

Audit Report

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**Department of Health and Mental Hygiene  
Regulatory Services**

April 2017

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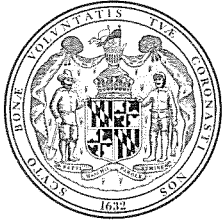
**OFFICE OF LEGISLATIVE AUDITS**  
DEPARTMENT OF LEGISLATIVE SERVICES  
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

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April 26, 2017

Senator Craig J. Zucker, Co-Chair, Joint Audit Committee  
Delegate C. William Frick, Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of Regulatory Services, a budgetary unit within the Department of Health and Mental Hygiene (DHMH), for the period beginning March 25, 2013 and ending September 27, 2015. In addition, other matters came to our attention during the audit that resulted in us reviewing certain activities beyond the audit period. Regulatory Services consists of the following entities:

- Health Professional Boards and Commissions (comprising 17 individual boards and 2 commissions)
- Board of Nursing
- Board of Physicians
- Office of Health Care Quality (OHCQ)

These entities are responsible for licensing and regulating health professionals (such as physicians, nurses, and pharmacists) and health care facilities in the State.

Our audit disclosed that the Board of Professional Counselors and Therapists did not properly track and monitor complaints received against licensees, resulting in complaints not being investigated and submitted to the Office of the Attorney General (OAG) for administrative and/or criminal action in a timely manner. We noted untimely action for 9 of the 15 complaints tested, including 3 that had not been submitted to OAG even though the Board recommended at least ten months earlier they should have been referred to OAG for administrative action (including license revocation). As of November 2016, 136 complaints were still under investigation or not yet investigated, including 91 that had been open for more than one year. The timely investigation and resolution of complaints is

critical since licensed counselors and therapists continue to practice until any action deemed necessary is taken.

The Maryland Medical Cannabis Commission (MMCC) improperly procured license application evaluation services through interagency agreements with a State university, circumventing competitive procurement and control agency approvals. The structure and use of the interagency agreements resulted in a lack of assurance that these services were obtained at the most advantageous cost to the State. For example, MMCC significantly understated the number of applications to be evaluated, resulting in an increase in the value of the agreements from \$545,000 to \$2.4 million. MMCC relied on Towson University's Regional Economic Studies Institute to renegotiate prices with the hired evaluators without ensuring the cost increases were reasonable.


The Board of Nursing did not always take timely action to suspend the licenses of delinquent noncustodial parents referred by the Child Support Enforcement Administration as required by State law. In addition, as noted during our past audits, OHCQ had not performed annual inspections for a number of licensed assisted living facilities and facilities for the developmentally disabled.

Certain boards had not established adequate controls over cash receipts. For example, for 17 of the boards, employees who were responsible for handling collections also had access to the licensing systems, which gave them the capability to issue or renew the related licenses. These functions should be separated to ensure collections are properly controlled.

The Board of Physicians did not adequately monitor a \$2.5 million rehabilitation services contract, and certain controls over the information systems used by three boards were not sufficient to protect critical licensee data.

DHMH's response to this audit, on behalf of Regulatory Services, is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this audit by Regulatory Services.

Respectfully submitted,



Thomas J. Barnickel III, CPA  
Legislative Auditor

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# Background Information

## Agency Responsibilities

Regulatory Services is a separate budgetary unit within the Department of Health and Mental Hygiene (DHMH) consisting of the

- Health Professional Boards and Commissions (comprising 17 separate boards and 2 commissions),
- Board of Nursing,
- Board of Physicians, and
- Office of Health Care Quality (OHCQ).

The various boards and commissions are responsible for licensing and regulating health professionals (including physicians, nurses, pharmacists, dentists, social workers, and chiropractors) in the State. OHCQ is responsible for regulating health care facilities in the State. According to the State’s records, fiscal year 2016 expenditures for Regulatory Services totaled approximately \$51.1 million. The expenditures were funded by special funds from licensing and registration fees (\$32.2 million), general funds (\$12.4 million), federal funds (\$6.0 million), and reimbursable funds (\$502,000).

Unit	Expenditures (In Millions)
OHCQ	\$ 18.1
Health Prof Boards and Comm	16.1
Board of Physicians	8.7
Board of Nursing	8.2
<b>Total</b>	<b>\$ 51.1</b>

Source: State Records

## Organizational Changes

Effective October 1, 2013, Chapter 403, Laws of Maryland, 2013 created the Natalie M. LaPrade Medical Marijuana Commission as an independent unit functioning within DHMH. This law also created the Natalie M. LaPrade Medical Marijuana Fund as a special, continuing, non-lapsing fund. Effective June 1, 2014, Chapters 240 and 256, Laws of Maryland, 2014, clarified the responsibilities of the Commission and provided for the collection of fees to fund the Commission’s operating costs. Finally, Chapter 251, Laws of Maryland, 2015, effective May 12, 2015, renamed the Commission and related Fund to the Natalie M. LaPrade Medical Cannabis Commission (subsequently referred to as the Maryland Medical Cannabis Commission) and the Natalie M. LaPrade Medical Cannabis Commission Fund. The scope of our audit included the operations of the Commission and the Fund.

Subsequent to the period covered by our audit, Chapter 739, Laws of Maryland 2016, effective October 1, 2016, separated the Board of Chiropractic and Massage Therapy Examiners into two boards – the Board of Chiropractic Examiners and the Board of Massage Therapy Examiners. The law change established separate special funds for the two boards while retaining shared personnel.

### **Status of Findings From Preceding Audit Report**

Our audit included a review to determine the status of the three findings contained in our preceding audit report on Regulatory Services dated June 19, 2014. We determined that Regulatory Services satisfactorily addressed one of the findings. The remaining two findings are repeated in this report.



