



Bureau of Administrative Reviews (BAR) Audit Report 202324-18

December 12, 2024

Executive Summary

Sections 322.2615, 322.2616, 322.271, and 322.64, Florida Statutes (F.S.), authorize the Bureau of Administrative Reviews (BAR) to conduct hearings and reviews to determine eligibility to reinstate driver license suspensions and revocations. BAR is part of the Office of General Counsel and is comprised of eight office locations around the state. From July 1, 2023 through June 30, 2024, BAR conducted 26,052 hearings and reviews and received \$520,177.32 in BAR-related fees.

BAR conducts administrative reviews and hearings for various reasons; a majority of which are for Driving with an Unlawful Blood Alcohol Level (DUBAL) or refusal to submit to a breath, blood, or urine test (refusal).

The purpose of this audit was to review and evaluate the efficiency and effectiveness of BAR operations and compliance with applicable laws, and Department policy and procedures. Our review included reviewing case distribution and the timeliness of scheduling cases and communicating final orders; reviewing and comparing recorded hearings from a sample of BAR field offices and documenting differences; identifying and determining the extent of quality assurance (QA) review activities; reviewing a sample of QA review documentation to determine compliance; and reviewing the training requirements of BAR members and determining whether the required training was completed and documented.

Our review determined that improving the timeliness of hearings would strengthen compliance. We noted that two hardship hearing cases were not scheduled within the 30-day requirement. Failing to afford drivers the opportunity of a hearing within 30 days of a hearing request could result in noncompliance with statute. We also noted that BAR is transitioning to a new case management platform system, OnBase, and therefore not all offices have started using the system. Implementing OnBase in all BAR offices would increase the efficiency of BAR operations. We recommend BAR management ensure hearings are timely scheduled. We also recommend BAR management prioritize the implementation of OnBase to efficiently and effectively assign and process cases. We further recommend BAR management ensure adequate staffing resources are available and appropriately allocated to accommodate timely scheduled hearings.

Our review also determined implementing a formal training manual would strengthen controls and establish clear responsibilities and accountability for BAR operations. We noted the *BAR Operations Manual* was last revised in April 2019 and does not contain



guidelines for completing, reporting, or documenting member training. Since 2018, training documentation and reporting have not been maintained. Additionally, there is no formalized training guidance detailing BAR members' roles, responsibilities, training documentation retention, or management's expectations. We recommend BAR management implement a formal training manual to establish clear responsibilities and accountability for BAR operations. This training manual should include guidance on documentation retention.

Our review further determined ensuring QA audits are being conducted and documented would strengthen BAR operations. We noted the *BAR Operations Manual* no longer reflects current BAR practices, such as changes in the organizational structure of BAR and the cessation of conducting QA audits. With an approximately 50% vacancy rate in BAR, high-priority tasks have taken precedence over QA audits. We recommend BAR management ensure periodic QA audits are being conducted and documented as required by *QA Review Procedures* and *BAR Operations Manual* to ensure BAR operations are consistent within offices. We also recommend BAR management ensure adequate staffing resources are available and appropriately allocated to perform QA audits.

BAR management concurred with the findings and recommendations and has begun implementing corrective actions.

Background and Introduction

Section 322.2615, F.S., *Suspension of License; Right to Review*, states that a law enforcement officer or correctional officer shall, on behalf of the Department, suspend the driving privilege of a person who is driving a motor vehicle and who has an unlawful blood-alcohol or breath-alcohol level of .08 or higher, or of a person who has refused to submit to a urine test or a test of his or her breath-alcohol or blood-alcohol level. The officer shall take the person's driver's license and issue the person a 10-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension.

Section 322.271, F.S., *Authority to Modify Revocation, Cancellation, or Suspension Order*, states scenarios when a person who had their license suspended, canceled, or revoked is allowed the opportunity to petition the Department for reinstatement of driving privileges by way of a hearing. A driving privilege restricted to business purposes only means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes.



BAR conducts hearings arising out of Driving Under the Influence (DUI) cases. When a driver is arrested for DUI due to DUBAL or refusal, his or her driving privilege is administratively suspended by law enforcement on behalf of the Department. BAR provides the due process method to allow drivers to challenge the administrative suspension via a hearing or review of the record. Drivers may also elect to waive their right to challenge their administrative suspension and obtain a restricted (or "Business Purposes Only") license if they otherwise qualify. In addition to scheduling and conducting hearings, the driver's record must be updated to reflect the actions taken.

