

OFFICES OF



THE ATTORNEY GENERAL
CONSUMER COUNCIL
OF MARYLAND

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ACQUISITIONS

CONSUMER REPRESENTATIVES
DEPARTMENT OF LICENSING AND REGULATION

by

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51120

CONSUMER COUNCIL

The Consumer Council of Maryland was created by the General Assembly in 1974 to serve as an advisory council to the Consumer Protection Division of the Attorney General's office. Its duties include advising the Division on general goals for the development of programs, conducting studies, issuing reports and fostering cooperation among Federal, State and local agencies and private groups.

Members of the Consumer Council serve without compensation for terms of six (6) years. They are appointed by the Governor with the advice and consent of the Senate of Maryland. The following serve as members; Ellen Haas is Chairperson.

Representing Consumer Groups	Phyllis Garbis Ellen Haas Douglas Schmenner
Representing Business Interests	Stanley Kaufman Robert E. Moss Eileen Katz
Representing the Public	Franklin Beaird Sara Giles Dorothy Murray
Representing the Consumer Protection Division	John N. Ruth
Appointed Secretary for the Council	Caroline Stellmann

Introduction

In the last several years, there has been some increase in legislation and rulemaking designed to improve consumer protection in Maryland. Numerous agencies, boards and commissions have been given a legislative mandate to provide such protection. However, to date, no review of the increasingly complicated network has been made.

During the 1977 General Assembly, a bill (H.B. 1158), to provide that consumer representatives be added to rulemaking bodies outside the Department of Licensing and Regulation, was introduced. It died quietly in committee; not only because of industry opposition but because there was no evaluation of the effectiveness of those consumer representatives already appointed to boards and commissions.

In view of this continuing proliferation, the Consumer Council of Maryland, under its legislative direction to conduct studies, considered it timely to review the status of these programs. The first section of the following report focused on consumer representatives on the occupational and professional licensing boards of the Department of Licensing and Regulation. It is preceded by a history of the development of consumer protection in Maryland. In particular, Ryna Komatzsky, a graduate student in the College of Human Ecology, University of Maryland, reviewed the development of consumer protection in Maryland. Her tenacity in pursuit of this background was much appreciated by the Consumer Council. Caroline Stellmann, Secretary to the Consumer Council, provided the research on the professional and occupational licensing boards of the Department of Licensing and Regulation. In addition to writing the section and assisting with the interviews, Ms. Stellmann also served as Project Director.

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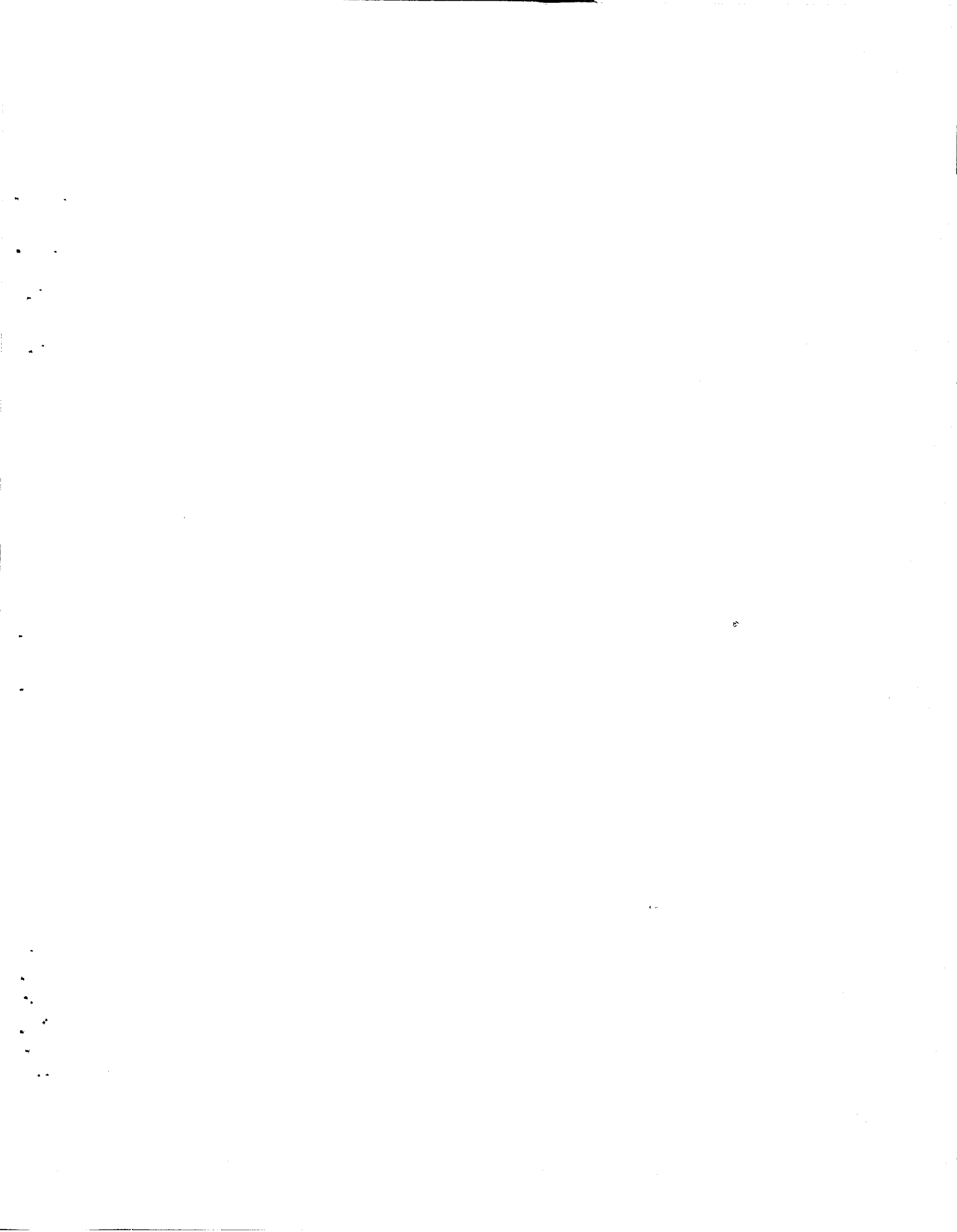
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CONSUMER REPRESENTATIVES ON OCCUPATIONAL AND
PROFESSIONAL LICENSING BOARDS WITHIN THE
DEPARTMENT OF LICENSING AND REGULATION

