

State of Florida, DHSMV

# Statewide Reorganization of the Bureau of Administrative Reviews

Research in conjunction with the Florida Gubernatorial Fellows Program



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## Summary

The Bureau of Administrative Reviews (BAR) conducts statewide driver license suspension and revocation hearings which determine a person’s eligibility to reinstate his or her driving privilege. The purpose of this report is to propose actionable recommendations regarding the reorganization of BAR for cost-efficiency and effectiveness, given the legal applications and requirements mandating these services. In an effort to better serve the citizens of the State, innovate ways to provide efficient and effective services to the public are evaluated and explored.

The research methods involved a field study, legal analysis, data collection, a fiscal audit, and policy exploration. As a result of finding the legal understanding and performance of hearing officers to be inadequate, it is recommended that attorneys replace hearing officers. Finding procedures to be antiquated and inefficient lends support to a recommendation that BAR modernize with technological advancements and streamlined processes. Lastly, it is recommended that operations be centralized due to significant financial waste identified in the current allocation of resources.

This report describes a transition plan for the reorganization of BAR including processes, procedures, and personnel requirements; expected trends based on historical data; initiatives to support an implementation timeline; and a catalyst for application of the proposed plan. The recommendations are projected to save at least \$1,500,000. The transition is expected to require one full year to complete.

## Background

All states, the District of Columbia, and Puerto Rico have legislated *illegal per se* laws which make operating a motor vehicle with a blood alcohol concentration (BAC) at or above .08 g/dL a criminal

offense. Forty-one states and the District of Columbia have enacted *administrative license suspension* (ALS) laws, which permit the administrative suspension of a driver license prior to conviction when a driver's BAC test result is found to exceed the legal limit or when a driver refuses to submit to chemical testing. In accordance with ALS laws, driver licenses are suspended immediately by the state's driver licensing agency independent of a criminal conviction for an impaired driving offense.<sup>1</sup> The deterrent effect of ALS has reduced DUI recidivism, improved public safety, and decreased the number of fatal crashes involving impaired drivers.<sup>2,3</sup>

ALS laws vary but a commonality is the right of drivers to request a review of the administrative action taken on their license.<sup>4</sup> In Florida, BAR is authorized to conduct administrative reviews and hearings to determine, by a preponderance of the evidence, whether sufficient cause exists to sustain, amend, or invalidate suspensions and to determine eligibility for reinstatement of driving privileges.<sup>5</sup> BAR is a quasi-judicial body within the Office of the General Counsel (OGC) of the Florida Department of Highway Safety and Motor Vehicles (DHSMV).

BAR is comprised of 103 full-time employees and fifteen field offices divided into three regions. Field office personnel include hearing officers, usually one but no more than two secretaries, and a supervisor to manage operations in addition to conducting hearings. Each region is assigned a Program

<sup>1</sup> *Digest of Impaired Driving and Select Beverage Control Laws*, 25, iii, viii Report no. DOT HS-811-456. Washington, DC: National Highway Traffic Safety Administration. (2011)

<sup>2</sup> Voas, R. B., Tippetts, A. S., & Taylor, E. P. *Impact of Ohio Administrative License Suspension*. Annual Proceedings / Association for the Advancement of Automotive Medicine, 42, 401-415. (1998).

<sup>3</sup> Zador, P.L.; Lund, A.K.; Fields, M.; and Weinberg, K. *Fatal crash involvement and laws against alcohol-impaired driving*. *Journal of Public Health Policy* 10(4):467-85. (1989).

<sup>4</sup> Jones, R.K.; Lacey, J.H.; and Wiliszowski, C.H. *Problems and solutions in DWI enforcement systems*. Report no. DOT HS-808-660. Washington, DC: National Highway Traffic Safety Administration. (1998).

<sup>5</sup> Fla.Stat. §322.2615,322.2616,322.271, 322.64 (2017)

Bureau Chief. Four Regulatory Program Specialists (RPSs) and one Regulatory Program Administrator (RPA) train employees and execute quality inspections.

For a *formal review* the driver may subpoena witnesses and elect to be represented by counsel. Subpoenaed witnesses, including the arresting law enforcement officers (LEOs), are placed under oath prior to giving testimony. During the hearing, counsel may question witnesses, make oral motions, raise objections, and request continuances. The hearing officer ensures that the line of questioning during the evidentiary portion of the hearing stays within the scope of the review. By contrast, an *informal review* is an examination of the materials submitted by the driver and the LEO without the presence of the driver, the LEO, or any witness.<sup>6</sup>

Once a review hearing concludes, the hearing officer has seven days to determine whether a preponderance of the evidence supports the suspension and if there is competent, substantial evidence that the applicable rules were followed. A decision is rendered in the form of a written final order which details the findings of fact. The hearing officer is the sole decision-maker as to the weight, relevance, and credibility of evidence for complex legal decisions.<sup>7</sup> A driver may appeal a final order by a petition for *writ of certiorari* filed with the circuit court though the petition does not stay the suspension or provide for a *de novo* appeal.<sup>8</sup>

Drivers have two options for obtaining a restricted license in the interim.<sup>9</sup> Drivers may show how a suspension has caused a personal burden at a *hardship hearing*. Drivers who have not had any prior impaired driving offenses may waive their right to request a review and immediately receive a restricted license at a *waiver hearing*. Hardship and waiver hearings are categorized as *eligibility hearings* because

<sup>6</sup> Fla. Admin. Code Ann. r. 15A-6.001-6.020 (1991-2007)

<sup>7</sup> Complex legal topics include implied consent law, mandatory blood draw, probable cause and reasonable suspicion, actual physical control, unlawful traffic stops, and field sobriety test analysis.