Driver Requirements

Within 10 days of the date of arrest or issuance of a notice of suspension, cancellation, or revocation of a license, the driver may submit a written request for a formal or informal review hearing by completing HSMV Form 78065, *Application for Formal/Informal Review of Driver's License Suspension/Disqualification*. The driver must indicate on the form what type of review he/she is requesting. The request must include a copy of the DUI citation and the appropriate filing fee.

A driver can also request reinstatement of a driving privilege on a restricted basis (business or employment) by completing HSMV Form 78306, *Application for Administrative Hearing*. The driver must also have already enrolled in or completed an applicable driving training course or DUI substance abuse education course. The driver must also submit a filing fee with the application to the BAR office nearest their residence.

Additionally, drivers may request a review of their driving record to determine the eligibility for immediate reinstatement of his/her driving privileges on a restricted basis by completing HSMV Form 72034, *Request for Eligibility Review*. With this form, the driver is requesting to waive the hearing requirement and determine the eligibility for a restricted license based on the application and any written documentation they are submitting. The driver must also submit a filing fee, a copy of the DUI citation, and proof of enrollment in a DUI school with the form to the BAR office nearest to their residence.

Types of Hearings/Reviews

The following are the types of hearing/reviews that BAR hearing officers conduct most frequently:



- Formal Review
- Informal Review
- Hardship Hearing
- Show Cause Hearing
- Financial Responsibility Hearing
- Medical Hearing
- Re-Examinations Review
- Waiver Hearing

Scheduling Cases

Hearings are assigned to hearing officers (attorneys vs non-attorneys) and scheduled based on both the type of hearing and the office location. Some hearing officers are licensed attorneys, and some are not. If there is more than one hearing officer in an office who can conduct these hearings, they are divided equally. If only one hearing officer in an office can conduct these hearings, that hearing officer's schedule may become full, and any additional hearings would be considered an overflow. If no one in a particular office can conduct the overflow hearings, then the hearings are sent to the Chief of BAR or the Planning Consultant at headquarters for distribution to another office based on workload and hearing officer availability.

In July 2024, BAR started transitioning to a new digital case management platform system, OnBase, and some offices have started using the application for assigning cases. For offices that have not started working with OnBase, they are utilizing paper case files.

QA Reviews

According to the *BAR Operations Manual*, the QA audit process is a primary way BAR tracks office operations and adherence to Department and BAR policy and procedures. Additionally, it specifies regular audits allow the BAR to identify and implement best practices being used in individual offices. The QA audits are standardized, include all aspects of office operations and documentation, and may be announced or unannounced.

The manual states that field office QA audits are conducted by a Regulatory Program Specialist. The Regulatory Program Administrator will review the audit and forward the completed form to the Program Manager responsible for the office with a copy to the Bureau Chief of BAR.

Currently, due to organizational changes, there is no Regulatory Program Specialist position and there have been no audits conducted during the period of our review. The Chief of BAR advised that Field Office Administrators spot-check the work of their BAR office members; however, not all BAR offices have Field Office Administrators due to numerous vacancies in BAR.

Additionally, the Chief of BAR advised that Department members who are assisting



BAR operations are documenting their BAR work in the Department's Bureau of Motorist Services Support SafetyNet site. The training members are spot-checking the assisting members' work to ensure cases are error-free.

Training

There are no federal or state laws that require BAR members to complete specific training annually. According to the *BAR Operations Manual*, the Regulatory Program Specialist position is responsible for ensuring that BAR members have the appropriate training documentation when starting a position in BAR or performing new tasks. Since there is no longer a Regulatory Program Specialist, the Planning Consultant emails training documents to new BAR members. Depending on the position, the Planning Consultant sends specific training tracks (i.e., multiple training documents and PowerPoint presentations) to new members in order for them to understand the requirements and functions of the position. However, there is no evidence retained to reflect that BAR members have completed training and understand their roles and expectations. According to the Chief of BAR, training records for staff members hired in 2018 or earlier would have been held in each office. However, during 2018, BAR was reorganized and downsized and since that time, training documentation or reporting has not been maintained.

The Chief of BAR works with the Chief Counsel for Driver's License and BAR hearing attorneys to develop PowerPoint presentations on pertinent training topics, such as appealed hearings that recently occurred, what attorneys are seeing in their cases, and when a court overturns a decision. The training presentations were being held monthly, but the training has slowed due to the high vacancy rate within BAR. The last training presentation for BAR members was in January 2024.

