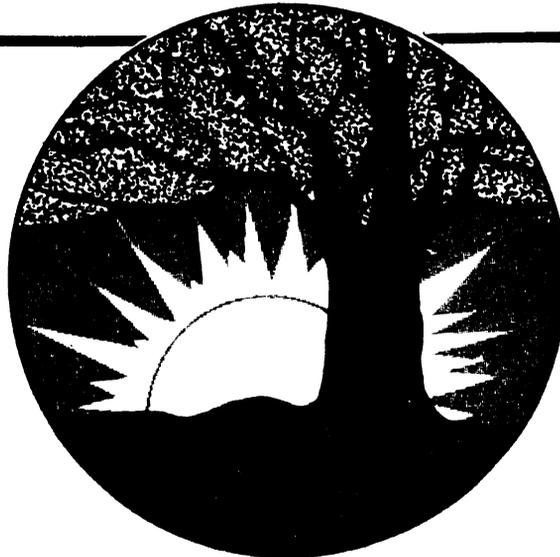


PERFORMANCE AUDIT

Professional Regulatory Boards

June 2005



John G. Morgan
Comptroller of the Treasury



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John G. Morgan
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June 27, 2005

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Thelma M. Harper, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Professional Regulatory Boards. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the boards should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dlj
04-062

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Professional Regulatory Boards
June 2005

AUDIT OBJECTIVES

The objectives of the audit were to determine the boards' and the Department of Commerce and Insurance's Division of Regulatory Boards' legislative mandates, determine the extent to which the boards and the division have carried out those mandates and complied with applicable laws and regulations, and to make recommendations that might result in more efficient and effective operation of the boards and the division.

FINDINGS

Not All Boards Have Met the Requirement for Self-Sufficiency*

Professional regulatory boards are required by law to be self-sufficient, i.e., their revenues in a given year should be sufficient to cover their expenses. Through their rule-making process, the boards have the authority to increase fees to meet this requirement. Boards that were not self-sufficient for multiple consecutive years during the period reviewed include the Board of Barber Examiners (1999 through 2004), the Board of Cosmetology (2002 through 2004), the Board of Funeral Directors and Embalmers (1999 through 2003), the Board of Examiners for Land Surveyors (1999 through 2002), and the Real Estate Appraisers Commission (1999 through 2001) (page 11).

The Board of Cosmetology Wavered in Actions to Remedy Problems With Its Testing Contractor, Resulting in Delays for License Applicants and Consuming Time and Effort of Staff Involved

Since 2001, the Board of Cosmetology has taken action to cancel a contract with its testing contractor, reversed that action after a new Request for Proposal (RFP) had already been

issued, and later canceled the contract a second time. This indecision resulted in delays for applicants ready to test and receive a license and the use of a substantial amount of staff time (both legal and administrative) to cancel the contract, initiate the bid process for a replacement contractor, cancel that RFP process and the contract termination process, and subsequently restart the cancellation process. The board's actions also highlighted the need for clear direction from board legal and administrative staff regarding the board's authority and the appropriateness of board activities (page 18).

Complaint Handling Guidelines Have Not Been Followed Consistently**

In December 2003, the Division of Regulatory Boards established written guidelines to provide a basic framework for handling complaints. The division also established, in its strategic plan, a 180-day target time for complaint resolution. Through a review of 40 complaint files randomly selected from the fiscal year 2004 complaints reported by the 12 boards included in this audit, we found that the guidelines were not

*This issue was also discussed in the February 1999 performance audit of the Professional Regulatory Boards.

**Related issues were also discussed in the February 1999 performance audit of the Professional Regulatory Boards.

consistently being followed and time frames were not being met (page 24).

Verification Procedures for Applicant Information Need to Be Improved

As part of the licensing process, a board should take reasonable steps to ensure the applicant meets all requirements. Such steps might include testing, reviewing or verifying information submitted, and investigating the applicant's background. In addition to the individual boards' responsibility, the Division of Regulatory Boards is responsible for establishing and maintaining effective controls to ensure the boards consistently apply the guidelines and criteria. To determine whether licensees met the qualifications set by the boards (for initial licensure and renewal) and how the boards verify applicant information, we tested a sample of license files for each of the 12 boards. These file reviews revealed a need for improvements in several areas. Although board procedures vary, our review of files and analysis of procedures indicate that in most cases the boards' review and approval of applicants' files is perfunctory. In many instances, the boards do not verify an applicant's answers to questions (page 26).

The Burial Services Office Has Only Limited Authority to Penalize Cemeteries That Do Not Submit Required Reports on Time, and It Has Not Used the Authority It Does Have**

The Burial Services Office (under the supervision of the executive director of the Board of Funeral Directors and Embalmers) has staff, including an audit supervisor and six auditors, who conduct audits of cemeteries' financial activities. Section 46-2-202, *Tennessee Code Annotated*, requires each cemetery company to file a report of its condition within 75 days of the end of the calendar or fiscal year. The trustee of the company's Improvement of Care Fund must file a trust fund report within 45 days after the end of the calendar year or the cemetery company's fiscal year. Cemeteries with Merchandise and Services Trust Funds and the trustee of those funds are also required to submit trust fund reports within 75 days. Our review indicated that although cemeteries did not always submit these reports on time, the Burial Services Office did not issue penalties as authorized by law for Merchandise and Services Funds reports. Authority to issue penalties related to Improvement of Care Fund reports was unclear (page 32).

OBSERVATIONS AND COMMENTS

The audit also discusses the following issues that affect the operations of the professional regulatory boards and the Division of Regulatory Boards, as well as the citizens of Tennessee: the transfer of authority for monitoring insurance-funded preneed funeral contracts to the Burial Services Office, the centralization of board investigations and inspections, consumer representation on the boards, and certain boards' actions regarding applicants/licensees who experienced problems either before or during licensure (page 4).

Performance Audit Professional Regulatory Boards

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Performance Audit Professional Regulatory Boards

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of 12 professional regulatory boards was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-226, the following entities are scheduled to terminate on June 30, 2005. On May 25, 2005, the General Assembly passed House Bill 2191, which extended these and other entities in the 2005 Sunset Cycle that had not yet been heard, for one year or until a public hearing can be held:

- Board of Barber Examiners
- Board of Cosmetology
- Board of Examiners for Architects and Engineers
- Board of Funeral Directors and Embalmers
- Board of Examiners for Land Surveyors
- Board of Pharmacy
- Private Investigation and Polygraph Commission
- Collection Service Board
- Private Protective Services Advisory Committee
- Real Estate Appraiser Commission
- Real Estate Commission
- Auctioneer Commission

The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the boards and to report to the Joint Government Operations Committee of the General Assembly. The performance audit is intended to aid the committee in determining whether the boards should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility the General Assembly mandated to the boards and to the Department of Commerce and Insurance's Division of Regulatory Boards,
2. to determine the extent to which the boards and the division have fulfilled their legislative mandates and complied with applicable laws and regulations, and

3. to recommend possible alternatives for legislative or administrative action that might result in more efficient and effective operation of the boards and the division.

SCOPE AND METHODOLOGY

We reviewed the activities and procedures of these 12 professional regulatory boards for the period July 2001 through November 2004. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The methods used included

1. a review of applicable statutes and rules and regulations;
2. examination of board files, documents, inspections, meeting minutes, licensee files, and policies and procedures;
3. a review of prior performance audit and financial and compliance audit reports, and audit reports from other states;
4. interviews with Division of Regulatory Boards staff, board members, and board staff;
5. attendance at board meetings; and
6. observation of funeral establishment inspections.

ORGANIZATION AND RESPONSIBILITIES

The Department of Commerce and Insurance's Division of Regulatory Boards provides staff and administrative support to the various boards and commissions that perform the occupational licensing and regulation of professions in Tennessee. The boards are responsible for ensuring that licensees comply with the laws and regulations of their professions and for protecting the public from any licensee's unprofessional conduct or illegal activity. Appendix 1 lists each board reviewed, its statutory citation, and a brief description of its purpose and responsibilities.

The boards' renewal periods, license application fees, and license renewal fees vary. Fees also vary within each board by type of license. Appendix 2 details the license period and expiration date, renewal amounts, and number of licensees for the boards covered in this audit.

BOARD COMPOSITION

Each board is composed of licensed industry members who may be selected from lists of names submitted by relevant trade and professional associations. In addition, the boards have public members (see page 9). The Governor is the appointing authority for all of the boards

covered in this audit except the Private Protective Services Advisory Committee, whose members are appointed by the Commissioner of Commerce and Insurance. The statutes for some boards state that the Governor “shall strive to appoint one member sixty years of age or older and one member of a racial minority.” As of November 2004, the Board of Funeral Directors and Embalmers does not have a member 60 years of age or older. The Board of Examiners for Land Surveyors and the Auctioneer Commission do not have racial minority members. Pursuant to Section 62-2-201, *Tennessee Code Annotated*, the Board of Examiners for Architects and Engineers is to have “where possible, at least one female and at least one black person.” The board does not have a black member. The 1999 performance audit also noted that the Board of Examiners for Land Surveyors did not have a racial minority member and the Board of Examiners for Architects and Engineers did not have a black member.

As of November 2004, the Board of Pharmacy, the Collection Service Board, and the Private Investigation and Polygraph Commission have one vacancy each.

BOARD ADMINISTRATION AND STAFF

The boards have either an administrator or an executive director and staff who are responsible for the board’s administrative functions and who report to the board members (but are considered Department of Commerce and Insurance employees). The administrative functions include, but are not limited to, processing applications and renewal notices, licensing, preparing board meeting agendas and minutes, and handling complaints. In addition to the board staff, the Division of Regulatory Boards has a pool of attorneys and investigators who assist in investigating and handling complaints. While an attorney will be assigned to a particular board, the investigators in the pool are assigned cases by region. Several boards have their own investigators/inspectors on staff but can also use the pool. The Auctioneer Commission has one investigator/inspector. The Board of Pharmacy’s investigators (who also perform inspections) are required to be licensed pharmacists with five years of experience. The Boards of Cosmetology, Barber Examiners, and Funeral Directors and Embalmers have inspectors who can also investigate complaints. The Real Estate Commission has staff auditors who also investigate complaints.

In order to have consistency in investigative activities and increase investigators’ accountability, Division of Regulatory Boards management has moved some board investigators to the Investigations Pool. For example, the Private Protective Services Advisory Committee and the Private Investigation and Polygraph Commission have investigators who are supervised by the Director of the Investigations Pool. (See page 5 for further discussion on the centralization of investigations.)

The boards maintain data on all licensees using the Regulatory Boards System (RBS), an on-line computer system. This system produces license renewal notifications and licenses, and is also used for tracking applications for licenses, license fee payments, and continuing education information. Some boards use the system to assign a number to a complaint and to enter complaint information. All 12 boards covered in this audit are on the RBS system.

OBSERVATIONS AND COMMENTS

THE DEPARTMENT OF COMMERCE AND INSURANCE HAS TRANSFERRED AUTHORITY FOR MONITORING INSURANCE-FUNDED PRENEED FUNERAL CONTRACTS TO THE DIVISION OF REGULATORY BOARDS' BURIAL SERVICES OFFICE

Preneed funeral contracts are between a funeral establishment (i.e., the seller) and a person contracting for funeral services at some point in the future. That contract can be either a money-funded contract or an insurance-funded contract. A money-funded preneed contract requires the seller to have a trust agreement with a bank or other financial institution. The person contracting for the services pays the seller, who then places the money in the trust, with the proceeds payable to the funeral home or funeral director when the services contracted for are provided. In the case of an insurance-funded preneed contract, a life insurance policy provides funding for the funeral at the time of death.

Section 62-5-405(b), *Tennessee Code Annotated*, gives the Commissioner of the Department of Commerce and Insurance authority to require an annual audit of sellers of preneed funeral contracts, to ensure that the sellers have the ability to complete their contracts. As noted in the 1999 Professional Regulatory Boards audit, monitoring of the contracts has (until recently) been split within the department—the Burial Services office of the Board of Funeral Directors and Embalmers audited money-funded preneed funeral contracts, and the department's Division of Insurance monitored insurance-funded preneed funeral contracts (the majority of preneed contracts). The Division of Insurance's monitoring was indirect—as part of an insurance company examination, division examiners pull a sample of insurance policies for review and, if preneed policies are included in the sample, they are reviewed. However, the examiners' focus was on the appropriateness of the insurance company's activities, rather than on the activities of the funeral director selling the preneed services.

In 1998, after reviewing complaints received by the Board of Funeral Directors and Embalmers related to preneed funeral arrangements, the board expressed concerns to the Commissioner of Commerce and Insurance that the state needed to improve its auditing of the preneed activities of funeral homes. Insurance-funded preneed contracts were cited as a particular area of concern. The 1999 performance audit of 14 professional regulatory boards concluded that the department needed to “evaluate the current level of monitoring of preneed contracts, both money funded and insurance funded, to determine if current monitoring efforts are providing adequate protection to the state's consumers.” Funeral arrangements are high-cost transactions which, because of the emotional trauma, lack of information, and time pressure, could leave consumers vulnerable to unethical and deceptive business practices.

In conjunction with management of the Division of Regulatory Boards, the Department of Commerce and Insurance has since evaluated the monitoring of preneed funeral contracts. In October 2004, the department's legal staff recommended to the Commissioner that the Burial Services office of the Board of Funeral Directors and Embalmers should audit both money-

funded and insurance-funded preneed funeral contracts. The Commissioner approved the change, and on January 31, 2005, Burial Services management sent a bulletin to the state's 550 funeral establishments, notifying them that "effective April 1, 2005, all funeral establishments selling agreements, contracts or plans for preneed funeral services, including those that are funded through insurance, shall register with the Commissioner of Commerce and Insurance and shall be subject to an annual audit."

Review of Preneed Audits Performed by the Burial Services Office During 2003 and 2004

The Burial Services office is under the supervision of the executive director of the Board of Funeral Directors and Embalmers. The Burial Services office staff includes an audit supervisor and six auditors who conduct audits of registered preneed sellers. As of July 2004, there were 198 registered sellers. We reviewed the files for 25 registered sellers, 24 of which were subject to be audited (one seller had closed in 2003). All sold money-funded preneed funeral contracts. Burial Services staff had audited 19 of the 24 sellers in both 2003 and 2004. Three were audited in 2004 but not in 2003, and two were audited in 2003 but not in 2004. Findings identified during Burial Services' audits included the failure to file reports required and a lack of documentation on serviced accounts.

CENTRALIZATION OF BOARD INVESTIGATIONS AND INSPECTIONS

In an effort to improve the productivity, effectiveness, and accountability of its investigation and inspection processes, the Division of Regulatory Boards has moved many of the investigators/inspectors for the individual boards under the management and supervision of the director of the division's Investigations Section.

As of December 2004, the Investigations Section had expanded to 39 staff members, compared to 11 staff prior to May 1, 2004. The repositioning of staff was initiated to improve the efficiency and effectiveness of the individual boards. According to management of both the Investigations Section and the Division of Regulatory Boards, this new unit has made great strides in reducing the backlog of cases for some boards. For example, since being transferred to the Investigations Section, the Regulatory Board investigators for the Private Protective Services Advisory Committee have reduced the case backlog from several hundred to 25 cases.

The expanded Investigations Section staff consists of the following:

- Director of Investigations,
- Assistant Director of Investigations,
- 24 Regulatory Board investigators,
- 10 Board for Licensing Contractors inspectors, and
- 3 administrative assistants.

The recently transferred employees are still paid by the boards to which they are assigned, but they are supervised by the Director and Assistant Director of Investigations. The Regulatory Board investigators (with the exception of 3 recently transferred investigators who focus solely on Private Protective Services investigations and 12 who focus on Motor Vehicle Commission investigations) are assigned to cases based on the region of the state, not individual boards.

Six of the 12 boards and commissions included in this performance audit have their own staff who perform investigations, inspections, or audits and report to the management of their individual boards. (See the following chart.)

Investigators, Inspectors, and Auditors Assigned to Individual Boards

Board	Number of Investigators/Inspectors/Auditors	Supervised By	Salary Source
Auctioneer Commission	1	Executive Director	Paid from the Auctioneer Commission and Recovery Fund
Board of Barber Examiners	3	Executive Director	Part of the board's expenses
Board of Cosmetology	9	Executive Director	Part of the board's expenses
Board of Funeral Directors and Embalmers	9	Executive Director	Part of the board's expenses
Board of Pharmacy	5	Executive Director	Part of the board's expenses
Real Estate Commission	4	Executive Director	Part of the commission's expenses

According to Division of Regulatory Boards management, there are ongoing discussions regarding further centralization of investigations and inspections. Thus far, the centralization moves have been made because of problems with particular boards' processes and because Division of Regulatory Boards management and the Commissioner of Commerce and Insurance (who makes the final decision) determined that the boards' investigation/inspection processes would benefit from centralization. Any future actions to centralize inspections/investigations would be made based on similar analysis.

The Director of the Investigations Section provided additional comments on the positive aspects of centralization. Investigations Section management stated that although the investigators for the individual boards have a working knowledge of the profession they regulate, they sometimes lack the basic investigative training and information needed to conduct quality investigations. According to management, investigators who are transferred into the Investigations Section have increased access to training and potentially vital information. Regulatory Board Investigators receive training from CLEAR, the Council for Licensure, Enforcement, and Regulation. This training consists of two components: a Basic Investigations class that teaches proper evidence gathering, report writing, and witness interviewing and an

Advanced Investigations class that focuses on advanced interviewing skills, investigative analysis, and report writing skills. After attending both programs and passing all the associated examinations, the investigator is considered a nationally certified investigator. As of April 2005, 15 of the Investigations Section staff are certified and 9 more have attended the basic training and are scheduled for the advanced training.

Investigations Section staff also have access to the Tennessee Bureau of Investigation's Tennessee Information and Enforcement System. This system permits access to information such as driver's licenses, addresses, social security numbers, photographs, and handgun permits. Recently, the section was given access (through the Tennessee Bureau of Investigation) to the Federal Bureau of Investigation's National Crime Information Center. This access allows investigators to conduct criminal background checks related to investigative requests.

