

**BACKGROUND PAPER FOR THE
California Board of Psychology**

**Joint Oversight Hearing, March 3, 2021 of the
Senate Committee on Business, Professions and Economic Development and the
Assembly Business and Professions committee**

**IDENTIFIED ISSUES, BACKGROUND, AND RECOMMENDATIONS REGARDING
THE CALIFORNIA BOARD OF PSYCHOLOGY**

**BRIEF OVERVIEW OF THE
CALIFORNIA BOARD OF PSYCHOLOGY**

History and Function of the California Board of Psychology

The California Board of Psychology (Board) traces its origins back to the Certification Act of 1958, which provided an early regulatory framework by granting title protection for the practice of psychology. In 1967, the California legislature further defined the scope of practice of psychology, requiring licensure to practice and further protect the public from potential consumer harm. At the time, the practice of psychology was placed under the jurisdiction of the Psychology Examining Committee, which was part of the larger Division of Allied Health Professions of The Board of Medical Quality Assurance (BMQA). Throughout the 1970s, the Psychology Examining Committee gradually became more independent, and became responsible for its own operations – including the authority to adopt regulations and administrative disciplinary actions without the endorsement of BMQA. In 1990, the Psychology Examining Committee was officially renamed the Board of Psychology.

Today, the Board regulates licensed psychologists, registered psychological assistants, and registered psychologists through the enforcement of the Psychology Licensing Law – also known as the Psychology Practice Act (Act). The board is one of several regulatory entities under the umbrella of the California Department of Consumer Affairs (DCA). The board is self-funded through license, application, and examination fees, and as such does not receive revenue from California’s General Fund.

The Board’s mission is to “protect consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.” According to the Board’s strategic plan, the Board focuses on the following areas:

- Protecting the health, safety, and welfare of consumers of psychological services.
- Advocating for the highest standards of professional psychology.
- Empowering consumers and licensees through public and professional education.

For example, the Board ensures consumer protection by verifying that licensed psychologists

possess the minimal competency to practice psychology with patients safely and independently. The Board can also investigate complaints submitted by members of the public, and if violations are found, the Board can impose disciplinary sanctions or refer more serious cases for criminal prosecution.

Today, the practice of psychology is defined as the application of “psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.”

Board Membership and Committees

The Board consists of nine members, five licensed psychologists and four public members. Board members may serve four-year terms, and no member may serve more than two consecutive terms. Five licensee members and two public members are appointed by the Governor, and the remaining public members are appointed by the Speaker of the Assembly and the Senate Rules Committee. Public members cannot be licensed by the Board or by any other DCA healing arts board.

The current members are as follows:

Name	Appointing Authority	Appointment Type	Appointment Date	Reappointment Date	Expiration Date
Seyron Foo (President)	Governor	Public Member	05/17/17	06/11/20	06/01/24
Lea Tate, PsyD (Vice-President)	Governor	Licensed Member	12/07/18		06/01/22
Sheryll Casuga, PsyD	Governor	Licensed Member	08/18/17	10/02/19	06/01/23
Marisela Cervantes	Speaker	Public Member	04/29/19		06/01/22
Mary Harb Sheets, PhD	Governor	Licensed Member	12/07/18	06/19/20	06/01/24
Julie Nystrom	Senate	Public Member	09/21/20		06/01/24
Stephen Phillips, JD, PsyD	Governor	Licensed Member	09/25/13	06/02/16 06/11/20	06/01/24
Ana Rescate	Governor	Public Member	10/20/20		06/01/22
Shacunda Rodgers, PhD	Governor	Licensed Member	11/27/19		06/01/23

The Board has three standing and five ad hoc committees to focus on various aspects of the Board’s functions.

Standing Committees

Outreach and Communications Committee:

This committee is responsible for engaging, informing, and educating consumers, students, applicants, licensees, and other stakeholders regarding the evolving practice of psychology, the work of the Board, and their relevant laws and regulations.

Legislative and Regulatory Affairs Committee:

This committee is responsible for advocating for legislation and for developing regulations that provide for the protection of consumer health and safety. The Committee reviews, monitors and recommends positions on legislation that affects the Board, consumers, and the profession of psychology. The Committee also recommends regulatory changes and informs the Board about the status of regulatory packages.

Licensure Committee:

This committee is responsible for maintaining a clear and efficient framework for licensure, examination processes, and continuing professional development through the Board's statutes and regulations to ensure licensees meet the qualifications necessary to practice safely and ethically. The committee communicates relevant information to its affected stakeholders.

Ad Hoc Committees

Enforcement Committee:

This committee is responsible for protecting the health and safety of consumers of psychological services through the active enforcement of the statutes and regulations governing the safe practice of psychology in California. The Committee reviews the Board's *Disciplinary Guidelines* and enforcement statutes and regulations and submits recommended amendments to the full Board for consideration.

Sunset Review Committee:

This committee is responsible for reviewing staff's responses to the questions asked by the Assembly Business and Professions and the Senate Business, Professions and Economic Development Committees. The Committee formulates and reviews the responses before submission to the full Board.

Telepsychology Committee:

This committee is responsible for developing regulatory language for the practice of psychology that is conducted remotely within the State of California and interstate practice that is conducted remotely.

Emergency Preparedness Ad Hoc Committee: The goal of this committee, formed in response to the novel coronavirus (COVID-19) emergency, is to develop recommendations to the Board for disaster resiliency for board operations. This Committee will catalogue existing waivers, evaluate the need for additional waivers, support messaging to stakeholders, and evaluate needs of committee/board meetings (e.g., petition hearings).

EPPP2 Ad Hoc Committee:

This committee will review issues related to the Board's national examination.

Ad Hoc Committees (Inactive)

The following committee is no longer active, but may be reactivated by the Board on an as-needed basis.

Applied Behavioral Analysis (ABA) Task Force:

This task force was tasked with reviewing, analyzing, and discussing the potential impact to the Board of regulating a new license category, applied behavior analysis. This committee is comprised of two Board Members and relevant stakeholders.

Fiscal and Fund Analysis

Board Fund Condition

As a regulatory board under the umbrella of the Department of Consumer Affairs (DCA), the Board is entirely special-funded and does not receive funds from California's General Fund. The Board generates revenue primarily from license, application, and examination fees levied on Psychologists, Psychological Assistants, and Registered Psychologists.

As of FY 2019-20, the Board's budget authority is \$5,231 million, with 20.4 months in budget reserve. The Board reports that it is in compliance with statutory requirements that its reserves do not exceed more than its operating budget for following two fiscal years.

According to fund condition analyses provided by DCA, the Board has a structural imbalance that would necessitate potential fee increases in FY 2023/24. Several factors contribute to this structural imbalance, including higher costs for expert witnesses and court reporters for disciplinary cases, as well as general cost increases to cover in personnel services (wages and benefits) and increased pro-rata costs paid to the Department of Consumer Affairs.

The Board's fund condition is included below:

Fund Condition						
(Dollars in Thousands)	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Beginning Balance	\$5,237	\$4,777	\$4,297	\$3,436	\$7,779	\$11,396
Revenues and Transfers	\$4,150	\$4,337	\$3,980	\$9,817	\$9,415	\$3,189
Total Revenue	\$9,387	\$9,114	\$8,277	\$13,253	\$17,194	\$14,585
Budget Authority	\$4,993	\$4,938	\$5,107	\$5,290	\$5,766	\$6,111
Expenditures	\$4,658	\$4,585	\$5,107	\$5,036	\$5,396	\$6,111*
Direct to Fund charges	\$8	\$232	\$307	\$361	\$402	\$385
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$1,230
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$1,605	\$1,066	\$0
Loans Repaid from General Fund	\$0	\$0	\$0	\$3,800	\$3,700	\$0
Fund Balance	\$4,721	\$4,297	\$2,863	\$7,856	\$11,396	\$8,089
Months in Reserve	11.8	9.5	6.4	16.3	21.1	13.1

*Projected figures

NOTE: A loan of \$5.0 million was made from the Board to the General Fund in Fiscal Year (FY) 2002/03, \$3.8 million was repaid to the Board in FY 2018/19, and \$1.2 million was scheduled for repayment in FY 2019/20. An interest payment of \$1.605 million was repaid to the Board in FY 2018/19. A loan of \$2.5 million was made from the Board to the General Fund in FY 2008/09 and was scheduled for repayment in FY 2019/20.

