



REPORT OF
THE
STATE AUDITOR

Department of Regulatory Agencies
Division of Registrations

PERFORMANCE AUDIT
August 2005

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This report contains the results of a performance audit of the Colorado Division of Registrations. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Division of Registrations.

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**Department of Regulatory Agencies
Division of Registrations
Performance Audit
August 2005**

Authority, Purpose, and Scope

This performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government. The audit work was conducted from December 2004 through June 2005 in accordance with generally accepted government auditing standards. During the audit we evaluated the efficiency and effectiveness of the Division of Registrations' licensing program, processing of complaints, and monitoring and enforcement efforts, as well as the overall administration of the Division of Registrations and its regulatory components. We acknowledge the assistance and cooperation of both management and staff at the Division of Registrations and the Department of Regulatory Agencies.

Background

The Division of Registrations (Division) is organizationally located within the Department of Regulatory Agencies (Department). The Division regulates approximately 280,000 individuals and 25,000 organizations within 30 licensing boards and programs. As part of its mission to protect the public through effective licensure and enforcement, the Division is responsible for licensing qualified practitioners and facilities, conducting investigations and inspections, and imposing disciplinary actions. There are three different types of regulatory boards and programs under the Division's oversight (1) autonomous boards (Type 1 boards), (2) advisory committees (Type 2 boards), and (3) director programs. Type 1 boards are autonomous and responsible for handling their own examination, licensing, enforcement, and rule-making functions. For the advisory committees and director programs, the Division Director is responsible for supervising and controlling all examination, licensing, enforcement, and rule-making functions. The Division is almost entirely cash funded through revenues consisting primarily of licensing fees, including application, renewal, reinstatement, and examination fees. In Fiscal Year 2005 the Division received approximately \$19.5 million in revenues, had expenditures of about \$18.4 million, and was appropriated 157 FTE.

For further information on this report, contact the Office of the State Auditor at 303.869.2800.

Summary of Audit Findings

Licensing

The Division is charged with protecting the public and ensuring that only fit and qualified applicants are granted licenses. We reviewed Division practices for licensing professions and administering examinations and found the following problems:

- **Identifying and evaluating criminal histories.** The Division's reliance upon self-disclosed criminal history information and checks performed by employers and educational programs may not be sufficient to adequately protect the public. Overall, we identified over 2,000 active licensees with felony convictions and nearly 5,000 active licensees with misdemeanor convictions. In addition, we reviewed the licensing applications for a sample of 54 active licensees who had a criminal conviction prior to licensure and found that 12 (22 percent) did not self-disclose a conviction they were required to report. We also reviewed 4,450 certified nurse aide applications and identified nearly 200 individuals (4.5 percent) who had a criminal history but failed to self-disclose this information on their applications. Finally, we found that when criminal histories are identified, the Division lacks clear criteria for evaluating those histories to determine whether an applicant should receive his or her license.
- **Licensing registered sex offenders.** The Colorado Bureau of Investigation identified approximately 270 individuals with active licenses who are registered sex offenders. More than 80 percent are licensed by either the Electrical or Plumbing boards, which are professions requiring access to homes and buildings. In addition, about 5 percent of the individuals are in a health care profession and may provide services to vulnerable people. The Division does not check the sex offender registry before awarding or renewing licenses.
- **Oversight of the examination process.** The Division has not provided the necessary level of oversight of the certified nurse aide examination process, which has resulted in problems with examination administration and outcomes. Specifically, we found substantial discrepancies in written and practical examination scores and inconsistencies in the level of difficulty for practical examination scenarios. Neither the Division nor the Board of Nursing have analyzed the vendor's test result data, even though they have received complaints from licensing applicants regarding the examination and failing scores.

Complaints and Investigations

The 30 licensing boards and programs within the Division are responsible for receiving and handling complaints. We identified the following weaknesses in this area:

- **Complaint classification.** The Division is overstating complaint data and corresponding dismissals by classifying cases initiated from self-disclosure questionnaires as complaints. (Cases initiated from self-disclosure questionnaires occur when an applicant discloses information, such as a criminal conviction, that requires follow up investigation.) We estimate that approximately 875 of the 3,760 (23 percent) cases received in Fiscal Year 2004 were initiated by self-disclosure questionnaires. The Division currently lacks a system for properly classifying the different types of cases it receives so that it can quantify complaints and conduct meaningful analysis.
- **Complaint processing.** Neither the Division nor the individual boards and programs have established timeframes or prioritization schedules for processing complaints. For a sample of 70 complaints, we found that it took, on average, about 160 days to process and close the complaints, with some taking as little as 23 days or as long as 512 days to complete.
- **Referral of criminal violations.** Neither statute nor Division policies require Division staff to refer criminal acts committed by licensed and unlicensed professionals to appropriate law enforcement authorities. Of the nearly 970 disciplinary actions issued between July 2003 and December 2004, about 260 (27 percent) actions were for practice act violations that were also criminal offenses. We found that only 2 of the 260 violations (less than 1 percent) were referred for criminal investigation and prosecution.
- **Peace officer authority.** We found that even when the Division alerts law enforcement agencies of criminal activity, the cases are not always investigated or prosecuted. According to Division staff, law enforcement agencies are reluctant to investigate and prosecute licensing-related violations because they may have more serious crimes waiting to be processed and they are not always familiar with the licensing practice acts and the role of the Division. The Division could increase the number of cases investigated and prosecuted if the Division's investigators had statutory peace officer authority and could pursue both the administrative and criminal aspects of cases.

Enforcement

Disciplinary actions are imposed by the Division for violations of the practice acts or licensing rules. We identified the following issues related to the Division's monitoring and enforcement practices:

- **Compliance monitoring.** The Division does not sufficiently monitor licensees to ensure compliance with disciplinary actions. For a sample of 30 nurses who had their licenses revoked, we matched the Division's records with employment data maintained by the Colorado Department of Labor and Employment and identified 11 that had received compensation from health care facilities after license revocation. This information warrants further follow up, since these individuals with revoked licenses could still be employed as nurses. In addition, for a second sample of 25 cases with disciplinary actions, we found the

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Division did not monitor compliance with the terms of the disciplinary actions for 6 of these cases (24 percent).

- **Disciplinary guidelines.** Most of the licensing boards and programs within the Division do not have written criteria for use in determining disciplinary actions against licensees who act inappropriately or in violation of law and rules. We reviewed a sample of 22 disciplinary actions taken by 9 licensing boards and programs and identified 6 cases where lack of defined criteria may have resulted in the boards and programs applying either no discipline or a lower level of discipline than may have been warranted.
- **Expedited settlement process.** The Office of Expedited Settlement has not been as effective as it could be in reducing the number of cases sent to the Office of the Attorney General, and thus the Division's legal costs. The number of cases sent to the Attorney General in Fiscal Year 2005 increased 26 percent over the prior year. Legal expenses could be further reduced if more boards and programs utilized the expedited settlement process. In Fiscal Year 2005 the average cost to settle a case through the Office of Expedited Settlement was about \$320, compared to an estimated \$620 per case for those sent to the Office of the Attorney General.

Administration

Maintaining complete and accurate information and actively monitoring payment activities are essential components of the Division's overall responsibility to provide public protection. We identified the following improvements to the Division's administration of the State's licensing function:

- **Assessment and collection of fines.** The Division does not actively track or reconcile fines and payments or act timely on late payments. In addition, we found the Division does not have complete and accurate data on the amount of fines and citations assessed and collected. We reviewed records for 91 cases with fines assessed between July 2003, and December 2004, and identified 32 records (35 percent) with missing and/or inaccurate fine payment amounts. Further, we found that disciplinary action had not been taken against nine licensees with unpaid fines or delinquent payments.
- **Delinquent payments.** We found the Division (1) referred delinquent accounts to Central Collections about 40 days after becoming past due although statute requires referral within 30 days, (2) failed to refer 21 delinquent fine accounts to Central Collections, and (3) does not have a formal reconciliation process in place to accurately monitor delinquent debts.
- **Automated data.** There are inconsistencies within the Division and among the licensing boards and programs in the way data are entered and maintained in the DORA Licensing System (DLS). We reviewed a sample of 70 disciplinary cases and identified 31 examples

in 26 cases (37 percent) with missing or inaccurate data. Further, we found the Division is not fully utilizing DLS to maintain information for all phases of the licensing, complaint, and enforcement processes.

Our recommendations and the responses of the Division of Registrations can be found in the Recommendation Locator.

RECOMMENDATION LOCATOR
Agency Addressed: Division of Registrations

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	22	Periodically run name checks against the Judicial database; assess the risks and consider the appropriateness of more comprehensive criminal history checks; and evaluate the various methods of conducting checks for licensees with criminal histories.	Agree	June 30, 2006
2	24	Develop guidelines and establish clear criteria for evaluating criminal history information.	Agree	June 30, 2006
3	25	Work with the Colorado Bureau of Investigation to identify potential or active licensees on the Colorado Sex Offender Registry, and use this information to determine if individuals are suitable for licensure or license renewal.	Agree	December 31, 2006
4	28	Clarify the Division's contract management policy to fully explain oversight responsibilities; provide formal contract management training to staff; include contract management responsibilities in staff position descriptions and performance plans; and develop and incorporate performance measures into vendor contracts.	Agree	June 30, 2007
5	30	Evaluate the feasibility and cost-effectiveness of having applicants apply directly to examination vendors or having applicants submit their scores to the Division, and contracting out additional licensing functions.	Agree	June 30, 2006
6	32	Establish a Division-wide policy for separately classifying self-disclosure and complaint information.	Agree	December 31, 2005
7	35	Develop prioritization schedules and time frames for processing and resolving complaints.	Agree	June 30, 2006

RECOMMENDATION LOCATOR
Agency Addressed: Division of Registrations

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
8	37	Assess the appropriateness of current criminal violations outlined in statute and determine what penalties should be assigned to violations; develop formal policies and procedures covering the referral of cases to district attorneys' offices and other local law enforcement agencies.	Agree	June 30, 2006
9	40	Seek statutory authority for peace officer status for the Division's criminal investigators and specifically define the extent of this authority.	Agree	June 30, 2006
10	42	Continue outreach efforts and develop additional written formal agreements or memoranda of understanding with other governmental and nongovernmental agencies covering the referral of potential practice act violations to the appropriate licensing boards or programs.	Agree	December 31, 2005
11	46	Establish policies and procedures for monitoring compliance with disciplinary actions; train staff on these procedures; and investigate options for following up on individuals who have had their licenses revoked.	Partially Agree	June 30, 2006
12	49	Establish written criteria and guidelines for determining appropriate disciplinary action.	Agree	December 31, 2006
13	52	Work with the licensing boards and programs to increase the number of cases referred to the Office of Expedited Settlement; implement a formal system to document and provide justification for cases referred to the Attorney General; and develop a billing method that reflects actual program usage.	Agree	December 31, 2005

RECOMMENDATION LOCATOR
Agency Addressed: Division of Registrations

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
14	55	Evaluate the cost-effectiveness of the hearing cost-recovery process and either enforce statutory requirements or seek statutory change to repeal the requirements.	Agree	June 30, 2006
15	60	Develop and implement procedures for recording and reconciling the assessment and payment of fines; collect delinquent payments and take action against licensees when fines are not paid; and comply with statutory requirements for sharing electrical fine revenue with local governments.	Agree	June 30, 2006
16	63	Work with Central Collections to determine appropriate fees for insufficient payments, and utilize DLS to manage and reconcile delinquent payment accounts.	Agree	June 30, 2006
17	66	Assess information entered into DLS to determine if data collected are accurate and necessary; develop standard written policies for entering data into DLS; and establish quality control procedures to verify information entered into the system.	Agree	June 30, 2006
18	67	Provide written guidelines identifying the information contained in case files, and establish a quality review process to ensure proper documentation is maintained.	Agree	December 31, 2005

Description of the Division of Registrations

Background

The Division of Registrations (Division) is organizationally located within the Department of Regulatory Agencies (Department). The Division regulates about 280,000 active individuals and 25,000 organizations within 30 licensing boards and programs. Each board and program within the Division has unique statutory requirements covering the administration and regulation of their licensed populations, including requirements related to licensing, enforcement, and discipline. As part of its mission to protect the public through effective licensure and enforcement, the Division is responsible for:

- Identifying and licensing qualified practitioners, facilities, programs, and equipment.
- Conducting investigations and inspections to ensure compliance.
- Restricting, suspending, or revoking licenses when generally accepted standards of practice, conduct, or safety are not met.
- Efficiently administering the regulatory programs.