# Findings and Recommendations

## Licensing

### **Finding 1**

**The Board of Professional Counselors and Therapists did not properly track complaints against licensees, resulting in complaints not being investigated and submitted to the Office of the Attorney General for administrative and/or criminal action in a timely manner.**

### **Analysis**

The Board of Professional Counselors and Therapists did not properly track and monitor complaints (such as, allegations of sexual misconduct, unprofessional conduct, practicing without a license, and insurance fraud) related to some of the 7,800 active licensees under its oversight. Specifically, our review of the complaint logs for three boards disclosed that the Board of Professional Counselors and Therapists' log contained incomplete information. As a result, we conducted a more detailed review of this Board and noted that complaints were not timely investigated and submitted to the Office of the Attorney General (OAG) for administrative (such as license revocation or suspension, probation, reprimand, and fines) and/or criminal action. Adequate tracking and timely resolution of complaints is critical since licensed individuals continue to practice until OAG takes action.

Complaints received by Board staff are to be recorded in a tracking log and follow a five-step complaint process. Our test of 15 complaints received during the period from January 2014 through June 2016, disclosed untimely action for 9 complaints as of December 2016. These complaints were selected based upon the nature of the allegations and the length of time the complaints remained open.

- Three complaints (for an alleged unlicensed practice, unprofessional conduct, and lack of supervision) had not been submitted to OAG even though, between December 2014 and February 2016, the Board had recommended that these complaints should be referred to OAG for administrative action (including license

### **Complaint Process**

**Step 1:** Complaint is received by Board staff and is required to be recorded in tracking log.

**Step 2:** Board reviews each complaint monthly and decides whether to investigate (or dismiss) complaint.

**Step 3:** Board staff investigates complaint.

**Step 4:** Board reviews results of staff investigation and decides whether case should be referred to OAG for administrative and/or criminal action(s).

**Step 5:** Board staff refers case to OAG for appropriate action.

revocation). As of December 2016, the Board staff should have referred these complaints to OAG between ten months to two years earlier.

- Four complaints (two for sexual misconduct and two for practicing without a license) were submitted to OAG between six months and one year after the Board recommended the administrative action (including license revocation) be taken.
- Two complaints received in March 2014 and recommended by the Board for investigation still did not have completed investigations.

Although there were no formal timelines established for steps in the complaint process, in accordance with State law, the Secretary of the Department of Health and Mental Hygiene (DHMH) had developed timeliness goals for complaint resolution by various health occupation boards. A timeliness goal of 3 to 12 months was developed for the completion of a complaint investigation and a determination to bring charges. The range is based on a number of factors, such as the complexity of the case and does not address the individual steps in the complaint investigation process.

The Board was not aware of the aforementioned delays since it did not periodically review the complaints recorded on the log that tracks the steps in the complaint process. The Board advised us that, after recommendation for administrative action, a complaint should be referred by staff to OAG within a few days.

We were advised by Board management that the referral delays were an oversight due to not having enough digital storage media (such as compact discs) to transfer the complaint files to OAG and due to staffing issues. Having enough digital storage media does not appear to be a valid reason for not forwarding complaints to OAG more timely. With regard to staffing issues for investigations, there was only one investigator during the period of our review and we were advised that the Board is recruiting for two additional positions to assist with the timeliness of investigations and the complaint tracking process.

Board staff also did not always document critical information in the complaint tracking log which would assist in tracking the timely disposition of complaints. For example, the date the Board received the complaint had only been recorded in the log for 16 complaints received since January 2010. Furthermore, as of November 2016, none of the 15 complaints received since July 2016 (based on the Board's meeting minutes) had been recorded in the log.

According to the tracking log, 437 complaints were recorded during the period from January 2010 to November 2016, including 48 complaints received in calendar year 2016. For those 437 complaints, 185 were investigated, of which 79 were reported as being referred to OAG. For the remaining complaints, 102 were dismissed, 14 were referred to another agency, and 136 complaints were still under investigation or not yet investigated, including 91 that had been open for more than one year.

### **Recommendation 1**

#### **We recommend that the Board**

- a. properly monitor complaints (such as periodically review the tracking log) and develop a strategy to ensure the timely disposition of complaints;**
- b. ensure that complaints are promptly referred to OAG upon the Board's recommendation for administrative action, including the three noted above; and**
- c. properly maintain the tracking log and ensure it reflects all critical information, including key dates such as initial receipt.**

### **Finding 2**

**The Board of Nursing did not always take timely action to suspend the licenses of delinquent noncustodial parents referred to it by the Child Support Enforcement Administration as required by State law.**

### **Analysis**

Our review of the license suspension process for Child Support Enforcement Administration (CSEA) referrals at three Boards (Board of Nursing, Board of Physicians, and the Board of Social Work Examiners), disclosed that the Board of Nursing did not always take timely action to suspend the licenses of delinquent noncustodial parents referred to it by CSEA. According to CSEA's records, during the period from July 2013 to November 2015, it referred 236 delinquent noncustodial parents to the Board of Nursing for license suspension. Our review of the Board's follow-up on referrals as of April 2016 disclosed that the Board had not sent the written notice of the suspension for 88 referrals for periods ranging from one to five months after being notified by CSEA to suspend the licenses.

State law and a Memorandum of Understanding between the Board of Nursing and CSEA require the Board to suspend or deny a license upon written notification from CSEA. In accordance with State law, prior to suspending a license, the Board sends a written notice of the suspension action to the licensee to provide the licensee with the option to contest the suspension based on

incorrect identification. The failure to issue the notices timely prolongs the process to suspend the license and could delay the licensee's compliance with child support obligations.

### **Recommendation 2**

**We recommend that the Board take timely action to suspend the licenses of delinquent noncustodial parents referred by CSEA as required by State law.**

### **Finding 3**

**The Office of Health Care Quality did not conduct annual inspections of certain health care facilities as required.**

### **Analysis**

The Office of Health Care Quality (OHCQ) did not inspect certain health care facilities annually as required by State law. Specifically, for fiscal year 2015, OHCQ had not performed inspections for 308 of the 1,497 (21 percent) assisted living facilities and had not inspected 132 of the 203 (65 percent) facilities for the developmentally disabled. Similar situations have been commented upon in DHMH audit reports dating back to 2004. For example, in the preceding audit report of Regulatory Services, we commented that 55 percent of the assisted living facilities and 73 percent of the facilities for the developmentally disabled were not inspected for fiscal year 2012.

