



STATE OF ILLINOIS  
**OFFICE OF THE  
AUDITOR GENERAL**

William G. Holland, Auditor General

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**SUMMARY REPORT DIGEST**

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**DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

**COMPLIANCE EXAMINATION  
For the Two Years Ended: June 30, 2012**

**Release Date: March 28, 2013**

**Summary of Findings:**

<b>Total this audit:</b>	<b>14</b>
<b>Total last audit:</b>	<b>10</b>
<b>Repeated from last audit:</b>	<b>10</b>

**SYNOPSIS**

- The Department's did not exercise adequate control over it's computer inventory.
- The Department's Division of Professional Regulation's Enforcement Unit did not perform and/or document enforcement activities in a timely or sufficient manner.
- Department Boards were not fully staffed.
- The Department's controls over interagency agreements were deficient.
- The Department did not fully comply with the requirements of the Pharmacy Practice Act.

{Expenditures and Activity Measures are summarized on the reverse page.}

**DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY  
COMPLIANCE EXAMINATION  
For the Two Years Ended June 30, 2012**

<b>EXPENDITURE STATISTICS</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
<b>Total Expenditures (All Funds).....</b>	<b>\$ 1,031,896,384</b>	<b>\$ 1,159,637,130</b>	<b>\$ 1,181,087,330</b>
OPERATIONS TOTAL.....	\$ 52,003,093	\$ 80,295,877	\$ 72,415,103
% of Total Expenditures.....	5.0%	6.9%	6.1%
Personal Services.....	10,325,662	6,782,867	19,055,546
Other Payroll Costs (FICA, Retirement, Group Insurance).....	2,666,236	3,867,163	6,307,154
Contractual Services.....	4,327,847	2,290,811	5,790,820
Lump Sum Expenditures.....	33,189,936	66,783,519	39,468,523
All Other Operating Expenditures.....	1,493,412	571,517	1,793,060
AWARDS AND GRANTS.....	\$ 979,893,291	\$ 1,079,119,703	\$ 1,108,603,649
% of Total Expenditures.....	95.0%	93.1%	93.9%
REFUNDS TOTAL.....	\$ -	\$ 221,550	\$ 68,578
% of Total Expenditures.....	0.0%	0.0%	0.0%
<b>Average Number of Employees.....</b>	<b>399</b>	<b>430</b>	<b>437</b>

<b>CASH RECEIPTS</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
Federal Grants.....	\$ 609,162,869	\$ 699,342,222	\$ 684,348,565
License and Fees.....	129,312,955	131,567,276	157,322,791
Prior Year Refunds.....	6,273,956	9,352,668	7,354,656
Sale of Investments and Interest Income.....	2,556,366	2,751,907	2,609,034
Loan Repayments.....	268,108	12,188,176	489,111
State Grants.....	14,281,441	21,663,082	1,981,923
Private Donor.....	56,712,544	37,250,608	11,566,796
Other.....	583,906	658,752	417,214
Total.....	<u>\$ 819,152,145</u>	<u>\$ 914,774,691</u>	<u>\$ 866,090,090</u>

<b>AGENCY DIRECTOR</b>
During Examination Period: Warren Ribley (through March 31, 2012); David Vaught (through November 25, 2012) Currently: Mr. Adam Pollet (Acting) (effective November 26, 2012)

**FINDINGS, CONCLUSIONS, AND**  
**RECOMMENDATIONS**

**INADEQUATE CONTROLS OVER COMPUTER INVENTORY**

**Unable to locate equipment**

The Department was not able to locate various pieces of computer equipment during its annual inventories.

During our review of the Department's Inventory Certification Discrepancy Reports for fiscal years 2012 and 2011, it was noted the Department was not able to locate various computer inventory totaling \$42,750.

**Missing items included laptop and desktop computers**

Thirteen of 16 (81%) missing laptops were used by the Division of Banking Field Examiners and confidential information may have been stored on these computers. The Department was not able to provide documentation to substantiate the missing laptops had the hard drives wiped of any information.

