

REPORT OF THE
JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
ON
OCCUPATIONAL AND PROFESSIONAL
REGULATORY BOARDS IN VIRGINIA
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



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PREFACE

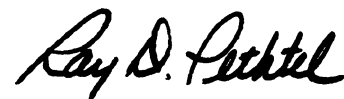
The Joint Legislative Audit and Review Commission (JLARC) has responsibility for operational and performance reviews of State agencies and programs. Under the Legislative Program Review and Evaluation Act, some of those reviews are selected from among one of the seven functional areas of State government according to a schedule adopted by the General Assembly.

This evaluation is the first of two reports being prepared on occupational and professional regulation which is encompassed within the Commerce and Resources function. The series was scheduled by Senate Joint Resolution 50 enacted by the 1980 General Assembly. Subcommittees of the House of Delegates and Senate committees on General Laws are cooperating in the evaluation process.

Occupational and professional regulation is one method used by the Commonwealth to protect the public from incompetent or unscrupulous practitioners. This report addresses performance characteristics of each of the 28 regulatory boards organized within the Department of Commerce and the Department of Health Regulatory Boards. More than 220,000 persons and 70 professions are regulated by these boards.

Baseline data is provided for each board and areas of special legislative interest have been highlighted. In some cases, recommendations have been made to improve the performance of a particular board or to achieve compliance with statutory statements of policy regarding the degree or purpose of regulation.

On behalf of the Commission staff, I wish to acknowledge the help provided by the officials and staff of the individual regulatory boards, the Department of Commerce, and the Department of Health Regulatory Boards.



Ray D. Pecht
Director

March 15, 1982

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OCCUPATIONAL AND PROFESSIONAL REGULATION IN VIRGINIA: AN OVERVIEW

Occupational and professional regulation in Virginia is intended, in part, to protect the public from incompetent or unscrupulous practitioners. Regulation generally takes the form of establishing minimum qualifications for entry into a profession or placing restrictions on the practice of a profession.

More than 70 professions are currently regulated by one of Virginia's 29 occupational and professional boards located within the Department of Commerce or the Department of Health Regulatory Boards. (Some other professionals, including attorneys, insurance agents, and public school teachers are regulated by other independent boards or agencies.)

Costs associated with occupational and professional regulation are covered by fees paid by regulated professionals. During the 1978-80 biennium, over \$8.5 million in regulatory fees was generated by the boards. Expenditures for the same period exceeded \$7.9 million.

Under provisions of Section 30-77, *Code of Virginia*, performance reviews of the State's regulatory boards are mandated from time to time. Several factors suggest that periodic review of the State's delegation of police power to boards is appropriate:

- the growing public concern that increased regulation has unnecessarily burdened our society and has frequently benefited special interests more than the public;
- the increasing number of professions requesting new regulation in recent years; and
- the high volume of statutory proposals pertaining to regulated professions and

occupations introduced during each legislative session.

Legislative Intent

In 1974, the General Assembly established guidelines for determining when regulation of a profession would be appropriate and how to determine which method of regulation should be used. According to Section 54-1.17, *Code of Virginia*, it is the Commonwealth's declared policy that occupations should be regulated only for the exclusive purpose of protecting the public interest when

1. their unregulated practice can harm or endanger the health, safety, and welfare of the public and when the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
2. their practice has inherent within it qualities peculiar to it that distinguish it from ordinary work and labor;
3. their practice requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. the public is not effectively protected by other means.

Not all situations of potential harm warrant use of the State's regulatory powers. Occupational regulation is justified when the profession clearly endangers the public's health, safety, and welfare and when no other means of protection exists. Potential risks to the public in the absence of regulation include physical, mental, or economic damage.

The primary segment of the public being protected from potential harm is the consumers of services provided by the regulated profession. Direct purchasers of services, however, are not the only group requiring protection. Frequently, a third party is dependent on the services of a profession and is

therefore also entitled to protection. For example, a CPA prepares a financial statement for a client. But the accuracy of the financial statement may be relied upon by investors and lending institutions to make financial decisions concerning the client. In this case, the client, the investor, and the lending institution receive protection by the regulation of the professional.

Legislation makes clear that protection should focus on the public interest, not solely on the regulated profession or occupation. This distinction should not be blurred by regulations that make entry requirements extremely stringent in order to "protect the public from incompetent practitioners" while at the same time limiting professional competition.

It is specified in the Code that professions which are highly technical or which involve special skills may require regulation. This language recognizes that the public does not always possess the knowledge necessary to determine the competency of practitioners or the quality of services provided. In these instances, occupational regulation appears justified in order to assure the public that practitioners meet minimum competency levels.

Occupational regulation by means of a practitioner board may not always be the most appropriate form of protecting the public. Instead, the State may use alternative means of protection, such as providing for private civil actions, prohibiting certain business practices, inspecting facilities, offering consumer education, or establishing direct regulation by a State agency.

Methods of Regulation

Once it has been determined that a profession should be regulated, a decision must be made as to the proper degree of regulation. There are five methods of regulation in Virginia:

- *Private civil actions and criminal prosecutions.* Whenever the State finds that existing laws are not sufficient to eradicate existing harm or prevent potential harm, it may provide by statute for more stringent causes for civil action and criminal prosecution.
- *Inspection.* The activities and premises of persons in certain occupations are subject to periodic inspections to ensure

that the public's health, safety, and welfare are protected. An injunction can be issued to prevent persons who do not meet the standards from engaging in the occupation. However, anyone is allowed to practice the occupation. Restaurant regulation is an example of this type of regulation.

- *Registration.* Under this type of regulation, any may engage in an occupation but he or she is required to submit information concerning the location, nature, and operation of the practice. Political lobbyists, for example, must register.
- *Certification.* As a form of regulation, certification recognizes persons who have met certain educational and experience standards to engage in an occupation. Although anyone may practice the occupation, only those who have been issued certificates may use the occupational title. The certification of landscape architects exemplifies this type of regulation.
- *Licensure.* Under this method of regulation, it is for anyone to engage in an occupation without a license, and only persons who possess certain qualifications are licensed. Physicians constitute one of over 50 occupational groups regulated by licensure in Virginia.

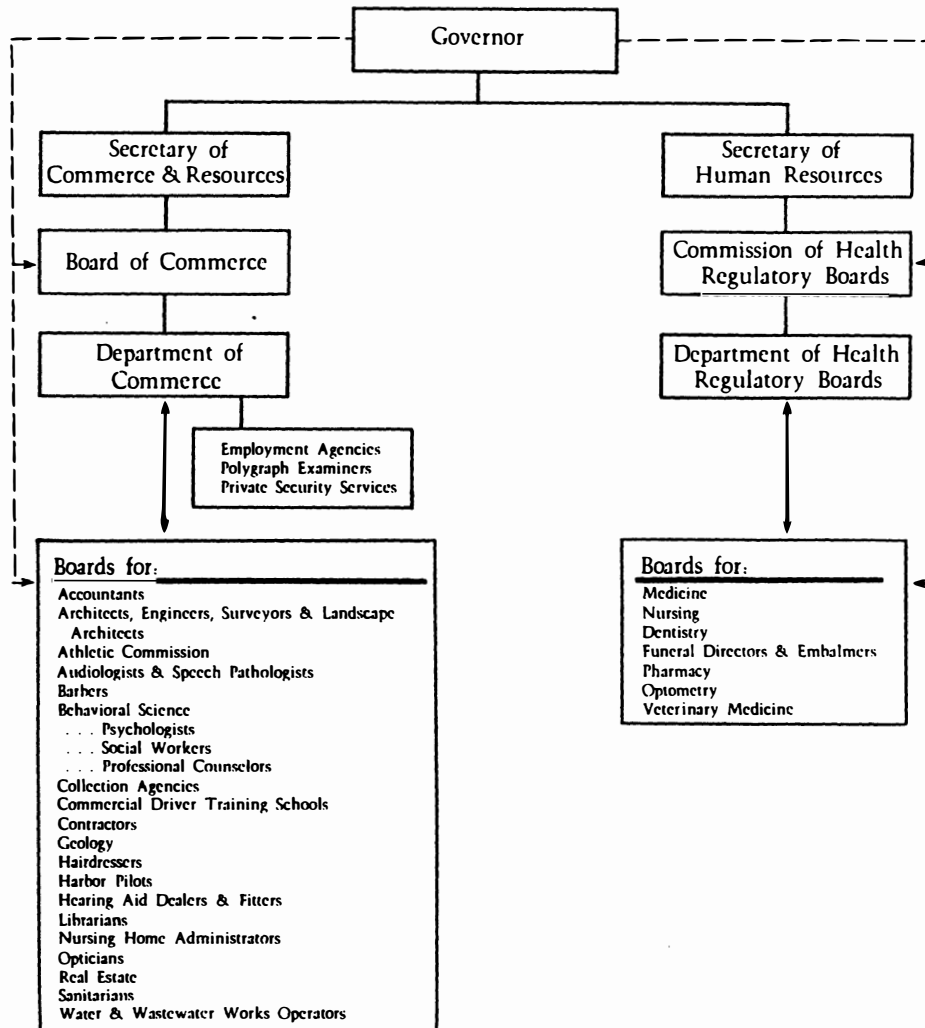
Statute requires that the degrees of regulation be considered in the above order. The implication of this provision is that the least restrictive form of regulation necessary to protect the public should be employed when it is deemed appropriate to regulate a profession.

Licensure has been the most common form of regulation chosen for those professions and occupations regulated in the Commonwealth. It is also the most restrictive method.

Virginia's Occupational Regulatory System

Responsibilities for regulating Virginia's occupations and professions are divided among three groups: 29 occupational and professional boards, two administrative agencies, and two review boards (Figure 1). Boards carry out rulemaking, judicial, and administrative functions. Their primary responsibili-

Figure 1
**ORGANIZATION OF OCCUPATIONAL
 REGULATION IN VIRGINIA**



ties include establishing entry requirements, screening applicants, credentialing qualified individuals, receiving complaints, and disciplining regulants.

The regulatory boards are located within two administrative agencies: the Department of Commerce (DOC) and the Department of Health Regulatory Boards (DHRB). These two agencies are assigned to the secretaries of Commerce and Resources and Human Resources respectively.

Most of the boards within DOC regulate commercial occupations or professions while those within DHRB regulate health-related professions. This alignment is not followed strictly, however. The realignment of boards has been considered from time to time by the General Assembly, various boards, cabinet secretaries, and professional associations. Interest has been expressed most recently in the boards regulating hairdressers, barbers, and funeral directors.

Some boards regulate several professions. For example, the Board of Behavioral Science, which was created in 1976, oversees the regulatory activities of three professions which were once independently regulated: psychology, professional counseling, and social work.

A few professions are regulated by two boards. The regulatory activities governing clinical psychologists are shared between the Board of Psychology and the Board of Medicine. Also, the Board of Nursing and the Board of Medicine jointly promulgate regulations for certifying nurse practitioners.

Several professions whose scopes of practice are closely or partially related are regulated by separate boards. These include barbers and hairdressers; audiologists, hearing aid dealers, and otolaryngologists; engineers and geologists; and opticians, optometrists, and ophthalmologists.

For employment agencies, private security businesses, and polygraph examiners, boards or committees serve an advisory rather than a direct regulatory function. Their purpose is to advise the director of DOC on matters relating to the department's regulation of their respective occupations.

Each board is administered by an executive director. Directors in DOC typically serve more than one board. Directors in DHRB generally serve a single board.

The responsibilities of board staff vary according to the delegation of authority granted by the board. Typical staff responsibilities include

- handling board correspondence;
- arranging board meetings;
- receiving complaints;
- proctoring exams;
- processing applications; and
- preparing statistical information.

The Departments of Commerce and Health Regulatory Boards have statutory responsibility for such administrative matters as making inspections, investigating complaints, collecting fees, budgeting, data processing, and personnel management. Departmental organization and management are discussed further in a separate JLARC report on the State's regulatory network.

Virginia's regulatory system also includes two review boards, the Board of Commerce

and the Commission of Health Regulatory Boards. The Board of Commerce is composed of nine citizen members appointed by the Governor. The Commission of Health Regulatory Boards is composed of 11 members: one member from each of the seven health boards and four members from the State at large.

The review boards have broad advisory functions in the area of regulatory policy. Their functions include

- evaluating the need for regulating additional professions and making recommendations to the General Assembly;
- monitoring the activities of their respective administrative agencies; and
- advising the Governor and the appropriate cabinet secretary on regulatory matters.

Virginia is recognized by observers of occupational and professional regulation as a leader in the field. The Commonwealth was one of the first states to organize its regulatory boards into administrative agencies. This began in 1948 with the creation of a Department of Occupational and Professional Registration, which became DOC, and continued with creation of DHRB.

Virginia was also the first state to regulate a profession when the colonial legislature passed a law regulating the practice of medicine in 1639. In addition, Virginia was one of the first states to regulate harbor pilots, nurses, dentists, pharmacists and funeral directors.

JLARC REVIEW

The General Assembly has given JLARC a dual legislative charge to conduct studies of Virginia's regulatory boards. Senate Joint Resolution 50, passed in 1980, directs JLARC to review the programs, activities, and agencies concerned with the regulation of professions and occupations.

In addition, Section 30-77, *Code of Virginia*, requires JLARC to conduct a performance review of specific regulatory boards "from time to time." These reviews are to be conducted in accordance with the provisions of the Legislative Program Review and Evaluation Act.

Legislative Program Review and Evaluation Act

The Legislative Program Review and Evaluation Act was passed in 1978 as Virginia's response to a national trend in legislative oversight popularly described as "sunset." Although the act resembles "sunset" legislation in many ways, important characteristics also distinguish it from that form of legislative oversight.

"Sunset" reviews were first begun in the 1970s as an attempt to make state government more efficient and effective. "Sunset" attempts to accomplish its oversight goals by requiring a systematic review of agencies and programs to determine if they are fulfilling their legislative intent, operating efficiently, or duplicating any other governmental activity. A program or agency may be modified, continued, or terminated as a result of the review. In fact, the unique feature of "sunset" is the scheduled automatic termination of existing programs unless reauthorized by legislative action.

Regulatory boards have been the primary focus of "sunset" studies in most states. According to a 1981 report by the Council of State Governments, factors which account for this focus include

- the feeling that it was unreasonable to expect termination of a corrections, health or transportation department;
- the desire to use untested sunset methodologies on agencies with less comprehensive, more easily defined missions; and
- the recognition that occupational regulatory boards often escape other state oversight mechanisms.

Virginia's Legislative Program Review and Evaluation Act similarly provides for a periodic review of programs, agencies, and activities of State government and the reviews occur according to a legislatively adopted schedule. Topics under review, however, are not limited to regulatory boards. Instead, programs for review are selected from among the seven functions of State government: (1) Individual and Family Services; (2) Education; (3) Transportation; (4) Resource and Economic Development; (5) Administration of Justice; (6) Enterprises; and (7) General Government. JLARC is responsi-

ble for conducting the reviews and for reporting them to the standing legislative committees having jurisdiction over the subject matter.

The Evaluation Act has several characteristics which distinguish it from the typical "sunset" legislation:

1. It sets no termination dates for State programs or agencies;
2. It provides for participation by the Virginia legislature in the selection of specific review topics;
3. It provides for coordination with the appropriate standing committees of both houses of the General Assembly; and
4. It provides that all reports conducted under the Act be exposed to public hearings.

Periodic Performance Reviews

The performance reviews called for by statute are intended to offer periodic assessments of the accomplishment of legislative intent, but they may serve a variety of other legislative needs. This study, for example, provides a comprehensive overview of the regulatory boards listed in Section 30-74, *Code of Virginia*, excepting the Board of Examiners in the Division of Mines which was transferred out of the Department of Commerce subsequent to adoption of the review provision. And information is not included on the Board of Geology since it only recently began operation in July 1981.

Since this is the first study carried out under Section 30-74, a systematic review was made of each board's regulatory responsibilities, and the board's performance was assessed in selected areas using criteria specified in the Evaluation Act or in the *Code* provisions relating to regulatory authority. A number of areas of special legislative interest relating to a specific board or profession were addressed. These topics generally speak to proposals currently confronting the legislature, concerns which the General Assembly will soon face, or areas of controversy. Obviously, in an evaluation of this scope, not all areas of performance or controversy common to boards or professions could be included. Future performance reviews can address additional areas.

This report serves several functions:

1. It provides basic descriptive informa-

- tion concerning each board;
2. It addresses specific issues of legislative interest;
 3. It can be used by legislative committees for hearings or other committee purposes;
 4. It identifies areas in which the General Assembly may wish to request more in-depth information; and
 5. It will serve as a baseline for future reviews.

Methods

During the course of this review, staff collected and analyzed data from numerous sources. Interviews were held with more than 70 board members, staff, and professional association representatives. Fiscal and enforcement data were reviewed. Regulations were compared with legislative criteria. Testing procedures were observed. Application records were reviewed. Board meetings and public hearings were attended. And a questionnaire was sent to all board members and to professional associations which represent regulated practitioners.

SCOPE OF REGULATORY BOARD ACTIVITIES

The U. S. Supreme Court has ruled in several cases that the right of individuals to engage in a profession of their own choosing is constitutionally guaranteed. The Court has also upheld the use of state police power to protect the public in occupational matters. The State has occasionally found it necessary to regulate certain professions and occupations in order to protect the public's health, safety, or welfare. Professions have also been regulated for other reasons, including federal requirements, State funding requirements, and recognition of accomplishment. As of May 1981, more than 220,000 persons and 14,500 businesses or training schools were regulated in Virginia.

— Practitioners working for governmental agencies or institutions, non-profit organizations, or as employees engaged in a profession strictly for the internal benefit of a private business are typically exempt from regulation. The underlying rationale of these exemptions appears to be that the State or other exempted entity assumes full responsi-

bility for the activities of its own employees.

Some professions are regulated in Virginia that are not typically regulated in other states. Virginia is the only state, for example, to regulate all types of professional counselors, private security couriers, and armored car personnel. And the Commonwealth is one of about 20 states that regulate social workers, collection agencies, contractors, librarians, opticians, and polygraph examiners. Figure 2 shows the occupations and professions regulated by each of the boards.

Board Composition and Authority

Boards range in size from three to 14 members. The Board of Behavioral Science, with its three subordinate boards and two certification committees, has a total of 28 members. All newly created boards are required by statute to have at least five members of whom two must be citizen members. All members must be citizens of the United States and residents of Virginia.

Board members are generally appointed by the Governor. The director of DOC appoints persons to serve on the three advisory bodies. The Criminal Justice Services Commission appoints some members to the Private Security Services Advisory Committee, and members of the Board of Commissioners to Examine Pilots are appointed by the circuit courts in Newport News/Hampton, Norfolk, and Portsmouth.

Most individuals serving on boards are members of the regulated profession. Ten boards are required by statute to have at least one non-practitioner, or "citizen" representative. Because the total composition of four other boards is not specified in the Code, these boards are also able to appoint citizen members: Barber Examiners, Hairdressers, Commercial Driver Training Schools, and Harbor Pilots. Some boards have *ex-officio* members, representatives of other State agencies, and members who represent related professions. For example, licensed physicians who specialize in treatment of either ear or eye disorders serve as board members on the Board of Examiners for Audiology and Speech Pathology, the Board of Hearing Aid Dealers and Fitters, and the Board of Opticians.

Board member terms are staggered to provide continuity. Terms of individual

members range from three to seven years with over half serving five years. A limit of two consecutive terms for each board member was established by the General Assembly in 1981. Harbor pilot commissioners, private security services advisory committee members, and certification committee members for drug and alcoholism counselors are appointed for unspecified terms.

Statutory Authority. The statutory authority granted to boards establishes the boundaries within which the board can promulgate regulations. The enabling legislation for many boards is by design very general and deals only with such items as board composition, terms, basic powers, definitions, and degree of regulation. In such cases, individual regulations are left to be promulgated by the boards. Some boards, on the other hand—in particular, those governing the health-related professions—have a large number of regulatory requirements detailed in the *Code*.

Board Duties. Section 54-1.28, *Code of Virginia*, specifies powers and duties for each regulatory board within the Department of Commerce. Boards may

- establish entry qualifications for applicants;
- examine applicants, including preparation, administration, and grading of exams;
- issue written credentials to qualified individuals;
- levy and collect fees;
- promulgate rules and regulations to assure continued competency, and to prevent deceptive or misleading practices by regulated practitioners;
- ensure that inspections are conducted relating to the practice of each regulant;
- revoke, suspend, or fail to renew the license or certificate of persons violating board rules;
- receive and dispose of complaints; and
- promulgate canons of ethics relating to the activities of regulated professionals.

~~Boards~~ within the Department of Health Regulatory Boards have similar types of duties specified in the enabling legislation of each board. All boards must adhere to the requirements of the Administrative Process Act when promulgating regulations and carrying out disciplinary actions.

Some boards have special duties or responsibilities in addition to basic regulatory functions, as with the following examples:

- The Board of Behavioral Science is responsible for making recommendations to the Board of Commerce on the regulation of new categories of behavioral scientists.
- The Real Estate Commission administers the Virginia Fair Housing Act, the Subdivided Land Act, the Condominium Act, the Real Estate Transaction Recovery Fund, and the Real Estate Time-Share Act.
- The Board for Contractors is responsible for management of the Contractors Transaction Recovery Fund.
- The Virginia Athletic Commission has authority to collect a tax on all boxing and wrestling contests.
- The Board of Pharmacy is responsible for administering the Drug Control Act.

Other Agencies Involved in Regulatory Matters

Several other State and local governmental entities are involved in helping to regulate the occupations and professions which are included in this report. For example:

- The State Water Control Board develops the licensure examination for wastewater works operators.
- The circuit courts in some jurisdictions appoint members to the board governing harbor pilots.
- Local health department officials in several jurisdictions inspect the sanitary conditions in barber shops and beauty shops.
- The Attorney General's office provides legal advice and reviews regulations for all boards.
- The Department of Labor and Industry approves apprenticeship programs for several boards.
- The State Council of Higher Education authorizes the establishment of new nursing degree programs.
- The Department of Education approves public school training programs for professions such as hairdressing, nursing, and driver training.

Figure 2
**OCCUPATIONS AND PROFESSIONS
 REGULATED BY VIRGINIA BOARDS**

<u>Board/Commission</u>	<u>Regulated Occupations and Professions</u>	<u>Method of Regulation</u>	<u>Number Regulated</u>
DEPARTMENT OF COMMERCE			
ACCOUNTANCY • regulates individuals skilled in systems of recording and summarizing business and financial transactions	ACCOUNTANTS CPA PRACTICE UNITS LIABLE MEMBERS OF PRACTICE UNITS	CERTIFICATION LICENSURE LICENSURE	2,100 790 2,500
ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS • regulates individuals engaged in various aspects of the development of structures or projects such as residential or commercial buildings	ARCHITECTS ENGINEERS LAND SURVEYORS LANDSCAPE ARCHITECTS CORPORATIONS	LICENSURE LICENSURE LICENSURE CERTIFICATION CERTIFICATION	2,900 9,718 821 2 247
ATHLETIC • protects the contestants of certain athletic events from physical harm and the public from fraud and misrepresentation	BOXERS WRESTLERS PROMOTERS/CLUBS OTHERS	LICENSURE LICENSURE LICENSURE LICENSURE	480 103 59 19
AUDIOLOGY AND SPEECH PATHOLOGY • regulates individuals providing services to those with speech or hearing impairments	AUDIOLOGISTS SPEECH PATHOLOGISTS	LICENSURE LICENSURE	107 511
BARBERS • regulates individuals who provide services that include cutting, shampooing, and dyeing of the hair or beard	BARBERS BARBER TEACHERS BARBER SCHOOLS BARBER SHOPS	LICENSURE LICENSURE LICENSURE LICENSURE	3,646 40 4 1,288
BEHAVIORAL SCIENCE • regulates persons engaged in providing psychological, social work, and professional counseling services to the public	ALCOHOL COUNSELORS DRUG COUNSELORS PROFESSIONAL COUNSELORS PSYCHOLOGISTS SCHOOL PSYCHOLOGISTS CLINICAL SOCIAL WORKERS SOCIAL WORKERS ASSOCIATE SOCIAL WORKERS REGISTERED SOCIAL WORKERS	CERTIFICATION CERTIFICATION LICENSURE LICENSURE LICENSURE LICENSURE LICENSURE REGISTRATION REGISTRATION	125 0 655 304 19 356 69 53 728
COLLECTION AGENCIES • regulates agencies and businesses which are compensated for collecting money from third parties	COLLECTION AGENCIES SOLICITORS	LICENSURE CERTIFICATION	165 262
CONTRACTORS • regulates businesses engaged in the construction, removal, or repair of real property, such as residences, commercial buildings, and roads	CONTRACTOR A CONTRACTOR B	LICENSURE LICENSURE	8,367 12,717
COMMERCIAL DRIVER TRAINING SCHOOLS • regulates schools and instructors who provide clients with instruction in the operation of motor vehicles	TRAINING SCHOOLS INSTRUCTORS	LICENSURE LICENSURE	69 186
EMPLOYMENT AGENCIES • regulates firms and individuals who act as brokers for persons seeking jobs and employers with positions to fill	EMPLOYMENT AGENCIES EMPLOYMENT COUNSELORS	LICENSURE REGISTRATION	252 336
GEOLOGISTS • regulates individuals engaged in the study and evaluation of earthen materials and structures	GEOLOGISTS	CERTIFICATION	N/A
HAIRDRESSERS • regulates individuals who provide services that include cosmetic treatments and cutting, curling, or dressing of hair	HAIRDRESSERS BEAUTY SHOPS	LICENSURE LICENSURE	22,679 4,880
HARBOR PILOTS • regulates individuals who pilot vessels into and out of Virginia's ports	HARBOR PILOTS	LICENSURE	49

<u>Board/Commission</u>	<u>Regulated Occupations and Professions</u>	<u>Method of Regulation</u>	<u>Number Regulated</u>
HEARING AID DEALERS AND FITTERS ● regulates individuals who fit and sell hearing aids based on audiometric measurement of a client's hearing capacity—	HEARING AID DEALERS	LICENSURE	148
LIBRARIANS ● ensures competency of individuals employed as full-time librarians in State-funded libraries	LIBRARIANS	CERTIFICATION	N/A
NURSING HOME ADMINISTRATORS ● regulates individuals responsible for administering homes for the chronically ill and infirm	NURSING HOME ADMINISTRATORS	LICENSURE	546
OPTICIANS ● regulates individuals who prepare, dispense, and fit eyeglasses or lenses prescribed by a physician or an optometrist	OPTICIANS	LICENSURE	916
POLYGRAPH EXAMINERS ● regulates individuals who administer polygraph exams to determine truthfulness	POLYGRAPH EXAMINERS POLYGRAPH INTERNS	LICENSURE LICENSURE	277 50
PRIVATE SECURITY SERVICES ● regulates businesses that provide various types of protective services, including armed guards, private investigators, and armored car personnel	PRIVATE SECURITY BUSINESSES QUALIFYING AGENTS OTHERS	LICENSURE LICENSURE REGISTRATION	245 322 12,000
REAL ESTATE ● regulates individuals engaged in selling and renting residential or commercial property	BROKERS SALESPERSONS BUSINESSES RENTAL LOCATION AGENTS OTHERS	LICENSURE LICENSURE LICENSURE LICENSURE LICENSURE	8,584 37,408 4,208 9 16
SANTARIANS ● establishes minimum qualifications to certify persons engaged in monitoring environmental health conditions	SANTARIANS	CERTIFICATION	365
WATER AND WASTEWATER WORKS OPERATORS ● regulates individuals who are responsible for operating water and wastewater treatment plants	WATER WORKS OPERATORS WASTEWATER WORKS OPERATORS	LICENSURE LICENSURE	1,310 1,918

DEPARTMENT OF HEALTH REGULATORY BOARDS

DENTISTRY ● regulates individuals who provide preventive care and treatment of the teeth, gums, and oral cavity	DENTISTS DENTAL HYGIENISTS	LICENSURE LICENSURE	3,796 1,562
FUNERAL DIRECTORS AND EMBALMERS ● regulates individuals and businesses that prepare the dead for burial or cremation and provide facilities for viewing the body	FUNERAL SERVICES PRACTITIONERS FUNERAL DIRECTORS EMBALMERS ESTABLISHMENTS	LICENSURE LICENSURE LICENSURE PERMIT	985 476 41 476
MEDICINE ● regulates individuals engaged in the practice of the healing arts to diagnose, treat, and cure human ailments and diseases	PHYSICIANS OSTEOPATHS PODIATRISTS CHIROPRACTORS OTHERS	LICENSURE LICENSURE LICENSURE LICENSURE VARIOUS	14,348 128 262 208 1,757
NURSING ● regulates individuals who provide care and counsel to the ill, injured, and infirm	REGISTERED NURSES PRACTICAL NURSES NURSE PRACTITIONERS NURSING PROGRAMS	LICENSURE LICENSURE CERTIFICATION ACCREDITATION	31,170 12,644 612 92
OPTOMETRY ● regulates individuals who provide eye care and prescribe lenses	OPTOMETRISTS	LICENSURE	719
PHARMACY ● regulates individuals who dispense, compound, and sell pharmaceuticals	PHARMACISTS PHARMACIES OTHERS	LICENSURE PERMIT VARIOUS	4,065 1,199 12,700
VETERINARY MEDICINE ● regulates individuals who treat animals	VETERINARIANS ANIMAL TECHNICIANS ANIMAL FACILITIES	LICENSURE CERTIFICATION REGISTRATION	1,106 206 326

Sources: JLARC Representation of Department of Commerce Renewal Data, May 1981, and Department of Health Regulatory Boards Biennial Report, 1978-1980.

REQUIREMENTS FOR APPLICANTS

Each regulatory board, or the Department of Commerce in the case of employment agencies, private security businesses, and polygraph examiners, is responsible for developing the qualifications for becoming licensed, certified, or registered in its respective profession. This includes establishing entry criteria, determining examination requirements, reviewing out-of-state applicants and setting regulatory fees. Figure 3 summarizes the activities of the regulatory boards.

Entry Criteria

Entry criteria are established by statute or regulation to ensure that an applicant for licensure or certification meets a standardized level of personal and professional qualification. As specified in the *Code of Virginia*, only entry qualifications "necessary to ensure either competence or integrity to engage in such profession or occupation" shall be adopted.

Typical entry requirements specify age, moral character, education, and experience qualifications. In addition, applicants must usually pass an examination and pay a fee. Applicants may not be denied credentials solely on the basis of a prior conviction of a crime unless the conviction relates directly to the occupation for which the credential is sought. The specific entry criteria vary considerably across professions.

About half of the regulatory boards have no age requirement while the remainder require an applicant to be at least 18 or 21 years old. Accountants, architects, and real estate brokers are examples of professions where the minimum age requirement is established to ensure that the applicant is legally eligible to enter into contracts.

Examinations

Applicants for licensure or certification in most professions are required to pass a board-sanctioned or developed examination. Examinations are intended to measure an individual's knowledge of professional information and skills and also serve to standardize the various educational backgrounds of applicants. National exams, developed by test-

ing services, are available for most professions. Several boards develop their own overall or supplementary examinations. The decision to use a national exam is often based on cost, efficiency, and applicability to State needs.

Examinations can take several forms: oral, written multiple-choice, written essay, or practical. Several boards require passing a combination of the various types of exams. For example, prospective dentists must pass three exams: a written regional dentistry exam, the Board's exam on Virginia dental laws and regulations, and a clinical exam testing the applicant's ability to perform dental procedures.

Passing the exam is usually the last major hurdle to becoming licensed or certified. Applicants are generally given ample opportunity to retake exams if necessary.

Out-of-state Applicants

In accordance with statute or regulation, regulatory boards may waive all or part of the entry requirements or examinations for out-of-state applicants provided that the applicant currently holds a license from another state. This function is performed through either reciprocity or endorsement procedures.

Reciprocity involves a formal agreement between Virginia and another state to mutually accept for licensure all applicants that are duly licensed in the other state. Endorsement, on the other hand, involves a case-by-case review of each out-of-state applicant's credentials to determine equivalency to Virginia's licensure requirements. Seven boards have reciprocity agreements with at least one state, while the rest use endorsement.

Reciprocal agreements and endorsement procedures provide for the movement of licensed practitioners between the states involved. Endorsement provides a thorough review of each applicant's credentials before permission to practice in Virginia is granted, but the process can be restrictive when a board is unwilling to accept an applicant's credentials as meeting those of the board. Reciprocal agreements establish specific criteria. These agreements are difficult to conclude and maintain, however, and they can result in the adoption of other states' restrictive provisions.

Fees and Expenditures

In order to become credentialed and to retain licensure, certification, or registration, individuals are required to pay fees. Typical fees include payments for initial applications, examinations, and renewals. Some boards also have established separate credentialing fees for professional instructors, business firms, and out-of-state applicants.

Fees are supposed to be set at a level sufficient to generate revenues to cover the expenses of the board and the administrative structure. The amounts of fees vary dramatically among boards. In 1981, fees ranged from a one-dollar lifetime charge for licensed librarians to \$550 or more for the initial licensure of private security businesses.

Individual boards have not always operated on a self-sufficient basis. During the 1978-80 biennium, expenditures of several DOC boards exceeded revenues. However, total revenues were sufficient to cover all board and departmental expenses during that period because some boards' revenues greatly exceeded their own expenditures.

Fees collected for boards within the Department of Commerce are deposited into a dedicated special fund, and the legislature makes a single appropriation to the agency from the fund. During the 1978-80 biennium, DOC collected \$5,774,388 in board fees. Expenditures incurred by the boards, the agency, and the Board of Commerce totaled \$5,010,599 during the same period.

Revenues from the seven boards in DHRB are paid into the State's general fund. DHRB receives appropriations designated for each health regulatory board and for technical assistance provided by the agency. Revenues collected during the 1978-80 biennium totaled \$2,716,637 while expenditures were \$2,922,464. Appropriations to the health regulatory boards and the department totaled \$3,011,625 during the same period.

ENSURING CONTINUED COMPETENCY

Once licensure or certification is obtained, individuals may retain their credentials for life. Renewal is generally subject only to the payment of periodic renewal fees. The boards attempt to ensure regulants' continued competency and compliance with State laws

and regulations by authorizing periodic inspections in some cases, and by handling complaints and disciplining regulants when necessary.

Renewal Criteria

Most boards issue licenses or certificates for a two-year period. At the end of the licensing period, individuals are typically required to pay a renewal fee in order to retain licensure. This is true in all cases except for librarians who pay only a one-dollar lifetime licensure fee and private security business employees who pay only additional registration fees when transferring from one employer to another.

Only a few boards place additional renewal criteria on their licensees, and no board requires that regulants be reexamined. The additional requirements take different forms:

- The Board for Commercial Driver Training Schools requires that proof of an active insurance policy be filed along with the renewal fee.
- Contractors engaged in a single contract exceeding \$40,000 or an annual total of \$300,000 are required to submit a financial statement along with annual renewal fees.
- Hearing aid dealers must submit a certified statement showing that calibration of an electronic instrument used to detect hearing loss has occurred during the past 12 months.
- Behavioral science professionals complete an "inspection of practices" form detailing the "boundaries of their practice."
- Individuals engaged in the practice of optometry, alcoholism counseling, and social work must show evidence of having attended continuing education courses.

Inspections

Although all boards may authorize inspections, only 11 boards require periodic inspections to be conducted of regulated places of business to ensure continued compliance with relevant laws and regulations (Table 1). These inspections are conducted by DOC and DHRB enforcement personnel.

Inspection activities vary from checking

Figure 3
SCOPE OF REGULATORY BOARD ACTIVITY

Board/Commission	Year Created	NUMBER REGULATED		BOARD COMPOSITION					ENTRY EXAM	FEES (DOLLARS)	
		Instructors & Practitioners	Schools, Firms & Facilities	Total Members	Citizen Members	Term (Years)	Written - State	Written - National		Oral	Practical

Commerce Boards

Accountancy	1928	2618	790	7	5		•					\$85	▲
A.P.E.L.S.C.L.A. **	1920	13,439	247	11	5		•	•				\$40	varies
Athletic Commission	1934	602	59	3	3	5						Varies	
Audiology & Speech Pathology	1972	625		7	2	4		•				\$70	\$25
Barbers	1962	3,686	1,292	5	3		•			•		\$15	\$25
Behavioral Sciences	1976	2309		9	3	5							
Professional Counselors	1975	(780)		7	4		•	•	•			\$50	\$150
Psychology	1946	(323)		5	5		•	•	•			\$50	\$75
Social Workers	1966	(1,206)		5	5			•	•			\$50	\$75
Collection Agencies	1970	262	165	3	3							\$325	
Contractors	1938	21,084		9	2	5	•					Class A \$200 Class B \$200	\$25
Commercial Driver Training Schools	1969	166	69	5	3							\$45	
Employment Agencies	1962	336	252	5	2	3						\$200	
Geology'	1981			5	2	3							
Hairdressers	1962	22,679	4,880	7	4		•		•			\$25	▲
Harbor Pilots		51		9	■		•	•	•	•		\$55	▲
Hearing Aid Dealers & Fitters	1970	148		7	2	4	•		•			\$100	▲
Librarians	1936	not available		3	5		•					\$1	▲
Nursing Home Administrators	1970	546		7	4		•	•	•			\$50	▲
Opticians	1954	916		5	1	5		•		•		\$85	▲
Polygraph Examiners	1968	327	14	6	3		•		•	•		\$100	\$25
Private Security Services	1976	Appr. 12,000	245	6	■							\$550	
Real Estate	1924	46,003	4,224	5	5		•			•		broker \$50 sales \$30	\$14.50
Sanitarians	1970	365		8	1	4		•				\$25	▲
Water & Wastewater Oper.	1970	3023		7	4		•					\$50	▲

Health Regulatory Boards

Dentistry	1886	5,358		7	5		•		•	•		dentist \$80 hvg \$60	▲
Funeral Directors & Embalmers	1894	1,502	476	7	2	7	•					\$70	\$150
Medicine	1884	16,703		14	5		•		•			\$175	▲
Nursing	1903	43,814	92	7	5		•					RN \$50 LPN \$33	▲
Optometry	1916	719		5	5		•		•			\$125	▲
Pharmacy	1886	17,964	1199	5	5		•			•		\$200	▲
Veterinary Medicine	1896	1,312	326	5	5		•			•		\$125	▲

*As of May 1981 for DOC boards; as of June 30, 1980 for DHRB boards.

**Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects.

▲ Exam fee included in initial fee

■ Unspecified term

Board/Commission	FISCAL DATA (FY 78-79 & FY 79-80)		RENEWAL CRITERIA					OUT-OF-STATE APPLICANTS			ENFORCEMENT (FY 1980)	
	Revenues	Expenditures	Biennial	Annual Renewal	Due Date	Minimum Renewal fee	Continuing Education	Other Renewal Requirements	Reciprocity Agreements/Endorsement	Number of Inspections	Complaints Investigated	Consent Orders & Disciplinary Actions

Commerce Boards

Accountancy	\$ 442,583	\$ 442,483	•		Oct. 1 even year	\$30			•	4	13	2	50
A.P.E.L.S.C.L.A. **	\$ 436,427	\$ 470,574	•		Jan. 1 odd year	\$50			•	0	34	6	50
Athletic Commission	\$232,710	\$125,852		•	Jan. 1		•		•			0	Box 40 Wrest 31
Audiology & Speech Pathology	\$ 20,901	\$ 27,473		•	Jan. 30	\$40			•	0	2	0	Audio 31 SP 33
Barbers	\$ 95,379	\$ 91,049	•		Jan. 1 odd year	\$15		•		849	6	0	50
Behavioral Sciences	\$ 174,429	\$ 285,386										3	
Professional Counselors			•		July 1 odd year	\$60			•	2			Varies
Psychology			•		July 1 odd year	\$60			•	0	2		49
Social Workers			•		July 1 odd year	\$60	•		•	1	4		20
Collection Agencies	\$ 24,629	\$ 48,500		•	Jan. 1	\$50			•	22	28	0	22
Contractors	\$ 530,281	\$ 530,458	Class B	Class A	Varies by class	Class A \$35 Class B \$10		•	•	7	105	0	22
Commercial Driver Training Schools	\$ 12,742	\$ 12,691		•	Dec. 31			•	•	1	3	0	50
Employment Agencies	\$ 41,100	\$ 38,973		•	Jan. 1	\$50			•	13	12	2	29
Geology									•				8
Hairdressers	\$ 568,144	\$ 454,814	•		Jan. 1 odd year	\$15			•	2,347	35	0	50
Harbor Pilots	\$ 5,665	\$ 4,387		•	Dec. 31	\$55						0	24
Hearing Aid Dealers & Fitters	\$ 11,759	\$ 17,928		•	Jan. 31	\$60		•	•	0	5	0	42
Librarians	\$ 273	\$ 419			none				•			0	24
Nursing Home Administrators	\$ 45,312	\$ 30,841	•	•	Dec. 31 odd year	\$50			•	0	1	0	50
Opticians	\$ 40,305	\$ 46,729		•	Dec. 31	\$40			•	3	9	1	21
Polygraph Examiners	\$ 18,035	\$ 21,106	•		Dec. 31 odd year	\$100			•	1	4	0	22
Private Security Services	\$ 237,061	\$ 366,024		•	Oct. 31	\$300			•	86	57	0	35
Real Estate	\$ 2,720,967	\$ 1,817,572	•		July 1 even year	Broker \$50 Sales \$30			•	252	260	24	50
Sanitarians	\$ 8,287	\$ 15,249		•	Jan. 1	\$15			•	0	0	0	33
Water & Wastewater Oper.	\$ 109,686	\$ 128,234		•	Jan. 1	\$15			•		1	0	Water 41 Waste 44

Health Regulatory Boards

Dentistry	\$ 229,656	\$ 151,748	•		Mar. 1 odd year	Dentist \$40 Hyg \$20				166	88		50
Funeral Directors & Embalmers	\$ 154,575	\$ 147,784	•		Mar. 1 odd year	\$70			•	103	26		49
Medicine	\$ 854,228	\$ 681,025		•	June 30	\$15			•		190	114	50
Nursing	\$ 829,037	\$ 664,911		•	Birth Month	\$5			•		52	18	50
Optometry	\$ 79,993	\$ 70,915	•		Nov. 1 odd year	\$100	•		•	42	3		50
Pharmacy	\$ 475,553	\$ 792,776		•	Dec. 31	\$20			•	981		23	50
Veterinary Medicine	\$ 93,595	\$ 67,079	•		Mar. 1 odd year	\$70			•	82	36	9	50

Table 1
BOARD INSPECTIONS

<u>Board and Inspection Activities</u>	<u>Number of Periodic Inspections (FY 1980)</u>
Barbers	849
Check licenses	
Collection Agency	22
Check licenses, review bond and audit trust accounts	
Employment Agency	13
Check licenses, verify adver- tising books, verify job orders, review applications	
Hairdressers	2,347
Check licenses	
Opticians	3
Check licenses	
Private Security Services	86
Check registration of employees	
Real Estate Commission	252
Check licenses, audit escrow accounts, check business office	
Dentistry	166
Carry out drug audits, review sanitation and activities of dental auxiliary personnel	
Funeral Directors	103
Check contracts, embalming room, casket room	
Pharmacy	981
Carry out drug audits and sanitation inspections for pharmacies, hospitals, manufacturers	
Veterinary Medicine	82
Review animal hospitals for sanitation, equipment, drug audits	

Source: DOC and DHRB Annual Reports.

to see that current licenses are properly displayed to auditing escrow funds. Reported violations include failure to post current licenses and incomplete record keeping. In many instances no violations are found or reported.

Complaints

The primary enforcement tool in the regulation of occupations and professions is the investigation and resolution of complaints registered against licensees. Complaints are often made by consumers, and many are filed by other licensed practitioners. Most complaints are filed with the board administrator, who typically determines whether the complaint is within the board's jurisdiction and needs an investigation. Some complaints come to the board through individual board members or the Office of Consumer Affairs of the Department of Agriculture and Consumer Services.

A large number of complaints received by boards involve activities other than client services. These include violations of professional conduct, such as alcoholism or drug addiction, unlicensed practitioners, and violations of business practice restrictions, such as the use of trade names and misleading advertising. In general, boards do not become involved in mediating controversies between licensees and their employees or in judging the fairness of charges for services rendered to clients.

Many complaints involve unlicensed practitioners. These complaints are investigated by departmental enforcement staff and referred to the local Commonwealth's attorney for prosecution unless the practitioner agrees to either cease operation or become licensed. The Department of Commerce also has statutory authority to file through the State Attorney General's office for civil injunction with the circuit court to stop any unlawful act.

Disciplinary Actions

Once a complaint has been investigated and found valid, it is referred back to the board for hearing and action. The hearings and appeals of disciplinary actions must adhere to the requirements of the Administrative Process Act. Boards generally have several alternative sanctions available, includ-

ing revocation, suspension, probation, or fines.

All fines collected for violations of board regulations or statute are deposited into the State's Literary Fund. In 1980, for example, DOC collected \$15,000 in fines against regulators.

Many boards have guidelines in their statute or regulations for taking disciplinary actions. Board disciplinary guidelines prohibit such things as

- obtaining credentials by fraud or misrepresentation;
- practicing incompetently or negligently;
- having been convicted of a felony or misdemeanor involving moral turpitude;
- deceptive or misleading advertising;
- practicing in a commercial establishment;
- using trade names; and
- violating laws or regulations governing the profession.

Penalties are generally applied on a case-by-case basis. However, the Board of Behavioral Science specifies minimum and maximum penalties for each violation. For example, a psychologist found to be mentally, physically, or emotionally incompetent could receive a maximum penalty of license revocation or, at the minimum, a suspension.

In general, the boards are cautious about taking away someone's livelihood and therefore attempt to resolve the matter through other means, such as a consent agreement between the licensee and the board. According to 1980 annual reports, 182 disciplinary actions and consent orders were reported for the seven health regulatory boards and 48 for DOC boards.

Assessing Board Functions

During the course of this review, JLARC focused its evaluation on three broad areas of special legislative interest relating to Virginia's occupational regulatory boards:

1. *Performance areas*, which include a board's ability to carry out its regulatory functions of screening applicants, issuing credentials, and ensuring continued competency;
2. *Regulatory scope*, which involves the appropriate level of regulation, duplication of effort, and controversies between regulated professions; and

3. *Trends and informational topics*, which include areas of general interest to the legislature and areas that the General Assembly may be requested to deal with sometime in the near future.

