

LITTLE HOOVER COMISSION

DCA DIRECTOR COMMENTS

A brief overview of the Department of Consumer Affairs and its mission.

The primary mission of the Department of Consumer Affairs (Department) is to protect California consumers. The Department consists of 26 boards, ten bureaus, two committees, one program, and one commission. These entities regulate and issue licenses to more than 250 different business and professional categories. These license categories do not include interior decorators, tattoo artists, or auctioneers which were discussed at length at the previous hearing.

From the Department's perspective licensing plays a critical role in ensuring consumer protection. First, if a licensee violates any part of their practice act the board can work to educate the licensee and help to prevent future violations. If issues persist or violations are severe enough disciplinary action can be taken against the license including, fines, citations, or license revocation. Taking disciplinary action is the ultimate authority a board has to restrict or remove bad actors and protect consumers. Licensing is one way to formally recognize competence or expertise, the other process is certification

Licensing differs from certification in a few key areas. Certification generally requires passing an exam administered by a private accrediting agency. Certification simply ensures that an individual has met certain criteria to practice in a given profession, but certification does not confer the privilege to practice. Traditionally, requirements for certification are set by a non-governmental entity that does not possess the regulatory power of a state entity consequently, if a consumer wishes to file a complaint or seek recourse from a certified practitioner they must work through the civil process.

An overview of the Department of Consumer Affairs' relationship with the boards and bureaus that comprise it. Please explain any differences in the Departments' relationship with the bureaus vs. the boards. How does the Department supervise the boards and bureaus? How much authority does the Department have over the boards and bureaus?

There is a different governance structure between boards and bureaus. Boards are semi-autonomous entities with appointed board members that set their own priorities. If a board has a policy issue that it wants to pursue, it can vote to seek a regulatory or statutory change during one of their public meetings. Boards can take positions on legislation; propose changes to state law, and take disciplinary actions on their licensees.

Bureaus are a direct extension of the Department and cannot act on policy matters without first consulting with the Department. Policy decisions start at the bureau level and must be vetted through the Department, the Business, Consumer Services and Housing Agency (Agency), and

finally the Governor's Office. Administratively, the director of the Department can delegate authority to a bureau chief to carry out licensing and enforcement duties.

An overview of the boards and bureaus' rulemaking processes and the role the Department plays in rulemaking.

In regard to the rulemaking process, when a proposed regulation is approved by a board, board staff prepare the regulation package for public notice and initial publication with the Office of Administrative Law. After publication of the regulation, the official public comment period begins and board staff submits the regulation package to the Department for official review.

The Department conducts a rigorous review of every regulation for its legal, economic, and policy impacts. In 2015, the Department reviewed 93 regulatory packages. Based on the review by the Department's executive staff, a position is recommended to the Director for approval. If there are any concerns with the regulation, the Department's executive staff work with the board and stakeholders to resolve issues or the Department Director can deny the regulation all together.

The process for Bureaus differs only in that before officially noticing and publishing with the Office of Administrative Law, the regulation is first reviewed by the Department and Business, Consumer Services, and Housing Agency. The Department also offers this courtesy to boards; however, it is not a requirement.

After the Department review is completed, the regulation is further reviewed by Agency. If there is an economic impact, the Department of Finance will also review the regulation. If Agency or the Department of Finance have any concerns, they contact the Department and staff work with the program to address those concerns. Once concerns have been addressed, the regulation is then returned to the Department for the closing process and then to the Board to file with the Office of Administrative Law.

A discussion on the Department's effort to standardize data and create performance metrics. Please indicate how the Department measures how it is protecting consumers.

Regarding performance measures, in 2010 in response to the realization that many healing arts boards were taking up to three years on average to complete an investigation and take action against a licensee, the Consumer Protection Enforcement Initiative was launched. A goal was set to first reduce these timelines to an average of between 12 and 18 months by focusing on the following issues:

- Staffing;
- Technology;
- Training; and

- Metrics, also known as performance measures.

The performance measures were developed in partnership with the boards and with enforcement experts. The goal was to measure as many standardized enforcement processes as possible. For example, all boards have processes for; intake, investigations, and discipline, however, boards may differ on exactly what activities take place within those three areas. This is also a reason boards may differ on performance measure targets. Since 2010, the Department has been gathering data on complaints, convictions, case aging, and enforcement times. The Department uses this data to work with boards to increase efficiency in its processes.

Beginning in the next fiscal year, the Department expects to begin reporting more detailed data on timelines and processes. Capturing and reporting more accurate data within the core performance measures will give the Department and boards additional information to review and analyze to ensure consumers are being protected.

A discussion on the work the Department is doing to understand how the boards and bureaus look at applicant convictions.

For each board and bureau, applicant convictions are dealt with on a case by case basis. In general, a board or bureau may deny a license only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

For example, if an applicant for a security guard license had a previous felony for breaking and entering the Bureau of Security and Investigative Services would look at the specifics of the case to determine if a license should be issued. If the facts of the conviction are substantially related to the duties of the profession then a license may be denied. Other convictions would be considered differently by other licensing entities and, in the case of boards, the ultimate decision regarding licensing is up to the board members.

We continue to look at how our boards and bureaus license individuals and seek to ensure that unnecessary barriers are not created. However, the Department would caution this body regarding any one-size fits all approach to dealing with applicant convictions.

Closing

Finally I believe the Department plays an essential role in protecting the states' consumers. Through our licensing and enforcement efforts we ensure that licensees in a wide range of professions are qualified and that consumers have protection and recourse. I am open to reviewing applicant criteria for each license type to try and reduce unnecessary barriers to entry, as long as that does not create a risk for consumers.

Thank you for your time and I am happy to take any questions you may have.