



The State Bar *of California*

DATE: March 4, 2022

TO: Members, California Paraprofessional Program Working Group

FROM: Leah Wilson, Executive Director
Linda Katz, Principal Program Analyst, Mission Advancement & Accountability Division

SUBJECT: Public Comment Period Conclusion and Recommended Next Steps

EXECUTIVE SUMMARY

The recommendations of the California Paraprofessional Program Working Group (CPPWG) were issued for public comment on September 24, 2021; the comment period closed on January 12, 2022.

Over 2,000 comments were received from 1,279 individual commenters.

The CPPWG was originally tasked with completing its work of developing recommendations for the creation of a paraprofessional licensure/certification program effective July 31, 2021. That timeline was extended to September 30, 2021, by the Board of Trustees. The CPPWG submitted its recommendations to the Board for consideration at that body's September 2021 meeting. Based on the overall project timeline in place at that time, the public comment period was to close in 60 days, such that any revisions to the recommendations stemming from the analysis of public comment could be submitted to the Board in January 2022. In directing a 110-day public comment period for the CPPWG's recommendations the State Bar Board of Trustees effectively extended this timeline without specifying a new term date. The Board year concludes with the September 2022 meeting; this is the latest date by which a final report of the CPPWG, reflecting any revisions to its September 23, 2021, recommendations, can be submitted.

In light of the number of comments received, the need to both appropriately consider those comments and produce a final report in the relatively near term, and the tremendous amount of time that CPPWG members, invited guests, presenters, and process observers/participants have spent vetting the myriad issues involved in the development of recommendations issued for public comment, staff has developed a proposed approach to the comment review and deliberation process. Staff specifically recommends that the working group vote on certain

proposed modifications at the March 4 working group meeting and address the remaining comments as described in the body of this memorandum.

BACKGROUND

The Board voted to form the CPPWG on March 10, 2020. The CPPWG's first meeting was held on April 21, 2020. The working group met as a full body 20 times, and held 17 separate subcommittee meetings between April 21, 2020, and September 10, 2021, reflecting over 270 hours of meeting time.

The CPPWG presented its recommendations to the Board of Trustees on September 23, 2021. The Board was asked to extend the staff recommended 60-day public comment period to 110 days; it did so. Over 2,000 comments were received from 1,279 individual commenters during the comment period. The comments ranged from categorical disagreement with the very idea of a licensed paraprofessional to wholehearted endorsement, with every point along the continuum represented.

Staff has done a significant amount of work to categorize and code the comments to facilitate meaningful review. The result of that effort can be accessed [here](#).

The CPPWG is now tasked with deciding which of its recommendations, if any, to modify in response to public comment received.

DISCUSSION

After careful consideration of the comments received, and in an effort to advance this process in a manner that is respectful of the time and effort of both CPPWG members and those that submitted public comment, staff recommends that the CPPWG take the following action at the March 4 meeting:

1. Vote to modify the following recommendations:
 - a. **Rule 5.4:** eliminate the ability of lawyers and paraprofessionals to co-own law firms. This aspect of the CPPWG's recommendations drew the most public comment and stated concern. Staff believes that the issue of nonattorney ownership is not foundational to the launch of a licensed paraprofessional program in California and can best be left for consideration by other State Bar working groups or task forces.
 - b. **Rule 1.5.1:** eliminate the ability of lawyers and paraprofessionals to share fees. Similar to the explanation regarding the recommendation to modify rule 5.4 above, staff does not believe that fee sharing between attorneys and paraprofessionals is foundational to the launch of a paraprofessional program and that rule 1.5.1 should be modified to eliminate this provision accordingly.
 - c. **In-court representation:** modify to reflect responsive representation only and apply to all practice areas. Many comments were submitted expressing concern

about the role of paraprofessionals in court. While staff respects the views of the judges on the CPPWG who provided compelling arguments in favor of in-court representation, staff also believes that the confusion created by the practice area specific approach to this question adopted by the CPPWG will create a confusing regulatory landscape. As such, staff recommends that something short of full in-court representation be allowed, and that this approach be consistently applied across all practice areas.

- d. **Fee caps:** modify to indicate that fee caps should be established wherever feasible. While there is considerable debate regarding the practicality of establishing fee caps as well as the fairness of imposing such caps when they do not exist for attorneys, there is a consensus around the fact that paraprofessionals' services should be at a lower cost than those of attorneys and should be affordable to middle class Californians. It is clear that the lack of fee caps creates a significant philosophical hurdle for those who are not convinced that, absent such caps, market forces will necessarily result in paraprofessional rates lower than those for attorneys. Staff therefore recommends that the CPPWG modify its position regarding fee caps. However, as will be discussed at the March 4 meeting, staff does not believe that there is sufficient time for the CPPWG to develop an affirmative fee cap proposal or schedule. Instead, policy parameters for future work in this area should be developed by the CPPWG.
- 2. Vote to exclude recommendations from consideration related to:
 - a. New practice areas: insufficient time to vet
 - b. Justice gap and whether or not it exists: outside of scope/CPPWG charge
 - c. Need for/validity of a licensed paraprofessional: outside of scope/CPPWG charge
 - 3. Vote to organize remaining comments as follows:
 - a. New information or argument not considered previously
 - b. No new information or argument

At the March 4 meeting, the CPPWG will discuss possible approaches to accomplishing this proposed categorization of remaining comments.

- 4. Vote to prioritize review of comments presenting new information or argument
 - a. Review of these comments by full CPPWG.

Staff believes that, at this juncture, it would be preferable for the full CPPWG, rather than individual subcommittees, to consider the remaining comments. This is based on both scheduling logistics and the fact that it will be easier to vote to amend any recommendations if the full group has considered the relevant comments and issues.