

Collection Agency Board Meeting

Tab 1 Call to Order

September 20, 2016

10:00 AM

Department of Licensing
Olympia, WA



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9012 • Olympia, Washington 98507-9027

**WASHINGTON STATE
COLLECTION AGENCY BOARD
AGENDA**
REGULAR BOARD MEETING

DATE: September 20, 2016
TIME: 10:00 a.m.
LOCATION: Department of Licensing
405 Black Lake Blvd SW
1st Floor, Conference Room 2105
Olympia, WA 98502

1. Call to Order

- 1.1. Introductions
- 1.2. Order Of Agenda
- 1.3. Approval Of Minutes: April 20, 2016
- 1.4. Review Communications

2. Public Comment Opportunity

3. New Business

- 3.1. NACARA Conference
- 3.2. 2017 Meeting Schedule
- 3.3. Questions regarding Jurisdiction

4. Old Business

- 4.1. Definition of Communication

5. Complaint Cases for Review*

- 5.1. Administrative Closures Report

6. Legal Issues for Deliberation*

- 6.1. Orders To Be Presented

7. Disciplinary & Investigation Items

- 7.1. Closed Session Deliberation report (*only necessary if closed session is held*)
- 7.2. Disciplinary Cases Report

8. Board Administrator's Report

- 8.1. Program Operations
- 8.2. Licensing and application update.
- 8.3. Department Of Licensing
- 8.4. Other Items

9. Other Business

- 9.1 Action Items from This Meeting
- 9.2 Agenda Items for Next Meeting

10. Adjournment

*The Board may enter into closed session to discuss disciplinary proceedings.



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

**WASHINGTON STATE
 COLLECTION AGENCY BOARD
 DRAFT MEETING MINUTES
 REGULAR BOARD MEETING**

DATE: April 20, 2016

TIME: 8:30 a.m.

LOCATION: Red Lion Hotel
 Board Room
 2300 Evergreen Park Dr SW
 Olympia, WA 98502

MEMBERS PRESENT: Tami Dohrman, Chair
 Scott Wiswall, Vice Chair
 Raymond Henning, Member
 Scott Kinkley, Member
 Mari Borden, Member

STAFF PRESENT: Rick Storvick, Assistant Administrator
 Autumn Dryden, Administrative Assistant
 Grace Hamilton, Investigator
 Elizabeth Thompson-Lagerberg, Advising AAG

GUESTS PRESENT: Steve Bernheim
 Shanán Gillespie, Staff; Randy Garcia, Staff

1. Call to Order

1.1. Introductions

Board members, staff, and visitors introduced themselves.

1.2. Order Of Agenda

Mr. Henning made a MOTION to accept the agenda as presented. Mr. Wiswall seconded the MOTION and it passed.

1.3. Approval Of Minutes: September 15, 2015

Mr. Wiswall made a MOTION to accept the minutes as presented. Ms. Borden seconded the MOTION and it passed.

- 1.4. Review communications
No business.

2. Public Comment Opportunity

No business.

3. New Business

3.1. Elect Vice Chair

Mr. Henning made a MOTION to appoint Mr. Wiswall to the position of Vice Chair. Mr. Kinkley seconded the MOTION and it passed.

3.2. 2015 NACARA Annual Meeting Report

Mr. Wiswall and Mr. Storvick attended the 2015 NACARA Annual Meeting. Mr. Wiswall reported on the meeting. He found it beneficial and recommended the board attend in the future.

3.3. NACARA Annual Meeting, October 2016

Ms. Dohrman asked board members to indicate their interest in attending the 2016 NACARA Annual Meeting. All board members were interested. Staff will request approval to send Ms. Borden with Mr. Henning as an alternate. Ms. Hamilton will attend as well.

4. Old Business

4.1. Operation Collection Protection

Mr. Storvick reported materials in the packet for Operation Collection Protection are the press releases released last fall. They highlight enforcement actions taken against abusive debt collectors by a coalition of 120 agencies from throughout the United States.

4.2. Review Complaint Process

Ms. Hamilton shared a presentation on the complaint process including the processes for initial complaint intake, case manager review, charging documents, default orders, Brief Administrative Procedures (BAPs), and hearings. Board members provided feedback and she will share the presentation at the Washington Collectors Association conference in May.

4.3. Review Master Action Items List

The board reviewed and discussed outstanding action items.

5. Complaint Cases for Review*

5.1. Case Manager Closures Report

No business.

5.2. Administrative Closures Report

Packet item only; no action.

6. Legal Issues for Deliberation*

6.1. Orders To Be Presented
No business.

7. Disciplinary & Investigation Items

7.1. Closed Session Deliberation report (only necessary if closed session is held)
No business.

8. Board Administrator’s Report

8.1. Program Operations
Mr. Storvick shared that the board staff’s move from the second floor of their building to the first floor is complete.

Board members reviewed a licensing report. No action needed.

8.2. Department Of Licensing
No business.

8.3. Other Items
The board touched on the issue of hang up/no answer calls.

Action Item: Staff will research past board minutes for discussions about hang up/no answer calls.

9. Other Business

9.1. Action items from this meeting
Action items from this meeting were reviewed and will be added to the master action items list.

9.2. Agenda items for next meeting
• Hang up/no answer calls

10. Adjournment 9:55 am

Approved by:

Rick Storvick, Assistant Administrator

Date

Tami Dohrman, Chair

Date

Board Meeting

Tab 2

Public Comment

The board has the option to allow comment from the public on agenda items or other topics, unless the comment is related to an open investigation.

The board may limit the comment period, and will provide instructions if it chooses to do so.

Board Meeting

Tab 3

New Business

Topics for action or discussion by the board that were identified at or since the last board meeting.



