

# AGENCY SNAPSHOTS:

## Department of Business and Professional Regulation

by Colin M. Roopnarine

The Department of Business and Professional Regulation (DBPR) licenses and regulates one million professionals and businesses across the State of Florida. DBPR issues licenses ranging from talent agents to mold inspectors and real estate agents, and construction contractors to alcohol and tobacco manufacturers and professional boxers. DBPR’s mission is to “License Efficiently, Regulate Fairly.”

**The Agency Head:** Ken Lawson was appointed the Secretary of DBPR on May 2, 2011. A native Floridian and a graduate of Florida State University and the Florida State University College of Law, Secretary Lawson has spent more than 12 years serving and protecting the public in numerous regulatory positions. Secretary Lawson began his legal career in the United States Marine Corps, Judge

Advocate General’s Division and spent seven years serving as an Assistant U.S. Attorney for the Middle District of Florida. After serving as an Assistant U.S. Attorney, Secretary Lawson was appointed the Assistant Secretary of Enforcement for the U.S. Department of the Treasury. In this capacity, Secretary Lawson was responsible for the oversight of several federal law enforcement agencies, including the U.S. Secret Service, the Bureau of Alcohol, Tobacco and Firearms and the Federal Law Enforcement Training Center.

In 2003, Secretary Lawson returned to the U.S. Attorney’s Office for the Middle District of Florida where he defended the United States against civil claims. He was then appointed the Assistant Chief Counsel for Field Operations with the Department of Homeland Security’s Trans-

portation Security Administration, a position he held for several months before moving to the private sector.

In the private sector, Secretary Lawson spent two years consulting for Booz Allen Hamilton, including one year as Chief of Party for the Financial Crimes Prevention Project in Jakarta, Indonesia. He most recently served as Vice-President for Compliance at nFinanSe Inc., a financial services company in Tampa, where he was responsible for the company’s Bank Secrecy Act/Anti-Money Laundering program and its compliance with state money transmitter licensing regulations for 42 states.

Secretary Lawson can be contacted as follows: Office of the Secretary, 1940 North Monroe Street, Tallahassee, Florida 32399-1000; Ph.: (850) 413-0755; Fax: (850) 921-4094.

**The Structure of DBPR:** DBPR’s

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## Joint Administrative Procedures Committee

by Jowanna N. Oates and Kenneth J. Plante

The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature. The Committee is comprised of six senators appointed by the President of the Senate and six representatives appointed by the Speaker of the House. JAPC’s duties are prescribed by Joint Rule 4.6 of the Legislature and Chapter 120, Florida Statutes. Among JAPC’s major functions are to review all proposed and existing agency rules to ensure that the rules are within the agency’s delegated legislative authority, and to exercise oversight of agency actions taken pursuant to the Administrative Procedure Act.

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The Coordinator of JAPC is a joint appointee of the President of the Senate and the Speaker of the House of Representatives. Mr. Plante was appointed Coordinator in October, 2011. Prior to his appointment, Mr. Plante spent fifteen years in private practice, focusing on administrative and environmental law, and served as General Counsel of the Department of Environmental Protection and the Department of Natural Resources.

**Hours of Operation:**  
8:00 a.m. – 5:00 p.m., Monday-Friday  
**Office Email:** [joint.admin.procedures@leg.state.fl.us](mailto:joint.admin.procedures@leg.state.fl.us)

**Practice Tips:** JAPC’s attorneys are available to answer questions concerning rulemaking. An individual interested in a proposed rule may track JAPC’s review on its website located at [www.japc.state.fl.us](http://www.japc.state.fl.us). The website provides links to correspondence to and from the Committee regarding administrative rules under review; provides links to DOAH challenges to a proposed rules; and provides the 90-day filing deadline dates for proposed rules. Additionally, the website contains links to publications such as the Committee’s annual report and the pocket guide to the Administrative Procedure Act. The website is a great place to begin legal research, as it has an annotated Chapter 120 database that includes law review and journal articles, case law, DOAH decisions, and Attorney General Opinions.

regulatory functions are divided into two general divisions, namely the Divisions of Business Regulation and Professions' Regulation.

Deputy Secretary, Michael Walker, Business Regulation, is responsible for licensing and regulating Alcoholic Beverages & Tobacco; Condominiums, Timeshares & Mobile Homes; Hotels & Restaurants (including elevator safety); and Pari-Mutuel Wagering.

