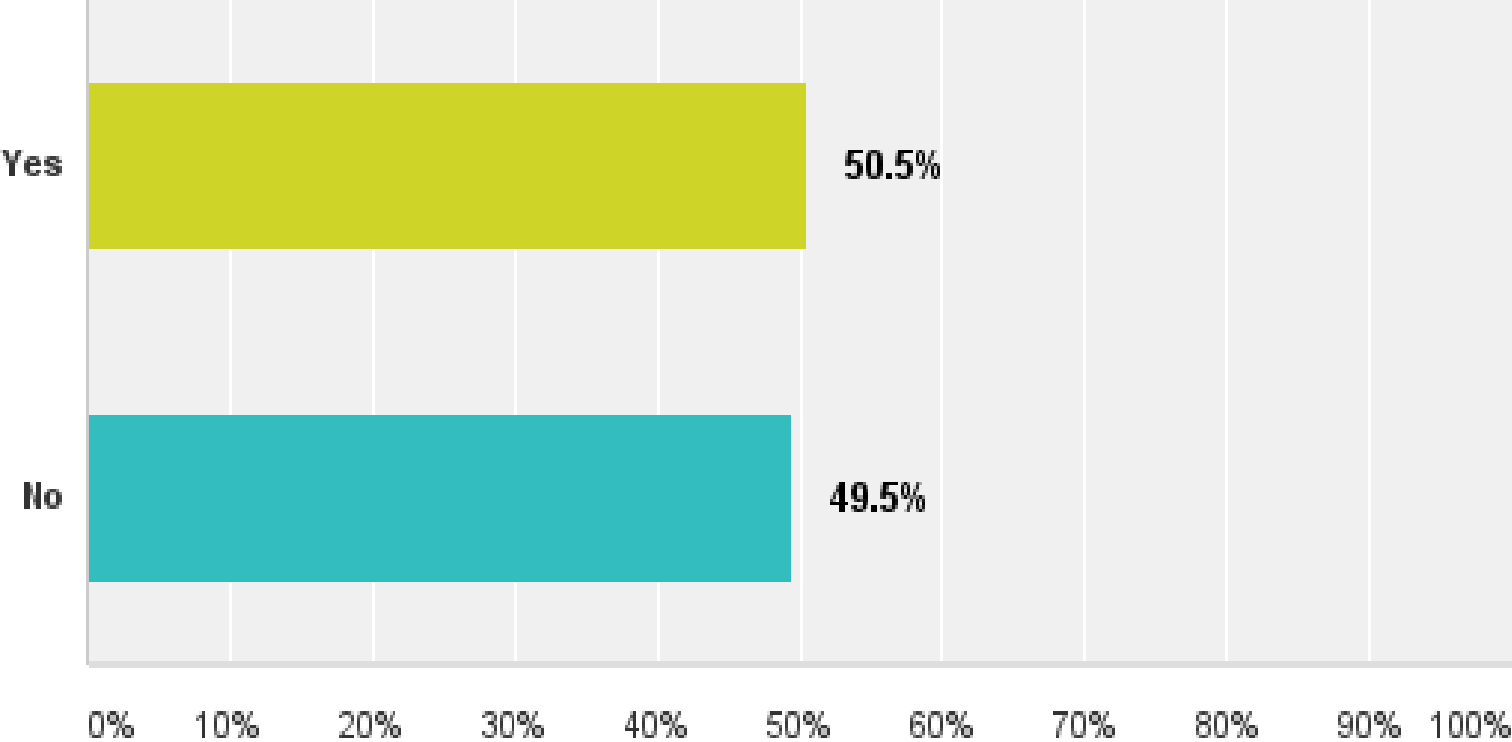
## Q5: Path to Board service:

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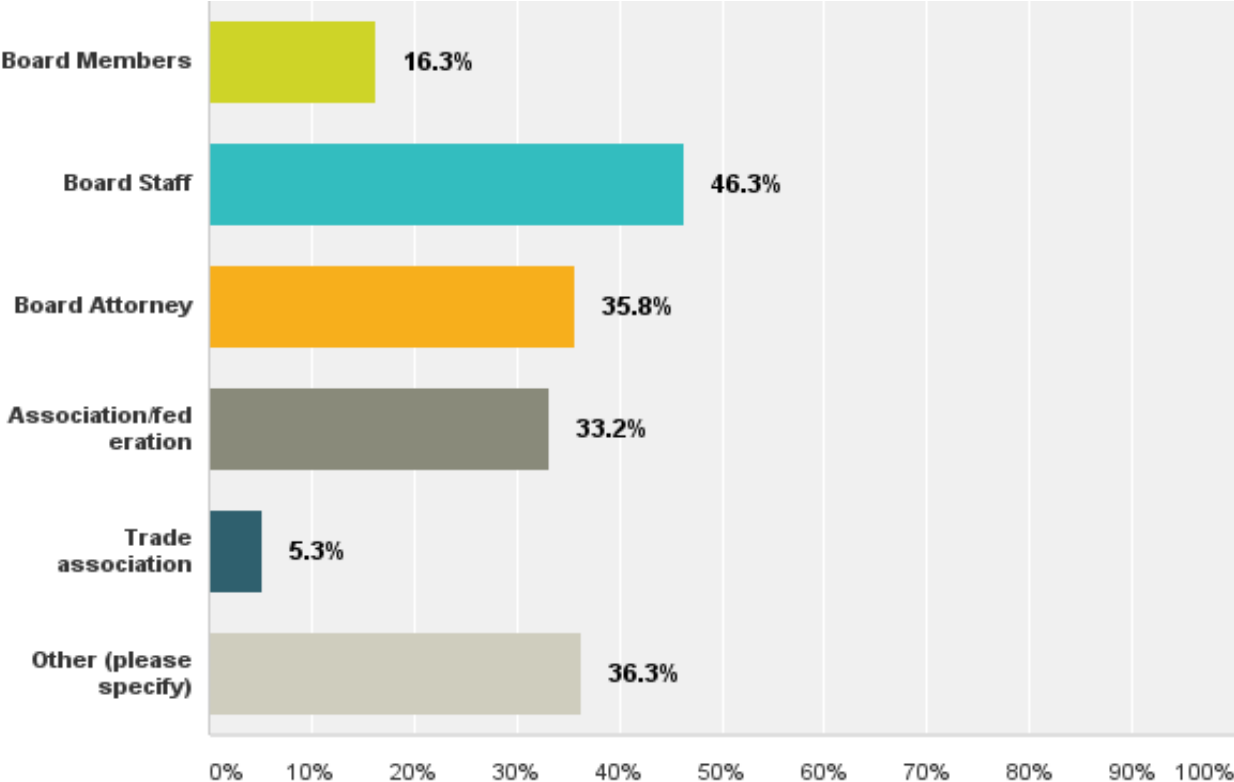


**Note that in Canada,  
board members are  
elected by the  
registrants/licensees**

**Q6: Did you receive any formal training regarding your Board service?**

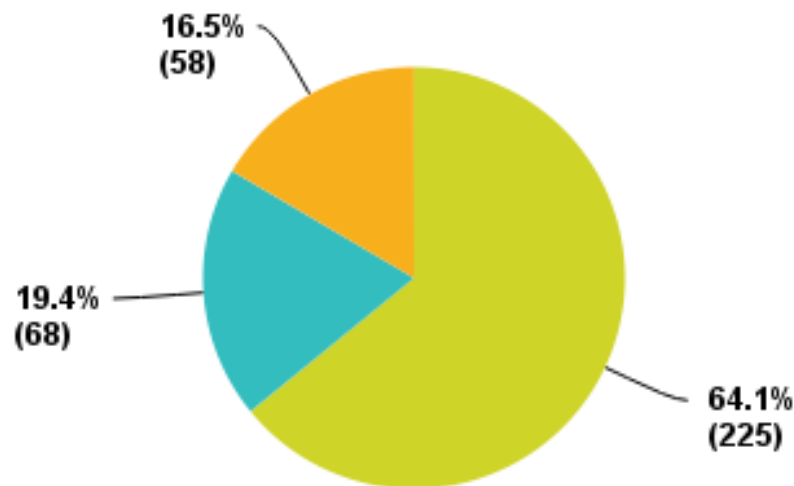


**Q7: Please identify who provided the training (check as many that apply):**



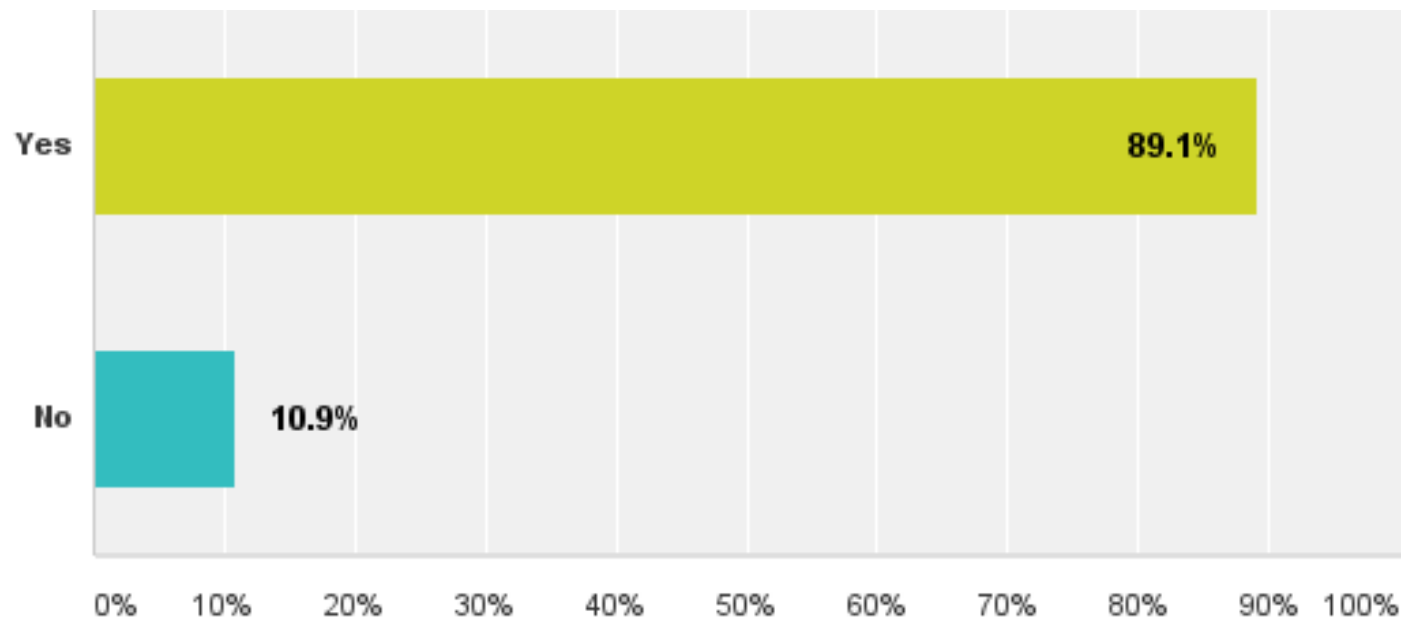
## Q8: Please identify your board structure:

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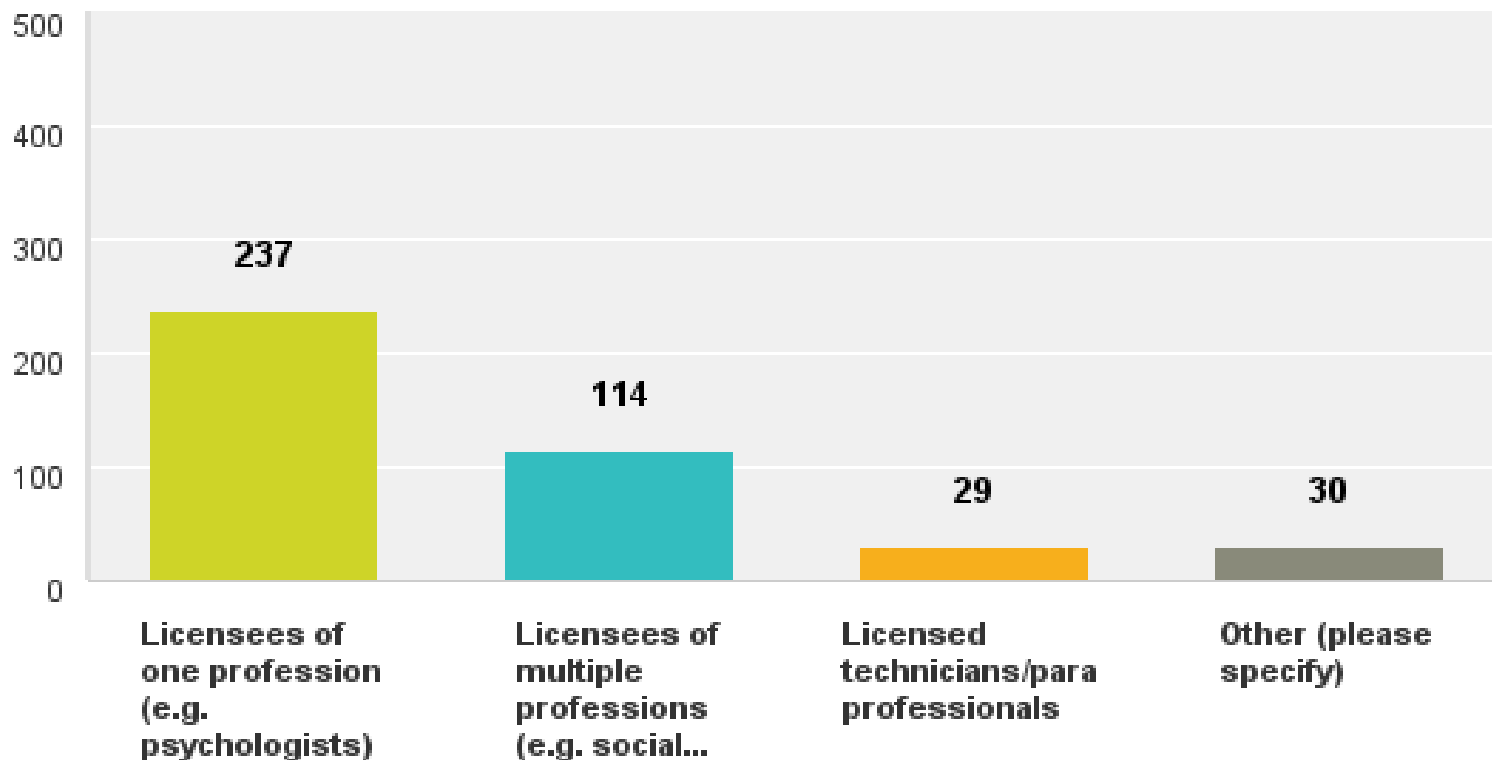


- Independent (sets own budget, board decisions are final)
  - Departmentalized (board is advisory to bureaucracy/department for final decisions)
  - Other (please specify)
-

# Q9: Does your Board have public/consumer members?



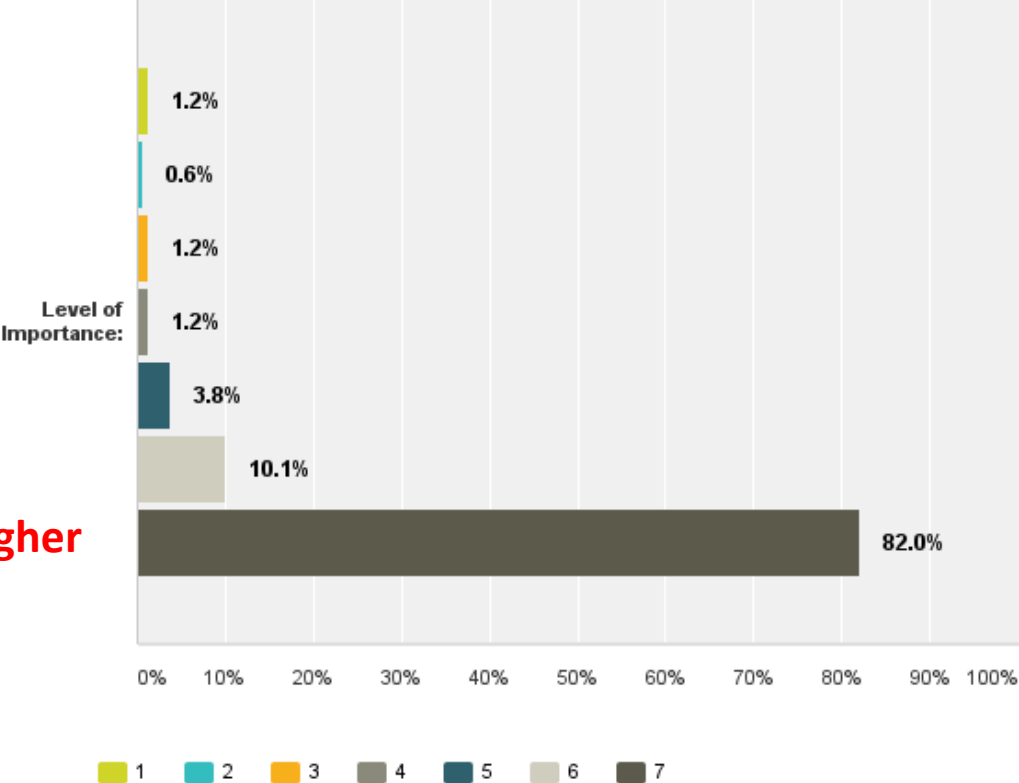
**Q10: In addition to public/consumer members, please identify the remaining members of the Board (check all that apply).**





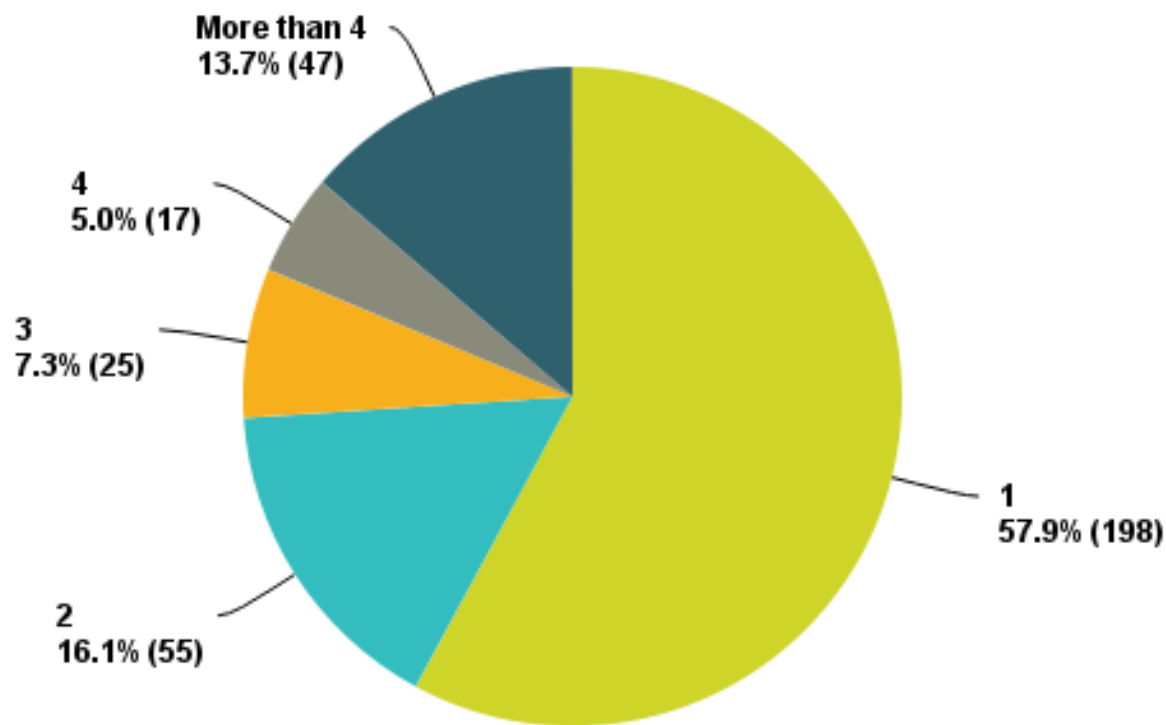
Q11: On a scale of 1 to 7 with 1 being not very important and 7 being extremely important, please identify how important it to have licensees serve on the Board?

Almost 96% rated importance a 5 or higher



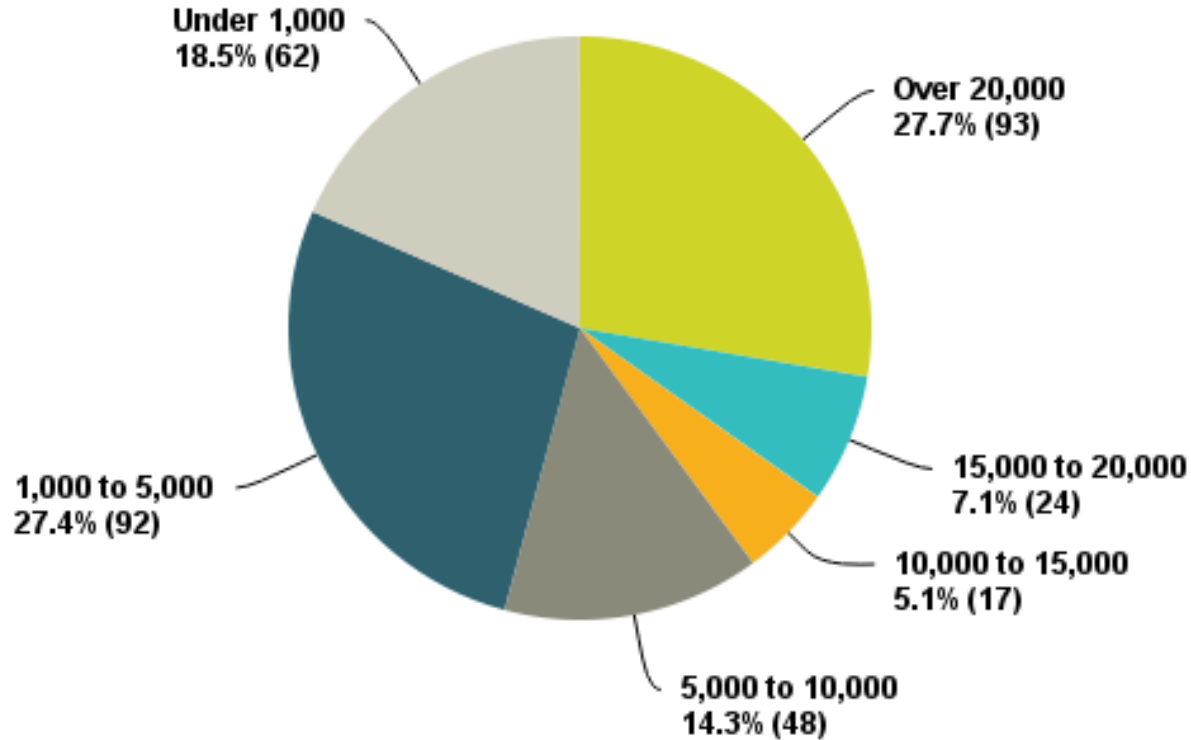
# Q12: How many professions are regulated by your Board?

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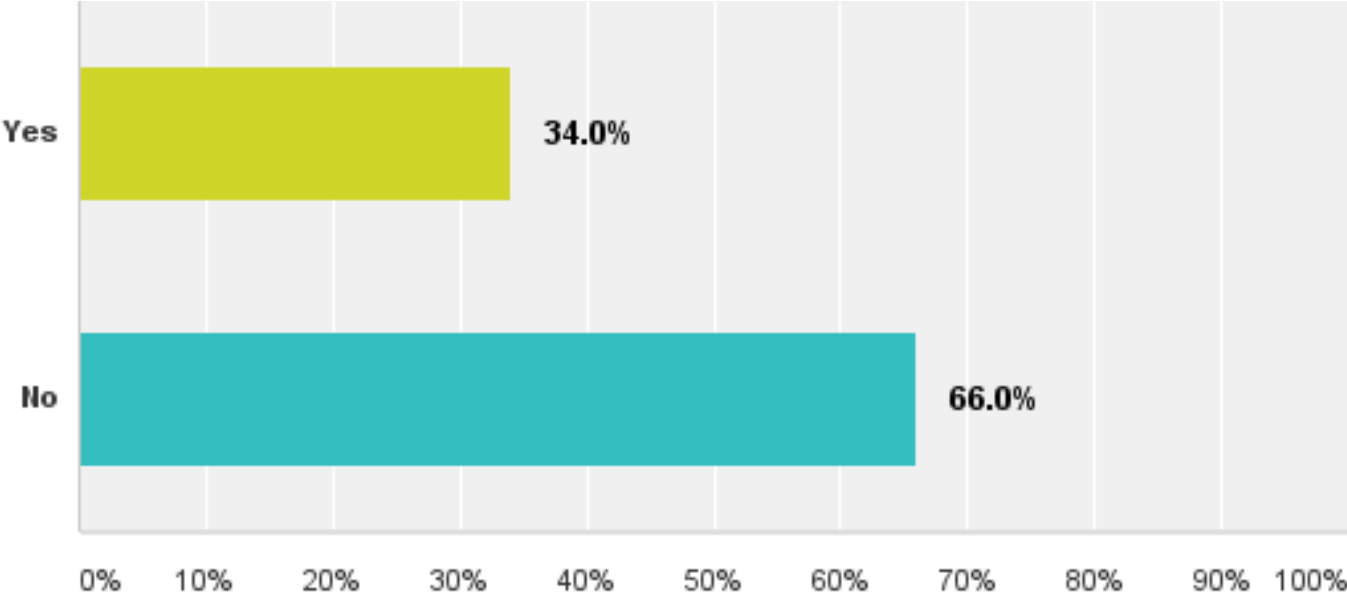
### Q13: How many persons/entities in total are licensed by your Board in your state?

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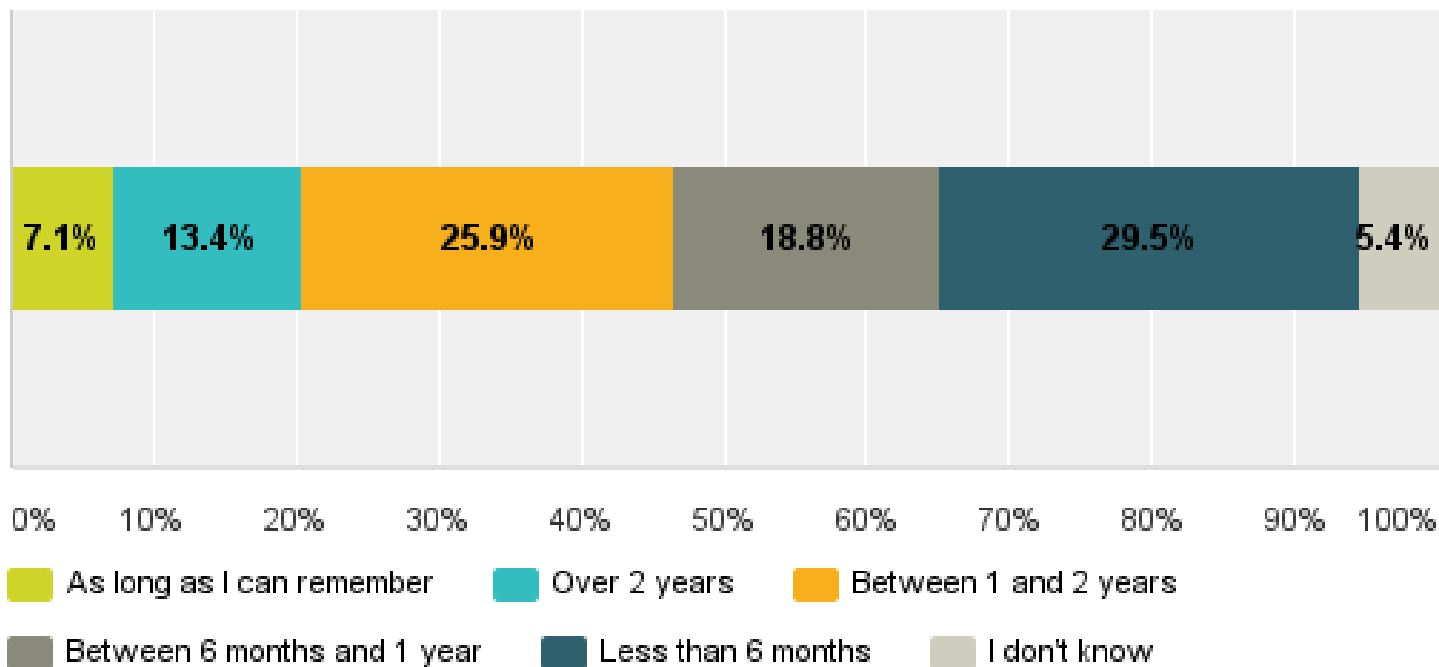
# Q15: Are there any vacancies on your Board?

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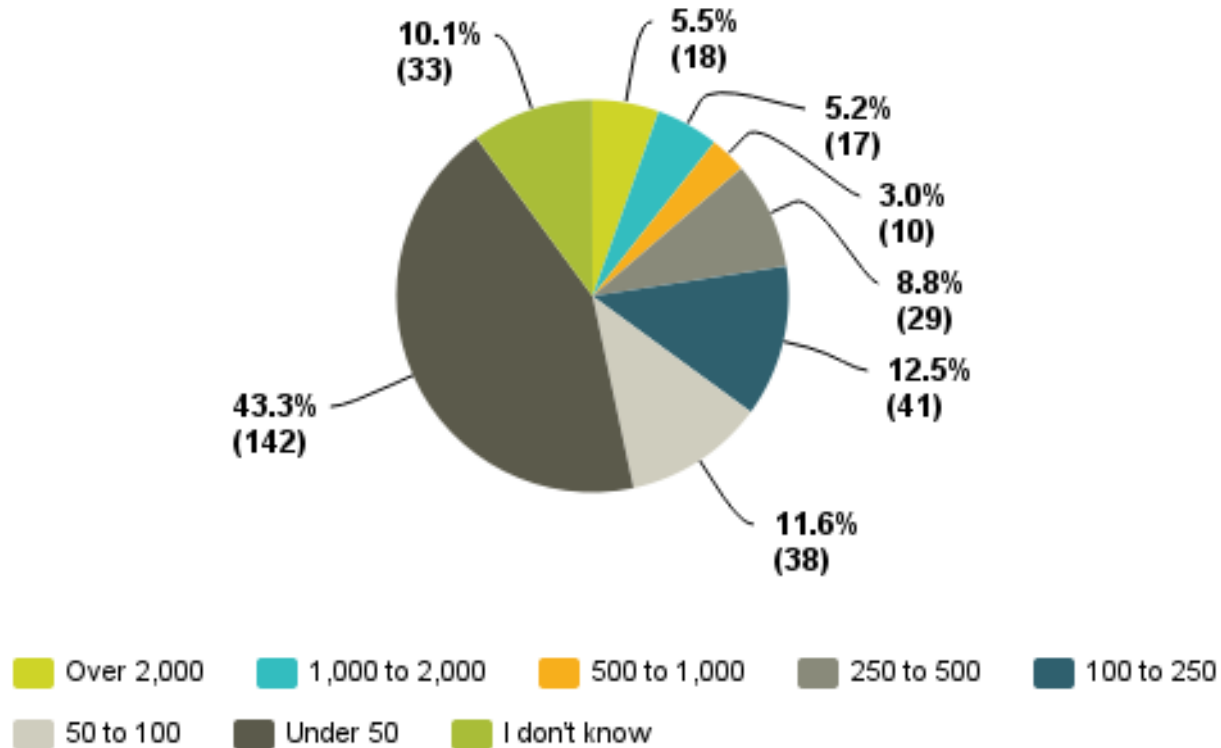


## Q16: How long has there been a vacancy?

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## Q19: On average, how many complaints are filed with your Board each year?

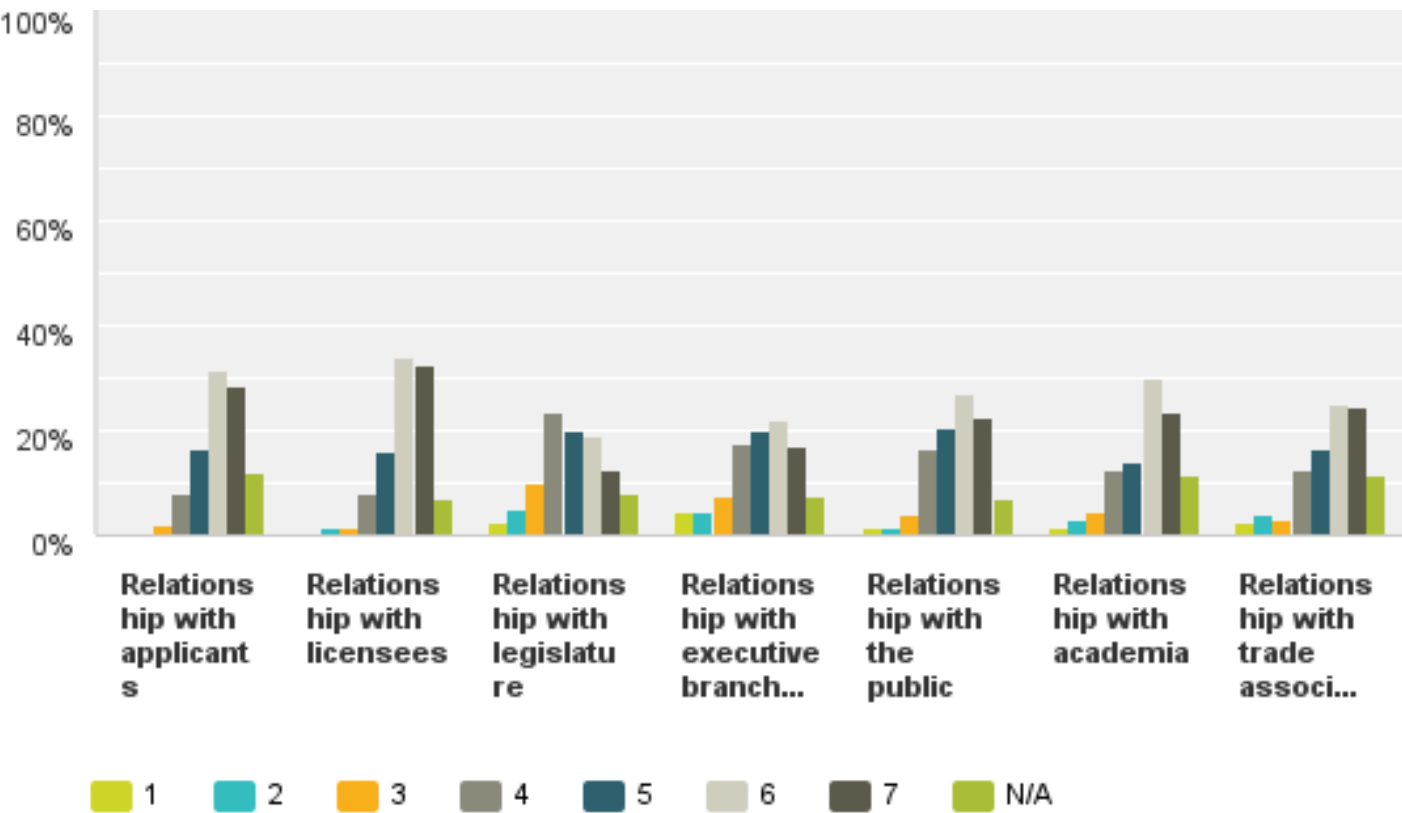


**Q19: On average, how many complaints are filed with your Board each year?**

---

- 43% of respondents have an average of less than 50 complaints/year
  - Compare that to the number of licensees – over 54% of respondents had more than 5,000 licensees
  - 10% of the respondents did not know
-

**Q20: For the following, please rate your level of satisfaction with 1 being not at all satisfied and 7 being very satisfied:**



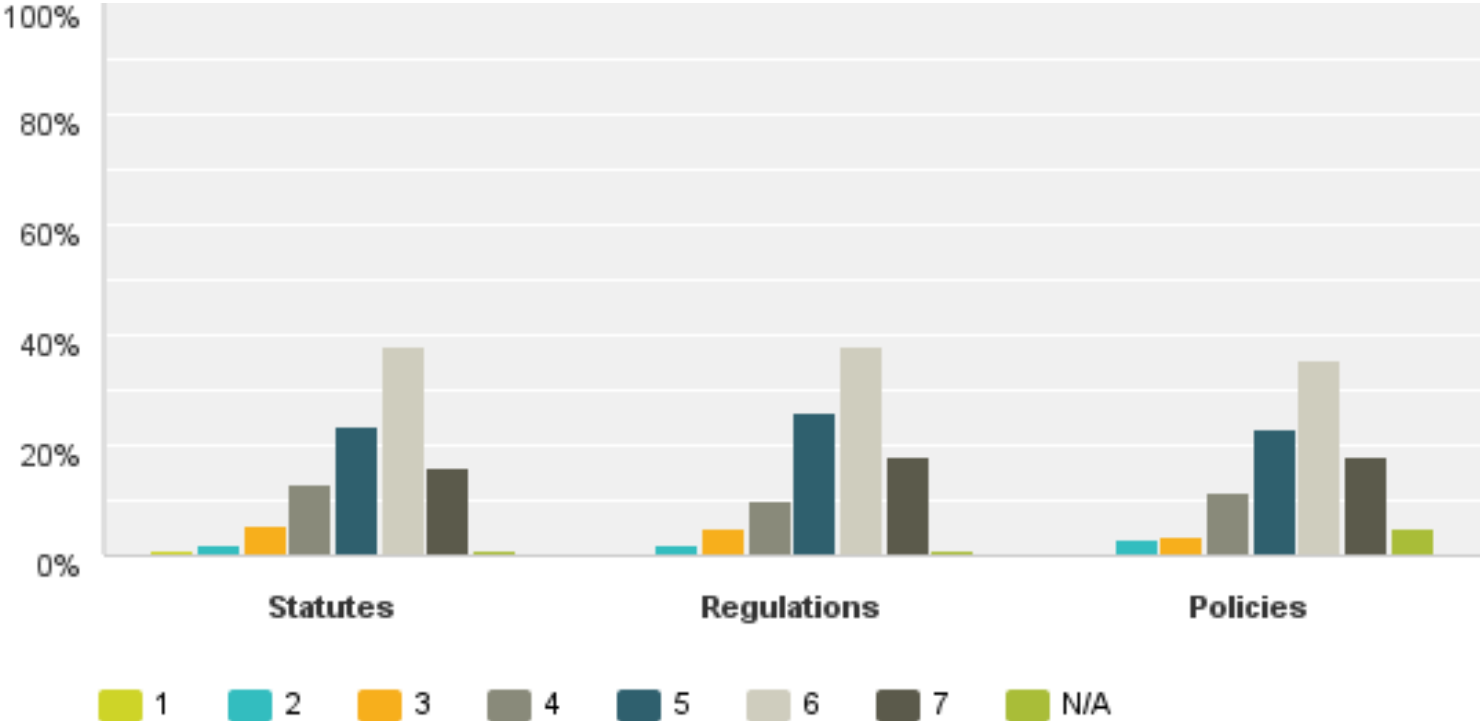


**Q20: For the following, please rate your level of satisfaction with 1 being not at all satisfied and 7 being very satisfied:**

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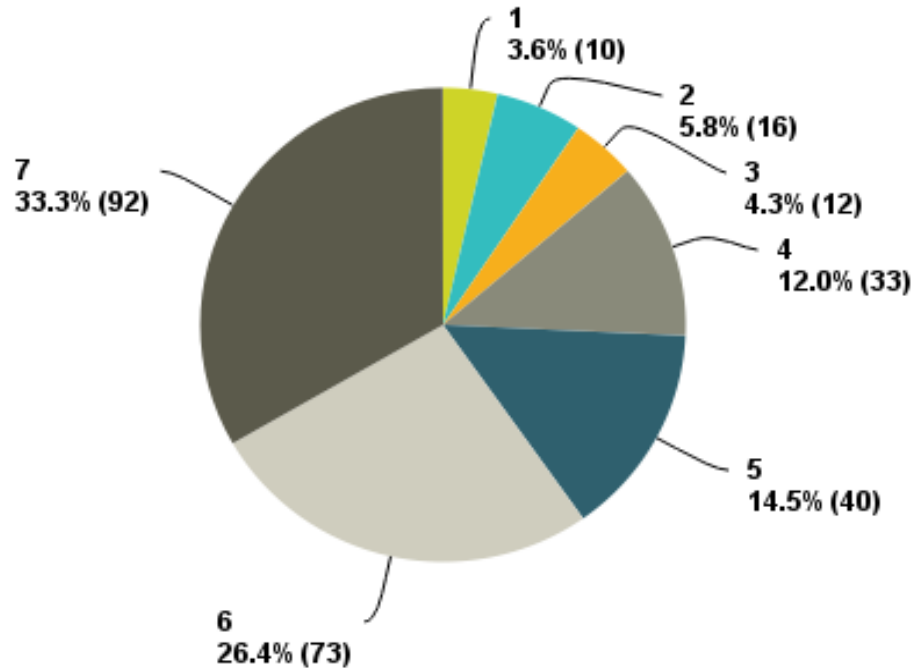
Relationship with:	Average Level of Satisfaction
Legislature	5.0
Executive/ Governor	5.14
Public	5.61
Trade Association	5.69
Academia	5.74
Licensees	6.04
Applicants	6.07

**Q21: For the following, please rate your level of satisfaction with 1 being not at all satisfied and 7 being very satisfied:**



**Q22: Regarding the finances of the Board, how satisfied are you with the financial wherewithal of the Board? (1 being not at all satisfied & 7 being very satisfied)**

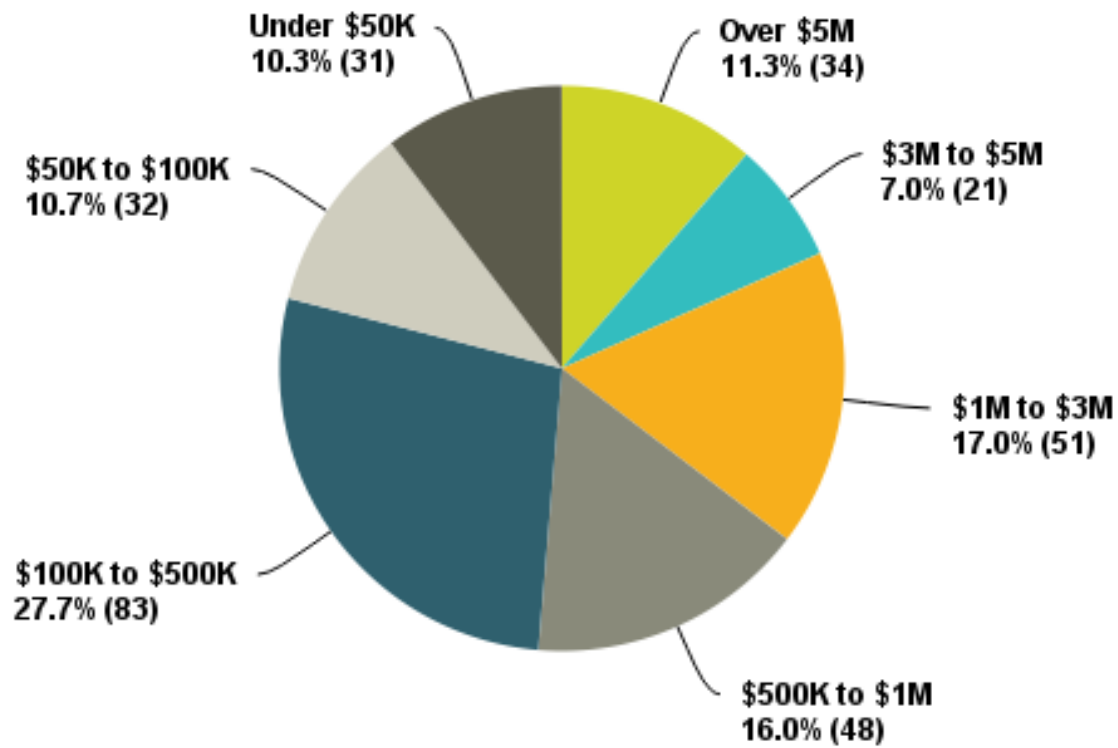
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Almost 60% rated satisfaction a 6 or higher - surprising that most of you feel you have sufficient funding. That's not the sentiment we hear anecdotally.

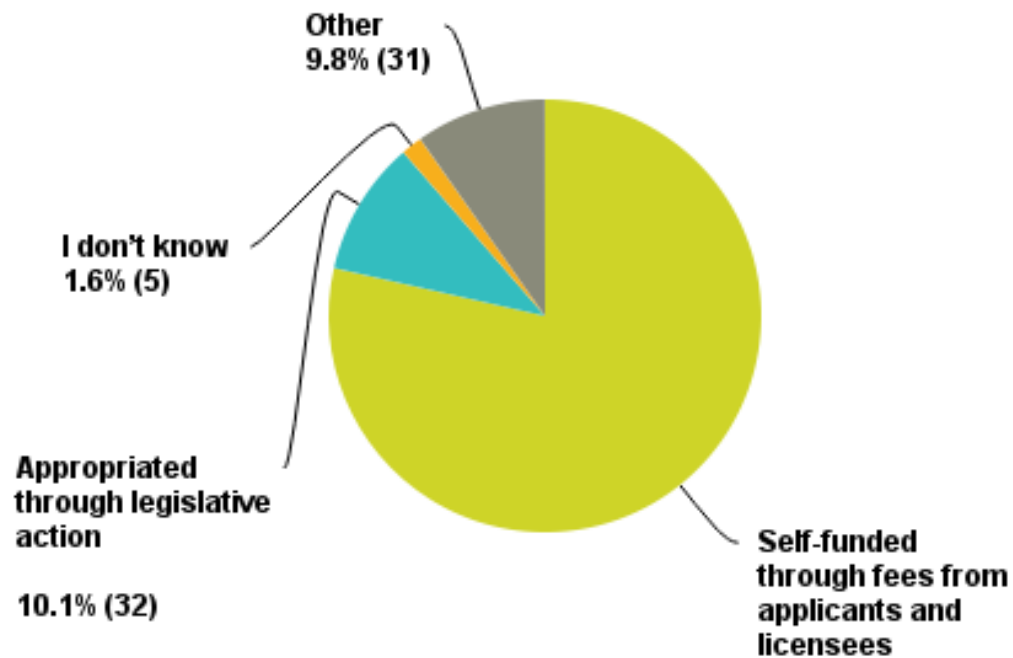
## Q23: What is your budget?

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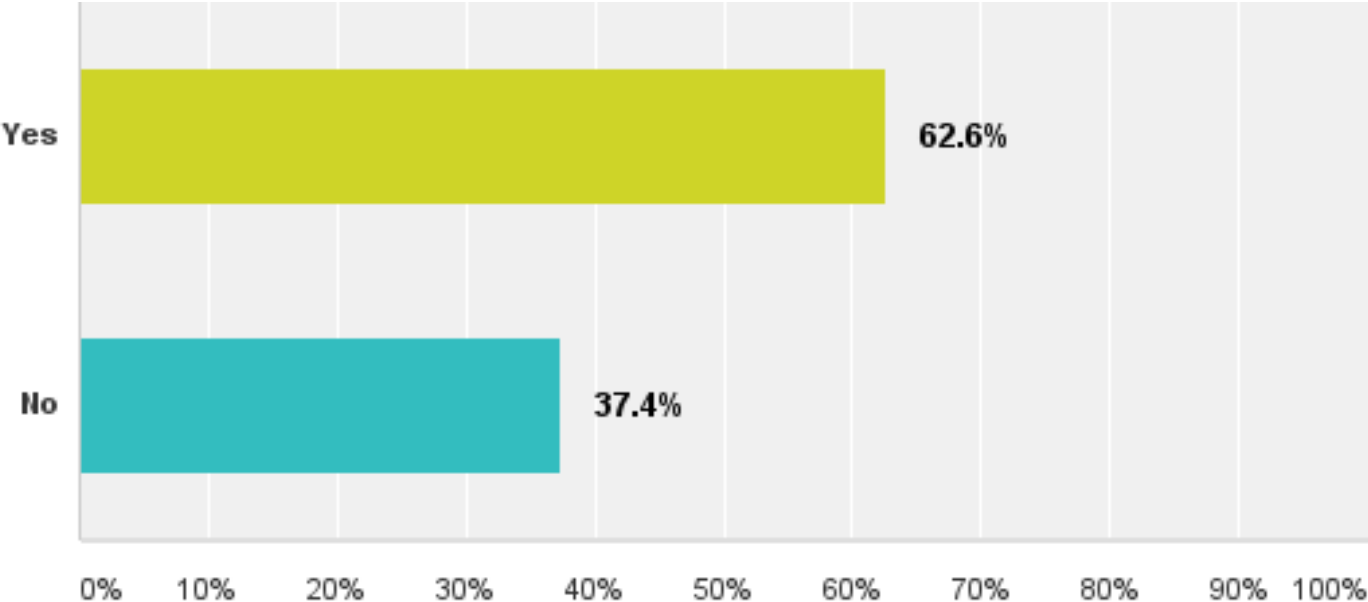
## Q24: How is you Board funded?

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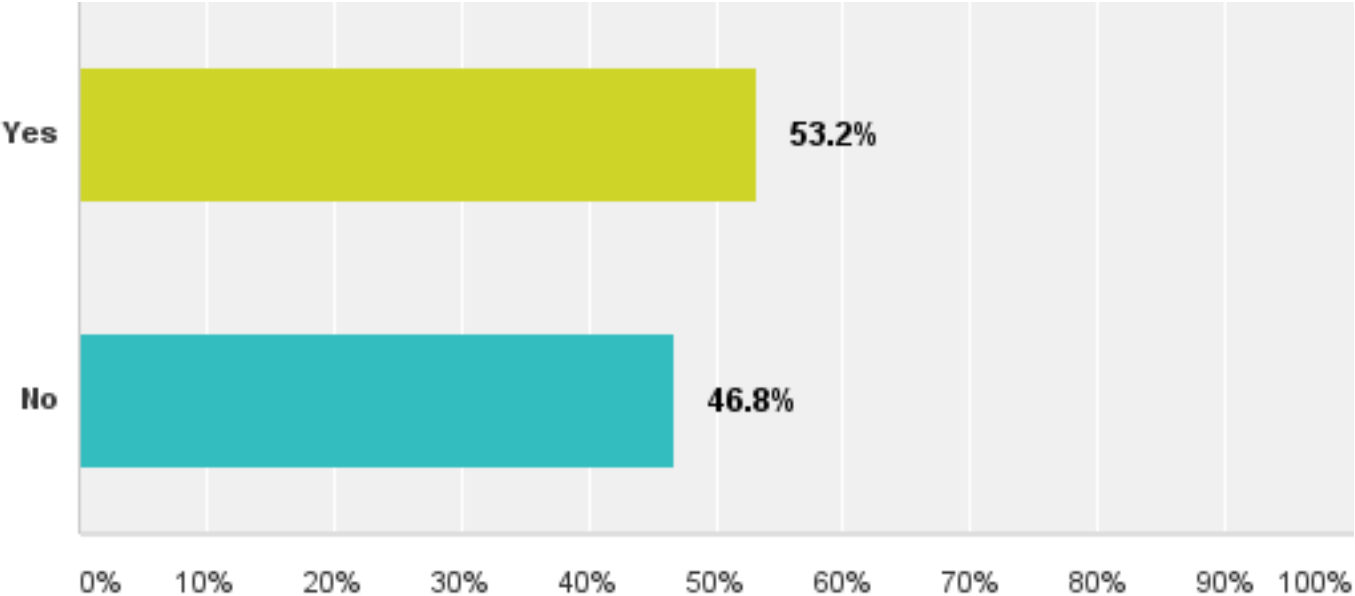
# Q25: Does your Board have reserve account?

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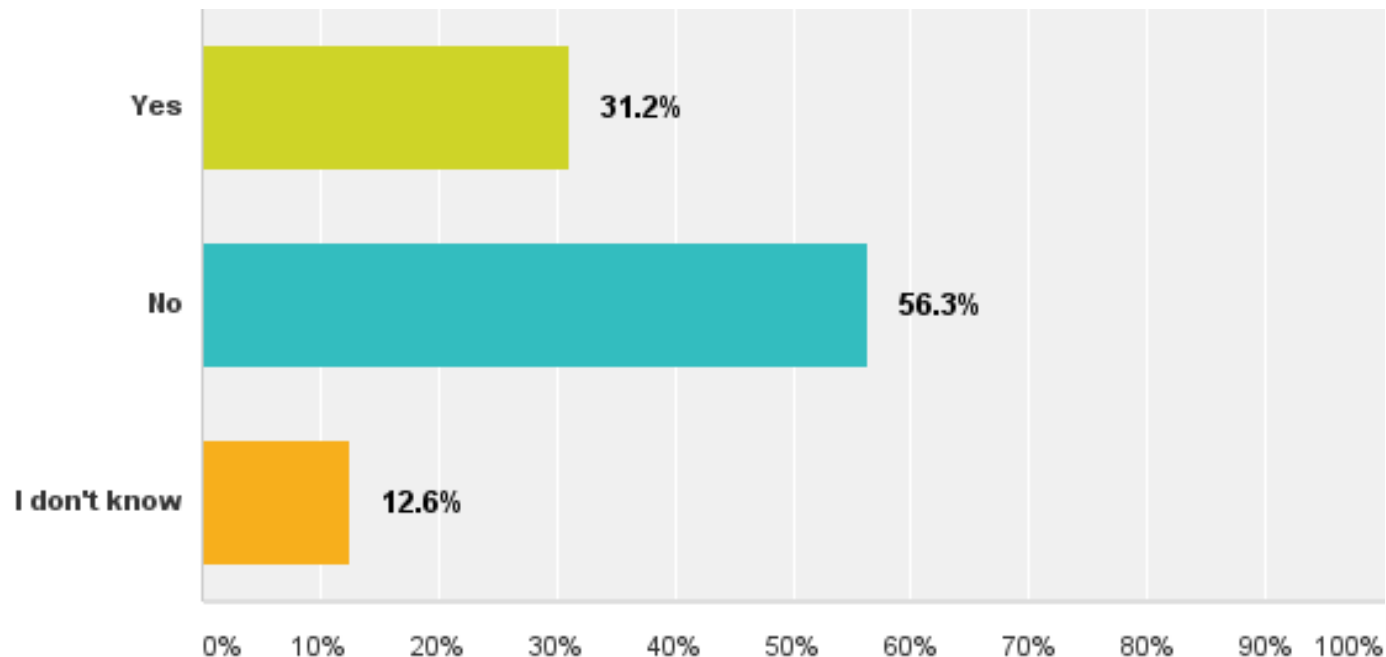
**Q26: Does your Board have a policy regarding contributions and goals of this reserve account?**

---



## Q27: Has the legislature ever “swept” your Board’s reserve account or excess revenue?

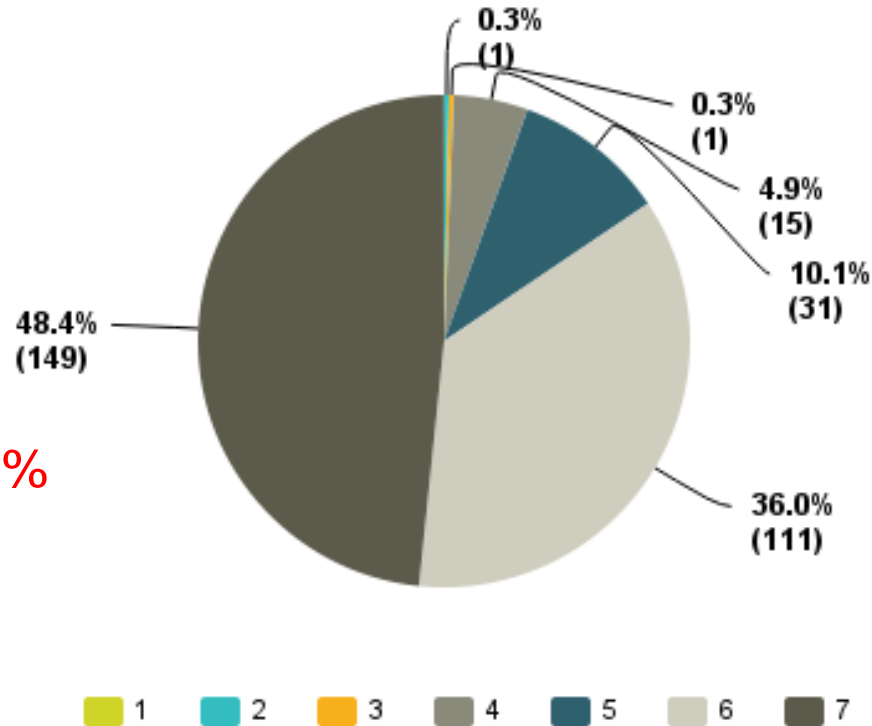
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**Q28: Over-all, please rate your level of satisfaction regarding your service with the board, with 1 being not at all satisfied and 7 being very satisfied:**

---



**This is great news – Over 84% of respondents rated satisfaction a 6 or a 7.**

**Q29: Please identify the biggest challenges to your Board. Feel free to identify as many challenges as you think are important.**

---

### Categories of issues frequently identified (in no particular order):

- Budgets, staffing/HR, technology support
  - Governor and legislature are “clueless”
  - Public awareness of mission of the board
  - Anti-regulatory climate; efforts to deregulate
  - Antitrust; effect of *NC Dental Board* case on operations
  - Communication with constituents
  - Outdated statutes and rules
-

# Thank You

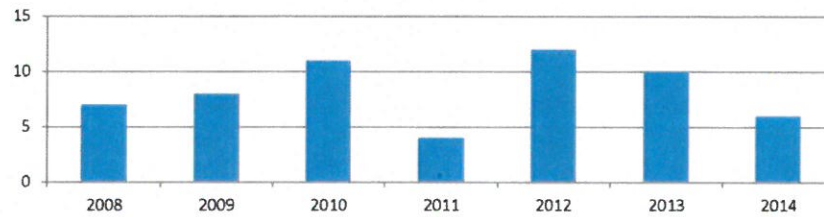
- Questions? Comments?
- Supplementary materials on Forum Conference website
  - Survey results and excerpts from sunset review report
  - Examples of types of data collected
- Don't forget to complete evaluation on this session for CE credit:  
<https://www.surveymonkey.com/r/9FJPKMK>

## APPENDIX IV – JCC Handouts – State Board of Registration for Professional Engineers

### Engineers Licensing Enforcement

2008 to 2014

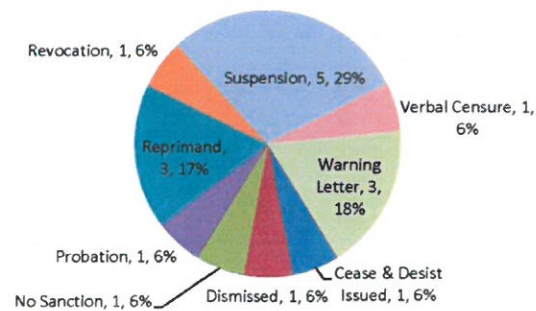
Complaints Received



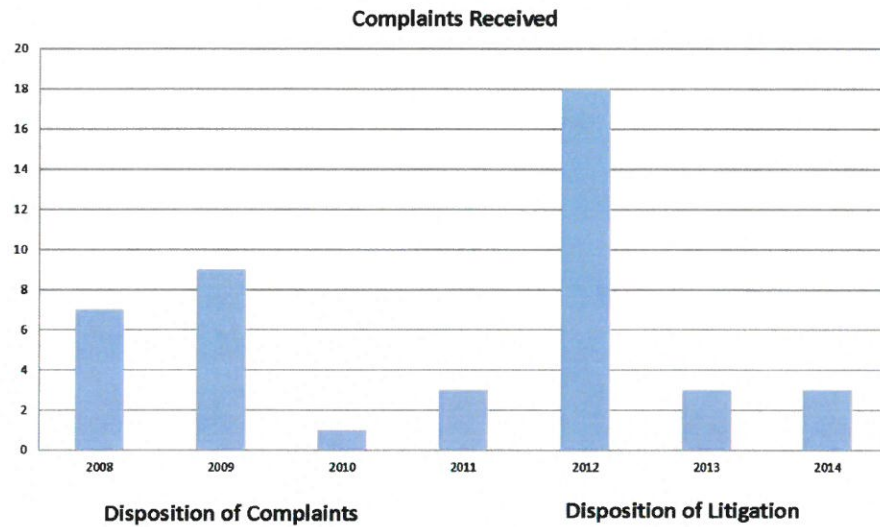
Results of Investigations

Alleged Violation	No Violation	Insufficient Evidence	Settled	Warning Letter	Litigation File Opened	Totals
Nonsanctionable Action	1					1
Unlicensed Practice	2	3	3	13	3	24
Application or Renewal Fraud					2	2
Discipline in Other Jurisdiction				1	3	4
Fraud					1	1
Lewd or Immoral Conduct					1	1
Unprofessional Conduct	10				3	13
Professional Incompetence	2			2	2	6
Totals	15	3	3	16	15	52

Disposition of Litigation



**Architects Licensing Enforcement  
2008 to 2014**



## **Chapter 4. Survey Results and Industry Perceptions of the Board**

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As part of this evaluation of the State Board of Morticians and Funeral Directors, the Department of Legislative Services (DLS) collected and analyzed data from a wide array of sources. This work included interviewing board members and staff, industry association representatives and members, and conducting a survey of individuals regulated by the board. This chapter presents the results of the survey and discusses industry perceptions of the board. While DLS review of the board and the majority of survey responses indicate that the board operates fairly, a troubling negative perception of the board exists among some industry members, which must be addressed.

### **Survey Provides Context and Perspective on Board and Industry**

The purpose of the survey was to provide critical context and perspective on the board and the funeral industry in the State. A personalized link to the survey was sent by email to every licensee, permit holder, and registrant who had an email address on file with the board. Thus, although the board issued a total of 1,790 licenses, permits, and registrations in fiscal 2016, the survey was sent to 1,077 recipients, as some individuals hold multiple licenses, registrations, or permits or did not have an email address on file with the board. DLS received responses from 550 individuals (a response rate of 51%), including 424 who identified themselves as morticians (approximately 46% of all morticians licensed by the board); 138 who identified themselves as holding funeral establishment licenses (representing approximately 48% of all funeral establishments licensed by the board); and 84 who identified themselves as crematory operators (approximately 58% of all crematory operators licensed by the board). A summary of the results of the full survey can be found in **Appendix 1**.

Survey responses provided insight into the demographics of the funeral industry in Maryland. The vast majority of respondents (81%) were licensed morticians, most of whom (63%) work in family-owned funeral establishments. Most respondents (75%) have been practicing in the funeral industry in Maryland for at least 10 years, while more than half (52%) have been practicing for at least 20 years. Almost half of respondents (46%) are also licensed in at least one neighboring jurisdiction. Although most respondents are a member of at least one professional association, 39% indicated they are not members of any Maryland associations. The three biggest associations represented by survey respondents were the Maryland State Funeral Directors Association (39% of respondents indicated that they are members), Delmarva Funeral Service Association (16% of respondents indicated that they are members), and Tri-County Funeral Directors Association (11% indicated that they are members).

## **Industry Largely Finds Regulation Excessive**

Throughout the sunset evaluation process, DLS heard through interviews and survey responses that some licensees believe that the board overregulates the industry. The majority of survey respondents (62%) felt that Maryland laws and regulations governing the funeral industry are either “somewhat excessive” or “excessive.” The increase in regulation of the industry prompted by legislative and regulatory changes in recent years may play a role in this perception.

## **Respondents Divided on Uniformity/Fairness of Board Members**

DLS also heard in interviews and survey comments critiques about the fairness of the board. On questions regarding whether the board enforces laws and regulations and handles disciplinary actions uniformly/fairly, as well as whether board members are impartial/professional, survey responses were split almost evenly with about half of respondents replying that they “strongly agree,” “agree,” or “somewhat agree,” and about half replying that they “somewhat disagree,” “disagree,” or “strongly disagree.”

## **Some Respondents Concerned with Inspection and Disciplinary Processes**

### **Inspection Process**

The survey included specific questions for funeral establishment licensees and crematory permit holders about whether they were cited for inspection violations. Only 15.0% of respondents who hold a crematory permit and 28.5% of individuals who hold a funeral establishment license indicated that they had been cited for an inspection violation. Further, the majority of crematory permit holders and funeral establishment licensees agreed that the inspection standards are clear as well as that inspectors conduct inspections in an impartial and professional manner.

However, some survey comments included complaints about vague inspection forms that do not include statutory or regulatory citations. For example, multiple respondents expressed a concern that the board was “making up requirements” as it went along. After reviewing inspection forms and conducting interviews, DLS notes that the inspector and executive director often offer suggestions or “best practices” based on what they have observed in other establishments or believe to be the logical extension of statute or regulation. Some respondents noted that facilities are being cited for violations of requirements, such as the presence of adequate ventilation or drainage in preparation rooms, for which they had not been cited during previous inspections. These facilities indicated that they are not required to have ventilation or drainage on the basis of being “grandfathered” under previous regulations. However, DLS is not aware of any authority that would allow establishments to be exempt from facility requirements based on when the relevant regulations were adopted.

## **Disciplinary Process**

The survey also included questions about whether the respondent (or the respondent's establishment) had ever been investigated by or had disciplinary action taken by the board. Of the 537 respondents to those questions, 23.5% indicated "yes." The majority of these respondents indicated that they felt the handling of the complaint was fair.

Some survey respondents raised issues with the disciplinary process. For example, multiple respondents stated that they felt they needed to hire representation to defend themselves against a complaint when they received a records subpoena from the board only to discover that they were not the target of the investigation but were being contacted as a witness. Survey respondents also expressed frustration that the board was the final arbiter of disciplinary actions and explained that they wished that they could appeal decisions of the board to a separate body. DLS notes that licensees, permit holders, and registrants are generally entitled to appeal board decisions to the Office of Administrative Hearings.

DLS also observed a general sense among some licensees that the board shuts down or threatens to shut down establishments for relatively minor infractions. The board advises, and DLS review of public orders corroborates, that the board's authority to shut down an establishment is rarely utilized. The board has used its authority to issue summary suspensions of licenses to shut down funeral establishments and crematories, or to close establishments and crematories by consent order in consultation with licensees, only eight times in the last nine years. In all instances, the authority was used to address situations that posed a serious risk of harm to public health and safety. In all cases of summary suspension, hearing dates were provided soon after the initial suspension to afford due process to the affected parties and to negotiate corrections to the establishment that would be required before reopening. In one case, the establishment requested that no hearing be scheduled and the establishment was closed permanently. DLS review of board records indicates that the board appears to be fairly implementing Maryland statute through the complaint and disciplinary processes.

## **No Evidence to Indicate Impropriety, but Negative Perceptions Remain**

While survey responses and board data indicate that the board handles inspections, investigations, and complaints fairly, a perception of unfairness, heavy-handedness, and overreaching authority persists among some licensees, which is a serious issue of concern and should be addressed promptly by the board.

Though DLS did not find evidence to indicate board impropriety, in order to maintain and improve the validity of the inspection and complaint process, the board should actively address several of the concerns raised in survey comments. To begin, the board should consider ways to continue to communicate to licensees the board's current interpretation of the existing transport regulations, which have been cited by some individuals as an example of the board overreaching its authority. The board should also clearly document and communicate to licensees board



complaint and investigation procedures. The board should also revise inspection forms and reports to enhance transparency and potentially build trust between the industry and the board. In revising inspection forms, the board should specifically (1) cite the statutory or regulatory authority for each requirement or violation and (2) clearly distinguish, in writing, between “deficiencies” and best practices. The board should also continue to communicate to the industry that current law and regulations do not allow grandfathering of establishments that are not compliant with statute and regulations.

In an effort to further increase transparency and understanding, the board should also examine and, if necessary, clarify subpoena procedures to ensure licensees, permit holders, and registrants understand whether they are the subject of an investigation or merely a witness. DLS recognizes that it is not always possible to provide notice to a licensee, permit holder, or registrant as to why the individual is being subpoenaed. Because information gleaned under subpoena may itself lead to an investigation of the witness, it may not be possible or appropriate for the board to classify the individual as a witness when the subpoena is issued.

If possible, the board should provide standardized language advising licensees of their ability to appeal a determination by the board, as well the rights of individuals appearing before the board or any informal complaint resolution body. This information should be provided both before and during the appearance. DLS heard from survey respondents that a complete explanation of the disciplinary process was not provided.

**Recommendation 5: The board should take concrete steps to address the perception among some licensees that board actions are unfair, heavy-handed, or overreach board authority, including (1) clarifying board interpretation of mortuary transport service regulations; (2) documenting and communicating board complaint and investigation procedures to the regulated industry; (3) revising inspection forms and reports; and (4) communicating to the industry that current law and regulations do not allow grandfathering of establishments that are not compliant with statute and regulations.**

### **Board Could Further Enhance Communication with Industry**

While a majority of survey respondents (57%) indicated that they felt that the board kept licensees adequately informed, several indicated that they felt the board was not proactive enough in notifying licensees of board activities, interpretations, and clarifications. Some stated that they felt referring to the board’s website for updates was time consuming and ineffective. DLS notes that most health occupations boards only provide updates to their licensees via postings on their websites and that a policy of posting information to the website likely provides legally sufficient notice to licensees. DLS also notes that the board currently has a system in place where an individual volunteer board member distributes meeting minutes as well as other news and information about the board via email following board meetings.

DLS recommends that the process of distributing meeting minutes, as well as notice of new procedures, new deadlines, and clarification of policy be handled by board staff rather than a volunteer board member. This would allow communications to be sent out via one centralized, State-based email, drawing recipients directly from the licensee database, and allow recipients to respond directly to the email in order to ask questions of board staff. The transition would reduce the burden on volunteer board members and standardize the communications – likely taking the format of a regular board newsletter. In concert with this effort, board staff should work with current licensees, permit holders, and registrants to update email addresses in the licensee database and to gather email addresses for licensees, permit holders, and registrants not currently on file. DLS acknowledges that implementing these changes may require some coordination with shared information technology personnel within the Department of Health and Mental Hygiene.

**Recommendation 6: Board staff should assume responsibility for the creation and distribution of meeting minutes and other board communications through one centralized email sent by board staff, in addition to posting information on the board’s website. Additional efforts should be made to collect or update email addresses for all licensees, permit holders, and registrants.**

### **Industry Members Cite Multiple Barriers to Opening a Funeral Establishment**

Throughout this evaluation process, DLS received a number of comments regarding the difficulty inherent in opening a new funeral establishment in Maryland. The most commonly identified barriers included education requirements, apprenticeship requirements, high license fees, difficulty entering the community of morticians and funeral directors, and the need to meet facility requirements.

Several survey respondents commented that the education requirements, which generally take two years to complete, are concerning in that the time it takes to obtain the required education prevents people from working for pay. Respondents also noted that the apprenticeship requirement does not adequately prepare morticians or funeral directors to “hit the ground running” or to own or operate their own establishment. Concerns were raised about the practical experience gained during the apprenticeship and whether the current metrics of completion, which include completing 1,000 hours of supervised practice and conducting 20 funerals, truly prepare apprentices to practice independently. **The board may wish to explore apprenticeship requirements in more detail to ascertain how well new licensees are prepared to practice.**

A number of respondents to the survey expressed concern with the high cost to maintain a license in the State, relative to surrounding states. While specific dollar amounts were not cited in responses, survey respondents referred to the combined cost of a funeral establishment license, a crematory license, mortician and crematory operator licenses, and a mortuary transport service license as being difficult to afford. Respondents also indicated that the requirements in statute and regulation, such as those pertaining to mortuary preparation room drainage and ventilation, refrigeration, and the permeability of surfaces, make opening a facility more expensive. They also raised issues around finding an adequate building and costs associated with purchasing a building

or leasing space with the ability to make required modifications. **In conducting the workload and fiscal analyses recommended in Chapter 3, the board may wish to take into consideration the cumulative impact of multiple fees on the industry.**

Several survey respondents noted the difficulty they experienced entering their local community of morticians and funeral directors, referencing acts of intimidation or what they perceived as unfair treatment by established owners in their area. Other respondents cited what they perceived to be unfair treatment by previous board members and inspectors (who are no longer connected to the board) who they believed to be affiliated with certain professional associations. Respondents who felt that they had experienced this discrimination frequently complimented the current board for what they considered the even application of statutes and regulations and for creating an “even playing field.”

## Appendix 1: Summary of Responses to the DLS Survey of Licensees and Registrants of the State Board of Morticians and Funeral Directors

The Department of Legislative Services (DLS), Office of Policy Analysis (OPA), of the Maryland General Assembly is evaluating the State Board of Morticians and Funeral Directors (board). As part of this evaluation, DLS is conducting a survey to gather feedback from members of the funeral industry regarding the performance of the board.

The survey primarily consists of multiple choice questions and should take no more than 10 minutes to complete.

Your responses will not be shared with the board or any other State agency.

Your responses will not be attributed to you by name.

The survey will close at midnight on September 30, 2016, so please respond by then. If you have any questions, please contact Kathleen P. Kennedy or Nathan W. McCurdy, Policy Analysts with DLS, by phone at (410) 946-5510 or (301) 970-5510, or by email at [OPAsurveys@gmail.com](mailto:OPAsurveys@gmail.com) or [DLSsurveys@mlis.state.md.us](mailto:DLSsurveys@mlis.state.md.us).

Question 1:

<b>1. In your opinion, Maryland laws/regulations governing the funeral industry are:</b>						
<b>Answer Options</b>	<b>Insufficient</b>	<b>Somewhat Insufficient</b>	<b>Reasonable</b>	<b>Somewhat Excessive</b>	<b>Excessive</b>	<b>Response Count</b>
	11 (2%)	26 (5%)	157 (30%)	209 (41%)	112 (22%)	515 (100%)
Additional Comments						109
<b><i>Answered Question</i></b>						<b>515</b>
<b><i>Skipped Question</i></b>						<b>35</b>

Question 2:

<b>2. Based on your experience with the board, please indicate your level of agreement with the following statements regarding board performance.</b>							
<b>Answer Options</b>	<b>Strongly Agree</b>	<b>Agree</b>	<b>Somewhat Agree</b>	<b>Somewhat Disagree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>	<b>Response Count</b>
The board enforces laws/regulations uniformly/fairly.	42 (8%)	117 (22%)	96 (18%)	83 (16%)	85 (16%)	104 (20%)	527 (100%)
The board handles disciplinary actions uniformly/fairly.	36 (7%)	134 (26%)	108 (21%)	74 (14%)	89 (17%)	78 (15%)	519 (100%)
Board members and staff are impartial/professional.	37 (7%)	113 (22%)	89 (17%)	95 (18%)	84 (16%)	104 (20%)	522 (100%)
The board keeps industry members adequately informed regarding changes in laws/regulations.	45 (8%)	154 (29%)	109 (20%)	62 (12%)	66 (13%)	98 (18%)	534 (100%)
The board is accessible and responsive.	58 (11%)	169 (32%)	110 (21%)	68 (13%)	58 (10%)	68 (13%)	531 (100%)
Additional Comments							105
<b>Answered Question</b>							<b>537</b>
<b>Skipped Question</b>							<b>13</b>

Question 3:

<b>3. Do you currently hold a crematory permit?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	20.8%	114
No	79.2%	435
<b>Answered Question</b>		<b>549</b>
<b>Skipped Question</b>		<b>1</b>

Question 4:

4. Based on your experience with the board, please indicate your level of agreement with the following statements regarding the inspection of crematories by the board.							
Answer Options	Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree	Response Count
Inspection standards for crematories are clear.	5 (5%)	32 (29%)	25 (23%)	20 (18%)	16 (15%)	11 (10%)	109 (100%)
Inspection standards are applied uniformly across crematories.	6 (6%)	34 (31%)	24 (22%)	21 (19%)	12 (11%)	11 (10%)	108 (100%)
Inspectors conduct inspections of crematories in an impartial/professional manner.	13 (12%)	43 (39%)	22 (20%)	15 (14%)	8 (7%)	8 (7%)	109 (100%)
Inspections provide helpful feedback regarding ways to improve the operations of crematories.	7 (6%)	36 (33%)	30 (28%)	15 (14%)	10 (9%)	11 (10%)	109 (100%)
Inspection standards for crematories adequately protect consumers and the public.	15 (14%)	49 (45%)	21 (19%)	8 (7%)	7 (6%)	9 (8%)	109 (100%)
Business owners can comply with inspection standards for crematories without undue burden.	6 (6%)	22 (21%)	22 (21%)	17 (16%)	12 (11%)	28 (26%)	107 (100%)
Inspection forms clearly convey issues that need to be corrected.	11 (10%)	43 (40%)	32 (30%)	6 (6%)	9 (8%)	7 (6%)	108 (100%)
Additional Comments							28
<b>Answered Question</b>							<b>109</b>
<b>Skipped Question</b>							<b>441</b>

Question 5:

<b>5. Has your crematory ever been cited for a violation of inspection standards?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	15.3%	17
No	84.7%	94
<b><i>Answered Question</i></b>		<b>111</b>
<b><i>Skipped Question</i></b>		<b>439</b>

Question 6:

<b>6. Did the inspection form related to the violation clearly convey the specific issues that needed to be corrected?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	82.4%	14
No	17.6%	3
If no, please explain.		3
<b><i>Answered Question</i></b>		<b>17</b>
<b><i>Skipped Question</i></b>		<b>533</b>

Question 7:

<b>7. Do you currently hold a funeral establishment license?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	40.3%	219
No	59.7%	325
<b><i>Answered Question</i></b>		<b>544</b>
<b><i>Skipped Question</i></b>		<b>6</b>

Question 8:

<b>8. Based on your experience with the board, please indicate your level of agreement with the following statements regarding the inspection of funeral establishments by the board.</b>							
<b>Answer Options</b>	<b>Strongly Agree</b>	<b>Agree</b>	<b>Somewhat Agree</b>	<b>Somewhat Disagree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>	<b>Response Count</b>
Inspection standards for funeral establishments are clear.	21 (10%)	60 (28%)	46 (22%)	31 (15%)	24 (11%)	29 (14%)	211 (100%)
Inspection standards are applied uniformly across funeral establishments.	18 (9%)	57 (28%)	34 (16%)	35 (17%)	28 (14%)	35 (17%)	207 (100%)
Inspectors conduct inspections of funeral establishments in an impartial/professional manner.	29 (14%)	75 (36%)	43 (20%)	25 (12%)	15 (7%)	23 (11%)	210 (100%)
Inspections provide helpful feedback regarding ways to improve the operations of funeral establishments.	29 (14%)	57 (27%)	58 (28v)	24 (11%)	21 (10%)	21 (10%)	210 (100%)
Inspection standards for funeral establishments adequately protect consumers and the public.	33 (16%)	81 (38%)	50 (24%)	18 (9%)	12 (6%)	17 (8%)	211 (100%)
Business owners can comply with inspection standards for funeral establishments without undue burden.	17 (8%)	52 (25%)	40 (19%)	29 (14%)	29 (14%)	42 (20%)	209 (100%)
Inspection forms clearly convey issues that need to be corrected.	28 (13%)	94 (45%)	55 (26%)	14 (7%)	7 (7%)	13 (6%)	211 (100%)
Additional Comments							44
<b>Answered Question</b>							<b>211</b>
<b>Skipped Question</b>							<b>339</b>



Question 9:

<b>9. Has your funeral establishment ever been cited for a violation of inspection standards?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	28.5%	61
No	71.5%	153
<b><i>Answered Question</i></b>		<b>214</b>
<b><i>Skipped Question</i></b>		<b>336</b>

Question 10:

<b>10. Did the inspection form related to the violation clearly convey the specific issues that needed to be corrected?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	78.7%	48
No	21.3%	13
If no, please explain.		12
<b><i>Answered Question</i></b>		<b>61</b>
<b><i>Skipped Question</i></b>		<b>489</b>

Question 11:

<b>11. Do you hold a transport license or permit?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	12.5%	67
No	87.5%	471
<b><i>Answered Question</i></b>		<b>538</b>
<b><i>Skipped Question</i></b>		<b>12</b>

Question 12:

<b>12. Based on your experience with the board, please indicate your level of agreement with the following statements regarding the inspection of mortuary transport services by the board.</b>							
<b>Answer Options</b>	<b>Strongly Agree</b>	<b>Agree</b>	<b>Somewhat Agree</b>	<b>Somewhat Disagree</b>	<b>Disagree</b>	<b>Strongly Disagree</b>	<b>Response Count</b>
Inspection standards for mortuary transport services are clear.	8 (12%)	28 (42%)	8 (12%)	5 (8%)	8 (12%)	9 (14%)	66 (100%)
Inspection standards are applied uniformly across mortuary transport services.	7 (11%)	22 (34%)	13 (20%)	7 (11%)	6 (9%)	10 (15%)	65 (100%)
Inspectors conduct inspections of mortuary transport services in an impartial/professional manner.	7 (11%)	26 (40%)	15 (23%)	3 (5%)	5 (8%)	9 (14%)	65 (100%)
Inspections provide helpful feedback regarding ways to improve operations of mortuary transport services.	9 (14%)	23 (35%)	15 (23%)	4 (6%)	6 (9%)	8 (12%)	65 (100%)
Inspection standards for mortuary transport services adequately protect consumers and the public.	10 (16%)	29 (45%)	10 (16%)	1 (2%)	5 (8%)	9 (14%)	64 (100%)
Business owners can comply with inspection standards for mortuary transport services without undue burden.	6 (9%)	20 (31%)	12 (19%)	4 (6%)	7 (11%)	15 (23%)	64 (100%)
Inspection forms clearly convey issues that need to be corrected.	9 (14%)	28 (43%)	15 (23%)	5 (8%)	2 (3%)	6 (9%)	65 (100%)
Additional Comments							13
<b>Answered Question</b>							<b>66</b>
<b>Skipped Question</b>							<b>484</b>

Question 13:

<b>13. Has your mortuary transport service ever been cited for a violation of inspection standards?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	4.3%	3
No	95.7%	66
<b>Answered Question</b>		<b>69</b>
<b>Skipped Question</b>		<b>481</b>

Question 14:

<b>14. Did the inspection form related to the violation clearly convey the specific issues that needed to be corrected?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	66.7%	2
No	33.3%	1
If no, please explain.		1
<b>Answered Question</b>		<b>3</b>
<b>Skipped Question</b>		<b>547</b>

Question 15:

<b>15. Has the board ever investigated you (or your establishment) or taken disciplinary action against you (or your establishment)?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	23.5%	126
No	76.5%	411
<b>Answered Question</b>		<b>537</b>
<b>Skipped Question</b>		<b>13</b>

Question 16:

16. Did board correspondence clearly convey the process required to resolve the investigation or disciplinary action?		
Answer Options	Response Percent	Response Count
Yes	65.9%	83
No	34.1%	43
If no, please explain.		38
<b>Answered Question</b>		<b>126</b>
<b>Skipped Question</b>		<b>424</b>

Question 17:

17. How long have you been practicing in the funeral industry in Maryland?		
Answer Options	Response Percent	Response Count
Less than 1 year	2.7%	14
1 to 4 years	9.9%	52
5 to 9 years	12.4%	65
10 to 19 years	22.8%	120
20 to 29 years	22.2%	117
30 to 39 years	15.4%	81
40 to 49 years	9.9%	52
50+ years	4.8%	25
<b>Answered Question</b>		<b>526</b>
<b>Skipped Question</b>		<b>24</b>

Question 18:

18. Please indicate if you are a member of any of the following associations (select all that apply)		
Answer Options	Response Percent	Response Count
Delmarva Funeral Service Association	16.4%	85
Maryland Cemetery, Funeral, and Cremation Association	3.5%	18
Maryland State Funeral Directors Association	39.1%	202
Funeral Directors and Morticians Association of Maryland	6.8%	35
Tri-County Funeral Directors Association	10.8%	56
Western Maryland Funeral Directors Association	0.2%	1
None	39.3%	203
Other (please specify)	19.1%	99
<b>Answered Question</b>		<b>517</b>
<b>Skipped Question</b>		<b>33</b>

Question 19:

<b>19. Do you hold a credential (license, permit, etc.) to practice in any state other than Maryland? Please indicate all that apply.</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
None	54.0%	281
Delaware	9.6%	50
District of Columbia	21.7%	113
Pennsylvania	9.4%	49
Virginia	17.7%	92
West Virginia	4.6%	24
Other (please specify)	5.4%	28
<b><i>Answered Question</i></b>		<b>520</b>
<b><i>Skipped Question</i></b>		<b>30</b>

Question 20:

<b>20. In which jurisdiction do you primarily work?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Allegany County	1.8%	8
Anne Arundel County	7.5%	34
Baltimore City	12.1%	55
Baltimore County	14.3%	65
Calvert County	2.6%	12
Caroline County	1.3%	6
Carroll County	5.3%	24
Cecil County	1.1%	5
Charles County	1.8%	8
Dorchester County	1.3%	6
Frederick County	2.9%	13
Garrett County	0.9%	4
Harford County	4.4%	20
Howard County	3.3%	15
Kent County	1.1%	5
Montgomery County	7.9%	36
Prince George's County	10.5%	48
Queen Anne's County	0.2%	1
Somerset County	0.4%	2
St. Mary's County	0.9%	4
Talbot County	0.4%	2
Washington County	2.0%	9
Wicomico County	2.6%	12
Worcester County	0.9%	4
Out of State	8.1%	37
n/a	4.4%	20
<b>Answered Question</b>		<b>455</b>
<b>Skipped Question</b>		<b>95</b>

Question 21:

<b>21. Which board-issued credential(s) do you currently hold? Please indicate all that apply.</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Apprentice	2.1%	11
Courtesy Card	4.4%	23
Crematory Operator	16.0%	84
Crematory Permit	8.2%	43
Funeral Director	35.4%	186
Funeral Establishment	26.3%	138
Mortician	80.8%	424
Mortuary Transport Service	6.3%	33
Other (Please Specify)	1.7%	9
<b>Answered Question</b>		<b>525</b>
<b>Skipped Question</b>		<b>25</b>

Question 22:

<b>22. Where are you currently employed?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Sole Proprietor Funeral Establishment	13.2%	69
Family-owned Funeral Establishment	63.0%	328
Corporate-owned Funeral Establishment	10.4%	54
Crematory	6.7%	35
Mortuary Transport Service	3.3%	17
Self-employed	11.3%	59
Retired	3.1%	16
Unemployed	1.5%	8
Other (Please Specify)	6.3%	33
<b>Answered Question</b>		<b>521</b>
<b>Skipped Question</b>		<b>29</b>

Question 23:

<b>23. Please provide a phone number where you can be reached. Providing a phone number is not required but will allow us to ask follow-up questions if necessary. Your responses will not be attributed to you by name, and the completed surveys will not be shared with the board or any other State agency.</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Name	96.6%	255
Phone Number	96.2%	254
<b><i>Answered Question</i></b>		<b>264</b>
<b><i>Skipped Question</i></b>		<b>286</b>

Question 24:

<b>24. Please provide any additional information you would like for us to consider in our evaluation of the board.</b>	
<b>Answer Options</b>	<b>Response Count</b>
	153
<b><i>Answered Question</i></b>	<b>153</b>
<b><i>Skipped Question</i></b>	<b>397</b>





**Exhibit 1.1**  
**Major Workload Indicators for the State Board of Physicians**  
**Fiscal 2012-2016**

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
<b>Physician Licenses</b>					
New	1,902	1,800	1,765	1,911	1,964
Renewal and Reinstatement	12,312	14,932	12,960	15,263	13,139
Unlicensed Medical Practitioners <sup>1</sup>	2,899	2,650	1,934	2,552	2,673
<b>Allied Health Licenses</b>					
New	1,355	1,083	1,474	1,073	1,111
Renewal and Reinstatement	2,889	8,816	3,333	9,538	3,599
<b>Total Licenses Issued</b>	<b>21,357</b>	<b>29,281</b>	<b>21,466</b>	<b>30,337</b>	<b>22,486</b>
<b>Total Complaints<sup>2</sup></b>	<b>1,991</b>	<b>1,242</b>	<b>1,272</b>	<b>1,180</b>	<b>1,367</b>

<sup>1</sup> Unlicensed medical practitioners are medical students completing clinical training and medical graduates completing postgraduate training in the State.

