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January 2, 2015

**VIA HAND DELIVERY AND E-MAIL**

<p>Senator Fletcher L. Hartsell, Jr. Joint Legislative Program Evaluation Oversight Committee Joint Legislative Administrative Procedure Oversight Committee NC Senate 300-C Legislative Office Building 300 N. Salisbury Street Raleigh, NC 27603-5925 Fletcher.Hartsell@ncleg.net</p>	<p>Senator Fletcher L. Hartsell, Jr. Joint Legislative Administrative Procedure Oversight Committee NC Senate 300-C Legislative Office Building 300 N. Salisbury Street Raleigh, NC 27603-5925 Fletcher.Hartsell@ncleg.net</p>
<p>Rep. Julia C. Howard Joint Legislative Program Evaluation Oversight Committee NC House of Representatives 302 Legislative Office Building, Room 302 300 N. Salisbury Street Raleigh, NC 27603-5925 Julia.Howard@ncleg.net</p>	

*RE: Response and comments of North Carolina State Board of Examiners in  
Optometry to PED Report*

Dear Senator Hartsell and Representative Howard:

I represent the North Carolina State Board of Examiners in Optometry ("the Board"). I write to provide the Board's response to the Program Evaluation Division's December 17, 2014 Final Report to the Joint Legislative Program Evaluation Oversight Committee. We appreciate the opportunity to respond to the Report, although the two-week deadline has made such response a little more challenging when one considers that period also contained at least two holidays and other traditional "days off" for the members of our Board.

Initially, the Board appreciates the effort that Mr. Hefren as Evaluation Lead and Messrs. Grimes, Horne, and Yates put into their work. We likewise appreciate their willingness to listen

to and consider and evaluate the Board's experiences and the Board's point of view on many of the issues addressed by the Report.

What follows are some the Board's thoughts regarding the Report, in bullet-point format for sake of conciseness:

- The Board agrees with what we perceive to be an underlying theme of the Report: the evidence suggests that many/most of the state's independent occupational licensing agencies (OLA's) are carrying out their mandated functions in a proper manner.
- The Board can understand the Report's conclusion that additional limited oversight of and reporting by such boards would be of benefit to the citizens of the state.
- We likewise can understand the Report's finding that there is room for more clarity and specificity in terms of "output"—more objective measurements of what these boards do and how they serve the people of North Carolina.
- We agree that the transfer of regulatory authority and administrative responsibilities (or either of them) to a single state agency would ill-advised for many, many reasons—among them those reasons specifically cited by PED in its Report.
- Contrary to the Report, we believe there is no compelling reason—at least not currently—to create a new/additional state agency in order to accomplish those results the Report says are needed:
  - Many of the desired outcomes identified in the Report could be accomplished simply by providing the OLA's with additional statutory guidance and, thereby, rulemaking authority. For example:
    - G. S. 93B could be amended to identify the OLA's subject to the statutory reporting requirements.
    - G. S. 93B and/or G. S. 150B could be amended to require that:
      - each OLA publish on its website a form through which a complaint may be submitted against a licensee of that board.
      - certain standard information be contained in each board's online complaint form.

- no notary's signature and no personal verification of the complaining person's signature be required in order to file a complaint.
- each board's complaint form be in a format that will allow it to be completed on-line or be printed out, completed by hand, and submitted to the Board by mail or email. (More on this "complaint form" issue later....)
- each OLA identify on its website the types of professionals it does have jurisdiction and oversight over, and (if applicable) also identify other licensees over whom the public often mistakenly believes a board has jurisdiction and where to file a complaint against such licensees.
  - *The Board does not believe there is a serious "jurisdiction" issue that needs this Board's attention. Confusion by the public as to where to complain against an optometrist has been negligible, and when it has occurred, those complaints have been misdirected to only two other boards (the Medical Board and the Opticians Board). These three boards have cooperated extremely well in correctly re-directing such complaints as quickly as possible.*
  - *As an aside: this Board believes that the people of North Carolina would be best served by having the Opticians Board continue to regulate the practice of opticianry rather than having that board eliminated or consolidated as is contemplated in the PED Report.*
- within a specified period of time, the board provide each complaining person with a response indicating whether the board has jurisdiction over the person who is the subject of the complaint.
- the board timely provide the complaining party with notice regarding the results of any "probable cause" determination by the board and the results of any informal resolution or disciplinary action taken as a result of a formal hearing on the complaint.

