

# LICENSED TO BILL

## How Licensing Boards Function With Government Endorsement

*Final Report of a Study  
Required by HB 525 in  
the 2011 Session and  
carried out by the 2011-  
2012 and 2013-2014  
Economic Affairs Interim  
Committees*

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The Review of Licensing Boards in this study covered two separate interims, 2011-2012 and 2013-2014. The only members of the EAIC to serve on both interims were Sen. Tom Facey and Rep. Tom Berry.

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Economic Affairs Interim Committee [EAIC], like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee.\*

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\*This information is included to comply with the law in 2-15-155, MCA.



# Table of Contents

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## **Contents**

Backdrop.....	1
Summary .....	1
Major Findings .....	4
Responses to Questionnaires Sent to Board Members.....	4
Responses to Survey.....	6
Comments Made at Meetings .....	7
Components of the HB 525 or 37-1-142, MCA, Reviews .....	9
The Question of Public Health, Safety, or Welfare .....	10
The Question of a Readily Identifiable, Distinguishable Scope of Practice .....	13
The Question of Whether the Occupation or Profession Requires a Specialized Skill or Training for Which Nationally Recognized Standards Exist.....	15
The Question of Whether Licensure Qualifications are Justified.....	17
The Question of Whether Licensure Provides a Public Benefit.....	20
The Question of Whether Licensure Significantly Increases Costs to the Public .....	21
The Question of Whether the Public Supports Licensure.....	21
Further Information from the Survey, Background Papers, and Public Comment.....	22
Department Budgeting Information .....	32
Conclusion.....	41
Appendix A: Responses to Questionnaires by Board Members or Department Staff on their Behalf .....	43
Appendix B: Frustrations with Licensing, as Indicated by Survey Responses .....	121
Appendix C: Views on Whether Boards are Needed for Public Health, Safety, or Welfare.....	123

## Backdrop

House Bill No. 525, enacted as 37-1-142, MCA, in the 2011 legislative session, directed an 8-year review of professional and occupational licensing boards with the intent of determining whether the boards remain necessary to protect public health, safety, or welfare. The legislation directed that the interim committee responsible for overseeing licensing boards review one-half of the 33 licensing boards<sup>1</sup> in the first interim and the remainder in the second interim, with the oldest boards reviewed first. The process was to be repeated through 2018, but a bill in the 2013 session reduced the review to one cycle over 4 years. The Economic Affairs Interim Committee (EAIC) conducted the reviews in the 2011-2012 and 2013-2014 interims.

The goal was to determine if the licensing boards remain necessary for a public purpose and meet criteria listed in 37-1-142, MCA (now terminated), which included whether the unregulated practice of the profession or occupation creates a direct, immediate hazard to public health, safety, or welfare. Other considerations are described below under components of the HB 525 reviews.

The examination of licensing boards also included analysis of the Business Standards Division of the Department of Labor and Industry, to which the 33 licensing boards are administratively attached. The Business Standards Division also provides licensing duties for two programs and oversees building codes and various other licensees, such as elevator inspectors, crane operators, and boiler inspectors. Although licensing programs were not part of the HB 525 reviews, the decision by the 2013-2014 EAIC to address financial issues related to professional and occupational licensees gave one of the two programs,<sup>2</sup> the Athletics Program that oversees boxing events, an opportunity to discuss with the EAIC its financial problems.

## Summary

All of the licensing boards reviewed in both the 2011-2012 interim and the 2013-2014 interim received support for continuing in existence. However, interest was shown in the 2013-2014 interim in transferring regulation to the Department of Public Health and Human Services for the entities now licensed by the Board of Alternative Adolescent Residential or Outdoor Programs. Table 1 lists all of the boards reviewed and their review dates. Those with more than one date tended to be boards that had problems either of a financial nature or with members who had compatibility issues.

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<sup>1</sup> The boards number 33, based on names of the boards as listed in statute. So, while some budgetary listings count the Board of Architects and Landscape Architects as two separate boards because the architects and landscape architects have separate accounting, the HB 525 review counted the board as one board. The HB 525 review did not include programs like the boxing-focused Athletics Program, although the Athletics Program did come under scrutiny because of its financial troubles.

<sup>2</sup> The other program is the Licensed Addiction Counselors Program, which the EAIC did not include in the HB 525 reviews because the language of HB 525 was to review licensing boards, not programs.



**Table 1: Licensing Board Review Dates in the 2011-2012 Interim or the 2013-2014 Interim**

<i>Boards reviewed in the 2011-2012 Interim</i>		<i>Boards reviewed in the 2013-2014 Interim</i>	
<i>Board Name</i>	<i>Date reviewed*</i>	<i>Board Name</i>	<i>Date reviewed*</i>
<i>Board of Chiropractors</i>	Aug. 24, 2011	<i>Board of Alternative Health Care</i>	June 25, 2013
<i>Board of Dentistry</i>	Aug. 23, 2011 Jan. 20, 2012	<i>Board of Architects and Landscape Architects</i>	June 25, 2013
<i>Electrical Board</i>	April 20, 2012	<i>Board of Athletic Trainers</i>	June 25, 2013
<i>Board of Professional Engineers and Land Surveyors</i>	April 20, 2012	<i>Board of Barbers and Cosmetologists</i>	June 25, 2013
<i>Board of Funeral Services</i>	Oct. 6, 2011	<i>Board of Clinical Laboratory Science Practitioners</i>	June 25, 2013 Oct. 22, 2013
	Jan. 20, 2012	<i>Board of Massage Therapy</i>	June 25, 2013
	Jan. 27, 2014 July 14, 2014		
<i>Board of Hearing Aid Dispensers</i>	Oct. 5, 2011	<i>Board of Occupational Therapy Practice</i>	June 25, 2013
	April 20, 2012	<i>Board of Physical Therapy Examiners</i>	June 25, 2013
	June 11, 2012		
	Jan. 27, 2014 March 27, 2014 July 14, 2014		
<i>Board of Medical Examiners</i>	Oct. 6, 2011	<i>Board of Private Alternative Adolescent Residential or Outdoor Programs</i>	June 25, 2013 Jan. 27, 2014 July 14, 2014 Sept. 12, 2014
<i>Board of Nursing</i>	Jan. 20, 2012	<i>Board of Private Security</i>	June 25, 2013
<i>Board of Nursing Home Administrators</i>	Oct. 5, 2011	<i>Board of Radiologic Technologists</i>	June 25, 2013 Oct. 22, 2013
<i>Board of Optometry</i>	Jan. 20, 2012	<i>Board of Real Estate Appraisers</i>	June 25, 2013
<i>Board of Outfitters</i>	Jan. 19, 2012	<i>Board of Realty Regulation</i>	June 25, 2013
<i>Board of Pharmacy</i>	Aug. 23, 2011	<i>Board of Respiratory Care Practitioners</i>	June 25, 2013 Oct. 22, 2013
<i>Board of Plumbers</i>	April 20, 2012		
<i>Board of Psychologists</i>	June 12, 2012	<i>Board of Sanitarians</i>	June 25, 2013
<i>Board of Public Accountants</i>	Jan. 19, 2012	<i>Board of Social Work Examiners and Professional Counselors</i>	June 25, 2013
<i>Board of Veterinary Medicine</i>	Aug. 24, 2011		
		<i>Board of Speech-Language Pathologists and Audiologists</i>	June 25, 2013

\*The term "Date reviewed" in the 2011-2012 (left) column means both the original date reviewed and any additional return visits by board members in either the 2011-2012 interim or the 2013-2014 interim. For the "Date reviewed" in the 2013-2014 (right) column, all board information was provided at the June 25, 2013, meeting. Three additional boards had reviews Oct. 22, 2013, because these boards all represent licensees typically providing services to hospitals and the licensees often are required to pass a national exam. There was a question of whether a state license was necessary if a national license or passing a national exam sufficed for hiring purposes. Any additional dates listed for 2014 in either column indicate those boards had financial concerns, which were part of the HB 525 reviews (37-1-142(3)) as well as required under 37-1-101(9)(a). The dates are listed so that an interested person can listen to the archived audio record for those meetings. The EAIC voted in October 2013 to retain some boards that were part of the 2013-2014 reviews with the vote to retain the remaining boards held in May 2014.

The 2011-2012 interim reviews were more detailed than in the 2013-2014 interim, in part because members of all the licensing boards selected for review in 2011-2012 came before the EAIC at least once and sometimes more than once.

Based on concerns that these appearances took some boards' members away from their jobs when the board that they represented appeared necessary for public health, welfare, or safety, the 2011-2012 EAIC recommended a shorter process for the 2013-2014 interim review. The 2011-2012 EAIC also voted to have a committee bill, House Bill No. 60, to shorten the review process to one complete cycle over two interims. HB 60 won approval in the 2013 Legislature,

The 2013-2014 review included presentations by some board members, but after hearing from representatives of three boards and taking comments regarding selected other boards, the EAIC decided to make its decision regarding continuation of the boards based on summary information provided by the boards and EAIC staff at the beginning of the interim. That information included:

- results of a survey of board members and the public, taken over the span of the HB 525 reviews;
- responses to questionnaires submitted to and completed by board members (or the Department of Labor and Industry staff acting on behalf of the boards);
- background information on each board: the number of its licensees, its budget by major expenditures, the number of complaints filed against licensees (when available), and the scope of practice for the occupation. For some boards the material included licensing fees.

The background reports, responses to the survey, and board responses to the questionnaires are all under the HB 525 website for the EAIC 2011-2012 Interim:  
<http://leg.mt.gov/css/Committees/Interim/2011-2012/Economic-Affairs/Assigned-Studies/HB525/HB525.asp>.

Using that information, the EAIC voted in May 2014 to recommend retaining all the remaining boards that had not yet been reviewed. During the rest of the 2013-2014 interim the EAIC examined licensing boards with financial troubles. Reviewing financial concerns also is part of the EAIC's duties, as indicated in 37-1-101, MCA.

The intense focus sought by HB 525 ended up providing an opportunity for at least some of the licensing boards' members and for licensees and nonlicensees to comment on how the boards operate and how representatives of different professions that might be on the same board interact with one another. The review also provided a look at board finances, both from the perspective that some boards had high licensing fees and some boards had financial problems. Both licensees and boards that had financial concerns had a way to appeal to legislators for ways to improve their respective situations. Boards that had jurisdictional disputes had opportunities to paint their rosy or grim options, depending on the circumstances.

## Major Findings

Preceding the votes by the 2011-2012 EAIC and the 2013-2014 EAIC were comments from board members, licensees, and the public that generally indicated that licensing boards were necessary for public health, welfare, or safety and that the current system worked for licensees of the professions or occupations covered by licensing boards. Some boards were the focus of more complaints than others, and while the EAIC tried to address concerns in both the 2011-2012 and the 2013-2014 interims, the bottom line for the HB 525 reviews was that enough support existed for all the boards to continue in their current format.

*The bottom line for the HB 525 reviews was that enough support existed for all the boards to continue in their current format.*

Highlights of these findings are provided below according to the source of their information, whether from: 1) responses to an EAIC questionnaire filled out by board members or sometimes by Department staff on behalf of a board; 2) a survey of licensees and nonlicensees; or 3) comments made at EAIC meetings. Further information on each of these information-gathering components is provided in the report under the “Components of the HB 525 Reviews” section.

### Responses to Questionnaires Sent to Board Members

The findings in Table 2 below summarize responses to the following questions posed in the questionnaires:

- Is a licensing board necessary for public health, safety, or welfare; and
- If a license is necessary to protect public health, safety, or welfare, then is a peer-appointed board itself needed or could an alternative approach be used? Among the other approaches suggested were: regulation by the Department of Labor and Industry (Department); licensing by professional associations and possible regulation by them; or using the consumer protection services of the Attorney General’s Office instead of having a board to respond to consumer complaints.

**Table 2: Questionnaire Response to A Board Being Necessary for Public Health, Safety, or Welfare**

<ul style="list-style-type: none"> <li>• <b><i>Is a licensing board necessary for public health, safety, or welfare?</i></b></li> </ul>
<p>All respondents to the questionnaires (whether board members or Department-appointed staff for the board) indicated a public health, safety, or welfare rationale for the board’s existence.</p>
<ul style="list-style-type: none"> <li>• <b><i>If a license is necessary to protect public health, safety, or welfare, then is a peer-appointed board itself needed or could an alternative approach be used?</i></b></li> </ul>
<ul style="list-style-type: none"> <li>○ <i>For example, is the Department alone a suitable substitute for a board?</i></li> </ul>
<p>Respondents who were members of licensing boards (or staff) said they see value in having a board of peers and at least one public member to determine whether applicants fulfill licensing requirements and whether licensees are meeting the standards of their profession or occupation. They said they did not feel the Department alone has sufficient expertise for all the board’s functions of licensing review, determining if an action is unprofessional conduct and, if so, what discipline is appropriate, or providing experience-based consultation for practice guidelines. The Department staff, however, is able to handle routine license applications, following the guidelines set by board members.</p>

<ul style="list-style-type: none"> <li>○ <i>Would a profession-affiliated association be a suitable substitute for a board?</i></li> </ul>
<p>According to respondents who were members of licensing boards (or staff), licensing or certification by profession-affiliated associations would be inadequate or inappropriate. The responses further indicated that, although some associations and some national boards license or certify people in a profession, the board structure provides additional regulatory authority and an ability to discipline licensees, which an association is not sanctioned to do. Also, associations tend to exist through voluntary membership and are dedicated to promoting the profession or occupation rather than regulating their profession or occupation</p>
<ul style="list-style-type: none"> <li>○ <i>How about using the Attorney General's Office of Consumer Protection as a substitute?</i></li> </ul>
<p>The responses indicated that using the consumer protection services of the Attorney General's Office is an option that the boards already can tap into, although if the Attorney General's Office were to have the responsibility of handling all consumer protection aspects of the boards, more expertise would be needed than the office now has and that boards provide through regulation and oversight by peers.</p>

Other questions sought to address concerns raised by those who feel boards interfere with competition. Especially during the 2011-2012 review, there was interest in determining whether boards were paying attention to an antidiscrimination provision enacted by Senate Bill No. 165 in 2011. That provision, added to 37-1-131, MCA, required licensing boards to act in a manner that did not discriminate against any person licensed by the board or that restrains trade unless necessary to protect public health and safety. Questions, presented in Table 3, that related to anticompetition included:

- Do licensing boards stymie competition by requiring licensing?
- Does bias by a board member interfere with or protect a licensee's (or board member's) business to the benefit or detriment of another licensee?
- Do overlapping scopes of practice have detrimental impacts to professions or the public?

**Table 3: Questionnaire Responses to Whether Boards Interfere with Competition Either Within an Industry or Between Industries**

<ul style="list-style-type: none"> <li>• <b><i>Do licensing boards stymie competition by requiring licensing?</i></b></li> </ul>
<p>Rote responses were common for these questions, tending toward answers that "all is well" for licensees. A standard comment was that the licensure qualifications were not difficult and that if a person wanted to enter a livelihood that required a license, there was no problem with getting one if the person fulfilled the requirements. There is the potential that the board members answering this question are more involved in the profession and defensive about the board's actions than a licensee who may consider a board's "protection" of a profession to be an impediment, particularly in cases where a board member may also be a competitor.</p>
<ul style="list-style-type: none"> <li>• <b><i>Does bias by a board member interfere with or protect a licensee's (or board member's) business to the benefit or detriment of another licensee?</i></b></li> </ul>
<p>The bias question also generated standard responses to the effect that the Department provides training to guard against bias and that board members themselves and Department staff are on the watch for bias. However, during the 2011-2012 interim, EAIC members heard that on some boards there was bias that protected some licensees at the expense of other licensees. Specifically, that was alleged for the Board of Dentistry and the Board of Funeral Service.</p>

- ***Do overlapping scopes of practice have detrimental impacts to professions or the public?***

As for overlapping scopes of practice, the questionnaire responses from certain boards stated simply either that they had exemptions allowing for other professionals' overlapping scopes of practice or that their activities were unique. One generic response to overlapping scopes of practice was that each license type had its scope of practice, and that was that.

## Responses to Survey

An online survey conducted over both interims asked licensees about favorable and unfavorable aspects of their boards. Respondents had a choice of checking standard responses but also had space to pour out their opinions.

The survey also included a way for nonlicensees to identify those boards that they felt were necessary for public health, safety, or welfare. This provided an arbitrary, nonscientific way to identify a public reaction to whether boards were needed for public health, safety, or welfare. For all boards, the checkoff (easy to compile) responses showed a plurality endorsing as the major compliment a board's ability to monitor the profession on behalf of licensees. For the major criticism more people had "no" criticism than were upset with high licensing fees. More detail is below and in Tables 4 and 5.

**Table 4: Survey Responses from Licensees Regarding Major Compliments**

<i>Top Responses for Major Compliment</i>		
Ability to monitor profession on behalf of licensees	48.9%	1,110 responders
None	24.2%	549 responders
Ability to keep profession from criticism because of bad actors	18.7%	424 responders
Ability to streamline continuing education process	15.1%	343 responders

- As the major compliment, the licensees for almost all the boards appreciated their board's ability to monitor the profession on behalf of licensees (and some added on behalf of the public). The responses were calculated by board and overall. The overall response, shown in Table 4, indicated not quite half selected that monitoring compliment-- 48.9%. They chose that answer either exclusively or in combination with the four options presented to them. Many people provided a compliment in their own words under a category labeled "other reason the board is important." Overall 292 people answered that option.

**Table 5: Survey Responses from Licensees Regarding Major Criticism**

<i>Top Responses for Major Criticism</i>		
None	41.9%	965 responders
Licensing fees too high	24.0%	554 responders
Board's response to unlicensed practice	13.2%	305 responders
Lack of Information	10.2%	234 responders
Regulations too strict	4.4%	102 responders
Renewal timelines too rigid	4.3%	98 responders

However, a plurality of responders for the following boards listed “none” as the major compliment (suggesting possible dissatisfaction): the Board of Barbers and Cosmetologists; the Board of Funeral Service; the Board of Outfitters; the Board of Private Security; the Board of Radiologic Technicians; and the Board of Real Estate Appraisers.

- As the major criticism, the overall comment from a plurality of respondents (see Table 5) showed no criticisms. Nearly one-fourth listed high license fees as their complaint and 26% provided free-form answers. These responses are included in the information provided on the board licensees’ responses to the survey, shown on the overall HB 525 [website](#) as “survey summary” for the 2011-2012 reviews and as “comments” for the 2013-2014 reviews.

As for specific boards, a plurality of the following had no major criticism: the Board of Architects and Landscape Architects; the Board of Barbers and Cosmetologists; the Board of Chiropractors; the Board of Clinical Laboratory Scientists; the Board of Dentistry; the Board of Professional Engineers and Professional Land Surveyors; the Board of Medical Examiners; the Board of Nursing; the Board of Occupational Therapists; the Board of Optometrists; the Board of Pharmacists; the Board of Public Accountants; the Board of Radiologic Technicians; the Board of Realty Regulation; the Board of Respiratory Care Technicians; the Board of Social Workers and Professional Counselors; and the Board of Speech-Language Pathologists and Audiologists.

Although the response might indicate satisfaction with a board, licensees for the Board of Barbers and Cosmetologists and the Board of Radiologic Technicians responded “none” to both this question and the previous question regarding compliments, which makes a conclusion of any kind suspect.

- General satisfaction with the profession’s scope of practice. Respondents were asked whether the scope of practice was just right, too broad, or too narrow. A majority both in the specific boards and overall (75.5%) responded that the scope of practice was just right. From an overall perspective of all licensing boards, more respondents felt that their scope of practice was too narrow (17.2%) than too broad (7.3%).

### **Comments Made at Meetings**

Not all the licensing boards had “their day in the sun” during the HB 525 reviews, but for some the sunlight was painfully bright. Of the boards that came before the EAIC for individual reviews, there were a few themes that predominated but did not rise to the level necessarily of suggesting that the board ought to face repeal. Instead there were suggestions that “something” needed to be done to improve relations or finances. The boards with the most attention during either the 2011-2012 interim or the 2013-2014 interim were:

- the Board of Dentistry (internal disputes) during the 2011-2012 interim;
- the Board of Hearing Aid Dispensers (financial troubles) during both interims; and
- the Board of Funeral Service (internal disputes and financial troubles) during both interims.

For the most part, the EAIC did not get involved in internal disputes. There was an effort in the 2011-2012 interim to try to determine if the Board of Dentistry ought to be separated so that instead of the three professional groups now on that board there would be one board representing dentists and one representing denturists and dental hygienists.<sup>3</sup> However, the 2011-2012 EAIC ultimately decided to see what would happen with the Board's plan to develop two subcommittees that could report to the full Board. One subcommittee represents dental hygienists and the other represents denturists. Both denturists and dental hygienists wanted their recommendations to be final without further interference of the full Board, but the full Board of Dentistry did not go along with that idea nor did the EAIC ultimately support that approach.

To understand better the concerns of boards with financial troubles, the EAIC heard various explanations regarding how the Department of Labor and Industry charged the boards either directly or indirectly for services. Comments made at the May 2014 (see Exhibit 10 in the Minutes Log), July 2014, and September 2014 meetings regarding the finances of the Board of Funeral Service indicated that there was not a clear way for a board or licensees to monitor services and expenditures, which ultimately must be paid through fees charged licensees by the boards. The Department said it is working to provide this information in a clear and consistent format on a quarterly basis to the boards.

Another subject of public comments during the 2011-2012 interim was the Board of Social Work Examiners and Professional Counselors. Although this board was not scheduled for the HB 525 up-or-down review until the 2013-2014 interim, several licensees raised concerns before one of the last EAIC meetings of that interim. A main thrust of their concern was that their board's actions seemed to be aggressively defending their professions but at the risk of licensees no longer wanting to assist divorced parents in writing parenting plans. This was because it was considered too easy for a disgruntled parent to complain to the licensing board if a parenting plan did not go the way the parent wanted. In the view of some licensees, the board tendency was to give more weight to the disgruntled parent than to the licensee. The perceived overzealousness of the board resulted in discussions with the Governor's office after which the Department of Labor and Industry requested Senate Bill No. 64 in 2013. SB 64 proposed to allow immunity from board disciplinary actions for unprofessional conduct based on testimony in court by social workers, professional counselors, and marriage and family therapists, the occupations licensed by the board. The bill also stated that a complaint might not have to be processed, even if true, if the conduct did not violate a statute, rule, or standard.

An entity not subject to the HB 525 review of licensing boards, because there no longer is a board for boxers, was the Athletic Program. The EAIC in 2013-2014 spent time trying to decipher whether the financial problems faced by the Program were fatal or fixable. No answer was evident by the end of the interim, but proponents of the Program promised to continue working to address their financial troubles.

The Department of Labor and Industry's solution for handling a program with insufficient funds is to suspend services to the program except for services that enhance revenues, such as

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<sup>3</sup> See <http://leg.mt.gov/content/Committees/Interim/2011-2012/Economic-Affairs/Assigned-Studies/HB525/LCdentBart.pdf>

licensing. This is provided for in 37-1-101(9)(b), MCA, which directs that the Department “shall...suspend all duties under this title related to the board except for services related to renewal of licenses” if a board cannot operate “in a cost-effective manner”. Suspension has plagued the Athletics Program because its money-raising functions—boxing events—have been costing more money for the Program than the income they generate for the Program.

### **Components of the HB 525 or 37-1-142, MCA, Reviews**

The criteria listed in 37-1-142, MCA (now terminated), sought to determine if licensing boards remain a valid extension of the “long arm of the law”—allowing government regulatory authority over certain professional and occupational pursuits in protection of public health, safety, or welfare. These questions, discussed in detail below, included:

- Does the unregulated practice of the occupation or profession create a direct, immediate hazard to the public health, safety, or welfare?
- Is the scope of practice readily identifiable and distinguishable from the scope of practice of other professions and occupations?
- Does the occupation or profession require a specialized skill or training for which nationally recognized standards of education and training exist?
- Are qualifications for licensure justified?
- Does licensure provide a public benefit?
- Does licensure significantly increase the cost of service to the public?
- Is there public support for licensure?

Under 37-1-142, MCA, the EAIC was to determine if any boards failed to meet a majority of the purposes listed above and, if they failed to do so, the EAIC had an option of recommending to the next Legislature a termination of the board. A look at the board’s solvency also was to be provided.

The questions listed above or ones similar to those threaded throughout the licensing board review, both in an online survey made available to licensees and members of the public and in a specific questionnaire sent to the presiding officers of boards or staff for the boards. This section will summarize responses to the questions above as well as provide information gleaned from the survey, questionnaires, and comments made at meetings.

To further pinpoint whether state government needed to be involved in licensure of professions or occupations, the following questions were added prior to the beginning of the 2013-2014 EAIC interim reviews, along with a decision-making matrix provided at the EAIC’s August 21, 2013, meeting:

- Are there alternatives to having a state license to operate? For example, can complaints be handled through the Attorney General's Consumer Protection Office?
- Does federal law or insurance reimbursement require a license?
- Are some boards licensing professionals who otherwise would be vetted by employers who could determine if they had national certifications so that a specific licensing board that duplicates the vetting work of these employers is not needed?



The 2013-2014 EAIC also was asked to consider the question: What if public safety indicates a need for a board but there are too few licensees willing to pay a high licensing fee needed to cover the various costs of a board? This never directly entered into discussions, but the issue of few licensees pervaded discussions about both the Board of Hearing Aid Dispensers and the Board of Private Alternative Adolescent Residential or Outdoor Programs. Licensees of both boards have high license renewal costs: \$1,500 to renew a hearing aid dispenser license and for the largest private alternative adolescent residential or outdoor facility, one serving more than 51 participants, a license renewal cost of \$13,313. The fees cover an annual license.

### **The Question of Public Health, Safety, or Welfare**

Each board respondent (or Department staff on the board's behalf) indicated in answering the questionnaire their perspective of whether they were protecting public health or safety or welfare. Portions of responses are provided below (for the full responses see Appendix A). These selections are put into categories of health, safety, or welfare based on a subjective perception of the overall response. Some boards listed all three rationales for existence, and others pointed to federal law. Some used a standard response, apparently provided by Department staff, referencing protection from unethical and incompetent providers.

- **Regarding Public Health**

- *Board of Alternative Health Care* – “serves a public health interest as they practice a system of primary health care for prevention, diagnosis, and treatment of human health conditions, injury, and disease...”
- *Board of Athletic Trainers* – “serves the public interest by protecting society's at-risk individuals, the youth of Montana. Youth of Montana deserve the highest quality of health care.”
- *Board of Barbers and Cosmetologists* – As a board whose licensees “touch...people's skin, hair and scalp... proper application of sanitation, disinfection, and when appropriate, sterilization procedures, must be observed to protect the public, to guard against the spread of infection.”
- *Board of Chiropractors* – Chiropractors are “considered to be primary portals of entry into the health care system, with the responsibility of diagnosing, properly treating, and properly referring patients for care of their health problems.” Regulation ensures chiropractors meet adequate education requirements to properly diagnose patients.
- *Board of Funeral Service (also listed below)* – protects members of the public and funeral business employees from “risks posed by exposure to infectious disease, medical wastes and sharps, hazardous chemicals in the embalming process, and hazardous medical implants, such as pacemakers or radioactive medications in the cremation process.”
- *Board of Massage Therapy (also listed below)* – protects the public against practices that may result in “unreasonable risk of physical injury to the client.”
- *Board of Pharmacy* – through licensure and regulation of pharmacists, pharmacy technicians, and the supply chain, the board “ensures the integrity of the

products that reach patients as well as the competency of those involved in the distribution of those products...”

- *Board of Psychologists* – through “protecting society’s most vulnerable individuals, including those who struggle against suicidal ideations, major depression, those about whom questions have been raised regarding competency in relation to parenting, the ability to stand trial for a crime...”
  - *Board of Radiologic Technologists* – through “protecting the public against becoming contaminated against harmful radiation caused by x-rays.”
  - *Board of Respiratory Care Practitioners* – “practitioners... literally help their patients and clients with the breath of life....[M]anagement of the respiratory system is critical to individual health.”
  - *Board of Sanitarians* – “part of the public health system” and the “interaction between human health and the environment. ... Maintaining and improving public health by managing those environmental factors that affect health is the goal of this professional group.”
  - *Board of Social Workers and Professional Counselors* - through “protecting society’s most vulnerable individuals, including those who struggle against suicidal ideations, major depression, bipolar disorders, or schizophrenia.”
  - *Board of Veterinarians* – serves “a public health interest as [veterinarians] diagnose and treat contagious diseases in animals that can be communicated to humans, such as rabies, anthrax, brucellosis, and avian flu.” Furthermore, veterinarians treat pets as a way of reducing animal-human bite contacts and animals that end up in the food chain.
- **Regarding Public Safety**
    - *Board of Architects and Landscape Architects* – “protects the public from unprofessional, improper, unauthorized, and unqualified practice of architecture and landscape architecture.”
    - *State Electrical Board* – “If wiring is not properly sized, connected, or run, the safety of the home owner or occupiers of buildings will be jeopardized.”
    - *Board of Occupational Therapy Practice* – through “proper patient assessment and use of modalities...”
    - *Board of Plumbers* – “...plumbers are the first line of defense in the fight against unsafe drinking water.”
    - *Board of Private Alternative Adolescent Residential or Outdoor Programs* – acts to “ensure the safety and well-being of the adolescents and parents using the programs.”
  - **Regarding Public Welfare**
    - *Board of Funeral Service* – “protects the public from deceptive funeral business practices...”
    - *Board of Massage Therapy* – “helps protect the public against inappropriate or criminal sexual conduct and practices engaged in by the illegitimate or unethical practitioner.”
    - *Board of Public Accountants* – protects “the public’s financial welfare.”

The boards listed below used a standard response, shaped for their own particular profession, of the board protecting “the public from incompetent, unprofessional, and unethical ... providers. They accomplish this... through ... licensure, regulation, and discipline.”

- *Board of Clinical Laboratory Science Practitioners*
- *Board of Hearing Aid Dispensers*
- *Board of Medical Examiners*, which added that the element of trust in a health care provider is critical and is supported by the board’s work to evaluate the provider’s education, knowledge, character, and fitness
- *Board of Optometry*, which added that optometrists hold licenses from the Drug Enforcement Administration
- *Board of Physical Therapy Examiners*

Some boards cited all three reasons for existence with specifics regarding the boards’ regulatory functions. These included:

- *Board of Dentistry*, whose dental professionals “have a direct and immediate effect on the health, safety, and welfare of the people of Montana”;
- *Board of Nursing*, which protects “the health, safety, and well being of the Montana citizens through the licensing of competent nursing professionals and by the regulation of the practice to promote the delivery of quality health care”;
- *Board of Outfitters*, which noted that outfitters’ services “can be inherently hazardous to participants”;
- *Board of Private Security*, which quoted from 37-60-103, MCA, its purpose statement;
- *Board of Speech-Language Pathologists and Audiologists*, which quoted from 37-15-101, MCA, its purpose statement;
- *Board of Professional Engineers and Professional Land Surveyors*, through their responsibility for “designing the physical components of Montana’s infrastructure...” to “allow for safe and proper development of the state ... roads, buildings, communications, etc...”;
- *Board of Realty Regulation*, noting “Public health, safety, and welfare is at stake when proper disclosures [on property sales] are not made – i.e., lead-based paint, asbestos, mold.” The response also noted that a real estate transaction is “often the single largest expenditure or investment that a person will make in their lives.”

The following boards referenced federal law as behind their existence. These included:

- The *Board of Nursing Home Administrators*, citing the need in amendments to the Social Security Act under 42 U.S.C. 1396 for a state program of licensing nursing home administrators; and
- The *Board of Real Estate Appraisers*, citing “a federal mandate for the states to oversee the licensing of real estate appraisers whose competency has been examined and ensure that appraisers have effective supervision.”

### **The Question of a Readily Identifiable, Distinguishable Scope of Practice**

Not all boards enjoy a readily identifiable, distinguishable scope of practice. These boards responded to question 12 in the questionnaire with a certain magnanimity about the public benefiting from a range of health care personnel, for example.

Lack of a specific scope of practice puts licensees in a position of possibly treading on another license category's turf. One suggestion among several questionnaire responders who recognized overlapping scopes of practice was for a person to be dually licensed to avoid challenges. However, chiropractors are not likely to get a degree from a medical school. Alarm installers may not be willing to put in the amount of time needed to become electricians.

Overall questionnaire responses showed that just 7.4% answered "yes" to a question of whether another licensing board's scope of practice caused problems. In general, the questionnaire respondents indicated that the following boards did not have a scope of practice that overlapped with another profession, although notes in the parentheses reflect contrary opinions by those 7.4% of the respondents who said they saw problems from overlapping scopes of practice:

- Board of Architects and Landscape Architects (3 people in the survey cited overlap by this board);
- Board of Clinical Laboratory Science Practitioners;
- Board of Funeral Service (which has internal issues, instead);
- Board of Nursing Home Administrators;
- Board of Optometry;
- Board of Outfitters (3 people in the survey cited overlap by this board);
- Board of Pharmacy;
- Board of Physical Therapy Examiners (25 people in the survey cited overlap by this board, in particular the Board of Athletic Trainers and the Board of Chiropractors);
- Board of Plumbers (2 people in the survey cited overlap by this board);
- Board of Public Accountants (1 person in the survey cited overlap by this board);
- Board of Realty Regulation; and
- Board of Veterinarians (1 person in the survey cited overlap by this board, although as the response in the questionnaire said, this is the only board with jurisdiction over animal health).

In several of the health care professions, the questionnaire respondents recognized the potential for overlapping scopes of practice. Other boards not listed above also recognized that potential overlap. The survey responses identified the Board of Nursing as the most frequently cited board for overlapping scope of practice (31 responses), followed by the Board of Physical Therapy (25), Board of Psychologists (13), and at 12 each the Board of Professional Engineers and Professional Land Surveyors and the Board of Barbers and Cosmetologists. The remaining boards had zero or under 10 citations.

A related question in the survey was "Do you think professional or occupational licensing boards reach beyond their authority to regulate the profession or occupation?" Of the 489 people who

answered that question (about 16% of the 3,000-plus who took the survey), 28.0% said “yes”. Among selected, unedited comments are:

- Board members tend to make rules and laws that benefit themselves or the entity they represent such as more continuing education for educational programs.
- I believe that if people want to give massages without a license they should be able to. So long as their clients are aware of this. I attended Williston State College and earned a degree in Massage Therapy in 2006. I have been licensed in SD since 2006. So far I have not met anyone who has been in the business without schooling for more than a year or two.
- Who are you to regulate what I do as my practice? I would think that a poor practice would have few customers where a good practice would have an abundance of customers. Seems to me you just have to be in control of everything and everyone. Let free enterprise be... How much harm can really come from massaging someone.
- National certification and regulatory agency examinations must be taken to practice, state regulatory agencies are not needed rather they just cost the professional more money. National certification must be renewed bi annually, if you are not certified regardless of state license, the professional still cannot work.
- Most every other state allows one to apply for a RE [real estate] Brokers license without requiring one to sell 35 houses or 10 commercial properties. I have been licensed as a RE broker in California and Washington. Your broker requirement is anti-competitive. I have 30 years' corporate, government, and private real estate experience. A bachelor's degree, the broker classes and passing an exam is sufficient requirement. Let the market determine my abilities not some arbitrary anti-competitive statute.
- The board [of Social Workers and Professional Counselors] is currently attempting to put into regulation standards and indicators for new counselors that they themselves are unwilling to participate in completing. The new guidelines are not beneficial to the industry, they are simply being used to limit the number of new counselors in the State, thus increasing fees through demand. I would be willing to consider these new regulations acceptable if the board members also had to renew their licenses under the same guidelines being proposed instead of being "grandfathered in" by the good ol' boys club.
- I have always believed the Board of Nursing over reaches its authority. There are numerous examples starting with the Hospice 6 in Helena. (This references a court case, Brackman v. Board of Nursing, 258 M 200, 851 P2d 1055, 50 St. Rep. 497 (1993), decided in May 1993 in which the Board of Nursing sought to sanction six hospice nurses. The Montana Supreme Court overruled it.)

Two questionnaire respondents offered the following views on overlapping scopes of practice:

- *The scope of practice involving psychology is, to some extent, shared by other licensed mental health professionals. While some of this overlap is expected, it is important to assure that one's practice is not allowed to expand beyond the content and levels of education and training associated with the license of that person. The public should be able to rely on the distinct titles associated with*

licensure that indicates the level of education and training associated with that person's practice.<sup>4</sup>

- *In many cases, the best course of action - and that recommended by the Board of Professional Engineers and Professional Land Surveyors - is for the individual to seek an additional license to avoid a scope of practice issue. The Board recognizes that issues such as scope of practice will arise occasionally. The Board has found that when they do arise, we have been able to work cooperatively with other regulatory boards. We believe cooperation can resolve issues, and we have confidence in the strong working relationships among boards and staff within the Business Standards Division.*

### **The Question of Whether the Occupation or Profession Requires a Specialized Skill or Training for Which Nationally Recognized Standards Exist**

A matrix prepared for the 2013-2014 EAIC included one section regarding national licensing and another on specialized skills or types of qualifications. A similar matrix was not provided for the licensing boards reviewed by the 2011-2012 EAIC, in part because those boards were established generally prior to 1975<sup>5</sup> and involved professions more likely to be licensed in other states, have national exams, or require specialized skills. Table 6 lists the licensing boards without a national exam. This is not to say that the occupations listed do not have specialized skills, which may be evaluated in different ways by different boards. The specialized skills component is more subjective and most board advocates probably would say their profession or occupation has specialized skills. Table 7 lists the licensing boards and their related national exams.

**Table 6: Licensed Occupations With No National Tests**

Alarm Response Runner*	Private Alternative Adolescent Residential or Outdoor Programs
Cemetery Operators	Private Investigator/Trainee*
Certified Firearms Instructor*	Private Security Guard*
Crematory Operators/ Technicians	Process Server*
Denturists	Real Estate Brokers, Salespeople, Timeshare Salespeople
Electricians	Resident Manager*
Hearing Aid Dispensers	Security Alarm Installer*
Massage Therapists	
Outfitters	
Plumbers	

\* Licensed by the Board of Private Security.

<sup>4</sup> This response went on to use the generic response used by several boards: "While there may be a third party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice."

<sup>5</sup>The Board of Sanitarians arguably could have been included in the 2011-2012 reviews because it was established in 1974 but its review was included with the 2013-2014 group of boards. A list of boards and their establishment dates is available in the HB 525 work plan for the 2011-2012 interim: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Economic-Affairs/Meeting-Documents/June%202011/HB525studyplan.pdf>.

**Table 7: Licensing Boards and Their National Examinations**

<i>Board of Alternative Health Care</i>	Naturopaths – North American Board of Naturopathic Examiners
	Midwives – North American Registry of Midwives exam
<i>Board of Architects and Landscape Architects</i>	Architects – Architect Registration Examination
	Landscape Architects – Landscape Architect Registration Exam
<i>Athletic Trainers</i>	Board of Certification for Athletic Trainers exam
<i>Board of Barbers and Cosmetologists</i>	National-Interstate Council of State Boards of Cosmetology
<i>Board of Chiropractors</i>	National Board of Chiropractic Examiners
<i>Board of Clinical Laboratory Science Practitioners</i>	Required National Certification
<i>Board of Dentistry</i>	Dentists and Dental Hygienists – Joint Commission on National Dental Examinations
	Denturists – no, but there’s an exam through a Canadian school
<i>Electrical Board</i>	State exam based on the National Electrical Code
<i>Board of Professional Engineers and Land Surveyors</i>	Engineers – Nat’l Council of Examiners for Engineers & Surveyors – Principles and Practices of Engineering
	Surveyors - Nat’l Council of Examiners for Engineers & Surveyors – Principles and Practices of Surveying
<i>Board of Funeral Service</i>	Morticians - International Conference of Funeral Service Examining Boards
	Crematory Operator/Technician - no
	Cemetery Operator - no
<i>Board of Medical Examiners</i>	Physicians – U.S. Medical Licensing Exam
	Physician Assistants – P.A. National Certifying Examination - PANCE
	Acupuncturists – Nat’l Commission for the Certification of Acupuncturists
	Dietitians/Nutritionists must register: Commission on Dietetic Registration
	Podiatrists – National Board of Podiatry Examiners Exam
	Emergency Medical Technicians – National Registry of EMT Exam or other
<i>Board of Nursing</i>	NCLEX for RNs and LPNs.
<i>Board of Nursing Home Administrators</i>	National Association of Boards of Examiners for Nursing Home Administrators (NAB) examination
<i>Board of Occupational Therapy Practice</i>	Required National Certification
<i>Board of Optometry</i>	National Board of Examiners in Optometry
<i>Board of Pharmacy</i>	Pharmacists
	Pharmacy Technicians – Pharmacy Technician Certification Board or ExCPT
<i>Board of Physical Therapy Examiners</i>	National Physical Therapy Exam (or Nat’l Physical Therapy Assistant Exam)
<i>Board of Psychologists</i>	Association of State and Provincial Psychological Boards
<i>Board of Public Accountants</i>	National Association of State Boards of Accountancy, Uniform CPA Exam
<i>Board of Radiologic Technologists</i>	American Registry of Radiologic Technologists (ARRT)
<i>Board of Real Estate Appraisers</i>	Appraiser Qualifications Board’s Uniform State Licensed Real Property Appraiser Examination. Federal government requires national certification
<i>Board of Realty Regulation</i>	State Exam – No National Exam
<i>Board of Respiratory Care Practitioners</i>	National Board for Respiratory Care exam

<i>Board of Sanitarians</i>	National Environmental Health Association Registered Sanitarian exam
<i>Board of Social Work Examiners and Professional Counselors</i>	Marriage and Family Therapists – American Association for Marriage and Family Therapy exam
	Professional Counselors - National Board of Certified Counselors exam
	Social Workers – Association of Social Work Boards exam
<i>Board of Speech-Language Pathologists and Audiologists</i>	Both Speech-Language Pathologists and Audiologists - American Board of Examiners in Speech-Language Pathology and Audiology
<i>Board of Veterinary Medicine</i>	NAVLE – the North American Veterinary Licensing Examination, which replaces the National Board Examination and the Clinical Competency Test

### **The Question of Whether Licensure Qualifications are Justified**

Although the question is whether qualifications for licensure are justified, the study approached that question from the perspective of whether a board is justified. Statutes outline qualifications for licensure, such as education, based on the request of the profession or occupation at the time a legislature creates a board and licensing structure. So, rather than go into detail about specific qualifications established for licensure by each board, the study questions looked at whether licensure itself is justified or necessary and whether a board needed to be involved. For example, Question 2 asked if a profession is not licensed, what public protection would be lost, and Question 3 asked if a license is necessary, does the profession or occupation need a board for oversight. Question 5 also is relevant to a degree because that question asked whether competitors who are not licensed are prevented from earning a living and perhaps offering similar services at a lower cost. Selected responses as they apply to these issues are provided below.

