



# The State Bar of California

## CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

---

Date: June 25, 2021

To: California Paraprofessional Program Working Group

From: Linda Katz, Principal Program Analyst

Subject: Paraprofessional Program Governance Structure and Functions

---

### 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 provides recommendations detailing a proposed governance structure and functions for the CPPWG's consideration.

### BACKGROUND

At its December 17, 2020, meeting the CPPWG considered staff recommendations regarding the composition and structure of the paraprofessional regulatory board. The December 17 memo is provided as Attachment 1. During that meeting, the Working Group provided feedback regarding the size, composition, and appointing authority of the governing board. This memo provides revised recommendations incorporating feedback received from the CPPWG, State Bar leadership, and the Supreme Court.

### DISCUSSION

The CPPWG report to the Board of Trustees will include recommendations regarding the name of the paraprofessional oversight body, and its composition and scope of authority. This memo provides recommendations in all of these areas.

### Licensing Board Name

Staff consulted with State Bar leadership regarding the name of the paraprofessional oversight body and, based on feedback received, recommends the name [Paraprofessional]<sup>1</sup> Licensing and Oversight Committee (PLOC). The recommendation to title the oversight body a committee versus a board stems from the fact that the State Bar itself is governed by a board, the Board of Trustees; all subentities that report to or are governed by the Board are titled committees or commissions.

### Composition and Appointing Authority

Recommendations included in the December 17 staff memo were informed by the following sources of information:

- 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*;<sup>2</sup>
- A review of the size and composition of paraprofessional licensing boards in other states; and
- A review of the size and composition of licensing boards for nonlegal professions in California.

Table 1 provides the recommendations for the size, composition, and appointing authority for the PLOC included in the December 17 memo, alongside revised recommendations based on feedback provided by the CPPWG at its December 2020 meeting.

Table 1. Composition and Appointing Authority

December 17, 2020 Recommendation		Revised Recommendation	
Member Type	Appointing Authority	Member Type	Appointing Authority
3 Paraprofessionals	Supreme Court	Judge	Supreme Court
2 Paraprofessionals	Legislature	Attorney	Board of Trustees
2 Attorneys	Supreme Court	Paraprofessional <sup>3</sup>	Board of Trustees
4 Public (non-licensee)	Governor	Public (non-licensee)	Governor
2 Public (non-licensee)	Legislature	Public (non-licensee)	State Assembly
*Committee to include one representative of an educational institution that provides training for paraprofessionals; this member may be a paraprofessional, attorney, or public member.		Public (non-licensee)	State Senate
		Paraprofessional Educator	California Board of Community Colleges or California Law School with Paraprofessional Program

<sup>1</sup> Name will reflect the license name that is selected.

<sup>2</sup> 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>

<sup>3</sup> When available.

As shown in table 1, the recommended size of the PLOC has been reduced from 13 to 7 members, reflecting the CPPWG's recommendation of a reduction; this size also conforms to the policy adopted by the Board of Trustees at its September 13, 2018 meeting. The CPPWG also suggested that the committee include a judge, and that attorney and paraprofessional members be appointed by the Board of Trustees.

### Governance Functions and Authority

Authority for oversight of the paraprofessional program will ultimately rest with the Supreme Court, which has the authority to license individuals to practice law. As with the licensure of attorneys, the Supreme Court delegates the responsibility for licensing, regulation, and discipline to the State Bar, and limits its direct involvement to matters requiring adjudication by the Supreme Court. Functional oversight will be provided by the Paraprofessional Licensing and Oversight Committee, the Board of Trustees, and the Legislature. Recommendations for the authority for each specific function were informed by a review of State Bar operations, including existing attorney Admissions and Attorney Regulation functions and relevant decision-making authority, as well as by paraprofessional disciplinary recommendations previously adopted by the CPPWG. In addition, staff consulted State Bar leadership and Supreme Court staff in developing the recommendations provided in table 2.

Table 2. Governance Functions

POLICY	Committee	Board of Trustees	Supreme Court	Legislature
Keep abreast of national and international developments in paraprofessional licensing	Implement	Receive updates	—	—
Program evaluation metrics and assessment	Approve	Receive updates	—	—
Consumer and prospective licensee outreach and education	Implement	Receive updates	—	—
LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
<b>Eligibility</b>				
Appeals of staff denial of eligibility	Approve	—	Discretionary Review	—
<b>Education</b>				
Establish educational requirements	Recommend	Recommend	Approve	Provide input
Approve learning objectives	Approve		—	—
<b>Experiential Training</b>				
Establish experiential requirements	Recommend	Recommend	Approve	Provide input
Establish attorney supervision requirements	Approve		Approve	Provide input
Establish incentives for attorney supervision	Recommend	Approve	—	—
<b>Waivers</b>				
Appeal of staff denial of waiver of educational or experiential hours	Approve	—	—	—
<b>Moral Character</b>				
Reviews & Informal Conferences	Approve	—	—	—
Review appeal of staff decision	Approve	—	Discretionary Review	
Set Fees	Recommend	Approve	—	—