The total fiscal year 2004 costs of the Investigations Section for the boards reviewed in this audit were \$509,368. Each board is charged a retainer fee for the ability to access the Investigations Section. The fee is determined by comparing the number of licensees for a board to the total number of all the licensees. If a board has less than 1% of licensees, the board is charged \$4,500; for 1% to 7% of licensees, the board is charged \$9,000; and for over 7% of licensees, the board is charged \$18,000. The total retainer charged to the boards in this audit was \$130,500. (See Table 1.) The total investigations cost per hour was \$103, and the total cost less the retainer was \$77. Section management tracks investigators' time by cross-referencing the daily call-in log, the inspection reports, investigative reports, monthly board hour reports, and department telephone logs. The Assistant Director conducts a monthly review to ensure the accuracy of the paperwork submitted and the logged hours.

The Division of Regulatory Boards' move toward centralizing investigations and inspections appears to be a reasonable way to improve the consistency and independence of investigations and to enhance the level of accountability of investigative staff. (Individual board administrators have other aspects of the regulatory process, such as licensing, to focus on and most likely have not been trained in investigative procedures.) As long as centralization is incomplete, however, division management should work with Investigations Section management to ensure that any investigators who remain assigned to an individual board have access to the same types of training and information available to Investigations Section staff.

Table 1
Investigative Charges to Boards
Fiscal Year 2004

Board	Total Number of Licensees	Percent of Total Licensees	Investigative Hours	Percent of Total Investigative Hours	Calculated Retainer	Allocation By Hours	Calculated Allocation (Retainer + Allocation)
Examiners for Architects and Engineers	12,893	5%	2,956	41%	\$9,000	\$226,402	\$235,402
Auctioneer	3,376	1%	182	3%	\$9,000	\$13,899	\$22,899
Barber Examiners	11,261	4%	35	0%	\$9,000	\$2,680	\$11,680
Collection Service	1,156	0%	42	1%	\$4,500	\$3,216	\$7,716
Cosmetology	74,597	28%	304	4%	\$18,000	\$23,241	\$41,241
Funeral Directors and Embalmers	4,386	2%	122	2%	\$9,000	\$9,343	\$18,343
Examiners for Land Surveyors	1,133	0%	273	4%	\$4,500	\$20,906	\$25,406
Pharmacy	20,140	8%	4	0%	\$18,000	\$306	\$18,306
Private Investigation and Polygraph	1,932	1%	12	0%	\$4,500	\$957	\$5,457
Private Protective Services	25,023	10%	152	2%	\$18,000	\$11,640	\$29,640
Real Estate Commission	32,800	12%	158	2%	\$18,000	\$12,099	\$30,099
Real Estate Appraiser	<u>2,791</u>	<u>1%</u>	<u>708</u>	<u>10%</u>	<u>\$9,000</u>	<u>\$54,179</u>	<u>\$63,179</u>
Total for Regulatory Boards in this Audit	191,488	72%	4,948	69%	\$130,500	\$378,868	\$509,368
Total for All Regulatory Boards	264,609	100%	7,219	100%	\$216,000	\$552,845	\$768,845

THE DIVISION OF REGULATORY BOARDS SHOULD CONSIDER TAKING ACTIONS TO INCREASE CONSUMER REPRESENTATION ON THE BOARDS

One of the rationales for regulating the professions represented by the boards covered in this audit is to protect consumers from any licensee’s unprofessional conduct or illegal activity. As indicated in the table below, most of these boards have only one public member.

**Board Composition
Public Members**

Board	Total Number of Members	Number of Public Members	Percentage of Public Members
Board of Barber Examiners	5	1	20%
Board of Cosmetology	9	2	22%
Board of Examiners for Architects and Engineers	12	1	8%
Board of Funeral Directors and Embalmers	7	1	14%
Board of Examiners for Land Surveyors	4	1	25%
Board of Pharmacy	7	1	14%
Private Investigation and Polygraph Commission	9	1	11%
Collection Service Board	5	2	40%
Private Protective Services Advisory Committee	7	0	0%
Real Estate Appraiser Commission	9	2	22%
Real Estate Commission	9	2	22%
Auctioneer Commission	5	1	20%

According to Benjamin Shimberg, in his book *Occupational Licensing: A Public Perspective*, published in 1982, the advantages of having public members on regulatory boards include the following:

- the addition of practical insights that contribute to the quality of decisions since board decision making often involves more than technical information,
- the prevention of practices that may be advantageous to the regulated profession but are not advantageous to the consumer, and
- the consideration, in board deliberations, of the views of those individuals affected by the actions of the regulated profession.

Shimberg lists the following problems with public members:

- public members do not have as much prestige as the professional members have with their peer groups,
- public members may not have as much time to spend on board activities as professional members,

- public members are not as familiar with the licensing process as the professionals, and
- public members may have less interest in the regulated profession.

The problems noted above can be offset, however, by proper recruitment, orientation, training, and support services for public members.

The Division of Regulatory Boards should consider seeking legislation to increase the percentage of public members on the boards in order to balance the need for expertise provided by the members who are licensed with the consumer-focused perspective provided by public members.

ADDITIONAL AUDIT WORK PERFORMED

The February 1999 Sunset Audit of 14 Professional Regulatory Boards included two Observations and Comments detailing concerns about the Real Estate Commission's and the Board of Pharmacy's actions with regard to applicants/licensees who experienced problems, either before or during licensure. During the current audit, we followed up on those concerns. The results of those follow-ups are discussed below.

Real Estate Commission's Actions Regarding Applicants With Criminal Convictions

Section 62-13-303(a)(1), *Tennessee Code Annotated*, states that "licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence . . . to safeguard the interest of the public." Affiliate broker applicants can be screened for previous criminal convictions through a Request for Preliminary Decision (RPD) form before taking the licensing examination or through the application after taking the licensing examination. A "yes" answer to the question concerning a conviction is reviewed by the TREC Executive Director and Staff Attorney. Candidates with felony convictions and misdemeanor convictions involving theft of money, services, or property are scheduled to appear before the Real Estate Commission for an informal hearing with their sponsoring principal broker. During the informal conference, the candidate is given an opportunity to tell the commission about the events that led to the conviction(s), the details of the conviction(s), and what the candidate has done since the conviction(s). The commission members then have an opportunity to ask questions of the candidate. The principal broker is given an opportunity to make a statement on behalf of the candidate. If the license is granted,

1. the licensee is placed on probation for one year, and
2. each time the licensee transfers to a new firm, the licensee is required to submit a letter from the new principal broker stating that he/she is aware of the conviction and is willing to supervise the licensee.

We reviewed the files of 12 affiliate broker applicants who appeared before the commission because of previous convictions. Most of the convictions were either theft- or drug-related. All 12 applicants had been approved and had submitted the proper information prior to licensure. Four of the 12 licensees had transferred to new firms subsequent to initial licensure. However, only one of the four files contained evidence of a letter from the new principal broker stating that he/she was aware of the conviction and was willing to supervise the licensee.

The purchase or sale of residential property involves large amounts of money and can be complex and time-consuming. A dishonest agent poses a significant risk to a consumer who is not knowledgeable about selling or acquiring property. Therefore, it is important that Real Estate Commission staff ensure that each convicted licensee is supervised by a principal broker aware of the conviction(s) and willing to supervise. (Staff could, for example, periodically check with the licensee's employer to ensure the licensee has not transferred to another firm.)

Board of Pharmacy's Monitoring of Impaired Pharmacists

The Board of Pharmacy currently monitors 85 impaired pharmacists who have surrendered their license and agreed, through a contract with the board, to participate in a substance abuse program. The board's standard contract consists of a five-year suspension of the license with all or a portion of the suspension stayed so that the pharmacist can continue to work. The contract requires complete abstinence from alcohol and controlled substances and submission to random drug testing, and prohibits work as a pharmacist in-charge.

We reviewed the files of five impaired pharmacists and found evidence of regular monitoring. In every case, the impairment was chemical dependency and random drug tests were regularly required. In one instance where an impaired pharmacist failed a drug test, the board took action in a timely manner and revoked his license. Files of pharmacists whose consent orders required an aftercare contract contained copies of those contracts.

FINDINGS AND RECOMMENDATIONS

1. Not all boards have met the requirement for self-sufficiency

Finding

Professional regulatory boards are required by law to be self-sufficient, i.e., their revenues in a given year should be sufficient to cover their expenses. Through their rule-making process, the boards have the authority to increase fees to meet this requirement. Based on the revenue, expense, and reserve account information obtained from the Department of Commerce and Insurance's Finance Division, several boards are not in compliance with the statutory requirement to collect sufficient revenues to cover operating expenses. (A similar finding appeared in the February 1999 performance audit of 14 Professional Regulatory Boards.) Table

2 details which boards did and did not have sufficient revenue to cover expenses during fiscal years 1999 through 2004.

Board Revenues and Expenditures

Board revenues are generated from application, examination, and license-renewal fees; charges for address changes and other administrative functions; and charges for inspections at some boards. Several boards included in this audit have raised license fees during the period 1999 to 2004 to address deficits.

**Boards With Fee Increases
1999 to 2004**

Name	Fee Increase Effective During Fiscal Year Ending June 30
Real Estate Appraiser Commission	2001
Board of Barber Examiners	2005
Board of Cosmetology	2005
Board of Funeral Directors and Embalmers	2002
Board of Examiners for Land Surveyors	2003
Real Estate Commission	2000

Also, the Board of Pharmacy initiated the registration of pharmacy technicians in January 2003, which created additional revenues.

Board expenditures include direct costs, a state regulatory fee, and indirect costs. Direct costs are those directly attributed to the operation of that board—salaries and benefits for staff, travel for board members and staff, printing of the board’s rules, etc. The state regulatory fee, set each year in the General Appropriations Act, is \$5 per active licensee per year. Indirect costs are categories of common costs allocated (by department financial staff) to the boards—administrative, legal, and investigative department costs. The division refers to these allocated costs as costbacks. Each board is assessed a base amount for each category of indirect costs as well as an additional amount that reflects varying levels of use (may be based on the number of licensees a board has or the percentage of time or number of hours a board used a particular service, etc.).

Board management and staff stated that the dollar value of costbacks is not known until after the end of the fiscal year, when financial staff have more complete knowledge of all expenditures. (The Division of State Audit’s most recent financial audit of the Department of Commerce and Insurance, issued April 2005, contains a finding about the lack of documentation supporting the calculation of the costback amounts.) Based on a review of the boards’ financial information, these amounts may be a significant part of a board’s expenses in any given year. For the boards covered in this audit, costbacks accounted for between 16% and 58% of individual boards’ total expenditures during fiscal years 2001 to 2004. Without preliminary information on costbacks to help better estimate expenses, it is difficult for boards to budget to ensure they have sufficient revenues to carry out their activities throughout a particular year.

Table 2
Regulatory Boards' Ability to Meet Self-Sufficiency Criteria
Fiscal Years 1999 Through 2004

Board	Fiscal Year 1999		Fiscal Year 2000		Fiscal Year 2001		Fiscal Year 2002		Fiscal Year 2003		Fiscal Year 2004	
	Revenues Exceed Expenditures	Reserve Account Positive										
Board of Barber Examiners	No		No		No		No		No	No	No	No
Board of Cosmetology							No		No		No	
Board of Examiners for Architects and Engineers							No				No	
Board of Funeral Directors and Embalmers	No	No		No								
Board of Examiners for Land Surveyors	No	No	No	No	No	No	No	No		No		
Board of Pharmacy					No							
Collection Service Board												
Private Investigation and Polygraph Commission	No										No	
Private Protective Services Advisory Committee	No	No	No	No		No						
Real Estate Commission		No	No	No			No				No	
Real Estate Appraiser Commission	No	No	No	No	No	No		No	No	No		
Auctioneer Commission			No		No						No	

Note: A "No" indicates the board did not have revenues sufficient to cover expenses during the fiscal year or did not have a positive reserve account balance as of June 30.

Table 3 lists the revenues, expenditures, and reserve account balances for the boards in this audit for fiscal years 1999 through 2004. (See Appendix 3 for bar graphs of this information for each board.) To ensure uninterrupted operation of boards which have deficits during a particular year, the Division of Regulatory Boards and the Department of Finance and Administration cover the deficits of some boards with the surpluses from other boards.

Certification by Department of Finance and Administration and Review by Joint Evaluation Committee

Section 4-29-121, *Tennessee Code Annotated*, requires the Commissioner of Finance and Administration to certify to the General Assembly's Joint Government Operations Committee and the Tennessee Code Commission a list of all regulatory entities that did not collect fees in an amount sufficient to pay the costs of operation during the fiscal year. If an entity is so certified in any two consecutive fiscal years, it shall be reviewed by a joint evaluation committee (i.e., the Joint Government Operations Committee) and is subject, pursuant to the provisions of the Governmental Entity Review Law, to a revised termination date of June 30 of the fiscal year immediately following the second year it operated at a deficit. Boards that were not self-sufficient for multiple consecutive years during the period reviewed include the Board of Barber Examiners (1999 through 2004), the Board of Cosmetology (2002 through 2004), the Board of Funeral Directors and Embalmers (1999 through 2003), the Board of Examiners for Land Surveyors (1999 through 2002), and the Real Estate Appraiser Commission (1999 through 2001).

According to Division of Regulatory Boards management and staff of the Joint Government Operations Committee, they have seen no documentation indicating that the Commissioner of Finance and Administration notified the Joint Government Operations Committee and the Tennessee Code Commission regarding the regulatory entities that were not self-sufficient. For fiscal years 1999 through 2004, this would have included the boards noted (by a "No") in Table 2. The committee was not notified regarding the agencies that were not self-sufficient; therefore, no reviews were performed.

Merging Boards to Help Achieve Self-Sufficiency

After the 1999 Sunset audit, the Division of Regulatory Boards combined the Private Investigation Commission and the Polygraph Examiners Board. At that time, the Polygraph Examiners Board had 37 licensees and had not been self-sufficient for two consecutive fiscal years, 1997 and 1998. Once combined, the Private Investigation and Polygraph Commission was self-sufficient for four consecutive years. During fiscal year 2004, the commission's expenditures exceeded revenues by \$9,118.

Table 3
Board Fees, Expenditures, and Reserve Account Balances
Fiscal Years 1999 Through 2004

	Board of Barber Examiners	Board of Cosmetology	Board of Examiners for Architects and Engineers	Board of Funeral Directors and Embalmers	Board of Examiners for Land Surveyors	Board of Pharmacy
Reserve Account 6/30/98	\$240,370	\$395,075	\$1,239,119	(\$287,620)	\$31,021	\$823,976
Fees FY 1999	\$294,186	\$1,111,014	\$1,232,875	\$143,559	\$156,554	\$1,057,516
Expenditures FY 1999	\$322,942	\$909,165	\$1,022,929	\$496,502	\$196,235	\$917,585
Excess of Revenues Over (Under) Expenditures FY 1999	(\$28,756)	\$201,849	\$209,946	(\$352,943)	(\$39,681)	\$139,931
Reserve Account 6/30/1999	\$211,614	\$596,924	\$1,449,065	(\$640,563)	(\$8,660)	\$963,907
Fees FY 2000	\$313,206	\$1,388,277	\$1,220,994	\$378,454	\$169,144	\$978,716
Expenditures FY 2000	\$369,942	\$1,177,956	\$1,160,675	\$431,302	\$184,659	\$956,073
Excess of Revenues Over (Under) Expenditures FY 2000	(\$56,736)	\$210,321	\$60,319	(\$52,848)	(\$15,515)	\$22,643
Reserve Account 6/30/2000	\$154,878	\$807,245	\$1,509,384	(\$693,411)	(\$24,175)	\$986,550
Fees FY 2001	\$289,089	\$1,100,641	\$1,238,944	\$164,334	\$173,027	\$1,027,755
Expenditures FY 2001	\$375,007	\$988,554	\$1,175,400	\$418,845	\$232,817	\$1,085,835
Excess of Revenues Over (Under) Expenditures FY 2001	(\$85,918)	\$112,087	\$63,544	(\$254,511)	(\$59,790)	(\$58,080)
Reserve Account 6/30/2001	\$68,960	\$919,332	\$1,572,928	(\$947,922)	(\$83,965)	\$928,470
Fees FY 2002	\$296,456	\$1,151,690	\$1,260,569	\$353,220	\$170,668	\$1,015,920
Expenditures FY 2002	\$356,024	\$1,210,665	\$1,388,135	\$413,209	\$196,767	\$964,419
Excess of Revenues Over (Under) Expenditures FY 2002	(\$59,568)	(\$58,975)	(\$127,566)	(\$59,989)	(\$26,099)	\$51,501
Reserve Account 6/30/2002	\$9,392	\$860,357	\$1,445,362	(\$1,007,911)	(\$110,064)	\$979,971
Fees FY 2003	\$303,840	\$1,127,433	\$1,312,148	\$321,473	\$218,201	\$1,279,271
Expenditures FY 2003	\$367,261	\$1,314,665	\$1,266,191	\$365,326	\$215,818	\$1,032,259
Excess of Revenues Over (Under) Expenditures FY 2003	(\$63,421)	(\$187,232)	\$45,957	(\$43,853)	\$2,383	\$247,012
Reserve Account 6/30/2003	(\$54,029)	\$673,125	\$1,491,319	(\$1,051,764)	(\$107,681)	\$1,226,983
Fees FY 2004	\$275,353	\$1,454,814	\$1,298,020	\$1,035,587	\$367,781	\$1,408,520
Expenditures FY 2004	\$407,399	\$1,461,638	\$1,437,209	\$430,323	\$220,918	\$1,176,675
Excess of Revenues Over (Under) Expenditures FY 2004	(\$132,046)	(\$6,824)	(\$139,189)	\$605,264	\$146,863	\$231,845
Reserve Account 6/30/2004	(\$186,075)	\$666,301	\$1,352,130	(\$446,500)	\$39,182	\$1,458,828

Table 3 (continued)
Board Fees, Expenditures, and Reserve Account Balances
Fiscal Years 1999 Through 2004

