



State of Nevada
Governor's Office of Finance
Division of Internal Audits

Audit Report

**Boards and Commissions
Independent Occupational and Professional
Licensing Boards
Governance**

DIA Report No. 19-03
June 25, 2019

EXECUTIVE SUMMARY

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Objective: Improve Oversight of Nevada's Independent Licensing Boards

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Establishing executive branch oversight of Nevada's independent licensing boards (Boards) under the Department of Business & Industry (B&I) will provide for executive branch awareness, guidance, and review that is currently lacking and will enhance public and licensee confidence in Board activities. Boards are subject to oversight by both the legislative and executive branches according to the Office of the Attorney General. Current oversight is exercised primarily by the legislative branch through the Sunset Subcommittee (Sunset); review and approval of regulations by the Legislative Commission; and other reporting requirements. Last interim, Sunset noted many concerns with Board practices involving hearing officers; training; operating reserves; fines and fee structures; electronic access and payments; use of outside counsel and lobbyists; and centralized coordination of expenditures. Sunset also noted instances of financial irregularities.

Existing executive branch oversight of Boards is lacking. As far back as 1992, a study of the structure of Nevada's government recommended Boards be under state oversight. Boards are exempt from certain financial, personnel, and internal control statutes that govern the activities of other state agencies. The lack of executive branch oversight allows for inconsistent Board practices that may not comply with state guidelines.

Board members typically serve part-time and may not be experienced in best operational practices even though they are experienced in their profession. An over reliance is placed on the executive director to ensure Boards function properly. Executive directors serve at the pleasure of their boards and have limited operational support provided by the state.

The Federal Trade Commission suggests that where actions of boards comprised of active market participants may expose the state to anti-trust liability, a "state supervisor" should be designated to provide active supervision. The supervisor may be an executive branch administrator, agency, or official that oversees regulatory boards and who is not an active market participant.

B&I is one of the largest, most complex executive departments with 23 regulatory bodies under its oversight umbrella. B&I is structured to provide regulatory, operational, facility, and administrative support to its regulatory bodies and could expand or adapt its structure to support Boards. The best first step for establishing B&I oversight may be enjoining a semi-autonomous relationship by which Boards retain authority for regulating professions under their practice acts and other Board operations fall under the umbrella oversight of B&I. A phased approach may be more effective. Limited oversight may be required for Boards that operate with a robust set of standards, while a more hands on approach may be required for other Boards. In an executive oversight role, B&I could fulfill the functions envisioned by earlier studies and federal guidelines, and provide state institutional support that is currently lacking.

B&I could assist Sunset by evaluating the effectiveness and efficiency of Board operations, making recommendations that benefit Boards from reorganization or consolidation, and providing other information and analysis to assist fulfilling statutory responsibilities. B&I could provide legislative assistance, reducing Board expenditures for lobbyist activities.

Establishing improved oversight of the Boards may result in additional costs. General fund appropriations may initially be necessary to offset some costs for personnel and other resources B&I may require in its expanded executive oversight role.

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Establishing standards through B&I will provide for executive branch awareness, guidance, and review of the Boards and will enhance public and licensee confidence in Board activities. B&I has experience establishing standards for the 23 regulatory bodies under its oversight umbrella. By establishing standards, executive branch oversight of boards through B&I will be improved by ensuring Board practice acts are consistent and comply with statute and other state guidelines.

In our first report, we noted several deficiencies in financial and administrative practices where setting standards could improve oversight. This audit identified additional areas of concern where setting standards could provide improved oversight by the executive branch: Hearing Officers; Fees, Fines, and Penalties; Regulatory Authority; Administrative Cost Recovery; Disciplinary Reporting; Board Training; and Records Retention and Public Records Requests.

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INTRODUCTION

At the direction of the Executive Branch Audit Committee, the Division of Internal Audits conducted an audit of Nevada's Boards and Commissions.

We limited the scope of the audit to Nevada's 34 independent licensing boards (Boards) subject to Title 54 and exempt from the provisions of the state's budget, internal control, and personnel acts.¹ This is the second of two reports. The first report focused on the Boards' compensation policies and practices, legal support, and standards for financial and administrative practices.² This report focuses on state governance and regulatory practices of the Boards. The audit's scope and methodology, background information, and acknowledgements are included in Appendix A.

The audit objective was to develop recommendations to:

- ✓ Improve oversight of Nevada's independent licensing boards.

Department of Business and Industry Response and Implementation Plan

We provided draft copies of this report to the Department of Business and Industry (B&I) for its review and comments. B&I's comments have been considered in the preparation of this report and are included in Appendix B. In its response, B&I accepted our recommendations. Appendix C includes a timetable to implement our recommendations.

NRS 353A.090 requires within six months after the final report is issued to the Executive Branch Audit Committee, the Administrator of the Division of Internal Audits shall evaluate the steps B&I has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The administrator shall report the six month follow-up results to the committee and B&I.

The following report (DIA Report No. 19-03) contains our *findings, conclusions, and recommendations*.

¹ Nevada Revised Statutes (NRS), Title 54, Professions, Occupations and Businesses, contains the NRS Chapters that provide the enabling legislation for the Boards. Those chapters along with their related Nevada Administrative Codes (NAC) are otherwise known as the Boards' individual practice acts.

² DIA Report 18-05, June 14, 2018, Boards and Commissions, Occupational and Professional Licensing Boards.

Improve Oversight of Nevada's Independent Licensing Boards

The state can improve oversight of Nevada's independent licensing boards (Boards) by:

- Establishing executive branch oversight of Boards under the Department of Business and Industry.
- Establishing standards for regulatory, financial, and administrative operations through the Department of Business and Industry.

Improving oversight will enhance public and licensee confidence in Board activities and help ensure that regulatory, financial, and administrative practices are consistent among Boards and with other state agencies. This will improve efficiency and effectiveness of licensing and regulatory activities and ensure that boards follow executive branch operational practices and guidelines.

Establish Executive Branch Oversight of Boards Under B&I

The state should establish executive branch oversight of Boards under the Department of Business and Industry (B&I). This oversight will provide for executive branch awareness, guidance, and review of the Boards that is currently lacking and will enhance public and licensee confidence in Board activities.

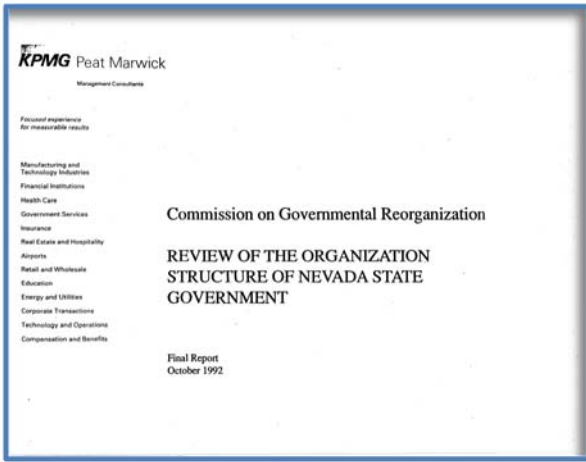
Boards Are State Agencies Subject to Executive Oversight



At the request of the Governor's Office, the Office of the Attorney General (OAG) performed a broad analysis of the attributes of fee-funded boards and commissions compared with the attributes of state government generally.³ The OAG noted that, "Though fee-funded boards and commissions receive no distributions from the State General Fund, they generate revenue for their regulatory and licensing activities by levying fees and assessments against persons who are made subject to their jurisdiction by way of legislative enactments. In this regard, the source of their revenue is analogous to the tax revenue that the State collects for deposit to the State General Fund." The OAG also noted that, "Fee-funded boards and commissions receive no distributions from the State General Fund, but they are subject to financial and administrative oversight by both the legislative and executive departments of the State."

³ Office of the Attorney General, Opinion No. 2018-07, December 21, 2018.

Nevada Study Calls for State Oversight of Boards



The relationship between Nevada’s Boards and state government has been an ongoing conversation for almost thirty years. A study for the Nevada Commission on Governmental Reorganization (KPMG Study) chaired by former Governor Kenny Guinn in the early 1990s attempted to lay out a way ahead for establishing increased accountability and effectiveness for Nevada’s Boards.⁴

Study Recommends Changes to Oversight of Boards

The October 1992 KPMG Study’s final report noted:

“Professional and occupational licensing boards and commissions have proliferated, and some boards and commissions are too small to effectively process licenses or investigate misconduct. The proliferation of boards and commissions has also diluted responsibility and accountability within state government. Moreover, the Governor may not be able to coordinate and ensure the appropriateness of board/commission policies and actions.

The opportunity exists for some boards that license related occupations to benefit from shared management, investigatory, legal, and clerical expertise. Consolidation could also minimize the regulatory burden experienced by certain professions and occupations.”

