

**BACKGROUND PAPER REGARDING ISSUES  
TO BE ADDRESSED BY THE  
DEPARTMENT OF CONSUMER AFFAIRS**

**(Oversight Hearing, March 23, 2015, by the  
Senate Committee on Business, Professions & Economic Development and  
Assembly Committee on Business & Professions)**

### **Overview of Department of Consumer Affairs**

The mission of the Department of Consumer Affairs (DCA) is “To protect consumers through effective enforcement activities and oversight of California’s licensed professionals.” By statute, consumer protection is the primary purpose for all of the regulatory programs located within the DCA, which consists of 26 boards, nine bureaus, two committees, one program, and one commission (hereafter “boards” unless otherwise noted). Collectively, these boards regulate more than 100 types of businesses and 200 different industries and professions. For example, physicians, acupuncturists, private security companies, and beauty salons are all regulated by the DCA. As regulators, these boards perform two basic functions:

- 1) Licensing—which entails ensuring only those who meet minimum standards are issued a license to practice, and
- 2) Enforcement—which entails investigation of alleged violations of laws and/or regulations and taking disciplinary action, when appropriate.

All of the boards and committees, as well as the commission, within the DCA are semiautonomous regulatory bodies with the authority to set their own priorities and policies and take disciplinary action on their licensees. Conversely, the DCA has direct authority and control over the bureaus. The DCA provides administrative support and guidance to the bureaus, boards, committees and commission. Members of the boards, committees, and commission are appointed by the Governor, and the Legislature. Some bureau chiefs are appointed by the Governor; others are appointed by the Director of the DCA. The following table on the next page shows the annual budgets (in millions) and staffing totals for the DCA’s divisions, boards, bureaus, committees, commission, and programs for Fiscal Years 2011-13 through 2015-16.

| Expenditures and Positions |                                  |                                  |                                  |                                     |                                    |
|----------------------------|----------------------------------|----------------------------------|----------------------------------|-------------------------------------|------------------------------------|
|                            | Fiscal Year<br>2011–12<br>Actual | Fiscal Year<br>2012–13<br>Actual | Fiscal Year<br>2013–14<br>Actual | Fiscal Year<br>2014-15<br>Estimated | Fiscal Year<br>2015-16<br>Proposed |
| <b>Budget*</b>             | 456,900                          | 442,384                          | 533,978                          | 610,525                             | 593,712                            |
| <b>Positions</b>           | 2,702                            | 2,751                            | 3,164                            | 3,415                               | 3,439                              |

\* Dollars in thousands

## Issue #1: BreEZe

### Introduction

The DCA has been working since 2009 on replacing multiple antiquated standalone IT systems with one fully integrated technology system. In October 2013, DCA launched its new customized information technology (IT) system, which it calls BreEZe. Unfortunately, there were significant problems with the planning, design, project management, and training associated with BreEZe and the future of the project is now in question.

### Background

In 2009, after three failed attempts to update outdated “legacy” IT systems, the DCA began the process of developing an IT system that would integrate the licensing and enforcement functions of all the DCA boards. According to the DCA, BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information if/when the program is fully operational.

When originally authorized, BreEZe was projected to cost approximately \$28 million and scheduled to be fully operational by June 2014. A contract to develop BreEZe was awarded to Accenture in September 2011. The project plan calls for BreEZe to be implemented in three releases. The first release was scheduled for June 2012. The DCA did not meet this target date. Release 1 was launched in October 2013.

In prior years’ testimony before these Committees, the DCA has assured that, despite increasing costs, project delays, and problems with the system, the BreEZe contract would produce a quality product while protecting the DCA’s fiscal interests. As this report will detail, it is not clear that those goals have been met.

To date, only the Release 1 boards are using BreEZe. The rest of the boards continue to use the outdated “legacy” systems. While there is a plan to expand BreEZe to the Release 2 boards, there is no plan to launch BreEZe for the Release 3 boards. As discussed on page 9, all of boards are paying into the BreEZe project (including the Release 3 boards).

Release 1 boards are:

1. Barbering and Cosmetology, Board of
2. Behavioral Sciences, Board of
3. Medical Board of California
4. Naturopathic Medicine Committee
5. Osteopathic Medical Board of California
6. Physician Assistant Board
7. Podiatric Medicine, Board of
8. Psychology, Board of
9. Registered Nursing, Board of
10. Respiratory Care Board

Release 2 boards are:

1. Board of Occupational Therapy
2. Board of Optometry
3. Board of Vocational Nursing & Psychiatric Technicians
4. Dental Board
5. Dental Hygiene Committee
6. Physical Therapy Board
7. Security & Investigative Services, Bureau of
8. Veterinary Board & Technical Exam Committee

Release 3 boards are:

1. Accountancy, Board of
2. Acupuncture Board
3. Architects Board
4. Athletic Commission
5. Automotive Repair, Bureau of
6. Cemetery & Funeral Bureau
7. Chiropractic Examiners, Board of
8. Contractors State License Board
9. Court Reporters Board
10. Electronic, Appliance Repair, Home Furnishing and Thermal Insulation, Bureau of
11. Guide Dogs for the Blind, Board of
12. Landscape Architects Technical Committee
13. Pharmacy Board
14. Private Postsecondary Education, Bureau of
15. Prof Engineers, Land/Geologists, Board for
16. Professional Fiduciaries Bureau
17. Speech-Language Path & Audiology & Hearing Aid
18. Structural Pest Control Board
19. Telephone Medical Advice Services

### Problems with Release 1

There were numerous problems with BreEZe when Release 1 was launched, and service to hundreds of applicants and licensees was delayed. In fact, more than 1,000 system defects were identified at the time BreEZe was launched. Fixing the problems has required many hours of staff workarounds, system reprogramming, and contract renegotiations. While some issues with Release 1 have been resolved, many remain outstanding and not all of the promised online functionality of BreEZe is available for Release 1 boards. Examples of some of the problems with BreEZe, and their impact on the boards and the public, are described below.

- Applicants could no longer check the status of their application files.
- Online renewals were temporarily unavailable.

- Online applications were not being accepted for certain license types.
- Delays in processing certain applications occurred.

Significantly, the Board of Registered Nursing (BRN) posted a notice on its Web site that states, “Due to circumstances beyond the control of the Board of Registered Nursing, we are experiencing some delays in processing applications. If it has been less than 90 days since your payment has cleared through your bank, please refrain from contacting the Board for application status.”

In addition to the reduced service to the public, behind the scenes the staff at the board and in the DCA’s IT division were scrambling to sort out the problems. Glitches in the system required significant resources to correct on the back end. Additionally, the boards had to modify their own internal business processes to accommodate BreEZe.

After BreEZE was launched, backlogs at the BRN generated media attention. Initially, DCA appeared to lay blame with staff. A story in the *Sacramento Bee* dated February 8, 2014, states, “Since the Internet-based BreEZe program went online last fall, nursing graduates are waiting up to three months for a test date-and losing jobs because of it. But unlike some other state information technology snafus caused by glitchy software, this time state officials say state workers are the root of the problem. They’ve had trouble switching from a ‘green-screen’ program in use for decades to the \$52 million Web-based system installed by New York-based tech firm Accenture PLC.”

A week later, a story ran in the *Los Angeles Times* indicated that the problem was not just with staff, but also with the system itself. In the story, a DCA representative was quoted as follows, “Our BreEZe computer system is not doing everything it was designed to do yet.” According to the story, instead of automating the licensing process, BreEZe was causing additional steps and additional workload.

During the March 10 2014, legislative oversight hearing, the DCA reported that, “The Department’s priority has been, and will continue to be, making Release 1 functional and stable for our Release 1 boards. The Department and the vendor understand the importance of stable and successful Release 1 product that will meet the needs of the client boards, California consumers, and professional licensees. The Department is working with the vendor to revise the maintenance and operations agreement to provide the Department with greater agility and flexibility in applying necessary system updates and enhancements for Release 1 boards.”

As discussed below, the State Auditor later determined that the problems were with both the design and rollout of BreEZe. The foundation on which BreEZe was designed was outdated, which resulted in a system that did not meet the board’s program needs. Additionally, staff training and department-wide change management was insufficient, which resulted in staff being unprepared to use BreEZe. However, the Auditor did not find the backlogs at BRN were directly linked to BreEZe.