<sup>2</sup> Total complaints includes complaints received in the fiscal year as well as complaints still pending from previous fiscal years.

Source: *Fiscal 2014, 2015, 2016, and 2017 Budget Books*; State Board of Physicians

MBP is composed of 22 members. By statute, the membership is drawn as follows:

- 11 practicing licensed physicians, including 1 doctor of osteopathy, appointed in accordance with a statutory nominating process;
- 1 practicing licensed physician appointed at the Governor's discretion;
- 2 practicing licensed physicians with full-time faculty appointments who serve as representatives of academic medical institutions and are appointed from lists of names submitted by the Johns Hopkins University School of Medicine and the University of Maryland School of Medicine;
- 1 representative from the Department of Health and Mental Hygiene (DHMH) nominated by the Secretary;
- 1 certified physician assistant appointed at the Governor's discretion in accordance with a statutory nominating process;
- 5 consumer members; and

**Exhibit 3.2**  
**Complaint Volume and Disposition of Complaints**  
**Fiscal 2012-2016**

	<b><u>FY 2012</u></b>	<b><u>FY 2013</u></b>	<b><u>FY 2014</u></b>	<b><u>FY 2015</u></b>	<b><u>FY 2016</u></b>
<b><u>Complaint Volume</u></b>					
Complaints Pending from a Previous Year	835	254	254	248	294
New Complaints	1,156	988	1,018	932	1,073
<b>Total Complaints Received</b>	<b>1,991</b>	<b>1,242</b>	<b>1,272</b>	<b>1,180</b>	<b>1,367</b>
<b><u>Disposition of Complaints</u></b>					
Closed with No Action	1,272	633	553	498	607
Closed with Advisory Opinion	261	238	200	161	220
Closed with Formal Action	214	342	271	227	272
<b>Total Complaints Closed</b>	<b>1,747</b>	<b>1,213</b>	<b>1,024</b>	<b>886</b>	<b>1,099</b>

Note: Total complaints closed does not equal total complaints received as not all complaints are resolved in the same fiscal year they are received.

Source: *Fiscal 2014, 2015, 2016, and 2017 Budget Books*; State Board of Physicians

**Board Generally Resolving Complaints within Statutorily Required Timeframe**

Section 14-401.1(k) of the Health Occupations Article stipulates that complaints should be completed “as expeditiously as possible and, in any event, within 18 months after the complaint was received.” The board has generally met this goal (which equates to about 548 days) for cases that do not go through OAH. On average, from fiscal 2012 through 2016, the board resolved cases involving physicians in 428 days (1.2 years) and cases involving allied health professionals in 320 days (0.9 years). Cases involving the unlicensed practice of medicine took longer to resolve (476 days, or 1.3 years).

Additionally, the board refers approximately 10 cases per calendar year to OAH. Cases that go through the OAH process take significantly longer to resolve, as the process could involve both DCCR (prior to referral to OAH) and an exceptions hearing (after the OAH hearing) before the board issues a final decision and order. Between calendar 2012 and 2016, the board referred 50 cases to OAH; on average, these cases took 1,054 days (2.9 years) to resolve (from complaint receipt to the board’s final decision and order).

**Concerns with the Two-panel System**

Board staff indicates that the two-panel system has resulted in some internal inefficiencies and has not noticeably improved the timely resolution of complaints. Staff must now prepare cases

### Most Common Grounds for Discipline Remain Unchanged while Complaint Sources Continue to Shift

As noted in the 2011 sunset evaluation, immoral or unprofessional conduct and the failure to meet the standard of care continue to be the most common disciplinary grounds investigated by the board. As shown in **Exhibit 3.5**, from fiscal 2012 through 2016, the board investigated an average of 705 cases per fiscal year that involved immoral or unprofessional conduct and an average of 394 cases per fiscal year that involved the failure to meet the standard of care.

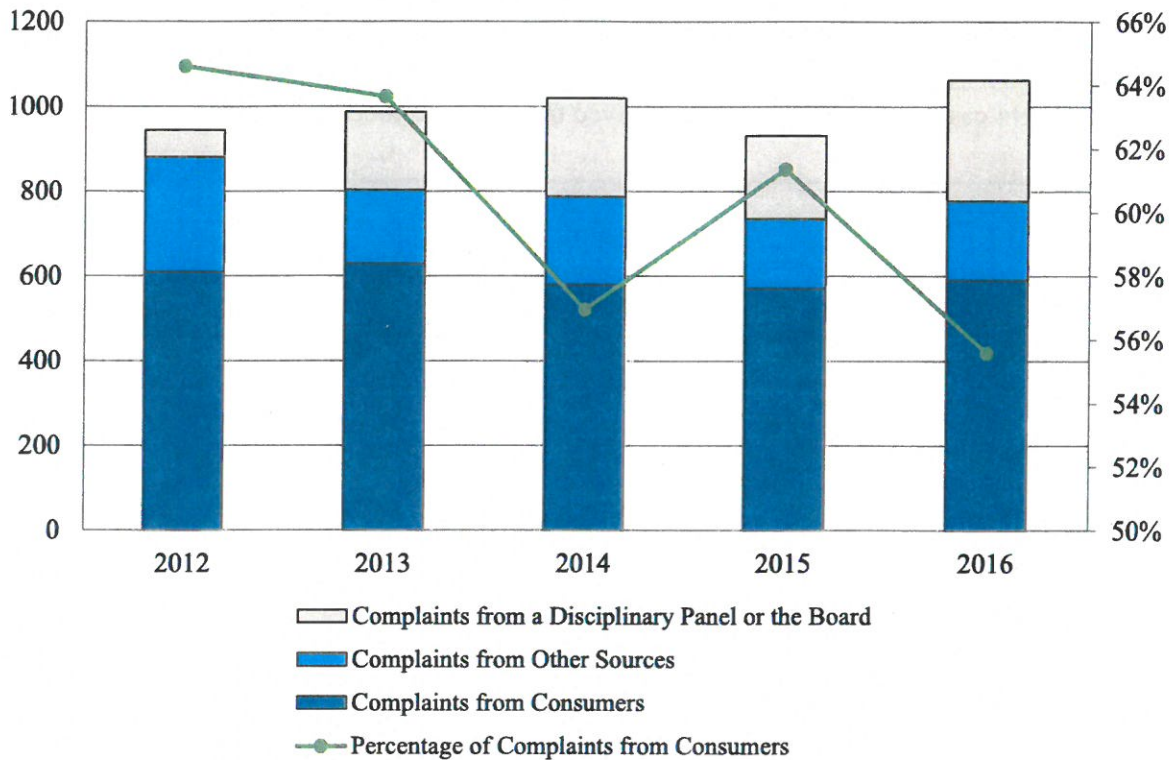
**Exhibit 3.5**  
**Number of Cases Investigated for Certain Grounds**  
**Fiscal 2012-2016**

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>Total</u>
Immoral or Unprofessional Conduct in the Practice of Medicine	663	1,012	679	570	601	3,525
Failure to Meet Standard of Care	468	611	257	286	248	1,970
Failure to Provide Medical Records to Another Physician or Hospital	67	80	55	46	51	299
Willfully Makes or Files a False Report or Record in the Practice of Medicine	26	42	11	3	12	94
Grossly Overutilizes Health Care Services	18	21	11	8	5	63
Patient Abandonment	11	12	11	13	8	55

Source: State Board of Physicians

The 2011 sunset evaluation found that complaints from consumers decreased from 73% of all complaints in fiscal 2007 to 64% in fiscal 2011. This trend has continued. As shown in **Exhibit 3.6**, complaints from consumers decreased from 65% in fiscal 2012 to 56% in fiscal 2016 while complaints from a disciplinary panel or the board increased from 7% in fiscal 2012 to 11% in fiscal 2016. The board attributes this increase to the reinstitution in 2013 of staff review of all “yes” answers to character and fitness questions on renewal applications, wherein staff determines if a preliminary investigation is required and presents such cases to a panel for review.

**Exhibit 3.6**  
**Maryland Board of Physicians Complaints by Source**  
**Fiscal 2012-2016**



Source: State Board of Physicians; Department of Legislative Services

### **Board Has Adopted and Generally Adheres to Sanctioning Guidelines**

The 2011 sunset evaluation found that the board had not adopted sanctioning guidelines for physicians and allied health professionals (as required by Chapters 533 and 534 of 2010) and recommended withholding funds from MBP until the board promulgated such guidelines in regulations. Consequently, Chapter 148 of 2012 withheld \$1.0 million from MBP until the sanctioning guidelines were adopted.

The board adopted sanctioning guidelines regulations for physicians and allied health professionals in January 2013. The guidelines list the minimum and maximum disciplinary sanctions and fines that may be imposed for violations of each of the statutory grounds for discipline. A panel may impose a sanction that is outside of the guidelines if there are aggravating or mitigating factors, as set out in regulation; the panel must state its reasons for departing from

# AGENCY AT A GLANCE

The Legislature established the Texas Board of Physical Therapy Examiners (PT board) as an independent agency in 1971 and the Texas Advisory Board of Occupational Therapy in 1983 as a licensing board housed within the Texas Rehabilitation Commission. In 1993, the Legislature created the Executive Council of Physical Therapy and Occupational Therapy Examiners to provide administrative support and executive oversight to the PT board and the newly created Texas Board of Occupational Therapy Examiners (OT board).

**Physical therapy** is a form of health care that prevents, identifies, corrects, or alleviates acute or prolonged movement dysfunction or pain of anatomic or physiologic origin.<sup>1</sup>

**Occupational therapy** is the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community and other settings.<sup>2</sup>

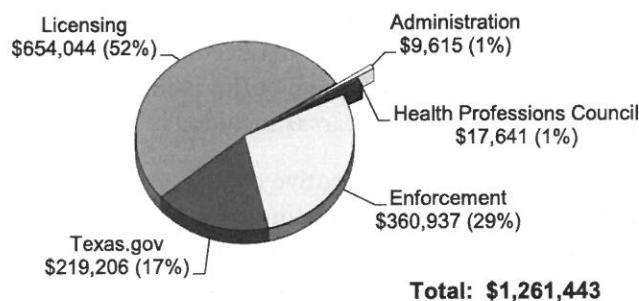
The boards protect public health and safety by licensing and regulating physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, and registering physical therapy and occupational therapy facilities. To fulfill these missions, the executive council carries out the following key activities:

- Issues and renews physical and occupational therapy licenses and facility registrations<sup>3</sup>
- Investigates and enforces violations of the physical therapy and occupational therapy practice acts and board rules<sup>4</sup>
- Establishes fees and approves proposals for rule changes from the PT board and OT board<sup>5</sup>

## Key Facts

- **Executive council and boards.** The PT and OT boards are each composed of nine governor-appointed members. The PT board includes six physical therapists and three public members. The OT board includes four occupational therapists, two occupational therapy assistants, and three public members. The executive council consists of a presiding officer, who is a member of the public appointed by the governor, and a public member and a licensee member from each of the boards.
- **Funding.** In fiscal year 2015, the agency operated on appropriations of almost \$1.3 million, with more than 95 percent coming from general revenue generated through fees paid by physical and occupational therapy licensees and facility registrants. The remainder comes from appropriated receipts from sales of mailing lists and email addresses. The pie chart, *Expenditures by Program*, breaks out the agency's spending by major program areas.

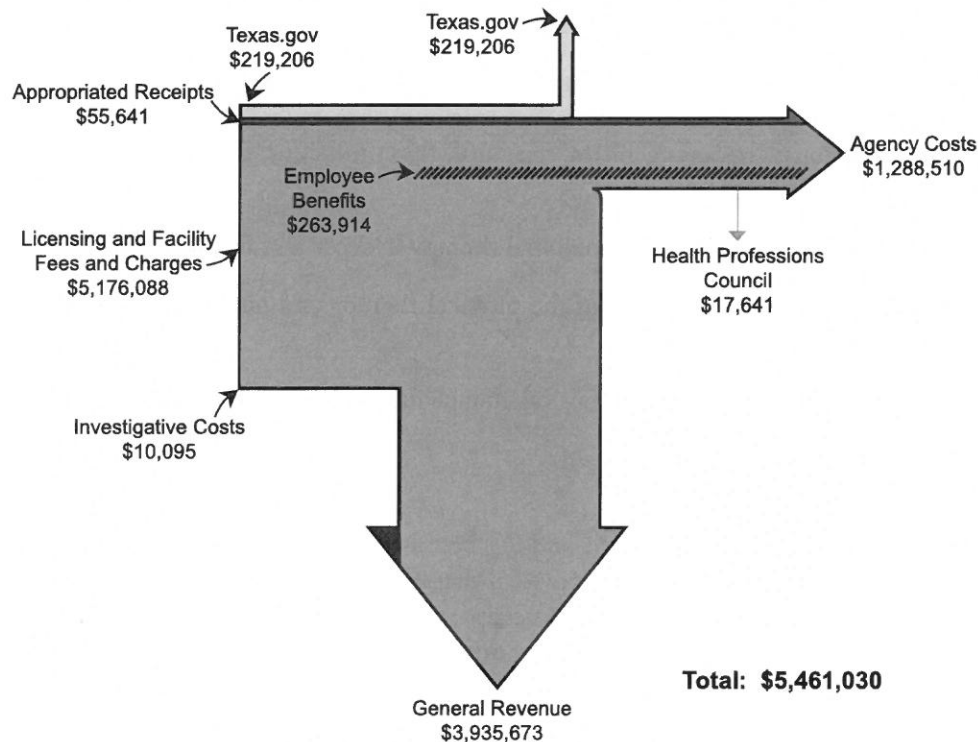
**Expenditures by Program  
FY 2015**





The agency generates revenue through fees far in excess of what is needed to cover agency expenditures. As shown in the chart, *Flow of Executive Council of Physical Therapy and Occupational Therapy Examiners Revenue and Expenditures*, the executive council generated revenue of almost \$5.5 million mainly from licensing and facility registration fees and a small amount of appropriated receipts. After accounting for the agency's costs and payments to Texas.gov and the Health Professions Council, excess revenue of more than \$3.9 million was deposited to the General Revenue Fund. A description of the executive council's use of historically underutilized businesses in purchasing goods and services and commodities for fiscal years 2013 to 2015 is included in Appendix A, *Historically Underutilized Businesses Statistics*.

**Flow of Executive Council of Physical Therapy  
and Occupational Therapy Examiners  
Revenue and Expenditures – FY 2015**



- **Staffing.** The executive council provides administrative support to the boards and currently employs 20 staff: an executive director, coordinators for each board, three accounting staff, a business manager, three investigators, and ten licensing employees. All staff work out of Austin. The agency has no field staff. A comparison of the agency's workforce composition to the statewide civilian workforce for the past three years is included in Appendix B, *Equal Employment Opportunity Statistics*.
- **Licensing.** The executive council processes license applications and renewals for the two boards. Applicants for licensure must meet certain education requirements, pass a national examination and a state jurisprudence examination, and report any criminal history for investigation. Licensees must renew their licenses biennially, and the agency audits five percent of renewals every quarter to ensure compliance with continuing competency and continuing education requirements. At the end of fiscal year 2015, the PT board licensed 16,076 physical therapists and 8,336 physical therapist assistants, while the OT board licensed 9,174 occupational therapists and 4,811 occupational therapy assistants.

- **Facility registration.** The agency also registered 2,637 physical therapy facilities and 1,469 occupational therapy facilities in fiscal year 2015. Facilities housed within or belonging to another regulated entity, such as a hospital or school, are exempt from registering with the executive council.
- **Enforcement.** Executive council staff investigates possible violations of the physical and occupational therapy statutes and rules by licensed and unlicensed individuals. Investigators receive complaints from licensees, members of the public, and licensing staff, and present their findings to the investigations committees of the PT and OT boards. They also notify violators and complainants of the investigation outcome, draft agreed orders on disciplinary actions for the boards' approval, and monitor compliance with disciplinary actions. In fiscal year 2015, the agency received 524 physical therapy-related complaints, and resolved 448, leading to 54 disciplinary actions; and the agency received 246 occupational therapy-related complaints, resolving 211, resulting in 39 disciplinary actions. The table, *Enforcement Actions*, details this information for 2015. The boards can impose administrative penalties, sanctions on a license or facility, community service, cease-and-desist orders, and refer certain violations for criminal proceedings if necessary.

**Enforcement Actions – FY 2015**

	Physical Therapy	Occupational Therapy
Jurisdictional complaints received	524	246
Jurisdictional complaints resolved	448	211
<b>Complaint Types</b>		
Drugs or criminal history	194	118
Continuing education or renewal audit failure	126	57
Fraudulent advertising for physical therapy	26	0
Practicing with expired license	8	10
Practice in unregistered facility	58	12
Fraudulent billing or documentation	37	27
Patient injury, abandonment, or neglect	31	10
Disciplinary action taken by another jurisdiction	16	10
Practicing beyond scope of licensure	10	0
Improper supervision of subordinates	5	0
Practice without a license	8	2
Referral for profit	5	0
<b>Total</b>	<b>524</b>	<b>246</b>
<b>Disciplinary Actions Taken</b>		
Cease-and-desist	0	1
Community service	11	17
Suspension	43	18
Reinstatement	0	1
Surrender or revocation	0	2
<b>Total</b>	<b>54</b>	<b>39</b>





## **JOBS CREATION COMMITTEE**

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### **Annual Report of Recommendations for the Professional Licensing Agency's Occupational Licensing Boards**

**July 1, 2015**

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The Jobs Creation Committee (“JCC”) is an eight member, independent committee with appointments being made pursuant to IC 25-1-16-7.<sup>[1]</sup> This annual report has been commissioned by the General Assembly to provide information on the current occupational licensing structures for boards and commissions that the JCC evaluated during the past twelve months..

This report is non-binding as any change to licensure law must be enacted by the General Assembly and signed into law by the Governor. Additionally, the recommendations made in this report are not reflective of public policy stances taken by the IPLA, the Governor, or the Governor’s administration. Rather, the JCC is statutorily required to make recommendations based on its exhaustive review of Indiana’s occupational licensing boards, the licenses and permits they issue, and their regulatory impact on the State’s economy.

The JCC will make itself available to members of the General Assembly, the IPLA, industry stakeholders, and other state policy makers as they determine which, if any, recommendations to pursue as potential changes to state law.

## **ABOUT THIS REPORT**

The JCC submits this report to the Governor and the Legislative Services Agency pursuant to IC 25-1-16-13, which states:

“Sec. 13. The committee shall submit a report to the: (1) Governor; and (2) legislative services agency; not later than July 1 of each year. The report submitted to the legislative services agency must be in an electronic format under IC 5-14-6.

In review of the occupational licensing boards overseen by the IPLA, the criteria for review were established in IC 25-1-16-8, which states:

“Sec. 8. (a) The committee shall review and evaluate each regulated occupation and board. The review and evaluation must include the following:

- (1) The functions, powers, and duties of the regulated occupation and the board, including any functions, powers, or duties that are inconsistent with current or projected practice of the occupation.
- (2) An assessment of the management efficiency of the board.
- (3) An assessment of the regulated occupation's and the board's ability to meet the objectives of the general assembly in licensing the regulated occupation.
- (4) An assessment of the necessity, burden, and alternatives to the licenses issued by the board.

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<sup>[1]</sup> JCC member bios are in Appendix I, which indicate the statutory authority for each appointment.

- (5) An assessment of the fees that the board charges for licenses.
- (6) Any other criteria identified by the committee.

(b) The committee shall prepare a report concerning each regulated occupation and board that the committee reviews and evaluates. The report must contain the following:

- (1) The number of individuals who are licensed in the regulated occupation.
- (2) A summary of the board's functions and actions.
- (3) The budget and other fiscal factors of regulating the regulated occupation, including the actual cost of administering license applications, renewals, and issuing licenses.
- (4) An assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.
- (5) Any recommendations for legislation, including whether:
  - (A) the regulation of a regulated occupation should be modified;
  - (B) the board should be combined with another board;
  - (C) whether the board or the regulation of the regulated occupation should be terminated;
  - (D) whether a license should be eliminated; or
  - (E) whether multiple licenses should be consolidated into a single license.
- (6) Any recommendations for administrative changes.
- (7) Information that supports the committee's recommendations.

(c) This section does not apply to fees that support dedicated funds. After the committee has reviewed and evaluated a regulated occupation and board, the committee shall provide the agency and the board that is the subject of the committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.

## **I. BACKGROUND INFORMATION ON OCCUPATIONAL LICENSING**

*Some of the background information provided in this section of the report has been updated and expanded upon from a previous report titled, “Senate Enrolled Act 421 Report: Establishing a Process for Self-Certification Registration – A Playbook for Future Regulation of Occupational Regulation in Indiana.” The report on self-certification registration was submitted in October of 2014 and included testimony from national experts on government, regulatory structures, specifically the economics of occupational licensing. This report can be found on the Indiana Professional Licensing Agency’s home page at [www.pla.in.gov](http://www.pla.in.gov).*

“The topic of occupational licensing in economics dates back at least to the comment by Adam Smith that trades conspire to reduce the availability of skilled craftsmen in order to raise wages. The public policy and legal communities, however, have noted that regulating occupations in order to protect the public against incompetent, untrustworthy, or irresponsible practitioners is in the public’s interest (*Thomas v. Collins* 1945).

Occupational regulation in the United States takes three forms. The least restrictive form is registration, in which individuals file their names, addresses, and qualifications with a government agency before practicing their occupation. The registration process may include posting a bond or filing a fee. In contrast, certification permits any person to perform the relevant tasks, but the government—or sometimes a private, nonprofit agency—administers an examination and certifies those who have achieved the level of skill and knowledge for certification. For example, travel agents and car mechanics are generally certified but not licensed. The toughest form of regulation is licensure; this form of regulation is often referred to as “the right to practice.” Under licensure laws, working in an occupation for compensation without first meeting government standards is illegal. In 2003 the Council of State Governments estimated that more than 800 occupations were licensed in at least one state and that more than 1,100 occupations were licensed, certified, or registered (CLEAR 2004).<sup>1</sup>”

*The most common regulatory structures used by state and local governments to oversee occupations are as follows: licensure, certification and registration.*

### **(A) State of Indiana**

The IPLA is the umbrella agency for 38 professional boards and commissions that regulate 493,079 professionals and businesses licensed to perform 134 different occupations.<sup>2</sup> More than

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<sup>1</sup>Analyzing the Extent and Influence of Occupational Licensing on the Labor Market Author(s): Morris M. Kleiner and Alan B. Krueger Source: *Journal of Labor Economics*, Vol. 31, No. 2, The Princeton Data Improvement Initiative (Part 2, April 2013), pp. S173-S202 Published by: The University of Chicago Press on behalf of the Society of Labor Economists and the NORC at the University of Chicago Stable URL: <http://www.jstor.org/stable/10.1086/669060>.

<sup>2</sup> Total number of active licensees as of May 22, 2015 these boards oversee 27,167 entity licenses spread across 63 different types.

332,000 people are licensed by other state agencies.<sup>3</sup> However, an even larger percentage of workers are licensed as these totals exclude an unknown number of licenses issued (discretionally) by Indiana's municipalities for fields such as electrical, refrigeration, high pressure steam (HVACR), wrecking, heating and air conditioning, and so forth. Currently, Indiana's labor force<sup>4</sup> includes 3,254,974 residents aged sixteen (16) and older.<sup>5</sup> As such, more than 25 percent of Indiana's labor force requires a state license to practice.<sup>6</sup>

Workers in Indiana earn an average annual income of \$38,812.<sup>7</sup> Excluding outliers, licensed professionals, on average, earn between \$29,000 and \$74,000.<sup>8</sup> Looking nationally within these licensed professions, practitioners are paid about 18 percent higher wages due to the limitation of competition into the marketplace from the barriers to entry that is a direct result of licensing regimes. The government specifying a competency threshold for education attainment and internships/apprenticeships are positively associated with wages as there are costs associated with completing these requirements that are the responsibility of the applicant. The economic trend is consistent with a monopoly model of occupational licensing in which supply is more restricted if the licensing authority operates on a wider geographic level (i.e. municipality, state or national compact requirements).<sup>9</sup> Also estimated nationally, the "cost of licensing ... in the form of lost jobs is between 0.5% and 1.0 percent" of the labor force.<sup>10</sup> Applying the lower

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<sup>3</sup> Indiana agencies with largest number of active individual licenses are as follows: 172,984 by Alcohol & Tobacco Commission (209,180 total, including business permits, as of Sept. 26, 2014); 6460 by Dept. of Natural Resources (as of Sept. 25, 2014); 18,538 by Indiana Supreme Court (as of May 15, 2014); 12,158 by Gaming Commission (as of May 15, 2014); 63,247 by Dept. of Insurance (as of April 8, 2014); 58,709 [teachers] by Dept. of Education (as of 2010-2011 school year).

<sup>4</sup> IN Departmentt of Workforce Development, *Hoosiers by the Numbers*. Available at <http://www.hoosierdata.in.gov/nav.asp?id=40>. ("For statistical purposes, the labor force is the sum of persons employed and persons unemployed and looking for work.")

<sup>5</sup> 3,066,027 employed/188,945 unemployed; seasonally adjusted with March 2015 data. Indiana University's Kelley School of Business, *STATS Indiana*. Available at [http://www.stats.indiana.edu/laus\\_sa/laus\\_view1.html](http://www.stats.indiana.edu/laus_sa/laus_view1.html) (as of May 22, 2015).

<sup>6</sup> Calculation adjusted for out-of-state residents to whom state agencies have issued licenses.

<sup>7</sup> 2013 "Per Capita Personal Income" in Indiana. U.S. Dept. of Commerce, Bureau of Economic Analysis. Available at <http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=3#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=18000&7027=2013&7001=421&7028=-1&7031=0&7040=-1&7083=levels&7029=21&7090=70>.

<sup>8</sup> Estimate based sample population of professionals working in different geographic areas in Indiana.

<sup>9</sup> Analyzing the Extent and Influence of Occupational Licensing on the Labor Market Author(s): Morris M. Kleiner and Alan B. Krueger Source: *Journal of Labor Economics*, Vol. 31, No. 2, The Princeton Data Improvement Initiative (Part 2, April 2013), pp. S173-S202 Published by: The University of Chicago Press on behalf of the Society of Labor Economists and the NORC at the University of Chicago Stable URL: <http://www.jstor.org/stable/10.1086/669060>.

<sup>10</sup> *Hearing*, (testimony of Professor and Economist Morris Kleiner) (Research by Professor Kleiner, Professor Alan Krueger of Princeton University and the former chairman of President Obama's White House Council of Economic

percentage to Indiana would result in approximately 16,000 new jobs. Consequently, more people could work and earn higher incomes if Indiana licensed fewer occupations.<sup>11</sup>

## **(A) When Governments License**

### *(1) Economics 101*

People looking to purchase services from licensed professionals base their buying decisions in part on accessibility and price. Those who decide to purchase services have access to licensed providers and can afford to pay the necessary remuneration. Those who decide not to purchase professional services are either without access or the means to pay for the services.

When the government decides to license an occupation, it restricts the supply of people who can legally perform the occupation's "scope of practice."<sup>12</sup> Thus, the ability of consumers to choose is limited by shrinking the available supply of labor, which in turn, increases the prices offered by licensed professionals at an estimated 15 percent or more.<sup>13</sup> This is especially detrimental to people who live in sparsely populated areas and/or are impoverished. In Indiana, more than 1.47 million people (or 22% of the total population) live in rural communities and approximately 15 percent live in poverty.<sup>14,15</sup>

### *(2) Stunting Middle Class Growth*

Melony Armstrong recently testified before Congress about Mississippi's burdensome licensing requirements imposed on African hair braiders and hair braiding instructors.<sup>16</sup> In 2004, Ms. Armstrong teamed with others to eliminate "needless government-created barriers."<sup>17</sup> Mississippi

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Advisers, and Professor Alexandre Mas of Princeton University and former Chief Economist in the U.S. Department of Labor and the Office of Management and Budget under President Obama).

<sup>11</sup> *Hearing*, (testimony of Prof. Morris Kleiner).

<sup>12</sup> *Hearing*, (testimony of Prof. Gary Wolfram for Self-Certification Registration meeting, 2014).

<sup>13</sup> *Hearing*, (testimony of Prof. Morris Kleiner).

<sup>14</sup> United States Department of Agriculture, Economic Research Service. Based on 2013 census data. *Available at* [http://www.ers.usda.gov/data-products/state-fact-sheets/state-data.aspx?StateFIPS=18&StateName=Indiana#.VCiPQbTp\\_RY](http://www.ers.usda.gov/data-products/state-fact-sheets/state-data.aspx?StateFIPS=18&StateName=Indiana#.VCiPQbTp_RY).

<sup>15</sup> Population Reference Bureau, "People Below the Poverty Level in the Past 12 Months (1-Year ACS)." (2012). *Available at* <http://www.prb.org/DataFinder/Topic/Rankings.aspx?ind=185> (last visited September 30, 2014).

<sup>16</sup> *Barriers to Opportunity: Do Occupational Licensing Laws Unfairly Limit Entrepreneurship and Jobs?: Hearing to examine the proliferation of occupational licensing laws and the impact these have on business opportunities Before the SUBCOMM. on Contracting and Workforce of the H. COMM. on Small Business*, 113th Cong. 2-3 (2014) (written statement of Melony Armstrong, African Hairbraider, Owner of "Naturally Speaking" Salon, Tupelo, MS) (requirements included 3200 hours of cosmetology school and tuition, exam fees, and three different licensing fees).

<sup>17</sup> *Id.* at 3.



eventually changed its laws to require only that hair braiders pay a \$25 registration fee and abide by relevant sanitation codes.<sup>18</sup>

Indiana still requires someone to obtain a cosmetology license to braid hair; meaning the person must, among other things, graduate from beauty culture school, which requires 1500 hours of training, and pass the examination for cosmetologist license applicants.<sup>19</sup> In 2014, Indiana's State Board of Cosmetology and Barber Examiners denied licensure to someone because she disclosed on her application that she worked in a salon "and performed hair braiding." The Board denied her application for practicing without a license.<sup>20</sup> Even though this might seem unreasonable, the board was merely applying the statutory prohibition against "styling, arranging ... or similarly treating hair" without a cosmetology license.<sup>21</sup>

As these hair braiding examples show, licensing prevents those with unique skill-sets from working in professions in which they are otherwise capable to perform.<sup>22</sup> Licensing's "barriers" are often too costly to overcome, especially for those who have neither the time nor the resources to pursue a license.<sup>23</sup>

Licensing also limits "employer choice," i.e. restricting the applicant pool to only those who have licenses. The better option is the "let-the-best-man-win approach," which allows applicants to send "signals" about their qualifications or experience, and let employers choose the person they believe is the best fit for the job, licensed or not.<sup>24</sup>

## II. PURPOSE OF OCCUPATIONAL REGULATION REVIEW

In the past 25 years, professional licensing has significantly increased in Indiana. Currently, over 200 occupations and more than 490,000 individuals and businesses possess some type of license overseen by the IPLA, including but not limited to physicians, accountants, dietitians, landscape architects, cosmetologists and funeral directors.<sup>25</sup> While the majority of state licenses are held by

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<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> Ind. Code § 25-8-9-3.

<sup>20</sup> *Id.* § 25-1-11-19(b)(1) ("The board may refuse to issue a license ... to an applicant for licensure if the applicant practiced without a license in violation of the law.").

<sup>21</sup> *Id.* § 25-8-2-5

<sup>22</sup> DICK M. CARPENTER, LISA KNEPPER, ANGELA C. ERICKSON & JOHN K. ROSS, LICENSE TO WORK: A NATIONAL STUDY OF BURDENS FROM OCCUPATIONAL LICENSING 6 (Institute for Justice 2012) (written testimony of Lee McGrath supplied to Self-Certification Registry Legislative Panel).

<sup>23</sup> *Expanding Opportunity in America: A Discussion Draft from the H. BUDGET COMM.* 66 113th Cong. (2014) (authored by Chairman Paul Ryan & House Budget Committee Staff) ("Eliminating irrational or unnecessary licensing requirements would not be a panacea, but it would open up new opportunities for low-income families and reduce costs for consumers.").

<sup>24</sup> *Hearing*, (testimony of McGrath).

<sup>25</sup> Indiana Professional Licensing Agency as of May 22, 2015 (See Exhibit A).

the IPLA, this doesn't include the state licenses held by other state agencies or required by municipalities.

It is the opinion of the JCC that the growth in licensing regimes – and the inability to remove regulatory, licensing structures once enacted by the General Assembly – appears to be related to four main factors: 1) the absence of a formal set of standards to determine whether an occupation should be licensed, fully weighing the economic principles of public safety and consumer choice, 2) political organizations, i.e. trade associations, who lobby for increase protections of their industries in order to insulate their professions from free market principles, 3) the unwillingness of the General Assembly to reduce regulations in licensed professions given the considerable financial investment made by education providers and practitioners to meet state requirements and obtain a license, and 4) the previous lack of regulatory oversight in Indiana following the elimination of the Indiana Sunset Evaluation Commission (“ISEC”).

The formal charge of the ISEC, which was created by the General Assembly in 1979, was to review licensing regulations. In the mid-1980's, the Commission was eliminated. Since that time, the State has added more than 80 new license types. Over the last five years, a renewed focus has been on regulatory structures in Indiana and the impact of the regimes on the economy. Other review boards have been created since the elimination of the ISEC.

In 2010, the Regulated Occupations Evaluation Committee (ROEC) was created. This committee was later dissolved by the Legislature and restructured to the current form that is the Jobs Creation Committee (2014). The lack of consistency and constant change of this regulatory oversight body has hindered its ability to effectively reverse the tide of licensing realized in Indiana.

### **III. JCC ASSESSMENT FRAMEWORK**

The JCC held public meetings, during which testimony was presented by IPLA staff pertinent to board operations, the Office of the Attorney General on the consumer complaint process, industry stakeholders regarding their profession, association representatives covering their role in the industry and the general public. IPLA staff worked with all individuals and associations who testified, so they knew the statutory obligations of the JCC and the types of questions that would need to be answered.

The JCC is required by statute to report the following, pursuant to IC 25-1-16-8:

- (1) The number of individuals licensed in the regulated occupation.
- (2) A summary of the board's functions and actions.
- (3) The budget and other fiscal factors of regulating the regulated occupation, including the actual cost of administering license applications, renewals, and issuing licenses.
- (4) An assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.
- (5) Any recommendations for legislation, including whether:

- (a) the regulation of a regulated occupation should be modified;
  - (b) the board should be combined with another board; or
  - (c) whether the board or the regulation of the regulated occupation should be terminated;
  - (d) whether a license should be eliminated; or
  - (e) whether multiple licenses should be consolidated into a single license.
- (6) Any recommendations for administrative changes.

*These questions are answered individually in the board review sections of the report.*

In order to evaluate and review all license types in a fair and consistent way pursuant to statute, the JCC established a conceptual framework for each of the regulated occupations aimed at answering two questions: (1) Should the state of Indiana be involved in any form of regulation (e.g., licensing, certification or registration) of a particular occupation (Part A), and if so, (2) What questions should be asked to determine whether a regulatory program is accomplishing its public purpose in a cost-effective manner or needs to be buttressed or reformed in some specific way (Part B)?

#### **(A) Part A**

The criteria developed for Part A aims to evaluate the public need for the profession to be regulated by the State of Indiana by determining the level of risk, alternatives to regulation and ultimately the cost-benefit impact. Five basic scoring criteria were established to do so:

1. **Risk Analysis.** Do consumers face a significant risk of harm from purchasing the goods or services of a particular professional? What is the nature of the harm, the likelihood and severity of the harm, and the potential for irreversible harm to the consumer?
2. **Informed Consumer Choice/Trial and Error.** To what extent do individual consumers have the experience or ability, by means of trial and error, to make informed risk-benefit decisions about purchasing goods or services from a particular professional?
3. **Self-regulation by the Profession.** Is the profession capable of organizing itself (on a local, state, national or international basis) to ensure an acceptable degree of competence without any regulatory program?
4. **Legal Alternatives to Regulation.** In the absence of an IPLA regulatory program, would consumers have adequate legal protections to deter incompetent or fraudulent behavior by professionals and to seek redress or compensation for avoidable harms?
5. **Benefit-Cost Determination.** Are the consumer benefits of an IPLA regulatory program (e.g., reduced harm to consumers and/or higher levels of public trust in professionals) likely to justify the anticipated costs of a regulatory system (e.g., licensing fees,

potentially higher prices for goods or services, and any administrative costs of implementing and enforcing a meaningful regulatory system)?

Following the presentation of a licensing board under review, including substantial question and answer dialogue and public comments, the JCC members then discussed the information provided, tabling preliminary recommendations until having meetings in June. At the June 2 and 17 meetings, the JCC scored the professions and deliberated over recommendations to streamline each regulated profession.

The average score of all the JCC members is used to help address the overall question of whether or not the State of Indiana should be involved in any form of regulation (e.g. licensing, certification or registration) of a particular occupation. The JCC evaluation calls for a systematic review of all professional license types within a five year period. This broad review of all license types is similar to a sunset review approach in that all licenses are included in the review and will be evaluated based on their merits under the same framework. However, the JCC acknowledges that many true “sunset” recommendations, outside of the administration’s capabilities through internal policies and rule promulgation, require legislative action in order to discontinue or change how a profession is regulated.

## **(B) Part B**

In addition to Part A, a list of questions was developed to explore possible reforms to licensing that might increase consumer protection as well as reduce any regulatory burden. The questions aim to determine whether the program is working properly, whether it is cost-effective, and whether any other reforms are appropriate. The JCC has five years to review all 38 boards overseen by the IPLA, so the process continues to be ongoing.

Here are the questions:

1. To what extent does the state engage in proactive surveillance, inspections or site visits to determine whether practitioners are in compliance with regulatory requirements?
2. When a complaint is lodged against a particular professional, is the process used to address the complaint fair, timely, defensible, and efficient?
3. What is the nature of complaints received by the board? Do they typically involve potential negative impacts to consumers? Do they typically represent the concerns of impacted consumers or the concerns that professionals have about their colleagues?
4. Are the potential risks to consumers that justify regulation addressed explicitly and adequately in the initial and ongoing regulatory requirements for a particular occupation/profession?
5. Is there evidence that the regulatory system has effectively reduced risk to the consumer?

6. Is the choice of regulatory mechanism (e.g., license, certification or registration) appropriate, given the nature of the occupation/profession and the costs and benefits of regulation?
  7. Are the requirements for continuing education of professionals, including associated fees, reasonable and cost-effective given the nature of the risks to consumers, the complexity of knowledge that underpins the profession, and the pace of change in knowledge about how professionals should do their work?
  8. Is there evidence that the regulatory system is adversely affecting the supply of professionals and thereby raising the price of goods or services to consumers?
  9. Are adequate resources available to carry out the statutory regulatory function in a fair, effective, trustworthy and cost-effective manner?
  10. Is there a reasonable relationship between the fees paid by the professionals in a particular occupation and the quality of the regulatory system that is delivered on behalf of consumers?
  11. Is the state the best regulator for the profession? Could the private sector/association assume responsibilities in administering licenses, continuing education and/or examinations?
  12. Does CE benefit the industry? Is there a more effective/efficient model?
  13. Could the profession/board be combined with another licensing board to streamline operations? What can the administration do to modernize and streamline licensing operations for practitioners?
  14. What's the average wage of professionals in the industry (BLS data to support claim)? What's the average income? What is the salary range of the practitioners?
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From September 18, 2014 to April 16, 2015, 11 boards were reviewed by the JCC:

**September 18, 2014**

- Indiana Board of Accountancy

**October 16, 2014**

- State Board of Registration for Architects and Landscape Architects
- Home Inspector Licensing Board

**January 15, 2015**

- State Board of Registration for Professional Engineers
- State Board of Registration for Professional Surveyors

**February 19, 2015**

- Private Investigator and Security Guard Licensing Board
- Manufactured Home Installer Licensing Board

**March 19, 2015**

- State Board of Funeral and Cemetery Service
- Committee on Hearing Aid Dealer Examiners

**April 16, 2015**

- Indiana Plumbing Commission
- Indiana Auctioneer Commission

From the review of these 11 boards, 45 different license types are covered. As described earlier in the report, each JCC member evaluated and scored each license type individually under Part A of the framework. Each member also thoroughly reviewed all submitted documentation and presentation materials submitted to the JCC. All of the voting members' scores were averaged to determine the overall score. These figures were used to guide the recommendations for each board and license type.

The JCC believes that the framework and review of current licenses would benefit future legislative discussions when considering the impact of adding more regulations or licenses. As such, in recent years, proposals to add licenses have included the following occupations: midwives (passed), diabetes educators (passed), court reporters (failed), playground installers (failed), electricians (failed), among others.

Review prior to the establishment of the license type could ensure that Indiana only approves new regulations after due consideration of all relevant factors. The review, a “sunrise” review, might be similar to the JCC evaluation framework outlined in this report, including an assessment of risks, alternatives to regulation, cost-benefit analysis, and consideration of resources available for administrative oversight.

**IV. COMMITTEE REPORTS AND RECOMMENDATIONS**

*Pursuant to IC 25-1-16-14, the Jobs Creation Committee received additional public input throughout its proceedings in 2015 and 2016 regarding preliminary recommendations to change a licensing board's structure or continued issuance of a license. The Indiana Professional Licensing Agency submitted an addendum to this report upon receipt of the Jobs Creation Committee's final recommendations. This report has been updated by the addendum and includes final recommendations from the Jobs Creation Committee.*

**(A) Indiana Board of Accountancy**

1. **Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

#### Definition of the Practitioner

#### **IC 25-2.1-1-10: "Practice of Accountancy"**

*Sec. 10. (a) "Practice of accountancy" means the performance or the offering to perform by a licensee of a service involving:*

- (1) the use of accounting or auditing skills, including the issuance of reports on financial statements;*
- (2) management advisory, financial advisory, or consulting services; or*
- (3) the preparation of tax returns or the furnishing of advice on tax matters.*

*(b) The term does not include the performance or offering of the following services if the person performing or offering the services is not a licensee and no representation is made that the person performing or offering the service is a licensee:*

- (1) The selling and installing of data processing or bookkeeping equipment and forms.*
- (2) The preparation of tax returns.*
- (3) The performance of bookkeeping.*

#### Establishment of the Board

#### **IC 25-2.1-2-3: Membership of board; qualifications**

*Sec. 3. (a) The board consists of six (6) members appointed by the Governor.*

*(b) Five (5) members must meet the following conditions:*

- (1) Be a resident of Indiana.*
- (2) Be a certified public accountant under IC 25-2.1-3 or IC 25-2.1-4.*

*(c) One (1) member must meet the following conditions:*

- (1) Be a resident of Indiana.*
- (2) Be a consumer who is not certified under this article but has professional or practical experience in the use of accounting services and financial statements that qualify the individual to make judgments about the qualifications and conduct of individuals and firms under this article.*

#### Role of the Board

The Indiana Board of Accountancy was created by IC 25-2.1-2-2 and is statutorily responsible for the administration and enforcement of IC 25-2.1-2.

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Nothing was discovered that indicates the board or licensees are acting in a manner inconsistent with the current or projected practice of the occupation; however, other methods were identified to improve the regulatory management structure of the program and are summarized in No. 10.

**2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The IPLA helps facilitate the responsibilities of the Indiana Board of Accountancy by employing one (1) director, one (1) assistant director, three (3) customer service representatives, and one (1) compliance officer. The annual salary budget for all six employees is \$162,186. In factoring the costs to process licenses, it is important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Board of Accountancy also serve other boards. “Group 14” also manages licensing board operations for massage therapists, optometrists, plumbers, physical therapists and occupational therapists.

Additionally, the agency’s executive staff provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, director of communication and legislative affairs, controller, controller staff, IT director and IT staff. The cost of administering and managing accountancy-related licenses would be even higher when factoring in the attorney general’s office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

The IPLA manages 13,913 active licenses for the Board of Accountancy.

The director, assistant director and compliance officer salaries are partially funded by the enforcement fund. The director and assistant director have approximately 20% (\$15,064) of their annual salaries (\$75,322) paid for through this fund while the compliance officer has a varying percentage based on the amount of time that individual spends on the accountancy profession.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Board of Accountancy have met the standards and statutes imposed by the General Assembly in providing adequate service to the accountancy profession and its licensees. The CPA Society did offer



recommendations to improve the functionality of the board in regulating the industry. For more information, please see recommendations from the CPA society (No. 8) and the policy statement from the JCC (No. 10) regarding the operational structure of the agency and the board.

#### **4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. The Accountancy Board does have an "Investigative Fund," and it is worth exploring legislative options to better utilize and administer those resources. An assessment of the fees charged by the Board is as follows:

##### **CPA Certificate of Registration - 3 years**

- First year of cycle (July 1, 2015 - June 30, 2016) - \$85\*
- Second year of cycle (July 1, 2016 - June 30, 2017) - \$60\*
- Third year of cycle (July 1, 2017 - June 30, 2018) - \$35\*

##### **CPA Application**

- Reciprocity - \$85\*
- Transfer of Grades - \$85\*

##### **CPA/AP/PA Renewal - 3 years**

- Renewal - \$105.00\*\*
- Reinstatement
  - Expired 0-3 years - \$50
  - Expired more than 3 years - \$85

##### **Permit for Firms - 3 years**

- Issuance - \$30
- Renewal - \$30
- Restoration Fee - \$50

##### **Professional Corporation - 2 years**

- Issuance - \$25
- Renewal - \$20

\*Fees include an additional \$10 for the accountancy investigative fund

\*\*Fee includes an additional \$30 for the accountancy investigative fund

872 IAC 1-1-10.5 - Accountant Investigative Fund  
IC 25-1-8 Fees

The Enforcement Fund is established by IC 25-2.1-8-4.

*Sec. 4. (a) The accountant investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against violators of this article. The fund shall be administered by the Indiana Professional Licensing Agency.*

Since the creation of the fund, \$475,964 has been paid into the fund and \$241,759 has been paid out.

- Monies paid to the fund may include those paid by licensees (for example, the \$105 renewal fee is broken down so that \$75.00 of that fee goes towards the PLA's general fund, while \$30.00 goes towards the enforcement fund and monies from civil penalties.
- Monies going out of the fund include salary costs, fringe, supplies, out-of-state travel, registration and dues, IOT fees, tech support, postage and an HR service fee. For 2014, all of these fees combined to cost roughly \$33,404.

**5. List the number of individuals who are licensed in the regulated occupation.**

To date, the total number of active licenses with the Indiana Board of Accountancy is 13,913.

**Certified Public Accountant (CPA)**

*- Required for anyone practicing accounting services in the State of Indiana*

- a.) 12,328 active licenses in Indiana
- b.) 990 new licenses issued in past three-year renewal cycle (6/2012-9/2014)

**Public Accountants (PA)**

*- Performs same functions as a CPA but not allowed to perform attest services*

- a.) 65 active licenses in Indiana
- b.) These licenses are no longer issued

**Accounting Practitioner (AP)**

- a.) 11 active licenses in Indiana
- b.) These licenses are no longer issued.

### **Accountancy Professional Corporation**

*- Required by businesses that fall under the professional corporation description (IC 23-1.5-2)*

- a.) 297 active corporate licenses
- b.) 9 licenses issued in past three-year renewal cycle (6/2012-9/2014)

### **Firm Permit**

*- Required for all accounting businesses in Indiana (IC 25-2.1-5)*

- a.) 1,212 active permits
- b.) 117 permits licenses issued in past three-year renewal cycle (6/2012-9/2014)

## **6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees are not dedicated to the profession. The Accountancy Board does have an “Investigative Fund,” and it is worth exploring legislative options to better utilize and administer those resources.

To review the staffing costs associated with administering licenses and renewals for the Indiana Board of Accountancy, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

## **7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

Excerpt from the International Federation of Accountants® IFAC Policy Position 1: Regulation of the Accountancy Profession, September 2011, The Accountancy Profession<sup>26</sup>:

“Members of the accountancy profession contribute to their communities in a wide variety of different roles, and within a range of different organizations.

Professional accountants work in, and contribute to, virtually all sectors of the economy, fulfilling diverse roles.

Professional accountants:

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<sup>26</sup> Information submitted by the Indiana CPA Society during their presentation to the JCC.

- Contribute to the growth of individual companies, support and sustain non-profit organizations, and assist governments in achieving their economic and social objectives
- Promote financial market performance, through the reporting of, and providing assurance on, financial information on which investors and other stakeholders rely in making resource-allocation decisions.

In these ways and others, professional accountants contribute to the growth of economies and ultimately to the well-being of society.”

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Additional excerpt from a report on US Accounting Services published in March of this year.

“Firms in the accounting profession are certified to audit the accounting records of public and private organizations and to attest to compliance with generally accepted accounting practices. Certified public accountants (CPAs) provide a variety of accounting services, including auditing accounting records, designing accounting systems, preparing financial statements, developing budgets and providing advice on matters related to accounting.” [IBISWorld.com](http://IBISWorld.com)

- With the majority of CPA Society members in public accounting and approximately 36 percent of membership holding positions in industry, government and education, CPAs effect countless business decisions being made in Indiana and elsewhere every day. They contribute immeasurably to the economic success of the state, the country and Indiana citizens.
- For more than 100 years, the profession has provided essential services to both individuals and companies of all sectors and sizes in support of a system of voluntary tax compliance at the federal and state level.

#### **8. Assess the necessity, burden, and alternatives to the licenses issued by the board.**

The field of accountancy is regulated in all other states. The JCC did not find that Indiana’s licensing requirements and structure to be burdensome for licensees.

Following the discovery of the ENRON scandal in 2001, CPAs and firms conducting audits for public companies were under increased scrutiny. They are required to be licensed under the accounting and auditing standards established by the Sarbanes-Oxley Act, which was enacted in 2002 (Public Law 107-204., 107th Congress).

Prior to 2007, Indiana had multiple licenses for accounting professionals: Certified Public Accountant, Public Accountant and Accounting Practitioner. Effective July 1, 2007, the AP and PA classes of accounting licenses were discontinued and existing licensees were grand-fathered in the statute (IC 25-2.1-6-4.5).

Alternatives to the licensing structures currently in place were discussed, but the JCC does not see a more efficient avenue to administratively handle the workload to license certified public accountants in Indiana.

For additional information, please see the policy statement recommendation (No. 10).

#### **9. List any other criteria identified by the JCC.**

The Indiana CPA Society recommended changes and clarifications to the statute that the JCC finds persuasive.

The Indiana CPA Society recommends the following for consideration regarding continuing education requirements and best practices for the industry:

- i. Competency-based pilot program
  - The Indiana CPA Society has been drafting the guidelines for this program and wouldn't require the IPLA to create the criteria.
- ii. Duplication of functions
  - CPA Society currently does many functions that PLA also does, i.e. auditing. The CPA Society would be willing to take on sole control of this process and others.

*The Indiana CPA Society also recommends the following changes:*

- i. Consider private sector support for administrative functions of IPLA
- ii. CPE audit, draft rules, peer review, license renewal
- iii. Create a new model for professional development
- iv. Develop education at all levels that recognize the use of technology and new learning methodology
- v. Establish a regulatory framework for new professional development model for license renewal

vi. Indiana innovation and leadership

*The Indiana CPA Society recommends the following statutory changes:*

- i. Better utilization of the Enforcement Fund
  - 1. Established in 2007 (IC 25-2.1-8-4)

- 10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The Jobs Creation Committee recommends keeping the Indiana Board of Accountancy and all of the licenses issues by the Board. The JCC supports the CPA Society's recommendations as outlined in No. 9. The JCC finds it persuasive that an outside entity, professional organization or association be the responsible entity for the administrative functions of licensing CPA's as an agent of the State of Indiana and that this entity also be responsible for setting the acceptable level of qualifying and continuing education standards for the industry.

The JCC also recommends that the Board still exist to enforce licensure law and discipline licensees who violate license law and that those cases are prosecuted by the Indiana Attorney General's Office.

## Indiana Board of Accountancy Costs

<b>Board Member Travel Reimbursements</b>	17-Jan-14	21-Feb-14	25-Apr-14	16-May-14	18-Jul-14	12-Sep-14	21-Nov-14
Randall Effner	\$17.60	\$17.60	\$17.60	\$17.60	\$17.60	\$17.60	\$17.60
Jamie O'Brien	\$280.73	\$280.73	\$267.22	\$272.73	\$285.73	\$254.22	\$272.73
Michael Vargo	\$24.64	--	\$24.64	\$24.64	\$24.64	\$24.64	\$24.64
JP Kane	--	\$30.80	\$30.80	\$30.80	\$30.80	\$30.80	\$30.80
Angela Zirkelbach	--	\$16.72	--	--	--	\$16.72	--
Gregory Coy	--	--	--	--	--	--	--
<b>Monthly Totals</b>	<b>\$322.97</b>	<b>\$345.85</b>	<b>\$340.26</b>	<b>\$345.77</b>	<b>\$358.77</b>	<b>\$343.98</b>	<b>\$345.77</b>
<b>Total Travel Costs</b>	<b>\$2,403.37</b>						

<b>Board Member Per Diem Payments</b>	17-Jan-14	21-Feb-14	25-Apr-14	16-May-14	18-Jul-14	12-Sep-14	21-Nov-14
Randall Effner	\$50.00	\$50.00	\$50.00	\$50.00	--	--	--
Jamie O'Brien	\$50.00	\$50.00	\$50.00	\$50.00	--	--	--
Michael Vargo*	\$50.00	--	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
JP Kane	--	\$50.00	\$50.00	\$50.00	--	--	--
Angela Zirkelbach	\$50.00	\$50.00	\$50.00	\$50.00	--	--	--
Gregory Coy	--	--	--	--	--	--	--
<b>Monthly Totals</b>	<b>\$200.00</b>	<b>\$200.00</b>	<b>\$250.00</b>	<b>\$250.00</b>	<b>\$50.00</b>	<b>\$50.00</b>	<b>\$50.00</b>
<b>Per Diem Total</b>	<b>\$1,050.00</b>	<i>*As of 12/11/14, Vargo was the only member to complete per diem forms.</i>					

<b>Court Reporter Costs</b>	17-Jan-14	21-Feb-14	25-Apr-14	16-May-14	18-Jul-14	12-Sep-14	21-Nov-14
Circle City Court Reporters	\$135.00	\$190.00	\$180.00	\$90.00	\$90.00*	\$270.00*	\$202.50
<b>Total for Court Reporters</b>	<b>\$1,157.50</b>	<i>*Costs were paid from the Accountancy Investigative Dedicated Fund.</i>					

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$4,610.87</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(B) State Board of Registration for Architects and Landscape Architects**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Definition of the Practitioner

**IC 25-4-1-17: Acts constituting practice of architecture**

*Sec. 17. The practice of architecture is the performance of professional services embracing the safe, healthful, scientific, aesthetic or orderly coordination of the planning, designing, erection, alteration or enlargement of any public or private building or buildings, structure or structures, project or projects, or any part thereof, or the equipment or utilities thereof or the accessories thereto, when such professional services require the application of the art and science of construction based upon the principles of mathematics, aesthetics, or the physical science acquired by education or training, and when such services are performed through the media of consultation, evaluation, investigation, preliminary study, plans, specifications, contract documents, or supervision of construction. Any one (1), or any combination of the foregoing services by a person shall constitute the practice of architecture. A building is any structure consisting of foundation, floors, walls, columns, girders, beams and roof, or a combination of any number of these parts, with or without other parts and appurtenances thereto.*

**IC 25-4-2-1: Landscape Architects**

*Sec. 1. (a) As used in this chapter, "board" means the board of registration for architects and landscape architects as established under IC 25-4-1-2.*

*(b) As used in this chapter, "landscape architecture" means the practice of professional services such as consultation, investigation, reconnaissance, research, planning, design, or responsible supervision to develop land areas for the dominant purpose of preserving, enhancing, or determining:*

- (1) proper land uses;*
- (2) natural land features;*
- (3) ground cover and planting;*
- (4) naturalistic and aesthetic values;*
- (5) the settings and approaches to structures or other improvements;*
- (6) the natural environment of a facility, an individual building, or other structure;*
- (7) site specific natural surface and subsoil drainage systems;*
- (8) landscape grading, swales, curbs, and walkways; and*
- (9) any inherent problems of the land relating to erosion, overuse, blight, or other hazards. The term includes the location and arrangement of the*



*proposed tangible objects and features that are incidental and necessary to accomplish the purposes of landscape architecture.*

### Establishment of the Board

In 1929, the State created the Architect Board. The statute establishing certification for landscape architects was added in 1981. It prohibited a practitioner from using the title “landscape architect” unless certified by the Board. In 1985, it was changed to a practice act, requiring that anyone practicing landscape architecture be registered, even if they don’t use that exact title under IC 25-4-1-2.

The State Board of Registration for Architects and Landscape Architects is currently comprised of eight members appointed by the Governor: five members are registered architects who have had at least ten years of architectural practice; two are registered landscape architects who have had at least 10 years of landscape architectural practice; and one member is a consumer member.

All appointments are made for three year terms. There are no limits to the number of terms an appointee can serve.

### Role of the Board

The Board’s primary functions are to review credentials for architect and landscape architect applicants, administer licenses to qualified individuals and implement administrative disciplinary actions against licensees who are not practicing according to the Board’s statutes and rules.

The Board also investigates the unlicensed practices of individuals and firms offering architecture and landscape architecture services in Indiana.

The IPLA leads in crafting legislation with input from the State Registration of Architects & Landscape Architects on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the board or licensees are acting in a manner inconsistent with the current or projected practice of the occupation; however, recommendations are being made by the JCC to improve the regulatory management structure of the profession and how funds are utilized. Please see the JCC’s statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Indiana State Board of Registration of Architects & Landscape Architects operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

Of note, the BD and AD salaries are partially funded (10% of their annual salaries) by the Investigative Fund, which totals approximately \$7,532.00.

In factoring the costs to process licenses, it is important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Indiana State Board of Registration of Architects & Landscape Architects also serve other boards. Specifically, “Group 10” includes Architects/Landscape Architects, Professional Engineers, Land Surveyors, Athletic Trainers and Private Investigators/Security Guards. These boards and the composition of each group are assigned by the agency director.

The agency’s executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general’s office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Indiana State Board of Registration of Architects & Landscape Architects have met the standards and statutes imposed by the General Assembly in providing adequate service to the architecture profession and its licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency’s operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. The State Board of Registration of Architects & Landscape Architects does have an “Investigative Fund,” and the JCC finds it persuasive for the fees being paid into

the account to be reviewed by the Board given that much of the fund is underutilized. An assessment of the fees charged by the Board is as follows:

**Application by Examination - \$170**

**Application by Reciprocity**

Reciprocity applicants are candidates who have been licensed as an architect/landscape architect in another state, which may or may not be substantially equivalent. The application varies whether they are reciprocating their license with or without National Council of Architectural Registration Boards (NCARB) or Council of Landscape Architectural Registration Boards (CLARB).

a.) Reciprocity *with* NCARB or CLARB - **\$220**

b.) Reciprocity *without* NCARB or CLARB - **\$520**

**Renewal 12/31/odd year - \$120**

**Reinstatement after 3 or less years - \$170**

**Reinstatement after 3 or more years - \$340**

**Professional Corporation Application Fee - \$25**

The biennial fee for a landscape architect license is consistent with the national average of \$110.<sup>27</sup>

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Investigative Fund established by IC 25-4-1-32,

*Sec. 32. (a) The registered architects and registered landscape architects investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against violators of this article. The fund shall be administered by the attorney general and the Indiana professional licensing agency...*

*(e) Money in the fund is continually appropriated for use by the attorney general and the Indiana professional licensing agency to administer and enforce the provisions of this article and to conduct investigations and*

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<sup>27</sup> Testimony from the Indiana Chapter of the American Society of Landscape Architects (INASLA) on Oct. 16, 2014.

*take enforcement action against persons violating the provisions of this article.*

Since the creation of the fund in October 2012, \$73,540 has been paid into the fund and \$16,967 has been paid out.

- a) Monies paid in to the fund may include those paid by licensees (for example, the \$120.00 renewal fee is broken down so that \$100.00 of that fee goes towards the PLA's general fund while \$20.00 goes towards the enforcement fund) and monies from civil penalties.
- b) Monies going out of the fund include salary costs, fringe, supplies, out-of-state travel, registration and dues, IOT fees, tech support, postage, and an HR service fee. Projected costs for 2015, all of these fees combined to cost roughly \$34,124.

**5. List the number of individuals who are licensed in the regulated occupation.**

To date, the total number of active licenses with the State Board of Registration of Architects & Landscape Architect is **3793**.

**Architects**

*- Required for anyone practicing architect services in the State of Indiana*

- a.) 3286 active licenses in Indiana
- b.) 142 new licenses issued since January 1, 2014 (beginning of renewal cycle)

**Landscape Architects**

*- Required for anyone practicing landscape architect services in the State of Indiana*

- a.) 411 active licenses in Indiana
- b.) 24 new licenses issued since January 1, 2014 (beginning of new renewal cycle)

**Architect Professional Corporation**

*- Required by businesses that fall under the professional corporation description (IC 23-1.5-2 and IC 23-1.5-2-3(a)(2))*

- a.) 96 active corporate licenses

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38

licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession. Indiana State Board of Registration of Architects & Landscape Architects does have an Investigative Fund (IC 25-4-1-32), and the JCC finds it persuasive for the fees being paid into the account to be reviewed by the Board given that much of the fund is underutilized.

Of the \$73,540 collected from licensing fees, only \$16,967 has been spent. The fund pays for salary costs, fringe, supplies, out-of-state travel, registration and dues, IOT fees, tech support, postage, and an HR service fee. The specific fee of \$20 could be reduced or use of the fund increased by the agency. The statutes in place grant enough flexibility where a legislative fix should not be necessary.

To review the staffing costs associated with administering licenses and renewals for the State Board of Registration of Architects & Landscape Architects, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

The health of the economy is tied to the building sector. When the building sector expands, it positively impacts every other U.S. sector and industry. Virtually every U.S. industry – from steel, concrete, insulation, mechanical and electrical equipment, solar systems, glass, wood, metals, tile, fabrics, engineering, banking, development, real estate, manufacturing, construction, wholesale, retail and distribution – depends on the demand for products and services generated by the construction industry.

Architecture is the leading edge of the construction industry that accounts for one in nine dollars of Gross Domestic Product. Every \$1 million invested in building design and construction yields 28.5 full-time jobs. When a client hires an architect, 30 additional jobs are created to build what the architects design.

Architecture is a small business profession: more than 97 percent of architecture firms employ 50 or fewer people. Many are sole practitioners.

Average salaries at firms range from around \$150,000 for firm leaders to \$40,000 for new hires. Most firms offer a salary increase to employees when they become licensed.

The licensure of architects and landscape architects is based on a national licensing model which is integrally related to educational standards as defined and accredited by NAAB/LAAB, minimum levels of work experience (Intern Development Program) as determined by NCARB/CLARB, and the completion

and passing of testing parameters (Architect Registration Examination) set by NCARB/CLARB. However, none of these agencies is involved in the granting of licenses to individuals, but serve mainly as the repository of information about candidates seeking licensure and professionals granted licenses by the individual States. The Indiana Board of Licensure for Architects and Landscape Architects is served by these organizations in the licensing of both professions. State licensing rules and statutes are based upon this relationship and unilateral changing would cause undo hardships for those practicing architecture and landscape architecture in the State of Indiana. The State has greatly benefitted from this symbiotic relationship by greatly reduced administrative cost.<sup>28</sup>

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Landscape Architects bring more to the state's economy than the traditional 'curb appeal' that is typically associated with landscapes. As with architecture, landscape architecture is the leading edge of the construction industry. With projects ranging from community planning and design, to transportation planning, to park and recreation design, landscape architects plan much of the built environment.

Following are a few points relating specifically to economics tied to transportation issues, especially pedestrian/bicycle infrastructure:

Communities with walkable streets and sidewalks have higher real estate values. A recent study, *Walking the Walk: How Walkability Raises Home Values in U.S. Cities*, showed that houses with the above average levels of walkability command a premium of about \$4,000 - \$34,000 over houses with just average levels of walkability.

Bicycle and pedestrian projects are helping provide economic development to local economies as well as state-wide economies. For example, the state of New Jersey recently calculated that in total, active transportation-related infrastructure, businesses, and events were estimated to have contributed \$497.46 million to the New Jersey economy in 2011, which was nearly eight times the estimated \$63 million invested in infrastructure that year.

Active transportation projects create jobs: A study conducted by the Political Economy Research Institute found that for each \$1 million spent on bike lanes, approximately 14 jobs are created. Compare this to \$1 million spent on road repair work that generated about seven jobs.

Increasingly, small towns and rural communities need more bicycle and walking projects. Between 6.9 percent – 9.6 percent of all trips are made by biking and walking. A recent study, *Active Transportation Beyond Urban Centers: Walking*

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<sup>28</sup> The information provided was distributed to the JCC by the American Institute of Architects (AIA).

*and Biking in Small Towns and Rural America*, demonstrates that rural communities increasingly want more walkable and bicycle-friendly communities to attract businesses and tourism and attract and retain much-needed workers.

The average salary for landscape architecture professionals is \$71,100 according to a 2010 national survey by the American Society of Landscape Architects (ASLA). The average salary for licensed landscape architects is \$77,700 – representing 73 percent of all respondents. The average salary of those without a license is \$52,700.<sup>29</sup>

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

Architects and landscape architects are regulated in all other states. The JCC did not find that Indiana’s licensing requirements and structure to be burdensome for licensees, but the Board should review the fee structure. The fee structure should not be a disincentive for possible entrants into the profession nor an unnecessary form of taxation required of those in the industry. Indiana’s licensing fees are about average when compared to other states for the architecture and landscape architecture industries.

Alternatives to the licensing structures currently in place were discussed, but the JCC does not see a more efficient avenue to administratively handle the workload to license architects and landscape architects in Indiana. The associations were not in favor of taking on current PLA duties.

**9. List any other criteria identified by the JCC.**

The Indiana Chapter of the American Society of Landscape Architects (INASLA) is a non-profit organization consisting of nearly 200 members. The INASLA Executive Committee is comprised solely of volunteers. Landscape architects are designers of outdoor and public spaces to achieve safe, environmental, socio-behavioral, and/or aesthetic outcomes. Landscape architects involve the systematic investigation of existing social, ecological, and geological conditions and processes in the landscape, and the design that will produce a desired outcome. The scope of the profession includes: urban planning and design; parks and recreational planning; environmental restoration; visual resource management; green infrastructure planning and provision; private residential design planning; all at varying scales of design, safety and management.<sup>30</sup>

During the JCC meeting, it was noted that due to economic conditions, internship opportunities in the architecture and landscape architecture fields was limited.

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<sup>29</sup> The information provided was distributed to the JCC by the Indiana Chapter of the American Society of Landscape Architects (INASLA).

<sup>30</sup> According to INASLA.

Jason Shelley with AIA acknowledged that the association was aware of the problem. He noted that (from the meeting minutes):

“Recessions hit this industry hard since construction slows when the economy is bad, so without new construction, fewer architects are needed. NCARB and AIA are very concerned about the age of current licensees in the profession, as approximately 50% of AIA members and NCARB subscribers will be retiring in the next ten years. There might be a nation-wide shortage of architects on the horizon.”

When asked by the JCC whether the internship requirement was possibly limiting the entrance of architects, AIA thought that it could be a restrictor, but the industry couldn't afford to lower licensure standards without jeopardizing public safety.

- 10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

Pursuant to IC 25-1-16-8(a)(6), the JCC recommends that the fee required for a reciprocity license from an architect or landscape architect applicant that is not a member of the Council of Landscape Architectural Registration Boards (CLARB) or the National Council of Architectural Registration Boards (NCARB) be equal to the fee required for an applicant who is a member of CLARB or NCARB, which reduces the fee from \$500 to \$200.



## State Board of Registration for Architects and Landscape Architects Costs

<b>Board Member Travel Reimbursements</b>	<b>8-Jan-14</b>	<b>12-Mar-14</b>	<b>14-May-14</b>	<b>9-Jul-14</b>	<b>12-Nov-14</b>
Les Smith	\$48.40	\$48.40	\$48.40	\$48.40	\$48.40
Debra Schmucker	\$18.48	--	\$18.48	\$18.48	\$18.48
Dale Stickel	\$278.09	\$291.09	--	\$291.09	\$268.08
Daniel Weinheimer	\$14.96	\$14.96	\$14.96	\$14.96	\$14.96
Hal Kovart	\$251.69	--	\$98.56	\$98.56	\$98.56
Dave Rausch	\$14.08	\$14.08	--	\$14.08	\$14.08
Jerome Eide	--	--	\$274.57	\$121.44	--
Richard Fetz	\$12.32	--	\$12.32	--	\$12.32
Todd Scroggins (New Member)	--	--	--	--	--
<b>Monthly Totals</b>	<b>\$638.02</b>	<b>\$368.53</b>	<b>\$467.29</b>	<b>\$607.01</b>	<b>\$474.88</b>
<b>Total Travel Costs</b>	<b>\$2,555.73</b>				

<b>Board Member Per Diem Payments</b>	<b>8-Jan-14</b>	<b>12-Mar-14</b>	<b>14-May-14</b>	<b>9-Jul-14</b>	<b>12-Nov-14</b>
Les Smith	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
Debra Schmucker	\$50.00	--	\$50.00	\$50.00	\$50.00
Dale Stickel	\$50.00	\$50.00	--	\$50.00	\$50.00
Daniel Weinheimer	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
Hal Kovart	\$50.00	--	\$50.00	--	--
Dave Rausch	\$50.00	\$50.00	--	--	--
Jerome Eide	--	--	\$50.00	--	--
Richard Fetz	\$50.00	--	\$50.00	--	--
Todd Scroggins	--	--	--	--	--
<b>Monthly Totals</b>	<b>\$350.00</b>	<b>\$200.00</b>	<b>\$300.00</b>	<b>\$200.00</b>	<b>\$200.00</b>
<b>Per Diem Total</b>	<b>\$1,250.00</b>				

*As of 12/31/2014, only four members completed their per diem paperwork to be paid following 7/1/2014.*

<b>Court Reporter Costs</b>	<b>8-Jan-14</b>	<b>12-Mar-14</b>	<b>14-May-14</b>	<b>9-Jul-14</b>	<b>12-Nov-14</b>
Circle City Court Reporters	\$90.00	\$90.00	\$90.00	\$90.00	--
<b>Total for Court Reporters</b>	<b>\$360.00</b>				

*The July 2014 court reporter costs were paid from the Architect and Landscape Architect Investigative Fund. Future invoices are to be paid from this dedicated fund.*

<b>Dues and Subscription Costs</b>	<b>FY 2014</b>	<b>FY 2015</b>
CLARB	\$5,485.00	\$10,985.00
NCARB	\$11,000.00	\$11,000.00
<b>Total</b>	<b>\$16,485.00</b>	<b>\$21,985.00</b>

*The Subscription costs are paid for using the Investigative Fund.*

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$20,650.73</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(C) Home Inspector Licensing Board**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Definition of the Practitioner

**IC 25-20.2-1-1: Application of article; exclusions**

*Sec. 1. (a) This article applies to an individual who conducts home inspections for compensation.*

*(b) This article does not apply to the following:*

*(1) An individual who is acting within the scope of the individual's employment as:*

*(A) a code enforcement official for the state or a political subdivision of the state; or*

*(B) a representative of a state or local housing agency or authority acting under the authority of the United States Department of Housing and Urban Development.*

*(2) An individual who is:*

*(A) either:*

*(i) registered as an architect under IC 25-4;*

*(ii) registered as a professional engineer under IC 25-31; or*

*(iii) licensed as a plumbing contractor or journeyman plumber under IC 25-28.5; and (B) acting within the scope of the individual's registration or license.*

*(3) An individual who is licensed under IC 25-34.1 as a real estate broker and is acting within the scope of the individual's license.*

*(4) An individual who is licensed or certified under IC 25-34.1 as a real estate appraiser and is acting within the scope of the individual's license or certificate.*

*(5) An individual who holds a certificate of authority under IC 27-1-27-2 as a public adjuster and is acting within the scope of the individual's certificate.*

*(6) An individual who holds a permit, certificate, or license to:*

*(A) use and apply pesticides; or*

*(B) make diagnostic inspections and reports for wood destroying pests; under IC 15-16-5 and is acting within the scope of the individual's certificate or license.*

*(7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license.*

## **IC 25-20.2-2-6: "Home inspection"**

*Sec. 6. "Home inspection" means a visual analysis for the purpose of providing a professional opinion of the condition of a residential dwelling and the dwelling's carports or garages, any reasonably accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for the following components:*

- (1) Heating systems.*
- (2) Cooling systems.*
- (3) Electrical systems.*
- (4) Plumbing systems.*
- (5) Structural components.*
- (6) Foundations.*
- (7) Roof coverings.*
- (8) Exterior and interior components.*
- (9) Attic spaces.*
- (10) Basement or crawl space, if any.*
- (11) Any other site aspects that affect the residential dwelling.*

*The term does not include a code compliance inspection.*

### **Establishment of the Board**

In 2003, the State created the Home Inspector Licensing Board. The Board is comprised of seven members appointed by the Governor: four members are Indiana licensed home inspectors actively engaged in the practice for at least 5 years prior to appointment; one member is a home builder actively engaged in the practice for at least 5 years prior to appointment; one member is a licensed real estate broker actively engaged in the practice for at least 5 years prior to appointment; and one member serves as a consumer (IC 25-20.2-3-2).

Each member serves on three year terms and cannot serve more than six consecutive years (IC 25-20.2-3-3).

### **Role of the Board**

The Board's primary functions are to review credentials for home inspector applicants, administer licenses to qualified individuals and implement administrative disciplinary actions against licensees who are not practicing according to the Board's statutes and rules.

The Board also investigates the unlicensed practices of individuals offering home inspection services in Indiana.

The IPLA leads in crafting legislation with input from the Home Inspector Licensing Board on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the board or licensees are acting in a manner inconsistent with the current or projected practice of the occupation; however, recommendations are being made by the JCC to change the regulatory management structure of the profession. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Home Inspector Licensing Board operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Home Inspector Licensing Board also serve other boards. Specifically, "Group 9" includes the Indiana Real Estate Commission, Manufactured Home Installer Licensing Board, Indiana Auctioneer Commission and Real Estate Appraiser Licensure & Certification Board. These boards and the composition of each group are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

## **3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Home Inspector Licensing Board have met the standards and statutes imposed by the General Assembly in providing adequate service to the home inspector profession and its licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the Board. The JCC

is proposing changes, requiring further public discussion at a future meeting, in regards to how this profession is regulated.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

<b>Application for licensure as a home inspector</b>	<b>\$450</b>
<b>Biennial home inspector license renewal fee</b>	<b>\$400</b>
<b>Application for Pre-licensing course provider</b>	<b>\$500</b>
<b>Biennial Pre-licensing course provider renewal fee</b>	<b>\$500</b>
<b>Application for continuing education provider</b>	<b>\$500</b>
<b>Biennial continuing education provider renewal fee</b>	<b>\$500</b>
<b>Reinstatement of expired home inspector license (under 3 years)</b>	<b>\$450</b>
<b>Reinstatement of expired home inspector license (over 3 years)</b>	<b>\$900</b>
<b>Activation of retired license</b>	<b>\$400</b>

This Board currently has the highest fees of any board overseen by the IPLA. Testimony delivered by Danny Maynard of the Indiana Chapter of the American Society of Home Inspectors (INASHI) stated that the fees were set at such a level to keep "hobbyists out of the marketplace." The agency and the board have since started the process of lowering the application fee to \$50. This is expected to go into effect before 2016.

**5. List the number of individuals who are licensed in the regulated occupation.**

**Home Inspectors**

- a.) 640 active licenses in Indiana
- b.) 23 retired licenses
- c.) 61 new licenses issued in 2012
- d.) 96 new licenses issued in 2013
- e.) 96 new licenses issued in 2014

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the Home Inspector Licensing Board, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

Home inspections started in the mid-1970s and consumer demand for the service has been growing. Further, ASHI estimates that 77 percent of the homes sold in the United States and Canada today are inspected prior to purchase.<sup>31</sup>

Danny Maynard, Executive Director for the Indiana Chapter of the American Society for Home Inspectors, stated the benefits to licensing home inspectors as:

- 1) Known Standards of Practice
- 2) Established Code of Ethics
- 3) Uniform Reporting Writing Standards
- 4) Pre-Licensing Training (higher education attainment to practice)
- 5) Competency Testing
- 6) Registration and Approval of Pre-Licensing Educational Providers.
- 7) Continuing Education Requirements

It was also noted as a positive economic effect that there are relatively few complaints against home inspectors. According to the Attorney General's Office, there were 19 complaints filed against home inspectors in 2014. Of all the complaints received by the Attorney General's office since 2008, 54 percent have resulted in no violation found. Of the cases that move to litigation, an overwhelming majority result in either no sanction, reprimand by the board or a warning letter.

In May 2012, construction and building inspectors had a median annual wage of \$53,450. The lowest ten percent of salaries reported were \$32,050 or under, while

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<sup>31</sup> According to the American Society of Home Inspectors.

those in the highest ten percent made \$83,760 or more a year.<sup>32</sup> In January 2014, that most home inspectors earned between \$25,223 and \$86,831 annually. The lowest mean pay range was \$27,730-\$46,860 and was found in states that included South Dakota, Maine, Indiana, Tennessee, Oklahoma and Idaho.<sup>33</sup>

The JCC found that it is common for real estate professionals (brokers), who are licensed practitioners, to suggest – and consumers demand – home inspections prior to purchasing a home. Often times the real estate broker chooses the home inspection company or home inspector directly with limited input from the consumer. The consumer does have ample resources and information to choose another service provider if they so choose.

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

The JCC is supportive of the current actions being taken by the Home Inspector Licensing Board and the IPLA to lower the application and renewal fees owed by home inspectors. Requiring practitioners to pay \$450 to be a home inspector each cycle amounts to, on average, almost a 1 percent annual income tax<sup>34</sup> on an individual's practice. The fee structure should not be a disincentive for possible entrants into the profession nor an unnecessary form of taxation required of those in the industry. The fees should fund state, administrative costs instead of serving as an obstacle for potential and current practitioners in the private sector.

Alternatives to the licensing structures currently in place for home inspectors were discussed, and the JCC will continue to seek public input on the preliminary recommendations for the Home Inspector Licensing Board pursuant to IC 25-1-16-14.

**9. List any other criteria identified by the JCC.**

None.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation**

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<sup>32</sup> According to the U.S. Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov).

<sup>33</sup> According to Pay Scale Human Capital – [www.payscale.com](http://www.payscale.com).

<sup>34</sup> Based on data provided previously in the report from the U.S. Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov).



**and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The JCC recommends that Indiana maintain the Home Inspector Licensing Board and continue to regulate all license types under the Home Inspectors Licensing Board, which includes the following: licensed home inspector, CE provider – home inspector, pre-course for home inspectors and home inspector instructor.

The JCC also recommends reducing the required number of continuing education (CE) hours from 32 hours to 16 hours per renewal cycle.

## Indiana Home Inspector Licensing Board Costs

<b>Board Member Travel Reimbursements</b>	<b>11-Mar-14</b>	<b>15-Jul-14</b>	<b>2-Dec-14</b>
Mark Genung	\$7.92	\$7.92	\$7.92
John Hatfield	\$188.32	\$188.32	\$359.45
John Longenecker	\$149.96	\$146.96	\$146.96
Phillip Thornberry	---	---	---
Paul Shoopman	---	---	---
<b>Monthly Totals</b>	<b>\$346.20</b>	<b>\$343.20</b>	<b>\$514.33</b>
<b>Total Travel Costs</b>	<b>\$1,203.73</b>		

<b>Board Member Per Diem Payments</b>	<b>11-Mar-14</b>	<b>15-Jul-14</b>	<b>2-Dec-14</b>
Mark Genung	\$50.00	---	\$50.00
John Hatfield	\$50.00	---	---
John Longenecker	\$50.00	\$50.00	\$50.00
Phillip Thornberry	---	---	---
Paul Shoopman	---	---	---
<b>Monthly Totals</b>	<b>\$150.00</b>	<b>\$50.00</b>	<b>\$100.00</b>
<b>Per Diem Total</b>	<b>\$300.00</b>		

*As of Dec. 2014, only two board members had completed the paper work necessary to receive per diem payments.*

<b>Court Reporter Costs</b>	<b>11-Mar-14</b>	<b>15-Jul-14</b>	<b>2-Dec-14</b>
Accurate Reporting of Indiana	\$150.00	\$150.00	---
<b>Total for Court Reporters</b>	<b>\$300.00</b>		

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$1,803.73</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(D) State Board of Registration for Professional Engineers**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Definition of the Practitioner

**IC 25-31-1-2: Definition of Engineering**

*Sec. 2. As used in this chapter:*

*(b) "Professional engineer" means an individual who, by reason of that individual's special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design which are acquired by education and practical experience, is qualified to engage in the practice of engineering as attested by that individual's registration as a professional engineer.*

*(c) "Engineering intern" means an individual who:*

*(1) is a graduate from an approved engineering curriculum of four (4) years or more or who has acquired, through engineering education and experience in engineering work, knowledge and skill approximating that obtained by graduation in an approved engineering curriculum of four (4) years or more;*

*(2) has successfully passed an examination as prescribed in section 14 of this chapter; and*

*(3) has been issued by the board an appropriate certificate of enrollment as an engineering intern.*

*(d) "Practice of engineering" means any service or creative work that the adequate performance of requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to services or creative work that includes the following:*

*(1) Consultation.*

*(2) Investigation.*

*(3) Evaluation.*

*(4) Planning, including planning the use of land and water.*

*(5) The design of or the supervision of the design of engineering works and systems.*

*(6) Engineering surveys and studies or the supervision of engineering surveys and studies, including all surveying activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but not including the surveying of real property for the establishment of land boundaries, subdivisions, rights-of-*

*way, easements, and the dependent or independent surveys or resurveys of the public land survey system.*

*(7) Evaluation of construction for the purpose of assuring compliance with specifications, plans, and designs, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, work systems, or projects.*

### Establishment of the Board

In 1935, the State of Indiana required that engineers be licensed. It was a combined board charged with regulating both the practice of engineering and the practice of land surveying. In 1991, the State Board of Registration for Land Surveyors was established, and the State Board of Registration for Professional Engineers began hearing cases solely involving the engineering profession. The makeup of the Board is outlined in statute below:

### **IC 25-31-1-3: State board of registration for professional engineers**

*Sec. 3. (b) The board consists of seven (7) members, six (6) of whom shall be registered professional engineers.*

*(c) One (1) member must be appointed to represent the general public who is:*

*(1) a resident of this state; and*

*(2) not associated with professional engineering other than as a consumer.*

*(d) All members of the board shall be appointed by the Governor.*

*(e) Six (6) professional engineer members shall be appointed to the board and shall at the time of appointment consist of:*

*(1) one (1) member from industry;*

*(2) one (1) member from government;*

*(3) one (1) member from education;*

*(4) two (2) members from private practice; and*

*(5) one (1) member at large.*

*(f) A person appointed as a professional engineer member of the board must:*

*(1) be a citizen of the United States;*

*(2) have been a resident of this state for a period of at least five (5) years immediately before the time of the member's appointment;*

*(3) be registered as a professional engineer and must have been engaged in the lawful practice of engineering for at least twelve (12) years; and*

*(4) have been in responsible charge of engineering work or engineering teaching for at least five (5) years.*

*(g) Every member of the board shall be appointed for a term of four (4) years and shall serve until the member's successor is appointed and qualified.*

### Role of the Board

The Board's primary functions are to review credentials for professional engineer applicants, administer licenses to qualified individuals and implement administrative disciplinary actions against licensees who are not practicing according to the Board's statutes and rules.

The Board also investigates the unlicensed practices of individuals offering engineering services in Indiana.

