

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

(Oversight hearing, March 10, 2014, Senate Committee on Business, Professions
& Economic Development and
Assembly Committee on Business, Professions and Consumer Protection)

Overview of Department of Consumer Affairs

The mission of the Department of Consumer Affairs (DCA) is to “protect and serve the interests of California consumers.” By statute, consumer protection is the primary purpose for all of the regulatory programs located within 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, doctors, auto mechanics, private security companies, and beauty salons are all regulated by DCA. As regulators, these boards perform two basic program 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 DCA are semiautonomous regulatory bodies with the authority to set their own priorities and policies and take disciplinary action on their licensees. Conversely, DCA has direct authority and control over the bureaus. 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 pointed by the director.

Expenditures and Positions					
	Fiscal Year 2010–11 Actual	Fiscal Year 2011–12 Actual	Fiscal Year 2012–13 Actual	Fiscal Year 2013–14 Estimated	Fiscal Year 2014-15 Proposed
Budget *	424,317	456,900	442,384	585,615	600,405
Positions	2,737	2,702	2,751	3,296	3,418

* Dollars in thousands

**Issue #1: Consumer Protection Enforcement Initiative
“A Systematic Solution to a Systemic Problem”**

Over the past several years, DCA’s boards have been criticized for failing to discipline licensees in a timely manner. Most recently, there has been a public outcry regarding doctors suspected of recklessly prescribing drugs. Investigative reports published by the *Los Angeles Times* have detailed cases in which doctors continued to practice despite having prescribed drugs to multiple patients who fatally overdosed. In some of those cases, the deaths occurred as the doctor was under investigation by the board, and the inquiry dragged on for months or years. Similarly, the *Los Angeles Times* and ProPublica disclosed in 2009, that the Board of Registered Nursing took more than three years on average to investigate and discipline even its most troubled nurses. Some were able to move from hospital to hospital despite accusations of assault, criminal activity, or on-the-job drug use.

In response to pressure from the media, as well as the Legislature, DCA launched its “Consumer Protection Enforcement Initiative” (CPEI) in 2010. CPEI incorporates a number of proactive efforts to address long-standing enforcement backlogs. 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, as well as performance outcomes for the boards.

In 2011, the Governor issued Executive Order B–13–11 requiring the Department of Finance to utilize “performance-based budgeting” to increase efficiency and focus on accomplishing program goals for DCA and other departments. Pursuant to the executive order, the Governor’s proposed budgets for fiscal years (FY) 2013–14 and 2014–15 include targeted and average cycle times for processing complaints, conducting investigations, and, if necessary, administering discipline. These targets mirror previously established CPEI targets and measures.

Overview of the Disciplinary Process

Generally, disciplinary cases can be placed into one of two phases: investigation and prosecution. At DCA, investigations are typically conducted by 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 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

Adequate Resources

As noted in previous sunset reports, a critical component of CPEI is adequate staffing and technological recourses for the boards. (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.

In March 2013, the Senate Committee on Business, Professions and Economic Development recommended that 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, 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 Fiscal year 2013-14, we note that the Governor’s proposed budget for FY 2014–15 includes 134.5 new staff positions for DCA, 90 of which are dedicated to enforcement programs. However, we also note that four of the DCA boards that are not meeting the performance target for investigations have not submitted BCPs for additional enforcement staff. Those boards are:

- Court Reporters Board
- Landscape Architects Technical Committee
- Board of Optometry
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

Administrative Changes

Some of the administrative changes outlined in CPEI are:

- delegating subpoena authority to board executive officers;
- creating enforcement academies for enforcement staff;
- developing performance expectations with Attorney General’s (AG) Office and the Office of Administrative Hearings (OAH); and
- issuing department-wide guidelines on complaint intake, complaint prioritization, anonymous complaints, and how to conduct mail ballots for adoption of disciplinary cases.

Many of the CPEI endeavors have been completed or are still in process. For example, assuring the boards have adequate staff has been an ongoing process that is tied to the state’s budgeting calendar. Also, DCA is in the middle of launching the new licensing and enforcement IT solution (BreEZe) which is discussed below. Additionally, in 2009 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.

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. The Committees would like to learn more about the Enforcement Academies. (Specific questions are listed at the end of this section.)

Current Performance Measures

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.

