

Audit Report

Department of Health and Mental Hygiene **Health Professional Boards and Commission** **State Board of Physicians** **State Board of Nursing**

January 2009



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

-
- This report and any related follow-up correspondence are available to the public through the Office of Legislative Audits at 301 West Preston Street, Room 1202, Baltimore, Maryland 21201. The Office may be contacted by telephone at 410-946-5900, 301-970-5900, or 1-877-486-9964.
 - Electronic copies of our audit reports can be viewed or downloaded from our website at <http://www.ola.state.md.us>.
 - Alternate formats may be requested through the Maryland Relay Service at 1-800-735-2258.
 - The Department of Legislative Services – Office of the Executive Director, 90 State Circle, Annapolis, Maryland 21401 can also assist you in obtaining copies of our reports and related correspondence. The Department may be contacted by telephone at 410-946-5400 or 301-970-5400.
-



Karl S. Aro
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Bruce A. Myers, CPA
Legislative Auditor

January 21, 2009

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee
Senator Verna L. Jones, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Health Professional Boards and Commission, the State Board of Physicians, and the State Board of Nursing, units of the Department of Health and Mental Hygiene (DHMH), for the period beginning June 1, 2005 and ending January 31, 2008. These units are responsible for licensing and regulating health professionals (such as pharmacists, physicians, and nurses) in the State.

Our audit again disclosed that DHMH had not consolidated certain fiscal and license recordkeeping functions of the boards and commission, and had not provided adequate oversight of these functions. Numerous internal control weaknesses continued to exist, primarily related to controls over the collection of cash receipts and license processing. For the three boards tested, annual collections were approximately \$10.7 million and the boards issued and renewed approximately 158,000 licenses. Some of these control issues have appeared in audit reports dating back to 1983.

The State Boards of Physicians and Nursing had certain deficiencies pertaining to their oversight of licensees and related recordkeeping. For example, the State Board of Physicians did not have sufficient procedures to verify that physicians had obtained required continuing education, the State Board of Nursing did not ensure its licensee records were accurate and both Boards lacked adequate security controls over licensee databases.

An Executive Summary of our findings can be found on page 5. DHMH's response, on behalf of the boards and commission, to this audit is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this audit by the boards and commission.

Respectfully submitted,

Bruce A. Myers, CPA
Legislative Auditor

Table of Contents

| | |
|---|----|
| Executive Summary | 5 |
| Background Information | 7 |
| Agency Responsibilities | 7 |
| Organizational Change | 7 |
| Information Systems Overview | 7 |
| Status of Findings From Preceding Audit Report | 8 |
| Findings and Recommendations | 9 |
| Cash Receipts and Licensing Controls | |
| * Finding 1 – Certain Boards Had Not Established Adequate Controls Over Collections and Professional Licenses | 9 |
| Consolidation of Fiscal and License Recordkeeping Functions | |
| * Finding 2 – (Policy Issue) DHMH Had Not Consolidated Certain Fiscal and License Recordkeeping Functions of the Various Units | 10 |
| State Board of Physicians | |
| Finding 3 – The Board Did Not Have Sufficient Procedures to Verify That Physicians Had Obtained the Required Continuing Medical Education and Taken Actions Accordingly | 12 |
| Finding 4 – Controls Over the Licensing Database Were Not Adequate | 13 |
| State Board of Nursing | |
| Finding 5 – The Board Had Not Established Adequate Procedures to Ensure the Accuracy of License Status in the Licensing Database | 14 |
| Finding 6 – Access Controls Over the Licensing Database and Monitoring of Critical Database Activity Were Not Adequate | 15 |
| Finding 7 – The Board Had Not Obtained an Annual Independent Audit of the Online License Renewal System Maintained by an Independent Contractor | 15 |
| <p>* Denotes item repeated in full or part from preceding audit report</p> | |

| | |
|---|----------|
| State Board of Pharmacy | |
| Finding 8 – The Board Did Not Register and Approve Pharmacy Technicians as Required by State Law | 16 |
| Audit Scope, Objectives, and Methodology | 19 |
| Agency Response | Appendix |

Executive Summary

Legislative Audit Report on the Department of Health and Mental Hygiene Health Professional Boards and Commission, the State Board of Physicians, and the State Board of Nursing January 2009

- **The three boards reviewed had not established adequate control and accountability over collections and professional licenses. For example, the three boards did not properly perform a deposit verification to ensure that all collections were deposited, and two boards did not perform a reconciliation of licenses issued and examinations given with the related cash receipts deposited. In addition, the three boards did not adequately restrict access to the automated licensing system, and two boards did not have controls in place to ensure that only qualified individuals were issued a new or renewed license.**

The boards should take the recommended corrective actions to ensure that all amounts received were deposited and credited to the board, access to the automated licensing system is adequately restricted, and that licenses issued were paid for and were proper.

- **DHMH had not consolidated certain fiscal and license recordkeeping functions of the boards and commission, and had not provided adequate oversight of these functions. Numerous internal control weaknesses continue to exist, some of which have been reported upon dating back to 1983.**

DHMH should develop a work plan to consolidate the fiscal functions of the boards and commission, including the collection of funds and control and accountability over licensing transactions. In addition DHMH, in conjunction with the boards and commission, should develop uniform guidelines and policies to be followed by all boards and the commission and should develop an ongoing oversight function.

- **The State Board of Physicians did not have procedures to adequately verify that physicians had obtained the required continuing medical education, and did not take appropriate administrative action when physicians could not demonstrate that continuing medical education requirements had been met.**

The Board should ensure that physicians have completed the required continuing medical education and take appropriate action (such as imposing civil penalties or suspending licenses as provided for in State law) when physicians fail to complete the required continuing education.

- **The State Board of Nursing had not established adequate procedures to ensure that the license status of nurses who did not renew their licenses was changed to non-renewed status in the Board's licensing system. As a result, the license status of 470 nurses who had not renewed their licenses was still recorded as active in the system.**

The Board should establish procedures to ensure that the license status of nurses who do not renew their license is changed to non-renewed status in the online licensing system, and take immediate action to correct the license status of the aforementioned 470 nurses in the system.

