FINAL RECOMMENDATIONS FOR ALL BOARDS UNDER THE DEPARTMENT ("CROSSCUTTING RECOMMENDATIONS")

RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The DCA has identified several "cross-cutting" issues affecting all boards and the Department's consumer protection mission, including:

- Consumer Complaint Disclosure
- Board Composition
- Mandatory Board Member Training
- Cost Recovery
- Establishment of an Alternative Medicine Bureau
- Division of Enforcement Oversight
- Cultural and Linguistic Competency
- Disaster Management Continuing Education

The JLSRC has also identified some additional "cross-cutting" issues which include:

- Consumer Complaint Disclosure
- Public Members' relationships to the profession
- Consumer Protection Mandate for all Boards
- Sunset Committee to Deal with Sunrise Issues

ISSUE #1. (SHOULD A COMPLAINT DISCLOSURE POLICY BE IN PLACE FOR ALL BOARDS?) Should the Legislature consider adopting a framework and general statutory authority for disclosure of complaint information?

Recommendation #1: ***The Legislature may wish to consider adopting a framework and general statutory authority for disclosure of consumer complaint information, emphasizing government's obligations under the Public Records Act.***

Comments: A key component of consumer protection is ensuring the availability of information to consumers when they make decisions about selecting practitioners. Providing information about consumer complaints filed against DCA licensees is a fundamental part of that information.

Pursuant to 7124.5 of the Business and Professions Code, in 1979 the Department developed a complaint disclosure policy designed to provide guidance to the boards and bureaus on complaint disclosure. That policy was crafted to provide maximum implementation flexibility to the boards and

bureaus, and in recognition of the boards' independent authority to institute policy. As such, it is overly broad and has prompted a wide range of practices within the Department's regulatory programs.

In the summer of 2000 the Department undertook a review of board and bureau consumer complaint disclosure policies. It became clear from that review that the boards have exercised their autonomous authority to implement various disclosure policies.

The Department conducted four public hearings in the summer and fall of 2001 to review the out-dated Departmental policy and to solicit comments on how the Department might modify it. Our review has focused on the implications of California's Public Records Act and the Information Practices Act, which govern the disclosure of information held by government and personal privacy rights.

The Department's hearings were held in Northridge, Anaheim, and Sacramento. Numerous consumer organizations, law enforcement, professional associations, and some DCA boards presented comments.

A number of boards expressed during the public hearings their desire to have statutory authority to implement an enhanced complaint disclosure policy. The Department is continuing its development of recommended standards for consumer complaint disclosure, which it intends to recommend to the boards, and implement on a pilot basis at the Bureaus within the Department.

ISSUE #2. (BALANCED PROFESSIONAL AND PUBLIC REPRESENTATION ON BOARDS?) Should all boards under the Department's jurisdiction have a balance of professional and public members?

Recommendation #2: *The Department recommends that all its boards have a balance of professional and public members.*

Comments: The public is best served when board representation is balanced, providing both professional expertise and consumer representation. California state law originally provided for a majority of public members except on the Department's medical boards. Public representation has been eroded over the years so that currently only ten boards have a public member majority.[1] Consumer interests are generally represented by a board's public-members. The Legislature's sunset review process has regenerated interest in public board membership.

The sunset review process has been effective in bringing greater balance to many Department boards. Public member representation on DCA boards has increased by eight since 1999. The Department believes this increased public representation improves the quality of consumer protection.

The Department is recommending the addition of two public members to the Board of Optometry.

In addition, the Department's JLSRC report recommends the addition of a board member with professional specialization. Specifically, the Department is recommending that a position on the

[1] Athletic Commission, Board of Behavioral Sciences, Contractors State License Board, Court Reporters Board, Board of Professional Engineers and Land Surveyors, Board of Geologists and Geophysicists, Board of Guide Dogs for the Blind, Hearing Aid Dispensers Advisory Committee, Landscape Architects Program, Board of Vocational Nursing and Psychiatric Technicians.

Acupuncture Board be reserved for a faculty member, currently teaching at an acupuncture school in California. Ensuring that board expertise is contemporary and relevant to current practices is critical for meaningful credentialing and enforcement.

We note that the JLSRC has previously expressed concern about maintenance of Board quorums. The Department is pleased to report that all DCA boards currently have a quorum and are able to meet and carry out their duties.

ISSUE #3. (MANDATE BOARD MEMBER TRAINING?) Should all new boards members be required to participate in training?

Recommendation #3: *Given the enormity of the duties and responsibilities of board members, the Department recommends that participation in the training and orientation session offered to new board members be mandatory. Specifically, the Department recommends that new appointees be required to attend the training within one year of assuming office, as they are currently required to complete ethics training. Ensuring that board members are fully informed of their duties increases the quality of their board participation and the board's oversight of the profession.*

Comments: The Department's Board Relations Division has instituted a valuable board training program for newly appointed and current board members. Training includes conflict of interest laws, open meeting act requirements, information on the legislative process, background on the Department and the services provided to Boards, and clarification of the duties and responsibilities of board members. Board members consistently report to the Board Relations Division that the training is a helpful tool in preparing them to carry out their duties as board members. However, these training sessions are not mandatory and a number of new appointees, devoid of board experience or training, elect not to attend.