**NORTH AMERICAN COLLECTION AGENCY
REGULATORY ASSOCIATION**

*Ensuring the Fair and Equitable Administration of
Collection Agency Regulation throughout North America*

2016 NACARA ANNUAL CONFERENCE AGENDA October 11 - 13, 2016 Inn on the Park Madison, Wisconsin	
Tuesday, October 11, 2016	
7:00 AM	Registration
8:30 - 10:15	General Session Industry Perspectives
10:15 - 10:30	Break
10:30 - 12:00	General Session Industry/Regulator Licensing and NMLS
12:00 - 1:00 PM	Lunch
1:00 - 2:30	General Session The Art of the Exam Part I
2:30 - 2:45	Break
2:45 - 4:00	General Session The Art of the Exam Part II
4:00 - 5:00	General Session The Art of the Exam Q&A
5:30 - 7:00	Welcome Reception & Registration
Wednesday, October 12, 2016	
7:00 AM	Registration
8:00 - 8:45	Welcome & Opening Remarks

8:45 – 10:15	General Session – CFPB Policy Issues
10:15 – 10:30	Break
10:30 – 12:00	General Session – FTC Debt Collection Initiatives
12:00 – 1:30 PM	Lunch w/Speaker
1:30 – 2:45	General Session – Student Loan Debt Collection
2:45 – 3:00	Break
3:00 – 4:00	General Session – Supervision of Foreign Entities
4:00 – 5:00	General Session – NMLS Expansion – Ombudsman Meeting
5:45	NACARA Member Dinner
Thursday, October 13, 2016	
8:00 – 9:00	Business Meeting & NACARA Elections *
9:00 – 10:15	Ethics in Government*
10:15 – 10:30	Break
10:30 – 12:00	Regulator Roundtable*
12:00 PM	Adjourn - Travel

*Open to NACARA members only

Washington State Collection Agency Board
September 20, 2016
Olympia, WA

Meeting Schedule

Background: At the last board meeting each year, the board and staff set the meeting calendar for the next year. To ensure we have appropriate time to process travel requests and take other action necessary for the North American Collection Agency Regulatory Association (NACARA) annual meeting, officer elections, etc., staff recommends the following schedule, with the standard calendar-related action items:

- April or March
 - Vice Chair Election
 - Identify delegates for the NACARA annual meeting in Sept/Oct

- September
 - Discuss topics from NACARA Annual Meeting Agenda

Recommendation: Board staff requests the board members bring their 2017 calendars to the board meeting.

Submitted by Board Staff
September 1, 2016

Regulatory Boards Section 2017 Calendar

January 2017						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
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29	30	31				

February 2017						
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March 2017						
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April 2017						
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May 2017						
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September 2017						
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October 2017						
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November 2017						
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December 2017						
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Landscape Architect Board Mtg
 Funeral & Cemetery Board Mtg
 Engineers Cmte/Bd meeting
 NCEES MBE Mtg
 Architect Board Mtg
 ICFSEB annual meeting
 NCARB Regional Summit
 LSAW Annual Conference
 Geologist Board Mtg -
 ASBOG COE
 Engineers Cmte/Bd meeting
 Landscape Architect Board Mtg
Collection Agency Board Mtg
 Architect Board Mtg
 Funeral & Cemetery Board Mtg
 NCEES Regional Meeting
 Geologist Board Mtg -
 Engineers Cmte/Bd meeting
 NCARB annual meeting
 Landscape Architect Board Mtg
 Funeral & Cemetery Board Mtg
 ASBOG Annual Meeting
 Engineers Cmte/Bd meeting
 NCEES National Meeting
 Architect Board Mtg
 Geologist Board Mtg -
Collection Agency Board Mtg
 CLARB Annual meeting
 NACARA annual meeting
 Engineers Cmte/Bd meeting
 Landscape Architect Board Mtg
 Funeral & Cemetery Board Mtg
 NCARB MBC/MBE meeting
 ASBOG COE & Annual meeting
 Architect Board Mtg
 Engineers Cmte/Bd meeting
 Geologist Board Mtg -

Geologist
Architect
Funeral & Cem
Landscape
Collection Agencies
Engineers

Conference dates on calendar include travel days.

AAG Conflict

State Holidays:	Jan 2 & 16	Feb 20	May 29	July 4
	Sept 4	Nov 10, 23-24	Dec 25	

Washington State Collection Agency Board
September 20, 2016
Olympia, WA

Questions Regarding Jurisdiction

Background: Several questions have come up in recent one on one discussions regarding the Board's jurisdictional authority associated with investigations, sanctions, and a specific portfolio of obligations a collection agency might collect on.

The questions are as follows:

- 1) Does the Collection Agency Act (CAA) apply to collection of fees and fines derived from criminal judgments?
- 2) What is the Board's ability to compel production of records from licensees, and is that power constrained when the Board seeks information relating to the collection of debts that are not covered by the provisions of the CAA?
- 3) May the Board discipline a licensee for failure to provide records related to collections activity not covered by the CAA?

Recommendation: The board establish a subcommittee of 2 members to work with the Board's advising AAG to research and review the questions and then report back to the board at the next meeting.

Submitted by Board Staff
September 1, 2016

Board Meeting

Tab 4

Old Business

Topics from past meetings, presented for update, action or further discussion by the board.

Washington State Collection Agency Board
September 20, 2016
Olympia, WA

Definition of Communication

Background: The board discussed the question of what constitutes a communication at their previous meeting April 20, 2016. It was requested information regarding past board discussions be provided at the next board meeting for review and discussion.

Attached are minutes from board meetings held in 2010 and 2011 when the topic of defining communications was previously discussed. Also attached is a document with excerpts from a recent Consumer Financial Protection Bureau (CFPB) outline of proposals they are considering as they move forward in the debt collection rule making process. The outline of proposals is not a proposed rule and it is not binding, but it provides a glimpse into what the CFPB is thinking.

Recommendation: The board reconsider the definition of communication once the CFPB publishes official proposed rules regarding communication.

Submitted by Board Staff
September 1, 2016



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9034 • Olympia, Washington 98507-9034

**COLLECTION AGENCY BOARD
MEETING MINUTES
SPECIAL BOARD MEETING**

DATE: November 18, 2010
TIME: 9:00 a.m.
LOCATION: Department of Licensing
2000 4th Avenue
2nd Floor, Conference Room 3204
Olympia, WA 98502

Members

Present: Robert Fuller, Chair
Fred Corbit, Public Member
Richard L. Marker, Public Member
Scott Wiswall, Licensee Member
Aracelli Lamb, Licensee Member (via teleconference)

Shanan Gillespie, Board Clerk

Staff

Present: Margaret Eby, Administrator
Nancy Skewis, Senior Administrator
Margaret Vogeli, Program Manager
Bruce Turcott, AAG Advisor

Public

Present: David Grimm – representing the Washington Collector's Association
Robert Lipsom – Senior Counsel from the Attorney General's Consumer
Protection Division

1. **Call to Order 9:11 a.m.**
 - 1.1 Introduction of attendees

1.2 Approval of Agenda: approved with additions of items 3.5 (Mr. Wiswald) and 3.6 (Mr. Turcott).

1.3 Approval of Minutes, April 13, 2010 Meeting.

MOTION: Mr. Wiswall moved and Mr. Corbit seconded. Motion passed.

