



**South Carolina  
Department of Labor, Licensing and Regulation**



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June 14, 2019

The Honorable Wm. Weston J. Newton  
South Carolina House of Representatives  
Legislative Oversight Committee  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Chairman Newton:

Thank you for the opportunity to provide additional information to the House of Representatives Legislative Oversight Committee. We continue to appreciate the opportunities afforded by the Committee for the Agency to hear concerns, to explain its programs and processes and the reasoning behind certain management decisions or actions, and to improve upon the services offered to the State through the programs the Agency administers.

Before responding to your May 23rd letter, we wanted to highlight and summarize some information provided to the subcommittee during its study of the Agency that might be helpful to the Committee. I hope this will assist to better understand: how the Agency's Professional and Occupational Licensing Division (POL) is structured and financially supported; how Agency staff supports the licensing boards and commissions (the "Boards"); and the difference in responsibilities between Agency staff and the Boards themselves.

LLR is essentially divided into three major program areas: 1) State Fire; 2) Labor; and 3) POL. While the Agency is the regulatory body in charge of implementing regulations and making determinations and administrative rulings for the State Fire and Labor programs, such is not the case with POL. Prior to the Agency's creation, each licensing board was its own separate agency. Through government restructuring in 1994, the legislature brought all of these individual agencies underneath the LLR umbrella. The Boards maintain their regulatory autonomy over the professions, but by statute, LLR is responsible for all administrative, fiscal, investigative, clerical, and license renewal operations for the Boards. The Agency provides human resource and finance support, administrative staff, technological support, legal services, conducts investigations and inspections, and provides training to the Boards. The Agency, through POL, processes initial and renewal licensure applications in line with statutory and Board-delegated authority. POL staff also identify applications that cannot be approved at staff level and prepare them for presentation to the Board, and monitor compliance with Board-ordered conditions for licensure. Although the Agency provides legal services to the Boards, including prosecutorial services and advice to the Boards themselves, the Boards make all final regulatory decisions regarding contested application and disciplinary cases. In addition, the Boards have the authority to interpret practice acts,

promulgate regulations, approve forms necessary to carry out board requirements, approve continuing education requirements, and establish criteria for issuing, renewing, and reactivating authorizations to practice of qualified applicants.

In the public comment portion of the meeting on May 8th, the Committee heard concerns related to staffing and comparison of that staffing to other Boards, particularly as it relates to the Accountancy Board and Real Estate Commission. One of the great advantages to having all licensing boards under the Agency's umbrella is that Agency management maintains an overall perspective of all the Boards – their workloads, complexity, number of licensees and customers, investigations, and other factors – for which it can manage and staff programs from a global standpoint. Staff is shared among some Boards to maximize efficiencies where possible and reduce costs. We thought it would be beneficial to the Committee to see the productivity and staffing of each board grouping within the Office of Board Services of POL, which is provided in the chart attached as Attachment 1. This chart provides a visual of the number of staff, number of licensees and number of customer calls or walk-ins that each board grouping supports. I hope this will better assist the Committee in understanding the Agency's staffing decisions.

Finally, I wanted to clarify concerns of individual licensing board cash balances that were visually portrayed to the Committee during the May meeting. Although the Agency has long maintained separate cash accounts for each licensing board in order to better assess whether a licensing board has the revenue to support its expenditures, the Agency overall has a healthy, positive balance of other funds to use toward expenditures of the programs it is charged with implementing and supporting. Therefore, although internally negative balances are recorded, it does not mean that the Agency is operating with a negative cash flow. Moreover, because of the two-year renewal cycle, some boards are negative in non-renewal years and have a positive carry forward in renewal years. Nevertheless, the Agency strives to keep the Boards with sufficient but not excessive revenue where possible, and we have provided more details on those efforts in answer to specific questions about them below.

I hope this information and explanation further assists the Committee in its evaluation and oversight of the Agency. The following information responds to the specific questions posed in your letter dated May 23, 2019:

### **Agency Staffing**

#### **1. Have any licensing boards requested additional staff? If yes, which ones, and how were the requests addressed by the agency?**

Over the last few years, several licensing boards have raised concerns regarding staffing. Typically, a Board or several members of a Board may ask to meet with POL management or myself so that we can have a dialogue about those concerns. I have met with Board members in

the past about staffing concerns. While we do not keep a log of which Board raised staffing concerns and for what reasons, I have only spoken directly with board members about staffing concerns with the members of the Real Estate Commission, Accountancy Board, and the Athletic Commission.

Most requests typically come internally from Agency staff, particularly Board Administrators who are charged with managing the staff that serve a particular Board or Boards. They will discuss with POL and Agency leadership a need for additional staff, which can be prompted by a variety of reasons including, but not limited to, an increased workload of the Board over an established period of time, a regulatory or statutory change that will require additional work for the Board, a temporary project of a limited duration, or a sudden loss of an employee or employees due to an unexpected reason (i.e., birth of a child, serious illness, sudden retirement). Depending on the need and reasons, an FTE may be formally requested through the budget process or a contract or staffing temporary employee may be hired, or a temporary employee from the Agency's Office of Operational Management may be moved to assist the Board during a particularly high customer demand timeframe such as a renewal period.

When staffing concerns are raised, the requests are evaluated based upon: assessment of workloads of the board staff; comparison with the needs and capacities of other staff within the POL Division; and the reason. At the time of my appointment as Interim Director of the Agency in August 2016, the Agency had just created 3 FTE positions in the new fiscal year following the General Assembly's passage of the budget request. Those FTEs were for the Accountancy Board, the Pharmacy Board, and the Nursing Board. In my tenure as Director, the Agency has since requested the following full time employee positions for the POL division in its budget requests to the General Assembly:

<b>FY 2017-2018</b>	Board staff requests: 1 FTE for Real Estate Commission and 1 FTE for Board of Medical Examiners/ Board of Podiatry Examiners  Additionally, the Agency received authorization to create 6 FTEs in its Office of Investigations and Enforcement and 3 FTEs in its Office of Advice and Office of Disciplinary Counsel to better handle caseloads and serve the boards in investigations and legal support.
<b>February 2018</b>	As part of the one-time state agency temporary to FTE conversion allowed for all agencies by proviso, LLR also created 1 FTE for the LP Gas Board/Pyrotechnic Board and 1 FTE for the Residential Builders Commission.
<b>FY 2018-2019</b>	No request for new board staff FTE positions, but the Agency received authorization to create 1 FTE for a new advice counsel

	position to assist with healthcare-related boards due to high volume and complexity of cases presented for disposition
<b>FY 2019-2020</b>	Board staff requests: 4 FTEs for Real Estate Commission

The Agency does not keep a specific list of every discussion, informal, or formal request from Board staff regarding staffing. However, over the past three years the Board of Medical Examiners, Real Estate, Building Codes Council, Manufactured Housing, Accountancy, Pharmacy, Barber/Cosmetology/Massage Therapy, and Contractor's Board have requested and been approved for additional permanent (FTE) or temporary (state temp or contract temp) staff.