The Board operates on an annual budget of \$5.586 million, with approximately 33 percent of its budget devoted to enforcement activities, 24 percent to examination and licensing functions, 18 percent to DCA pro rata costs, and 25 percent for administration.

Expenditures by Program Component								(list dollars in thousands)	
	FY 2015/16		FY 2016/17		FY 2017/18**		FY 2018/19**		
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	
Enforcement	\$612	\$1,527	\$664	\$1,389	\$669	\$1,394	\$739	\$1,007	
Examination	\$0	\$132	\$0	\$138	\$0	\$71	\$0	\$298	
Licensing	\$812	\$344	\$976	\$264	\$697	\$228	\$770	\$215	
Administration*	\$438	\$148	\$470	\$103	\$957	\$281	\$1,051	\$265	
DCA Pro Rata	\$0	\$780	\$0	\$770	\$0	\$857	\$0	\$939	
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
TOTALS	\$1,862	\$2,931	\$2,110	\$2,664	\$2,323	\$2,831	\$2,560	\$2,724	

*Administration includes costs for executive staff, board, administrative support, examination personnel, and fiscal services.

**Figures are projected.

Cost Recovery and Restitution

Current law authorizes the Board to request fee recovery from any licensee found guilty of violation of the licensing act to pay for the reasonable costs of the investigation and enforcement of their case. Cost recovery is a standard term and condition specified in the Board's disciplinary guidelines for all proposed decisions and stipulations.

There is no specific amount of cost recovery ordered for revocations, surrenders, and probationers, as each discipline case has its own amount of cost recovery ordered depending on the investigation and prosecution costs incurred. Most cost recovery is due within 12 months of the order's effective date. During negotiations, a probationer can request a payment plan if he or she needs additional time to reimburse the Board. All cost recovery must be paid six-months prior to the completion of probation. If cost recovery is determined to be unrecoverable, the Board uses the Franchise Tax Board's Offset intercept program to collect the amount due. Generally, there is not a problem recovering costs from licensees because cost recovery is a term of probation, and failure to pay could result in license revocation. A fiscal overview of the Board's cost recovery program is available below:

Fiscal Overview of Cost Recovery					(list dollars in thousands)
	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	
Total Enforcement Expenditures	\$1,268	\$953	\$1,149	\$784**	
Potential Cases for Recovery *	37	31	25	33	
Cases Recovery Ordered***	29	41	26	21	
Amount of Cost Recovery Ordered	\$264	\$410	\$222	\$225	
Amount Collected	\$107	\$114	\$53	\$29	
* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the License Practice Act.					
** Total based on preliminary yearly expenditures provided by DCA					
***Cost recovery ordered may be from other accusations in different fiscal years					

Budget Change Proposals

Since the last Sunset Review, the Board reorganized its internal organizational structure, which included the hiring of additional staff to improve Board operations. This reorganization was a result of the 2015 Cooperative Personnel Services (CPS) Human Resource Consulting analysis of the Board's programs.

The CPS analysis recommended a structural reorganization of the Board into three distinct units by function: Licensing, Enforcement, and Central Services (Central Services includes activities such as legislative & regulatory operations, cashiering, and others). The study also recommended that each of these units have a Staff Services Manager to directly supervise staff and /recommended a reclassification of the Assistant Executive Officer to a Staff Services Manager II position to perform higher level support for the Board. According to the Board, this new structure ensures that each unit has appropriate supervisory positions in order to adequately monitor staff performance and assist with the Board's program improvement efforts.

As part of this reorganization, the Board submitted the following BCPs and were granted the authority to hire the additional following positions:

- FY 2016/17: One Program Technician (PT) II position to address increased workload associated with new cashiering and mail processing responsibilities.
- FY 2017/18, One Staff Services Manager I and one Staff Services Manager II to establish the organizational structure described above
- FY 2020/21: Two Office Technicians in its Central Services Unit to assist with managing the increasing volume in renewals. One position is effective FY 2020/21 and the second in 2021/22.

For FY 2021-22, the Board will be requesting funding to augment the Board's expert witness budget and to support court reporter expenses. This funding would align these line items with its actual expenditures. Historically, the Board has over expended its evidence/witness and court reporter budget. Until recently, the Board has been able to use savings within other areas of their appropriation to cover these expenses; however, the Board notes that it can no longer absorb these costs.

Staffing Issues

The Board has statutory authority to appoint its own Executive Officer (EO), who is tasked with performing duties as delegated by the Board. The current EO has served in the position since 2013. To support its mission, the Board has an additional 26.3 authorized positions.

The Board reports experiencing challenges in recruiting and retaining qualified administrative support staff. Some of these barriers are caused by factors outside of the Board's control, with multiple state entities included in the hiring process. For example, DCA and the California

Department of Human Resources (CalHR) are intimately involved in defining job classifications, salaries and benefits, as well as approving job postings, recruitment efforts, and final hiring. This can extend recruiting timelines and negatively impact Board operations with lengthy vacancies.

For existing staff, the Board reports contracting with CPS to also perform a training needs assessment and design a succession plan manual. The board also spent significantly more on staff training in FY18-19 for staff development. A breakdown of staff training expenditures since the last Sunset Review has been included below:

Expenditures	2015/16	2016/17	2017/18	2018/19
Staff Training	\$1,143	\$620	\$840	\$4,810

Licensing

The Board licenses psychologists and registers psychologists and psychological assistants. Applicants for a Psychologist license must have a qualifying doctorate degree, complete a minimum of 3,000 hours of supervised professional experience, and pass a national examination and a California law and ethics examination. Psychological assistants must earn a qualifying master’s degree, must be registered to a licensed psychologist or a Board-certified psychiatrist as employees, and may provide limited psychological services under the direct supervision of the psychologist or psychiatrist with whom they are registered. Registered psychologists must earn a qualifying doctoral degree, must complete a specified number of hours of professional experience under supervision, and can only engage in psychological activities at qualifying nonprofit community agencies.

The Board’s licensee population is outlined below:

Licensee Population					
License Type	License Status	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19
Psychologist	Active	17,434	17,828	18,255	18,719
	Delinquent	1,023	1,062	1,144	1,146
Registered Psychologist	Active	262	232	177	129
	Delinquent*	N/A	N/A	N/A	N/A
Psychological Assistant	Active	1,580	1,442	1,355	1,378
	Delinquent	95	78	100	87
*Registered Psychologists do not renew so there is no delinquent status					

Although the Board reports that its Licensing Unit is meeting program expectations and maintaining reasonable timeframes when processing licensing applications, the Board is experiencing a notable increase in the average time to process complete applications and a significant increase in the average time to process incomplete applications in the past three fiscal years. Additionally, the number of pending applications has outpaced completed applications. An overview of this trend is outlined in the table below:

Licensing Data – Processing Times (Initial License/Initial Exam Cycle Time)			
	FY 2016/17	FY 2017/18	FY 2018/19
Average Days to Application Approval (All - Complete/Incomplete)	29	31	40
Average Days to Application Approval (incomplete applications)*	46	58	81
Average Days to Application Approval (complete applications)*	23	26	34
<i>*Incomplete applications require the Board to contact applicants to submit missing or incorrect information, further delaying processing times</i>			

To respond to this trend, the Board aims to identify any performance barriers in the licensing process through DCA’s Organizational Improvement Office (OIO). The Board reports having developed the following improvement plans:

- Pathways to Licensure – The Board has conducted a comprehensive review of its statutes and regulations addressing how licensure can be obtained. The Board has provided suggestions for statutory changes aiming at removing barriers to licensure and streamline the administrative steps related to obtaining licensure.
- OIO – The Board will be working with DCA’s OIO to identify and evaluate program and process efficiencies. Once the review with OIO is complete, the Board will submit a BCP to seek authorized positions to improve performance.

