

BACKGROUND PAPER FOR THE BOARD OF GUIDE DOGS FOR THE BLIND

**Joint Oversight Hearing, March 11, 2013,
Senate Committee on Business, Professions
and Economic Development
and
Assembly Committee on Business, Professions
and Consumer Protection**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
REGARDING THE BOARD OF GUIDE DOGS FOR THE BLIND**

BRIEF OVERVIEW OF THE BOARD OF GUIDE DOGS FOR THE BLIND

The State Board of Guide Dogs for the Blind, (Board), was established January 1, 1948 to ensure that blind persons receive well-trained guide dogs, to confirm that blind persons are thoroughly trained to be effective and safe guide dog users, and to assure donors to guide dog charities that their donations will be used for the intended charitable purpose. The Board's mission, as stated in the Board's 2010-2014 Strategic Plan is as follows:

“To ensure the quality of the guide dog industry by protecting, promoting, and educating guide dog users, instructors, schools, and the public in order to enhance the lives of blind or visually impaired individuals.”

The Board licenses: 1) guide dog schools, 2) guide dog instructors, and 3) fundraising programs to open new guide dog schools. (BPC §§ 7200.5, 7210.6) The Board inspects all schools, requires new active guide dog instructors to take a legally defensible written and practical examination, and requires instructors to submit proof of eight hours of continuing education each year to remain licensed. California is the only State that has such a regulatory program.

In fiscal year 2011/12 the Board had a license base of 109 active guide dog instructors and 3 inactive guide dog instructors. The Board also oversees 3 guide dog schools located throughout California.

The Guide Dog Board has seven members. One member represents the Director of the Department of Rehabilitation. The other six are Governor’s appointees, two of whom must be blind persons who use guide dogs.

Each member is appointed by the Governor to serve a four year term. All Board meetings are subject to the Bagley-Keene Open Meetings Act.

The following table lists all members of the Board including background on each member, appointment date, term expiration date and appointing authority.

Board Members	Appointment Date	Term Expiration Date	Member Type	Appointing Authority
<p>Eric Holm, (Board President)</p> <p>Board President Eric Holm, after serving as a volunteer, speaker, and independent consultant with Guide Dogs for the Blind, Inc., was appointed by Governor Jerry Brown to the State Board of Guide Dogs for the Blind, on June 1, 2012 and re-elected as Board President on May 14, 2012. Holm graduated from Saint Mary's College (BA), San Francisco Law School (JD), and the Federal Law Enforcement Training Center. Holm served as a Federal Adjudications Officer for the U.S. Department of Justice and the U.S. Department of Homeland Security. Holm also held the position of Vice President and Chief Stewart of the American Federation of Government Employees Local 1616. Holm actively engages as a member of the National Federation of the Blind and the Bay Area Association of Disabled Sailors. Presently, Holm also serves on the City of San Rafael Park & Recreation Commission and the City's ADA & Accessibility Advisory Committee, educating and advancing the rights and responsibilities of persons with disabilities. Ford, Holm's beautiful Yellow Labrador, nurtured and trained at Guide</p>	<p>10/29/08, 5/30/12</p>	<p>06/01/15</p>	<p>Guide Dog User / Public</p>	<p>Governor</p>

Dogs for the Blind, assists him in living life to the fullest.				
<p>Tom Scott, (Board Vice President)</p> <p>Board Vice President Tom Scott provides government affairs counsel to clients ranging from tort reform, plastics, energy, defense, environmental engineering and telecommunications. With an extensive background in both the private and public sectors, he has worked at all levels of government including positions in the offices of Los Angeles County Supervisor Michael Antonovich, former State Senator John Seymour, the U.S. Department of Commerce and former U.S. Senator Pete Wilson. He currently serves as Vice Chair for the City of Folsom Utility Commission, Chair of the Folsom Chamber of Commerce Government Affairs Committee and as a member of the Board of Directors for the Folsom Chamber of Commerce.</p>	12/16/04, 11/04/08,	06/01/12	Public	Governor
<p>Joseph Xavier, (Board Secretary)</p> <p>Board Secretary Joseph Xavier of Elk Grove, has served as deputy director of independent living and the external affairs division for the Department of Rehabilitation (DOR). Since 2005, he served as staff services manager II at DOR. From 2001 to 2005, Xavier served as an associate management auditor for the audit section at DOR and, from 1998 to 2001, served as a supervising business enterprise program consultant II for the Business Enterprise Program Section. He is a member of the California Council of the Blind and the American Council of the Blind.</p>	04/21/10	Serves at the Governor's Pleasure	Designee of DOR / Public	Governor
<p>Belinda Barragan, (Board Member)</p> <p>Belinda Barragan has served as the regional director for the greater Los</p>	06/16/08,	06/01/12	Public	Governor

