

December 19, 2023

Melinda Grant, Undersecretary
California Business, Consumer Services and Housing Agency
500 Capitol Mall, Suite 1850
Sacramento, CA 95814

Dear Undersecretary Melinda Grant,

In accordance with the State Leadership Accountability Act (Leadership Accountability), the Alcoholic Beverage Control Appeals Board submits this report on the review of our internal control and monitoring systems for the biennial period ending December 31, 2023.

Should you have any questions please contact Taryn Kinney, Executive Officer, at (916) 445-4005, Taryn.Kinney@abcappeals.ca.gov.

GOVERNANCE

Mission and Strategic Plan

The Alcoholic Beverage Control Appeals Board (the Board) is an entity within the California Business, Consumer Services and Housing Agency (BCSH). The Board's mission is to provide quasi-judicial review of decisions of the Department of Alcoholic Beverage Control (Department) issuing, denying, suspending, or revoking alcoholic beverage licenses. The Board's authority is derived from the California Constitution, and its powers are delineated in the Business and Professions Code sections 23075 through 23089.

The Board is comprised of three members appointed by the Governor. The staff consists at the present time of an Executive Officer, a Supervising Attorney, an Attorney III, an Associate Governmental Program Analyst, a Legal Secretary, and a part-time Student Assistant.

The Board holds monthly board hearings via video conference and in-person in Sacramento. The Board members are provided case materials (hearing transcripts, exhibits, as well as controlling legal principles) and analysis by staff attorneys prior to hearing arguments in individual cases. After the Board deliberates, staff attorneys and Board members work together to craft the Board's decisions. Judicial review of the Board's order may be obtained by filing a petition for writ of review with the California Supreme Court or the Court of Appeal.

The Board and its staff implement their work with the knowledge that the Board's decisions can impact the economic lives of the licensees whose appeals are heard, and the efficacy of the Department's regulatory function that its decisions implement. To that end, the Board and its staff's objective is to provide members of the public who appeal to the Board a fair, transparent, and timely evaluation of Department decisions soundly based on the law and decisions explanatory in their reasoning. The Board works to ensure appellants fully understand their rights and the process of the appeal and strives to offer an easily accessible venue in which to seek review. The Board is also focused on modernizing and streamlining Board

processes to become more accessible to a layperson and more transparent to the public.

The Board is a special-funded agency. Its operations are funded by a surcharge on alcoholic beverage license fees. The Board's administrative functions are provided via an Interagency Agreement by the Department of General Services (DGS). These functions include human resources, budgeting, and accounting services. Technology services are provided via Interagency Agreement by the Department of Consumer Affairs (DCA).

The Board is a small, independent state agency and does not have separate entities under its reporting responsibility.

Control Environment

Management establishes and demonstrates integrity and ethical values by informing employees of established core values in a professional workplace, policies and procedures, and clearly communicating consequences of any code of conduct violation. The tone at the top establishes a culture of risk intelligence, integrity, and diligence, viewing all matters through the lens of fairness and due process. Most Board employees and all Board members file a Form 700 with the Fair Political Practices Commission annually and as such, are required to receive biannual ethics training.

Management has an open-door policy for employees, encouraging whistleblower actions, transparency, and open communication to report all ethical concerns. Management demonstrates ethical values by projecting a value system and mindset of integrity and diligently reviewing all office spending to ensure the most efficient use of public funds. Creating a work environment of professionalism and respect for all is integral to the Board achieving its mission and is detailed in the Board's Equal Employment Opportunity and Ethics policies. All Board employees receive annual notifications of their rights and protections under the California Whistleblower Protection Act on how to report improper activity to the California State Auditor and/or a retaliatory action to the State Personnel Board.

Oversight is provided by the Executive Officer. The Executive Officer reports directly to the Board and elevates administrative matters to the Board as appropriate. Board management meets with BCSH's Secretary and executive team monthly. The Executive Officer also provides a Week Ahead Report on high-level updates for BCSH (and Governor's Office) consideration.

The Board ensures appropriate levels of responsibility and authority by adhering to the documented organizational chart structure, employee duty statements, CalHR job classifications, and documenting that proper training is performed for specific duties such as procurement and utilization of FI\$Cal. The Board ensures and maintains documentation of internal control systems by posting detailed step-by-step instructions on filing an appeal on the Board's public website and through correspondence with appellants. The Board's digital case management system is used to ensure documentation of all case files and a timeline of key dates for each appeal. Internal procedures are documented for staff responsibilities including intake of new cases, preparing board materials, calendars, and decisions, procurement procedures, payment of invoices, new hire procedures, and creating supply orders and purchase orders. The Board has further documented policies and procedures including duty charts detailing which staff member is responsible for specific office tasks and the designated

back-up staff person for each task. Staff training logs, annual performance appraisal/probation report calendars, appeal timelines, and documented website processes are updated regularly.

