

BCE responses to sunset questions from the Legislature

1. **Staff Recommendation:** *The BCE should explain to the Committees its current fiscal situation and projected budget reserves beyond FY 2014/15. Will the BCE need to consider a fee increase? In addition, the BCE should explain the purpose of the loan from the BAR in FY 2014 and how the BCE is paying it back.*

The Board of Chiropractic (BCE) budget in the near term is stable. The projected fund balance for fiscal year 2017/18 is \$629,000 or 1.7 months in reserve. However, the DCA Budget Office calculates the fund balance based on an assumption that the BCE will expend the entire allotted budget. This assumption is inaccurate because historically the BCE does not expend its entire annual budget resources but reverts unencumbered revenue back to the fund.

The long term outlook of the budget is structurally unbalanced. Revenue is not keeping pace with expenditures. The BCE anticipates the need for a fee increase. **Also, the fund has been depleted faster than in years past due to an annual loan repayment of \$250,000 to the Bureau of Automotive Repair (BAR).**

February 2017, the EO has met with the DCA Budget Office to discuss a short-term plan to monitor the budget and long-term strategy to institute a fee increase. These are on-going conversations for the EO and he will keep the BCE informed of any changes. The BCE was informed at the February 16, 2017 meeting about the need for a fee increase and the ongoing meetings with the Budget Office.

The inconsistency in budget revenues in fiscal year 2014/15 was due to receipt of a \$2.698 million dollar loan to satisfy a multi-million dollar judgement resulting from a lawsuit filed by a former employee more than a decade prior. Additionally, in fiscal year 2016/17, the BCE's portion of the state-wide administrative pro rata has increased.

As of the beginning of fiscal year 2017/18, the BCE has repaid \$1.5 million dollars of the \$2.698 million dollar loan. Pursuant to the MOU with BAR, the BCE will pay at least \$250,000 each fiscal year. However, there is no set schedule for repayment at this time. **The MOU with BAR was written to provide the BCE flexibility in repayment. Furthermore, the BCE has committed to at least a \$250k payment each fiscal year as long as its fund balance reserve remains sufficient to make repayments.**

2. Staff Recommendation: *The Board should explain to the Committees how it established its internal processing timeframes back in 2011 and if it is considering revising its internal performance expectations for application processing in the future.*

BCE licensing staff has remained consistent since the 2011 sunset review. The BCE determined its internal processing time by completing desk audits of licensing staff.

The BCE initial licensing process time averages about 3.5 months. There are times when the process takes place much faster due to submission of a completed application and an applicant quickly taking and passing the jurisprudence exam. In these best cases, a license can be issued in 30 days.

However, in many more cases, applicants submit incomplete applications and take their time to provide the required documentation for submission of the application.

The BCE has a two part licensing process:

- 1) The first step requires the applicant to submit the application for licensure with a \$100 application processing fee and submit proof of Livescan or fingerprint cards and requires numerous verification documents for proof of education/training, passage of the national examination, and legal documents if convictions and/or disciplinary actions have been reported. The BCE requires these various documents in order to determine the individual's fitness for licensure. Some of these documents must be received directly from the issuing entity which may cause delays in the licensure process. Once the application is deemed complete, they are eligible to sit for the California jurisprudence examination. An applicant has one-year from the date the application is received by the BCE to qualify to sit for the California jurisprudence examination before their application is abandoned.
- 2) The second step takes place following the approval to sit for the California jurisprudence examination. An approval letter is sent to the applicant advising that they have one-year from the date of the approval letter to obtain their license. During this timeframe, an applicant must take and pass the California jurisprudence examination and submit their pass letter along with a \$100 license fee to the BCE. Examinations are offered throughout the state on weekdays. There are no barriers to gain access to the examination. If these requirements are not met within one year, the application is deemed abandoned. Therefore, an applicant has up to two years to complete all requirements for licensure.

Processing timeframes can be lengthy due to the manner in which applicants are qualified for licensure rather than actual backlogs in workload. The only way that our timeframes may be shortened is by changing the manner in which applicants qualify for licensure (i.e. requiring passage of the California jurisprudence examination prior to submitting an application for licensure. Applicants have two years following approval to take the jurisprudence exam.