<p>Angeles area for the non-profit Latino Issues Forum. Barragan previously was assistant director of state government relations for the University of California, Los Angeles from 2001 to 2007 and legislative consultant and district director for Assemblymember Tony Cardenas from 1996 to 2001.</p>				
<p>Jeff Neidich, (Board Member)</p> <p>Jeff Neidich has a passion for advocating and enhancing the lives of individuals who are disabled. Mr. Neidich was a small business entrepreneur, has worked for the United States Government, and has held several positions within the non-profit arena. He has served on numerous boards and committees that provide consumer protection and public education. He was appointed to serve as a Board Member on the California State Board of Guide Dogs for the Blind on December 1, 2004. As an experienced guide dog handler, he brings to the Board practical knowledge. Additionally, Mr. Neidich is currently serving his second term with the Yuba City Board of Appeals. This Board assists the City when considering waivers pertaining to public access as defined under Title 24, California Code of Regulations.</p>	<p>12/01/04, 10/28/08,</p>	<p>06/01/12</p>	<p>Guide Dog User / Public</p>	<p>Governor</p>
<p>Lawrence S. Grable, (Board Member)</p> <p>Lawrence Grable, of Rancho Cucamonga, has served as director of Governor Schwarzenegger's Riverside Field Office since 2004. Previously, Grable was a sales manager for CBM Systems from 2002 to 2003, a manager for Allied Equipment in 2003, a dispatch coordinator for United Rentals from 1998 to 2001, a manager for Ahern Rentals from 1988 to 1998 and was accounts receiver and purchaser for</p>	<p>12/21/10</p>	<p>6/01/13</p>	<p>Public</p>	<p>Governor</p>

Match Corporation from 1986 to 1988.				
VACANT	12/22/10	06/01/13	Public	Governor

The Board has three standing committees including:

1. Legislative
2. Outreach and Education
3. Practice Task Force

Legislative Committee – The Legislative Committee meets, on average, two times per fiscal year. This Committee reviews state and federal legislation affecting its stakeholders, including guide dog users, guide dog schools, and guide dog instructors. After review, the Committee makes legislative recommendations to the Board.

Outreach and Education Committee – The Outreach and Education Committee usually meets two times per fiscal year. The Committee evaluates topics such as access rights, dog attacks on guide dogs, and changes to the Americans with Disabilities Act, and it leverages partnerships with stakeholders and media to educate members of the public, government officials, law enforcement, and the business community.

Practice Task Force – The Practice Task Force is comprised of three licensed guide dog instructors and one Board Member. The Task Force reviews statutes and regulations and makes recommendations to the Board to update, clarify, and add language that is reflective of the current practice of guide dog instruction. As there are no licensee members on the Board, this task force ensures there is input from the regulated profession.

The Board maintains a single office in Sacramento. The Board’s Executive Officer oversees a staff of one part-time employee.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Committee last reviewed the Board of Guide Dogs for the Blind in 2001. At that time, the Committee identified issues for the Board and directed the Board to address the issues and implement a number of recommended changes.

On November 1, 2012, the Board of Guide Dogs for the Blind submitted its required Sunset Report to this Committee. In its 2012 report, the Board described actions it has taken since its last sunset review. Below are the prior issues raised by the JLSRC in its Background Paper of 2001 and in its final recommendations, and the Board’s responses to how the issues or recommendations of the JLSRC were addressed. (The prior “Board of Guide Dogs for the Blind

Background Paper of 2001” which details these issues and the JLSRC Recommendations regarding the Board can be obtained from this Committee.)