PERFORMANCE AREAS

Entry Requirements

For entry criteria to be appropriate, they must relate directly to protecting the public interest by establishing minimum qualifications of the professional or by regulating aspects of business or professional practice. Entry criteria should be developed within the prescribed statutory framework. They should not be ambiguous or unduly restrictive, and they should not prevent competent individuals from engaging in the profession.

JLARC's review indicates that entry requirements prescribed by some boards need further consideration and adjustment or clarification.

Board for Contractors. This board has not established specific entry qualifications for licensing Class A contractors (that is, those who undertake work in which a single contract exceeds \$40,000 or total contracts exceed \$300,000 annually). Instead, the Board relies on the "expertise of its members" to make case-by-case judgments on applicants. In the absence of written guidelines, contractor applicants do not know the standards against which they are being measured.

Recommendation (1). The State Board for Contractors should develop written criteria for Class A licensees. These would inform applicants and Board members of the criteria to be applied and help ensure consistency in Board decisions.

Board of Examiners of Professional Hairdressers. This board has controversial training requirements. Applicants must complete 2,000 hours of training before taking the licensure examination. The required number of hours exceeds the national average and those of all neighboring states except West Virginia. Nevertheless, several applicants from neighboring states are licensed in Virginia each year under reciprocity agreements even though out-of-state applicants have only completed 1,500 hours of training.

Controversy has arisen between the Board of Hairdressers and the State Department of Education over the amount of training necessary to sit for the hairdressers licensure examination. A Department of Education pilot program for high school cosmetology students has been proposed. The DOE program would provide for 1,080 hours in cosmetology plus 500 hours in related subjects. The Board has declined to allow the DOE students to sit for the licensing exam because the pilot program does not meet the training requirements.

Recommendation (2). Since the number of hours of school-based training needed to adequately train cosmetologists has not been conclusively established, it appears that a methodologically sound pilot project could be useful in establishing an empirical basis for the number of required training hours. The Board and DOE should work together to develop such a pilot program.

Board of Commissioners to Examine Pilots. To be eligible for State licensure as a harbor pilot, an applicant must first serve as an apprentice to a pilot for five years. Apprenticeship programs are operated by the Virginia Pilot Association and apprentices are selected and trained by the association. In essence, this selection determines who eventually become licensed pilots. Very few individuals are chosen by the association as apprentices each year. Often, those chosen are relatives or friends of pilots.

It is not inconsistent with practices in other states or with existing case law for selection of pilot apprentices to be delegated by a state to a pilots association or for preference to be given to friends or relatives. However, recent rulings in cases relating to the equal employment opportunity clauses in the 1964 Civil Rights Act have objected to both the form and results of some apprenticeship programs.

Recommendation (3). In light of recent federal civil rights and equal employment decisions, the Board of Commissioners to Examine Pilots might wish to consider establishing criteria for the selection of apprentices in its regulations to ensure equal opportunity to applicants.

Examination Concerns

Passage of licensure or certification exams is typically the last major hurdle to becoming credentialed. As such, exams are supposed to measure an applicant's skills and serve to standardize the various educational backgrounds of candidates. Therefore, an exam's construction must strike a delicate balance between measuring an applicant's competency to perform an occupation and being so rigorous that capable individuals cannot pass tests that exceed job-related standards. In addition, exams must be uniformly administered and objectively scored.

JLARC found that at least some of the examinations used by State boards are not validated to determine job-relatedness, they have excessively high failure rates, or sometimes they involve undue subjectivity in test procedures.

Board of Barber Examiners. Fifty-seven percent of the barber candidates during FY 1979 and 1980 passed both the written and practical licensing exam; 42 percent failed the written test. Of the 895 persons who failed at least one part of the exam, 80 did not pass the written, two failed the practical, and three failed both. There seem to be problems with the written exam since test results reveal that most of the individuals who fail the written exam demonstrate sufficient skill to pass the practical licensing exam on the same day.

Several explanations have been suggested by Board officials for the high failure rate, including poor exam construction and a six-month lag between the time a candidate completes barber school and the date the exam is taken. Although the Board has attempted to address the examination problems, it is still concerned about the high failure rates.

Recommendation (4). The Board of Barber Examiners should take steps to ensure that the written exam is an appropriate screening mechanism. Since barbering is a skill-oriented profession, a practical exam alone might be an adequate procedure. If a written exam is retained, the test should continue to be evaluated to ensure its job-relatedness. Consideration might also be given to administering the exam upon completion of the training in barber school instead of after the subsequent six-month apprenticeship.

Board for the Certification of Water and Wastewater Works Operators. For some classes of operators, the failure rate on written tests was as high as 65 percent as recently as February 1981. The overall failure rate for examinees of all classes was 49 percent in 1980. Since most examinees have been working as operators for at least five years prior to taking the licensure exam, it is not clear whether the problem is the inadequate training and practical experience of applicants or the content and structure of the exams. The Board is concerned about the failure rate but several steps taken by the Board to correct the situation have not worked.

An assessment of the exam by a national association highlighted a major problem. The association found that the Board has not validated its educational or experience requirements or the cut-off scores of the exam relative to the job requirement of applicants.

Recommendation (5). **The Board for the Certification of Water and Wastewater Works Operators should take steps to (1) ensure that the exam measures the actual skills and knowledge needed to serve as an operator, and (2) assess the characteristics of applicants who pass and fail the exam to detect possible reasons for failure. In addition, the Board should consider limiting the number of times an applicant may retake the exam without attending Board-sponsored or equivalent training. The Board should also advise examinees who fail on subject areas in which they score low.**

Board of Medicine. Most occupational boards use independent examiners or a panel of examiners to administer exams. Objectivity is always a concern in instances where exams are developed, given, and scored by a single person. Such is the case with the chiropractic exam which is developed, administered, and scored by the one member of the Board of Medicine who is a chiropractor. As a result, the examination process for chiropractors is open to questions of bias. The Board of Medicine's podiatric exam was discontinued in 1976 for similar reasons. The Board indicates that the National Board of Chiropractic Examiners is presently developing a chiropractic examination.

Recommendation (6). **In the interim, the Board of Medicine should obtain the assistance of other chiropractors to help develop, grade, or score the exam. In general, boards should ensure objectivity by not placing total responsibility for examinations in a single individual.**

Oral examinations can also result in problems for boards, because they often lack objective measures for evaluating applicants. Oral exams are required for licensure as professional counselors, social workers, psychologists, harbor pilots, and nursing home administrators. The Board of Funeral Directors and Embalmers previously used oral exams, but the practice was discontinued in 1980 because of several concerns including lack of objectivity.

Observation of the oral exam procedures of one board revealed that some questions were asked that did not relate to the applicant's qualifications or professional integrity, and that some duplicated other exam requirements. Several questions asked during the oral exam, for example, related to personal career objectives, willingness to accept future employment in the State, and personal character. These types of questions may be irrelevant to establishing minimum competence for licensure and may more appropriately fall within the purview of the individual's employer. According to that board's chairperson, some applicants have been denied licensure initially because of answers given during the oral exam.

Recommendation (7). **Boards should give careful consideration to the need for oral examinations. If orals are deemed necessary to determine an applicant's competency or integrity, then individual bias should be rigorously avoided. Questions should be job-related and should come from a predetermined list.**

Temporary Permits

The General Assembly has established in law that an individual must meet all entry requirements, including passage of any licensing exams, before practicing a regulated profession. Several boards, such as those regulating dentistry, psychology, contractors, and private security services, have received statutory authority to issue temporary permits to

individuals prior to completing all licensure requirements. The temporary permits are used for such reasons as permitting the applicant to practice while awaiting exam results, regulating persons during required training, and for emergency situations.

The Board of Hearing Aid Dealers and Fitters. This Board appears to be using temporary permits in a manner inconsistent with the intent expressed in the Code. A temporary permit is defined in the Board's statutes as being issued to an applicant who is in training to become a licensed hearing aid dealer and fitter. However, the linkage between the temporary permit and licensure is not established in the Board's regulations.

Moreover, most holders of permits do not appear serious about becoming licensed. Since 1975, only 35 of the 227 persons who have been issued temporary permits have even bothered to take the licensure exam. The permit system, in effect, allows persons who do not meet the Board's regular entry criteria to be employed as dealers and fitters for as long as two years.

Recommendation (8). **The Board of Hearing Aid Dealers and Fitters should reassess the temporary permit procedure. Current practice does not comply with the purpose stated in the Code to train applicants for licensure. Regulations should be adopted that establish a clear linkage between a bona fide, on-the-job training program and qualifications for licensure. Temporary permits should be issued only to persons who are in bona fide training.**

Fees and Expenditures

Several boards have recently increased the fees paid by practitioners of regulated professions. Fees are paid initially for entry into the profession and periodically in order to retain credentials. Fees collected are supposed to cover the boards' operating expenses, including a share of the overhead for the agency and the review board.

In the past, expenditures have greatly exceeded revenues for several boards. This situation has resulted from a reluctance to raise fees, from unanticipated workloads, from the expenses of frequent board meetings, and from departmental allocations of costs to the boards. The expenses of 13 boards exceeded fees collected during the

1978-80 biennium. Overexpenditures reported by DOC and DHRB ranged from \$146,634 for the Board of Pharmacy and \$128,963 for Private Security Services to \$146 for the Board for the Certification of Librarians and \$177 for the Board for Contractors. These overexpenditures were covered by surpluses from other regulatory boards within the administrative agency.

In 1981, the General Assembly amended the general statutes relating to occupations and professions (Section 54-1.28:1), to require each regulatory board to adjust its fees to within ± 10 percent of the amount of its last biennial expenses. Because of the placement of the law in the Code and the wording used, this law does not appear to apply to the boards under the Department of Health Regulatory Boards nor to the three DOC advisory committees for employment agencies, polygraph examiners, and private security services.

Recommendation (9). **The General Assembly may wish to amend Section 54-1.28:1 to include all boards.**

Expenditures associated with the regulatory activities of boards were identified by JLARC as needing attention.

Private Security Services. Regulation of private security personnel is one of the highest cost activities carried out by the Department of Commerce. New fees were established after consideration of various options. However, fees are considerably higher than in previous years and are far greater than those for other boards. For example, initial licensure of a business offering two categories of private security services increased from \$150 in FY 1980 to \$750 in FY 1981. In addition, many firms also pay the \$15 registration fee for each of their registered personnel.

During the 1978-80 biennium, expenditures exceeded revenues by \$128,963 or 54 percent. The high costs are attributable to reimbursements to the Criminal Justice Services Commission for regulating training programs, costs directly associated with processing over 1,500 applications a month, and the portion of DOC administrative overhead allocated to regulating this profession.

Recommendation (10). **Although some**

steps have been taken to reduce overall expenditures, DOC should consider additional options to maximize resources, reduce unnecessary tasks or costs, or distribute costs equitably among those regulated. It is incumbent upon regulated occupations, however, to bear the necessary costs of regulation.

Board of Behavioral Science. During the 1978-80 biennium, regulation of all behavioral scientists generated \$174,429 in revenue. Expenditures for the same period exceeded revenues by \$110,957.

One reason for the large overexpenditure is the frequency with which the various boards meet during the year. For example, 79 board meetings were conducted during FY 1980. The costs associated with those meetings equaled \$37,779 or 26 percent of the year's total expenditures.

Recommendation (11). The Board of Behavioral Science and the Department of Commerce should work together to determine ways to reduce the number of meetings and thereby bring Board expenditures more in line with revenues.

Athletic Commission. The Virginia Athletic Commission is responsible for collecting and distributing the tax revenues generated from gate receipts at athletic events. JLARC found, however, that net tax revenues were not properly distributed to the general fund and localities during the 1978-80 biennium.

The problem occurred because the Department of Commerce did not provide the Athletic Commission with information about overhead expenses before tax revenues were distributed. Therefore, the Commission was not able to accurately deduct all expenses from total revenues before allocating the remainder to the general fund and the localities at the close of the fiscal year as required by statute.

DOC has taken steps to develop an accounting system that will accrue costs on a timely basis throughout the year. This system will enable the department to allocate overhead costs to the Commission (and to other boards) promptly at the close of the fiscal year. DOC and the Athletic Commission also intend to reconcile amounts distributed for 1979, 1980, and 1981 to ensure that proper distributions have been made.

Mandatory Continuing Education

Much controversy surrounds mandatory continuing education for license renewal in Virginia and the rest of the nation. It is generally proposed as a means for ensuring that practitioners remain knowledgeable in the profession. Sometimes continuing education is required by professional associations. However, concerns have been raised about (1) the lack of conclusive evidence that mandatory continuing education relates directly to a practitioner's continued competency, (2) administrative problems such as deciding which courses will count toward the hours needed, and (3) the prospect of denying relicensure of an otherwise capable practitioner who did not meet the required course hours. Moreover, it is argued that many practitioners make voluntary use of professional seminars and journals.

Several boards in Virginia, including the Board of Nursing and the Board of Dentistry, have gone on record in opposition to mandatory continuing education courses and in favor of voluntary coursework instead. Some boards are attempting to ensure continued competency by methods other than mandatory continuing education. For example, the Board of Accountancy has recently adopted regulations which will require periodic quality reviews of licensed accounting firms.

Three groups of professionals are currently required to attend approved continuing education courses:

- Board of Optometry regulations effective October 31, 1981 change the required number of hours optometrists must take every two years from 16 to 24.
- The Certification Committee for Alcoholism Counselors requires completion of at least 60 clock hours (or six continuing education units) every two years.
- Board of Social Work regulations require licensees to show evidence of keeping abreast of new developments in the profession through continuing education. The number of hours required is not specified.

Although not currently implemented, the certification committee for drug counselors also has provisions in its regulations which require continuing education courses.

In addition, some boards require individu-

als who wish to upgrade their credentials or renew a lapsed license or certificate to complete a specified number of hours of professional education courses. For example, the State Board of Accountancy requires a certificate holder who passed the CPA examination four or more years ago to complete at least 40 hours of continuing education prior to becoming licensed.

Recommendation (12). It is generally advisable for regulatory boards to promulgate regulations that are of proven benefit and are administratively feasible. Boards should carefully weigh the apparent problems associated with continuing education requirements.

Inspection Activities

According to Section 54-1.28, periodic inspections conducted by occupational regulatory boards are to relate to the practice of each licensee "to ensure that such practitioner is conducting his practice in a competent manner and within the lawful rules and regulations" of the board. Eleven boards have chosen to authorize inspections.

The current inspection activities of the boards for barbers, hairdressers, and opticians are not related to the competence of a licensee's practice. Instead, these inspections are concerned with whether current licenses are properly displayed. No assessment of a practitioner's performance or competency is made. During FY 1980, more than 3,000 inspections of this nature were conducted.

Recommendation (13). These routine inspection activities should be discontinued in favor of inspecting upon receiving a complaint or by using sampling techniques.

Board of Veterinary Medicine. To be effective, inspections must be able to identify violations that may exist. This is generally accomplished by visiting the practitioner's office unannounced. The Board of Veterinary Medicine recently adopted a regulation which requires three days' advance notice of an inspection be given to the owner or operator of an animal facility. The Board's action ~~reflected a~~ desire to ensure that the licensee will be present during the inspection, that mobile units will be available for inspection, and that the surgery suite will not be in use. However, announced inspections also

permit a licensee to temporarily correct any deficiencies that exist and do not ensure an accurate view of existing conditions.

Recommendation (14). If periodic inspections are deemed necessary, they should be conducted on an unannounced basis in order to provide the Board with an accurate view of the licensee's compliance record.

Board of Barber Examiners and Board of Examiners of Professional Hairdressers. State-wide inspections of the sanitary conditions of barber shops and beauty shops were conducted by the State Department of Health until 1979. The health inspections have been discontinued except where required by local ordinance. The State Commissioner of Health indicated that it was his belief that the State health department had lost the authority to inspect those shops when statutory language relating to such inspections was repealed.

However, statutory provisions requiring health department inspections of barber shops remain in the Barber Act. The statutory authority for continued inspections of beauty shops by the health department may be less clear.

Recommendation (15). The Board of Barber Examiners, the Board of Examiners of Professional Hairdressers, the Board of Commerce, and the Department of Health should cooperatively develop inspection options to present to the General Assembly. Options could include the following: (1) termination of all statewide inspections in the absence of serious known hazards; (2) assignment of responsibility for compliance and sanitary inspections to the Department of Commerce; or (3) reinstatement of sanitary inspections by the State Department of Health.

Complaint Handling

Most occupational regulatory boards use the complaint process as the primary means for ensuring continued competency and compliance with State standards. Thus, it is important that boards act on appropriate complaints.

Each board establishes the type of violations on which it will act. These typically include allegations of incompetent or unscrupulous practice, misrepresentation in obtain-

ing licensure or certification, substance abuse, employment of unlicensed personnel, and violations of State law or regulations. Complaints against unlicensed practitioners are turned over to the local commonwealth attorney if found valid.

JLARC found that some boards have excluded complaint areas that seem to be necessary for the public's protection. For example, complaints involving standards of practice of hairdressers and private security guards are not acted upon by their respective regulatory body. Two recent cases involving these professions suggest that standards of practice should be included among complaint areas.

During the summer of 1981, it was alleged that a private security guard working for a convenience store shot and killed an unarmed shoplifter. The suspect was in the process of running away from the store with approximately \$15 worth of stolen food when he was shot.

It was determined by Board officials that this type of incident was outside the control of occupational regulation until the courts had acted. Therefore, no action was taken.

* * *

A woman lost her hair after receiving a second application of a permanent in 1979. Although the licensed beautician denied any impropriety, a circuit court jury awarded the woman \$20,000 in damages in September 1981.

This complaint was considered by the Board of Examiners of Professional Hairdressers to be outside its purview since incompetent practice is not an area included in Board regulations. Therefore, no regulatory action was taken against the beautician and none is expected.

Although it may be difficult to assess such things as faulty applications of hair treatments or improper use of a firearm, it appears appropriate for boards to exercise their regulatory powers to protect the public by investigating complaints that involve actual physical, emotional, or financial harm that are alleged to have resulted from improper practice. In the absence of such action, incompetent practitioners may continue to practice their professions.

Recommendation (16). The General Assembly may wish to address the authority of regulatory boards to investigate allegations of incompetent practice to ensure they adequately protect the public.

Boards vary in the method by which complaints can be registered. Some boards will act on phone complaints. Several require a complainant to file the complaint in writing before action will be taken on it. Others, such as the Real Estate Commission, the Board of Dentistry, the Board for Commercial Driver Training Schools, and the Board of Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, also require that the written complaint be notarized.

The boards appear to favor written complaints to avoid frivolous allegations and to ensure that complainants will support their contentions. Only the investigation stage of complaint processing is protected under the Freedom of Information Act. All allegations are public information, nevertheless.

Concern has been expressed in occupational and professional regulation literature that requiring complaints to be submitted in writing reduces the number of legitimate complaints filed. This occurs for several reasons:

- a lack of confidence among some people in their ability to affect political processes;
- the inability to write intelligibly; and
- the loss of anonymity of the complainant once the complaint is rendered in writing.

Recommendation (17). Recognizing these concerns, Virginia's boards should eliminate notarization requirements for initial filing of complaints, and they should develop procedures for dealing with telephone complaints.

REGULATORY SCOPE

Degree of Regulation

The General Assembly has established in statute different degrees of regulation for occupations and professions. These degrees are to be considered whenever recommendations are made to the General Assembly "that a particular profession or occupation should be regulated, or that a different

degree of regulation should be imposed on such profession or occupation not otherwise regulated by law." The prescribed degrees of regulation are to be considered in the following order:

1. *Stricter private civil actions and criminal prosecutions* are to be considered first whenever it is determined that existing penalties are not sufficient to eradicate existing harm or prevent potential harm.
2. *Inspection and injunction* may be utilized when it is recognized that current procedures are not sufficient to eradicate harm.
3. *Registration* may be implemented whenever it is found "necessary to determine the impact sustained by the public from the operation of a profession or occupation."
4. *Certification* may be utilized to grant "a designation of professional competence in order that persons may have a substantial basis for relying on the services of a practitioner."
5. *Licensing* is appropriate when it is apparent "that adequate regulation cannot be achieved by other means."

The most recent statutes enacted by the General Assembly relating to occupations and professions establish criteria to be used to determine the proper degree of regulation. The criteria enumerated in Section 54-1.26(b), *Code of Virginia*, are listed below:

1. Whether the practitioner performs a service for individuals involving a hazard to the public health, safety or welfare, if unregulated.
2. The view of a substantial portion of the people who do not practice the particular profession, trade or occupation.
3. The number of states which have regulatory provisions similar to those proposed.
4. Whether there is sufficient demand for the service for which there is no substitute not likewise regulated and this service is required by a substantial portion of the population.
5. Whether the profession, trade or occupation requires high standards of public responsibility, character and performance of each individual

engaged in the profession, trade or occupation, as evidenced by established and published codes of ethics.

6. Whether the profession, trade or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he (or she) has the minimum qualifications.
7. Whether the professional, trade or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession, trade or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. Whether the characteristics of the profession, trade or occupation make it impractical or impossible to prohibit those practices of the profession, trade or occupation which are detrimental to the public health, safety and welfare.
10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

The amount of regulation needed to protect the public interest may also change from time to time because of technological advances, increased federal or other State controls, or a reduction of potential harm associated with the occupation. The method used to regulate certain professions may need to be occasionally reevaluated to determine if the degree of regulation is still appropriate.

It is apparent that some professions are regulated in a manner which is inconsistent with statutory requirements relating to the degree of regulation. For example, some practitioners are only required to meet registration requirements when they are explicitly required by statute to be licensed. While agencies must comply with requirements in the *Code*, authority to use alternative levels of regulation may be requested from the General Assembly. It is also difficult to tell from confusing occupational and board titles whether a profession is licensed, certified, or registered.

During the course of this review, JLARC applied the criteria in the *Code* to each regu-

lated group and concluded that the current method of regulating certain professionals may not be consistent with the criteria. These should be reviewed by the legislature.

Sanitarians. Persons who meet the requirements of the State Board of Sanitarian Examiners may be voluntarily certified. Certification permits individuals to use the title "registered sanitarian," which is also used in other states.

The regulation of sanitarians is somewhat unusual in that most sanitarians are public employees who are subject to State and local personnel policies. Certification is not a condition of employment or promotion in public agencies.

Certification of sanitarians actually serves only to recognize a sanitarian's professional credentials on a voluntary basis. The same recognition could be accomplished if sanitarians were certified by a professional association.

Recommendation (18). **The General Assembly may wish to consider certification of sanitarians by a professional association as the credentialing method.**

Librarians. Statutory provisions passed nearly 40 years ago require that public libraries fill professional librarian positions with persons certified as holding a degree in library science or its equivalent in order to retain State aid. The Board for the Certification of Librarians grants licenses to applicants with appropriate degrees without examination, provides an opportunity for persons to demonstrate equivalency for licensure by State exam, and grants licensure to out-of-state applicants under certain circumstances.

In addition to the link with State funding, regulation of librarians is unique in other ways: regulation focuses on public sector employees; licensure certificates are granted for a lifetime with no renewal required; the one-time fee is one dollar; and the Board does not have any regulations relating to the practice of librarianship.

Librarians are regulated in 24 states. Five states regulate head librarians only. States which do not regulate librarians directly often tie minimum professional standards to state funding or to state personnel requirements.

Recommendation (19). **The General Assembly may wish to consider several different options to achieve the objectives intended in the regulation of librarians. These might include the licensure or certification of head librarians only; transferring the credentialing function to the State Library Board; or delegating to localities the responsibility to ensure their personnel have the credentials necessary to receive State aid.**

Review of the appropriate level of regulation of collection agency solicitors and employment agency counselors is also necessary. The current method used to regulate these professions does not appear to comply with statutory requirements.

When a board is created, the General Assembly specifies the level of regulation for the various professions or facilities within the board's jurisdiction. Boards must establish requirements in accordance with the degree of regulation. Although most boards do comply, JLARC found two instances where the intent stated in the Code has been interpreted to permit different levels from those suggested.

Collection Agency Solicitors. Section 54-729.3 of the Code establishes licensure as the appropriate level for regulating collection agency solicitors. Under licensure, only those individuals who meet specific qualifications can legally engage in the occupation.

In contrast to this language in the Code, the Collection Agency Board states in its regulations that solicitors are to be certified. This method of regulation allows anyone to practice the profession but permits only qualified persons to use a designated title such as "certified solicitor." The Board's procedures do not assure the public of the degree of regulation that licensure is intended to convey.

Recommendation (20). **The Board should regulate solicitors at the level specified in the Code, but may recommend a statutory change to the General Assembly.**

While language in the Code requires collection agency solicitors to be licensed, registration, a less restrictive form of regulation, might be recommended. To be registered, individual employees or firms would need only to submit their names, locations, and types of occupation to the Board.

The Collection Agency Board might determine, however, that it is necessary to protect the public through a higher level of regulation. In that case, certification, as defined in the Code, could be used to inform the public of those individuals who meet minimum requirements to be solicitors.

Employment Counselors. The degree of regulation of employment counselors does not comply with language in the Code. When regulatory activity for employment agencies was established for the Department of Commerce, the exact level of regulation for counselors was not specified in the statute. However, the statute did require that the Employment Agency Advisory Board "advise and make recommendations to the Department with respect to appropriate standards of competence to be established with respect to employment agency counselors and procedures for certification or licensing of such counselors." No mention was made of Board or agency discretion to select another option. Nevertheless, DOC has established a procedure which resembles registration for employment counselors instead of licensing or certifying them.

The Employment Agency Advisory Board determined that registration was sufficient for counselors because of the very specific business practices prescribed for licensed agencies in regulation. The counselor is subordinate to the licensed operator of the business who must ensure that the entire business is in compliance.

Recommendation (21). Regulation of employment counselors needs to comply with current statutory requirements. However, consideration might be given to requesting statutory authority for a less restrictive method of regulation for this group. Statutory authorization for use of registration could be recommended to the General Assembly if deemed appropriate.

— In several cases, titles of some occupational groups and regulatory boards contribute to the confusion as to whether a given profession is licensed, certified, or registered. The following examples illustrate the problem:

- "Registered barbers" and "registered nurses" are actually licensed.

- A "registered sanitarian" is actually certified.
- A "certified nurse practitioner" is both licensed as a nurse and certified as having special qualifications.
- The Board for the Certification of Water and Wastewater Works Operators licenses rather than certifies its practitioners.

Recommendation (22). Boards should correct the confusion which may exist by the use of misleading adjectives in occupational titles. In some cases, popular usage may dictate retention of an otherwise misleading title, but the boards should correct titles where possible. The General Assembly may wish to amend relevant sections of the Code to clarify confusing adjectives.

Composition of Regulatory Boards

Increasing citizen representation and granting full representation to certain regulated groups are two areas of controversy regarding the composition of Virginia's occupational regulatory boards.

Citizen Members. Members of occupational boards are often faced with an internal conflict of regulating a profession in which they participate. Unlike members of most other State governmental boards and commissions, members of occupational regulatory boards are typically practitioners in the regulated profession. In fact, positions are frequently filled from lists of nominees submitted by professional associations. Some individuals have even continued to serve as association officials after appointment to an occupational regulatory board even though requested to resign their positions.

In an attempt to provide more public involvement in occupational regulatory matters, the General Assembly passed legislation in 1974 specifically mandating that two citizen members be placed on each newly created occupational regulatory board. Section 54-1.18.1, *Code of Virginia*, defines a citizen member as someone who "(i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct

or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board." Language in the *Code* also states that citizen members shall participate in all regulatory matters except "decisions regarding the examination of applicants for licensure or decisions regarding the professional competence of licensees." Ten boards are currently required by statute to have citizen members.

Legislation has also been proposed in recent years to place citizen members on some existing boards. Following are some of the concerns that have been expressed over these proposals:

- whether to substitute citizens for some practitioner members or increase overall board size to include citizen members;
- whether some boards are being singled out as needing public representation; and
- whether citizen members can be effective on boards.

Recommendation (23). The General Assembly may wish to develop cross-cutting legislation which would place citizen members on each professional and occupational regulatory board. This action would serve to increase public representation on existing as well as new boards and would not single out any particular board. In addition, to avoid any potential conflict of interests, the legislature may also wish to require board member appointees to resign an official post in a related professional association.

Board Representation. Board representation is generally limited to groups whose practice is explicitly regulated. Some additional groups desire representation on existing boards; some represented groups want more extensive voting privileges for their representative on boards.

Two professional groups have indicated a desire for legislative action which would change their status regarding board representation.

Non-Certified accountants have some concern because they are not represented on the State Board of Accountancy. Non-certified accountants and CPAs differ in the services they may provide and in their qualifications. A bill was considered by the General Assembly in 1981 to require one Board member to

be a non-certified accountant. The bill generated a great deal of controversy and was not passed.

Members of the state association of non-certified accountants feel that representation on the State Board of Accountancy is necessary to ensure that regulations governing the practice of CPAs do not unduly restrict the practice of non-CPAs. It is the position of the Accountants Society of Virginia that board representation for non-CPAs would provide for closer consideration of the effect of Board rules and regulations on their branch of the profession. They want to be able to use the title public accountant and to indicate on financial statements that they have expert knowledge of accounting principles.

CPA association representatives oppose the move to place a non-certified accountant on the State Board of Accountancy. This group feels that non-CPAs are not regulated and, therefore, have no need for board membership. They do not feel that non-CPAs should be permitted to use titles and forms that would inaccurately represent their level of skill to the public.

The State Board of Accountancy's position is that there is no need for regulation of persons not representing themselves as CPAs or public accountants and who are not representing themselves as knowledgeable in accounting and auditing matters. Further, the Board feels that any representation to third parties regarding generally accepted auditing and accounting standards requires the proof of current knowledge in the field which can best be demonstrated by passing the uniform CPA exam.

Dental hygienists favor more representation on the State Board of Dentistry. Granting increased representation would include the lifting of current voting restrictions placed on the hygienist board member and removing the statutory provision limiting to one the number of hygienists on the board.

The State dental hygienist association has noted that 20 states grant full voting rights to hygienists on dental boards. In Virginia, the hygienist member may vote only on matters related to the practice of dental hygiene. The hygienist association states that since the primary role of the Board of Dentistry is the oversight of the practice of

dentistry and dental hygiene, "there is no rationale to deny one of the regulated licensed professions full participation in the regulatory process."

Although the Virginia Dental Association supported the addition of a dental hygienist to the Board of Dentistry, it does not support the hygienists' current proposals to alter board representation and voting requirements.

Both of these policy issues are likely to be brought before the General Assembly in future sessions. The extent of representation of related professions on boards is a matter of public policy which needs to be determined by the General Assembly.

Duplication of Effort

There does not appear to be widespread duplication of effort between regulatory boards or other State agencies. However, some duplication does exist, primarily in the regulation of clinical psychologists, commercial driver training schools, other schools, and nursing home administrators.

Clinical Psychologists. Duplication exists because the regulation of clinical psychologists is split between two boards, the Board of Psychology and the Board of Medicine. A clinical psychologist is defined in Section 54-936, *Code of Virginia*, as "a psychologist who is competent to apply principles and techniques of psychological evaluation and psychotherapy to individual clients for the purpose of ameliorating or attenuating problems of behavioral and/or emotional maladjustment."

In accordance with the *Code*, the Board of Psychology evaluates and examines applicants for licensure as clinical psychologists, collects initial fees, and makes licensure recommendations to the Board of Medicine. The Board of Medicine issues the license and is responsible for "all instructions regarding the administration of such license." This responsibility has included setting and collecting renewal fees and dividing them with the Board of Psychology.

This split arrangement has existed since 1966 when all psychologists became licensed. Several factors indicate that a review of the current arrangement is necessary:

- Membership of both boards is required to include a licensed clinical psychologist.

- Responsibility for the investigation of complaints has not been clearly established in practice. Officials of the Board of Medicine indicate that the Board took disciplinary actions against one clinical psychologist in 1975. The Board of Psychology has investigated three allegations of unlicensed practice of clinical psychology since 1977.
- The Board of Psychology issues a license in the specialty of "Psychology (Clinical)" which, according to psychology regulations, permits practitioners to engage in the same range of practice as persons licensed by the Board of Medicine as clinical psychologists.
- Recent proposals by the Board of Medicine to adopt their own examination criteria for clinical psychologists would be duplicative if adopted. The Board of Medicine also proposed to stop sharing renewal fees with the Board of Psychology.

Recommendation (24). **The General Assembly may wish to review the sharing of responsibilities for licensing clinical psychologists between the Boards of Psychology and Medicine and assign sole responsibility to one board.**

Training Schools. To secure federal highway funds which were dependent upon the regulation of driver education, the Commonwealth created the Board for Commercial Driver Training Schools, and also assigned supervision of driver training schools for students between 16 and 18 years of age to the State Department of Education. This arrangement has resulted in some duplication of responsibilities and little coordination among the activities or requirements of the Board, the Department of Education and other State agencies such as the Division of Motor Vehicles which licenses operators and vehicles.

In addition to driver training schools, several other training programs are regulated by occupational boards. These include nursing programs, polygraphy schools, barber schools, funeral services training programs, and real estate schools. (Cosmetology schools were regulated by the Board of Examiners of Professional Hairdressers until recently when the Attorney General advised it that such

regulation was outside its scope of authority.) State agencies such as the Department of Education, Council of Higher Education, and the Criminal Justice Services Commission are also responsible for approving and regulating educational programs and training schools relating to the Commonwealth's regulated professions and occupations.

Consolidation of the regulation of proprietary schools under the Department of Commerce has been explored for some time. Difficulties appear to include opposition from some types of schools and the mixed funding of regulatory activities through special or general funds.

Recommendation (25). The General Assembly may wish to require the Secretaries of Education and Commerce and Resources to develop a recommendation for legislative consideration to reduce duplicative regulation of proprietary schools to the extent possible.

Board of Nursing Home Administrators. The Board of Nursing Home Administrators holds the nursing home administrator responsible for maintaining a valid license and for operating the home in a competent manner. But in the absence of formally defined procedures and terms for the reporting of violations found by the Department of Health, it is difficult for the Board to determine the extent of problems caused by the negligence and incompetence of administrators and to discipline practitioners effectively.

All inspections are currently made by the Department of Health. It is responsible for licensing facilities and for enforcing compliance with Medicaid and licensure standards. Since the facility license is held by the owner, it is the owner of the home that is cited. If violations persist, the department may revoke a license for the facility but not the administrator's license.

In 1981, the Department of Health conducted 525 nursing home inspections. Violations were handled in accord with the routine departmental procedure of citing owners. However, no notice of violations by administrators or notice of poorly administered homes was made to the Board. According to a representative sample of nursing home violations examined by JLARC in 1978, nearly half of all violations could be attributed to administrative performance and

could have been addressed by an administrator's action.

Recommendation (26). The Board of Nursing Home Administrators should arrange for the Department of Health to provide it with regular notification of nursing home violations attributable to the negligence or incompetence of administrators. The Board, on the other hand, should be certain it communicates to the Department of Health what constitutes reasonable scope of practice and unprofessional conduct. Such sharing of information has been discussed but not implemented in the past. Given the importance of protecting the elderly and infirm in nursing homes, personnel in both agencies should develop appropriate procedures for handling and following up on reported violations.

Scope of Practice Controversies

Scope of practice controversies, or "turf battles," exist between several related professions in the Commonwealth. These controversies center on what constitutes the boundaries of practice of each of the professions involved.

Scope of practice refers to the duties and responsibilities of a particular profession and the services which that particular group is permitted to provide to the public as defined by State law or regulations. In the absence of professional regulation, practice boundaries are defined by the individual practitioner's training, personal desires and limitations, and work environment.

The existing scope of practice for a particular regulated profession is usually defined in the enabling legislation of its respective board. The scope typically reflects the level of training associated with the profession and the historical definition of the profession's practice.

Frequently, professionals want to change their areas of practice and prepare legislation for review by the General Assembly. Proposed changes often reflect changes in education, training, and the needs of consumers or practitioners. Legislative decisions on proposed scope of practice changes are often controversial because they are viewed as directly affecting the livelihood and autonomy of all groups involved.

Controversies described in other sections of the report are summarized below.

Ophthalmologists, Optometrists, and Opticians. Scope of practice controversies have continued for the past several years between the three professions providing vision care in Virginia: ophthalmology, optometry, and opticianry. These three groups are licensed by separate boards under two different administrative agencies. The differences between the three professions' training, current scopes of practice, and licensing boards are detailed in Table 2.

Current areas of controversy relating to the three professions' scopes of practice include the following:

- dispensing of contact lenses by opticians without supervision by ophthalmologists or optometrists;
- prohibition on the use of drugs by optometrists;
- referral of patients with certain eye symptoms to ophthalmologists; and
- supervision of unlicensed employees working for eye care practitioners.

Dentists and Dental Hygienists. Virginia's dentists and dental hygienists are both regulated by the State Board of Dentistry. However, a major area of conflict exists between the two professions involving supervision of hygienist activities. Hygienists are currently required by the Code to work

under the "direct supervision" of dentists. Direct supervision requires a dentist to personally observe and evaluate the services performed by the hygienist.

Hygienists favor statutory changes to broaden their scope of practice by permitting them to work under the "general supervision" of dentists. Under this method, dentists would authorize all treatment to be conducted on patients but would not routinely inspect each procedure performed by hygienists. Supervision would not have to be on-site. Dentists do not feel a change is warranted because direct supervision is believed to ensure quality of care and immediate reaction in emergency situations.

Audiologists and Hearing Aid Dealers. Audiologists and hearing aid dealers are part of the health care delivery system for people with hearing impairments. Audiologists hold master's degrees in audiology and provide rehabilitative assistance to persons with hearing problems. Hearing aid dealers and fitters are high school graduates who have passed a course teaching them to fit hearing aids and engage in fitting and selling amplification devices. The groups are licensed by separate boards.

There is considerable controversy between the groups because only licensed dealers are

Table 2
EYECARE PROFESSIONALS

<u>Ophthalmologists</u>	<u>Optometrists</u>	<u>Opticians</u>
<ul style="list-style-type: none"> • Physicians (M.D.'s) • Diagnose and treat eye disease • Perform eye surgery • May prescribe drugs, lenses, and other forms of treatment • Can fit and sell lenses • Licensed by Board of Medicine 	<ul style="list-style-type: none"> • Non-physicians (Doctors of Optometry) • Perform visual exams • Cannot prescribe drugs; may prescribe lenses, other optical aids or visual training • Can fit and sell lenses • Licensed by Board of Optometry 	<ul style="list-style-type: none"> • Non-physicians (two-year training course) • May not examine eyes or prescribe treatment • Cannot prescribe drugs, lenses, other optical aids, or visual training • Adjust frames and fit eyeglasses or contact lenses according to prescriptions by ophthalmologists and optometrists • Licensed by Board of Opticians

permitted by law to fit and sell hearing aids. Audiologists maintain that they are trained to provide this service as part of their comprehensive treatment of the client.

Resolving Scope of Practice Controversies. To some extent, scope of practice controversies can be reviewed as a matter of performance of a regulatory board. However, because the livelihood and occupational autonomy of professionals are often seen to be at stake, the resolution of scope of practice controversies involves policy decisions.

It is often very difficult for the General Assembly to determine all of the relevant facts necessary to reach a decision regarding a turf battle between professions. Therefore, it is very difficult for legislators to discern whether a legislative change is being proposed for legitimate concerns.

Recommendation (27). The General Assembly might consider handling scope of practice controversies by requiring the Board of Commerce and the Commission of Health Regulatory Boards to review and make recommendations to the General Assembly when scope of practice controversies will require legislative changes involving more than one board. This process would be similar to that now used to review requests for regulating new professions.

The Board of Commerce and the Commission of Health Regulatory Boards could specifically address such policy options as the following:

1. The advantages and disadvantages of combining related professions into a single board. For example, the Board of Behavioral Science and the Board of Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects were created to encourage related professions to deal cooperatively with scope of practice concerns.

2. The effect of lowering the degree of regulation of the disputing professions. Licensure, for example, exacerbates disputes by strictly defining parameters of practice. In contrast, certification assures consumers that certified practitioners are qualified, but allows others to practice.

3. Additional methods for handling scope of practice controversies.

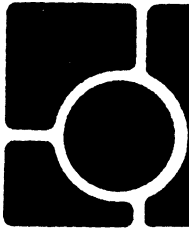
ADDITIONAL AREAS OF LEGISLATIVE INTEREST

During the course of this study, JLARC identified a number of areas which the staff believes will be of special interest to the General Assembly. Such topics range from recent regulatory decisions concerning new types of athletic events to the regulation of real estate franchise advertising and initiation of quality reviews for accountancy firms. These topics apply only to a single board and are therefore discussed separately in the following narratives on each individual board. Additional recommendations may be found in those narratives.

This report has addressed the general performance of the regulatory boards within the Department of Commerce and the Department of Health Regulatory Boards. Baseline data has been provided on each board and specific areas of performance and of special legislative interest have been highlighted. A number of recommendations have been made to correct deficiencies in performance or in compliance with statutory guidelines. Where a subject under review involves solely a policy issue or scope of practice dispute among professions, staff recommendations have not been made.

The Legislative Program Review and Evaluation Act was designed to ensure public exposure of study findings and coordination with the interests of standing committees. A subcommittee composed of members of the House and Senate General Laws Committees has cooperated with JLARC during the course of this study. These committees have independent responsibility under Section 30-74, *Code of Virginia* for holding hearings on complaints relative to board activities, and under Section 30-76 to make further recommendations for legislative action. Pursuant to the Act and for the purposes specified above, this report is directed to their attention.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



STATE BOARD OF ACCOUNTANCY

A certified public accountant (CPA) is required to be skilled in systems of recording and summarizing business and financial transactions and in analyzing and reporting the results. Regulation is intended to ensure that licensed and certified public accountants meet professional standards of ethics and are qualified to perform specified accounting functions.

HISTORY AND SCOPE OF REGULATION

Virginia was the twenty-first state to regulate the accounting profession when the first law regulating accountants was passed in 1910. The State Board of Accountancy was established in 1928 to carry out the regulatory process.

Two levels of CPA regulation are carried out in Virginia: certification and licensure. A certified public accountant has met the Board's entry criteria and passed the appropriate national exam. This accountant is permitted to use the title "Certified Public Accountant" or the abbreviation "CPA."

A license is also required of each legally liable member of a practice unit engaged in public accountancy. A practice unit could be a sole proprietorship, a partnership, a professional corporation, or any combination thereof. In addition to having each of its liable members licensed, a practice unit must also obtain a permit or license. Public accounting includes services involving the use of accounting or auditing skills, management advisory or consulting services, or the performance of tax services.

Approximately 2,500 practitioners are currently licensed to practice as public

accountants in Virginia. About 2,100 additional practitioners are certified but not licensed. Licensed CPA practice units number 790.

Individual accountants who are employed by licensed CPAs or who are not practicing public accountancy need not be certified or licensed nor do accountants working for State and federal governments.

CPAs are regulated in all states. Most states allow only persons regulated by the state to attest to the accuracy of financial data.

As of 1979, 15 states also regulated the practice of non-certified accountants. Most of these states continue to license accountants grandfathered in and do not issue new certificates to non-certified accountants. Generally, states permit non-regulated accountants to provide most accounting services, except the audit and attest functions, to the general public. They may not, however, use certain titles or otherwise hold themselves out in such a way as to appear to be certified or licensed.

The Board of Accountancy has seven members: a lawyer, an educator, and five practicing certified public accountants with at least three years of experience. Board members may serve two five-year terms. The Board has regular quarterly meetings, with other meetings occurring throughout the year.

The provisions in the *Code of Virginia* which govern the State Board of Accountancy are Section 54-84 *et seq.*

REQUIREMENTS FOR APPLICANTS

To be certified, an applicant must meet the following criteria:

1. have earned passing grades in all parts of the national CPA written examination and an examination on professional ethics;

2. have "good moral character," which is defined as possessing fiscal integrity and lacking any history of dishonesty or non-compliance with Board regulations;
3. have earned 120 semester hours of credit from an accredited institution that is judged by the Board to be essentially equivalent to a baccalaureate (after December 31, 1981, a baccalaureate or higher degree will be required of all applicants);
4. have completed at least 27 semester hours in accounting courses including accounting principles, auditing, cost accounting, and commercial law; and
5. have gained at least two years' accounting experience with emphasis on the attest function; or three years' accounting experience in its broadest sense; or four years of diversified teaching experience in accounting subjects plus five months' experience in a public accounting firm.

An applicant for licensure is not required to meet any additional qualifications beyond those prescribed for certification. To become licensed, the CPA must file an application, notify the Board of his or her business affiliation, and pay the required fee. An individual not previously licensed within four years of passing the CPA exam must also show that 40 hours of continuing professional education have been completed during the prior year. According to Board officials, the purpose of this requirement is to bring the individual up to current pronouncements in accounting.

Successful applicants for certification must pass a national competency examination and an exam on professional ethics, both of which are developed and scored by the American Institute of Certified Public Accountants (AICPA). The competency exam for CPAs consists of four parts: auditing, business law, theory of accounts, and accounting practice. This two-and-a-half day exam is offered simultaneously nationwide in May and November. Virginia's two test sites are Norfolk and Roanoke.

Approximately one-fourth of the examinees pass the CPA exam on a given testing date. In November 1980, 1,067 persons took the exam and 287 passed. Most persons take

the exam at least twice, and all parts must be passed within six successive, scheduled examinations. The minimum passing score on each part of the exam is 75.

The supplemental exam on professional ethics in accounting is conducted on a home-study basis and is not tailored to Virginia's laws or regulations. Thirty-five states require their CPA applicants to pass this ethics exam.

The State Board of Accountancy may issue a certificate to a certificate holder from another state provided the accountant meets Virginia's requirements. An out-of-state applicant who has passed the CPA examination in another state is not required to retake it since it is accepted nationally.

FEES AND EXPENDITURES

Licensure and certification fees were recently increased to cover anticipated costs resulting from changes in the regulations and increased fees charged by the AICPA to grade the exam. Original certification and examination fees rose from \$55 to \$85. In addition, a new biennial certificate maintenance fee was instituted to help defray the costs of a new record-keeping regulation to identify where certified, unlicensed accountants are employed.