### State Auditor's Report on BreEZe

Problems with BreEZe Release 1 were significant enough to justify an audit by the Bureau of State Audits (BSA). On May 20, 2014, Assembly Member Kristin Olsen asked the Joint Legislative Audit Committee to authorize an audit of “policies and procedures on the planning, development and implementation” of BreEZe. The audit was approved by the Joint Legislative Audit Committee on June 4, 2014.

On February 12, 2015, BSA released an audit report that identified numerous problems with the DCA’s planning for and oversight of BreEZe. Some of the most significant findings and observations include:

- The DCA relied upon outdated documentation of business needs to define the scope of the project, which resulted in more than 1,000 system defects at the time BreEZe was launched.
- The DCA did not understand the depth and breadth of its boards’ operations and licensing functions, nor did it understand the lack of flexibility within the boards to make changes to their processes.
- The DCA failed to provide adequate change management and training during the launch of BreEZe.
- The DCA and the Department of Technology did not appropriately address 180 significant concerns that were identified as BreEZe was being developed.
- The DCA’s contract with the vendor transferred significant risk to the State and reduced the State’s protections against intellectual property rights violations.

The State Auditor also documented a general dissatisfaction with BreEZe. The table on the next page has been reproduced from the BSA audit and indicates the satisfaction and dissatisfaction level for the 10 agencies selected for BreEZe implementation.

## Selected Responses From 10 Regulatory Entities to Questions Regarding Their Experiences With the BreEZe System

| CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS (CONSUMER AFFAIRS) REGULATORY ENTITY | OVERALL SATISFACTION WITH BREEZE | SATISFIED WITH DESIGN PLANNING | SATISFIED WITH TESTING | SATISFIED WITH TRAINING | READY TO IMPLEMENT BREEZE IN OCTOBER 2013 | SATISFIED WITH REPORTS AND DATA ACCURACY | EFFECT ON OPERATIONAL EFFICIENCY | CONCERNS ADDRESSED IN ADEQUATE AND TIMELY MANNER |
|--|----------------------------------|--------------------------------|------------------------|-------------------------|---|--|----------------------------------|--|
| Board of Barbering and Cosmetology   | Fair                             | Yes                            | No                     | No                      | Yes                                       | No                                       | Decreased                        | No   |
| Board of Behavioral Sciences   | Fair                             | Yes                            | Yes                    | Yes                     | Yes                                       | No                                       | Decreased                        | Yes  |
| Board of Podiatric Medicine  | Good                             | Yes                            | Yes                    | Yes                     | No  | No                                       | Increased                        | Yes  |
| Board of Psychology  | Fair                             | No                             | No                     | No                      | No  | No                                       | Decreased                        | No   |
| Board of Registered Nursing  | Poor                             | Yes                            | No                     | No                      | No  | No                                       | Decreased                        | No   |
| Medical Board of California  | Fair                             | No                             | No                     | No                      | Yes                                       | No                                       | Decreased                        | No   |
| Naturopathic Medicine Committee  | Poor                             | No                             | No                     | No                      | Yes                                       | No                                       | Decreased                        | No   |
| Osteopathic Medical Board  | Poor                             | No                             | No                     | No                      | Yes                                       | No                                       | Decreased                        | No   |
| Physician Assistant Board  | Fair                             | No                             | No                     | No                      | No  | No                                       | Decreased                        | No   |
| Respiratory Care Board   | Very Good                        | No                             | Yes                    | Yes                     | Yes                                       | No                                       | Increased                        | Yes  |

Sources: The 10 Consumer Affairs' regulatory entities included in phase 1 of the BreEZe implementation.

Note: The column titled *Overall Satisfaction With BreEZe* presents the regulatory entities' responses to a question regarding their overall satisfaction with the BreEZe system as of the dates we conducted our interviews, which occurred in mid-September 2014 through mid-October 2014. Thus, this column does not represent a summary of the responses we received to the remaining questions presented in this table. Rather, the regulatory entities' responses to the remaining questions in this table represent their experiences with the BreEZe system at different points in time during the course of the project.

The State Auditor raised issues that call into question the state's system for overseeing large-scale IT projects. Additionally, the Auditor made recommendation for BRN's licensing processes. Questions and recommendations about IT oversight and BRN's licensing program are not addressed in this report. Separate legislative oversight hearings will address those issues. For purposes of this hearing, we will remain focused on BreEZe, its impact on regulatory programs, and DCA's role in managing the project.

### Changing Cost, Schedule and Scope of BreEZe

As the table on the next page shows, the scope, timeline, and cost of BreEZe has expanded and contracted over the years. Each change required the DCA to submit a Special Project Report (SPR), which provides a summary of proposed changes to the original project cost, schedule, or scope. An SPR generally is required when project costs or total financial program benefits deviate or are anticipated to deviate by 10 percent or more, or a major change occurs in project requirements methodology. The DCA has generated four different SPRs for BreEZe. The first two SPRs were implemented, but the third was withdrawn. The fourth, which is referred to as SPR 3.1, is pending. (The table on the next page was reproduced from the BSA audit. It shows high-level changes in BreEZe timelines and costs.)<sup>1</sup>

<sup>1</sup> Although the Audit reflects SPR 3.1 at a cost of \$96.1 million, DCA reports that the Audit references a draft version of SPR 3.1 and the actual cost of SPR 3.1 is \$95.4 million.

**Table 6**

**BreEZe Estimated Cost Increases Since the Project's Inception From November 2009 Through January 2015 (Dollars in Millions)**

| DOCUMENT                    | DATE OF ESTIMATE  | TOTAL COST ESTIMATE | AMOUNT CHANGE FROM INITIAL ESTIMATE IN 2009 | PERCENTAGE CHANGE FROM INITIAL ESTIMATE IN 2009 |
|-----------------------------|-------------------|---------------------|---|---|
| Feasibility Study Report    | November 10, 2009 | \$27.5              | \$0.0                                       | 0%  |
| Special Project Report 1    | June 22, 2011     | 45.8                | 18.3  | 66.5  |
| Special Project Report 2    | July 22, 2013     | 77.9                | 50.4  | 183.3   |
| Special Project Report 3*   | June 25, 2014     | 118.3               | 90.8  | 330.2   |
| Special Project Report 3.1† | January 7, 2015   | 96.1                | 68.6  | 249.5   |

Sources: California Department of Consumer Affairs' (Consumer Affairs) BreEZe Feasibility Study Report, and Special Project Reports (SPR).

\* The total cost estimate presented in SPR 3 captures only those costs Consumer Affairs projected through the implementation of BreEZe at the phase 2 regulatory entities. Thus, this amount does not include the projected costs for implementing BreEZe at the 19 phase 3 regulatory entities. Further, although SPR 3 was initially approved by the California Department of Technology (CalTech) in July 2014, Consumer Affairs withdrew the report in September 2014. According to the BreEZe project director, Consumer Affairs withdrew SPR 3 at the direction of CalTech and the California Department of Finance.

† SPR 3.1 was submitted by Consumer Affairs to CalTech after these entities concluded negotiations with Accenture LLP on December 1, 2014, to remove phase 3 from the BreEZe project.

According to the DCA, *SPR 3.1 addresses many of the Auditor's findings regarding project management and other issues*. To amend the Accenture contract as outlined in SPR 3.1, the DCA and the Department of Finance (DOF) were required to notify the Joint Legislative Budget Committee (JLBC).