**2. What is the agency's staff breakdown by race, gender, ethnicity, and age? Please include information for each major division/department if possible.**

Please see Attachment 2.

**3. How many employees have left the agency since your appointment as Interim Director in 2016? Please provide the number of employee separations per month since that time.**

Please see Attachment 3.

**Licensee Services**

**4. How do the boards and/or agency staff address constituent concerns about licensure delays?**

The Agency has a number of processes in place to answer questions about licensure, including complaints that licensure has been delayed. First, members of the public can reach Board staff directly via email or phone. Each Board has a designated phone number that will link members of the public directly to the licensing board of their choice. Each Board has a dedicated email address for general questions as well. The phone number and email address is located on the Board's web page on the Agency website.

If direct contact with the Board staff does not resolve an issue, the Agency Ombudsman, Lesia Kudelka, will assist. When resolving a licensure delay complaint, if Ms. Kudelka determines the delay is not an isolated event and is, instead, the result of a staffing or process problem, then she will inform the POL Deputy Director, Dean Grigg.

Mr. Grigg will then typically speak with the Board Administrator to determine the cause of the delay. If the problem is staffing for a temporary issue, then management will transfer staff from other licensing boards or the Office of Operational Management (the Agency's pool of

temporary employees) to assist. The volume of licensure applications fluctuates during renewals and following graduations and examinations; therefore, Boards often need additional assistance during these timeframes but not on an ongoing basis. If additional staffing is required on a more permanent basis, then Mr. Grigg will present the issue for my consideration. If the delays are the result of individual staff members' inefficiencies, then those issues are addressed directly with staff and/or HR. Finally, if it is determined that a delay is the result of existing process inefficiencies, then the Agency evaluates methods to improve or better automate processes in collaboration with staff from the Department of Operations, Technology and Security (DOTS).

All licensure delays are not, however, caused by staffing or process problems. Staff cannot issue a license until an applicant sends all documentation required by law. When staff receives an incomplete application, they must issue a deficiency letter to apprise the applicant of what information is missing and wait until the information is received before they can continue to process the license. Additionally, applicants may be required to appear before the Board before their license is issued if they have criminal histories, judgments, or medical, mental health or substance abuse issues. Most Boards meet at least quarterly, with some meeting as often as monthly, but awaiting that hearing may result in a delay over which neither the Board nor the Agency have any control.

**5. For each board, what was the average time between receipt of a licensure application and issuance/denial of that license in FY18? Please feel free to differentiate between different types of licenses (e.g., initial and renewal) and provide explanations of outliers as appropriate.**

The Agency began tracking licensure-processing time approximately 5 years ago. According to that data, in FY18, the processing time to issue a license following receipt of a completed application was 7.75 days for online applications and 5.25 days for paper applications. This average is fairly consistent over the life of the data we have. A complete application includes all necessary information that is required for licensure, either from the applicant or third party sources, such as test scores, transcripts, and background checks.

However, the Agency has recognized that this data is not entirely accurate and does not afford us the opportunities to effectively and efficiently drill down on license processing time for a particular board or license type. The current tracking method accounts for processing time when an application is complete, but it does not track the time it takes before then for a licensee or a third party to provide all the information. Every license type is different in what it requires and often a delay in processing is the result of a licensee or third party not having provided everything that must accompany an application.

For example, once all the components of an application for a Board of Medical Examiners license is received, it will generally take less than 24 hours to actually process and issue the license.

However, in addition to information from the licensee, the Medical Board requires certain information be sent to the Agency on behalf of the licensee, including national credentialing service information, AMA physician profile, license verifications from other states, and a criminal background check. Also, if a hit appears on the background check, then the applicant may have to appear before the Medical Board. All of this can extend a typical one-day processing time to several months from the time the application was first received.

The current tracking system is not sophisticated enough to track all of the different scenarios from Board to Board and license type to license type to fully understand where there may be problems with a process. It also does not begin to start tracking time until a staff person picks up an application and scans it into the system. In other words, it misses what is likely the most critical time period – how long an application sits on an Agency's employee's desk or inbox before it is processed.

If we hear of a general concern for a particular Board, then we can manually create a report through our IT staff to better track the applications that come to a particular board and how long they have been pending. We began generating such a report with Accountancy, for example, after hearing concerns from the South Carolina CPA Association. However, these reports are lengthy and time consuming to generate for every Board and license type and would not be useful for other Boards that process more than a handful of new applications a month.

In recognition of this critical information gap and the lack of efficiency and practicality in manually producing the individual report described directly above, in the past year, LLR has developed and begun implementing a completely new application intake process that tracks nearly every aspect of the life of applications from date received until the date a license is issued. The Centralized Automated Mail Processing ("CAMP") system more efficiently handles the receipt of applications so that we can track when an application comes to the Agency, and it automatically places the application in a queue for processing with the relevant Board. Before CAMP, Board staff would pick up their mail on a daily basis and then the staff would scan in and input the application information to the system. Now, the mail is opened and scanned by Agency staff in DOTS the day it is received, and then emailed to the relevant Board staff for processing. In the future, CAMP will also allow the Agency to flag the system at different stages of a license so that we can track its life cycle and better identify time delays.

The Agency has been implementing CAMP slowly, Board by Board, to ensure that we work out any problems with the system and staff are aware of changes. Since CAMP went live in January 2019, six Boards are now fully utilizing CAMP with four more being currently added. The new process is going smoothly and already revealing human error problems that we can address.

Finally, to address the second part of this question regarding denials – generally, if all statutory requirements have been met, then a denial of license occurs only at the Board level. Because this is a Board decision and not an Agency processing issue, the Agency does not currently track when a license is denied. There are also a multitude of different variables that could lead to an application denial or that may keep an application in pending status, which would be difficult to track. For example, a number of Boards allow applicants to retake licensure exams if they do not pass the first time. In fact, some allow multiple re-takes leaving an open application for years. The application will essentially remain open as long as statutorily allowed. However, CAMP will help us to better determine licensing turnaround times for the Agency to process an application from the time it is received to the time it is completed and issued.

**6. Do you have a goal for staff response time to licensee inquiries? Do you track the response time? If so, please provide any recent data you have, broken down by board if available.**

POL's policy is that all correspondence, whether by phone or email, be responded to within 24 hours. LLR does not directly track response time because of the complication involved in tracking the various ways that members of the public and licensees interact with the Agency (i.e. they may call, email, mail correspondence, or appear in-person). However, the Agency improved its customer satisfaction surveys and began to track those responses in the fall of 2018.

The customer satisfaction surveys are designed to provide management with data on overall customer satisfaction, satisfaction with phone or other communication services, satisfaction with staff services, and satisfaction with facilities and technological services. The questions on the survey that specifically address telephone and communication services ask the customers if they were able to contact LLR staff with minimal delays and if their phone call or email was responded to within 24 hrs. Prior to October 2018, the Agency did not track these specific metrics; however, since implementation of the new customer surveys, the Agency has received 1204 surveys with an overall customer satisfaction of 4.58 out of 5, and a communication/telephone services rating of 4.52 out of 5. More details of the information asked and the scores received by specific Board staff groupings is included in Attachment 4.