We also noted the Chief of BAR requires all BAR members (except for Administrative Secretaries) to attend a yearly multi-day training that is conducted by the National Judicial College. Administrative Secretaries are required to stay in offices to keep operational activities running. The courses are conducted around the state and attendees sign a roster to indicate they were present in the training.

Before any training courses are presented to BAR hearing attorneys, the Chief of BAR submits the training curriculum to the office of the Florida BAR and asks if the training can be used towards the Continuing Legal Education (CLE) certifications for the attorneys attending. Non-attorney hearing officers are not required to meet any CLE requirements.



Conclusions

Current workload, technology tools, and staffing limitations have adversely impacted BAR program activities and processes. Key control areas where improvements should be made include ensuring hearing cases are timely scheduled, QA audits are being conducted, and a formal training manual is implemented. These improvements should be made to ensure compliance with Section 322.271, F.S., Rule 15A-6.013, Florida Administrative Code (F.A.C.), and the *BAR Operations Manual*.

Findings and Recommendations

Timeliness of Hearings

Finding No. 1: Improving the timeliness of hearings would strengthen compliance.

Section 322.271, F.S., *Authority to Modify Revocation, Cancellation, or Suspension Order*, requires upon suspension, cancellation, or revocation of a driver's license of any person as authorized or required in this chapter, the Department shall afford the driver an opportunity for a hearing, as early as practicable, not more than 30 days after receipt of such a request.

According to Rule 15A-6.013, F.A.C., *Formal Review*, upon receipt of a request for a formal review, the BAR shall schedule a hearing within 30 days after the request is received unless waived by the driver.

BAR Operations Manual states informal reviews should be scheduled within 12 to 14 days of the request, but no later than 30 days.

We randomly sampled a total of 75 hearings from three types of cases. We reviewed 25 hardship, 25 formal, and 25 waiver hearings to determine the timeliness of scheduling the hearing and communicating the results. During the review, the following was noted:

- 2 of the 25 hardship hearing cases (8%) were not scheduled within 30 days following a request. The delayed hearings were scheduled between 3 to 6 days after the required period.

Failing to afford drivers the opportunity of a hearing not more than 30 days after a hearing request, could result in noncompliance.

In July 2024, BAR started transitioning to a new case management platform system, OnBase, to increase the efficiency and effectiveness of operations. During the time of



the audit, some offices started using the application for assigning cases, but some offices are still utilizing physical case files.

Implementation of OnBase in all BAR offices would enhance efficiency in accessing case information, reviewing documents, scheduling cases, and communicating final orders.

Recommendations

We recommend BAR management ensure hearings are timely scheduled to ensure compliance with Section 322.271, F.S., Rule 15A-6.013 F.A.C., and the *BAR Operations Manual*.

We also recommend BAR management prioritize the implementation of OnBase to efficiently and effectively assign and process cases.

We further recommend BAR management ensure adequate staffing resources are available and appropriately allocated to accommodate timely scheduled hearings.

Management Response

The Bureau agrees with the recommendations. As noted in this audit, BAR's vacancy rate has been approximately 50%. To address this staffing shortage, overtime has been authorized and BAR has hired Other Personnel Services (OPS) staff. Staff members have been obtained from Motorist Services to fill BAR positions temporarily, and we are aggressively hiring. As staffing increases, we will be able to conduct more timely hearings.

Regarding OnBase, all BAR offices are now utilizing the new case management system. OnBase functionality is being delivered in phased rollouts. Phase I has been completed. Phase II is set to begin in 2025. OnBase is a high priority for BAR leadership

Formal Training Manual

Finding No. 2: Implementing a formal training manual would provide controls and establish clear responsibilities and accountability for BAR operations.

Department Policy 11.12, *Management Control*, states that managers are responsible for specifying and establishing policies, plans, operating standards, and procedures. Managers should establish practical controlling processes that require and encourage members to carry out their duties and responsibilities in a manner that fosters a favorable control environment.



As best practice, a focused training manual ensures that all employees have the necessary knowledge, skills, and abilities required to perform job tasks. Training manuals establish a standard operating procedure (SOP) that promotes consistency throughout the organization. This consistency leads to better outcomes and reduces errors. Additionally, retaining documentation of member training enhances assurance that members receive the required training.

During the review, we noted the *BAR Operations Manual* was last revised in April 2019 and does not contain information on how training is completed, reported, or documented. The manual states that it is designed to assist trained BAR members in ensuring they follow all appropriate procedures and is not to be construed as being a training manual but to act as a reminder of steps and current policies that should be followed.