The KPMG Study made several recommendations to increase accountability for Boards, including:

- Boards should report adopted budgets and actual expenditures to a liaison state department;
- Smaller Boards should receive administrative support from, and should have budgets approved by liaison state departments;
- A liaison agency should be specified when created by legislation; and
- The Governor should have the authority to appoint Board executive directors from nominees submitted by the Boards.

⁴ KPMG Peat Marwick, Review of the Organization Structure of Nevada State Government, Commission on Governmental Reorganization, Final Report, October 1992.

Executive Branch Oversight is Lacking

The individual practice acts grant each Board authority to oversee their own activities. Existing executive branch oversight of those activities is lacking. For example, while Boards are subject to certain statutes that govern their activities, there is no executive branch agency or official with responsibility for ensuring that the Boards comply with those statutes.⁵ That responsibility rests solely with the Boards under their practice acts.

Moreover, Boards are exempted from certain statutes that govern the activities of executive branch agencies. For example, Boards are exempt from the following NRS Chapters:

- NRS 353, State Financial Administration – Provides for state oversight of agency fiscal practices;
- NRS 284, State Personnel System – Provides for state oversight of agency employment practices; and
- NRS 353A, Internal Accounting and Administrative Control – Provides for state oversight of the development of an agency’s system of internal accounting and administrative controls.

Current Oversight Mostly by Legislature

With executive branch oversight lacking, current oversight of Boards is exercised mostly by the Legislature. Legislative oversight exists primarily through the Legislative Commission’s Sunset Subcommittee and other reporting requirements:

- Sunset Subcommittee (Sunset) review – NRS 232B establishes Sunset and requires a review of a minimum of 10 boards and commissions during each interim session to:
 - Determine if a board should be continued, modified, consolidated, or terminated;
 - Recommend improvements to the Boards; and
 - Determine if any funding should be continued, modified, or terminated.

Sunset reports its findings to the Legislative Commission at the end of the interim session;

- Disciplinary and licensing activity reporting – NRS 622 requires Boards to report a summary of disciplinary and licensing activity to the Legislative Counsel Bureau (LCB). LCB compiles the information and reports to the

⁵ Examples include: NRS 622, General Provision Governing Regulatory Bodies; NRS 233B, Nevada Administrative Procedures Act; NRS 333, Purchasing; and NRS 239, Public Records.

- Legislative Commission each quarter and to specified legislative committees on or before the first day of each legislative session;
- Financial reporting – NRS 218G requires Boards to submit balance sheet or audited financial reports to LCB. The reports must be submitted annually or biannually. LCB compiles and reports the submission status and selected financial information to the Legislature semi-annually;
 - Administrative regulation approval – NRS 233B requires that regulations proposed by Boards be approved by the Legislative Commission; and
 - Other reporting – Legislation requires Boards to report periodically to legislative committees on various activities specific to their regulatory function. Examples include reports to the Council on Veterans Affairs and the Committee on Health Care.

In an executive oversight role, B&I can fill the state liaison role contemplated by the KPMG Study. B&I could coordinate and ensure the appropriateness of Board policies and actions and provide the opportunity for some Boards to benefit from shared services. Because of its familiarity with board and commission operations and its related support structure already in place, B&I is unique among executive branch departments and would be best able to provide executive oversight and operational support for Boards.

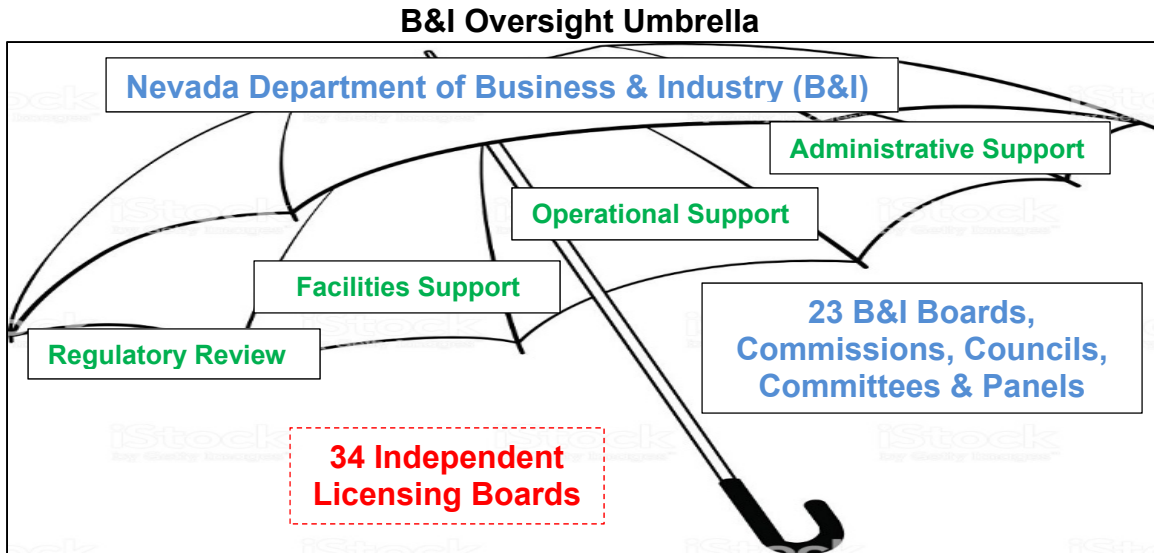
B&I Organized and Staffed to Support Oversight of Boards

B&I is one of the largest and most complex departments under the executive branch. There are 23 regulatory bodies under its oversight umbrella. B&I is funded by a combination of licensing and other fees, general fund appropriations, and grants. For fiscal year 2017, B&I had a staff of 679 and expenditures of about \$87.4 million.

The regulatory bodies B&I oversees are comprised of a wide variety of boards, commissions, committees, councils, and panels. As a group, they are responsible for all regulatory functions such as licensure, complaints, investigations, hearings, appeals and/or discipline for many different industries, occupations, and professions. They also operate with varying degrees of autonomy with some having independent authority, while others fall under B&I divisions or the Director of B&I. Further, the variety of regulatory bodies under B&I's single oversight umbrella are typically under the oversight of multiple agencies in other states. See Appendix A, Exhibits III and IV for a state comparison survey conducted by B&I and a detailed listing of the regulatory bodies under B&I's single oversight umbrella.

Exhibit I illustrates the support B&I provides to its regulatory bodies under its oversight umbrella and could provide to Nevada’s independent licensing boards.

Exhibit I



B&I Experienced in Providing Executive Oversight and Support

B&I is organized and staffed to provide regulatory, operational, facilities, and administrative support to the regulatory bodies under its umbrella authority. Areas of support include fiscal and accounting; personnel and payroll; training and development; investigations; hearings and appeals; offices and meeting rooms; video conferencing and communications; and IT support.

In its executive oversight role, B&I could adapt and/or expand its existing support structure to support the needs of the independent Boards as appropriate. In addition, B&I could provide executive oversight in areas where Boards have been exempted. For example, through review of Board policies, procedures and practices, B&I could ensure:

- Disciplinary actions are consistent and properly reported;
- Budgetary and financial reporting practices are reasonable and accurate, including the establishment and monitoring of operating reserves;
- Personnel practices are consistent with state law and state personnel practices, including the establishment of compensation policies and employee review procedures; and
- Internal accounting and administrative controls are documented and conform to the uniform system of internal controls for state agencies.

Lack of Executive Branch Oversight Leads to Inconsistent Practices

No executive branch agency is specifically assigned oversight of Boards. Consequently, there has been no single management structure to guide Board practices. It is therefore not unexpected that Board licensing, regulatory, operational, and administrative practices are inconsistent and may not comply with state guidelines.

Sunset Noted Concerns with Board Practices

During the 2017 - 2018 interim, Sunset reviewed 22 of the 34 licensing Boards. In its final report, Sunset provided a summary of its concerns, findings, and observations about Nevada's professional and occupational licensing boards.⁶ Among others, Sunset noted the following concerns:

- The practice acts of some Boards allow them to delegate authority to hear complaints but qualifications are not specified for hearing officers;
- NRS 622.200 provides that board members receive training by the Office of the Attorney General but not all board members and staff participated in the training;
- Operating reserves vary widely among Boards and many had no policy regarding reasonable reserves;
- Some Board practices allow fines to be retained, creating a potential conflict of interest;
- Fee structures among the Boards are not uniform as some allow a range and limitation on fees while others set specific fee amounts;
- Many Boards utilize outside counsel instead of the Office of the Attorney General and also hire lobbyists, leading to increased expenditures;
- Not all Boards provide electronic access to documents and payments of fees; and
- With no centralized coordination among the Boards, Boards duplicate expenditures in areas such as compensation, information technology, legal fees, lobbying expenses, and office overhead.

Additionally, Sunset outlined several past and current instances of embezzlement and/or financial irregularities with Boards. Sunset noted the Legislature did not approve Board budgets nor were they included in the Executive Budget. Sunset also stressed the importance of audits and reviews of the Boards due to the high risk of fraud as evidenced by the financial irregularities noted.