	Collection Service Board	Private Investigation and Polygraph Commission	Private Protective Services Advisory Committee	Real Estate Commission	Real Estate Appraiser Commission	Auctioneer Commission
Reserve Account 6/30/98	\$145,374	\$165,250	(\$309,135)	(\$593,270)	(\$18,362)	\$83,884
Fees FY 1999	\$187,565	\$219,718	\$679,121	\$4,347,763	\$171,525	\$244,303
Expenditures FY 1999	\$144,063	\$243,785	\$689,593	\$3,837,497	\$324,457	\$223,082
Excess of Revenues Over (Under) Expenditures FY 1999	\$43,502	(\$24,067)	(\$10,472)	\$510,266	(\$152,932)	\$21,221
Reserve Account 6/30/1999	\$188,876	\$141,183	(\$319,607)	(\$83,004)	(\$171,294)	\$105,105
Fees FY 2000	\$218,830	\$253,360	\$779,214	\$813,995	\$382,225	\$266,276
Expenditures FY 2000	\$152,306	\$235,486	\$822,476	\$1,864,931	\$399,840	\$272,959
Excess of Revenues Over (Under) Expenditures FY 2000	\$66,524	\$17,874	(\$43,262)	(\$1,050,936)	(\$17,615)	(\$6,683)
Reserve Account 6/30/2000	\$255,400	\$159,057	(\$362,869)	(\$1,133,940)	(\$188,909)	\$98,422
Fees FY 2001	\$222,000	\$252,969	\$803,498	\$3,811,152	\$205,919	\$238,488
Expenditures FY 2001	\$165,013	\$251,215	\$683,422	\$1,441,500	\$335,313	\$293,842
Excess of Revenues Over (Under) Expenditures FY 2001	\$56,987	\$1,754	\$120,076	\$2,369,652	(\$129,394)	(\$55,354)
Reserve Account 6/30/2001	\$312,387	\$160,811	(\$242,793)	\$1,235,712	(\$318,303)	\$43,068
Fees FY 2002	\$232,645	\$242,002	\$938,948	\$1,518,753	\$587,800	\$262,868
Expenditures FY 2002	\$152,109	\$204,712	\$677,750	\$1,582,843	\$376,330	\$243,258
Excess of Revenues Over (Under) Expenditures FY 2002	\$80,536	\$37,290	\$261,198	(\$64,090)	\$211,470	\$19,610
Reserve Account 6/30/2002	\$392,923	\$198,101	\$18,405	\$1,171,622	(\$106,833)	\$62,678
Fees FY 2003	\$239,635	\$247,770	\$930,883	\$3,765,991	\$323,655	\$257,484
Expenditures FY 2003	\$136,251	\$203,485	\$683,447	\$1,561,135	\$377,996	\$234,234
Excess of Revenues Over (Under) Expenditures FY 2003	\$103,384	\$44,285	\$247,436	\$2,204,856	(\$54,341)	\$23,250
Reserve Account 6/30/2003	\$496,307	\$242,386	\$265,841	\$3,376,478	(\$161,174)	\$85,928
Fees FY 2004	\$253,346	\$261,964	\$1,077,834	\$1,075,080	\$651,776	\$281,477
Expenditures FY 2004	\$177,252	\$271,082	\$726,185	\$1,722,991	\$472,877	\$305,398
Excess of Revenues Over (Under) Expenditures FY 2004	\$76,094	(\$9,118)	\$351,649	(\$647,911)	\$178,899	(\$23,921)
Reserve Account 6/30/2004	\$572,401	\$233,268	\$617,490	\$2,728,567	\$17,725	\$62,007

The division may have other boards that license groups with similar practices and qualifications that could be merged. The professions would continue to have separate licensing acts, as in the case above. As an example, the Board of Barber Examiners and the Board of Cosmetology have similar qualifications and already share an executive director and administrative functions. Boards that have a smaller number of licensees—such as the Board of Examiners for Land Surveyors and Collection Service Board—could be combined with larger boards that have similar functions. However, occupations with conflicting duties should not be combined. For example, brokers licensed by the Real Estate Commission are interested in selling property to make a profit. Appraisers, licensed by the Real Estate Appraiser Commission, place a dollar value on property, and thus have a function that potentially conflicts with a broker’s activities.

Recommendation

Management of the Division of Regulatory Boards should review those boards that have problems meeting self-sufficiency requirements and identify ways to increase revenues and/or decrease expenses. The division should continue to periodically analyze each board’s financial condition and take actions to adjust fees so that the boards meet the requirements for self-sufficiency. The division should make preliminary estimates of costbacks to boards as early as possible during the fiscal year, to better enable boards to budget expenditures for the rest of the year and remain self-sufficient. Division management should evaluate board functions, numbers of licensees and staff, etc., and give consideration to merging similar boards in order to achieve more efficient operations and facilitate self-sufficiency.

The Commissioner of the Department of Finance and Administration should certify to the Joint Government Operations Committee a list of all regulatory entities that did not collect fees in an amount sufficient to pay the cost of operation, as required by Section 4-29-121, *Tennessee Code Annotated*.

Management’s Comments

Department of Commerce and Insurance

We concur. The Division of Regulatory Boards has encouraged boards that consistently fail to meet the requirement for self-sufficiency to take action to meet this requirement. Action by some boards has already had positive results. Fee increases adopted by the Board of Funeral Directors and Embalmers, the Board of Land Surveyor Examiners and the Real Estate Appraiser Commission have resulted in positive annual fund balances for at least one of the last two fiscal years for each of these boards. As reflected in Table 2, these programs have previously consistently failed to meet self-sufficiency requirements. The division is continuing to encourage the remaining boards with consistent self-sufficiency problems to take action to address this situation. The expenditures of boards operating at a deficit are monitored closely by the division. Requests for purchases and travel are scrutinized and are routinely denied or modified unless they are deemed critical to the programs’ statutory responsibilities.

Also, the division has begun the rulemaking process to allow each board to charge the annual \$5.00 state regulatory fee as part of the renewal process (the method currently used by the Department of Health to collect this fee). Since this fee became a requirement through Public Chapter 523 of 1989, the division has paid this regulatory fee from the reserves of each board rather than charging this fee to each individual licensee. This proposed change should help boards maintain their self-sufficiency.

In regard to the lack of certification by the Department of Finance and Administration for review by the General Assembly's joint evaluation committee, the division has submitted to the Department of Finance and Administration lists of the regulatory entities within the division that did not collect fees in an amount sufficient to pay the costs of operation during the fiscal years ending July 1, 2003 and July 1, 2004.

The department has previously merged the operational staffs of several boards and commissions and is considering legislative proposals that would result in statutory and budgetary mergers of such entities for the purpose of achieving self-sufficiency.

Department of Finance and Administration

The Department of Finance and Administration concurs with the finding and recommendation concerning certification. Our March 11, 2005, memorandum certified a list of boards that had not collected fees in an amount sufficient to pay operating costs in the two consecutive fiscal years ending June 30, 2003 and 2004. This memorandum was late, and we did not certify a list earlier in the time period covered by the performance audit. In the future, we annually will certify to the Joint Government Operations Committee and the Tennessee Code Commission a list of boards that do not collect fees sufficient to pay operating costs in any fiscal year, as required by TCA 4-29-121. As a practical matter, it is not possible to do this on June 30, but we will respond as timely as possible for the closing of each fiscal year.

2. The Board of Cosmetology wavered in actions to remedy problems with its testing contractor, resulting in delays for license applicants and consuming time and effort of staff involved

Finding

Since 2001, the Board of Cosmetology has taken action to cancel a contract with its testing contractor, reversed that action after a new Request for Proposal (RFP) had already been issued, and later canceled the contract a second time. This indecision resulted in delays for applicants ready to test and receive a license and the use of a substantial amount of staff time (both legal and administrative) to cancel the contract, initiate the bid process for a replacement contractor, cancel that RFP process and the contract termination process, and subsequently restart the cancellation process. The board's actions also highlighted the need for clear direction

from board legal and administrative staff regarding the board's authority and the appropriateness of board activities. (See Exhibit 1 for a timeline of board actions related to the contract.)

Contract for Testing Applicants for Cosmetology Licenses

Section 62-4-105(d), *Tennessee Code Annotated*, gives the Board of Cosmetology authority to "conduct or cause to be conducted examinations of applicants." To carry out this duty, the Department of Commerce and Insurance entered into a contract (signed by the Commissioner) with Experior Assessments, LLC, effective from July 1, 2000, to June 30, 2005. The service description on the contract was "develop and administer an examination program for the Tennessee State Board of Cosmetology." Under the contract's scope of services, Experior is required to

- permit the board to modify and reject any examination questions whose subject matter is not in compliance with the practice of cosmetology in Tennessee;
- complete candidate registration processes at test sites;
- resolve candidate concerns in a timely, efficient, and responsible manner;
- establish daily testing (five days a week) in Nashville and testing at least once a week or as needed in Memphis and Knoxville;
- provide physical facilities for testing and test center personnel; and
- provide photograph-bearing score reports to candidates immediately following examination.

Based on our review of meeting minutes and interviews with board members and staff, the contractor failed to meet these conditions at times.

Concerns About Contractor Not Meeting Scope of Services

Board minutes reflect concerns about the contractor's failure to meet the scope of services defined in the contract. As early as February 2001, the meeting minutes indicate that Experior representatives were questioned about the composition of the tests administered. Board members asked contractor representatives whether the board had approved test questions being used, whether the test questions were applicable to practice in Tennessee, and the process for grading with an answer key. Testimony at the board meeting from a representative of a cosmetology school owners' association raised concerns that too many students were failing the test. Problems with Experior were discussed at the majority of board meetings during calendar years 2001 and 2002. At the July 2003 meeting, board members discussed the issue that testing was only being offered three days a week in Nashville even though the contract calls for testing five days a week. At the August 2003 board meeting, Experior representatives announced that testing was again occurring five days a week in Nashville. At the June 2004 meeting, the board

discussed with Experior representatives the company's decision to remove equipment from the Nashville testing site that provided same-day scoring and photograph-bearing score reports. According to Experior staff, the Nashville office was changing from an operational hub to solely a testing center and, as a result, the contractor could not process candidate registration at the test sites, which created delays in test scheduling, loss of payments, and loss of paperwork. The board's attorney stated that the company was in breach of contract because the company stopped same-day scoring and failed to notify the board.

Minutes of various meetings record board members saying they received numerous calls from applicants about the prolonged time it was taking to schedule a test—sometimes several weeks before an applicant could get an exam time scheduled with the contractor. Applicants also complained about the length of time spent waiting on the phone to speak with Experior staff.

Based on a review of meeting minutes and interviews with board members and board staff, the main problems with the contractor that they consider to have been violations of the terms of the contract were

- discontinuation of same-day scoring from the Nashville testing site;
- the length of time to schedule an exam, with some students waiting several weeks;
- failure to remove test questions that board members had asked to be removed;
- instances when the test sites were short-staffed or not open and, in some cases, the practical exam was not administered properly; and
- the number of retests required for some students to pass the exam.

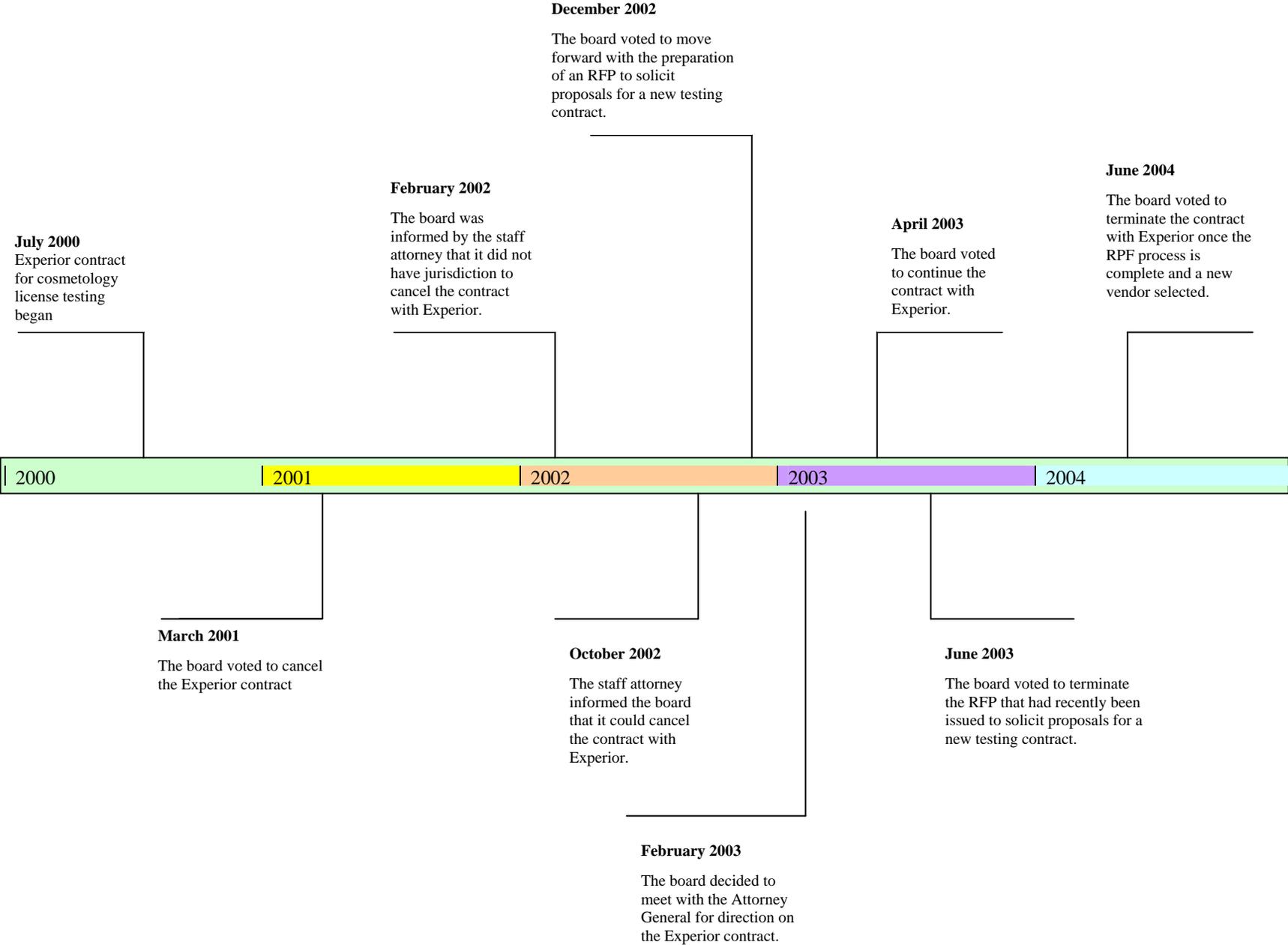
Staff of cosmetology boards in two other states, as well as staff of other Tennessee Professional Regulatory Boards (the Board of Barber Examiners, the Board of Funeral Directors and Embalmers, the Collection Service Board, the Board for Licensing Contractors, the Board for Licensing Alarm System Contractors, the Private Investigation and Polygraph Commission, and the Private Protective Services Advisory Committee) that have or have had a contract with Experior also identified similar problems with Experior at some time during the contract terms.

Board Actions Taken Regarding the Contractor

A review of the Board of Cosmetology's actions regarding the Experior contract determined the following:

- the board was provided conflicting advice from board attorneys regarding the board's authority over the contract,
- board members' opinions about the testing contract changed from one meeting to the next, and

Exhibit 1
Chronology of Cosmetology Board Decisions Related to License Testing Contract With Experior



- board members were confused about the status of actions taken by board staff in terminating the contract.

See Exhibit 1.

At the February 2001 meeting, a board motion to terminate the Experior contract failed. According to the minutes of the March 2001 board meeting, a motion by the board to terminate the Experior contract passed. Throughout the meeting, numerous questions were raised (by board members and other meeting attendees) regarding the legitimacy of the vote. When the board tried to determine if one of the motions had passed, the staff attorney had to leave the meeting to find a copy of *Robert's Rules of Order* in order to assess the outcome of the vote. Questions were also raised (but not resolved) regarding whether one member was eligible to vote on the motion.

The minutes from subsequent board meetings revealed the following additional information related to the March 2001 vote:

- February 2002 - The board's attorney informed the board that since the contract is between the State of Tennessee and the testing company, the board has no authority to cancel the contract.
- November 2002 - The Deputy Commissioner of the Department of Commerce and Insurance told the board that the State Attorney General's opinion was that the board has authority to terminate the contract.
- February 2003 - The legitimacy of the March 2001 board vote was again questioned because a board member, who voted to cancel contract, did not meet appointment criteria. She was removed from the board. A motion to reconsider the contract failed, and board members decided to meet with the Attorney General's staff for advice.

According to the meeting minutes for an April 2003 teleconference meeting, the board voted to continue Experior's contract until its expiration. The staff attorney advised the board that the motion was not in order because actions had been taken (i.e., a letter canceling the contract sent, a new RFP issued with proposals from prospective companies due in June) that could not be negated. A motion to rescind the board's action terminating the contract failed. In June 2003, the board voted to terminate the RFP soliciting proposals for a new testing contract. According to the Director of the Department of Finance and Administration's Office of Contracts Review, RFPs are not usually canceled so late in the process.

A Request for Proposal is a time-consuming process that involves many groups including the RFP Coordinator, the Proposal Evaluation Team, the department making the request, the vendors, the Department of Finance and Administration, etc. There are Finance and Administration guidelines to follow when drafting and submitting an RFP. The RFP must contain

- a clear and accurate description of the technical requirements for the needed service;
- directions regarding the submission of proposals;
- a timeline of the RFP process that lists deadlines, state requirements, and restrictions regarding the RFP;
- a description of the factors to be considered in evaluating the proposals; and
- a declaration of the contract terms and conditions which are required by the state.

Once the Office of Contracts Review approves the RFP, the procuring agency will send an RFP to a documented list of potential service providers.

At the June 2004 board meeting, the board voted yet again to terminate the contract with Experior once a new RFP process was complete and a new vendor had been selected.

