

December 20, 2019

Alexis Podesta, Secretary  
California Business, Consumer Services and Housing Agency  
915 Capitol Mall, Suite 350-A  
Sacramento, CA 95814

Dear Ms. Alexis Podesta,

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, 2019.

Should you have any questions please contact Taryn Kinney, Executive Officer, at (916) 445-4005, [Taryn.Kinney@abcappeals.ca.gov](mailto: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's strategic plan is currently in development by the Executive Officer and senior management.

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 I, a Staff Services Analyst, a Legal Secretary, and a part-time Student Assistant.

The Board holds monthly hearings. The Board Members are provided case materials (hearing transcripts, exhibits, as well as controlling legal principles) and analysis by staff attorneys prior to hearing argument in individual cases. After the Board deliberates, Board members are provided drafts reflecting the Board's decisions. The draft and final decisions are prepared by the Board's attorneys.

The Board and its staff are keenly aware 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 ensure that its timely decisions are soundly based on the law and explanatory in their reasoning. Decisions of the Board are subject to appellate review by way of writ of review to a District Court of Appeal or the Supreme Court.

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, budget, and accounting services. Technology services are provided via Interagency Agreement by the Department

of Technology (CDT).

## **Control Environment**

Management establishes and demonstrates integrity and ethical values by informing employees of established policies and procedures and clearly communicating consequences of any 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 to 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 and open communication to report any and all ethical concerns. Management demonstrates ethical values by "walking the walk" and diligently reviewing all office spending to ensure the most efficient use of taxpayer funds.

Oversight is provided by the Executive Officer. The Executive Officer reports directly to the Board and elevates administrative matters to the Board as appropriate.

The Board ensures appropriate levels of responsibility and authority by adhering to the documented organizational chart structure, employee duty statements, and CalHR job classifications.

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, and pursuing promotional opportunities when appropriate.

The Executive Officer evaluates employee performance and enforces accountability with documentation and one-on-one meetings, along with annual performance appraisals. The majority of staff members are currently on probation and are receiving regular probation reports along with related coaching. Management's regular check-ins with staff on ongoing projects and deadlines also reinforces accountability.

## **Information and Communication**

Management communicates relevant and reliable information internally by working closely with all employees including one-on-one meetings and staff meetings. All staff are housed in one office. 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 communication is handled largely by the Executive Officer, updating members via phone or email as necessary.

Management communicates quality information externally via the public website (posting Board meeting calendars, decisions, and informational materials) and via mail and email with appellants and

the Department regarding appeals process requirements. 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 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 Month Ahead Report is written documentation for BCSH prepared by the Executive Officer which updates Agency on significant or sensitive issues the Board is currently facing. Staff communicates regularly via phone, email, and in-person meeting with DGS regarding HR, budget, and accounting matters and CDT regarding 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 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, briefing schedule, hearing date, 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 about necessary changes to expedite due process. This process clearly shows 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 necessary external communications with other departments and the public are conducted in a cordial and professional manner.

Monthly Board meetings also provide an opportunity for discussion with the Board, Executive Officer, and staff attorneys in closed session 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 Board meeting in closed session 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 Staff Services Analyst communicate regularly with DGS to ensure the

Board's HR needs are being met and to address any delay in processing HR actions.

CDT staff performs 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. As Chief Information Officer, the Executive Officer 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.

The Board's HR practices and hiring policies are currently under review by the State Personnel Board. These results will inform the Executive Officer of necessary changes to implement. Last year, the Board was given an independent security assessment by the California Military Department which has informed the Board on potential IT vulnerabilities and recommendations going forward.

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. Progress is monitored by regular meetings, updates, communication and quantified results. She 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 housed in a single office, an organization-wide risk assessment is an on-going process that includes 100 percent of the staff. Potential risks can be raised at regular monthly staff 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: Dependence on ABC Department & paper-based filing**

Ongoing evaluation of the process for an appeals case preparation has identified an opportunity to reduce the processing time for assessing and coordinating the appeals fee and obtaining the necessary copies of the Department's administrative hearing transcript and record.

Currently, the Board requests a calculation of the cost for a copy of the court reporter's transcript from the Department. Depending on the Department's workload, this can take several weeks. Then the Board communicates this fee to the appellant and requests payment. After payment is received, the Department will request a copy of the transcript from the court reporter. Depending on the Department's workload and the workload of the court reporter, this can also take several weeks.

The risk to the appeals process is that the Department's workload and the workload of the court reporter controls the time it takes to process the appeals fee and prepare the case for an appeal hearing.

Additionally, legal offices and courts are modernizing at a faster pace than the Board by enabling or requiring electronic filing of pleadings and orders. As the extent to which society keeps paper records continually declines, e-filing will be the standard and, in many jurisdictions, already is.

The Board has utilized a paper-based system since it was established over 60 years ago. Currently, all appeals and briefs must be mailed to the Board and the Department and email does not satisfy our filing regulations. The risk of a continued paper-based appeals process is that it increases the time and complexity of exercising appellant's due process rights. Additionally, a web-based process could make the appeals process more user-friendly to small businesses who want to exercise their right to appeal.

### **Control: Appeals process regulation review and revision**

The control required to mitigate this risk is a review and revision of the Board's regulations that govern the process for receiving payment and the administrative hearing transcripts and record and updating Board regulations to allow e-filing of appeals and briefs.

### **Risk: Vacancy on three-member Board**

With a three-member board, but only two Governor's appointments currently filled, there is a risk of delayed hearing(s) if just one Board member is ill or unavailable. Both current Board members are required to be at every monthly Board meeting in order to have a quorum and for appellants to receive timely due process. Until the third Board member is appointed, any unforeseen absence will cause a hearing to be canceled and the calendared cases and subsequent decisions would be held up. Continued delays could be a public safety concern if unlawful licensees remain open for business while they await a revocation appeals hearing.

### **Control: Effective schedule management**

To limit the occurrence of any scheduling conflicts, Board staff will continue to communicate regularly with Board members on scheduling to ensure they can attend every hearing. Appointment of a third Board member would eliminate the risk, however the appointment process

is beyond the Board's control.

**Risk: Delay in compliance with AB 434**

The Board has yet to fully-comply with AB 434 which required every California state agency to maintain full accessibility compliance with WCAG 2.0 Level AA standard by July 1, 2019. Due to the Board's limited budget and staff, the website's documents have not yet achieved full compliance. Including some documents on the website that are not fully compliant with this new law may limit access to public resources and leaves the Board vulnerable to legal exposure.

**Control: Achieve full document remediation**

The Board will continue the process of fully remediating the remaining documents on the website to be AB 434 compliant. Achieving the compliance certificate and posting it to the website will eliminate the associated risks.

**Risk: Staff turnover potential**

Given the small size of the Board's total staff, one separation 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 Staff Services 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 written manuals**

Staff will continue to implement cross training and 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 will also help eliminate the risk.

**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 (2), Assembly (1)]  
California State Auditor  
California State Library  
California State Controller  
Director of California Department of Finance  
Secretary of California Government Operations Agency