



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

May 3, 2021

The Honorable Representative David Hickernell, 98th District
Chairman, House Professional Licensure Committee
43 A East Wing
Harrisburg, PA 17120-2098

The Honorable Representative Jake Wheatley, 19th District
Minority Chairman, House Professional Licensure Committee
36 East Wing
Harrisburg, PA 17120-2019

Dear Chairman Hickernell and Chairman Wheatley:

Thank you for the opportunity to appear before the House Professional Licensure Committee on March 15, 2021. I am writing to respond to the questions that were asked during the hearing that required additional information or follow-up.

Rep. Lawrence

- ***BPOA administration for the State Board of Dentistry rose from \$335,103.31 in FY 2012/13 to \$554,093.15 in FY 2018/19. Over the same time period, legal administration, prosecution, and counsel rose from \$483,091.63 to \$780,739.92. My question is, what happened over this six-year period to cause expense increases for these specific line items? What are the specific cost drivers? Are these increases typical across the other licensing boards?***

The bulk of the increased BPOA Administration costs for the Dental Board over the specified timeframe was due to the board's share of expenses related to the building of the PA Licensure System (PALS). All boards and commissions under the Bureau proportionately shared the costs of the system build. In addition, as the Dental Board's licensee population continues to increase, additional administrative expenses are also realized.

With regard to the increases in legal costs for the Dental Board over this timeframe, much of the increases were related to prosecution division's renewed emphasis on "standard of care" and "infection control" cases. Historically, the Commonwealth could

rely on the board members' expertise in such cases, but in the wake of the Commonwealth Court's decision in *Stoner v. BPOA, State Board of Medicine*, 10 A3rd 364 (Cmwlth. Ct. 2010), the court established the rule that the board's expertise cannot substitute for evidence. Thus, the prosecutors must establish a violation of the standard of care through expert testimony. This requires each such case to be sent out to an expert for a report and an expert opinion as to whether the standard of care was violated, even before a decision is made to prosecute.

In addition, when the decision is made to prosecute a matter based on that report, the expert is needed to testify at any hearing on the matter. A large amount of the increased costs were related to these expert reviews, including reviews of instances of negligence contained in medical malpractice payment reports that are received by the agency. Furthermore, up until 2012, the prosecution division rarely had to engage an expert in "infection control" cases, but after a few high profile cases, complaints in this area increased.

Overall, the costs related to prosecution and expert review are driven by the number of complaints that are received. With the ability to file complaints online, the number of complaints for all BPOA boards, including the Dental Board, has steadily increased over this timeframe. Specifically, with regard to the Dental Board, the number of cases opened in FY 12/13 was 480, while the number of cases opened in FY 19/20 was 562, with a high of 612 cases opened in FY 15/16. The Board has no control over the number of complaints filed, the number of cases opened or the number of disciplinary proceedings brought before the Board.

The case counts for are as follows:

- Cases Opened:
 - FY 12/13: 480
 - FY 13/14: 444
 - FY 14/15: 484
 - FY 15/16: 612
 - FY 16/17: 491
 - FY 17/18: 425
 - FY 18/19: 442
 - FY 19/20: 562
 - FY 20/21: 367 to date

- Cases Closed:
 - FY 12/13: 493
 - FY 13/14: 419
 - FY 14/15: 458
 - FY 15/16: 461
 - FY 16/17: 593

- FY 17/18: 584
 - FY 18/19: 422
 - FY 19/20: 455
 - FY 20/21: 453 to date
- ***What communication did BPOA have with the Governor's Office during COVID concerning his repeated statements that he would pull professional licenses if they did not comply with orders? (i.e. a dentist could not practice unless he provided care in a negative pressure room). At what point did Secretary Levine or someone from DOH reach out to BPOA to discuss the restrictions during COVID-19 as it related to licensed professionals under BPOA?***

As Commissioner Johnson stated orally, he did not have a personal conversation with Secretary Levine prior to the release of the DOH guidance. However, the two Departments have collaborated throughout the past twelve months.

Rep. Mehaffie

- ***What is BPOA doing to streamline the process for licensees, for instance the State Board of Nursing, for those that already have an underlying license and need further certification (i.e. CRNP). Is there a way to streamline these applications/this process so that they are not treated as a new application?***

We are currently developing a new application, that will give Nurse's the ability to apply for all three licenses at once. The new application will be available fall 2021.

Rep. Polinchock

- ***What is BPOA doing as it relates to streamlining continuing education requirements? Is there a legislative change that needs to be made to permit individual licensees to upload continuing education instead of third-party providers?***

The system was developed specifically to require the approved providers of the Act 31 child abuse recognition and reporting training to upload the participation/attendance data for applicants and licensees directly to the PALS system, where it attaches to each license/certificate held by an individual or the application of an applicant. Section 6383 of the Child Protective Services Law prohibits a licensing board/commission from either issuing or renewing a license/certificate if the individual did not take an approved course.

Permitting a licensee to upload a certificate of attendance/participation may lead to circumstances where the course they took was not an approved course or the certificate may be fraudulent. In addition, with thousands of licensees for 16 boards required to complete these training requirements, processing all those pieces of paper would be extremely costly and time consuming.

All approved providers are required to submit the data in a timely manner. If a particular approved course provider is not submitting the data in a timely manner, the Bureau would need that information so the issue could be resolved with the provider.

Licensees can assure that the data is received before the renewal deadline by completing an approved course early in the biennial renewal period, by assuring that they provide the course provider with their name as it appears on their license and their complete license number, and by renewing as soon as the renewal process opens (usually 60 days prior to license expiration) so that any issues can be resolved before the licensee's license expires.

