



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

William G. Holland, Auditor General

SUMMARY REPORT DIGEST

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Compliance Examination:
 For the Two Years Ended June 30, 2014

Release Date: February 26, 2015

FINDINGS THIS AUDIT: 13				AGING SCHEDULE OF REPEATED FINDINGS			
	<u>New</u>	<u>Repeat</u>	<u>Total</u>	<u>Repeated Since</u>	<u>Category 1</u>	<u>Category 2</u>	<u>Category 3</u>
Category 1:	0	0	0	2012		9	
Category 2:	4	9	13	2008		1	
Category 3:	<u>0</u>	<u>0</u>	<u>0</u>	2006		4	
TOTAL	4	9	13	2004		2, 3, 5, 6, 8	
				2002		10	
FINDINGS LAST AUDIT: 14							

SYNOPSIS

- (14-2) The Department did not perform and/or document enforcement activities in a timely or sufficient manner.
- (14-3) Department Boards and Committees were not fully staffed.
- (14-4) The Department's controls over interagency agreements were deficient.
- (14-9) The Department did not ensure compliance with the Pharmacy Practice Act.
- (14-10) The Department was not in compliance with provisions of the Residential Mortgage License Act of 1987.

Category 1: Findings that are **material weaknesses** in internal control and/or a **qualification** on compliance with State laws and regulations (material noncompliance).
Category 2: Findings that are **significant deficiencies** in internal control and **noncompliance** with State laws and regulations.
Category 3: Findings that have **no internal control issues but are in noncompliance** with State laws and regulations.

{Expenditures and Activity Measures are summarized on next page.}

**DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
COMPLIANCE EXAMINATION
For the Two Years Ended June 30, 2014**

EXPENDITURE STATISTICS	2014	2013	2012
Total Expenditures.....	\$ 78,407,538	\$ 77,176,915	\$ 76,702,501
OPERATIONS TOTAL.....	\$ 78,127,569	\$ 77,126,017	\$ 76,440,927
% of Total Expenditures.....	99.6%	99.9%	99.7%
Personal Services.....	35,369,071	35,143,673	37,331,537
Other Payroll Costs (FICA, Retirement).....	25,741,958	26,156,212	24,016,158
All Other Operating Expenditures.....	17,016,540	15,826,132	15,093,232
AWARDS AND GRANTS.....	\$ 239,786	\$ 27,070	\$ 232,864
% of Total Expenditures.....	0.3%	0.1%	0.3%
REFUNDS.....	\$ 40,183	\$ 23,828	\$ 28,710
% of Total Expenditures.....	0.1%	0.0%	0.0%
Total Receipts.....	\$ 119,138,116	\$ 84,332,300	\$ 98,407,570
Average Number of Employees.....	462	458	493

SELECTED ACTIVITY MEASURES (Not Examined)	2014	2013	2012
Examinations Completed:			
Financial Institutions.....	2,856	2,797	2,560
Banks and Trust Companies.....	614	628	445
Thrift and Mortgage.....	262	271	358
Number of Licensees:			
Financial Institutions.....	2,795	2,788	2,819
Bank and Trust Companies.....	1,372	1,382	1,281
Residential Mortgage.....	744	772	760
Profession (New/Renewals Received).....	295,469	569,741	605,176
Enforcement:			
Complaints Received.....	10,867	11,669	12,466
Complaints Closed.....	10,335	11,489	12,958
Cases Closed at Investigations.....	2,900	3,541	3,836
Cases Referred to Prosecutions.....	4,656	4,033	5,717
Cases Closed at Prosecutions.....	1,818	1,719	1,368

SECRETARY	
During Examination Period:	Manual Flores (Acting)
Currently:	Bryan A. Schneider (Acting, Effective February 9, 2015)

**FINDINGS, CONCLUSIONS, AND
RECOMMENDATIONS**

**ENFORCEMENT ACTIVITIES NOT PERFORMED
TIMELY AND/OR NOT SUFFICIENTLY
DOCUMENTED**

**Problems noted with investigation,
prosecution and probation files**

The Department did not perform and/or document enforcement activities in a timely or sufficient manner. During our review of investigation, prosecution, and probation files we noted complainants were not contacted timely, reports were not signed by investigator and/or supervisor, and reports were not timely prepared. (Finding 2, pages 13-14). **This finding has been repeated since 2004.**