The *BAR Operations Manual* also specifies the responsibilities of the Regulatory Program Specialist to ensure BAR members receive the required training when they start a new position or perform new tasks in BAR. This training includes receiving and reviewing in-house-created training materials and understanding the tasks and activities involved. Since the BAR vacancy rate has increased and organizational changes have occurred, the Regulatory Program Specialist position has been eliminated.

According to the Chief of BAR, training completion documentation for staff members hired in 2018 or earlier would have been held in the office by the office supervisor. However, in 2018, BAR was reorganized and downsized by its leadership and since that time, training documentation and reporting have not been maintained.

There is no formal documented training guidance detailing BAR members' roles, responsibilities, training documents retention, or management's expectations.

The absence of a formal BAR training manual reduces assurance that management's expectations are effectively communicated to members. When expectations are not communicated, performance and accountability are compromised.

Also, without standardized training, the consistency of BAR operations is reduced. Additionally, failing to maintain member training documentation reduces assurance that adequate training has been completed.

Recommendation

We recommend BAR management implement a formal training manual to establish clear responsibilities and accountability for BAR operations. The training manual should include guidance on documentation retention.

Management Response

The Bureau agrees with the recommendation. As discussed, due to our vacancy rate, BAR has focused on conducting high-priority tasks, such as completing hearings for drivers. As we continue to hire, we will focus on developing a formal training manual, including guidance on document retention.

Quality Assurance Audits

Finding No. 3: Ensuring QA audits are being conducted and documented would strengthen BAR operations.

The *BAR Operations Manual* states the Regulatory Program Specialist is authorized to provide QA functions to ensure all offices can complete their mission. QA audits are conducted according to a schedule dictated by the Bureau Chief of BAR. The manual states the optimal schedule is to conduct two QA audits at each BAR office during each calendar year. The QA audit process is the primary way that BAR tracks office operations and adherence to Department and BAR policy and procedures. Additionally, regular reviews allow BAR to identify and implement best practices being used in individual offices.

QA Review Procedures detail step-by-step guidelines to ensure every QA audit is conducted in a uniform and consistent manner with the same expectations and standards being applied. The Regulatory Program Specialist is responsible for conducting QA audits in the offices.

The *BAR Operations Manual* was last updated in April 2019. OIG noted that the *BAR Operations Manual* no longer reflects current BAR practices. Specifically, the changes to BAR practices include the following:

- Under the direction of prior BAR leadership, QA audits were discontinued. The last documented QA occurred in January 2020.
- The organizational structure of BAR has changed and no longer includes any Regulatory Program Specialist positions.

While formal QA audits are no longer performed, informal, spot-check reviews are conducted in offices.

We judgmentally sampled 30 hearing recordings from different BAR office locations for three case types. We listened to recordings of 10 hardship, 10 formal, and 10 eligibility (waiver) hearings to compare hearings across offices and document any differences between the hearings. Hearing officers are required to follow a specific script for each type of hearing. During our review, the following instances were noted:



- In 1 of the 30 hearings, the hearing officer did not state on record the authority of Section 322.271, F.S., did not place the individual under oath, and did not record their name, date of birth, and current address as required by the script; and
- In 1 of the 30 hearings, the hearing officer did not state on record the driver's license number as required by the script.

According to BAR management, the QA audits were stopped by former leadership during the COVID-19 pandemic. Since that time, staff vacancies have increased, and no audits have been completed. Also, with approximately a 50% vacancy rate in BAR, high-priority tasks have taken precedence over QA audits.

Recommendations

We recommend BAR management ensure periodic QA audits are being conducted and documented as required by *QA Review Procedures* and *BAR Operations Manual* to ensure BAR operations are consistent within offices.

We also recommend BAR management ensure adequate staffing resources are available and appropriately allocated to perform QA audits.

Management Response

The Bureau agrees with the recommendations. As noted in this audit, due to organizational changes, no positions are assigned to conduct QA reviews. While dealing with our high number of vacancies, we are working to reorganize BAR's structure to provide additional supervision and oversight of work at each office. This is a short-term solution. Long-term, as there are no positions for QA review, we will need to add positions to fulfill this role. Obtaining these positions will be subject to approval by Department leadership and may require authorization and funding from the Legislature.

Purpose, Scope, and Methodology

The purpose of this audit was to review and evaluate the efficiency and effectiveness of BAR operations and compliance with applicable laws, Department policy and procedures.

The scope of this audit included the BAR's records and operation procedures from July 1, 2023 – December 31, 2023. After communications with BAR management, the scope of the audit was amended to July 1, 2023 – June 30, 2024, due to records availability.