The standard answer suggested by Department staff was: “The public would have very little recourse [to complain] except through the legal system, which can be very costly and time consuming.” That answer also addressed the availability of a complaint process: “The Board ensures the public’s protection through minimum qualifications for licensure and the discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the public.”

Regarding the latter discipline process, the 2011-2012 EAIC received copies of a complaint from one grieving daughter upset with a mortician, who happened to be on the Board of Funeral Service. Her lengthy complaint did not specify any action that the Board itself saw as unprofessional conduct, but she also was accusing a board member who sat in on his own screening panel and defended himself (according to a phone call to Legislative Services staff from the person who filed the complaint). The person who filed the complaint also noted that she was unable to discuss the complaint further during the screening panel<sup>6</sup> process, although the accused board member as a member of the screening panel had full rights to respond and talk at will about the case with the other board members. The Business Standards Division has

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<sup>6</sup>A screening panel is typically a subset of board members whose purpose, as described in 37-1-307(1)(d), is to determine if a “licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings.” The screening panel’s finding of unprofessional conduct, usually with recommendations for discipline, goes before a different subset of board members on an adjudication panel, which levies a punishment that could range from a public reprimand to removal of a license. This process can be appealed to a department hearings officer. Or a complaint can be filed in district court. Department legal staff participate in both phases of the review.



indicated that this self-serving situation no longer is allowed to occur. That particular board member no longer is on the Board of Funeral Service.

In another situation, a licensee who had been brought before a different board's screening panel expressed her concern to Legislative Services staff that her ability to defend herself before the screening panel was limited to questions asked when, after her initial description of her case, additional accusations were made. In other words, the due process provided by screening panels is not necessarily uniformly applied, based on these two samples.

Below are selected responses to Question 2 regarding what public protection would be lost if the profession were not licensed. For all responses to this question, see Appendix A.

- If midwives were not licensed, "birth outside of hospital settings would be without professional treatment."
- If chiropractors were not licensed, "the public would not have any recourse in the case of a complaint of improper practice procedures. Malpractice insurance for practitioners mandates that the practitioner is licensed."
- If electricians were not licensed, "anyone could perform electrical installations in Montana. With the majority of the electrical installation performed within the walls of a home or building, the occupier of the structure would not be able to tell if the electrical installation was finished properly. If the work is not properly installed or inspected, the occupiers and future occupiers of the structure could be exposed to electrocution, electrical fires, or malfunctioning of the electrical system."
- If funeral practitioners were not licensed: "Because funeral consumers often do not comparison shop for this costly and infrequent purchase, and because funeral service is a purchase typically made at a time of significant emotional distress, the consumer is more susceptible to these problems. ... Additionally, the funeral practitioner has an important role, to act in conjunction with the county coroner to ensure the reporting of potential criminal or violent causes of death...."
- If the professions under the Board of Medical Examiners were not licensed, "anyone could claim to be a practitioner of medicine or of the other professions the Board of Medical Examiners regulates. The market would provide the only limitations on providers, allowing unscrupulous or unethical individuals to place profit over patient care and patient safety. ... [A] system of licensing and regulation increases the credibility of health professionals. ..."
- If outfitters were not licensed, "there would be no safeguard against the inexperienced but ambitious people who would see an opportunity to make a profit without a proper degree of accountability. Without licensing those who participate in this industry, Montana would be inviting the blind to lead the blind out into Montana's beautiful but unpredictable and potentially dangerous terrain and weather."
- If plumbers were not licensed: "With the majority of the plumbing performed under the foundation of a home or building, the occupier of the structure would not be able to tell if the plumbing was done properly. If the work is not properly installed or inspected, the occupiers and future occupiers of the structure could be exposed to contaminated drinking water, wastewater, and sewer gas or mold."

- If private alternative adolescent residential or outdoor programs were not licensed, “any private home or building could claim to be a private alternative adolescent residential or outdoor program – housing youth and allowing unscrupulous or unethical individuals to place profit over youth safety. Parents place their children in private residential care only when they have no other alternative or are desperate and feel that their child’s emotional and behavioral problems cannot be safely dealt with in the home environment.”
- If engineers and land surveyors were not licensed, “Unqualified individuals would be designing structures and surveying properties that could lead to the collapse of a poorly designed building or to a boundary dispute between two property owners. The public would be unaware of any faults or mistakes in the work until it is too late.”
- If real estate brokers and salespeople were not licensed, “...consumers could not be assured that their agents understood more recent developments in the field and the evolving regulatory environment pertaining to real estate transactions and ownership.”

Question 3 asked whether a board is needed for oversight if licensing is considered necessary. The standard answer to this question typically provided the year that the board was created and a description of the board’s makeup. Some board members’ responses also pointed out that board members’ expertise allows for appropriate evaluation of initial applications for licensure and practice complaints and the public member serves to represent consumers. For specific responses to this question, see Appendix A.

Question 5 asked for comments regarding situations in which a person is not licensed but may feel qualified in an occupation or profession and is prevented from earning a living by accusations of unlicensed practice. These situations do not impact all the licensing boards equally. The standard response noted that laws require “reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications.”

On this particular question, some respondents used canned language saying “The Legislature finds and declares” that a particular occupation or profession affects public health, safety, or welfare. However, in relation to responses for the Board of Architects and Landscape Architects, the Board of Hearing Aid Dispensers, the Board of Physical Therapy Examiners, the Board of Private Alternative Adolescent Residential and Outdoor Programs, and the Board of Speech-Language Pathologists and Audiologists, the reference is wrong because none of the statutes for these boards have a purpose clause that states “The Legislature finds and declares... .” That language is in statute only for optometry, acupuncture, psychology, nutrition assessment and counseling, naturopathic medicine, respiratory care, massage therapy, clinical laboratory science practitioners, and marriage and family practice therapists.

Based on the questionnaire responses, a sampling of replies to Question 5 is below regarding the potential for inhibited competition if a person is unlicensed but feels qualified in an occupation or profession. For all responses to this question, see Appendix A. A sampling of comments from people who voiced frustration with the licensing process through the survey is available in Appendix B.

- The respondent for the Board of Alternative Health Care noted that by law naturopathic physicians can prescribe drugs on an approved formulary. “There are those individuals with correspondence school degrees in Naturopathy who do not have hands-on clinical

education or a four-year post graduate education; if licensure was not provided by the State of Montana, these people could pass themselves off to the public as being as highly trained as the presently licensed Naturopathic Doctors.”

- “Having a Board of Chiropractors with licensing requirements and rules and regulations regarding the proper administration of Chiropractic does not prevent anyone from earning a living. The only prohibitive factor is the cost of licensing, which is minimal as compared to the expenses of running a business. Licensing only ensures that those who are practicing are doing so with the safety and welfare of the public in mind.”
- The respondent for the State Electrical Board noted: “Licensure represents a necessary barrier to entering this profession to allow the public a certain measure of protection and confidence that the person being hired is capable.”
- The respondent for the Board of Medical Examiners referred to an 1892 court case (Craig v. Board of Medical Examiners, 121 MT 203) that noted there is no unjust discrimination in providing for examination and certification for the practice of medicine.
- The respondent for the Board of Nursing commented “Licensees in nursing are privileged professionals with access to the public at what can be very vulnerable circumstances and so should be under scrutiny to be licensed and to keep that license.”
- The respondent for the Board of Outfitters said, “If someone is qualified in this profession or occupation, then that person is not prevented from acquiring a license and earning a living. Should outfitting not be subject to licensure laws, the minimum standards would no longer be required, and the quality of service and public protection may suffer.”
- The respondent for the Board of Private Security wrote, “The Board does not desire to impede licensure of qualified individuals. Rather, protecting public health, welfare, and safety requires training and competency standards.”
- The respondent for the Board of Public Accountants noted that the Board “does not regulate bookkeepers, general accountants, or paid tax preparers. These individuals may still practice and earn a living. The only individuals regulated by the Board are those that wish to be a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA).”
- The respondent for the Board of Realty Regulation wrote: “...persons who wish to engage in personal real estate transactions without the assistance of real estate agents and property managers may do so, and persons who wish to engage a professional to assist in the transaction can do so with the assurance that the agent has met the professional standards prerequisite to licensure.”
- The respondent for the Board of Sanitarians noted that not all sanitarians or environmental health specialists have to have a license but some “choose to be professionally licensed as a means to demonstrate their commitment to their professions, public/environmental health, and an ethical standard.” The respondent also said, “The only group required to be licensed are those practicing the profession of sanitarian in their employment with local government or those working for state government whose position descriptions require this licensing.”

### **The Question of Whether Licensure Provides a Public Benefit**

This question addresses a theme that already has been discussed in the first question, particularly as to whether licensing protects public health, safety, or welfare. Those responding

to the questionnaire stressed the following benefits to the public or to consumers of having a licensing board:

- Assurance that the licensee has the qualifications set by statute or by rule to perform the occupation or profession, which helps to establish trust in the profession or occupation;
- Assurance that most licensees are maintaining their skills through continuing education or at the very least are subject to a complaint process if they fail to stay up-to-date with their skills and professional knowledge to the detriment of a consumer;
- Recourse to a sounding board if a consumer feels that a practitioner has acted unprofessionally. The recourse is less expensive than a court of law but may not provide a monetary or tangible “fix” to a situation other than to prevent other consumers from being misled if the practitioner’s license is suspended. One of the licensing boards that is supposed to ensure that customers receive a refund is the Board of Hearing Aid Dispensers. That particular board reportedly has heard numerous complaints against a limited number of hearing aid dispensers who routinely fail to provide refunds as required under 37-16-304, MCA. The cost of screening panels drives up the licensing fees of other, law-abiding hearing aid dispensers, so that board is hoping to enlist the authority of the Attorney General’s Office of Consumer Protection to help consumers get refunds. Over the span of both interims, the EAIC encouraged continued efforts by the Business Standards Division to get a Memorandum of Understanding with the Attorney General’s Office. That MOU was signed in March 2014. The Department of Labor and Industry noted that even before the MOU officially went into place, some transfers to the AG’s Office had occurred.

### **The Question of Whether Licensure Significantly Increases Costs to the Public**

All licensees have to pay for initial licensure and then to renew their license either annually or every 2 years (for a few professions). Some licensing costs are less than \$100. Physical therapists, for example, pay \$60 a year to renew a license. A registered nurse pays \$100 every 2 years. In contrast, hearing aid dispensers pay \$1,500 a year. Obviously, depending on how many customers or clients each provider has or even whether an employer covers the license fee, the cost is passed on in either greater or smaller portions.

What is as important as asking whether certain license costs are higher and passed on to individual members of the public is whether costs are logically determined, controlled, transparent, and individually beneficial rather than costs that ought to be borne by the public. The issue of costs is further discussed in the “Department Budgeting Information” section below.

### **The Question of Whether the Public Supports Licensure**

Public support for licensure is difficult to determine. Even a costly poll might not provide a satisfactory sampling of the public. What the HB 525 review sought to solicit was public responses to a survey that the 2011-2012 EAIC authorized. The Business Standards Division allowed a link to the survey to be posted on board websites, and the EAIC provided a link on its website. One portion of the survey asked whether the responder thought a board (all were listed individually) was necessary for public health, safety, or welfare (each board was under each question). The cumbersome survey mechanism generally meant that licensees did not answer

the broad question related to whether other boards had a public health, safety, or welfare purpose. Most licensees answered only the part of the survey dealing with their own board. Many respondents listed out-of-state addresses on the survey and indicated that they were not licensed. This was allowed because the survey was open to the general online public as one way of gaining public comment. So, even if the opinion had no specific tie to Montana, all of the roughly 1,419 responses not specifically associated with licensing boards were compiled as a way of determining the public's assessment of whether a board was needed for public health, safety, or welfare. The results were not scientific, but nevertheless interesting.

A board-by-board listing of public indications of support (or lack of it) for the licensing boards reviewed in 2013-2014 is available in the decision matrix presented to the EAIC in August 2013. Public responses also were summarized for the licensing boards reviewed in the 2011-2012 interim and included in the summary sheet regarding responses for each board. The public responses are compiled in Appendix C.

Public support was lowest for the Board of Outfitters in all three categories. The public health ranking was lowest among all boards and all categories at 19.8%. In the respective categories of public safety, 30.9%, and public welfare, 27.3%, the Board of Outfitters also ranked lowest.

Public support was highest for the Board of Nursing at 83.8% for those thinking the board was necessary for public health. The Board of Nursing also ranked highest in the public welfare category at 64.0%. The highest ranking board for public safety was the Electrical Board at 67.9%.

### **Further Information from the Survey, Background Papers, and Public Comment**

**Survey**—EAIC members received board-specific responses to the survey in 2011-2012 as each board came before the committee. The date varied as to when the data was downloaded from the survey or received from the department for a particular board. In the 2013-2014 interim, the EAIC members received a booklet listing all the licensing boards with summaries of the survey as of June 3, 2013. The survey remained open until October 2014. The individual comment sheets for each board removed duplicate or nonsense names when they were obvious. (If someone did not list a name, this obviously couldn't be done.) Only licensees responding to the survey by the board's data pull date were included for their particular board's review. However, late responses were available for the final tallies taken in October 2014. The Board of Private Alternative Adolescent Residential or Outdoor Programs (PAARP) was inadvertently left off the list of licensees in the original survey but not in the general part of the survey asking whether a board was needed for public health, safety, or welfare. An e-mail went out to all the PAARP licensees after the survey was revised to include the PAARP Board under the licensee list, and four people responded (one of whom was the Department's program manager).

Major board-specific responses are listed in Table 8, which provides--for each licensing board--an indication of the number and percent of licensees responding, their major compliments and major complaints from a proposed list of complaints, an indication of whether the respondents found their scope of practice satisfactory, and comments regarding whether they thought their board was needed for public health, welfare, or safety. As mentioned earlier, specific

information is available on the EAIC website under the HB 525 Study for either the 2011-2012 interim<sup>7</sup> or the 2013-2014 interim<sup>8</sup>.

**Table 8: Survey Summary, Cumulative from October 2011 through October 2014**

<b>Board Name / # of Licensees in Fiscal Year Studied</b>	<b>Responses; % of All Licensees</b>	<b>Major Compliment*</b>	<b>Major Complaint*</b>	<b>Satisfied with Scope of Practice?*</b>	<b>Public Need?*</b>
<b>Alternative Health Care</b> 117 licensees 2012	15 --- 12.8%	5 - ability to monitor profession on behalf of licensees; 4- none	5 – high license fees; 5 - none	7 just right; 5 too narrow	13 – one or more 1 – none
<b>Architects/Landscape Architects</b> 1,426 licensees 2012	59 --- 4.1%	35 - ability to monitor profession on behalf of licensees; 11- none	28 had none; 15 high license fees	44 just right; 11 too narrow	53 – one or more; 4 -none
<b>Athletic Trainers</b> 113 licensees 2012	38 --- 33.6%	20 - ability to monitor profession on behalf of licensees; 10 - none	20 -high license fees	18 just right 16 too narrow	35 – one or more; 3- none
<b>Barbers/Cosmetologists</b> 11,124 licensees 2012	118 --- 1.1%	49 – none; 31 - ability to monitor profession on behalf of licensees	38-none 29 -high license fees 17–lack information	80-just right 21 too narrow	67 – two or more; 17 - none
<b>Chiropractors</b> 509 licensees 2011	7 --- 1.4%	5 - ability to monitor profession on behalf of licensees	6 - none	4 just right 3 too narrow	4 – two or more
<b>Clinical Laboratory Scientists</b> 928 licensees 2012	92 --- 9.9%	39 - ability to monitor profession on behalf of licensees; 32 - none	36 – none; 31 – high license fees	68 just right 7 too narrow 7 too broad	31 – two or more; 26 none
<b>Dentists/Denturists/Hygienists</b> 1,554 licensees 2011	298 --- 19.2%	191 - ability to monitor profession on behalf of licensees	157 – none; 38 – board response to unlicensed practice	213 just right 64 too narrow 7 too wide	286 – one or more; 9 none
<b>Electricians</b> 5,304 licensees 2011	64 --- 1.2%	26 - ability to monitor profession on behalf of licensees; 13 -none	33 – board response to unlicensed practice; 13 – high license fees	32 just right 25 too narrow 5 too broad	30 – two or more; 4 - none
<b>Engineers/Land Surveyors</b> 13,147 licensees 2011	242 --- 1.8%	52 – ability to keep profession from criticism because of bad actors; 43 none	132 – none; 48 – board response to unlicensed practice	192 – just right	152 – 2 or more; 10 - none
<b>Funeral Service</b> 446 licensees 2011	3 --- < 1%	2 - none	1 each – high licensing fees, regulations too strict, lack information	3 – too narrow	3 - none
<b>Hearing Aid Dispensers</b> 111 licensees 2011	8 --- 7%	3 - ability to monitor profession on behalf of licensees	6 - high license fees	4 just right 4 too narrow	3 – two or more 1 none
<b>Massage Therapists</b> 1,265 licensees 2012	147 --- 11.6%	44 - ability to monitor profession on behalf of licensees; 37 – ability to keep profession from criticism because of bad actors; 34 none	47 – high license fees; 43 none; 29 – lack of information	84 just right 34 too narrow 10 too broad	62 – 2 or more 41 none

<sup>7</sup>See <http://leg.mt.gov/css/Committees/Interim/2011-2012/Economic-Affairs/Assigned-Studies/HB525/HB525.asp>

<sup>8</sup>See <http://leg.mt.gov/css/committees/interim/2013-2014/Economic-Affairs/Committee-Topics/HB525/hb-525.asp>

<b>Medical Examiners</b> <i>(includes doctors, physician assistants, emergency medical technicians, nutritionists, podiatrists, acupuncturists)</i> 9,964 licensees 2011	123 --- 1.2%	70 - ability to monitor profession on behalf of licensees; 31 - ability to keep profession from criticism because of bad actors; 14 none	61 – none; 20 – high license fees; 18 – board response to unlicensed practice	94 just right 18 too narrow 6 too broad	82 – two or more 6 none
<b>Nurses</b> 18,457 licensees 2011	178 --- 1%	93 - ability to monitor profession on behalf of licensees ; 34 none	78 – none; 34 –high license fees	133 just right 25 too narrow 10 too wide	110 – two or more 13 none
<b>Nursing Home Administrators</b> 208 licensees 2011	11 --- 5.3%	5 - ability to monitor profession on behalf of licensees	5 – high license fees 4 - none	10 -just right	6 – two or more
<b>Occupational Therapists</b> 417 licensees 2012	36 --- 8.6%	18 - Ability to monitor profession on behalf of licensees; 9 none	22 – none; 4 – high license fees	25 just right 10 too narrow 1 too broad	15 – two or more; 1 none
<b>Optometrists</b> 274 licensees 2011	3 --- 1%	2 - ability to monitor profession on behalf of licensees	2 - none	1 just right 1 too narrow	2 – two or more
<b>Outfitters</b> 1,619 licensees 2011	34 --- 2.1%	17 – none; 6 - ability to monitor profession on behalf of licensees	17 – high license fees; 7 – board response to unlicensed practice	14 just right 4 too narrow 6 too broad	6 – two or more 17 none
<b>Pharmacists</b> 5,054 licensees 2011	14 --- ½ of 1%	8 - ability to monitor profession on behalf of licensees	12 – none; 1 – high license fees	9 just right 4 too narrow	9 – two or more; 1 none
<b>Physical Therapists</b> 1,250 licensees 2012	65 --- 5.2%	31 - ability to monitor profession on behalf of licensees; 14 - none	38 – none; 6 - high license fees	47 just right 11 too narrow 2 too wide	32 – two or more 7 none
<b>Plumbers</b> 1,599 licensees 2011	26 --- 1.6%	11 - ability to monitor profession on behalf of licensees; 8 - none	13 -high license fees; 13 – board response to unlicensed practice	15 just right 7 too narrow	15 – two or more; 4 none
<b>Private Alternative Adolescent Residential Outdoor Programs</b> 14 licensees 2012	4 --- 28.6%	2 - ability to monitor profession on behalf of licensees; 1 – ability to streamline continuing education; 1 – none	3 – high license fees 1 – lack of information	4 just right	3 – two or more
<b>Private Security</b> 1,415 licensees 2012	50 --- 3.5%	23 – none; 13 - ability to monitor profession on behalf of licensees	30 – high license fees 11 - none	28 just right 6 too narrow 9 too broad	31 – one or more 18 – none
<b>Psychologists</b> 1,348 licensees 2012	22 --- 1.6%	12 - ability to monitor profession on behalf of licensees; 2 none	13- high license fees; 1 none	16 just right 4 too narrow	13 – two or more; 3 none
<b>Public Accountants</b> 3,933 licensees 2011	95 --- 2.4%	49 - ability to monitor profession on behalf of licensees; 19 - none	52 – none 13 – high license fees	77 just right 6 too narrow 3 too broad	69 – one or more 23 none
<b>Radiologic Technicians</b> 1,348 licensees 2012	23 --- 1.7%	10 – none; 7 - ability to monitor profession on behalf of licensees	13 – none; 3 – high license fees	13 just right 3 too narrow 4 too broad	17 – one or more 5 none
<b>Real Estate Appraisers</b> 524 licensees 2012	37 --- 7.1%	13 – none; 11 - ability to monitor profession on behalf of licensees	17 – high license fees; 9 – lack of information	20 just right 3 too narrow 12 too broad	22 – one or more 14 - none

<b>Realty Regulation</b>  5,183 licensees 2012	196 --- 3.8%	63 - ability to monitor profession on behalf of licensees; 49 – none; 42 - ability to streamline continuing education	58 – none; 35 – high license fees; 24 – board response to unlicensed practice; 21 – lack of information	126 just right 22 too narrow 22 too broad	132 – one or more 57 none
<b>Respiratory Care Technicians</b> 555 licensees 2012	23 --- 4.1%	12 - ability to monitor profession on behalf of licensees; 6 - none	11 – none; 6 – high license fees	13 just right 7 too narrow	20 – one or more
<b>Sanitarians</b>  181 licensees 2012	89 --- 49.2%	56 – ability to monitor profession on behalf of licensees; 21 – ability to keep profession from criticism because of bad actors; 13 – none	57 – high license fees; 20 - none	68 just right 4 too narrow 8 too broad	80 – one or more 8 none
<b>Social Workers/ Professional Counselors/Marriage &amp; Family Therapists</b>  1,881 licensees 2012	193 --- 10.3%	82 - ability to monitor profession on behalf of licensees; 46 – ability to streamline continuing education; 45 – ability to keep profession from criticism because of bad actors; 39 – none	67 – none 59 – high license fees 19 – lack of information 11 – board’s response to unlicensed practice 10 – regulations too strict	147 just right 22 too narrow 10 too broad	176 – one or more 14 none
<b>Speech-Language Pathologists and Audiologists</b>  464 licensees 2012	17 --- 3.7%	10 - ability to monitor profession on behalf of licensees; 2 - ability to keep profession from criticism because of bad actors;	5 – none 3 – high license fees 3 – lack of information	15 just right 1 too narrow 1 too broad	15 – one or more 2 - none
<b>Veterinarians</b> 1,106 licensees 2011	8 --- 0.07%	4 – ability to monitor profession on behalf of licensees; 3 – none	3 – board response to unlicensed practice 3 - none	5 just right 2 too narrow	7 – one or more 1 none

*\*The majority response is listed and if significant in number or indicating “none”, that response is included.*

The overall final tally among licensees regarding whether they thought their licensing board was necessary for public health, safety, or welfare (or a combination of any of these) was 50.5% saying their board was necessary for public health, 68.8% endorsing the board’s necessity for public safety, and 13.9% indicating the board was needed for public welfare. Welfare was not defined (nor is it under the licensing board statutes), but generally the thought has been that welfare covers economic concerns.

**Background Papers** – All of the licensing boards in the 2011-2012 Interim had briefing papers prepared for the meeting at which board members were asked to appear to support continuation of the board or provide information related to issues that arose about the board. For the 2013-2014 interim, the background briefing papers were all provided at the June 2013 EAIC meeting. These briefing papers contained board member information, the scope of practice for the professions or occupations licensed by the board, and board budget and complaint information whenever that was available. Licensing fee costs were included for some of the boards. A list of



the background materials, which also includes the board responses to the questionnaires, and results of the survey<sup>9</sup> are posted on the HB 525 pages for the respective interims, with the 2011-2012 website providing background for all the licensing boards.

EAIC staff provided additional materials and overviews of the HB 525 study. One example is in Table 9, which was prepared for the 2013-2014 EAIC at its initial June meeting in 2013 as part of a report on the HB 525 reviews. Table 9 provides a list of the licensing boards reviewed in 2013-2014, along with an indication of how many times revenues had exceeded expenditures, the number of complaints filed and the FY 2012 legal costs (indicating contested complaints), plus the license renewal fees for 2013. The revenues over expenditures position also was the subject of concern in the Department of Labor and Industry's financial compliance audit for the 2 fiscal years ending in June 2013. Although a "cushion" of revenue is good for meeting unexpected expenses (and one never knows when a complaint might turn into a long-lived court case), a budgeting statute, 17-2-302, MCA, limits revenues to no more than twice the annual appropriation for a year or an amount that is greater than the biennial appropriation from that account. As the audit notes, an excess cash balance may indicate that licensees are being overcharged for their license renewals. The report further states:

"Department personnel stated they try to maintain a cash balance up to twice the annual appropriation, but recognize that they may not need to maintain such a large cash balance for some boards, so plan to look at cash needs more closely, as some costs, such as legal, can be difficult to estimate."<sup>10</sup>

The Department addressed the audit concerns about excess revenues over expenditures by proposing two options. Both options proposed changing the definition of "fees commensurate with costs," allowing boards the ability to collect a reasonable cash reserve for unplanned expenses. According to the Department, the difference between the two options was in what methodology would be available for the board to spend that excess cash—that is, where would they find the appropriation. One option was to change the accounting terminology for the licensing boards from a state special revenue account to an enterprise fund. The other was to create a contingency appropriation that boards could use to spend cash they already had on hand in case an unexpected expense was incurred. The Department chose to go with the contingency option rather than change the accounting structure, which may have had various repercussions.<sup>11</sup> This is discussed under the "Department Budgeting Information" section.

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<sup>9</sup> The survey results, presented at the June 2013 meeting, of all boards to be reviewed in the 2013-2014 interim did not include specific responses by the public to the question regarding public perception of need for a board based on public health, safety, or welfare. A summary tally was made available at the August 2013 meeting: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Committee-Topics/HB525/overview-aug2013.pdf>.

<sup>10</sup> See Legislative Audit Division, "Financial Compliance Audit: Department of Labor and Industry For the Two Fiscal Years Ended June 30, 2013", October 2013, p. 9 at <http://leg.mt.gov/content/Publications/Audit/Report/13-15.pdf>.

<sup>11</sup> See a staff report entitled "Board Financial Accounting Options vis-a-vis Concerns Raised by Boards" presented at the July 2014 EAIC meeting: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/July-2014/board-financial-options-vs-concerns.pdf>.

**Table 9: Licensing Boards, Budgeting Status, Complaints, and License Renewal Costs**

Boards Reviewed in 2013-2014	Revenues Exceed Expenditures x of y years	Complaints (average) plus FY 2012 legal costs indicating contested complaints	License renewal fees as of 2013
Alternative Health Care Board	4 of 4 years	13.5 / \$10,188	\$550
Board of Architects and Landscape Architects	2 of 4 years	28.75 / \$11,018	A = \$55 LA = \$250
Board of Athletic Trainers	2 of 4 years	0.75 / \$1,992	\$175
Board of Barbers and Cosmetologists	1 of 4 years	196 / \$37,848	\$75 to \$220
Board of Clinical Laboratory Science Practitioners	3 of 4 years	2.75 / \$3,030	\$60
Board of Massage Therapy	2 of 3 years	8.33 / \$11,350	\$140
Board of Occupational Therapy Practice	3 of 4 years	2 / \$1,660	\$110
Board of Physical Therapy Examiners	3 of 4 years	11 / \$19,318	\$60
Board of Private Alternative Adolescent Residential or Outdoor Programs	2 of 4 years	8.5 / \$21,139	from \$1,688 to \$13,313
Board of Private Security	2 of 4 years	34.25 / \$34,487	\$100 to \$175
Board of Radiologic Technologists**	0 of 4 years	6 / \$5,623	\$50
Board of Real Estate Appraisers	2 of 4 years	46 / \$69,690	\$475* to \$3,000
Board of Realty Regulation	1 of 4 years	168 / \$186,704	\$35 to \$100
Board of Respiratory Care Practitioners	2 of 4 years	2.75 / \$1,349	\$75
Board of Sanitarians**	3 of 4 years	0.5 / \$2,739	\$180
Board of Social Work Examiners & Professional Counselors**	0 of 4 years	41 / \$56,718	\$175
Board of Speech-Language Pathologists & Audiologists	3 of 4 years	0.25 / \$2,988	\$100
<p>* The renewal fee for Real Estate Appraisers does not include a \$40 cost for a national registration fee.  ** This board was not reviewed by the EAIC in 2013-2014 for financial issues because the Department did not list it among boards with financial troubles. The Department suspended service for the Board of Sanitarians at some point in the fiscal year, according to the Business Standards Division administrator. The Board of Social Work Examiners and Professional Counselors resolved the budget concerns for that board. The Board of Radiologic Technologists has been whittling down a surplus balance in its state special revenue account.</p>			

**Public Comments at Meetings** – Budgeting and financial concerns were part of two major issues that generated public comment during the reviews of licensing boards. The other major concern was the alleged use of a board to stymie competition when a board regulated more than one type of licensee.

- **Budgeting Issues.** During both the 2011-2012 Interim and the 2013-2014 Interim fiscal problems (or resulting licensing fee increases) plagued the Board of Hearing Aid Dispensers, the Board of Funeral Service, the Athletics Program, and several other boards. Both the Board of Hearing Aid Dispensers and the Board of Funeral Service raised licensing fees after prodding by the Business Standards Division for the boards to resolve deficit concerns by adopting rules to raise licensing fees. Some boards that had more recent deficits did not get the attention of the EAIC because the Business Standards Division did not highlight concerns about these boards. Instead, they were among boards listed in spreadsheets the Business Standards Division provided to the EAIC at its March and May 2014 meetings.(More detail on the spreadsheets is included below.) As mentioned earlier, budget issues--especially as related to solvency of a board--were included in the 37-1-142, MCA (HB 525) reviews. Notification of solvency also is a duty of the Department assigned under 37-1-101, MCA.

- *Board of Hearing Aid Dispensers*

In the 2011-2012 Interim, the Board of Hearing Aid Dispensers lost approximately half of its licensees after a 2011 bill freed audiologists from having to have a license as both a hearing aid dispenser and an audiologist. This resulted in license renewal fees escalating for the 50 to 80 remaining hearing aid dispensers from \$450 a year initially to \$1,000 and then to the current charge of \$1,500 a year. In addition to a loss of licensees, the Board had experienced legal costs that in FY 2010 amounted to 78% of its annual budget for FY 2010 of \$45,886—apparently to address complaints against a limited number of licensees who were not providing refunds, as required, for defective hearing aids.

One option considered late in the 2011-2012 interim was to let the Department of Justice through its Consumer Protection Office handle consumer complaints about hearing aid dispensers. A different way of handling penalties would mean that the Department of Justice did not have to put levied fines into the general fund, as is required of most licensing boards by 37-1-312, MCA,<sup>12</sup> and could charge up to \$10,000 for a violation of the Unfair Trade Practices Act. The Board of Hearing Aid Dispensers is allowed to deposit fines back into its own revenue account but is limited to fines of no more than \$1,000 for a violation. The 2013-2014 EAIC followed up on the 2011-2012 efforts and continued to prompt action by the Department of Labor and Industry and the Department of Justice on a memorandum of understanding to let the DOJ handle the consumer complaints, and in March 2014 the two departments signed the MOU.<sup>13</sup> The MOU says that the Office of Consumer Protection will transfer to the Business Standards Division its share of recovered attorney fees, costs, and civil fines for deposit in the state special revenue account

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<sup>12</sup> Only five boards are allowed to deposit fines into their own accounts: the Board of Hearing Aid Dispensers, the Board of Outfitters, the Board of Nursing, the Board of Pharmacy, and the Board of Realty Regulation. Many other boards whose fines are put into the general fund as required in 37-1-312 and 37-1-406, MCA, had voiced frustration over this provision because the good licensees had to pay for the legal services needed to sanction licensees who were not following the rules.

<sup>13</sup> See a copy on the HB 525 website for 2013-2014: <http://leg.mt.gov/css/committees/interim/2013-2014/Economic-Affairs/Committee-Topics/HB525/hb-525.asp>.

for the Board. The MOU solution remains only partial until the costs of prosecution are more in line with licensing fee revenues plus income from fines.

The MOU does not increase the number of licensees, which remains small and one reason for high licensing fees. After a question posed in March 2014 by the chairman of the Board of Hearing Aid Dispensers to the EAIC, the committee requested information on why licensing costs are so much lower in the neighboring states of Idaho and South Dakota, two states cited by the board chairman in a handout to the EAIC. The handout listed Idaho's renewal fee as \$125 and South Dakota's renewal fee as \$200. Both the Department and EAIC staff looked into the issue. The Department found that many of the rules were the same in all three states and that in both Idaho and South Dakota the licensing boards included more than one profession. The board in South Dakota, for example, includes both hearing aid dispensers and audiologists. One of the findings by EAIC staff was that the South Dakota board's staffing is handled under contract with an outside contractor. That contractor spoke by phone at the EAIC's July 2014 meeting about that alternate form of staffing.

The Department, upon the request of the EAIC, provided some suggestions for all the licensing boards with troubled financial accounts. The Department responded to some EAIC questions, including whether a combined board with the Speech-Language Pathologists and Audiologists would be an appropriate option. The response from the Department noted that the speech-language pathologists and audiologists, who pay \$100 to renew a license, are unlikely to want to subsidize hearing aid dispensers, who pay \$1,500. The Department's analysis indicated license fees would go up for speech-language pathologists and audiologists by \$35 and drop for hearing aid dispensers by \$1,365 for an overall charge of about \$135 to renew either type of license. As for removing the board and having the Department handle licensing and all other board tasks, the savings would shave only about \$3,500 out of the hearing aid dispensers' FY 2012 expenditures of about \$83,900. Other considerations are available in the May 2014 report from the Department to the EAIC.

- *Board of Funeral Service*

Even though the Board of Funeral Service had adopted higher licensing fees to resolve a series of annual budget deficits (see Table 10), financial concerns remained for the board throughout the HB 525 study. In the 2011-2012 interim board members discussed problems and costs associated with staff turnover (some of this was due to the Department's in-house switching of personnel) and the need to train new people in the statutes and rules of the board. Training time counts against the board's budget, but the board by statute has no say in Department hiring or staffing. (Under 2-15-121, MCA, the statute that describes administrative attachment, the Department is responsible for hiring personnel unless a board is specifically exempt from that provision.)

In the 2013-2014 interim, financial issues remained a concern for the Board of Funeral Service. The Business Standards Division provided an indication of what might happen if the Legislature removed the Board of Funeral Service inspection duties for crematoria and mortuaries and put those duties under the Department of Public Health and Human Services. The assumption was that funeral directors would continue to be licensed but that inspections of facilities would be transferred. The report to the July 2014 EAIC indicated \$38,197 less expended for inspections, licensing, compliance, investigation, and legal services. The corresponding loss in revenue was projected at \$53,725 for loss of facility licensing. (The cost of DPHHS handling the facility licensing and inspections was not included in these calculations.)

**Table 10: Board of Funeral Service Revenues, Expenditures**

	Revenues	Expenditures	Difference
<b>FY 2007*</b>	\$94,055	\$82,053	\$12,002
<b>FY 2008*</b>	\$87,294	\$88,400	-\$1,106
<b>FY 2009*</b>	\$89,985	\$91,979	-\$1,994
<b>FY 2010*</b>	\$89,128	\$93,713	-\$4,585
<b>FY 2011*</b>	\$101,946	\$118,453	-\$16,507
<b>FY 2012**</b>	\$129,017	\$155,203	-\$26,186
<b>FY 2013***</b>	\$70,116	\$102,749	-\$32,633
	Beginning appropriation	Ending Appropriation Balance	Difference
<b>FY 2013****</b>	\$93,470	\$193,170	\$99,700

\*Information provided in the Montana Administrative Register as a rationale for raising licensing fees by about 50% in April 2012.

\*\*Information provided to the EAIC for a background report in January 2014.

\*\*\*Information from the Legislative Fiscal Division for fund balances as of January 23, 2014. Revenues of \$21,685 were added to a fund balance of \$48,431.

\*\*\*\*Information in chart of beginning FY 2013 appropriation and ending balance provided by the Business Standards Division in March 2014.

How the Department of Labor and Industry assessed costs against boards was also a question asked by the Montana Association of Funeral Directors representatives at the May 2014 EAIC meeting. The Association provided the EAIC in May 2014 with information related to staffing charges for the Board of Funeral Service plus a breakout of revenues in 2013 of \$198,745 and expenditures of \$185,307. One of the points made by the MAFD representatives at that meeting was that the board had no control over how many people worked on a project or for how much time. Part of the handout provided to the committee showed staffing and the hours they charged to the board. For example, 29 separate administrative assistants or administrative specialists charged hours to the board, as did 22 separate license permit technicians. According to one explanation, those with minimal hours most likely were attending staff meetings for which the Department divided up the hours among all boards, even for staff members whose full time might be spent on one specific board (for example the pharmacists working with the Board of Pharmacy.) Those with more hours most likely worked on specific board-related tasks. More information on how the Department divvies up the costs is provided in the section "Department Budgeting Information," below.

- o *Athletics Program*

Although not part of the HB 525 Study of licensing boards, because the licensing program for boxers no longer has a board, the issues raised regarding this program are

similar to those raised by the Montana Association of Funeral Directors on behalf of its licensed members over high licensing fees and little ability to control the Department's costs. As part of an explanation of the fiscal troubles of the Athletics Program, the Department handed out material at the July 2014 meeting related to the Athletics Program. The material showed program costs if certain changes were made that still were unlikely to cover the listed expenses. Athletics Program advocates told the EAIC they would take the information and try to develop a plan to make the program solvent.

- ***Boards and Competitive Dissonance.*** A concern that particularly affects licensing boards in which one profession predominates over another profession licensed by the same board relates to the potential of the dominant profession to stymie the scope of practice of the perceived competitors. This was a concern specifically raised in relation to the Board of Dentistry and the Board of Funeral Service during the 2011-2012 interim.