Board of Registered Nursing				
	Fiscal Year 2010–11	Fiscal Year 2011–12	Fiscal Year 2012–13	Fiscal Year 2013–14 (July–Sept.)
Number of Cases				
Intake	8,063	8,084	8,375	2,323
Intake and Investigation	5,340	4,946	6,734	NDA
Formal Discipline	766	728	998	NDA
Average Days to Complete				
Intake (target: 15 days)	16	15	12	18
Intake and Investigation (target: 100 days) ¹	113	122	143	123
Formal Discipline (target: 540)	722	677	738	677

¹ According to DCA’s quarterly performance measures, this data “Does not include cases sent to the Attorney General or other forms of formal discipline.”

Medical Board of California				
	Fiscal Year 2010–11	Fiscal Year 2011–12	Fiscal Year 2012–13	Fiscal Year 2013–14 (July–Sept.)
Number of Cases				
Intake	7,251	7,042	7,437	2,009
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	10
Intake and Investigation (target: 125 days) ²	119	126	109	108
Formal Discipline (target: 540 days)	795	853	775	811

Board of Vocational Nursing and Psychiatric Technicians				
	Fiscal Year 2010–11	Fiscal Year 2011–12	Fiscal Year 2012–13	Fiscal Year 2013–14 (July–Sept.)
Number of Cases				
Intake	5,163	5,561	5,154	1,243
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	12
Intake and Investigation (target: 360 days) ²	288	275	247	242
Formal Discipline (target: 540 days)	1,083	1,107	1,233	1,105

Lengthy Prosecutions Persist

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. For the Veterinary Medical Board and the Board of Vocational Nursing and Psychiatric Technicians, it took about three years to complete formal discipline in FY 2012–13.

Difficult to Diagnose the Problem

The cause or causes for the lengthy prosecution is unclear. The fact that multiple entities have a role throughout the process and the lack of consistent long term data

² According to DCA’s quarterly performance measures, this data “Does not include cases sent to the Attorney General or other forms of formal discipline.”

makes it difficult to diagnose the reason. However, CPEI performance reports offer helpful multi-year data that was previously not available. This data could be expanded to include additional major milestones in the process, such as all investigations (not just those that do not result in formal discipline); length of time to file accusations; and, the length of time to conduct a hearing. This would help management, stakeholders, the general public, and law makers determine where there is room for improvement.

As noted above, the AG and OAH are separate agencies; therefore DCA does not have direct control over when and how cases are handled once the cases have been referred to the AG's Office. With that in mind, 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. DCA and the AG's Office are developing expectations for filing accusations, setting settlement conferences, and filing continuance requests. Further, DCA is working with OAH to establish timelines for setting cases for hearings, which, once implemented, could reduce a case timeline by months." At last year's sunset hearing, DCA's director indicated she would be exploring ways to work with OAH and the AG's Office on reducing timelines.

Apparently, OAH has a standard to set hearings within 120 days of the request. In Fiscal Year 2012-13, DCA's cases took, on average 192 days to be heard by OAH. This is about 62 days longer than the 120 day standard. It is unclear if similar standards have been set for the AG's Office. The Committee would like to know more about DCA's efforts to enhance communication and accountability between DCA, AG and OAH.

What More Could Be Done?

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.

Additional issues 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?

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. According to performance measures posted in the Governor's proposed budget for FY 2014–15, only one of the health care boards (Occupational Therapy) met that goal in 2012–13. While some boards have made improvements and are meeting their self-determined performance targets, such as complaint intake and investigation, we note 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, it is not clear if these reports are truly capturing 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, according to the oldest and most recent performance reports posted online for DOI (these reports are dated April–June 2011 and July–September 2014, respectively), DOI's average investigation time frames have remained essentially unchanged at about 180 days since 2011. Therefore, it is difficult to discern the effectiveness of CPEI goal in reducing investigative time frames.

Based on the above, the Senate continues to be concerned with excessive delays in investigating and taking disciplinary action (when warranted) against DCA licensees.

