

## REGULATORY FAIRNESS BOARD

### Meeting Notes

January 22<sup>nd</sup>, 2010

Informal conversation prior to the official meeting: Anne Head joins Ed Philips, Van Perry, and Eliot Stanley. Philips summarizes the BRED hearing from the previous day, including the public hearing on [LD1608](#), a bill related to the Administrative Procedures Act. There was support for the bill, but people are concerned about the cost the drastic change in the current process that this bill would introduce.

PRESENT at the meeting for official start: Van Perry, Ed Philips, Linda Snyder, and Eliot Stanley of the Maine RFB, and Anne Head (Commissioner Financial and Professional Regulation and Director Office of Licensing and Registration). SPO Staff present: Thomas Merrill.

9:25am: Eliot Stanley moves for meeting to become official.

Philips briefs meeting attendees of various stakeholders who supported and spoke against the bill. BRED concluded the hearing by asking RFB and other stakeholders, including Commissioner of FPR and Director of OLR, meet to come to an agreement on elements of the bill before BRED holds the public work session on the topic.

Stanley mentions past RFB recommendations in dealing with denturist regulation which were adopted and now seem to be benefiting the trade. Stanley also mentions independent hygienists who consider their current regulatory environment satisfactory, but feel they could benefit from more autonomy.

Anne Head explains that her involvement in the issues Stanley has spoken about has been significant. Denturists are still within the Dental Board, but have their own subcommittee that handles discipline. During the last session, the scope of Denturists work was expanded to allow them to do more work and serve more people as opposed to moving them under a separate board.

Head explains that it is the legislative committees who ultimately make the decisions whether to expand or contract the scope of work under a specific license; it is not under the purview of commissioner or of the board itself to make policy. When a group of licensees has an issue with licensing regulation, this must be taken up with the legislature. Anne Heads offers her availability to assist RFB in addressing complaints from the business community.

Philips says RFB would benefit from having a liaison, like from FPR and from DEP, to attend the hearings and help to avoid misunderstandings between stakeholders.

Head explains that the concept of having that kind of cooperation is fine, but on a cautionary note: there are some instances where RFB may receive a complaint that is ongoing and has not come to final agency action – that is not a matter that any state agency could ever comment on. RFB should not be in position to disrupt a case when it's in the middle of being heard or investigated.

Philips agrees, but says without such cooperation RFB may not be aware whether the complaint/issue is in process and has not been resolved. RFB is not interested in judging the case, rather, RFB judges how the case was solved.

Head explains that her agency has put much effort into improving the process of remediating complaints. From the AG, to licensing board members, to the licensee and their attorney, etc – when this process is within an agency like OLR, standard practices which can be observed, publicized, and managed, fairness is improved. RFB may have to figure out a way of drawing advisors to the independent boards and programs which do not want to be a part of the standard practices operated by OLR. These independent boards have their own staffs and they pay for their own IT and HR, for example. They are like little state agencies unto themselves and the FPR Commissioner really only controls the head count of the staff or the independent boards, not their operating processes.

Perry mentions that some states have a single office of licensing boards, with all professional licenses under consistent board direction.

Head explains that OLR is the closest Maine has to this, but many arrangements have evolved over time for licensing boards to be independent of this office. It is easier for OLR to act like as the mechanism that insures public accountability and accessibility, such as administrative duties and responding to freedom of access, etc, but the licensing boards must still make the final disciplinary decision. LD1608 does not work with the processes used by OLR.

Philips says that is the problem -- we need to change the system we use because it's unjust.

Perry says the same people who are setting the rules are also judging and providing discipline. RFB is trying to setup a 3<sup>rd</sup> party, an impartial judge. Those who make the rules are not impartial.

Head points out that it is the legislature that makes the rules by putting rules in statute and designing the policies. Boards must base their decisions on what is in the statute, not on their own impartiality.

Snyder asks what parameters the independent boards are given. Are they given the same as those who fall under OLR? They still have state employees and are governed by the Maine administrative procedures act...

Head explains that when a complaint comes in, this is the starts the legal process to investigate and review the complaint. The licensing board committee digs into the case and reviews, and makes recommendations on how to proceed. Until decision is made by the board, the APA doesn't address the process. The AG's office and executive staff work together on the process that is used during that time period.

Stanley asks if LD1608 would kick in earlier.

Head: Basically, but this isn't clear in the focus of the bill. The bill mentions only complaints that are referred by OLR, but OLR does not refer to the affiliated boards. If RFB's intent for LD1608 is to convene the independent boards under a consistent process, the wording of LD1608 needs to be changed. The AG's who supervise the attorneys who work with the affiliated boards should be consulted.

Head, on the subject of compiling an easier to navigate source of regulatory information than what is currently available online, mentions that DECD might be able to help RFB with a decision tree/booklet to help licensees. RFB should add links for licensee information to the RFB website.

Stanley moves to the next topic, asks for any comments on the contents of the last meeting's minutes? Snyder motions to accept. Perry seconds. Minutes approved as printed at the meeting.

Stanley mentions that we might be in a position for this February's report to comment on the ideas in the most recent Missouri Regulatory Fairness Board report that would be useful to Maine. Philips agrees. Stanley suggests RFB isolate the things Missouri is doing that have relevance to Maine. Ideas have been generated since the RFB has reconvened, and although RFB is not yet making recommendations, RFB can report that issues are being thoughtfully considered. For the February report, RFB is not in a position to make legislative recommendations, but can define some potential suggestions. Message will be sent to Board members to advise that any contributions to the report should be submitted to Merrill by the end of the day on Monday, January 25 for a report completion date of January 28.

Philips suggests designating future meeting times and potential topics for meetings now. If the date comes and there is no business, we can postpone and continue working on the ongoing projects, but it would be nice to have a longer term plan. Snyder agrees.

Stanley mentions siting approval process should be a topic at a meeting on March 18<sup>th</sup> at 9am, led by Van Perry, and perhaps Mr. Meisner can also attend to speak about the "back-fit rule". RFB can advertise the March date as open for additional members of the public to speak with the Board as well.

The motion is made and accepted adjourn the meeting at 11:00am.