2. Old Business

2.1 Mr. Wiswall presented the subcommittee's report on definition of "reasonable business hours" and two options for possible draft rule. A discussion followed and the following language was proposed:

Option 1

WAC 308-29-010 – Definitions

DRAFT NEW SUBSECTION (5) "reasonable **stated** business hours," as required by RCW 19.16.230(1), shall include, but not be limited to, four hours per day for four days each week within the hours specified for communications in RCW 19.16.250(12)(c). A collection agency shall post its reasonable business hours so they may be viewed by the public outside of its normal place of business. When a collection agency closes the place of business during its normal business hours, (a) a sign must be posted on the main door of the agency stating the time that the agency will next be open for business and how the agency may be contacted, (b) a telephone message must state when someone will be available to answer the phone, and (c) an automated electronic mail reply must state when someone will be able to respond. A collection agency may not avoid maintaining reasonable business hours by routinely using a door sign, telephone message, and automated electronic mail reply."

Mr. Corbit moved to adopt this definition and to go forward with official rule-making when it is permitted. Mr. Marker seconded the motion. Motion carried.

2.2 Assistant Attorney General Turcott opened the floor to questions related to the *O'Neill v. City of Shoreline* case regarding records retention that he distributed to Board members in October. He stated that because the Department of Licensing retains the official Board records, members should forward email discussions they have to the program staff for retention purposes.

3. New Business

3.1 Ms. Vogeli handed out the current program complaint statistics. She noted that the backlog is gone. There are currently 28 open complaints/cases. Members agreed that they would like to continue receiving monthly status reports on complaint cases.

3.2 Ms. Vogeli handed out the revised brochure, *Collection Agency Problems?*, and explained how the Department is distributing it to consumers. Board members suggested that the brochure also be posted on the Program's website and Fred Corbit offered to post it on the *WAlawhelp.org* website. Mr. Grimm objected to the word *Problems* in the title of the brochure and suggested, *Collection Agencies – Know Your Rights*. Mr. Corbit likes the current title.

A discussion followed about possible proactive steps to educate licensees.

3.3 Administrator Margaret Eby gave her executive report which included:

- Program budget issues
- Program staffing
- Board clerk replacement
- Proposed use of Board members for consultations with staff -- Discussion followed

The Board adjourned for a break at 10:48 a.m. and resumed session at 11:00 a.m.

3.4 Discussion on possibly defining "contact" in WAC. A subcommittee was established to bring a draft rule to the next meeting. Ms. Lamb will take the lead with Mr. Corbit, Mr. Lipson and Mr. Grimm contributing.

3.5 Discussion of closed disciplinary action case involving process servers. Mr. Corbit suggested the subcommittee dealing with definition of "contact" consider the issue.

3.6 Mr. Turcott asked the question "Does the Board want to delegate its review authority in Brief Adjudicative Proceedings (RCW 34.05.488) to the Board Chair or a Board member?" The members decided that a quorum of three would be required for such reviews.

3.7 Public Questions - None

4. Other Business

4.1 **ACTION ITEMS** from this Meeting:

- Subcommittee consisting of Ms. Lamb, Mr. Corbit, Mr. Lipsom, and Mr. Grimm will provide draft definition of "communication" as used in RCW 19.16.250(12) at the next meeting.
- Program staff to post brochure on website if possible

4.2 Agenda Items for Next Meeting

- Review draft definition of "communication" presented by subcommittee.
- Possible closed session for presentation of cases

4.3 2011 meeting calendar:

- March 17, 2011 @ 9:00 a.m.
- September 29, 2011 @ 9:00 a.m.

5. Adjournment

Adjourned at 12:30 p.m.

Submitted by: _____ Approved By: _____
Margaret Vogeli Date Robert F. Fuller Date

Department of Licensing
 2nd Floor, Conference Room 2209
 405 Black Lake Blvd. SW
 Olympia, WA



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9034 • Olympia, Washington 98507-9034

**COLLECTION AGENCY BOARD
 MEETING MINUTES
 SPECIAL BOARD MEETING**

DATE: March 17, 2011

TIME: 9:00 a.m.

LOCATION: Department of Licensing
 405 Black Lake Blvd. SW
 2nd Floor, Conference Room 2209
 Olympia, WA 98502

Members

Present: Robert Fuller, Chair
 Fred Corbit, Public Member
 Richard L. Marker, Public Member
 Scott Wiswall, Licensee Member
 Aracelli Lamb, Licensee Member

Shanan Gillespie, Board Clerk

Staff

Present: Margaret Eby, Administrator
 Margaret Vogeli, Program staff
 Bruce Turcott, AAG Advisor
 Jacqueline Walker, AAG (via teleconference)

Public

Present: David Grimm – representing the Washington Collector's Association
 Robert Lipson – Senior Counsel from the Attorney General's Consumer
 Protection Division (via teleconference)
 Kevin Underwood, Collections
 Steve Bernheim, Attorney

1. Call to Order 9:04 a.m.

- 1.1 Introduction of attendees
- 1.2 Approval of Agenda: approved
- 1.3 Approval of Minutes, November 18, 2010 Meeting.

MOTION: Approved with amendment to dates in item 4.3 (Mr. Marker).

2. Old Business

2.1 Ms. Lamb submitted a summary of research in definitions of "communication" from other states and Canada. Discussion held. Subcommittee was asked to bring a proposed definition to the next meeting.

2.2 Assistant Attorney General Turcott reported on proposed legislation SSB 5574/SHB 1745. He also informed the Board about a recent court case involving FMS Inc. The case was dismissed with prejudice.

2.3 On behalf of Margaret Eby, Margaret Vogeli reported on current legislation the program is following:
 SSB 5574/SHB 1745
 ESHB 1864
 HB 2017

3. New Business

3.1 Ms. Vogeli handed out the current program complaint statistics. She noted the dramatic increases in cases over the past three years. There are currently 26 open complaint cases. Members requested more data on types of cases, if possible.

3.2 Ms. Vogeli handed out the document, *Complaint Process*, which has been added to the Collection Agency website as a proactive step to educate licensees.

