



State of Vermont

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James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary

July 31, 2019

TO: Sunset Advisory Commission
FR: Chris Winters, Deputy Secretary of State
RE: Board Model to Advisor Model Conversions

Professions Under the Office of Professional Regulation (OPR) Umbrella:

Boards (15):

Accountancy
Allied Mental Health
Architects
Chiropractic
Dental Examiners
Engineering
Land Surveyors
Nursing
Optometry
Osteopathic Physicians
Pharmacy
Private Investigative & Security Services
Psychological Examiners
Real Estate Brokers & Salespersons
Veterinary Medicine

Advisors (31):

Acupuncturists
Alcohol & Drug Abuse Counselors *
Applied Behavior Analysis
Athletic Trainers
Auctioneers
Audiologist
Barbers & Cosmetologists *
Boxing *

Dietitians
Electrologists
Foresters
Funeral Service *
Hearing Aid Dispensers
Landscape Architects
Midwives
Motor Vehicle Racing *
Naturopathic Physicians
Notaries Public
Nursing Home Administrators *
Occupational Therapy
Opticians *
Physical Therapists
Pollution Abatement Facility Operators
Property Inspectors
Psychoanalysts
Radiologic Technology *
Real Estate Appraisers *
Respiratory Care Practitioners
Social Workers
Speech-Language Pathologist
Tattooists & Body Piercers
Wastewater/Water System Designers

*** Board to advisor conversions**

The Major Differences Between the Board and Advisor Models of Regulation:

- 2 or 3 Advisors appointed by the Secretary of State rather than 5 to 10 board members appointed by the Governor.
- The Director of OPR regulates the profession and is the final decision-maker, with the advice of Advisors, rather than a Board.
- Disciplinary cases are heard by a law-trained administrative law officer, rather than a board hearing panel.

Considerations in Converting:

- Inactivity - few meetings, issues, changes, or conduct complaints
- Funding - revenue shortfalls in smaller professions and budgetary issues lead to the advisor pool
- Flexibility/responsiveness - determining the public will be better served by faster decisions and a less cumbersome decision-making process
- Vacancies - difficulty maintaining a full board or quorum due to lack of individuals interested in filling specialized seats
- Level of Technical Expertise – what is needed to competently administer regulation

Recent Examples:

We did **funeral** because the licensee base needed a bigger insurance pool.

We did **barbering & cosmetology** because of a combination of inactivity and need for flexibility.

We did **radiologic technology** because of needs to improve flexibility and fill specialized seats.

We did **real estate appraisers** for inactivity secondary to federal dominance of regulatory requirements.

Other Considerations - Sunset Review from Ch. 57:

We can and should ask ourselves these essential questions when recommending structural changes. 26 V.S.A. §3104(b) tells us to inquire into:

- (1) the extent to which a regulatory entity's actions have been in the public interest and consistent with legislative intent;*
- (2) the extent to which the profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public;*
- (3) the extent to which the scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public;*

- (4) the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest;*
- (5) the extent to which a regulatory entity's resolutions of complaints and disciplinary actions have been effective to protect the public;*
- (6) the extent to which a regulatory entity has sought ideas from the public and from those it regulates, concerning reasonable ways to improve the service of the entity and the profession or occupation regulated;*
- (7) the extent to which a regulatory entity gives adequate public notice of its hearings and meetings and encourages public participation;*
- (8) whether a regulatory entity makes efficient and effective use of its funds and meets its responsibilities; and*
- (9) whether a regulatory entity has sufficient funding to carry out its mandate.*

Why Spending Time on this is Important:

- Establish governance that preserves the best of peer regulation in a model that is more resistant to industry capture than the board model.
- Ensure efficacy. Our most effective boards:
 - oversee technical professions,
 - where acceptable practices cannot be reliably understood by unassisted State administrators and lawyers, and
 - have enough substantive policy work to justify their existence as a body.
- Avoid the idle-hands problem. If there's nothing productive to do, some boards are:
 - inventing new red tape,
 - micro-managing commerce, or
 - becoming sounding boards for otherwise minor problems.
- Focus on the mission and legislative intent.