

## **Regulation of Professions and Occupations in Virginia**

- In Virginia, regulation of professions and occupations are coordinated through two state agencies.
- The Department of Professional and Occupational Regulation coordinates and provides staff support for 18 boards that regulate 31 occupations and professions.
- The Department of Health Professions coordinates and provides staff support for 13 health regulatory boards that are responsible for regulating health professions.

### **Department of Professional and Occupational Regulation (DPOR)**

- The Department of Professional and Occupational Regulation (DPOR) is the agency with statutory authority to study and make recommendations to the General Assembly on the need to regulation professions or occupations, and if so, the degree of regulation that should be imposed
- The Commonwealth's philosophy on the regulation of professions and occupations is that: The occupational property rights of the individual may be abridged only to the degree necessary to protect the public. As stated in the *Code of Virginia*:
  - "...the right of every person to engage in any lawful profession, trade or occupation is his choice and is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgement is necessary for the preservation of the health, safety and welfare of the public." (*Code of Virginia*, § 54.1-100)
- Statutory guidance sets forth conditions that must be met before the state may impose regulation on a profession or occupation. The broad questions to be answered include:
  - Could the unregulated practice of a profession/occupation harm or endanger the health, welfare or safety of the public in a recognizable and not remote way?
  - Does the profession have inherent qualities peculiar to it that distinguish it from ordinary work?
  - Does the profession require specialized skill or training? And will it benefit by assurance of professional ability?
  - Is the public not effectively protected by other means?

- When the DPOR recommends that a particular profession or occupation be regulated, it considers the following degrees of regulation, in order:
  - Private civil actions and criminal prosecutions – i.e. making changes to statute to ensure appropriate legal penalties are available
  - Inspection of facilities
  - Registration of individuals participating in certain professions/occupations
  - Certification
  - Licensing – the most stringent form of regulation, to be implemented whenever adequate regulation cannot be achieved by other, less intrusive means
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- How does the State determine the proper degree of regulation? In Virginia's case, the DPOR Board examines:
  - Whether a practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety, or welfare
  - The number of other states which have regulatory provisions similar to those proposed
  - Whether the profession requires high standards of public responsibility, character and performance of each individual engaged in the profession, as evidenced by established and published codes of ethics
  - Whether the profession requires skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications
  - Whether professional associations adequately protect the public from incompetent or unscrupulous members of the profession
  - When the public depends on the expert knowledge of a practitioner of a profession
- DPOR currently regulates 31 occupations and professions through 18 boards composed of practitioners and citizens
- DPOR licenses or certifies more than 245,000 individuals and businesses ranging from architects and contractors to cosmetologists and professional wrestlers
- Has this method of determining whether an industry should be regulated been effective? In most cases yes. Although some – myself among them – may question the need to regulate hair braiders and professional wrestlers – the agency has been able to reject some calls to unnecessarily regulate industries.

- For example, legislation was passed in 2002 requesting the need for DPOR to regulate roller skating rinks. I am happy to report that the agency resisted the temptation and our citizens and their children remain free to engage in unregulated roller skating
- In terms of financing, DPOR is a nongeneral fund agency supported solely by assessments on licensed practitioners, not by any tax revenues
- DPOR's enforcement division protects the public against fraudulent or unlicensed activity. During the last biennium DPOR obtained 864 arrests, 676 convictions and over \$2.0 million in court ordered victim restitution

### **Regulation of Health Professions**

- The Department of Health Professions coordinates and provides staff support for 13 health regulatory boards that are charged with responsibility for regulating health professions.
- The 13 boards regulate nearly 265,000 health professionals, including physicians, physician assistants, nurses, dentists, dental hygienists, funeral directors and embalmers, nursing home administrators, optometrists, pharmacists, licensed professional counselors, marriage and family therapists, psychologists, social workers, and veterinarians, among others.
- In 1998, the General Assembly directed its oversight agency, the Joint Legislative Audit and Review Commission (JLARC) to study the effectiveness of Virginia's health regulatory boards and the Department of Health Professions.
- At the time, there were concerns that changes and growth in the health care system were taxing the regulatory system's ability to provide a high quality licensing program and disciplinary process.
- The 2-year study examined the licensing and rule-making functions of the health regulatory boards, as well as the role of the Department of Health Professions. In addition, a significant portion of the study examined the disciplinary system used by the boards and made recommendations to improve the disciplinary process.
- The JLARC review of the health regulatory boards concluded that the composition of the boards was generally appropriate and the boards perform their licensure function effectively.
- However, JLARC noted that the boards needed additional authority to conduct criminal background checks, that state law may unreasonably restrict out-of state

dentists from gaining licensure in Virginia, and the lengthy rule-making process slowed the work of the boards and their staff.

- In terms of the disciplinary process, the study found that the disciplinary process took too long to resolve many cases, particularly serious disciplinary cases, during which time the practitioners continued to practice and potentially threaten public safety.
- In particular, the study found that the standard of negligence applied to Board of Medicine standard of care cases did not adequately protect the public from substandard practice of medicine by physicians.
- In addition, the Board of Medicine didn't adequately pursue and investigate cases based on medical malpractice reports received by the Department of Health Professions.
- Finally, the study found that most of the health regulatory boards did not comply with statutory requirements that they adjust their fees so that their revenues and expenditures match within 10 percent. A number of the boards accumulated large surpluses over an 8-year time period, without adjusting fees.
- As a result of this study of the health regulatory system, the 2003 General Assembly made major statutory changes dealing with the disciplinary procedures for individuals licensed by the Boards of Medicine (physicians, physicians assistants, etc.) and Physical Therapy.
  - The disciplinary standard was lowered from gross negligence (intentional or grossly negligent) to simple negligence.
  - A confidential consent agreement can be used in lieu of discipline in limited circumstances where there is not probable cause for gross negligence or intentional misconduct in the care of patients and where the conduct was not a danger to patients or the public.
  - The Department of Health Professions was given increased authority to take action against unlicensed practice and directed to investigate all complaints within the jurisdiction of the relevant health regulatory board.
  - Finally, reporting requirements by hospitals, health care institutions, health professionals and others concerning disciplinary actions, certain orders, malpractice judgments and settlements were clarified regarding timing for the reports and the information required to be reported to the health regulatory boards.