⁶ Sunset Subcommittee of the Legislative Commission, Bulletin 19-17, Legislative Counsel Bureau, September 2018.

Sunset voted to recommend the Legislature establish an interim study of the operations of the professional and occupational licensing boards during the 2019 - 2020 Interim. During the 2019 session, the Legislature adopted Senate Concurrent Resolution No. 6 directing the Legislative Commission to conduct an interim study concerning professional and occupational licensing boards citing the concerns noted above.

In its executive oversight role, B&I's participation will be integral to the study and its development.

Some Boards Need Help



Some Board members and staff may not be able to develop and implement operational best practices even though they may be experienced in the profession they are charged with licensing and regulating. The lack of ongoing executive branch oversight may exacerbate problems as members and staff may not be familiar with state guidelines to help them implement their practice act authorities.

Board Members May Be Experienced in their Profession But Lack Management Expertise

Board individual practice acts set forth the qualifications of board members. The qualifications are usually narrowly defined and typically require that a board member have experience in the profession regulated or that the member be from the general public. Additionally, there may be requirements for political or geographic diversity. There are generally no qualifications requiring a board member to have experience in management, finance, administration, or be familiar with the operational practices of state agencies. Finally, members serve part-time on their appointed board while typically engaged full-time in the profession their board regulates.

The legislative framework for Nevada's Boards delegates to each board independently, the full responsibility for its own operational management, financial, and administrative practices. Enabling legislation typically grants each board its own authority to establish offices; hire and set the duties and compensation for board staff; contract with attorneys, investigators, consultants and other professionals for outside services; record and account for revenues and expenses; and maintain board records.

Boards are left to themselves to develop their own policies and procedures for the management, financial, and administrative practices of their operations. Consequently, Board practices are not consistent among Boards or with practices of other state agencies.

In its oversight role, B&I could ensure practices are consistent among Boards and consistent with state guidelines.

Board Inexperience Leads to Over Reliance on Executive Director Position

Board members hold part-time positions that do not require any experience with how a board or state agency operates. However, they have full responsibility for their own board's management, financial, and administrative practices. Because the board members themselves may be inexperienced and are not able to function in a full-time management capacity, the executive director is almost entirely responsible for developing and implementing the operational practices of the Boards.⁷ Without executive branch oversight, this places an over reliance on the executive director position and the executive director as an individual to ensure that the Boards function adequately in meeting their statutory responsibilities.

In its executive oversight role, B&I could provide a framework to lessen the reliance placed on a single position or individual to ensure Board operations function to meet their statutory responsibilities.

Qualifications for Board Executive Directors Lack Specificity

Certain qualifications for a board's executive director are set forth in NRS 622.220 and require that if a Board hires a person as an executive director, the person, "Must possess a level of education or experience, or a combination of both, to qualify the person to perform the administrative and managerial tasks required of the position..." However, the requisite level of education and experience is not specified by state statute, regulation, or policy. It is left solely to the Boards to determine the requisite qualifications. Board members may not be knowledgeable of the specific administrative or managerial tasks required or of the tasks required of other state agencies.

In its executive oversight role, B&I could provide expertise in establishing specific qualifications for each Board's executive director position and assist in evaluating the level of education or experience of an executive director candidate. B&I could

⁷ The titles of the Boards' senior operating/administrative executives vary and include, executive director, executive officer, executive secretary, secretary/treasurer and chief inspector. The title of executive director is used throughout to refer to these positions.

better determine if a candidate is qualified to perform the administrative and managerial tasks required of that board's executive director position.

Executive Directors Serve at the Pleasure of Boards

Generally, the individual practice acts require executive directors serve at the pleasure of their respective boards. In so doing, a board has complete authority and control over the hiring, duties, compensation, and performance review of its executive director without accountability to or governance and oversight by the executive branch. As noted previously, Boards are not subject to the state's personnel act.

As a result, the state provides no institutional support for executive directors in the assignment and performance of their duties. Additionally, as noted previously, Boards may not have sufficient expertise in the operations of the boards or state agencies and may not be able to fairly evaluate the qualifications or performance standards required of an executive director.

In its executive oversight role, B&I could be provided with, in concert with the Boards, the authority to hire, direct the duties, and review the performance of the executive directors. Under that structure, executive directors would have a dual reporting relationship with both their board and B&I, which would allow B&I to provide state institutional support for executive directors.

Potential Federal Anti-Trust Vulnerabilities Mitigated by Executive Branch Oversight



Recent anti-trust court cases and guidance from the Federal Trade Commission (FTC) suggest that to be able to claim state-action immunity from anti-trust liability, states must provide active supervision of the regulatory actions taken by boards where the state has delegated regulatory authority to boards controlled by members who are active market participants.

The FTC's guidance considers a member of a state regulatory board to be an active market participant in the occupation the board regulates if such person is licensed by the board or provides any service that is subject to the regulatory authority of the board.⁸ Under the FTC's guidance, Nevada's Boards would be considered to be controlled by members who are active market participants.

The purpose of the FTC's guidance on active supervision is to determine whether the state has exercised sufficient independent judgment and control such that the

⁸ FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants, Federal Trade Commission, November 2018.

details of the regulatory scheme have been established as a product of deliberate state intervention and not simply by agreement among the members of the board.

If the Legislature authorizes the adoption of regulations by an executive agency which bind persons outside of the agency, Nevada's Constitution gives the legislative branch authority by law to review those regulations.⁹ The Nevada Administrative Procedures Act (APA) provides the authority for the Legislature, through the Legislative Commission, to approve regulations adopted by the Boards before the regulations are submitted to the Secretary of State and become binding.¹⁰ All Boards are subject to the APA and required to have their adopted regulations approved by the Legislative Commission to be binding.

It is not a violation of separation of powers under the Nevada Constitution for the Legislature to approve regulations adopted by executive branch agencies. It appears FTC guidance on active supervision would be met for rule making, as long as Boards comply with the APA and codify practices binding on licensees or the public in regulations approved by the Legislative Commission.

Boards may still expose the state to anti-trust liability if their practices are not codified in regulation or codified such that Board actions may be considered discretionary, i.e., Board actions may be determined to be an agreement among the members of the board rather than the product of deliberate state intervention. Examples of such actions might be setting standards for practice or discipline by policy rather than regulation or having provisions in the practice acts that do not set specific amounts for fees or fines.

Board disciplinary actions may also expose the state to anti-trust liability if action taken is not set specifically in statute or regulation. For example, some Boards have provisions in their practice acts that allow them to issue a disciplinary order that, "may contain other terms, provisions or conditions as the Board deems proper..."

In instances where Board actions may expose the state to anti-trust liability, FTC guidance suggests that for state-action immunity to apply, a "state supervisor" provide active supervision by reviewing and approving Board actions. In this context, the FTC suggests that active supervision may be provided by an executive branch administrator, agency, or official that oversees regulatory boards and who is not an active market participant.

In its executive oversight role, B&I could act as the "state supervisor" to monitor, review, and approve Board activities as appropriate to mitigate the state's exposure to anti-trust liability.

⁹ Nevada Constitution, Article 3, Section 1.

¹⁰ NRS 233B.067.

Board Semi-Autonomy with B&I May Be Best First Step for Licensing and Regulating Nevada's Professions



The best first step for establishing B&I oversight of Nevada's Boards may be enjoining a semi-autonomous relationship by which Boards retain authority for the professions or occupations they regulate under their individual practice acts while other aspects of Board operations fall under the umbrella oversight of B&I. Under this framework, Boards would retain their independent authority to license and establish standards for their professions and would benefit from B&I's review of regulatory actions, operational practices, and administrative procedures.

Nevada's Boards Prefer Autonomy

The Council on Licensure, Enforcement and Regulation (CLEAR), described five models of organization for licensing boards in the 50 states.¹¹ The models described range from fully autonomous where each board is responsible for its own operations to fully-centralized where a state agency is responsible for operations and a board, if it exists, is advisory.

CLEAR considered Nevada Boards to be fully autonomous because:

- They hire their own staff;
- Make decisions about office location, purchasing, and procedures;
- Receive and investigate complaints and discipline licensees;
- Prepare, conduct, and grade examinations;
- Set qualifications for licensing and standards for practice;
- Collect fees and maintain financial records;
- Process applications for licensing and renewal; and
- Answer inquiries from licensees and the public.

Boards believe strongly that the autonomous model provides the greatest flexibility and responsiveness to public needs and changes in professional practices. However, Boards also generally recognize that because they operate independently of both each other and the state, inconsistent practices among the Boards may exist and there is a lack of oversight, support, guidance, and consistency for their operations when compared to other state agencies.