Questions/Recommendations:

1. *DCA should provide an update on CPEI. Which elements have been implemented, which are still in process, and which have been abandoned?*
2. *DCA should clarify the definition of the information reported in the "Intake and Investigation Cycle Time" performance measure. Are all investigations counted, or only those that are not referred to the Attorney General or result in some other form of formal discipline? How does DCA ensure that all of the boards are using the same definition in these reports?*
3. *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 AG's Office and OAH.*

4. *DCA should explain how CPEI and performance-based budgeting have impacted or will impact disciplinary outcomes and timelines. How has performance-based budgeting “increased efficiency” and helped the boards to “focus on accomplishing program goals.”*
5. *DCA should provide data regarding the length of time it takes to conduct investigations that result in formal discipline for FY 2010–11, 2011–12, and 2012–13.*
6. *How has the department worked with OAH and the AG toward reducing timelines for formal discipline? Should OAH and the AG’s office be subject to reporting requirements similar to those in CPEI and the Governor’s budget?*
7. *Although the boards have received additional staffing, will this make a difference in reducing time frames for investigation and prosecution of cases and will the Department assist the boards with filling these positions and training the new staff? Additionally, the department should provide a timeline for filling the new staff positions in the FY 2014–15.*
8. *DCA should provide an overview of the Enforcement Academies. Who attends and how often are the academies offered? Are DOI and AG’s Office included in development and delivery of training materials? How is DCA measuring outcome of the training? Are the quality and timeliness of disciplinary cases improving since the academies were introduced?*

Issue #2: BreEZe

Problems with BreEZe

In 2010, after years of toiling with multiple antiquated standalone IT systems and three failed attempts to update those systems, DCA began the process of developing an IT system that would integrate the licensing and enforcement functions of all DCA boards. A contract to develop the new system, which DCA calls BreEZe, was awarded to Accenture in September 2011, and the project was funded for the first time in FY 2010–11. When originally authorized, BreEZe was projected to cost approximately \$45 million. According to DCA, BreEZe is currently projected to cost about \$77 million.

According to 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, when the program is fully operational.

During the project development phase, and ongoing, all DCA boards, bureaus, programs, and commissions (hereafter boards) participate in identifying and documenting system requirements. After that, board staff participate in system acceptance testing.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicates the first release was scheduled for FY 2012–13, and the final release was projected to be complete in FY 2013–14. After multiple delays, Release 1 was launched in October 2013 and, as of February 2014 final rollout is projected to be completed by the end of 2015. If the 2015 target is met, BreEZe will be fully operational about a year and a half later than originally projected.

The stated reason for the delay was to ensure that BreEZe would meet performance expectations – otherwise payment would be withheld. In her letter to the Senate Rules Committee dated May 15, 2012, the DCA director stated that she placed a “high priority on protecting prospective applicants, licensees, and consumers from harm above meeting a deployment date with an incomplete system. Because of this priority on consumer and licensee protection, the Department has the necessary contract protections in place to ensure that Accenture is held to a significant standard of quality prior to their ability to implement a given release. Additionally, the Department has structured the contract using a performance-based payment model to ensure that the Department withholds any payment until the system is successfully deployed for operation, further ensuring Accenture’s commitment to a quality and timely product release.”

As of October 2013, the following ten boards have been operating under Release 1 of BreEZe:

- Barbering and Cosmetology, Board of
- Behavioral Sciences, Board of
- Naturopathic Medicine Committee
- Medical Board of California
- Osteopathic Medical Board of California
- Physician Assistant Board
- Podiatric Medicine, Board of
- Psychology, Board of
- Registered Nursing, Board of
- Respiratory Care Board

According to DCA’s Web site, the following functions will be available via BreEZe:

- File a complaint
- Public license search
- Apply for a license
- Renew a license
- Subscribe to license status changes
- License maintenance

However, not all of these services were available at the time the Release 1 was launched. As of February 2014, only the “file a complaint,” “public license search,” and

“subscribe to license status changes” were available to all the boards in Release 1. Some (but not all) boards in Release 1 offer the option of applying for certain licenses and/or renewing licenses online. According to DCA, most tracking and productivity reports for licensing and enforcement programs are working under BreEZe. However, the report used to track and publish CPEI performance measures (as discussed above) is not functional as of February 2014. DCA expects that to be available by early April 2014.