While the number of inspections conducted in fiscal year 2015 represents an improvement from our last audit, OHCQ is still not in compliance with State law which requires that inspections of these facilities be conducted at least annually to ensure compliance with State and federal regulations regarding patient care and safety. When deficiencies are noted, OHCQ initiates administrative action against the facilities. If a facility fails to correct problems, OHCQ may impose sanctions such as license revocation, fines, or other restrictions on the operating license.

According to OHCQ's fiscal year 2015 *Annual Report and Staffing Analysis* submitted to the General Assembly, insufficient staff has impacted its ability to meet the annual inspection requirements. OHCQ advised us that it will be unable to perform the required inspections unless additional personnel are assigned or legislative action is taken to change the intervals for inspections. OHCQ further advised that it had not initiated any recent actions to pursue additional staff or to recommend a law change.

### **Recommendation 3**

**We recommend that OHCQ, in conjunction with DHMH, develop a strategy to ensure inspections of the various health care facilities are completed as required by law (repeat).**

## **Interagency Agreements**

### **Finding 4**

**The Maryland Medical Cannabis Commission improperly used interagency agreements with a State university to procure license application evaluation services, circumventing competitive procurement and control agency approvals.**

### **Analysis**

The Maryland Medical Cannabis Commission (MMCC) improperly procured consulting and license application evaluation services for medical cannabis growers, processors, and dispensaries through interagency agreements with Towson University's Regional Economic Studies Institute (RESI). The use and structure of the interagency agreements resulted in a circumvention of control agency approvals and a lack of assurance that these services were obtained at the most advantageous cost to the State.

In July 2015, MMCC entered into an interagency agreement with RESI to develop an application scoring and rating structure and to select subject matter experts (SMEs) to review applications for medical cannabis growers, processors, and dispensaries. In October 2015, MMCC entered into three additional agreements with RESI to oversee and coordinate the evaluation and scoring process performed by the SMEs.

RESI's compensation was based on a fixed rate for each application received which represented payments to the SME for its services as well as RESI's overhead costs for overseeing the SMEs. RESI was also paid for its direct personnel costs, based on an hourly rate, to sift (review the applications for adequacy), sort (assign the applications to the SMEs to review the applications), and compile the SMEs' scores. Initially, these four agreements had a combined not-to-exceed value of \$544,607, but were modified to increase the value to \$2.4 million (see table).

## Schedule of Interagency Agreements

Scope of Services	Original Agreement Value	Modified Agreement Value			
		RESI		Subject Matter Experts	Total
		Direct	Overhead		
1 Consulting services to develop the application scoring and rating structure, and to select subject matter experts	\$80,000	\$150,000	\$0	\$0	\$150,000
2 Oversee evaluation/scoring of grower license applications	135,975	48,290	135,236	290,830	474,356
3 Oversee evaluation/scoring of processor license applications	81,470	43,000	122,249	262,900	428,149
4 Oversee evaluation/scoring of dispensary license applications	247,162	188,000	254,778	926,265	1,369,043
<b>TOTAL</b>	<b>\$544,607</b>	<b>\$429,290</b>	<b>\$512,263</b>	<b>\$1,479,995</b>	<b>\$2,421,548</b>

Source: Interagency Agreements

### Questionable Use of Interagency Agreements

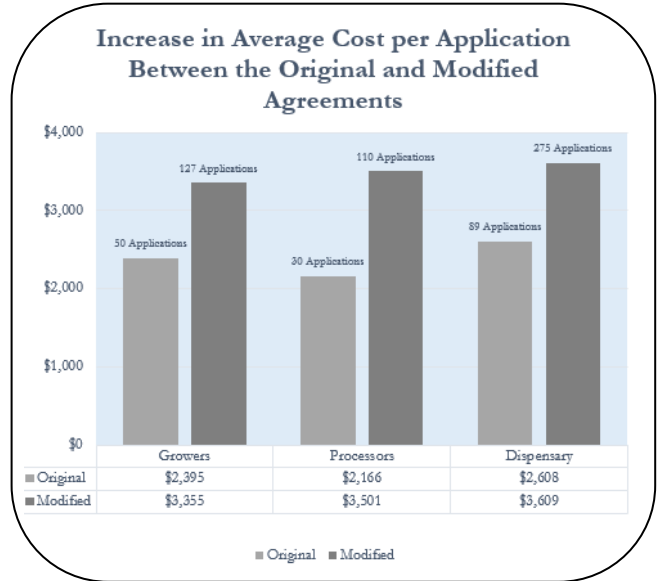
Generally, the use of an interagency agreement permits one State agency to obtain services directly from another, alleviating the need for a competitive third-party vendor procurement process. However, the SMEs were not University employees. Therefore, MMCC's use of interagency agreements with RESI to procure and oversee the SMEs was not consistent with State law requiring competitive procurement for goods and services valued at \$25,000 or more.

MMCC started the process to competitively procure all application evaluation services as one contract (that is, to include medical cannabis growers, processors, and dispensaries) and had paid a consultant approximately \$22,000 to draft a request for proposal (RFP). The proposal was submitted to DHMH's Office of Procurement and Support Services (OPASS) for review in April 2015. However, MMCC never issued the RFP and, instead, entered into the first interagency agreement with RESI in July 2015 and the three subsequent interagency agreements in October 2015. MMCC management advised us that it wanted to pre-approve the licenses by December 2015 and believed an OPASS competitive procurement process, including review and approval by the Board of Public Works, would take too long. MMCC management could not provide any documentation to support this determination or the reason for the December 2015 deadline.

### Agreements Were Artificially Split and Understated

MMCC artificially split and underestimated the anticipated number of applications for the three interagency agreements for application evaluation

services, circumventing the Department of Budget and Management’s (DBM) oversight. Rather than create one interagency agreement for these services to evaluate all license application types as originally planned when drafting the aforementioned RFP, MMCC created three interagency agreements, one for each license type, with identical scopes of work. MMCC also underestimated the anticipated number of applications in the agreements. For example, the agreement for dispensary application evaluations was initially based on an estimated 89 applications even though State regulations allowed for at least 94 licensees. MMCC was aware there would be strong demand for license applications, as stated in the RFP, and eventually received 275 dispensary applications for evaluation. MMCC could not provide us with documentation for how it determined the number of applications used in the agreements.