Management recruits, develops, and maintains a competent workforce by encouraging cooperative employee relationships and communication by holding regular meetings with staff, utilizing coaching, career development, and motivational strategies, seeking training opportunities and skills growth, using a digitized case management system, supporting a healthy work-life balance, employing a hybrid work environment, and pursuing promotional and stretch project opportunities when appropriate.

The Executive Officer evaluates employee performance and enforces accountability with documentation and one-on-one meetings, along with annual performance appraisals and related coaching. Management's regular check-ins with staff on ongoing projects and deadlines also reinforces accountability and provides an opportunity to consider any excessive pressures. The Board's civil service employees are governed by civil service laws and regulations and collective bargaining agreements. Board members serve at the pleasure of the Governor and can be removed at any time. The Executive Officer is an at-will employee and serves at the pleasure of the Board.

Information and Communication

Management communicates relevant and reliable information internally by working closely with all employees including one-on-one meetings and staff meetings. Communication takes place efficiently throughout the day by regularly updating each other on operational, programmatic, and financial matters. The attorneys collect quality legal informational materials via research of case law, legal publications, and statutes. These citations are communicated in their legal analysis to interested parties via the Board's written decisions.

Robust internal communication of quality information amongst staff members is expected and required by management in order to facilitate Board operations, mission, and objectives. This includes issuing department-wide emails and memos and sharing updated policies and procedures with all staff and during new employee onboarding. Board member communication is handled largely by the Executive Officer, updating them via phone or email as necessary.

Management communicates quality information externally via the public website (posting Board meeting calendars, decisions, regulation updates, and informational materials) and via mail and email with appellants and the Department regarding appeals process requirements. The public may subscribe via the Board's Listserv to receive updates on meetings, regulations, and other news. The Board's monthly meetings are available to be accessed publicly via teleconference, phone or in-person. Since the Board and the Department must work closely together on appeals processing, Board staff meet as needed with Department staff to discuss process efficiencies and legislative and regulatory updates. The Board's Legal Secretary and Department legal staff communicate via phone and email on procedural matters to set hearing dates and coordinate appeals payments.

The Board has documented systems related to internal and external communication via staff

duty charts and duty statements and written procedures related to regular website updates and efficient communication with internal and external parties. The process to report inefficiencies is documented in the Whistleblower notification and Board's Equal Employment Opportunity policy.

The Executive Officer provides a Week Ahead Report to BCSH, as needed. The Month Ahead Report is written documentation for BCSH prepared by the Executive Officer which updates BCSH on significant or sensitive issues the Board is currently facing and flags anything that may need to be elevated to the Governor's Office. The Executive Officer elevates issues to the Board members as needed. In consultation with Board attorneys, the Executive Officer communicates with Board members in individual meetings regarding pending matters before the Board. Staff communicates regularly via phone, email, and teleconference meetings with DGS regarding HR, budget, and accounting matters and DCA regarding information technology matters.

Employees may report inefficiencies or inappropriate actions to the Executive Officer via in-person meeting or written report. They also have the option to report actions to the Board, BCSH, or the California State Auditor.

MONITORING

The information included here discusses the entity-wide, continuous process to ensure internal control systems are working as intended. The role of the executive monitoring sponsor includes facilitating and verifying that the Alcoholic Beverage Control Appeals Board monitoring practices are implemented and functioning. The responsibilities as the executive monitoring sponsor(s) have been given to: Taryn Kinney, Executive Officer.

Monitoring activities are performed, documented, and measured against a baseline through ongoing monitoring processes and routine tracking of the statistical data captured throughout the appeals process. All key dates of an appeal (initial filing, receipt of fee, receipt of transcript, and decision date) are tracked and recorded. This data serves as a baseline of the average timeframe from notice of appeal to issuance of decision, confirms effectiveness of internal controls, and guides management's decision-making. This process clearly demonstrates if there were a backlog at any juncture and would inform management if an internal control system is not working as intended.

Given the small size of the Appeals Board staff and the very narrow nature of the duties involved, monitoring activities are performed on a near-weekly basis. The Executive Officer is able to routinely evaluate if staff members are performing their day-to-day responsibilities, if the Board is completing its work in a timely fashion, if there are delays happening on any pending appeal, and if external communications with other state agencies and the public are conducted as necessary.

