
6B

Information/Action

Professional Practices Committee

Update on the Bureau of State Audits Report

Executive Summary: This agenda item provides an update to the Commission on the Commission's response to the Bureau of State Audits Report, and requests approval to withdraw the request for an Attorney General Opinion.

Recommended Action: That the Commission adopt new policy and withdraw the request for a formal opinion from the Attorney General.

Presenter: Nanette Rufo, Director, Division of Professional Practices

Strategic Plan Goal: 1

Promote educational excellence through the preparation and certification of professional educators

- ◆ Evaluate and monitor the moral fitness of credential applicants and holders and take appropriate action

August 2012

Update on the Bureau of State Audits Report

Introduction

On April 7, 2011 the California State Auditor issued a report entitled “*Despite Delays in Discipline of Teacher Misconduct, the Division of Professional Practices has not Developed an Adequate Strategy or Implemented Processes That Will Safeguard Against Future Backlogs*”. The audit included twenty-two recommendations to improve this area of the Commission’s work.

The Six-Month Audit Response by the Commission

After reviewing the Commission’s six-month report to the Bureau of State Audits (BSA), the BSA determined that, of the 22 recommendations, nine were fully implemented, three were partially implemented, and ten were pending.

The One-Year Audit Response by the Commission

On April 6, 2012 the Commission submitted its one-year response to the BSA. The one-year response reflected the priority the Commission has given to implementing the Auditor’s recommendations. Following submission of the one-year report, Commission staff responded to questions from the BSA and provided additional documentation. From the communications with BSA staff, it appears that 16 of the 22 recommendations will be considered completed and six are considered partially completed. Each of the recommendations that remain to be completed are discussed in this item.

Recommendation 2.3: *The commission should seek a legal opinion from the Attorney General to determine the legal authority and extent to which the Committee of Credentials (Committee) may delegate to the division the discretionary authority to close investigations of alleged misconduct without Committee review, and take all necessary steps to comply with the Attorney General’s advice.*

Recommendation 2.4: *Once the commission has received the Attorney General’s legal advice regarding the extent to which the Committee may delegate case closures to the division, the commission should undertake all necessary procedural and statutory changes to increase the number of cases the Committee can review each month.*

Until the Commission receives the requested opinion we cannot complete these two recommendations. However, the Commission may wish to consider whether it wants to withdraw its request for an opinion. Instead, the Commission may want to consider enacting policy that all cases where the Committee has jurisdiction shall be presented to the Committee, except in those circumstances where the Commission has expressly set a different policy (e.g. at the December 2011 meeting the Commission enacted policy that staff should pursue expired credentials only in specified, limited circumstances, and in January 2012 adopted a policy that staff should close single alcohol offenses).

The decision to request an opinion of the Attorney General was a compromise to resolve a difference of opinion between the legal staff of the Commission and the legal staff of the BSA. The Commission's attorney believed the delegation of authority to staff was legally appropriate, while the BSA's attorney believed the delegation was not lawful. When an impasse was reached, the parties agreed to resolve the issue by asking for an AG opinion.

In the interim, the Commission halted the practice of Division of Professional Practices (DPP) staff closing cases without the Committee's review. This action was taken pursuant to direction from the then Executive Director without formal enactment of policy by the Commission. Since May 2011 all cases where the Committee has jurisdiction to investigate are presented to the Committee, and this practice is working.

Under current practice, staff closes matters where the Committee lacks jurisdiction to proceed. For example, complaints that are not signed under penalty of perjury are closed by staff since such a signature is required for the Committee to have jurisdiction. Staff also closes reports of an arrest for a traffic infraction. An infraction is the most minor of criminal offenses, and the law sharply limits use of an infraction for licensing purposes. Penal Code §19.8 states in the relevant part:

Except for violations of Vehicle Code section 13202.5 subdivision (d) (drug and alcohol offenses for persons between 13 and 21) and Vehicle Code section 14601.1 (driving while license suspended) based on a failure to appear, a conviction under Penal Code section 17 subdivision (d), an infraction, is not grounds for the suspension, revocation, or denial of any license. . .

Because the law is clear that infractions may not form the basis of a licensing action, staff has routinely closed such matters without opening a case for review by the Committee of Credentials. This is a ministerial action not requiring the exercise of discretion by staff. Other examples of the Commission adopting clear policy to make staff's action ministerial, include the adoption of a policy on first time alcohol offenses and a policy about when staff should pursue action on an expired credential.

By presenting cases to the Committee, rather than staff taking unilateral action, the Commission ensures that there is oversight over staff via the Committee's review, honors the ability of educators to be a part of the discipline of other educators.

Recommendation 2.6: *The division should provide training and oversight, and should take any other necessary steps, to ensure that the case information in its database is complete, accurate, and consistently entered to allow for the retrieval of reliable case management information.*

Commission staff developed a policy for review of data to ensure its accuracy. A statistically sound sampling method was developed and files for review were identified by a random number generator. Sixty files were pulled and management reviewed key data points for each file. Documentation of the review was developed, completed and saved.

Recommendation 2.9.a: *To adequately address the weaknesses in its processing of reports of misconduct, the division should revisit management's reports and its processes for overseeing*

the investigations of misconduct to ensure that the reports and practices provide adequate information to facilitate reduction of the time elapsed to perform critical steps in the review process.

Division staff developed numerous case management reports since the initial BSA report. While these reports are being consistently used to monitor the workload, DPP has not adequately documented use of the reports. For example, while data is discussed at the weekly DPP manager meeting, agendas were not developed and minutes were not kept. These materials would properly document use of the data. Commencing in May 2012, a written agenda is developed for each manger meeting and minutes are kept.

Recommendation 2.9.c: *The division should ensure that its reports and practices provide prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals.*

The dashboard measurement system proposed to the Commission at the January 2012 will provide the data needed to meet this recommendation, as well as recommendation 2.9.d. However, the technology staff needed to develop the dashboard will not be available for work on the project until CTC Online (formerly called CWIP) is fully implemented. As of July 15, 2012, the information technology section did not have available resources to begin work on this recommendation.

Recommendation 2.9.d: *The division should ensure that its reports and practices provide adequate understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases.*

The Commission programmed “reasons for delay” in the database and developed procedures. DPP conducted training for the entry of reasons for delay on June 29, 2012. Effective June 29, 2012, staff began entering reasons for delay as cases are reviewed. The cause for delay information will be captured in a report once the Commission’s information technology section has time and resources to complete that task.

According to BSA staff, that office will be requesting additional information in August or September for inclusion in their 2013 annual report to the Legislature. Commission staff anticipates completion of additional recommendations so that the updated information can be included in the 2013 BSA report.

Staff Recommendation

Staff recommends that the Commission enact policy that states: All matters where the Committee has jurisdiction to investigate shall be presented to the Committee. Any exceptions to this policy shall only be made where the Commission has explicitly granted staff specific authority to take such an action with sufficient clarity that the staff’s action is a ministerial duty.

This policy makes the Commission’s request for a formal opinion of the Attorney General unnecessary, and staff may withdraw the request for an opinion, with agreement from the Bureau of State Audits.