ISSUE #4. (COST RECOVERY?) Should all entities under the Department's jurisdiction maintain cost recovery?

Recommendation #4: *To protect the public and ensure discipline against licensee misconduct, the DCA recommends that all DCA entities maintain cost recovery authority.*

Comments: The important enforcement tool of cost recovery, which gives DCA boards/bureaus the authority to recover investigative and prosecution costs related to enforcement cases, faces a serious challenge in a case pending before the California Supreme Court.[2] *Zuckerman v. Board of Chiropractic Examiners* may jeopardize the ability of DCA's regulatory entities to recoup disciplinary costs from offenders.[3]

[2] Since 1993, Business and Professions Code § 125.3 has authorized DCA boards/bureaus to recover costs of investigation and prosecution from disciplined licensees.
[3] *Robert Zuckerman v. Board of Chiropractic Examiners of the State of California* (2Civ. B135896) California Supreme Court No.__

Cost recovery for all DCA boards and bureaus was authorized in 1992 to ensure that the Department's consumer protection functions would not be compromised due to enforcement costs.[4] It ensures that those who violate the law--and thereby generate enforcement expenses--pay for those costs, rather than shifting those costs to law-abiding licensees. Nonetheless, there have been periodic proposals to modify the ability of DCA boards to seek reimbursement of enforcement costs.

Over $8 million of cost recovery was ordered for the four-year period of fiscal years 1997/98 to 2000/01 to the nine boards/bureau currently under review. During that same time period, the nine boards/bureau collected close to $5 million in cost recovery. Eight percent of the $103 million spent on enforcement by these regulatory programs in the past four years is to be recovered from violators. Clearly, cost recovery is significant.

ISSUE #5. (ALTERNATIVE MEDICINE BUREAU?) Should an Alternative Medicine Bureau be created under DCA?

Recommendation #5: *The Department recommends that a study be performed to examine the feasibility of consolidating the regulation of some currently regulated professions such as midwives and acupuncturists, as well as professionals seeking licensure, in such a bureau. A study could potentially be funded by the impacted professions.*

Comments: Californians are increasingly turning to alternative and complementary medicine providers for their health care. As providers such as naturopaths and homeopaths become more popular, the question of the need for regulation increasingly arises. Consumers have many choices of alternative medicine providers but little information about the quality of these practitioners. Licensure assures consumers that practitioners' knowledge, skills, and abilities have been evaluated. Without licensure, consumers do not have this assurance, nor do they have ready recourse should a practitioner provide inappropriate care. The Department supports consideration of the establishment of an Alternative Medicine Bureau.

ISSUE #6. (DIVISION OF ENFORCEMENT OVERSIGHT?) Are limited DCA resources a problem?

Recommendation #6: *The Department notes that as currently structured, the Department does not have the resources to engage in regulatory enforcement oversight. To the extent a need for additional resources to implement these activities is identified, DCA will address the need through the annual budget development process.*

Comments: In 1999, the Bureau of State Audits raised the issue of Departmental oversight of board enforcement activities. Last year, Assembly Member Correa introduced Assembly Bill 269, which would have established a Division of Enforcement Oversight in the Department.

Clearly, the Department's statutory mandate to protect consumers implies a duty to monitor enforcement of board and bureau laws and regulations, and yet no function has been established for the

[4] AB 3745, Speier, Chapter 1059 and AB 2743, Frazee, Chapter 1289, Statutes of 1992.

Department to do that credibly. When given the tools, as with the recent establishment of an enforcement monitor at the Contractor's State License Board, the Department can provide an important evaluation of enforcement priorities and processes, and make recommendations for improvement when indicated.

ISSUE #7. (CULTURAL AND LINGUISTIC COMPETENCY OF PRACTITIONERS?)

Should the sunset review questionnaire include questions about cultural and linguistic competency?

Recommendation #7: *As Task Force deliberations have raised the relevance of these issues by other health professions, such as nurses and physician assistants, the JLSRC may wish to modify the sunset review questionnaire to include questions about the assessment of cultural and linguistic competency of other providers, and the needs of non-English speaking patients.*

Comments: In 2000, Governor Davis and the Legislature established the Task Force on Culturally and Linguistically Competent Physicians and Dentists. The Task Force, co-chaired by the Department Director and the Director of the Department of Health Services, is charged with reviewing the need for the development of cultural competency standards, certification and continuing education and submitting a report to the Legislature in 2003.