Both board staff and board members expressed concerns related to the events regarding Experior. Several board members stated that they did not understand how the board could vote to keep the contract in April 2003, several months after the board had voted to terminate the contract. After the initial vote (in March 2001) to terminate, the board members stated it was their understanding that the termination and RFP process had started. They were frustrated when they found out that little action had been taken to terminate the contract and when the board's staff attorney told them that they could not terminate the contract.

Recommendation

Division of Regulatory Boards management should ensure that board members and board staff are knowledgeable about their board's authority and the correct procedures for taking actions and making decisions, including an understanding of *Robert's Rules of Order*. Management should also ensure that board attorneys are aware of the rules and regulations for the boards they represent and should clarify what an attorney should do if he or she is unclear about what advice to give board members or what actions to take. If unresolved questions remain regarding a particular motion, no final action should be taken until the department's General Counsel and/or the Attorney General's Office have been contacted for clarification.

Management's Comments

Department of Commerce and Insurance

We concur. Since this situation occurred, in an effort to address these types of situations, the department's senior staff, including the Commissioner, the Deputy Commissioner, the Assistant Commissioner for Regulatory Boards, the department's General Counsel, and the division's Deputy General Counsel convened a meeting of the board chairs and vice-chairs for all of the division's regulatory boards. At this meeting senior staff outlined and explained the responsibility of board members, and the responsibility of administrative and legal staff. There have been several recent examples to indicate that this meeting has resulted in board members

having a better understanding of their role in the regulatory process. Orientation for new board members has been revised to emphasize and distinguish the responsibilities of board members and staff.

The department makes every effort to ensure that its attorneys are properly trained in regulatory law. Department attorneys are required to attend continuing legal education courses on an annual basis, and when the budget allows, they are encouraged to attend seminars specifically related to their areas of responsibility. In-house training sessions are conducted by the department's General Counsel and senior attorneys. However, because of the relatively low pay scale for state attorneys and the specialized nature of their work, it has been difficult to hire and keep experienced attorneys.

Chair of the Board of Cosmetology

We concur with the findings set forth above. However, I would like to make the following comments. I was appointed to the Board of Cosmetology in April 2004. In June 2004, the board voted to change the testing contractor. The new contractor, PSI, started testing in February 2005. The board and its administrator worked with PSI from November 2004 until February 2005, creating the examinations for Cosmetologist, Manicurist, Shampoo Technician, Natural Hair Stylist, Aesthetician, and Instructor. PSI has six testing sites with no backlog now. There are four ways to register: phone, fax, Internet, or mail.

In the past, there has been confusion as to our authority to terminate the previous contract with Experior Testing Company. Our attorneys gave conflicting advice as to our authority to terminate the contract; therefore, the confusion. This situation has now been corrected.

3. Complaint handling guidelines have not been followed consistently

Finding

In December 2003, the Division of Regulatory Boards established written guidelines to provide a basic framework for handling complaints. The division also established, in its strategic plan, a 180-day target time for complaint resolution. Through a review of 40 complaint files randomly selected from the fiscal year 2004 complaints reported by the 12 boards included in this audit, we found that the guidelines were not consistently being followed and time frames were not being met.

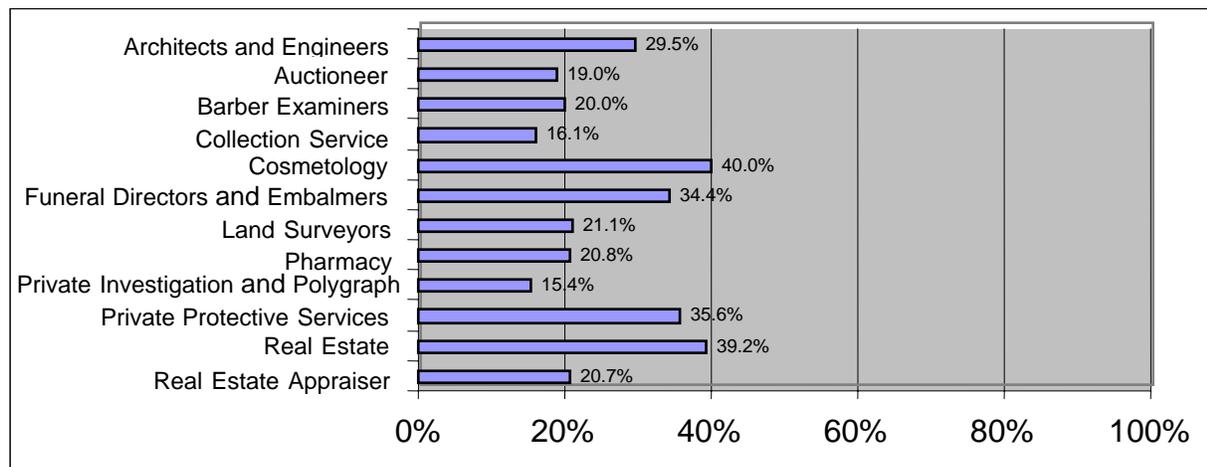
Board staff track progress on complaints in several different ways, with varying degrees of success, including the use of the Regulatory Boards System (the electronic information system used by the Division of Regulatory Boards), a ledger, tickle files, and a logbook, with each board using one or more of these mechanisms. Although the guidelines instruct the various boards to forward a copy of the complaint to the respondent (professional against whom the complaint was filed) requesting a reply within 14 days, notification letters were not always mailed to the

respondent, or (in a few cases) were mailed one to four months after the complaint was received. Further, two boards have established longer reply periods, inconsistent with the 14-day goal set by the guidelines. Another area of concern is that, although repeat offenders (individuals with multiple complaints filed against them) are a problem for many boards, only 6 of the 12 boards reviewed had any mechanisms in place to identify repeat offenders and incorporate information related to any previous complaint(s) into the new complaint information.

We obtained fiscal year 2004 data from the Regulatory Boards System (RBS) on all complaints received by the 12 boards under review. These boards received 1,072 complaints in fiscal year 2004. For the purpose of our analysis, we excluded 18 records that were incomplete or inconsistent¹. In an analysis of the remaining 1,054 records, 22% (or 232 records) had been closed, while 78% (822 records) remained open. Forty-seven of the closed cases were open for longer than 180 days prior to closing—the longest was open for 349 days. Of the 822 open cases, 344 (42%) had been open for more than 180 days as of June 30, 2004. Three of those cases had been open for 365 days by that date.

We also analyzed fiscal year 2004 complaints to determine the percentage of each board’s complaints that took longer than the 180-day resolution time limit. Percentages ranged from a high of 40% for the Cosmetology Board to a low of 15% for the Private Investigation and Polygraph Commission. (See the following chart.)

Percent of Fiscal Year 2004 Complaints Over 180 Days, by Board



¹ After reviewing the 2004 complaint data and finding 18 complaints with invalid close dates, we reviewed data for 9,631 complaints from August 4, 1998, to August 18, 2004. Two complaints had invalid dates for the year of the complaint. Twenty-six complaints had closing dates prior to the date the complaint was received. One hundred and forty-nine complaints had case numbers that were not valid given the fiscal year in which they were received. Based on interviews with department Internal Audit and Information Systems staff, the RBS system does not have edit checks that prevent the entering of invalid dates.

Recommendation

Division of Regulatory Boards management should ensure that each board adopts and consistently applies the established complaint-handling guidelines, including taking steps to ensure that complaints are resolved within the 180-day target. Management should consider adopting formal, written procedures that set time guidelines for all phases of the complaint process—receipt, correspondence with complainant and respondent, investigation, and disclosure to the public. Further, management should review the RBS and its capabilities and work with Information Systems staff to ensure that there are adequate system edits in place to help ensure the accuracy of data entered into the system and that there are appropriate follow-up procedures in place for error correction and review.

Board administrators should analyze sources and types of complaints to identify problem areas and trends. All boards should adopt written procedures providing methods to identify repeat offenders and should use that information when considering disciplinary actions. Board staff should take actions to ensure (e.g., by detailing that information on the division’s website for each board) that the public is made aware of the procedures for filing complaints, investigation processes, and how to access information on final disciplinary orders and sanctions. Staff should ensure that such information is up-to-date.

Management’s Comment

We concur. The written guidelines have been followed to varying degrees by each board. In February 2005 the division created a Consumer Ombudsman position whose responsibility includes addressing the inconsistency in complaint handling. The Consumer Ombudsman is developing standard operating procedures for complaint handling with deadlines for all phases of the complaint process. All of the boards within the division will be required to follow these procedures. The Consumer Ombudsman is also responsible for helping members of the public understand the complaint process, coordinating disciplinary action reports, and ensuring that respondents comply with disciplinary action. It is expected that the department will have a new case and complaint tracking system within the near future that should further assist in the uniform handling of these matters.

4. Verification procedures for applicant information need to be improved

Finding

State regulatory programs are intended to safeguard the public from unqualified or unscrupulous practitioners. Professional boards establish guidelines and criteria detailing what qualifications each applicant is required to have to obtain a license and what a licensee must do (or is prohibited from doing) in order to retain the license granted. Based on our review of the

statutes and rules for the 12 boards covered in this audit, all of these boards have such formal written guidelines and criteria.

As part of the licensing process, a board should take reasonable steps to ensure the applicant meets all requirements. Such steps might include testing, reviewing or verifying information submitted, and investigating the applicant’s background. In addition to the individual boards’ responsibility, the Division of Regulatory Boards is responsible for establishing and maintaining effective controls to ensure the boards consistently apply the guidelines and criteria. To determine whether licensees met the qualifications set by the boards (for initial licensure and renewal) and how the boards verify applicant information, we tested a sample of license files for each of the 12 boards. These file reviews revealed a need for improvements in several areas, which are detailed below.

File Reviews

Some boards issue more than one type of license; for example, the Real Estate Commission regulates nine profession types or licenses. We reviewed files from 49 license types, for a total of 1,111 files. Some boards were not able to locate all of the files chosen in our sample. Board staff attributed the problem to former employees having misplaced files or to the files having been archived. Table 4 details the board, profession type, and number of files that could not be located.

**Table 4
Missing Files**

Board	Profession Type	Number of Files Requested	Number of Files Staff Could Not Locate
Collection Service Board	Collection Service Managers	25	1
Collection Service Board	Branch Offices	25	4
Private Protective Services Advisory Committee	Security Businesses	25	4
Real Estate Commission	Real Estate Brokers	25	1
Real Estate Commission	Real Estate Firms	25	1
Real Estate Commission	Rental Location Firms	2	1
Real Estate Commission	Rental Location Agents	7	5
Real Estate Commission	Vacation Lodging	25	1
Totals		159	18

Overall Concerns Identified Through File Reviews

We identified several overall concerns as a result of our file reviews. Although board procedures vary, our review of files and analysis of procedures indicate that in most cases the boards’ review and approval of applicants’ files is perfunctory.

In many instances, the boards do not verify an applicant’s answers to questions. According to board staff, they do not verify all information because each application is signed

under oath and notarized certifying that all answers, statements, and information given on the application and any attachments to the application are true and correct. Examples of the types of requirements licensees must meet include age, United States citizenship, good moral character, completion of a course of study in a school specializing in the particular profession, a college degree, a passing score on an examination, and work experience.

Boards differ in the methods used to verify the information the license applicants provide. For example, the Board of Examiners for Land Surveyors requires a licensee to speak and write the English language. If the application is filled out in English, the board assumes the applicant has met the language requirement. The Board of Funeral Directors and Embalmers' applicants submit answers to questions about criminal convictions, communicable diseases, and citizenship, attested to before a notary. The Private Investigation and Polygraph Commission requires applicants for a Private Investigator's license to answer whether a court has declared them mentally incompetent or if they are suffering from habitual drunkenness or narcotics addiction. Applicants for a Polygraph Examiner's license submit fingerprints for a criminal records check to determine proof of the requirement that they not have been convicted of a felony or misdemeanor involving moral turpitude. Applicants to the Private Protective Services Advisory Committee undergo TBI and FBI background checks. Boards have minimum education requirements ranging from a high school education to a college degree in a particular field. We found that some boards require transcripts while others merely have the applicant fill in education history.

Several of the boards have requirements that the applicant be of good moral character, and the boards differ in how they establish good moral character. Some boards (e.g., the Board of Examiners for Land Surveyors) use letters of recommendation to determine good moral character. The Auctioneer Commission's members use their "knowledge and experience of the profession" to determine whether applications received indicate that the potential licensee is honest and trustworthy. As mentioned above, the Private Protective Services Advisory Committee and the Private Investigation and Polygraph Commission use criminal records obtained from the TBI and FBI to determine whether an applicant is honest and moral. However, these boards do not have written guidelines regarding what offenses are considered contrary to honesty or morality; each applicant's history is evaluated subjectively.

Using moral character as a criterion for licensing is problematic because it is difficult to quantify and is open to too many interpretations. Specifying (and verifying the existence of, where possible) certain types of offenses/convictions or addictions may be more helpful in determining whether applicants meet licensure qualifications and in protecting the public.

File Review Results for Specific Boards

In addition to concerns applicable to the boards in general, our file reviews also raised concerns specific to individual boards. These concerns are described below.

Collection Service Board - Collection Service Agencies. The Collection Service Board is responsible for ensuring the financial solvency of agencies prior to licensing them. Section 62-20-106, *Tennessee Code Annotated*, lists the items required to be submitted when applying for a

collection service license. Those items include a current personal or corporate financial statement prepared by a licensed public accountant or certified public accountant and a proposed budget of monthly operating expenses for the first six months of operation. Our file review of 25 licensed collection service agencies found that one agency license file did not contain the financial statements required of applicants and 14 files did not contain the operating budget required of applicants. We also found that 5 of the 25 collection service agencies had a current agency license even though the license of the designated location manager had expired. Section 62-20-108 states that every collection service agency is to have a licensed location manager.

Private Investigation and Polygraph Commission. Section 62-26-207, *Tennessee Code Annotated*, states that applicants for a Private Investigators license should not have been declared incompetent by a court and should not be “suffering from habitual drunkenness or narcotics addiction or dependence.” The board asks this question on the application; the applicant replies yes or no, then signs the application and has it notarized. One of the 25 licensees whose files we reviewed had not answered yes or no to this question but had received a license.

According to Section 62-27-107, *Tennessee Code Annotated*, applicants for Polygraph Examiners licensure are to (among other criteria)

- have a baccalaureate degree from a college or university, or two years of college credits and five years of work experience;
- be a graduate of a polygraph school; and
- have passed a licensing examination.

Five of the 25 Polygraph Examiners files we reviewed did not contain some or all of the proof that the applicant met these three requirements. In addition, one of the 25 files did not contain the original application.

Real Estate Commission. In our review of 24 broker files, we found one broker who had not met continuing education requirements but continued to maintain an active license. Six of 22 Time Share registrant files did not contain proof of escrow. Board staff said the board’s staff auditors would review escrow accounts if the firms were audited. One of the two rental location agent files reviewed (five files requested could not be found) revealed noncompliance with Section 62-25-103(e), *Tennessee Code Annotated*, which requires each rental location firm or agent to post a bond in the amount of \$10,000 “for the use and benefit of any person who may be injured or aggrieved by the wrongful act or default of such rental location agent.” In the file reviewed, the bond was only in the amount of \$2,500, which was not appropriate given that the original application had an unlicensed rental location firm listed as the principal. (Only a \$2,500 bond is required if the rental location agent is “employed by a corporation, partnership, firm or association which is licensed under this chapter.”) The file contained no evidence of proof of bond coverage for the subsequent renewals of the rental location agent license in 2000, 2001, and 2002. The file contained a June 27, 2003, letter sent by the commission stating that the rental location agent must submit a current bond before the 2003 renewal could be processed. The response in the file was an unexecuted bond with the unlicensed rental location firm as the principal, covering June 8, 2002, through June 8, 2003, a period for which the agent had already

been renewed. Despite the lack of compliance with the bond requirement, the rental location agent’s license was active at the time of the current audit.

Board of Funeral Directors and Embalmers - Apprentice Registration. Sections 62-5-305 and 62-5-307, *Tennessee Code Annotated*, require an applicant for a Funeral Director or Embalmer license to register as an apprentice upon entering mortuary school or the employ of a funeral establishment. During the apprenticeship, apprentices must submit quarterly reports. A total of 25 cases (funerals assisted or embalmings performed) are required during the apprenticeship and a “Completion of Apprenticeship” form, prepared by a licensed Tennessee funeral director/embalmer, must be submitted to the board.

Our file review of 25 registered apprentices found that all registrants applied for apprentice status prior to entering school or the employ of a licensed funeral director. Sixteen of the 25 apprentices should have submitted quarterly reports during their apprentice licensing period (nine were in school or recently registered as an apprentice and were not yet required to submit reports). Five of the 16 did not have any reports. Also, we could not find any evidence of review by a staff person of the reports that had been submitted. According to the board’s executive director, the quarterly reports are briefly looked at and filed. The reports are not checked until the apprentice notifies the board that the apprenticeship is completed. At that time, board staff review the reports to see that requirements are met and that reports are originals, signed and dated by the supervising authority and notarized.

Private Protective Services Advisory Committee. In order to meet the qualifications outlined in Section 62-35-117, *Tennessee Code Annotated*, applicants for licensure as a security guard provide answers to questions about

- prior residences;
- whether they have been declared incompetent by a court;
- whether they are “suffering from habitual drunkenness or narcotics addiction or dependence”;
- military service and discharge status; and
- physical traits (eye color, height, weight).

During our file reviews, we found approved applications with incomplete information and no answers to questions.

**Private Protective Services File Review
Licensee Files With Incomplete Applications**

Profession Type	Number of Files Reviewed	Number of Incomplete Applications
Guards	25	1
Security Businesses	21	1*
Armed Guards	25	5

* This file did not have an application.

According to board staff, they may be able to obtain the information from another source when the applicant does not provide it. For example, if an applicant does not answer questions about weight, height, eye color, and U.S. citizenship, staff look to the applicant's fingerprint card for descriptive information and for an indication of birthplace. In other instances, staff may simply assume that no answer means there is no problem needing additional explanation, instead of following up to clarify. For example, if the applicant provides no answer about military discharge and there is no separate sheet of paper explaining a less than honorable discharge, the staff assume the applicant received an honorable discharge.