On January 27, 2015, the DOF submitted a "Section 11" letter to the JLBC that indicates the DCA intends to pursue significant changes in the scope, timeline, and cost of developing BreEZe, as described in SPR 3.1. Specifically, the cost would be \$95.4 million, up from original estimates of \$28 million. The scope of the project would be significantly modified, as 19 of the department's boards and bureaus would be cut from the project. These changes effectively cut the project scope in half while tripling the cost. The design methodology and quality assurance measures are significantly enhanced in SPR 3.1. The DCA also was seeking 34 additional personnel years (PYs) to assist with the project

JLBC had 30 days to respond to the Section 11 letter. Citing concerns that there was insufficient time to review SPR 3.1 in a meaningful way, on February 25, 2015, the JLBC advised DOF that the Committee did not concur with the plan outlined in the Section 11 letter. The JLBC letter states, "Despite the magnitude of these changes, the Administration has failed to provide adequate information necessary to inform the Legislature's review and decision-making. In particular, it is critical for the Legislature to understand:

- **DCA's Long-Term Plan for the Project.** The Legislature needs the department's long-term plan for moving forward with the project, including the anticipated cost and timeline for providing IT solutions for the board and bureaus in Release 3. The DCA has indicated they do not plan to conduct this analysis until sometime after Release 2 is completed in 2016. However, this information is necessary for the Legislature to adequately evaluate whether the proposed course of action is the best available long-term approach.

- **Allocation of Project Costs.** Information is also needed on how project costs will be allocated across boards and bureaus and how those costs will affect license fees for each entity. The Administration did not initially provide this information when requested by legislative staff. On February 24, 2015—just two days before the end of the JLBC’s 30-day review period—the Administration provided some pertinent information. However, this does not leave the Legislature with adequate time to meaningfully review and analyze this information.”

The DCA responded on February 26, 2015 with the following statement that reads:

“The Joint Legislative Budget Committee sent a letter to the Department of Finance today denying the Department’s request to amend a key contract with a vendor for the new BreZE licensing and enforcement database until the committee can hold a series of hearings.

“We are still evaluating the potential ramifications of the letter from the Joint Legislative Budget Committee, however today’s action triggers a domino-effect that could have a significant cost impact on our Boards and Bureaus.

“Because we cannot now amend the contract, we will be forced to operate under the old contract. The old contract requires us to have BreZE’s second release ready by April. One of the reasons we renegotiated the contract is to provide more time for Release 2 to avoid the problems in Release 1. As a result, we will likely have to terminate the contract. That in turn means the Boards and Bureaus may have to pay up to \$86 million while getting nothing in return. That is why we felt it fiscally prudent to amend the contract in the first place.”

Despite the statement above, JLBC did not deny the DCA’s request to amend the contract. Rather, the Committee asked the department to provide detailed responses to the issues raised in the Committee’s letter at upcoming legislative hearings.

The Legislative hearings referenced in the letter are:

- |                |   |
|----------------|---|
| March 12, 2015 | Senate Budget and Fiscal Review Subcommittee No. 4 on State and Administration and General Government                                     |
| March 23, 2015 | Joint Hearing of the Senate Business, Professions, and Economic Development Committee and the Assembly business and Professions Committee |
| April 14, 2015 | Assembly Budget Subcommittee No. 4 on State Administration  |

In a February 24, 2015 briefing, the DCA reported that not going forward with SPR 3.1 would cause the department to pursue an immediate stop-work order followed by termination for convenience to “limit the DCA’s financial exposure.” The DCA has estimated the costs associated with delaying the implementation of SPR 3.1 at about \$1.7 million per month (\$1.3 million for the Accenture contract and \$400,000 for other state staff and contractor costs). It estimates that termination of the contract would cost the department about \$86 million based on the monthly “cost” of \$2 million per month at 43 months.

The JLBC letter also urged the DCA to “make every effort to minimize the costs associated with this short delay” to provide a more informed, thorough, and public decision-making process. The JLBC letter also stated, “such a process may ultimately provide a better outcome that could save the state money in the long run.” It closed with, “I will reconsider the merits of the proposed approach following upcoming legislative oversight hearings.”

According to the State Auditor, “there are mechanisms in the contract that allow for the containment of potential liability. In particular, there are provisions that allow for a partial or complete stop work order and they require the contractor to take all reasonable steps to minimize the resulting costs and they specify that the State is not liable for lost profits.”

Based on the above, it is unclear why the DCA would characterize the JLBC’s actions as denying the request to amend the contract and consequently threaten to shut down the entire BreEZe project. In contrast to the threat to shut down BreEZe, Committee staff has been told that the DCA is exploring options to minimize costs while awaiting legislative action.

### Release 3 Boards

Under SPR 3.1, the DCA has no formal plan to expand BreEZe to the Release 3 boards. Instead, the DCA intends to conduct a cost-benefit analysis for Release 3 boards after Release 2 is completed in 2016. Despite the lack of plan, Release 3 boards have already paid over \$4 million for BreEZe. These boards are projected to pay about \$13 million through FY 2016-17. These charges are being assessed *without any specific plan or assessment to address if, how, or when BreEZe will work for the Release 3 boards.*

The basis for the cost distribution of BreEZe for Release 3 boards is unclear. For example, Bureau for Private Postsecondary Education (BPPE), with an annual budget of about \$10 million is scheduled to about \$10,000 through FY 2016-17. Conversely, the Athletic Commission, with an operating budget of about \$1.5 million, is scheduled to pay about \$50,000 through FY 2016-17

As noted above, in 2014, DCA completed SPR 3, which was subsequently withdrawn. SPR 3.1 was issued in late January 2015. *Importantly, both SPR 3 and SPR 3.1 did not include costs for the Release 3 boards.* This means that the DCA knew the Release 3 boards would be cut from BreEZE planning at least six months before the Legislature was advised of this dramatic change in project scope. Despite that knowledge, the DCA has continued to assess BreEZe costs on Release 3 boards.

The feasibility of BreEZe working for Release 3 boards has not been assessed. With about 160 different license types, the 19 boards for Release 3 boards operate some of the most complex licensing programs in the DCA. Additionally, some of the Release 3 have licensing structures that are vastly different from the traditional DCA model. For example, the Athletic Commission does not require education or licensing exams before it issues a license to an athlete, and their licenses are not generally renewed. They often expire and a new license is issued if and when it is needed. In fact, unlike other the DCA boards, the Athletic Commission sometimes issues licenses in the field. It is unclear if this service could be provided via BreEZe. The Bureaus for Private Postsecondary Education and Telephone Medical Advice Services have regulatory

structures that are completely unique within the DCA. Therefore, absent any assessment of their needs, the feasibility of BreEZe being suitable for these boards is questionable.

Long-Term Fiscal Impact on Boards

Under SPR 3.1, BreEZe is projected to cost \$95.4 million. According to DCA, the costs are scheduled to be distributed between the boards in Release 1, 2 and 3 as follows:

Release 1: \$55.4 million  
 Release 2: \$23.3 million  
 Release 3: \$16.7 million  
**Total: \$95.4 million**

According to DCA, the figures above include new and redirected resources. Basically, redirected resources are existing personnel within the boards and at the department who are working on the project. The “cost” of the staff is absorbed by the employer. Therefore, no additional funding is required.

On February 24, 2015, the DCA provided fund condition reports that demonstrate the impact of development and maintenance of BreEZe on all of the DCA’s special funds. (Appendix 1 shows the costs for each of the boards and the resulting effect on the fund conditions.) According to these reports, 18 of the funds are projected to have less than 3 months in reserve in FY 2016-17. Typically, boards consider seeking fee increases when they project the funds will dip below a three-month reserve. If these projections are accurate, those same 18 regulatory programs could be seeking fee increases next fiscal year.

| Fiscal Impact of BreEZe SPR 3.1                    |  |                |
|--|--|----------------|
| Fund Name  | Projected Months in Reserve FY 2016-17 | BreEZe Release |
| Behavioral Sciences Examiners Fund                 | .9                                     | 1              |
| Contractors License Fund                           | 2.4                                    | 3              |
| State Dentistry Fund                               | .5                                     | 2              |
| State Dental Hygiene Fund                          | 1.5                                    | 2              |
| State Funeral Directors and Embalmers Fund         | 1.6                                    | 3              |
| Geology and Geophysics                             | -2.1                                   | 3              |
| State Board of Guide Dogs for the Blind Fund       | -2                                     | 3              |
| Home Furnishing & Thermal Insulation Fund          | 1                                      | 3              |
| Contingent Fund of the Medical Board of California | 2.9                                    | 1              |
| Pharmacy Board Contingent Fund                     | 1.2                                    | 3              |
| Physical Therapy Board                             | 1                                      | 2              |
| Board of Podiatric Medicine Fund                   | -3.3                                   | 1              |
| Psychiatric Technicians Account                    | .9                                     | 2              |
| Dispensing Opticians Fund                          | -6.2                                   | 1              |

|  |      |   |
|--|------|---|
| Board of Registered Nursing Fund         | -3.5 | 1 |
| Respiratory Care Fund                    | .1   | 1 |
| Structural Pest Control Fund             | -1.1 | 3 |
| Veterinary Medical Board Contingent Fund | 1.7  | 2 |

Importantly, these projections reflect SPR 3.1 impacts on the funds. The projections do not include total impact of BreEZe on Release 3 boards, because they *are not included* in SPR 3.1 and BreEZe costs for those boards is completely unknown. We do not know the impact on the funds under SPR 2, nor do we know the impact on the funds if the Accenture contract is terminated.

