

BACKGROUND PAPER FOR THE Board of Guide Dogs for the Blind

Joint Oversight Hearing, February 27, 2017

**Assembly Committee on Business & Professions
and**

Senate Committee on Business, Professions & Economic Development

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS

BRIEF OVERVIEW OF THE BOARD OF GUIDE DOGS FOR THE BLIND

The Board of Guide Dogs for the Blind (Board) was established in 1948 to ensure that blind or visually impaired individuals receive well-trained guide dogs, the Board also confirms that blind or visually impaired individuals are thoroughly trained to be effective and safe guide dog users. Furthermore, the Board was also designed to assure donors of guide dog charities their donations are used for their intended charitable purpose.

The Board licenses and regulates 1) guide dog instructors; 2) guide dog schools; and, 3) fundraising programs that open new schools as specified in Business and Professions Code (BPC) sections 7200.5-7210.6. Currently, the Board oversees 103 guide dog instructors, including 47 out of state instructors and three guide dog schools. The Board annually inspects all schools, requires new active guide dog instructors to take written, practical, and oral examinations, and requires instructors to submit proof of eight hours of continuing education (CE) each year to remain licensed. California is the only State that has such a regulatory program.

The priority of the Board, as specified in BPC section 7200.1, is protection of the public:

Protection of the public shall be the highest priority for the State Board of Guide Dogs for the Blind in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

In addition to its statutory mandate regarding consumer protection, the current mission statement of the Board, as specified in its 2016-2020 Strategic Plan, is as follows:

We ensure the quality of the guide dog industry by setting and enforcing standards, and providing outreach and education.

Board Membership and Committees

The composition of the Board includes seven members, all of whom are appointed by the Governor. One appointee must be the Director of Rehabilitation or his designated representative. Two members must be blind or visually impaired persons who use guide dogs. The remaining members must include individuals who have shown a particular interest in dealing with the problems of persons who are blind or visually impaired. However, beginning on January 1, 2017, as a result of SB 1331 (Pavley), Chapter 595, Statutes of 2016, the composition of the Board was changed to require three appointees be persons who are blind or visually impaired instead of two. As of December 1, 2016, four of the Board's members are guide dog users.

As specified in BPC section 7205, Board members receive a \$100-a-day per diem, except the Director of Rehabilitation or his or her designated representative who only receives the necessary expenses for each day actually spent in the performance of his or her duties. The Board meets at a minimum four times per year. The Board reports that it has been able to achieve a quorum at all of its meetings over the past four years however; there have been instances where the Board had to cancel meetings due to teleconference locations not being properly staffed. There are currently no vacancies on the Board. The following is a listing of the current Board members and their backgrounds:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority
<p>Eric Holm, Board President Holm is a stand-in City Councilmember of the City of San Rafael, Vice Chair of the San Rafael Park & Recreation Commission, and Committee member on the San Rafael ADA & Accessibility Advisory Committee. Holm is a Past President of the National Federation of the Blind, San Francisco Chapter, member of the Bay Area Association of Disabled Sailors, and an Officer of the Benevolent and Protective Order of Elks. Previously, Holm served as an Adjudications Officer at the U.S. Department of Homeland Security, U.S. Department of Justice, and Vice President and Chief Stewart of the American Federation of Government Employees Local 1616. Holm has been a guide dog user since 2006, graduating with his guide dog, "Ford," from Guide Dogs for the Blind in San Rafael.</p>	<p>10/28/2008 07/02/2012 06/05/2015</p>	<p>06/05/2019</p>	<p>Governor</p>
<p>Carmen Delgado, Board Vice President Delgado served as a consultant at the California Department of Alcohol and Drug Programs from 2009 to 2011 and was Farrell project director at the California Department of Corrections and Rehabilitation, Division of Juvenile Justice from 2008 to 2009. She was assistant deputy director at the California Department of Alcohol and Drug Programs' Program Operations Division from 2002 to 2008 and acting assistant deputy director from 2000 to 2002. Delgado was assistant district director at the California Conservation Corps from 1978 to 1992.</p>	<p>06/03/2013</p>	<p>06/01/2017</p>	<p>Governor</p>
<p>Don Brown, Public Member Brown has been a disability compliance specialist for the City of Berkeley since 2001 and a disability compliance consultant at Access Work Systems since 2000. He was a human resources disability programs manager at San Francisco State University from 1994 to 2001 and a human resources analyst for the San Francisco Unified School District from 1991 to 1994.</p>	<p>06/23/2013</p>	<p>06/01/2016</p>	<p>Governor</p>
<p>Catherine Carlton Carlton has been a member of the Menlo Park City Council since 2012 and board member of the Vista Center for the Blind and Visually Impaired since 2011. She was North America managing director at SearchBank Executive Search from 2003 to 2005 and founder and</p>	<p>06/03/2013 06/01/2016</p>	<p>06/01/2020</p>	<p>Governor</p>