3.3 Mr. Fuller proposed that a vice-chair of the Board be selected to serve in his place if needed.

MOTION: Nominate Richard L. Marker to serve as Vice-Chair for the remainder of his term. Motion was passed unanimously.

3.4 Public Questions - None

4. Other Business

4.1 **ACTION ITEMS** from this Meeting:

- 1. Subcommittee consisting of Ms. Lamb, Mr. Corbit, Mr. Lipson, and Mr. Grimm will provide draft definition of "communication" as used in RCW 19.16.250(12) at the next meeting.
- 2. Program staff to distribute list of Board members.
- 3. Program staff to provide number of complaints where they have not been able to take action.
- 4. Mr. Corbit will provide proposed language for two legislative amendments regarding:
 - o debt-purchasers
 - o the requirement for out-of-state licensure.

4.2 Agenda Items for Next Meeting

- Review draft definition of "communication" presented by subcommittee.
- Review proposed legislative amendment language
- Possible closed session for presentation of cases

4.3 Next Meeting:

- September 29, 2011 @ 9:00 a.m.

The Board adjourned for a 10 minute break.

5. Adjudicative Session

5.1 AAG Jacqueline Walker presented the following proposed Board orders:

1. Collections Unlimited, Inc.
2. United Portfolio Management
3. Haller, Harlan, & Taylor
4. Asset Recovery Firm

5.2 The Board deliberated in closed session.

6. Adjournment

Adjourned at 11:30 a.m.

Submitted by: _____ Date _____ Approved By: _____ Date _____
 Margaret Vogeli Date Robert F. Fuller Date



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9027 • Olympia, Washington 98507-9027

**COLLECTION AGENCY BOARD
 MEETING MINUTES
 SPECIAL BOARD MEETING**

DATE: October 14, 2011

TIME: 9:00 a.m.

LOCATION: Department of Licensing
 2000 4th Avenue
 2nd Floor, Conference Room 3204
 Olympia, WA 98502

Members

Present: Robert Fuller, Chair
 Fred Corbit, Public Member
 Richard L. Marker, Public Member
 Scott Wiswall, Licensee Member

Staff

Present: Margaret Eby, Administrator
 Harumi Tolbert, Program staff
 Bruce Turcott, AAG Advisor
 George Twiss, Executive Director of the Engineering Board

Public

Present: David Grimm – representing the Washington Collector's Association

1. Call to Order 9:05 a.m.

1.1 Introduction of attendees

1.2 Approval of Agenda:

- 3.3 changed to "Federated Association of Regulatory Boards briefing" – Bob Fuller
- 3.4 changed to "Public Questions"

1.3 Approval of Minutes, March 17, 2011 Meeting.

MOTION: Approved as amended to wording in item 2.1 (Mr. Marker).

2. Old Business

2.1 Fred Corbit presented his research on defining “communication” and expressed that, with the recent changes to the Collection Agency Act, a definition is not needed. Mr. Corbit believes the Board should wait to see how the law changes affect the industry.

The Board agreed not to define “communication” at this time.

2.2 Fred Corbit presented his proposal for a legislative amendment regarding ‘debt purchasers’. The proposal requires debt purchasers to follow RCW 19.16.250, but does not require them to be licensed.

Harumi Tolbert reminded the Board that in 2004, the Board decided that debt purchasers do not fit under the definition of RCW 19.16.100 and are not required to be licensed.

The Board further discussed the issue. Mr. Corbit changed his original proposal to read: “Members of the Collection Agency Board have no objection to requiring debt buyers to be licensed and are investigating that issue.”

MOTION: Mr. Corbit motioned to support the proposal that was distributed; motion was seconded by Mr. Marker.

Board further discussed the issue. Bob Fuller asked AAG Bruce Turcott to research whether debt buyers fall under RCW 19.16.100 and report to the Board in two to three months.

MOTION: Mr. Marker amended the motion to consider Mr. Corbit’s proposal at the next meeting and include AAG Turcott’s research; motion seconded by Mr. Wiswall. Motion passed.

Guest, Mr. David Grimm, stated he would have representatives from the debt buyer industry attend the next meeting to answer questions the Board may have.

Mr. Corbit was not able to report on ‘out-of-state licensure’. This agenda item will be discussed at the next meeting.

At 10:10 a.m., the Board adjourned for a 10 minutes break.

2.3 Ms. Tolbert distributed a board member contact list.

Ms. Tolbert informed the Board that Rumson, Bolling and Associates, an agency the Board took action against for unlicensed activity, was recently shut down by the Federal Trade Commission for deceiving clients and abusing consumers.

Ms. Eby explained that the recent budget bill included Legislative approval for a fee increase for collection agencies. The public hearing for this fee increase will be held on November 10, 2011 at 3:00 p.m. at the following address:

405 Black Lake Boulevard SW
 Room 2209, Second Floor
 Olympia, WA 98502.

The Board discussed the fee history for collection agencies . Ms. Eby explained why fees were lowered in 2005 and why now they will increase . Simply stated the program must be self-supporting with the fees it collects. Last year the program was overspent by more than \$50,000, so the program's fund balance has dwindled to a dangerously low point. AAG Turcott confirmed that the Director of Licensing has the authority to raise fees in rule.

3. New Business

3.1 Ms. Tolbert handed out the current program complaint statistics. There are currently 12 open complaint cases.

3.2 AAG Turcott briefly discussed recent legislation—ESHB 1864, SB 5956 and SSB 5574—the Board received copies of the bills along with the analysis for each.

AAG Turcott also mentioned two case law updates. One case involved a licensee that was disciplined for a criminal conviction. The Superior Court ruled against the licensing entity, citing the conviction did not relate to the licensee's profession. The second case law (Hardy v. State) addressed the standard of proof to support disciplinary actions.

Mr. Fuller again discussed using a case manager for disciplinary cases. He stated that he believes all other disciplinary boards in the Business and Professions Division have board case managers. It was agreed that this issue would be discussed at the next meeting.

3.3 Mr. Fuller reported that he had attended a conference for the Federated Association of Regulatory Boards in Utah. Mr. Fuller reported that at the conference they discussed the Federal Trade Commission taking action against a North Carolina dental board for restrictive trade and competition. The dental board is going to litigate the case.

Mr. Fuller requested that the Program send the Board correspondence received by the Program and the Program's responses, as deemed appropriate by administrative staff. Ms. Tolbert will send the information to the Board via email, or include materials in a Board Packet.

