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# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

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**Memo No. 3**

**TO:** MEMBERS OF THE STUDY COMMITTEE ON OCCUPATIONAL LICENSES

**FROM:** Margit Kelley, Principal Attorney, and Patrick Ward, Staff Attorney

**RE:** Information in Response to Committee Requests at the September 27 and October 12, 2022, Meetings

**DATE:** November 8, 2022

During meetings on September 27 and October 12, 2022, members of the Study Committee on Occupational Licenses requested the following information from speakers and committee staff: (1) examples of Colorado recommendations to eliminate occupations; (2) application processing experiences of designers of engineering systems; (3) telehealth services for patients across state lines; (4) types of credentialing; and (5) Wisconsin credentialing bodies. This memo provides information in response to these requests.

### **RECOMMENDATIONS OF THE COLORADO OFFICE OF POLICY, RESEARCH AND REGULATORY REFORM**

At the September 27, 2022, study committee meeting, Brian S.W. Tobias, Director of the Colorado Office of Policy, Research & Regulatory Reform (commonly referred to as COPRRR), presented an overview of the office's sunrise and sunset review processes.

Mr. Tobias has forwarded the following information in response to a request for an example of an occupation that the office recommended for elimination:

In the 2016 sunset review of the Motor Vehicle Dealer Board, we recommended repealing a section of law that prohibits motor vehicle dealers from selling vehicles on Sundays. This recommendation was not adopted by the General Assembly.

In the 2019 sunset review of the Private Investigators Licensure Act, we recommended sunseting the regulation of private investigators. This recommendation was adopted by the General Assembly.

In the 2014 sunset review of Athletic Trainers, we recommended sunseting the registration program and returning to the profession practicing under an exemption to the Medical Practice Act. The sunset bill did not pass in 2015, so the program went into windup. However, legislation to continue regulation passed in 2016. In 2020, we again recommended sunseting regulation, but this recommendation was not adopted by the General Assembly.

## **APPLICATION PROCESSING EXPERIENCES OF DESIGNERS OF ENGINEERING SYSTEMS**

At the October 12, 2022, study committee meeting, Jonathan Kowalski, Executive Director of the Plumbing, Mechanical, Sheet Metal Contractor's Alliance, Inc., presented in support of continuing to offer a designer of engineering systems permit credential in Wisconsin.

Mr. Kowalski has forwarded the following information in response to a question as to whether members of the association had experienced any delays or problems in obtaining the permit:

The current process of obtaining and renewing the credential of Licensed Designer of HVAC systems is not anything that our members would consider a hindrance or difficult in any fashion. It is the observation of the contractor's I represent that the dates for test sites as well as the available documents that are allowed to the test are well documented and available – the test and paperwork are as expected and appropriate. The renewal is simply filling out the renewal and sending in the appropriate fee on even numbered years.

## **TELEHEALTH SERVICES FOR PATIENTS ACROSS STATE LINES**

At the October 12, 2022, study committee meeting, during the committee discussion, a committee member commented on the importance of telehealth services, particularly for mental health care, and the need to be able to provide those services across state jurisdictional lines.

To follow up on that comment, under state law, a health care provider generally must be licensed in the state where the services are provided to a patient. A few aspects of current law revise that requirement for telehealth services. For example, 2021 Wisconsin Act 131 entered Wisconsin into the Psychology Interjurisdictional Compact (commonly referred to as PsyPact). Among the provisions of the compact, a psychologist and patient who are located in different compact member states from each other may participate in telehealth services under an “authorization to practice interjurisdictional telepsychology.” [s. [455.50 \(4\)](#), Stats.]

Among the provisions of 2021 Wisconsin Act 10, a health care provider in another state or territory may provide telehealth services under the act's temporary state credential. A health care provider must apply for the temporary credential within 30 days of first providing services in Wisconsin, and if only providing telehealth services, is not required to submit notice and attestation from an employer. [s. [440.094 \(2\) \(a\) 2.](#) and [\(3\)](#), Stats.]

Additionally, the state's Medical Assistance (MA) policies were revised under 2019 Wisconsin Act 56 to provide coverage for telehealth services, including services by out-of-state providers. [s. [49.45 \(61\)](#), Stats.; and Department of Health Services, [ForwardHealth: Telehealth Expansion and Related Resources for Providers](#) and [ForwardHealth: Update 2020-12.](#)]

## **TYPES OF CREDENTIALING**

At the October 12, 2022, study committee meeting, during the committee discussion, an explanation of the different types of credentialing was requested.