Objectives

The principal objective of this study by the Consumer Council of Maryland is to review the role of consumer/public representatives on occupational and professional licensing boards with the Department of Licensing and Regulation (hereafter called the Department). This study is to examine the effectiveness and participation of consumer representatives on their respective boards.

While the major effort of the project is an overview and report, recommendations to promote more effective public participation in the regulatory process are an integral part of the study.



Background

"Public participation in governmental decision-making is the cornerstone of the American political process. A fundamental tenet of democratic government is that decisions which affect the lives of citizens should be made only with the consent of the governed."¹ One area of government where public participation is particularly important is in state regulation of professions and industries. Such regulation falls under the domain of state occupational and professional licensing departments. At present, twenty-nine states provide for consumer representation on boards and commissions in departments.²

In Maryland such representation is mandated by Maryland Code Annotated, Article 41, Section 221A(c), which provides that "every board, commission and council, whether regulatory or advisory, shall include as a member one or more consumer representatives." More states are recognizing their obligation to involve the public in policy making and there is an increasing number of states requiring consumer representation. Furthermore, increasing numbers of occupations are seeking the recognition and protection of licensing.

Licensing was developed to protect the public from incompetent or dishonest practitioners and to establish a minimum standard of proficiency in the regulated occupation. To enforce

¹Richard A. Frank, Joseph N. Onek, James B. Steinberg, "Public Participation in the Policy Formulation Process", Center for Law in Social Policy, (1977) p. 13.

²Monica K. Grobman, "Survey: Public Members on States' Centralized Occupational and Professional Licensing Boards," Council of State Governments, (1977).

these principles, Maryland vests its police power in boards which license and discipline members of the profession or industry. These boards, composed predominantly of members of the regulated profession or industry, exert a strong influence on entry requirements by establishing educational training and performance guidelines for the particular field. Since they regulate the chief industries and principal professions in the state, these boards have considerable impact on the state economy and the public pocketbook.

Self regulation, by its nature, promotes the interests of those it regulates. Regulatory boards can be too restrictive in admission to licensure, thus artificially limiting the supply of practitioners and promoting a market dominated by a select number of organizations. For instance, it has come to the attention of the Council that, because of unnecessarily restrictive application requirements, certain counties suffer a dearth of master plumbers. Obsolescent licensing criteria that benefit the regulated and lax enforcement policies, ensue. Consequently, the public interest, when defined alone by industry representatives, is distorted to reflect private rather than public interests.

Additionally, licensing frequently raises the cost of services. Lewis A. Engman, former Chairman of the Federal Trade Commission, observed

"As new occupations are licensed each year, the restrictions on occupational freedom grows apace. Individuals who once might have simply started practicing a trade must subject themselves to extensive training, examinations and character investigations. The evidence is not at all persuasive that all these restrictions benefit the public. The evidence is more persuasive that by limiting entry, these restrictions raise prices."³

³Lewis A. Engman, Speech to the National Association of Attorneys General, Winter Meeting, (December, 1974).

In an economy suffering from both high unemployment and inflation; licensing restrictions that result in higher costs and which exclude minorities are a matter of proper public concern. This has been expressed by the Equal Employment Opportunity Commission, which has suggested that job discrimination by state licensing boards violates Title VII of the Civil Rights Act of 1964, and by several congressional committees which have proposed hearings on the impact of licensing on unemployment and the mobility of labor.

As the cost of services, impelled by unnecessary licensure restrictions and qualifications continues to rise, many low income families and those in remote geographic locations are resorting to "do it yourself" repairs and installations. A University of Tennessee study shows that strict licensing requirements can threaten safety of consumers. The study shows that the licensing of electricians "is significantly related across all fifty states to the rate of death from accidental electrocutions."⁴ The seven states most strict in their licensing requirements have up to ten times more accidental electrocutions. Those states with the most lenient requirements rank well below the national average.

Another study demonstrating the economic impact of licensing is the 1977 Western Illinois University Study by Stuart Dorsey. It points out the fact that unnecessarily strict licensing requirements discriminate against minorities and the poor because they tend to be less educated and not because they lack job skills.

⁴Robert I. Gaston and Sidney Powell, University of Tennessee, Knoxville, Occupational Licensing Final Report, National Science Foundation, (1977).

All too frequently, these boards issue no annual reports and submit minutes that are unintelligible to the uninitiated. There is no real accountability except through the ponderous process of legislative review. In Maryland, regulatory boards are virtually autonomous, with the exception of budgetary review provided by the Department. In view of this, the welfare of the Maryland consumer rests in the hands of the consumer representatives.

The question can be raised - Who guards the Guardians?

The consumer members on licensing boards are charged with an herculean task. Their input into the decision-making of these boards is vital. A layperson does have the ability to make basic judgments regarding the necessary balance which must be reached in board decisions.⁵ However, the consumer appointee generally has little or no knowledge of the regulatory process and its vast economic and social ramifications.

