



The State Bar of California

MISSION ADVANCEMENT AND ACCOUNTABILITY DIVISION

Date: December 17, 2020

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Regulatory Structure and Board Composition

EXECUTIVE SUMMARY

The California Paraprofessional Program Working Group (CPPWG) is charged with developing recommendations for consideration by the Board of Trustees for the creation of a paraprofessional licensure/certification program to increase access to legal services in California. The CPPWG's charter is informed by the [California Justice Gap Study](#) and the [Task Force on Access Through Innovation of Legal Services \(ATILS\)](#). In carrying out its charge, the CPPWG must balance the dual goals of ensuring public protection and increasing access to legal services. The CPPWG's recommendations to the Board will include, among other topics, the regulatory structure for paraprofessionals. This memo outlines options for an overarching regulatory structure, namely a regulatory board, for the CPPWG's consideration.

BACKGROUND

At its August 25, 2020, meeting, the CPPWG determined that subcommittees should be created to develop requirements for paraprofessional licensing, regulation, and discipline. These subcommittees were appointed subsequent to that meeting, and each met several times to review and consider information about their assigned topics. At its October 29, 2020, meeting, the Working Group reviewed the status reports from each of these subcommittees and provided feedback on the subcommittees' preliminary recommendations and proposals. These subcommittees have continued to meet and have provided updated reports and recommendations for the December 17 CPPWG meeting.

During the course of their discussions, the Licensing, Regulation, and Discipline Subcommittees have each identified roles and responsibilities for a paraprofessional licensing board (hereinafter referred to as the Board). This has brought to the fore the question of how this Board will be constituted and what it will be required and authorized to do.

DISCUSSION

In developing recommendations for the Board, I reviewed the size and composition of paraprofessional licensing boards in other states, as well as the licensing boards for nonlegal professions in California. Attachment A provides a summary of this information.

In addition, I reviewed the factors that should be considered in determining Board size, structure, and composition as outlined in a 2018 report on the State Bar's board, commissions, committees, and councils (collectively referred to as committees), *Opportunities for Improving Governance and Service Delivery*.¹ This report emphasizes that decisions about size, structure, and composition should be driven by the purpose of the committee itself.

The Licensing, Regulation, and Discipline Subcommittees have to date identified a number of roles and responsibilities for the Board, including:

- Licensing: establishing licensing requirements and ensuring that they remain relevant; decisions regarding the addition of new practice areas.
- Regulation: responsibility for program rules, MCLE requirements, proactive regulation policies, and program evaluation.
- Discipline: potentially hearing appeals and approving certain disciplinary recommendations.

With these functions in mind, this memo considers the following issues with regard to a Board: size, composition, appointing authority, term of membership, functional (committee) structure, and reporting authority. These recommendations are presented as a starting point for CPPWG deliberation and are not intended to be conclusory.

BOARD SIZE

At its September 13, 2018, meeting, the State Bar Board of Trustees adopted a policy to limit the size of State Bar committees to 7 or fewer members, absent a justification of the need for more members based on workload or the need for additional expertise or perspectives to carry out the work. This policy is based on research that found that larger boards are less effective in the decision-making process.

Given the broad set of responsibilities envisioned for this Board, as well as its potential role in discipline adjudication, a larger size is warranted. As reflected in the tables in Attachment A, California's professional licensing boards range in size from 9 to 15, and other states' paraprofessional licensing boards range from 11 to 15. I recommend that the Board be comprised of 13 members, which is an average of the sizes of other states' paraprofessional licensing boards and is the same size as the State Bar Board of Trustees.

¹ Schauffler, Richard. *Opportunities for Improving Governance and Service Delivery: A report and Recommendations Regarding the State Bar of California's Boards, Commissions, Committees, and Councils*. September 13, 2018. <http://board.calbar.ca.gov/Agenda.aspx?id=14901&tid=0&show=100019508&s=true#10027325>

BOARD COMPOSITION AND APPOINTING AUTHORITY

The composition of the Board should reflect its purpose and functions. Its purpose is to ensure that the paraprofessional program improves access to legal services while maintaining public protection. The fulfillment of that purpose is achieved through licensing, regulation, and discipline of licensees.

As reflected in Attachment A, both California's professional licensing boards and other jurisdictions' paraprofessional licensing boards include a balance of licensed professionals and public members, with Department of Consumer Affairs (DCA) boards having more public members than their paraprofessional counterparts. I recommend that the Board conform to the standards of California licensing boards in this regard. Following the model for California licensing boards, the Board composition should ensure that expertise is available that informs its work, by including members who represent the consumers that paraprofessionals will serve, as well as those who can inform the specific topics of licensing, regulation, and discipline. A balance of attorneys, licensed paraprofessionals, legal educators, and public members is recommended.