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

Department agreed with auditors

Department management concurred and stated the Department has improved its performance and will continue to review internal guidelines and work with all employees to correct the identified deficiencies. *(For the previous Department response, see Digest Footnote #1.)*

**DEPARTMENT BOARDS AND COMMITTEES NOT
FULLY STAFFED**

**Board and Committees had
vacancies and persons serving with
expired terms**

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

- 3 of 9 positions were vacant in the Real Estate Administration and Disciplinary Board.
- 5 of 9 positions were held by individuals whose service terms had expired for the State Board of Pharmacy.
- 1 of 13 positions was vacant for the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004.
- 2 of 9 positions were held by individuals whose service terms have now exceeded the 8 year limit for the Respiratory Care Board.
- 3 of 7 positions have been vacant and 3 positions were held by individuals whose terms have expired for the Physician Assistant Advisory Committee.
- 1 of 7 positions was filled subsequent to June 30, 2014 for the Professional Counselor Examining and Disciplinary Board.
- 1 of 8 positions was vacant for the Sex Offender Evaluation and Treatment Provider Licensing and Disciplinary Board.

- 2 of 5 positions were vacant for the Board of Licensing for Perfusionists.
- 2 of 7 positions were vacant for the Illinois Occupational Therapy Licensure Board. (Finding 3, pages 15-19). **This finding has been repeated since 2004.**

We recommended the Department continuously appoint qualified members to these Boards and Committees as required by the Acts cited. We also recommended the Department continue to work with the Governor’s Office to ensure the Board and Committee vacancies are filled in a timely manner for those cases where the Governor’s Office is required to appoint the Board and Committee members.

Department agreed with auditors

Department management concurred and stated the Department continues to make substantial progress in filling board vacancies and reappointing statutorily eligible board members as terms expire. *(For the previous Department response, see Digest Footnote #2.)*

DEFICIENCIES IDENTIFIED IN CONTROLS OVER INTERAGENCY AGREEMENTS

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

The Department’s controls over interagency agreements were deficient. During testing of 14 interagency agreements we noted one agreement was signed 73 days after the effective date of the agreement. In addition, nine interagency agreements pertained 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. In two instances, the employee’s full salary and benefits was paid by GOMB, however the employees spent a majority of their time related to Department activities. In seven instances, the employee’s full salary and benefits were paid by the Department but the shared employees’ time were 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. We also recommended the Department revisit their existing interagency agreements to ensure that salaries and benefit costs are appropriately allocated to agencies sharing the services of an employee.

Department agreed with auditors

Department management concurred and stated they agree with the audit findings and recommendations. *(For the previous Department response, see Digest Footnote #3.)*

NONCOMPLIANCE WITH THE PHARMACY PRACTICE ACT

Two positions required by Act vacant

The Department did not ensure compliance with the Pharmacy Practice Act. We noted two Deputy Pharmacy Coordinator positions within the Pharmacy Unit were still vacant. (Finding 9, page 31)

We recommended the Department fill vacant positions to comply with the requirements or seek legislative remedy to amend the current language in the Act allowing for conformity with the Department's current practice and capability.

Department agreed with auditors

Department management concurred and stated they agree with the audit findings and recommendations. *(For the previous Department response, see Digest Footnote #4.)*

NONCOMPLIANCE WITH THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Department did not report violations or monitor licensees with default rates equal to or greater than 5%

The Department was not in compliance with provisions of the Residential Mortgage License Act of 1987. We noted the Department had not reported any mortgage loan originator's violations or enforcement actions to the National Mortgage Licensing System and Registry (NMLS) during Fiscal Years 2013 and 2014 as required. In addition, we noted the Department did not monitor residential mortgage licensees with default rate equal to or greater than 5%. As such, the Department did not conduct an examination of licenses who might have met the 5% default rate. (Finding 10, pages 32-33)

We recommended the Department report mortgage loan originator's violations of the Act to NMLS to increase public awareness and ensure compliance with the Act. We also recommended the Department coordinate with the Department of Housing and Urban Development in obtaining the default rate in order to comply with the requirements of the Act.