Rep. Mako

- ***What are the steps that an investigation goes through when a complaint is filed against an individual licensee?***
 - In a very general and broad sense, when a complaint is received it is first reviewed to determine whether the Department of State has jurisdiction over the matter.
 - If we do have jurisdiction, the complaint is converted to a case and assigned a case number.
 - The case is then assessed (generally by a paralegal or attorney) and most often the matter is sent out for investigation or inspection by our Bureau of Enforcement and Investigation.
 - Once the investigation is completed, the case is reviewed by the Prosecution Division to determine next steps (generally this involves our Legal Analysts and Senior Prosecutors).
 - Those steps could include citations, formal charges, negotiations, compliance efforts, educational efforts, closure of the case, etc.
 - If formal charges are filed, the cases proceed through the administrative hearing process or if settlement is possible, that could be accomplished via a Consent Agreement presented to the applicable licensing Board or Commission.
 - If a hearing is held, the case ultimately ends up with the Board or Commission for final adjudication.

- **During COVID we have seen an increase in the need for health care professionals. What is BPOA looking at to make it easier for military members to get licensed in Pennsylvania? Do we need a statutory change to address this (i.e. education requirements, etc.)?**

In order to study the effects of occupational licensing as it relates to veterans and military spouses in the Commonwealth, the Department of State launched the Veterans' Licensure Survey on Veteran's Day 2019. The survey, housed on the Department's

website, ran until Veteran's Day 2020 and collected over 200 responses from veterans and military spouses who hold an occupational license. Survey questions focused on license requirements, barriers and the overall application process.

Findings from the survey included:

- Most respondents received their Pennsylvania occupational license within 3 months of applying.
- A majority of respondents spent between \$200 - \$500 in initial licensing expenses.
- Difficulty in transferring military credentials and experience to satisfy state occupational licensure requirements pose a significant barrier to veterans.
- Respondents reported that "Acceptance of military training, education, and experience" as well as "Licensure fee waivers" would be most beneficial to veterans and military spouses when obtaining licensure.

These findings led to development of the following policy recommendations:

- Support legislative approaches that call for recognition of military training and experience to satisfy licensure requirements.
- Institute waivers for initial licensure fees of military spouses. Waivers for initial licensing fees would have to be instituted legislatively.
- Allow veterans to be licensed by examination. This recommendation would require legislation from the General Assembly to permit the state boards and commissions to waive civilian educational requirements and permit veterans to sit for a licensing exam.
- Establish processes to expedite review of license applications for veterans and military spouses.
- This would require a legislative change in how BPOA processes applications
- Increase veteran and military spouse presence on state licensing boards.
- The State should work with education providers (State educational and technical institutions) and the U.S. Department of Defense to develop bridge programs to fill gaps in training for veterans returning to the civilian workforce. This would also require legislation in order to take effect.

In addition, The Department of State is currently developing a military 'occupational crosswalk' to identify and relate civilian career opportunities and requirements to veterans' military experience. Once completed, the crosswalk will guide veterans in translating their education, certification, training, and skills into professional credentials which in turn can be used to fulfill occupational licensing standards. The crosswalk will also assist veterans identify any gaps in their training and/or experience that must be filled in order to meet their personal career goals.

The crosswalk contains over 350 military occupations, representing all five branches, with almost 70% of the occupations residing in the healthcare field. The military

occupations featured are matched to nearly 100 licensed professions administered by the professional licensing boards and commissions in Pennsylvania. The goal of the crosswalk is to educate the state legislature, licensing boards and commissions, the veteran community, and employers on how military training and experience aligns directly with civilian education and work experience. The crosswalk will be used as a tool to ensure veterans experience a consistent transition in the licensure application process. The crosswalk is set to be released on the DOS website in Summer 2021.

Staff

- ***What is the State Board of Nursing doing to make the ATT process more efficient? If the problem is with the nursing school programs not getting education transcripts to the Board in a timely matter, what communication has the Board had with the nursing schools?***

Previously the PALS system only matched the information from the school to the first application that was submitted. EXAMPLE: graduate applied for a permit on one day and then several days later applied for the examination. PALS would only search for the first application submitted. Often, we would not be aware that the other application was submitted because it would not be listed on a match or mismatch list. This has now been corrected and the NEV [Nurse Education Verification] matches to each application, regardless of when it was submitted. Also, there are times a graduate will submit an application for PN licensure by examination, but the education information submitted by the school indicates completion of an RN program. Previously this would not be noted as a mismatch. We have added criteria that the program type submitted by the school and license type applied for by the graduate must match. If these do not match the application now appears on the mismatch list.

- ***What other Boards provide an ATT code directly to the licensee? Do other professions get these codes directly from the testing entity?***

The Nurse Board does not provide the ATT code directly to the licensee. When all correct information is received by staff, they make the graduate eligible to test via the Pearson Vue online site. Once made eligible on the site, Pearson Vue releases the authorization to test via email to the graduate.

The following boards provide the authorization directly to the licensee:

- Auctioneer Examiners
- Real Estate Commission
- Landscape Architects
- Osteopathic Medicine
- Social Workers, Marriage and Family Therapists and Professional Counselors

The following boards provide the authorization directly to the testing entity or the testing entity contacts the applicant:

- Barber
- Cosmetology
- Nursing
- Accountancy
- Professional Engineers, Land Surveyor, Geologists
- Funeral Director
- Certified Real Estate Appraisers
- Nursing Home Administrators
- Pharmacy
- Physical Therapy

Sincerely,

A handwritten signature in black ink, reading "K. Kalonji Johnson". The signature is written in a cursive style with a large, stylized "K" and "J".

K. Kalonji Johnson,
Commissioner, Bureau of Professional and Occupational Affairs