The Professional Licensing Agency leads in crafting legislation with input from the State Board of Registration for Professional Engineers on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the Board or licensees are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The State Board of Registration for Professional Engineers operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the State Board of Registration for Professional Engineers also serve other boards. Specifically, "Group 10" includes the State Board of Registration for Professional Surveyors, State Board of Registration for Architects and Landscape Architects, Indiana Athletic Trainers Board and Private Investigator and Security Guard Licensing Board. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative

director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the State Board of Registration for Professional Engineers have met the standards and statutes imposed by the General Assembly in providing adequate service to the engineer profession and its licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the Board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

First-Time Indiana Professional Engineer Examination Applicants

- a.) The National Council of Examiners for Engineering and Surveying (NCEES) aids in the servicing of licenses.
  - i. NCEES develops, administers and scores the examinations used for engineering and surveying licensure. NCEES also promotes and facilitates professional mobility and uniformity of the licensure processes by supplying records, study materials, credential evaluations and exam administration.
  - ii. Annual NCEES membership dues \$6,500, which are paid by the IPLA.
- b.) Initial application candidates have an application fee payable to the Board. The application fee is \$300.00.

Comity applicants

- a.) Comity applicants are candidates who are or have been licensed as a professional engineer in another state, which may or may not be substantially equivalent.

b.) Comity application fee is \$500.00

Other associated fees

a.) Issuance fee

i. August 1 of odd year through July 31 of even year – \$50.00

ii. August 1 of even year through July 31 of odd year - \$100.00

b.) Renewal fee (3 years or less) = \$100.00

c.) Reinstatement fee (more than 3 years) = \$400.00

d.) Professional corporation application fee = \$25.00

**IC 25-31-1-35 Investigative fund; administration by attorney general and licensing agency; appropriation**

*Sec. 35. (a) The registered professional engineers and registered engineering interns investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against violators of this article. The fund shall be administered by the attorney general and the licensing agency.*

*(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from the fee imposed upon registered professional engineers and registered engineering interns under section 9(b) of this chapter.*

*(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested*

Since the fund was created in 2005 by the General Assembly, the Board has never created rules to collect fees to use the fund. There is currently no money being collected or any money in the fund to be used.

**5. List the number of individuals who are licensed in the regulated occupation.**

**Engineer Intern** – a professional candidate learning the practice of professional engineer services in the State of Indiana

a.) 23,464 active licenses in Indiana

b.) 97 new licenses issued since August 1, 2014

**Professional Engineers** – required for anyone practicing professional engineer

services in the State of Indiana

- a.) 11,789 active licenses in Indiana
- b.) 325 new licenses issued since August 1, 2014

**Engineer Professional Corporation** – required by businesses that fall under the professional corporation description (IC 23-1.5-2 and IC 23-1.5-2-3(a)(2))

- a.) 139 active corporate licenses

The total number of active licenses with the State Board of Registration of Professional Engineers is **35,253**.

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the State Board of Registration for Professional Engineers, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

Licensure is the mark of a professional and distinguishes practitioners (PE can be added after name) in the marketplace. Consumers and businesses know that in working with (licensed) professional engineers, there is a high quality associated with the work produced.

The economic impact can be measured in the costs of engineering failures and the reason for higher regulatory reform. The welfare of all Hoosiers working in metropolitan areas is at stake if the state's infrastructure, buildings, etc. are not properly constructed. Here's a timeline of major engineering failures:

- June 5, 1976 – Teton Dam Collapse
  - o 14 people died
  - o >1\$ billion cost
- July 17, 1981 – Hyatt Regency Bridge Collapse
  - o 114 people died
  - o >200 people injured



- April 28, 1986 – Cherobyl Nuclear Power Plant Accident
  - o >20 people killed
  - o .5 million people injured
- August 1, 2007 – Minneapolis I-35W Bridge Collapse
  - o 13 people killed
  - o 145 people injured

These accidents occurred with the engineering field being regulated, but the volume of accidents could have been higher without the current structure in place. Some of the economic impact is preventing disasters from happening in the first place.

Revenue generated for the State from licensing fees is between approximately \$350k and \$400k.

Currently, only a licensed engineer may prepare, sign and seal, and submit engineering plans and drawings to a public authority for approval, or seal engineering work for public and private clients. For those considering a career in education, many states have been increasingly requiring that those individuals teaching engineering to be licensed.

With the growing complexity and the increasing diversity of modern construction processes and techniques, the engineer in construction must readily be able to communicate and exchange ideas and views with other licensed design engineers. For those pursuing careers in industry, licensure has recently taken on increased meaning with heightened public attention concerning product safety, environmental issues, and design defects. Employers have found it advantageous to identify to the courts and the public those employees who have met at least a minimum level of competence.<sup>35</sup>

## **8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

Alternatives to the licensing structures currently in place for professional engineers were discussed, and the JCC will continue to seek public input on the preliminary recommendations for the State Board of Registration for Professional Engineers pursuant to IC 25-1-16-14.

The JCC didn't find the fees being charged by the Board to be a critical barrier to entry, but the costs could be lowered to be less of financial strain on practitioners.

## **9. List any other criteria identified by the JCC.**

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<sup>35</sup> Information accumulated for this section was from the report given by the Indiana Society of Professional Engineers (ISPE).

None.

- 10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The JCC recommends that Indiana maintain the State Board of Registration for Professional Engineers and continue to regulate all license types under the State Board of Registration for Professional Engineers, which includes professional engineers, engineer interns and engineering professional corporations.

## **State Board of Registration for Professional Engineers**

<b>Board Member Travel Reimbursements</b>	<b>16-Jan-14</b>	<b>20-Mar-14</b>	<b>13-May-14</b>	<b>17-Jul-14</b>	<b>18-Sep-14</b>	<b>20-Nov-14</b>
Mark Downey	\$13.20	\$13.20	--	--	--	--
Vincent Drnevich	\$59.84	\$59.84	\$59.84	\$59.84	--	\$59.84
Harold Snead	\$194.37	--	\$194.37	\$194.37	\$214.37	\$194.37
Kenneth Spaulding	\$279.53	\$303.53	\$279.53	--	--	--
John Sauer	--	--	--	--	--	--
Stephen Gillman	--	--	--	--	--	--
Opal Kuhl	--	--	--	--	--	\$56.32
<b>Monthly Totals</b>	<b>\$546.94</b>	<b>\$376.57</b>	<b>\$533.74</b>	<b>\$254.21</b>	<b>\$214.37</b>	<b>\$310.53</b>

<b>Total Travel Costs</b>	<b>\$2,236.36</b>
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<b>Board Member Per Diem Payments</b>	<b>16-Jan-14</b>	<b>20-Mar-14</b>	<b>13-May-14</b>	<b>17-Jul-14</b>	<b>18-Sep-14</b>	<b>20-Nov-14</b>
Mark Downey	\$50.00	\$50.00	--	--	--	--
Vincent Drnevich	\$50.00	\$50.00	--	--	--	--
Harold Snead	\$50.00	--	\$50.00	\$50.00	\$50.00	\$50.00
Kenneth Spaulding	\$50.00	\$50.00	--	--	--	--
John Sauer	--	--	--	--	--	--
Stephen Gillman	--	--	--	--	--	--
Opal Kuhl	--	--	--	--	--	--
<b>Monthly Totals</b>	<b>\$200.00</b>	<b>\$150.00</b>	<b>\$50.00</b>	<b>\$50.00</b>	<b>\$50.00</b>	<b>\$50.00</b>

<b>Per Diem Total</b>	<b>\$550.00</b>
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*As of December 2014, only 1 member had completed the paper work to receive per diem payments.*

<b>Court Reporter Costs</b>	<b>16-Jan-14</b>	<b>20-Mar-14</b>	<b>13-May-14</b>	<b>17-Jul-14</b>	<b>18-Sep-14</b>	<b>20-Nov-14</b>
Circle City Court Reporters	\$90.00	\$270.00	\$90.00	\$90.00	\$135.00	--

<b>Total for Court Reporters</b>	<b>\$675.00</b>
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<b>Dues and Subscription Costs</b>	<b>FY 2014</b>	<b>FY 2015</b>
NCEES	\$6,500.00	\$6,500.00
<b>Total</b>	<b>\$6,500.00</b>	<b>\$6,500.00</b>

*The Subscription costs are paid for using General Fund appropriations.*

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$9,961.36</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(E) State Board of Registration for Professional Surveyors**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Definition of the Practitioner

**IC 25-21.5-1-7: “Practice of Surveying”**

*Sec. 7. (a) "Practice of surveying" means providing, or offering to provide, professional services involving:*

- (1) the making of geometric measurements of, and gathering related information pertaining to, the physical or legal features of the earth, improvements on the earth, the space above the earth, or any part of the earth; and*
- (2) the use and development of the measurements and information gathered under subdivision (1) into survey products, including graphics, digital data, maps, plats, plans, reports, and descriptions and projects.*

*(b) Professional services provided under the practice of surveying include consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any of the following:*

- (1) Determining the configuration or contour of the earth's surface or the position of fixed objects thereon by measuring lines and angles and applying the principles of mathematics or photogrammetry.*
- (2) Determining the size and shape of the earth, or any point on the earth, by performing geodetic surveys using angular and linear measurements through spatially oriented spherical geometry.*
- (3) Determining, by the use of principles of surveying, the position for any nonboundary related survey control monument or reference point, or setting, resetting, or replacing any nonboundary related monument or reference point.*
- (4) Locating, relocating, establishing, reestablishing, laying out, retracing, or marking any property or boundary line or corner of any tract of land or of any right-of-way or easement.*
- (5) Making any survey or preparing any plat for the subdivision of any tract of land.*
- (6) Determining, by the use of principles of surveying, the position for any boundary related survey monument or reference point, or setting, resetting, or replacing any monument or reference point.*
- (7) Preparing a description for any parcel or boundary of land, or for any right-of-way or easement, except when prepared by an attorney who is licensed to practice law in Indiana.*

*(8) Determining the amount of acreage contained in any parcel of land, except when determined by an attorney who is licensed to practice law in Indiana.*

*(9) Performing construction staking or layout of the control for any elements of an engineering, building, or construction project, if the position of an element is:*

*(A) dependent on;*

*(B) in specific relation to; or*

*(C) in close proximity to; a boundary, property line, or corner, including easements and rights-of-way.*

*(10) For and within subdivisions being designed by a professional surveyor, the preparation and furnishing of plats, plans, and profiles for roads, storm drainage, sanitary sewer extensions, and the location of residences or dwellings where the work involves the use and application of standards prescribed by local, state, or federal authorities.*

*(11) All work incidental to cleaning out, reconstructing, or maintaining existing open and tile drains.*

*(12) Creating, preparing, or modifying electronic or computerized data relative to the performance of the activities described in this subsection.(c) Activities included within the practice of surveying that must be accomplished under the responsible charge of a professional surveyor, unless specifically exempted under subsection (d), include the following:*

*(1) The creation of maps and geo-referenced data bases representing authoritative locations for boundaries, fixed works, or topography, either by terrestrial surveying methods or by photogrammetric or GNSS locations. This includes maps and geo-referenced data bases prepared by any person, firm, or government agency if that data is provided to the public as a survey product.*

*(2) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes:*

*(A) Geodetic control.*

*(B) Orthoimagery.*

*(C) Elevation and bathymetry.*

*(D) Fixed works.*

*(E) Government boundaries.*

*(F) Cadastral information.*

*(3) Certification of positional accuracy of maps or measured survey data.*

*(4) Measurement, adjustment, and authoritative interpretation of raw survey data.*

*(5) GIS-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected.*

*(6) Interpretation of maps, deeds, or other land title documents to resolve conflicting data elements within cadastral documents of record.*

*(7) Acquisition of field data required to authoritatively position fixed works or cadastral data to geodetic control.*

*(8) Adjustment or transformation of cadastral data to improve the positional accuracy of the parcel layer or layers with respect to the geodetic control layer within a GIS for purposes of affirming positional accuracy.*

*(d) A distinction is made in this subsection, in the use of electronic systems, between making or documenting original measurements in the creation of survey products and the copying, interpretation, or representation of those measurements in systems. Further, a distinction is made according to the intent, use, or purpose of measurement products in electronic systems, between the determination of authoritative locations and the use of those products as a locational reference for planning, infrastructure management, and general information. The following items are not included as activities within the definition of the practice of surveying:*

*(1) The creation of general maps:*

*(A) prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;*

*(B) prepared for publication in a gazetteer or atlas as an educational tool or reference publication;*

*(C) prepared for or by educational institutions for use in the curriculum of any course of study;*

*(D) produced by any electronic or print media firm as an illustrative guide to the geographic location of any event; or*

*(E) prepared by lay persons for conversational or illustrative purposes, including advertising material and users' guides.*

*(2) The transcription of previously geo-referenced data into a geographic information system by manual or electronic means, and the maintenance thereof, if the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and the precise location of fixed works of humans.*

*(3) The transcription of public record data, without modification except for graphical purposes, into geographic information systems-based cadastral, including tax maps, zoning maps, and associated records by manual or electronic means, and the maintenance of that cadastral, if the data are clearly not intended to authoritatively represent property boundaries.*

*(4) The preparation of any document by any agency of the federal government that does not define real property boundaries, including civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other similar documents.*

*(5) The incorporation or use of documents or data bases prepared by any federal agency into a geographic information system, including federal census and demographic data, quadrangle topographic maps, and military maps.*

*(6) Inventory maps and data bases created by any organization, in either hard copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which the organization has rights or for which the organization has management responsibility. The distribution of these maps and data bases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data source or sources, and date or dates, and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.*

*(7) Maps, cross-sections, graphics, and data bases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document and interpret the data in the context of their respective practices.*

*(8) Maps and geo-referenced data bases depicting physical features and events prepared by any government agency if the access to that data is restricted by statute, including geo-referenced data generated by law enforcement agencies involving crime statistics and criminal activities.*

*(9) Classified parcels developed in accordance with IC 6-1.1-6-9(c).*

*(e) The use of photogrammetric methods or similar remote sensing technology to perform any part of the practice of surveying as defined in this section may be performed only under the direct control and supervision of a professional surveyor or professional photogrammetrists who maintain a current title of "Certified Photogrammetrist" from a national scientific organization having a process for certifying photogrammetrists.*

*(f) The practice of surveying encompasses a number of disciplines, including geodetic surveying, hydrographic surveying, cadastral surveying, construction staking, route surveying, photogrammetric surveying, and topographic surveying. A professional surveyor may practice only within the surveyor's area of expertise.*

### Establishment of the Board

Professional surveyors have been regulated and licensed in Indiana since the 1935; the same year the State of Indiana required that engineers be licensed. It was a combined board charged with regulating both the practice of engineering and the practice of land surveying. In the 1960's, the highly specialized nature of boundary surveying as separate and distinct from engineering was acknowledged and surveying licensure was completely separated from the practice of engineering at that time.



In 1991, the combined board split, establishing the State Board of Registration for Land Surveyors and the State Board of Registration for Professional Engineers.

The makeup of the board is outlined in statute below:

**IC 25-21.5-2-2: State board of registration for professional surveyor, membership**

*Sec. 2. (a) The board consists of seven (7) members appointed by the Governor.*

*(b) One (1) member must be appointed to represent the general public who is:*

*(1) a resident of Indiana; and*

*(2) not associated with surveying other than as a consumer.*

*(c) Six (6) members must be registered professional surveyors who engage in the practice of surveying and who each meet the following conditions:*

*(1) Is a citizen of the United States.*

*(2) Has been a resident of Indiana for at least five (5) years immediately before the member's appointment.*

*(3) Is registered in Indiana as a professional surveyor.*

*(4) Has been engaged in the lawful practice of surveying for at least eight (8) years.*

*(5) Has been in charge of surveying work or surveying teaching for at least five (5) years.*

*(d) Of the registered professional surveyors appointed under subsection (c), three (3) must be engaged in the practice of surveying on a full-time basis, and at least two (2) must be engaged in the practice of surveying on a part-time basis.*

**Role of the Board**

The Board's primary functions are to review credentials for professional surveyor applicants, administer licenses to qualified individuals and implement administrative disciplinary actions against licensees who are not practicing according to the Board's statutes and rules.

The Board also investigates the unlicensed practices of individuals offering land surveying services in Indiana.

The Professional Licensing Agency leads in crafting legislation with input from the State Board of Registration for Professional Surveyors on related matters that work to benefit consumers and licensees in their industry.

Nothing was discovered that indicates the board or licensees are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

**2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The State Board of Registration for Professional Surveyors operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the State Board of Registration for Professional Surveyors also serve other boards. Specifically, "Group 10" includes the State Board of Registration for Professional Engineers, State Board of Registration for Architects and Landscape Architects, Indiana Athletic Trainers Board and Private Investigator and Security Guard Licensing Board. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the State Board of Registration for Professional Surveyors have met the standards and statutes imposed by the General Assembly in providing adequate service to the land surveying profession and its licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

#### First-Time Indiana Professional Surveyor Examination Applicants

The National Council of Examiners for Engineering and Surveying (NCEES) aids in the servicing of licenses. NCEES develops, administers and scores the examinations used for engineering and surveying licensure. NCEES also promotes and facilitates professional mobility and uniformity of the licensure processes by supplying records, study materials, credential evaluations and exam administration.

Annual NCEES membership dues are \$6,500. The initial application candidates have an application fee payable to the Board. The application fee is \$300.00.

#### Comity applicants

- a.) Comity applicants are candidates who are or have been licensed as a professional engineer in another state, which may or may not be substantially equivalent.
- b.) Comity application fee is \$500.00.

#### Other associated fees

- a.) Issuance fees for August 1 of odd year through July 31 of even year are \$50.00, while August 1 of even year through July 31 of odd year - \$100.00
- b.) Renewal fee (3 years or less) = \$100.00
- c.) Reinstatement fee (more than 3 years) = \$400.00
- d.) Professional corporation application fee = \$25.00

#### **IC 25-21.5-11-4 Investigative fund; administration by attorney general and licensing agency; appropriation**

*Sec. 4. (a) The professional surveyor and surveyor intern investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against violators of this article. The fund shall be administered by the attorney general and the licensing agency.*

*(b) The expenses of administering the fund shall be paid from the money in the fund. The fund consists of money from a fee imposed upon professional surveyors and surveyor interns under IC 25-21.5-3-4(b).*

*(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.*

*(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund. If the total amount in the fund exceeds five hundred thousand dollars (\$500,000) at the end of a state fiscal year after payment of all claims and expenses, the amount that exceeds five hundred thousand dollars (\$500,000) reverts to the state general fund.*

*(e) Money in the fund is continually appropriated for use by the attorney general and the licensing agency to administer and enforce the provisions of this article and to conduct investigations and take enforcement action against persons violating the provision of this article.*

—  
This fund has never been created or utilized and has a balance of \$0.

**5. List the number of individuals who are licensed in the regulated occupation.**

**Land Surveyor-in-Training** – a professional candidate learning the practice of professional surveyor services in the State of Indiana

- a.) 408 active licenses in Indiana
- b.) 4 new licenses issued since January 1, 2014

**Professional Surveyor** – required for anyone practicing professional surveyor services in the State of Indiana

- a.) 838 active licenses in Indiana
- b.) 10 new licenses issued since January 1, 2014

**Engineer Professional Corporation** – required by businesses that fall under the professional corporation description (IC 23-1.5-2 and IC 23-1.5-2-3(a)(2))

- a.) 115 active corporate licenses

The total number of active licenses with the State Board of Registration for Professional Surveyors is **1361**.

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the State Board of Registration for Professional Surveyors, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

“Numbers are difficult to assimilate for several reasons:

- 1) some aspects of surveying may also be practiced by professional engineers,
- 2) many surveying firms also employ engineers, and
- 3) many engineering firms employ surveyors only in support of their engineering projects.

But, ISPLS estimates that there are perhaps 2,000 persons directly employed as or by professional surveyors in the State of Indiana.

The average salary of a Professional Surveyor varies widely depending on a number of factors:

- 1) the size of firm they work for,
- 2) the type of work they perform, and
- 3) where their businesses are located.

Notwithstanding that, salaries likely range from perhaps an annual salary of \$50,000 for the practitioner with a very small business or a junior Professional Surveyor, to perhaps \$100,000 for a very senior staff surveyor or survey manager in a large firm. The pay of survey technicians likewise varies for the same reasons, with annual incomes likely ranging from around \$25,000 for an entry-level office technician to over \$60,000 for a senior, experienced field technician.

Licensure - or the lack thereof - does not have a direct impact on the amount of economic activity since the ‘drivers’ of economic activity that generate surveying work are not in the control of surveyors. Private developers, lenders, governmental entities and property owners are the initiators of activities that will

require the services of professional surveyors; surveyors generally do not generate their own work, they are hired by others.

The small numbers of persons involved in surveying activities cited above are deceiving since every single public and private infrastructure project necessarily involves surveyors at the very beginning, often throughout the project, and typically at the end for as-built documentation purposes. In addition, conveyances of commercial property or property being purchased or financed for development nearly always involve a specialized type of boundary survey (the nationally-recognized 'ALTA/ACSM Land Title Survey') that lenders and title companies rely on to assess the risks involved in lending and insuring projects.

Surveying licensure is important because it supports economic development in Indiana in many ways. Development, infrastructure and land conveyancing may be the most important economically because they are directly tied to a tremendous amount of related economic activity.

Contracts for surveying on infrastructure projects of any significant size require that the work be performed by licensed surveyors. Such contracts virtually always require that the survey provider carry professional liability insurance, which is generally not available unless the provider is a licensed surveyor. Similarly, lenders across the United States typically require that a Land Title Survey be performed as a condition of the mortgage on commercial or industrial property. Lenders universally require that such surveys be performed by licensed surveyors.

Taking the above facts into account means that very significant economic activity related to development, infrastructure and property would grind to a halt in fairly short order without surveying licensure to assure lending institutions, title companies and clients that the work is being done by qualified, competent persons. It is not an exaggeration to say that if money and title insurance are not available, these activities will simply cease. Because these activities almost always reach across state lines in one manner or other, certification is not a substitute for licensure for the sophisticated clients involved in these sorts of activities.

Aside from those obvious issues, the entire land tenure system in Indiana (and every other state, for that matter) hinges on the professional surveyor. It is widely recognized that private property ownership is a cornerstone of a democratic society. Providing for the integrity of those property boundaries is a necessity and the surveyor is the only person educated, experienced and qualified to provide for that veracity. This is the primary reason that surveyors are licensed in all 50 states and have been for many decades.

Many, if not most clients require professional liability insurance on their projects - which will be available only to out-of-state licensed surveyors. If Indiana

deregulated the profession, out-of-state surveyors will be the only ones who will be able to secure contracts on federal highway projects, U.S. Corps of Engineers projects, utility projects that cross state lines and the many other projects that require a licensed professional. Ultimately, Hoosier surveyors will find themselves out of a job because, without licensure, they will not be able to meet the requirements of most such clients.

Furthermore, deregulating the professional will prevent Hoosier surveyors from obtaining licensure by comity in any other state. Many Indiana surveyors are licensed and perform work in adjoining states. In addition, young and up-coming Indiana surveyors will never be able to gain the required experience under a licensed professional to qualify for licensure in another state, so they will simply not remain in Indiana. At least three surveying programs at Indiana colleges and universities would cease to exist.

In short, the deregulation of the surveying profession would, ironically, not equal more jobs for Hoosiers; it would actually destroy jobs in Indiana.”<sup>36</sup>

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

Please see No. 10 for more information.

**9. List any other criteria identified by the JCC.**

None.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

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<sup>36</sup> Information accumulated in this section is from the report given by the Indiana Society of Professional Land Surveyors (INSPLS).

The JCC recommends that Indiana maintain the State Board of Registration for Professional Surveyors and continue to regulate the following license types: professional surveyor, surveyor intern, CE provider – land surveyor, and surveyor firm.



## **State Board of Registration for Professional Surveyors**

<b>Board Member Travel Reimbursements</b>	<b>24-Jan-14</b>	<b>4-Apr-14</b>	<b>25-Jul-14</b>	<b>3-Oct-14</b>
Christine Arnold	\$9.68	\$18.48	--	\$9.68
Richard Hudson	\$144.46	\$144.46	--	\$124.96
Doug Lechner	--	--	--	--
John Stephens	--	--	\$74.80	--
Michael Deboy	\$26.40	--	--	\$26.40
Ross Holloway	--	\$17.60	\$17.60	--
Gary Kent	--	--	--	--
<b>Monthly Totals</b>	<b>\$180.54</b>	<b>\$180.54</b>	<b>\$92.40</b>	<b>\$161.04</b>

<b>Total Travel Costs</b>	<b>\$614.52</b>
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<b>Board Member Per Diem Payments</b>	<b>24-Jan-14</b>	<b>4-Apr-14</b>	<b>25-Jul-14</b>	<b>3-Oct-14</b>
Christine Arnold	\$50.00	\$50.00	--	\$50.00
Richard Hudson	\$50.00	\$50.00	--	\$50.00
Doug Lechner	--	--	--	--
John Stephens	--	--	--	--
Michael Deboy	\$50.00		\$50.00	\$50.00
Ross Holloway	--	\$50.00	\$50.00	--
Gary Kent	--	--	--	--
<b>Monthly Totals</b>	<b>\$150.00</b>	<b>\$150.00</b>	<b>\$100.00</b>	<b>\$150.00</b>

<b>Per Diem Total</b>	<b>\$550.00</b>
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*As of December 2014 only 3 board members had completed the paper work to receive per diem payments.*

<b>Court Reporter Costs</b>	<b>24-Jan-14</b>	<b>4-Apr-14</b>	<b>25-Jul-14</b>	<b>3-Oct-14</b>
Circle City Court Reporters	\$360.00	\$270.00	\$135.00	\$378.00

<b>Total for Court Reporters</b>	<b>\$1,143.00</b>
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<b>Dues and Subscription Costs</b>	<b>FY 2014</b>	<b>FY 2015</b>
NCEES	\$6,500.00	\$6,500.00
<b>Total</b>	<b>\$6,500.00</b>	<b>\$6,500.00</b>

*The Subscription costs are paid for using General Fund appropriations.*

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$8,807.52</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(F) Manufactured Home Installer Licensing Board**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Definition of the Practitioner

**IC 25-23.7-2-4: "Installer"**

*Sec. 4. "Installer" means an individual who contracts to install or installs a manufactured home.*

**IC 25-23.7-2-7: "Manufactured home"**

*Sec. 7. "Manufactured home" means a:*

- (1) dwelling meeting the definition set forth in IC 22-12-1-16; or*
- (2) mobile home being installed in a mobile home community.*

Establishment of the Board

The Board was established in accordance with IC 25-23.7 in 2002.

**IC 25-23.7-3-2: Members**

*Sec. 2. (a) The board consists of nine (9) members appointed by the Governor as follows:*

- (1) Four (4) members who are installers, each of whom:*
  - (A) is licensed in Indiana as an installer; and*
  - (B) has been actively engaged in the installation of manufactured homes for at least five (5) years immediately before the member's appointment to the board.*
- (2) One (1) member who represents manufactured home manufacturers with production facilities in Indiana.*
- (3) One (1) member who represents manufactured home dealers.*
- (4) One (1) member who is an operator or who is employed by an operator of a mobile home community licensed under IC 16-41-27.*
- (5) One (1) member who is an owner of or who is employed by a primary inspection agency, a designation issued under 24 CFR3282 by the United States Department of Housing and Urban Development.*
- (6) One (1) member who represents the general public and who is not associated with the manufactured home industry other than as a consumer.*

*(b) The members of the board must be residents of Indiana.*

Role of the Board

The Board's primary functions are to review credentials for manufactured home installer applicants, administer licenses to qualified individuals and implement administrative disciplinary actions against licensees who are not practicing according to the Board's statutes and rules.

The Board also investigates the unlicensed practices of individuals offering manufactured home installation services in Indiana.

The Professional Licensing Agency leads in crafting legislation with input from the Manufactured Home Installer Licensing Board on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the board or licensees are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Manufactured Home Installer Licensing Board operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Manufactured Home Installer Licensing Board also serve other boards. Specifically, "Group 9" includes the Indiana Real Estate Commission, Indiana Real Estate Appraiser Board, Home Inspector Licensing Board, and the Indiana Auctioneer Commission. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Manufactured Home Installer Licensing Board have met the standards and statutes imposed by the General Assembly in providing adequate service to the manufactured home installer profession and its licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the Board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

Application Fee	\$150
Quadrennial Renewal Fee	\$50
Reinstatement of expired license (under 3 years)	\$100
Reinstatement of expired license (over 3 years)	\$200

**5. List the number of individuals who are licensed in the regulated occupation.**

**Manufactured Home Installer** – An individual may not install a manufactured home without first obtaining from the board a license authorizing the individual to install a manufactured home. A political subdivision may not require a licensee to submit to any other form of licensing except for that required by a political subdivision for onsite electrical, plumbing or mechanical systems installation. However, this article does not limit the power of a political subdivision to regulate the quality and character of work performed by a licensee through the enforcement of building codes or conducting inspections.

**\*\*Exception to licensure** - An individual acting at all times at the direction and under the supervision of a licensed installer need not be licensed in order to install a manufactured home. A licensee is fully responsible for all installation work performed under the licensee's direction or supervision.

- 126 active licenses
- 11 inactive licenses
- 6 new licenses issued in 2013
- 2 new licenses issued in 2014
- 0 licenses issued to date in 2015 (as of 2/12/2015)

**Pre-Licensing Course Providers**

Approval by the Board is required to offer a pre-licensing course to applicants for licensure. There are three active providers:

1. Indiana Manufactured Housing Association, CE10600353
2. James K. Keller, CE21000939
3. Tyson Marketing, CE21100021

### **Continuing Education Course Providers**

Continuing education course providers are approved by the Board or automatically approved under IC 25-1-4-0.2. There are two active providers:

1. Indiana Manufactured Housing Association, CE10700587
2. Tyson Marketing, CE21100037

### **6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the Manufactured Home Installer Licensing Board, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

### **7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

Federal law requires manufactured home installers to be licensed. Federal law also mandates minimum standards in training, licensing, installing and inspecting these homes. This federal law was established at the request of the industry.

Manufactured homes are engineered and constructed to rigorous standards with a multi-stage inspection and approval process. However, the benefits of the indoor, highly regimented system building process can be destroyed by a poor installation. Improper installation can create a variety of problems ranging from cracked drywall and improper fitting of doors and windows to serious safety issues with broken utility connections.

As a product that is largely focused on the affordable housing market we are keenly aware of any increased costs that will eventually be passed on to the consumer. There are obvious costs involved in the installer licensing process, including bonding, education and applications. There could also be an opportunity cost to an installer who has to attend continuing education class, although the current requirement of 10 CE hours in four years makes that negligible.

Home manufacturers have long claimed that the number one reason for warranty claims by new homeowners is due to improper installation of the home. All home manufacturers build expenses into the cost of the home to cover the anticipated warranty service. Historically, these expenses were as high as 4-5% of the home costs. Now they are down around 1-2% of the cost of the home.

According to the US Census Bureau, in 2013 the average sale price of a new manufactured home in Indiana was \$50,100. For each 1% a manufacturer saves in warranty costs up to \$510 can be kept as profit or passed on as savings to the consumer. If costs were lowered by 3% the warranty expense of each home would drop \$1,530. Considering that 823 new manufactured homes were sold (and presumably installed) in Indiana last year the economic impact would be around \$1.26 million for calendar year 2014. Over the 4 year period of all installer licenses the economic impact could be around \$5 million.

These figures relate only to trackable expenses as there is no way to quantify how much a money a homeowner invests to correct issues with their home after the warranty period expires or as of a result of poor secondary installations.”<sup>37</sup>

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

The JCC found that the required fees to be a manufactured home installer in Indiana are appropriate.

Alternatives to the licensing structures currently in place for manufactured home installers were discussed, and the JCC recommends that the state should continue to monitor the profession instead of the federal government. A voluntary system, such as the self-certification registry, would not work for this profession.

**9. List any other criteria identified by the JCC.**

None.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be**

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<sup>37</sup> Information accumulated in this section is from the report given by the Indiana Manufactured Housing Association Recreation Vehicle Indiana Council, Inc.

**combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The Jobs Creation Committee recommends keeping the Manufactured Home Installer Licensing Board and its current regulatory structure because the federal government requires either federal or state oversight of the profession. The JCC finds that the current regulatory structure in place is efficient, and the federal government need not assume the state's current, regulatory role.



## **Manufactured Home Installer Licensing Board Costs**

<b>Board Member Travel Reimbursements</b>	<b>25-Feb-14</b>	<b>24-Jun-14</b>
Robert Young	\$13.20	\$13.20
Gregory Dickman	\$124.96	\$124.96
Galen Yoder	\$98.56	\$102.96
Patrick Cross	\$143.44	--
W. Joe Schulz	\$74.80	\$74.80
Dan Dodge	\$46.64	--
Mark Wisely	--	--
Evor Johns	--	--
	--	--
<b>Monthly Totals</b>	<b>\$501.60</b>	<b>\$315.92</b>
<b>Total Travel Costs</b>	<b>\$817.52</b>	

<b>Board Member Per Diem Payments</b>	<b>25-Feb-14</b>	<b>24-Jun-14</b>
Robert Young	\$50.00	\$50.00
Gregory Dickman	\$50.00	--
Galen Yoder	\$50.00	--
Patrick Cross	\$50.00	--
W. Joe Schulz	\$50.00	--
Dan Dodge	\$50.00	--
Mark Wisely	--	--
Evor Johns	--	--
	--	--
<b>Monthly Totals</b>	<b>\$300.00</b>	<b>\$50.00</b>
<b>Per Diem Total</b>	<b>\$350.00</b>	

*As of December 2014, only 1 board member had completed the paper work to receive per diem payments.*

<b>Court Reporter Costs</b>	<b>25-Feb-14</b>	<b>24-Jun-14</b>
Accurate Reporting of Indiana	\$150.00	\$150.00
<b>Total for Court Reporters</b>	<b>\$300.00</b>	

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$1,467.52</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(G) Private Investigator and Security Guard Licensing Board**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Definition of the Firm

**IC 25-30-1-2: "Definitions"**

*Sec. 2. (3) "Private investigator firm" means the business of:*

*(A) making, for hire or reward, investigation or investigations for the purpose of obtaining information with reference to:*

*(i) a crime against the state or wrongs done or threatened;*

*(ii) the habits, conduct, movements, whereabouts, association, transactions, reputation, or character of a person;*

*(iii) credibility of witnesses or other persons;*

*(iv) the location or recovery of lost, abandoned, unclaimed, or stolen property;*

*(v) the causes, origin, or responsibility for fires or accidents or injuries to real or personal property; or*

*(vi) the truth or falsity of a statement or representation;*

*(B) securing, for hire or reward, evidence to be used for authorized investigation committees or boards of award or arbitration or in the trial of civil or criminal cases; or*

*(C) providing, for hire or reward, undercover investigators to detect and prevent fraud and theft in the workplace or elsewhere.*

Establishment of the Board

The Board was established in accordance with IC 25-30-1-5.2 in 2007.

**IC 25-30-1-5.2: Private investigator and security guard licensing board; establishment; members; terms; salaries**

*Sec. 5.2. (a) The private investigator and security guard licensing board is established.*

*(b) The board consists of:*

*(1) the superintendent of the state police department or the superintendent's designee; and*

*(2) the following six (6) members appointed by the Governor from different geographic regions of Indiana as determined by the Governor:*

*(A) Two (2) individuals who are associated with a private investigator firm licensed under this article.*

*(B) Two (2) individuals who are associated with a security guard agency licensed under this article.*

*(C) One (1) local law enforcement official.*

*(D) One (1) person who is not associated with the private investigator firm or security guard agency other than as a consumer.*

*(c) Each member of the board appointed by the Governor shall serve a term of two (2) years.*

*(d) The Governor may remove a board member appointed by the Governor for incompetency or failure to perform the member's duties under this chapter.*

*(e) A vacancy in the membership of the board shall be filled by appointment by the Governor for the unexpired term.*

*(f) Each member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.*

### Role of the Board

The Board's primary functions are to review credentials for private investigator and security guard firms, administer licenses to these qualified firms and implement administrative disciplinary actions against licensed businesses that are not practicing according to the Board's statutes and rules.

The Professional Licensing Agency leads in crafting legislation with input from the Private Investigator and Security Guard Licensing Board on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the Board or licensed businesses are acting in a manner inconsistent with the current or projected practice of the occupations. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Private Investigator and Security Guard Licensing Board operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Private Investigator and Security Guard Licensing Board also serve other boards. Specifically, "Group 10" includes the State Board of Registration for Professional Engineers, State Board of Registration for Professional Surveyors, State Board of Registration for Architects and Landscape Architects, Indiana Athletic Trainer Board and the Indiana State Board of Health Facility Administrators. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Private Investigator and Security Guard Licensing Board have met the standards and statutes imposed by the General Assembly in providing adequate service to the private investigator and security guard professions and its licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the Board. The JCC is proposing changes to the how this profession is regulated.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

Private Investigator Firm License Fees

- a.) Issuance Fee \$300.00
- b.) Issuance Fee \$150.00 (if less than one year before quadrennial renewal date)
- c.) Renewal Fee \$300
- d.) Renewal Late Fee \$50

Security Guard Agency Fees

- a.) Issuance Fee \$300
- b.) Issuance Fee \$150 (if less than one year before quadrennial renewal date)
- c.) Renewal Fee \$300
- d.) Renewal Late Fee \$50

**5. List the number of individuals who are licensed in the regulated occupation.**

**Private Investigator Firm License** – A firm is required to be licensed if that entity practices private investigator services (IC 25-30-1-2 Definitions) in the State of Indiana.

- a.) 517 active licenses in Indiana
- b.) 48 new licenses issued since January 1, 2014

**Security Guard Agency License** – An agency is required to be licensed if that entity provides security services (IC 25-30-1.3-5 "Security guard agency") in the State of Indiana.

- a.) 393 active licenses in Indiana
- b.) 19 new licenses issued since January 1, 2014

The total number of active licenses with the Private Investigator and Security Guard Licensing Board is 910.

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the Private Investigator and Security Guard Licensing Board, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

The associations believe that the licensing of private investigators (PI) and security guard (SG) companies is necessary to protect the public from unscrupulous, predatory and unqualified operators and to provide a necessary level of quality assurance to business owners and the public at large.

The associations see no economic value to the state or to the public in the deregulation of the PI and SG sectors, and in fact, it could lead to negative consequences in a substantial increase in consumer frauds and additional burdens on our law enforcement communities. Our present codes require only that one individual be eligible for licensing for each business, and those eligibility standards are minimal. The licensing fee is insignificant as a part of start-up costs (\$75 per year).

The associations routinely handle sensitive business and personal matters for our clients, which require the use and protection of confidential and proprietary information and the safeguarding of valuable client assets and personnel. In the absence of licensing, any individual could present himself to the public at large as a “private investigator” and make outrageous claims as to what they could do. In the absence of licensing the public would be in constant danger of exploitation by fraudsters, sexual predators and scam artists. Most guard company owners have a law enforcement background and are skilled in the protection of personnel and assets. Without licensing and regulation, individuals without any experience or training could offer guard services, placing the public and business owners in danger.

Although the associations believe that our codes could be enhanced to provide great assurances to the public and business communities, we equally believe that our minimum licensing standards must be maintained in the interest of public safety.

According to the US Census Bureau, in 2014 the mean salary for a security guard in Indiana was \$27,590 with an hourly rate of \$13.26. For private investigators, the average salary was between \$42,000 and \$50,000. Information specific to Indiana was not available.”<sup>38</sup>

## **8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

The JCC found that the currently required fees to be a private investigator or security guard firm in Indiana are appropriate.

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<sup>38</sup> Information in this section was in part accumulated from the report given by the Indiana Association of Professional Investigators and the Indiana Society of Professional Investigators.

Alternatives to the licensing structures currently in place for private investigator or security guard firms were discussed, and the JCC finds those ideas unpersuasive. A voluntary system, such as the self-certification registry, would be difficult to regulate given the high turnover of professionals in the fields. Licensing individual private investigators and security guards was previously done and deemed too onerous to administer and adequately regulate/oversee.

**9. List any other criteria identified by the JCC.**

None.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The JCC recommends that Indiana maintain the Private Investigator & Security Guard Licensing Board and continue to regulate all license types, which includes private investigator firms and security guard agencies.



## **Private Investigator and Security Guard Licensing Board**

<b>Board Member Travel Reimbursements</b>	<b>9-Jan-14</b>	<b>13-Mar-14</b>	<b>8-May-14</b>	<b>10-Jul-14</b>	<b>11-Sep-14</b>	<b>13-Nov-14</b>
Don Johnson	---	---	---	---	---	---
Penelope Hughes	\$6.16	\$6.16	---	---	---	\$6.16
Lt. Darrell Ledsinger	---	---	---	---	---	---
Lewis LaMaster	\$73.92	\$73.92	\$73.92	\$73.92	\$73.92	\$73.92
Bob Caldwell	---	\$248.74	\$109.12	---	\$109.12	\$109.12
C. Tim Wilcox	---	\$22.00	\$22.00	\$22.00	---	\$22.00
Randy Sidwell	---	---	---	---	---	---
<b>Monthly Totals</b>	<b>\$80.08</b>	<b>\$350.82</b>	<b>\$205.04</b>	<b>\$95.92</b>	<b>\$183.04</b>	<b>\$211.20</b>
<b>Total Travel Costs</b>	<b>\$1,126.10</b>					

<b>Board Member Per Diem Payments</b>	<b>9-Jan-14</b>	<b>13-Mar-14</b>	<b>8-May-14</b>	<b>10-Jul-14</b>	<b>11-Sep-14</b>	<b>13-Nov-14</b>
Don Johnson	---	---	---	---	---	---
Penelope Hughes	\$50.00	\$50.00	---	---	---	---
Lt. Darrell Ledsinger	---	---	---	---	---	---
Lewis LaMaster	\$50.00	\$50.00	\$50.00	---	---	---
Bob Caldwell	---	\$50.00	\$50.00	---	---	---
C. Tim Wilcox	---	\$50.00	\$50.00	\$50.00	---	\$50.00
Randy Sidwell	---	---	---	---	\$50.00	\$50.00
<b>Monthly Totals</b>	<b>\$100.00</b>	<b>\$200.00</b>	<b>\$150.00</b>	<b>\$50.00</b>	<b>\$50.00</b>	<b>\$100.00</b>
<b>Per Diem Total</b>	<b>\$650.00</b>					

*As of 12/31/2014 only 2 board members had completed the paper work to receive per diem payments. State Employees are exempt from receiving payment.*

<b>Court Reporter Costs</b>	<b>9-Jan-14</b>	<b>13-Mar-14</b>	<b>8-May-14</b>	<b>10-Jul-14</b>	<b>11-Sep-14</b>	<b>13-Nov-14</b>
Accurate Reporting of Indiana	\$90.00	\$90.00	\$90.00	\$135.00	---	\$90.00
<b>Total for Court Reporters</b>	<b>\$495.00</b>					

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$2,271.10</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(H) State Board of Funeral and Cemetery Service**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Funeral and Cemetery Definitions

**IC 25-15-2: Definitions**

**IC 25-15-2-3.5 "Branch location"**

*Sec. 3.5. As used in this chapter, "branch location" means a physical structure:*

- (1) that is owned or leased by a person, not in conjunction with any other person, who owns and operates a licensed funeral home in the same or adjoining county;*
- (2) where human remains are prepared for a viewing, a funeral, or final disposition after initial preparation in a funeral home;*
- (3) where memorial visitation or the viewing of human remains is conducted before or as part of a memorial or funeral service; and*
- (4) where funerals that are not primarily for religious or worship purposes are conducted or held.*

**IC 25-15-2-9 "Embalming"**

*Sec. 9. "Embalming" means the temporary preservation and disinfection of human remains by the internal or external application of chemicals or by other methods in preparation for disposition.*

**IC 25-15-2-15 "Funeral home"**

*Sec. 15. "Funeral home" means a physical structure where:*

- (1) human remains are prepared for a funeral or final disposition;*
- (2) human remains are held for disposition;*
- (3) there is an embalming room in compliance with licensure requirements of this article where at least one (1) of the following takes place:*
  - (A) The embalming of human remains.*
  - (B) The prevention of the spread of infectious or contagious disease from human remains.*
  - (C) The aspiration of internal body fluids and gasses from human remains.*
  - (D) The temporary storage of non-casketed human remains awaiting final disposition.*
  - (E) The dressing, final preparation, and casketing of human remains;*
- (4) memorial visitation or the viewing of human remains is conducted before or as part of a memorial or funeral service; and*

*(5) funerals whose primary function is not for a religious or worship purpose are conducted or held*

#### **IC 25-15-2-17 "Funeral services"**

*Sec. 17. As used in this chapter, "funeral services" means:*

- (1) accepting, holding, caring for, or preparing human remains for a funeral or final disposition, including embalming (where authorized) and the practice of restorative arts;*
- (2) at need counseling of survivors of a deceased individual on:*
  - (A) the services, methods, and alternatives for final disposition of human remains; and*
  - (B) the requirements of federal and state law applicable to the sale of funeral services and merchandise;*
- (3) arranging, supervising, or conducting a funeral service in conjunction with the memorialization or the disposition of human remains, (however, "funeral services" does not include interment services performed in a cemetery by cemetery personnel), including attendance at services held in cemeteries or crematories where third persons are directly responsible for the physical acts associated with interment or final disposition of human remains;*
- (4) selling or offering to sell funeral merchandise described in IC 30-2-13-8 to a consumer at the time of need or in advance of need;*
- (5) selling or offering to sell funeral services described in IC 30-2-13-8 at the time of need or in advance of need;*
- (6) managing a funeral home or branch location licensed under IC 25-15-4-1 or IC 25-15-4-1.1; and*
- (7) arranging for the final disposition of human remains in compliance with public health and safety laws and in a manner that prevents the spread of infectious disease.*

#### **Establishment of the Board**

The Board was established in accordance with IC 25-15-2 in 1985. Prior to that date, the board was established as the Embalmers and Funeral Directors Board. The Board's current structure was established in accordance with IC 25-15-9-1 in 1991.

#### **IC 25-15-9-2 Members; chairman**

*Sec. 2. (a) The board consists of eleven (11) members as follows:*

- (1) Ten (10) members appointed by the Governor for terms of four (4) years.*
- (2) The commissioner of the state department of health or the commissioner's designee.*

*(b) The board shall elect a chairman from the board's own membership every two (2) years to serve a term of two (2) years. The chairman shall be elected*

*alternately from those board members appointed under sections 3 and 4 of this chapter.*

**IC 25-15-9-3 Funeral directors; members**

*Sec. 3. Four (4) of the board's appointed members must be licensed funeral directors, in good standing, without any association with a school of mortuary science other than as a preceptor or supervisor of a funeral service intern.*

**IC 25-15-9-4 Cemetery owners or managers; members**

*Sec. 4. Four (4) of the board's appointed members must be active in the cemetery industry in Indiana, either as an owner or a manager of an operating cemetery property.*

**IC 25-15-9-5 Consumers; members**

*Sec. 5. Two (2) of the board's appointed members must be residents of Indiana who are not associated with the practice of funeral service or a cemetery operation other than as consumers.*

**IC 25-15-9-6 Party affiliation; members**

*Sec. 6. Not more than five (5) of the board's appointed members may be affiliated with the same political party.*

**IC 25-15-9-7 Number of terms; limitation**

*Sec. 7. The board's appointed members may serve only two (2) terms on the board, including prior service either as a member of the state board of funeral service or the state board of embalmers and funeral directors. A member of the board may serve until the member's successor is appointed and qualified under this chapter*

**Role of the Board**

Primary functions are to review credentials license applicants, administer licenses to qualified individuals and facilities, consider requests for restitution from consumer protection funds, promulgate rules, and implement administrative disciplinary actions against licensees who are not practicing according to the Board's statutes and rules.

The IPLA crafts legislation with input from the Board on related matters that work to benefit consumers and licensees in their industry.

The Board is in existence to maintain Indiana's health, fiscal health, safety, and welfare of the public and practitioners as it pertains to the regulation of the funeral and cemetery industry.

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Nothing was discovered that indicates the Board or licensed businesses are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

**2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The State Board of Funeral and Cemetery Service operates with one board director (BD), one assistant director (AD) and five customer service representatives (CSR) and four compliance officers (CO). The starting salary for a CSR is \$22,724. The starting salary for an AD and CO is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$323,934.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the State Board of Funeral and Cemetery Service also serve other boards. Specifically, "Group 12" also includes the State Board of Cosmetology and Barber Examiners. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the State Board of Funeral and Cemetery Service have met the standards and statutes imposed by the General Assembly in providing adequate service to funeral and cemetery licensees. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and

commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

#### **Funeral Director Intern**

- a.) The applicant would need to pass the International Conference of Funeral Service Examining Boards Arts and Sciences examination. Fees are paid directly to the Conference.
- b.) The applicant would then apply for the license and pay the \$25.00 application/license fee.
- c.) The license is valid for two years and may be renewed for one more year by filing a renewal application and fee of \$25.00.

#### **Funeral Director**

- a.) The applicant would apply for the license and pay the \$50.00 application/license fee and the \$50.00 examination fee.
- b.) The applicant would then need to pass the funeral director law examination.
- c.) The license is valid for two years and may be renewed by filing a renewal application and fee of \$50.00.

#### **Funeral Director by Reciprocity**

- a.) The applicant would apply for the license and pay the \$50.00 application/license fee and the \$50.00 examination fee.
- b.) The applicant would then need to pass the funeral director law examination.
- c.) Reciprocity applicants are not required to obtain one year work experience as a funeral director intern in Indiana as a non-reciprocity applicant would.
- d.) The license is valid for two years and may be renewed by filing a renewal application and fee of \$50.00.

#### **Embalmer**

- a.) The board no longer issues an embalmer license however existing embalmer licenses may be renewed by filing a renewal application and renewal fee of \$50.00.

#### **Courtesy Card**

- a.) The applicant would apply for the license and pay the \$150.00 application/license fee.
- b.) The license is valid for two years and may be renewed by filing a renewal application and fee of \$150.00.
- c.) Pursuant to IC 25-15-10(4), the Board must consider the fees charged by states bordering Indiana that issue courtesy cards to charge a fee that is consistent with fees charged by those states.

#### **Funeral Home and Funeral Home Branch**

- a.) The applicant would apply for the license and pay the \$50.00 application/license fee.
- b.) The applicant would then need to pass inspection for issuance of the license.
- c.) The license is valid for two years and may be renewed by filing a renewal application and fee of \$50.00.

**Crematory**

- a.) The applicant would apply for the registration. There is no fee pursuant to statute.
- b.) The registration does not expire.

**Cemetery**

- a.) The applicant would apply for the registration and pay the \$100.00 fee pursuant to IC 25-15-9-17(b).
- b.) The registration does not expire.

**5. List the number of individuals who are licensed in the regulated occupation.**

**Funeral Director** – Required for anyone practicing funeral service without supervision in the State of Indiana.

- a.) 2488 active licenses in Indiana
- b.) 163 new licenses issued in past two year renewal cycle (1/2013-12/2014)

**Funeral Director Intern** – Required for anyone practicing funeral service under the supervision of a FD to gain experience to become a funeral director in the State of Indiana

- a.) 49 active licenses in Indiana
- b.) 96 new licenses issued in past two years (1/2013-12/2014)

**Embalmer (EM)** – Required for anyone practicing embalming services in the State of Indiana.

- a.) 6 active licenses
- b.) No longer issue new embalmers licenses, however existing licenses are eligible for renewal every two years.

**Courtesy Card** – Established January 2013; required for a funeral director licensed in a bordering state that offers a courtesy card to Indiana funeral directors that would like to perform limited services without obtaining a funeral director license by reciprocity. The courtesy card provides for limited funeral director services.

- a.) 82 active licenses in Indiana
- b.) 82 new licenses issued in past two year renewal cycle (1/2013-12/2014)



**Funeral Home** – Required facility to hold and prepare human remains for viewing, a funeral, or final disposition.

- a.) 576 active licenses
- b.) 42 licenses issued in past two year renewal cycle (1/2013-12/2014)

**Funeral Home Branch** – Required facility where human remains are prepared for viewing, a funeral, or final disposition after initial preparation of the body in a funeral home.

- a.) 97 active licenses
- b.) 19 licenses issued in past two year renewal cycle (1/2013-12/2014)

**Total number of licenses with the State Board of Funeral and Cemetery Service**

- a.) Active – 3298
- b.) Probation – 13
- c.) Inactive – 47
- d.) Expired – 1151

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the State Board of Funeral and Cemetery Service, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

The funeral service industry is not a growing segment of the economy due to changes in funeral customs which has led to a decrease in the number of funeral homes. The industry is primarily comprised of family-run businesses that have worked in the industry for generations. The Indiana Funeral Directors Association believes that the manner in which funeral service is practiced is vital to the health, welfare, and safety of the citizens of Indiana.

Regulation of funeral service through formal licensing of funeral homes and funeral directors has been the practice in Indiana and 48 other states for decades.

The rationale for doing so is still valid. (Colorado, the one exception, recently saw the need to increase their regulatory level.)

Reasons for licensing:

- The purchase of a funeral is a unique transaction under trying circumstances. The public needs to know that the person they have placed their trust in has met certain educational requirements and complies with strict licensing standards.
- The handling of human remains requires knowledge of infectious disease and requires safe handling protocols.
- Money paid in advance and held for future use deserves state protection that only licensing can provide.
- The public is best served when a licensing board is in place to handle consumer complaints.
- Only a licensing board can take immediate and emergency action against a practitioner to protect the public in rare cases where it is warranted.

Recommendations from IFDA:

1. Increase the entry level educational standard to a bachelor's degree to be in line with a growing number of other states as well as other comparable professions. (Indiana is falling behind and pay differential could cost us good candidates.)
2. Increase in the number of continuing education hours for re-licensure to help insure up-to-date practices and legal compliance.
3. Retention of current size and structure of board, but streamlining of complaint process.
4. Better and sooner "triage" of complaints by a practitioner.
5. Fines used towards enforcement with an increase of inspections and inspectors.

According to the US Census Bureau, in 2014 the mean salary for a mortician, undertaker and funeral director in Indiana was \$44,650.<sup>39</sup>

## **8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

The JCC found that the currently required fees to be work in the funeral/cemetery industry in Indiana are appropriate.

Alternatives to the licensing structures currently in place for this industry were discussed, and the JCC finds these alternatives unpersuasive.

## **9. List any other criteria identified by the JCC.**

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<sup>39</sup> Information in this section is in part accumulated from the report presented by the Indiana Funeral Directors Association and the Indiana Cemetery Association.

None.

- 10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The JCC recommends that Indiana maintain the State Board of Funeral and Cemetery Service and continue to license the following license types: embalmer only, funeral home, funeral director, certificate of authority, crematorium, cemetery, funeral branch, CE provider – funeral, and funeral director courtesy card.

The JCC also recommends the elimination of the funeral director intern license, instead only requiring a registration at no cost to the individual. Funeral director interns would still be required to work under the direct and immediate supervision of a licensed funeral director.

## **State Board of Funeral and Cemetery Service**

<b>Board Member Travel Reimbursements</b>	<b>6-Feb-14</b>	<b>3-Apr-14</b>	<b>12-Jun-14</b>	<b>26-Jun-14</b>	<b>7-Aug-14</b>	<b>2-Oct-14</b>	<b>4-Dec-14</b>
David McComb	\$121.44	---	\$121.44	---	\$121.44	---	---
Matthew Drury	\$25.52	\$25.52	\$25.52	---	---	---	---
James Todd	\$42.24	\$42.24	\$42.24	---	\$42.24	---	---
John Gerlach	\$288.65	\$265.65	\$301.65	---	\$286.67	---	---
Theodore Mau	\$11.44	\$11.44	\$11.44	\$11.44	\$11.44	\$11.44	\$11.44
Anne Patterson	---	\$26.40	---	---	---	---	---
Roland Cutter	\$64.24	\$64.24	\$64.24	\$64.24	\$64.24	\$64.24	\$64.24
Tasha Smith	---	---	---	---	---	---	---
Paul St. Pierre	---	---	---	---	---	---	---
Samuel Frain	---	\$101.20	\$101.20	\$101.20	\$101.20	\$101.20	\$101.20
Donald Alford	---	---	---	---	---	\$186.56	\$186.56
Robert Loose	---	---	---	---	---	\$38.72	\$38.72
Thomas Sproles	---	---	---	---	---	\$44.88	\$44.88
Chistopher Cooke	---	---	---	---	---	\$201.52	\$201.52
<b>Monthly Totals</b>	<b>\$553.53</b>	<b>\$536.69</b>	<b>\$667.73</b>	<b>\$176.88</b>	<b>\$627.23</b>	<b>\$648.56</b>	<b>\$648.56</b>
<b>Total Travel Costs</b>	<b>\$3,859.18</b>						

<b>Board Member Per Diem Payments</b>	<b>6-Feb-14</b>	<b>3-Apr-14</b>	<b>12-Jun-14</b>	<b>26-Jun-14</b>	<b>7-Aug-14</b>	<b>2-Oct-14</b>	<b>4-Dec-14</b>
David McComb	\$50.00	---	\$50.00	---	---	---	---
Matthew Drury	\$50.00	\$50.00	\$50.00	---	---	---	---
James Todd	\$50.00	\$50.00	\$50.00	---	\$50.00	---	---
John Gerlach	---	---	---	---	---	---	---

Theodore Mau	\$50.00	\$50.00	\$50.00	\$50.00	---	---	---
Anne Patterson	\$50.00	\$50.00	\$0.00	---	---	---	---
Roland Cutter	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
Tasha Smith	---	---	---	---	---	---	---
Paul St. Pierre	---	---	---	---	---	---	---
Samuel Frain	---	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
Donald Alford	---	---	---	---	---	\$50.00	\$50.00
Robert Loose	---	---	---	---	---	\$50.00	\$50.00
Thomas Sproles	---	---	---	---	---	\$50.00	\$50.00
Chistopher Cooke	---	---	---	---	---	\$50.00	\$50.00
<b>Monthly Totals</b>	<b>\$300.00</b>	<b>\$300.00</b>	<b>\$300.00</b>	<b>\$150.00</b>	<b>\$150.00</b>	<b>\$300.00</b>	<b>\$300.00</b>
<b>Per Diem Total</b>	<b>\$1,800.00</b>						

*As of 2/5/15 all members had completed the paper work to receive per diem payments.*

<b>Court Reporter Costs</b>	<b>6-Feb-14</b>	<b>3-Apr-14</b>	<b>12-Jun-14</b>	<b>26-Jun-14</b>	<b>7-Aug-14</b>	<b>2-Oct-14</b>	<b>4-Dec-14</b>
Accurate Reporting of Indiana	\$150.00	\$150.00	\$200.00	---	\$150.00	---	\$125.00
<b>Total for Court Reporters</b>	<b>\$775.00</b>						

<b>Dues and Subscription Costs</b>	<b>FY 2014</b>	<b>FY 2015</b>
The International Conference of Funeral Services Exam Bds.	\$250.00	\$250.00
<b>Total</b>	<b>\$250.00</b>	<b>\$250.00</b>

*Paid out of the Dedicated Funeral Education Fund 40310*

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$6,684.18</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(I) Committee of Hearing Aid Dealer Examiners**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Hearing Aid Dealer and Other Pertinent Definitions

**IC 25-20-1-1 Definitions**

*Sec. 1. Except as the context requires otherwise:*

*"Hearing aid" shall mean any instrument or device worn on the human body, designed and fit for an individual with a hearing loss and any parts, attachments or accessories of such an instrument or device. The term does not include a personal sound amplifier.*

*"Personal sound amplifier" means a device that simply magnifies sound and does not address an individual's specific hearing loss.*

*"Fit hearing aids" shall mean the hearing aid dealer's or salesman's evaluation or measurement of the powers or range of human hearing for the subsequent selection or adaption or sale of hearing aids.*

*"Dispense hearing aids" shall mean the sale, lease or rental of a hearing aid to anyone other than a hearing aid dealer. "Hearing aid dealer" shall mean any person who fits or dispenses hearing aids and who receives a commission or salary derived from the sale of such devices or maintenance of such devices except any person who serves said dealer only in an administrative or clerical manner and who does not evaluate, fit or dispense hearing aids shall be excluded.*

*"Audiologist" means an individual holding a license to practice audiology issued under IC 25-35.6.*

*"Registration" shall refer to the legal privilege given a person who holds a hearing aid dealer certificate of registration; and*

*"Temporary Registration" shall refer to the legal privilege given a person who holds a temporary hearing aid dealer certificate of registration.*

Establishment of the Board

The Committee of Hearing Aid Dealer Examiners ("Committee") was created in 1981 (IC 25-20-1-1.5).

**IC 25-20-1-1.5 Committee of hearing aid dealer examiners**

*Sec. 1.5. (a) There is established the committee of hearing aid dealer examiners which consists of five (5) members all appointed by the Governor to a term of three (3) years. Three (3) members must be hearing aid dealers licensed under this chapter, who are residents of this state and who have been practicing as hearing aid dealers for at least one (1) year prior to their appointment. One (1) member must be an otolaryngologist in this state, who is a resident of this state*

*and who has been engaged in the practice of otolaryngology for at least one (1) year prior to appointment to the committee. One (1) member must be a resident of this state who is in no way associated with the business of hearing aid dealers, audiology, or speech-language pathology other than as a consumer. Whenever a vacancy occurs on the committee, the Governor shall appoint a successor to serve the remainder of the term of the vacated member.*

*(b) Three (3) members present constitute a quorum.*

*(c) The members serve without compensation, except that each member is entitled to the salary per diem as provided by IC 4-10-11-2.1 and to reimbursement for travel, lodging, meals, and other expenses as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.*

### Role of the Board

Primary functions are to review credentials license applicants, administer licenses to qualified individuals, consider requests for restitution from consumer protection funds, promulgate rules, and implement administrative disciplinary actions against licensees who are not practicing according to the Board's statutes and rules.

The IPLA crafts legislation with input from the Committee on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the Committee or licensed businesses are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Committee of Hearing Aid Dealer Examiners operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Committee of Hearing Aid Dealer Examiners also serve other boards. Specifically, "Group 4" also includes the Board of Pharmacy and the

Speech-Language Pathology Audiology Board. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Committee of Hearing Aid Dealer Examiners have met the standards and statutes imposed by the General Assembly in providing adequate service to licensed practitioners. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

The initial application for a Hearing Aid Dealer registration costs \$60. This registration is set on a biennial renewal cycle expiring on June 30<sup>th</sup>. To renew a hearing aid dealer registration, a licensee must pay \$40. If a licensee is renewing a permit late and it's less than three years since the registration was first granted, then the cost to renew is \$90 (\$50 penalty fee plus biennial renewal of \$40). If it's more than three years since the license was active, then it's \$100 (renewal fee plus initial application fee).

Student hearing aid dealer permits cost \$20 annually from the time of issuance. These permits are not on a renewal cycle.

Hearing aid dealers are required to complete twenty hours of continuing education credit prior to renewal. A registrant may use only credit hours earned in continuing education courses completed after the last date the registrant renewed a certificate of registration. Credit may be received only by completing continuing education courses that have been approved by the committee, the American Speech-Language-Hearing Association or the National Institute for Hearing



Instrument Studies. A copy of the original certificate of completion must be included.

**5. List the number of individuals who are licensed in the regulated occupation.**

**Hearing Aid Dealer** – Any person who fits or dispenses hearing aids and who receives a commission or salary derived from the sale of such devices or maintenance of such devices except any person who serves said dealer only in an administrative or clerical manner and who does not evaluate, fit or dispense hearing aids shall be excluded.

- a.) 287 active licenses
- b.) 16 new licenses issued in the last year

**Student Hearing Aid Dealer** – A student applicant employed or directly supervised in the fitting of hearing aids by a registrant holding a valid registration.

- a.) 63 active licenses
- b.) 51 new licenses issued in the last year

Total Number of Licenses = 350

**6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the Committee, please see No. 2. For the costs associated with having the Committee and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

**7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

The Committee on Hearing Aid Dealer Examiners is one of the smallest boards overseen by the IPLA, having approximately 350 practitioners. This board meets only twice a year and handles very little administrative business as there are few to no complaints filed against practitioners.

The International Hearing Society (IHS) believes that it is a matter of public safety for there to be an independent board, which focuses on the practice of dispensing hearing aids. It's the best way to ensure the highest standards of consumer protection and public safety.

According to the US Census Bureau, in 2014 the mean salary for a hearing aid specialist in Indiana was \$40,580.<sup>40</sup>

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

Please see No. 10.

**9. List any other criteria identified by the JCC.**

The JCC was given a letter from Cynthia Hoest, President of the Colorado Hearing Society. In this letter, it described the cause and effect of Colorado's actions in deregulating hearing aid professionals. Colorado has since passed language again regulating the profession because there was "a huge influx of unscrupulous, untrained and incapable people dispensing hearing aids."

The Attorney General's office has only revoked 2 hearing dealer licenses since 2008.

Please see No. 10 for more information.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

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<sup>40</sup> Information in this section is in part accumulated from the report presented by the International Hearing Society.

The JCC recommends that Indiana maintain the Committee of Hearing Aid Dealer Examiners and continue to license hearing aid dealers.

The JCC also recommends elimination of the student hearing aid dealer license but that those serving as student hearing aid dealers still be allowed to practice under the direct and immediate supervision of a licensed hearing aid dealer.

## Committee on Hearing Aid Dealer Examiners

Board Member Travel Reimbursements	13-Feb-14	9-Apr-14	9-Jul-14	8-Oct-14
Alan Reese	\$265.57	\$242.57	\$265.57	\$99.44
Robert Payne	\$9.68	\$11.44	\$11.44	\$11.44
Richard Miyamoto, M.D.	---	\$10.56	\$10.56	\$10.56
Anthony Gigli	---	---	---	---
<b>Monthly Totals</b>	<b>\$275.25</b>	<b>\$264.57</b>	<b>\$287.57</b>	<b>\$121.44</b>
<b>Total Travel Costs</b>	<b>\$948.83</b>			

Board Member Per Diem Payments	13-Feb-14	9-Apr-14	9-Jul-14	8-Oct-14
Alan Reese	\$50.00	\$50.00	\$50.00	\$50.00
Robert Payne	\$50.00	\$50.00	---	---
Richard Miyamoto, M.D.	---	\$50.00	\$50.00	\$50.00
Anthony Gigli	---	---	---	---
<b>Monthly Totals</b>	<b>\$100.00</b>	<b>\$150.00</b>	<b>\$100.00</b>	<b>\$100.00</b>
<b>Per Diem Total</b>	<b>\$450.00</b>			

*As of 12/31/2014 only 2 board members had completed the paper work to receive per diem payments.*

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$1,398.83</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**(J) Indiana Plumbing Commission**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Plumbing Definitions

**IC 25-28.5-1-2 Definitions**

*Sec. 2. As used in this chapter:*

*(1) "Plumbing" means the practice of and the materials and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following:*

*(A) Sanitary drainage or storm drainage facilities, the venting system, and the public or private water supply systems, within or adjacent to any building or structure.*

*(B) The practice and materials used in the installation, maintenance, extension, or alteration of the stormwater, liquid waste, or sewerage, and water supply systems of any premises to the private property line or to their connection with any point of public disposal or other acceptable terminal.*

*The term does not include the planning, designing, and installation of sanitation and water systems in vehicles commonly known as mobile homes, the drilling of wells, the installation of pumps, pressure tanks, and piping incidental to the drilling or repair of a well system, the sale or installation of water softening equipment and apparatuses and services of the same, or the business of manufacturing or selling plumbing fixtures; appliances, equipment, or hardware; the installation of automatic sprinklers, the overhead or underground water supplies or standpipes when connected to an automatic sprinkler system or to their related devices or appurtenances connecting thereto; nor does the term include the work referred to in section 32(i) of this chapter; nor does the term include the planning or design of water supply or sewage systems which would ordinarily be performed as "the practice of engineering", as defined in IC 25-31-1, or the "practice of architecture", as defined in IC 25-4-1.*

*(2) "Plumbing contractor" means any person who, for compensation, undertakes to, or submits a bid to, or does himself or herself or by others, construct, repair, alter, remodel, add to, subtract from, or improve plumbing and who is responsible for substantially all the plumbing within the entire project, or one who fabricates units or plumbing substantially completed and ready for installation.*

*(3) "Journeyman plumber" means a person who engages or offers to engage in, as an occupation or trade, the construction, installation, alteration, maintenance, repair, remodeling, or removal and replacement of plumbing under the supervision, direction, and responsibility of a licensed plumbing contractor.*

*(4) "Maintenance man" means a person who is employed on a permanent basis to keep the premises of a business establishment in good repair.*

- (5) "Contracting" means, except as exempted in this chapter, engaging in a business as a contractor.
- (6) "Person" means a natural person, except in the case of a plumbing contractor, in which case it may mean the partners or members of a partnership, limited partnership, or any form of unincorporated enterprise, owned by two (2) or more persons, and as applied to "corporation" in addition to the corporate entity means the officers or directors and employees thereof.
- (7) "Commission" means the Indiana plumbing commission created by this chapter.
- (8) "License" means a certificate issued by the commission established by this chapter which confers upon the holder the privilege to act as a plumbing contractor or a journeyman plumber as defined in this chapter.
- (9) "Farmstead" means a farm dwelling together with other buildings, structures, equipment, piping, and other plumbing materials and supplies, located upon a parcel of real estate used primarily for agricultural purposes located outside the corporate limits of a municipality and not connected to a public water supply.
- (10) "Licensing agency" means the Indiana professional licensing agency established under IC 25-1-5-3.
- (11) "Apprentice plumber" means an individual who:
- (A) is learning the plumbing trade; and
  - (B) is under the direction and immediate supervision of a licensed plumbing contractor or a licensed journeyman plumber.
- (12) "Registration" means the granting of a certificate by the commission that authorizes an individual to act as an apprentice plumber.

#### Establishment of the Board

The Indiana Plumbing Commission ("Commission") was created in 1972 (IC 25-28.5-1-3). At no time shall there be more than four members of the same political faith on the commission. No person, other than the representative of the state department of health, shall act as a member of the commission while holding another elective or appointive office either state or federal.

#### **IC 25-28.5-1-4 Members of commission; appointment; terms; vacancies; dual office holding prohibited**

*Sec. 4. (a) The commission shall consist of six (6) members to be appointed by the Governor. Each member appointed shall be a citizen and resident of this state. Two (2) of the members shall be actively engaged in the plumbing contracting business for not less than five(5) years immediately prior to his appointment or shall have had ten(10) years experience in the plumbing contracting business. Two (2) of the members shall be persons who for not less than five (5) years immediately prior to their appointment have been employed as journeymen plumbers. One (1) member shall be the commissioner of the state department of health or a member of the commissioner's professional staff. One (1) member, appointed to represent the general public, may never have been associated with*

*plumbing in anyway other than as a consumer. The term of all members of the commission shall be for three (3) years and until their successors are appointed and qualified.*

*(b) Members appointed by the Governor to fill vacancies shall hold office for the unexpired term. At no time shall there be more than four (4) members of the same political faith on the commission. No person, other than the representative of the state department of health, shall act as a member of the commission while holding another elective or appointive office either state or federal*

### Role of the Board

Primary functions are to review credentials license applicants, administer licenses to qualified individuals, consider requests for restitution from consumer protection funds, promulgate rules, and implement administrative disciplinary actions against licensees who are not practicing according to the Commission's statutes and rules.

The IPLA crafts legislation with input from the Commission on related matters that work to benefit consumers and licensees in their industry.

The Commission is in existence to maintain Indiana's health, fiscal health, safety, and welfare of the public and practitioners as it pertains to the regulation of the plumbing industry.

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Nothing was discovered that indicates the Commission or licensed individuals are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Commission operates with one board director (BD), one assistant director (AD) and four customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$166,218.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Commission also serve other boards. Specifically, "Group 14" also includes the boards the oversee accountants, massage therapists, optometrists,

physical therapists and occupational therapists. These boards, and the composition of each group, are assigned by the agency director.

The agency's executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general's office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Commission have met the standards and statutes imposed by the General Assembly in providing adequate service to licensed practitioners. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the Commission.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency's operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Commission is as follows:

1. Plumbing Apprentice Application fee	\$10
2. Plumbing Apprentice Renewal fee	\$10
3. Journeyman Plumber Application fee	\$30
4. Journeyman Plumber Issuance fee	\$30 even yrs. /\$15 odd yrs.
5. Journeyman Plumber Renewal fee	\$30 (every 2 yrs)
6. Journeyman Plumber Reinstate fee	\$60
7. Plumbing Contractor Application fee	\$50
8. Plumbing Contractor Issuance fee	\$100 even yrs. /\$50 odd yrs.
9. Plumbing Contractor Renewal fee	\$50 (every 2 yrs)
10. Plumbing Contractor Reinstate fee	\$200
11. Temporary Contractor license fee	\$25
12. Plumbing Contractor Corp. Application fee	\$50
13. Plumbing Contractor Corp. Renewal fee	\$100
14. Plumbing Contractor Corp. Reinstate fee	\$200

\*\*\*A \$50 late fee is assessed for licenses expired less than 3 years\*\*\*

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## **Plumbers Recovery Fund, IC 25-28.5-2**

The Plumbers Recovery Fund is administered by the Commission and is established so that if any aggrieved person obtains a final judgment in any court against any plumbing contractor to recover damages for a violation under IC 25-1-11 or the plumbing codes of the state (with or without a finding by the Commission) that results in an actual cash loss to the aggrieved person, the person may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application in the court in which the judgment was entered for an order directing payment out of the Plumbers Recovery Fund of the amount of actual and direct loss in the transaction that remains unpaid upon the judgment. The amount of actual and direct loss may include court costs but may not include attorney's fees or punitive damages awarded. The amount that may be paid from the Plumbers Recovery Fund may not exceed \$20,000 per judgment and an aggregate lifetime limit of \$50,000 with respect to any one licensee.

The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

Money in the fund at the end of a state fiscal year does not revert to the state general fund, except if the total amount in the Plumbers Recovery Fund (including principal and interest) exceeds \$550,000 at the end of a state fiscal year after the payment of all claims and expenses, the amount in excess of \$550,000 reverts to the state General Fund

If the total amount in the Plumbers Recovery Fund (including principal and interest) plus estimated revenues from the fee assessed under section 2.1 of this chapter from July 1 of the current year through June 30 of the next year will be less than \$330,000 on June 30 in an odd-numbered year after the payment of all claims and expenses, the Indiana Plumbing Commission shall assess a surcharge in order to maintain the fund at an approximate level of \$400,000.

As of March 31, 2015, the Plumbers Recovery Fund balance was at \$504,885.84, which requires no collection of the fee. The last payment out of the fund was August 2012.

### **5. List the number of individuals who are licensed in the regulated occupation.**

**Plumbing Apprentice** – an individual who: (A) is learning the plumbing trade; and (B) is under the direction and immediate supervision of a licensed plumbing contractor or a licensed journeyman plumber.

- a) 1,087 active licenses
- b) 400 licenses issued in 2013
- c) 417 licenses issued in 2014
- d) 38 licenses issued to date in 2015 (as of 4/13/2015)

**Journeyman Plumber** – a person who engages or offers to engage in, as an occupation or trade, the construction, installation, alteration, maintenance, repair, remodeling, or removal and replacement of plumbing under the supervision, direction, and responsibility of a licensed plumbing contractor.

- a) 4,538 active licenses
- b) 107 licenses issued in 2013
- c) 55 licenses issued in 2014
- d) 14 licenses issued to date in 2015 (as of 4/13/2015)

**Plumbing Contractor** – any person who, for compensation, undertakes to, or submits a bid to, or does himself or herself or by others, construct, repair, alter, remodel, add to, subtract from, or improve plumbing and who is responsible for substantially all the plumbing within the entire project, or one who fabricates units or plumbing substantially completed and ready for installation.

- a) 3,339 active licenses
- b) 86 licenses issued in 2013
- c) 82 licenses issued in 2014
- d) 15 licenses issued to date in 2015 (as of 4/13/2015)

**Temporary Contractor** – an individual who has an ownership interest in or is an officer of a contracting business if the plumbing contractor licensee operating the business has died or is physically or mentally unable to operate the business. The commission may issue the license for the period needed to dispose of the contracting business or to otherwise meet the emergency giving rise to the need for the license. However, a temporary contractor's license may not be issued for a period, including all renewals, exceeding two (2) years.

- a) 1 active licenses
- b) 2 licenses issued in 2013
- c) 1 licenses issued in 2014
- d) 0 licenses issued to date in 2015 (as of 4/13/2015)

**Corporate Plumbing Contractor** – In the case of a corporation engaged in the business of a plumbing contractor, the corporation must be licensed as a plumbing contractor and must file with the commission an application as provided for in this chapter

- a) 529 active licenses
- b) 20 licenses issued in 2013
- c) 33 licenses issued in 2014
- d) 4 licenses issued to date in 2015 (as of 4/13/2015)

### **Approved Apprentice Programs**

There are 17 approved plumbing apprentice providers in the State of Indiana.

### **Continuing Education Course Providers**

The 17 approved Plumbing Apprentice Programs are also approved as continuing education providers by the Commission.

## **6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the Commission, please see No. 2. For the costs associated with having the Board and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

## **7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

An unlicensed, untrained person performing plumbing work can cause a cross connection that can put themselves and the community they live in at risk of sickness, disease, and potential criminal and civil proceedings against them.

- The Center for Disease Control has documented 57 waterborne disease outbreaks related to cross-connections, resulting in 9, 734 illnesses.
- A Craun and Calderon report found that 30.3 percent of waterborne disease outbreaks in community systems were caused by contamination of water in the distribution system.
- The Center for Disease Control and Prevention has prepared Ebola guidance for Workers Handling Untreated Sewage from Ebola cases in the United States that address personal protective equipment (PPE) use and PPE disposal actions. Specifically they provide protocols for plumbers.

According to the World Health Organization:

*“The safety and abundance of drinking water is, of course, a concern for most people all over the world, but what is not often emphasized is the work the plumbing industry contributes every day to alleviate these concerns. Over the life of a plumbing system, periodic maintenance is required. The chances of the system continuing to function in the safest manner possible grow exponentially when the person performing that maintenance is a trained professional.”*

Given the increasing emphasis on college education, fewer people are entering the trades than ever before. At the same time, the level of knowledge and skill required of a plumber continues to grow as the industry becomes increasingly complex. Experience has demonstrated that the most practical and sound method of preparing workers for employment in skilled occupations is through planned apprenticeship.

Lieutenant Gov. Sue Ellspermann recently spoke at an event by challenging employers to do even more to invest in young talent in Indiana. The Indiana Career Council's strategic plan calls for 60% of the state's workers to have in-demand postsecondary skills and credentials by 2025. Aligning and engaging industry, education and the emerging workforce in work-and-learn models is a key strategy for Indiana's economic development.

Indiana Commissioner for Higher Education Teresa Lubbers recently spoke on Inside Indiana Business and said “It is abundantly clear that students who have opportunities to apply their classroom learning in a real-world setting are better prepared to meet employer expectations and succeed in their careers. We want work-and-learn experiences to become the new standard on our campuses and in our classrooms.”

Apprentice programs are indeed post-secondary education that allows individuals to achieve specialized training while earning a paycheck and contributing to the overall economy. The Plumbing apprenticeship programs are a proven example of work and learn. Apprentices finish their four-year training with good paying, secure employment and no debt. These programs are run by the industry – training individuals in a trade that cannot be outsourced—and at NO COST to the Indiana taxpayer.

- August 2012 US Department of Labor showed that skilled tradesmen who participate in an apprentice program typically earn almost a quarter-million dollars more than nonparticipants over the course of their careers.

The demand for plumbers continues to increase at a rate outpacing most other trades. According to the 2010/11 edition of Occupational Outlook Handbook

published by US Department of Labor Statistics, the need for plumbers will probably grow faster than average compared to other occupations through 2018.

The Indiana Department of Workforce Development named “Plumber” as the 20<sup>th</sup> hottest job of the future in Indiana. Hoosier Hot 50 Jobs is a listing of the 50 fastest growing, high-wage jobs of tomorrow. The list's ranking for Hoosier Hot 50 Jobs is based on expected demand and wages in 2022 for the state of Indiana. Even though the Hoosier Hot 50 Jobs focuses on the jobs of tomorrow, there are several professions that are hot now and “Plumber” is indicated as such.<sup>41</sup>

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The Bureau of Labor Statistics figures released in May 2013 show the median income for plumbers across the country as \$53,820 per year, or \$25.88 per hour. Apprentice hourly wages start at a percentage hourly rate of a journeyman, and increase each school semester (of 8 semesters) a certain percentage. For example, the first semester is 50%, second is 55%, through the 8<sup>th</sup> semester to 95%.

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

It is the JCC’s opinion that licensure is necessary in this field. The currently required fees to work in the plumbing industry in Indiana are fairly competitive and not extraordinarily high in comparison with other licensed professions or in comparison to fees required in other states.

Alternatives to the licensing structures currently in place for this industry were discussed, and the JCC finds these alternatives unpersuasive. The specific recommendations are outlined in No. 10.

**9. List any other criteria identified by the JCC.**

The JCC suggests the Legislature remove the political requirements when appointing board members to the Indiana Plumbing Commission. This requirement is rare for the 38 occupational licensing boards overseen by the IPLA, and it is an unnecessary statutory requirement when considering the best qualified candidate to serve on the Commission. It also poses an administrative burden in how a political party is determined i.e. voting records, how the applicant identifies at the time of appointment, etc.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be**

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<sup>41</sup> Information in this section collected from the report presented by the Plumbing Heating Cooling Contractors Association.

**eliminated; or whether multiple licenses should be consolidated into a single license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The JCC recommends that Indiana maintain the Indiana Plumbing Commission and continue to license the following license types: plumber contractor, journeyman plumber, temporary plumbing contractor, plumbing professional corporation, plumbing apprentice, and plumbing apprenticeship program.

## **Indiana Plumbing Commission**

<b>Board Member Travel Reimbursements</b>	<b>22-Jan-14</b>	<b>26-Mar-14</b>	<b>28-May-14</b>	<b>23-Jul-14</b>	<b>24-Sep-14</b>	<b>19-Nov-14</b>
William Ciriello	---	---	---	---	---	---
Matt Buczolich	\$150.28	\$156.78	\$156.78	---	---	---
Eric Ott	\$150.28	\$156.78	\$156.78	\$137.28	\$0.00	\$132.28
Robert Synko	---	---	---	---	---	---
Owen Stephens	---	\$149.74	\$149.74	\$130.24	\$130.24	---
John Van Cleve	---	---	\$71.28	\$71.28	\$71.28	\$71.28
<b>Monthly Totals</b>	<b>\$300.56</b>	<b>\$463.30</b>	<b>\$534.58</b>	<b>\$338.80</b>	<b>\$201.52</b>	<b>\$203.56</b>
<b>Total Travel Costs</b>	<b>\$2,042.32</b>					

<b>Board Member Per Diem Payments</b>	<b>22-Jan-14</b>	<b>26-Mar-14</b>	<b>28-May-14</b>	<b>23-Jul-14</b>	<b>24-Sep-14</b>	<b>19-Nov-14</b>
William Ciriello	---	---	---	---	---	---
Matt Buczolich	\$50.00	\$50.00	\$50.00	---	---	---
Eric Ott	\$50.00	\$50.00	\$50.00	---	---	---
Robert Synko	---	---	---	---	---	---
Owen Stephens	---	\$50.00	---	---	---	---
John Van Cleve	---	---	\$50.00	\$50.00	\$50.00	\$50.00
<b>Monthly Totals</b>	<b>\$100.00</b>	<b>\$150.00</b>	<b>\$150.00</b>	<b>\$50.00</b>	<b>\$50.00</b>	<b>\$50.00</b>
<b>Per Diem Total</b>	<b>\$550.00</b>					

*As of 12/31/2014 only 1 board member had completed the paper work to receive per diem payments and 1 of those waivers.*

<b>Court Reporter Costs</b>	<b>22-Jan-14</b>	<b>26-Mar-14</b>	<b>28-May-14</b>	<b>23-Jul-14</b>	<b>24-Sep-14</b>	<b>19-Nov-14</b>
Circle City Reporters	\$270.00	\$382.50	\$180.00	\$225.00	\$270.00	\$270.00
<b>Total for Court Reporters</b>	<b>\$1,597.50</b>					

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$4,189.82</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.



**(K) Indiana Auctioneer Commission**

- 1. Identify the functions, powers, and duties of the regulated occupation and the board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.**

Scope of Practice

**IC 25-6.1-1-2 Scope of article**

*Sec. 2. This article provides licensing and registration for persons engaged in operating, conducting or otherwise producing auctions. No other agency or political subdivision of the state shall impose on a licensee or seller at auction any registration or license requirement or any license or employment fee or charge on account of such auction activities.*

Auctioneering Definitions

**IC 25-6.1-1-3 Definitions**

*Sec. 3. As used in this article:*

*"Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of the auctioneer's audience, which exchanges consist of a series of invitations for offers for the purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.*

*"Auction company" means any person or persons who, as a part of its business, arranges, manages, sponsors, advertises, or carries out auctions.*

*"Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds the individual out as being available to engage in, the calling for, the recognition of, and the acceptance of offers for the purchase of goods or real estate at an auction.*

Establishment of the Board

The Indiana Auctioneering Commission ("Commission") was established in accordance with IC 25-6.1-2 in 1977.

**IC 25-6.1-2-1 Creation and membership**

*Sec. 1. Creation and Membership. (a) The Indiana auctioneer commission is created consisting of six (6) members, not more than four (4) of whom may be members of the same political party.*

*(b) A member of the commission is appointed by the Governor to serve for a term of three (3) years and until his successor is appointed and qualified. A vacancy arising on the commission shall be filled by the Governor, and the individual*

*appointed to fill such vacancy shall serve for the unexpired term of the individual whose vacancy is being filled.*

*(c) Five (5) individuals appointed to membership on the commission must be citizens of Indiana and engaged as auctioneers for a period of not less than five (5) years immediately preceding their appointment. One (1) individual appointed to membership on the commission must be a citizen of Indiana who has not been associated with auctioneering in any way other than as a consumer.*

*(d) An individual may not act as a member of the commission while holding another elected or appointed office in either the state or federal government.*

### Role of the Board

Primary functions are to review credentials license applicants, administer licenses to qualified individuals, consider requests for restitution from consumer protection funds, promulgate rules, and implement administrative disciplinary actions against licensees who are not practicing according to the Commission's statutes and rules.

The IPLA crafts legislation with input from the Commission on related matters that work to benefit consumers and licensees in their industry.

