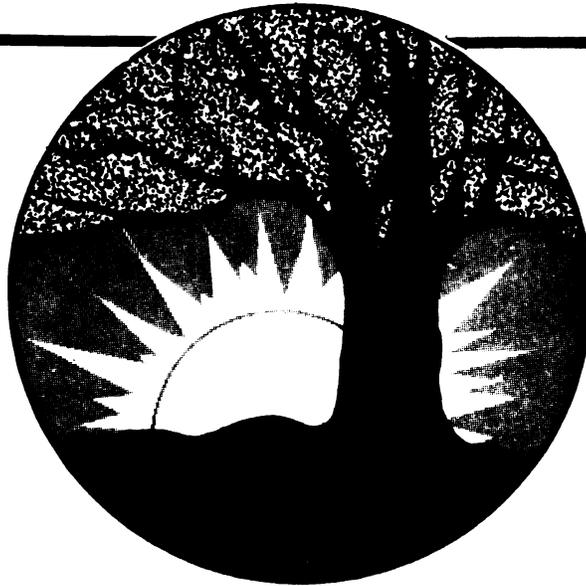


# PERFORMANCE AUDIT

**Selected Health Related Boards  
of the Department of Health  
September 2012**



**Justin P. Wilson**  
Comptroller of the Treasury



State of Tennessee  
Comptroller of the Treasury  
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September 20, 2012

The Honorable Ron Ramsey  
Speaker of the Senate  
The Honorable Beth Harwell  
Speaker of the House of Representatives  
The Honorable Mike Bell, Chair  
Senate Committee on Government Operations  
The Honorable Jim Cobb, Chair  
House Committee on Government Operations  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243  
and  
The Honorable John J. Dreyzehner, MD, MPH, Commissioner  
Department of Health  
Cordell Hull Building  
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Nashville, TN 37243  
and  
The Honorable Mark Emkes, Commissioner  
Department of Finance and Administration  
State Capitol  
Nashville, TN 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the eight boards administratively attached to the Department of Health, Division of Health Related Boards, that are scheduled to terminate June 30, 2013. Our scope covered the period July 1, 2008, through May 31, 2012. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

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

September 20, 2012  
Page Two

management of the Department of Finance and Administration are responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

Our audit disclosed certain findings, which are detailed in the Objectives, Methodologies, and Conclusions section of this report. Management of the Department of Health, Division of Health Related Boards, and management of the Department of Finance and Administration have responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Board of Chiropractic Examiners, Board of Communication Disorders and Sciences, Board of Dentistry, Board of Examiners in Psychology, Board of Medical Examiners' Committee on Physician Assistants, Board of Optometry, Board of Podiatric Medical Examiners, and Board of Veterinary Medical Examiners should be continued, restructured, or terminated.

Sincerely,

A handwritten signature in black ink that reads "Arthur A. Hayes, Jr." with a stylized flourish at the end.

Arthur A. Hayes, Jr., CPA  
Director

AAH/kr  
12058

State of Tennessee

# Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit  
**Board of Chiropractic Examiners**  
**Board of Communication Disorders and Sciences**  
**Board of Dentistry**  
**Board of Examiners in Psychology**  
**Board of Medical Examiners' Committee on Physician Assistants**  
**Board of Optometry**  
**Board of Podiatric Medical Examiners**  
**Board of Veterinary Medical Examiners**

September 2012

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## AUDIT SCOPE

We have audited eight boards administratively attached to the Department of Health, Division of Health Related Boards, for the period July 1, 2008, through May 31, 2012. Our audit scope included a review of the boards' business practices; internal controls; compliance with laws, regulations, and provisions of contracts or grant agreements; and prior audit findings. We focused our audit specifically in the areas of board self-sufficiency, state regulatory fees, continuing education monitoring, disciplinary actions on licensees, legal counsel turnover, the licensee application process, the licensing system, the cash office, conflict of interest policy, performance measures, and Title VI. In addition we followed up on prior sunset performance audit findings. The audit was conducted in accordance with generally accepted government auditing standards.

## AUDIT FINDINGS

**Finding 1** The Department of Finance and Administration has not properly analyzed the sufficiency of the state regulatory fee, and the Department of Health's Division of Health Related Boards has not ensured the accuracy of the state regulatory fee collections before submitting the fee to the Department of Finance and Administration (page 10).

**Finding 2** The Department of Health’s Director of the Office of Information Technology did not develop adequate policies and procedures to assess and mitigate the risks associated with Information Systems security, increasing the risk of fraudulent activity (page 23).

**Finding 3\*** The Division of Health Related Boards did not properly prepare its risk assessment and did not have adequate controls in place to mitigate the risks of inadequate segregation of duties, reconciliations not being performed, and ineffective tracking of case costs and civil penalties (page 26).

**Finding 4** The Division of Health Related Boards did not ensure that it developed clear conflict of interest procedures to achieve the Division of Health Related Boards’ conflict of interest policy, did not update the procedure to reflect current executive orders, and did not ensure that employees and board members signed the conflict of interest forms annually (page 31).

**Finding 5** The Director of the Health Related Boards did not ensure that the division’s performance measures reported in the department’s strategic plans for the performance-based budget were completely supported (page 34).

**Finding 6\*** The Division of Health Related Boards did not fully utilize the National Practitioner Data Bank, which provides an opportunity for the division to further protect the public (page 38).

## **OBSERVATIONS AND COMMENTS**

The audit also discusses the following issues:

**Observation 1** The Division of Health Related Boards’ self-sufficiency could be affected by legal or investigative costs, administrative services errors, and the Division of Health Related Boards’ lack of policies and procedures to address deteriorating financial conditions (page 6).

**Observation 2** The Division of Health Related Boards’ Continuing Education Compliance Unit could select audits more efficiently and effectively (page 19).

## **RECOMMENDATION FOR LEGISLATIVE CONSIDERATION**

The General Assembly may wish to clarify whether the state regulatory fee is subject to prorating and may wish to modify Section 4-3-1011(b)(2), *Tennessee Code Annotated*, regarding the state regulatory fee (page 40).

\* These findings are repeated from the prior audit.

# Performance Audit

## Selected Health Related Boards of the Department of Health

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# **Performance Audit Selected Health Related Boards of the Department of Health**

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## **INTRODUCTION**

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### **PURPOSE AND AUTHORITY FOR THE AUDIT**

This performance audit of the eight health-related boards that are scheduled to terminate June 30, 2013, was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether these boards should be continued, restructured, or terminated. The eight boards include

- the Board of Chiropractic Examiners,
- the Board of Communication Disorders and Sciences,
- the Board of Dentistry,
- the Board of Examiners in Psychology,
- the Board of Medical Examiners' Committee on Physician Assistants,
- the Board of Optometry,
- the Board of Podiatric Medical Examiners, and
- the Board of Veterinary Medical Examiners.

### **ORGANIZATION AND STATUTORY RESPONSIBILITIES**

#### **Department of Health, Division of Health Related Boards**

Under the Department of Health's Division of Health Licensure and Regulation, the Division of Health Related Boards was established pursuant to Section 63-1-101, *Tennessee Code Annotated*, to provide administrative and staff support to the various Health Related Boards, committees, and councils, which license and regulate health care professionals in Tennessee. The Division of Health Related Boards is authorized by Section 63-1-115, *Tennessee Code Annotated*, to employ investigators or other employees to enforce the laws regulating the practice of health professionals within Tennessee. The Division of Health Related Boards also administers examinations of licensing applicants, reviews licensing applications and renewals, reviews and approves criminal background checks of license applicants, issues licenses, conducts continuing education audits, and investigates complaints against licensed practitioners. Staff of the division are employees of the State of Tennessee.

The Department of Health's Division of Administrative Services provides fiscal and support services to the Division of Health Related Boards. The Department of Health's Office of

Legal Counsel provides legal counsel support for the Division of Health Related Boards. Also under the Department of Health, the Office of Internal Audit investigates reports of fraud, waste, and abuse of government funds and property involving department management and staff within the Department of Health.

### **Office of Investigations**

The Office of Investigations receives and investigates complaints against practitioners licensed under the Division of Health Related Boards. The Assistant Director of Investigations establishes a priority level for each complaint based on the seriousness of the complaint. The levels include immediate jeopardy, actual harm/no injury, potential harm, or potential harm minimal. The level assigned determines the number of days the office has (from 5 to 150) to address the complaint.

Once an investigation has been conducted, the Investigation Coordinator, Board Consultant, and the Department of Health's Office of General Counsel attorneys determine if the complaint will be closed with no further action, closed with informal disciplinary action, or escalated to the Office of General Counsel for additional action. Following this additional action, the Office of General Counsel may close the case, contest the case, or send letters of reprimand to the practitioners.

### **Boards and Board Members**

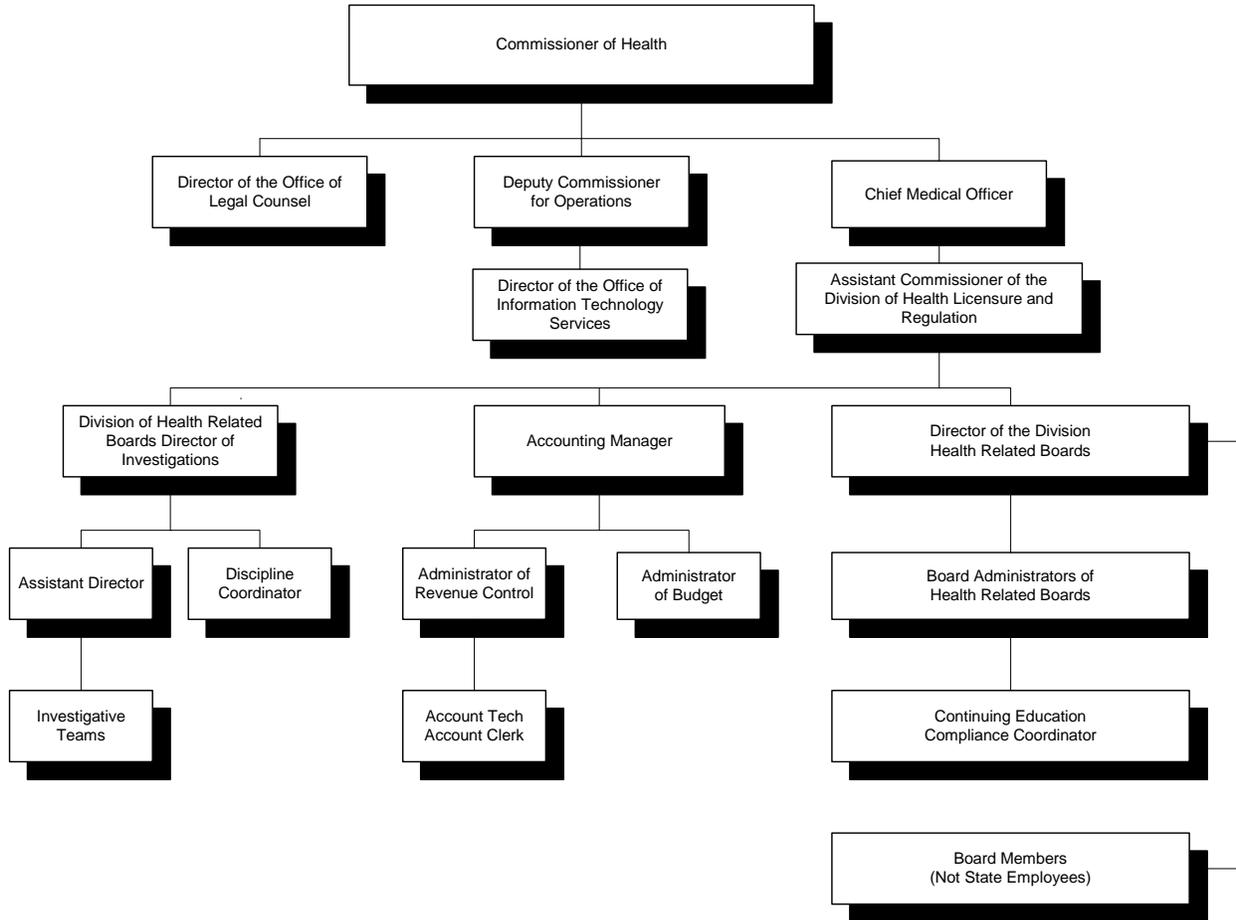
The Health Related Boards are generally responsible for safeguarding the public by interpreting the laws, rules, and regulations to determine, regulate, and enforce the appropriate standard of practice for select health care professions in Tennessee. The boards meet as statutorily required to examine licensee applications; conduct hearings to revoke or suspend a license or certificate; sponsor, conduct, or approve educational programs; and issue rulings to licensees.

The members of the Health Related Boards are appointed by the Governor. The board members include licensed practitioners and consumer/citizen members not associated with the board's industry. The board members are not employees of the Department of Health but serve a term according to statute. They receive a per diem when actually engaged in the discharge of official board duties and are reimbursed for travel and other necessary expenses.

The boards issue to health care practitioners licenses that are renewable on a biennial basis. See Appendix 3 for a brief description of each of the boards included in the scope of this audit, the number of licensees governed by each board, and the renewal fees for licenses or certificates issued by each board.

## Partial Organization Chart of the Department of Health

### Showing Functions Related to the Division of Health Related Boards




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## AUDIT SCOPE

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We have audited eight boards administratively attached to the Department of Health, Division of Health Related Boards, for the period July 1, 2008, through May 31, 2012. Our audit scope included a review the boards' business practices; internal controls; compliance with laws, regulations, and provisions of contracts or grant agreements; and prior audit findings. We focused our audit specifically in the areas of board self-sufficiency, state regulatory fees, continuing education monitoring, disciplinary actions on licensees, legal counsel turnover, the licensee application process, the licensing system, the cash office, conflict of interest policy, performance measures, and Title VI. In addition, we followed up on prior sunset performance

audit findings. The audit was conducted in accordance with generally accepted government auditing standards.

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## PRIOR AUDIT FINDINGS

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Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the actions taken to implement the recommendations in the prior audit report. The Department of Health filed its report with the Department of Audit on August 9, 2010. A follow-up of all prior audit findings related to the boards under our audit was conducted as part of the current audit.

### RESOLVED AUDIT FINDING

The current audit found that the Department of Health has corrected the previous audit finding concerning boards that did not meet financial self-sufficiency requirements as imposed by state law. The following eight boards were not self-sufficient at the time of the previous audit:

- Board of Dietitian/Nutritionist Examiners
- Council for Licensing Hearing Instrument Specialists
- Board of Medical Examiners
- Board of Athletic Trainers
- Board of Nursing
- Board of Examiners for Nursing Home Administrators
- Council of Certified Professional Midwifery
- Massage Licensure Board

While we performed sufficient work in this current audit to determine that these boards met self-sufficiency requirements for fiscal years 2009 - 2011, these boards were not included in the scope of this audit because they were not scheduled to terminate June 30, 2013.

### REPEATED AUDIT FINDINGS

We found that the Department of Health has not corrected two prior audit findings. These repeated findings, related to the Division of Health Related Board's lack of adequate methods and information to monitor licensing timeliness, and the Division of Health Related Board's use of the National Practitioner Data Bank, can be found on pages 26 and 38. We also performed a review of the Health Related Boards' ability to remain self-sufficient, and we noted an observation on page 6 that unexpected or unusual legal or investigative costs, administrative errors, and the Division of Health Related Boards' lack of policies or procedures to address deteriorating financial conditions could impact the boards' ability to maintain self-sufficiency.

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## OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

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### Business Processes

#### SELF-SUFFICIENCY

Section 4-29-121, *Tennessee Code Annotated*, requires each Health Related Board to maintain self-sufficiency. The boards achieve self-sufficiency by collecting licensure and penalty fees in an amount sufficient to cover the boards' operating expenditures for two consecutive years.

The objectives of our review of the Health Related Boards' self-sufficiency were to

- gain an understanding of the boards' requirements to maintain self-sufficiency;
- review the boards' financial records for fiscal years 2009-2011 and relevant board minutes to determine the boards' self-sufficiency, document the boards' reserve funds, and identify license fee changes;
- analyze the potential impact of expenditures related to the Office of Investigations, the Office of General Counsel, and board members' per diem, travel, and other routine expenses on the Health Related Boards' self-sufficiency;
- interview the Department of Finance and Administration's management to determine what statewide or departmental indirect costs were allowed by statute to be charged to the boards and review Edison transactions to determine if the boards were charged costs appropriately;
- determine whether the Division of Health Related Boards (DHRB) evaluated the boards' reserves on a routine basis, advised the boards about reserve levels, and considered establishing a threshold for reserves to help the boards achieve and maintain self-sufficiency; and
- determine if the state's current administrative structure for the Health Related Boards was adequate.