3.4 Public Questions - None

4. Other Business

4.1 **ACTION ITEMS** from this Meeting:

1. AAG Turcott to report to Board regarding 'debt buyers.'
2. Mr. Corbit will provide proposed language for a legislative amendment regarding the requirement for out-of-state licensure.

4.2 Agenda Items for Next Meeting

- Discuss the use of case managers.
- Review proposed legislative amendment language.
- Discuss number of board meetings to have per year.
- Possible closed session for presentation of disciplinary cases

4.3 Next Meeting:

- Tentative dates for the next meeting are: January 20th or 27th OR February 3rd or 10th.

Mr. Fuller mentioned that there is a new AAG Prosecutor – Leah Harris, who will begin on October 17, 2011.

5. Adjournment

Adjourned at 11:30 a.m.

Submitted by: _____ Approved By: _____
 Harumi Tolbert Date Robert F. Fuller Date

4. Proposal under consideration to require consumer acknowledgement before accepting payment on debt that is both time-barred and obsolete

If consumers cannot be subject to either lawsuits or credit reporting, the Bureau believes that it is especially important for them to know about their rights to ensure they do not pay as a result of a debt collector's unlawful conduct. The Bureau therefore is considering a proposal to prohibit a debt collector from accepting payment on such a debt until the collector obtains the consumer's written acknowledgement of having received a time-barred debt disclosure and an obsolescence disclosure. Debt collectors would be free to include, as a separate document that accompanies the validation notice, a form that consumers may use to acknowledge receipt. The Bureau does not anticipate providing a model form for this purpose.

V. Collector Communication Practices

The second largest source of Bureau complaints about debt collection focuses on communication practices. Although the FDCPA has established multiple protections and requirements regarding debt collection communications throughout the debt collection lifecycle, consumers consistently complain about frequent or repeated collections telephone calls, disclosures of debts to third parties, and other concerns related to debt collection communications.³⁶ Communications-related conduct also drives a substantial number of FDCPA lawsuits.

Communications are also a major source of frustration and inefficiency for debt collectors, who often feel caught between different sets of FDCPA requirements, such as those requiring collectors to identify themselves as collectors and those prohibiting revealing the existence of a debt to third parties. In particular, many collectors feel that it is too legally risky for them to leave messages for consumers because of the risk that a third party might hear or see the message containing the required FDCPA content and thus learn of the debt. Thus, some collectors call consumers repeatedly without leaving messages, which in turn can leave consumers feeling frustrated and harassed.

The Bureau believes that improving the quality of information in the debt collection system and providing consumers with the initial disclosures discussed in part III might decrease the amount of time and effort that collectors spend trying to locate and initiate contact with consumers. Nevertheless, the Bureau is considering several other potential proposals to give consumers more control over the rhythm and channels of communications and to provide greater regulatory certainty for all parties. The most significant interventions under consideration include:

- Regulations to govern contact frequency and the leaving of messages;
- Regulations to govern the time, place, and manner of collector contacts; and

³⁶ Communication tactics ranked second in debt collection complaints submitted to the Bureau during 2015, and the majority of complaints in this category—52 percent, or almost 8,000 complaints during 2015—were about frequent or repeated telephone calls. See 2016 FDCPA Annual Report, *supra* note 4, at 19.

- Regulations relating to situations in which the consumer alleged to owe the debt dies (decedent debt).

Each of these categories of interventions is summarized below, along with proposals the Bureau is considering related to consumer consent to communications that, without consent, would otherwise violate the FDCPA or implementing regulations. In addition, Appendix H lists certain collector practices that the Bureau is considering specifying violate the FDCPA. Again, the Bureau believes that the proposals under consideration regarding communications would have both benefits and costs for small entities. The Bureau seeks the SERs' input on how the combined impacts would affect their businesses and the broader debt collection industry, particularly in light of the information integrity measures discussed above.

A. Proposals under consideration regarding contact frequency and the leaving of messages

1. Why is the Bureau considering proposals relating to contact frequency and the leaving of messages with consumers and with third parties?

As noted, consumers often complain that the frequency with which debt collectors contact them is harassing.³⁷ Collectors, on the other hand, observe that multiple contact attempts are necessary, particularly when trying initially to locate and establish contact with a particular consumer who owes a particular debt.

In addition, uncertainty over the intersection of certain FDCPA requirements substantially complicates the communication process. As mentioned above, many collectors believe that, under the FDCPA, they may not be able to leave voicemails or other messages for consumers because the FDCPA requires them to leave information identifying themselves as a collector and provide certain warnings to the consumer. If such content is seen or heard by a third party, however, that would risk violating FDCPA prohibitions against revealing debts to third parties.³⁸ As a result, when consumers do not answer collections calls, some debt collectors simply hang up and call back, repeating this process until the consumer picks up the call. This may result in consumers receiving many more collection calls than they presumably would if debt collectors could leave a simple message.

The Bureau believes that setting forth clear standards regarding both permissible contact

³⁷ Section 806(5) of the FDCPA prohibits collectors from "causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person," and section 806 more generally prohibits conduct by debt collectors that has the natural consequence of harassing, oppressing, or abusing any person.

³⁸ The intersection between the two FDCPA requirements was raised in the 2006 decision in *Foti v. NCO Financial Systems*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006) and is commonly referred to as the *Foti* dilemma. Under the *Foti* line of cases, a voicemail message that includes the collection company's name, states that the call is about an important business matter, and provides a toll-free call-back number has been considered a "communication" under the FDCPA. Debt collectors that have left such voicemails without providing the required warnings—*i.e.*, a statement that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, or a statement that the communication is from a debt collector—have faced liability under FDCPA section 807(11). Because such warnings, also known as the "mini-Miranda" warning, necessarily contain information about a consumer's debt, however, debt collectors leaving messages with the mini-Miranda also could face liability under FDCPA section 805(b) if a third-party were to overhear the message.

frequency and how collectors may leave messages for consumers could benefit both consumers and industry by reducing contact frequency while maintaining or enhancing debt collectors' ability to communicate with consumers.