The methodology included:

- Reviewing applicable statutes, rules, manuals, and procedures;
- Interviewing appropriate Department staff;
- Gaining an understanding of the types of cases heard and how they are distributed and scheduled among hearing officers;
- Reviewing the timeliness of scheduling cases and communicating final orders;
- Listening and comparing a sample of recorded hearings;
- Reviewing QA review activities and documentation; and
- Reviewing training requirements and documentation of BAR members.

Acknowledgement

We would like to thank BAR management who assisted during the audit and express our appreciation for their cooperation during the course of our examination.



Distribution, Statement of Accordance, and Project Team

Distribution

Dave Kerner, Executive Director
Robert Kynoch, Deputy Executive Director
Jennifer Langston, Chief of Staff
David J. Arthmann, General Counsel
Tom Moffett, Chief of Administrative Reviews

Melinda M. Miguel, Chief Inspector General
Sherrill F. Norman, Auditor General

Statement of Accordance

Section 20.055, Florida Statutes, requires the Florida Department of Highway Safety and Motor Vehicles' Inspector General to review, evaluate, and report on policies, plans, procedures, accounting, financial, and other operations of the Department and to recommend improvements. This audit engagement was conducted in accordance with applicable *International Standards for the Professional Practice of Internal Auditing* published by the Institute of Internal Auditors and *Principles and Standards for Offices of Inspector General* published by the Association of Inspectors General.

Project Team

Engagement conducted by:
Kim Butler, Auditor

Under the supervision of:
Erin Mook, Audit Director

Approved by:

Mike Stacy, Inspector General

ATTACHMENT - Management Response



Dave Kerner
Executive Director

2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
www.flhsmv.gov

MEMORANDUM

DATE: December 6, 2024
TO: Kim Butler, Audit Supervisor
FROM: Tom Moffett, Chief of Administrative Reviews
SUBJECT: Management Response to the Bureau of Administrative Review Audit (BAR) (202324-18)

The following is our response to the findings and recommendations presented in the report.

Finding 1: Improving the timeliness of hearings would strengthen compliance.

Recommendations

We recommend BAR management ensure hearings are timely scheduled to ensure compliance with Section 322.271, F.S., Rule 15A-6.013 F.A.C., and the *BAR Operations Manual*.

We also recommend BAR management prioritize the implementation of OnBase to efficiently and effectively assign and process cases.

We further recommend BAR management ensure adequate staffing resources are available and appropriately allocated to accommodate timely scheduled hearings.

Management Response

The Bureau agrees with the recommendations. As noted in this audit, BAR's vacancy rate has been approximately 50%. To address this staffing shortage, overtime has been authorized, BAR has hired OPS personnel, personnel have been obtained from Motorist Services to temporarily fill BAR positions, and we are aggressively hiring. As staffing increases, we will be able to conduct more timely hearings.

Regarding OnBase, all BAR offices are now utilizing the new case management system. OnBase functionality is being delivered in phased rollouts. Phase I has been completed. Phase II is set to begin in 2025. OnBase is a high priority for BAR leadership.

Service • Integrity • Courtesy • Professionalism • Innovation • Excellence
An Equal Opportunity Employer



Finding 2: Implementing a formal training manual would provide controls and establish clear responsibilities and accountability for BAR operations.

Recommendation

We recommend BAR management implement a formal training manual to establish clear responsibilities and accountability for BAR operations. The training manual should include guidance on documentation retention.

Management Response

The Bureau agrees with the recommendation. As discussed, due to our vacancy rate, BAR has focused on conducting high-priority tasks, such as completing hearings for drivers. As we continue to hire we will focus on developing a formal training manual, including guidance on document retention.

Finding 3: Ensuring QA audits are being conducted and documented would strengthen BAR operations.

Recommendations

We recommend BAR management ensure periodic QA reviews are being conducted and documented as required by *QA Review Procedures* and *BAR Operations Manual* to ensure BAR operations are consistent within offices.

We also recommend BAR management ensure adequate staffing resources are available and appropriately allocated to perform QA review audits.

Management Response

The Bureau agrees with the recommendations. As noted in this audit, due to organizational changes, there are no positions assigned to conduct QA reviews. While dealing with our high number of vacancies, we are working to reorganize BAR's structure to provide additional supervision and oversight of work at each office. This is a short-term solution. Long term, as there are no positions for QA review, we will need to add positions to fulfill this role. Obtaining these positions will be subject to approval by Department leadership and may require authorization and funding from the Legislature.