managing director of the Asia Pacific Australia region at Digital Islands from 1999 to 2001. Carlton has been vice president of the Sharon Heights Homeowners Association since 2006, state chair of the Junior Leagues of California, State Public Affairs Committee since 2003 and chair of the Menlo Charity Horse Show from 2006 to 2011.			
Rosa Gomez Gomez has served as the Assistant Deputy Director for the Specialized Services Division (SSD) for the Department of Rehabilitation (DOR) since May 2015. From 2012 through 2015, she served in the capacity of a Staff Services manager II for the department, administering the Orientation Center for the Blind (OCB) residential training program for DOR's consumers who are blind. Previously, Rosa was a Rehabilitation Supervisor at OCB and a Rehabilitation Counselor-QRP for Blind Field Services where she began her career in 2008 at the Department of Rehabilitation. Rosa has been a guide dog user since 1985.	07/06/2015	n/a	Director of Rehabilitation or his or her designated representative
Gwen Marelli Marelli is currently working as the director of commercial and industrial services at the Southern California Gas Company. She has served in multiple positions at Southern California Gas Company since 1991, including director of customer operations, director of customer services and director of customer research, strategy and communications. She was a flight test engineer at McDonnell Douglas Corporation from 1988 to 1991 and an operating plant services engineer at Bechtel Western Power Company from 1986 to 1988. Marelli is a member of the Executive Boards of both the Los Angeles County Economic Development Corporation and Energy Solutions Center. She and her family have been volunteer puppy raisers for Guide Dogs for the Blind since 2010.	11/26/2013	06/01/2017	Governor
Joan Patche Patche owns and operates four cafés and snack bars in State and Federal buildings in the downtown Sacramento area. Prior to her business ventures, Patche studied French at Stonehill College in North Easton Massachusetts and the Monterey Institute of International Studies where she received her Master's degree. Patche and her Golden Lab Guide Dog, Amorette, work and play hard.	02/17/2015 06/01/2016	06/01/2020	Governor

The Board has two committees and one task force which are created as needed by the Board. The Board does not have any statutorily required committee. All committee meetings are subject to the Bagley-Keene Open Meetings Act.

- 1) The *Outreach and Education Committee* evaluates topics such as access rights, dog attacks on guide dogs, and changes to the Americans with Disabilities Act. Additionally it leverages partnerships with stakeholders and media to educate members of the public, government officials, law enforcement, and the business community.
- 2) The *Legislative 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.
- 3) The *Practice Task Force* is comprised of three licensed guide dog instructors and two Board members. 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. The task force members are as follows: 1) Chair, Bob Wendler, Guide Dog Instructor (Guide Dogs of the Desert); 2) Amy Gunn, Guide Dog Instructor (Guide Dogs for

the Blind, Inc.); 3) Yvonne Martin, Guide Dog Instructor (Guide Dogs of America); 4) Carmen Delgado, Board Vice President; and 5) Don Brown, Board Member.

Staffing Levels

The Board appoints an executive officer. The current executive officer, Brian Skewis, has served in his position since May 2014. In 2015, the Board laid-off the part-time Office Technician to balance revenues and expenditures. Currently, the Executive Officer is the only employee of the Board. The Board has not submitted any Budget Change Proposals in the last four fiscal years (FY). The Board does not plan to submit a budget change proposal for FY 2017-18.

Fiscal and Fund Analysis

As a Special Fund agency, the Board receives no General Fund support, relying solely on fees set by statute and collected from licensing and renewal fees. The Board has not made any loans to the General Fund.

Licensing and Renewal Fees

Guide dog schools are required to renew their licenses annually by April 30th of each year (BPC section 7200.7). SB 475 (Padilla), Chapter 51, Statutes of 2009, increased the statutory cap of a school renewal fee to .005 of a school's total annual expense. Subsequently, the Board adopted California Code of Regulations (CCR) section 2262.1, which set the current school renewal fee to .00425 of a school's total annual expense.

Guide dog instructors are required to renew their license on the anniversary date of their initial license. An initial license fee is currently \$250 and a renewal license fee is currently \$100. Both initial and renewal fees are at the statutory maximum amount.

A license for advanced solicitation of a guide dog school is \$50 however; the Board reports that it has not issued such a license in 40 years.

The Board reports that instructor and fundraising license fees have not been changed in 10 years.

Table 4. Fee Schedule and Revenue (list revenue dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	% of Total Revenue
Instructor Application	\$250	\$250	\$1	\$1	\$2	\$3	2%
Instructor Renewal	\$100	\$100	\$10	\$10	\$9	\$9	6%
Instructor Delinquent Renewal	\$50	\$50	\$ -	\$ -	\$ -	\$ -	0%

Inactive Instructor Renewal	\$25	\$25	\$ -	\$ -	\$ -	\$ -	0%
School Renewal	.00425 X Expenses	.005 X Expenses	\$138	\$140	\$139	\$141	92%
Misc. Revenue	Variable	Variable	\$ -		\$2	\$ -	0%
Total Revenue			\$149	\$151	\$152	\$153	100%

Note: This table was taken from the State Board of Guide Dogs for the Blind, 2016 Sunset Review Report

The Board reports that it is subject to BPC Section 128.5 which sets a statutory cap for Board reserves of 24 months.