We reviewed Section 4-29-121, *Tennessee Code Annotated*, to gain an understanding of the self-sufficiency requirements. We reviewed the financial records of the boards for fiscal years 2009-2011 to document the status of the reserve funds and the self-sufficiency of the boards. We reviewed board minutes to determine which boards recently changed licensure fees. We analyzed expenditures of the Office of Investigations, Office of General Counsel, and board member expenditures to determine the effect on each board's self-sufficiency. We also interviewed the Health Related Boards' administrators to determine the effect of these

expenditures on self-sufficiency. We interviewed Department of Finance and Administration management to determine what indirect costs, if any, were allowed by statute to be charged to the Health Related Boards. We also reviewed Edison transactions to determine if the Health Related Boards were charged indirect costs contrary to those allowed by statute. We interviewed fiscal personnel and read board meeting minutes to determine if the Division of Health Related Boards evaluated reserves on a routine basis and communicated reserve level information to the boards. We interviewed division management to determine if the Division of Health Related Boards has considered setting a threshold for reserve balance to help the boards achieve and maintain self-sufficiency. We analyzed the current administrative structure of the state used to administer the Health Related Boards and interviewed department management to determine the adequacy of the current structure.

Based on our review of the relevant sections of *Tennessee Code Annotated*, we gained an understanding of boards' self-sufficiency requirements. Based on our review of the financial records, we determined that all eight Health Related Boards we audited met the self-sufficiency requirement for the period of fiscal years 2009-2011, and we documented the reserve funds for each of the boards. Based on our review of board minutes, we determined which boards had recently changed licensure fees. We determined that the accounting errors and the unusual and unexpected legal and investigation expenditures assessed to the Health Related Boards can cause the boards to fail to meet the self-sufficiency requirement. See further details in the Observation below. We determined that staff of the Department of Health's Division of Administrative Services complied with the law related to indirect costs. However, we found the Division of Administrative Services' staff mistakenly applied multiple expenditure transactions to the wrong boards. See further details in the Observation below.

We determined that the Department of Health's Budget Administrator evaluated and informed the boards of reserve amounts on at least an annual basis and that the Division of Health Related Boards did not have the authority to set a minimum reserve amount. Based on interviews with DHRB management, we determined the state's current administrative structure of the Division of Health Related Boards appeared adequate.

Based on our overall review and discussion with DHRB management, we found that the lack of policies and procedures to address the boards' deteriorating financial position as noted in the Observation below could impact the boards' self-sufficiency status.

**Observation 1: The Division of Health Related Boards' self-sufficiency could be affected by legal or investigative costs, administrative services errors, and the Division of Health Related Boards' lack of policies and procedures to address deteriorating financial conditions**

We reviewed the Health Related Boards' financial statements for fiscal years 2009-2011 and the state's accounting system queries that support the financial statements. We found that (1) unusual or unexpected legal and investigation costs could affect boards' self-sufficiency, (2) the Department of Health's Division of Administrative Services (DAS) Assistant 2 made several keying errors when recording expenditures for the Health Related Boards, and (3) the Division of

Health Related Boards did not have policies and procedures to address immediate actions to take when a board or commission's financial position begins to deteriorate.

### **Legal and Investigation Costs Could Affect the Boards' Self-Sufficiency**

Section 4-29-121, *Tennessee Code Annotated*, requires boards administratively attached to the Division of Health Related Boards within the Department of Health to "collect fees in an amount sufficient to pay the cost of operating the board," or be reported by the Commissioner of Finance and Administration to certain committees of the General Assembly. Boards who have failed to meet self-sufficiency requirements two consecutive years must come before a joint evaluation committee. Based on our interviews, testwork, and review of financial statements, we determined that all eight Health Related Boards covered in this audit were self-sufficient overall for fiscal years 2009-2011. However, based on interviews with the Division of Health Related Boards' Board Administrators, and our review of the boards' financial statements, we determined that the Legal and Investigation costs fluctuate from year to year and any unusual or unexpected investigations or lengthy legal cases could cause a board to fail to be self-sufficient.

### **Impact of Clerical Errors in the Department of Health's Division of Administrative Services**

Based on our review of financial transactions posted to the Health Related Boards' financial records, we found the DAS posted several transactions to the wrong Health Related Board. We determined that 31 refund transactions, totaling \$16,136, were charged to the Board of Podiatric Medical Examiners instead of the Board of Medical Examiners. Also, two Secretary of State expenditures for \$200 each (total \$400) were charged to the Division of Health Related Boards' Administration/Support instead of to the Board of Chiropractic Examiners. The Department of Health Fiscal Director stated the refunds and expenditures were keyed in error.

In November 2009, the Board of Podiatric Medical Examiners had decided to decrease licensure fees because its reserve fund appeared adequate and fees could be reduced while still sufficient to cover expenditures; however, given the reduction in fees combined with the previously unknown keying errors, the board was very close to failing the self-sufficiency requirements. The Department of Health's Division of Administrative Services should establish sufficient controls to ensure that all information keyed into Edison is entered correctly.

### **Impact of No Defined Actions When the Boards' Financial Position Begins to Deteriorate**

The Division of Health Related Boards should institute policies and procedures to address actions to be taken by the boards and board administrators when a Health Related Board's financial position begins to deteriorate. The policies and procedures should include criteria that, if met, would require the board to take steps to reverse the deterioration in financial condition or to explain why no action is necessary, and to document the discussions in the meeting minutes.

Financial deterioration criteria could include expenditures exceeding revenue for a fiscal year, a negative fund balance, or decrease in revenue over a period of time. The response of a board to one or more of these conditions may be to increase fees or reduce expenditures. In

addition, a board that has a large positive fund balance may wish to consider reducing licensure fees. Any management discussion and decisions should be recorded in the meeting minutes of the boards. By instituting policies and procedures to address these situations, the Health Related Boards could reduce the risk of failing to meet self-sufficiency requirements.

### **Self-Sufficiency in 2012 and 2013**

Based on our analysis of the boards' financial statements, we projected that seven of the eight Health Related Boards should be self-sufficient for fiscal years 2012 and 2013 barring any unforeseen or extraordinary occurrences. These seven boards include the Board of Chiropractic Examiners, the Board of Dentistry, the Board of Examiners in Psychology, the Board of Medical Examiners' Committee on Physician Assistants, the Board of Optometry, the Board of Podiatric Medical Examiners, and Board of Veterinary Medical Examiners. Based on the trend of revenue and expenditures, we projected that in fiscal year 2013, the Board of Communication Disorders and Sciences may have expenditures exceeding revenues.

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### **STATE REGULATORY FEE**

Section 4-3-1011(b)(2), *Tennessee Code Annotated*, states, "In addition to the board fee, each regulatory board shall also assess a state regulatory fee in such amount as is set each year in the general appropriations act. The state regulatory fee shall be in lieu of any allocation of indirect costs that would otherwise be allocated to such boards." Since 1989, when the state regulatory fee was created by the General Assembly, the Department of Finance and Administration through the Appropriations Act has kept the state regulatory fee at \$5 per licensee per year and has not changed this fee in more than 20 years.

The objectives of our review of the state regulatory fee were to

- review and gain an understanding of the applicable laws which authorized fee assessment by the Health Related Boards;
- interview the Division of Administrative Services staff and the Division of Health Related Boards staff to determine the methodology used to calculate and collect the state regulatory fee from licensees and the procedure to remit the fee to the Department of Finance and Administration;
- review *Tennessee Code Annotated* and board rules to determine if the prorating of the state regulatory fee was allowable and determine if the boards consistently prorated the fee<sup>1</sup>;

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<sup>1</sup> Prorated Fees – Based on discussion with a Division of Health Related Boards Board Administrator, back fees are paid on reinstatement applications because the licensee did not properly retire his/her license. The fees, including the state regulatory fee, are evenly divided (prorated) for the applicable period.

- document any differences between the amount of the state regulatory fee collected according to the Regulatory Boards System and the amount of the state regulatory fee collected and transferred to the Department of Finance and Administration according to Edison; and
- compare the amount of state regulatory fees collected to the amount of indirect costs incurred to operate the boards to determine the sufficiency of the state regulatory fee.

We reviewed and gained an understanding of the applicable statutes authorizing fee assessment by the Health Related Boards. We interviewed Division of Administrative Services staff and Division of Health Related Boards (DHRB) staff to determine the methodology used to calculate and collect the state regulatory fee from licensees, and the procedure to remit the fee to the Department of Finance and Administration. We reviewed *Tennessee Code Annotated* and board rules to determine if the prorating of the state regulatory fee was allowable and recalculated the amount of state regulatory fee, and interviewed board administrators to determine if the boards consistently prorated the state regulatory fee. We compared the amount of the state regulatory fee collected according to the Regulatory Board System reports to the amount of the state regulatory fee collected and transferred to the Department of Finance and Administration according to Edison. We compared the amount of state regulatory fee collected to the amount of estimated indirect costs incurred to operate the boards based on review of the Department of Health's Cost Allocation Plan for Fiscal Year 2010-2011.

We reviewed and gained an understanding of Section 4-1-1011(b)(2), *Tennessee Code Annotated*, which authorizes fee assessments by the Health Related Boards. Based on our discussion with the Division of Administrative Services' staff and DHRB staff, the DHRB staff collected the state regulatory fee along with renewal fees from licensees and held the state regulatory fee in a separate account until collections were remitted to the Department of Finance and Administration. We determined that neither the Division of Administrative Services staff nor DHRB staff independently calculated the state regulatory fee that should have been collected based on the number of new or renewed licenses to ensure the proper state regulatory fee was collected and remitted. In fact, the division's methodology to calculate and remit the state regulatory fee did not include verification or recalculation of the amount collected and transferred as described in the finding below. Based on review of *Tennessee Code Annotated* and board rules, we found that neither addressed whether the state regulatory fee could be prorated by DHRB staff processing license reactivations and late renewals. We also determined seven of the eight boards prorated the state regulatory fee and one board did not prorate the state regulatory fee. See further details in the finding below. Based on our testwork we found that the state regulatory fee as reported in the Regulatory Board System reports agreed to the amount recorded in Edison for fiscal year 2011. Additionally, as discussed in the finding below, the amount of state regulatory fees collected and remitted was not sufficient to cover the estimated indirect costs incurred to operate the boards as the law intended.

## Finding

### 1. **The Department of Finance and Administration has not properly analyzed the sufficiency of the state regulatory fee, and the Department of Health's Division of Health Related Boards has not ensured the accuracy of the state regulatory fee collections before submitting the fee to the Department of Finance and Administration**

In 1989, the General Assembly created the State Regulatory Fee (SRF) for the purpose of establishing a revenue source to cover the state's overhead (indirect costs) to administer the Health Related Boards.

Section 4-3-1011(b)(2), *Tennessee Code Annotated*, states

In addition to the board fee, each regulatory board shall also assess a state regulatory fee in such amount as is set each year in the general appropriations act. The state regulatory fee shall be in lieu of any allocation of indirect costs that would otherwise be allocated to such boards.

According to the law, the Department of Finance and Administration (F&A) will set the state regulatory fee in the state's general appropriations act annually. Once the fee is set, each board and commission administered by the Department of Health (DOH) is required by statute to collect the SRF from licensees and remit the total fee collections to the Department of Finance and Administration.

Management of the Department of Finance and Administration, in each of the annual appropriations bills since 1989, has kept the state regulatory fee at \$5 per license per year, or \$10 for a two-year license. In order to establish the SRF at a sufficient level, the Department of Finance and Administration, in coordination with the Department of Health, should periodically assess all of the state's (statewide and departmental) indirect costs associated with board operations.

However, the Commissioner of Finance and Administration has not changed the SRF in more than 20 years. Based on our interviews with F&A management, we determined that F&A has not properly certified the indirect costs associated with the boards' operations as required by law. Without knowing the total indirect costs, the Commissioner of F&A cannot establish the state regulatory fee at an amount sufficient to cover all indirect costs. For our audit period, we determined that the Health Related Boards' costs of operations exceeded the state regulatory fee collections.

### **Department of Finance and Administration's Responsibility for the State Regulatory Fee**

Section 4-3-1011(a), *Tennessee Code Annotated*, states, "The commissioner of finance and administration shall certify to the ... director of the division of health-related boards, as defined in Section 63-1-131, the amount of fees required by each board for the subsequent fiscal year based on the general appropriations act for that year." Management of the Department of

Finance and Administration has not performed this certification and could not tell us whether the amount of state regulatory fees collected was sufficient to cover the indirect costs. Also, according to the Department of Finance and Administration's Senior Advisor for the Division of Budget, for at least the last 14 years, the Department of Finance and Administration has not performed an analysis of the regulatory fee to determine its sufficiency, even though statute requires certification.

The Department of Finance and Administration annually provides the statewide indirect costs to the Department of Health so that the department can include the statewide indirect costs in its own cost allocation plan for its divisions. Based on our review, we found that the Department of Health appropriately did not allocate the statewide indirect costs to the Division of Health Related Boards. However, these statewide costs as well as the department's own indirect costs are critical in determining the sufficiency of the state regulatory fee and setting the fee at an amount sufficient to offset all the state's indirect costs derived from board operations. Therefore, we believe it is the responsibility of both departments to analyze all indirect costs so the Commissioner of Finance and Administration can properly establish the state regulatory fee.

We also determined that even though the Health Related Boards collect the SRF and remit the revenue to F&A, representatives of F&A's Division of Budget stated they do not apply the SRF revenue to specific indirect costs of the Health Related Boards but that the SRF revenue is a general fund revenue which is applied to any general fund costs. Therefore, the Department of Health's Division of Health Related Boards does not receive the direct benefit of the SRF revenue to offset its own departmental indirect costs of board operations.

We reviewed the Department of Health's Cost Allocation Plan for Fiscal Year 2010-2011 and determined that Department of Health's Division of Administrative Services did not have access to a funding source to cover an estimated \$1,501,688 of indirect costs resulting from Health's operations for the Division of Health Related Boards. In comparison, the amount of the state regulatory fee collected and remitted by DHRB was \$1,310,851. Therefore, the amount of state regulatory fee collected was \$190,837 less than the indirect costs identified.

### **Fiscal Year 2013 Additional Recurring Appropriation to Offset Indirect Costs**

In the fiscal year 2013 appropriations bill the General Assembly appropriated an additional \$264,000 to the Department of Health to help compensate the department for its indirect costs which by law cannot be allocated to the Division of Health Related Boards or to the Boards themselves. According to management of the Department of Health, the supplemental appropriation was intended to cover the indirect costs of the Assistant Commissioner's Office. Furthermore, the supplemental appropriation is derived from general tax revenue collections. As stated above, we believe the General Assembly intended the SRF to provide the state with sufficient revenue from active licensees to cover all indirect costs of board operations, thereby eliminating the need of supplemental state appropriations. Since the SRF is not specifically assigned as revenue to cover indirect costs and neither the Department of Finance and Administration nor the Department of Health perform an analysis of indirect costs in comparison to the amount of SRF revenue collected, then there is no assurance that the current SRF is sufficient to cover indirect costs as intended by statute.

## **The Process Used to Collect the State Regulatory Fee as of May 2012**

We also discussed the process of collecting the state regulatory board fee with the board administrators and the Department of Health's Division of Administrative Services staff. We determined that DHRB collects the state regulatory fee as a separate fee in addition to the initial licensee fee or renewal fee. DHRB staff appropriately coded the amount collected for the state regulatory fee in Edison and transferred the full amount collected to the Department of Finance and Administration. However, neither the Division of Administrative Services nor the Division of Health Related Boards reconciled or verified that the amount of state regulatory fees collected and transferred was the amount that should have been collected based on the number of licenses issued or renewed. Therefore, DHRB did not ensure the full amount of state regulatory fees was collected and remitted to the Department of Finance and Administration.

## **Health Related Boards Inconsistently Prorated the State Regulatory Fee**

We reviewed the fiscal year June 30, 2010, and June 30, 2011, state regulatory fee DHRB collected and transferred to the Department of Finance and Administration, and determined that seven of eight Health Related Boards (87%) we audited routinely prorate the state regulatory fee when they process the license reactivation and delinquent renewals. Based on our review of *Tennessee Code Annotated* and the *Rules of the Tennessee Department of Health Division of Health Related Boards*, we found that neither authoritative source addressed whether the state regulatory fee could be prorated. However, the statute and rules do address prorating licensure fees in general. The following language was in Section 63-1-107(a)(1), *Tennessee Code Annotated*,

However, during a transition period, or at any time thereafter when the board determines that the volume of work for any given interval is unduly burdensome or costly, either the licenses or renewals, or both of them, may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under the alternative interval method for a period of other than twenty-four (24) months shall be proportionate to the annual fee and modified in no other manner, except that the proportional fee shall be rounded off to the nearest quarter of a dollar (25¢).