Department agreed with auditors

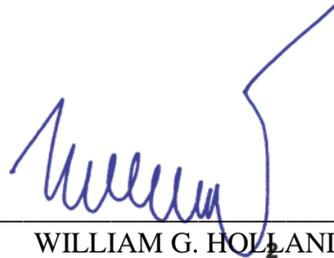
Department management concurred and stated the Department agrees with the audit findings and recommendations. *(For the previous Department response, see Digest Footnote #5.)*

OTHER FINDINGS

The remaining findings pertain to: 1) controls over computer equipment, 2) performance evaluations, 3) vehicle reporting, usage and maintenance, 4) property records, 5) telecommunications services and expenditures, 6) licensee documentation, and 7) noncompliance with various statutory mandates. We will review the Department's progress toward implementation of our recommendations during our next examination.

AUDITOR'S 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.



WILLIAM G. HOLLAND
.. Auditor General

WGH:JC

SPECIAL ASSISTANT AUDITORS

Our Special Assistant Auditors for this examination were E.C. Ortiz & Co., LLP.

DIGEST FOOTNOTES

#1 – ENFORCEMENT ACTIVITIES NOT PERFORMED TIMELY AND/OR NOT SUFFICIENTLY DOCUMENTED – Previous Department Response

2012: Concur. The Department has extensively revised its Enforcement Manual to ensure that all activities are performed in a timely manner and that all necessary documentation is maintained in case files. Pursuant to the Collective Bargaining Agreement, the updated manual has been sent to the union and the Department has completed impact bargaining regarding the changes. The new manual will be effective March 8, 2013.

#2 – DEPARTMENT BOARDS AND COMMITTEES NOT FULLY STAFFED – Previous Department Response

2012: Concur. The Department continues to make substantial progress in filling board vacancies and reappointing statutorily eligible board members as terms expire. In 2012, the Department saw the highest annual number of appointments made in the previous 13 years. For the past year, the vacancy rate has been near 10% and is currently at 7.4%. At this time, 31 of the Department's 52 boards have no vacant positions. A majority of reappointments are being made on or shortly after the member's term expiration date. Of the boards that were part of this finding, two have no vacancies as well as no members serving in expired terms and four have just one vacant position. None were unable to meet or carry out their duties due to quorum issues. The Department continues to work closely with the Governor's Office and to actively recruit new board members to fill vacancies and replace termed-out members by reaching out to professional associations, community leaders and organizations, and current and former board members.

#3 – DEFICIENCIES IDENTIFIED IN CONTROLS OVER INTERAGENCY AGREEMENTS – Previous Department Response

2012: The Department agrees with the audit finding and recommendation.

#4 – NONCOMPLIANCE WITH THE PHARMACY PRACTICE ACT – Previous Department Response

2012: The Department concurs that there are vacancies in the unit based on the Pharmacy Practice Act. However, the Department does not agree that this is a violation of a statutory mandate. Based on paragraphs 37 through 43 of the opinion of Judge Zappa in the case of *Illinois Association of Realtors v. John Filan et al*, the work “shall” in a statute does not always indicate a mandatory but sometimes rather a directory intent. Judge Zappa goes on to state that because hiring decisions are inherently discretionary, mandamus is not appropriate to compel the Department to hire certain employees. Therefore, it is the Department’s position that failure to hire certain staff based on the Pharmacy Practice Act is not a violation of a statutory mandate.

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.

#5 – NONCOMPLIANCE WITH THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987 – Previous Department Response

2012: Concur. The Department will continue to review and enhance its internal procedures to ensure its residential mortgage licensees are in compliance with the provisions of the Residential Mortgage License Act of 1987 (Act). Effective August 03, 2012, Section 3-2(g) of the Act was amended to allow for self-prepared compilation financial statements for licenses who solely broker residential mortgage loans as defined in Section 1-4(o).