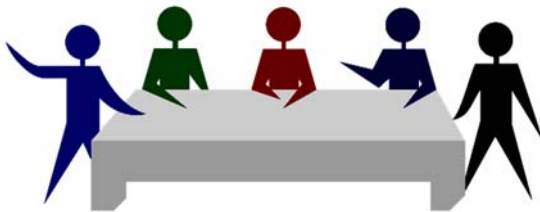
¹¹ Questions a Legislator Should Ask, The Council on Licensure, Enforcement and Regulation (CLEAR), 1994. CLEAR is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation. CLEAR promotes regulatory excellence through conferences, educational programs, etc., and provides networking opportunities, publications, and research services for those involved with professional and occupational regulation.

Semi-Autonomy Retains Responsiveness to the Public and Enhances Accountability for the Profession

CLEAR describes alternatives between full autonomy and full centralization that may provide both the flexibility and responsiveness to the public and profession while providing greater oversight and consistency in how the Boards operate. This relationship may be described as semi-autonomous in that Boards regulate their profession and set qualifications for licensing and standards for practice; prepare, conduct, and grade examinations; discipline licensees; hire their own staff; and answer inquiries from licensees and the public. However, a central agency would have varying degrees of control over other aspects of operations, such as facilities, licensing and regulatory processes, budgets, financial accounting and reporting, complaint investigations, personnel policies, and records.

In its executive oversight role, B&I could act as the central agency contemplated in the semi-autonomous relationship. B&I could provide varying degrees of control over the other aspects of operations as necessary to maximize the effectiveness, efficiency, and consistency of the Boards.

Oversight Provided by a Core of Personnel Experienced in Board Operations



The organizational structure of B&I's executive oversight role will depend on many factors. Some Boards have suggested that a "liaison unit" be established and staffed by personnel experienced in core functions of board operations. Suggested core functions could include:

- Administration – Overall organization of board operations;
- Fiscal – Budgeting, accounting, financial reporting and internal controls;
- Legislative and regulatory – Interface with the Legislature and LCB;
- Investigative – Provide assistance to Boards that lack resources;
- Legal – Review of cases, advise on due process and other areas; and
- Human Resources – Personnel policies, compensation, performance reviews, and training.

In its executive oversight role, B&I could hire, direct, and manage personnel experienced in the core functions of board operations.

B&I Can Assist Sunset in its Oversight Role

Sunset provides legislative oversight of the Boards through its review to determine if a Board should be continued, modified, consolidated or terminated, and to make recommendations for improvement to the Boards. However, because Sunset's review of each Board is infrequent and generally independent of the other Boards under review each session, the information Sunset receives may not provide the best or most responsive basis for determining operational changes that may be beneficial to the state and the public.

In its executive oversight role, B&I could evaluate the effectiveness and efficiency of how Boards operate individually and how Boards may best work together operationally in terms of facilities, staff, systems, and practices. In that role, B&I could provide information and analysis to Sunset to assist in better fulfilling its statutory responsibilities.

B&I Can Provide Legislative Assistance

Some Boards represented that one of the most confusing and intimidating aspects of Board operations is negotiating legislative processes for adopting regulations or introducing new bills. For example, even with OAG's rule making manual and training classes, the specifics of how to write and submit regulations is difficult to understand for new members and executive staff. Also, there is no central point of contact for introducing new legislation, leaving Boards to find a legislator on their own who is willing to introduce their bills.

Additionally, some Boards may devote significant portions of their operating budgets toward lobbyist services. Some Boards represented they need lobbyists to educate them on the legislative process and to keep abreast of pending legislation.

As one of the largest executive departments, overseeing multiple industries, occupations and professions, B&I is acutely involved in the legislative process, both in terms of adopting regulations and introducing new legislation. In its executive oversight role, B&I could be the central point of contact for Boards to provide legislative assistance. As a result, Board expenditures on lobbyist activities may be reduced.

Consolidation of Board Operations May Be Desirable

Several Boards represented they do not need or lack the funding to operate full-time. Consequently, Boards may employ only a single person on a part-time basis or may require that Board members volunteer time to function in a staff capacity to help ensure they meet the needs of the public and profession.

As noted in our first report, one group of three boards has consolidated their facilities, operations, and staffing to provide full-time operations for all three boards and reduce overall operating costs while maintaining the independence of each of the three boards to regulate their professions. The boards share operating costs through a co-location and cost-sharing agreement. This approach may serve as a model for other boards with limited requirements or resources. An executive oversight agency would be in a position to have sufficient data, information, and awareness to recommend and guide such a consolidation.

In its oversight role, B&I could evaluate the requirements and limitations of the Boards in order to determine which Boards might benefit from consolidation of their facilities, operations, and staffing. B&I could provide an on-going institutional and structured service to smaller boards.

Phased Approach May Be Effective

Board size and complexity vary greatly. As noted in our first report for fiscal year 2017, the number of licensees regulated varies from about 60 to 48,600; annual expenditures vary from about \$28,000 to \$7.1 million; and staffing levels vary from about 1 to 60 positions.¹²

Given the great degree of variance in the Boards and their regulated professions, a one-size-fits-all approach to oversight may not be desirable. Instead, a phased approach may be more effective.

While B&I could function in the same oversight role for all Boards, the way it accomplishes that oversight may require a phased approach. After an initial period of evaluation, B&I could determine the degree and type of oversight that would best benefit each Board. For example, for Boards that currently operate with a robust set of standards and function effectively and efficiently, a review by B&I of those standards for consistency of practice may be all that is required. In contrast, Boards with a history of issues such as inadequate funding, staff turnover, unresolved complaints, or delays in license processing may require a more hands on approach, up to and including direct management and/or consolidation of operations. This approach would seem to meet the intent of the Legislature to establish a set of standards for the Boards where needed but still allow Boards that already meet those standards to continue to operate as normal.¹³

¹² DIA Report 18-05, June 14, 2018, Boards and Commissions, Occupational and Professional Licensing Boards, Exhibit XII, page 26.

¹³ March 24, 2017 Assembly Committee on Commerce and Labor minutes, pages 9-11.

Funding for Oversight Provided by Combination of Cost Allocations and General Fund Appropriations



Establishing improved oversight of the Boards may result in additional costs to the state as a whole initially. Ideally, these costs would be allocated to the Boards based on some metric such as number of licenses. However, cost allocations, especially during the initial phases may place additional financial burdens on boards that are already in financial difficulty. As an alternative, general fund appropriations may be necessary to offset costs not initially allocated to the Boards for funding the additional personnel and other resources B&I would incur to fulfill its executive oversight role that, in turn, better protects the public and enhances accountability for the professions.

Conclusion

Executive branch oversight of Boards is lacking with existing oversight performed mainly by the Legislature. Boards are agencies of state government under the executive branch. Establishing oversight of the Boards under B&I will provide for executive branch awareness, guidance, and review of the Boards and will enhance public and licensee confidence in Board activities.

Recommendation

1. Establish executive branch oversight of Boards under the Department of Business and Industry.

Establish Standards for Regulatory, Financial, and Administrative Operation Through B&I

The executive branch should establish standards for regulatory, financial, and administrative operation of boards through the Department of Business & Industry (B&I). B&I should have statutory authority for establishing Board standards to fulfill its executive oversight role. Through adoption of regulations and development of policies and procedures, B&I could ensure there is a standard set of guidelines to follow and practices are consistent among the Boards and with other state agencies.

Establishment of Standards Required by Existing Statute



The 2017 Legislature determined, “The Department of Administration shall adopt regulations establishing standards for the financial operation and administration of regulatory bodies.”¹⁴ Prior to this legislation, Boards typically adopted their own regulations. The intent was to enable the Department of Administration (D of A) to

address and adopt regulations for a basic set of board standards. Boards that meet the standards in their regulations would continue to operate as normal.¹⁵

B&I is a better option to establish standards for the Boards.

Regulatory, Financial, and Administrative Practices Need Standards

In our first report, we noted several deficiencies in financial and administrative practices where setting standards could improve oversight. The practices involved: compensation; operating reserves; contract approval; and financial reporting.

This audit identified additional areas of concern where setting standards could provide improved oversight by the executive branch. These areas involve:

- Hearing Officers;
- Fees, Fines and Penalties;
- Regulatory Authority;
- Administrative Cost Recovery;
- Disciplinary Reporting;
- Board Training; and
- Records Retention and Public Records Requests.

¹⁴ NRS 622.235 codified Section 3 of Assembly Bill 328.

¹⁵ March 24, 2017 Assembly Committee on Commerce and Labor minutes, pages 9-11.

Hearing Officers



Board use of hearing officers may lack statutory authority and/or regulatory guidance. There appears to be no state guidelines that set forth the qualifications of hearing officers used by the Boards. In general, Board use of hearing officers appears inconsistent with the authorizing statute.

