JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE FINDINGS AND RECOMMENDATIONS

Review and Evaluation of the Board of Guide Dogs for the Blind

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Report to the
Department of Consumer Affairs

MARCH 1996

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SUMMARY OF RECOMMENDATIONS AND FINDINGS

ISSUE: Should the Board of Guide Dogs for the Blind be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs?

RECOMMENDATION:

The Board of Guide Dogs for the Blind should not be continued as a separate agency and all of its duties, powers and functions should be turned over to the Department of Consumer Affairs. The transfer of authority of the Board of Guide Dogs for the Blind to the Department shall be revenue neutral.

FINDINGS:

A. General Responsibilities, Duties and Powers of the Board

1. ***While not the smallest licensing board numerically, this board has the smallest licensee population, budget, staff, examination and enforcement activity of any agency under the Department of Consumer Affairs administrative "umbrella."***

2. ***The board has not defined incompetence, gross negligence or unprofessional conduct of a licensee.***

B. Funding and Organization of the Board and Staff

1. ***Historically, the board operated on revenues coming out of the General Fund. The board converted from General Fund to licensing fee revenues (special fund) to fund its operation commencing with fiscal year 1994-95. The board's budget for fiscal year 1995/95 is only $46,000, an increase of approximately $3,000 over its 1994/95 expenditures. Almost one-half of the board's expenditures go to fund the board's sole half-time staff person. The board's annual licensing fees are $50 for a fund-raiser license, $100 for an instructors license (total approximately $6500 of the board's $46,000), and .4% (0.004) of a school's most recent calendar year expenses.***

2. ***The board has spent a very small portion of its budget on enforcement - on average, about 13 percent of its budget on enforcement activity over the past four years. Other boards have spent, on average, about 66 percent.***

3. ***The board's expenditure level has been and is currently insufficient to carry out its legal mandate effectively and efficiently, and the board has addressed this situation through curtailing all but essential activities.***

C. Licensing and Application Process

1. ***The board licenses few instructors and has not licensed any new schools or fundraising organizations since the licensing laws and requirements were enacted for each.***

2. ***The education and experience requirements for licensure as a guide dog instructor are unique as there are no other states which license instructors.***

3. ***The one year of actual experience working with the training of dogs prior to entering the apprenticeship program does not appear justified, nor do schools adhere to this requirement.***

4. ***Applications for schools and fundraising organizations are rather extensive.***

5. ***The requirements for the establishment of a licensed guide dog school, and the ability to solicit funds for the establishment of the school, appear to be unduly restrictive, very subjective, and unnecessary. It has been argued that the board allows a monopoly to exist for the training of guide dogs because they have not permitted any other schools to qualify for licensure in this state.***

D. Continuing Education and Review of Professional Competence

1. ***Commencing in June of 1996, eight hours of continuing education will be required for the renewal of an instructor license. There are no continuing education requirements for renewal of a school's license.***

E. Examination Process

1. ***There is a 100% passage rate on the examination for those who have completed three years of apprenticeship training with a licensed instructor. The board estimates that there is a 50% failure rate during the apprenticeship training, and that 50% of instructor applicants from out-of-state are unable to pass its licensing examination without at least six months apprenticing at a licensed California school.***

2. ***Only the written portion of the exam is independently validated. The practical and oral have been developed by the board and are only reviewed by board members, the schools and other licensed instructors.***

3. ***The oral part of the examination is unique and appears to be too subjective and arbitrary in its application.***

4. ***There is no formal license examination for either a guide dog school or fund-raiser license.***

F. Complaint Process

1. ***The board receives a minimal number of complaints, and those it does receive are usually received via the telephone. The board states it generally uses informal mediation as its first recourse in attempting to resolve complaints.***

G. Enforcement Process

Unlicensed Activity

1. ***There appears to be little problem with unlicensed activity, in part apparently due to the close community related to the activities of the board's licensees. There are only three schools offering training, at which virtually all of the board's other licensees, the instructors, are located.***

Inspections

1. ***There has been no formal action taken by the board against any licensee based upon inspections made at guide dog schools.***

Investigations

1. ***The board has had very few formal investigations (six) over the past four years.***

2. ***There were no extreme delays in the investigation of cases.***

Disciplinary Action

1. ***The board has had little enforcement activity and no accusations filed over the past four years.***

2. ***The board has not instituted administrative citation and fine provisions stating that its informal mediation process is viewed to be generally sufficient.***

H. Efforts to Improve the Current Regulatory Process

Operational Improvements

1. ***The board has made efforts to improve its administrative mission in the past few years.***

Legislative Efforts

1. ***Legislative efforts by the board have made some improvements in the current regulatory program including sponsoring or supporting enactment of laws that provided for the operational improvements listed above. The board also promoted legislation requiring annual certified audits of licensed guide dog schools.***

ISSUE #2:	Should the State continue with the licensing and regulation of guide dog schools, instructors and fund-raisers for schools, and if not, should some other alternative form of regulation be recommended?

RECOMMENDATION:

The Department of Consumer Affairs should assure that the licensing and regulation of guide dog instructors, schools and guide dog fund-raising organizations continues, until it has had an opportunity to investigate whether it is necessary for the state to continue with the current licensing and regulatory program, or whether some other alternative to regulation would suffice.

FINDINGS:

1. ***There is some evidence that the unregulated practice of guide dog training and fundraising could endanger the safety and welfare of the public and blind persons who rely on guide dogs to increase their mobility and capability to lead an active life.***

2. ***The current regulatory program does not provide any evidence that harm would result to the guide dog user and the public if guide dog training was deregulated.***

3. ***There are no other states that license guide dog schools, instructors or fund-raisers, and there is no evidence provided that harm has occurred to the guide dog user or the public in other states..***

4. ***There appears to be some support by guide dog users and organizations for the blind for the regulation and licensing of guide dog schools, instructors and fund-raisers. However, one organization representing the blind is opposed to this oversight.***

5. ***There is a high degree of knowledge, skills and abilities required to assure that guide dog instructors are competent.***

6. ***There is a generally accepted core amount of knowledge, skill and ability required of instructors to properly train the guide dog and the guide dog user which are measurable by objective, written and practical performance standards. However, whether an oral exam is necessary is questionable.***

7. ***There are no other organizations that have oversight of instructors or schools.***