Organizational Structure

There are three different types of regulatory boards and programs under the Division's oversight: autonomous boards (under statute called Type 1 boards); advisory committees (under statute called Type 2 boards); and director programs. According to statute (Section 24-34-102, C.R.S.), the Division provides any necessary management support to Type 1 boards and has supervision and control of the Type 2 licensing programs. Practically, Type 1 boards are autonomous and responsible for handling their own examination, licensing, enforcement, and rule-making functions. Members of Type 1 boards are appointed by the Governor and serve varying terms. The following table shows the Type 1 boards along with the number of individuals licensed by each board:

Type 1 Boards and Number of Active Licensees			
Board	Number of Licensees	Board	Number of Licensees
Accountancy	10,600	Optometrists	1,100
Architects	6,700	Passenger Tramway	360
Chiropractic	2,500	Pharmacy	6,300
Dental	7,800	Plumbers	16,900
Electrical	29,500	Podiatry	190
Engineers/Land Surveyors	30,300	Professional Counselors	3,400
Marriage & Family Therapist	550	Psychologist	2,200
Medical	17,600	Unlicensed Psychotherapists	2,100
Nursing	60,300	Social Work	3,600
Nursing Home Administrators	530	Veterinary	3,400
Source: Division of Registrations data.			
Note: Number of licensees includes apprentices and interns that have limited scope of practice, but not retired or inactive licensees or entities.			

For Type 2 advisory committees, members are typically industry practitioners who provide guidance and recommendations to the Division Director. The Division Director is ultimately responsible for supervising and controlling all examination, licensing, enforcement, and rule-making functions (Section 24-34-102, C.R.S.). With the exception of the Boxing Commission, whose members are appointed by both the Governor and the General Assembly, Type 2 committee members are appointed by the Division Director. The following table shows the Type 2 advisory committees along with the number of licensees:

Type 2 Advisory Committees and Number of Licensees	
Committee	Number of Licensees
Barber/Cosmetology	40,500
Boxing	310
Nurse Aides	25,400
Outfitters	330
Physical Therapy	4,800
Source: Division of Registrations data.	

For the director programs, the Division Director is responsible for supervising and controlling all examination, licensing, enforcement, and rule-making functions. However, for these professions there is no statutory requirement for an advisory committee to assist the Director. The following table shows the director programs and number of licensees:

Director Programs and Number of Licensees	
Program	Number of Licensees
Acupuncture	780
Addiction Counselors	2,600
Respiratory Therapy	2,000
Audiology/Hearing Aid Providers	430
Midwifery	50
Source: Division of Registrations data.	

The 30 boards and programs have been organized into nine separate program areas. Each program area is assigned a program director and administrative staff. In addition, support services are provided to all boards and programs by an additional five centralized offices:

- **Office of the Director.** Manages and oversees the Division, including directly supervising the program directors, administering the budget, coordinating legislation for the Division, and other functions as needed.
- **Office of Support Services.** Maintains the licensing system and produces license and renewal forms, processes license verifications and payment voucher requests, receives and processes mail and cash payments made by licensees, maintains the Division's Web site, and staffs the customer service positions at the front desk.
- **Office of Licensing.** Evaluates the initial license, renewal, and reinstatement applications to ensure all requirements are met and issues the licenses upon approval.
- **Office of Examination Services.** Develops and administers examinations conducted by the Division and contracts with private-sector companies to develop and administer examinations to license applicants.
- **Office of Investigations.** Conducts investigations of complaints referred by the licensing boards or programs.

Fiscal Overview

The Division is almost entirely cash-funded through the Division of Registrations Cash Fund. The Division's cash fund revenues consist primarily of licensing fees, including application, renewal, reinstatement, and examination fees. In addition, the certified nurse aide program receives some federal Medicare and Medicaid funds. The following table shows Division revenues and expenditures for Fiscal Years 2002 through 2005. Revenues increased by over 15 percent while expenditures increased by about 2 percent.

Division of Registrations Revenues and Expenditures Fiscal Years 2002 Through 2005 (In Millions)						
		Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004	Fiscal Year 2005	Percent Change 2002-2005
Revenues	Division of Registrations Cash Fund	\$16.6	\$19.2	\$18.1	\$19.2	15.7%
	Funds from Health Care Policy and Financing	\$0.3	\$0.3	\$0.3	\$0.3	0.0%
	Total Revenues	\$16.9	\$19.5	\$18.4	\$19.5	15.4%
Expenditures	Total Expenditures*	\$18.1	\$19.0	\$19.1	\$18.4	1.7%
Employees	Total FTE	150.6	149.4	149.4	157.4	4.5%
Source: Office of the State Auditor analysis of COFRS information. * Funds from Health Care Policy and Financing are transferred into the Division of Registrations Cash Fund.						

Audit Scope and Methodology

During this performance audit we evaluated the efficiency and effectiveness of the Division's licensing, investigation, complaint processing, monitoring, and enforcement functions, as well as the overall administration of the Division and its regulatory components. Our audit work included interviewing both Division and Department staff, reviewing statutory requirements and application information, analyzing complaint and enforcement data contained within the Division's centralized licensing system, and utilizing information from the Colorado Judicial Department, the Colorado Bureau of Investigation, and the Colorado Department of Labor and Employment databases. In addition, we reviewed professional licensing practices in six other states (Idaho, Maine, Maryland, New Mexico, Vermont, and Washington), and interviewed management and staff from other regulatory and law enforcement agencies in the State, as well as from the Colorado Office of the Attorney General.

Audit work was conducted from December 2004 through June 2005. We acknowledge the assistance and cooperation of both management and staff at the Division of Registrations and the Department of Regulatory Agencies.

Licensing

Chapter 1

Background

The mission of the Division of Registrations is to protect the public through effective licensure and enforcement. This includes identifying and licensing qualified practitioners and restricting, suspending, or revoking licenses when accepted standards of practice are not met. The Division utilizes industry associations, private companies, and nonprofit entities to perform various functions associated with professional licensing in Colorado. Depending on the board or program, services may include reviewing and processing applications, conducting examinations, and issuing licenses.

We reviewed the Division's licensing functions to determine if the Division is adequately protecting the public and ensuring that only fit and qualified applicants are granted licenses. We identified concerns with the Division's oversight and review of criminal histories for current and prospective licensees. We also identified areas where the Division can improve its contract management oversight of examination vendors to ensure compliance with statutory and contractual requirements.

Criminal History Checks

Criminal history checks are important in the regulatory arena. They are one of the most basic ways to evaluate an applicant's fitness for licensure and to protect the public from licensees who may use their license to cause public harm. Criminal history checks can be comprehensive (e.g., a fingerprint check through the Federal Bureau of Investigation) or limited (e.g., self-disclosure by the license applicant). Costs vary substantially depending on the method used. The challenge for the Division and the General Assembly is to ensure a system of criminal history checks that provides sufficient public protection while controlling costs.

To date, the Division has primarily relied on applicants to self-disclose their criminal histories. However, during our audit, the Division also conducted name-based criminal history checks for one profession: certified nurse aide applicants. Self-disclosure and name-based criminal history checks are discussed in detail below:

- **Self-disclosure.** For all of the professions regulated by the Division (except for certified nurse aides) statutes do not authorize the Division to conduct criminal history checks. To identify criminal histories, the Division requires applicants to complete a questionnaire disclosing their criminal history at the time of application for initial licensure. Additionally, 4 of the 30 licensing boards and programs (Nursing, Medical, Optometry, and Podiatry) have statutory requirements mandating the self-disclosure of criminal history information at the time of license renewal. Two other programs (Pharmacy and Veterinary) require self-disclosure during license renewal in conjunction with collecting evidence of continuing education. Depending on the profession and statutory requirements, the applicant is required to disclose different types of criminal history information. For example, all registered nurse applicants are asked if they have ever been convicted of a felony, misdemeanor, or petty offense. (The practice act permits the denial of a license on the grounds that the applicant has been convicted of a felony or any crime that would constitute a violation of the act.) Applicants for an electrician license are asked to disclose only convictions or guilty pleas related to crimes that are felonies. (The practice act limits grounds for license denial to felony convictions.) In contrast, statutes require engineers and land surveyors to disclose only felony convictions related to their ability to practice.
- **Name-based criminal history check.** Until August 2005, the certified nurse aide statute (Section 12-38.1-105(1)(c), C.R.S.) required the Division to conduct a criminal history check for every nurse aide applicant within 90 days of the receipt of the application. (Certified nurse aides represent approximately 25,400, or 9 percent, of about 280,000 total active licensees regulated by the Division.) Applicants arranged for their criminal history check through a private company, which submitted the results to the Division for review. During the 2005 legislative session, the Division initiated an amendment to Senate Bill 05-155 repealing criminal history checks for certified nurse aide applicants. The bill passed, and effective August 2005, criminal history checks are no longer required for licensure.

Our audit examined the extent to which the Division's licensees had criminal histories and whether the Division's procedures successfully identified these criminal histories prior to granting a license. We identified concerns with the Division's controls over criminal history checks, as described in the next two sections.

Criminal Convictions

To identify current Division licensees with criminal convictions, we worked with the Colorado Judicial Department (Judicial Department) to match 280,000 individuals with active licenses to the Judicial Department's court disposition database. We were unable to conduct matches on about 52,000 licensees because Division records were missing key data fields such as date of birth. Of the approximately 228,000 licensees we were able to match, we identified over 2,000 active licensees with felony convictions and nearly 5,000 active licensees with misdemeanor convictions. This represents about 3.1 percent of total licensees matched by Judicial. More than 90 percent of these licensees were licensed by the Nursing, Barber/Cosmetology, Electrical, Plumbing, and Engineers/Land Surveyors boards and programs, which are some of the largest programs in the Division. It is important to note that the match likely understates the number of active licensees with convictions because the Judicial Department database does not include dispositions from other states, municipal courts, or cases handled by Denver County Court.

Identifying Criminal Histories

To determine whether Division controls were sufficiently identifying current and prospective licensees with prior criminal convictions before granting a license, we evaluated self-disclosure information provided on license applications. We reviewed a random sample of 54 active licensees who had a criminal conviction before 2004 and who were licensed after January 1, 2004, and identified 12 individuals (22 percent) who did not report a conviction that they were required to disclose. We also reviewed 4,450 nurse aide applications submitted between July 1, 2003, and December 31, 2004, and identified nearly 200 individuals (4.5 percent) who had a positive criminal history check yet did not self-disclose this information on their applications. Finally, we identified approximately 290 individuals (6.5 percent) who did disclose their criminal history, yet the criminal history check did not identify a corresponding conviction. Staff report that the Division typically follows up with applicants who self-disclose a criminal history, and in most cases, staff are able to verify the criminal conviction through supporting court documents. Staff believe that the likely reason these 290 criminal histories were not identified through the name-based criminal history check is that the check only searches for criminal histories in the states the applicant reported as a former residence. If the applicant committed and was convicted of a crime outside of his or her reported states of residence, the conviction would not appear on the criminal history check.

Checks by Employers and Educational Institutions

Our analysis raises concerns about whether the Division's reliance on applicants' self-disclosed criminal histories is sufficient to ensure the Division has complete criminal history information before evaluating applicants for licensure. The Division acknowledges that there are weaknesses in applicant self-disclosures but notes that there are other controls that ensure applicants with criminal histories are not working in professions with sensitive or high-risk public contact. For example, applicants working in health care professions may have their criminal histories checked by their educational institutions during training or by their employers after licensure. For this reason, the Division initiated eliminating the statutory requirement for criminal history checks for certified nurse aides, and effective August 2005, statutory criminal history checks for nurse aide applicants are no longer required.

We evaluated whether criminal history checks performed by employers and educational institutions were sufficient to ensure that criminal histories of certified nurse aide applicants and licensees were identified. We identified substantial gaps as discussed below.

Employers. Certified nurse aides typically work in one of the State's approximately 210 long-term care facilities or about 420 home health care, hospice, and convalescent center agencies. The Colorado Department of Public Health and Environment (CDPHE) ensures statutory and regulatory compliance at these agencies. Statute (Section 25-1-124.5, C.R.S.) requires each of the 210 long-term care facilities to conduct criminal history checks on employees. Federal Medicare and Medicaid regulations also prohibit individuals convicted of certain types of crimes from working in long-term care facilities. However, neither statute nor federal regulation specifies the type or comprehensiveness of the required criminal history check nor the types of convictions that disqualify individuals from employment. According to CDPHE staff, practices vary among facilities, with some facilities conducting a simple name-based criminal history check in the county of residence provided by the employee and others conducting broader searches.

There are no statutes or regulations requiring the other 420 facilities regulated by the CDPHE to conduct criminal history checks. As noted above, these include home health care, hospice, and convalescent center agencies, which are all areas where vulnerable people reside. Additionally, there are no regulations prohibiting these agencies from employing individuals with criminal histories. These agencies serve vulnerable populations and typically provide services to clients in a less controlled and unsupervised environment, such as the client's home. The CDPHE reports that, in general, the majority of these agencies do not have policies to investigate the criminal histories of employees.