The Board of Accountancy assesses the following applicable fees:

Examination and certification	\$85
Reexamination	75
Certification by endorsement	85
Biennial license (individual)	30
Biennial firm permits (fee depends on size of firm)	50 to 2,500
Certificate maintenance	10

For the 1978-80 biennium, revenues exceeded expenditures by \$20,100 as shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$225,522	\$217,061	\$442,583
Expenditures	<u>190,474</u>	<u>232,009</u>	<u>422,483</u>
Balance	\$ 35,048	(\$ 14,948)	\$ 20,100

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Biennial renewal is required of certificate holders by October 1 of even-numbered years. Fees must also be paid by certificate holders who wish to remain registered as non-practicing CPAs or to become licensed practitioners. Each practice unit will be required to complete a self-assessment questionnaire for renewal in 1982. Also, as part of its effort to ensure continued competency, the Board will conduct quality reviews of a sample of public accounting firms to ensure that accounting and auditing procedures are acceptable. This procedure will begin in May 1983.

According to Board data, 103 complaints were filed against practitioners between November 1977 and July 1981. Most complaints involved alleged substandard practice. Occasionally the Board receives allegations about non-certified accountants who are presenting themselves to the public as CPAs.

Investigations of complaints against CPAs are carried out by the Department of Commerce's investigative unit. If a complaint involves a technical aspect of substandard practice, a CPA is sometimes employed as a consultant.

Disciplinary actions may be taken against a practitioner by the Board of Accountancy for several reasons, among which are the following:

- fraud or deceit in obtaining a certificate or permit;
- loss of license in another state;
- dishonesty, fraud, or gross negligence in the practice of public accounting;
- non-compliance with Board regulations;
- conviction of a felony; or
- any other conduct reflecting adversely upon the licensee's fitness to practice public accounting.

The majority of the actions taken result in consent agreements between the Board and the practitioner involved. The Board has also suspended or revoked four certificates between November 1977 and July 1981.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Board Representation of Non-Certified Accountants

Concerns have been raised by some non-certified accountants because they are not represented on the State Board of Accountancy. A bill was considered by the General Assembly in 1981 to require one Board member to be a non-certified accountant. The bill generated a great deal of controversy and was not passed.

Non-certified accountants and CPAs differ in the services they provide and in their qualifications. Non-certified accountants provide such services as tax reports, payroll reports, management services, preparation of unaudited financial statements and bookkeeping. CPAs, on the other hand, may provide all of these services plus those reserved for them by Board regulations. CPAs may

- review financial information, which involves compiling the firm's data and independently assessing the accuracy of a portion of the data;
- audit financial data, which involves a complete determination of the audited firm's financial position according to generally accepted accounting principles; and
- attest to the accuracy of audited data presented in a financial statement.

Qualifications of the CPA and the non-certified accountant also differ. State regulations establish minimum educational and experience requirements for a CPA in addition to passage of the national CPA exam. Non-certified accountants are not required to meet these minimum qualifications nor to pass a standardized exam in order to practice their profession. Consequently, some non-certified accountants may have more education and experience than CPAs while others have less.

Members of the state association of non-certified accountants feel that representation on the State Board of Accountancy is necessary to ensure that regulations governing the practice of CPAs do not unduly restrict the

practice of non-CPAs. It is the position of the Accountants Society of Virginia that board representation for non-CPAs would provide for closer consideration of the effect of Board rules and regulations on their branch of the profession. They have gone to court in the past to gain permission to use the title "accountant," and they oppose being restricted by the Board of Accountancy from using the title "public accountant." The non-certified accountants also seek the freedom to indicate on financial statements that they have expert knowledge in accounting, as opposed to auditing, and that they have used generally accepted accounting principles. Officials of the Accountants Society indicate that they do not wish to be licensed by the Board.

Representatives of the Virginia Society of CPAs oppose representation of non-certified accountants on the State Board of Accountancy. This group feels that the non-CPAs are not regulated by the Board and, therefore, have no need for Board membership. CPAs prefer that a citizen member be appointed to the Board if an additional member is deemed necessary to represent both the public and non-CPA interests. CPAs are also concerned that this proposal is an attempt by the non-certified accountants to become licensed—a move which CPAs oppose for two reasons: (1) they think that regulation of non-certified accountants would result in the creation of a new title for the group and further confuse the public; and (2) they do not believe that non-CPAs have proven that they can meet minimum objective standards.

The State Board of Accountancy's position is that there is no need for regulation of persons not representing themselves as CPAs or public accountants and not representing themselves as being knowledgeable in accounting and auditing matters. Further, the Board's position is that any representation to third parties regarding generally accepted auditing and accounting standards requires the proof of current knowledge in the field which can best be met by the practitioner's passing the uniform CPA exam.

Quality Reviews

When the State Board of Accountancy recently lowered the requirements for granting a CPA certificate, it also adopted a regulation requiring a "quality review" of a sample of CPA firms. The Board's position is that in order to perform well CPAs must remain current with developments in the field. The quality reviews are intended to ensure that current CPA practices adhere to generally accepted accounting and auditing standards. Although several accounting firms periodically require these reviews, Virginia is the first state to adopt quality reviews in its regulations.

The reviews will begin in May 1983 and be conducted by independent consultants. All costs associated with the reviews will be borne by the Board. Increased fees will help defray these costs. Any CPA firm which has contracted for its own independent quality review within the last five years will normally be exempted from the Board's review. Specific details of the quality review are being worked out by a Board committee in conjunction with representatives from the Virginia Society of CPAs.

The Virginia Society of CPAs, a professional association with more than 3,000 members, favors the concept of quality review but is opposed to placing the review authority under the Board. The society is concerned that the confidentiality of client records examined during a Board quality review might be compromised because of public disclosure laws affecting public agencies.

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STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS

Architects, engineers, land surveyors, and landscape architects engage in various aspects of the design and development of structures or projects such as residential, commercial, industrial or institutional buildings and transportation or utility systems. Regulation is intended to ensure that practitioners of each profession have appropriate skills and knowledge of applied mathematics and science.

HISTORY AND SCOPE OF REGULATION

The Board of Architects, Professional Engineers and Land Surveyors in Virginia was created in 1920. In 1980, the name of the Board and its responsibilities were expanded to include landscape architects.

The Board of Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects issues licenses to architects, engineers, and land surveyors and issues certificates to landscape architects. The scope of practice of each profession and the number of persons regulated as of May 1981 are shown below:

<u>Profession</u>	<u>Number</u>
Architects design and supervise the construction of buildings, structures, or projects.	2,900
Engineers design and supervise the development of structures, machines, products, systems, and processes.	9,718
Land surveyors 3(a) determine the boundaries of land areas for conveying or for the establishment and	649

reestablishment of internal and external land boundaries.

Land surveyors 3(b) provide all of the services above plus preparation of plats, plans, and profiles for roads, drainage, and sewer extensions. 172

Landscape architects plan and supervise projects related to the functional and aesthetic use of land. 2

The Board also issues general or limited certificates of authority to professional corporations. A general certificate of authority entitles a corporation to practice all of the regulated professions. A limited certificate of authority permits a corporation to practice only the profession(s) shown on its certificate.

Two-thirds of the board of directors of a domestic corporation must be licensed or certified in the profession(s) the corporation is practicing. Capital stock ownership is limited to professionals licensed in Virginia and non-licensed employees. At least two-thirds of the stock must be owned by licensed professionals. Foreign corporations must comply, except that stockholders need not hold Virginia licenses. As of May 1981, 230 corporations were approved for practice.

Exemptions from regulatory provisions include

- owners building on their own property when the public health and safety are not involved;
- local, State, and federal employees who do not engage in private practice;
- utilities, in projects for their own use;
- corporations involved in interstate commerce whose facilities are subject to regulation by the State Corporation Commission;
- the practice of professional engineering and land surveying by a licensed architect when the practice is incidental to an architectural undertaking;

- the practice of architecture and land surveying by an engineer that is incidental to engineering; and
- the practice of engineering, architecture, land surveying, or landscape architecture as an employee of a licensed engineer, architect, land surveyor, or certified landscape architect, as long as that person is not placed in responsible charge of design or supervision.

All 50 states regulate architects, engineers, and land surveyors in some way, and 36 states regulate landscape architects.

The Board is composed of three architects, three engineers, three land surveyors, and two certified landscape architects. All members are appointed for five years and cannot serve more than two successive terms. Board members must have actively practiced their professions as principals or as instructors for at least ten years before being appointed to the Board. In FY 1980, the Board or its sections met 29 times.

The provisions in the *Code of Virginia* which govern the Board are Section 54-17.1 *et seq.*

REQUIREMENTS FOR APPLICANTS

To be licensed or certified as an architect, engineer, land surveyor, or landscape architect in Virginia, an individual must

1. be at least 18 years of age;
2. be of good moral character;
3. have appropriate training and experience; and
4. pass an examination.

In addition, each profession has specific education, experience, and examination requirements leading to licensure or certification.

Architects. An individual seeking initial licensure as an architect must pass the National Council of Architectural Registration Boards (NCARB) professional examination. There are two ways to qualify for the professional exam:

1. have a five-year, professional degree in architecture and three years of approved experience in architecture; or
2. have a combination of education and experience which is equivalent to five

years of formal education and pass the equivalency exam.

Candidates for licensure must also pass a design examination.

Architectural examinations are developed by the NCARB and the Educational Testing Service, and the Board purchases and administers the exam. The National Council grades the exams and sets a recommended passing score, which the Board has accepted.

Examinations include (1) the qualifying test, which measures degree-equivalent knowledge of persons who have not graduated from an accredited school; (2) the design examination, a 12-hour examination which tests a candidate's ability to solve an architectural problem using graphic techniques; and (3) the professional examination, a written test which requires a candidate to assume the role of a professional who is responsible for a project from planning through construction management.

Engineers. To be licensed as an engineer, an individual must have specific education and experience and pass one or two examinations. There are five ways to qualify for licensure:

1. graduate from an approved four-year engineering program, have four years of professional experience, and pass two written examinations; or
2. graduate from a nonapproved four-year engineering or related science program, have six years of professional experience, and pass two written examinations; or
3. have the equivalent of a four-year program through self-study or other means, have ten years of professional experience, and pass two written examinations; or
4. graduate from an approved four-year engineering program, have 20 years of experience, and pass one written examination; or
5. graduate from an approved four-year engineering program, have 30 years of experience, and pass an oral examination given by the Board relating to the experience, work, and professional capabilities of the candidate.

Engineering examinations are developed by the National Council of Engineering Examiners and the Educational Testing

Service. There are two exams: an eight-hour written exam on the fundamentals of engineering, and an eight-hour written exam on the principles and practice of engineering.

The examinations are administered by the Department of Commerce under authority from the Board. Exams are graded and scored by the National Council and the Educational Testing Service.

Engineer-in-Training. Persons seeking certificates as engineers-in-training can qualify in three ways:

1. graduate from an approved engineering program and pass the fundamentals of engineering examination developed by the National Council of Engineering Examiners; or
2. graduate from a nonapproved engineering or related science program, have two years of professional experience, and pass the examination on the fundamentals of engineering; or
3. graduate from an approved four-year engineering technology curriculum, have two years of experience, and pass the fundamentals of engineering examination.

Land Surveyor. To be licensed as a land surveyor, an individual must meet one of the following sets of criteria:

1. have six years of practical experience, pass a national examination, gain two years of additional experience, and pass the Board examination; or
2. graduate with a B.S. degree from a Board-approved program specializing in land surveying, gain one year of experience, pass a national exam, have two additional years of professional experience, and pass the Board exam; or
3. graduate with a B.S. degree from a Board-approved program specializing in land surveying, have two or more years of professional experience, pass a national examination, gain two years of additional experience, and pass the Board exam.

Land surveyor examinations consist of two parts. Part I, which is developed by the National Council of Engineering Examiners, covers the fundamentals of surveying. It is purchased and administered by the Board and DOC. The passing score on Part I is 70

percent. Part II is developed by the Board and covers the practice of surveying in Virginia. The passing score for the second part of the examination is 75 percent with a minimum of 70 percent on each of the two parts.

A special eight-hour exam is given for individuals who will be surveying as 3(b) category surveyors. This exam is developed, administered, and scored by the Board. The minimum passing grade is 75 percent.

Certified Landscape Architect. A person seeking certification as a landscape architect can qualify in one of three ways:

1. graduate from an approved landscape architecture program and pass a professional examination; or
2. have at least eight years of education and experience in landscape architecture and pass a professional examination; or
3. graduate from an approved program or have a comparable degree, have practiced landscape architecture since July 1, 1977, and have presented oneself to the public as a landscape architect.

The Board gives a four-part examination. The fundamentals section of the examination is developed by the Council of Landscape Architectural Registration Boards. The principles and practices sections of the exam are designed and developed by the landscape architecture subcommittee of the Board.

During 1979 and 1980, 2,177 persons were examined as architects, engineers, or land surveyors. Over 60 percent of the examinees passed the exams. The examination of landscape architects will begin July 1982.

The Board has no formal reciprocal agreements with other states. However, the Board will accept out-of-state applicants for licensure or certification provided that the applicant holds a like, unexpired license issued by a state which has similar requirements to the Board's and that the applicant has met exam requirements equivalent to those of the Board.

FEES AND EXPENDITURES

The Board recently promulgated new fees for examinations, licensure, and certification which are shown below.

APELSCLA BOARD FEES

	Application	Examination		Renewal
Architects	\$40	Qualifying Design Professional	\$100 100 100	\$50
Engineers	40	Fundamentals Principals Oral	40 40 100	50
Engineers-in-Training	20	Fundamentals	40	N/A
Land Surveyors	40	Part I Part II 3b	40 40 40	50
Landscape Architects	40		175	50
Certificate of Authority	50		N/A	50

Source: Board of APELSCLA Regulations.

During the 1978-80 biennium, the Board's expenditures exceeded revenues by \$34,147. Revenues and expenditures for the two-year period are indicated below.

	FY 1979	FY 1980	Total
Revenues	\$324,585	\$111,842	\$436,427
Expenditures	219,243	251,331	470,574
Balance	\$105,342	(\$139,489)	(\$ 34,147)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses and certificates are renewed biennially during January of each odd-numbered year.

No requirements for routine inspections

of licensees or their places of business have been authorized by the Board.

Complaints against licensed practitioners are reviewed by the executive director and sometimes a Board member. If a complaint appears justified, it is sent to the enforcement division for investigation. After investigation it is sent to a Board member for a recommendation to the full Board for disposition.

Between FY 1976 and FY 1981, an average of 53 complaints was processed each year. During the latest year most of the complaints were filed by consumers or other licensees. Thirty-four of the complaints involved unlicensed practice, 28 were alleged violations of Board regulations, and nine were under investigation.

In responding to 30 complaints found valid in 1981, the Board issued one consent order, six cease and desist orders, and one warning letter. Two formal hearings are pending as well as an additional civil matter. Compliance was obtained in 19 cases without any formal disciplinary action.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Regulating Design-Build Services

A point of recurring controversy has been the applicability of Board requirements to contractors who design and build structures ranging from home additions to office buildings or factories. At issue has been the legality of contractors' practicing architecture or engineering when they both design and build projects. Although the APELSCLA Board has enforced its regulations on design-build contractors engaged in large projects, it has not taken action in cases involving unlicensed activities in home construction and smaller projects.

A subcommittee of the Board of Commerce has studied the issue with the assistance of APELSCLA Board members and representatives of the architecture, engineering, and construction professions. A proposed solution to the problem will be presented to the General Assembly for adoption.

A number of revisions are proposed (1) to acknowledge that local building officials may require designs to be prepared by a licensed architect or professional engineer; (2) to exempt design-build contractors who employ licensed architects or engineers from licensure; and (3) to require registration of all design-build contractors with the APELSCLA Board.

In addition, provisions would exempt from licensure as architects or engineers persons who design and build specific types and sizes of projects. The proposals would permit exemptions for the following types of projects:

1. single and multi-family dwellings not exceeding two and a half stories and 40 feet high;
2. farm structures or storage buildings;
3. certain business and mercantile buildings not exceeding 5000 square feet, three stories, or 40 feet in height;
4. factory and industrial buildings not exceeding 15,000 square feet, three stories, and 40 feet in height;
5. remodeling or interior design without modifications to occupancy or structural system;

6. electrical installations up to 800 amperes in size where work is performed under direct supervision of a master electrician;
7. plumbing and mechanical projects using packaged mechanical systems; and
8. buildings, structures, or electrical and mechanical installations which are of standard design sealed by a licensed design professional.

Board Organization

The APELSCLA Board has established a separate section for each regulated profession. Each section functions as a separate regulatory board by drafting regulations, reviewing applications, administering exams, and evaluating complaints for their respective professions. Board regulations specify that the qualifications of applicants are to be determined by a majority vote of the Board members of each profession. The full Board approves the actions of each section, but approval is pro forma in many cases.

During interviews and in written response to a JLARC survey, some APELSCLA Board members suggested a need for additional Board members. These members would help to handle the large number of applications and complaints reviewed by each profession. High volume is particularly evident for engineering and architecture where the three board members for each profession issued over 1400 and 370 new licenses respectively during the 1978-80 biennium. Board members point out that several other regulatory boards deal with fewer applicants yet have five members.

The workload of the individual sections is undeniably high. However, it may not be consistent with the General Assembly's intent in creating a combined board for each section to carry a separate workload. Moreover, the procedures of the Board may unnecessarily burden the members.

The multiple and complex criteria for architects and engineers appear to make it necessary for Board members to consider each applicant individually. This process is time consuming, frequent meetings make it costly, and the process can lead to inconsistent decisions on applicants' qualifications.

The Board should develop options for more efficient handling of its workload. Such options could include requesting additional Board members from the General Assembly. For example, an additional landscape architect member should be considered to break a tie between the two current members over an applicant's qualifications. However, the Board should also consider developing objective entry criteria that can be applied by profes-

sional staff employed by the Department of Commerce and act itself only on exceptional cases.

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VIRGINIA ATHLETIC COMMISSION

Boxers and wrestlers participate in athletic contests or exhibitions of endurance and skill. Regulation is intended to protect contestants from physical harm and the public from fraud and deceit in the promotion of events. In addition, the Athletic Commission collects State taxes on revenues generated from ticket sales and telecasts.

<u>Category</u>	<u>Number Licensed</u>
Boxers	
Professional	181
Amateur	299
Wrestlers	
Professional	103
Amateur	0
Managers	8
Seconds	2
Booking Agents	0
Matchmakers	0
Promoters/Clubs	59
Referees	9
Physicians	0
Total	<u>661</u>

HISTORY AND SCOPE OF REGULATION

Regulation of amateur and professional boxing and wrestling in the Commonwealth began in 1934. At that time, boxing and wrestling were believed to be controlled by many unscrupulous matchmakers, promoters, and managers.

The Virginia Athletic Commission's sanction is necessary to hold or telecast any exhibition or match in the Commonwealth where an admission fee is charged. The Commission also licenses boxers and wrestlers and persons directly involved in the promotion and management of these athletic events. As of May 5, 1980, the Commission had licensed 661 persons in one of nine categories.

High school and college students participating in intramural boxing and wrestling contests are exempt from licensure. Boxing matches between inmates of the Department of Corrections were also exempted by action of the 1981 General Assembly.

Thirty-nine states regulate boxing and 50 states regulate wrestling. All out-of-state applicants must meet the same requirements as Virginia applicants.

The Athletic Commission consists of three members appointed for five-year terms. The Commission is unique among regulatory boards because it is authorized by language in the *Code of Virginia* to collect a five percent tax on the gross receipts from boxing and wrestling events, including live telecasts. At the end of each fiscal year, tax revenues are divided between the general fund and the localities that generated the revenues. To carry out its regulatory and fiscal roles, the Commission employs 28 part-time inspectors who supervise matches or telecasts in the Commonwealth. Inspectors ensure that regulations are adhered to during events and supervise the sale of tickets and the counting of gate receipts. The Commission meets at least twice annually.

REQUIREMENTS FOR APPLICANTS

Boxers or wrestlers must meet the following licensure requirements:

1. be of good moral character;
2. be generally skilled in or knowledgeable about boxing and wrestling;

3. be physically and mentally fit;
4. have not been convicted of a felony or misdemeanor involving moral turpitude; and
5. can provide two personal photographs, fingerprints, and a recent certified copy of a physician's examination.

Applicants as managers, seconds, or matchmakers may be granted licenses after photographs and fingerprints have been submitted and a criminal check has been conducted. Promoters may be licensed after a criminal check has been conducted and they have posted bond and submitted proof of medical insurance and copies of contracts with contestants.

Language in the Code stipulates that physicians must have been licensed to practice in Virginia for at least five years before they may be licensed by the Athletic Commission. In addition, referees must be bona fide residents of the State, although non-residents may officiate for single contests.

Boxers must be physically examined before each match by a physician appointed by the Athletic Commission. Wrestlers must submit a form from a physician certifying that a physical examination has been conducted within 30 days of the annual license renewal date.

FEES AND EXPENDITURES

Licensing fees for persons regulated by the Commission are as follows:

Promoters	
a sliding scale, based on population of locality	\$25 to \$175
Televised contests in all localities	1
Boxers and Wrestlers	
Professional	10
Amateur	1
Seconds	10
Managers	15
Booking Agents	35
Referees	15
Examining Physicians	10
Matchmakers	
in cities of more than 150,000	50
in other localities	25

A fee of five dollars is charged for sanction of an amateur contest.

During FY 1980, the Athletic Commission collected total revenues of \$126,437. Tax revenues and license fees are held in a special fund from which the Commission's expenses are paid. After expenses are deducted from revenues, the balance is divided between the State's general fund and localities generating taxes over \$400. In FY 1980, for example, the general fund received \$25,162 and the localities received \$22,310.

	FY 1979	FY 1980	Total
Revenues	\$106,273	\$126,437	\$232,710
Expenditures	62,678	90,459	153,137
Balance	\$ 43,595	\$ 35,978	\$ 79,573

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses are renewed one year from the date of issuance upon payment of the appropriate fee. Wrestlers must also have their physical condition certified by a Commission-approved physician.

Inspections are carried out by the 28 part-time inspectors and occasionally by the executive secretary. At each athletic event sanctioned by the Athletic Commission, a team of inspectors monitors the weighing-in of contestants, checks the equipment worn by contestants and the structure of the ring, counts gate receipts, and collects taxes.

Between 1976 and 1980, ten complaints were received by the Commission against licensees. Complaints involved incorrect ticket manifests or promotion irregularities by managers and promoters and unprofessional conduct by boxers or wrestlers. One complaint was referred to the investigative unit of the Department of Commerce, and two complaints were referred to local Commonwealth's attorneys for criminal action. Other complaints were handled by the Executive Secretary.

The Commission has the authority to reprimand, or suspend or revoke licenses if the licensee

- has obtained a license by means of misrepresentation;
- has been determined to be unfit or incompetent by reason of negligence;
- has been convicted in any court of a felony or misdemeanor involving moral turpitude;
- has been disrespectful to any member of the Commission;
- has been guilty of unprofessional or unethical conduct;
- has by act or omission conducted himself in a manner detrimental to the best interest of boxing or wrestling, or the public's interests;
- has failed to maintain the required bond;
- is a habitual alcohol or drug user;
- has engaged within or outside the State in restraints or monopolies to hinder, interfere with, or prevent any athletic event; or
- has failed to provide copies of all contracts entered into.

The Commission also has the authority to protect boxers or wrestlers from participating in events once they have been knocked out or have sustained serious injuries. The licenses of injured participants may be put on probation, suspended, or revoked for periods ranging from 28 to 90 days depending on the severity of the injury. Since 1976, 92 boxer's licenses have been suspended. No wrestler's licenses have been suspended during this period.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Distribution of Tax Revenues

Tax revenues generated from gate receipts at athletic events were not properly distributed to the general fund and localities during the 1978-80 biennium. Net tax revenues were overstated by \$16,065 in 1979 and understated by \$11,494 in 1980. The problem occurred because the Department of Commerce did not provide the Athletic Commission with information about indirect

costs before funds were distributed. Therefore, the Commission was not able to accurately deduct all expenses from revenues before allocating the remainder.

Before 1979, the Commission functioned as an independent agency and accounted for its own expenses. Since joining the Department of Commerce, the Commission has continued to maintain its own record of direct expenditures, but the Department of Commerce assessed indirect costs. The department, however, did not allocate costs among the boards for one fiscal year until well into the next fiscal year.

The original accounting problem was exacerbated by attempts to rectify it. In order to recoup overhead costs for FY 1979 and adjust the overpayment in tax revenues, the department deducted \$36,066 from the fund before distributing revenues for FY 1980. However, this figure included an inaccurate estimate of 1980 indirect costs. As a result, in 1980 the Commission underpaid the general fund and localities but overpaid the department. The department will review and allocate indirect expenses to the Commission for FY 1981 and make adjustments to correct inaccuracies in FY 1979 and FY 1980.

The Department of Commerce has taken steps to improve its accounting capabilities in order that both direct and indirect costs for each board would be accrued and reported on a monthly basis throughout the fiscal year. This practice will enable the department to allocate overhead costs to the Commission (and to the other boards) promptly at the close of the fiscal year. Since the distribution of gate receipts is a statutory requirement, the Department of Commerce and the Athletic Commission should reconcile amounts distributed for 1979, 1980, and 1981 to ensure that proper distributions have been made.

Licensure of Felons

There is an inconsistency between the Athletic Commission's regulation that wrestling or boxing licenses be denied to felons and a general provision of the Code that licensure may not be denied to convicted felons "unless such criminal conviction directly relates to the trade, occupation or profession for which the . . . licensure . . .

is sought." The Commission does not generally enforce the regulation in practice.

The Commission requires applicants to submit photographs and fingerprints, and sometimes conducts a background investigation before issuing a license to a boxer or wrestler. Managers of amateur boxers are usually screened because they are working with young people.

The Commission should reassess the extent to which conviction of a felony or misdemeanor directly relates to each license category. The relationship of certain convictions to a promoter's license may be clear because of the financial responsibilities involved; the relationship of a particular felony to licensure as a boxer or wrestler may be less clear.

The Commission should review and appropriately amend its regulations regarding the licensure of athletic personnel.

Licensure of Examining Physicians

The Commission also has difficulty complying with language in the Code which requires an examining physician to be licensed and appointed by the Commission. Since 1979, 102 amateur and professional boxing matches have taken place in the Commonwealth, but during that same period, no physicians were licensed by the Commission. According to Commission officials, physicians were present at each match, but they served on an unlicensed basis.

The problem appears to be the reluctance of physicians who are already licensed by the Board of Medicine to pay to become licensed by the Athletic Commission. Although Commission regulations require a physician to be present at each match for safety purposes and although they are compensated for each boxing event, they are also asked to pay a \$10 annual licensure fee. Few physicians desire such licensure. Recently, the Commission increased the compensa-

tion to \$65 in order to recruit more physicians for contests.

Additional compensation may not solve the problem. It is not unusual for the Commission to have great difficulty locating a willing physician. The Board might resolve some of its difficulty by requiring that each promoter be responsible for finding a physician willing to attend the match (subject to the Commission's approval) before any match is sanctioned.

Since physicians are already licensed to practice in Virginia, Athletic Commission licensure might better be complementary or included as compensation for attending the match.

New Types of Events

The Commission has recently been called on to prevent certain new forms of athletic events from taking place in the Commonwealth. Such events include professional female "mud wrestling," "toughman" contests, and bear wrestling. The Commission has prevented these contests because the participants and the events do not meet established criteria for sanctioned events, and some of the activities are dangerous to participants. For example, "toughman" contests, in which inexperienced and untrained contestants box for prizes, have resulted in serious injuries and death in other states.

In bear wrestling, contestants try to pin a live animal. After a contestant was injured in such a match in Virginia, the Commission issued a cease and desist order and revoked the promoter's privileges. According to the Commission order, the bear did not meet criteria required for wrestlers.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



VIRGINIA BOARD OF EXAMINERS FOR AUDIOLOGY AND SPEECH PATHOLOGY

Audiologists and speech pathologists provide therapy and counseling to persons with impaired hearing or speech. Regulation is directed primarily at establishing educational and clinical qualifications for entry into the profession.

HISTORY AND SCOPE OF REGULATION

As a condition for third-party reimbursement, federal regulations require audiologists and speech pathologists to be certified by the American Speech-Language-Hearing Association and to meet any regulatory requirements of the state in which they practice. The Board of Examiners for Audiology and Speech Pathology was created by the General Assembly in 1972 to carry out State regulation.

The Board licenses audiologists and speech pathologists and issues temporary permits to trainees receiving clinical experience. As of May 1981, there were 107 audiologists and 511 speech pathologists licensed in Virginia. Nineteen temporary permits were issued for speech pathology and seven for audiology.

Licenses are not required by practitioners holding Virginia licenses in related fields, such as physicians, nurses, or their employees. Provided the client pays no fee for services and practitioners do not hold themselves out to the public as licensees, exemption applies also to employees of federal, State, municipal, or county governments, employees of chartered educational institutions, and supervised students and interns at accredited colleges and recognized training centers. Unlicensed assistants may also be

employed by licensed audiologists and speech pathologists to perform closely supervised tasks.

Virginia is one of 30 states that license audiologists. Thirty-one states, including Virginia, license speech pathologists; one state certifies and another state registers them.

The Board is composed of seven members. As required by statute, two members are licensed audiologists, two are licensed speech pathologists, one is a doctor of otolaryngology, and two are citizen members. Citizen members were added to the Board in 1978. All practitioners must have been licensed and teaching or doing research in their fields for at least two years prior to their appointment by the Governor.

Terms are of four years' duration, and no member may serve more than two terms in succession. The Board meets at least three times a year.

The provisions in the *Code of Virginia* which govern the Board of Examiners for Audiology and Speech Pathology are Section 54-83.1:5 *et seq.*

REQUIREMENTS FOR APPLICANTS

All applicants for licensure as an audiologist or speech pathologist must

1. be of good moral character;
2. have completed 60 semester hours at an accredited college or university in a graduate course of study approved by the Board;
3. have completed 300 hours of supervised clinical experience; and
4. have passed the Board's examination or have received the American Speech-Language-Hearing Association's Certificate of Clinical Competence.

A temporary permit is issued to a person who has completed the educational requirements and has applied to take the examina-

tion. Temporary permits are issued for 24 months to enable applicants to meet the requirement for clinical experience.

Applicants may take the Board's examination or be certified by taking an examination administered by the American Speech-Language-Hearing Association. The Board has not administered an examination in its nine years of existence. All applicants have been members of the American Speech-Language-Hearing Association and have taken an examination under the Association's requirements for certification. When necessary, the Board intends to obtain an examination from a national testing service.

The Board will license an out-of-state applicant who holds a Certificate of Clinical Competence from the professional association and is licensed in a state with standards at least equal to the Board's. If the out-of-state applicant is not certified, a temporary permit is issued for 24 months.

FEES AND EXPENDITURES

The Board assesses the following fees:

Initial license	\$70
Examination	25
Temporary permit	70
License renewal	40

Expenditures exceeded revenues for the first time during the 1978-80 biennium as shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$10,045	\$10,856	\$20,901
Expenditures	12,228	15,245	27,473
Balance	(\$ 2,183)	(\$ 4,389)	(\$ 6,572)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses are renewable on or before January 30 of odd-numbered years. Permits are not renewable.

There are no Board requirements for inspecting the practices of audiologists or speech pathologists. For the 1978-80 biennium, no inspections were conducted.

Eighteen complaints have been received since the Board was established. The majority of these complaints were made against unlicensed persons practicing the profession.

The Board has the authority to reprimand practitioners, or to revoke or suspend licenses if the licensee

- guarantees the results of any consultative or therapeutic procedure;
- provides diagnosis or treatment by correspondence;
- provides confidential patient information to persons without the patient's consent;
- provides continued patient treatment where no benefit can be expected to occur from such treatment;
- has been convicted in any court of embezzlement or offenses directly related to the profession;
- has been determined to be incompetent due to excessive alcohol or drug use;
- has been determined to be negligent in his or her practice;
- has treated patients not having been examined by a physician within six months without recommending that the patient be examined by a physician; or
- has not provided direct supervision to unlicensed personnel.

To date the Board has not taken disciplinary action against any licensed practitioner.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Scope of Practice - Audiologists and Hearing Aid Dealers

The health care delivery system for people with hearing impairments consists of otolaryngologists, audiologists, and hearing aid dealers.

Otolaryngologists are licensed physicians who specialize in diseases and structural deficiencies of the auditory system. They may examine the inner ear and prescribe medication, surgical correction, therapy, or a hear-

ing aid. Audiologists hold master's degrees in audiology. They provide rehabilitative assistance, such as measurement of hearing capacity, lip reading, and counseling, to persons with hearing problems. Hearing aid dealers are high school graduates who have passed a course on fitting hearing aids. They measure hearing capacity and demonstrate, fit, and sell amplification devices. Audiologists and hearing aid dealers are restricted to examining only the outer ear.

Some overlap exists among the three practices. As licensed physicians, otolaryngologists are exempt from the regulations imposed by other boards. There is considerable controversy, however, between audiologists and hearing aid dealers, because only licensed dealers are permitted by law to fit and sell hearing aids. Audiologists maintain that they are trained to provide this service as part of their comprehensive treatment of the client.

Scope of practice issues between boards are difficult to resolve because the livelihood and occupational autonomy of practitioners are often seen to be at stake. While audiologists want the law changed to permit them to sell hearing aids, it is important to recognize that audiologists may become licensed as dealers now and that existing regulations for hearing aid dealers cover business practices as well as scope of practice.

Although the Board has not taken an official position, a Board member and a professional association representative state that becoming licensed as hearing aid dealers is not the preferred option of audiologists, because (1) audiologists feel their training is not being recognized; (2) dual licensure places additional restrictions on their practices; and (3) practitioners with less education are judging their qualifications.

Nevertheless, 28 audiologists have obtained licenses from the Board of Hearing Aid Dealers and Fitters. Since the majority of audiologists work in public or private institutions, hospitals, or schools, many may not

need to sell hearing aids, and no change in current legislation may be needed.

Much of the regulation of hearing aid dealers concerns proper business practices. If audiologists were exempted from the hearing aid law, they would not have to adhere to such requirements as specifying the terms of sale and the condition of hearing aids in the sales contract, advising clients that dealers cannot perform a medical examination, or refusing to fit children without a medical exam or adults without a signed waiver. Such regulations might need to be adopted by the Board of Examiners for Audiology and Speech Pathology if audiologists were exempted from regulations for hearing aid dealers.

Another option has been pursued by the Department of Commerce in an attempt to reconcile scope of practice issues. The department has suggested the creation of a combined board of audiologists, speech pathologists, and hearing aid dealers. A combined board would address the need for comprehensive non-medical care of people with impaired hearing or communication skills. But a major obstacle to combining the boards is the concern of hearing aid dealers that they would be outvoted by the other occupations and would have lower status because of differences in the required level of education. The addition of citizen members to the board might help to alleviate this concern.

The department and the Board of Commerce should continue to explore ways to reduce conflict among related occupations and recommend a course of action to the General Assembly.

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BOARD OF BARBER EXAMINERS

Barbers provide services to consumers that include cutting, shampooing, and dyeing of the hair or beard. Regulation specifies qualifications for barbers and standards for shops and schools.

HISTORY AND SCOPE OF REGULATION

Virginia was the last of the 50 states to regulate barbers. According to a Board official, regulation was initiated in 1962 to prevent barbers unable to qualify for licensure in other states from practicing in Virginia and to protect the consumer from unsanitary conditions.

The State Board of Barber Examiners currently licenses 3,646 barbers and 40 teachers. In addition, 1,288 barber shops and four private barber schools are licensed. These numbers have declined over the past decade partially because of the shift from traditional haircuts to more elaborate hairstyling.

Medical practitioners, registered nurses, embalmers, and beauticians are exempt from complying with the Barber Act. Persons employed to provide barbering services in State or local penal or mental institutions and persons cutting hair in their own home and not offering the service to the public are also exempt from regulation.

The Board of Barber Examiners is composed of five members appointed by the Governor. At least two of the members are required to have been practicing barbers for the last five years.

Board members serve three-year terms. Present members may be reappointed an unlimited number of times, but new members will be limited to two successive

terms. During FY 1979 and FY 1980, the Board met a total of 22 times.

The provisions in the *Code of Virginia* which govern the Board of Barber Examiners are Section 54-83.2 *et seq.*

REQUIREMENTS FOR APPLICANTS

To be licensed as a barber, an applicant must meet the following qualifications:

1. be at least 18 years of age;
2. be of good moral character and temperate habits;
3. have an eighth grade education or the equivalent;
4. complete either 1,500 hours of barber school plus a six month apprenticeship or a 4,000-hour apprenticeship;
5. pass a written and practical exam; and
6. present a medical certificate stating that the applicant is free from any infectious disease including tuberculosis.

A 1979 amendment to the Barber Act prohibits the denial of licensure to an otherwise qualified individual solely for failing to produce a medical certificate. According to a Board official, the regulatory requirement for a certificate is not being enforced and will be omitted when new regulations are promulgated.

Once barbers have been licensed for three years, they may also apply to become barber teachers. To qualify the applicant must be at least 21 years old, must be a high school graduate, and must be free from infectious disease. The applicant must also pass a barber teacher examination.

In addition to regulating practitioners, Board regulations specify licensure requirements for the operation of barber shops and schools. Shops must keep barbering areas separated from any other residential or business uses; they must have hot and cold

running water available; they must display a barbershop sign; and they must post a copy of the regulations governing barbershop conditions in a conspicuous place.

Licensure requirements for barber schools specify the equipment, conditions, work space, and curriculum of each school. Newly established schools must undergo two inspections by the Board or its designees before obtaining a license.

Examinations for applicants to become barbers or barber teachers are conducted by Board members and independent examiners at least four times a year in various parts of the State. Applicants must pass both a written and a practical exam with a minimum score of 70 percent on each part. Examinees usually take both parts on the same day. Anyone who fails may retake the exam within 60 days. Those who fail a second time are required to re-enroll for 1,000 hours of apprenticeship training before re-examination. In recent years more than one-third of the applicants have failed the exam.

The written portion of the exam is a multiple-choice test which covers subjects in the barbering curriculum. The current exam is a modified version of a test developed by the Educational Testing Service. The Board requested development of the original test in the hope that a uniform national exam would facilitate reciprocity among states and alleviate problems with the construction and content of the former exam. Between January 1978 and June 1979, however, only Virginia and one other state used the test, and the testing service discontinued the project. Copyright permission was granted to the Board to adapt the exam for its purposes. The practical exam consists of a demonstration of barbering techniques by applicants on their own models. One Board member or examiner evaluates the applicant's performance and assigns a grade.

Examinations are waived for licensed barbers moving to Virginia from states which have established a reciprocity agreement with the Board. As of February 1981, Virginia has established reciprocity for barbers with Tennessee, Delaware, South Carolina, Maryland, and Maine. In addition, agreements are being discussed with Pennsylvania and Colorado. Until these agreements were signed, reciprocity for barbers did not exist in the country.

FEES AND EXPENDITURES

The Board's current licensing fee structure includes the following:

Barber examination and initial license	\$ 50
Barber student/apprentice permit	10
Teacher examination and initial license	50
Barbershop permit	15
Barber school or college license	100
Renewal of a barber license	30
Renewal of a teacher license	50

Since July 1, 1981, barbers who are inmates of penal institutions must pay licensing fees. Previously, licenses were granted to inmates without charge.

During the 1978-80 biennium, Board revenues exceeded expenditures by \$4,330. Revenues and expenditures for that period are shown below.

	FY 1979	FY 1980	Total
Revenues	\$85,253	\$10,126	\$95,379
Expenditures	61,334	29,715	91,049
Balance	\$23,919	(\$19,589)	\$ 4,330

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

Renewal payments are received in the odd-numbered year of a biennium. This practice accounts for the considerable difference in revenues between the two years of the biennium.

ENSURING CONTINUED COMPETENCY

Licenses are renewed by paying the applicable fee by January 1 of each odd-numbered year. The Department of Commerce employs two persons who spend approximately 17 percent of their time routinely visiting barber establishments to ensure that the facility and its employees are currently licensed. Between July 1976 and June 1980 almost 4,000 inspections of barber shops were conducted by DOC inspectors. According to the Board's data, relatively few barber shops were found to be out of compliance with requirements to post the shop's license, a copy of the regulations governing shops and prohibited acts, and the licenses of each

barber. Some shops violated more than one requirement.

Between July 1977 and June 1980, 18 complaints were filed with the Board. All but two of these alleged that barbers or shops were unlicensed.

The Board has the authority to revoke, suspend, or refuse to issue or renew a license for the following reasons:

- gross malpractice or gross incompetency;
- continued practice by a person who knowingly works with a dangerous infection or contagious disease;
- false or deceptive advertising;
- alcohol or drug addiction;
- obtaining a license by fraudulent pretenses;
- practicing under fraudulent pretenses;
- using any room or place for barbering and residential or business purposes without a solid partition dividing the two areas;
- operating a barbershop or school without continuous hot and cold running water;
- failing to indicate that barbering performed at barber schools is conducted by students; or
- failing to display a sign indicating that the business is a barbershop.

Board records indicate that no disciplinary actions have been taken against any licensed barber since 1977. Of the 18 complaints filed since then, compliance was obtained in seven cases, six were dismissed, and five were found invalid.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Barber Examinations

Applicants for a barber license must pass a written and a practical examination. The written exam is intended to assess an examinee's knowledge of barbering theory and State laws and regulations pertaining to barbering. The practical exam measures the performance of barbering skills. High failure rates on the written exam in recent years have been of concern to the Board. While current applicants may be less qualified or less well trained in the areas covered on the exam, there may also be problems with the construction or content of the exam which

would call into question its value as a screening mechanism.

Between 1970 and 1977 the overall failure rate on the exams ranged from two percent to 20 percent. In contrast, during the last three years the overall rate has ranged from one-third to one-half of all applicants. As indicated below, the test results for 1979 and 1980 reveal that all but five candidates demonstrated sufficient skill to pass the practical part of the exam, even though eighty candidates failed the written exam.

	<u>1979</u>	<u>1980</u>
Examined	98	99
Passed	54	58
Failed Written	42	38
Failed Practical	1	1
Failed Both	1	2

Board officials believe that the failure rate is connected, in part, to the construction of some questions. Board staff have identified questions that were incorrectly answered by about half of the persons recently examined. Another reason considered by the Board is the six-month lag between the time applicants complete school and the time they take the exam. Most training received by applicants is focused on the attainment of performance skills, not on theory or regulation. These skills are then reinforced by a required six-month apprenticeship before taking the exam. And some other applicants are trained primarily through a 4,000-hour apprenticeship program. By the time the exam is taken, therefore, applicants may be competent in skills but inadequately prepared to take a written exam on procedures, theory, and regulation.

The Board has taken some steps to correct the examination problems. The written examination was recently evaluated by a testing specialist. Although the subsequent passing rates were slightly higher, the Board continues to be concerned about the exam.

The Board of Barber Examiners should take additional steps to ensure that the exam is an appropriate screening mechanism. Since barbering is a skill-oriented profession, a practical exam alone might be an adequate procedure. If a written exam is retained, the test should continue to be evaluated to ensure that questions are clearly and unambiguously constructed, that content is job-related, and that the reading level is consistent with the

eighth-grade educational requirement for applicants. Consideration might also be given to administering the exam upon completion of the training in barber school instead of after the subsequent six-month apprenticeship.

Inspection of Barber Shops

The Board of Barber Examiners believes that inspections of barber shops are necessary to protect public health. The Board, however, has encountered difficulties in maintaining health-related inspections, and the need for such inspections has been called into question itself by the apparent absence of major health hazards associated with the practice of barbering.

Inspections conducted by the State Department of Health prior to 1979 were discontinued because of the department's concerns about their statutory authority. Inspections currently conducted at the Board's request by the Department of Commerce are limited to ensuring that licenses are properly displayed. Although a Board "presence" is provided in the shops by the inspectors, they are not authorized to address health matters through inspection of sanitary conditions or practitioner performance.

Until the mid-1900s, many of the hair dyes and treatments used by barbers were thought to cause permanent scalp damage and hair loss. There were also concern that diseases such as lice, ringworm, and infectious dandruff could be communicated through the scalp. However, increasing regulation by the U. S. Food and Drug Administration of the chemicals in hair preparations has greatly reduced the harm from their correct application.

Also, officials of the State Department of Health indicate that there is no record of communicable diseases being transmitted by barbering in the State. While a publication of the U. S. Public Health Service states that ringworm of the scalp can be transmitted by unsterilized barber equipment, tracing the ~~specific~~ source of this or other communicable diseases would be difficult.

Inspections of barber shops by local health departments were discontinued in 1979, except where required by local ordinance. In a letter to the Director of the Department of Commerce, the State Commis-

sioner of Health indicated that authority for the health department to promulgate regulations for such inspections had been repealed in a 1974 recodification of statutes relating to occupations and professions. The Department of Health apparently became aware of the repeal during recodification of public health statutes in 1979.

Inspection of barber shops may have been erroneously discontinued by the State Department of Health. Section 54-83.27 which requires inspections by the health department still remains in the Barber Act:

Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, shall inspect each barber shop in the State regularly. Any infractions shall be immediately reported to the Health Department and the executive secretary of the Board of Barber Examiners for disciplinary action.

Section 54-83.24 which authorizes promulgation of regulations to govern inspections was repealed. However, the authority for promulgating regulations had been assigned to the Board of Barber Examiners, not to the Department of Health. The Board still has this authority:

The Board shall prescribe such rules, regulations and sanitary requirements . . . in aid or furtherance of the provisions of this act as required by the State Board of Health pursuant to Section 32-6 of the *Code of Virginia*.

Language in the 1974 recodification act authorized the regulatory boards to adopt the repealed *Code* provisions as rules or regulations. The Attorney General has since issued an opinion that in accordance with this directive a Board may perform specified regulatory functions to the same extent as before repeal due to recodification.