Applicant information

The Board requires every applicant for a registration or license to be fingerprinted and undergo a criminal history background check. Applicants with a clear criminal history report continue with the application review process, and those with a conviction history are requested to provide court certified documentation for the arrest and conviction. Enforcement staff reviews the criminal history documentation to determine if the conviction is substantially related to the practice of psychology. If a substantial relationship exists, the application may be denied.

Board staff also checks BreEZe to determine if any disciplinary action has been filed against the applicant by another DCA entity. Additionally, the Board accesses the ASPPB Disciplinary Data Bank to determine if an applicant has ever been disciplined by another state board or jurisdiction. Once the applicant is licensed or registered, the Board receives subsequent arrest information from the Department of Justice.

Since the last Sunset Review, the Board identified individuals who did not have fingerprint results on file and required them to be fingerprinted. According to the Board, all current and active licensees are in compliance with the fingerprint requirement.

Examination

Psychology licensure candidates must take the national Examination for Professional Practice in

Psychology (EPPP), which is administered by the ASPPB. In addition, candidates for licensure must also take the California Psychology Laws and Ethics Examination (CPLEE), which is administered by the Board. The EPPP and CPLEE are both computer-based examinations.

Pursuant to 16 CCR 1388(h), an applicant for whom English is the second language may be eligible for additional time when taking the licensing examinations.

Below are the pass rates for first time vs. retakes in the past four fiscal years:

Examination Pass Rate of First Time vs. Retakes								
Fiscal Year	EPPP				CPLEE			
	Total First Timers	Pass Rate	Total Retakes	Pass Rate	Total First Timers	Pass Rate	Total Retakes	Pass Rate
2015/2016	694	88%	688	23%	953	98%	375	48%
2016/2017	901	70%	587	28%	860	78%	209	62%
2017/2018	912	68%	692	30%	899	80%	269	71%
2018/2019	859	69%	732	28%	918	71%	348	69%

School Approval

In response to concerns that California was the only state that allowed students from unaccredited schools to attempt the psychology licensing examinations and that licensed California psychologists were not able to be full members of the national professional association, statutory changes were enacted requiring, beginning January 1, 2020, that an applicant for psychologist licensure graduate from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. The changes included a grandfather clause to ensure psychology students at the time would not be impacted by the change. The Board does not approve schools and has no authority to do so.

Continuing Education

Currently, the Board requires all licensees to accrue for each renewal cycle 36 hours of continuing education, including nine hours of live or live-interactive CE, in order to maintain their license. The Board accepts CE courses provided by the American Psychological Association; the California Psychological Association; the Association of Black Psychologists; the California Medical Association; and the Accreditation Council for Continuing Medical Education.

The Board reports that it has initiated the rulemaking process to implement regulatory changes that would replace the current continuing education model with a broader Continuing Professional Development (CPD) model developed by ASPPB. This model will consist of fourteen continuing professional development activities grouped under four different categories, including:

- 1- Professional (Peer Consultation, Practice Outcome Monitoring, Professional Activities, Conferences/Conventions, Examination Functions)

- 2- Academic (Academic Courses, Academic Instruction, Supervision, Publications)
- 3- Sponsored Continuing Education Coursework including Independent/Online Learning
- 4- Board Certification from the American Board of Professional Psychology (ABPP).

The Board's renewal application requires licensees to self-certify under penalty of perjury the amount of CE hours accrued. The Board then conducts random CE audits of 10% of the licensees renewing each month. Selected licensees are mailed and emailed an initial audit notice and are given 60 days from the date of the notice to submit CE course certificates to verify completion of the required CE. If the Board does not receive a response within 30 days, a final notice of the audit deadline is mailed to the licensee. If a licensee passes the audit, the licensee is sent a compliance letter. If a licensee fails a CE audit, he or she is issued a citation order requiring the individual to accrue the hours he or she is deficient and pay a fine.

Fines for failure to complete CE range from \$250 to \$2,500 depending on the number of hours short and the number of audits the licensee has previously failed. Any licensee who wants to contest a citation or fine can request an informal conference or an administrative hearing. If the licensee fails to provide any response to the audit, the licensee may be subject to discipline.

The Board reports that in the past four fiscal years, 2,485 licenses have been audited. Of the 2,485 licensees audited, 322 have failed (13%).

Enforcement

To promote transparency regarding enforcement goals and timelines for disciplinary actions, DCA uses Performance Measures (PM) to gauge the effectiveness of a Board's enforcement program. The PMs were established through DCA's Consumer Protection Enforcement Initiative (CPEI) and can provide insight into a Board's enforcement processes – for example, how much time occurs between a complaint being filed with the Board and any disciplinary action taken as a result of the complaint.

The PMs, their definition, and their target goals are outlined on the following table:

Performance Measure (PM)	Definition	Performance Target
PM 1 Volume	Number of complaints and convictions received.	*
PM 2 Intake	Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.	9 days
PM 3 Intake/ Investigation	Average number of days to complete the entire enforcement process for cases not transmitted to the AG. (Includes intake and investigation).	80 days
PM 4 Formal Discipline	Average number of days to complete the entire enforcement process for cases transmitted to the AG for formal discipline (includes intake, investigation, and transmittal outcome).	540 days
PM 5 Efficiency (cost)	Average cost of intake and investigation for complaints not resulting in formal discipline.	**
PM 6 Customer Satisfaction	Consumer satisfaction with the service received during the enforcement process.	***
PM 7 Probation/ Intake	Average number of days from monitor assignment, to date the monitor makes first contact with the probationer.	7 days
PM 8 Probation Violation Response	Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.	10 days
* Complaint volume is counted and not considered a performance measure		
** Data not collected		
*** The DCA-wide average for all participating programs has been between 80-85% since 2015.		

The Board reports that it is meeting all of its performance targets with the exception of PM 4 (Formal Discipline). Formal discipline requires involvement with the Office of the Attorney General (AG) and the Office of Administrative Hearings, and the Board has limited control over case aging after they transfer the case to these entities. As a result, the performance target of 540 days is not always met. To improve this measure, the Board has limited the amount of time given to the respondent during settlement negotiations and requested that Accusations/Statement of Issues be filed within 30 days of transmittal to the Office of the Attorney General.

Of note, the Board's volume of complaints and arrests has increased by 27% since the last Sunset Review. In FY 2018/19, the Board received its largest number of complaints and arrests, totaling 1,232 case; compared to 972 in FY 2014-15. According to the Board, no recognizable trends have been identified to explain the continued increase in complaint volume.