- **The State Board of Nursing had not obtained an annual independent audit of the online license renewal system maintained by an independent contractor to determine whether the systems' controls and related policies and procedures were suitably designed and properly operating and whether personal and licensing data were secure.**

The Board should obtain an annual independent audit of the controls over the online license renewal system.

- **The State Board of Physicians and that State Board of Nursing did not have adequate controls over their respective licensing databases.**

The Boards should take the recommended corrective actions to improve security over these critical licensing databases.

- **The State Board of Pharmacy did not begin registering pharmacy technicians until January 2008 even though State law required that practicing pharmacy technicians be registered by January 1, 2007.**

The Board should register and approve pharmacy technicians as required by State law and ensure that future actions required by State law are implemented within the specified timeframe.

Background Information

Agency Responsibilities

The Health Professional Boards and Commission budgetary unit of the Department of Health and Mental Hygiene's Office of the Secretary consists of 16 health-related professional boards and one commission. These units, the State Board of Physicians, and the State Board of Nursing (which are separate budgetary units) are responsible for licensing and regulating health professionals (such as pharmacists, physicians, and nurses) in the State. According to the State's records, fiscal year 2007 revenues and expenditures for these units totaled approximately \$25.6 million and \$21.5 million, respectively.

Organizational Change

Chapter 185, Laws of Maryland 2007, effective October 1, 2007, renamed the State Board of Morticians to the State Board of Morticians and Funeral Directors, and required an individual to be licensed by the Board before practicing funeral direction in the State.

Information Systems Overview

Three boards' licensing systems reside on the Comptroller of the Treasury's Annapolis Data Center (ADC), with security software used as the primary means to protect the licensing applications, online transactions, and related license data. Eleven boards and the one commission have licensing systems maintained by board and commission information technology staff on a consolidated licensing application database system. The remaining four boards maintain licensing systems residing on servers located at each board's office and principally use application security to provide system security.

Our audit of these systems was limited to the review of certain database controls for the State Board of Physicians, the State Board of Nursing, and the boards and commission consolidated licensing database. Our audit also included reviewing certain general controls (such as file backup procedures and disaster recovery planning) for the State Board of Physicians, the State Board of Nursing, and the State Board of Pharmacy.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the twelve findings contained in our preceding audit report dated August 23, 2006. We determined that the boards and commission satisfactorily addressed ten of the findings. The remaining two findings are repeated in this report.

Findings and Recommendations

Cash Receipts and Licensing Controls

Finding 1

Certain boards had not established adequate control and accountability over collections and professional licenses.

Analysis

Adequate control and accountability had not been established over collections and professional licenses at each of the three boards we selected for detail review (that is, the State Boards of Nursing, Pharmacy, and Physicians). According to Department of Health and Mental Hygiene (DHMH) records, during calendar year 2007, cash receipts for these three boards totaled approximately \$10.7 million and, during fiscal year 2007, these boards issued and renewed approximately 158,000 licenses. Specifically, our review disclosed the following conditions:

- The procedures at two boards did not always require the recordation of certain collections immediately upon receipt and, at all three boards, independent deposit verifications were not performed to ensure that all recorded collections were properly accounted for and deposited. Additionally, at one board, renewal license collections, which included renewals processed online by a contractor and which, according to the State's records, totaled approximately \$4.5 million during calendar year 2007, were not reconciled with the related fees deposited into the State's bank account and with the amounts recorded in the State's accounting records. The lack of immediate recording of receipts by certain boards has been commented upon in our five preceding audit reports, and the lack of adequate deposit verifications by certain boards has been commented upon in our two preceding audit reports.
- Two boards did not perform a reconciliation of licenses issued and examinations given with the related cash receipts deposited. Although a reconciliation was performed at the third board, the reconciliation was incorrectly performed because it did not verify that funds were collected for each license issued. The lack of such reconciliations by certain boards has been commented upon in our audit reports dating back to 1983.
- All three boards had not adequately restricted access to the automated licensing systems. For example, at one board, 41 employees could process and issue new licenses without supervisory review, and 37 of these employees could also record a payment in the system. In addition, 47 employees could

make changes to critical license data (such as name, address, and license type) without adequate supervisory review, and 41 employees could change the license status (from inactive to active) without supervisory review.

- Controls at two of the boards were inadequate to ensure that only qualified individuals were issued a new or renewed license. For example, at one of the boards, supervisory personnel responsible for approving new licenses did not review the related supporting documentation (such as the application, examination results, and results of the background check). Additionally, two boards did not adequately safeguard and periodically account for the prenumbered licenses as to issued, voided, or on hand. The lack of periodic accountings for prenumbered licenses by certain boards has been commented upon in our six preceding audit reports.

Each board has been advised in writing of the specific control deficiencies applicable to its respective unit. While we tested three boards during the current audit, during our preceding audit we tested all of the boards and commission and found control issues at each unit. Although the responsibilities of each board reviewed are similar, there was a lack of a coordinated approach related to the aforementioned fiscal functions. Rather, as commented upon in Finding 2 of this report, each board and commission essentially operated independently and DHMH's oversight of the units was not adequate.

Recommendation 1

We again recommend that the boards and commission establish procedures to ensure that all amounts received are deposited into the State Treasury and credited to the respective unit, and that all licenses issued were paid for and were proper. We also recommend that the boards and commission adequately restrict access to the automated licensing systems. We made detailed recommendations to each board reviewed which, if implemented, should provide the necessary controls.

Consolidation of Fiscal and License Recordkeeping Functions

Finding 2 (Policy Issue)

DHMH had not consolidated certain fiscal and license recordkeeping functions of the boards and commission, and had not provided adequate oversight in these areas.