8. ***The board does not regulate or license related types of training activities -- "signal" dogs for the deaf, "service" dogs for the physically disabled, and "companion" dogs (for emotional and psychological support).***

9. ***There is a significant, though relatively small demand for the services of guide dogs; the ability of the consumer of guide dog training services (a blind person) to independently determine competence is limited in advance of obtaining their services.***

10. ***There are at least two other public agencies, the Department of Rehabilitation and the State Attorney General's Office, which have relevant regulatory authority, though no formal licensure function.***

11. ***It is doubtful that monetary damages would suffice if the guide dog user was no longer able to use the guide dog because of the incompetence or negligence of the school or instructor.***

12. ***It does not appear that the current regulatory program has restricted the amount of guide dogs necessary to serve the visually impaired or increased overall costs for the blind user.***

13. ***There may be other alternatives to the current regulatory program.***

- **Schools provide the written and practical examinations.**

- **Eliminate licensing of guide dog instructors.**

- **Transfer the Powers and Duties of the Guide Dog Board to the Department of Rehabilitation.**

- **Transfer the Powers and Duties of the Board to the Department of Consumer Affairs.**

- **Total Deregulation.**

ISSUE #3: If the board is to continue as a separate agency, what changes should be made to its operation and programs to improve its effectiveness and efficiency?

NO RECOMMENDATIONS.

OVERALL APPROACH TO THE SUNSET REVIEW

CURRENT APPROACH TO REVIEW

Legislation enacted in 1994 (Chapter 908/94, SB 2036, McCorquodale), put in place a procedure and schedule for the Legislature to assess the effectiveness of, or need for, state involvement in the 32 occupational areas currently regulated by various boards. ("Board," as used in this document, refers to a "commission," "committee," "examining committee," or "organization" that has the ultimate responsibility for administration of a regulatory program as required under provisions of the Business and Professions Code.)

Pursuant to this new law, independent boards become inoperative, according to a specified schedule, on July 1 of either 1997, 1998, or 1999. The respective statutes are then repealed six months later, on January 1 of either 1998, 1999, or 2000. Thus, the boards and their regulatory authorities "sunset," unless the Legislature passes laws to either reinstate the board or extend its sunset date.

Chapter 908/94 creates the Joint Legislative Sunset Review Committee (JLSRC) to review and analyze the effectiveness of and need for each of the boards. Each board, with the assistance of the Department of Consumer Affairs (DCA), is required to submit to the JLSRC -- 15 months before January 1, of the year its authorizing legislation becomes operative -- an analysis of its regulatory functions and reasons to continue regulatory activities. (Reports from the boards scheduled to sunset in 1997 were, therefore, due by October 1, 1995.)

The JLSRC must hold public hearings during the interim study recess to solicit testimony from the director of Consumer Affairs, the boards scheduled to sunset, the public, and the regulated industries/occupations. During those hearings, the committee members must evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation based on the factors and minimum standards of performance listed below:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.
(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.
(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public

interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personal matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

The JLSRC must also consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.

The JLSRC must then report its findings and recommendations to the DCA for its review. The DCA must then prepare a final report including its own findings and recommendations and those of JLSRC. This final report must then be submitted to the Legislature within 60 days, and shall include whether each board scheduled for repeal should be terminated, continued, or re-established, and whether its functions should be revised. If the JLSRC or DCA deems it advisable, the report may include proposed bills to carry out these recommendations.

REQUEST FOR INFORMATION AND BOARD REPORT

As indicated, all boards are required to prepare an analysis and submit a report to the JLSRC "no later than one year plus 90 days prior to the January 1st of the year during which that board shall become inoperative." (October 1, 1995, was the deadline for those boards which sunset in 1997.)

The analysis and report must include, at a minimum, all of the following:

(a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
(b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and pre-accusation cases at the Attorney General's office.
(c) The board's fund conditions, sources of revenue, and expenditure categories of the last four fiscal years by program component.
(d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, and passage rate and areas of examination.
(e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

In an attempt to reconcile this requirement for information, along with those considerations and factors which the JLSRC must make during its deliberations, a request for information was prepared by JLSRC staff and sent to all boards on July 3, 1995.

The request asked a number of questions about the board's operations and programs, about the continued need to regulate the particular occupation, and about the efforts which the board has made, or should make, to improve its overall efficiency and effectiveness. There was also a specific request for information dealing with the board's funding, licensing, examination, complaint and enforcement process for the past four years.

Staff then continued to meet with boards, as needed, to assist them in compiling this information and completing the report.

The report submitted by each board was broken down into three parts. The first part, provided background information dealing with each aspect of the board's current regulatory program. This included the board's powers, duties and responsibilities, its funding and organization, the licensing, examination, continuing education, and enforcement activities of the board for the past four years.

The second part of the report, addressed the issue of whether there is still a need to regulate this particular occupation. The questions addressed by the board were basically those which are asked during any "sunrise review" process, i.e., the current process used by the Legislature to evaluate the need for regulation.

The third part of the report, discusses any regulatory or legislative efforts the board has made, or are needed, to improve its current operation and protection of the consumer.

There are some appendices which were included as part of their report.
There are also appendices (attachments) which, because of their length, or because they were not essential to the overall information contained in the original report, were not

provided with the report. They were, however, available to members of the JLSRC upon request.

JLSRC REPORT OF FINDINGS AND RECOMMENDATIONS

The JLSRC must provide to DCA a report of its findings and recommendations after hearings are completed. This document has been prepared in an attempt to meet that mandate.

The findings and recommendations in this report are based on information and testimony received during the hearings conducted by the JLSRC on November 27th, 28th and December 5th, 1995. It also reflects information which was provided in the board's report, information provided by the Department of Consumer Affairs, a review of the current literature dealing with occupational licensing issues, and a comparative analysis of occupational licensing in other states performed by the Senate Office of Research.

The document begins with a short summary of the current regulatory program and discusses the creation of the licensing act, the board's budget, revenue and fees collected, an overview of licensing activity and the required examination, and disciplinary/enforcement actions.

Part one, provides an overall evaluation of the board's operations and programs. This section includes everything from the general responsibilities and duties of the board, to the licensing, examination and enforcement process. There are findings made about each function and activity of the board.

Part two of this document, is a review of the need to regulate this particular occupation. The issues are those which are addressed during the current "sunrise review" process, and those which must be considered by the JLSRC under the current law.