According to the *Rules of the Tennessee Department of Health Division of Health Related Boards*, Chapter 1200-10-1-.10 Licensee Renewal Applications, part (d), states prorated fees are "the fees to be assessed to cover the renewal of licenses during any transitional period required to bring a licensee into a twenty-four (24) month renewal cycle."

We discussed the process of prorating fees with the board administrators. The Board of Dentistry Director, who was also DHRB's Information Technology (IT) Coordinator, stated that the Regulatory Board System (RBS) computer program automatically calculates the amount of fees owed for initial licensures and license renewals. However, for license reinstatements and reactivation applications, RBS calculates the amount of current year's licensure fees due; then staff of the Division of Health Related Boards manually calculate the unpaid renewal fees from any prior period and prorate the unpaid fees for periods less than 24 months. Some boards

prorate the SRF during this process while other boards do not. The IT Coordinator could not explain why some boards prorated the state regulatory fee at the same time they prorated the renewal fee. The Director mentioned the rule noted above gives the Health Related Boards the authority to prorate fees and believed that authority includes the state regulatory fee. We believe all boards should be required to assess the SRF consistently.

### **Recommendation**

The Department of Finance and Administration, in conjunction with the Department of Health's Division of Health Related Boards, should biennially compare the amount of state regulatory fees collected to the amount of indirect costs incurred through board operations and the Commissioner of Finance and Administration should establish the state regulatory fee at an amount sufficient to cover all the state's indirect costs derived from the Health Related Boards' operations. In addition, so that general tax collections are not used to fund indirect costs of Health Related Boards' operations (since all boards are required by law to be self-sufficient) and because the General Assembly has already established statute creating the state regulatory fee to cover all Health Related Boards' indirect costs, the General Assembly may wish to consider alternative actions regarding the state regulatory fee, as outlined in "Recommendation for Legislative Consideration" below and also repeated on page 40.

The Department of Health's Division of Administrative Services should reconcile or verify that the amount of state regulatory fees collected and remitted to the Department of Finance and Administration agrees to an independent calculation of the number of licenses issued or renewed, multiplied by the annual state regulatory fee. The Director of the Division of Health Related Boards should enforce consistent assessment of the SRF or seek legislative clarification regarding the proration of the state regulatory fees. We noted a Recommendation for Legislative Consideration regarding prorating the state regulatory fee below, which is also repeated on page 40.

### **Recommendation for Legislative Consideration**

The General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of Health Related Boards' operations.

The General Assembly may wish to consider legislation to

- amend or repeal Section 4-3-1011(b)(2), *Tennessee Code Annotated*, regarding the state regulatory fee based on the following three options:
  - Option 1 – The General Assembly may wish to consider if the state regulatory fee should be earmarked and established at an amount sufficient to cover all indirect costs of board operations. To accomplish this the General Assembly should amend the current statute to clarify its intent and require both the Commissioners of the Department of Finance and Administration and the Department of Health to periodically analyze and certify all indirect costs

incurred at a statewide and department level associated with the operations of the Health Related Boards and set the fee accordingly.

This requirement would eliminate the General Assembly's need to provide recurring supplemental state appropriations (which begins for fiscal year 2013) to cover indirect costs when the state regulatory fee is insufficient.

- Option 2 – The General Assembly may wish to consider eliminating the state regulatory fee in Section 4-3-1011(b)(2), *Tennessee Code Annotated* altogether and require the Health Related Boards to become fully self-sufficient as implied by current legislation under Section 4-29-121, *Tennessee Code Annotated*.
- Option 3 – Should the General Assembly wish to continue to collect the state regulatory fee and use other general fund tax revenue (when the state regulatory fee collections are insufficient) to cover the indirect costs associated with the Health Related Boards' operations, the General Assembly should amend the current legislation to clarify its intent.

Under the current system, Division of Health Related Boards collects the \$5 state regulatory fee from licensees and remits the fee to the Department of Finance and Administration as general fund tax revenue, in lieu of the state or oversight department charging the boards for any indirect costs incurred from the boards' operations.

As noted in Finding 1, the current process is questionable because the Department of Finance and Administration and the Department of Health have not assessed the sufficiency of the state regulatory fee to cover fully the statewide and departmental indirect costs to operate the Health Related Boards. In fact, the Commissioner of Finance and Administration has not changed the fee since it was established in 1989. We determined the state regulatory fee is insufficient to currently fund all of the state's indirect costs to maintain the Health Related Boards, and as a result, the General Assembly has approved a new recurring supplemental state appropriation for the Department of Health for the purpose of covering indirect costs when indirect costs exceed the state regulatory fee collections. As a result, in addition to charging licensees the state regulatory fee, essentially all the state's taxpayers are funding the Boards' indirect costs through general appropriations from general fund tax revenue. For the boards to be truly self-sufficient, all costs should be borne by them, including all indirect costs.

- If the State Regulatory Fee is not repealed as discussed in Option 2 above, the General Assembly should clarify whether the state regulatory fee is subject to prorating in the same way that license renewals are subject to prorating in Section 63-1-107-(a)(1), *Tennessee Code Annotated*. Legislation should also address whether reinstatement and reactivation applicants should pay one \$10 state regulatory fee amount for the whole period or \$10 for every two-year period that the license was not active.

## **Managements' Comments**

### **Department of Health**

We concur with the portion of the recommendation that is specifically related to the Department of Health. However, we do not agree with certain aspects of the discussion contained in the body of the finding.

The department concurs that the state regulatory fee has been inconsistently prorated and will explore options to ensure consistent enforcement and assessment of the state regulatory fee. The department does perform reconciliation processes to ensure that the amount of state regulatory fees collected is remitted to the Department of Finance and Administration. However, these processes include the proration of state regulatory fees. Clarification may be necessary to determine the validity of prorating state regulatory fees.

The department does not agree with the audit's assessment of the role of general tax collections in supporting Health Related Board operations. The state regulatory fee is not earmarked by law. It is considered general tax revenue and apportioned to the general fund by law. The administrative divisions of the Department of Health receive general fund appropriations so that no indirect costs are passed on to the Health Related Boards. As a matter of law, the state regulatory fee is in lieu of any indirect cost charges to the Health Related Boards. Although the state regulatory fee is not earmarked, the administrative divisions of the department are funded by general tax collections, comprised of many sources including the state regulatory fee. Therefore, the administrative divisions do have access to the state regulatory fee and other general fund sources to support administrative operations which prevents the passage of indirect costs to the Health Related Boards.

### **Department of Finance and Administration**

We concur. We have not analyzed the sufficiency of the state regulatory fee. We will analyze the sufficiency of the state regulatory fee at any time that the Governor wants to consider making a budget recommendation to increase the fee or at any time the General Assembly considers increasing the fee.

Our perspective and reservations on some of the audit comments are as follows:

We agree with the comment that the Department of Finance and Administration has not performed the annual certification of regulatory board fees required by TCA Section 4-3-1011(a) for each regulatory board. In the Budget Document, board license fees are estimated for each individual board, but the appropriations for regulatory boards are single line items from license fees for the Division of Regulatory Boards (C&I Dept.) and the Health Related Boards (Health Dept.). Given that, we provide a work program (enacted budget) as provided by budget law, including all the appropriations act adjustments affecting the Division of Regulatory Boards and the Health Related Boards. This is as far as our certification has gone. As a practical matter, the Department of Finance and Administration does not have the detail on individual board budgets

and licensees that would be necessary to provide a certification of fee requirements for each board.

We will suggest to the Administration that it propose that the law be changed to provide that the departments of Commerce and Insurance and of Health certify to the Commissioner of Finance and Administration each board's fee requirements, based upon the work program provided by F&A, that the Commissioner of F&A approve the fee requirements, and that the departments of Commerce and Insurance and of Health provide the approved certification of fee requirements for each board to the directors of Regulatory Boards and Health Related Boards.

The Department of Finance and Administration and its commissioner, and the departments of Commerce and Insurance and of Health, do not set the state regulatory fee; it annually is set by law in the general appropriations act. See Public Acts of 2012, Chapter 1029, Section 15, Item 10.

Although analysis of the sufficiency of the state regulatory fee to offset indirect costs of the regulatory boards is appropriate, we do not agree with the statement that the statute requires the analysis. The statute simply requires that a fee be set and that the fee be in lieu of any indirect cost charges.

The audit comments under the heading "Fiscal Year 2013 Additional Recurring Appropriation to Offset Indirect Costs" argue that assigning the state regulatory fees to offset indirect costs or increasing the state regulatory fee can eliminate the need for state appropriations. That is not correct. The general fund collects the state regulatory fee in lieu of the indirect cost charges to the boards. A state appropriation from the general fund to the administrative functions of the departments of Commerce and Insurance and of Health always will be necessary in order to hold the regulatory boards harmless from indirect cost charges of those departmental administrative functions.

The state regulatory fee is a tax apportioned to the general fund. The regulatory boards do not receive an appropriation from the general fund. The administrative divisions of the departments of Commerce and Insurance and of Health receive general fund appropriations so that they will not charge indirect costs to the regulatory boards. That is because, as a matter of law, the state regulatory fee is in lieu of any indirect cost charges to the regulatory boards. Therefore, general fund revenue must be used to fund the appropriations made to the administrative divisions of the two departments, which are appropriations made in lieu of indirect cost charges to the regulatory boards.

Because the setting of the fee is a matter of law, we would agree that the sufficiency of the fee to offset indirect costs should be analyzed at the time the Governor wants to recommend or the General Assembly intends to enact a state regulatory fee increase. We do not think that conducting the study each year or every two years would be a good use of staff resources.

In the audit of Health Related Boards, auditors say that an appropriation of \$264,000 in the 2012 appropriations act was not sufficient to offset indirect costs in the Department of Health. We would point out, however, that the \$264,000 appropriation was an additional

amount, in addition to a pre-existing base recurring appropriation to the administrative functions of the Department of Health, which also is made in lieu of indirect cost charges to the Health Related Boards. The \$264,000 is the amount estimated as necessary to resolve the indirect-cost charge issue.

### **Recommendation for Legislative Consideration**

We believe that the state regulatory fee should remain in place but, for reasons discussed above, do not agree with the statement in Option 1 that setting the state regulatory fee at an amount sufficient to offset all indirect costs would eliminate the need for appropriations to the administrative divisions of the two departments. The appropriations to the administrative divisions are necessary in order to hold the regulatory boards harmless from indirect cost charges internal to the two departments.

We also think that the appropriate time to examine the sufficiency of the state regulatory fee is at the time that the Governor intends to recommend or the General Assembly to enact a fee increase and that a study and certification every two years would not be a good use of staff resources.

We do not recommend legislative Option 2, which would eliminate the state regulatory fee and implement indirect cost charges to the regulatory boards. The state regulatory fee is a simple method of collecting from the licensees the approximate indirect cost of having the regulatory boards. Using the state regulatory fee method is much simpler than using the large number of accounting transactions that would be necessary to allocate indirect cost charges to each of the many regulatory boards.

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### **CONTINUING EDUCATION MONITORING**

The Division of Health Related Boards' rules require licensees to obtain continuing education hours. The Division of Health Related Boards was responsible for overseeing the monitoring of the continuing education requirements of all boards' licensees.

The objectives of our review of continuing education monitoring efforts were to

- determine DHRB's procedures for monitoring continuing education hours of licensees and document the required continuing education audit percentage for the eight boards under audit;
- determine if DHRB's Continuing Education Compliance Unit followed the continuing education audit selection process as described;
- re-perform the audit selection for March 2011 to determine if DHRB's Continuing Education Audit Unit properly followed the selection method and whether the method

was effective and reasonable for monitoring licensees' compliance with continuing education requirements;

- test a sample of 65 licensees chosen for audit out of a population of 2,354 licensee audits performed from the period of January 1, 2011, to December 31, 2011, to determine if DHRB completed the continuing education audits timely and properly; and
- review DHRB's Financial Integrity Act Risk Assessment as it related to the continuing education monitoring process to determine that risks were identified and addressed.

We reviewed the Continuing Education and Continuing Competency Audit sections of the Health Related Boards' Administrative Policies and Procedures to determine the procedures for monitoring continuing education hours of licensees and document the required continuing education audit percentage for the eight boards under audit. We discussed the continuing education process with the Director of the Continuing Education Compliance Unit and the Continuing Education Audit Coordinator to determine if the continuing education audit selection process was followed properly. We re-performed the audit selection for March 2011 to determine if the audit selection method was properly followed. We used the audit selection re-performance to determine the effectiveness and reasonableness of the audit selection method used by the Continuing Education Compliance Unit. We tested a sample of licensees who were audited during the period January 1, 2011, through December 31, 2011, to determine if the audits were completed and timely. We reviewed DHRB's Financial Integrity Act Risk Assessment as it related to the continuing education monitoring process to determine that risks were identified and addressed.

We determined DHRB's procedures for monitoring continuing education hours of licensees and documented the required continuing education audit percentage for the eight boards. Based on our interviews, review of policies and procedures, and testwork, we determined that DHRB's Continuing Education Compliance Unit completed the audit selection process properly. Based on re-performance of the audit selection method, we determined the audit selection method was properly performed. Based on our testwork of licensees chosen for audit, we determined the audits were timely and properly completed; however, we found a minor discrepancy in the audits selected. This discrepancy is discussed in detail in the observation below.

We reviewed the 2011 *Financial Integrity Act Risk Assessment* and found that although department management listed Strategic Objective #1 as "All licensed healthcare professionals meet statutory and regulatory requirements," management did not identify any risks or controls over the continuing education monitoring function of the Health Related Boards in its Risk Assessment.

Overall, we found no significant weaknesses or noncompliance in this area; however, we do suggest that DHRB's Continuing Education Compliance Unit improve its efficiency and effectiveness of selecting licensees to audit, as noted in the Observation.

## **Observation 2: The Division of Health Related Boards' Continuing Education Compliance Unit could select audits more efficiently and effectively**

Based on our interviews, review of policies and procedures, and testwork, we determined that the Continuing Education Compliance Unit (CECU) properly and timely completed continuing education audits, according to the division's written and stated policy. However, we discovered that in April 2011 the CECU selected an incorrect number of licensees of the Board of Veterinary Medical Examiners. The Board of Veterinary Medical Examiners was to audit 5% of renewals based on board rule. The Continuing Education Compliance Coordinator only selected three licensees for audit in April when four licensees were required to be selected.

We believe that the manual audit selection method utilized by the unit may have contributed to this error. The Continuing Education Compliance Coordinator calculates the number of licensees to be audited from each board's profession by applying the audit selection percentage to a list of renewals obtained for each board. The Coordinator then manually selects the sample of licensees subject to audit. The selection process was highly susceptible to human error. The Continuing Education Coordinator admitted that the manual process of selecting licensees to audit for large boards can be confusing and lengthy.

The Director of the Continuing Education Compliance Unit stated that Versa, the new computer system, will have the capability to choose a random sample of licensees for audit. Until then, the Director of the Continuing Education Compliance Unit may wish to use sampling software to reduce the chance of errors and the time spent selecting licensees for audit.

Management's selection method increased the division's risk that the sample could be selected in error or even manipulated. The 2011 Financial Integrity Act Risk Assessment for Health Related Boards did not identify risks associated with or controls over the Continuing Education Monitoring function of Health Related Boards.

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## **DISCIPLINARY ACTION ON LICENSEES**

The Division of Health Related Boards is required to oversee disciplinary actions placed on licensees by the each of the Health Related Boards.

The objectives of our review of disciplinary actions were to determine

- the nature of the offenses committed by licensees, which boards had repeat offenders, and the type of offenses that were repeated;
- if the boards assigned harsher punishments to repeat or multiple offenders;
- whether the boards applied penalty fees consistently for the same offenses; and
- if DHRB reported unlicensed practitioners on the Health Related Boards website.

For the eight boards we audited, we reviewed the monthly Disciplinary Action Reports for the period October 1, 2009, to June 30, 2011, and analyzed disciplinary actions taken by each board to determine which boards have repeat offenders and what type of offenses were repeated. We interviewed key board members and staff of boards with multiple offenders to assess the level of punishment for multiple offenders. For the eight boards, we reviewed licensees' agreed citations<sup>2</sup> or individuals who had committed the same offense to determine if they received similar penalties. We reviewed the documented offenses to determine instances where an individual was punished for practicing without a license. We reviewed the Health Related Boards' website and Licensure Verification section to determine if individuals identified as unlicensed practitioners were listed.