Analysis

DHMH had not consolidated certain fiscal and license recordkeeping functions of the boards and commission. In this regard, the April 11, 2005 *Joint Chairmen's*

Report requested that DHMH provide a report, including a proposed work plan, on centralizing the administrative functions of the health occupations boards. In our preceding audit report, we noted that the report submitted by DHMH did not include the requested work plan, but did note that there may be opportunities for the boards to operate more efficiently through restructuring or centralization of functions, most notably in licensing and application processing. Our preceding audit report recommended that DHMH develop a work plan to consolidate the fiscal functions for the boards and commission, including the collection of funds and control and accountability over the licensing transactions. The preceding audit report also recommended that this work plan address whether DHMH needed to seek legislation to authorize the consolidation.

Our current audit disclosed that DHMH had still not developed a consolidated work plan, and had taken only limited action to consolidate the recordkeeping functions of the boards and commission. Furthermore, DHMH obtained formal legal advice that indicated that statutory changes were necessary to accomplish the recommended consolidation. However, as of August 26, 2008, the needed statutory changes had not been made.

Our preceding audit report also recommended that DHMH, in conjunction with the boards and commission, develop uniform guidelines and policies to be followed by all units, and that DHMH develop an ongoing oversight function (such as internal audits) for the units. Our current audit disclosed that DHMH had not developed uniform guidelines and policies to be followed by all units. Additionally, although DHMH's Office of the Inspector General (OIG) had provided some guidance to the boards and commission (for example, worked with the boards and commission to address certain internal control deficiencies identified in our preceding audit), OIG had not conducted any audits of the fiscal operations of the boards and commission during our audit period. Our current audit disclosed that significant internal control weaknesses related primarily to collections and license recordkeeping continued to exist over the administrative functions of the boards that we reviewed (see Finding 1). Similar internal control weaknesses have appeared in our audit reports dating back to 1983.

Recommendation 2

We again recommend that that DHMH develop a work plan to consolidate the fiscal functions of the boards and commission, including the collection of funds and control and accountability over the licensing transactions. In conjunction with the work plan development, DHMH should address the statutory changes needed to accomplish the consolidation. Furthermore, we again recommend that DHMH, in conjunction with the boards and the commission, develop uniform guidelines and policies to be followed by all

boards and commission. Additionally, we again recommend that DHMH develop an ongoing oversight function (such as internal audits) for the boards and commission.

State Board of Physicians

Finding 3

The Board did not have sufficient procedures to verify that physicians had obtained the required continuing medical education, and did not withhold renewal licenses from physicians who had failed to complete educational requirements.

Analysis

The Board's efforts to ensure that physicians had obtained the required continuing medical education (CME) were not adequate. Specifically, the Board randomly selected a sample of 100 physicians at the completion of each renewal period and required the physicians to submit documentation of CME completed during the preceding two years. However, the Board's review of CME completed by the physicians selected for review was incomplete and not performed timely. In addition, the Board had not withheld or suspended the licenses of physicians who failed to meet CME requirements, as permitted by State law. Our review disclosed the following conditions:

- Eleven physicians selected for the 2005 renewal period (ending in November 2005) submitted documentation indicating that less than the required amount of CME had been completed. One of these 11 physicians submitted no documentation of CME obtained; the other 10 submitted documentation showing that they were from 6 to 33.5 credits short of the required CME. Although the Board notified these physicians that they would be required to submit documentation of CME completed during the next renewal period, these physicians were allowed to subsequently renew their licenses without submitting any documentation of CME completed.
- Of the physicians selected for review for the 2006 renewal period (ending in November 2006), 12 physicians had not submitted any documentation of CME completed and the Board had neither made further attempts to obtain the documentation, nor taken appropriate administrative action (such as suspending the physician's license). Additionally, the Board had received documentation of CME from 32 physicians during the period from December 2007 through January 2008 but, as of March 2008, had not reviewed the documentation to ensure that the required CME was completed.

- As of March 2008, the Board had not selected the sample of physicians for review who had renewed their licenses during the 2007 renewal period (ending in November 2007).

State regulations require that each physician receive 50 credits of CME every two years in order to renew a license in Maryland. State law provides that a license may be suspended in the event the physician does not complete the required CME. Additionally, effective June 2007, the law allows the Board, in certain cases, to impose a civil penalty of up to \$100 per CME credit for failure to obtain the necessary CME in lieu of sanctions (such as license suspension). CME generally serves to maintain, develop, and increase knowledge, skills, and professional performance that a physician uses to provide health care services to the public. According to the Board's records, during fiscal year 2007, the Board renewed 12,741 licenses.

Recommendation 3

We recommend that the Board ensure that physicians have completed the required CME and take appropriate action (imposing civil penalties, suspending license) when physicians fail to complete the required CME. The Board should request documentation of CME completed by physicians, and review documentation submitted, in a timely manner.

Finding 4

Controls over the licensing database were not adequate.

Analysis

Controls over the licensing database were not adequate. Specifically, we noted the following conditions:

- Numerous users had unnecessary, direct modification access to five critical production database tables. As a result, unauthorized modifications to these critical tables could occur.
- Although database auditing capabilities were enabled, the use of critical database privileges (such as profile creation or granting database roles) was not logged. As a result, unauthorized changes to production data could occur and not be detected by management.
- Password controls were not in compliance with the Department of Information Technology's *State Security Access Control Standard*. Specifically, the standards for password complexity and history were not enforced and

password aging was set to unlimited for 59 user accounts despite the standards requiring that passwords be changed at least every 90 days.

- Database administrators used an unencrypted protocol, which transmitted userids and passwords in clear text over the network, to access the database. Accordingly, database administrators' userids and passwords could be intercepted in a usable form, and then used to gain unauthorized access to the production licensing database.

Recommendation 4

We recommend that the Board establish adequate controls over the licensing database. Specifically, we made detailed recommendations to the Board which, if implemented, will establish adequate controls over the licensing database.

State Board of Nursing

Finding 5

The Board had not established adequate procedures to ensure that the license status recorded for nurses on its online licensing system was accurate.