Educational Institutions. A significant number of certified nurse aides receive their training through the Health and Nursing programs administered by the Colorado Community College System (CCCS). Recently the CCCS has adopted a policy that requires all prospective nursing students to submit to a criminal history check prior to enrollment in one of the CCCS schools. However, there are institutions in the State such as private vocational education institutions that also train nurse aides. Some of these institutions do not have similar requirements in place for criminal history checks. As a result, practices for conducting criminal history checks among nurse aide training programs are inconsistent.

Improvements

The Division should improve its controls for ensuring that licensing boards have the information they need to review the criminal histories of applicants for regulated professions. The reliance upon self-disclosed criminal history information and checks performed by employers and educational programs may not adequately protect the populations served by these professions if the applicant does not self-disclose. As the single point of contact for licensure, the Division is uniquely positioned to ensure that criminal history checks performed for the professions it regulates are comprehensive, consistent, and equitable.

The federal government and other states are expanding their use of criminal history checks as a tool to protect the public and for evaluating the suitability of professional licensees. For example, Florida requires criminal history checks for all applicants in several health care fields, including nursing, podiatry, chiropractic, and osteopathic disciplines. The federal government recently instituted a pilot program requiring fingerprint-based criminal history checks for all employees at long-term care facilities, home health agencies, and other related facilities in seven states. Other state agencies in Colorado also require fingerprint-based criminal history checks for licensees, including those applying for a license from the Division of Gaming as well as individuals seeking a motor vehicle dealer's license. Finally, as previously mentioned, some educational institutions are also adopting requirements for criminal history checks.

To improve its oversight of criminal history checks, the Division should take immediate action at several levels. First, the Division should notify applicants and licensees that their criminal history could be checked. The Division could then periodically run name checks against the Judicial database, as we did on this audit. This can be a cost-effective option and produce a sentinel effect. Second, the Division should consider random verification of the self-disclosed criminal history information provided to each licensing board and program to identify high-risk areas. Third, the Division should work with each licensing board and program to determine the risks licensees with criminal histories pose to the public. The Division may wish

to conduct more comprehensive criminal history checks for these professions, seeking statutory authority as needed. Finally, the Division needs to consider the types of criminal history checks that best serve the needs of the specific licensing boards and programs. This could range from simple name-based criminal history checks, to state and nationwide fingerprint-based criminal history checks.

Recommendation No. 1:

The Division of Registrations should improve its oversight of criminal history checks to ensure adequate protection for populations served by Division-regulated professions. The Division should evaluate a range of options including:

- a. Notifying applicants and licensees that their criminal history may be verified, and periodically running name checks against the Judicial database.
- b. Developing a system to verify self-disclosed criminal history information provided by applicants through random criminal history checks.
- c. Working with the various licensing boards and programs to assess the risks that licensees with criminal histories pose to the public, and considering more comprehensive criminal history checks as appropriate.
- d. Working with the licensing boards and programs to evaluate the various methods of conducting criminal history checks, and determining which methods are most appropriate to serve the needs of the various boards and programs. Statutory changes should be pursued as necessary.

Division of Registrations Response:

- a. Agree. Implementation Date: January 1, 2006. The Division has obtained a sample letter from the Colorado Gaming Commission that will notify applicants and licensees that submitted information is subject to verification and we will periodically run name checks against the Judicial database as practicable.
- b. Agree. Implementation Date: June 30, 2006. The Division has begun exploring ways to develop a system to verify self-disclosed criminal history information such as requiring licensees to self-report subsequent felony convictions after the date of initial licensure, which would require statutory changes.

- c. Agree. Implementation Date: June 30, 2006. The Division will work with the boards and programs to assess the risks that licensees with criminal histories pose to the public and consider more comprehensive criminal history checks as appropriate.
- d. Agree. Implementation Date: June 30, 2006. The Department is in the process of preparing a memo outlining the various methods of conducting criminal history checks in order for boards and programs to determine which method, if necessary, is the most appropriate. The Division notes that depending on the board or program, statutory changes may be needed to implement more comprehensive criminal history checks.

Evaluating Criminal Histories

Once the Division has identified the criminal histories of its applicants for licensure and license renewal, the Division should assess these histories to determine whether, in the interest of public protection, a prior conviction should disqualify an applicant. We reviewed Division practices for evaluating the criminal history information of potential licensees and found a lack of written, objective criteria and different practices among licensing boards and programs. For example, the Board of Nursing has established a matrix that requires staff to collect additional information if applicants have disclosed certain types of crimes. On the basis of the type of crime disclosed, or upon the results of the criminal history check for certified nurse aides, various levels of approval are required. In most instances, Nursing Board staff have been delegated the authority to make licensing decisions based upon the review of criminal history information. For some crimes such as assault, however, review by the board is required. In all cases, staff have the option of referring licensing decisions to the board. In other professions, applicants that self-disclose criminal history information are referred to the respective board or Division Director for final license approval. Ultimately, the boards and Division Director are given a high degree of discretion when making licensing decisions based upon criminal history information. In fact, some boards and programs are statutorily required to consider whether the applicant with a criminal history has been rehabilitated, which requires discretion on the part of the board. Even though the practice acts include language giving the boards and Division the authority to deny a license for criminal history reasons, statutes do not require that an individual be automatically denied licensure because of a criminal history.

During our review of the criminal history check policy at the Colorado Community College System (CCCS), we found that CCCS has established clear guidelines for determining whether applicants with certain criminal convictions can be admitted

into its Health and Nursing programs. We compared the criminal histories of individuals with active licenses issued by the Board of Nursing with the admissions standards for Health and Nursing programs offered by the CCCS. We identified almost 700 active nurse aides who, according to Judicial Department disposition information, had convictions that would have disqualified them from entering the CCCS nurse aide training programs. Of these individuals, we found that almost 250 licensees had committed the offense prior to licensure, while about 450 committed the offense after being granted a license. We also found that several other state agencies have established criteria that disqualify individuals convicted of certain crimes from obtaining licenses. For example, the Department of Revenue has established disqualifiers for motor vehicle dealer licenses, and the Department of Education has established disqualifiers for teaching licenses. Federal regulations also preclude individuals convicted of certain crimes from working in long-term care facilities and related environments. Therefore, the Division should work with the various licensing boards and programs to establish clear evaluation criteria which would allow the boards and programs to assess the fitness of licensing applicants and make defensible licensing decisions efficiently.

Recommendation No. 2:

The Division of Registrations should work to develop guidelines in conjunction with the various licensing boards and programs to establish clear criteria for evaluating criminal history information.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006. The Division will work in conjunction with the various boards and programs to develop guidelines and establish criteria for evaluating criminal history information.

Registered Sex Offenders

State statute requires anyone who has been convicted of unlawful sexual behavior or enticement of a child in the state of Colorado or in another state or jurisdiction to register with the local law enforcement agency where he or she resides. This registration information is uploaded and maintained by the Colorado Bureau of Investigation (CBI) in the Colorado Sex Offender Registry.

We requested that the CBI run the database of 280,000 active Division licensees against the Colorado Sex Offender Registry. The CBI matched licensee names and

social security numbers (fingerprints were not available). The CBI identified approximately 270 individuals with active licenses who are registered sex offenders. Some of these individuals currently hold multiple licenses. More than 80 percent of these individuals are licensed by either the Electrical or Plumbing Boards, which are professions potentially requiring access to homes and buildings. In addition, about 5 percent of the individuals are in a health care profession and may provide services to vulnerable people. The CBI also identified about 70 additional individuals, who according to CBI, are probable matches with names and or social security numbers in the Registry. It is important to note that the Colorado Sex Offender Registry has historically had problems ensuring that all individuals required to register actually do so. Therefore, the Registry may not include all individuals required by law to register.

We have turned the results of our CBI match over to the Division and requested that it take immediate action against the licenses as allowed by the relevant practice acts. In the future, the Division should use the information in the Sex Offender Registry when evaluating the suitability of individuals seeking licensure or license renewal. Depending on the profession, licensees may have contact with at-risk populations or perform services in private residences. As such, the Division should work with the CBI to identify licensing applicants and active licensees who are on the Sex Offender Registry. This information should be used to deny, restrict, or revoke licenses as allowed by law.

Recommendation No. 3:

The Division of Registrations should work with the Colorado Bureau of Investigation to identify potential or active licensees that may appear on the Colorado Sex Offender Registry. The Division should use this information to determine if an individual is suitable for licensure or license renewal and to deny, restrict, or revoke licenses as allowed by law.

Division of Registrations Response:

Agree. Implementation Date: The Division will immediately contact CBI about implementing this recommendation for full implementation by December 2006. The Division notes that this recommendation is similar to Recommendation 1(b) and would serve as an additional means for developing a system to verify self-disclosed criminal history information provided by applicants. The Division is currently in the process of contacting those licensees on the Registry who failed to notify the Division. Once this information is received, the Division will forward it to the

appropriate boards and programs in order to assess the individuals' fitness for licensure.

Licensing Examinations

The Division contracts with industry associations, private companies, and nonprofit organizations to perform various licensing and examination functions for 16 of the 30 (53 percent) licensing boards and programs within the Division. For most of the boards and programs, the vendors own the professional examinations and are the sole provider of the examinations nationwide. Therefore, unless the Division develops and administers its own examination it has no choice but to contract with these vendors. Depending on the license, contracted services may include collection and review of applications, administration of examinations, and issuance of licenses. For example, a private vendor provides and administers the Certified Public Accountants examination for the Accountancy Board. For the Barber/Cosmetology program, the private vendor receives and processes licensing applications, provides and administers the licensing examination, and issues the licenses.

In the following sections, we present findings and recommendations to help improve the oversight and efficiency of the examination process.

Examination Oversight

The Division executed a contract with a vendor in December 2000 to develop, administer, and score written and practical examinations of certified nurse aide applicants. This vendor administered written and practical examinations to applicants in about one-half of the states in the U.S. from January 2001 through March 2005. During this period the vendor administered about 21,600 practical examinations to about 16,250 individuals in Colorado. We analyzed the data to determine if the vendor was complying with all contractual obligations. Further, we reviewed the data to determine if the Division was providing the appropriate level of oversight of the vendor to ensure that the applicants' and the State's interests were met. We found the Division has not provided the necessary level of oversight of the certified nurse aide examination process which has resulted in problems with administration of the examination and examination outcomes.

Substantial discrepancies in written and practical examination scores. We found that first-time test takers in Colorado routinely scored, on average, in the top 26 percent of the states nationally on the written exam, but scored, on average, in the bottom 18 percent for the practical examination. Applicants who fail the practical examination must pay another fee to the vendor to take the examination again. The

difference between passing rates for written and practical examinations could indicate a problem with the practical examination itself, the administration of the examination, or with the training provided to individuals in certified nurse aide programs.

Inconsistencies in level of difficulty for practical examination scenarios. The vendor currently uses 15 different scenarios to test the skills of certified nurse aides. Each scenario tests applicants on 5 of 21 different skills, and individuals are randomly assigned one of the 15 scenarios for testing purposes. The Division's Request for Proposal (included in the contract) for the current certified nurse aide contract requires that the vendor ensure there are minimal variations in examination difficulty among the different scenarios on the practical examination and that the total set of nurse aide skills be tested in a psychometrically sound manner. We analyzed the results of all practical examinations that have been administered by the vendor since December 2000 and found that of the 15 different scenarios, 3 had passage rates of over 70 percent, including one scenario with a 77 percent passage rate. Conversely, 2 scenarios had passage rates close to 50 percent. Depending on the scenario assigned, the candidate may be more or less likely to pass the examination.

Contract Oversight

Neither the Division nor the Board of Nursing has analyzed the vendor's test result data, even though they have received complaints from licensing applicants regarding the examination and failing scores. Prior to January 2005, the Division did not have formal policies and procedures setting forth contract monitoring responsibilities for overseeing vendor performance. Although the Division developed a policy in January 2005 covering contract management responsibilities for outsourced examination vendors, further steps could be taken to ensure effective contract management.

According to State Fiscal Rules, each state agency is responsible for ensuring that its contracts comply with statutory and constitutional requirements. Therefore, the Division should ensure that staff receive the information necessary for effective contract management. This should include clarifying the Division's contract management policy so that it fully explains oversight responsibilities and what steps should be taken to ensure effective contract management. In addition, the Division should train staff to help ensure they understand the contracting process, are aware of their own individual responsibilities with respect to the process, and adequately monitor contractor performance. The Division should also incorporate contract management responsibilities into staff position descriptions and performance plans. Finally, the Division should develop and incorporate additional performance measures to be included in vendor contracts.

Recommendation No. 4:

The Division of Registrations should improve its oversight of examination services vendors by:

- a. Clarifying its contract management policy to fully explain oversight responsibilities and the steps contract monitors should take to ensure effective contract management.
- b. Providing formal training to staff who are responsible for contract management oversight.
- c. Including contract management responsibilities in staff position descriptions and performance plans.
- d. Developing and incorporating performance measures into vendor contracts.