Industry members on these boards continuously receive input and support from their peers and the state and national trade associations. This network clearly identifies and defines problems, issues and strategies which are important to the regulated industry. On the other hand, consumer representatives function in a vacuum, lacking the most rudimentary support. They have little resource and research capacity on a state or national level. In Maryland, consumer representatives have not met even in an informal caucus. Furthermore, most seem unaware that this lack of information and interaction with their peers puts them at a disadvantage.

⁵"Brown Places 60 on California Boards as 'Lobbyists for People' Instead of Special Interests," New York Times, February, 1977, p. 23.

The so-called training which they do receive is generally provided by the members of the industry or profession. Needless to say, the consumer representative receives information wholly from the industry perception. Indeed:

"One cynical trade association representative in California remarked that, 'It generally takes only a few months to brainwash the public representative so that he's painfully aware of his limitations; thereafter, he's usually willing to go along with whatever industry wants.'"⁶

SURVEY

This study, undertaken in the latter part of 1977 by the Consumer Council, sought to examine the effectiveness of consumer representatives on the boards and commissions (hereafter called boards) within the Maryland Department of Licensing and Regulation (hereafter called Department). The thirty-four boards and commissions were studied utilizing a two part questionnaire (attachment I). Part I requested basic data on the board from the chairperson; Part II queried consumer representatives on their perception of their roles on these boards. The results which follow, while hardly startling, firmly underline the non-assertiveness of these members, their lack of advocacy skills and the lack of a coherent selection process all resulting in a regulatory system that reflects the vested rather than the public interest. Furthermore, these members appear to have little understanding of the regulatory process and its economic impact on the citizens of Maryland.

⁶Benjamin Shimberg, Barbara F. Esser and Daniel H. Kruger, Occupational Licensing: Practices and Policies, (1972), p. 76.

Part I

Ninety-seven percent of the boards queried, thirty-three of thirty-four boards, responded to Part I of the questionnaire. The Board of Registration for Foresters did not respond, stating it was unable to complete the questionnaire due to the illness of the Chairman. Of the responses received, the Maryland Standard-Bred Race Fund Advisory Committee and the Maryland-Bred Race Fund Advisory Committee of the Maryland Racing Commission replied through their Secretary: "because this is an advisory committee only, it is our opinion that the questionnaire is not applicable." The Savings-Share Insurance Corporation replied that while "the Governor does have the power to appoint three members of the Board," the Corporation was chartered by the Legislature and the mandate of consumer representation does not apply.

Since 1974, Maryland has required one or more consumer representatives on each board or commission within the Department (Md. Code Ann., Art. 41, §221A(c)). In the survey, each of the boards was asked if consumer members were required under this statute. Fourteen of the boards surveyed, (42%), responded that they were not covered by the statute. It is of interest to note that, while most of these do indeed have consumer members, they were unaware of the requirement.

APPOINTMENTS

The traditional cynical approach to board appointments is exemplified by the following quote from a "veteran city politician": "You'd be surprised at how many people want to be on those crazy commissions. They got some weird interest in a particular field or they just want to have a certificate to hang on their wall." This quotation, from an article by Donald Kimelman in the Sunday Sun, November 27, 1977, demonstrates the lack of understanding of the importance of responsible consumer representation in the present selection process.

Clearly consumer members, if they are to be expected to participate effectively in policy decision, need to be appointed in a cohesive and orderly manner. It would also follow that careful review of the participation of consumer members be undertaken prior to reappointment.

There is little uniformity in the method of board appointments. Members to boards are appointed in the following manner:

- 14 - by the Governor with the advice of the Secretary of the Department
- 4 - by the Governor with the advice and consent of the Senate
- 11 - by the Governor with the advice of the Secretary and the consent of the Senate
- 1 - by the Secretary
- 1 - by the Commissioner of Labor and Industry with the approval of the Governor and the Secretary

1 - by the Commissioner of Labor and Industry with the approval of the Secretary.

Four boards reported vacancies. The Minimum Wage Advisory Board, The Amusement Safety Advisory Board, The Board of Examining Moving Picture Machine Operators, and The Board of Public Accountancy.

Comment

The selection of consumer representatives should not be on an ad hoc basis. The selection of consumer representatives as a form of political patronage is a practice whose time has passed. The consumer member of a board is an integral part of balanced decision making. A pool of pre-screened potential consumer representatives should be maintained. In order to provide the Governor with an adequate selection of names, a screening process should be developed. Furthermore, the screening and recommendation should be made with full awareness of the skills and types of appointees needed to resolve the issues addressed by each board.

Sources of names should include consumer organizations, legislators, other state agencies and public solicitation. Effort to match individuals and specific talents will also strengthen the effectiyeness of public input and insure a broad range of perspectives. Examples of the types of people sought by the California Department of Consumer Affairs for its boards follows:

<u>Board</u>	<u>Member or Possible Nominee</u>
Athletic Commission	Past world female sports competitor with 3-1/2 years medical training (women are now entering fields regulated by the Commission; medical expertise beneficial in evaluating physical condition of boxers prior to next match).
Bureau of Automotive Repair Advisory Board	Member of consumer organization with past involvement in sports car racing (technical knowledge of motor vehicles; consumer activity an asset since this Bureau receives approximately 30,000 consumer complaints per year).
Board of Architectural Examiners	Person involved in Los Angeles urban housing and community development programs.
Cemetery Board	Person who has had several experiences with the industry as a result of recent family deaths.
Bureau of Collection Agencies Advisory Board	Public interest lawyers (collection agency practices have a great impact on those served by public interest, legal agencies, i.e., minorities and low-income people).
Hearing Aid Dispensers Examining Committee	Young individual with hearing loss in both ears and consumer of the services of various licensees.
Board of Nursing Home	Lawyer with National Senior Citizens Law Center; 21-year-old consumer advocate who prepared a study of San Diego nursing homes.
Board of Veterinary Medicine	West Coast Director of the Humane Society of the United States.