The Division of Alcoholic Beverages and Tobacco (Chapters 561-565 and 567-569, Florida Statutes) licenses the alcoholic beverage and tobacco industries, enforces the laws and regulations governing those industries, and collects taxes and fees paid by the licensees. The Division of Florida Condominiums, Timeshares and Mobile Homes provides protection for residents living in those communities. The Division of Hotels and Restaurants (Chapter 509, Florida Statutes) oversees compliance and licensure, sanitation and safety inspectors and elevator safety. The Division of Pari-Mutuel Wagering regulates activities such as jai alai, horse racing, dog racing, card rooms and the slot machine gaming industry.

Deputy Secretary, Tim Vaccaro, Professions, is responsible for licensing and regulating individual professions licensed primarily through regulatory boards administratively housed within the DBPR. "Professions" is responsible for licensing a very diverse group, including certified public accountants, boxers, community association managers, construction and electrical contractors, child and farm labor contractors, cosmetologists, geologists, real estate appraisers, brokers and sales associates and veterinarians. Recently, the Florida Building Commission was legislatively transferred to Professions.

Each of these two divisions has units that: (1) process applications for initial licensure and renewal; (2) investigate allegations of misconduct by licensees; and (3) monitor licensee compliance. The DBPR is very proactive in the regulation of its licensees. This is accomplished by proactively monitoring professionals and related businesses, aggressively pursuing and investigating complaints of wrongdoing and utilizing compliance mechanisms such as

a mediation program, educational outreach, notices of noncompliance, citations and statutorily mandated inspections.

**The General Counsel:** Jeffrey Layne Smith became General Counsel at DBPR on May 2, 2011. Mr. Smith grew up in Tallahassee, where after high school he received an appointment to the United States Air Force Academy. Upon returning to Tallahassee, he graduated from TCC and the Florida State University College of Business, and in 1987, graduated from the Florida State University College of Law (J.D. with High Honors; Order of the Coif; Order of the Barristers).

Mr. Smith has been a member of the Florida Bar for twenty-five years, twenty-four of which he spent in private practice. He assumed several roles as a civil, criminal, and administrative trial lawyer. He practiced general civil litigation in state and federal courts, and administrative litigation at several state agencies. Mr. Smith is also a certified circuit court mediator, and he mediates cases. On several occasions he was designated to serve as a special public defender and he provided free legal services defending indigent clients. He has litigated complex civil fraud and commercial tort cases, and breach of contract and collection cases.

The General Counsel is assisted by three Deputy General Counsels. Michael Martinez is the current Deputy of Business Regulation having previously served as the Deputy of Professions' Regulation. Mr. Martinez has eleven years of experience in state government and was a public defender for two years. Colin M. Roopnarine is the current Deputy of Professions' Regulation. Mr. Roopnarine is Board Certified in State and Federal Government and Administrative Practice, and has worked in state government for sixteen years as a litigator, appellate counsel and hearing officer. J. Yvette Pressley, is the Deputy for Administration, which includes serving as DBPR's Ethics Officer. Ms. Pressley has served in state government for twenty-three years and has practiced in various areas such as criminal, labor, and employment law, having served as DBPR's personnel attorney prior to her promotion to Deputy.

Mr. Smith can be contacted as follows: Office of the General Counsel, 1940 North Monroe Street, Tallahassee, Florida 32399-2202; Ph.: (850) 488-0063; Fax: (850) 922-1278.

**The Agency Clerk:** Rhonda Bryan is the current Agency Clerk of DBPR. Her contact and filing information is as follows: 1940 North Monroe Street,

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must contain a factual recitation sufficient to demonstrate the existence of an imminent threat of 'specific incidents of irreparable harm to the public interest' requiring use of the extraordinary device afforded by section 120.569(2)(n)."