Division of Registrations Response:

- a. Agree. Implementation Date: June 30, 2006. The Division is developing a policy in conjunction with the Department to fully implement oversight responsibilities and detail important contract management steps.
 - b. Agree. Implementation Date: June 30, 2006. The Division has begun providing formal training by holding bi-weekly meetings on examination contracts requiring oversight and will be sending a staff member to the State Contract Management Training to assist with implementing this recommendation.
 - c. Agree. Implementation Date: June 30, 2006. The Division has included contract management provisions in performance plans for all program directors and relevant staff.
 - d. Agree. Implementation Date: Implemented as contracts are renewed with full implementation by June 30, 2007. The Division, in conjunction with the Department's global effort on this issue, is in the process of developing and incorporating performance measures into vendor contracts.
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Streamlining Examinations

Once the Division has improved its practices for overseeing examination services vendors, it should consider expanding its use of contracted services to improve the efficiency of the licensing process. We identified two areas where contracting for additional services could further streamline the licensing functions for both the Division and the applicant:

- **Examination application.** The Division requires applicants for 13 licensing boards and programs to submit an application to take the licensing examination. The Division verifies the applicants' eligibility to take the examination and sends an approved list of eligible candidates to the vendor. The examination vendor will then contact the eligible candidates to schedule the examination. This process is inefficient for both the Division and the individuals taking the examinations. Alternatively, applicants could apply directly to the vendors to take the examinations or once they have taken the examination, submit their scores to the Division with their application for licensure. The Division already uses these alternative approaches for 10 other licensing boards and programs.
- **Application and licensing.** The Division contracts with examination vendors to process and approve licensing applications for the Accounting, Barber/Cosmetology, and Certified Nurse Aide boards and programs. In addition, the Division contracts with examination vendors to issue licenses for Barbers/Cosmetologists, Electricians, and Plumbers. The Division reports that the current examination vendors for about 15 additional boards and programs may be capable of processing and approving licensing applications. Further, examination vendors for about 13 boards and programs may be capable of issuing the licenses. Contracting with examination vendors to provide these services may free up some resources for the Division's contract management and criminal history check responsibilities as discussed earlier and could potentially help reduce the Division's administrative costs and licensing fees.

The Division should evaluate the feasibility and cost-effectiveness of contracting out additional examination and licensing functions to examination vendors. When making its assessment, the Division should consider the impact this would have on its responsibility to protect the public.

Recommendation No. 5:

The Division of Registrations should streamline the examination and licensing functions without negatively impacting public protection by evaluating the feasibility and cost-effectiveness of:

- a. Having applicants apply directly to examination vendors to take the examination or submit their examination scores to the Division with their application for licensure.
- b. Contracting out additional licensing functions, such as application processing and license issuance, to qualified vendors.

Once the evaluation is completed, the Division should propose statutory changes, as needed.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006.

- a. The Division will evaluate the feasibility and cost-effectiveness of the 13 programs identified to determine the effectiveness of having candidates apply directly to the exam vendor instead of the Division providing the information to the vendors. The Division notes that depending on the board or program, statutory changes may be needed to implement this recommendation.
 - b. The Division has seen in some instances where outsourcing application and licensing functions can be cost effective. In the same vein, however, Division experience has shown that outsourcing these functions creates other types of demands, such as additional contract management and oversight, requiring staff involvement. Thus, the amount of time “freed up” may be small or non-existent. The Division is concerned about delegating an important public protection function such as licensing for all of its professions, but is willing to evaluate the feasibility and cost-effectiveness of contracting out additional licensing functions as deemed appropriate. Finally, the Division notes that some statutory changes may be necessary to fully implement this recommendation.
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Complaints and Investigations

Chapter 2

Background

The 30 licensing boards and programs within the Division of Registrations are responsible for receiving and handling complaints filed by public citizens, governmental agencies, law enforcement authorities, staff, and other sources. The licensing boards and programs may also initiate cases against licensees based on media stories, evidence uncovered during complaint investigations, or self-disclosed information provided by licensees during the application and renewal processes. Complaints range from minor allegations, such as unprofessional conduct and unintentional misrepresentation, to more serious allegations of unlicensed activity, negligence, fraud, and sexual misconduct. According to statutes, certain violations deserve criminal penalties, while others are appropriate only for administrative sanctioning. The Division reported receiving, opening, and handling approximately 3,760 cases in Fiscal Year 2004. As discussed later in this chapter, this number includes approximately 875 cases (23 percent) initiated by boards in response to information self-disclosed by licensees on the initial or renewal application.

Each board and program has a different complaint form and slightly different complaint process. It is the responsibility of the program director and the licensing board or Division Director to determine if a possible violation has occurred or if an investigation is required. If the program director, board, or Division Director determines that the Division has no authority to hear a complaint, it will be dismissed and no action will be taken. If the Division does have the authority to hear a complaint, board staff will investigate some, while others are referred to the Division's Office of Investigations. After an investigation is completed, the investigator prepares a report that is submitted to the licensing board or Division Director for review. The board or Division Director is responsible for determining the final disposition of the complaint, including any disciplinary action imposed.

Complaint Classification

Cases can be initiated by complaints from citizens, employers, and other government agencies, or they can be initiated by the individual boards or programs based on other information, such as information that licensees disclose on licensing questionnaires during the application and renewal processes. Disclosures can relate to criminal convictions as well as possible physical or mental impairments. Currently the Division classifies these self-disclosures as complaints because they often require additional investigation.

We found that by classifying the cases initiated from self-disclosure questionnaires as complaints, the Division is incorrectly reporting the real number of “complaints” received and processed each year. Of the approximately 3,760 cases received by the Division in Fiscal Year 2004, we estimate that about 875 (23 percent) can be attributed to self-disclosure questionnaires and have largely resulted from one program area. The Division currently lacks a system for properly classifying the different types of cases it receives so that this information can be used for meaningful analysis and for determining the exact number of cases attributed to complaints versus the number of cases attributed to self-disclosure questionnaires. This is because staff use several different codes in the DORA Licensing System (DLS) to classify complaints and self-disclosed information, and there is no consistency among the boards and programs. This inconsistency is part of a larger data entry and management problem, as discussed in Chapter 4 of this report.

Recording and reporting self-disclosed information as complaints overstates the total number of complaints and corresponding dismissals. Complaint and dismissal data appear in various budget documents, including annual budget requests, and are used during periodic sunset reviews. It is important that policymakers have accurate and reliable data when making decisions related to the Division. Therefore, the Division needs to establish procedures and a Division-wide policy for separately classifying, tracking, and reporting self-disclosed and complaint information.

Recommendation No. 6:

The Division of Registrations should improve the accuracy of complaint reporting by establishing a Division-wide policy for separately classifying self-disclosure and complaint information.

Division of Registrations Response:

Agree. Implementation Date: December 31, 2005. The number of complaints was overstated, and fortunately, limited to one profession. The error has been corrected. Rather than create a separate classification system though, the Division believes a policy can be adopted addressing what information and conduct will be required to reach the threshold of a “complaint.”

Complaint Processing

Each of the 30 licensing boards and programs within the Division has its own process for handling complaints. In general, however, when a board or program receives a complaint, staff review the allegations to determine if the board has jurisdiction over the issues. If the board or program does not have jurisdiction, in many cases staff will notify the individual who filed the complaint that no action can be taken. If the board or program does have jurisdiction, staff will send a letter on the board’s behalf to the licensee explaining the complaint process with the complaint or allegations attached. That letter gives the licensee 20 or 30 days to respond to the allegations, depending on the board or program. Once the licensee responds to the allegations, the board or Division Director either will make a decision on the complaint at that time or will send the complaint to the Division’s Office of Investigations for further investigation, depending on the severity and complexity of the allegations and the licensee’s response. Once the Office of Investigations completes its investigation, the information it has collected is forwarded to the board or Division Director. The board or Division Director will then consider the evidence and issue a final decision on the complaint.

We reviewed the timeliness of the complaint handling process for a sample of 70 complaints for 11 different boards and programs, including the Accountancy, Medical, Nursing, Dental, Pharmacy, Barber/Cosmetology, and five of the Mental Health professions. Overall, we found that the timeliness of the complaint handling process varies by board or program. In addition, neither the Division nor the individual boards and programs have established time frames or prioritization schedules for processing complaints, although there are some Division-wide performance measures that address portions of the complaint process.

For our sample, we found that it took an average of about 160 days to process and close the complaints, with some complaints taking as little as 23 days or as long as 512 days to complete. The Nursing Board took the longest with an average of about

260 days, followed by the Pharmacy Board with an average of 180 days. The Mental Health boards and programs had the shortest time with an average of 95 days.

We also looked at the time required for individual boards and programs to complete the various phases of the complaint review process. For example, we found that, on average, it took anywhere from 12 days (Accountancy Board) to 27 days (Nursing and Dental Boards) for the boards to send the 20- or 30-day response letter. This time frame is important because, in most cases, a board does not make a decision on a complaint until the letter is sent and the licensee's response is received. If staff wait about a month to send the 30-day response letter and a respondent does not respond for another month, staff cannot prepare the case for the board until two months after the complaint was received. Some boards meet monthly, so there could be an additional month before the board can begin the process of making a decision on the case. In that case it would be almost three months before the board heard the complaint.

This process can be drawn out further if a full investigation is required. When a case requires a more extensive investigation, it is referred to the Office of Investigations. On average, we found that it takes about 300 days to process and close complaints that are sent to the Office of Investigations. Potential problems with closing complaints can be illustrated by one case that involved a nurse aide who was accused of being verbally abusive and negligent toward elderly patients in her care at a nursing home. It took the Nursing Board 51 days from the receipt of the complaint to send the 30-day response letter. The licensee's response arrived 32 days later, and the board heard it 36 days after that, so the case was nearly four months old before the board began to decide how to proceed. The board then sent the complaint to the Office of Investigations for a full investigation, which took an additional 332 days. The nurse aide's license was eventually revoked, 512 days after the board initially received the complaint.

As the example above illustrates, some complaints can take a substantial amount of time to process and close. Because the Division has limited standards for identifying complaints that have not been handled timely, it makes it difficult to address the cause of delays in processing. Setting time guidelines for processing complaints and prioritizing complaints based on their severity would help ensure that complaints are processed timely and that evidence and witnesses are available to complete investigations. Staff reported that lengthy complaint processing and investigations can lead to poor investigative findings because witnesses cannot be found, memories are not as clear, and evidence is misplaced or no longer available as time passes. This can lead to the dismissal of complaints due to lack of evidence, even though sufficient evidence may have been available early on in the process. Our review of complaints since 1998 identified about 1,480 cases that took more than 400 days to process, and of those 37 percent (about 550) were dismissed.

The issues we identified indicate a need for the Division and the individual boards and programs to establish a complaint management system for processing complaints across the Division. An effective system would assist staff with prioritizing complaints based on the severity of the allegations and establish time frames for all phases of the complaint process. Other governmental agencies have established timeliness standards and prioritization schedules for complaint processing that are appropriate for their agencies. In Florida the state licensing division must process and make a recommendation on cases within 180 days. In Colorado the Division of Real Estate has a prioritization schedule that calls for complaints to be resolved within 90 to 180 days depending on their severity, and the Motor Vehicle Dealer Board requires investigators to close 70 percent of their cases within 90 days. In addition, in the 2001 performance audit of the Nursing Board and the Board of Medical Examiners, we recommended that the boards establish performance goals for certain components of the complaint process to ensure the complaints move forward in a timely manner.

Recommendation No. 7:

The Division of Registrations should improve the timeliness of complaint processing and resolution by:

- a. Developing a prioritization schedule for processing and resolving complaints based on the severity of the allegations.
- b. Establishing either Division-wide or board- and program-specific time guidelines for completing all phases of the complaint process.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006.

- a. The Division notes that the prioritization schedule for its Office of Investigations will serve as a good baseline for implementing the recommendation.
 - b. Similar to the time guidelines developed for the Nursing and Medical Boards, the Division will work towards establishing either Division-wide or board-specific time guidelines for completing all phases of the complaint process.
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Criminal Violations

Division staff investigate licensing complaints involving acts, such as criminal impersonation, sexual assault, insurance fraud, and theft, that are considered crimes under the Colorado Criminal Code. In addition, the practice acts, or statutes, for 29 of the 30 licensing boards and programs within the Division assign criminal penalties to certain violations of the acts. In fact, *any* violation of the practice acts for 10 of the boards is considered a criminal offense. Violations that are considered criminal offenses under the practice acts can include everything from failing to retain accountancy work records for five years to dispensing habit-forming drugs or controlled substances outside the course of legitimate medical practice. According to the practice acts, the majority of the violations are considered misdemeanors; however, certain violations (e.g., sexual intrusion by an acupuncturist or the use of forged credentials by a physician), as well as select repeat violations (e.g., multiple violations of the practice act by a pharmacist or nurse), are considered felony offenses.