It appears that the Department of Health is still required to implement sanitary regulations that the Board of Barber Examiners chooses to promulgate. The issue is confused, however, by the fact that the Board had not exercised this right prior to 1979. The regulations were in fact promulgated by the Department of Health, although the health department did not have authority under Section 32-6 of the *Code* to promulgate regulations at that time. Language in the recodification of Title 32 now does permit the department to promulgate regulations for

purposes other than those stated in Title 32.

To avoid unnecessary, costly, and potentially duplicative inspections, it is necessary to resolve two questions regarding sanitary inspections of barber shops. The first involves the need for such inspections given the absence of reported health hazards, and the second involves determination of the proper agency to carry out any type of necessary inspection. Currently the Department of Commerce employs two inspectors to review the posting of licenses in barber shops, beauty salons, and opticians' offices. In addition, the State Department of Health appears to have continuing responsibility for conducting sanitary inspections and must comply with Code unless other arrangements are made.

Local health departments in seven jurisdictions continue to conduct health inspections under local ordinances. Some localities conduct inspections on a quarterly basis, others not as frequently. Officials of these departments report that few violations are found during quarterly inspections. Reported violations have included dirty equipment or floors and equipment that had not been properly sanitized. Inspection activities have been terminated in Lynchburg and Staunton by action of the local government. The City of Richmond is considering eliminating inspections because of staffing constraints and the limited threat posed to public health.

Although the need for inspections in order to prevent disease appears to be limited, public health and Board officials note that customers are provided with some assurance that sanitary conditions in the shops are monitored. Moreover, the absence of reported incidents does not mean that none occurs, and the Board believes that inspections act as a deterrent. It should be noted, however, that it is clearly in the best interest of barber shop owners to maintain clean premises and to post licenses, because these shops are heavily dependent upon return trade.

The Board of Barber Examiners, the Board of Commerce, and the Department of Health should cooperatively develop options to present to the General Assembly. Options could include the following:

1. Termination of all inspections in the absence of serious known hazards. Under this option, the General Assem-

bly would need to repeal Section 54-83.27, which requires health department inspections, and make clear that the Barber Board has no authority to promulgate sanitary regulations.

2. Assignment of responsibility for compliance and sanitary inspections to the Department of Commerce in accordance with regulations promulgated by the Board. Under this option the Board would bear the expense for inspections. The General Assembly would need to repeal Section 54-83.27 and authorize the Board of Barber Examiners to promulgate sanitary regulations.
3. Reinstatement of sanitary inspections by the State Department of Health. Under this option the inspections would be conducted at public expense or by a transfer of funds from the Department of Commerce to the State Department of Health. The General Assembly could assign responsibility for promulgating regulations to the Board of Barber Examiners or to the Board of Health.

The General Assembly may also wish to address the need for the inspections currently carried out by the Department of Commerce at the Board's request. These inspections do not serve a useful purpose in protecting the health or safety of the public. Two inspectors visit barber shops, beauty shops, and opticians' offices to ensure that shop and practitioner licenses are posted. Since the major area in which the Board does receive complaints is unlicensed activity, the purpose of ensuring that licenses are valid could be achieved more economically through investigation of complaints or visits to shops that do not apply for renewal of licenses. Although these inspections are carried out at the Board's expense, they do not appear to be a justifiable use of funds collected under the authority of the State government, and authority for these inspections should be abrogated.

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VIRGINIA BOARD OF BEHAVIORAL SCIENCE

The first drug counselor certificates are expected to be issued in late 1981.

Psychologists, social workers, and counselors assist clients with problems related to mental, emotional, social, and behavioral adjustment. Regulation is intended to ensure that practitioners are sufficiently trained in their respective disciplines and qualified to deal with human situations and personalities.

HISTORY AND SCOPE OF REGULATION

The State Board of Behavioral Science is an "umbrella" board which oversees and approves the regulatory activities of the Boards of Psychology, Social Work, and Professional Counselors, and the Alcoholism and Drug Counselor Certification Committees. This organizational structure, which was the first of its kind, has generated a great deal of interest across the country.

The individual boards and committees were created at various times, beginning with the regulation of clinical psychologists in 1946. The initial voluntary registration of psychologists was changed to licensure in 1966. Social workers and professional counselors were licensed in 1976. Alcoholism and drug counselor certification also became effective at the time.

As of May 1981, over 2,300 persons in five professions were regulated by the Board of Behavioral Science. Approximately 580 of these individuals continue to renew their credentials as either registered or associate social workers. These credentials are voluntary, however, and are issued only to those who were so credentialed before 1976. Registration does not permit an individual to engage in the private practice of social work.

<u>Licensed Professions</u>	<u>Number Regulated</u>
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Professional counselors are trained to assist individuals in achieving more effective personal, social, educational, and career development and adjustment. Included are specialists in marriage and the family, and in educational, rehabilitation, pastoral, substance abuse, career, and research counseling.	655
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Psychologists are trained to apply established principles of learning, motivation, perception, thinking, and emotional relationships to individual and group problems related to problems of personality and behavior. Included are school and clinical psychologists as well as psychologists who do not render direct services to individuals.	323
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Social workers are trained to effect changes in human behavior, emotional responses, and social conditions by the application of the values, principles, methods, and procedures of the profession of social work. Included are case managers, group workers, and clinical social workers.	1,206
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Certified Professions

Alcoholism counselors are certified to provide alcoholism counseling in a State-approved public or private alcoholism program and/or facility.	125
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Drug counselors are certified to provide drug counseling in a State-approved public or private drug program and/or facility.	
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The following are exempt from regulation by the Board of Behavioral Science:

- persons providing psychological, social work, or counseling services without charge and without holding themselves out as licensed or certified practitioners;
- students engaged in a study of the regulated fields;
- clergy acting within the scope of their regular duties;
- employees of governmental institutions or private non-profit agencies funded or sponsored in whole or part by a community-based citizen group (including community mental health agencies, State mental health facilities, and State colleges and universities); and
- personnel employed by private firms to engage in employment counseling for workers.

The Board of Behavioral Science consists of nine members including two representatives from each professional board and three citizen members appointed by the Governor. The citizen members are appointed for five-year terms, and the terms of other members vary according to the professional board. No member may serve more than two full terms on the Board of Behavioral Science. There are 28 members on the four boards and two certification committees.

The Boards of Psychology and Social Work each have five members appointed by the Governor for five-year terms. Three of the psychology board members are required to be college psychology teachers who are licensed or qualified to be licensed as psychologists. One member must be a clinical psychologist and the other a school psychologist. All social work board members must have been licensed and in active practice for at least five years prior to their appointment to the Board.

The Board of Professional Counselors consists of seven members, five appointed directly by the Governor and one selected from each certification committee. Language in the Code requires that the membership represent each of the following specialties: marriage-family, rehabilitation, pastoral, educational, alcoholism, and drug counseling and teaching. Members serve four-year terms and each member must be licensed or certified.

Two committees serve under the Board of Professional Counselors for the purpose of certifying alcoholism and drug counselors. Each committee is composed of five members appointed by the Governor for unspecified terms. All committee members must be capable of being certified.

The responsibilities for regulation of the various professions are shared by the Board of Behavioral Science and the professional boards. The following responsibilities of the Board of Behavioral Science are specified in the Code:

1. promulgating qualifications for licensure/certification developed by each professional board;
2. licensing or certifying applicants recommended to the Board by the appropriate professional board;
3. levying and collecting initial and renewal fees;
4. promulgating regulations to carry out its functions;
5. ensuring that inspections of practitioners are conducted by each professional board relating to the practice of each practitioner;
6. reviewing investigative actions taken by the professional boards;
7. taking appropriate disciplinary actions;
8. recommending to the Board of Commerce the creation of related professional boards if deemed necessary and in the best interest of the public; and
9. promulgating a canon of ethics under which the professional activities of persons regulated shall be conducted.

The three professional boards for psychology, social work, and professional counselors function within the framework of the Board of Behavioral Science. In practice, however, the professional boards act autonomously on matters pertaining to their own occupational group.

Specific duties and powers of each professional board include

1. promulgating regulations necessary to administer its regulatory functions;
2. designating specialties within each professional field;
3. developing qualifications for licensure or certification of applicants and

- forwarding them to the Board of Behavioral Science for promulgation;
4. evaluating the qualifications of applicants, including the preparation and administration of exams;
 5. hiring independent examiners and/or establishing subcommittees to conduct exams;
 6. recommending qualified applicants to the Board of Behavioral Science for licensure/certification;
 7. investigating complaints against licensees;
 8. holding hearings and recommending disciplinary action;
 9. establishing a canon of ethics consistent with the canon established by the Board of Behavioral Science;
 10. appointing two of its members to serve on the Board of Behavioral Science; and
 11. publishing a directory of licensees every two years.

The provisions in the *Code of Virginia* which govern the Virginia Board of Behavioral Science are Section 54-923 *et seq.*

REQUIREMENTS FOR APPLICANTS

Applicants must meet the criteria developed by the appropriate professional board

and promulgated by the Board of Behavioral Science. Each board requires letters of personal reference, verification of education, training, and experience, and supervisors' assessments. A successful applicant must also pass a discipline-specific written and oral examination. The education and experience requirements for each profession are shown below.

All applicants are required to pass a written exam that is administered by DOC as well as an oral exam. The objective portion of the written exam is developed for each board by a national testing service, while the essay portion is designed by board members. The examinations cover areas of professional competency, the applicant's stated area(s) of practice, knowledge of State laws and regulations, and the code of ethics governing the profession. Additional exams are typically required for specialty designations within each field. The passing grade on written exams is based on a standard deviation from the mean score of all persons taking the exam. About 80 percent of the 559 applicants who took written exams in FY 1979 and FY 1980 passed. This ranged from 77 percent of the social work examinees to 84 percent of the professional counselor candidates.

The oral exam is conducted by Board members and appointed examining commit-

<u>Profession</u>	<u>Education (or Equivalency)</u>	<u>Post-Graduate Training</u>	<u>Supervision or Internship</u>
Board of Psychology			
Psychologist	Ph.D.	2 years	1 year
Clinical Psychologist*	Ph.D.	2 years	1 year
School Psychologist	Master's	4 years	1 year
Board of Social Work			
Social Worker	Master's or Bachelor's	None 2 years	Not Required 135 hours
Clinical Social Worker	MSW	3 years	200 hours
Board of Professional Counselors			
Professional Counselor	Master's	2 years	Not Required
Certified Drug Counselor	High School Diploma or G.E.D.	500-hour drug training program	Not Required
Certified Alcoholism Counselor	High School Diploma or G.E.D.	400-hour alcoholism training program	Not Required

*Qualified applicants are recommended to the State Board of Medicine for licensure.

tees. Its purpose is to evaluate the applicant's areas of professional competence, ability to apply the appropriate code of ethics to professional practice, and his or her personal and professional maturity. A work sample submitted by the applicant is presented and discussed. About 86 percent of those taking the oral portion of the exam pass upon a majority decision of the Board. The percent passing ranged from 78 percent of the psychology candidates to 92 percent of the professional counselors.

The Board of Social Work has established partial reciprocity agreements with New York and Maryland. The other two professional boards do not have formal reciprocity with any state. Instead, they evaluate each out-of-state applicant's credentials individually.

FEES AND EXPENDITURES

The fees established by each board are shown below:

Board	Initial Application	Exam	Biennial Renewal
Psychology	\$75	\$225	\$75
Social Work	50	65	90
Professional Counselor	50 (plus 25 per specialty)	75	75
- Alcoholism Counselor	25	75	50
- Drug Counselor	25	75	50

Persons registered as Associate Social Workers (A.S.W.) and Registered Social Workers (R.S.W.) pay \$25 to renew their registration each biennium.

During the 1978-80 biennium, regulation of all areas of behavioral science generated \$174,429 in revenue. Expenditures for the same period exceeded revenues by \$110,957.

	FY 1979	FY 1980	Total
Revenues	\$ 96,073	\$ 78,356	\$174,429
Expenditures	137,616	147,770	285,386
Balance	(\$ 41,543)	(\$ 69,414)	(\$110,957)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

A high-cost item is the frequent meetings of the various boards. Seventy-nine board meetings were conducted during FY 1980 at a cost of \$37,779 (26 percent of the year's total expenditures).

ENSURING CONTINUED COMPETENCY

Each board mails out a questionnaire with a renewal notice to each licensee. The returned questionnaires are reviewed by an Inspections of Practices Committee of each board. The committee determines by the applicant's responses whether the individual is practicing within the bounds of his or her license. If necessary, the committee will either request more information, call a person in for clarification, or issue a warning to cease practicing outside the scope of licensure.

The Board of Social Work and the certification committee for alcoholism counselors also require applicants for renewal to show that they have remained current in their profession by taking continuing education courses. Alcoholism counselors must complete 60 clock hours of approved courses or six continuing education units every two years in order to retain certification. No specific number of course hours is specified for social workers. However, the social work board did notify six social workers during FY 1979 that their continuing education activities were well below the average reported.

Persons certified as drug or alcoholism counselors must also have been personally free of substance abuse during the certification period.

No routine on-site inspections are conducted for the behavioral science boards, but the boards do receive complaints. Most complaints are filed by licensees and involve unlicensed practitioners or licensees who are practicing outside the boundaries of their license. A few complaints involve allegations of unethical conduct or incompetence. Since July 1976, approximately 100 complaints in the behavioral sciences have been investigated by Department of Commerce investigators. Fifty-six of these involved psychologists, 22 involved professional counselors, and 20 involved social workers. Forty-two of the cases were found valid.

To assure uniformity in disciplinary cases, the Board of Behavioral Science recently adopted guidelines for its own use and for the use of the professional boards or hearing officers in disciplinary cases. The following guidelines provide minimum and maximum penalties for various violations:

<u>Offense</u>	<u>Penalties</u>	
	<u>Maximum</u>	<u>Minimum</u>
Conviction of felony	Revocation	Stayed revoc. with 3 years' probation
Fraudulent obtainment of license	—	Revocation
Substance abuse	Revocation	Stayed revoc. with 3 years' probation
Negligence in practice or violation of code of ethics	Revocation	1 year suspension, stayed, with 3 years' probation
Performance of functions beyond licensed competence	1 year suspension with 3 years' probation	1 year suspension, stayed, with 3 years' probation
Mental, physical, or emotional incompetence	Revocation	1 year suspension, stayed, with 3 years' probation
Violation of the Code of Virginia or regulations	Revocation	Suspension

According to Board officials, few disciplinary actions have been taken by the Board of Behavioral Science. Many complaints are settled through voluntary compliance.

Between July 1976 and June 1980, the Boards of Psychology and Social Work have denied 132 and 125 licenses respectively. In addition, during 1979 these two boards issued 26 and 46 warnings to licensees respectively as a result of information supplied on the renewal survey.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Regulation within Professions

Coordination among the behavioral sciences and the administration of regulatory functions appear to have been long-standing problems in the Commonwealth. A significant effort to define the scope of counseling, social work, and psychology disciplines was made in the mid-1970s when licensure was established as the method of regulation for social workers and professional counselors as well as for psychologists. In fact, the Board of Behavioral Science was created by the General Assembly with the specific purpose of maintaining harmony among the three professions. Section 54-923 of the *Code of Virginia* states,

The Commonwealth . . . recognizes the fact that the many professions offering these services [in the behavioral sciences] overlap and intertwine to a substantial degree. This fact results in the need for these professions to work in close harmony with each other and to maintain quality service to the citizens and to prevent infringement on the rights of practitioners to engage in their lawful professions, which infringements may harm the public.

While a mechanism has been established to lessen friction among the professions, administration of individual board activities and definition of the scope of practice within professions appear to remain problems. Regulations promulgated by the boards are sometimes unclear and subject to inconsistent application. Moreover, few tasks can be effectively delegated to executive assistants of the boards because of the precise, individual determinations that are required regarding qualifications of applicants. Such specificity necessitates frequent board meetings, which greatly increase regulatory costs, and may, at times, constitute infringement on freedom of practice within professions.

Problems of this nature are particularly apparent in the activities of the Boards of Psychology and Social Work. The following are examples of regulations that have been inconsistently interpreted because they lack clarity or are imprecise in intent.

Until recently, psychology applicants were charged the full \$225 exam fee as specified in regulations regardless of whether the individual was taking the three initial core exams (national written, State essay, and orals) or sitting for exams to obtain an additional specialty license. This occurred because current regulations break down re-examination costs but are silent on the matter of specialty exams. An applicant's inquiry led to the discovery by Board members that contrary to what they intended, persons sitting for additional specialty exams were charged full fees because regulations were not clearly stated.

* * *

Regulations concerning oral exams require psychology applicants to submit a "recent work sample (past six months)" for review. The parenthetical phrase "(past six months)" has caused some inconsistency to occur in dealing with applicants. The Board's staff has required all applicants submitting older work samples to submit more recent ones. When a question was recently raised, however, Board members stated that the time reference was supposed to serve as a guideline for applicants and not as an absolute requirement. Consequently, Board members have allowed several applicants to submit work samples completed prior to the past six months.

* * *

The Board of Social Work requires a licensee to submit upon renewal "evidence of having kept abreast of new developments in the licensee's area of specialization." The requirement is fulfilled by taking continuing education courses in social work. Although acceptable categories of continuing education are listed, the regulations do not specify the required number of hours. Nevertheless, the Board has notified several licensees that their number of continuing education hours was below the average reported by other licensees. The implication is that licensees must keep pace with others to retain licensure.

Some boards may also have gone beyond legislative intent by establishing limitations

on the scope of practice within specialties. Boards that regulate the behavioral sciences are authorized by language in the Code of Virginia to provide for the designation of "specialties within their professional fields." A number of specialties are listed or defined for each board such as clinical, school, or industrial/organizational psychology, family or alcohol counseling, and clinical or generic social work. It is not clear if the boards are limited to the designations in the Code, or if they may create other board categories or define sub-specialties within designated areas.

Nevertheless, a psychologist, for example, receives a license to practice in a designated specialty which is further restricted by the type of population to be served (for example, adolescents or the elderly) and the types of diagnostic instruments and therapeutic techniques that may be used. Psychologists who practice beyond the specific boundaries for which they were licensed are subject to disciplinary action.

In addition, Board decisions on the qualifications of practitioners are not always consistently based on regulation and may establish unique criteria for individual applicants. For example:

An applicant for licensure as a psychologist was originally denied permission to sit for an examination as a clinical psychologist because some of her post-doctoral training had been supervised by a psychiatrist. The Board of Psychology's regulations state that "supervision will normally be provided by a licensed psychologist or clinical psychologist. However, to obtain specialized training, up to one-half of the required supervision may be provided by a senior licensed mental health professional. This type of arrangement must be approved by the Board in advance." The Board stated in a letter to the applicant that "while the regulations do allow for supervision from a senior licensed mental health professional, the Board has consistently accepted such an arrangement only in the case of geographical hardship." Considering that the applicant was from the Tidewater area where a number of psychologists reside, the Board refused to grant permission to sit for the exam.

The applicant requested assistance from the Governor's office. After the Governor's office had reviewed the case and requested reconsideration, the Board reversed its earlier decision.

A similar case involving partial supervision by a psychiatrist had also been denied by the Board. This case and any like it should be reconsidered in light of the Board's recent reversal.

* * *

A foreign born and educated applicant was denied licensure as a psychologist because of "limited training relevant to the practice of psychology in the United States." The Board of Psychology told the applicant that she could continue pursuing licensure after completing "at least six months of assessment experience involving at least 25 comprehensive psychodiagnostic batteries and an hour of supervision for each assessment provided by a licensed psychologist." Records do not show how the requisite number of assessments was derived by the Board.

It is the expressed policy of the Commonwealth to protect the health and safety of persons who are in need of treatment by professionals in the behavioral sciences. Board members are working to develop criteria for protecting a highly vulnerable client group. However, there is no consensus in the mental health field regarding the best method or type of practitioner to deal with mental or emotional disorders. Therefore, unnecessarily cumbersome regulations and procedures may actually restrict a client's access to care.

It appears that the individual boards, in conjunction with the Board of Behavioral Science, should carefully review existing regulations and practices in order to simplify criteria, reduce areas of subjectivity, and facilitate administrative consistency. The Department of Commerce has recently requested assistance from the Department of Management Analysis and Systems Development and the office of the Attorney General to study both finances and the legal and administrative functions of the Boards of Psychology and Social Work. This study might be expanded to encompass the Board of Profes-

sional Counselors and the Board of Behavioral Science.

Regulation of Clinical Psychologists

Clinical psychologists are regulated by the Board of Psychology and the Board of Medicine. This arrangement involves not only two boards, but two departments, because the Board of Medicine is housed within the Department of Health Regulatory Boards and the Board of Psychology within the Department of Commerce. This duplicative scheme for regulating clinical psychologists has existed since 1966. Apparent reasons are that clinical psychologists generally function in a medical setting and obtain status from a medical license. However, the responsibilities of the two boards are not clearly defined; recent legislative proposals of the Board of Medicine raise questions about the continued feasibility of the arrangement; and two categories of clinical psychologists are either jointly or separately licensed in the Commonwealth.

The Board of Psychology screens, examines, and recommends individuals for licensure to the Board of Medicine. These licensees then become subject to the Board of Medicine's discipline. Nevertheless, responsibility for the investigation of complaints has not been clearly established in practice. Officials of the Board of Medicine indicate that the Board has taken disciplinary action in 1975 against one clinical psychologist. The Board of Psychology has investigated three allegations of unlicensed practice of clinical psychology since 1977.

The issue is further complicated because 83 clinical psychologists hold licenses issued by both boards. Moreover, the Board of Psychology issues a license in a sub-specialty called "Psychologist (clinical)." According to Board regulations, the scope of practice of persons receiving this license is identical to clinical psychologists licensed by the Board of Medicine. Clinical psychologists, also, are members of both boards. There is one representative on the fourteen-member Board of Medicine, and three of the five current Board of Psychology members are clinical psychologists by training.

Because of the dual responsibility, fees are split between the two boards. By law, the Board of Medicine must reimburse half

of the renewal fee to the Board of Psychology. In FY 1980, reimbursement of renewal fees to the Board of Psychology amounted to \$3,430.

The Board of Medicine has recently considered making two proposals for statutory changes that highlight the duplicative nature of regulation for clinical psychologists. The Board has proposed elimination of shared renewal fees and the assuming of authority to develop examination criteria for clinical psychologists. The latter move would potentially increase duplication with the examination function of the Board of Psychology.

The responsibilities of the two boards should be clearly defined. Moreover, the General Assembly may wish to assign full responsibility to regulate clinical psychologists to one board.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



VIRGINIA COLLECTION AGENCY BOARD

Collection agencies are businesses which are compensated for collecting money due on delinquent accounts or other forms of indebtedness. The agency generally receives from ten to 50 percent of the amount collected depending on the size and age of the account. The purpose of regulation is to assure both creditors and debtors that collection agencies are financially stable and employ fair collection practices.

HISTORY AND SCOPE OF REGULATION

In 1965 the Federal Trade Commission issued a national regulatory publication titled *Guide Against Debt Collection Deception*. The guide is used to enforce fair collection practices among collectors involved in interstate business. Regulation in the Commonwealth, first begun in 1970, is intended to supplement the federal guide and to promote consistent State action.

The Collection Agency Board regulates both collection agencies and persons who solicit business for the agency. Agencies and their principal agents are licensed and include any person, firm, corporation, or association directly or indirectly engaged in the business of soliciting from or collecting for others any account, bill or indebtedness due or owed for a fee, commission or other compensation. Any branch office operated by a collection agency must also be licensed.

Solicitors, on the other hand, are certified, not licensed, and include those persons who are employed by or have contracts with a collection agency to solicit debts for the collection agency.

During 1980, 165 collection agencies and 17 branch offices were licensed. There were 318 certified solicitors.

Some persons who act as debt collectors are exempt from these regulations: regular employees of a single creditor; banks and trust companies; building and savings and loan associations; licensed real estate brokers or agents (when the claims are in connection with real estate); attorneys handling claims and collection in their own names; or any person or firm acting under the order of a court.

Twenty-two states regulate collection agencies. Six states require licensure: Virginia, California, Colorado, Indiana, Nevada, and Oregon. Sixteen states require registration.

Four states regulate solicitors: Colorado, Oregon, Wisconsin, and Virginia.

The Collection Agency Board consists of three members appointed by the Governor for three-year terms. Each member is required to have been a resident of Virginia for at least three years prior to being appointed and to have operated or have been affiliated with the collection business for at least five years as owner, partner, or manager. Since 1971, the Board has met at least twice a year.

The provisions in the *Code of Virginia* which govern the Virginia Collection Agency Board are Section 54-729.2 *et seq.*

REQUIREMENTS FOR APPLICANTS

To protect the public from collection abuses, regulations are directed toward assuring that collection agencies are financially stable and that they use proper procedures and have qualified management. Licenses for collection agencies or agents may be granted to any applicant who

1. is of good moral character;
2. has not been convicted in any court of

- fraud, embezzlement, or a felony involving moral turpitude;
3. has a regular office in Virginia;
 4. has not previously violated or been convicted of any provisions in the *Code of Virginia* or the Board's regulations;
 5. obtains a surety bond of \$5,000;
 6. submits collection notices, letters, and forms which do not simulate any legal process, threaten litigation, or misrepresent the amount of the debt;
 7. furnishes the Board with an accurate financial statement; and
 8. obtains a trust/escrow account in which to deposit client funds.

A collection agency must apply for a certificate for any solicitor whom it employs. The agency must submit to the Board a notarized document accepting responsibility for the training and actions of its solicitors.

An agency can receive as many solicitors' certificates as needed for employees. Since the certificate bears the name of the agency rather than the solicitor, a new certificate must be issued bearing the agency's name when a solicitor becomes employed at another collection agency.

There are no examination requirements.

An out-of-state applicant must meet the qualifications established for State applicants. In addition, if an out-of-state agency seeks a license for a branch office in Virginia, it must appoint an attorney who is a member of the Virginia Bar to act as its registered agent.

FEEs AND EXPENDITURES

Agency licenses are issued after payment of the following applicable fees:

Background investigation	\$250
Initial license for each office	75
Annual renewal for each license	50

Certification fees are \$25 a year for each solicitor employed in each office.

Agency fees were recently increased by 210 percent to bring revenues into line with expenditures. For the 1978-80 biennium expenditures exceeded revenues by \$23,872.

Revenues and expenditures for the 1978-80 biennium are shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$11,768	\$12,861	\$24,629
Expenditures	<u>20,141</u>	<u>28,359</u>	<u>48,500</u>
Balance	(\$ 8,373)	(\$15,498)	(\$23,871)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

As a line item expenditure, the cost of enforcement incurred by Department of Commerce staff was more than the total revenues received by the Board in FY 1980. Costs allocated by the department to the Board for enforcement activities were \$15,488.

ENSURING CONTINUED COMPETENCY

Renewal of agency or solicitor credentials requires payment of the fee on or before December 31 of each year. If a renewal fee for an agency is received after that date, the licensee is considered a new applicant and all fees required of a new licensee must then be remitted.

Board regulations specify the type of records and accounts that must be retained by the agencies and made available to clients for review. Licenses must be openly displayed and agencies must maintain certain trust accounts in accordance with Board regulations.

There are no specific inspection requirements in the Board's regulations. However, the board may request inspections as needed to ensure compliance with its requirements. Since 1971, the Department of Commerce has made 455 inspections. The number varies significantly from one year to another. In 1979, there were 144 inspections. In 1980, there were 22.

The Board has recently established an administrative policy for conducting inspections at least four times within the first year for each newly licensed agency. Inspections of other agencies are to be conducted at least once every 18 months.

The majority of complaints received by the Board concern agencies identified as collecting debts for clients without being licensed. The main sources of complaints are licensed agencies and the Department of Commerce's own enforcement staff. About 30 complaints are received each year. If an agency is found to be unlicensed, it generally applies for a license and its application is generally approved.

Board regulations require that all complaints filed against a licensee or certificate holder must be submitted in affidavit form within six months from the date of the occurrence.

The Board has the authority to reprimand, revoke, or suspend licenses if the licensee

- obtained a license by means of misrepresentation;
- failed to maintain a \$5,000 bond;
- failed to maintain a regular office or current appointed registered agent;
- failed to maintain records or trust accounts;
- failed to deposit client funds in a trust account within five days;
- failed to pay clients the proper proceeds of collections within 30 days;
- commingled funds;
- has been convicted in any court of fraud or embezzlement or had a judgment for failure to account to a client for funds collected;
- violated any federal guidelines relating to collection agencies;
- used any trade name that created the impression that the agency is connected with an agency of the government; or
- failed to notify the Board of changes in ownership, partnership, or location.

Board records indicate that one disciplinary action was taken against a licensed agency in 1978.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Scope of Regulation of Solicitors

The Board's current method of certifying solicitors is not consistent with the language in Section 54-729.3 of the *Code of Virginia*

that requires licensure of solicitors. The language reads, "No person, firm, corporation or association shall conduct or operate a collection agency . . . or act as a solicitor until he shall have first secured a license."

Licensing procedures generally require each person who meets entry criteria to apply for a license. Persons without valid licenses issued in their names may not practice the occupation or profession.

In contrast to this standard licensing procedure, Board regulations require that solicitors be certified and provides that only persons certified by the Board may practice as solicitors. The established procedure requires the agency wishing to employ one or more solicitors to pay a fee and to submit an affidavit stating that those persons meet Board requirements. A single affidavit may contain information about many solicitors.

A certificate is then issued to the collection agency along with identification cards for the number of persons named in the affidavit. The identification cards are issued in the name of the agency, they are the property of the agency, they do not bear the name of the individual solicitor, and they may be transferred among employees of the agency.

The Board's procedures do not assure the public of the level of individual competence that licensure is intended to convey. The credentials are not routinely verified by the Board, and the credentials are not issued in the name of the individual solicitor. The agency, not the solicitor, appears to be the accountable party. Moreover, identification cards that do not bear an individual's name may be inappropriately transferred.

The Virginia Collection Agency Board should review its procedures for regulating solicitors and adopt revisions to implement the licensure requirement specified by statute.

An Alternative Level of Regulation of Solicitors

Although the Board needs to comply with the current requirement for licensure of solicitors, an alternative level of regulation might be recommended by the Board to the General Assembly. In current practice, employers or their agents are considered responsible for the qualifications and actions

of their solicitors. If this approach is thought to provide a sufficient degree of regulation by the Collection Agency Board, registration, a less restrictive form of regulation, could be recommended. To be registered, individual employees or firms would need only to submit their names, locations, and types of occupation to the Board.

The Board might determine, however, that it is necessary to protect the public through a higher level of regulation than registration. In that case, certification, as defined in the *Code*, could be used to inform the public of those individuals who meet minimum requirements to be solicitors.

However the Board's current procedures for certifying solicitors do not appear to be consistent with general certification procedures. As defined in the *Code* (Section 54-1-

18), a certificate may be issued to any person who has the minimum skills and education to properly engage in a profession or occupation. Anyone may practice the occupation, but only those certified may represent themselves as being certified. In contrast to this provision, the regulations of the Collection Agency Board permit only persons certified by the Board to be employed as solicitors. This regulation conflicts with the statutory definition of certification and should be changed.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



STATE BOARD FOR CONTRACTORS

Contractors operate businesses that engage in the construction, removal, repair or improvement of real property such as residences, commercial buildings, and roads. Regulation is intended (1) to ensure that businesses are financially stable and are able to complete contracts satisfactorily as well as (2) to protect the public from certain improper or dishonest acts by contractors.

HISTORY AND SCOPE OF REGULATION

The State Board for Contractors was created in 1938 to deal with the proliferation of financially unsound contractors during the Depression. It continues to supplement the efforts of local building officials to protect the public from unqualified or financially insolvent persons and firms. Until it was located in the Department of Commerce in 1977, the Board functioned as an independent regulatory agency with its own support and enforcement staff.

The Board for Contractors is authorized by statute to license two classes of contractors:

1. *Class A contractors* are individuals or firms who undertake work in which a single contract exceeds 40,000 or the total annual value of contracts is greater than \$300,000.
2. *Class B contractors* are individuals or firms who undertake work in which the value of a single contract is between \$1,500 and \$40,000.

Class A contractors are licensed in each type of specialty they perform. Specialties include residential, plumbing, electrical work,

highway construction, utilities, and home improvement. Class A contractors are exempt from local bonding and examination requirements. In addition, a Class A contractor may engage in jobs under \$40,000 without obtaining a Class B license. Class B contractors receive a license from the Board, but they must also meet the requirements of any local ordinances.

As of May 1981, the Board licensed 8,367 Class A and 12,717 Class B contractors. This is a four-fold increase since 1970 when fewer than 5,000 contractors were regulated on the State level.

A major group of contractors exempt from licensure are "owner-developers," those that build residential, commercial, or industrial buildings on their own land. To maintain this exemption a contract for sale cannot be entered into prior to completion if equitable title is to pass from the seller to the buyer when the value of work remaining is at or exceeding the monetary limits that require a license.

Individuals and firms who do work valued at less than \$1,500 per contract are also free from regulation. Additional exemptions include contractors providing certain services to the federal government and to the Virginia Department of Highways and Transportation.

General contractors are licensed in 19 states and registered in three. However, some other states regulate specialty contractors such as electricians, plumbers, and home improvement specialists.

The State Board for Contractors is composed of nine members. Six members represent construction specialties and three are citizens not contractors. The contractors include a highway contractor, a utility contractor, a commercial contractor, a residential contractor, a home improvement contractor, and a subcontractor. Also, one of the lay members must be involved in the sale of construction materials and supplies. Each

member serves for a five-year term. The Board holds quarterly meetings with special meetings when necessary.

The provisions in the *Code of Virginia* which govern the State Board for Contractors are Section 54-113 *et seq.*

REQUIREMENTS FOR APPLICANTS

Language in the *Code* specifies that to be licensed as Class A contractors, firms must have the "ability, character and financial position" to pay bills and carry out contractual obligations. Board regulations require the applicant to submit the following information:

1. a statement describing the applicant's contracting business;
2. names and addresses of all owners or officers;
3. a complete record of all previous construction experience;
4. licensure history, including disciplinary actions by other states;
5. the type of workman's compensation and/or liability coverage held by the applicant; and
6. the most current financial statement.

The *Code* also specifies that Class B applicants must submit their name, place of business, place of residence, the registered agent's name, and evidence of meeting local licensing requirements.

Although no licensure examination is required of general contractors, Class A electrical and plumbing contractors must pass written examinations developed in conjunction with the trade associations and reviewed by building officials. These exams are given at least four times a year in Richmond. As of October 1981, exams also became required for heating, ventilating, air conditioning, and refrigeration contractors. Anyone holding a current Class A license in any of these fields prior to June 1981 is exempt from taking the examination.

Although no State exam is given for Class B licenses, many localities require these contractors to pass examinations in order to be licensed. The Virginia Department of Housing and Community Development is

working with local governments to develop a uniform examination that localities could use on a voluntary basis.

The number of individuals taking and passing the examination for plumbing and electrical contractors has doubled since 1970. However, the percentage of applicants passing the exams has remained relatively stable at about 70 percent. The passing score for each exam is 70.

The Board for Contractors may also grant a license to an out-of-state applicant currently licensed in a state which has established a reciprocity agreement with Virginia. The Board has one reciprocal agreement with North Carolina for electrical contractors and is exploring other reciprocal licensing arrangements with North Carolina, Maryland, and Tennessee.

FEEES AND EXPENDITURES

The fee schedule for contractors includes the following:

Class A	
Initial license	\$60
Renewal	35
Class B	
Initial license	20
Renewal	10
Examination	25
Classification change	10

During the 1978-80 biennium, the Board for Contractors had revenues of \$530,281 and expenses of \$530,458 as shown below.

	FY 1979	FY 1980	Total
Revenues	\$258,831	\$271,450	\$530,281
Expenditures	210,354	320,104	530,458
Balance	\$ 48,477	(\$ 48,654)	(\$ 177)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Class A applicants must renew licenses annually by the end of January. In addition

to paying the appropriate fee, Class A contractors are required to submit a financial statement. The Department of Commerce then reviews each statement and refers the name of any contractor who does not meet the Board's financial guidelines to the Board. Class B licenses are renewed biennially by December 31 of each odd-numbered year.

Routine inspections are not currently authorized by the Board for Contractors. But local building officials routinely inspect construction activities within their jurisdictions and may notify the State Board for Contractors of any violations found.

Complaints about contractors have increased substantially in the past five years. According to Board officials, 335 complaints were received in 1980 in contrast to 36 in 1975. Most complaints are against new residential builders and home improvement contractors. About 120 complaints each year that involve structural defects or fraud are sent to the department's enforcement division for investigation.

Guidelines for Board disciplinary actions against contractors are specified in statute and regulations. Among the causes for disciplinary action are

- failing to comply with contractor laws and regulations;
- publishing false or misleading advertising;
- being disciplined by any local, State, or federal body;
- contracting incompetently or with gross negligence;
- failing to comply with the Uniform Statewide Building Code or the Virginia Fair Housing Law; and
- abandoning without legal excuse a contract or construction project.

While most complaints are disposed of administratively, four licenses have been ~~revoked~~ since 1978 because of bankruptcy, dissolution, or liquidation of the contracting firm. According to new regulations of the Board, the procedure now used is to void licenses on these grounds.

Also, 369 renewal applications have been denied since 1970, primarily because the

Board felt the contractor's financial position was unsound. Most applicants denied renewal are later relicensed. Under new regulations, any applicant refused renewal must be sent a written notice explaining the reasons for denial.

Under specific circumstances, the Board may provide financial relief to victims of improper or dishonest practices by contractors. In conjunction with the Department of Commerce, the Board administers the Contractor Transaction Recovery Fund, which was created by the General Assembly in 1980. A person who is awarded a judgement against a licensed contractor but is unable to collect may file a claim with the fund through the court. The maximum claim against the fund is \$10,000 per single transaction or an aggregate of claims of \$20,000 against one contractor. Such a claim against the fund may include reasonable attorney's fees and court costs.

The first two claims against the fund were recently processed. Both were aimed at recovering down payments from the same Class B contractor in central Virginia for home improvement work that was never done. The two claims totalled \$2,122. Four additional claims totalling \$22,440 are currently pending.

Each Class A and B licensee pays \$25 into the fund, which is maintained in a separate account from the normal licensing fees. Language in the *Code* requires that the funds be deposited in one or more federally insured financial institutions. The maximum balance the fund may reach is \$500,000 and the minimum is \$400,000. Reassessment is possible if the fund falls below the minimum.

Approximately 4,000 new licenses have been issued since the fund reached its maximum. Board and Department of Commerce officials indicate that those licensees who have not contributed to the fund can and will be identified through the department's computer system when the next assessment becomes necessary.

The interest earned on the deposits is required by statute to be used to cover the costs of administering the fund. Any remaining interest may be used to provide educational programs on the Uniform Statewide Building Code, or it shall accrue to the fund.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Class A Licensing Requirements

The State Board for Contractors requires applicants to submit data on their financial condition, but the Board has not promulgated specific fiscal criteria for licensure of Class A contractors. According to a Board official, the Board relies on the "expertise of its members" to make case-by-case judgments. In the absence of written guidelines, however, contractor applicants are not aware of the standards against which they are being measured.

Under present law and regulations, Class A contractors must submit information such as a financial statement, credit references, and extent of insurance. The Board evaluates these documents against unwritten guidelines that vary for corporations, partnerships, and individuals, and for each type of contractor specialty. The guidelines are understood to include such items as \$10,000 in quick working capital, \$10,000 in paid-up stock, established lines of credit, and criteria concerning prior bankruptcies.

The State Board for Contractors should develop written criteria for Class A licenses. These would inform applicants and Board members of the criteria to be applied and help to ensure consistency in Board decisions. Distinctions could be made among specialties if necessary.

Owner-Developer Exemption

The exemption from licensure of owner-developers has been a source of controversy for several years. The exemption affects two primary groups:

- property owners who construct or make improvements to their own residences; and
- speculative builders who intend to lease or sell residential or commercial buildings which they construct on their own land.

There appears to be general acceptance of the principle that individual property owners may build their own homes. The Board for Contractors and the Board of Commerce have

expressed concern that some contractors who build with the intent to lease or sell, however, are not subject to regulatory requirements regarding financial stability and fair business practices.

Two opinions issued by the Attorney General in 1973 clarified the circumstances under which speculative owner-developers were required to obtain a license. The determining factors are the time at which the building is sold and the value of the contract to be performed. The builder is exempt from licensure if the builder contracts to sell a completed building. However, if equitable title of the project passes from the developer to the buyer before completion and the value of the work remaining exceeds the licensure threshold, the speculative owner-developer is no longer exempt from being licensed.

As a result of these opinions, most owner-developers are licensed. However, those who build and sell completed projects, such as speculative houses or shopping centers, can operate without a license. Although the number of exempted developers may not be large, the impact of substandard unlicensed activity on the public can be significant in terms of protections foregone.

A 1980-81 study conducted by the Department of Commerce and the Board of Commerce at the request of the General Assembly raised concerns about the owner-developer exemption. The study noted that the exemption was inconsistent with the protection of the public interest because it "denies a person who buys a newly-constructed house the same protection" afforded to purchasers of houses constructed by licensed contractors. Such protections include assurance of the minimum qualifications of the contractor as well as the ability to seek the Board's assistance in the resolution of any complaints within the Board's jurisdiction. In addition, the Contractor Transaction Recovery Act indemnifies certain judgement creditors of contractors whose conduct is found to be improper or dishonest. A further concern was that the public was not fully aware of the exemption.

The Board for Contractors may wish to request the General Assembly to modify the exemption to include only property owners who construct or make improvements on their own residences.

Enforcement of the Uniform Statewide Building Code

The Board for Contractors and local building inspectors seek to protect the public from contractors who are unscrupulous or inadequately informed about the provisions of the Uniform Statewide Building Code. Both require contractors to adhere to the building code which was adopted by the State in 1973. However, local inspectors concentrate on minimum compliance with the code, while the Board concerns itself also with quality of work, contractual obligations, and the financial solvency of contractors. This overlap in responsibility requires cooperation among State and local inspectors and a uniform application of standards.

A study released in 1981 by the Department of Commerce indicates that contractors are often not knowledgeable about the provisions of the Uniform Statewide Building Code and that local enforcement ranges from "adequate to non-existent." Problems are attributed in part to inadequate training of local building inspectors and insufficient staffing. Officials of the Board for Contractors also indicate that interpretations of code provisions may vary among inspectors. In some cases, Department of Commerce inspectors who are investigating a consumer's complaint differ with local inspectors on the nature and extent of violations committed by contractors.

Steps should be taken to improve implementation of the Uniform Statewide Building Code. The Board for Contractors is authorized to use interest accrued from the Contractors Transaction Recovery Fund to provide education about the building code. An educational program for local building inspectors is being developed. Both local governments and the Department of Housing and Community Development which is responsible for administering the code, should actively support such important training.

The Board for Contractors might also consider (1) requiring new applicants for contractor licenses to pass a written examination on the building code provisions to ensure familiarity with basic requirements and (2) providing training opportunities on the building code for all licensees.

The Contractors Transaction Recovery Fund

The Contractors Transaction Recovery Fund was created by the General Assembly in 1980 to provide financial compensation to victims of improper or dishonest practices by contractors. Claims against the fund are considered by the courts in a summary hearing. Claimants must provide evidence of an unsatisfied judgment arising out of an improper or dishonest act by the licensee and must establish that the licensee has no further assets remaining to apply against the judgment. Recovery is limited to the amount of the unsatisfied judgment, reasonable attorney's fees, and court costs up to \$10,000 per contract and \$20,000 for aggregate claims.

The workings of the fund are currently under review by a legislative subcommittee pursuant to SJR 141 passed by the 1981 General Assembly. A primary concern of critics of the fund is that under the present system honest contractors are asked to pay for the wrongdoing of dishonest contractors. The fund is supported by a \$25 mandatory assessment on each contractor. The Committee is expected to report to the 1982 session of the General Assembly.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



BOARD FOR COMMERCIAL DRIVER TRAINING SCHOOLS

Commercial driver training schools provide clients with instruction in the operation of motor vehicles. Regulations address business practices and require operators of schools to comply with State and local vehicle licensure and safety standards.

HISTORY AND SCOPE OF REGULATION

In accordance with the Federal Highway Safety Act of 1966, each state must have a comprehensive highway safety program in order to qualify for federal highway construction and maintenance funds. The act requires that there be appropriate regulation of commercial driver training schools, including the licensing of schools and certification of instructors. A State program for driver education in the school system is also required.

In 1967, the Mann Commission in Virginia recommended the creation of a board to regulate commercial driver education, and the Board for Commercial Driver Training Schools was created by the General Assembly in 1969. The commission also emphasized the importance of training of 16 to 18 year olds in public school programs certified by the Department of Education. Formal training is now required of persons under 18 before being licensed to operate a motor vehicle.

Both commercial driver training schools and instructors must be licensed. A Class A license is issued to schools that provide training in vehicles over 20,000 pounds, while Class B licenses are issued for training in vehicles under that weight. Instructor's licenses are issued in the same classes based

on the same vehicle weights as those of the schools.

As of FY 1980, the Board had issued 65 driver school licenses and 153 driver instructor licenses. These include one Class A school and eight Class A instructors.

Schools operated by the following groups are excluded from licensure: colleges and universities; local and State governments for traffic violators; employers for their own employees; religious institutions; public schools; and associations approved by the Department of Education.

Three State agencies have some control over driver training schools and instructors. The Division of Motor Vehicles licenses all vehicles and vehicle operators in the State, including training school vehicles and instructors, and enforces State minimum insurance requirements on vehicles. The Division of Safety of the Virginia State Police is responsible for semi-annual safety inspections of vehicles.

The State Department of Education is also responsible for certifying the curricula and instructors of all public and commercial schools that provide driver education to 16 to 18 year olds. The department is required by law to submit the names of certified schools to the Division of Motor Vehicles; an operator's license may only be issued to students who have successfully completed driver education courses at a certified school.

Commercial driver training schools are regulated in all 50 states.

The Board for Commercial Driver Training Schools consists of five members appointed by the Governor. Two members are instructors, with at least five years of experience at commercial driver training schools. The other three members are driving teachers at local public schools. Members serve three-year terms and are not able to succeed themselves. The Board meets about twice a year.