<sup>8</sup> Trial *de novo* occurs when a court decides all issues in a case, as if the case was being heard for the first time.

<sup>9</sup> The restrictions are invoked for business purposes only (BPO) or employment purposes only (EPO).

the determination is dependent on fulfilling a set of criteria based on the offense's severity.<sup>10</sup> The majority of hearings held by BAR result from either driving with an unlawful blood/breath alcohol level (DUBAL) or refusing to submit to a breath, blood, or urine test (Refusal). All remaining hearings are categorized as *miscellaneous* which include medical, fraud, financial responsibility, and other specialty topics. In 2017 BAR conducted 31,927 hearings consisting of 6,099 review hearings, 16,266 hardship hearings, 9,183 waiver hearings, and 419 miscellaneous hearings.

## Methodology

Preparation for this report required both qualitative and quantitative research; this involved a field study, legal analysis, data collection, a fiscal audit, and policy exploration. Prior to commencing research, a comprehensive review of BAR resources, archived files, and databases was conducted.<sup>11</sup>

Interviews and observations were the primary methods for gathering qualitative data during the field study. Hearings were attended and operations were observed at eight field offices.<sup>12</sup> Numerous BAR employees and members of law enforcement were interviewed.<sup>13</sup> All interviewees remain anonymous but their respective position title will be disclosed if relevant.

Florida Statutes (F.S.), the Florida Constitution, the Florida Administrative Code (F.A.C.), case law, and relevant federal laws were reviewed to determine the mandated requirements and legal parameters pertaining to BAR. General Counsel Legal Opinions and DHSMV policies were also analyzed.

Data from petitions for *writ of certiorari* filed from 2014 through 2016 that requested a judicial

<sup>10</sup> Criteria include, but are not limited to, proof of enrollment in or completion of an approved educational course, the time interval since the last temporary permit issuance, abstinence from alcohol and drugs, and fee payment.

<sup>11</sup> BAR resources included training curricula, examinations, supplemental instructions, hearing scripts, the operations manual, the code of

ethics, position descriptions, and annual training curriculums. Archived files include invalidation reports, final orders, forms, BAR-DUI convictions, quality assurance reports, meeting agendas, exit interviews, and audio recordings of hearings.<sup>12</sup> Field offices visited include Tallahassee, Jacksonville, Orlando, Clearwater, Tampa, Lantana, Miami, and Lauderdale Lakes.<sup>13</sup> Interviewed BAR employees include the acting Bureau Chief, the RPA, one RPS, four Program Managers, seven supervisors, fourteen hearing officers, and three secretaries. Interviewed law enforcement members include a Chief, a DUI Drug Recognition Expert, three Officers in a DUI Squad, the Chief Counsel for Florida Highway Patrol, and a Troop Legal Advisor.

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review of a DHSMV order was compiled and analyzed. Each individual case resulting in a final disposition of granted, settled, or remanded was screened and reviewed. The *writ of certiorari* data was used to deduce issues identified by the judiciary during the appellate process.

BAR records from 2014 through 2017 were collected and organized by region, month, and hearing type to identify trends in activity. BAR records were organized by field office to determine geographical trends. Schedules from field offices were sampled to factor the division of labor into a workflow pattern. The data on BAR activity was used to evaluate organizational efficiency.

A fiscal audit was conducted to examine all expenditures for travel, training, supplies, building maintenance, the personnel budget, and facility costs from 2016 through 2017. The fiscal audit was used to evaluate areas of inefficient spending and to create alternative budget proposals.

BAR procedures and processes were compared and contrasted with those of other similarly sized states. The administrative operations, driver license policies, hearing format, and organizational structure were researched for each of the ten most populous states.<sup>14</sup>

Department of Management Services (DMS) and DHSMV policies regarding personnel services and human resource management were researched to determine potential methods for restructuring BAR. Previous DHSMV restructurings were also explored.<sup>15</sup>

Technological programs were researched for the practicality and feasibility of legal application. Academic publications on innovations in court technology were reviewed. Options were identified for potential improvements to BAR operations. The Division of Administrative Hearings (DOAH) video telephonic conference (VTC) hearing facility was toured.

<sup>14</sup> The ten most populous states in descending order as of July 1<sup>st</sup>, 2015 are California, Texas, Florida, New York, Illinois, Pennsylvania, Ohio, Georgia, North Carolina, and Michigan.

<sup>15</sup> Previous historical restructurings include the Driver License Transition Plan of 2011 in conjunction with the Florida Tax Collectors and Florida Association of Counties

## Findings

### A. BAR Activity is on Decline

In 2014, BAR completed a grand total of 41,901 reviews; 9,974 more than in 2017. Since 2014 the number of BAR hearings conducted annually has decreased by 31.2%. Activity is on a steady downward trend at an average annual reduction of 3,325 hearings. Workload inefficiency was identified by the DHSMV Office of Inspector General (OIG) as a result of an audit of BAR during the 2015-16 fiscal year (FY). After observing “significant downtime” and noting the average number of hearings and reviews conducted daily “varied greatly from 1.32 to 3.10 per allotted hearing officer position”, the OIG recommended BAR conduct a formal workload and staffing analysis.<sup>16</sup>

BAR responded in May 2016 by a staff reduction of nine employees of the then 116-member workforce. Management has yet to implement a precise attrition plan to reflect the continuously diminishing activity. The number of hearings conducted daily in October and November 2017 averaged 1.98 and 1.95 respectively per allotted officer. Since ruling on formal reviews and writing final orders is viewed as a considerably difficult task, hearing officers are given ample time to prepare final orders; therefore more than half of their time at work is often unscheduled.

