

# California State Auditor

B U R E A U O F S T A T E A U D I T S

## **Department of Consumer Affairs:**

*Lengthy Delays and Poor Monitoring  
Weaken Consumer Protection*



November 2000  
2000-111

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# CALIFORNIA STATE AUDITOR

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November 22, 2000

2000-111

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning our review of the Department of Consumer Affairs (department). The report concludes that the department has not fulfilled its responsibility to oversee the regulatory activities aimed at protecting the health, safety, and welfare of consumers carried out by its boards and bureaus. Our review of 4 boards and bureaus and a survey of the remaining 31 revealed that many are slow to issue or review licenses, resolve complaints, and fail to set goals so they can measure how effectively they accomplish these critical regulatory functions.

We also found that complaints referred to the Attorney General's Office (AGO) for formal disciplinary action frequently take more than a year to resolve and neither the boards and bureaus nor the AGO has a means of pinpointing the cause of the delay.

Respectfully submitted,

*Elaine M. Howle*

ELAINE M. HOWLE  
State Auditor

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# SUMMARY

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## Audit Highlights . . .

*Our review of the Department of Consumer Affairs (department) found that:*

- The department has not fulfilled its oversight responsibility over its boards and bureaus, allowing weaknesses in licensing and complaint processing to continue undetected.*
- The department diverted its internal audit resources away from reviews of the licensing and complaint processes of its boards and bureaus, using them instead on lower risk special projects.*
- Many boards and bureaus do not publicly disclose complaint information even though department policy requires such disclosures.*
- None of the four boards and bureaus we visited are promptly processing complaints.*
- Nineteen of the 35 boards and bureaus we reviewed or surveyed had not established time goals they could use as a way to monitor their effectiveness in responding to complaints.*

*(continued on next page)*

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## RESULTS IN BRIEF

The Department of Consumer Affairs (department) comprises 35 boards and bureaus responsible for regulating businesses and individuals who wish to practice certain professions that affect the health, safety, and welfare of California consumers. The department is responsible for overseeing the regulatory boards and bureaus to ensure that they carry out this mission. However, the department has not fulfilled its responsibility. It has diverted the resources of its internal audit office to other department projects, thereby allowing weaknesses within the boards and bureaus to go undetected. Additionally, the department's oversight efforts have relied heavily on information reported by the boards and bureaus themselves, such as strategic plans and regulations, annual statistical reports, and results from the Joint Legislative Sunset Review Committee process. This self-reported information should not be the department's exclusive source of assurance that the boards and bureaus are protecting consumers.

To assess how the boards and bureaus perform their duties, we reviewed in detail 4 boards and bureaus—the Bureau for Private Postsecondary and Vocational Education (BPPVE), the Dental Board of California (board), the Bureau of Automotive Repair (bureau), and the Contractors State License Board (CSLB)—and surveyed the remaining 31 boards and bureaus regarding the way they perform their duties. As a result of our review, we found that 2 of the 4 boards and bureaus have not been prompt in issuing and renewing professional and occupational licenses. The BPPVE, for example, takes an average of 525 days to process one class of license applications it receives. Similarly, 4 of the 31 boards and bureaus we surveyed reported that their processing times for issuing new licenses exceeded established goals and 14 reported they had set no goals for the prompt issuance of license renewals. Moreover, not all boards and bureaus are monitoring their licensing activities to ensure that applications are processed promptly.

We also found that all 4 of the boards and bureaus we reviewed do not always respond promptly to consumer complaints. In addition, 2 of the boards and bureaus do not monitor the

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☑ *The Bureau for Private Postsecondary and Vocational Education temporarily discontinued investigating some complaints including allegations of serious violations of law.*

☑ *Disciplinary cases requiring legal representation by the Attorney General's Office frequently take more than a year to resolve.*

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progress of their regulatory staff in responding to each complaint, and 1 bureau—the BPPVE—in December 1999 temporarily discontinued investigating some complaints against the State's private postsecondary and vocational educational schools for a six-month period, including allegations of serious violations of law. Likewise, of the 31 regulatory boards and bureaus we surveyed, 17 reported that they had not established goals for the timely processing of complaints. These findings are startling, given that resolving complaints from consumers is central to the mission of any consumer protection agency.

Finally, the complaints that the department's regulatory boards and bureaus refer to the Attorney General's Office (AGO) as cases warranting severe discipline, such as license suspension or revocation, have taken too much time to process. Represented by the AGO, the boards and bureaus often bring these more serious complaints before an administrative law judge. Many of the cases have taken more than a year to resolve. Because the boards and bureaus and the AGO do not track all the activities associated with the progress of these cases, we were not able to determine why they take so long to be resolved.

## RECOMMENDATIONS

To ensure that its boards and bureaus are providing prompt and complete consumer protection services, the department should take the following steps:

- Establish a plan to review and evaluate the licensing and enforcement functions of its boards and bureaus.
- Use the resources of its internal audit office or other monitoring unit to periodically review each board and bureau.
- Ensure that each board and bureau establish policies, procedures, processing goals, and monitoring systems for processing licenses and complaints consistently, promptly, and effectively.

The BPPVE, the board, the bureau, and the CSLB should put systems in place to monitor their licensing and complaint processes and should use these systems to ensure that they promptly and effectively process license applications and complaints.

The department, along with its boards and bureaus, should assess whether the AGO's new management reporting system is successful in identifying the causes for delay in the processing of legal cases so they can be eliminated. If the AGO's system does not meet this goal, the department should petition the Legislature to consider alternatives to the current process requiring the involvement of the AGO. For example, on a test basis, a board or bureau could hire a legal firm—with the ability to represent a board or bureau throughout the State—to represent it in such cases. The results of the pilot, including costs, timeliness, and effectiveness, could then be compared to the current process to determine whether, as a whole, consumers were served more promptly.

### **AGENCY COMMENTS**

The State and Consumer Services Agency and the department agreed with our findings and stated that the department and the boards and bureaus we reviewed are taking steps to correct the problems we identified. The AGO questioned the accuracy of some of our word choices. In addition, the AGO does not believe that we acknowledged its view of why legal cases take so long to resolve, which it feels is due to a shortage of staff. ■



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# INTRODUCTION

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## BACKGROUND

The Consumer Affairs Act (act) created the Department of Consumer Affairs (department) in 1970 to replace the Department of Professional and Vocational Standards, which had operated since 1929. By establishing the department, the Legislature intended to ensure vigorous representation and protection of consumer interests, which it recognized as essential to the fair and efficient functioning of a free market economy. The act vests the responsibility for administering and enforcing its provisions in the department's director. Through the department's boards and bureaus, the director ensures that private businesses and professionals engaged in activities that affect public health, safety, and welfare are adequately regulated to protect the people of California.

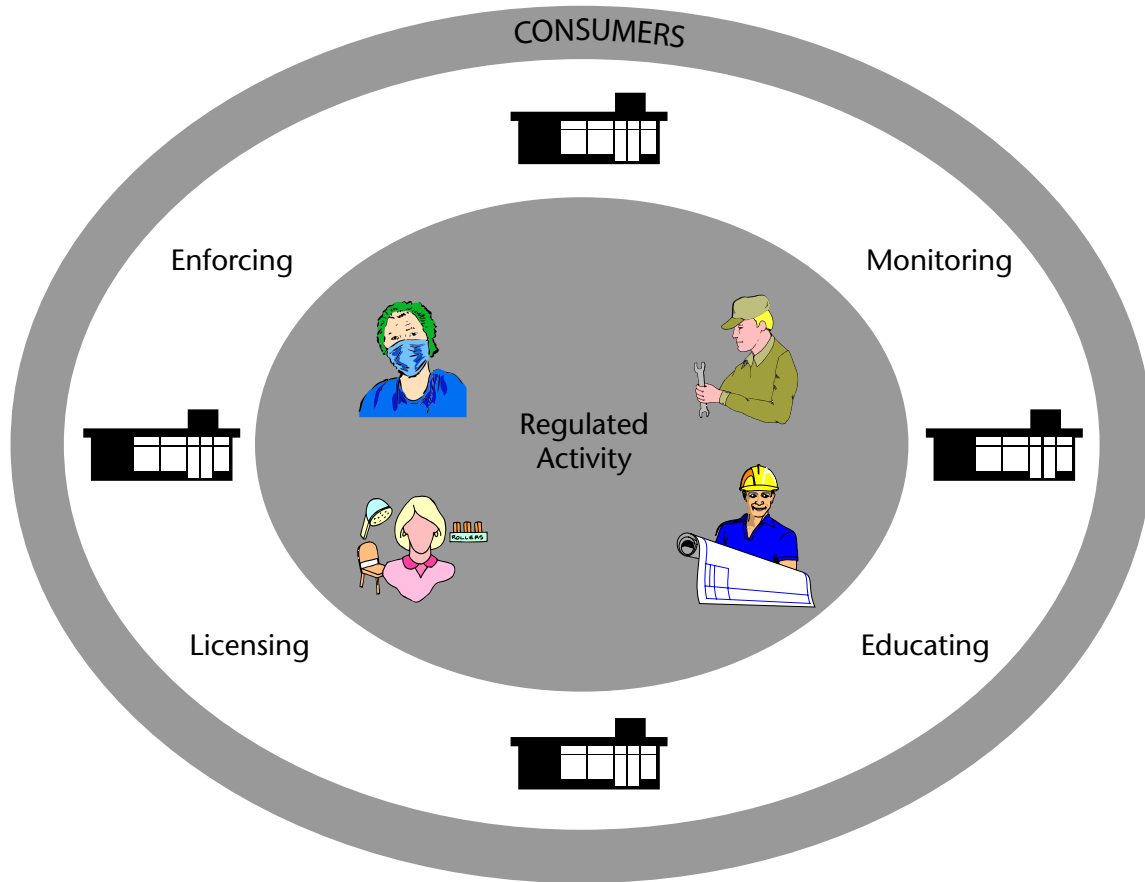
The department's boards, bureaus, programs, commission, and committees regulate such diverse occupations as dentists, court reporters, and construction contractors. By establishing minimum qualifications and levels of competency for persons desiring to engage in these regulated professions, the boards and bureaus ensure that practitioners possess the skills and qualifications required to provide safe, effective services to the public. In addition, they respond to consumer complaints by investigating allegations of unprofessional conduct, incompetence, and fraudulent or unlawful activities, and institute disciplinary actions against licensees when warranted.

## BASIC FUNCTIONS OF THE REGULATORY BOARDS AND BUREAUS

Most regulatory boards and bureaus share four basic functions—licensing, enforcing, monitoring, and educating. Figure 1 depicts how these functions help regulatory boards and bureaus establish a buffer between consumers and a regulated business or professional.

**FIGURE 1**

**The Primary Functions of Boards and Bureaus Provide a Buffer Between Regulated Professions and Consumers**



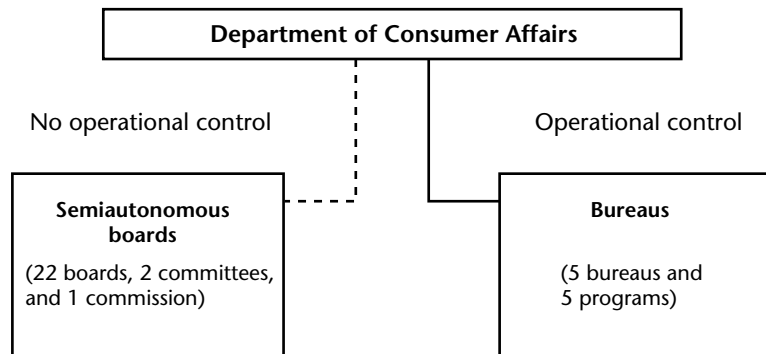
The licensing function of a board or bureau ensures that the providers of goods or services in a regulated profession possess minimum qualifications and levels of competency. Through its enforcing function, a board or bureau responds to complaints against licensees and is responsible for disciplining licensees found guilty of violating the law or other established guidelines. The monitoring function is similar to the enforcing function but is more proactive. It involves identifying and correcting illegal or unprofessional practices before such practices bring harm to the public, rather than responding to consumer complaints. Finally, through its educating function, a board or bureau seeks to inform the public, as well as people working in the regulated professions, of the guidelines for the proper exchange of goods and services.

## ORGANIZATION OF THE DEPARTMENT

The department's 35 boards, bureaus, programs, commission, and committees perform most of its regulatory work. State law places the department's 5 bureaus and 5 programs (collectively called bureaus in this report) under the direct operational control of the department. An example of a bureau would be the Bureau of Electronic and Appliance Repair. In contrast, state law mandates that the department's boards, committees, and commission (collectively called boards in this report) are semiautonomous—separate from the department but under its oversight. An example of one of these boards would be the Board of Accountancy. Figure 2 illustrates this division of control. In addition to its boards and bureaus, the department has several divisions that serve primarily administrative roles. Appendix A lists the various components of the department.

**FIGURE 2**

### Composition of the Department of Consumer Affairs



The governor and the Legislature appoint the members of each board. Board members are responsible for setting standards, developing rules and regulations, and approving disciplinary actions. The act specifically states that decisions made by the boards relating to licensing are exempt from departmental review. Therefore, the department cannot directly control the operations of the boards; instead, its role is more one of administrative oversight. Specifically, the act defines the department's scope to include the following activities:

- Auditing and reviewing the licensing and enforcement activities of boards.

- Requiring boards to submit reports on any phase of their operations.
- Investigating the work of boards and making copies of any of their records and data.
- Examining the performance of any board contract.
- Reviewing and approving board rules and regulations.