**7. Does the agency provide licensee mailing lists to professional associations or others for the purposes of disseminating information about continuing education opportunities? If not, why not?**

Yes, the Boards provide license rosters to anyone requesting them, including associations. The Boards generally release the following information: full name, business name, company, business address, city, zip code, business phone, issue and expiration date of the license, credential type, credential number, and status of the license. The Agency collects and stores a voluminous amount of personal information about its licensees, and the Agency takes very seriously its

responsibility to protect that information and to not release it without the licensee's consent unless clearly required by law. The Agency has great concern in releasing licensees' home addresses and information to associations for advertisements of any kind, including those for continuing education classes. Accordingly, the information released in the mailing lists is limited to business information rather than personal information.

To specifically address this issue raised at the Committee's May meeting, the South Carolina Family Privacy Protection Act requires agencies to develop privacy policies and procedures to ensure that the collection of personal information pertaining to the citizens of the State is limited to such personal information required to fulfill the agency's legitimate public purpose. S.C. Code Section 30-2-20. The purpose of each of LLR's Boards is to ensure that applicants for licensure meet the criteria required by law to practice a regulated profession in this state. In order to fulfill that obligation, the Boards are required to collect a significant amount of personal information from applicants and licensees, including, but not limited to their: names; social security numbers; dates of birth; race; gender; ethnicity; home addresses; personal email addresses; primary telephone numbers; electronic mailing addresses; driver's license or state identification numbers; medical, mental health or disability information; fingerprints in some cases; photographs and images; signatures; financial status; education level; grades; bank account numbers; credit reports and criminal backgrounds.

Much of the information collected by the Agency in order to issue a professional or occupational license constitutes "personal information," as defined in the Family Privacy Protection Act. In recent years, with the increase in technology, personal information can be used alone, or in combination with other collectible data, to steal a licensee's identity. The information can also be used to locate a licensee, which poses a potential safety risk. South Carolina Code Section 30-2-200(3) provides, "When state and local government entities possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public."

The agency does not disagree that the Family Privacy Protection Act anticipates that agencies may release *certain* information about applicants or licensees upon request and directs that agencies take "reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation," S.C. Code Section 30-2-50(C). Indeed, the act excludes from the definition of commercial solicitation "notification of continuing education opportunities." S.C. Code Section 30-2-30(3)(b). However, the Agency believes that the entirety of Chapter 2, Title 30, entitled "Family and Personal Identifying Information Privacy Protection," should be read to only permit the release of information so long as it does not violate a person's privacy.



In addition to guidance provided to agencies by the Family Privacy Protection Act, the Freedom of Information Act exempts from disclosure information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy. S.C. Code Section 30-2-40(a)(2). Also, the South Carolina Court of Appeals ruled in 2015 that home addresses, personal telephone numbers and email addresses are information in which applicants have a privacy interest. *George S. Glassmeyer v. City of Columbia*, 414 S.C. 213, 777 S.E. 2d 835 (Ct. App 2015). In applying the common law balancing test to determine if the public's need to know the information outweighed the individuals' privacy interest, the *Glassmeyer* Court reminded readers that the purpose of FOIA is to prevent the operation of government in secrecy and concluded, in that instance, that the public's right to know the home address of an applicant for the city manager's job did not outweigh the individual's privacy right in that information.

While the courts are vested with the final authority in applying the privacy balancing test, the Agency has considered the factors presented and determined the need for direct notification of continuing education opportunities does not outweigh an applicant or licensee's privacy interest in his or her home address, particularly where certain information can be released to requestors, such as licensee names and business addresses, where there is no risk of violating the licensee's privacy.

#### **8. What problems may arise when a licensee's name changes?**

If a licensee legally changes his or her name, then the Agency has a process by which the licensee can change the name on the license. The licensee completes a name change form and submits supporting documentation, and then the Board will change the name on the license. There are no issues when the Agency is presented with a legal name change.

At the Committee's May meeting, several concerns were raised regarding real estate licensees conducting business in a name other than the name in which the Real Estate Commission issued the real estate license. Essentially, this issue involves a licensee using a nickname where the law itself requires the licensee to use the legal name. Section 40-57-135 (C)(3) provides that a licensee may not conduct real estate business "under another name or at an address other than the one for which his license is issued." There are several other requirements under the Real Estate Practice Act regarding the full name of the licensee and/or brokerage firm. For example, in advertising, the licensee must clearly identify the full name of the real estate brokerage firm with which the real estate licensee is affiliated, and the brokerage firm must clearly identify its name.

In 2017, the General Assembly passed a law regarding team advertising in the Real Estate Practice Act. This law change required that team advertising contain the team name, the name of all team members, and the full name of the real estate brokerage under which the team works.

Once this law change occurred, the Agency began receiving complaints related to the law that fell in two categories. First, licensees filed complaints against other licensees for not following the new team advertising requirements regarding identifying the brokerage firm or for not being properly licensed in the name for which the Real Estate Commission issued the license. Second, members of the public filed complaints for unlicensed practice when they could not find the licensee's name in the Agency's Licensee Look-Up database because the name the licensee used for business purposes was different from the legal name by which he or she was licensed.

The reason for the various laws regarding names and advertising requiring the full name of the licensee and brokerage firm is to ensure that the public can easily verify the license status of the real estate agent and the brokerage firm that is responsible for the agent. The Real Estate Commission has stated that a nickname can be used in advertising, as long as the legal name is also referenced. The administrator for the Real Estate Commission communicated this to licensees in an October 2018 newsletter.

**9. Please address the concern raised at the meeting that board decisions are not shared with licensees affected by those decisions.**

Any Board order that affects a licensee is always communicated to the licensee by mail or certified mail. Important information, such as a change in the law, is posted on a Board's webpage, and depending on the Board, is communicated through e-blast, newsletter, Twitter, or Facebook. Minutes from the meeting are also available if a licensee would like to know what happened at the meeting itself. Often times, board administrators cull through the minutes and post information that would assist licensees on the website FAQs. For example, the Administrator for the Board of Accountancy went through the minutes of several years' worth of meetings and was able to clarify the continuing education, firm registration, and other licensing requirements on the Board's webpage. However, due to the concerns raised at the Committee meeting, the Agency will develop a more cohesive and consistent policy for information sharing after each board meeting with licensees.