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Nothing was discovered that indicates the Commission or licensed individuals are acting in a manner inconsistent with the current or projected practice of the occupation. Please see the JCC's statement in No. 10 of this report for the recommendations and additional information.

## **2. Assess the structure and the management efficiency of the board and the Indiana Professional Licensing Agency.**

The Commission operates with one board director (BD), one assistant director (AD) and five customer service representatives (CSR). The starting salary for a CSR is \$22,724. The starting salary for an AD is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. The annual salary budget for all 6 employees is approximately \$188,942.

In factoring the costs to process licenses, it's important to recognize that the IPLA is an umbrella agency for 38 additional boards and commissions. The staffers working for the Commission also serve other boards. Specifically, "Group 9" also includes the Indiana Real Estate Commission, Indiana Real Estate Appraiser Board, Home Inspector Licensing Board and the Manufactured Home Installer Board. These boards, and the composition of each group, are assigned by the agency director.

The agency’s executive staff also provides services to the entire agency and should be considered in this analysis. This includes the executive director, deputy director, chief legal counsel, staff attorney, communications director, legislative director, controller, controller staff, IT director and IT staff. The cost of administering and managing these licenses would be even higher when factoring in the attorney general’s office, which includes their expenses of Advisory Counsel to the Board, prosecution and senior management from both advisory and litigation.

**3. Assess the regulated occupation's and the board's ability to meet the objectives of the General Assembly in licensing the regulated occupation.**

The IPLA and the Commission have met the standards and statutes imposed by the General Assembly in providing adequate service to licensed practitioners. Based on the information provided to the JCC, recommendations were submitted. The policy statement from the JCC is No. 10 regarding the operational structure of the agency and the board.

**4. Assess the fees that the board charges for licenses.**

The IPLA has a General Fund appropriation that is not board specific and is used to support the agency’s operations for all 38 of its licensing boards and commissions. Licensing fees are not dedicated to the profession. An assessment of the fees charged by the Board is as follows:

Application fee	\$35
Examination fee	\$70
Reciprocal application fee	\$70
Quadrennial Renewal Fee	\$70
Reinstatement of expired license (under 3 years)	\$120
Reinstatement of expired license (over 3 years)	\$105

**Auctioneer Recovery Fund**

The balance of the fund at the end of 2014 was \$358,522. If the balance is below the \$360,000 threshold as of 6/30/2015, fees will be assessed during the next renewal cycle to bring the balance back to the statutory level of \$400,000. The last claim against the fund was in April 2014.

**IC 25-6.1-8-1 Establishment of fund; administration; investments**

*Sec. 1. (a) The auctioneer recovery fund is established for the purpose set out in this chapter. The fund shall be administered by the auctioneer commission.(b) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be*

*invested. Interest that accrues from these investments shall be deposited in the fund.(c) Money in the fund at the end of a fiscal year does not revert to the state general fund, except as provided in section 2.1 of this chapter.*

*IC 25-6.1-8-2 Surcharge; formula; assessment*

*Sec. 2. (a) If the total amount in the auctioneer recovery fund (including principal and interest) is less than three hundred sixty thousand dollars (\$360,000) on June 30 in an odd-numbered year after the payment of all claims and expenses, the auctioneer commission shall assess a surcharge according to the following formula in order to maintain the fund at an approximate level of four hundred thousand dollars (\$400,000):*

*STEP ONE: Determine the amount remaining in the fund on June 30 of the current year after all expenses and claims have been paid.*

*STEP TWO: Subtract the amount determined under STEP ONE from four hundred thousand dollars (\$400,000).*

*STEP THREE: Determine the number of licensees who had licenses in effect on June 30 of the current year.*

*STEP FOUR: Divide the number determined under STEP TWO by the number determined under STEP THREE.*

*(b) The auctioneer commission shall assess the surcharge described in subsection (a) against each licensee who:*

*(1) receives an initial license; or*

*(2) receives a renewal license.*

*(c) The auctioneer commission shall assess the surcharge described in subsection (a) for the two (2) year period beginning on July 1 of the current year through June 30 of the next odd-numbered year.*

*(d) The surcharge assessed under this section is in addition to any other fee under this article.*

**5. List the number of individuals who are licensed in the regulated occupation.**

**Auctioneer** – An individual who is engaged in, or who by advertising or otherwise holds the individual out as being available to engage in, the calling for, the recognition of, and the acceptance of offers for the purchase of goods or real estate at an auction.

- a) 2932 active licenses
- b) 244 inactive licenses
- c) 137 licenses issued in 2013
- d) 106 licenses issued in 2014
- e) 21 licenses issued to date in 2015 (as of 3/18/2015)

**Auction Company** – any person or persons who, as a part of its business, arranges, manages, sponsors, advertises, or carries out auctions.

- a) 395 active licenses
- b) 22 licenses issued in 2013
- c) 112 licenses issued in 2014 (due to elimination of the Auction House license)
- d) 9 licenses issued to date in 2015 (as of 3/18/2015)

#### **Pre-Licensing Course Providers**

Approval by the Commission is required to offer a pre-licensing course to applicants for licensure. There are 17 active providers in the state.

#### **Continuing Education Course Providers**

Continuing education course providers are approved by the Commission or automatically approved under IC 25-1-4-0.2. There are 21 active providers in the state.

### **6. Provide the budget and other fiscal factors for regulating the regulated occupation, including the actual cost of administering license applications, renewals and issuing licenses.**

The IPLA has a General Fund appropriation that is not board specific. The General Fund appropriation is used to support the agency operations for 38 licensing boards and staff. Licensing fees, as outlined in No. 4 of this report, are not dedicated to the profession.

To review the staffing costs associated with administering licenses and renewals for the Commission, please see No. 2. For the costs associated with having the Commission and paying per diem, travel and court reporters for board meetings, please see the last page of this section after the recommendation from the JCC.

### **7. Provide an assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

Auctions are used to liquidate a variety of assets in a fair and commercially reasonable manner to attain the highest dollar in the current market.

Examples include but are not limited to: real estate, personal or estate items, business assets (tangible & intangible), livestock and farm products, machinery, mineral rights, automobiles, state and county surplus, bankruptcy, foreclosure, divorce and settling estates.

Numbers are difficult to assimilate for several reasons regarding the economic impact of the industry. There are approximately 2,900 active auctioneer licenses with an additional 394 auctioneer company licenses (as of February 2015). The average salary of a professional auctioneer varies widely depending on a number of factors, such as what type of auctions is being conducted: livestock, auto,

general household, estates, real estate, etc. Other factors include whether an auctioneer is contracted simply to call the bid and is compensated as such, or whether the auctioneer is doing all aspects of the transaction. The wage of an auctioneer is also dependent on whether they are working for an auction company or working independently? There are many facets to the auction industry, and therefore, it is very difficult to pin down the average wage of an auctioneer (BLS data not available).

Indiana has the lowest auctioneer license fees in the United States among those states that require licensure.

For Neighboring States:

- Ohio auctioneer fees are \$200.00 initially with a bond and \$200.00 renewal biennial.
- Illinois auctioneer fees are \$200.00 initially with a renewal fee of \$450.00 every other year if paid by January 1. After January 1 the fee is \$500.00.
- Kentucky auctioneer fees are \$150.00 initial and \$150.00 annual renewal.<sup>42</sup>

**8. Assess the necessity, burden and alternatives to the licenses issued by the board.**

The currently required fees to work in the auctioneering industry in Indiana are appropriate and very low in comparison with other licensed professions.

Alternatives to the licensing structures currently in place for this industry were discussed, and the JCC will continue to deliberate on this at a public meeting pursuant to IC 25-1-16-14.

**9. List any other criteria identified by the JCC.**

The JCC suggests the Legislature remove the political requirements when appointing board members to the Indiana Auctioneer Commission. This requirement is rare for the 38 occupational licensing boards overseen by the IPLA, and it is an unnecessary statutory requirement when considering the best qualified candidate to serve on the board. It also poses an administrative burden in how a political party is determined i.e. voting records, how the applicant identifies at the time of appointment, etc.

**10. Include any recommendations for legislation, including whether: the regulation of a regulated occupation should be modified; the board should be combined with another board; or whether the board or the regulation of the regulated occupation should be terminated; whether a license should be eliminated; or whether multiple licenses should be consolidated into a single**

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<sup>42</sup> Information in this section is collected from the report presented by the Indiana Auctioneers Association.

**license. The report should also include any recommendations for administrative changes and information that supports the Committee's recommendations. This section does not apply to fees that support dedicated funds. After the Committee has reviewed and evaluated a regulated occupation and board, the Committee shall provide the agency and the board that is the subject of the Committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.**

The JCC recommends that Indiana maintain the Auctioneer Commission and continue to regulate all license types, which includes the following: auctioneer, auction company, CE provider-auctioneer, and CE pre-course auctioneer.

## **Indiana Auctioneer Commission**

<b>Board Member Travel Reimbursements</b>	<b>24-Jan-14</b>	<b>18-Mar-14</b>	<b>13-May-14</b>	<b>19-Aug-14</b>	<b>1-Dec-14</b>
Jimmie Yagle	---	\$85.36	\$85.36	\$245.49	\$85.36
Jack Fife	\$7.04	\$7.04	\$7.04	\$7.04	---
Jack Lawson	---	\$16.72	\$16.72	\$16.72	---
Greg Michael	---	\$58.96	\$58.96	\$232.09	\$58.96
Larry Arnold	---	---	---	\$123.20	\$123.20
John Kruse	---	---	---	---	---
Peter Shawver	---	---	---	---	---
<b>Monthly Totals</b>	<b>\$7.04</b>	<b>\$168.08</b>	<b>\$168.08</b>	<b>\$624.54</b>	<b>\$267.52</b>
<b>Total Travel Costs</b>	<b>\$1,235.26</b>				

<b>Board Member Per Diem Payments</b>	<b>24-Jan-14</b>	<b>18-Mar-14</b>	<b>13-May-14</b>	<b>19-Aug-14</b>	<b>1-Dec-14</b>
Jimmie Yagle	---	\$50.00	\$50.00	\$50.00	\$50.00
Jack Fife	\$50.00	\$50.00	\$50.00	\$50.00	---
Jack Lawson	---	\$50.00	\$50.00	\$50.00	---
Greg Michael	---	\$50.00	\$50.00	\$50.00	\$50.00
Larry Arnold	---	---	---	---	---
John Kruse	---	---	---	---	---
Peter Shawver	---	---	---	---	\$50.00
<b>Monthly Totals</b>	<b>\$50.00</b>	<b>\$200.00</b>	<b>\$200.00</b>	<b>\$200.00</b>	<b>\$150.00</b>
<b>Per Diem Total</b>	<b>\$800.00</b>				

*As of 12/31/2014 only 4 board members had completed the paper work to receive per diem payments.*



<b>Court Reporter Costs</b>	<b>24-Jan-14</b>	<b>18-Mar-14</b>	<b>13-May-14</b>	<b>19-Aug-14</b>	<b>1-Dec-14</b>
Accurate Reporting of Indiana	---	\$150.00	---	\$150.00	---
Circle City Reporting	---	---	---	---	\$315.00
Total for Court Reporters	<b>\$615.00</b>				

<b>TOTAL Board Operations Costs for 2014</b>	<b>\$2,650.26</b>
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Note: Costs are not representative of attendance as some members choose not receive payment.

**EXHIBIT A – Active License Totals Per Board****INDIANA PROFESSIONAL LICENSING AGENCY  
CURRENT LICENSES @ 5/22/2015**

5/22/2015

10:39:24AM

<u>LICENSE CODE/TYPE</u>	<u>NUMBER CURRENT</u>	<u>ISSUED IN LAST YEAR</u>
1 Physician	26,768	1,322
2 Osteopathic Physician	2,331	196
11 Medical Residency Permit	1,365	541
50 Medical Corporation	718	41
73 Medical Fellowship Permit	70	51
74 Genetic Counselor	66	13
75 Medical Teaching Permit	2	0
101 CSR-Physician	19,571	1,142
102 CSR-Osteopathic Physician	1,686	156
9901 Temporary MD Permit	51	51
9902 Temporary DO Permit	6	6
9974 Temp Genetic Counselor Permit	3	3
9975 Limited Scope MD	1	0
<b>TOTAL FOR Medical Licensing Board</b>	<b>52,638</b>	<b>3,522</b>
5 Physical Therapist	5,462	321
6 Phys Ther Assistant	2,879	207
53 Physical Therapy Corporation	33	0
9905 Temporary PT Permit	16	16
9906 Temporary PTA Permit	10	9
<b>TOTAL FOR Physical Therapy Committee</b>	<b>8,400</b>	<b>553</b>
7 Podiatrist	468	30
41 Limited Podiatry TMP	52	18
52 Podiatric Corporation	25	0
707 CSR-Podiatrist	392	29
9907 Podiatrist Temporary Permit	1	1
<b>TOTAL FOR Podiatric Medicine Board</b>	<b>938</b>	<b>78</b>
8 Chiropractor	1,328	67
51 Chiropractic Corporation	184	1
78 Chiro Graduate Permit	3	3
<b>TOTAL FOR Chiropractic Board</b>	<b>1,515</b>	<b>71</b>
10 Physician Assistant	1,230	176
1010 CSR-Physician Assistant	1,038	161
9910 Temporary PA Permit	2	2
<b>TOTAL FOR Physician Assistant Committee</b>	<b>2,270</b>	<b>339</b>
12 Dentist	4,123	177
13 Dental Hygienist	5,131	232
43 Dental Anesthesia Permit	238	13
54 Dental Corporation	603	19
65 Mobile Dental Facility	19	4
89 Dental Hygiene Anesthesia Permit	1,454	324
1201 CE Sponsor - Dental	46	10
1212 CSR-Dentist	3,661	163
1215 Limited Dental Residency	79	22
1220 Limited Dental Faculty	4	2
1230 Dental Instructor	9	1
1231 CSR-IU Dental Instructor	3	0
1250 Limited Charitable Dental Permit	4	4
1255 Limited Charitable Dental Hygienist Pmt	1	1
<b>TOTAL FOR Dentistry Board</b>	<b>15,375</b>	<b>972</b>

**EXHIBIT A – Active License Totals Per Board****INDIANA PROFESSIONAL LICENSING AGENCY  
CURRENT LICENSES @ 5/22/2015**

5/22/2015

10:39:24AM

<u>LICENSE CODE/TYPE</u>	<u>NUMBER CURRENT</u>	<u>ISSUED IN LAST YEAR</u>
14 Health Facility Administrator	1,307	54
15 Preceptor Eligible	163	44
16 Residential Care Administrator	62	11
47 HFA Provisional	2	2
1401 CE Sponsor - HFA	35	7
1501 HFA Preceptor	61	61
1502 RCA Preceptor	5	5
9914 HFA Temporary Permit	3	3
9916 RCA Temporary Permit	1	1
<b>TOTAL FOR Health Facility Admin Board</b>	<b>1,639</b>	<b>188</b>
17 Hearing Aid Dealer	293	15
40 Student Hearing Aid Dealer	62	47
<b>TOTAL FOR Hearing Aid Dealer Committee</b>	<b>355</b>	<b>62</b>
18 Optometrist	1,518	54
56 Optometry Corporation	165	3
1818 Optometric Legend Drug Certificate	1,372	53
<b>TOTAL FOR Optometry Board</b>	<b>3,055</b>	<b>110</b>
19 Psychologist Limited	9	0
20 Psychologist	1,765	94
57 Psychology Corporation	64	4
9820 CE Sponsor - Psychology	29	3
9919 Limited Scope Psychologist	25	14
9920 Temporary Psychologist Permit	8	8
<b>TOTAL FOR Psychology Board</b>	<b>1,900</b>	<b>123</b>
22 Speech Pathologist	2,970	229
23 Audiologist	434	15
29 SLP Support Personnel	161	65
46 CFY	166	145
58 Speech Lan PA Corporation	12	1
<b>TOTAL FOR Speech Lang Path &amp; Audio Board</b>	<b>3,743</b>	<b>455</b>
24 Veterinarian	2,538	173
25 Registered Vet Tech	1,400	178
59 Veterinarian Corporation	146	6
2424 CSR-Veterinarian	1,669	113
<b>TOTAL FOR Veterinary Board</b>	<b>5,753</b>	<b>470</b>
26 Pharmacist	10,990	529
45 Pharmacy Intern	1,671	538
48 Wholesale Drug Distributor	398	34
49 Pharmacy Corporation	2	1
60 Pharmacy	1,426	57
61 CSR	779	59
64 Non-Resident Pharmacy	1,016	223
67 Pharmacy Technician	13,648	1,786
69 Home Medical Equip Service Provider	766	111
1000 CSR-Pharmacy	1,409	56
9967 Pharmacy Tech In-Training	1,986	1,931
<b>TOTAL FOR Pharmacy Board</b>	<b>34,091</b>	<b>5,325</b>

**EXHIBIT A – Active License Totals Per Board****INDIANA PROFESSIONAL LICENSING AGENCY  
CURRENT LICENSES @ 5/22/2015**

5/22/2015

10:39:24AM

<u>LICENSE CODE/TYPE</u>	<u>NUMBER CURRENT</u>	<u>ISSUED IN LAST YEAR</u>
9 Nurse Midwife	172	21
27 Licensed Practical Nurse	26,630	1,169
28 Registered Nurse	110,326	6,706
55 Nursing Corporation	18	1
71 APN Prescriptive Authority	4,709	576
2871 CSR-Prescriptive Authority	4,631	557
9927 Temporary LPN Permit	11	9
9928 Temporary RN Permit	96	95
<b>TOTAL FOR Nursing Board</b>	<b>146,593</b>	<b>9,134</b>
30 Respiratory Care Practitioner	4,714	227
6830 Respiratory Care Professional Corp	2	0
9830 Student Temp RCP	39	38
9930 Temporary RCP Permit	12	12
<b>TOTAL FOR Respiratory Care Committee</b>	<b>4,767</b>	<b>277</b>
31 Occupational Therapist	3,149	201
32 Occ Therapy Assistant	1,806	197
6831 Occupational Therapy Corporation	4	1
9831 CE Sponsor - Occ Therapy	30	10
9931 Temporary Occ Therapist Permit	2	2
9932 Temporary OTA Permit	2	2
<b>TOTAL FOR Occupational Therapy Committee</b>	<b>4,993</b>	<b>413</b>
33 Social Worker	2,746	370
34 Clinical Social Worker	4,709	272
35 Marriage & Family Therapist	996	42
39 Mental Health Counselor	1,958	120
85 Marriage & Family Associate	99	38
86 Addiction Counselor	289	3
87 Clinical Addiction Counselor	1,438	4
88 Mental Health Associate	79	58
6833 Behavioral Sciences Corp.	15	1
9833 CE Sponsor - BHHS	116	14
9933 Temp Social Worker Permit	42	41
9934 Temp Clin Soc Worker Permit	22	22
9939 Temp Mental Hlth Coun Permit	8	8
<b>TOTAL FOR Behavioral Health Board</b>	<b>12,517</b>	<b>993</b>
36 Athletic Trainer	1,239	148
<b>TOTAL FOR Athletic Trainer Board</b>	<b>1,239</b>	<b>148</b>
37 Dietitian	1,353	124
<b>TOTAL FOR Dietitian Certification Board</b>	<b>1,353</b>	<b>124</b>
68 Multi-Profession Corporation	12	2
<b>TOTAL FOR Corporations</b>	<b>12</b>	<b>2</b>
80 Acupuncture Detox Specialist	22	2
81 Acupuncturist - DC	138	8
82 Acupuncturist - DDS	1	0
84 Licensed Acupuncturist	105	9
6884 Acupuncture Corporation	1	0
<b>TOTAL FOR Acupuncture Committee</b>	<b>267</b>	<b>19</b>

**EXHIBIT A – Active License Totals Per Board****INDIANA PROFESSIONAL LICENSING AGENCY  
CURRENT LICENSES @ 5/22/2015**

5/22/2015

10:39:24AM

<u>LICENSE CODE/TYPE</u>	<u>NUMBER CURRENT</u>	<u>ISSUED IN LAST YEAR</u>
20101 Certified Public Accountant	12,615	426
20102 Public Accountant	65	0
20103 Accounting Practitioner	11	0
20104 Accountancy Professional Corp	309	5
20106 Firm Permit to Practice Acct	1,258	54
<b>TOTAL FOR Accountancy Board</b>	<b>14,258</b>	<b>485</b>
20201 Architect	3,431	191
20202 Landscape Architect	426	22
20203 Architect Professional Corporation	100	10
<b>TOTAL FOR Architect Board</b>	<b>3,957</b>	<b>223</b>
20301 Auctioneer	3,227	111
20302 Auction House	1	0
20303 Auction Company	411	125
20304 CE Provider - Auctioneer	21	1
20305 CE Pre-Course - Auctioneer	17	2
<b>TOTAL FOR Auctioneer Commission</b>	<b>3,677</b>	<b>239</b>
20601 Esthetician	2,928	311
20602 Beauty Culture School	97	2
20603 Cosmetologist	47,275	2,130
20605 Manicurist	5,999	356
20607 Beauty Culture Salon	8,808	919
20611 Beauty Culture Instructor	1,411	104
20612 Electrologist	94	0
20614 Mobile Salon	94	35
20616 Barber	3,769	184
20618 Provisional Barber	5	2
20622 Tanning Facility	900	70
20647 Temp Beauty Culture Salon	84	84
20648 Temp Manicuring Salon	1	0
20661 Provisional Esthetician	2	1
20664 Provisional Cosmetologist	55	23
20665 Provisional Manicurist	20	12
<b>TOTAL FOR Cosmetology &amp; Barber Board</b>	<b>71,542</b>	<b>4,233</b>
20701 Private Investigator Firm	565	34
20702 Security Guard Agency	416	22
<b>TOTAL FOR Private Investig &amp; Sec Guard</b>	<b>981</b>	<b>56</b>
20801 Engineer Intern	23,509	223
20802 Professional Engineer	13,025	788
20803 Engineering Professional Corporation	140	9
<b>TOTAL FOR Engineer Board</b>	<b>36,674</b>	<b>1,020</b>

**EXHIBIT A – Active License Totals Per Board****INDIANA PROFESSIONAL LICENSING AGENCY  
CURRENT LICENSES @ 5/22/2015**

5/22/2015

10:39:24AM

<u>LICENSE CODE/TYPE</u>	<u>NUMBER CURRENT</u>	<u>ISSUED IN LAST YEAR</u>
20901 Embalmer Only	11	0
20903 Funeral Home	581	15
20904 Funeral Director	1,732	68
20905 Funeral Director Intern	46	38
20906 Certificate of Authority	640	47
20907 Crematorium	96	2
20908 Cemetery	130	5
20909 Funeral Branch	104	30
20910 CE Provider - Funeral	303	9
20911 Funeral Director Courtesy Card	81	29
<b>TOTAL FOR Funeral Board</b>	<b>3,724</b>	<b>243</b>
21001 Surveyor Intern	412	4
21002 Professional Surveyor	914	15
21003 Land Surveyor Professional Corporation	7	1
21010 CE Provider - Land Surveyor	30	2
21015 Land Surveyor Firm	116	3
<b>TOTAL FOR Land Surveyor Board</b>	<b>1,479</b>	<b>25</b>
21101 Plumber Contractor	3,377	74
21102 Journeyman Plumber	4,575	54
21103 Plumbing Corporation	533	18
21104 Plumbing Apprentice	1,114	379
21105 Temporary Plumbing Contractor	2	2
21110 Plumbing Apprenticeship Program	15	0
<b>TOTAL FOR Plumbing Commission</b>	<b>9,616</b>	<b>527</b>
21201 Appraiser Trainee	208	29
21202 Licensed Residential Appraiser	322	0
21203 Certified Residential Appraiser	1,119	55
21204 Certified General Appraiser	867	67
21205 CE Sponsor - Appraiser	22	3
21207 Appraiser Temporary Permit	257	257
21210 Instructor - Appraiser	217	17
21215 Appraisal Management Company	181	21
<b>TOTAL FOR Appraiser Board</b>	<b>3,193</b>	<b>449</b>
21301 Real Estate Broker Company	2,459	265
21304 Real Estate Broker	31,508	7,743
21306 Real Estate Associate Broker	5	0
21307 Real Estate Sales Person	17	0
21308 Real Estate School	29	4
21311 Real Estate Professional Corp	84	5
21320 Real Estate Branch Office	193	34
21323 CE Sponsor - RE Broker	75	6
21325 Instructor Registration - Real Estate	15	0
21327 Real Estate Instructor Permit	645	181
<b>TOTAL FOR Real Estate Commission</b>	<b>35,030</b>	<b>8,238</b>
21401 Licensed Home Inspector	720	111
21402 Pre-Course Provider - Home Inspector	22	0
21403 CE Provider - Home Inspector	26	1
21410 Instructor - Home Inspector	21	0
<b>TOTAL FOR Home Inspectors Board</b>	<b>789</b>	<b>112</b>

**EXHIBIT A – Active License Totals Per Board**

**INDIANA PROFESSIONAL LICENSING AGENCY  
CURRENT LICENSES @ 5/22/2015**

5/22/2015

10:39:24AM

<u>LICENSE CODE/TYPE</u>	<u>NUMBER CURRENT</u>	<u>ISSUED IN LAST YEAR</u>
21501    Manufactured Home Installer	143	3
21502    CE Provider - Mgf Home Installer	2	0
21503    Pre-Course - Mgf Home Installer	3	0
<b>TOTAL FOR    Manufactured Home Installers</b>	<b>148</b>	<b>3</b>
21601    Massage Therapist	4,284	361
<b>TOTAL FOR    Massage Therapy Board</b>	<b>4,284</b>	<b>361</b>
22001    Registered Interior Designer	314	21
<b>TOTAL FOR    Interior Design Registry</b>	<b>314</b>	<b>21</b>
<b>TOTAL ACTIVE LICENSES/PERMITS</b>	<b>493,079</b>	<b>39,613</b>

## License to Work

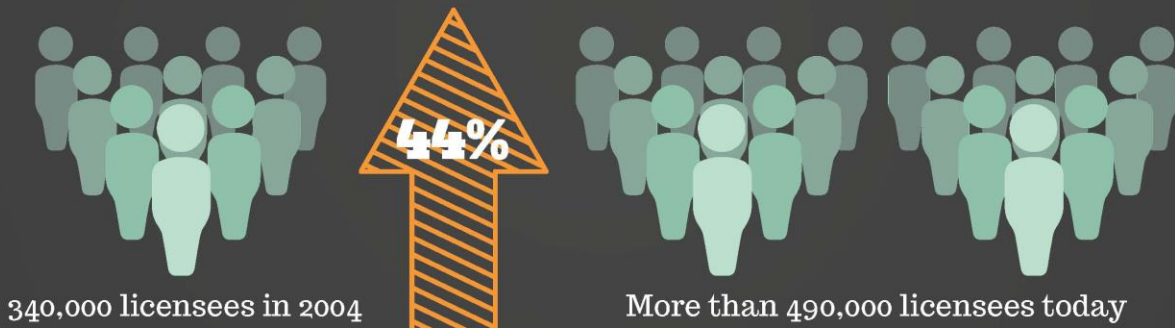
An occupational license is a form of government regulation where a governing body sets arbitrary requirements that an applicant must meet before being approved to practice a skill or trade. The Indiana Professional Licensing Agency administers more than 240 licenses and permits and oversees 38 different boards and commissions.



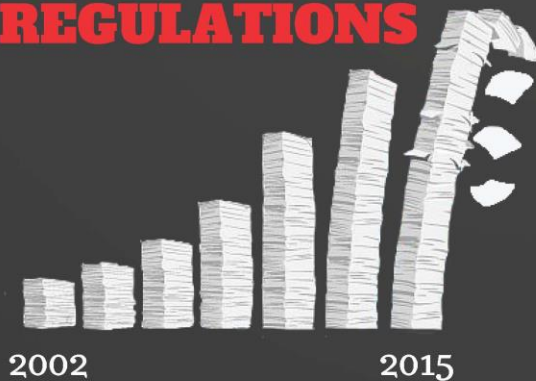
In 1950, 1 in 20 Americans needed a license to work. Today, that number is closer to 1 in 3.

Source: Institute for Justice

The number of licensed Hoosiers, just overseen by the IPLA, has dramatically increased over the last ten years.



## REGULATIONS



Since 2002, 40 new licenses, permits and certifications have been created by the Legislature, including 20 new licensed occupations. Conversely, only 3 occupations no longer require licensure: Hypnotists, Environmental Health Specialists and Shampoo Operators.





## **APPENDIX I – JCC Member Bios**

### **Members of the Jobs Creation Committee and Corresponding Bios**

**Nicholas Rhoad (Chairman)** is the Executive Director of the Indiana Professional Licensing Agency. The agency is tasked with licensing one out of seven hard working Hoosiers in thirty-eight different professions such as doctors, CPAs, engineers and real estate professionals. IPLA's mission is to provide exemplary customer service for Hoosier licensees, serve as a catalyst for business growth and make Indiana the best place to live and work.

Nick has a bachelor's degree from Hillsdale College in Michigan and a master's degree from Indiana University. He also enjoys philanthropic work by being active in the community and volunteering his time to work with amputees and their families.

Nicholas Rhoad's appointment is pursuant to IC 25-1-16-7(a)(1).

—

**Dr. Matthew Will** is an Associate Professor of Finance for the University of Indianapolis MBA Program. He has both graduate and undergraduate degrees from Indiana University in Bloomington, as well as a doctorate from Anderson University in finance. After working a number of years in private industry as a senior manager and executive, he began a career in academia. Dr. Will spent 9 years on the faculty of Johns Hopkins University in Baltimore, Maryland. In 2001, he returned to his home state of Indiana and joined the faculty of the University of Indianapolis MBA Program. He has served as Director of the MBA Program, Associate Dean and currently holds the position of Director of External Relations.

Dr. Will's appointment is pursuant to IC 25-1-16-7(a)(6).

—

**Tim Reed** has been involved in the residential real estate industry as a broker for 34 years. He served as the District 1 Real Estate Commissioner from 1992 to 2014. He has also served as the President of the Duneland Valparaiso Board of Realtors and the Greater Northwest Indiana Association of Realtors. He has received numerous accolades including being recognized as the Realtor of the Year by the Indiana Association of Realtors and being a recipient of the Sagamore of the Wabash from Governor Pence.

Tim Reed's appointment is pursuant to IC 25-1-16-7(a)(5).

—

**Barbara Quandt** is the Indiana State Director of the National Federation of Independent Business (NFIB). A small business owner and NFIB member for over twenty years, Barbara Quandt represented NFIB in the state capital as well as in Washington, D.C. She was also the president and founder of Danville and Brownsburg World Travel agencies, and later, the president and co-founder of The Quandt Group, Inc., a public relations and crisis management consulting firm.

Born in Venezuela and raised in Northport, New York, Quandt has called Indiana her home since she arrived in Indianapolis to attend Butler University. Barbara Quandt is the mother of five.

## **APPENDIX I – JCC Member Bios**

Barbara Quandt’s appointment is pursuant to IC 25-1-16-7(a)(4).

–

**Richard Wilson** has over 25 years combined service to our nation. Currently, he serves as the Executive Officer for the Director of Office of Audit Readiness at the U.S. Department of Defense Finance and Accounting Service (DFAS). Prior to joining the Defense Department, Richard served in the US Army with the 3rd Armored Division in the NATO Defense of Europe and Persian Gulf War. After leaving active duty, he served 16 years in various positions on the staff of U.S. Representative Dan Burton. He has served on several corporate and non-profit boards and is currently the President of the City of Lawrence Police Merit Commission. He is also the Treasurer of the Federated Campaign Stewards, a non-profit organization that runs charitable giving campaigns for federal government agencies in five states, and a Board Member of the Indiana War Memorials Foundation, a private 501 non-profit that supports the Indiana War Memorials and Museums.

Col. Richard Wilson’s appointment is pursuant to IC 25-1-16-7(a)(6).

–

**John Wright** is a Certified Public Accountant in Indiana and a Managing Director in the Evansville office of BKD, LLP. John has been involved in the taxation of public and private enterprises for over 35 years. He holds a Master of Science in Taxation with distinction from Grand Valley State University and a Bachelor of Science in Accounting from the University of Evansville.

John Wright’s appointment is pursuant to IC 25-1-16-7(a)(5).

–

**Allen K. Pope** is the Chief Counsel and Director of the Indiana Medicaid Fraud Control Unit for the Indiana Office of the Attorney General. He is also a faculty member of Indiana Wesleyan University and serves as an adjunct professor of IU Robert H. McKinney School of Law.

Allen Pope’s appointment is pursuant to IC 25-1-16-7(a)(3).

–

**Chad Timmerman** is the Director of Education Policy for the Office of the Governor and the Assistant Director of Education and Economic Development for the State Budget Agency/Office of Management and Budget. Before joining OMB, Chad served as a Legislative Assistant for the Indiana House of Representatives.

Chad Timmerman’s appointment is pursuant to IC 25-1-16-7(a)(2).

**JOBS CREATION COMMITTEE**

**Will meet on  
Thursday, September 18, 2014  
at 10:00 a.m.  
at the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, Indiana 46204**

- I. CALL TO ORDER & ESTABLISHMENT OF QUORUM 10:00 A.M**
- II. ADOPTION OF AGENDA**
- III. OPENING REMARKS & INTRODUCTION**
  - A. Chairman Nicholas Rhoad, Executive Director of the IPLA**
- IV. REPORT FROM THE BOARD OF ACCOUNTANCY**
  - A. Hannah Fichter, Board Director for the Board of Accountancy**
- V. REPORT FROM THE ATTORNEY GENERAL’S OFFICE ON CONSUMER COMPLAINTS**
  - A. Paul Schilling, Deputy Attorney General**
- VI. REPORT FROM THE INDIANA CPA SOCIETY**
  - A. Gary Bolinger, CAE, CEO and President**
- VII. CONCLUDING DISCUSSION BY THE COMMITTEE**
- VIII. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
October 16, 2014  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, Indiana 46204**

**JOBS CREATION COMMITTEE**

Thursday, October 16, 2014  
at 9:00 AM  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204

- I. CALL TO ORDER & ESTABLISHMENT OF QUORUM**
- II. ADOPTION OF AGENDA & REVIEW OF SEPTEMBER MINUTES**
- III. COMMITTEE DISCUSSION & RECOMMENDATIONS FOR BOARD OF ACCOUNTANCY**
- IV. PRESENTATION FROM THE STATE BOARD OF REGISTRATION FOR ARCHITECTS & LANDSCAPE ARCHITECTS**
  - a. Amy Hall, Board Director
- V. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. ARCHITECTS & LANDSCAPE ARCHITECTS**
- VI. REPORT FROM AMERICAN INSTITUTE OF ARCHITECTS INDIANA**
  - a. Jason Shelley, Executive Director
- VII. REPORT FROM INDIANA CHAPTER OF THE AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS**
  - a. Stacy Haviland, President
- VIII. BREAK FOR LUNCH** **12:30 P.M.**
- IX. PRESENTATION FROM THE HOME INSPECTORS’ LICENSING BOARD**
  - a. Jeanette Langford, Board Director
- X. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. HOME INSPECTORS**
- XI. REPORT FROM INDIANA CHAPTER OF THE AMERICAN SOCIETY OF HOME INSPECTORS**
  - a. Danny Maynard, President
- XII. CONCLUDING DISCUSSION BY THE COMMITTEE**

**XIII. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
FOR THE JOBS CREATION COMMITTEE**

January 15, 2015  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204

**JOBS CREATION COMMITTEE**

Will meet on  
Thursday, January 15, 2014  
at 8:30 a.m.  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, Indiana 46204

- I. CALL TO ORDER & ESTABLISHMENT OF QUORUM  
8:30 A.M.**
- II. ADOPTION OF AGENDA & REVIEW OF OCTOBER MINUTES**
- III. COMMITTEE DISCUSSION & RECOMMENDATIONS FOR ARCHITECTS  
& LANDSCAPE ARCHITECTS**
- IV. REPORT FROM THE STATE BOARD OF REGISTRATION FOR  
PROFESSIONAL SURVEYORS**
  - A. Amy Hall, Board Director
- V. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE  
re. SURVEYORS**
  - A. Terry Tolliver, Deputy Attorney General
- VI. REPORT FROM THE INDIANA SOCIETY OF PROFESSIONAL LAND  
SURVEYORS, INC.**
  - A. Jason Coyle, Executive Director
- VII. BREAK FOR LUNCH** **12:30 P.M.**
- VIII. REPORT FROM THE STATE BOARD OF REGISTRATION FOR  
PROFESSIONAL ENGINEERS**
  - A. Amy Hall, Board Director
- IX. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE  
re. ENGINEERS**
  - A. Terry Tolliver, Deputy Attorney General
- X. REPORT FROM THE INDIANA SOCIETY OF PROFESSIONAL  
ENGINEERS.**
  - A. Scott Haraburda, PhD, PE, ENSPE, President, ISPE
- XI. CONCLUDING DISCUSSION BY THE COMMITTEE**

**XII. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
February 19, 2014  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, Indiana 46204**

**JOBS CREATION COMMITTEE**

**Thursday, February 19, 2014  
at 9:00 AM  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

- I. CALL TO ORDER & ESTABLISHMENT OF QUORUM**
- II. ADOPTION OF AGENDA & REVIEW OF JANUARY MINUTES**
- III. COMMITTEE DISCUSSION**
- IV. PRESENTATION FROM THE MANUFACTURED HOME INSTALLER LICENSING BOARD**
  - a. Jeanette Langford, Board Director
- V. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. MANUFACTURED HOME INSTALLERS**
- VI. REPORT FROM THE INDIANA MANUFACTURED HOUSING ASSOCIATION – RECREATION VEHICLE INDIANA COUNCIL**
  - a. Mark Bowersox, Executive Director
- VII. BREAK FOR LUNCH**
- VIII. PRESENTATION FROM THE PRIVATE INVESTIGATOR AND SECURITY GUARD LICENSING BOARD**
  - a. Amy Hall, Board Director
- IX. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. PRIVATE INVESTIGATORS AND SECURITY GUARDS**
- X. REPORT FROM THE INDIANA SOCIETY OF PROFESSIONAL INVESTIGATORS**
  - a. Brandy Lord, President
- XI. REPORT FROM THE INDIANA ASSOCIATION OF PROFESSIONAL INVESTIGATORS**
  - a. Kim Ridding, President
- XII. CONCLUDING DISCUSSION BY THE COMMITTEE**



**XIII. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
FOR THE JOBS CREATION COMMITTEE  
March 19, 2015  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

**JOBS CREATION COMMITTEE**

**Thursday, March 19, 2014  
at 9:00 AM  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

- I. CALL TO ORDER & ESTABLISHMENT OF QUORUM**
- II. ADOPTION OF AGENDA & REVIEW OF FEBRUARY MINUTES**
- III. COMMITTEE DISCUSSION**
- IV. PRESENTATION ON “POVERTY AND ENTREPRENEURSHIP IN INDIANA: WIDENING THE ROAD OUT OF POVERTY”**
  - a. Doug Noonan, Associate Professor at Indiana University – Purdue University Indianapolis
- V. PRESENTATION FROM THE STATE BOARD OF FUNERAL AND CEMETERY SERVICE**
  - a. Tracy Hicks, Board Director
- VI. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. FUNERAL HOME DIRECTORS & CEMETERIES**
  - a. Terry Tolliver, Deputy Attorney General
- VII. REPORT FROM THE INDIANA FUNERAL DIRECTORS ASSOCIATION**
  - a. Curtis Rostad, Executive Director
- VIII. BREAK FOR LUNCH**
- IX. PRESENTATION FROM THE COMMITTEE ON HEARING AID DEALER EXAMINERS**
  - a. Rae Harman, Assistant Board Director
- X. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. HEARING AID DEALERS**
  - a. Laura Iosue, Deputy Attorney General
- XI. REPORT FROM THE INDIANA HEARING AID ALLIANCE**
  - a. Allen Reese and Bruce Campagna, Representatives
- XII. REPORT FROM THE INDIANA SPEECH-LANGUAGE-HEARING ASSOCIATION**

**APPENDIX II – JCC Meeting Agendas**

- a. Heidi Neuburger, Representative

**XIII. CONCLUDING DISCUSSION BY THE COMMITTEE**

**XIV. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
FOR THE JOBS CREATION COMMITTEE  
April 16, 2015  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

**JOBS CREATION COMMITTEE**

**Thursday, April 16, 2014  
at 9:00 AM  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

- I. CALL TO ORDER & ESTABLISHMENT OF QUORUM**
- II. ADOPTION OF AGENDA & REVIEW OF MARCH MINUTES**
- III. COMMITTEE DISCUSSION**
- IV. REPORT FROM THE INDIANA CEMETERY ASSOCIATION**
  - a. Casey Miller, Executive Director
- V. PRESENTATION FROM THE PRIVATE INVESTIGATOR & SECURITY GUARD LICENSING BOARD**
  - a. Randy Sidwell, Captain of the Pendleton Police Department and Board Member
- VI. PRESENTATION FROM THE INDIANA AUCTIONEER COMMISSION**
  - a. Jeanette Langford, Board Director
- VII. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. AUCTIONEERS**
  - a. Terry Tolliver, Deputy Attorney General
- VIII. REPORT FROM THE INDIANA AUCTIONEERS ASSOCIATION**
  - a. Kathy Baber, Executive Director
- IX. BREAK FOR LUNCH**
- X. PRESENTATION FROM THE INDIANA PLUMBING COMMISSION**
  - a. Rae Harman, Board Director
- XI. PRESENTATION FROM THE INDIANA ATTORNEY GENERAL’S OFFICE re. PLUMBERS**
  - a. Derek Peterson, Deputy Attorney General
- XII. REPORT FROM THE INDIANA PLUMBING HEATING COOLING CONTRACTORS ASSOCIATION**
  - a. Brenda Dant, Executive Director
- XIII. CONCLUDING DISCUSSION BY THE COMMITTEE**

**XIV. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
FOR THE JOBS CREATION COMMITTEE  
June 2, 2015  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

**JOBS CREATION COMMITTEE**

**Tuesday, June 2, 2015  
at 9:00 AM  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

- I. CALL TO ORDER & ESTABLISHMENT OF QUOROM**
- II. REVIEW & ADOPTION OF AGENDA & APRIL MINUTES**
- III. OLD / NEW BUSINESS**
  - a. Discussion and resolution of JCC requirements pursuant to IC 25-1-16-8
  - b. Assessment framework for board recommendations
    - i. Adoption
    - ii. Discussion for each board
- IV. CONCLUDING DISCUSSION BY THE COMMITTEE**
- V. ADJOURNMENT**

**NEXT SCHEDULED MEETING  
June 17, 2015  
at 1:00 PM  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204**

**JOBS CREATION COMMITTEE**

Wednesday, June 17, 2015  
at 1:00 PM  
in the Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204

**I. CALL TO ORDER & ESTABLISHMENT OF QUORUM**

**II. REVIEW & ADOPTION OF AGENDA & JUNE 2<sup>ND</sup> MEETING MINUTES**

**III. OLD / NEW BUSINESS**

- a. Discussion and resolution of JCC requirements pursuant to IC 25-1-16-8
- b. Annual Report
  - i. Final discussions for each board and subsequent licenses
  - ii. Adoption of report for submission

**IV. SCHEDULING BOARD PRESENTATIONS FOR THE REST OF THE YEAR**

**V. CONCLUDING DISCUSSION BY THE COMMITTEE**

**VI. ADJOURNMENT**

**NEXT SCHEDULED MEETING**

TBD  
at 9:00 AM  
Indiana Government Center-South  
402 West Washington Street, Room W064  
Indianapolis, IN 46204

**Jobs Creation Committee**

**September 18, 2014 10 a.m.**

**Indiana Government South, W064**

**INCPAS Comments: Gary Bolinger, CAE, President & CEO, Indiana CPA Society**

**1. Introduction:**

- Introduction and brief background: Gary Bolinger
- Indiana CPA Society overview:
  - 100 years of representing CPA profession in Indiana
  - Represent 8,000 CPAs in Indiana
  - Approximately 70 percent of licensees
  - Recognized as trusted business advisors, we have members in all segments of the business community: locally, nationally and internationally.

2. The Society was asked to provide information to address Part 4 of the committee's charge, which is stated in the legislation that created the committee, SEA 421, which is now PL 112-2014 as:

***Part 4. An assessment of the effect of the CPA/Accounting profession on the state's economy, including consumers and businesses.\****

Excerpt from: International Federation of Accountants® *IFAC Policy Position 1: Regulation of the Accountancy Profession, September 2011*

The Accountancy Profession:

*“Members of the accountancy profession contribute to their communities in a wide variety of different roles, and within a range of different organizations. . Professional accountants work in, and contribute across, virtually all sectors of the economy, fulfilling diverse roles.*

*Professional accountants:*

- *Contribute to the growth of individual companies, support and sustain non-profit organizations, and assist governments in achieving their economic and social objectives; and*
- *Promote financial market performance, through the reporting of, and providing assurance on, financial information on which investors and other stakeholders rely in making resource-allocation decisions.*

*In these ways and others, professional accountants contribute to the growth of economies and ultimately to the well- being of society.”*

[IFAC Regulation Accty Profession 2011](#)



## APPENDIX IV – JCC Handouts – Indiana Board of Accountancy

Additional excerpt from a report on US Accounting Services published in March of this year.

*“Firms in the accounting profession are certified to audit the accounting records of public and private organizations and to attest to compliance with generally accepted accounting practices. Certified public accountants (CPAs) provide a variety of accounting services, including auditing accounting records, designing accounting systems, preparing financial statements, developing budgets and providing advice on matters related to accounting.”* [IBISWorld.com](http://IBISWorld.com)

- With the majority of Society members in public accounting and approximately 36 percent of membership holding positions in industry, government and education, CPAs effect countless business decisions being made in Indiana and beyond every day. They contribute immeasurably to the economic success of the state, the country and Indiana citizens.
- For more than 100 years the profession has provided essential services to both individuals and companies of all sectors and sizes in support of a system of voluntary tax compliance at the federal and state level.
- Additional statistics and information is available.

### 3. Part 5 of the committee’s charge includes:

***Part 5. Any recommendations for legislation, including whether: \****

- *The regulation of CPAs should be modified*
  - The Society does not have specific recommendations for modification at this time. INCPAS supports the profession and regulators continuously assessing potential modifications, but caution that Indiana should remain consistent with other states to prevent unintended consequences that could negatively affect Indiana’s licensees.
- *The board should be combined with another board; or*
  - The Society does not support the “super board” model where multiple licensed professions are overseen by one large board made up of directors from various professions.
  - The CPA profession is complex, technical and highly regulated at all levels. CPAs are held to numerous sets of complex standards and ethics code that require specialized understanding to properly regulate the profession.
- *The board or the regulation of the profession should be terminated*
  - It is in the best interest of the public for the regulatory board to understand the profession and have appropriate disciplinary authority to enforce the rules and regulations pertaining to the profession.
- *A license should be eliminated; or*
  - Given the profession’s responsibility to the public, it should not be eliminated. Following the discovery of the ENRON scandal in 2001, CPAs and firms conducting audits for

#### **APPENDIX IV – JCC Handouts – Indiana Board of Accountancy**

public companies were under increased scrutiny. They are required to be licensed under the accounting and auditing standards established by the Sarbanes-Oxley Act, which was enacted in 2002. (Public Law 107-204., 107<sup>th</sup> Congress)

- *Multiple licenses should be consolidated into a single license*
  - Prior to 2007, Indiana had multiple licenses for accounting professionals: Certified Public Accountant, Public Accountant and Accounting Practitioner. Effective July 1, 2007, the AP and PA classes of accounting licenses were discontinued and existing licensees were grand-fathered in the statute. (IC 25-2.1-6-4.5).
  - The Society supports licensing of CPAs and opposes licensure of any other than this class. (INCPAS Board policy: Section 9 adopted 8/3/88 and subsequently revised in 2005 and 2006)

#### **4. Provide additional background: why profession should be regulated:**

- Certification: the 3 E's  
Certification across the country generally requires the 3 E's: Education, Exam and Experience
- Professional Development/Competence
  - CPE
  - Competency
- Enforcement
  - Peer Review – why it is important?
    - **IC 25-2.1-5-8 Rules requiring peer review before renewal**
  - Administering entity for Peer Review – Society's role
    - **872 IAC 1-6-8 Responsibilities of administering entity**
  - Mobility – Ability to move freely and easily
    - Allows CPAs and firms to have practice privileges outside of domicile state with “no notice, no fee, and no escape.” Indiana added mobility in 2007.
    - Individuals

#### **5. For the committee's consideration:**

- Example: Firm permit clarification issue
  - Clarify existing law and change rule to be consistent
  - Or require individuals to have peer review
  - Statutes interpreted as individual or firm but rules make it unclear as it only references firms-confusing to some in their interpretation

## APPENDIX IV – *JCC Handouts – Indiana Board of Accountancy*

- **IC 25-2.1-1-7 "Firm"**

Sec. 7. "Firm" means a proprietorship, a general business corporation, a professional corporation, a limited liability company, a partnership, or other form of legal entity issued a permit under IC 25-2.1-5 or a registration under IC 25-2.1-6.

*As added by P.L.30-1993, SEC.7. Amended by P.L.128-2001, SEC.9*

- **IC 25-2.1-1-8.7 "Peer Review"**

Sec. 8.7. (a) "Peer review" means a study, an appraisal, or a review of at least one (1) aspect of the professional work of:

(1) an individual who; or

(2) a firm in the practice of accountancy that;

attests or issues compilation reports, by at least one (1) individual who holds a certificate from any state and possesses qualifications that meet the applicable substantial equivalency standards and who is independent of the individual or firm being reviewed. The term includes any part of a quality review conducted before July 1, 2012, that becomes part of a peer review conducted or peer review report issued after June 30, 2012.

(b) After June 30, 2012, any reference in any law, rule, or other document to "quality review" as that term was applied under this article before July 1, 2012, shall be treated as a reference to peer review.

*As added by P.L.197-2011, SEC.75.*

- **IC 25-2.1-12-3.5 Attest services performance prohibited**

Sec. 3.5. A holder of a CPA or PA certificate issued under this article may not perform attest services except through a firm that holds a valid permit under IC 25-2.1-5.

*As added by P.L.128-2001, SEC.43.*

- **872 IAC 1-6-1 Applicability**

Authority: IC 25-2.1

Affected: IC 25-2.1-5; IC 25-2.1-6

Sec. 1. (a) This rule establishes a peer review program for CPA and PA firms issued a permit under IC 25-2.1-5.

- Board of Accountancy has interpreted definition of firm to mean that even sole practitioners need a firm permit
- Would save administrative time and resources to provide clarity
- Proposed legislation in 2014 offered a potential fix. There is still a need for clarification to reduce confusion.
- Should Jobs Creation Committee have a recommendation?

### 6. *Part 6: Any recommendations for administrative changes*

- Consider private sector support for administrative functions of IPLA

#### **APPENDIX IV – *JCC Handouts – Indiana Board of Accountancy***

- There is a duplication of administrative functions between Society membership and state licensing offering potential for streamlining. Possibly through outsourcing/privatizing some administrative functions:
  - Database
    - Society's is more accurate and better maintained
    - Licensees have to submit much of the same information to both
    - Creating frustration in the marketplace and in some cases confusion on roles
  - Examples of successful partnering programs include: CPE audit, draft rules, peer review, competency-based pilot program
  - CPE audits
    - INCPAS has provided member resources and volunteers for CPE audits; allowing state resources to be utilized in other areas
    - Could create the potential to audit close to 100 percent of active licensees (assuming it would be allowed by law)
    - Could explore innovative ideas such as "real time" audits
- Opportunity for Indiana to lead profession through innovative ideas
  - Example: Competency based pilot program
    - What it is and why
- Create a new model for professional development:
  - Develop education at all levels that recognize the use of technology and new learning methodology
  - Increased complexity demands new methods for professionals to maintain and enhance competency
- Establish a regulatory framework for new professional development model, such as a competency based system for license renewal.
- Enforcement fund (IC 25-2.1-8-4) (PL 190-2007 Established fund)
  - The Indiana CPA Society has concerns about the enforcement funds use
  - Licensees/profession supported the creation of the enforcement fund because the profession felt there was a need to protect the public and preserve the integrity of the profession.
  - The funds are dedicated and funded by the additional license fee of \$30/cycle
  - There is a need and defined role for the compliance position and the funds should be utilized to support the compliance position and administrative functions related to compliance issues. (IC 25-2.1-9-2 )

**7. Questions/Discussions/Closing remarks:**

- The Indiana CPA Society and its members proudly represent CPAs in Indiana with the highest level of professionalism, competence, and ethical standards. The Society thanks members of the Jobs Creation Committee for the opportunity to provide this information.

**Reference: SEA 421: PL 112-2014**

**\*IC 25-1-16-8**

**Review and evaluation of regulated occupations and boards; report**

Sec. 8. (a) The committee shall review and evaluate each regulated occupation and board. The review and evaluation must include the following:

- (1) The functions, powers, and duties of the regulated occupation and the board, including any functions, powers, or duties that are inconsistent with current or projected practice of the occupation.
- (2) An assessment of the management efficiency of the board.
- (3) An assessment of the regulated occupation's and the board's ability to meet the objectives of the general assembly in licensing the regulated occupation.
- (4) An assessment of the necessity, burden, and alternatives to the licenses issued by the board.
- (5) An assessment of the fees that the board charges for licenses.


(6) Any other criteria identified by the committee.

(b) The committee shall prepare a report concerning each regulated occupation and board that the committee reviews and evaluates. The report must contain the following:

- (1) The number of individuals who are licensed in the regulated occupation.
- (2) A summary of the board's functions and actions.
- (3) The budget and other fiscal factors of regulating the regulated occupation, including the actual cost of administering license applications, renewals, and issuing licenses.
- (4) An assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.
- (5) Any recommendations for legislation, including whether:
  - (A) the regulation of a regulated occupation should be modified;
  - (B) the board should be combined with another board;
  - (C) whether the board or the regulation of the regulated occupation should be terminated;
  - (D) whether a license should be eliminated; or
  - (E) whether multiple licenses should be consolidated into a single license.
- (6) Any recommendations for administrative changes.
- (7) Information that supports the committee's recommendations.

(c) This section does not apply to fees that support dedicated funds. After the committee has reviewed and evaluated a regulated occupation and board, the committee shall provide the agency and the board that is the subject of the committee's evaluation with recommendations for fees that the board should charge for application fees, renewal fees, and fees to issue licenses. The recommendation for fees must comply with the requirements under IC 25-1-8-2. However, the recommendation must not exceed the lesser of either one hundred dollars (\$100) or the actual administrative cost to process the application or renew or issue the license.




[\\*\(IC 25-1-16-8\)](#)



Office of the Indiana Attorney General  
Consumer Protection Division


IndianaConsumer.com

## Indiana Board of Accountancy



Paul Schilling  
Deputy Attorney General  
Home Owner's Protection Unit

1

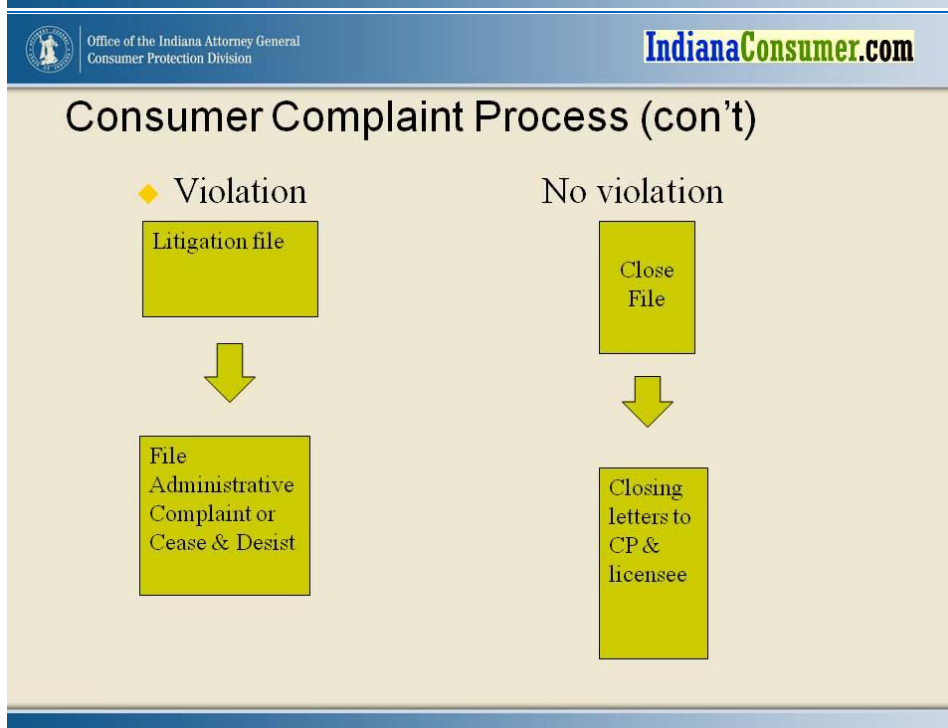
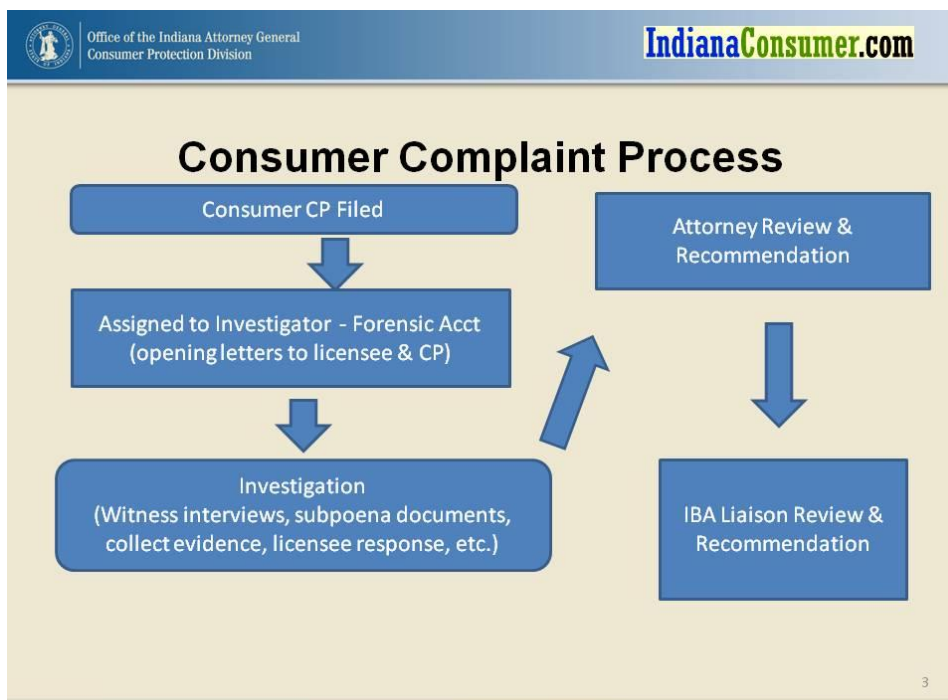


Office of the Indiana Attorney General  
Consumer Protection Division

IndianaConsumer.com

## Licensing Enforcement & Homeowner Protection Unit

- Licensing Actions
- CPAs, Public Accounting Firms, Accounting Practitioner
- Can file motion for cease & desist order against someone who is practicing without a license





## Litigation Process

- Settlement Conference
  - Informal / confidential
  - With OAG & IBA Liaison
  - Licensee can present evidence
  - OAG (with liaison input) may make settlement offer
  - Licensee can accept or decline
  - If declined = hearing



5



## Litigation Process (con't)

- Licensing Action Before IBA
  - Formal hearing
  - Sworn testimony
  - OAG representing State
  - Both sides present evidence
  - Board can question licensee & witnesses
  - Sanctions & discipline determined by Board



6





## Sanctions

### Ind. Code 25-1-11-12

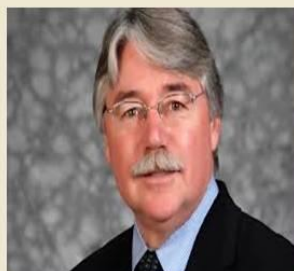
- Revocation
- Suspension (X period of time; other conditions (fines, CE courses, restitution, civil penalties)
- Probation (X period of time; other conditions)
- LOR
- Public Censure
- Civil penalties of \$1,000 per count / violation



### By the numbers

Year	Consumer Complaints
2009	40
2010	28
2011	24
2012	35
2013	29
2014	19

Currently 16 open cp files

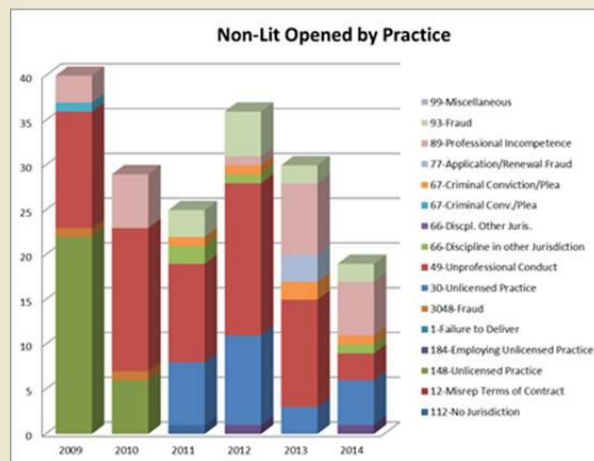




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## Types of consumer files



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## By the Numbers - Administrative Cases

Action Taken	2009	2010	2011	2012	2013	2014
Admin CP	6	4	4	11	4	8
Cease & Desist	3	3	2	6	2	1
Total	9	7	6	17	6	9



## 5 most common complaints

- 1. Unlicensed practice (failed peer review)
- 2. discipline in another jurisdiction
- 3. professional incompetence  
(AICPA or other rule violations; failure to provide client files, etc.)
- 4. criminal conviction
- 5. advertising



## Questions?



## **INASLA Jobs Creation Committee Presentation**

**October 16, 2014**

### **INASLA**

The Indiana Chapter of the American Society of Landscape Architects (INASLA) is a non-profit organization consisting of nearly 200 members. The INASLA Executive Committee is comprised solely of volunteers.

The members and associates of the Indiana Chapter of the American Society of Landscape Architects believe in contributing to our communities and profession as leaders in the field of landscape architecture; to lead, to educate and to participate in the careful stewardship, wise planning, and artful design of our cultural and natural environments.

The chapter's activities include: advocacy for the profession, continuing education offerings throughout the state, professional and student design awards program, student academic awards program for Purdue University and Ball State University's Landscape Architecture programs, annual conference and expo, golf outing, holiday party, and other social networking events.

### **What Landscape Architects Do**

Landscape Architects plan livable communities that foster active lifestyles, design green streets that manage stormwater runoff, plan cutting-edge transportation corridors that are safe for all users, and help communities prepare for and recover from natural disasters. Landscape architecture encompasses the analysis, planning, design, management, and stewardship of the natural and built environment through science and design.

See the attached PDFs for more information and visit <http://www.asla.org/design/index.html> for more information.

### **Path to Licensure**

Landscape Architects in Indiana must be licensed before they can practice landscape architecture or call themselves a Landscape Architect.

The three steps to becoming licensed include:

#### **Education:**

The Landscape Architectural Accreditation Board (LAAB) accredits bachelor and master level programs at 68 institutions across the United States. Purdue University and Ball State University are LAAB accredited.

#### **Experience:**

Candidates are required to obtain a minimum of three years of experience working under a licensed landscape architect, prior to licensure.

#### **Examination:**

Candidates are required to pass the four-part Landscape Architect Registration Examination (LARE). The Council of Landscape Architectural Registration Board (CLARB) administers and grades this exam. Skills tested include: project development; site suitability; stormwater management; erosion control;

## **APPENDIX IV – JCC Handouts – State Board of Registration for Architects and Landscape Architects**

hydrology; and irrigation. Candidates also must demonstrate competence in such areas as: layout of playground equipment; vehicular and pedestrian circulation; roadway alignment design; site lighting layouts; manipulation of contours and spot elevations; calculation of slopes, grades, and volumes of material; design of surface and subsurface storm drainage, including hydraulic characteristics and storm drain connections; and site planning for buildings.

The four sections of the LARE include:

1. Project and Construction Management
2. Inventory and Analysis
3. Design
4. Grading, Drainage and Construction Documentation

Continuing Education:

Once licensed, Landscape Architects in Indiana are required to obtain 24 continuing education units (CEUs) every two years in order to maintain their licensure. 16 of the 24 CEUs must fall under the health, safety, and welfare criteria.

### **Economic Impact**

Landscape Architects bring more to the state's economy than the traditional 'curb appeal' that is typically associated with landscapes. As with architecture, landscape architecture is the leading edge of the construction industry. With projects ranging from community planning and design, to transportation planning, to park and recreation design, landscape architects plan much of the built environment.

Following are a few points relating specifically to economics tied to transportation issues, especially pedestrian/bicycle infrastructure:

Communities with walkable streets and sidewalks have higher real estate values. A recent study, *Walking the Walk: How Walkability Raises Home Values in U.S. Cities*, showed that houses with the above average levels of walkability command a premium of about \$4,000 - \$34,000 over houses with just average levels of walkability.

Bicycle and pedestrian projects are helping provide economic development to local economies as well as state-wide economies. For example, the state of New Jersey recently calculated that in total, active transportation-related infrastructure, businesses, and events were estimated to have contributed \$497.46 million to the New Jersey economy in 2011, which was nearly eight times the estimated \$63 million invested in infrastructure that year.

Active transportation projects create jobs: A study conducted by the Political Economy Research Institute found that for each \$1 million spent on bike lanes, approximately 14 jobs are created. Compare this to \$1 million spent on road repair work that generated about 7 jobs.

Increasingly, small towns and rural communities need more bicycle and walking projects. Between 6.9 percent – 9.6 percent of all trips are made by biking and walking. A recent study, *Active Transportation Beyond Urban Centers: Walking and Biking in Small Towns and Rural America*, demonstrates that rural

#### **APPENDIX IV – JCC Handouts – State Board of Registration for Architects and Landscape Architects**

communities increasingly want more walkable and bicycle-friendly communities to attract businesses and tourism and attract and retain much-needed workers.

The average salary for landscape architecture professionals is \$71,100 according to a 2010 national survey by the American Society of Landscape Architects (ASLA). The average salary for licensed landscape architects is \$77,700 – representing 73 percent of all respondents. The average salary of those without a license is \$52,700.

The biennial fee for a landscape architect license is consistent with the national average. The national average is \$110.

#### **Why is licensure for Landscape Architects important?**

All 50 states have recognized that regulation of landscape architecture is necessary to protect the public health, safety, and welfare. All but three states regulate the profession through a practice act. The remaining three states have enacted title act statutes. A practice act is important because of the real danger to clients and the users of these public and private spaces: physical injury, property damage, and financial ruin. Without regulation, landscape architects in Indiana may have difficulty in successfully bidding for work, as projects will likely be awarded to professionals that hold licenses, proving to the client that they are capable of such work.



# AIA Indiana

A Chapter of the American Institute of Architects

## **AIA INDIANA JOB CREATION COMMITTEE PRESENTATION**

October 16, 2014

### **AIA INDIANA**

**The American Institute of Architects [AIA]** is the national voice of the architecture profession dedicated to: serve its members; advance their value; and improve the quality of the built environment while protecting the health, safety, and welfare of the public.

The American Institute of Architects [AIA Indiana Chapter] is a non-profit professional association representing the interests of and providing services to nearly 700 Hoosier architects.

The Chapter's programs and activities have a statewide focus. Services include: monitoring legislative issues and government regulations; professional development and educational seminars; design assistance teams to further community planning and development; annual convention and trade fair; design and service award programs; and support of Ball State and Notre Dame Universities Colleges of Architecture.

**WHAT ARCHITECTS DO** – video- <https://www.youtube.com/watch?v=HTudH-4BysA>

**PATH TO LICENSURE** - Architects must be licensed before they can practice architecture or call themselves an architect. There are four main steps to becoming an architect.

### **Education**

To become licensed, candidates must earn a professional degree in architecture from one of the more than 100 schools of architecture that have degree programs accredited by the National Architectural Accrediting Board (NAAB). (*BSU and ND are NAAB accredited*)

### **Internship**

Architecture graduates must complete an internship in order to become licensed. The Intern Development Program (IDP) is a comprehensive training program created to ensure that interns in the architecture profession gain the knowledge and skills required for the independent practice of architecture.

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Most new graduates complete their training period by working as interns at architectural firms. Interns in architectural firms assist in the design of projects, help prepare architectural documents or drawings, build physical and digital models, or prepare construction drawings on CADD. Interns also research building codes and materials or write specifications for building materials, installation criteria, the quality of finishes, and other related details. Interns also are exposed to the management of projects and business as well as contracting for services.

### **Examination**

All 50 states and US territories require the completion of the Architect Registration Examination (ARE). The examination is broken into seven divisions (Construction Documents & Services; Programming, Planning & Practice; Site Planning & Design; Building Design & Construction Systems; Structural Systems; Building Systems; Schematic Design). No single examination can test for competency in all aspects of architecture, which is why the ARE is not the only requirement to become a licensed architect. The ARE concentrates on those services that most affect the public health, safety, and welfare. The ARE has been developed with specific concern for its fidelity to the practice of architecture; that is, its content relates to the actual tasks an architect encounters in practice.

### **Licensure**

All 50 states and US territories require individuals to be licensed (registered) in their specific state before they may call themselves architects and contract to provide architectural services. Once licensed, continuing education is required to maintain a license. Indiana requires 24 Continuing Education Units (CEU's) every two years, 16 of the 24 CEU's must be health, safety, and welfare education (HSW).

### **ECONOMIC IMPACT**

The health of the economy is tied to the building sector. When the building sector expands it positively impacts every other U.S. sector and industry. Virtually every U.S. industry – from steel, concrete, insulation, mechanical and electrical equipment, solar systems, glass, wood, metals, tile, fabrics, engineering, banking, development, real estate, manufacturing, construction, wholesale, retail and distribution – depends on the demand for products and services generated by the construction industry.

Architecture is the leading edge of the construction industry that accounts for one in nine dollars of Gross Domestic Product. Every \$1 million invested in building design and construction yields 28.5 full-time jobs. When a client hires an architect, 30 additional jobs are created to build what the architects design.

Architecture is a small business profession: more than 97 percent of architecture firms employ 50 or fewer people. Many are sole practitioners.

Average salaries at firms range from around \$150,000 for firm leaders to \$40,000 for new hires. Most firms offer a salary increase to employees when they become licensed.

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### **WHY IS LICENSURE IMPORTANT?**

Licensure is a formal recognition that an individual has demonstrated sufficient knowledge, skill and ability to practice the profession without endangering the health, safety and welfare of the public. Licensure is required in all 50 states and US territories.

The licensure of architects and landscape architects is based on a national licensing model which is integrally related to educational standards as defined and accredited by NAAB/LAAB, minimum levels of work experience (Intern Development Program) as determined by NCARB/CLARB, and the completion and passing of testing parameters (Architect Registration Examination) set by NCARB/CLARB. However, none of these agencies is involved in the granting of licenses to individuals, but serve mainly as the repository of information about candidates seeking licensure and professionals granted licenses by the individual States. The Indiana Board of Licensure for Architects and Landscape Architects is served by these organizations in the licensing of both professions. State licensing rules and statutes are based upon this relationship and unilateral changing would cause undo hardships for those practicing architecture and landscape architecture in the State of Indiana. The State has greatly benefitted from this symbiotic relationship by greatly reduced administrative cost.

Again, the licensing of architects is vitally important to ensure the quality and safety of the built environment. The rigors of education and training that prepare someone to become an architect uniquely qualify them to anticipate and respond to the many needs and challenges facing humanity today (ADA issues, public health and safety, sustainability, etc.)

The public benefits most from individuals who resolve and are willing to be fully accountable through a professional commitment reflected in licensure. Supporting and expanding the universe of licensed architects is essential to the mission of the AIA. The “protection” we pursue is inextricably linked to the health, safety, welfare, and well-being of the clients and communities architects serve. For Hoosier licensed architects, there is no higher calling.

### **IMPROVEMENTS**

More robust investigative efforts with fees and fines dedicated to enforcement and the Board authority to impose them. When there are no fines or they are of trivial amount, they serve no purpose in deterring architects from violating the law, leading to an attitude of no big deal even if you get caught.

Architects want a newly licensed ceremony to commemorate the momentous occasion and the effort required to attain it.

More authority for the board to pursue unlicensed practice of architecture. In many states that rite has been granted to the licensing boards.

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**APPENDIX IV – JCC Handouts – State Board of Registration for Architects and Landscape Architects**

Fines dedicated to the investigative fund instead of the general fund.

More communication from the board/agency. For example, other states produce a newsletter that includes recent updates/news/fines/etc.

Architects want and crave solid enforcement!

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# AIA Indiana

A Chapter of the American Institute of Architects

## MEMORANDUM

To: Job Creation Committee Members

From: Jason Shelley, AIA Indiana Executive Director

Date: October 14, 2014

Re: State Regulation of Architects

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AIA Indiana feels strongly the State has a need to license and regulate architects as the State is the only entity that provides the necessary assurance to the public that these professionals have the education and training necessary to competently design spaces. Also, but equally important is the need to protect consumers and ensure the competent and ethical practice of architecture in Indiana.

Licensed architects are needed to ensure built spaces in Indiana are safe for human use. By affixing their seal to a design, architects ensure their plans comply with building and accessibility codes and that the plans are ready for regulatory approval or construction. Competent design of a space is essential to the health, safety, and welfare of the public.

All 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands currently regulate the practice of architecture and require individuals to be licensed before they may call themselves architects or contract to provide architectural services. If Indiana did not provide regulation for architects, these professionals would be at a disadvantage compared to their counterparts in other states. Outside of state licensure, no other form of certification currently exists to distinguish architects. The national organizations of state boards that set standards for education, experience, and examination for architects do not provide certifications to non-licensed individuals.

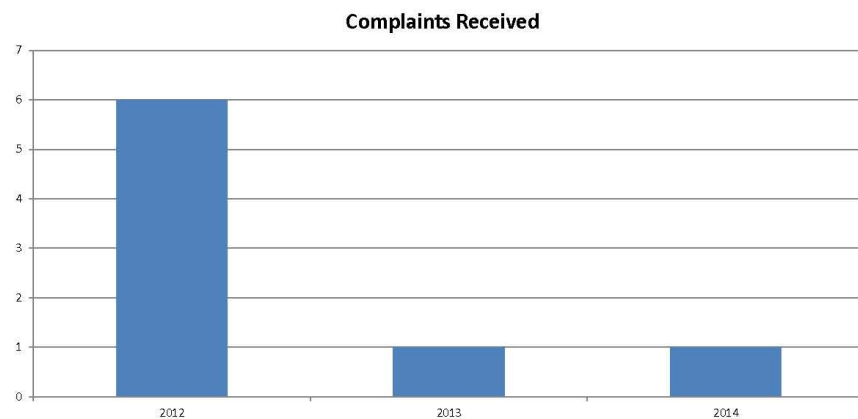
In sum, state regulation of architects exists to protect the public from risks to its health, safety, and welfare. This regulation is necessary because the architecture profession directly affects public health. State regulation assures public protection by licensing those deemed competent to practice the profession, ensuring that licensed professionals maintain their credentials and receive ongoing education, and enforcing against those who violate statute or rules governing professional practice.

Do not hesitate to contact me if you have any questions or concerns.

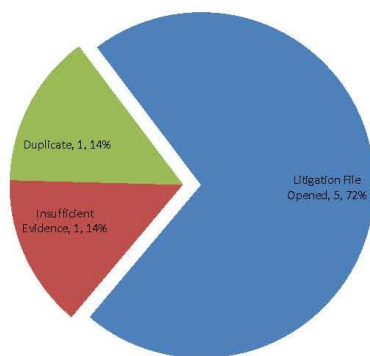
Thank you for your service.

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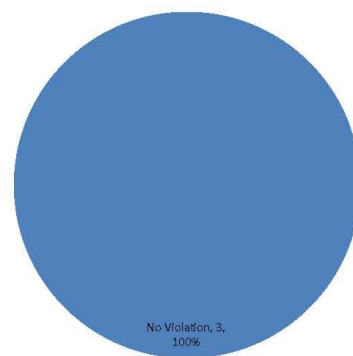
**Landscape Architects Licensing Enforcement  
2008 to 2014**



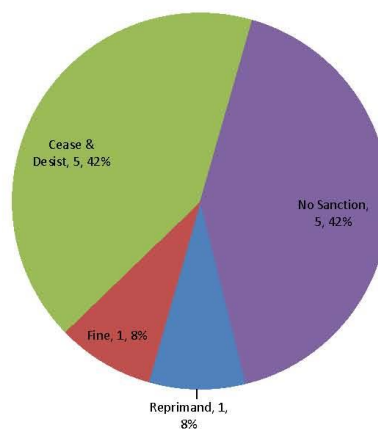
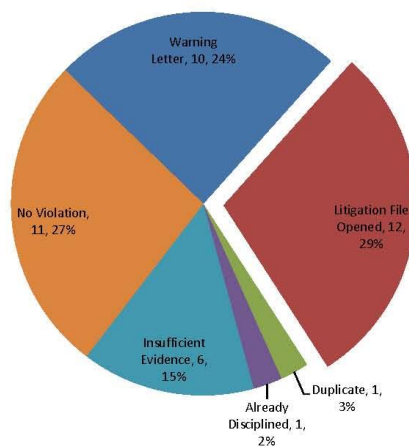
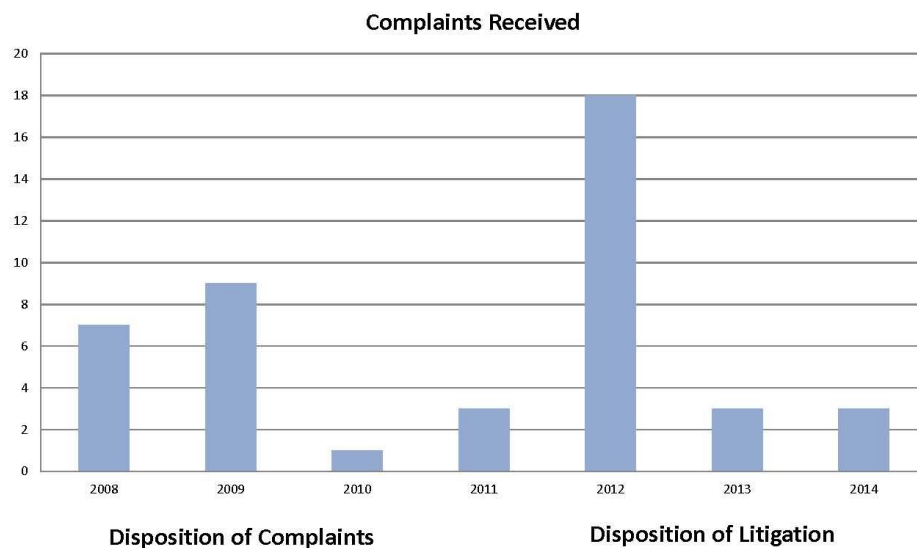
**Disposition of Complaints**



**Disposition of Litigation**



## Architects Licensing Enforcement 2008 to 2014



**APPENDIX IV – JCC Handouts – Home Inspector Licensing Board**

**JOBS CREATION COMMITTEE**

**OCTOBER 16, 2014**

Speaking for the Indiana Chapter of American Society of Home Inspectors (INASHI)

President, Danny L Maynard, past national president of ASHI, former chair and member of the HILB

- Short history of home inspectors license
- Consumer Protection is the direct result of licensing of Home Inspectors. Those protected are: home buyers, home sellers, realtors and home inspectors.

The attorney general reports that he is initiating legislation to tighten up protection on home improvement fraud.

- Benefits of Home Inspector licensing

Standards of Practice

Code of Ethics

Report writing standards

Pre-licensing training

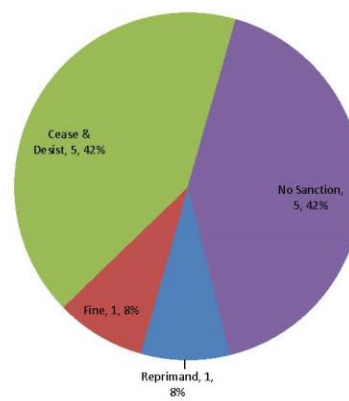
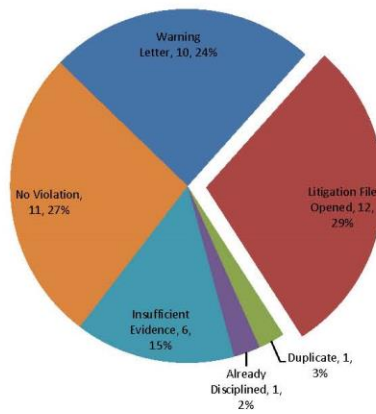
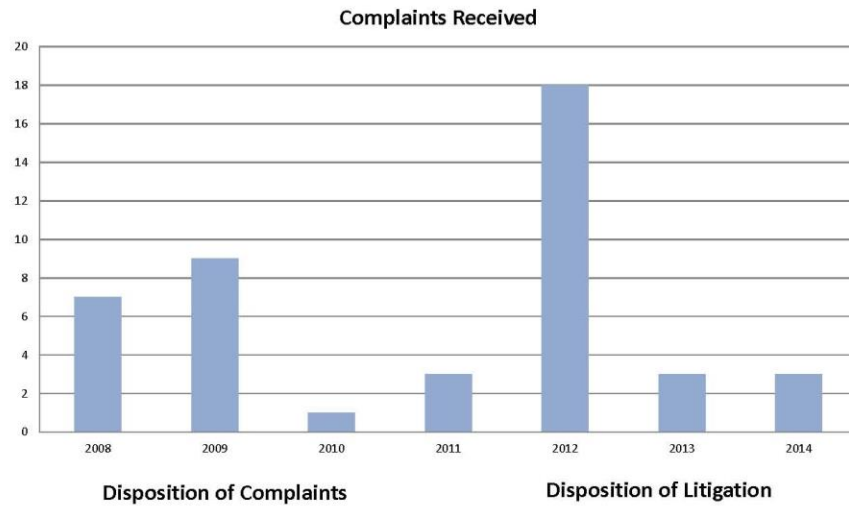
Competency testing prior to licensing

Registration and approval of pre licensing trainers.

Continuing Education requirements and approval

- Licensing has a positive economic affect on Indiana
  - License pays for itself
  - Low complaints on Inspectors
- Licensing has a positive economic affect on Consumers
  - Purchasers get defective items and safety items repaired before purchase by sellers.
- Possible changes in the rules
  - Increase the percentage of CE audits
  - Establishing a Uniform Inspection report.
- Possible termination of license
  - Replacing licensing with an association certification will not work.
  - Raises a lot of 'Whos'
- Administrative changes
  - Publish minutes timely
  - Maintain web site
  - Create newsletter from the board and IPLA to licensees.

### Home Inspector Licensing Enforcement 2008 to 2014





**Presentation to Job Creation Committee**

15 January 2015

Scott S. Haraburda, PhD, PE, F.NSPE  
President, ISPE



## **Agenda**

- Engineering Failures
- History of PE Licensure
- Purpose of PE Licensure
- Licensure vs. Certification
- Benefits of PE Licensure
- Indiana Society of Professional Engineers

## Engineering Failures

Date	Failure	Impact
29 Aug 1907	Quebec Bridge Two Collapses	- 75 killed, 11 injured.
11 Sep 1916		- 13 killed.
15 Jan 1919	Boston Molasses Disaster	- 21 killed, 150 injured
20 Oct 1944	Cleveland East Ohio Gas Explosion	- 130 killed, 79 houses destroyed
5 Jun 1976	Teton Dam Collapse	- 14 killed, >\$1 billion
17 Jul 1981	Hyatt Regency Bridge Collapse	- 114 killed, >200 injured
2 Dec 1984	Bhopal Disaster	- 3,800+ killed, >0.5 mil injured
26 Apr 1986	Chernobyl Nuc Pwr Plant Accident	- >20 killed, >0.5 million injured
1 Aug 2007	Minneapolis I-35W Bridge Collapse	- 13 killed, 145 injured

<http://www.thecanadianencyclopedia.ca/en/article/quebec-bridge-disaster-feature/>  
<http://www.scientificamerican.com/article/molasses-flood-physics-science/>  
<http://ech.cwru.edu/ech/cgi/article.pl?id=EOGCEAF>  
[http://www.geol.ucsb.edu/faculty/sylvester/Teton\\_Dam/welcome\\_dam.html](http://www.geol.ucsb.edu/faculty/sylvester/Teton_Dam/welcome_dam.html)  
<http://www.engineering.com/Library/ArticlesPage/tabid/85/ArticleID/175/Hyatt-Regency-Walkway-Collapse.aspx>  
<http://www.ehjournal.net/content/4/1/6>  
<http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/chernobyl-bg.html>  
<http://www.dot.state.mn.us/i35w/bridge/>

## Engineering Failures - Causes

A 1976 study conducted at the Swiss federal Institute of technology in Zurich analyzed 800 cases of structural failure in which 504 people were killed, 592 people injured, and millions of dollars of damage incurred. When engineers were at fault, the researchers classified the causes of failure as follows:

Insufficient knowledge .....	36%
Underestimation of influence .....	16%
Ignorance, carelessness, negligence .....	14%
Forgetfulness, error .....	13%
Relying upon others without sufficient control ..	9%
Objectively unknown situation .....	7%
Unprecise definition of responsibilities .....	1%
Choice of bad quality .....	1%
Other .....	3%

M. Matousek and Schneider, J., (1976) Untersuchungen Zur Struktur des Zicherheitproblems bei Bauwerken, Institut für Baustatik und Konstruktion der ETH Zürich, Bericht No. 59, ETH. [[www.matscieng.sunysb.edu/disaster](http://www.matscieng.sunysb.edu/disaster)]

## History of PE Licensure

- 1907 Wyoming passes the first engineering registration law.
- 1922 The American Association of Engineers (which later became the National Society of Professional Engineers) put forth a platform for engineering that included the "*passage of an engineers registration law in every state and the enforcement of existing registration laws.*"
- 1934 The National Society of Professional Engineers is formed, with the membership requirement of being a professional, licensed engineer. At the time, only 28 states had engineering registration laws enacted.
- 1940 Between 1935 and 1940, 17 additional states, including Indiana in 1935, adopted engineering registration laws, partly through the efforts of NSPE members.
- 1947 Montana is the last state to enact engineering licensure laws.