SUMMARY OF CURRENT REGULATION

Background

- The State Board of Guide Dogs for the Blind (board) was created in 1947. The board comprises seven members appointed by the Governor: the Director of Rehabilitation or his /her representative, and six persons with an interest in problems of blind persons of whom two must be blind users of guide ("seeing eye") dogs. [The board reports that there are three board member vacancies.] Board members are prohibited from having any interest in any organization that provides guide dogs.

- The board licenses guide dog instructors (65), guide dog schools (three), and organizations that solicit funds to provide guide dogs to the blind (one). It is unlawful to sell, offer to sell, give, hire or furnish any guide dog or seeing-eye dog, or to engage in the business or occupation of training any such dog, or solicit funds for the purpose of providing guide dogs for the blind unless a person holds a license from the board. All California-licensed guide dog schools are non-profit charities. California is the only state that licenses guide dog schools, instructors or fund-raisers.

- The board usually meets three to four times per year, at which time the board generally conducts an inspection of one of the three licensed schools in California (thus yearly inspection of schools) and conducts the oral and practical license examinations for the instructor's license.

- California is the only state that licenses guide dog schools, instructors or fund-raisers.

Budget

- Until the 1994/95 fiscal year, the board was funded from General Fund revenues. Effective FY 1994/95, the board is funded from its own license fees (special fund). In 1994/95, the board expended $42,967 (Administrative - $17,187; Regulation/Enforcement - $4,297; & Licensing - $21,484). The board's annual budget for 1995/96 is $46,000 (1995-96) and it employs only a single half time staff person ($20,388 + benefits in 1994/95). Board members receive a per diem of $100 and up to $116 travel/expense reimbursement per day of board business; and spend an average of two to four weeks on board activities (1994/95 per diem was budgeted at $3500, travel at $7057.)

Fees

- Instructor license fees are currently $250 (application) and $100 (annual renewal). Eight hours of continuing education (CE) will be required for the renewal of instructor licenses that expire on or after June 30, 1996. Annual guide dog school license fees are established by statute at .4% (0.004) of all school expenses incurred in the most recently concluded school calendar year as specified in a statutory-required independent audit. Guide dog fund-raiser licenses (good for one year, with a possible one year extension) are $50.

Licensing

- To be licensed as an instructor a person is required to: (1) have knowledge of the special problems of the blind and how to teach them;
  (2) have at least three years' actual experience as an instructor (out-of-state) and have handled 22 guide dog/blind person "units"; or one year working with dogs plus 3 years working as an apprentice working in a California guide dog school under the supervision of a licensed instructor; (3) be suited temperamentally and otherwise to instruct blind persons; and (4) pass the board's 3-part examination (written, practical, and oral interview). There are currently 65 licensed instructors. The board has issued a total of 11 new instructor licenses from 1991 through 1994.

- Guide dog schools are required to have a complete understanding of the requirements of operation under the law; they must have a plan of operation that covers required provision of residential facilities for blind students, attendants, licensed instructor(s), and a program of training of dogs and instructing students. The board requires 90 days of preliminary dog training, followed by either 80 hours (over four weeks) of dog/student instruction for first time students or 40 hours (over two weeks) instruction for previous students/guide dog users. There are currently three licensed guide dog schools; which number has remained the same for years. Guide dog schools are required to make an annual report to the board which contains an independent audit by a certified public accountant of a school's finances.

- Guide dog fund-raisers are required to identify the names addresses, etc., of those involved in the fundraising solicitations ; show satisfactory evidence of financial responsibility, keep a list of donors, place all funds collected in a trust account, and repay donors (minus fundraising costs) in the event sufficient funds ($20,000 minimum) to start a school are not raised. There is one fund-raiser currently licensed by the board.

Examinations

- The examination for an instructor's license is a three-part examination: Written, Practical, and an Oral interview before the board. The practical examination requires the blindfolded instructor candidate to take a dog through a specified course that duplicates actual conditions in which the dog will be used. The board indicates that there is a 100% pass rate by applicants for the instructor's license. (However, a 50%

failure rate during apprenticeship and for out-of-state candidates.) The number of new instructor licenses issued over the past four years is: four in 1994, seven in 1993, two in 1992, and one in 1991. The board receives periodic reports from the licensed schools regarding the performance of its instructor apprentices.

- There are no formal license examinations for either the guide dog school license or the fund-raiser license.

Discipline/Enforcement

- The board indicates that it receives a minimal number of complaints, usually by telephone, and that mediation by the board is the first recourse used in attempting to resolve problems. The board states it receives several hundred inquiries annually. It states it handles about 50 complaints informally and two to three formally (referred for investigation) annually. This past year one case was formally investigated and closed without formal disciplinary action. The board reports no license suspensions or revocations over the past four years but identifies one letter of warning that resulted in a fund-raiser applying for the required board license for its school fund-raising efforts.

- The board states that its informal mediation process generally is sufficient to resolve most problems, so formal discipline or institution of administrative citation and fine procedures have been unnecessary.

- One common area of conflict are disputes between guide dog schools and the blind guide dog users. (Under the current guide dog law, the ownership of a guide dog may remain with the guide dog school or be transferred to the user, with or without conditions.) Legislation enacted in 1993 established a five-year pilot project for an arbitration program to decide disputes between a guide dog user and a guide dog school regarding custody and continued use of a dog by a blind user. The arbitration law also provides for specified annual reports by the schools and by the board on how the project is working.

1.

EVALUATION OF BOARD'S OPERATIONS AND PROGRAMS

ISSUE: Should the Board of Guide Dogs for the Blind be continued as a separate agency, merged with another board, or sunsetted and have all of its duties, powers and functions turned over to the Department of Consumer Affairs?

RECOMMENDATION:

The Board of Guide Dogs for the Blind should not be continued as a separate agency and all of its duties, powers and functions should be turned over to the Department of Consumer Affairs. The transfer of authority of the Board of Guide Dogs for the Blind to the Department shall be revenue neutral.

FINDINGS:

A. General Responsibilities, Duties and Powers of the Board

1. ***While not the smallest licensing board numerically, this board has the smallest licensee population, budget, staff, examination and enforcement activity of any agency under the Department of Consumer Affairs administrative "umbrella."***

2. ***The board has not defined incompetence, gross negligence or unprofessional conduct of a licensee.***

- The board states that in guide dog matters, lack of professional competence most generally is revealed in the production of unsafe person/dog units, poor treatment of blind persons in training, and unprofessional behaviors/attitudes toward the blind. The board, however, does not have any statutory authorization to take disciplinary action for incompetence, gross negligence or unprofessional conduct of a licensee. Nor has the board taken any action to try and define professional competence, negligence or appropriate professional conduct of the licensee.