According to reports at board meetings and in the media, there have been some technical difficulties with the launch of BreEZe, and these glitches require significant work-arounds. Additionally, some boards actually offer reduced online services with the launch of BreEZe. For example, some applicants can no longer check the status of their application files. There are notices on board Web sites indicating that online renewals are temporarily unavailable, online applications are not being accepted for certain license types, and delays may occur in processing certain applications. 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.” The BRN home page also contained a notice that read, “Nurse Practitioner Furnishing (NPF) numbers cannot be renewed online at this time.” Additionally, the Medical Board is out of compliance with Business and Profession code Sections 2027, which mandates that the Board make certain information available about board licensees online.

Committee staff were told that glitches in the system require somewhat significant resources on the “back end” to correct. All boards in Release 1 have dedicated a significant number of staff hours to development and testing of the system. This, coupled with the learning curve, has apparently resulted in backlogs in issuing new licenses and possibly with license renewals.

On February 4, 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 as it affects the Board of Registered Nursing. In her letter, she expressed concern that delays in issuing new licenses to recent graduates of nursing school programs caused delays for those graduates to obtain jobs, and hospitals to remain understaffed.

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.”

Another story ran in the *Los Angeles Times* on February 13, 2014, indicating 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 is causing additional steps and additional workload, and staff must type in applicant data from paper forms before they can determine eligibility to take the nursing licensing exam. The *Times* reported that there were about 4,000 pending applications at the time the story ran. On February 18, 2014, DCA redirected about 15 additional staff to the BRN to assist with processing the 4,000 pending applications.

Finally, BreEZe has been criticized for not being “user-friendly” to the public. We note that under BreEZe it now takes *10 steps* to look up a medical license. Conversely, the State Bar Web site has a license lookup function for attorneys on its home page. License information is literally only one click away. One of the most basic functions of the boards is to provide information about their licensees to the public, traditionally a very popular service. For example, consumers are encouraged to look up a license before hiring a contractor, licensees consult the lookup function to determine the status of their own licenses, and employers and potential employers look up licenses for employment purposes. Additionally, as previously noted, the Medical Board is out of compliance with Business and Profession code Section 2027, which mandates that the Board make certain information available about board licensees online.

Conclusion

Release 1 participants have identified about 1,000 system glitches that require programming changes. Only about half of those requests are covered in the current contract, making it necessary to re-open contract negotiations. In the meantime, requests to fix these programming issues have been prioritized, and an updated version of BreEZe is scheduled to go live in April 2014. Additional incremental enhancements are planned to be deployed at least quarterly thereafter. Until then, important management reports will remain unavailable, staff will continue to use manual work-arounds while operating BreEZe, and the public will continue to have limited online services available via the BreEZe system.

Questions/ Recommendations:

9. *DCA should provide a status report on implementation of BreEZe Release 1. Which of the BreEZe functions are fully operational, which are partially functional, and which (if any) have not yet been activated? And what is the plan (including the timeline) to bring Release 1 of BreEZe to full functionality?*
10. *Does DCA believe they should only launch Release 2 and 3 of BreEZe once the outstanding issues with Release 1 are resolved?*
11. *What were the causes for problems with the implementation of BreEZe Release 1? For example, was it due to scoping of the project, programming, staff training, and/or other issues? What has DCA learned with implementation of Release 1 of BreEZe, and how will those lessons be applied to future releases of BreEZe?*
12. *What is the status of the contract with Accenture? What are projected costs for the entire project and how much has Accenture been paid to date?*

13. *What is the BreEZe training plan? What change management efforts are in place to encourage staff to embrace BreEZe? Has there been a resistance to change, and how is DCA responding to this resistance?*
14. *When will data collection functions be fully restored to the boards, and when will CPEI performance measures be published once again?*
15. *DCA should simplify the online license lookup function to make it more user-friendly and to comply with Business and Professions code section 2027.*

Issue #3: Transfer of MBC Investigators to DOI

Senate Bill 304 (Lieu), Chapter 515, Statutes of 2013, transferred the Medical Board's peace officers, and medical consultants and support staff under those peace officers to a newly created Health Quality Investigation Unit (HQIU) within DCA's Division of Investigation (DOI). The transfer is to take place no later than July 1, 2014.

HQIU will perform investigative services for MBC, 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 MBC investigative staff.

The MBC 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 Governor's proposed budget for FY 2014–15 includes the transfer of \$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.

According to the SB 304 implementation plan, which was developed by DCA and MBC, a formal Memorandum of Understanding (MOU) between DOI and the board will be adopted in February 2014. The MOU will address a myriad of issues, including billing protocols, transfer of equipment, procedure for media inquiries, and other administrative functions. The MOU likely also will include communication and information-sharing protocols between the board and DOI.