Massachusetts follows the same painstaking approach with a cabinet level consumer appointment official. Special attention in both states is given to the recruitment of women and minorities to assure that access to licensure to these segments of the population is not limited.

Recommendations

The Consumer Council recommends that Maryland adopt a selection process based not only on resume, but also a screening process based on an interview and a questionnaire. It is crucial to analyze both the potential contributions of the appointees and, equally important, their ability to advocate the consumer or public viewpoint. Public notice of board vacancies should be given on a regular basis.

The Consumer Council should be responsible for developing and maintaining a pool of potential consumer representatives for recommendation to the Governor.

The Office of the Secretary of Licensing and Regulation, which must work closely with the boards on a day-to-day basis, now advising on appointments to approximately thirty boards, should have continued input into appointments, and, after review of the members' board participation, advise on reappointments. The Senate would, of course, continue to give its advice and consent on various appointments.

This uniform method of screening would not only provide a pool of qualified names, but also upgrade the system, allow greater accountability and increased responsiveness to the public interest.

Terms

There is no continuity or uniformity in the terms served by board members. Examples of the variations follow:

<u>Number of Boards</u>	<u>Length of Appointment</u>
5	6 years
8	5 years
6	4 years
4	3 years
5	2 years

Several consumer members commented spontaneously that a five or six year term was "too long" and "burdensome".

Comment

The Consumer Council agrees that terms of five or six years can prove burdensome for non-industry members. Terms of four years might increase the number of applicants willing to participate in governmental decision-making on regulatory boards as a civic duty. Terms should be staggered to expire one year apart to insure a majority carry-over of expertise into each successive year. Additionally, appointment of all board members on a regular basis would allow prescheduled orientation programs and increase the new members' ability immediately to serve the public through a greater understanding of the regulatory process and board activity.

Recommendations

The Consumer Council recommends that all commissioners and board members be appointed to four year staggered terms. To fulfill the requisite for all boards - to protect the health, safety and welfare of the Maryland citizen - and to provide maximum public input, it is further recommended that no member be appointed to any one board for more than two (2) subsequent terms.

SELECTION OF CHAIRPERSON

There is little uniformity on the selection and term of board chairpersons. According to the responses received, terms vary in length from one to five years and the selection of the chairperson is made as follows:

- 14 - Governor with the advice of the Secretary
- 2 - Governor with the advice of the Secretary and the advice and consent of the Senate
- 3 - Elected by the board
- 1 - Commissioner of Labor and Industry
- 1 - Unspecified
- 12 - No response

Recommendations

The Consumer Council recommends that whenever a consumer/public member is designated chairperson, the Consumer Council or consumer officer responsible for screening and recommending consumer applicants submit a list of three or more names to the Governor for selection of the appointee.

COMPENSATION

Compensation is a hodge-podge of per diems and salaries inherent in the legislation creating the boards. Salaries range from \$4,500.00 per annum for twelve required meetings, through per diems of \$25.00 and \$30.00, to no compensation in a seemingly

**TABLE I
COMPENSATION**

	Salary	Per Diem	Expenses
Architectural Registration Board	None	None	Yes
Athletic Commission	Chairperson - \$3,500 Member - \$2,500	None	Yes
Banking Board	None	None	Yes
Bank Regulation Board	None	None	No
Barber Examiners, Board of	None	\$30.00	Yes
Building, Savings & Loan Association Commissioner, Board of	None	None	Yes
Censors, Maryland, State Board of	Chairperson - \$5,000 Member - \$4,500	None	Yes
Cosmetologists, State Board of	None	\$30.00	Yes
Electrical Examiners and Supervisors, Board of	Secretary - \$2,700 Member - \$1,200	None	No
Examining Engineers, Board of	\$3,000	None	Yes
Foresters, State Board of Registration for	None	None	Yes
Hearing Aid Dealers, Board of Examiners for	None	\$25.00	Yes
Home Improvement Commission	Chairperson - \$4,000 Member - \$3,500	None	Yes
Horse Riding Stables, State Board of Inspection of	None	None	Yes
Apprenticeship & Training Council	None	None	Yes
Board of Boiler Rules	None	None	Yes
Employment Agency Advisory Board	None	None	Yes
Minimum Wage Advisory Committee	None	None	Yes

TABLE I continued

Occupational Health and Safety Advisory Board	None	\$30.00	Yes
Prevailing Wage Rates, Advisory Council on	None	\$30.00	Yes
Amusement Safety Advisory Board	None	\$30.00	Yes
Landscape Architects, Board of Examiners of	None	None	Yes
Maryland Pilots, Board of Examiners of	\$500.00	None	Yes
Moving Picture Machine Operators, Board of Examining	None	\$30.00	Yes
Practical Plumbing, State Board of Commissioners of	\$3,600.00	None	Yes
Professional Engineers, Board of Board of Registration for	None	None	Yes
Professional Landsurveyors, Board of Registration for			
Public Accountancy, Maryland State Board	\$2,400.00	None	Yes
Racing Commission	Chairperson - \$4,00.00 Member - \$3,000.00	None	Yes
Real Estate Commission of Maryland	Chairperson - \$3,500.00 Vice-Chairperson \$3,000.00 Member - \$2,500	None	Yes

arbitrary fashion. Expenses incurred on board business are generally given. See Table I.

Comments

While participation on a board by an industry member can be considered serving a self interest, for the consumer representative conscientious participation can be a time consuming and unrewarding burden of some years duration. Most consumer members must take time from their full time employment and meet at inconvenient times and places, some as often as weekly.

Thirty-one occupations were listed by consumer members, (including four housewives and three retired). It would seem reasonable that these consumer representatives be compensated for service on those boards now having neither a salary nor a per diem. It should be taken into consideration that those who are paid on an hourly basis may be excluded from involvement in the regulatory process for economic reasons.