Analysis

Adequate procedures had not been established to ensure that the license status of nurses who did not renew their licenses was changed to non-renewed status in the Board's licensing system. In this regard, although the Board had developed a software program to change the status of licenses from active to non-renewed in the licensing system for nurses who did not renew their licenses, the Board did not ensure that the program was functioning as intended. In this regard, our review of the license status of nurses who did not renew their licenses during the period from January 2005 through December 2007 disclosed that, as of March 2008, the license status of 470 nurses was still active in the online licensing system. Employers have access to the online licensing system and may use the system to determine if nurses are licensed to practice in Maryland. Consequently, the accuracy of the license status reflected in the system is critical.

Recommendation 5

We recommend that the Board establish procedures to ensure that the license status of nurses who do not renew their license is changed from active to non-renewed status in the licensing system. We also recommend that the Board take immediate action to correct the license status of the aforementioned 470 nurses in the system.

Finding 6

Access controls over the licensing database and critical database activity monitoring were not adequate.

Analysis

Access controls over the licensing database and critical database activity monitoring were not adequate. Specifically, we noted the following conditions:

- A default group of all licensing database users had unnecessary read access to all licensing database tables. As a result, any licensing database user could logon to this database (via two default database accounts which were using default passwords) and have read access to the licensing database tables outside of normal application processing. These database tables included sensitive non-public licensee information, such as licensee social security numbers, medical information, complaints, and related discipline.
- Auditing capabilities were not enabled for the licensing database. Accordingly, critical security data generated by these auditing features were not collected and analyzed. Examples of database activities which should be logged and analyzed include direct changes to critical data tables, changes to database security settings, and use of certain critical privileges. Therefore, unauthorized or inappropriate activities, affecting the integrity of the production database information, could occur and not be detected by management.

Recommendation 6

We recommend that access to the licensing database be properly restricted and that auditing capabilities for this database be enabled. We further recommend that management, using this auditing data, generate security reports and analyze these reports for unauthorized or inappropriate activities. We also recommend that all security report reviews be documented and retained.

Finding 7

The Board had not obtained an annual independent audit of the online license renewal system maintained by an independent contractor.

Analysis

The Board had not required nor obtained an annual independent audit of the online license renewal system maintained by an independent contractor. Such audits, which are provided for in generally accepted auditing standards

established for service organizations, could determine whether the systems' controls and related policies and procedures were suitably designed and properly operating. Consequently, the system could be vulnerable to a variety of exposures, of which the Board is unaware, including third party access to critical system data (such as credit card information used to pay for license renewals). The Board places considerable reliance on the system to ensure the accurate and complete processing of license renewals and related collections. Controls over the automated system take on increased importance when the issues noted in Finding 1 are considered.

Although the Board had presented the contractor with a series of questions about the security measures taken to protect the online licensing system from outside entities, the Board did not verify the accuracy of the contractor's responses to the questions posed. In addition, the Board did not inquire about what steps had been taken to ensure that the online license data had been safeguarded from improper access by contractor employees.

According to the Board's records, approximately 89,000 nursing licenses were renewed during fiscal year 2007. Generally, licenses are renewed using the online license renewal system.

Recommendation 7

We recommend that the Board obtain an annual independent audit of the controls over the online license renewal system.

State Board of Pharmacy

Finding 8

The Board did not register and approve pharmacy technicians within the timeframe specified by State law.

Analysis

The Board did not register and approve pharmacy technicians, as required. In this regard, State law specifies the requirements that must be met by an individual to practice as a pharmacy technician (such as, completion of a pharmacy technician training program and successfully passing a Board-approved examination) and, effective July 1, 2006, required the Board to register and approve practicing pharmacy technicians by January 1, 2007. According to Board management personnel, approximately 4,000 pharmacy technicians are expected to eventually be registered. We were advised by Board management personnel that the registration of pharmacy technicians was not completed timely due to delays in adopting related State regulations, and that these delays were caused by the

involvement of stakeholders (such as pharmacies, local and national pharmacists' associations and exam boards, and pharmacy colleges) in the development of the regulations. The regulations were adopted in January 2008 and, as of that time, we were advised that only two pharmacy technicians had been registered by the Board.

Recommendation 8

We recommend that the Board take immediate action to register and approve pharmacy technicians, as required by State law. In addition, we recommend that, in the future, the Board implement actions required by State law within specified timeframes.

Audit Scope, Objectives, and Methodology

We have audited the Health Professional Boards and Commission, the State Board of Physicians, and the State Board of Nursing for the period beginning June 1, 2005 and ending January 31, 2008. 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 the Boards' and Commission's financial transactions, records and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. We also determined the status of the findings contained in our preceding audit report.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of the Boards' and Commission's operations. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Data provided in this report for background or informational purposes were deemed reasonable, but were not independently verified.

Our audit did not include certain support services provided to the Boards and Commission by the Department of Health and Mental Hygiene. These support services (such as payroll, purchasing, maintenance of accounting records, and related fiscal functions) are included within the scope of our audits of the Department's Office of the Secretary and Other Units.

Our audit scope was limited with respect to the Boards' and Commission's cash transactions because the Office of the State Treasurer was unable to reconcile the State's main bank accounts during a portion of the audit period. Due to this condition, we were unable to determine, with reasonable assurance, that all Boards' and Commission's cash transactions prior to July 1, 2005 were accounted for and properly recorded on the related State accounting records as well as the banks' records.

The management of the Boards and Commission 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 that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect the Boards' and Commission's 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 the Boards and Commission that did not warrant inclusion in this report.

The Department of Health and Mental Hygiene's response, on behalf of the Boards and Commission, 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 the Department regarding the results of our review of its response.

APPENDIX



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

January 7, 2009

Mr. Bruce Myers, CPA
Legislative Auditor
Office of Legislative Audits
301 West Preston Street
Baltimore, MD 21201

Dear Mr. Myers:

Thank you for your letter regarding the draft audit report of the Department of Health and Mental Hygiene Professional Boards and Commission, State Board of Physicians and State Board of Nursing for the period beginning June 1, 2005 and ending January 31, 2008.

