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

(Oversight Hearing, March 11, 2013, Senate Committee on Business, Professions & Economic Development)

Overview of the Department of Consumer Affairs

Currently, the Department of Consumer Affairs (DCA) consists of 36 regulatory boards, bureaus, committees, commissions, and programs, all of which regulate more than 100 business and 200 industries and professions, including doctors, contractors, private security companies, and beauty salons. The DCA's mission statement is "to protect and serve the interests of California consumers." Consumer protection is the primary purpose for all of the regulatory programs located within the DCA.

The boards and commission are semi-autonomous regulatory bodies with the authority to set their own priorities and policies. Members of the boards and commission are appointed by the Governor and the Legislature. The DCA provides administrative support and guidance to the boards and commission, but it has direct authority and control over the programs and bureaus.

In accordance with the Governor's Reorganization Proposal (GRP) No. 2, the following state entities will be transferred to the DCA on July 1, 2013.

- Department of Real Estate
- Office of Real Estate Appraisers
- Structural Pest Control Board, and
- Board of Chiropractic Examiners

Implementation of the GRP is discussed in the document under Issue #4.

Budget and Personnel

	Fiscal Year 2011–12	**Fiscal Year 2012-13**	**Fiscal Year 2013-14**
	Actual	Enacted	Proposed
Budget *	456,900	490,181	572,433
Positions	2,702	2,876	3,288

***Dollars in thousands**

Issue #1: Consumer Protection Enforcement Initiative (CPEI)

Extreme delays in investigating and prosecuting enforcement cases by the DCA's health care boards were exposed in a series of articles in the *Los Angeles Times,* beginning in July 2009. In response to the criticism, the DCA created a comprehensive plan to address long-standing backlogs, including an intense review of pending cases at the Division of Investigation, implementing numerous suggested regulatory changes, and an enhanced tracking of pending cases. The DCA calls this the Consumer Protection Enforcement Initiative (CPEI).

At its inception in 2010, the goal of CPEI was to reduce the average enforcement completion timeline from 3 years or more to between 12 and 18 months by fiscal year (FY) 2012–13. A review of performance data indicates that the boards are not meeting this goal.

A critical component of CPEI is adequate staffing. Therefore, a budget change proposal (BCP) for approximately 100 new full-time positions focused on enforcement cases in FY 2010-11 and 30 more positions in FY 2011-12 was approved. These positions are distributed across 18 healing arts boards and the DCA administrative support unit. The vast majority of these positions are investigators and investigative supervisors, and the remaining are complaint intake or administrative support staff. In addition to increasing staffing, the DCA has pledged that staff will be properly trained, monitored, and assessed so that cases are expedited as quickly as possible.

While the BCP for additional enforcement staff was approved, hiring to fill these positions has been hampered by Executive Orders mandating a statewide hiring freeze. Although the hiring freeze was lifted for the DCA in 2010, it appears that many of the CPEI positions remain vacant. Adequate staffing is an essential component to the success of the CPEI and, more importantly, to the improved service to the public.

According to a recent report from the Medical Board, only 2 of 22.5 CPEI positions authorized for the Medical Board of California (MBC) through the budget process have been filled. The same report indicates that 2.5 positions were transferred to other boards. The remaining CPEI positions have been eliminated through a number of administrative processes. This raises questions about the status of the positions authority by the CPEI BCP for the other health care boards.

Generally, disciplinary cases can be placed into one of two phases: investigation and prosecution. At the DCA, investigations are typically conducted by the DCA employees. Once the investigation is completed, cases that warrant disciplinary action are forwarded to the Office of the Attorney General (AG) for prosecution. The AG must use the Office of Administrative Hearings (OAH) in order to schedule and conduct disciplinary hearings.

AG and OAH are separate agencies; therefore, the DCA does not have direct control over when and how cases are handled once the cases have been referred to the AG's Office. However, the DCA can work with the AG and OAH to find ways to speed up the prosecutions.