The Board ended FY 2015-16 with a reported reserve of \$80 thousand which is equivalent to 4.6 months in reserve. To address fiscal concerns the Board eliminated the part-time Office Technician position in July of 2015 and restructured its board meeting operations. As a result, the Board no longer travels regularly for the purpose of meetings and instead conducts all board meetings telephonically. The Board reports that it is currently structurally balanced, expending and collecting approximately the same amount of money annually; however, the Board projects a deficit in FY 2017-18.

The Board believes that with the elimination of the Office Technician position and the elimination of travel expenses for board meetings, as noted above, that solvency can be projected through FY 2018-19 at which point, an increase of school renewal fees to the statutory maximum allowed would yield an approximate \$25 thousand increase to revenue and delay insolvency further into the future.

Table 2. Fund Condition						
(Dollars in Thousands)	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Beginning Balance	\$163	\$123	\$127	\$88	\$80	\$25
Revenues and Transfers	\$149	\$151	\$152	\$153	\$153	\$153
Total Revenue	\$312	\$274	\$279	\$241	\$233	\$178
Budget Authority	\$196	\$199	\$209	\$208	\$208	N/A
Expenditures	\$189	\$147	\$190	\$161	\$208	\$212
Loans to General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Accrued Interest, Loans to General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loans Repaid From General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fund Balance	\$123	\$127	\$89	\$80	\$25	-\$34
Months in Reserve	10	8.0	6.6	4.6	1.4	-1.9

Note: This table was taken from the State Board of Guide Dogs for the Blind, 2016 Sunset Review Report

Expenditures by Program Component

For the last four fiscal years, the Board has expended approximately 14% on enforcement, 13% on examinations, 18% on licensing, 31% on administration, and 24% on DCA pro rata.

*Administration includes costs for executive staff, Board, administrative support, and fiscal services.

Table 3. Expenditures by Program Component (list dollars in thousands)								
	FY 2012/13		FY 2013/14		FY 2014/15		FY 2015/16	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$22	\$5	\$17	\$5	\$26	\$4	\$20	\$5
Examination	\$23	\$5	\$17	\$5	\$26	\$3	\$20	\$5
Licensing	\$30	\$7	\$23	\$6	\$34	\$5	\$26	\$6
Administration *	\$40	\$18	\$31	\$16	\$44	\$16	\$36	\$17
DCA Pro Rata	-	\$39	-	\$27	-	\$32	-	\$26
Diversion	-	-	-	-	-	-	-	-
TOTALS	\$115	\$74	\$88	\$59	\$130	\$60	\$102	\$59

*Administration includes costs for board, administrative support, and statewide fiscal services.

Note: This table was taken from the State Board of Guide Dogs for the Blind, 2016 Sunset Review Report

The Board is authorized to seek cost recovery as specified in BPC section 125.3. However, the Board reports that it has not been involved in a case needing to seek cost recovery. As a result, the Board has not had to utilize the Franchise Tax Board intercept program for assistance with recovery collection.

Licensing

The Board licenses three guide dog schools and approximately 103 guide dog instructors. Currently the Board does not have any fundraising licensees. 47 of the 103 licensed instructors reside outside of California. The Board does not license or regulate schools or fundraising programs outside of California. The licensing population has been fairly consistent since FY 2013-14.

The Licensing Program of the Board was designed to provide public protection by ensuring only those applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial are licensed or registered.

Although the Boards' 2016 Sunset Review Report noted a decrease in licensed guide dog instructors between FY 2013-13 and FY 2013-14, the Board attributes this to a onetime retirement of instructors and the Board does not consider this to be a trend.

		FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16
Guide Dog Instructor	Active	116	94	98	103

Note: This table was taken from the State Board of Guide Dogs for the Blind, 2016 Sunset Review Report

The Board has established an internal performance expectation that all applications should be processed within one week. The Board reports that it is currently meeting performance expectations.

The current application process includes an evaluation video, application review, the collection of the examination and initial licensing fee, and compliance with fingerprint requirements.

Per BPC section 7208, the Board is authorized to make rules and regulations as reasonably necessary to govern the admission of applicants for the examination for a license to instruct persons who are blind or visually impaired in the use of guide dogs or to engage in the business of training, selling, hiring, or supplying guide dogs for persons who are legally blind or visually impaired. In order to apply for the licensing examination, a guide dog school must submit a qualifying letter stating that the applicant is qualified to sit for the licensing examination (California Code of Regulations (CCR), Title 16 section 2260(c)).

As part of the licensing process all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). The Board reports that there are a number of licensees who have been fingerprinted manually (hard card) and not electronically (Live Scan). To ensure that all licensees have an electronic fingerprint record on file, the Board reports that it proposed a regulation change in October of 2016 which would require all licensees to submit electronic fingerprints, if an electronic copy is not currently on file. That proposed regulation package is currently pending approval from the DCA prior to submission with the Office of Administrative Law.