Enclosed you will find the Department's response and plan of correction that addresses each audit recommendation. I will work with the appropriate Boards and Commission to promptly address all audit exceptions.

If you have any questions or require additional information, please do not hesitate to contact me at 410-767-6505 or Thomas Russell of my staff at 410-767-5862.

Sincerely,

John M. Colmers
Secretary

Enclosure

cc: C. Irving Pinder, Jr., Executive Director, State Board of Physicians
Patricia A. Noble, R.N., Executive Director, State Board of Nursing
LaVerne G. Naesca, Executive Director, State Board of Pharmacy
Paula C. Hollinger, Associate Director, Health Workforce
Thomas V. Russell, Inspector General, DHMH
Ellwood L. Hall Jr., Assistant Inspector General, DHMH.
Lisa J. Ellis, Chief Administrative Officer, DHMH

Toll Free 1-877-4MD-DHMH • TTY for Disabled - Maryland Relay Service 1-800-735-2258

Web Site: www.dhmh.state.md.us

Findings and Recommendations

Cash Receipts and Licensing Controls

Finding 1

Certain boards had not established adequate control and accountability over collections and professional licenses.

Recommendation 1

We again recommend that the boards and commission establish procedures to ensure that all amounts received are deposited into the State Treasury and credited to the respective unit, and that all licenses issued were paid for and were proper. We also recommend that the boards and commission adequately restrict access to the automated licensing systems. We made detailed recommendations to each board reviewed which, if implemented, should provide the necessary controls.

Boards' Response

Board of Physicians Response:

The Maryland Board of Physicians does not concur with the repeat finding.

All funds received for the Board are deposited at Sun Trust Bank. The funds are then sent to the "State Depository" at Bank of America and are credited to the Comptroller of the Treasury. The Comptroller of the Treasury then credits the appropriate Units thru the FMIS system. On a monthly basis, the Chief of Executive Services reconciles all deposits made through this system and reports any discrepancies to the Comptroller of the Treasury and the Deputy Director of the Board. This process ensures proper distribution of funds to the Board.

Checks received by mail are opened by employees of the Executive Division, independent of any cash functions, and are stamped "for deposit only Board of Physicians". All checks are then given to another staff person, independent of any cash functions, who prepares a daily manifest of the checks received. This manifest is reconciled by the Chief of Executive Services. All checks are sent to the SunTrust LockBox within 24 hours. This process directly corresponds with the Comptroller of the Treasury's *Accounting Procedures*. The Board has updated all "cash generating" applications to read that all payments should be made directly to the SunTrust LockBox address. Any licensee who attempts to hand deliver a check to the Board is advised to redirect the check to the SunTrust LockBox. No hand delivered check is accepted at the Board.

The reconciliation reports generated by Sun Trust Bank reflect current deposit activity. The Board performs a daily reconciliation of deposits to applications received to verify receipts. If a check is returned due to insufficient funds, a

“Bounced Check” report is generated by the Fiscal Unit. The applicant’s database record is flagged by the Fiscal staff and a hold is placed on the processing of the application. The Licensure unit issues a status letter to the applicant to resolve the issue before the processing of the application is resumed. Licenses are not printed until the issue is rectified. Only the Fiscal Unit can facilitate the completion of the application at this point by removing the hold status when funds are received. Initial medical license applications require extensive research and verification. The processing time for an initial medical license exceeds 30 days on average, well beyond the notification time for a returned check.

The Board does not concur with the finding and recommendation for the need for an employee independent of the cash receipts and license issuance functions to periodically (for example, quarterly) reconcile its license activity with the related cash receipts deposited. The reconciliation reports generated by Sun Trust Bank reflect current deposit activity. The recommendation refers to a reconciliation of current licenses issued to past deposit activity. The proposed reconciliation could only be accomplished if MBP staff compare a “New License Issued Report” to past deposit activity, a process that would encompass approximately 14,000 transactions annually and may include multiple fiscal years. This is highly inefficient and cost prohibitive. The typical application process exceeds one month period, and some can take several months to complete, depending on how quickly the applicant provides the prerequisite documentation to the Board. The MBP currently performs a daily reconciliation of deposits to applications received to verify receipts. Due to the repeat nature of this finding, the Board has developed a task force to revisit this issue. The task force will commence immediately and, by the spring of 2009, develop recommendations to improve the reconciliation process.

During the audit an additional layer of oversight was implemented to ensure applications were complete. To ensure systemic and procedural compliance with MBP licensure statutes and regulations, the Chief of Licensure performs an audit of all applications pre-approved by the licensure analysts. These pre-approved applications and backup documents are forwarded to the Chief for review. A checklist of requirements is compared to the contents of the application to verify compliance. The Chief confers with the analyst to rectify any issues that may arise. If the application is complete, the Chief initiates the printing of the license, signs off on the checklist and retains a copy for audit purposes. These current processes ensure a license is not issued to an applicant that does not fully qualify in both credentialing and financial obligation.

The Board has established mechanisms to restrict access, safeguard, and account for pre-numbered licenses. The bulk of the unused licenses are kept in a secure computer equipment storeroom which can only be accessed by the data processing staff. A working stock of blank licenses is kept in a locked cabinet located in the office of a supervisory employee.

Four individuals print and issue licenses and a notation of the serial numbers are logged on a list. In order to actually print the licenses, however, the serial number must be assigned in the computer system by one of the two employees who have the authority to do this. The employee who assigns the serial numbers and holds the stock of blank licenses does not have license printing privileges. Furthermore, the computer system restricts the printing of licenses to those employees who are authorized to print those licenses. The Board Secretary is responsible for the periodic accounting of all pre-numbered licenses, including those issued, those voided, and those on hand. Voided licenses are destroyed in the presence of two employees not involved in issuing licenses and signed off by the Deputy Director. In the event that there are any serial numbers which cannot be accounted for, a report is made to the Deputy Director.¹

Board of Nursing Response:

The Board concurs with the recommendation. Effective July 1, 2008, the Board of Nursing implemented a process of deposit verification for licenses issued. Additionally, two separate ledgers are kept by separate individuals for walk-ins. This is balanced and deposited the next day and reconciled to the cash receipt ledger. The ledgers are based on licensure/obtained by type. It is not possible to reconcile on a daily basis due to the stage of process for exam candidates and endorsement individuals. However, at the end of the process it is reconciled.