Conclusion

Verification of applicant information is necessary to ensure that licenses are issued only to qualified applicants. Verification could be performed by board staff or, as is being considered by Division of Regulatory Board management, by division staff not associated with a particular board. Periodic independent verification would help division management (1) ensure that controls are functioning properly and that the public is protected from unqualified licensees, (2) evaluate board staff activities and performance, and (3) identify potential areas of concern and needed improvements.

Recommendation

Division of Regulatory Boards management should institute a system to conduct periodic reviews of licensee files to verify important application information and ensure licensees meet license requirements. Management should review application questions and determine steps staff should take to verify different types of required applicant information (e.g., whether applicants must provide original transcripts to achieve compliance with education requirements). Procedures developed should be formalized and communicated to board staff. Management should also work with individual boards and board staff to develop guidelines to maximize consistency in evaluating applicants' moral character, including guidelines on the types of offenses/convictions or other circumstances that might result in denial of an application.

Division staff should, wherever available, use national databases, such as those currently used by the Real Estate Commission and the Board of Examiners for Architects and Engineers, to identify disciplinary actions taken by other states against Tennessee license applicants and licensees. Division staff should work with department Information Systems staff to identify methods using current computer technology to check applicants' information.

Individual board administrators need to examine the deficiencies identified in the files reviewed by the Division of State Audit and (1) correct the specific deficiencies wherever possible and (2) revise application review procedures and activities to help ensure similar problems do not occur in the future.

Management's Comment

We concur. As part of her duties, the new Consumer Ombudsman will perform periodic reviews of random licensee files to verify applicant information and ensure each licensee meets license requirements. Board directors have been asked to review application questions and determine steps staff should take to verify different types of required applicant information. The division will work with the department's Information Systems staff to identify methods using current technology to verify applicant information. Board directors will be required to review the deficiencies identified in the audit and correct these deficiencies. Board directors will be asked to review and revise application procedures to help ensure these problems do not occur again.

In conjunction with the case and complaint tracking system noted in the department's response to Finding 3, a new computerized licensing system will be implemented in the near future. This should provide some assistance in managing the large amounts of data received by the boards necessary to the licensing process.

5. The Burial Services Office has only limited authority to penalize cemeteries that do not submit required reports on time, and it has not used the authority it does have

Finding

Cemeteries that operate as a for-profit cemetery are required to register and renew their license annually. The Burial Services Office (under the supervision of the executive director of the Board of Funeral Directors and Embalmers) has staff, including an audit supervisor and six auditors, who conduct audits of cemeteries' financial activities. Section 46-2-202, *Tennessee Code Annotated*, requires each cemetery company to file a report of its condition within 75 days of the end of the calendar or fiscal year. The trustee of the company's Improvement of Care Fund must file a trust fund report within 45 days after the end of the calendar year or the cemetery company's fiscal year. Cemeteries with Merchandise and Services Trust Funds and the trustee of those funds are also required to submit trust fund reports within 75 days. Our review indicated that although cemeteries did not always submit these reports on time, the Burial Services Office did not issue penalties as authorized by law for Merchandise and Services Funds reports. (Authority to issue penalties related to Improvement of Care Fund reports was unclear.)

The February 1999 Sunset audit of the Professional Regulatory Boards found weaknesses in the Burial Services Office's monitoring of cemetery companies' financial activities, including no record of an annual audit and the lack of required reports in several cases. For the current audit, we reviewed 24 files of the 191 registered cemeteries in order to determine whether files contained

- the proper trust agreements,

- timely reports on Improvement of Care and/or Merchandise and Services Trust Funds, and
- audit reports completed by Burial Services staff.

Table 5 summarizes the results of our file review. We found a significant improvement in that Burial Services staff had audited all cemeteries in our sample, as required. Problems still existed, however, regarding timely submission of reports.

Table 5
Registered Cemeteries File Review Results

	Number Required to Submit Report/Agreement		Number Submitted Timely		Number Submitted Late		Percentage Late	
	1999 Audit	Current Audit	1999 Audit	Current Audit	1999 Audit	Current Audit	1999 Audit	Current Audit
Trust Agreement – Improvement of Care Funds	NA	24	NA	24	NA	0	NA	0%
Improvement of Care Report – Cemetery Company	NA	24	NA	20	NA	4	NA	17%
Improvement of Care Report – Trustee	14	24	11	16	3	8	21%	33%
Trust Agreement – Merchandise and Services Funds	NA	16	NA	15	NA	1	NA	6%
Merchandise and Services Report – Cemetery Company*	9	12	8	10	1	2	11%	17%
Merchandise and Services Report – Trustee*	9	12	7	10	2	2	22%	17%

NA - Attribute not tested during last audit.

*Reports are not required if all merchandise and services are delivered within 60 days.

Section 46-2-204, *Tennessee Code Annotated*, states that a cemetery company or trustee that fails to submit the required report has committed a Class C misdemeanor. The Commissioner of Commerce and Insurance is required to notify the cemetery company owner by registered letter if either report is not received and may order a conditional suspension of the certificate if the report is not received within 15 days of the letter's receipt. Section 46-2-410(c), *Tennessee Code Annotated*, sets forth the standard penalties for late filings. Burial Services staff are responsible for preparing the notification letters regarding late reports and placing a copy in the individual cemetery's file. According to Burial Services management and the staff attorney, however, the remedies in Section 46-2-410 are only applicable to Merchandise and Services Funds reports and not to Improvement of Care Fund reports.

Burial Services staff had not issued penalties for late submission of Merchandise and Services reports. After questioning by the audit team, however, staff indicated that they would

send a penalty assessment to the affected cemeteries. Regarding late Improvement of Care Funds reports, staff stated that they have no authority to assess penalties for late reports but that they would note a late report as a finding during the next examination of the cemetery. Timely reports are necessary if Burial Services is to adequately monitor cemeteries' financial activities. In addition, Burial Services' failure to monitor cemetery companies' compliance with state law and to levy penalties results in lost penalty fees. For fiscal year 2004, Burial Services had a negative reserve account balance of \$1,318,651. (Burial Services, although located within the Division of Regulatory Boards, is not a professional regulatory board; therefore, it is not required by statute to be self-sufficient. The size of the negative reserve account balance, however, raises questions about the adequacy of the fees charged.)

Recommendation

Division of Regulatory Boards management should consider proposing legislation to allow penalties to be imposed for late reports for Improvement of Care Funds. Burial Services management and staff should monitor cemeteries for compliance with all state reporting requirements and determine whether reports are timely. Burial Services should then levy penalties, as allowed by law, against cemeteries that do not comply with reporting requirements.

Division of Regulatory Boards management should review the revenues and expenditures of the Burial Services Section and determine (1) whether the fees charged to cemeteries are reasonable given the services provided, (2) whether Burial Services' expenditures are reasonable given its activities, and (3) whether additional actions (e.g., raising fees or decreasing expenditures) need to be taken.

Management's Comment

We concur. The division plans to propose legislation to address problems that have arisen in recent years related to the weak regulatory structure for cemeteries. The division has recently taken steps to reduce the cost of this regulatory program by eliminating two of the positions assigned to this program. The division is also reviewing the operating costs charged to the Funeral Board and Cemetery programs (which share staff, equipment and supplies) to make sure that these costs are divided equitably between these two programs.

RECOMMENDATIONS

ADMINISTRATIVE

The following areas should be addressed to improve the efficiency and effectiveness of the professional regulatory boards' and/or the Division of Regulatory Boards' operations.

1. Management of the Division of Regulatory Boards should review those boards that have problems meeting self-sufficiency requirements and identify ways to increase revenues and/or decrease expenses. The division should continue to periodically analyze each board's financial condition and take actions to adjust fees so that the boards meet the requirements for self-sufficiency. The division should make preliminary estimates of costbacks to boards as early as possible during the fiscal year, to better enable boards to budget expenditures for the rest of the year and remain self-sufficient. Division management should evaluate board functions, numbers of licensees and staff, etc., and give consideration to merging similar boards in order to achieve more efficient operations and facilitate self-sufficiency.
2. The Commissioner of the Department of Finance and Administration should certify to the Joint Government Operations Committee a list of all regulatory entities that did not collect fees in an amount sufficient to pay the cost of operation, as required by Section 4-29-121, *Tennessee Code Annotated*.
3. Division of Regulatory Boards management should ensure that board members and board staff are knowledgeable about their board's authority and the correct procedures for taking actions and making decisions, including an understanding of *Robert's Rules of Order*. Management should also ensure that board attorneys are aware of the rules and regulations for the boards they represent and should clarify what an attorney should do if he or she is unclear about what advice to give board members or what actions to take. If unresolved questions remain regarding a particular motion, no final action should be taken until the department's General Counsel and/or the Attorney General's Office have been contacted for clarification.
4. Division of Regulatory Boards management should ensure that each board adopts and consistently applies the established complaint-handling guidelines, including taking steps to ensure that complaints are resolved within the 180-day target. Management should consider adopting formal, written procedures that set time guidelines for all phases of the complaint process—receipt, correspondence with complainant and respondent, investigation, and disclosure to the public. Further, management should review the RBS and its capabilities and work with Information Systems staff to ensure that there are adequate system edits in place to help ensure the accuracy of data entered into the system and that there are appropriate follow-up procedures in place for error correction and review.

5. Board administrators should analyze sources and types of complaints to identify problem areas and trends. All boards should adopt written procedures providing methods to identify repeat offenders and should use that information when considering disciplinary actions. Board staff should take actions to ensure (e.g., by detailing that information on the division's website for each board) that the public is made aware of the procedures for filing complaints, investigation processes, and how to access information on final disciplinary orders and sanctions. Staff should ensure that such information is up-to-date.
6. Division of Regulatory Boards management should institute a system to conduct periodic reviews of licensee files to verify important application information and ensure licensees meet license requirements. Management should review application questions and determine steps staff should take to verify different types of required applicant information (e.g., whether applicants must provide original transcripts to achieve compliance with education requirements). Procedures developed should be formalized and communicated to board staff. Management should also work with individual boards and board staff to develop guidelines to maximize consistency in evaluating applicants' moral character, including guidelines on the types of offenses/convictions or other circumstances that might result in denial of an application.
7. Division staff should, wherever available, use national databases, such as those currently used by the Real Estate Commission and the Board of Examiners for Architects and Engineers, to identify disciplinary actions taken by other states against Tennessee license applicants and licensees. Division staff should work with department Information Systems staff to identify methods using current computer technology to check applicants' information.
8. Individual board administrators need to examine the deficiencies identified in the files reviewed by the Division of State Audit and (1) correct the specific deficiencies wherever possible and (2) revise application review procedures and activities to help ensure similar problems do not occur in the future.
9. Division of Regulatory Boards management should consider proposing legislation to allow penalties to be imposed for late reports for Improvement of Care Funds. Burial Services management and staff should monitor cemeteries for compliance with all state reporting requirements and determine whether reports are timely. Burial Services should then levy penalties, as allowed by law, against cemeteries that do not comply with reporting requirements.
10. Division of Regulatory Boards management should review the revenues and expenditures of the Burial Services Section and determine (1) whether the fees charged to cemeteries are reasonable given the services provided, (2) whether Burial Services' expenditures are reasonable given its activities, and (3) whether additional actions (e.g., raising fees or decreasing expenditures) need to be taken.

Appendix 1

Professional Regulatory Boards Reviewed

Board of Barber Examiners - Title 62, Chapter 3. The board enforces the rules and regulations governing the profession of barbering through certification of master barbers, technicians, and instructors and certification and inspection of barber schools and shops.

Board of Cosmetology - Title 62, Chapter 4. The board has responsibility for enforcing the rules and regulations governing the professions of cosmetology and manicuring through licensing of cosmetologists, manicurists, aestheticians, shampoo technicians, natural hair stylists, and instructors and licensing and inspection of shops and schools.

Board of Examiners for Architects and Engineers - Title 62, Chapter 2. The board has the authority to issue and regulate licenses for architects, engineers, landscape architects, and interior designers and their related firms.

Board of Funeral Directors and Embalmers - Title 62, Chapter 5. This board licenses and regulates the professions of funeral directing and embalming through registration of apprentices, licensing of funeral directors and embalmers, and licensing and inspections of funeral establishments. The Burial Services Section registers cemeteries, collects annual registration fees, maintains files, performs examinations of cemeteries and trusts, and investigates complaints.

Board of Examiners for Land Surveyors - Title 62, Chapter 18. The board is responsible for certifying land surveyors working in Tennessee.

Board of Pharmacy - Title 63, Chapter 10. The board enforces the rules and regulations governing the profession of pharmacy. The board licenses pharmacists and pharmacies and registers drug researchers and manufacturers.

Collection Service Board - Title 62, Chapter 20. The board is responsible for examining and licensing collection service firms and collection managers working in the collections industry in Tennessee.

Private Investigation and Polygraph Commission - Title 62, Chapter 26. The commission's purpose is to issue and regulate licenses for private investigators, private investigation firms, and polygraph examiners.

Private Protective Services Advisory Committee - Title 62, Chapter 35. The committee's purpose is to advise the Commissioner of Commerce and Insurance on rulemaking and to make formal recommendations to the commissioner or the General Assembly about issues relating to private security matters. The commissioner licenses private security companies and registers security guards/officers.

Real Estate Commission - Title 62, Chapter 13. The commission licenses affiliate brokers, brokers, real estate firms, and time-share agents.

Real Estate Appraiser Commission - Title 62, Chapter 39. The commission regulates, licenses, and certifies real estate appraisers to ensure compliance with the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

Auctioneer Commission - Title 62, Chapter 19. The commission is responsible for examining and licensing auctioneers, apprentice auctioneers, and firms engaged in the auction industry in Tennessee.

Appendix 2

Board License Periods, Renewal Amounts, and Licensees

Board	License Period and Expiration Date	Renewal Amount (a)	Number of Licensees (b)
Board of Barber Examiners	Biennially on Date of Issue	\$80	10,999
Board of Cosmetology	Biennially on Date of Issue	\$50	71,823
Board of Examiners for Architects and Engineers	Biennially on Date of Issue	\$140	19,350
Board of Funeral Directors and Embalmers	Biennially on Date of Issue	\$275	4,137
Board of Examiners for Land Surveyors	Biennially on December 31	\$280	1,113
Board of Pharmacy	Biennially on Last Day of Month of Issue	\$96	20,925
Private Investigation and Polygraph Commission	Biennially on Date of Issue	\$100 Private Investigations \$500 Polygraph	1,854
Collection Service Board	Annually on December 31	\$350	1,081
Private Protective Services Advisory Committee	Biennially on Date of Issue	\$50 (c)	24,932
Real Estate Appraiser Commission	Biennially on Date of Issue	\$350	2,182
Real Estate Commission	Biennially on December 31 of Even-Numbered Years	\$80	34,270
Auctioneer Commission	Biennially on Date of Issue	\$150	3,406

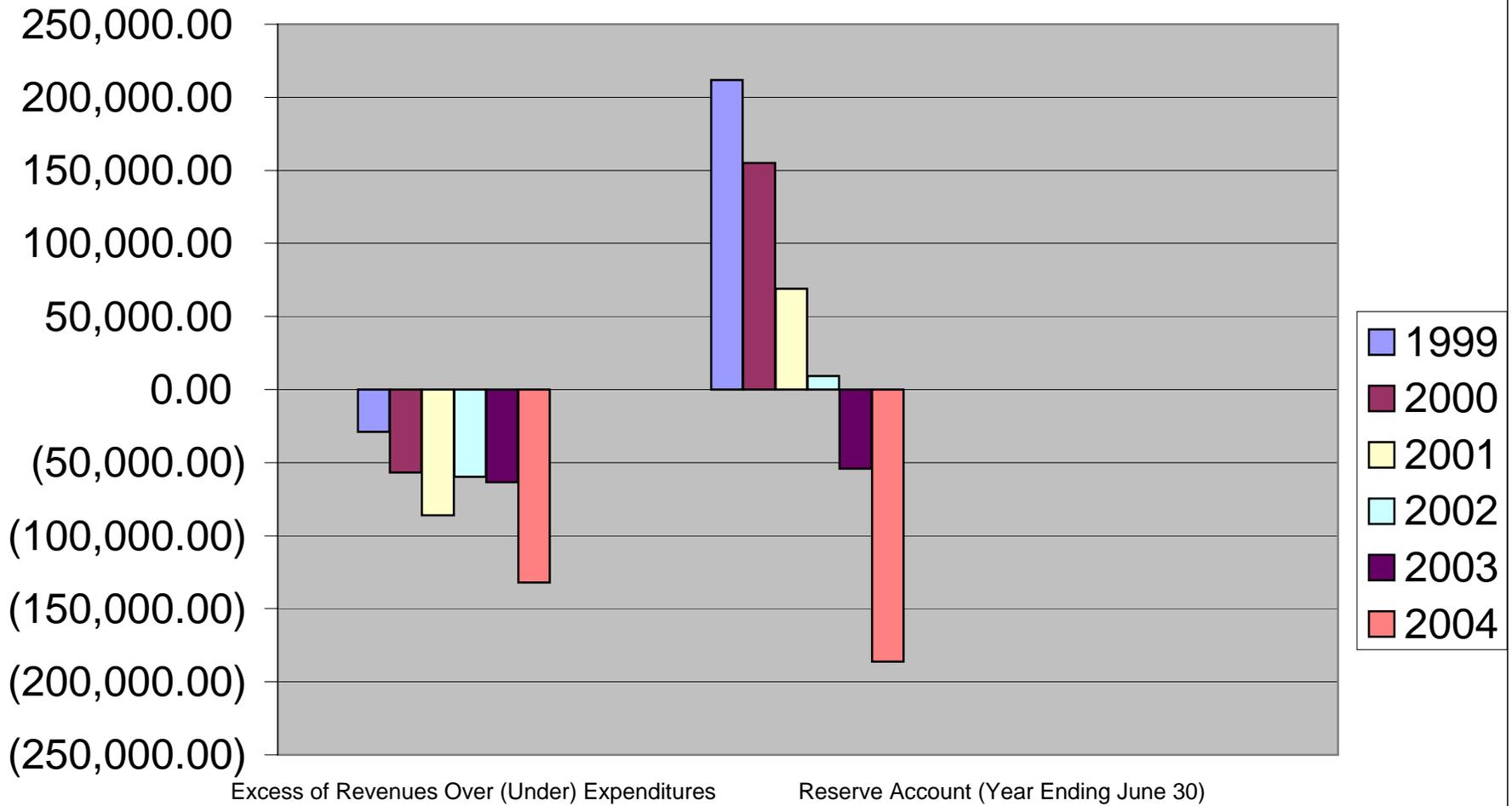
Notes:

- (a) These renewal amounts are for an individual license. Amounts differ for firm, apprentice, trainee, etc., classifications.
- (b) These numbers include apprentices, trainees, firms, and establishments as of December 2004.
- (c) This renewal amount is for an armed guard. Unarmed guards pay \$60, and firms pay \$300 to \$500 based on number of employees.