[www.indspe.org](http://www.indspe.org)

A century ago, anyone could work as an engineer without proof of competency. In order to protect the public health, safety, and welfare, the first engineering licensure law was enacted in 1907 in Wyoming.

Now every state regulates the practice of engineering to ensure public safety by granting only Professional Engineers (PEs) the authority to sign and seal engineering plans and offer their services to the public.

## **Purpose of PE Licensure**

- Protect public from incompetence & misconduct.
- Requires demonstration of minimum competence.
- Require completion of:
  - An educational degree in a particular area of study,
  - A sufficient period of experience acceptable to the licensing board, and
  - Successful completion of written examinations.
- Issued for a specific period of time and renewed.
- Engineers must adapt to rapidly changing world.
- State boards seeking more authority to impose penalties upon non-licensed engineers.

Licenses are employed by governments, usually states, to regulate the practice of many professions to protect the public from incompetence and misconduct of practitioners. Obtaining a license is a privilege. It is not an individual's right and requires a demonstration of minimum competence. Licenses for engineers and some allied professionals are issued by specific boards appointed by states and territories of the United States.

They require completion of an educational degree in a particular area of study, a sufficient period of experience acceptable to the licensing board, and successful completion of written examinations. To become licensed, engineers must complete a four-year college degree, work under a Professional Engineer for at least four years, pass two intensive competency exams and earn a license from their state's licensure board.

Such licenses are state-specific, i.e., individuals must be licensed by each jurisdiction in which they wish to practice. Also, licenses are issued for a specific period of time and must be renewed periodically. Most jurisdictions require evidence of continuing professional development and learning as a condition for license renewal. Then, to retain their licenses, PEs must continually maintain and improve their skills throughout their careers.

Engineers must adapt to a rapidly changing workplace-restructuring, downsizing, outsourcing, privatization, and re-engineering. Engineers should prepare to make the transition into a consulting relationship with former employers and clients in the event of a corporate outsourcing and respond if their corporation decides to bring design and engineering services in-house. Only by becoming licensed can an engineer perform the

#### **APPENDIX IV – JCC Handouts – State Board of Registration for Professional Engineers**

broad scope of engineering services within an area of competence as defined under state law.

State engineering boards are increasingly seeking and obtaining the authority to impose civil penalties against unlicensed individuals who unlawfully engage in the practice of engineering.

## **Licensure vs. Certification**

- Licenses and accredited certifications are granted using similar credentialing practices.
- Licensure is required to offer services to the public, while certification is not required.
- License covers a broad body of knowledge, while certification is limited to a specialty more constrained in scope.

Licenses and accredited certifications are granted using similar credentialing practices, i.e., they rely upon a prescribed education program, applicable experience of some duration and scope, and an examination of the individual's knowledge and judgment. Both ensure that the credentialed individual is minimally competent in the scope of the service regulated. Licenses are required for a professional to offer services to the public. Certifications are not required and do not grant authority to a professional to offer services to the public. A common perception is that licenses address minimum competency and that certifications attest to a higher competency. This perception is not correct. Generally, a license covers a broad body of knowledge and a certification is limited to a specialty more constrained in scope. For example, a person may be licensed as a professional engineer and certified as a forensic engineer or a water resources engineer. However, the body of knowledge for some certifications can be broad in scope; typically, this occurs when the certification is the only available credential for the area of practice.

## **Benefits of PE Licensure**

- Mark of a professional.
- Demands extra competence and dedication.
- An enhanced public status.
- Is a legal requirement.
- Becoming more important for work in the government, education, construction, industry, and military areas.

Licensure, first of all, is the mark of a professional. The licensure process demands an extra measure of competence and dedication. While not all engineers find licensure mandatory for their chosen career paths, the PE initials after their names can provide many advantages. Employers in all disciplines indicate that they find licensed professional engineer employees to be more dedicated, with enhanced leadership and management skills. These employers look to licensure in evaluating the advancement potential of employees. Licensed engineers also achieve an enhanced status in the eyes of the public, which equates the engineer with professionals licensed in other fields. Licensure is an indicator of dedication to integrity, hard work, and creativity, and an assurance that the individual engineer has passed at least a minimum screen of competence. Of course, licensure is just a starting point for professional growth and development, and participation in professional activities is part of the ongoing activities of a true professional.

Licensure for individuals who wish to pursue a career as a consulting engineer or a private practitioner is not something that is merely desirable; it is a legal requirement for those who are in responsible charge of work, be they principals or employees. Only a licensed engineer may prepare, sign and seal, and submit engineering plans and drawings to a public authority for approval, or seal engineering work for public and private clients.

Licensure for engineers in government has become increasingly significant. Many federal, state, and municipal agencies require that certain governmental engineering positions, particularly those considered higher level and responsible positions, be filled only by licensed professional engineers. For those considering a career in education, many states



have been increasingly requiring that those individuals teaching engineering must be licensed. Exemptions to state laws are under attack, and in the future, those in education, as well as industry and government, may need to be licensed to practice. Also, licensure helps educators prepare students for their future in engineering. Many states require that individuals teaching engineering must also be licensed. Exemptions to state laws are under attack, and in the future, those in education, as well as industry and government, may need to be licensed to practice. Also, licensure helps educators prepare students for their future in engineering. With the growing complexity and the increasing diversity of modern construction processes and techniques, the engineer in construction must readily be able to communicate and exchange ideas and views with other licensed design engineers. For those pursuing careers in industry, licensure has recently taken on increased meaning with heightened public attention concerning product safety, environmental issues, and design defects. Employers have found it advantageous to identify to the courts and the public those employees who have met at least a minimum level of competence. Engineers in the military must have the credentials to stay with the service in the face of downsizing or to make the transition to the private sector. More and more with each passing day, government agencies, educational institutions and private industries are requiring that they hire and contract only with licensed professional engineers. This is a trend that is almost certain to continue in the future.

Just as the CPA defines the accountant, and a law license defines the lawyer, the PE license tells the public that you have mastered the critical elements of your profession. It demonstrates your commitment to the highest standards of engineering practice. It's also proof of your ability to offer engineering services directly to the public - something only a licensed PE can do.

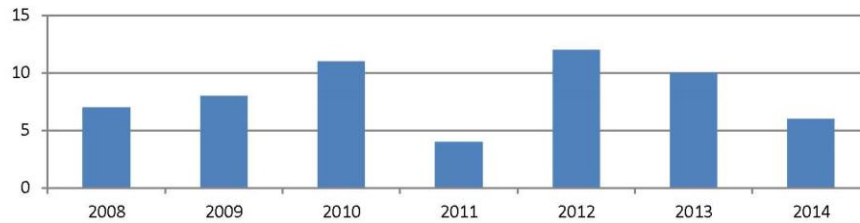
## **Indiana Society of Professional Engineers**

Since June 4, 1937, ISPE has actively promoted and defended the professional interests of all engineering professionals throughout the State of Indiana, including its more than 13,000 licensed professional engineers. This organization helps in protecting the public, supporting engineering ethical conduct and professionalism, along with service to the public.

[www.indspe.org](http://www.indspe.org)

### Engineers Licensing Enforcement 2008 to 2014

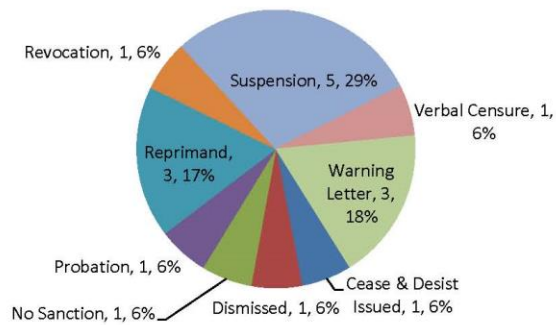
**Complaints Received**



**Results of Investigations**

Alleged Violation	No Violation	Insufficient Evidence	Settled	Warning Letter	Litigation File Opened	Totals
Nonsanctionable Action	1					1
Unlicensed Practice	2	3	3	13	3	24
Application or Renewal Fraud					2	2
Discipline in Other Jurisdiction				1	3	4
Fraud					1	1
Lewd or Immoral Conduct					1	1
Unprofessional Conduct	10				3	13
Professional Incompetence	2			2	2	6
Totals	15	3	3	16	15	52

**Disposition of Litigation**



**A Report on the Status of the Surveying Profession  
from  
the Indiana Society of Professional Land Surveyors  
to  
the Indiana Jobs Creation Committee**

January 15, 2015

**Introduction**

On behalf of the directors and members of the Indiana Society of Professional Land Surveyors (ISPLS), we thank you for this opportunity to share information on the importance of the surveying profession to the State of Indiana. Our hope is to convey that licensure of Professional Surveyors in Indiana is a necessity for ensuring the integrity of Hoosier landowners' property lines and for assuring that Indiana's investments in infrastructure - both public and private - are protected. Furthermore, we hope that this presentation will leave you with a clear understanding of the benefits to Hoosiers and the effectiveness of regulating and licensing Professional Surveyors.

**Executive Summary**

As explained in detail below, the ISPLS believes that the licensure of professional surveyors in Indiana is necessary for the continued growth and strength of Indiana's economy. The needs of public and private clients, lenders, and title companies, the demands of technology, the legal complexities of boundaries, and the demands of an intricate and interwoven national economy call for the assurance that licensure provides through its rigorous requirements for education, experience and examination.

The deregulation of the surveying profession in Indiana would result in negative consequences to the economy of the Hoosier State. The results of such an action would ignore the demands of the national market in regards to insurance (both title and professional liability), lending institutions and contractual requirements that are beyond the reach and control of the State of Indiana.

The deregulation of the surveying profession would not increase the number of surveying jobs in Indiana. It would in fact, *decrease* the number of surveying jobs in the state and open the Hoosier State to a virtual invasion by surveyors licensed in other states.

With a few minor modifications that are already being contemplated (and that are discussed below), the current structure of the Board and the Indiana Professional Licensing Agency supports the viability and integrity of the profession as it stands today.

**What is ISPLS?**

The Indiana Society of Professional Land Surveyors was established in 1954 – we are excited to be celebrating our 60th year. Our primary mission is to provide our membership with a professional identity, professional guidelines and direction, educational services and to promote the interests of the profession. The philosophy of ISPLS is to encourage all who are in the surveying profession to value professional ethics in thought and deed, to maintain competency in performance of duties, to insure trustworthiness, to provide quality in work, and to constantly protect the public interest.

The society currently has over 700 members, with more than 450 of those being Professional Surveyors that reside in Indiana and 75 Professional Surveyors that reside in other states.

The ISPLS leadership consists of 12 directors and a full time executive director. We maintain a full time office accessible to the public through the week and further, by maintaining an informative and user friendly web-site. The ISPLS Board of Directors meets ten times over the course of each year and continually includes participation by higher education institutions within Indiana.

The 12 directors consist of both private and public sector licensed professional surveyors collectively possessing experience and knowledge that parallels the cross section of Indiana's citizens. ISPLS maintains and invests in being accessible and useful; we see our service to our profession and the public as fundamental to our mission.

**The History of the Surveying Profession in Indiana**

Professional Surveyors have been regulated and licensed in Indiana since the 1930's. In the 1960's, the highly specialized nature of boundary surveying as separate and distinct from engineering was acknowledged and surveying licensure was completely separated from the practice of engineering at that time.

Because of the highly sophisticated technology regularly utilized by surveyors today, the complex legal issues related to boundaries, and the necessary reliance by the public on an appropriately educated, trained profession, today's Professional Surveyors are required to obtain at least an Associate's Degree including extensive and specific college-level surveying, math and science courses.

They are also required to work under the direction of another Professional Surveyor for a minimum of 4 years. For the last leg of the triad, Professional Surveyors are thoroughly tested through 16 hours of rigorous national exams and a state-specific exam.

### **Economic Impact of Licensure**

Numbers are difficult to assimilate for several reasons<sup>1</sup>, but ISPLS estimates that there are perhaps 2,000 persons directly employed as or by professional surveyors in the State of Indiana.

The average salary of a Professional Surveyor varies widely depending on a number of factors such as the size of firm they work for, the type of work they perform and where their businesses are located. Notwithstanding that, salaries likely range from perhaps an annual salary of \$50,000 for the practitioner with very small business or a junior Professional Surveyor, to perhaps \$100,000 for a very senior staff surveyor or survey manager in a large firm. The pay of survey technicians likewise varies for the same reasons, with annual incomes likely ranging from around \$25,000 for an entry-level office technician to over \$60,000 for a senior, experienced field technician.

Other than as explained in the paragraphs immediately following, licensure - or the lack thereof - does not have a direct impact on the amount of economic activity since the ‘drivers’ of economic activity that generate surveying work are not in the control of surveyors. Private developers, lenders, governmental entities and property owners are the initiators of activities that will require the services of professional surveyors; surveyors generally do not generate their own work, they are hired by others.

The small numbers of persons involved in surveying activities cited above are deceiving since every single public and private infrastructure project necessarily involves surveyors at the very beginning, often throughout the project, and typically at the end for as-built documentation purposes. In addition, conveyances of commercial property or property being purchased or financed for development nearly always involve a specialized type of boundary survey (the nationally-recognized ‘ALTA/ACSM Land Title Survey’) that lenders and title companies rely on to assess the risks involved in lending and insuring projects.

### **Why Licensure is Needed**

Surveying licensure is important because it supports economic development in Indiana in many ways. Development, infrastructure and land conveyancing may be the most important economically because they are directly tied to a tremendous amount of related economic activity.

Contracts for surveying on infrastructure projects of any significant size require that the work be performed by licensed surveyors. Such contracts virtually always require that the survey provider carry professional liability insurance, which is generally not available unless the provider is a licensed surveyor. Similarly, lenders across the United States typically require that a Land Title Survey be performed as a condition of the mortgage on commercial or industrial property. Lenders universally require that such surveys be performed by licensed surveyors.

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<sup>1</sup> Reasons include: (1) some aspects of surveying may also be practiced by professional engineers, (2) many surveying firms also employ engineers, and (3) many engineering firms employ surveyors only in support of their engineering projects.

Taking the above facts into account means that very significant economic activity related to development, infrastructure and property would grind to a halt in fairly short order without surveying licensure to assure lending institutions, title companies and clients that the work is being done by qualified, competent persons. It is not an exaggeration to say that if money and title insurance are not available, these activities will simply cease. Because these activities almost always reach across state lines in one manner or other, certification is not a substitute for licensure for the sophisticated clients involved in these sorts of activities.

Aside from those obvious issues, the entire land tenure system in Indiana (and every other state, for that matter) hinges on the professional surveyor. It is widely recognized that private property ownership is a cornerstone of a democratic society. Providing for the integrity of those property boundaries is a necessity and the surveyor is the only person educated, experienced and qualified to provide for that veracity. This is the primary reason that surveyors are licensed in all 50 states and have been for many decades.

#### **The Impact of Surveying Licensure on Jobs**

Aside from the negative impact not only on surveyors, but on the entire Indiana economy explained above, it would be a mistake to not add one more comment on the necessity of licensure as related to jobs in Indiana.

Deregulating the profession would open the flood gates wide to surveyors from surrounding and distant states who would cross into the Hoosier State seeking opportunities created by ending licensure. And they will most certainly find them! Entities as widely varying as lending institutions, title insurance companies, developers and municipal, county, state and federal clients all have guidelines requiring that surveys be performed by licensed individuals. Many, if not most clients require professional liability insurance on their projects - which will be available only to out-of-state licensed surveyors.

Furthermore, out-of-state surveyors will be the only ones who will be able to secure contracts on federal highway projects, U.S. Corps of Engineers projects, utility projects that cross state lines and the many other projects that require a licensed professional. Ultimately, Hoosier surveyors will find themselves out of a job because without licensure, they will not be able to meet the requirements of most such clients.

In another twist, deregulating the professional will prevent Hoosier surveyors from obtaining licensure by comity in any other state. Many Indiana surveyors are licensed and perform work in adjoining states. In addition, young and up-coming Indiana surveyors will never be able to gain the required experience under a licensed professional to qualify for licensure in another state, so they will simply not remain in Indiana. At least three surveying programs at Indiana colleges and universities would cease to exist.

In short, the deregulation of the surveying profession would, ironically, not equal more jobs for Hoosiers; it would actually destroy jobs in Indiana.

### **Property Boundaries in Indiana**

The United States Public Land Survey System (USPLSS) – originally proposed by Thomas Jefferson – was developed when the federal government acquired the Northwest Territory. With a few exceptions (e.g., around Vincennes and Clarksville), it is relied upon – either directly or indirectly – for virtually every property boundary and survey performed in Indiana.

The USPLSS Surveys in Indiana began in 1804 in the southern part of the state and continued until about 1855 when they were completed in the northern part of the state. The surveys of the USPLSS consisted of subdividing the land into one-mile squares, called sections, and setting wood posts at half-mile intervals.

Indiana's Professional Surveyors are the stewards of the records, measurements and markers of those original government surveyors. They are charged with perpetuating the location of the lines and corners established by the USPLSS surveys. Without that stewardship, the entire system of land tenure would break down because boundaries will become ambiguous, questionable and in conflict. One could argue, we suppose, that the economic activity related to lawsuits generated by ambiguous boundaries is good, but ISPLS would suggest other economic activity is more desirable for our state.

Indiana's Professional Surveyors are also the stewards of Hoosier's property boundaries. Their duty and responsibility is to help ensure the American Dream of real property ownership by providing property boundary location services. No one other than Professional Surveyors who have demonstrated their qualifications by education, experience, examination and licensure are competent to locate property boundaries on the ground, and to map and certify those locations.

### **The Surveying Profession – A Broader Perspective**

Indiana's Professional Surveyors are involved in many, many other aspects of surveying, besides boundary surveying, that are crucial to building Indiana and putting Hoosier's to work. They are too numerous to list in detail here, but some important ones include:

- Topographic Surveys for determining the shape and contour of the Earth's surface (used in planning and engineering design)
- Route Surveys for mapping the routes of highways, railroads and utilities;
- The preparation of reports, maps and documents for describing and acquiring right-of-ways and easements;
- Flood Hazard Surveys/Elevation Certificates used to provide elevation information necessary to ensure compliance with community floodplain management ordinances and to help developers and homeowners avoid development in flood-prone areas;
- Commercial and Residential Subdivision Design;
- Construction Staking and Layout for highways, pipelines, transmission lines, industrial, commercial and residential construction, utility lines, etc.;
- Construction As-built Surveys for mapping, documenting and certifying the locations of new improvements; and
- 3D Terrestrial Laser Scanning & Mobile Mapping for gathering and mapping millions of precise data points in very short periods of time – accelerating project timelines and



preventing costly and dangerous shutdowns of, for example, highways or railroads by keeping survey personnel away from busy intersections and outside dangerous areas to the greatest extent possible.

Regulation and licensing relieves the public and those who hire surveyors from otherwise trying to assess the qualifications of persons who would perform this highly specialized type of work. Because of the nature of surveying, even a major error may not reveal itself for years, so state licensing provides an important function.

#### **Recommendations for Legislation or Administrative Rules**

In a recent and positive development, during the 2013 legislative session, the definition of the Practice of Surveying was amended to bring it up-to-date with present-day practice and technology. The new law was based on the nationally-recognized NCEES (National Council of Examiners for Engineers and Surveyors) Model Law for Surveying. It was supported by a wide cross-section of professions that deal with surveyors on a regular basis and recognize the complexities of the profession.

As far as suggestions for the future, for the 2015 Legislative Session, ISPLS is seeking amendments to the Indiana Code concerning the Indiana Dig Law and how it unnecessarily and negatively impacts surveyors. Additionally, ISPLS is seeking the inclusion of professional surveyors in the statute of repose law - which by all accounts inadvertently excluded them when it was originally written.

The Board of Registration for Professional Surveyors has been very proactive in suggesting amendments to the Indiana Administrative Code. A current suggestion includes streamlining the language concerning the college-level surveying courses required for licensure. This suggestion would bring the language up-to-date with today's practices and course offerings, assist applicants in determining whether or not they are eligible, and give the Board better guidance and direction during the application review. Ultimately, it will also result in applicants getting licensed more quickly.

#### **Current Board Make-up and Structure; Current IPLA Structure**

The ISPLS believes that the current structure of the Board of Registration for Professional Surveyors is very effective in regulating the profession and we support the continuance of this structure. The number of board members is appropriate and necessary given the complaint process and the limited number of meetings currently allowed (3 or 4 per year).

One observation is that complaints against persons who may be doing substandard work and damaging property owners' rights on a regular basis can seemingly languish for months and even years due to the fact that the board can meet only quarterly. Respondents, who are keen to the system, can request well-timed continuances that result in them continuing to practice for a fairly lengthy period of time. Given scheduling conflicts, a continuance can easily result in a 6 month delay in a hearing. This is a concern.

## **APPENDIX IV – JCC Handouts – State Board of Registration for Professional Surveyors**

As far as other possibilities related to board structure, an obvious suggestion – recombining the surveying and engineering boards - would ignore the very reasons that those boards were separated in 1991. That separation was supported by both the surveying and the engineering communities and was necessitated by the earlier cited fact that the primary reason for licensing surveyors - boundaries – is totally separate from, and has nothing in common with, engineering practice.

A similar suggestion to combine the boards several years ago was opposed by both groups for the same reason.

If there are financial concerns related to a separate surveying board, ISPLS would remind the JCC that this issue was raised in 1991 and the surveying profession stood up and told the legislature that it was willing to have its fees increased to support any increased costs. This was done – renewal fees were increased (with virtually no negative response from surveyors). As an aside, the fees were inexplicably lowered a few years later. ISPLS would be in support of increasing licensing and renewal fees if deemed appropriate.

Considering the extremely limited staff, the Indiana Professional Licensing Agency does an acceptable job. It seems hard to comprehend, however, how - for example - the Director of the surveyor's board can also effectively be the director of 5 or 6 other boards. ISPLS would like to see a timelier uploading of information to the Board's website and more communication from the State to its licensees; and ISPLS is more than willing to assist if it can.

### **Fees**

The current licensing and renewal fee structure is more than fair and, as noted above, ISPLS would support increased fees if they were required in order to receive more services or in support of the separate surveying board.

### **Licensure Renewal and Continuing Education Requirements**

As noted above, ISPLS supports the Board's desire to modify the current education requirements to make them more congruent with educational offerings in the state and the needs of the profession.

Otherwise, ISPLS believes that the amount of education required for licensure is commensurate with the contemporary demands of the profession.

Regarding continuing education, ISPLS believes that the level of surveying practice in Indiana has improved with the requirement of mandatory continuing education. We hear few, if any, complaints about the number of continuing education hours required; they seem to be appropriate to the profession.

**Renewal Cycle**

The two year renewal cycle seems appropriate and, when tied with continuing education, is well-suited to assuring the continuing competency of licensees. A longer period would be contrary to the idea of continuous improvement and competency by allowing licensees to go an extended period of time with no on-going training or education.

**Summary**

The Indiana Society of Professional Land Surveyors believes that legislation that would terminate the Board of Registration for Professional Surveyors and the regulation of the Surveying Profession in Indiana would be exceptionally negative for the State of Indiana and for jobs in Indiana.

As outlined above in this report, there are a number of reasons for this belief, but they include:

1. The protection of Hoosier property owners and their property rights.
2. The demands of a national economy relating to lending institutions, title companies, professional liability insurance and client needs.
3. The loss of Hoosier jobs to companies outside the state and an invasion of surveyors from other states into Indiana.
4. Hoosiers leaving the state in search of employment where they can otherwise use or obtain a professional license.

We appreciate this opportunity to provide input and, hopefully, clarity on the issue of professional surveyor licensure. Thank you.

Respectfully,

The Indiana Society of Professional Land Surveyors

By

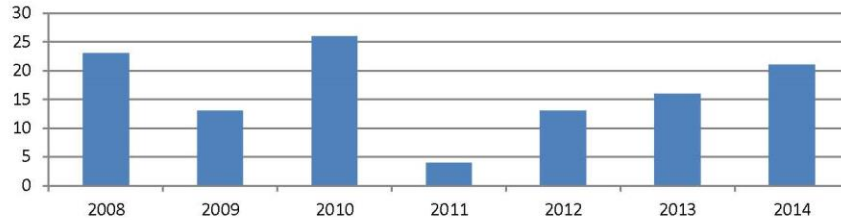


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### Land Surveyors Licensing Enforcement 2008 to 2014

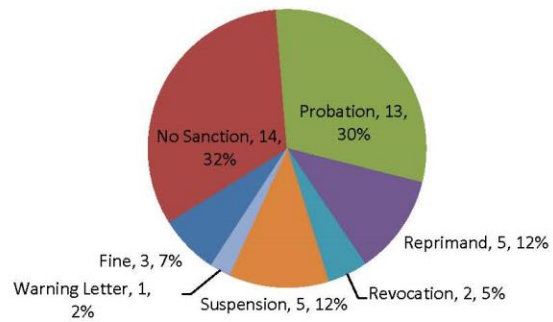
Complaints Received



Results of Investigations

Allegation	No Violation	Insufficient Evidence	Settled	Warning Letter	Litigation File Opened	Totals
Nonsanctionable Action	7					7
Unlicensed Practice	4	1		3	2	10
Application or Renewal Fraud					2	2
Discipline in Other Jurisdiction				1	1	2
Failure To Supervise	1					1
Fraud	1	1				2
Unprofessional Conduct	13	4	3	3	4	27
Professional Incompetence	26	1	1	4	8	40
Totals	52	7	4	11	17	91

Disposition of Litigation





## Indiana Manufactured Housing Association Recreation Vehicle Indiana Council, Inc.

### **Job Creation Committee Review of the Indiana Manufactured Home Installer Licensing Board: Report from the Indiana Manufactured Housing Association, February 19, 2015**

Thank you for the opportunity to report on the Indiana Manufactured Home Installer Licensing Board. IMHA was asked to address Indiana Code 25-1-16-8, numbers 4, 5 and 6. Please see our response below:

#### **4. An assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.**

As you are aware by now, federal law required manufactured home installers to be licensed. Federal law also mandates minimum standards in training, licensing, installing and inspecting these homes. What you may not be aware of is that this federal law was established at the request of the industry. Manufactured homes are engineered and constructed to rigorous standards with a multi-stage inspection and approval process. However, the benefits of the indoor, highly regimented system building process can be destroyed by a poor installation. Improper installation can create a variety of problems ranging from cracked drywall and improper fitting of doors and windows to serious safety issues with broken utility connections.

As a product that is largely focused on the affordable housing market we are keenly aware of any increased costs that will eventually be passed on to the consumer. There are obvious costs involved in the installer licensing process, including bonding, education and applications. There could also be an opportunity cost to an installer who has to attend continuing education class, although the current requirement of 10 CE hours in four years makes that negligible.

Home manufacturers have long claimed that the number one reason for warranty claims by new homeowners is due to improper installation of the home. All home manufacturers build expenses into the cost of the home to cover the anticipated warranty service. Historically, these expenses were as high as 4-5% of the home costs. Now they are down around 1-2% of the cost of the home.

According to the US Census Bureau, in 2013 the average sale price of a new manufactured home in Indiana was \$50,100. For each 1% a manufacturer saves in warranty costs up to \$510 can be kept as profit or passed on as savings to the consumer. If costs were lowered by 3% the warranty expense of each home would drop \$1,530. Considering that 823 new manufactured homes were sold (and presumably installed) in Indiana last year the economic impact would be around \$1.26 million for calendar year 2014. Over the 4 year period of all installer licenses the economic impact could be around \$5 million.

These figures relate only to trackable expenses as there is no way to quantify how much a money a homeowner invests to correct issues with their home after the warranty period expires or as of a result of poor secondary installations.

## **APPENDIX IV – JCC Handouts – Manufactured Home Installer Licensing Board**

### **5. Any recommendations for legislation, including whether:**

#### **A. the regulation of a regulated occupation should be modified**

First and foremost, we believe the Indiana should continue to operate its own manufactured housing installer licensing program and not default to the control of the US Department of Housing and Urban Development (HUD). We believe federal control of Indiana's program would be both more time consuming and more expensive for Indiana's businesses and manufactured housing consumers.

Federal regulations required each state to have an installer licensing program in place by 2005 or become a "default" state where HUD would set the program. While there are currently 12 states who have not implemented their own manufactured home installer licensing program HUD has yet to take action in those states. Indications are that HUD expects to begin a pilot program in two states later this year and will begin implementing a program nationally in 2017 or 2018. Further, in September of 2014 HUD implemented a label fee increase on manufactured home builders of more than 150%.

While details of the default HUD program are still being finalized these simple examples highlight our serious concerns about the federal government's ability to implement a program that is timely, cost-effective and relevant to industry and consumer needs in Indiana.

Secondly, I believe the current system could be modified in order to provide a better experience for consumers and improve installation quality. Although installers are required to be licensed compliance is complaint driven without any checks in the system. There is no central record of how many homes are installed or who is responsible for the installations. Simply compiling this information would give the licensing board more resources in order to more effectively administer the licensing program. In 2013, Senate Bill 447 attempted to give the board these resources while minimizing any time commitment or financial burden by utilizing data already held at the state level. Similar legislation could serve the same purpose or an interagency memorandum of understanding could be developed in order to share data between the BMV and the PLA.

#### **B. the board should be combined with another board**

As manufactured housing falls in a unique niche that is at times regulated by federal, state, and local authorities it is unlikely that another board has the same combination of concerns. We believe it is unlikely that combining this group with another would create a more efficient system.

#### **C. whether the board or the regulation of the regulated occupation should be terminated**

As discussed above, manufactured housing installers are required to be licensed under federal law. In Indiana the Manufactured Housing Installer Licensing Board also oversees the state requirement that all manufactured homes in land-lease communities be installed with a functioning weather alert radio.

Indiana ranks fourth in the country in manufactured home production - Hoosier workers built more than 5,000 of them last year. The industry is an important employer in northern Indiana and the industry fills a critical affordable housing niche in a state where the median family income is less than \$48,000. We

## **APPENDIX IV – JCC Handouts – Manufactured Home Installer Licensing Board**

believe terminating Indiana's board would have a significant detrimental impact to both the industry and the families it serves.

### **D. whether a license should be eliminated**

As discussed above the license is required by federal law.

### **E. whether multiple licenses should be consolidated into one license**

Our association serves the manufactured housing industry and we aren't experts in all the licenses issued by the PLA. However, due to the unique nature of the industry and the product the manufactured housing installer's license does not seem to be a good candidate for consolidation with other licenses.

### **6. Any recommendations for administrative changes.**

In our opinion, the most significant improvement that can be made is to compile information on the manufactured home installations that are taking place around the state. Some of this may be available from the BMV and some may have to come from the installers themselves. Once this information is obtained the board can take any necessary actions as dictated by the data.

Additionally, online education should be pursued as a means to train licensees in a more timely, and perhaps less expensive fashion. As the main continuing education provider for this license, IMHA will be pursuing this avenue with the board in the near future.

### **Attachments:**

- Average Sales Price of New Manufactured Homes Placed, 2013 – US Census Bureau
- Manufactured Home Shipments – MHI's Monthly Economic Report, December 2014
- Senate Bill 447 (2013 session)
- Senate Bill 447 Fiscal Impact Statement (2013 session)
- Production of Manufactured Homes by State, December 2014 - MHI's Monthly Economic Report, December 2014

**APPENDIX IV – *JCC Handouts – Manufactured Home Installer Licensing Board***

**AVERAGE SALES PRICE OF NEW MANUFACTURED HOMES PLACED:  
BY SIZE OF HOME BY STATE - 2013**

REGION, DIVISION, AND STATE	Average Sales Prices (Dollars)		
	Total <sup>1</sup>	Single	Double
<b>United States</b>	64,000	42,200	78,600
<b>Northeast</b>	66,500	44,300	79,600
New England	71,200	46,600	95,900
Connecticut	44,900	S	S
Maine	60,400	44,400	79,300
Massachusetts	111,600	60,400	174,000
New Hampshire	82,800	S	99,100
Rhode Island	S	S	S
Vermont	59,800	46,400	80,100
Middle Atlantic	65,100	43,300	76,000
New Jersey	83,700	58,800	95,000
New York	60,800	42,000	72,500
Pennsylvania	68,000	43,400	77,500
<b>Midwest</b>	62,900	43,300	80,000
East North Central	54,900	40,700	71,700
Illinois	55,000	38,300	77,700
Indiana	50,100	42,100	66,600
Michigan	51,800	40,800	64,500
Ohio	56,700	40,200	69,800
Wisconsin	63,500	46,000	78,000
West North Central	70,700	46,700	86,100
Iowa	60,400	43,300	78,600
Kansas	65,400	42,200	80,700
Minnesota	77,300	46,800	87,900
Missouri	61,200	42,400	73,200
Nebraska	63,000	48,900	74,200
North Dakota	85,200	51,700	106,800
South Dakota	73,000	51,200	86,800
<b>South</b>	61,200	41,700	76,500
South Atlantic	63,100	40,000	76,100
Delaware	65,900	S	106,100
District of Columbia	X	X	X
Florida	68,000	37,700	74,100
Georgia	59,900	32,700	72,500
Maryland	70,800	S	79,300
North Carolina	56,600	37,400	77,600
South Carolina	61,300	43,200	77,000
Virginia	62,900	45,800	77,600
West Virginia	68,800	44,600	77,400



**APPENDIX IV – JCC Handouts – Manufactured Home Installer Licensing Board**

**AVERAGE SALES PRICE OF NEW MANUFACTURED HOMES PLACED:  
BY SIZE OF HOME BY STATE - 2013**

REGION, DIVISION, AND STATE	Average Sales Prices (Dollars)		
	Total <sup>1</sup>	Single	Double
East South Central	60,200	41,500	74,400
Alabama	62,900	42,100	75,300
Kentucky	60,500	42,600	77,500
Mississippi	57,600	40,900	75,700
Tennessee	59,400	39,700	68,700
West South Central	60,400	42,500	77,900
Arkansas	58,400	39,500	72,700
Louisiana	59,000	43,400	81,200
Oklahoma	65,200	45,100	82,900
Texas	60,200	42,000	76,800
West	79,100	44,600	86,600
Mountain	70,300	45,500	82,400
Arizona	70,200	40,500	79,300
Colorado	62,800	48,100	81,800
Idaho	87,000	S	87,800
Montana	72,000	49,900	89,800
Nevada	70,600	41,000	77,100
New Mexico	67,200	44,700	78,900
Utah	80,500	S	93,300
Wyoming	77,900	48,500	105,700
Pacific	88,700	41,500	89,800
Alaska	54,200	45,300	S
California	95,800	43,400	98,000
Hawaii	S	S	S
Oregon	72,000	S	71,800
Washington	82,300	37,800	78,900

<sup>1</sup> Includes manufactured homes with more than two sections.

S Suppressed to avoid disclosing data for individual dealers; data are included in higher level estimates.

X Not Applicable

**Source:** These data are produced by the U.S. Commerce Department's Census Bureau from a survey sponsored by the U.S. Department of Housing and Urban Development.

Table 12: Manufactured Home Shipments

	DECEMBER			Year through DECEMBER		
	2013	2014	% Change	2013	2014	% Change
<b>New England</b>						
Connecticut	7	1	-85.7%	98	82	-16.3%
Maine	24	23	-4.2%	339	380	12.1%
Massachusetts	7	9	28.6%	133	161	21.1%
New Hampshire	20	8	-60.0%	263	257	-2.3%
Rhode Island	0	0	-	5	11	120.0%
Vermont	10	3	-70.0%	114	136	19.3%
Subtotal (region)	68	44	-35.3%	952	1,027	7.9%
<b>Middle Atlantic</b>						
New Jersey	11	22	100.0%	203	284	39.9%
New York	60	60	0.0%	1,388	1,313	-5.4%
Pennsylvania	61	78	27.9%	1,278	1,322	3.4%
Subtotal (region)	132	160	21.2%	2,869	2,919	1.7%
<b>East North Central</b>						
Illinois	52	69	32.7%	732	922	26.0%
Indiana	51	51	0.0%	1,138	823	-27.7%
Michigan	83	216	160.2%	1,598	2,230	39.5%
Ohio	59	86	45.8%	971	1,070	10.2%
Wisconsin	9	10	11.1%	306	260	-15.0%
Subtotal (region)	254	432	70.1%	4,745	5,305	11.8%
<b>West North Central</b>						
Iowa	19	12	-36.8%	313	323	3.2%
Kansas	26	15	-42.3%	356	328	-7.9%
Minnesota	28	12	-57.1%	437	407	-6.9%
Missouri	44	66	50.0%	800	893	11.6%
Nebraska	7	3	-57.1%	244	122	-50.0%
North Dakota	34	66	94.1%	774	914	18.1%
South Dakota	33	24	-27.3%	387	425	9.8%
Subtotal (region)	191	198	3.7%	3,311	3,412	3.1%
<b>South Atlantic</b>						
Delaware	14	24	71.4%	261	310	18.8%
District of Columbia	0	0	-	0	0	-
Florida	236	311	31.8%	3,002	3,780	25.9%
Georgia	100	117	17.0%	1,407	1,529	8.7%
Maryland	5	11	120.0%	246	145	-41.1%
North Carolina	221	182	-17.6%	2,626	2,333	-11.2%
South Carolina	137	153	11.7%	2,039	2,063	1.2%
Virginia	73	86	17.8%	1,051	989	-5.9%
West Virginia	51	61	19.6%	1,033	1,073	3.9%
Subtotal (region)	837	945	12.9%	11,665	12,222	4.8%

(continued)

Introduced Version

## SENATE BILL No. 447

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-14-3-5; IC 25-23.7.

**Synopsis:** Manufactured home installers. Requires the bureau of motor vehicles to provide information concerning titles for manufactured homes to the manufactured home installer licensing board (board). Requires manufactured home installers to make quarterly reports to the board. Requires the board to investigate violations by manufactured home installers. Creates the licensed manufactured home installer safety compliance fund, and continually appropriates money in the fund.

**Effective:** July 1, 2013.

**Yoder**

January 10, 2013, read first time and referred to Committee on Commerce, Economic Development & Technology.

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Introduced

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

## SENATE BILL No. 447

A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-14-3-5, AS AMENDED BY P.L.125-2012,  
2 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 5. (a) Except as provided in subsection (b), (d), or  
4 (e), the bureau shall prepare and deliver information on titles,  
5 registrations, and licenses and permits upon the request of any person.  
6 All requests must be:  
7 (1) submitted in writing; or  
8 (2) made electronically through the computer gateway  
9 administered under IC 4-13.1-2-2(a)(5) by the office of  
10 technology;  
11 to the bureau and, unless exempted under IC 9-29, must be  
12 accompanied by the payment of the fee prescribed in IC 9-29-2-2.  
13 (b) The bureau shall not disclose:  
14 (1) the Social Security number;  
15 (2) the federal identification number;  
16 (3) the driver's license number;  
17 (4) the digital image of the driver's license applicant;

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(5) a reproduction of the signature secured under IC 9-24-9-1 or IC 9-24-16-3; or  
(6) medical or disability information;  
of any person except as provided in subsection (c).

(c) The bureau may disclose any information listed in subsection (b):

- (1) to a law enforcement officer;
- (2) to an agent or a designee of the department of state revenue;
- (3) for uses permitted under IC 9-14-3.5-10(1), IC 9-14-3.5-10(4), IC 9-14-3.5-10(6), and IC 9-14-3.5-10(9); or
- (4) for voter registration and election purposes required under IC 3-7 or IC 9-24-2.5.

(d) As provided under 42 U.S.C. 1973gg-3(b), the bureau may not disclose any information concerning the failure of an applicant for a motor vehicle driver's license to sign a voter registration application, except as authorized under IC 3-7-14.

(e) The bureau may not disclose any information concerning the failure of an applicant for a title, registration, license, or permit (other than a motor vehicle license described under subsection (d)) to sign a voter registration application, except as authorized under IC 3-7-14.

**(f) The bureau shall provide information concerning titles for manufactured homes to the manufactured home installer licensing board established by IC 25-23.7-3-1. The manufactured home installer licensing board shall use the information in administering IC 25-23.7.**

SECTION 2. IC 25-23.7-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 5. (a) Beginning April 1, 2014, a licensee shall submit to the board a quarterly report, due fifteen (15) days after the end of the quarter, for each immediately preceding quarter. The report must contain the following information:**

**(1) Contact information for the individuals for whom the installation was made, including each individual's:**

- (A) name;**
- (B) address; and**
- (C) telephone number.**

**(2) Name of the licensee.**

**(3) Date of the installation.**

**(4) Address at which the manufactured home was installed on the date of installation.**

**(5) Certification that the manufactured home was installed as follows:**

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(A) For a new manufactured home, to the manufacturer's installation instructions.

(B) For a used manufactured home, to the manufacturer's installation instructions, if available, or to the American National Standard Institute (ANSI) standard A225.1.

(b) If two (2) or more licensees are involved in the same installation, each licensee shall list the installation in the licensee's quarterly report.

(c) A licensee shall file quarterly reports required under this section even if no manufactured homes were installed by the licensee.

(d) The board shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 25-23.7-7-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.5. (a) For purposes of this section, "fund" refers to the licensed manufactured home installer safety compliance fund established by subsection (e).

(b) The board shall obtain information from the bureau of motor vehicles concerning manufactured home title transactions.

(c) The board shall compare the title data obtained under subsection (b) and installation data submitted under IC 25-23.7-5-5. If the board determines that a manufactured home has been installed by an unlicensed installer or if there is a violation of this article by a licensee, the board may impose and collect a civil penalty not to exceed one thousand dollars (\$1,000) against the unlicensed installer or the licensee. Fees collected under this subsection shall be deposited in the fund.

(d) A licensee or unlicensed installer who is investigated by the board, and found by the board to have violated this article, may appeal the determination of the board under IC 4-21.5.

(e) The licensed manufactured home installer safety compliance fund is established to provide funds for administering and enforcing this article. The fund shall be administered by the board. The fund consists of:

- (1) fines and civil penalties collected under this article; and
- (2) appropriations.

The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert

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**APPENDIX IV – JCC Handouts – Manufactured Home Installer Licensing Board**

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- 1 to the state general fund. Money in the fund is continually
- 2 appropriated to the board for purposes of this section.

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**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6723**

**BILL NUMBER:** SB 447

**NOTE PREPARED:** Jan 1, 2013

**BILL AMENDED:**

**SUBJECT:** Manufactured Home Installers.

**FIRST AUTHOR:** Sen. Yoder

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State

**Summary of Legislation:** *BMV*- The bill requires the Bureau of Motor Vehicles (BMV) to provide information concerning titles for manufactured homes to the Manufactured Home Installer Licensing Board.

**Quarterly Reports**- The bill requires manufactured home installers to make quarterly reports to the Board. The bill requires the Board to investigate violations by manufactured home installers.

**Compliance Fund**- The bill creates the Licensed Manufactured Home Installer Safety Compliance Fund (Compliance Fund), and continually appropriates money in the Compliance Fund.

**Effective Date:** July 1, 2013.

**Explanation of State Expenditures:** *BMV*- Under current law, all motor vehicles, trailers, mobile homes, and recreational vehicles must be titled. The BMV already provides title information to persons that submit the proper request (written or via the Office of Technology computer gateway) and pay the required fee. Additionally, the BMV keeps track of manufactured homes that are transferred to real estate. Therefore, depending on the format that the information is reported, it is likely the BMV could provide title information, required under the bill, to the Manufactured Home Installer Licensing Board within existing resources.

**Quarterly Reports**- Although the bill states that the Board would obtain the title information from the BMV and compare the title data with the installation data from the quarterly reports from licensees, the Professional Licensing Agency (PLA) would provide the administrative services to the Board to accomplish this provision. Based on the current number of licensed manufactured home installers, the PLA would have to review and



## APPENDIX IV – JCC Handouts – Manufactured Home Installer Licensing Board

compare the BMV data with approximately 1,100 reports annually. Currently, the PLA has two case managers that serve the Board. Additionally, they also provide licensing administrative services to accountants, auctioneers, and private investigator/security guards. If additional staff were needed to process and analyze the quarterly reports from manufactured home installers, a COMOT III-level staff member would require expenditures of approximately \$38,700 in the first year of employment. The estimate includes base salary, fringe benefits, and other indirect costs such as office supplies and a computer.

**Rules Adoption-** The Board would be required to adopt rules in order to implement the requirements of the bill. The Board would likely be able to adopt rules within the course of a regular meeting of the Board. The Board, to date, is scheduled to meet three times during CY 2013.

**Compliance Fund-** The establishment of a compliance fund would provide funding for the administration of quarterly reports and the enforcement actions taken against licensees that commit violations.

**Explanation of State Revenues:** *Compliance Fund-* The Compliance Fund would consist of civil penalties/fines and appropriations. The maximum penalty that could be assessed by the Board, under the bill, would be \$1,000 per violator. Money in the Compliance Fund would not revert to the state General Fund at the end of a state fiscal year.

A 2% noncompliance rate, with each violation assessed the maximum penalty of \$1,000, might generate approximately \$22,100 annually.

**Background Information-** As of September 19, 2012, there were 227 manufactured home installers holding an active Indiana license. Multiplying the number of active licensees by four would yield the expected number of annual reports to be filed in the first year of implementation at 1,108.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Bureau of Motor Vehicles; Manufactured Home Installer Licensing Board.

**Local Agencies Affected:**

**Information Sources:** Professional Licensing Agency; Bureau of Motor Vehicles.

**Fiscal Analyst:** Chris Baker, 317-232-9851.

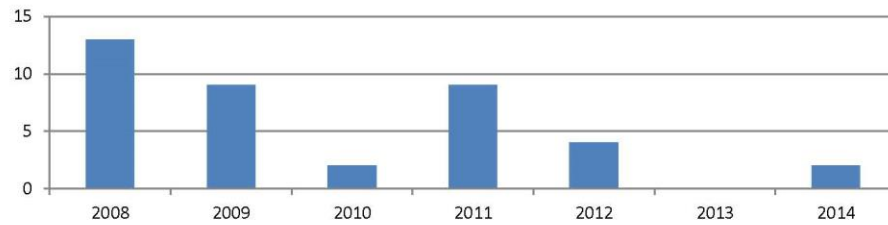
**Table 16: Production of Manufactured Homes by State (Ranked from Highest to Lowest)  
Year through DECEMBER 2014**

State	TOTAL			SINGLE-SECTION			MULTI-SECTION		
	Production	% of Total	Rank	Production	% of Total	Rank	Production	% of Total	Rank
Texas	17,319	26.9%	1	10,519	34.8%	1	6,800	19.9%	1
Tennessee	9,481	14.7%	2	4,320	14.3%	2	5,161	15.1%	2
Alabama	8,155	12.7%	3	3,791	12.5%	3	4,364	12.8%	3
Indiana	5,056	7.9%	4	3,164	10.5%	4	1,892	5.5%	8
Pennsylvania	4,047	6.3%	5	1,712	5.7%	5	2,335	6.8%	4
Georgia	3,291	5.1%	6	1,108	3.7%	7	2,183	6.4%	5
Florida	2,678	4.2%	7	718	2.4%	8	1,960	5.7%	7
North Carolina	2,590	4.0%	8	1,217	4.0%	6	1,373	4.0%	9
California	2,275	3.5%	9	233	0.8%	13	2,042	6.0%	6
Arizona	1,774	2.8%	10	517	1.7%	9	1,257	3.7%	11
Oregon	1,631	2.5%	11	297	1.0%	11	1,334	3.9%	10
Minnesota	946	1.5%	12	463	1.5%	10	483	1.4%	13
Idaho	810	1.3%	13	236	0.8%	12	574	1.7%	12
Nebraska	265	0.4%	14	198	0.7%	14	67	0.2%	14
States with *	4,013	6.2%		1,725	5.7%		2,288	6.7%	
<b>Total Home Production</b>	<b>64,331</b>	<b>100.0%</b>		<b>30,218</b>	<b>100.0%</b>		<b>34,113</b>	<b>100.0%</b>	
<b>Product Mix</b>		<b>100.0%</b>			<b>47.0%</b>			<b>53.0%</b>	

States with less than three active manufacturers are indicated with an asterisk (\*). Production figures for these states are suppressed to protect proprietary information. Total production for these states is reported on the line labeled "States With \*".

### Manufactured Home Installers 2008 to 2014

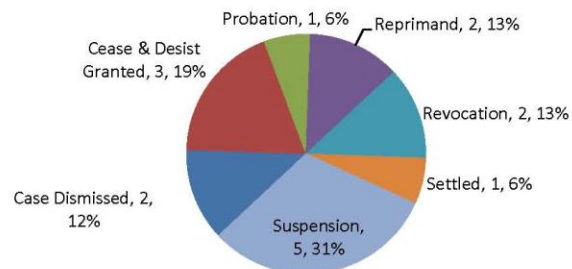
#### Complaints Received



#### Results of Investigations

Alleged Violation	Duplicate	No Violation	Out of Business	Insufficient Evidence	Settled	Warning Letter	Litigation File Opened	Totals
Breach of Contract		1				1	2	4
Failure to Complete CE							6	6
Fraud				1				1
Professional Incompetence		5		3	1		6	15
Unlicensed Practice			1				1	2
Unprofessional Conduct	1	4						5
Totals	1	10	1	4	1	1	15	33

#### Disposition of Litigation



**A Report to the Job Creation Committee  
on the  
Licensing of Private Investigators and Security  
Guards**

**For the JCC Review Scheduled for February 19, 2015**



**Presented by**

**The Indiana Association of Professional Investigators  
and**

**The Indiana Society of Professional Investigators**



**A Report to the Job Creation Committee on the Licensing of Private Investigators and Security Guards  
For the JCC Review Scheduled for February 19, 2015**

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## **APPENDIX IV – JCC Handouts – Private Investigator and Security Guard Licensing Board**

**A Report to the Job Creation Committee on the Licensing of Private Investigators and Security Guards  
For the JCC Review Scheduled for February 19, 2015  
Presented by the Indiana Association of Professional Investigators and the Indiana Society of  
Professional Investigators**

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### **Executive Summary**

The associations believe that the licensing of private investigators (PI) and security guard (SG) companies is necessary to protect the public from unscrupulous, predatory and unqualified operators and to provide a necessary level of quality assurance to business owners and the public at large.

We see no economic value to the state or to the public in the deregulation of the PI and SG sectors, and in fact we believe it could lead to negative consequences in a substantial increase in consumer frauds and additional burdens on our law enforcement communities. Our present codes require only that one individual be eligible for licensing for each business, and those eligibility standards are minimal and the licensing fee insignificant as a part of start-up costs (\$75 per year).

We routinely handle sensitive business and personal matters for our clients, which require the use and protection of confidential and proprietary information and the safeguarding of valuable client assets and personnel. In the absence of licensing, any individual could present himself to the public at large as a “private investigator” and make outrageous claims as to what they could do. In the absence of licensing the public would be in constant danger of exploitation by fraudsters, sexual predators and scam artists. Most guard company owners have a law enforcement background and are skilled in the protection of personnel and assets. Without licensing and regulation, individuals without any experience or training could offer guard services, placing the public and business owners in danger.

Although the associations believe that our codes could be enhanced to provide great assurances to the public and business communities, we equally believe that our minimum licensing standards must be maintained in the interest of public safety.

### **A Brief History of Private Investigation and Security Guard Services**

Today’s professional private investigators trace their beginnings back to the early 19<sup>th</sup> century, when Eugene Francois Vidocq founded the first modern detective agency and credit bureau in Paris. Vidocq later helped create the *Sûreté*, the detective bureau of the French police. During that period and well into the early 20<sup>th</sup> century, however, private detectives and security guards were largely unlicensed and unregulated.

The best known of the early private detectives in the U.S. is, of course, Allan Pinkerton and his Pinkerton National Detective Agency, which also provided security services. A major competitor to the Pinkerton agency in the early 20<sup>th</sup> century was the William J. Burns International Detective Agency. William Burns served as director of the federal agency which preceded the Federal Bureau of Investigation.<sup>1</sup> For many years during the 19<sup>th</sup> century and the early 20<sup>th</sup> century, private detectives and security guards, often

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<sup>1</sup> See the FBI’s web site, at <http://www.fbi.gov/about-us/history/directors/burns>. Burns was succeeded by J. Edgar Hoover in 1924.

times the same individuals, provided valuable services to the public and businesses across the country, which could not often depend on local police departments to solve crimes and provide protection and patrol services. Local and state police departments, if they existed at all, were unorganized, untrained and poorly funded.

However, the national detective agencies often times became part of the problem, rather than the solution, especially during the labor unrest in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, when security guards and undercover investigators were used by large corporations to counter union movements. Licensing was soon to follow, in order to protect the public and business sectors from unscrupulous tactics and provide some assurance of qualification. Regulation of the private security industry began in California in 1915<sup>2</sup>, and by the late 1960s Indiana began licensing security guards and private detectives, originally under the auspices of the Indiana State Police. Licensing moved to the Professional Licensing Agency when it was formed in 1989, under the Private Detective Licensing Codes which covered detectives and security guards. Since the revised codes of 2007, we have been known as private investigators and security guards have been regulated under separate codes, both under the oversight of the Private Investigator and Security Guard Licensing Board.

By the 1980s, the Pinkerton and Burns agencies were primarily involved in providing security guard services, and in 2003 both companies were purchased by an international firm, Securitas AB, based in Sweden. Although a Pinkerton investigation division still exists, it remains part of Securitas. However, smaller private investigation firms and contract security agencies continued to grow around the U.S.

Presently, there are 45 states which regulate private investigators and security guards through a state agency, a state's attorney general or a state police department. Pennsylvania regulates private investigators through its various county Courts of Common Pleas, and Wyoming licenses investigators through many local jurisdictions and municipal governments. Private security firms in Wyoming have to register with the Secretary of State and in some municipalities. Alaska requires a business license, except in Fairbanks which requires separate licensing of PI firms. Bills to license investigators in Alabama and Mississippi were filed this year in the respective state legislatures.<sup>3</sup> The states yet to have any form of licensing are Idaho and South Dakota.<sup>4</sup>

#### **A Brief History of the Private Investigation Associations in Indiana**

There are two non-profit associations in Indiana representing professional investigators, the Indiana Society of Professional Investigators (INspi) and the Indiana Association of Private Investigators (IAPi). The groups originated around the same time in the 1990s; yet, ironically, each set of founding members was unaware that another group was forming until after the charters were established. The Indiana

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<sup>2</sup> From the web site of the California Department of Consumer Affairs, Bureau of Security & Investigative Services, found at [http://www.bsis.ca.gov/about\\_us/history.shtml](http://www.bsis.ca.gov/about_us/history.shtml).

<sup>3</sup> An article in an Alabama newspaper details why private investigators wanted licensing; see [http://www.annistonstar.com/news/article\\_3c0dc7d6-7f44-11e4-b5c0-3f1b39f7a6c0.html](http://www.annistonstar.com/news/article_3c0dc7d6-7f44-11e4-b5c0-3f1b39f7a6c0.html). The Mississippi bill can be found at <https://legiscan.com/MS/bill/HB713/2015>.

<sup>4</sup> From information sent to PISG Licensing Board chairman, Don C. Johnson, by Laurel Rudd, executive director of the [International Association of Security and Investigative Regulators \(IASIR\)](http://www.iasir.org), on December 19, 2014. IASIR is comprised of regulatory and licensing agencies from over 35 states, Canadian provinces and the United Emirates.



Society of Professional Investigators is comprised of both licensed private investigators and security guard companies and the Indiana Association of Private Investigators is comprised of licensed private investigators and certified specialists in various fields, such as polygraph examiners, accident reconstructionists, hand writing experts, etc. Over the years the associations have worked together on common interests, such as legislative advocacy on the state and national fronts. Although merger has been discussed among the two associations, differences remain in structure and governance. Yet, both associations have a great amount of respect for one another and continue to work together for their members' business interests and in the best interests of the public and business community at large.

But just as our interests are common, so are the challenges we face in recruiting members. Our combined membership numbers total approximately 120 private investigation firms and security guard agencies (which includes several overlapping memberships).<sup>5</sup> By year's end 2014, there were 518 Private Investigator licenses and 395 Security Guard agencies in Indiana, according to figures provided by the Professional Licensing Agency.<sup>6</sup> Thus, the associations represent only 13 percent of the combined license holders in the state, or only 23 percent of the licensed private investigators. We are volunteer organizations and have no ability to compel memberships. Our licensing codes provide for no continuing education for license renewals, a mechanism other state associations use to gain memberships by providing those credits in regularly scheduled seminars and conferences. Although both INspi and IAPI provide seminars and networking events, only a small number of our members regularly attend.

#### **Why the Associations Support Licensing of Private Investigators and Security Guards**

We believe that to understand why licensing is necessary we need to illustrate the kinds of services provided by professional private investigators in today's modern world, and, to a degree embedded in the obvious, why guard services must be regulated.

**Private Investigation Clients.** Although attorneys and businesses comprise the majority of our clients, we also do work for the public, the average consumer, if you will. Even when we work for an attorney, we are most times acting on behalf of a consumer, for example a personal injury victim or a criminal defendant. The kinds of special cases we handle for attorneys, insurance companies, businesses and individual members of the public include but are not limited to:

1. **Personal Injury and Negligence Cases.** We review accident reports, conduct scene inspections and evidence examinations. We interview witnesses and vet expert witnesses. We provide support to counsel during depositions and trial preparation.
2. **Criminal Defense Cases.** We develop incident time lines for counsel; review police and other first responder reports; locate and interview witnesses and escort defense witnesses to trial; and other litigation support services, including background investigations of potential jurors and expert witnesses.

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<sup>5</sup> There is no separate state association for security guard agencies in Indiana. [ASIS International](#) (formerly American Society for Industrial Security) has state chapters in Indiana, but its membership is comprised mostly of corporate security directors. Corporate security forces do not require licensing. There are few contract guard providers in the ASIS ranks.

<sup>6</sup> From an email to PISG Licensing Board chairman, Don C. Johnson, from the board's staff director, Amy Hall, on December 18, 2014. No more licenses were issued before year's end.



3. **Insurance Defense Investigations.** We conduct surveillance and other investigative activities in insurance fraud cases. We conduct background and asset investigations on subrogation targets for insurance defense attorneys and insurance company special investigation units.
4. **Estate and Probate Investigations.** We conduct background investigations on caregivers and others who have inserted themselves into the life of a senior citizen. We search for missing or unknown heirs on an estate, either for a family or an executor needing due diligence for probate purposes.
5. **Family Law Investigations.** Although we have the occasional request from a wronged spouse to identify an unknown co-respondent, most family law cases involve petitions for modification in child custody arrangements, when a former spouse may be in violation of a dissolution decree. When a member of the public does contact us, we operate under the premise of “Know your client.” Indiana is of course a no fault divorce state and we must always operate with a high degree of caution in these matters.
6. **Business Matters.** Many of us provide special investigation services to businesses, small and large. These services can include pre-employment and background screening, which require special knowledge of relevant federal and state employment laws. We also conduct workplace investigations on suspected stalking, sexual harassment and disability cases. We also conduct due diligence investigations on mergers and acquisitions. We work on intellectual property investigations into copyright and trademark infringement. We conduct investigations on compliance violations in franchise agreements.
7. **Property Services.** These investigations include mortgage fraud investigations and other real estate and personal property services, such as fraudulent transfer and stolen property.
8. **Computer Forensic Examinations.** These cases require the services of a qualified forensic specialist, knowledgeable of the rules of digital evidence preservation. We also need to know state and federal laws on access to devices during an investigation.
9. **Electronic Countermeasures.** Technical Surveillance Countermeasures (TSCM) also require the services of a highly qualified examiner, usually not found at the hands of an individual offering a scan with a handheld device purchased on the internet for a hundred dollars.<sup>7</sup>
10. **Miscellaneous, Personal Cases.** Those of us who have been in the PI business for a few years can share stories of the random case, the frantic call from someone who hears strange noises in the attic, someone who has lost a pet, or someone who had something stolen and they believe they’ve had no satisfaction from the police. These matters require special handling, both in terms of what you can or cannot promise a client and dealing with results that run counter to your client’s belief. Also requiring careful handling are online dating investigations and individuals who are trying to locate lost loves or missing children. Again, you must “Know Your Client.”

**Security Guard Licensing.** The associations believe the licensing of contract security guard companies is absolutely essential. We have detailed below many of the harms brought to the marketplace in the

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<sup>7</sup> The Indiana PISG codes do not regulate computer forensic examiners and TSCM specialists. Most PI firms will have at their disposal the services of an expert in these fields, either on staff or by contract.

## APPENDIX IV – *JCC Handouts – Private Investigator and Security Guard Licensing Board*

absence of licensing.<sup>8</sup> Our present codes impose minimum regulation in the licensing of SG agencies. We license only the SG agency “Qualifier,” the individual who must meet the minimum standards for licensing: two years of qualifying experience, a clean background check and a certificate of professional liability insurance. We do not license or register the employees of SG agencies or PI firms. Those requirements were eliminated when the codes were revamped in 2007. The PI and SG businesses are required to maintain fingerprint cards on file for each employee and conduct their own background checks. Although the state can conduct random audits to check for compliance, we are not aware that is a standard practice.

There is ample anecdotal evidence of the danger not only of unlicensed security guard operations but problems with licensed guard companies whose practices endanger the public safety, in particular in the absence of stronger codes which require specific training of employees and minimum standards for guard uniforms, for example. In an administrative law hearing last month before the Indiana Private Investigator and Security Guard Licensing Board, a Petition for Summary Suspension filed by the Office of the Attorney General was heard; reference Cause Number PISG 15-01, in the matter of Security Watch Alert Team, LLC d/b/a MyPrivatePolice.com. After a hearing that lasted over nine hours, the board found for the Petitioner and the guard company’s license was suspended for 90 days for practices that endangered the public safety.<sup>9</sup>

**Few Applications for Licensure Denied.** In a memo to the association presidents, the chairman of the Private Investigator and Security Guard, Don C. Johnson, provided the following figures, from his meeting notes, on the number of licenses granted and denied during 2014:<sup>10</sup>

### ***Meeting Month Licenses Issued Denied Tabled***

January	PI	5	1	
	SG	1	1	
March	PI	14	1	1
	SG	9	0	1
May	PI	10	0	
	SG	3	0	1

<sup>8</sup> Ray Myszak is a former Hammond police detective and guard company owner. He sent this message to us on February 5<sup>th</sup>: “When I ran my guard company, I had 200-250% turnover in guards every year. High turnovers are common among guard companies. Even though 20% of my guards were with me for years, 80% had to be replaced twice a year, or more. Without licensing and proper operating procedures, unscrupulous guard companies would refrain from providing optimum security for their clients. In fact, many disservices would result without licensing.”

<sup>9</sup> News coverage of the hearing can be found online at <http://www.theindychannel.com/news/local-news/carmel-company-accused-of-impersonating-police> and <http://www.indystar.com/story/news/2015/01/15/carmel-security-firms-license-suspended-impersonating-police-allegations/21804879/>

<sup>10</sup> The totals of licenses issued in 2014 (46 PIs, 19 SGs) were confirmed by Amy Hall, PLA’s staff director of the PISG Licensing Board. In most instances on an application denial, the qualifier did not have the minimum number of hours of documented experience. Often times when an application is tabled for that reason, the applicant will produce additional documents to meet the minimum requirements.

## APPENDIX IV – *JCC Handouts – Private Investigator and Security Guard Licensing Board*

July	PI	5	0	1
	SG	3	0	
September	PI	5	0	
	SG	1	0	
November	PI	7	0	
	SG	2	1	

### What Is the Harm in the Absence of Licensing?

The licensing of private investigator firms and security guard agencies in Indiana is essential and necessary for two primary reasons:

1. Public Safety
2. Consumer Assurance

**Risks to Public Safety.** Without licensing or regulation of the PI and SG business sectors, anyone can “hang a shingle” and offer these services. This would include individuals who are predicated towards or who have been convicted of serious felony and misdemeanor crimes, to include, but not limited to:

- Sexual offenses and predatory practices such as stalking;
- Domestic violence and battery;
- Homicide or manslaughter;
- Assault with a deadly weapon;
- Theft or receiving stolen property;
- Identity fraud and cyber crimes;
- Deceptive consumer practices.

Our present licensing system requires background checks for applicants. Without licensing, anyone convicted of a sex offense or violent crime would be able to promote himself as a “private investigator.” An unlicensed security guard would have access to a company’s facilities, employees and property.

**Risks to Consumer Assurance.** Without licensing, the public and business sectors have no assurance that someone claiming to be a private investigator or security guard has a minimum qualifying experience. Prior experience in law enforcement or in the private sectors gives an individual valuable experience in the critical areas of asset and data protection, compliance with state and federal laws and regulations governing critical areas of responsibility, including but not limited to:

- Privacy Rights and Access to Personal Identifying Information (PIN);
- Civil and Criminal Law Rules of Evidence;
- Pre-employment and Post-employment Background Investigations;
- Protection of Personnel and Facilities;
- Business Practices and Protocols.

An unlicensed PI or guard contractor is more likely to avoid state and federal taxes by paying employees “off the books” and issuing 1099s at the end of the year for those it wrongly treats as sub-contractors. This white paper does not address in detail how a consumer would seek redress if an unlicensed PI takes money and does not provide the service. We all know the civil courts are crowded and a judgment in hand is not worth much if you can’t collect on it. Many unlicensed PIs will avoid carrying liability insurance, just as they will avoid paying any payroll taxes. The licensing and regulation of PI and SG services give consumers an additional option for redress for civil and criminal wrongs.

#### **Are there Acceptable Alternatives to Licensing?**

The associations do not believe there is an acceptable alternative to licensing. We are not capable of the administrative and financial burden that would be imposed if the state requested we assume oversight. As noted above, we are volunteer, non-profit organizations and we continue to face the challenges of membership attrition and recruitment.

Furthermore, we believe the concept of “self-certification” would be equally untenable. As we understand it, self-certification is a “*private and voluntary certification as a complement to other state-authorized occupational licensing regimes*” that does not impose an absolute obligation under law for registration.<sup>11</sup>

Furthermore, there are no national associations or organizations which provide a certification for PI firms or SG agencies that would not impose significant financial burdens on Hoosier business owners who would choose to seek those certifications. Only one organization, ASIS International, provides certifications for both sectors which might otherwise be considered were it not for the cost of examination and re-certification. The eligibility requirements for these examinations impose minimum standards and experience beyond what our present codes require, adding a further financial burden in achieving those levels. Other associations provide certifications in narrow fields of investigation, which most business owners would not seek in light of those restrictions and the additional financial burden of examination and re-certification.<sup>12</sup>

#### **How Can the PI and SG Licensing Codes Be Improved?**

Our present codes impose absolutely minimum standards for licensing, especially when compared to all the states surrounding us and many of the others which require licensing. We believe that the present renewal cycle of four years provides some relief to business owners who had to renew on two year cycles in the codes prior to 2007. However, an increase in the renewal cycle might impose a financial burden on the Professional Licensing Agency in tracking the compliance of license holders and add to the administrative costs of an increased volume in renewals during the same calendar year.

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<sup>11</sup> Reference the SEA 421 Report on self-certification at [http://www.in.gov/pla/files/IPLA\\_Legislative\\_Report\\_-\\_Self-Certification\\_Registration.pdf](http://www.in.gov/pla/files/IPLA_Legislative_Report_-_Self-Certification_Registration.pdf). We respectively refer the JCC to pages 5 and 6 of this report, in regards to the licensing of certain occupations and professions “...to protect the health and safety of consumers” and the factors to use when considering the necessity of full licensure. We believe these factors dictate licensure over certification for the PI and SG sectors.

<sup>12</sup> For details on the ASIS certifications, go to [www.asisonline.org](http://www.asisonline.org). Additional but narrow certifications are provided by the [National Association of Legal Investigators](#) and the [Association of Certified Fraud Examiners](#).



However, the associations have always taken the position that continuing education is an essential component of good business practices, considering the nature of the services we provide, as detailed above. Our present codes have no such requirement.

**Continuing Education for License Renewals.** The associations realize the problem of imposing additional financial burdens on business owners, which most likely makes untenable requiring continuing education credits for license renewals at this time. However, as noted above, the associations routinely schedule continuing education events at locations around the state. The Indiana Association of Professional Investigators holds monthly meetings in Indianapolis and regularly schedules training components in those meetings. The IAPI also holds an annual seminar in the fall of each year. The IAPI is a LETB (Law Enforcement Training Board) Certified Training Provider making their annual seminar an option to law enforcement officers and support personnel for satisfying in-service training requirements through the ILEA (Indiana Law Enforcement Academy). The Indiana Society of Professional Investigator holds quarterly meetings and seminars around the state, including most recently in South Bend and before that at the French Lick Hotel. The society is hosting a conference in Indianapolis in April at the Holiday Inn in Carmel, “Associations One 2015 Investigation and Security Conference,” co-sponsored by associations from Michigan, Ohio, Illinois and Kentucky. Members of the IAPI are invited to that event, now in its 16<sup>th</sup> year.<sup>13</sup> The Associations One conferences and other seminars hosted by INspi have been recognized by the National Association of Legal Investigators for continuing education credits for Certified Legal Investigators.<sup>™</sup>

The annual dues for our associations are \$100 for the business owners and associate memberships are offered to employees at a reduced rate. Our regular seminar and meeting fees are in the \$20-\$25 range. Our members believe these minimum dues and fees are money well spent and provide a desired level of confidence for our clients. A sampling of topics covered in our continuing education events:

- Changes in civil and criminal laws and rules of evidence;
- Changes in state and federal laws regulating pre-employment screening;
- Changes in technology, computer security, and digital evidence recovery and examination;
- Best practices and procedures in the service of process;
- Interview and interrogation techniques;
- Asset investigation and judgment recovery;
- Premises liability and negligence issues for security companies and investigators;
- Accident scene inspection and documentation.
- Best business practices, including human resource issues.

**Reconsideration of How We License Out-of-State Companies.** Our codes do not require that out-of-state PI firms and SG agencies have an office in Indiana when applying for licensure here. Under the codes prior to 2007, if an out-of-state company applied for a license, they had to either have an office in Indiana or a “Registered Agent,” a license holder in the state who could be held responsible for the out-of-state firm’s actions and where the out-of-state company had to maintain a copy of its Indiana license.

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<sup>13</sup> Details can be found at [www.associationsone.net](http://www.associationsone.net).

## APPENDIX IV – JCC Handouts – Private Investigator and Security Guard Licensing Board

The PISG Licensing Board regularly licenses out-of-state firms with no easy mechanism for PLA to track how many employees they are sending into Indiana. These firms on occasion will use an out-of-state sub-contractor who is not licensed in Indiana. These are companies that are taking jobs from Hoosier-based firms without the same regulatory oversight and that do not pay taxes in Indiana.

**Enhanced Rules and Regulations for Security Guards.** Again, we recognize the problem of a financial burden that additional rules and regulations might impose on SG agency owners. However, we would be remiss if we did not note that we consider the rules and regulations governing the operation of SG agencies as wholly insufficient for the protection of the public. The recent incident referenced above illustrates that point, when it was learned that an employee of that guard company had a criminal history. In that same hearing, we saw that some guard company uniforms can be confused with the uniform of a police officer. Responsible guard companies, such as Securitas, outfit their guards in uniform colors and embroideries that a member of the public could clearly identify as belonging to a security company and not a local police department. Uniforms are an initial expense for any guard company. While grandfathering present SG agencies, we believe that new rules and regulations requiring minimum standards in uniform design, for example, would impose no additional cost.

### **In Conclusion ...**

The associations appreciate this opportunity to share with the Job Creation Committee this overview of the private investigator and security guard business sectors. We hope that our report provides an increased understanding of what it is that we do, as well as an illustration of the value to the public in knowing that the great Hoosier state requires licensure for PI firms and SG agencies. We know that you share our belief that, when considering the operation and licensure of any occupation or profession, ensuring the safety of the public is paramount.

We will be glad to answer any questions that you may have.

Respectfully,

The Indiana Association of Professional Investigators:

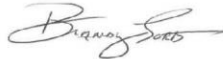


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Kim Ridding, President

[info@legworkinvestigations.com](mailto:info@legworkinvestigations.com)

The Indiana Society of Professional Investigators:



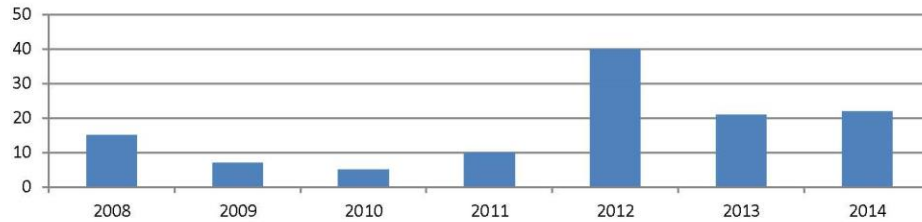
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Brandy Lord, President

[pi@integrityinvestigationsinc.com](mailto:pi@integrityinvestigationsinc.com)

**Private Investigators and Security Guards  
2008 to 2014**

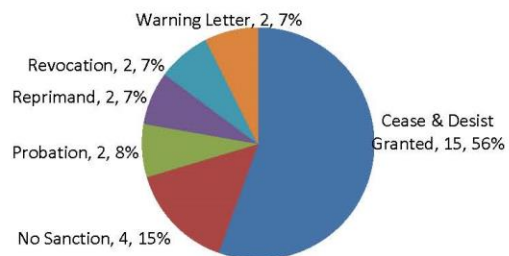
**Complaints Received**



**Results of Investigations**

Alleged Violation	Duplicate	No Violation	Referred to Another Agency	Insufficient Evidence	Settled	Warning Letter	Litigation File Opened	Totals
Application or Renewal Fraud		1						1
Criminal Activity		4						4
Employing Unlicensed Practitioner		2						2
Fraud		1		1				2
Nonsanctionable Action		2	1	1				4
Professional Incompetence	1	8		3	1	1		14
Unlicensed Practice	1	17		5	5	7	8	43
Unprofessional Conduct	1	19	1	5		1	1	28
Totals	3	54	2	15	6	9	9	98

**Disposition of Litigation**





**Indiana Funeral Directors Association**

1305 W. 96<sup>th</sup> St. Suite A

Indianapolis, IN 46260

Phone 317-846-2448 Fax 317-846-6534

[www.infda.org](http://www.infda.org)

IFDA is a trade and professional association representing 470 independent, family-owned funeral homes and approximately 1100 individual funeral director licensees in Indiana.

Funeral service is not a growing segment of the economy due to changes in funeral customs which has led to a decrease in the number of funeral homes.

The manner in which funeral service is practiced is vital to the health, welfare, and safety of the citizens of Indiana.

Regulation of funeral service through formal licensing of funeral homes and funeral directors has been the practice in Indiana and 48 other states for decades. The rationale for doing so is still valid. (Colorado, the one exception, recently saw the need to increase their regulatory level.)

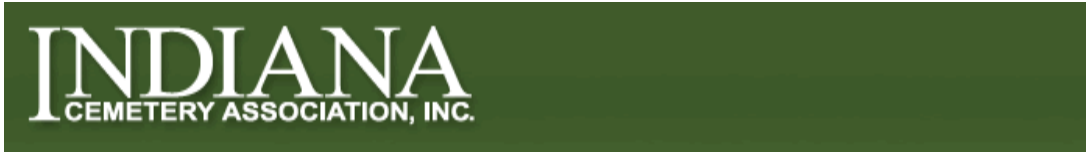
Reasons for licensing:

- The purchase of a funeral is a unique transaction under trying circumstances. The public needs to know that the person they have placed their trust in has met certain educational requirements and complies with strict licensing standards.
- The handling of human remains requires a knowledge of infectious disease and requires safe handling protocols.
- Money paid in advance and held for future use deserves state protection that only licensing can provide.
- The public is best served when a licensing board is in place to handle consumer complaints.
- Only a licensing board can take immediate and emergency action against a practitioner to protect the public in rare cases where it is warranted.

Recommendations:

1. Increase the entry level educational standard to a bachelor's degree to be in line with a growing number of other states as well as other comparable professions. (Indiana is falling behind and pay differential could cost us good candidates.)
2. Increase in the number of continuing education hours for re-licensure to help insure up-to-date practices and legal compliance.
3. Retention of current size and structure of board, but streamlining of complaint process.
4. Better and sooner "triage" of complaints by a practitioner.
5. Fines used towards enforcement with an increase of inspections and inspectors.





Casey Miller, Executive Director of the Indiana Cemetery Association, submitted these bullet points to the JCC to aid his testimony:

**11. Provide an introduction and overview of the industry, your involvement and the role licensure plays to benefit practitioners and consumers. Economic impact of the industry on the state? Does licensure support/facilitate economic growth? Why or why not? What's the average wage of professionals in the industry? What's the average income? What is the salary range of the practitioners (BLS data)?**

- As the Executive Director of the Indiana Cemetery Association, I represent approximately 125 of both large and small cemeteries in Indiana and these 125 cemeteries perform approximately 60% of the burials in Indiana. I presently manage the Catholic Cemetery in Fort Wayne and also manage the Indiana Cemetery Association on behalf of its Board of Directors. I was appointed to the State Board of Funeral and Cemetery service by then Gov. Evan Bayh and served for two, 4 year terms. I was the Chairman of the State Board for two years. Funeral and Cemetery Licensure is absolutely critical to guarantee compliance with trusting laws and to insure public safety when visiting Indiana funeral homes. Licensure of cemeteries and funeral homes does not negatively impact economic growth and are not burdensome. Management level employees earn \$65,000.00 on average and fully licensed funeral directors earn approximately \$55,000.00 on average.

**12. Explain why licensure is needed for the industry. Could certifications be used as an alternative? Why or why not? Provide additional background information for why the profession should be regulated.**

- I will defer to the Indiana Funeral Directors Association on this question.

**13. Recommendations for legislative or administrative changes to the licensure structure? If recommendations are needed, how will these benefit consumers and practitioners?**

- I will defer to the Indiana Funeral Directors Association on this question.

**14. Is the current board structure satisfactory? Is the agency structure satisfactory for managing the regulations of the industry and informing**

**licensees?**

- The present structure of the State Board is certainly adequate and I would not recommend any changes. Further, my dealings with IPLA have been excellent and have found the staff informative when asked questions and responding to my needs.

**15. Are the fees fair? Why or why not?**

- The fee structure is not excessive.

**16. Are the pre-licensure educational requirements and continuing education requirements appropriate?**

- Again, I will defer to the Indiana Funeral Directors Association.

**17. Should the renewal cycle change? Could it be structured differently to be more centered on competency?**

- Again, I will defer to the Indiana Funeral Directors Association.

**18. Should the board be simplified? Is the number of board members appropriate? Should the board be combined with another similarly regulated profession?**

- I would like to discuss the reasoning behind the Board composition that became law on July 1st, 1991 and give reasoning as to why the makeup of the Board is still effective today. The Board should not be combined with any other professional group or Board.

**APPENDIX IV – *JCC Handouts – State Board of Funeral and Cemetery Service***

**FUNERAL FEES IN SURROUNDING STATES**

**ILLINOIS**

License Fees:

Funeral Director - \$100  
Funeral Director by reciprocity - \$200  
Funeral Director Intern - \$50  
CE Sponsor - \$500

Renewal Fees:

Funeral Director - \$50  
Funeral Director Intern - \$25  
CE Sponsor - \$125

Misc.

Restoration - \$50 + all lapsed renewal fees not to exceed \$300  
Duplicate License - \$20  
Certification of License - \$20

**KENTUCKY**

License Fees:

Funeral Director - \$125  
Embalmer - \$75  
Embalmer by Reciprocity - \$125  
Courtesy Card - \$75  
Funeral Home - \$150

Renewal Fees:

Funeral Director - \$75  
Embalmer - \$75  
Funeral Home - \$150  
Courtesy Card - \$75

**MICHIGAN**

License Fees:

Funeral Director - \$60 (even year) \$100 (odd year)  
Trainee - \$45  
Courtesy Card - \$270 (odd year) \$405 (even year)

**APPENDIX IV – JCC Handouts – State Board of Funeral and Cemetery Service**

Funeral Home - \$170 (even year) \$225 (odd year)

**Renewal Fees:**

Funeral Director - \$120  
Trainee - \$65  
Courtesy Card - \$425  
Funeral Home - \$245

**OHIO**

**License Fees:**

Funeral Director - \$150  
Apprentice - \$25  
Embalmer - \$150  
Funeral Home - \$350  
Courtesy Card - \$150

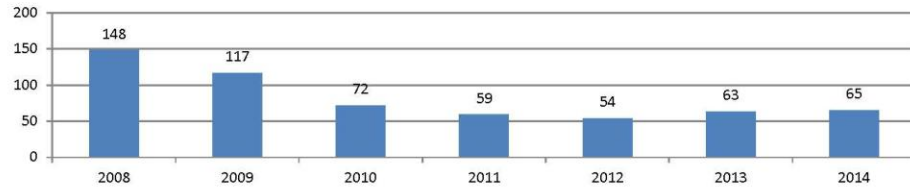
**Renewal Fees:**

Funeral Director - \$150  
Apprentice - \$25  
Embalmer - \$150  
Funeral Home - \$350  
Courtesy Card - \$150

**APPENDIX IV – JCC Handouts – State Board of Funeral and Cemetery Service**

**Funeral Directors and Cemeteries  
2008 to 2014**

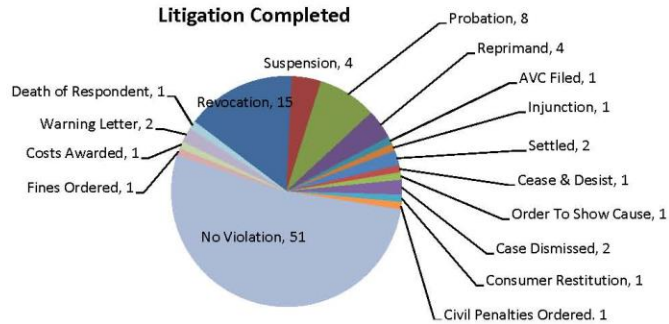
**Complaints Received**



**Investigations Completed**

Alleged Violation	Duplicate	No Violation	Death of Respondent	Out of Business	Insufficient Evidence	Warning Letter	Settled	Litigation File Opened	Totals
Nonsanctionable Action		17		1	2			5	25
Unlicensed Practice		17			7	4	2	11	41
Employing Unlicensed Practitioner		3						2	5
False Advertising		1							1
Breach of Contract		1							1
Billing Dispute	2	4						4	10
Fraud	1	21	3		1	1	3	15	45
Criminal Activity								1	1
Unprofessional Conduct		50		1	11	1	8	18	89
Professional Incompetence	6	190	2	6	18	27	26	65	340
Totals	9	304	5	8	39	33	39	121	558

**Litigation Completed**



## COLORADO HEARING SOCIETY

March 3, 2015

To Whom It May Concern:

In 1986 the Colorado State Legislature determined that regulation for hearing aid dispensers and audiologists was not necessary because of the very few complaints received regarding our profession each year.

The Colorado Hearing Society testified before several legislative committees urging them not to de-regulate our profession. However, the legislature felt that we policed ourselves well and did not need further regulation and they voted to sunset our regulations.

Once this de-regulation occurred, our state began attracting the worst of our profession. This resulted in a huge influx of unscrupulous, untrained, and incapable people dispensing hearing aids. The number of dispensers rose dramatically.

Individuals who previously had their licenses revoked or had numerous complaints in other states were free to set up shop and scam a new set of victims here.

The state thought we didn't need regulation, however, it quickly became apparent that we did as increased numbers of complaints against dispensers and audiologists began to pour into the state.

Some individuals opened storefront offices; others worked from their cars making home visits. They were there to make the sale but impossible to find when the customer needed service. A number of these people had absolutely NO training at all. This caused immeasurable damage to Colorado consumers physically, mentally, and financially.

State agencies eventually became involved and prosecuted several of these people. In most cases consumers were unable to obtain financial compensation.

In 1996 The State of Colorado again enacted registration and eventually licensing for all hearing aid providers and audiologists. We now have laws in place to handle disciplinary actions against those who do not comply with Colorado law.

It took 15 years to get these undesirable people out of the profession. It has taken much longer to regain the trust of the consumers in our state.

I urge you not to follow the path that Colorado took, the unexpected fall-out takes many years to recover from.

Sincerely,

*Cynthia L. Hoest*

Cynthia L. Hoest, BC-HIS  
President Colorado Hearing Society

Chapter One  
Of The International Hearing Society



Dedicated To  
Serving The Hearing Impaired

**Silicone Impression Material  
in the Middle Ear**

**Kipp Robins, M.D.  
Richard Harris, Ph.D.  
Brigham Young University, Provo, UT  
(Posted April 23, 1999)**

*Hearing aid specialists (dealers) and dispensing audiologists are afforded a wide range of ethyl methacrylate monomer/polymer and silicone ear impression materials. Considerable professional skill and care must be exercised in selecting the size, material and placement of the oto-block within the external ear canal. Block materials include the traditional cotton and the newer polyfoam. Because of its compressibility, the latter ear dam material is often a poor choice for use with viscous, high density silicone impression materials. Impression material insertion techniques have advanced from hand-packing to include syringes and silicone "guns" which include stabilizer and impression material in separate barrels, mixed on injection. Material mix consistency and injection force are also critical variables in the impression-taking process. Friable and monomerically scarred tympanic membranes and surgically altered ears are at particular risk. This case study, contributed by Kipp Robins, M.D. and Richard Harris, Ph.D., FAAA, Brigham Young University, Provo, UT, demonstrates the profound otic impact of improper ear impression-taking technique. Dr. Robins provides detailed notes of the surgical treatment and follow-up. Audiometric data are unavailable.*

*Roy F. Sullivan, Ph.D.  
Editor, Video Otoscopy Forum*

A 91 year old male was seen by a local hearing aid specialist for hearing aids in May, 1998. The hearing aid specialist took ear impressions using silicone material injected using a gun. Details on the use of an ear dam are unavailable. According to the patient, the specialist placed the tip of the gun deeply into the ear canal and kept injecting silicone. The impression material, injected under pressure, apparently perforated the tympanic membrane and filled the majority of the tympanic cavity AND the auditory tube.