The Board of Nursing is confident that it has adequately restricted access to the licensure system. Based on roles, the appropriate employees can process functions necessary for renewal or licensure. One of the controls is that the individual receiving confirmation of licensure exam results cannot issue the license. That individual must forward the results to another Board employee in a separate department for issuance of the license. Many individuals have read-only access to information but are not able to change anything in the system. The Board recognized security of the confidential information. However, individuals still must have access. For example, Board Counsel are able to access a licensee/certificate holder in the system including information such as, social security number, date of birth, etc. This information is necessary for writing and processing Board Orders. They are not able to change information and have signed, as have all employees of the Board, the following Policies:

¹ **Auditor's Comment:** The Board of Physicians' response indicates various disagreements and outlines Board procedures related to the cash receipts and licensing controls finding. Similar comments were made by the Board at the conclusion of our audit. As confirmed with the Board, certain of these processes were established after the audit period. Furthermore, subsequent verification procedures performed by our Office confirmed that certain processes had not been effectively implemented. For example, the Board's response describes its procedures for recordation of receipts immediately upon receipt. Our review disclosed that the Board had not followed its established procedures on a number of occasions, as we noted receipts were not immediately recorded for a number of days.

1. 02.01.01 Policy on use of DHMH Electronic Information Systems (EIS);
2. 02.01.02 Software Copyright Policy & the State of Maryland software Code of Ethics;
3. 02.01.06 Policy to Assure Confidentiality, integrity and Availability of DHMH Information (IAP); and
4. Statement of Confidentiality Acknowledgement for Background Checks.

The Board of Nursing has designated specific individuals with expertise to evaluate applications for licensure. For example, the Exam Specialist reviews the exam application and supporting documentation to ensure that the applicant is qualified to sit for the exam. This individual reviews exam results but cannot issue the license. The Board of Nursing does not issue pre-numbered licenses.

Board of Pharmacy Response:

The Board of Pharmacy partially concurs with finding #1. Specifically, that independent verification was not performed to insure that all recorded collections were properly accounted for and deposited after submission to the fiscal officer under joint employment by all of the Boards. The Board however, did verify that the deposits were made as appropriate when the banking statements were received.

The Board concurs with the recommendation to establish procedures to ensure that all amounts received are deposited into the State Treasury and appropriately credited to the Board of Pharmacy. Specifically, to ensure immediate confirmation in the future, the Board of Pharmacy will request a copy of the daily deposit receipt each business day following submission collected funds to the fiscal officer.

The Board also concurs that it did not restrict access to certain functions of its automated licensing system for one of its employee's whose position at the Board had changed. Review of her activities during the period when she had access revealed that she did not actually access the system inappropriately. The Board is in the process of implementing a new licensing system that will list users by positions rather than name, thereby avoiding this type of error in the future.

Smaller Boards Response:

The smaller boards and commission have establish procedures to ensure that all amounts received are deposited into the State Treasury and credited to the respective unit, and that all licenses issued were paid for and were proper. The smaller boards and commission have adequately restricted access to the automated licensing systems.

Consolidation of Fiscal and License Recordkeeping Functions

Finding 2 (Policy Issue)

DHMH had not consolidated certain fiscal and license recordkeeping functions of the boards and commission, and had not provided adequate oversight in these areas.

Recommendation 2

We again recommend that that DHMH develop a work plan to consolidate the fiscal functions of the boards and commission, including the collection of funds and control and accountability over the licensing transactions. In conjunction with the work plan development, DHMH should address the statutory changes needed to accomplish the consolidation. Furthermore, we again recommend that DHMH, in conjunction with the boards and the commission, develop uniform guidelines and policies to be followed by all boards and commission. Additionally, we again recommend that DHMH develop an ongoing oversight function (such as internal audits) for the boards and commission.

Department's Response

The Department does not concur that this item is a repeat finding. As the Department has pointed out in response to the previous two legislative audits, consolidation of the fiscal functions of the boards, including the collection of funds and control and accountability over licensing transactions, and oversight of these functions, requires legislative action. The need for legislation was confirmed by our Assistant Attorney General.

The Department has taken steps to determine the benefits of such a change, using a consultant hired by the Department of Budget and Management (DBM) to ascertain the cost-benefits of consolidating business functions. The study determined that minimal cost savings would occur from consolidation. Following the previous audit the Department attempted to convince the boards to use the same licensing software, with an interest in consolidating functions to limit redundancy. The majority of the boards rejected the offer. More recently, legislation was passed by the 2008 General Assembly (HB 811) requiring a task force to study the differences in board disciplinary actions. This legislation called for the task force to recommend potential changes to the organizational structure of the health occupation boards and the relationship of all boards to the Department. Absent legislative action the Department has no authority to comply

with this audit finding. Consequently, we disagree with the categorization of this as a repeat finding.²

As stated in our response in the previous audit report, the Department lacks sufficient personnel to devote a dedicated audit staff to the Boards and Commission. In addition to monitoring required monthly status reports outlining corrective action plans, the Office of the Inspector General and the Department of Budget and Management also have conducted on-site visits to provide assistance as resources allowed. The OIG provided OLA with an audit trail of sample emails and an outline of our communications with the Boards and DBM in an attempt to resolve the outstanding audit findings and recommendations.

State Board of Physicians

Finding 3

The Board did not have sufficient procedures to verify that physicians had obtained the required continuing medical education, and did not withhold renewal licenses from physicians who had failed to complete educational requirements.

Recommendation 3

We recommend that the Board ensure that physicians have completed the required CME and take appropriate action (imposing civil penalties, suspending license) when physicians fail to complete the required CME. The Board should request documentation of CME completed by physicians, and review documentation submitted, in a timely manner.