In July 2012, the DCA reported that the average investigation timeframe at the Division of Investigations had been reduced from 600 days to 169 days. The number of pending cases at the division had been reduced from 1,520 to 950. As of January 31, 2013, the Division's timeframes have been reduced to 181 days and they have 636 pending cases. These are significant accomplishments related to investigation timeframes, but prosecution timeframes remain extremely high. For example, both the Medical Board and the Board of Registered Nursing reported that it took over 700 days to complete the disciplinary process in the second quarter of FY 2012-13, which far exceeds the 12–18-month goal of the CPEI. MBC reports that their investigation took approximately 300 days and the AG took about 400 days to prosecute cases.

CPEI performance measures were developed for the enforcement programs, and quarterly reports are posted on the department's Website. Additionally, the Governor's Executive Order B-13-11 requires the Department of Finance to work in conjunction with various departments to utilize performance-based budgeting to increase efficiency and focus on accomplishing program goals. The DCA was identified as one of the first departments to participate in performance based budgeting for FY 2013-14. The Governor's Proposed Budget includes targeted and average cycle time for processing complaints, conducting investigations and, if necessary, administering discipline. A few of the DCA regulatory programs, including the California Architects Board and the Board of Barbering and Cosmetology, met all three performance targets (complaint intake cycle time, intake and investigation cycle time, and formal discipline cycle time) in FY 2011-12. Only 5 of the 35 participating regulatory programs are meeting their targets for administering formal discipline.

The data below shows specific performance data for three of the largest health care boards at the DCA, as reported in the DCA's CPEI quarterly performance measure reports.

	Fiscal Year 2010–11				**Fiscal Year 2011–12**				**Fiscal Year 2012–13**
Board of Registered Nursing	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**
Monthly Average # of Complaints & Convictions	722	660	505	745	574	527	645	834	676
Intake*	16	19	18	10	15	16	16	15	9
Intake & Investigation**	120	100	113	89	92	102	113	136	134
Formal	852	786	643	659	623	684	654	893	740

Discipline***									

	Fiscal Year 2010–11				Fiscal Year 2011–12				Fiscal Year 2012–13
Board of Vocational Nursing and Psychiatric Technicians	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**
Monthly Average # of Complaints & Convictions	447	405	420	414	455	404	414	567	401
Intake*	28	25	30	19	17	14	21	17	17
Intake & Investigation**	319	276	319	260	243	296	204	340	242
Formal Discipline***	988	1,118	1,198	1,035	971	1,095	1,006	1,229	1,039

	Fiscal Year 2010–11				Fiscal Year 2011–12				Fiscal Year 2012–13
Medical Board of California	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**
Monthly Average # of Complaints & Convictions	585	567	649	615	616	525	580	614	652
Intake*	10	8	8	11	12	17	10	10	9
Intake & Investigation**	110	121	124	120	125	138	131	114	107
Formal Discipline***	768	870	735	801	801	856	895	861	861

*Average days from receipt of complaint to assignment to an investigator
**Average days from receipt of complaint to closure
***Average days to complete entire process for cases resulting in discipline

Questions/Recommendations

1. *Is the CPEI working as envisioned? What has it accomplished?*
2. *What has the DCA done to assist the boards in hiring employees, especially hiring into the positions authorized via the CPEI budget change proposal?*
3. *The DCA should provide a detailed report on the status of all of the CPEI positions authorized via the CPEI BCP.*
4. *The DCA should spearhead a department-wide assessment to identify appropriate staffing levels necessary to ensure the boards and bureaus have adequate resources to meet their consumer protection mandates, specifically to meet the performance standards set forth in the proposed budget for FY 2013-14. For the boards and bureaus that have adequate funds, the DCA should seek to obtain*

authority through the budget process to hire the staff needed to meet performance targets.

Issue #2: The DCA Interaction with Boards

The DCA's boards are designed to operate as semi-autonomous regulatory bodies with authority to set their own policies and priorities. The DCA's oversight of the boards is generally limited to ministerial and administrative regulatory functions. However, the DCA may have a role in providing public comment at board meetings, facilitating personnel and other administrative transactions, investigating activities of boards, commenting on legislation affecting the boards, and sponsoring legislation.

The DCA also has the specific authority to review and approve BCPs and regulatory changes, and provide many other administrative services, including mandatory training to new board members. The Director of the DCA has specific authority to approve some board executive officer hires, chairs the Substance Abuse Coordination Committee that established Uniform Standards on how to handle licensees with substance-abuse problems, and establish guidelines to prescribe components for mandatory continuing education administered by the boards.