MMCC’s understated estimates are significant because all three agreements were eventually modified to increase the number of applications at significantly higher costs (see graph<sup>1</sup>). The average cost to evaluate each application increased by \$960 for growers, \$1,335 for processors, and \$1,001 for dispensaries. For example, under the original agreement, the average cost to evaluate a dispensary application was \$2,608, but the average cost to evaluate each application under the modified agreement was \$3,609 – a difference of \$1,001 per evaluation. We were advised by MMCC management that the rates increased for the additional applications to incentivize the SMEs to evaluate the increased number of applications without an extension of time. We were also advised by MMCC management that RESI renegotiated the costs with the SMEs without MMCC’s involvement, and MMCC did not ensure that the basis for the cost increases was documented and reasonable.

In addition, had the agreements been combined and properly valued, MMCC would have exceeded the \$500,000 threshold requiring it to submit the interagency agreement to DBM for review and approval. According to DBM’s

<sup>1</sup> MMCC actually received 145 grower, 124 processor, and 811 dispensary applications. However, RESI combined applications when the same applicant submitted individual applications for multiple legislative districts. The figures used in our report represent the amount of applications RESI used to invoice MMCC.

policy for reviewing and approving interagency agreements, MMCC would have been required to explain why the services could not be provided by the agency and why it was appropriate to use RESI, what other alternatives had been considered, and the impact on the agency mandates and operations if the agreement was not continued. Although we were advised that MMCC disclosed the agreements in its required annual reporting to DBM, it did not submit the grower, processor, and initial dispensary agreements for review and approval since each one was below the \$500,000 threshold; the modified dispensary agreement, valued at \$1,369,043, was submitted and approved after it was modified in April 2016. DBM advised us that it approved the modified agreement and the related overhead rates described below because the work was already substantially performed.

#### MMCC Did Not Determine if RESI Overhead Rates Were Reasonable

MMCC did not review overhead rates included in the three interagency agreements with RESI to oversee the evaluation and scoring process by the SMEs; the overhead rates ranged from 31 percent to 47 percent. Consequently, the modified agreements included \$512,262 in payments to RESI for overhead. This amount is in addition to \$279,290 in direct payments to RESI for sifting, sorting, and consolidating the SME scores. According to DBM's instructions for reviewing and approving interagency agreements, any overhead rates greater than 20 percent are required to be justified by the higher education institution, in this case RESI, to ensure the rates are properly supported and reasonable. However, as noted above the justification for the modified dispensary agreement was not submitted to DBM until after the work was already substantially performed and MMCC had not taken any steps to ensure that the rates included in the three interagency agreements were reasonable.

As of January 2017, MMCC had received RESI invoices totaling approximately \$2.4 million, but had only made payments relating to the first agreement totaling \$150,000. We were advised by MMCC management that MMCC had not approved the remaining invoices because of a lack of sufficient documentation from RESI to support the amounts invoiced.

#### **Recommendation 4**

**We recommend that MMCC**

- a. discontinue the practice of using interagency agreements as a mechanism to avoid a competitive procurement process to obtain contractual services;**
- b. discontinue splitting contracts (including interagency agreements) to circumvent procurement oversight from control agencies;**



- c. ensure estimates, personnel costs, and any overhead rates are reasonable when it is determined appropriate to use interagency agreements in the future; and
- d. approve the RESI invoices for payment once sufficient supporting documentation is received.

## Cash Receipts

### Background

The Regulatory Services boards and commissions collected approximately \$37.7 million during fiscal year 2015 (see table below). These collections were received via credit card, lockbox, or by mail.

### Summary of Fiscal Year 2015 Collections Boards and Commissions

Board/Commission	Mail-In	Lockbox	Credit Card	Total
Board of Physicians	\$ 405,351	\$4,490,148	\$8,385,837	\$13,281,336
Board of Nursing	1,062,562	0	7,604,858	8,667,420
Board of Pharmacy*	3,004,184	0	1,257,795	4,261,979
Board of Dental Examiners	631,112	0	1,922,383	2,553,495
Board of Social Work Examiners	481,359	0	1,231,866	1,713,225
Board of Chiropractic and Massage Therapy Examiners	364,180	0	1,034,080	1,398,260
Board of Professional Counselors and Therapists	403,037	0	519,154	922,191
Board of Physical Therapy Examiners	276,839	0	715,212	992,051
Board of Morticians and Funeral Directors	624,923	0	115,800	740,723
Board of Examiners of Psychologists	199,048	0	464,372	663,420
Board of Occupational Therapy Practice	120,749	0	501,920	622,669
Board of Audiologists, Hearing Aid Dispensers and Speech Language Pathologists	92,906	0	274,269	367,175
Board of Acupuncture	95,971	0	212,997	308,968
Board of Podiatric Medical Examiners	95,965	0	208,950	304,915
Board of Optometry	43,463	0	234,466	277,929
Board of Dietetic Practice	87,238	0	189,244	276,482
Commission on Kidney Disease	169,615	0	0	169,615
Board of Environmental Health Specialists	104,475	0	0	104,475
Board of Examiners of Nursing Home Administrators	19,050	0	44,600	63,650
Board for the Certification of Residential Child Care Program Professionals	32,767	0	0	32,767
Natalie M. LaPrade Medical Cannabis Commission	0	0	0	0
<b>TOTAL</b>	<b>\$8,314,794</b>	<b>\$4,490,148</b>	<b>\$24,917,803</b>	<b>\$37,722,745</b>

Source: State Accounting Records

\* The Board of Pharmacy instituted a lockbox in April 2016.

We performed a detailed review of the cash receipts procedures and controls at the Board of Physicians, Board of Nursing, Board of Pharmacy, and Board of Social Work Examiners, as well as a review of the segregation of licensing and cash handling duties at all 20 boards and commissions with collections during fiscal year 2015.