- *Board of Dentistry*

Denturists, in particular, felt their profession was under the thumb of dentists on the 10-member Board of Dentistry populated by 5 dentists, 1 denturist, 2 dental hygienists, and 2 public members. Testimony at various meetings in the 2011-2012 interim from dental hygienists also indicated they would have preferred a separate board in combination with the denturists, as proposed at one point during the 2011-2012 EAIC meetings. Dentists, however, pointed out that they did not have a majority of the seats, only half of the 10-member board. Strongly held dentists' beliefs that some of the actions of denturists violated a patient's health and safety—for example, the potential for underlying oral cancer to go undetected if a denturist were to provide dentures on top of implants—underlie some of the dentists' positions. Denturists argued that the barrier to placing dentures on top of implants stemmed from an unwillingness of dentists to share that field of dentistry.

In an amended complaint<sup>14</sup> filed in state district court in 2014, the plaintiff denturists state their belief that they have the authority to place “prosthetic devices” like dentures on top of implants. The denturists' lawsuit cited Senate Bill No. 165 from the 2011 session in their complaint against the Board of Dentistry. SB 165 included language (as mentioned earlier) that required boards to apply their rules and standards in a way that did not discriminate against other members of that board unless necessary to protect public health and safety. The lawsuit is in the First Judicial District Court, Cause No. CDV 2013-924. Potentially germane to that lawsuit is a pending U.S. Supreme Court case regarding a licensing board that was accused of anticompetitive behavior in relation to teeth-whitening services. The U.S. Supreme Court heard that case, *North Carolina Board of Dental Examiners v. the Federal Trade Commission*, Docket No. 13-534, October 14, 2014. The appeal was from the Fourth Circuit Court of Appeals decision upholding the Federal Trade Commission's administrative complaint against the North

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<sup>14</sup> See a copy of the complaint on the HB 525 website: <http://leg.mt.gov/css/committees/interim/2013-2014/Economic-Affairs/Committee-Topics/HB525/hb-525.asp>. A November 5, 2014, letter to staff of the Economic Affairs Interim Committee further voiced frustration not only with the subcommittee process but with the failure of the Economic Affairs Interim Committee to forward a legislative fix for the problem. A copy of the letter is available upon request.

Carolina Board for excluding non-dentist teeth whiteners from the market. Of the various issues in that case, the U.S. Supreme Court chose to look at whether the state-action exemption from federal antitrust law applied to an official state regulatory board or whether that board is a “private actor” because a majority of the board’s members are market participants, in this case “elected to their official positions by other market participants.”<sup>15</sup>

- Board of Funeral Service

Complaints voiced regarding the six-member Board of Funeral Service included that the three licensed morticians on the Board often acted to the detriment of crematory operators who were not morticians. The other members of the Board of Funeral Service must be a representative of the public not engaged in the industry, a representative of a cemetery company, and “a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation”. As can be seen from the last option listing multiple choices, independent crematory operators do not have to be represented.

## Department Budgeting Information

A frequently heard complaint among licensees and some board members has been that they have little control over board costs if they want to minimize these costs. Under 37-1-134, MCA, a board must set fees that are commensurate with costs. These costs are a combination of what the Department charges for standard operations and the board-determined “extras” considered necessary for the board to remain current in the profession. The board may, for example, budget to send one or more board members and potentially Department staff to their profession’s national conference.

The Department conceivably has some say in whether the “extras”, whatever they may be, are to be included in the board’s budget that is submitted to the Governor. That is because the statute<sup>16</sup> regarding administratively attached entities, like the licensing boards, states that the department to which the boards are attached must direct and supervise the budgeting of the attached entities. Stated another way in 2-15-121(1), MCA, the administratively attached entities

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<sup>15</sup> The quote is from the question presented to the U.S. Supreme Court. See the docket information [here](#).

<sup>16</sup> Under 2-15-121, MCA, the administrative attachment criteria are spelled out. The statute reads in part:

**2-15-121. Allocation for administrative purposes only.** (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

are required to submit their budget requests through the department to which they are attached. Whether the department can cut those budgets is a question that hinges on whether these boards are considered independent legislatively created entities or whether they are subject to not only legislative appropriation constraints but the Governor's budgetary guidelines and authority.

Other budgeting factors important for the boards include:

- the number of licensees associated with the Board. The more licensees, the more people who split costs. Thus, nurses with more than 18,000 licensees have to pay \$100 every other year for a license (for a registered nurse or licensed practical nurse) while the hearing aid dispensers with 56 licensees, as indicated in a report to the EAIC in January 2014, faced license renewal costs of \$1,500 a year.
- the number of department personnel and the number of management positions whose functions interrelate but are not necessarily directly associated with the licensing boards. This is described in more detail below in relation to the Legislative Fiscal Division report on cost allocations.

The following section will review:

- how the Department of Labor and Industry allocates costs among boards;
- what problems arise for boards that have too little cash in their accounts;
- what problems occur for lack of appropriation authority;
- what problems arise for boards that have too much cash in their accounts; and
- as part of the above sections, what the Department has proposed at various times as ways to address financial imbalances.

**Allocation of Costs** -- The Department of Labor and Industry under 37-1-101, MCA, is required to assess its costs to the boards equitably, including administrative, legal, and clerical services costs plus costs for investigations, rent, contracts for licensing examinations, and disciplinary procedures. Starting with a study of licensing boards in the 2005-2006 interim, the EAIC has heard problems with budget allocations. Since that interim the Business Standards Division has reorganized at least twice, with both reorganizations aimed at improving efficiency, in part by having more staff that is cross-trained and sharing duties.

Information provided in both the 2011-2012 and 2013-2014 EAIC interims described an allocation process by which the direct time spent by licensing application specialists, program specialists, and others for a board was added up, then that time was used to determine proportionate indirect costs for the bureau chiefs, the Department of Labor and Industry Commissioner's Office, and others whose functions indirectly benefit or affect the licensing boards.

A marked-up copy of a Legislative Fiscal Division report made to the 2011 EAIC about licensing board allocations pointed out that a board's costs are made up of five different factors: direct operating expenses, direct hours, indirect hours, administration indirect, and indirect charges. These could also be divided into two main subsets: direct and indirect. Brief explanations of each, based on that 2011 report, are:



- direct operating costs – travel expenses and other directly applicable charges;
- direct hours – reported by a Department employee for hours spent directly on a board’s business;
- indirect hours – reported for general support, including staff meetings attended by all employees, vacation and sick leave, and time spent generally for one of the three licensing board-affiliated bureaus: licensing; board management; or operations (see organization chart provided to the 2013-2014 EAIC in June 2013). The charge to an individual board for indirect hours is determined by multiplying the total indirect hours *times* the hourly rate of the employee recording those hours *times* a percentage of the direct hours spent on a board by all employees recording that direct time.
- administration indirect – also allocated based on hours. The concept of administration indirect is a charge for any operating cost that cannot be identified as belonging specifically to a particular board. The costs are allocated among boards based on each board’s percentage of the total direct hours charged in the previous quarter.
- indirect charges, which include phone lines, computer systems, general supplies, and other goods used by boards. These are calculated based on the direct hours indicated above.

The Business Standards Division provided a graphic representation of board costs at the EAIC’s January 2014 meeting. Graphics identified general direct costs (53% of costs) plus legal (9%) and compliance unit charges (11%) as being direct costs, for a total of about 73%. The remainder are indirect, including the Division’s administrative charges (5%), division-specific information technology charges (7%), Bureau-wide charges (4%), indirect time/employee default task profiles (4%), department-wide information technology charges (3%), and the Commissioner’s office (4%) for a total indirect of about 27%. The information provided by the Department further indicated that indirect costs ranged from a low of 25.9% of all costs in FY 2010 to a high of 29.1% in 2012.

The Legislative Fiscal Division (LFD) provided another way to analyze indirect costs in information provided to the August 2013 EAIC. That data showed cost allocations for the Licensing Bureau in the FY 2015 biennium for 44 direct full-time equivalent (FTE) positions and 39.88 indirect FTEs. By looking at the expenditures, the higher number of FTEs—representing direct costs—accounted for a lower amount of the costs, indicating the apparently higher-paid administrative staff comprising the majority of indirect charges. However, the LFD report also noted that the office structure had changed between when the Department presented its budget to the Legislature in 2013 and the beginning of FY 2014 (in July 2013). The new structure had three bureaus (instead of two) involved with the licensing boards—management, licensing, and compliance or operations; their indirect costs were in the range of 28.8%. Those directly attributed to the Licensing Bureau were about 31.5%.<sup>17</sup>

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<sup>17</sup> See Kris Wilkinson, “Cost Allocations for Business Standards Division,” August 6, 2013, at <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/August-2013/BSD-cost-allocation.pdf>.

Two major reorganizations have occurred since the Department of Labor and Industry inherited licensing boards from the Department of Commerce in 2001. Both reorganizations referenced recommendations by a performance audit in June 2004. The recommendations (relevant to this board study) were for the Department:

- to continue to pursue improvements in administrative efficiency and effectiveness by: A) upgrading and revising administrative policies and procedures; B) developing compilation and reporting standards for management information; and C) establishing performance measurement procedures to assess progress in implementing management reorganization plans;
- to seek statutory authority to set uniform administrative service fees (this occurred in 2005) and to develop procedures to ensure administrative service fees are commensurate with the cost of services (this was part of an effort to track more closely direct hours that were then used to determine indirect hours);
- to work with licensing boards to improve responses to excess cash balances by A) seeking statutory authority for temporary fee adjustments; and B) developing model administrative rules defining procedures for temporary fee adjustments. It is unclear if these were implemented, although the Department did reorganize some rules regarding fees.
- to work with licensing boards to delegate responsibility for review and approval of routine applications to department staff. Almost all, if not all, boards have made this transition for routine applications.
- to standardize license renewal procedures by: A) evaluating renewals distribution and, where necessary, altering renewal dates for certain boards (this was implemented to provide a year-round process for renewals rather than January 1 for most boards or another standard date); B) pursuing revisions to statute to eliminate documentary verification of continuing education hours in favor of random audits to establish compliance (this was done in 2005); and C) phasing out continual renewal cycles in favor of fixed-date renewals (this was part of the year-round switch mentioned above);

**Table 11: Business Standards FTE Staffing\*, Comparison from 2002, 2006, 2013**

Positions	2002	2006	2013
Administrator	1	1	1
Bureau Chiefs	2	2	3
Executive Officers/ Program Managers**	4 3	6 9	11 --
Supervisors (2013)			
Bureau A***	Not	2	3
Bureau B ***	specific	7	2
Other (Compliance)		1	
Investigators/Inspectors	2	5	10
Compliance/Auditor	9	13	7
Support Staff****	31	18	25
IT for Division			9
Fiscal / Administration	1		4
Training Specialist			1
Specialists			
Physician			1
Emergency Med Tech		1	1

\*Excludes Legal Staff, which are assigned to the Commissioner's Office (21 currently).

\*\*The latest reorganization made many program managers into executive officers. The 2014 contact list for boards shows 12 executive officers.

\*\*\*Bureau A in 2006 stands for the Health Care Bureau and in 2013 for the Licensing Bureau. Bureau B in 2006 stands for the Business / Occupational Board Bureau (and includes program specialists with supervisors) and in 2013 for the Board Management Bureau.

\*\*\*\*The org chart shows supervisors along with other specialists in the FTE tally. This table discounts by 1 position in each category in which the supervisor is indicated as being within the unit.

- to consult with boards and work to revise procedures or develop model administrative rules to increase consistency in the disciplinary process by A) classifying disciplinary actions involving minor infractions of administrative rules (the Department has begun to do this); B) establishing an alternative path for disciplinary action involving minor infractions; and C) expanding the range of corrective action options available to boards in cases of administrative noncompliance (there was an effort to deal with tardy license renewals in 2005 by creating standardized timelines).
- to develop model administrative rules to provide guidance for professional assistance programs. (These programs are statutorily allowed for four boards: the Board of Medical Examiners, the Board of Dentistry, the Board of Nursing, and the Board of Pharmacy to help individuals suffering from drug or other impairments, including physical disabilities, to retain their license while being monitored to make certain that the public is not put at risk as the licensee either recovers from the impairment or learns to cope with a physical impairment.) The audit commended the rules adopted by the Board of Nursing as a good approach for other boards to use.
- to develop standardized procedures for compliance inspections; and
- to develop procedures to strengthen supervision of complaint investigations.

The latest major reorganization, which spanned 2012-2013 and was not included in the budget report to the Legislature in 2013, consolidated more of the operations of the boards into a department-wide function. Initial apprehension by board members and licensees appears to have faded as most boards continue to work with the same program managers or executive officers. A comparison of organizational charts is available through the EAIC 2005-2006<sup>18</sup> [website](#) comparing positions in 2002 and 2006, the EAIC November 2009 website listing organizational charts for the [health care](#) and [business licensing](#) bureaus, and the [2013 organization chart](#) showing three bureaus.

Budgets over that time have increased not just through inflation and dealing with a new broadband pay plan but also accounting for increased division-based information technology (IT) staff, paying for new computer systems, and incorporating the changes brought about by the internal division reorganizations, which in some cases increased staffing and in other cases revised the accounting methodology in ways that made direct comparisons difficult. Table 11 provides a limited attempt at a comparison, qualified by a recognition that the Business Standards Division has had an ongoing effort to increase efficiency and improve services, which has resulted in many positions being redefined. For example, some boards who once were served by program managers now have executive officers. By statute only four boards are required to have an executive officer, whether termed an executive secretary (Board of Medical Examiners and the Board of Realty Regulation) or an executive director (the Board of Nursing and the Board of Outfitters).

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<sup>18</sup> This was part of the Senate Joint Resolution No. 35 study of licensing boards assigned to the EAIC. At that time, there were two main licensing board bureaus, one for health care boards and one for business and occupational boards. An additional organization chart showing health care boards prior to the first reorganization is at [http://leg.mt.gov/content/committees/interim/2005\\_2006/econ\\_affairs/meeting\\_materials/HCLB\\_org\\_chart\\_preorg.pdf](http://leg.mt.gov/content/committees/interim/2005_2006/econ_affairs/meeting_materials/HCLB_org_chart_preorg.pdf) and for business and occupational boards prior to the first reorganization is at [http://leg.mt.gov/content/committees/interim/2005\\_2006/econ\\_affairs/meeting\\_materials/BOLBpayband\\_org\\_chart\\_BEFOREREORG.pdf](http://leg.mt.gov/content/committees/interim/2005_2006/econ_affairs/meeting_materials/BOLBpayband_org_chart_BEFOREREORG.pdf). The Study Materials [site](#) also includes the “after” organizational charts for each.

**Problems for boards with not enough cash** – As described earlier for the Board of Hearing Aid Dispensers and selected other boards and programs, not having enough cash can mean that the Department can withhold services except for those services that help to generate revenue, like licensing. As pointed out in the March 2014 EAIC meeting, however, there are three issues: one is for specific boards being short of cash; another is for a board being short of appropriation authority; and the third is for the Business Standards Division itself being short of appropriation authority.

For boards with too little cash on hand, the typical response by the Business Standards Division has been to urge a board to raise revenues through higher licensing fees. If a board that had extraordinary expenses in one fiscal year raises fees in another fiscal year and has minimal expenses, then cash balances can skew upwards. The Department has sought to protect against such spikes by looking at five-year averages to adjust for unexpected situations. A risk with increasing licensing fees is that people may begin practicing without a license, further shrinking the pool of licensees and increasing potential costs of investigations into unlicensed practice. This may not be a problem for boards with larger numbers of licensees but could be problematic for a licensing board with, for example, 100 or fewer licensees.

The Business Standards Division as the administrator--and not the policy maker regarding boards--has been loath to recommend that boards merge to bolster the number of licensees supporting the board. In one merger situation, which the legislature enacted in 2007, the Department has continued to keep the accounting separate between architects and landscape architects in their now combined board.

**Problems with lack of appropriation authority**--The concept of appropriation authority is separate from cash on hand. Boards may have cash on hand but not the appropriation authority through the legislative budgeting process to spend that money. However, the state allows movement of appropriation authority to various programs within a department, as long as those programs have cash to use the spending authority. So when the Business Standards Division receives appropriation authority on behalf of all boards and programs plus the Building Codes Bureau and the Weights and Measures Bureau of \$31,095,613 for the FY 2014-2015 Biennium, that means that, if necessary, boards that run short of their own portion of that appropriation authority might end up borrowing from other boards or bureaus that were not using the authority. For example, from 2008 until about 2011 during the Great Recession, the Building Codes Bureau was not as busy with building inspections as expected, so some of that bureau's appropriation authority was used by licensing boards in need of more authority. The boards still had to cover the costs. Table 12 shows boards in FY 2010 and FY 2013 that exceeded their appropriation authority (and therefore had to borrow). More than half the 33 boards (21 in all) exceeded their appropriation authority in FY 2013. This information from the Department is on the March 2014 EAIC [website](#) under Boards' plus-minus budgets.

Without an in-depth look at the reasons for the overages in various years, it is difficult to say whether the shortfalls occurred because of unexpected expenses, the board choosing to pursue extras for which they did not have appropriation authority, or the disconnect between what the Legislature appropriated and what the board thought it ought to be able to spend. One concern is that several boards have had overages in more than 3 of the latest fiscal years: Board of

Chiropractors, Board of Dentistry, Board of Massage Therapists, the Board of Realty Regulation, and the Board of Veterinarians.

**Table 12: Boards Exceeding Appropriation Authority by more than 1% in FY 2010 and FY 2013**

Board	FY 2010 - % of budget + overage	Board	FY 2013 - % of budget + overage
Chiropractors	17.2% - \$15,000	Athletic Trainers	8.1% -- \$1,500
Dentistry	8.9% -- \$20,000	Chiropractors	6.6% -- \$6,500
Engineers and Land Surveyors	17.1% -- \$55,000	Clinical Lab Science Practitioners	25.0% -- \$15,000
Massage Therapy	44.2% - \$20,000	Dentistry	21.1% -- \$50,000
Outfitters	3.1% -- \$20,000	Engineers and Land Surveyors	12.6% -- \$47,800
Pharmacy	3.2% -- \$20,000	Funeral Service	106.7% -- \$99,700
Physical Therapists	38.5% -- \$27,000	Massage Therapists	68.6% -- \$51,500
Private Alternative Adolescent Residential / Outdoor Programs	83.2% -- \$40,000	Medical Examiners	7.5% -- \$101,500
Private Security	8.9% -- \$225,082	Nursing	6.1% -- \$60,000
Realty Regulation	11.6% -- \$82,500	Occupational Therapists	51.6% -- \$17,400
Veterinarians	11.3% -- \$11,000	Optometrists	82.9% -- \$26,524
		Pharmacy	51.6% -- \$17,400
		Psychologists	50.3% -- \$79,544
		Public Accountants	5.3% -- \$19,500
		Real Estate Appraisers	57.6% -- \$130,000
		Realty Regulation	16.3% -- \$130,500
		Respiratory Care Therapists	63.2% -- \$21,000
		Sanitarians	42.6% -- \$10,500
		Social Workers / Prof. Counselors	27.1% -- \$52,000
		Speech Pathologists / Audiologists	70.6% -- \$33,500
		Veterinarians	28.3% -- \$29,500

The Business Standards Division told the EAIC in March 2014 that appropriation authority was less likely to be in surplus in the future, and the Department’s fiscal officer suggested that an option for resolving sufficient cash but insufficient appropriation authority might be to revise the accounting structure for the licensing boards so that instead of using a state special revenue account dedicated to each board, each board would use an enterprise fund. Depending on how the enterprise funds might be set up, the Legislature could specify a continued oversight role or the funds could be set up to operate without legislative appropriations oversight. An accounting expert with the Department of Administration provided background information to the EAIC in July 2014<sup>19</sup> indicating that a decision to create 33 enterprise funds (representing the boards) was not to be taken lightly, given accounting standards that recommended fewer rather than more “funds” (in contrast to accounts within funds). The Department of Labor and Industry decided not to pursue the enterprise fund approach but instead to ask for legislative changes to the definition of “fees commensurate with costs” to include options for board contingencies. This

<sup>19</sup> See presentation entitled “Enterprise vs State Special Revenue Funds”, <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/July-2014/board-enterprise-funds-spec-rev-feldman.pdf>

would resolve the audit finding that showed boards with too much cash but would not deal with problems of boards with too little cash.<sup>20</sup>

**Problems for boards with too much cash**--The Department also is to “monitor a board’s cash balances to ensure that the balances do not exceed two times the board’s annual appropriation level and adjust fees through administrative rules when necessary.” It is the latter issue that was the subject of the Department’s financial compliance audit in October 2013<sup>21</sup> and is also the subject of LC 0446, a proposed bill from the Department for the 2015 session to clarify the definition of fees commensurate with costs. From the Department’s standpoint, the fees commensurate with costs issue is a problem in that flexibility is not part of 37-1-134, MCA,<sup>22</sup> nor is there allowance for boards to have more money in their accounts to deal with unexpected situations.

The concern pointed out by the financial compliance audit in October 2013 was that the excess fund balances for some of the licensing boards violated 17-2-302, MCA. That statute says accounts may not maintain a cash balance of more than twice the annual appropriation authority. The audit suggested that some boards may be overcharging their licensees. The rationale for what may be an overcharging of licensees is that the boards are to be self-supporting and because there is no money set aside specifically for unexpected legal or other unanticipated costs, there ought to be a cushion for the boards to rely upon in a financial bind. The Department has suggested a bill draft that would allow a contingency within the “fees commensurate with costs” statute. The contingency is broad and is not limited to legal fees and investigations, which may be one way to narrow the approach to areas acknowledged to be problematic for budgeting because they are not predictable. Budgeting discussions are in the 2013-2014 EAIC’s final report and were a theme during the 2011-2012 interim as well. An example of how boards draw down balances or exceed their cash balances is provided in Table 13. The \$420,983 cash balance for the Board of Social Work Examiners and Professional

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<sup>20</sup> For a review of the different Department of Labor and Industry proposals as they affected boards with too little cash, see an EAIC staff document entitled “Board Financial Accounting Options vis-a-vis Concerns Raised by Boards”, prepared for the July 2014 EAIC meeting: <http://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/July-2014/board-financial-options-vs-concerns.pdf>.

<sup>21</sup> See <http://leg.mt.gov/content/Publications/Audit/Report/13-15.pdf>.

<sup>22</sup>37-1-134. *Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.*

Counselors in 2014 indicates that they will be more than twice their annual appropriation of \$191,733 unless some drawdowns occur before the fiscal yearend.

Table 13 shows the Board of Radiologic Technologists drawing down its cash balance, the Board of Sanitarians going from years of negative cash balances to positive territory, and the Board of Social Workers and Professional Counselors having healthy cash balances until 2010 and then experiencing a large fee hike in 2012 (its first since 2003). The increase in fees from \$100 a year to \$175 a year for renewals boosted revenues by nearly 63%. (Original application costs jumped from \$50 to \$200 for social workers and professional counselors and from \$100 to \$200 for marriage and family therapists.)

As can be seen from Table 13 showing expenditures greater than revenues, diminishing cash balances, surges in cash balances, and borrowed appropriation authority, the budgeting for licensing boards is no easy feat. Unanticipated legal costs, just for investigation of unprofessional conduct, can throw off an otherwise carefully planned budget. Although lawsuits

**Table 13: Changing Cash Balances and Revenue-to-Expenditure Comparisons for Select Boards**

		2006	2007	2008	2009	2010	2011	2012	2013	2014
Radiologic Technologists	Cash Balance	\$99,548	\$102,836	\$99,053	\$101,469	\$95,558	\$84,311	\$76,165	\$48,076	\$47,465
	Expenditures	\$80,889	\$87,499	\$84,206	\$85,483	\$92,432	\$88,471	\$109,139	\$82,512	\$97,662
	Revenues	\$84,177	\$83,716	\$86,622	\$79,572	\$81,185	\$80,325	\$81,050	\$81,900	\$83,907
	Budget Authority							FY 2012 \$92,526	FY 2013 \$92,583	
Sanitarians	Cash Balance	-\$6,233	-\$4,348	-\$6,608	-\$8,765	-\$9,749	-\$724	\$5,582	\$12,676	\$10,577
	Expenditures	\$15,984	\$24,417	\$22,324	\$35,857	\$24,830	\$26,944	\$25,126	-\$33,259	-\$28,344
	Revenues	\$22,417	\$22,157	\$20,167	\$34,873	\$33,854	\$33,250	\$32,220	\$31,160	\$28,941
	Budget Authority							FY 2012 \$24,631	FY 2013 \$24,642	
Social Workers/ Prof. Counselors	Cash Balance	\$148,081	\$135,304	\$155,240	\$123,893	\$69,959	\$60,557	\$34,379	-\$24,473	\$12,879
	Expenditures	\$149,174	\$137,286	\$190,903	\$213,402	\$191,295	\$223,676	\$268,963	\$226,204	\$265,946
	Revenues	\$136,396	\$157,222	\$159,556	\$159,469	\$181,893	\$197,398	\$210,111	\$263,556	\$420,983
	Budget Authority							FY 2012 \$191,630	FY 2013 \$191,733	
NOTES: Expenditures are a negative but do not show a minus sign. The minus sign for cash balances indicates a deficit. Negative cash balances are shaded.										

might be defended by the Department of Administration's Risk Management and Tort Defense Division, which has an entirely different budgeting mechanism, the uncertain nature of the licensing boards' legal costs is one reason the Department has proposed contingency language for the "fees commensurate with costs" language in 37-1-134, MCA. In the 2013 session, the Department also proposed to capture some of the legal costs expended against individuals found by certain boards to be practicing without a license. That bill, House Bill No. 109, did not get to the House floor for debate. At least one alternative approach, indicated by LC 0253 in the

2015 session by Rep. Ryan Lynch, proposes to address the way fines are handled by licensing boards.

## **Conclusion**

The effort to determine whether licensing boards remain necessary for public health, safety, and welfare resulted in all boards getting an endorsement for retention. However, problems were obvious in both the 2011-2012 and the 2013-2014 interims with certain boards. These problems ranged from budgetary concerns to conflicts within some boards by various professionals licensed by those boards. A survey of licensees provided an opportunity for many licensees to comment. In general, most appeared satisfied with their boards' efforts to support their profession.





**Appendix A: Responses to Questionnaires by Board Members or Department Staff on their Behalf**

<b>Question 1: What is the public health, safety, or welfare rationale for licensing and regulating your profession or occupation?</b>
<b>Board of Alternative Health Care</b> - Question 1
The regulation of direct-entry midwives through licensure serves the public interest as they advise and assist women during pregnancy, labor, natural childbirth, and the postpartum period. The regulation of naturopathic physicians serves a public health interest as they practice a system of primary health care for prevention, diagnosis and treatment of human health conditions, injury, and disease. Naturopathic medicine is a distinct health care profession and contributes to the freedom of choice in health care. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. Licensing and continued oversight of these professionals is necessary to safeguard the public safety and welfare of the citizens of Montana.
<b>Board of Architects and Landscape Architects</b> - Question 1 (rationale for licensing?)
The board protects the public from unprofessional, improper, unauthorized, and unqualified practice of architecture and landscape architecture. The board accomplishes this mission through the performance of three key functions: licensure, regulation, and discipline.
<b>Board of Athletic Trainers</b> - Question 1 (rationale for licensing?)
The regulation of Athletic Trainers was enacted in 2007. Prior to legislation many well-meaning though ill-prepared individuals called themselves Athletic Trainers because they had participated in an athletic taping class in high school. The statute clearly defines an "Athletic Trainer" as an individual who is licensed to practice athletic training. "Athletic training" is defined as the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. Though not clearly addressed, licensure of Athletic Trainers serves the public interest by protecting society's at-risk individuals, the youth of Montana. Youth of Montana deserve the highest quality of health care. The board ensures that all Licensed Athletic Trainers have the education and qualifications required for the profession.
<b>Board of Barbers and Cosmetologists</b> - Question 1 (rationale for licensing?)
The Professions/Occupations that are regulated by this board are those of a very few boards that require the licensee to physically touch their customers/patrons. It is possible that licensees under the jurisdiction of this board touch more people's skin, hair, and scalp than medical doctors do their patients on a daily basis. This being the case, proper application of sanitation, disinfection, and, when appropriate, sterilization procedures, must be observed to protect the public, to guard against the spread of infection.
The regulation of Barbers, Cosmetologists, Estheticians, Electrologists, Instructors, Manicurists through licensure serves the public interest by protecting the public against the risk of bodily harm by the use of practices (proper use of chemicals, implements, machines, and equipment) that someone has been adequately trained to use and the knowledge of infection control by the proper disinfection/sterilization of equipment that is used on the public.
During the practice of these professions/occupations, there is the possibility of the licensee coming into contact with body fluids and blood, either associated with the service, or by the accidental misuse of a tool or an implement. If this should occur, appropriate blood spill and blood-borne pathogen procedures must be observed. It is this board's responsibility to insure (sic) that proper education, rulemaking, and ongoing facility and practitioner inspections are consistently applied for the protection of the public.

**Board of Chiropractors** - Question 1 (rationale for licensing?)

1. It is the function of the Board of Chiropractors to:

- a. Oversee the applications of Doctors of Chiropractic to practice in the State of Montana. This consists of making sure new applicants have credentials showing their proper training and education to meet the requirements in place by the Board of Chiropractors, and to insure that new applicants have no past history of criminal or disciplinary actions that would pose a risk to the public if they were to be granted a license. The process also includes that applicants have adequate knowledge of the rules and regulations that govern a practitioner as are specific to the State of Montana.
- b. Monitor the relicensing of Doctors of Chiropractic on an annual basis. This includes collecting fees necessary for the support of the costs of the Board and also insuring that they have met the requirements of continuing education as stated in the rules and regulations.
- c. Handle any complaints formally instituted by the public regarding the proper engagement of chiropractic services by a specific practitioner. This includes investigating complaints, making judgment on any complaints, and imposing any disciplinary measures to a Doctor of Chiropractic, should a complaint be found to have merit.
- d. Monitor the current rules, regulations, and statutes for the State of Montana as it pertains to the practice of chiropractic. This includes changing existing rules or instituting new rules to keep current with the proper administration of chiropractic to ensure the safety of the public.

Chiropractors in the State of Montana are considered to be primary portals of entry into the health care system, with the responsibility of diagnosing, properly treating, and properly referring patients for care of their health problems. Chiropractors, medical doctors and osteopaths are the only health practitioners with the responsibility to diagnose health problems in the State of Montana. It is imperative that Doctors of Chiropractic meet the necessary standards of education for the proper diagnosis of patients. This can only be insured if this occupation is regulated to ensure that a Doctor of Chiropractic has met the requirements for such adequate education.

**Board of Clinical Laboratory Science Practitioners** - Question 1 (rationale for licensing?)

The board protects the public from incompetent, unprofessional, and unethical health providers. They accomplish this mission through the performance of three key functions: licensure, regulation, and discipline.

**Board of Dentistry** - Question 1 (rationale for licensing?) Responses to questions 1-6 by Dale Chamberlain, DDS, then Board presiding officer, for 8/23/11 EAIC meeting

Dental professionals have a direct and immediate effect on the health, safety, and welfare of the people of Montana. The actions of the professionals can be irreversible; therefore, a monitoring system is needed. While most dental professionals are very ethical and have a high set of morals, there are those few who will do or attempt to do things that are inappropriate.

**State Electrical Board** - Question 1 (rationale for licensing?) Responses by Jack Fisher, chair, 12/15/11

Being a licensed electrician implies that the person has all certificates and licenses, as well as all the education and training, needed to perform aspects of wiring for, installing, and repairing electrical apparatuses, including equipment for light, heat and power. Licensed electricians protect the health of Montanans by being statutorily subject to the National Electrical Code (NEC). Their work is inspected for safety against poor installations that could cause house or building fires. Without the proper education and technical knowledge to understand the NEC, many homes and buildings would be improperly wired. Structures require proper conduit and correct size wiring, along with the correct breaker size in order to insure the wires can transmit the correct voltage. If the wiring is not properly sized, connected, or run, the safety of the home owner or occupiers of the buildings will be jeopardized.

<p><b>Board of Funeral Service</b> - Question 1 (rationale for licensing?)</p>
<p>Licensing of funeral industry workers and inspection of establishments protects the public from deceptive funeral business practices and ensures that persons who handle and care for deceased persons have the proper training and education to protect members of the public and funeral business employees from risks posed by exposure to infectious disease, medical wastes and sharps, hazardous chemicals in the embalming process, and hazardous medical implants such as pacemakers or radioactive medications in the cremation process.</p>
<p><b>Board of Hearing Aid Dispensers</b> - Question 1 (rationale for licensing?)</p>
<p>Hearing aid dispensers predominately service disabled and the elderly population. The Board protects the public from incompetent, unprofessional, and unethical health providers. The Board accomplishes this mission through the performance of three key functions: licensure, discipline, and regulation.</p>
<p><b>Board of Massage Therapists</b> - Question 1 (rationale for licensing?)</p>
<p>The regulation of massage therapists through licensure serves the public interest by protecting the public against massage therapy practices that may result in unreasonable risk of physical injury to the client. Proper training [is needed] in the use of a system of structured touch pressure, positioning, or holding to soft tissues of the body in order to restore health and well-being by promoting pain relief, stress reduction, and relaxation. In addition, regulation of the practice of massage therapy helps protect the public against inappropriate or criminal sexual conduct and practices engaged in by the illegitimate or unethical practitioner.</p>
<p><b>Board of Medical Examiners</b> -Question 1 (rationale for licensing?) - Responses submitted by the BOME Executive Director</p>
<p>The members and staff of the Board of Medical Examiners believe in the mission of the Board: "Protect the public from incompetent, unprofessional, and unethical health providers." We believe that is a strong rationale for the three aspects of our work -- licensing, regulation, and for a small minority, discipline of the health care providers under our authority,.</p> <p>Put another way, it is critical that Montanans trust their health care provider. The Board of Medical Examiners works to insure that trust is earned, by evaluating the education, knowledge, character, and fitness of each licensee. When that trust is broken, the Board also is there to address the situation and affect the necessary changes.</p> <p>To emphasize the durability of that mission, let me quote from one of the first annual reports of the Board, made to Governor Joseph Toole in December of 1892:</p> <p style="padding-left: 40px;">"It is well understood that...persons who may require the services of a physician in an emergency, or those who may have to send for a doctor in a community where they are unacquainted, may be assured they will secure the services of those who are accomplished and qualified physicians, and not run the risk...of placing their health and the lives of themselves and their families in the hands of pretenders who do not possess the essential qualifications to practice medicine."</p> <p>In far more recent times, the legislature has stated clearly that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. See 37-3-101, MCA.</p> <p>State laws also are very clear that the practice of medicine and other health professions in Montana either require a license to practice or a legal exemption from that requirement.</p>

**Board of Nursing** - Question 1 (rationale for licensing?)

As per the Board of Nursing mission statement: to protect the health, safety, and well being of the Montana citizens through the licensing of competent nursing professionals and by the regulation of the practice to promote the delivery of quality health care. The Board believes that the public relies on the Board to diligently review public complaints filed against licensees and take necessary actions if just cause is given to disciplinary actions as one means to protect and give safe and effective nursing to Montana citizens. The Board also takes seriously its role in licensing applicants who have demonstrated the proper credentials and responsible citizenship.

**Board of Nursing Home Administrators** - Question 1 (rationale for licensing?)

The first 3 questions are answered by the federal mandate for state licensure of Nursing Home Administrators:

In 1965 President Johnson signed into law the Social Security Amendments which established the Medicare and Medicaid programs. Medicare contained provisions for nursing home benefits for extended care and the Medicaid program broadened the scope of medical assistance that states could make available to the poor and the medically needy. The Social Security Act was further amended in 1967. These amendments deal primarily with skilled nursing facilities receiving payments under a state Medicaid plan and established a new class of facilities entitled intermediate care facilities. It was this legislation that Senator Edward M. Kennedy offered an amendment to require states to establish programs for licensing nursing home administrators. Sections 1903(a)(29) and 1908 of the Social Security Act (42 USC 1396a(a)(29) and 1396g) mandate that a state plan for medical assistance include a state program for the licensing of administrators of nursing homes and spells out the requirements for such licensing. The regulations implementing these provisions are contained in the Code of Federal Regulations (42 CFR Parts 431.700 to 431-715).

The Federal Mandate notwithstanding, there are obvious public health & safety rationales for the public oversight of the nursing home administration profession. The residents of nursing homes include some of our most vulnerable populations, the elderly and disabled. Unfortunately, many of these residents do not benefit from frequent involvement or monitoring by friends or family. In fact, in many cases the nursing home is the payee/recipient of resident's social security or retirement earnings and manages their funds. While the vast majority of individuals pursuing a career in managing nursing homes are motivated by the intrinsic values of improving quality of life for their residents, nevertheless, there are temptations for the unscrupulous. Oversight by the DPHHS and the licensure board with appropriate sanctions for unprofessional behavior are appropriate and needed.

**Board of Occupational Therapy Practice** - Question 1 (rationale for licensing?)

The professions of Occupational Therapist and Occupational Therapist Assistant that are regulated by this Board are those that generally work in a healthcare environment or an educational environment (primary and secondary school systems). This being the case, proper patient assessment and use of modalities allowed under this licensure are critical. It is this Board's responsibility to ensure that proper education, rulemaking, and an ongoing continuing education are consistently applied to protect the public.

**Board of Optometry** - Question 1 (rationale for licensing?)

The Board protects the public from incompetent, unprofessional, and unethical health providers. The Board accomplishes this mission through the performance of three key functions: licensure, regulation, and discipline. In addition, optometrists hold DEA (Drug Enforcement Administration) licenses to use controlled substance drugs in their treatments.

**Board of Outfitters** - Question 1 (rationale for licensing?)

Some activities conducted by outfitters, guides, and professional guides within the scope of their authorized services can be inherently hazardous to participants. It is the policy, intent, and purpose of the board to provide quality regulatory functions and services to the profession it regulates and to the public in order to promote, maintain, and preserve the health, safety, and welfare of the public.

The outfitting industry provides a service that represents a definition and impression of the state of Montana itself and, to a large degree, serves as the interface between hunters and anglers and Montana's landowners. Outfitters accompany Montana's residents as well as Montana's out-of-state visitors in the pursuit of Montana's fish and wildlife, and outfitters have a significant amount of interactions with Montana's landowners and the agencies that regulate Montana's public lands.

**Board of Pharmacy** - Question 1 (rationale for licensing?)

There is an unchallenged public policy in favor of licensing and regulation of the pharmacy profession and pharmaceutical industry. The responsibility of the Board of Pharmacy involves licensing the PRACTITIONER as well as the PHARMACEUTICAL SUPPLY CHAIN. Licensing of the pharmacist involves the culmination of background check, verification of graduation from accredited school of pharmacy, and successfully passing national licensing exam, all of which are regulated by the Board. In addition to registered pharmacists, the Board also oversees and licenses the PHARMACY TECHNICIAN. Montana was one of the first states in the country to require a national examination as a requirement of technicians to practice in our state, and many other states are adopting that requirement. Every state in the U.S. has a Board of Pharmacy to regulate the profession in their respective states, and all state Boards of Pharmacy belong to the National Association of Boards of Pharmacy (NABP), an international impartial association that assists its member boards and jurisdictions in developing, implementing, and enforcing uniform standards for the purpose of protecting the public health.

Boards of Pharmacy are also responsible to license the pharmaceutical supply chain. Our regulation and oversight of retail pharmacies, hospital pharmacies, home infusion pharmacies, mail order pharmacies (including those entities that are outside of Montana but mail prescriptions to patients in Montana), as well as wholesalers and distributors ensure that integrity of the products that reach patients as well as the competency of those involved in the distribution of those products is maintained. NABP offers accreditation programs for drug wholesale distributors, as well as online pharmacies, and the Montana Board of Pharmacy requires NABP accreditation before we will grant licensure to those entities. In addition, NABP operates and provides access to a national clearinghouse of licensure information on pharmacists, pharmacies, technicians, interns, and wholesale distributors provided to member Boards, and provides monthly reporting of disciplinary actions against licensees nationally.

**Board of Physical Therapists** - Question 1 (rationale for licensing?)

The board protects the public from incompetent, unprofessional, and unethical health providers. The board accomplishes this through three key functions: licensure, regulation, and discipline.