**10. Do all boards comply with FOIA requirements for notifications of public meetings? How does the agency announce meetings? Please provide the date and time on which each of the last five public meetings of the Board of Accountancy, or any subdivisions, was announced.**

All Board members and Board staff are trained on compliance with the requirements for noticing a public meeting pursuant to FOIA. S.C. Code Section 30-4-80(A) sets forth the requirements for providing notice of meetings of public bodies. FOIA requires that the Boards give written public notice of *regular* meetings at the beginning of each calendar year. The notice must include the dates, times and places of the meetings. The Boards post all the upcoming year's regular meetings on their web page. For example, the Board of Accountancy has listed on its page

the dates and times for the Board's upcoming meetings for the entire year. This can be found on the Board's page at <https://www.llr.sc.gov/pol/accountancy/index.asp?file=cal.htm>. For your convenience, the calendar is provided below as it appears on the website:

**Board of Accountancy upcoming meetings**

Date	Time	Location	Description
3/7/2019	10:00 AM - 12:30 PM	Room 108	Committee Meeting
4/5/2019	1:00 PM - 4:00 PM	Room 105	Committee Meeting
4/16/2019	1:00 PM - 4:00 PM	Room 105	Committee Meeting
4/30/2019	10:00 AM - 5:00 PM	Room 108	Board Meeting
5/1/2019	9:00 AM - 5:00 PM	Room 108	Board Meeting
5/8/2019	8:00 AM - 5:00 PM	Room 202-02	Other
5/9/2019	8:00 AM - 5:00 PM	Room 202-02	Other
5/22/2019	10:00 AM - 1:00 PM	Room 108	Committee Meeting
6/18/2019	10:00 AM - 1:00 PM	Room 105	Committee Meeting
6/26/2019	10:00 AM - 5:00 PM	Room 108	Board Meeting
6/27/2019	9:00 AM - 5:00 PM	Room 108	Board Meeting
8/22/2019	10:00 AM - 5:00 PM	Room 108	Board Meeting
10/16/2019	10:00 AM - 5:00 PM	Room 108	Board Meeting
12/12/2019	10:00 AM - 5:00 PM	Room 108	Board Meeting

The agenda for a regular meeting must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on the public website maintained by the body, if any, at least 24 hours prior to the meeting. The Agency has bulletin boards at both entrances to the building, and notices and agendas are posted there. Additionally, notice of Agency meetings are posted electronically on a monitor by the Agency's reception desk.

Notice for *called*, *special* or *rescheduled* meetings must be posted as early as practicable, but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time and place of the meeting and must be posted on a bulletin board or website, if any.

In compliance with section 30-4-80(E) of FOIA, the Boards also notify via email any persons or organizations, local news media, or other such news media that may have specifically requested notification of the times, dates, places and agenda of all public meetings.

Below is a list of the last five meetings the Accountancy Board held. Beneath each is the date and time the agenda was posted online, and the date and time that notice was given by way of email to media and interested parties. Notice would have been posted on the Agency bulletin board at that time as well.

- **May 22 at 10:00 A.M. Committee meeting: Regulation Task Force.**  
*Agenda posted online at 9:13 A.M., May 21<sup>st</sup>.*  
*Agenda emailed at 9:05 A.M., May 21<sup>st</sup>.*
- **April 30 at 10:00 A.M. Board meeting.**  
*Agenda posted online at 2:57 P.M., April 26<sup>th</sup>.*  
*Agenda emailed at 2:54 P.M., April 26<sup>th</sup>.*
- **April 16 at 1:00 P.M. Committee meeting: Education Committee.**  
*Agenda posted online at 12:15 P.M., April 15<sup>th</sup>.*  
*Agenda emailed at 12:42 P.M., April 15<sup>th</sup>.*
- **April 5, 2019 at 1:00 P.M. Committee meeting: Guidelines Committee.**  
*Agenda posted online at 9:08 A.M., April 4<sup>th</sup>.*  
*Agenda emailed at 12:15 P.M., April 4<sup>th</sup>.*
- **March 7, 2019 at 10:00 A.M. Committee meeting: Regulation Task Force.**  
*Agenda posted at 4:15 P.M., March 5<sup>th</sup>.*  
*Agenda emailed at 4:19 P.M., March 5<sup>th</sup>.*

**11. What plans, if any, do you have to improve relationships that licensing boards and staff have with licensees and their professional associations? What plans, if any, do you have to meet with all boards and discuss how to better serve their licensees?**

The Agency is committed to serving the public first and foremost in keeping South Carolina a safe place to work and live. This commitment to protecting the public can be at odds with the licensees and their professional associations who promote and advocate for the profession. LLR and a Board may disagree with an association regarding the fact that sometimes what may be best for the profession itself is not necessarily what is best for the public and the customers of that service.

Despite the differences, we recognize that it is important to keep licensees and their associations well informed of decisions made by the Boards or actions undertaken by the Agency. Two recent initiatives the Agency has undertaken seek to better open communication with the Boards themselves. First, the Agency now sends a quarterly Board newsletter to inform board members about important information regarding the Agency. Second, I have made it a priority to attend a meeting of every Board to meet board members face-to-face, provide my business card with my cell phone number so they know I am always available to hear any concerns or questions, and to provide them with an update regarding the Agency. From public comment during this Oversight process, and considering how better to provide that communication, the Agency will undertake the following additional initiatives:

- The Agency will create a button on the main page of its new website, being launched in July 2019, that asks for suggestions in how the Agency can serve the website visitor better. By clicking the link, any member of the public will be able to fill out a brief form to describe their suggestion, which will then be sent directly to the Agency Ombudsman for handling. Although the suggestion link will be anonymous, the form will also allow the individual to provide their contact information for a follow-up to the suggestion, concern or question he or she may have.
- In the fall of this year, the Agency is planning a two-day training and team building session for its Board Administrators – the first time this has been done in recent memory. The entire session is meant to make the Administrators more unified, consistent in work product and procedures, and ensure they understand Agency processes and have an open forum for questions and answers. The expectation is that this will not only provide the Agency's Office of Board Services staff with more focused and helpful training, but that this will translate to better customer service to the licensees and the public.
- The Agency will commit to reaching out proactively to professional associations to be more available for discussion about the Agency and the POL Division in particular. To that end, Deputy Director Dean Grigg, Legislative Liaison Katie Phillips, and Board Administrator for Accountancy Susanna Sharpe met with representatives from SCACPA. I have also spoken to Sarah Wilbanks with the South Carolina Occupational Therapy Association, and plan to meet with Reah Smith from the South Carolina Realtors Association regarding their concerns expressed at the meeting.
- One of the best ways for licensees and the public to stay informed about Board decisions and business are the minutes from Board meetings posted on the Agency website. It is Agency policy that Board staff are to prepare meeting minutes so that they can be reviewed and approved by the Board at its next scheduled meeting. In light of discussion at the last Committee hearing, senior management reviewed the Agency website for minutes posted and found that some Boards were behind in getting minutes posted. Therefore, the Agency

is updating the policy to require minutes be prepared for Board approval at their next scheduled meeting *and* posted to the Agency website within three business days after they are approved. The Agency is committed to ensuring minutes are timely posted and available to licensees and the public.