The inefficient division of labor has troubled personnel. In an exit interview from January 2018 a hearing officer articulated that, “there is not enough [a] work – there is a lot of down-time” as the work related concern that made the employee seek employment elsewhere. The employee answered, “having so much down-time” as the primary least enjoyed aspect of the job. Lastly, the hearing officer confirmed,

“If we were busier I would have stayed until I retired” suggesting a recourse management could have pursued to prevent the employee’s exit from BAR.

Approximately \$1,138,214 would be saved in the personnel budget annually if the workforce was downsized to reflect an average of four daily hearings per officer. Based on the recorded data from October

<sup>16</sup> *Review of the Bureau of Administrative Reviews*. Audit Report No. 201516-06. DHSMV Inspector General (2016)

and November 2017, daily hearings per employee would have averaged 3.95 and 3.9 respectively if the number of hearing officers and supervisors were halved. A smaller workforce could outperform the current rate of production if hearings were delegated efficiently.

#### B. Field Office Structure is Flawed

The existing structure of field offices was arranged for customer convenience and in-person accessibility. Fifteen field offices are located statewide and each is assigned nearby counties to serve. The most densely populated counties are in the southeast (Miami-Dade and Broward), in central Florida (Seminole and Orange), and along the Atlantic and Gulf coasts (Duval, Hillsborough, Pinellas, and Lee). By contrast, 38% of Florida is nonresidential land.<sup>17</sup> Reflecting the population’s spatial distribution has caused disparities in staff size and productivity.

Field offices located in counties of high population densities employ more personnel, are more productive, and are more cost-efficient than the field offices in counties of lower population densities. Thus, a disproportionate amount of work is being completed by a minority of the field offices. In 2016 the Tallahassee field office averaged 15.5 adult formal review hearings per month with four employees on staff; the Tampa field office averaged 70.25 adult formal review hearings per month with nine employees on staff. The marginal product per employee for the Tampa office is nearly double that of the Tallahassee office. In August 2017 five field offices had four or fewer employees, four field offices had



five or six employees, and six field offices had seven or more employees.<sup>18</sup>

The management of the field office structure has involved logistical disorganization. Field offices function differently from one another.<sup>19</sup> The monitoring system designed to regulate the field offices is

<sup>17</sup> Rayer, S., PhD, & Wang, Y., PhD. *Measuring Population Density For Counties In Florida*. Bureau of Economic and Business Research. University of Florida. (2014).

<sup>18</sup> Tallahassee, Gainesville, Winter Springs, Melbourne, and Fort Myers had four or fewer employees. Pensacola, Daytona, Lantana, and Fort Pierce had five or six employees. Jacksonville, Orlando, Clearwater, Tampa, Lauderdale Lakes, and Miami had seven or more employees.

<sup>19</sup> Procedure inconsistencies include communication methods, timelines, operation management, telephonic policy, new employee mentorship, and required authorizations.

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insufficient to create cohesiveness. Managerial employees have overlapping duties with limited oversight. For instance, supervisors each manage a field office and submit a weekly activity report; Program Managers travel to all field offices within a region monthly to conduct a site visit; and RPSs travel every other month to a field office to complete a quality assurance inspection. An employee in BAR management stated, “We are making too many mistakes to be checking this often”. Fewer management positions would be needed if monitoring were simplified; greater uniformity would result.

The field office structure is also expensive to maintain. Six of the field offices are leased facilities.<sup>20</sup> The 2016-17 FY multi-lease bottom line was \$301,379 and it was \$321,669 for the 2015-16 FY. Nine of the field offices are state-owned facilities.<sup>21</sup> With the exception of the Tallahassee office, \$300 is paid annually for each state-owned facility to the Department of Environmental Protection Division of State Lands. The price of office supplies and building maintenance totaled \$14,682 in 2017 and \$25,088 in 2016. Total travel costs in 2017 was \$51,803.

DOAH administrative law judges (ALJs) are all housed in the division’s headquarters in Tallahassee. DOAH’s cost savings due to this policy amounted to \$218,814 for the 2016-17 FY and \$384,448 for the 2015-16 FY. ALS hearings in Michigan are held face-to-face in three field offices

located in highly populated cities and the rest are conducted via VTC technology.<sup>22</sup> BAR overhead expenses can be minimized by dissolving inefficient field offices and centralizing operations.

### C. Hiring and Training are Inadequate

The process for selecting applicants for vacant BAR positions can take up to six months. The educational requirement for an applicant is a high school diploma or its equivalent. There is no writing sample or cover letter required in an application. BAR management reviews the applications and then mails printed copies

<sup>20</sup> Leased facilities include the field offices in Fort Pierce, Clearwater, Fort Myers, Gainesville, Melbourne, and Winter Springs.

<sup>21</sup> State-owned facilities include the field offices in Miami, Lauderdale Lakes, Lantana, Tampa, Orlando, Daytona, Jacksonville, Tallahassee, and Pensacola. The Tallahassee office is located within the agency headquarters at the Neil Kirkman Building. <sup>22</sup> Only hearings held in Grand Rapids, Lansing, and Livonia are held face-to-face in with a hearing officer in Michigan.

to the supervisor responsible for the vacant position. A supervisor said out of 180 applications that are mailed, there may be ten ‘good ones.’ The lengthy hiring process allows for the applicants to find other jobs and it leaves the field office in a short-staffed limbo.<sup>23</sup>

A high level of legal understanding is needed for all employees; including secretaries who explain BAR procedures to drivers. The majority of personnel have no background in judicial processes or prior legal experience. The limited prerequisites in place for hiring necessitate intensive training measures because employees cannot perform the job they have undertaken until they fully understand the relevant statutes, case law, and administrative procedures.