The DCA is using a fairly new state purchasing program that allows for the payoff of large-scale items over multiple budget years: seven years, to be exact. It is referred to as GS Smart. It appears the budget projections take into account the seven year payoff plan.

Additionally, legislative staff have been told the DCA discerned that it needs about 60 PYs to adequately staff and support BreEZe. However, the special funds could not support 60 PYs, so the DCA reduced the requested staff to 34. To offset the reduced staff, the contract under SPR 3.1 included funds to hire temporary help and or contracted staff.

Other Issues With BreEZe

BreEZe has been criticized for not being “user-friendly” to the public. For example, BRN has posted a 20-page instruction sheet on how to use BreEZE for applicants and licensees. Additionally, the Medical Board is out of compliance with Business and Professions Code Section 2027, which mandates that the Board make certain information about board licensees available online.

After implementation of BreEZe Release 1, it became clear that the boards throughout the DCA have different internal protocols, which made it difficult to identify programming needs as well as train staff with rollout of the new system. For example, database codes are used differently, transactions are recorded differently, and definitions of basic transactions (such as when a piece of mail was received) can vary. These differences practically stymied the Release1 rollout. The DCA should consider assessing some basic definitions and protocols to create department-wide standards, similar to the procedures and definitions used to create DCA’s annual report. The Department should also ensure Release 2 boards’ business processes are documented appropriately before Release 2 programming begins.

Much of the conversation around BreEZe has been focused on licensing functions. Very little has been said about enforcement. It would be helpful to hear more from the DCA about how the enforcement component of the BreEZe is working.

Legislative Oversight of BreEZe

In addition to the BSA audit, the Legislature has been closely monitoring BreEZe since its inception. BreEZe has been a major focus during the Committee’s oversight hearings and budget

committees for at least four years. During those hearings, the DCA has somewhat minimized the problems with BreEze and promised that they would be fixed.

The Legislature established reporting mandates for DCA. However, delays in implementing BreEze have caused the DCA to fail to meet reporting deadlines. For example, the Budget Act of 2013 required DCA to submit a report to the Legislature on the status of the BreEze project no later than October 1, 2014. The report was to include information on the implementation of BreEze by the healing arts boards, funding allocations, preliminary usage information among new and existing licenses, and workload analysis for the positions established to support the project. Because the project was not completed, DCA did not submit the report.

Additionally, Business and Professions Code Section 210 requires the DCA to submit a report “analyzing the workload of licensing personnel employed by boards within the department participating in the BreEze system.” Again, because the project was not complete, the DCA did not submit the report.

Past budget provisions stated that in some out-year, once efficiencies are achieved through the implementation of BreEze a reduction of \$500,000 in expenditure authority would occur. The DCA has never been able to implement BreEze so the provision continues to be postponed into out-year budgets.

### Conclusion

Release 1 of BreEze was poorly planned and lacked basic governance structures. As noted previously in this report, Release 1 participants identified more than 1,000 system glitches that required programming changes. Almost one and half years later, many remain outstanding, important management reports are still unavailable, and board staff continue to use manual workarounds to make the system work.

However, the DCA reports it has learned from past mistakes and that many of the issues identified in the audit report have been addressed in SPR 3.1. The DCA has been asked to provide more detailed information regarding SPR 3.1 to assist the Legislature and the public to better understand why going forward with the project is fiscally prudent in this hearing, as well as in budget committee hearings in the Senate and Assembly.

### Staff Questions/Recommendations:

- 1. Given the delay of SPR 3.1, what is the status of BreEze project? Is the DCA planning to shut it down or working to reduce costs pending legislative action?*
- 2. As suggested by JLBC, the DCA should discuss its long-term plan for moving forward with BreEze, including the anticipated cost and timeline for providing IT solutions for the boards in Release 3.*
- 3. The DCA has already shared how BreEze project costs will be allocated across boards and bureaus under SPR 3.1. The DCA should explain how BreEze charges (pro rata) were calculated for each of the boards – especially for Release 3 boards. The DCA should also*

*share how those costs will affect license fees for each entity and the plan to address these deficiencies.*

- 4. When did the DCA know that Release 3 boards were going to be cut from the BreEZe project plan/contract? Why are Release 3 boards paying for BreEZe when there is no plan for them? What are they paying for? Will any of the Release 3 boards be given refunds if/when it is determined that they will not join BreEZe?*
- 5. The DCA should explain why the Consumer Protection Enforcement Initiative reports and other management reports are not available almost 18 months after Release 1 was launched. Are the boards given all of the tools they need to extract the reports?*
- 6. How are the enforcement functions of BreEZe working? If enforcement is working better than licensing, what was the difference between design and rollout of licensing versus enforcement?*

## **Issue #2 Consumer Protection Enforcement Initiative – A Systemic Solution to a Systemic Problem**

### Background

Some of the DCA's health care boards have a long history of taking three years or longer to take disciplinary action on their licensees when discipline is warranted. In response to pressure from the media and the Legislature, the DCA created CPEI in 2010. The specific goal of CPEI was to reduce the average length of time it takes health care boards to take formal disciplinary action from three years to 12 to 18 months. Key components of CPEI include administrative changes, ensuring the boards' enforcement programs are sufficiently staffed and have adequate technology to conduct their regulatory functions, and establishing and publishing precise performance targets.

The Legislature has been very supportive of the DCA's efforts to establish and meet performance measures. In prior years, the Legislature has authorized 220 additional enforcement staff, approved funding for the BreEZe project, and established performance measures for the OAH. All of these efforts have been in support of CPEI.

Aside from BreEZe, many components of CPEI have been implemented. For example, enforcement staff has been increased and most health care boards have adopted changes in procedure designed to expedite certain enforcement transactions. However, the impact of those efforts have not been identified or measured and most boards have failed to meet their performance targets for formal discipline, which is the stated purpose of the entire initiative.

### Overview of the Disciplinary Process

Generally, disciplinary cases can be placed into one of two phases: investigation and prosecution. At the DCA, investigations are typically conducted by the DCA employees. Once the investigation is completed, cases that warrant formal disciplinary action are forwarded to

the Office of the Attorney General (AG) for prosecution. The AG must use the Office of Administrative Hearings (OAH) to schedule and conduct the disciplinary hearings.

The table below provides a very high-level overview of the complaint intake, investigation and prosecution processes. There are numerous steps and nuances in the process that are not included in the table. For simplicity, we present the major milestones and the entity that is responsible for the milestone.

| Function   | Who Performs This Function?  |
|--|--|
| Complaint Intake   | Board Employee   |
| Conduct Investigation  | Board Employee and/or DOI Investigator   |
| Expert Review of Case File                                   | Expert Consultant (This is typically a licensee on contract with the board or a licensee employed by the board.) |
| Prosecution of Cases   | Deputy Attorney General  |
| Conduct Administrative Hearing and Prepare Proposed Decision | Administrative Law Judge employed by the Office of Administrative Hearings                                       |
| Adopt Final Discipline                                       | Board Members  |

As noted in the chart above, some aspects of the enforcement programs are not within the DCA’s direct control. Cases that go forward for formal discipline are referred to the Attorney General’s (AG) Office for prosecution. Cases that require a formal hearing must be heard by administrative law judges at the Office of Administrative Hearings (OAH). Both of these entities are outside of the DCA’s jurisdiction.