The provisions in the *Code of Virginia* which govern the Board for Commercial Driver Training Schools are Section 54-145.11 *et seq.*

REQUIREMENTS FOR APPLICANTS

To be issued a driver training school license, applicants must have an established place of business in Virginia and must show proof that their vehicles are licensed in the State of Virginia or by the state where the vehicle is principally garaged. All motor vehicles to be used for driver instruction must also have dual brakes, rearview mirrors, and outside mirrors, and passenger vehicles must carry a rooftop sign not less than 2 1/2 inches in height, with "Student Driver" printed in bold lettering. The name of the school must also appear on the outside of the vehicle.

All vehicles must be insured with a company licensed to do business in Virginia in the minimum amounts required by law, \$25,000 and \$10,000 for liability and personal injury respectively. Finally, all vehicles must have valid State inspection stickers.

Applicants for an instructor's license must

1. be of good moral character;
2. be 21 years of age or older;
3. have a high school diploma or its equivalent;
4. have at least four years driving experience;
5. have a valid State operator's license, with no major violations for a period of three years;
6. be in good physical and mental health as stated by a physician licensed to practice in the State of Virginia;
7. have a statement of reference from the chief of police or sheriff of the city or county in which the instructor resides; and
8. have two recommendations from persons other than the driver training school operator.

The Board does not require an examination for licensure.

The Board has no reciprocal agreements with other states. A vehicle registered in another state may have Virginia inspection

requirements waived, however, if that state has similar requirements.

FEES AND EXPENDITURES

Initial licensing fees for Class A and B schools and instructors are \$45 and \$15 respectively. Annual renewal fees are the same. The Board is, however, considering an increase in both initial and renewal fees, with increases expected to be promulgated before the end of FY 1982.

As indicated below, Board revenues and expenditures were balanced for the 1978-80 biennium.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$6,435	\$6,307	\$12,742
Expenditures	5,705	6,986	12,691
Balance	\$ 730	\$ (679)	\$ 51

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

Since 1971, the Board's expenditures grew from \$1,940 to \$6,986, an increase of 260 percent, while revenues grew 50 percent from \$4,212 to \$6,307.

ENSURING CONTINUED COMPETENCY

Licenses are renewed annually upon payment of the fee. Each school must also submit proof of continued insurance coverage on all vehicles used for driver training.

The Board has no written regulations requiring regular inspection of facilities. Board records indicate that since 1971, however, 49 inspections have been conducted by request, 31 of these in 1974 and 15 in 1977. DOC inspectors check facilities for proper display of licenses, properly marked vehicles, posted rate schedules, and current driver's licenses. Inspectors are not required to check vehicles for properly functioning safety equipment.

Since 1971, 35 complaints have been received by the Board. During the 1978-80 biennium the Board received one complaint.

According to the Board's executive director, most complaints are made against persons

practicing without licenses. Other complaints come from students requesting refunds of fees, either because they were not satisfied with their training or because they stopped training before completing the course.

The Board may refuse to license, refuse to renew a license, or revoke or suspend a license for the following reasons:

- furnishing false, misleading, or incomplete information to the Board;
- presenting false or misleading information to prospective students;
- failing to maintain premises or equipment in safe and sanitary condition;
- paying a commission or giving consideration to any person for service in violation of the Code or Board regulations;
- failing to provide actual instruction to a student for the full period for which payment has been received; or
- providing instruction in a vehicle which the instructor is not licensed to operate.

Since its creation in 1969, the Board has not revoked or suspended a license.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Duplication in Regulating Commercial Driver Training Schools

To secure federal highway funds which were dependent upon the regulation of driver education, the Commonwealth created the Board for Commercial Driver Training Schools and assigned supervision of public school and other programs for students between 16 and 18 years of age to the State Department of Education. This arrangement has been approved by the federal Department of Transportation.

This assignment of responsibilities, however, has resulted in considerable duplication and little coordination among the activities or requirements of the Board, the

Department of Education, the Division of Motor Vehicles, and the State Police. The Board has few requirements that do not relate to the activities of other agencies. For example, the Division of Motor Vehicles requires all automobiles and drivers to have a valid license and minimum liability insurance, as does the Board. The Virginia State Police carry out safety inspections of vehicles semi-annually, and the Board relies on the police inspection. Moreover, of the 65 licensed schools, 39 (60 percent) are also certified by the Department of Education in order to serve students 16 to 18 years old.

The Board has few requirements concerning a school's curriculum or an instructor's qualifications. In contrast, the Department of Education specifies curriculum components and requires instructors to complete six semester hours of driver education.

The regulatory activity of the Board has also been minimal. The number of licensees has remained relatively stable, and Board records indicate that 35 complaints have been handled since FY 1971, most of these dealing with unlicensed activity. The Board does regulate some business practices, however, by prohibiting false or misleading advertising and by providing that schools offer instruction for the time specified in the student's contract.

Although the Board's activity is not extensive and requirements are duplicative of other agencies' activities, there probably would be little financial benefit from shifting the Board's function to another agency such as the Department of Education. Since regulation of commercial driver training schools is federally required, some expenditure would be necessary under any arrangement.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



EMPLOYMENT AGENCY ADVISORY BOARD

Employment agencies are businesses that act as brokers for persons seeking jobs and employers with positions to fill. A fee or commission is charged for this service. Regulation is intended primarily to ensure that contractual arrangements and advertisements are clear, accurate, and fair.

HISTORY AND SCOPE OF REGULATION

Employment agencies have been regulated in the Commonwealth since 1962. In 1978 the responsibility for regulation was shifted to the Department of Commerce (DOC) from the Department of Labor and Industry. An advisory board representing professional and consumer interests works with DOC. Previously, all Board members were associated with employment agencies.

All agencies in Virginia that advertise through any means and charge a fee for the purpose of assigning, directing, or placing persons for employment must be licensed. Agency employees whose responsibilities include consulting, interviewing applicants, or dealing directly with businesses in need of employees must be registered as employment counselors.

As of December 1980, 275 employment agencies were licensed in Virginia. This is a considerable increase over prior years; between 1972 and 1979, the number of licenses was approximately 149. The total number of registered employment counselors as of February 1981 was 336.

Exempted from regulation are persons engaged exclusively in the business of providing part-time or temporary personnel,

businesses recruiting for their own purposes, and persons placing migratory farm labor.

Twenty-nine states regulate employment agencies. Of these, 21 require that agencies be registered, and eight states, including Virginia, require licensure. The eight licensing states are Alabama, Arkansas, Connecticut, Georgia, Montana, Tennessee, Texas, and Virginia.

Eight states regulate employment counselors. Four states, including Virginia, register employment counselors, and four states require that employment counselors be licensed.

The Employment Agency Advisory Board is composed of five members appointed by the director of DOC. While all Board members were previously associated with employment agencies, language in the Code as amended in 1978 requires the Board to include two members representing the profession, two members from consumer protection interest groups, and a State official familiar with the regulation of employment agencies. Terms are for three years. According to DOC regulations, the Board shall meet not less than quarterly each year. During FY 1980 the Board held ten meetings.

The Board is authorized to advise the director of DOC on matters relating to employment agency practices and procedures and to conduct research on the operation and conduct of such agencies. The Board has no regulatory or disciplinary power, but the director of DOC may refer a complaint to the Board for recommended action.

DOC is responsible for all regulatory and administrative functions related to employment agencies. These duties include establishing and reviewing the qualifications of applicants, issuing licenses, levying and collecting fees, initiating inspections and investigations, and disciplining practitioners.

The provisions in the *Code of Virginia* which govern the Employment Agency Advisory Board are Section 54-872.16 *et seq.*

REQUIREMENTS FOR APPLICANTS

Applicants for employment agency licenses must meet the following entry requirements:

1. be of good moral character;
2. be at least 18 years of age;
3. submit to a criminal records check;
4. give evidence of an established place to practice in Virginia;
5. provide a \$5,000 surety bond for each office operating under the agency name; and
6. submit a copy of the agency contract which applicants sign; a copy of the agency fee schedule for both applicants and employers; copies of all advertisements; and a copy of the State Corporation Commission charter if the agency is a corporation, partnership, or association.

In order to be employed in a licensed agency as a registered employment counselor, an applicant must be at least 18 years old and of good moral character, must not have been convicted of a felony, and must not have had a prior application revoked for fraud or other acts that constitute a violation of the *Code* or DOC regulations.

There is no examination required for entry to practice.

DOC has not established any reciprocal agreements with other states. The requirements for out-of-state agencies are the same as those for in-state agencies: a license must be obtained before doing business in the Commonwealth.

FEES AND EXPENDITURES

The following fees for employment agencies are established in the *Code*:

Initial application	\$200
Fee for each controlling partner	200
Annual renewal	50

Employment counselors are not assessed a fee. The licensed agency is required to register each employment counselor with the department.

For the 1978-80 biennium, revenues exceeded expenditures by \$2,127.

	FY 1979	FY 1980	Total
Revenues	\$19,450	\$21,650	\$41,100
Expenditures	15,581	23,392	38,973
Balance	\$ 3,869	(\$ 1,742)	\$ 2,127

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses are renewed upon payment of the fee by January 1 of each year.

Agencies and branch offices must have available for review the following records for a three-year period:

1. originals or duplicates of all applications and contracts;
2. all employer job orders;
3. all advertisements identified by date and publication;
4. the date of clients' applications for employment;
5. the name and address of every applicant from whom a fee is received or to whom a placement fee is charged; and
6. the name, date, address, and amount of refunds.

Twenty-two inspections have been conducted since 1978. No violations of the *Code* were found.

From 1975 to 1980, 22 complaints were made against employment agencies (1979 data are not in retrievable form). Disputes between employment agencies and job applicants over the amount of the agency fee were the most frequent. Generally, the complaints involved contract disputes between employment agencies and job applicants over fees; applicants leaving jobs without paying agency fees; and employment agencies inducing employees to leave one company for another company that the agency represents. Most of the complaints filed with the department to date have been unfounded.

DOC's disciplinary prerogatives enable it to revoke or suspend a license or use other disciplinary measures. Grounds for disciplinary actions include the following:

- committing fraud, misrepresentation, or

- deception in contractual agreements;
- charging a fee for a position that is not available;
- advertising a position when a contract with the employer is not on file;
- inducing employees from one company to another;
- changing locations or opening branch offices without notifying the department;
- employing non-registered employment counselors;
- failing to post a surety bond; and
- failing to keep the department informed of changes in fee schedules or contracts.

Since 1978, only one consent order has been issued.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Regulation of Employment Counselors

When regulatory authority for employment agencies was established for DOC, the level of regulation for employment counselors was not specified in the *Code*. However, Section 54-872.23(D) requires the Employment Agency Advisory Board to "advise and make recommendations to the Department with respect to . . . appropriate standards of competence to be established with respect to employment agency counselors and procedures for certification or licensing of such counselors." No mention was made of Board or agency discretion to select another option. Still, DOC has implemented procedures for registering employment counselors instead of licensing or certifying them.

Registration is the least restrictive form of regulation for the individual practitioner. An employment agency must supply DOC with the name of each counselor it has employed. The agency is then held responsible for hiring qualified counselors and for ensuring their proper performance of duties. In contrast, licensure permits only those who meet all entry and performance criteria to practice a profession. Certification permits anyone to practice a profession, but it attests that those holding certificates have achieved specified levels of relevant education and experience.

The Advisory Board has determined that registration is sufficient for counselors because of the very specific business practices prescribed for licensed agencies in regulation. The counselor is subordinate to the licensed operator of the business who must ensure that the entire business is in compliance. Although registration of counselors does not appear to be unreasonable, regulation needs to comply with one of the alternative levels specified in the *Code*. Authority may be requested from the General Assembly to regulate counselors by registration.

Clarification of Board's Regulatory Authority

Sections of the *Code* relating to the type of regulatory authority of the Board are not consistent, since the Board is referred to as having both advisory and regulatory powers. Section 54-872.23 of the *Code*, which establishes the advisory authority of the Board, states, "It shall be the duty of the board to advise and make recommendations to the Department with respect to all matters relating to employment agencies." Section 54-872.18 of the *Code*, however, states, "The Board may make such rules and regulations as may be necessary to carry out the purposes of this article."

According to a department official, Section 54-872.18 refers to the authority of the Board of Commerce for promulgating rules and regulations for employment agencies as specified in the 1978 Acts of Assembly, Chapter 840, Section 5. Although it promulgates regulations for the other two advisory boards, it is DOC's opinion that the Board of Commerce rather than the department should promulgate regulations.

The reference in the statute should be clarified at the earliest opportunity. The General Assembly may wish to specify the responsibilities of the Board of Commerce in the *Code* and define more clearly the role of the Board of Commerce regarding all advisory boards.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



VIRGINIA STATE BOARD OF EXAMINERS OF PROFESSIONAL HAIRDRESSERS

Professional hairdressers provide services to consumers including cosmetic treatments and cutting, curling, or dressing of hair. Regulations specify qualifications for hairdressers and standards for beauty shops.

HISTORY AND SCOPE OF REGULATION

In 1962 Virginia became one of the last states to license hairdressers. According to Board officials, regulation in Virginia resulted from concern by the State's hairdressers that individuals incapable of meeting licensure requirements in other states were moving to Virginia to practice. Hairdressers are now licensed in all 50 states.

The Board of Hairdressers licenses 22,700 hairdressers and 4,880 beauty shops. Until recently, the Board also licensed approximately 150 cosmetology schools and certified 1,300 teachers. An Attorney General's opinion issued in October 1980, however, stated that the Board did not have the statutory authority to approve beauty schools or to prescribe standards for teachers.

Exempted from licensure as hairdressers are licensed barbers, apprentices or students of cosmetology, persons employed only as a shampooer or a manicurist, and persons practicing hairdressing without pay.

Apprenticeship programs in cosmetology are approved by the State Department of Labor and Industry based on standards approved by the Board. In addition, the Department of Education approves the cosmetology curriculum in public schools.

The Board of Examiners of Professional Hairdressers is composed of seven members

appointed for four-year terms. The Board generally meets on a monthly basis.

The provisions in the *Code of Virginia* which govern the Board of Examiners of Professional Hairdressers are Section 54-112.1 *et seq.*

REQUIREMENTS FOR APPLICANTS

To qualify for licensure as a professional hairdresser in Virginia, a person must

1. be at least 17 years old and of good moral character;
2. have an eighth grade education or its equivalent;
3. present a medical certificate stating that the applicant is free of infectious communicable disease;
4. complete 2,000 hours of beauty school training (1,500 hours of which will be in cosmetology training and 500 in related subjects) or a 4,000-hour apprenticeship program; and
5. pass a written and a practical examination.

A 1979 amendment to the *Code* prohibits the denial of licensure to an otherwise qualified hairdresser solely for failing to produce a medical certificate. According to a Board official, the regulatory requirement for a certificate is not being enforced and will be omitted when new regulations are promulgated.

Applicants for a beauty shop license must obtain a local business permit, receive local health department approval of the facilities, provide at least 110 square feet of floor space per operator, and have adequate ventilation. No beauty shop is permitted to be used for residential or sleeping purposes, although the shop may be located in a residence.

Hairdresser examinations consist of written and practical sections. The written exam is required to cover all of the areas covered in a beauty school's curriculum. It is developed and scored by a national testing service.

The practical exam measures the applicant's hairdressing competency. Applicants are scored on their performance of a series of Board-specified tests using live models or mannequins. The Department of Commerce employs a part-time chief examiner and 26 independent examiners to administer the practical exam for the Board. The examiners are all licensed practicing hairdressers. They are trained by the chief examiner to conduct and score the exam.

The number of applicants passing both the written and practical exams has remained around 1,300 annually since 1970. The passing score is 70 on each exam, and generally more than three-quarters of the applicants pass.

The examination requirement is waived for a currently licensed cosmetologist or hairdresser in any state which has a reciprocity agreement with Virginia. Virginia currently has full reciprocity with 29 states plus the District of Columbia and the Virgin Islands. Partial reciprocity has been extended to 12 additional states.

FEES AND EXPENDITURES

The following fees are currently charged by the Board of Examiners:

Examination and initial license	\$25
Reexamination	5
Licensure renewal	15
Salon license	25
Reciprocity and initial license	25

Because of the large number of licensees, the Board generates the second highest amount of total revenue of all boards within the Department of Commerce. Nearly \$600,000 was collected from fees during the 1978-80 biennium.

Board revenues exceeded expenditures for the same period by \$113,330. Revenues and expenditures for the 1978-80 biennium are shown below.

	FY 1979	FY 1980	Total
Revenues	\$482,948	\$ 85,196	\$568,144
Expenditures	277,698	177,116	454,814
Balance	\$205,250	(\$ 91,920)	\$113,330

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

Renewal fees are paid in the odd-numbered year of the biennium. This practice accounts for the difference in revenues between the two years of the biennium.

ENSURING CONTINUED COMPETENCY

Licenses are renewed by paying the biennial fee by January 1 of each odd-numbered year. Failure to renew a license within 30 days of the expiration date results in automatic revocation of the license. Lapsed licenses may be reinstated, however, within five years of the expiration date by paying a penalty fee of five dollars and the cost of the license for those years not renewed.

Two Department of Commerce inspectors spend about two-thirds of their time periodically visiting beauty shops to determine if the shop and its employees are properly displaying current licenses. Between July 1976 and June 1980, 10,597 inspections of beauty shops were conducted. Board data show that approximately 1,800 violations are found each year. Common violations include operating without licenses; failing to post licenses, licensee photographs, and apprenticeship signs; and lacking mannequins for use by apprentices.

Eighty-six complaints were filed with the Board between 1977 and 1980. The majority of complaints concerned unlicensed practitioners or shops. Licensed competitors are the source of most complaints.

The Board of Hairdressers is required by regulation to revoke or suspend the license of a hairdresser who

- is incompetent through addiction to drugs or alcohol;
- is guilty of fraud or deceit in the practice of hairdressing;
- practices while suffering from an infectious or contagious communicable disease;
- violates or causes others to violate the requirements of the cosmetology section in the *Code of Virginia* or regulations; or
- violates any sanitation rule or regulation of the State Department of Health relating to hairdressing establishments.

Records indicate that no disciplinary actions have been taken by the Board since

July 1976. Of the 86 complaints received during this period, compliance was obtained in 39 cases, no violation was found in 42 cases, one case was dismissed, and another was withdrawn. Three cases were handled through the legal system.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Training Requirements

The number of hours of school-based training needed to adequately train cosmetologists has not been conclusively established. The President of the National Hairdressers and Cosmetologists Association recently stated that it is unknown whether "a graduate with 1,800 is better qualified than a graduate with 1,500 hours." Each state sets its own requirement. In Virginia considerable controversy has arisen between the Board of Hairdressers and the Department of Education regarding the amount of training necessary to sit for the hairdresser licensure examination.

The Board of Hairdressers currently requires its cosmetology applicants to complete 2,000 training hours in a beauty school or 4,000 hours as an apprentice. In contrast, most states require their cosmetology students to complete 1,500 hours in beauty school. Requirements range from 1,000 curriculum hours in Massachusetts to 2,500 hours in Oregon.

Among states bordering Virginia—Maryland, North Carolina, Tennessee, and the District of Columbia—each requires 1,500 hours. West Virginia's educational requirements are identical to Virginia's. Several applicants from these neighboring states become licensed in Virginia each year under reciprocity agreements, and the Board accepts each state's educational requirement.

In contrast to its practice with out-of-state applicants, the Board does not allow any exceptions to the 2,000-training-hour prerequisite for taking the licensure exam in Virginia. In particular, the Board has stated that it will not allow graduates of a pilot program proposed by the Department of Education to take the exam after completing a vocational curriculum consisting of 1,080 hours in cosmetology and 500 hours in related subjects. The pilot project was to include six

specially selected high school students in Russell County. All other students would continue to take the regular 2,000-hour curriculum which corresponds to the requirement in private schools of cosmetology.

Both the Secretary of Commerce and Resources and the Board of Commerce requested the Board of Hairdressers to reconsider allowing the students to sit for the exam upon completion of the pilot project. When the Board of Hairdressers reaffirmed its earlier position, the Board of Commerce went on record supporting legislation that would allow any person completing cosmetology training under the auspices of the Department of Education to sit for the licensure exam regardless of the number of hours of training received.

In this case, the Department of Education and the Board of Hairdressers have come into conflict over their shared responsibilities. The Board of Hairdressers has clear statutory responsibility for assuring the competence of cosmetologists by establishing entry criteria that include an examination. The Department of Education is responsible for approving the curricula of public schools.

It appears that a sound pilot project could be useful in determining an empirical basis for the number of required training hours. The present proposal of the Department of Education does not appear to be sufficient, however, because it involves six specially selected students in one school. A pilot should include a representative group of students and be designed in accordance with generally accepted research principles.

The Department of Education and the Board of Hairdressers should jointly develop such a pilot program. If the results show that all students or students with specific qualifications could benefit from a revised curriculum, appropriate adjustments in entry criteria could then be made by the Board of Hairdressers.

Inspections of Beauty Shops

Before 1979, inspections of beauty shops and barber shops were carried out by the State Department of Health. The inspections were discontinued as a result of the department's reinterpretation of its authority under the Code for conducting such inspections. Although the health department appears still to be responsible for inspecting barber shops,

the statutory authority for continued inspections of beauty shops by the department is less clear. The Board of Hairdressers believes that sanitary inspections of beauty shops are necessary to protect public health. Therefore, the Board intends to request authority from the General Assembly to promulgate rules and regulations regarding sanitation to be enforced by the Department of Commerce.

Until the mid-1900s, many hair dyes and treatments were considered to have the potential for causing permanent scalp damage and hair loss. There were also concerns that diseases such as lice, ringworm, and infectious dandruff could be communicated through the scalp. Increasing regulation, however, by the U. S. Food and Drug Administration of the chemicals in hair preparations has reduced the potential harm when these products are applied correctly. And officials of the State Department of Health also indicate that there is no record of communicable disease being transmitted by hair dressing. While a U. S. Public Health Service publication states that ringworm of the scalp can be transmitted by unsterilized hairdressing equipment, as well as through contact with contaminated clothing or upholstery, tracing the source of such an occurrence would be difficult.

Local health departments in seven jurisdictions have continued to conduct health inspections of barber and beauty shops under local ordinances. Some localities conduct inspections on a quarterly basis, others not as frequently. Although violations have been reported which include dirty floors and equipment that has not been properly sanitized, officials of these health departments report that few violations are found during inspections. Inspections have been terminated in Lynchburg and Staunton by action of the local government, and the City of Richmond is considering eliminating inspections because of staffing constraints and the belief that there is a limited threat posed to public health.

Although the need for inspections in order to prevent disease appears to be limited, public health and Board officials indicate that customers are provided with some assurance that sanitary conditions in the shops are monitored. Moreover, the absence of reported incidents does not mean that none occurs, and the Board believes that inspec-

tions act as a deterrent to unsanitary conditions. It should be noted, however, that it is clearly in the best interest of beauty shop owners to maintain clean premises and to post licenses, because these shops are heavily dependent upon return trade.

The Board of Hairdressers should join with the Board of Barber Examiners, the Board of Commerce, and the Department of Health to develop options cooperatively to present to the General Assembly. Options could include the following:

1. Termination of all inspections in the absence of serious known hazards. Under this option, the Board of Hairdressers will not regain authority to promulgate regulations for sanitary inspections.
2. Assignment of responsibility for compliance and sanitary inspections to the Department of Commerce in accordance with regulations promulgated by the Board of Hairdressers. Under this option the Board would bear the expense for inspections. The General Assembly would need to authorize the Board to promulgate sanitary regulations.
3. Reinstatement of sanitary inspections by the State Department of Health. Under this option the inspections would be conducted at public expense or through a transfer of funds from the Department of Commerce to the State Department of Health. The General Assembly may consider assigning responsibility for promulgating regulations to the Board of Hairdressers or to the Board of Health.

The General Assembly may also wish to address the need for the inspections currently carried out by the Department of Commerce at the Board's request. Two inspectors devote approximately 84 percent of their time visiting barber shops and beauty shops only to ensure that shop and practitioner licenses are posted. Since the major area in which the Board does receive complaints is unlicensed activity, the purpose of ensuring that licenses are valid could be achieved more economically through investigation of complaints or visits to shops that do not apply for renewal of licenses. Although these inspections are carried out at the Board's expense, they do not appear to be an economical use of funds

collected under the authority of the State government.

Beauty Schools and Teachers

Pursuant to an Attorney General's opinion issued in October 1980, the Board of Examiners of Professional Hairdressers has ceased regulating proprietary schools of cosmetology and teachers in these schools. The Attorney General stated that the Board did not appear to have statutory authority to conduct these activities. The Board of Hairdressers continues to favor State regulation of cosmetology schools and teachers, however, and is proposing an amendment to its enabling legislation in order to gain the authority required to conduct these regulatory activities.

Until the Board ceased regulating them, cosmetology schools were required to meet regulations governing physical plant, teaching materials, student records, curriculum, and staffing ratios. Instructors in these schools had to meet certain training requirements or pass a national teachers examination. Instructors also had to be licensed as hairdressers because cosmetology schools offer hairstyling services to the public.

It appears that Virginia's cosmetology schools now exist with only limited oversight. The Department of Education is not involved with private schools. According to Board officials, only 13 of the approximately 150 cosmetology schools in Virginia have received accreditation by the National Accrediting Commission of Cosmetology Arts and Sciences. National accreditation is needed in order for a school's students to qualify for federal loans. In order to be accredited, a school must make application with the national commission and demonstrate that it meets requirements.

In recent months, Board officials have received some complaints about schools, but they can no longer carry out follow-up investigations. According to the Attorney General, however, the Board still has the authority to ensure that schools adhere to the standards for beauty shops, since cosmetology services are provided to the public by the schools.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



VIRGINIA BOARD OF HEARING AID DEALERS AND FITTERS

Hearing aid dealers fit and sell hearing aids based on a physician's referral or their own audiometric measurement of a client's hearing capacity. Regulation focuses primarily on the training and business practices of dealers.

HISTORY AND SCOPE OF REGULATION

The regulation of hearing aid dealers and fitters in Virginia began in 1970. Only licensed dealers and holders of temporary permits may engage in the fitting and sale of hearing aids. Temporary permits are issued to persons in training to become licensed dealers and fitters. In FY 1980, the Virginia Board of Hearing Aid Dealers and Fitters issued or renewed 141 licenses and 31 temporary permits.

Physicians licensed to practice in Virginia are exempt from Board regulations. Other practitioners, such as audiologists, may measure hearing to determine the need for a hearing aid, but they may not fit or sell the instrument.

The Board's regulations on appropriate business practices provide that dealers and trainees shall

1. indicate at the beginning of testing that the dealer is not licensed to do medical examinations and that persons under 18 years of age can not be fitted unless they have been examined by an otolaryngologist within the past six months;
2. require all fully informed adult clients either to sign a waiver of an examination by a physician or to have a medical examination before being fitted for a hearing aid; and

3. provide each purchaser of a hearing aid with a receipt that includes the licensee's signature, business address, and license number; the make and model of the hearing aid; a notice that the unit is used or reconditioned if the hearing aid is not new; and the full terms of the sale.

Virginia is one of 42 states that license dealers and fitters. Virginia and seven other states regulate trainees: one registers trainees, six issue licenses, and Virginia issues a permit.

The Board is composed of seven members. Four members are licensed hearing aid dealers and fitters, one is an otolaryngologist, and two are citizen members. One of the citizen members is required to be a hearing-aid user and the other is a family member of a hearing-aid user. All professional members of the Board are required to have five years' experience in their professions before being appointed.

The terms of office are four years, and two successive terms are permitted. The Board generally meets three times a year.

The provisions in the *Code of Virginia* which govern the Virginia Board for Hearing Aid Dealers and Fitters are Section 54-524.110 *et seq.*

REQUIREMENTS FOR APPLICANTS

An applicant for licensure as a hearing aid dealer and fitter must

1. be at least 18 years of age;
2. be of good moral character;
3. have graduated from an accredited high school or be able to show proof of equivalency;
4. have successfully completed the National Hearing Aid Society course or a course at a recognized college or university in hearing aid evaluation, fitting, sales and service;

5. be free of contagious or infectious diseases; and
6. pass the Board-administered examination.

Applicants for temporary permits must be at least 18 years of age and of good moral character, must have graduated from high school or its equivalent, must be free from diseases, and must have obtained a notarized statement from a licensed dealer and fitter certifying that the licensee will supervise training in the required subjects.

The Board's licensure examination consists of written and practical sections, and it is drafted, administered, and scored by Board members and staff. An applicant must pass each section of the examination with a minimum score of 75. Should an applicant fail any section, he or she may be re-examined.

In FY 1980, the Board held two examinations. Seventeen applicants were tested; of these five passed and 12 failed the examination.

The Board has established formal reciprocity agreements for licensing applicants who hold licenses in Ohio and Tennessee. It may issue "certificates of endorsement" to applicants who are licensed in states with standards comparable to Virginia's, however. Such states include Maryland, North Carolina, South Carolina, Kentucky, and New Jersey.

FEES AND EXPENDITURES

The Board assesses the following fees:

Initial application and examination	\$100
License renewal	60
Temporary permit	50
Temporary permit renewal	50
Certificate of endorsement	75

For the 1978-80 biennium, the Board's expenditures exceeded revenues by \$6,169.

	FY 1979	FY 1980	Total
Revenues	\$5,871	\$ 5,888	\$11,759
Expenditures	7,321	10,607	17,928
Balance	(\$1,450)	(\$ 4,719)	(\$ 6,169)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses must be renewed on or before January 31 each year by paying a renewal fee and submitting a certified copy of an electronic audiometer calibration made within the licensure period.

Temporary permits are issued for 12 months. The Board may reissue a temporary permit for an additional 12 months upon request by the trainee and payment of the renewal fee.

The Board has no established regulations providing for the routine inspection of licensees. Seven inspections have been conducted at the Board's request since 1970, with inspectors checking especially the display of licenses and calibrations of audiometers.

According to Board officials, complaints commonly involve disputes between licensees about advertising practices and the concerns of audiologists that hearing aid dealers represent themselves as audiologists. The scopes of practice of audiologists and hearing aid dealers are closely related in some areas, such as measurement of hearing capacity and examination of the client's ear. In FY 1980, five complaints were assigned to the enforcement section of the Department of Commerce for investigation. Forty-eight complaints were investigated between 1971 and 1980.

The Board usually appoints a three-person committee consisting of the chairman, an assistant attorney general, and the executive secretary to receive the department's investigative report and select appropriate Board action. The range of penalties available to the Board includes letters of reprimand, fines, and suspension or revocation of licenses.

The Board also has the authority to revoke, deny, suspend, or refuse to renew the license of a person who

- has been convicted of a felony, or a misdemeanor involving moral turpitude;
- has knowingly employed an unlicensed person to perform licensed functions;
- has collected a fee by fraud or misrepresentation;
- has advertised to the public information that is misleading, deceptive, or untruthful;
- has represented himself or herself to

- the public as a physician or audiologist;
- has been determined to be a habitual alcohol or drug user to the extent of endangering the health, welfare or safety of the public;
 - has conducted business while suffering from a contagious or infectious disease;
 - has been determined to have sold hearing aids to a person who has not been given a medical examination, or signed a waiver if over 18 years of age; or
 - is incompetent or negligent in fitting and selling hearing aids.

Board records indicate that two disciplinary actions have been handed down by the Board, one each in 1973 and 1976. The Board has requested the DOC investigator to visit the licensees involved in these actions more frequently.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Purpose of Temporary Permits

A temporary permit is defined in Section 54-524.110 of the *Code* as being issued to an applicant who is in training to become a licensed hearing aid dealer and fitter. However, the purpose of the temporary permit as an avenue to licensure is not established in the Board's regulations. Moreover, most holders of permits do not appear serious about becoming licensed. The permit system, in effect, allows persons who do not meet the Board's regular entry criteria to be employed as dealers and fitters for as long as two years. This practice is not consistent with the purpose of temporary permits reflected in the *Code*.

In the first place, the Board's regulations do not require a training period for licensure. Nor do requirements for licensure of trainees differ from those of other applicants who receive no practical training. All applicants must pass an examination after successfully completing a correspondence course of the National Hearing Aid Society or a course at a recognized college or university whether or not they first held a temporary permit.

Board regulations also state that trainees should take the licensure examination within one year of issuance of the permit unless it is extended for another year. However, few trainees ever take the examination. In fact,

since 1975, only 35 of the 227 persons who have been issued temporary permits have even bothered to take the examination. And every trainee who did apply for licensure also took the required course work and could have qualified for the licensing exam on that basis alone.

Nine additional temporary permit holders became licensed in Virginia through reciprocity agreements after becoming licensed in another state.

The limited use of the training program by permit holders to secure licenses was recognized as a national problem in hearings held by the Federal Trade Commission in 1978. According to testimony received by the Commission, many employers and permit holders were only interested in expanding the sales of hearing aids, not in training. And the training provided to permit holders was said to be minimal.

In Virginia, trainees are not required to have any previous educational background in fitting hearing aids and are not required to demonstrate any intent to become licensed. None of the 227 permit holders referred to above had taken the coursework required for licensure prior to employment. Even though the Board specifies required training subjects, it does not monitor the training provided by a sponsoring dealer who employs the trainee. The sponsoring employer is responsible for the ethical conduct of the trainee who may conduct business either on or off premises. At least 20 hours per month is defined as adequate on-premises formal training for the trainee through personal contact with the sponsor.

The Virginia Board of Hearing Aid Dealers and Fitters should reassess the temporary permit procedure. Current practice does not comply with the purpose stated in the *Code* to train applicants for licensure. Regulations should be adopted that establish a clear linkage between a bona fide on-the-job training program and qualifications for licensure. Temporary permits should be issued only to persons who are in bona fide training.

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STATE BOARD FOR THE CERTIFICATION OF LIBRARIANS

A professional librarian engages in such activities as selecting publications and prescribing research strategies for library users. Regulation is intended to implement a provision of State law requiring licensure of all full-time professional librarians who work in publicly supported libraries.

HISTORY AND SCOPE OF REGULATION

The State Board for the Certification of Librarians was created in 1936. Prior to that time, many librarian positions were political patronage jobs. Board members believe that the beginning of State aid to libraries resulted in licensure to ensure that localities would hire librarians possessing at least a minimum level of competency.

Since 1942, licenses have been issued to 2,630 librarians in Virginia. Although the number of active professional librarians is not known by the Board, 795 full-time positions are currently required to be filled by licensed librarians. The positions are established by the Boards of Trustees of libraries across the State or by the State Department of Personnel and Training. Professional librarians generally serve as head librarians or as supervisors in the areas of cataloging, acquisitions, or reference.

Since public school libraries are certified by the State Board of Education, their libraries are exempt from licensure by the Board. Also exempt are librarians in law libraries and privately funded libraries. Neither does licensure apply to employees performing clerical duties.

Librarians are currently regulated in 24 states. Most states, like Virginia, have library boards which license or certify professional librarians in all public libraries. In five states only the head librarians are regulated. Eight states have voluntary certification programs typically sponsored by a state library association. States that do not regulate librarians directly often tie minimum professional standards to state funding or to state personnel requirements.

The State Board for the Certification of Librarians has three members: two librarians appointed by the Governor and the State librarian, who serves *ex-officio*. Appointed members serve for five years and are eligible for two successive terms. Since 1971, the Board has met an average of twice annually.

The provisions in the *Code of Virginia* which govern the State Board for Certification of Librarians are Section 54-261 *et seq.*

REQUIREMENTS FOR APPLICANTS

A full-time professional librarian position is defined in Section 54-271 of the *Code of Virginia* as one that requires a knowledge of books and of library techniques equivalent to that required for graduation from an accredited library school. The Board, therefore, requires that applicants for licensure have obtained a master's degree from an accredited school of library science, have been certified in another state, or have passed a state equivalency exam.

During the past decade, almost all of the librarian certificates issued were to persons qualifying by degree. Since 1971, of the 1,203 persons who received licenses, 12 were licensed on the basis of examination; 16 held certificates from other states; and 1,135 held master's degrees in library science.

Examinations for licensure are given twice a year in Roanoke and Richmond. Any

graduate of an accredited college or university is eligible to take the exam. Those who are not college graduates may become eligible by making an acceptable score on the Graduate Record Examination.

The certification exam follows an essay format and is developed and scored by the Board. Areas covered by the exam are reference techniques and sources, administration, cataloging, and bibliography and book selection. In the future, the Board intends to have the exam developed by instructors at accredited library schools.

Few persons who take the certification exam actually pass. During the 1970s, only 12 of the 143 examinees passed. Those failing must retake the entire exam to be certified. Board members attribute the low passing rate to the high level of knowledge required to pass an exam equivalent to a master's degree in library science.

Virginia does not have reciprocity agreements with other states; each out-of-state applicant's credentials are reviewed individually. Board regulations allow licensure to be given without examination for out-of-state applicants who meet one of the following requirements:

1. have similar certification by another state; or
2. have served for at least three years in a full-time professional library position outside of Virginia where no certification law exists; or
3. have served for at least one year in a full-time library position outside of Virginia where a certification law now exists, but which did not exist at the time of the service.

FEES AND EXPENDITURES

Licensees pay a lifetime fee of one dollar. There is no renewal fee, but one dollar is also charged for replacement or duplicate licenses.

All expenditures are paid from funds appropriated by the General Assembly to the State Library. Revenues and expenditures for the 1978-80 biennium are shown below. In contrast to most boards organized under the Department of Commerce, the Board for the Certification of Librarians is not assessed any overhead costs by the department.

	FY 1979	FY 1980	Total
Revenues	\$138	\$135	\$273
Expenditures	270	149	419
Balance	(\$132)	(\$ 14)	(\$146)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Since certificates are granted for a lifetime, no renewal requirements exist. However, the State Board annually surveys each publicly supported library in the State, requiring a list of all full-time librarians and their certificate numbers. The Board then cross-checks this list against the Board's records. In FY 1980, the survey indicated that five unlicensed persons were employed as librarians. The Board advised the libraries to see that these librarians become licensed or risk losing public funds.

Routine inspections are not authorized by the Board.

No complaints against librarians were filed with the Board and no disciplinary actions were taken by the Board between 1971 and 1980.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Regulation of Librarians

The regulation of librarians has several characteristics which make it unique within Virginia's occupational regulatory system. The objective of librarian regulation is to ensure that libraries receiving State funds have qualified staff. Specifically, Virginia requires that public libraries hire persons with a master's degree in library science or its equivalent in order to retain State aid.

The Board for the Certification of Librarians plays a limited role in the regulatory process. The Board automatically issues most of its certificates to applicants who hold master's degrees from accredited programs. The Board's primary function, then, is to provide an opportunity each year for approxi-

mately 20 persons who did not graduate from an accredited master's program to become licensed by State exam. It also grants licensure to out-of-state applicants wishing to practice in Virginia.

Other characteristics which make the regulation of librarians unique include the following:

- In contrast to most other occupations or professions, regulation of librarians focuses on public, rather than private, sector employees.
- Certificates are granted for a lifetime, and no renewal is required.
- Certification fees of one dollar are the lowest of any board and the fee level is set by statute rather than in board regulations.
- The Board does not have specific regulations relating to the practice of librarianship.

Although the Board's activities are limited, the functions performed by the Board are

currently necessitated by the link established in State law between funding and the licensure of professionals in publicly supported libraries. These statutory provisions were enacted nearly 40 years ago.

The General Assembly may now wish to consider several different options to achieve the objectives intended in the regulation of librarians. These might include the licensure or certification of head librarians only; transferring the credentialing function to the State Library Board; or delegating to localities the responsibility to ensure that their personnel have the credentials necessary to receive State aid.

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STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

A nursing home administrator is responsible for the overall operation of facilities that provide room, board, and medical care to persons who are elderly, disabled, or infirm. Regulation is intended to ensure that administrators are capable of protecting the health and safety of residents.

HISTORY AND SCOPE OF REGULATION

The 1967 amendments to Title XIX of the Social Security Act required all states to regulate nursing home administrators as a condition of Medicaid participation. U.S. Senate hearings in the mid-1960s had revealed that standards and enforcement for nursing homes varied greatly among the states. In many instances there were unsafe conditions, poor management, and substandard patient care. As a result of the federal mandate, nursing home administrators are licensed by each of the 50 states.

The State Department of Health is responsible for licensing nursing home facilities and ensuring their compliance with State and federal standards. In Virginia, every nursing home must be supervised by a licensed administrator who has met all of the requirements of the State Board of Examiners for Nursing Home Administrators and of Title XIX of the Social Security Act. As of May 1981, there were 546 administrators licensed by the State.

The Administrator-in-Training (AIT) programs throughout the State are also regulated by the Board. It reviews and approves applicants entering the program as well as the content of each program. In FY 1981,

the Board approved 23 AIT applicants and 14 AIT programs.

The Board of Examiners for Nursing Home Administrators is composed of seven members. As specified in the *Code of Virginia*, three members are licensed nursing home administrators and four are from professions and institutions concerned with the care and treatment of aged patients who are chronically ill and infirm. Of the current Board, three are administrators in proprietary nursing homes, and the other four Board members include two doctors, a nursing home owner, and an attorney affiliated with the health care industry.

All appointments are for four years, and members can not serve more than two terms in succession. The Board has met at least six times each year.

The provisions in the *Code of Virginia* which govern the Board of Examiners for Nursing Home Administrators are Section 54-899 *et seq.*

REQUIREMENTS FOR APPLICANTS

Nursing home administrators are required to know facility operating procedures, federal and State regulations, and the ethics of treating long-term care residents.

Applicants for licensure as a nursing home administrator or for admission to an Administrator-in-Training program must meet the following requirements:

1. be at least 18 years of age;
2. be of good moral character;
3. be in good health;
4. have completed high school or its equivalent; and
5. have completed at least 60 semester hours of postsecondary study in a related curriculum approved by the Board.

Applicants for licensure must also have completed an Administrator-in-Training program. The AIT program consists of 12 months of work in a licensed nursing home under the direct supervision of a licensed nursing home administrator (preceptor) who has been approved by the Board. The trainee works 40 hours a week for 52 weeks and is trained in areas based on the requirements established in Title XIX of the Social Security Act. Subject areas covered in the AIT program include such topics as

- community resources;
- nursing home administration;
- environmental health and safety;
- local health and safety regulations;
- psychology of patient care;
- principles of Medicaid care;
- therapeutics and services in long-term care; and
- personal and social care for patients.

Effective in 1982, all applicants will be required to have at least a baccalaureate degree. The Board may accept some in-service training in health care management as credit toward its postsecondary educational requirement. One month of work-related training may be substituted for one semester hour, up to a maximum of 15 semester hours' credit. The Board may also waive or modify its AIT program requirement for applicants who have been full-time hospital administrators for two years or more, or for persons who have been awarded a baccalaureate in nursing home administration or a health administration discipline.

A licensure examination for nursing home administrators consists of three parts. The first is a written, multiple-choice test developed by the National Association of Boards of Examiners for Nursing Home Administrators. This section tests applicants on topics such as federal regulations and principles of medical care. It is administered by Department of Commerce staff and graded by the national association.

The second part of the examination is an objective, open-book, take-home test on Virginia's laws and regulations. This part of the exam has been developed by the State Board and is administered and graded by department staff. The exam is revised periodically.

The third part of the examination process is oral. Each applicant is questioned by Board members on regulations, professional practices, career objectives, and training.

Examinations were conducted six times during FY 1981. Thirty-six persons were examined, and 29 applicants passed all three parts of the exam.

The Board licenses by endorsement those persons who have been licensed by other states with standards comparable to Virginia's and who have at least one year of licensed, full-time experience. Those administrators are licensed without examination. The Board has licensed by endorsement administrators from Maryland, Florida, North Carolina, South Carolina, Tennessee, Pennsylvania, and New Jersey.

FEES AND EXPENDITURES

The Board assesses the following fees:

Licensure	\$50
Biennial renewal	50
AIT program approval	50

During the 1978-80 biennium, the Board had revenues of \$45,312 and expenditures of \$30,841 as shown below.

	FY 1979	FY 1980	Total
Revenues	\$16,750	\$28,562	\$45,312
Expenditures	13,527	17,314	30,841
Balance	\$ 3,223	\$11,248	\$14,471

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses expire December 31 of each odd-numbered year, and renewal follows payment of the fee.

Prior to 1980, the Board required inspections of nursing home facilities to ensure that licenses were properly displayed. But Board inspections were discontinued, because inspections by the Department of Health

were considered sufficient. Department of Health inspectors are supposed to notify the Board's Executive Director of any violations by nursing home administrators found during inspections of facilities.

Complaints come from a variety of sources: patients, other licensees, health inspectors, families of patients, and the general public. Concerns range from improper care to mismanagement of funds. Since 1971, Board records indicate that 13 complaints have been investigated by the Department of Commerce.

The Board may suspend, revoke, or refuse to renew a license for the following reasons:

- mental or physical incompetency;
- performance of any willful or wanton act that would discredit the profession or amount to incompetency;
- conviction of a felony or misdemeanor involving dishonesty, fraud, or deceit, or any felony relating to the care of a patient;
- illegal use of drugs; or
- negligence in the performance of duties.

Since regulation of nursing home administrators began in 1970, no disciplinary actions have been taken against a licensed administrator.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Coordination with the Department of Health

The Board holds the nursing home administrator responsible for maintaining a valid license and for operating the home in a competent manner. But in the absence of formally defined procedures and terms for the reporting of violations found by the Department of Health, it is difficult for the Board to determine the extent of problems caused by the negligence and incompetence

of administrators and to discipline practitioners effectively.

All inspections are currently made by the Department of Health. It is responsible for licensing facilities and for enforcing compliance with Medicaid and licensure standards. Since the facility license is held by the owner, it is the owner of the home that is cited. If violations persist, the department may revoke a license for the facility but not the administrator's license.

In 1981, the Department of Health conducted 525 nursing home inspections. Violations were handled in accord with the routine departmental procedure of citing owners. However, no notice of violations by administrators or notice of poorly administered homes was made to the Board. According to a representative sample of nursing home violations examined by JLARC in 1978, nearly half of all violations could be attributed to administrative performance and could have been addressed by an administrator's action.