### **Licensing Fees and Finances**

**12. For each of the 11 boards that have had negative cash balances for more than one consecutive year, to what do you attribute this persistent deficit (e.g., unusually low fees, unusually high expenses, low number of licensees, etc.)?**

The Agency conducted its first comprehensive fee analysis in 2013 and 2014 with changes first being implemented in 2014. This was the first time the Agency conducted a comprehensive fee review of revenue and expenses of all the Boards and adjusted fees as a result. Many of these Boards had likely run a negative balance for quite some time; therefore, it will take time to generate enough revenue from a license fee increase to end a fiscal year with a positive cash balance. Most Boards renew every other year, so it takes several renewal cycles to see the impact of a license fee increase (i.e. it would take 4-6 years for a Board to run through 2-3 revenue years).

Therefore, the primary reason most of these Boards have run a persistent deficit is because the fees had not been proactively adjusted in quite some time, and it will take time before we begin to see fee increases resulting in a positive cash balance. For example, the Cosmetology Board and the Board of Chiropractic Examiners have run a deficit for a number of years. However, after the comprehensive fee analysis in 2013 and 2014, certain fees were increased, and both boards began to slowly come out of the deficit over the last couple of renewal cycles. The latest financial reports show that after this year's renewal, both boards will have a positive cash balance for the first time in many years. The Board of Barber Examiners has a similar cash flow history and should have a positive balance soon as well.

For some of the Boards, the persistent negative balance is because of the low number of licensees or the uniqueness of the profession requiring regulation. Soil Classifier Advisory Council has the fewest licensees of any Board. The Boards of Podiatry Examiners, Examiners in Opticianry, and Registration for Foresters similarly have low numbers of licensees that make it difficult to generate a positive balance.

The Perpetual Care Cemetery Board licenses the perpetual care cemeteries – not the individuals – and there is a finite number of such cemeteries in South Carolina (i.e. no new applications). The number of renewals is also decreasing. Therefore, it will be difficult to ever have a positive balance of this board. The Athletic Commission does not operate like the other licensing boards under LLR's umbrella because it is charged with licensing the referees, judges, promoters, timekeepers and fighters of an event. The Commission also receives revenue from

commission fees and gate fees of a particular event. There is therefore a unique element of having to promote events, which is outside the Agency's mission, required for this profession to have a positive cash balance as it requires events in South Carolina to generate revenue for the Commission. Also, each event requires a number of Agency inspectors to staff an event (which often requires out-of-town travel) and at times the cost of providing that statutorily required oversight outweighs the revenue generated to the Commission through fees and licensing.

The reasons for other perpetual deficits is being reviewed in the current license fee analysis the Agency is conducting. For some Boards, it may be that license fees were not adjusted in 2014 enough, or at all, and that now must be adjusted or readjusted. The Agency strongly believes that all boards should be operating in a fiscally responsible and sustainable manner and will strive to do so with this current analysis.

**13. What is the agency's plan to address the persistent budget deficits of several boards?**

The Agency is in the process of addressing the deficit boards as well as those that have more revenue than necessary. The Agency published a Notice of Drafting on March 22, 2019, in the State Register about its intention to amend fees for certain boards and commissions in Chapter 10 of the South Carolina Code of Regulations. The fiscal operations division of the Agency is in the midst of conducting a comprehensive and global financial and fee analysis of all Boards. This analysis is analyzing the previous five years of revenue and expenditures to better project future cash flows for each Board. Ultimately, this analysis will help the Agency determine a long-term roadmap that would allow each Board to identify cash deficit periods in advance and take corrective actions to alleviate the deficit. The culmination of this analysis will be the regulatory fee changes proposed for the next legislative session.

**14. In your March 15, 2019, response to Rep. Hixon's Question 10, you indicated that although the agency accounts for board revenue with separate cost centers in SCEIS, "[a]ll revenue collected in the POL division of the Agency is deposited in its account with the State Treasurer." S.C. Code of Laws § 40-1- 50(D) states that "[f]ees must be deposited in accounts established for each respective board." Please explain the agency's position on whether it is in compliance with this statutory requirement ?**

Yes, the Agency is in compliance with the statute. The law does not require that the fees be deposited in separate accounts of the State Treasurer. It only provides that the fees must be deposited in accounts established for each board, which the Agency accomplishes through SCEIS.

**Fingerprint Background Checks**

**15. The Committee understands that the Department of Insurance collects fingerprints once from licensed insurance agents and that the fingerprints are thereafter kept on file by**

**SLED and periodically rechecked. Does the agency believe it will be able to follow a similar procedure with the fingerprint background checks of licensees under the Real Estate Commission? If not, why not?**

No, the Agency does not believe it will be able follow a similar procedure with the fingerprint background check for licensees under the Real Estate Commission. Section 40-57-115 provides “the commission shall require initial applicants and applicants for licensure renewal to submit to a state fingerprint-based criminal records check...and a national criminal records check, supported by fingerprints, by the FBI.” (emphasis added). Because the law provides that an applicant for renewal must also have to submit to the fingerprinting, it is our understanding that fingerprints will be required at renewal and initial licensing. Additionally, because the law requires a state and a national criminal records check, a re-check by SLED would not provide information on changes to an individual’s criminal history in another state. In working closely with SLED, it is our understanding that SLED could report information to an agency if an individual has a fingerprint on file, is arrested in a jurisdiction in South Carolina and that local jurisdiction reports the arrest to SLED. However, it would not provide information from an arrest in another state and would not include updates to disposition, sex offender status, etc.

**16. Will Real Estate Commission licensees whose fingerprints are already on file with SLED, such as those who are also licensed insurance agents, need to submit additional fingerprints?**

Yes, the Real Estate Commission has no statutory provision that exempts real estate licensees who otherwise have provided their fingerprints as part of another state license, to not undergo fingerprinting as part of licensure with the Commission. This is different than the Department of Insurance, which has the exemption. (Section 38-43-100(G)(1)(a).)

**Other Licensing Issues**

**17. Which practice acts authorize the issuance of advisory opinions? Do any boards issue advisory opinions without explicit statutory authorization? If not, why not?**

Only some of the Agency’s healthcare boards have explicit authority to issue advisory opinions. The Board of Medical Examiners and the Board of Nursing both have statutory authority to publish advisory opinions and positions statements. Although not explicitly authorized by statute, the Boards of Dentistry and Pharmacy have issued joint advisory opinions with the Boards of Medical Examiners and Nursing, to advise on clinical practices involving all of their respective regulated professions. These healthcare boards have jointly issued advisory opinions to advise on practice procedures regarding the standard of care.



