



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued July 13, 2017

Division of Professional Licensure

For the period July 1, 2015 through June 30, 2016





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Making government work better

July 13, 2017

Mr. Charles Borstel, Commissioner
Division of Professional Licensure
1000 Washington Street, Suite 710
Boston, MA 02118

Dear Commissioner Borstel:

I am pleased to provide this performance audit of the Division of Professional Licensure. This report details the audit objectives, scope, methodology, finding, and recommendation for the audit period, July 1, 2015 through June 30, 2016. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Division of Professional Licensure for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

cc: John C. Chapman, Undersecretary, Office of Consumer Affairs and Business Regulation
Robert Fortes, Deputy Director for Policy and Boards, Division of Professional Licensure
Kevin P. Scanlon, Deputy Director and General Counsel, Division of Professional Licensure

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EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Division of Professional Licensure (DPL) for the period July 1, 2015 through June 30, 2016. The purpose of our audit was to determine whether DPL receives, documents, and processes complaints¹ in accordance with applicable Massachusetts laws, regulations, and other authoritative guidance. In addition, we sought to determine whether DPL completed investigations of complaints promptly and in accordance with its guidelines.

Below is a summary of our finding and recommendation, with links to each page listed.

Finding 1 Page 5	DPL experienced delays in completing investigations of complaints.
Recommendation Page 6	DPL should establish monitoring policies and procedures and use its complaint-investigation database to routinely monitor complaints so that the tasks associated with their timely completion can be more effectively managed.

Post-Audit Action

DPL has begun developing monthly reports that can show the status of a complaint at various stages of an investigation, which should help it address complaints more promptly.

1. Complaints are formal allegations levied against licensees that have been accused of noncompliance with applicable state laws, rules, regulations, or professional standards. Complaints can be initiated by consumers, by DPL's Office of Investigations after site inspections, or by licensees' boards.

OVERVIEW OF AUDITED ENTITY

The Division of Professional Licensure (DPL) was established by Section 8 of Chapter 13 of the Massachusetts General Laws. Its website states,

The Division of Professional Licensure (DPL) is an agency within the Office of Consumer Affairs and Business Regulation. DPL oversees 28 boards of registration, which license and regulate more than 387,000 individuals and businesses to practice some 50 trades and professions in Massachusetts. DPL also licenses private occupational schools. . . .

[DPL's mission is] to protect the public health, safety and welfare by licensing qualified individuals and businesses to provide services to consumers, and by fair and consistent enforcement of the licensing laws and regulations. DPL seeks to promote consumer protection, a fair and competitive marketplace, and education and outreach.

According to DPL's annual report for fiscal year 2015,

DPL's 28 boards of registration and the Office of Private Occupational School Education are supported in their enforcement efforts by three offices within the agency: the Office of Investigations; the Office of Prosecutions; and the Office of Legal Counsel. . . . [These] three offices support each of DPL's 28 boards of registration . . . through the provision of investigative services, legal advice, and where appropriate, prosecution of licensed and unlicensed individuals and businesses, for violations of applicable licensing statutes and regulations.

All of DPL's administrative, enforcement, and licensing functions are overseen by a commissioner. For fiscal year 2016, DPL received an appropriation of \$4,263,413 to fund its activities.

Allegations of unlicensed practices or professional misconduct are investigated by the Office of Investigations (OI), which receives complaints generated by consumer allegations through DPL's online portal or through site inspections conducted by OI's staff. Once OI completes its investigation, it refers the complaint to the board of registration that licenses the profession practiced by the person or business that was investigated. The board then determines what actions (e.g., dismissal or referral to the Office of Prosecutions) should be taken. In addition, OI staff members help consumers file Application for Complaint forms with the relevant boards of registration.

DPL uses an online system called eLicensing to process license applications, renewals, and certificates and to streamline the process of filing and tracking complaints.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Division of Professional Licensure (DPL) for the period July 1, 2015 through June 30, 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in this report.