The completion of training is required within one year from the start of employment. Training consists of three phases administered by an RPS. Employees typically finish within six months but training may span a full year due to scheduling conflicts and travel paperwork. Each lesson of technical and legal content lasts between two and three business days. Multiple employees articulated, in their

experience, the condensed format of the trainings cause a low retainment of the information.<sup>24</sup>

New employees are expected to sit idle until phase one begins, which is delayed until the second month of employment. Upon completion of phase one, employees perform the functions of a secretary until the next training. The second phase qualifies employees to begin conducting hardship and waiver hearings. After the final phase, employees practice formal review hearings with an experienced staff member until they are able to perform them without supervision. An employee emphasized she experienced frustration from feeling underutilized through the first months of employment.<sup>25</sup>

Turnover is both an effect of and a contributing factor to the deficiency in these processes. It is not rare for a new hire to quit before completing training either due to discontent engendered by waiting to be

<sup>23</sup> A new hire said that if he had received other job offers during the six months he awaited a BAR response, he would have accepted them.

<sup>24</sup> The nature of the trainings was also described as overloaded, lacking depth, and lacking participation from the trainee. <sup>25</sup> The first six weeks of her employment as a hearing officer were spent answering phone calls.

trained or from a lack of desire to undertake the job for which they had applied. Nineteen employees from 2016 through 2017 served less than a year. The turnover rate for hearing officers was 31.49% in 2016 and 22.41% in 2017. Similarly in 2016, 32.26% of supervisors separated. <sup>26</sup> A Program Manager noted that, due to the high turnover rate, there are an insufficient number of seasoned employees to instruct new employees. Roughly a quarter of the hearing officers are separating each year, creating a void in experience and a costly and burdensome training cycle.

RPA and RPS expenditures for new employee trainings from August 2016 through September 2017 totaled \$27,487. Due to six to twelve months of salary pay before a new hire can fully function as a hearing officer, the loss of productivity during training costs approximately \$16,600 to \$33,200.<sup>27</sup>

Additionally, each year BAR holds a mandatory annual training for all employees to ensure the pertinent legal material required for performing hearings is not forgotten. The 2017 annual training expense was \$67,626 and the 2016 annual training totaled \$74,674; the National Judicial College was paid over \$20,000 to teach at each. BAR applies annually for an FDOT grant to cover these expenses.

An online training module would eliminate the lengthy timeline and the expensive annual training, saving funds and allowing staff to begin work immediately. Online training modules are emerging across industries and universities internationally.<sup>28</sup> The DHSMV Learning and Development Office has created an expansive online course catalog and utilizes the educational program 'iLearn'.

#### D. Performance is Poor

Inadequate training has caused a lack of understanding of both the law and the procedure. The *writ of certiorari* data revealed a pattern of errors made by hearing officers. Of the 713 petitions filed from 2014 through 2016 that requested a judicial review of a DHSMV order, 81.2% arose from a BAR review for

<sup>26</sup> In 2016, twenty of the 63.5 hearing officers separated and twenty-three new employees were hired. In 2017, thirteen of the fifty-eight hearing officers separated and seven new employees were hired. In 2016, five of the 15.5 supervisors separated and five new supervisors were appointed.

<sup>27</sup> The average annual hearing officer salary is \$33,200.

<sup>28</sup> Bonk, C.J. *Online Training in an Online World*. USDLA Journal. 16 (3), Retrieved from <https://www.learntechlib.org/p/93562/>. (2002)

DUI DUBAL or Refusal. In the 141 petitions granted, settled, or remanded from 2014 through 2016, the circuit court judges repeatedly offered similar reasons for their decisions in the orders:

- “Hearing Officer was wrong about the law's requirements, which resulted in Petitioner's being denied due process”;
- “Hearing officer failed to observe the essential requirements of law”;
- “A finding that there was substantial competent evidence to uphold a license suspension was not supported”;
- “Hearing Officer’s interpretation of the statute was clearly erroneous, which resulted in a miscarriage of justice” and;
- “Nothing in the record supports the hearing officer’s conclusion.”

The poor performance of hearings has disappointed members of law enforcement involved in BAR proceedings. The interviewed LEOs believe counsel can ‘walk all over’ hearing officers and they are underqualified to conduct hearings. They feel improperly represented; one LEO compared BAR hearings to other judicial proceedings, noting that “at least in traffic court, the officer is speaking to a judge.” Another LEO said he feels that his hard work “ends up in the hands of incompetent people.”

The ability of counsel to intimidate hearing officers is prevalent; especially with the less experienced or less confident staff members. Attorneys attempt to intimidate hearing officers by using legal jargon beyond their comprehension. An attorney said, “I know what I can get away with from certain hearing officers. I also know which ones are stricter.” As certain attorneys specialize in DUI defense and

law enforcement agencies are structured with DUI-focused squads, a familiarity was often observed between them and the hearing officers.<sup>29</sup>

Tense and argumentative interactions were also observed during the field study. For example, an LEO who was being questioned by counsel during a formal review hearing turned toward the hearing officer and yelled, “How is this relevant at all to the case? Why are you allowing this?” The hearing officer

<sup>29</sup> During the field study, two unrelated consecutive hearings conducted by the same hearing officer contained the same counsel and LEO; they both frequent that particular field office and are commonly in the same hearing.

