

Summary: Operations and Performance of the Department of Professional and Occupational Regulation

WHAT WE FOUND

DPOR licensing requirements are generally appropriate, but regulation of some occupations may not be warranted

Requirements to enter and remain in DPOR occupations appear appropriate to protect consumers and are not overly burdensome to applicants. The requirements for DPOR's largest occupations are largely in line with the requirements set by Virginia's neighboring states, and most regulated individuals reported that licensing requirements were appropriate.

There are 11 occupations regulated by DPOR that do not appear to meet the criteria for regulation that are established in the Code of Virginia. These occupations include community managers, opticians, residential energy analysts, soil scientists, waste management facility operators, landscape architects, natural gas automobile mechanics, and others. State statute clearly indicates that the state should *not* restrict access to any occupation unless it is "necessary for the protection or preservation of the health, safety, and welfare of the public" (§ 54.1-100). These occupations do not meet the criteria, and regulation of these occupations could be reduced or eliminated through legislation.

WHY WE DID THIS STUDY

In 2017, the Joint Legislative Audit and Review Commission directed staff to study the Department of Professional and Occupational Regulation (DPOR). JLARC staff reviewed the department's staffing and organization, its processing of occupational licenses, and enforcement of occupational rules. JLARC staff also assessed the affordability of fees and processes for adjusting fees.

ABOUT DPOR

DPOR is charged with protecting the health, safety, and welfare of the public by licensing qualified individuals and businesses and enforcing standards of professional conduct for a wide variety of professions and occupations. DPOR is funded through the fees that it charges applicants, and has a non-general fund budget of \$23 million.

Licensing process could better evaluate applicants' qualifications and be less cumbersome for both applicants and DPOR staff

DPOR's application review and approval process ensures that all necessary information is received before an application is approved, but it does not always verify the accuracy of the work experience or criminal and disciplinary history reported by the applicant. DPOR does not regularly audit education providers for the occupations it oversees to confirm they are operating legitimately.

Overall, DPOR issues licenses in a timely manner, taking less than the goal of 30 days on average to process applications. However, the many limitations of DPOR's licensing IT system create challenges for both staff and applicants. The system does not allow DPOR to offer basic, user-friendly online services and does not effectively automate key licensing processes.

DPOR's method for calculating fee changes has led to unnecessarily high application fees for some occupations

DPOR is funded by the fees it charges to applicants, and those fees are based on the expenses the agency expects to incur. DPOR's method for calculating fees has over-projected agency expenses and led to unnecessarily large increases to the fees charged under two of its largest boards (Board for Contractors and Board for Barbers and Cosmetology). These past fee increases led to the agency's current, high balances. DPOR has since reduced most of those fees, and the current fees are generally not over-collecting and are not excessive compared to other states. However, the methodology DPOR uses for determining when fee changes should occur, and what new fees should be, is inadequate.

DPOR closes some cases prematurely and could improve the fairness and consistency of disciplinary decisions

DPOR staff closed a majority (71 percent) of the cases that it opened in FY17, and not all staff decisions about these cases were well supported. DPOR's boards have not established well-defined criteria for when staff can close cases, and such decisions are overly reliant on staff discretion. This creates a risk that regulants who have committed serious rule violations will not be held accountable for potentially harmful practices.

DPOR staff do not investigate all potential violations committed by regulants, even when they are aware of the violations. DPOR could also better identify violations by performing routine inspections. DPOR also has insufficient authority to deter individuals or businesses that are practicing without a license, and concerns have been raised about the prevalence of unlicensed practice.

DPOR's disciplinary process provides regulants who have allegedly committed a violation with sufficient due process. However, the process could be improved by providing regulants an additional opportunity to present their case. DPOR sanctions regulants who are found to have committed a violation, but DPOR does not have well-developed sanction guidelines.

DPOR's organization does not ensure that core functions receive sufficient focus from management

DPOR's operations should be organized to ensure that its core functions are well supervised and that the division of responsibilities across the agency is logical and clear. Licensing is one of the agency's core functions, but the licensing division has several extraneous responsibilities that contribute to the substantial size of the division and could prevent its managers from effectively supervising the licensing function. This includes several important IT-related functions that should instead be managed by DPOR's IT division. It also includes some executive-level functions that could be more effectively handled.

DPOR's leadership has not sufficiently addressed long-standing agency problems

DPOR has several long-standing problems that impede its ability to fulfill its mission of protecting consumers through effective occupational licensing and enforcement. These problems have persisted because DPOR's leadership has not identified the problems in need of a resolution or taken adequate steps to address known problems. These long-standing problems have contributed to staffing shortages in key agency divisions, inefficient IT systems that are fundamental to effective agency operations, and vulnerability to licensing fraud.

WHAT WE RECOMMEND

Legislative action

- Eliminate regulation of community managers, opticians, residential energy analysts, and natural gas automobile mechanics.
- Require that any legislation to increase or begin regulation of an occupation under DPOR first be evaluated for regulation by DPOR's Board for Professional and Occupational Regulation.
- Establish a cap on board balances and require DPOR to distribute to current regulants the funds that exceed the cap.
- Authorize DPOR to issue cease and desist notices to individuals and businesses found to be engaged in the unlicensed practice of an occupation that is licensed by DPOR.

Executive action

- Develop a plan for upgrading or replacing the agency's licensing IT system.
- Establish specific criteria for closing enforcement cases at various stages, and develop formal guidance that addresses the types of cases and circumstances under which staff may close a case without board review.
- Resume unannounced inspections and audits for certain occupations, and establish specific protocols for how all potential violations uncovered during an investigation should be handled.
- Take action to address staff vacancies, remove non-licensing functions from the licensing division, and develop an internal plan to address long-standing agency problems.