Although the department cannot control the actions of its boards, the act does allow the department to recommend to the boards or the Legislature any changes it deems necessary to protect consumer interests. Because the Legislature has the authority to compel the boards to change, this provision allows the department to express its concerns to a body that can address them.

## **SUNSET REVIEW PROCESS**

In 1994, the Legislature established the Joint Legislative Sunset Review Committee (committee) and a process for routinely reviewing the performance of the semiautonomous boards. The Legislature took this action to address concerns it had regarding certain elements of the boards' operations, including the following:

- Licensing laws and regulations that clearly benefited the profession but not the consumer.
- Little or no disciplinary action taken against some licensees.
- Committees composed of volunteer professionals making decisions relating to disciplinary actions against licensees.
- Boards that were not carrying out their statutory responsibilities related to enforcing laws.
- Poorly defined professional standards, or what constituted incompetent, negligent, or unprofessional conduct.

The committee begins its review process by sending a board a questionnaire and a request for information covering every aspect of the board's operation for a specified period. Although committee staff and the board meet to discuss the information and to seek input from consumer groups, all the information

supplied to the committee comes from the board itself. The basic issue for the committee to consider during its deliberations is whether the board should continue to regulate the profession in question or be terminated. The committee gives the department as well as the board an opportunity to respond to its recommendations before presenting them to the Legislature.

As a result of its review, the committee might recommend that the Legislature terminate, or “sunset,” a board. The 1994 law provides only for the elimination of a board, not for the actual deregulation of the profession. Thus, when the Legislature acts on the committee’s recommendation to sunset a board, it perpetuates the board’s regulatory responsibilities in one of three ways: by transforming the board into a bureau and placing it under the direct control of the department, by merging the board with an existing board, or by re-creating the board. Since its initial review in fiscal year 1995-96, the committee has recommended sunsetting 11 boards. For example, the Legislature acted on the committee’s recommendation to sunset the Board of Nursing Home Administrators in July 1998, transferring the responsibility of regulating this profession to the department.

## **SCOPE AND METHODOLOGY**

The Joint Legislative Audit Committee (JLAC) requested the Bureau of State Audits to conduct an audit of the department to determine whether it is properly overseeing its regulatory boards and bureaus. The JLAC also directed us to assess whether boards and bureaus issue licenses and respond to consumer complaints effectively and in a timely manner, and whether they establish adequate financial controls.

To determine whether the department is properly overseeing its regulatory boards and bureaus, we reviewed applicable laws and regulations and interviewed key department staff to identify the department’s oversight role and responsibilities and the actions it takes to carry out these responsibilities.

To ascertain the adequacy and timeliness of the licensing and complaint processes of the regulatory boards and bureaus, we selected two boards and two bureaus and reviewed their processes. We noted whether these boards and bureaus had established guidelines, such as policies and procedures to guide staff in the consistent handling of license applications and complaints. We also determined whether the boards and bureaus had established

benchmarks by which they could measure their success in processing applications and complaints. We then verified whether the boards and bureaus routinely monitored their operations to determine their success in reaching the benchmarks.

To assess the functions of the boards and bureaus we did not visit, we distributed a survey that asked questions related to key operations, such as licensing and complaint handling. Appendix B summarizes the survey data.

To evaluate the financial controls of the regulatory boards and bureaus we visited, we reviewed their systems for controlling receipts. We also performed limited tests of the centralized accounting system operated by the department on behalf of the various regulatory boards and bureaus and found no problems.

Finally, to assess the effect the Attorney General's Office (AGO) has on how long it takes the regulatory boards and bureaus to resolve consumer complaints, we interviewed staff at the AGO and at the regulatory boards and bureaus we visited. ■

# CHAPTER 1

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## ***Consumer Protection Suffers Because of the Department's Lack of Oversight***

### CHAPTER SUMMARY

**A**lthough each board and bureau within the Department of Consumer Affairs (department) is accountable for the level of consumer protection it provides, the department, in its oversight role, also has the responsibility to ensure that its boards and bureaus are protecting consumers adequately. However, the department has not fulfilled its oversight responsibility, allowing weaknesses in licensing and complaint processing to continue within its boards and bureaus. For example, our review found that neither the Dental Board of California (board) nor the Bureau for Private Postsecondary and Vocational Education (BPPVE) have developed monitoring systems to ensure that they quickly process consumer complaints. Moreover, both the BPPVE and the Bureau of Automotive Repair are taking too long to process license applications. Other boards and bureaus reported similar weaknesses. Of the 31 boards and bureaus we surveyed, 17 responded that they did not have time goals they could use to ensure the prompt processing of all complaints. The licensing and complaint-resolution functions of boards and bureaus represent their most critical responsibilities to consumers. Nevertheless, using its current oversight methods, the department was unable to detect these problems among its boards and bureaus and provide meaningful corrective intervention.

The department planned for its internal auditors to review the complaint and licensing functions of its boards and bureaus to ensure that they provide adequate consumer protection. However, the department has repeatedly diverted the resources of its internal audit office to other projects, preventing internal auditors from performing most reviews. Instead, the department told us that it relies on other sources of information to assess and monitor the operations of its boards and bureaus, such as annual statistical reports, reviews of strategic plans and regulations, and information gathered during the Joint Legislative Sunset Review Committee (committee) process. Although these sources may serve a particular purpose, the department should not rely on them exclusively, because they are based on self-reported information and are sometimes infrequently reported.



Furthermore, among the 31 boards and bureaus surveyed, we found no consistent process for disclosing complaint information to the public. In accordance with state law, the department has established a policy for releasing information to the public concerning complaints against licensees, but the department has not strictly enforced its policy, leaving each board or bureau to institute its own disclosure process. As a result, consumers may not be fully informed about the quality of services they receive from the businesses and professionals regulated by the department.

Through its lack of sufficient oversight, the department has allowed the boards and bureaus to handle consumer complaints and license applications inadequately. Prompt and consistent licensing processes, quick and appropriate responses to consumer complaints, and full disclosure of complaint information to the public are integral parts of a well-functioning consumer protection agency. When it fails to oversee the operations of its boards and bureaus in these areas, the department unnecessarily puts consumers at risk by exposing them to potentially harmful or unqualified business or professional practices and limits public information about such practices.

## **THE DEPARTMENT'S REVIEW OF THE OPERATIONS OF ITS BOARDS AND BUREAUS IS LIMITED**

According to the department, it uses a variety of methods to monitor the operations of its boards and bureaus. These oversight methods include reviews conducted by the department's internal audit office (office), as well as department desk reviews of information about the boards and bureaus. These desk reviews involve reviewing the strategic plans and regulations of each board and bureau, compiling annual statistical data, and assessing the reviews of boards conducted by the committee. However, the department's monitoring efforts have been haphazard. According to the chief of the department's internal audit office, most of her staff's time is spent on special projects, such as personnel issues. Also, the department does not verify the accuracy of the information provided to it by the various boards and bureaus. Finally, the committee collects information from the various boards and holds hearings to determine whether the boards are still needed, but these reviews are infrequent, sometimes taking place only once every six years.

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*The department's efforts to monitor the activities of its boards and bureaus have been haphazard.*

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The department originally intended its office to serve as a monitoring tool for determining how well the boards and bureaus operate. However, when we reviewed the work done by the office, we found that its resources had often been diverted to other projects. For example, the office's audit plans for fiscal years 1997-98 and 1998-99 show that it planned to spend over 20 percent of its time auditing the licensing and enforcement functions of boards and bureaus and over 25 percent of its time on audits that would evaluate financial and administrative controls. Although the completed assignment log for this two-year period indicated that the office reviewed some of the boards' and bureaus' financial and administrative controls, it also showed that the office had neither audited nor reviewed any of the boards' and bureaus' licensing and enforcement functions.

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***The department has not reviewed the licensing or enforcement functions of its boards and bureaus for more than two years, even though these functions are considered high priority.***

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Rather, the department had used its internal audit resources for special projects such as personnel and contract issues. In fact, the chief of the office estimated that during the two-year period she spent 98 percent of her time on special projects rather than on reviewing how thoroughly the boards and bureaus were carrying out their licensing and enforcement responsibilities. In addition, the chief stated that during five of those months she only had one staff working for her. Furthermore, the office did not perform any licensing or enforcement reviews at all in fiscal year 1999-2000. The lack of department audits or reviews was confirmed by our survey of 31 boards and bureaus. Seventeen reported that the last time the department had reviewed their operations was in 1997 or before, and 10 more reported that they did not know when they were last reviewed. As of November 2000, the office had eight positions authorized and had filled six.

The department made the decision to divert the office's resources from reviewing the licensing and enforcement functions of the boards and bureaus to working on special projects, even though the department's own audit plan assessed the licensing and enforcement functions as a higher risk, and therefore of higher priority, than special projects. As a result, deficiencies in the licensing and enforcement functions of the department's boards and bureaus have not been detected and corrected. For example, we found that the Dental Board of California does not have adequate monitoring to ensure that complaints are processed efficiently and, on average, takes an excessive amount of time to investigate complaints. The department's failure to review these important regulatory functions of the boards and bureaus does not appear to be consistent with its mission, which is to promote and protect the interests of California consumers.

Other sources of information the department uses in desk reviews—strategic plans and regulations, annual statistical data, and the reviews conducted by the committee—may assist the department in monitoring its boards and bureaus but are not a substitute for field reviews. Because they are based on information provided by the boards and bureaus themselves, the department should not rely on such desk reviews exclusively to ensure that their operations are sound. Furthermore, although the committee develops independent information and holds hearings involving consumer advocates and industry representatives, it too relies on information that the boards report. Additionally, the period between committee reviews can be as long as six years. Moreover, we do not believe that the Legislature intended the sunset review process to supplant the oversight functions of the department.

### **BOARDS AND BUREAUS DO NOT ALWAYS COMPLY WITH THE DEPARTMENT’S COMPLAINT DISCLOSURE POLICY**

We found that many boards and bureaus do not comply with the department’s complaint disclosure policy. State law requires the boards and bureaus to release complaint information to the public in accordance with a standard policy established by the department. This department policy requires boards and bureaus to publicly disclose those complaints that are determined to involve probable violations of licensing laws and regulations, which would include such disciplinary outcomes as a warning letter, citation, or license suspension or revocation. However, our survey found that many boards and bureaus do not always follow the policy. For example, as Table 1 shows, 19 of the 27 boards and bureaus to which the survey question applied reported that they did not publicly disclose complaints that resulted in warning letters. Complaints that result in warning letters normally involve minor violations of law or regulation and, under the department’s disclosure policy, should be public information. Those boards and bureaus that do not disclose this information are failing to provide consumers with information they need to make informed decisions.

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*Nineteen of the boards and bureaus we surveyed do not follow the department’s policy requiring the public disclosure of certain disciplinary actions.*

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**TABLE 1****Types of Information Released to the Public**

Type of Information	Number of Boards and Bureaus		
	Releasing Information to Public	Not Releasing Information to Public	Not Applicable
Unsubstantiated complaint	4	25	2
Mediated complaint	9	16	6
Arbitration	4	11	16
Warning letter	8	19	4
Citation	25	3	3
Suspension	28	0	3
Revocation	28	0	3

**RECOMMENDATIONS**

To ensure that its boards and bureaus are providing timely and effective consumer protection services, the department should perform these tasks:

- Establish a plan to periodically review and evaluate the licensing and enforcement functions of its boards and bureaus.
- Better utilize the resources of its internal audit office to review each board and bureau consistently.
- Ensure that each of its boards and bureaus establish adequate monitoring systems and processing goals.
- Ensure that its boards and bureaus are consistent in releasing complaint information to the public. ■

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# CHAPTER 2

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## ***Some Boards and Bureaus Have Insufficient Licensing and Complaint Processes***

### CHAPTER SUMMARY

The four regulatory boards and bureaus that we reviewed within the Department of Consumer Affairs (department)—the Bureau for Private Postsecondary and Vocational Education (BPPVE), the Dental Board of California (board), the Bureau of Automotive Repair (bureau), and the Contractors State License Board (CSLB)—have not always ensured that their licensing and complaint processes adequately protect consumer interests. The BPPVE and the board do not adequately track complaints, and as a result spend excessive amounts of time, sometimes almost a year, to resolve them. Moreover, the BPPVE temporarily stopped investigating some of its complaints, including some involving serious violations of law. In addition, the department’s licensing unit, which until recently handled licensing activities for the bureau, has a flawed monitoring system that limits its efficiency in ensuring that applications are promptly processed, allowing some applications to languish for up to six months. Finally, the efforts of the CSLB to reengineer

its complaint-handling process imposed temporary delays on complaint processing. As a result of these weaknesses in handling complaints and license applications, these boards and bureaus have compromised consumer protection.

#### **The Bureau for Private Postsecondary and Vocational Education**

- Predecessor was the Council for Private Postsecondary and Vocational Education, created in 1989 as an independent council to provide minimum educational and financial standards for private postsecondary and vocational schools as well as consumer protection to students.
- Legislature terminated the council’s authority in 1998 and created the BPPVE within the department.
- Regulates private postsecondary and vocational schools through licensing and enforcement and by reviewing applications to ensure sound curriculum, qualified instructors, and financial stability.