# Paraprofessional Program Governance Structure and Functions

June 25, 2021

Page 4

LICENSURE	Committee	Board of Trustees	Supreme Court	Legislature
<b>Exam Development</b>				
Develop questions	Approve	—	—	—
Review of questions	Approve	—	—	—
Evaluate grading	Approve	—	—	—
Sampling plan	Approve	—	—	—
Challenges to exam questions	Approve	—	Discretionary Review	—
Set exam fee	Recommend	Approve	—	—
<b>Testing Accommodations</b>				
Policy development	Approve	—	—	—
Review petitions	Approve	—	—	—
Review appeals	Approve	—	Discretionary Review	—
<b>Eligibility &amp; Enforcement of Exam Rules</b>				
Policy development	Approve	—	—	—
Enforcement	Approve	—	—	—
Appeals	Approve	—	Discretionary Review	—
<b>Exam Analysis &amp; Review</b>				
Design standard setting study	Recommend	Approve	—	—
Design content validation study	Recommend	Approve	—	—
Design job analysis	Recommend	Approve	—	—
<b>Paraprofessional Educational Institutions</b>				
Certification	Approve		—	—
REGULATION	Committee	Board of Trustees	Supreme Court	Legislature
<b>MCLE</b>				
MCLE Provider certification criteria	Approve	—	—	—
MCLE Requirements	Approve	—	Final Decision	Provide Input
<b>Financial Responsibility</b>				
Establish requirements	Approve	—	Final Decision	Provide Input
<b>Rules of Professional Conduct</b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules<sup>4</sup></b>				
Establish and modify	Recommend	Approve	Final Decision	—
<b>State Bar Rules of Procedure</b>				
Establish and modify	Recommend	Approve	—	—
<b>California Rules of Court</b>				
Establish and modify	Recommend	Recommend	Final Decision	—
<b>Statutes (State Bar Act, other statutes)</b>				
Establish and modify	Recommend	Recommend	Provide input	Final Decision

<sup>4</sup> Some State Bar Rules are statutorily subject to approval by the Supreme Court (e.g., Minimum Standards for Lawyer Referral Services).

DISCIPLINE	Committee	Board of Trustees	Supreme Court	Legislature
Compensation for hearing officers	Approve			
Hearing panel selection	Recommend	Approve	—	—
Settlement	Approve	—	—	—
License Suspension/Revocation	Recommend	—	Final Decision	—
Other Discipline	Approve	—	—	—

## PROPOSED RESOLUTIONS

RESOLVED, that the California Paraprofessional Program Working Group recommends that the program's Licensing and Oversight Committee reflect the following composition and appointing authority:

Member Type	Appointing Authority
Judge	Supreme Court
Attorney	Board of Trustees
Paraprofessional <sup>5</sup>	Board of Trustees
Public (non-licensee)	Governor
Public (non-licensee)	State Assembly
Public (non-licensee)	State Senate
Paraprofessional Educator	California Board of Community Colleges or California Law School with Paraprofessional Program

RESOLVED, that the California Paraprofessional Program Working Group recommends that the governance functions for the paraprofessional program reflect the authority provided in table 2 of this memo.

---

<sup>5</sup> When available.



# 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*.<sup>1</sup> 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.

---

<sup>1</sup> 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
<b>Arizona</b>	Legal Paraprofessional (LP)	Board of Nonlawyer Legal Service Providers	11 members appointed by Chief Justice <ul style="list-style-type: none"> <li>• 2 Certified Legal Document Preparers</li> <li>• 2 Legal Paraprofessionals</li> <li>• 1 Judge or Court Commissioner</li> <li>• 1 Clerk of the Superior Court</li> <li>• 1 Attorney</li> <li>• 2 Public Members</li> <li>• 2 Additional Members</li> </ul>	3 years
<b>Utah</b>	Licensed Paralegal Practitioner (LPP)	Board of Bar Commissioners	13-15 Members <ul style="list-style-type: none"> <li>• 11 Elected Lawyers</li> <li>• 2 Nonlawyers appointed by Supreme Court</li> </ul>	3 years
<b>Washington</b>	Limited License Legal Technician (LLLT)	Limited License Legal Technician Board	15 voting members appointed by Supreme Court <ul style="list-style-type: none"> <li>• ≥ 11 Lawyers, LLLTs, or Limited Practice Officers (LPO) <ul style="list-style-type: none"> <li>○ ≥ 9 Active Lawyers or LLLTs</li> <li>○ ≤ 2 LPO, Judicial, or Emeritus Pro Bono Lawyers</li> </ul> </li> <li>• 4 Nonlawyers</li> </ul> 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
<b>Attorney</b>	State Bar Board of Trustees	13 Members <ul style="list-style-type: none"> <li>• 5 Attorneys appointed by Supreme Court</li> <li>• 2 Attorneys appointed by Legislature</li> <li>• 4 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years
<b>Physician</b>	Medical Board of California	15 members <ul style="list-style-type: none"> <li>• 8 Physicians appointed by Governor</li> <li>• 5 Public Members appointed by Governor</li> <li>• 2 Public Members appointed by Legislature</li> </ul>	4 years

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