A recent South Carolina Supreme Court opinion, *Joseph v. S.C. Dep't of Labor, Licensing, & Regulation*, 417 S.C. 436, 790 S.E.2d 763 (2016), dictates that Boards be cautious in issuing any policies, guidelines or advisory opinions by which they intend to hold licensees accountable. In *Joseph*, the Physical Therapy Board issued a position statement interpreting a statute. Years earlier, in 2006, the Board issued a similar position statement on the same statute, and the South Carolina Supreme Court ruled the position statement was simply a policy that did not have the force of law. Accordingly, at that time, many boards issued policy and guidance statements. However, in *Joseph*, the Supreme Court reversed its earlier 2006 decision, and found the position statement at issue had the force of law and therefore, was considered a "binding norm." The Court ruled that the Board violated the Administrative Procedures Act (APA) by issuing the position statement. *Joseph* establishes that binding norms may only be established via regulation in compliance with the APA. The Court cautioned that when a board is presented with a close question, the board should promulgate a regulation in compliance with the APA. The reason for the APA's regulation requirement is that the regulatory process provides for notice of drafting and input from the public through the public comment process, and ultimately allows the legislature to review, modify, or approve the regulation. By contrast, a board could potentially adopt a policy or issue an advisory opinion that impacts licensees without meaningful input by those licensees.

After the *Joseph* ruling, boards without statutory authority to issue advisory opinions have been discouraged from issuing them. Even boards with the statutory authority need to be cautious because a policy or guidance opinion cannot hold licensees accountable to a certain standard without violating the tenets espoused in *Joseph*. In the past, and consistent with case law at the time, the boards issued such opinions. Currently, the boards are advised to promulgate a regulation where a board intends for a licensee to comply with a certain standard. For example, when the law changed to require certain mechanical contractor license subclassifications to display a contractor license number on all commercial vehicles, the agency received numerous calls and emails from licensees asking what they needed to do in order to comply with the statutory change. Because the Contractor's Licensing Board intended to hold licensees to a certain standard, the decision was made to promulgate a regulation outlining the requirements. While many boards issue FAQs and policies to provide guidance to licensees regarding their administrative processes and prior public interpretations of their governing practice act and regulations, all boards are advised that only statutes and regulations have the force and effect of law.

**18. Does the agency anticipate any problems would be caused by a statutory requirement that licensees include their license number on communications with the public (e.g., business cards and advertisements) in order to facilitate verification of licensure?**

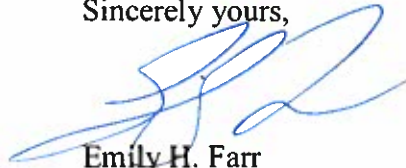
License numbers are currently available on LLR's website via the Licensee Lookup feature for each board. The agency licenses all different types of professionals and therefore, the answer may not be the same for every licensee type. Physicians, for example, may find the requirement burdensome, because they do not use a license or license number in their daily practice. However,

other professionals, such as cosmetologists, that are already required to display their license in their place of work, or mechanical contractors who are required to display their license number on their vehicles, may be more amenable to using a license number to advertise. Some licensees may complain that this requirement is overly burdensome because it may require them to incur additional costs with re-design and re-print of company logos, badges, vinyl wraps or magnets for fleet vehicles, business cards, billboards, website design, etc.

**19. If available, please break down the licensees of the Board of Nursing and the Real Estate Commission by county of residence.**

See Attachment 5.