B. Funding and Organization of the Board and Staff

1. ***Historically, the board operated on revenues coming out of the General Fund. The board converted from General Fund to licensing fee revenues (special fund) to fund its operation commencing with fiscal year 1994-95. The board's budget for fiscal year 1995/95 is only $46,000, an increase of approximately $3,000 over its 1994/95 expenditures. Almost one-half of the board's expenditures go to fund the board's sole half-time staff person. The board's annual licensing fees are $50 for a fund-raiser license, $100 for an instructors license (total approximately $6500 of the board's $46,000), and .4% (0.004) of a school's most recent calendar year expenses.***

2. ***The board has spent a very small portion of its budget on enforcement - on average, about 13 percent of its budget on enforcement activity over the past four years. Other boards have spent, on average, about 66 percent.***

3. ***The board's expenditure level has been and is currently insufficient to carry out its legal mandate effectively and efficiently, and the board has addressed this situation through curtailing all but essential activities.***

- For many years the board functioned without staff support and used the Department of Rehabilitation(DOR) staff to provide clerical, administrative and other support services. During the mid-1970's, however, DOR phased out its services and the board received its own funding under the General Fund for a half-time administrative assistant. In FY 1994/95, the board was forced to establish a fee structure for the licensing of fund-raisers, instructors and schools so it would be self-sufficient and didn't have to rely on the General Fund. The amount the board receives is still only enough to provide for a half-time executive officer and some operating and equipment expenses.

- In 1991, the board indicated that it's steadily increasing workload finds the staff being in the position of continually reacting to deadlines, and finding no time to perform the important housekeeping chores which assure smooth functioning and efficiency. The board stated that the continued operation at the present level is neither practical nor reasonable and recommended that the half-time position of staff be made full-time. (This request was refused by the Legislature.)

- It is doubtful circumstances have changed since that time, and there are even more requirements placed on this single staff member with the establishment of the arbitration pilot project of the board. Considering the number of responsibilities this small licensing body and single staff member has, they have done a remarkable job of trying to meet its varied legal mandates.

C. Licensing and Application Process

1. ***The board licenses few instructors and has not licensed any new schools or fundraising organizations since the licensing laws and requirements were enacted for each.***

- The board currently licenses only about 65 instructors, three (3) guide dog schools, and one (1) guide dog school fund-raising organization. Over the past four years, the board has only received approximately 21 applications for licensure. The board has licensed 14 new instructors in those four years. There have been no new fundraising organizations or guide dog schools licensed for many years.

2. ***The education and experience requirements for licensure as a guide dog instructor are unique as there are no other states which license instructors.***

- The requirements for an instructor are extensive including: three years actual experience as an instructor (out-of-state applicants) and have handled 22 guide dog/person "units"; or one year of experience working with dogs plus three years working as an apprentice in a California guide dog school under the supervision of an instructor.

3. ***The one year of actual experience working with the training of dogs prior to entering the apprenticeship program does not appear justified, nor do schools adhere to this requirement.***

- Section 2266 of the California Code of Regulations requires that a school shall not employ or retain in its employ an apprentice who has not had at least one year of actual experience in working with the training of dogs. However, Section 7209 of the B&P Code, pertaining to examination requirements, only says that the a candidate for the examination has to have the equivalent of three years of training as an apprentice in a school licensed by the board. There does not appear to be any statutory authority for this one year experience requirement.

- Some schools currently have an “instructor’s assistant” training program which would fulfill this one year experience requirement (as long as it was an unpaid position), but they do not always adhere to this regulation. They usually prefer to hire someone who has “knowledge” of the training of animals, but do not always require that the person have had one year of actual experience in the training of dogs. At least one school indicated that it would be extremely difficult to verify this experience and determine whether the experience was appropriate to meet this requirement.

- Another part of the same regulation, dealing with apprentice experience requirements, states that no apprentice shall be permitted to train any guide dog until they have completed not less than twenty hours of such instruction a week for a period of not less than one year. Again, schools do not always follow this mandate. A person is usually hired into the apprentice program on a full-time basis and begins training of dogs immediately. To fulfill this requirement, a person would have to refrain from

training a dog for at least six months. The apprenticeship program does not operate in this fashion. Section 2266 needs to be changed to reflect practices within the schools.

4. *Applications for schools and fundraising organizations are rather extensive.*

- The school and fundraising applications are highly detailed, calling for the applicants to furnish documentary information about the ability of the school to provide for residential, kennel, and licensed instructional personnel. It involves a lengthy process (several weeks at least) in which board staff work closely with the applicant. If the organization is efficient, and has engaged in good planning and effort prior to the application process, it is possible for the license to be granted in a period of weeks.

5. *The requirements for the establishment of a licensed guide dog school, and the ability to solicit funds for the establishment of the school, appear to be unduly restrictive, very subjective, and unnecessary. It has been argued that the board allows a monopoly to exist for the training of guide dogs because they have not permitted any other schools to qualify for licensure in this state.*

- A person desiring to establish a licensed guide dog school must submit a plan of operation and satisfactory evidence of financial responsibility to the board. Once approved, the board will then provide a license to solicit funds for the establishment of a guide dog training school for a period of one year. (The license for advance solicitation may be extend for one year if good cause is shown.) Other requirements include holding the funds solicited in a trust department of a bank or trust company, keeping a record of all donors, and returning the funds to donors if sufficient funds are not raised within one year.

- There does not appear to be any written requirements or standards concerning what the plan of operation must include and what amounts to satisfactory evidence of financial responsibility. The board indicates that documentation provided must include: the organizing documents for the school/fundraising operation, including documents of the board members, financial documents, the school facilities/operations description, the identity of the licensed instructor/instructors who will provide training for the organization. However, there is no indication that the board provides a more detailed explanation of what these documents must contain, or examples of what a person must provide in the way of information for approval of its plan of operation, and to meet the threshold necessary for financial responsibility. The board also states that "guide dog schools are required to have a complete understanding of the requirements of operating such institutions, <u>including</u> a complete plan of operation, from residential facilities to a program of training of the dogs and instructing the blind guide dog users." The requirements would appear to go beyond the scope of Section 7210.6 of the Business and Professions Code (B&P Code) which only requires the plan of operation and satisfactory evidence of financial responsibility, nothing more.