Statutory Authority or Regulatory Guidance Is Lacking

Many Boards have a provision in their practice acts that allows use of hearing officers or panels. The following is a typical wording of that provision:

“The Board may delegate to a hearing officer or panel its authority to take any disciplinary action pursuant to this chapter, impose and collect fines and penalties therefor, and deposit the money therefrom in a bank or other financial institution in this State.

If a hearing officer or panel is not authorized to take disciplinary action... and the Board deposits the money collected from the imposition of fines with the State Treasurer for credit to the State General Fund, it may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is required to pay attorney’s fees or the costs of an investigation, or both.”

The context of this provision relates to how money should be deposited resulting from actions if a hearing officer has been delegated the authority to take disciplinary action by the Board.

The OAG noted that the circumstances or conditions for the delegation to a hearing officer should be incorporated into the Board practice acts to provide clarity and guidance as to how and under what circumstances a hearing officer may be used. Other than mentioning hearing officers in the deposit statutes, practice acts are typically silent regarding the use of hearing officers.

Qualifications of Hearing Officers Lacking

Board practice acts appear silent as to the qualifications required for hearing officers. The OAG is not aware of hearing officer qualifications set forth elsewhere for Boards. With the exception of the Contractors Board, Boards that reported the use of hearing officers also reported that there were no internal written policies for the qualifications or selection of hearing officers.

The Contractors Board has a written policy for hearing officer qualifications that follow the guidelines of the National Judicial College. Generally, the hearing officer is required to be a Nevada attorney in good standing, an administrative law judge, and have at least five years' experience in the area of law regulated by the Board.

Boards Use of Hearing Officers Not Consistent With Authorizing Statute

Generally, for Boards that have the provision for the use of hearing officers in their practice acts and report using them, the manner they are used appears inconsistent with the intent of the authorizing statute. The authorizing statute contemplates that Boards, "...delegate to a hearing officer or panel its authority to take any disciplinary action pursuant to this chapter, impose and collect civil penalties, court costs and attorney's fees therefor..."

With the exception of the Contractors Board, Boards that use hearing officers or panels use them to establish the facts of a case, make recommendations, and then present the case to the Board for action. In these circumstances the Board has not delegated its authority to the hearing officer.

The Contractors Board uses hearing officers as contemplated by the statute in that the Board does not hear cases and decisions by the hearing officer may not be appealed to the Board. Appeals are made in district court.

Fees, Fines and Penalties



Board practice acts are inconsistent in how moneys received from fees, fines or penalties are treated. The practice act provisions that address the treatment of fines or penalties may conflict with constitutional provisions. Further, Board practices are inconsistent in what they consider a fine or penalty versus a fee.

Finally, Board methods for handling and accounting for moneys received from fines or penalties are inconsistent and may not comply with statute.

Boards are Inconsistent on Treatment of Moneys Received

Board practices are inconsistent on treatment of moneys received. Most practice acts allow Boards to retain moneys received from fees but require moneys received from fines be remitted to the state. Some practice acts are silent on the treatment of moneys received; others appear to allow Boards to retain all moneys received whether from fees or fines. This practice allows Boards that retain fines that should be remitted to the state to subsidize operational costs otherwise covered by licensees.

Retention of Fines May Conflict with Constitutional Provisions

Board practices that retain moneys received from fines may conflict with constitutional provisions. Statutory provisions that appear to allow Boards to retain fines imposed by hearing officers who have been delegated disciplinary authority may also conflict with constitutional provisions. The constitutional framework for the treatment of fines reads:¹⁶

“All fines, penalties and forfeitures accruing to the Territory of Nevada or to the people of the United States in the Territory of Nevada, shall inure to the State of Nevada.”

The OAG indicates a purpose of this clause is to protect a person’s due process rights by preventing a regulatory body which takes disciplinary action from deriving a direct financial benefit from its decisions. Boards that retain fines, either because their practice acts are silent or appear to allow the retention of fines, may be doing so in conflict with Nevada’s Constitution.

Practice Acts May Hinder Independence

Most Boards have provisions within their practice acts that appear to allow them to retain fines imposed by hearing officers. Generally, the practice acts provide that Boards who delegate their authority to hearing officers may retain the money. However, the practice acts also provide that if a hearing officer or panel is not authorized to take disciplinary action, the money should be remitted to the state.

The authorizing statute appears to address the constitutional provision on the treatment of fines by requiring the Board to delegate its authority to the hearing officer. The implication is that the hearing officer would be independent of the Board. Consequently, Boards would not derive a direct financial benefit from decisions made by an independent hearing officer.

However, the OAG noted that even if a Board delegates its authority to a hearing officer, the hearing officer may not be completely independent from the Board with regard to fines. If the hearing officer is “hired” by the Board, the hearing officer could be incentivized to levy fines in higher amounts to justify continued employment. At a minimum, because the hearing officer derives financial benefit from an ongoing relationship with the Board, the appearance of independence may be compromised.

¹⁶ Nevada Constitution, Article 17, Section 3.

The Contractors Board uses hearing officers as contemplated by the authorizing statute. The deposit statute contains the typical wording allowing the Board to retain fines imposed by the hearing officer but in practice the Board remits them to the state. This practice eliminates the appearance that the Board may be deriving direct financial benefit from hearing officer decisions.

Boards Differ in Defining a Fine/Fee

Board practices are different on what is considered a fine versus a fee. For example, some Boards conduct audits of continuing professional education (CPE) credits required by their practice acts that are reported by licensees. If a licensee cannot support the reported CPE, they may be assessed a fine. Some Boards consider the assessment to be a fee and retain the moneys received; others consider it a fine and remit the moneys to the state.

Practice acts that grant a Board the authority to impose monetary discipline may use terms such as fine, administrative fine, penalty, administrative penalty, and/or civil penalty. The OAG believes that any moneys received from the imposition of monetary discipline, regardless of terminology, should be remitted to the state.

Methods for Handling and Accounting for Fines May Not Comply with Statute

Board methods for handling and accounting for fines may not comply with statute. Generally, Board practice acts that address the treatment of fines imply that moneys received from fines be deposited with the State Treasurer for credit to the State General Fund. The practice acts further provide that the Boards may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is required to pay attorney's fees or the costs of an investigation, or both.

All Boards that remit fines to the state, with the exception of the Pharmacy Board, require that they be made payable to the Boards. These fines are then deposited in Board bank accounts and later remitted to the state. The timing when the Boards remit to the state is inconsistent, with some Boards remitting monthly, some quarterly, and some annually. The Pharmacy Board requires payments for fines be made by check payable to the state. The Pharmacy Board accepts the check and forwards the check to the state.

None of the Boards reported submitting claims to the state for money required to pay attorney's fees/investigation costs. Moneys received for the recovery of attorney's fees/investigation costs are deposited directly in the Board bank accounts and recorded in their accounting systems. If the moneys received include both fines and recovered costs, Boards deposit the full amount received and then remit the fine to the state.

Regulatory Authority



Board practices on conducting regulatory authority are different. Generally, each practice act provides the specific authority, including: setting standards and qualifications for the profession; setting fees for applications and licensure; investigating complaints; disciplining licensees; imposing fines; and taking action

against unlicensed activity. Typically, NRS provides the framework for a board's authority and NAC provides regulations that codify the specific actions that may be taken within that framework.

OAG guidance provides that any Board directive or guidance to the public and/or licensees should be codified in regulation, such as setting the specific type or amount of fees or fines. In this way, the Legislature granted the Board specific authority and action. However, if not codified, an action taken in setting fees or fines could be considered discretionary and may require action by the Board as a regulatory body under the general authority granted the Board by its practice act.

Practice Acts are Inconsistent on Authority for Fees/Fines

Board practice acts are inconsistent on the specific authority for setting fees and imposing fines codified in regulation. For most Boards, fees or fines are set as "not-to-exceed" amounts in NRS with the specific amounts set in NAC. For some Boards, fines or fees are set in NRS at a not-to-exceed amount without any specific amounts set in NAC. For other Boards, both NRS and NAC set fines or fees at not-to-exceed amounts. OAG believes that any fine or fee not resulting from a discretionary action taken by a Board as a regulatory body should be codified specifically in regulation as to the type and amount.

Some Boards Set Fines or Fees Through Policy Rather than Regulation

Board practices in setting fines and fees vary. Some Boards set fines or fees through policy rather than by statute or regulation. Using the previous example of Boards that conduct CPE audits, a board may have a policy of conducting the audits, determining non-compliance with the requirements of their practice act, and then setting the amount of any fine or fee resulting from a determination of non-compliance. However, the board's practice act may not set the amount of the fine. Moreover, the board as a regulatory body may not approve the individual fines imposed by the policy. Consequently, the board may be exposed to anti-trust liability. OAG believes regulatory actions taken under this type of policy should be codified in regulation, rather than set by policy.