**Board of Plumbers** - Question 1 (rationale for licensing?)

A plumber is a craftsman who specializes in installing and maintaining systems used for water, sewage, drainage, and piping. A master plumber is a plumber who has demonstrated through testing and experience that he/she has truly mastered the profession. It takes 8 years before one can test for a master plumber license. The fact is that plumbers are the first line of defense in the fight against unsafe drinking water. You may have heard the slogan: "the plumber protects the health of the nation". This slogan refers to plumbers keeping your drinking water safe by preventing contamination from sewer and other wastes that may come in contact with potable/drinking water. For example, the Centers for Disease Control documented 57 waterborne disease outbreaks from 1981 to 1998, which resulted in over 9,700 cases of illnesses caused by water that was contaminated in the water distribution systems. It was estimated that over 50% of the contamination was due to cross connection and (continued next page)

**Board of Plumbers, Q1 - continued**

backflow issues, easily prevented through competent plumbing practices. In other words, sewer water and other contaminants can enter into the water supply without proper safeguards that licensed plumbers are able to provide. Fewer than 10,000 cases of waterborne illness in this great nation of 300 million is minimal, thanks to a competent plumbing industry. A known but infrequently mentioned fact is that the practical absence of Typhoid fever and Cholera in our country is thanks, largely, to the plumbing industry. In addition to protecting the water supply plumbers make sure that the drainage system has the proper traps and vents to keep harmful gases, bacteria and other bugs from climbing out of the sewer system and into our homes. In contrast, 7.5% of deaths in India are attributed to water and sanitation issues. The World Health Organization has said that the SARS epidemic in Asia some years ago causing 100s of deaths was spread through inadequate plumbing.

**Board of Private Alternative Adolescent Residential or Outdoor Programs - Question 1 (rationale for licensing?)**

The members and staff of the Board of Private Alternative Adolescent Residential or Outdoor Programs (PAARP) believe in the mission of the board:

To license and regulate PAARP as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

We believe this is a strong foundation for the three aspects of our work -- licensing, regulation, and in a small number of cases, discipline of the facilities under our authority. It is critical that Montanans trust their health care facilities particularly where vulnerable youth are concerned.

The board works to ensure that trust is earned, by evaluating the program's plan of operation, the policies and procedure that target behavior modification plans, routine, and emergency medical and psychological care, the competence and character of the program owners, managers, and direct care staff, and the safety of each licensed program. When situations arise, we are available to address those situations and effect (or initiate) the necessary changes.

**Board of Private Security - Question 1 (rationale for licensing?)**

As per Montana Code Annotated §37-60-103, the purpose of the Board of Private Security (the Board) is to:

"increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, private investigators, and process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, private investigators, or process servers".

**Board of Professional Engineers and Professional Land Surveyors - Question 1 (rationale for licensing?)**

Professional engineers have a direct and immediate impact on public health, safety and welfare as they are responsible for designing the physical components of Montana's infrastructure. Likewise, professional land surveyors directly impact the public as their measurements and analysis of the ever-changing landscape allow for safe and proper development of the state. Montana's roads, buildings, communications, etc., depend on the work of these professionals. Regulation of these professions is necessary to ensure that qualified individuals perform this work ethically in the state, protecting the people of Montana.

<b>Board of Psychologists</b> -Question 1 (rationale for licensing?)
The regulation of psychologists through licensure serves the public interest by protecting society's most vulnerable individuals, including those who struggle against suicidal ideations, major depression, those about whom questions have been raised regarding competency in relation to parenting, the ability to stand trial for a crime, those who need to sort through some major decisions in their life, or to simply be able to prove that they should remain free from institutional commitment.
<b>Board of Public Accountants</b> - Question 1 (rationale for licensing?)
This Board is in place to protect the public's financial welfare. The CPA [certified public accountant] profession is extremely broad, not only in the services the CPA provides, but also in the various third parties who rely on the CPA's work. The services provided to clients are relied upon by taxing authorities, banks and other lending institutions, investors, governmental entities providing grants, donors, boards of directors, family beneficiaries, etc. The reliance on the services of CPAs by outside third parties is what sets the public accounting profession apart from all others. It amplifies the importance of the profession's ethical obligations for independence, integrity, and objectivity that directly relate to serving the public interest.
<b>Board of Radiologic Technologists</b> - Question 1 (rationale for licensing?)
The regulation of Radiologic Technologists through licensure serves the public interest by protecting the public against becoming contaminated against harmful radiation caused by x-rays. Proper training in the use of the x-ray equipment and human anatomy is crucial in providing doctors accurate images in order to diagnose or treat a patient.
<b>Board of Real Estate Appraisers</b> - Question 1 (rationale for licensing?)
The [rationale centers on the] health, safety, and soundness of the federally insured depositories and lending institutions that rely upon accurate and credible real estate appraisals for their lending decisions. It is a federal mandate for the states to oversee the licensing of real estate appraisers whose competency has been examined and ensure that appraisers have effective supervision.
<b>Board of Realty Regulation</b> - Question 1 (rationale for licensing?)
<p>The Board exists to protect consumers when dealing in housing or other real estate, whether those persons are buying, selling, renting, or leasing the real estate. The real estate profession is an integral part of the daily lives of all Montana citizens.</p> <p>Purchasing a home or other real estate is often the single largest expenditure or investment that a person will make in their lives. A home typically becomes a person's largest financial asset. In addition, real estate agents are often involved in complicated sale or leasing transactions involving agricultural and commercial properties. Real estate transactions can be very complicated and fraught with problems whether intentional or accidental. Public health, safety, and welfare is at stake when proper disclosures are not made - i.e. lead-based paint, asbestos, mold. It is essential that consumers receive competent, fair, equitable, and honest counsel when buying and selling real estate.</p> <p>The rental/leasing of real estate is utilized by a large sector of the public, often involving less sophisticated tenants and people entering the housing market for the first time. Owners must receive competent, fair, and equitable treatment when hiring someone to secure tenants for investment property. Likewise, tenants in rental property also have a right and expectation of competent and fair dealing from persons who manage the leased properties.</p> <p>In all real estate transactions, large amounts of money are received, handled, held, and transferred. Much of Montana's economy depends on these transactions going smoothly.</p>



**Board of Respiratory Care Practitioners** - Question 1 (rationale for licensing?)

37-28-101, MCA states:

*The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety, and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care.*

The Board of Respiratory Care Practitioners takes its responsibility seriously. It is not overstating to say that the practitioners licensed and regulated by this board literally help their patients and clients with the breath of life. From chronic illness to emergency care, management of the respiratory system is critical for individual health. Appropriate regulation of these caregivers is important for the protection of public health and safety, as is the effort to keep unqualified or unscrupulous individuals out of the practice.

**Board of Sanitarians** - Question 1 (rationale for licensing?)

Registered Sanitarians (RS) are part of the public health system that includes registered public health nurses, epidemiologists, and others concerned with issues of public health significance. The profession of sanitarians is also known as Environmental Health Specialist. Environmental Health addresses the interaction between human health and the environment. Our health is affected by the quality of air, land, food, and water resources. Maintaining and improving public health by managing those environmental factors that affect health is the goal of this professional group.

Examples of duties associated with the environmental health field include:

- On-site wastewater treatment system permitting, design, and inspection
- Assuring wastewater system compliance with the Montana Water Quality Act
- State licensing and inspection of retail food establishments
- State licensing and inspection of wholesale food manufacturers
- State licensing and inspection of public accommodations
- State licensing and inspection of trailer parks, work camps, campgrounds, youth camps
- State licensing and inspection of pools, spas, and similar facilities
- Licensing and inspection of tattoo parlors
- Inspection of day care centers
- Inspection of group homes for the disabled
- Review of subdivisions under Title 76, chapter 4, MCA, the Sanitation in Subdivisions Act. Includes review of water, wastewater, storm water, and solid waste management facilities.
- Air quality program activities
- Solid waste compliance issues
- Public water system inspection contract under the Montana Dept. of Environmental Quality
- Education and training on all of the above
- Compliance and enforcement actions on all of the above.

In Montana, those working in environmental health for a local government agency are required to be licensed by the Montana Department of Labor and Industry; state employees may require licensure if required by their position description.

**Board of Social Workers/Professional Counselors/Marriage and Family Therapists** - Question 1 (rationale for licensing?)

The Board of Social Work Examiners and Professional Counselors believes in the mission of the board: The profession of Social Work, Professional Counseling, and Marriage and (continued on next page)

<p><b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists – Q 1- continued</b></p>
<p>Family Therapy profoundly affects the lives of people of this state. It is its purpose to provide for the common good by ensuring the ethical, qualified, and professional practice of Social Workers, Professional Counselors, and Marriage and Family Therapists. The regulation of Social Workers, Professional Counselors, and Marriage and Family Therapists through licensure serves the public interest by protecting society's most vulnerable individuals, including those who struggle against suicidal ideations, major depression, bi-polar disorders, or schizophrenia. We believe this is a strong rationale for the three components of our work: licensing, regulation, and discipline of the health care providers under our authority. It is critical that Montanans trust their health care provider. The Board of Social Work Examiners and Professional Counselors works to ensure that confidence is earned by evaluating the education, clinical experience, knowledge, and character of each licensure applicant. When that confidence is broken, the board is available to address the circumstances and impose necessary change.</p>
<p><b>Board of Speech-Language Pathologists and Audiologists - Question 1 (rationale for licensing?)</b></p>
<p>As per the Board of Speech-Language Pathologists and Audiologists mission statement: "in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified Speech-Language Pathologists and Audiologists and to help ensure the availability of the highest possible quality Speech-Language Pathology and Audiology services to the people of this state with communicative disorders, it is necessary to provide regulatory authority over persons offering Speech-Language Pathology or Audiology services to the public".</p> <p>The board believes that the public relies on it to diligently review public complaints filed against licensees and take necessary actions if just cause is given for discipline as a means to protect and give safe and effective services to Montana's citizens. The board takes this role seriously by only licensing applicants who have demonstrated the proper credentials and responsible citizenship.</p>
<p><b>Board of Veterinary Medicine - Question 1 (rationale for licensing?)</b></p>
<p>Veterinarians serve a public health interest as they diagnose and treat contagious diseases in animals that can be communicated to humans, such as rabies, anthrax, brucellosis, and avian flu. Food animals such as cattle, chickens, sheep, etc., are monitored and treated by veterinarians so that the human food chain is safe. Veterinarians help maintain a healthy pet population, free of disease and pain, which reduces animal-human bite contacts. Veterinarians are currently being trained in bio-terrorism response to address the threat of possible biological agents being introduced through animals in feed lots or other locations. Veterinarians hold DEA (Drug Enforcement Administration) licenses to order and use controlled substance drugs in their treatment of animals. They utilize nuclear medicine such as CAT scans and x-ray machines when diagnosing. Licensing and continued oversight of these professionals is necessary to safeguard the public safety and welfare of the citizens of Montana.</p> <p>Other professions licensed by the Board of Veterinary Medicine are:</p> <ol style="list-style-type: none"> <li>1) euthanasia technicians who work in a humane society licensed by the Board and who are certified by the Board to administer a controlled substance for the purpose of euthanizing animals; and</li> <li>2) embryo transfer technicians who are certified to use certain drugs, under the supervision of a veterinarian, for the purposes of assisted bovine reproduction. Licensing and continued oversight of these professionals is necessary to safeguard the public safety and welfare of the public in these areas.</li> </ol>
<p><b>Question 2: If your profession is not licensed, what public protection would be lost?</b></p>
<p><b>Board of Alternative Health Care - Question 2</b></p>
<p>Women who choose to birth outside of hospital settings would be without professional treatment. Persons attempting to practice naturopathic medicine without proper education, training, and testing would expose the public to increased risk of harm from incompetence and malfeasance. If a (continued on next page)</p>

<b>Board of Alternative Health Care – Q. 1 - continued</b>
problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints.
<b>Board of Architects and Landscape Architects - Question 2 (If no license, is public protected?)</b>
The public would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the Board ensures the public's protection through minimum qualifications for licensure and the discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the public.
<b>Board of Athletic Trainers - Question 2 (If no license, is public protected?)</b>
Yes. Licensure of Athletic Trainers ensures the public that those individuals with the education, qualifications, and experience will be providing these services. Before licensure, any person could claim to be an Athletic Trainer with virtually no qualifications. This put the athletes and other Montana citizens at great risk. Qualifications as a Licensed Athletic Trainer include a minimum of a Bachelor's degree approved by the National Athletic Trainers Association Board of Certification, clinical supervision hours, and successful completion of a national exam. As a result of these standards, the licensees are qualified health care professionals who are considered experts in the field of sports medicine. During the 2013 legislative session SB 112, the Youth Concussion Act, was passed. Licensed Athletic Trainers are one of the health care providers recognized by this legislation to provide services referenced in the bill.
<b>Board of Barbers and Cosmetologists - Question 2 (If no license, is public protected?)</b>
Licensure of the professions is preceded by and premised upon strict standards of education and periods of supervised experience for students. Students are educated in the proper and safe uses of the tools, implements, equipment, and chemicals that are necessary to their practice. Students receive formal instruction in: anatomy, physiology, chemistry, and the recognition of diseases and disorders that are associated with the hair, skin, and nails. If this education were not required, followed by board- approved nationally accepted theory and practical exams to determine competency, prior to issuing of licenses, the public would be exposed to a vast variety of unsafe, unsanitary, and disease-spreading practices.
The failure to regulate those who would practice under this board would be exposing the public to potentially harmful procedures and infection. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to ensure that competency is met for the profession it regulates.
<b>Board of Chiropractors - Question 2 (If no license, is public protected?)</b>
Public protection would also be lost if there were not disciplinary measures to be wagered against the license of a practitioner. The public deserves to know that the practitioner they are engaging the service of is licensed in good standing with the adequate skills as determined by the Board of Chiropractors. If a practitioner does not have the requirements of licensing, the public would not have any recourse in the case of a complaint of improper practice procedures. Malpractice insurance for practitioners mandates that the practitioner is licensed.
<b>Board of Clinical Laboratory Science Practitioners - Question 2 (If no license, is public protected?)</b>
The patient would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the Board ensures the public's protection through minimum qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the patient.
<b>Board of Dentistry - Question 2 (If no license, is public protected?)</b>
Most, if not all, public protection would be lost. The patient would have very little recourse, except through the legal system. Sometimes the Board is able to intervene and by simple or complex dialogue is able to rectify the problem.

**State Electrical Board** - Question 2 (If no license, is public protected?)

Without licensing and regulation, anyone could perform electrical installations in Montana. With the majority of the electrical installation performed within the walls of a home or building, the occupier of the structure would not be able to tell if the electrical installation was finished properly. If the work is not properly installed or inspected, the occupiers and future occupiers of the structure could be exposed to electrocution, electrical fires or malfunctioning of the electrical system.

The lay person does not have adequate knowledge of proper construction, wire sizing, or voltage requirements. Exposure to faulty and improper wiring compromises the health, safety, and welfare of the citizens of Montana.

**Board of Funeral Service** - Question 2 (If no license, is public protected?)

Without licensing and inspection activities to ensure compliance with state law, the public could be subject to unprofessional, deceptive, or misleading business practices. Because funeral consumers often do not comparison shop for this costly and infrequent purchase, and because funeral service is a purchase typically made at a time of significant emotional distress, the consumer is more susceptible to these problems.

Examples of the business practices concerned include:

- full price disclosures upon request;
- restrictions on time and place of sales solicitation;
- proper handling and accounting of client trust funds for funeral goods and services paid for in advance of need and trust funds held for the perpetual care and maintenance of cemeteries;
- correct representation of the law regarding embalming and burial practices;
- ensuring respect and dignity for the deceased;
- compliance with final wishes of deceased person or authorized designee;
- ensuring compliance with regulations concerning communicable disease, medical waste, or other hazardous materials and substances for the health of the public and funeral service employees.

Additionally, the funeral practitioner has an important role, to act in conjunction with the county coroner to ensure the reporting of potential criminal or violent causes of death before removing or embalming. Further, it is the sole responsibility of the funeral practitioner to obtain authorization for cremation from the coroner and to gather timely and accurate information from the coroner and physician to file death certificates with county registrars and Vital Statistics Bureau, DPHHS. Regulation fosters the integrity of these systems.

**Board of Hearing Aid Dispensers** - Question 2 (If no license, is public protected?)

Consumers receiving hearing aids from nonaudiologist dispensers would have little or no protection from incompetent, unprofessional, and unethical health providers, especially in rural areas.

**Board of Massage Therapists** - Question 2 (If no license, is public protected?)

Licensure of Massage Therapists is preceded by and premised upon strict standards of education and periods of supervised experience. The failure to regulate those who would assume the role of a Massage Therapist would be exposing the public to unqualified individuals that would potentially harm a client. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints. The Board sets the standards needed to ensure that competency is met for Massage Therapists who practice in Montana.

<b>Board of Medical Examiners</b> - Question 2 (If no license, is public protected?)
<p>Without licensing and regulation, anyone could claim to be a practitioner of medicine or of the other professions the Board of Medical Examiners regulates. The market would provide the only limitations on providers, allowing unscrupulous or unethical individuals to place profit over patient care and patient safety. The Board of Medical Examiners believes that a system of licensing and regulation increases the credibility of health professionals with the public, and increases the public's trust in those professionals. We also believe the Board plays an important role in making sure health professionals in Montana deliver high quality services to their patients, clients, and consumers.</p> <p>Additionally, were it not for the Board of Medical Examiners' disciplinary process, citizens would be left on their own to pursue civil remedies against health professionals they believe have engaged in incompetent, unprofessional, or unethical health care practices. This would be extremely difficult, as lay people do not understand the body of knowledge necessary to become a health professional. Nor might they understand the training and credentials required.</p>
<b>Board of Nursing</b> - Question 2 (If no license, is public protected?)
<p>Nurses rank at the top of the list in public opinion polls as one of the most trusted professionals. The Board finds that the vast majority of licensees performs in an exemplary way and deserves high praise. That is why the Board feels it even more imperative that these high standards are maintained. The Board is very committed to the regulation of safe nursing care. They achieve this through regulating nursing education programs in the state, setting standards of quality that seek to insure competent nursing graduates for the state's healthcare workforce, and protecting the public from licensees who have a substance disorder that significantly impairs their ability to provide competent, safe care.</p>
<b>Board of Nursing Home Administrators</b> - Question 2 (If no license, is public protected?)
See Question 1.
<b>Board of Occupational Therapy Practice</b> - Question 2 (If no license, is public protected?)
<p>Licensure of the professions is preceded by and premised upon strict standards of education and periods of supervised experience for assistants. The failure to regulate those who would practice under this Board would be exposing the public to potentially harmful procedures. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public/patient complaints. The Board sets the standards needed to ensure that competency is met for the profession it regulates.</p>
<b>Board of Optometry</b> - Question 2 (If no license, is public protected?)
<p>The patient would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the Board ensures the public's protection through minimum qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the patient.</p>
<b>Board of Outfitters</b> - Question 2 (If no license, is public protected?)
<p>The licensure process is designed to ensure outfitters first gain sufficient knowledge and experience so that they have the ability to perform outfitting services with high regard to the safety, health, and welfare of participants. The experience and knowledge requirements include a minimum number years of experience in the geographical area of the outfitter's proposed operation, including the ability to cope with weather conditions and terrain. Licensees must demonstrate a respect for and compliance with federal and state laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem. The board currently performs inspections to determine whether an outfitter's equipment is serviceable and safe for the services advertised/identified in the outfitter's operations plan. Outfitters must report to the board the functions and operations of the outfitter's business. These operations plans are evaluated to determine whether the business will be (continued next page)</p>

<b>Board of Outfitters</b> – Q. 2 - continued
performed by the outfitter in a manner that will protect the health, safety, and welfare of the public, and in accordance with laws and rules of state and federal agencies. If outfitting was not regulated via licensure, then there would be no safeguard against the inexperienced but ambitious people who would see an opportunity to make a profit without a proper degree of accountability. Without licensing those who participate in this industry, Montana would be inviting the blind to lead the blind out into Montana's beautiful but unpredictable and potentially dangerous terrain and weather.
<b>Board of Pharmacy</b> - Question 2 (If no license, is public protected?)
The Board's response to the previous question addressed this question in some detail. The Board provides oversight of practitioners that ensures only those qualified to practice are working in Montana providing pharmaceutical care to our public. As previously mentioned, the Board provides oversight of out-of-state pharmacies and pharmacists that choose to do business within Montana. The Board provides oversight of the SUPPLY CHAIN by licensing suppliers as well. Board licensing ensures integrity of practitioners, integrity of product.
<b>Board of Physical Therapy Examiners</b> - Question 2 (If no license, is public protected?)
The patient would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the Board ensures the public's protection through minimum qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the patient. Patients have direct access to physical therapy services, so licensing is critical for patients who might otherwise seek services from individuals who weren't licensed.
<b>Board of Plumbers</b> - Question 2 (If no license, is public protected?)
Without licensing and regulation, anyone could perform plumbing in Montana. With the majority of the plumbing performed under the foundation of a home or building, the occupier of the structure would not be able to tell if the plumbing was done properly. If the work is not properly installed or inspected, the occupiers and future occupiers of the structure could be exposed to contaminated drinking water, wastewater, and sewer gas or mold.  The lay person does not have adequate knowledge of proper construction, sizing, and venting of a plumbing system. Exposure to contaminated drinking water, wastewater, and sewer gas compromises the health, safety, and welfare of the citizens of Montana.
<b>Board of Private Alternative Adolescent Residential or Outdoor Programs</b> - Question 2 (If no license, is public protected?)
Without licensing and regulation, any private home or building could claim to be a Private Alternative Adolescent Residential or Outdoor Program -- housing youth and allowing unscrupulous or unethical individuals to place profit over youth safety. Parents place their children in private residential care only when they have no other alternative or are desperate and feel that their child's emotional and behavioral problems cannot be safely dealt with in the home environment.  Both the children and their parents need assurance that programs will be run according to acknowledged, ethical, and safe standards of care. Without the PAARP Board there would be no standards for the safe treatment of children in private residential settings, and no inspections to check on the safety of programs in Montana.  We also believe the board plays an important role in making sure programs in Montana deliver high quality services to youth and their families. Without the PAARP Board's disciplinary process, youth and their families would not have a state agency to report complaints regarding programs they believe have engaged in incompetent, unprofessional, or unethical practices. It would be extremely difficult to remedy problems, particularly if there weren't any established standards for the appropriate (continued next page)

<p><b>Board of Private Alternative Adolescent Residential or Outdoor Programs - Q2 - continued</b></p> <p>procedures, rights of children, and training requirements that ensure basic safety and respect for children's dignity. A consumer who is violated would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the board ensures public protection through qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to youth or their families. In addition, without a clear licensing standard and an inspection process, the PAARP Board believes that it would be very difficult for legitimate programs to compete with other states that have standards of safe and ethical care for all children's residential programs. Competent licensing standards and inspections are necessary for the credibility of our youth care facilities, and increase the public's trust in those facilities and the professionals working within them.</p>
<p><b>Board of Private Security - Question 2 (If no license, is public protected?)</b></p> <p>The various private security professions exist to protect the public. Likewise, the Board's responsibility is to help ensure that these professionals entrusted by citizens of the State are competent and qualified to safely perform their duties. As many private security officers and private investigators are armed, it is necessary that appropriate training be required and monitored to ensure public safety. Private security officers, private investigators, process servers, alarm response runners, and electronic security companies and their employees are often entrusted with information of a confidential nature. The Board requires that licensees meet several requirements including a criminal records check as well as training.</p>
<p><b>Board of Professional Engineers and Professional Land Surveyors - Question 2 (If no license, is public protected?)</b></p> <p>Without licensing and regulation of these professions, a great deal of public protection would be lost. Unqualified individuals would be designing structures and surveying properties that could lead to the collapse of a poorly designed building or to a boundary dispute between two property owners. The public would be unaware of any faults or mistakes in the work until it is too late</p>
<p><b>Board of Psychologists - Question 2 (If no license, is public protected?)</b></p> <p>Licensure of psychologists is preceded by and premised upon high standards of education and lengthy periods of supervised experience. The failure to regulate those who would assume the role of psychologist would expose the public to a foreseeable and increased risk of harm from incompetence and malfeasance. Because licensed psychologists are entrusted with serving and evaluating many of the most vulnerable of our population, should licensure not be required of psychologists, it would be the emotional well-being and constitutional rights of the most vulnerable among us who would suffer a loss of protection. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints.</p>
<p><b>Board of Public Accountants - Question 2 (If no license, is public protected?)</b></p> <p>If CPAs were not licensed, the public would not be able to identify those professionals that have not only passed the CPA exam and met the education and experience requirements but are also up-to-date (via continuing professional education) on the most recent standards and laws. The general public does not usually have the appropriate knowledge to review a work product and determine if it meets professional standards, leaving that responsibility to the Board.</p>
<p><b>Board of Radiologic Technologists - Question 2 (If no license, is public protected?)</b></p> <p>Licensure of Radiologic Technologists is preceded by and premised upon strict standards of education and periods of supervised experience. The failure to regulate those who would assume the role of a Radiologic Technician would be exposing the public to harmful radiation and have an increased risk of being misdiagnosed. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints. The Board sets the standards needed to ensure that competency is met for Radiologic Technologists based off the American Registry of Radiologic Technologists (ARRT) code of ethics.</p>

**Board of Real Estate Appraisers** - Question 2 (If no license, is public protected?)

The U.S. Congress has mandated that only appraisers who are certified and licensed may perform appraisals for federally related transactions. Without licensing or the oversight of real estate appraisers, Montana would not be allowed to provide appraisals from certified appraisers. No federally related transactions would be able to be completed without the licensing and oversight required by Congress. Real Estate Appraisers are subject to oversight by the Appraisal Subcommittee (USC). Congress has given the USC authority over the states' appraisal programs to ensure compliance with Title XI [of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended--FIRREA (12 U.S.C. 3331-3351) and the Dodd-Frank Financial Reform bill.

The purpose of Title XI of FIRREA is to provide that federal financial and public policy interests in real estate-related transactions will be protected by requiring that real estate appraisal utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. The Appraisal Subcommittee [12 U.S.C. 3332] shall monitor the requirements established by the states:

- (a) For the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and
- (b) For the registration and supervision of operations and activities of an appraisal management company.

**Board of Realty Regulation** - Question 2 (If no license, is public protected?)

If real estate brokers, salespeople, and property managers were not licensed, the public could not identify those individuals who have met examination and experience requirements and can be relied upon to uphold current laws and properly handle complicated transactions. A real estate transaction represents a substantial investment from the consumer and is a transaction that happens infrequently. Because it happens infrequently, many, if not most, consumers do not develop significant expertise in handling real estate transactions. This results in consumers relying on the real estate practitioner to navigate the ever-changing, complex process. It is important to note that the regulation of real estate professionals is expanding throughout the world as investors, financial institutions, and governments seek to stabilize their markets and add credibility to their local/regional economies. This is being accomplished by establishing a real estate regulatory system that determines minimum competencies and expected conduct for practitioners and offers an avenue of complaint resolution for consumers. In addition, the Legislature and the Board have required that licensees pursue a course of continuing education that keeps them abreast of the rapidly changing real estate market and field. If licensure were lost, consumers could not be assured that their agents understood more recent developments in the field and the evolving regulatory environment pertaining to real estate transactions and ownership.

**Board of Respiratory Care Practitioners** - Question 2 (If no license, is public protected?)

Without a system of licensing for RCPs, any individual could claim to offer cures or treatments for respiratory illnesses or conditions without any education, training, or experience. Montana's licensing of RCPs as professionals assures that standards must be met before a practitioner treats a patient. This gives the public a level of confidence that their respiratory care provider is not only qualified, but also subject to disciplinary sanction should a violation of state law or board rule occur.

**Board of Sanitarians** - Question 2 (If no license, is public protected?)

The areas of environmental health listed above [in question 1] involve not only critical issues of public health but also business development and operation, the legal status of property development, and other private as well as community concerns. It is imperative that the registered sanitarian have an appropriate educational background, continuing educational, and ethical standards to competently address the science of public health, assure compliance with state and local regulations, provide education and training to promote environmental health, and interact with the public and business community in an effective and ethical way. Without an educational and ethical standard, the (continued on next page)



<b>Board of Sanitarians –Q 2 - continued</b>
administration of public health programs could result in inconsistencies in how public health laws are applied, lack of knowledge in how to protect the public's health based upon valid scientific evidence, application of state law in an unethical manner and without recourse available to the public, and a variety of other substandard practices.
The RS [Registered Sanitarian] working for a local environmental health program is, essentially, where the state public health standards meet the public. It is critical for both current and future generations that the laws are applied accurately, fairly, and with an informed scientific basis.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists - Question 2 (If no license, is public protected?)</b>
The Board finds that the vast majority of licensees performs in an exemplary way and deserves high praise. The Board feels it is even more imperative that these high standards are maintained. The failure to regulate those who would pursue a career as Social Workers, Professional Counselors, or Marriage and Family Therapists would expose the public to a predictable and increased risk of harm due to incompetence. The Board is very committed to the regulation of safe counseling care. They achieve this through regulating education programs, clinical supervision requirements, and a national exam that measures minimum competence for each of the credentials under their jurisdiction. Without licensing and regulation, anyone could claim to be a licensee. The Board believes that a system of licensing and regulation increases the credibility of mental health professionals with the public, and increases the public's trust in those professionals. We also believe the Board plays an important role in making sure professionals in Montana deliver high quality services to their patients, clients, and consumers. Additionally, were it not for the Board of Social Work Examiners and Professional Counselors' disciplinary process, citizens would be left on their own to pursue remedies against mental health professionals they believe have engaged in incompetent, unprofessional, or unethical practices. This would be extremely difficult, as lay people do not understand the knowledge necessary to become a mental health professional. Nor would they understand the training and credentials required.
<b>Board of Speech-Language Pathologists and Audiologists - Question 2 (If no license, is public protected?)</b>
Persons with communicative disorders, especially the elderly, the young, and the disabled are particularly vulnerable, and protection for these consumers is needed. A consumer who is violated would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the Board ensures the public's protection through qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to the patient.
<b>Board of Veterinary Medicine - Question 2 (If no license, is public protected?)</b>
Without licensure of these professionals, the public has no assurance that the necessary veterinary medical knowledge and skills will be available. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints.
<b>Question 3: If a license is necessary (for health, safety, or welfare), does the profession or occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.</b>
<b>Board of Alternative Health Care - Question 3</b>
Yes. A board is necessary to provide an entity with expertise to evaluate initial licensure of applicants (appropriate education, exams passed, no disciplinary concerns) and continued monitoring of existing licensees through complaint review, mandatory birth morbidity/mortality (continued on next page)

<b>Board of Alternative Health Care – Q. 3 - continued</b>
reporting, continuing education requirements, etc. The Board of Alternative Health Care is comprised of practitioners from midwifery, naturopathic medicine, a medical doctor whose practice includes obstetrics, and a public member who represents the perspective of consumers. The mix of talent on the board is the most appropriate method to deal with oversight issues.
<b>Board of Architects and Landscape Architects - Question 3 (Is a board needed for oversight?)</b>
Yes. The Board of Architects was established in 1917. The Board of Landscape Architects was established in 1975. The Boards of Architects and Landscape Architects were combined in 2007. The Board protects the public from unprofessional, improper, and unauthorized, unqualified providers of architecture and landscape architecture through the licensure process.
<b>Board of Athletic Trainers - Question 3 (Is a board needed for oversight?)</b>
Yes. As mentioned earlier, the Board of Athletic Trainers was established in 2007. The purpose for the creation of the Board was to clearly define "Athletic Trainer" and "Athletic training" and to establish the minimum qualifications to practice as a Licensed Athletic Trainer. The Board is composed of five members appointed by the Governor. One member must be a Licensed Physician preferably with a background in the practice of sports medicine. Three members must be Athletic Trainers who have been engaged in the practice of athletic training in the state for at least two years prior to being appointed. One must be employed by or retired from employment with a postsecondary institution in Montana; the second must be employed in or retired from a secondary school in Montana, and the third must be employed by or retired from a health care facility or an athletic facility in Montana. The fifth board member must be a member of the public who is not engaged in or directly connected with the practice of athletic training. Based on the Board composition, these experts and member of the public have the capacity to establish, implement, and enforce licensure requirements.
<b>Board of Barbers and Cosmetologists - Question 3 (Is a board needed for oversight?)</b>
Yes. The Board determines the educational curriculum and school standards to ensure that all licensees receive adequate and appropriate education in their scope of practice. A board is necessary to provide the expertise to evaluate initial licensure of applicants (such as appropriate education, exams administered and passed, and no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Barbers and Cosmetologists is comprised of 9 members and currently includes 3 Cosmetologists, 3 Barbers, 1 Manicurist, and 2 public members. The mix of the professions licensed by this Board is the most appropriate method to deal with oversight issues.
<b>Board of Chiropractors - Question 3 (Is a board needed for oversight?)</b>
The Board is necessary to oversee the complaint process by the public. The complaint process requires members of the Board who are current with their knowledge of the practice of the occupation, and the understanding of best practices involved in the administration of the occupation. The Board of Chiropractors has 3 members who are practicing chiropractors with adequate knowledge of the profession and the administration of care given to patients.
<b>Board of Clinical Laboratory Science Practitioners - Question 3 (Is a board needed for oversight?)</b>
Yes. The Board of Clinical Laboratory Science Practitioners was established in 1993. They protect the public from incompetent, unprofessional, and unethical providers of clinical laboratory science services through the licensure and regulation of qualified clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians. In addition, clinical laboratory science practitioners provide essential services to other health care providers by furnishing vital information that may be used in the assessment of human health and in the diagnosis, prevention, and treatment of disease or impairment. Patients rely on laboratory testing as a first step in diagnosis of critical diseases, thus it is important that appropriately trained individuals perform those tests.

<b>Board of Dentistry</b> - Question 3 (Is a board needed for oversight?)
There must be some type of monitoring system within the dental profession. If not, there would not be protection for the public and they would have no place to turn.
<b>State Electrical Board</b> - Question 3 (Is a board needed for oversight?)
Yes, a board is necessary for health, safety, and welfare. The board was created for the protection of the people of this state from the danger of electrically caused shocks, fires and explosions. Also, to protect property from the hazards of electrically caused fires and explosions and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that the persons making electrical installations are qualified to do so.
<b>Board of Funeral Service</b> - Question 3 (Is a board needed for oversight?)
The purpose of creating a board is to provide a body, independent from the agency (except for administrative purposes), to provide oversight of the profession and to serve as a check and balance on the agency (as the agency likewise serves as a check and balance on the board) to whom it is administratively attached.
In carrying out the duties of reviewing qualifications to enter the profession, disciplining, and assuring continued competence of licensees, board members provide expertise and informed perspective of the public interest. Board members have a better understanding of both licensee and public concerns and individually, have greater personal ownership of and responsibility for the decisions that are made. A "board" provides greater visibility to the public and acts as a deterrent to potential violators.
<b>Board of Hearing Aid Dispensers</b> - Question 3 (Is a board needed for oversight?)
Yes. Hearing aid dispensers predominately service disabled and elderly populations. The Board protects the public from incompetent, unprofessional, and unethical health providers, especially in rural areas.
<b>Board of Massage Therapists</b> - Question 3 (If no license, is public protected?)
Yes. A board is necessary to provide the expertise to evaluate the initial licensure applicants (such as appropriate educational, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Massage Therapy is comprised of five members who include a public member, one member who is a licensed healthcare provider, and three massage therapists licensed in Montana. This combination of individuals provides the necessary knowledge and perspective on the Board that is most appropriate to deal with oversight issues.
<b>Board of Medical Examiners</b> - Question 3 (Is a board needed for oversight?)
Yes. As with any profession that requires a large body of knowledge and specific training, only fellow health professionals truly can evaluate whether an individual meets the standards of his or her profession. The Board of Medical Examiners includes experienced professionals in the professions the Board oversees.
As for the purpose of creating a board, the Montana Territorial Legislature addressed that issue in 1889 by passing an act to regulate the practice of medicine and punish persons who violated its provisions.
That act instructed the Governor to appoint seven "learned, skilled and capable physicians" for a new Board of Examiners that could certify qualified physicians and surgeons. The act also required every person wishing to practice medicine or surgery within the territory to comply with the new law. The Board was empowered to charge a license fee of \$15 and to refuse or revoke a certificate for "unprofessional, dishonorable, or immoral conduct, or to anyone who may publicly profess to cure, or treat disease, injury or deformity in such as manner as to deceive the public." The law also proscribed (sic) stiff fines and significant jail sentences for violators who practiced medicine without a license. (continued on next page)

<b>Board of Medical Examiners</b> – Q. 3 - continued
Today, the Board's role is to oversee the licensing of medical professionals, see that they provide an appropriate standard of patient care and conduct themselves in a professional manner, and provide a disciplinary process for medical professionals who fail to meet those standards.
<b>Board of Nursing</b> - Question 3 (Is a board needed for oversight?)
What better way to determine just cause for discipline than to have it done by peers? The Board uses a Screening Panel made up of Board members representing license types as well as a public member to review each complaint that comes to the department's Compliance Office. This review is done in executive session for the privacy of the licensee. If there is just cause for disciplinary action, the Screening Panel can give a summary suspension of a license. Other discipline can be suggested to the Board's Adjudication Panel, which is then a public meeting and a judgment is given with due process. The Board (as licensees and public members) has the task of rulemaking for licensee scope of practice, which guides the parameters of nursing practice in the state. With the use of open Board meetings, this serves as a needed public forum to discuss practice with active licensees and the public to set quality standards of safe care.
<b>Board of Nursing Home Administrators</b> - Question 3 (Is a board needed for oversight?)
See Question 1.
<b>Board of Occupational Therapy Practice</b> - Question 3 (Is a board needed for oversight?)
The Board determines the educational curriculum and school standards that will be accepted to ensure that all licensees receive adequate and appropriate education in their scope of practice.  Yes. A board is necessary to provide the expertise to evaluate initial licensure of applicants (such as appropriate education, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Occupational Therapy Practice is comprised of five members and currently includes three professional and two public members.
<b>Board of Optometry</b> - Question 3 (Is a board needed for oversight?)
Yes. The Board of Optometry was established in 1974. The Board protects the public from incompetent, unprofessional, and unethical providers of optometric services through the licensure and regulation of qualified optometrists.
<b>Board of Outfitters</b> - Question 3 (Is a board needed for oversight?)
Yes. A Board is necessary to provide an entity with expertise (in their field) to evaluate initial licensure applicants (by determining the appropriate standards, qualifications, experience, examination, etc.) and continued monitoring of existing licensees through the complaint process. The Board of Outfitters is comprised of licensees from two areas of outfitting functions (hunting and fishing), and the public member and sportspersons represent the perspective of the consumer. The mix of experience and perspectives on the board is the most appropriate method to deal with oversight issues for this industry. It is necessary for potential clients to have the ability to check the status of an outfitter with whom the clients are booking, as well as to have a regulatory body that will address any complaints the clients or other public member may have regarding the conduct of the outfitter.
<b>Board of Pharmacy</b> - Question 3 (Is a board needed for oversight?)
The Board of Pharmacy is responsible for writing, implementing, and interpreting rules that govern the pharmacy profession based on the intent and authority of the legislature and specific statutes enacted by the legislature. In order to effectively carry out this function a Board of its peers is necessary to effectively develop and administer these rules. As the profession of pharmacy changes, the Board is often faced with revision of certain rules, new rules, or deletion of rules in order to regulate (continued on next page)

<b>Board of Pharmacy</b> – Q. 3 -- continued
the profession responsibly, ethically, and efficiently. Without Board oversight of the rulemaking process undoubtedly this process would become ineffective and many challenges to proposed and existing rules, as well as possibility of need for emergency rules, would result.
<b>Board of Physical Therapy Examiners</b> - Question 3 (Is a board needed for oversight?)
Yes. The Board of Physical Therapy Examiners was established in 1979. The Board protects the public from incompetent, unprofessional, and unethical providers of physical therapy services through the licensure and regulation of qualified physical therapists and physical therapist assistants.
<b>Board of Plumbers</b> - Question 3 (Is a board needed for oversight?)
Yes, a board is necessary for health, safety, and welfare.
<b>Board of Private Alternative Adolescent Residential or Outdoor Programs</b> - Question 3 (Is a board needed for oversight?)
<p>Yes. The Montana Board was established in 2007 to regulate Private Alternative Adolescent Residential or Outdoor Programs. The purpose for the creation of a board is oversight of health, safety, and welfare of children who are placed in private residential treatment programs. Prior to creation of this board programs serving private paying youth and families were unregulated in Montana, whereas any program that took any government funding was required to operate according to clear state standards for safe treatment and were regulated to ensure compliance with these standards. The present board was created to make certain that all residential programs who serve children would be regulated and held to safe professional standards of practice. Who better to oversee these elements than a board composed of members drawn from both the public at large and from the professionals who operate these programs? As with any profession that requires a large body of knowledge, only fellow professionals truly can evaluate whether a facility meets the standards of the profession. As required by law, the PAARP Board includes three members from programs of various sizes and types and two members who must be from the general public. The combination of expertise on the board is the best method to establish standards of care and deal with oversight issues.</p> <p>The Board protects the public from incompetent, unprofessional, and unethical providers of youth services through licensure and regulation. The Board establishes and monitors licensure requirements for new licensees as well as monitors existing licensees through the complaint review process, new employee fingerprint and background checks, program inspections, and annual renewal requirements. Without a board, the consumer or youth and their families would have no simple recourse to appeal in the event of unethical practice.</p>
<b>Board of Private Security</b> - Question 3 (Is a board needed for oversight?)
The Board is an appropriate means by which the private security, private investigators, alarm response runners, electronic security companies, contract security companies, and the process server professions can be monitored. 2-15-1781, MCA, establishes that the Board be comprised of members employed in several security-related professions, including contract or proprietary security companies, electronic security companies, city police departments, county sheriff's offices, the public, the Montana Public Safety Officer Standards and Training Council, and private investigators or process servers. This representation of various components of the profession, law enforcement, and the public incorporates diverse knowledge and experience regarding private security that is necessary in providing a balanced level of oversight.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 3 (Is a board needed for oversight?)
Yes. Because engineering and surveying require specific education and experience, individuals with the same education and experience are the ones qualified to assess the competency of those who want to perform those services in Montana. Without the board, there would be no (continued on next page)