#### **Finding 5**

#### **Certain boards did not adequately control and account for collections.**

##### **Analysis**

All four boards reviewed did not establish adequate controls over certain aspects of the collections process. According to State records, fiscal year 2015 collections for the four boards totaled approximately \$28.0 million, including \$13.3 million at the Board of Physicians, \$8.7 million at the Board of Nursing, \$4.3 million at the Board of Pharmacy, and \$1.7 million at the Board of Social Work Examiners.

##### Board of Physicians

The Board did not segregate critical collection duties. Specifically, the employee responsible for performing deposit verifications had access to the related mail-in collections. Additionally, the Board did not always deposit collections timely. Our test of mail-in collections totaling \$75,700 received on 10 days during the period from September 2013 to October 2015 disclosed that collections received on 7 days, totaling \$68,800, were deposited between 4 and 7 days after receipt. Finally, the Board did not perform a verification of the accuracy of the electronic credit card payment data uploaded daily to the licensing system.

##### Board of Nursing

The Board did not segregate critical collection duties. Specifically, the employee responsible for performing deposit verifications had access to the related mail-in collections and did not document the verifications performed. The lack of adequate deposit verification by the Board has been commented upon in our audit reports dating back to 2002. The Board also did not verify that credit card collections were deposited in the State's bank account and did not ensure the credit card collections were recorded in the State's accounting records. Finally, the Board did not periodically reconcile the value of licenses issued with the related collections to ensure that all collections were accounted for and deposited.

##### Board of Pharmacy

The Board did not always deposit collections timely. Our test of mail-in collections totaling \$609,500 received on 10 days during the period from March 2015 to September 2015 disclosed that collections received on 9 days totaling

\$564,300 were deposited between 2 and 11 days after receipt. In addition, the Board did not periodically reconcile the value of licenses issued with the related collections. The lack of these reconciliations by the Board has been commented upon in our audit reports dating back to 2006.

#### Board of Social Work Examiners

The Board did not document its verification that mail-in collections and credit card collections were deposited in the State's bank account and did not ensure credit card collections were recorded in the State's accounting records. Finally, the Board did not periodically reconcile the value of licenses issued with the related collections to ensure that all collections were accounted for and deposited.

The Comptroller of Maryland's *Accounting Procedures Manual* requires the establishment of sufficient controls over collections, including depositing collections totaling more than \$5,000 no later than the first working day after receipt, performing an independent verification of collections to deposit, recording deposited collections in the State's accounting records, and reconciling the value of licenses to the related collections.

#### **Recommendation 5**

**We recommend that the applicable Boards**

- a. ensure that the employees responsible for performing the deposit verifications do not have access to collections (repeat) and that the verifications are documented,**
- b. deposit collections within one working day of receipt as required,**
- c. perform documented verifications that mail-in and credit card collections were deposited and properly recorded in the State's accounting records,**
- d. perform documented verifications of the accuracy of the credit card payment data uploaded to the licensing system, and**
- e. periodically reconcile licensing activity with the related collections (repeat).**

#### **Finding 6**

**Seventeen boards and commissions did not ensure that employees who handled collections were denied the capability to issue or renew licenses in the electronic licensing systems.**

#### **Analysis**

Seventeen of the 20 boards and commissions reviewed did not ensure that employees who handled collections were denied the capability to issue or renew

licenses in the electronic licensing systems.<sup>2</sup> Specifically, employees who handled collections also had been assigned system user functions that allowed them the capability to issue or renew licenses in the electronic licensing systems. For example, five of the seven individuals who physically handled collections at the Board of Nursing also had the access capability to issue or renew licenses or certificates.

Although we were advised by most of the boards and commissions that they did not allow employees to both handle collections and issue or renew licenses, having the aforementioned capabilities on the licensing systems still created a risk that employees could issue a license and misappropriate the related collections without detection. Furthermore, as noted in Finding 5, three of the four boards reviewed did not have a process to periodically reconcile licensing activity with the related collections, which could allow any misappropriation to remain undetected.

We were advised by several boards that eliminating licensing issuance and renewal capabilities for all cash handling employees would be a challenge because of limited personnel. In this regard, the Board of Physicians and, as of April 2016, the Board of Pharmacy use a bank lockbox account to process most of their collections, significantly reducing the aforementioned risk. The remaining boards and commissions had not evaluated the feasibility of using a bank lockbox account to receive collections.

The Office of the State Treasurer maintains a banking contract to provide lockbox services to State agencies. The various health professional boards and commissions, in conjunction with DHMH, should evaluate the costs associated with the lockbox account in relation to the related benefits associated with the inherent control of checks being directly sent to the bank for deposit.

### **Recommendation 6**

**We recommend that the boards and commissions**

- a. ensure that employees processing collections are denied the system capability to issue or renew licenses, certificates, or permits; and**
- b. in conjunction with DHMH, consider the feasibility of using a bank lockbox account to receive collections.**

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<sup>2</sup> This condition was not identified during our review of the Board of Podiatric Medical Examiners, Board of Optometry, and the Commission on Kidney Disease.

## Contract Monitoring

### **Finding 7**

**The Board of Physicians did not adequately monitor a rehabilitation services vendor with a \$2.5 million contract and did not always obtain documentation to support amounts invoiced.**

### **Analysis**

The Board of Physicians did not adequately monitor a rehabilitation services vendor and did not always obtain documentation of services provided prior to payment of the related invoice. The Board contracted with a vendor to administer rehabilitation services to physicians and other health professionals enrolled in the Physician Rehabilitation Program for alcoholism, chemical dependency, or other physical or psychological conditions. The vendor is required to provide evaluation, treatment referral, case management, and reporting of participant compliance in the Program. The contract covered the period from January 1, 2015 through December 31, 2019 and was valued at approximately \$2.5 million. The vendor is paid quarterly in equal installments, which, according to State records, totaled approximately \$356,250 for the period January 1, 2015 through February 17, 2016.