Although there are no backlogs in processing license applications, the BCE will conduct a review of the licensing process to determine if changes are necessary.

Once the review is complete, a modification to internal performance expectations of the licensing program can be considered.

- 3. Staff Recommendation: *The BCE should advise the Committees on whether or not it thinks the use of the NPDB would be beneficial for the BCE and if it could increase the protection of the public. If the cost of continuous query services is too high, the BCE may consider conducting periodic checks of sets of licensees or charging the \$2 at the time of initial license and renewal. The BCE may confer with other boards to gain insight about how other regulatory entities utilize the NPDB.***

The National Practitioner Data Bank is a comprehensive repository of information on various topics such as medical malpractice payments and certain adverse actions related to health care practitioners, entities, providers, and suppliers. Although the current information collected by the BCE to make licensing decisions is sufficient, the NPDB collects data that the BCE may not have access to through other resources.

Prior to the hearing, the BCE has researched both the NPDB and DCA programs that currently or have tried to implement a process to utilize the data bank. Following discussions, the BCE decided that it is feasible to include a NPDB query into its licensing process. Utilizing the data bank to query names of new applicants for licensure in California, out-of-state applicants for licensure in California, and applicants who request a reciprocal license in California would not only provide for a more complete review but it would increase consumer protection. Limiting queries to this smaller group of applicants would ensure that the BCE protects consumers and allow the BCE to continue its licensing functions without a large increase in expenditures.

Finally, the NPDB will be a topic of discussion at the BCE's May board meeting.

4. **Staff Recommendation:** *Although there has been improvement, the BCE should advise the Committees on its continued efforts to decrease the timeframes. In addition, the BCE should advise the Committees on why it continues to see such high number of complaints against DCs.*

The BCE is subject to Department of Consumer Affairs (DCA) department-wide performance measures. These performance measures are the targets the staff uses internally to measure performance regarding enforcement functions.

PM 4 (Formal Discipline) is the average number of days to complete the entire enforcement process for cases resulting in formal discipline. This includes intake, investigation by BCE analysts and DOI, and prosecution by the AG. The DCA sets the performance target for PM 4 at 540 days (18 months). Since 2013, the average number of days for the BCE to complete formal discipline is 1292. **However, this number is not indicative of the actual amount of time it takes the BCE to complete its portion of an enforcement case.** The aggregate data point for formal discipline is misleading because it fails to distinguish between how long a case is at the BCE before it is sent to the AG and how long the AG's office takes to complete a case.

Currently the BCE has 8 pending enforcement cases that have aged over two years. Each of these is a long-term case that is either awaiting a criminal trial or has been moved to the State Attorney General's Office and is awaiting a hearing with the Office of Administrative Hearings (OAH). The BCE has done all it can in regard to processing and investigating these cases. Although the BCE no longer has direct control over the handling of the cases at this stage, staff continues to closely monitor their progress and make every effort to move them forward as quickly as possible.

The number of complaints received has been consistent over the last ten years averaging about 500 each year. Throughout this period of time, the BCE's enforcement program has not undergone any major changes. The recent rise in complaints is not an outlier and does not indicate the BCE is experiencing an increase in enforcement activity.

- 5. Staff Recommendation: *The BCE should discuss the barriers it faces in meeting its CE audit targets. Further, the BCE should discuss potential reasons for the high rates of noncompliance and discuss potential solutions, such as completing more audits or increasing fines for noncompliance.***

In order to ensure licensee compliance with the annual license renewal requirement to complete 24 hours of continuing education, staff audits CE documentation provided by licensees. This audit consists of staff randomly selecting individuals who have submitted a license renewal form and sending them a compliance letter requesting that they submit copies of CE certificates of completion. After review, if a licensee is found to be in violation (i.e. not completing the required CE), their file is forwarded to the enforcement unit for further action. A warning letter or citation is then issued based on the severity and past history of the licensee.

During the previous sunset review in 2011, the BCE conducted an analysis of its CE audit program and determined that from 2008 to 2011, the BCE was completing between 900 and 1000 audits a year. Unfortunately, due to staffing changes and competing priorities, the number of audits conducted has dropped.