<b>Board of Professional Engineers and Professional Land Surveyors</b> – Q. 3 -- continued
monitoring of the profession to ensure quality work was being performed, and the public would have no means to protect themselves against individuals performing substandard work.
<b>Board of Psychologists</b> - Question 3 (Is a board needed for oversight?)
Yes. A board is necessary to provide the expertise to evaluate initial licensure applicants (such as appropriate educational degree, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Psychologists is comprised of practitioners from various areas of psychological practice (two in private practice, one in public health, one engaged in teaching of psychology) and two members must be from the general public who represent the perspective of consumers. The mix of talent on the board is the most appropriate method to deal with oversight issues.
<b>Board of Public Accountants</b> - Question 3 (Is a board needed for oversight?)
The aspect of the CPA profession that make the need for an oversight board imperative is that it is ever-changing, requiring people who are immersed in the profession to monitor these changes and make sure that our licensees are in compliance and that Montana citizens are protected. The five practitioners on the Board have the expertise to review technical matters, and the two public members represent the views of consumers.
<b>Board of Radiologic Technologists</b> - Question 3 (Is a board needed for oversight?)
Yes. A board is necessary to provide the expertise to evaluate initial licensure applicants (such as appropriate education, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Radiologic Technologists is comprised of seven members who include a radiologist licensed to practice medicine, a limited permit holder, a public member, and four licensed radiologic technologists registered with ARRT. The mix of talent on the board is the most appropriate method to deal with oversight issues.
<b>Board of Real Estate Appraisers</b> - Question 3 (Is a board needed for oversight?)
Title XI [of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended] (12 U.S.C. 3331-3351) mandated the requirement to license individuals whose competency has been demonstrated and provide effective supervision over real estate appraisers.
[Section 12 U.S.C. 3346 provides that] to ensure the availability of state certified and licensed appraisers for the performance in a state of appraisals in a federally related transaction and to assure effective supervision of the activities of certified and licensed appraisers, a state may establish a state appraiser certifying and licensing agency.
<b>Board of Realty Regulation</b> - Question 3 (Is a board needed for oversight?)
Yes. All applicants must be scrutinized to determine whether an applicant can practice safely and competently. A board is necessary to provide the expertise to evaluate initial licensure applicants *such as appropriate education, exams administered and passed). The Board also ensures there are no discipline concerns for initial applicants because persons with past conduct issues in Montana or elsewhere have a higher likelihood of harming Montana consumers. Not all conduct issues would prevent a person from being licensed in Montana.
Once any practitioner is licensed, whether ones with past conduct issues or not, the Board continues to monitor those licensees through complaint review, continuing education requirements, etc., in order to ensure that practitioners are practicing in a manner that minimizes harm to consumers and other licensees. As required by law, the Board of Realty Regulation is composed of (continued on next page)

<b>Board of Realty Regulation – Q. 3 -- continued</b>
practitioners and members from the general public who represent the perspective of consumers. The goal of the Board is to protect the public and fellow licensees from practitioners who may intentionally or accidentally cause harm -- whether that harm is of a financial nature or other. Without the real estate expertise of a board composed of several members who are professionals, it would be difficult for state employees to recognize conduct that is detrimental to the public and take appropriate action to protect the public from future misconduct.
<b>Board of Respiratory Care Practitioners - Question 3 (Is a board needed for oversight?)</b>
The Legislature first created the Board of RCP in 1991. That, in itself, signals that a board is necessary to regulate the practice of respiratory care and respiratory therapy. Without a board and the rulemaking and compliance authority granted it, Montana would have little or no ability to regulate RCPs effectively or discipline those who violate standards of care or engage in other unprofessional conduct. Further, the existence of a board made up of respiratory care professionals, along with a lay member of the public, provides the expertise to make thoughtful and informed decisions about the profession and its practitioners.
<b>Board of Sanitarians - Question 3 (Is a board needed for oversight?)</b>
Board oversight is essential to the public. State regulations require that a Registered Sanitarian have a degree in Environmental Health from an accredited college or a degree that is equivalent as determined by the Board. Because few applications come from those with an Environmental Health degree, the Board routinely reviews applications for educational equivalency. The Board also does the required application review to determine if the applicant has licensing or ethics issues in their past that might prevent them from serving the Montana public well as a Registered Sanitarian.  Because Registered Sanitarians routinely deal with applying public health law and standards, it is very important that the citizens of Montana have recourse to the Board if they believe they have been treated unfairly or unethically by a sanitarian. While these requests are infrequent, this opportunity to have a hearing to address such a complaint is an essential part of the licensing system.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists - Question 3 (Is a board needed for oversight?)</b>
Yes. A license by definition provides evidence of meeting minimum standards of education, supervision, and competence. As with any profession that requires a large body of knowledge and specific training, only fellow mental health professionals can truly evaluate whether an individual meets the standards of the profession. The Montana Board was established in 1983 regulating only Licensed Clinical Social Workers (LCSW) at the time. In 1985 Licensed Clinical Professional Counselors (LCPC) were added to the board's authority, and in 2009 Licensed Marriage and Family Therapists (LMFT). The Board of Social Work Examiners and Professional Counselors is comprised of experienced professionals in the professions they oversee. As required by law, the Governor appoints a seven member board; three members must be Licensed Social Workers, and three must be Licensed Professional Counselors; one member must be appointed from and represent the general public and may not be engaged in social work. The knowledge and expertise of the board members is the best method to deal with oversight issues. Across the United States virtually every state and the District of Columbia regulate Social Workers, Professional Counselors, and Marriage and Family Therapists in some fashion. The purpose of creation of a board is oversight of health, safety, and welfare of consumers. Without a board, the consumer has no recourse to appeal to in the event of unethical practice.
<b>Board of Speech-Language Pathologists and Audiologists - Question 3 (Is a board needed for oversight?)</b>
The Montana board was established in 1975 to regulate Speech-Language Pathologists and Audiologists and three levels of Speech Language Pathology and Audiology Aides and Assistants. In the United States 48 states and the District of Columbia regulate Speech-Language (continued on next page)

<b>Board of Speech-Language Pathologists and Audiologists</b> – Q. 3 -- continued
Pathologists and Audiologists; Colorado and South Dakota regulate only Audiologists. The purpose for the creation of the board is oversight of health, safety, and welfare of consumers. Who better to oversee these elements than members of the profession and a consumer? As required by law, the Board of Speech-Language Pathologists and Audiologists includes practitioners from various areas of practice. "At least two members of the board shall be Speech-Language Pathologists and at least two shall be Audiologists, with the remaining member to be a public member who is a consumer of speech-language pathology or audiology services and who is not a licentiate (cq) of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in Speech-Language Pathology or Audiology". The mix of talent on the board is the best method to deal with oversight issues.
The board protects the public from incompetent, unprofessional, and unethical providers of speech services through the licensure and regulation of qualified professionals. The board establishes and monitors education, supervision, and exam requirements for new licensees as well as monitors existing licensees through the complaint review, continuing education and renewal requirements. Without a board, the consumer has no recourse to appeal in the event of unethical practice.
<b>Board of Veterinary Medicine</b> - Question 3 (Is a board needed for oversight?)
Yes. A board is necessary to provide an entity with expertise to evaluate initial licensure applicants (appropriate educational degree, exams administered and passed, no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. The Board of Veterinary Medicine is comprised of practitioners from various areas of veterinary medicine (large animal, companion animal, equine, etc.), and the public member represents the perspective of consumers. The mix of talent on the Board is the most appropriate method to deal with oversight issues.
<b>Question 4: Does the board deal with unlicensed practice issues? If yes, what types of issues?</b>
<b>Board of Alternative Health Care</b> - Question 4
Yes, the board has dealt with complaints of unlicensed individuals without proper training and education delivering babies, treating human health conditions, and people advertising that they are able to perform procedures that are defined in statute as within the scope of practice for these professions.
<b>Board of Architects and Landscape Architects</b> - Question 4 (Unlicensed practice?)
Yes. Practicing as an architect and landscape architect without a license or with an expired license are the most common unlicensed practice issues to come before the Board.
<b>Board of Athletic Trainers</b> - Question 4 (Unlicensed practice?)
Yes. As with any new profession that raises to the level of licensure the risk of unlicensed practice exists. The Board has occasionally become aware of individuals who are portraying themselves as Athletic Trainers to the public, without the proper education, qualifications, or licensure. This endangers Montana citizens, particularly our youth, due to the potential for improper diagnosis of injuries, treatment, or rehabilitation of injuries. The Board has used its authority to issue a cease and desist notice.
<b>Board of Barbers and Cosmetologists</b> - Question 4 (Unlicensed practice?)
Occasionally, the Board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to practice when they are not qualified. A great deal of personal harm to individuals may result if the unlicensed person is not trained in the correct procedures, safety, sanitation, and the recognition of potentially harmful and contagious diseases associated with their practice.



<b>Board of Chiropractors</b> - Question 4 (Unlicensed practice?)
The Board of Chiropractors cannot deal with anyone who is unlicensed. Their jurisdiction is only with those who are licensed. [A complaint by the public against] unlicensed individuals claiming to be practicing Chiropractic needs to be addressed through county attorneys.
<b>Board of Clinical Laboratory Scientists</b> - Question 4 (Unlicensed practice?)
Yes. Practicing as a clinical laboratory scientist, clinical laboratory specialist, and/or clinical laboratory technician without a license or with an expired license are the most common unlicensed practice issues to come before the Board.
<b>Board of Dentistry</b> - Question 4 (Unlicensed practice?)
Yes, it does deal with unlicensed practice issues. Some of those unlicensed practice issues include: 1) failure to reapply for licensure; 2) those who lack continuing education; and 3) people who lack dental education to perform the services they are providing.
<b>State Electrical Board</b> - Question 4 (Unlicensed practice?)
Yes, the board deals with unlicensed practice issues. This is a very important function of the board as unlicensed practice complaints make up a good portion of a typical board meeting's work.  The board frequently investigates and reviews information regarding unlicensed practice. Many complaints regarding unlicensed practice are initiated by homeowners who recognize, after the work is done, that the work is substandard, inefficient, or even dangerous. For example, the board has sought injunctions against people who refused to stop electrical installations without a license and whose work electrocuted a person or resulted in damage to the home. It is not uncommon for the complaining party to describe the cost involved in repairing the substandard work the unlicensed person did, ironically to save the cost of hiring a licensed person.
<b>Board of Funeral Service</b> - Question 4 (Unlicensed practice?)
The board does not appear to deal with "pure" unlicensed practice issues where persons engage in the business without the intent of obtaining a personal license. Rather, the unlicensed practice issues tend to involve a licensee exceeding the scope of practice or practicing on an expired license. Of these types of issues, there appear to have been approximately five complaints within the past 5 years: <ul style="list-style-type: none"> <li>• improper advertising (the advertised service not within licensure);</li> <li>• operation of a cemetery prior to issuance of the license; and</li> <li>• making funeral arrangements and preparing bodies in a place other than a preparation room outside of a licensed mortuary.</li> </ul>
<b>Board of Hearing Aid Dispensers</b> - Question 4 (Unlicensed practice?)
Yes. Failure to obtain a license, which is a state law.
<b>Board of Massage Therapists</b> - Question 4 (Unlicensed practice?)
Yes. The Board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to be Massage Therapists. The Board frequently investigates and reviews issues concerning human trafficking, erotic massages, and false advertising.
<b>Board of Medical Examiners</b> - Question 4 (Unlicensed practice?)
Yes. This is an important function. The licensing process assures that a health professional has received the necessary training to be competent in his or her practice. Without licensing, we as regulators do not know the level of a person's training or body of knowledge.  It is worth noting that the Board of Medical Examiners addresses very few cases of unlicensed practice. As of June 30 of this year [2011], the Board has more than 8,000 licensed (continued on next page)

<b>Board of Medical Examiners</b> – Q. 4 -- continued
<p>professionals on file. In a typical year, the Board issues fewer than ten "cease and desist" letters for unlicensed practice. Injunctions against individuals are even more uncommon. One review of Board actions from 2001 to 2008 showed a total of only two injunctions during that seven-year period.</p> <p>An issue of unlicensed practice could be a simple misunderstanding, in which a person is reported to the Board because he or she mistakenly has been named as a certified professional in a published article. It could involve an individual advertising himself or herself as a "nutritionist" as a generic label when, in fact, he or she has no license in that field and, hence, is not legally entitled to use that term. Or it could be as serious as a person essentially acting as a physician -- recklessly diagnosing and treating patients -- without a license. Or it might involve someone acting in a blatantly fraudulent manner making false claims about health services.</p>
<b>Board of Nursing</b> - Question 4 (Unlicensed practice?)
<p>Yes, the Board does deal with persons who purport to be active licensees and practice nursing without the proper education, examination, or screening. Recently a woman extorted [extorted?] an older man in the state out of money by posing as a licensed nurse for his homecare when she was not duly qualified. The Board can file a complaint against persons practicing as nurses without a license to carry out an order to cease and desist.</p> <p>The license lookup system also assists the public when questioning if a person has an active license and is easy to access as well as has the latest data on license status, including all public discipline. This is very beneficial to agencies in hiring and retaining licensees.</p>
<b>Board of Nursing Home Administrators</b> - Question 4 (Unlicensed practice?)
<p>Practicing as a nursing home administrator without a license or with an expired license are the most common unlicensed practice issues to come before the Board. The Board notifies DPHHS, which has jurisdiction over nursing home facility licenses, when it learns that unlicensed individuals are working as administrators in licensed facilities, and requests an investigation by DPHHS. The Board also pursues disciplinary action over the unlicensed individual.</p>
<b>Board of Occupational Therapy</b> - Question 4 (Unlicensed practice?)
<p>Occasionally, the Board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to practice when they are not qualified. A great deal of personal harm to individuals may result if the unlicensed person is not trained in the correct procedures. This is rare for this Board as there is also oversight and internal regulation of licensees by healthcare and educational entities.</p>
<b>Board of Optometry</b> - Question 4 (Unlicensed practice?)
<p>Yes. Practicing as an optometrist without a license or with an expired license are the most common unlicensed practice issues to come before the Board.</p>
<b>Board of Outfitters</b> - Question 4 (Unlicensed practice?)
<p>Yes. Although the board is not solely responsible for prohibiting unlicensed outfitting in Montana, the board may file an action to enjoin a person from practicing without a license. A person violating an injunction may be held in contempt of court, but there are currently no other laws that empower the board to take any other action or levy any other sanction against an unlicensed outfitter.</p> <p>The board has administered discipline against a few licensees who were involved with operations that used people without the proper guide licenses, and it frequently deals with noncompliant advertisements that usually result in the issuance of an instructional letter. Unlicensed outfitting, as a crime, is enforced by the Department of Fish, Wildlife, and Parks in accordance with Section 87-6-702, MCA.</p>

<b>Board of Pharmacy</b> - Question 4 (Unlicensed practice?)
The Board of Pharmacy infrequently encounters unlicensed practice issues thanks in large part to the standardization of state boards with NABP and ability to share and exchange information, thus practicing unlicensed in Montana [is] virtually impossible. Often the Board is confronted with out of state licensees that fail to license or renew before doing business in Montana as an example.
<b>Board of Physical Therapy Examiners</b> - Question 4 (Unlicensed practice?)
Yes. Practicing as a physical therapist and physical therapist assistant without a license or with an expired license are the most common unlicensed practice issues to come before the Board.
<b>Board of Plumbers</b> - Question 4 (Unlicensed practice?)
Yes, the board deals with unlicensed practice issues. This is a very important function of the board as unlicensed practice complaints make up a good portion of a typical board meeting's work.  The board frequently investigates and reviews information regarding unlicensed practice. Many complaints regarding unlicensed practice are initiated by homeowners who recognize, after the work is done, that the work is substandard, inefficient, or even dangerous. For example, the board has sought injunctions against people who refused to stop plumbing without a license and whose work has made families ill or resulted in damage to the home. It is not uncommon for the complaining party to describe the cost involved in repairing the substandard work the unlicensed person did, ironically to save the cost of hiring a licensed person.
<b>Board of Private Alternative Adolescent Residential and Outdoor Programs</b> - Question 4 (Unlicensed practice?)
Yes. This is an important function. The licensing process assures that a licensed program has met the necessary requirements to be competent in providing services for youth and their families. Without licensing, we as regulators do not know the program's body of knowledge or level of services offered. The Board [which] currently licenses 14 programs has addressed very few cases of unlicensed practice. As of July 1, 2010, the Board reviewed 2 cases of unlicensed practice and both cases were dismissed without prejudice. An issue of unlicensed practice could be a simple misunderstanding, in which a program is reported to the Board because the complainant fails to understand program exemptions from licensure such as (any program that is required to be licensed or regulated by the state under Title 50, 52, or 53, recreational programs such as Boy Scouts, Girl Scouts, or 4-H clubs, organizations, boarding schools, or residential schools with a sole focus on academics, residential training or vocational programs with a sole focus on education and vocational training, youth camps with a focus on recreation and faith-related activities, or an organization, boarding school, or residential school that is an (continued on next page)
<b>Board of Private Alternative Adolescent Residential and Outdoor Programs</b> – Q. 4 -- continued
adjunct ministry of a church incorporated in the State of Montana. Or it could be as serious as a facility functioning and representing themselves as a PAARP program, without a license. Recently, the Nineteenth Judicial District Court in its Order held the Ranch for Kids must be licensed.
<b>Board of Private Security</b> - Question 4 (Unlicensed practice?)
Yes. The Board deals with unlicensed practice complaints on a regular basis. Complaints range from individuals acting as private investigators and monitoring the activities of members of the public, to companies hiring unlicensed individuals who interact with and have authority over citizens, and electronic security systems companies who send individuals out to make direct contact with citizens by entering private homes and businesses and installing alarm devices. In all of these cases, these unlicensed individuals have likely interacted with the public without having met training requirements nor have they been properly vetted via a criminal records background check.

<p><b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 4 (Unlicensed practice?)</p> <p>Yes. The handling of unlicensed practice is a critical function of the board. The licensure process ensures that professional engineers and professional land surveyors complete the proper education, experience, and examinations to perform these vitally important services in Montana.</p> <p>The board reviews a wide range of unlicensed practice complaints. Some unlicensed practice complaints involve the improper use of the title "professional engineer" or "professional land surveyor", which misleads the public to believe a person has met the stringent qualifications for licensure when, in fact, the person has not. The board also deals with more substantive unlicensed practice issues such as the possible practice of engineering by architects as well as the blatant practice of engineering or surveying by an unlicensed individual.</p>
<p><b>Board of Psychologists</b> - Question 4 (Unlicensed practice?)</p> <p>Occasionally, the board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to address or handle issues for which they are not qualified. A great deal of personal harm may result to individuals as a result of erroneous conclusions from psychological evaluations (e.g. confinement, parenting plan recommendations, competency to stand trial) and a court's reliance upon individuals claiming to be an expert in the field of psychology is often at the root of such problems.</p>
<p><b>Board of Public Accountants</b> - Question 4 (Unlicensed practice?)</p> <p>The typical unlicensed practice issues this Board deals with are cases where an individual is advertising themselves as a CPA when they are not a licensed CPA. The Board also deals with individuals who do not clearly understand mobility/practice privilege requirements and establish a CPA office in the state without being licensed in Montana. Unlicensed practice complaints are reviewed in executive session to maintain confidentiality until the Board has determined whether a violation has actually occurred.</p>
<p><b>Board of Radiologic Technologists</b> - Question 4 (Unlicensed practice?)</p> <p>Occasionally, the Board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to address or handle x-rays for which they are not qualified. A great deal of person harm or false diagnosis to individuals may result if the exams are erroneous and film is incorrectly processed.</p>
<p><b>Board of Real Estate Appraisers</b> - Question 4 (Unlicensed practice?)</p> <p>The Board does not have many issues with unlicensed practice with unlicensed appraisers because a federally related transaction prepared for a federally insured depository requires a licensed or certified appraiser. The federally insured depository (federal institution) is required to ensure that the appraiser is licensed or certified for the appraisal work. The Board also licenses Appraisal Management Companies (AMC). Since Montana licensed or certified appraisers cannot accept an appraisal assignment from an unlicensed AMCI the unlicensed AMC has not happened yet.</p>
<p><b>Board of Realty Regulation</b> - Question 4 (Unlicensed practice?)</p> <p>Yes. The Board does consider unlicensed practice issues although it has no authority to prohibit, regulate, or punish it.</p> <p>The most prevalent unlicensed issue currently is Internet sites that attempt to solicit buyers, sellers, or tenants. They often charge consumers for information that is outdated or incorrect. They charge consumers for information and services that are free to the public and do nothing but profit the unlicensed person. Generally, they also do not practice in a way that is protective of the public or fair to other practitioners. Unlicensed persons are subject to no oversight whether to determine that they are actually minimally qualified to practice in Montana or to ensure that they are practicing in a safe manner.</p>

<p><b>Board of Respiratory Care Practitioners</b> - Question 4 (Unlicensed practice?)</p>
<p>Yes. Although complaints have been rare (only 6 from FY 2009 through FY 2012), the Board is vigilant regarding individuals advertising as (or otherwise claiming to be) respiratory care professionals when they are not licensed. By the same token, the Board has recognized instances when it has no authority over individuals because of their employment status (such as with a federal health facility) or because the treatment involved is not covered by state statute or board rule.</p>
<p><b>Board of Sanitarians</b> - Question 4 (Unlicensed practice?)</p>
<p>The Board receives unlicensed practice complaints infrequently. Most of the duties that are included within a sanitarian's scope of practice are carried out by employees of local governments, and most governments are careful to hire qualified and licensed professionals. Many acts that might otherwise fall within the scope of practice as a sanitarian are covered by statutory exemptions that allow engineers, state and federal government public health officials, and individuals who are not employed by or under contract with government entities to perform sanitarian duties without being registered. Current law seems to adequately protect the public without unnecessary restrictions that hinder the work of individuals, businesses, and governments.</p>
<p><b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 4 (Unlicensed practice?)</p>
<p>Yes. The Board is notified of the conduct of individuals who present themselves as having appropriate education and training to address or handle issues for which they are not qualified. The licensing process assures mental health professionals have received the necessary training and are competent to practice. Without licensing, we as regulators do not know the level of a person's training or body of knowledge.</p> <p>An issue of unlicensed practice could be a simple misunderstanding, in which a person is reported to the Board because he or she has mistakenly advertised as a "counselor" as a generic label. This representation is acceptable. Legally, the same individual is not permitted to use the title of Licensed Clinical Social Worker, Licensed Clinical Professional Counselor, or Licensed Marriage and Family Therapist without having met the licensure requirements. Or it could be as serious as a person acting as licensed professional, diagnosing and treating mental illnesses without a license. Likewise, it might involve someone acting in a blatantly fraudulent manner making false claims about mental health services.</p>
<p><b>Board of Speech-Language Pathologists and Audiologists</b> - Question 4 (Unlicensed practice?)</p>
<p>Occasionally the Board is faced with the conduct of individuals who often are licensed in another jurisdiction and who wish to practice in Montana. These individuals fail to understand that though they hold a credential in another state they are, by statute and rule, required to hold a license in Montana. At the present time, the Board is dealing with a changing licensing environment because of changes in demographics and technology. Telepractice has risen to the forefront of practice issues for the profession and the Board. The Board has proactively begun the rule-writing process on telepractice services to ensure that all Montana consumers continue to receive safe and quality service no matter the method of service delivery.</p>
<p><b>Board of Veterinary Medicine</b> - Question 4 (Unlicensed practice?)</p>
<p>Yes. Unlicensed practice complaints are held in Executive Session to maintain the confidentiality of the complaint until the Board determines whether a violation of law has occurred. The Board has dealt with unlicensed individuals coming down from Canada to do herd work in Montana, an unlicensed person who had a "doctor's bag" containing drugs (left over from treatment of one of her animals) who made a house call to euthanize a dog, and people advertising that they are able to perform procedures that are defined in statute as veterinary medicine.</p>

<b>Question 5: People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living. What is your response?</b>
<b>Board of Alternative Health Care</b> - Question 5
<p>Qualification for licensure as a Naturopathic Physician/Doctor requires a four-year post graduate medical education from a nationally accredited naturopathic medical school. It also requires successful completion of nationally accredited basic sciences and clinical examinations. Naturopathic Physicians can prescribe drugs on the approved formulary. There are those individuals with correspondence school degrees in Naturopathy who do not have hands-on clinical education or a four-year post graduate education; if licensure was not provided by the State of Montana, these people could pass themselves off to the public as being as highly trained as the presently licensed Naturopathic Doctors.</p> <p>Direct-entry midwives are required to complete education, supervised experience/training requirements, and pass a national examination. This is necessary training for individuals assisting women in natural childbirth.</p>
<b>Board of Architects and Landscape Architects</b> - Question 5 (Preventing others from a living?)
<p>The Legislature finds and declares that the practice of architecture and landscape architecture in the state affects the public health, safety, and welfare. [This is not specifically stated in statute for these professions but seems to be a department-suggested response.] Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The statutes and rules governing licensure ensure that an individual meets the minimum education and experience requirements required to practice.</p>
<b>Board of Athletic Trainers</b> - Question 5 (Preventing others from a living?)
<p>The safe and competent practice of athletic training requires a Bachelor's level of education, which includes at a minimum of 1000 hours of clinical experiences in a variety of athletic training sites. The academic site must be accredited by the National athletic Trainers Association Board of Certification. To ensure the proper and necessary preparation, the law requires reasonable standards that do not unfairly bar any individual from earning a living. In support of Montana regulations, we welcome visiting sports teams at the high school and college level to provide their own athletic trainer services without the need for a temporary Montana license. Montana Athletic Trainers support the concept that all students in all states deserve quality health care.</p>
<b>Board of Barbers and Cosmetologists</b> - Question 5 (Preventing others from a living?)
<p>The safe and competent practice of the disciplines under this Board is learned through formal education and training and under supervision when students perform services on the public in an educational environment. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications.</p>
<b>Board of Chiropractors</b> - Question 5 (Preventing others from a living?)
<p>Having a Board of Chiropractors with licensing requirements and rules and regulations regarding the proper administration of Chiropractic does not prevent anyone from earning a living. The only prohibitive factor is the cost of licensing, which is minimal as compared to the expenses of running a business. Licensing only ensures that those who are practicing are doing so with the safety and welfare of the public in mind.</p>
<b>Board of Clinical Laboratory Science Practitioners</b> - Question 5 (Preventing others from a living?)
<p>The Legislature finds and declares [in 37-34-102, MCA] that the practice of clinical laboratory science in the state affects the public health, safety, and welfare. Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The clinical laboratory science profession offers three levels of licensure. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession.</p>

<b>Board of Dentistry</b> - Question 5 (Preventing others from a living?)
While attending dental school it is engrained in our minds there are certain hoops which we must jump through in order to obtain our license. These hoops include taking national boards I & II as well as a regional exam. Upon passing those exams we then apply for licensure for a particular state or states. If there is an individual who truly is qualified, according to statute, they may apply for a license by going through the appropriate process.
<b>State Electrical Board</b> - Question 5 (Preventing others from a living?)
The training, education, and supervised experience currently required of individuals to qualify for licensure as an electrician is necessary to help ensure each person will be capable of providing services that meet building code safety and efficiency requirements. Licensure represents a necessary barrier to entering this profession to allow the public a certain measure of protection and confidence that the person being hired is capable.
The board does not discriminate with regards to who may submit an application. Staff for the board will review all applications submitted.
Assuming an individual comes from a jurisdiction in which electrical licensure is not required, staff or the board will review all the experience an applicant submits. If the applicant's experience meets the established criteria, was legally obtained, and is verifiable, either the staff or the board will approve the applicant to sit for the examination. Upon passage of the exam, the applicant will be licensed.
<b>Board of Funeral Service</b> - Question 5 (Preventing others from a living?)
The Board is aware of this criticism and yet stands by its position that regulation of funeral service providers truly serves the public's best interest. Likewise, the Board views the evaluation process at issue in this sunset review as in the public interest and, when operative changes are supported by that evaluation, as a way to produce a more equitable and well-managed regulatory operation.
<b>Board of Hearing Aid Dispensers</b> - Question 5 (Preventing others from a living?)
The Legislature finds and declares that the practice of hearing aid dispensers in the state affects the public health, safety, and welfare. [This is not specifically stated in statute for this profession but seems to be a department-suggested response.] The Board protects the public from the unqualified practice of dispensing hearing aids or unprofessional conduct by qualified practitioners. Hearing aid dispensing is a dynamic and changing art and science that is continually evolving to include new medical technologies and more sophisticated devices in patient care.
<b>Board of Massage Therapists</b> - Question 5 (Preventing others from a living?)
The safe and competent practice of massage therapy requires 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization accredited by the National Commission for Certifying Agencies or its equivalent and receive a passing score on an examination prescribed by the Board. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications.
<b>Board of Medical Examiners</b> - Question 5 (Preventing others from a living?)
A similar question emerged in 1892, three years after the Board of Medical Examiners was created by the territorial legislature. In that year, the Montana Supreme Court rules that "a statute regarding the practice of medicine and providing for the examination and issuing of certifications to persons desirous of practicing the same cannot be deemed to create unjust discrimination." (Craig v. Board of Medical Examiners 121 MT 203.)
Today, as in 1892, the Board of Medical Examiners focuses on the education, training, and experience of each health care provider we license. Without the oversight that licensing and (continued on next page)

<b>Board of Medical Examiners – Q. 5 -- continued</b>
<p>regulation provides, anyone could make a false claim of knowledge, training, or experience, thus potentially putting the public at risk.</p> <p>The Board of Medical Examiners operates with no quotas or limits on the number of licensed professionals, whether by population, geography, political jurisdiction, or profession. The field is open to anyone with the proper qualifications.</p> <p>In addition, as noted in our response to Question #4, the Board of Medical Examiners routinely addresses only a handful of unlicensed practice issues per year. In FY 2009, the Board took action in only 3 unlicensed practice cases. In FY 2010, we acted in 8 cases. In FY 2011, there were 5.</p>
<b>Board of Nursing - Question 5 (Preventing others from a living?)</b>
<p>To be qualified for licensure as a nurse, a person needs to successfully complete an educational degree that includes demonstration of clinical skills and comprehensive knowledge of nursing care, pass a qualifying national examination of knowledge, and have demonstrated upstanding citizenship. APRNs (Advanced Practice Registered Nurses) also have to hold current national certification in their specialty field for this special endorsement. These requirements are significant and lead to a good living wage in the healthcare workforce. Recognition by licensure of these qualifications upholds the high standards to be a licensee in nursing. Licensees in nursing are privileged professionals with access to the public at what can be very vulnerable circumstances and so should be under scrutiny to be licensed and to keep that license.</p>
<b>Board of Nursing Home Administrators - Question 5 (Preventing others from a living?)</b>
<p>Licensure as a nursing home administrator is a federal mandate. Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession.</p>
<b>Board of Occupational Therapy Practice - Question 5 (Preventing others from a living?)</b>
<p>The safe and competent practice of the disciplines under this Board is learned through formal education and training and under supervision of a competent Occupational Therapists when dictated by statute or rule. To ensure the proper and necessary preparation, the law requires reasonable standards that do not bar any individual from earning a living once they have met qualifications. Healthcare and educational entities that employ members of the profession require licensure as a condition of employment.</p>
<b>Board of Optometry - Question 5 (Preventing others from a living?)</b>
<p>The Legislature finds and declares [in 37-10-105, MCA] that the practice of optometry in the state affects the public health, safety, and welfare. Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession.</p>
<b>Board of Outfitters - Question 5 (Preventing others from a living?)</b>
<p>If someone is qualified in this profession or occupation, then that person is not prevented from acquiring a license and earning a living. Should outfitting not be subject to licensure laws, the minimum standards would no longer be required, and the quality of service and public protection may suffer.</p> <p>Licensure laws are in place to establish ethical standards to an industry that respects the profession and the policies of the state in order to protect the health, safety, and welfare of the participants and the general public, too.</p> <p>Licensing and qualifications have maintained outfitting as a respected profession so that those who participate are able to make a living while those who seek such services may have confidence that the person providing the services is qualified and accountable.</p>



<b>Board of Pharmacy</b> - Question 5 (Preventing others from a living?)
This question is not applicable to the practice of Pharmacy. [Neither] pharmacists, technicians, nor student interns can work and practice in a pharmacy unless they are licensed to do so, and they cannot become licensed until they meet the educational requirements to make them eligible for licensure.
<b>Board of Physical Therapy Examiners</b> - Question 5 (Preventing others from a living?)
The Legislature finds and declares that the practice of physical therapy in the state affects the public health, safety, and welfare. [This is not specifically stated in statute for these professions but seems to be a department-suggested response.] Unlicensed individuals who may be qualified must be licensed before they can practice in the profession. The physical therapy profession offers two levels of licensure. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession.
<b>Board of Plumbers</b> - Question 5 (Preventing others from a living?)
The training, education, and supervised experience currently required of individuals to qualify for licensure as a plumber is necessary to help ensure each person will be capable of providing services that meet building code safety and efficiency requirements. Licensure represents a necessary barrier to entering this profession to allow the public a certain measure of protection and confidence that the person being hired is capable. The board does not discriminate with regards to who may submit an application. Staff for the board will review all applications submitted. Assuming an individual comes from a jurisdiction in which plumbing licensure is not required, staff or the board will review all the experience an applicant submits. If the applicant's experience meets the established criteria, was legally obtained, and is verifiable, either the staff or the board will approve the applicant to sit for the examination. Upon passage of the exam, the applicant will be licensed.
<b>Board of Private Alternative Adolescent Residential and Outdoor Programs</b> -Question 5 (Preventing others from a living?)
The Legislature finds and declares that the Board is to license and regulate Private Alternative Adolescent Residential or Outdoor Programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using their services. In addition, the Board shall develop and adopt rules and set fees for mandatory (continued on next page) licensing programs. Each program is required to provide policies of insurance in a form and in an adequate amount as determined by Board rule. The Legislature further finds and declares that programs shall meet the qualifications set for in statute and provided by board rule. Additionally, board statute provides for a variety of exemptions as listed in Question 4. The cost of securing licensure for a program is high as fees are set commensurate with costs and the current 14 programs are obligated to meet the financial obligations of regulation. In light of this, the Board does not prevent anyone from earning a living; rather, the Board prevents unqualified programs from operating at the expense of vulnerable youth and their families. Without this board, an established set of program standards for safe care of children in residential programs, and a process of verifying compliance with the standards there would be no way of establishing that a person or company is qualified to operate a safe program and there would not be a process to assure compliance.
<b>Board of Private Security</b> - Question 5 (Preventing others from a living?)
Individuals who desire to earn a living in the various private security-related professions are eligible to apply for licensure from the Board. If they meet the qualifications as spelled out in State statute and rules, then they can become licensed and earn their living. The Board does not desire to impede licensure of qualified individuals. Rather, protecting public health, welfare, and safety requires training and competency standards.

<p><b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 5 (Preventing others from a living?)</p>
<p>If an individual can provide sufficient proof he or she is qualified, the board will review the individual's application. There are four sets of qualifications for licensure for both professional engineers and professional land surveyors that require different combinations of education and experience. These different combinations of education and experience allow for qualified individuals from a number of backgrounds to apply to sit for the national exam or to apply for a license if licensed in another state.</p>
<p><b>Board of Psychologists</b> - Question 5 (Preventing others from a living?)</p>
<p>The safe and competent practice of psychology requires a doctoral level of education, training, and two years of professional supervised experience. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living.</p>
<p><b>Board of Public Accountants</b> Question 5 (Preventing others from a living?)</p>
<p>The Board of Public Accountants does not regulate bookkeepers, general accountants, or paid tax preparers. These individuals may still practice and earn a living. The only individuals regulated by the Board are those that wish to be a Certified Public Accountant or Licensed Public Accountant.</p>
<p><b>Board of Radiologic Technologists</b> - Question 5 (Preventing others from a living?)</p>
<p>The safe and competent practice of x-rays requires a 24-month course of study in radiologic technology. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living once they have met qualifications.</p>
<p><b>Board of Real Estate Appraisers</b> - Question 5 (Preventing others from a living?)</p>
<p>The Montana Board of Real Estate Appraisers must ensure compliance with the federal requirements for educational qualifications and for experience. The minimum requirements for education and experience are the same in all 50 states and 4 jurisdictions. The Montana Board cannot be less stringent in their requirements for licensure than the federal guidelines.</p> <p>Montana is a nonmandatory state as it relates to the licensure of real estate appraisers. If an individual is doing appraisals that are not for federally related transactions, they may do so. The individual may not identify themselves as licensed or certified. See 37-54-201, MCA:</p> <p><b>37-54-201. Real estate appraiser license -- scope and display of license.</b> (1) Upon proof that an applicant meets the qualifications set out in 37-54-202, the board shall issue to the applicant a real estate appraiser license.</p> <p>(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.</p> <p>(3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from appraising real property for transactions not related to a federal agency or project for compensation if the person does not purport to be a licensed or certified real estate appraiser. A person who purports that the person or the person's company is licensed under this section or certified under 37-54-302 and 37-54-303 without possessing the applicable license or certificate is guilty of a misdemeanor.</p> <p>(4) This section does not:</p> <p>(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;</p> <p>(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.</p> <p>(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.</p> <p>(6) A licensed real estate appraiser shall conspicuously display the license in the appraiser's principal place of business.</p>

**Board of Realty Regulation** - Question 5 (Preventing others from a living?)

A practitioner must practice in a manner that does not harm others -- financially or otherwise. In order to truly determine that someone is "qualified" to practice real estate, an entity separate from the proposed practitioner is in a better position to determine whether those qualifications are actually met. The requirements for licensure are not onerous and can be accomplished in a short period of time. The important aspect of licensing is to assure consumers and fellow practitioners that the licensed practitioner has met minimum competency by completing education and demonstrating a basic knowledge through examination. Persons are permitted to buy, sell, and lease real estate on their own behalf without involving licensees. Thus, persons who wish to engage in personal real estate transactions without the assistance of real estate agents and property managers may do so, and persons who wish to engage a professional to assist in the transaction can do so with the assurance that the agent has met the professional standards prerequisite to licensure.

**Board of Respiratory Care** - Question 5 (Preventing others from a living?)

This question has not been posed to the Board. However, it is worth noting that licensure as an RCP does not pose an undue burden on an individual. Initial licensure costs only \$100.00, while annual renewal is only \$75. This is far less than many other licensed professionals in Montana. Individuals who wish to become RCPs must invest much more time, effort, and money in the education and examination that renders them fit for licensure. The Board also notes that, because of its straightforward licensing standards, few applications for licensure become "nonroutine" and require extra scrutiny by the Board.

The Board also believes that Montana citizens benefit from licensure of RCPs because licensed individuals are subject to a disciplinary process should they violate state laws or board rules regarding the profession. In short, licensing protects the public in two ways--by allowing only qualified individuals to practice and by establishing processes to punish those who violate state standards.

**Board of Sanitarians** - Question 5 (Preventing others from a living?)

The only group required to be licensed are those practicing the profession of sanitarian in their employment with local government or those working for state government whose position descriptions require this licensing. There are many individuals working for private industry, (continued on next page) state government, federal government, or self-employed who are qualified and work in areas related to the profession of sanitarian. Examples are environmental consultants who evaluate land for development, prepare sanitation in subdivision applications, and design on-site wastewater systems. Some qualified persons serve as in-house inspectors for businesses and as trainers for the food industry. These individuals are valuable contributors to our communities; many choose to be professionally licensed as a means to demonstrate their commitment to their profession, public/environmental health, and an ethical standard.

**Board of Social Workers/Professional Counselors/Marriage and Family Therapists** - Question 5 (Preventing others from a living?)

For qualified individuals, the process of licensure is not difficult. Individuals wishing to work as a mental health professional would desire licensure as part of an ethical and best practices means of working in the profession. It protects the licensee as well as the public. If one is not licensed, much confusion, at best, and damage, at worst, is risked to the public. The requirements for licensure in Montana are very reasonable and are not felt to be a barrier for entry to the profession. The Legislature declares that the Board shall set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as Licensed Clinical Social Workers, Licensed Clinical Professional Counselors, and Licensed Marriage and Family Therapists.