#### **THE LICENSING AND COMPLAINT PROCESSES FOR THE BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION ARE DEFICIENT**

The Legislature created the BPPVE to issue licenses to schools qualified to provide private postsecondary and vocational educational services in the State and to take appropriate action on complaints. However, because the BPPVE provides inadequate guidance to its staff and does not

adequately monitor its licensing and complaint processes, it cannot ensure that consumers are well protected from the institutions it regulates. The BPPVE also discontinued its investigations of some complaints for a period of six months, including some alleging serious violations of the law, allowing institutions to continue operating without appropriate discipline and putting students at risk.

### **The BPPVE Licensing Process Is Not Prompt or Consistent**

The BPPVE does not adequately monitor or provide its staff with sufficient guidance for regulating its licensing process to ensure that licenses are processed in a prompt, appropriate, and consistent manner. As a result, the amount of time the BPPVE takes to issue licenses is often excessive. Our review found that the BPPVE took an average of 396 and 525 days to issue licenses to nondegree and degree-granting institutions, respectively. Such delays are significant because schools are given temporary approval to operate while the BPPVE completes its reviews. Further, the BPPVE's lack of policies and procedures causes its licensing staff to make inappropriate or inconsistent decisions. In addition, we found that the BPPVE did not always complete important steps, such as financial reviews of an institution, before issuing a license. The BPPVE needs policies and procedures, as well as control mechanisms that monitor adherence to them, to ensure that it licenses only qualified institutions.

### ***The BPPVE Does Not Adequately Monitor Its Licensing Activities***

Although the BPPVE uses a spreadsheet to log license application information, it does not use the spreadsheet to ensure that it meets established time goals. In fact, the BPPVE has no formal method of monitoring its licensing workload. State law and regulations establish timelines for various phases of the BPPVE's licensing process. For example, the regulations require that, within 30 days of receiving an application, the BPPVE must acknowledge receipt of the application and inform the institution if it is not complete. Because the BPPVE does not monitor the time it takes to issue a license, staff could not tell us whether they were meeting the processing timelines established by law and regulation. Therefore, we attempted to determine the average processing times by using the data in the BPPVE's spreadsheet. However, when we compared spreadsheet data for a sample of institutions to the BPPVE's original application files, we determined that the spreadsheet information was often inaccurate or unsupported and therefore unreliable. Specifically,

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***Because BPPVE does not monitor the time it takes to issue a license, staff does not know whether it is meeting the processing timelines established by law and regulation.***

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when we attempted to test the licensing process for 22 schools listed in the spreadsheet, staff were unable to find source information for 8. Furthermore, for 6 of the remaining 14 schools (43 percent) the information reflected in the spreadsheet did not match the source information.

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***The BPPVE is taking longer than the year its regulations allow to issue a license—an average of 525 days in the case of degree-granting institutions.***

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Because of the high degree of error in the spreadsheet, we computed the average number of days it took the BPPVE to issue a license, using only those schools for which we could locate source documents. For the 14 cases we were able to test, we calculated that the BPPVE's licensing process took an average of 525 days for degree-granting institutions and 396 days for nondegree programs. The maximum that state regulations allow for the BPPVE to perform its review before granting a license is one year. We also noted that for one school that had yet to be issued a license, the BPPVE had received the application more than 16 months prior to the date of our testing and had thus already exceeded the period prescribed by regulation.

These long delays are significant because the BPPVE gives schools temporary approval to operate while completing the licensing process. Therefore, a school that does not meet all the licensing requirements may be allowed to operate for over a year, exposing students to the risk that their school's curriculum may not be appropriate or that the school may be financially unstable. To ensure that it is fulfilling its role of regulating private postsecondary and vocational education institutions, the BPPVE needs to establish a reliable system by which it can monitor its licensing activities and ensure that it is processing applications within the timelines established by law or regulation.

### ***The BPPVE's Lack of Procedures Causes Inconsistent License Processing***

The BPPVE does not have policies and procedures to guide its licensing unit's processing of applications. Rather, it has allowed its staff to develop their own processing methods. As a result, the BPPVE has issued licenses without financial reviews, despite regulations requiring them. In doing so, the BPPVE may be allowing financially unstable institutions to operate. We further learned that the BPPVE did not always collect the correct fees from its applicants. Beginning in January 1998, state law required the BPPVE to reduce its application and renewal fees. We found that although the BPPVE's published schedule of fees incorporated the reduction, the actual amounts charged to licensees did not. The amount listed on the BPPVE application was between \$225



and \$675 higher than the legally allowed rate. According to the chief of the bureau, the BPPVE is aware of this error and staff are in the process of identifying those institutions that overpaid. The BPPVE chief told us that he felt that vagueness within the state laws that establish its fees contributed to this error. Nonetheless, the overcharges might not have occurred if the BPPVE had established policies and procedures and processing controls to ensure that its staff took appropriate actions.

Furthermore, the BPPVE uses a system to log complaints that is different from the system used to store application information. According to the BPPVE, licensing unit staff are supposed to review complaint information while processing an application or renewal. However, without standard procedures to follow, some staff may not review the information and thus may issue licenses or renewals to institutions that have complaints pending against them.

### **The BPPVE Temporarily Discontinued Investigating Some Complaints and Lacks Adequate Controls Over Those It Does Review**

The BPPVE is responsible for receiving and investigating complaints against private postsecondary and vocational educational institutions in the State. However, the BPPVE temporarily discontinued investigating cases it could not mediate, including those alleging serious violations of the law. Furthermore, the BPPVE does not have policies and procedures, established processing timelines, or monitoring and review systems in place to pursue complaints it continues to handle in an appropriate, prompt, and consistent fashion. As a result, the BPPVE is not ensuring that private postsecondary and vocational education institutions are operating in the best interests of the students they serve.

### ***The BPPVE Suspended Pursuing Cases It Could Not Mediate***

Although the BPPVE attempts to mediate some of the complaints it receives, between December 1999 and July 2000 it decided not to pursue further action against schools with which it could not mediate. Rather, it closed the cases and noted in its files that the schools had unresolved complaints. When the Legislature placed the BPPVE under the direction of the department in 1998, the department discontinued the BPPVE's enforcement unit, which handled complaints that could not be resolved through mediation efforts. Instead, the BPPVE was asked to send all cases it was

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***For six months, the BPPVE ceased investigating complaints that it could not mediate.***

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unable to mediate to the department's division of investigation (DOI). However, the BPPVE told us that it became dissatisfied with the work of the DOI, stating that the DOI was slow to investigate BPPVE cases. By December 1999, the BPPVE had determined that it was obtaining virtually no benefit from sending cases to the DOI and ceased to do so. In addition, it retrieved from the DOI seven cases it had already referred for investigation. It did not, however, replace the DOI with an enforcement unit of its own to handle these serious complaints.

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***The former system BPPVE used allowed a school with complaints pending against it to continue to operate for several years.***

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According to its chief, the BPPVE has recently reestablished its relationship with the DOI and, as of July 2000, will again be forwarding cases that it cannot mediate to the DOI. However, this had not been accomplished for the seven cases it had earlier retrieved. According to the BPPVE, of the seven cases it withdrew from the DOI, one was referred to another unit, one is being closed, and BPPVE staff is further investigating five. For example, one of the five involves a complaint the BPPVE first received in November 1998 alleging that a beauty college in San Jose was operating in a fraudulent manner and was charging its students excessive fees. The BPPVE withdrew the case before the DOI completed its investigation. However, as of September 2000, the BPPVE had not performed the investigative work needed to ensure that the college had remedied the conditions alleged in the complaint.

Before reestablishing its relationship with the DOI, the BPPVE forwarded any case it could not resolve through mediation to its licensing unit, which noted in the school's file that an unresolved complaint existed. According to the BPPVE, when the licensing unit staff reviewed a license application or renewal for a school, they were supposed to check the file for any pending complaints. However, because the BPPVE did not have procedures to ensure consistent license or renewal processing, this check of the file could easily be overlooked. More importantly, merely placing a "red flag" on the school's file did nothing to resolve the initial condition that gave rise to the complaint. Depending on the situation, a school could continue to operate with complaints pending against it for several more years before seeking renewal of its license and thus be subject to BPPVE's review for red flags.

***The BPPVE Has Not Provided Adequate Guidance to Its Staff and Does Not Carefully Monitor and Review Its Complaint Activities***

***The BPPVE does not monitor its handling of complaints nor has it established processing timelines to ensure prompt resolution.***

The BPPVE does attempt to mediate the complaints that it receives. However, it does not have standard procedures in place to ensure that staff promptly and consistently handle complaints. Although its staff use state law as their criteria for handling complaints, the BPPVE has not developed its own policies and procedures to ensure that staff apply those laws consistently. The BPPVE told us that each staff member makes the final decisions on complaint processing and resolution. In addition, after a complaint is closed, BPPVE management does not review the case to determine whether it was handled and resolved appropriately. Without policies and procedures for the staff to follow, and a final review by management, the BPPVE cannot ensure that complaints are handled in a consistent manner and that the resolution for each is appropriate.

The BPPVE has also not established timelines for processing complaints. State law does not specify timelines, and the BPPVE has not included them in its regulations or policies. Moreover, even if the BPPVE had timelines, it could not determine whether it was meeting them because it does not monitor its complaint-processing activities. The BPPVE does use an informal system set up by one staff member to log when a complaint is received and completed, but it does not use this information to monitor the progress of a complaint. As a result, the BPPVE has not compiled the information it needs to ensure that complaints are handled promptly. Therefore, complainants who have suffered a loss, such as a student who is due a tuition refund, cannot receive

restitution in a timely manner, and schools that have complaints lodged against them are not swiftly disciplined.

**The Dental Board of California**

- Created in 1885 to regulate dentists.
- Currently regulates the practice of approximately 74,000 dental health professionals.
- Examines and licenses dental professionals, resolves complaints, enforces laws and regulations, and provides information and education.
- Total expenditures were \$5.8 million in fiscal year 1998-99, approximately 70 percent of which was for enforcement.

**THE DENTAL BOARD'S LICENSING AND COMPLAINT PROCESSES SUFFER FROM LACK OF MONITORING, LENGTHY INVESTIGATIONS, AND CONTROL WEAKNESSES**

The purpose of the Dental Board of California (board) is to protect the health and safety of consumers by regulating the practice of dentistry in the State. Although the board has reasonable processes to ensure that applicants are qualified for

licensure and that discipline is levied when a licensee deviates from safe or established practices, it does not adequately monitor itself to ensure that its work is completed promptly. For its complaint-resolution process, the board does not have established timelines or adequate monitoring systems. As a result, the board has taken too long to resolve complaints. We also noted during our review that the board had several weaknesses in its internal controls over cash receipts. Each of these monitoring and control weaknesses diminishes the board's ability to provide prompt, thorough consumer protection services.

### **The Board Has a Reasonably Prompt Licensing Process**

To become licensed as a dentist in California, a candidate must meet educational and examination requirements. The board processes applications for licensure, issues and renews licenses, oversees the examination process, and maintains licensee records. Currently, about 74,000 dental professionals are licensed in California.

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*Although the board does not normally monitor its licensing process, its performance bettered the goals set in its regulations.*

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We reviewed the board's process for accepting and evaluating applications for a license and found it to be reasonable. (While the board handles applications for dentists, a separate committee—the Committee on Dental Auxiliaries—handles applications for registered dental hygienists and assistants. We limited our review to the board's handling of dentists' applications.) An individual wishing to receive a license to practice dentistry must first graduate from an accredited dental school and pass the National Board Dental Examination as well as supplemental examinations in California dental law and ethics. The applicant must also pass the clinical dental licensure examination before the board will issue a dental license. This process appears reasonable to ensure that only qualified professionals receive licenses.

Our review also confirmed that the board processes license applications promptly. Regulations establish time goals for the board's processing of license applications. Although the board does not normally monitor its licensing process to ensure that it meets these goals, the sample of license applications we reviewed were processed well within the timelines called for in the board's regulations. Specifically, the board allows 90 days for notifying applicants that their applications are complete or deficient and then another 90 days after the filing of complete applications to notify the applicants of its decisions. Our review found that the

board required an average of only 8 days to notify applicants that their applications were complete or deficient and another 14 days to notify them of its decisions.

### **The Board's Complaint Process Is Reasonable but Slow**

Although the steps the board follows to resolve complaints appear reasonable, the amount of time it takes is excessive. Through its complaint program, the board administers all phases of the enforcement process for dental health professionals, from receiving the initial complaint to overseeing the surveillance of dental health professionals on probation as a result of violations. The board receives many types of health-related complaints against its licensees from a variety of sources, including patients, other dental professionals, and various government boards and bureaus.

The enforcement process begins with a complaint to the board. The board reviews the complaint to determine whether there is a violation of the Dental Practice Act. It works with a dental consultant when the complaint appears to involve a quality-of-care issue that could constitute malpractice or unprofessional conduct. The board's staff, including analysts, inspectors, and investigators, work to resolve the complaint through either mediation or disciplinary action. In the case of a severe violation, the board works with the Attorney General's Office to bring a legal case before an administrative law judge and take formal disciplinary action against the licensee, such as suspending or revoking the license.

Although its complaint-handling process appears reasonable, the board takes too long to resolve some cases. The board has not established timelines, so it is difficult for us as well as the board to judge whether it is processing complaints promptly. However, as Table 2 shows, the board's complaint-processing times over the past three fiscal years appear to have been excessive when compared to the time goals used by other boards and bureaus.

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*While the board has not set any performance goals for resolving complaints, the time it does take far exceeds the goals set by other boards and bureaus.*

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**TABLE 2**

**Average Number of Days to Close Complaints During  
Fiscal Years 1997-98 Through 1999-2000\***

Type of Case	FY 1997-98 (total of 3,669 cases closed)	FY 1998-99 (total of 3,669 cases closed)	FY 1999-2000* (total of 2,764 cases closed)	Reasonable Time Goal
Mediation	175	184	159	60
Investigations	338	380	354	180
Inspections	175	166	226	180

\* Through March 31, 2000.