A 2015 White House report on [Occupational Licensing: A Framework for Policymakers](#) describes the different types of licensure in footnote 6 as follows:

A **license** represents formal permission from a government body to practice in an occupation. Licensing laws not only determine whether an individual can practice, but they also often enumerate what services she can provide as part of her practice. This is commonly referred to as **scope of practice**.

**State certification**, or “right-to-title,” means that individuals seeking to assume a profession’s official title must obtain the permission of the government, but anyone is allowed to perform the duties of the profession, regardless of whether or not they have been certified. Certification can also be done by private certifying bodies, which give their imprimatur to workers who have met their standards.

**Registration** is the least restrictive form of occupational regulation. It generally just involves individuals paying a fee and filing their names, addresses, and qualifications with the government. This ensures that practitioners can be reached in the event of a complaint, thereby supporting civil remedies for consumer harm.

For a comparison, under current law:

- A person who performs dentistry services must be licensed as a dentist under s. 447.03, Stats., and a person who is not licensed is prohibited from practicing dentistry or holding themselves out as a dentist or doctor of dental surgery (DDS).
- A person who provides certain engineering services may be certified as an engineer in training if they are a graduate of a four-year engineering curriculum or meet other requirements, and, if certified, may hold themselves out as a certified engineer in training under s. 443.05, Stats. A person who meets the same requirements, but has not obtained certification, may also provide certain engineering services and hold themselves out as providing engineering services, but may not hold themselves out as a certified engineer in training.
- A person who provides pharmacy technician services must register with the Pharmacy Examining Board under s. 450.068 (2), Stats., in order to provide pharmacy technician services and use the title “pharmacy technician” or “pharmacy tech.”

A **permit** is an additional title that is sometimes used. The title is often used as an approval to operate a business, but may also be used as a training credential or a primary credential.

However, these terms are often used interchangeably, and the naming of a particular occupational credential does not determine the rights and responsibilities of a person who is providing services. Rather, the rights and responsibilities in providing services in an occupation are specified by statute and administrative rules regardless of the name applied. For example, a Wisconsin registered interior designer under s. [443.075](#), Stats., could more accurately be referred to as a “certified” interior designer under the types of credentials identified in the White House Report.

## WISCONSIN CREDENTIALING BODIES

Lastly, at the October 12, 2022, study committee meeting, during the committee discussion, a description of the organizational structure for the different credentialing bodies in Wisconsin was requested.

Although the Department of Safety and Professional Services (DSPS) exclusively administers some of the credentials issued in Wisconsin, DSPS and a credentialing board jointly administer many credentials. DSPS centralizes administrative functions and provides certain uniform procedures. Additionally, 2021 Wisconsin Act 118 made it explicit that a board may delegate application processing to DSPS, retaining a final opportunity to review. See generally, s. [440.03](#), Stats., for DSPS general duties and powers, and s. [440.035](#), Stats., for the examining board and affiliated credentialing board general duties and powers.

Generally, an **examining board** is responsible for setting standards of professional conduct and granting credentials. Wisconsin utilizes the following examining boards: (1) Accounting Examining Board; (2) Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors and Registered Interior Designers; (3) Chiropractic Examining Board; (4) Cosmetology Examining Board; (5) Dentistry Examining Board; (6) Funeral Directors Examining Board; (7) Hearing and Speech Examining Board; (8) Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board; (9) Medical Examining Board; (10) Naturopathic Medicine Examining Board; (11) Board of Nursing; (12) Nursing Home Administrator Examining Board; (13) Optometry Examining Board; (14) Pharmacy Examining Board; (15) Physical Therapy Examining Board; (16) Examining Board of Professional Geologists, Hydrologists and Soil Scientists; (17) Psychology Examining Board; (18) Radiography Examining Board; (19) and Real Estate Examining Board.

An **affiliated credentialing board** is attached to the Medical Examining Board for professions that practice in collaboration with that board, and is responsible for setting standards for professional conduct and granting credentials, with the advice of the Medical Examining Board. Wisconsin utilizes the following affiliated credentialing boards attached to the Medical Examining Board: (1) athletic trainers; (2) dietitians; (3) massage therapy and bodywork therapy; (4) occupational therapists; (5) physician assistants; and (6) podiatry.

A **board** assists DSPS in making policy decisions for the oversight of an applicable credential. The specific role of each board is established by statute. Examples of boards include the auctioneer board, which does not have rulemaking authority, and the cemetery board, which has rulemaking authority.