**Department unsure if confidential information was on the missing computers**

Of the four missing desktop computers, one was subsequently found and two did not have confidential information contained within as they were used for internal networking. The other desktop was assigned to a former contractual employee. The Department could not determine if any confidential or sensitive information may have been stored on this computer.

The Department could not determine what type of data was stored on two missing hard drives and a missing Personal Digital Assistant. (Finding 1, pages, 10-11) **This finding was first reported in 2008.**

We recommended the Department continue to evaluate the procedures and strengthen the controls over inventory of State property. Further, the Department should perform a detailed assessment to determine if any of the missing computers contained confidential information.

**Department agrees with auditors**

Department officials agreed with our recommendation and stated they have revised the inventory procedure to better track the internal movement of computer equipment. The Department has also acquired a state-of-the-art inventory program with barcode scanning capabilities and will maintain a copy of any equipment movement that is maintained by the Information Technology Division and the Administrative Services Division. (For previous Department response, see Digest Footnote #1.)

## **NEED TO IMPROVE TIMELINESS AND DOCUMENTATION OF ENFORCEMENT ACTIVITIES**

### **Failure to document enforcement activities in a timely or sufficient manner**

The Department's Division of Professional Regulation's Enforcement Unit did not perform and/or document enforcement activities in a timely or sufficient manner.

The Department has established and implemented guidelines and time frames for significant investigation prosecution, and probation/compliance activities of the Enforcement Unit. Since the Department did implement guidelines to ensure that the investigation and prosecution activity is initiated and completed within a reasonable time parameters, we used their guidelines and time frames as the criteria for our tests.

Some of the deficiencies noted in our review of 25 investigation files follows:

### **Complainants not timely contacted**

- In 6 of 25 (24%) case files reviewed, the investigator did not contact the complainant within 30 days following assignment of the case as specified in the Department's Enforcement Guidelines. Four of the 6 (67%) referenced case files showed complainants were contacted 35 to 412 days after assignment, while 2 of 6 (33%) case files did not have evidence that contact was made with the complainant.
- In 3 of 25 (12%) case files reviewed, the Investigative Reports were not signed by the supervisor.

### **Investigative Reports completed late**

- In 4 of 25 (16%) case files reviewed, the Investigative Reports were not prepared in a timely manner. The completion of the investigative reports ranged from 124 to 559 days after the investigative activity.
- In 2 of 25 (8%) case files reviewed, no Investigative Summary Reports were noted on file for investigation that remained open in excess of 180 days.

### **Probation intake interview and contact with licensee not timely**

We reviewed 25 probation files and in 2 of 25 (8%) case files we noted the Department conducted the probation intake interview or made contact with the licensee beyond 30 days of the case assignment.

We reviewed 25 prosecution files and in 1 of 25 (4%) case files reviewed, the Notice of Informal Conference was sent to the licensee 328 days after the case was assigned to an attorney. (Finding 2, pages 12-14) **This finding was first reported in 2004.**

We recommended the Department comply with its Enforcement Unit's internal guidelines and ensure investigative, prosecution, and probation activities are documented properly and performed within the established time frames.

**Department agrees with auditors**

Department officials concurred with our recommendation and stated its Enforcement Manual has been extensively revised to ensure that all activities are performed in a timely manner. (For previous Department response, see Digest Footnote #2.)

**DEPARTMENT BOARDS NOT FULLY STAFFED**

The Department did not ensure the appointment of the required number of members to various Boards and Committees to fill vacancies.

The Secretary of the Department did not appoint members to the Barber, Cosmetology, Esthetics, Hair Braiding and Nail Technology Board (Board). During our testing we noted 2 of 11 (18%) positions were held by individuals with terms that expired in October 2002 and September 2011. In addition, these two referenced individuals held their positions beyond three terms.

**Real Estate Administration and Disciplinary Board**

The Department's Division of Professional Regulation was not in compliance with the provisions of the Real Estate Appraiser Licensing Act (Act) (225 ILCS 458/25-10) regarding the Real Estate Administration and Disciplinary Board (Board). During our testing, we noted 1 of 9 (11%) members was first appointed in June 1996 and has exceeded the 12 year service limit. Further, one member did not file required disclosures regarding conflict of interests.