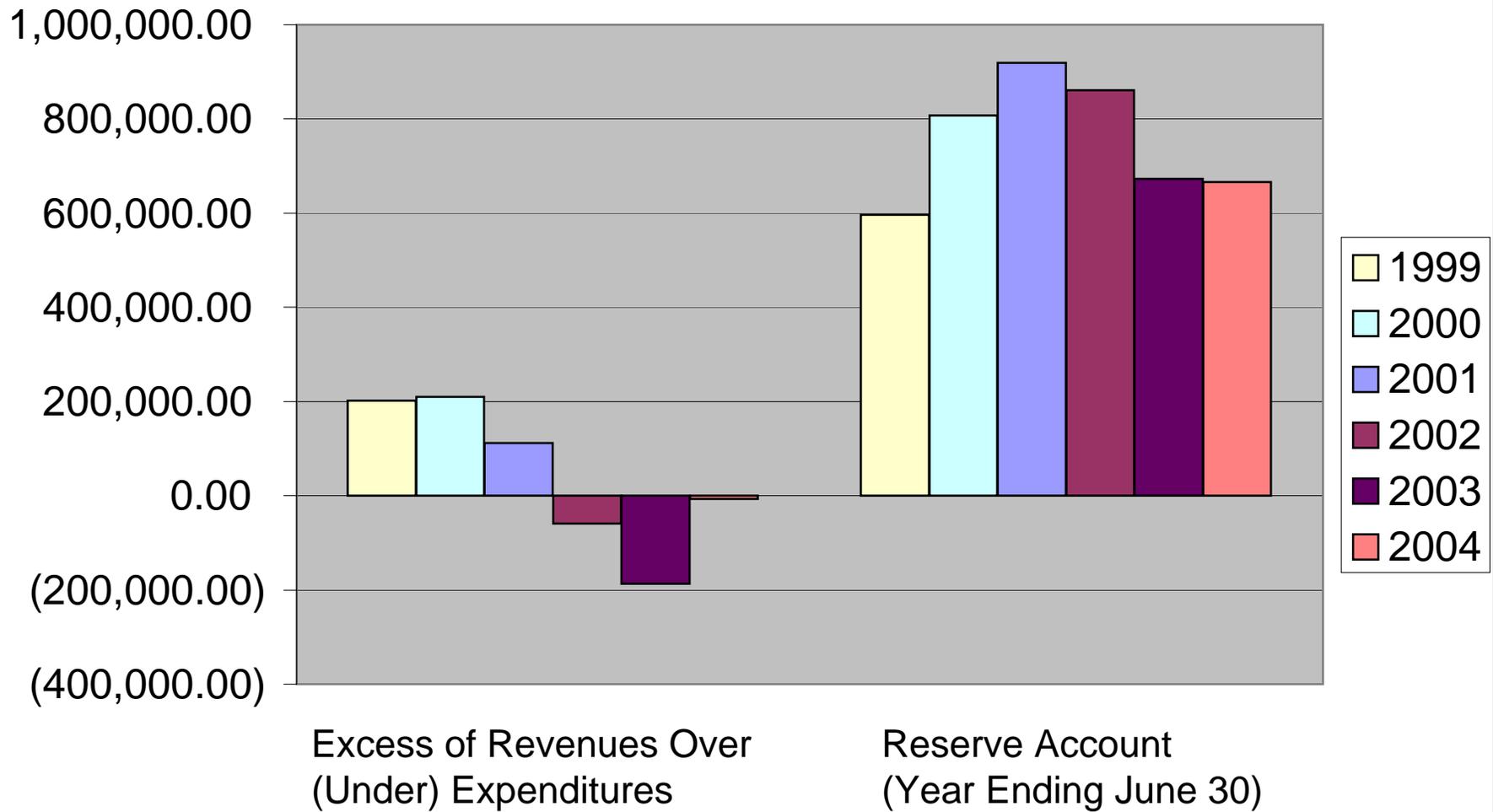
Source: Board Executive Directors and Board Website

Appendix 3
Excess of Revenues Over (Under) Expenditures and Reserve Account Balance
By Board
For Fiscal Years 1999 Through 2004

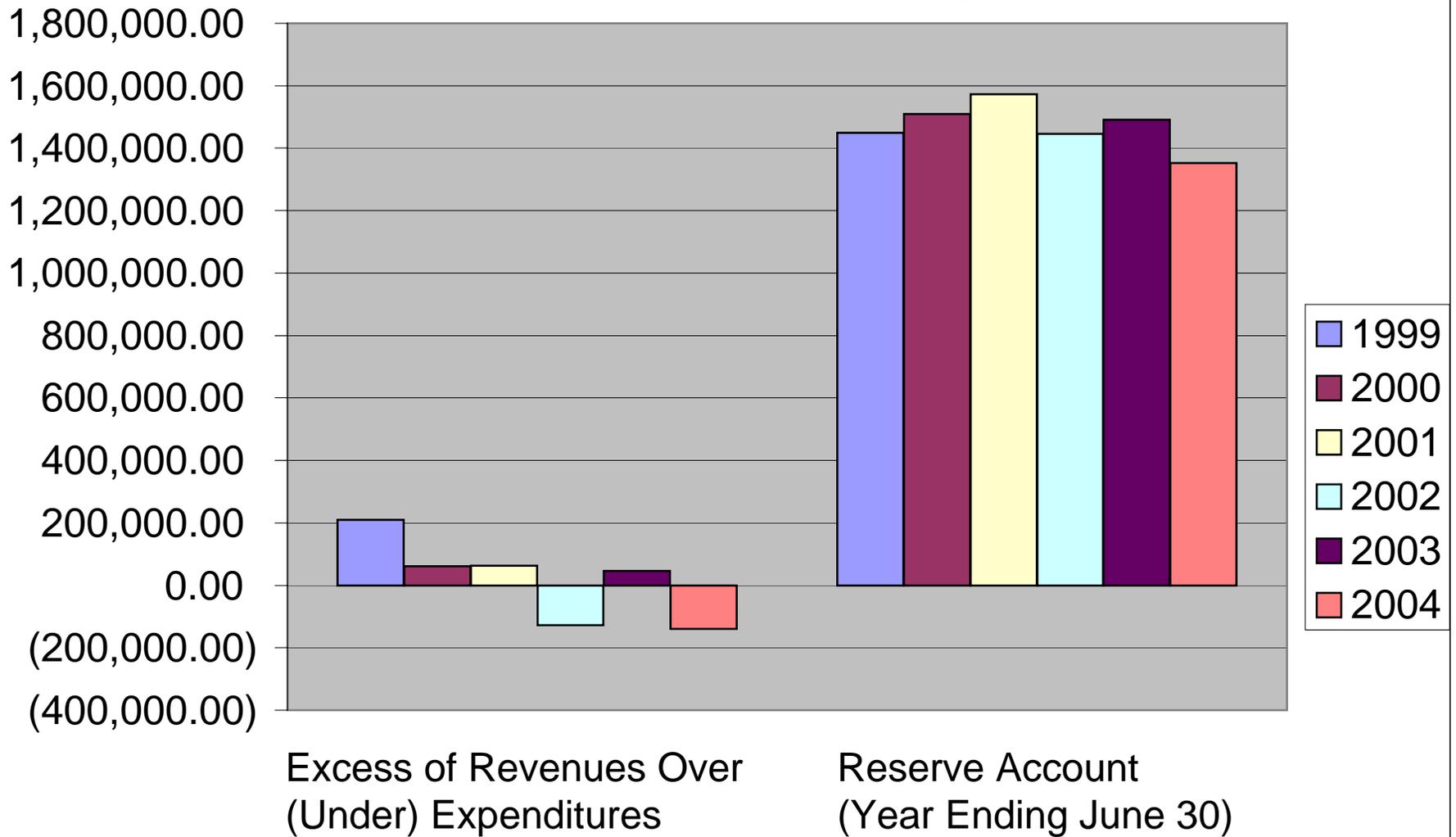
Board of Barber Examiners



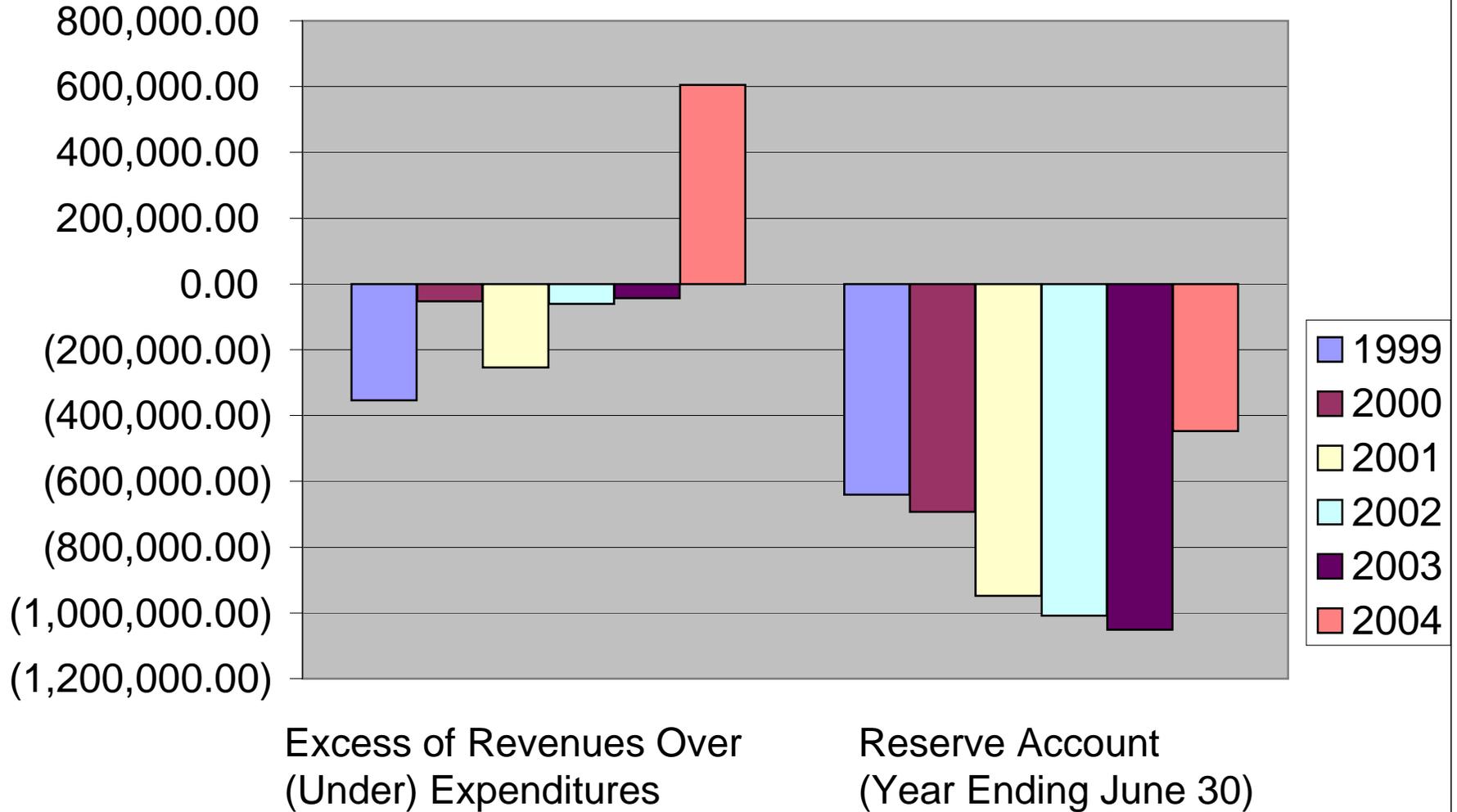
Board of Cosmetology



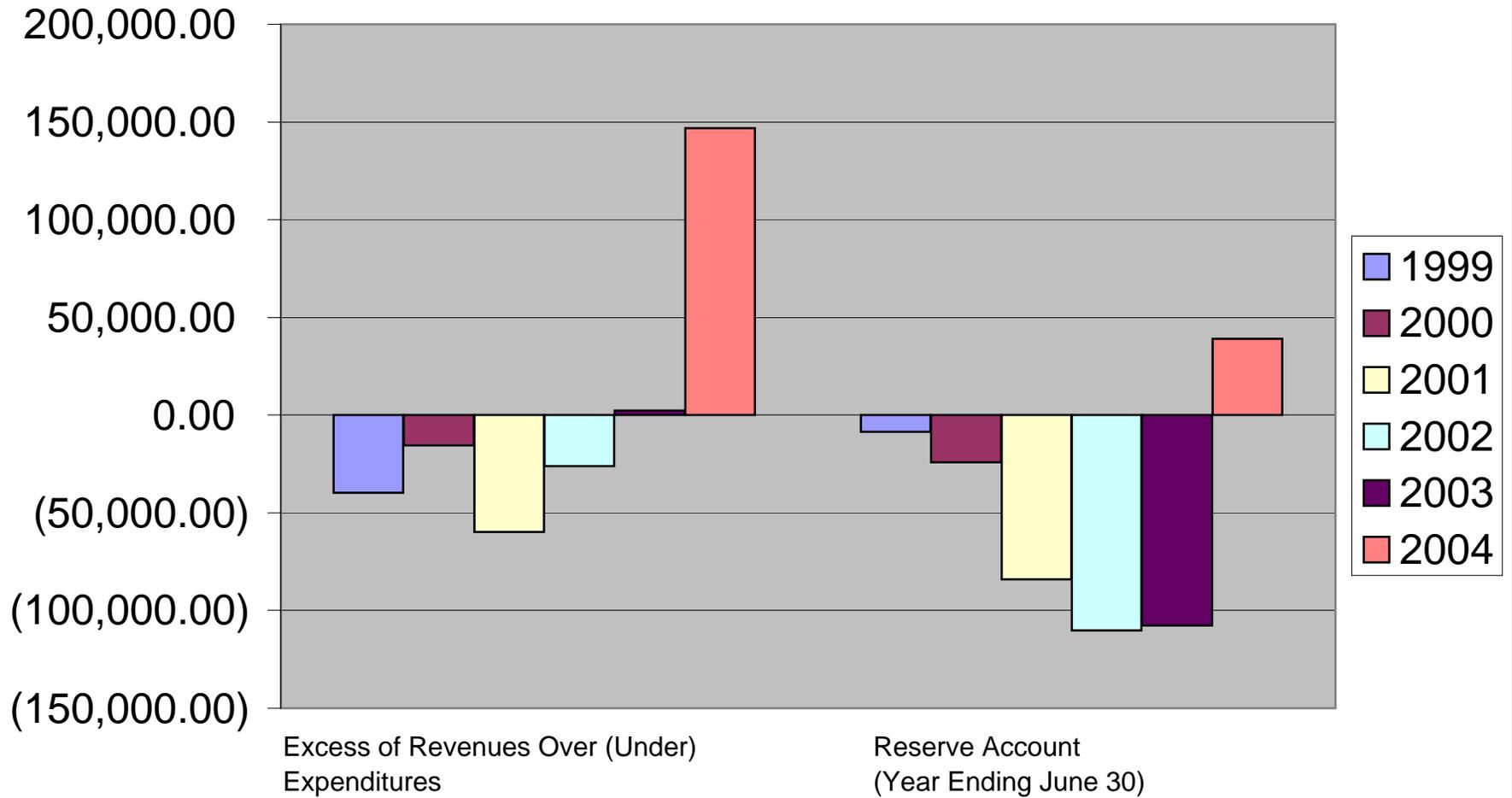
Board of Architects and Engineers



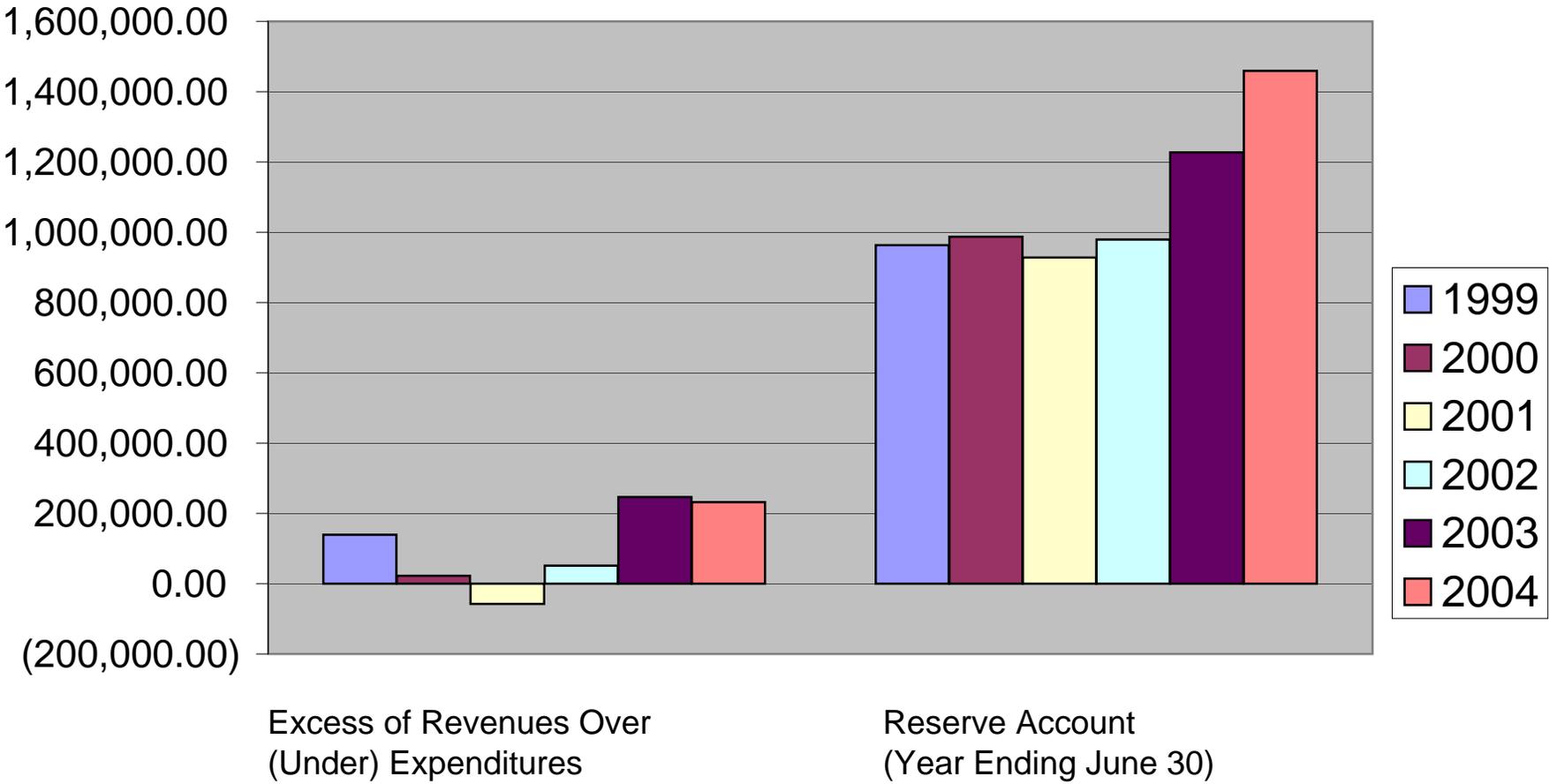
Board of Funeral Directors and Embalmers