The DCA has limited influence and control over certain functions of the boards. The DCA also provides administrative support and guidance to the boards and commission, including legal services and is in charge of the Division of Investigation (DOI), which offers investigative services to many of the boards.

In the past, the DCA Director has used his/her influence to implement certain policies. For example, the previous director requested that all boards post accusations (formal charging documents) filed against the boards' licensees on the boards' Website. When one of the boards refused to comply with the request, the DCA began posting the board's accusations on the DCA's Website. Ultimately, the board complied, and now posts pending accusations on its own Website. More recently, the DCA issued a memorandum to the health care boards clarifying legal advice regarding adopting the Uniform Substance Abuse Standards (see discussion on Item #5).

The DCA representative(s) often attend public board meetings and are available to answer questions or provide guidance to the boards during public deliberation. The DCA representatives are also available to provide board members with one-on-one consultation on an as needed basis. For example, board members may consult with legal counsel with questions regarding potential conflict of interest. The DCA Directors may also hold regular meetings with board executive officers and/or board presidents. These are typically information sharing opportunities and provide a chance for boards to discuss common issues.

When observing board meetings, it sometimes becomes apparent that boards are floundering with difficult issues, struggling from lack of leadership or lack of resources, or any number of issues that can overwhelm a board and cause stagnation. At such

times, the DCA can be (and has been) available to provide expertise, assistance, and guidance.

In the past, some boards have been criticized in the sunset review process for failing to perform basic functions, resolve persistent policy issues, or other forms of organizational dysfunction. In extreme cases, boards have sunset due to lack of effective performance.

Questions/Recommendations:

5. *How does the DCA view its role in supporting the boards by providing administrative services, such as legal counsel or IT services, versus guiding policy decisions?*
6. *At what point does the DCA get involved with board decisions and/or functions when boards are in need of support? What is the policy regarding DCA's guidance and assistance for boards and how is that policy communicated to board members?*

Issue #3: Information Technology Resources – BreEZe System

For many years, the regulatory programs at the DCA have operated without an information technology (IT) system they need to run efficiently. Instead, they perform their licensing and enforcement operations with outdated, cumbersome, inflexible IT systems that are not integrated. Furthermore, due to limitations of the current information system, some boards have created duplicative or stand-alone systems that do not readily interface with the DCA system. Therefore, staff are required to make multiple entries or forced to track some information manually or with additional small databases. To further complicate matters, data sharing between boards is almost non-existent or manual.

After three failed attempts to update its antiquated programs and databases, the DCA launched a new plan to implement a comprehensive IT system that will integrate licensing and enforcement activity for all boards and bureaus, which the DCA is calling BreEZe. According to the DCA, BreEZe will provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. BreEZe will replace the 3 existing outdated legacy systems and 90 "work around" systems with an integrated solution.

In November of 2009, the DCA received approval of the BreEZe Feasibility Study Report (FSR), which documented the existing technical shortcomings of DCA's existing informational systems and how BreEZe would support the DCA's various business objectives. The January 2010 Governor's Budget and subsequent Budget Acts include funding to support BreEZe based on the project cost estimates presented in the FSR.

By design, BreEZe will provide applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is designed to improve the DCA service to the public. BreEZe will be web-enabled, allowing licensees to complete and submit applications, renewals, and the necessary fees through the Internet. The public will also be able to file complaints, access

complaint status, and check licensee information. BreEZe will be maintained at a three-tier State Data Center in conformity with current State IT policy.

To implement BreEZe, the DCA conducted a business-based procurement between May 2010 to July 2011, to competitively select a vendor that would configure and install a modifiable Commercial Off The Shelf (COTS) software solution to achieve the BreEZe project's business objectives. The DCA's procurement approach included pre-qualifying vendors and COTS products that had demonstrated proven successes in similar licensing and enforcement regulatory agencies. Ultimately, the DCA selected Accenture, LLP to provide and configure the Versa solution software suite, implementation services, and initial maintenance following system implementation.

Staff from all of DCA's boards and bureaus have participated in development and testing of BreEZe and continue to do so.

