

December 22, 2021

Lourdes M. Castro Ramirez, Secretary
California Business, Consumer Services and Housing Agency
915 Capitol Mall, Suite 350-A
Sacramento, CA 95814

Dear Secretary Lourdes M. Castro Ramirez,

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, 2021.

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

The Board holds monthly board hearings via video conference. 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 Technology (CDT).

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 taxpayer 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 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.

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 telework as much as possible, 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, 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 and other news. The Board's monthly meetings are available to be accessed publicly via teleconference or phone. 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 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 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 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.

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 meetings 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. 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.

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. In 2020, 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.

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.

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, 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 and board 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: Paper-based appeals process

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, electronic filing will be the standard across business sectors.

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 the Board's filing regulations. The risk of a continued paper-based appeals process is that it increases the time, cost, and complexity of exercising appellants' due process rights. Electronic processes could make the appeals process more user-friendly and cost efficient for those who want to exercise their right to appeal.

Control: Appeals process regulation revision

The control required to mitigate this risk is revision of the Board's regulations that govern the process for the filing of appeals, briefs, and decisions to allow electronic filing. Legislation was approved in 2021 (AB 1589), to become effective January 1, 2022, to allow electronic filing and the Board is currently working on revising regulations to implement this legislation. Electronic filing will allow parties before the Board a more efficient and accessible avenue with which to appeal.

Risk: Staff turnover potential and key staff dependence

Given the small size of the Board's total staff, one separation 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 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 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 will also help eliminate the risk.

Risk: IT Security vulnerabilities

The Board's 2020 information security audit by the California Military Department identified several risks and vulnerabilities in the Board's security infrastructure, policies, and procedures. While the Board does not handle large amounts of confidential documents or personal identifying information, it is still critically important that the Board maintain a solid IT security plan and process to protect its data and prevent an impairment of Board functions. Given the widespread occurrence of telework, effective IT security is even more critical. Currently, the Board does not have a Technology Recovery Plan in place in order to continue to fulfill its objectives in the event of an internet or power outage or other natural disaster. The Board works with CDT on IT management services, but CDT does not offer many of the security-related services to client agencies that the Board needs in order to remedy several of the identified risks. The Board does not have internal expertise on IT security matters and with a limited budget, is not able to initiate a large-scale IT security project with an outside contractor.

Control: Evaluate current contracts and identify opportunities

The Board must evaluate its current IT contracts with external vendors and state departments and perform a cost/benefit analysis on expanding IT services to include additional security mitigation. If an opportunity is identified to increase IT security services within the Board's current budget, that will be explored. A current Technology Recovery Plan must be developed in consultation with IT experts to ensure there are no gaps in appeals processing due to any unforeseen disaster.

Risk: Leave balance liabilities

A Board employee has a leave balance that exceeds the maximum vacation/annual leave balance currently allowed. A retirement would result in tens of thousands of dollars in leave payout from the Board's modest budget which the Board is not able to absorb. This risk occurred because the leave balance cap was lifted by CalHR during the pandemic while employees were accruing Personal Leave Program (PLP) hours. The leave balance cap was recently reinstated for employees, albeit higher than it was pre-pandemic.

Control: Leave management plan

The employee has been placed on a leave management plan and the Executive Officer regularly reviews leave summaries to ensure this employee and other staff's leave balances are appropriately managed.

Risk: Video conference board meeting uncertainty

Throughout the COVID-19 pandemic, due to the Governor's Executive Order temporarily waiving portions of the Bagley-Keene Open Meeting Act, the Board has been holding its monthly board meetings via video conference. This has worked smoothly and increased public participation. The Executive Order and subsequent legislation (AB 361 of 2021) has temporarily waived the requirement for all state boards and commissions to hold meetings in a physical location and to publicly-notice the location of board members joining the meeting remotely. The new law allowing this practice to continue expires January 31, 2022. If the requirement for an in-person physical location is reinstated, the Board

will need to increase spending on travel and plan for a publicly available physical location on short notice. The Board eliminated its travel budget as part of the state budget cutting all state departments operations budgets by five percent starting in 2021-22. If the Board was not able to quickly implement an in-person board meeting on short notice as required, the appeals process could be delayed.

Control: Contingency and budget planning

The Board must budget and plan for both scenarios – long-term teleconference board meetings and a return to in-person. Especially if the Board returns permanently to in-person, this will require significant resources and staff time to plan and execute. Proper planning will ensure there is no delay in Board hearings due to an unforeseen change.

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