Questions/Recommendations:

16. *DCA should provide an update on the status of the transfer of MBC investigative staff to DOI and what specific plans and timelines there are for the transfer to be completed.*

Issue #4: Pro Rata

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

Pro Rata Calculation/Distributed Costs Methodology			
Administrative Service ³	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		
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		

³ This table includes examples of the types of administrative services provided by DCA. There may be additional services not included in the table.

Reviewing past year distributed costs appears to show a wide range of pro rata costs as a percentage of the total operating budget. It is unclear if the pro rata calculations are applied uniformly throughout the department. For example, according to a report on distributed costs in the FY 2013–14 budget, the Bureau of Real Estate and the Bureau of Real Estate Appraisers are being charged about 5 percent of their total budget for DCA’s centralized services, which is significantly lower than all other DCA entities. Conversely, DCA pro rata for the Bureaus of Security and Investigative Services and the Professional Fiduciaries Bureau amount to about 40% of their entire budget.

In actual dollars, the top five contributors to DCA’s pro rata are listed below:

Board/Bureau	FY 2013 14 Pro Rata
Bureau of Automotive Repair	\$17 million
Board of Barbering and Cosmetology	\$7 million
Contractors State License Board	\$ 6 million
Board of Registered Nursing	\$ 9 million
Bureau of Security and Investigative Services	\$5 million

Some boards may be charged for services (again, based on position count) that they may not be receiving. Some of DCA’s larger programs, like the Bureau of Automotive Repair (BAR) and Contractors State License Board (CSLB), may not use the full compliment of DCA services. For example, both BAR and CSLB 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.

It seems as if 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 efforts to reduce expenditures and staffing levels throughout state government. Those cost-control measures reduced staffing levels at the boards and it is 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 DCA asking that pro rata be calculated based on filled positions, not based on allocated positions.

There also are questions as to how some of the more unique funds within DCA are assessed pro rata fees. For example, the Athletic Commission’s Pension Fund and Neurological Funds and BAR’s High Polluter Repair or Removal Account and Enhanced Fleet Modernization Subaccount appear to be charged pro rata based on position counts when these are unique within DCA, therefore they may not require the full range of traditional services offered by DCA. Additionally, when CSAC was experiencing a severe cash-flow crisis that threatened to shut down the entire operation and CSAC’s staff were significantly reduced, DCA’s pro rata charges were not immediately adjusted.

Questions/Recommendations:

17. *Given the description above, DCA should explain how the distributed cost calculation is performed. Is the methodology uniformly applied, or are there exceptions? If so, please explain.*
18. *DCA should define “position counts” as it pertains to the pro rata calculations. How is pro rata adjusted to reflect staffing limitations resulting from hiring freezes, furloughs, and other budget cuts?*
19. *DCA should conduct a study to determine if the current system for prorating centralized administrative services is the most productive, efficient and cost effective manner for the department and the boards to operate. For example, could some of the administrative services offered by DCA be outsourced or charged on an as needed basis? Might there be any cost savings for the boards if DCA boards were permitted to “opt out” of certain services? The results of this study with recommended changes should be submitted to both Committees on or before June 2, 2014.*

Issue #5: Sunshine—Public Access to State Government

Meeting Notice

In 1967, when the Legislature passed, and the Governor signed, the Bagley-Keene Open Meeting Act, the Legislature provided the public with the ability to monitor and participate in decision-making processes of certain state entities, including DCA boards.

Government Code Section 11120 sets forth the purpose of the Bagley-Keene Open Meeting Act as follows:

It is the public policy of this state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed. In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

According to DCA’s Guide to the Bagley-Keene Open Meeting Act, “Each board has essentially three duties under the Open Meeting Act. First, to give adequate notice of meetings to be held. Second, to provide an opportunity for public comment. Third, to conduct such meetings in open session, except where a closed session is specifically authorized.”

Regarding meeting notice, a key element to public participation is adequate notice of upcoming meetings. Government Code 11125(a) requires that state bodies (i.e., DCA boards) provide notice of their meetings to “any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.”