According to the project plan BreEZe will be implemented in three releases, the first release is starting in FY 2012-13, and the final release is projected to be complete in FY 2013-14. When fully implemented, BreEZe is projected to cost approximately $45 million.

The following DCA entities are participating in the first phase of the BReEZe rollout:

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

While the project appears to be on budget at this time, it is not meeting its own timelines. BreEZe was originally scheduled to "go live" in July 2012. On July 2, 2012, the DCA Director testified at a Senate hearing that BreEZe would go live in fall of 2012. Neither of these targets were met. According to a report dated February 1, 2013, the department was projecting to roll out BreEze in February 2013 – this did not occur either. The same report indicates that the following activities were currently "in progress:"

- On-going configuration refinement
- User Acceptance Testing
- Data conversion validation and on-going clean-up
- Internal user training
- Cutover preparation from Legacy System

Questions/Recommendations:

7. *The DCA should update the Committee on implementation of BreEZe and advise if there are any anticipated problems or additional costs with the roll out of this IT system. What is the new target date for launching BreEZe? Why has implementation of BreEZe been postponed from July 2012? Is it still on budget?*
8. *How is the DCA working with the vendor to keep the project on time and on budget?*

Issue #4: Governor's Reorganization Plan – Department of Real Estate and Office of Real Estate Appraisers

Government Code Sections 8523 and 12080 establish the reorganization process for certain departments within state government. These codes authorize the Governor to propose a Government Reorganization Plan (GRP), the Little Hoover Commission to review that plan, and the Legislature to either allow the plan to go into effect, or to reject it by a majority vote in either house. In spring of 2012, the Governor introduced GRP No. 2, which proposed numerous changes in the organization of state government. The Legislature did not reject the plan; therefore, it will be implemented. For purposes of this legislative oversight hearing, we are focused on the part of the GRP that affects the DCA. Specifically, the following state entities will be transferred into the DCA effective July 1, 2013:

- Department of Real Estate
- Office of Real Estate Appraisers
- Structural Pest Control Board, and
- Board of Chiropractic Examiners

Under GRP No. 2, the Department of Real Estate and the Office of Real Estate Appraisers will become bureaus, but the Structural Pest Control Board and the Board of Chiropractic Examiners will remain boards.

The table below is provided as a snapshot of the four entities proposed to be relocated to the DCA.

Department/Board	# Licensees*	Budget*	Authorized PYs*
Office of Real Estate Appraisers	15,000	$5 million	33
Department of Real Estate	485,000	$48 million	335
Board of Chiropractic Examiners	14,000	$4 million	20
Structural Pest Control Board	22,000	$5 million	30
Total	**536,000**	**$34 million**	**460**

*** All numbers are approximate.**

According to testimony at the Little Hoover Commission hearing, GRP No. 2 is intended to increase efficiencies in state government by consolidating resources and functions. The DCA Director provided the following written testimony at the hearing, "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 representative from the DRE provided the following written testimony, "Given the common purpose that the DRE would share as a bureau and with the sister boards and commissions at the DCA, there are no doubts that the consolidation will allow for leveraging of resources to enhance consumer protections." The same written testimony suggested that GRP might cause elimination of duplicative staff positions and create opportunities for shared technology, shared exam centers, and shared call centers.

As of July 2012, GRP implementation plans were under development.

Questions/Recommendations:

9. *Is there a GRP implementation plan? If so, please describe the plan and provide a status update.*
10. *How will the reorganization improve efficiency and/or reduce expenditures?*
11. *What is the impact of GRP on the soon to be transferred entities, and upon the DCA's administrative support divisions?*

Issue #5: Diversion Programs and Implementation of SB 1441 (Uniform Substance Abuse Standards)

Seven of the health care boards within the DCA, Board of Registered Nursing, Dental Board of California, Board of Pharmacy, Physical Therapy Board of California, Physician Assistant Committee, Veterinary Medical Board, and Osteopathic Medical Board, operate confidential diversion programs for licensees with substance abuse problems. Through a contract, the Diversion program participants avoid license sanctions and are initially restricted from practice until they have undergone treatment which may include inpatient treatment, group therapy, individual therapy, drug screenings, diversion evaluation committee meetings, aftercare (outpatient programs) and monthly self-reporting. Participants may be allowed to return to work after it has been determined that the participant has met all requirements and has been successful in the program. Upon returning to practice, the participant must report to a worksite monitor and continue to be screened for drug and/or alcohol use.