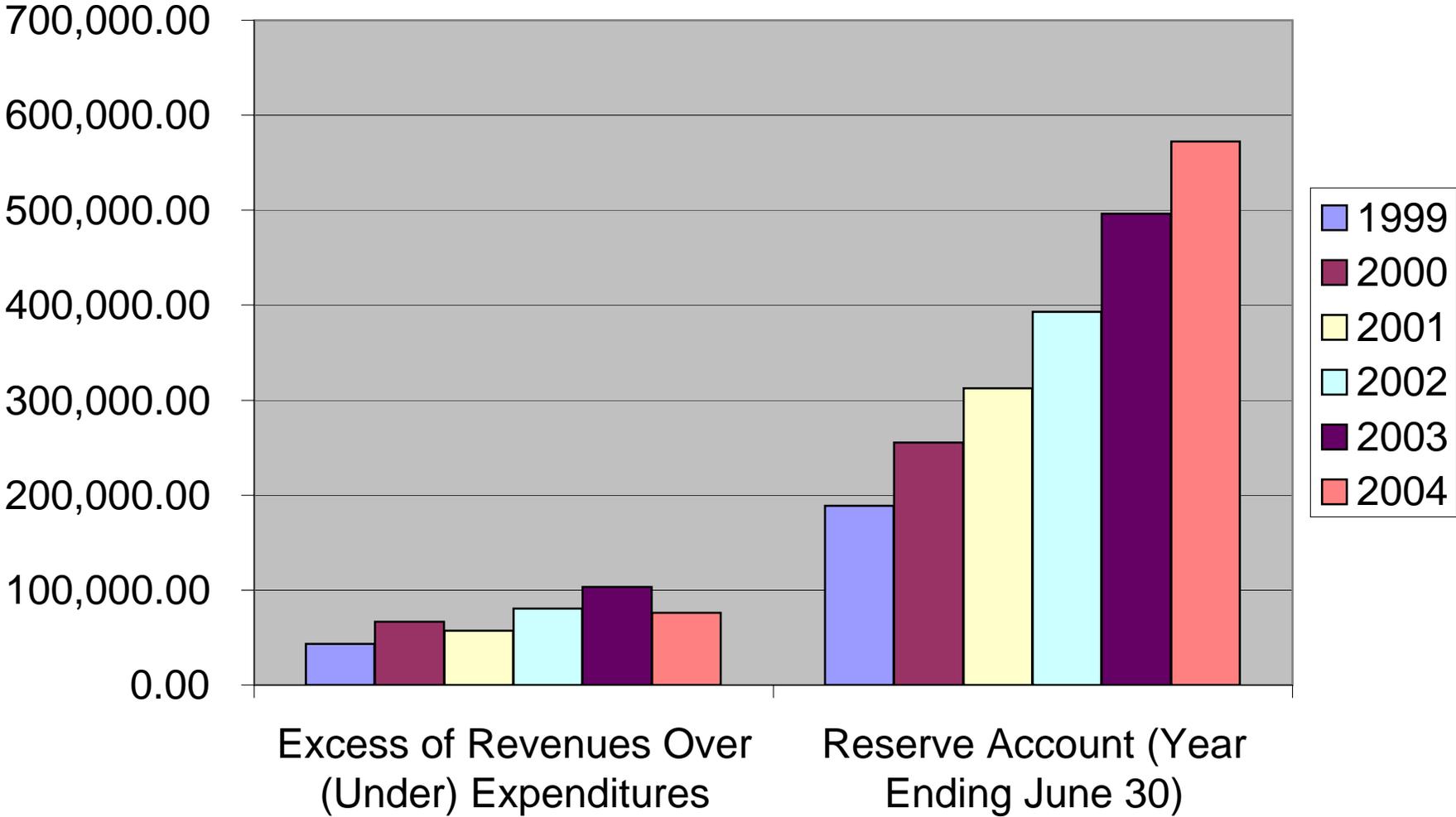
Board of Land Survey Examiners



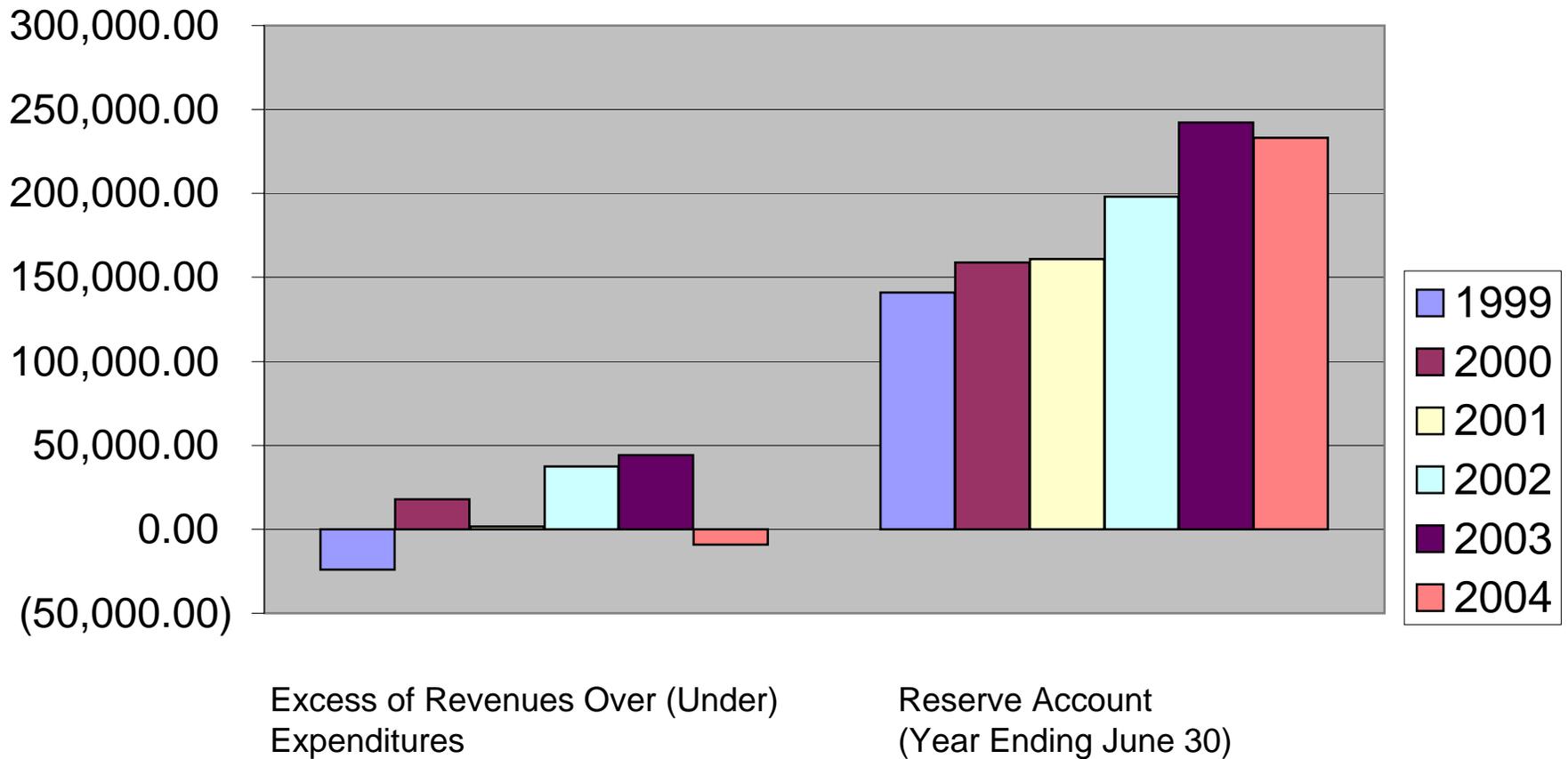
Board of Pharmacy



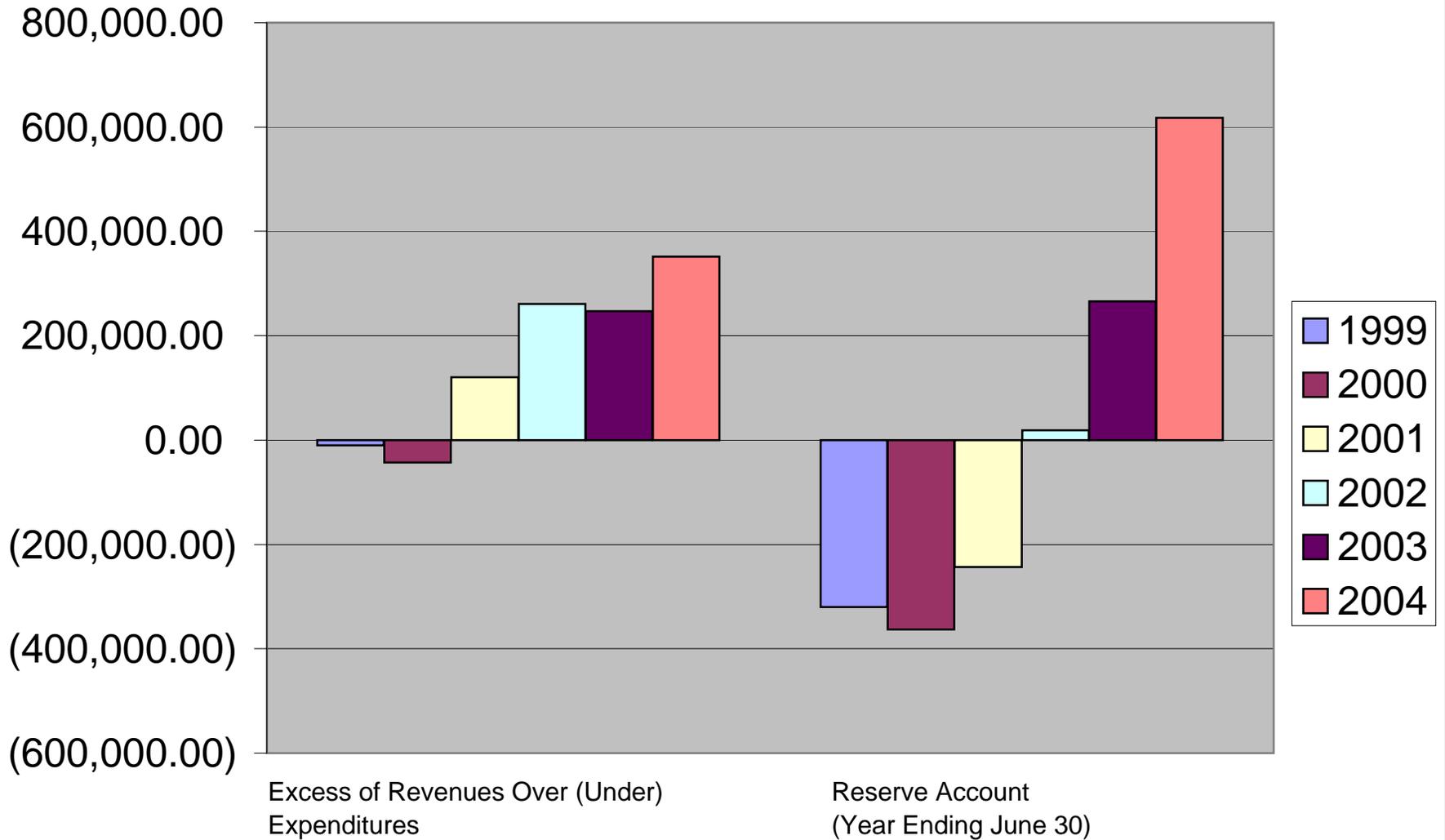
Collection Service Board



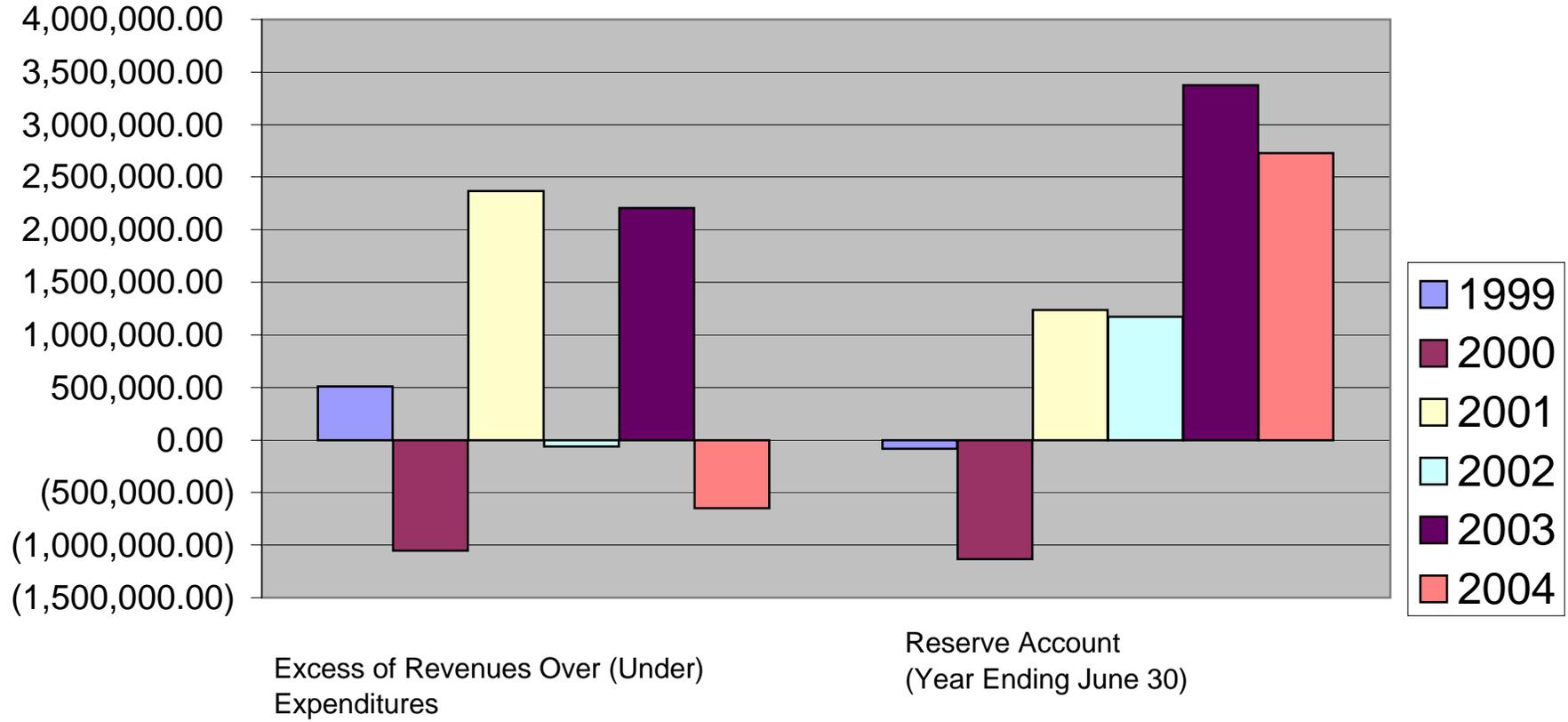
Private Investigation and Polygraph Commission