The patient was seen subsequently by a local Otolaryngologist (Dr. Robins) to remove the solidified impression from the tympanic cavity. During the initial visit an image (Fig. 1) was recorded using an in-office video otoscope system. A traumatic perforation can be seen in the inferior portion of the tympanic membrane. The patient was scheduled for surgical removal of the tympanic cavity impression and a series of emulsion photographs (Figs. 2 - 12) were recorded before, during and after surgery.

The otolaryngologist reported that the silicone material had almost completely filled the tympanic cavity and that the material was wrapped around the ossicular chain on three sides and also filled the auditory tube. The material was removed without physical damage to the ossicular chain.



Figure 1. Video otoscopic image of "tympanic cavity impression" taken in ENT office. Click image for full size view.

The vivid blue cast visible through the tympanic membrane in Figure 1 is the residual silicone impression material filling the middle ear space in intimate contact with the medial surface of the TM. Injection of the material caused a traumatic inferior perforation of the tympanic membrane and subsequently filled the tympanic cavity. Note the hematoma in anterior inferior auditory meatus, probably traumatically induced by the injection gun tip placement.



Figure 2. Photo taken in operating room prior to surgery for excision of silicone impression material from the middle ear cavity. Click image for full size view.

The risks of surgery were discussed with the patient and family. These risks included possible disruption of the ossicular chain, injury to the tympanic membrane or the inner ear. Both patient and family desired to proceed with the surgical removal of the impression material. Figure 2 was taken 24 hours after Fig.1, via a surgical microscope using emulsion photography. Some separation of the impression material from the medial surface of the TM is noted.

The following photographs, operative and follow-up notes were provided by otolaryngologist Dr. Robins.

**Surgical Procedure:**

*The patient was taken to the operating room, on May 7, 1998, where general endotracheal anesthesia was induced without complication. The left ear was prepped and draped in the usual sterile fashion. Under microscopic visualization, an extended*



typanomeatal flap was made. This extended from the superior aspect of the drum posteriorly down to approximately 7 o'clock. The drum was elevated forward. Further photo documentation was obtained at this point (Figure 3). The KTP laser was used at a setting of 2 watts to attempt to cut and dissect the silicon. This seemed to heat the silicon, but did not appear to be effective at cutting. The myringotomy knife was used to make several slices through the silicon inferiorly where it was felt to be safe. Ultimately, the straight-cut forceps were found to be best for removal of the silicon piecemeal. It did break away without significant tension using the straight-cut forceps.

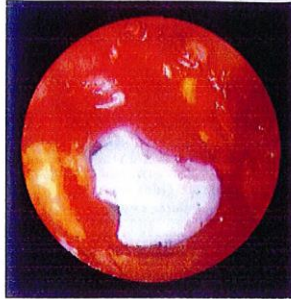


Figure 3. Initial surgical exposure shows residual impression material in the operative field.  
Click image for full size view.

It was initially felt visually that the incudostapedial complex was encased in silicon. As the silicon was retracted inferiorly from this area, however, it was seen that the silicon extended to/and abutted against the incudostapedial complex but did not surround and encase the ossicles. The ossicular chain was therefore able to be kept intact throughout the procedure. All posterior and inferior areas of the tympanum were able to be cleaned of the silicon using this piecemeal removal. At this point additional photographs (Figures 4-6) were taken.



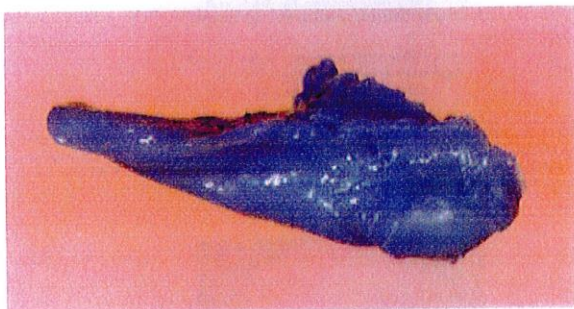
Figure 4. Material excised from posterior and inferior tympanum  
Click image for full size view.

The anterior tympanum was still filled with the rubber material. This was not able to be retrieved deep to the malleus. Further extension of the incision anteriorly allowed the drum to be retracted posteriorly and the remainder of the silicon was able to be removed in this fashion.



*Figure 5. Material has been removed from anterior tympanum and Eustachian tube.  
Click image for full size view.*

*There was an extension which appears to have gone down into the eustachian tube which came out as a single large piece.*



*Impression material cast of the Eustachian tube, removed intact.*

*At this point, the tympanic membrane was replaced to its original position. A Gelfilm graft was placed over the inferior perforation and some of the macerated areas of the drum.*



*Figure 7. Tympanic membrane replaced in original position.  
Click image for full size view.*

*Next, Gelfoam was packed in the lateral ear canal and a cotton ball covered with ointment and a Band-Aide were placed over the ear. The patient tolerated the procedure well and was awakened, extubated and taken to the recovery room in stable condition. Because of the tedious nature of the surgery, approximately two hours was involved in removal of the foreign body with repair of the ear drum.*

**Post-Operative follow up notes:**

**05/18/98**

**S - No problems with the ears since surgery.**

**O - Left ear packing still in place. Everything looks appropriate at this time.**

**R - Recheck in one month.**

**07/03/98**

**- No problems since last visit.**

**0 - Right ear remains healthy. Packing from the left ear canal is removed. The eardrum is well visualized. The posterior annulus appears to have retracted somewhat from its canal, leaving two separate posterior perforations between bony wall and annulus.**

**R - We will watch these. I will see him back in 2 months. I did approve wearing a hearing aid now in both ears. There is, incidentally, a small fleck of silicone still deep in the eardrum, which should not have any bad consequences.**



**Figure 8. Postop color-edited photo taken 7-3-98 showing annulus pulled away from tympanic sulcus which resulted in 2 posterior inferior perforations.  
Click image for unedited full size view.**

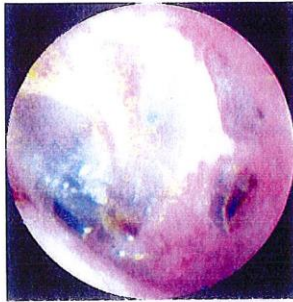
## APPENDIX IV – JCC Handouts – Committee of Hearing Aid Dealer Examiners

09/04/98

*S - No problems since last visit. He is having some troubles properly putting his hearing aid in on the right. There was apparently a malfunction of his left hearing aid and it is being fixed.*

*Ø - Right eardrum healthy. Left eardrum now has one smaller perforation posteroinferiorly. The annulus remains pulled away from the bony [meatus]. I again photographed it today.*

*R - Recheck three months. I again gave him approval to wear a hearing aid on the left.*



*Figure 9. Post-operative color-edited photo taken 9-4-98  
Click image for unedited full size view.*

03/17/99

*S - No reported problems since last visit. His step-son comes in again with him today.*

*Ø - Right ear healthy. Left ear has otorrhea. On further questioning, he states that he has noticed some moisture in the ear canal for quite sometime. I suctioned this. He now again has two perforations, but they are much smaller than before. I am uncertain whether the single perforation that he had last time has now closed centrally creating two much smaller holes.*

*R - Cipro drops for four days. Recheck two weeks. It sounds as if they have signed a contract with the adjuster at \*\*\*\*\* ending all payments. This is certainly not appropriate until the eardrum is back to its pre-trauma state.*

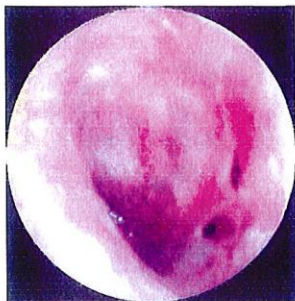


Figure 10. Post-operative color-edited photo taken 3-17-99.  
[Click image for unedited full size view.](#)

03/31/99

*S - No otorrhea since last visit. He has been faithful in using the drops.*

*O - One of the two small holes is now gone. The inferior hole has enlarged. I photographed this (Figure 11).*

*R - Drops twice a week. Recheck two months still with the hopes that the perforations will close spontaneously.*



Figure 11. Postop photo taken 3-31-99.  
[Click image for unedited full size view.](#)



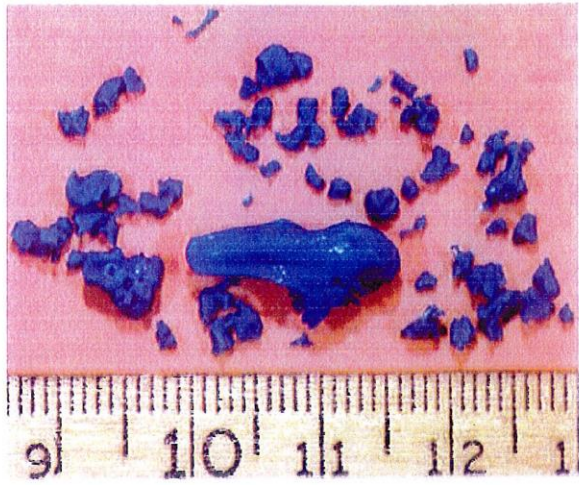


Figure 12. Remnants of silicone impression material surgically removed from middle ear spaces.

## **A PROFESSIONAL PRACTICE PROFILE FOR HEARING HEALTH PROFESSIONALS**

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*The International Hearing Society has adopted the following practice profile as a comprehensive declaration of dispensing characteristics and expectations that define the unique role of the hearing instrument practitioner.*

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Hearing instrument dispensing includes several professions that overlap. There are traditional hearing aid dispensers, Board Certified hearing health professionals, hearing aid practitioners, hearing instrument specialists, audioprosthologists, audiologists, doctors of audiology, otolaryngologists and other doctors of medicine. This document summarizes the scope of dispenser services as defined by the 1999 NBC-HIS Role Delineation Study of Hearing Aid Dispensers (D'Costa, 1999). It does not replace or supersede current state and federal regulations governing the practice of hearing instrument dispensing, but is specific to the training and legitimate professional activities of those practitioners licensed in hearing instrument dispensing.

Simply put, the purposes of this document are twofold: to provide a model hearing instrument dispenser practice plan for state/provincial licensing boards and to provide consumers, government agencies and other interested parties official information about the specific services and understandings a patient has the right to expect from a competent hearing health professional.

The following guiding principles and assumptions were used in the development of this profile:

- Only those professionals who hold professional licenses which allow hearing aid dispensing and who have appropriate training and experience may provide specific procedures.
- Safety and health of the patient are the most important considerations in all practice decisions and actions.
- All dispensing procedures are performed in a manner as to prevent bodily injury and infection.
- Hearing aids may be only part of the answer for improved communication; therefore, it is important to recognize and to encourage the use of other assistive listening devices for patients.
- Hearing healthcare requires a team effort. Dispensers must work with other professionals, as needed, to maximize patient care and interprofessional collaboration.
- Dispensers form a partnership with each of their patients to help achieve total communication with their own world, thus enabling their development and participation in all aspects of their life.
- All equipment must be maintained according to the manufacturer's specifications and recommendations. Equipment must be properly calibrated and necessary records maintained.
- Decontamination, cleaning and disinfection of multiple-use equipment must be carried out according to facility-specific infection-control policies and manufacturer's guidelines.
- Ambient noise levels in the test environment must be appropriate to the practice setting.
- Documentation must be maintained in accordance with local regulations and in keeping with good professional practice.

The NBC-HIS 1999 Role Delineation Study analyzed the responses of survey responders to 100 tasks in terms of the frequency with which each task was performed, and in terms of the level of supervision occurring with each task performance. Sixteen broad procedures were identified using statistical clustering of the tasks and are listed below.

1. **Elicit patient/client case histories**, including medical, otological, pharmacological, previous amplification history and patient attitudes and expectations.
2. **Administer otoscopy** for the purpose of identifying possible otological conditions, including but not limited to the FDA red flag conditions that may indicate the need for medical referral or which may have a bearing on needed rehabilitative measures, outcomes and/or recommendations.
3. **Administer cerumen management** in the course of examining ears, taking ear impressions and/or fitting of hearing instruments.
4. **Administer and interpret tests of human hearing**, including appropriate objective and subjective methodology and measures.
5. **Determine candidacy for hearing instruments**, assistive devices or referral for cochlear implant evaluation or other clinical/rehabilitative/medical intervention.
6. **Prescribe, select and fit appropriate hearing instruments and assistive devices** including appropriate technology, electroacoustic targets, programming parameters and special applications as indicated.
7. **Assess hearing instrument efficacy** utilizing appropriate fitting verification methodology, including all available fitting validation methods.
8. **Take and prepare ear impressions for prosthetic adaptation** of hearing instruments, assistive devices, telecommunications applications, ear protection and other related applications.
9. **Design and modify earmolds and auditory equipment** requisite to meet individual patient needs.
10. **Provide rehabilitative advice and counseling** in the use and care of hearing instruments and assistive devices and in effectively utilizing communication coping strategies and other approaches to foster optimal patient rehabilitation.
11. **Counsel family member(s) and other interested parties relative to psychosocial and rehabilitative considerations** for optimal patient outcomes.
12. **Provide long-term patient care**, including periodic audiometric updates and recommendations for modifying rehabilitation programs to help meet patients' changing needs over time.
13. **Refer and cooperate with other allied professionals** in meeting the needs of the hearing impaired.
14. **Provide supervision and in-service training** of those entering the dispensing profession.
15. **Maintain and update knowledge and skills in current and future diagnostic and technological advancements** within the hearing industry.
16. **Consult with industry in the development of products and services** relating to aiding hearing impairment.



The sixteen procedures listed above were then grouped into six major areas as follows:

1. Assess patient presenting problem and needs
2. Test and analyze patient hearing
3. Prescribe and analyze hearing aid
4. Fit, adjust, program and service hearing aid
5. Counsel and help rehabilitate patient
6. Manage office and practice

The following section addresses the expected outcomes, indication for procedure and procedure methods for each of the six categories.

#### **ASSESS PRESENTING PROBLEM AND NEEDS**

##### **Expected Outcomes:**

- Identification of factors in the patient's background that may put him/her at risk for hearing problems.
- Identification of FDA red flags that would require a referral for medical evaluation.
- Identification of other medical problems that may have an impact on the methods used for procedures and/or expected outcomes of hearing aid fitting.
- Identification of family members' concerns regarding patient's hearing difficulties.
- Exploration of patient attitudes and expectations of amplification.
- Identification of problems with hearing and understanding.
- Identification of daily activities and impact of hearing loss on lifestyle.
- Identification of impact of hearing loss on family, friends and in the workplace.

##### **Indication for Procedure:**

- Individuals being seen for either hearing screening or hearing evaluation

##### **Procedure Methods:**

- Typically consists of a combination of written answers to a series of questions, elaboration of those answers by oral questioning and behavioral observation.
- Areas covered include but are not limited to: family history of hearing loss; incidence and duration of childhood hearing-related illnesses; information regarding dizziness, loss of balance or tinnitus; current medication/drug history; and history of noise exposure and acoustic trauma. In addition, it is critical to elicit family members' concerns about the patient's hearing difficulties, the patient's attitudes and expectations regarding amplification, and the patient's own assessment of their hearing difficulties.
- Additional areas that must be covered include but are not limited to questions regarding history of ear surgeries, diseases and treatments; information regarding past experiences with amplification; and questions and observations regarding ear deformity, pain, sudden hearing loss, ear infection, disease, drainage or blockage requiring medical referral.

## **TEST AND ANALYZE HEARING**

### **Expected Outcomes:**

- Basic hearing evaluation is conducted to quantify and qualify hearing loss on the basis of perceptual responses to acoustic stimuli and to describe any associated communication disorders.
- Results of the evaluation may result in recommendations for more advanced testing, medical referral, amplification consultation, assistive listening device consultation or follow-up recommendations.
- Speech discrimination tests are performed for additional information about a hearing loss.
- Evaluation may result in recommendation for a medical referral, amplification, aural rehabilitation and/or counseling.
- Determine need for medical referral based on audiometric air-bone gap results.
- Determine degree, type and configuration of hearing loss from test results.
- Hearing instrument efficacy will be determined by pre-post audiometric measures.

### **Indications for Procedure:**

- Hearing evaluation may be done when a hearing screening is failed.
- Hearing evaluation is generally prompted by self-referral, family referral, failure of an occupational hearing test or referral from other professionals.

### **Procedure Methods:**

- Hearing evaluation is preceded by eliciting the hearing history and assessing the hearing problem. This is followed by examination of the external ear canal and cerumen management if necessary.
- The standard audiometric tests consist of pure-tone air and bone conduction testing with appropriate masking using the TDH-39 standard. It is our recommendation that all providers move to the EAR-3 or equivalent insert earphones standard by July 1, 2005. Some professionals also choose to do loudness growth testing at this time.
- Speech testing includes speech awareness and/or speech reception threshold tests, speech discrimination tests and establishing MCL and UCL thresholds (appropriate masking used as required). In addition, further information can be gained by doing unaided and aided sound field discrimination tests and by testing binaurally as well as monaurally.
- Special audiometric tests are performed for additional information about a hearing loss.
- Evaluation may result in recommendation for a medical referral, amplification, aural rehabilitation and/or counseling.
- Procedures such as immittance audiometry (tympanometry and reflexes) are quite common.
- Procedures to assess cochlear versus retrocochlear (i.e., eighth cranial nerve, brainstem or cortical) auditory disorders include acoustic reflex threshold, tone decay testing and PiPb rollover testing.
- Special procedures for testing infants and children as appropriate to licensure or evaluating tinnitus are also sometimes called for.
- Evaluate the reliability and validity of the test results.
- Evaluate test results to determine the presence of collapsed ear canals.
- Evaluate aided sound field measures and/or real-ear aided performance measures or live speech mapping.

**PRESCRIBE AND ANALYZE HEARING AID**

**Expected Outcomes:**

- In consultation with the patient and family (taking into account their lifestyle, special needs, hearing aid style, technology and price category preferences), selecting the hearing aid that will best fit their needs.
- Provide measurable results of improved hearing thresholds and ease of communication.
- The appropriate specifications for the hearing aid will be selected.

**Indication for Procedure:**

- Individuals identified with hearing loss who have reached a level of acceptance regarding their loss and are ready to seek help from amplification.

**Procedure Method:**

- Determine hearing aid needed for severity, type and configuration of hearing loss, keeping in mind the patient's history, lifestyle and audiogram.
- Discuss with patient the various levels of technology and their different price categories to aid in determination of hearing aid prescription.
- Identify physical limitations affecting hearing instrument selection.
- Prior to dispensing the hearing aid, verification of hearing aid performance is conducted via a listening check to rule out excessive circuit noise, intermittency and/or poor sound quality.
- Perform electroacoustic analysis to determine if hearing aid is performing according to manufacturer's specifications.
- Confirm telecoil function.
- Programmable and digital hearing aids should be programmed prior to patient's arrival to ensure integrity of programming system and hearing aids.

**FIT, ADJUST AND SERVICE HEARING AID**

**Expected Outcomes:**

- Appropriate earmold/hearing aid shell configuration and material will be selected for maximum comfort and hearing aid performance.
- Alleviation of a problem with physical or acoustic comfort (i.e., occlusion, loudness, discomfort).
- Restore the aid to manufacturer's specifications.

**Indications for Procedure:**

- Patient is being fitted for new amplification.
- Patient or family reports a problem with the function, comfort or benefit being received from the hearing aid.

**Procedure Methods:**

- Assess ear canal for ear impression vis-à-vis size, length and direction.
- Perform proper ear impression procedures, e.g. otoblock placement.
- Determine earmold/hearing aid shell configuration and material.
- Examine surface of earmold and instrument for damage and sharp edges.
- Perform physical fitting of coupler and instrument.
- Appropriateness of physical fit should be assessed through ease of insertion and removal, cosmetic appeal, comfort, absence of feedback, placement of microphone port(s) and ease of volume control use when present.

- Program selected hearing aids to patient's baseline audiometric data.
- Adjust/modify hearing instrument electronics based on patient feedback.
- Make venting modifications as needed for reduction of occlusion effect and/or to control feedback. Modify shell or earmold for improved, more comfortable fit.
- In the event the patient returns with a malfunctioning hearing aid, conduct in-office internal inspection of earmold and instrument and take appropriate corrective action (suctioning wax and debris from receiver and microphone ports, cleaning corrosion from battery contacts, replacing earmold tubing, etc.). Conduct electric current drain measurement of hearing aid. If in-office repair is not possible, return aid to manufacturer for repair and offer the patient a loaner hearing aid to use while his/hers is being repaired.
- If the hearing aid needs to go to the factory for repair and it is out of warranty, inform the patient of the charges and repair warranty.
- Validation of fitting should be done with sound field testing using frequency specific thresholds and/or aided speech discrimination and speech reception thresholds or with real-ear aided measurements or with live speech mapping.
- Reprogram hearing aids based on patient feedback.

#### **COUNSELING AND AURAL REHABILITATION**

##### **Expected Outcomes:**

- Dispensers assist patients in coming to grips with the reality of their hearing loss and in the process of accepting amplification or other assistive listening devices.
- Dispensers educate the family and the patient in the ramifications of a hearing loss and what is a reasonable expectation for improved communication with amplification.
- To facilitate listening in various acoustic environments.
- To provide alerting systems to: augment the benefits of the hearing aids, establish procedures for follow-up and provide information to allied healthcare professionals.

##### **Indications for Procedure:**

- Individuals who have had their hearing evaluated.
- Individuals who are being fitted with amplification.
- Individuals who need more help than their hearing aids can provide in various situations.

##### **Procedure Methods:**

- Explain otoscopic examination and audiometric assessment to patient.
- Discuss patient's reactions to hearing instruments.
- Discuss with patient various treatment options, e.g., different levels of technology, different styles of hearing instruments.
- Provide patient with hearing rehabilitation exercises.
- Explain hearing instrument use in different listening environments.
- Instruct patient on proper instrument insertion and removal techniques.
- Counsel patient on cerumen management.
- Counsel patient regarding care and use of instrument.
- Counsel patient on battery life and insertion/removal techniques.
- Counsel patient on telephone usage with hearing instruments and assistive listening device coupling as necessary.

- Counsel patient on amplification expectations and limitations:
  - discussion of appropriate expectations for amplification include improved communication, freedom from unwanted feedback, minimization of the occlusion effect and more auditory benefit in quiet than in noise
  - patient is advised of their legal rights for hearing aid adjustment, replacement and return
  - self-assessment tools that measure degree of hearing handicap and/or pre- and post-fitting satisfaction are an appropriate tool for measuring patient satisfaction
  - instruct patient/family in effective listening techniques with hearing aids
  - counsel family members about patient's adjustment and use of hearing aids
  - provide patient with information concerning environmental modifications that can ease communication
  - may provide patient with information on speech reading or other aural rehabilitation classes
  - may include demonstration and information on devices to enhance telephone usage; listening to television; listening in church; listening in restaurants and other difficult listening environments; listening in the classroom or auditoriums; and telephone, doorbell and smoke alarm alerting systems
  - formulate long-term treatment program
  - establish methods for recording care from treatment to rehabilitation
  - counsel patient on importance of follow-up visits
  - provide physician, with patient's permission according to HIPAA standards, your audiometric evaluation and recommendations and communicate with other allied health professionals as appropriate.

#### **OFFICE AND PRACTICE MANAGEMENT**

##### **Expected Outcomes:**

- Equipment will be maintained according to sanitary guidelines and manufacturer's specifications.
- Records will be maintained in an organized and efficient manner.
- Clinical/professional knowledge and skills will be current.

##### **Indications for Procedure:**

- To standardize professional standards and practices.

##### **Procedure Methods:**

- Maintain equipment to standards of sanitation and cleanliness.
- Supervise sanitization and cleanliness of office personnel.
- Maintain equipment according to manufacturer's specifications.
- Conduct biologic check of audiometric equipment.
- Perform cerumen management procedures using standard techniques/equipment.
- Recruit, train and develop professional and administrative staff.
- Establish supervisory procedures to ensure quality care.
- Develop marketing and advertising plans.
- Provide certification to patient to receive amplified telephone systems where appropriate.

- Identify sources of patient referrals.
- Establish and maintain quality assurance procedures.
- Adopt and follow a professional code of ethics.
- Maintain adequate professional liability protection.
- Design, implement and monitor hearing care/conservation programs.
- Know governmental laws and guidelines affecting the dispensing profession.
- Update clinical/professional knowledge and skills.
- Attend professional seminars, conferences and association conventions.
- Maintain patient records in accordance with governmental regulations including HIPAA privacy standards.
- Develop and maintain effective patient/business information systems.
- Maintain and adhere to all HIPAA standards when billing electronically.
- Formulate short- and long-range business plans.
- Upgrade office computer systems (hardware and software).



[www.ihsinfo.org](http://www.ihsinfo.org)

**Testimony before the Commerce and Labor Committee  
Regarding Opposition to A.B. 115**

**February 16, 2015**

On behalf of the International Hearing Society, I would like to thank the Chair, Vice Chair and the Committee members for the opportunity to testify and submit comments on this important issue.

The International Hearing Society, founded in 1951, is a professional membership organization representing hearing aid dispensing professionals worldwide. IHS' membership and leadership include both hearing aid specialists and audiologists. IHS is also the author of the International Licensing Examination for Hearing Healthcare professionals—the licensing exam used in Nevada as well as 38 other states and 4 Canadian provinces.

IHS is interested in ensuring a legislative and regulatory framework that allows our members to do what they do best—care for the individuals in their community with hearing loss. We believe that the profession plays an important role in the hearing health continuum of care and are always working towards promoting the highest professional standards. Above all our society and our members are focused on ensuring public safety and consumer protections. As a result, we must oppose the legislation before the committee today as we feel that it could lead to diminished standards and jeopardize consumer protections.

**A Distinct Profession**

The practice of dispensing hearing aids constitutes a distinct and separate profession—a reality recognized under current Nevada law by the establishment of an independent board of Hearing Aid Specialists. It is a profession that requires specific training and education in order to be performed safely and effectively. If examination procedures are incorrectly performed, or if individuals are fitted with an inappropriate or mis-programmed device, harm to the patient may result. Without proper education and training, a provider may miss the signs of a serious medical condition that requires referral to a physician—a situation which could result in delayed diagnosis and treatment for the affected individual. As a distinct profession, it is important that it be regulated as such and that can only be accomplished by maintaining an independent board.

## **APPENDIX IV – JCC Handouts – Committee of Hearing Aid Dealer Examiners**

### Consumer Safety

An independent board focusing on the practice of dispensing hearing aids is the best way to ensure the highest standards of consumer protection and public safety are maintained. Merging boards of disparate professions inevitably weakens the ability of the board to concentrate on any one issue and results in less attention being paid to all of the issues before the board. As I've mentioned, the practice of fitting and dispensing hearing aids is not without risk and requires specific training and the oversight of a board that is extremely knowledgeable of the specific issues of the profession. Without that knowledge, oversight becomes less competent.

For instance, merging the boards in question here would result in Hearing Aid Specialists providing oversight for Speech Language Pathologists and Speech Language Pathologists responsible for determining what is appropriate or inappropriate in dispensing hearing aids. Neither of these professions are trained or have expertise in the other profession's field, nor should they, but with a merged board they would be responsible not only for licensing, but oversight and discipline of a profession with which they are unfamiliar. And the ultimate harm in this situation may fall on the public.

This problem is exacerbated by the legislation before the committee today by the unequal distribution of seats on the board with three speech language pathologists, two audiologists, and only one hearing aid specialist. It is inappropriate that a profession regulated by the board hold only one seat—the same number of seats reserved for the representative of the general public.

### Strong and Consistent Standards

Another important component of maintaining consumer safety that I would like to address is ensuring that all hearing aid dispensing professionals – whether hearing aid specialists or dispensing audiologists are held to the same licensing and professional standards.

Audiologists receive a broad education covering many aspects of hearing health, but, as I've mentioned, hearing aid dispensing is a specialty requiring a unique knowledge base and training. Hearing aid specialists focus only on this specialty—in their training, practices, and continuing education. An audiologist, however, is concerned with a wider variety of issues and, as a necessity, is focused less on any single issue—such as dispensing a hearing aid. As a result, an audiologist's education does not alone prepare them to dispense and fit hearing aids. It is essential that all individuals dispensing hearing aids must be properly trained and demonstrate their competence by passing written and practical licensing exams in this specialty.

The bill before the committee today does require an audiologist wishing to dispense hearing aids to pass an examination determined by the board. It is important, however, that all the



requirements for dispensing professionals be uniform—from taking the same examinations, both written and practical, to any additional licensing or continuing education requirements, to consumer protections pertaining specifically to hearing aid sales. The most important thing is to ensure that all licensees can practice safely. This legislation does not specifically address the issue of parity between all dispensing professionals and therefore does not provide sufficient safeguards that ensure the highest level of consumer protection.

Professional Interference

The legislation before the committee today was not requested nor is desired by the hearing aid specialists of the state, and appears to be the effort of one profession to exert control and influence over another. For instance, the bill the committee is considering today would put into statute the requirement that hearing aid specialists applying for licensure be board certified, a provision that currently appears in regulation. The requirement for board certification for initial licensure is unusual when looking at common practices across the country. IHS believes a conversation in the state regarding the approach to licensure is needed to bring the state into line with best practices across the country and meet the dual goals of allowing competition and growth in the marketplace while maintaining high standards. Unfortunately, this bill would short circuit that conversation and make it difficult to address the issue in the future.

Summary

For these reasons, the International Hearing Society urges the committee to oppose this bill.

We all share the desire to efficiently and effectively regulate the profession in a manner that encourages the highest levels of professionalism and protects the consumer. The best way to accomplish that goal is to continue to regulate the practice of dispensing hearing aids as the distinct licensed service that it is.

Thank you, and I'd be happy to answer any questions either now or at a later time.

Michael Grogan

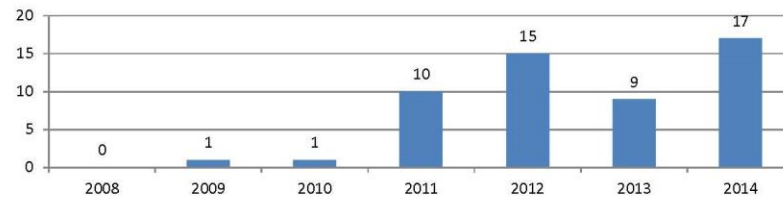
Government Affairs Manager – International Hearing Society

[mgrogan@ihsinfo.org](mailto:mgrogan@ihsinfo.org) – 734-522-7200

**APPENDIX IV – *JCC Handouts – Committee of Hearing Aid Dealer Examiners***

**Hearing Aid Dealers  
2008 to 2014**

**Complaints Received**



**Investigations Completed**

Alleged Violation	No Violation	Referred to Another Agency	Cannot Locate Respondent	Warning Letter	Settled	Litigation File Opened	Totals
No Jurisdiction		1					1
Nonsanctionable Action		1					1
Unlicensed Practice					1		1
Employing Unlicensed Practitioner						1	1
False Advertising					1		1
Billing Dispute	1		3				4
Fraud	2						2
Criminal Activity	1					1	2
Unprofessional Conduct	4			1	1	1	7
Professional Incompetence	3			3	2	4	12
Totals	11	2	3	4	5	7	32

**Litigation Completed**



**JOBS CREATION COMMITTEE**

**Plumbing Licensure Presentation**

**April 16, 2015**

**PHCC Comments: Brenda Dant, Executive Director**

**1. Provide an introduction and overview of the industry, your involvement and the role licensure plays to benefit practitioners and consumers.**

Indiana Plumbing-Heating-Cooling Contractors is the state chapter for the PHCC National Association. PHCC is the national trade association representing nearly 5,000 union and non-union plumbing, heating, and cooling contractors throughout the United States. Indiana serves as a state association within the federation. The national office was founded in 1883 and the Indiana association was formed in 1897. Indiana PHCC has over 250 company members. Those members account for 1109 apprentice, journeymen and plumbing contractor licenses with the IPLA.

The term plumber means different things to different people. The average person may consider a plumber that worker who unclogs their kitchen drain or fixes a leaky toilet. In reality plumbers do more than install various types of pipe through which hot and cold water run. The industry refers to a plumber as any craftsman employed to provide services related to the provision of safe drinking water to and proper disposal of sanitary and stormwater wastewater. They install and repair the water, waste (sanitary and storm), drainage, and gas systems in residential, commercial and industrial structures. Essentially plumbers are health protectors.

**Why Plumbing Licensing Protects Hoosiers**

An unlicensed, untrained person performing plumbing work can cause a cross connection that can put themselves and the community they live in at risk of sickness, disease, and potential criminal and civil proceedings against them.

- The Center for Disease Control has documented 57 waterborne disease outbreaks related to cross-connections, resulting in 9, 734 illnesses.
- A Craun and Calderon report found that 30.3 percent of waterborne disease outbreaks in community systems were caused by contamination of water in the distribution system
- The Center for Disease Control and Prevention has prepared Ebola guidance for Workers Handling Untreated Sewage from Ebola cases in the United States that address personal protective equipment (PPE) use and PPE disposal actions. Specifically they provide protocols for plumbers.

According to the World Health Organization: *“The safety and abundance of drinking water is, of course, a concern for most people all over the world, but what is not often emphasized is the work the plumbing industry contributes every day to alleviate these concerns. Over the life of a plumbing system, periodic maintenance is required. The chances of the system continuing to function in the safest manner possible grow exponentially when the person performing that maintenance is a trained professional.”*

**2. Economic impact of the industry on the state?**

**- *Does licensure support/facilitate economic growth? Why or why not?***

Given the increasing emphasis on college education, fewer people are entering the trades than ever before. At the same time, the level of knowledge and skill required of a plumber continues to grow as the industry becomes increasingly complex. Experience has demonstrated that the most practical and sound method of preparing workers for employment in skilled occupations is through planned apprenticeship.

Lieutenant Gov. Sue Ellspermann recently spoke at an event by challenging employers to do even more to invest in young talent in Indiana. The Indiana Career Council's strategic plan calls for 60% of the state's workers to have in-demand postsecondary skills and credentials by 2025. Aligning and engaging industry, education and the emerging workforce in work-and-learn models is a key strategy for Indiana's economic development.

Indiana Commissioner for Higher Education Teresa Lubbers recently spoke on Inside Indiana Business and said “It is abundantly clear that students who have opportunities to apply their classroom learning in a real-world setting are better prepared to meet employer expectations and succeed in their careers. We want work-and-learn experiences to become the new standard on our campuses and in our classrooms.”

Apprentice programs are indeed post-secondary education that allows individuals to achieve specialized training while earning a paycheck and contributing to the overall economy. The Plumbing apprenticeship programs are a proven example of work and learn. Apprentices finish their four-year training with good paying, secure employment and no debt. These programs are run by the industry – training individuals in a trade that cannot be outsourced—and at NO COST to the Indiana taxpayer.

- August 2012 US Department of Labor showed that skilled tradesmen who participate in an apprentice program typically earn almost a quarter-million dollars more than nonparticipants over the course of their careers.

The demand for plumbers continues to increase at a rate outpacing most other trades. According to the 2010/11 edition of Occupational Outlook Handbook published by US Department of Labor Statistics, the need for plumbers will probably grow faster than average compared to other occupations through 2018.

- The Indiana Department of Workforce Development named “Plumber” as the 20<sup>th</sup> hottest job of the future in Indiana. Hoosier Hot 50 Jobs is a listing of the 50 fastest growing, high-wage jobs of tomorrow. The list's ranking for Hoosier Hot 50 Jobs is based on expected demand and wages in 2022 for the state of Indiana. Even though the Hoosier Hot 50 Jobs focuses on the jobs of tomorrow, there are several professions that are hot now and “Plumber” is indicated as such.

***What’s the average wage of professionals in the industry? What’s the average income? What is the salary range of the practitioners? (BLS data)***

The Bureau of Labor Statistics figures released in May 2013 show the median income for plumbers across the country as \$53, 820 per year, or \$25.88 per hour. Apprentice hourly wages start at a percentage hourly rate of a journeyman, and increase each school semester (of 8

## **APPENDIX IV – JCC Handouts – Indiana Plumbing Commission**

semesters) a certain percentage. For example the first semester is 50%, second is 55%, through the 8<sup>th</sup> semester to 95%.

### **3. Explain why licensure is needed for the industry.**

Plumbing, well drilling and sewage disposal are public health issues. Plumbing is regulated by various methods in all 50 states, the District of Columbia and in most developed countries. Some regulate by state law and others by local requirements. Nineteen states have state plumbing license laws substantially equal to Indiana including registered apprenticeship requirements. Of the five states, which rely only on local licensing, two have state laws requiring them to do so. Local regulation can be effective but is actually a step backwards. Local regulation is inconsistent and actually adds needless cost and regulation to the consumer and practitioner

The minimal number of health incidents related to plumbing is a testament to the effectiveness of these regulations. Some argue that plumbing is over regulated sighting minimal incidents. One merely needs to look at the recent measles vaccination controversy. While this was not a plumbing health issue the premise of out-of-site out-of-mind applies.

When licensing is administered by the State it provides an unbiased, unquestionable foundation based on health and safety for all. Licenses assure Hoosiers that the tradesperson is qualified and accountable for the work performed. Therefore, it is crucial to obtain a license showing proficiency of installation and compliance with a code.

#### **- *Could certifications be used as an alternative? Why or why not?***

PHCC supports the statewide licensing of apprentices, journeyman, and plumbing contractors to benefit the citizens of Indiana by ensuring a skilled and competent workforce who will protect their health and safety.

#### **- *Provide additional background information for why the profession should be regulated.***

Plumbers must be familiar with safety procedures, hazardous material precautions, and OSHA requirements. They must understand codes and regulations, specifically the Indiana Plumbing Code, the Indiana Mechanical Code, the Indiana Building Code, the Indiana Residential Code, and the Indiana Fuel Gas Code. They must understand regulations by the Indiana Department of Environmental Management, local and state health departments and local water and sewer utilities.

They must review construction documents and be able to read a blueprint. From this they may perform calculations and determine installation locations. They install pipe made of various materials and must understand installation methods for water supply, waste, and venting. The science of plumbing is based upon hydraulics and pneumatics.

Problems reported by licensed plumbers who have been called in to repair unlicensed work:

- Improper venting (i.e., allowing sewer gases to contaminate occupied areas)
- Improper calculation of supply and water distribution lines sizes
- Products and outlets submerged, below flood-level rim resulting in cross-connection
- No protection when pipe materials of dissimilar metals are joined together resulting in one or the other of the materials corroding

#### **APPENDIX IV – JCC Handouts – Indiana Plumbing Commission**

- Lack of cleanouts in sewage or drainage systems
- Pipe hangers or supports of inadequate size
- Practices that weaken the structural integrity of a building
- Temperature pressure relief valves improperly installed
- Use of unapproved materials in the drinking water and waste water systems

In a recent fact finding interview with Mark Fasel, Fishers, Indiana Building Commissioner and past president of the Indiana Building Officials Association, he stated that licensed plumbers have far less deficiency notices than any other craft. Fishers Indiana is one of the fastest growing communities in the state and its building department inspects one hundred percent of its issued permits.

**4. Recommendations for legislative or administrative changes to the licensure structure?**

- *If recommendations are needed, how will these benefit consumers and practitioners?*

There is a need for a defined role for a compliance position. Or a change in the law to give more enforcement powers to local inspectors and local building officials.

**5. Is the current board structure satisfactory? Is the agency structure satisfactory for managing the regulations of the industry and informing licensees?**

The board structure is fair and representative of all segments of our profession.

**6. Are the fees fair? Why or why not?**

Yes they are fair. While it is true plumbing licensing fees are passed on to the consumer, not the taxpayer, such fees are near the lowest in the nation. Actually licensing fees incurred and passed down from crafts requiring local level licensing and doing business in multiple jurisdictions far exceeds the cost of statewide licensing to the contractor. Local licensure is inconsistent from jurisdiction to jurisdiction. Bonding requirements, a condition for local licensing, are redundant and add needless cost to the consumer. Licensing in multiple jurisdictions is burdensome and expensive for contractors. Often time contractors, because of this expense, choose not to license in jurisdictions where the opportunity for work is less. This limits the consumer's option for quality and value.

**7. Are the pre-licensure educational requirements and continuing education requirements appropriate?**

Plumbers in Indiana train on the job through jointly administered apprenticeship programs. The apprenticeship consists of 4 or 5 years of paid-on-the-job training and at least 144 hours of related classroom instruction per year. Classroom subjects include mathematics, construction print reading, safety, codes, and regulations. On the job apprentices learn how to work with various types of piping systems and plumbing fixtures.

**8. Should the renewal cycle change? Could it be structured differently to be more centered on competency?**

Our members like the two year renewal cycle. Licensed plumbers have proven competency by their apprenticeship training and the state testing requirements at the time of initial licensing. Our organization and the vast majority of our members favor continuing education requirements for licensed plumbing contractors.

**9. Should the board be simplified? Is the number of board members appropriate? Should the board be combined with another similarly regulated profession?**

The board has just six members, two licensed plumbing contractors, two licensed journeyman plumbers, one representative from the State Board of Health and one consumer representative not associated with the trade. We think this is an appropriate number and a fair representation.

The plumbing trade is complex and technical. Plumbers are held to numerous health and safety requirements that require specialized understanding to properly regulate the trade. We don't see the Plumbing Commission Board being combined with another Board for that reason.

## APPENDIX IV – JCC Handouts – Indiana Plumbing Commission



### INDIANA STATE PIPE TRADES ASSOCIATION

2930 Ludwig Road  
Fort Wayne, IN 46818

Local 136  
Evansville, IN

Local 157  
Terre Haute, IN

Local 166,  
Fort Wayne, IN

Local 172  
South Bend, IN

Local 210  
Merrillville, IN

Local 392  
Cincinnati, OH

Local 440  
Indianapolis, IN

Local 502  
Louisville, KY

Local 597  
Chicago, IL

Local 669  
District 13 & 29  
Indiana

To: Jobs Creation Committee

April 16, 2015

The Indiana State Pipe Trades Association was granted a Charter in 1914 by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (UA).

We represent 10 UA Locals throughout the State of Indiana that have a combined membership of 8,400 of which 2,300 are Licensed Plumbers.

Our Local Unions along with the Mechanical Contractors Association of Indiana maintain 11 jointly managed Apprenticeship Training Program Facilities with an annual budget of 6.1 million dollars.

We currently have 375 signatory employers.

Mike Menke, Executive Director

Phone 260-451-0120  
Fax 260-451-0121  
[www.indianastatepipetrades.com](http://www.indianastatepipetrades.com)

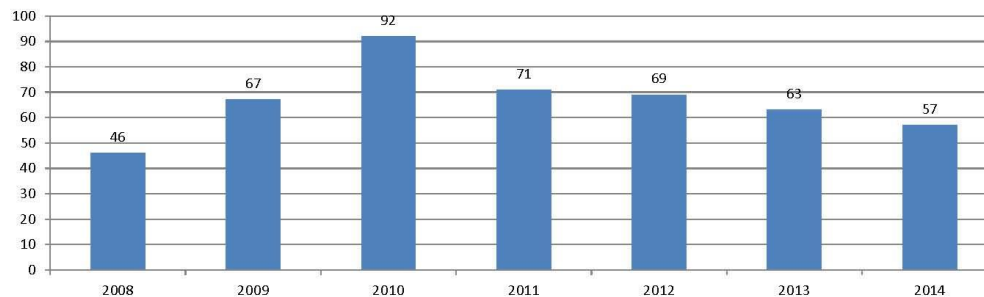




## APPENDIX IV – *JCC Handouts – Indiana Plumbing Commission*

### Plumbing 2008 to 2014

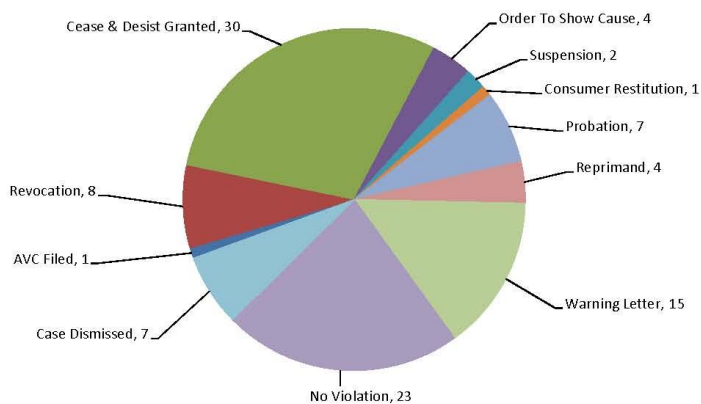
#### Complaints Received



#### Investigations Completed

Alleged Violation	Duplicate	No Violation	Referred to Another Agency	Out of Business	Cannot Locate Respondent	Insufficient Evidence	Warning Letter	Settled	Litigation File Opened	Totals
Nonsanctionable Action	0	3	0	0	0	0	0	0	0	3
Unlicensed Practice	2	48	0	4	3	34	52	5	40	188
Employing Unlicensed Practitioner	0	3	0	0	0	1	1	0	1	6
False Advertising	0	0	0	0	0	0	0	2	0	2
Billing Dispute	1	3	0	0	0	0	0	0	0	4
Fraud	0	7	0	0	0	1	0	1	4	13
Criminal Activity	0	1	0	0	0	0	0	0	1	2
Unprofessional Conduct	3	61	1	0	0	10	7	7	10	99
Professional Incompetence	0	26	0	1	0	3	12	11	6	59
Totals	6	152	1	5	3	49	72	26	62	376

#### Litigation Completed



# Indiana Auctioneers Association

JCC Review – April 2015

## Overview of the Auction Industry

- An auction as defined in Indiana Code 25-6.1-1-3 means:
- A sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of the auctioneer's audience, which exchanges consist of a series of invitations for offers for the purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

## Types of Auction License

- IC 26-6.1-3-2
  - Auctioneer License - Every individual, before acting as an auctioneer must obtain a license from the commission.
  - Auction Company License – Every person other than: an individual who is a licensed auctioneer who is seeking to operate as an auction company must obtain a license from the commission. Notwithstanding the fact that an individual who is a licensed auctioneer also has an interest in an organization, every organization which seeks to operate an auction company must obtain a license for that auction company.

## Overview of the Auction Industry

- Auctions are used to liquidate a variety of assets in a fair and commercially reasonable manner to attain the highest dollar in the current market.
- Examples:
  - Real Estate
  - Personal or Estate items
  - Business Assets (Tangible & Intangible)
  - Livestock and Farm Products
  - Machinery
  - Mineral Rights
  - Automobiles
  - State and County Surplus
  - Bankruptcy
  - Foreclosure
  - Divorce
  - Settling Estates

## Indiana Auctioneers Association's Role

- The Indiana Auctioneers Association's role is to provide our members with the resources, tools and education to conduct business in an ethically and professionally superior manner.
- The Association allows auctioneers to stay current with the latest industry trends.
- The Association stands as the legislative voice for Auction Professionals in the State of Indiana.

## Indiana Auctioneers Association

- We reaffirm our commitment to complying with both the letter and spirit of all state, local, and federal laws regulating the auction industry, and pledge our support and assistance in the further development of policies and programs which ensure the continued integrity and viability of the auction industry while offering adequate protection for the consumer.
- We support government regulations which strike a balance between necessary regulations to protect the integrity of the industry and the health, safety, and well-being of the public while ensuring that the concept of free enterprise without undue government intervention is maintained.
- We support the creation of a strong base for continued economic development and the creation of jobs in the State of Indiana and the modification of governmental legislation and regulations to that end. We affirm the need for Indiana to develop an environment more conducive to retaining and attracting businesses to the State.

## Indiana Auctioneers Association

- We support a viable and responsible education system based upon equitable and sustainable funding sources and the State of Indiana fulfilling its constitutional mandate.
- In addition, we reaffirm our commitment to and belief in the Indiana Auctioneers Code of Ethics and the Standards of Practice contained therein.
- We urge government officials at all levels to solicit the input and expertise of the auction industry in formulating government regulatory policies.

## Economic Impact - Growth

- Auctioneers are most efficient in the sale of distressed or motivated and/or highly desirable assets.
- Auctioneers are business, real estate and personal asset recyclers of the economy.
- Auctioneers are the most efficient asset converters in the economy.

## Economic Impact-Average Wage

- Numbers are difficult to assimilate for several reasons. There are currently 2,923 active auctioneer license with an additional 394 auctioneer company license (as of 2/17/2015). The average salary of a Professional Auctioneer varies widely depending on a number of factors such as what type of auctions are they working: livestock, auto, general household, estates, real estate, etc. The other factors: is the auctioneer a contract auctioneer that simply calls the bid and receives a paycheck or are they an auctioneer who is doing all aspects of the transaction. Are they working for an auction company or working independent? There are many facets to the auction industry and therefore it is very difficult to pin down the average wage of an auctioneer.

## Government Regulation of the Auction Industry

- The Indiana Auctioneers Association urges the Indiana Professional Licensing Agency to vigorously enforce disciplinary action for substantive violations of the license law and rules; to vigorously prosecute those engaged in the auction business without being properly licensed, to provide adequate and trained investigative and legal staff; to provide timely responses and disposition of complaints; to ensure the Indiana Auctioneers involvement in the complaint and learning process; and to exercise diligence and due process at all levels of the investigatory and regulatory process.

## Licensure Benefits

- Licensure of auctioneers and auction companies protects the consumer from potential harm from mishandling, co-mingling of funds, misrepresentation, and fraud.
- Licensure of auctioneers and auction companies in Indiana is beneficial to the auctioneer and auction companies to provide consumers with the proof that the licensees are professionals with the proper knowledge and confidence of the State to handle the consumers assets.
- Licensure of auctioneers in Indiana is imperative to obtain reciprocity with other licensure states. There are currently 330 reciprocity licensees in Indiana (10% of the current license are individuals from outside the state of Indiana).

## Benefits to the Consumer

- In the auction industry the consumer is uniquely both the buyer and seller.
- Licensee's are required to use contracts to protect the consumer.
- Licensee's are required to have a trust/escrow account to ensure all monies are accounted for.
- Licensee's have to meet minimum continuing education requirements.
- Consumer has a clearly defined course of action for filing complaints and proper recourse.

## Benefits to the Consumer Auctioneer Recovery Fund

### Auctioneer Recovery Fund:

- The Recovery Fund provides an aggrieved person the opportunity to recover damages due to the unlawful acts of a licensee.
- The aggrieved person must obtain a final judgment in any court against the licensee to recover damages.
- Licensees are assessed a fee to contribute to the fund when the balance dips below \$360,000.00.
- Consumer can recover up to \$20,000.00 in damages.
- Aggregate lifetime limit of \$50,000 with respect to any one (1) licensee.

## Potential Harm if Unregulated

- Increases potential fraud and theft by those representing themselves as auctioneers or auction companies.
- Convicted criminals with a record of theft or embezzlement, who would potentially be prohibited from getting a license, could open an auction company or become an auctioneer.
- The auctioneers who rely upon reciprocity to conduct business will be significantly affected.



## Alternatives to Regulation

- We believe there is **no** alternative to regulation based on the following:
  - No national certification available
  - Associations are not equipped to handle regulation, however the Association does have the capabilities of assisting in administrative duties
  - Civil Court – civil lawsuits are cost prohibitive and overly complex for the layperson
  - Financial recovery is unlikely and time consuming due to debt collection processes and the already overburdened court systems.
  - Criminal Court – prosecutors will likely not pursue unless severe physical harm or theft comes to someone involved.
  - Reactive approach will not screen out and discourage practice of unlicensed individuals.

## Legislative or Administrative Changes

- In 2012 the Auctioneers license was under review through the ROEC Committee. The recommendation was to eliminate the Auction House License and Temporary Permits from the type of auctioneer license.
- By eliminating the two license types this would allow for less administrative actions therefore decreasing administrative cost.
- The elimination will allow for a more streamlined process and more efficient and consistent regulation.
- The Indiana Auctioneers Association was the lead on working with the PLA, the Auctioneer Commission and legislators to reduce the types of license.

## Legislative Changes

- The Indiana Auctioneers Association believes in continued education, therefore we would ask that the Auction Companies have the same continued education requirements as the Auctioneer.
  - A principal named on the Auction Company license would be responsible for meeting the continuing education requirements.

## Legislative Changes-Online Auctions

- ONLINE AUCTIONS
  - Recognizing the distinct difference between those selling as individuals, and those who engage in the professional practice of auctioneering; and given the apparent frequency of online auction fraud and the lax governmental oversight of online auctioneers, the IAA recommends that Indiana license and regulate online auctions and auctioneers under modified forms of existing state law.
  - The differences between online auctions and traditional auctioneers are minimal. The only significant difference between the two is the choice of medium.
  - The IAA believes the lack of regulatory oversight of online auctioneers constitutes an unfair advantage over traditional “brick and mortar” auctioneers. At a minimum, state-licensed auctioneers must demonstrate their knowledge of applicable state laws; contribute to recovery funds or hold a bond; pay applicable licensing fees; and adhere to professional standards set by law. In contrast, online auctioneers do not currently have to meet this burden of demonstrating their knowledge of regulation, nor do they have to adhere to a standard of conduct.

## Legislative Changes-Online Auctions

- However, Indiana’s regulation of the auction industry is not overly burdensome. As written, state regulations accomplish two goals. First, the statutes outline the professional responsibilities and duties for an auctioneer. Second, these regulations protect the consumer, both bidder and seller. The majority of license law applicants must first undergo a criminal background check, and individuals convicted of felonies are barred from conducting auctions. Licensing laws also mandate auctioneers meet minimal educational requirements (high school diploma or equivalent) and age requirements. Consumers with grievances against an auctioneer can seek restitution from a states’ recovery fund or have their losses applied against an auctioneer’s bond.
- It is our belief that those individuals who conduct auctions on the Internet should be licensed in the state in which they reside. This would include those individuals who conduct such sales on consignment, who purchase property expressly for resale through such venues, or businesses that offer merchandise for sale through online auctions.
- Current licensing laws should be interpreted to include online auctions. But, they should be interpreted so as not to place an undue burden on online auctioneers, and in some cases modified to better suit this new medium. Some requirements—knowledge of bid calling practices and course of study at an accredited auction program or apprenticeship—are simply not practical for online auctioneers. Waiver of these requirements or additional legislation would lessen any undue restrictions on online auctioneers.

## Board Structure/Agency Structure

- The Indiana Auctioneers Association supports the PLA and the Auctioneer Commission.
- The Indiana Auctioneers Association does not recommend that the board be combined with any other regulated profession due to the complexity of the industry.
- The Indiana Auctioneers Association would be willing to assist the PLA in administrative duties.
  - Administering the state exam
  - Assisting in the review of education auditing

## Fees

- Indiana has the lowest auctioneer license fee in the United States among those states that require licensure. With that said the Indiana Auctioneers Association understands that raising the fees is not favored by the current Administration.
- Neighboring states – Ohio, Illinois and Kentucky.
  - Ohio auctioneer fees are \$200.00 initially with a bond and \$200.00 renewal biennial (every other year).
  - Illinois auctioneer fees are Initial \$200.00 with renewal of \$450.00 ever other year if paid by January 1. After January 1 the fee is \$500.00.
  - Kentucky auctioneer fees are \$150.00 initial and \$150.00 annual renewal.

## Education

- **Pre-License Education**

We support specific educational requirements as a prerequisite for licensing and support the continuation of training and education throughout the professional careers of all members of our Association, to assure competent and skillful auction service to the citizens of Indiana. We recognize our responsibility to the members of the Association to make available meaningful and advanced levels of training and education.
- **Continuing Education**

We support mandatory continuing education as a condition of auctioneer's license renewal. Online Education should become a common practice and should be regulated to ensure quality delivery.

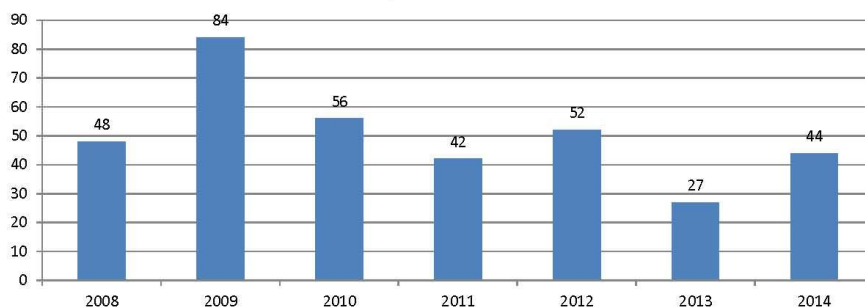
## Renewal Cycle

- The current statute requires a four (4) year renewal with sixteen (16) hours of education.
- Recommendations
  - Renewal cycle be every two (2) years with eight (8) hours of education with at least three (3) of the hours being mandatory subject matter.
  - A renewal cycle of four (4) years in our opinion is too much time between renewals. With the ever changing laws, education, technology and with many auctioneers being dual licensee's (Real Estate) the Association believes the renewal cycle should be more in line with the Real Estate requirements, due to many auctioneers being dual licensed (Auctioneer and Real Estate).

## APPENDIX IV – *JCC Handouts – Indiana Auctioneer Commission*

### Auctioneers 2008 to 2014

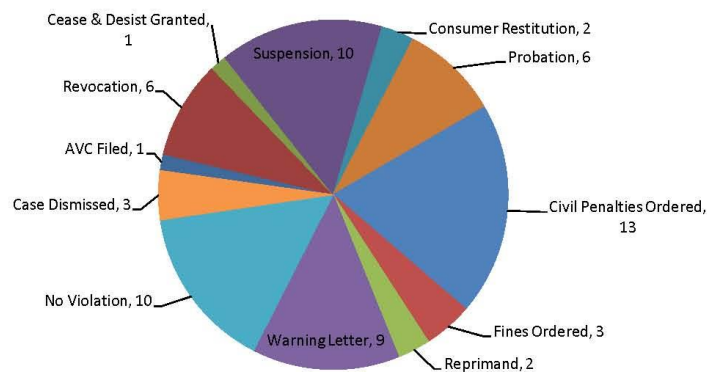
#### Complaints Received



#### Investigations Completed

Alleged Violation	Duplicate	No Violation	Referred to Another Agency	Insufficient Evidence	Warning Letter	Settled	Litigation File Opened	Totals
No Jurisdiction	0	0	2	0	0	0	0	2
Nonsanctionable Action	0	9	0	0	0	0	5	14
Unlicensed Practice	0	3	0	6	4	3	5	21
Breach of Contract	0	1	0	0	0	0	0	1
Disciplined in Another Jurisdiction	0	0	0	0	0	0	2	2
Fraud	0	1	0	0	1	0	2	4
Criminal Activity	1	0	0	0	0	0	2	3
Unprofessional Conduct	1	78	2	10	12	13	103	219
Professional Incompetence	4	16	0	3	8	3	16	50
Totals	6	108	4	19	25	19	135	316

#### Litigation Completed



# Board Retreats: Missions, visions, values, strategic plan maps

---

- Dr. Susan Meyerle
- Life Resources, LLC
- January 27, 2017
- 10:45 – 11:15 am



# Objectives

- Experience how to set the stage
- Identify 11 tips for success
- List 8 reasons to engage in strategic planning
- Review 5 steps for effective strategic planning





slide to power off

- <https://youtu.be/QD9p0PMJ4k0?t=1m40s>
- NOTE: Begin at 1:40; End at 6:33





# A CHRISTMAS CAROL







~~Threat~~

Opportunity





persons  
guides or  
**leadership.**  
action of  
capacity  
iel i





=







Break



CREATIVITY



# PERFORMANCE





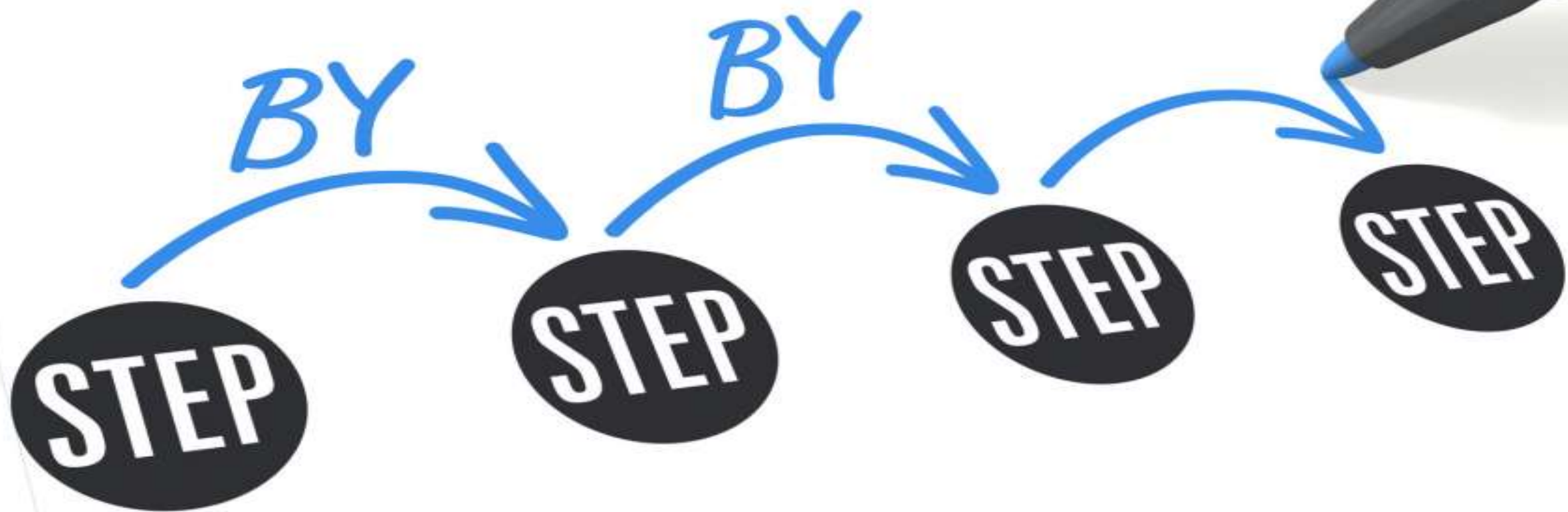
LET'S RECAP...



**CLARITY**

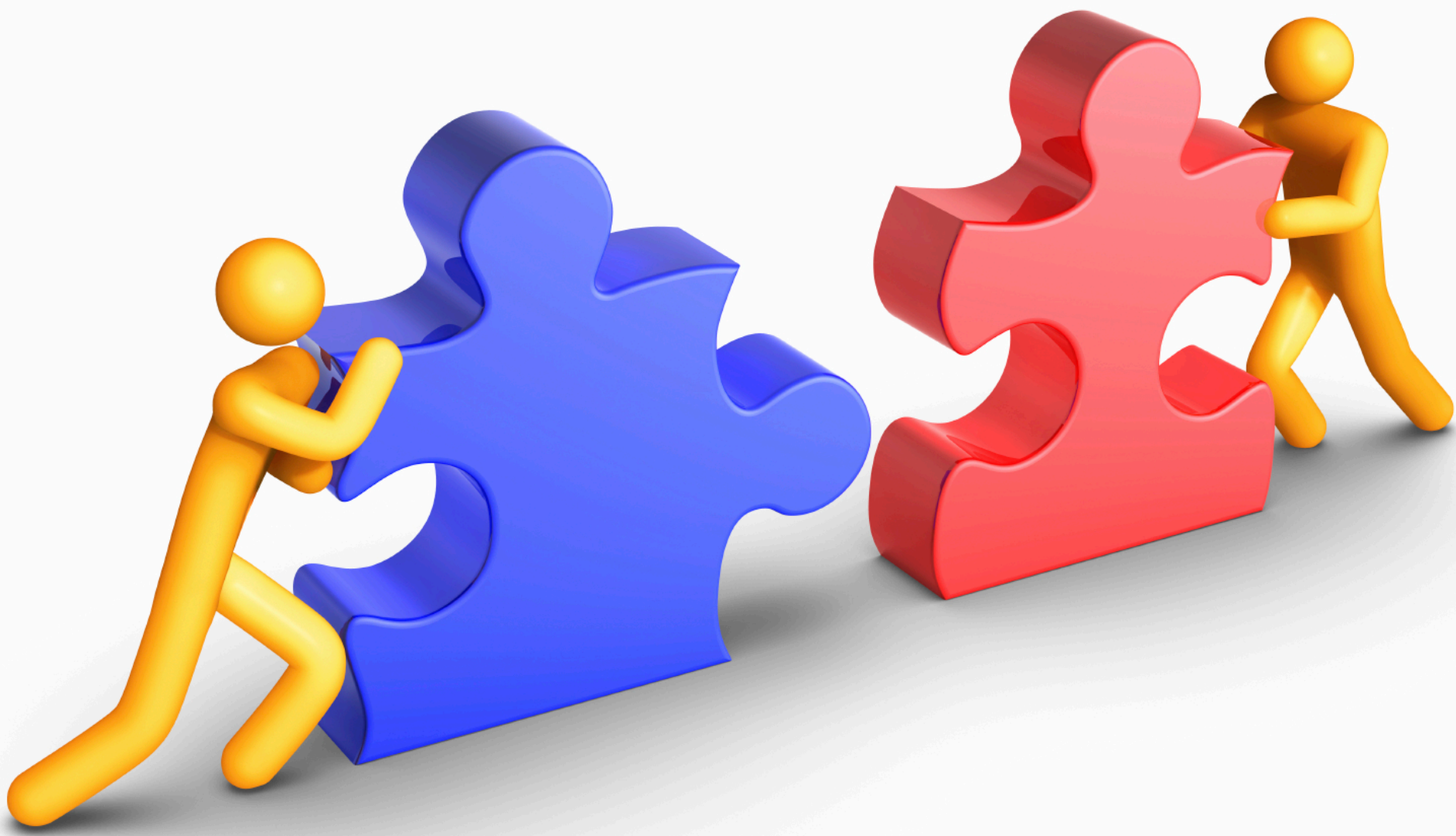


The Future



Think  
Outside  
the Box...








[illegible]





Priorities











# THANK YOU!

Dr. Susan Meyerle

Founder, Creating Ethical Boundaries

<http://www.creatingethicalboundaries.com/>

Owner, Life Resources, LLC

Lincoln, Nebraska

(402) 477-0651

# A LICENSE TO LABOR



States are re-examining the way they regulate a variety of occupations.

BY SUZANNE WEISS

Suzanne Weiss is a freelance writer and frequent contributor to *State Legislatures* magazine.

In 2003, bright blue-and-white kiosks offering \$99 teeth-whitening treatments began popping up in shopping malls, spas and other locations across North Carolina.

The growing number of outlets, and the brisk business they were doing, soon attracted the attention of dentists—who typically charge upwards of \$500 for teeth whitening—and eventually the North Carolina Board of Dental Examiners, eight of whose 10 members were practicing dentists themselves.

Citing a state law it interpreted as prohibiting anyone but licensed dentists from bleaching teeth, the board issued cease and desist letters in 2006 to more than 50 kiosk operators and their landlords. Within a year, all of the cut-rate teeth-whitening businesses in North Carolina had shut down.

But far from settling the matter, the board's actions generated a legal battle fought all the way up to the U.S. Supreme Court, culminating in 2015 in a landmark decision with complex ramifications for states' traditional approaches to regulating a wide variety of occupations.

The battle began when the cease and desist letters were brought to the attention of the Federal Trade Commission, which, after investigation, filed a complaint against the board,

accusing it of anticompetitive behavior. "Without any legitimate justification or defense," the complaint charged, the board had prevented non-dentists from offering a service that reduced prices and expanded consumer choice.

The dental board argued that its conduct was shielded by what is called the "state-action doctrine"—a New Deal-era legal principle that renders federal antitrust laws inapplicable to economic regulations adopted by a state in its sovereign capacity.

But the Fourth Circuit, and ultimately the Supreme Court, sided with the FTC's contention that an entity like the dental board—controlled by market participants who are elected by other market participants—is a non-sovereign "private actor," not automatically exempt from antitrust challenges.

In *North Carolina Board of Dental Examiners v. FTC*, handed down in February 2015, the high court established a new standard: When a state delegates control over a market to a non-sovereign actor, the state-action immunity doctrine applies only if the state itself "actively supervises" and accepts political responsibility for the private actor's decisions. The need for supervision, the court ruled, "turns on the risk that active market participants will pursue private interests in restraining trade."

## What It Means for States

For governors, legislators and other policymakers, the ruling has raised the specter of a tide of lawsuits against licensing boards, which oversee occupations ranging from doctors and lawyers to barbers, locksmiths, beekeepers and auctioneers. Among the most common complaints against such boards, according to the FTC: difficult entry requirements, arbitrary restrictions on offering innovative services and unclear definitions of the “boundaries” of a given occupation.

A regulatory board of accountants, for example, may decide, for whatever reason, to limit the number of new licenses awarded each year, or a licensing board of attorneys may adopt a rule or code of ethics that prohibits attorneys from advertising. It’s how we ended up with hair braiders—in 26 states across the country—needing a cosmetology license that typically costs \$22,000 and involves more than 2,000 hours of training.

## Protecting Consumers

Those serving on boards, however, would remind us that licensing, regulatory boards and all kinds of other regulations were created for a reason—to protect consumers from fraudulent, negligent, unqualified or otherwise unscrupulous practitioners. They would contend that oversight, rules and regulations guarantee high standards, so consumers receive quality work and fairly priced services.

Professional licensing also protects the reputation of the occupation itself, supporters say, protecting it from un- or under-trained tricksters capable of doing great harm.

The Supreme Court ruling has triggered about a dozen suits against state licensing boards over the past year—brought not by the FTC, but by current or prospective licensees. Nearly all of them have been settled or dismissed, having been found not to involve “a credible underlying antitrust claim,” says Sarah Allen, a senior assistant attorney general in Virginia who has been closely tracking the fallout from the high court’s decision.

One notable exception is a suit filed in April 2015 against the Texas Medical

Board by Teladoc Inc., a company that uses telephone and videoconferencing technology to provide on-demand remote medical care. Teladoc is challenging a board rule that requires physicians to meet with patients in person before treating them remotely. The company alleges that the rule restricts its ability to compete, resulting in higher prices and less access to doctors for the state’s residents.

Last December, a federal judge rejected

*“We needed a process  
with some teeth.”*

—ARKANSAS SENATE PRESIDENT PRO TEMPORE  
JONATHAN DISMANG

the medical board’s request to dismiss the case, declaring that there had been “no active supervision to establish state-action immunity,” Allen says.

And there’s the rub: What constitutes “active supervision,” and who or what is best suited to provide it?

Lisa Sorenson, executive director of the State and Local Legal Center, points out that state licensing boards take many thousands of regulatory actions every year, the large majority of which do not involve market manipulation. But there are certainly instances in which boards can and do “go rogue,” as she put it, tilting the regulatory framework in favor of private interests.

So, Sorenson says, every state must now reassess the structure and operations of its licensing boards with an eye to reducing the risk of antitrust claims—“and there is no one-size-fits-all way of doing so.”

## Where to Begin?

As a starting point, state officials can look at a 13-page guidance paper issued by FTC staff in the wake of the 2015 Supreme Court decision in the dental board case.

The paper begins by noting that states may avoid conflict with federal antitrust

laws altogether by creating regulatory boards that serve only in an advisory capacity, or staffing them exclusively with individuals who have no financial interest in the occupation being regulated.

But the vast majority of state licensing boards are, in fact, dominated by active members of the occupations they oversee, the paper acknowledges—and states thus “must accept responsibility for their conduct by actively supervising them.”

The paper follows with the essential components of good supervision: a substantive review of a potentially anticompetitive board decision, the development of a factual record and the power to veto or modify particular decisions to ensure they agree with state policy.

The big question is who should do the supervising?

- An executive-branch official or agency? Colorado’s Department of Regulatory Agencies has long had authority over all state licensing boards, and over the past year Alabama, Delaware and Maryland have moved in that direction.
- The attorney general’s office? So far, only Oklahoma has taken this approach. Governor Mary Fallin (R) issued an executive order requiring boards controlled by market participants to submit a record of their actions to the attorney general’s office for review, written analysis and possible modification. The drawbacks to this idea, both Sorenson and Allen say, are that attorneys general typically lack the resources to carry out such a task, and because they often advise multiple state boards on legal matters, they may have conflicts of interest. In addition, in many states, boards are not required to follow the advice of the attorney general.
- What about the legislature? In some states, legislative committees have the power to review board rules and regulations, but that can cause political problems for elected officials. “It forces them to take sides, and they don’t want to be in that position,” says Ken Levine, director of the Texas Sunset Advisory Commission, which was created by the Texas Legislature in 1977 to independently monitor the performance of state agencies, including licensing boards.



## OCCUPATIONAL LICENSING

### Seeking Better Supervision

Since the Supreme Court's decision, states are handling the supervision of licensing boards through executive orders, legislative proposals and opinions issued by the offices of attorneys general, according to recent NCSL research.

The Connecticut General Assembly passed a bill last year that makes any exercise of statutory functions, including licensing, subject to approval, rejection or modification by the commissioner of the state's Department of Consumer Protection.

Indiana lawmakers established a committee to make recommendations on reforming the way that appeals of decisions made by occupational licensing boards and other agencies are handled. The goal is to move away from traditional, patchwork administrative law models (with a single administrative law judge) toward panels of judges who hear appeals from several boards and agencies.

Governors in Alabama and Massachusetts issued executive orders. Alabama established the Office for Regulatory Oversight of Boards and Commissions to review, modify or veto the actions of boards and commissions.

In Massachusetts, the director of professional licensure, which oversees 28 boards, and the commissioner of public health must now conduct "a careful review" of any actions with the potential to be anticompetitive in the areas of licensing requirements, defining scope of practice, pricing, advertising and allocating territory. The order requires disapproval of any measure that doesn't advance "an important policy goal of the Commonwealth."

In 2015, the Arkansas Legislature passed a bill requiring that all proposed board rules and regulations be approved by a subcommittee of the Legislative Council. Previously, the powers of the subcommittee, which consists of 22 legislators selected by the House and Senate leadership, did not go beyond simple review of proposed board actions.

"We needed a process with some teeth," says Senate President Pro Tempore Jonathan Dismang (R), who sponsored the bill. "In some cases, these boards have become a government unto themselves."



### Removing Burdens

A particularly ambitious initiative is underway in Delaware, where Governor Jack Markell (D) formed a committee to do a top-to-bottom analysis of the composition, state oversight and licensing requirements of all boards and commissions.

The Delaware Professional Licensing Review Committee, whose members include legislative and gubernatorial appointees, is charged with comparing the state's licensing requirements with those of other states; identifying best practices; and recommending actions that will alleviate the risk of antitrust liability and eliminate unnecessary licensing/certification requirements.

A key goal, Markell says, is to "remove regulatory burdens that can dissuade individuals from entering into professions, and can represent a barrier to the disadvantaged and underemployed from improving their lot in life." The committee is set



Senate President  
Pro Tempore  
Jonathan Dismang  
Arkansas

to issue its findings and recommendations soon.

Steven Ogle, general counsel to Texas' Sunset Advisory Commission staff, says the challenges facing states as a result of the Supreme Court decision are indisputable. "It's going to take substantial effort on the part of states to figure out the logistics of all this, and a lot of it will likely be trial and error," he says.

Although the FTC guidance provides some help, "there are a lot of unanswered questions, and it's probably going to take a test case to resolve them," Ogle says.

In a few states, "the attitude seems to be 'wait and see' or 'the feds won't bother us,' but most states are proactively taking steps to respond because they know that, absolutely, this will affect them," he says.

Soronen agrees. "This case is obscure, but it's important. And all levels of state government—from bill drafters to department heads to governors' legal counsels—have some interest in and responsibility for addressing it."



# Jobs Requiring Licenses Way Up

Do licensing requirements restrict job opportunities or protect the public?

Once upon a time, all you needed to go into business and make a living was the know-how, resources and equipment necessary to keep your business afloat. But over the past few decades, the percentage of Americans who cannot work without obtaining a license or other form of government consent has grown significantly—from about 4 percent in the 1950s to nearly 25 percent today.

Occupational licensing laws were first passed to protect the public from negligent, unqualified and substandard practitioners, but increasingly they are seen as a mechanism designed not to protect consumers, but rather to insulate existing business interests from competition.

Critics charge that licensing requirements contribute to higher prices for goods and services, discourage specialization and innovation, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.

Today, roughly 1,100 occupations are regulated in at least one state, ranging from highly specialized professions like medicine, law and engineering to what once were considered “odd jobs”—and a whole lot of things in between, from elevator operators to casket sellers, hearing-aid dealers to upholsterers, lightning-rod installers to turtle farmers, interior decorators to reptile catchers.

“Most things that should be licensed, are licensed,” says Ken Levine, director of the Texas Sunset Advisory Commission. “But there are some things that don’t need to be. There is, really, over-regulation and over-licensing.”

Levine’s agency, created by the Texas Legislature in 1977 as an independent monitor of the performance of state agencies, has from time to time recommended removing licensing requirements for certain occupations, including dietitians, dyslexia therapists and radiologic technologists.



In all but a couple of instances, “the Legislature didn’t agree with us,” Levine says.

The number of licensed job categories varies from a high of 177 in California to a low of 41 in Missouri, with the average among states in the mid-90s.

Licensing requirements vary widely from state to state, too. For example, Michigan mandates three years of education and training to become a licensed security guard, while most other states require only 11 days or less. South Dakota, Iowa and Nebraska require 16 months of education to become a licensed cosmetologist, while New York and Massachusetts require less than eight months.

Many states require twice as much training for X-ray technicians—and eight times as much training for dental assistants—as does the military. All the variations make it difficult for some workers to transfer their licenses across state borders. Military spouses, with their frequent moves, are especially hard hit.

The push to add occupations that need licenses continues. Most recently, private investigators in Mississippi, music therapists in Florida and elevator maintenance workers in New York have lobbied legislators for state-mandated licensing.

But over the past couple of years, sign-language interpreters in Idaho and substance-disorder counselors in Iowa, who managed to win legislative approval for their licensing proposals, were thwarted by a governor’s veto. And in Arizona, the governor signed a package of bills that he pledged “will begin the elimination of burdensome regulations that are often designed to kill

competition or keep out the little guy.”

States’ licensing arrangements were the focus of sweeping criticism in a report prepared by the Treasury Department’s Office of Economic Policy, the Council of Economic Advisers and the Department of Labor, and issued by the White House in July 2015. They concluded that the expansion of occupational licenses has created a substantial drag on the economy by making it harder for people to start their own businesses and for the nation “to take full advantage of all of America’s talented labor.” Licensing restrictions “cost millions of jobs nationwide and raise consumer expenses by over \$100 billion,” the report said.

The report looked at the impact of licensing requirements on several populations—veterans and their families, immigrants, the underemployed and individuals with criminal records—and the options for institutional reform that “would promote a more careful and rational approach to occupational regulation.”

Among other things, the report suggests, states could look at certification as an alternative to licensing. Unlike licensing, certification isn’t mandatory. Another key recommendation is to consider the use of regional compacts to harmonize licensing requirements across states.

Morris Kleiner, an economics professor at the University of Minnesota and a leading critic of occupational licensing, has conducted research documenting the rise of licensure and its effects on the labor market. Being in a licensed profession is associated with as much as 15 percent higher wages, he found, and may slow employment growth in the field.

“With licensing, you’re creating a monopoly, and it’s very difficult for people in many places to enter these occupations,” Kleiner says. “It’s keeping people away from the American dream.”

—Suzanne Weiss

## Sunset Review and Annual Legislative Reports: Board evaluations using data

- Ken Levine
- Sunset Commission
- January 27, 2017



# Objectives

- Understanding of Sunset review processes
- Understanding of similar evaluation processes (program evaluation)
- Preparing self-evaluation and similar legislative reports
- Data to collect and prepare
- How to successfully prepare for legislative reviews
- How to successfully handle the review process
- Understanding results

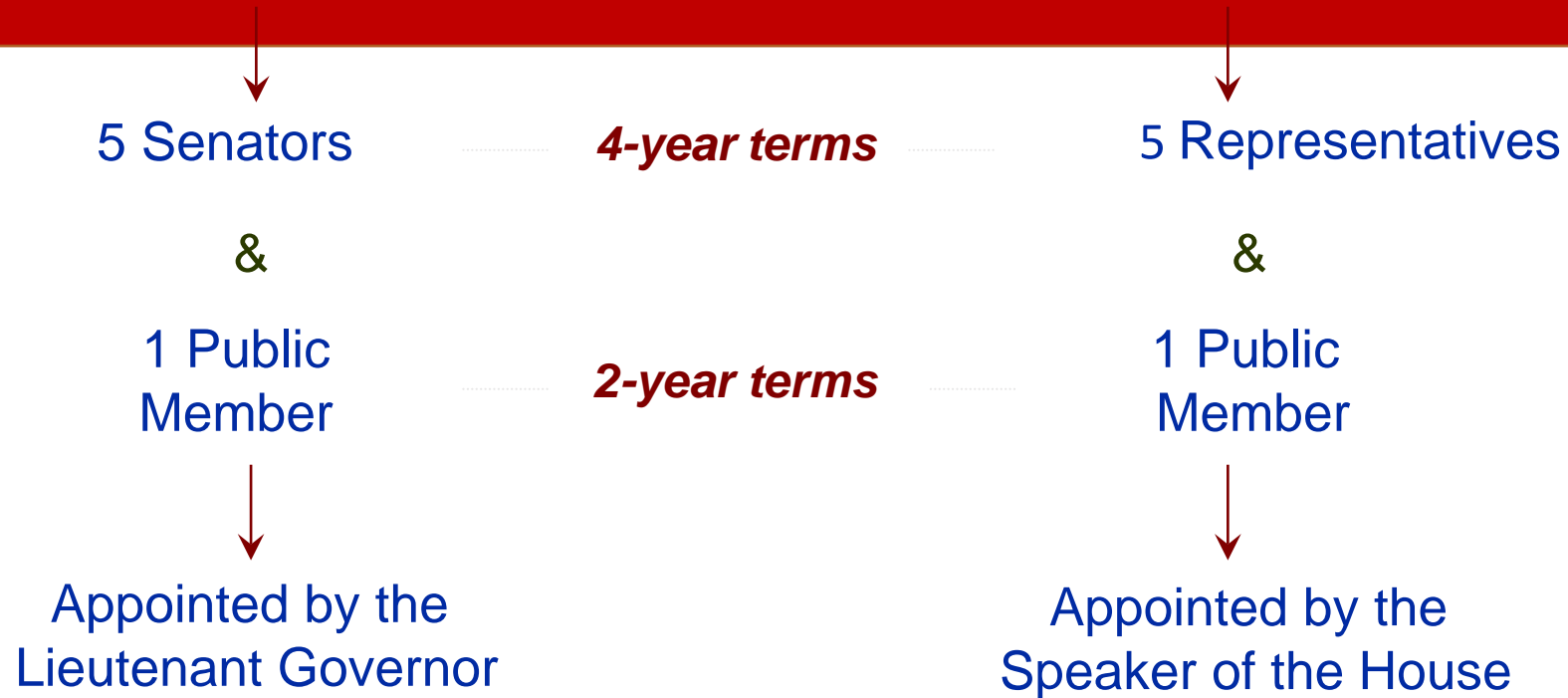
# What is Sunset?

- **Created in 1977 by the Texas Legislature**
- **A key tool for the Legislature to oversee state agencies and improve how Texas government works**
- **Agencies under Sunset are abolished unless continued by the Legislature**
  - Forces critical thinking about the need for and performance of an agency
  - Not just about abolishment - creates strong incentive to pass reforms

# Sunset in Texas

- Expansive process covering most areas of state government
- Not just regulatory/occupational licensing
- 12 year cycle of reviews
- 20 – 30 agencies each biennium
- 12 member Commission
- About 28 staff

## 12-Member Commission



*Chair and Vice Chair rotate between the Senate and House each biennium.*

Staff of 28 supports the Sunset Commission members.

# Sunset Process – Three Phases

*Public involvement throughout!*

❖ **Phase 1:** Sunset staff evaluation

❖ **Phase 2:** Sunset Commission  
deliberation

❖ **Phase 3:** Legislative action

# Key Questions: Sunset (and other) Evaluations

- How efficiently and effectively does the agency operate?
- How successful has the agency been in achieving its mission, goals, and objectives?
- Does the agency perform any duties that are not statutorily authorized?
- Does the agency have sufficient authority related to fees, inspections, enforcement, and penalties?
- In what ways could the agency's functions/operations be less burdensome or restrictive and still adequately protect the public?
- How much do the agency's programs and jurisdiction duplicate those of other agencies?
- Does the agency promptly and effectively address complaints?
- To what extent does the agency encourage and use public participation when making rules and decisions?
- Would abolishing the agency cause federal government intervention or loss of federal funds?



# Questions for Occupational Licensing Agencies

- Does the agency's occupational licensing program provide the least restrictive form of regulation needed to protect the public interest?
- Could the program's regulatory objective be achieved through market forces, private certification and accreditation programs, or enforcement of other law?
- Are the skill and training requirements for a license consistent with a public interest, or do they impede applicants, particularly those with moderate or low incomes, from entering the occupation?
- What is the impact of the regulation on competition, consumer choice, and the cost of services?

# North Carolina v. FTC: Impact for Sunset

- Can affect all occupational licensing reviews and evaluations
- Legislatures very interested – why?
- Impact on Texas Sunset reviews
- Impact on program evaluation processes across U.S.
- What can YOU do?

