



## Legislative Fiscal Bureau

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June 6, 2023

Joint Committee on Finance

Paper #687

### **Board Support Staff (Safety and Professional Services -- Regulation of Professions)**

[LFB 2023-25 Budget Summary: Page 555, #3]

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#### **CURRENT LAW**

The Department of Safety and Professional Services provides administrative services for boards of professionals to regulate and license certain professionals in the state. These boards include independent examining boards, semi-autonomous boards, and affiliated credentialing boards that regulate certain professions and classes of businesses identified in statute. The Department and its boards issue several types of credentials, including licenses, certificates, registrations, and permits. These credentials are generally differentiated by qualification requirements, the use of a professional title, and the range of scope of practice or activities that a credential holder is allowed to perform. The Department currently provides administrative services to 30 boards.

The DSPS Division of Policy Development (DPD) provides professional and administrative support to regulatory boards, councils, and committees. The Division drafts and implements administrative rules and policies, provides policy guidance, and facilitates meetings for the professional boards, councils, and committees. Further, DPD administers the prescription drug monitoring program (PDMP), which is discussed in greater detail in Paper #690.

Additionally, the Division of Legal Services and Compliance (DLSC) provides the following services for credentialing boards: (a) intake and screening of complaints against credential holders, including allegations of negligence, unprofessional conduct, and incompetence; (b) legal services to professional boards and the Department, including prosecuting violations of professional standards; (c) monitoring of compliance with disciplinary orders; and (d) administration and oversight of a confidential program for impaired professionals in need of substance-abuse intervention. In cooperation with the examining boards, Division employees

investigate complaints and prosecute violations through formal disciplinary hearings before the appropriate boards, when required. Cases are generally resolved through administrative warnings, reprimands, suspensions, practice limitations, citations, remedial education, and forfeitures.

**DISCUSSION POINTS**

1. Assembly Bill 43/Senate Bill 70 would provide the positions and funding shown in Table 1 to support existing and new credentialing boards with policy, legal, and administrative services:

**TABLE 1**

**Board Support Staff -- Assembly Bill 43/Senate Bill 70**

<u>Position Title/Category</u>	<u>Positions</u>	<u>Funding</u>	
		<u>2023-24</u>	<u>2024-25</u>
<b>Division of Legal Services and Compliance</b>			
Attorney	3.00	\$178,400	\$237,600
Pharmacy Practices Consultant	1.00	102,500	136,700
Real Estate Specialist	1.00	55,200	73,600
Senior Consumer Protection Investigator	1.00	55,200	73,600
Program and Policy Analyst*	1.00	55,200	73,600
Consumer Protection Investigator	<u>1.00</u>	<u>51,000</u>	<u>68,100</u>
Subtotal	8.00	\$497,500	\$663,200
<b>Division of Policy Development</b>			
Administrative Policy Advisor	1.00	\$55,200	\$73,600
Administrative Rules Coordinator	<u>1.00</u>	<u>55,200</u>	<u>73,600</u>
Subtotal	2.00	\$110,400	\$147,200
Supplies and Services		\$145,800	\$166,500
Total	10.00	\$753,700	\$976,900

\*Two-year project position

2. DSPS reports that the 10.0 recommended staff would fulfill a variety of roles within the Department and in support of board operations. The following sections briefly describe the responsibilities each position would carry out. Positions would be split-funded among DSPS's, main health, business, and safety and buildings operations appropriations.

## **Division of Legal Services and Compliance**

3. *PDMP Attorneys.* DSPS indicates that 2.0 protection and investigation services attorneys would provide additional investigative resources to the Controlled Substances Board (CSB) for administration of PDMP investigations and referrals. A case referral requires consultation between an attorney, who would analyze the evidentiary needs of the case, and consumer protection investigators who build a case file. Attorneys analyze and review records involved with each case referral, which typically number approximately 1,000 pages, based on evidentiary files related to the party under investigation and at least 10 of the prescriber's patients.

4. *Consumer Protection Investigators.* 2.0 investigators would assist attorneys in the procurement of documentation and evidence for cases identified under the PDMP. DSPS reports that the 1,000-page records involved with each case referral leads to the need for additional consumer protection investigators to support legal proceedings.