The State of Montana qualifications are closely aligned with existing national standards for the credentials under the jurisdiction of the Board. Additionally, board statute provides for a variety of exemptions, including a provision for a temporary license in the event of an out-of-state (continued on next page)

<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Q. 5 -- continued
licensee working in Montana for a limited number of days. The Board does not prevent anyone from earning a living; rather they prevent, unqualified practitioners from earning a living at the expense of the profession. Licensees are privileged professionals with access to the public under what can be very vulnerable circumstances and so should be under scrutiny to be licensed and to keep that license.
<b>Board of Speech-Language Pathologists and Audiologists</b> - Question 5 (Preventing others from a living?)
The Legislature finds and declares that Speech-Language Pathologists and Audiologists and Aides and Assistants shall meet the qualifications set forth in statute and provided by board rule. [There is nothing in statute that states the Legislature finds and declares this.] Additionally, board statute provides for a variety of exemptions including a provision for a temporary license in the event of an out-of-state licensee working in Montana for a limited number of days. Individuals who are qualified to be a Speech Language Pathologist or Audiologist would not object to being licensed. Individuals who have an interest in the profession understand early in their career that licensure is required and necessary. Furthermore, the cost of securing licensure is minimal. The Board does not prevent anyone from earning a living; rather, the Board prevents unqualified practitioners from earning a living at the expense of consumers. In addition to full licensure, the Board permits further competent services for consumers by offering a registration category for Speech-Language Pathology and Audiology Aides and Assistants. Anyone who has an interest in the profession but falls short of the education, supervision, or exam requirements for full licensure can enter the field and practice under the close supervision of a licensed professional.
<b>Board of Veterinary Medicine</b> - Question 5 (Preventing others from a living?)
To practice veterinary medicine, an individual would possess and use controlled substances, perform surgery, and diagnose diseases. Continued competence of these abilities should be monitored. A doctoral degree in veterinary medicine and passage of national examinations followed by licensure is the necessary training for this profession as defined by the Legislature in Montana.
<b>Question 6: How does your board monitor bias among board members toward a particular licensee, an applicant or a respondent (to unlicensed practice)? and How does your board monitor bias toward a particular profession or occupation, if more than one profession or occupation is licensed by the board?</b>
<b>Board of Alternative Health Care</b> - Question 6
Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The Presiding Officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. Also, having a mix of public and professional members who serve together on the board is another safeguard.  Direct-entry midwives and naturopathic physicians work well together as there are shared areas of practice. There are also an equal number of members from each profession. There has never been an issue regarding unfair treatment on behalf of either profession.
<b>Board of Architects and Landscape Architects</b> - Question 6 (Monitoring bias?)
The Business Standards Division provides board member training for all members to attend that provides instruction regarding recusing oneself when there is actual, or the appearance of, a conflict of interest or bias.  Additionally, the Board's composition serves to monitor bias. There are six members appointed by the Governor. The composition of the Board is two licensed architects who have (continued on next page)

<p><b>Board of Architects and Landscape Architects</b> - Q. 6 -- continued</p> <p>been in continuous practice for 3 years before their appointment, one licensed architect who is on the staff of the Montana State University-Bozeman school of architecture, two licensed landscape architects, and one representative of the public who is not engaged in or directly connected with the practice of architecture or landscape architecture. The makeup of the Board was determined by the number of licensees in each profession.</p> <p>Finally, board member bias toward a particular applicant or licensee is kept to a minimum by following the rules and regulations that are in place for the Board.</p>
<p><b>Board of Athletic Trainers</b> - Question 6 (Monitoring bias?)</p> <p>Board member training by the Department of Labor and Industry addresses the issue of bias. Board members are advised of the need to recuse themselves from decision-making if a conflict exists. The Presiding Officer and staff including an attorney also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided. Also, having a mix of a public member and professional members serving together on the Board is another safeguard. There are no other professions licensed by this board.</p>
<p><b>Board of Barbers and Cosmetologists</b> - Question 6 (Monitoring bias?)</p> <p>Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists, and they have followed this procedure. The presiding officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided. In addition, the public right to participation in open meetings is encouraged. Having a mix of public and professional members who serve together on the Board is another safeguard. Board counsel will also advise members/staff if issues of bias come forward.</p>
<p><b>Board of Chiropractors</b> - Question 6 (Monitoring bias?)</p> <p>The Board of Chiropractors minimizes bias among board members toward particular licensees and applicants in the following manner: (continued on next page)</p> <p>a. New applicants are insured (sic) licensing through objective criteria. This includes graduation from an accredited college of Chiropractic and/or the holding of a license in another state – where reciprocity is involved. The only time a new application comes before the Board members is if there is an issue with past disciplinary measures by a board in another state towards the applicant's license or legal issues that have been filed against an applicant. Bias is minimized by the concurrence of all board members' opinions, with legal implications being kept in mind as toward the Board's authority.</p> <p>b. Board bias toward particular licensees is kept to a minimum by following the rules and regulations that are in place for the Board. There are specific rules that deal with the actions of practitioners. If a complaint is filed, the Board members must find specific rules that have been broken. Further bias is minimized by having a public member on the Board who can add input as to the merits of the infraction.</p>
<p><b>Board of Clinical Laboratory Scientists</b> - Question 6 (Monitoring bias?)</p> <p>The Business Standards Division provides board member training for all members to attend, which includes information and instruction on how and when to recuse oneself when there is actual or the appearance of a conflict of interest or bias. Additionally, the Board's composition serves to monitor bias. They consist of five members appointed by the Governor. Four of the members must be clinical laboratory science practitioners in Montana and one public member who is not associated with or financially interested in the practice of clinical laboratory science. Finally, board member bias toward a particular applicant or licensee is kept to a minimum by following the rules and regulations that are in place for the Board.</p>

**Board of Dentistry** - Question 6 (Monitoring bias?)

A. Our Board is made up of intelligent, independent thinkers. None is easily swayed one way or the other. All board members listen to the information and materials presented to them and form their own opinion.

The board members take their responsibility to serve the people of Montana very seriously and the health, safety, and welfare of the public is their primary focus while serving on the Board. Turf wars between different occupations served by the Board are frowned upon. (Document includes Mission and History of WREB, the Western Regional Examining Board for dentists and dental hygienists.)

**State Electrical Board** - Question 6 (Monitoring bias?)

The Montana State Electrical Board consists of a five-member board appointed by the Governor with the consent of the senate, including two master electricians, one journeyman electrician, and two public members. The diversity of the board helps serve to reduce the chances that any particular board member's bias will affect how the board carries out its business. The board members understand the responsibility that comes with their appointments and the impact of their decisions. If a member determines that they may have a conflict of interest, they will immediately recuse themselves and abstain from discussion involving an applicant, agenda topic or complaint. The board only licenses a single profession; therefore, bias towards another profession or occupation is not an issue.

**Board of Funeral Service** - Question 6 (Monitoring bias?)

*AMONG BOARD MEMBERS AND TOWARD A PARTICULAR PROFESSION --* The full board is composed of three morticians, one crematory operator, one cemetery owner, and a public member who is not associated with the practice of the funeral business. The distribution of the licensed members generally reflects the distribution of licensees, with morticians being the most in number, followed by crematory operator licenses, and cemetery company licenses. All board decisions require a majority vote, which under the composition of the Board prevents morticians from controlling the decision making. Likewise, a similar balance exists on the 3-member disciplinary screening panel, which presently includes a mortician, the public member, and the cemetery owner.

The Board monitors bias through board member and public comment at its meetings and rule adoption process and by adhering to the provisions of Title 37, which set forth the application and disciplinary processes as well as the defined scopes of practices and duties of each licensed category. To prevent bias or any perception of bias, Board members recuse themselves from discussing and deciding matters in which they are personally involved. Board decisions are supported by reasonable cause and afford due process to the individual subject to board action.

Finally, the Department of Labor and Industry provides training to all board members and advice of legal staff to assist in the effort to avoid bias.

**Board of Hearing Aid Dispensers** - Question 6 (Monitoring bias?)

The Business Standards Division has developed a "Board Member Manual" for board member policy and processes. The Division also sponsors a Board Member Training for all members to attend. There is training and instruction on how and when to recuse oneself when there might be a conflict of interest or bias.

In addition, the board member composition is an avenue to monitor bias. The Board consists of five members appointed by the Governor to include: two members, each of whom has been a licensed hearing aid dispenser for at least 5 years, possesses a current audiologist license, and has a master's level college degree; two members, each of whom does not hold a master's level college degree in audiology but has been a licensed dispenser and fitter of hearing aids for at least 5 years before being appointed to the board; and one public member who is either an otolaryngologist or a person who is not a licensed hearing aid dispenser or a licensed audiologist and who regularly uses a hearing aid because of a demonstrated hearing impairment.

<b>Board of Massage Therapists</b> - Question 6 (Monitoring bias?)
Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The Presiding Officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all decisions. Having a mix of public and professional members who serve together on the Board is another safeguard. The Board licenses no other professions.
<b>Board of Medical Examiners</b> - Question 6 (Monitoring bias?)
The Board of Medical Examiners relies on its members to announce any association or circumstances that might lead to bias or the perception of bias when addressing the tasks put before it. In addition, the Board has three built-in checks on potential bias.  First, the Board is diverse. Of the 13 seats with voting power (including the newly named acupuncture representative) no profession holds enough seats to create a quorum. Nor can one profession's members win a majority if all members vote.  Second, the Board includes two "public member" seats, which are not held by licensed health providers. We believe this provides even more diversity, as our "public members" have no vested interest in any of the professions the board oversees.  Third, when a complaint enters the compliance process, the two panels involved -- Screening and Adjudication -- are comprised of different members of the Board. This insures that a Board member who is involved in screening a case is not involved in adjudicating the same case.
<b>Board of Nursing</b> - Question 6 (Monitoring bias?)
The members of the Board monitor each other for bias by conducting themselves in a respectful and courteous manner to all business brought before the Board. Official business is always done in the open meeting format unless to protect the privacy of an individual it can be done in an executive session such as the Screening Panel meetings. These executive sessions are done with a majority of members present as well as departmental staff such as legal counsel or other support staff. The openness of Board meetings helps to assure that a particular member cannot dominate the decisions or put forward their own agenda as a majority of members needs to be present to hold a meeting. Board orientation also helps to assure that bias is not helpful to decision making and so education on the Board work and processes is always ongoing to make sure there is a culture where all Board members feel free to speak and participate. The makeup of the Board is also helpful with representation from all of the nursing license types of LPN, RN, and APRN as well as public members. Another method used frequently in the executive sessions such as the Screening Panel is for members to recuse themselves if they have a personal relationship with the licensee or person lodging the complaint.
<b>Board of Nursing Home Administrators</b> - Question 6 (Monitoring bias?)
The Business Standards Division sponsors a Board Member Training for all members to attend. There is training and instruction on how and when to recuse oneself when there might be a conflict of interest or bias. The board member composition also assures the public against bias with the inclusion of nonlicensee public members and the nonvoting representation of the DPHHS director. (See 2-15-1735, MCA.)
<b>Board of Occupational Therapy Practice</b> - Question 6 (Monitoring bias?)
Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision making if a conflict exists and they have followed this procedure. The Presiding Officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, also the (continued on next page)

<b>Board of Occupational Therapy Practice</b> – Q. 6 -- continued
public right to participation in open meetings is encouraged. Having a mix of public and professional members who serve together on the Board is another safeguard. Board Counsel will also advise members/staff if issues of bias come forward.
<b>Board of Optometry</b> - Question 6 (Monitoring bias?)
The Business Standards Division provides board member training for all members to attend, which includes information and instruction on how and when to recuse oneself when there is actual or the appearance of a conflict of interest or bias.  Additionally, the Board's composition serves to monitor bias. The Board consists of four members appointed by the Governor. Three of the members must be registered optometrists in Montana and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.
<b>Board of Outfitters</b> - Question 6 (Monitoring bias?)
<i>AMONG BOARD MEMBERS</i> -- Each board member is duty-bound to announce an association with a particular applicant or licensee, etc., that they believe could amount to a bias (in favor of or against an individual) that could prevent that member from fairly passing on a particular matter. Whether in a licensing proceeding or in a disciplinary proceeding, a member that is biased takes no part in the discussion or vote on the matter.  All board members attend a new board member training session administered by the department. Members are instructed as a quasi-judicial board to disclose the interest creating any conflict to their board counsel prior to participating in any official action.  <i>TOWARD A PARTICULAR PROFESSION</i> -- The board licenses (1) hunting outfitters, (2) fishing outfitters, (3) guides, and (4) professional guides. Guides and professional guides are able to serve clients on behalf of hunting outfitters and fishing outfitters.  As to the differences between hunting outfitters and fishing outfitters, and the guides and professional guides who assist them, the board is balanced in its composition of members, having one representative each who is a hunting or fishing outfitter, two members who are licensed as both (hunting and fishing), one member of the public, and two sportspersons.  As among the license types of outfitter, guide, and professional guide (with no respect to whether the service being provided is hunting or fishing), there have been no concerns raised to the board, that the board is aware of, that would cause concern that there may be any bias toward outfitters, guides, or professional guides. Each board member is honor-bound to announce an association that they believe could amount to a bias (in favor of or against an individual) that could prevent that member from fairly passing judgment on a particular matter. Whether in a licensing proceeding or in a disciplinary proceeding, if a member feels biased he or she takes no part in the discussion or vote on the matter. The board faces such bias issues infrequently. The board cannot recall internal conflicts or biases between licensed outfitters, professional guides, or guides. To our knowledge such conflicts have not occurred.
<b>Board of Pharmacy</b> - Question 6 (Monitoring bias?)
Montana is large geographically but small in terms of the profession of pharmacy. No different than with physicians, nurses, or dentists, through professional affiliation board members know many of their colleagues in the state. That said, invariably the situation will arise where a licensee involved in a case before the Board will be known to one or more members. My first board meeting I was confronted with TWO pharmacists appearing before the Board on diversion issues that used to work for me. Since being assigned to the screening panel of the Board another licensee has come before us on a diversion issue that used to work for me. In my specific situation, as a new member, I sought (continued on next page)



**Board of Pharmacy** – Q. 6 -- continued

advice from the Board counsel and executive director on this matter. Subsequently, I attended new Board member training that provided guidance and direction on these potential issues, but quite honestly the structure of the Board provides a strong, objective body where bias or potential bias issues are infrequent.

Board members are unable to recall any conflict with any other profession because there is no professional overlap between pharmacists' professional boundaries and other professionals' boundaries. There may be, for instance, mutual overlap between the care afforded by an athletic trainer and a physical therapist, but there is no such overlap between pharmacists and other providers. Any potential overlap and possible bias with physicians dispensing medications is managed by law -- §37-2-101 *et seq.* The Board has no experience with internal conflicts or biases between licensed pharmacists and pharmacy technicians or between any of the various forms of licensed pharmacies. While conceivable, perhaps, such conflicts have not occurred.

**Board of Physical Therapy Examiners** - Question 6 (Monitoring bias?)

The Business Standards Division provides board member training for all members to attend, which includes information and instruction on how and when to recuse oneself when there is actual or the appearance of a conflict of interest or bias. Additionally, the board's composition serves to monitor bias. The Board consists of five members appointed by the Governor. Four of the members must be physical therapists who have been actively engaged in the practice of physical therapy for the three years preceding appointment to the Board; one member is of the general public who is not a physician or a physical therapist. Lastly, board member bias toward a particular applicant or licensee is kept to a minimum by following the rules and regulations that are in place for the Board.

**Board of Plumbers** - Question 6 (Monitoring bias?)

The Board of Plumbers consists of a nine-member board appointed by the Governor with the consent of the senate, including two master plumbers, two journeyman plumbers, one registered professional engineer, three representatives of the public and one representative of the Department of Environmental Quality who must have experience in the regulation of drinking water systems. The diversity of the board helps serve to reduce the chances that any particular board member's bias will affect how the board carries out its business. The board members understand the responsibility that comes with their appointments and the impact of their decisions. If a member determines they may have a conflict of interest, they will immediately recuse themselves and abstain from discussion involving an applicant, agenda topic or complaint.

The Board only licenses a single profession; bias towards another profession or occupation is a nonissue.

**Board of Private Alternative Adolescent Residential and Outdoor Programs** - Question 6 (Monitoring bias?)

The Board regulates only one license type. As mentioned in Question 3, the Board composition includes 3 members from programs of various sizes and types and 2 members who must be from the general public. No program size or type holds enough seats to create a quorum or win a majority if all members vote. The Board includes 2 public member seats, which are not held by program members. We believe this provides even more diversity, as our public members have no vested interest in any particular program size or type. In addition, when a complaint enters the compliance process, two panels become involved, screening and adjudication. The panels are comprised of different Board members. This ensures that a Board member who is involved in screening a case is not involved in adjudicating that same case. The Department of Labor and Industry provides training for all appointed board members; members are advised of the need to recuse themselves from decision making if an actual conflict or the appearance of a conflict exists. The presiding officer and staff, including an attorney, monitor to ensure that cases are treated according to the same requirements and avoid the possibility or perception of bias.

**Board of Private Security** - Question 6 (Monitoring bias?)

All board members appointed to the Board by the Governor are responsible for upholding the purpose of the Board in increasing the integrity, competency, and performance of the security-related professions and ensuring that public health, welfare, and safety are protected. The very structure of the Board, with representation by the public and various law enforcement and private security professionals, helps create balance by the Board in its regulation and oversight.

The Board's review and consideration of a complaint is bifurcated into two panels--screening and adjudication--so that the board members determining whether reasonable cause exists to proceed with disciplinary action against a licensee are different than those determining the final outcome of the disciplinary matter. The Board may request an investigation to be conducted by the Department of Labor and Industry and in the event a disciplinary action results in a contested case, an administrative hearing examiner is appointed to preside over the case.

Board members are educated to identify and understand conflicts of interest, whether perceived or actual, that may prohibit their participation in reviewing or considering issues involving disciplinary matters with licensees, license applications, or complaints of unlicensed practice.

**Board of Professional Engineers and Professional Land Surveyors** - Question 6 (Monitoring bias?)

The Board members understand the importance and integrity that falls on them and the impact of their decisions. A member who determines he or she has a conflict of interest will immediately abstain from the complaint or topic on the agenda. The Board is made up of 5 professional engineers, 2 land surveyors, and 2 public members. The makeup of the Board was determined by the number of licensees in each profession. While professional engineers make up a majority of the board, all members are willing to review matters relating to both professions. Engineering and surveying are related professions, so much so that a dual license exists for professional engineer surveyors. The public members serve important roles in preventing bias towards either profession because they offer outside, independent views.

**Board of Psychologists** - Question 6 (Monitoring bias?)

Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The presiding officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. Also, having a mix of public and professional members who serve together on the board is another safeguard.

There are no other professions licensed by this board.

**Board of Public Accountants** - Question 6 (Monitoring bias?)

Board members recuse themselves when the Board is dealing with an issue regarding someone they know or in situations where the issue may be viewed as a conflict of interest for them to weigh in on the discussion. Board staff and legal counsel make sure there is consistency in the Board's actions in similar cases.

Only one profession/occupation is licensed by this board.

**Board of Radiologic Technologists** - Question 6 (Monitoring bias?)

Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The presiding officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided. A carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. A mix of public and professional members who serve together on the board is another safeguard. The Board licenses no other professions.

<p><b>Board of Real Estate Appraisers</b> - Question 6 (Monitoring bias?)</p>
<p>The Montana Board of Real Estate Appraisers is made up of 7 members: 5 real estate appraisers and 2 public members. The Board has given department staff the authority to review the educational requirements mandated by Title XI [of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended] and the Appraisal Qualifications Board.</p> <p>The Board reviews an applicant's work product. The work product is chosen by the only appraiser staff member, not the board. The work product is required to be reviewed in accordance with strict ethics and professional code requirements. The Board is sitting in judgment of the work product and not the individual person. This system of review prevents bias from being present.</p>
<p><b>Board of Realty Regulation</b> - Question 6 (Monitoring bias?)</p>
<p>The members of the Board monitor each other for bias by conducting themselves in a respectful and courteous manner for all business brought before the Board. The Board also understands that public scrutiny is the guarantee of governmental propriety and necessary to the protection of all public rights. Therefore, official business is always done in an open meeting format unless the meeting must be closed to protect the privacy of an individual. All meetings of the Board are noticed to the public and are conducted with a majority of members present as well as department staff such as legal counsel or other support staff. The openness of board meetings helps to assure that the Board is accountable to the public also ensures that a particular member cannot dominate the decisions or promote their own agenda. Board orientation also helps to show that bias is not helpful to decision-making. Education of board members on board work and processes is always ongoing to make sure there is a culture where all board members feel free to speak and participate and where the public may observe and participate as allowed by law. The makeup of the Board is also helpful with representation of brokers, property managers as well as public members. Likewise, the public and licensees are encouraged to attend all meetings. Licensees are even given continuing education credit simply for attending board meetings. Board members also know that they must recuse themselves if they have a personal relationship with a licensee or person appearing before the Board or if they have some other interest in the matter being discussed. Further, an independent hearing examiner is used in all contested cases to ensure fairness of the process.</p>
<p><b>Board of Respiratory Care Practitioners</b> - Question 6 (Monitoring bias?)</p>
<p>The Board of RCP licenses only one type of health care provider. Should a board member have a bias or a conflict of interest with a particular provider, licensee, or alleged violator, that board member has an obligation to recuse himself or herself from the decision-making process involving that individual. That board has not been made aware of any cases of alleged bias.</p>
<p><b>Board of Sanitarians</b> - Question 6 (Monitoring bias?)</p>
<p>This Board, which is composed of three Registered Sanitarians and two members of the public, monitor one profession with the two license types of Registered Sanitarian and Sanitarian-in-Training. The structure of the Board provides balance in the regulation of the industry. Board members are educated through training to identify and understand conflicts of interest. A member who feels they may have a conflict of interest associated with an application, license, or disciplinary issue can freely recuse themselves from voting.</p>
<p><b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 6 (Monitoring bias?)</p>
<p>Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The Board and department staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. Having a mix of public and professional members who serve together on the Board is another safeguard. Three (continued on next page)</p>

<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Q. 6 -- continued
<p>credentials are regulated by the Board. The Board of Social Work Examiners and Professional Counselors relies on its members to announce any association or circumstance that might lead to bias of the perception of bias when addressing the tasks put before it. In addition, the Board has three built-in checks on potential bias. First, the Board is diverse. Of the seven seats, no profession holds enough seats to create a quorum or win a majority if all members vote. Three seats are held by Licensed Clinical Social Workers and three seats are held by Licensed Clinical Professional Counselors. Second, the Board includes one public member seat, which is not held by a licensee. We believe this provides even more diversity, as our public member has no vested interest in any of the professions the Board oversees. Third, when a complaint enters the compliance process, the two panels involved--Screening and Adjudication--are comprised of different members of the Board. This insures that a board member who is involved in screening a case is not involved in adjudicating the same case.</p>
<b>Board of Speech-Language Pathologists and Audiologists</b> - Question 6 (Monitoring bias?)
<p>The Board regulates two license types, Speech-Language Pathologists and Audiologists, and registers Aides and Assistants. The Board composition includes an equal number of Speech-Language Pathologists and Audiologists even though the number of licensed Speech-Language Pathologists far exceeds the number of Audiologists. In addition, the screening and adjudication panels are balanced among the two license types. The Department of Labor and Industry provides board member training for all appointed members. Board members are advised to recuse themselves from decision-making if an actual conflict or the appearance of a conflict exists. The presiding officer and staff including an attorney also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided.</p>
<b>Board of Veterinary Medicine</b> - Question 6 (Monitoring bias?)
<p>Board member training provided by the Department of Labor and Industry addresses this issue. Board members are advised of the need to recuse themselves from decision-making if a conflict exists. The Presiding Officer and staff also monitor bias to ensure that the possibility or perception of bias is avoided. Embryo Transfer Technicians and Euthanasia Technicians work well with veterinarians in narrow areas of veterinary medicine. An issue of unfair treatment on behalf of those professions has not been raised.</p>
<b>Question 7: Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as an oversight body?</b>
<b>Board of Alternative Health Care</b> - Question 7
<p>There are professional associations consisting of members who elect to join the associations. The mission of associations is to promote the industry; the board's mission is to protect the public. These are two separate functions that are not well-suited to be performed by the same entity. The associations do not have legal authority to investigate complaints and discipline professionals or public members to accomplish regulation. The cost to institute licensing and discipline functions in the association would raise association membership fees considerably.</p>
<b>Board of Architects and Landscape Architects</b> - Question 7 (Association oversight instead?)
<p>No. The mission of associations is to promote the profession and advocate for the industry. The Board's mission is to protect the public through the licensure and regulation of architecture and landscape architecture. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals.</p>

<b>Board of Athletic Trainers</b> - Question 7 (Association oversight instead?)
The National Athletic Trainers Association Board of Certification exists as well as the Montana Athletic Trainers Association. Belonging to these Associations is voluntary. The Board of Certification or BOC monitors continuing education and tri-annual renewal, but they don't monitor unlicensed or unethical practices. The Associations have standards of professional practice and promote the profession while the Board promotes protection of the public through regulation of the practice.
<b>Board of Barbers and Cosmetologists</b> - Question 7 (Association oversight instead?)
Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.  No state professional associations currently exist that would function in this manner. Those national associations that are available for voluntary membership do not have oversight as part of their mission. Theirs is that of professional advancement, advanced training, and legislative action.
<b>Board of Chiropractors</b> - Question 7 (Association oversight instead?)
The occupation of Chiropractic does have a professional association, the Montana Chiropractic Association (MCA). The purpose of the MCA is to promote the advancement of Chiropractic in the State of Montana. This causes a conflict of interest with the protection of the public. While the MCA does promote proper ethical behavior of the profession and its members, their primary function is to promote Chiropractic to the public. Membership in the MCA is voluntary, and the MCA derives its funding from dues by the members. If they were to be placed in a disciplinary role, their focus may favor the dues paying member, and bias against any person from the public instituting a complaint.  There have also been times in the past where various chiropractors in the state have discussed starting a different professional association due to differences in philosophy as to how the profession could be promoted. If there were more than one professional association, there would be conflicts as to which one should be the oversight body.
<b>Board of Clinical Laboratory Science Practitioners</b> - Question 7 (Association oversight instead?)
No. The mission of associations is to promote the profession and advocate for the industry. The Board's mission is to protect the public through the licensure and regulation of clinical laboratory science practitioners. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals.
<b>Board of Dentistry</b> - Question 7 (Association oversight instead?) response by George Johnson, DDS, 8/23/11
The associations like the Montana Dental Association, Montana Denturist Association, Montana Hygiene Association, and Montana Dental Assistants Association are political and self-serving in nature. They have been set up to advance their professions and their focus may or may not address the will, needs, and protection of the general public pertaining to a particular issue.
<b>State Electrical Board</b> - Question 7 (Association oversight instead?)
The State Electrical Board does not have an association that could provide oversight at this time. Montana does have electrical unions; however, the unions' primary loyalties are to their membership and profession, not to the health, safety, and welfare of the citizens of Montana.

<b>Board of Funeral Service</b> - Question 7 (Association oversight instead?)
The only association related to the funeral industry in Montana is the Montana Funeral Directors' Association (MFDA), which only represents funeral homes (mortuaries). Since the Board of Funeral Service also licenses crematories, cemeteries, crematory operators, and crematory technicians there would be no entity with jurisdiction over these licensees. The mission of a professional association is to promote the profession whereas the Board exists to protect the public. A conflict of interest could exist if the licensing entity was also the promoter of the industry.
<b>Board of Hearing Aid Dispensers</b> - Question 7 (Association oversight instead?)
No. Associations are in existence for the cohesion of the profession and the interest on behalf of the industry.
<b>Board of Massage Therapists</b> - Question 7 (Association oversight instead?)
Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.
<b>Board of Medical Examiners</b> - Question 7 (Association oversight instead?)
The Board of Medical Examiners sees its role as very different from the roles played by the professional associations to which many of our licensees belong. The Board's role is to (continued on next page)
<b>Board of Medical Examiners</b> - Q.7 - continued
protect the public through its own rules and through the statutes it enforces. In contrast, the professional association work to promote, enhance, and advocate on behalf of their respective professional members. At this time, the Board of Medical Examiners is unaware of any intention or effort by a professional association to share -- or assume outright -- the duties assigned to the Board by statute and/or rule.
<b>Board of Nursing</b> - Question 7 (Association oversight instead?)
In Montana, registered nurses have a nursing association -- the Montana Nurses Association (MNA). It is a member organization with dues nearly four times the cost than licensure for RNs in Montana. MNA is also a collective bargaining group for nurses working in contract healthcare institutions, such as hospitals.
<b>Board of Nursing Home Administrators</b> - Question 7 (Association oversight instead?)
No. Federal law requires that the state administer the licensing of nursing home administrators. An association is a public, voluntary membership organization that is not a state agency. Furthermore, it is felt that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement.
<b>Board of Occupational Therapy Practice</b> - Question 7 (Association oversight instead?)
Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.
<b>Board of Optometry</b> - Question 7 (Association oversight instead?)
No. The mission of associations is to promote the profession and advocate for the industry. The Board's mission is to protect the public through the licensure and regulation of optometrists. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals.

<b>Board of Outfitters</b> - Question 7 (Association oversight instead?)
There are professional associations consisting of members/licensees who elect to join the associations. The mission of associations is to promote the industry, recommend licensing qualifications, monitor statutes and rules to balance qualification standards with industry viability; the board's mission is to license, investigate alleged violations of the laws/rules of the practice and impose fair sanctions on licensees that are not in compliance in order to regulate the occupation as well as protect the public. These are separate functions not well-suited to be performed by the same entity, especially in an industry that deals so intimately with landowner rights and issues relevant to public access and public wildlife.
<b>Board of Pharmacy</b> - Question 7 (Association oversight instead?)
The Montana Pharmacy Association is a pharmacists' advocacy organization geared toward promoting the profession and pharmacists' individual aims. Those goals are laudable, but an oversight body must be strictly focused on the interests of the public. The Montana Pharmacy Association could not divide its mission by both advocating for pharmacists and protecting the public interest. In addition many pharmacists choose to affiliate with other associations, e.g. American Society of Health-System Pharmacists, American Pharmacy Association, National Community Pharmacists Association, etc. My experience has shown that given the diverse practice settings many practitioners don't necessarily agree on the same issues, so invariably MPA would be presented with many conflict of interest issues. It is impossible for MPA to perform the work of the Board, executive director, two inspectors, and administrative staff.
<b>Board of Physical Therapy Examiners</b> - Question 7 (Association oversight instead?)
No. The mission of the associations is to promote the profession and advocate for the industry. The Board's mission is to protect the public through the licensure and regulation of physical therapy. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals.
<b>Board of Plumbers</b> - Question 7 (Association oversight instead?)
The Board of Plumbers does not have an association that could provide oversight at this time. Montana does have plumbing unions; however, the unions are not in a position to regulate the industry.
<b>Board of Private Alternative Adolescent Residential and Outdoor Programs</b> - Question 7 (Association oversight instead?)
The PAARP Board sees its role as very different from the roles played by the National Association of Therapeutic Schools and Programs (NATSAP) to which many of our licensees belong. We both have adopted similar standards for safe care of children. However, NATSAP is not a regulatory body nor an accrediting body and so cannot provide the inspection and oversight that is provided by the PAARP Board. The Board's role is to protect the public through its own rules and through the statutes it enforces. In contrast, the Association serves as an advocate and resource for innovative organizations that devote themselves to society's need for the effective care and education of struggling young people and their families. Their vision is for a nation of healthy children. "We are the voice inspiring, nurturing, and advancing the courageous work of our schools and programs." At this time, the Board is unaware of any effort by a professional association to share -- or assume outright -- the duties assigned to the Board by statute or rule.
<b>Board of Private Security</b> - Question 7 (Association oversight instead?)
The Board is aware of at least one association that exists in the State regarding private investigators and security operators. However, one or more associations do not presently exist in the State that can provide the level of oversight to all of the professions of private security and license types that the Board currently regulates, to the extent necessary to ensure competency and training requirements are met.

<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 7 (Association oversight instead?)
There is a Montana Society of Engineers (MSE) and a Montana Association of Registered Land Surveyors (MARLS). Both groups keep up with activities of the board, but the main goal of the associations is to promote their professions. They do not regulate the profession or handle complaints. They rely on the board to oversee the licensees and professions. Plus, membership in these associations is not required so many licensees would not fall under the purview of the associations' oversight.
<b>Board of Psychologists</b> - Question 7 (Association oversight instead?)
Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally, the primary mission of an association is to promote an industry, and the primary mission of a regulatory board is to protect the public. These separate functions are not well-suited to be performed by the same entity.
<b>Board of Public Accountants</b> - Question 7 (Association oversight instead?)
The professional association for CPAs in the state is the Montana Society of CPAs. While the Board works closely with the association, the two entities have a very different mission. The society is in existence to protect the interests of its members (individuals in the profession who voluntarily pay yearly dues to be a member). The Board is in existence to protect the interests of the public.
<b>Board of Radiologic Technologists</b> - Question 7 (Association oversight instead?)
Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are two separate functions not well-suited to be performed by the same entity.
<b>Board of Real Estate Appraisers</b> - Question 7 (Association oversight instead?)
The appraisal associations are primarily educational providers and are not set up for the oversight of real estate appraisal practice issues. The federal requirement is for states to provide "effective supervision" of appraisers.
<b>Board of Realty Regulation</b> - Question 7 (Association oversight instead?)
No. There is a private association called the Montana Association of Realtors (MAR). However, membership in MAR is voluntary so not every licensee is represented. Also, the Board perceives that MAR is not interested in regulating the entire profession.  While the Board works closely with MAR, the mission of the association is to promote the profession and advocate for the industry in order to help its members become more profitable and successful. On the other hand, the mission of the Board of Realty Regulation is to protect the public through the licensure and regulation of all licensees -- brokers, salespeople, and property managers. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals especially of licensees who are not members of MAR. If the association regulated the profession, the association's responsibility to support its membership could be in conflict with its duty to take action against unprofessional conduct by members of the association. There is the potential for both perceived and actual conflict should MAR also be charged with regulating non-MAR members.
<b>Board of Respiratory Care Practitioners</b> - Question 7 (Association oversight instead?)
The Board works with the Montana Society of Respiratory Care and its national umbrella organization, the American Association for Respiratory Care. Those organizations promote the profession and seek paid membership. While valuable to their members, those organizations do not have a regulatory role and would not be an impartial body when it comes to rulemaking or discipline.



<p><b>Board of Sanitarians</b> - Question 7 (Association oversight instead?)</p>
<p>Registered Sanitarians are typically members of the Montana Environmental Health Association (MEHA) and/or the National Environmental Health Association (NEHA). MEHA is formed as an affiliate under NEHA. There is no requirement that either MEHA or NEHA exist, so it is possible that any oversight these associations might provide could cease. MEHA does not have, and I would be quite confident that they would not choose to have, any involvement with professional licensing or application of an ethical standard. NEHA has professional licensing: Environmental Health Specialist (EHS), which is comparable to the Montana RS license. One avenue to meeting the Environmental Health Degree equivalency standard of Montana is to have a NEHA EHS license and a Microbiology course. NEHA licensing has not been deemed a suitable replacement for Montana licensing in that it does not have an ethical standard associated with the Environmental Health Specialist certification. The educational standards also vary somewhat from Montana, which is a topic currently being addressed by the Board.</p>
<p><b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 7 (Association oversight instead?)</p>
<p>The Board of Social Work Examiners and Professional Counselors views its role differently from the roles played by the professional associations to which many of our licensees belong. The Board's role is to protect the public through the rules and statutes it enforces. In contrast, the professional associations work to promote, enhance, and advocate on behalf of their respective professional members. At this time, the Board of Social Work Examiners and Professional Counselors is unaware of any effort by a professional association to share or assume the duties assigned to the Board by statute or rule.</p>
<p><b>Board of Speech-Language Pathologists and Audiologists</b> - Question 7 (Association oversight instead?)</p>
<p>The Board concerns itself with protection of consumers where associations concern themselves with practitioners. The mission of the Montana Speech-Language Hearing Association is to provide educational and networking opportunities for members; advocate for those with communication disabilities and the issues related to our professions; and educate the public about communication disorders. The commitment of the American Speech-Language Hearing Association is to ensuring that all people with speech, language, and hearing disorders receive services to help them communicate effectively. The Board's mission is to protect the public through the licensure and regulation of the Speech-Language Pathologists and Audiologists. The current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals.</p>
<p><b>Board of Veterinary Medicine</b> - Question 7 (Association oversight instead?)</p>
<p>There are professional associations consisting of members who elect to join the associations. The mission of associations is to promote the industry; the Board's mission is to protect the public. These are two separate functions that are not well-suited to be performed by the same entity. The associations do not have legal authority to investigate complaints and discipline professionals or public members to accomplish regulation. The cost to institute licensing and discipline functions in the association would raise association membership fees considerably.</p>
<p><b>Question 8: Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?</b></p>
<p><b>Board of Alternative Health Care</b> - Question 8</p>
<p>Yes, insurance companies are well aware of the advantage of a licensing board being able to determine the qualifications of practitioners, so licensure through an administrative agency is a prerequisite of insurance coverage for most of these professions' services. The board is not aware of any alternative billing method.</p>

<b>Board of Architects and Landscape Architects</b> - Question 8 (Licensure re: billing?)
The Board does not facilitate the billing of insurance claims in the same manner as many of the licensed health care boards do.
<b>Board of Athletic Trainers</b> -Question 8 (Licensure re: billing?)
Licensure of Athletic Trainers is a new credential. Athletic Trainers do not bill to receive insurance reimbursement though an insurance billing code is available. Licensed Athletic Trainers are able to obtain a provider identification number, but Medicaid and Medicare do not reimburse for athletic trainer services thus most insurance companies do not reimburse. Most Licensed Athletic Trainers work in a school setting as their employees and fees are not assessed to student athletes.
<b>Board of Barbers and Cosmetologists</b> - Question 8 (Licensure re: billing?)
While this may not be directly pertinent for the Board of Barbers and Cosmetologists, those licensees who want liability insurance may find it required or easier to obtain in a licensed and regulated profession that sets forth certain standards of practice.
<b>Board of Chiropractors</b> - Question 8 (Licensure re: billing?) Insurance companies require the licensing of practitioners for reimbursement. To my knowledge, I am not sure if they require a Board to be in place. I do know that massage therapists were not able to bill insurance companies prior to being licensed and regulated during this past year. If unlicensed chiropractors were to have insurance benefits for their patients, it would require the referral of a medical doctor for such care. This would place a large burden on medical doctors to take the time to refer and supervise the care of a patient under chiropractic care. It would also place a burden on any patient, since they would have to schedule an appointment with their medical provider to obtain a referral.
<b>Board of Clinical Laboratory Scientists</b> - Question 8 (Licensure re: billing?)
Yes. For Medicaid and Medicare and health insurance licensure is required for billing along with facility certification by the state. There is no alternative.
<b>Board of Dentistry</b> - Question 8 (Licensure re: billing?)
Dental insurance companies ask for a practitioner's license and use it to validate a practitioner. I personally do not know of an alternative method of billing.  The same answer could be said of a dentist's professional-liability insurance. Those companies also use the license as a way of validating and rating the risk of insuring the practitioner. They check and see if a practitioner's license has ever been suspended, revoked, or issued with a provisional status.
<b>State Electrical Board</b> - Question 8 (Licensure re: billing?)
The State Electrical Board does not facilitate the billing of insurance claims in the same manner as many of the licensed health care boards do.
<b>Board of Funeral Service</b> - Question 8 (Licensure re: billing?)
There are no insurance billing requirements of this specific nature related to licensure of which the Board is aware. However, a funeral insurance policy may be made payable to a licensed mortuary or funeral director under the provisions and limitations of Title 33, chapters 18 and 20.
<b>Board of Hearing Aid Dispensers</b> - Question 8 (Licensure re: billing?)
Yes. Hearing aids are sometimes covered by insurance and a licensure number is required for payment.
<b>Board of Massage Therapists</b> - Question 8 (Licensure re: billing?)
Yes. Insurance companies are well aware of the advantage of a licensing board being able to determine the qualifications of massage therapists, so licensure through an administrative agency is not strictly required but is clearly helpful for insurance coverage of massage services. (continued on next page)

<b>Board of Massage Therapists</b> – Q. 8 -- continued
However, with the passage of the Affordable Care Act (ACA), also known as Obamacare, there is a strong nondiscriminatory clause covering treatment by all licensed providers. This is intended to include alternative health care professions. It remains to be seen how the ACA will affect insurance coverage for massage therapy in Montana. The Board is not aware of any alternative billing method.
<b>Board of Medical Examiners</b> - Question 8 (Licensure re: billing?)
The health professionals overseen by the Board of Medical Examiners must be licensed in order to bill a "third party payer" such as an insurance provider. In preparing this report, BOME found the following information from Montana's three largest third party payers: 1) Blue Cross Blue Shield of Montana's <i>Provider Network Participation Policy</i> says it contracts only with providers licensed by the state and that such license is necessary to participate in BCBSMT plans. 2) New West Health Services requires detailed information about the license status and history of its potential providers. 3) Allegiance Benefit Plan Management confirms that all of its providers must be licensed by the state in order to bill. Because of these requirements, a licensing authority is necessary.
<b>Board of Nursing</b> - Question 8 (Licensure re: billing?)
Yes. 2011 legislation was put into effect so that RN first assists in surgery could be reimbursed for their services by insurance. APRNs have also needed licensure to be reimbursed as independent healthcare practitioners.
<b>Board of Nursing Home Administrators</b> - Question 8 (Licensure re: billing?)
Yes, for Medicaid and Medicare and health insurance, licensure is required along with facility licensure/certification by the state.
<b>Board of Occupational Therapy Practice</b> - Question 8 (Licensure re: billing?)
Healthcare and educational entities (and some private practice entities) that employ members of this profession routinely bill insurance for the procedures performed by licensees of this Board. This includes Medicaid and Medicare. All of the above entities require strict adherence to billing practices in which the individual is licensed and competent to provide the services performed. Many require the order of another healthcare practitioner such as a physician in order to provide and bill the service.
<b>Board of Optometry</b> - Question 8 (Licensure re: billing?)
Yes, for Medicaid and Medicare and health insurance, licensure is required for billing. In addition, optometrists hold DEA (Drug Enforcement Administration) licenses to order and use controlled substance drugs in their treatments. There is no alternative.
<b>Board of Outfitters</b> - Question 8 (Licensure re: billing?)
This does not affect the licensees administered by the Board of Outfitters.
<b>Board of Pharmacy</b> - Question 8 (Licensure re: billing?)
Yes. Third-party payers will only reimburse licensed pharmacies. In the case of clinical pharmacist practitioners, specially trained pharmacists may offer patients drug therapy management, but only licensed and certified practitioners are entitled to bill for this service. (See §37-7-306, MCA.) Part 2 - No. Only licensed pharmacies may bill insurance carriers or government programs; any others would be rejected.
<b>Board of Physical Therapy Examiners</b> - Question 8 (Licensure re: billing?)
Yes. For Medicaid and Medicare and health insurance, licensure is required for billing. There is no alternative.