2. Permitting certain limited-content voicemails and other messages

The Bureau is considering a proposal that would provide that no information regarding a debt is conveyed—and no FDCPA “communication”³⁹ occurs—when collectors convey **only**: (1) the individual debt collector’s name, (2) the consumer’s name, and (3) a toll-free method that the consumer can use to reply to the collector. For example, a voicemail could state, “This is John Smith calling for David Jones. David, please contact me at 1-800-555-1212.” This would allow collectors to leave such limited-content messages in a voicemail message, with a third-party in a live conversation, or through another method of communication (*e.g.*, in a text message or an email), without triggering the requirement to provide the FDCPA warnings.⁴⁰ If the collector succeeds in reaching the consumer or if the consumer contacts the collector after receiving the message, these FDCPA requirements would apply immediately.

The Bureau is seeking feedback on whether permitting limited-content messages is an appropriate and practical way to cut down on repeat contacts without messages, protect against third-party disclosures, and ensure that consumers understand the nature of the communication as soon as there is direct contact with the collector. To ensure that such communications do not become an avenue for evading FDCPA requirements, the Bureau also is considering specifying that debt collectors engage in harassing or abusive conduct in violation of FDCPA section 806 if they use the limited-content voicemails or other messages to engage in contacts that would be prohibited if they were FDCPA “communications.” For example, a debt collector who used limited-content voicemails to continue to contact consumers after receiving a written cease communications request⁴¹ would violate FDCPA section 806 and the Bureau’s rules implementing that section.

3. Restricting debt collection contacts with consumers

In combination with solving the current uncertainty over leaving messages, the Bureau is considering proposing regulations limiting the frequency with which debt collectors may contact, or attempt to contact, consumers. As discussed further in part VII, the Bureau believes that current collector practices vary widely with regard to frequency of contact but that some debt collectors do not call frequently enough to be affected by the caps under consideration. Smaller respondents to the Bureau’s industry survey on current collector practices and procedures, in particular, reported that they are unlikely to call consumers more than one to two

³⁹ FDCPA section 803(2) defines the term “communication” to mean “the conveying of information regarding a debt directly or indirectly to any person through any medium.”

⁴⁰ As discussed in Appendix F, the proposals under consideration would also prohibit debt collectors from including information in the “from” and “subject” lines of emails and from using telephone numbers such as “1-800-PAYDEBT” that that would convey that the message is from a debt collector.

⁴¹ Consumers may ask collectors orally to stop communicating with them about a debt. Although the proposals under consideration would not necessarily make it a violation for a collector not to honor an oral cease communication request, the Bureau notes that a debt collector that continues to contact a consumer after receiving such an oral request to cease communications may be engaging in harassing conduct in violation of FDCPA section 806.

times per week and generally would not speak to a consumer more than one time per week.⁴²

In considering proposals to restrict contact frequency, the Bureau believes that it would make sense to establish different numerical restrictions depending on whether the collector has successfully established contact with the consumer who is alleged to owe the particular debt. The Bureau believes such an approach may be appropriate because prior to such “confirmed consumer contact,” the collector may attempt to reach the consumer through different phone numbers or different media and may not know how best to reach the consumer. Once the collector has reached the consumer and confirmed that certain contact information is effective, the collector will know how best to reach the consumer and need not attempt to initiate contact as frequently.⁴³

The Bureau is considering a rule that would provide that “confirmed consumer contact” exists once any collector—*i.e.*, whether the current collector or a prior one—has communicated with the consumer about the debt, and the consumer has answered when contacted that he or she is the debtor or alleged debtor. Confirmed consumer contact would not exist either: (1) prior to the consumer answering that he or she is the person whom the collector sought to contact, or (2) if the collector reasonably believes that previously confirmed contact information for the consumer has become inaccurate. In general, confirmed consumer contact would pass from collector to collector.

The contact caps under consideration would limit both successful and attempted contacts. For instance, a contact attempt that ends with the collector leaving a limited-content message as described above would count toward the cap.

The Bureau also is considering whether to apply the contact caps equally to all communication channels (*e.g.*, telephone, mail, email, text messages, and other newer technologies), and whether to create separate limits per unique phone number or address as well as for total contacts per week. Because collectors may have or obtain several phone numbers as well as potentially one or more email and mailing addresses for a consumer, the Bureau believes that it would be excessive for a debt collector to make contact attempts through any one of these points of contact more than a certain number of times per week. The Bureau also believes that overall contact attempts by a given debt collector through different points of contact can have the same harassing consequence.

The Bureau is considering whether to structure the caps as “hard” bright-line limits or to provide more flexibility. For instance, one option would be to establish a general bright-line rule but with some specific exceptions. Another option would be to establish a rebuttable presumption that contacts or attempted contacts above the threshold constitute harassing, oppressive, or abusive conduct, and contacts or contact attempts at or below the thresholds do

⁴² Operations Study, *supra* note 15, at sec. 5.2.

⁴³ The Bureau continues to consider whether confirmed consumer contact status should be established only after the collector communicates with the consumer obligated or allegedly obligated to pay the debt (and not, *e.g.*, to the consumer’s spouse). The Bureau is contemplating that collectors would not be limited to the stricter contact caps associated with confirmed consumer contact status until they have communicated with the debtor or alleged debtor, because a successful contact with a section 805(d) consumer (*e.g.*, a spouse) would not necessarily mean that the collector has located the alleged debtor. In the case of decedent debt, confirmed consumer contact could be established when the collector has communicated with an executor, administrator, or personal representative of the estate.

not. Under such an approach, if the collector knew or had reason to know that a contact or contact attempt in excess of the cap would not result in harassing, oppressive, or abusive conduct for a particular consumer, the collector would not violate the regulation by contacting or attempting to contact the consumer more often than the thresholds otherwise would allow. On the other hand, if the collector knew or should have known that a contact or contact attempt below the threshold would be harassing, the collector would violate the regulation by contacting or attempting to contact the consumer at that frequency.

When analyzing contact frequencies, the Bureau is weighing the competing interests of debt collectors in being able to make the repeated contact attempts often necessary to establish confirmed consumer contact and collect debts, and the interests of consumers in minimizing the number of debt collection calls they receive.⁴⁴ The Bureau believes that the caps under consideration may appropriately balance the risks to consumers of being annoyed, harassed, oppressed, or abused by too-frequent contacts or contact attempts via multiple points of contact with the risks to collectors from being unable to communicate sufficiently with consumers. The Bureau further believes that—particularly when taken together with the Bureau’s proposed approach to leaving messages discussed above—these caps would significantly reduce the number of contacts and contact attempts that consumers experience, while simultaneously allowing collections to continue without undue burden.

