



Greater Use of Alternative Resolution Could Aid Consumer Protection

at a glance

The Department of Business and Professional Regulation could make greater use of alternative resolution methods, such as mediation and civil citations, in lieu of its hearing process to resolve consumer complaints. Alternative resolution provides much faster and less costly resolution of consumer problems. While most professions authorize alternative resolution for some types of cases, its use varies among professions and could be expanded. To do so, the department should work with the professions to develop consistent criteria for using alternative resolution.

Scope

This report examines the complaint resolution process administered by the Department of Business and Professional Regulation (DBPR), Professional Regulation Program and assesses the potential benefits of increasing the use of alternative complaint resolution.

Background

Florida's Professional Regulation Program, which is administered by the Department of Business and Professional Regulation, regulates 22 professions. In Fiscal Year 2003-04, these professions regulated 737,997 licensees.

The program is intended to protect the health, safety, and welfare of the state's citizens and visitors by ensuring that regulated professionals meet prescribed standards of education, competency, and practice. To achieve this mission, the program sets licensing standards and licenses individuals, conducts inspections, and processes complaints of wrongdoing filed against licensed and unlicensed persons. These complaints may be filed by consumers and other licensees, or be generated by program staff based on violations they detect during routine inspections. In Fiscal Year 2003-04, the program received 19,597 complaints against licensees and 3,507 complaints for alleged unlicensed activities.

Complaint processing is performed by the department and professional boards.¹ As shown in Exhibit 1, when the department receives a complaint alleging unlicensed practice or violations by a licensed person, staff reviews the case to determine if the allegations meet legal sufficiency standards.² If the

¹ Three professions, asbestos abatement, athlete agents, and talent agencies, do not have boards. For these professions, the department performs the activities conducted by boards for the other regulated professions.

² Legal sufficiency exists if (1) the profession is within the jurisdiction of the department; (2) the allegations, if proven, would be a violation of the practice acts for that profession; and (3) there is sufficient evidence to meet the minimum evidentiary requirements for the alleged violation. A complaint found legally insufficient is closed.

complaint is deemed to be legally sufficient, the department next determines whether it is eligible for alternative resolution or should be investigated. Certain violations, typically those deemed to be minor, may be handled through alternative resolution. Depending on the nature of the violation and the profession involved, the alternative resolution process can include issuance of a notice of noncompliance, a citation, or mediation.^{3,4}

More egregious allegations are investigated. The program then submits its investigative findings and recommendations to the probable cause panel of the appropriate regulatory board for a probable cause determination.⁵ If probable cause is found, the department files a formal complaint against the licensee.⁶ In accordance with Chapter 120, *Florida Statutes*, the department then conducts a hearing and issues a recommended order that is sent back to the appropriate board who then issues the final order.⁷ Serious allegations relating to unlicensed activity are resolved by the department through a final order.

³ A notice of noncompliance is issued as a first response to a minor violation of a rule, as established by each professional board, in any instance in which it is reasonable to assume that the violator was unaware of the rule or how to comply with it. A citation is issued in matters when a board has adopted rules to designate as citation violations those violations for which there is no substantial threat to public health, safety, and welfare. Mediation is an informal and non-adversarial process in which a neutral third person or mediator helps disputing parties reach a mutually acceptable and voluntary agreement for complaints alleging economic harm that the licensee can remedy.