Recommendations

The Consumer Council recommends that compensation be provided for consumer members of all boards or commissions. The rate of compensation should be as provided in the budget.

JURISDICTION

Several boards reported they do not have statewide jurisdiction. Those reporting that they cover Baltimore City only follow:

Board of Electrical Examiners & Supervisors
Board of Examining Engineers
Board of Examining Moving Picture Machine
Operators

The Board of Commissioners of Practical Plumbing responded that they "need an opinion in clarification of Article 43, Annotated Code of Maryland."

Comment

Boards having jurisdiction only in Baltimore City should not be chartered at the State level. (The Chairperson of the Board of Electrical Examiners & Supervisors, in Part II, does report an effort to standardize industry examinations and requirements for licensure throughout Maryland).

Recommendation

The Consumer Council recommends that consideration be given to dissolving such boards at State level.

COMPLAINTS

Complaints will be reviewed with Part II of the questionnaire.

ACCOUNTABILITY

At this time, twenty boards report that they are not required to submit a report. Eleven report they are required to make an annual report. However, there is no central office where these reports are now available for public review. Several departmental bills have been prefiled to eliminate some annual

reports now required. Twenty-one boards state that they hold regularly scheduled meetings. These regularly scheduled meetings range from weekly to twice per year. Nine boards report that their meetings were not regularly scheduled.

An overwhelming majority of boards reported the announcement of meetings in the Maryland Register. An exception was the Board of Registration for Professional Engineers which stated its announcements of meetings were "posted on board in the office."

Eleven boards reported no public attendance at meetings during 1976-1977. The rest reported numbers varying from 1 to 75.

Comment

There seems to be general discouragement, by both the department and the boards, with the annual report as method of accountability. The lack of prescribed format for the annual report and the sparse information presented, i.e., budget, monies taken in and expended and number of licensees, fails to present a full picture of the boards' activities. Regulatory boards are virtually autonomous, with the exception of budgetary review provided by the department. There is no real accountability except through the process of legislative review. In view of the magnitude of the social and economic impact of the regulatory system on the Maryland citizen, this lack of accountability is a problem of major concern. The department is now computerizing boards' activities and plans a comprehensive overview and comparison of boards. This appears to be a reasonable approach to accountability, but it should be closely monitored with the thought of further improvement.

Recommendations

The Consumer Council supports the Department's effort to increase board accountability through computerization. This effort should be carefully monitored with the results available to the public in a central location, in readily understandable language and format.

The Consumer Council requests that the Department make available by December 1978, a report reviewing the year's progress in accountability to ascertain if the computerization, indeed, provides more pertinent information than the present system of annual reports. Further, recommendations, after consultation with the Department, may be made at that time.

PART II

In order to understand and evaluate the role and participation of consumer representatives presently serving on boards and commissions within the Department, Part II of the survey sought to examine the role and perspective of consumer representatives, as distinguished from that of industry members. At least one member from each of the thirty-four boards was contacted in order to arrange an interview. In toto, twenty-nine interviews were undertaken.

Of those consumer representatives contacted, 85% responded to the questionnaire. The exceptions and explanations follow:

1. The Board of Examiners for Horse Riding Stables. It proved impossible to contact the consumer representative to arrange an interview.
2. The Board of Examiners for Professional Engineers. It proved impossible to contact the consumer representative to arrange an interview.
3. The Maryland Saving Share Insurance Corporation. Stated questionnaire was not applicable to their corporation, as the corporation was chartered by a special act of the Legislature in 1962.
4. The Racing Commission, consisting of the Thoroughbred Board, The Harness Board and two Breeding Advisory Fund Committees. Replied through their Executive Secretary that, as the boards were all public members, the questionnaires were not applicable.
5. The Board of Examining Moving Picture Machine Operators. Stated it has no public member and was not required to under Md. Ann. Code, Art. 41, §221A(c).
6. The Board of Public Accountancy. Noted no consumer representative had been appointed to their board.
7. The Board of Boiler Rules. Reported that they have no consumer representative.
8. The Board of Hearing Aid Examiners. Had two members designated as consumer representatives. Both members, however, stated they represented allied professions in the health care delivery system and were not consumer representatives. Their interviews indicated interest in consumer advocacy and therefore, were included in the report on Part II.

FINDINGS

While most of those designated as consumer representatives agreed they do represent the consumer and had a general awareness

of their role, a serious gap in consumer advocacy skills and perceptions as well as knowledge of the regulatory process exists.

For example:

28% stated their perception was identical to that of industry members.

17% stated they acted as consumer advocates during board meetings.

42% of chairpersons stated there were no consumer members required on their boards.

17% denied being consumer representatives.

One individual stated he was uncertain of his role.

One individual thought his board disbanded.

One individual did not know he was reappointed.

Public Awareness of Boards

In general, consumer representatives stated they felt that the public was insufficiently aware of the board's existence. Despite this perception, none of the consumer representatives responding to the survey reported a program to ameliorate this problem. For instance, public speeches giving information on their boards were reported by only two consumer representatives. They both stated that these were given only on an ad hoc basis in connection with other community activity.

Little, if any, information is available to the public regarding the regulatory boards. One of the few mentions of board appointments was made by the Acting Governor at a press conference in Hagerstown on September 23, 1977. His invitation to the public

to apply for appointment as consumer representatives produced immediate public response statewide.

The effort to inform the public of its rights and responsibilities vis-a-vis the regulated industry is virtually nil, with one or two exceptions. One consumer representative reported the early stages of development of a consumer brochure giving the "does" and "don'ts" in contracting with a member of that industry. This, and a few vocational courses taught in the school system, appear to be the sum total of such public informational programs. Consequently, public awareness of these boards and their function is extremely limited.