Specifically, the proposals under consideration would set the limits in Table 2 below. Note that, when confirmed consumer contact exists, the Bureau is considering whether to provide that more than one live conversation per week would be generally prohibited. Except under a strict hard cap approach, a consumer could consent to greater frequency than reflected in the caps for confirmed consumer contact status, for example, by agreeing during the first conversation about a particular account that week that the collector could call the consumer back at a specific date and time later in the week. To be effective, the consent would need to meet the minimum requirements described later in part V.D.

**Table 2: Permissible Consumer Contacts (or Contact Attempts)
Per Account Per Week**

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number	3	2
Total contact attempts	6	3
Live communications	N/A	1

- **Alternatives considered.** The Bureau considered applying the caps on a per-consumer, rather than on a per-account, basis for all types of debts. In rejecting this approach, the Bureau considered that: (1) a collector working on multiple accounts for multiple creditors

⁴⁴ The Bureau considered consumer complaints about—and anecdotal evidence of consumer harm from—too-frequent contacts or contact attempts by collectors, feedback from consumers in response to the Bureau’s *Survey of Consumer Views on Debt* (preliminary results attached at Appendix B), anecdotal data from collectors about call frequency required by debt owners, and relevant case law and states’ laws.

might not be able to work on each account if the collector could only communicate with the consumer one time per week; (2) creditors might seek to place their accounts with collectors who exclusively work their accounts, or work only a certain type of debt, which might make collection activity less efficient; and (3) it could be impracticable or otherwise problematic for collectors to merge information across different creditors' accounts for purposes of counting contacts or contact attempts. The Bureau recognizes that the proposal under consideration would permit a higher number of contacts and contact attempts to consumers with multiple accounts in collection. However, the disadvantages of a per-consumer cap structure and the other measures that the Bureau is considering to increase consumer awareness of, and ability to limit, communications suggest that a per-account approach may be most appropriate. The Bureau continues to consider whether a per-consumer, rather than a per-account, contact cap may be preferable for particular categories of debt, such as student loan or medical debt, where one collector likely may be collecting on multiple accounts for the same consumer simultaneously.

4. Location contacts and frequency of general third-party contacts

Section 804 of the FDCPA permits debt collectors to contact persons other than the person (or persons) who owes or allegedly owes the debt to acquire location information for that individual. It also prescribes requirements regarding such location communications. The Bureau understands that there are concerns about consumer harms from debt collectors using location contacts improperly by, for example, repeatedly contacting or attempting to contact third parties, asking or encouraging third parties to pay the debt, or enlisting third parties to pressure consumers to contact collectors.

The Bureau is considering a set of contact caps that would allow collectors to make a limited number of location contacts (or attempted location contacts) with third parties when the collector does not have confirmed consumer contact. Like the consumer contact caps under consideration, the contact caps being considered for location communications would: (1) apply to all contact channels; (2) restrict both attempts per unique address or phone number and total attempts per week; and (3) apply per account, rather than per consumer. Similarly, the Bureau is considering whether to establish a hard cap, a general cap with limited exceptions, or a rebuttable presumption structure.

The proposals under consideration would set the limits in Table 3 below. As with consumer contacts, attempts to contact a third party would count toward the cap; for instance, a contact that ends with the collector leaving a message for a third party would count as a contact attempt. Consistent with the FDCPA, the caps would prohibit a collector from initiating a contact with any particular third party that the collector already had contacted to obtain location information, unless specifically requested to do so by the third party, or unless the collector reasonably believed that the location information that it had received from the third party was incorrect or incomplete. However, the caps would not restrict the total location attempts made to all third parties per account per week absent harassment or other conduct that would violate FDCPA section 806, since attempts to one third party generally are not likely to harass another third party.

Table 3: Permissible Number of Location Contacts (or Contact Attempts) to a Third Party Per Account Per Week

Collector Activity	Collector Does Not Have Confirmed Consumer Contact	Collector Has Confirmed Consumer Contact
Attempts per unique address or phone number per third party	3	0
Total contact attempts per third party	6	0
Total contact attempts across all third parties	No specific limit	0
Live communications per third party (total, not weekly)	1	0

When the debt collector has confirmed consumer contact, the caps would bar all further location communications. A collector who has reached the consumer obligated or allegedly obligated to pay the debt may no longer need to obtain location information for the consumer. Therefore, future purported location contacts likely may be made for a purpose other than to obtain the consumer's location information. As noted in part V.A.3, above, if the collector reasonably believes that previously confirmed contact information for the consumer has become inaccurate, confirmed consumer contact would be deemed not to exist, and the collector would be permitted to resume contacting third parties to obtain location information.

B. General time, place, manner restrictions

FDCPA section 805(a) limits the times and places at which collectors may communicate with consumers in connection with the collection of debts. For example, it generally prohibits debt collectors from communicating with consumers about a debt at any unusual time or place, or at a time or place that the collector knows or should know is inconvenient for the consumer, unless the collector has received consent directly from the consumer. The statute further specifies that, in the absence of knowledge of circumstances to the contrary, debt collectors shall assume that the convenient time for contacting consumers is after 8:00 a.m. and before 9:00 p.m. in the consumer's location.

Notwithstanding section 805(a)'s protections, consumers have complained that debt collectors contact them at inconvenient times and places, and that they have not been able to prevent such contacts. At the same time, debt collectors may face uncertainty about whether and how section 805(a) applies to communications via newer technologies such as email.

The Bureau believes that this rulemaking presents an opportunity to clarify FDCPA section 805(a) for consumers and collectors alike. Importantly, the proposals under consideration would underscore that collectors must abide by section 805(a)'s protections unless they receive consent to do otherwise directly from consumers. Under the proposal under consideration, collectors would not be able to rely on the consumer consent provided to the original creditor or a prior collector. *See also* part V.D regarding consent, below.

Washington State Collection Agency Board

Board or Staff Assignments

Date Assigned

<i>Agenda Item</i>	<i>Action Item</i>	<i>Assigned to</i>	<i>Status</i>
4/20/2016	Staff will research hang up/no answer call discussions from previous board meetings.		<i>Due Date</i> <i>Completed</i> <input checked="" type="checkbox"/> <i>Out dated</i> <input type="checkbox"/>
..			

Board Meeting

Tab 5

Complaint Cases for Review

Complaint closure recommendations
presented by the assigned case manager.

Board action is required on each case.