The success and effectiveness of these programs have been called into question numerous times. For example, after 5 audits and years of deliberation, the Medical

Board of California voted to allow its own diversion program to sunset in 2008. Additionally, the *Los Angeles Times* ran a series of articles beginning in July 2009 that characterized the diversion program for nurses with drug abuse problems as largely unsuccessful and had failed to quickly take action when nurses flunked out and were internally labeled "public safety threats."

In response to these concerns, Senate Bill 1441 (Chapter 548, Statutes of 2008), required the Substance Abuse Coordination Committee (SACC) to formulate uniform standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program. Business and Professions Code Section 315(c), as added by SB 1441, expressly requires the SACC to formulate *"uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program"* [emphasis added].

SB 1441 required the SACC to develop uniform and specific standards that shall be used by each healing arts board in dealing with substance-abusing licensees in 16 specified areas, including requirements and standards for:

1. Clinical and diagnostic evaluation of the licensee.
2. Temporary removal of the licensee from practice.
3. Communication with licensee's employer about licensee status and condition.
4. Testing and frequency of testing while participating in a diversion program or while on probation.
5. Group meeting attendance and qualifications for facilitators.
6. Determining what type of treatment is necessary.
7. Worksite monitoring.
8. Procedures to be followed if licensee tests positive for banned substance.
9. Procedures to be followed when a licensee is confirmed to have ingested a banned substance.
10. Consequences for major violations and minor violations of the standards and requirements.
11. Return to practice on a full-time basis.
12. Reinstatement of a health practitioner's license.
13. Use of and reliance upon a private-sector vendor that provides diversion services, including reporting non-compliance of program participants.
14. The extent to which participation in a diversion program shall be kept confidential.
15. Audits of a private-sector vendor's performance and adherence to the uniform standards and requirements.
16. Measurable criteria and standards to determine how effective diversion programs are in protecting patients and in assisting licensees in recovering from substance abuse in the long term.

As part of SB 1441 implementation, the DCA convened a SACC, which consisted of representatives from all of the healing arts boards. A series of meetings were held from

2009 to 2011 to discuss and develop the standards. The Uniform Substance Abuse Standards (Uniform Standards) were adopted in their final form March 2011.

All but one of the standards could be implemented administratively. The only standard that needed statutory authority dealt with the cease practice requirement. SB 1172 (Negrete McLeod, Chapter 517, Statutes of 2010), among other provisions, required healing arts boards to order a licensee to cease practice if the licensee tests positive for any substance prohibited under the terms of the licensee's probation or diversion program.

In 2011, several boards began the process of adopting the Uniform Standards via regulation. However, some boards believed they had discretionary authority regarding the adoption of all 16 standards, in particular the frequency of testing. At issue was whether the healing arts boards have clear rulemaking authority to either adopt or change the Uniform Standards, or whether adoption and approval of the Uniform Standards rests squarely with the DCA.

A Legislative Counsel opinion was requested due to the disagreement as to discretion regarding adoption of the Uniform Standards. In October 2011 the Legislative Counsel concluded that the Uniform Standards are mandatory and are required to be implemented by the boards without change, but that they must be adopted by SACC and the DCA pursuant to the rulemaking procedures under the Administrative Procedure Act.

On February 29, 2012, the Attorney General's Office issued an informal legal opinion that the healing arts boards do not have the discretion to modify the content of the specific terms or condition of probation that make up the Uniform Standards. The Attorney General's Office opined that SACC was <u>not</u> vested with the authority to adopt regulations implementing the Uniform Standards. DCA's Legal Affairs office supported the AG opinion and a memorandum was issued advising the health care boards to implement the Uniform Standards via regulation. According to a letter from the DCA Director to Senate Rules Committee, "The Department advised the healing arts boards, via memorandum dated April 5, 2012, that all applicable Uniform Standards for substance abusing licensees must be implemented through regulation. Additionally, those regulations may not include provisions that allow the board to diverge from the standards. The DCA also recommended that healing arts boards move forward with the regulations as soon as possible. Furthermore, the healing arts boards have been advised that the DCA will disapprove any regulations relating to the Uniform Standards that are inconsistent with the above direction."