We reviewed the Division's process for referring criminal license violations to local law enforcement agencies and district attorneys' offices for criminal investigation and prosecution. Overall, we found there is no statutory requirement or Division-wide policy for referring criminal acts committed by licensed and unlicensed professionals to appropriate law enforcement authorities. Furthermore, except for the six Mental Health programs, which require the immediate referral of sexual misconduct allegations to district attorneys, none of the individual boards or programs have formal referral procedures. Of the nearly 970 disciplinary actions issued between July 2003 and December 2004, there were about 260 (27 percent) issued by the 10 boards with statutes establishing all violations as criminal offenses. These violations included practicing without a license, substance abuse, and negligent practice. Division staff and the Office of the Attorney General reported that only 2 of the 260 violations (less than 1 percent) were formally referred to local law enforcement agencies for criminal investigation and prosecution.

We identified one instance where the Board of Accountancy issued a cease and desist order against an individual who illegally used the C.P.A. designation eight years after license expiration. According to statute, this violation constituted a class 3 misdemeanor. Three years later, the individual violated the cease and desist order and used the C.P.A. designation again, constituting another class 3 misdemeanor. The Board of Accountancy did not refer either of these criminal violations to the local district attorney, even though the individual could have been practicing without a certificate for up to 11 years.

Division staff report that one reason the Division does not typically refer licensing-related criminal violations to local law enforcement agencies is that district attorneys view these violations as minor offenses and, thus, are unlikely to prosecute them. However, since statutes clearly define these practice act violations as criminal offenses, it is the responsibility of law enforcement, not the Division, to determine when criminal charges will be filed. Unless the Division refers these violations to law enforcement, district attorneys do not have the opportunity to evaluate the merits of the case to determine whether prosecution should proceed.

A second reason why the Division does not refer licensing-related criminal violations is that according to some staff, the Division would lose credibility with district attorneys if it referred all cases that were technically criminal regardless of the severity of the crime. Statutes, however, do not always distinguish criminal penalties for licensing violations on the basis of severity. For example, the accountancy practice act attaches the same criminal penalty—a class 3 misdemeanor—to any violation of the act, including (1) noncompliance with continuing education requirements (a less serious violation); and (2) fraudulent procurement of a certified public accountant certificate (a more serious violation). When these provisions were originally enacted, the Legislature intended that the same criminal penalty be attached to these license violations. The Division has not reevaluated these criminal penalties and corresponding license violations to determine if they are still appropriate.

Criminal prosecution and conviction can be an effective deterrent against unqualified or negligent practice and illegal acts by licensees. The Division should work with the licensing boards and programs to review the practice acts and determine whether the licensing violations designated as criminal offenses, the type of criminal offense, and the associated penalties are appropriate, and seek statutory change if needed. The Division should then establish formal policies and procedures covering the referral of cases to district attorneys' offices and other local law enforcement agencies to ensure accurate reporting of these cases and activities.

Recommendation No. 8:

The Division of Registrations should ensure the intent of the General Assembly is met and the public is being adequately protected by:

- a. Assessing the appropriateness of the current criminal violations outlined in statute and determining the criminal penalties that should be assigned to these violations. Statutory changes should be pursued as necessary.

- b. Developing formal policies and procedures covering the referral of cases to district attorneys' offices and other local law enforcement agencies.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006.

- a. The Division will continue to assess the appropriateness of the current criminal violations outlined in the statute. However, upon initial assessment, the Division believes statutory changes are necessary and would request the removal of criminal provisions from the 10 statutes where any violation constitutes a criminal offense. Additionally, the Division would support statutory changes where all the practice acts would make the unlicensed practice subject to criminal penalties.
 - b. The Division will develop formal policies and procedures covering the referral of cases to district attorneys' offices when appropriate.
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Peace Officer Authority

As stated previously, certain violations committed by licensed and unlicensed individuals are defined by the practice acts as criminal and should be referred to the appropriate law enforcement agency. Additionally, the Division has the responsibility to notify law enforcement when crimes defined by the Colorado Criminal Code, such as criminal impersonation and theft, occur. However, law enforcement involvement does not guarantee case prosecution. We found the following three specific instances where the Division alerted law enforcement of criminal activity, and to date, the cases have not been prosecuted or investigated:

- A case involving an unlicensed dental hygienist who used a forged license was referred to a local police department. However, it took the police department nearly eight months to issue an arrest warrant. The individual fled the State before the arrest could be made.
- A case involving an individual's repeated unlicensed practice of medicine was referred to a local district attorney 12 months ago and was not prosecuted.
- A local police department was notified seven months ago of an incident involving the theft of two licenses by someone posing as a state inspector. A witness was available and there was a risk that the licenses could be sold

to unlicensed individuals. At the time of the audit, the incident had not been investigated.

We identified two main factors that hinder the prosecution of criminal violations referred to law enforcement. First, as discussed previously, the Division has indicated that law enforcement agencies are reluctant to investigate and prosecute licensing-related violations when they have more serious crimes waiting to be processed. Second, some Division staff report that law enforcement investigators may be unfamiliar with the practice acts and the role of the Division, which can slow or obstruct the criminal investigation of cases that are referred. As a result, the case investigation may not occur for many months, if at all, and the case may not result in prosecution.

We spoke with staff from the Division and the Colorado District Attorney's Council to determine whether there were steps the Division could take to make sure that when the Division referred criminal licensing violations, law enforcement agencies investigated and prosecuted these cases successfully. According to the Division and the Colorado District Attorney's Council, obtaining peace officer status for some of the Division's investigators could increase the number of cases investigated and prosecuted. Currently Division investigators are limited to pursuing the administrative side of cases and must depend on law enforcement agencies to investigate and prosecute criminal violations.

According to statutes (Title 16, C.R.S.), investigators with peace officer status have the authority to enforce all the laws of the state of Colorado, make arrests, execute search warrants, and issue summons and complaints for misdemeanors. Further, the Colorado District Attorney's Council and one district attorney's office reported that district attorneys prefer to have felony investigations presented to them by peace officers, who sign on probable cause warrants and provide sworn and signed testimonies of case facts. This ensures the credibility of the investigation. Statutory peace officer status would provide the Division's investigators with this ability and increase the chances that prosecution would occur.

We found that peace officer authority would be especially useful for investigating more serious licensing violations, such as unlicensed practice, that may not be otherwise investigated or prosecuted. Law enforcement officers do not regularly enforce the practice acts and might not recognize a licensing violation as criminal, which can hinder prosecution. With peace officer status, Division investigators would be trained to collect admissible evidence and investigate the crimes with which they are familiar.

Furthermore, peace officer status could reduce the duplicate work efforts that result from having police officers or district attorney investigators reinvestigate the cases

referred by the Division. For example, the Denver District Attorney's Office typically refers cases to the Denver Police Department for further investigation. Currently Division investigators only prepare cases for administrative hearings, where the burden of proof is lower and the rules of evidence are more relaxed than for criminal proceedings. Therefore, the cases that are referred by the Division would most likely have to be reinvestigated before a district attorney made the decision to prosecute.

We found that other state agencies with similar regulatory functions (Auto Industry Division and Division of Gaming at the Colorado Department of Revenue) have investigators with peace officer authority who investigate criminal acts in preparation for criminal proceedings. These agencies reported that peace officer authority, as well as relationship-building with district attorneys, has helped get the majority of their cases prosecuted in criminal court. The Auto Industry Division reported that nearly 99 percent of its felony cases are accepted and prosecuted by district attorneys and that only three misdemeanors in the last five years have been dismissed. According to the Division of Gaming, many of its cases are plea-bargained down, but few are dismissed altogether. Additionally, three of the six other state licensing agencies (Maine, Vermont, and New Mexico) we contacted have investigators with peace officer authority.

The Division's investigators have extensive knowledge of the practice acts and the violations that constitute grounds for administrative and criminal sanctioning. Peace officer status would provide them with the powers needed to handle criminal cases and effectively address unlicensed activity to ensure the public is better protected. Therefore, the Division should pursue the statutory authorization for its investigators to obtain peace officer authority. Once this authority is obtained, Division management will be able to define the extent and limits of the authority it will grant its peace officers under the law.

Recommendation No. 9:

The Division of Registrations should improve the process for investigating criminal licensing violations by seeking statutory authority for peace officer status for some or all of its criminal investigators. Once statutory authority is obtained, the Division should specifically define the extent of this authority for its investigators.

Division of Registrations Response:

Agree. Implementation Date: The Division will try to implement this recommendation by June 30, 2006 provided that appropriate legislation is enacted during the upcoming 2006 Legislative session. The Division agrees with this recommendation in regards to the granting of peace officer status for investigating unlicensed practice of a profession.

Licensing Violation Referrals

The Division receives and investigates thousands of complaints annually that are submitted from a variety of sources, including citizens, state and federal agencies, law enforcement agencies, and other licensing boards. However, violations are only reported when awareness of the Division's regulatory authority over certain professions, as well as its licensing and disciplinary functions, exists. Overall, we found that the Division and the licensing boards and programs do not have written, formal agreements with district attorneys' offices or law enforcement agencies addressing licensing violation referrals, even though these entities can be the first point of contact for potential licensing violations, such as unlicensed practice or sexual misconduct. In addition, agreements between the Division and other governmental and nongovernmental entities that are likely to oversee or come in contact with licensed individuals are limited.

According to Division staff, some local district attorneys and police officers are not aware of the Division's regulatory jurisdiction over certain professions, which prevents them from referring licensing-related cases for administrative sanctioning. Further, other governmental and nongovernmental entities may not be aware of the Division and its regulatory functions. For example, in our April 2005 Private Prisons performance audit, we found that an inmate at a private prison monitored by the Department of Corrections died from a medication overdose. According to the report, "The private prison medical staff changed the inmate's medication, neglected a medication stop order, and administered two medications that, according to the Bent County coroner's autopsy report, interacted with one another." Neither the Department of Corrections nor the private prison filed complaints against the licensed individuals involved in the incident, although their actions may have constituted grounds for discipline, and possibly license revocation. In addition, although the Better Business Bureau reported that it regularly advises consumers to contact the licensing boards with cross-jurisdictional complaints, we found that it does not include the Division on its Web site list of referral agencies; it only provides contact information for the Dental Board and its Web link is not included. This

makes it difficult for consumers to easily identify and access the Division and other licensing boards and programs to file complaints.

The Division has taken some steps to make the public and other agencies aware of regulatory boards and the processes for reporting licensing violations. For example, staff have made presentations to the Colorado District Attorney's Council and the Better Business Bureau on the Division's responsibilities and the various professions that it oversees. In addition, the Division has developed memoranda of understanding with the Department of Public Health and Environment and the Division of Wildlife to share information on violations involving regulated professionals and facilities in the health industry and wildlife areas, respectively. Public protection, however, requires that individuals who provide substandard care, act negligently, or commit other practice act violations be formally disciplined. Therefore, the Division should further its outreach activities by developing formal agreements with other agencies, as well as by disseminating regulatory information through presentations and conferences, to raise awareness of the Division's jurisdictional authority over certain professions and, in turn, increase the chances that licensing violations reach the licensing boards for disciplinary action. Specifically, the Division should consider agreements with district attorneys' offices; police departments; other state agencies such as the Departments of Human Services, Health Care Policy and Financing, and Corrections; municipal and county health departments; the Better Business Bureau; and trade associations.

Recommendation No. 10:

The Division of Registrations should continue its outreach efforts and develop additional written formal agreements or memoranda of understanding with other governmental and nongovernmental agencies covering the referral of potential practice act violations to the appropriate licensing boards or programs.

Division of Registrations Response:

Agree. Implementation Date: December 31, 2005. In Fiscal Year 2004, the Division implemented a Business Project Reengineering effort to further its outreach activities. The transition to this new model has taken some time and may have delayed the Division in regards to this recommendation. Thus, the Division sees this recommendation as being consistent with its goal to continue outreach efforts with other governmental and non-government agencies as needed.

Enforcement

Chapter 3

Background

When a board or the Division Director (for the programs without boards) finds that a complaint is valid and a licensee has violated the relevant practice acts or licensing rules, a disciplinary action is imposed. All disciplinary actions are public information and can be accessed by phone through the Automated Licensing Information System (ALIS) or the Division's Web site through the Automated Licensing Information System Online (ALISON) or the Registrations Online Documents (ROD). Disciplinary actions, which vary in severity and are imposed based on the nature of the violation, can range from a letter of admonition to license revocation. Following are some of the different types of actions that can be taken against a licensee in response to a complaint:

- **Dismissals.** A complaint is dismissed when the boards or Division Director determine there is no evidence of a violation and as a result, no disciplinary action is taken. Eight boards are statutorily authorized to dismiss complaints with a confidential letter of concern. A dismissal with a confidential letter of concern is not considered discipline but allows the board to express concern about conduct that, if continued, may warrant disciplinary action. Dismissals without a confidential letter of concern are typically available for public inspection.
- **Administrative actions and sanctions.** The boards or Division Director can impose disciplinary actions such as issuing a public letter of admonition, requiring continuing education, assessing fines, or requiring the licensee to hire a practice or treatment monitor.
- **Actions against licensees.** The boards or Division Director can also take action against a licensee by putting the licensee on probation or suspending or revoking the license.
- **Actions against unlicensed persons:** A cease and desist order or injunction is issued ordering the unlicensed person to cease an activity that constitutes the licensed practice.