Administrative Cost Recovery



Board practices in recovering administrative costs are inconsistent. Generally, Boards may recover reasonable attorney's fees and costs that are incurred as part of its investigative, administrative, and disciplinary proceedings if the Board issues an order or enters into a settlement agreement for a violation of the practice act.¹⁷ Allowable costs include: costs of an investigation; costs for copies, calls, postage, and delivery; fees for court reporters, expert witnesses, interpreters, and servicing a subpoena; and expenses for research.

Typically, Boards follow the guidelines for the recovery of attorney's fees and costs for actions taken as a regulatory body in issuing an order or entering a settlement agreement for violations of their practice acts. However, without additional authority in their practice acts, some Boards also recover administrative costs for the procedural handling of codified fines or penalties that do not require Board action. For example, some Boards recover administrative costs from a fine imposed for failure to notify the Board of an address change within statutory timeframes. The specific amount of the fine is set in the practice act and requires no Board action; however, the amount of the fine that is remitted to the state is reduced by the recovery of administrative costs.

OAG interprets the plain language of the provisions of NRS 622 that allow for cost recovery to apply only to the recovery of costs associated with actions taken by a Board as a regulatory body. OAG considers that recovery of costs for procedural handling of fines ought to be included in the fee structure. Additional clarification in NRS 622 is needed as to whether Boards have the authority to deduct administrative costs from procedural fines before remitting the fines to the state.

Disciplinary Reporting



Board practices are inconsistent in the types of disciplinary actions reported to the Legislative Counsel Bureau (LCB). Moreover, practices vary in providing public access to disciplinary actions taken against licensees.

Inconsistent Reporting of Disciplinary Actions

NRS 622.100 requires Boards to submit a quarterly summary of each disciplinary action taken against any licensee to LCB. However, the interpretation of what comprises reportable disciplinary action is left to the individual Boards. This interpretation results in different reporting of the same disciplinary action among

¹⁷ NRS 622.400.

the Boards. With regard to the CPE example, some Boards interpret fines or penalties for failure to comply with CPE requirements as disciplinary action reportable to the LCB while other Boards do not.

Inconsistent Public Access to Disciplinary Actions

Generally, Board practice acts deem disciplinary actions taken against licensees to be a matter of public record. However, with few exceptions, the practice acts are silent on the type and frequency of information required to be disclosed to the public and none describe the methods or means by which the Boards are required to provide public access to disciplinary information.

The public may have limited access to the disciplinary history of a licensee, if any. Some Board websites provide searchable lists of licensees and details of disciplinary action. Other Board websites have no information as to individual licensees and/or any disciplinary action.

Board Training



Board practices are inconsistent for training provided to members and staff. Moreover, Board members and staff are not statutorily required to attend training, although the OAG is required to make training available. Existing training modes, timing, and subjects may not be practical or effective for some Board members and staff.

Attendance at OAG Training for Board Members and Staff Not Required by Statute

The statutory requirement for Board training is, “As soon as practicable after a person is first appointed to serve as a member of a regulatory body, the person must be provided with: (a) A written summary of the duties and responsibilities of a member of the regulatory body; and (b) Training on those duties and responsibilities by the Attorney General.”¹⁸

OAG reports the requirements for training Board members is for OAG to provide the training and not as a requirement for Board members to attend. The statutes are silent with regard to training for Board staff.

Board Training Varies

Board-reported efforts to train members and staff vary greatly. Some Boards reported comprehensive training programs for members and staff. Elements of the programs included: internal training manuals; OAG manuals; continuing

¹⁸ NRS 622.200.

education requirements; mandatory attendance at OAG training classes; Board-specific training during meetings by the OAG and Ethics Commission; and attendance at seminars related to board operations. Other Boards reported that members were provided with only the date and time of the OAG training classes with no requirement to attend.

Training Could be More Effective

The OAG training class consists of one full day, given twice a year in general. Board members and staff are invited to attend. Subjects covered include open meeting law, administrative rulemaking, hearing procedures, contracting, audits, ethics, and public records.

Some Boards reported their members are professionals with active practices and it is not practical for them to devote a full day to training. Depending on the timing of an appointment, members may go six or more months before they are able to attend training. Additionally, all subjects are covered in one class while the training has different degrees of relevance for participants. Boards reported that because of the amount and variety of material, some subjects may not be covered fully or leave time for questions or discussion.

Boards provided suggestions to improve the effectiveness of training:

- Breaking classes up into more focused subject areas;
- Conducting classes more frequently than once or twice a year;
- Developing on-line courses taken at the participant's convenience; and
- Providing training more tailored to individual Board needs.

The OAG recognized there are opportunities for improving Board training but expressed concern about having the resources to implement some of the suggestions, especially for developing on-line courses. The OAG may need assistance and additional expertise in implementing Board suggestions.

Records Retention and Public Records Requests



Board practices for records retention and handling of public records requests vary and may not comply with statute.

Records Retention

Generally, Boards report following the state's general retention schedule as published by Nevada State Library, Archives and Public

Records (NSLAPR). NSLAPR also publishes specific retention schedules

developed jointly with Boards who have requirements not contained in the general retention schedules. Some Board practice acts specify retention of certain types of records, such as complaints, applications, legal notes, etc. The board-specific schedules must be approved by the state records committee. The board-specific and general retention schedules comprise the official retention schedules for Boards.

Some Boards that have specific retention requirements do not have an approved board-specific schedule. NSLAPR noted it is a violation of NRS 239, Public Records, to destroy records except in accordance with the official retention schedules. Boards may be in violation of NRS if they destroy records according to the retention requirements of their practice acts without also having those records retention requirements listed in an approved board-specific retention schedule.

Public Records Requests

NRS 239 and NSLAPR's Public Records Act Manual for State Agencies, details requirements for providing the public access to records. Some basic requirements are state agencies must:

- Adopt policies and procedures that conform to NRS 239 and NSLAPR's manual and post them on their website;
- Designate a records official and post the name of the records official on their website;
- Adopt a public records request form consistent with the one developed by the NSLAPR and OAG and post the form on their website; and
- Prepare a list of fees, within statutory limits, that the agency charges for providing public records and post the listing on their website.

Boards report they respond to public records requests. However, Board compliance with state requirements for public records access is inconsistent. Some Boards' websites provide detailed information that meet all of the requirements while other Boards' websites provide none.

B&I a Better Choice to Exercise Statutory Authority for Establishing Standards

B&I should be provided the statutory authority for establishing standards. In order to fulfill its executive oversight role, B&I would need to establish regulatory, financial, and administrative standards. Continuing to provide D of A with the authority to establish standards would require B&I to work through an agency not directly involved in the oversight of the Boards. It would be more effective, efficient, consistent, and more cohesive if B&I were provided that authority directly.

Establishing Standards by Regulation May Not Be Practical or Required

NRS 622.235 requires the adoption of regulations for establishing financial and administrative standards. Establishing a basic set of standards through regulation may not be practical or necessary. NRS 233B.038 states that a regulation does not include:

- A statement concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- A manual of internal policies and procedures or audit procedures of an agency which is used solely to train or provide guidance to employees of the agency and which is not used as authority in a contested case to determine whether a person is in compliance with a federal or state statute or regulation.

Many of the basic standards for the financial and administrative operations of the Boards relate to their internal management, policies, procedures, and practices. Establishing these standards may not require the adoption of regulations but could be achieved through written policies and procedures, many of which B&I already has in place.

As an integral part of its executive oversight role, B&I should be given the authority to establish standards through policy statements and manuals rather than regulation. Where the adoption of regulations is required, B&I, rather than D of A should be given the authority to adopt the regulations.

B&I Can Establish Standards

B&I has experience establishing standards for the 23 regulatory bodies under its oversight umbrella. For example, as a component of its agency services, B&I provides hearing/appeal officer support in various capacities to its regulatory bodies. B&I could establish standards for the use of hearing officers. Likewise, B&I could establish standards for the other areas of concern regarding fees, fines, and penalties; regulatory activity; administrative cost recovery; training; and public records retention and requests. By establishing standards, executive branch

oversight of boards through B&I will be improved by ensuring Board practice acts are consistent and comply with statute and other state guidelines.

Conclusion

Board standards and practices for regulatory, financial, and administrative operations are inconsistent. Establishing standards through B&I will provide for executive branch awareness, guidance, and review of the Boards and will enhance public and licensee confidence in Board activities.

Recommendation

2. Establish standards for regulatory, financial, and administrative operations through the Department of Business and Industry.

Appendix A

Scope and Methodology, Background, Acknowledgements

Scope and Methodology

We began the audit in June 2018. In the course of our work, we interviewed and discussed processes inherent to the governance and regulatory practices of Nevada's independent licensing boards (Boards) with management of the Boards; Office of the Governor; Office of the Attorney General (OAG); Department of Business and Industry (B&I); Department of Health and Human Services (DHHS); Department of Administration (D of A); Nevada State Library, Archives and Public Records (NSLAPR); and Legislative Council Bureau (LCB). We researched Board records and websites; legislative hearings; information and training manuals; professional publications and studies; applicable NRS, NAC, and SAM sections; and other state and federal guidelines. We concluded fieldwork in May 2019.