5. *Board Business Team Attorney.* DSPS indicates that the 1.0 board business team attorney would oversee business team investigations, handle prosecutions, and ensure compliance with federally-mandated appraisal deadlines.

6. *Pharmacy Practices Consultant.* 1.0 consultant would provide inspections for various pharmacy licenses, particularly for specialty pharmacies, distributors, or manufacturers that require a higher level of knowledge and training than that required for initial inspections of general retail pharmacies. DSPS conducts initial inspections within six months of the license application, but the Department's current consumer protection investigators are not formally trained in inspections for specialty pharmacy establishments. DSPS indicates the position would reverse a provision in 2017 Act 59, the 2017-19 biennial budget act, under which 0.5 position was deleted with the intention of the agency contracting for advanced pharmacy inspections. However, the initiative was not pursued immediately after Act 59. In 2019, the Pharmacy Examining Board passed a resolution stating that contracted inspectors would be too costly, and that a permanent DSPS position dedicated to pharmacy practice consultations would better meet inspection needs. The Department's Division of Legal Services and Compliance estimates that, on average, the cost per inspection for a DSPS staff pharmacy consultant would be \$450 per inspection, while a contracted inspector would cost between \$2,000 and \$6,000 per inspection.

7. *Real Estate Specialist.* 1.0 specialist would assist the Real Estate Examining Board and Real Estate Appraisers Board in ensuring that real estate professionals comply with rules under Title XI of the federal Financial Institutions, Reform, Recovery, and Enforcement Act of 1989, as amended by the Consumer Protection Act of 2010. The act requires real estate appraisals used in connection with certain federally-designated transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective state supervision. Additionally, DSPS reports that this position would provide necessary appraisal and real estate-specialized subject matter technical resources to better serve the two boards.

8. *Program and Policy Analyst.* 1.0 analyst project position would serve the various boards by identifying and analyzing data, preparing responses to stakeholders and the Legislature, and

measuring DLSC performance. DSPS reports that the Department receives numerous requests for data in support of board operations. The 1.0 program and policy analyst would fill this need by making responses to requestors, submitting reports to the Legislature on behalf of the credentialing boards that are required by statute, and ensuring consistent availability of board and departmental data.

### **Division of Policy Development**

9. *Administrative Policy Advisor.* 1.0 policy advisor would serve as the Department's policy representative and facilitator for meetings amongst examining boards, credentialing boards, advisory boards, and other committees. Such a position, the Department contends, would improve collaborative policy development amongst the Department, boards, and committees. This could benefit the licensing and credentialing process by way of clearer, more effective application and review policies. Currently, no such position is authorized under the Department.

10. *Administrative Rules Coordinator.* 1.0 rules coordinator would lead the process for permanent and emergency rules coordination and serve as the Department and board liaison on all new administrative code requirements. DSPS is currently authorized 3.0 administrative rules coordinators; all are filled. The Department indicates that an additional 1.0 position would increase capability and efficiency in the rules promulgation process.

### **Additional Considerations**

11. Of the 8.0 positions that would be provided to the DLSC, 4.0 positions would be primarily associated with referrals and enforcement under the PDMP. The Department considers PDMP investigations high priority and typically time-sensitive to prevent the improper distribution of opioids among the general public. In the 2022 year-end report for the PDMP, DSPS and the Controlled Substances Board indicated 51 of the top prescribing physicians, physician assistants, dentists, and advanced practice nurse prescribers had been referred to their respective examining boards for potential disciplinary action. Although recent quarterly and year-end PDMP reports indicate certain CSB Referral Criteria Workgroup and dispenser audit functions slowed or paused during the COVID-19 pandemic, making comparisons to prior years inexact, the number of referrals in 2022 generally increased relative to prior years.

12. An additional 2.0 DLSC positions were identified by DSPS as having potentially significant impacts on operations. A 1.0 pharmacy practices consultant would provide expertise not currently held by agency inspection staff, and would eliminate the need for contract services that may be of higher cost than a permanent position. DSPS also indicates the 1.0 real estate specialist is required for the agency, the Real Estate Examining Board, and Real Estate Appraisers Board to comply with federal requirements. Such support is needed, DSPS indicates, due to the complex nature of the work, and because referrals to the state from federal mortgage finance agencies for unacceptable appraisals have increased in recent years. Referrals have increased from 2018 (no referrals) to 2021 (17 referrals), then significantly in 2022 (49 referrals), and remain high in 2023 (12 referrals through April 23).