Ratio of Closure to Pending Cases	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19
Prior Year Pending (AG Pending Cases and Pending Intake or Investigation Cases)	275	415	274	376	488
Complaints and Arrests Received	972	1,038	1,232	1,183	1,232
Closed at Intake	92	210	274	351	336
Closed at Investigation	736	768	918	882	837
Closed at AG	15	15	13	9	11
Closed with Discipline	20	34	53	33	29
Case Workload	1,247	1,453	1,506	1,559	1,720
Case Closure	863	1,027	1,258	1,275	1,213
Pending Cases	384	426	248	284	507
Closure to Pending Ratio	2.25:1	2.41:1	5.07:1	4.49:1	2.39:1

The Board has identified the following performance barriers for its Enforcement program:

- 1) *Increased number of complaints and enforcement workload.* As outlined in the table above, the Board has experienced an increase in the number of desk investigations due to a growing number of complaints and applicant file reviews where there is a history of convictions or discipline from another state or jurisdiction. Additionally, the Board has experienced an increase in the number of administrative subpoenas and petitions for early termination of probation and reinstatement. In addition to performing desk investigations, enforcement analysts are also responsible for updating forms and procedure manuals, responding to Public Records Act (PRA) requests, preparing statistical data reports, facilitating and organizing expert training, and preparing and issuing administrative subpoenas.
- 2) *Limited pool of Subject Matter Experts.* Currently, the Board has 42 Subject Matter Experts (SME), which is down from 100 SMEs from the prior Sunset Review. The Board utilizes licensed psychologists as SMEs to review complaints to determine if there has been a departure from the standard of care. The Board has identified several factors for this decrease, such as insufficient amount paid in relation to the prevailing hourly rate, availability of SMEs, potential conflicts of interest with respondents, complainants, or opposing counsel, and limited pools of experts in certain fields such as child custody evaluations, neuropsychology, and forensic psychology.
- 3) *Timeframes for formal investigations.* The Board no longer utilizes the Health Quality Investigative Unit due to lengthy timeframes of approximately 24 months for investigations. To reduce investigative timeframes, the Board engaged DCA's Division of Investigation in 2017 to take over investigative workload.
- 4) *Statutory barriers to obtain necessary documentation.* Through the Child Custody Stakeholder Meeting held in September 2018, the Board has identified statutory barriers to

obtaining necessary documentation in its investigations of child custody-related complaints.

- 5) *Timeframes for administrative hearings.* Currently, the Office of Administrative Hearings (OAH) takes an average of 12 months to hear a disciplinary matter, once scheduled. This barrier is outside of the Board's control.

Of note, since the last Sunset Review, the overall enforcement statistics do not reflect a significant change in the number of disciplinary actions taken by the Board.

Cite and Fine

The Board can address relatively minor violations of the Psychology Act through citations and fines. The five most common violations for which citations are issued are as follows:

- Failure to comply with the continuing education requirements;
- Failure to disclose conviction information on renewal application;
- False or misleading advertising;
- Unlicensed practice; and
- Violation of the terms and conditions of probation.

The cite and fine process allows an individual to request an informal conference with the Board's EO to present information to modify, withdraw, or affirm the decision. As a result, the fines collected can often differ from the fines originally assessed to the licensee. The average pre-appeal fine for enforcement citation orders is \$1,950 and the average postappeal fine is \$1,125. The average pre-appeal fine for CE citation orders is \$772 and the average post-appeal fine is \$573.

In instances of failure to pay a fine within the required time, the licensee or non-licensee's information is forwarded to the DCA for referral to Franchise Tax Board for collection.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development (the Committees) in 2016. At that time, the Committees identified 7 issues for discussion. Below are prior issues raised by the Committees in the Background Paper of 2016, the Committees' recommendations, and the Board's responses to how the issues or recommendations were addressed by the Board.

Prior Issue #1: Lack of mental health providers in certain communities. The Board collects a \$10 fee as part of license renewals to support the Mental Health Practitioner Education Fund, which can award up to \$15,000 to repay educational loans over a 24-month period in exchange for a 24-month commitment to practicing and providing direct care in a publicly funded or public mental health facility, a non-profit mental health facility, or a mental health professions shortage area. The Committees inquired how the Board could further promote service in these underserved

areas, and whether \$10 is sufficient to fund the Mental Health Practitioner Education Fund. In response, the Board launched an outreach and education campaign, which included several articles in the Board's newsletter publication about loan repayment opportunities. In 2017, the legislature also increased the contribution fee to the Mental Health Practitioner Education Fund to \$20 (AB 1188, Nazarian, Chapter 557, Statutes of 2017)

Prior Issue #2: Licensing applicants from unaccredited schools. At the time of the last Sunset Review, California was the only state that allowed students from unaccredited schools to sit for psychology licensing examinations. The committees recommended removing language authorizing graduates with degrees from unaccredited institutions to sit for licensure by the Board, and ensure that timeframes for this change accommodate current students. Legislative changes made in the Sunset bill required, beginning January 1, 2020, that an applicant for psychologist licensure graduate from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. The changes included a grandfather clause to ensure psychology students at the time would not be impacted by the change.

Prior Issue #3: Continuing Education. The Committees inquired if the Board had any recommendations for updating continuing education statutes. As discussed in earlier sections of this paper, the Board reports that it has initiated the rulemaking process to implement regulatory changes that would replace the current continuing education model with a broader Continuing Professional Development model.

Prior Issue #4: Expansion of Psychological Assistant practice areas. During the last Sunset Review, the Committees and the Board identified outdated statutes that restricted employment of a psychological assistant to a psychological or medical corporation, a California licensed psychology clinic, a Bronzan-McCorquodale contract clinic, a licensed psychologist, or a board certified psychiatrist. The Sunset bill enacted statutory changes that removed the restriction on the types of settings in which a psychological assistant can work. The Board has implemented these changes through its statutory authority and is seeking additional conforming changes via regulations.

Prior Issue #5: Retired License. After identifying that the Psychology Act did not authorize a "retired" license status (a licensee may only choose between "inactive" or "delinquent"), the last Sunset Review provided the Board with statutory authority to create a retired license status. The Board has initiated the formal rulemaking process to implement these statutory changes in regulation.

Prior Issue #6: Web Site Information. The Committees discussed if the Board should update its public information policies and authorize the Board to post historical information on existing and past licensees' approved graduate and post-graduate education on its Web site, in order to enable consumers to make informed decisions when selecting a psychology provider. The Sunset bill clarified the Board's authority to post enforcement-related actions and documents and to add the following licensee information on current and former licensees, including institutions that awarded the qualifying educational degree and type of degree awarded and a link to the licensee's professional internet website.

Prior Issue #7: Licensing and regulation of the practice of psychology to be continued and be regulated by the current Board membership. The Board regulatory authority was extended by another 4 years.

**CURRENT SUNSET REVIEW:
ISSUES FOR THE BOARD OF PSYCHOLOGY**

BOARD ADMINISTRATIVE ISSUES

ISSUE #1: (FUTURE FEE INCREASES) The Board is experiencing a budget structural deficit, which will necessitate fee increases in the future. What options should the Board consider in order to stabilize its fund condition?

Background: The Board is special-funded, and as such does not receive funding from California’s General Fund. The Board generates revenue primarily from license, application, and examination fees levied on Psychologists, Psychological Assistants, and Registered Psychologists. The Board is currently facing a budget structural deficit, with expenditures outpacing revenue streams. The table below outlines this budget imbalance:

Fund Condition						
(Dollars in Thousands)	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Revenues and Transfers	\$4,150	\$4,337	\$3,980	\$9,817	\$9,415	\$3,189
Expenditures	\$4,658	\$4,585	\$5,107	\$5,036	\$5,396	\$6,111
Months in Reserve*	11.8	9.5	6.4	16.3	21.1	13.1

**The Board was repaid a loan it had made to the General Fund in FY 18/19, bolstering its reserves for that year. However, the Board continues to operate at a fiscal deficit.*

The Business and Professions Code (BPC) establishes statutory limits on the various fees levied on licensees. The Board may adjust fees via regulations, as long as the dollar amount remain within the statutory limits. As part of the Sunset Review process, the Board may request the legislature to adjust the fee statutory limits to respond to budgetary needs.

