



Professional Boards Encouraged to Increase Alternative Resolution, But Have Not Yet Modified Guidelines

at a glance

The Department of Business and Professional Regulation has encouraged its professional boards to increase use of alternative complaint resolution processes such as mediation, which can improve consumer outcomes and reduce costs. However, the boards have not yet done so. The department and boards should consider expanding alternative complaint resolution as they conduct periodic reviews of disciplinary guidelines as required by law.

Scope

In accordance with state law, this progress report informs the Legislature of actions taken by the Department of Business and Professional Regulation (DBPR) in response to a 2005 OPPAGA report.^{1,2} This report presents our assessment of the extent to which the department has addressed the findings and recommendations included in our report.

Background

DBPR's Professional Regulation Program regulates 21 professions ranging from asbestos abatement contractors to doctors of veterinary medicine. In Fiscal Year 2005-06, these professions regulated

804,723 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. According to the department, the program received 26,098 complaints against licensees and 3,671 complaints for alleged unlicensed activities in Fiscal Year 2005-06.

When the program receives a complaint alleging unlicensed activity or violations by a licensee, staff review the case to determine if the allegations meet legal sufficiency standards. Cases that are deemed legally sufficient are then reviewed to determine whether they can be handled through alternative resolution or need to be further investigated. Depending on the profession involved, certain violations, typically those deemed to be minor, may be handled through alternative resolution procedures that can include issuance of a notice of noncompliance, a citation, or mediation. These alternative procedures typically result in faster and less expensive resolution of minor complaints for consumers than formal investigations, which can take several months to complete and can require formal hearings.

Alleged violations that the program determines to be inappropriate for alternative resolution are

¹ Section 11.51(6), *F.S.*

² *Greater Use of Alternative Resolution Could Aid Consumer Protection*, [OPPAGA Report No. 05-15](#), March 2005.

assigned to an investigator for additional examination. When this investigation is completed, staff submit their findings and recommendations to the probable cause panel of the appropriate regulatory board for a determination. If the board finds probable cause, DBPR files a formal complaint against the licensee and then conducts a hearing and issues a recommended order that is sent back to the appropriate board for issuance of a final order.³ Final orders may impose penalties such as reprimands, monetary fines, an order to cease and desist, and revocation of professional licenses.⁴

DBPR processes complaints for 19 of the 21 professions. The remaining two professions—professional engineers as well as architecture and interior design—have privatized this activity and private entities now perform all of the complaint processing activities that were previously performed by the program.

Our 2005 review concluded that the department could improve its complaint processing activities by working with the associated professional boards to develop uniform criteria for processing similar complaints and expand its use of alternative complaint resolution. To facilitate this review, we recommended that the department work with the professions to develop consistent criteria for using alternative resolution. We also recommended that the Legislature direct each profession to enter into rulemaking to assess violations through use of consistent criteria and direct the department to work with each profession during this process.

Current Status

Consistent with our recommendations, the department has taken steps to encourage professional boards to increase use of alternative complaint resolution processes. For example, a member of the Professional Regulation Program's staff appeared at several board meetings and discussed the efficiency and advantages of using the alternative complaint resolution process.

³ The department resolves serious allegations relating to unlicensed activity through a final order.

⁴ When complaints include allegations of criminal misconduct, the law directs the program to refer the complaint to the proper prosecuting authority.

In addition, the department reports that it routinely advises boards on their disciplinary guidelines when such advice is requested. However, the department reports that no board has yet changed its rules or disciplinary guidelines to expand use of alternative complaint resolution.

Section 455.2273, *Florida Statutes*, directs the department and boards to periodically review disciplinary guidelines, and the department may challenge any rules that do not have a meaningful range of actions. The intent of this law is to ensure that minor violations be distinguished from those that endanger the public, provide notice of likely penalties for proscribed conduct, and ensure that penalties are consistently applied.

The department could use this authority and responsibility to more fully assist boards during future periodic reviews by identifying inconsistencies that exist between boards' disciplinary guidelines. A comparative analysis that identifies such inconsistencies may facilitate the development of more uniform criteria-based guidelines for classification and disposition of violations; it also may result in the greater use of alternative complaint resolution by the boards. As pointed out in the prior report, there are substantial differences in how boards currently sanction similar violations. For example, some boards allow for issuing a citation for a first violation of improper advertising, while others require a formal hearing for such a violation.

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Florida Monitor: www.oppaga.state.fl.us

Project supervised by Kara Collins-Gomez (850/487-4257)

Project conducted by Don Wolf (850/487-9237)

Gary R. VanLandingham, OPPAGA Director