There is no reciprocity for out-of-state licensees as California is the only state to license instructors, schools and fundraising programs. Until January 1, 2017, out-of-state instructors who came to California to provide follow up services to a consumer who obtained training at an unlicensed school outside of California were required to be licensed in this state. As a result of SB 1331 (Pavley), Chapter, 595 Statutes of 2016, whenever a consumer has received training or instruction from a school outside of this state that is certified by the International Guide Dog Federation or a successor entity, as determined by the Board, personnel from that school may provide, in this state, any follow-up services to that individual with respect to the specific guide dog for whom training or instruction was originally provided outside of this state. The law also provides a mechanism for follow-up services to be provided on an emergency basis but did not permit unlicensed guide dog training services to be provided in California in any other situation. In addition, the new law requires that the unlicensed personnel who are providing the follow-up services submit their fingerprints to the Board and be subject to the disciplinary jurisdiction of the Board, which may include a citation or fine.

School Approval

The Board inspects licensed guide dog schools annually and only approves those guide dog schools located in California. While the Board licenses instructors who are affiliated with out-of-state schools, the Board does not have the authority to license the school. Guide dog schools are not required to additionally be approved by The Bureau of Private Postsecondary Education.

Continuing Education

BPC section 7211.1 specifies that as a condition of renewal for a guide dog instructor license, licensees are required to provide proof to the Board of completion of no less than eight hours of CE in blindness

mobility, health issues relating to blindness, instructing persons who are blind or visually impaired, or care and training of dogs. 16 CCR section 2286(c) specifies that licensees may seek pre-approval from the Board to ensure the CE courses, seminars, or meetings will be accepted.

The Board approves CE courses. Currently, the Board's EO reviews the content of each course along with the instructor's qualifications and issues approval. The Board does not preapprove CE course providers instead CE courses are approved with each licensee's application for renewal.

The Board is responsible for conducting audits of licensees to ensure compliance with CE requirements. The Board reports that it is able to conduct CE audits annually on its entire licensing population.

Enforcement

The Board reports that it received 1 complaint in FY 2013/14, 2 complaints in FY 2014/15, and 4 complaints in FY 2015/16. The table below illustrates the timeframes for the last three years for investigations and formal discipline. Although the timeframe for closing investigations increased during FY 2015/16, it is below the 90 day internal timeframe set by the Board.

Enforcement Timeframes	FY 2013/14	FY 2014/15	FY 2015/16
Investigations: Average days to close	10	15	26
Discipline: Average Days to Complete			

Note: This table was taken from the State Board of Guide Dogs for the Blind, 2016 Sunset Review Report

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed in 2013 by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection. In December 2016, the Board submitted its required sunset report to both the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. In this report, the Board described actions it has taken since its prior review to address the recommendations of the standing policy committees in 2013.

Issue: 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?

Board Action: *After the prior sunset review, the Board initially made an assumption that the small number of licensees that had not submitted fingerprints would comply with a request to complete the process or let their license expire due to retirement or other attrition. This assumption led the Board not to promulgate regulations immediately following the prior sunset review. While the majority of these individuals complied with the Board's request to submit fingerprints, it recently came to the Board's attention that there were a significant number of licensees that were fingerprinted manually and not electronically. Therefore, the Board introduced a retroactive fingerprint regulation change on 10/11/2016 that, when effective, will require all licensees to be electronically fingerprinted before their next annual renewal. The Board anticipates all licensees being fingerprinted in 2018.*

Issue: How is the Board dealing with ongoing and recurring vacancies on the Board?

Board Action: *All positions on the Board are currently filled and the Board has not had trouble retaining members. Board staff now has frequent conversations with the Governor's Appointments Office to ensure vacancies are filled in a timely manner.*

Issue: Has the Board developed an ethics code for practitioners?

Board Action: *The Board developed and approved 16 CCR section 2285 "Ethical Standards of Practice for a Guide Dog Instructor or Guide Dog School" which was filed in the Office of the Secretary of State on Monday, September 10, 2014 and became effective January 1, 2015.*

Issue: Should BPC section 7206 be amended to reflect the current practices of the Board related to candidate examinations?

Board Action: *SB 822 (Price) Chapter 319, Statutes of 2013 made the necessary changes to the Boards statute and allowed subject matter experts to review and rate a candidates licensing examination.*

Issue: Should BPC section 7210 be amended to reflect proper contemporary terminology for guide dogs?

Board Action: *SB 822 (Price) Chapter 319, Statutes of 2013 made the necessary changes to the Boards statute to remove the outdated references.*

Issue: 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?

Board Action: *In 2015 the Board surveyed guide dog schools located outside of California to determine if there were any barriers to the licensure and examination processes. Limited formal responses were collected; however the Board has begun a new occupational audit in conjunction with an examination evaluation and potential restructuring which will take place late 2016-2017. If the Board identifies any ways to streamline the licensure process while ensuring consumer protection, they will be considered as options for amending the current examination and licensure processes.*

Issue: Should the arbitration pilot program be extended or allowed to sunset?

Board Action: *Through this increased use of the arbitration process, the Board has become aware of flaws inherent in the process. The Board is in the process of discussing the best way to amend the statute and will provide suggestions to the committee as soon as consensus is reached. The primary areas of concern lie in the following:*

- *individual school policies regarding ownership of guide dogs/a school's proprietary handle*
- *composition of the panel*
- *procedure and timeline for custody disputes when safety is a concern*
- *violations of user/school contracts*

The Board is dedicated to providing an arbitration process that best serves the guide dog user, the guide dog, and the school collectively. The Board believes that the arbitration program should be continued; however it should be amended and enhanced in a way that best serves the community.