Collection Agency Board Administrative Closures

5 cases of no jurisdiction

- Received the complaint.
- Gather information.
- Determine no jurisdiction.
- Closed Case.

22 cases with no violation

- Received the complaint.
- Gather information.
- Notify respondent.
- Review Response
- Determine if there was a violation.
- No?
- Closed Case.

2 cases recommended to be closed by case manager

- Received the complaint.
- Gather information.
- Notify respondent.
- Review response.
- Assign and send case to case manager.
- Receive case manager recommendation to close.
- Closed case.

5 Complaint withdrawn or opened in error

- Received the complaint.
- Gather information.
- Notify respondent.
- Receive request from Complainant to withdraw complaint.
- Notify Respondent that case has been closed.
- Close case.

Board Meeting

Tab 6

Legal Issues for Deliberation

Negotiated settlement orders or default orders presented by the board's prosecution team.

Board action is required on each order.

Board Meeting

Tab 7

Disciplinary & Investigation Reports

Standard disciplinary reports and a list of any administratively-closed complaints.

Provided for information only – typically no board action is needed.

Washington State Collection Agency Board Open Case Complaint Report

Olympia, WA
September 20, 2016

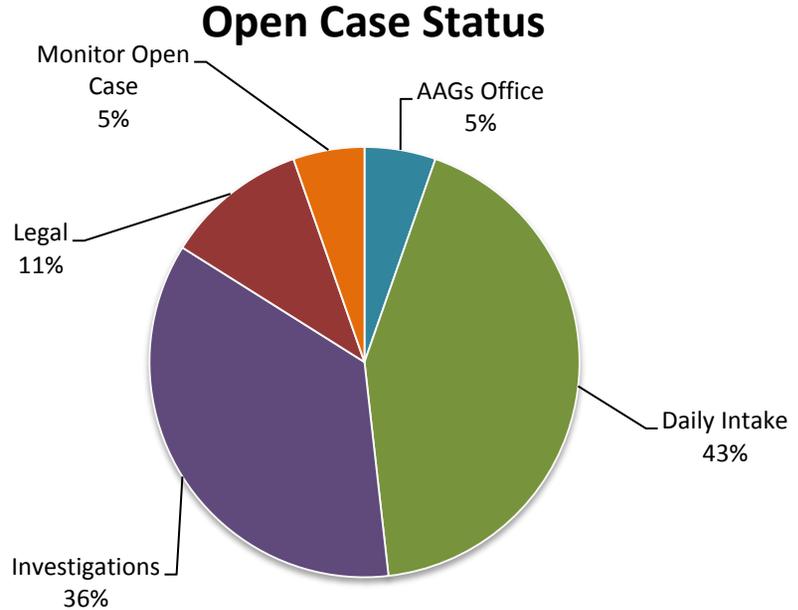
Assigned to:	Unlicensed	Unprofessional Conduct
Raymond Henning	2	3
Scott Kinkley	2	1
Scott W. Wiswall	2	2
No Case Manager	19	24
TOTAL	25	30

Recent Case History	2016	2015
Beginning	27	50
+ Opened	90	108
- Closed	62	131
Remaining open	55	27

Case Status	Case Count
AAGs Office	3
Daily Intake	24
Investigations	20
Legal	6
Monitor Open Case	2
Total	55

Collections Activity	
Monitored for compliance	0
Sent to collections	1
Outstanding fines*	\$ 500.00

*in collections



Typical Complaint Process (Open Case Status)

- o Staff receive complaint (*Daily intake*)
- o Staff evaluate complaint (*Daily intake*)
- o Staff use BAP if appropriate (*BAP*)
- o Staff assign to Case Manager (CM) (*Case Manager Review*)
- o CM review; determine whether to investigate (*Case Manager Review*)
- o Staff investigate complaint (*Investigations*)

o If no evidence supports allegation, CM recommend closure (*Case Manager Review*)

o If evidence supports allegation, CM determine sanctions (*Case Manager Review*)

Run date: 8/30/2016

Board Meeting

Tab 8

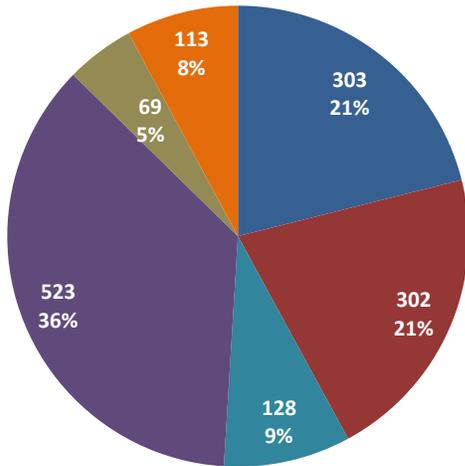
Board Administrator's Report

Operational reports and information
about legislative matters of interest to the board.

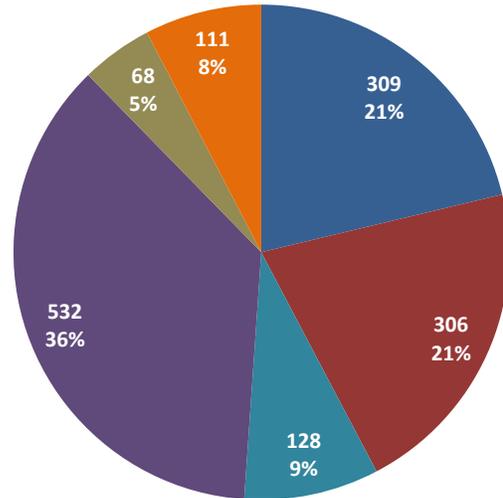
Provided for information only –
typically no board action is needed.

Collection Agency License Counts

Active 3/25/16



Active 8/29/16



License Counts	Active 3/25/16	Active 8/29/16	Change
Collection Agency	303	309	+6
Collection Agency Branch	302	306	+4
Out-Of-State Collection Agency w/fees	128	128	No Change
Out-Of-State Collection Agency w/ out fees	523	532	+9
Out-Of-State Collection Agency Branch w/fees	69	68	-1
Out-Of-State Collection Agency Branch w/ out fees	113	111	-2
License Totals	1438	1454	+16

Board Meeting

Tab 9

Other Business

Review of action items from this meeting, agenda items for the next meeting, and discussion of topics added under the Order of the Agenda.

Board Meeting

Tab 10

Adjournment