<b>Board of Plumbers</b> - Question 8 (Licensure re: billing?)
The Board of Plumbers does not facilitate the billing of insurance claims in the same manner as many of the licensed health care boards do.
<b>Board of Private Alternative Adolescent Residential and Outdoor Programs</b> - Question 8 (Licensure re: billing?)
Programs and/or staff must be licensed in order to bill Medicare, Medicaid, or insurance companies. The Board is not aware of any alternative billing method. Most insurance companies provide only limited coverage for longer term residential care of emotional and behavioral problems in children. However, some will provide limited support only if a program is duly licensed and regulated in a state.
<b>Board of Private Security</b> - Question 8 (Licensure re: billing?)
Certain categories of licensees are required to carry insurance or be bonded (i.e. private investigators, firearms instructors, process servers, security companies, etc.). However, it is unknown as to whether the insurance carrier(s) require that these licensees be licensed by the Board.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 8 (Licensure re: billing?)
The Board of Professional Engineers and Professional Land Surveyors does not oversee insurance requirements or billing regulations at this time.
<b>Board of Psychologists</b> - Question 8 (Licensure re: billing?)
Yes, insurance companies are well aware of the advantage of a licensing board being able to determine the qualifications of practitioners, so licensure through an administrative agency is a prerequisite to insurance coverage for psychological services. The board is not aware of any alternative billing method.
<b>Board of Public Accountants</b> - Question 8 (Licensure re: billing?)
N/A
<b>Board of Radiologic Technologists</b> - Question 8 (Licensure re: billing?)
Yes. Insurance companies are well aware of the advantage of a licensing board being able to determine the qualifications of practitioners, so licensure through an administrative agency is a prerequisite to insurance coverage for Radiologic services. The Board is not aware of any alternative billing method.
<b>Board of Real Estate Appraisers</b> - Question 8 (Licensure re: billing?)
No.
<b>Board of Realty Regulation</b> - Question 8 (Licensure re: billing?)
No. Typically, insurance issues arise in the context of health care. Insurance billing issues are not a consideration in the practice of real estate and do not impact insurance claims.
<b>Board of Respiratory Care</b> - Question 8 (Licensure re: billing?)
In Montana, a respiratory care practitioner must be licensed in order to bill and receive payment through insurance.
<b>Board of Sanitarians</b> - Question 8 (Licensure re: billing?)
No. This issue is not related to Sanitarian Registration.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 8 (Licensure re: billing?)
Yes. Insurance companies are aware of the advantage of a licensing board being able to determine the qualifications of mental health service providers. The licensees overseen by the Board of Social Work Examiners and Professional Counselors must be licensed in order to bill a "third party payer" such as an insurance provider. The Board is not aware of any alternative billing method.

<b>Board of Speech-Language Pathologists and Audiologists</b> - Question 8 (Licensure re: billing?)
Service providers must be licensed in order to bill Medicare, Medicaid, or insurance companies. The Board is not aware of any alternative billing method.
<b>Board of Veterinary Medicine</b> - Question 8 (Licensure re: billing?)
No.
<b>Question: 9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?</b>
<b>Board of Alternative Health Care</b> - Question 9
The board has the expertise of the professional members who understand the technical aspects of the profession and a public member to represent the consumer view. Both aspects are essential to effective regulation of the professions, and neither could be available to the department without the use of a board.
<b>Board of Architects and Landscape Architects</b> - Question 9 (Board v department on licensing/discipline)
Five board members are peers of the licensees they oversee and have knowledge of and expertise in the regulated profession. In addition, the Board includes public representation of at least one individual. This board representation ensures an unbiased and fair approach to discipline and other regulatory issues.
<b>Board of Athletic Trainers</b> - Question 9 (Board v department on licensing/discipline)
The Board composition is detailed in question number 3. The board members appointed by the Governor are experts in the field of sports medicine plus a member of the public. These experienced and knowledgeable professionals have a clear understanding of the education, training, and knowledge base needed to qualify as a Licensed Athletic Trainer. They also understand the terminology of their profession. Therefore, it is appropriate and wise for the Board to set the standards of licensing and professional practice, to emphasize standards of care, and to enforce discipline when needed. Most licensure applications that come before the Board are "routine" and are handled primarily by staff without the need for board review. This makes for an efficient licensing process. "Non-routine" applications, those that have indicators that deviate from standards, are referred to the full board for review. The Board to date has not reviewed complaints before its screening or adjudication panels. The Board believes that having them involved in the discipline gives the process a "real world" perspective, and will take its charge seriously in discipline issues for each complaint. Having the process done through the perspective of board members shall yield informed and wise results. Peers judge peers from a practice perspective.
<b>Board of Barbers and Cosmetologists</b> - Question 9 (Board v department on licensing/discipline)
The Board has the expertise of the disciplines it licenses along with members who understand the technical, artistic, and beneficial aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.
<b>Board of Chiropractors</b> - Question 9 (Board v department on licensing/discipline)
The benefits of a board being part of the licensing and discipline process, rather than having the process handled strictly by the department, is that the Board has the expertise of chiropractors who are practicing every day and have knowledge specific to the various applications of healthcare procedures. With all of the various techniques, therapy modalities, diagnostic criteria and best practices models in place within the profession, it would be very difficult for a department member to discern whether a doctor of chiropractic was within their scope of practice as it pertains to many of the complaints that are filed. As an example, if a complaint is filed for overutilization, a department may not know if this would be proper, given the diagnosis and medical/chiropractic findings in regard to examination, x-rays, and response to treatment.

<b>Board of Clinical Laboratory Scientists</b> - Question 9 (Board v department on licensing/discipline)
Four board members are peers of the licensees they oversee and have knowledge of and expertise in the regulated profession. In addition, the Board includes public representation of at least one individual. This broad representation ensures an unbiased and fair approach to discipline and other issues.
<b>Board of Dentistry</b> - Question 9 (Board v department on licensing/discipline)
The expertise provided by the professionals on the Board is essential to the process of handling the licensing and discipline process. Professionals would have to be brought in to provide opinions on almost every case if the department was solely in charge.
<b>State Electrical Board</b> - Question 9 (Board v department on licensing/discipline)
Licensing and discipline processes frequently involve technical issues relative to electrical installations. The State Electrical Board is made up primarily of experienced and knowledgeable electricians and construction professionals. As such, the board members have a clear understanding of the qualifications of licensure and generally accepted standards of practice. Therefore, it is appropriate and wise for the board to determine that requirements of licensure and standards of care in their regulation of the electrical profession.
<b>Board of Funeral Service</b> - Question 9 (Board v department on licensing/discipline)
As discussed in the answers to Questions 3 and 11, a board benefits the overall regulatory operation and particularly the licensing and disciplinary process.
<b>Board of Hearing Aid Dispensers</b> - Question 9 (Board v department on licensing/discipline)
Knowledge of the profession, expertise in the profession, and these are peers of the licensees they oversee. The Board includes other professional representatives of organizations that work with the elderly and/or disabled. Finally, the Board includes public representation. This board representation ensures an unbiased and fair approach to disciplinary and other issues.
<b>Board of Massage Therapists</b> - Question 9 (Board v department on licensing/discipline)
The Board has the expertise of the massage therapist members along with a healthcare member who understands the technical aspects of the profession and one public member to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the Department without the use of a board.
<b>Board of Medical Examiners</b> - Question 9 (Board v department on licensing/discipline)
The Board of Medical Examiners (BOME) is made up primarily of experienced and knowledgeable health professionals. As such, board members have a clear understanding of the education, training, and knowledge base needed to qualify as a professional in their respective areas of expertise. They also understand the terminology of their respective professions. Therefore, it is appropriate and wise for the Board to set the standards of licensing and professional practice, to emphasize standards of care and to enforce discipline when needed.
In terms of licensing, the vast majority of license applications that come to the Board of Medical Examiners are "routine" and are handled exclusively by BOME staff without the need for board review. In addition, staff may issue licenses to "non-routine" applicants -- those whose applications contain some deviation from standards -- in certain proscribed (sic) situations. For the vast majority of applicants, this makes for a more efficient licensing process.
"Non-routine" applications that have more serious deviations from standards are referred to individual board members or the full board for review.

<b>Board of Nursing</b> - Question 9 (Board v department on licensing/discipline)
Having the Board be involved in the discipline gives this process a "real world" perspective. The screening panel deliberates very intensely on discipline issues for each complaint and this is done through the perspective of board members who are licensees working in practice settings. Peers are judging peers from a practice perspective.
<b>Board of Nursing Home Administrators</b> - Question 9 (Board v department on licensing/discipline)
Three board members are peers of the licensees they oversee and have knowledge of and expertise in the profession. Other board members include professional representatives of organizations that deal with the elderly and/or disabled. Finally, the Board includes public representation of at least one individual age 55 or older. This broad representation ensures an unbiased and fair approach to disciplinary and other issues.
<b>Board of Occupational Therapy Practice</b> - Question 9 (Board v department on licensing/discipline)
The Board has the expertise of the disciplines it licenses along with members who understand the technical and beneficial aspects of the profession, and two public members represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available (efficiently) to the department without the use of a board.
<b>Board of Optometry</b> - Question 9 (Board v department on licensing/discipline)
Three board members are peers of the licensees they oversee and have knowledge and expertise in the regulated profession. In addition, the Board includes public representation of at least one individual. This broad representation ensures an unbiased and fair approach to discipline and other issues.
<b>Board of Outfitters</b> - Question 9 (Board v department on licensing/discipline)
The Board is better adapted to deal with experiences in their field. The board composition offers the expertise and insight of the occupation being regulated and the sportspersons and public who all have a stake in how this industry is regulated. That expertise and insight allows the board to better evaluate and judge an applicant's qualifications and the need for discipline in the case of a licensee's misconduct. Each appointed member of the board brings a particular viewpoint for ideas and approaches that can be applied to the relevant issues. A board of peers provides confidence for the profession by entrusting participation in self-governance in colleagues and fellow members of the public, rather than placing the authority to regulate in an uninvolved agency.
<b>Board of Pharmacy</b> - Question 9 (Board v department on licensing/discipline)
The Board offers the expertise and insight of practicing professionals representing a wide spectrum of pharmacy practice. That expertise and insight allows the Board to better evaluate and judge an applicant's qualifications or the need for discipline in the case of a licensee's alleged misconduct. With rotating membership on the Board, fresh ideas and novel approaches can be applied to recurrent issues. Additionally, a board offers the value of a number of individuals' combined talent and experience, rather than that of a single department decision maker. A board of peers engenders the confidence of the profession through notions of self-governance by colleagues instead of rule by a distant bureaucracy. The rules governing the profession of pharmacy are complicated, and often the work of the Board involves extensive researching and discussion with respect to a potential issue as to specific violations of specific rules before any decision can be made with regard to discipline or further action. It is impossible and impractical for an agency that doesn't have the practice experience or expertise to exercise objective and appropriate decision making, another reason the Board is comprised of a quorum of practitioners from different practice settings.
<b>Board of Physical Therapy Examiners</b> - Question 9 (Board v department on licensing/discipline)
Four board members are peers of the licensees they oversee and have knowledge of and expertise in the regulated profession. In addition, the Board includes public representation of at least one individual. This broad representation ensures an unbiased and fair approach to discipline and other issues.

<b>Board of Plumbers</b> - Question 9 (Board v department on licensing/discipline)
Licensing and discipline processes frequently involve technical issues relative to plumbing. The Board of Plumbers is made up primarily of experienced and knowledgeable plumbers and construction professionals. As such, the board members have a clear understanding of the qualifications of licensure and generally accepted standards of practice. Therefore, it is appropriate and wise for the board to determine that requirements of licensure and standards of care in their regulation of the plumbing profession.
<b>Board of Private Alternative Adolescent Residential and Outdoor Programs</b> - Question 9 (Board v department on licensing/discipline)
The Board is made up primarily of experienced and knowledgeable service providers. As such, board members have a clear understanding of the qualifications and knowledge base needed to qualify as a licensed program in their respective categories. They also understand the appropriate professional standards for competent programs. Therefore, it is appropriate and wise for the Board to set the standards of licensing and professional practice, to emphasize standards of care, and to enforce discipline when needed. Board members who serve on screening and adjudication panels respectfully yield to the expertise of their counterparts to best determine outcomes of reviewed cases.
<b>Board of Private Security</b> - Question 9 (Board v department on licensing/discipline)
While the Department assists the Board administratively in the license application and discipline processes, the Board is in the best position to determine whether an applicant is qualified for licensure or a licensee has violated the generally accepted standards of practice within his or her profession because the board members represent all facets of the private security professions and (continued on next page) possess the experience and expertise necessary to make these decisions.  For example, those individuals applying for licensure as certified firearms instructors must submit course outlines for board approval regarding firearm familiarization, safe handling, use of deadly force, shooting judgment, and civil and criminal liability. Board members with extensive firearms training and experience are better suited than Department staff to determine whether the applicant's proposed course curriculum is sufficient.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 9 (Board v department on licensing/discipline)
The board is made up primarily of experienced and licensed professional engineers and professional land surveyors. As such, board members have a clear understanding of the education, experience, and knowledge base needed to qualify as a professional in their respective areas of expertise. Therefore, it is appropriate and beneficial for the board to set the standards of licensing and professional practice and to enforce discipline when needed.  One of the main responsibilities of the board is to review applications for licensure. Because the board members are licensed professionals, they have the expertise to review the experience portions of the application to determine competency whereas department staff lacks that expertise.  As for discipline, the board understands the seriousness of violations in terms of poor design and surveys, and the board can better determine unlicensed practice based on its codes, laws, and rules.
<b>Board of Psychologists</b> - Question 9 (Board v department on licensing/discipline)
The Board has the expertise of the psychologist members who understand the technical aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.



<p><b>Board of Public Accountants</b> - Question 9 (Board v department on licensing/discipline)</p>
<p>The Board of Public Accountants' job is not simply to license CPAs but to make sure individuals are prepared to carry that license and, if they stray from professional standards, to enforce. This profession is distinctly different from all other professions licensed and regulated by the department due to its regulatory complexity (ever-changing issues such as federal and state tax laws, financial reporting and auditing standards and international finance standards must constantly be monitored; the U.S. CPA examination is not administered internationally; mobility within the profession that allows CPAs licensed in one state to practice in any other substantially equivalent state without obtaining additional licenses), licensee services (a "peer review" program to make sure the financial reports being issued by our licensees meet professional standards), and the accountability of the profession to third parties and the general public who are dependent upon financial information in order to make investing, financial planning, and lending decisions.</p> <p>All of these distinct differences require professionals who have been adequately trained in the public accounting profession and work in the field on a daily basis to make decisions regarding the licensing and discipline processes in response to the many ever-changing issues facing the profession. In short, department staff would not have the expertise to understand the intricate licensing and discipline processes the public accounting profession requires.</p>
<p><b>Board of Radiologic Technologists</b> - Question 9 (Board v department on licensing/discipline)</p>
<p>The Board has the expertise of the Radiologic Technologist members who understand the technical aspects of the profession and one public member to represent the consumer view. Both aspects are essential to effective regulation of the profession and neither would be available to the department without the use of a board.</p>
<p><b>Board of Real Estate Appraisers</b> - Question 9 (Board v department on licensing/discipline)</p>
<p>The minimum educational requirements are handled by the department staff. The qualifying experience requirements must meet the minimum development and reporting requirements of the Uniform Standards of Professional Appraisal Practice and any additional assignment conditions from the secondary market participants. This requires review of the work product. The board members are peers of those they license. The board members understand the appraisal practice and weigh the strengths and weakness of the work product presented for licensure. In addition to the Board's review, the Appraisal Subcommittee reviews the Board's decisions for licensure to ensure compliance with the national licensing criteria as established by Title XI [of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended] (12 U.S.C. 3331-3351).</p> <p>The appraiser board members are a wealth of knowledge in identifying how the Montana laws and rules affect the practice of appraisers in the field. The Board reviews all complaints and has unique insight as to the acceptable appraisal practice. The need for additional investigation into standards and practices is sent to a Certified Appraiser investigator.</p>
<p><b>Board of Realty Regulation</b> - Question 9 (Board v department on licensing/discipline)</p>
<p>The Board has the expertise of the five licensee members who understand the technical aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.</p>
<p><b>Board of Respiratory Care Practitioners</b> - Question 9 (Board v department on licensing/discipline)</p>
<p>Members of the Board of RCP have specific, in-depth, knowledge of the practice of respiratory care. Only individuals with this knowledge are qualified to judge the care rendered by fellow professionals.</p>

<b>Board of Sanitarians</b> - Question 9 (Board v department on licensing/discipline)
The Board is composed of three Registered Sanitarians and two members of the public. Having members who are part of the profession is very important. This profession is rather unusual and not well-understood. There are only about 100+ sanitarians who work for local government. Therefore, having people who are invested in the profession serve on the Board brings understanding regarding both educational and ethical standards that are appropriate for the profession. Having public members on the board is also important in that the purpose of professional licensing is to protect the public whom they represent. The Board brings continuity to the process. The Department is valuable in its expertise, but the positions have turnover that can impede understanding. The Department is not an invested party to the Registered Sanitarian with regard to public relationship.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 9 (Board v department on licensing/discipline)
The Board has the expertise of the Licensed Social Worker and Licensed Professional Counselor members who understand the technical aspects of the profession and one public member to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the Department without the use of a board. It is vital that the nuances of each practice are understood. Board members who serve on screening and adjudication panels yield to the expertise of their counterparts to best determine outcomes of reviewed cases. The Board of Social Work Examiners and Professional Counselors is made up primarily of experienced and knowledgeable mental health professionals. As such, board members have a clear understanding of the (continued on next page)
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> Q. 9- continued
education, training, and knowledge base needed to qualify as a professional in their respective areas of expertise. They also understand the terminology of their respective professions. Therefore, it is appropriate and wise for the Board to set the standards of licensing and professional practice.
<b>Board of Speech-Language Pathologists and Audiologists</b> - Question 9 (Board v department on licensing/discipline)
It is vital that the nuances of each professional practice be understood. Board members who serve on screening and adjudication panels yield to the expertise of their counterparts to best determine outcomes of reviewed cases.
<b>Board of Veterinary Medicine</b> - Question 9 (Board v department on licensing/discipline)
The Board has the expertise of the veterinarians who understand the technical aspects of the profession and a public member to represent the public interest.
<b>Question 10: Is there an optimum ratio between licensees, board size, or public representation?</b>
<b>Board of Alternative Health Care</b> - Question 10
There may be, and the number might differ for different boards. What we have now, four professional members, one public member, and a medical doctor appears to work well. A board is unwieldy if it is too large, and the current number (six board members) seems sufficient for the work load.
<b>Board of Architects and Landscape Architects</b> - Question 10 (Board size)
Yes. The Board regulates 1,430 active architects and 105 active landscape architects. The Board's current composition balances the number of licensees and public members while remaining small enough to function efficiently.
<b>Board of Athletic Trainers</b> - Question 10 (Board size)
The composition of the Board is dictated by statute and works well for the Board. They are able to do their work in regulating the licensees.

<b>Board of Barbers and Cosmetologists</b> - Question 10 (Board size)
The number of licensees regulated by the Board does not necessarily dictate the number of board members; however, it may be taken into consideration on a board-by-board basis. What we have now, seven professional and two public members, appears to work well.
<b>Board of Chiropractors</b> - Question 10 (Board size)
I believe there currently is an optimum ratio between licensees, board size, and public representation with the current setup of the Board of Chiropractors. This is evident in the minimal amount of meetings that the Board is required to have per year compared to some of the other boards. Currently, the Board meets two times per year, and is able to handle all of the issues that come before it
<b>Board of Clinical Laboratory Scientists</b> - Question 10 (Board size)
Yes. The Board regulates 850 licensees. The Board's current composition balances the number of licenses and public members while remaining small enough to function efficiently.
<b>Board of Dentistry</b> - Question 10 (Board size)
I don't know of an optimum size of licensees served by the Board of Dentistry. We meet quarterly. Our meetings generally start at 7 a.m. and run until late afternoon. We often have a working lunch. We have the occasional teleconference to address issues in between the quarterly meetings on matters of urgency. Lay people on the Board provide a valuable service by their neutrality. As Montana continues to grow, the scope and board size may have to be addressed. At this time and in the foreseeable future, it is a very workable board structure.
<b>State Electrical Board</b> - Question 10 (Board size)
The five-member State Electrical Board regulates a profession of approximately 5,000 licensed electricians and electrical contractors. The board has had no quorum issues regarding their 4 annual board meetings and the various panels and committees that are required to carry out the business of the board. Based on the work being accomplished, it appears that the current ratio between licensees, board size, and public representation is appropriate.
<b>Board of Funeral Service</b> - Question 10 (Board size)
The present composition of the Board, with three morticians, one crematory operator licensee, one cemetery owner, and one public member appears to be sufficient to handle the workload.
<b>Board of Hearing Aid Dispensers</b> - Question 10 (Board size)
Yes. Number of active licensees = 77. Number of inactive licensees = 7. And a 5-member board.
<b>Board of Massage Therapists</b> - Question 10 (Board size)
There may be, and the number might differ for different boards. What we have now, four professional and one public member, appears to work well. A board is unwieldy if it is too large, and the current number (five board members) seems sufficient for the work load.
<b>Board of Medical Examiners</b> - Question 10 (Board size)
The Board of Medical Examiners (BOME) cannot speak to the larger issue of an "optimum" ratio for all boards. We can report that the size of our board works well, in terms of both license review and the disciplinary process. We also take pride that the various professions we oversee are represented on the Board. We also believe in the value of having two public members on the Board, as well as a non-voting liaison representing Physician Assistants.
Other than the addition of an acupuncturist to the Board, there have been no formal discussions about expanding the Board or changing its composition. However, one informal concern has been raised while preparing this response. It involves the burden placed upon the physician members of the Board in the compliance process.
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<b>Board of Medical Examiners</b> – Q. 10 -- continued
In a typical two-month cycle between full Board meetings, the BOME's Screening Panel receives 30-40 complaints, the vast majority of which involve physicians. As a result, most of the burden of reviewing those complaints -- especially in preparation for Screening Panel meetings -- falls on the six physician members of the Board. This means the physician Board members can spend much more time on BOME business than their nonphysician counterparts. At this time, the Board offers no proposal to address this concern.
<b>Board of Nursing</b> - Question 10 (Board size)
Current approximation of licensee types for the Board of Nursing: LPN=3,200 (20% of licensees); RN=13,700 (80% of licenses), and of those 730 are also APRNs; 6 Medication Aides. The Board is made up of 9 members: 3 LPNs, 4 RNs (one an APRN); 2 public members.
<b>Board of Nursing Home Administrators</b> - Question 10 (Board size)
Yes. The Board has 163 active members and 48 inactive members. The board composition that balances the number of licenses and public members while remaining small enough to function efficiently is optimal. The 7-member board, which includes 1 nonvoting member from DPHHS, fits this model very well.
<b>Board of Occupational Therapy Practice</b> - Question 10 (Board size)
The number of licensees regulated by the board does not necessarily dictate the number of board members; however, it may be taken into consideration on a board by board basis. What we have now, three professional and two public members, appears to work well.
<b>Board of Optometry</b> - Question 10 (Board size)
Yes, the Board regulates 276 active licensees. The Board's current composition [3 professionals, 1 public member] balances the number of licenses and public members while remaining small enough to function efficiently.
<b>Board of Outfitters</b> - Question 10 (Board size)
The board consists of one fishing outfitter, one hunting outfitter, two hunting and fishing outfitters, a public member, and two sportsperson members. It has a higher ratio of public participation than any other board. The current board composition seems to provide an ideal ratio among licensees, board size, and public representation.
<b>Board of Pharmacy</b> - Question 10 (Board size)
Pharmacy practice is varied by type and by licensure level; representatives of which should act on the Board together with representatives of the public the Board serves. A cross-section of the practice should include pharmacists from institutional pharmacies, such as hospitals or government-operated pharmacies and community pharmacies whose practices face different challenges. Additionally, the Board should include a representative of pharmacy technicians. Finally, the public should have a significant voice. Considering these factors, the present board of seven with four pharmacists, one pharmacy technician, and two public members is near optimal. The Board is diverse enough to be inclusive, but not too large to be effective. The two public members give effective advocacy to the public's interest.
<b>Board of Physical Therapy Examiners</b> - Question 10 (Board size)
Yes. The Board regulates 1,350 licensees. The Board's current composition balances the number of licensees and board members while remaining small enough to function efficiently.
<b>Board of Plumbers</b> - Question 10 (Board size)
The 9-member Board of Plumbers regulates a profession of approximately 1,400 plumbers. The Board has had no quorum issues regarding the 4 annual Board meetings and the various panels and committees that are required to carry out the Board's business. Based on the work being accomplished, it appears that the current ratio between licensees, board size, and public representation is appropriate.

<b>Board of Private Alternative Adolescent Residential or Outdoor Programs</b> - Question 10 (Board size)
The Board of Private Alternative Adolescent Residential or Outdoor Programs cannot speak to the larger issue of an "optimum" ratio for all boards. We can report that the size of our Board works well, in terms of both license review and the disciplinary process. We take pride that the variety of size and types of programs are represented on the Board as well as recognition in the value of having two public members on the Board.
<b>Board of Private Security</b> - Question 10 (Board size)
The current makeup of the Board seems to be appropriate, given the diverse number of private security related professions. As previously referenced, 2-15-1781, MCA, establishes seven board members who represent three different areas of private security, in addition to one public member, one local police representative, one county sheriff representative, and one representative from the Montana Public Safety Officer Standards and Training Council.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 10 (Board size)
Yes. The nine-member board relies on the knowledge of the public, those being protected, and the professionals, those doing the work, to make sound and fair decisions for license review and disciplinary processes.
There are approximately 1,770 resident professional engineers in Montana; 3,300 nonresident professional engineers, 250 resident professional land surveyors, 185 nonresident professional land surveyors, 40 resident professional engineer surveyors, and nearly 20 nonresident professional engineer surveyors. The number of professional engineers and professional land surveyors on the board reflects the ratio of licensed professional engineers to licensed professional land surveyors in Montana.
The mixture of professional engineers, professional land surveyors, and the public members provides for relevant discussions of the issues brought before the board.
<b>Board of Psychologists</b> - Question 10 (Board size)
There may be, and the number might differ for different boards. What we have now, four professional and two public members, appears to work well. A board is unwieldy if it is too large, and the current number (six board members) seems sufficient for the work load.
<b>Board of Public Accountants</b> - Question 10 (Board size)
There seems to be an appropriate ratio between the number of licensees, board size, and public representation. The Board is comprised of five practitioners and two public members. With approximately 3,500 licensees, that equates to one board member for every 500 licensees.
<b>Board of Radiologic Technologists</b> - Question 10 (Board size)
There may be, and the number might differ for different boards. What we have now, six professional and one public member, appears to work well. A board is unwieldy if it is too large, and the current number (7 board members) seems sufficient for the work load.
<b>Board of Real Estate Appraisers</b> - Question 10 (Board size)
No. The Board of Real Estate Appraisers consists of 7 members: 5 appraiser members and 2 public members. Originally the board consisted of 5 members: 4 appraiser members and 1 public member. There has not been any recognizable difference in the effectiveness of the Board with the increased membership.
<b>Board of Realty Regulation</b> - Question 10 (Board size)
There seems to be an appropriate ratio between the number of licensees, board size, and public representation. The Board is composed of five practitioners and two public members. While the public member perspective is vital, a public member often does not have the (continued on next page)

<b>Board of Realty Regulation – Q. 10 -- continued</b>
knowledge and background to determine if a licensee has violated a statute or rule. With approximately 5,500 licensees, that equates to one board member for every 785 licensees. Experience has shown that a board smaller in size to the current board causes excess workload for volunteer board members and can make it difficult to convene a quorum to conduct business (if, for example, one or more members must recuse themselves or is unable to attend a meeting due to sickness or other reasons). A board larger than the current Board would increase inefficiency and could delay decision-making.
<b>Board of Respiratory Care Practitioners - Question 10 (Board size)</b>
Currently, the Board has five members, including one public member. It regulates about 880 licensees without difficulty. What the "optimum" number of licensees to Board members might be is unknown, but the Board seems to function well at present.
<b>Board of Sanitarians - Question 10 (Board size)</b>
A greater number of licensees allows for a reduced annual licensing fee. The Registered Sanitarian group is one of the smallest license groups; this means our operating costs bring higher fees than that of many professions. While this is not optimal, the sanitarians, when surveyed in 2011, expressed their support of maintaining their own licensing group and board. The ratio on the Board of Sanitarians seems appropriate with 3 RS and 2 public members. This brings a good balance between those licensed and those protected.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists - Question 10 (Board size)</b>
There may be. We can report that the size of our board works well, in terms of both license review and the disciplinary process with one exception. Currently the Licensed Marriage and Family Therapist credential is not represented on the Board. The Board has licensed Marriage and Family Therapists since 2009. The majority of these licensees hold a dual credential, i.e. a Social Worker or Professional Counselor license in addition to the Marriage and Family Therapist license. Since 2009, board members have pined (sic) over the need to have a "pure" LMFT seated at the table in dealing with issues that arise for that particular license. The Board has also requested the LMFT Association return to the Legislature and request the Board be expended to include a seat for LMFT. The response received from the Association cited a limit in financial resources to support lobbying efforts to enact a new law. The Board intends to pursue future requests of the Association for a board set for Licensed Marriage and Family Therapists. For now, a 7-person Board will suffice in meeting the work load.
<b>Board of Speech-Language Pathologists and Audiologists - Question 10 (Board size)</b>
Yes. A working board of fewer than 5 can have members entrenched in thinking patterns. Further,, to satisfy the need for a quorum, members may be absent without the risk of losing a quorum.
<b>Board of Veterinary Medicine - Question 10 (Board size)</b>
A board is unwieldy if it is too large. Our number (6) seems sufficient for the work load with the public member serving on the Disciplinary Panel and as one of the officers.
<b>Question 11: If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?</b>
<b>Board of Alternative Health Care - Question 11</b>
A disinterested third party would spend significant time and money learning the profession and hiring consultants in various areas of the professions to address issues as they arise. (continued on next page)

<b>Board of Alternative Health Care</b> - Q. 11 -- continued
Fraud issues such as insurance billing and Medicare/Medicaid deception have not been not common issues for these professions. However, the board has the ability to respond to fraud issues or to forward them to the Attorney General's office as the need arises.
<b>Board of Architects and Landscape Architects</b> - Question 11 (AG for consumer protection?)
No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting architects or landscape architects in various areas of the profession to address practice and conduct issues. The Board can more efficiently and effectively handle complaints and other business pertinent to its professions.
The Board, through the complaint process, monitors fraud on a licensee level. The Board has the ability to respond to fraud issues or to forward them to the Attorney General's Office if necessary.
<b>Board of Athletic Trainers</b> - Question 11 (AG for consumer protection?)
A board comprised of individuals in the profession is invested in monitoring their own profession. They have the expertise in the scope of practice and standards of care and specific knowledge regarding safety issues that need monitoring and boundaries. A disinterested third party would spend significant time and money either learning the profession or hiring consultants in various areas of the profession to address practice and conduct issues.
<b>Board of Barbers and Cosmetologists</b> - Question 11 (AG for consumer protection?)
A disinterested third party would spend significant time and money learning the professions to best protect the public. The regulating entity must have adequate knowledge of "standards of practice", with which the Board is already uniquely equipped because of its professional members.
<b>Board of Chiropractors</b> - Question 11 (AG for consumer protection?)
There may be merit in having complaints handled by the Attorney General/s office. My concerns would be that as stated in question #9, the office of the Attorney General may not be as prepared to handle the complaints of best practices as well as Doctors of Chiropractic that sit on the Board. Complaints handled by the Attorney General's office may have significant lag time before being handled since the Attorney General's office fields many complaints, many of which may have a much higher priority. We have found this to be the case in complaints of unlicensed practitioners. Complaints filed to county attorneys are often placed on the back burner because they have lower priority status. Cases of fraud within the profession could be referred to the Attorney General's office.
<b>Board of Clinical Laboratory Scientists</b> - Question 11 (AG for consumer protection?)
No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting clinical laboratory scientists in various areas of the profession to address practice and conduct issues.
The Board, through the complaint process, monitors fraud on a licensee level. They have the ability to respond to fraud issues or to forward them to the Attorney General's Office if necessary. Medicaid, Medicare, and health insurance fraud has to be monitored by those respective entities. The Department of Public Health and Human Services has additional oversight over facilities.
<b>Board of Dentistry</b> - Question 11 (AG for consumer protection?)
I believe that the Board of Dentistry and its licensing overview greatly reduced the case load that has to go through the Montana legal system. This is a money saver for the state. Fines issued to licensees go into Montana's general fund or to the patient. Many Montanans would rather go through the Board of Dentistry than the legal system. The Board gives those who don't have financial resources an avenue to address an issue with a health care provider. Some of the public do not like to participate in the legal system by filing a lawsuit, and they use the Board as a means of addressing (continued on next page)

<b>Board of Dentistry</b> – Q. 11 -- continued
their problems with the health care treatment or services they have received. Expert points of view are almost always needed to protect the public welfare and settle differences of opinion when it comes to health care issues. Fraud monitoring is very important. Fraud can be addressed in the legal system. Medicaid fraud and other public insurance fraud has to be monitored by Medicaid or the public insurance.
<b>State Electrical Board</b> - Question 11 (AG for consumer protection?)
Regarding the specialized knowledge required to be an electrician, the board believes it is necessary for electricians and industry-related professionals to regulate other electricians. When circumstances dictate disciplinary action, the board members have the specialized knowledge required to fairly and impartially rule on the issues.
<b>Board of Funeral Service</b> - Question 11 (AG for consumer protection?)
The relationship between the official handling consumer complaints and the consumer, who is most times a relative of a recently deceased person, is a delicate one requiring judgment, sympathy, understanding, and trustworthiness. The Board asserts that a Board and administrative staff provide a better way to handle funeral industry consumer complaints because of the emotional character of these complaints. Further, it takes time and assistance from board members for staff to develop expertise to appropriately respond to consumer complaints and provide competent assistance in carrying out other board-related duties.
<b>Board of Hearing Aid Dispensers</b> - Question 11 (AG for consumer protection?)
No. The Board is concerned that there may be areas of unprofessional conduct that a third party may not recognize or have jurisdiction. However, the Board is exploring with the Office of Consumer Protection and Victim Services to protect the consumer. Currently the Board should be responsible for monitoring fraud as per statute.
<b>Board of Massage Therapists</b> - Question 11 (AG for consumer protection?)
A disinterested third party would spend significant time and money learning the profession and hiring or consulting with massage therapists and medical professionals in various areas of the profession to address issues as they arise. Massage Therapists have specialized skills of assessing professional abilities (and lack thereof) that governmental employees will not typically have. To best protect the public, the regulating entity must have adequate knowledge of "standards of care", with which the Board is already uniquely equipped because of its professional members.
<b>Board of Medical Examiners</b> - Question 11 (AG for consumer protection?)
The Board of Medical Examiners believes the specialized knowledge required of health professionals makes it appropriate for health professionals to regulate other health professionals. When circumstances require disciplinary action, the Board has tremendous faith in both the compliance specialist assigned to it by the Business Standards Division and the legal staff who prosecute offenders before Department of Labor and Industry hearing examiners.
<b>Board of Nursing</b> - Question 11 (AG for consumer protection?)
An interested board of licensees of the profession is very invested in monitoring their own profession and also has expertise in the scope of practice of that profession and specifically the safety issues needing monitoring and boundaries. The Nurses Assistance Program of the Board also brings a perspective in monitoring licensees with a substance use disorder that would be handled differently if subject to discipline from law enforcement.
<b>Board of Nursing Home Administrators</b> - Question 11 (AG for consumer protection?)
The Board, through the complaint process, monitors fraud on a licensee level. The Centers for Medicare and Medicaid Services monitors fraud on the federal level. DPHHS has additional oversight over facilities.