Board of Physicians Response:

The Board concurs with this finding and recommendation. A physician who is renewing his/her medical licenses is required to affirm all responses on the application, including a response to the following:

² **Auditor's Comment:** The Department's response indicates that it does not concur that this item is a repeat finding and that absent legislative action, the Department has no authority to comply with this finding.

Our finding was intended to point out that the Department had not developed a work plan to consolidate certain administrative functions of the boards and commission as was requested in a prior year's *Joint Chairmen's Report*. This condition was noted in our preceding audit report. Furthermore, our report specifically acknowledged the need for statutory changes to accomplish the recommended consolidation, and we also specifically recommended that the Department address the statutory changes needed to accomplish the consolidation as part of its work plan development.

CONTINUING MEDICAL EDUCATION Choose one statement that applies to you.

- a. CME met. I have earned 50 credit hours of Category 1 continuing medical education during the two years prior to this renewal.
- b. First renewal and NPO. I am exempt from CME during the renewal period because this is my first renewal after initial medical licensure in Maryland and I have completed the Board's New Physician Orientation Program. (If you need to complete the Board's New Physician Orientation Program, please visit our website at www.mbp.state.md.us to complete the orientation. Your license will not be renewed unless you have completed the orientation.)
- c. First renewal after reinstatement. I am exempt from CME during the renewal period because this is my first renewal after reinstatement of my medical licensure in Maryland.

As outlined in the previous paragraph, there is an attestation on the renewal application regarding CME. By completing the renewal application, the physician is attesting to earning 50 credit hours. The Board does not renew the license of any physician who fails to affirm that he/she has met the continuing education requirement. The Board performs an audit of documentation of CME by taking a random sample of those physicians who renewed their licenses in the previous renewal period and requesting submission of the supporting documentation. A licensure clerk reviews all documentation for acceptability (based on date of CME and criteria established in regulation).

The Board performs roughly 600 physician CME audits, or 5% of the total renewing physicians, annually. One hundred of the audits are random and the balance is done during a full compliance investigation. Prior to 2003, the Board's practice had been to refer physicians who could not document their CME to the Compliance Division. The physicians were given the opportunity to sign a consent agreement stating that they had failed to obtain the CME, were guilty of unprofessional conduct, and would pay an administrative fine for the missing CME. In 2003, Board Counsel advised the Board that they did not have either statutory or regulatory authority to impose fines in this way. Therefore, the Board discontinued this practice and began consideration of regulations. The Board continued the random sample audit and sent advisory letters to physicians who had not submitted adequate documentation. The draft regulations considered by the Board in 2006 were not approved by the Board at that time. Instead, there was consideration given to requesting a statutory provision that would allow the Board to impose a fine without charging the physician with violation of the Medical Practice Act (specifically, unprofessional conduct) by failing to obtain CME.

This provision was included in the Board's Sunset Legislation (SB 255), which passed in 2007. Therefore, the new process is as follows: a random sample of physicians is selected; physicians are requested to submit documentation; documentation is reviewed; if the physician falls a few credits short of the required 50 credit hours within the two-year cycle, a letter is sent to the physician and an administrative fine of up to \$100 per missing CME credits in lieu of a sanction is imposed; if the physician falls significantly short of the required 50 credit hours, it is the Board's decision to open a case on the grounds of

unprofessional conduct in the practice of medicine; if the Board so decides, the physician will be referred to compliance for action.

Each of the physicians selected during the 2005 renewal period was sent an advisory letter in August 2008 indicating that if his/her CME requirement was not fulfilled within 30 days, he/she would be fined. In addition, if the Board so decides, his/her name would be referred to the Compliance Division for action.

Each of the physicians selected for review during the 2006 renewal period (ending in November 2006) who had not submitted any documentation of CME completed, was sent an advisory letter in September 2008 indicating that if his/her CME requirement was not fulfilled, his/her license will not be renewed.

For those physicians renewing during the 2007 renewal period (ending in November 2007), the Board will select the sample of physicians for CME review in January 2009.

Finding 4

Controls over the licensing database were not adequate.

Recommendation 4

We recommend that the Board establish adequate controls over the licensing database. Specifically, we made detailed recommendations to the Board which, if implemented, will establish adequate controls over the licensing database.

Board of Physicians Response:

The Board concurs with the finding and recommendation. All user accounts have been reconfigured and trimmed of unnecessary critical roles (DBA, IMP_FULL_DATABASE, and EXP_FULL_DATABASE). The ADMIN option has also been eliminated from certain accounts. The ADMIN option is limited to the database administrator account. Access to critical roles is restricted to only those individuals who require them for their job responsibilities. These changes were completed during the audit.

A critical database utility program has been deleted from all user computers, except for those within our Information Systems Division that require access as part of their job function.

The Board recently migrated to a newer version of the database. A critical database utility program is a new utility included with this new version and runs as a service on the database server. This service has been disabled. No one can

access the database via this service. We have also implemented roles limiting access to critical tables to those individuals who require such access.

The use of critical database privileges is being logged via the database's audit logging capabilities. MBP is also using triggers to record before and after images of changes to data from our key tables.

MBP has developed a monthly summary report to be reviewed and retained by the Deputy Director that will highlight suspicious activity within key tables. If suspicious activity is detected, the more detailed "before and after" image tables will help assess the propriety of these changes. Evidence of these reviews and assessments will be retained for audit verification. Full implementation occurred on October 31, 2008.

Primary access to the database is through the BPQA legacy system. This system does not provide the user with any warnings about database accounts that are about to expire. Strong password controls will be implemented in a gradual process. Turning on strong password controls would require ISD staff to manually change each user's password immediately and every ninety days thereafter. Modifications to the BPQA legacy system are currently under way to provide users with advance password expiration times and allow the users to manage their own passwords. These modifications will be in compliance with the DOiT State Security Access Control Standard and also support strong password controls. Modifications should be completed and implemented by June 30, 2009.

