



The State Bar of California

CALIFORNIA PARAPROFESSIONAL PROGRAM WORKING GROUP

Date: August 31, 2021

To: California Paraprofessional Program Working Group

From: Sharon Bashan, Julianne Fellmeth, Amos Hartston, Kim Kirchmeyer, Fariba Soroosh, and Ira Spiro

Subject: Regulation and Discipline Subcommittees Recommendations Regarding Statutory Changes and Increased Law Enforcement Resources to Address the Unauthorized Practice of Law

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](#). 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, recommendations regarding changes to statutes and increased resources to support the identification, investigation, and prosecution of the unauthorized practice of law.

BACKGROUND

The CPPWG charter, adopted by the Board of Trustees at its March 12, 2020, meeting, directs the Working Group to consider and propose any requisite changes to the rules and statutes governing the unauthorized practice of law (UPL). The CPPWG identified the need to recommend enhanced enforcement for violations of statutes governing UPL, to counteract the potential risk of increased UPL that may arise from implementation of the paraprofessional program.

DISCUSSION

An increase in the unauthorized practice of law has been identified as one of the potential risks of the creation of a new paraprofessional program. Nonlicensed individuals may hold themselves out as licensed under the new program, creating a new method to defraud the public. Law enforcement, State Bar staff, legal services, and other consumer advocates raised concerns, particularly in light of the currently underfunded system to address the unauthorized practice of law.

At its December 17, 2020, meeting, Mr. Zachariah DeMeola from the University of Denver's Institute for the Advancement of the American Legal System led the CPPWG in exercises intended to identify the goals and potential risks of the paraprofessional program, and how to measure whether the program meets those goals and protects against risks. Among the potential risks identified by the Working Group was that consumers would receive unregulated services. At subsequent, independent, meetings of their subcommittees, both the Regulation and Discipline Subcommittees heard public comments and presentations about the potential risk that licensing paraprofessionals might lead to consumer confusion, providing unscrupulous people the opportunity to prey upon vulnerable communities by engaging in UPL by holding themselves out as paraprofessionals.

At its December 7, 2020, meeting, the Discipline Subcommittee was joined by Ms. Ryann Jorban of the Los Angeles District Attorney's Notario Fraud Unit, Steve Moawad of the State Bar Office of Chief Trial Counsel (OCTC), and Gus Hernandez, supervisor of the OCTC Nonattorney UPL team. Mr. Hernandez described the limited tools and remedies available to OCTC regarding the investigation and prosecution of UPL cases, and the relationship between OCTC and law enforcement in these matters. He explained that OCTC sends violators cease and desist letters and, if they continue to practice in violation of the law, can petition the court to assume jurisdiction over the illegal practice. When a petition is granted, OCTC seizes the files and bank accounts of the practice, and contacts clients to return their files and any funds that have been seized. OCTC does not have jurisdiction to criminally prosecute violators of UPL statutes, but it refers cases to prosecutors, and provides information to assist in their investigations.

Ms. Jorban expressed concern that, if a new group of practitioners is licensed to practice law, it might be more difficult to control those who commit fraud. She stated that it would be important to ensure proper protections are in place prior to the implementation of this program. Ms. Jorban identified the following limitations on the ability to prosecute UPL:

- District Attorneys' offices do not have enough resources to prosecute all cases;
- The State Bar has no jurisdiction to prosecute cases, and is unable to assist victims; and
- In most cases, UPL can only be prosecuted as a misdemeanor.¹

¹ See [Business and Professions Code § 6126](#).

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With regard to the limitation of prosecution of UPL cases as misdemeanors, Ms. Jorban explained that misdemeanor convictions do not serve as sufficient deterrent. In her experience, violators who are convicted of misdemeanors continue to violate UPL statutes, often by reopening their illegal firm under a different name.

At a joint meeting of the Regulation and Discipline Subcommittees on May 5, 2021, convened to further investigate this issue, Ms. Jorban, Mr. Moawad, and Mr. Hernandez further discussed challenges faced by prosecutors in enforcing UPL within current statutory and resource limitations. At an August 12 joint meeting, the subcommittees considered those recommendations and adopted the following resolutions for consideration by the CPPWG at its August 31, 2021, meeting:

RESOLVED, that the California Paraprofessional Program Working Group has heard that increases in the unauthorized practice of law and fraud by non-licensees is one of the potential risks of the creation of a new paraprofessional program.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that additional laws, enforcement, and resources addressing the unauthorized practice of law and fraud by non-licensees be considered as an essential part of a proposed paraprofessional program in light of the goal to protect the public in connection with the Working Group's recommendations.

FURTHER RESOLVED, that the California Paraprofessional Program Working Group's investigation has identified that the existing framework for the investigation and prosecution of the unauthorized practice of law suffers from a pervasive lack of resources, with respect to both District Attorney's Offices, which are the primary enforcers, as well as the State Bar Office of Chief Trial Counsel. New laws and increased resources are needed, potentially including:

- Changes to statutes and available remedies, including harsher criminal penalties and specifically including making felonies available even without priors;
- Additional funding and resources for law enforcement to investigate and prosecute UPL and fraud by non-licensees;
- Additional statutory changes, funding, and resources for the State Bar's Office of Chief Trial Counsel to investigate and address UPL and fraud by non-licensees, including potentially providing or coordinating legal services for victims, and allowing for citation and fines for UPL;
- Additional funding for legal services programs that provide legal services for victims;
- Creation of a victim fund for UPL victims;
- Extension of the statute of limitations; and
- Creation of record keeping requirements for Paraprofessionals.

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FURTHER RESOLVED, that the California Paraprofessional Program Working Group recommends that sufficient resources be devoted by the State Bar to consumer education to ensure that the public is aware of the scope of the paraprofessional license, as well as how to identify whether a service provider is appropriately licensed.

At and subsequent to the August 12 meeting, State Bar staff indicated that without specific direction from the Working Group, specific proposed statutory changes and increased resources addressing UPL would not be included in the initial Working Group proposals and would need to await further action and direction from the Board of Trustees at a later time. Mr. Hartston proposed the following additional resolution for consideration by the CPPWG:

RESOLVED, that the California Paraprofessional Program Working Group recommends that State Bar staff be directed to propose appropriate changes in law and additional resources for law enforcement related to the Unauthorized Practice of Law to be included in the proposed statutory amendments section of the Working Group's report presented to the Board of Trustees, and in connection with the State Bar proposing legislation necessary and important in the initial implementation of the Paraprofessional program.