The Board has not yet reached the cap on several fee types: for example, both the initial licensing fee and the biennial renewal fee for Psychologists are currently set by the Board at \$400, but are statutorily limited to \$500.

The Board’s current fee schedule and respective statutory limits are outlined below:

Fee Schedule and Revenue (list revenue dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2015/16 Revenue	FY 2016/17 Revenue	FY 2017/18 Revenue	FY 2018/19 Revenue	% of Total Revenue
LICENSING FEES							
Application Fee – Psychologist	\$40	\$50	\$58	\$55	\$59	\$61	1%
Application Fee – Psych Assistant	\$40	\$75	\$41	\$35	\$31	\$30	1%
Initial License Fee – Psychologist	\$400	\$500	\$401	\$334	\$362	\$346	8%
California Psychology Laws and Ethics Examination	\$129	Actual Cost to Board	\$156	\$144	\$157	\$170	4%
CE Evaluation Fee	\$10	\$10	\$81	\$87	\$78	\$85	2%
Biennial Renewal Fee – Psychologist	\$400	\$500	\$3,197	\$3,439	\$3,301	\$3,416	78%
Inactive License (Psychologists)	\$40	\$40	\$50	\$58	\$58	\$55	1%
Annual Renewal Fee – Psychological Assts	\$40	\$75	\$34	\$36	\$36	\$33	1%
Delinquent Fee – Psychologist	\$150	\$150*	\$11	\$12	\$23	\$34	1%
Delinquent Inactive Renewal Fee – Psychologists	\$20	50% of Renewal Fee	\$0	\$0	\$2	\$4	<1%
Delinquency Fee – Psychological Assts	\$20	50% of Renewal Fee	\$1	\$1	\$1	\$1	<1%
Duplicate License Fee	\$5	\$5	\$3	\$3	\$8	\$5	<1%
Certification / Letter of Good Standing	\$5	\$5	\$2	\$2	\$2	\$2	<1%
FINES & PENALITIES							
Citations & Fines	Varies	\$5,000	\$58	\$64	\$148	\$53	1%
Franchise Tax Board Cite Fine Collection	Varies	N/A	\$0	\$0	\$3	\$1	<1%
OTHER							
Income from Surplus Money Investment	Variable	N/A	\$24	\$38	\$40	\$68	2%
Suspended Revenue	Variable	N/A	\$32	\$21	\$19	\$23	1%
Over/Short Fees	Variable	N/A	\$1	\$0	\$0	\$0	<1%
OTHER (cont.)							
Miscellaneous**	Variable	N/A	\$1	\$1	\$4	\$1	<1%

Based on current projections, the Board expects that it will need to increase its fees in some manner by FY 2023-24. To further alleviate budget pressures, the Board reports that it will be conducting

an analysis of its existing operations and determine if small administrative fees can be levied to recoup actual costs for completing certain service. For example, the Board is considering enacting a fee for official licensing file transfers – which occurs when the Board transfers official documents at the request of a licensee, such as applications filed with the Board or proof of supervised professional experience, for the purpose of licensure in another state or jurisdiction.

Staff Recommendation:

The Board should describe its budget resource needs, provide additional details on the administrative solutions it is considering to improve its fund condition, and report to the Committees on any fee increases it plans to enact.

ISSUE #2: (WAIVER AUTHORITY) Should the Board be granted special authority to waive provisions of the Psychology Licensing Law during a state of emergency?

Background: In response to the COVID-19 global pandemic, Governor Newsom proclaimed a state of emergency on March 4, 2020, mobilizing state agencies and resources to battle the highly contagious respiratory virus. On March 30, 2020, the Governor also issued Executive Order N-39-20, which authorized the DCA Director to temporarily waive any of the professional licensing requirements relating to health care licensees in the BPC.

Since then, DCA – in coordination with the licensing boards under its jurisdiction – issued several waivers to adapt and respond to changes brought by the pandemic. These included temporarily waiving examination timing requirements or waiving face-to-face supervision requirements to accommodate social distancing recommendations and shelter-in-place orders.

The Board worked with DCA on several waiver requests. Two waivers submitted by the Board were approved, and three were denied.

To supplement its own response to the pandemic, the Board established an Emergency Preparedness Ad Hoc Committee. This Committee was tasked with evaluating Board processes, including meetings, petition hearings, and identifying statutory authority needs. Based on its experience with the COVID-19 pandemic, the Board has expressed concerns that it currently does not have sufficient flexibility in responding to issues impacting licensees and the public. At the recommendation of the Emergency Preparedness Ad Hoc Committee, the Board is requesting to have independent authority to waive specified provisions of the Psychology Licensing Law during a declared federal, state or local emergency.

Staff Recommendation:

The Board should discuss its activities responding to the COVID-19 global pandemic, its experience with the existing waiver process, and its request for independent authority to waive the Psychology Licensing Law during a state of emergency.

ISSUE #3: (UNNOTICED COMMITTEE MEETINGS) Committees made of two board members are not required to be open to the public. Should two-person committees be used to provide recommendations to the full Board?

Background: All state boards and commissions must abide by the Bagley-Keene Open Meeting Act (Open Meeting Act), which specifies how these state entities must meet, deliberate, and conduct business. Generally, regulatory bodies are required to publicly notice their meetings in advance, prepare agendas, accept public testimony, and make decisions in meetings open to the public. The purpose of the Open Meeting Act is to provide the California public with the ability to monitor and participate in the decision-making process of the executive branch and limit the instances in which meetings or decisions can be made behind closed doors.

Regulatory boards under DCA often use committees (sometimes called subcommittees), which generally consist of less than a quorum of the members of the full board, to address specific issues or topics. Committees allow for a deeper dive on a variety of subjects that would otherwise not be possible at a full board meeting where other business must be conducted.

Under the Open Meeting Act, committee meetings are also required to be noticed and open to the public. The only exception is for a committee that consists of fewer than three persons and does not exercise any authority of a state body delegated to it by that state body. This means that a committee made up of two board members are not required to publicly notice their meetings, but that the committee cannot make a policy decision on behalf of the full board. In this instance, a committee can provide recommendations to the entire Board, but those recommendations must be discussed and considered at a public meeting.

Stakeholders have expressed concerns that the Board has used two-person committees to draft and discuss proposed regulatory language of significance to the psychology profession. Because those specific committee meetings are not disclosed nor open to the public, stakeholders allege that they are unable to participate or provide feedback until draft regulatory language is considered for discussion at an open meeting of the full board. While public discussion can happen then, stakeholders argue that valuable time and meaningful input is lost if the public cannot attend committee meetings.

According to the Board, it has welcomed this feedback and has changed the telepsychology two-person committee to a three- member committee. This change has subjected the committee in question to the requirements of the Open Meeting Act.

Staff Recommendation

The Board should describe its use of two-person committees. Additionally, the Board should discuss how it ensures adequate public and stakeholder participation on the various policy and regulatory issues impacting the psychology profession.

LICENSING ISSUES

ISSUE #4: (FOREIGN DEGREE EVALUATION) Should the National Register of Health Services Psychologists be statutorily added as an organization that can provide foreign credential evaluation services for applicants who are trained outside the United States or Canada?

Background: BPC Section 2914 requires an applicant for licensure trained in an educational institution outside the United States or Canada to demonstrate to the satisfaction of the board that the applicant possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. To do so, applicants must provide the Board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the Board deems necessary.