**Occupational Therapy Licensure Board**

The Secretary of the Department did not appoint members to the Illinois Occupational Therapy Licensure Board (Board) to fill a vacancy. During our testing, we noted 1 of 7 (14%) positions (public member) has been vacant since April 2012.

**State Board of Pharmacy**

The Department's Division of Professional Regulation was not in compliance with the provisions of the Pharmacy Practice Act regarding appointments of members to the State Board of Pharmacy (Board). During testing, we noted 1 of 9 (11%) positions (public member) has been vacant since December 2011. In addition, 5 of 9 (56%) positions were held by individuals whose service terms expired in April 2007 (2 positions), April 2009 (2 positions), and April 2010 (1 position).

The Department's Division of Professional Regulation was not in compliance with the provisions of the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, & Locksmith Act of 2004. During testing, it was noted 1 of 13 (8%) positions (Security Contractor) has been vacant since

November 2011 and 1 of 13 (8%) positions (Locksmith) was held by an individual with a second term that expired in January 2012.

### **Respiratory Care Board**

The Department was not in compliance with the provisions of the Respiratory Care Practice Act. During testing, we noted 1 of 9 (11%) positions (respiratory care practitioner) has been vacant since February 2012 and 3 of 9 (33%) positions were held by individuals whose service terms have exceeded the 8 year limit as of June 30, 2012.

### **Physician Assistant Advisory Committee**

The Department's Division of Professional Regulation was not in compliance with the provisions of the Physician Assistant Practice Act of 1987. During testing, we noted 2 of 7 (29%) positions (1 physician and 1 public member) have been vacant since October 2009 and November 2000, respectively and 5 of 7 (71%) positions were held by individuals with terms that expired in November 1999 (1 position), November 2000 (2 positions), November 2001 (1 position), and January 2004 (1 position). (Finding 3, pages 15-18) **This finding was first reported in 2004.**

We recommended the Secretary appoint qualified members to these Boards and Committees as required by the Acts cited and reappoint applicable Board members in a timely manner. Further, the Department should work with the Governor's Office to fill Board vacancies with qualified members.

### **Department agrees with auditors**

Department officials concurred with our recommendation and stated they continue to make substantial progress in filling board vacancies and reappointing statutorily eligible board members as terms expire. (For previous Department response, see Digest Footnote #3.)

### **NEED TO IMPROVE CONTROLS OVER INTERAGENCY AGREEMENTS**

The Department's controls over interagency agreements were deficient.

### **Deficiencies in interagency agreements noted**

During our examination of nine interagency agreements during fiscal years 2011 and 2012, the following deficiencies were noted:

- One of 9 (11%) interagency agreements tested was not signed by all parties prior to the effective date of the agreement.
- Five of 9 (56%) interagency agreements tested pertain to the sharing of administrative, legal and managerial services of employees between the Department, the Governor's Office of Management and Budget (GOMB), and the Office of the Governor. One of the

**Employee's full salary paid by one Agency but employee performed duties at two different agencies**

five referenced agreements was between the Department and GOMB wherein the employee's full salary including benefits was paid by GOMB, however, the employee spent a majority of his time on Department activities. Four of the five referenced agreements were between the Department and the Office of the Governor wherein the employees' full salary including benefits was paid by the Department but the shared employees' time was spent working on activities for both the Office of the Governor and the Department. (Finding 4, pages 20-21) **This finding was first reported in 2006.**

We recommended the Department ensure all interagency agreements are signed by all parties prior to the effective date of the agreement. Further, the Department should revisit their existing interagency agreements to ensure that salaries and benefit costs are appropriately allocated to agencies sharing the services of an employee.

**Department agrees with auditors**

Department officials agreed with our recommendation. (For previous Department response, see Digest Footnote #4.)

#### **NEED TO COMPLY WITH PHARMACY PRACTICE ACT REQUIREMENTS**

The Department did not fully comply with the requirements of the Pharmacy Practice Act.