- The Board did not maintain documentation that it obtained and reviewed supporting documentation from the vendor to verify that rehabilitation services (such as chemical screenings and therapy) were being provided to all program participants and to verify reported physician compliance with the requirements of their individual rehabilitation plans. Specifically, the Board did not compare participant rehabilitation plans with records of actual treatment services provided to ensure that all the planned services were received. The Board also did not obtain and review chemical screening reports as required by the contract for individuals reported as compliant by the vendor. The vendor reported in its quarterly reports that participant compliance rates ranged from 88 percent to 94 percent during the first year of the contract.
- Our test of two paid invoices totaling \$237,500, disclosed that, for one invoice totaling \$118,750, the Board did not receive the required quarterly detail reports for all program participants documenting the services provided prior to the invoice being paid. According to the contract, if all quarterly detail reports are not received, the contractor is considered to be out of compliance and payment may be withheld.

## **Recommendation 7**

### **We recommend that the Board**

- a. obtain and review supporting documentation, such as rehabilitation plans and chemical screenings, at least on a test basis, to ensure appropriate rehabilitation services were provided to Program participants; and**
- b. ensure that quarterly detail reports are received for all program participants prior to invoice payment.**

## **Information Systems Security and Control**

### **Background**

Fourteen boards and two commissions have licensing systems maintained by the Health Professional Boards and Commissions' information technology staff on a consolidated licensing application database system. The remaining five boards maintain licensing systems residing on servers located at each board's office and principally utilize application security to provide system security. Additionally, several boards provide an online license verification service to the general public and numerous boards offer online license renewals.

Our audit of these systems was primarily limited to the review of select database system controls for the Board of Physicians and the Board of Nursing. Our audit also included the review of certain other controls (including the review of operating systems and critical application account and password controls) for several boards.

### **Finding 8**

**Password and account controls for the Boards of Nursing, Physicians, and Pharmacy were not sufficient to properly protect critical data.**

### **Analysis**

Password and account controls for the Boards of Nursing, Physicians, and Pharmacy were not sufficient to properly protect critical data (such as personally identifiable information). Specifically, we noted that password and account controls over critical applications used by the Boards of Nursing and Pharmacy did not comply with required settings prescribed by the State of Maryland *Information Security Policy* with respect to length, complexity, age, history and account lockout. In addition, password controls over the production licensing databases used by the Boards of Nursing and Physicians did not comply with certain password settings required by the *Policy*. For example, settings for password age, length, complexity and history were not enforced for the critical Board of Nursing's production licensing database.

Given the results of our review of selected systems and the fact that many of the other boards and commissions maintain sensitive licensee information, we believe DHMH should ensure that all boards and commissions have established appropriate password and account controls.

**Recommendation 8**

**We recommend that**

- a. the three Boards implement strong controls over passwords and accounts for critical applications and databases, in accordance with those prescribed by the *Information Security Policy*; and**
- b. DHMH determine the extent to which additional password and account controls are needed to protect licensee data for the remaining boards and commissions.**

## **Audit Scope, Objectives, and Methodology**

We have conducted a fiscal compliance audit of Regulatory Services, a unit of the Department of Health and Mental Hygiene (DHMH), for the period beginning March 25, 2013 and ending September 27, 2015. In addition, other matters came to our attention during the audit that resulted in us reviewing certain activities beyond the audit period (refer to Findings 1 and 4). Regulatory Services consists of the Health Professional Boards and Commissions (comprising 17 separate boards and 2 commissions), the Board of Nursing, the Board of Physicians, and the Office of Health Care Quality (OHCQ). The audit was conducted 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.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine Regulatory Services' financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included health professional and facilities licensing, cash receipts, contracts, corporate purchasing card expenditures, and information systems. In addition, as required by State law, we audited the accounts and transactions of the Board of Dental Examiners' Dental Well-Being Committee and the Dental Hygiene Well-Being Committee, as well as the Board of Physicians' Maryland Physician Rehabilitation Program.<sup>3</sup> We also determined the status of the findings contained in our preceding audit report.

Our audit did not include certain support services provided to Regulatory Services by DHMH – Office of the Secretary. These support services (such as payroll, purchasing, maintenance of accounting records, and related fiscal functions) are included within the scope of our audit of the Office of the Secretary.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of

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<sup>3</sup> The Board of Dental Examiners' committees and the Maryland Physician Rehabilitation Program exist to provide confidential support for licensed individuals experiencing physical, emotional, mental, or substance abuse difficulties.



Regulatory Services' operations, and tests of transactions. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk. Unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, the results of the tests cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the contractor administering the State's Corporate Purchasing Card Program (credit card activity). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit.

We also extracted data from various agency systems, including the licensing systems at the Board of Nursing and the Board of Physicians and the inspection system at OHCQ, for the purpose of testing whether licenses were properly issued and inspections were performed as required. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during the audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

Regulatory Services' management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect Regulatory Services' ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to Regulatory Services' that did not warrant inclusion in this report.

The response from DHMH, on behalf of Regulatory Services, to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise DHMH regarding the results of our review of its response.

**DHMH**

Maryland Department of Health and Mental Hygiene

*Larry Hogan, Governor - Boyd Rutherford, Lt. Governor - Dennis R. Schrader, Secretary*

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April 21, 2017

Mr. Thomas J. Barnickel III, CPA  
Legislative Auditor  
Office of Legislative Audits  
301 West Preston Street, Room 1202  
Baltimore, MD 21201

Dear Mr. Barnickel:

Thank you for your letter regarding the draft audit report for the Department of Health and Mental Hygiene – Regulatory Services for the period beginning March 25, 2013 through September 27, 2015. Enclosed you will find the Department's response and plan of correction that addresses each audit recommendation.

I will work with the appropriate administration directors, program directors and deputy secretary to promptly address the audit exceptions. In addition, the Office of the Inspector General's Division of Internal Audits will follow up on the recommendations to ensure compliance.

If you have any questions or require additional information, please do not hesitate to contact me at 410-767-4639 or Megan D. Limarzi, Inspector General, at 410-767-5862.