The ASPPB conducted a discussion on foreign-trained applicants and received information about the National Register of Health Services Psychologists (NRHSP). Established in 1974, the NRHSP describes itself as an independent nonprofit organization and the largest credentialing organization for psychologists and psychology doctoral students.

After reviewing the NRHSP credentials review process, the Board approved draft statutory amendments to add the NRHSP as an additional credential evaluation service. According to the Board, this proposed change will offer foreign-trained applicants an additional avenue to obtain the credentials evaluation required for licensure.

Staff Recommendation

The Board should provide details on its recommendation to add the NRHSP as an entity that can perform foreign credential evaluation service for the purpose of licensing applicants trained in an educational institution outside the United States of Canada.

ISSUE #5: (PATHWAY TO LICENSURE) How can the Board reduce its increasing licensing timelines? What is the Board's plan to streamline pathways to licensure, maintain high consumer protection standards and remedy program inefficiencies?

Background: As noted in the "Licensing" section of this background paper, the Board is experiencing a notable increase in the average time to process complete applications and a significant increase in the average time to process incomplete applications in the past three fiscal years. Additionally, the number of pending applications has outpaced completed applications.

In response to this trend, the Board has conducted a comprehensive review of its statutes and regulations addressing how licensure can be obtained. The Board has identified sections it believes create undue barriers to licensure, or are inconsistent with the current training environments, education, and new technologies related to the practice of psychology. The Board will be pursuing statutory and regulatory changes to enact these proposed changes.

Among several other technical and substantive proposals, the Board recommends restructuring existing registration categories to expand training opportunities for registrants; updating outdated terminologies to reduce confusion; changing the definition of qualified primary supervisors; modifying continuing education requirements, and more.

Staff Recommendation:

The Board should report back on its work reviewing licensing statutes and regulations, and work with the Committees to identify legislative changes to improve pathways to licensure. In addition, the Board should describe how it anticipates these potential statutory changes to improve licensing timelines.

ISSUE #6: (LICENSE REINSTATEMENT) Should existing law be clarified to allow the reinstatement of a license that was voluntarily surrendered under non-disciplinary circumstances?

Background: Based on the Board’s analysis of its aging licensee demographic and input from its stakeholders about discipline related to a licensee’s cognitive impairment, the Board has reevaluated its approach to investigation and discipline of complaints where there is no consumer harm involved. The Board reports instances where licensees have diminished cognitive capacity due to diseases such as Alzheimer’s and the licensee’s family or a fellow licensee reported that the licensee is starting to experience cognitive issues due to their impairment but have no consumer complaints filed against them.

Currently, the Board has implicit statutory authority to accept a non-disciplinary surrender of a license. However, the Board reports that it does not have a mechanism for reinstatement of such a surrendered license in circumstances where medication or surgery could restore cognitive function. As such, the Board is requesting clarification of the process for voluntary surrender and to establish a mechanism for such individuals to petition the Board for reinstatement of their license.

Staff Recommendation:

The Board should provide the Committees with its recommendation on legislative changes that would allow license reinstatement after a non-disciplinary surrender while maintaining adequate consumer protection.

ISSUE #7: (AUTHORITY OF THE LICENSURE COMMITTEE) Should the Board’s Licensure Committee be able to have final authority when reviewing licensing requests from applicants?

Background: As described previously, all state boards and commissions are subject to the Open Meeting Act which specifies, that meetings must be noticed in advance and open to the public. Among other exceptions, the Open Meeting Act does permit a licensing board to conduct, under specified circumstances, a closed session meeting to discuss matters that may constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting.

According to the Board, its Licensure Committee uses this statutory discretion when discussing certain licensing related requests from applicants. For example, the Committee reviews requests for additional time to accrue the supervised professional experience required for licensure due to personal or health-related reasons. According to the Board, the Committee is often presented with personal medical information that accompanies these requests. The Committee then brings its recommendations to the full Board for final decision in open session at a Board Meeting, where the requests must be substantially redacted to protect sensitive personal information. The Board suggests that this process creates unnecessary delays for those seeking licensure, where these individuals may be unable to practice while awaiting a final decision from the Board.

The Board is requesting the ability to delegate the final authority to review and decide these requests to the Licensure Committee, and still have the ability to meet in closed session in the interests of fairness and privacy protection for these applicants and licensees.

Staff Recommendation:

The Board should discuss its request to delegate final authority related to licensing issues. The Board should also provide the Committees with recommendations on how the Board can both safeguard sensitive personal information and maintain transparency and accountability with the public regarding its licensing decisions.

ISSUE #8: (SCHOOL OVERSIGHT) The Board’s prior sunset review resulted in changes to the law that require applicants to now graduate from regionally accredited educational institutions. How has the change impacted California students and patients?

Background: During the prior sunset review oversight for the Board, concerns were raised about the lack of oversight for certain psychology educational programs. At the time, the Committee noted that California was the only state that allowed students from unaccredited schools to attempt the psychology licensing examinations, and that licensed California psychologists were not able to be full members of the national professional association. SB 1193 (Hill, Chapter 484, Statutes of 2016) required, beginning January 1, 2020, an applicant for psychologist licensure to graduate from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education. The changes included provisions aimed at ensuring that students enrolled in unaccredited institutions would still have a pathway to licensure.

It would be helpful for the Committees to understand what the Board has done to implement SB 1193, including outreach to students and schools to ensure appropriate compliance with the new requirement, and how students were accommodated through the transition to the accreditation requirement taking effect. It would be helpful for the Committees to learn how increased standards for educational programs have benefited students, licensees, and patients.

Staff Recommendation:

The Board should advise the Committees on the implementation of new requirements for applicants to have completed their education and training at a regionally accredited institution.

ISSUE #9: (RESEARCH PSYCHOANALYST REGISTRATION) Should a registration program for Research Psychoanalysts be administered by the Board of Psychology instead of the Medical Board of California?

Background: According to the American Psychological Association (APA), psychoanalysis is a specialty in psychology that is distinguished from other specialties by its body of knowledge and its intensive treatment approaches. It aims at structural changes and modifications of a person's personality. Psychoanalysis promotes awareness of unconscious, maladaptive and habitually recurrent patterns of emotion and behavior, allowing previously unconscious aspects of the self to become integrated and promoting optimal functioning, healing and creative expression. The APA states that psychoanalytic training typically requires four to eight years of advanced study after completion of a doctoral degree in psychology acceptable to the American Board of Professional Psychology and further requires specialized training at free-standing psychoanalytic institutes, postdoctoral university programs, or an equivalent training secured independently that is acceptable to the American Board and Academy of Psychoanalysis.

A registered Research Psychoanalyst (RP) is an individual who has graduated from an approved psychoanalytic institution and is registered with the Medical Board of California (MBC). Students currently enrolled in an approved psychoanalytic institution and register with MBC as a Student RP, and as such, are authorized to engage in psychoanalysis under supervision. Existing law authorizes individuals who have graduated from an approved psychoanalytic institute to engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts and requires these individuals to register with MBC. An RP may engage in psychoanalysis as an adjunct to teaching, training or research. "Adjunct" means that the RP may not render psychoanalytic services on a fee-for-service basis for more than an average of one-third of his or her total professional time, including time spent in practice, teaching, training or research. Students and graduates are not entitled to state or imply that they are licensed to practice psychology, nor may they hold themselves out by any title or description of services incorporating the words: psychological, psychologist, psychology, psychometrists, psychometrics or psychometry. MBC follows a process to determine the appropriate educational and training qualification (as reflected through materials received directly from entities verifying this information) and also the proper background checks for applicants for RP registration.