**Required positions were not filled by the Department**

During testing, we noted two Deputy Pharmacy Coordinator positions within the Pharmacy Unit were vacant. In addition, the Department only employed three of four pharmacy investigators as required by the Act. The Act (225 ILCS 85/11(d)) requires the Secretary of the Department to appoint a chief pharmacy coordinator and at least 2 deputy pharmacy coordinators. Further, the Act requires the Secretary to employ not less than 4 pharmacy investigators in conformity of the Personnel Code. (Finding 11, page 32)

We recommended the Department fill vacant positions to comply with the requirements of the Act.

**Department disagrees with auditors**

The Department agrees that there were vacancies based on the Pharmacy Practice Act, however the Department does not believe that this is a violation of the statutory mandate based on a recent court opinion in which it was determined hiring decisions are inherently discretionary, and mandamus is not appropriate to compel the Department to hire certain employees.

**Auditor’s Comment**

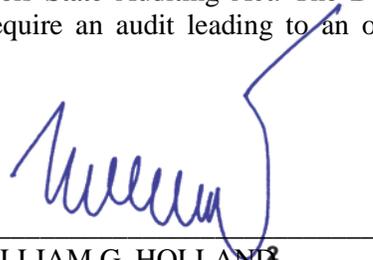
The case referred to by the Department involved litigation surrounding the transfer of funds from the Real Estate License Administration Fund pursuant to the fiscal Year 2007 Budget Implementation Act and Executive Order 2003-10. In that case, the Court refused to issue the extraordinary remedy of mandamus to force the Department to expend funds for hiring additional investigators pursuant to a provision in the Real Estate License Act. This finding involves the Pharmacy Practice Act and is not a court action for the extraordinary remedy of mandamus. Under the circumstances, we continue to believe that the Department should comply with the plain meaning of the Pharmacy Practice Act or seek a legislative remedy.

**OTHER FINDINGS**

The remaining findings are reportedly being given attention by the Department. We will review the Department’s progress towards the implementation of our recommendations in our next engagement.

**AUDITORS’ OPINION**

We conducted a compliance examination of the Department as required by the Illinois State Auditing Act. The Department has no funds that require an audit leading to an opinion of financial statements.



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WILLIAM G. HOLLAND  
Auditor General

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**SPECIAL ASSISTANT AUDITORS**

E.C. Ortiz & Co., LLP were our special assistant auditors.

## **DIGEST FOOTNOTES**

### **#1 - INADEQUATE CONTROLS OVER COMPUTER INVENTORY**

2010: Department officials agreed with our recommendation and stated they have conducted an internal audit of inventory procedures and implemented recommendations of that audit. The Department further stated they have improved the inventory procedure to better track the internal movement of computer equipment.

### **#2 - NEED TO IMPROVE TIMELINESS AND DOCUMENTATION OF ENFORCEMENT ACTIVITIES**

2010: Department officials concurred with our recommendation and stated they are reallocating resources and implementing new procedures in order to ensure that documentation is maintained in accordance with the State Records Act and all applicable internal policies. The Department is in the process of upgrading both the case review and oversight procedures. Through more detailed supervisory review the Department will be able to identify and address issues in a timely manner thereby enabling the Department to better comply with all relevant mandates and guidelines.

### **#3 - DEPARTMENT BOARDS NOT FULLY STAFFED**

2010: Department officials concurred with our recommendation and stated the Department has made substantial progress in filling board vacancies, and they are engaging in an ongoing process of filling vacancies as terms expire. In addition, the Department stated they have been proactive in the recruitment of new board members to fill vacancies by outreach to community leaders and organizations.

### **#4 - NEED TO IMPROVE CONTROLS OVER INTERAGENCY AGREEMENTS**

2010: Department officials concurred with our recommendation and stated the Department will endeavor to determine if there is a feasible methodology to monitor parties' assumption of payment obligations. If no methodology is appropriate, the Department will determine the feasibility of these types of interagency agreements going forward. The Department will endeavor to approve all interagency agreements prior to the performance of services there under.