Regular check-ins provide an opportunity for discussion with the Board, Executive Officer, and staff regarding any risks identified in the previous month. If significant risks are identified and discussed, the Executive Officer will summarize the discussion in writing and provide a proposed risk-reduction strategy and estimated timeframe to the Board and staff. Updates on how the risk mitigation is progressing and timeframe updates will be given to the Board at

subsequent meetings and in writing.

With DGS performing the Board's HR services, budgeting, and accounting, they are not directly involved in day-to-day actions but are able to identify potential internal control vulnerabilities in those areas and bring them to the Executive Officer's attention urgently or during quarterly check-in meetings.

The Executive Officer and Associate Governmental Program Analyst communicate regularly with DGS to ensure the Board's HR needs are being met and to address any delay in processing HR actions. The Board's HR practices and hiring policies were reviewed by the State Personnel Board in 2019 highlighting risks and vulnerabilities. This allowed the Board and DGS to implement updated policies and procedures to remedy these findings.

DCA staff perform the Board's IT services and are not directly involved to day-to-day actions of the Board but are able to identify potential technology-related or information security internal control problems and work closely with the Executive Officer to help monitor and mitigate. DCA remains alert about potential information security risks or hardware/software failures in order to take preventative measures and identify an appropriate course of action to protect the Board's data and technological infrastructure. Every other year, the Board receives an independent security assessment by the California Military Department which has informs the Board/DCA on potential IT vulnerabilities and recommendations going forward.

DGS also performs reviews of the Board's procurement practices and processes in order to maintain purchasing authority. This review identifies any error or oversight in procurement documentation, training, and in the Board's policy and procedure manual and provides for a corrective action plan. This review allows the Executive Officer and procurement staff to rectify any findings and ensure all procurement policies and procedures are followed going forward.

Monthly meetings between the Executive Officer and BCSH also provide an opportunity for external parties not involved with day-to-day operations to help identify potential problems and review and provide feedback on control systems in place.

As the Executive Officer of the Board, Taryn Kinney is responsible for the overall establishment and maintenance of the internal control system. She compares results of the above activities to expectations to inform her decisions and determine quickly if change and process improvements are needed. She will assign ownership of addressing any identified vulnerabilities and segregation of duties by job classification, organizational structure, and task assignment and ensure corrective action is taken by maintaining accountability with progress reports and mutually agreed upon deadlines.

The Board's documented procedures detail the tracking of appeals and which employees are responsible for updating the case management system and corresponding tracking documents. The Board's case management system documents key dates and timeframes. The Board's contracts with external parties (DGS, DCA, etc.) clearly document ownership of any identified vulnerability and responsibilities to flag and elevate any risks.

Progress is monitored by regular meetings, updates, communication, and quantified results. The Executive Officer ensures prompt cooperation, efficient resolution, and documentation, and evaluates results.

RISK ASSESSMENT PROCESS

The following personnel were involved in the Alcoholic Beverage Control Appeals Board risk assessment process: executive management, middle management, and staff.

The following methods were used to identify risks: brainstorming meetings, ongoing monitoring activities, audit/review results, other/prior risk assessments, external stakeholders, consideration of potential fraud, and performance metrics.

The following criteria were used to rank risks: likelihood of occurrence, potential impact to mission/goals/objectives, timing of potential event, potential impact of remediation efforts, and tolerance level for the type of risk.

With a total staff of five full-time employees, an organization-wide risk assessment is an on-going process that includes 100 percent of the staff. Potential risks can be raised at regular meetings. Management establishes and communicates clearly defined objectives to enable identification of risks and definition of risks tolerances. Management identifies, analyzes, and responds to risks by consistently brainstorming with staff and external stakeholders on any potential issue, ongoing internal monitoring of information systems, evaluating performance metrics such as tracking average appeal timelines, reviewing audit results and prior risk assessments, and considering the potential for fraud. When a potential risk is identified management determines whether the risk could adversely affect due process. If so, action plans, policies, procedures, contingency plans, and/or significant changes are developed to address potential deficiencies without delay.

RISKS AND CONTROLS

Risk: Staff turnover potential and key staff dependence

Given the small size of the Board's total staff, one separation/retirement or extended leave could equal 100 percent turnover of a classification and 20 percent of total full-time staff. A vacancy could significantly reduce the capacity to process appeals. Limited positions create challenges in cross-training backups as each staff member has a specific role to play, skills, and expertise without significant task overlap with other staff members. For example, the Associate Governmental Program Analyst is the primary liaison for HR, website, and accounting matters. The Legal Secretary is skilled in executing the appeals process and Board hearings. If a key staff member separated, knowledge transfer gaps could cause a temporary delay in access to due process or a backlog in internal HR or accounting issues.