Idle time before locking a user account is set to thirty minutes. A user account is also locked if 4 unsuccessful login attempts are made. The user account will be locked indefinitely, until an administrator unlocks the account. Password history is also set to eliminate the use of past passwords.

A critical database utility service has been disabled on the database server, so access to this utility no longer applies. Access to the database interface is currently through http and does create a potential of capturing clear text via a sniffer connected directly to our internal network.

The Central Services group, within the Department of Health and Mental Hygiene, has reconfigured our network infrastructure, creating two subnets upon which only Board staff members have access. No longer does the entire building operate on one network, as was the case when this audit was conducted. This new infrastructure is more secure and requires a sniffer to be placed on our subnet, which is physically located in a secure area.

ISD will research the cost and feasibility of using https when attaching to the database.

State Board of Nursing

Finding 5

The Board had not established adequate procedures to ensure that the license status recorded for nurses on its online licensing system was accurate.

Recommendation 5

We recommend that the Board establish procedures to ensure that the license status of nurses who do not renew their license is changed from active to non-renewed status in the licensing system. We also recommend that the Board take immediate action to correct the license status of the aforementioned 470 nurses in the system.

Board Response:

The Board concurs with the recommendations. A second program has been implemented as a backup to ensure that license status for nurses on its online licensing system is accurate. In May 2008 the Board corrected the status of the 470 nurses prior to completion of the audit.

Finding 6

Access controls over the licensing database and critical database activity monitoring were not adequate.

Recommendation 6

We recommend that access to the licensing database be properly restricted and that auditing capabilities for this database be enabled. We further recommend that management, using this auditing data, generate security reports and analyze these reports for unauthorized or inappropriate activities. We also recommend that all security report reviews be documented and retained.

Board's Response:

The Board concurs with the recommendations. The Board has restricted access and is confident that both users and activities are appropriate. The Board has one super-user. The activities of the super-user are monitored and retained by another employee on a monthly basis. These activities are reviewed quarterly by the Executive Director. Any discrepancy will immediately be brought to the attention of the Executive Director. This process was implemented July 1, 2008 and has yielded no unauthorized or inappropriate activity to date.

Finding 7

The Board had not obtained an annual independent audit of the online license renewal system maintained by an independent contractor.

Recommendation 7

We recommend that the Board obtain an annual independent audit of the controls over the online license renewal system.

Board Response:

The Board does not concur with the recommendation of the Auditors. The recommendation is cost prohibitive with an estimated cost of approximately \$1million. In lieu of this recommendation, the Board audited the vendor. In February 2008, Information Technology (IT) and the fiscal staff of the Board went to Chicago to audit the vendor utilizing security documentation provided by the Information Assurance Coordinator of the Information Resources Management Administration. The results of this audit were provided to OLA auditor. After review, OLA auditors requested additional information. In May 2008, the IT Board staff went to Chicago to further audit controls over the online license renewal system. Three software programs provided by OLA were used to extract the data required by the auditors and retained by the Board. No deficiencies were found. The Board considers this audit to be adequate and the process will continue. It is anticipated that the vendor will be audited again by March 2009, and annually thereafter.³

State Board of Pharmacy**Finding 8**

The Board did not register and approve pharmacy technicians within the timeframe specified by State law.

³ **Auditor's Comment:** The Department's response indicated that it did not concur with the recommendation to obtain an annual independent audit of the State Board of Nursing's online license renewal system. The response indicated that the recommendation is cost prohibitive and, in lieu of the recommendation, the Board had audited the vendor itself. As commented in the report, the Board's initial efforts to audit the vendor were not sufficient. We did not review any subsequent efforts made by the Board that were alluded to in the response. We continue to believe that the Board should determine if the system's controls are suitably designed and properly operating due to the high level of reliance that the Board places on the system to ensure the accurate processing of license renewals and related collections. While we believe that an independent audit is preferable, we will review the procedures performed by the Board to audit the system during our next audit.

Recommendation 8

We recommend that the Board take immediate action to register and approve pharmacy technicians, as required by State law. In addition, we recommend that, in the future, the Board implement actions required by State law within specified timeframes.

Board's Response:

Board of Pharmacy Response: The Board concurs with Finding #8 and Recommendation #8, with explanation.

In an attempt to meet the January 2007 date noted in the statute, the Board prepared and released an informal draft of the Pharmacy Technician regulations on September 27, 2006. Based on stakeholders' comments, it released a second draft on February 26, 2007. Regulations were formally published on May 11, 2007 with a 30 day comment period that ended on June 11, 2007. An identical emergency proposal was submitted at the same time for two reasons. The main reason was the Board's concern that although given leeway after January 1, 2007, the Board wanted to begin registration as close to that date as possible. The second reason was that individuals who qualified to be grandfathered wanted to register as soon as possible to give them the opportunity to seek other employment as registered pharmacy technicians.

The emergency proposal was never published because the Joint Committee on Administrative, Executive, and Legislative review (AELR) placed a hold on both proposals on June 21, 2007 in response to concerns received from some stakeholders and their lobbyists. The emergency proposal was subsequently withdrawn. Following numerous subsequent discussions between the Board and stakeholders over a period of a year, a re-proposal was submitted July 24, 2007. AELR released the re-proposal and it was published on September 28, 2007. Following the thirty day comment period and responses provided by the Board, the Board recommended adoption of the re-proposal as proposed. The Notice of Final Action was published in December and the regulations became effective on January 28, 2008. The Board has subsequently begun registering pharmacy technicians with over 5,000 technicians having been registered to date.

The Board of Pharmacy will implement actions required by State law within specified timeframes in the future if circumstances allow such action in the future.

AUDIT TEAM

Mark A. Ermer, CPA

Audit Manager

A. Jerome Sokol, CPA

Information Systems Audit Manager

Joel E. Kleiman, CPA

Senior Auditor

Athenia M. Rock, CFE

Shalom N. Warburg

Staff Auditors

David J. Burger

Information Systems Staff Auditor