Often, the licensing board or program issuing the discipline includes one or more of the actions listed above in a stipulation, or legal agreement. In this chapter we discuss our findings and recommendations related to the Division's monitoring and enforcement efforts. We identified areas for improvement related to the Division's enforcement practices that could enhance the State's ability to protect the public.

Compliance Monitoring

When a licensee is disciplined, Division staff assigned to the board or program area are charged with making sure the licensee complies with the terms imposed by the disciplinary action. For example, if a board imposes practice monitoring, the board will require that a practice monitor observe the licensee's services through direct observation or file review to ensure the licensee complies with statutes and rules and report back to the board on the licensee's performance. Staff are responsible for recording in the DORA Licensing System (DLS), the Division's licensing system, that the monitoring occurred and the report was received.

We reviewed two samples of cases where a board or program imposed disciplinary action to determine (1) if licensees complied with the terms of the actions, and (2) if Division staff monitored the licensee to ensure compliance. For the first sample, we matched the records for 30 nurses who had their licenses revoked with employment records maintained by the Department of Labor and Employment. We used these data to determine if these nurses were still working in health care facilities. We found that 11 of the 30 nurses (37 percent) had received compensation from health care facilities after their license was revoked. Although we were unable to determine if these individuals were still employed as nurses or if they were employed in some other capacity, the results of our sample indicate the need for Division staff to do some follow-up when licenses are revoked to ensure the individuals are not practicing without a license.

For the second sample, we reviewed 25 cases where stipulations were issued and signed, but the licenses were not revoked, and found that the Division did not monitor compliance with the terms of the disciplinary actions for 6 of these cases (24 percent). Specifically, we found:

- **Four cases** involved physicians licensed by the Medical Board who had limitations placed on their licenses. Three of the four cases stipulated that the physician's practice was limited to either noninvasive diagnostic testing (no treatment recommendations could be made to patients), administrative medicine, or urgent care only. The other physician was precluded from practicing in Colorado until a criminal case in Florida was resolved.

Division staff did not follow up with these individuals to ensure they were adhering to the licensing restrictions.

- **One case** involved a nurse licensed by the Nursing Board who was restricted from practicing in Colorado because she withdrew from a program to treat a substance addiction. The terms of her disciplinary action required her to request and receive permission from the board to resume practicing. The stipulated agreement for her discipline allows the board to put her on probation if such a request is granted. Division staff did not follow up to ensure she was complying with the terms of the agreement.
- **One case** involved a hearing aid provider who was ordered by the Division to cease and desist from referring to himself as a doctor and misrepresenting products or services he provided. Division staff did not follow up to ensure the licensee was complying with the cease and desist order.

We notified the Division of these cases and to date, the Division has taken no further steps to determine if the licensees are complying with the terms of their disciplinary actions.

Insufficient compliance monitoring may compromise the effectiveness of the Division's and the boards' enforcement functions. Currently there are no consistent Division-wide procedures for staff to follow when monitoring compliance with disciplinary actions. Boards dealing with individuals with limited licenses can contact employers to inquire about functions that the licensee is performing. In cases like the hearing aid provider who misrepresented his credentials and products, staff could investigate the licensee's marketing presentation.

Additionally, the Division does not follow up once a license has been revoked to ensure unlicensed practice does not occur. Although it would be difficult for the Division to follow up indefinitely on revoked licensees, there are some steps staff could take to ensure compliance at least for a period of time after revocation. For example, as indicated above, on a quarterly basis, the Division could match individuals who have had their licenses revoked against the unemployment database at the Division of Labor and Employment to see if they are still working in the same industry. There are only about 150 licenses revoked each year, so this match should not be time- or labor-intensive for Division staff. The Division should also investigate other reasonable means of following up on individuals with revoked licenses to help prevent unlicensed practice. Without sufficient controls, the Division and the boards cannot provide assurance that licensees who have acted inappropriately, and at times illegally, have complied with the terms of their disciplinary actions.

Recommendation No. 11:

The Division of Registrations should ensure that licensees comply with the terms of disciplinary actions by:

- a. Establishing policies and procedures for monitoring compliance and training staff on these procedures.
- b. Investigating options for following up on individuals who have had their licenses revoked to help prevent unlicensed practice. One option could include matching license revocations with the Department of Labor and Employment data to determine if individuals who have had their licenses revoked are continuing to work in the same industry.

Division of Registrations Response:

- a. Agree. Implementation Date: June 30, 2006. The Division agrees that policies need to be established and additional training is warranted in this area.
- b. Disagree. The Division respectfully disagrees with subpart (b). The Division does not have enough staff to actively go out to places of business and ensure that licensees and unlicensed persons are compliant with all disciplinary terms. As noted in the audit report, even the verification of the database at the Division of Labor and Employment requires staff time to pull the information and further research the findings since it is possible and appropriate for a disciplined professional to still be working for the same employer, but in a different or limited capacity. For example, a revoked engineer or certified public accountant can still provide some engineering and accounting services without a license. Additionally, a revoked nurse could continue to work in the same hospital in a non-nursing capacity such as a records clerk, ward clerk, receptionist, dietary aide, and many other positions.

The Division believes that its current process provides the checks and balances needed to ensure compliance with disciplinary actions. For example, within the health care system, it is extremely difficult for physicians or nurses to practice outside their restrictions. Hospitals and insurers must credential physicians annually, and part of the credentialing process is to verify licensure status with the Division. Furthermore, the Medical Board actively notifies hospitals of any licensure restrictions on physicians holding privileges in that facility, which is a statutory

requirement. Also, people who file the initial complaints tend to follow the process along and usually will notify the Division when someone has violated the disciplinary terms. Finally, the Division posts all of the disciplinary actions on its Web site, which includes a copy of the document imposing the discipline, so the public is aware of such professionals. The Division will look for ways to educate and encourage the public to use its Web site at the same time the Division continues to increase its outreach efforts as suggested in Recommendation 10.

Auditor's Addendum:

We note that basic checks, such as matching revoked licenses against the Department of Labor and Employment database, could enhance public protection with minimal cost and effort to the Division.

Disciplinary Guidelines

Statutes authorize boards and the Division Director to discipline licensees for a variety of violations, including unlicensed practice, felony convictions, substance abuse, false advertising, and negligent acts. Each board and program has a statutorily authorized range of disciplinary actions to impose. In general, the types of discipline allowed are similar across the boards, although there are some differences. For example, only 16 of the 30 boards and programs (53 percent) have the ability to impose fines. As discussed previously, disciplinary actions can range from a letter of admonition to license revocation. Although not considered "discipline," eight boards can also issue a letter of concern, which informs the licensee that certain conduct could warrant disciplinary action if continued.

We found that most of the licensing boards or programs within the Division do not have written criteria for use in determining disciplinary actions against licensees who act inappropriately or in violation of law and rules. Consequently, boards and programs lack a basic framework for ensuring discipline is provided at an appropriate and consistent level, as warranted by the facts of the case.

Concerns related to consistent and appropriate discipline were brought to the Division's attention during a sunset review of the Pharmacy Board in 2002. The review concluded that for cases involving dispensing errors, which have a direct impact on the individuals receiving the drugs, there was a lack of discipline. Statutes allow the Pharmacy Board to suspend, revoke, refuse to renew, or otherwise discipline any license after hearing, upon proof that the licensee has violated any

board rules or state or federal law related to drugs or failed to meet the generally accepted standards of pharmacy practice (Section 12-22-125(1)(c) and (k), C.R.S.).

We reviewed a sample of 22 disciplinary actions taken by 9 Division boards and programs between July 2003 and December 2004. Our review included three Pharmacy Board cases which were decided after the sunset review. In all three cases we found that a lack of defined criteria may have resulted in the Pharmacy Board applying a lower level of discipline than may have been warranted. These cases indicate that some of the same issues identified in the sunset review may still exist:

- A pharmacist dispensed the wrong medication, which an investigation showed resulted in the patient being hospitalized twice for a total of eight days. The investigation cited possible violations of six statutes and four board regulations. The licensee did not respond to the complaint against her, and she was disciplined with a letter of admonition.
- A pharmacist dispensed drugs that were four times the dosage of what was prescribed to an 82-year-old man. In this case, the bottle was marked with the correct dosage, 12.5mg, but the pills were actually 50mg. According to the complaint written by the patient's daughter, the staff at the patient's nursing home noticed he did not eat anything and could not wake him. The pharmacist admitted the mistake. The pharmacist was not disciplined and the case was dismissed with a letter of concern.
- A pharmacist dispensed expired drugs. The pharmacist was not disciplined and the case was dismissed with a letter of concern.

The investigation reports for all three cases presented evidence indicating a possible violation of the board's rules related to drug dispensing. In two of the cases, the board imposed no disciplinary action, and in the other case, the board imposed minimum disciplinary action.

We also identified other cases in our sample where licensing boards and programs dismissed complaints with a letter of concern when some type of disciplinary action may have been warranted. For example, we found:

- A dentist put a crown on the wrong tooth for a patient. Even though the dentist admitted the error, the Dental Board dismissed the complaint with a confidential letter of concern.
- An addiction counselor failed to report a possible incestuous relationship involving three young boys to social services or law enforcement. Even

though the counselor admitted that she failed to report the incident, the complaint was dismissed with a confidential letter of concern.

- A physician supervising midwives provided a “lack of adequate supervision of a high-risk obstetrical patient at term” to a patient under midwife care, which resulted in the death of the baby. In his response to the complaint, the physician outlined changes he made in his practice following the incident, indicating that his system was at least partly to blame for the infant mortality. The Medical Board dismissed the case with a confidential letter of concern.

The rationale for not imposing discipline was not documented in the files. Because the cases were dismissed with a confidential letter of concern, the public was not notified of these occurrences.

To ensure boards impose appropriate levels of discipline consistently, the Division should work with the individual boards to develop criteria to use when making disciplinary decisions. Criteria could include factors such as the type of violation, intent, public harm, and the licensee’s history of violations. The criteria should provide boards with direction on the types of disciplinary action that should be imposed, but allow boards and the Division Director discretion to make the final disciplinary decision. These criteria could be especially useful for new board members who are not familiar with the disciplinary process.

We found that other licensing organizations, both in Colorado and in other states, have created these types of disciplinary models. In Virginia the Department of Public Health Professions created a system where points are assessed for a variety of factors including the repercussions of the violation and the licensee’s history of violations. In that system, the total number of points assessed gives direction for the type of disciplinary action imposed. Boards may consider the disciplinary recommendation from the model but retain discretion to consider other factors when making a final decision regarding the disciplinary action imposed. In Colorado the Transportation Section of the Public Utilities Commission recently developed policies and procedures outlining the factors it takes into consideration when determining disciplinary actions.

Recommendation No. 12:

The Division of Registrations should work with the individual licensing boards and programs to establish written criteria and guidelines for use when determining the appropriate disciplinary action. The guidelines should assist boards with determining recommended disciplinary action and allow for the boards or Division Director to have discretion over final disciplinary decisions.

Division of Registrations Response:

Agree. Implementation Date: December 31, 2006. The Division will work with individual licensing boards and programs to establish written criteria and guidelines for use when determining the appropriate disciplinary action. As noted in the Attorney General Memorandum dated May 20, 2005 in response to the audit of the Division of Real Estate, the Division believes the information would be useful for orienting new board members and utilizing such criteria during executive sessions when determining the appropriate disciplinary action.

Expedited Settlement Process

In 1995 the General Assembly mandated that the Department of Regulatory Agencies explore alternatives to reduce the cost of its legal services. In response to that mandate, the Board of Nursing implemented an expedited settlement process, and in 1998 other boards and programs began to develop similar processes. The purpose of an expedited settlement process is to focus on settling cases against licensees before they are referred to the Office of the Attorney General. In August 2004 the General Assembly granted the Division the authority to create the Office of Expedited Settlement, which provides settlement services to all boards (except the Board of Nursing) and programs within the Division. The goal of the Office is to expedite the disciplinary process and reduce legal services costs. According to a Memorandum of Understanding executed with the Office of the Attorney General, the Division implemented the expedited settlement program (ESP) to attempt to resolve disciplinary actions under the direction of the respective boards, utilizing form stipulations prepared by the assistant attorneys general.