Based on our review of the Disciplinary Action Reports, we documented the nature of the offenses committed by licensees, the boards which had repeated offenders, and the type of offenses repeated. Based on our interviews and reviews, we determined that the Health Related Boards assigned harsher punishments to multiple offenders; penalty fees were issued consistently by the board for the same offense; and unlicensed practitioners were reported on the Health Related Boards' website through the Disciplinary Action Reports; however, these reports were cumbersome and could discourage an individual from searching for a suspected unlicensed practitioner on the website.

The Division of Health Related Boards may wish to develop and maintain a separate list on the Health Related Boards' website of individuals who are disciplined for operating without a license. Currently, practitioners' status can be found on the Health Related Boards' Verification website. However, whether someone has been disciplined for operating without a license can only be found in the monthly Disciplinary Action Reports. If DHRB cannot provide the public with an efficient method to identify unlicensed professionals, then DHRB may be negligent in its mission to safeguard the health, safety, and welfare of Tennesseans by requiring those who practice health care professions within this state to be qualified. A separate list as described would allow citizens to easily determine whether a practitioner is unlicensed.

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## **LEGAL COUNSEL TURNOVER**

The Office of Legal Counsel provides legal support and represents the different Health Related Boards during board meetings and legal proceedings. During the course of our audit, we noted high legal counsel turnover within the office.

The objectives of our review of the impact of legal counsel turnover on DHRB were to determine

- the turnover rate associated with the legal counsel;

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<sup>2</sup> Agreed citations are statements signed by licensees for failing to follow board rules.

- if attorneys providing legal counsel were frequently reassigned from one board to a different board;
- DHRB’s reason for the high attorney turnover; and
- whether the attorney turnover caused inconsistent disciplinary actions.

We reviewed the list of attorneys who separated from the Department of Health’s Office of Legal Counsel during the period November 1, 2009, to March 16, 2012, and calculated the turnover rate for that period. We reviewed the board minutes to determine how often the board met and if attorney reassignments appeared to be excessive. We reviewed the personnel files for attorneys who separated from the department and documented the length of employment and reason for leaving. We compared attorney turnover to consistency of disciplinary actions.

Based on our interviews, reviews, and testwork, we determined that the office had experienced a very high attorney turnover rate of 94 percent during the 28-month period reviewed and that the high turnover caused reassignments of cases to new attorneys. The average length of employment of an attorney with the department was 3.8 years. Also, our review of board minutes substantiated that attorney reassignments appeared to be excessive. Based on interviews with Office of Legal Counsel personnel, the reassignments of attorneys from one board to another were primarily driven by turnover. Based on our review of personnel files, most attorneys resigned for other job opportunities or for personal reasons. Based on our review of the disciplinary actions, we determined that penalty fees were issued consistently even with high turnover of attorneys. Therefore, we concluded the boards’ legal cases and disciplinary actions were not negatively affected by the high turnover of attorneys.

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## **LICENSEE APPLICATION PROCESS**

In order for each board with DHRB to issue a licensee to an applicant, the applicant must meet board requirements and submit an application with required documentation. The board administrators review the applications and submit recommended applicants to the boards for approval.

The objectives of our review of the licensee application process were to determine whether

- the board administrators verified that DHRB staff obtained required information from licensees (exams, background checks, references, transcripts) so the board administrators and board members could properly approve applications;
- the statute that required that an applicant “must successfully complete at least a one-year residency program approved by the Council on Podiatric Medical Examiners or its successor organization” was still applicable;

- the rule [Rule 0460-03-.01 (10)] for the Board of Dentistry that requires dental hygienist applicants to “apply within 90 days of completing the requirements for licensure or the board may choose to deny a subsequent application,” was still applicable; and
- the DHRB properly addressed the risks related to the licensee application process in its Financial Integrity Act Risk Assessment.

We tested a sample of 62 initial license applications that were reviewed by board administrators during calendar year 2011 to determine if the applications were properly approved and the required information (exams, background checks, references, transcripts) was obtained and approved by the board administrator and board members. We discussed with the board attorneys, the DHRB Director, and board administrators whether the Board of Podiatric Medical Examiners statute and Board of Dentistry rule were still applicable. We reviewed the Financial Integrity Act Risk Assessment to determine whether management had addressed controls over the license application process.

Based on the testwork performed, we determined that in all material respects, license application files had the required documentation. Based on discussion with the board attorneys, DHRB Director, and board administrators, we determined the statute related to the Council on Podiatric Medical Examiners and the rule related to the Board of Dentistry were still applicable and may be used in the future.

We reviewed the Financial Integrity Act Risk Assessment to determine whether management of the Department of Health addressed the risks and mitigating controls over the license applications. In Strategic Objective #1, management stated the objective that, “All licensed healthcare professionals meet statutory and regulatory requirements”; however, there were no specific procedures included to implement this objective. The Risk Assessment was used by management to create policies to address and mitigate the risks identified and was also utilized by Department of Health Internal Audit when planning an audit. In order to be reliable and useful for Health Related Boards’ management and Internal Audit, the Risk Assessment must adequately address all risks and related controls over the license application process.

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## **Internal Controls**

### **LICENSING SYSTEM**

The Division of Health Related Boards utilizes a computerized licensing system, the Regulatory Boards System (RBS), to track license applications, active licensees, license renewals, and licensee payments.

Our objectives were to

- gain an understanding of the RBS controls, and

- determine any deficiencies in system controls.

We interviewed the Health Related Boards Information System Specialist, the Application Services Director, and the Director of the Office of Information Technology to gain an understanding of RBS controls and deficiencies. Due to the sensitive nature of the finding, we cannot reveal our full objectives or the work performed.

### Finding

**2. The Department of Health’s Director of the Office of Information Technology did not develop adequate policies and procedures to assess and mitigate the risks associated with Information Systems security, increasing the risk of fraudulent activity**

The Division of Health Related Boards uses the Regulatory Boards System as a licensing system to track license applications, active licensees, license renewals, and licensee payments. We reviewed the division’s policies and procedures and system controls in the Regulatory Boards System. Due to the sensitive nature of the finding, we cannot reveal our full objectives or the work performed.

Based on review of policies and procedures, interviews with the Health Related Boards Information System Specialist, the Application Services Director, and the Director of the Office of Information Technology, we determined that the Director of the Office of Information Technology had not developed adequate policies and procedures governing critical aspects of the Regulatory Boards System.

The wording of this finding does not identify specific vulnerabilities that could allow someone to exploit the department’s system. Disclosing those vulnerabilities could present a potential security risk by providing readers with information that might be confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided department management with detailed information regarding the specific vulnerabilities, and we identified our recommendations for improvement.

Additionally, we noted during our review of management’s Financial and Integrity Act Risk Assessment that Information Technology Services management identified the risks related to this finding. Management documented in the Risk Assessment that the control activity was a function of the Office of Information Technology Services; however, we believe the Division of Health Related Boards shared responsibility for this area. Management did not include risks associated with all responsible parties in the risk assessment.

## **Recommendation**

The Director of the Office of Information Technology should ensure that these conditions are remedied through policies and procedures that encompass all aspects of the finding. The Director of the Office of Information Technology should implement effective controls to ensure compliance with applicable requirements, assign staff to be responsible for ongoing monitoring of the risks and mitigating controls, and take action if deficiencies occur. The Assistant Commissioner of the Division of Health Related Boards should ensure that all risks are properly identified in the Risk Assessment.

## **Management's Comment**

We concur. The Office of Information Technology has already taken action to implement policies and procedures to correct the internal control issues identified by the auditor in regard to the RBS system.

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## **CASH OFFICE**

The Division of Health Related Boards is responsible for overseeing a cash office, which receives funds on behalf of all Health Related Boards.

The objectives of our review of controls over cash collected within the cash office were to

- gain an understanding of the cash receipting, recording, and reconciliation process and related controls to ensure proper segregation of duties;
- determine if the division performed regular reconciliations between the Regulatory Boards System (RBS) data and Edison (the State of Tennessee accounting system);
- determine if the cash office staff maintained adequate supporting documentation for revenue transactions posted to Edison and to RBS, if cash received was deposited in accordance with Finance and Administration's Policy 25, "Deposit Practices," if the cash office staff posted the proper cash receipts to RBS, and if staff assigned the receipts to the correct revenue category;
- assess the method used to track revenues and receivables related to penalties, case costs<sup>3</sup>, and uncollectible penalty fees and case costs to determine what controls exist to ensure case costs and penalties were collected prior to license reinstatement;

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<sup>3</sup> Case costs are costs assessed to licensees for penalties resulting from an investigation performed to establish whether the licensee had violated board rules.

- determine the difference between “unassigned”<sup>4</sup> and “miscellaneous”<sup>5</sup> revenue and to determine what conditions created the balance in each category at the end of the fiscal year;
- determine if DHRB identified cash receipt risks and related cash controls in management’s Financial Integrity Act Risk Assessment and implemented the controls as described; and
- follow up on the prior audit finding.

We performed a walkthrough of the cash office and interviewed the cash office supervisor to gain an understanding of the cash receipting, recording, and reconciliation process to ensure proper segregation of duties. We discussed with the Department of Health Fiscal Director 1 and Assistant Commissioner for the Division of Health Related Boards the regular reconciliation process between RBS and Edison. We tested a sample of cash office revenue transactions posted to Edison and transactions posted to RBS (two separate samples) to ensure that the transactions were adequately supported, cash received was deposited intact and in a timely manner, and cash receipts were properly posted to RBS and assigned to the correct category.

We interviewed the Office of Investigations Disciplinary Coordinator to gain an understanding of the method used to track revenues and receivables associated with civil penalties and case costs to ensure controls were in place to prevent staff from reinstating a license before the case costs and penalties have been collected.

We interviewed the Board of Dentistry Director (this director was on the committee to implement the new regulatory boards system) to determine the differences between “unassigned” and “miscellaneous” revenue and the types of transactions that resulted in the balances at fiscal year-end.

We reviewed the Health Related Boards’ 2011 Financial Integrity Act (FIA) Risk Assessment, the Division of Administrative Services-Fiscal Services’ Risk Assessment, and the Office of Information Technology Services’ Risk Assessment. We interviewed relevant personnel to determine whether management identified cash receipts risk and related controls and to determine if the controls listed in each Risk Assessment were in practice as described.

We interviewed the Disciplinary Coordinator of the Division of Health Related Boards, Office of Investigation and reviewed the prior audit finding to determine if any corrective action had been performed.

Based on our walkthroughs, interviews, and testwork, we

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<sup>4</sup> All revenue received by the cash office is automatically placed in an “unassigned” revenue category until the board administrator assigns the revenue to the proper category by matching the amount collected to an approved license application.

<sup>5</sup> “Miscellaneous” revenue consists of amounts for case costs, civil penalties, and unidentified receipts and receipts for applications that have been closed or denied.

- gained an understanding of the cash receipting, recording, and reconciliation process, and found inadequate segregation of duties in the cash office, which is discussed in the finding in this section;
- determined that DHRB staff did not reconcile RBS with Edison, and according to the Fiscal Director, no one reconciled the amount of license fees collected to the number of licenses issued, as noted in the finding;
- determined that cash receipt transactions were adequately supported, cash received was deposited intact and in a timely manner, except as noted in the finding in this section, and receipts were properly posted to RBS and assigned to the correct category;
- assessed the method used to track revenues and receivables associated with civil penalties and case costs before reinstating a license and found that staff did not ensure the case costs and penalties were collected – the details of this lack of controls are discussed in the finding below;
- determined that the “unassigned” and “miscellaneous” revenue categories were used as intended, and normal operations can cause a balance in either account at the end of a fiscal year;
- determined that management had failed to correctly and adequately identify each related risk in several areas of the risk assessment, which is discussed in detail in the finding in this section; and
- determined the prior audit finding was partially corrected, and we repeated the condition related to management ineffectively tracking case costs and penalties and related segregation of duties in the finding below.

### **Finding**

**3. The Division of Health Related Boards did not properly prepare its risk assessment and did not have adequate controls in place to mitigate the risks of inadequate segregation of duties, reconciliations not being performed, and ineffective tracking of case costs and civil penalties**

The Department of Health provides the Health Related Boards’ licensees three payment options for license renewals. The Department of Health’s Division of Health Related Boards oversees a cash office, which collects revenue from licensees for initial licensee applications and payments for penalties and case costs. The Department of Health also has a revenue lockbox arrangement with the Department of Revenue and contracts with a third-party vendor to process online license renewals. For the 2011 calendar year, the cash office processed 4,519 transactions (approximately 5%) of the initial and renewal license revenue, while the Department of Revenue

processed 38,933 transactions (40%), and the third-party vendor processed 55,036 transactions (55%) of the license revenue activity.

The scope of this finding relates only to the Department of Health's Division of Health Related Boards' cash office. We did not include the Department of Revenue or the third-party vendor in the scope of this audit.

### **The Cash Office Lacked Adequate Segregation of Duties**

During our audit period, the cash office consisted of four employees: a Clerk 2, a Clerk 3, an Accounting Technician 2, and a Supervisor. Based on our walkthrough of the cash receipting process and interviews with the Cash Office Supervisor, we found that the duties of each cash office employee overlapped and that management did not adequately segregate the duties of cash receipting, cash deposit, and recording the revenue to iNovah (the cashiering system). In addition, in light of the small staff size, management did not appropriately review the cash functions as a compensating control for the small staff size.

The Department of Health's Office of Internal Audit released an audit report in May 2012 which also reported a finding involving the cash office's lack of segregation of duties. When proper segregation of duties is not achieved and management does not perform adequate compensating reviews, there is an increased risk that an error or fraud could occur and would not be detected in a timely manner.

### **The Division of Health Related Boards' Staff Did Not Perform Reconciliations**

The Division of Health Related Boards' staff did not reconcile the Regulatory Boards System (RBS) to Edison, the state's accounting system. Specifically, we found that DHRB staff had not reconciled the amount of licensure fees collected for each board to the number of licenses issued by that board, nor did DHRB staff reconcile the total revenue collected for all boards to the total number of licenses issued. Without reconciliations between RBS and Edison, DHRB could not guarantee that all revenue is collected and deposited and that revenue information recorded in Edison is accurate and complete, increasing the risk that errors and fraud will not be detected timely.

**As stated in the prior audit, the Division of Health Related Boards' Office of Investigations did not have a computerized tracking system to track disciplinary cases, assessed case costs, and civil penalties, and the Office of Investigations lacked proper segregation of duties over the collection of assessed costs and penalties, which increased the risk that costs and penalties would not be collected and errors or fraud would not be detected timely.** Based on our follow-up of the prior audit finding, we determined that the Disciplinary Coordinator of the Division of Health Related Boards, Office of Investigations, used an independent spreadsheet to track disciplinary cases but did not have an effective method to track the assessed case costs and civil penalties owed by licensees. To determine the amounts of assessed case costs and civil penalties owed by a disciplined practitioner, the Disciplinary Coordinator must manually review the case file to obtain the civil penalty cost sheet and the case

cost sheet. Without an automated method to track the costs, DHRB is at risk of failing to identify and pursue outstanding debts of disciplined practitioners.

We also followed up on the prior finding to determine whether DHRB has addressed adequate segregation of duties related to the receipt of case costs and civil penalties. We found that the current Director of Investigations for DHRB and the Director of DHRB did not adequately segregate duties related to the collection of case costs and civil penalties, and did not reconcile the total case costs and civil penalties owed to actual cash collected. As stated in the prior audit, the Disciplinary Coordinator continued to be responsible for nearly all duties associated with disciplinary actions. The Disciplinary Coordinator

- opened all payments received in the mail;
- printed a receipt of cash received;
- assigned the cash collected as civil penalties or case costs; and
- took the cash collections to the cash office to be deposited and posted to the accounting records.

In addition, DHRB management did not provide compensating controls. Without adequate segregation of duties, or appropriate compensating controls, the risk that an error or fraud will not be detected is increased. The Director of the Office of Investigations stated that an additional staff person was hired recently and the added capabilities expected of the new regulatory boards system should improve controls and segregation of duties in the future.

**Management's risk assessment did not adequately address risks in several areas, which decreased the risk assessment's value as a tool in designing effective internal controls to mitigate identified risks.** The Director of the Division of Health Related Boards did not identify all risks and in some cases did not identify adequate mitigating controls in the Division's 2011 Financial Integrity Act (FIA) Risk Assessment. We found that although management had identified the risk that checks could be endorsed with the incorrect account number and deposited into the wrong account, management's identified control could not effectively prevent the error in deposit. We found that management had not identified potential risks of inadequately tracking and collecting civil penalties and case costs. When risks and control activities are not correctly identified, management cannot properly address the risk and institute controls to mitigate the risk.

## **Recommendation**

*Cash Office* – The Division of Health Related Boards’ cash office management should segregate duties as much as possible and implement compensating controls when duties and functions cannot be segregated to mitigate the risk that an error or fraud would go undetected or not be detected in a timely manner.