It has taken the board about six months to resolve most mediation cases, which tend to be less complicated and therefore easier to resolve. To resolve more complicated cases requiring investigations, the board has taken roughly a year. Because of its knowledge and experience, the board is in the best position to determine what amount of time is reasonable for each stage of its complaint process, however, it has not done so. To determine whether the board's processing times were reasonable, we looked at the timelines of the other boards and bureaus we visited and surveyed. Although each one is unique, most boards and bureaus that have established timelines for mediated complaints set a goal of 30 to 60 days from the date the complaint is received to the date the complaint is mediated. For investigations, most have established goals of between 90 and 180 days. The board advised us that investigations require more of its time and effort to resolve than inspections. Therefore, to be fair we used the investigation timelines for inspections as well. Using these goals as a guide, we determined that the board's processing times are excessive.

Furthermore, when we looked at the board's pending cases (those that are not yet closed), we found that its actual processing times are slower than those indicated in Table 2. Table 3 shows the average age of cases pending as of March 31, 2000. Because these cases are not yet closed, their final processing times will be even longer.

**TABLE 3****Average Age of Pending Cases as of March 31, 2000**

	Number of Cases	Days
Mediation	1,122	297
Investigations	506	447
Inspections	125	299

The board's chief of enforcement agrees that its complaint-processing times need to improve. The chief added that the board has made some improvements, including hiring one new inspector for each of its two regional offices. According to the chief, hiring two inspectors will alleviate the backlogs experienced by the board's current inspectors and ultimately will improve the processing times for complaints requiring inspections.

The chief also explained that delays in processing complaints involving investigations resulted from legislation that required the board to reduce the number of investigators with peace officer authority from 17 to 7 by July 1999. Subsequent legislation has authorized the board to hire back 3 permanent investigators and another 7 on a temporary basis. As mandated by the legislation, the board is currently working with an independent consultant to examine the board's need for sworn peace officer positions in its investigative unit. The board is required to submit a report to the Legislature by January 2001.

Another cause of delays in mediating complaints is the time it takes to obtain advice from the board's dental consultants, who help the board determine whether violations have occurred and how cases should be resolved. The board currently has only one consultant for each of its two regions to review most of its mediation cases. As a result, some cases have been delayed as long as six months pending a consultant's review. According to the board, it is currently trying to remedy this problem but has not yet reached a solution.

While hiring inspectors, investigators, and obtaining additional dental consultants may help the board's complaint-processing efforts, the board should first ensure that it consistently monitors its activities. During our review, the board told us that it

does not regularly monitor the timeliness or thoroughness of most of its complaint process. Without regular monitoring, the board cannot ensure that it is responding adequately to consumer complaints.

### **The Board Should Improve Controls Over Receipts**

During our review, we also determined that the board had some internal control weaknesses related to its processing of receipts. Specifically, when the board receives license applications, rather than safeguarding the accompanying payment (normally a check), the board forwards the application and the check to its licensing unit for review and approval. If approved, the check is forwarded to the board's cashiering unit for processing. To safeguard its payments, the board should restrictively endorse checks upon receipt, create a log of checks received, and then hold them in a safe place until its licensing unit determines how the payment should be processed. We also noted that the board does not always make daily deposits of the funds it receives. Rather, it sometimes stores payments in its safe without logging them or restrictively endorsing them. If these payments were stolen or destroyed in a fire, the board would not be able to determine what had been lost. State guidelines require the board to make timely deposits and to adequately safeguard its receipts. Finally, we noted that the board does not adequately separate its cashiering duties. Specifically, the person who prepares a deposit and submits it to management for approval also secures the deposit after approval. State guidelines require that different people perform these duties to reduce the risk of theft.

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*The board does not properly safeguard the license fees it collects.*

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Internal auditors from the department found similar deficiencies at the board in 1991. The auditors concluded that the board had not adequately safeguarded, cashiered, and controlled its receipts. According to the board, it took action at the time to resolve the weaknesses identified by the internal auditors. In fact, the management representative we spoke to seemed surprised when we advised her of these weaknesses, suggesting that board management does not consistently monitor the actions of its staff in processing receipts. After we discussed these deficiencies with the board, it began to implement procedures that address the deficiencies noted in our review.



## THE BUREAU OF AUTOMOTIVE REPAIR HAS WEAKNESSES IN ITS LICENSING PROCESS BUT HANDLES COMPLAINTS ADEQUATELY

The Bureau of Automotive Repair (bureau) regulates the auto repair and smog check industries in the State. It is responsible for licensing businesses and individuals that work in these industries and for responding to complaints.

### The Bureau of Automotive Repair

- Created in 1972 as a result of the Automotive Repair Act.
- Mission is to educate consumers, deter fraudulent or unfair automotive repair practices, and improve air quality by reducing vehicular emissions.
- Comprises two programs: Auto Repair Consumer Protection and Smog Check.
- Licenses auto repair and smog check dealers and investigates complaints.
- License processing was done by the department's centralized licensing unit until the bureau assumed control in July 2000.

Although the bureau seems to process most complaints efficiently, its licensing operation, handled by the department's licensing unit (unit) prior to July 2000, has a flaw in its tracking system that caused some significant delays. Since July 2000, the bureau began performing these licensing activities using the same system formerly used by the department's unit.

### A System Design Flaw Limits the Efficiency of the Department's Licensing Unit

Although the department's licensing unit was able to meet most of its established processing goals, its inefficient monitoring system caused delays in processing some applications for the bureau. Time goals for processing personal and business licenses for the bureau's Auto Repair Consumer Protection and Smog Check programs are established in regulations. Although our review confirmed that the unit was meeting its time goals, the system the unit uses is unable to track the progress of license applications so that such measurements can be made. We had to select a sample of applications and calculate an average processing time ourselves. As a result of this flaw in the tracking system, the centralized personal licensing unit could not ensure the effective processing of license applications it received from the bureau. For example, we found unprocessed licensing documents in the unit's mailroom that had been there for up to six months. Because of the way the tracking system operates, these documents remained undetected.

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***A flaw in the license tracking system limits the bureau's ability to detect delays in its processing of applications.***

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After receiving applications, the unit sorts them according to type—business or personal—and by date, with the oldest applications on top. However, the unit cannot enter an application into its tracking system until its review is complete. Therefore, any delays in reviewing applications are not identified until the unit has completed its work. The unit advised us that it could not enter applications into its system any earlier because, once entered, the system immediately sends the application to a contractor who administers proficiency exams and then issues licenses on the bureau's behalf.

To better monitor its workload, the unit needs to either modify its current tracking system so that applications are logged when they are received or find some other method for measuring its progress in processing licenses. For example, the department currently captures key information in its cashiering system, including the date it received the application and payment. The unit could use this data to develop a tracking system that would allow it to monitor its progress in processing applications and to quickly detect any applications that were received but remained unprocessed.

### **The Bureau's Complaint Process Is Reasonable but Sometimes Slow**

Although the bureau has generally processed complaints promptly, its average processing time for complaints related to its Auto Repair Consumer Protection Program did not meet its goal for fiscal year 1999-2000. The department mediates complaints against businesses and individuals regulated by this program, while the bureau investigates complaints the department is unable to resolve in addition to all complaints related to its Smog Check Program. The bureau has established guidelines and timelines to assist its staff in resolving complaints. It monitors its actions through an information-retrieval system that collects data on its operations and identifies when the bureau is not processing complaints efficiently.

Table 4 presents the bureau's goals and actual processing times over the past three fiscal years.

**TABLE 4**

**Average Complaint-Processing Time in Days for Fiscal Years 1997-98 Through 1999-2000\***

Type of Case	Goal	FY 1997-98	FY 1998-99	FY 1999-2000*
<b>Auto Repair Consumer Protection Program</b>				
Mediation	57	57	56	63 <sup>†</sup>
Investigations	210	197	178	228 <sup>†</sup>
<b>Smog Check Program</b>				
Mediation	57	38	36	38
Investigation	210	99	88	131

\* Through March 31, 2000.

† Times do not meet established goals.

The bureau told us that it has taken longer to investigate smog complaints because of a recent change to a computer system operated by the Department of Motor Vehicles that provides information to the bureau on vehicle repair businesses. Because this system now takes longer to extract and transmit the information the bureau requires to complete its investigations, processing times are taking longer. The bureau indicated that delays occur in its Auto Repair Consumer Protection Program because vehicles are not always readily available to carry out undercover investigations of auto repair operations. Although the bureau appears to have an adequate monitoring and control structure in place, it should review the causes of its increased processing times for complaints in the Auto Repair Consumer Protection Program and take appropriate action to ensure that it is meeting the needs of consumers.

## **ALTHOUGH ITS LICENSING PROCESS IS PROMPT, THE CONTRACTORS STATE LICENSE BOARD HAS EXPERIENCED DELAYS IN HANDLING COMPLAINTS AS A RESULT OF ITS REENGINEERING EFFORTS**

The Contractors State License Board (CSLB) has established reasonable licensing and enforcement processes to help ensure that construction within the State is performed in a safe, competent, and professional manner. The CSLB has policies, procedures, and timelines for its employees to follow in processing license applications and consumer complaints as well as a system for consistent monitoring of its licensing and complaint-processing efforts. Although the CSLB is currently meeting its license-processing goals, it is not meeting the timelines set for complaint processing. According to the CSLB, a reengineering effort that began in March 1999, aimed at overhauling its complaint-handling process, has temporarily caused delays in complaint processing. Furthermore, the department claims that the reengineering efforts may have reduced consumers' access to CSLB services. Despite the recent improvements we found in CSLB's complaint-processing times since the reengineering and our inability to substantiate the department's concerns, the CSLB should continue to evaluate its reengineering efforts to ensure that it meets its goals while preserving consumer access to its complaint process.

### **The Contractors State License Board**

- Created as a bureau in 1929 to protect the public from irresponsible contractors.
- Became a board that regulates 41 construction license classifications and 3 certifications.
- Responsible for enforcing the State's construction laws and has the ability to cite, fine, or suspend or revoke licenses for failure to comply with those laws.
- Regulates 280,557 licensed contractors and registered home improvement salespersons as of June 30, 1999.

### **Established Timelines and Consistent Monitoring Help Regulate CSLB's Licensing Process**

Our review of CSLB's licensing process found it to be well monitored and efficient, with most license applications processed within the timelines CSLB has set for itself. All businesses and individuals who construct, offer to construct, or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must obtain a license from the CSLB if the total cost of labor and materials of one or more contracts on the project is at least \$500. As Table 5 shows, CSLB regulations establish timelines for various phases of the licensing process.

**TABLE 5**

**CSLB Regulations Have Established Licensing Timelines**

Type of Application	Established Timelines
<b>New application with competency exam</b>	60 days from receipt to inform applicant whether application is complete.  115 days from completed application to decide if applicant meets licensing requirements.
<b>New application with competency exam waiver</b>	50 days from receipt to inform applicant whether application is complete.  15 days from completed application to decide if applicant meets licensing requirements.

In addition, the CSLB has established a set of internal goals for license processing and has a policy and procedures manual to help its staff meet these goals. To monitor its licensing process, at least once a month the CSLB compares data it captures from actual processing activities to its internal goals.

**The CSLB Handles Complaints Reasonably, but It Needs to Monitor Its Timeliness Following a Reengineering of Its Process**

Although the process the CSLB follows to resolve consumer complaints appears to be reasonable, reengineering efforts that occurred in 1999 have prevented the CSLB from meeting its time goals for resolving complaints. The CSLB receives complaints regarding all phases of the construction industry, with the majority coming from consumers involved in residential remodeling or repair work. In fiscal year 1998-99, the CSLB received more than 26,000 complaints. To guide its staff in handling these complaints, the CSLB has outlined the process in its policy and procedures manual. Most complaints are channeled through one of two intake and mediation centers for assessment, although some are routed to the arbitration program. Complaints involving serious allegations of fraud, prior disciplinary actions, or contractors with multiple complaints filed against them are forwarded directly to the CSLB's investigations unit for review. If investigators in this unit determine that the complaint involves

violations of laws or regulations, the CSLB has several options for legal action: citations, action against the contractor's license, or referral to a district attorney for criminal prosecution.

Although the regulations do not establish any timelines for closing complaint cases, the CSLB has identified critical activities within the complaint process and has established goals at each point. Table 6 presents these critical activities, the CSLB's goals, and the actual time it is taking the CSLB to process complaints.

**TABLE 6**

**Goals and Actual Times for Processing Complaints for Fiscal Year 1999-2000\***

Critical Activities	Goal (in days)	Actual Processing Times
Mediation	30	70
Investigation	102	197
Legal action	210	324
<b>Average time for all complaints</b>	<b>60</b>	<b>105</b>

\* Through March 31, 2000.

The CSLB uses an automated system to monitor the progress of a complaint and to determine the time it takes to reach a resolution. The reports that the system generates allow the CSLB to evaluate its progress in meeting its time goals for the critical activities in the complaint process. As Table 6 indicates, the CSLB is not currently meeting its established goals. We found that while the CSLB decreased the processing times for most complaints handled in the first few months of 2000, it has not yet reached its goals. The CSLB told us that the reason for the delays is that the staff is still adjusting to the new complaint-handling procedures established by its reengineering efforts.