Consumer Complaints

The number of complaints in fiscal year 1976 made to the boards ranged from 0 to 1,310. Lack of accountability is underscored by the response from the Home Improvement Commission, (1,310 complaints) indicating that records of closed complaints were not kept, i.e., a "file by file" check would have to be made to ascertain how many complaints were closed.

A significant number, 34%, of consumer members interviewed stated categorically that the public had insufficient access to the board complaint mechanism while 17% indicated they had some reservations concerning public awareness of the complaint mechanism. Consumer representatives on three boards reported that they were unaware of the number or substance of consumer complaints against their licensees as complaints were handled by a centralized investigative division. However, only two reported an attempt to

improve either the public's access to the complaint mechanism or to the process itself.

One member reported the proposed development of a brochure that would include information on how to make a complaint and the second reported board discussion of the inclusion of a consumer member on adjudicative hearing panels. Three consumer representatives commented that no consumer member was included by policy on hearing panels.

Several consumer representatives suggested that hearing officers within the Department would reduce the backlog and prevent delay in scheduling cases. One individual mentioned that, while on one hand it was unfair to allow an unscrupulous individual to provide poor workmanship or bilk the public, on the other hand, it would be denial of due process to suspend a license without a hearing and his board could not schedule hearings for some weeks. For example: the Real Estate Commission is presently scheduling hearings six (6) months in advance.

RECOMMENDATIONS BY CONSUMER REPRESENTATIVES

When the consumer representatives were asked what could be done to improve the quality of public representation, fifty-seven responses were made:

- 76% stated training should be a condition of appointment
- 41% requested an annual workshop/seminar
- 41% requested a resource manual giving information on the regulatory process, the specific board, the Department of Licensing and Regulation and other pertinent information

34% requested an orientation program at time of appointment

10% stated their board met too infrequently and continuity was lost

10% stated departmental hearing officers would alleviate jammed hearing schedules (two, however, stated they were against hearing officers as too impersonal).

Consumer members also commented that terms as long as six years were burdensome. Others felt strongly that all board members should be compensated. A nearly unanimous consensus was that the quality of the appointees and their commitment to consumer representation were paramount.

Other suggestions included the placement of the name and telephone number of the board in the telephone yellow pages next to the heading of the listing of the regulated industry and the development of informational brochures.

COMMENT

The Consumer Council concludes that:

1) The effective participation of consumer representatives is severely hampered by lack of training in consumer advocacy, of knowledge of the regulatory system and State and national resources available, and of guidance following appointment; and that

2) The regulatory process mainly benefits the regulated occupations and professions because of such deficiencies.

How, then, can the position of the consumer representative be strengthened? Where are the weaknesses in their participation? And what can be done to increase their effectiveness?

Regulatory decisions must be based on a process in which the public can influence policy. Furthermore, policy must have balanced input from all affected sectors.

Conclusions

It is impossible for consumer members to make informed decisions and participate effectively in policy decisions with no background in the regulatory process, consumer protection law or consumer advocacy.

Maryland has an excellent opportunity to improve the quality of public input into the boards. The structure is already in place. The large majority of consumer members gave positive responses to their role as consumer representatives. The suggestion of training and resource support was eagerly received. It would appear that these back-up aids would prove a profitable, long range investment for the Maryland citizen.

An orientation program to acquaint the appointees with their role, the regulatory process, the Department of Licensing and Regulation and their board should be required as a condition of appointment. This program should include a handbook designed to serve, not only as a preliminary overview, but also a permanent resource manual. Materials would include information on the appointees' specific board, enabling legislation, rules and regulations, pertinent court decisions and interpretations and minutes for the past year, and would reference national resources available.

An annual seminar/workshop should be held on such important aspects of regulation as the Equal Employment Opportunity Commission,

itself a regulatory agency, now reviewing possible discrimination by state licensing boards in violation of Title VII of the Civil Rights Act of 1964; the impact of occupational and professional licensing on unemployment and the mobility of labor; or consumer advocacy.

These annual meetings would offer the peer support and the informational exchanges available to industry members through their trade associations. Additionally, annual meetings could later be expanded to include industry representatives. Training programs should be developed jointly by the Consumer Council and Department

The direct result of the program will be more constructive consumer representation. The benefit will be that these trained consumer representatives will be sufficiently knowledgeable to isolate and analyze issues of consumer concern and to identify the economic and social impact of those measures designed to address the issues. Trained consumer representatives will not only be equipped to influence policy decisions, but also to resist restrictive regulatory measures that raise costs and limit personnel and services.

For instance, many consumer representatives stated that qualifications of licensees should be raised. None questioned this perspective. However, while education, training and experience appear to be defensible qualifications for licensure or board membership, a case may be made that age, sex, citizenship, residency and "moral character" are not. The Consumer Council suggests that as problems with some qualifications are inherent in the enabling legislation, model legislation should be drafted to eliminate those of questionable legal status.

Minimum age and residency requirements are particularly open to question. Neither has any bearing on occupational or professional skill; knowledge of the state laws and regulations can be determined through examination.

"Good moral character" is appropriate for philosophical discussion but has little to do with occupational skill. It is highly judgmental and certainly does not appear to be in line with rehabilitation of ex-offenders whose record is in no way connected with the occupation.

Even educational and training requirements are open to challenge. If an applicant can demonstrate the necessary occupational skills, should a specific educational or training requirement, such as a high school diploma or the 1,500 hours of training required to be an operator in a beauty shop, be required?

These requirements appear to be restrictive and beneficial only to the regulated industry. Indeed, many consumers now denied needed services because of low income or geographic location, might well be able to avail themselves of services if more licensees were available. It is hoped that trained consumer representatives would question whether:

- 1) The consuming public could be more economically served by registration than licensing; and
- 2) The continued existence of the board is necessary to protect the safety, health and pocketbook of the citizen, or is an enclave of privilege, designed to give economic benefit and professional recognition to the regulated industry.