According to the Board, the following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made:

- **Executive Officer.** The Board hired its current Executive Officer in May of 2014.
- **Staff reduction.** The Board eliminated its half-time office technician in 2015
- **Board meetings.** Board meetings are only conducted telephonically as of 2015.
- **Strategic Plan.** The Board adopted a new strategic plan for 2016-2020.
- **Examination.** The Board Restructured the examination process for guide dog instructors.

CURRENT SUNSET REVIEW ISSUES FOR THE BOARD OF GUIDE DOGS FOR THE BLIND

The following are unresolved issues pertaining to the Board, as well as those issues which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Assembly Business and Professions Committee staff have made addressing 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 staff recommendations. To obtain a copy of the Board's 2016 Sunset Review Report please visit, http://www.guidedogboard.ca.gov/forms_pubs/sunset_2016.pdf.

BUDGET ISSUES

ISSUE #1: Long term fund condition

Background: As stated in the Board's 2017 Sunset Review Report, the Board completed FY 2015-16 with a reserve of \$80K, equivalent to 4.6 months of reserve. The Board noted that it has implemented cost savings measures by eliminating the Office Technician position and conducting board meetings telephonically, reducing travel-related costs.

The Board reports that for FY 2016-17 it is structurally balanced. However, the Board reports that it is projected to be in a deficit in FY 2017-18. To address this, the Board anticipates a need to raise the school renewal fees to the statutory max (.0050) in FY 2018-19. The Board's licensing population has remained consistent; however, the budget continues to decrease even with the reduction of travel expenses and the elimination of an Office Technician.

Table 2. Fund Condition						
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Expenditures	\$189	\$147	\$190	\$161	\$208	\$212
Loans to General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Accrued Interest, Loans to General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loans Repaid From General Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Fund Balance	\$123	\$127	\$89	\$80	\$25	-\$34
Months in Reserve	10	8.0	6.6	4.6	1.4	-1.9

Note: This table was taken from the State Board of Guide Dogs for the Blind, 2016 Sunset Review Report

Staff Recommendation: *The Board should update the Committees about the Board's current fund condition and its long term plans to maintain fiscal solvency. In addition, the Board should explain to the Committee why revenues have been decreasing even with a relatively consistent licensing population and reduced costs and expenses.*

LICENSING ISSUES

ISSUE #2: **Licensing –Does the Board anticipate an increased workload as a result of SB 1331 (Pavley), Chapter 595, Statutes of 2016?**

Background: Prior to the passage of SB 1331 (Pavley), Chapter 595, Statutes of 2016, which took effect on January 1, 2017, California residents who obtained training at an out-of-state school and who wanted to receive follow-up instruction from the unlicensed school or instructor were not permitted to do so, as it was considered unlicensed practice by the Board. With the passage of SB 1331, California-based residents can now obtain services from unlicensed schools or instructors outside of California; however, if someone wanted to obtain follow-up services in the state, those instructors would have to be licensed in California. Thus, as noted on the Board's website, follow-up services or formal instruction with a client is prohibited in California without a license.

California is the only state to license and regulate guide dog instructors and schools. As a result, people who obtain guide dog training and instruction services from outside of California may acquire services from an unlicensed school and/or instructor. As there is no other state that licenses guide dog instructors, there is no reciprocity to establish specified practice privileges in California. However, instructors who reside outside of California who may be providing instruction and training outside of

California can choose to obtain California licensure (if they meet the requirements of the practice act (BPC sections 7200-7217, *et seq.*). Instructors, who do not have a license issued by the Board, may not provide instructional services in California unless they have a license. California residents may obtain guide dog training services from a school of their choice, either in or out of state. However, issues may arise when a California resident who obtained training from an unlicensed out-of-state school seeks to obtain follow-up instruction (additional training or instruction) in California from the unlicensed school or instructor who provided the original services outside of California.

During the Board's 2013 sunset review, the committee staff background paper raised the issue of unlicensed instructors from outside of California providing follow-up services in California. In the *2013 Committee Staff Background Paper*, it was noted, "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 had clarified through regulations that instruction, which can only be conducted by a licensed provider, includes follow-up instruction. Some guide dog users 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."

As a result of the concern that follow-up services were not available for California residents who chose to obtain guide dog training and instruction from an unlicensed school outside of California, SB 1331 (Pavley), Chapter 595, Statutes of 2016, was recently chaptered into law which now allows out-of-state personnel to provide follow-up instruction or training services in California without a license if specific administrative processes are followed. BPC section 7200.5 (b)(1) specifies that if an individual has received training or instruction from a guide dog school licensed outside of California that is certified by the International Guide Dog Federation, the personnel at those schools are permitted to provide follow-up services to individuals residing in California if they received training or instruction outside of California at an unlicensed school. Those personnel who will provide the follow-up services are required to notify the Board on a Board-developed form three days prior to their arrival in California to provide the follow-up training and instruction. If follow-up is needed based on an emergency, the out-of-state personnel may notify the Board within 24 hours after arriving in the state. The Board is authorized to prohibit out-of-state personnel to provide follow up services if the personnel have committed any act which would currently be grounds for suspension or revocation for in-state licensed personnel (BPC section 7211.9). Although the Board is not providing a license to the follow-up instructional providers, they will be processing the information forms from the out-of-state providers are still required to submit information forms which the Board will process. The Board also has authority to take enforcement actions against out-of-state personnel should an issue arise.