The ESP process begins with a review of the case by the board, assistant attorney general, program director, and the ESP coordinator to determine if the case is a candidate for the expedited settlement program. The determination is based on the factual and legal complexity of the case, whether counsel represents the licensee, and whether similar cases have been previously handled through ESP. If the case proceeds through ESP, the Division's ESP coordinator attempts to settle the case based on discipline parameters specifically set by the board. The licensee may agree to the settlement terms or submit a counteroffer that is returned to the board. The board may then accept the counteroffer, or refer the case to the Office of the Attorney General for processing, which may lead to an administrative hearing.

We reviewed the ESP process and identified several areas for improvement that will help make the process more effective, as discussed in the following sections.

Usage

We found that the ESP process has not been as effective as it could be in reducing the number of cases sent to the Office of the Attorney General, and thus the Division's legal costs. Specifically, we found that the number of cases sent to the Office of the Attorney General in Fiscal Year 2005 actually increased 26 percent over the prior year, even though the number of complaints received by the Division only increased 15 percent during this time period. In Fiscal Year 2005, licensing boards and programs within the Division referred about 590 cases to the Office of the Attorney General compared with about 470 cases in Fiscal Year 2004.

One reason for the increase in the number of cases sent to the Attorney General is that some boards and programs are not maximizing their usage of the services provided by the Office of Expedited Settlement. During Fiscal Year 2005 the Office of Expedited Settlement received about 610 cases, or 12 percent of the approximately 4,920 complaints received by the Division. (Note, some of the cases referred to the Office during Fiscal Year 2005 were initiated during Fiscal Year 2004.) About 430 of the 610 cases (71 percent) referred to the Office of Expedited Settlement were referred from one licensing program – Barber/Cosmetology. Other boards, such as the Accountancy Board, also referred a large number of their cases to the Office of Expedited Settlement. The Office resolved about 590, or 97 percent, of these cases which meant the Division did not have to refer them to the Office of the Attorney General.

In contrast, some boards, such as the Medical and Dental Boards, which have traditionally accounted for a large portion of the Division's legal services costs, referred very few cases to the Office of Expedited Settlement, sending only 4 and 10 cases respectively. (Note, these two boards were not included in the Office of Expedited Settlement until January 2005.) These same two boards, however, sent about 110 and 70 cases, respectively, to the Office of the Attorney General during this same period.

The low usage rate of some boards and programs can be explained by the relative newness of the ESP process and the boards' and programs' well-established relationships with their assigned assistant attorneys general. The boards and programs have come to rely on their assigned attorneys and the formal legal process to handle their cases and are hesitant to send cases to the Office of Expedited Settlement. However, the Division can realize benefits in reduced legal expenses and expedited settlements if more cases are referred to the Office of Expedited Settlement. According to Division data, the average cost to settle a case through the Office of Expedited Settlement during Fiscal Year 2005 was about \$320 compared with an estimated \$620 per case for those sent to the Office of the Attorney General. These amounts do not include any board or program staff time needed to prepare the

case for settlement processing, which can result in additional costs. In addition, the Office of Expedited Settlement has had a high success rate in settling cases. Of the approximately 400 cases closed in Fiscal Year 2005, about 380 (95 percent) were initially settled by the Office of Expedited Settlement and did not go through extended processing through the Office of the Attorney General.

The Division should work with the boards and programs to familiarize them with the ESP process and increase the number of cases referred to the Office of Expedited Settlement. In addition, the Division should implement a formal system for referring cases to the Office of the Attorney General that includes documenting and providing justification for making the referral.

Billings

We also found that the Office of Expedited Settlement's indirect billing process resulted in significantly different costs per case for the boards and program areas. Currently the Office bills boards and programs for settlement services based on an indirect cost rate that was established to cover the cost of the program. However, this process results in some boards that pay as little as \$70 per case, while others pay as much as \$1,200 per case. The difference in rates had no correlation to the complexity of or the amount of time spent on the cases. The Division needs to develop a billing method that accurately reflects actual program usage. Options include implementing a direct billing rate that is applied to the number of hours spent on a case or continuing with the indirect-cost methodology but monitoring activity and conducting mid-year and end-of-fiscal-year adjustments to account for actual usage.

Recommendation No. 13:

The Division of Registrations should improve the expedited settlement process by:

- a. Working with the licensing boards and programs to increase the number of cases referred to the Office of Expedited Settlement by familiarizing them with the process and the potential benefits of reduced legal costs and more efficient settlement processing.
- b. Implementing a formal system for licensing boards and programs to document and provide justification for cases when they are referred to the Office of the Attorney General instead of to the Office of Expedited Settlement.

- c. Developing a billing method that reflects actual program usage. This could include direct billing based on the number of hours spent on a case or indirect billing that is adjusted for actual usage.

Division of Registrations Response:

Agree. Implementation Date: December 31, 2005.

- a. The Division, given its excellent first-year success, is in the process of expanding expedited settlement to increase the number of cases referred to the Office of Expedited Settlement.
- b. The Division notes this recommendation is similar to its current transmittal form for cases sent to the Office of the Attorney General. The Division will work towards implementing a formal system for boards and programs to document and provide justification for cases when they are referred directly to the Office of the Attorney General instead of the Office of Expedited Settlement.
- c. The Division will develop a billing method that reflects actual program usage. The Division would note that the current system of indirect billing is in its first year, and the Division had planned on reviewing and making changes to the system at the conclusion of Fiscal Year 2005. The Division prefers indirect billing over the “timekeeping” system mentioned in the recommendation since timekeeping is more labor intensive, takes time away from settling cases, and mid-year adjustments can easily correct any errors that do not accurately reflect actual program usage.

Hearing Cost Recovery

Licensees who have received a complaint against them and who cannot reach an agreement with their licensing board or program have the right to a hearing according to the Colorado State Administrative Procedure Act (Section 24-4-104, C.R.S.). Hearings are also initiated to resolve cases where the licensee does not respond to written notification of the complaint or engage in the process. Default judgments are handed down if the licensee fails to appear at the hearing. The Division utilizes administrative law judges within the Division of Administrative Hearings to conduct its hearings.

Currently three programs within the Division (Barber/Cosmetology, Outfitters, and Boxing) are statutorily required to recover their costs associated with hearings, including attorney general, administrative law judge, and expert witness expenses, from licensees who have been placed on probation or have had their licenses denied, suspended, or revoked. This requirement affords the Division the opportunity to recover hearing costs when the licensee has violated a statute or rule and, when carried out, may help prevent frivolous litigation.

We reviewed the hearing cost-recovery process and found that two of the licensing programs with this authority are not enforcing the requirement as intended by statute. Specifically, we found that the Division is not consistently assessing and recovering hearing costs for the Barber/Cosmetology and Outfitters programs when licensees are found to have violated licensing statutes and rules. The Boxing program has never had a case go before an administrative law judge. Over the last five years, a disciplinary action was issued for the 12 Barber/Cosmetology cases that went before an administrative law judge. Of these 12, only 8 were assessed hearing costs totaling about \$6,900. In the end, only one of the individuals actually paid the entire amount assessed (\$1,600). The remaining accounts were sent to the Division of Central Collections for nonpayment. Two of the individuals who did not pay the entire amount continue to hold an active license. However, the Division has placed them on probation and required payment plans with Central Collections. During this same period, only two Outfitter cases were scheduled for hearing; however, default judgments were issued when the individuals failed to appear in court, and disciplinary actions were handed down in their absences. The Division failed to recover the hearing costs for these cases or to refer the accounts to Central Collections.

The Division is not complying with statutes when it fails to assess and recover hearing costs and refer cases with unpaid debts to Central Collections. According to the Division, the process of assessing and recovering hearing costs for these boards and programs may not be cost-effective. In the past, and as indicated above, when the Division has assessed costs, it has had difficulty actually collecting the full amount. As a result, the Division may spend more resources trying to collect hearing costs than it actually recovers. Therefore, the Division should evaluate the cost-effectiveness of the hearing cost-recovery process and based on this evaluation, either enforce the statutory requirements or seek statutory change to repeal the requirements.

Recommendation No. 14:

The Division of Registrations should evaluate the cost-effectiveness of the hearing cost-recovery process and based on this evaluation, either enforce the statutory

requirements for the Barber/Cosmetology, Outfitters, and Boxing programs or seek statutory change to repeal the requirements.

Division of Registrations Response:

Agree. Implementation Date: The Division will try to implement this recommendation by June 30, 2006 provided that appropriate legislation is enacted during the upcoming 2006 Legislative Session. The Division will request statutory changes to repeal the hearing cost recovery provisions from the three programs where it currently exists.

Administration

Chapter 4

Background

Division staff from the boards, programs, and centralized offices are responsible for administering the State's licensing function. As part of their administrative responsibilities, staff record information in the DORA Licensing System (DLS) related to the licensing, complaint, and enforcement functions; manage payments to the Division; and maintain case files. Maintaining complete and accurate information and actively monitoring payment activities are essential components of the Division's overall responsibility to provide public protection through the regulation of the 30 licensing boards and programs. In this chapter we present findings and recommendations related to improving the Division's administration of the State's licensing function.

Fines

Statutes authorize 16 of the 30 (53 percent) licensing boards and programs within the Division to assess fines against licensees as a disciplinary action. The Electrical Board also has the authority to issue citations. Statutes govern the amount that each board and program can fine licensees and the circumstances under which a fine can be imposed. For example, the Pharmacy Board can assess fines between \$500 and \$5,000 for statutory or rule violations, while the Accountancy Board can fine up to \$1,000 for the first administrative procedure against a certificate. The largest fine that can be assessed is \$50,000 by the Passenger Tramway Safety Board for an area operator's willful misconduct. The Division reported in COFRS that it received about \$173,000 in fines during Fiscal Year 2004.

We reviewed the Division's controls over the assessment and collection of fines and found that the Division does not actively track or reconcile fines and payments, act timely on late payments, or deposit payments from one board into the appropriate government fund. We discuss these issues in the next three sections.

Reconciliation

We reviewed citation and fine assessment and payment data within DLS for the Electrical, Barber/Cosmetology, Pharmacy, Accountancy, and Outfitters boards and programs during Fiscal Year 2004 and compared the information with the amounts recorded in COFRS. As we proceeded with our analysis, however, we found that the Division did not have complete and accurate data on the amount of fines and citations assessed and the amount collected. Specifically, we found the following pertaining to fines assessed between July 2003 and December 2004:

- Electrical Board: Missing or inaccurate data for 18 of the 36 citations.
- Barber/Cosmetology Program: Conflicting payment information on different activity screens and/or inaccurate data for 9 of the 20 fines sampled. (There were 89 fines assessed during this period.)
- Accountancy Board: Missing data for 4 of the 26 fines.
- Pharmacy Board: Conflicting payment information on different activity screens for 1 of the 9 fines.
- Outfitters Program: Missing data, such that the Division cannot determine the number or amount of fines assessed.

There are no Division-wide policies or procedures on the process for recording the assessment and payment of fines. Of the boards and programs reviewed, only two (Electrical and Barber/Cosmetology) have procedures for recording data on fines assessed and collected. However, there are still inconsistencies in how data are entered between these two boards. Furthermore, the Division confirmed that it could not verify the accuracy of the fine reports generated by DLS. As a result, the Division lacks the complete fine assessment and payment data to accurately reconcile assessments and payments.

We also reviewed Division practices for reconciling fines. We found that neither the Division nor the 16 individual boards and programs with fining authority, have written procedures covering the process for reconciling (1) individual assessments to total assessments, (2) assessments to payments, (3) payments to deposits, or (4) deposits to COFRS. Without procedures for accurately recording and reconciling assessments and payments, the Division may not identify errors or irregularities, and the risk of fraud and abuse increases.

Late Payments

We reviewed the timeliness of payments for all of the 71 fines and citations assessed by the Pharmacy, Accountancy, and Electrical boards and 20 of 89 fines (22 percent) assessed by the Barber/Cosmetology program between July 2003 and December 2004. Although all of the fines assessed by the Pharmacy and Accountancy boards were paid on time, we identified problems with delinquent payments for the Electrical Board and the Barber/Cosmetology program.

We found that the Electrical Board issued 36 citations between July 2003 and December 2004, in which 13 were paid on time, 1 was partially paid, and 6 were unpaid. The remaining 16 citations were paid an average of about 50 days after the due date. According to written procedures for the Electrical Board, citations are due within 10 days of issuance and staff are to send reminder letters to the licensee if payment has not been received within 30 days. However, program staff often send out reminder letters in bulk after periodic file reviews are conducted to determine which accounts are delinquent. On the basis of DLS data, two individuals who received citations in September and December 2004 did not receive reminder letters until February 2005.

At the time of the audit, the Electrical Board had 25 unpaid citations dating back to 2001. Of these 25, 10 individuals were currently licensed as electricians, and no disciplinary action had been taken on any of the 25 cases. The Office of the Attorney General is seeking license revocation for two of the cases that were referred for resolution in 2001. According to Division data, only five licenses have ever been revoked for nonpayment; the last revocation for nonpayment occurred in October 2000. One licensee had his license renewed twice before payment was ultimately made.