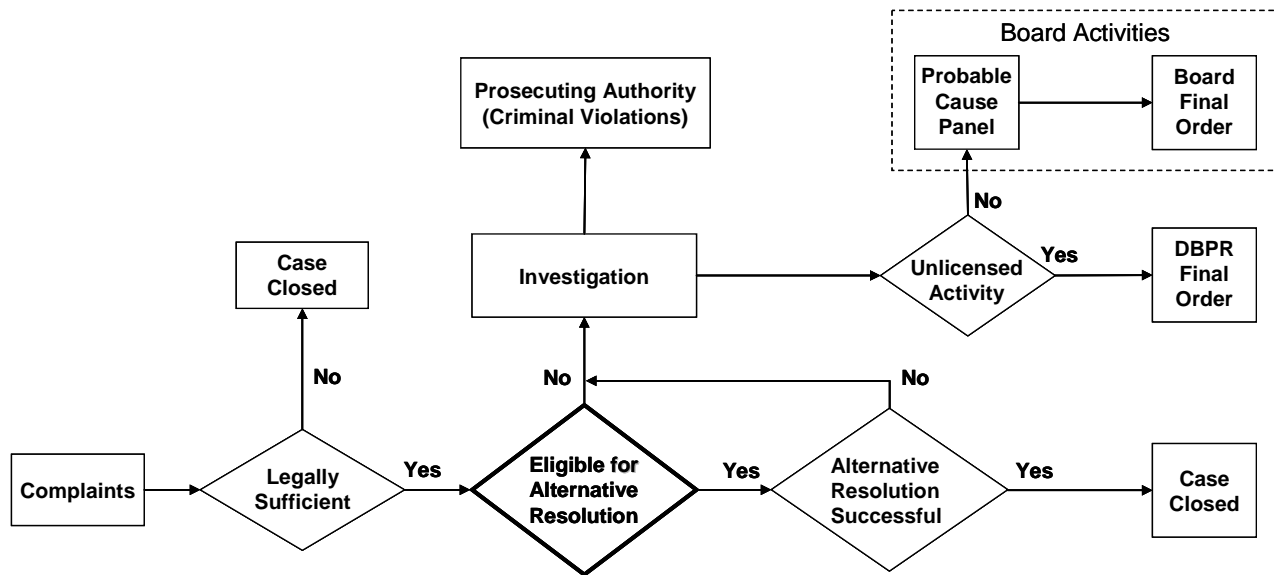
⁴ According to the department, violations relating to unlicensed activity are not eligible to be resolved through mediation.

⁵ At any time after legal sufficiency is found, the department may dismiss a case if there is insufficient evidence to support prosecution of allegations.

⁶ Probable cause is established when the facts or evidence in the investigative report provides reasonable belief that a licensee has violated a statute(s) as regulated by the Department of Business and Professional Regulation. During the probable cause hearing and any later proceedings, the licensee has the right to inspect the investigative file and receive a copy of any complaint filed, as well as to file written responses to those documents.

⁷ A hearing before an administrative judge from the Division of Administrative Hearings must be held if there are any disputed issues of material fact.

**Exhibit 1
The Complaint Resolution Process Involves Multiple Steps**



Source: OPPAGA analysis.

Final orders may include penalties such as reprimands, monetary fines, an order to cease and desist illegal actions, and revocation of professional licenses. When complaints include allegations of criminal misconduct, the law directs the program to refer the complaint to the proper prosecuting authority.⁸

As shown in Exhibit 2, DBPR processes complaints for 20 professions, while 2 professions have privatized this activity—professional engineers and architecture and interior design.⁹ For these 2 professions, private entities now perform all of the complaint processing activities that were previously performed by the program to include reviews for legal sufficiency and investigations. However, the program continues to provide administrative support services to these professions. For example, the program maintains all of the associated complaint processing data for these professional boards in the department’s LicenseEase data system.¹⁰

**Exhibit 2
DBPR Processes Complaints for Most Professions, but Two Professions Privatized this Function**

Regulated Profession	Number of Licensees on June 30, 2004
Complaints Processed by DBPR	
Asbestos Abatement	438
Athlete Agents	152
Accountancy	34,905
Auctioneers	2,445
Barbers	12,711
Building Code Administrators and Inspectors	10,285
Community Association Managers	9,619
Construction	92,970
Cosmetology	167,239
Electrical Contractors	11,197
Employee Leasing Companies	606
Funeral Industry ¹	4,224
Harbor Pilots	113
Landscape Architecture	1,306
Professional Geologists	2,169
Professional Surveyors and Mappers	4,149
Real Estate	298,688
Real Estate Appraisal	17,302
Talent Agents	175
Veterinary Medicine	7,123
Complaints Processed by a Private Entity	
Architecture and Interior Design	14,724
Professional Engineers	45,457
Total	737,997

¹ Responsibility for regulating the funeral industry will be transferred to the Department of Financial Services in October 2005 in accordance with Ch. 2004-301, *Laws of Florida*.