Performance Measures

While CPEI focused on the health care boards, performance measures were established for all of the enforcement programs at the DCA. CPEI currently measures workload and timelines in the following milestones for enforcement cases:

- Complaint intake
- Compliant intake and conducting investigations
- Formal discipline

One year after the DCA created CPEI, the Governor issued Executive Order B-13-11 requiring the DOF to utilize “performance-based budgeting” to increase efficiency and focus on accomplishing program goals for the DCA and other departments. Pursuant to the Executive Order, the Governor’s proposed budgets for FY 2013-14 through FY 15-16 included targets that mirror previously established CPEI targets and measures.

In 2014, the DCA reported to the Committees that it was requiring all boards to “undergo a program evaluation to determine appropriate enforcement and licensing performance measures.” According to the Governor’s proposed budget for FY 2015-16, the DCA will report on performance targets for its licensing programs in FY 16-17, and actual performance data will be reported in the FY 17-18 budget.

Adding performance measures for licensing programs would be helpful, as licensing delays can affect the economic development of the state and individuals’ fiscal well-being.

Gaps in the Data

The DCA’s enforcement performance measures are an important tool for management, the public, and the Legislature to monitor and assess the department’s productivity. However, there are important gaps in the data. Most significantly, there is no data regarding major milestones in prosecutions, or the length of investigations that result in prosecutions, nor do we have data for some of the programs using BreEZe.

Seven of the 10 programs using BreEZe have reported performance data for FY 2013–14 in the budget. Unfortunately, the BRN and the Medical Board, two boards that historically have some of the largest caseloads and the longest processing times, are among the boards not reporting performance measure data on the length of time for formal investigations.

Senate staff have reviewed three different DCA generated reports that provide performance data for FY 2013-14. Those reports are: DCA’s Annual Report, the Governor’s proposed budget for FY 2015-16, and DCA’s CPEI Annual Reports. Presumably due to limited reporting functionality of BreEZe, the data presented in each of these reports varies. For example, the number of complaints received by the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) is reported as 5,709 in the CPEI Annual Report. The Governor’s proposed budget indicates BVNPT received 5,771 complaints and DCA’s Annual Report indicates BVNPT received 5,789 complaints. For the sake of simplicity, the tables below include the data from CPEI Annual Reports. As with last year’s sunset report, performance measures for the three largest health care boards are displayed in the tables below and on the following page.

| <b>Board of Registered Nursing</b>            |                        |                        |                        |                        |
|---|------------------------|------------------------|------------------------|------------------------|
|   | Fiscal Year<br>2010–11 | Fiscal Year<br>2011–12 | Fiscal Year<br>2012–13 | Fiscal Year<br>2013–14 |
| <b>Number of Cases</b>                        |                        |                        |                        |                        |
| Intake  | 8,063                  | 8,084                  | 8,375                  | NDA                    |
| Intake and Investigation                      | 5,340                  | 4,946                  | 6,734                  | NDA                    |
| Formal Discipline                             | 766                    | 728                    | 998                    | NDA                    |
| <b>Average Days to Complete</b>               |                        |                        |                        |                        |
| Intake (target: 15 days)                      | 16                     | 15                     | 12                     | 27                     |
| Intake and Investigation<br>(target: 80 days) | 113                    | 122                    | 143                    | 141                    |
| Formal Discipline<br>(target: 540)            | 722                    | 677                    | 738                    | NDA                    |

| Medical Board of California                    |                        |                        |                        |                        |
|--|------------------------|------------------------|------------------------|------------------------|
|  | Fiscal Year<br>2010–11 | Fiscal Year<br>2011–12 | Fiscal Year<br>2012–13 | Fiscal Year<br>2013–14 |
| Number of Cases                                |                        |                        |                        |                        |
| Intake   | 7,251                  | 7,042                  | 7,437                  | 8,325                  |
| Intake and Investigation                       | 6,542                  | 6,665                  | 6,897                  | NDA                    |
| Formal Discipline                              | 245                    | 315                    | 341                    | NDA                    |
| Average Days to Complete                       |                        |                        |                        |                        |
| Intake (target: 9 days)                        | 10                     | 12                     | 10                     | 11                     |
| Intake and Investigation<br>(target: 125 days) | 119                    | 126                    | 109                    | NDA                    |
| Formal Discipline<br>(target: 540 days)        | 795                    | 853                    | 775                    | NDA                    |

| Board of Vocational Nursing and Psychiatric Technicians |                        |                        |                        |                        |
|---|------------------------|------------------------|------------------------|------------------------|
|   | Fiscal Year<br>2010–11 | Fiscal Year<br>2011–12 | Fiscal Year<br>2012–13 | Fiscal Year<br>2013–14 |
| Number of Cases   |                        |                        |                        |                        |
| Intake  | 5,163                  | 5,561                  | 5,154                  | 5,709                  |
| Intake and Investigation                                | 5,315                  | 5,202                  | 5,273                  | NDA                    |
| Formal Discipline                                       | 192                    | 250                    | 357                    | NDA                    |
| Average Days to Complete                                |                        |                        |                        |                        |
| Intake (target: 30 days)                                | 26                     | 16                     | 16                     | 18                     |
| Intake and Investigation<br>(target: 360 days)          | 288                    | 275                    | 247                    | 212                    |
| Formal Discipline<br>(target: 540 days)                 | 1,083                  | 1,107                  | 1,233                  | 1,135                  |

Boards in Release 1 of BrEZe STILL cannot generate CPEI reports. During the 2014 sunset hearings, the DCA indicated that “critical reporting needs will be satisfied by summer of 2014. Our first priority is to reestablish the CPEI performance measures; we anticipate this report being available by April 2014.” That target date was not met. Senate staff have been informed that the CPEI reports are expected to be available when a system patch is launched in April 2015. However, with the DCA threatening to terminate the BReEZe contract, it is unclear if that patch will be implemented.

Like last year, it was noted that the data presented in CPEI performance measures for intake and investigation timelines “Does not include cases sent to the Attorney General or other forms of formal discipline.” Therefore, these reports are not truly capturing timelines all of the

investigations. By their nature, cases that result in formal discipline will often take longer to investigate than those that do not result in formal discipline.

Additionally, reporting performance measures for two other state agencies that provide legal services to the DCA boards could be useful. As discussed previously, the DCA boards rely on the AG and OAH to perform certain functions in the formal disciplinary enforcement process and the boards do not have direct control over when and how cases are handled once the cases have been referred to the AG’s Office.

In 2010, the DCA’s CPEI states, “DCA has been working with the Attorney General’s Office and the Office of Administrative Hearings (OAH) to establish performance agreements that will expedite the prosecution of cases. The DCA and the AG’s Office are developing expectations for filing accusations, setting settlement conferences, and filing continuance requests.”

In March 2014, the DCA was still working on those agreements. The DCA reported that it planned to “continue to work with both OAH and the AG’s Office to develop performance measures.” It also has been reported that the DCA legal staff were meeting regularly with OAH and the AG’s Office to discuss methods and efforts to reduce enforcement time frames.

Absent an agreement between the DCA and the OAH regarding performance measures, Senate Bill 1243 (Lieu), Chapter 395, Statutes of 2014, established performance measures for the OAH beginning January 1, 2016. The OAH issued its First Annual Caseload Statistics and Hearing Timeframe Report to the Legislature on September 30, 2014. Notably, the report was published over a year ahead of the due date. In addition to measuring workload and timelines, the OAH reports that it is in the process of developing targets for those timelines. This effort is consistent with the Committees’ past recommendations. The table below summarizes OAH caseload data for DCA boards in FY 13-14.

| <b>Fiscal Year 2013-14</b>  |                        |
|---|------------------------|
| <b>OAH Actions for DCA Boards</b>   | <b>Caseload / Days</b> |
| Number of Cases Filed   | 4,403                  |
| Number of Hearings Held   | 1,815                  |
| Average Days Per Hearing  | 1.2                    |
| Number of Decisions Issued  | 1,329                  |
| Average days from Case Submission to Issuance of Proposed Decisions         | 25.25                  |
| Average days from Request to Set a Hearing to Issuance of Proposed Decision | 204                    |

It is unclear if any performance agreements have been established for the AG’s Office. Therefore, Committee staff will be working with the AG’s Office in attempt to facilitate performance measures and targets.