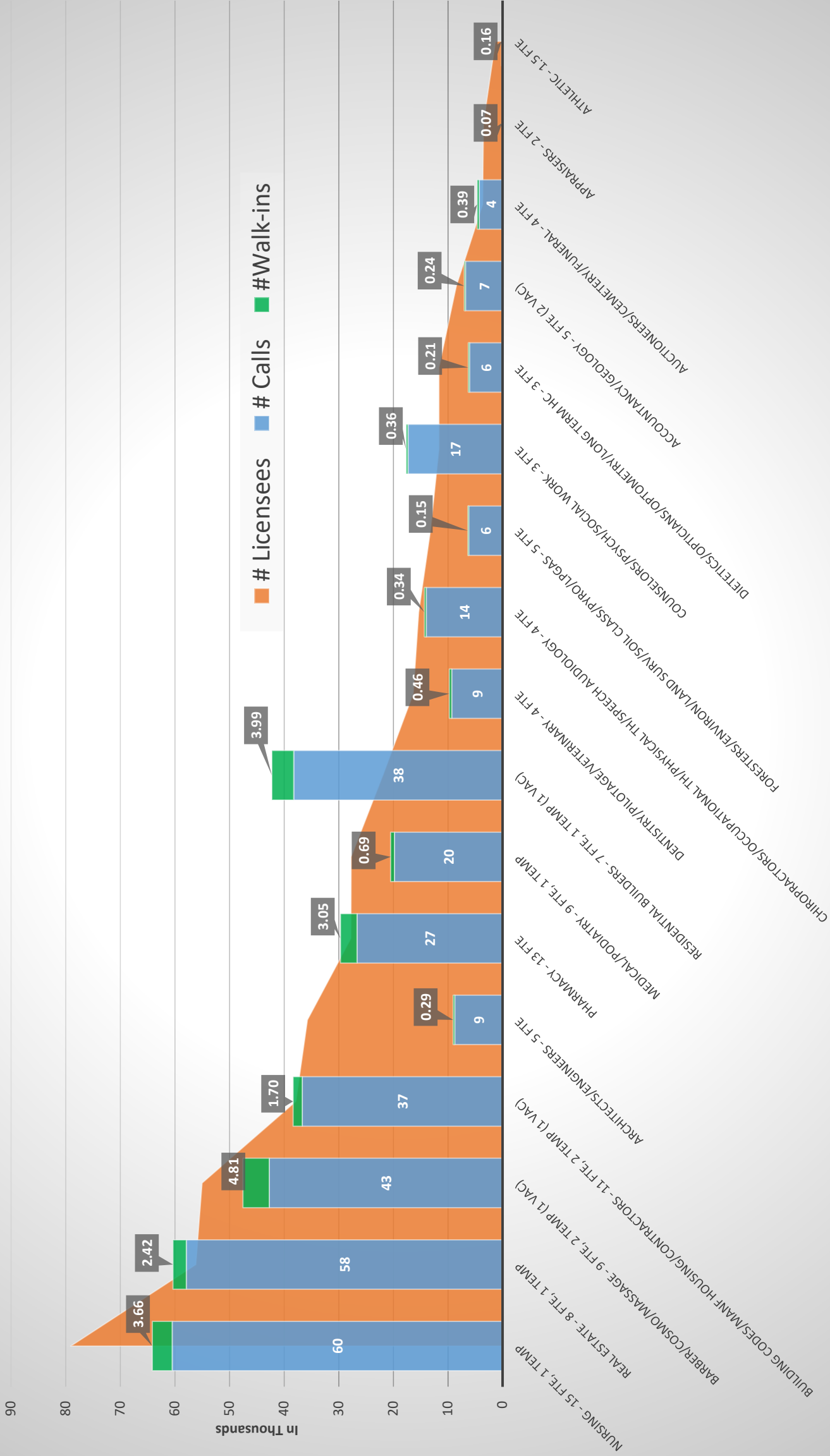
Sincerely yours,

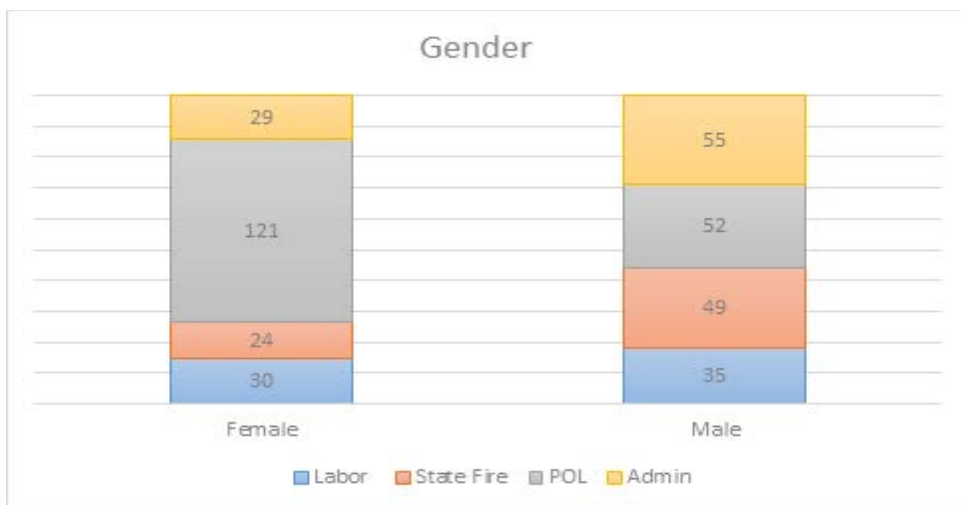
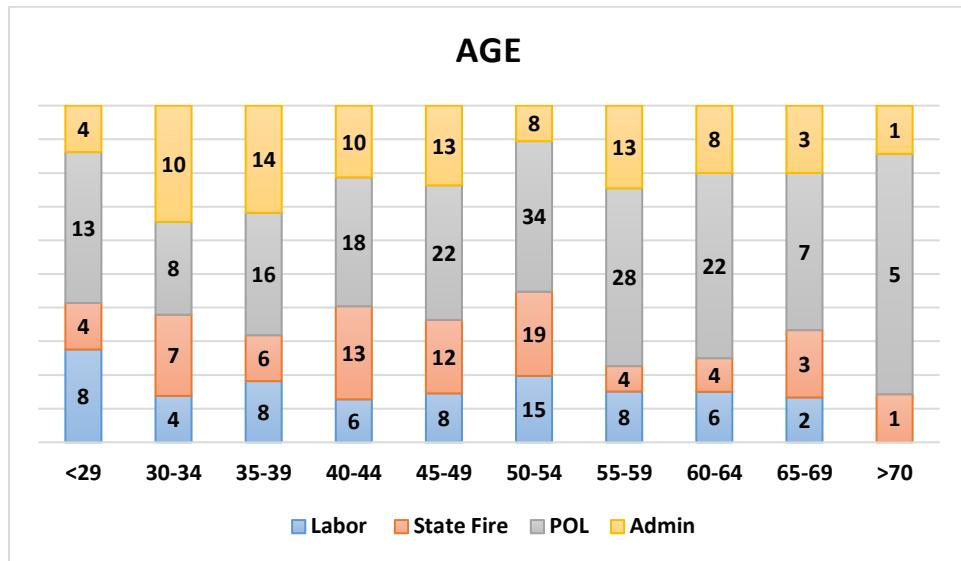
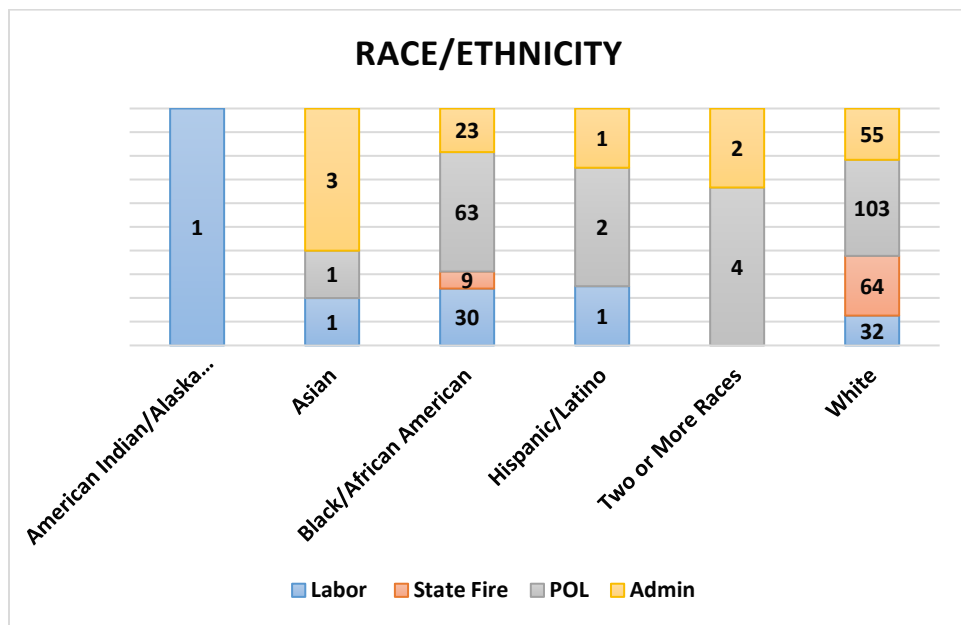