At least one appellate court has held that an emergency order should not be used to punish past behavior. See *Daube v. Dep't of Health*, 897 So. 2d 493, 494 (Fla. 1st DCA 2005) (noting "[p]unishment for past behavior is properly the subject of an administrative complaint pursuant to section 120.60(5) wherein the licensee is afforded the opportunity to challenge the factual basis of the complaint through a section 120.57(1) hearing."). However, "[p]ast acts may be sufficient to allege a danger of future misconduct if the conduct alleged is sufficiently serious and is likely to be repeated." *Witmer*, 631 So. 2d at 343. See also *St. Michael's Academy, Inc. v. Dept. of Children & Families*, 965 So. 2d 169, 172 (Fla. 3d DCA 2007) (noting "[i]mmediacy of harm to the public need not be alleged if there are allegations of sufficiently egregious past harm which are of a nature likely to be repeated.").

Potential monetary losses can be an immediate danger to the public health, safety, or welfare and justify an emergency order. See *Premier Travel*, 849 So. 2d at 1134 (noting [p]ersonal monetary losses can be the sort of danger addressed by section 120.60 Florida Statutes."). However, the Fourth District Court of Appeal noted in *Witmer*, 631 So. 2d at 342, that

[w]hile loss of state revenue was found to be a sufficient reason for emergency action in *Little*, 557 So. 2d at 160 and *Calder Race Course v Board of Business Regulation*, 319 So. 2d 67, 68 (Fla. 1st DCA 1975), those cases involved immediate, concrete, economic threats, rather than mere speculation. In *Calder* the complaint alleged a direct and immediate loss of state tax revenue. In *Little* the agency demonstrated that a budget revision was necessary to keep a state benefits program functioning through the end of the current fiscal year.

When an agency encounters a

situation that amounts to a genuine emergency, it is absolutely essential that an emergency order be promptly issued. As more time passes between when the agency learned of the emergency situation and when an emergency order is issued, the harder it becomes to persuade an appellate court that the facts at hand amount to a genuine emergency. See *St. Michael's Academy*, 965 So. 2d at 173 (stating "[t]his Court is not persuaded by conclusory predictions of future harm based on factual allegations which do not demonstrate an immediate danger. The Court also notes that the time gap between a number of the incidents and the order undercuts the immediacy of the alleged danger."); *Bio-Med Plus*, 915 So. 2d at 673 (concluding "[t]he harm

alleged in the Department's order is general and conclusory and relates to actions in excess of two years old" and that there are "no factual allegations to support a conclusion that the safety or welfare of the public is being threatened at present. Thus, neither immediate danger nor necessity for the [emergency suspension order] has been demonstrated.").

## B. Is the Emergency Order Narrowly Tailored?

An emergency order must take "only that action necessary to protect the public interest . . ." §120.60(6)(b), Fla. Stat. (2012). In other words, the action taken via an emergency order must be narrowly tailored to address the alleged harm. See *Daube*, 897 So. 2d at 494 (holding that

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**Practice Tips:** There are distinct differences in practicing before the two divisions at DBPR. For example, Division Directors within Business Regulation are authorized to take final agency action, while regulatory boards are vested with authority over final agency action within Professions.

In addition, board meetings within Professions are subject to the public meetings requirement of Chapter 286, Florida Statutes, and may occur over the phone or in-person at locations throughout Florida. Licensee discipline is typically within the purview of DBPR counsel, while the boards are themselves represented and advised by select members of the Attorney General's Office. The exception to this is the Florida Building Commission whose advisory counsel is employed by DBPR's General Counsel's Office.

Recently too, DBPR assumed responsibility for non-board professions from the Attorney General's Office.

**Number of Attorneys on Staff:** DBPR employs approximately 50 at-

torneys (including the General Counsel and his deputies), most of whom are located in Tallahassee, and the remainder of whom are located in Orlando. The legal staff is supported by a number of administrative assistants and law clerks.

Recently, Professions coalesced its litigation endeavors into a unified Litigation Team, under the supervision of the Deputy Secretary of Professions, Colin M. Roopnarine. The team handles most of the litigation involving the Construction Industry Licensing Board, and all other Professions, with the exception of Real Estate. Professions also produced a Litigation Manual and conducts monthly Florida Bar approved CLE litigation training for all of its attorneys.

**Typical Cases:** The majority of DBPR's litigation involves the discipline of licensees, initiated through administrative complaints. The General Counsel's Office, however, is committed primarily to the discipline and prevention of consumer harm, and has devoted significant resources to that endeavor. There are also a few rule challenges and licensure denials in which DBPR is the respondent. Most cases are brought pursuant to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.