Source: Department of Business and Professional Regulation.

⁸ As specified in s. 455.2277, *F.S.*

⁹ In 1997, the Legislature established the Florida Engineers Management Corporation as a private not-for-profit corporation to perform all activities relating to processing complaints for the Florida Board of Professional Engineers. In 2002, the Board of Architecture and Interior Design contracted with the law firm of Smith, Thompson, Shaw & Manausa, P.A. to perform its complaint processing activities. In addition, the Board of Land Surveyors and Mappers voted in July 2003 to privatize support services, but has not received approval from the Department.

¹⁰ The LicenseEase system maintains licensing data on all the department’s regulated professions.

Resources. For Fiscal Year 2004-05, the Legislature appropriated \$17.5 million for the program’s compliance and enforcement activities.¹¹ The majority of this amount (\$16.9 million) is derived from trust funds. Biennial license fees, civil monetary penalties, and examination fees from license applicants are the primary sources of revenue for these trust funds. The remaining \$680,000 was appropriated from general revenue. The Legislature also authorized 188 full-time equivalent positions for compliance and enforcement of the regulated professions. Program staff is located in Tallahassee and 10 field offices. Appendix A identifies the net income for the two-year period, July 1, 2002, through June 30, 2004, and the Fiscal Year 2003-04 ending fund balance for each of the professions.

Findings

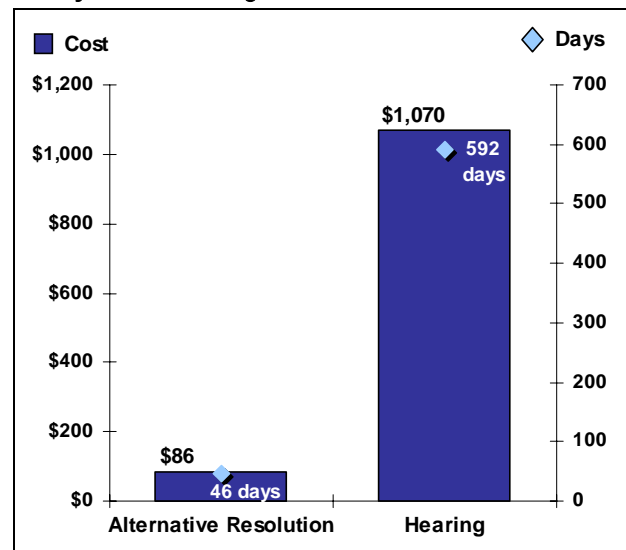
Greater use of alternative resolution would benefit consumers and reduce costs

Complaints processed through alternative resolution are resolved much faster and at a lower cost than those handled using the hearing process. In Fiscal Year 2003-04, complaints resolved through a hearing took a median of 592 days to resolve, or over 19 months (see Exhibit 3). In contrast, complaints processed through alternative resolution took a median of 46 days to resolve.¹² Faster resolution of complaints benefits consumers because corrective actions that reduce the risk to consumer safety can be implemented more quickly.

Exhibit 3 also shows that processing complaints through alternative means is much less costly than a hearing. The median cost to the state for resolving a complaint through the

alternative resolution process was \$86 in Fiscal Year 2003-04, which was less than 10% of the estimated cost of \$1,070 to resolve a complaint through a hearing. Alternative resolution also can be less costly to licensees, who may incur expense by hiring lawyers to represent them in the hearing process. Appendix B shows the median number of days to process complaints during Fiscal Year 2003-04 for each regulated profession.

Exhibit 3
Alternative Resolution Is Much Faster and Less Costly Than Hearings



Source: Department of Business and Professional Regulation and OPPAGA analysis.