In 1977, when RPs were first recognized statutorily, MBC, then the Board of Medical Quality Assurance, was comprised of three sections, the Division of Medical Quality, the Division of Licensing, and the Division of Allied Health Professions. Several allied health professions were within the jurisdiction of the Division of Allied Health Professions, including audiologists, acupuncturists, hearing aid dispensers, physical therapists, medical assistants, physician assistants, podiatrists, registered dispensing opticians, speech pathologists, and psychologists. In 1990, when the Board of Psychology came into existence, RPs remained under the MBC's oversight.

The Board of Psychology previously had a member who served as president of the Northern California Society for the Psychoanalytic Psychology Board of Directors and who was an assistant editor for a psychoanalytic publication. It appears that the Board of Psychology may have more expertise in this discipline and may be a more appropriate entity to register RPs who engage in the practice.

Staff Recommendation:

In coordination with the MBC, the Board should advise the Committees as to why RPs are under the jurisdiction of the MBC rather than the Board of Psychology. Upon receipt of information from MBC and the Board of Psychology, the Committees may wish to transfer registration of RPs to the Board of Psychology, which already successfully administers registration programs for individuals practicing psychology.

ISSUE #10: (AB 2138.) What is the status of the Board’s implementation of Assembly Bill 2138 (Chiu/Low) and are any statutory changes needed to enable the Board to better carry out the intent of the Fair Chance Licensing Act?

Background: In 2018, Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018) was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied based on prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, it was presumed that its implementation would require changes to current regulations for every board impacted by the bill. It is also likely that the Board may identify potential changes to the law that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public. AB 2138 went into effect on July 1, 2020.

Staff Recommendation:

The Board should provide an update in regards to its implementation of AB 2138 provisions, as well as relay any recommendations it has for statutory changes.

ENFORCEMENT ISSUES

ISSUE #11: (ENFORCEMENT WORKLOAD AND RESOURCES) How can the Board effectively use its resources to proactively address increasing workload on its Enforcement Unit?

As noted in the Enforcement section of this background paper, while the Board is meeting enforcement performance targets under its control, the volume of complaints and arrests has increased by 27% since the last Sunset Review. As an example, in FY 2018/19, the Board received its largest number of complaints and arrests, totaling 1,232 case; compared to 972 in FY 2014-15. According to the Board, no recognizable trends have been identified to explain this increase in complaints.

Without insight as to the cause of such increases, there are concerns that enforcement workload will continue to trend upwards in the coming years. The Board should proactively determine what its resources or staffing needs are, should complaint volume continue to rise.

Additionally, stakeholders have expressed concerns that the Board is using resource-intensive enforcement tactics – such as the use of undercover operations – to investigate alleged minor violations. Generally, these investigation techniques are not conducted by Board staff, but through DCA’s Division of Investigation (DOI). Of note, the Board no longer utilizes the Health Quality Investigative Unit due to lengthy timeframes of approximately 24 months for investigations. To reduce investigative timeframes to between 12 to 16 months, the Board engaged DOI in 2017 to take over investigative workload. DOI, a centralized service for all regulatory entities under the DCA umbrella, conducts specified administrative and criminal investigations that require the use of law enforcement. Although the Board cannot provide details on open investigations, it notes that it is its responsibility to investigate all complaints filed with the Board.

Staff Recommendations:

The Board should proactively determine how it plans to address a continued increase in complaint volume, and how it can effectively uses available resources to ensure effective consumer protection.

ISSUE #12: (SEXUAL BEHAVIOR) Should the Board update the definition of sexual behavior for the purpose of disciplinary action?

In 2019, the Board pursued legislation that would define “sexual behavior” as inappropriate contact or communication of a sexual nature – and would have required an administrative law judge’s proposed decision to include an order of licensure revocation when there is a finding that a licensee of the Board of Psychology has engaged in sexual behavior short of sexual contact with a client during therapy, or within two years of termination of therapy. According to the Board, the legislation would assist in achieving appropriate discipline for cases that did not meet the existing definition of sexual contact and therefore did not require the Administrative Law Judge to recommend revoking the license. The legislation was pulled due to the circumstances of COVID-19 pandemic, but the Board notes that it will seek legislation at the next opportunity.

Staff Recommendations:

The Board should update the Committees on its plan to update the definition of “sexual behavior” for the purpose of disciplinary action.

ISSUE #13: (PUBLISHING DISCIPLINARY ACTION OUTCOMES) Should the Board publish the outcome of disciplinary actions on its newsletter and other public channels?

Background: As part of its broader outreach efforts, the Board publishes a quarterly newsletter publication which provides information to licensees and members of the public. The content of the newsletter includes Board member profiles, regulatory and legislative updates, or general updates related to the practice of psychology. This newsletter, also called the “Journal,” is available on the Board’s website, and is advertised via the Board’s distribution list-serv and social media channels, with physical copies available at the Board’s office location.

The newsletter notably includes information on any recent disciplinary action taken by the Board. In this section, the Board provides summaries of stipulated settlements, and includes the full name, license or registration number, and general location of individuals who were disciplined.

Stakeholders have expressed concerns that publishing this information on a public forum can be damaging for licensees, particularly if the information made public is erroneous or incorrect. In response, the Board asserts that making the information available is important for transparency and consumer protection, and that publishing disciplinary outcomes can serve as effective education tool for all current and prospective licensees. The Board also affirms that all published information is objective, as it is taken from stipulated settlements source documents, where disciplinary terms were negotiated and legally agreed upon between the licensee or their attorney and the Board's legal representative from the Office of the Attorney General.

Staff Recommendation

The Board should provide additional information on its newsletter disciplinary action section and describe how it maintains accuracy and objectivity with the information published.

ISSUE #14: (CONVERSION THERAPY) What actions can the Board take to protect minors from the prohibited practice of conversion therapy?

Background: Conversion therapy – sometimes referred as sexual orientation change efforts – is an attempt to change the sexual orientation of an individual, generally from homosexual or bisexual to heterosexual. Medical and mental health organizations have deemed conversion therapy to be harmful and potentially dangerous, as the longstanding scientific consensus is that variations in sexual orientation is a normal and positive aspect of human sexuality. Organizations like the American Psychological Association have affirmed over the past decade that homosexuality is not a mental disorder, and discouraged parents, guardians, and families to seek sexual orientation change efforts. In 2012, the state legislature prohibited mental health providers from providing conversion therapy services to patients under 18 years of age. In 2019, the legislature reasserted the ineffectiveness of conversation therapy, and the importance of protecting the mental health and well-being of the LGBTQ community through Assembly Concurrent

Resolution 99.

Since the 2012 ban on conversion therapy on minors, the Board reports the ability to discipline licensees who have engaged in prohibited sexual orientation change efforts. However, several regulatory questions remain outstanding, including whether the Board has updated its disciplinary guidelines to establish minimum and maximum penalties when adjudicating cases related to conversion therapy. Other regulatory bodies for mental health professionals, such as the Board of Behavioral Sciences, are in the process of establishing such guidelines.

Additionally, it is currently unclear if the Board can investigate cases filed by a minor, as the release form allowing the Board to obtain patient record must be signed by a parent or legal guardian. In instances where parents are forcing a minor to seek illegal conversion therapy services with a licensee, refusal to sign patient record release forms could create barriers for the Board during the investigation process. However, the Board does have the authority to issue a subpoena if necessary.

Finally, discussion around statute of limitations may provide insights on improving consumer protection against fraudulent sexual orientation change efforts. Because conversion therapy can harm young individuals, the narrow statute of limitations can prevent appropriate disciplinary action against a bad actor. These instances can be prevalent in crimes involving minors – such as conversion therapy – as childhood abuse is often not disclosed until victims become adults. This is an area where regulatory Boards can take a proactive role, such as engaging in outreach and education efforts, to ensure vulnerable members of the public have adequate access to information about the law or how to adequately file a complaint.