Staff Recommendation: *The Board should advise the Committee about any preparations it is making to address a potential increase in licensing, enforcement, or its administrative workload as a result of the passage of SB 1331. Has the Board received any complaints from consumers about out-of-state personnel providing services in California?*

ENFORCEMENT ISSUES

ISSUE #3: Enforcement timeframes. Why are the Board's enforcement timeframes increasing?

Background: Although the Board's licensing population is relatively small, the Board noted in its 2016 Sunset Review Report an increase in enforcement timeframes.

Enforcement Timeframes	FY 2013/14	FY 2014/15	FY 2015/16
Investigations: Average days to close	10	15	26

Staff Recommendation: *The Board should advise the Committees about the increased enforcement timeframes and explain if there is staffing or other issues leading to increased enforcement timeframes.*

TECHNOLOGY ISSUES

ISSUE #4: What is the status of BReZE implementation by the Board?

Background: In 2009, the Department of Consumer Affairs (DCA) began an IT project to replace multiple antiquated standalone information technology systems used by the boards, bureaus, and committees within its jurisdiction, with one fully integrated system. In 2011, the DCA awarded a grant to Accenture LLC to develop and implement the IT system, commonly referred to as BReZE.

The original project plan called for the BreZE system to be implemented into three releases beginning in July of 2012. The Board was scheduled to be a part of the third release, along with 19 other boards and bureaus. However, numerous technical delays and problems with the project forced the delay of both the first and second releases of the system; and subsequently eliminated the project for those boards and bureaus scheduled for release three, including the Board. DCA reported its intentions to conduct a cost-benefit analysis for Release 3 boards after the completion of release two in early 2016. According to the DCA, the Board has completed its first step in the process of establishing a new IT system, which required the Board to map out their business processes and determine what the requirements of an IT system must be in order to meet the Board's needs. The second step is to include business justification, cost benefit analysis, alternatives analysis, and fiscal analysis.

Since the inception of the BreZE project, the Board has contributed a total of \$1,020. The Board's estimated contribution in FY 2016-17 is \$1,089. The Board has not and does not anticipate utilizing the BreZE system.

Staff Recommendation: *The Board should update the Committees about its future technology plans including information provided to the Board by the DCA and any anticipated costs of a new system. In addition, the Board should explain to the Committees any enforcement or licensing*

related problems as a result of the current IT system. The Board should update the Committees on the total amount they anticipate spending on the BreZE system.

ISSUE #5: Consumer Satisfaction Surveys

Background: In the Board's 2016 Sunset Report, the board noted that due to its limited licensing population and the low volume of complaints, the Board does not use the DCA customer satisfaction surveys that are available; however, the Board did create a consumer survey that measured consumer satisfaction with guide dog schools and instructors. Although that survey may be helpful to address issues with instructors and schools, there is no way to gauge consumer satisfaction with the Board in many areas including feedback from consumers about how often the Board is contacted, the purposes of those contacts (general questions, enforcement, licensing), and whenever the contact and/or staff was helpful.

Staff Recommendation: *The Board should update the Committees on how it ensures that consumers are satisfied with the services provided by the Board and the operations of the Board. The Committees may wish to require the Board to create consumer satisfaction surveys relevant to the operations of the Board.*

ADMINISTRATIVE ISSUES

ISSUE #6: Data collection. Does the Board need to collect demographic data about consumers?

Background: Pursuant to BPC section 7210.7 and 16 CCR section 2278, the Board is required to collect the name and addresses of those clients who have enrolled, graduated, or are currently receiving in-home training from a guide dog school. This information is collected for demographic purposes and the Board believes that there is no reason to retain specific personal information about guide dog users.

Staff Recommendation: *The Board should advise the Committees on the usefulness of collecting the demographic data mentioned above, and what the risks are to consumer protection if the Board no longer maintains this personal information.*

ISSUE #7: Posting licensee information.

Background: Pursuant to BPC Section 27(a), the Board is required to post a licensee's address of record on its website; although, licensees are allowed to provide a post office box number or other alternate address, instead of his or her home address, many licensees use the school with which they are employed as their address of record. However, when licensees retire or separate from a school, they are required to change their address, most likely to their home address. According to the Board, this causes many licensees to let their license expire as they do not wish to have their home address listed on the internet. The Board has requested that the Committees consider exempting guide dog instructors from BPC Section 27(a) and the requirement to post an address of record to help ensure personal privacy as requested by their licensing population.

Staff Recommendation: *The Board should advise the Committees on whether or not posting this information is valuable for consumers and if there are any potential risks to consumer safety if licensed guide dog instructors are exempt from these requirements?*

ISSUE #8: Board Meetings.