The use of alternative complaint resolution varies among the professions

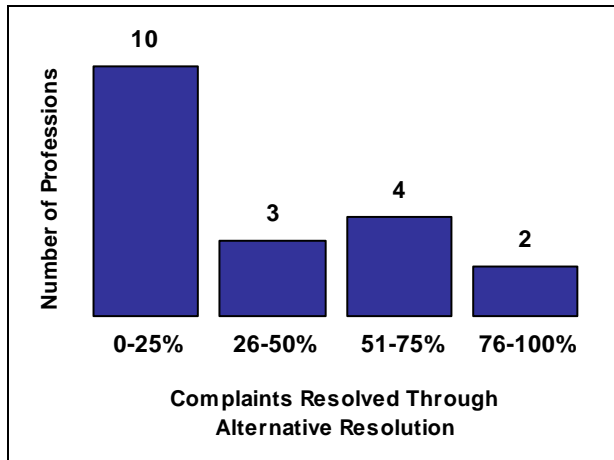
While alternative resolution methods are not appropriate for all complaints, their use could be increased. Eligibility for a complaint to be processed through alternative resolution is currently established by each professional board.¹³ As shown in Exhibit 4, most professions resolved less than 50% of complaints through alternative resolution in Fiscal Year 2003-04. Appendix B identifies the percentage of complaints resolved through a hearing and through alternative resolution by profession.

¹¹ In addition to compliance and enforcement activities, the Legislature appropriated \$20.5 million to the program for standards and licensure activities. These activities include processing applications for examination and professional licensure, and monitoring all continuing education activities of licensees.

¹² In Fiscal Year 2003-04, complaints resolved through a hearing took between 286 and 1,184 days to resolve, while complaints processed through alternative resolution took between 8 and 411 days to resolve.

¹³ As specified in s. 455.2273, F.S.

Exhibit 4
In Fiscal Year 2003-04, the Use of Alternative Resolution Varied Among Professions¹



¹ In Fiscal Year 2003-04, three professions, asbestos abatement, athlete agents, and professional geologists, did not resolve any complaints through issuance of a final order. Although complaints were received for these professions, a lack of final orders indicates that these complaints were either dismissed due to insufficient evidence or still pending at the end of the fiscal year.

Source: Department of Business and Professional Regulation and OPPAGA analysis.

Most professions use alternative resolution to process some complaints. However, the number and types of violations that are eligible for alternative resolution vary substantially among professions.¹⁴ For example, the Real Estate Commission allows citations to be issued for 41 offenses, such as failure to maintain the required office entrance sign and misconduct involving economic loss resulting in full restitution to the complainant. In contrast, the Board of Landscape Architects only allows a citation for two offenses—false, deceptive or misleading advertising not resulting in compensation; and practicing on an inactive license within two months after expiration.

The boards also vary in the types of violations that may be handled through alternative resolution processes. For example, the Board of Professional Geologists requires complaints associated with fraudulent, false, deceptive or misleading advertising to be processed through

¹⁴ In Fiscal Year 2003-04, three professions; asbestos abatement, athlete agents, and professional geologists did not use alternative resolution.

the hearing process, while the Veterinary Medicine and the Landscape Architecture boards allow alternative resolution to be used for these violations. Similarly, the Board of Architecture and Interior Design requires complaints involving failure to obtain or provide proof of continuing education hours to be handled through the hearing process, while the boards of Electrical Contractors and Building Code Administrators and Inspectors authorize using alternative resolution for these violations.

Conclusions and Recommendations

The department should ensure that only violations posing a substantial threat to public health, safety and welfare require resolution through a hearing

Although similar violations among the various professions can have differing impacts on consumer health, safety and welfare, the criteria used to identify the appropriate complaint process should be uniform. To help ensure that only violations having a substantial effect on consumer health, safety and welfare require resolution through the hearing process, the program should work with the associated professional boards to identify the appropriate process for each violation.

To increase the use of alternative resolution and improve consumer protection, each profession should assess each violation’s eligibility for alternative resolution. This comprehensive assessment should result in a reduction in the number of complaints resolved through a hearing, which will serve to reduce the average cost and time to process complaints and result in improved consumer protection.