The DCA has advised Senate staff that the following boards have adopted the Uniform Standards for Substance Abusing licensees via regulation:

1. Occupational Therapy Board
2. Board of Optometry
3. Respiratory Care Board

4. Board of Vocational Nursing and Psychiatric Technicians

The Medical Board of California adopted regulations to update their disciplinary guidelines to include some, but not all of the provisions of the Uniform Standards, therefore, the Medical Board is not fully in compliance with the Uniform Standards. The remaining health care boards , including Board of Registered Nursing, Board of Pharmacy, Dental Board, Physical Therapy Board of California, Physician Assistant Board, Board of Behavioral Sciences, Naturopathic Medicine, Board of Podiatric Medicine, Veterinary Medical Board, and Osteopathic Medical Board, have not adopted the standards.

Implementation of the Uniform Standards by MAXIMUS

The DCA, on behalf of the 7 boards that operate diversion programs, has contracted with a private vendor (MAXIMUS) to provide these treatment and monitoring services. This is a $7 million contract with a term beginning on January 1, 2010. The original contract was scheduled to terminate on December 31, 2012, but has been extended until December 31, 2013.

In 2010, MAXIMUS was audited by DCA and the auditors found that MAXIMUS was complying with all of the requirements of the contract. However, Committee staff had serious concerns about the completeness of this audit and the deficiencies identified in the audit, which may still exist with this program.

On September 14, 2010, the former Chair of this Committee, Senator Negrete McLeod, sent a letter to the DCA Director detailing the concerns regarding the audit and other issues regarding the administration of the diversion program. The letter pointed out that numerous audit findings reveal a lack of coordination between MAXIMUS and the boards; gaps in the system that are capable of being exploited; and inadequate monitoring of diversion program participants. In fact, the auditors found deficiencies in the most important and fundamental functions of MAXIMUS: 1) In more than one-half of the cases reviewed, MAXIMUS did not maintain some of the required documentation/recordkeeping that demonstrates participant compliance with all terms and conditions of the diversion program contract; and, 2) MAXIMUS did not always report positive drug tests to the boards in a timely manner.

Concerns regarding MAXIMUS performance in the diversion programs were further exacerbated when MAXIMUS acknowledged that its sub-contractor had been using incorrect testing standards for diversion participants. On October 8, 2010, the *Los Angeles Times* ran a story exposing a troubling flaw in MAXIMUS's testing for drug and alcohol screenings. According to the *Los Angeles Times*, more than 140 nurses, pharmacists and others in diversion programs tested positive for drugs or alcohol but the results were disregarded because the testing facility was using the wrong testing standard. The problem continued for ten months until the sub-contractor that runs the testing program alerted the state. For health care professionals with known substance-abuse problems, strict abstinence from unauthorized or prohibited substances or

alcohol is required. Instead, the testing facility used a lesser standard that may not have detected the improper use of prohibited substance or alcohol and allowed for use of alcohol or other substances when they are not working. The DCA took immediate steps to rectify this problem, but the lapse still raises questions regarding the effectiveness and efficiency of this program and what future changes are needed; in particular, with the required implementation of Uniform Standards for substance abuse programs.

As indicated, the DCA currently contracts with MAXIMUS to monitor licensees who are enrolled in a board's diversion program; currently, seven boards administer a diversion program. The MAXIMUS contract went into effect prior to the finalization of the Uniform Standards, therefore, it is necessary to amend the contract to assure that MAXIMUS is aware of, in compliance with, and implementing these Uniform Standards.

The former Director of the DCA previously advised this Committee that the MAXIMUS contract was expected to be amended before the end of 2010. However, according to testimony at a legislative hearing on March 12, 2012, the DCA was working on amendments to the contract that implemented provisions of SB 1441. Additionally, any amendments to the contract will require approval from the Department of General Services.