Background: In 2015 year, the Board eliminated location-specific board meetings and transitioned to a teleconference-only meeting system in order to address fiscal constraints on the Board and to help ensure access for all stakeholders. However, the Board noted in its 2016 Sunset Review Report that while the Board has been able to achieve a quorum at all of its meetings over the past four years, there have been instances where the Board has had to cancel meetings due to teleconference locations not being properly staffed. The Bagley-Keene Open Meetings Act (Act) applies to all state boards and commissions and generally requires that all state boards and commissions publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by the Act to meet in closed session¹. Due to the requirements of the Act, a number of scheduled Board meetings have been canceled at the last minute due to teleconference locations not being properly attended by at least one Board member as required by law.

Staff Recommendation: *The Board should advise the Committees about any issues it has with conducting board meetings telephonically. Does the Board anticipate transitioning back to location-specific board meeting in the future?*

ISSUE #9: Has the Board Fact Sheet been prepared as required by SB 1331?

Background: Although the Board's website provides a robust amount of consumer information about guide dogs, guide dog users, board meeting information, and consumer information sheets, SB 1331 (Pavley), Chapter 595, Statutes, of 2016 requires the Board to prepare a fact sheet to post on its website and provide copies to each licensed guide dog school. The fact sheet should include detailed information about the purpose of the Board, a description of the Board's role in assisting guide dog users who are victims of alleged guide dog discrimination, and a description of the Board's arbitration procedure as specified in BPC section 7215.6.

Staff Recommendation: *The Board should update the Committees on the development of the fact sheet and its projected timeline for completion.*

ISSUE #10: Regulations.

Background: The issue of fingerprinting all licensees was raised during the Board's 2012 Sunset Review. The 2012 Staff Background Paper noted there were twelve licensees who had not submitted Live Scan fingerprints and are not required to do so because the regulations do not reach those licensed before January 1, 1998.² The Board reported in its 2016 Sunset Review Report, "After the prior sunset review, the Board initially made an assumption that the small number of licensees that had not

¹ http://ag.ca.gov/publications/bagleykeene2004_ada.pdf

² <http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/Guide%20Dogs%20Background%20Paper%202012-13%20%28Final%29.pdf>

submitted fingerprints would comply with a request to complete the process or let their license expire due to retirement or other attrition. This assumption led the Board not to promulgate regulations immediately following the prior sunset review. While the majority of these individuals complied with the Board's request to submit fingerprints, it recently came to the Board's attention that there were a significant number of licensees that were fingerprinted manually and not electronically. Therefore, the Board introduced a retroactive fingerprint regulation change on 10/11/2016 that, when effective, will require all licensees to be electronically fingerprinted before their next annual renewal. The Board anticipates all licensees being fingerprinted in 2018."

Staff Recommendation: *The Board should update the Committees on the regulations currently in process and when it expects those regulations to take effect.*

ISSUE #11: Arbitration Program.

Background: As specified in BPC section 7215. 6, the Board is required to offer arbitration assistance to graduates of California guide dog schools when a school makes a decision to discontinue use or to reclaim custody of a guide dog. Arbitration was established as a mechanism 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. Those users who are dissatisfied with a school's decision to discontinue use or to reclaim the custody of a guide dog may appeal to the Board to convene an arbitration panel. The types of disputes which may be subject to the arbitration procedure, as specified in current law, concern differences between the user and school over whether or not a guide dog should continue to be used, the treatment of a dog by the user, and whether or not a user should continue to have custody of a dog pending investigation of charges of abuse. It does not address issues relating to admissions to schools, training practices, or other issues relating to school standards

The arbitration panel consists of at least one representative from each of the licensed California schools and the guide dog user as well as a representative of the Board to coordinate the meeting and serve as the chair. Additional representatives or witnesses may be requested by the Board. The arbitration panel will meet in closed session to hear the issue. Once both party's presentations have been heard, the arbitration panel will issue a decision, in writing, to the parties involved within 10 calendar days. The panel's decision is final and both parties must waive any subsequent judicial review prior to beginning the arbitration process.

According to the Board's website, to seek arbitration a user will receive written notice from a school when a decision has been made to reclaim physical custody or to discontinue use of a dog. This notice must include information about the Board's Arbitration Program and must come through a service where delivery to the user can be confirmed by the school. If a user wishes to seek arbitration, they must submit a written and signed request to the Board, and send a copy to the school, within 30 days of the receipt of notice from the school. All of the arbitration panel's hearings, investigations, and decisions will be concluded within 45 calendar days of receipt of a user's written request for arbitration. However, the Board will make every effort to minimize costs for all parties involved as all parties are required to bear their own costs for arbitration.³

³ http://www.guidedogboard.ca.gov/about/meeting/materials_20160404_arbitration.pdf

During the previous sunset review of the Board in 2013, concerns about the usefulness of the arbitration program (as specified in BPC section 7215.6), were raised in the Committee staff's background paper: "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." At that time, it was reported that the program had only been used two times during the nine years it had existed.