The Board of Nursing Home Administrators should arrange for the Department of Health to provide it with regular notification of nursing home violations attributable to the negligence or incompetence of administrators. The Board, on the other hand, should be certain it communicates to the Department of Health what constitutes reasonable scope of practice and unprofessional conduct. Such sharing of information has been discussed but not implemented in the past. Given the importance of protecting the elderly and infirm in nursing homes, personnel in both agencies should develop appropriate procedures for handling and following up on reported violations.

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VIRGINIA STATE BOARD OF OPTICIANS

An optician may prepare, fit, and dispense eyeglasses or contact lenses prescribed by a physician or an optometrist. Regulation is intended to ensure that opticians are qualified to fulfill this responsibility.

HISTORY AND SCOPE OF REGULATION

The Board of Opticians, which was created in 1954, regulates opticians by licensure. In doing so, Virginia is one of 22 states that regulate opticians. Licensed opticians who fit contact lenses may apply voluntarily to the Board for certification in that field. Effective July 1, 1982, however, certification to fit contact lenses will become mandatory in Virginia.

The number of licensed opticians in Virginia has more than doubled since 1970. Of the 916 opticians that were licensed as of May 1981, 158 were also certified to fit contact lenses.

Exempted from opticianry licensure are licensed physicians or optometrists, suppliers of ophthalmic prescriptions and supplies, and sellers of preassembled eye merchandise such as sunglasses, binoculars, and magnifying glasses. Also exempt are persons working under the direct control and supervision of a licensed ophthalmologist, optometrist, or optician, so long as they do not hold themselves out to the public as opticians.

The State Board of Opticians is composed of five members appointed by the Governor: three opticians, one ophthalmologist, and one public member. Each member is appointed for a five-year term and is eligible for reap-

pointment to a second term. The Board meets approximately five times annually.

The provisions in the *Code of Virginia* which govern the Board of Opticians are Section 54-398.1 *et seq.*

REQUIREMENTS FOR APPLICANTS

In order to be licensed as an optician in Virginia, a person must

1. be at least 18 years of age;
2. be of good moral character;
3. have completed high school or its equivalent;
4. have completed a two-year approved course in opticianry or have completed a three-year apprenticeship; and
5. pass both a written and practical examination.

Virginia is one of eight states that use a written licensure examination developed by the American Board of Opticians. The exam is purchased from the Educational Testing Service which supervises its administration with the assistance of DOC and grades the exam. A practical examination is developed, administered, and graded by the Board of Opticians.

The contact lens certification exam is developed by the National Committee of Contact Lens Examiners. It is a written exam without a practical component and is sold and administered by the Educational Testing Service.

The passing score for each exam is set at 70. During the period between 1970 and 1980, more persons failed than passed the exam, as indicated in the accompanying table. In hopes of increasing passing rates, the Board of Opticians established prerequisites for taking the test. Since November 1980, applicants must first complete a two-year opticianry course or a three-year apprenticeship program. Apprenticeship programs are approved and administered by the State

Department of Labor and Industry in accordance with criteria developed by the Board.

	<u>Licensing Exam</u>		<u>Contact Lens Exam</u>	
	<u>Number Passing</u>	<u>Number Failing</u>	<u>Number Passing</u>	<u>Number Failing</u>
1970	16	21	—	—
1971	15	17	—	—
1972	20	36	—	—
1973	34	60	—	—
1974	67	80	—	—
1975	65	130	—	—
1976	73	89	—	—
1977	67	167	—	—
1978	131	103	—	—
1979	109	77	107	48
1980	52	61	15	20

The Board of Opticians collects the following license and certification fees:

Initial licensure (includes exam)	\$85
Annual renewal	40
Contact lens certification	35

In 1981, the optician's renewal fee was changed from \$40 biennially to \$40 annually in order to generate enough fees to cover Board-related expenses.

Revenues and expenditures for the biennium are shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$20,661	\$19,644	\$40,305
Expenditures	18,084	28,645	46,729
Balance	\$ 2,577	(\$ 9,001)	(\$ 6,424)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Annual payment of the licensing fee by December 31 is required for renewal, and inspections of opticians' offices began in 1981 to ensure that a current optician's license is properly displayed. Between April and September 1981, Board data indicates that 47 inspections were conducted. No violations were reported.

The Board of Opticians also receives complaints about practitioners. From July 1976 to June 1980, the Board received 29 complaints. Included were 12 complaints about unlicensed practice, 11 about professional incompetence, four about false or misleading advertising, and two about professional ethics. Most of the complaints were filed by licensees or consumers.

The Board may take disciplinary action against licensees who

- are convicted of a crime related to practicing opticianry;
- use alcohol or drugs which adversely affect their professional competence;
- display professional incompetence or negligence which endangers the public health, safety, or welfare;
- fraudulently certify that an applicant possesses the required qualifications for licensure;
- violate any law or regulation pertaining to the regulation of professions; or
- engage in false, deceptive, or misleading advertising.

Since 1976, Board records indicate that no formal disciplinary actions have been taken by the Board. Of the ten valid complaints filed during that period, compliance was obtained in four cases, four cases were referred to the Board of Optometry for action, and two cases involving unlicensed activity were referred to a commonwealth's attorney.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Scope of Practice Controversy

Opticians across the country have been engaged in controversy for several years with two other professions providing eyecare: ophthalmologists and optometrists. An ophthalmologist is a physician licensed by the Board of Medicine who specializes in the diagnosis and treatment of eye conditions and who may perform eye surgery, prescribe drugs or lenses, and use other types of treatment. An optometrist is licensed by the Board of Optometry to perform visual exams without the use of drugs and may prescribe lenses, other optical aids, or visual training. In Virginia, the first area of controversy

involves conditions for the dispensing of contact lenses by opticians under the supervision of ophthalmologists and optometrists. A second issue is the definition of "direct supervision" of unlicensed personnel who fit glasses in the offices of ophthalmologists and optometrists.

Section 54-398.27, *Code of Virginia*, prohibits opticians from "[fitting] contact lenses except on prescription of an ophthalmologist or optometrist and under his direction." A 1977 opinion issued by the Attorney General interpreted the provision to mean that opticians are prohibited from dispensing contact lenses to consumers unless they are prescribed specifically and the patient is referred back to the prescriber for a review examination. Opticians would prefer being allowed to fit contact lenses for any consumer unless the prescription bears an explicit statement that the patient should not be fitted for contact lenses.

Opticians are also concerned that they are put at a competitive disadvantage because they believe that some prescribers who fit contact lenses refuse to give approval on prescriptions so they can fit the lenses themselves. Addressing this concern, the Attorney General stated in 1979 that antitrust laws would apply in any situation where a group of prescribers "had combined to prevent opticians, in general, from competing in the business of fitting contact lenses" by refusing to give permission on the prescription for contacts to be fitted.

To comply with the requirements in the *Code*, the Board of Opticians recently adopted Regulation POR 12-17 requiring opticians to request contact lens consumers to acknowledge with their signature an instruction to return to the prescribing ophthalmologist or optometrist for reevaluation and any needed adjustments. To ensure the competence of practitioners, even further Board regulations require all opticians fitting contact lenses after July 1, 1982 to have passed a certification exam. Still, the Board of Opticians feels that the law should be changed to allow them more freedom in fitting contact lenses.

Representatives of ophthalmologists and optometrists in Virginia disagree with the opticians' position. These groups state that there is a higher risk of eye problems associated with contact lenses than with eyeglasses.

They feel, therefore, that it is necessary for a qualified person to make decisions regarding each patient's wearing of contact lenses in order to avoid serious eye problems. In their opinion, opticians do not have the necessary training to determine whether the medical or physiological condition of the patient's eye should preclude the wearing of contact lenses.

In November 1980 a proposal by the opticians to change the law was heard by the Commission of Health Regulatory Boards, which represents the boards regulating the health professions. The commission views the issue as health-related and ruled that "present law covers all that which is necessary for patients' well-being." The commission cited the absence of consumer complaints regarding inability to obtain prescriptions for their eyecare needs.

In contrast, officials of the Department of Commerce, which houses the Board of Opticians, feel that the issue involves a business practice rather than a health concern. They believe that the issue is not whether the patient can obtain a prescription, but whether opticians are permitted to do what the law allows: to fit contact lenses under the supervision of an ophthalmologist or optometrist. DOC officials say that ophthalmologists have been writing "not for contact lenses" on prescriptions. The opticians object to this practice unless there is a medical reason, but they do not object to follow-up examinations by the prescriber.

A second area of controversy among eyecare practitioners involves the current statutes which permit unlicensed employees of ophthalmologists and optometrists to perform the optician functions of fitting and dispensing eyeglasses. While this work is supposed to be carried out under the "direct supervision" of ophthalmologists and optometrists, opticians have voiced concern that unlicensed persons are often left unsupervised and that the public may not be receiving adequate protection from harm. Opticians suggest that "direct supervision" in the *Code* be defined explicitly to mean "supervisor present and available when all work requiring a licensed practitioner is performed."

Ophthalmologists and optometrists oppose the opticians' suggested change. These groups contend that the opticians' concerns are

unfounded and that the vast majority of unlicensed personnel are supervised. They believe that the current statutes are adequate for protecting the public.

Current Inspection Activities

Until recently opticians were required to produce a current license upon request. Board regulations now require, however, that the licenses be properly displayed, and in April 1981 inspections began on a random basis by Department of Commerce inspectors who conduct similar routine inspections for the barber and hairdresser boards. These inspectors visit opticians when they can take time from their ongoing duties for these boards. In a five-month period, 45 inspections revealed no violations.

Inspections of opticians for the purpose of checking for the display of licenses does not appear to warrant the attention of enforcement personnel. The Board of Opticians should consider discontinuing this type of inspection. Monitoring could be accomplished more economically through the investigation of complaints and follow-up on opticians who have not renewed their license to determine if they are still working as opticians.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



STATE BOARD OF COMMISSIONERS TO EXAMINE PILOTS

A harbor pilot boards a vessel to direct it to and from port. All foreign vessels and domestic vessels carrying cargo from foreign ports must be guided by a licensed pilot when entering Virginia's waterways. Regulation is intended to ensure that pilots are competent in negotiating local waterways and port facilities.

HISTORY AND SCOPE OF REGULATION

Some form of State harbor pilot license has existed since as far back as 1669. Virginia was one of the first states to regulate harbor pilots. A commission to examine pilots has been in existence since about 1792.

During the Colonial period, pilots competed with one another for the opportunity to guide ships into Virginia waters. Pilots often earned a reputation for playing tricks on one another in order to gain a competitive edge. After the Civil War, northern seamen assembled on the Virginia capes and began competing for the State's piloting business. Many of them were involved in accidents because they lacked familiarity with the waterways.

In 1866, several pilots formed the Virginia Pilot Association. The association was instrumental in having a law passed requiring stricter licensure of all pilots and ~~providing~~ for regulation of the pilotage profession and rates.

Forty-nine pilots are currently licensed by the Board of Commissioners to Examine Pilots. The number of licensed pilots in the State is determined by the number of pilot apprentices accepted by the Virginia Pilot

Association. Piloting on the James, York, and Potomac Rivers is restricted to a quota of pilots who have obtained a special endorsement on their original license for each river branch. This ensures that each pilot is experienced in navigating specific rivers.

State piloting regulations do not apply to vessels which travel only to domestic ports. These vessels may be piloted either by a Virginia pilot who also has a federal pilot license or by someone aboard the ship possessing a federal license for the area.

Virginia is one of 24 states bordering on the Atlantic and Pacific Oceans and the Gulf of Mexico that regulate harbor pilots. Pilotage on the Great Lakes is regulated by the federal government.

Most states have independent pilot boards composed primarily of pilots. The boards are usually responsible for regulating pilots and for setting the pilotage rates. Associations of pilots operate apprenticeship programs.

Pilotage rates in Virginia are established by the State Corporation Commission and some regulation of pilot activities has been assigned to the Virginia Pilot Association.

All licensed pilots are members of the Virginia Pilot Association, and the association selects and trains all apprentices. In addition, it carries out the following functions:

- maintains a roster of all pilots and informs them of their turn on duty;
- maintains a sufficient number of pilots aboard a station boat to accommodate incoming vessels;
- pools members' resources to cover the expenses of the station boats and small launches used by the pilots;
- collects and disburses all pilotage charges to its members; and
- reports any violations of rules to the Board.

Circuit courts in the Tidewater region have the statutory authority to appoint representatives to serve on the Board of Commissioners to Examine Pilots. Three Board

members are appointed from the Newport News/Hampton area, four from the city of Norfolk, and two from the city of Portsmouth. Four of the nine members are required to be licensed pilots, and all members are appointed for unspecified terms. The Board was exempted from 1981 legislation limiting professional board members to two successive terms.

The Board's responsibilities include examining candidates for licensure, issuing pilot licenses, resolving piloting disputes between licensees and other parties, and taking disciplinary action. The Board meets quarterly.

During the interim, an appointed part-time clerk, whose position is established by statute, handles the Board's business. The clerk's duties include arranging Board meetings, taking minutes, and preparing licenses for signature.

The provisions in the *Code of Virginia* which govern harbor pilots are Section 54-525 *et seq.*

REQUIREMENTS FOR APPLICANTS

To be eligible for licensure, an individual must

1. be of "honest demeanor";
2. serve a five-year apprenticeship to a pilot;
3. pass several State exams;
4. provide character references; and
5. post a surety bond of \$500.

In addition, a prospective pilot must meet the requirements of the Virginia Pilot Association and the U. S. Coast Guard.

Five-Year Apprenticeship. Persons between the ages of 18 and 23 wishing to obtain licensure are required by State law to complete a five-year apprenticeship. In order to become eligible for the apprenticeship, the individual must first make application to the Virginia Pilot Association and wait until new members are needed either to fill a vacancy or to handle an increased workload. New members are then selected by a secret vote of the current membership.

Top vote-getters enter the apprenticeship program sponsored by the Association. During the apprenticeship, new members learn seamanship, go to an accredited school,

and become familiar with Virginia's waterways.

Limited Branch Pilot License. During the first two years of apprenticeship, the candidate works toward completing an association requirement of 500 transits on the harbor. Once completed, the apprentice is given a written examination by the association and an oral exam by the Board. If both are passed, the apprentice is granted a limited branch pilot license by the Board.

This type of license requires no fee and limits the tonnage or size of the ship the licensee may pilot. Every six months the license is upgraded with regard to tonnage.

Federal Endorsement. At the end of the third year of training, the apprentice takes the federal pilot examination. A federal pilot license is required by U. S. law to pilot a vessel with domestic cargo that is being moved along the country's coast.

To qualify to take the exam, the individual must meet federal requirements for specified time aboard ship, for tonnage piloted, and for licensure as a limited branch pilot. The federal examination is given by the U. S. Coast Guard and includes questions about several technical aspects of seamanship such as the use of radar equipment.

Branch Pilot License. To receive the State "branch pilot" license the apprentice must pass a second oral examination relating specifically to Virginia's waterways. The exam is conducted by the Board's Examining Committee which consists of the four pilot members.

Upon passing the exam, completing the five-year apprenticeship, and paying the licensing fees, the individual receives a State license as a branch pilot and is designated a "State officer." A branch pilot license permits piloting between the James River Bridge, Old Point, and Cape Henry.

Additional Association Requirements. After obtaining the branch license, the pilot must then serve an additional one-year probationary period required by the Virginia Pilot Association. During this year, the pilot obtains a special river license by completing an apprenticeship and passing both a federal and State exam for a particular river. Upon completion, the pilot obtains full membership in the association.

Virginia has not established reciprocity

with any other state. Pilots wishing to work in the State have to serve the apprenticeship and pass the Board's exam regardless of licensure elsewhere.

FEES AND EXPENDITURES

The current licensing fee for a branch pilot is \$55 annually. Fees are collected by the Virginia Pilot Association and paid by a single check to the Department of Commerce.

Revenues and expenditures for the biennium are shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$2,860	\$2,805	\$5,665
Expenditures	<u>1,613</u>	<u>2,774</u>	<u>4,387</u>
Balance	\$1,247	\$ 31	\$1,278
Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.			

ENSURING CONTINUED COMPETENCY

Licenses are renewed upon payment of the fees. However, the Board informally re-evaluates each pilot's performance annually. Pilots are also reexamined by the U.S. Coast Guard every five years in order to maintain their federal license.

Although routine inspections are not authorized by the Board, complaints dealing with refusal to pilot a ship, intoxication, habitual lateness, or any other misbehavior or neglect of duty fall under the jurisdiction of the Board. Few complaints are received, according to Board officials.

If a complaint involves an accident, the case is turned over to the U.S. Coast Guard for investigation. If the pilot is found to be at fault, the Board may take disciplinary action in the areas over which it has jurisdiction.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Entry into the Piloting Occupation

Because piloting is such a specialized field, pilot associations have traditionally

been closely involved in the regulation of the occupation. Usually, pilots dominate the membership of a state regulatory board. Virginia, however, has established a broader membership base than many states and only four of the nine members on the Board are required by statute to be pilots. Nevertheless, pilots still control entry into the profession.

Section 54-536 of the *Code of Virginia* requires an applicant for examination as a harbor pilot to show that he has served as apprentice to a state pilot for five years. No criteria for apprenticeship have been established by the Board. Instead, consistent with traditional practice, the Virginia Pilot Association selects and trains apprentices and determines in effect, the number of pilot positions in the State.

Apprentices are selected by a vote of the association's membership. Although persons between the ages of 18 and 23 may apply to the association, apprentices are not selected until need arises to fill a vacancy or to handle an increased workload. Between 1958 and 1966 and between 1974 and 1978 no apprentices were taken.

According to association officials, apprenticeships are open to all persons. It has been traditional among pilot associations, however, to select friends and relatives of current members, and unrelated persons appear to have a better chance of acceptance when relatives of pilots are not available. The figures below show the familial relationship of apprentices for each of the last four decades.

<u>Period</u>	<u>Number of Apprentices</u>	<u>Sons or Grandsons Number</u>	<u>Percent</u>
1940-49	18	8	44%
1950-59	23	2	9
1960-69	6	3	50
1970-79	13	7	54
1980-81	5	4	80

Additional apprentices may have been related to pilot members in other ways.

According to tradition, the Association permits only one son from each pilot family to fill an apprentice slot. It is not possible to tell how many friends or other relatives were also selected.

It is not inconsistent with practice in other states or with existing case law for selection of apprentices to be delegated by the State to a pilots association, or for preference to be given to relatives. In a 1947 case, the U.S. Supreme Court ruled that control by incumbent pilots of the selection process did not violate the Fourteenth Amendment's guarantee against denial of equal protection of the law. *Kotch v. Board of River Port Pilots Commissioners*, 330 U.S. 552 (1947). The Court acknowledged that preference was shown to those having the favor of pilots, primarily friends and relatives. However, because of the uniqueness of the occupation and the close association among small numbers of pilots, this practice was seen to be reasonable.

The U.S. Supreme Court has not heard another case specifically related to pilots since 1947, and it is possible that the uniqueness of the occupation would still be seen as sufficient justification for upholding traditional practices. But in more recent cases related to the equal employment opportunity clause in the 1964 Civil Rights Act, the Court has considered not only the form but the results of employment and apprenticeship practices. For example, in *Griggs v. Duke Power Co.*, the Court ruled that "practices, procedures, or tests neutral on their face and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." The Court approvingly noted a circuit court action to strike down a union nepotism provision that applied equally to black and white, because its continued application would in effect forever deny to Mexican-Americans any real opportunity for membership. *Asbestos Workers v. Vogler*, 407F.2d 1047 (1969).

Officials of the Virginia Pilot Association indicate they do not intend to discriminate

against any group. In fact, according to association officials, the secret ballot on apprentices and the limit on apprenticeships to one son per family are intended to help open membership. These officials state that two blacks and two women have applied for apprenticeship but that in each case the applicant either decided against pursuing membership, was over the age limit, or applied at a time when no positions were open.

Nevertheless, the Board might wish to consider establishing State guidelines for the selection of apprentices. The Board's rules and regulations were last revised in 1959. The absence of Board criteria for the selection of apprentices might now be reconsidered in terms of the State's commitment to equal opportunity employment.

State Officer Designation

After receiving the branch license, a pilot is also designated a "State officer" according to Section 54-536, *Code of Virginia*. There is some uncertainty about the implications of this designation.

According to Board officials, in the past the designation permitted harbor pilots to carry weapons as a means of enforcing both their authority aboard ship and State piloting laws. This practice, however, has been discontinued.

The General Assembly may wish to review this section of the *Code* and specify the meaning of the "State officer" designation.

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POLYGRAPH EXAMINERS ADVISORY COMMITTEE

A polygraph is an instrument (commonly known as a lie detector) used to test persons for the purpose of determining truthfulness. Regulation is directed at ensuring suitable training for examiners and providing due process for examinees.

HISTORY AND SCOPE OF REGULATION

The polygraph was developed in the 1920s. Regulation was initiated in Virginia in 1968 under the Department of Professional and Occupational Registration which later became the Department of Commerce (DOC). A committee of polygraphers advises the department regarding rules and regulations.

DOC has established two categories of licensees and three approval categories. Licenses are granted to polygraph examiners and to polygraph interns, who study under the supervision of a licensed polygraph examiner. Only licensed examiners and interns may administer polygraph examinations. In addition to practitioners, DOC approves the physical facilities, instructors, and students of schools that teach subjects relating to polygraphy. Only graduates of approved schools may apply for licensure in Virginia.

Twenty-two states, including Virginia, license polygraphers. Three states register and 13 states license interns. No information is available on the regulation of schools, instructors, or students in other states.

As of May 1981, Virginia had 277 licensed polygraphers and 50 licensed interns. Fourteen polygraph schools were approved, one of which is located in Virginia.

Although the department has adopted standards for polygraph schools by setting separate requirements for curricula, instructors, and students, out-of-state students do not come under DOC's control until they actually apply for licensure in Virginia. The school for polygraphers in Norfolk averages about ten students per year.

Language in the *Code* establishes certain standards for administering polygraph examinations and DOC also has established specific criteria for conducting a polygraph examination. As the following requirements indicate, a primary concern appears to be the protection of the rights of examinees before, during, and after the examination:

- *Pre-Test Procedure.* No examiner may administer a polygraph examination without first (1) obtaining the written consent of the examinee; (2) informing the examinee of the issues to be determined; and (3) submitting to the examinee in writing the questions to be asked on the examination.
- *Termination of Examination.* Upon request by an examinee, any examination in progress must be immediately terminated.
- *Report of Polygraphic Examination.* Whenever an employer requires anyone to submit to a polygraphic examination, the employer must furnish the person with a written report of the questions asked and the conclusions of the examiner. All polygraphic charts, a record of questions asked, and the conclusions of the examination must be kept for one year.

The functions of the Polygraph Examiners Advisory Committee were recently formalized in regulation. The Committee, appointed by the director of DOC, provides advice on the development of regulations and oversight of the profession. The Committee is currently composed of six polygraph examiners, three of these in law enforcement agen-

cies and three self-employed. Members serve three-year terms and are limited to two consecutive terms.

The director of DOC has authority for overseeing the regulation of the occupation. DOC staff is responsible for promulgating and interpreting rules and regulations, collecting license fees, reviewing and validating applications, administering examinations, and responding to complaints against unlicensed practitioners or violations of the law and regulations by licensees.

The provisions in the *Code of Virginia* which govern the polygraph examiners industry are Section 54-916 *et seq.*

REQUIREMENTS FOR APPLICANTS

Specific criteria have been developed for the licensure or approval of examiners, interns, schools, and students.

Applicants for licensure as polygraph examiners must meet the following requirements:

1. have a bachelor's degree from an accredited college or university, or an associate degree in a police-related field and three years' experience as an investigator or detective, or a high school diploma and five years' experience as an investigator or detective;
2. complete an approved training course of at least 240 hours, or have 180 hours of formal advanced training in the profession;
3. submit to a fingerprint check;
4. present evidence of never having been convicted of a felony or misdemeanor involving dishonesty, fraud, or deceit;
5. complete six months as a licensed intern examiner under the personal supervision of an examiner licensed in Virginia; and
6. pass an examination administered by DOC.

An intern license will be issued to applicants who fulfill the first four of the above requirements. The intern must then spend six months supervised by a licensed polygraph examiner. Every 60 days the supervisor must provide DOC with written documentation of the intern's progress. After completing the above requirements the intern may

sit for the examination. An intern license is valid for 12 months.

Each school requesting approval from Virginia must file an application with the director of DOC along with a statement of financial responsibility. The curriculum must contain no less than 240 hours of instruction in the following areas:

polygraph theory	chart interpretation
exam techniques	legal aspects
question formulation	psychological aspects
physiological aspects	instrumentation
history of polygraphy	polygraph interrogation
case observation	polygraph case practice

In addition to having an adequate physical facility, the school must have sufficient texts and training aids, including at least one polygraph instrument for every three students. A current calibration log of polygraph equipment must also be maintained. Instructors in approved polygraph schools must meet the following minimum qualifications:

<u>Instructors</u>	<u>Qualifications</u>
Law	Law degree
Interrogation	Five years' experience in interrogation
Physiology	B.S. degree in biological science
Psychology	B.S. degree in psychology
Other	B.S. degree in related subject areas and five years' experience

To meet the minimum qualifications established by DOC, a student must

1. have a bachelor's degree from an accredited college or university; or, an associate degree in a police-related discipline and three years' experience as an investigator or detective that is acceptable to DOC; or, a high school diploma and five years' experience as an investigator or detective;
2. have no record of conviction of a felony or misdemeanor involving dishonesty, fraud, or deceit; and
3. submit to a polygraph examination or background investigation.

Exams for polygraph examiners are given when a sufficient number of applicants is available. The examination is developed by DOC in conjunction with the advisory committee and consists of both written and

practical sections. The written portion of the exam covers polygraph theory, exam techniques, and legal, physiological, and psychological aspects of polygraphy. The practical section requires the applicant to develop questions based on a hypothetical situation and to present three charts of the examination for review by DOC.

The written part of the examination has a passing score of 70 percent. The practical section is graded on a pass/fail basis. Nearly all applicants pass, as did the 13 applicants who took the exam during 1980.

Reciprocal licensure agreements exist with Georgia, South Carolina, and Florida. Attempts are being made to establish reciprocity with other states.

Persons from states that do not regulate polygraphers may also qualify for a Virginia license without meeting the internship requirement. They must have had at least one year of experience in their state, meet other department requirements, and pass Virginia's examination. An applicant who fails the examination is required to serve a six-month internship before being re-examined.

FEES AND EXPENDITURES

The following fees were recently promulgated by DOC for polygraphers and interns:

Initial application	\$125
Intern application	35
Biennial renewal (examiners only)	100

No application fee is required from practitioners employed full-time by State or local law enforcement agencies.

Revenues and expenditures for the 1978-80 biennium are shown below.

	FY 1979	FY 1980	Total
Revenues	\$8,980	\$ 9,055	\$18,035
Expenditures	8,094	13,092	21,186
Balance	\$ 886	(\$ 4,037)	(\$ 3,151)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Polygraph examiner licenses are issued for two calendar years. All licenses are renewable during December of each odd-numbered year upon payment of the renewal fee. Intern licenses are issued for one year only. The director of DOC has the authority, however, to extend an intern's license to the next scheduled licensing examination.

The procedures for inspections and annual approval of polygraph schools are specified in regulation:

- Polygraph schools may be subject to an initial on-site inspection prior to initial approval.
- The department shall conduct such annual inspection(s) as it deems necessary of each school to insure compliance with regulations. Inspections can be conducted through written communications.
- Out-of-state schools which are not approved by their state of residence may be inspected, and the school shall pay for the actual expenses of inspection.
- Schools having current approval by the American Polygraph Association may have inspection requirements waived.

DOC records indicate only one on-site inspection of a polygraph school. However, DOC requires each school periodically to submit written materials on the school's curricula, qualifications of instructors, and current certification by the American Polygraph Association. All schools currently approved by DOC are certified by the association.

Twelve complaints have been received by DOC since 1968, four of these in FY 1980. One complaint regarded a question asked by a polygrapher that was not first presented in writing. The other complaints concerned the validity and reliability of the polygraph examinations.

DOC may deny, suspend, or revoke the license of a polygraph examiner for several reasons including the following:

- making a misstatement in the original application;
- committing a felony or misdemeanor involving dishonesty, fraud, or deceit;

- allowing one's license to be used by an unlicensed person; or
- violating the Code or DOC regulations.

To date, only one disciplinary action has been taken by DOC. A consent order was issued against an examiner who failed to give a written pretest to an examinee.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Use of Polygraphic Examinations

The regulation of polygraph examiners primarily ensures that polygraphers meet minimum requirements to practice. However, concern still exists about the complete reliability of polygraph examinations and the protection of the civil rights of examinees. Therefore, some states have limited the use of this method of truth detection in court and employment proceedings, and others have reassessed the appropriate level of regulation.

The Virginia Supreme Court has ruled as recently as 1971 that the results of lie detector tests are not admissible as evidence in court proceedings. This doctrine was established in Virginia in 1958 and reaffirmed in 1965. In the most recent decision, the court refused to change its earlier position on the grounds that "lie detector tests have not yet proved scientifically reliable." *Skinner v. Commonwealth*, 183 S.E. 2d 725.

The State has not, however, prohibited the use of polygraph examinations by businesses to screen job applicants and to investigate suspected wrongdoing by employees. In 1979, a proposal to eliminate the use of a polygraph examination as a condition for employment was considered by a legislative committee. Such states as California, Maryland, New Jersey, and New York, however, prohibit the use of polygraphs for employment purposes, and a Texas commission recently recommended this prohibition to the legislature.

Total deregulation of polygraphers is an option that was recommended in 1981 by the Illinois Select Joint Committee on Regulatory Reform on the grounds that regulation could not prevent errors which arise from the limitations of the technique.

But unless the use of polygraph examinations is completely prohibited, states are nonetheless faced with a regulatory dilemma. While regulation cannot assure the validity of the examination, it does represent a means of ensuring due processes for examinees and the highest possible competence of examiners.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



PRIVATE SECURITY SERVICES ADVISORY COMMITTEE

Private security businesses protect people and property by providing private investigators, security guards, armored car personnel, and other security services under contract. Regulation is directed primarily toward ensuring that privately employed personnel are ethical and that they are trained in security procedures.

HISTORY AND SCOPE OF REGULATION

Regulation of Virginia's private investigators and private security businesses began in 1964 through local governments. To achieve statewide uniformity of standards and enforcement, the General Assembly transferred regulatory responsibility to the Department of Commerce (DOC) in 1977. The department is assisted in this responsibility by an advisory committee of practitioners from the private security business. Also, the Criminal Justice Services Commission is responsible for establishing compulsory minimum training standards and for inspecting facilities and training programs conducted for private security personnel.

The DOC licenses private security businesses and qualifying agents, and registers all other security personnel. Each private security business must have at least one person licensed as a qualifying agent and must have an agent registered in each category of service the firm is licensed to offer. Services are provided by personnel in the following occupations:

1. A private investigator is employed to secure information on crimes, civil wrongs, recovery of stolen property, and accidents.

2. A guard is employed by a private security business under contract to protect persons and property or prevent theft or loss of property.
3. A guard dog handler is an armed or unarmed person employed to handle dogs in the performance of duty.
4. A courier is an armed employee who transports documents, papers, or negotiable instruments.
5. Armored car personnel transport money or other valuables in specially equipped vehicles.
6. An in-house armed guard is any regular employee engaged in protecting the employer's property who carries a firearm while in contact with the general public.

As of May 1981, there were 245 licensed private security service businesses, 322 licensed qualifying agents, and approximately 12,000 registered security personnel in Virginia.

The following groups are exempted from regulation:

- employees of the United States, the Commonwealth, or any political subdivision, engaging in the performance of official duty;
- individuals or agencies providing financial ratings or consumer reports;
- attorneys or employees of attorneys;
- legal owners of property acting to repossess their property;
- law enforcement officers receiving compensation as private guards;
- unarmed employees who investigate accidents or adjust claims;
- "shoppers," who purchase goods for the purpose of testing the employees of a business for the employer;
- police agents appointed by motor carriers and railroad companies; and
- in-house armed guards who do not come into contact with the public.

The regulation of private security personnel varies among states, as indicated below. The most highly regulated security occupation is the private investigator, which 35 states regulate.

<u>Category</u>	<u>Number of States</u>	<u>Method of Regulation</u>	
		<u>Registration</u>	<u>Licensure</u>
Private Investigator	35	7	28
Security Guards	17	8	9
Armored Car Personnel	1	1	
Couriers	1	1	
Guard Dog Handlers	2	1	1

Virginia is the only state that registers armored car personnel and couriers and is one of two states that regulate dog handlers.

The Private Security Services Businesses Advisory Committee advises DOC on issues relating to the profession. The Committee is composed of six members: two are private investigators and four are in the private security business.

The committee is appointed by the Director of DOC and the Criminal Justice Services Commission, each of whom appoints one private investigator and two persons engaged in the private security business. The term for appointments is not established in either the Code or the department rules and regulations. During the last biennium the Committee met seven times.

Since the Committee is limited to an advisory role, DOC is responsible for all regulatory activities. DOC's responsibilities include issuing licenses, developing and interpreting rules, collecting license fees, responding to complaints of unlicensed practice, and disciplining practitioners.

The provisions in the *Code of Virginia* which govern the regulation of the private security services businesses are Section 54-729.27 et seq.

REQUIREMENTS FOR APPLICANTS

Entry requirements are the most extensive for businesses and their qualifying

agents. Regulated employees must undergo a criminal records background check and successfully complete the training mandated by the Criminal Justice Services Commission.

Owners of private security services businesses must meet the following criteria:

1. submit names of owners, partners, or officers;
2. identify categories in which the business will provide service;
3. post a surety bond of \$25,000 or have liability insurance with a minimum coverage of \$100,000 and \$300,000; and
4. have an office in Virginia.

Qualifying agents must meet the following requirements:

1. have three years' private security experience in an investigative or supervisory capacity or employment in a supervisory capacity with any federal, state, or local law enforcement agency (education can be substituted for some experience);
2. complete minimum approved training;
3. be fingerprinted and submit to a criminal records check; and
4. be registered in the category(s) in which the business is to be licensed.

The Criminal Justice Services Commission requires 48 hours of training for private investigators. The minimum for dog handlers is 28 hours; 16 hours are required for guards. Fewer hours are required for unarmed personnel in these categories. Armored car personnel receive 22 hours of training.

Before completing CJSC training, all personnel must pass an examination in subject areas relating to their area of practice. For this reason, DOC discontinued its independent exam for private investigators as of March 1981.

FEES AND EXPENDITURES

The following fees for private security businesses were recently promulgated by DOC:

Initial agency license	\$550
Agency fee for each additional category of service provided	200
Agency renewal for first category	300
Additional category renewal	200
Individual registration	15

Agencies pay an additional fee for each additional category of service that they provide. Registered personnel pay an initial registration fee each time they transfer from one agency to another.

Current fees reflect substantial increases over the previous year in order to bring revenues into line with expenditures. Expenditures exceeded revenues for both years of the 1978-80 biennium as indicated below.

	FY 1979	FY 1980	Total
Revenues	\$115,558	\$121,503	\$237,061
Expenditures	155,029	210,995	366,024
Balance	(\$ 39,471)	(\$ 89,492)	(\$128,963)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

An expenditure unique to this regulatory activity is the reimbursement to the Criminal Justice Services Commission for regulating security personnel training programs. During FY 1980, the payment was \$40,690. A recommendation by DOC that a general fund appropriation be requested for this activity was rejected by the Commission and the Secretaries of Commerce and Resources and Public Safety.

ENSURING CONTINUED COMPETENCY

Agency licenses are renewed by October 31 each year upon payment of a fee for each category of service provided.

Inspections of private security businesses are conducted to ensure that agencies are licensed and employees properly registered. They generally consist of an audit of personnel and payroll records. Eighty-six inspections were conducted during FY 1980.

The Board received 68 complaints in each of the last two fiscal years (FY 1980 and FY 1981). About 90 percent of the complaints are filed by the executive director, based upon information received from various sources. Most frequently these involve non-registered personnel. The disposition of complaints handled during these years is shown in the following table.

Disposition	FY 1980	FY 1981
No violations found	33	15
No jurisdiction	3	4
Criminal actions	4	4
Consent orders	13	6
Background investigations	8	4
Others	7	10
Open	2	28
Total	70	71

The Department may suspend or revoke a license if it finds that a licensee or registrant

- attained a license or registration by fraud;
- failed to provide information requested by the department as a result of a complaint or during an audit by the department;
- employed personnel who had not met the requirements for registration;
- falsified or aided others in falsifying credentials;
- failed to return the identification card or notify the department upon termination of an employee;
- employed personnel for more than 120 days when they failed to complete required training;
- failed to maintain a current bond or liability insurance;
- failed to maintain a qualifying agent for each business category;
- offered services which the security business was not licensed to perform;
- violated provisions in the statute or regulations; or
- failed to have employees comply with the compulsory minimum training standards.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Cost of Regulation

Regulation of private security personnel is one of the highest cost functions carried out by the Department of Commerce. Fees,

which were increased considerably during the last year, are far greater than those for other boards. Still further increases are anticipated to cover the cost of processing nearly 1,500 new applications each month and processing a new category of armed in-house guards.

Fees to be charged to private security businesses in 1982 are shown below.

<u>Fee Category</u>	<u>FY 1981</u>	<u>FY 1982</u>
Initial agency license	\$75	\$550
Agency fee for each additional category of service provided	75	200
Agency renewal for first category	75	300
Additional category renewal	75	200
Individual registration	13	15

According to department officials, the initial and renewal fees are set high enough to cover the cost of reimbursing the Criminal Justice Services Commission (CJSC) for regulating private security training programs and the cost of processing the large volume of applications.

During a public hearing in May on the department's proposed fees a number of concerns were raised about the impact of fee increases on small businesses, the potential restriction of the entry of new businesses, and the appropriate level of DOC's administrative costs. The charges to an individual business can be quite high because in addition to initial fees, businesses pay a separate fee for each category of service offered. Many firms also pay the \$15 registration fee for each of their registered personnel.

During the 1978-80 biennium expenditures for regulating private security businesses exceeded revenues by \$128,963. Department officials attribute two-thirds of the shortfall to the \$79,200 which DOC paid the Criminal Justice Services Commission. This reimbursement accounts for about 24 percent of the total expenditures. In addition, direct costs and overhead account for 47 percent and 24 percent respectively.

DOC is required by law to reimburse CJSC for expenditures related to private security personnel. However, DOC officials believe that this is an extraordinary regulatory expense to come from fees and that the level of regulation by CJSC is too costly. A

recommendation by DOC that a general fund appropriation be requested for this activity was rejected by CJSC and the Secretaries of Commerce and Resources and Public Safety. Other options being explored include establishing a separate fee to be paid by training schools.

According to DOC officials, most of the direct costs for regulation of the private security industry are related to processing new applications, an activity which consumes a large amount of staff time. According to a DOC official, the large number of applications is a result of an estimated 80 percent turnover rate among the 12,000 registered personnel.

Reviewing new applications involves verifying both employment experience and training. In addition, a request for a fingerprint check is sent to the State Police. Any police record sent back with the fingerprint verification is also reviewed by staff. In a few cases where questions arise involving an applicant's background, DOC enforcement personnel conduct a field investigation.

The private security regulatory program is also allocated a portion of DOC administrative overhead, as are all boards and committees. Indirect costs are allocated based on the number of applications processed and the number of persons regulated. Because of the large number of applications, the program's share of overhead amounted to \$105,888 for the 1978-80 biennium, ten percent of the department's total indirect costs.

DOC and Advisory Committee officials are concerned about escalating costs, and in addition to raising fees have taken some other steps to bring expenditures in line with revenues. For example, DOC has stopped issuing laminated cards to registrants; it has ceased putting applicants' pictures on cards; it has eliminated one clerical position; and it has begun to computerize additional functions.

DOC might be able to find additional ways to maximize resources, reduce unnecessary tasks or costs, and distribute costs equitably among those regulated. Options to be assessed by DOC should include the following:

1. Analyzing each licensing function and the time required to process applications and conduct background investi-

gations. Consideration could be given to having clerical personnel rather than the executive director or enforcement personnel perform some of these tasks.

2. Developing a graduated fee structure that (a) recognizes size differences among businesses, (b) equitably covers the costs for regulating in-house security guards, and (c) establishes fees for private investigators and registered security personnel that more fully reflect actual costs involved.

At DOC's request, the State Department of Management Analysis and Systems Development (MASD) has recently conducted an assessment of the department's overall operating practices. Since expenditures for the regulation of private security businesses are of significant concern to licensees, the MASD study might be expanded to include a specific review of processes, procedures, and cost allocation methods relative to the regulatory program. This review would also assist DOC in applying at the program level the systemic recommendations made by MASD.

Regulation of In-house Armed Security Guards

Legislation enacted by the 1981 Session of the General Assembly brought under regulation a previously exempt category of in-house guards. These guards are generally employed by retail stores or commercial firms. The total number of guards is unknown, because they were exempt until recently. Approxi-

mately 500 in-house guards have been registered since July 1981. The department will need to address several administrative or regulatory problems associated with this new responsibility:

1. The processing of applications for in-house armed guards will increase the overall cost of regulating private security services. Costs are currently allocated primarily through fees charged to licensed security businesses. However, the guards are actually employed by unregulated businesses.
2. According to regulations promulgated for private security businesses, licensed private security businesses are held responsible for violations committed by employees. It is not clear who will be held accountable for the performance of in-house guards.

DOC needs to develop appropriate rules and regulations regarding identification of in-house guards employed in the Commonwealth, a rationale for assessing and collecting charges, and procedures for enforcing compliance with statutory requirements.

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VIRGINIA REAL ESTATE COMMISSION

Real estate brokers and salespersons represent buyers or sellers in transactions which typically involve a large capital investment, such as the purchase of a home or commercial property. Regulation seeks to ensure that practitioners adhere to fair business practices, to provide redress from financial harm, and to administer State laws relating to the real estate industry.

HISTORY AND SCOPE OF REGULATION

The Real Estate Commission was established by the General Assembly in 1924. It is one of the largest regulatory boards in the Commonwealth with revenues that exceed one million dollars annually.

The Commission regulates real estate brokers and salespersons, rental location agents, real estate businesses, schools, and instructors. Following are the three major real estate practitioner groups:

1. A real estate broker sells, buys, or negotiates the purchase, sale, or exchange of real estate. Although only one type of broker license is issued, the Commission recognizes two classes of brokers: principal and associate. Principal brokers are responsible and liable for the business activities of their employees. An associate broker is someone who has obtained a broker license but works as a salesperson for a principal broker.
2. A real estate salesperson is employed by a principal broker for the purpose of buying, selling, or negotiating the purchase, sale, or exchange of real

estate. By law, the salesperson's license is held by the employing broker.

3. A rental location agent furnishes rental information to prospective tenants, assists persons in renting property for a fee, or solicits rental listings from landlords. Agents are prohibited from negotiating leases or offering to sell property.

As of May 1981, the Real Estate Commission had licensed 46,003 brokers, salespersons, and rental location agents, some of whom are currently not active in real estate. The Commission also granted 4,224 licenses to real estate firms, branch offices, schools, and rental location agencies.

Persons who sell or lease their own property, rental property managers, attorneys, trustees, receivers, and auctioneers are exempt from licensure provisions.

In addition to licensing real estate professions, the Commission has been given the responsibility of administering the following acts relating to real estate sales:

- the Fair Housing Act, which attempts to prevent discriminatory housing practices in Virginia;
- the Subdivided Land Sales Act, which protects consumers from fraudulent sales promotions for recreational subdivisions;
- the Condominium Act, which protects condominium unit purchasers through disclosure requirements;
- the Real Estate Transaction Recovery Act, which establishes a recovery fund to protect consumers from potential loss; and
- the Real Estate Time-Share Act, which protects time-share purchasers through disclosure requirements.

All 50 states license real estate brokers and salespeople. Thirty states, including Virginia, have established a recovery fund to protect consumers from financial loss.

The Real Estate Commission is composed of five members. Each member must have practiced as a real estate salesperson or broker for at least five years prior to appointment. Terms are for five years and no member may serve more than two terms. The Commission has met once a month or more since 1975.

The provisions in the *Code of Virginia* which govern the regulation of the real estate profession are Section 54-730 *et seq.*

REQUIREMENTS FOR APPLICANTS

To be licensed as a real estate salesperson in Virginia, an individual must meet the following qualifications:

1. be at least 18 years of age;
2. complete an approved 45-classroom-hour course (three semester hours) in the principles of real estate;
3. have a good reputation for honesty, truthfulness, and fair dealing and competence;
4. must not have had a real estate license revoked within five years or suspended within one year in Virginia or any other state;
5. must not have been convicted of or pled *nolo contendere* within five years to forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, bribery, burglary, robbery, a felony involving personal injury, or a violation of the Fair Housing Law;
6. pass the examination for real estate salespeople;
7. furnish a list of all residences and businesses for the last five years; and
8. provide a written statement from a licensed broker attesting to the applicant's honesty, truthfulness, and good reputation.

Custody and control of the real estate salesperson's license is given to the broker employing the salesperson. This arrangement ensures that the salesperson is not employed by competing brokers. The license is transferable to another broker upon payment of five dollars to the Commission.

Applicants for licensure as a real estate broker must meet the following requirements

in addition to all of the qualifications for the salesperson:

- have been engaged as a real estate salesperson for at least 36 of the previous 40 months;
- submit an affidavit from an employing broker affirming experience in real estate transactions;
- complete 12 semester hours in real estate courses (brokerage, finance, appraisal, law, and other subjects); and
- provide a statement declaring where and with whom business will be conducted.

Rental location agents must meet all of the requirements for a real estate salesperson but they do not have to be employed by a real estate broker. The license is placed in the custody of a supervising rental location agent.

A licensed broker or salesperson may become a rental location agent by surrendering the license along with a small fee to the Commission. A licensed salesperson may not concurrently hold a rental location agent license except with the written permission of the employing broker.

All applicants for licensure must pass the appropriate written examination. Since 1970 the exams have been directly administered by the Educational Testing Service, which receives applications, tests applicants, and reports results to the Commission.

Each exam consists of 80 multiple-choice questions developed by the Educational Testing Service and 20 to 30 questions developed jointly by the testing service and the Commission concerning Virginia's real estate laws and regulations.