Several consumer representatives brought up occupational

testing. This subject would also provide an excellent area for annual workshop/seminars.

A leading authority on licensing practices, Benjamin Shimberg of Educational Testing Service, states "the most glaring weakness in the present system of occupational licensing lies in the examination process. Board members have usually taken it upon themselves to develop and administer examinations without any training for the task and without outside help."⁷ Shimberg suggests that the use of qualified testing specialists be considered to:

- 1) analyze occupations
- 2) identify the elements requiring testing
- 3) develop test specifications
- 4) write the questions and directions
- 5) develop scoring procedures and grading standards.

Such specialists might well be incorporated into the Department and would assure the applicant and the public the benefits of unbiased objective testing to which both are entitled.

Fairest Testing

While standardizing occupational and professional tests and testing methods may be unfeasible in some cases, it would be to the benefit of the Maryland consumer for boards to be aware of the pitfalls inherent in local board compilation of examinations. Some occupations, such as public accountancy, lend themselves to national testing, others require local testing or demonstration, and some profit by a combination of national and local testing.

⁷Ibid, page 212.

CONCLUSION

The Consumer Council concludes consumer representatives must be given adequate training and alternate sources of information, above and beyond those offered by industry members. The crux of the problem is to assure the public of a balanced regulatory process through knowledgeable consumer representatives capable of influencing policy.

MAJOR RECOMMENDATIONS

The Consumer Council recommends:

Appointments

- 1) Establishment of pool of qualified potential consumer nominees to be maintained by the Consumer Council for recommendation to the Governor.
- 2) Development of a screening process to insure a pool of qualified potential public members by the Consumer Council in conjunction with the Department of Licensing and Regulation.
- 3) Standardization of board terms to four years.
- 4) Limitation of reappointment to two terms on any one board.
- 5) Selection of the chairperson, when a public member is mandated, from a list of at least three names submitted by the Consumer Council from the pool of prescreened applicants.

Compensation

- 6) Establishment of a minimum rate of compensation for consumer representatives serving on uncompensated boards.

Jurisdiction

- 7) Consideration be given to dissolving State boards having jurisdiction only in Baltimore City.

Accountability

- 8) Support of computerization to increase board accountability with evaluation and recommendations after one year.

Orientation

- 9) Development by the Consumer Council, in cooperation with the Department of Licensing and Regulation, of an orientation program to be attended as a condition of appointment.

Manual

- 10) Development of a resource handbook containing appropriate material on the board, the regulatory process, the Department of Licensing and Regulation, State and national resources, board minutes and other pertinent material to be developed.

Training

- 11) Attendance at an annual training program, to be developed by the Consumer Council in cooperation with the Department of Licensing and Regulation, be a condition of appointment. (This annual workshop/seminar could be expanded to include industry members after the initial program.)

Brochure

- 12) Development of an informational brochure designed to increase public awareness of the Maryland boards and their economic impact. This brochure would also serve to attract applications for membership from the public on a broad basis. (Public Service Announcements and other media approaches should also be considered.)

OTHER RECOMMENDATIONS

Testing

- 13) Utilization of qualified testing specialists where boards require local testing. This service should be incorporated into the umbrella services now provided by the Department of Licensing and Regulation.

In closing, the Consumer Council urges the implementation of these recommendations and offers to assist in their development.

TABLE 2 NUMBER OF JURISDICTIONS LICENSING SELECTED OCCUPATIONS AND PROFESSIONS, 1968*

Occupation/Profession	Number Licensing	Occupation/Profession	Number Licensing
Abstractor	16	Midwife	23
Accountant	45	Milk Weigher/Grader/Certifier	20
Airplane Pilot	20	Miner/Mine Inspector	11
Architect	48	Motor Vehicle Dealer/Salesman	24
Attorney	48	Naturopath	10
Auctioneer	5	Nurse/Practical	48
Barber	46	Nurse/Public Health	24
Beautician/Cosmetologist	47	Nurse/Registered	47
Boiler Inspector	19	Nurseryman	5
Cemetery Salesman/Broker	11	Nursing Home Administrator	13
Chiropractor	48	Optician	23
Collection Agent	15	Optometrist	48
Contractor	20	Osteopath	47
Debt Adjustor	12	Pharmacist	47
Dental Hygienist	47	Physical Therapist	46
Dentist	48	Physician/Surgeon	48
Dry Cleaner	6	Pest Controller	19
Egg Grader	11	Plumber	27
Electrician	21	Podiatrist (Chiropodist)	48
Electrologist	13	Private Detective/Guard	22
Elevator Inspector	12	Psychiatric Technician	9
Embalmer	47	Psychoanalyst	17
Engineer (Professional)	46	Psychologist	37
Funeral Director	44	Real Estate Broker/Salesman	46
Harbor Pilot	15	Reporter/Certified Shorthand	9
Homeopath	10	Sanitarian	25
Insurance Adjustor	28	Social Worker	6
Insurance Broker/Agent	45	Surveyor	41
Investment Advisor	23	Teacher	40
Landscape Architect	6	Tree Surgeon	8
Librarian	11	Veterinarian	48
Masseur	10	Watchmaker/Clockmaker	10
Meat Grader	7	Well Digger	13
Medical Technician	12		

*Includes 46 states, Puerto Rico and the Virgin Islands.

Source: The Council of State Governments, Occupations and Professions Licensed by the States, Puerto Rico and the Virgin Islands, December, 1968.