CPEI performance reports are a good start to establishing long-term consistent reporting for public consumption. The information could be expanded to include additional major milestones, such as all investigations (not just those that do not result in formal discipline), length of time to file accusations and other milestones in prosecution, and the length of time to conduct a hearing. This would help management, stakeholders, the general public, and

lawmakers determine where there is room for improvement. The Committees would like to know more about DCA's efforts to enhance communication and accountability between the DCA, AG and OAH.

### Staffing Resources and Training

As noted in previous sunset reports, a critical component of CPEI is adequate staffing and technological resources for the boards. The DCA's technology solution is discussed in the BreEZe section of this report. Regarding staffing, in FYs 2010–11 and 2011–12, about 130 new full-time positions dedicated to processing enforcement cases were authorized. However, hiring employees to fill those new positions was hampered by a number of administrative efforts to control spending, and the staffing authority was reduced to 94 via administrative action.

In March 2013, the Senate Committee on Business, Professions and Economic Development recommended the DCA "spearhead a department-wide assessment to identify appropriate staffing levels necessary to ensure the boards and bureaus have adequate resources to meet their consumer protections mandates, specifically to meet the performance standards set forth in the proposed budget for FY 2013–14. For the boards and bureaus that have adequate funds, the DCA should seek to obtain authority through the budget process to hire the staff needed to meet performance targets."

While there were no budget augmentations specifically focused on enforcement for FY 2013-14, we note that the Governor's proposed budget for FY 2014–15 includes 134.5 new staff positions for the DCA, 90 of which are dedicated to enforcement programs.

Since the inception of CPEI, the Legislature has authorized 220 additional staff positions to work on enforcement cases.

An essential part of CPEI was enhancing use of non-sworn investigative staff to conduct less complex investigations. According to the CPEI BCP, which was approved in FY 2010-11, "Recognizing the need to make internal changes and acquire additional resources, and as part of these proactive efforts to develop a greater level of consistency as to how these complaints could be categorized, DCA issued 'Complaint Prioritization Guidelines' for Boards to utilize in prioritizing their respective complaint and investigative workloads." The guidelines established the following three categories of complaint identification and the basic rationale for workload timeframes.

| Complaint Prioritization Guidelines |   |
|-------------------------------------|---|
| Category                            | Type of Allegations   |
| Urgent                              | Acts that could result in serious patient harm, injury or death and involve, but are not limited to, gross negligence, incompetence, drug/alcohol abuse, practicing under the influence, theft of prescription drugs, sexual misconduct while treating a patient, physical/mental abuse, conviction of a crime etc. |
| High                                | Acts that involve negligence/incompetence (w/o serious injury), physical/mental abuse (w/o injury), mandatory peer review reporting, prescribing/dispensing w/o authority, involved in aiding and abetting unlicensed activity, complaints about licensees on probation, exam subversion, etc.                      |
| Routine                             | Complaints that involve fraud, general unprofessional conduct, unsanitary conditions, false/misleading advertising, patient abandonment, fraud, failure to release medical records, recordkeeping violations, applicant misconduct, continuing education, non-jurisdictional issues, applicant misconduct.          |

As designed, investigations of routine cases could be conducted by non-sworn staff at the boards. Cases categorized as urgent or high would be investigated by sworn staff at the DCA’s Division of Investigation. These guidelines, coupled with staff training, were designed to free up sworn staff so that they could work on complex investigations. It also would allow the non-sworn staff to focus on and keep cases moving that might have been a lower priority if they were assigned to sworn staff. If this model is not being used, cases handled by sworn and non-sworn investigative staff could become bogged down, thus elongating investigative timeframes.

CPEI staffing enhancements were approved by the Legislature with this model in mind. It would be helpful to hear from the DCA how the Complaint Prioritization Guidelines is being implemented throughout the department.

*Lengthy Prosecutions Persist*

At its inception, the goal of CPEI was to reduce the average enforcement completion timeline from three years or more to between 12 and 18 months by FY 2012–13. Five years after CPEI was launched, most of the boards are meeting performance targets for complaint intake and complaint investigation for cases not referred for formal discipline. However, many of the DCA’s boards continue to fail to meet performance targets for formal discipline.

According to statistics for FY 2013–14, many regulatory programs at the DCA did not meet their performance targets. Specifically:

- Eleven of the 37 programs with performance targets *did not meet their targets* for intake and investigation timelines.
- Thirty of the 37 programs *did not meet their targets* for formal discipline timelines.

Despite additional resources and administrative changes to facilitate the more timely completion of enforcement cases, it still takes most health care boards more than two years to complete the formal disciplinary process.

Some of the lengthiest averages for formal discipline are shown in the table below:

| Board Name   | Average Days to Formal Discipline |
|--|-----------------------------------|
| Board for Professional Engineers and Land Surveyors and Geologists | 1,509                             |
| Chiropractic Examiners Board                                       | 1,289                             |
| Dental Board   | 1,190                             |
| Board of Vocational Nursing & Psychiatric Technicians              | 1,107                             |
| Acupuncture Board  | 1,004                             |
| Veterinary Medical Board   | 940                               |
| Board of Psychology  | 922                               |
| California State Board of Pharmacy                                 | 817                               |
| California Board of Accountancy                                    | 813                               |
| Board of Behavioral Sciences                                       | 811                               |

The cause or causes for the lengthy prosecution timeline remain unclear. The fact that multiple entities have a role throughout the process and the lack of consistent long term data makes it difficult to diagnose the reason.

It is important to note that cases for which formal discipline is sought are subject to due process, which can lengthen the time it takes to close these cases. For example, the subject of pending discipline can request continuances because he or she hired new legal counsel, a witness may be unavailable, or other evidentiary issues. These may be legitimate reasons for delaying a case, but we do not know if these are the causes.

If resources at the AG’s Office or OAH have been a factor, staffing levels at both were recently enhanced. The AG’s Office was authorized 29 additional positions in the legal services division, 14 of which were directed to their licensing division to support the DCA’s enforcement efforts. OAH has transitioned 10 part-time Administrative Law Judges to full time employees, which is expected enhance efficiencies in calendaring hearing dates.

Review, Revise, and Expand Performance Targets

CPEI has resulted in staffing enhancements as well as administrative changes that may have improved efficiencies within enforcement programs.

The fact that many of the boards are generally meeting their internal (intake and investigation) targets is commendable. Lengthy timelines for prosecutions continues, so it may be unreasonable to place a 12 to 18 month expectation on the boards.

The following is from the Committees' 2014 sunset report, "CPEI was an ambitious multi-faceted endeavor that was spearheaded by the DCA in 2010, and many of the components have been implemented. Therefore, it may be time to revisit the CPEI to determine what has worked and what more could be done. Additionally, much of the discussion has been around speeding up casework. The Committees do not want boards to feel pressure to expedite cases at the cost of thoughtful thorough casework and, more importantly, at the cost of due process.

"For example, it has been suggested that delays in prosecution of cases are sometimes due to incomplete cases being referred to the AG's Office. In such instances, the prosecutors may perform additional work or refer the case back to the board. Either way, the case will be delayed. It is not clear if this is a systemic problem, but it may warrant exploration."

The following questions were put forth in the 2014 sunset report as suggested issues the DCA may consider during its internal evaluation might include:

- How can communication and accountability between DCA and the AG's Office be improved?
- Could or should the boards define settlement terms when case is transferred to AG?
- Could or should the boards revisit disciplinary guidelines in consultation with the AG's Office and OAH?
- What kind of quality review is in place before cases are transferred to the AG?
- What legislative changes might be needed?
- Are there additional training needs?"

The same report suggested the DCA should "conduct another system-wide review and analysis of the enforcement programs, similar to CPEI, and develop a new corrective action plan to address shortcomings. That plan should include establishing additional expanded performance measures for boards, for the AG's Office and for OAH. When conducting this review and developing the new plan, DCA should consult with the AG's Office and OAH."