A Subcommittee of the Task Force, created by the Legislation, was charged with examining the feasibility of establishing a pilot program that would allow Mexican and Caribbean licensed physicians and dentists to practice in nonprofit community health centers in California's medically under-served areas. To address this question, the Subcommittee, chaired by the DHS Director, held public hearings and received a number of proposals. After much discussion and review, the Subcommittee did not recommend such a pilot program and was unable to agree on an alternative program. Five areas of disagreement were identified, including the temporary versus permanent nature of a project, the placement of project participants, the means for assuring cultural and linguistic competency of participants, the time needed to implement a pilot project and the licensing and professional residency requirements for participants. The Subcommittee did identify a variety of creative proposals aimed at increasing the availability of providers in medically under-served areas, including the reintroduction of the Fifth Pathway Program. The full Task Force is looking at the Subcommittee's recommendations and expects to incorporate them in its final report.

Since the establishment of the Task Force in 2001, six public hearings have been convened in medically underserved communities throughout the state to identify the need for doctors and dentists with particular language skills and cultural attenuation to California's diverse ethnic communities. The Task Force has also held quarterly meetings to examine licensing, credentialing, and continuing education issues, to review public hearing recommendations, and to begin developing recommendations for its final report.

The Task Force has focused both on ways to facilitate the licensure of foreign educated doctors and dentists, and to assess the availability of skilled medical interpreter services in the health care delivery system. The Task Force's working groups on cultural competency standards, continuing education, and voluntary cultural competency certification continue to develop specific recommendations in these

areas. The Task Force appears interested in the re-establishment of a "Fifth Pathway" medical school program in California, as well as the need for standards for medical interpreters.

ISSUE #8. (DISASTER MANAGEMENT CONTINUING EDUCATION FOR HEALTH CARE PROFESSIONALS?) Should health care regulatory boards develop continuing education courses and requirements related to disaster management and bio-terrorism?

Recommendation #8: *The Department recommends that health care regulatory boards should consult with the Department of Health Services and the Office of Emergency Services to develop continuing education courses and requirements related to disaster management and bio-terrorism.*

Comments: Health professionals, including physicians, physician assistants, nurses and pharmacists, have a key role of responding to disasters of all types, including earthquakes, fires, floods, chemical spills, as well as bio-terrorism, and other possible terrorist attacks. Heightened concerns about the potential use of anthrax, smallpox, or other diseases as weapons, which many health care professionals have never seen in clinical practice, have generated a need to assess preparedness for biological disaster management. The Department of Health Services (DHS) has requested that health Boards consider continuing education requirements as a condition of license renewal, as proposed in Assembly Bill 1921 (Richman).

ISSUE #9. (SHOULD A COMPLAINT DISCLOSURE POLICY BE IN PLACE FOR ALL BOARDS?) Should all consumer boards be required to promulgate regulations that allow for more useful and meaningful information to be provided to the public?

Recommendation #9: *In addition to the Department's recommendation on complaint disclosure, the Joint Committee recommends that all boards under the Department and the Board of Chiropractic Examiners shall promulgate recommendations to provide more useful and meaningful information to the public regarding the individual board and its licensees.*

Comments: The Legislature should adopt a statute requiring all boards to adopt regulations (i) establishing processes and standards by which each board will respond to Public Records Act requests; (ii) establishing how the board will implement the Department's recommendations regarding public disclosure; (iii) establishing what information in the board's possession will be disclosed on the board's website; and (iv) establishing a process to ensure that the information on the board's web site is accurate and reliable.

The Committee believes that each board should confront these important issues through an administrative rule-making process, where testimony and evidence from interested parties may be obtained and evaluated, and where the eventual disclosure rules are settled and public.

ISSUE #10. (AMEND MANDATE OF CONSUMER BOARDS?) Should the statutory mandate of consumer boards reflect that consumer protection is paramount?

Recommendation #10: ***The Joint Committee recommends that Business and Professions Code Section 101.6 be amended to state clearly that consumer protection is the first priority of consumer boards***.

Comments: Consumer protection is the essential purpose of all California's occupational licensure boards and bureaus. However, most of the consumer board's statutory schemes do not establish clearly that protecting consumers is their primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of the law.

ISSUE #11. (PUBLIC MEMBER RELATIONSHIPS?) Should there be specific standards in place for public members to decrease the possibility of conflicts of interest?

Recommendation #11: *The Joint Committee recommends that the Business and Professions Code be amended to reduce the possibility of public member conflict of interest.*

Comments: The statutes should reflect that public board members should not be:

1) Current or past licensees of the board that they serve on;
2) A close family member of a licensee;
3) Formerly or currently connected with the industry; or
4) Have any financial interest in the business of a licensee of the board.

ISSUE #12. (SUNRISE REVIEW?) Should the JLSRC review proposals creating new state occupational programs?

Recommendation #12: ***Amend Business and Professions Code Section 473.6 to provide the JLSRC with the authority to review the expansion or creation of occupational programs.***

Comments: Sunrise review will allow for a more in-depth review of proposals that create new licensing requirements for a profession or expand their scope of practice.