1. The JLSRC recommended that the Board should utilize the expertise of the Bureau for Private Postsecondary and Vocational Education (Bureau) and the Attorney General to enhance guide dog user protection. The Bureau and the Attorney General have expertise and jurisdiction that might provide additional protection for guide dog users. The Board responded in its 2012 Sunset Review Report that guide dog schools, which are non-profit organizations that provide guide dog instruction to blind or visually impaired persons are significantly different than the private postsecondary schools the Bureau supports. The Board currently relies upon the services provided by the Department of Consumer Affairs, (DCA) including cashiering, public affairs, legal, legislative and regulatory review and administrative support. The Board has increased its communication with the Attorney General’s office, established an enforcement budget and is seeking regulatory changes which would provide greater accountability from the guide dog schools, (e.g. requiring schools to provide all reports and fees to the Attorney General’s office to maintain an active license.)
2. The JLSRC raised the issue of then existing discrepancy between school practices and the Board’s statutes and regulations related to the amount of instructor experience required prior to licensure. At the time of the last Sunset Review, Board regulations (CCR § 2266) prohibited a school from hiring an apprentice who did not have at least one year of actual experience in working with the training of dogs. However, BPC § 7209, pertaining to examination requirements, only required that candidates for examination have the equivalent of three years of training as an apprentice in a licensed school. There did not appear to be any statutory authority for the one-year experience requirement. The Board responded to this concern by amending CCR § 2266 to eliminate the one year requirement.
3. The JLSRC raised the issue of frequent member vacancy problems. The JLSRC recommended that the Board deal with the vacancies as a cross-cutting issue. The Board responded in its 2012 Sunset Review Report that there is currently one board member vacancy.
4. The JLSRC raised the issue of whether the Board should be continued, merged with another board or sunset. The JLSRC recommended that the Board should continue to license and regulate guide dog schools and instructors. The Board agrees with this recommendation.
5. The JLSRC raised the issue of whether the Board could afford to increase its staff. The Board addressed the problem in 2010 by changing its fee structure to accommodate for an enforcement budget and increase the staff position authority to 1.5 (from 1.3).
6. The JLSRC raised the issue that the threshold for licensure and financial responsibility for those who wish to establish a guide dog school in California might be too high. The JLSRC recommended that the Board examine the current standards and provide the

JLSRC with possible modifications in the criteria for those who wish to establish a guide dog school in California. The Board has not modified the requirements for an organization wishing to establish a fundraising license to start a guide dog school. The Board states that there have been no complaints received from applicant schools since the last sunset review

7. The JLSRC raised the issue that the Board has not defined professional competence, negligence, or appropriate professional conduct as it relates to licensees. The Board, acting on advice from legal counsel did not pursue defining professional competence, negligence and appropriate conduct. The Board's Strategic Plan, however, does address drafting a practitioner code of ethics. The goal completion date for this code is 2014.
8. The JLSRC raised the issue of the Board's diminishing fund reserve, and recommended that the Board provide the JLSRC with a breakdown of projected expenditures and a proposal to resolve the diminishing state of their fund reserve. In its 2012 Sunset Report, the Board states that the fund reserve is currently in a healthy state.
9. The JLSRC raised the issue of whether the arbitration pilot project between guide dog users and guide dog schools should be extended or sunset. The JLSRC recommended that the Board should report on the outcome of the arbitration program and recommend whether the project should be continued. The Board states that during the Arbitration Program's nine year tenure, it has been utilized twice. Once, the Program conducted a formal hearing, whereby the panel sided with the guide dog school. The second time, the Board appointed a special committee to hear a dispute between a client and a guide dog school. All parties agreed that it was in the best interests of the guide dog to be returned to the guide dog school. While the arbitration mechanism has not been utilized frequently, it does provide a guide dog user the opportunity to dispute the repossession of a guide dog by a school after successful completion of training. The Board is open to feedback from consumers regarding the presence of such a mechanism for dispute.
10. The JLSRC raised the issue of whether the guide dog schools were submitting the required reports to the Board. The JLSRC requested that the Board provide copies of these reports to the JLSRC. The Board states that the schools are in compliance with reporting per BPC § 7217. The Board stated that the Legislature has not requested reports of such information; however, the Board can provide this information upon request.

Since the Committee's last review in 2001, the Board has implemented or is considering the following additional changes:

Internal Changes to the Board

Since the Board's last Sunset Review, there have been several changes in leadership. Board Presidents have been: Harry Thomas, (1996-2000), Hugh Lyttleton, (2000-2002), Allan Brenner, (2002-2007), Jeffrey Neidich, (2007-2010), Eric Holm, (2011-Present).

The Board hired a new Executive Officer in March 2008, and adopted a strategic plan on November 23, 2009. The Board also increased the .3 (Office Technician) to a .5 (Office Technician) staff position.