The Department responded that it met with all of the health care boards to assess the boards' "respective intake workload, areas of enforcement operations specific to case review and analysis and case criteria for formal investigation, performance measures and targets, and other efficiencies that could be addressed in the enforcement performance measures."

Outcome from these meetings is unclear, but it does not appear to have generated a system-wide review of CPEI. Once again, it is suggested that the DCA should review CPEI as suggested last year, in order to determine if the performance measures could be modified, including reducing the performance targets.

Because the boards generally are not meeting the 12 to 18 month target for formal discipline, the question must be asked: Is the 12to 18 month target a reasonable and reachable goal for all of the boards?

## Conclusion

At its inception, the goal of CPEI was to reduce the average enforcement completion timeline from three years or more to between 12 and 18 months by FY 2012–13. Based on the above, the Committees continue to be concerned that CPEI goals for disciplinary action are not being met. If the 12 to 15 month goal is not realistic, what is? As it is now, the goals may be deceptive to consumers, policy makers, and licensees.

In past oversight hearings, the DCA has testified that it would help boards meet CPEI goals through a variety of efforts. Performance based budgeting was presented as a way to “increase efficiency” at the DCA and help the boards to “focus on accomplishing program goals” (although it is not clear how reporting performance measures has increased efficiency). The DCA said it would “focus on those programs that are unable to reach their performance targets and identify processes that can be streamlined and improved.” Staffing levels have increased and training academies were offered. Other administrative changes were implemented for the purpose of moving cases more quickly through the investigative and disciplinary process. Yet, most boards are not meeting the 12 to 18 month goal.

After 5 years, it appears that revisiting CPEI in its entirety may be in order. In addition to determining the cause for lengthy prosecutions, DCA should reassess its enforcement programs to determine the root cause for any shortcomings identified in the assessment. Additionally, the DCA should reassess performance goals and expanding performance measures. For example, can performance targets be set based on case complexity? Should each board set their own targets, based on their typical case, instead of a department-wide target?

As noted above, the Legislature already has established performance measures for OAH. The Committees will continue to work with the AG’s Office to explore ways to identify appropriate reporting mechanisms, as well as assist with policy or resources that may improve timeliness of case closures.

## Staff Recommendations:

- 1. As was recommended last year, DCA should conduct system-wide review and analysis of the enforcement programs, similar to CPEI, and develop a new corrective action plan to address shortcomings. That plan should include reconsidering existing enforcement performance targets, establishing additional expanded performance measures for boards, for the AG’s Office and for OAH. When conducting this review and developing the new plan, the DCA should consult with the AG’s Office and OAH.*
- 2. The DCA should explain how the Case Acceptance Guidelines are being implemented throughout the DCA? Have they been effective?*

### Issue #3: Transfer of Medical Board Investigative Staff to DCA

Senate Bill 304 (Lieu), Chapter 515, Statutes of 2013, transferred the Medical Board's Peace Officers, Medical Consultants, and some support staff to a newly created Health Quality Investigation Unit (HQIU) within DCA's Division of Investigation (DOI).

HQIU now performs investigative services for the Medical Board, the Osteopathic Medical Board, the Board of Podiatric Medicine, the Board of Psychology, the Physician Assistant Board, and any other entity under the jurisdiction of MBC (e.g., Licensed Midwife Program, Registered Dispensing Optician Program, etc.). Prior to implementation of SB 304, all of the investigative services discussed above were performed by the Medical Board investigative staff. The Medical Board will continue to operate under the Vertical Enforcement and Prosecution (VEP) model, which requires joint investigation by HQIU and employees of the AG's Office.

The budget for FY 2014–15 transferred \$15.5 million and 116 positions, plus an executive-level staff to provide review of enforcement cases, settlement negotiations, and liaison with the AG's Office, etc. While this transfer took effect July 1, 2014, several outstanding management issues and protocols have yet to be resolved. Most significantly, DOI and the AG's Office have not agreed upon a Procedural Manual for Vertical Enforcement (VE), which has hampered the flow of investigations and resulting prosecutions. In March 2014, the Legislature was informed that the Manual was in progress.

At the January 2015 meeting of the Medical Board, it was reported that the Manual was "95 percent complete" and expected to be approved and in operation by July 2015. Without the Manual, staff members do not have standard protocols to guide them when conducting investigations, and there may be inequity in how cases are processed. It was also reported at the same Medical Board meeting that long standing problems with recruitment and retention of sworn investigative staff persist.

It should be noted, that since the transfer of the MBC investigative staff, there appears to be an increase in criminal prosecutions of Medical Board cases by DOI, which generally do not require the approval of the AG's Office. However, there appears to be some concern on the part of the AG that they may lack involvement in the decision to prosecute a case criminally.

#### Staff Recommendations:

1. *The DCA should provide an update on the transfer of MBC investigative staff to DOI. How has the transfer impacted board operations and investigation outcomes?*
2. *The DCA should discuss its efforts to address problems with recruiting and retaining sworn investigative staff for HQIU.*
3. *The DCA should discuss the apparent increase in criminal prosecutions of Medical Board cases. Is it a result of the transfer of investigative duties to DOI? Should the AG have some involvement in decisions regarding whether a case should be prosecuted criminally and if so to what extent?*

## Issue #4: Pro Rata

The Committees continue to be interested in exploring the manner in which the DCA boards are charged for administrative services provided by the DCA. Business and Professions Code Section 201 gives the Director, with approval of the Department of Finance, the authority to charge the boards for estimated administrative expenses. B&P Code Section 201 reads:

“A charge for the estimated administrative expenses of the department, not to exceed the available balance in any appropriation for any one fiscal year, may be levied in advance on a pro rata share basis against the funds of any of the boards, bureaus commissions, division and agencies, at the discretion of the director and with the approval of the Department of Finance.”

Through its divisions, the DCA provides centralized administrative services to all boards, committees, commission and bureaus (hereafter boards). Most of these services are funded through a pro rata calculation that is based on “position counts.” Other functions (call center services, complaint resolution, and correspondence unit) are based on past-year workload. The pro rata charges fund the entire DCA operations. For FY 15-16, DCA is budgeted \$94 million with 727 employees.

The table below displays the DCA’s distributed costs methodology for a variety of services it provides to its boards, as explained by the DCA.

| Pro Rata Calculation/Distributed Costs Methodology     |                |                     |   |
|--|----------------|---------------------|---|
| Administrative Service <sup>2</sup>                    | Position Count | Prior Year(s) Usage | Other   |
| Budgeting, Accounting, Cashiering, and Human Resources | X              |                     |   |
| Call Center  |                | X                   |   |
| Complaint Resolution                                   |                | X                   |   |
| Correspondence Unit                                    |                | X                   |   |
| Equal Employment Opportunity Services                  | X              |                     |   |
| Exam Development and Validation                        | X              |                     | Inter-Agency Agreement is also required for certain services                  |
| Executive Office                                       | X              |                     |   |
| Information Security                                   | X              |                     |   |
| Information Technology                                 | X              | X                   | Based on “multiple service centers, each with its own method of distribution” |
| Internal Audits  | X              |                     |   |

<sup>2</sup> This table includes examples of the types of administrative services provided by DCA. There may be additional services not included in the table.

|  |   |   |  |
|--|---|---|--|
| Investigative Services (complaint investigations)  |   | X |  |
| Legal Services                                     | X |   |  |
| Monitor and Advocate for Legislation               | X |   |  |
| Public Affairs and Consumer Outreach               | X |   |  |
| Publication, Design, and Editing                   | X |   |  |
| Special Operations (i.e., internal investigations) | X |   |  |
| Training   | X |   |  |
| Complaint Resolution Review                        |   | X |  |

Importantly, the boards have *no control* over the pro rata charges, regardless of the quality or quantity of services provided. This is true, despite the fact that Executive Officers are held responsible for managing their budgets, as well as spearheading requests for fee increases. As shown below, pro rata charges in actual dollars are significant for some boards. Perhaps more importantly, pro rata can be as much as 40% of a board’s annual operating budget

| Board/Bureau                                  | FY 2014-15 Pro Rata |                    |
|---|---------------------|--------------------|
|   | Dollars             | % of Annual Budget |
| Medical Board of California                   | \$21 million        | 35%                |
| Bureau of Automotive Repair                   | \$18 million        | 10%                |
| Board of Registered Nursing                   | \$11 million        | 29%                |
| Board of Barbering and Cosmetology            | \$7.5 million       | 35%                |
| Contractors State License Board               | \$ 6.5 million      | 10%                |
| Bureau of Security and Investigative Services | \$5 million         | 40%                |
| Bureau of Electronic Appliance Repair         | \$1 million         | 38%                |
| Physical Therapy Board                        | \$1 million         | 29%                |

Under the current model, some boards are be charged for services (again, based on position count) that they may not be receiving. Some of the DCA’s larger programs, like the Bureau of Automotive Repair (BAR) and Contractors State License Board (CSLB), may not use the full complement of the DCA services. For example, both BAR and CLSB have their own sophisticated in-house public information units that serve the sole purpose of supporting their own regulatory program. Basically, it appears as if these larger boards are subsidizing the program needs of smaller ones.