The passing score for salespersons is 75 percent on the first and 60 percent on the State part. For brokers the corresponding passing scores are 75 and 66 percent.

More than 15,300 people took the broker and salesperson exams during FY 1979 and FY 1980 and 80 percent passed. This represents an increase in the pass rate which the Commission attributes to adopting a real estate course prerequisite for the examination after July 1, 1975.

The Real Estate Commission may waive the examination requirement for applicants licensed in states with requirements equivalent to Virginia's.

FEES AND EXPENDITURES

The following fee schedule has been adopted by the Real Estate Commission:

	<u>Initial License</u>	<u>Biennial Renewal</u>
Real estate salesperson	\$ 30	\$30
Real estate broker	50	50
Rental location agent	30	30
Real estate agency (partnership, association or corporation)	50	50
Rental location agency	50	50
Real estate schools	100	50 (annual)
Branch office	5	5
Late payment of renewal	-	15
Reactivation of inactive license	-	5

In addition, applicants pay an examination fee of \$14.50 directly to the Educational Testing Service.

The Real Estate Commission generates by far the largest amount of revenues and expenditures of any regulatory board in the State. The Commission accounted for 47 percent and 36 percent respectively of the Department of Commerce's total revenues and expenditures for the 1978-80 biennium.

During the same biennium, the Commission's revenues exceeded expenditures by \$903,395 as indicated below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$1,497,144	\$1,223,823	\$2,720,967
Expenditures	843,622	973,950	1,817,572
Balance	\$ 653,522	\$ 249,873	\$ 903,395

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Real estate licenses expire on June 30 of each even-numbered year. Those who fail to remit their biennial renewal fee within 60 days must re-apply as new applicants and

meet current education and examination requirements.

Inspections of real estate offices are conducted by Department of Commerce investigators generally in conjunction with a complaint investigation. Inspectors check to be sure licenses are current and displayed properly, they review sales and escrow accounts, and note whether the firm's office complies with the Commission's regulations concerning such things as equipment, supervision, accessibility to the public, and office identification.

Inspections are also conducted as part of the review of an application to open a private real estate school. These inspections focus on physical plant facilities and instructional aids.

Between 1975 and 1980, 2,205 inspections were conducted for the Real Estate Commission. Some of the inspections were conducted as a result of a fair housing complaint.

The Real Estate Commission considers only notarized complaints, except for fair-housing complaints and those initiated by Commission members, staff, and Department of Commerce investigators.

In FY 1980, the Real Estate Commission received more than one-third of all complaints filed with regulatory boards within the Department of Commerce; since 1975, more than 1,300 complaints have been investigated.

In 1980 investigations were completed for 260 complaints. Of these, 160 concerned misrepresentation and improper dealings, 29 concerned failure to remit funds, 12 dealt with physical office problems, ten involved books and records, and the remainder involved miscellaneous allegations. Several of the cases involved more than one type of complaint. Seventy-five percent of the complaints received were filed by consumers, and the balance was initiated by the Commission members, staff, and DOC investigators.

Violations which constitute grounds for disciplinary action include

- obtaining a license under false pretenses;
- acting for more than one party in a real estate transaction;
- representing two real estate brokers without the knowledge of the employing broker;
- placing a rental or sale sign on any

- property without the owner's consent;
- commingling funds;
- acting as a rental location agent in referring a prospective tenant to any property for which the agent has not verified the availability within seven working days;
- advertising in a false or misleading way that the property is "for sale by owners"; and
- using a service or franchise mark which does not conspicuously disclose that the business is independently owned and operated.

According to its regulations, the Commission will not become involved in disputes between licensees, in disputes concerning the payment of an employee's commission, or in the internal affairs of brokerage firms. Regulations also state that the Commission may revoke the license of a real estate broker for violations committed by an employee, salesperson, or associate, provided that the broker "knew or should have known" of the violation. Revocation of a principal broker's license automatically results in the suspension of the license of every salesperson employed or associated with the broker, pending his or her affiliation with another broker.

During the 1978-80 biennium, the Real Estate Commission issued 25 reprimands, 19 suspensions, nine monetary penalties, seven probations, and six revocations. In some cases, more than one type of action was taken.

In 1977, the General Assembly passed the Virginia Real Estate Transaction Recovery Act establishing a fund to protect consumers from financial harm resulting from the "improper or dishonest conduct" of real estate professionals. Improper or dishonest conduct is defined in Section 54-765.2 of the Code as "the wrongful taking or conversion of money, property or other things of value, and fraud, willful misrepresentation, or deceit."

Proponents of the fund saw its creation as both protecting the public and benefiting the real estate profession. In the past, real estate brokers were required to post a \$1,000 performance bond each year. When problems arose, consumers sometimes encountered difficulties recovering funds from bonding compa-

nies. With the establishment of the recovery fund, all licensees pay a small fee into the account and consumers' restitution is handled through the courts.

Each licensee is assessed a ten-dollar fee which goes exclusively to the fund. Fees are collected until the fund balance falls between the minimum of \$200,000 and the maximum of \$500,000. The Code specifies, however, that no licensee shall be assessed more than \$20 during a biennial licensing period.

Thus far, only one assessment has been conducted. Once the fund balance reached \$472,520, the assessment was terminated. Not all licensees were assessed. Commission and Department of Commerce officials indicate that those licensees who have not contributed to the fund can and will be identified through the department's computer system when the next assessment becomes necessary.

Monies collected for the fund are to be deposited in federally-insured financial institutions and kept separate from the licensing fee accounts. Interest in the fund is to pay for administrative costs and to accrue to the fund.

To file a claim, a consumer must first obtain a court judgment against the licensee for improper or dishonest conduct in connection with the sale, lease, or management of real property. After 30 days, the claimant may apply for a court order directing payment from the fund on any unpaid portion of the judgment provided that restitution could not be made by the licensee in any other way. The plaintiff in the case may not be a licensee.

The following limits have been placed on the amount of money that can be recovered from the fund for judgments against one licensee:

- \$20,000 maximum involving one creditor in connection with a single transaction;
- \$50,000 maximum involving aggregate claims against one licensee in connection with a single transaction; and
- \$100,000 maximum involving aggregate claims against one licensee in connection with more than a single transaction.

In cases where aggregate claims exceed the limit, the maximum permitted is to be

prorated among claimants. As a further penalty, and to recoup funds, the Commission revokes the license of anyone for whom damages are paid from the recovery fund. The license may be reinstated after the individual repays the fund outlay plus 8 1/2 percent annual interest.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Real Estate Transaction Recovery Fund

Although the Real Estate Transaction Recovery Fund was created in 1977, the first claims against the fund were not paid out until April 1981. During the interim, however, the fund exceeded the statutory limit of \$500,000 by approximately \$41,500 because of significant amounts of interest accrued and the lack of payments.

Since April 1981, a total of \$103,538 has been paid out of the fund. The first payment involved an aggregate claim by 56 claimants requesting \$100,591. The claims were filed against a Richmond real estate brokerage firm which had been placed in receivership a year earlier at the request of the Virginia Real Estate Commission after the firm had irregularities in its financial accounts.

The Real Estate Commission withheld payment on the claims it received for one year because it knew other claims against the brokerage firm would be forthcoming. The claims ranged from \$149 for a security deposit to \$15,150 for an investment company that had property with the firm. In accordance with State law, the Commission prorated the maximum allowable recoupment of \$100,000 so that the 56 claimants received a 99.41 percent share of their individual judgments. In addition to these payments, \$3,538 in other claims has been disbursed, and six claims against the recovery fund have been made between August and November 1981 which will amount to payments of an additional \$36,596.

Real Estate Commission officials are not sure why the recovery fund was not used before April 1981. It is possible, although unlikely, that no real estate cases which

went to court between July 1977 and April 1980, when the first claims were received, had resulted in unpaid judgments.

The public may not be sufficiently aware of the fund's existence or may be deterred from pressing legal action by court costs. A newspaper article publicizing the fund and its first payments resulted in three phone inquiries about potential claims against the fund.

To address these matters, the General Assembly may wish to allow the fund's interest to be used for related educational purposes, and to allow claimants to recover reasonable court costs and legal fees. These provisions are currently allowable under statutes which established a similar recovery fund for contractors under the State Board for Contractors.

Franchise Sign Regulation

A regulation adopted by the Virginia Real Estate Commission controlling the use of a "service mark" or the franchise logo of a national real estate corporation has been the center of controversy for several years. The regulation requires that advertisements disclose that the local firm is independently owned and operated, and the agency's name must be at least as conspicuous as that of the franchise logo.

Real estate franchises, such as Century 21, Realty World, ERA, and Better Homes, became prominent across the country during the early 1970s. The franchises provide several services to members including a national referral network of prospective clients, training seminars, and national advertising and promotional campaigns. The franchises are not, however, responsible for the performance of services by the local agency.

The Virginia Real Estate Commission adopted the franchise regulation in 1976 to become effective January 1, 1979. Although no complaints about franchise operations had been received, the Commission was concerned that prospective clients and other licensees might be misled into thinking they would be dealing with a national real estate firm whose reputation and financial resources might be very different from those of the local agency. This was believed to have the potential for giving the franchise firms an unfair advantage over independent agencies

and to make consumers think that liability extended to the national corporation.

Virginia's action was an outgrowth of a national concern about franchises, and similar regulations have been considered or adopted by real estate boards in other states. These actions have generated considerable controversy including several court challenges. In a frequently cited case, the courts ruled that the real estate commission in Nevada could appropriately promulgate regulations that limit the manner of commercial speech, such as prescribing specifications for sale signs. The regulations could deal with misleading or deceptive wording but not completely prohibit advertising.

Virginia's regulation has been challenged in court three times. In 1978, the Commission was sued in federal court by the Realty World franchise firm. The firm argued that the regulation violated the constitutional guarantee of commercial free speech. However, the judge ruled in favor of the Real Estate Commission citing the same criteria used in the Nevada case.

Century 21 Real Estate Corporation challenged the Virginia regulation in circuit court on the grounds that no State statutory authority existed on which to base the regulation. The judge ruled in the plaintiff's favor and permanently enjoined the regulation from being enforced.

In 1979, the General Assembly amended the general provisions of Title 54 in the *Code of Virginia* which detail the powers and duties of all regulatory boards under the Department of Commerce. Section 54-1.28(5) now gives regulatory boards the authority to promulgate regulations necessary "to prevent deceptive and misleading practices by practitioners." On the basis of this general statutory authority, the Real Estate Commission once again promulgated the franchise sign regulation in 1980, despite the opposition of the Board of Commerce. The Board of Commerce took the position that no demonstrable harm existed from the present practices of real estate agencies.

Century 21 has again challenged the regulation in circuit court on grounds that include lack of sufficient statutory authority. The case has been under advisement since January 1981. The Real Estate Commission has decided not to enforce the regulation until the court challenge is settled.

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STATE BOARD OF SANITARIAN EXAMINERS

Most sanitarians are employed by departments of public health to monitor environmental health conditions. Some activities include inspecting food service facilities, sampling water supplies, sampling soil, and controlling rodents and other pests. Regulation establishes minimum qualifications for using the title "registered sanitarian."

HISTORY AND SCOPE OF REGULATION

The State Board of Sanitarian Examiners was created in 1970. Virginia is one of 33 states that regulate sanitarian examiners. While 24 states issue licenses, Virginia is among the nine that certify qualified applicants. As of May 1981 there were 365 certificate holders in Virginia entitled to use the professional title "registered sanitarian." Obtaining a certificate is voluntary; it is not required to practice the profession.

The Board consists of eight members. Two *ex-officio* members, provided for by statute, are the Commissioner of the State Department of Health or a representative and the department's Director of Environmental Health. The six remaining members appointed by the Governor include four registered sanitarians, the director of a county health department, and a citizen member. Appointees serve four-year terms, and the Board meets at least once a year.

The provisions in the *Code of Virginia* which govern the Board of Sanitarian Examiners are Section 54-859.1 *et seq.*

REQUIREMENTS FOR APPLICANTS

To receive a certificate, an applicant must

1. be at least 18 years of age;

2. be of good moral character;
3. have earned at least a bachelor's degree in environmental health or the biological or physical sciences or completed 30 hours in the biological or physical sciences;
4. have obtained two years of supervised experience in the field of environmental sanitation;
5. have completed at least one year of graduate study in sanitary science; and
6. pass a certification examination required by the Board.

The Board is currently negotiating with the National Environmental Health Association for the use of the association's certification exam. Through April 1980 an examination prepared by the American Professional Health Association had been administered for the Board by J. Sargeant Reynolds Community College in conjunction with its Environmental Technology program. The college has recently discontinued the program.

The Board also has authority to certify without examination any person who is certified by another state with equivalent regulatory standards. Reciprocity agreements have not been established by the Board, however; each out-of-state applicant is assessed on an individual basis.

FEES AND EXPENDITURES

The Board charges a \$25 fee for processing an initial application for certification and examination and an annual renewal fee of \$15.

	FY 1979	FY 1980	Total
Revenues	\$4,178	\$4,109	\$ 8,287
Expenditures	7,485	7,764	15,249
Balance	(\$3,307)	(\$3,655)	(\$ 6,962)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

Renewals for FY 1980 accounted for 90 percent of all revenues because of the relatively small number of new applicants. There were 369 renewals and 13 new certificates issued.

ENSURING CONTINUED COMPETENCY

Sanitarians are required to renew certificates annually by January 1. The Board does not require routine inspections of the performance of registered sanitarians, and no inspections have been conducted.

The Board has not received any complaints against registered sanitarians since it was created in 1970. Board officials indicate that the local health departments that employ sanitarians receive and resolve complaints without involving the Board.

The Board can revoke, deny, suspend, or refuse to renew a certificate for any of the following reasons:

- conviction of a felony;
- excessive use of alcohol or drugs;
- display of incompetence which endangers the public health, safety, or welfare; or
- violation of any provision of the *Code* or the Board's regulations.

No disciplinary action has been taken against any certificate holder.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Scope of Regulation of Sanitarians

Although the establishment of the Board of Sanitarians is authorized by statute, the level of regulation is not specified. Determining the specific level of regulation is the prerogative of the General Assembly, however, and such language appears to have been inadvertently omitted from the *Code* during recodification in 1974. The Board has adopted a system of voluntary certification: sanitarians who meet the educational and practical requirements of the Board and pass a standardized exam receive a certificate of registra-

tion. They may use the title "registered sanitarian," which is also used in other states.

The regulation of sanitarians is somewhat unusual because most sanitarians are public employees who are subject to State and local personnel policies. In fact, Board officials explain that the Board does not receive complaints about sanitarians because the health department deals with its own employees. Of the approximately 518 sanitarians employed by the State, 512 are employed as environmental health inspectors for local departments of health. An additional 70 sanitarians are estimated to be employed in the private sector. But even these sanitarians do not practice with complete independence, because facilities for which they are responsible are also inspected by public sanitarians.

The General Assembly should establish the specific level of regulation through language in the *Code*. In that case, certification as it is presently administered appears to be the highest level necessary for the regulation of sanitarians. Licensure, which has been proposed by some groups, would be too restrictive an approach since it provides that only license holders can practice the profession. Under this form of regulation, the Board of Sanitarian Examiners would infringe on the hiring prerogatives of both State and local public agencies.

Although an estimated 65 percent of the publicly employed sanitarians hold certificates, certification is not a condition of employment or promotion in public agencies. Certification actually serves only to recognize a sanitarian's professional credentials on a voluntary basis. The same recognition could be accomplished if sanitarians were certified by a professional association. The General Assembly may wish to consider certification by a professional association as the credentialing method for sanitarians.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



BOARD FOR THE CERTIFICATION OF WATER AND WASTEWATER WORKS OPERATORS

A waterworks operator is responsible for the storage and purification of water that is distributed to the public for drinking or domestic use. A wastewater works operator is responsible for systems of sewage treatment that discharge industrial or other wastes into State waters. The purpose of regulation is to ensure that persons in charge of water or wastewater works have met a minimum standard of competence.

HISTORY AND SCOPE OF REGULATION

In the early 1950s a board for the voluntary certification of water and wastewater works operators was created through the combined efforts of the State Water Control Board, the State Department of Health, and related professional associations. This board was not established by statute as an agency of State government.

In 1970, the State Board for the Certification of Water and Wastewater Works Operators was created by the General Assembly as a mandatory licensing authority. Virginia became one of the 41 states that currently license waterworks operators. Virginia is also one of 42 states that license wastewater works operators. (Two additional states certify operators.)

The State assumed responsibility for the regulation of operators to carry out federal guidelines for wastewater treatment facilities constructed with federal funds and the provisions of Executive Order 11507. The guidelines required that grantees "provide a staff of qualified personnel adequate to operate the facility so as to achieve the highest level of

treatment." The Executive Order required that operators of federal facilities meet state certification requirements.

The State Department of Health has regulatory control over the operation of waterworks to ensure that public water is free from bacterial and chemical contamination. The State Water Control Board has regulatory control over wastewater works operations to ensure that treatment of waste adheres to federal and State water pollution laws. In accordance with provisions in the *Code of Virginia*, both agencies require that a certified operator be "in responsible charge" at all certified facilities.

More than 1,500 water and wastewater treatment facilities in the Commonwealth require licensed operators: approximately 1,030 water and 470 wastewater treatment facilities. The Board issues unlimited licenses to four classes of water and wastewater works operators as well as three other types of restricted licenses.

- *Unlimited licenses* are issued to all classes of operators based on the size and type of facility they are qualified to operate. A holder of an unlimited license may be employed in any facility in the specified class.
- *Limited licenses* are issued to individuals who were "in responsible charge of facilities" prior to the licensure requirement and who applied for licensure by July 1, 1977. A limited license authorizes the holder to operate at the facility for which the license is issued or a facility of the same type and classification under the same owner. The license is no longer valid if the facility is enlarged to a higher class or if the licensee moves to another facility. About one-third of the waterworks operators and 21 percent of the wastewater works operators hold limited licenses.
- *Operator-in-training licenses* are issued

to persons who have not yet met the experience requirements for licensure. This type of license is issued only if a facility owner cannot obtain the services of a fully licensed operator.

- *Temporary licenses* are issued in emergencies to allow a person who has not qualified for a regular license to serve as the operator in charge of a facility for a six-month period. The facility is considered to be operating without a qualified operator.

At the end of 1981, there were 2,425 licensed water and wastewater works operators in Virginia. Limited licenses were issued to 803 persons. During 1981, operator-in-training licenses were issued to 18 waterworks operators and seven wastewater works operators. Three temporary licenses were issued to wastewater works operators.

Water and wastewater systems serving fewer than 400 persons are not required to have licensed operators unless required by the State Water Control Board or the State Department of Health.

The Board for the Certification of Water and Wastewater Works Operators consists of seven members. Two *ex-officio* members, provided for by language in the *Code*, are the Director of the Division of Water Programs of the State Department of Health and the Executive Secretary of the State Water Control Board. Four members appointed by the Governor are operators holding a license of the highest classification at treatment facilities. One additional member must be a teacher of water or wastewater management at a State university or college. Each member of the Board is appointed for a four-year term, and members can serve for two terms. The Board meets about three times a year.

The provisions in the *Code of Virginia* which govern the State Board for the Certification of Water and Wastewater Works Operators are Section 54-573.1 *et seq.*

REQUIREMENTS FOR APPLICANTS

Board regulations for operator licenses include general requirements for all appli-

cants and specific requirements for individual classes of operators. All applicants are required to give evidence of good moral character, dependability, initiative, interest, and judgement, and applicants must pass the required examinations. The Board may also request references from owners or operators in charge at the facilities where the applicant is presently or was previously employed.

Applicants for licensure as water or wastewater works operators must meet the following requirements:

- *Class I* - Bachelor's degree in science or engineering and two years' experience as an operator of a Class II plant or higher; or
Three years of passing college work in science or engineering, or an associate's degree in water or wastewater plant operation, and three years' experience as an operator of a Class II plant or higher; or
A Class II license and a total of five years' experience as an operator.
- *Class II* - Bachelor's degree in science or engineering and one year's experience as an operator of a Class III plant or higher; or
Associate's degree in water and wastewater plant operation and two years' experience as an operator of a Class III plant or higher; or
Two years of passing college work in science or engineering and three years' experience as an operator of a Class III plant or higher; or
A Class III license and a total of four years' experience as an operator.
- *Class III* - Bachelor's degree in science or engineering and six months' experience as an operator; or
Associate's degree in water or wastewater plant operation and six months' experience as an operator; or
High school diploma or the equivalent and one year's experience as an operator; or
Two years of high school and three years' experience as an operator; or
A Class IV license and a total of four years' experience as an operator.
- *Class IV* - High school diploma or the equivalent and six months' experience as an operator; or

Eighth grade education or the equivalent and one year's experience as an operator.

An applicant's experience must be directly related to the operation of a water or wastewater works in order to merit full credit towards licensure. Partial credit may be given for experience in related fields, but such credit may not exceed 50 percent of the total required for any classification.

An applicant for a temporary license must submit an affidavit from the owner of a facility that (1) recounts the unsuccessful efforts to obtain the services of a qualified operator; (2) specifies the size, category and classification of the plant; and (3) includes a copy of notification to the appropriate State agency which regulates the facility that it is operating without a qualified operator.

An applicant for an operator-in-training license must submit an affidavit from the owner stating (1) the need for a licensed operator; (2) the efforts made to hire an appropriate licensee; and (3) the category and classification of the plant.

Licensure examinations for wastewater and water works operators are administered twice each year in five locations across the State. The tests are composed of multiple-choice questions and are taken open-book. Applicants who fail may be retested as many times as they request. In FY 1980, 1,046 applicants took the examinations, of whom about half passed.

Questions for the exams are selected from various sources including the Wastewater Treatment Personnel Examination Questions developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities. The training officers of the State Department of Health and the State Water Control Board select the questions for the water and wastewater works operators' exams respectively—based on their knowledge of the operators' responsibilities in Virginia. A committee of Class I operators then reviews the selected questions and deletes those that appear to be inappropriate or irrelevant to the actual experiences of operators. The Board has final review of all questions used on the examination.

The Board also has authority to grant licensure without examination to any applicant who is licensed by another state with equivalent regulatory standards. Each out-of-

state applicant is assessed on an individual basis; the Board has accepted applicants from Maryland, Pennsylvania, North Carolina, South Carolina, Tennessee and West Virginia.

FEES AND EXPENDITURES

Operators licenses are issued after payment of the following applicable fees:

Pre-examination	\$25
Initial license	50
Renewal	15

Board expenditures exceeded revenues for the past three fiscal years. During the 1978-80 biennium, expenditures exceeded revenues by 17 percent as shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$52,260	\$57,426	\$109,686
Expenditures	<u>57,587</u>	<u>70,647</u>	<u>128,234</u>
Balance	(\$ 5,327)	(\$ 18,548)	(\$13,221)

Source: Department of Commerce Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

In order to maintain licensure, operators are required to renew licenses annually by January 1.

The State Department of Health and the State Water Control Board inspect water and wastewater works respectively. The two agencies notify the Board in writing of any violations of Board regulations by operators observed during facility inspections. By written agreement, the Board reports to the State agencies the findings of investigations and any subsequent actions it takes against licensees. In 1980, the Board received six referrals from the two agencies. Investigations of complaints received by the Board are carried out by staff of the Department of Commerce.

Board records indicate that most complaints are those reported by the State agencies on the basis of facility inspections. Complaints received from the public usually refer to matters which come under State agency

control, such as water pollution and suspected dumping of illegal waste. Such complaints are referred to the appropriate agency without further action by the Board.

The Board has the authority to deny renewal, or to suspend or revoke a license if after a hearing it finds that the licensee

- is incompetent or negligent;
- has violated the Board's rules and regulations;
- has been found guilty of misrepresentation in obtaining an operator's license; or
- has not been working as an operator in a certified plant for nine of the previous 36 months or since first licensed.

Since its creation in 1970, the Board has taken no disciplinary actions against a licensee.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Failure Rate on Examinations

Well trained operators are needed to run modern water treatment plants. The General Assembly has recognized this need by requiring every treatment plant to have at least one licensed operator in charge. The Board for the Certification of Water and Wastewater Works Operators primarily screens applicants for licensure by using a standardized test for each class of operator. However, high failure rates on the exams have been a continuing source of concern which the Board has not been able to resolve. It is not clear whether the problem is the inadequate training and practical experience of applicants or the content and structure of the exams.

The Board has explored the possibility of using an examination developed by a national firm, but believes that the cost of doing so is prohibitive. The Board has attempted to deal with high failure rates by deleting or modifying questions that are missed by many applicants, by allowing an unlimited number of attempts to pass the exam, and by making training available at community colleges. However, some of these methods have been unsuccessful in ensuring the validity of the test or the quality of applicants. Repeated test-taking may result in

familiarity with the test, and deleted questions may be important to test critical skills and knowledge. Furthermore, according to Board officials, many operators do not attend the training programs.

It may be that many applicants are not qualified to become licensed and fail the exam for that reason. JLARC found in a study of water resources management in 1976 that a large number of wastewater treatment operators spent less than 20 hours weekly in the actual performance of an operator's duties. Therefore, some applicants may not possess sufficient experience in operations. Also, the exam is open-book and apparently understandable. According to a 1980 assessment of the exam by the National Association of Boards, the reading level of the exam is commensurate with the educational requirements for operator certification.

Nevertheless, the national association's assessment did highlight a major problem that exists in other states also. The Board has not validated its educational or experience requirements or the cut-off score on the exam relative to the job requirements of applicants. The association suggested that a panel of certified operators could work with the Board to match both specific academic courses and specific operational tasks with the educational and experience criteria for each level of certification. The exam could then be restructured to test critical areas.

The Board should take steps to (1) ensure that the examinations are measuring actual skills and knowledge needed by operators and (2) assess the characteristics of applicants who pass and fail the exam to detect possible reasons for failure. In addition, the Board should consider limiting the number of times an applicant may retake the exam without attending Board-sponsored or equivalent training and advising examinees who fail on subject areas in which they score low.

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VIRGINIA BOARD OF DENTISTRY

Dentists and dental hygienists provide clients with preventive care and treatment of the teeth, gums, and oral cavity. Regulation is intended to define the scope of practice and the qualifications for practitioners.

HISTORY AND SCOPE OF REGULATION

The Board of Dentistry licenses both dentists and dental hygienists. All states require licensure of dentists and dental hygienists except Alabama which does not license hygienists. Virginia's dentists became regulated in 1886, dental hygienists in 1951. As of December 1980, 3,746 dentists and 1,603 dental hygienists were licensed.

The practice of dentistry includes diagnosing or treating diseases of the oral cavity, extracting teeth, preparing artificial teeth, prescribing medicinal remedies for treatment of dental or oral diseases, and using x-rays and anesthetic agents for diagnosis and treatment. Dental hygienists clean and polish teeth and assist dentists in providing care and oral health education to the public. Hygienists are permitted to practice only under the "direct on-premises supervision" of a dentist.

Temporary permits may be granted to post-graduate students who render dental care in an educational setting, to instructors of dentistry and hygiene, and to clinicians for the State Department of Health and the Department of Mental Health and Mental Retardation. The Board may also grant "restricted" licenses to foreign practitioners who are teaching dentistry or dental hygiene.

Exempt from licensure are employees of the federal government and the military, students enrolled in dental degree programs, physicians, and certified nurse practitioners. Also exempt are persons engaged, by a written work authorization from a dentist, in the construction or repair of dentures, bridges, or other dental appliances.

A number of the Board's regulations address the business and professional practices of dentists. For example, dentists may employ only two hygienists at one time. They are also prohibited from practicing in a commercial setting, or practicing under a trade name or firm name. Advertisements by dentists may not contain a testimonial about or an endorsement of a dentist or contain language that is intended to attract patients by "showmanship, puffery, self laudation or hucksterism, including the use of slogans, jingles, or garish or sensational language or format."

The Board is composed of seven members appointed by the Governor; six are dentists and one is a dental hygienist. The hygienist may vote only on matters related to dental hygiene. Members must have practiced for at least three years and are limited to two successive five-year terms. The Board meets in formal session at least three times a year.

The provisions in the *Code of Virginia* which govern the regulation of the dental profession are Section 54-146 *et seq.*

REQUIREMENTS FOR APPLICANTS

Applicants for licensure as a dentist or dental hygienist must be at least 18 years of age and must present a certificate of good moral character signed by two dentists, in addition to meeting the following specific criteria:

- *Dentists* must graduate from an approved dental school; pass the National Board and regional dentistry

examinations; and pass the Board's exam on Virginia dental laws and regulations.

- *Dental Hygienists* must graduate from an approved dental hygiene program; pass the National Board and regional hygienist examinations; and pass the Board's exam on Virginia dental hygiene laws and regulations.

In addition to the regional and State licensure exams, students in both professions take national exams developed by a consortium of the American Association of Dental Examiners, the American Association of Dental Schools, and the American Dental Association as a prerequisite to completing their coursework and State licensure.

Since December 1975, the regional examinations have been designed, administered, and scored by the Southern Regional Testing Agency, a consortium of the dental boards of Tennessee, Arkansas, Kentucky, and Virginia. Prior to this arrangement each state board was responsible for its own exam.

The regional examinations for dentists have four parts. The first two portions consist of a series of slides which the examinee must correctly identify for pathology, diagnosis, and treatment. The second two parts test the applicant's clinical ability to perform such professional tasks as restorations, cleaning, and impressions.

The regional exams for dental hygienists have three parts. The first two portions consist of a series of slides which the examinee must correctly identify for pathology and diagnostic radiological interpretations. The next portion is a clinical exam that tests the applicant's ability to perform such professional tasks as dental charting, oral prophylaxis, and the exposure of dental x-rays.

Statistical information on the number of persons taking and passing the exam is maintained by the agency and is not readily available by state. The State exam was developed by the Board and tests the applicant's knowledge of Virginia's dentistry laws and regulations. It is usually taken at the same time as the clinical exam.

No reciprocity agreements exist with other states. However, the regional exam requirement is waived by the Board for applicants that have passed that exam within the last five years.

FEES AND EXPENDITURES

The Board of Dentistry assesses the following licensure fees for dentists and dental hygienists:

Dentists	
Application	\$80
Biennial renewal	40
Duplicate	10
Temporary	50
Teachers	50
Dental Hygienists	
Application	\$60
Biennial renewal	20
Duplicate	10
Temporary	50
Teachers	50

During the 1978-80 biennium, the Board's appropriations exceeded revenues by \$18,679 and expenditures by \$96,587 as indicated below.

	FY 1979	FY 1980	Total
Revenues	\$198,661	\$30,995	\$229,656
Appropriations	122,665	125,670	248,335
Expenditures	82,599	69,149	151,748
Balance	\$ 40,066	\$56,521	\$ 96,587

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Renewal of biennial licenses is due by March 1 of odd-numbered years, and dental offices are inspected on a time-available basis by inspectors of the Department of Health Regulatory Boards. Between 1978 and 1980, 178 of the estimated 1,500 dental offices in the State were inspected.

DHRB investigators (1) review dental work authorization records; (2) check to see that current licenses are properly displayed; (3) observe the activities of unlicensed auxiliary personnel such as dental assistants to ensure they are not engaging in licensed

activities and to determine that dental hygienists are providing services within their scope of licensure; (4) ensure that only persons having satisfactorily completed a course or exam in radiation safety are administering x-rays; and (5) review drug records and storage.

Between 1978 and 1980, 191 complaints were filed with the Board. Of these, 58 were found to be invalid and 33 either required no action for disposition or were beyond the Board's jurisdiction. The most common complaints concern the fit of dentures and excessive fees. The Board has no authority to regulate practitioner fees, however.

The Board may take disciplinary actions in cases which involve

- fraud or misrepresentation in obtaining a license or in the practice of dentistry;
- conviction of a felony or crime involving moral turpitude;
- alcohol or drug addiction;
- unprofessional conduct;
- negligent practice;
- employment of unlicensed persons;
- willfully permitting a dental hygienist to violate the law or regulation; or
- false, deceptive, or misleading advertising.

The Board has a number of sanctions at its disposal, including consent orders, reprimands, fines up to \$1,000, temporary suspensions, probations, and permanent revocations. Often these sanctions are used together, for example, to suspend the dental practitioner's license for six months and then to place him or her on a two-year probation.

Twenty-five disciplinary actions were taken in FY 1980: the Board revoked one license, placed eight practitioners on probation or suspended their licenses, and issued ten cease and desist orders and six reprimands.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Role of Dental Hygienists

Dental hygienists are auxiliary personnel who assist dentists. They may perform services which are educational, diagnostic, therapeutic or preventive in nature, but direct supervision of a dentist is required at

all times. The Virginia Dental Hygienist Association is proposing statutory changes (1) to redefine supervision in a way that would expand their scope of practice and (2) to permit the full representation of hygienists on the Board of Dentistry. The Virginia Dental Association opposes these proposed changes.

The Board of Dentistry regulates the practice of dentists and all auxiliary personnel including hygienists and dental assistants. Dentists and hygienists receive formal training and are licensed by the Board, while assistants receive their training on the job or at community colleges and are not licensed. The dentist may delegate tasks to assistants that are specified in regulation. Hygienists may perform all of those tasks plus additional services specified in regulation, such as performing preliminary examinations of the oral cavity, scaling, root planing, and polishing natural or restored teeth. No distinction is made between the level of supervision necessary for assistants and hygienists. The regulation specifies that "the dentist must in all cases be present and observe the patient and evaluate the services performed by the assistant or dental hygienist before allowing the patient to leave the office."

Dental hygienists argue that direct supervision is too restrictive because they are licensed professionals who have received extensive training and who have demonstrated their competence by passing a national examination. They believe that the scope of practice detailed in regulation restricts their ability to perform additional tasks such as completing the restoration of teeth. Moreover, the requirements for on-site supervision also preclude their extending the availability of dental care by providing basic preventive service in settings such as nursing homes and underserved rural areas. They believe that such services could be provided under the general supervision of a dentist.

The Virginia Dental Hygienists Association supports a statutory change to require general supervision instead of direct supervision by a dentist. General supervision as defined by the American Dental Association provides that dental procedures will be carried out in accordance with the dentist's diagnosis and treatment plan. However, the physical presence of and observation by a dentist would not be required. According to

the hygienist association, respondents to a survey of all licensed hygienists in Virginia indicated support for a revised definition and for practice in settings other than the traditional private office of a dentist.

An American Dental Hygienist Association document indicates that 26 states currently permit hygienists to perform at least some functions under general supervision. Recent studies by the U.S. General Accounting Office and the Council of State Governments have favored greater flexibility for dentists to delegate tasks, such as completion of tooth restoration, to auxiliary personnel. The Federal Trade Commission has also questioned the necessity for such extensive regulatory requirements concerning the practice of both auxiliary personnel and dentists and has further questioned the prohibition of dentists' practicing in commercial settings or employing more than a specified number of auxiliary personnel.

The Virginia Dental Association believes that direct supervision of dental hygienists is necessary to ensure that patients receive adequate care and that medical emergencies are dealt with immediately. They feel that geriatric patients in nursing homes should not be provided with oral hygiene treatment without prior examination and evaluation by a dentist. They also state that the current level of training for hygienists would have to be expanded to encompass more skills. Moreover, the dental association does not believe

that additional training for hygienists and outreach activities by this profession are necessary, because there is a more than adequate supply of dentists in the Commonwealth. Although a State Department of Health study in 1978 showed that many Virginians had not received recent dental care, the association feels that people are simply not taking advantage of available services.

Although the Virginia Dental Association supported the addition of a dental hygienist to the Board of Dentistry in 1977, it does not support a change in the statute to permit full voting privileges for the dental hygienist member of the Board or for the addition of other hygienists. The Virginia Dental Hygiene Association has noted, however, that 20 states give full voting rights to hygienists on dental boards. And the hygienist association states that since the primary role of the Board of Dentistry is the oversight of the practice of dentistry and dental hygiene, "there is no rationale to deny one of the regulated licensed professions full participation in the regulatory process."

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VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Funeral directors and embalmers are engaged in businesses that prepare the dead for burial or cremation and provide facilities for viewing the body and for funeral services. Regulation is intended to ensure that practitioners are qualified to handle dead bodies properly and that business practices are fair to bereaved families.

HISTORY AND SCOPE OF REGULATION

Virginia was the first state to regulate the funeral industry. The State Board of Embalming was created in 1894 because of concern that improper handling of dead bodies could spread infection. The Board's name was changed in 1956 to the Virginia Board of Funeral Directors and Embalmers. In recent years business practices have become a focus of the Board because of national concerns that bereaved families are subjected to undue pressure and as a consequence incur exorbitant expenses. All states except Colorado currently regulate funeral directors and embalmers.

Prior to 1972, the Board licensed funeral directors and embalmers under separate licenses. An amendment to the *Code of Virginia* created the category of "funeral service practitioner" to include both directors and embalmers. Previously licensed directors or embalmers could retain categorical licensure or be considered by the Board for licensure as funeral service practitioners. As of March 1981, the Board had licensed 36 embalmers, 450 funeral directors, and 973 funeral service practitioners. An additional 200 persons were registered as resident train-

ees under the supervision of a licensed practitioner.

The Board also approves schools of embalming and maintains a list of approved schools for training applicants for licensure in Virginia. As of March 1981, the Board had approved one school in Virginia and 36 schools in other states. All of the schools are certified by the American Board of Funeral Services.

While the State Department of Health monitors the compliance of funeral establishments with local ordinances concerning health and safety, these establishments may not operate without a permit from the Board. As of March 1981, 476 separate permits were issued for main offices, branch offices, or chapels at other locations. The Board's focus on sound business practice has resulted in the following regulations:

- Persons contracting for funeral services must be provided a written itemized list of charges and services and a statement of all anticipated cash advances and expenditures.
- Funeral directors or their employees may not interfere with the freedom of choice of the next of kin.
- False and misleading advertising is prohibited.

Employees of local or State institutions and State medical examiners are exempted from licensure, as are persons who manufacture or sell caskets. Code provisions also do not apply to the burial of dead bodies of paupers or inmates of State institutions when buried at the expense of the State or of a political subdivision of the State.

The Board is composed of five licensed funeral service practitioners and two citizen members. Members are appointed for seven-year terms and cannot succeed themselves. The Board meets about 11 times a year.

The provisions in the *Code of Virginia* which govern the Board of Funeral Directors and Embalmers are Section 54-260.64 *et seq.*

REQUIREMENTS FOR APPLICANTS

Licenses for funeral service practitioners may be granted to any applicant who

1. is a resident of Virginia;
2. is at least 18 years old;
3. is of good moral character;
4. has graduated from high school or the equivalent;
5. has completed two years of resident traineeship;
6. has graduated from an approved school of mortuary science; and
7. has passed the Board examination.

Applicants applying for registration as a resident trainee are required to be of good moral character and to have graduated from high school or the equivalent. Board members review all applications, transcripts, and supporting affidavits. The requirements for a resident traineeship may be waived on an individual basis at the Board's discretion, based on the applicant's previous work experience and educational background.

The training program consists of a two-year apprenticeship in all aspects of funeral services. The trainee is required to spend 40 hours a week at an approved funeral establishment and to participate under licensed supervision in all areas of funeral service including funeral directing and embalming. A report must be made to the Board every six months on the progress of the trainee and the amount of time spent in training. The final report must include a listing of all cases served during the traineeship.

Permits for funeral establishments themselves are issued upon verification by the Board that the following conditions have been met:

1. that the licensee has a full-time licensed person in charge at each facility for which a permit is to be issued; and
2. that each establishment contains a preparation room equipped with a tile, cement, or composition floor, and that there are proper drainage, ventilation, and necessary instruments and supplies for the preparation and embalming of dead human bodies.

Applicants for licensure must pass a two-part written examination. The first part,

which tests knowledge of mortuary science, is developed by the National Conference of Funeral Examining Boards. The second part is developed by the Board and consists of questions on rules and regulations applicable in Virginia.

An applicant must score at least 75 percent on both parts of the test in order to be licensed. Each applicant has three chances to pass. A different exam is given whenever an applicant fails the examination and needs to be retested. Alternate versions of the national exam are used for subsequent tests. In some instances, the first part of the exam may be waived if the applicant has successfully passed the National Board of Embalmers' exam given at mortuary colleges.

Although practical and oral portions of the exam are specified as required in the Board's regulations, neither is currently administered. The practical exam was discontinued in 1970, because it was difficult to hold a regularly scheduled exam for which embalming techniques had to be performed on a newly dead body and because such instruction and evaluation are included in the program of mortuary science colleges. The oral exam was discontinued in May 1980 by the Department of Health Regulatory Boards because of alleged lack of objectivity by the Board. The Board currently interviews each applicant for informational purposes.

Virginia has established reciprocal licensure agreements with Ohio, Missouri, and Florida by which the Board may give full or partial exemption from the Board's in-service training requirements. According to Board officials, licensure by endorsement legislation in these States has weakened such reciprocal agreements with Virginia. "Courtesy Card" agreements have also been established with Maryland, the District of Columbia, and West Virginia. This arrangement permits a licensee from those jurisdictions to remove bodies from this State or to arrange funerals in this State, but not to establish a place of business or engage in the practice of embalming.

FEEES AND EXPENDITURES

The Board has established the following fees:

Funeral Service Practitioner Examination	
In-state applicant	\$ 50
Out-of-state applicant	150
Initial license	70
Renewal	70
Resident Trainee registration	20
Establishment certificate	50
Courtesy card	50
Funeral Director license renewal	40
Embalmer license renewal	40

During the 1978-80 biennium, revenues from fees totalled \$154,575 and the Board received an appropriation of \$144,875. For the first time in the Board's history, expenditures exceeded appropriations for the biennium as indicated below:

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$119,235	\$35,340	\$154,575
Appropriations	72,610	72,265	144,875
Expenditures	71,621	76,163	147,784
Balance	\$ 989	(\$ 3,898)	(\$ 2,909)

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Biennial renewals are due by March 1 of each odd-numbered year. Courtesy Cards are granted for one year and expire on December 31 of the year issued. Permits of resident trainees are renewed each year.

The Board employs an inspector to monitor compliance with its rules and regulations. Facilities are inspected to ensure that there are

- hot and cold running water;
- sinks connected with public water;
- metal or porcelain morgue tables;
- means for sterilization of instruments;
- clean gowns or aprons and rubber gloves for each person in the embalming room;
- a clean and sanitary embalming room;
- a hydro-aspirator equipped with a vacuum breaker; and

- a full-time licensed employee on duty at each establishment.

Contracts are also checked to determine that itemized statements are given to each consumer and that statements are properly signed by a licensed employee of the funeral establishment.

During FY 1980, 103 inspections were conducted. The major types of violations found included the signing of consumer contracts by unlicensed employees, the absence of a full-time manager at branch offices, and unsanitary conditions in embalming rooms.

The Board also receives complaints of which 22 were received during FY 1980. Upon investigation, only one of these was found to require Board action. Since 1980, the Board had two cases pending formal hearings and another case on appeal in the circuit courts. The majority of the complaints received by the Board came from consumers. Typical complaints involved the failure of licensees to provide clients with itemized bills and the failure to submit monthly statistical reports to the State Department of Health's Bureau of Vital Statistics.

Grounds for disciplinary action include

- conviction of a felony or crime involving moral turpitude;
- misrepresentation or fraud in conducting business;
- false or misleading advertising;
- solicitation of dead human bodies;
- employing persons on a commission basis for the purpose of influencing funeral services;
- aiding unlicensed persons to practice;
- overuse of alcohol or drugs;
- violating State law or municipal or county ordinances affecting the handling, custody, care or transportation of dead human bodies;
- refusing to promptly surrender a body upon request by the person lawfully entitled to custody;
- knowingly making false statements on a certificate of death;
- knowingly removing or embalming a body when a crime or violence is connected with the cause of death, or cremating a body without the permission of the State medical examiner; and

- interfering with the freedom of choice of the general public to obtain the funeral services of their choice.

Since FY 1977, the Board has taken 33 disciplinary actions. Formal hearings were held in seven cases. Cease and desist orders were issued in 21 cases and penalties were imposed in five cases.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Required Staffing of Funeral Establishments

The Virginia Board of Funeral Directors and Embalmers does not consistently enforce the statutory provision that a full-time license holder be present at each funeral establishment. A funeral establishment is defined in Section 54-260 of the *Code* as any place, including a main office, branch, or chapel, where any part of the profession is performed.

According to a Board official, the requirement causes excessive hardship in some

instances. Therefore, the Board has allowed extended periods of time for compliance by the licensee. This waiver has occurred when a chapel is at a different location from the main office and the chapel is used only for the viewing of a body or a wake service. The waiver allows licensees at other funeral establishments to be designated managers at these chapels or branch offices.

It does not appear, however, that the Board has the authority to grant waivers of staffing requirements. If the requirement is believed to be excessive, then repeal or modification of the requirement should be recommended to the General Assembly. The statute could be amended to require staffing of chapels only when in use.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



Physicians and other medical professionals deal with the maintenance of health and the prevention, alleviation, and cure of disease. Regulation is intended to ensure that practitioners meet educational standards and are mentally and physically able to practice.

HISTORY AND SCOPE OF REGULATION

In the late nineteenth century, medical societies throughout the country supported State regulation to restrict the practice of medicine to physicians trained in medical schools.

Virginia began regulating the practice of medicine and surgery in 1884. Originally the Board licensed only medical doctors, but through the years nine categories of professionals in the field of human health have come under the Board's jurisdiction.

As of 1980, Board licenses for 16,305 practitioners and certificates for 122 physician's assistants were in force.

<u>Practitioners</u>	<u>Number</u>
Medical Doctors	14,241
Osteopaths	119
Podiatrists	252
Chiropractors	174
Clinical Psychologists	343
Physical Therapists	1,065
Physical Therapy Assistants	111
Physician's Assistant I	38
Physician's Assistant II	84

Exempt from regulation by the Board of Medicine are visiting practitioners, such as members of the armed forces, foreign practi-

tioners serving their country's diplomatic personnel, and consultants invited to speak, teach, or render a professional opinion.

The Board of Medicine interacts with several other boards. For example, the Board of Pharmacy provides the Board of Medicine with the results of drug-related complaint investigations of medical professionals. Responsibility for the regulation of clinical psychologists is divided between the Board of Psychology and the Board of Medicine, and regulations for certified nurse practitioners are jointly promulgated by the Board of Nursing and the Board of Medicine.