- the board keep electronic records on the intake, processing, and resolution of all complaints in a format that allows “downloading” by the appropriate state authorities.
- additional financial or other information deemed important be included in the annual reports and financial statements currently submitted by the OLA’s. (Report, p. 21.)
- We question whether, if the foregoing changes and any other needed changes were made to the governing statutes, an Occupational Licensing Commission (“OLC”) would be necessary.
  - Would it not be more fiscally prudent to make the legislative changes described above and then determine whether such an oversight agency is actually necessary, or if necessary, whether its charge might need to be different, in light of the effects of those legislative changes?
  - Not creating a new OLC also would mean the cost for such agency would not be assessed against the OLA’s—and that such cost would not be passed on by the agencies to their licensees, and ultimately from those licensees to their patients and customers.
- However, even if such an oversight agency is needed, whether currently or in the future, we question whether the proposed makeup of the OLC (assuming that such OLC would “oversee” health-related occupations) is likely to be the most effective.
  - The Report cites with approval the Texas Health Professions Council (Report, p. 24) as a “model for improving the level of oversight of OLA’s”.
    - Yet the Report’s proposal for the makeup of the North Carolina OLC is very different from the makeup of the Texas Council:
      - The proposed North Carolina OLC would consist of nine members, only four of whom would be licensees in professions regulated by occupational licensing agencies—and none of those four necessarily would be a member of his or her profession’s licensing agency. The remaining five members would be public members who not licensed in an occupation regulated by an OLA.
      - Providing only four seats to a group of professions whose licensing boards (broadly defined, and absent any elimination or consolidation of boards) would

exceed that number of seats by a factor of at least three is a formulation inferior to the Texas system: such would be at best inimical to the objectives of operating efficiency and resolution of scope of practice disputes (Report, p. 22), and at worst an invitation for infighting, favoritism, and turf battles.

- The Texas Council has as its members one representative from each of the Council's twelve member occupational licensing agencies plus one member each from the Governor's office, the Office of the Attorney General, and the Texas Department of State's Professional Licensing and Certification Unit. (Texas Health Professions Council Annual Report, February 1, 2014.)
- We see no objective reason why the makeup of the OLC as proposed by the Report is inherently better than an OLC whose makeup more closely mirrors that of the Texas Council.
  - We think it likely that a board composed of licensees who actually serve on licensing boards is better equipped to improve the level of OLA oversight and help OLA's more cost-effectively achieve their objectives (Report, p. 22) than a Council with a makeup as proposed by the Report.
  - For example, one of the cited objectives of the proposed Council is to "provide mediation services between OLA's regarding scope of practice disputes." (Dec. 16, 2014 PED presentation, slide 25.) We think it is far more likely that an effective mediation process could be achieved through persons who actually deal with scope of practice disputes as a part of their jobs and who are versed in OLA practice issues (*i.e.*, the true Texas model) than the proposed North Carolina model—which would utilize lay persons and licensees who have little or no experience with licensing law or scope of practice issues and disputes.
  - A Texas-model OLC could consider whether some or much of the administrative work of that commission could be done by employees "loaned"

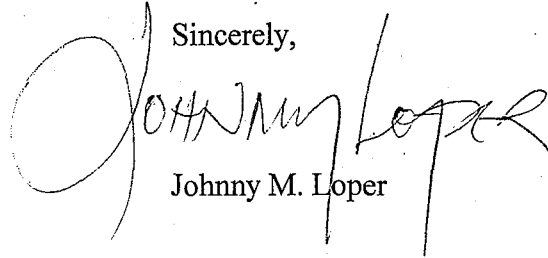
from the constituent boards, thereby avoiding the adding of new employees to the state's payroll. Such employees would also be more familiar with the issues than "green" state employees, and therefore more efficient.

- There is no reason that the other benefits of an OLC as touted by the PED—*e.g.*, facilitating the sharing of services among OLA's, collecting and disseminating OLA performance information, and acting as a clearinghouse for complaints—could not be done just as efficiently, if not more so, under the true Texas model.
  - If there is to be a "one size fits all" complaint form used by the OLC (a proposal that we think is likely to prove problematic in its implementation), that form would be better designed by licensing professionals than licensing novices.
- Finally, with regard to the makeup of the forms by which complaints can be lodged with the appropriate board:
    - Accepting without agreeing with PED's position (as it relates to this Board) that the public has somehow been "hindered" in its ability to lodge complaints with OLA's (Report, p. 34), this Board agrees that many of the bullet points listed in Recommendation 3 of the Report (at pp. 34-35) would benefit the public.
    - However, if PED really wants to minimize "the time that unqualified and unscrupulous individuals...continue" to operate (Report, p. 21), and if PED really wants the complaint process to be as smooth and expeditious as possible, having complaint forms that contain only "the information necessary to determine jurisdictional authority" (Report, p. 35) will operate at cross-purposes to those goals.
    - Complaint forms certainly should contain the information necessary to determine whether the board to which the form is submitted is the proper board to pursue the complaint. However, the complaint resolution process will be unnecessarily extended if the board is not given on the complaint form substantially all the information it needs to undertake a meaningful start to the investigation. Why require the board to go back to the

complaining party for additional information when that information can be provided on the complaint form?

While there is more that could be said here, I'll close in the interest of [relative] brevity. I'm sure you will get similar and other comments from other occupational licensing boards. We appreciate your consideration of our viewpoints, which have the best interests of the citizens of North Carolina in general and our licensee's patients in particular in mind.

Sincerely,

A handwritten signature in black ink, appearing to read "Johnny M. Loper". The signature is written in a cursive style with a large initial "J".

Johnny M. Loper

JML:mwg

cc: John D. Robinson, O.D., Board Executive Director  
Chuck Hefren, Principal Program Evaluator (*via hand delivery*)