13. DSPS indicates that the Division of Policy Development (DPD) positions would fulfill necessary responsibilities required for credentialing boards, and replace positions that have been

reallocated to other programs in the agency in recent years. Table 2 shows the combined administrative rules coordinators and DPD board operations positions in six-month increments from 2020.

**TABLE 2**

**Administrative Rule Coordinators and Board Operations Positions, 2020 to 2023**

	Administrative <u>Rules</u>	Board <u>Operations</u>
2020 Q1	5.00	3.00
2020 Q3	5.00	2.00
2021 Q1	4.00	2.00
2021 Q3	3.00	2.00
2022 Q1	3.00	2.00
2022 Q3	3.00	1.00
2023 Q1	3.00	2.00

14. In approximately the time period shown in Table 2, 29 acts of the 2019-20 and 2021-22 Legislature have been passed regarding credentialing of professions. Approximately half of the acts could be considered to have required additional administrative actions of credentialing boards or DSPS staff, including provisions for rule-making, required registrations or credentialing of additional entities, or the creation of additional credentialing or examining boards. Numerous other acts reduced or modified requirements of regulated individuals or occupations; although these acts may have eased licensure procedures for these persons, the acts may have prompted additional administrative actions on the part of DSPS to conform practices to new provisions of law.

15. The Committee could consider approving any of the individual or types of positions identified in Table 1 for a single program responsibility [Alternatives 1 and 2]. Alternative 1d would also provide the option of restoring 0.5 position for a pharmacy practices consultant, consistent with the deletion under 2017 Act 59 for the same purposes. The Committee could also take no action [Alternative 3]. DSPS could request additional position authority through the passive review request under s. 16.505 of the statutes.

**ALTERNATIVES**

1. Provide any of the following positions for the Division of Legal Services and Compliance:

- a. 1.0 attorney for business and trades complaints and other compliance;

ALT 1a	Change to Base Funding                  Positions	
PR	\$169,300	1.00

- b. 2.0 attorneys for the prescription drug monitoring program;

<b>ALT 1b</b>	<b>Change to Base Funding</b>	<b>Positions</b>
PR	\$338,500	2.00

- c. 1.0 pharmacy practices consultant for inspections of primarily non-retail pharmacy locations;

<b>ALT 1c</b>	<b>Change to Base Funding</b>	<b>Positions</b>
PR	\$292,000	1.00

- d. 0.5 pharmacy practices consultant for advanced pharmacy inspections (this would restore a 0.5 position deleted under 2017 Act 59 for the same purposes);

<b>ALT 1d</b>	<b>Change to Base Funding</b>	<b>Positions</b>
PR	\$119,700	0.50

- e. 1.0 real estate specialist for appraisals attorneys for the prescription drug monitoring program;

<b>ALT 1e</b>	<b>Change to Base Funding</b>	<b>Positions</b>
PR	\$157,100	1.00

- f. 1.0 consumer protection investigator and 1.0 consumer protection investigator-senior for PDMP investigations; or

<b>ALT 1f</b>	<b>Change to Base Funding</b>	<b>Positions</b>
PR	\$302,400	2.00

- g. 1.0 two-year project program and policy analyst for credential board data analysis and informational responses to internal and external parties.

<b>ALT 1g</b>	<b>Change to Base Funding</b>	<b>Positions</b>
PR	\$157,100	1.00

2. Provide any of the following for the Division of Policy Development:

a. 1.0 administrative policy advisor for facilitating operations of credentialing and examining boards; or

<b>ALT 2a</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
PR	\$157,100	1.00

b. 1.0 administrative rules coordinator for facilitating operations of credentialing and examining boards.

<b>ALT 2b</b>	<b>Change to Base</b>	
	<b>Funding</b>	<b>Positions</b>
PR	\$157,100	1.00

3. Take no action.

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