Licensure of physicians is required by all 50 states and the District of Columbia. All 50 states and the District of Columbia regulate physical therapists, and all states except New Jersey regulate physician's assistants. Three states do not regulate clinical psychologists: Missouri, South Dakota, and Vermont.

The State Board of Medicine has 14 members appointed by the Governor. Language in the *Code* specifies that membership must include one physician from each of the ten congressional districts, an osteopath, a podiatrist, a chiropractor, and a clinical psychologist. Terms of office are five years with a limit of two successive terms for all members except the member who serves as secretary of the Board.

Committees have been established by the Board to carry out certain functions. In accordance with a provision of the *Code of Virginia*, the Board may appoint a medical complaint investigation committee composed of three licensed physicians who are not Board members. The committee has the power to subpoena, take evidence and recommend to the Board whether sufficient grounds exist for further action against a licensee.

A standing advisory committee also advises the Board on regulation of physical therapists. In addition, a central psychiatric advisory committee and three regional

committees have been established by the Board. Each regional committee is composed of a chairman who is a member of the central committee, and two psychiatrists, and is served by a psychologist who tests practitioners subject to disciplinary action. The central committee provides advice to the Board on the fitness of practitioners who are subject to disciplinary action because of mental, emotional, or substance abuse problems.

In accordance with the *Code*, the Board must meet at least once each year, with nine members constituting a quorum. During 1980, 44 meetings were held by the Board or its committees.

The provisions in the *Code of Virginia* which govern the Board of Medicine are Section 54-273 *et seq.*

REQUIREMENTS FOR APPLICANTS

To become licensed or certified in a health profession, an applicant must be at least 18 years of age and of good moral character. Education and examination requirements differ among professional categories.

- *Medical Doctors and Osteopaths* are required to have four years of professional education. Most graduates of accredited medical schools in the United States take the first two parts of a National Board examination prior to graduation. After completion of a one-year internship, they take the third part of the exam. Parts one and two of the exam cover basic science and the practice of medicine respectively. Part three is clinically based.

Physicians trained in other countries, graduates of non-accredited schools, and students electing not to take the National Board exam must take a ~~three-part~~ National Federal Licensing Exam (FLEX). Additionally, in Virginia foreign-trained physicians must serve a one-year internship prior to licensure.

- *Podiatrists and Chiropractors* are required to have graduated from accredited professional educational programs. Podiatrists must pass the first two parts

of the exam given by the National Board of Podiatry Examiners. Chiropractors take the first part of the National Board of Chiropractors Examiners exam.

- *Clinical Psychologists* are required to have a Ph.D. and two years of experience, and to have completed a one-year internship prior to licensure. They are examined by the State Board of Psychology.
- *Physical Therapists and Assistants* are required to have four years and two years of college, respectively. They must pass an exam developed by the Professional Examination Service.
- *Physician's Assistants I* are required to have completed high school and an approved program for physician's assistants, and show proof of having passed an examination given by the National Commission for Certification of Physician's Assistants or the Examining Board of the American Society of Podiatric Assistants.
- *Physician's Assistants II* are employed by the Department of Corrections and are certified on the basis of experience and completion of an approved training program in lieu of an examination. They may function in this capacity only while employed by the Department of Corrections.

Applicants for licensure by endorsement must have passed an examination equal to the examination in Virginia or all three parts of the FLEX examination. Applicants may also be accepted for endorsement who have been in practice in the United States or its armed services or have been licensed by another state for at least ten years. Diplomates of national specialty boards, of the Licensing Medical Council of Canada, of the National Board of Medical Examiners, or of the National Board of Osteopathic Examiners are exempt from examination.

FEES AND EXPENDITURES

During the 1978-80 biennium the Board collected revenues of \$854,228, had expenditures of \$681,025 and received appropriations of \$723,805 as shown below.

	FY 1979	FY 1980	Total
Revenues	\$432,533	\$421,679	\$854,228
Appropriations	351,580	372,225	723,805
Expenditures	340,182	340,843	681,025
Balance	\$ 11,398	\$ 31,382	\$ 42,780

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and FY 1980.

The following fees apply to professions regulated by the Board:

Initial examination	\$175
Re-examination - Part I	80
Part II	80
Part III	85
Endorsement	175
Endorsement to another state	25
Limited license to professors	50
Duplicate license	2
Penalty for non-payment	25
Annual drug permit	20
Renewal (except Clinical Psychologist)	15
Renewal for Clinical Psychologist	20

ENSURING CONTINUED COMPETENCY

Annual renewal of licenses and certificates are due prior to June 30. Renewal fees from clinical psychologists are divided equally between the Board of Medicine and the Board of Behavioral Science.

Routine inspections are not conducted by the Board of Medicine. Pharmacy inspectors may check medical facility drug records as a result of a complaint investigation and report violations to the Board of Medicine for further action.

Complaints involving standards of practice and/or medical, mental, or physical incompetence are referred to the medical complaint investigation committee. The committee evaluates the evidence and submits its recommendations to the Board. The Board takes appropriate disciplinary actions through formal proceedings.

In the six-month period ending December 31, 1980, there were 66 complaints filed

against licensed professionals as shown below. A total of 161 complaints are currently under investigation including carry-over complaints from previous fiscal years.

Complaint Category	FY 1979	FY 1980
Indiscriminate prescribing of drugs	71	65
Standards of practice	67	74
Controlled substance abuse	13	5
Miscellaneous	21	17
Total	172	161

Disciplinary action can be taken by the Board if a practitioner

- engages in the practice under a false name, or impersonates another practitioner;
- prescribes or dispenses controlled substances with intent or knowledge that the drugs will be used for other than medicinal purposes;
- makes statements about a secret cure or treatment for certain ailments;
- undertakes to practice physical therapy independent of a referral and direction of a licensed doctor;
- commits a felony under State or federal law, or any act involving moral turpitude;
- conducts a practice in a manner contrary to the standards of ethics of the profession or in a manner as to endanger the health and welfare of patients;
- uses drugs, alcohol, or other chemicals to excess;
- dispenses, administers, or prescribes medicines or drugs and is not registered by the Board of Pharmacy to do so; or
- engages in selling drugs or other narcotics for personal gain.

Disciplinary actions taken by the Board between FY 1978 and FY 1980 are shown below:

Disciplinary Action	FY 1978	FY 1979	FY 1980
Reinstatement	6	13	4
Probation	5	14	20
Suspension/Revocation			11
Surrender of license	1	1	7
Reprimand			3
Cease and desist orders			1
Other			1
	12	28	47

AREAS OF SPECIAL LEGISLATIVE INTEREST

Examination for Chiropractors

The Board of Medicine currently does not use Parts II and III of the FLEX examination for chiropractors because these exams do not, in the opinion of the Board, adequately measure the clinical competency of applicants. Instead, the exam given in Virginia is designed, administered, and graded by the one member of the Board who is a practicing chiropractor.

Such a testing process is generally avoided in professional testing because it is difficult to establish test validity and guard against undue subjective bias in testing procedures. Most occupational or professional boards that administer a state exam use independent examiners, or use a panel of examiners.

The Board of Medicine recently discontinued its own practice of having one podiatrist design, administer, and grade an exam of podiatric applicants. The validity of procedures for that exam and other procedures used by the Board were challenged in federal court in 1976. The suit was dismissed because of lack of federal jurisdiction. However, an official of the Board indicated that the podiatric exam was discontinued because the court commented unfavorably on the procedure of allowing a single examiner to have so much discretion over the examination process.

The Board of Medicine has contracted with a national testing service to develop a new exam for podiatrists. In the interim the Board is accepting for licensure a Doctor of Podiatry who is a diplomate of the National Board of Podiatry Examiners in lieu of testing.

Since the chiropractor examination process has flaws similar to those identified in the exam for podiatrists, the Board of Medicine should also revise the examination process for chiropractors. Using more than one examiner would be a step towards establishing better test procedures and would eliminate possible bias. Board officials indicate that the National Board of Chiropractic Examiners has been contacted and they are in the process of developing the third section for national use.

Regulation of Clinical Psychologists

The Board of Medicine has recently proposed statutory revisions that will affect the regulation of clinical psychologists. Currently the regulatory responsibilities and fees for the profession are divided between the Board of Medicine and the Board of Psychology. This involves not only two boards, but two departments, because the Board of Medicine is within the Department of Health Regulatory Boards and the Board of Psychology is within the Department of Commerce. Although, seen by the Board of Medicine as housekeeping measures, the revisions are opposed by the Department of Commerce and the Board of Psychology.

The dual regulatory arrangement has existed since 1966 and was apparently established because clinical psychologists generally function in a medical setting and obtain status from a medical license. The Board of Psychology screens, examines, and recommends applicants for licensure. Recommended individuals are licensed by the Board of Medicine and subject to its discipline. However, responsibility for the investigation of complaints has never been clearly established in practice. Officials of the Board of Medicine indicate that the Board has taken disciplinary action in 1975 against one clinical psychologist. The Board of Psychology has investigated three cases of alleged unlicensed practice of clinical psychology since 1977.

Because of the dual responsibility, fees are split between the two boards. The Board of Medicine collects renewal fees, and, by law, must reimburse half of the amount collected to the Board of Psychology. However, the Board of Medicine has recently proposed repeal of the reimbursement requirement. In FY 1980, reimbursement to the Board of Psychology amounted to \$3,430.

The Board of Medicine has also considered proposing an amendment to the Code which would permit the Board to prescribe rules and regulations governing the content, administration and grading of licensure examinations for clinical psychologists or to accept the examination given by the Board of Psychology. According to the Board's executive director, this amendment would serve to make requirements for clinical psychologists consistent with requirements for

other professions regulated by the Board. The executive director has stated that the intent is not for the Board to ever reject an applicant referred by the Board of Psychology.

These issues highlight duplication of responsibility for the regulation of clinical psychologists. Other areas of overlap include

- dual licensure of 83 clinical psychologists who are also licensed by the Board of Psychology;
- licensure by the Board of Psychology in the category of "Psychologist (Clinical)." Practitioners apparently have the same scope of practice as clinical psychologists; and
- required representation of clinical psychologists on both boards. One

member of the Board of Medicine is a clinical psychologist and three members of the Board of Psychology are clinical psychologists by training.

The responsibilities of the two boards should be clearly defined. Moreover, the General Assembly may wish to assign full responsibility to regulate clinical psychologists to one board.

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VIRGINIA STATE BOARD OF NURSING

A nurse engages in the care of persons who are ill, injured or experiencing changes in normal life processes. Regulation is intended to ensure that nurses and certified nurse practitioners, who assist physicians, are qualified to practice and that educational programs adhere to accepted standards.

HISTORY AND SCOPE OF REGULATION

Virginia was one of the first states to begin regulating nursing in 1903. The State Board of Nursing licenses registered and practical nurses, certifies nurse practitioners, and accredits nursing education programs. While all the states license registered and practical nurses, six states and the District of Columbia do so through separate regulatory boards. A "professional" or "registered" nurse provides patient care, including administering medications under the direction of a physician, and may supervise or teach other nurses. A "licensed practical nurse" works under the direction of either a physician or a registered nurse.

A certified nurse practitioner is a licensed registered nurse who has completed a program designed to prepare nurses for advanced clinical practice. They may assume additional responsibility for medical activities under the direction of a physician. Such activities include recording a patient's medical history; performing physical examinations; initiating and conducting selected diagnostic procedures; recommending a diagnosis and/or treatment plan to the physician; implementing a prescribed treatment plan; and initiating emergency treatment in the absence of a

physician. Nurse practitioners function in hospitals, physicians' offices, and clinics, and they have helped to fill the gap created by the shortage of physicians in rural areas. The Board of Nursing is jointly responsible with the Board of Medicine for promulgating regulations for nurse practitioners.

The Board accredits four types of nursing programs: baccalaureate degree programs offered by colleges or universities; associate degree programs typically offered by community colleges; hospital diploma programs; and practical nursing programs offered by public schools, hospitals, community colleges, and federally funded agencies. New nursing programs must be approved by the State Council of Higher Education for public colleges and universities, and by the State Department of Education for secondary schools, before they can be accredited by the Board of Nursing. Board of Nursing accreditation is required for the legal operation of schools of nursing and practical nursing.

In 1980, Board licenses for more than 31,000 registered nurses and 12,000 practical nurses were in effect as well as certificates for 612 nurse practitioners. Because of changes in the Board's renewal cycle, however, these figures do not accurately represent the total number of licenses in force.

Exemptions to licensure include nursing students, new graduates from Board-approved schools pending the results of the first licensing exam after graduation, aides, assistants, employees of the federal government, and persons furnishing nursing assistance in an emergency.

The State Board of Nursing consists of five registered and two practical nurses. Board members are appointed for five-year terms and may be appointed for a second term. The Board is required to meet once annually. Generally the full Board meets five times a year while committees meet as often as necessary.

The Board's staff includes three full-time nurse consultants who are registered nurses. One of the major duties of these consultants is to survey the nursing education programs and provide consultation services for faculty. They review new programs and re-evaluate existing programs in accordance with Board standards on a five-year cycle.

The provisions in the *Code of Virginia* which govern the regulation of nurses are Section 54-367.1 *et seq.* The provision which governs the regulation of certified nurse practitioners is Section 54-274.

REQUIREMENTS FOR APPLICANTS

Applicants in each nursing category must be of good moral character and must meet the specific criteria for their respective areas:

- *Registered Nurses* must complete four years of high school or the equivalent, obtain a degree or diploma from an accredited professional nursing program, and pass a written examination as required by the Board.
- *Practical Nurses* must complete two years of high school, obtain a diploma from an accredited practical nursing program, and pass a written examination as required by the Board.
- *Nurse Practitioners* must be licensed in Virginia as registered nurses and complete an approved nurse practitioner program. Practitioners who specialize as nurse anesthetists or midwives must obtain certificates from a national board certifying agency.

Nursing programs in public or private schools must meet the Board's accreditation standards for facilities, administration, students, faculty, curricula, and resources.

Examinations developed by the National Council of State Boards of Nursing are administered for registered nurse applicants in February and July and for practical nurse applicants in April and October. Since April 1981, the exams have been offered in Tidewater, Richmond, and Roanoke.

The examination for registered nurses is taken on two consecutive days. It involves five multiple-choice tests dealing with the theory and practice of medical, surgical, pediatric, psychiatric, and obstetrical nursing.

The practical nursing exam requires only one day to complete. It is a multiple-choice exam in two sections. In FY 1980, 2,284 persons took the exam for registered nurses and 1,119 took the exam for practical nurses; approximately 80 percent passed each of these tests.

The Board has adopted a new examination which will be used for the first time in July 1982. The four-part exam developed by the National Council of State Boards of Nursing will place more emphasis on actual nursing practice. Applicants will be required to make direct application to the National Council to take the exam. The examination will be administered by the Board and the National Council will report the scores to the Board.

The Board of Nursing issues a license by endorsement to an applicant who is currently licensed in a state with requirements similar to its own. A licensed out-of-state applicant may practice nursing for 30 days while applying for a Virginia license. During FY 1979 and FY 1980, the Board issued 4,533 licenses to registered nurses and 928 licenses to practical nurses by endorsement.

FEES AND EXPENDITURES

The Board has adopted the following fee structure for nurses in Virginia:

Registered Nurse	
Examination	\$50
Renewal	5
Endorsement	30
Licensed Practical Nurse	
Examination	35
Renewal	5
Endorsement	30
Certified Nurse Practitioner	
Renewal	10

The Board's revenues have far exceeded expenditures and appropriations for several years. During the 1978-80 biennium, revenues exceeded appropriations by \$181,202 and expenditures by \$164,126. The fee structure is currently under review.

In 1980 the Board requested a supplemental appropriation of approximately \$17,000 to cover additional expenditures relating to such items as decentralization of the exam admin-

istration and a larger than anticipated share of the Department of Health Regulatory Board's centralized computer costs.

	FY 1979	FY 1980	Total
Revenues	\$390,005	\$439,032	\$829,037
Appropriations	315,990	331,845	647,835
Expenditures	308,127	356,784	664,911
Balance	\$ 7,863	(\$ 24,939)	(\$ 17,076)

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Licenses must pay the annual renewal fee by the end of their month of birth. Anyone practicing with a lapsed license is considered to be practicing illegally and is subject to penalties. The Board is considering biennial licensing of nurses. Licensees born in odd-numbered years would renew every odd-numbered year, while those born in even-numbered years would renew in even years. This change would reduce the administrative workload and still provide a steady flow of revenues.

No routine inspections are conducted for the Board of Nursing. However, accreditation surveys of nursing programs are conducted on a five-year cycle unless the Board is given reason to conduct a special review.

The Board of Nursing received 125 complaints during 1980 and 1981. The two major categories of complaints filed against nurses involved the diverting of drugs for personal or unauthorized use and alcoholism. According to Board officials, very few complaints are filed with the Board relating to a nurse's actual job performance. Most complaints of this type would be filed with the hospital employing the nurse or with the immediate supervisor.

Once a complaint is substantiated, however, the Board has the power to revoke or suspend a license or to discipline the individual by censure or probation for any of the following reasons:

- fraud or deceit in procuring a license;

- unprofessional conduct;
- willful violation of the Nurse Practices Act;
- commission of a felony or a misdemeanor involving moral turpitude;
- practicing nursing in an unethical manner or in such a way as to endanger the health and welfare of patients or the public; or
- inability to practice nursing due to illness or substance abuse.

Anyone whose license is suspended or revoked because of mental or physical illness or substance abuse is periodically afforded the opportunity to demonstrate that he or she can resume the competent practice of nursing. Between 1976 and 1980, the Board of Nursing revoked 19 licenses, placed ten licensees on probation, and suspended five licenses.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Regulatory Concerns

The Board of Nursing is faced with proposals to increase initial educational requirements and mandatory continuing education for registered nurses. Although the Board has not gone on record in favor of either proposal, continuing pressure for statutory revision is anticipated.

The American Nurses' Association has endorsed raising the minimum educational requirement for licensure as a registered nurse to the baccalaureate degree only. Associate degrees and diploma programs leading to licensure as registered nurses would no longer be possible under this proposal.

Proponents of the proposal feel that additional educational requirements would better prepare nurses to function in today's rapidly changing health field. The State Board of Nursing has not addressed this proposal because of its responsibility to administer the nursing practice act as it is written. The Board is continuing to monitor developments in other states in relation to this issue.

Twelve states currently require from five to fifteen hours of continuing education annually for professional nurses as a condition of licensure renewal. The Board is

concerned that there is a national trend in this direction, although the relationship between continuing education and competence has never been clearly established. Moreover, such requirements are believed to be difficult to administer and enforce because coursework would have to be approved for thousands of nurses and an otherwise competent nurse would have to be denied a license for failing to take required course work.

In 1973, the Board of Nursing issued a position statement on continuing education for nurses which states in part that the Board "firmly supports a voluntary system of recognition for continuing education for registered nurses and licensed practical nurses." In 1977 the National Council of State Boards of Nursing also passed a resolution against mandatory continuing education until further study can determine whether the education is directly related to competence.

Approval of Nursing Programs

The Board is also concerned that the perceived shortage of nurses will result in an unnecessary proliferation of nursing programs. The Board believes that it must accredit any new program that meets standards, regardless of the need for nursing professionals or the appropriate mix of baccalaureate, associate, diploma, or practical nursing programs. The Board believes that there is a need for a statewide study to determine future demand for professional nurses and practical nurses that could serve as a basis for decisions to establish new programs.

Since most nursing programs are established in State institutions of higher education or public schools, it appears that there is a shared responsibility for the control of the development of new programs. Of the 91 nursing programs, only 14 are hospital diploma programs. The others are under the jurisdiction of the State Council of Higher Education or the Department of Education. Forty-four practical nursing programs are in

public schools and two are in State community colleges. Thirteen associate degree programs are offered by community colleges or universities. Six baccalaureate programs are in State universities or colleges.

In 1977, the State Council of Higher Education issued a report conducted by its nurse manpower study committee on the future supply of and demand for registered nurses. The study concluded that if the staffing patterns and rates of utilization assumed in the report remained stable, the future supply of registered nurses would exceed demand in Virginia. The Committee recommended "that the total number of generic nursing graduates from basic education programs under the Council's jurisdiction not be increased until such increases are justified on the basis of (a) a re-evaluation of the overall supply of and demand for registered nurses; or (b) a regional analysis of the registered nurse supply and demand; or (c) an evaluation of the supply and demand of registered nurses by types of educational preparation." Although these follow-up studies were recommended, they have not been conducted.

It appears that new programs will not proliferate in public institutions of higher education until such studies are conducted. The State Board of Nursing should determine its policy with regard to hospital or private programs and confer with the Department of Education regarding programs in secondary schools. The feasibility and statewide follow-up studies should be determined by the parties involved.

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VIRGINIA BOARD OF OPTOMETRY

The provisions in the *Code of Virginia* which govern the Board of Optometry are Section 54-368 *et seq.*

Optometrists provide eyecare to the public by examining eyes to determine the presence of vision problems, eye diseases, and other abnormalities. Optometrists may treat vision problems by prescribing corrective lenses, vision training, or developmental techniques, or they may refer the patient to specialized medical practitioners. Regulation establishes qualifications for optometrists and standards of practice.

HISTORY AND SCOPE OF REGULATION

Optometrists are one of three groups of practitioners that provide eyecare to the public. Other providers include ophthalmologists who are physicians specializing in the medical or surgical treatment of eye problems, and opticians, who prepare and dispense eyeglasses or contact lenses.

All 50 states plus the District of Columbia regulate optometrists through licensure. Optometrists have been licensed in Virginia since 1916, with the Board of Optometry currently licensing 780 practitioners. As practitioners who fall under the regulation of their respective regulatory boards, physicians and opticians are exempted from the optometry laws. Language in the *Code* also specifies that eyeglasses may be sold in any regularly located place of business, although optometrists are prohibited from practicing in a commercial establishment.

The Board of Optometry is composed of five licensed optometrists who have practiced for at least five years. A member serves for a five-year term and is limited to two terms. The Board meets an average of five to seven times annually.

REQUIREMENTS FOR APPLICANTS

In order to be licensed as an optometrist in Virginia, a person must

1. be at least 18 years old;
2. be of good moral character;
3. have at least two years' undergraduate work and a degree from a four-year approved school of optometry;
4. pass a national optometric exam; and
5. pass a practical exam administered by the State Board.

Before applying for licensure in Virginia, a candidate must pass the written examination given by the National Board of Optometry. The exam is developed, administered, and graded at the national level.

The State gives a practical examination twice a year which consists of patient cases, visual slides on pathological diseases of the eye, ophthalmic optics, and a clinical examination of an actual patient. This examination was developed by the Board, and it is administered by Board members, staff, and testing associates who are practicing optometrists.

The passing score on the State exam varies from year to year. The passing score on each section of the examination is based on an adjusted score of those candidates taking the exam. The candidate must pass each section of the exam and may retake specific sections if needed. During the past three years, 74 percent of the 220 examinees have passed the exam.

The Board of Optometry may waive the requirement for the written examination for optometrists currently licensed in another state. All applicants to date, however, have been required to take the practical examination. The Board also conducts an oral review

of both in-state and out-of-state applicants' credentials. This review is not a factor in the determination of a candidate's eligibility for licensure.

FEES AND EXPENDITURES

The fee for an initial optometrist license is \$125 including the cost of examination. The biennial renewal fee is \$100.

During the 1978-80 biennium, the Board collected revenues of \$79,993 and was appropriated \$71,195 as shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$39,155	\$40,838	\$79,993
Appropriations	37,760	33,435	71,195
Expenditures	<u>36,899</u>	<u>34,016</u>	<u>70,915</u>
Balance	\$ 861	(\$ 581)	\$ 280

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Biennial fees are due by October 31 of odd-numbered years. In addition, all licensees are required by law to complete continuing education courses as a prerequisite to license renewal. Board regulations specify that each licensee must complete 24 actual hours of Board-approved continuing education during each biennial renewal period.

The Board of Optometry does not authorize routine inspections. During FY 1979 and FY 1980, a total of 59 complaints were investigated for the Board of Optometry. Of the ten complaints received by the Board between July and December of 1980, six involved standards of practice and the others involved fees, use of diagnostic drugs, and advertising violations. Most of these complaints were filed by consumers.

Optometrists are subject to disciplinary action for violations of business and professional standards specified in both statute and regulation. Violations include

- fraud or deceit in practice;
- conviction of a felony or misdemeanor involving moral character;

- substance abuse or practice in such a manner as to endanger patients' health and welfare;
- engaging in or employing someone to conduct house-to-house soliciting to fit or sell glasses;
- deceptive or misleading advertising or the offering of free optometrical services or examinations;
- use of trade names;
- practicing in a commercial establishment; or
- failure to provide direct supervision to unlicensed employees engaged in optometric activities.

Of the ten complaints received by the Board between July and September of 1981, no disciplinary action was taken in six cases: four cases were determined to be unfounded; one investigation revealed that no further action was necessary; and, the Board had no jurisdiction in one case. In two instances, an agreement was reached between the complainant and the practitioner: in one case the optometrist's license was suspended, and in one case the practitioner was put on probation.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Scope of Practice Controversy

Optometrists examine eyes, detect visual problems and disease abnormalities, and in some cases dispense eyeglasses and lenses. Differences of opinion have arisen between optometrists, opticians, who are dispensers of ophthalmic goods, and ophthalmologists, who are medical doctors that specialize in eyecare, about appropriate limits of the scope of each practice. Controversial areas among eyecare providers include the use of diagnostic drugs, mandatory referral of patients with major eye problems to ophthalmologists, and fitting of contact lenses by opticians.

Optometrists may use over-the-counter drugs but are not authorized by law in Virginia to use controlled diagnostic or therapeutic drugs in their practices. Optometrists believe, however, that they are trained sufficiently in school to use diagnostic drugs including those which dilate the pupil, anesthetize the eye, or hold the eye muscle

in place during a visual examination. To this end they have attempted to have permissive legislation adopted in Virginia, and bills were passed by both houses of the General Assembly in 1978 and 1979 but were vetoed by the Governor. These bills were vigorously opposed by ophthalmologists. Twenty-nine states have enacted laws permitting optometrists to use drugs for diagnostic purposes. Optometrists in five additional states are permitted to use diagnostic drugs by Board regulation and/or attorney general opinion.

Ophthalmologists contend that optometrists do not have adequate training in pharmacology to use the drugs without endangering the patient. They also assert that dilation of the pupil would help optometrists to perceive only an additional ten percent of eye problems during the visual exam. Finally, ophthalmologists are concerned that the use of drugs during the eye examination would lead patients to believe that they had received medical examinations.

The ophthalmologists' association supports the introduction of a bill that would require optometrists to refer patients with certain eye symptoms to a medical doctor. Optometrists are under a professional obligation to refer patients suspected of having any medical eye problems to the appropriate medical practitioner. Board of Optometry officials indicate that the Board has taken administrative action in at least two cases where proper referrals were not made by an optometrist. Ophthalmologists, however, feel that referral should be made mandatory in law because the alleged failure by optometrists to refer patients with certain symptoms can result in permanent or serious vision impairment.

To gather evidence on the extent of the referral problem and to support their position, the Virginia Society of Ophthalmology and Otolaryngology surveyed its 170 ophthalmology members. The 172 cases generated by respondents were subsequently published in a 1981 society document entitled, *Eye Doctors. There is a Difference. Evidence of Harm.* Cited in the publication are unreferred cases that are alleged to have resulted in blindness or to have involved abnormalities of the eye or treatment of non-existent eye problems.

Although a real problem may or may not exist, the results of the survey are open to question because of methodological flaws. All

respondents cited problems, but only 33 of the 170 ophthalmologists polled responded to the survey. Moreover, cases submitted by four ophthalmologists accounted for more than half of the total cases included in the society's document. On the basis of these responses, the pervasiveness of problems caused by lack of referral cannot adequately be determined.

In addition to these flaws in the survey, since no time limits on problem cases were established, some cases dated back to the 1960s. Data, therefore, do not indicate whether eye problems resulting from the lack of optometric referrals have become more or less of a problem over the years or whether just a few problem cases occur each year. The Society of Ophthalmology and Otolaryngology may wish to generate additional information by developing a study methodology that is consistent with generally accepted research principles.

Although some type of general referral language is included in the optometry statutes of about one-third of the states, referral laws such as that supported by ophthalmologists in Virginia are not in effect in any other state. These statutory proposals would require optometrists to refer patients with specified abnormalities or conditions to a physician. Fourteen of the 34 states which permit optometrists to use diagnostic drugs in their practice make a general reference to referral. Virginia's ophthalmologists feel that a specific referral requirement might serve as a safeguard for the public should the practice of optometrists be extended above their opposition.

In November 1981, the State Board of Medicine declined to take a position on the mandatory referral proposal. Instead, the Board suggested that the opposing parties meet to resolve their differences.

A discussion of the controversy surrounding the fitting of contact lenses by opticians is included in the chapter of this report devoted to the Board of Opticians.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



STATE BOARD OF PHARMACY

Pharmacists store, compound, dispense, and sell to the public a broad range of pharmaceuticals. Regulation is intended to ensure that pharmacists are knowledgeable about drugs, that drugs are properly dispensed, that proper inventory records of certain drugs are maintained, and that drugs are properly and safely stored.

HISTORY AND SCOPE OF REGULATION

Pharmacists are licensed in all states and the District of Columbia. The regulation of pharmacists in Virginia began in 1886 when registration of pharmacists was more or less voluntary and was an attempt to bring about some standardization in the profession. In its responsibility for administering the Drug Control Act, the Board of Pharmacy regulates the legal manufacturing, distribution, and dispensing of drugs in various types of facilities and regulates the manufacturing of cosmetics and manufacturing and distribution of medical devices.

The Board of Pharmacy registers everyone in the Commonwealth who prescribes controlled substances, including physicians, veterinarians, and dentists. In addition, licenses are issued to pharmacists and permits to pharmacies. The four pharmacies in the Commonwealth that handle nuclear substances must also adhere to specific requirements for storing and dispensing radioactive drugs and meet the standards of the Federal Nuclear Regulatory Commission. The Board also issues permits to manufacturers and wholesale distributors of drugs, devices, and cosmetics, and licenses to physicians (permitted

physicians), primarily in rural areas, who may dispense and sell, as well as prescribe, drugs. Special permits for the use of pentobarbital sodium may be issued to humane societies for euthanasia.

The number of regulated facilities or individuals in FY 1980 is shown below:

<u>Category</u>	<u>Type of Regulation</u>	<u>Number</u>
Pharmacists	License	4,065
Pharmacies	Permit	1,199
Permitted Physicians	License	26
Manufacturers	Permit	37
Wholesale Distributors	Permit	74
Humane Societies	Permit	42
Prescribers of controlled substances	Registration	12,521

The Board also cooperates in drug law enforcement with federal, State, and local officials. In addition, the Board carries out drug-related inspections for the Boards of Veterinary Medicine and Dentistry when requested to do so. Violations are reported by pharmacy investigators to the appropriate board for disciplinary action.

The Board consists of five licensed pharmacists. Members serve for five-year terms, and they may serve two successive terms. The Board must meet at least once each year, but generally it averages about ten meetings.

The provisions in the *Code of Virginia* which govern the Board of Pharmacy are Section 54-524.1 et seq.

REQUIREMENTS FOR APPLICANTS

Licensure as a pharmacist in Virginia may be granted to any applicant who

1. is at least 18 years of age;
2. is of good moral character;
3. is a graduate of a school of pharmacy approved by the Board;

4. has passed the National Association of Boards of Pharmacy Licensing Examination (NABPLEX); and
5. has completed a 1,000 hour, six-month internship.

Applicants for permits and registrations must show proof of licensure by appropriate State regulatory boards.

Pharmacists and pharmacies which desire to handle nuclear pharmaceuticals must meet special requirements specified in Board regulations. These include additional training, recordkeeping, and facility requirements.

The Board-administered exam tests applicants on pharmaceutical theory, practical application, and pharmacy law. Applicants must score at least 60 percent on the theory section, 75 percent on the practical section, and achieve an average of not less than 75 percent. The minimum score required on the portion dealing with pharmacy law is 75 percent. No applicant may sit for the examination until the practical experience requirement has been met.

During the 1978-80 biennium, examinations were administered by the Board to 339 people. Approximately 85 percent passed.

The Board has established reciprocal agreements with all states represented in the National Association of Boards of Pharmacy except California, Florida, and Hawaii. To qualify for reciprocity, applicants must be licensed in the state where they were originally licensed by examination, have passed the national examination with scores equivalent to Virginia's requirements, and have the required practical experience. Qualified applicants must pass the portion of the Board's examination on pharmacy law and be interviewed by the Board.

FEES AND EXPENDITURES

Licenses and permits are issued after payment of the following applicable fees:

<u>Category</u>	<u>Initial Fee</u>	<u>Renewal Fee</u>
Pharmacist	\$200	\$ 20
Pharmacy	75	75
Permitted Physician	75	75
Manufacturer	200	200
Wholesale Distributor	200	200
Humane Societies	15	15
Controlled Substances	20	20
Reciprocal Pharmacist	300	20

During FY 1980, the Board collected revenues of \$247,578 and was appropriated \$408,980. Expenses exceeded appropriations by \$9,187 as shown below.

	<u>FY 1979</u>	<u>FY 1980</u>	<u>Total</u>
Revenues	\$227,975	\$247,578	\$475,553
Appropriations	401,450	408,980	810,430
Expenditures	374,609	418,167	792,776
Balance	\$ 26,841	(\$ 9,187)	\$ 17,654

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and 1980.

ENSURING CONTINUED COMPETENCY

Licenses and permits are renewed annually by December 31, and the Board of Pharmacy has statutory authority to inspect facilities that store, dispense, administer, or manufacture drugs, cosmetics, and devices. Eight pharmacy inspectors and three drug auditors are employed to carry out this responsibility. Inspectors are responsible for inspecting all aspects of a facility including drug records. When inaccurate records are found, the auditors are required to make detailed analyses of drug transactions. During 1981, the Board conducted 732 inspections and 196 drug audits, exclusive of inspections conducted for other boards.

During FY 1981, the Board received 103 complaints. Typically, complaints received by the Board were for unauthorized dispensing of drugs and misuse of drugs by licensees. Of the 103 complaints received, 24 were from citizens and 79 were initiated by the Board or its staff.

Language in the Code and Board regulations specify violations that are subject to disciplinary action. Criminal violations are subject to State and federal laws, ranging from a misdemeanor to a felony.

The Board has the authority to reprimand, revoke, or suspend a license if the licensee

- has been found to be negligent in the practice of pharmacy, manufacturing, or distributing;

- has been found incompetent to practice because of physical or mental conditions;
- is a habitual user of drugs or alcohol;
- has engaged in or attempted to defraud or deceive the public or the Board in his or her practice;
- has assisted or allowed unlicensed persons to engage in dispensing pharmacy, manufacturing, or wholesaling; or
- has had federal registration to manufacture, distribute, or dispense drugs revoked or suspended.

Of the complaints investigated during FY 1981 against licensees, one resulted in a suspension or revocation, eight license holders received monetary penalties, and 19 were issued cease and desist orders.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Inspection of Drug Inventories and Records

The Virginia Drug Control Act and federal statutes require medical practitioners with access to controlled substances to maintain accurate inventory and transaction records. Regulations concerning the recording of drug inventories and prescriptions by practitioners have been promulgated by the Boards of Dentistry and Veterinary Medicine, and inspectors of the Department of Health Regulatory Boards are required to review these records during the regular inspection of facilities. When drug-related violations are

found, they are reported to the Board of Pharmacy.

The Board of Medicine, however, has not promulgated such requirements for physicians and no regular inspections of physicians' offices are conducted. According to officials of the Department of Health Regulatory Boards, drug records of medical practitioners are inspected only when complaints are received or unusual patterns of prescribing are detected during regular reviews of pharmacy records. However, physicians have access to the most dangerous of controlled substances and often store samples of therapeutic dosages in their offices. Such substances should be properly labeled, inventoried, and dispensed.

In practice, routine drug-related inspections of facilities other than pharmacies appear to be dependent upon the regulations of the individual practitioner boards. The Board of Medicine should promulgate regulations regarding the inspection of drug records, and inventories and inspections should be conducted periodically by inspectors of the Department of Health Regulatory Boards. Any apparent violations noted should be referred to the Board of Pharmacy so that a more detailed audit can be conducted.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.



VIRGINIA BOARD OF VETERINARY MEDICINE

Veterinarians diagnose diseases and abnormalities and medically or surgically treat all types of animals. Regulation is intended to ensure that practitioners are qualified and that facilities and drug use are in accord with prescribed standards.

HISTORY AND SCOPE OF REGULATION

The practice of veterinary medicine, which is regulated in all 50 states and the District of Columbia, was first regulated by the State of Virginia in 1896. Veterinary medicine was initially limited to the treatment of livestock, but it now includes domestic and wild animals as well. In 1977, the State Board of Veterinary Examiners was renamed the Board of Veterinary Medicine and transferred from the Department of Professional and Occupational Registration to the Department of Health Regulatory Boards. The purpose of the change was to bring all health-related professions under one administrative agency.

The Board of Veterinary Medicine regulates several groups of practitioners as well as veterinary facilities.

Veterinarians are licensed by the Board although practitioners themselves may specialize in large or small animals or may have a mixed practice. Large-animal practitioners deal primarily with cattle, horses, and other livestock, while small-animal practitioners treat mostly domestic animals such as dogs, cats, and birds.

In addition to licensing veterinarians, the Board certifies animal technicians who work under the direct supervision of a licensed veterinarian but cannot perform surgery,

diagnose, or prescribe medication. Veterinary or animal hospitals are registered, and the Board issues a faculty recognition certificate to a veterinarian licensed in another state who is employed by an institution of higher learning and is involved in the instructional program of veterinary medical students. This certificate does not permit the holder to practice outside the institution of higher learning.

During 1981, there were 1,312 licensed veterinarians, 293 certified animal technicians, and 326 registered animal facilities.

Veterinarians must register with the Virginia Board of Pharmacy and the Federal Drug Enforcement Administration in order to prescribe or stock certain controlled substances, and they must maintain adequate records of drug transactions for audit purposes. Veterinarians using radiographic equipment must also register this equipment with the State Department of Health.

The Board consists of five licensed veterinarians appointed by the Governor for five-year terms. No member can serve for more than two successive terms. The Board normally meets about six times each year.

The provisions in the *Code of Virginia* which govern the Board of Veterinary Medicine are Section 54-776 *et seq.*

REQUIREMENTS FOR APPLICANTS

An applicant for licensure as a veterinarian must

1. be at least 18 years of age and of good moral character;
2. have received a degree in veterinary medicine from a college or university approved by the Board;
3. submit a national board score acceptable to the Board; and
4. pass the State Board's written examination.

Foreign students or graduates of non-accredited schools must complete an American Veterinary Medical Association internship program.

To be certified as an animal technician, an applicant must be at least 18 years of age and of good moral character, and must have completed high school or the equivalent and have received a diploma in animal technology from a school accredited by the national association or another Board-approved school. Applicants must also pass examinations by both a national board and the State Board.

The State Board's examination for veterinarians consists of two parts. The first part is the national exam administered by the Board. The second part is designed by the Board and consists of practical, clinical, and pharmaceutical sections, and also covers State laws and regulations. The Board exam for animal technicians requires them to view slides to determine whether the care or treatment shown is correct and to indicate the correct treatment. It also includes a section on State laws and regulations.

These exams are developed by the entire Board and administered by Board members according to established procedures. No two examinations have identical questions.

The Board is presently entering into a reciprocal agreement for veterinarians with the State of Florida. An applicant who is licensed and in good standing in another state and has passed the National Board examination must pass the Virginia Board's examination. Animal technicians licensed in another state may have the national examination waived by the Board.

FEES AND EXPENDITURES

The Board of Veterinary Medicine recently established the following fees:

Veterinarians	
License	\$125
Biennial renewal	70
Animal Technicians	
Certification	50
Biennial renewal	30
Animal Facility	
Registration	25
Annual renewal	25
Veterinary Faculty*	
Recognition certificate	20
*One-time-only fee	

During the 1978-80 biennium, the Board had revenues of \$93,595. Expenditures exceeded appropriations by \$2,674. During most biennia the Board has shown slight overexpenditures.

	FY 1979	FY 1980	Total
Revenues	\$69,607	\$23,988	\$93,595
Appropriations	30,800	33,605	64,405
Expenditures	30,566	36,513	67,079
Balance	\$ 234	(\$ 2,908)	(\$ 2,674)

Source: Department of Health Regulatory Boards Annual Reports, FY 1979 and FY 1980.

ENSURING CONTINUED COMPETENCY

Veterinarians and animal technicians renew licenses and certificates on March 1 of odd-numbered years. Animal facility registrations are renewed each year by March 1.

Each new animal facility must be inspected before being registered. Periodic inspections are conducted by the Department of Health Regulatory Boards to ensure that licensees are in compliance with the following standards:

1. Buildings and grounds are constructed to provide adequate sanitary facilities.
2. The facility has adequate heating, lighting, and ventilation.
3. The facility has provisions for hot and cold running water from an approved water source and for sanitary storage and disposal of waste.
4. Examination rooms are clean, orderly, and well lighted, and all instruments are sanitized after each use.
5. All surgery is performed in a room reserved for that purpose and in a manner compatible with current veterinary medical practice with regard to anesthesia, asepsis, life support, and recovery care.
6. Sterilization equipment includes a steam pressure sterilizer.
7. All controlled substances are maintained, administered, dispensed and

prescribed in compliance with Board of Pharmacy regulations (Drug Control Act) and regulations of the Board of Veterinary Medicine.

8. Radiographs are generated in a manner to prevent over-exposure and mishandling.

In 1981, 125 inspections were conducted. Although records are not kept on the types of violations found, the Board administrator has stated that the major one was improper recordkeeping for controlled substances. Department of Health Regulatory Boards investigators follow up on reported errors in records or suspected abuse of controlled substances.

Since 1977, there have been 148 complaints against veterinarians. Most complaints are made by consumers and involve unprofessional conduct. Investigations of complaints against licensees are carried out by the department's compliance section.

The Board has the authority to suspend, revoke, or refuse to approve or renew licenses if the licensee

- has given false or fraudulent information;
- has been convicted of a felony relating to controlled substances;
- is a habitual user of drugs or intoxicants;
- allows unlicensed persons to practice veterinary medicine or to administer controlled substances;
- practices in such a manner as to endanger the health and welfare of patients or the public;
- has had a license to practice in another state revoked or suspended.

Since 1979, the Board has taken 29 disciplinary actions. During FY 1981, seven monetary penalties were levied, six cease and desist orders were issued, and three licenses were revoked, suspended, or put on probation.

AREAS OF SPECIAL LEGISLATIVE INTEREST

Inspection of Animal Facilities

Inspections of animal facilities were initiated by the Board in FY 1979 and are carried out by the enforcement staff of the Department of Health Regulatory Boards. In 1981, the Board adopted new procedures for inspections which require three days' advance notice when possible to the owner or operator. Department inspectors raised concerns about the requirements because they felt that prior notice makes inspection meaningless by allowing the licensee to correct deficiencies. Other boards do not require prior notice to the practitioners.

Board members appear to support the advance notice primarily to ensure that the licensee will be present during the inspection, that mobile units will be available for inspection, and that the surgery suite will not be in use. They feel that if the licensee is not present, inspectors will have to make a time-consuming and costly revisit and will not be able to do a complete facility inspection. Inspectors, however, are trained to conduct independent assessments, and their normal procedure is to notify the licensee of violations and to follow up to ensure that corrections have been made.

Since many of the facility standards relate to health and safety provisions, unannounced visits would appear to present a more reliable indication of a facility's conditions. The Board should reassess the purpose of the inspections and the need for a licensee's presence. Unannounced visits could be conducted with adequate provision for a follow-up consultation with the licensee.

This report is one in a series which reviews the occupational and regulatory boards in Virginia. The study has been conducted by the Joint Legislative Audit and Review Commission, 910 Capitol Street, Suite 1100, Richmond, Virginia 23219.

Appendix

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Agency Responses

As part of an extensive data validation process, each State agency involved in JLARC's review and evaluation efforts is given the opportunity to comment on an exposure draft of the report.

Appropriate corrections resulting from the written comments received from the administrative agencies and the chairpersons of each board have been made in the final report.

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COMMONWEALTH of VIRGINIA

RUTH J. HERRINK
Director

Department of Commerce
2 SOUTH NINTH STREET, RICHMOND, VIRGINIA 23219

January 5, 1982

Mr. Ray D. Pethtel
Joint Legislative Audit and
Review Commission
Commonwealth of Virginia
1100 General Assembly Building
910 Capitol Street
Richmond, Virginia 23219

Dear Ray:

This office has reviewed the exposure draft entitled Occupational and Professional Regulation in Virginia submitted by your staff.

As you know, we suggested changes to the first draft to correct certain inaccuracies. Given the scope and complexity of the material covered, I feel you have made a fair representation of the facts as they pertain to the Department of Commerce.

Careful consideration will be given by this Department to recommendations of the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. J. Herrink".

Ruth J. Herrink



COMMONWEALTH of VIRGINIA
Department of Health Regulatory Boards
Virginia Commission of Health Regulatory Boards
Seaboard Building, Suite 453
3600 West Broad Street
Richmond, Virginia 23230
(804) 257-0345

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January 6, 1982

Mr. Ray D. Pethel
Joint Legislative Audit and Review Commission
Suite 1100, 910 Capitol Street
Richmond, VA 23219

Dear Ray:

I am writing to advise that this department has received, and has responded to, the Joint Legislative Audit and Review Commission's report on Occupational and Professional Regulation by Boards in Virginia. I wish you to know that I felt that the document appeared to be well prepared and presented an objective review and analysis of the boards within this department.

I feel it is also important for you to know that the JLARC staff members, who consulted and interviewed with my staff members, presented themselves well, were courteous and understanding, and made a very conscientious effort not to cause an imposition to my staff members.

I shall look forward to seeing you at the JLARC meeting on Monday, January 11.

Best wishes.

Sincerely,

Jack B. Carson
Director

JBC:RWM/dp

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