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had failed to keep the line of questioning within the scope of the review. Counsel clarified afterward that he often uses BAR hearings as a deposition to gather information for his client’s parallel criminal trial.<sup>30</sup>

According to the U.S. Department of Labor, a law degree is typically required for jobs as a hearing officer.<sup>31</sup> A better understanding of the law would characterize these proceedings if BAR hearing officers were required to have a Juris Doctor degree and to belong to the Florida Bar. The average BAR hearing officer salary is \$2,578 above the ALJ minimum salary and \$3,181 below the attorney minimum salary in the broadband system used by DMS.<sup>32</sup> The discrepancy in pay for higher qualified employees would be offset by less training being necessary.

#### E. Eligibility Hearings Can be Streamlined

The bulk of hearings conducted by BAR are based on eligibility information available for pre-hearing review. Drivers request an eligibility hearing by submitting qualification information on an application. These hearings are conducted on a walk-in basis and are not scheduled. The hearing officer checks databases to verify eligibility before the hearing. During the hearing, the driver is asked questions from a script and then determined reinstatement on the spot. Among the interviewed hearing officers, hardship and waiver hearings are unanimously viewed as significantly less difficult to conduct when compared to a formal review hearing. These hearings range between ten and twenty minutes to conduct.

In 2017 the 25,449 hardship and waiver hearings conducted composed 79.7% of the BAR activity that year. Similarly, 27,701 were conducted in 2016, 80.4% of the year's total. Few applicants are deemed ineligible; the denial rate for eligibility hearings is consistently low. An average 15.1% of hardship

<sup>30</sup> As with depositions, court reporters are often hired by counsel to transcribe BAR hearings for their own record. <sup>31</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Judges and Hearing Officers, on the Internet at <https://www.bls.gov/ooh/legal/judges-and-hearing-officers.htm> (visited March 07, 2018). <sup>32</sup> DMS uses a broadband system as the official classification and compensation system of the State Personnel System. An "ALJ" occupation in broadband level 2 has a pay band minimum of \$30,622.02. An "attorney" occupation in broadband level 3 has a pay band minimum of \$36,381.54

hearings and 1.1% of waiver hearings result in a restricted license being denied. A hearing in these instances is not standard practice in other states.<sup>33</sup> Many states rely on analysis of the application and background check to determine eligibility instead of conducting a hearing. Pre hearing screening of eligibility requests would decrease hardship hearings by approximately 85% and decrease waiver hearings by 99%; effectively abating the BAR hearing schedule. If the eligibility process were streamlined the majority of BAR hearings would be eliminated.

The department is legally required to afford an opportunity for a hearing upon the licensee's request within no more than thirty days after receipt of the request for the modification of an order or reinstatement of a license.<sup>34</sup> This requirement can be fulfilled by restructuring the application to allow for pre-hearing approval; within thirty days of receipt of requests, applicants that meet eligibility criteria would receive a letter of pre-approval and applicants that did not clearly meet eligibility criteria would receive a notice of hearing letter. Alternatively, drivers can be granted the option of requesting an informal eligibility determination comparable to an informal review hearing. A statutory change is not necessary; however, F.A.C. Chapter 15A-1 would need to be amended to include this process.

#### F. Telephonic Hearings Grant Efficiency and Flexibility

F.S. allows administrative hearings to be conducted via communications technology.<sup>35</sup> Most BAR hearings can be administered telephonically and that option is made known to applicants as an alternative. The utilization of telephonic hearings in BAR was critical after Hurricane Irma rendered certain field offices inoperable in September 2017. Telephonic hearings were successfully instituted as a method of mitigating the backlog of rescheduled hearings and meeting time-sensitive requirements. The field study conducted after the hurricane garnered positive feedback on the telephonic option.<sup>36</sup>

<sup>33</sup> California, Texas, New York, Pennsylvania, Michigan, Georgia, and North Carolina do not conduct administrative hearings for restricted license applicants.

<sup>34</sup> Fla.Stat. §322.271 (2017)

<sup>35</sup> Fla.Stat. §322.2615 (2017)

<sup>36</sup> None of the interviewed BAR members expressed a preference against conducting hearings telephonically.

Video and telephonic hearings are expanding in both state and federal government.<sup>37</sup> DOAH began transitioning towards VTC technology in 1992. The Administrative Service Director who managed the transition said the ALJs were initially displeased but then favored the change. The Social Security Administration's Office of Disability Adjudication and Review (ODAR) reported that from September 30, 2017 through January 26, 2018, 28.7% of the total 146,151 hearings were held via VTC technology.<sup>38</sup> ODAR's projected decade-long savings due to video hearings is \$596,000,000.<sup>39</sup>

Hearing officers have the power to swear witnesses and take their testimony under oath.<sup>40</sup> Despite there being no law that prohibits administering oaths via communicative technology, the BAR manual requires that witnesses in a telephonic hearing be sworn in-person by a licensed notary.<sup>41</sup> This current practice is not a promulgated rule. The one exception is LEOs who may swear in each other. LEOs often struggle to find another officer to administer an oath because unpredictability is inherent in their profession. If there is an emergency and no one is available at the duty station to administer the oath, the LEO has now failed to comply with a subpoena. In the past, LEOs could be sworn in telephonically which according to them was convenient and easy.