*Reconciliations* – The Division of Health Related Boards should reconcile the amount of licensure fees collected to the number of licenses granted by individual board and should reconcile RBS to Edison to ensure that financial records and information are accurate and complete, and that all revenue is collected and deposited.

*Office of Investigations* – (1) The Director of Investigations should segregate receipting, recording, and depositing cash receipts, or should implement compensating controls to mitigate the risk that errors or fraud will not be detected timely. (2) The Director of Investigations should use a tracking system for civil penalties and case costs to properly track this information and to reduce the risk of error. (3) The Director of Investigations should reconcile the amount of case costs and civil penalties received to the amount owed to ensure collection of all case costs and civil penalties and the effectiveness of collection efforts.

*Risk Assessment* – The Assistant Commissioner of the Division of Health Related Boards should review the risk assessment and revise areas that are inadequate.

## **Management’s Comment**

We concur.

*Cash Office* – The Office of Health Related Boards understands the need to segregate duties to mitigate the risk that an error or fraud could go undetected or not detected in a timely manner. However, due to budget constraints it is not possible to employ enough persons in the cash office to segregate all of their duties. Therefore, to mitigate and reduce this risk the cash office management will begin implementing periodic compensating reviews by using employees from other areas and other management intervention techniques when duties and functions in the office cannot be segregated as deemed necessary.

*Reconciliations* – To the greatest extent possible, the Office of Health Related Boards will reconcile the amount of licensure fees collected to the number of licenses granted by individual boards. The Office of Health Related Boards will work with the Tennessee Department of Health’s Division of Administrative Services and within the capability of RBS and Edison to reconcile RBS and Edison to ensure that financial records and information are accurate and complete and that all revenue is collected and deposited.

*Office of Investigations* – The Director of Investigations will begin segregating duties, and institute procedures to track civil penalties and case costs. The Office will also begin reconciling the amount of case costs and civil penalties received to the amount owed to ensure collection of

all case costs and civil penalties and the effectiveness of collection efforts. If staffing limitations occur that would not allow this segregation to occur on a continuing basis, management will take other temporary compensating controls such as using employees from other non-related areas to assist.

*Risk Assessment* – The Assistant Commissioner of the Division of Health Licensure and Regulation will review, as part of the annual Financial Integrity Act submission, the risk assessment and revise areas of control as deemed appropriate.

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## **CONFLICT OF INTEREST**

According to the Department of Health, Division of Health Related Boards (DHRB) Administrative Policies and Procedures, Policy 302.01, the purpose of DHRB’s conflict of interest policy is “to assure that activities of the Health Related Boards employees and board members do not conflict or have the appearance of conflicting with the provision of full-unbiased service to the public.”

The objectives of our review of DHRB’s conflict of interest policy were to

- gain an understanding of DHRB’s conflict of interest policy and procedures;
- determine if DHRB updated the conflict of interest forms to reflect the most recent executive orders;
- determine if board members signed the conflict of interest form annually;
- determine if division employees signed the conflict of interest form annually; and
- determine if board members recused themselves from any discussions or decisions related to a disclosed conflict.

We reviewed the Division of Health Related Boards’ conflict of interest policy and procedures, which govern both the division’s employees and the board members of the Health Related Boards, and we interviewed key personnel to gain an understanding of DHRB’s procedures. We reviewed the most recent Governor’s Office executive orders and the conflict of interest forms used by DHRB for its employees and board members. We reviewed the conflict of interest forms for both DHRB’s employees and the board members of the boards included in this audit to determine if the employees and the board members were in compliance with the conflict of interest policy and the procedures. We reviewed the board minutes to determine if board members recused themselves from discussions or decisions related to a disclosed conflict of interest.

We found that DHRB’s conflict of interest policy seemed adequate, but its procedures were confusing and could be the cause of DHRB employees’ and board members’ failure to sign appropriate conflict of interest forms annually. We also found that management had not updated

the procedures to reflect the most recent executive orders requiring the employees and board members to complete the form annually. See the finding below. We found that DHRB's form (Appendix 6) that board members and DHRB employees signed was not designed to provide an area for the individual to make a disclosure of the nature of the conflicts of interest; the form only provided space to acknowledge that the individual had read DHRB's conflict of interest policy.

Based on our specific review of the conflict of interest forms, we found that DHRB staff did not have a signed conflict of interest form on file for several division employees or board members. Examples of the conflict of interest forms applicable for the audit period are displayed in Appendices 6, 7, and 8.

Based on a review of the board minutes, we found that board members did recuse themselves from discussion and decisions related to conflicts of interest.

### Finding

- 4. The Division of Health Related Boards did not ensure that it developed clear conflict of interest procedures to achieve the Division of Health Related Boards' conflict of interest policy, did not update the procedure to reflect current executive orders, and did not ensure that employees and board members signed the conflict of interest forms annually**

The Division of Health Related Boards' employees and board members are required to disclose potential conflict of interests as an essential method to maintain public trust in government and ensure the proper performance of government. However, management of the Division of Health Related Boards did not develop clear procedures to ensure proper administration of its conflict of interest policy. As a result, we found that board members and DHRB employees did not consistently sign the appropriate forms and that all conflicts may not be adequately disclosed to management.

### Conflict of Interest Procedure Is Confusing

The Department of Health's Division of Health Related Boards' Administrative Policies and Procedures, Policy 302.01, states, "All full-time employees and board members of Health Related Boards will adhere to the Department of Health's and the Health Related Boards' Conflict of Interest Policy."

To achieve the policy, DHRB developed Procedure 302.01, which states,

Employees: All board members and employees will be required to read and sign the Health Related Board's Conflict of Interest Policy [Appendix 7] and the Department's Confidentiality and Conflict of Interest Form PH-3131 [Appendix 6]. A copy of the Department's Conflict of Interest will be provided to each employee.

Board Members: All board members will be asked to read the Department's Conflict of Interest Policy [Appendix 6]. Board members will be required to sign a conflict of interest statement Form PH-3131 [Appendix 6]. Signed copies will be on file in the Bureau of Health Licensure and Regulation.

### **Procedure 302.01 Lacks Clarity**

Upon our review of the procedure, we were confused by the following:

- The procedure's **Employees** section also addresses board members and appears to require not only the division's employees but also the board members to sign the forms designated as the *Health Related Boards Conflict of Interest Policy* (a Health Related Boards Division form) and the *Department of Health Personnel Confidentiality Statement* (department form PH-3131).
- The procedure's **Board Members** section requires the board members to "read" the *Department of Health Personnel Confidentiality Statement* (the same form just discussed above) and to sign form PH-3131 (also the form discussed in the Employee section).
- The procedure does not address the form titled *Health Related Boards Conflict of Interest Policy Board Members* (Appendix 8).
- DHRB provides all its division employees and board members a conflict of interest packet, which includes all the forms mentioned above. However, the procedure does not address all the forms or clearly instruct employees and board members as to concerning which form or forms that each group should sign.

As a result of the confusing procedures, we reviewed the most recent conflict of interest forms for 24 key DHRB employees and all 60 board members of the boards included in this audit to determine the impact of the confusing procedure. We found that all 24 DHRB employees had signed the *Department of Health Personnel Confidentiality Statement* (Appendix 6). However, only one employee had also signed the *Health Related Boards Conflict of Interest Policy* (Appendix 7) as required by procedure.

For the board members, we found 6 of 60 board members had failed to sign any form. Of the 54 signed statements, 8 board members had signed the *Department of Health Personnel Confidentiality Statement* (Appendix 6) as required by the procedure and 46 board members had signed the *Health Related Boards Conflict of Interest Policy Board Members* (Appendix 8), which was not even mentioned in the procedure.

Ultimately, without management's commitment to revise the procedure to provide appropriate clarity and guidance, management cannot expect to obtain critical conflict of interest information from the employees or the board members.

## **Conflict of Interest Forms Not Updated Annually**

The Division of Health Related Boards' current conflict of interest policy or the current procedure did not require the form or forms to be updated annually by employees and board members. However, Executive Order No. 3, dated February 3, 2003, applied to all executive service employees and required each department to submit an annual certification on or before January 31 of each year to the Governor that all material violations of the conflict of interest order were identified to the department head or the compliance officer and have been reported to the standing Tennessee Ethics Commission administered by the Secretary of State. Without management's enforcement of annual forms, it cannot effectively comply with Executive Order No. 3, Part 10, "Annual Certification."

## **Forms Do Not Provide Space for Disclosing Potential Conflicts**

We also found that the conflict of interest forms as currently designed do not provide employees and board members an area to disclose potential conflicts of interest. The forms provide a place for individuals to sign an acknowledgement that they have read the division's and the department's conflict of interest policy.

## **Recommendation**

We recommend that the Division of Health Related Boards revise its conflict of interest policy and related procedures to require board members and employees to complete the required forms annually and to disclose any conflicts of interest. The procedure should be clearly stated to avoid confusion. Rather than only providing certification that the signer has read the division's and the department's conflict of interest policy, the forms should also provide an area to disclose potential conflicts of interest.

## **Management's Comment**

We concur. The Office of Health Related Boards will, on or before December 31, 2012, revise its conflict of interest policy, forms, and related procedures to require board members and employees to complete the required forms annually or, in the case of a subsequent form, to certify any changes. These changes will ensure that the conflict of interest policy is applied consistently across all boards. As suggested by the auditors, the forms will also include an area for board members and employees to disclose any potential conflicts of interest.

## Compliance

### PERFORMANCE MEASURES

Executive agencies are required by the Governmental Accountability Act of 2002 and Section 9-4-5606(b), *Tennessee Code Annotated*, to annually submit a strategic plan for delivering services and the proposed program performance measures and standards to assist the General Assembly in making meaningful decisions about the allocation of the state's resources in meeting vital needs. The objective of our review of the Division of Health Related Boards' strategic plans and program performance measures was to

- note any change in performance measures from the previous plan and gain an understanding of the methods used by the Division of Health Related Boards (DHRB) to track, calculate, and report DHRB performance measures.

We reviewed the *Agency Strategic Plans for 2011* Volume 1 and Volume 2, as discussed further in Appendix 2. We also interviewed key personnel to determine changes in DHRB's performance measures from the previous plan and the process used to track, calculate, and report DHRB performance measures.

Based on our review and interviews conducted, we found that there was no documentation for the performance measures percentage calculations to support how the percentages were to be tracked, calculated, and reported. Therefore, we could not analyze or conclude whether DHRB had achieved its objectives as identified in its strategic plan. The finding below discusses the issue in detail.

### Finding

**5. The Director of the Health Related Boards did not ensure that the division's performance measures reported in the department's strategic plans for the performance-based budget were completely supported**

The General Assembly created the Tennessee Governmental Accountability Act of 2002 to establish accountability in the state's program performance that is vital to the effective and efficient delivery of state services. Since 2002, the General Assembly, in conjunction with all state departments, agencies, and boards and commissions, has developed a system of strategic planning and performance-based budgeting to achieve the efficient and effective delivery of all governmental services.

Specifically, the executive agencies are required by Section 9-4-5606(b), *Tennessee Code Annotated*, to submit annually a strategic plan and the related program performance measures and standards to accomplish the plan. The strategic plan and the performance measures are published in two separate volumes. Volume 1 contains the Five-Year Strategic Plans and addresses agency-wide information, and Volume 2 - Program Performance Measures contains more detailed program information and performance standards and measures for each program.

These volumes together are titled the *Agency Strategic Plans* and represent the commitment of the administration to provide the General Assembly information that is useful for a performance-based budget process and for agency oversight to ensure the effective and efficient delivery of state services.

The Division of Health Related Boards reported in its Strategic Plan two performance measures: (1) Percent of initial licensure applications processed within 100 calendar days from receipt of completed application to licensure approval or denial for initial application and within 14 calendar days for renewals, and (2) Percent of complaints resolved within established category time frames. Based on review of the performance measures and interviews, we determined that DHRB's performance measures did not allow for the impact of applicant-caused delays and did not consider unique board licensure requirements.

***The performance measure concerning license application approval did not consider applicant-caused delays.*** DHRB reported in the *Agency Strategic Plans* for September 2011, Volume 2, and the corresponding fiscal year 2012-2013 budget document that its performance standard for issuing new licenses was 100 days. The Division of Health Related Boards used reports from RBS to calculate the number of days to process licenses to determine the percent to meet the performance standard.

When calculating timeliness, the division included all time elapsing between the date the application payment was received and the date the associated license was issued. This calculation was impacted by some delays outside of the boards' control, such as applicants failing to submit necessary paperwork and the time involved to obtain that paperwork. As a result, it was difficult to determine whether board staff processed applications as efficiently as possible since the total time to process an application and issue the license was beyond its control.

***All boards are subject to the same benchmark despite unique licensing processes and requirements.*** In addition to RBS not accounting for delays outside of the boards' control, the universal 100-day timeliness benchmark does not consider unavoidable time lags caused by some boards' unique licensing requirements. For example, veterinarian applicants are required to submit an application to the Board of Veterinary Medical Examiners 100 days prior to taking the required national certification exams. As a result, even if that board immediately processes the application paperwork, the application must remain open for at least 100 days prior to the exam, and any time after the exam until the results are available to the board. As a result, the board will be automatically in violation of the universal 100-day standard through no fault of its own. This minimum 100-day time lapse was not considered when deriving the current performance benchmark. Similarly, psychologists applying for a Health Service Provider designation must submit an application to their board before sitting for the required exam and before earning the required 1,200 hours of post-doctoral experience. In both of these examples, and similar to previously discussed client-caused delays, the RBS system was not able to track detailed information to account for these delays when calculating timeliness.

## **Lack of Documentation**

Based on our testwork and interviews, we also found that the Director of Health Related Boards stated she calculated the percentage for the license timeliness performance measure; however, she did not maintain documentation of her calculations. In addition, the Director of the Office of Investigations stated she calculated the percentage for the complaint resolution performance measure but did not maintain documentation of her calculations. If management does not properly create performance measures and maintain supporting documentation for future review, management cannot make proper representations to the General Assembly.

Section 9-4-5606(d), *Tennessee Code Annotated*, provides, “Each state agency subject to performance-based budgeting shall submit to the commissioner of finance and administration any documentation required by the commissioner regarding the validity, reliability, and appropriateness of each performance measure and standard regarding how the strategic plan and the performance measures are used in management decision-making and other agency processes.” Therefore, management of the Division of Health Related Boards must maintain documentation related to calculating performance measures to comply.

Additionally, during our review of performance measures, we noted that DHRB reported in its Strategic Plan that the percentage of complaints resolved within 120-150 days was 65 percent. However, DHRB reported in the fiscal year 2012 – 2013 budget document the percentage of complaints resolved was 70 percent. The Director of the Health Related Boards could not provide documentation or explain the difference in the reported percentage of complaints resolved.

## **Continued Issues With the Regulatory Board System**

As noted above, DHRB identified initial licensing timeliness as a key performance measure. As noted in the 2003, 2005, and 2009 performance audits, the Division of Health Related Boards’ ability to monitor its functions, including initial licensing timeliness, continued to be hampered by longstanding problems with its Regulatory Boards System (RBS), the computerized license system used to record licensing activities. As discussed above, during the current audit, we found the Director of the Health Related Boards did not maintain documentation to support the performance measures reported to the General Assembly partly due to the outdated RBS, which contributed to management’s inability to capture consistent data to compare the boards accurately. The Director of Health Related Boards left state service before our audit was completed. Since DHRB management is currently working to replace the RBS system with a new system, Versa, management has no plans to accommodate its performance measure reporting by modifications to the RBS.

## **Recommendation**

Since tracking performance measures is required by statute, the Director of the Health Related Boards should improve the division’s ability to track, calculate, and report DHRB performance measures. The division should continue efforts to obtain and implement a new and

effective regulatory board tracking system as quickly and efficiently as possible. The division should ensure that any new system provides the ability to analyze time delays outside of the boards' control, including applicant-caused delays and time delays required by each board's unique licensing requirements or modify its performance measures. Until the new computer system is implemented, the division may wish to consider assessing performance by gathering more detailed timeliness information on a limited scale, such as manually analyzing a sample of application files.

The Assistant Commissioner of the Division of Health Licensure and Regulation may wish to consider developing policies and procedures that clearly designate responsibility for preparing the calculations and maintaining documentation for performance measures included in the Strategic Plan. These policies and procedures should require DHRB and the boards to use uniform data codes, document the calculation and reporting of initial license applications' timeliness, and maintain supporting documentation for all performance measures.