Sincerely,

Dennis R. Schrader  
Secretary

cc: Brandon P. Wright, Associate Director, Health Occupations Boards and Commissions, DHMH  
Christine A. Farrelly, Executive Director, State Board of Physicians, DHMH  
Richard A. Proctor, Interim Executive Director, State Board of Nursing, DHMH  
Deena N. Speights-Napata, Executive Director, State Board of Pharmacy, DHMH

Stanley E. Weinstein, Ph.D., Executive Director, State Board of Social Work Examiners, DHMH  
Tracey R, DeShields, Executive Director, State Board of Professional Counselors and Therapists,  
DHMH  
Patrick Jameson, Executive Director, Natalie M. Laprade Medical Cannabis Commission,  
DHMH  
Megan Davey Limarzi, Esq., Inspector General, DHMH  
Elizabeth A. Morgan, Assistant Inspector General, Audits, DHMH  
J. David Lashar, Chief of Staff, DHMH

# **Agency Responses to the Findings and Recommendations**

## **Licensing**

### **Finding 1**

**The Board of Professional Counselors and Therapists did not properly track complaints against licensees, resulting in complaints not being investigated and submitted to the Office of the Attorney General for administrative and/or criminal action in a timely manner.**

### **Recommendation 1**

**We recommend that the Board**

- a. properly monitor complaints (such as periodically review the tracking log) and develop a strategy to ensure the timely disposition of complaints;**
- b. ensure that complaints are promptly referred to OAG upon the Board's recommendation for administrative action, including the three noted above; and**
- c. properly maintain the tracking log and ensure it reflects all critical information, including key dates such as initial receipt.**

### **Board of Professional Counselors and Therapists Response**

- a. The Board concurs with the recommendation. The Board is working to address the timeliness of the resolution of complaints, and through the Executive Director has been working to improve the tracking of complaints to better monitor the timeliness of complaint resolution. The Board's Ethics Committee will monitor complaints by reviewing the complaint log periodically to ensure timely disposition of complaints.
- b. The Board concurs with the recommendation. The Board will refer all cases to the OAG within thirty (30) days of the Board's vote; however, on occasion additional follow-up work is required after the Board's vote, and before transmitting to the OAG, which may delay the transmission. When such a delay occurs, the reason for the delay will be fully documented and retained. The Board will monitor the timely transmission of cases to the OAG through its Ethics Committee during review of the complaint tracking log. The three cases noted, that were not transferred to the OAG, have been transferred to the OAG.

- c. The Board concurs with the recommendation. The Board will ensure through its Ethics Committee that the complaint tracking log is properly maintained and reflects all critical information, including key dates such as the initial receipt of a complaint. This will be implemented by May 2017.

### **Finding 2**

**The Board of Nursing did not always take timely action to suspend the licenses of delinquent noncustodial parents referred to it by the Child Support Enforcement Administration as required by State law.**

### **Recommendation 2**

**We recommend that the Board take timely action to suspend the licenses of delinquent noncustodial parents referred by CSEA as required by State law.**

### **Board of Nursing Response**

The Board concurs with the recommendation and has taken steps toward compliance with the State law. In August 2013, the Board and CSEA entered into a Memorandum of Understanding (MOU) which outlines a multitude of steps for the agencies to abide by before taking an action to suspend. The MOU has been reviewed by Board counsel and is pending revision. In February 2017, the Board hired an additional employee to address suspension orders and take timely action to suspend the licenses of delinquent noncustodial parents referred by CSEA.

### **Finding 3**

**The Office of Health Care Quality did not conduct annual inspections of certain health care facilities as required.**

### **Recommendation 3**

**We recommend that OHCQ, in conjunction with DHMH, develop a strategy to ensure inspections of the various health care facilities are completed as required by law (repeat).**

### **Office of Health Care Quality Response**

OHCQ concurs with the recommendation. By October 1, 2017, DHMH will be submitting a Joint Chairmen's Report detailing a three-year plan to adequately staff OHCQ. Additional staff will allow us to complete more of the mandated survey activities.

## Interagency Agreements

### **Finding 4**

**The Maryland Medical Cannabis Commission improperly used interagency agreements with a State university to procure license application evaluation services, circumventing competitive procurement and control agency approvals.**

### **Recommendation 4**

**We recommend that MMCC**

- a. discontinue the practice of using interagency agreements as a mechanism to avoid a competitive procurement process to obtain contractual services;**
- b. discontinue splitting contracts (including interagency agreements) to circumvent procurement oversight from control agencies;**
- c. ensure estimates, personnel costs, and any overhead rates are reasonable when it is determined appropriate to use interagency agreements in the future; and**
- d. approve the RESI invoices for payment once sufficient supporting documentation is received.**

### **Maryland Medical Cannabis Commission Response**

The Commission respectfully submits that state law permits the use of inter-agency agreements between state agencies. The Commission's use of interagency agreements here does not reflect any intent to circumvent state law. The Commission does not intend to use MOU's to avoid competitive procurements. The Commission has renewed its commitment to the competitive procurement process.

The Commission is in the process of reviewing the application procedures for a more cost effective and timely system.

- a. The Commission concurs with the finding. The Commission will review all MOU's to make sure they are compliant with state procurement rules.
- b. The Commission concurs with the finding.
- c. The Commission concurs with the finding.

- d. The Commission concurs with the finding. Payments will be evaluated once the Commission receives all proper, complete and supporting documentation. This is in process at this time.

## **Cash Receipts**

### **Finding 5**

**Certain boards did not adequately control and account for collections.**

### **Recommendation 5**

**We recommend that the applicable Boards**

- a. **ensure that the employees responsible for performing the deposit verifications do not have access to collections (repeat) and that the verifications are documented,**
- b. **deposit collections within one working day of receipt as required,**
- c. **perform documented verifications that mail-in and credit card collections were deposited and properly recorded in the State's accounting records,**
- d. **perform documented verifications of the accuracy of the credit card payment data uploaded to the licensing system, and**
- e. **periodically reconcile licensing activity with the related collections (repeat).**

### **Board of Physicians Response**

- a. The Board concurs with the recommendation. To ensure independent verification of collections to deposits, the access of the employee performing deposit verifications to the related collections was terminated on May 31, 2016. In addition, his ability to process license renewals was removed.
- b. The Board concurs with the recommendation. Effective May 31, 2016, the Board began depositing all payments within one business day.
- c. Not applicable to the Board of Physicians.
- d. The Board concurs with the recommendation. Effective May 2016, the Board began conducting a random sampling of electronic credit card payment data. To ensure that only legitimate payment information from the credit card renewal text file is uploaded to the Board's database, the Board implemented a monthly audit of account records to reduce the risk of fictitious payments.
- e. Not applicable to the Board of Physicians.