The BAR manual further restricts the usage of telephonic hearings for medical investigations, specific hardship hearings,<sup>42</sup> and *fraud show cause* hearings.<sup>43, 44</sup> Notably, 12.76% of hearings conducted in 2017 would not have been eligible for a telephonic format. Similar to the BAR restriction on administering oaths, the current practice is not an enacted law or promulgated rule. F.A.C. states that

<sup>37</sup> Anderson, R., *The Impact of Information Technology on Judicial Administration: A Research Agenda for the Future*, 66 S. Cal. L. Rev. 1762,1770 (1993)

<sup>38</sup> *Hearings Held In-Person or Via Video Conferencing Report FY 2018*. Social Security Administration. (n.d.). Retrieved March 15, 2018, from [https://www.ssa.gov/appeals/DataSets/06\\_Hearings\\_Held\\_InPerson\\_Video\\_Report.html](https://www.ssa.gov/appeals/DataSets/06_Hearings_Held_InPerson_Video_Report.html)

<sup>39</sup> *Recommendation 2011-4 – Agency Use Of Video Hearings: Best Practices And Possibilities For Expansion*. 76 Fed. Reg. 48,789, 48,795 (Aug. 9, 2011)

<sup>40</sup> Fla. Admin. Code Ann. r. 15A-6.014 (2007)

<sup>41</sup> *Bureau of Administrative Reviews Operations Manual*. Ch 10. (2017)

<sup>42</sup> The following customers are not eligible for a telephonic hardship hearing: medicals, incapables, SSSP appeals, fraud, permanent



revocation hardship, committing an offense where mandatory revocation is required if convicted, and when an interpreter is used. <sup>43</sup> A *fraud show cause* hearing is for the driver to present any testimony or documentation indicating they did not knowingly commit fraud. <sup>44</sup> *Bureau of Administrative Reviews Operations Manual*. Ch 7-9. (2017)

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hearing officers are authorized to conduct all hearings using communications technology approved by the department.<sup>45</sup> Hardship hearings are to be held pursuant to the Administrative Procedure Act which permits “means of communications media technology”.<sup>46</sup>

Restrictions on telephonic use are baseless. An interview with a member of the Driver License Fraud Team explained that there was not a known reason for BAR fraud hearings to be conducted in person. The original issuance documents brought to a fraud hardship hearing are inspected by trained examiners at the DMV or Tax Collectors Office prior to receiving reinstatement. The employee could not identify an occurrence in which a hearing officer inspected documentation and determined fraud.

Furthermore, in 2017 BAR conducted 807 medical investigations, which is 13% of the 6,032 medical reports received by the DHSMV Medical Section. BAR filtered out 103 cases, which is 1.7% of the Medical Section workload that year. Of the medical investigations conducted by BAR, 774 nevertheless resulted in the Medical Section requesting a physician report from the driver.<sup>47</sup>

#### G. Practices are Antiquated

A formal review hearing request must be mailed to a field office along with a copy of the citation or suspension notice. The hearing must be scheduled for a date within 30 days of the date the request was received. The BAR manual directs staff to pick a date 28 to 30 days after the request was received to allow for mail time, even if a sooner date is available.<sup>48</sup> The availability of the driver or counsel is not factored into scheduling the initial hearing. Staff will then search through arrest packets from law enforcement agencies to obtain the driver’s arrest packet. A letter notifying the driver of the hearing date is signed and mailed with a temporary driving permit if eligible.

<sup>45</sup> Fla. Admin. Code Ann. r. 15A-6.009 (2013)

<sup>46</sup> Fla.Stat.§120.54(2017)

<sup>47</sup> The Medical Section requests a physician report as the initial step in an evaluation; except if the case is sent to BAR for a medical investigation.

<sup>48</sup> *Bureau of Administrative Reviews Operation Manual*. Ch 6. (2017)

One-sided scheduling with lengthy delays for mail delivery is not efficient. Continuances are repeatedly requested due to the unavailability of parties.<sup>49</sup> Subpoenas are time-sensitive and must be renewed if time lapses. These circumstances cause a repetitive burden on the staff to frequently update calendars, code records, maintain files, and draft letters.

Supporting documents have a five-year retention period and final order records are retained permanently.<sup>50</sup> Since BAR conducts hearings at a high volume, field offices are susceptible to being inundated by incoming mail, arrest packets, applications, subpoenas, faxes, and copies of communication. A supervisor who described the process of looking for an arrest packet said determining if the packet is lost in the office or not received yet is often difficult to ascertain. Procedures reliant on paper create complications for the proper storage, retrieval, and organization of important records.

The Florida Courts Technology Commission has approved innovations in court technology that could afford opportunities for greater efficiency.<sup>51</sup> Case management technologies provide paperless access to dockets, data, and images; pre-hearing access for all parties; and electronic signatures. Court Application Processing Systems (CAPS) are designed for judges and their staff to access electronic case files in order to manage cases, schedule and conduct hearings, adjudicate disputes, and record activity.<sup>52</sup>

Many clerical tasks can be streamlined by utilizing innovations in court technology. Scheduling of hearings could ensure the driver's availability through an interactive calendar tool. Hearings could be conducted and recorded directly through CAPS instead of manually through a voice recorder. Documents

could be signed and sent electronically. Management of case files could be paperless with an electronic

<sup>49</sup> BAR granted 797 continuances in 2017 and 842 in 2016.

<sup>50</sup> *General Records Schedule GSI-SL for State and Local Government Agencies*. Florida Department of State. Division of Library and Information Services. (2017)

<sup>51</sup> *2017 Yearly Report*. Florida Courts Technology Commission. Florida Supreme Court. (2017)

<sup>52</sup> Currently, there are two vendor-based CAPS systems (Mentis Technology Solutions and Pioneer Technology Group) approved by the Certification Subcommittee of FCTC.

filing portal for applications, documents, and fees. Modernization would reduce paper, save time, serve as a convenience to drivers, and increase operational efficiency.