The BCE will discuss the barriers to conducting more audits with the Licensing/CE Committee members to develop a plan to meet the goals previously set and set stricter penalties for non-compliance. In the meantime, the BCE can utilize the BCE's newsletter, website, and social media to share its intent of enforcing CE requirements more vigorously.

- 6. Staff Recommendation: *The BCE should update the Committees about its future technology plans including information provided to the BCE by the DCA and any anticipated costs of a new system. In addition, the BCE should explain to the Committees any enforcement or licensing related problems as a result of its current outdated IT system. The BCE should update the Committees on the total amount they anticipate spending on the BreEZe system, which they will not be utilizing. The BCE should update the Committees on where it is in the sequence mentioned above to secure a new IT system.***

As of March 2017, the BCE has continued working with Office of Information Services (OIS) to find a solution to satisfy the BCE's IT needs. The BCE has completed its first step to initiate the process of establishing a new IT system, which would require the BCE to map out its business processes and determine what the requirements of an IT system must be in order to meet the BCE's needs. The BCE anticipates commencing the five part process in Q4 2017. The steps include a business justification, cost benefit analysis, alternatives analysis, and fiscal analysis.

In February of 2017, the executive officer met with the DCA Budget Office to discuss the budget. At this meeting, the EO was provided with the most updated budget figures. Through FY 2015/16, the BCE has spent approximately \$275,076 on the BreEZe system without being included in the first two releases and without the current ability to utilize the system. For FY 2016/2017, the BCE has projected BreEZe costs of \$130,308. Projected cost for FY 2017/18 is \$112,000 and projected cost for \$FY 2018/19 is \$100,000. The BCE is working under the assumption that it will eventually be able to utilize the BreEZe system. Therefore, the BCE is unable to provide a total anticipated cost to procure and utilize the system. If those figures become available, the BCE can report back to the Committees.

Currently, the BCE is not experiencing any backlog in processing licensing or enforcement related material. Due to experienced and dedicated staff, this is possible. However, the inefficiencies created by not being able to accept online payment for licensing related functions like renewals continues to burden staff with excessive paper processing. Staff must cashier and process initial license applications and renewal applications manually because the BCE is beholden to an antiquated IT system. The efficiencies gained by upgrading to a new IT system will increase efficiency and consumer protection.

- 7. Staff Recommendation: *The BCE should explain to the Committees why it believes the passage rate for the CLEE is low and what concerns the BCE has about the CLEE. What role, if any, is there for the BCE to help ensure individuals seeking licensure are sufficiently knowledgeable in California's laws and the ethics to ensure consumer safety? The BCE should provide the Committees with updated information about the OA and its results.***

The average pass rate for 1st time candidates for FISCAL YEAR 07/08 through fiscal year 2010/11 was noted to be 63.5%. For fiscal year 2012/13 through fiscal year 2015/16, the average pass rate increased to 68.8%. According to the DCA Office of Professional Examination Services (OPES), both average pass rates are comparable to pass rates for law and ethics examinations for other health care professions.

For candidates preparing to take the jurisprudence exam the BCE website provides links to the specific areas of California law tested on the examination. The BCE website also provides a link to the Candidate Handbook for the jurisprudence exam.

In addition to these candidate communications, the BCE works closely with OPES to update the jurisprudence exam on a continuous basis. Beginning January 2017, the BCE shifted its computer based exam administration from its previous vendor to DCA's computerized test administration vendor, PSI. Candidates are now able to schedule their examination on-line and take the jurisprudence exam at any of PSI's test administration sites throughout California and the U.S.

At this time the BCE is also working with OPES on a new occupational analysis. The occupational analysis is scheduled to be completed Summer 2017. Following the completion of the occupational analysis, the content of the jurisprudence exam will be updated in keeping with California Business & Professions Code, section 139 requirements.