### **Management's Comment**

We concur. The Office of Health Related Boards agrees that the process can be improved and anticipate improvements with the implementation of a more effective regulatory board tracking system and management tools that will allow the generation of reports to validate the performance measures. Currently, the Office employs a limited scale manual analysis process to track, calculate, and report Health Related Boards timeliness of application processing and resolution of complaints. Until the new Versa system comes on-line, we will ensure that the documentation that is created through this manual process is retained to support the evaluation of whether or not the performance measures are met. Once the new Versa system comes on-line we will reevaluate the data available from that system to see that our performance measures are evaluated and supportable.

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## **TITLE VI**

Title VI of the Civil Rights Act of 1964 states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The objectives of our review of Title VI were to determine if the Department of Health

- prepared a Title VI plan to include the Division of Health Related Boards; and
- had procedures for handling Title VI complaints and the number of Title VI-related complaints received during the past two years.

We reviewed the Title VI Implementation Plan for the Department of Health to determine if the department prepared a Title VI plan that included the Division of Health Related Boards.

We interviewed key personnel to determine if the department had procedures for handling Title VI complaints and to determine the number of Title VI-related complaints received during the past two years.

Based on our interviews and reviews, we found that the Department of Health

- prepared a Title VI plan which included the Division of Health Related Boards; and
- had procedures for handling Title VI complaints, and had not received any complaints during the last two years.

See Appendix 1 for Health Related Boards' staff ethnicity and gender demographics.

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## **NATIONAL PRACTITIONER DATA BANK**

Section 1921 of the Social Security Act requires state licensing authorities, peer review organizations, and private organizations to report any negative action or findings that have been taken against a health care practitioner or health care entity to the National Practitioner Data Bank. The data bank provides an opportunity for the Division of Health Related Boards to further protect the public by identifying adverse actions taken against licensed practitioners.

The objective of our review of this prior issue was to determine if management had begun to utilize the National Practitioner Data Bank prior to issuing licenses. Based on review of the prior audit finding, we interviewed key personnel and determined that only the Disciplinary Coordinator and the Director of Investigations have access to the data bank and only use the data bank when an application is believed to be suspicious. Since DHRB is not using the National Practitioner Data Bank consistently, the finding was repeated.

### **Finding**

#### **6. The Division of Health Related Boards did not fully utilize the National Practitioner Data Bank, which provides an opportunity for the division to further protect the public**

As noted in the prior performance audit finding, with which management concurred, the National Practitioner Data Bank provides an opportunity for the Division of Health Related Boards to further protect the public; however, the division is not fully utilizing this data bank. The prior audit finding in its entirety is displayed in Appendix 9.

In response to the prior audit finding, management stated, "The Division will consider ways it can more fully and systematically integrate the use of the data bank into its application process." However, based on discussion with the Executive Director of the Board of Medical Examiners, the Medical Examiner's Committee on Physician Assistants staff, and the Division of Health Related Boards' Disciplinary Compliance Coordinator, management had not taken any action to fully integrate the use of the data bank into its application process.

### **Recommendation**

The Assistant Commissioner should ensure that Division of Health Related Boards' staff supplement existing efforts to identify problematic applicants by querying the National Practitioner Data Bank whenever an applicant in a covered profession applies for Tennessee licensure.

### **Management's Comment**

We do not concur. The Office of Health Related Boards utilizes both the Healthcare Integrity and Protection Integrity Data Bank (HIPIDB) and the National Practitioner Data Base (NPDB). Both the NPDB and the HIPIDB are information clearinghouses created by Congress and both contain reports on adverse or negative actions against healthcare practitioners. While it may not have been clearly communicated or understood during the audit interviews, the reports generated from a query entered from HIPIDB or NPDB are integrated. When the Office of Health Related Boards submits a query to HIPIDB, by default, the system generates a comprehensive report from both the NPDB and HIPIDB. The integration is important, because the NPDB does not require reporting by all healthcare organizations. The integrated query of both systems is the result of programming at the federal level. For our purposes, the integration allows the Office of Health Related Boards to meet its duty to protect the public.

### **Auditor Rebuttal**

Based on our discussion with management during audit fieldwork we determined that management did not use the National Practitioner Data Bank "routinely or consistently" and management did not tell us about the Healthcare Integrity and Protection Integrity Data Bank or that it was integrated with the National Practitioner Data Bank until they provided their comments to the finding. Had management informed us during the audit we would have performed testwork to substantiate management's claims.

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## RECOMMENDATION FOR LEGISLATIVE CONSIDERATION

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### STATE REGULATORY FEE

The General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of Health Related Boards' operations.

The General Assembly may wish to consider legislation to

- amend or repeal Section 4-3-1011(b)(2), *Tennessee Code Annotated*, regarding the state regulatory fee based on the following three options:
  - Option 1 – The General Assembly may wish to consider if the state regulatory fee should be earmarked and established at an amount sufficient to cover all indirect costs of board operations. To accomplish this the General Assembly should amend the current statute to clarify its intent and require both the Commissioners of the Department of Finance and Administration and the Department of Health to periodically analyze and certify all indirect costs incurred at a statewide and department level associated with the operations of the Health Related Boards and set the fee accordingly.

This requirement would eliminate the General Assembly's need to provide recurring supplemental state appropriations (which begins for fiscal year 2013) to cover indirect costs when the state regulatory fee is insufficient.

- Option 2 – The General Assembly may wish to consider eliminating the state regulatory fee in Section 4-3-1011(b)(2), *Tennessee Code Annotated* altogether and require the Health Related Boards to become fully self-sufficient as implied by current legislation under Section 4-29-121, *Tennessee Code Annotated*.
- Option 3 – Should the General Assembly wish to continue to collect the state regulatory fee and use other general fund tax revenue (when the state regulatory fee collections are insufficient) to cover the indirect costs associated with the Health Related Boards' operations, the General Assembly should amend the current legislation to clarify its intent.

Under the current system, Division of Health Related Boards collects the \$5 state regulatory fee from licensees and remits the fee to the Department of Finance and Administration as general fund tax revenue, in lieu of the state or oversight department charging the boards for any indirect costs incurred from the boards' operations.

As noted in Finding 1, the current process is questionable because the Department of Finance and Administration and the Department of Health have not assessed the sufficiency of the state regulatory fee to cover fully the statewide and departmental indirect costs to operate the Health Related Boards. In fact, the Commissioner of Finance and Administration has not changed the fee since it was established in 1989. We determined the state regulatory fee is insufficient to currently fund all of the state's indirect costs to maintain the Health Related Boards, and as a result, the General Assembly has approved a new recurring supplemental state appropriation for the Department of Health for the purpose of covering indirect costs when indirect costs exceed the state regulatory fee collections. As a result, in addition to charging licensees the state regulatory fee, essentially all the state's taxpayers are funding the Boards' indirect costs through general appropriations from general fund tax revenue. For the boards to be truly self-sufficient, all costs should be borne by them, including all indirect costs.

- If the State Regulatory Fee is not repealed as discussed in Option 2 above, the General Assembly should clarify whether the state regulatory fee is subject to prorating in the same way that license renewals are subject to prorating in Section 63-1-107-(a)(1), *Tennessee Code Annotated*. Legislation should also address whether reinstatement and reactivation applicants should pay one \$10 state regulatory fee amount for the whole period or \$10 for every two-year period that the license was not active.

# APPENDICES

## Appendix 1

### Health Related Boards Staff Positions by Gender and Ethnicity

March 2012

Source: Department of Health Human Resources Administrator

Title	Gender		Ethnicity		
	Male	Female	White	Black	Other
Accounting Technician 2		1		1	
Administrative Assistant 1		2	1	1	
Administrative Secretary		1	1		
Administrative Services Assistant 2		7	4	2	1
Administrative Services Assistant 3		3	3		
Administrative Services Assistant 4		2	1	1	
Board Member	83	79	132	25	5
Clerk 2		1	1		
Clerk 3	1	1	1	1	
Dental Board Director		1	1		
Distributed Computer Operator 2		1			1
Health Facilities Program Manager 1		1	1		
Health Related Boards Director		1	1		
Health Related Boards Inv Director		1	1		
Information Resource Support Spec 2		1		1	
Information Resource Support Spec 3		1	1		
Information Resource Support Spec 4	3		3		
Information Resource Support Spec 5		1		1	
Information System ANA 4		1			1
Information Systems Manager 2	1		1		
Legal Assistant	1	1	1	1	
Licensing Technician	5	15	5	15	
Medical Board Director		1	1		
Medical Technologist Consultant 1	1		1		
Nursing Board Director		1	1		
Pharmacist 2	4	1	5		
Pharmacy Board Director	1		1		
Physician	1		1		
Public Health Nursing Consultant 1	1	10	10	1	
Public Health Nursing Consultant 2	1	4	5		
Regulatory Boards Admin Assistant 1	2	3	3	2	
Regulatory Boards Admin Manager		2	1	1	
Regulatory Boards Investigator		1	1		
Regulatory Board Admin Assistant 2	3	14	11	6	
Regulatory Board Admin Assistant 3	1	1	2		
Regulatory Board Admin Director 1		2	1	1	
Statistician 2	1	1	2		
Systems Programmer 3	1	1	2		
Veterinary Board Director		1	1		
<b>Totals</b>	<b>111</b>	<b>165</b>	<b>208</b>	<b>60</b>	<b>8</b>

**Appendix 1 (continued)**

**Health Related Boards  
Board Members by Board, Ethnicity, and Gender  
March 2012  
Source: Department of Health Human Resources Administrator**

<b>Board</b>	<b>Gender</b>		<b>Ethnicity</b>			
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>	<i>Asian</i>	<i>Other</i>
Board of Chiropractic Examiners	4	3	7			
Board of Communication Disorders and Sciences	1	3	4			
Board of Dentistry	6	4	7	2	1	
Board of Examiners in Psychology	5	3	5	3		
Board of Optometry	4	2	5	1		
Board of Medical Examiners' Committee on Physician Assistants	4	3	5	1		1
Board of Podiatric Medical Examiners	5	1	5	1		
Board of Veterinary Medical Examiners	5		4	1		
<b>Totals</b>	<b>34</b>	<b>19</b>	<b>42</b>	<b>9</b>	<b>1</b>	<b>1</b>

## Appendix 2

### Performance Measures Information

#### Source: Division of Health Related Boards Management and Agency Strategic Plans

As stated in the Tennessee Governmental Accountability Act of 2002, “accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government.” In accordance with this act, all executive branch agencies are required to submit annually to the Department of Finance and Administration (F&A) a strategic plan and program performance measures. F&A publishes the resulting information in two volumes of *Agency Strategic Plans: Volume 1 - Five-Year Strategic Plans* and *Volume 2 - Program Performance Measures*. Agencies were required to submit performance-based budget requests according to a schedule developed by F&A, beginning with three agencies in fiscal year 2005 and including all executive-branch agencies by fiscal year 2012. The Division of Health Related Boards began submitting performance-based budget requests effective for fiscal year 2010.

Detailed below are the Division of Health Related Boards’ performance standards and performance measures, as reported in the September 2011 *Volume 2 - Program Performance Measures*. Also reported below is a description of the agency’s processes for (1) identifying/developing the standards and measures; (2) collecting the data used in the measures; and (3) ensuring that the standards and measures reported are appropriate and that the data are accurate.

The Health Related Boards’ current performance measurement method and data were incomplete because of an inadequate Regulatory Boards System. The prior audit finding was repeated because the system was not modified to correct this finding (see page 34).

A finding was written on page 34 concerning problems in the ability of the licensing system to collect specific data for the calculation of days.

#### Performance Standard 1

Through maintenance of licensure standards, protect the public health and safety by ensuring that only qualified individuals are authorized to practice a health-related profession.

## Appendix 2 (cont.)

### Performance Measure 1

Percent of initial licensure applications processed within 100 calendar days from receipt of completed application to licensure approval or denial for initial applications and within 14 calendar days for renewals.

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
97%	100%	98%

### Performance Standard 2

Through maintenance of inspection protocols, protect the public health and safety by ensuring that complaints against licensed and unlicensed individuals are brought to a conclusion in a timely fashion.

### Performance Measure 2

Percent of complaints resolved within established category time frames.

Actual (FY 2010-2011)	Estimate (FY 2011-2012)	Target (FY 2012-2013)
65%	85%	90%

### Licenses

The Division of Health Related Boards has the responsibility for ensuring that minimal qualifications and standards of competence were met for licensure and regulation of health-care professionals.

### Complaints

The number of days to track the resolution of complaints starts when a complaint was deemed as requiring an investigation until the complaint was closed with an end date.

## **Appendix 3**

### **Health Related Boards Covered in Audit**

**Source: *Tennessee Code Annotated* and Health Related Boards Website**

#### **Board of Chiropractic Examiners**

The Board of Chiropractic Examiners was created in 1923 and is governed by Sections 63-4-101 through 124, *Tennessee Code Annotated*, and regulates those who practice the profession of chiropractic or chiropractic x-ray technology within the state. The seven-member board meets annually.

#### **Board of Communication Disorders and Sciences**

The Board of Communication Disorders and Sciences was created in 1973 as the Board of Examiners of Speech Pathology and Audiology. In 1995 the State Legislature restructured the board as the current Board of Communication Disorders and Sciences. The board is governed by Sections 63-17-101 through 222, *Tennessee Code Annotated*, and regulates those who practice the profession of speech pathology and audiology within the state. The seven-member board meets four times a year.

#### **Board of Dentistry**

The Board of Dentistry was created in 1957. The board is governed by Sections 63-5-101 through 134, *Tennessee Code Annotated*, and regulates those who practice as dentists, dental hygienists, or dental assistants within the state. The seven-member board meets annually.

#### **Board of Examiners in Psychology**

The Board of Examiners in Psychology was created in 1953. The board is governed by Sections 63-11-101 through 226, *Tennessee Code Annotated*, regulates those who practice as psychologists or psychological examiners within the state. The nine-member board meets four times a year.

#### **Board of Medical Examiners' Committee on Physician Assistants**

The Board of Medical Examiners' Committee on Physician Assistants was created in 1985. The Committee is governed by Sections 63-19-101 through 210, *Tennessee Code Annotated*, and regulates those who practice as physician assistants in the state. The five-member committee meets four times a year.

## **Appendix 3 (cont.)**

### **Board of Optometry**

The Board of Optometry was created in 1925. The board is governed by Sections 63-8-101 through 134, *Tennessee Code Annotated*, and regulates those who practice optometry within the state. The six-member board meets four times a year.

### **Board of Podiatric Medical Examiners**

The Board of Podiatric Medical Examiners was created in 1931. The board is governed by Sections 63-3-101 through 213, *Tennessee Code Annotated*, and regulates those who practice the profession of podiatry within the state. The six-member board meets annually.

### **Board of Veterinary Medical Examiners**

The Board of Veterinary Medical Examiners was created in 1905. The board is governed by Sections 63-12-101 through 145, *Tennessee Code Annotated*, and regulates all who practice as a veterinarian, veterinary medical technician, or euthanasia technician within the state. Additionally, as of January 1, 1997, veterinary facilities are required to obtain a premise permit. The seven-member board meets four times a year.