- It would appear as if the requirements of Section 7210.5 and 7210.6 of the B&P code (pertaining to fundraising organizations) are unnecessary due to the current requirements concerning Charitable Solicitations. Under Section 17510 et seq. of the B&P Code and Section 12580 et seq. of the Government Code, all charitable organizations are subject to a number of requirements before they can solicit funds in this state, and would receive substantial penalties for either fraudulent or deceitful fundraising practices. The requirements of the board may be duplicative of the laws pertaining to charitable solicitations.

- One organization which represents the blind, the National Federation of the Blind of California, has argued that the board has allowed a monopoly of the three guide dog schools to continue in this state, and has restricted trade (and competition) by requiring that licensed guide dog trainers only be able to work within the three guide dog schools. In other words, even though licensed trainers may be qualified to practice outside of the school, they are required to maintain employment with the school at all times. This is even true where "home training" may be necessary. Under Section 7210.7 of the B&P Code, the school must receive approval from the board before home training will be allowed, and only instructors who are employed by the school may provide the training.

- One court case has already been brought against the board for preventing one organization, the Guide Dogs U.S.A., from raising funds to establish a guide dog school. The board denied this organization the ability to raise funds and grant a license because they found their application to be "incomplete." The organization brought civil action against the board questioning their authority to prevent them from raising funds. The court upheld the board's authority to regulate such activities, but there is still a question as to the reasons for denying their application in the first place.

D. Continuing Education and Review of Professional Competence

1. *Commencing in June of 1996, eight hours of continuing education will be required for the renewal of an instructor license. There are no continuing education requirements for renewal of a school's license.*

- Eight hours of continuing education will be required for instructors whose licenses expire on or after June 30, 1996 (Chapter 1193 - Statutes of 1993). The education must be in one or more of the following: blindness and mobility; health issues relating to blindness; instructing blind persons; and the care and training of dogs.

E. Examination Process

1. *There is a 100% passage rate on the examination for those who have completed three years of apprenticeship training with a licensed instructor. The board estimates that there is a 50% failure rate during the apprenticeship training, and that 50% of*

instructor applicants from out-of-state are unable to pass its licensing examination without at least six months apprenticing at a licensed California school.

- The board is unclear about why 50% fail until they have completed three years as an apprentice working with a licensed instructor, or six-months if out-of-state.

2. *Only the written portion of the exam is independently validated. The practical and oral have been developed by the board and are only reviewed by board members, the schools and other licensed instructors.*

- The written test has been developed under the auspices of the Office of Examination Resources in the Department of Consumer Affairs. Initially a committee of licensed guide dog instructors gathered for a lengthy session in which, with the guidance of a test formulation expert, a bank of over 100 questions was developed. The board convened another panel at the end of two years to review the test questions and validate them, and this resulted in an overall bank of over 300 questions. The board plans to have another validation/question writing session to take place this year.

- The practical test is designed by the board. Numbers of school personnel and others may observe the test, but the test is only subject to validation and comment from representatives of the schools and licensed instructors.

- The oral test is held before the entire board in a "confidential setting." The board reviews the application, and discusses issues important to guide dog usage. The board also evaluates the applicant's ability to deal with the complexities of the role of guide dog instructor. This includes making a determination as to whether the applicant is "suited temperamentally and otherwise to instruct blind persons in the use of guide dogs" (Section 7209 (3) of the B&P Code).

3. *The oral part of the examination is unique and appears to be too subjective and arbitrary in its application.*

- Few if any boards require a "confidential oral interview" of an applicant prior to receiving licensure in this State. Examinations should be open for review and independently validated to assure they are objective evaluations of the knowledge, skills and abilities necessary to practice in a particular occupation. Many of the questions asked of the candidate by the board are those which are part of the written or practical exam, or could be incorporated into either exam. Section 7209 subsection (3) of the B&P Code, which requires an applicant for the examination to be suited temperamentally and otherwise to instruct blind persons in the use of guide dogs, is a very subjective standard to apply and could lead to arbitrary decisions that have no basis in fact to determine qualifications of a person to sit for the exam.

4. *There is no formal license examination for either a guide dog school or fund-raiser license.*

F. Complaint Process

1. ***The board receives a minimal number of complaints, and those it does receive are usually received via the telephone. The board states it generally uses informal mediation as its first recourse in attempting to resolve complaints.***

- The board reports it annually handles about 50 complaints informally, and two or three formally each year which means engaging in an investigation. The board receives about 450 inquiries per year (slight rises occur each year). Inquiries usually involve requests for vocational information, access problems, problems involving all three assistance dogs: guide, signal and service, and the like. The board most often seeks to resolve problems via informal mediation by its staff. The board will often bring complaints about a licensee to the licensee's attention in an effort to work out problems or obtain a correction in behavior. An example of how this process works is the board's use of its arbitration process when there are custody problems concerning the guide dog.

- If a complaint cannot be resolved informally the board will obtain a formal, written complaint (there is no formal complaint form used by the board) and refer it to the Division of Investigation of the Department of Consumer Affairs for further investigation. If sufficient evidence of a violation is found the board will send the case to the Attorney General's office for the filing of an accusation.

G. Enforcement Process

Unlicensed Activity

1. ***There appears to be little problem with unlicensed activity, in part apparently due to the close community related to the activities of the board's licensees. There are only three schools offering training, at which virtually all of the board's other licensees, the instructors, are located.***

Inspections

1. ***There has been no formal action taken by the board against any licensee based upon inspections made at guide dog schools.***

- At least annually the board inspects each licensed guide dog school. The process includes a preliminary on-site staff "audit" of the school's records (client records, dog records, minutes of the governing board, and such other documents as the board may require). The "audit", as stated by the

board, reveals the day to day handling of matters great and small at the school, and the manner in which school personnel -- and particularly licensed instructors -- deal with operations.

- There was no evidence provided that the board has either cited or informed the school to take certain actions to rectify a problem discovered during the audit, or that any particular problems have been observed during these audits.