In 1997, the CSLB hired a consultant to review its operations and suggest ways it might improve its work processes. The consultant found that the CSLB's decentralized approach to receiving and resolving complaints resulted in significant inconsistencies among its district offices. The inconsistent staffing levels and workloads at the various districts and the different approaches to enforcement reduced consistency in the

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*The reengineering of CSLB's complaint process should result in a more consistent response to consumer complaints.*

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treatment and outcomes for consumers and contractors. Based on this report, the CSLB began to reengineer its complaint process in March 1999 at its district offices in Southern California by channeling complaints to one intake and mediation center for assessment. By centralizing functions, the reengineered process made complaint assessment more consistent and reduced workload and staffing inequities at the various district offices. After determining that the reengineering efforts were working in Southern California, the CSLB implemented the plan in Northern California in January 2000.

### **Our Review Did Not Substantiate the Department's Concern Over Reengineering**

The department expressed concern that the CSLB's reengineering of its complaint process would result in reduced consumer access. However, we were not able to substantiate this concern. When the CSLB centralized its intake and mediation functions, it was able to close several district offices because of the shifted workload. By closing some district offices and replacing regional and district supervisors with statewide managers, the CSLB intended to provide more consistent enforcement of the contractor licensing laws throughout the State. The department expressed concern over the loss of these district offices, fearing that their closing would reduce consumer access to the CSLB.

We took note of the department's concern during our review but could not find any evidence to confirm it. The centralized intake and mediation centers provide services formerly offered by the district offices that were closed, and centralization should give consumers a more consistent response from the CSLB. A toll-free number and the ability to submit complaints through a web site ensures that consumers have access to the CSLB's complaint process. Furthermore, the CSLB still has investigators assigned to the areas formerly covered by the closed district offices. As part of the new reorganization, investigators received laptop computers and other tools that freed them from a specific office, giving them greater flexibility to meet with consumers and visit construction sites to see the sources of complaints.

While the reengineered process appears reasonable and its complaint-processing times are slowly moving toward its goals, the CSLB needs to continue to monitor its progress in this area and evaluate the merits of the reengineering. If the CSLB does not continue progressing toward its goals, or if it determines

that consumers' access is restricted, the CSLB should adjust the process and determine how it can best meet the needs of the State's consumers and also fulfill its mission of protecting them.

## RECOMMENDATIONS

To ensure that the State's consumers are protected from professions that affect their health and safety, the four boards and bureaus we reviewed should perform these tasks:

- The Bureau for Private Postsecondary and Vocational Education (BPPVE) should establish a system to monitor its actions in processing licenses and consumer complaints. It should also develop policies and procedures to guide its staff in processing applications and consumer complaints in a consistent and effective manner. Furthermore, the BPPVE should ensure that it investigates all consumer complaints, especially the ones it cannot mediate. Finally, the BPPVE should continue its efforts to identify those institutions that were overcharged for licensing fees and reimburse them.
- The Dental Board of California (board) should develop a system to monitor its processing of license applications and consumer complaints to ensure that they are handled promptly. It should also develop goals for resolving complaints so that it can monitor how well it is functioning. Furthermore, the board should seek to correct the causes of delays in resolving consumer complaints and take appropriate actions to minimize them. Finally, the board should strengthen its controls over the collection of receipts.
- The Bureau of Automotive Repair should develop a system to monitor its license application process to ensure that it is timely and efficient, and improve the average time it has recently taken to resolve auto repair complaints.
- The Contractors State License Board should continue to monitor the results of its reengineered complaint-handling process to ensure that it responds promptly to consumer complaints and that consumers have adequate access to its services. ■



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## CHAPTER 3

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### ***Disciplinary Cases Requiring Legal Action Experience Long Delays***

#### CHAPTER SUMMARY

**W**hen a board or bureau within the Department of Consumer Affairs (department) determines that the actions of a licensee merit severe discipline, such as license suspension or revocation, the board or bureau generally takes the case through an administrative hearing process. State law requires the boards and bureaus to use the services of the Attorney General's Office (AGO) to represent them in these administrative hearings. Although they concur that the timeliness of these proceedings is an important factor in adequately protecting consumers, the boards and bureaus that use administrative hearings to discipline licensees have experienced prolonged processing times associated with these cases of as much as three years. The boards and bureaus we reviewed reported feeling that they have little or no control over the length of time the AGO takes to prosecute these more serious disciplinary cases. Although the AGO takes responsibility for causing some delays in the processing of legal cases, it too reports that certain factors causing delays are beyond its control. However, neither the boards and bureaus nor the AGO track the causes of the delays; therefore, we could not determine why these cases are not processed more promptly. The AGO is currently developing a system that may enable it to identify where delays occur. If it succeeds, the AGO should work with the department and the boards and bureaus to identify and resolve the causes of the delays. Otherwise, the department should recommend to the Legislature an alternative to the current process, which could be established as a pilot project.

#### **CASES REFERRED TO THE ATTORNEY GENERAL'S OFFICE EXPERIENCE DELAYS, BUT THE REASON IS UNCLEAR**

Although technically the boards and bureaus are responsible for taking prompt disciplinary action to protect consumers, they report that control over the resolution of legal cases lies not with them but with the AGO, which follows its own timeline. The AGO has responded that delays are sometimes a result of the

failure of the boards and bureaus to promptly forward information or approvals the attorneys need to further process cases. The fact is that neither the boards and bureaus nor the AGO can pinpoint the cause of prolonged legal cases because they do not track all the factors cited as causing the delay.

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***State law requires that boards and bureaus be represented by the AGO in legal hearings.***

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When a board or bureau determines that the actions of a regulated business or professional merit severe discipline, such as license suspension or revocation, and the licensee does not agree, the board or bureau may pursue legal action to carry out the discipline. State law allows the boards and bureaus to use an administrative hearing process to resolve these cases. Administrative law judges within the Department of General Services' Office of Administrative Hearings are responsible for hearing and rendering decisions on these cases. State law also stipulates that the AGO represent the boards and bureaus in the administrative hearings. Accordingly, the AGO uses information provided by the boards and bureaus to develop a legal action, referred to as a pleading, and then requests a hearing with the Office of Administrative Hearings.

When we asked the boards and bureaus how long, on average, it took to resolve legal action cases, they reported that the process often extended beyond a year. In fact, as presented in Table 7, nine boards and bureaus reported that the resolution of legal cases averaged more than 500 days. This time frame is significantly longer than the year the AGO's senior assistant attorney general described as reasonable for processing legal cases.

Prompt resolution of a legal case is an important part of consumer protection. During the complaint-resolution process, a board or bureau can issue an interim order suspending or restricting the license of a business or professional that is subject to disciplinary action. However, because such orders are not required, licensees who may be a threat to consumers' health and safety can continue to operate. Furthermore, quickly bringing a case before an administrative law judge for legal action allows a board or bureau to present its case while the information is relatively current.

Determining the cause of lengthy delays in the resolution of legal cases is difficult because the AGO's current system does not track all aspects of their progress. When we spoke to staff at the AGO concerning the length of time needed to process legal cases, they told us that many factors can cause a case to be delayed, only some of which the AGO can control. For example, while it can try to see that its attorneys meet reasonable time

**TABLE 7****Average Time to Process Legal Cases in Fiscal Year 1998-99**

Board or Bureau	Average Processing Times <sup>†</sup> (days)
Contractors State License Board	324 <sup>†</sup>
Dental Board of California	400
Bureau of Automotive Repair	599 / 387 <sup>‡</sup>
Bureau for Private Postsecondary and Vocational Education	N/A
Board of Accountancy	210
Acupuncture Board	730
Board of Behavioral Sciences	395
Board of California Court Reporters	545
Board of Registration for Geologists and Geophysicists	264 <sup>§</sup>
Board of Optometry	780
Board of Pharmacy	658
Physical Therapy Board	525
Board of Podiatric Medicine	601
Board of Psychology	401
Veterinary Medical Board	1,095
Board of Vocational Nursing and Psychiatric Technicians	180
Barbering and Cosmetology Program	311
Bureau of Electronic and Appliance Repair	657
Athletic Commission	60

\* Averages determined by reviewing legal action cases closed in fiscal year 1998-99. Upper limit used when survey responses include range of times.

† Fiscal year 1998-99 data not available, so fiscal year 1999-2000 (through March 2000) presented.

‡ Average times are for Auto Repair Consumer Protection and Smog Check programs, respectively.

§ Only one case closed in fiscal year 1998-99.

N/A - Data not available.

schedules, the AGO cannot control delays caused by boards and bureaus not providing needed approvals or information promptly or by having to wait for a hearing to be scheduled by the Office of Administrative Hearings. However, the AGO's current information system does not track the amounts of time that are attributable to these various factors. Therefore, we could not ascertain why cases that had been referred to the AGO take so long to be resolved.

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*Determining the cause of lengthy delays for legal cases is difficult because the AGO's system does not track all aspects of their progress.*

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The AGO told us that it is currently developing a new management reporting system that will collect and report on case data as it occurs. It hopes to fully implement the system after testing it on a pilot basis in October 2000. If this system is able to capture the data needed to identify where the delays in case processing are occurring, the AGO, along with the department and the boards and bureaus, could use this information to shorten the process. However, if this system does not assist in identifying the cause of the delays, alternative approaches to the current system should be considered.

### **PAST ATTEMPTS TO EXPEDITE THE LEGAL PROCESS HAVE BEEN UNSUCCESSFUL**

There have been some attempts to allow boards and bureaus to use their own legal staff to bring cases before the Office of Administrative Hearings in an effort to more promptly resolve them. For example, in 1997, two bills were introduced that would have, on a temporary basis, allowed the Board of Pharmacy to employ legal staff to prosecute cases that involve disciplinary matters. However, the bills were not approved by the Legislature.

The AGO told us that there are fiscal and philosophical problems with boards and bureaus using legal counsel outside of the AGO. The fiscal problem relates to the statewide support system needed to adequately process cases. Since cases can originate anywhere in the State, the legal team representing the boards and bureaus must be able to cover all regions, have the necessary support staff and law libraries, and incur significant travel costs. Since the AGO has such an infrastructure already in place, it is able to provide its services at the current rate of \$100 an hour. The AGO stated that the cost of establishing a legal team that could meet these demands would be prohibitive for an agency, such as the department or its boards and bureaus.

The philosophical problem relates to the ability of legal counsel outside the AGO to be independent. In the rare circumstance in which a board or bureau tries to pursue a course of action that might be considered contrary to the public interest, the AGO's attorneys—who are employed by the AGO, not a board or bureau—are able to freely advise a board or bureau as to the proper course of action. Also, having the AGO alone represent all of the boards and bureaus promotes uniformity and consistency in the regulatory process.

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*The delay in resolving legal cases is sufficient cause to look for alternatives to the current process.*

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Although we acknowledge the concerns raised by the AGO, and we believe that any alternative approach should consider these factors, the long timelines for processing legal cases are sufficient cause to look for alternatives to the current process. One option is to allow a regulatory board or bureau, on a pilot basis, to engage the services of an established law firm to represent it in legal proceedings. A law firm that has offices throughout the State would likely have the resources—such as attorneys, support staff, and law libraries—to meet the needs of a board or bureau. If the pilot project indicates that the benefit of hiring an outside legal firm outweighs the costs, the concept of alternative representation should be considered for all boards and bureaus. However, if the cost is too great or the pilot does not result in a significant decrease in process time, the focus should return to trying to make the current system better.

## RECOMMENDATIONS

To ensure that consumer complaint cases requiring legal action are processed efficiently, the department, the AGO, and the various boards and bureaus within the department should review data compiled by the AGO's new management reporting system as a means to identify and resolve delays.

If this effort is unsuccessful, the department should recommend to the Legislature an alternative to the current process of prosecuting legal cases through the AGO as a way to resolve these cases in less time. One alternative that should be considered is allowing a board or bureau, on a test basis, to hire a legal firm with offices statewide to represent it in disciplinary actions. The results of the pilot—including costs, timeliness, and effectiveness—could then be compared to the current process to determine which one better serves consumers.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE  
State Auditor

Date: November 22, 2000

Staff: Doug Cordiner, Audit Principal  
David E. Biggs, CPA  
Ken Cools  
Susie Lackie, CPA  
Tony Nevarez  
Helen Covey

# APPENDIX A

## Department of Consumer Affairs and Its Regulatory Entities

This appendix lists the divisions, bureaus, programs, boards, committees, and commission that make up the Department of Consumer Affairs and describes their respective roles.