Questions/Recommendations:

12. *What is the DCA doing to help the boards that have not yet adopted the Uniform Standards come into compliance with the law?*
13. *Has the contract with MAXIMUS been amended to accommodate all of requirements of SB 1441 that apply to licensees enrolled in a diversion program? If not, provide the Committee with a firm date on full implementation.*
14. *How is the DCA ensuring MAXIMUS is correctly implementing and monitoring diversion programs and those enrolled in diversion programs?*

Issue #6 – Senate Bill 1111 Regulations

In 2010, Senator Negrete-McLeod introduced SB 1111 in an attempt to standardize the disciplinary process for all of the health care boards. Although the bill did not become law, it was determined that numerous provisions of SB 1111 could be implemented with existing statutory authority. The DCA distributed a list of provisions that could be implemented via the rulemaking process, which includes the following:

- Board delegation to executive officer to adopt stipulated settlements to revoke or accept the surrender of a license.
- Mandatory revocation for sexual misconduct.
- Mandatory denial of application for registered sex offenders.

According to the DCA, 10 of the health care boards have adopted, or are in the process of adopting, SB 1111 provisions. Those boards are listed below.

- Board of Behavioral Sciences
- Dental Board
- Occupational Therapy Board
- Physical Therapy Board
- Physician Assistant Committee
- Pharmacy Board
- Psychology Board
- Respiratory Care Board
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- Board of Vocational Nursing and Psychiatric Technicians

According to DCA, the following boards have not adopted SB 1111 regulations:

- Acupuncture
- Dental Hygiene
- Medical Board of California
- Board of Optometry
- Osteopathic Medicine
- Podiatric Medicine
- Board of Registered Nursing
- Veterinary Medicine

Questions/Recommendations:

15. *What is causing the delay in adopting the SB 1111 provisions by the 8 health care boards that have not yet done so?*
16. *What is the DCA doing to facilitate those boards' adoption of the SB 1111 provisions?*

Issue #7: Board Websites and Webcasting at Board Meetings

Webcasting, the delivery of live audio or video content through the Internet, is an effective tool in ensuring public access to publicly held meetings. However, the webcasting option is not chosen by some of the DCA boards, commissions and committees for their public meetings. While meetings are held at various locations throughout the state to allow for public participation and to ensure that public access is not hindered by geographical barriers, there is also significant benefit gained from providing consistent access to public meetings via the Internet. Many boards, commission and committee websites publish meeting materials but few allow interested parties to view proceedings online. It is unclear how decisions are made about webcasting, as some boards' meetings are always webcast and others are rarely webcast. Many boards, commissions and committees, even those with smaller

licensing populations, are delving into subject areas of major state and national importance and the inability of stakeholders to conveniently view or listen to proceedings harms public outreach efforts. Consumers, licensees, professional associations, media and state and national regulatory bodies would be well served through consistent, reliable and easy access to these meetings via webcasting.

Even more importantly may be the ability for the public to participate in meetings remotely. Other state boards are now doing this routinely, for example, there is a new Autism Task Force within the Department of Managed Health Care (DMHC) which routinely has a call-in number whereby anybody anywhere can listen and also participate in the meeting without actually having to be present at the meeting site. Same is true with the California Commission on Disability Access and some task forces and committees within the DMHC. Senate staff is aware of at least one state commission (Mental Health Services Oversight and Accountability Commission) that holds public meetings and offers a "call-in" option. It appears the DCA could benefit from the knowledge and experience at the commission.

In a letter to the Senate Rules Committee, the DCA Director reported that 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 the DCA is considering hosted conference calls, online chat applications, and the use of Skype. The DCA was researching options for achieving greater public access to participate 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."

Most of boards are posting meeting materials and offer email notification. However, a recent survey revealed lack of consistency in the format and layout of Websites, making it difficult to locate some of these important online services. For example, one board posts meeting calendars, agendas, minutes, and background materials for board meetings. However, these documents are posted on four separate webpages. Other boards post all of this meeting information in one easy-to-find location. The lack of consistency described above can make it difficult for the public to access information.

<u>Questions/Recommendations</u>:

17. *What is the DCA doing to ensure robust, consistent public access to its meetings through mediums like webcasting?*
18. *Why is webcasting of the DCA board meetings sporadic? What are the impediments to ensuring consistent webcasting of meetings?*
19. *What has the DCA done to facilitate a call-in system, on-line chat applications, the use of Skype, or other method to enhance public participation at board meetings?*
20. *What more can the DCA do to standardize website content and to make it more accessible to the public?*