Investigations

1. ***The board has had very few formal investigations (six) over the past four years.***

2. ***There were no extreme delays in the investigation of cases.***

Disciplinary Action

1. ***The board has had little enforcement activity and no accusations filed over the past four years.***

- Data provide by the board shows minimal formal enforcement activity. There were no reported accusations, license revocations or suspensions, or legal cases during the past four years, a dozen or so formal investigations, 1 warning letter sent in 1994, an average of 50 complaints, and approximately 200 - 250 inquiries annually. The board sent one case out for formal investigation by the DCA's Division of Investigation this last year - but no formal disciplinary action was taken. In the past 20 years, only one case has been sent to the Attorney General where disciplinary action ensued. The board states that its informal mediation process resolves most problems and complaints without the necessity of formal and expensive disciplinary action.

- Violations of the guide dog laws are misdemeanors. The statutory grounds for license suspension or revocation are: (1) Providing false information on applications; (2) Any violation of the requirements of the guide dog law or board regulations; (3) Conviction of a felony or crime involving moral turpitude, or any offense involving cruelty to animals;
  (4) Commission of any act that constitutes grounds for denial of a license (including those generally applicable to all licensing agencies within the DCA - B&P Code Sections 475 & 480).

2. ***The board has not instituted administrative citation and fine provisions stating that its informal mediation process is viewed to be generally sufficient.***

H. Efforts to Improve the Current Regulatory Process

Operational Improvements

1. ***The board has made efforts to improve its administrative mission in the past few years.***

- Operational improvements presented by the board are: (1) Establishment of a written instructor test; (2) Sponsoring successful legislation to establish a 5 year pilot project for arbitration of disputes between schools and guide dog users over continued use/possession of a dog;
  (3) Establishing continuing education requirements (8 hours annually) for guide dog instructors; (4) Expanding the law to authorize home training programs; (5) Promoting changes in the law regarding accessibility to public accommodations, etc., with guide dogs.

Legislative Efforts

1. ***Legislative efforts by the board have made some improvements in the current regulatory program including sponsoring or supporting enactment of laws that provided for the operational improvements listed above. The board also promoted legislation requiring annual certified audits of licensed guide dog schools.***

- Legislative efforts presented by the board include: (1) Enactment of law providing some guide dog ownership rights and procedures to be followed by the guide dog user (1978); (2) Enactment of the requirement that a school provide an annual certified audit of its financial condition; (3) Enactment of arbitration pilot project for guide dog possession disputes, authorization of home training, increased public access with guide dogs (1993).

- The board states that three legislative changes are recommended to improve operational efficiency: (1) Enactment of a "mission statement" in the guide dog law; (2) Enactment of requirements regarding follow-up services to be provided by schools to guide dog users; and (3) Elimination of the 5 year "sunset" clause on the recently enacted (1993) guide dog possession arbitration pilot project (due to expire in 1999).

2.

REVIEW OF THE NEED FOR STATE LICENSING AND REGULATION OF GUIDE DOG SCHOOLS, INSTRUCTORS AND FUND-RAISERS.

ISSUE: Should the State continue with the licensing and regulation of guide dog schools, instructors and fund-raisers for schools, and if not, should some other alternative form of regulation be recommended?

RECOMMENDATION:

The Department of Consumer Affairs should assure that the licensing and regulation of guide dog instructors, schools and guide dog fund-raising organizations continues, until it has had an opportunity to investigate whether it is necessary for the state to continue with the current licensing and regulatory program, or whether some other alternative to regulation would suffice.

FINDINGS:

1. ***There is some evidence that the unregulated practice of guide dog training and fundraising could endanger the safety and welfare of the public and blind persons who rely on guide dogs to increase their mobility and capability to lead an active life.***

- The board report states, that continued regulation of guide dogs is necessary to protect the blind person who uses these dogs. Such harm would come from incompetent instructors and instructions that would endanger not only blind guide dog users but also the public with whom they come in contact. If a dog is improperly or poorly trained, the blind user is exposed to situations in which the dog may expose him/her to avoidable hazards: negotiating construction along sidewalks by taking the individual into the street; attempting to cross streets despite traffic dangers which the dog should readily pick up on; not going around hazards. Possible injury could occur because a guide dog becomes overaggressive because of it possessive tendencies, involves its user in actions which result in unfortunate consequences, or simply doesn't provide the right information to its blind user. If the dog isn't properly screened similar circumstances could occur, and possibly death or serious injury could result in a traffic accident. (The board indicates that there are no reliable statistics that exist concerning injuries or deaths, since they are not kept by any traffic reporting agency, but there are "anecdotal accounts" which they are aware of.)

- The board argues that without regulation there would be a return to some of the abuses and problems which were occurring when there was no oversight of schools, instructors or fund-raising organizations. Prior to regulation in 1947, there was: improper treatment and incompetent, or no training of dogs provided to blind persons; fraud and deceit in guide dog fundraising efforts (absence of intent or plans to provide guide dogs); unreasonable delays in providing training to blind persons housed at schools; improper training of blind users, and incompetent instructors. At the time regulation was enacted, there were over 20 guide dog schools in California - of which only three were able to qualify for licensure. (Today there are still only three licensed guide dog schools.)

2. ***The current regulatory program does not provide any evidence that harm would result to the guide dog user and the public if guide dog training was deregulated.***

- The board's enforcement program is non-existent. Complaints received by the board do not involve any of the potential harms which could occur from inadequate or incompetent training. The board cites only one case in which the instructors license was revoked because they "abandoned their duty." There have been no other cases reported of incompetence or negligence by an instructor. Nor has the board taken any action against the three schools for improper treatment, training or selection of guide dogs. Complaints received by the board are not of a serious nature and are usually resolved informally by the board staff.

3. ***There are no other states that license guide dog schools, instructors or fund-raisers, and there is no evidence provided that harm has occurred to the guide dog user or the public in other states.***

- No other states have licensing regulation of guide dog schools, instructors or fund-raisers. The board reports that there is some evidence of problems in other states similar to those which caused California to enact licensing in 1947. No formal studies or reports showing evidence of the nature or amount of problems, or providing a comparison of training competence were presented by the board.