Legislation Sponsored By / Affecting the Board:

SB 1307, Committee on Business, Professions and Economic Development

This measure clarified that the Board is not a party to a dispute between a guide dog user and a guide dog school. The guide dog user and guide dog school voluntarily waive the right to judicial review of their dispute when they agree to participate in arbitration facilitated by the Board. (Chapter 983 Statutes of 1999)

SB 136, Figueroa

Board of Guide Dogs for the Blind Sunset Extended the sunset date for the Board and its arbitration panel pilot project by six years to July 1, 2008. Also extended the sunset dates for and made technical changes to two nonprofit organizations and several professional boards within the Department of Consumer Affairs, including a fee increase for the Board of Professional Engineers and Land Surveyors. Specifically, this statute addresses the California Council for Interior Design Certification, Board of Professional Engineers and Land Surveyors, and California Tax Education Council. (Chapter 495 Statutes of 2001)

AB 2973, Committee on Business and Professions

The Department of Consumer Affairs sponsored proposed non-substantive technical and clarifying changes that enacted, amended, or repealed provisions relating to the regulatory programs of the Board of Guide Dogs for the Blind. (Chapter 405 Statutes of 2002)

AB 2276, Fuentes

This bill would have extended the sunset date for the State Board of Guide Dogs from July 1, 2011 to July 1, 2016. (Died in Assembly Business & Professions Committee)

SB 475, Padilla

Increased the annual renewal fee limit for the State Board of Guide Dogs for the Blind (Board) from 0.004 to no more than 0.005 of a school's annual expenses; required the Board to define the exact amount of the fee by regulation; and required the renewal fee to be paid by April 30th of each year. (Chapter 51 Statutes of 2009)

SB 1491, Committee on Business, Professions and Economic Development

This made several minor and non-substantive changes to provisions pertaining to non-health regulatory boards of the Department of Consumer Affairs. (Chapter 415 Statutes of 2010)

SB 543, Steinberg/ Price

Business and Professions: Regulatory Boards Extended the sunset date for the Board of Guide Dogs for the Blind, along with a number of other boards, until January 1, 2014. This bill also extended the sunset date for the Board’s Arbitration Program until January 1, 2014. (Chapter 448 Statutes of 2011)

SB 944, Committee on Business, Professions and Economic Development

Business and Professions: Regulatory Boards Clarified in statute that (1) the Executive Officer keeps all records for the Board, and (2) the Board processes applications and payments; required that (1) the health certificate for the guide dog be delivered to the client upon assignment of the dog, (2) schools licensed by the Board shall provide an audit of the school’s finances to the Board within 90 days after the end of a calendar year. (Chapter 432 Statutes of 2011)

Proposed Regulations

Regulation Information, all references to Title 16	File Date	Effective Date
CCR sections 2268.2 (Donations; Records), 2271 (Living Quarters; Attendants).		

Regulations Enacted

Regulation Information, all references to Title 16	File Date	Effective Date
CCR Sections 2252 (Definitions), 2275 (Sterilization of Dogs), 2284 (Instructor -When License Required), 2295 (Issuance of Citations and Fines), 2295.1 (Criteria to Be Considered), 2295.2 (Contested Citations), 2295.3 (Citations for Unlicensed Practice)	Monday, April 16, 2012	Wednesday, May 16, 2012
CCR Sections 2260 (Completion of Requirements for License as Instructor), 2266 (Apprentice Standards; Minimum Instruction), 2282 (Required Training) and 2282.1 (Assignment of Dogs)	Thursday, March 17, 2011	Saturday, April 16, 2011
CCR Sections 2262 (License Period), 2262.1 (Annual School Renewal Payment) and 2276 (Client Instruction)	Wednesday, July 21, 2010	Saturday, August 21, 2010
CCR Section 2262 (License Period) and 2262.1 (Annual School Renewal Payment)	Monday, February 22, 2010	Monday, February 22, 2010

CCR Section 2286 (Continuing Education)	Monday, November 30, 2009	Wednesday, December 30, 2009
CCR Section 2250 (Location of Office), Repeal of CCR Sections 2274 (Health Certificate) and 2277 (Physical Defects)	Wednesday, August 27, 2008	Friday, September 26, 2008
CCR Sections 2293 (School Requirements Regarding Continued Use of a Guide Dog) and 2294 (Arbitration Requirements)	Tuesday, May 10, 2005	Thursday, June 9, 2005

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to this Board, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee's staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

ISSUE # 1: Should the regulations be changed to require licensees licensed before January 1, 1998 to submit fingerprints for security clearance prior to the renewal of their licenses?

Background: There are currently twelve licensees who have not submitted Live Scan fingerprints and are not required to do so because the regulations do not reach those licensed before January 1, 1998.

The Committee is concerned that the Board should require fingerprint security clearance for all licensees, if doing so would assist the Board with its enforcement and consumer protection responsibilities.