Despite the above mentioned issue, in the last two FYs, the Board has been involved in six separate cases where the custody or use of a guide dog has come into question and the Board has conducted custody hearings, arbitrations, and aided in the settlement process. The Board notes that through the increased usage of the arbitration program, there may be several issues with the arbitration process which may need to be addressed including: 1) composition of the panel; 2) procedure and timeline for disputes related to safety concerns; and 3) violations of user or school contracts.

Staff Recommendation: The Board should update the Committees on the usefulness of the arbitration program and whether or not the pilot program should become permanent. If the Board feels that the arbitration program is an effective tool for the resolution of disputes between schools and guide dog users, the Board should advise the Committees on what, if any, statutory or programmatic changes are necessary to ensure a fair and reasonable arbitration program for both guide dog users and guide dog schools. The Board may wish to consider issuing a survey to guide dog users previously involved in an arbitration panel to consider their perceived fairness of the arbitration process.

ISSUE #12: Service animals and guide dogs.

Background: The role of the Board is to ensure that blind persons receive well-trained guide dogs and that blind persons are well-trained to be effective and safe guide dog users. To that end, the Board licenses schools and instructors in an effort to ensure that blind individuals receive appropriately trained guide dogs in California. The Board's regulatory responsibility does not extend to those animals used as "service" animals throughout California. The Board does not register service animals or users nor does it license or regulate service dog instructors. Guide dogs are intended for the use of blind or visually impaired individuals, whereas service animals are trained to provide a myriad of other services including: mobility assistance, hearing, medical alert, psychiatric, and emotional support. The Board notes that it often receives calls and inquiries about service animals, including perceived violations of the laws and regulations of the Americans with Disabilities Act, questions on how to obtain a service animal certification or registration, people seeking a service animal (not a guide dog), and sometimes request for information on service dog schools or providers.

Under California law, "service dog" means "any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items." This definition includes services for people with physical, developmental or psychiatric disabilities, including: autism, epilepsy, and mental illnesses. Under both state and federal law, an animal that is trained to perform tasks that benefit a person with psychiatric disabilities is a "psychiatric service animal."

Concerns over service dog fraud have become an issue in California and across the nation. A quick google search will produce a multitude of headlines regarding service dog fraud with headlines such as, "*The growing problem of fake service dogs*", KSDK.com-May 15, 2016; "*Why it's harmful to scam the service dog system*", Fusion-Sep 29, 2016; "*Calls increase for crackdown on people flying with fake service animals*", WXYZ-Dec 28, 2016; and, "*Service Animal Scams: A Growing Problem*", Psychology Today, Jun 11, 2014.

The Board has been aware of this concern for a number of years and approached the Senate Committee on Business, Professions and Economic Development in early 2014 to address the issue. As a result, the Senate Committee on Business, Professions and Economic Development held an informational hearing in February 2014 to discuss the problems associated with “fake” service dogs and the individuals who are exploiting the service dog industry by impersonating their pets as working service dogs and using online companies that sell service dog paraphernalia to create the appearance that they have a service dog. The hearing highlighted the negative impact the practice has on legitimate service dog owners, such as guide dog users. In the Senate Committee's background paper drafted for that hearing, it stated that "around the country, an increasing number of people are using their dogs to fake disabilities in order to obtain waivers for no pet housing, snag good parking spots, have access to airlines, bring their dogs into restaurants or hotels, or to just cut in lines at theme parks. People with legitimate service dogs are being questioned more than ever because of the use of “fake” service dogs. They fear that they will have to carry around identification stating their disability. The current law does not require service dog handlers to carry any special identification. The fear of service dog handlers is that they will be questioned even more and that “fake” service dogs will undermine the legitimate needs of people with disabilities or problems that make a service dog indispensable."⁴

Staff Recommendation: *The Board should inform the Committees on what role, if any, there is for the Board to help address the concerns related to "fake service dogs" and any suggestions the Board may have to increase consumer protection regarding this issue.*

TECHNICAL CLEANUP

ISSUE #13: Technical Cleanup.

Background: There may be a number of non-substantive and technical changes to the Board's practice act which may need to be made.

Staff Recommendation: *The Board should recommend cleanup amendments to the Committees.*

ISSUE #14: Continued Regulation of the Profession by the Board.

Background: According to a previous sunset review of the Board in early 2000, "the Board was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) five years ago (1995-96). At that time, the JLSRC recommended that the Board sunset on July 1, 1997 based on the following

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<http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/Background%20Paper%20for%20Fake%20Service%20Dog%20Hearing%20%282-14-14%29.pdf>

findings: a) the Board licenses few instructors and has not licensed any new schools or fundraising organizations since the licensing requirements were first enacted; and b) there appeared to be little problem with unlicensed activity, in part due to the close community related to the activities of the Board's licensees.

Upon its sunset, all of the duties and responsibilities of the Board would be passed to the department under the bureau structure. However, contrary to the recommendation of the JLSRC, AB 1546, Chapter 475, Statutes of 1997, sponsored by the DCA, extended the Board for five years. The DCA's argument for doing so was based on their assessment that it would be more cost effective to retain the Board than to abolish it." This issue has not been raised since.

Staff Recommendation: *The Board should be continued, at this time, so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed and reassess the role and functions of the Board to ensure it continues to provide services necessary for protection of consumers of the guide dog industry.*