# Preparing for legislative review

- Clean your house
- Talk to agencies that successfully completed the process (avoid whiners)
- Talk to (all) stakeholders
- Complete any pre-review questionnaires or reports fully – don't take shortcuts and ask questions
- Avoid making or accepting assumptions about hidden motives – almost always wrong
- Clean your attitude(s)

# Data? What data?

- Performance data
- Output numbers mean little
- Outcome numbers show performance
- Outcomes should align with your statutory purposes and goals
- Evaluators will key off of results oriented data – these best tell your story
- Be prepared to show documentation that data and calculations are accurate

# Handling the review

- Assign a primary liaison
- Don't assume, ask questions
- Offer alternatives to requests if it will save time and effort
- Keep your's and others' attitudes in check
- It's not personal (even if it may feel that way)!
- Ask for a brief check-in to assure reviewers have what they need, including full cooperation

# Understanding results

- Scour the draft
- Offer to provide input on typos etc. separately
- Ask questions
- Focus down to important matters
  - Key corrections needed (not typos)
  - Potential misinterpretations
  - Conclusions that you respectfully disagree with
  - Recommendations that you respectfully disagree with

# Understanding results: One more thought

- Implement the recommendations
  - They will be back
  - They will check
  - They will report
  - Have a darn good, well-supported reason if not implemented

# Closing Comments for All Agencies

## Successful Practices



# Government should employ a common set of practices

- Setting outcomes-focused goals
- Collecting and analyzing performance data
- Data-rich reviews to identify what works and what needs attention
- Comparing to rigorous evaluations and other studies
- Effective communication strategies for a wide variety of stakeholders

Performance Accountability, Evidence, And Improvement: Reflections and Recommendations to the next Administration

Shelley H. Metzenbaum and Robert Shea; Working Paper, October 2016

# [www.sunset.texas.gov](http://www.sunset.texas.gov)

- Information and flow charts on how Sunset works
- Dedicated page for each agency currently under review
- Public input forms to submit comments on an agency under review
- Sunset Commission meeting schedule
- Database of all previous Sunset reviews, reports, and results

*Sign up for our e-mail lists, and follow @TX\_Sunset on Twitter, LinkedIn, and Facebook for announcements*

# Contact Us

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**Phone:** (512) 463-1300
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- **Mailing Address:** Sunset Advisory Commission, PO Box 13066, Austin, Texas 78711
- Ken Levine, Director [ken.levine@sunset.texas.gov](mailto:ken.levine@sunset.texas.gov)

# Award Winning Boards: Accomplishments worth sharing

---

Mary Jo Monahan, MSW, LCSW

Michelle Mayhew, MSN, MBA/HCM, RN-BC

Bill Hegarty, JD

January 27, 2017

1:15 p.m.



Mary Jo Monahan, MSW, LCSW

Association of Social Work Boards



# ASWB Awards

In recognition of member board members and member board staff who make major contributions to public protection, ASWB presents two distinguished awards annually.

- The Sunny Andrews Award for Outstanding Commitment to Social Work Regulatory Board Service
- The Glenda McDonald Award for Outstanding Commitment to Social Work Regulatory Board Service



# Who is Sunny Andrews?



The Sunny Andrews Award for Outstanding Commitment to Social Work Regulatory Board Service is named after Sunny Andrews of Nebraska, a past president of the association who served on a wide range of ASWB committees and task forces from 1991 to 2003.

# Who was Glenda McDonald?

The Glenda McDonald Award for Outstanding Commitment to Social Work Regulatory Board Service is named in memory of Glenda McDonald, a former Administrator of the Ontario College of Social Workers and Social Service Workers. She served on a variety of ASWB committees and task forces from 2010 until her passing in 2015.





# Criteria – Sunny Andrews Award

Extraordinary commitment as a board member to a social work regulatory board in the following areas:

- Upholding the integrity of a member board's functioning and processes
- Enforcing the ethical performance of a member board
- Giving selflessly of personal time and effort to support the work of a member board



# Criteria – Glenda McDonald Award

Extraordinary service as staff to a social work regulatory board in the following areas:

- Promoting the ethical, responsible, and effective functioning of a member board
- Facilitating a fair, efficient, and responsible process for legal regulation in a member jurisdiction or on behalf of a member board
- Educating the public and the profession on legal regulation



# Presentation of the awards

- ASWB pays travel and lodging for each recipient to attend the Annual Meeting in its entirety, usually held in the fall
- The awards luncheon is held on the last day of the Annual Meeting, and award recipients' guests are invited to attend
- Remarks and the award are customarily presented by the nominator, if attending



# Michelle Mayhew, MSN, MBA/HCM, RN-BC

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WV Board of Licensed Practical Nurses





# Objectives

- Explain the Regulatory Achievement Award presented by National Council State Boards of Nursing.
- Explain what accomplishments were required of the WV LPN Board in order to achieve the award.

# Regulatory Achievement Award

The Regulatory Achievement Award recognizes the member board or associate member that has made an identifiable, significant contribution to the mission and vision of National Council State Boards of Nursing (NCSBN) in promoting public policy related to the safe and effective practice of nursing in the interest of public welfare.

# Accomplishments

- Board was chosen by NCSBN to be the pilot Board
- Development of a Process Manual
- Dual online renewal process
- Continued implementation of all applications to the online version
- Discipline complaint form currently online
- Currently moving into Phase 2.

# Summary

- Video



# Bill Hegarty, JD

---

Deputy Director

State of Ohio Counselor, Social  
Worker & Marriage and Family  
Therapist Board



# Objectives

- Introduce the Board:
  - Define and explain the role of the Board
- Provide a snapshot of what we do:
  - the investigative process
- Explain the Service Award given to our Investigation Department
  - 2016 Award- Service to the Ohio Association for Marriage and Family Therapy

## State of Ohio Counselor, Social Worker & Marriage and Family Therapist Board

- The CSWMFT Board is a composite board that licenses counselors, social workers and marriage and family therapists.
- Ohio currently has approximately 26,000 social workers, 9000 counselors, and 400 marriage and family therapists.
- Primary role of the Board:
  - **Protect the Public**
  - **Enforce the ORC State Laws, and OAC Administrative Rules**

# Investigation Process

- Identify records and documents needed: Public, courts, internet, etc.
- Subpoena personnel files, client records.
- Identify potential witnesses, interview as needed:
  - Client, supervisor, peer, employer?
  - Licensee/Respondent: Can interview at the board offices or on site.
- Obtain respondent's written statement:
  - Have the respondent give a full explanation in their own words, the matters discussed during the interview
- Report of investigation (contains three parts):
  - Basis for investigation- allegation, relevant rule or law
  - Evidence- witnesses, admission, records, etc.
  - Summary and Recommendation- violation or none found. If a violation-does this warrant discipline?

## Ohio Association for Marriage and Family Therapy 2016 Service Award

- The OAMFT Association gives the Service award yearly, to someone who provides outstanding service to the advancement of Marriage and Family Therapists in Ohio.

### Why were Ohio Investigators honored?

- “Keeping professionals practicing ethically is not only in the best interest of the public, but in fact it is in the best interest of every MFT in Ohio.”
- “As they investigate, they not only recommend appropriate disciplinary courses for those who are seriously practicing unethically, but they also educate the rest of us on our potential growth and blind spots.”
- “They treat our licensed professionals and registered students with respect even if they are without a doubt practicing in an unethical way.”

## Ohio Association for Marriage and Family Therapy 2016 Service Award

- Board Investigators have training in investigations, advanced analysis of written statements, advanced interviewing techniques, and comprehensive understanding of ORC 4757 and OAC 4757, as well as over 60 years of combined experience.
- Board investigators understand the potential impact on a licensee's ability to practice.
- Board investigators strive for **Consistency**
  - What disciplinary actions have been taken in similar cases in the past?
  - If the board has usually required one year supervision for a record keeping violation, we should not impose four years in a similar case.

## Contact:

- Bill Hegarty, JD, Deputy Director  
CSWMFT Board

77 S. High St. 24<sup>th</sup> floor

Columbus, OH 43215

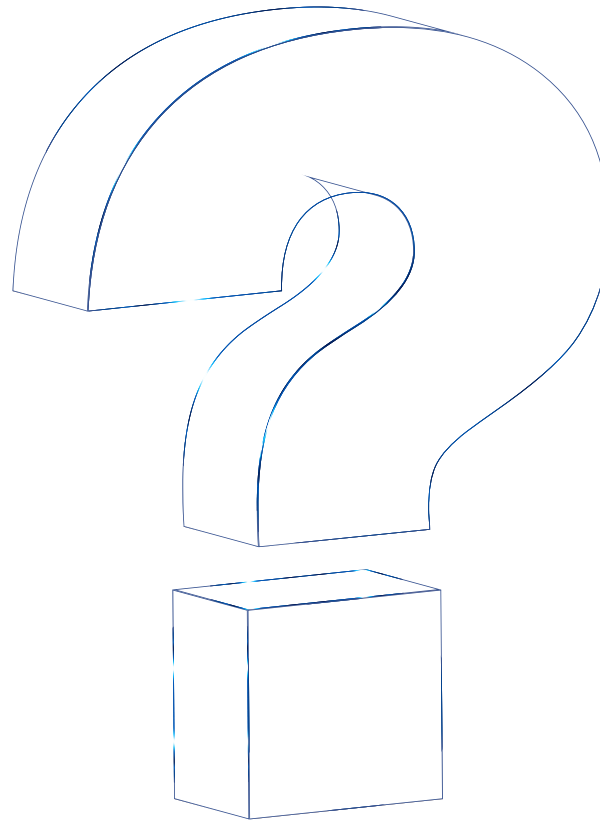
614-728-4360

[Bill.hegarty@cswb.ohio.gov](mailto:Bill.hegarty@cswb.ohio.gov)

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[Tammy.tingle@cswb.ohio.gov](mailto:Tammy.tingle@cswb.ohio.gov)

# Questions





# A Legislative Mandate for Board Collaboration – The ND Experience

---

- Margo Adams Larsen, Ph.D.
  - *President - ND State Board of Psychologist Examiners*
- January 27, 2017
- 3:00 pm – 3:45 pm



# Key Objective

Common sense regulation ...

... benefits from interdisciplinary collaboration ...

... of regulatory board and public perspectives.

# Objectives

- Detailed analysis of legislation that mandated a collaboration between state boards
  - *designed to stimulate communications, efficiencies, and uniformity.*
- Address legislation
  - *Introduction and history*
- Address the process
  - *Collaborative training/meeting - continued working meetings*
- Address outcomes of the collaborative efforts
  - *Collaborative Report – testimony to legislators*
- Resulting implementations
  - *Updates from Boards*

# Detailed Analysis of Legislation

- 64<sup>th</sup> Legislative Assembly of North Dakota (*meets every 2 years*)
- In Regular Session Commencing Tuesday, January 6, 2015
- HOUSE BILL NO. 1048
- (Legislative Management)
- (Human Services Committee)
- *AN ACT to provide for behavioral health licensure boards to each develop a plan, in collaboration with the other boards, for the administration and implementation of **licensing and reciprocity standards** for licensees.*

## *...Detailed Analysis of Legislation*

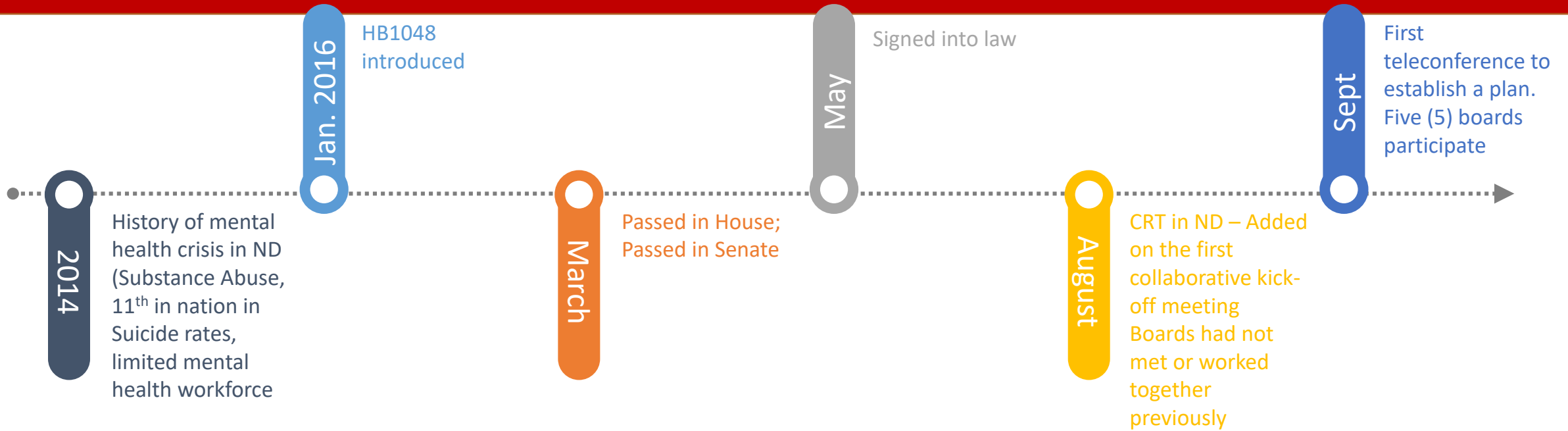
- BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:
- **SECTION 1. BEHAVIORAL HEALTH LICENSURE BOARDS - PLAN FOR ADMINISTRATION AND IMPLEMENTATION OF LICENSING AND RECIPROCITY STANDARDS FOR LICENSEES - REPORT TO LEGISLATIVE MANAGEMENT.**
  - Two Requirements

## *...Detailed Analysis of Legislation*

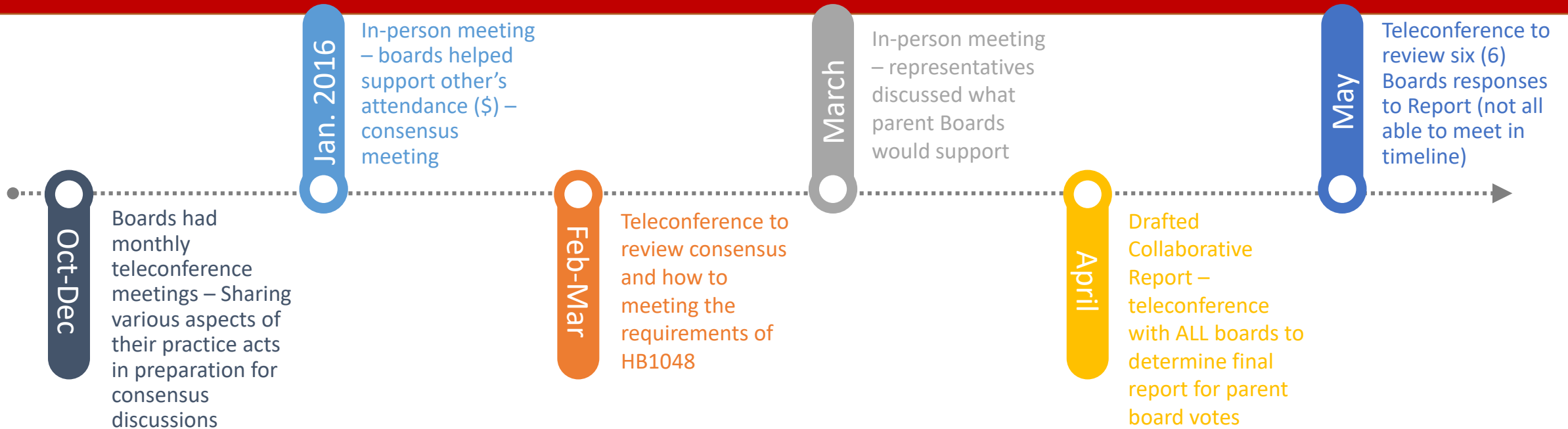
- 1. During the 2015-16 interim, the board of **addiction counseling** examiners, board of **counselor** examiners, North Dakota board of **social work** examiners, state board of **psychologist** examiners, state board of **medical examiners**, and North Dakota **marriage and family therapy** licensure board, **shall**, in collaboration with the other boards, develop a plan for the administration and implementation of licensing and reciprocity standards for licensees. The plan must include a standard for issuance of licenses to qualified applicants in a timely manner. The boards **shall** evaluate whether regional, national, or international licensing and reciprocity standards are adequate for licensure in the state.
- 2. Before July 1, 2016, each board **shall** present its findings, the proposed plan, and any legislative changes necessary to implement the plan, to the legislative management.

# ND HB1048

*How did we get here?*

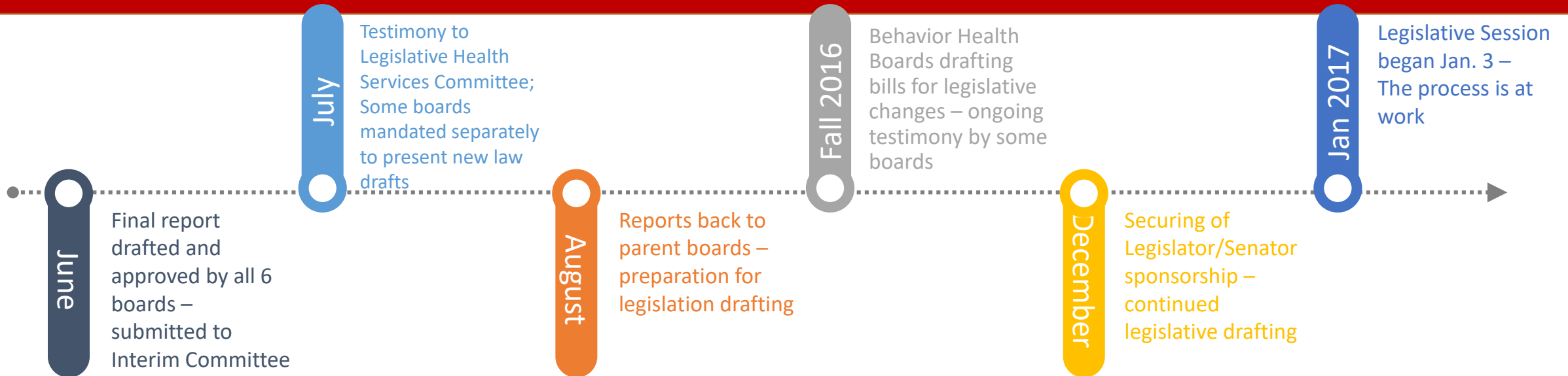


## ...ND HB1048 *How did we get here?*





## ...ND HB1048 *How did we get here?*



# Collaborative Process

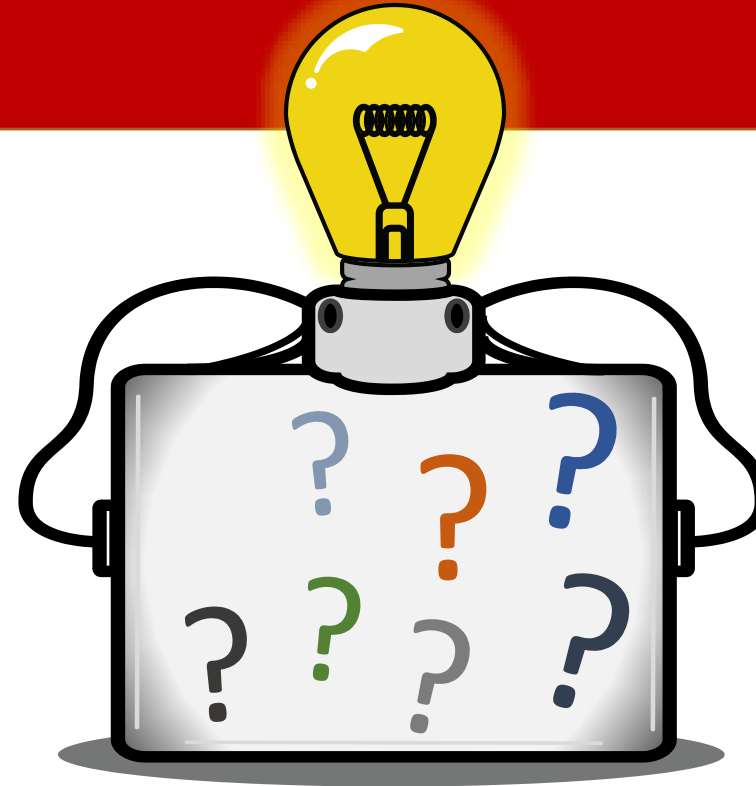
- Introduction of each board to the group by occupation and scope
- Meetings reviewed:
  - Licensing requirements
  - Licensing processes
  - “Reciprocity” concepts
  - Supervised practice requirements
  - National standards for each occupational area
  - Board perspectives of challenges in public protection/workforce needs
- Established definitions (mobility related; licensing ‘status’)

# Outcomes

- Consensus Statements
  - What boards had in common or could agree upon for:
    - **Administration and Implementation** of licensing and reciprocity standards for licensees from a public protection perspective
    - **Practicalities and Operating Efficiencies** of licensing and reciprocity standards for licensees from a public protection perspective
- Consensus Recommendations
  - What boards assessed to meet the needs of the public in ND with regard to licensing efficiency and consistent standards

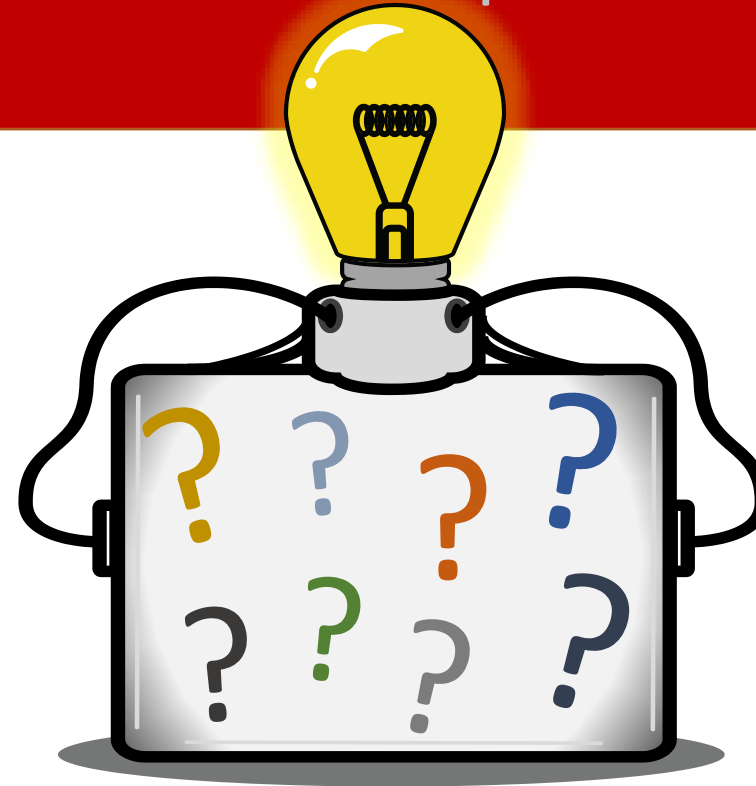
# Consensus Statements – Admin Implementations

- 1 Service to a recipient in ND constitutes practice in ND.
- 2 Require an APPLICATION and fees, burden is on applicant.
- 3 Require attainment of EDUCATIONAL standards.
- 4 Require attainment of TRAINING standards.
- 5 Require passing of a NATIONAL EXAMINATION.
- 6 Require attainment of SUPERVISED PRACTICE standards.
- 7 Require CONTINUING EDUCATION for renewal.
- 8 Facilitates for PROFESSIONAL MOVEMENT into ND.



# Consensus Statements – Practical Operations

- 1 Average license issue time of **1-week**  
– upon completion of all requirements
- 2 For professional mobility, ND needs to match **national** standards.
- 3 Minimal changes for each NDCC Chapter would bring ND standards in sync with **national occupation-specific standards**
- 4 No consistent international standards and number of applicants are small
- 5 Work-force related issues are not due to regulatory barriers or board inefficiencies
- 6 No authority over employment standards or insurance reimbursement requirements
- 7 No authority, nor purview, to advocate for workforce, employers, insurance carriers, or professions.
- 8 Welcome **funded** opportunities to interact with other State regulators.

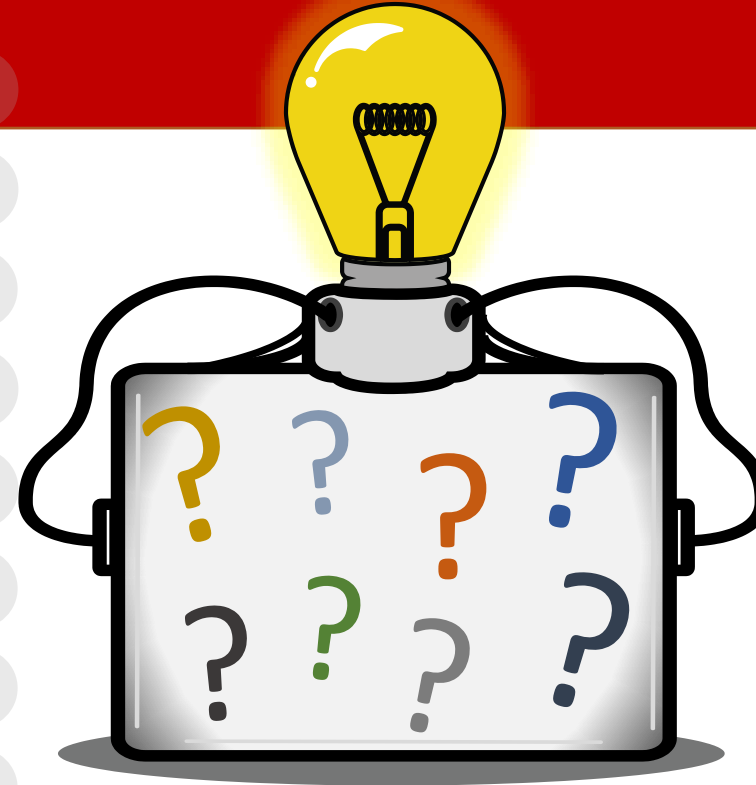


# Outcomes – Discussion

- Standards for licensing existed
- Efficient processes were generally in place
- Completion of applications in a timely manner was common issue
- There were national standards that could make consistency in licensing across the 6 state boards more difficult, and not mobility-friendly
- Workforce issues were not impacted by regulations but by employer or insurance related challenges

# Collaborative Recommendations

- 1 Mandate ND employers and insurance carriers to use ND occupational licensing standards – limited cost to gov't.
- 2 Maintain autonomous boards with ND standards mapped to **national occupational standards** – no cost.
- 3 Adopt **EXPEDITED LICENSURE** model for mobility/ portability of licensure – minimal to moderate cost to boards.
- 4 Appropriation of funds to Governor's Office to expand operational efficiencies for smaller boards.
- 5 Appropriation of funds to Governor's Office for designated purpose of yearly meetings of ALL regulatory Board Chairs and Board Managers.
- 6 Require background checks for all new issue licenses – moderate cost to boards and minimal cost to applicants.
- 7 Standardization of CE reporting and renewal processes – moderate cost to board.
- 8 Mechanism to share disciplinary action between ND boards and to public – minimal cost.
- 9 Consistency of telepractice laws/rules across all behavioral health boards – minimal to moderate cost.
- 10 **Aspire** to consistency in statutory language across all licensing professions by use of **model language** to promote consistent format, mechanism, procedures, and issuance of licenses – cost prohibitive.



# All the wiser...

- Legislators lack knowledge for educational, training, and examination terms/requirements
  - Internship, Training, & Supervision
- Legislators are not necessarily interested in public protection
- Legislators are not sympathetic to financial constraints of boards (“raise your fees”)
- Value in “friends” in legislation



# Resources for Report/Process - \$59,400\*

Item	Detail	Total Invested
Cost for Meetings	August Reg. 6 x \$150 = \$900 Travel to Bismarck 3 x \$500 = \$1500 Travel to GF from BIS 2 x \$500 = \$1000 Travel to GF from FAR 1 x \$100 = \$100	\$3400
Office Costs (estimated)	5 boards x \$200 = \$1000	\$1000
Time spent in meetings	August 2015 = 6 x 8hrs = 48 Monthly = 6 x 6 x 1hrs = 36 Jan & Mar = 5 x 8hrs = 40	124hrs
Time spent preparing materials	Monthly = 4 x 5 x 2hrs = 40 Jan & Mar = 5 x 2hrs = 10 Apr & Jun = 6 x 4hrs = 24	74hrs
Travel time	August = 3 x 10hrs = 30 Jan & Mar = 2 x 10hrs = 20 Mar = 1 x 2hrs = 2	52hrs
Coordination time	August 2015 = 5hrs Monthly = 4 x 1hr = 4 Jan & Mar = 2 x 4hrs = 8 Apr & Jun = 2 x 4hrs = 8	25hrs
Total Time	<i>(professional time estimated at \$200/hr)</i>	275hrs

# Resulting Implementation – Breaking News...

- ND State Board of Psychologist Examiners
  - Expedited Licensure (replaces reciprocity)
  - Proposed law changes that would increase board efficiency
  - Common language changes
  - Brevity in law – expanded concepts in rule (i.e. remove names of non-regulatory organizations)
  - COMPACT considerations

## ...Resulting Implementation – Breaking News...

- ND Board of Counseling Examiners
  - Prior to report completion, sent out letters to the other jurisdictions regarding reciprocity agreements
  - Continued board discussion as to how to address some of the issues such as administrative changes, however these take time and no initiation yet.
  - Another SB has been introduced by a Senator to change supervision requirements, along with those of the Social Work Board, Addiction Counselors Board, and MFT Board. Unfortunately, each of these boards were unaware of this pending bill and were not included in the drafting.

## ...Resulting Implementation – Breaking News...

- ND State Board of Social Work
  - Planning to introduce legislation to align statute with the ASWB (Association of Social Work Boards) Model Law. This is in hopes that reciprocity applicants will have a smoother process of obtaining licensure once most, if not all, states align with this Model Law.

## ...Resulting Implementation – Breaking News...

- ND Board of Addiction Counselors Examiners
  - Submitted a bill, which would alter the definition of Addiction Counseling and authorize the creation of a Master's level license for Addiction Counselors (Masters Addiction Counselor - MAC).
  - During the past summer introduced Recovery Coach requirements within their on-going legislative change process

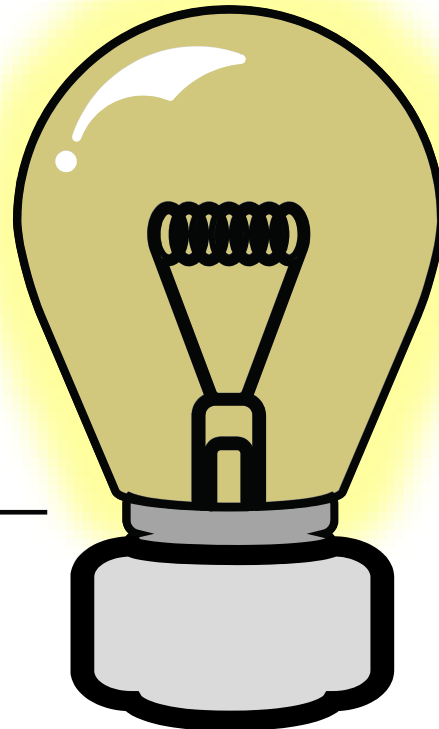
## ...Resulting Implementation – Breaking News...

- ND State Board of Marriage and Family Therapy
  - Updating the Administrative Code (NDAC Title 111)
  - New board administration procedures for applicants licensed elsewhere
    - For endorsement into ND Board member and ED review, if there are no concerns, the application is approved and applicant interviewed on the same date (removes 4-6 week lag time between these two) Applicants still must wait for background check clearance.
- ND Board of Medicine
  - DON'T PARTICIPATE in collaborative communication

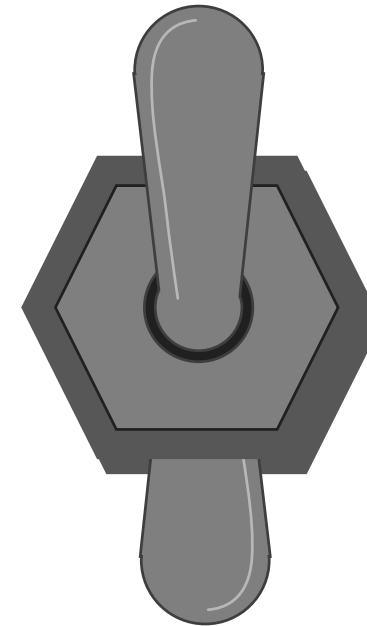
# Collaborative Board Networking

- Regulates the professions in the interest of protecting the public health, safety, and welfare

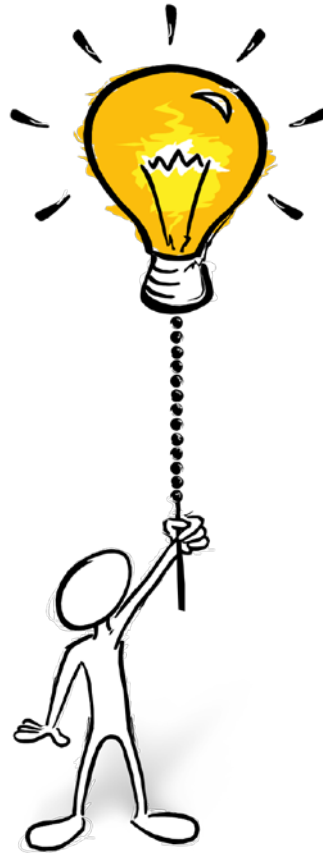
Connecting  
boards together  
brings knowledge  
of commonalities  
and barriers...



...and lights our  
common path  
to efficient  
and effective  
public protection  
and enhanced  
provider mobility



# Questions/Discussion





# Accessibility Isn't Optional

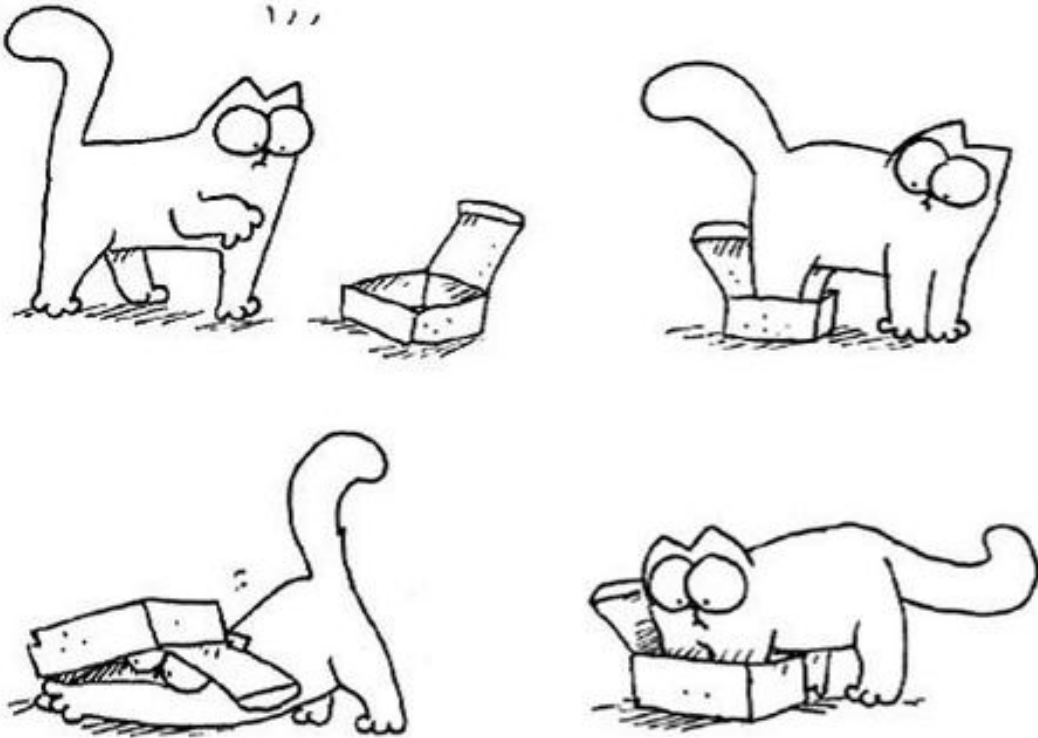
---

- Jeremy Abbott
- Texas NIC
- January 27, 2017
- 1:45PM



# Accessibility isn't optional

#a11y-farb



*Simon's Cat*



TEXASNIC  
Jeremy Abbott

And curiosity isn't just for cats.

Planes, pizzas, and calculators

#a11y-farb



@jabbott

*art, design, music,  
user experience/a11y*

# Enabling curiosity

#a11y-farb



We all deserve the opportunity to  
**learn, explore,  
and succeed**

regardless of our limitations or  
preferences.

# Changing the process

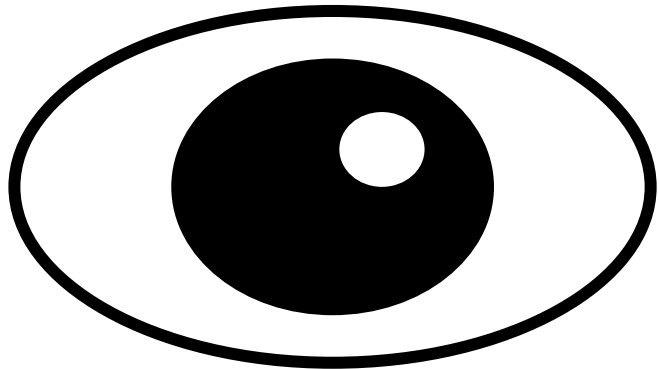
#a11y-farb

1. Planning
2. Design
3. Develop
4. Test
5. Release

Bake in accessibility  
from the beginning

# Seeing optional

#a11y-farb

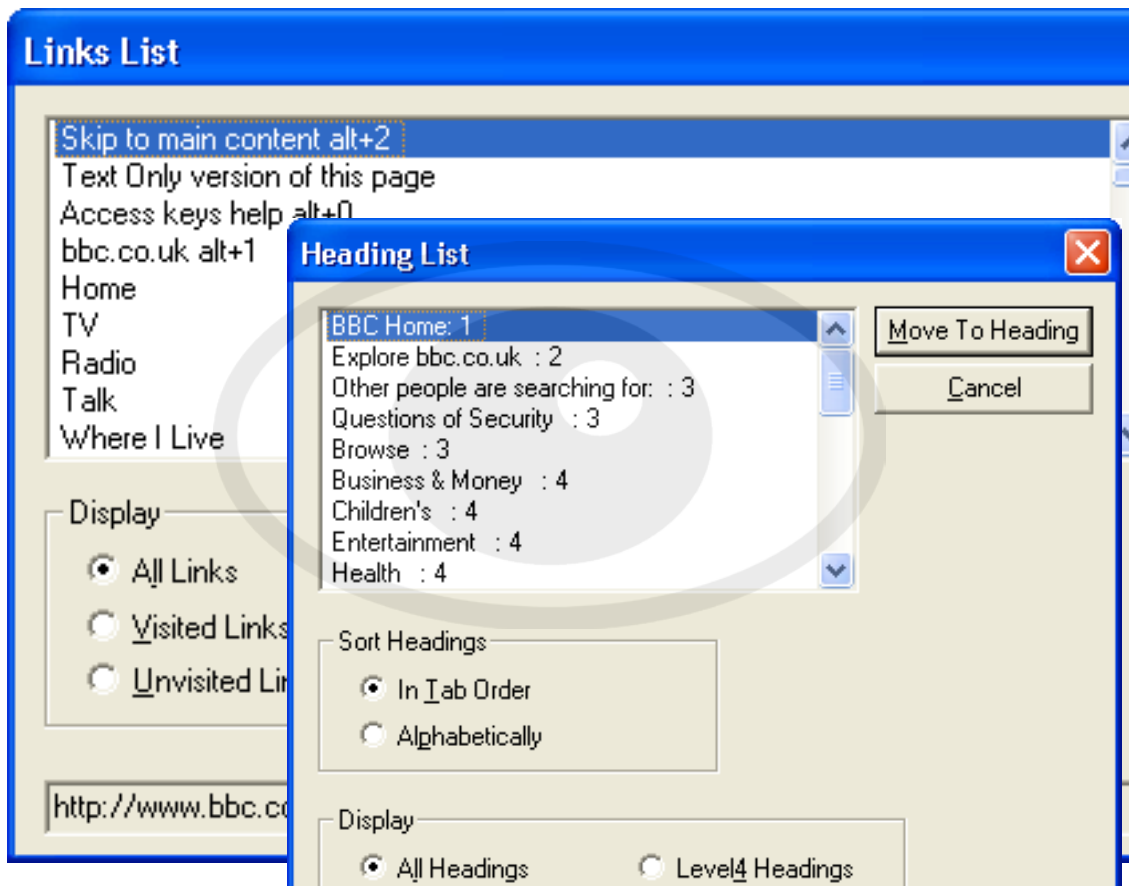


## Types

- Legally blind
- Limited vision
- Colorblind
- Environmental
- Search engines

# Seeing optional

#a11y-farb



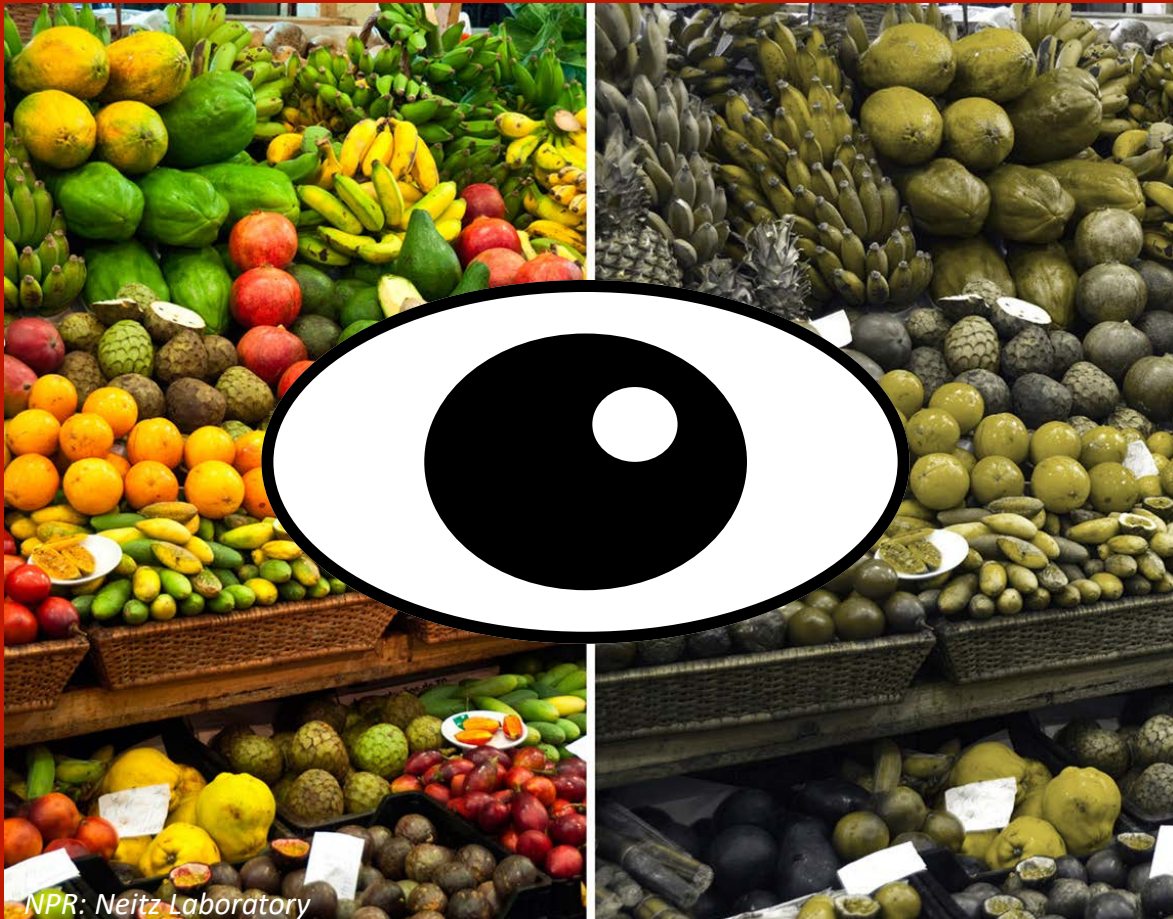
## Techniques

- Logically grouped content
- Clear titles, links and form labels
- Hidden skip links



Color optional

#a11y-farb



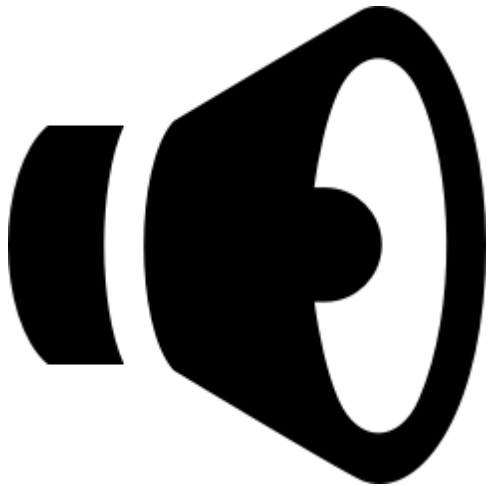
## Techniques

- Color meaning optional
- Sufficient contrast
- Color labels or descriptions



# Hearing optional

#a11y-farb



## Types

- Deaf
- Hard of hearing
- Prefers quiet

# Hearing optional

#a11y-farb



## Techniques

- Video captions
- Visual alerts
- Alternate to audio content

## Mice optional

#a11y-farb



### **Types** (keyboard or voice)

- Vision impairment
- Mobility impairment
- Some power users

# Mice optional

#a11y-farb



## Techniques

- Logical tabbing
- Skip links
- Selection traps

## Rabbits optional

#a11y-farb



### Types

- Mobility
- Cognitive
- Tired parents

# Rabbits optional

#a11y-farb



**Your online banking session will end in 2 minutes due to inactivity**

As a security precaution, if there is no additional activity in your online banking session, the session will end. You will be brought to the home page.

If you wish to continue your online banking session, choose the "Continue" button.

OK



[close](#) 

## Techniques

- Notify of time limits
- Extendable sessions
- Simple clicks

Focus optional

#a11y-farb



## Techniques

- Clear location
- Easy to read
- Chunk forms
- Auto-save



# Changes to regulations

#a11y-farb



- Section 508 Refresh
- Compliance Dates
- Safe Harbor Clause
- Disclaimer



Thank you

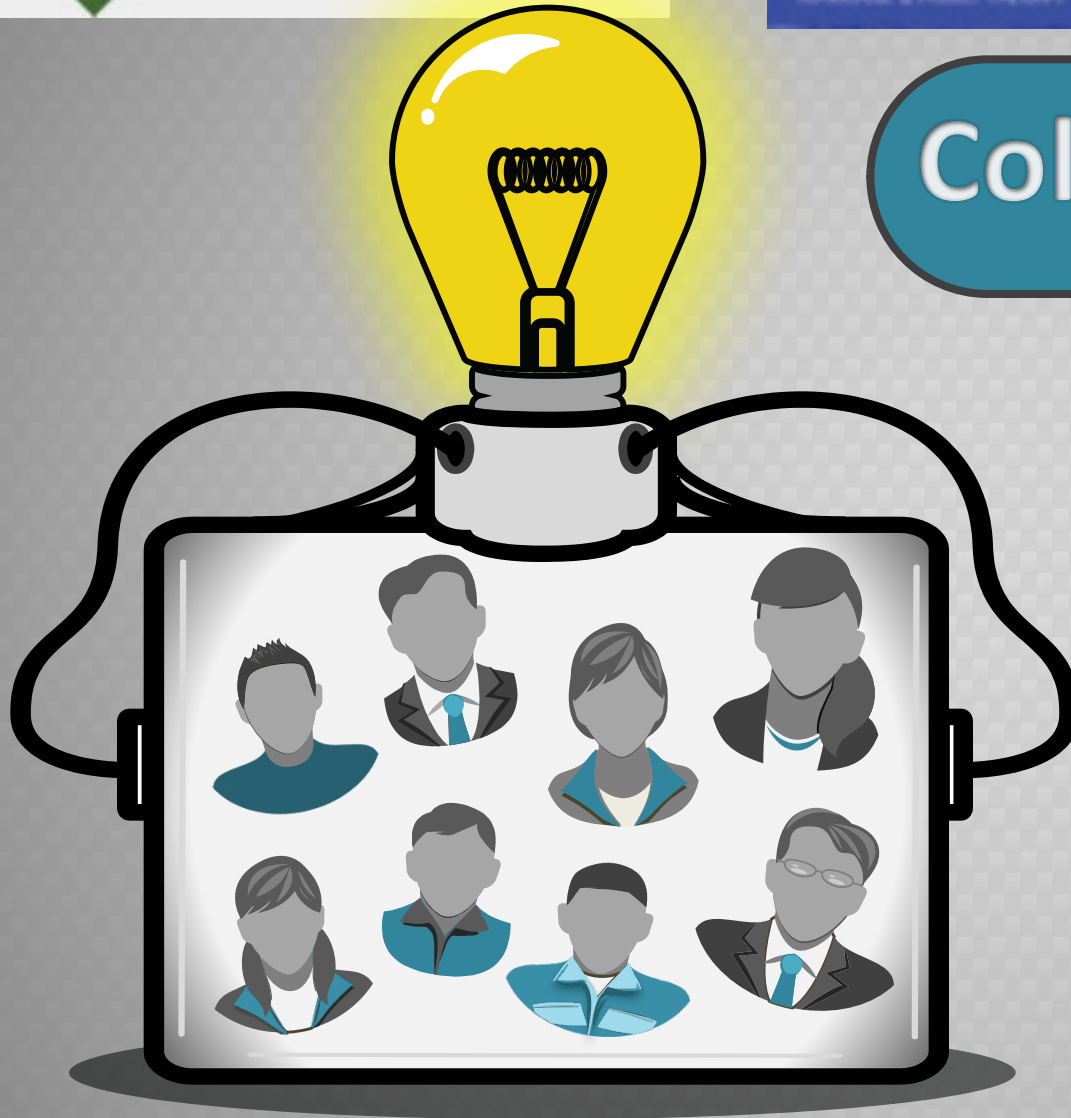
#a11y-farb



TEXASNIC



@jabbott



# Collaborative Report

ND Behavioral Health Boards  
Mandated Response to  
HB1048

Presentation to the:  
Legislative Health Services  
Committee

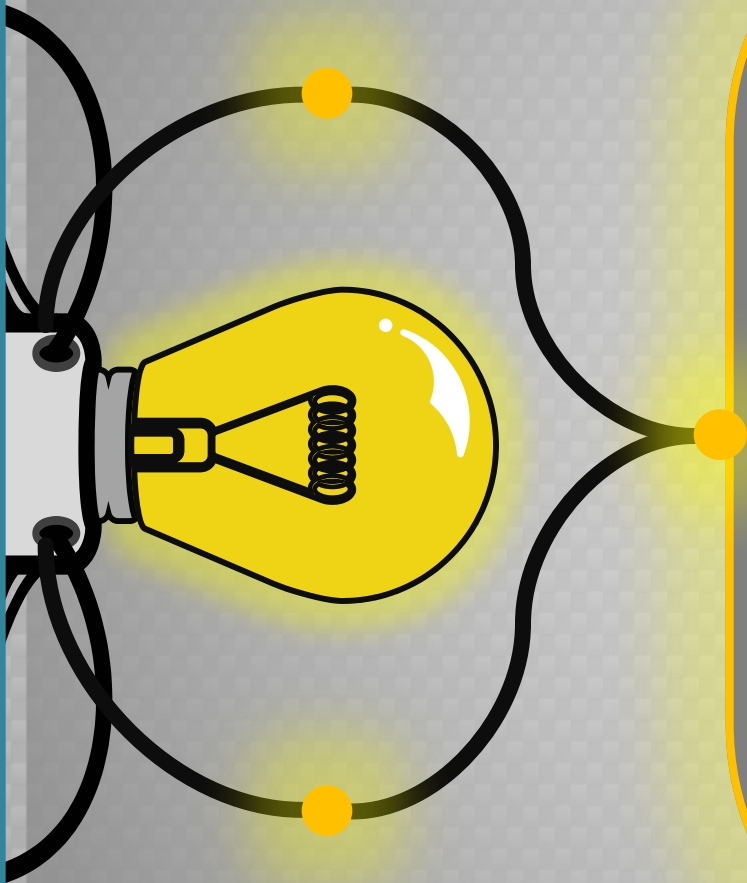
July 27, 2016  
12:30pm  
State Capital, Bismarck

NORTH DAKOTA  
**Board of Medicine**

**ndsbpe**  
ND Board of  
Psychologist Examiners



ND Board of Social  
Work Examiners



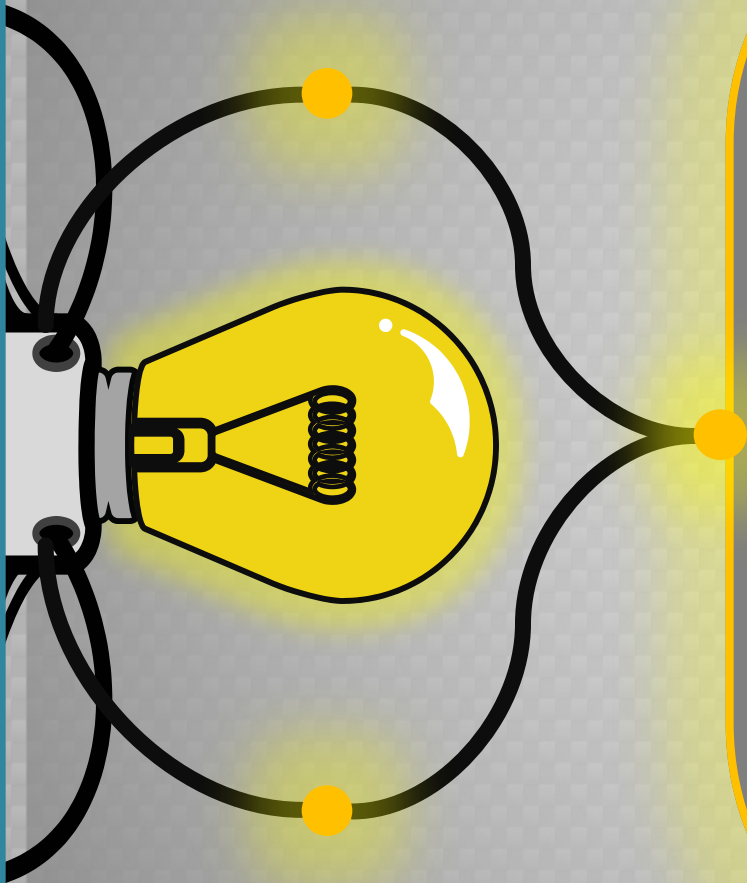
## Testimony Outline

- ☐ Regulatory Boards
- ☐ HB1048
- ☐ Collaboration Procedures
- ☐ Consensus Statements
- ☐ Report Recommendations
- ☐ Supplemental Info Request



## Regulatory Boards

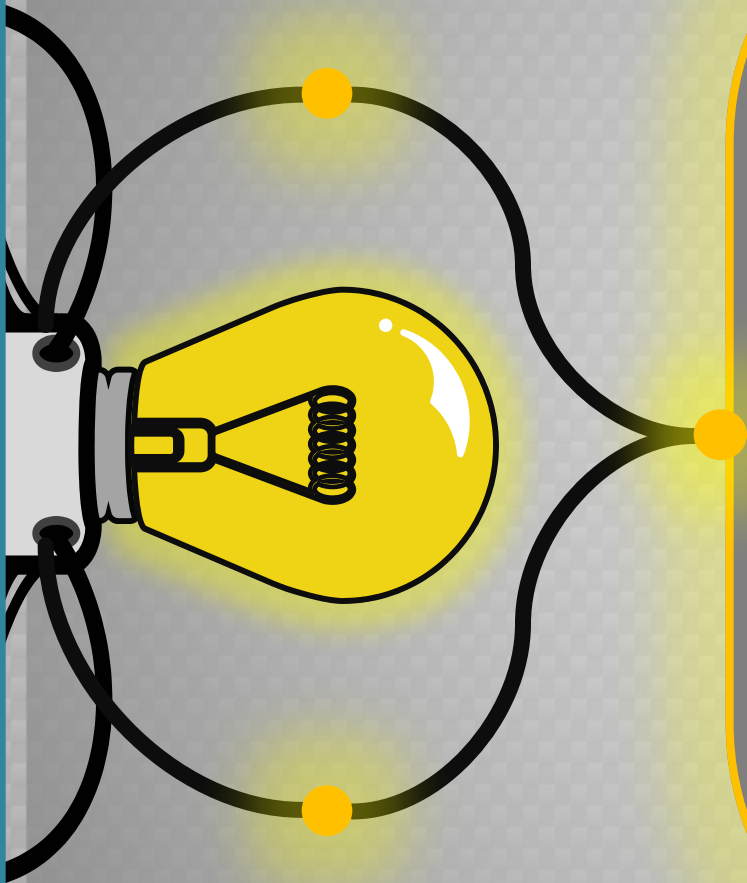
- ☐ Members are unpaid volunteers who dedicate their time and service to regulate the professions in the interest of protecting the public health, safety, and welfare
- ☐ Appointed by the Governor
- ☐ Function of the executive branch of ND State Government
- ☐ Members are REGULATORS, not professional advocates (*NC State Board of Dental Examiners v. FTC, Feb. 2015*)



## House Bill No. 1048

- ☐ Enacted in 2015
- ☐ Six (6) Behavioral Health licensure boards
- ☐ Develop a plan for administration and implementation of licensing and reciprocity standards for licensees
- ☐ Plan for issuance of licenses in a timely manner
- ☐ Evaluate whether regional, **national**, or international licensing and reciprocity standards are adequate for licensure in ND





## Collaboration Process

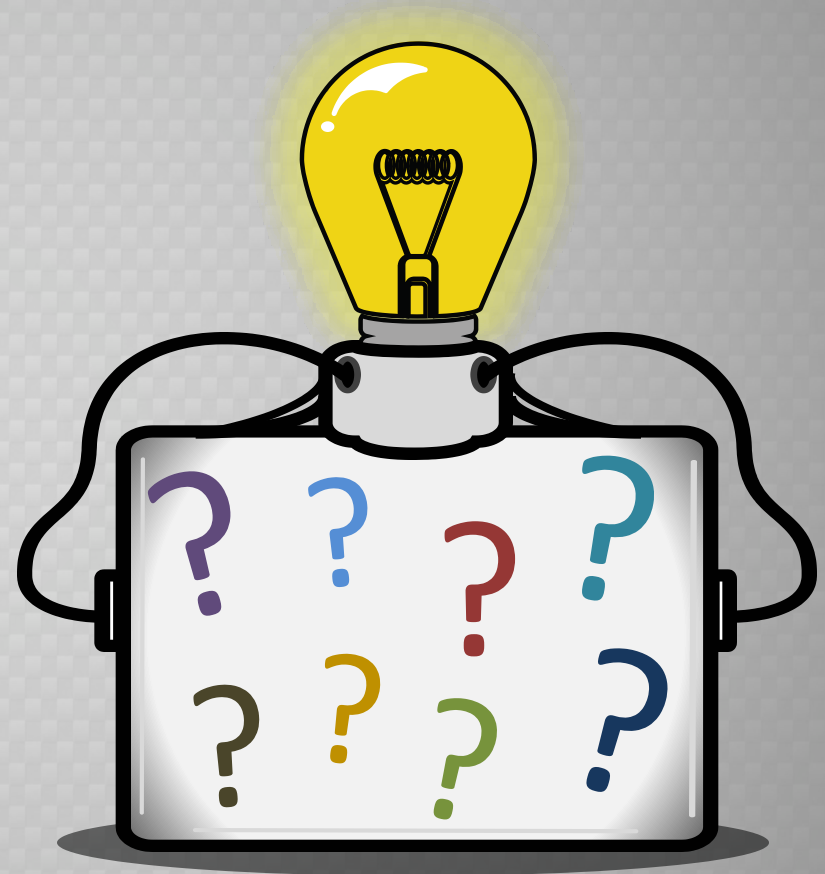
- ❑ Prior to the HB, a plan was already underway for a collaborative training for all ND regulatory boards in August 2015
- ❑ At the end of this training, the presenter facilitated the first planning meeting of the 6 behavioral health boards in response to HB1048
- ❑ Several teleconferences and two more in-person meetings were held based on a collaborative consensus process model
- ❑ Volunteer Board members have spent in excess of 275 hours on this process
  - ❑ 42-page report

# Consensus Statements

**Administration and Implementation** of licensing and reciprocity standards for licensees from a **public protection perspective**

ALL 6 Occupational Boards:

- 1 Service to a recipient in ND constitutes practice in ND.
- 2 Require an APPLICATION and fees, burden is on applicant.
- 3 Require attainment of EDUCATIONAL standards.
- 4 Require attainment of TRAINING standards.
- 5 Require passing of a NATIONAL EXAMINATION.
- 6 Require attainment of SUPERVISED PRACTICE standards.
- 7 Require CONTINUING EDUCATION for renewal.
- 8 Facilitates for PROFESSIONAL MOVEMENT into ND.



# Consensus Statements

**Practicalities and Operating Efficiencies** of licensing and reciprocity standards for licensees from a **public protection perspective**

ALL 6 Occupational Boards :

1

Average license issue time of **1-week**  
– upon completion of all requirements

2

For professional mobility, ND needs to match **national** standards.

3

Minimal changes for each NDCC Chapter would bring ND standards in sync with **national occupation-specific standards**

4

No consistent international standards and number of applicants are small

5

Work-force related issues are not due to regulatory barriers or board inefficiencies

6

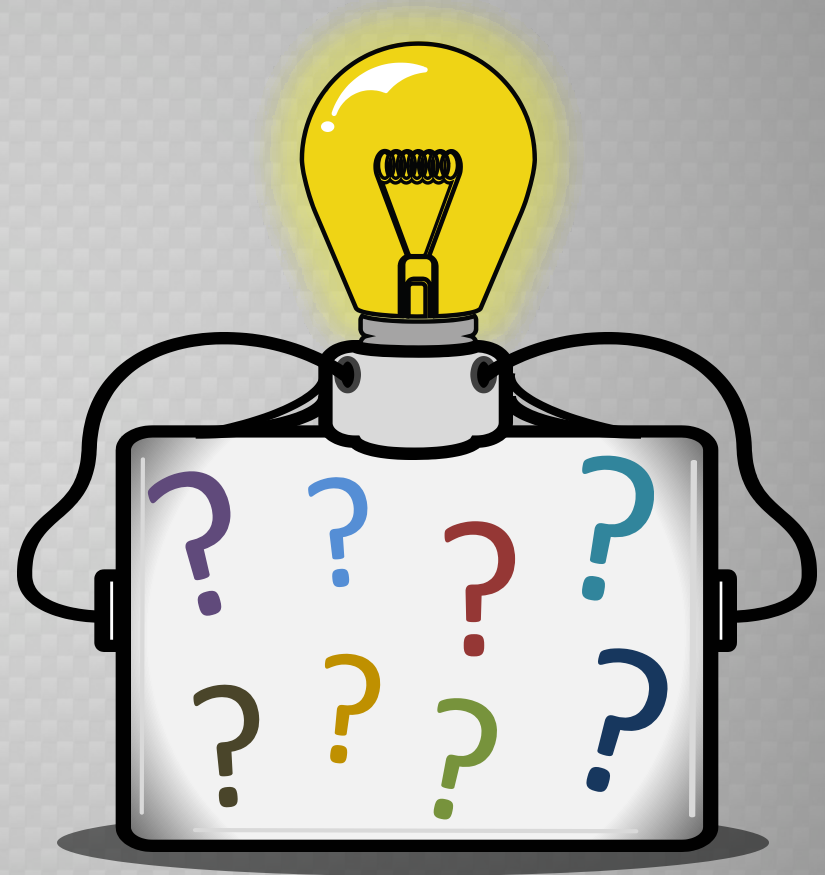
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7

No authority, nor purview, to advocate for workforce, employers, insurance carriers, or professions.

8

Welcome **funded** opportunities to interact with other State regulators.



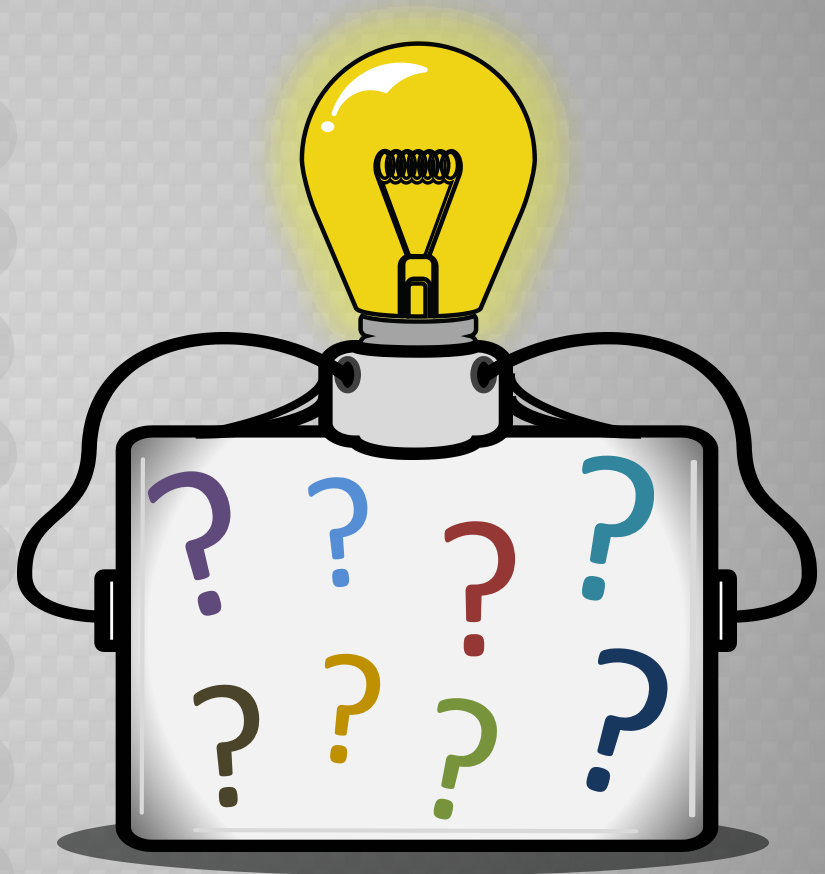


# Collaborative Recommendations

## Administration & Implementation

of licensing and reciprocity standards for licensees from a **public protection perspective**

- 1 Mandate ND employers and insurance carriers to use ND occupational licensing standards – limited cost to gov't.
- 2 Maintain autonomous boards with ND standards mapped to **national occupational standards** – no cost.
- 3 Adopt **EXPEDITED LICENSURE** model for mobility/ portability of licensure – minimal to moderate cost to boards.
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- 9 Consistency of telepractice laws/rules across all behavioral health boards – minimal to moderate cost.
- 10 **Aspire** to consistency in statutory language across all licensing professions by use of **model language** to promote consistent format, mechanism, procedures, and issuance of licenses – cost prohibitive.



# Internship, Training, & Supervision

## NDBACE

1400hrs.  
Reqs set by  
the Board for  
training and  
supervisors,  
training  
consortiums  
approved by  
the Board

## NDBCE

700hrs.  
Reqs set by  
program;  
Board only  
has authority  
over  
supervisor  
requirements

## NDBOM

NO DATA  
PROVIDED

## NDBSWE

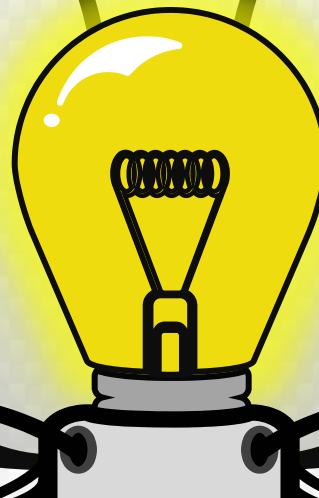
Not  
Applicable/  
Not  
Required

## NDLMFTB

2000hrs.  
Reqs set by  
COAMFTE  
and Master's  
Program;  
Board only  
has authority  
over  
supervisor  
requirements

## NDSBPE

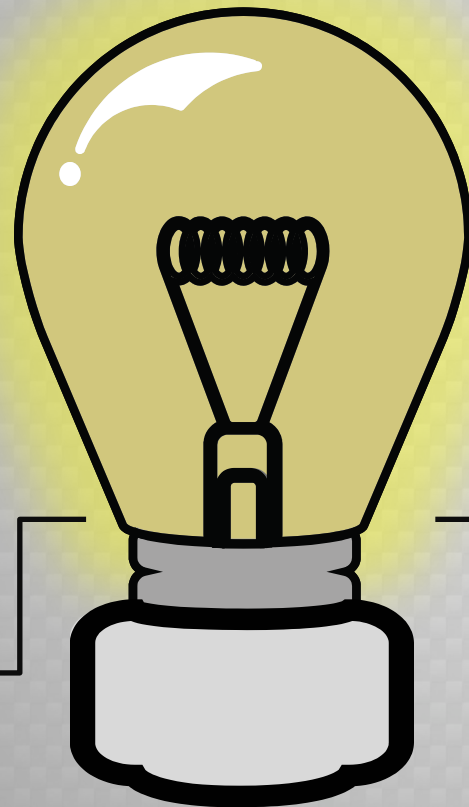
3000hrs.  
Reqs set by  
program;  
Board only  
has authority  
over Psych.  
Res.  
supervisor  
requirements



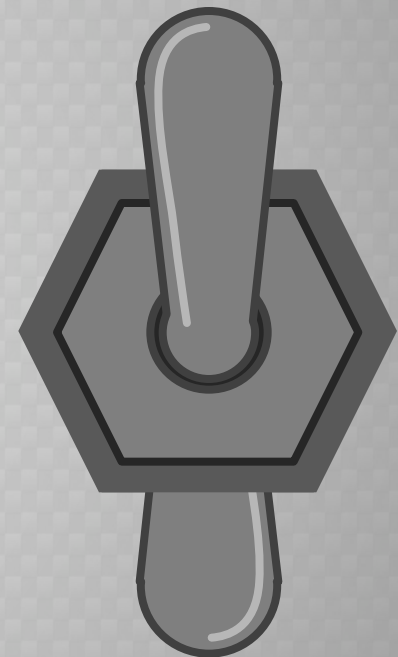
# Collaborative Behavioral Health Boards

Regulate the professions in the interest of protecting the public health, safety, and welfare

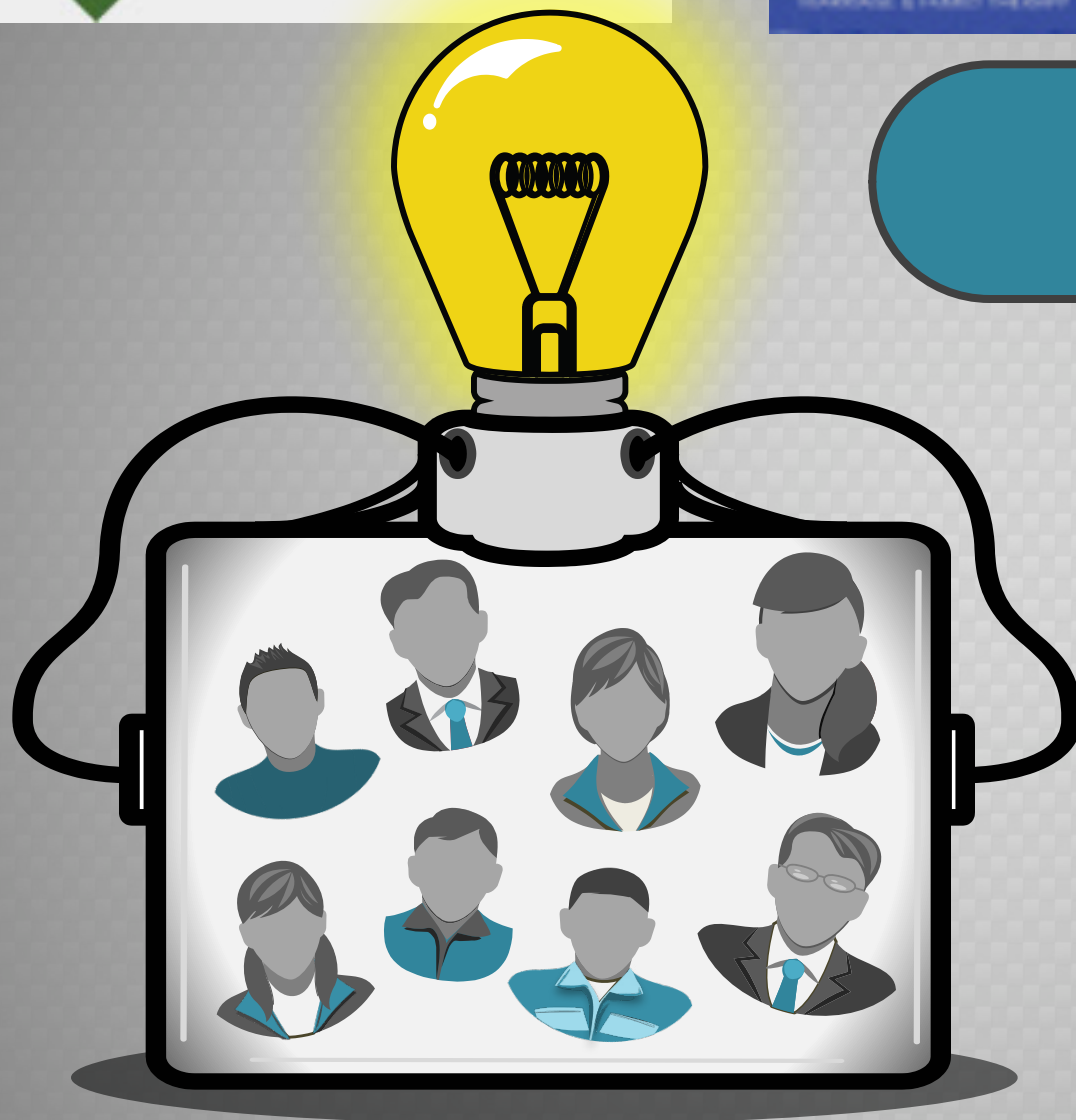
Connecting boards together brings knowledge of commonalities and barriers...



...and lights our common path to efficient and effective public protection and enhanced provider mobility







## Questions...

NDSBPE	Margo Adams Larsen, PhD, LP <i>Board President</i>
NDBACE	Julijana Nevland, PhD, LP <i>Board Vice Chair</i>
NDBCE	Marge Ellefson <i>Board Executive Secretary</i>
NDLMFTB	Larry J Giese, MDiv, MA, LMFT <i>Board Administrator</i>
NDBSWE	Heidi Nieuwsma, LICSW <i>Board Chair</i>
NDBOM	Duane Houdek <i>Board Executive Director</i>

NORTH DAKOTA  
**Board of Medicine**

**ndsbpe**  
ND Board of  
Psychologist Examiners



**ND Board of Social  
Work Examiners**

# Regulation In The News...



Friday, January 27<sup>th</sup>

3:30 pm - 4:15 pm



...And the Regulatory Mosh Pit



FARB Forum • January 26-29, 2017 • San Antonio, Texas

# Speaker

**Dale J. Atkinson, Esq.**

Executive Director & General  
Counsel, FARB

Atkinson & Atkinson, LLC

1466 Techny Road

Northbrook, IL 60062

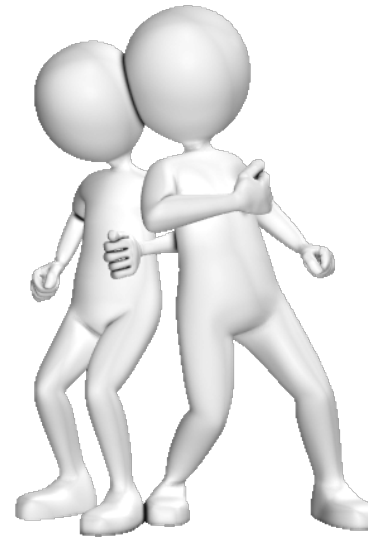
847-714-0070

[dale@atkinsonfirm.com](mailto:dale@atkinsonfirm.com)



# Definition

- **Definition of MOSH PIT**
- : an area in front of a stage where very physical and rough dancing takes place at a rock concert
  - Merriam-Webster
- You are free to dance, yes
- Physical and rough, no
- Music, yes
- Risk of injuries, low





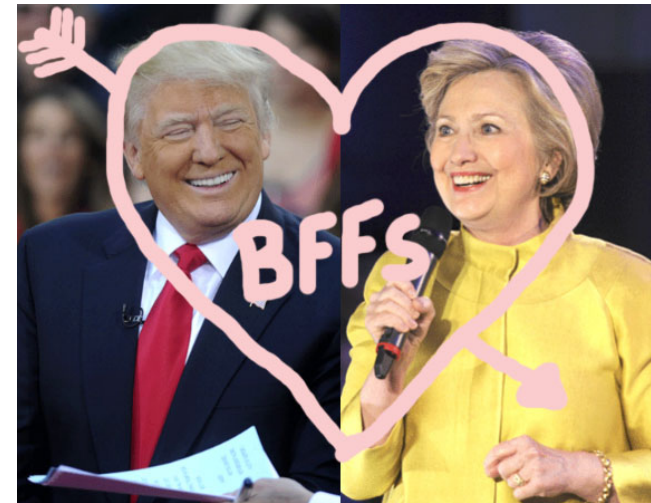
# Process

- Open forum to allow for comment, debate, discussion, argument, fisticuffs,.....anything goes.



**Orderly**

Or



**Disorderly**



# Anything Goes

- If there is a relevant topic on your mind, please bring it up.
- FARB looks to an interactive session whereby attendees are able to pose questions, gain opinions/answers, and engage in a dialogue with your peers.
- Look for the peak up prompt.....
- There will be a splash of FARB In the News to address the media's role and influence in the regulatory arena.

**Speak Up**

# Content

1. Short Survey
2. Public Nature of Final Adverse Actions
3. Speech, Advertising, Title Protection
4. Regulatory Changes
5. Applications and Renewals
6. Technology and Social Media
7. Examinations
8. Public Perception – Conflict of Interest
9. Mental health: online therapy and ADA

# Attendee Survey

- Is your/the profession self-regulated?

Yes    or    No

# Attendee Survey

- What is your board's biggest concern?

---

(10 words or less)

# Attendee Survey

- Is your/the board sufficiently funded?

Yes or No

# Attendee Survey

- Based upon your knowledge/understanding, the ideal regulatory structure involves (pick one)
  - Autonomous boards
  - Composite boards (boards that regulate multiple “related” professions)
  - Departmentalized structure
  - Federal licensure

# Attendee Survey

- Describe your profession's licensure eligibility criteria for purposes of endorsement/reciprocity (pick one)
  - Uniform
  - Mostly uniform
  - Not uniform

# Attendee Survey

- Please provide five distinct words to describe your experience with the regulatory board(s)

- ---
- ---
- ---
- ---
- ---



# Public Nature of Final Adverse Actions

- Public orders....mandated?
- Private orders...allowed?
- Pros and Cons to each..... Speak Up....



# Public Nature of Final Adverse Actions

- Regarding the complaint process and final adverse actions....what is available to the public?..... How?

## • Speak Up

- Complaint
- Investigation materials
- Decision to administrative prosecute
- Formal charge
- Hearing
- Final order

## Arizona lawmaker wants to get rid of hidden regulatory board discipline (February 2016) (1 of 3)

- In a 2014 newsletter to dental professionals, the *Arizona Board of Dental Examiners wrote that it's "good news" that the vast majority of board actions are hidden from the public and are eventually destroyed.*
- *"The good news though is that the non-disciplinary consent agreements are not available on the website and are only available for five years if the public should contact the board office,"* according to the September 2014 letter.
- <http://www.abc15.com/news/local-news/investigations/az-lawmaker-wants-to-get-rid-of-hidden-regulatory-board-discipline-after-abc15-investigation?autoplay=true> (Video 1:14)
- Link to Dental Board letter referenced:

[http://media2.abc15.com/html/pdf/Good%20News%20Letter%20\\_Highlighted.pdf?\\_ga=1.46524775.150276293.1484149403](http://media2.abc15.com/html/pdf/Good%20News%20Letter%20_Highlighted.pdf?_ga=1.46524775.150276293.1484149403)

## Arizona lawmaker wants to get rid of hidden regulatory board discipline (2 of 3)

- **Non-disciplinary actions**, which are purged after five years, are supposed to be used to address minor violations and issues.
- They account for **70 percent of the actions** taken by the board against dentists.
- However, a 2014 state audit questioned if the dental board is using them too often, allowing dentists to get off easy.
- Non-disciplinary actions are **only available if the public knows they exist and then requests them from the dental board in writing.**

## Arizona lawmaker wants to get rid of hidden regulatory board discipline (3 of 3)

- AZ SB 1443 that would have
  - Required boards to post all final adverse action on website
  - Required boards to post recorded copies of their meetings on website
  - Imposed term limits on board members
  - Revamped substance abuse programs for professionals
- Vetoed in May 2016..... Why? ....Speak Up

# Speech.....Advertising..... Title Protection

- Does your board have regulations/rules that limit advertising by licensees?
- Are the use of certain titles/acronyms limited by law to licensees?
- What about the use of private sector awarded credential(s)?
  - Board certified
  - Specialty
  - Other

*Speak Up*

## Alberta dentists sue their own governing body (March 2016)

- <http://www.calgarysun.com/2016/03/16/dentists-sue-their-own-governing-body>
- Suit relates to **advertising restrictions**
- It further suggests some dentists have been offered immunity from disciplinary action or a reduction in penalties in exchange for making a formal complaint to the Alberta Dental Association and College (ADAC) about the websites of other dentists.
- In addition, the dentists are hoping the province will step in to separate the responsibilities of the ADAC, **which serves both as a professional organization as well as a regulatory body.**

## Their name on the line, Texas engineering regulators head to court (April 2016)

- <http://www.mystatesman.com/news/news/state-regional-govt-politics/their-name-on-the-line-texas-engineering-regulator/nq6Ff/>
- Express Oil Change and Tire Engineers – tire rotation company sued for use of word **“engineers”**
- “On paper, the dispute is a technical legal argument over literally one word. Yet in a state proud of its regulatory light touch, the case is also ringing up legal bills for Texas taxpayers on a big-government pursuit that seems to defy common sense: **If regulators’ job is to protect the public, and there is no danger, what’s the fight over?”**
- Tire Engineers operates stores in 12 states. The company’s lawyer said all but Texas have said the company may use its name.
- A spokesman for the Mississippi Board for Professional Engineers and Surveyors said his agency is still deciding.



# Regulatory Changes

- More regulation
- Less regulation
- Change in “structure” of boards
- National...State...Local regulation
- Access to information
  - Regulatory boards
  - Law enforcement
  - judiciary

*Speak Up*

# Access to information

- Intrastate.....inter-profession (North Dakota example)
- Interstate...intra-profession
- Law enforcement to administrative boards
- Administrative to law enforcement
- Trade association to administrative boards
- Judiciary to administrative boards

Speak Up

## Local lawmaker calls for change after flaws revealed in monitoring of professional licenses (May 2016)

- <http://www.actionnewsjax.com/news/local/local-lawmaker-calls-for-change-after-flaws-revealed-in-monitoring-of-professional-licenses/279352716> (Video 2:07)
- Massage therapist arrested in Florida in **2011**; convicted of child molestation; events occurred in massage therapy sessions; incarcerated; **license voluntarily surrendered** in May **2016**.
- Former licensee now lives in Indiana. What do subsequent states know?

## Architects push for continuing education; Interior designers seeking state registration stand in the way (August 2016)

- <http://www.cpbj.com/article/20160812/CPBJ01/160819916/architects-push-for-continuing-education>
- Trade association (AIA) is pushing for mandatory continuing education in PA; association already requires CE for membership.
- **Interior designers seeking to be regulated** and be allowed to independently design and submit interior construction plans that affect non-load-bearing walls.
- The AIA argues that training for interior designers is not equivalent to that of licensed architects, so they shouldn't be given that added responsibility.

## Chicago to require pharmaceutical rep licenses despite industry objections (November 2016)

- <http://www.chicagotribune.com/business/ct-pharma-sales-licenses-chicago-1117-biz-20161116-story.html>
- **Ordinance** aims to curb opioid abuse. Pharmaceutical companies and other groups say ordinance does not address that problem.
- Starting July 2017, reps would need to be licensed, pay an annual \$750 fee, report data regarding physicians contacted, and complete 5 hours of professional education.
- Washington, DC has licensed reps for last 8 years at \$175/year fee.

# Pharmacies miss half of dangerous drug combinations

(November 2016)

- <http://www.chicagotribune.com/news/watchdog/druginteractions/ct-drug-interactions-durbin-pharmacy-20161216-story.html> (Video 5:10)
- 255 pharmacies were tested to see how often stores would dispense dangerous drug pairs without warning patients.
- 52% of the pharmacies sold the medications without mentioning the potential interaction, evidence of an industrywide failure that places millions of consumers at risk.
- Senator Dick Durbin is urging the federal [Centers for Disease Control and Prevention](#) to determine the prevalence of the problem nationally and to [issue guidelines to state boards of pharmacy and private industry groups.](#)

# Applications and Renewals

- Is good moral character a prerequisite to licensure?
  - New developments on criteria and decisions?
- Does your board require a criminal background check?
- Scenario: Renewal application reveals criminal conviction, license renewed by board....next renewal cycle, board members do not want to renew....Result?

*Speak Up*

# Technology and Social Media

- What constitutes practice?
- Where does practice occur?
- Does use of social media by a licensee potentially violate law related to licensure?

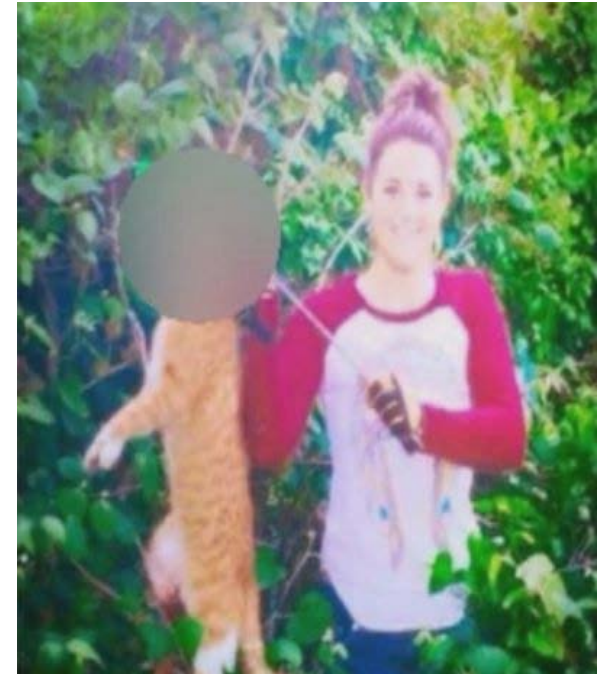
• **Speak Up**





# Vet who killed cat with bow and arrow gets suspended license (October 2016)

- <http://www.foxnews.com/us/2016/10/19/vet-who-killed-cat-with-bow-and-arrow-gets-suspended-license.html>
- Vet argued cat was feral and in her rural residential area, feral animals are disposed of by residents.
- Facebook post revealed the incident. Her lawyer said, “This case would never have gone forward but for the fact that we live in a social media age.”
- Query: would outcome be different if she was not a veterinarian?