Objective	Conclusion
1. Does DPL receive, document, and process complaints in accordance with Section 7.0 of Title 250 of the Code of Massachusetts Regulations (CMR), 258 CMR 30.01–30.03, 265 CMR 8.01–8.06, Sections 61 and 65C of Chapter 112 of the General Laws, and Section 232 of Chapter 112 of the General Laws?	Yes
2. Does DPL complete its investigation of complaints in a timely manner, in accordance with its policies and procedures?	No; see Finding <u>1</u>

To achieve our objectives, we gained an understanding of the internal controls at DPL that were related to our audit objectives, and we evaluated the design and tested the operating effectiveness of those key controls over the receipt, documentation, processing, and timely investigation of complaints levied against licensed professionals and unlicensed individuals practicing the trades or professions that DPL oversees.

We assessed the reliability of DPL’s data by (1) comparing source documentation to system data, tracing a sample of data to source documents, and performing selected tests to identify hidden cells or duplications in DPL systems; (2) reviewing existing information about the data and the system that produced the data; and (3) interviewing agency officials who were knowledgeable about the data. In addition, we selected a random sample of 25 of the 253 DPL system users to determine whether they

were currently employed by DPL, whether they were authorized users of the system, and whether their access privileges were appropriate for their respective job levels. Based on the results of these audit procedures, we determined that the information obtained for our audit period was sufficiently reliable for the purposes of our audit work.

In addition, we performed the following procedures:

- We reviewed all laws, regulations, policies, and procedures relevant to our audit objectives.
- We randomly selected a nonstatistical sample of 63 closed complaints out of a population of 1,794 from our audit period to determine whether DPL received, documented, and processed each complaint in accordance with applicable state laws, regulations, and other authoritative guidance. Specifically, we reviewed each complaint file to determine whether (1) it contained an official Application for Complaint form and a response from the applicable board of registration; (2) DPL investigated the complaint and, if warranted, referred it to the Office of Prosecutions; (3) the relevant board took action when appropriate; and (4) the final result of any action was reviewed and signed off on by each board of registration involved and the chief investigator of the complaint.
- We used the same randomly selected nonstatistical sample of 63 closed complaints out of a population of 1,794 from our audit period to determine whether DPL investigates complaints in a timely manner in accordance with its training manual, the Investigations Unit Manual—Orientation & Procedures. To make this determination, we noted each sampled complaint's assigned priority designation² and determined whether the investigation of the complaint was completed within the timeframe established by the manual for the complaint's priority designation. We also reviewed documentation of delinquent investigations to ensure that DPL sent a second Order to Show Cause letter³ when an accused licensee failed to respond to the initial letter. In addition, we reviewed DPL's standard operating practices for instances in which licensees did not respond to an initial Order to Show Cause letter or return requested information in a timely manner.

Since we used a nonstatistical sample for audit testing purposes, we could not project the results of our tests to the entire population.

2. DPL prioritizes cases based on the level of risk to public health and safety.

3. Order to Show Cause letters are sent after complaints are determined to have merit. They require the accused licensees to justify, explain, or prove something related to a complaint.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Division of Professional Licensure experienced delays in completing investigations of complaints.

The Division of Professional Licensure (DPL) did not always complete its investigations of complaints within the established timeframes. Within our sample of 63 complaints, 16 (25%) were delinquent, and on average, DPL took an additional 38 days beyond its guidelines to complete those investigations. Fourteen of those 16 investigations were Priority 2 cases, and 2 were Priority 3 cases.

These delayed investigations involved (1) the false procurement of a real-estate license; (2) unsanitary practices at a podiatrist and a provider of beauty and barbering services; and (3) a veterinarian, a massage therapist, a sheet-metal worker, an engineer, and a provider of beauty and barbering services suspected of operating without licenses. Delinquent investigations can lead to delays in appropriate enforcement action against noncompliant licensees, including the possible suspension or revocation of licenses. Investigative delays could also lead to a health and safety risk to the members of the public, who may be obtaining services from unlicensed professionals.