4. ***There appears to be some support by guide dog users and organizations for the blind for the regulation and licensing of guide dog schools, instructors and fund-raisers. However, one organization representing the blind is opposed to this oversight.***

- For the most part, guide dog users, the blind community in general, instructors, and the three California guide dog schools support the current regulatory program. There is one group, however, the National Federation of the Blind of Sacramento, which opposes the continuation of the board and its regulatory oversight. They argue that the board was established during a time when consumerism and self-advocacy for the blind were not prevalent, and thus the assistance of a state regulatory body was necessary. They believe circumstances have changed such that the board has outlived its usefulness and should be abolished. They also argue that the board has created a restrictive and anti-consumer environment by: (1) trying to impose its authority over providers of signal dogs for the deaf and service dogs for the physically disabled and making it more difficult for users to obtain these dogs within a reasonable time; (2) creating a monopoly of guide dog schools where only those licensed by the school may instruct guide dogs; (3) preventing other fund-raising organizations from operating in California.

5. ***There is a high degree of knowledge, skills and abilities required to assure that guide dog instructors are competent.***

- A competent instructor must be able to: provide dogs which are safe, reliable guides; provide blind persons with reliable instruction in the use of guide dogs; provide any of the services specified in the law and in particular those services which are significant in the provision of safe and effective travel by blind persons using guide dogs. An example of specific acts of competence include: the ability to teach guide dog users how to cross streets, controlled or uncontrolled; an understanding of the particular needs of blind persons including any health problems which could endanger the safety of the blind person during the training regimen; proper care and selection of animals; understanding of other required services, either during or post training.

6. ***There is a generally accepted core amount of knowledge, skill and ability required of instructors to properly train the guide dog and the guide dog user which are measurable by objective, written and practical performance standards. However, whether an oral exam is necessary is questionable.***

- As already indicated, the knowledge, skills and abilities necessary to train guide dogs as an instructor are tested in three ways: by a written, practical, and oral examination. The board has worked with the Department's Office of Examination Resources and other guide dog instructors to develop a comprehensive written exam. The exam generally tests the knowledge of the candidate on the following subjects: (1) care and selection of dogs; (2) obedience training of dogs; (3) training of dogs preparatory to becoming guides for blind people; (4) blindness and its effects; (5) current laws and regulations of the board; (6) basic principles of travel and mobility training for blind people.

- The practical examination tests the skills and abilities of the candidate to complete a prescribed route under blindfold with a guide dog much in the same way the candidate's future students will. The candidate must demonstrate an unquestionable ability to move easily through the test route with a minimum of error. The board provides a "Handbook for the Practical Examination for the Guide Dog Instructor's License" which outlines the kinds of situations which the candidate should encounter to demonstrate competence. The candidate will fail the test if at any time the safety of the person/dog is in jeopardy, they fail to cross street safely, or if there are repeated demonstrations of an inability to avoid objects and other pedestrians resulting in headlong collision. A panel which includes one or two board members selects and pretests the examination route and scores the practical test on a pass/fail basis.

- As indicated earlier, the oral part of the examination does not appear to be testing any knowledge, skills or abilities which assure competency. The basic ability that the oral exam seems to be testing is whether the candidate is "suited temperamentally and otherwise to instruct blind persons in the use of guide dogs." This is a very subjective standard to apply and could lead to arbitrary decisions that have no basis in fact to determine qualifications and the competency of a person to instruct guide dogs and guide dog users. This is a decision which would be more suited for the school to determine when deciding whether to hire or fire a person as an apprentice and as an

employee. The school has the ability to hire or fire an apprentice at any time during their three years of training, and this is a behavior which the schools would be more able to observe and deal with.

7. *There are no other organizations that have oversight of instructors or schools.*

- According to the information provided by the board, there are no national organizations for the blind that have standards for the training of guide dogs, guide dog users, schools, or fund-raisers. The board states, that according to the Department of Defense, the California guide dog law is the only place where dog behavior is codified. There is, however, one national organization, the Council of Dog Guide Schools, which is a school-sponsored organization which meets to discuss mutual issues among the schools. It is unknown whether this organization certifies schools outside of California.

8. *The board does not regulate or license related types of training activities -- "signal" dogs for the deaf, "service" dogs for the physically disabled, and "companion" dogs (for emotional and psychological support).*

- Persons and organizations that provide "signal dogs" for the deaf and "service dogs" for the disabled are not currently licensed in California. In 1990, there were three training programs in California for signal dogs and one for service dogs. Pursuant to legislation sought by the board (SB 2229 - Marks, Chapter 1595 of 1988), the board was required to conduct a study and report to the Legislature by June 30, 1990, regarding the possible expansion of the guide dog law to regulate other trainable animals including signal and service dogs. The board's 1990 report suggested expansion to include those animals for purposes of: standardizing the training for such animals; facilitating identification of such dogs' users; and, establishing their right to access to various public accommodations, etc., accompanied by their dogs. It was noted at that time, that the training varied significantly among the various training programs but there was no evidence of abusive practices similar to those which led to the initial licensing of guide dogs. There was significant opposition to the expansion of the board's jurisdiction following the 1990 report, with concerns being expressed that such additional licensing could cause significant economic hardship on the existing signal and service dog training programs, increasing their costs of training, all in the absence of evidence of abuse.

9. *There is a significant, though relatively small demand for the services of guide dogs; the ability of the consumer of guide dog training services (a blind person) to independently determine competence is limited in advance of obtaining their services.*

- As noted by the board, while the number of guide dog users is comparatively small, the significance of properly trained dogs and users is great for the individuals involved. The provision of a guide dog to a blind person is infrequent (working life expectancy of a guide dog is from six to ten years), and costly ($15,000 to $30,000).

Absent state regulation, the board argues that a blind guide dog user would have little personal ability to assess the competence of an instructor or a school's training program and follow-up services, except through anecdotal reports from other users.

- Because blind guide dog users do not frequently or repeatedly use the services of these schools or instructors, and make a considerable investment in time for training, they are neither readily able to evaluate licensee services and easily choose alternative providers of those services.

10. ***There are at least two other public agencies, the Department of Rehabilitation and the State Attorney General's Office, which have relevant regulatory authority, though no formal licensure function.***

- The Department of Rehabilitation provides a full range of services and programs for the blind and partially sighted. Under their Independent Living Division they have a program titled, "Services for the Blind and Partially Sighted." This program is primarily involved in job development and placement, but also provides services which can assist the blind person in achieving independence (such as in use of guide dogs). The Department is also responsible for inspecting and certifying programs to ensure standards are met, and working with nonprofit groups for development and improvement of services (including fund-raising efforts).

- Under Section 12580 et seq. of the Government Code, charitable fund-raisers are required to register with the State Attorney General's Office. The fund-raiser requirements are designed to protect donors from being defrauded by bogus or unreliable persons or organizations.