To help ensure that only violations having a substantial effect on consumer health, safety and welfare require resolution through the hearing process, we recommend that the Legislature direct that each profession enter into rulemaking to assess each violation through use of consistent criteria. We also recommend that the Legislature direct the department to work with each profession during this process. The department's involvement will help ensure that only complaints with a substantial impact on the health, safety, and welfare of consumers are handled through the hearing process, and that complaints of minor violations are processed through alternative resolution.

Agency Response ---

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Business and Professional Regulation for review and response. The Secretary's written response is included in Appendix C.

Appendix A

Most Boards Have a Positive Net Income and Fund Balance

It is legislative intent that regulated professions be self-supporting.¹⁵ Each board, or the department, when there is no board, is responsible for ensuring that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance. Boards determine the amount of license fees based on estimates of the revenue required to implement all regulatory functions for the profession. As of June 30, 2004, most boards had a positive net income and fund balance.¹⁶

Regulatory Entity	Net Income ¹⁷ (FY 2002-03 thru FY 2003-04)	Fund Balance (June 30, 2004)
Board of Accountancy	\$ (926,980)	\$ (390,122)
Board of Architecture and Interior Design	(213,312)	601,103
Asbestos Licensing Unit	88,644	38,351
Office of Athlete Agents	96,178	58,257
Florida Board of Auctioneers	15,467	1,014,059
Barbers Board	789,295	1,109,242
Building Code Administrators and Inspectors	4,059,131	2,294,419
Council of Community Association Managers	1,666,390	1,004,605
Construction Industry Licensing Board	(6,781,312)	2,878,526
Board of Cosmetology	(1,578,235)	(227,877)
Electrical Contractors Licensing Board	(1,210,516)	(264,566)
Board of Employee Leasing Companies	608,284	613,244
Board of Professional Engineering	1,319,738	570,563
Board of Funeral Directors and Embalmers	143,937	106,384
Board of Professional Geologists	51,942	100,770
Board of Landscape Architecture	97,202	243,463
Board of Pilot Commissioners	117,961	87,291
Florida Real Estate Appraisal Board	1,726,599	390,439
Real Estate Commission	5,236,529	6,155,061
Board of Professional Surveyors and Mappers	226,562	44,535
Office of Talent Agents	(173,656)	(476,147)
Board of Veterinary Medicine	215,268	750,162

Source: Department of Business and Professional Regulation and OPPAGA analysis.

¹⁵ As specified in s. 455.219(1), *F.S.*

¹⁶ For each profession, net income was derived from operating accounts and unlicensed activity accounts. For the Board of Accountancy, the Education Minority Assistance Program account also was included in net income and fund balance totals. Associated recovery fund accounts were included for the Florida Board of Auctioneers, the Construction Industry Licensing Board, and the Real Estate Commission.

¹⁷ Net income is reported for a two-year period to account for fluctuations in revenue collection due to the two-year licensing period.

Appendix B

Alternative Resolution Is Faster Than the Hearing Process, But Use Varies Among Professions

The department processes complaints for all professions except architecture and interior design and professional engineers, which have privatized compliance and enforcement functions. In Fiscal Year 2003-04, the median number of days to resolve complaints through a hearing was 592 days, while the time to resolve cases through alternative resolution was only 46 days.