Staff Recommendation

The Board should report on its disciplinary and outreach activities related to prohibited conversion therapy practice on minors. Additionally, the Board should advise the Committees if there are existing barriers to enforcing the law, such as refusal to sign release form or narrow statutes of limitations.

ISSUES RELATED TO THE PRACTICE OF PSYCHOLOGY

ISSUE #15: (TEMPORARY PRACTICE PROVISIONS) Should existing law be updated to clarify how long a psychologist licensed in another state can practice in California?

Background: BPC 2912 permits a person licensed as a psychologist at the doctoral level in another state or in Canada to offer psychological services in California for a period not to exceed 30 days in a calendar year. According to the Board, this provision has been interpreted in multiple ways over time. For example, this section of the law does not define what constitute a day (e.g. any part of the day, or an accrued 8 hours) nor does it speak whether the calendar days must be consecutive or non-consecutive.

The Board is requesting that the law be clarified that the 30 calendar days of practice may be 30 consecutive or non-consecutive days in any calendar year, where practice for any part of a day is

considered a day.

Staff Recommendation

The Board should discuss its recommendation with the Committees. Additionally, the Board should explain how it currently tracks psychologists licensed in another state who offer psychological services in California, and how the 30 calendar days are documented.

ISSUE #16: (MENTAL HEALTH SERVICES FOR COVID-19 PROVIDERS) Does the Board have recommendations on how to provide mental health support and services to COVID-19 front line health care workers who are working under extreme conditions due to the COVID-19 pandemic?

Background: Throughout the COVID-19 pandemic, frontline healthcare workers and first responders, such as physicians, nurses, respiratory care therapists, paramedics, and more, have been caring for COVID-19 patients through multiple deadly surges, including a record shattering death toll surge in December of 2020.

In its bulletin “Healthcare Personnel and First Responders: How to Cope with Stress and Build Resilience During the COVID-19 Pandemic,” the Centers for Disease Control notes that “[p]roviding care to others during the COVID-19 pandemic can lead to stress, anxiety, fear, and other strong emotions.... Experiencing or witnessing life threatening or traumatic events impacts everyone differently. In some circumstances, the distress can be managed successfully to reduce associated negative health and behavioral outcomes. In other cases, some people may experience clinically significant distress or impairment, such as acute stress disorder, post-traumatic stress disorder (PTSD), or secondary traumatic stress (also known as vicarious traumatization). Compassion fatigue and burnout may also result from chronic workplace stress and exposure to traumatic events during the COVID-19 pandemic.”

Frontline healthcare workers are essential to the state of California. Given the length and the unique conditions of the COVID-19 pandemic, it may be beneficial to track trends and identify potential challenges and solutions in delivering mental health care and support for front line healthcare workers who have been under extreme physical and mental pressure since the start of the global pandemic.

Staff Recommendation: *The Board should discuss any findings related to the delivery of mental and behavioral healthcare to frontline healthcare providers and first responders.*

ISSUE #17: (CHILD CUSTODY) The Board is implementing several recommendations from stakeholders related to child custody issues. Are further legislative or regulator actions recommended?

Background: Over the past few years, issues have been raised by stakeholders regarding child custody matters in family court. This includes the role of psychologists who are appointed by a court to assist with custody and visitation proceedings. In 2018, the Board convened a stakeholder meeting to discuss these concerns and develop a plan to address them. The meeting included the Board of Psychology, the Board of Behavioral Sciences, Department of Consumer Affairs'

Executive Office and Legal Office, the Judicial Council of Family Law, the Senate Judiciary Committee, the Assembly Business and Professions Committee, the Office of the Attorney General, and Center for Judicial Excellence. Based on stakeholder input, the Board created and approved a Child Custody Implementation Plan. Among other items, the plan requires Child Custody SMEs to take continuing education in child abuse and domestic violence and outlines the circumstances in which the Board will provide further review of SME applications.

The Board notes that it has identified statutory barriers to obtaining necessary documentation in its investigations of child custody-related complaints and is in the process of identifying recommendations for potential legislative changes.

Staff Recommendation:

The Board should report to the Committees on its work addressing child custody issues and provide any recommendations for legislative changes that would enhance consumer protection.

ISSUE #18: (TELEHEALTH) Does the Board have any additional recommendations to increase safe access to telehealth services?

Background: As part of its last Sunset Review, the Board committed to developing telehealth regulations that would instruct licensees how to provide telehealth to Californians and give additional opportunities to provide care to underserved populations. Through its ad-hoc Telepsychology Committee, the Board considered the American Psychological Association Guidelines for the Practice of Telepsychology and ASPPB Telepsychology Task Force Principles and Standards to develop and draft regulatory language. Given the severity of the COVID-19 pandemic, the need for telepsychology standards was made especially clear as licensees transitioned to providing care through telehealth platforms.

In 2020, the Board proposed regulations that, among other items, establish standards of practice for telehealth by licensed California psychologists and psychology trainees to an originating site in the State, to a patient or client who is a resident of California who is temporarily located outside of the State. The regulations also provide standards of practice related to clients or patients who initiate psychological health care services while in the State, but who may not be a resident of this State.

At the national level, the ASPPB established the Psychology Interjurisdictional Compact (PSYPACT), which was created to facilitate telehealth and temporary in-person, face-to-face practice of psychology across jurisdictional boundaries. In 2015, the ASPPB inquired if the Board was interested in joining PSYPACT. After an initial review and identifying several concerns, such as cost and jurisdictional authority, the Board ultimately decided to decline joining PSYPACT at that time. However, as this decision was made several years ago, the Board’s Telepsychology Committee will conduct another review of PSYPACT and determine if there are any updated recommendations.

Staff Recommendation:

The Board should inform the Committees on its regulatory efforts regarding telehealth and telepsychology, particularly as it responded to issues related to COVID-19. Additionally, the

Board should discuss any identified issues or legislative recommendations to improve access to telehealth services.

ISSUE #19: (INDEPENDENT CONTRACTORS). Does the new test for determining employment status prescribed by the court decision *Dynamex Operations West Inc. v. Superior Court* have any unresolved implications for licensees working in the psychology profession as independent contractors?

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity’s business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the “ABC test,” the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be independent contractors. Occupations regulated by entities under the Department of Consumer Affairs have been no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine the rights and obligations of employees.

In 2019, the enactment of Assembly Bill 5 (Gonzalez, Chapter 296, Statutes of 2019) effectively codified the *Dynamex* decision’s ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors.

Staff Recommendation:

*The Board should inform the committees of any discussions it has had about the *Dynamex* decision and AB 5, and whether there is potential to impact the current landscape of the psychology profession, beyond the exemption provided to psychologists.*

TECHNICAL ISSUES

ISSUE #20: (TECHNICAL CLEANUP) Is there a need for technical cleanup?

Background: As the psychology profession continues to evolve and new laws are enacted, many provisions of the Business and Professions Code relating to psychology become outmoded or superfluous. The Board should recommend cleanup amendments for statute.

Staff Recommendation:

The Board should work with the Committees to enact any technical changes to the Business and Professions Code needed to add clarity and remove unnecessary language.

CONTINUATION OF THE BOARD

ISSUE #21: Should the licensing and regulation of the practice of psychology be continued and be regulated by the current Board membership?

Background: The health, safety, and welfare of consumers are protected by a well-regulated psychology profession. The Board has shown a strong commitment to improve the Board's overall efficiency and effectiveness and has worked cooperatively with the Legislature and the Committees to bring about necessary changes.

Staff Recommendation:

The practice of psychology should continue to be regulated by the Board of Psychology in order to protect the interest of the public. The Board should be reviewed by the Committees once again on a future date to be determined.