Authoritative Guidance

DPL's Investigations Unit Manual—Orientation & Procedures contains guidelines for prioritizing complaints and the timeframes in which the Office of Investigations should investigate Priority 1, 2, and 3 complaints:

PRIORITY 1: *Allegations involving a substantial danger to the public. . . . Priority 1 case goal is investigation and referral to the Board within **45 days**.*

PRIORITY 2: *Allegations often involving gross negligence, incompetence, or substantial violations of statutes or regulations where the public health may suffer. . . . Priority 2 case goal is investigation and referral to the Board within **60 days**.*

PRIORITY 3: *Allegations often involving violations where the public health is likely not in danger. . . . Priority 3 case goal is investigation and referral to the Board within **90 days**.*

Reasons for Issue

DPL did not establish monitoring policies, monitoring procedures, and checks in the eLicensing database containing its complaint investigation information that would allow it to routinely monitor the number of days a complaint had been under investigation. In addition, according to DPL, complaints often

require in-depth investigations involving time-consuming research; conferences with accused licensees; and correspondence with the complainant, the licensee, and their respective legal counsels. The timeliness of these activities is outside DPL's immediate control.

Recommendation

DPL should establish monitoring policies and procedures and use its complaint-investigation database to routinely monitor complaints so that the tasks associated with their timely completion can be more effectively managed.

Auditee's Response

When a complaint is filed, it is investigated by the Office of Investigation. When the investigation is complete, it is presented to the appropriate board for a determination of whether: (a) an Order to Show Cause should be issued; (b) the complaint should be dismissed; or (c) returned to the Office of Investigations for further investigation. Some of the delay found by the audit can be attributed to the statutory structure of how the twenty-eight (28) boards of registration under DPL's supervision operate. Most of these boards only meet once a month. In at least two (2) of the cases identified in the audit that went beyond the sixty (60) day DPL goal, one of those cases was presented to the board within the 60 day time period but was returned to the board for further investigation. As a result, this case went beyond the 60 day period.

In another case, the matter was investigated within the 60 day period but the licensee claimed that she did not receive the initial letter from the Office of Investigations requesting a response to a complaint. The licensee requested additional time to respond, which was granted, but this caused the case to go beyond the 60 day time frame.

While DPL strives to complete all of its investigations within 60 days, given the breadth and scope of the boards of registration under DPL's supervision, there are a wide variety of cases that are investigated from simple ticket cases to complex engineering, real estate and health care cases. The complex cases can take more time to investigate and complete.

Moreover, where there is an immediate and serious threat to the public health, safety or welfare, DPL suspends or revokes a license immediately pursuant to G.L. c. 112, sec. 65B. This action prohibits any continued practice by the licensee in his/her registered profession.

Another factor contributing to the slight delay in completing investigations was the implementation and conversion of DPL's old computer system and databases to a new eLicensing system. Implementation of the eLicensing system occurred over a number of months beginning in March 2015 and ending in August 2016. During this conversion period, which also coincided with the audit period, DPL used 2 different computer systems and databases. As a result, the data from the 2 different systems did not always align to provide DPL with definitive information. Since the final conversion has taken place, DPL has been developing monthly reports that can

show the status of a complaint at various stages of an investigation. This corrective action will assist DPL to monitor the timely disposition of complaints.

Auditor's Reply

We acknowledge that there may be circumstances, such as the ones DPL details in its response, that can cause it to process complaints beyond the time established by its guidelines. Our concern was that this situation appeared to be a recurrent problem, since within our sample of 63 complaints, 16 (25%) were delinquent and DPL took an average of 38 additional days beyond its guidelines to complete those investigations. We also acknowledge that the conversion from one database or system to another can create problems with information flow. However, DPL did not establish monitoring policies and procedures for its complaint-investigation database that would have allowed it to monitor the number of days complaints had been under investigation and more effectively manage the tasks associated with their timely completion, and we urge DPL to do so. Based on its response, DPL is taking measures to address our concerns in this area.

APPENDIX

Boards of the Division of Professional Licensure

- Allied Health Professions
- Allied Mental Health and Human Services Professions
- Architects
- Health Officers
- Chiropractors
- Cosmetology and Barbering
- Dietitians and Nutritionists
- Dispensing Opticians
- Electricians
- Embalming and Funeral Directing
- Hearing Instrument Specialists
- Home Inspectors
- Landscape Architects
- Massage Therapy
- Operators of Drinking Water Supply Facilities
- Optometry
- Plumbers and Gas Fitters
- Podiatry
- Professional Engineers and Land Surveyors
- Public Accountancy
- Psychologists
- Real Estate Appraisers
- Real Estate Brokers and Salespersons

- Sanitarians
- Sheet Metal Workers
- Social Workers
- Speech-Language Pathology and Audiology
- Veterinary Medicine