For the Barber/Cosmetology program, we found that 2 of the 20 individuals assessed fines were delinquent on part of their payments. At the time of review, no recovery efforts had been made to collect the fines, nor had there been any disciplinary action taken against the licensees.

Deposits

Statutes (Section 12-23-118(7)(a), C.R.S.) governing the Electrical Board state: “Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of any such fine to the general fund, and one-half of the amount of any such fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to any such entity on an annual basis.”

We found that the Electrical Board is depositing all fines associated with stipulated agreements into the General Fund contrary to statute. In Fiscal Years 2004 and 2005, approximately \$3,880 was inappropriately credited to the General Fund, rather than paid to the appropriate local government.

The Division needs to improve its administration and management of fines assessed by the boards and programs to ensure that licensed professionals comply with enforcement decisions. Specifically, the Division needs to enhance the procedures covering the management of fines and citations to include timely recording and tracking. Also, the Division needs to develop a formal system of reconciling the activity on fines and citations.

Recommendation No. 15:

The Division of Registrations should improve the administration and management of fines and citations by:

- a. Developing and implementing procedures for recording the assessment and payment of fines and for reconciling payments internally and with COFRS.
- b. Ensuring that fine payments are timely and taking steps to collect on delinquent payments by consistently sending out demand letters and taking action against licenses when fines are not paid.
- c. Complying with the statutory requirement for sharing electrical fine revenue with the appropriate local government.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006.

- a. The Division will implement procedures in order to assess and reconcile the payment of fines in DLS with COFRS. The Division has already begun to work on refining its DLS reports so that the information is reported accurately.
- b. The Division will put in place procedures to monitor the payment of fines and to collect on delinquent payments. For those fees considered delinquent debts, the Division will work with the system vendor for DLS to update the template demand letter in the system such that staff can create the letter using DLS.

- c. The Division notes the Electrical Board has paid the local governments the amounts due for Fiscal Year 2004 and Fiscal Year 2005. A written procedure has been implemented such that these payments will be made during the fiscal year when the fines are collected.

Delinquent Payments

The Division assesses fees for both original license applications and renewal licenses. Individuals can pay their license fees through direct mail or in person at the Division, and for renewals, payments can be made through the Division's bank lock box or via the Internet. The Division's centralized Office of Support Services receives and posts the licensing fees to the individual's record. During our audit we examined the Division's handling of licensing fees and the administration of insufficient payments and delinquent debts. We identified several issues with how the Division manages and processes payments that are returned by the State's bank due to insufficient funds. We also found that the Division is not complying with statutes governing the handling of debts and delinquent accounts.

Penalty Fee

Section 13-21-109, C.R.S., allows Central Collections to charge a returned check fee of \$20. The Division's policy, however, is to notify individuals that the debt must be paid within 30 days and that a \$17 fee has been added to cover administrative expenses. We reviewed data from Central Collections on the fees assessed for returned checks from July 2003, through December 2004, and found that Central Collections charged inconsistent fees to the accounts. During that period more than 100 bad check accounts were sent to Central Collections, and we identified 60 accounts (56 percent) that were assessed an insufficient funds fee of \$20, 42 accounts (39 percent) that were assessed an insufficient funds fee of \$17, 1 account that was assessed a \$3 insufficient funds fee, and 4 accounts that were not assessed an insufficient funds fee. The Division was not aware of the variances in recovery fees assessed to their accounts when referred to Central Collections.

Placement With Central Collections

Section 24-30-202.4, C.R.S., requires all state agencies to refer debts to Central Collections within 30 days after the debt becomes past due. From July 2003, through December 2004, the Division referred approximately 110 delinquent accounts (primarily consisting of insufficient payment accounts) totaling approximately \$12,500 to Central Collections. We reviewed 25 of these accounts to determine if the Division was referring them to Central Collections within the statutorily required

time frame. We found that, on average, using the due date included in the initial demand letter, accounts were referred to Central Collections about 40 days after they became past due. Overall, our analysis shows that 110 days elapsed from the date of the initial payment to the date that Central Collections reports receiving the debt.

We also found that the Electrical Board and the Barber/Cosmetology program have not referred their delinquent accounts for unpaid fines to Central Collections in accordance with statute. The Electrical Board had 25 delinquent fine accounts dating back to 2001, with only 6 accounts referred to Central Collections. Additionally, we found that the Barber/Cosmetology program had two delinquent fine accounts in our sample. Neither account was referred to Central Collections, although the accounts were several months past due.

A portion of the delays can be explained by the Division's additional demand letter, which gives individuals who submit bad checks five more days to pay. Some delays are also caused by the Division's manual system of processing delinquent accounts. For example, staff must manually create each demand letter sent and record the dates for further action on individual calendars. As a result of the manual nature of this process, we found several demand letters with addition errors.

Reconciliation Process

The Division does not have a formal reconciliation process in place to accurately monitor delinquent debts. The Division relies on reports produced by Central Collections and does not perform a formal and systematic reconciliation of these accounts. The State Fiscal Procedures include a requirement for state agencies to complete reconciliation reports on activity of past due accounts in the Past Due Receivable Policy. The Division will benefit from developing a formal documented reconciliation process that can provide management with current information on recovery activity and effectiveness.

Improvements

The Division needs to improve its handling of delinquent payments to prevent the burden of covering these costs from being passed on to other licensees through fees. Specifically, the Division should fully utilize the capabilities of its DLS system to expedite the process of referring accounts to Central Collections and to improve the accuracy of information related to delinquent accounts. This should include using the system to issue demand letters, establishing a formal system of reports for reconciling delinquent accounts, and tracking and monitoring account activity. Additionally, the Division should work with Central Collections to determine the appropriate amount to charge individuals who submit insufficient payments and ensure that accurate information is provided to the license holders regarding any

potential fees. Finally, the Division should provide staff with training and supervision to accurately manage delinquent payments and penalties imposed by the licensing boards. This should include training on timeliness for referring delinquent accounts to Central Collections.

Recommendation No. 16:

The Division of Registrations should improve the management of delinquent accounts and payments by:

- a. Working with Central Collections to determine the appropriate fee amounts and ensuring that license holders and applicants are provided accurate information on any potential collection fees.
- b. Utilizing the DLS system to better manage these accounts to ensure that accounts are forwarded to Central Collections in accordance with statutory requirements.
- c. Establishing a formal and systematic reconciliation process to provide accurate and timely information on recovery activities and effectiveness.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006.

- a. The Division has already begun working with Central Collections to determine the appropriate fee amounts and ensuring that licensees are provided accurate information on any potential collection fees.
 - b. The Division will work on the reporting capabilities in DLS to better manage delinquent accounts and forward them to Central Collections in accordance with statutory requirements.
 - c. The Division will establish a formal and systematic reconciliation process.
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Automated Data

In July 2003 the Division of Registrations began using the DORA Licensing System, or DLS, to record all aspects of the licensing function, including licensing applications and decisions, complaint intake and investigation, disciplinary actions, expedited settlement agreements, and compliance monitoring. Throughout the audit, we reviewed DLS data and found there are inconsistencies within the Division and among the boards and programs in the way data are entered and maintained. In addition, we found that the Division is not fully utilizing DLS to maintain information for all phases of the licensing, complaint, and enforcement processes.

Complaint Case Data

We reviewed a sample of 70 disciplinary cases from 11 licensing boards and programs (Medical, Nursing, Dental, Pharmacy, Barber/Cosmetology, Accountancy, and five of the Mental Health professions) and identified 31 examples in 26 records (37 percent) with missing or inaccurate data. Specifically, we found:

- **Missing Data.** The DLS Procedures Manual requires the record to include the alleged violation, the source of the complaint (citizen, board, etc.), information on the complainant, case activities, and references to related or combined cases. Sixteen cases were missing one or more of these items.
- **Inaccurate Data.** The DLS Procedures Manual requires a case referred to the Office of Investigations to be designated a “Formal” case. We identified six cases that were referred to the Office of Investigations and were designated as “Informal,” and another case that was not sent to the Office of Investigations but was designated as “Formal.” Additionally, we found three cases with incorrect sources listed in DLS and one with erroneous activities listed.

These errors and omissions are important because inaccurate and incomplete data reduce the effectiveness of program reports to Division and Department management.

There were also 10 instances where the Electrical Board had dismissed complaints with letters of concern and erroneously recorded the letters as a disciplinary action in DLS. Disciplinary actions in DLS are available to the public on ALIS and ALISON. Including the letters on ALIS and ALISON makes it appear as though the licensees had received disciplinary actions, when in fact they had not. We also found an instance where two cases were opened in DLS for a single complaint, creating a double record. This made it appear that the Division had received two different complaints against the licensee when the Division had only received one.

DLS Usage

In addition to the data accuracy and inconsistency issues discussed above, we also found that the Division is not fully utilizing DLS's capabilities with respect to maintaining and tracking case referral data. For example, we found that when staff refer cases to law enforcement agencies, they generally record the referrals in the actual paper file or in board minutes rather than in DLS. This makes the quick retrieval of data difficult. Staff also do not record case disposition information in DLS for those cases that are referred to law enforcement for criminal prosecution. This information would be useful for consideration on future licensing decisions. In addition, we found that the Division is not fully utilizing DLS in its collection of delinquent payments. According to the Division, it is currently working on DLS' capabilities to automatically produce demand letters. Until changes to DLS are made, administrative staff have to manually complete each letter.

Improvements

To address the problems we identified, the Division should provide additional staff training and develop written guidelines addressing required data elements and formats for entry. Although the Division has provided some training to staff, developed a DLS Enforcement and Licensing Procedures Manual, and held periodic user group meetings, these tools have not sufficiently alerted staff to their specific responsibilities with respect to data management. Additionally, the Division should evaluate DLS data to identify gaps in data collection and ensure that all of the information collected is necessary. Limited evaluation of DLS data has been completed since the system was implemented two years ago. In addition, some staff have reported that they do not enter some information into DLS, because it is time-consuming, and they believe it is not useful or actually used for any other purpose. However, as we have stated, DLS is not being fully utilized for other important purposes such as maintaining and tracking case referral information.

Finally, the Division should develop and implement quality control procedures, such as supervisory review, to ensure the consistency and accuracy of complaint and enforcement information entered into DLS. Currently the supervisors and managers within the Licensing Unit review the licensing activities entered into DLS by staff. This is a good system and should be expanded to other functions performed by the Division. DLS is a powerful management tool and is capable of maintaining comprehensive information related to the Division's licensing responsibilities. Therefore, it is important that the Division take steps to ensure the information in DLS is complete and accurate for effective management of the program and that it is used to its fullest potential.

Recommendation No. 17:

The Division of Registrations should ensure DLS data are complete, reliable, and accurate by:

- a. Assessing the information that is being entered into the system to determine if there are gaps in data collection and if all of the information currently being collected is necessary.
- b. Developing standard, written policies and procedures for entering information into DLS and implementing them Division-wide, and training staff on these procedures.
- c. Establishing quality control procedures for reviewing and verifying information that is entered into the system.

Division of Registrations Response:

Agree. Implementation Date: June 30, 2006.

- a. The Division will use the audit findings to determine if there are gaps in data collection and if all the information currently being collected is necessary. The Division would note that DLS was a major change from the previous licensing system. DLS is a windows-based program with many input screens compared to a limited text-based hot-key system that was used prior to DLS. The transition to DLS was initially difficult for employees, and as acceptance and familiarity has increased with DLS, so has the data collection.
 - b. The Division will expand on its existing written enforcement and licensing procedures as well as provide additional training to staff as needs arise.
 - c. The Division is in the process of reformatting its reporting capabilities to improve and establish quality control procedures for reviewing and verifying information that is entered into DLS.
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File Completeness

In a 2001 audit of the Medical and Nursing Boards, the Office of the State Auditor found deficiencies in the documentation maintained in complaint files. The audit recommended that the Boards include process checklists specific to each board's activities to ensure documents are added to files, steps are completed, and staff are accountable for their actions. The Division extended this requirement to all boards in the Division. During the audit we found that the recommendation has not been fully implemented. For example, we found complaint files that are missing the required log, checklist, and correspondence letters.

The Division needs to fully implement the 2001 audit recommendation Division-wide and ensure that all boards and programs maintain the proper documentation in complaint files. This should include developing checklists and guidelines for documentation to be included in complaint files and establishing a quality review process for verifying that files contain the proper documentation.

Recommendation No. 18:

The Division of Registrations should improve case documentation by:

- a. Providing written guidelines for what should be included in each case file.
- b. Establishing a case file quality review to ensure proper documentation is maintained.

Division of Registrations Response:

Agree. Implementation Date: December 31, 2005

- a. The Division will provide written guidelines for what information and documents should be included in each case file.
 - b. The Division will establish a case file quality review.
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