Recommendation: *The Board should inform the Committee whether it believes that expanding the Live Scan fingerprinting requirement to all licensees would be beneficial to ensuring the protection of consumers and stakeholders.*

ISSUE # 2: How is the Board dealing with ongoing and recurring vacancies on the Board?

Background: The Board has had one unfilled member position since December 2010, and has had trouble retaining Board members and significant turnover for several years.

The Committee is concerned that there should not be long-term vacancies on the Board.

Recommendation: *The Board should inform the Committee whether board position vacancies are harming the Board’s ability to fulfill its mission and whether the Board has suggestions related to addressing the vacancy issue.*

ISSUE # 3: Has the Board developed an ethics code for practitioners?

Background: In its 2012 Sunset Review Report, the Board stated that it will develop a code of ethics for practitioners as part of its strategic plan. What progress has the Board made on developing the code? How is the code being developed? How will the code be enforced?

The Committee is concerned that the Board should complete an ethics code for practitioners.

Recommendation: *The Board should update the Committee on its plan for developing an ethics code, its estimated date for completion, and its plans for promulgating and enforcing the code.*

ISSUE # 4: Should BPC § 7206 be amended to reflect the current practices of the Board related to candidate examinations?

Background: Currently, BPC § 7206 requires the Board to conduct an examination of candidates for certification at least once per year. However, after conducting an Occupational Analysis in 2005, the Board changed the examination process so that licensed subject matter experts, not board members, (none of whom are licensed in the field of guide dog instruction), review candidates written and oral exam performance. The Board states that the requirement that the Board conduct the examination needs to be deleted.

The Committee is concerned that BPC § 7206 and the Board’s examination practices should be consistent.

Recommendation: *The Committee should amend BPC § 7206 to state that once a year the Board shall direct licensed subject matter experts to conduct examinations of candidates for licensure.*

ISSUE # 5: Should BPC § 7210 be amended to reflect proper contemporary terminology for guide dogs?

Background: BPC § 7210 makes reference to “seeing-eye dog,” which is a type of guide dog provided by a school in New Jersey. According to the Board, the term “seeing-eye dog” is no longer used as a general term for guide dogs, and thus needs to be deleted.

The Committee is concerned that BPC § 7210 should use the proper terminology when discussing guide dogs.

Recommendation: *The Committee should amend BPC § 7210 to remove the term “seeing-eye dog” from the statute.*

ISSUE # 6: Is the licensure process too burdensome for out of state instructors and schools who wish to provide services, including follow-up training, in California? Is this detrimental to California consumers?

Background: Because California is the only state that regulates guide dog schools, instructors, and fundraisers, some out-of-state guide dog schools and instructors who do not have the ability to get licenses in their home states have expressed concern that they are unable to provide guide dog training services in California without applying for a California license.

The Board has clarified through regulations that “instruction,” which can only be conducted by a licensed provider, includes follow-up instruction. Some guide dog users have questioned the validity of a law that prohibits unlicensed follow-up instruction in this state.

As no other state licenses guide dog instructors, there is no reciprocity to establish mechanisms like practice privilege. However, individuals who meet the criteria laid out in Business and Professions Code section 7209, Qualifications for Examination as Instructor, may become licensed instructors in California even if their own training and experience occurred outside this state.

The Board states that it has not received any formal complaints from instructors or consumers. All feedback on this issue has been informal.

The Committee is concerned that the Board should protect California consumers without unnecessarily restricting consumers’ access to quality training services.

Recommendation: *The Board should evaluate whether there is anything the Board can do to remove barriers to qualified out-of-state instructors securing California licensure and report back to the Committee.*

ISSUE # 7: Should the arbitration pilot program be extended or allowed to sunset?

Background: BPC § 7215.6 establishes an arbitration panel for the settlement of disputes between a guide dog user and a licensed guide dog school regarding the continued use of a guide dog by the user in all cases except those in which the dog user is the unconditional legal owner of the dog. The arbitration program has only been used two times during the nine years it has existed. In its 2012 Sunset Review Report, the Board states that it is open to consumer feedback about whether the arbitration program should be continued. The program will sunset on January 1, 2014, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

The Committee is concerned that the arbitration program should remain available if it is an important tool for guide dog users and guide dog schools in resolving disputes between them. However, due to the infrequent use of the program, if it is not meeting the needs of the stakeholders, it should be allowed to sunset.

Recommendation: *The Board should inform the Committee whether it believes the arbitration program should be continued in light of its infrequent use.*