The DCA’s pro rata calculations are based on position authority, rather than actual number of employees, which may inflate pro rata charges. In recent years, there have been a number of statewide efforts to reduce expenditures and staffing levels throughout state government. Those cost-control measures reduced staffing levels at the boards, and it was unclear if or how pro rata charges were adjusted as a result of staffing reductions. For this reason, on January

28, 2014, Assembly Member Curt Hagman sent a letter to the DCA asking that pro rata be calculated based on filled positions, not based on allocated positions.

Citing added workload and volatility of staffing levels, the DCA was resistant to changing the pro-rata model from authorized position count to filled positions last year. But the department indicated it was willing to pursue a study of pro-rata methodology. The department indicated, “The Department would need time to procure the services of a qualified entity to perform an independent and objective study...”

After discussing pro rata at the 2014 oversight hearing, the Committee Chair authored Senate Bill 1243 (Lieu, Chapter 395, Statutes of 2014), which requires that DCA conduct a one-time mandatory study of its “current system for prorating administrative expenses to determine if that system is the most productive, efficient, and cost-effective manner for the department and the agencies comprising the department.” The bill requires that the study consider whether some services should be outsourced or if DCA boards could elect to opt out of some of the administrative services. The DCA is conducting survey of board executives regarding pro rata. Participation in the survey requires respondents to identify themselves, which may inhibit candid responses. The pro rata report is due to the Legislature by July 1, 2015.

Based on some of the observations above, there is growing interest in increasing transparency of pro rata calculations to allow for better understanding of how these assessments are calculated and what impact they have on board operations, especially in light of assessments now being made for BreEZe.

Staff Recommendations:

1. *Given the significant impact of pro rata costs on the boards’ operating budgets, should B&P Code Section 201 be amended to require legislative approval, through the budget process, for the DCA’s annual pro rata assessment?*
2. *The DCA should explain how the boards are involved in the calculation and payment of pro rata. What happens if a board does not concur with the DCA’s pro rata assessment?*

**Issue #5: Sunshine—Public Access to State Government**

Webcasting can be a valuable tool in allowing public access to board meetings. In the past, very few of the DCA board meetings were webcast; however, in recent years, there has been an increase in webcasting of board meetings. With that increase, many technical difficulties seen in the past have been improved. For example, meeting participants are better at identifying themselves when they speak, and participants are more careful to use microphones. However, sometimes there is sporadic loss of internet feed.

Finding meeting materials while watching webcasts can be somewhat complicated because meeting agendas and background materials are not posted on the same page as the webcasts. The DCA should work to make meeting information available at one easy to access webpage.

Even more important than webcasting, may be the ability for the public to participate in meetings remotely. Other state boards are now doing this routinely. For example, the Medical Board of California is using a robust system for webcasting and live teleconferencing for participants who may be monitoring the meetings via the internet or the teleconference.

The DCA wrote in last year's sunset report, "We continue to look for new technology means, such as 'virtual' meetings, to help expand public participation in board meetings." The Committees acknowledges and commends the DCA and its boards for expanding webcasting services. The Committees also encourage the DCA to continue to enhance this important service to the public in real-time interactive ways. Some state entities now make agendas and meeting materials available on the webcast page.

#### Staff Recommendations:

1. *DCA should continue to enhance the ability for the public to access and participate in board meetings. For example, DCA should enhance availability of webcasting to all board meetings; develop protocols for boards to use when they are conducting webcasts; provide links to meeting agendas and materials on the webcast page; and expand use of teleconferencing or some other appropriate technology that would allow remote participation in board meetings.*

## **Issue #6: Training for Staff and Board Members**

### Staff Training

In 2009, the DCA introduced its new "Enforcement Academies," which were designed to "teach investigators and other enforcement staff key skills used in complaint intake, investigation procedures, case management, database use, and other areas." The full enforcement academy was scheduled to begin its regular cycle in April 2010.

Committee staff has been informed that the Academies are designed as entry-level courses. With the addition of new enforcement staff authorized in recent budgets, the importance of training becomes even more essential to the success of the CPEI. While entry-level training is important, developing advanced expertise in specialized skills, like how to develop and process administrative enforcement cases, is just as important. The DCA should expand training for enforcement staff. Advanced enforcement academies could assist with improving the quality of cases and potentially reduce unnecessary delays. The Contractors State License Board has a somewhat sophisticated staff training program that might provide a good model for the DCA.

In an effort to encourage the DCA to expand its enforcement training, B&P Code Section 154.1(b), was added in 2014 to read, “The department shall continue to develop and make available training courses for employees who perform enforcement functions. The purpose of the training courses is to develop knowledge of enforcement practices for all employees who perform enforcement functions. The department shall encourage an agency executive officer, registrar, executive director, bureau chief, enforcement manager, supervisor, or staff member to attend enforcement training courses.”

In 2014, the DCA reported that the training office was capturing data regarding outcome of the academies to perform a return-on-investment analysis. According to the DCA, “This information is derived from attendees’ subjective estimates of how much (by percentage) the following business areas will improve. Data must be compare to actual, measured changes to be useful at return-on-investment information: volume; cycle time; efficiency (cost); customer services; and employee satisfaction.” The DCA also reported, “Since the Academies began as recently as 2010, it is difficult to measure the improvement for case quality and timeliness in such a short period of time.” After five years, such measurement should be now feasible.

### Board Member Training

The DCA is required currently to provide new board members with an orientation and training with one year of their appointment. During the training, board members are appropriately cautioned not to engage in ex parte communication with other board members. However, efforts to comply with the law can stifle new members from asking questions of their peers about their role and responsibility as a board member and inhibit their participation in board proceedings. Many board members who have received DCA’s orientation report that the information is somewhat overwhelming.

As previously noted, board members have to take the mandatory training within a year of appointment. This could mean some board members might attend three or more meetings before they receive the formal training.

The orientation is very focused on legal aspects of being a board member such as on ex-parte communications, open meetings laws, rulemaking process, and the administrative discipline process. Understanding these laws is essential to performing the duties of a board member, but there is a need to offer board members, especially new board members, additional guidance as they prepare to cast important votes. For example, members need briefings on current policy matters, explanation of their administrative duties, and briefing on the overall structure and function of the various programs within the board.

Committee staff is aware that some of the DCA boards use an informal mentoring program in which the Executive Officers and other, more experienced board members provide guidance to newly appointed members. It is not clear where the DCA fits into the informal training. For example, is the DCA staff available to provide context to policy discussions that are pending before the board? When does the DCA staff engage in difficult board decisions?

Staff Recommendations:

1. *The DCA should enhance and expand enforcement training in order to develop a cadre of enforcement employees with standardized yet advanced knowledge and skills of modern investigative techniques and quality case development throughout the department.*
2. *The DCA should update the Committee on its Enforcement Academies. Has participation in the Enforcement Academies expanded to include more senior level staff? What are the results of the DCA's return-on-investment analysis regarding Enforcement Academies?*
3. *The DCA should enhance and expand the training it provides to board members by making some topics available online; providing the orientation via video conference; providing additional follow training on an ongoing basis; and/or include an informal mentoring component.*