Control: Cross training and update written manuals

Staff will continue to implement cross training and update written task manuals and documented policies and procedures to ensure proper knowledge transfer of essential duties and tasks without impairing the Board's functions. Ensuring appeal procedures are

properly documented and regularly updated to facilitate smooth onboarding of new hires also helps reduce the risk.

Risk: Communication and Engagement

The Board has observed a lack of awareness or inaccurate/incomplete understanding by some stakeholders and the general public of the Board's role. There is a common misconception that the Board is a division within the Department of ABC. This erroneous assumption by the public that the Board is part of the Department is concerning because it may also lead to a false impression that that Board is not, or cannot be, impartial. As an entirely separate and independent state entity, fairness, due process, and impartiality are core tenants of the Board's mission. If licensees are not aware of the Board and its distinct separation from the Department of ABC, they may be less likely to appeal their Department decisions and instead may choose to concede their accusation even if they have a sound legal basis for appealing.

Expanding education, outreach and awareness is challenging for the Board due to limited resources, funding, and expertise to reach a massive and diverse audience of nearly 100,000 licensees statewide.

Control: Stakeholder Engagement and Outreach

The Board has updated messaging to describe the role it plays for licensees, the Board's core mission of fairness, and more details about the appeals process. The Board has updated the website, videos, and informational materials and all are translated into several languages. All of this messaging clearly states that the Board is entirely separate from the Department of ABC. The Board has also begun more proactive external outreach including to media and industry magazines, newspapers, and blogs. To continue to reduce the risk, the Board will seek opportunities to educate stakeholders on the Board, its separation from the Department, and applicable laws, regulations, policies, and procedures and modifications thereto.

Risk: Staff development

Fortunately, Board staff turnover has historically been very low. However, with such a small department and a limited budget and opportunity for promotion/advancement, it is a risk that some staff may venture to larger departments in order to promote and/or develop personal career goals beyond the Board's scope. Turnover is a concern due to the size, limited number of vacancies, and ability for upward mobility within the same department. The scope of the Board's Upward Mobility program is limited due to size, positions (zero vacancies), and budget. Due to challenges regarding pay structure obstacles and creating incentives for high performers, and the questions surrounding a hybrid workforce, there may be future hurdles attracting and retaining a skillful workforce which the Board must continually prepare for.

Control: Upward Mobility and Career Development

To strengthen staff retention, the Board makes every effort to support employee goals and provide opportunities and resources for training, growth, mentoring, and career

advancement. Upward Mobility program participants have taken on escalated responsibilities and challenges, continuing to work on career development. They participate in a wide variety of trainings to broaden and strengthen their knowledge and skills towards their career goals. The Board's commitment and efforts towards upward mobility and career development will provide more support to employees and increase their satisfaction working for the Board, which will hopefully bolster staff retention. The Board also conducts annual performance evaluations and works with staff to create career development plans. The Board has implemented staff cross training to both strengthen institutional knowledge and create opportunities for employees to expand their skill set and job experiences.

Risk: Leave balance liabilities

The California Department of Human Resources (CalHR) requires all state employers and employees to make every effort to adhere to a maximum cap of annual leave vacation hours in accordance with Memorandums of Understanding and California Code of Regulations. In compliance with Bargaining Unit 2 MOU sections 9.1.F and 9.11.E, the rollover/cap accumulation limit was temporarily increased by 192 hours until December 31, 2023. As of January 1, 2024, the maximum cap of annual leave/vacation hours for all Board employees is 640 hours. Currently, all Board employees are in compliance with CalHR leave caps. However, some employee leave balances, while under the limit, are quite high. Employees who have accumulated significant leave hours create an unfunded liability for the Board budget. It is difficult for some staff members to substantially reduce their leave balances due to the specialization of their work, such as supervising.

Control: Leave management plan

Employees who exceed the leave balance limit will be placed on a leave management plan and the Executive Officer regularly reviews leave summaries to ensure the plans are followed and staff leave balances are appropriately managed. Maintaining compliance with leave balance caps will reduce the liability for the Board.

CONCLUSION

The Alcoholic Beverage Control Appeals Board strives to reduce the risks inherent in our work and accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies as appropriate. I certify our internal control and monitoring systems are adequate to identify and address current and potential risks facing the organization.

Taryn Kinney, Executive Officer

CC: California Legislature [Senate, Assembly]
California State Auditor
California State Library
California State Controller
Director of California Department of Finance
Secretary of California Government Operations Agency