**TABLE 8**

### Department of Consumer Affairs and Its Regulatory Entities

Name	Role
<b>Department Divisions</b>	
Administrative and Information Services	Provides services such as accounting, budgeting, and information technology
Communications/Consumer Information	Develops consumer information and operates an information hotline
Legal/Legislative and Regulatory Review	Provides legal services and tracks and analyzes legislation and regulations
Licensing/Examination Resources/Investigations	Issues licenses, designs exams, and provides investigative services
<b>Bureaus</b>	
Automotive Repair	Oversees automotive repair facilities and smog stations
Electronic and Appliance Repair	Regulates electronics and appliance repair industry
Home Furnishing and Thermal Insulation	Ensures that home furnishing and thermal insulation products that consumers buy are safe
Private Postsecondary and Vocational Education	Reviews private adult education programs to ensure quality education
Security and Investigative Services	Governs security guards, investigators, and alarm systems providers
<b>Programs</b>	
Arbitration Certification	Certifies and monitors automobile arbitration programs
Barbering and Cosmetology	Oversees barbers, cosmetologists, electrologists, and related professions
Cemetery and Funeral	Regulates private cemeteries, funeral operators, and related professions
Hearing Aid Dispensers	Monitors the sellers of hearing aids
Nursing Home Administrator	Oversees administrators of nursing homes
<b>Boards</b>	
Accountancy	Monitors individuals and businesses practicing accounting
Acupuncture	Regulates acupuncture practitioners
Behavioral Sciences	Controls marriage and family therapists, clinical social workers, and educational psychologists
California Architects	Oversees architects and landscape architects
California Dental	Licenses and monitors dentists
Contractors State License	Regulates construction contractors
Court Reporters	Oversees court reporters
Guide Dogs for the Blind	Oversees guide dog training schools
Medical	Regulates physicians, surgeons, and certain allied health professions
Optometry	Monitors optometrists
Pharmacy	Oversees pharmacists

*(continued on next page)*



Name	Role
Physical Therapy	Regulates physical therapists
Podiatric Medicine	Controls podiatrists
Professional Engineers and Land Surveyors	Controls designers of roads, bridges, and buildings
Psychology	Regulates psychologists
Registration for Geologists and Geophysicists	Regulates geologists and geophysicists
Registered Nursing	Oversees registered nurses
Respiratory Care	Monitors respiratory care practitioners
Speech-Language Pathology and Audiology	Regulates speech and hearing practitioners
Structural Pest Control	Oversees persons practicing structural pest control
Veterinary Medical	Controls veterinarians and veterinary technicians
Vocational Nursing and Psychiatric Technicians	Monitors vocational nurses and psychiatric technicians
<b>Committees</b>	
Dental Auxiliaries	Regulates dental auxiliaries such as hygienists and assistants
Physician Assistant	Oversees physician assistants
<b>Commission</b>	
Athletic	Regulates boxing and martial arts

# APPENDIX B

## Summary of Survey Data\*

	Yes	No	Not Applicable	Did Not Answer
Do you have written policies/procedures for:				
<b>Licensing?</b>	29	3	—	—
<b>Enforcement?</b>	27	3	2	—
Do you have a toll-free number for complaints?				
	14	16	2	—
Is complaint information available on the Internet?				
	27	3	2	—
Do you have <b>licensing</b> time goals for:				
New applications?	29	3	—	—
Renewals?	15	14	3	—
Appeals?	18	9	4	1
Is the average time to <b>process a license</b> within your goals for:				
New applications?	20	4	2	6
Renewals?	8	4	19	1
Appeals?	5	3	15	9
Do you have <b>enforcement</b> time goals for:				
Mediation?	14	9	9	—
Investigation?	21	9	2	—
Alternate?	3	14	15	—
Attorney General?	16	13	3	—
Is the average time to <b>resolve complaints</b> within your goals for:				
Mediation?	10	4	18	
Investigation?	7	11	11	3
Alternate?	1	1	29	1
Attorney General?	7	2	20	3
Is the <b>enforcement outcome</b> publicly disclosed for:				
Unsubstantiated complaint?	4	26	2	—
Mediated complaint?	9	17	6	—
Arbitration?	4	11	17	—
Warning letter?	8	20	4	—
Citation?	26	3	3	—
Suspension?	29	—	3	—
Revocation?	29	—	3	—
Attorney General?	21	7	3	1
Other?	13	2	6	11

\* We surveyed the 31 boards and bureaus for which we did not perform on-site reviews. The Cemetery and Funeral Program gave separate responses for the cemetery program and the funeral program; therefore, we present 32 responses.

	Yes	No	Not Applicable	Did Not Answer
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Do you seek recovery of enforcement costs for:				
Investigation?	26	3	3	—
Enforcement?	19	10	3	—
Legal/Attorney General?	27	2	3	—

DCA last reviewed your operations in:	1991 and prior	1992	1993	1994	1995	1996	1997	1998	1999	Unknown
	7	1	0	2	2	1	4	1	4	10

Please characterize your interaction with the DCA:	Marginal	Good	Good+	Good ++	Excellent	No Response
	6	12	7	3	2	2

*Agency's comments provided as text only.*

State and Consumer Services Agency  
Office of the Secretary  
Clothilde V. Hewlett, Undersecretary  
915 Capitol Mall, Suite 200  
Sacramento, CA 95814

November 16, 2000

Elaine Howle, State Auditor\*  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Ms. Noble:

SUBJECT:     AUDIT REPORT NO. 2000-111

Enclosed is our response prepared by the Department of Consumer Affairs to the Bureau of State Audits' Report No. 2000-111 entitled *The Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection*. A copy of the response on a diskette is also included.

If you have any questions or need additional information, please contact me at 653-4090.

Sincerely,

*(Signed by: Clothilde V. Hewlett)*

Clothilde V. Hewlett  
Undersecretary

Enclosures

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\*California State Auditor's comments appear on page 57.

Department of Consumer Affairs  
Kathleen Hamilton, Director  
400 R Street, Suite 3000  
Sacramento, CA 95814

November 16, 2000

Ms. Elaine Howle  
California State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is the Department of Consumer Affairs' response to the November 2000 audit report. Included are responses from the four boards and bureaus reviewed – the Bureau for Private Postsecondary and Vocational Education, the Dental Board of California, the Bureau of Automotive Repair, and the Contractors State License Board.

In 1999 the Department undertook an administrative reorganization and instituted several new policies, procedures, and activities to ensure proper oversight over the Department's 35 constituent boards and bureaus and to enhance consumer protection. These include:

- Creation of a separate complaint review unit whose purpose is to review and monitor the handling of consumer complaints and to assist consumers who are not satisfied with initial responses from boards and bureaus.
- Creation of a Board Relations Office whose primary function is to train and to assist boards in carrying out the Department's mission, vision, goals and policies and to monitor board policies and procedures.
- In August 2000, the Department began a review of board and bureau complaint handling procedures. Following this review the Department will develop a department wide standard for handling consumer complaints.
- A review of the Department's existing complaint-disclosure policy is underway to ensure that boards and bureaus have adequate policies in place. (I would note that the Department's policy was issued in 1979 and has not been reviewed or reissued since).
- Creation of an audit committee to provide oversight of the effectiveness of the systems of internal control for all of the Department's boards and bureaus and to ensure the independence and quality of the audit function.
- Establishment of regular quarterly meetings with board executive officers to exchange information and to provide current guidance and direction regarding Department policies, procedures, and activities.

Ms. Elaine Howle  
November 16, 2000  
Page 2

Given the short period of time provided to the Department to respond to this report (we note that the preparation of this report by the Bureau of State Audits took over six months to complete and the Department had five days to respond), please be advised that the Department will continue to review the report and its various assumptions, assertions and conclusions and may submit additional information to the Bureau and the Joint Legislative Audit Committee in the future.

The Department of Consumer Affairs is committed to protecting the consumers of California and welcomes any recommendations that will assist us in achieving our mission.

Yours truly,

*(Signed by: Denise Brown for:)*

KATHLEEN HAMILTON  
Director

Enclosure

## CHAPTER 1

Finding: The Bureau of State Audits (BSA) found that the Department's review of the operations of its boards and bureaus is limited.

Historically, the Department has relied on the Internal Audit Office to review the internal controls and operations of the boards, committees, commission, bureaus, and programs (boards and bureaus) under the umbrella of the Department. The report states that for fiscal year 1997-98 and 1998-99 the Internal Audit Office had planned for, but not audited nor reviewed the boards' and bureaus' licensing and enforcement functions. The DCA agrees with the finding, but notes that this condition existed prior to the appointment of the current Director.

Beginning in February 1999, the newly appointed Director faced significant staffing shortages in the Internal Audit Office. Staff recruitment and retention problems that had existed in prior years limited the Internal Audit Office's ability to complete planned assignments.

Furthermore, the Y2K Project, which impacted all state agencies, was understaffed and behind schedule. Mitigating the effects of Y2K became the highest priority for the DCA to ensure uninterrupted service to California's consumers and businesses on and after January 1, 2000. This project required the temporary diversion of the Department's limited and valuable audit resources to assist with the testing and remediation of the mission critical computer systems for the DCA and the boards and bureaus.

Did other processes suffer as a result of these necessary diversions? The answer clearly is yes. Did the Department have any viable alternative? The answer is no.

After successfully managing the Y2K threat, the DCA took the following steps to address the deficiencies in the Internal Audit Office:

- The Director established an audit committee in May 2000. The audit committee provides oversight of the effectiveness of the systems of internal control for all of the Department's boards and bureaus. The audit committee: ensures the independence and quality of the audit function; maximizes use of audit resources; reviews the findings of audit reports and the status of follow-up activities; resolves audit exceptions; and recommends audit policy;
- The audit committee approved the Internal Audit Office's fiscal year 2000-2001 audit plan. This plan introduces a risk-based audit approach to ensure that the boards and bureaus' high-risk areas—such as licensing and enforcement—are consistently reviewed and evaluated;
- In October 2000, the DCA contracted with the Department of Finance, Office of State Audits and Evaluations, to assist with the statutorily required internal control audits of the boards and bureaus;
- After identifying management issues in the Internal Audit Office, the Director took strong measures to ensure that existing vacancies in the Internal Audit Office were filled. In October 2000, the DCA hired two additional auditors to help meet the Department's audit needs.

We are confident that the corrective actions taken will ensure that the operations of the boards and bureaus are consistently reviewed.

Finding: The BSA found that the boards and bureaus do not always comply with the Department's complaint disclosure policy.

The BSA states in its report that "[s]tate law requires the boards and bureaus to release complaint information to the public in accordance with a standard policy established by the department." The BSA goes on to state that many boards and bureaus do not always follow the complaint disclosure policy adopted by the DCA.

The likely source of the BSA's conclusion that state law requires the boards and bureaus to disclose complaints in accordance with the Department's standard policy is Business and Professions Code § 7124.5.

Business and Professions Code § 7124.5 provides as follows:

"The board shall not make public disclosure of complaints against a licensee except pursuant to a uniform policy if adopted by the Department of Consumer Affairs, after public hearings which is applicable to all boards, bureaus, commissions, divisions, offices or officers subject to the jurisdiction of the department."

After public hearing, the Department adopted the uniform policy currently in effect. This uniform policy is applicable to all boards and bureaus and requires the disclosure amongst others, "the number of complaints which, after investigation...have been found by agency staff to indicate probable violations of the agency's licensing laws or regulations"

The Department's uniform complaint disclosure policy, dated December 3, 1979, established the policies on the dissemination of complaint information by the Department and its boards, bureaus and programs. However, since the Director has very limited authority over the boards, the Department's complaint disclosure policy, as applied to the boards, is advisory rather than mandatory.

At the Director's request, the DCA Legal Office is reviewing the 1979 complaint disclosure policy. The DCA will monitor the boards and bureaus to determine whether the release of complaint information to the public is in accordance with established policy.

## **CHAPTER 2**

Finding: The BSA found that some boards and bureaus have inefficient licensing and complaint processes.

### *Bureau for Private Postsecondary & Vocational Education Response*

The findings identified in the BSA draft report, dated November 9, 2000, are consistent with those identified by the Bureau for Private Postsecondary & Vocational Education's (BPPVE) own program and operational study conducted from December 1999 through February 2000.



Specifically, at the direction of BPPVE's newly appointed Chief in November 1999, the BPPVE initiated an internal review of all its operational activities to determine compliance with statutory requirements and to assess customer service. The BPPVE review examined: (1) the licensure/approval procedures for the BPPVE's three licensure programs (i.e., Degree-Granting, Vocational, Registered Institutions and Veteran's Title 38 Programs); (2) Enforcement/ Complaint procedures; and (3) administrative policies and procedures.

Similar to the BSA's own findings, the BPPVE's review disclosed that customer service and compliance with statutory requirements were being adversely affected by the following operational and/or administrative deficiencies:

- Inadequate information database to record, coordinate and monitor all licensure activities; record customer complaints and monitor compliance with statutory processing requirements;
- Enforcement/Complaint Program was understaffed and did not have the infrastructure support to facilitate prompt response to complaints;
- Insufficient Policies and Procedures to clearly delineate the BPPVE's processing, policies and procedures;
- Undefined workload management and staffing plans were adversely affecting customer service and the efficient allocation of scarce resources.

To address the aforementioned BPPVE findings, the BPPVE initiated a corrective action plan in March 2000 to improve operational efficiency and service to the customers as follows:

Management Information System Database Development – As denoted in the BPPVE/BSA audit findings, the absence of a central information database system was adversely affecting the BPPVE's ability to (1) monitor licensing and complaint workload; and (2) ensure compliance with prescribed statutory processing timeframes.

Therefore, in January 2000, the BPPVE began development of the "*School's Automated Information Link (SAIL)*" for the purpose of replacing the BPPVE's current "piecemeal" database systems with a comprehensive and integrated automated data and business process system. All information technology and budgetary approvals were completed by May 2000. SAIL improves efficiency and accountability to the following BPPVE operations and programs:

①

- Licensing Program Application Tracking System – To ensure accurate and consistent recordation, monitoring, and reporting of all applications received and processed by the BPPVE. This includes Degree-Granting, Vocational, Registered Institutions and Veterans Title 38 Program applications received and processed by the BPPVE;
- Enforcement and Complaint Tracking System – To ensure complete and accurate recordation of student, industry and stakeholder complaints, investigations and unlicensed activity;
- Revenue Tracking System – To ensure accurate and consistent financial accounting of all revenues received and processed by the BPPVE;
- Annual Report System – To ensure a comprehensive report of all school's informational outcomes is provided to BPPVE stakeholders in accordance with current law;
- Student Tuition Recovery Fund and Closed School Information – A database system to ensure eligible California students are fully reimbursed for tuition losses as a result of school closures for which they are adversely affected.