- 8. Staff Recommendation: *The BCE should advise the Committees on whether it has considered the use of social media to increase its survey response rate. If not, the BCE should discuss whether social media can be used for this purpose or what other methods it can use to enhance consumer outreach.***

Currently, the BCE utilizes a consumer satisfaction survey sent to complainants upon closure of a complaint. The notification letters sent out to complainants include a link to an online survey conducted by the Department of Consumer Affairs and a pre-paid postcard version of the same survey.

Annually, the BCE sends out approximately 100 surveys from which it receives a handful of responses. Historically, healing arts board's response rates for this type of survey have been low. The BCE is no different. For various reasons, many complainants do not respond to the survey. Many of those who respond are dissatisfied with the result of a complaint or fail to respond for a lack of interest in further engagement with the BCE. It is difficult for the BCE to draw additional conclusions from the information gained from the minimal number of survey responses received.

The BCE does not have a "general" consumer response survey available for the general public to engage. The BCE utilizes one survey to gain consumer feedback following the conclusion of a complaint. In this case, it would not make sense to use social media to increase survey response rates as we would be reaching individuals who have not personally interacted with the BCE. However, the BCE has discussed the possible development of an online "general" consumer satisfaction survey that would be available to interested persons on the BCE's website. This would allow the BCE to gather additional data regarding public perception and enable it to provide overall better customer service to California consumers.

9. Staff Recommendation: *The BCE should discuss barriers it faces when learning of convicted licensees who are released early from correctional institutions, such as a lack of DOJ or court notice. The BCE should advise the Committees if there are shortfalls in its enforcement process and if there are any potential legislative remedies.*

Our top priority is to ensure consumer protection. We take this mandate seriously and do everything within our authority to make sure the health, welfare, and safety of the public is protected.

Recently, BCE staff encountered a situation in which a licensee was sentenced to two years in prison but was released early with time served. The BCE was not immediately notified upon the individual's release and the licensee was able to resume practicing before the BCE was able to impose discipline or place restrictions on the license. When a licensee is arrested and the BCE believes the individual is a threat to consumers, a PC 23 hearing is requested and the BCE can, and usually does request a temporary suspension of a license or restrictions on the license.

Within this PC 23 process, the Deputy Attorney General (DAG) who represents the interest of the BCE establishes or negotiates terms for the suspension and/or restriction of the license. Most PC 23's include language stating "These restrictions shall apply to the defendant's chiropractic license until the conclusion of the pending criminal and administrative matter." However, what is ultimately included in the PC 23 is at the discretion on the judge who is hearing the request.

In this case, the PC 23 only stated "these restrictions shall apply to the defendant's chiropractic license until the conclusion of the pending criminal matter." Therefore, the early release from prison coincided with a termination of the restrictions on his license. Due to a court employee strike, the early release from prison was not relayed to the BCE or its attorney in a timely manner.

There were events that prevented the timely and efficient transfer of information regarding the status of this particular individual. The BCE relies on the DAG to provide status updates. The DAG represents the BCE's interest before the courts and is the appropriate person from whom to seek information. Because the court employee strike prevented the timely transfer of this critical information to the DAG, the BCE was unable to intervene when the licensee was released from jail and able to resume practicing. As soon as the BCE became aware of this situation, it worked closely with the DAG to obtain a suspension order which prohibited the licensee from practicing pending the outcome of the BCE's administrative process.

The BCE analyst handled this case conscientiously and was diligent about requesting monthly updates on the status of the case throughout the duration of this case cycle. Additionally, before the individual was sentenced to prison and while the PC 23 was in

place, BCE investigators regularly visited the individual's chiropractic office to ensure compliance with the suspension order.

In order to prevent something like this from happening again, the BCE will work with the Department of Justice to continue requesting that all PC 23's place restrictions on a suspended license through the conclusion of both criminal and administrative matters. We will also establish early and ongoing communication with the District Attorney prosecuting the criminal matter to ensure they are aware of the BCE's interest in the matter. This will ensure that there is no gap on license restrictions between the time a criminal matter concludes and the end of the administrative (enforcement) process.

10. Staff Recommendation: *The BCE should recommend cleanup amendments.*

At this time, the BCE does not anticipate the need for legislation to remedy any of the above discussed issues. The BCE will continue to communicate with the Committees regarding any urgent issues that come up and require a legislative fix.