All DCA boards have Web sites that include information on their licensing and enforcement programs, board meetings, and other matters of interest to the public. The boards also maintain interested parties’ mailing lists, to which the public may subscribe for meeting notices, regulatory notices, etc. Typically this is a service provided via e-mail, but some boards continue to mail hard copies. Such notifications allow the public to monitor and track activities of the boards and participate if/when they desire to do so. It appears that some boards post meeting notices but do not always issue email and/or hard copy of the notice to their interested parties mailing lists.

GC 11125 does not require the boards to notify interested parties via e-mail when meeting notices have been posted on the Internet, but simply posting something on the Internet, and not proactively notifying the people who have asked to be notified, may not meet the spirit of the law. Some, but not all, boards issue mass e-mails to notify the public when a meeting notice has been posted.

Senate staff is aware of several instances in which boards published meeting notices online but did not e-mail or mail notices and, as a result, members of the public either missed meetings or were made aware of the meetings two to three days before the meeting dates, making it difficult for them to attend.

Webcasts

Webcasting can be a valuable tool in allowing public access to board meetings. In the past, very few DCA board meetings were webcast; however, since the last sunset hearings, we note an increase in webcasting of board meetings.

While webcasting of DCA board meetings has been expanded, there are some technical difficulties with the service. For example, meeting participants don’t always identify themselves when speaking, they do not always speak into the microphone, the camera is not always directed at speakers, and there is sometimes sporadic loss of internet feed. Additionally, it appears to take an inordinate amount of time to post past meetings on DCA’s Web site.

Additionally, information regarding the intent to webcast a meeting is not always included on meeting notices, which somewhat diminishes the purpose of webcasting public meetings. We understand that technical difficulties may arise, and that in the event that the webcast fails, the public may not have access to the meeting. With that in mind, the Medical Board of California includes the following disclaimer on its meeting notices, “While the Board intends to webcast this meeting, it may not be possible to

webcast the entire open meeting due to limitations on resources.” This appears to provide notice of intent to webcast with the caution that there may be technical issues, and allows the public to make an informed decision regarding whether to attend a meeting in person.

Other Technologies

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, “Covered California” has a robust system for webcasting and live teleconferencing for participants who may be monitoring the meetings via the internet or the teleconference.

In her May 15, 2012, letter to the Senate Rules Committee, DCA’s director reported she is working to “enhance consumer protection through transparency in the processes the Department uses so that decisions are made in an open and public manner.” The same letter indicated that DCA is considering hosting conference calls, online chat applications, and the use of Skype. DCA was researching options for achieving greater public participation in meetings from remote locations. However, the letter implied that teleconferencing of public meetings might be cost-prohibitive with the following statement, “Given the intense resource requirements of each of these options, we are working with the boards to see what they have in the way of staff time and travel budget to devote to these tools.” At that last sunset hearing, DCA’s director testified she would make it a priority to expand webcasting of board meeting.

We acknowledge and commend the DCA and its boards for expanding webcasting services. We encourage the department to continue to enhance this important service to the public.

Questions/Recommendations:

20. *Does the department believe that simply posting a meeting notice is sufficient to comply with GC 11125(a)? What does the department do to ensure compliance with this code?*
21. *Should DCA boards be required to issue e-mails to interested parties who have asked to be advised when meeting notices have been posted online?*
22. *What is DCA’s policy regarding availability and notification of webcasting? When is the public notified that a board plans to webcast a meeting, and when are past webcasts posted on the internet?*
23. *DCA should provide an update on its efforts to expand webcasting and any other use of technology to expand public participation in board meetings.*
24. *In addition to expanding webcasts to the point where all meetings are available for live webcast, as well as on demand, DCA should continue to enhance and improve the quality and reliability of the webcasts.*

25. *If a public meeting is going to be webcast, the meeting notice should include information regarding the intent to webcast. Recordings of live webcasts should be posted on DCA's website in a more timely manner.*

Issue #6: Advertising - Unlicensed Activity

Business and Professions Code section 149 gives certain DCA entities (hereinafter boards) the authority to take decisive action when they identify the advertising of unlicensed activity. Specifically, the boards (listed below) are statutorily authorized to issue citations that include cease and desist orders for advertising in a telephone directory if the advertiser lists the availability of services for which a license is required, and if the advertiser does not hold the required license. Failure to comply with the order could result in the unlicensed person's telephone service being disconnected.