## Recommendations

Based on the foregoing findings, the following policy recommendations are provided:

### I. Centralize Operations

- Dissolve inefficient field offices;
- Reduce staff size to reflect the decline in workload;
- Delegate workload equally instead of geographically.

### II. Modernize Practices

- Standardize telephonic technology as the primary method for conducting hearings;
- Install an electronic file submission option for drivers;
- Introduce an online training module for new employees;
- Utilize court technologies and other modern technologies to streamline processes.

### III. Simplify Processes

- Unify inconsistencies to create a cohesive procedure;
- Implement an application screening process for pre-hearing approval of eligibility requests;
- Remove BAR medical investigations and instead request physician reports;
- Permit previously restricted hearings to be conducted via communicative technology.
- Allow testifying LEOs to be sworn in telephonically.

### IV. Restructure Personnel

- Raise the hearing officer requirement to a Juris Doctorate and Florida Bar membership;
- Establish a team of attorneys to conduct formal reviews hearings and other applicable hearings;
- Create a cadre of clerks to assist the BAR attorneys.

## Transition Plans and Fiscal Reports

Restructuring BAR with the aforementioned recommendations is projected to save a half to two thirds of the current annual spending. The following are two options for the restructuring of BAR based on the degree at which the recommendations are applied.

### Option 1: Total Centralization with VTC Sites

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This option models the adjudication of disputes by DOAH through a headquarters connected to multiple VTC sites. In this option, the majority of BAR personnel would be housed in a headquarters in Tallahassee. Four state-owned field offices will be chosen as VTC sites. Each VTC site will house two clerks who operate the software, greet customers, and perform other administrative tasks such as processing eligibility applications.

At the headquarters, fifteen attorneys will each conduct approximately 2.5 hearing daily via telephonic and VTC technology.<sup>53</sup> Other personnel would include two secretaries to manage the front desk and an assistant for the Bureau Chief and the Deputy Bureau Chief. This option carries the advantage of providing a method for conducting specialty hearings with VTC technology and conveniencing customers who would prefer a VTC format to a telephonic hearing.

Current Annual Spending Option 1 Proposed Budget

Personnel	Current Annual Spending	Option 1 Proposed Budget
Secretaries (16)	\$401,495	Secretaries (2) \$50,000
Assistants (4)	\$105,773	Assistants (1) \$28,000
Hearing Officers (50)	\$1,662,112	Clerks (15) \$498,000
Supervisors (15)	\$614,318	Attorneys (15) \$825,000
RPA and RPSs (3)	\$119,316	Deputy Bureau Chief (1) \$65,000

	Program Managers (3)	\$166,468	Bureau Chief (1)	\$90,000
	Bureau Chief (1)	\$74,750	Benefits	\$734,619
	Benefits	\$2,185,301		
				Total: \$5,329,533 Total: \$2,290,619 Savings: \$3,038,914
	Lease Facility Cost (6)	\$301,380	Headquarters Contract	TBD
	State-Owned Facility Cost (9)	\$2,400	State-Owned Facility Cost (4)	\$1,200
	Office Supplies & Building Maintenance	\$14,682	Office Supplies & Building Maintenance	\$4,894
	Utilities	\$60,224	Utilities	\$42,017
	Lawn Care	\$30,398	Lawn Care	\$20,926
			CAPS Contract	TBD
			VTC System (4)	\$36,000
				Total: \$409,084 Total: \$105,037 Savings: \$304,047
Travel	Fuel & Maintenance	\$12,863	Fuel & Maintenance	\$1,000
	Meals & Per Diem	\$13,659	Meals & Per Diem	\$1,000
	Hotels	\$25,281	Hotels	\$2,000

<sup>53</sup>9,000 annual hearings (6,000 reviews + 2,500 hardship hearings + 100 waiver hearings + 400 miscellaneous hearings) divided by a team of 15 attorneys would supply each with 600 hearings to complete annually. 600 hearings divided into 12 months is 50 hearings to be completed monthly. 50 hearings monthly divided by an average of 20 work days per month is 2.5 reviews to be completed daily.

				Total: \$51,803 Total: \$4,000 Savings: \$47,803
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Grand Total: \$5,790,420 Grand Total: \$2,399,656  
Grand Savings: \$3,390,764

Secretaries and assistants in the proposed budget will remain at the current average salary for the position. Clerks will be paid the average hearing officer salary, the Deputy Bureau Chief is paid commensurate with current Program Managers, and the Bureau Chief is paid commensurate to current OGC legal chiefs. The annual salary for attorneys will start at \$55,000; which is roughly \$15,000 above the average supervisor salary. Estimated expenditures for office supplies, building maintenance, utilities, lawn care and travel costs are based on the fiscal audit. The VTC system used by DOAH each cost approximately \$12,000 in total for twelve years of usage.<sup>54</sup>

The process for obtaining a headquarters will involve submitting a Request for Space Need to the State Agency Leasing Liaisons of DMS who will procure a suitable facility in partnership with the state's tenant broker representatives. To purchase a court technology will involve a formal solicitation process through the Division of State Purchasing of DMS for vendors to procure a state contract. For these reasons, those costs are listed as "to be determined" (TBD). Following these procedures ensures effective use of taxpayer dollars and that the proposed budget will not be significantly affected.

Option 2: Partial Centralization with a Limited Number of Regional Offices This option mimics an aspect of Michigan's ALS hearings discussed previously. In this option, specific state-owned field offices that are located in high population density areas will remain open and become regional offices. The field offices in Miami, Tampa, Orlando, and Jacksonville are optimal regional locations. Hearings will be conducted in-person for those in the area and telephonically for those elsewhere. One secretary will work at each of the four regional offices along with the attorneys and clerks.