11. ***It is doubtful that monetary damages would suffice if the guide dog user was no longer able to use the guide dog because of the incompetence or negligence of the school or instructor.***

- The average guide dog represents no less than two weeks to four weeks of training for the blind person under the supervision of a guide dog instructor, along with two years of specialized rearing, nurturing, and ultimately training of the dog in the licensed school and with licensed instructors. The average cost of the dog and its training, and placement with the blind person, is in the range of $15,000 to $30,000. This figure must be supplemented with any costs to the blind person in the training situation. The damage to the individual through loss of the guide dog must be viewed from the perspective of not simply death of the dog, but the impact of, for instance, a traffic accident has on the dog. Guide dogs can be rendered unsafe after being involved in such an event because they are too traumatized to continue.

- Considering the amount of effort and commitment that are required for a blind person to successfully blend his/her talents and skills with a guide dog, and ramifications of loss on the overall functioning of a blind person who has independent mobility through the use of a guide dog, simple monetary damages would not seem to suffice if the blind user can no longer use the guide dog, either because of death or loss of ability to guide.

  There is also an emotional impact on the blind person who has relied on the guide dog for many years. The loss is likened to that of a close family member and has a severe impact on the adjustment and emotional well-being of the blind person.

12. ***It does not appear that the current regulatory program has restricted the amount of guide dogs necessary to serve the visually impaired or increased overall costs for the blind user.***

- It does not appear that California's unique licensing law has unduly or negatively affected the provision of guide dogs to blind persons. California licenses 65 of the estimated 200 guide dog instructors (more than 25%), and three of the 10 established guide dog schools (30%), that exist nationwide. California's guide dog schools produce about 350 trained person/guide dog units annually, and provide follow-up and related services to in excess of 2,000 guide dog users. Less than 50% of dogs that commence training are "graduated" from California schools as guide dogs. The average cost of training a person/guide dog unit is estimated to be between $15,000 to $30,000. The aggregate expenditures for all three California-licensed guide dog schools is in excess of $13 million. Almost all of the costs associated with providing guide dogs to the blind are paid for through fund-raising activities.

13. ***There may be other alternatives to the current regulatory program.***

- **Schools Provide the Written and Practical Examinations.** As indicated, the school instructors are primarily used to draft questions for the written examination along with oversight by the Department of Consumer Affairs. The practical examination is also set up by the school along with assistance from board members. The schools currently provide their own written and practical examinations which are considered more difficult than those provided by the board.

  There is no argument presented, or reason given, why completion of the apprenticeship program and passage of the schools examination would not be adequate to assure the competency of instructors.

- **Eliminate Licensing of Guide Dog Instructors.** There has been no action taken by the board against guide dog instructors for many years. Also, unlike other practitioners licensed by the various consumer boards of this State, licensed guide dog instructors are not independent practitioners. They continue to work for the schools and are not allowed to operate outside of the school's jurisdiction (this even includes home training in the use of guide dogs). As long as there is a requirement that guide dog instructors must work for a school to train guide dogs, it does not appear as if

licensure is necessary.

- **Transfer the Powers and Duties of the Guide Dog Board to the Department of Rehabilitation.** SB 90 (Boatwright, 1987) proposed to transfer the powers and duties of the Guide Dog Board to the Department of Rehabilitation (DOR). At that time the Legislative Analyst argued that DOR, rather than the Department of Consumer Affairs (DCA), was the logical entity to house the board, as it already provided services to the blind and a representative of the Director of Rehabilitation serves as a member of the board. Opponents of the proposed transfer argued, at the time, that the board was a quality control service that was available to not just guide dog users but blind persons in general and that it was appropriate to house its operation within the Department of Consumer Affairs. Further, it was noted that DOR did not have mechanisms such as licensing procedures to perform the board's functions. SB 90 died in the Senate Business and Professions Committee.

  (If it is determined that licensing of instructors is no longer required, and that graduation from an apprenticeship program and examination would suffice, then DOR could possibly inspect schools to assure that quality training was being provided. (They are already responsible for oversight of the "Orientation Center for the Blind.") They would also be able to make broad determinations about the overall needs of blind persons, both in terms of increased independence (and use of guide dogs) and those services which truly benefit the blind community.)

- **Transfer the Powers and Duties of the Board to the Department of Consumer Affairs.** The board believes that little if any economic efficiency would be gained if the Department took over the administration of the board's programs, and there would be a loss of expertise in the issues relating to guide dogs that the board and staff have developed over a number of years. However, the amount of administrative support which the Department could provide for such a program would be greater than that which exists, given the current staffing situation of the board.

- **Total Deregulation.** The board argues that continued licensing regulation is necessary and that other alternatives would place guide dog users and the public in greater physical, economic and psychological risk. The board believes that "marketplace" factors in this arena are not satisfactory given the vulnerability of the blind guide dog user, and the public sympathy which guide dog solicitations evoke. The board believes that total deregulation would undermine the assurance of competent training (schools would be tempted to hire untrained "instructors") and protection against guide dog charitable solicitation fraud. The board argues that voluntary private or public certification would mislead the public and guide dog user by failing to screen out unqualified persons. While the board believes dispute arbitration is useful (and it has its own pilot arbitration project), it believes that civil or criminal legal recourse rather than state licensure would not adequately protect persons, and would be unavailable (more serious crimes given priority), costly and time consuming.

  Based on the findings of this report, there appears to be adequate protections of the

public from fraudulent or deceitful fund-raising organizations. It is doubtful the board would be able to take any action against a fund-raising organization except for denying a license to solicit funds to operate a school, or to solicit funds for one of the three schools in this state. The Department of Rehabilitation could provide the necessary oversight of the three schools, and decide on whether or not to approve other schools. Completion of a three year apprenticeship program, and passage of a written and practical exam provided by the school, should be sufficient to ensure the competency of guide dog instructors, not only in terms of their ability to train dogs effectively, but also to train people who are blind and visually impaired and who wish to use a guide dog for greater mobility.

There are also new legal remedies which are available to blind persons when rights of public access are denied. Under Section 365.5 of the Penal Code a person is guilty of a misdemeanor for interfering with, harassing or obstructing a guide dog user or guide dog. Under Section 54 of the Civil Code, a blind person has the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, buildings, etc. Damages may be collected for denial of appropriate access.