<b>Board of Occupational Therapy Practice</b> - Question 11 (AG for consumer protection?)
A disinterested third party would spend significant time and money learning the professions to best protect the public. The regulating entity must have adequate knowledge of "standards of practice", with which the Board is already uniquely equipped because of its professional members.
<b>Board of Optometry</b> - Question 11 (AG for consumer protection?)
No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting optometrists in various areas of the profession to address practice and conduct issues.
<b>Board of Outfitters</b> - Question 11 (AG for consumer protection?)
The vast majority of complaints involving licensees deal with fish and game laws, not consumer protection from fraud. However, without limiting the public members' rights and remedies in civil actions, and without restricting the state's ability to pursue appropriate criminal sanctions, complaints involving fraud may be adequately addressed from a licensing point of view because the person's privilege to work as an outfitter or guide may be suspended, revoked, or otherwise limited. One particularly relevant sanction the board may order is the refund of costs and fees billed to and collected from a consumer.
<b>Board of Pharmacy</b> - Question 11 (AG for consumer protection?)
<p>Although consumer protection is a mission of both the Board of Pharmacy and the Attorney General's office, the roles and functions of the Board and the Attorney General's office are very different. The Board possesses the licensing function, which logistically could not be assumed by the AJ [Attorney General]. In addition, the AJ [Attorney General's] office is not equipped with the Board's technical expertise to evaluate many cases, e.g., unprofessional conduct.</p> <p>The Board presently offers consumer protection by scrutinizing license applicants and disciplining licensee's misconduct. Since we do share a goal of consumer protection with the AJ [AG], however, there certainly is significant potential to align our two agencies to better serve the public, as evidence in the newly enacted Prescription Drug Monitoring Program, a program that is equally important to both agencies' ... efforts to curb prescription drug abuse. The Montana Attorney General may have resources and legal tools available that are unavailable to the Board of Pharmacy, making it a useful ally to the Board in promoting public safety. Indeed, the federal government, through the United States Attorneys' offices, regularly pursues civil claims against pharmacies for significant violations of the Food, Drug, and Cosmetic Act. The Montana Attorney General may have resources and legal tools available to it that are unavailable to the Board of Pharmacy, making it a useful ally to the Board in promoting public welfare. However, the Attorney General could not undertake the Board's licensing function, which is a significant fraction of the Board's duties. Additionally, the attorney general is not equipped with the Board's technical expertise to evaluate cases of alleged substandard or unprofessional conduct -- a properly trained pharmacist is indispensable in any case.</p> <p>There is more than one type of "fraud" and properly there is more than one avenue to address it. The Board of Pharmacy enforces its administrative rule on unprofessional conduct that expressly addresses fraud in three particulars:</p> <ul style="list-style-type: none"> <li>• 24.174.2301 ARM - UNPROFESSIONAL CONDUCT Definition includes as unprofessional conduct (g) defrauding any persons or government agency receiving pharmaceutical services; and (l) fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license or license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information; (m) use of a false, fraudulent, or deceptive statement in any document connected with the practice of pharmacy.</li> </ul> <p>The Board's rules allow the Board to discipline a licensee that defrauds a (continued on next page)</p>

<b>Board of Pharmacy</b> – Q. 11 -- continued
patient or government, the board itself, or anyone else impacted by a fraudulent statement. Local county attorneys have authority to criminally prosecute fraud as a particular form of theft. See, e.g., §45-6-301(4) through (6), MCA. Presumably the Attorney General's office has authority to take action through its consumer protection office if a consumer has been harmed by a pharmacist's fraud. With this tightly woven net, it is difficult to imagine fraud escaping detection and correction.
<b>Board of Physical Therapy Examiners</b> - Question 11 (AG for consumer protection?)
No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting physical therapists in various areas of the profession to address practice and conduct issues. The Board, through the complaint process, monitors fraud on a licensee level. The Board has the ability to respond to fraud issues or to forward them to the Attorney General's Office if necessary. Medicaid, Medicare, and health insurance fraud has to be monitored by those respective entities.
<b>Board of Plumbers</b> - Question 11 (AG for consumer protection?)
Regarding the specialized knowledge required to be a plumber, the board believes it is necessary for plumbers and industry-related professionals to regulate other plumbers. When circumstances dictate disciplinary action, the board members have the specialized knowledge required to fairly and impartially rule on the issues.
<b>Board of Private Alternative Adolescent Residential or Outdoor Programs</b> - Question 11 (AG for consumer protection?)
The Board believes the specialized knowledge required of programs makes it appropriate for program peers to regulate programs. A disinterested third party would spend significant time and money either learning the profession or hiring consultants in various areas of the profession to address practice and conduct issues. Moreover, without established standards of care a third party could not establish whether or not a program was operating in an acceptable fashion so as to limit any adverse consequences to children under their care. When circumstances require disciplinary action, the Board has tremendous faith in both the compliance specialist assigned to it and the legal staff who prosecute offenders before the Department of Labor and Industry hearing examiners.
<b>Board of Private Security</b> - Question 11 (AG for consumer protection?)
If consumer protection was removed from the purview of the Board and the responsibility rested solely with the Attorney General's Office to investigate and adjudicate, the effect on the Board would be minimal. However, this change would likely have a larger impact on the citizens of Montana. The question of whether or not this would cause overlap of the Board and the Attorney General's Office is valid in this response. Consumer protection is not the only area the Board addresses. Complaints may contain standards of practice and consumer protection issues. Complaints being handled in segments by separate entities -- the Board and the Attorney General's Office -- may not be efficient or in the best interest of any of the parties involved.
The Board currently evaluates standards of practice and consumer protection issues using the members' experience and knowledge in various capacities of the private security professions. Therefore, value exists for the Board to continue addressing consumer protection and fraud-related allegations. Unprofessional conduct is defined under ARM 23.182.2301 to include several consumer protection and fraud-related issues, and the board members evaluate the allegations within the context of the private security industry.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 11 (AG for consumer protection?)
With the specialized knowledge required for both professions, it is appropriate for the licensees themselves to regulate one another. When circumstances require disciplinary (continued on next page)

<b>Board of Professional Engineers and Professional Land Surveyors</b> – Q. 11 – continued
action, the Board has confidence in both the compliance specialist assigned to it by the Business Standards Division and the legal staff who prosecute offenders before Department of Labor and Industry hearing examiners. The Attorney General's Office would need to hire a number of different professionals acquainted with engineering and surveying in order to provide protection for the people of Montana.
<b>Board of Psychologists</b> - Question 11 (AG for consumer protection?)
A disinterested third party would spend significant time and money learning the profession and hiring consulting psychologists in various areas of the profession to address issues as they arise. Fraud issues such as insurance billing and Medicare/Medicaid deception have not been not common issues (sic) for this profession. However, the Board has the ability to respond to fraud issues or to forward them to the Attorney General's office as the need arises. Psychologists have specialized skills of assessing professional abilities (and lack thereof) that governmental employees will not typically have. To best protect the public, the regulating entity must have adequate knowledge of "standards of care", with which the Board is already uniquely equipped because of its professional members.
<b>Board of Public Accountants</b> - Question 11 (AG for consumer protection?)
As discussed in previous answers, the CPA profession is ever-changing, requiring people who are immersed in the profession to monitor these changes. In order for the Attorney General's office to try and match the expertise the Board has, a staff of people in the profession would be needed with competitive CPA salaries offered.  Public Accountancy boards in the U.S. have an extensive network of information sharing amongst themselves as well as with federal agencies dealing with the profession (such as the IRS and the Securities and Exchange Commission [SEC]). Monitoring fraud in the profession is achieved through this collaboration.
<b>Board of Radiologic Technologists</b> - Question 11 (AG for consumer protection?)
A disinterested third party would spend significant time and money learning the profession and hiring consulting Radiologic Technologists and medical professionals in various areas of the profession to address issues as they arise. Radiologic Technologists have specialized skills of assessing professional abilities (and lack thereof) that governmental employees will not typically have. To best protect the public, the regulating entity must have adequate knowledge of "standards of care," with which the Board is already uniquely equipped because of its professional members.
<b>Board of Real Estate Appraisers</b> - Question 11 (AG for consumer protection?)
The Attorney General's office would need additional expertise of certified appraisers on staff to sit in judgment of work product. There is a federal requirement to verify education, experience, or expertise to review work product by applications that must meet federal requirements. [These include:] The Uniform Standards of Professional Appraisal Practice requirements, assigned conditions mandated by the Veterans Administration, Housing and Urban Development, Fannie Mae and Freddie Mac. Under the Federal Mandate of Title XI and Dodd/Frank Financial Reform Bill, to provide effective supervision would require the Attorney General's office to hire the same staff as required by the Department of Labor and Industry.  The Board is the first entity to identify fraud in appraisal work product through its complaint process.
<b>Board of Realty Regulation</b> - Question 11 (AG for consumer protection?)
No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting real estate professionals in various areas of the profession to address practice conduct issues. This would result in higher costs and cause delays in resolving important consumer issues. The real estate regulatory boards in the United States have developed an extensive network of information sharing amongst themselves. Monitoring fraud in the profession is achieved (continued on next page)

<b>Board of Realty Regulation – Q. 11 -- continued</b>
through this collaboration. Additionally, as is currently required by law, all board legal representation is already being conducted by Special Assistant Attorney Generals [i.e. department attorneys are deputized].
<b>Board of Respiratory Care Practitioners - Question 11 (AG for consumer protection?)</b>
Members of the Board of RCP have specific, in-depth, knowledge of the practice of respiratory care. Only individuals with this knowledge are qualified to judge the care rendered by fellow professionals. This also is true of the evaluation of potential fraud. Only a trained RCP with knowledge of the profession would be able to distinguish between legitimate treatments and therapies and fraudulent ones.
<b>Board of Sanitarians - Question 11 (AG for consumer protection?)</b>
It is of great benefit to have a board that understand the profession. This is especially true with a profession that has a small number of licensees and is often not well understood by the average person. The board structure allows the members to better understand the profession, its needs for educational requirements, judgment when ethical standards are compromised, and the other responsibilities seated with the Board. Rarely does the Board address issues of consumer protection. As such, it is not likely the Attorney General's office could develop the relationships and the understanding necessary to determine if the public protection is being adequately served by this profession.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists - Question 11 (AG for consumer protection?)</b>
The regulating entity must have adequate knowledge of standards of care, with which the Board is already uniquely equipped because of its professional members. A disinterested (continued on next page)
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists Q. 11 continued</b>
third party would spend significant time and money learning the profession and hiring consulting mental health professionals in various areas of the profession to address issues as they arise. Fraud issues, such as insurance billing and Medicare/Medicaid deception, are not uncommon. A board of licensees of the profession is very invested in monitoring their own profession and also has expertise in the scope of practice of that profession and specifically the safety issues needing monitoring and boundaries.
<b>Board of Speech-Language Pathologists and Audiologists - Question 11 (AG for consumer protection?)</b>
A board of licensees of the profession is very invested in monitoring their own profession and also has the expertise in the scope of practice of that profession and specifically the safety issues needing monitoring and boundaries A disinterested third party would spend significant time and money either learning the profession or hiring consultants in various areas of the profession to address practice and conduct issues.
<b>Board of Veterinary Medicine - Question 11 (AG for consumer protection?)</b>
A disinterested third party would spend significant time and money either learning the profession or hiring consulting veterinarians in various areas of the profession to address issues. Fraud issues such as insurance billing and Medicare/Medicaid deception are not issues for this profession. The Board has the ability to respond to fraud issues or to forward them to the Attorney General's office if necessary.
<b>Question 12: If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the others' practice? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?</b>
<b>Board of Alternative Health Care - Question 12</b>
The scope of practice is determined by statute, and while there may be some overlap, it is important to assure that one's practice is not allowed to expand beyond the content and level of education and training associated with the license of that person. The public should be able to rely on (continued on next page)

<b>Board of Alternative Health Care</b> - Q. 12 -- continued
the distinct titles associated with licensure that indicate the level of education and training associated with that person's practice. While there may be a third party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.
<b>Board of Architects and Landscape Architects</b> - Question 12 (Overlapping scopes of practice?)
Each profession has a specific scope of practice and educational requirements.
<b>Board of Athletic Trainers</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice for Licensed Athletic Trainers is shared to some extent with other health care professionals. While some overlap is expected, it is important to assure that those practicing as a Licensed Athletic Trainer do so within the scope of practice and standard of care established by the Board. In the large health care system there is overlap from the variety of health care professionals. Each has a defined scope of practice, but the Board of Athletic Trainers believes it takes a lot of health care personnel to get the job done. Yes, there are conflicts and it is the hope of the Board that health care licensing boards work together to address these issues in the common goal of providing excellent professionals to deliver the best care possible as issues arise.
<b>Board of Barbers and Cosmetologists</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice involving the professions under the Board of Barbers and Cosmetologists (37-31-101, MCA) defines the areas of practice that are overlapping (as for a cosmetologist) and those that are distinct (barbering, manicuring, electrology, esthetics, and instructors).
The public should be able to rely on distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third-party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the Board responsible for regulating the practice.
<b>Board of Chiropractors</b> - Question 12 (Overlapping scopes of practice?)
For the most part, I have not seen cases of scope of practice that have been seen to overlap. The rules, regulations, and statutes seem to fall in fairly well prescribed lines of demarcation. I believe that the language involved in the rules and statutes should keep this question from being judged subjectively, so that there should be no overlap. It is incumbent on the Board to keep an eye on situations as they occur and change their rules accordingly for better clarification.
<b>Board of Clinical Laboratory Science Practitioners</b> - Question 12 (Overlapping scopes of practice?)
Each profession has a specific scope of practice and educational requirements.
<b>Board of Dentistry</b> - Question 12 (Overlapping scopes of practice?)
Boards or their representatives should be able to meet with one another if there are overlapping disputes. Someone from the Department could act as a judge if no agreement is reached. 37-1-107, MCA, also addresses this.
<b>State Electrical Board</b> - Question 12 (Overlapping scopes of practice?)
At times, the elevator, low-voltage technicians, well drillers, fire alarm installers and maintenance personnel have provided some feedback pertaining to the laws and rules of the State Electrical Board. Each time the board has been able to resolve the issues with little or no resistance. Each occupation normally understands the laws and rules of each other, thus there have been few if any practice issues between the occupations.

<b>Board of Funeral Service</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice of the funeral industry does not overlap with any other licensing board.
<b>Board of Hearing Aid Dispensers</b> - Question 12 (Overlapping scopes of practice?)
No. Each profession has a specific scope of practice and educational requirements.
<b>Board of Massage Therapists</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice involving massage therapy could overlap with other professions. The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.
<b>Board of Medical Examiners</b> - Question 12 (Overlapping scopes of practice?)
Licensed professionals should not exceed their scope of practice. Such conduct would be considered unprofessional and would be subject to discipline by the Board that regulates that individual's practice. If the conduct entered into another board's area of professional expertise, then the second board would be justified in taking action for unlicensed practice. In many cases, the best course of action -- and that recommended by the Board of Medical Examiners -- is for the individual to seek an additional license to avoid a scope of practice issue.
The Board of Medical Examiners recognizes that issues such as scope of practice will continue to arise periodically. The Board has found that when they do arise, we have been able to work cooperatively with other regulatory boards. We believe cooperation can resolve issues, and we have confidence in the strong working relationships among boards and staff within the Health Care Licensing Bureau.
<b>Board of Nursing</b> - Question 12 (Overlapping scopes of practice?)
In the large healthcare system there is overlap from the variety of healthcare professionals. Each has a defined scope of practice, but the Board feels it takes a lot of healthcare personnel to get the job done and that an interprofessional team approach is necessary for high quality patient care. Yes, there are conflicts and it is the hope of the Board of Nursing that healthcare licensing boards work together to address these issues in the common goal of providing excellent professionals to deliver the best care possible as issues arise.
<b>Board of Nursing Home Administrators</b> - Question 12 (Overlapping scopes of practice?)
Each profession has a specific scope of practice.
<b>Board of Occupational Therapy Practice</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice involving the Board of Occupational Therapy (37-24-103, MCA) defines the areas of practice. The Board of Physical Therapists probably has the most overlapping scope of practice with this Board. The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.
<b>Board of Optometry</b> - Question 12 (Overlapping scopes of practice?)
The Board licenses a single profession and has no overlapping scope of practice.

<b>Board of Outfitters</b> - Question 12 (Overlapping scopes of practice?)
The licensed practices regulated by this board do no overlap with any other profession or occupation.
<b>Board of Pharmacy</b> - Question 12 (Overlapping scopes of practice?)
As noted above, the Board of Pharmacy does not face instances of overlapping scopes of practice. The pharmacist's role in health care is unique.
The Board agrees that it is vital to have a disinterested third party reviewing the Board's proposed decisions. If any license applicant or licensee disputes a board's proposed decision on a matter -- whatever its nature -- it may be reviewed by an independent hearing examiner under the [Montana] Administrative Procedure Act.
Viewed as an academic question, if two professions truly have "overlapping scopes of practice" then each profession must be entitled to perform the act. Each board should be able to judge whether its licensees are working within their scope of practice or not. Generally it is unprofessional conduct to exceed one's scope of practice and the offending licensee would be disciplined by his or her own board. If a licensee improperly exceeds his or her scope of practice and encroaches on another's "turf" the second board could take action as well for unlicensed practice. In practice, however, it is more efficient to discipline a licensee than seek an injunction against a nonlicensee. Regardless of the means of redress, an independent hearing examiner and an independent court of law checks the authority of the board.
<b>Board of Physical Therapy Examiners</b> - Question 12 (Overlapping scopes of practice?)
Each profession has a specific scope of practice and educational requirements. <b>37-11-103. Restrictions on scope of practice.</b> Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.
<b>Board of Plumbers</b> - Question 12 (Overlapping scopes of practice?)
The issue of overlapping scopes of practice has not arisen in relation to the Board of Plumbers.
<b>Board of Private Alternative Adolescent Residential or Outdoor Programs</b> - Question 12 (Overlapping scopes of practice?)
Licensed programs should not exceed their scope of practice. The PAARP Board is the only one of its kind at the Department of Labor and Industry. There are no overlaps or conflicts of scope of practice within the department. With that said, however, there is a potential overlap of practice with the Department of Public Health and Human Services, which is charged with providing the same tasks of setting standards and oversight of all programs that serve publicly funded children. However, in 2007 the Legislature created the PAARP Board as a separate entity to establish standards and regulation of private programs at least in part because they recognized that both the standards and regulatory process could reflect the differences in program type between what is currently offered in the private domain as opposed to the levels of care offered in the public domain.
Conduct considered unprofessional and should be subject to discipline by the Board, which regulates that program practice, whether at the Department of Labor and Industry or the Department of Public Health and Human Services. When and if the conduct enters into another board's area of professional expertise, then the second board is justified in taking action for unlicensed practice. In many cases, the best course of action recommended by the Board is for the program in question to seek an additional license to avoid a scope of practice issue. The Board recognizes that issues such as scope of practice might arise periodically. The Board has found that when they arise, we have been able to work cooperatively with other regulatory boards.

<b>Board of Private Security</b> - Question 12 (Overlapping scopes of practice?)
The Board is unaware of an overlap with other occupational or health care boards regarding the scope of practice that this Board regulates and oversees. However, 37-60-105, MCA, exempts certain individuals or entities from licensing with the Board to avoid scope of practice overlap with other industries or regulatory bodies, including federal and state employees, attorneys practicing law, insurance producers, and others.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 12 (Overlapping scopes of practice?)
Licensed professionals should not exceed their scope of practice. Such conduct is unprofessional and would be subject to discipline by the Board that regulates that individual's practice. If the conduct entered into another board's area of professional expertise, then the second board would be justified in taking action for unlicensed practice. In many cases, the best course of action - and that recommended by the Board of Professional Engineers and Professional Land Surveyors - is for the individual to seek an additional license to avoid a scope of practice issue.
The Board recognizes that issues such as scope of practice will arise occasionally. The Board has found that when they do arise, we have been able to work cooperatively with other regulatory boards. We believe cooperation can resolve issues, and we have confidence in the strong working relationships among boards and staff within the Business Standards Division.
<b>Board of Psychologists</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice involving psychology is, to some extent, shared by other licensed mental health professionals. While some of this overlap is expected, it is important to assure that one's practice is not allowed to expand beyond the content and levels of education and training associated with the license of that person. The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.
<b>Board of Public Accountants</b> - Question 12 (Overlapping scopes of practice?)
This Board is unique from all other boards, so there are no overlapping scopes of practice.
<b>Board of Radiologic Technologists</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice involving Radiologic Technologists is overlapped only by the dental profession. 37-14-301(1)(a)(ii), MCA, exempts administering x-rays in the practice of dentistry or dentistry, but still requires the persons in the dental office to be certified by the Board of Dentistry as having passed an examination testing the person's proficiency to administer x-ray examinations. Physician Assistants are allowed to perform x-rays only if they have training, as well (Administrative Rules of Montana 24.156.1701).
The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated with that person's practice. While there may be a third-party who may also properly judge whether there is an intrusion into another's practice, the statutes provide adequate notice of the respective scopes of practice and provide that if a person's practice exceeds that person's license, that person may be enjoined from the conduct by a district court action initiated by the board responsible for regulating the practice.
<b>Board of Real Estate Appraisers</b> - Question 12 (Overlapping scopes of practice?)
The Legislature should be the judge. Each board always has the opportunity to bring these issues via proposals for new regulations to the committees of the Legislature.



<b>Board of Realty Regulation</b> - Question 12 (Overlapping scopes of practice?)
No. This board is unique from all other boards. There is no overlapping scope of practice with other boards or professions.
<b>Board of Respiratory Care Practitioners</b> - Question 12 (Overlapping scopes of practice?)
The Board of RCP believes in collaborative discussions with other licensing or regulatory boards in the rare instance where scope of practice may cross boundaries with another board. Should such an instance occur, the Board of RCP would reach out to the other entity and begin a dialogue. In the event a successful resolution cannot be reached through dialogue, the RCP Board would notify the leadership of the Business Standards Division and discuss what should happen next.
<b>Board of Sanitarians</b> - Question 12 (Overlapping scopes of practice?)
The closest example relative to this question pertains to Registered Sanitarians and Professional Engineers. There has been some issue raised over the limits of the types of wastewater systems that can be designed by Registered Sanitarians vs. engineers. While not part of these conversations, this matter was resolved by the two groups meeting to determine the appropriate line of jurisdiction for the professions. It was determined that a wastewater system with a design flow of 2500gpd or more was to be designed by an engineer. A collaborative attempt to reach consensus would be the best first step with a third party entering the conversation if deemed necessary.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice involving counseling is shared by other licensed mental health professionals. While some of this overlap is expected, it is important to assure that a licensee's practice is not allowed to expand beyond the content and level of education and training associated with the license they hold. The public should be able to rely on the distinct titles associated with licensure that indicates the level of education and training associated that person's practice. Licensed professionals should not exceed their scope of practice. Such conduct would be considered unprofessional and would be subject to discipline by the board that regulates that individual's practice. If the conduct entered into another board's area of professional expertise, then the second board would be justified in taking action for unlicensed practice. In many cases, the best course of action, and that recommended by the Board is for the individual to seek an additional license to avoid a scope of practice issue. The Board of Social Work Examiners and Professional Counselors recognizes that issues such as scope of practice will arise periodically and will continue to work cooperatively with other regulatory boards. Cooperation can resolve issues and we have confidence in the strong working relationships among boards and staff.
<b>Board of Speech-Language Pathologists and Audiologists</b> - Question 12 (Overlapping scopes of practice?)
In the health care system there is overlap from the variety of health care professionals. Each has a defined scope of practice, but the Board feels it takes a lot of health care personnel to get the job done and that an inter-professional team approach is necessary for high quality patient care. Yes, there are conflicts and it is the hope of the Board that health care licensing boards work together to address these issues in the common goal of providing excellent professionals to deliver the best care possible as issues arise.
<b>Board of Veterinary Medicine</b> - Question 12 (Overlapping scopes of practice?)
The scope of practice is determined by statute, and this is the only board with jurisdiction over animals.

<b>Question 13: Should the board have the ability to limit use of certain terminology to only a licensee?</b>
<b>Board of Alternative Health Care</b> - Question 13
Terminology or titles that imply a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimal qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee. It is the way of knowing that the individual is trained, tested, and monitored for continued compliance.
<b>Board of Architects and Landscape Architects</b> - Question 13 (terminology uses?)
Yes. An individual must have the training, education, and qualifications verified by examination to be licensed in the profession of architecture and landscape architecture. There are exemptions in the statutes regarding those in an educational or working condition. (See 37-65-103 and 37-66-105, MCA)
<b>Board of Athletic Trainers</b> - Question 13 (terminology uses?)
Yes, because the Board is building public trust in the Athletic Trainer profession. According to 37-36-203, MCA, the use of the title "Licensed Athletic Trainer" or "Certified Athletic Trainer" is for those licensed in the profession, and they may use the abbreviations "LAT" or "AT".
<b>Board of Barbers and Cosmetologists</b> - Question 13 (terminology uses?)
Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimum qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.
<b>Board of Chiropractors</b> - Question 13 (terminology uses?)
The question as to the ability of a board to limit use of certain terminology to only a licensee is a perfect example as to why some boards should stay in existence. It is only with a complete knowledge of a profession as held by the members of that board, that these types of questions can be adequately answered. With the communication between boards, all of the various implications of such language can be hashed out to best serve the public interest, without serving to protect their turf. This is another reason that if disciplinary oversight bodies were placed with professional associations, some of these questions may never meet with any resolution.
<b>Board of Clinical Laboratory Science Practitioners</b> - Question 13 (terminology uses?)
Yes. The person has the training, education, and qualifications verified by examination to be licensed in the profession of clinical laboratory science. Exemptions are in statute for licensed physicians, or other licensed professions with the applicable scope of practice, U.S. government employees, or those in a research or educational status. (Reference 37-34-302, MCA)
<b>Board of Dentistry</b> - Question 13 (terminology uses?)
Terminology is important when addressing the public and the qualifications of licensees. That is one of our purposes: to protect the public from people claiming they have qualifications they do not have.
<b>State Electrical Board</b> - Question 13 (terminology uses?) - submitted by Jack Fisher, board president
Yes. The board should have the ability to limit use of certain terminology to only a licensee. When a person holds themselves out to be an electrician, the public assumes that the person is qualified to perform electrical installations. Licensure substantiates the fact that the individual has the education, training, and experience, verified by examination, to perform electrical work. Allowing unlicensed persons the ability to advertise or otherwise represent to the public their competence or ability in the electrical field would be misleading to the public.

<b>Board of Funeral Service</b> - Question 13 (terminology uses?)
The Board asserts that the terms "mortician", "funeral director", "crematory technician", and "crematory operator" are terms that indicate to the public that the person is knowledgeable and competent in her or her profession.
<b>Board of Hearing Aid Dispensers</b> - Question 13 (terminology uses?)
Yes. Reference 37-16-103, MCA: <b>37-16-103. Exemptions.</b> This chapter does not apply to a person who is: (1) a physician licensed to practice by the state board of medical examiners; (2) engaged in the practice of fitting hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency; or (3) licensed as an audiologist under the provisions of Title 37, chapter 15, except that the provisions of 37-16-304 apply to licensed audiologists.
<b>Board of Massage Therapists</b> - Question 13 (terminology uses?)
Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimal qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.
<b>Board of Medical Examiners</b> - Question 13 (terminology uses?)
Essentially, this is a "truth in advertising" issue that reflects both factual accuracy and the trust relationship between provider and patient/client. In Montana, certain terms relating to professionals and their medical specialty are specifically defined in law. For instance, the term "acupuncturist" has a specific legal definition under MCA 37-13-103.  Another statute (MCA 37-25-102) defines a "nutritionist" as a person who either is licensed as such or "has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university."  The Board of Medical Examiners is the body best able to determine whether healthcare professionals are truthful in presenting their professional status to the public, whether through advertising or through claims about their practice. In addition, the public expects healthcare professionals to be truthful if they choose to use the legally recognized name of a specialty.
<b>Board of Nursing</b> - Question 13 (terminology uses?)
Because of the public trust in the nursing profession, the use of the terms LPN (licensed practical nurse) or RN (registered nurse) or APRN (advanced practice registered nurse) should be limited to those holding the qualifications to be duly licensed.
<b>Board of Nursing Home Administrators</b> - Question 13 (terminology uses?)
Federal law defines nursing home administrators and requires licensure by states.
<b>Board of Occupational Therapists</b> - Question 13 (terminology uses?)
Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Consumers have a right to know the minimum qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.
<b>Board of Optometry</b> - Question 13 (terminology uses?)
Yes. The use of the title, Doctor of Optometry, OD, implies that the person has the training, education, and qualifications to be licensed in the profession. See 37-10-102, MCA for exemptions.

<b>Board of Outfitters</b> - Question 13 (terminology uses?)
Yes. The terms fishing or hunting "outfitter", "guide", and "professional guide" are terms that indicate to the public that the person is licensed, tested, qualified, and competent to perform the services of their profession necessary for safeguarding the public health, safety, and welfare. Allowing others to use these terms would invite and facilitate confusion among the public without serving any meaningful purpose.
<b>Board of Pharmacy</b> - Question 13 (terminology uses?)
Yes. The public has come to associate certain terms with licensed professions that have the endorsement and approval of government regulators. Over years of use, the term "pharmacy" has gained the public trust because of the skill and professionalism of licensed pharmacists. It would be a disservice to the public and to the profession to allow unqualified individuals to represent themselves in the same light as pharmacists operating a pharmacy. Allowing free use of the term would confuse consumers and erode public confidence in licensed pharmacists.
<b>Board of Physical Therapy Examiners</b> - Question 13 (terminology uses?)
Yes. The person has the training, education, and qualifications verified by an examination to be licensed in the profession of physical therapy. <b>37-11-102. Exemptions.</b> This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.
<b>Board of Plumbers</b> - Question 13 (terminology uses?)- submitted by Tim Regan, chair of the board
Yes. The board should have the ability to limit use of certain terminology to only a licensee. When a person holds themselves out to be a plumber, the public assumes that the person is qualified to perform plumbing. Licensure substantiates the fact that the individual has the education, training, and experience, verified by examination, to perform plumbing. Allowing unlicensed persons the ability to advertise or otherwise represent to the public their competence or ability in the field of plumbing would be misleading to the public.
<b>Board of Private Alternative Adolescent Residential or Outdoor Programs</b> - Question 13 (terminology uses?)
Essentially, this is a "truth in advertising" issue that reflects both factual accuracy and the trust relationship between programs and the youth and families they serve. In Montana, the Board of Private Alternative Adolescent Residential or Outdoor Programs is the body best able to determine whether a program is truthful in presenting their professional status to the public, whether through advertising or through claims about the program. In addition, the public expects a youth care facility and its professionals to be truthful about the professional status, including the legally recognized name. According to statute, the designation as a Licensed Private Alternative Adolescent Residential or Outdoor Program shall "be displayed in a conspicuous place near the admitting office of the program."
<b>Board of Private Security</b> - Question 13 (terminology uses?)
Boards should be able to limit the use of certain terminology when necessary to protect public health, welfare, and safety. As an example, an individual representing to the public that he or she is an Armed Private Security Guard without meeting the necessary training requirements to competently handle a firearm and otherwise perform the duties of the profession poses a threat to the citizens of Montana.
<b>Board of Professional Engineers and Professional Land Surveyors</b> - Question 13 (terminology uses?) - submitted by David Elias, presiding officer of the board
The Board does not limit the use of the word engineer or surveyor. However, the distinction of being called a professional engineer or a professional land surveyor is a distinction the board protects. These titles convey to the public that the individual has met certain rigorous standards and that the individual is qualified to offer services in Montana.

<b>Board of Psychologists</b> - Question 13 (terminology uses?)
Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Physicians, attorneys, and psychologists are among that group. These are titles that go with those professional labels and imply a particular level of training/experience. Consumers have a right to know the minimal qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.
<b>Board of Public Accountants</b> - Question 13 (terminology uses?)
Because of the ever-changing nature of the CPA profession (as discussed in previous answers), the public relies on the restricted use of the "CPA" designation in order to identify those professionals who have not only passed the CPA exam and met the education and experience requirements but who are also up-to-date (via continuing professional education) on the most recent standards and laws.
<b>Board of Radiologic Technologists</b> - Question 13 (terminology uses?)
Terminology that implies a particular level of training/experience should have its use restricted to those individuals that actually have that training/experience and have been adequately assessed. Physicians, attorneys, and psychologists are amongst that group. These are titles that go with those professional labels and imply a particular level of training/experience. Consumers have a right to know the minimal qualifications of those who utilize the associated titles and terms, which is why some boards should be able to limit the use of certain terminology to only a licensee.
<b>Board of Real Estate Appraisers</b> - Question 13 (terminology uses?)
Yes. Only a licensed and certified real estate appraiser may sign an appraisal report for a federally related transaction. See 37-54-301, MCA:  <b>37-54-301. Certification -- use of term -- standards of practice.</b> (1) A person may not represent to the public that the person is a certified real estate appraiser unless the person is certified under this chapter. (2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under this chapter who assisted in the preparation of the appraisal may cosign the appraisal report. (3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group. (4) Whenever an appraisal or appraiser report is identified by the certified real estate appraiser as "certified", the appraiser shall indicate in writing the class of certification the appraiser holds.
<b>Board of Realty Regulation</b> - Question 13 (terminology uses?)
Because of the public trust in the real estate profession, and to prevent consumers from believing they are dealing with a licensed person when in fact the person is unlicensed, the use of the terms "real estate broker", "real estate salesperson", or "property manager" should be limited to those holding a real estate license.
<b>Board of Respiratory Care Practitioners</b> - Question 13 (terminology uses?)
Yes. While the Board of RCP cannot speak for any other board or its licensees, it recognizes the need for providers of health care to be clearly and accurately identified by profession. Whether "nurse," "dentist," or "acupuncturist," titles of licensure have specific meaning and should only apply to those professionals who have the education, training, or other qualifications to provide the care associated with that profession.

<b>Board of Sanitarians</b> - Question 13 (terminology uses?)
In order to be protective of the public, there are times when terminology related to a professional should be limited to a licensed person. Boards should be able to limit the use of certain terminology so that the public is not misled or confused by persons describing themselves in professional terms.
<b>Board of Social Workers/Professional Counselors/Marriage and Family Therapists</b> - Question 13 (terminology uses?)
Because of the public trust in the Professional Counseling, Social Work, and Marriage and Family Therapy professions, the use of the terms LCSW (Licensed Clinical Social Worker), LCPC (Licensed Clinical Professional Counselor) and LMFT (Licensed Marriage and Family Therapist) should be limited to those holding the qualifications to be duly licensed.
Finally, the Board is aware that this committee received comments at its final meeting of 2012. The Board listened with great concern over the comments and would like to respond and provide an update to the Committee of actions taken since that time. Two individuals raised a number of concerns regarding the Board's processes involving complaints of misconduct by licensees at the September 11, 2012, Economic Affairs Interim Committee. The Committee requested a response, and the Board's understanding is that the Chief of Staff for the Schweitzer administration, had already written to address those concerns. The Board does not wish to provide redundant responses to the Committee's request; however, the Board would welcome an opportunity to provide further information to the Committee should it so desire. In addition, the Board believes that the Department of Labor and Industry has implemented policy changes related to the conduct of meetings and disciplinary proceedings by all boards that will address some of the Committee's and citizens' concerns. Finally, with the enactment of SB 64, the Board believes that complaints will be reduced significantly, because licensees will have immunity from disciplinary actions arising from parenting evaluations. The Board looks forward to providing you with any additional information you may need.
<b>Board of Speech-Language Pathologists and Audiologists</b> - Question 13 (terminology uses?)
Because of the public trust in the profession as a whole, the use of the terms Speech-Language Pathologist and Speech-Language Pathology Aide or Assistant, Audiologist, Audiology Aide or Assistant should be limited to those holding the qualifications.
<b>Board of Veterinary Medicine</b> - Question 13 (terminology uses?)
Yes. The use of the title "veterinarian", "certified euthanasia technician", or "embryo transfer technician" is the public's way of knowing who it is dealing with in the area of animal medicine. It is the way of knowing that the individual is trained, tested, and monitored for continued compliance.



## Appendix B: Frustrations with Licensing, as Indicated by Survey Responses

The online survey regarding licensing boards generated much comment from licensees as well as nonlicensees. Much of it was positive, but the survey also allowed much venting of frustration. People did not need to list their names, although more than 2/3 of the respondents did (2,583 out of 3,812). Of the 3,772 people who answered the question of whether they were licensed by a licensing board, 2,915 or 77.3% said they were. That left 857 or 22.7% responding to the survey who were not licensed and represented the general public. These numbers do not account for a smattering of cases where a person signed up to take the survey and then took it again either because they did not know if they had submitted a valid response or they were trying to skew results. The individual board responses listed under the HB 525 webpage in the 2011-2012 EAIC interim removed those duplicates whenever they were detected.

Following are edited responses (to avoid libel) of frustrations with the boards—nonlicensees will be designated—as indicated by survey responses:

- Beauticians -- have you ever read the regulations? They micromanage (and charge fees for changes) regarding some ridiculous things as where a licensed beautician works. Costly and almost irrelevant things like which way a door swings becomes a livelihood threatening issue. The oppression placed in Montana is not done in other states and the world does not end. Consumers benefit with more convenient service, such as being able to get a haircut in their office. Innovative service keeps the competition scrambling and prices low. ... In your questions below -- the point is while there might be some benefit to consumers to have an agency doing a screening or certifying -- why does it have to be government? Why does it have to be forced? The Realtors organization is an example (which would be even better if they didn't have to compete with government) of how any issues that might be of real concern by consumers could be addressed. There is in your questions the implication that if government doesn't do it there is no way to address issues of health and safety or establishing credentials. Not only are there other alternatives, removed from the lack of incentive inherent in bureaucracy, they might work even better. (From a nonlicensee)
- I completely understand the logistical need in 2007 to combine the Board of Landscape Architects with the Board of Architects. However, if there were any way logistically possible for landscape architects to be regulated by an independent board it would be better for the profession.
- We (the Board of Realty Regulation) are limited to \$1000 fine on issues that Idaho, Wyoming and North Dakota charge from \$3,000 to \$10,000 for the same violation. It is easy to become licensed in MT and then move to practice in ND, ID or WY. This is a major reason why we have revoked reciprocity of licensing.
- (In response to a question of a regulation that has caused problems) Letting oil refineries use non-licensed electricians for new construction. The scope of this work covered in the NEC is enormous and in some sections listed as hazardous. Seems strange that we require licensing for wiring a 500 sq ft addition to a commercial building, but something as hazardous as an oil refinery can be wired by anyone.
- The presence of the laws is not a problem. The problem is inconsistency within the body of laws governing my profession. The board has a high degree of discretionary, arbitrary authority and



in the context of inconsistency of regulation that kind of authority can also be a problem, especially if the board chooses to engage in protectionist practices. (From a nonlicensee)

- A licensee of the Board of Professional Engineers and Professional Land Surveyors commented about a concern: When the Board considered only allowing continuing education credits that met a select few members' view of education. Although it didn't pass the Board's vote it concerned me that we would only be allowed to get credits from large out-of-state education training companies that charge high rates and may not present issues that are relevant to engineers from a low population state. As a transportation professional, many of the national courses focus too much on large traffic issues rather than rural and small urban issues. I was impressed the Board took into account the opinions of its members and elected to not install their requirement a few years ago. (#3514)

## Appendix C: Views\* on Whether Boards are Needed for Public Health, Safety, or Welfare

\*The licensing survey attracted about 3,600 respondents (some duplicated). Not quite 2,200 were licensees, with the remaining respondents being members of the public not licensed. Of this latter group only 389 answered the question of whether boards were needed for public health, 324 answered regarding public safety, and 275 answered about public welfare. Some people just checked off all the boards. Others were more selective. Out-of-state responses are included. The percent of respondents for each board and category is listed followed by the number of responses.

Board	Needed - Public Health	Needed - Public Safety	Needed - Public Welfare
Alternative Health Care	57.1% -- 222	46.9% -- 152	54.2% -- 149
Architects & Landscape Architects	35.5% -- 138	57.1% -- 185	36.0% -- 99
Athletic Trainers	40.1% -- 156	34.6% -- 112	36.0% -- 99
Chiropractors	70.4% -- 274	50.6% -- 164	51.6% -- 142
Clinical Laboratory Science Practitioners	60.2% -- 234	50.3% -- 163	49.1% -- 135
Barbers & Cosmetologists	47.3% - 184	39.5% -- 128	39.3% -- 108
Dentistry	80.2% -- 312	51.9% -- 168	58.5% -- 161
Electrical	41.1% -- 160	67.9% -- 220	44.4% -- 122
Funeral Services	42.2% -- 164	35.8% -- 116	45.1% -- 124
Hearing Aid Dispensers	34.4% -- 134	31.2% -- 101	36.7% -- 101
Massage Therapy	48.3% -- 188	37.3% -- 121	40.4% -- 111
Medical Examiners	78.7% -- 306	58.6% -- 190	60.0% -- 165
Nursing	83.8% -- 326	58.6% -- 190	64.0% -- 176
Nursing Home Administrators	69.2% -- 269	51.9% -- 168	61.5% -- 169
Occupational Therapy Practice	62.2% -- 242	45.1% -- 146	48.7% -- 134
Optometry	72.5% -- 282	49.7% -- 161	52.4% -- 144
Outfitters	19.8% -- 77	30.9% -- 100	27.3% -- 75
Pharmacy	79.4% -- 309	56.5% -- 183	58.9% -- 162
Physical Therapy Examiners	64.5% -- 251	46.9% -- 152	47.3% -- 130
Plumbers	40.6% -- 158	54.6% -- 177	42.2% -- 116
Private Alternative Adolescent Residential or Outdoor Programs	39.1% -- 152	40.7% -- 132	44.0% -- 121
Private Security	23.9% -- 93	43.5% -- 141	38.5% -- 106
Professional Engineers & Professional Land Surveyors	40.1% -- 156	58.6% -- 190	43.3% -- 119
Psychologists	70.7% -- 275	50.0% -- 162	54.5% -- 150

Public Accountants	36.8% -- 143	35.2% -- 114	43.3% -- 119
Radiologic Technologists	59.6% -- 232	45.1% -- 146	46.2% -- 127
<b>Board</b>	<b>Needed - Public Health</b>	<b>Needed - Public Safety</b>	<b>Needed - Public Welfare</b>
Real Estate Appraisers	35.0% -- 136	34.6% -- 112	43.6% -- 120
Realty Regulation	32.9% -- 128	38.6% -- 125	45.5% -- 125
Respiratory Care Practitioners	62.0% -- 241	46.9% -- 152	48.7% -- 134
Sanitarians`	44.0% -- 171	45.1% -- 146	46.9% -- 129
Social Work Examiners & Professional Counselors	57.8% -- 225	46.3% -- 150	60.7% -- 167
Speech Language Pathologists & Audiologists	53.5% -- 208	39.5% -- 128	45.1% -- 124
Veterinary Medicine	65.8% -- 256	49.4% -- 160	50.2% -- 138
<b><i>Responders in this category</i></b>	389	324	275

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