### **Board of Nursing Response**

- a. The Board concurs with the recommendation and has taken steps toward compliance. As of April 1, 2016, new processes were implemented to ensure the separation of the duties of each individual who has access to deposit collections (checks/money orders) from those individuals who are able to verify those deposits. In April 2017, the initial recordation ledger was revamped into a more uniform and automated document which limits the opportunity for misappropriation. Additionally, all individuals responsible for verifications no longer have access to collections, and all verifications are now documented for record.
- b. Not Applicable to the Board of Nursing
- c. The Board concurs with the recommendation and has taken steps toward compliance. As of February 2017, the Board has hired additional staff whose duties include verifying mail-in and credit cards collections with the State's accounting records, while still adhering to the strict separation of duty protocols.
- d. Not applicable to the Board of Nursing
- e. The Board concurs with this recommendation and has taken steps toward compliance. This finding continues to exist because of the limitations of our licensing system. The Board is still working on updates to its current licensing system which will assist staff in performing this task. In conjunction with updates to the licensing system, the Board has hired additional personnel in September 2016 and February 2017 to assist with these reconciliations.

### **Board of Pharmacy Response**

- a. Not applicable to the Board of Pharmacy.
- b. The Board of Pharmacy concurs with the recommendation. Effective April 2016, the Board no longer directly accepts cash or checks in person or via the mail. All payments are processed either directly online via credit card, or checks and money orders are mailed into the lockbox and are directly deposited to the Board's revenue account.
- c. Not applicable to the Board of Pharmacy.
- d. Not applicable to the Board of Pharmacy.

- e. The Board of Pharmacy concurs with the recommendation. In April 2014, the Board implemented procedures to reconcile license activity with the related collections, and to research any discrepancies

**Board of Social Work Examiners Response**

- a. Not applicable to the Board of Social Work Examiners.
- b. Not applicable to the Board of Social Work Examiners.
- c. The Board concurs with the recommendations. The Board documents its verification that mail-in collections and credit card collections were deposited in the state bank account.
- d. Not applicable to the Board of Social Work Examiners.
- e. The Board concurs with the recommendation that a process to reconcile license activity for both check and credit card collections take place. These reconciliations have been in effect since 2016.

**Finding 6**

**Seventeen boards and commissions did not ensure that employees who handled collections were denied the capability to issue or renew licenses in the electronic licensing systems.**

**Recommendation 6**

**We recommend that the boards and commissions**

- a. ensure that employees processing collections are denied the system capability to issue or renew licenses, certificates, or permits; and**
- b. in conjunction with DHMH, consider the feasibility of using a bank lockbox account to receive collections.**

**Boards and Commissions Response**

- a. The Boards and Commissions concur with the recommendation to ensure that employees processing collections do not have the capability to issue or renew licenses or certificates. These functions are separated and staff responsible for doing collections do not have the capability to issue or renew licenses or certificates nor make changes in the licensing system. The Boards will work to better document the separation of these functions.

- b. The Boards and Commissions concur with the recommendation and will collaborate with DHMH to determine the feasibility of using a lockbox and other more efficient and cost effective options.

## **Contract Monitoring**

### **Finding 7**

**The Board of Physicians did not adequately monitor a rehabilitation services vendor with a \$2.5 million contract and did not always obtain documentation to support amounts invoiced.**

### **Recommendation 7**

**We recommend that the Board**

- a. **obtain and review supporting documentation, such as rehabilitation plans and chemical screenings, at least on a test basis, to ensure appropriate rehabilitation services were provided to Program participants; and**
- b. **ensure that quarterly detail reports are received for all program participants prior to invoice payment.**

### **Board of Physicians Response**

- a. The Board concurs with the recommendation. Although the Board routinely obtains and reviews supporting documentation to ensure rehabilitation services are provided to participants, the Board did not have a formal process in place. Effective April 2016, the Board began a formal process of documenting its comparison of individual quarterly reports with the underlying documents. At the beginning of each new quarter, the Probation staff requests, then thoroughly reviews the rehabilitation plans and chemical screenings for five randomly selected Maryland Professional Rehabilitation Program participants from the previous quarter. Results of the comparison are documented and kept in a binder.
- b. The Board concurs with the recommendation. In accordance with the contract terms, the Board will ensure that quarterly detail reports are received for all program participants prior to the invoice payments, effective April 2017.

## Information Systems Security and Control

### **Finding 8**

**Password and account controls for the Boards of Nursing, Physicians, and Pharmacy were not sufficient to properly protect critical data.**

### **Recommendation 8**

**We recommend that**

- a. the three Boards implement strong controls over passwords and accounts for critical applications and databases, in accordance with those prescribed by the *Information Security Policy*; and**
- b. DHMH determine the extent to which additional password and account controls are needed to protect licensee data for the remaining boards and commissions.**

### **Board of Nursing Response**

- a. The Board concurs with this recommendation. As of April 2016, the Board of Nursing implemented various user and administrative password requirements related to length, complexity, age, history, and account lockout in compliance with the Information Security Policy.

### **Board of Physicians Response**

- a. The Board concurs with this recommendation as it relates to password controls over the production licensing database. Effective January 27, 2016, the Board modified the Verify Function file to reflect a minimum password length of 8 characters. The Password Grace Time was also modified for all Profiles (including Default) to remove the grace period.

### **Board of Pharmacy Response**

- a. The Board concurs with recommendation. The board has submitted to DOIT IT system features needed to meet the system security requirements that have been identified. The all-board IT procurement is still being developed and there is no defined date for implementation.

### **DHMH Response**

- b. DHMH concurs with this recommendation. Whereas the Department does not possess authority over the IT operations and applications of the Health Occupation Boards ("Boards"), the Department will conduct for the Boards a review of policies and practices related to password creation and management, and will also offer to the Boards assistance with coming into compliance with the policies and practices.

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