## Nurse who 'vented' online found guilty of professional misconduct (December 2016)

- <http://www.cbc.ca/news/canada/saskatchewan/srna-discipline-social-media-nurse-saskatchewan-1.3880351>
- Social media posts (Facebook and Twitter) regarding care received by a family member were grounds for unprofessional conduct in that they bypassed a complaint process and went straight to social media
- Posts both criticized and praised care received.
- Discipline committee noted that comments were free speech, but nurse referenced her credentials in the postings and thus must follow applicable codes.

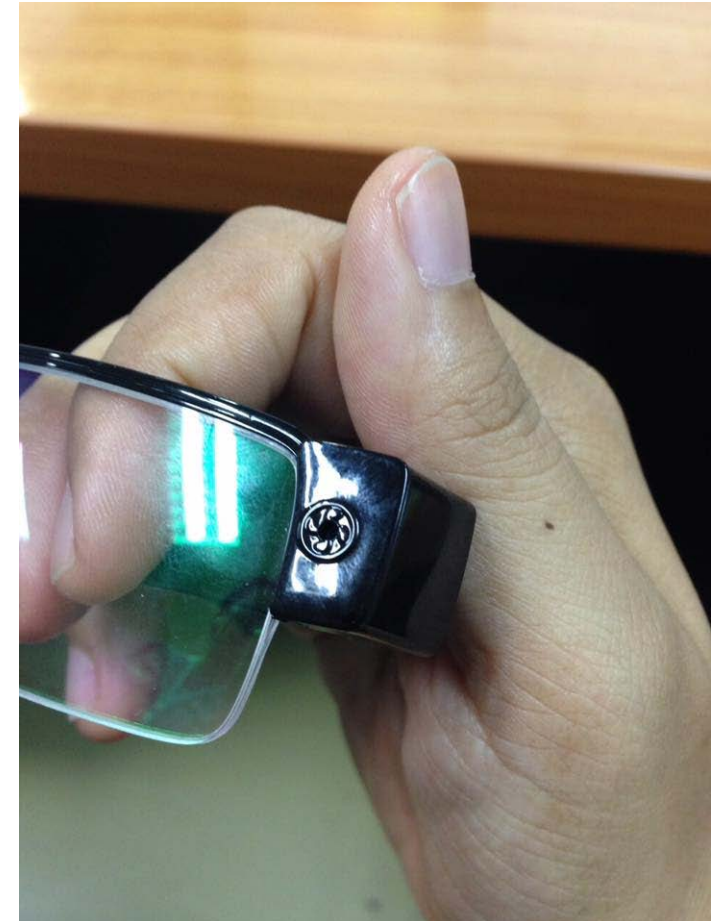
# Examinations

- Relied upon by boards...how?  
Statute/Rule/Regulation/Policy
- Uniformity...validated using industry standards
- Legally defensible...psychometrically sound
- Owned and controlled by the association of boards
- Develop, administer, score, and maintain
- What could go wrong?

Speak Up

## Thai medical students caught cheating with spy glasses (May 2016)

- <http://www.hindustantimes.com/world/like-mission-impossible-thai-students-caught-cheating-with-spy-glasses/story-uBISRZ1E5oEFDDpifqDsJO.html>
- Spyglasses transmitted questions and answers transmitted to examinees' smartwatches
- Exam results cancelled after plot discovered



# IN THE DOGHOUSE: 85 face discipline over cheating at Ohio State vet school

(June 2016)

- <http://www.theatlantic.com/news/archive/2016/06/cheating-ohio-state-university/486011/>
- The university found in an investigation that doctoral students at the College of Veterinary Medicine wrongly collaborated on online, take-home assessments.
- Officials were able to determine whether students had collaborated on the online exams by looking at patterns of right and wrong answers, and looked to see how long it took them to complete the exams

# \$1,300 to take one test? Med students are fed up.

(June 2016)

(1 of 2)

- [https://www.washingtonpost.com/local/education/thousands-of-medical-students-fight-against-pricey-required-skills-exam/2016/06/08/a5b64a56-2357-11e6-aa84-42391ba52c91\\_story.html?hpid=hp\\_local-news\\_medstudents-rhp-1254pm%3Ahomepage%2Fstory](https://www.washingtonpost.com/local/education/thousands-of-medical-students-fight-against-pricey-required-skills-exam/2016/06/08/a5b64a56-2357-11e6-aa84-42391ba52c91_story.html?hpid=hp_local-news_medstudents-rhp-1254pm%3Ahomepage%2Fstory)
- Students say that the Step 2 Clinical Skills exam, which measures bedside manner and real-world problem-solving while students interact with people acting as patients — should be replaced with an alternative exam that the nation's medical schools could administer free.
- There is a \$1,275 registration fee, and because the test is offered in just five cities, students often have to bear the cost of travel and lodging.

# \$1,300 to take one test? Med students are fed up.

(June 2016)

(2 of 2)

- “We care about public trust,” said Samia Osman, a fourth-year Harvard medical student and an organizer of the campaign. “And we want to make sure there is evidence-based data supporting the examination and that it is done a cost-effective way.”
- Licensing boards say that the existing exam system is quality-control measure in a profession that holds people’s lives in the balance.
- “Licensing boards have to have some bellwether to say this student has the competence to go into practice,” said Kim Edward LeBlanc, executive director of the Clinical Skills Evaluation Collaboration, which oversees the Step 2 exam. “The students bring up some legitimate concerns. But after 14 years on a licensing board, I can tell you that I would not feel comfortable giving a license to someone without this exam.”

# Public Perception & Conflict of Interest

- Perception about regulation from....
  - Applicants & Licensees
  - Boards
  - Legislative branch
  - Executive branch
  - Judicial branch
  - Media
  - Economic interests groups
  - Trade associations
  - Consumers

Speak Up



# Contractors association, state board join forces to build new downtown office building

(January 2017)

- <https://www.businessreport.com/article/contractors-association-state-board-join-forces-build-new-downtown-office-building>
- Louisiana Associated General Contractors and the Louisiana State Licensing Board for Contractors are teaming up to develop a new four-story building in downtown Baton Rouge that will house offices for both entities.
- The state LBC is funding the building, and we are providing the property,” says LAGC CEO Ken Naquin, who estimates the budget for the building’s construction at \$6.5 million. “It’s a true public-private partnership.”

# Contractors association, state board join forces to build new downtown office building

(January 2017)

- Some comments from readers posted to the article:
  - *So, a lobbying organization and a state board are joining forces to construct a four-story (small) downtown building at the public's expense. **What could go wrong with that?***
  - *Has this cleared the ethics commission? **Can an entity that represents the regulated industry enter into an ongoing real estate transaction with the regulator (or the reverse it doesn't matter).** When a contractor has a potential licensing problem and seeks assistance from the Louisiana Associated General Contractors Association will the transaction be "lets just go down the hall and see what our land lord/tenant (sic) has to say, you know we are very close?"*

# College Accreditors Largely Staffed by Employees of Schools They Oversee

(1 of 3) (November 2016, Wall Street Journal)

- <http://www.wsj.com/articles/college-accreditors-largely-staffed-by-employees-of-schools-they-oversee-1478860210>
- The accrediting agencies are **non-governmental bodies** made up largely of officials in higher education.
- Two-thirds of the officials responsible for policing the quality of the nation's colleges and universities are employed by schools their agencies oversee, highlighting potential **conflicts of interest**.

# College Accreditors Largely Staffed by Employees of Schools They Oversee

(2 of 3) (November 2016, Wall Street Journal)

- And while **most accreditors require commissioners to recuse themselves** from deliberations regarding their institutions, commissioners could cast a favorable vote toward a particular school with which he or she has no affiliation **in exchange for a favorable vote** on their school.
- Accreditors have faced criticism from policy makers such as Sen. Marco Rubio (R., Fla.), who says the accreditation system has **acted as a cartel**, blocking nontraditional education providers from gaining access to federal funds and competing against traditional schools.

# College Accreditors Largely Staffed by Employees of Schools They Oversee

(3 of 3) (November 2016, Wall Street Journal)

- Mary Ellen Petrisko, President of Western Association of Schools and Colleges Senior Colleges and Universities Commission, said accrediting is a peer-review process for good reason—college officials work in higher education daily and thus are best positioned to set standards. ***“I don’t think you would want doctors evaluating whether plumbers are doing a good job,”*** she said.
- In September, Sen. Elizabeth Warren (D., Mass.), Dick Durbin (D., Ill.) and Brian Schatz (D., Hawaii) **co-sponsored a bill that would, in part, restrict conflict of interest in the accreditation process by prohibiting individuals holding administrative and other roles from involvement in the certification process of that school.**

# Plan to Divide California State Bar Draws Fire

(April 2016, California) (1 of 2)

- <http://www.courthousenews.com/2016/04/26/plan-to-divide-california-state-bar-draws-fire.htm>
- Currently the state bar makes licensure and disciplinary decisions as well as sells insurance, puts on an annual convention and offers educational programs.
- Proposal to **break up mandatory California state bar into a regulatory agency and a separate voluntary trade association.**
- Proposal still under consideration. Final plan to be submitted by April 1, 2018.

# Plan to Divide California State Bar Draws Fire

(April 2016, California) (2 of 2)

- Some argue that carving off a regulatory agency would cripple bar's work to promote legal aid services and access to justice for the poor and middle class.
- Others argue that the current bar is "a distracted regulator" that spends much of its energy on professional association matters rather than important public protection and that it is a **conflict of interest to advocate for the profession and advocate for the public.**

# Mental Health – Online Therapy, ADA

- Technological advancements will always outpace regulation
- What constitutes practice?
- Where does practice occur?...multiple places?
- What does the law say now?...In need of change?
- Administrative authority over all persons, not just applicants and licensees



# Online Eye Exam Site Makes Waves in Eye Care Industry

(May 2016)

- <http://www.npr.org/sections/alltechconsidered/2016/05/25/479346651/online-eye-exam-site-makes-waves-in-eye-care-industry>
- Opternative offers online eye exams
- Available in at least 34 states
- Indiana “outlawed” the online test
- Michigan sent “cease and desist order” to Opternative



# Opternative co-founder settles lawsuit over optometry board test questions (August 2015)

- <http://www.chicagotribune.com/bluesky/originals/ct-steven-lee-opternative-lawsuit-bsi-0813-story.html>
- Co-founder settled lawsuit with National Board of Examiners of Optometry ....2 weeks before Opternative online exams initially offered
- NBEO alleged trade secret misappropriation, willful copyright infringement, tortious interference with contract, and breach of contract
- Alleged unauthorized use of exam questions, practice exams, and study guides
- Payment to NBEO between \$181,200 and up to \$481,200 based upon capital raised by start up or if it sells...

# Online anonymous therapy sites grapple with legal, ethical dilemmas

(December 2016) (1 of 2)

- <http://www.fiercehealthcare.com/it/online-therapy-sites-grapple-legal-ethical-dilemmas>
- Dilemmas faced by therapists when information exchanged with anonymous patient triggers mandatory reporting or duty to warn
- Is the online app (Talkspace) only a software platform or a healthcare facility?

# Online anonymous therapy sites grapple with legal, ethical dilemmas

(December 2016)

(2 of 2)

- The recently signed 21st Century Cures Act will increase access to telehealth services for Medicare beneficiaries. But expanding access puts more pressure on states and physicians to navigate licensing laws.
- More in-depth article can be found at:

<http://www.theverge.com/2016/12/19/14004442/talkspace-therapy-app-reviews-patient-safety-privacy-liability-online>

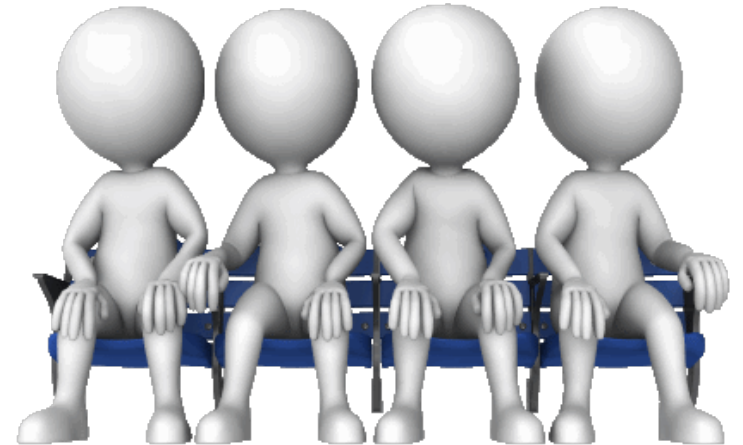
# Mental Health At Core Of Florida Bar Admission Case

(Florida, attorney, November 2016)

- <http://wlrn.org/post/mental-health-core-florida-bar-admission-case>
- Attorney licensed in AZ and WI applied for admission to Florida Bar
- Lawsuit claims that Bar Examiners' Character and Fitness evaluation impermissibly seeks information regarding his mental health in violation of ADA
- Attorney claims he is a recovering alcoholic and suffers from depression.

# Thank you!

- Final thoughts.....
- First time attendees...please stand
- FARB Reception immediately follows this session...until 6:00pm.



## EXAMINATIONS: What State Boards Need to Know

- Debra Persinger, Dalene Paull, Angelina Barnes and Deanna Hudella
- Saturday, January 28
- 8:30 AM







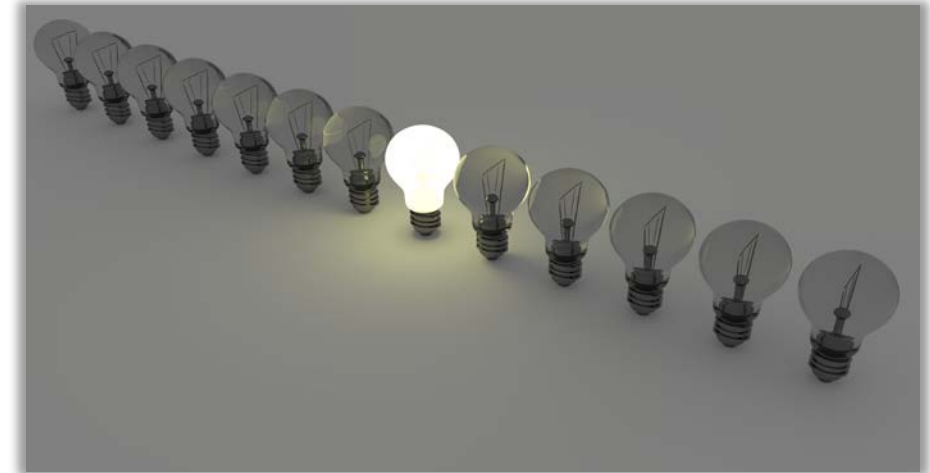
Moderator: Debra Persinger, PhD

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Federation of State Massage  
Therapy Boards



# Consider New Points of View



# Three Perspectives



# Public Protection

Public Protection  
is everyone's business.



# Dalene Paull

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The International Conference Of  
Funeral Service Examining Boards,  
Inc.



# Exam Ownership

- Has its privileges
- ...and its considerations
  - Legal defensibility
  - Role in the licensure process
  - Validity of individual results
  - Breaches



# Our story...



# Angelina M. Barnes

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Minnesota Board of Psychology



# Boards: Examination for Licensure

**Board Control.** How much control does the Board have over the development, maintenance, and administration of an examination? (Depending on the examination ownership the Board may be in a position to exhibit control over this process, or maybe not.)





# Boards: Examination for Licensure

How confident are you that your Board understands the foundation of your licensing examination(s) in use?



## Boards: Examination Foundation

- **Authority.** Where does the authority to utilize a licensing examination come from and what role does the Board play in licensure examinations?
- **Examination Type.** Is your Board clear on what types of examinations it is authorized to administer (written, state (ethics/jurisprudence), national, oral, practical)?

# Boards: Examination Foundation

- **Purpose.** The Board must also understand what an examination does, and what it *does not* do...

- ✓ Knowledge?
- ✓ Skill?
- ✓ Competence?
- ✓ Applied analysis/concepts?



## Boards: Examination Foundation

- **Reliability and Validity.** Has the Board considered the reliability and validity of the examination?
- **Examination Challenges.** Is the Board prepared to address challenges to an examination, should they arise?

# Boards: Examination Foundation

## Board of Psychology Rulemaking Example



# Boards: Examination Foundation

- **Minimum Standards.** Is the examination sufficiently tailored to identify applicants who meet the **minimum requirements?**

## Boards: Examination Creation/Maintenance

- **Development and Maintenance.** The examination must be properly developed, maintained, and administered.
- **Security.** What security precautions are in place to address item “harvesting,” and to protect exam content?

# Boards: Examination Scoring

- **Passing Scores.** Boards must understand examination scoring – and be clear on the establishment of the passing or “cut” score -- Does your Board establish the passing score or does it defer that responsibility, are there risks associated with each approach?



# Boards: Examination Administration

- **Fairness.** Is your Board clear on how its examinations are administered (fairness, Equal protection, subjective vs. objective challenges to oral examinations)?
  - Is there consistency in examination admission requirements for all applicants?
  - What exists to create standard testing conditions?

# Boards: Invalid Examination Results

- **Invalidation of Scores.** Boards should be clear on the implications of score invalidation - (What happens now? What is “invalid”?)
- **Board Action.** Does your Board have authority to take action if an exam score is invalid? (What can it do?)

# Board Obligation

A licensing board has the ultimate responsibility to ensure that a licensing examination meets technical, professional, and legal standards, and that the examination protects the health, safety, and welfare of the public by assessing applicants' abilities to practice competently.

# Deanna Hudella

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Pearson VUE



# Protecting the public requires protecting your program

## Test delivery considerations

- Test center environment – consistency, rigor, access
- Candidate ID policies
- Candidate biometrics including photo, electronic signature, finger printing/palm vein, ID scans, wanding
- Candidate code of conduct/NDA
- ADA management
- Candidate communication
- Security risks; item harvesting and proxy test takers
- Documentation/Incident reports
- Exam administration process – balancing program and candidate needs

# Questions?



# Top Regulatory Cases

- Dale J. Atkinson, Executive Director
- FARB
- Saturday January 28<sup>th</sup>
- 11:30 am - 12:15 pm





# Speaker

**Dale J. Atkinson, Esq.**

Executive Director & General  
Counsel, FARB

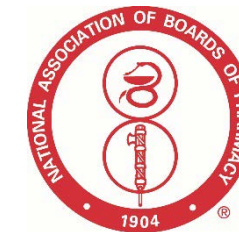
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# Objectives

- *Review* recent cases relevant to the regulatory community
- *Identify* issues and judicial holdings
- *Discuss* the importance to attendees

# Objectives

- Topics will include:
  - Public-Private relationships
  - State board authority and sanction options
  - Applications and renewals
  - Use of title, advertising bans, religious beliefs
  - Disabilities laws
  - Open meetings, open records, FOIA
  - Grounds for discipline and burden of proof

# Public-Private Relationship

- **Ask:**

- Under what conditions can the actions of a private entity affect the public sector?
  - Education
  - Examination
  - Supervised experience
  - Others....



# ADA..... Private Actor..... Binding State?

- ***Ivy V. Commissioner Williams Texas Education Agency***

781 F. 3d 250, 2015 U.S. App. LEXIS 4813

- **United States Court of Appeals for the 5<sup>th</sup> Circuit reversed the District Court and dismissed the putative class action case filed by deaf individuals seeking injunctive and declaratory relief to require the Texas Education Agency (TEA) to bring private sector driver education programs into compliance with the Americans with Disabilities Act (ADA) and Rehabilitation Act.**

## *Ivy V. Commissioner Williams*

- In order to obtain a drivers license, persons under the age of 25 must submit a **driver education certificate (DEC)** to the **Texas Dept. of Public Safety**. DEC's are only available from private driver education programs that are licensed by the TEA. Plaintiffs contacted numerous private education programs all of whom refused to provide accommodations for hearing impairments. **Plaintiffs filed an action in District Court seeking to require the TEA to comply with the ADA.** The District Court denied the TEA motion to dismiss and certified an interlocutory appeal. **On appeal and after finding the Plaintiffs had standing, the 5<sup>th</sup> Circuit held that the plaintiffs case failed on the merits.**

## *Ivy V. Commissioner Williams*

- The court held, “in a close call”, that driver education is NOT a service, program or activity of a public entity under Title II of the ADA. The court held that in the absence of a contractual or agency relationship, “courts have routinely held that a public entity is not liable for a licensed private actor’s behavior.” While troubled by the fact that a DEC is mandatory and can only be obtained through a regulated private sector education program, the court held that state regulation of the education program does not transform such program into a TEA program or service.

## *Ivy V. Commissioner Williams*

- Appealed to the United States Supreme Court
- U.S. Supreme Court initially agreed to hear the case
- October 31, 2016, the U.S. Supreme Court vacated the decision as moot, thus rendering the 5<sup>th</sup> Circuit opinion of no precedential value.
- *Issue remains important to the regulatory community....*

# State of Affairs – Public/Private Recognition

- A state board deemed a “non-sovereign, private actor”
  - *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. \_\_ (2015)
- A public corporation deemed a non-sovereign public actor
  - *Rivera-Nazario v. Corporacion Del Fondo Del Seguro Del Estado*, 2015 U.S. Dist. LEXIS 103952
- A statutorily identified private corporation deemed a government entity
  - *Department of Transportation v. Association of American Railroads*, 135 S. Ct. 1225 (2015)
- A private, not-for-profit organization deemed to be a government entity for purposes of the 4<sup>th</sup> Amendment search and seizure clause
  - *U.S. v. Ackerman*, 2016 U.S. App LEXIS 14411



# Sanction Options....Authority over Whom?

- Look to relevant statutes...Practice Act or Administrative Procedures Act
- Unlicensed practice.....Does the board have authority over all persons? Or just applicants and licensees? ?
- Sanction options...
  - What is revocation?
  - Permanent?!
- What about consent/settlement orders?
  - Almost anything goes!

## Public Interest Law Firm v. State Bar of Nevada (NV 2016)

- Attorney licensed in Alaska
- Set up a firm in Nevada, *unlicensed in Nevada*
- Engaged in practice of law & used licensed attorney names and numbers without permission
- Administratively prosecuted, numerous violations found
- Hearing Panel recommended *permanent prohibition from practicing law in Nevada*
- Court agreed and upheld

## State Board for Educator Certification v. Lange (TX 2016)

- Teacher/licensee had sexual relationship with adult high school student
- Student attended different high school than where licensee taught
- Teacher was student's martial arts coach
- Board of Education cited Code of Ethics as substantiating **sanction of permanent revocation of license**
- Debate over definition of "student" (undefined term in Code)
- Licensee argued "student" does not apply to outside private activities unrelated to teaching
- Court rejected teacher's arguments, **upheld permanent revocation**

## In re Taylor (VT 2016)

- **1996 consent order** by VT Medical Board with indefinite suspension of physician license due to addiction issues and mental impairment
- **2000 revised consent order** allowing limited practice with restrictions
- Thereafter, **Massachusetts Medical Board indefinitely suspended** MA license due to violation of MA consent order
- VT board and licensee entered into new consent order with **“final and irrevocable”** surrender of her license.
- Physician sought to vacate irrevocable surrender order.
- Court held that **physician has the burden** to show changed circumstances negating previous consent
- Physician failed to meet her burden and court upheld permanent surrender

# Applications and Renewals

- Initial Applications and Renewal Applications
  - Distinct processes...perhaps distinct legal rights?
- What is asked? How phrased?
- Consequences of incomplete applications? Denial? Held? Closed?
- Consequences of inaccurate information or failure to disclose?
- Who makes the final decision? Staff? Board? Department? Other?
- Character & Fitness, Good Moral Character
  - Required as a prerequisite to licensure eligibility?
  - What is it?

# Marin v. Schmider (PA 2016)

- EMT applicant applied for license in 2011
- Applicant had complained about conduct of persons at Department of Health who, as alleged, **refused to process his application because it did not include his social security number**
- In 2012, applicant requested that his “hold” be lifted
- Department refused to lift the hold and applicant litigated under the First Amendment and alleging retaliation
- Court dismissed case finding that there was **no connection between 2011 complaints and 2012 refusal to lift the hold** as time period too long
- Also, there was no “pattern of antagonism”

## Jarrett v. Bd. of Bar Examiners (WI 2016)

- Applicant for admission to state bar
- **Admitted to academic misconduct** (inflated grades, misrepresented extra curricular activities)
- **Failed to report 3 traffic violations**
- Board found explanations not plausible and that **he failed to establish good moral character**, thus application denied.
- Wisconsin Supreme Court, while recognizing the great lengths undertaken by the board to assess GMC, held that it is the **ultimate arbiter of fitness**
- **Court was persuaded by the applicant** and ordered the board to certify the applicant, but with certain conditions, including 2 years of monitored practice

## Long v. Bd of Registration of Real Estate Appraisers (MA 2016)

- Real estate appraiser renewal application
- **Failed to disclose 17 year old DUI conviction**
- Board imposed administrative discipline on licensee as a **“second offender”** based upon failure to disclose on **both initial and renewal applications**
- Licensee argued that his failure to disclose was **“unknowing”**
- On appeal, court **affirmed the discipline**, but **remanded regarding the sanctions finding that licensee was not a “second” offender** because he was not disciplined re his initial application



## In re Obregon (VT 2016)

- Attorney submitted renewal applications indicating **“good standing”** re state taxes owed.
- Based upon notice from the Dept. of Taxes, board initiated administrative disciplinary action
- Licensee argued computer crashes and auto accident/concussion caused delay in filing
- Board found **false statements and suspended license**
- Vermont Supreme Court identified definition of “good standing” in statute had changed, and now identified ***failure to file as a basis for not good standing (in addition to failure to make payments)***
- Because licensee **accurately stated she did not “owe” taxes**, her suspension was overturned, but a public reprimand was appropriate.

## In re Mikulin (OH 2016)

- Applicant seeking access sit for the bar examination
- Applicant has a history of **substance abuse, financial irresponsibility, and traffic violations**
- Hearing panel recommended disapproval for bar exam until Feb 2016
- Board adopted findings, but delayed eligibility for exam until July 2016
- Board lauded applicant efforts to overcome heroin addiction and alcohol abuse, but held **applicant failed to explain the 11 traffic violations and multiple debts** occurred.
- Ohio Supreme Court affirmed Board decision.

# Use of Title, Advertising Ban/Restriction, Exercise of Religion

- At what point can one refer to themselves as an (profession)?
- Does the setting of the referral as an (profession) matter?
- Can statutes or rules ban or limit how licensees advertise?
- Social media presence and issues
- First Amendment
- Exercise of religious beliefs

## Montana Cannabis Industry Assn. v. State of Montana (MT 2016)

- Montana Cannabis Industry Association sued the state **alleging ban on provider advertising was unconstitutional.**
- Association also argued that the **warrantless inspections by state authorities** amounted to law enforcement and were unconstitutional
- Montana Supreme Court held that ban on provider advertising was constitutional as it addressed **commercial speech** and was subject to rational basis scrutiny.
- Further, **marijuana remained illegal under federal law, justifying a ban on advertising**
- Re warrantless searches, court held that industry is heavily regulated and that business owners should **reasonable expect to the subject of inspections** during business hours.

## American Academy of Implant Dentistry v. Texas State Board of Dental Examiners (TX 2016)

- Texas State Board of Dental Examiners promulgated a **rule that prohibits advertising any specialty area not recognized as a “specialty” by the American Dental Association (ADA)**
- The rule was challenged by dentists as unconstitutional delegation and violation of free speech rights
- United States **District Court found such “blind reliance” on the ADA to be unconstitutional as related to advancing the state’s interests**

## Welch v. Brown (CA 2016)

- Licensed mental health providers challenged **California law that prohibits sexual orientation change efforts (SOCE) with minor patients**
- Plaintiffs argued law excessively entangles the **state with religion**
- **Court upheld the law as constitutional** because...
  - Law only regulates conduct within the confines of the counselor-patient relationship
  - Prohibition applies without regard to nature of the patient's motivation
  - Evidence falls short of demonstrating that its primary effect was to inhibit religion
  - Nothing in the law prevents minors from seeking SOCE once 18 years old

# Relevant Disabilities Laws

- Affect on board websites, application and renewals, board meetings, administrative proceedings, and eligibility for licensure
- Affect on educational programs, student standing, and graduation
- Affect on administration of licensure examinations
- Are such examination decisions binding on state boards?

## Bibber v. Nat'l Bd. Of Osteopathic Med. Examiners, Inc. (PA 2016)

- On multiple occasions, **medical student with hearing impairment, slow reader and dyslexia** sought additional time from the National Board of Osteopathic Medical Examiners on her COMLEX
- Requests denied and student filed litigation under ADA
- In hearing for injunction, **multiple experts testified with varying opinions** as to no extra time to 50% additional time
- Court held that the student reads at an average level and the **dyslexia does not substantially limit her abilities** as compared to the general population, thus she is not disabled under the ADA



## Rajpal v. Regents of the Univ. of Minnesota (MN 2016)

- Medical **student flunked 2 course and step 1 of the medical licensing examination** that led to her dismissal from the program
- Student litigated dismissal arguing **“performance anxiety” on exams**
- University provided student with requested accommodations of extra time and quiet room
- Appellate **court affirmed summary judgment in favor of school** holding that.....
  - Student failed to present any evidence of requested accommodations for courses
  - Student failed courses due to lack of knowledge, not disability
  - Due process only requires notification of deficiencies, notice of consequences of dismissal and a careful, deliberate decision

# Open Meetings...Open Records...FOIA

- Seek legal advice
- Know the law
- Generally, rule is disclose, exception is confidentiality

## Wadhwa v. Secretary of the Dept. of Veterans Affairs (PA 2016)

- **Physician sought release of documents** from VA Medical Center related to employment issues
- Medical Center **released some documents, redacted some released documents, and refused to release some documents** they were exempt from disclosure.
- United States District Court agreed with the Medical Center as to its defenses to litigation seeking documents, but ordered Medical Center to provide **details as to why non-disclosed documents were exempt from disclosure**

# Grounds for Discipline

- Set forth in statutes
- Details in rules/regulations
- How often are administrative disciplinary cases based upon “competence” issues, rather than “ethics” issues?
- What is the “burden of proof” in administrative cases

## Sang Woo v. Illinois. Department of Finance & Professional Regulation (IL 2016)

- Dentist accused of **unprofessional conduct and professional incompetence**
- Patients were minors with severe tooth decay, requiring composites and restorations
- ALJ found by **clear and convincing evidence** that dentist violated act, made false records, and had repeated billing irregularities
- Dentist **fined \$9K, suspended license for 30 days, indefinite probation, specific training, and prohibition on pediatric patients**
- Court upheld sanctions as not clearly erroneous, not excessive and that inadequate treatment of 3 patients in multiple ways constituted “repeated acts.”

## Alabama Board of Landscape Architects v. Bostick (AL 2016)

- Landscape architect **misappropriated client payments** made for services rendered (3 checks totaling \$2,196)
- Board found such actions to be **fraud or deceit, negligence, or willful misconduct**
- Board suspended license for one year and imposed a \$250 fine
- The **Alabama Supreme Court reversed finding that such activities occurred within the employer-employee relationship and were not within the practice of landscape architecture**
- The Court also held that applicable criminal and civil laws provided sufficient public protection

# Thank You....

- Enjoy the afternoon in San Antonio....





# Technology in Investigations

Subtitle:

When Arming Yourself to Enforce  
Your Practice Act and Sanction  
Licensees for Violations,

***“Remember the Alamo!”***

- Dirk Hanson, DVM
- Investigator, Kansas Board of  
Veterinary Examiners





# Objectives Today:

To provide you with information that your agency can utilize to better accomplish your agency mission

- through stronger enforcement of your Practice Act
- by increased ability to adjudicate violations
- resulting from enhanced quality of investigations
- using today's technologies.

# By a show of hands please...

- Who here is
  - Board member?
  - Executive Director/Administrator?
  - Investigator?
- Who here is from an agency that is
  - Using paper-based complaint case packets (interview report narratives, records)?
  - Using paperless investigative packets including video-recorded case interviews as evidentiary documents for probable cause determinations and adjudications?
- Preface

# My logic for pursuing utilization of technology

- Why are investigative interview reports typically written narratives, while depositions are court reporter word-for-word transcriptions?
- Why are depositions in word-for-word transcriptions, while hearing witnesses are in in-person testimony?
- Because word-for-word, and in-person formats give the judge/jury the best capacity to sense what really happened in a case - *a critical capacity*.
- Strive to make that capacity available right from day 1 of the case; available to probable cause reviewers at the beginning of the process

# Electronic communications

- Email
  - Authored by complainant, respondent, witness
  - Sometimes including interviews
- Recorded telephonic (mp3)
- Strive to get all communications in a format that can be electronically transmitted

# Electronic documents

- Email strings
  - Again, sometimes makes up an interview
- Scanned images to convert from hard copy format
- Provided electronically

# Procedure

1. Video investigative interviews
2. Electronic investigative packets

# 1. Video interviews

- Simplistic, portable equipment
  - Cell Phones
    - Empty photo album to maximize storage capacity
    - Set to lower frames/second (fps)
    - Airplane mode
  - Tripod and clips
- Requires obtaining records in advance and preplanned line of questioning
- Okay to have periods of silence during interview while thinking
  - Easy to edit out

# Video interviews (continued)

- Movie software import
  - Movie Maker if PC based; iMovie Mac based
  - Empty photo album on phone once imported so ready for next use
- Create 'project' in the software
  - Allows for editing (silent sections easy to see and cut out to condense)
- Finalize project (prepares for upload to sharing)
- Upload to sharing
  - Limited minutes of segment length. ("Part 1 of \_\_, Part 2 of \_\_")
- Facebook, YouTube or file sharing (Restricted access)



## 2. Electronic investigative packets

- Email conference call request
- For the purpose of probable cause deliberation & determination
  - Legal Counsel opinion is that this is a quasi-judicial proceeding
  - Not open to Open Records or Open Meetings – Significant!
- Embed private url addresses where video interviews can be viewed
- Attach electronic versions of investigative documents
- In some cases, in addition to having to use multi-part videos, may also have to use multi-part emails to work around packet size limitations

Drs. Dodson, Bentz, and Snyder,

Two different complaint cases have been received involving three different veterinarians. One complaint case involves Drs. \_ and \_; the other involves Dr. \_. All three veterinarians work at \_, and the complaints are relative to the practice of veterinary medicine that occurred at \_. I recommend you all, as one probable cause team look at both cases so that any overlapping issues attributable to the practice itself that may exist can be identified and addressed if need be.

The investigative packet for each case is attached, and consists of 1) the complaint, 2) the records obtained during unannounced visits, 3) the written responses from the veterinarians, and 4) the probable cause determination forms.

The audio-video recorded interviews of the veterinarians may be viewed by clicking on the links below:

Drs. \_&\_

<https://www.youtube.com/watch?v=0iYxRwkk1v>

<https://www.youtube.com/watch?v=KzyP2KF-TP>

Dr. \_

[https://www.youtube.com/watch?v=VPPvC\\_9-jD](https://www.youtube.com/watch?v=VPPvC_9-jD)

<https://www.youtube.com/watch?v=cKfaCKAHg1>

May we please have a conference call to discuss these cases at 7 a.m. next Wednesday morning?

The dial-in number to call is **(555) 555-5555**

The access code is **46472**

## Procedure (continued)

3. Electronic transfer to Litigation Counsel for prosecution
4. Electronic transfer to Defense Counsel for discovery (raw footage)
5. Electronic transfer to Presiding Officer(s) for exhibits
6. Electronic transfer for District Court of Appeals for case transfer

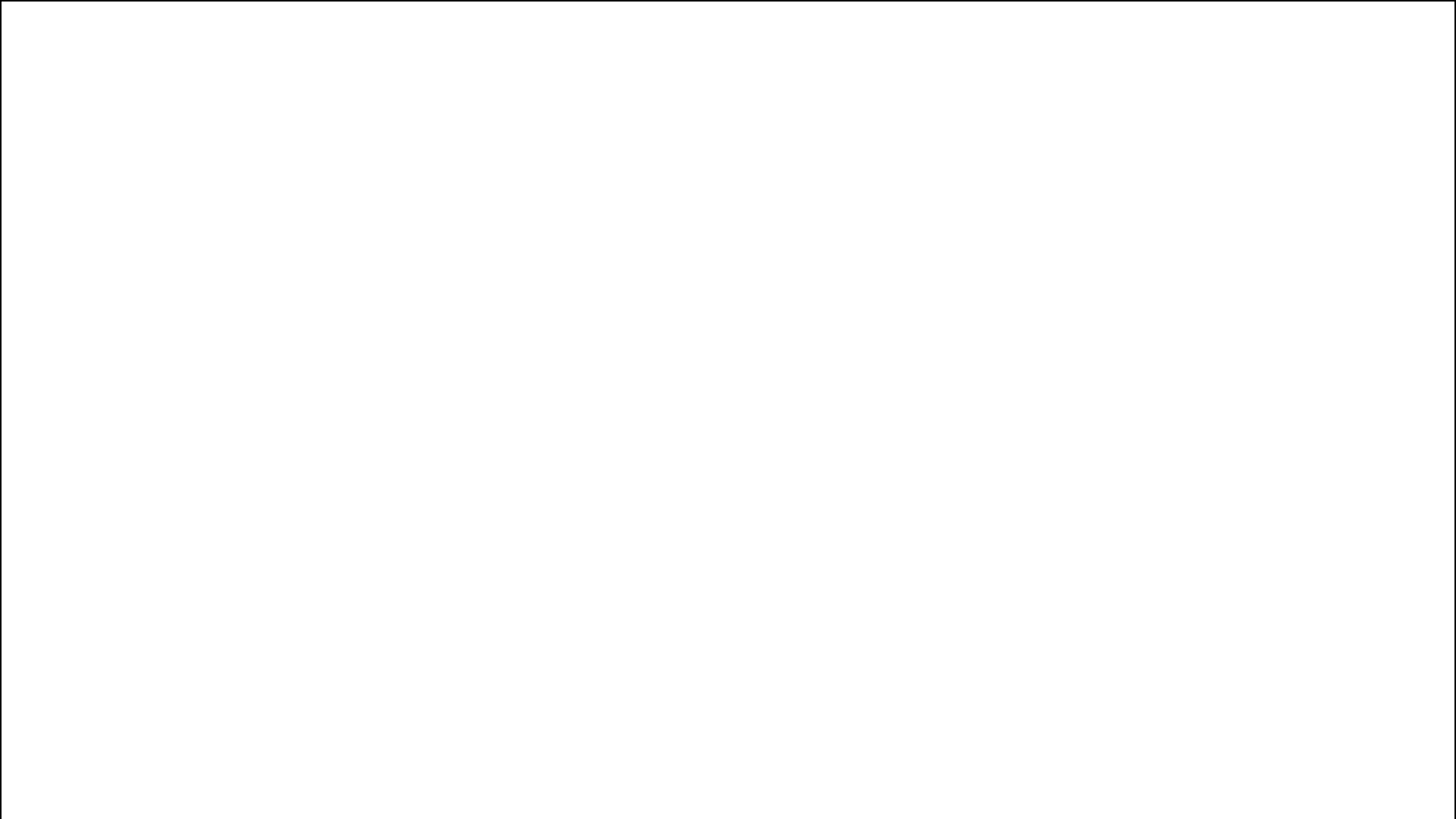
# Caveats

- Build redundancy into your standard procedure.
- Why?
  - This can be a very important point, so allow me to help you remember it by giving you a word picture
  - I am a licensed pilot, and for something 'fun' to do, I fly a *'powered parachute'*



# Build in Redundancy

- Redundancy is built-in to powered parachutes.
- Why?
  - A powered parachute is registered with the FAA as an '*experimental*' aircraft
  - As you watch the following powered parachute take-off video, imagine yourself as the one sitting in the pilot seat of this *experimental* aircraft as it takes off...



# Build in Redundancy (continued)

- A typical engines has *one sparkplug per cylinder* and *one magneto for all cylinders*.
- Powered parachute engines, however, have *two spark plugs per cylinder*, and *one magneto for EACH cylinder*
- Why this built-in redundancy?
  - Because ‘technical difficulties’ could have happened during your take-off!
  - As a pilot, you want to have many ‘little adventures’, not one ‘big adventure’!
  - So the redundancy of spark plugs and magnetos are built in to vitally protect you in case of ‘technical difficulty’. Should one fail, the redundant can be relied on
- Similarly, ‘technical difficulties’ can happen using technology in investigations
- “One bite at the apple” for interviews! Defense counsel can be intolerant!

# Build in Redundancy (continued)

- Duplicate recording equipment!
- Duplicate electronic data storage
- Archive securely



## Caveats (continued)

- Video file manipulation time intensive; do it in the background or off hours
- Must ensure video file access restriction
- Must use simple sharing methodology for the non tech-friendly users (probable cause reviewer board members)
- Once a case is no longer an ongoing investigation, electronic documents are subject to the same OM/OR laws as paper documents
- Depending on your records retention schedule, must archive both raw original and working condensed versions

# Outcomes

## KBVE's experience

- Probable Cause Reviewers appreciate enhanced quality of investigations
  - Better sense for case in 'He said, she said' evidentiary situations
  - Contemporaneous response including body language better able to evidence violations such as 'Demonstrating a careless or willful disregard for health, safety and welfare of a patient'
- More concessionary defense postures (respondent and respondent's counsel), more conducive to informal mediated resolution

# Outcomes (continued)

- As recently stated by a Respondent's Defense counsel
  - "You have the evidence you need to meet the burden of proof"
  - Involved in many contested cases previous to use of technologies; never concessionary
- Administrative law burden of proof - Clear and convincing evidence
- Presiding panel better able to determine when technology utilized



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# Acknowledgement

# Outcomes (continued)

For KBVE, using today's technologies has

- resulted in enhanced quality of investigations and
- increased ability to adjudicate violations to
- better accomplish agency mission through
- stronger enforcement of the Practice Act

## In conclusion,

- When arming yourself to enforce your practice act and sanction licensees for violations,
- ***Remember the Alamo!***
- Arm yourself well; using today's technologies in investigations.
- Thank you for this opportunity to share with you!
- Happy to answer any questions





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Thank you!

# **The Discipline Experience: Perspective of a Complainant and a Disciplined Licensee**

Federation of Associations of Regulatory  
Boards Forum  
January 29, 2017

**Julian Rivera**

Partner, Husch Blackwell  
[julian.rivera@huschblackwell.com](mailto:julian.rivera@huschblackwell.com)  
(512) 479-9753



# Perspectives

- Complainant
- Disciplined Licensee
- Surrogates
  - Governments and Organization Agents/Employees
  - Attorneys

# Complainant Perspective

## Who is the complainant?

- Individual
- Corporation
- Government
- Quasi-Government

# Complainant Perspective

## Motivations

- Righteous citizen
- Safety
- Professionalism
- Friend
- Seeking self-empowerment
  - Individual
  - Organization
- Competitor

# Complainant Perspective

## Frustrations

- Lack of transparency
- Varying perspectives
- Lack of remedies
- Fear of retaliation
- Scope of final decisions

# **Disciplined Licensee Perspective**

## **Who is the licensee?**

- Individual
- Employee
- Business partner
  - Practice groups
  - Payor relationships
- Leader
- Community member
- Professional association member

# **Disciplined Licensee Perspective**

## **Motivations**

- Self-preservation
- Self-empowerment
- Mental health
- Mitigation
- Education
- Correction
- Professional success

# **Disciplined Licensee Perspective**

## **Frustrations**

- Inspections/Subpoenas
- Lack of transparency with investigation
- Lack of opportunity to review evidence
- Lack of respect or clarity of interpretation of laws by agency
- Public view of discipline

# The Same Perspectives?

## Commonalities

- Truth
- Privacy
- Respect
- Transparency
- Fairness
- Efficiency
- Clarity of law and enforcement
- Business realities
- Finality



# Lawyer Ethics Example

## *Ethical Implications for Lawyers under Ohio's Medical Marijuana Law*; Ohio Supreme Court Opinion 2016-6:

- Federal law prohibits sale, cultivation, processing, or use of marijuana, for any purpose
- Prof.Cond.R.1.2 prohibits lawyer from counseling or assisting client to engage in conduct lawyer knows is illegal under any law
- Lawyer may advise a client as to legality of conduct either permitted under state law or prohibited under federal law, explain scope and application of law to the client's conduct, but a lawyer cannot provide legal services necessary to establish and operate medical marijuana enterprise or transact with medical marijuana business
- Lawyer seeking to use medical marijuana or participate in regulated business under Ohio law is in technical violation of federal law. Lawyer's personal violation of federal law, under certain circumstances, may adversely reflect on lawyer's honesty, trustworthiness, and fitness to practice law in violation of Prof.Cond.R. 8.4(b) or 8.4(h)



..... conversation

**Thank you!**

# The Supreme Court of Ohio

## BOARD OF PROFESSIONAL CONDUCT

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### OPINION 2016-6

Issued August 5, 2016

#### *Ethical Implications for Lawyers under Ohio's Medical Marijuana Law*

**SYLLABUS:** A lawyer may not advise a client to engage in conduct that violates federal law, or assist in such conduct, even if the conduct is authorized by state law. A lawyer cannot provide legal services necessary for a client to establish and operate a medical marijuana enterprise or to transact business with a person or entity engaged in a medical marijuana enterprise. A lawyer may provide advice as to the legality and consequences of a client's proposed conduct under state and federal law and explain the validity, scope, meaning, and application of the law.

A lawyer's personal use of medical marijuana pursuant to a state regulated prescription, ownership in, or employment by a medical marijuana enterprise, subjects the lawyer to possible federal prosecution, and may adversely reflect on a lawyer's honesty, trustworthiness, and overall fitness to practice law.

**QUESTIONS:** Several lawyers seek guidance concerning Ohio Sub. H.B. 523, effective September 8, 2016, that permits the cultivation, processing, sale, and use of medical marijuana under a state licensing and regulatory framework. This opinion addresses three questions:

- 1) Whether an Ohio lawyer may ethically counsel, advise, provide legal services to, and represent state regulated medical marijuana cultivators, processors, and dispensaries, as well as business clients seeking to transact with regulated entities;

- 2) Whether an Ohio lawyer may operate, hold employment or an ownership interest in, a licensed medical marijuana enterprise; and
- 3) Whether an Ohio lawyer may ethically use medical marijuana with a prescription.

**APPLICABLE RULES:** Prof.Cond.R. 1.2(d), 8.4(b), 8.4(h).

**OPINION:** Ohio Sub. H.B. 523 permits a patient, upon the recommendation of a physician, to use medical marijuana to treat a qualifying medical condition. Three state regulatory agencies are permitted to issue licenses to persons and entities for the purposes of cultivating, processing, testing, dispensing, and prescribing medical marijuana. The law provides that a registered patient or caregiver is not subject to arrest or criminal prosecution for using, obtaining, possessing, or administering marijuana and establishes an affirmative defense to a criminal charge to the possession of marijuana. The law immunizes professional license holders, including lawyers, from any professional disciplinary action for engaging in professional or occupational activities related to medical marijuana. Notwithstanding this provision, this advisory opinion analyzes the questions presented in light of rules promulgated by the Supreme Court pursuant to Oh. Const. Art. IV, Section 2(B)(1)(g).<sup>1</sup>

On and after September 8, 2016, a direct conflict will exist between Ohio law and federal law. The federal Controlled Substances Act (“CSA”) currently designates marijuana as a Schedule I controlled substance which makes its use for any purpose, including medical applications, a crime. 21 USC §§ 812(b)(1), 841(a)(1). Additionally, under the CSA, it is illegal to manufacture, distribute, or dispense a controlled substance, including marijuana (21 USC § 841(a)(1)), or conspire to do so (21 USC § 846). Consequently, any Ohio citizen engaged in cultivating, processing, prescribing, or use of medical marijuana is in violation of federal law.

In 2013, the U.S. Department of Justice (“USDOJ”) issued a memorandum stating its general policy not to interfere with the medical use of marijuana pursuant to state laws, provided the state tightly regulates and controls the medical marijuana market. Memorandum from James M. Cole, Deputy Attorney General, to All United States

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<sup>1</sup> “The supreme court shall have original jurisdiction in \* \* \* [a]dmission to the practice of law, the discipline of persons so admitted, and all other matters related to the practice of law.”



Attorneys, Guidance Regarding Marijuana Enforcement (August 29, 2013) (“Cole Memorandum”).<sup>2</sup> The Cole Memorandum does not override federal law enacted by Congress or grant immunity to individuals or businesses from federal prosecution.

The conflict between the Ohio and federal marijuana laws complicates the application of the Rules of Professional Conduct for Ohio lawyers. While Ohio law permits certain conduct by its citizens and grants immunity from prosecution for certain state crimes for the cultivation, processing, sale, and use of medical marijuana, the same conduct constitutes a federal crime, despite instructions to U.S. attorneys from the current administration to not vigorously enforce the law and therefore implicates Prof.Cond.R. 1.2 for lawyers with clients seeking to engage in activities permissible under state law.<sup>3</sup>

## ANALYSIS:

### *Advice and Legal Services Provided to Clients Engaged in Conduct as a State Regulated Marijuana Enterprise*

A lawyer cannot assist a client who engages or seeks to engage in conduct the lawyer knows to be illegal. Prof.Cond.R. 1.2(d). Nor can a lawyer recommend to a client the means by which an illegal act may be committed. Prof.Cond.R. 1.2(d), cmt. [9]. Prof.Cond.R. 1.2(d) embodies a lawyer’s important role in promoting compliance with the law by providing legal advice and assistance in structuring clients’ conduct in accordance with the law. The rule underscores an essential role of lawyers in preventing clients from engaging in conduct that is criminal in nature or when the legality of the proposed conduct is unclear. N.Y. Op. 1024 (2014).

Prof.Cond.R. 1.2(d) does not distinguish between illegal client conduct that will, or will not, be enforced by the federal government. The first inquiry of a lawyer is whether the legal services to be provided can be construed as assisting the client in conduct that is a violation of either state or federal law. If the answer is in the affirmative

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<sup>2</sup> <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

<sup>3</sup> Federal laws ordinarily preempt inconsistent state laws under the federal Supremacy Clause. In *Gonzales v. Raich*, 545 U.S. 1 (2005), the Court rejected a claim that Congress exceeded its authority under the Commerce Clause insofar as the marijuana prohibition applied to personal use of marijuana for medical purposes. Additionally, the federal government always may enforce its own criminal statutes. “Marijuana remains illegal under federal law, even in those states in which medical marijuana has been legalized.” *United States v. Canori*, 737 F.3d 181, 184 (2d Cir. 2013).

under either law, Prof.Cond.R. 1.2(d) precludes the lawyer from providing those legal services to the client.<sup>4</sup>

Under Prof.Cond.R. 1.2(d), a lawyer cannot deliver legal services to assist a client in the establishment and operation of a state regulated marijuana enterprise that is illegal under federal law. The types of legal services that cannot be provided under the rule include, but are not limited to, the completion and filing of marijuana license applications, negotiations with regulated individuals and businesses, representation of clients before state regulatory boards responsible for the regulation of medical marijuana, the drafting and negotiating of contracts with vendors for resources or supplies, the drafting of lease agreements for property to be used in the cultivation, processing, or sale of medical marijuana, commercial paper, tax, zoning, corporate entity formation, and statutory agent services. *See also*, Colo. Op. 125 (2013). Similarly, a lawyer cannot represent a property owner, lessor, supplier or business in transactions with a marijuana regulated entity, if the lawyer knows the transferred property, facilities, goods or supplies will be used to engage in conduct that is illegal under federal law. Even though the completion of any of these services or transactions may be permissible under Ohio law, and a lawyer's assistance can facilitate their completion, the lawyer ultimately would be assisting the client in engaging in conduct that the lawyer knows to be illegal under federal law.

However, Prof.Cond.R. 1.2(d) does not foreclose certain advice and counsel to a client seeking to participate in the Ohio medical marijuana industry. Prof.Cond.R. 1.2(d) also provides:

A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

This portion of the rule permits a lawyer to explain to the client the conflict that currently exists between state and federal law, the consequences of engaging in conduct that is permissible under Ohio law but contrary to federal law, and the likelihood of federal enforcement given the policies of the current administration. A lawyer may counsel and advise a client regarding the scope and general requirements of the Ohio medical

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<sup>4</sup> Jurisdictions in accord with this view include Connecticut (Conn. Op. 2013-02); Hawaii (Haw. Op. 49 (2015)); Maine (Me. Op. 199 (2010)); and Colorado (Colo. Op. 125 (2014)).

marijuana law, the meaning of its provisions, and how the law would be applied to a client's proposed conduct. A lawyer also can advise a client concerning good faith arguments regarding the validity of the federal or state law and its application to the client's proposed conduct.

In addition to the permissible range of advice permitted under Prof.Cond.R. 1.2(d), the rule does not preclude a lawyer from representing a client charged with violating the state medical marijuana law, representing a professional license holder before state licensing boards, representing an employee in a wrongful discharge action due to medical marijuana use, or aiding a government client in the implementation and administration of the state's regulated licensing program. With regard to the latter, lawyers assisting a government client at the state or local level in the establishment, operation, or implementation of the state medical marijuana regulatory system are not advising or assisting the client in conduct that directly violates federal law. The state or a local government is not directly involved in the sale, processing, or dispensing of medical marijuana prohibited by federal law, even though it is arguably enabling the conduct through the issuance of licenses and the maintenance of its regulatory system.

For these reasons, the Board concludes that a lawyer violates Prof.Cond.R. 1.2(d) when he or she transitions from advising a client regarding the consequences of conduct under federal and state law to counseling or assisting the client to engage in conduct the lawyer knows is prohibited under federal law. Colo. Op. 125 (2013). Unless and until federal law is amended to authorize the use, production, and distribution of medical marijuana, a lawyer only may advise a client as to the legality of conduct either permitted under state law or prohibited under federal law and explain the scope and application of state and federal law to the client's proposed conduct. However, the lawyer cannot provide the types of legal services necessary for a client to establish and operate a medical marijuana enterprise or to transact with medical marijuana businesses. To document compliance with his or her ethical obligations, a lawyer approached by a prospective client seeking to engage in activities permitted by Ohio Sub. H.B. 523 should enter into a written fee agreement with the client that encompasses a mutual understanding about the exact scope of services the lawyer is ethically and lawfully able to provide under Prof.Cond.R. 1.2(d).

The Board is mindful that the current state of the law creates a unique conflict for Ohio lawyers and deprives certain clients of the ability to obtain a full range of legal services in furtherance of activities deemed lawful by the General Assembly. The



Supreme Court may amend the Rules of Professional Conduct to address this conflict. Several jurisdictions have reached similar conclusions to those contained in this opinion and have amended, or are considering amending Rule 1.2 or the comments to that rule. These states include Illinois, Alaska, Colorado, Nevada, Oregon, Washington, and Hawaii.

*A Lawyer's Personal Use of Medical Marijuana and Participation in a Medical Marijuana Enterprise*

Under current federal law, an Ohio lawyer's use of medical marijuana, even obtained through a state regulated prescription, constitutes an illegal act and subjects a lawyer to possible prosecution under federal law. Such activity may implicate Prof.Cond.R. 8.4(b) (commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness) and Prof.Cond.R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law).

Whether the illegal act "reflects adversely on the lawyer's honesty or trustworthiness" under Prof.Cond.R. 8.4(b) only can be determined on a case-by-case basis. A lawyer is "answerable to the entire criminal law," but is only "professionally answerable" to those offenses that demonstrate a lack of honesty or trustworthiness. Prof.Cond.R. 8.4(b), cmt. [2]. For example, a single violation of the CSA by a lawyer using medical marijuana would not, by itself, demonstrate the requisite lack of honesty or trustworthiness to constitute a violation of Prof.Cond.R. 8.4(b). Other misconduct related to the illegal act, such as lying to federal investigators or obtaining a prescription for medical marijuana for purposes of resale or providing it to a minor, would need to be present to trigger a violation of Prof.Cond.R. 8.4(b). A nexus must be established between the commission of an illegal act and the lawyer's lack of honesty or trustworthiness. Colo. Adv. Op. 124 (2012). Similarly, multiple violations of federal law would likely constitute "a pattern of repeated offenses" indicating an "indifference to legal obligations" and constitute a violation of the rule. Prof.Cond.R. 8.4(b), cmt. [3]. See *Stark County Bar Ass'n v. Zimmer*, 135 Ohio St.3d 462, 2013-Ohio-1962 (respondent's multiple driving infractions constituted a violation of Prof.Cond.R. 8.4(b)).

Personal conduct involving medical marijuana that does not implicate a specific Rule of Professional Conduct may give rise to a standalone violation of Prof.Cond.R. 8.4(h). In these cases, a violation is found when there is clear and convincing evidence that the lawyer has engaged in misconduct that adversely reflects on the lawyer's fitness

to practice law. *Disciplinary Counsel v. Bowling*, 2010-Ohio-5040 (magistrate charged, but not convicted, for marijuana possession under state law violated Prof.Cond.R. 8.4(h)).

Similar to the issue of personal marijuana use, a lawyer's personal ownership or other participation in an Ohio medical marijuana enterprise violates federal law. Consequently, under circumstances similar to those previously discussed in relation to personal marijuana use, a lawyer's ownership of a medical marijuana enterprise may implicate Prof.Cond.R. 8.4(b), Prof.Cond.R. 8.4(h), or both. Likewise, participating in a medical marijuana enterprise as an employee or personally investing or lending money to a medical marijuana enterprise, subjects the lawyer to the same criminal and professional liabilities as having an ownership interest in a medical marijuana enterprise.

**CONCLUSION:** Federal law currently prohibits the sale, cultivation, processing, or use of marijuana, for any purpose. Prof.Cond.R. 1.2 prohibits a lawyer from counseling or assisting a client to engage in conduct the lawyer knows is illegal under any law. The rule does not contain an exception if the federally prohibited conduct is legal under state law. However, a lawyer may advise a client as to the legality of conduct either permitted under state law or prohibited under federal law, explain the scope and application of the law to the client's conduct, but a lawyer cannot provide the legal services necessary to establish and operate a medical marijuana enterprise or transact with a medical marijuana business. A lawyer seeking to use medical marijuana or participate in a regulated business under Ohio law is in technical violation of federal law. A lawyer's personal violation of federal law, under certain circumstances, may adversely reflect on a lawyer's honesty, trustworthiness, and fitness to practice law in violation of Prof.Cond.R. 8.4(b) or 8.4(h).

**Advisory Opinions of the Board of Professional Conduct are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Rules of Professional Conduct, the Code of Judicial Conduct, and the Attorney's Oath of Office.**

# Reinstatement Petitions: Relevant Evidence and Burdens.

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- Mark R. Brengelman, J.D., M.A.
- Mark R. Brengelman, Attorney at Law PLLC, Frankfort, Kentucky
- January 29, 2017
- 10:15 a.m.-11:00 a.m.



## Speaker – Welcome and Introduction

**Mark R. Brengelman, J.D., M.A.**

**Mark R. Brengelman, Attorney at Law PLLC**  
**Frankfort, Kentucky**

Mark is retired from the Kentucky Office of the Attorney General and has been in private practice since July 2012. He is a long-time friend of and continuing education speaker for FARB – Mark has done continuing education for over twenty national and state organizations and private companies.

## Speaker – Welcome and Introduction

**Mark R. Brengelman, J.D., M.A.**

**Mark R. Brengelman, Attorney at Law PLLC**  
**Frankfort, Kentucky**

Mark's most recent continuing legal education was co-presenting Navigating Law and Ethics for the Regulatory Lawyer, a new 2.0 hour Ethics CLE, and Cease and Desist: Should We Cease and Desist Using Cease and Desist?, both held at the 2016 FARB Regulatory Law Seminar, Chicago, Illinois.

# Objectives

To provide attendees with:

- ❖ a focus on identifying reinstatement petitions for review by a state agency – non-disciplinary action versus disciplinary action;
- ❖ an analysis of relevant evidence reviewed by a state agency and the burden of proof in a reinstatement proceeding;
- ❖ a recommendation on statutes and administrative regulations/rules, or other provisions, regarding reinstatement proceedings, and;

## Objectives, con't.

To provide attendees with, con't.:

- ❖ a presentation here that is more relevant to Board staff, Board members, and other (presumably) non-attorneys.

## Introduction – what are we reinstating?

Non-discipline versus disciplinary reinstatement:

- ❖ Retired or inactive license reinstatement applications a state agency;
- ❖ Discipline under active, on-going disciplinary terms, and;
- ❖ Post-discipline after active, disciplinary terms, i.e., reinstatement of a revoked license.



# Non-discipline reinstatement of a license

Non-discipline reinstatement:

- ❖ Inactive license, retired license – does your agency have these?
- ❖ What are they if you have an inactive or retired license, presumably one that you cannot use? Why have them?
- ❖ What limits are there, if any, on holding an inactive or retired license?

# Non-discipline reinstatement of a license, con't.

## Non-discipline reinstatement:

- ❖ What limits are there, if any, on holding an inactive or retired license?
  - cannot practice that profession;
  - must still pay a regular licensure fee (the same or less?);
  - may have to do things later and all at once to reinstate an inactive license or a retired license that would have been done over time as a full, active licensee.

## Non-discipline reinstatement of a license, con't.

### Non-discipline reinstatement:

- ❖ What advantages are there if you cannot practice that profession?
  - do not have to obtain continuing education;
  - may pay less of a regular licensure fee;
  - can still call yourself a professional of that profession thus entitling you to membership in a state association (and association benefits);
  - serves as a placeholder in time that is easier to resume practice later;
  - has advantages for professionals licensed in more than one jurisdiction who may need only hold an active license in one jurisdiction, but could more easily reactivate their inactive licenses in other jurisdictions on an as needed basis.

## Non-discipline reinstatement of a license, con't.

### Non-discipline reinstatement:

#### ❖ How do you reinstate such a license?

- this should be a ministerial act, that is, a “cookbook” style step found in administrative regulation or rule that specifies exactly what has to be done;
- this process should allow Board staff to handle reinstatements;
- a written application for reinstatement should be in an approved form document available to the public and recognized by law with an administrative regulation or rule, and;
- application form should include all the same questions on a regular initial application or regular renewal form (see FARB model application/renewal documents).

## Non-discipline reinstatement of a license, con't.

### Non-discipline reinstatement:

#### ❖ How do you reinstate such a license?

- usually, one must apply within a period of time since last fully licensed;
- but this still allows for the Board to act in a discretionary matter if there is any substantive question on the reinstatement application such as, for example, the sufficiency of required continuing education or the existence of a criminal conviction;
- usually, after a period of time holding an inactive or retired license, one must “start over” or do something else, and;
- reinstatement in these contexts are not pejorative actions.

# Non-discipline reinstatement of a license, con't.

## Non-discipline reinstatement:

### ❖ Examples in the law?

- many examples in the law, by administrative regulation or rule;
- each state licensure agency should have an administrative regulation for licensure renewal, late renewal and grace period, reinstatement within “X” period of time (such as number of years), and; reinstatement after more than “X” period of time;
- note: What is that period of time measured from? From last holding a license or from last engaging in the active practice of that profession with a license?
- further note: What is “active practice?”

## Disciplinary reinstatement of a license

Disciplinary reinstatement – these apply to:

- ❖ Terms and conditions of a Settlement Agreement or Consent Decree, which is an administrative document taking disciplinary action and may contain automatic or discretionary reinstatement terms (*see* FARB model settlement agreement documents), and;
- ❖ Example: active suspension of license for “X” period of time, or; active suspension of license for “X” period of time, and the licensee may petition for reinstatement.

## Disciplinary reinstatement of a license, con't.

Disciplinary reinstatement:

- ❖ Advantages and disadvantages of each?
- ❖ Active suspension of license for “X” period of time – allows automatic or self-implementing reinstatement based on terms and conditions;
- ❖ Active suspension of license for “X” period of time, and the licensee may petition for reinstatement – may provide too much discretion and may unreasonably delay reinstatement;
  - note: this may be warranted where there are open-ended items to accomplish, such as a mental health evaluation or drug assessment.



## Disciplinary reinstatement of a license, con't.

Disciplinary reinstatement:

- ❖ These disciplinary reinstatements should be as automatic as possible to implement the terms and conditions of a disciplinary action;
- ❖ May not require specific forms such as non-disciplinary reinstatements, but does call for precise adherence to the terms and conditions of each individual disciplinary action, and;
- ❖ These are pejorative actions.

# Non-disciplinary and disciplinary reinstatements

Relevant evidence and burdens:

- ❖ These reinstatements should include all statutory and administrative requirements of the law as evidence to comply;
- ❖ The burden to prove reinstatement is on the applicant, the licensee, or former licensee seeking reinstatement, and;
- ❖ A denied reinstatement should trigger a due process right of the denied applicant to request an administrative hearing.

## Non-disciplinary and disciplinary reinstatements, con't.

Relevant evidence and burdens:

- ❖ What about a due process right of the denied applicant to request an administrative hearing?
- ❖ Practice tip: the agency may issue a preliminary denial stating grounds why the reinstatement is denied, then offer an administrative hearing upon receipt, in “X” number of days, of a written request for a hearing. and;
- ❖ Burden of proof is embodied in a state administrative procedures act.

## Non-disciplinary and disciplinary reinstatements, con't.

An example - KRS 13B.090(7):

“In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. . . . The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.”

## Post-disciplinary reinstatements

Check your governing statutes about revoked licenses:

- ❖ What does revoke mean? Should your statute say “permanent revocation?”
- ❖ Does a right to seek reinstatement apply by statute? and;
- ❖ If so, such statutes typically govern the period of time and the standard of reinstatement.

## Post-disciplinary reinstatements, con't.

Check your governing statutes about revoked licenses:

An example – KRS 319.082(4):

“Three (3) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate his or her petition and may reinstate his or her license upon finding that the former licensee has complied with the provisions of this chapter and administrative regulations promulgated by the board and is again able to engage in the practice of psychology with reasonable skill, competency, and safety to the public.”

## General comments on post-disciplinary reinstatements

Enact your evidentiary standards and burden of proof into law:

❖ Suggestions on “the three Rs” of remorse, restitution, rehabilitation;

Example: Kentucky Supreme Court Rule 2.300(7):

“A petitioner for reinstatement will be held to a substantially more rigorous standard than a first time applicant for an initial admission to the Bar. The prior determination that he/she engaged in professional misconduct continues to be evidence against him or her and the proof presented must be sufficient to overcome that prior adverse judgment.”

## General comments on post-disciplinary reinstatements

Example: Kentucky Supreme Court Rule 2.300(7), con't.:

Among the considerations to be weighed are:

- “The nature of the misconduct for which the applicant was suspended or disbarred;
- The applicant’s conception of the serious nature of his or her act;
- The applicant’s sense of wrongdoing;
- The applicant’s previous and subsequent conduct and attitude toward the courts and the practice, including the element of time elapsed since disbarment;
- The applicant’s candor in dealing with the Character and Fitness Committee, and;
- The relevant knowledge of witnesses called by the applicant.”



## General comments on post-disciplinary reinstatements

Enact your evidentiary standards and burden of proof into law:

- ❖ Administrative regulation or rule, or by state statute;
- ❖ In the absence of regulation, rule, or statute, put them in a Settlement Agreement or Consent Decree when you have one;
- ❖ Example: Kentucky Supreme Court Rule 3.330:

“In reinstatement hearings the burden shall rest upon the Applicant, and he/she must demonstrate by clear and convincing evidence his/her suitability for reinstatement.”

## General comments on post-disciplinary reinstatements

Enact your evidentiary standards and burden of proof into law, con't.:

❖ Example: Kentucky Supreme Court Rule 2.300(6):

“[I]n reinstatement cases the applicant has the burden of proving by clear and convincing evidence that he/she possesses the requisite character, fitness and moral qualification for re-admission to the practice of law. (SCR 3.330) Issues that will be considered include, but are not limited to, the following:

(a) Whether the applicant has presented clear and convincing evidence that he/she has complied with every term of the order of suspension or disbarment;

(b) Whether the applicant has presented clear and convincing evidence that his/her conduct while under suspension shows that he/she is worthy of the trust and confidence of the public;”

## General comments on post-disciplinary reinstatements

Enact your evidentiary standards and burden of proof into law, con't.:

❖ Example: Kentucky Supreme Court Rule 2.300(6), con't.:

(c) Whether the applicant has presented clear and convincing evidence that he/she possesses sufficient professional capabilities to serve the public as a lawyer;

(d) Whether the applicant has presented clear and convincing evidence that he/she presently exhibits good moral character, and;

(e) Whether the applicant has presented clear and convincing evidence that he/she appreciates the wrongfulness of his/her prior misconduct, that he/she has manifest contrition for his/her prior professional misconduct, and has rehabilitated himself/herself from past derelictions.”

## Disciplinary reinstatement of a license – some case law

Check applicable case law about revoked licenses:

- ❖ What does revoke mean? And for how long? What happens next?
- ❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure*, 2006 Ky. App. Unpub. LEXIS 1229, Court of Appeals of Kentucky, No. 2004-CA-001768-MR, Rendered January 27, 2006; Discretionary Review Denied by the Supreme Court of Kentucky, September 13, 2006; Opinion of the Court of Appeals Ordered not to be Published.
- ❖ Review denied and ordered not published by *Kentucky Board of Medical Licensure v. Shamaeizadeh*, 2006 Ky. LEXIS 244 (September 13, 2006)

## Disciplinary reinstatement of a license – more case law

- ❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure*, con't.:
- ❖ Application for reinstatement by a revoked physician;
- ❖ Questions to ask:
  - non-disciplinary or disciplinary reinstatement?
  - who had the burden of proof?
  - what standard of evidence?
  - what weight was given to a Board final order?

## Disciplinary reinstatement of a license – more case law

- ❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure, con't.:*
- ❖ Conclusion: The Court of Appeals of Kentucky reversed and remanded a case to the lower court directing the lower court to conduct a judicial review of the Board's denial of the physician's reinstatement petition.
- ❖ Facts: Physician was revoked March 7, 2000 – upheld by the lower court (circuit court) on judicial appeal, and then upheld again by the Court of Appeals. Physician reapplied to the Board in October 2003 under statute allowing a petition two years after revocation.

## Disciplinary reinstatement of a license – more case law

- ❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure*, con't.:
- ❖ More facts: KRS 311.607 allowed for a reinstatement petition under the following standards, in part:

“[A] licensee who has had his license revoked may, after two (2) years from the effective date of the revocation order, petition the board for a license to again practice in the Commonwealth of Kentucky; [Note: the statute has exceptions and qualifications.]

No new license shall be issued to such former licensee unless the applicant satisfies the board that he is presently of good moral character and qualified both physically and mentally to resume the practice of medicine without undue risk or danger to his patients or the public.”

## Disciplinary reinstatement of a license – more case law

- ❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure*, con't.:
- ❖ More facts: On December 3, 2003, the Board issued a final order denying the reinstatement under the “good moral character and qualified both physically and mentally” standard and ordered:  
  
“Furthermore, having considered all available information, particularly the licensee’s disciplinary history before this Board and the bases for those disciplinary orders, [the Board] orders that it will not consider another petition for reinstatement filed by the licensee prior to its November 2013 meeting, a period of ten (10) years.”
- ❖ Judicial review was denied by the lower court – reversed by the Court of Appeals.



## Disciplinary reinstatement of a license – more case law

❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure*, con't.:

❖ Rationale:

“The legislature has created a procedure for reinstatement of a medical license; it is a proceeding separate and distinct from the disciplinary action that preceded the revocation of the license. The order adjudicating the application for reinstatement concludes that process and constitutes a final order. If a physician is aggrieved by the final order, that order becomes subject to judicial review.

[T]he non-ministerial orders of an administrative agency are inherently reviewable for abuse or arbitrariness regardless of whether there is a statutory procedure established for that purpose.”

## Disciplinary reinstatement of a license – more case law

- ❖ *Shamaeizadeh v. Kentucky Board of Medical Licensure*, con't.:
- ❖ Answers and comments:
  - non-disciplinary or disciplinary reinstatement?
  - who had the burden of proof?
  - what standard of evidence?
  - what weight was given to the lower court's conclusion agreeing with the Board that there was no right to judicial review?

## Disciplinary reinstatement of a license – more case law

*In re the reinstatement of Drain*, 2016 OK 68, 376 P.3d 208, Oklahoma Supreme Court (2016) (see FARB Top Regulatory Cases):

- ❖ Application for reinstatement by a formerly licensed attorney;
- ❖ Questions to ask:
  - non-disciplinary or disciplinary reinstatement?
  - who had the burden of proof?
  - what standard of evidence?
  - what weight was given to a recommendation to reinstate?

## Disciplinary reinstatement of a license – some case law

*In re the reinstatement of Drain*, 2016 OK 68, 376 P.3d 208, Oklahoma Supreme Court (2016), con't.:

- ❖ Conclusion: The Supreme Court of Oklahoma determined an attorney seeking reinstatement of his law license did not demonstrate the required competency to grant his petition.
- ❖ Facts: Drain had resigned from the practice of law 10 years earlier with no disciplinary proceedings pending, but an administrative suspension had been issued for failing to pay \$100 in CLE late fees prior to his resignation.

## Disciplinary reinstatement of a license – some case law

*In re the reinstatement of Drain*, 2016 OK 68, 376 P.3d 208, Oklahoma Supreme Court (2016), con't.:

- ❖ More facts: Drain had worked thereafter as a paralegal and as an instructor of paralegal courses. Drain filed for reinstatement - the Professional Responsibility Tribunal recommended reinstatement and determined:
  - Drain had complied with all procedural rules, established he had not engaged in unlicensed practice, and had demonstrated competence.

## Disciplinary reinstatement of a license – some case law

*In re the reinstatement of Drain*, 2016 OK 68, 376 P.3d 208, Oklahoma Supreme Court (2016), con't.:

- ❖ Rationale: The Oklahoma Supreme Court overruled the recommendation finding there was no evidence Drain completed the mandatory CLE in the 10 years since his resignation and, teaching paralegal courses to non-attorneys did not rise to the level and competency expected of attorneys;
- ❖ Based on Drain's extended absence from the profession, he must retake the state bar examination as the only recourse for reinstatement.

## Disciplinary reinstatement of a license – some case law

*In re the reinstatement of Drain*, 2016 OK 68, 376 P.3d 208, Oklahoma Supreme Court (2016), con't.:

- ❖ Answers and comments:
  - non-disciplinary or disciplinary reinstatement?
  - who had the burden of proof?
  - what standard of evidence?
  - what weight was given to a recommendation to reinstate?
- ❖ *De novo* review – court here looks at the facts and law without giving weight to any recommendation (giving no deference), and;
- ❖ Passing the examination again seems always a path to reinstatement.

## Disciplinary reinstatement of a license – some case law

*In re the reinstatement of Drain*, 2016 OK 68, 376 P.3d 208, Oklahoma Supreme Court (2016), con't.:

- ❖ Could Drain pass the state bar examination again? Perhaps!
- ❖ Was Drain successful in avoiding that requirement simply by being reinstated? No!
- ❖ What may we ultimately conclude?!?!?



## Conclusion

We have covered:

- ❖ a focus on identifying reinstatement petitions for review by a state agency – non-disciplinary action versus disciplinary action;
- ❖ an analysis of relevant evidence reviewed by a state agency and the burden of proof in a reinstatement proceeding, and;
- ❖ a recommendation on statutes and administrative regulations/rules, or other provisions, regarding reinstatement proceedings.

*Questions?*



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*Thank You!*



# Administrative Expungement

Dale J. Atkinson, Esq.

FARB Executive Director & General Counsel

Sunday January 29<sup>th</sup>

11:00 am – 11:30 am

# Speaker

**Dale J. Atkinson, Esq.**

Executive Director & General  
Counsel, FARB

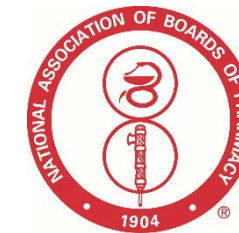
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# Objectives

- **Identify** issues related to administrative expungements
- **Review** relevant statutes, rules/regulations & cases
- **Discuss** relevance to regulatory community

# Terms

- Definitions of .....

- **Expunge**.....*Black's Law Dictionary* defines "**expungement of record**" as the process by which record of criminal conviction is destroyed or sealed after the expiration of time.
- **Pardon**..... *Black's Law Dictionary* defines "**pardon**" as an executive action that mitigates or sets aside punishment for a crime. An act of grace from government power which mitigates the punishment the law demands for the offense and restores the rights and privileges forfeited on account of the offense.



# Added Emphasis: The Effect of Criminal Convictions on Labor

- Illinois examples: (<http://www.icjia.state.il.us/articles/the-impact-employment-restriction-laws-on-Illinois-convicted-felons>)
  - 1,449 Illinois statutes constrain convicted felons rights, entitlements, and opportunities.
  - Of those constraints, 77% impose restrictions on felons' employment, **occupational licensing**, and business activities.
  - The majority of those restrictions are mandatory, automatic, and permanent.
  - Six (6%) percent of these statutes provide an avenue for relief from these collateral consequences.
  - Examples of licensure consequences:

• Mandatory restrictions	Discretionary restrictions
Nurses	Barbers
Certified nursing assistants	Realtors

# Consequences

- Increased political pressures to legislate solutions....
- Anticipated increased incentives to petition for expungement of records

# Illinois initiative...

- On July 19, 2014, Illinois Governor Pat Quinn signed into law the Job Opportunities for Qualified Applicants Act, which went into effect on January 1, 2015. The new law will restrict the timing of pre-employment inquiries by Illinois employers about a job applicant's criminal past. (Job Opportunities for Qualified Applicants Act; (820 ILCS 75/1))
- Effective January 1, 2017, **Illinois law will allow licensed health care workers convicted of previously disqualifying forcible felonies to petition the IDPH for a waiver.** (Public Act 099-0886)
- Illinois law provides that a **felony conviction cannot be the sole reason for rejecting an applicants request for a license in certain identified occupations: funeral director, embalmer, roofer, barber, cosmetologist, esthetician, hair braider, and nail technician.** (Public Act 099-0876)

# Criminal settings

- Numerous processes and case law surrounding the expungement of records related to criminal convictions (and arrests).
- State and Federal statutes

# Relevance to Administrative Settings

- What will petitions to expunge involve re the administrative records
  - Complaints
  - Formal administrative charges
  - Investigative files
  - Transcripts of administrative proceedings
  - Final administrative orders
- What entity (or entities) is authorized to determine such petitions
  - Executive branch
  - Judiciary
  - Administrative board(s)

# DWI/DUI

- Relevant case law that may be instructive involves a driver's license.
  - Scenario:
    - Individual arrested for DWI.
    - Convicted of criminal offense (criminal proceeding).
    - Criminal conviction leads to suspension of driver's license for a period of 90 days (administrative proceeding).
    - Individual seeks expungement (as provided by statute) of all matters related to DWI conviction.
    - ***Ask: Does such expungement encompass both the criminal and administrative actions?***



## e.g. Missouri....Yes

- The 2005 amendment to Missouri law (Mo. Rev. Stat. section 577.054.1) authorizes the Director of Revenue to expunge “all” records of respondent’s drivers administrative alcohol suspension and make such records confidential.  
(See: *S.S. v. Mitchell*, 289 S.W. 3d 797 (App. Ct. MO 2009))
- Does such an analysis apply to an occupational/professional license?

# DWI/DUI

- Relevant case law that may be instructive involves a DWI/DUI.
  - Scenario:
    - Individual arrested for DWI.
    - Convicted of criminal offense (criminal proceeding).
    - Criminal conviction leads to suspension of occupational/professional license for a period of 90 days (administrative proceeding).
    - Individual seeks expungement (as provided by statute) of all matters related to DWI conviction.
    - ***Ask: Does such expungement encompass both the criminal and administrative actions?***



# Administrative Expungements

- Is there a process by which Licensees can seek and be granted petitions to expunge administrative records?
  - **Kentucky** ....KRS 314.131(9) and 201 KAR 20:410 (nursing)
  - **Maryland** ...explored, but no formalization in law. See letter & report of January 24, 2011 from Secretary of Health Occupations Board to Senate Education, Health, and Environmental Affairs Committee and House Health and Government Operations Committee
  - **North Carolina** ...in disciplinary handbook only, but not law. B.11 Expunging a Licensee's Record of a Violation or Sanction

# Additional Relevant Case Law

- Explore relevant cases.....



# *Stephenson v. United States* 2015 U.S. Dist. LEXIS 137740 (D.C. NY 2015)

- The U. S. District Court for the Eastern District of New York **denied Dawn Stephenson's petition to expunge her conviction for bank fraud entered twenty two years ago in which she served one day in custody, six months home confinement and four years supervised release.** Petitioner sought the expungement because she was desirous of seeking a career in nursing and was **concerned about meeting the "good moral character" requirement in seeking employment in the profession due to the criminal conviction.** In the period following her conviction, she was working, obtained an associate's degree in human services/mental health and was hired as a coordinator for a trauma team. The court noted that to receive an expungement under federal law, a petitioner must demonstrate that the conviction is causing "extreme circumstances" in his or her life such as inability to secure employment.

## *Stephenson v. United States* 2015 U.S. Dist. LEXIS 137740 (D.C. NY 2015)

- The court, after pointing out that Stephenson had served her time without incident, had been gainfully employed, her conviction had no relationship to the practice of nursing, she had good moral character and the policy of New York as evidenced by statutory law was to prevent discrimination based on a prior conviction, found **she had not demonstrated "extreme circumstances" as required under federal law because she ".... has been so successful in turning her life around."** The court noted the irony in this case is that it was because Stephenson had been so successful in turning her life around that she was unable to demonstrate "exceptional circumstances" warranting expungement. The court entered the order denying the petition without prejudice as to any future application should her circumstances change.

# Webster v. State, 2016 Del. Super, LEXIS 449 (Superior Ct. DE 2016)

- **A Delaware Superior Court denied an individual's (Petitioner) motion to have his criminal record expunged because he provided no facts to support his allegation that the continued existence and possible dissemination of information regarding his arrest caused or might cause injustice to him.** The Petitioner was arrested on assault charges and found not guilty after a jury trial. In his petition, he provided no facts to support the allegation of injustice, as required by statute. The court compared the case to one where a physician filed for an expungement, arguing that a complaint was filed with a medical licensing board related to the same conduct for which a physician was acquitted.

# Webster v. State, 2016 Del. Super, LEXIS 449 (Superior Ct. DE 2016)

- Much like in Petitioner's case, the **physician's case was highly publicized, thus news accounts were forever available to the public regarding the arrests and subsequent acquittals. Therefore, expunging an arrest record would not necessarily negate the public's access to the relevant information.** The court held that the **Petitioner did not meet the burden of showing that maintaining the arrest record was manifestly unjust,** but allowed him the opportunity to amend his complaint.

## Farr v. State, 1997 Del. Super 322 (Superior Ct. DE 1997)

- **The Superior Court of Delaware denied a petition by a physician to expunge his arrest record as he did not meet his burden of showing a manifest injustice if the record were not expunged.** The physician, an OBGYN, was arrested for sexual assault and due to publicity of the accusations, several patients alleged inappropriate touching. After a jury trial, the physician was acquitted of the criminal charges. Thereafter, the physician petitioned to expunge his criminal arrest record. The Medical Board subsequently filed an administrative complaint based upon the multiple patients accusations. Based upon the pending administrative proceeding, the parties agreed to “stay” the petition for expungement until the administrative proceedings were complete.

## Farr v. State, 1997 Del. Super 322 (Superior Ct. DE 1997)

- After the administrative hearing, the physician was found to have breached the trust of his patients, as well as to have acted unprofessionally and abusive. The Board revoked his certification to practice medicine. He did not appeal the ruling.
- The stay was lifted and the criminal expungement proceedings were resurrected whereby the court addressed the petition to expunge the criminal arrest record. Finding a lack of specifics necessary to be alleged to establish a manifest injustice and no evidence of failure to obtain employment, the court denied the petition.



## Doe v. United States (U.S. District Court 2016)

**A federal district court ruled it lacked jurisdiction to expunge its own federal criminal conviction of a nurse who had been convicted of fraud thirteen years before, even on equitable grounds.** The criminal conviction had impaired the nurse's license and employment opportunities because of the public nature of the conviction.

With no intention of continuing an “unending hardship she has endured in the job market,” the same federal judge who originally sentenced the nurse **did issue a federal certificate of rehabilitation** based on the undisputed rehabilitation of the nurse and twelve-year history of no further legal issues since the conviction.

## Doe v. United States (U.S. District Court 2016)

The fraud conviction involved the vulnerable defendant, a nurse at the time, being recruited by a corrupt boyfriend to fake injury in a staged car accident, a crime not uncommon at the time due to “corrupt health care professionals, lawyers, and others” who “exploited this no-fault scheme by staging car accidents and receiving payments for injuries never suffered and services never rendered.”

A jury convicted the defendant and a harsher prison sentence was reduced upon remand by a federal appeals court pursuant to the then-recent U.S. Supreme Court case on federal sentencing mandates.

**While an expungement would allow the nurse and society “to forget” the conviction, a certificate of rehabilitation recognized the conviction, but “uses a certificate of rehabilitation or a pardon to symbolize society's forgiveness of the underlying offense conduct.”** A certificate of rehabilitation is authorized by state law.

# Where are we?



- Know what expungement means
- Distinguish between criminal and administrative proceedings and expungements
- Be prepared for petitions to expunge administrative records
- Seek counsel on both procedural and substantive rights of petitioners
- Know the law regarding administrative petitions
- The petitioner has the burden
- Know what the burden is...
- Register for future FARB meetings...

A 3D rendered white figure of a person, standing and facing slightly to the right. It has a large, smooth, featureless head and a simple, rounded body. It is holding a black marker in its right hand, which is raised as if writing. The figure casts a soft shadow on the ground below it.

Thank you

to....

- Attendees
- Speakers
- FARB BOD
- Staff
- AV staff
- Hotel
- Texas regulatory community

# SAVE THE DATE



25<sup>th</sup> Annual FARB RLS  
October 5 - 8, 2017  
Hyatt Regency Savannah  
Savannah, GA



42<sup>nd</sup> Annual FARB Forum  
January 25 - 28, 2018  
Loews Coronado Bay  
Coronado, CA