<sup>54</sup> Polycom set-up is \$9,000 per system. After six years a replacement box costs \$3,000. Total for twelve years estimate is \$12,000 or \$1,000/year for each Polycom site.

headquarters. The advantages of this option are that the local needs of population dense areas are met and in-person hearings are still provided. All salaries discussed in Option 1 remain the same.

Current Annual Spending Option 2 Proposed Budget

<b>Personnel</b>	Secretaries (16)	\$401,495	Secretaries (4)	\$100,000
	Assistants (4)	\$105,773	Assistants (1)	\$28,000
	Hearing Officers (50)	\$1,662,112	Clerks (15)	\$498,000
	Supervisors (15)	\$614,318	Attorneys (15)	\$825,000
	RPA and RPSs (3)	\$119,316	Deputy Bureau Chief (1)	\$65,000
	Program Managers (3)	\$166,468	Bureau Chief (1)	\$90,000
	Bureau Chief (1)	\$74,750	Benefits	\$758,225
	Benefits	\$2,185,301		
				<b>Total: \$5,329,533 Total: \$2,364,225 Savings: \$2,965,308</b>
	Lease Facility Cost (6)	\$301,380	CAPS Contract	TBD
	State-Owned Facility Cost (9)	\$2,400	State-Owned Facility Cost (4)	\$1,200
	Office Supplies & Building Maintenance	\$14,682	Office Supplies & Building Maintenance	\$3,915
	Utilities	\$60,224	Utilities	\$42,017
	Lawn Care	\$30,398	Lawn Care	\$20,926
				<b>Total: \$409,084 Total: \$68,058 Savings: \$341,026</b>
<b>Travel</b>	Fuel & Maintenance	\$12,863	Fuel & Maintenance	\$1,000
	Meals & Per Diem	\$13,659	Meals & Per Diem	\$1,000
	Hotels	\$25,281	Hotels	\$2,000
				<b>Total: \$51,803 Total: \$4,000 Savings: \$47,803</b>

Grand Total: \$5,790,420 Grand Total: \$2,436,283  
Grand Savings: \$3,354,137

### Personnel Policy and Transition Timeline

A Workforce Transition Plan must be approved by the DMS Division of Human Resource Management prior to initiating any restructuring. A Workforce Transition Team must develop a communication plan to inform employees about the restructuring process.<sup>55,56</sup> The DHSMV Communications Director will

<sup>55</sup> The Workforce Transition Team include the following DHSMV members: the Bureau Chief of Personnel Services, Office of Employee Relations Manager, Benefits and Member Services Manager, Office of Workforce Efficiency Manager, and a BAR designee. <sup>56</sup> The communications will include information regarding accumulated leave, insurance, employment placement assistance, counseling, continuation of benefits, and employees' responsibilities during the transition.

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communicate information as any proposed layoff is made known.<sup>57</sup> BAR becomes identified as a competitive area for personnel; Career Service (CS) employees in BAR may exercise retention rights to compete for reassignments. <sup>58</sup> Selected Exempt Service and Senior Management Service employees serve at the pleasure of the agency head and therefore do not have retention rights.<sup>59</sup>

Selective competition is the process of excluding positions within the competitive area due to specific qualifications. Clerk positions will be a selective competition for current hearing officers. All BAR employee will be assessed including a performance review for all employees who have not been reviewed within a year.<sup>60</sup> Employment strategies include internal and external placement assistance.<sup>61</sup>

The following is a proposed quarterly timeline adaptable to either option:

#### Quarter 1:

- Receive approval from DMS and initiate communication plan.
- Hire a Deputy Bureau Chief.
- Assess current employees for placement.
- Procure state contracts for CAPS and/or VTC technology and the headquarters lease.
- Close the field offices in Fort Myers, Winter Springs, and Tallahassee.

#### Quarter 2:



- Hire and train five attorneys, five clerks, two or four secretaries, and an assistant.
- Close the field offices in Daytona, Lantana, Gainesville, and Melbourne.

Quarter 3:

- Hire and train five attorneys and five clerks.
- Close the field offices in Fort Pierce, Pensacola, Clearwater, and Lauderdale Lakes.

Quarter 4:

- Hire and train five attorneys and five clerks.
- Ensure the field offices in Miami, Tampa, Orlando, and Jacksonville are either fully staffed regional offices or VTC sites.
- All adversely affected employees have been assessed and placed where positions are available.

<sup>57</sup> *Workforce Transition Plan*. Department of Highway Safety and Motor Vehicles. (January 2017).

<sup>58</sup> *Transition for Career Service Employees Program Manual*. Division of Human Resource Management. Department of Management Services. State Personnel System. HRM #2017-007 (June 29<sup>th</sup>, 2017)

<sup>59</sup> CS positions in BAR include hearing officers, secretaries, and assistants. Select Exempt Service and Senior Management Service employees include all other BAR positions: supervisors, Program Managers, RPSs, the RPA, and the Bureau Chief. <sup>60</sup> Employee assessments evaluate the comparative merit, demonstrated skill, experience, and length of service when considering employees for a layoff.

<sup>61</sup> Internal placement assistance is to retain valued employees within the agency by matching the employee's skills with the requirements of vacant positions. Reemployment and Emergency Assistance Coordination Team of the Department of Economic Opportunity assists in external placement to place adversely affected employees in other state agencies, local government, and the private sector.

- All closed field offices have been cleared of state property.