**Appendix 4**  
**License Renewal Amounts and Number of Licenses as of June 30, 2011**  
**Source: Health Related Board Rules and the Administrative Services Assistant 5**

	Biennial Renewal Amount	Number of Licenses
<b>Board of Chiropractic Examiners</b>		
Chiropractic Examiners	\$275	1,059
Chiropractic X-Ray Technologist	\$125	116
Chiropractic Therapy Assistants	\$125	465
<b>Board of Communication Disorders and Sciences</b>		
Speech Language Pathologist	\$80	1,886
Audiologist	\$80	345
SLP- Assistants	\$25	57
Audiologist Aid	For students completing their Clinical Fellowship, not tracked due to extremely high turnover.	
<b>Board of Dentistry</b>		
Dentist	\$300	3,568
Dental Hygienists	\$190	4,076
Dental Assistants	\$135	7,612
<b>Board of Examiners in Psychology</b>		
Psychologist	\$275	1,323
Senior Psychology Examiners	\$275	520
Psychological Assistant	\$275	23
<b>Board of Medical Examiners' Committee on Physician Assistants</b>		
Physician Assistant	\$250	1,223
Orthopedic Physician Assistant	\$250	24
<b>Board of Optometry</b>		
	\$330	1,159
<b>Board of Podiatric Medical Examiners</b>		
Podiatrist	\$350	230
X-Ray Operator Podiatrist's Office	\$30	96
Orthotist	\$200	162
Prosthetist	\$200	144
Pedorthist	\$200	71
<b>Board of Veterinary Medical Examiners</b>		
Veterinarians	\$360	1,948
Veterinary Medical Technicians	\$90	415
Certified Animal Euthanasia Technicians	\$100	250
Veterinary Facilities	\$160	664
Certified Animal Control Agencies	\$160	64

## Appendix 5

### Board of Chiropractic Examiners Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009 Source: Board Administrator

	<u>FY 2011</u>	<u>FY 2010</u>	<u>FY 2009</u>
Salaries & Wages	\$23,134.08	\$37,993.05	\$25,231.69
Longevity	\$1,744.31	\$590.86	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$14,912.59	\$18,744.45	\$12,788.17
Payroll Expenditures	\$39,790.98	\$57,328.36	\$38,019.86
Travel	\$6,081.50	\$8,224.33	\$7,961.14
Printing & Duplicating	\$0.00	\$0.00	\$0.00
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$1,842.30	\$1,907.24	\$1,701.46
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$4,251.12	\$3,779.39	\$8,775.83
Supplies & Materials	\$0.00	\$0.00	\$140.71
Rentals & Insurance	\$0.00	\$3,366.00	\$3,366.00
Awards & Indemnities	\$0.00	\$0.00	\$0.00
Grants & Subsidies	\$0.00	\$0.00	\$0.00
Training of State Employees	\$44.45	\$0.00	\$0.00
Computer Related Items	\$460.00	\$324.00	\$0.00
State Prof. Svcs.	\$9,610.91	\$933.48	\$3,259.60
Other Expenditures	\$22,290.28	\$18,534.44	\$25,204.74
<b>Total Direct Expenditures</b>	<b>\$62,081.26</b>	<b>\$75,862.80</b>	<b>\$63,224.60</b>
<b>Indirect Expenditures*</b>			
Administration	\$22,101.67	\$18,130.88	\$19,894.97
Investigations	\$31,966.83	\$54,507.31	\$37,077.40
Legal	\$36,364.45	\$14,006.40	\$28,953.48
Cash Office	\$1,553.27	\$1,371.84	\$1,373.38
<b>Total Indirect Expenditures</b>	<b>\$91,986.22</b>	<b>\$88,016.43</b>	<b>\$87,299.23</b>
<b>Total Expenditures</b>	<b>\$154,067.48</b>	<b>\$163,879.23</b>	<b>\$150,523.83</b>
<b>Board Fee Revenue</b>	<b>\$247,045.01</b>	<b>\$236,756.61</b>	<b>\$222,006.69</b>
<b>Current Year Net</b>	<b>\$92,977.53</b>	<b>\$72,877.38</b>	<b>\$71,482.86</b>
<b>Cumulative Carryover</b>	<b>\$267,060.72</b>	<b>\$174,083.19</b>	<b>\$101,205.81</b>

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\*Although the Division of Health Related Boards has classified these as “indirect expenditures,” the expenditures are for Direct Service Charges resulting from direct costs associated with administration, investigations, legal, and cash office functions. These direct costs are allocated to the boards according to use.

**Appendix 5 (cont.)**

**Board of Communication Disorders and Sciences  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<u><b>FY 2011</b></u>	<u><b>FY 2010</b></u>	<u><b>FY 2009</b></u>
Salaries & Wages	\$17,886.93	\$25,963.99	\$17,037.67
Longevity	\$360.00	\$1,817.15	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$11,312.08	\$12,926.38	\$8,890.02
Payroll Expenditures	\$29,559.01	\$40,707.52	\$25,927.69
Travel	\$3,439.20	\$1,503.58	\$2,910.85
Printing & Duplicating	\$0.00	\$0.00	\$0.00
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$2,438.55	\$3,028.23	\$3,492.12
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$973.95	\$548.95	\$1,901.37
Supplies & Materials	\$1,782.00	\$0.00	\$87.89
Rentals & Insurance	\$0.00	\$4,518.00	\$4,518.00
Awards & Indemnities	\$0.00	\$0.00	\$120.00
Grants & Subsidies	\$0.00	\$0.00	\$0.00
Training of State Employees	\$719.45	\$0.00	\$0.00
Computer Related Items	\$3,947.70	\$694.00	\$0.00
State Prof. Svcs.	\$9,008.58	\$2,220.61	\$491.49
Other Expenditures	\$22,309.43	\$12,513.37	\$13,521.72
<b>Total Direct Expenditures</b>	<b>\$51,868.44</b>	<b>\$53,220.89</b>	<b>\$39,449.41</b>
<b>Indirect Expenditures*</b>			
Administration	\$32,277.39	\$25,785.70	\$28,025.97
Investigations	\$5,796.73	\$1,777.60	\$1,609.73
Legal	\$15,072.59	\$12,052.02	\$5,360.19
Cash Office	\$2,167.01	\$1,851.38	\$1,843.53
<b>Total Indirect Expenditures</b>	<b>\$55,313.72</b>	<b>\$41,466.70</b>	<b>\$36,839.42</b>
<b>Total Expenditures</b>	<b>\$107,182.16</b>	<b>\$94,687.59</b>	<b>\$76,288.83</b>
<b>Board Fee Revenue</b>	<b>\$129,052.07</b>	<b>\$109,416.26</b>	<b>\$115,405.71</b>
<b>Current Year Net</b>	<b>\$21,869.91</b>	<b>\$14,728.67</b>	<b>\$39,116.88</b>
<b>Cumulative Carryover</b>	<b>\$85,702.24</b>	<b>\$63,832.33</b>	<b>\$49,103.66</b>

**Appendix 5 (cont.)**

**Board of Dentistry  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<b><u>FY 2011</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2009</u></b>
Salaries & Wages	\$168,792.11	\$153,445.20	\$164,191.45
Longevity	\$7,061.73	\$6,800.00	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$86,404.59	\$81,717.68	\$86,796.86
Payroll Expenditures	\$262,258.43	\$241,962.88	\$250,988.31
Travel	\$13,208.53	\$13,203.86	\$18,067.62
Printing & Duplicating	\$17.29	\$0.00	\$319.00
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$18,703.30	\$19,484.22	\$19,380.35
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$125,458.80	\$143,324.28	\$27,485.19
Supplies & Materials	\$5,336.26	\$1,058.11	\$975.61
Rentals & Insurance	\$0.00	\$10,368.00	\$10,368.00
Awards & Indemnities	\$0.00	\$0.00	\$0.00
Grants & Subsidies	\$0.00	\$534.56	\$99,000.00
Training of State Employees	\$2,930.00	\$385.00	\$0.00
Computer Related Items	\$15,225.26	\$4,073.00	\$0.00
State Prof. Svcs.	\$43,066.46	\$17,441.90	\$10,256.17
Other Expenditures	\$223,945.90	\$209,872.93	\$185,851.94
<b>Total Direct Expenditures</b>	<b>\$486,204.33</b>	<b>\$451,835.81</b>	<b>\$436,840.25</b>
<b>Indirect Expenditures*</b>			
Administration	\$206,523.65	\$161,994.91	\$203,400.29
Investigations	\$151,777.21	\$117,924.31	\$154,310.31
Legal	\$90,728.21	\$100,542.08	\$120,329.97
Cash Office	\$14,449.24	\$12,455.31	\$12,482.49
<b>Total Indirect Expenditures</b>	<b>\$463,478.31</b>	<b>\$392,916.61</b>	<b>\$490,523.06</b>
<b>Total Expenditures</b>	<b>\$949,682.64</b>	<b>\$844,752.42</b>	<b>\$927,363.31</b>
<b>Board Fee Revenue</b>	<b>\$1,586,372.99</b>	<b>\$1,449,020.86</b>	<b>\$1,528,265.91</b>
<b>Current Year Net</b>	<b>\$636,690.35</b>	<b>\$604,268.44</b>	<b>\$600,902.60</b>
<b>Cumulative Carryover</b>	<b>\$1,950,570.92</b>	<b>\$1,313,880.57</b>	<b>\$709,612.13</b>

**Appendix 5 (cont.)**

**Board of Examiners in Psychology  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<b><u>FY 2011</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2009</u></b>
Salaries & Wages	\$21,395.23	\$13,508.54	\$37,085.91
Longevity	\$632.19	\$0.00	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$9,210.72	\$7,083.17	\$17,685.08
Payroll Expenditures	\$31,238.14	\$20,591.71	\$54,770.99
Travel	\$14,286.50	\$6,885.28	\$11,916.34
Printing & Duplicating	\$0.00	\$0.00	\$0.00
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$2,092.97	\$1,707.45	\$1,719.53
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$17,686.51	\$22,326.10	\$7,052.94
Supplies & Materials	\$0.00	\$0.00	\$144.69
Rentals & Insurance	\$0.00	\$4,122.00	\$4,122.00
Awards & Indemnities	\$0.00	\$0.00	\$80.00
Grants & Subsidies	\$18,621.72	\$4,465.32	\$21,266.82
Training of State Employees	\$674.44	\$0.00	\$0.00
Computer Related Items	\$644.00	\$634.00	\$0.00
State Prof. Svcs.	\$8,178.06	\$2,324.32	\$944.71
Other Expenditures	\$62,184.20	\$42,464.47	\$47,247.03
<b>Total Direct Expenditures</b>	<b>\$93,422.34</b>	<b>\$63,056.18</b>	<b>\$102,018.02</b>
<b>Indirect Expenditures*</b>			
Administration	\$25,373.46	\$21,345.29	\$24,537.15
Investigations	\$42,388.60	\$30,921.58	\$39,277.36
Legal	\$24,145.41	\$23,669.73	\$31,443.64
Cash Office	\$1,767.32	\$1,599.62	\$1,681.69
<b>Total Indirect Expenditures</b>	<b>\$93,674.79</b>	<b>\$77,536.22</b>	<b>\$96,939.84</b>
<b>Total Expenditures</b>	<b>\$187,097.13</b>	<b>\$140,592.40</b>	<b>\$198,957.86</b>
<b>Board Fee Revenue</b>	<b>\$309,677.61</b>	<b>\$277,412.26</b>	<b>\$309,506.39</b>
<b>Current Year Net</b>	<b>\$122,580.48</b>	<b>\$136,819.86</b>	<b>\$110,548.53</b>
<b>Cumulative Carryover</b>	<b>\$412,718.39</b>	<b>\$290,137.91</b>	<b>\$153,318.05</b>

**Appendix 5 (cont.)**

**Board of Medical Examiners' Committee on Physician Assistants  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<b><u>FY 2011</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2009</u></b>
Salaries & Wages	\$12,338.26	\$21,304.39	\$24,799.48
Longevity	\$643.16	\$227.48	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$6,462.62	\$11,286.56	\$12,567.23
Payroll Expenditures	\$19,444.04	\$32,818.43	\$37,366.71
Travel	\$4,053.88	\$4,695.80	\$3,790.38
Printing & Duplicating	\$0.00	\$0.00	\$0.00
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$1,208.98	\$702.90	\$474.99
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$2,634.94	\$16,213.41	\$4,735.47
Supplies & Materials	\$0.00	\$0.00	\$0.00
Rentals & Insurance	\$0.00	\$1,170.00	\$1,170.00
Awards & Indemnities	\$0.00	\$0.00	\$79.27
Grants & Subsidies	\$15,583.34	\$2,916.38	\$15,583.33
Training of State Employees	\$0.00	\$0.00	\$0.00
Computer Related Items	\$536.00	\$558.00	\$0.00
State Prof. Svcs.	\$1,973.20	\$202.50	\$1,177.75
Other Expenditures	\$25,990.34	\$26,458.99	\$27,011.19
<b>Total Direct Expenditures</b>	<b>\$45,434.38</b>	<b>\$59,277.42</b>	<b>\$64,377.90</b>
<b>Indirect Expenditures*</b>			
Administration	\$22,178.87	\$16,429.15	\$24,954.01
Investigations	\$19,753.35	\$35,170.48	\$24,092.26
Legal	\$4,243.74	\$13,246.36	\$19,752.52
Cash Office	\$1,181.06	\$980.50	\$970.14
<b>Total Indirect Expenditures</b>	<b>\$47,357.02</b>	<b>\$65,826.49</b>	<b>\$69,768.93</b>
<b>Total Expenditures</b>	<b>\$92,791.40</b>	<b>\$125,103.91</b>	<b>\$134,146.83</b>
<b>Board Fee Revenue</b>	<b>\$181,373.94</b>	<b>\$170,853.51</b>	<b>\$166,418.54</b>
<b>Current Year Net</b>	<b>\$88,582.54</b>	<b>\$45,749.60</b>	<b>\$32,271.71</b>
<b>Cumulative Carryover</b>	<b>\$194,656.13</b>	<b>\$106,073.59</b>	<b>\$60,323.99</b>

**Appendix 5 (cont.)**

**Board of Optometry  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<u><b>FY 2011</b></u>	<u><b>FY 2010</b></u>	<u><b>FY 2009</b></u>
Salaries & Wages	\$19,349.98	\$24,798.64	\$32,089.40
Longevity	\$573.33	\$795.63	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$12,797.02	\$11,551.28	\$17,782.22
Payroll Expenditures	\$32,720.33	\$37,145.55	\$49,871.62
Travel	\$6,034.55	\$4,947.54	\$4,797.50
Printing & Duplicating	\$0.00	\$6.00	\$12.27
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$1,187.98	\$1,676.46	\$1,630.69
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$2,882.87	\$2,478.08	\$2,240.42
Supplies & Materials	\$0.00	\$0.00	\$0.00
Rentals & Insurance	\$0.00	\$2,520.00	\$2,520.00
Awards & Indemnities	\$0.00	\$0.00	\$80.00
Grants & Subsidies	\$0.00	\$310.12	\$375.00
Training of State Employees	\$1,019.45	\$925.00	\$0.00
Computer Related Items	\$0.00	\$0.00	\$0.00
State Prof. Svcs.	\$4,300.57	\$496.75	\$213.85
Other Expenditures	\$15,425.42	\$13,359.95	\$11,869.73
<b>Total Direct Expenditures</b>	<b>\$48,145.75</b>	<b>\$50,505.50</b>	<b>\$61,741.35</b>
<b>Indirect Expenditures*</b>			
Administration	\$20,613.71	\$16,457.84	\$26,920.79
Investigations	\$1,193.93	\$3,928.06	\$3,112.14
Legal	\$13,243.39	\$16,937.97	\$9,369.78
Cash Office	\$1,097.71	\$982.21	\$1,033.43
<b>Total Indirect Expenditures</b>	<b>\$36,148.74</b>	<b>\$38,306.08</b>	<b>\$40,436.14</b>
<b>Total Expenditures</b>	<b>\$84,294.49</b>	<b>\$88,811.58</b>	<b>\$102,177.49</b>
<b>Board Fee Revenue</b>	<b>\$206,480.20</b>	<b>\$189,113.51</b>	<b>\$198,003.93</b>
<b>Current Year Net</b>	<b>\$122,185.71</b>	<b>\$100,301.93</b>	<b>\$95,826.44</b>
<b>Cumulative Carryover</b>	<b>\$354,562.37</b>	<b>\$232,376.66</b>	<b>\$132,074.73</b>

**Appendix 5 (cont.)**

**Board of Podiatric Medical Examiners  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<b><u>FY 2011</u></b>	<b><u>FY 2010</u></b>	<b><u>FY 2009</u></b>
Salaries & Wages	\$13,027.84	\$11,521.91	\$12,679.91
Longevity	\$600.00	\$222.08	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$5,966.25	\$4,362.97	\$4,786.54
Payroll Expenditures	\$19,594.09	\$16,106.96	\$17,466.45
Travel	\$3,612.38	\$2,390.39	\$2,493.06
Printing & Duplicating	(\$3,615.00)	\$7,230.00	\$0.00
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$872.60	\$827.66	\$1,430.70
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$2,323.49	\$1,722.08	\$1,306.75
Supplies & Materials	\$0.00	\$0.00	\$87.89
Rentals & Insurance	\$0.00	\$1,620.00	\$1,620.00
Awards & Indemnities	\$0.00	\$0.00	\$0.00
Grants & Subsidies	\$0.00	\$0.00	\$0.00
Training of State Employees	\$1,264.44	\$0.00	\$0.00
Computer Related Items	\$200.00	\$182.00	\$0.00
State Prof. Svcs.	\$2,617.41	\$459.50	\$124.15
Other Expenditures	\$7,275.32	\$14,431.63	\$7,062.55
<b>Total Direct Expenditures</b>	<b>\$26,869.41</b>	<b>\$30,538.59</b>	<b>\$24,529.00</b>
<b>Indirect Expenditures*</b>			
Administration	\$11,597.74	\$9,489.58	\$16,159.02
Investigations	\$12,367.46	\$8,211.65	\$10,338.03
Legal	\$14,779.92	\$19,326.66	\$20,807.67
Cash Office	\$665.82	\$620.84	\$659.11
<b>Total Indirect Expenditures</b>	<b>\$39,410.94</b>	<b>\$37,648.73</b>	<b>\$47,963.83</b>
<b>Total Expenditures</b>	<b>\$66,280.35</b>	<b>\$68,187.32</b>	<b>\$72,492.83</b>
<b>Board Fee Revenue</b>	<b>\$75,551.24</b>	<b>\$96,303.54</b>	<b>\$116,583.21</b>
<b>Current Year Net</b>	<b>\$9,270.89</b>	<b>\$28,116.22</b>	<b>\$44,090.38</b>
<b>Cumulative Carryover</b>	<b>\$101,862.67</b>	<b>\$92,591.78</b>	<b>\$64,475.56</b>