Enforcement & Complaint Program Accountability Plan – As denoted above, the BPPVE established the “Enforcement Program Automation System” in September 2000 to ensure effective and efficient recordation, processing and monitoring of student complaints, investigation and unlicensed activities. Additionally, as part of the BPPVE’s recent reorganization plan, the Enforcement Program personnel has been increased by over 250 percent (from four to ten staff) as of October 23, 2000, to ensure prompt and effective complaint mediation service to customers. The aforementioned positions were redirected from within existing BPPVE programs.

Established Policies and Procedures – Effective July 2000, the BPPVE established written operational and policy procedures to ensure staff correctly and consistently conduct their work and provide customer service. The BPPVE has subsequently issued numerous written policy/procedural communications affecting all phases of operation and will continue to do so as needed.

Workload and Staffing Management Plans – On April 25, 2000, the BPPVE submitted a plan to eliminate backlogged Vocational Program work for the Administration and Legislature’s approval. The backlogged Vocational Program workload pre-dates the current Bureau Chief’s appointment in November 1999 and is the same backlogged work identified in the BSA report. Moreover, the backlogged vocational work is the primary reason for the delays in BPPVE licensure activities and service to customers. The plan, which redirects existing budgeted resources, was approved as part of the 2000-01 State Budget Enactment process. The BPPVE has already started towards reduction and elimination of the backlog.

While all of the BSA findings were consistent with those identified in BPPVE’s own review, there were additional findings with significant program and service impact that were not included in the BSA report. They are as follows:

- Three of Four BPPVE Licensure Programs Are Operating Effectively – With the exception of the Vocational Program which is currently addressing backlogged work, the remaining three BPPVE Programs are operating with efficiency and serving the students’ and stakeholders’ needs. Specifically, the Degree-Granting, Registered Institutions and Veterans Title 38 Program are operating to meet the needs of students/customers. (2)
- National Recognition for Outstanding Service to California’s Veterans – The BPPVE’s Veterans Title 38 Program was awarded the nation’s highest approval rating for educational program approval services to veterans. According to the national “Joint Peer Review Group” and federal Department of Veterans Affairs officials responsible for the national rating, the BPPVE was commended for significant improvements in program service in 1998 and 1999. In addition, the BPPVE developed innovative procedures that saved taxpayers money and ensured quality education to California’s veteran students. As a result, the BPPVE received the nation’s highest ratings for educational services to veterans.

Based on the aforementioned facts, the BPPVE concurs with the BSA findings which are consistent with those independently ascertained by the BPPVE in its own internal procedure and administration review. Moreover, the BPPVE is pleased to report that a corrective action plan has been implemented for each deficiency finding in accordance with BSA’s own recommendation. Lastly, the BPPVE will continue to

improve its operations and procedures to ensure efficient and effective services to students, industry and all stakeholders.

### Dental Board of California Response

The Dental Board of California (Board) agrees with the findings regarding the monitoring of license applications. The BSA recommends that the Board develop a system to monitor its processing of license applications and consumer complaints to ensure that they are handled promptly.

As a means of implementing these recommendations, the Board has instituted processes that are designed to improve the processing of license applications and consumer complaints. For instance, the process that is currently utilized to process license applications requires the Board's examination staff to maintain a control log that indicates the date that each application is reviewed by the Board's staff. This process will be improved by including the dates that each application for licensure is received at the Board. In addition, supervisory staff will initiate a standardized review process at the conclusion of the application filing-period to verify that the statutory timelines are being achieved.

In addition, subsequent to the audit, the Board has increased the monitoring of the process that is utilized to track and investigate incoming consumer complaints. This recent addition includes regularly scheduled monthly meetings between the analysts, investigators, and their respective supervisors during which means to reduce case aging will be discussed. Also, supervisors will conduct case audits on a quarterly basis in an effort to identify and expedite languishing cases.

The Board agrees with the finding that the Board's complaint process is reasonable but slow. The BSA recommends that the Board develop goals for resolving complaints so that it can monitor how well it is functioning.

The Board has established timelines for determining an acceptable length of time that is required to process complaint and investigation cases. As part of this process, employees must report to their immediate supervisors on a monthly basis to identify all complaint cases that are over 30 days old and investigation cases that are over six months old. During the course of six months, and on a monthly basis, the supervisory staff will analyze the length of time that is required to process complaint and investigation cases through their various stages. Thereafter, standardized timelines will be developed as a means of establishing time goals.

The BSA also recommends that the Board should seek to identify causes of delays in resolving consumer complaints and take appropriate actions to minimize the delays.

The Board concurs with this recommendation. A preliminary review has revealed that the most significant delay in processing complaint cases is a result of the extensive backlog of cases that are awaiting review by the Board's two dental consultants. As a means for reducing this delay, the Board will hire an additional dental consultant on a retired annuitant basis. The prospective employee has been selected and once the personnel office completes processing his personnel documents, he will be scheduled to begin his employment at the Board. It is anticipated that this appointment will be made by the end of November 2000.

Furthermore, the Board will monitor the flow of complaint and investigation cases over the upcoming six months on a month-by-month basis to determine if the Board possesses sufficient personnel resources to process the complaint and investigation cases in a timely manner.

The Board agrees with the finding that the Board strengthen its controls over the collection of receipts.

The Board has already instituted measures to ensure that additional safeguards are being implemented with regard to the collection of receipts. Specifically, after the exit meeting with the state auditors, the Board established a requirement that now requires the maintenance of a log which lists all checks that are not cashiered prior to the conclusion of the business day. This process requires the Board's cashier to provide all financial instruments that were not cashiered, prior to the end of the business day, to a supervisory employee. A substitute supervisory employee has been designated to fulfill these duties when necessary. The supervisor, who does not supervise the cashiering unit, will secure all financial instruments in the Board's vault for safekeeping at the end of the business day. Methods have been devised to safeguard the cashiering of checks in the Board's Examination Unit. These improvements will require incoming checks to be cashiered within two days even though the accompanying application may not be reviewed within the two-day time frame. The applications will thereafter be reviewed within 90 days, as required by statute.

Although the cashier position at the Board is currently vacant, the next employee who is assigned to this function will perform these duties in compliance with the requirements set forth by the State Auditor.

#### Bureau of Automotive Repair Response

The Bureau of Automotive Repair (BAR) concurs that a system design flaw limited the ability to track the timeliness of the processing of personal licenses. As acknowledged in the audit report, the entire Department's licensing unit was reorganized in July 2000 from a centralized multi-purpose licensing operation, to separate licensing operations divided by the programs each serves. The BAR licensing staff and operations have been transferred back under the management of BAR program staff. In addition, the licensing staff has been physically relocated to be close to the BAR program staff and management, so that policy coordination is facilitated.

As recommended by the audit report, BAR has designed a tracking system which tracks ALL incoming licensing workload, regardless of license type, from the point applications are received. This system will be fully implemented on December 1, 2000, and will allow BAR management to identify any applications which are not being processed in a timely fashion.

The BAR concurs that complaint processing times are adequate. The BAR also concurs that management must continue to monitor complaint processing times and improve investigatory systems to maintain efficiency. To that end, the BAR has developed a new set of computer programs to make access to the smog check database and DMV more accessible to BAR field staff. BAR has also completed civil service testing for field staff positions and hired a full complement of staff. BAR is confident that complaint processing times will remain adequate or, in fact, decrease in FY 00/01.

Contractors State License Board Response

The Contractors State License Board (CSLB) generally concurs with BSA's findings regarding processing times and public access. The CSLB was aware of the issues surrounding delays in implementing its re-engineered complaint process and had already taken steps to address the concerns cited in the report. The new process has been in place in southern California for over a year and in the northern state for 6 months. There have been marked improvements in processing times where the process has been fully implemented.

The CSLB will continue to monitor the results of its re-engineered complaint-handling process. Further, the CSLB will continue to ensure that consumers have adequate access to its services.

# COMMENTS

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## ***California State Auditor’s Comments on the Response From the Department of Consumer Affairs***

To provide clarity and perspective, we are commenting on the Department of Consumer Affairs’ (department) response to our audit report. The numbers below correspond to the numbers we have placed in the response.

- ① At the time we concluded our fieldwork at the Bureau for Private Postsecondary and Vocational Education (BPPVE), this system was not yet operational, so we were not able to assess its benefits.
- ② This statement is puzzling because, as we state on page 19, the BPPVE averaged 525 days to issue licenses to degree-granting institutions—well beyond the time prescribed by regulation.

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*Agency's comments provided as text only.*

Bill Lockyer, Attorney General  
Department of Justice  
Ronald Reagan Building  
300 South Spring Street, Suite 5212  
Los Angeles, CA 90013

November 13, 2000

Elaine M. Howle\*  
State Auditor  
California State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

RE: STATE AUDITOR'S DRAFT REPORT

Dear Ms. Howle:

Thank you for providing us with an opportunity to comment on those portions of the State Auditor's Draft Report on the Department of Consumer Affairs which pertain to the Office of the Attorney General's (AGO) representation of the Department's boards and bureaus in the administrative hearing disciplinary process. We received the Draft on November 9, 2000.

Chapter 3 of the Draft is entitled "Serious Disciplinary Cases Requiring legal Action Experience Long Delays." This caption is misleading because the chapter purports to deal with all license suspension and revocation cases that boards and bureaus "take . . . through an administrative hearing process." While all such cases are important, many are much more serious than others. Oftentimes our staff will stop work on routine disciplinary cases, which involve minor transgressions with little threat to public safety to "prioritize" the processing of more serious and very serious cases. Sometimes serious cases are handled more quickly than routine matters. A more accurate chapter heading would be "Disciplinary Cases Requiring Legal Action May Experience Long Delays." ①

Towards the bottom of page 46, the Draft states ". . . neither the boards and bureaus nor the AGO track the causes of the delays; therefore, we could not determine why these cases are not processed more promptly." This is not accurate. On July 21, 2000, I faxed a five page summary of the many reasons cases can be delayed to David Biggs of your staff. A copy is attached for your reference. At page 4 of the summary, it states "Licensing Section management receive monthly management reports which report the progress of cases being worked by Deputy Attorneys General. Due to the fact that line supervisor positions have not been funded by the budget process, the Licensing Section is more reactive in its monitoring approach, following up on cases when it receives complaints from clients. The Licensing Section encourages its clients ②

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\*California State Auditor's comments begin on page 69.



to contact their deputies or AG management if they are not receiving adequate service, or cases are taking too long.” Despite the fact we have no funded supervisory positions, we do, on occasion, review these management reports and identify cases that appear to be taking “too long” and take appropriate action. Therefore, this sentence should read “While the AGO has management reports which enable it to track the time lines involved in processing cases, it is not budgeted for line supervisors to spend significant time on case tracking activities. To do so would decrease the amount of hours available to attorneys to actually work on the cases themselves. We recommend that the Department support the AGO’s pending request to the Department of Finance to provide funds sufficient to dedicate line supervisors to quality assurance, which would include tracking cases more closely.”

Also, at the bottom of page 46, the Draft Report states “The AGO is currently developing a system that may enable it to identify where delays occur.” In our response, at page 4, we stated “The AG is currently developing a new management reporting system called ProLaw. It is an online, real-time system that will collect and report on case data as it occurs. The AG will hopefully be piloting the system in one of the Civil Law Division’s sections, probably Licensing’s office in San Francisco somewhere around October 2000. If the pilot is successful, the system would be implemented in the other sections thereafter.” The Draft Report should state that “the AGO is developing a system that will better enable it to identify where delays occur.”

At the bottom of page 46 and the top of page 47, the Draft states “If it succeeds [the development of a better case management system], the AGO should work with the department and the boards and bureaus to identify and resolve the causes of the delays. Otherwise, the department should recommend to the Legislature piloting an alternative to the current process.” Page 4 of our summary of reasons for case delays includes the following “Another cause of delay in processing cases is some agencies underestimate their projected caseloads during the budgeting process. As a result, the AG often finds itself understaffed for the amount of work that actually comes in.” We think your Draft should state “The department, boards, and bureaus should work with the AGO to better coordinate budgeting for AGO services in order to ensure that the AGO will be properly staffed to efficiently process the work of the boards and bureaus.”