TABLE 3 NUMBER OF SELECTED OCCUPATIONS LICENSED BY STATES, 1969*

State	Number of Occupations Licensed
Alabama	117
Alaska	65
Arizona	83
Arkansas	79
California	178
Colorado	89
Connecticut	106
Delaware	83
Florida	123
Georgia	129
Hawaii	113
Idaho	138
Illinois	181
Indiana	88
Iowa	73
Kansas	83
Kentucky	110
Louisiana	99
Maine	99
Maryland	94
Massachusetts	106
Michigan	147
Minnesota	114
Mississippi	94
Missouri	68
Montana	74
Nebraska	97
Nevada	95
New Hampshire	78
New Jersey	100
New Mexico	105
New York	130
North Carolina	85
North Dakota	67
Ohio	80
Oklahoma	76
Oregon	96
Pennsylvania	165
Rhode Island	99
South Carolina	69
South Dakota	79
Tennessee	84
Texas	66
Utah	72
Vermont	73
Virginia	100
West Virginia	63
Washington	95
Wisconsin	140
Wyoming	131

Source: United States Department of Labor, Occupational Licensing and the Supply of Non-professional Manpower, Research Monograph No. 11 (1969)

* Approximate numbers due to lack of uniformity in state classification.

QUESTIONNAIRE

CONSUMER PROTECTION IN MARYLAND

A.

1. Name of Board/Commission

2. Address

3. Article

4. Appointments

a. Members appointed by:

b. Selection of chairperson:

c. Term:

d. Number of vacancies:

e. How long open:

f. Number of appointments after July 1, 1974

g. Statutory requirements for members:

- h. Is your Board/Commission required to have a consumer representative pursuant to Art. 41, §221A(c)?
yes _____ no _____.

If yes, give name and date of appointment.

1. Listed below are the names of Board members, expiration dates of their terms and an indication of their appointment to the Board/Commission as the representative of a particular group or the public at large. Please correct and update this as necessary. List their primary occupation.

5. Does the Board/Commission have Statewide jurisdiction?
yes ____ no ____.

If not, what is its jurisdiction?

6. Listed below are occupations licensed by the Board/Commission.
Please update and correct as necessary.

7. What are the powers and duties of the Board/Commission?

a. Subpeona _____

b. Injunctive _____

c. Restitution to consumer _____

d. Rules and Regulations _____

e. Fine _____

f. Other _____

g. _____

h. _____

8. Number of complaints during 1976 _____, 1977 _____.
Number of complaints closed during 1976 _____, 1977 _____.
% of complaints from industry during 1976 _____.
% of complaints from consumers during 1976 _____.

9. Describe the complaint mechanism available to the consumer.

Screened by staff _____

Who investigates such complaints _____

Types of resolutions _____

How is compliance assured _____

Is there any follow-up? _____

Explain in detail _____

10. Is the Board/Commission required to compile an Annual Report?
yes _____ no _____.

Is it published? yes _____ no _____. Where is it available _____

11. List other comprehensive reports on problems your Board/Commission perceives as affecting the public made during 1976 or 1977.

12. Does the Board/Commission have a required number of meetings per year? yes _____ no _____. How many _____. Required by statute _____ or by rules and regulations _____. Other _____

13. Are these meetings regularly scheduled? yes _____ no _____.

Time _____

Address _____

14. Is public announcement of the meeting required? yes _____ no _____

In what media _____

15. Has there been attendance by members of the general public during 1977? yes _____ no _____ Approximate number _____

16. Are members compensated in any way? Salary _____ Per Diem _____

Expenses _____ None of the above _____ Other _____

17. Is there paid staff? yes _____ no _____ Assigned _____ Shared _____ Is available staff time sufficient? yes _____ no _____ Number _____

18. Are there any required fees? *

Licensing

New _____

Reciprocal _____

Renewal _____

Reexamination _____

Other _____

* Add additional sheet or use the next page if necessary

Questionnaire
Consumer Protection in Md.

Other required fees _____

19. How many licenses applications in FY 1977 _____

How many license denials in FY 1977 _____

20. Please use this space to make any other comments.

Questionnaire
Consumer Protection in Md.

4. Do you regularly take part in:

- | | | |
|---------------------------------|-----|----|
| a. Policy decisions | yes | no |
| b. Review of license denial | yes | no |
| c. complaints | yes | no |
| d. review of complaint criteria | yes | no |
| e. educational programs, if any | yes | no |
| f. consumer advocacy | yes | no |
| g. Other - explain | | |

5. Do you feel that there is consistency in the application of the licensing criteria? yes ___ no ___. Explain.

6. Do you feel that the licensing criteria are in the best interest of the Maryland consumer? Explain.

7. Do you have sufficient access to pertinent information to make informed judgement? If not, have you requested such data?

8. Do you feel that the consumer has sufficient access to the complaint mechanism? yes _____ no _____.
What improvements, in your opinion, could be made? Explain.

9. How is the public made aware of the existence of the Board/Commission?
Explain:

Publications _____

Brochures _____

Speeches _____

Educational programs _____

Other _____

10. What educational efforts are directed at the public?

11. What educational efforts are directed at the regulated industry?

12. Are there requirements for continuing education by the regulated industry? yes _____ no _____.

Should there, in your opinion, be? Explain.

13. Are the Board/Commission's resources sufficient to carry out its statutory mandate?

14. Describe improvements you would make if increased resources were available, especially your role as consumer representative.

15. Would increased knowledge of consumer issues and communication with other consumer representatives on State Boards and Commissions increase your effectiveness? yes _____ no _____.
How?

16. Describe your background or training as it relates to your role on the Board/Commission.

17. In your opinion should there be increased consumer representation on your Board/Commission? yes ___ no ___.

- 20% consumer representatives _____
- 40% consumer representatives _____
- 50% consumer representatives _____
- 100% public members with industry consultants _____

Discuss the reason for your answer.



END