**Appendix 5 (cont.)**

**Board of Veterinary Medical Examiners  
Revenue and Expenditures for Fiscal Years 2011, 2010, and 2009  
Source: Board Administrator**

	<u><b>FY 2011</b></u>	<u><b>FY 2010</b></u>	<u><b>FY 2009</b></u>
Salaries & Wages	\$151,205.62	\$153,753.46	\$147,713.15
Longevity	\$5,424.38	\$4,444.65	\$0.00
Overtime	\$0.00	\$0.00	\$0.00
Employee Benefits	\$54,777.89	\$45,805.50	\$43,149.79
Payroll Expenditures	\$211,407.89	\$204,003.61	\$190,862.94
Travel	\$7,137.48	\$4,309.43	\$8,188.83
Printing & Duplicating	\$0.00	\$0.00	\$341.79
Utilities & Fuel	\$0.00	\$0.00	\$0.00
Communications	\$7,440.97	\$7,376.14	\$4,894.29
Maintenance & Repairs	\$0.00	\$0.00	\$0.00
Prof. Svc. & Dues	\$70,240.99	\$49,974.72	\$7,148.62
Supplies & Materials	(\$12.83)	\$0.00	\$1,080.60
Rentals & Insurance	\$0.00	\$8,856.00	\$9,331.00
Awards & Indemnities	\$0.00	\$0.00	\$0.00
Grants & Subsidies	\$0.00	\$7,340.00	\$51,990.00
Training of State Employees	\$1,700.00	\$0.00	\$0.00
Computer Related Items	\$1,178.98	\$507.00	\$0.00
State Prof. Svcs.	\$27,696.15	\$12,403.65	\$8,382.75
Other Expenditures	\$115,381.74	\$90,766.94	\$91,357.88
<b>Total Direct Expenditures</b>	<b>\$326,789.63</b>	<b>\$294,770.55</b>	<b>\$282,220.82</b>
<b>Indirect Expenditures*</b>			
Administration	\$51,697.37	\$40,868.00	\$58,440.13
Investigations	\$41,046.46	\$44,682.82	\$107,833.89
Legal	\$37,242.47	\$45,385.08	\$43,430.21
Cash Office	\$3,164.32	\$2,779.64	\$2,825.42
<b>Total Indirect Expenditures</b>	<b>\$133,150.62</b>	<b>\$133,715.54</b>	<b>\$212,529.65</b>
<b>Total Expenditures</b>	<b>\$459,940.25</b>	<b>\$428,486.09</b>	<b>\$494,750.47</b>
<b>Board Fee Revenue</b>	<b>\$540,578.50</b>	<b>\$554,248.53</b>	<b>\$491,012.33</b>
<b>Current Year Net</b>	<b>\$80,638.25</b>	<b>\$125,762.44</b>	<b>(\$3,738.14)</b>
<b>Cumulative Carryover</b>	<b>\$96,610.34</b>	<b>\$15,972.09</b>	<b>(\$109,790.35)</b>

## Appendix 6

### Department of Health Personnel Confidentiality Statement Source: Tennessee Department of Health Intranet Website



#### TENNESSEE DEPARTMENT OF HEALTH

##### PERSONNEL CONFIDENTIALITY STATEMENT

By signing below, I acknowledge and understand that, as a State employee of the Tennessee Department of Health or as a County, Contract, or Municipal employee working for the Tennessee Department of Health, I am prohibited from releasing to any unauthorized person any medical information which may come to my attention in the course of my duties.

Moreover, I acknowledge and understand that any breach of confidentiality, patient or otherwise, resulting from my written or verbal release of information or records provides grounds for disciplinary action, which may include my immediate termination as an employee of the department.

##### DRUG-FREE WORKPLACE

I, as a State employee of the Tennessee Department of Health, or as a County, Contract, or Municipal employee working for the Tennessee Department of Health, hereby certify that I have received a copy of the Tennessee Department of Health's policy regarding the maintenance of a drug-free workplace. I realize that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace or on state property and violation of this policy can subject me to discipline up to and including termination. I realize that as a condition of employment, I must abide by the terms of this policy and will notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five (5) days after such conviction. I further realize that federal law mandates that the employer communicate this conviction to a federal agency, where appropriate, and I hereby waive any and all claims that may arise for conveying this information to the federal agency. By signing below, I acknowledge that I have agreed to comply with the Drug-Free Workplace Policy of the Tennessee Department of Health.

##### SEXUAL HARASSMENT ACKNOWLEDGEMENT

By signing below, I acknowledge that I have read and agree to comply with the Conflict of Interest Policy of the Tennessee Department of Health.

**Appendix 6 (cont.)**

**CONFLICT OF INTEREST POLICY  
ACKNOWLEDGEMENT**

By signing below, I acknowledge that I have read and agree to comply with the Conflict of Interest Policy of the Tennessee Department of Health.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Social Security Number  
PH-3131  
RDA N/A

## Appendix 7

### Health Related Boards Conflict of Interest Policy Signed by Employees Source: Tennessee Department of Health Intranet Website

#### Health Related Boards Conflict of Interest Policy

#### EMPLOYEES

**Purpose:** To assure that the individual interests/activities of employees do not conflict or have the appearance of conflicting with their responsibilities of full, unbiased service to the public.

**Applicability:** This policy shall apply to all employees within the Division of Health Related Boards.

#### I. Definitions

- (a) **Conflict of Interest:** A circumstance in which an employee's individual interest impairs or impedes, or gives the appearance of impairing or impeding, his or her ability to make full, unbiased decisions or to provide full, unbiased service to the public.
- (b) **Substantial Financial Interest:** Ownership by an employee or an employee's immediate family members of ten percent (10%) or more of the stock of a corporation or ten percent (10%) or more of any other business entity; or a relationship as a director, advisor, or other active participant in the affairs of a party.

#### II. Conduct

- (a) An employee shall not engage in conduct, employment, or other activity which impairs or impedes, or gives the appearance of impairing or impeding, the employee's ability to make full, unbiased decisions, or to provide full, unbiased service to the public.
- (b) An employee shall not violate applicable state or federal laws concerning conflict of interest.
- (c) An employee shall not knowingly take any action which might prejudice the department's interest in a civil or criminal case.

### **Appendix 7 (cont.)**

- (d) An employee shall not accept any item of significant monetary value except usual social and business courtesies from a party or provider seeking to obtain a contractual or other financial relationship with the employee's organizational unit or whose activities are regulated by such.
- (e) An employee shall not accept honoraria or other compensation for activities which are, or should be, performed as part of one's official duties, except as provided by the Comprehensive Travel Regulations of the Department of Finance and Administration.

### **III. Financial Interest**

- (a) It is a conflict of interest for an employee, who has a public duty to recommend, approve, disapprove, monitor, regulate, investigate, or superintend, in any manner, a contract or other activity, to have a substantial financial interest in a business that does, or seeks to do, business with Health Related Boards.
- (b) An employee shall not have a financial interest in an outside entity of such significance that the departmental responsibilities and duties of the employee can not be rendered in a fair and impartial manner.
- (c) An employee shall not engage in a financial transaction for personal gain relying upon information obtainable solely through one's employment.
- (d) An employee shall not receive any compensation from a private source for services which are, or should be, performed as part of one's official duties, except as provided by statute or as approved by the Commissioner.

### **IV. Outside Employment and Activities**

- (a) An employee who has a public duty to recommend, approve, disapprove, monitor, regulate, investigate, or superintend program activities shall not engage in outside employment with an entity that is regulated by Health Related Boards.

**Appendix 7 (cont.)**

- (b) An employee shall not serve on a board of directors for a non-state agency that is regulated by, or that has or seeks funding from Health Related Boards unless the Commissioner deems such to be in the Department's interest and grants a waiver of this restriction.

**V. Action to Resolve a Conflict of Interest**

- (a) An employee who has a conflict of interest must eliminate such conflict.
- (b) If an employee's activities give the appearance of a conflict of interest, such activities must be eliminated.
- (c) If there is uncertainty whether a current or proposed activity is a conflict of interest, an employee should notify the Commissioner in writing of the potential conflict and receive approval for such activity.

**VI. Violation of Conflict of Interest**

- (a) An employee with a conflict of interest in violation of this policy is subject to disciplinary action in accordance with the Department of Personnel's rules and regulations.
- (b) An employee who violates a statutory conflict of interest is also subject to sanctions provided by statute.

I have read and understand both the Department of Health's and Division of Health Related Boards' conflict of interest policies and I, \_\_\_\_\_, certify that I shall notify the Division of Health Related Boards immediately in writing if I feel that there may be a conflict of interest in an assignment. I also understand that the release of any confidential information obtained to any unauthorized person is prohibited.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

## Appendix 8

### Health Related Boards Conflict of Interest Policy Signed by Board Members

Source: Tennessee Department of Health Intranet Website

#### HEALTH RELATED BOARDS CONFLICT OF INTEREST POLICY BOARD MEMBERS

**Purpose:** To assure that the individual interests of board members do not conflict with their responsibilities to the Board to which they are appointed.

**Applicability:** This policy shall apply to all board members.

#### I. Definitions

- A. **Conflict of Interest:** A circumstance in which a board member's individual interest impairs or impedes, or gives the appearance of impairing or impeding, his or her ability to make full, unbiased decisions or to provide full, unbiased service to the Board.
- B. **Financial Interest:** Ownership by a board member or a board member's immediate family members of ten percent (10%) or more of the stock of a corporation or ten percent (10%) or more of any other business entity; or a relationship as a director, advisor, or other active participant in the affairs of a party. An office in an educational, professional, religious, charitable, or civic organization is not a financial interest.

#### II. Conduct

- A. A board member shall not engage in conduct which impairs or impedes, or gives the appearance of impairing or impeding, the board member's ability to make full, unbiased decisions, or to provide full, unbiased service to the Board.
- B. A board member shall not knowingly take any action which might prejudice his or her ability, or other members of the board's ability, to make an unbiased decision on any matter in which the board member, or the board member's immediate family members, has a financial interest.
- C. A board member will not willingly participate as an expert witness in a contested case hearing before this Board.

### **Appendix 8 (cont.)**

- D.** It is a conflict of interest for a board member to vote in a matter involving a party in which the board member, or the board member's immediate family members, holds a financial interest.
- E.** A board member shall not accept any item of significant monetary value except usual social and business courtesies from a party or provider seeking specific board approval of action.
- F.** A board member who is employed by, or has contracted to provide services to, a health care provider seeking specific board approval or action, shall abstain from voting on the board approval or action.
- G.** A board member shall not accept honoraria or other compensation for activities which are, or should be, performed as part of one's official duties, except as provided by the Comprehensive Travel Regulations of the Department of Finance and Administration.

### **III. Disclosure**

- A.** Each board member shall disclose to the Board on a case-by-case basis, any personal relationships, interests or dealings that impairs or impedes, or gives the appearance of impairing or impeding, his or her ability to make full, unbiased decisions on a matter.
- B.** For the purposes of contested cases, the Board will be governed by T.C.A. 4-5-302, attached as Exhibit A to this policy.

### **IV. Recusal**

- A.** Any board member who has a conflict of interest as defined above must recuse himself/herself from any matter and is prohibited from participating in any discussion or vote on the matter, and shall leave the hearing room during the discussion and vote.
- B.** It is improper for any board member having a conflict of interest to attempt to influence another board member at any item, including prior to the discussion on the matter for which the conflict exists.

**Appendix 8 (cont.)**

- C. In business matters, the board chair, with the advice of the advising attorney, shall be the final authority to determine whether a board member must be recused.

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Board Member

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Date

## Appendix 9

### Prior Finding as Reported in the 2009 Performance Audit Report

#### Finding

#### **The National Practitioner Data Bank provides an opportunity for the Division of Health Related Boards to further protect the public**

The federal government created the National Practitioner Data Bank through the *Health Care Quality Improvement Act of 1986*. The act's intent is to encourage state licensing boards and other entities to identify and discipline practitioners who engage in unprofessional behavior and to restrict the ability of incompetent health care providers to move from state to state without disclosure or discovery of adverse actions taken against them. While the department is not required by the federal government or by state statute/rules to query the database, the federal government encourages states to do so. The data bank can include information on adverse actions involving license discipline, clinical privileges, professional society membership, malpractice payments, and exclusions from Medicare and Medicaid.

Medical malpractice payers, medical/dental state licensing boards, hospitals and other health care entities, professional societies with formal peer review, the Health and Human Services Office of Inspector General, and the U.S. Drug Enforcement Administration report to the data bank. Professions covered by the data bank include physicians, dentists, dietitian/nutritionists, registered nurses, pharmacists, podiatrists, massage therapists, respiratory therapists, audiologists, and midwives among many others.

The U.S. Department of Health and Human Services recommends, but does not require, that state licensing authorities and other health care entities use the data bank to alert the entities that there may be a problem with a practitioner's competence or conduct. Further, the federal government states that the data bank should not be used as the sole source of information, but rather as a supplement to other information useful in evaluating current competence, such as peer recommendations and verification of training and experience. Similarly, nothing in state statute or rules currently appears to mandate the department to use the data bank.

#### The Data Bank Could Supplement Existing Practices

The data bank provides an additional opportunity for the division to supplement its current efforts to protect consumers from practitioners who have poor records in other states. The division already uses the data bank in some circumstances. Specifically, the Office of Investigations has access to query the data bank when a problem is suspected or to follow up on previously disciplined practitioners.

Similarly, the Board of Medical Examiners currently requests data bank queries during the licensing process on an as-needed basis. The board also accesses an alternative database operated by the Federation of State Medical Boards for all applicants in covered professions.

## **Appendix 9 (cont.)**

However, this database does not include information on hospital privileges or malpractice suits, which is included in the National Practitioner Data Bank. This suggests that the data bank could be a useful and efficient tool to provide information not currently available in all cases to the boards.

Additionally, individual board administrators already sometimes proactively request information from other states when reviewing applications. For example, one administrator explained that when an applicant discloses that he or she had lived in another state but did not practice in that state, the administrator might take the initiative to contact the other state's licensing authority to ensure that the applicant was truthful and not failing to disclose a past disciplinary action.

The division could supplement these efforts by also systematically querying the data bank before licensing applicants. This would provide an additional tool to the division to identify problematic practitioners and further reduce dependency on applicants to truthfully disclose all potential problems.

### **Licensing Fees May Need to Be Adjusted**

The division would incur additional costs if it routinely queried the data bank for all covered professional applicants. The division reports that the data bank charges it \$9.50 per query to cover costs. Given the current budget environment, the division is unlikely to be able to absorb this cost. However, given the importance of protecting Tennessee citizens from dangerous practitioners, the division and individual boards may wish to review their current authority and, if necessary, request authority from the General Assembly to charge each applicant a one-time fee to cover the query cost.

## **Recommendation**

Division of Health Related Boards staff should supplement existing efforts to identify problematic applicants by systematically querying the National Practitioner Data Bank whenever an applicant in a covered profession applies for Tennessee licensure. To cover this cost, the division and individual boards should investigate their current authority and, if necessary, request authority from the General Assembly, to charge each covered applicant a one-time fee to cover the query cost.

## **Appendix 9 (cont.)**

### **Prior Finding as Reported in the 2009 Performance Audit Report**

#### **Management's Comments**

##### Comment by the Department of Health

We concur.

As pointed out by the auditors, the Health Related Boards staff has a number of sources of information from which it can draw to conduct background checks on applicants and does, at times, access the databases maintained by the Federation of State Medical Boards and the National Practitioner Data Bank. Additionally, the staff does occasionally contact other states concerning a particular applicant.

As also noted by the auditors, the Division of Health Related Boards is not required by statute to query the National Practitioner Data Bank for each application. Furthermore, the data bank may not have complete data. Public Citizen has reported that hospitals have repeatedly failed to file every instance of doctors being disciplined for unprofessional behavior or incompetence. Thus, to mandate that the data bank be queried would not likely produce the desired result in every instance. Nonetheless, the Division will consider ways it can more fully and systematically integrate the use of the data bank into its application processes.

##### Comment by the Chair of the Massage Licensure Board

We concur that all boards should use the Data Bank for every applicant and add a one-time \$10 fee.

Auditors Note: The finding was not resolved. See page 38.