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

Background

Nevada's Boards and Commissions Overview

Nevada's Boards and Commissions help Nevada citizens to have direct access to their government and to participate in shaping public policy. Board or Commission members are generally appointed or confirmed by the Governor. Membership requirements are outlined in their enabling legislation and are usually narrowly defined and often include requirements to ensure political or geographic diversity. Most of the Boards and Commissions are created pursuant to federal law, state legislation, or executive order and each plays a different role in state government. Boards and Commissions may provide oversight of an Executive Branch agency, act in an advisory capacity to a policy making body, or regulate an industry, profession or occupation, either under the umbrella of an Executive Branch agency or as an independent regulatory body. As of September 2017, the Office of the Governor listed over 200 active Boards and Commissions.

Occupational and Professional Licensing

Nevada regulates many types of businesses, occupations, and professions. Most laws pertaining to regulating Boards are found in Title 54, “Professional, Occupations and Businesses” of NRS, which contains provisions governing more than 50 professions, occupations, and businesses. Most occupations or professions are regulated by independent licensing boards. Other occupations are regulated through state agencies. As regulatory bodies, independent licensing boards are mandated to enforce provisions of state law for the protection and benefit of the public.

Creation and Operation of Independent Boards

The Legislature creates independent licensing boards and sets public policy governing them through their individual practice acts. These independent boards are given the authority to adopt regulations regarding licensing and practice of the occupation or profession they were created to oversee, subject to review and approval by the Legislature.

Independent boards are funded by fees charged to their licensees and do not receive state general fund support. As the independent boards receive no general fund appropriations, their fiscal activity is not included in and does not affect the state’s Executive Budget. Additionally, the independent boards maintain their own accounting and payroll systems and hire their own staff. Accordingly, the independent boards have been exempted from the provisions of the state’s budget act, NRS Chapter 353 “State Financial Administration”, the state’s internal control act, NRS Chapter 353A, “Internal Accounting and Administrative Control”; and the state’s personnel act, NRS Chapter 284, “State Personnel System.”

Boards Selected for Audit

There are 34 independent licensing boards (Boards) that are exempt from the state’s budget, internal control, and personnel acts. As independent regulatory bodies, the Boards are not under the oversight umbrella of any executive branch agency. However, the Boards are subject to periodic review by the Legislative Commission’s Sunset Subcommittee under NRS 232B. The Boards are also required to submit certain financial, licensing and disciplinary activity reports to the LCB.¹⁹

¹⁹ Submission of financial reports to the LCB is required each year under NRS 218G.400. Submission of licensing and disciplinary activity reports to the LCB is required each quarter under NRS 622.090.

Exhibit II lists the Boards selected for audit.

Exhibit II

Selected Board Titles, Authority and Number of Members

Statutory Title	Short Title	Creating Authority	Board Members
Nevada State Board of Accountancy	Accountancy	NRS628.035	7
Board of Examiners for Alcohol, Drug and Gambling Counselors	Alcohol, Drug	NRS641C.150	7
State Board of Architecture, Interior Design and Residential Design	Architecture	NRS623.050	9
Board of Athletic Trainers	Athletic Trainers	NRS640B.170	5
State Barbers' Health and Sanitation Board	Barbers	NRS643.020	4
Certified Court Reporters' Board of Nevada	Court Reporters	NRS656.040	5
Chiropractic Physicians' Board of Nevada	Chiropractic	NRS634.020	7
State Contractors' Board	Contractors	NRS624.040	7
State Board of Cosmetology	Cosmetology	NRS644.030	7
Board of Dental Examiners of Nevada	Dental	NRS631.120	11
Board of Dispensing Opticians	Opticians	NRS637.030	5
Nevada Funeral and Cemetery Services Board	Funeral	NRS642.020	7
Board of Homeopathic Medical Examiners	Homeopathic	NRS630A.100	7
State Board of Landscape Architecture	Landscape	NRS623A.080	5
Board for the Regulation of Liquefied Petroleum Gas	Petroleum	NRS590.485	6
Board of Examiners for Long-Term Care Administrators	Long-Term Care	NRS654.050	7
Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors	Marriage	NRS641A.090	9
Board of Massage Therapists	Massage	NRS640C.150	7
Board of Medical Examiners	Medical	NRS630.050	9
State Board of Nursing	Nursing	NRS632.020	7
Board of Occupational Therapy	Occupational	NRS640A.080	5
Nevada State Board of Optometry	Optometry	NRS636.030	4
State Board of Oriental Medicine	Oriental	NRS634A.030	5
State Board of Osteopathic Medicine	Osteopathic	NRS633.181	7
State Board of Pharmacy	Pharmacy	NRS639.020	7
State Board of Physical Therapy Examiners	Physical Therapy	NRS640.030	5
State Board of Podiatry	Podiatry	NRS635.020	5
Private Investigator's Licensing Board	Investigators	NRS648.020	5
State Board of Professional Engineers and Land Surveyors	Engineers	NRS625.100	9
Board of Psychological Examiners	Psychological	NRS641.030	7
Board of Registered Environmental Health Specialists	Environmental	NRS625A.030	5
Board of Examiners for Social Workers	Social Workers	NRS641B.100	5
Speech-Language Pathology, Audiology and Hearing Aid Dispensing Board	Speech	NRS637B.100	8
Nevada State Board of Veterinary Medical Examiners	Veterinary	NRS638.020	8

Overview of Department of Business and Industry

The Department of Business and Industry (B&I) is a cabinet level agency in Nevada State government. Its objective is to encourage and promote the development and growth of business and to ensure the legal operation of business in order to protect consumers by maintaining a fair and competitive regulatory environment. B&I is comprised of the director's office, 12 executive branch agencies, and 23 regulatory bodies under its oversight umbrella. For fiscal year 2017, B&I had a staff of 679 and expenditures of about \$87.4 million.

The director's office manages a number of programs and initiatives to address the needs of small businesses and consumers, including small business advocacy, bond programs, access to capital, constituent services and fraud prevention, and education

The regulatory bodies consist of a wide variety of boards, commissions, committees, councils, and panels that handle licensure, as well as complaints, investigations, hearings, appeals and/or discipline for many different industries, occupations and professions. These regulatory bodies operate with varying degrees of autonomy with some having independent authority, while others fall under B&I divisions or the Director of B&I.

A comparison survey conducted by B&I indicates that the variety of regulatory bodies under B&I's single oversight umbrella are typically under the oversight of multiple agencies in other states. Additionally, of the states surveyed, all but Ohio place licensing boards under the oversight of a state agency.

Exhibit III shows the results of B&I's state comparison survey, indicating the agencies in other states that oversee the regulatory bodies under B&I's single oversight umbrella. Exhibit III also shows the agency in other states that oversees licensing boards.

Exhibit III:

DEPARTMENT OF BUSINESS & INDUSTRY - STATE COMPARISON SURVEY

NEVADA (UNDER B & I)	COLORADO	UTAH	VIRGINIA	CALIFORNIA	WASHINGTON	OHIO	MASSACHUSETTS
ATHLETIC COMMISSION	Department of Regulatory Agencies	Governor's Office of Economic Development	Secretary of Commerce & Trade	Business, Consumer Services and Housing Agency	Department of Licensing (includes DMV)	Athletic Commission of Ohio	Secretary of Housing & Economic Development
BANKING	Department of Regulatory Agencies	Department of Financial Institutions	State Corporation Commission	Business, Consumer Services and Housing Agency	Department of Financial Institutions	Department of Commerce	Secretary of Housing & Economic Development
MORTGAGE LENDING	Department of Regulatory Agencies	Department of Financial Institutions	State Corporation Commission	Business, Consumer Services and Housing Agency	Department of Financial Institutions	Department of Commerce	Secretary of Housing & Economic Development
INSURANCE	Department of Regulatory Agencies	Department of Insurance	State Corporation Commission	Elected Constitutional Officer	Elected Constitutional Officer	Department of Insurance	Secretary of Housing & Economic Development
REAL ESTATE / HOA	Department of Regulatory Agencies	Department of Commerce	State Corporation Commission	Business, Consumer Services and Housing Agency	Department of Licensing	Department of Commerce	Secretary of Housing & Economic Development
HOUSING	Department of Local Affairs	Department of Community & Culture	Secretary of Commerce & Trade	Business, Consumer Services and Housing Agency	Housing Finance Commission	Ohio Housing Finance and Development Services Agencies	Secretary of Housing & Economic Development
SMALL BUSINESS	Department of Economic Development / Office of the Governor	Governor's Office of Economic Development	Secretary of Commerce & Trade	Governor - Office of Business & Economic Development	Department of Commerce	Secretary of Commerce & Trade	Secretary of Housing & Economic Development
CONSUMER AFFAIRS	Department of Regulatory Agencies	Department of Commerce	Attorney General and agencies	Business, Consumer Services and Housing Agency	Attorney General	Attorney General	Secretary of Housing & Economic Development
MINORITY AFFAIRS	Department of Regulatory Agencies	Department of Community & Culture	Secretary of Commerce & Trade	Multiple Agencies	Human Rights Commission	Ohio Development Services Agency	
TRANSPORTATION (TNC, Limos, etc)	Department of Transportation	Public Service Commission	Secretary of Transportation / DMV	Public Utility Commission	Utilities & Transportation Commission	Public Utilities Commission	Secretary of Energy & Environmental Affairs/ Department of Public Utilities
TAXI	Local Government	Local Government	Secretary of Transportation / DMV	Local Government	Department of Licensing	Local Government	Local Government
LABOR COMMISSIONER	Department of Labor & Employment	Labor Commission	Secretary of Commerce & Trade	Labor & Workforce Development Agency	Department of Labor & Industries	Department of Commerce	Labor and Workforce Development
INDUSTRIAL RELATIONS	Department of Labor & Employment	Labor Commission	Secretary of Commerce & Trade	Labor & Workforce Development Agency	Department of Labor & Industries	Department of Commerce	Secretary of Labor and Workforce Development
WORKERS COMPENSATION	Department of Labor & Employment	Worker's Compensation Commission	Independent Commission	Labor & Workforce Development Agency	Department of Labor & Industries	Bureau of Workers Composition	Secretary of Labor and Workforce Development
EMPLOYMENT MANAGEMENT RELATIONS BOARD	Department of Labor & Employment	Labor Commission	No equivalent	Labor & Workforce Development Agency		State Employment Relations Board	Secretary of Labor and Workforce Development
ATTORNEY FOR INJURED WORKERS	Department of Labor & Employment	None	None	None	None	Industrial Commission	None
OSHA	Department of Labor & Employment	Labor Commission	No	Labor & Workforce Development Agency	Department of Labor & Industries	Federal Program	Secretary of Labor and Workforce Development

NEVADA (Not Under B & I)	COLORADO	UTAH	VIRGINIA	CALIFORNIA	WASHINGTON	OHIO	MASSACHUSETTS
ECONOMIC DEVELOPMENT	Governor - Office of Economic Development & International Affairs	Governor's Office of Economic Development	Secretary of Commerce & Trade	Governor - Office of Business & Economic Development	Department of Commerce	Ohio Development Services Agency	Secretary of Housing & Economic Development
LICENSING BOARDS	Department of Regulatory Agencies	Department of Commerce	Secretary of Commerce & Trade	Business, Consumer Services and Housing Agency	Department of Licensing	Multiple Independent Boards & Commissions	Secretary of Housing & Economic Development
APPRENTICESHIPS	Department of Labor & Employment	Department of Workforce Services	Secretary of Commerce & Trade / Department of Labor & Industry	Labor & Workforce Development Agency	Department of Labor & Industries	Ohio Department of Job & Family services	Secretary of Labor and Workforce Development
PUBLIC UTILITIES COMMISSION	Department of Regulatory Agencies	Department of Commerce	State Corporation Commission	Independent Commission	Department of Commerce	Public Utilities Commission	Secretary of Energy & Environmental Affairs
MARIJUANA	Governor - Office of Marijuana Coordination	None	TBD	Business, Consumer Services and Housing Agency	Liquor & Cannabis Board	Assorted agencies through the Ohio Medical Marijuana Control Program	Cannabis Control Commission

Source: Department of Business & Industry State Survey, 2019.

Exhibit IV shows the 23 regulatory bodies currently under B&I and where the 34 Boards might fall under B&I's oversight umbrella.

Exhibit IV:

DEPARTMENT OF BUSINESS AND INDUSTRY
Boards, Commissions, Committees, Councils, and Panels

INDEPENDENT AUTHORITY	DIVISION AUTHORITY	B&I DIRECTOR AUTHORITY
Taxicab Authority* Taxicab Authority Board** Governor Appointed	Division of Insurance*** Commissioner's Advisory Committee on Health Care and Insurance Commissioner Appointed	Mortgage Lending Division*** Advisory Council Mortgage Investments and Lending Legislatively Appointed
Dept of Business & Industry Nevada Commission on Minority Affairs Legislatively Appointed	Division of Insurance*** Agent Advisory Committee Commissioner Appointed	EMRB*** Employee Management Relations Board*** Governor Appointed
Division of Insurance*** Appeals Panel for Industrial Insurance Governor Appointed	Division of Insurance*** Property & Casualty Advisory Committee Commissioner Appointed	Labor Commissioner's Office*** Labor Commissioner*** Director Appointed
NV Athletic Commission*** NV Athletic Commission*** Governor Appointed	Division of Insurance*** Title Insurance Advisory Committee Commissioner Appointed	NV Transportation Authority*** NV Transportation Authority*** Governor Appointed
Real Estate Division* NV Commission of Appraisers of Real Estate** Governor Appointed	Division of Insurance*** Network Adequacy Advisory Council Commissioner Appointed	
Real Estate Division* Nevada Commission for Common-Interest and Condominium Hotels** Governor Appointed	Nevada Housing Division*** Weatherization Assistance Program - Policy Advisory Council Div Administrator Appointed	
Real Estate Division* NV Real Estate Commission** Governor Appointed	Division of Industrial Relations*** Workers Compensation (WC) Section Permanent Partial Disability Quality Assurance Review Panel Div Administrator Appointed	
Financial Institutions Division*** Credit Union Advisory Council Governor Appointed		
Division of Industrial Relations*** Advisory Council to the Division Governor Appointed		
Division of Industrial Relations*** Admin Board of the Subsequent Injury Account for Associations of Self Insured Public or Private Employers Governor Appointed		
Division of Industrial Relations*** Admin Board of the Subsequent Injury Account for Self-Insured Employers Governor Appointed		
Division of Industrial Relations*** Occupational Safety and Health Review Board Governor Appointed		
Independent Licensing Boards*** Title 54 Boards Exempt From Provisions of State's Budget and Personnel Acts Governor Appointed		

Summary	
Councils:	5
Committees:	4
Panels:	2
Commissions:	7
Boards:	5
B&I Total:	23

Independent Licensing Boards:	34
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- * Licensure
- ** Licensure, Complaints & Discipline
- *** Complaints & Discipline

Acknowledgments

We express appreciation to the management of the Boards, Office of the Governor, OAG, B&I, DHHS, D of A, NSLAPR and LCB for their cooperation and assistance throughout the audit.

Contributors to this report included:

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Administrator

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Executive Branch Auditor

Appendix B

Department of Business and Industry Response and Implementation Plan

STEVE SISOLAK
Governor

STATE OF NEVADA



MICHAEL BROWN
Director

DEPARTMENT OF BUSINESS AND INDUSTRY OFFICE OF THE DIRECTOR

June 3, 2019

Mr. Mark Richards
Executive Branch Auditor
Governor's Finance Office
209 East Musser Street, Suite 302
Carson City, NV 89701

Dear Mr. Richards,

Thank you for providing the draft Audit Report on Nevada's Independent Licensing Boards. This excellent report identifies the many governance gaps in the organization of this function within state government. The current patchwork of boards is inefficient and creates substantial financial, data security, human resource and reputational risk. They lack standardized financial, human resource, and other administrative controls.

The Department of Business & Industry concurs with the report's recommendation to establish standards for regulatory, financial and administrative management of the Independent Licensing Boards. The best managed states in the nation have consolidated oversight of Boards under a cabinet-level department, such as the Nevada Department of Business and Industry. Using a shared-business service model, this Department currently provides standardized support for 12 divisions encompassing 23 boards, commissions, councils, committees and panels. Adding 34 licensing boards could be achieved by creating a Division of Occupational Licensing, like that found in the state of Colorado within their Department of Regulatory Affairs.

This Department is in full support of your report and its findings. We stand ready to help advance the needed reforms.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Brown".

Michael Brown, Director
Department of Business and Industry

Appendix C

Timetable for Implementing Audit Recommendations

In consultation with the Department of Business and Industry (B&I), the Division of Internal Audits categorized the two recommendations contained within this report into one of two separate implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). B&I should begin taking steps to implement all recommendations as soon as possible. B&I's target completion dates are incorporated from Appendix B.

**Category 2: Recommendations with an anticipated
implementation period exceeding six months.**

<u>Recommendations</u>	<u>Time Frame</u>
1. Establish executive branch oversight of Boards under the Department of Business and Industry. (page 16)	Jan 2022
2. Establish standards for regulatory, financial, and administrative operations through the Department of Business and Industry. (page 28)	Jan 2022

The Division of Internal Audits shall evaluate the action taken by B&I concerning the report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the committee and B&I.