PROFESSIONS	Alternative Resolution			Hearing Process		
	Number of Complaints	Percentage Resolved	Median Days to Close	Number of Complaints	Percentage Resolved	Median Days to Close
Accountancy	11	21%	47	42	79%	542
Asbestos Abatement	0	N/A	N/A	0	N/A	N/A
Athlete Agents	0	N/A	N/A	0	N/A	N/A
Auctioneers	35	69%	121	16	31%	438
Barbers	709	94%	58	43	6%	308
Building Code Administrators and Inspectors	0	0%	N/A	3	100%	455
Community Association Managers	7	32%	411	15	68%	984
Construction	894	52%	85	821	48%	631
Cosmetology	3,441	97%	41	106	3%	341
Electrical Contractors	74	73%	80	27	27%	677
Employee Leasing Companies	11	25%	82	33	75%	788
Funeral Directors and Embalmers	34	40%	23	51	60%	719
Professional Geologists	0	N/A	N/A	0	N/A	N/A
Landscape Architecture	1	25%	51	3	75%	1,184
Harbor Pilots	0	0%	N/A	1	100%	286
Real Estate	9	2%	8	353	98%	463
Real Estate Appraisal	4	9%	24	41	91%	1,011
Professional Surveyors and Mappers	5	17%	36	24	83%	575
Talent Agents	8	67%	42	4	33%	827
Veterinary Medicine	29	43%	35	39	57%	545
TOTAL	5,272	76%	46	1,622	24%	592
PROFESSIONS WITH PRIVATIZED COMPLAINT PROCESSING						
Architecture and Interior Design	0	0%	N/A	125	100%	351
Professional Engineers	2	6%	107	33	94%	579

Source: Department of Business and Professional Regulation and OPPAGA analysis.

Appendix C



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

March 15, 2005



Jeb Bush
Governor
Diane Carr
Secretary

Gary R. VanLandingham, Interim Director
Office of Program Policy Analysis and Government Accountability
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Dear Mr. VanLandingham:

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The following information is presented in response to the Office of Program Policy Analysis and Government Accountability (OPPAGA) report entitled, "Greater Use of Alternative Resolution Could Aid Consumer Protection."

Our staff worked closely with yours regarding this report and we feel that you have accurately described the savings and benefits of the Alternative Dispute Resolution (ADR) Program. In fact, these are the similar issues that we have been promoting within DBPR and throughout state government since we began implementing ADR in 1999. Since that time, the program has:

- Successfully resolved **2,374** cases;
- Produced a cost avoidance of **\$2,389,934** in investigative and legal expense; and
- Resulted in consumer recoveries of **\$18,646,132**.

Also, in response to Governor Jeb Bush's, Executive Order 02-87, March 20, 2002, the Department formed the Alternative Dispute Resolution (ADR) Committee, comprised of representatives of all its Divisions, for the purpose of evaluating the Department's current use of ADR and establishing goals for possible expansion.

As a result of those efforts, the Division of Professions and Regulation created its own in-house ADR training and certification program and made presentations to all existing Boards, requesting suggested rule changes to expand the number of ADR eligible complaints. The additional training has resulted in the ADR Program winning its fourth Davis Productivity Award and being nominated for a fifth award for sustained excellence.

Promulgating rule changes to allow all of the professions to partake in the ADR process would allow for even more cases to be resolved in this manner. In the aftermath of last year's hurricanes, the number of complaints our Department has received has greatly increased. Expanding the utilization of the ADR program would help to ease the complaint-flow and would lower the pressure placed on our investigators and those involved with the hearing process.

Mr. Gary R. VanLandingham
March 15, 2005
Page Two

Conclusions and Recommendations

The Department should ensure that only violations posing a substantial threat to public health, safety and welfare require resolution through a hearing.

Action Plan:

- The Department will review the current rules of each profession it regulates and identify the specific areas that will require revision in order to conform to this recommendation.
- Over the next fiscal year, the Department will work closely with Board members to explain the need for these revisions, with personal appearances by members of senior level staff before those that are deemed the most critical in arriving at conformity and consistency.

I thank you and your staff for their excellent work. If I may be of further assistance, please do not hesitate to contact me at 850.413.0755.

Sincerely,

/s/
Diane Carr
Secretary

DC/pe

cc: Andy Edwards, Deputy Secretary
Rick Morrison, Director, Division of Professions and Regulation

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



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- [Best Financial Management Practices Reviews of Florida school districts](#). In accordance with the *Sharpening the Pencil Act*, OPPAGA and the Auditor General jointly conduct reviews to determine if a school district is using best financial management practices to help school districts meet the challenge of educating their students in a cost-efficient manner.

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