We note that the following 21 DCA entities have this authority:

- Accountancy, California Board of
- Acupuncture Board
- Automotive Repair, Bureau of
- Barbering and Cosmetology, Bureau of
- Behavioral Sciences, Board of
- California Architects Board
- Cemetery and Funeral Bureau
- Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation, Bureau of
- Landscape Architects Technical Committee
- Naturopathic Medicine Committee
- Physical Therapy Board of California
- Podiatric Medicine, California Board of
- Private Postsecondary Education, Bureau of
- Professional Engineers and Land Surveyors, Board for
- Psychology, Board of
- Real Estate, Bureau of
- Respiratory Care Board of California
- Security and Investigative Services, Bureau of
- Speech-Language Pathology and Audiology Board
- Structural Pest Control Board
- Veterinary Medical Board

An informal survey of boards showed sporadic use of BPC 149 until 2012. In late 2012, a dispute arose over the interpretation of the phrase "telephone directory" and it was determined that the statute spoke only to those numbers listed in a printed telephone directory. As a result, telephone disconnect orders based on internet activity were either rejected or were in a state of limbo. Although the authority to act on advertisements for unlicensed activity in a printed telephone directory remains, its usefulness and impact has diminished with the advent of the internet. The public turns less often to printed telephone directories and more often to the internet to find a person or hire a service. Therefore, BPC 149 could be modernized to include current communication technologies such as the internet, e-mail advertising, cell phones, and Voice Over Internet Protocol.

Additionally, some boards that do not currently have the authority to act on BPC 149 have expressed interest in obtaining similar authority, if it were modernized as discussed above.

Questions/Recommendations:

26. Does DCA believe BPC 149 should be amended to include internet and/or email advertisements?

27. Which, if any, additional DCA boards should be included in BPC 149 and why?

Issue #7: Governor's Reorganization Plan No. 2

In accordance with the Governor's Reorganization Plan No. 2 (GRP 2), the following state entities were transferred to DCA effective July 1, 2013:

- Department of Real Estate (now the Bureau of Real Estate)
- Office of Real Estate Appraisers (now the Bureau of Real Estate Appraisers)
- Structural Pest Control Board
- Board of Chiropractic Examiners

GRP 2's stated purpose was to gain efficiencies in state government by consolidating resources and functions.

On April 24, 2012, DCA's director provided the following written testimony at a hearing conducted by the Little Hoover Commission (LHC) on GRP 2, "Having 36 separate and unique licensing entities has allowed the Department of Consumer Affairs to create economies of scale that reduce costs and improve efficiency for our boards, bureaus and programs. All of our programs share one human resources office, one contracts office, one information technology office, one legal office, and one budget office. Moving the Department of Real Estate (DRE) and the Office of Real Estate Appraisers will allow us to leverage these economies of scale to eliminate redundancies and use the resources we have more efficiently."

A letter from the director to the Senate Rules Committee went further with this idea of cost savings, ". . . some staff may need to be redirected to accommodate the additional workload. Nonetheless, DCA believes that over time, this proposal could result in an overall reduction of staff and overall expenditures."

Similar statements were made by a representative of the former DRE at the LHC hearing, in which he suggested that GRP might cause elimination of duplicative staff positions and create opportunities for shared technology, shared exam centers, and shared call centers.

Testimony from the DCA Director at the 2013 sunset hearings indicated that staffing levels would be reduced and cost savings realized—the actual amount of savings was not yet determined. Testimony also indicated that about 10 employees would be "impacted" as a result of GRP 2.

After GRP 2 was announced, there was concern that the relocation of the former DRE might cause legal staff to be reassigned or laid off, which could create a loss of technical legal expertise that might diminish the regulation and oversight of transactions within DRE's jurisdiction. At the time, the Senate was informed that DRE's legal counsel would not be transferred or reassigned with implementation of GRP 2.

Questions/Recommendation:

28. *DCA should provide an update on GRP 2. How has the reorganization improved efficiency, reduced redundancies, and/or reduced expenditures?*
29. *DCA should discuss the transition of former DRE attorneys to the new Bureau of Real Estate. Is BRE legal counsel continuing to prosecute disciplinary cases?*
30. *DCA should provide a report on BRE and BREA use of DOI investigative services. For example, how many cases have been referred to DOI, and how have investigators been trained to handle these two new clients?*