At page 48 of your Draft you state, “We found that the process often extended beyond a year. Table 7 presents the average processing times for legal cases for the boards and bureaus we reviewed in depth as well as for some of those we surveyed.” As pointed out in our five page summary of the problems associated with case processing, it can often take more than one year to complete a case without any unreasonable delays on the part of the AGO, or the boards or bureaus, for that matter. What we find particularly troubling from an audit standpoint, and in light of the fairly radical recommendation at the conclusion of the chapter (that a pilot program

be legislatively initiated where a board or bureau retain outside counsel to do its enforcement work), is the fact that our office was not contacted regarding any of the cases surveyed. As pointed out in our five page summary, cases could take several years to complete without any unreasonable delay attributable to our office or even our clients. It would seem sound to us that before such a significant recommendation is made, the cases surveyed should be presented to our office for comment so the auditor would have all the data necessary to make an informed recommendation. ⑤

At the top of page 49, the Draft Report states “. . . we could not ascertain why cases that had been referred to the AGO take so long to be resolved.” As we have just pointed out, the audit, thus far, has not asked the AGO why any surveyed case required the time taken for processing. We think that good audit principles, as well as fairness, would include this step. ⑤

At the first full paragraph on page 50 of the Draft Report, it is stated “The philosophical problem relates to the inability of legal counsel outside the AGO to be independent.” Our July 21, 2000, summary on the process states at page 5 “The philosophical issue relates to the independence of the Office of the Attorney General. In the rare circumstance where a Board or other client may wish to follow a course of action that could be considered contrary to the public interest, the DAGs, who are not employed by the client, would be able to freely provide the appropriate advice and consultation.” We did not state that legal counsel outside of this office would be unable to be independent. We recommend that the Draft Report so indicate. It should be noted that these are not merely hypothetical concerns. The recent and significant public protection problems that arose with regard to the former Insurance Commissioner’s implementation of his regulatory enforcement program would not have occurred if his legal representation had been provided by the AGO, an independent, constitutionally created law office for the State, its officers and agencies, and the People. ⑥

In the last paragraph of page 50, the Draft Report states that the “long timelines for processing cases are sufficient cause to look for alternatives to the current process.” As stated before, we would like an opportunity to address the particular cases that appear to have unwarranted or unreasonably long time lines in order to determine whether change should be recommended and, if so, what kind of change. ⑤

In the same paragraph, it is recommended that an outside law firm with offices throughout the state be considered as a pilot project for the processing of a board’s or bureau’s administrative disciplinary work. Based on the lack of audit information as to whether a particular case appeared to take an unwarranted amount of time to process

Elaine M. Howle  
November 13, 2000  
Page 4

4 and, if so, why, we think this recommendation is premature.<sup>1</sup> And assuming, for the sake of this discussion, that it is established that the AGO takes too long to process cases, there are several less draconian steps that can and should be initiated such as encouraging the Department of Finance to fund supervising deputies for quality assurance and/or encouraging the boards and bureaus to budget sufficient funds to staff the AGO to the level necessary to eliminate delays due to staffing problems.

We have included a diskette with a copy of the response. If you have any questions or comments, please contact me.

Sincerely,

*(Signed by: Ron Russo)*

RON RUSSO  
Senior Assistant Attorney General

For BILL LOCKYER  
Attorney General

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<sup>1</sup> We are also skeptical regarding the ability of an outside law firm to provide such services at even close to the \$106 hourly rate charged by the AGO. Furthermore, we do not see how an outside law firm whose remuneration would depend on "satisfying" the board or bureau paying it addresses or resolves the "independence" issue.

**SUMMARY OF DISCUSSION WITH RON RUSSO  
SENIOR ASSISTANT ATTORNEY GENERAL  
LICENSING SECTION**

**Normal process for a case to follow when it is referred to the Attorney General**

There are a number of different ways a case can be transmitted to this office and be processed by the Licensing Section. The following is a very broad generalization of the “usual” or “normal” process. Among many other things, these timelines vary from city to city and are effected by staffing at the Attorney General’s Office and the Office of Administrative Hearings (OAH). The Licensing Section maintains attorneys and paralegals in Los Angeles, Sacramento, San Diego, San Francisco and Oakland. OAH has Administrative Law Judges (ALJ) in Sacramento, Los Angeles, San Diego, and Oakland.

The case first goes to an assignment deputy who has up to ten working days to assign the case, according to the Licensing Section’s guidelines. During this time, the assignment deputy reviews the case (a cursory review) to determine if the case contains the principal documents to go forward and to determine whether there is helpful information about the particular type of case that the assignment deputy can pass on to the assigned deputy. If the assignment deputy determines the case passes this initial reviews, he will assign it to a Deputy Attorney General (DAG). If the case is not complete, the assignment deputy will send it back to the referring agency or hold it until the defect can be cured. This happens in about five percent of the cases and can cause delays of two weeks to six months.

The assigned DAG does an in depth review of the case and prepares a pleading. According to the guidelines the DAG has 60 days to prepare the pleading. During the review, if the DAG determines that the case is not solid or needs additional investigative or other work, such as an expert opinion, the DAG will return it to the client agency or hold it while the agency obtains the additional material. This happens in about 10 to 15 percent of the cases and can cause delays of one to twelve months.

The AG has a team of paralegals in Sacramento, referred to as the LAT team, that prepares pleadings for the more repetitive types of cases for a few client agencies. Under the section’s guidelines, the LAT team is allowed 48 days to prepare pleadings. They also may return cases to the client for additional documentation or investigation, or hold the case until the client produces the necessary information.

After the pleading is prepared, it goes to the client agency for approval. Although some agencies take longer than others, generally it takes about thirty working days for the agency to approve the pleading and return it to the AG.

After the pleading is approved, the respondent is served with the pleading and several other documents required by law, including a notice that the respondent may request a hearing. The respondent may ask for an extension to respond to the accusation, and some do.

When the respondent submits a notice of defense, which requests that a hearing be held, the AG sends a notice to OAH, to notify them that an administrative law judge is needed to hear the case. The Licensing Section's guidelines provide that the DAG has five working days to submit this request to OAH.

The AG has no control over how quickly OAH responds to its requests for hearings. It normally takes about 30 days for OAH to respond to the AG's request for a hearing. When it responds, OAH will schedule a hearing normally between three to six months in the future, depending on the calendars of the ALJ, the respondents, and the DAGs.

When the DAG receives the hearing date from OAH, s/he has five working days to send notices of hearing to the respondent.

During the wait for the hearing, the parties perform their discovery pursuant to Business and Professions Code sections 11507.6 and 11507.7, exchanging information among themselves to prepare their case. Sometimes disputes arise as to whether all appropriate information has been subject to the discovery process. If the parties cannot work it out themselves, they may have to go before an ALJ for rulings which may cause the case to be continued or go off calendar (or cancel the originally scheduled hearing date until the dispute is resolved). When the dispute is resolved, another hearing date is set which again may be another three to six months in the future.

Also during this time, the parties usually attempt to reach a settlement of the case through a settlement conference. A 1997 revision to the Administrative Procedure Act requires the parties to participate in a prehearing conference and/or settlement conference if the ALJ so orders, and they often do. The AG will discuss settlement options with the respondent's attorney, however, it usually will not agree to take the case off calendar unless it appears a settlement will definitely be reached. Public safety and welfare are always the prevailing concern in licensing cases, and accordingly the AG will not settle a case if it means that the public's interest is not best served.

If a settlement is reached, it is forwarded to the client agency for their approval. The settlements can only be approved at Board meetings or by mail vote and this can take some time to accomplish. If it is approved, the case is closed. If it is not approved, the AG then notifies OAH that a hearing again is needed, which could take three to six months.

When a case goes to hearing, it can last one-half day to months depending on the case and the subject matter. In some cases, both sides may be required to submit closing briefs and this can take 30 to 40 days. The ALJ will normally render a decision within thirty to sixty days of the submission of the case.

The ALJ's decision is then sent to the client agency for approval. Some Boards meet monthly and consider the decision within a month. Others meet less frequently and could take two to three months to consider the decision. If the Board approves the decision, the terms of the decision take effect. The respondent has 30 days to file a motion to reconsider the decision. If filed, more arguments are heard and time spent.

If the Board non-adopts the decision, it will advise the ALJ how it should proceed to complete the case. For example, the Board may advise the ALJ to hold more hearings to take additional evidence or the Board could proceed by hearing argument itself. While a small number of cases are non-adopted, when it occurs it can add up to six months or more to a case.

The losing party has 30 days after the Board's decision is final to file a writ of mandate with the superior court. In these cases (about 100 - 200 a year) the OAH produces the transcripts from its hearings (takes 30 - 90 days) and forwards them to the superior court. It may take three to four months for a hearing before the superior court. The loser at the superior court level may appeal the case to the Court of Appeal, which occurs about 25 times a year (one percent). If this occurs, the appellate process can add another year to the case. In a very few cases, an appeal is taken to the supreme court, which could take a year or more.

## **Other Miscellaneous Information**

The Licensing Section at the AG's office serves approximately 30 state agencies, with approximately 2200 - 2500 cases per year.

Licensing Section management receive monthly management reports which report the progress of cases being worked by Deputy Attorneys General. Due to the fact that line supervisor positions have not been funded by the budget process, the Licensing Section is more reactive in its monitoring approach, following up on cases when it receives complaints from clients. The Licensing Section encourages its clients to contact their deputies or AG management if they are not receiving adequate service, or cases are taking too long.

The AG is currently developing a new management reporting system called ProLaw. It is an online, real-time system that will collect and report on case data as it occurs. The AG will hopefully be piloting the system in one of the Civil Law Division's sections, probably Licensing's office in San Francisco somewhere around October 2000. If the pilot is successful, the system would be implemented in the other sections thereafter.

The length of time it takes to process a case is affected by several different factors, such as AG processing, client agency responsiveness, OAH processing, and respondent's counsel's responsiveness and cooperation. The AG's current information system does not track the amount of time attributable to these various factors. For example, recently one deputy had to spend 100 hours going through a case to recreate a time table in order to answer the concerns of a client who wanted to know why a case took so long to process. The current information system does have milestones built into the case processing structure that indicates whether or not a case has completed the next identified milestone.

One cause of delay in case processing that the AG incurs is from staff turnover. When a deputy leaves the AG, another deputy must pick up the case in the middle of the process, which adds time because the new deputy must spend time obtaining an understanding of the case:

The Licensing Section's largest clients are as follows:

Contractors State License Board	- 500-650 cases/year
Bureau of Automotive Repair	- 300-350 cases/year
Registered Nursing Board	- 300-350 cases/year

Another cause of delay in processing cases is some agencies underestimate their projected caseloads during the budgeting process. As a result, the AG often finds itself understaffed for the amount of work that actually comes in. For example, the following is the last three year budget projection and actual work figures from the Bureau of Automotive Repair:

<u>FY</u>	<u>Budgeted</u>	<u>Actual</u>
1997/98	\$1,507,000	\$1,579,000
1998/99	\$1,507,000	\$1,902,000
1999/00	\$1,507,000	\$2,015,000

About three years ago, the Licensing Section received authority to hire limited term attorneys to handle fluctuations in workload. The division tracks clients' spending on caseloads to identify when additional staffing is needed. However, it takes about three months to hire a deputy, and about another six months to train him or her.

There have been at least a couple of attempts in the past to allow agencies to hire their own legal counsel. SB 827 and SB 829 in the 1997/98 session by Senator Greene both attempted to do this. Neither of these efforts succeeded. The Attorney General's Office sees two issues with outsourcing legal duties from the AG; one a fiscal problem, the other a philosophical problem. The fiscal problem relates to the statewide support system needed to adequately adjudicate cases all over the state. Since cases can originate all over the state, the legal team representing the client agencies must be able to cover all areas of the state. They would need support staff, law libraries, and would incur a lot of travel costs. Since the AG has its infrastructure in place, it is able to do all this for its current \$100/hour rate. These demands would be cost prohibitive for an agency, such as consumer affairs, establishing its own legal team.

The philosophical issue relates to the independence of the Office of the Attorney General. In the rare circumstance where a Board or other client may wish to follow a course of action that could be considered contrary to the public interest, the DAGs, who are not employed by the client, would be able to freely provide the appropriate advice and consultation. Also, the AG's Office as one legal office providing representation to all of the Boards, Bureaus, and Programs within the Department of Consumer Affairs, is able to promote uniformity and consistency in the regulatory process.



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# COMMENTS

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## ***California State Auditor's Comments on the Response From the Office of the Attorney General***

To provide clarity and perspective, we are commenting on the Office of the Attorney General's (AGO) response to our audit report. The numbers below correspond to the numbers we have placed in the response.

- ① See revised heading on page 37.
- ② The AGO has missed the point. We acknowledge that the AGO has a system that allows it to monitor the activities of its staff in processing legal action cases, even though it does not normally use this system for such purposes. However, as we state on page 39 of our report, the AGO is unable to track the amount of time attributable to other sources of delay, such as boards and bureaus not providing needed approvals or information promptly, or having to wait for a hearing to be scheduled by the Office of Administrative Hearings. Accordingly, the AGO is unable to pinpoint the causes of delays in its processing of legal action cases. This weakness is illustrated in an example provided in the AGO's response on page 66. In the example, the AGO reports that it took one of its deputies 100 hours to go through a case in order to recreate a time table to respond to a client's concerns about why the case was taking so long to resolve. If the AGO had a system that effectively monitored the progress of its cases, this information would have been readily available.
- ③ The fundamental benefit of an effective tracking system is that it allows supervisors to target cases that fall outside of normal processing times, thus enabling them to better prioritize the section's workload. Therefore, if the AGO had such a tracking system, it may find that it does not need additional staff.
- ④ Before the AGO, the department, and its boards and bureaus devote additional resources to this process, we feel the most prudent action would be to identify the causes of delay, take appropriate steps to resolve them, and establish a monitoring system to quickly identify and alleviate any future causes of delay. Additionally, we feel the AGO has a responsibility to its

clients to anticipate client demand for its services—such as using historical data to anticipate future needs—and to plan its workload accordingly.

- ⑤ We modified the text on page 38 to clarify that our analysis was based on average processing times for legal action cases as reported to us by the boards and bureaus we visited or surveyed and not on a review of specific cases. Nonetheless, the conclusions we make are still valid. As indicated in Table 7 on page 39 of our report, nine of the boards and bureaus we visited or surveyed reported that on average, it took over 500 days to process legal action cases during fiscal year 1998-99. This is significantly longer than the one year described to us by the AGO's senior assistant attorney general as the normal processing time for legal cases.
- ⑥ We modified the text on page 40 to address the concerns raised by the AGO.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press