The Governor and Legislature are vested with authority to appoint members to boards that fall under the jurisdiction of the DCA, as well as some members of the State Bar Board of Trustees. The Supreme Court is vested with appointing authority for the attorney members of the State Bar Board of Trustees. The appointing authority structure for the paraprofessional Board should mirror that of the State Bar Board of Trustees.

The combined recommendations regarding Board size, composition, and appointing authority are thus as follows:

- 3 paraprofessionals appointed by the Supreme Court
 - 2 paraprofessionals appointed by the Legislature
 - 2 attorneys appointed by the Supreme Court
 - 4 public members appointed by the Governor
 - 2 public members appointed by the Legislature
- *Board to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.

BOARD TERM LIMITS

Terms should be established that allow members enough time to learn the work of the Board and carry out its work effectively. A lack of term limits may result in a Board that stagnates, which prevents new perspectives from being introduced. Staggered terms allow for continuity by providing overlap among members. Following the model of California's professional licensing boards, which provide for longer terms than the paraprofessional licensing boards in other states, Board members should be appointed to 4-year staggered terms.

BOARD STRUCTURE: COMMITTEES

The Board's structure should reflect its oversight functions. Committees might be established with oversight authority for Licensing, Regulation, and Discipline. Under this approach, each committee would make recommendations to the full Board regarding issues that fall within their respective areas of purview. Where appropriate, membership on these committees should rotate on a regular basis. This recommended committee structure mirrors that of the State Bar Board of Trustees.

REPORTING AUTHORITY

As a Board under the authority of the State Bar, decisions of the Board would be subject to authorization of the State Bar Board of Trustees. The Board of Trustees may determine that it is appropriate to delegate final decision-making authority to the Board with regard to certain topics (e.g., educational and training requirements, licensee discipline, etc.). However, it is likely that requests for changes to Rules of Professional Conduct or requests for statutory changes would require approval by the Board of Trustees.

Paraprofessional Licensing Boards

	License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
Arizona	Legal Paraprofessional (LP)	Board of Nonlawyer Legal Service Providers	11 members appointed by Chief Justice <ul style="list-style-type: none"> • 2 Certified Legal Document Preparers • 2 Legal Paraprofessionals • 1 Judge or Court Commissioner • 1 Clerk of the Superior Court • 1 Attorney • 2 Public Members • 2 Additional Members 	3 years
Utah	Licensed Paralegal Practitioner (LPP)	Board of Bar Commissioners	13-15 Members <ul style="list-style-type: none"> • 11 Elected Lawyers • 2 Nonlawyers appointed by Supreme Court 	3 years
Washington	Limited License Legal Technician (LLLT)	Limited License Legal Technician Board	15 voting members appointed by Supreme Court <ul style="list-style-type: none"> • ≥ 11 Lawyers, LLLTs, or Limited Practice Officers (LPO) <ul style="list-style-type: none"> ○ ≥ 9 Active Lawyers or LLLTs ○ ≤ 2 LPO, Judicial, or Emeritus Pro Bono Lawyers • 4 Nonlawyers 1 Ex Officio Nonvoting Representative of State Board of Community and Technical Colleges	3 years

California Licensing Boards

License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
Attorney	State Bar Board of Trustees	13 Members <ul style="list-style-type: none"> • 5 Attorneys appointed by Supreme Court • 2 Attorneys appointed by Legislature • 4 Public Members appointed by Governor • 2 Public Members appointed by Legislature 	4 years
Physician	Medical Board of California	15 members <ul style="list-style-type: none"> • 8 Physicians appointed by Governor • 5 Public Members appointed by Governor • 2 Public Members appointed by Legislature 	4 years

License	Regulatory Board	Board Size, Composition, and Appointing Authority	Term
Architect	Architects Board of California	10 members <ul style="list-style-type: none"> • 5 Architects appointed by Governor • 3 Public Members appointed by Governor • 2 Public Members appointed by Legislature 	4 years
Dentist (DDS) Certifications: <ul style="list-style-type: none"> • Dental Assistant • Dental Assistant in Extended Functions 	Dental Board of California	15 members <ul style="list-style-type: none"> • 8 Dentists appointed by Governor • 1 Dental Hygienist appointed by Governor • 1 Dental Assistant appointed by Governor • 3 Public Members appointed by Governor • 2 Public Members appointed by Legislature 	4 years
Registered Nurse Certifications: <ul style="list-style-type: none"> • Nurse Anesthetist • Nurse Midwife • Nurse Practitioner • Psychiatric/Mental Health Nurse • Public Health Nurse 	Board of Registered Nursing	9 members <ul style="list-style-type: none"> • 5 Registered Nurses appointed by Governor <ul style="list-style-type: none"> ○ 2 Engaged in Direct Patient Care ○ 1 Advanced Practice ○ 1 Educator or Administrator in nurse training program ○ 1 Administrator of a Nursing Service • 2 Public Members appointed by Governor • 2 Public Members appointed by Legislature 	4 years