Emily H. Farr  
Director

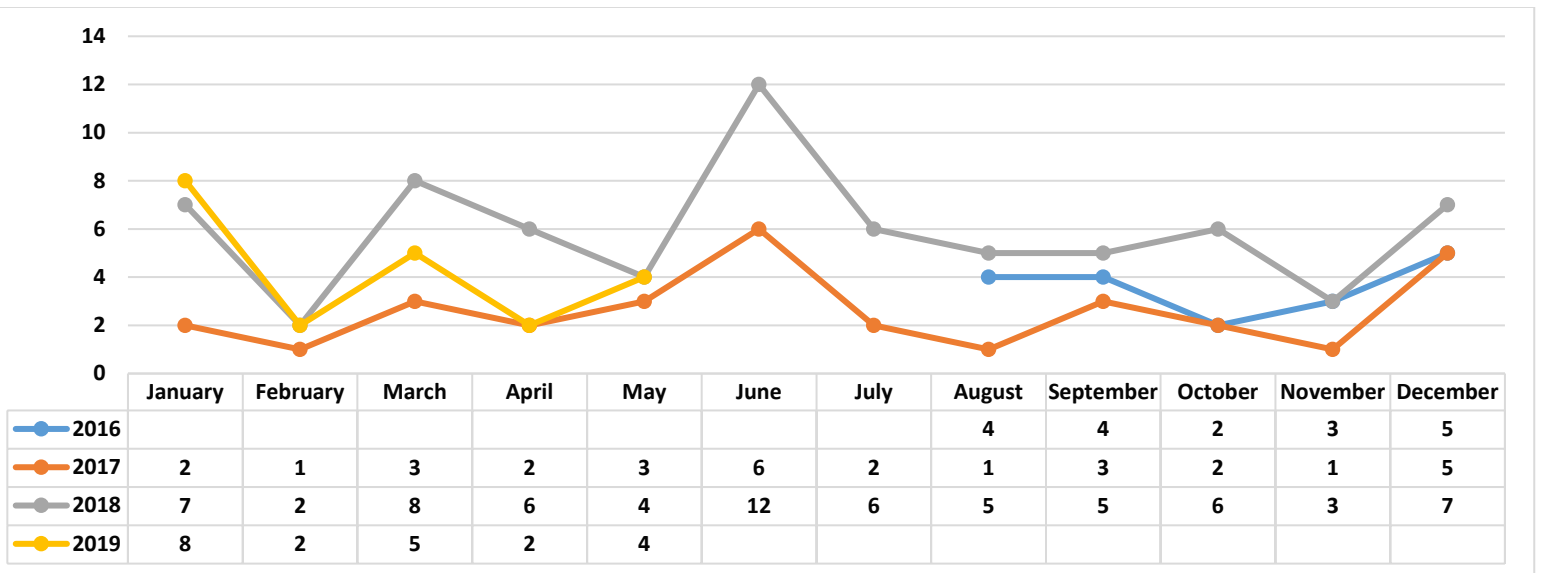
Enclosures

FY 2018 Calls/Walk-ins vs. Licensees by Board Grouping





**Number of Employee Separations Per Month since August 2016**



## OBS Customer Service Survey and Phone Report, October 2018 - May 2019

Grand Totals	4.63	4.57	4.65	4.24	1595	230122
Board Group	Overall Satisfaction	Telephone Scores	Staff Scores	Website Scores	# Survey Responses Received	# Phone Calls Received
Accounting, Geology	4.63	4.50	4.56	4.00	25	4582
Appraisers	4.90	4.86	4.95	4.63	34	unavailable
Architects, Engineers, Land Surveyors	4.54	4.56	4.60	4.14	71	6051
Barber, Cosmetology, Massage	4.51	4.44	4.58	4.19	203	45910
Building Codes, Contractors	4.63	4.42	4.65	4.27	107	24512
Cemetery, Funeral, Auctioneer	4.50	4.83	4.65	3.92	21	2370
Chiropractors, Occupational Therapy, Physical Therapy, Speech Audiology	4.58	4.59	4.63	4.21	124	10236
Dentistry, Pilotage, Veterinary	4.74	4.75	4.74	4.36	76	8299
Environmental, Forester, Landscape Architect, Soil Classifier, LP Gas	4.66	4.48	4.61	4.02	35	3791
Medical, Podiatry	4.62	4.62	4.68	4.27	160	15820
Nursing	4.59	4.50	4.60	4.21	315	20735
Optometry, Optician, Dietetics, Long Term Care	4.67	4.58	4.60	4.17	76	3940
Pharmacy	4.75	4.76	4.76	4.52	86	13396
Real Estate	4.72	4.69	4.73	4.26	135	35791
Residential Builders	4.64	4.53	4.63	4.27	123	22596
Social Work, Psychology, Counselors	5.00	4.50	5.00	4.50	4	12093
Grand Total	4.63	4.57	4.65	4.24	1595	230122

### Customer Service Survey Methodology

Responses to customer service surveys are collected through a unique URL for each LLR customer service employee. Responses for each question can be rated N/A for not applicable, or from 1-5, with 1 being "Unsatisfied" and 5 being "Extremely Satisfied." This individual data was then aggregated by board grouping, as staff are often shared between several boards. In this report, customer service survey questions are grouped by color. For the staff scores and website scores, we have weighted the questions.

#### Below are the customer service survey questions:

Rate your overall satisfaction with the service you received.

You were able to make telephone contact with the appropriate staff during business hours and with minimal delays.

Staff was courteous and polite while assisting you. (50% of staff score)

Staff was knowledgeable and able to directly answer your questions. (25% of staff score)

Staff was able to effectively resolve your issues in a timely manner. (12.5% of staff score)

Your telephone messages and/or emails were responded to by staff within 24 hours. (12.5% of staff score)

The information and forms located on the website were helpful and easily obtained. (50% of website score)

The website was easy to access and navigate. (50% of website score)

*\* As of the creation of this report, there is no available phone data for the Athletics Commission or the Real Estate Appraisers Board. Also, there is no available customer service survey data for the Athletics Commission.*

## BOARD OF NURSING LICENSEES BY COUNTY OF RESIDENCE

Abbeville	477	Horry	4712
Aiken	2091	Jasper	222
Allendale	54	Kershaw	1101
Anderson	3356	Lancaster	1091
Bamberg	179	Laurens	810
Barnwell	256	Lee	149
Beaufort	2186	Lexington	5151
Berkeley	2875	Marion	505
Calhoun	273	Marlboro	314
Charleston	7514	McCormick	67
Cherokee	616	Newberry	515
Chester	297	Oconee	987
Chesterfield	580	Orangeburg	1074
Clarendon	422	Pickens	1672
Colleton	516	Richland	5923
Darlington	922	Saluda	266
Dillon	401	Spartanburg	4327
Dorchester	2531	Sumter	1278
Edgefield	298	Union	302
Fairfield	222	Williamsburg	314
Florence	3008	York	3470
Georgetown	965		
Greenville	7503	<b>TOTAL</b>	<b>73,116</b>
Greenwood	1170		
Hampton	154		
Out of Country			36
Out of State			5694
Did not provide agency with county of residence			605
<b>TOTAL</b>			<b>6335</b>

## REAL ESTATE COMMISSION LICENSEES BY COUNTY OF RESIDENCE

Abbeville	61	Horry	5019
Aiken	802	Jasper	152
Allendale	19	Kershaw	329
Anderson	1077	Lancaster	404
Bamberg	17	Laurens	137
Barnwell	51	Lee	40
Beaufort	2988	Lexington	2343
Berkeley	1348	Marion	93
Calhoun	46	Marlboro	34
Charleston	6461	McCormick	48
Cherokee	141	Newberry	117
Chester	55	Oconee	547
Chesterfield	68	Orangeburg	223
Clarendon	115	Pickens	614
Colleton	238	Richland	3653
Darlington	140	Saluda	53
Dillon	52	Spartanburg	1656
Dorchester	1107	Sumter	413
Edgefield	95	Union	352
Fairfield	98	Williamsburg	58
Florence	558	York	1689
Georgetown	791		
Greenville	4983	<b>TOTAL</b>	<b>39,642</b>
Greenwood	300		
Hampton	57		
Out of Country			21
Out of State			16,123
Did not provide agency with county of residence			310
<b>TOTAL</b>			<b>16,454</b>