A number of councils and advisory committees are also available to assist DSPS and the boards. Examples include the barbering advisory committee, the commercial building code council, and the electrical code advisory committee.

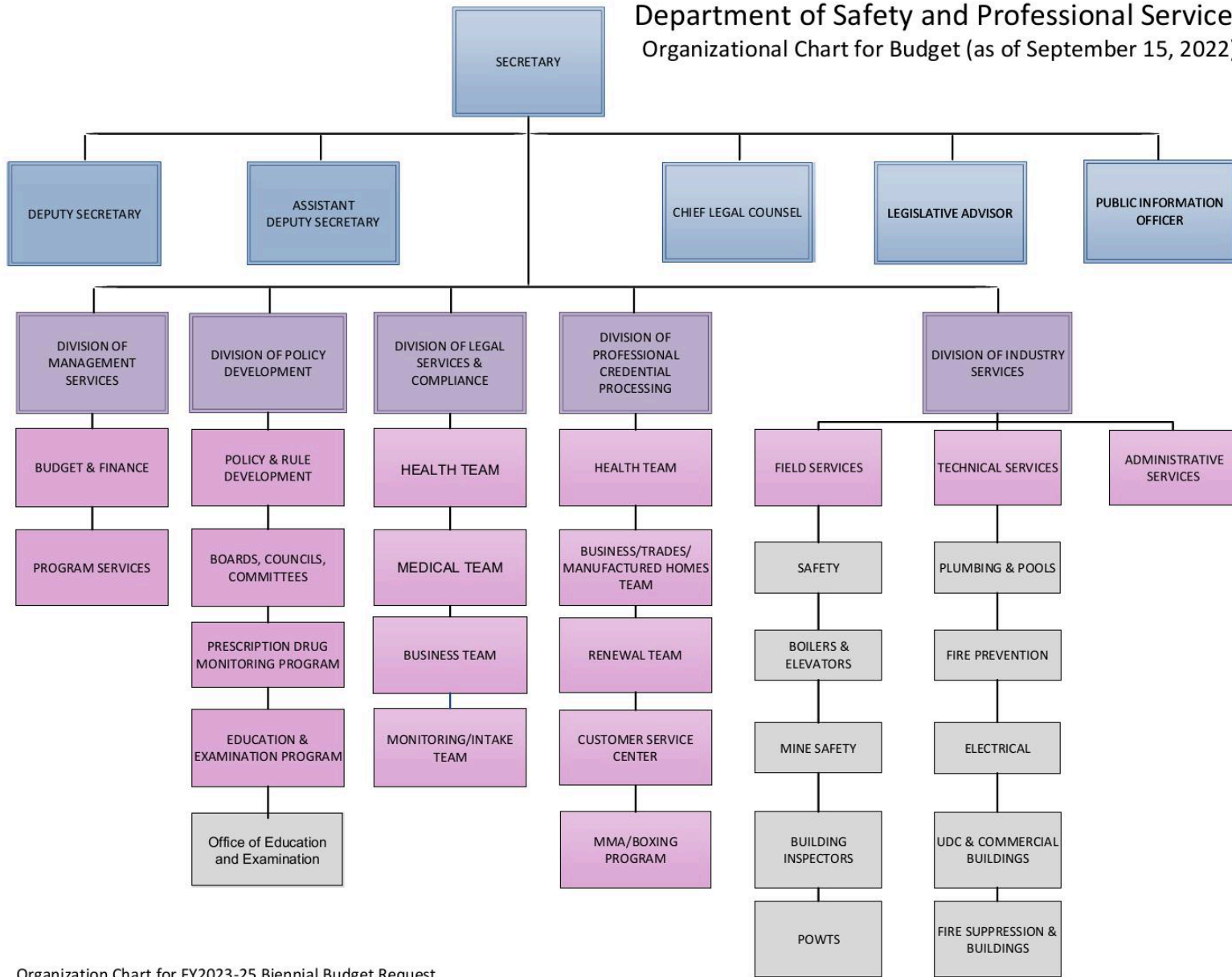
For more information, DSPS's website provides an [A-Z Boards and Councils List](#). Also, DSPS's proposed organization chart for its [2023-2025 Biennium Agency Budget Request](#) (September 15, 2022) is attached.

MSK:PW:ksm

Attachment

# Department of Safety and Professional Services

## Organizational Chart for Budget (as of September 15, 2022)



Organization Chart for FY2023-25 Biennial Budget Request