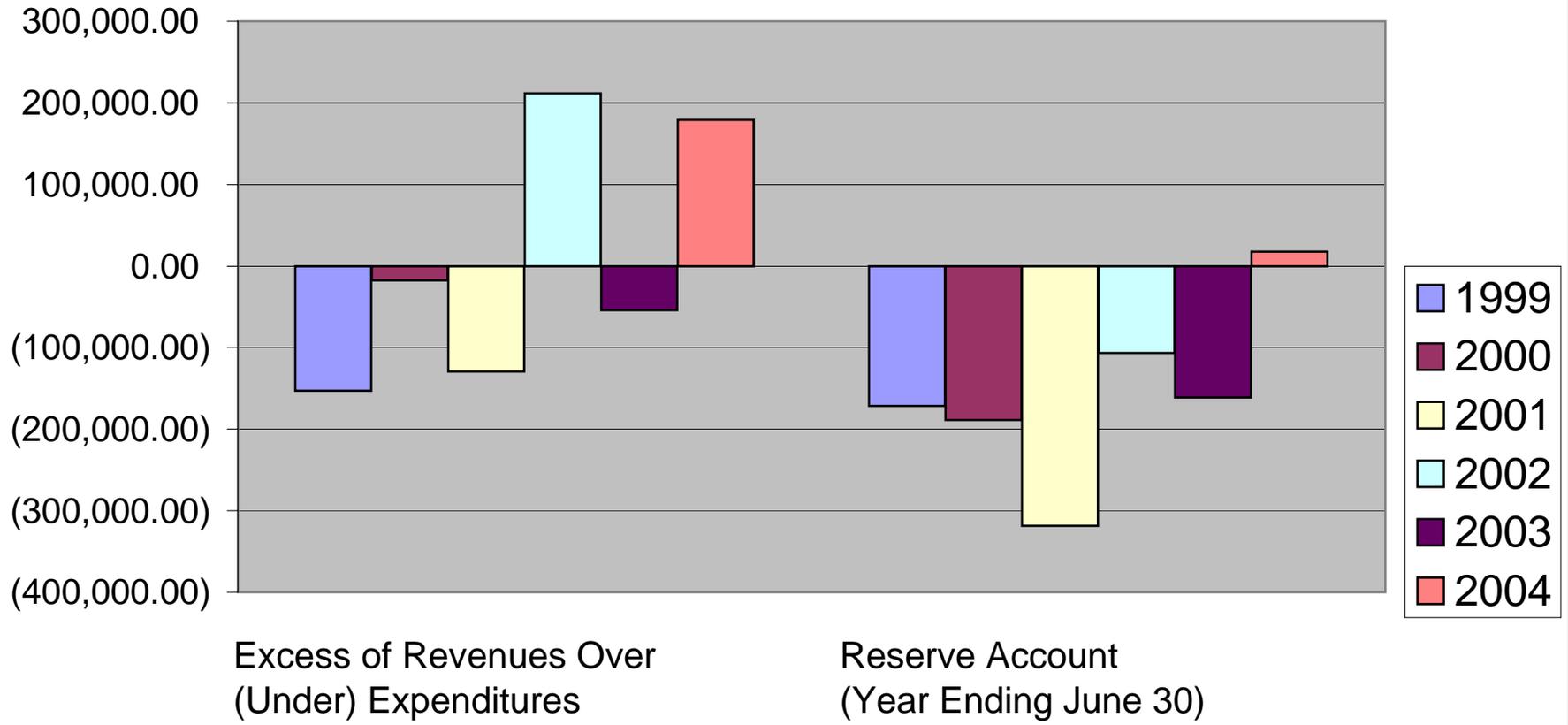
Private Protective Services Advisory Committee



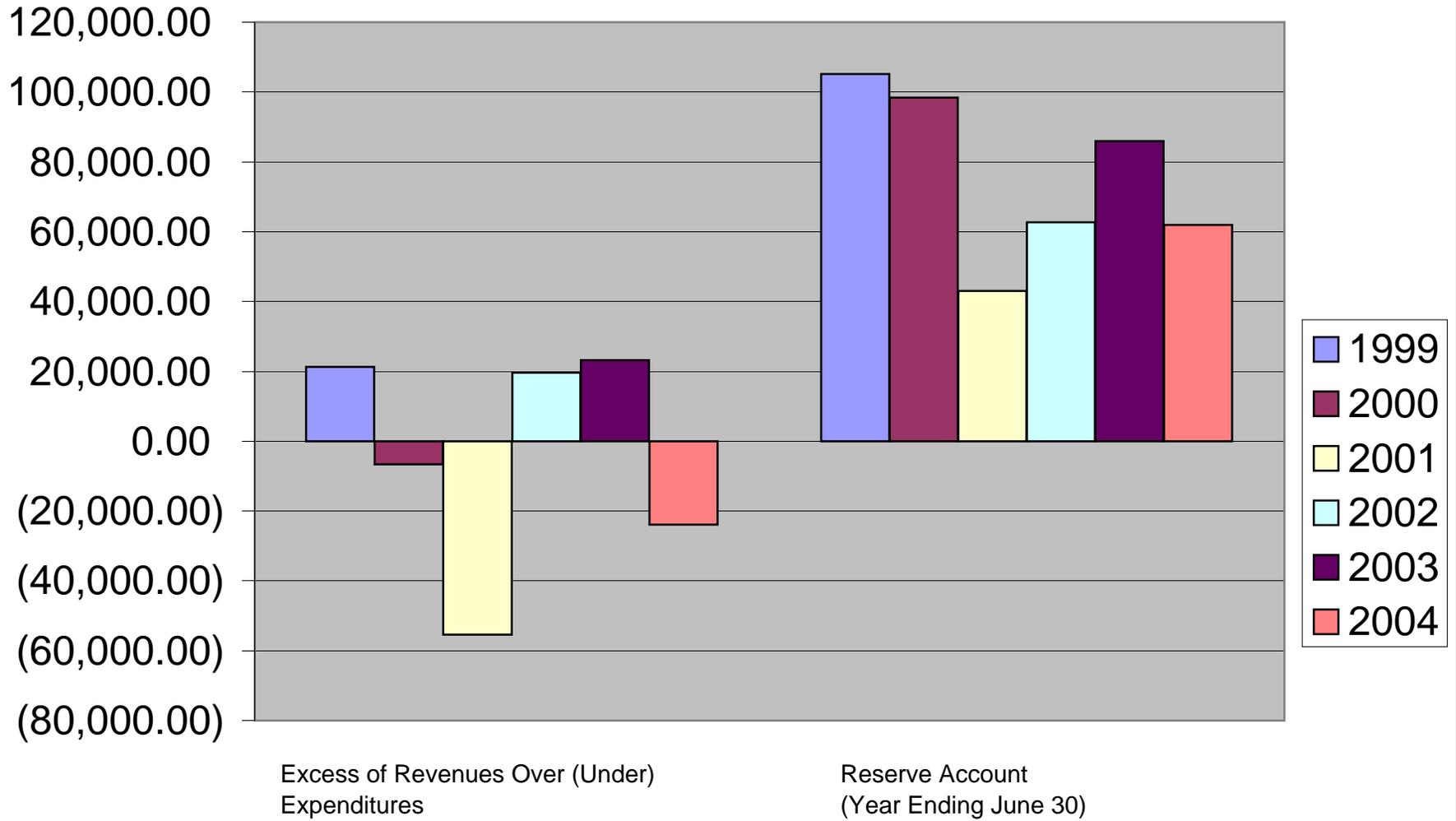
Real Estate Commission



Real Estate Appraisers Commission



Auctioneers Commission



**Appendix 4
Title VI Information**

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, we compiled information concerning federal financial assistance received by the Department of Commerce and Insurance, Division of Regulatory Boards, and the department's and division's efforts to comply with Title VI requirements. The results of the information gathered are summarized below.

In fiscal year 2005 (according to information provided by the department), the Tennessee Department of Commerce and Insurance will receive direct federal funds, indirect federal assistance, and funds through a cooperative agreement with the U.S. Department of Housing and Urban Development (HUD). None of the 12 regulatory boards covered in this audit will receive federal funds.

Direct Federal Assistance Programs

Name	Grantor Agency	Amount and Term	Description
National Fire Service Training Grant	Federal Emergency Management Agency	\$28,000 9/15/2003 to 12/31/2004	Funds Fire Service and Codes Enforcement Academy's teaching of the National Fire Academy's "hand off" course to state firefighters.

Indirect Federal Assistance Programs

Name	Grantor Agency	Amount and Term	Description
Edward Byrne Memorial Grant	Tennessee Department of Finance and Administration's Office of Criminal Justice Programs	\$67,400 7/1/2004 to 6/30/2005	Supports and enhances the Bomb and Arson Special Operations Response Team.
Edward Byrne Memorial Grant	Tennessee Department of Finance and Administration's Office of Criminal Justice Programs	\$100,000 7/1/2004 to 6/30/2005	Enhances Bomb and Arson Section's ability to respond to methamphetamine related fire scenes.
State Homeland Security Grant	Tennessee Department of Military, Tennessee Emergency Management Agency	\$184,000 8/1/2003 to 2/28/2005	Provides security enhancements to the Fire Service and Codes Enforcement Academy.
State Homeland Security Grant	Tennessee Department of Military, Tennessee Emergency Management Agency	\$299,880 8/1/2003 to 2/28/2005	Provides first-response supplies and equipment to the Bomb and Arson Section.

State Homeland Security Grant	Tennessee Department of Military, Tennessee Emergency Management Agency	\$310,000 8/1/2003 to 2/28/2005	Used to train firefighters as first responders to acts of terrorism.
State Homeland Security Grant	Tennessee Department of Military, Tennessee Emergency Management Agency	\$123,295 11/1/2003 to 12/31/2004	Provides funds for a Mobile Command Post truck for the Special Operations Response Team when responding to crime scenes including acts of terrorism.

Non-Grant Federal Assistance Programs

Name	Agency	Amount and Term	Description
Cooperative Agreement	U.S. Department of Housing and Urban Development (HUD)	The department receives a set fee for each manufactured home section shipped into the state and for each section produced in the state. For fiscal year 2003, the amount was \$159,638 and for fiscal year 2004, the amount was \$214,754.	Staff perform monitoring reviews at factories producing manufactured housing, investigate consumer complaints, and take enforcement actions as needed. The department submits to HUD a state plan, which details Tennessee's provisions for enforcing federal manufactured home construction and safety standards.

The Assistant Commissioner for Administration also serves as the Title VI coordinator for the department. His duties include updating and preparing the Title VI implementation plan, accepting Title VI complaints, investigating and resolving (along with the department's chief counsel) such complaints, and tracking Title VI legislation. The department submitted its annual Title VI compliance report and implementation plan update to the Office of the Comptroller of the Treasury on June 23, 2004, as required by statute. The update, submitted in the form of a letter from the Commissioner of the Department of Commerce and Insurance, stated that the Title VI policies, procedures, complaint procedures, terminology, and monitoring methodology are contained in the department's Title VI compliance plan filed with the Comptroller's Office on June 25, 1998. The letter states that there have been no changes to the plan since that time. The plan, which we reviewed, describes the department's Title VI policy, the responsibilities of the various levels of government, the department's proposed Title VI activities related to public notification of eligible participants, data collection and reporting of participation data, complaint handling, and compliance reviews. Many of the Title VI-related policies and procedures are not applicable to the department's current federally funded activities because of the nature of the activities (i.e., bomb and arson investigations and manufactured housing inspections).

The department's plan does not have any specific policies or procedures related to the licensing, disciplinary, or other aspects of the regulatory boards. The department's position is that licensees and those persons disciplined by the boards are not recipients of Title VI funds.

The department has not received any Title VI complaints in the last two fiscal years and has not performed any compliance reviews.

The Division of Regulatory Boards has the following contracts for the fiscal year ending June 30, 2005, for the 12 boards included in this audit. The department does not track ethnicity of contractors.

Contract Number	Contractor and Service Provided	Contract Duration	Contract Amount
FA05-15863-00	John W. Smith d/b/a JWS & Associates evaluate transcripts of candidates to determine if substantially equivalent to ABET-accredited programs and provide a written report to the board (Board of Examiners for Architects and Engineers)	7/1/2004 – 6/30/2005	\$3,000
FA05-15879-00	National Council of Examiners for Engineering and Surveying provide and score examinations (Board of Examiners for Architects and Engineers)	7/1/2004 – 6/30/2005	\$250,000
FA05-15208-01	National Council of Examiners for Engineering and Surveying provide and score examinations (Board of Examiners for Land Surveyors)	7/1/2003 – 6/30/2005	\$55,000
FA05-15883-00	Council of Landscape Architect Registration Boards proctor the national engineering and landscape architecture exams and provide exam site (Board of Examiners for Architects and Engineers)	7/1/2004 – 6/30/2005	\$15,000
ED02-00499-00	East Tenn. State University develop/maintain test items specific to the practice of surveying in Tennessee (Board of Examiners for Land Surveyors)	07/01/01 - 06/30/06	\$105,480
NC01-00549-01	National Association of Boards of Pharmacy provision of the development and administration of licensure exam program and examination and scoring of NAPLEX candidates (Board of Pharmacy)	07/01/00 - 06/30/05	\$0*
NC01-00550-01	Promissor, Inc. develop and administer examination services (Real Estate Appraiser Commission)	07/01/00 - 06/30/05	\$0*
FA01-14221-04	Promissor, Inc. Licensing examination compilation and administration (Auctioneer Commission)	07/01/04 - 06/30/05	\$15,000
FA02-14736-02	Terry Evans d/b/a Evans Education Center Conduct regional education seminars and print newsletters (Auctioneer Commission)	9/1/2001-6/30/2005	\$128,000
NC01-00551-00	Experior Assessments, LLC develop and administer examination program (Board of Cosmetology)	07/01/00 - 06/30/05	\$0*
NC02-00638-00	Experior Assessments, LLC develop and administer examination program (Collection Service Board)	07/01/01 - 06/30/06	\$0*
NC02-00639-00	Experior Assessments, LLC develop and administer examination program (Board of Funeral Directors and Embalmers)	07/01/01 - 06/30/06	\$0*
NC-03-00663-00	Experior Assessments, LLC develop and administer examination program (Private Protection Services Advisory Committee)	7/1/02 - 6/30/05	\$0*
NC-03-00665-00	Experior Assessments, LLC develop and administer licensing examinations (Private Investigation and Polygraph Commission)	7/1/02 - 1/31/05	\$0*
NC-03-00674-00	Experior Assessments, LLC develop and administer examination program (Board of Barber Examiners)	7/1/02 - 6/30/05	\$0*

NC03-00683-00	Rice Insurance Services Company LLC provide a master real estate errors and omissions liability insurance policy with liability per claim per licensee limit of \$100,000.00 (Real Estate Commission)	8/16/02 - 12/31/04	\$0*
NC05-00809-00	Rice Insurance Services Company LLC provide a master real estate errors and omissions liability insurance policy with liability per claim per licensee limit of \$100,000.00 (Real Estate Commission)	8/11/04 - 12/31/06	\$0*
NC05-00791-00	Psychological Services, Inc. examination development and administration services (Real Estate Commission)	7/1/2004 -6/30/2006	\$0*

* These contractors receive no funds from the boards or the department. They are paid directly by board licensees or applicants for licensure.

The following table details the ethnicity of board members for the 12 boards covered in this audit:

**Gender and Ethnicity Distribution of Board Members
As of October 11, 2004**

Board	Female	Male	Black	White	Asian	Hispanic	Vacant	Grand Total
Barber Examiners	0	5	1	4	0	0	0	5
Cosmetology	7	2	2	7	0	0	0	9
Examiners for Architects and Engineers	2	10	0	11	1	0	0	12
Funeral Directors and Embalmers	1	6	1	6	0	0	0	7
Examiners for Land Surveyors	1	3	0	4	0	0	0	4
Pharmacy	3	3	1	5	0	0	1	7
Collection Service Board	2	2	0	4	0	0	1	5
Private Investigation and Polygraph	3	5	0	7	0	1	1	9
Private Protective Services	1	6	3	4	0	0	0	7
Real Estate	4	5	1	8	0	0	0	9
Real Estate Appraiser	0	9	2	7	0	0	0	9
Auctioneer	1	4	0	5	0	0	0	5
Grand Total	25	60	11	72	1	1	3	88
Percentages	29%	71%	13%	85%	1%	1%		

The following table indicates the staff associated with the boards covered in this audit. (The listing below does not include board attorneys, who are not included under the Regulatory Boards cost center.)

**Division of Regulatory Boards Staff
Associated With the 12 Boards Covered in this Audit
By Title, Gender, and Ethnicity
As of August 31, 2004**

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Administrative Assistant 1	0	1	0	0	0	0	1	0
Administrative Assistant Regulatory Board 1	2	17	0	6	0	0	13	0
Administrative Assistant Regulatory Board 2	0	1	0	0	0	0	1	0
Administrative Assistant Regulatory Board 3	2	3	0	0	0	0	5	0
Administrative Director Regulatory Board 1	0	4	0	0	0	0	4	0
Administrative Director Regulatory Board 2	0	2	0	2	0	0	0	0
Administrative Manager Regulatory Board	1	2	0	0	0	0	3	0
Administrative Secretary	0	2	0	0	0	0	2	0
Administrative Services Assistant 2	0	1	0	0	0	0	1	0
Administrative Services Assistant 4	0	1	0	0	0	0	1	0
Administrative Services Manager	0	1	0	0	0	0	1	0
Assistant Commissioner 2	1	0	0	0	0	0	1	0
Auditor 2	1	0	0	0	0	0	1	0
Auditor 3	2	0	0	0	0	0	2	0
Clerk 3	0	3	0	1	0	0	2	0
Distributed Programmer/Analyst 4	3	0	2	0	0	0	1	0
Information Systems Analyst 3	0	1	0	1	0	0	0	0
Licensing Technician	2	17	0	7	0	0	12	0
Pharmacist 2	5	0	0	0	0	0	5	0
Pharmacy Board Director	1	0	0	0	0	0	1	0
Regulatory Board Executive Director	2	3	0	0	0	0	5	0
Regulatory Board Field Representative	6	8	0	2	0	0	12	0
Regulatory Board Investigation Assistant Director	1	0	0	0	0	0	1	0
Regulatory Board Investigator	7	1	0	0	0	0	8	0
Regulatory Board Investigator Supervisor	1	0	0	0	0	0	1	0
Secretary	0	3	0	1	0	0	1	1
Statistician 2	0	1	0	0	0	0	1	0
Totals	37	72	2	20	0	0	86	1
Percentages	34%	66%	2%	18%	0%	0%	79%	1%