BACKGROUND PAPER FOR HEARING

BOARD OF GUIDE DOGS FOR THE BLIND

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD, BACKGROUND CONCERNING ISSUES, AND PRELIMINARY RECOMMENDATIONS

PRIOR SUNSET REVIEW: The Board of Guide Dogs for the Blind (Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) five years ago (1995-96). At that time, the JLSRC recommended that the Board be sunsetted on July 1, 1997 based on the following findings: a) the Board licenses few instructors and has not licensed any new schools or fundraising organizations since the licensing requirements were first enacted; and b) there appeared to be little problem with unlicensed activity, in part due to the close community related to the activities of the Board's licensees.

Upon its sunset, all of the duties and responsibilities of the Board would be passed to the department under the bureau structure. However, contrary to the recommendation of the JLSRC, legislation (AB 1546), Chapter 475, Statutes of 1997, sponsored by the Department of Consumer Affairs (DCA), extended the Board for five years. The DCA's argument for doing so was based on their assessment that it would be more cost effective to retain the Board than to abolish it.

The following are unresolved issues pertaining to this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. Where necessary, the staff of the JLSRC has made preliminary recommendations for Members and the Department of Consumer Affairs to consider. There are also questions that staff has prepared concerning the particular issue. The Board was provided with these questions and should address each one.

CURRENT SUNSET REVIEW ISSUES

BOARD VACANCY ISSUE

ISSUE #1. THE BOARD CONTINUES TO HAVE MEMBER VACANCY PROBLEMS.

QUESTION #1 FOR THE BOARD: *What is the current status of the Board's membership?*

BACKGROUND: At their last review, the Board reported three board member vacancies.

This is a seven member board. At present there are only five members sitting on the Board and terms of two of those members expired in June. In fact, the Board was unable to conduct official business at their last meeting due to quorum problems.

BUDGETARY ISSUES

ISSUE #2. SHOULD THE BOARD BE CONTINUED, BE MERGED WITH ANOTHER BOARD, OR SUNSETTED AND HAVE ALL ITS DUTIES, POWERS, AND FUNCTIONS TURNED OVER TO THE DEPARTMENT OF CONSUMER AFFAIRS ?

QUESTION #2 FOR THE BOARD: *Does it continue to be fiscally prudent to keep the Board in existence?*

BACKGROUND: While the JLSRC recommended that the Board should be eliminated at the last review, the Department of Consumer Affairs chose successfully to seek a 5-year extension for the Board. DCA's stated reasons included the important expertise available through the Board system, and the increased costs which would result if the Department assumed the Board's responsibilities. The Board relies on volunteer help which is not possible under a bureau structure.

It is the Board's position that the unique services which this Board provides, utilizing as it does important contributions by guide dog users themselves, would be difficult to duplicate in another structure.

ISSUE #3. DOES THE BOARD'S FUND CONDITION PERMIT FILLING A HALF-TIME CLERICAL POSITION?

QUESTION #3 FOR THE BOARD: *Does the Board anticipate the need for a fee increase to allow for the a clerical support position?*

BACKGROUND: The Board is funded by licensing fee revenues (special fund) and now operates at about $100,000 per year. There has been a small increase in the number of licensed instructors, and more substantial increases in renewal fees from the licensed schools. The Board's annual licensing fees are $50 for a fund-raiser license, $100 for an instructors' license, and 0.4% (0.004) of a school's most recent calendar year expenses. Currently, there are 76 instructors which total approximately $7600 of the Board's income and the remainder of the revenue is generated from the schools. At present, there are no fund-raiser licensees.

Although the Board's income has increased, expenditures have done so as well. The Board has indicated that a 0.5 clerical support position has not been filled because of the state of the potential fund condition. According to the Board figures, in FY 99-00 there was approximately 14 months in reserve; however, this figure has dropped to 5 months in reserve for FY 00-01 and is project to fall below 1 month in reserve by FY 03-04. It appears that the projected figures provided by the Board include the salary of a part-time clerical position.

Is the Board considering a fee increase to procure additional funding?

PRELIMINARY RECOMMENDATION: ***The Board should provide the JLSRC with a breakdown of projected expenditures and a proposal to resolve the diminishing state of their fund reserve.***

LICENSURE ISSUES

ISSUE #4. IS THE THRESHOLD FOR LICENSURE AND FINANCIAL RESPONSIBILITY FOR THOSE WHO WISH TO ESTABLISH A GUIDE DOG SCHOOL IN CALIFORNIA TOO HIGH?

QUESTION #4 FOR THE BOARD: *Does the criteria used to license guide dog schools need to be modified?*

BACKGROUND: 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 restrictive, 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. 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 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.

To open a guide dog school, an organization must be able to demonstrate that it posses the requisite knowledge to provide guide dogs to blind persons, including the important matters involved with facilities, understanding of blindness and related health issues, appropriate staff to provide the dogs and other important training, and the facilities to support such an operation.

Organizations wishing to raise funds to establish guide dog schools must demonstrate they have a plan of operation for a school, the ability to employ licensed personnel, and have requisite financial responsibility. The initial fundraising license is for a period of one year, with an additional year possible upon request.

The Board reports that from time to time individuals and/or organizations attempt to open training schools, and to do this must obtain the fundraising license. There have been two organizations which did secure the fundraising license; neither was able to develop sufficient funds in order to commence the process of school operation, and in the final analysis did not possess sufficient energy to do so. Given the expertise of adequate fundraising, most of the other requirements could be met, but the amount of vigor required to raise funds usually is not found among those who believe it would be a "nice" idea to open a school.

The Board also reported that at present there is a wait at these schools, however, do not believe that it is a problem that would warrant the need for additional schools to be opened.

PRELIMINARY RECOMMENDATION: ***The Board should examine the current standards and provide the JLSRC with possible modifications in the criteria for those who wish to establish a guide dog school in California.***

ISSUE #5. SHOULD THE STATE CONTINUE WITH THE LICENSING AND REGULATION OF GUIDE DOG SCHOOLS, INSTRUCTORS, AND SCHOOL FUNDRAISERS?

QUESTION #5 FOR THE BOARD: *Is it necessary for California to continue to license schools, instructors, and school fundraisers?*

BACKGROUND: The education and experience requirements for licensure as a guide dog instructor are unique as there are no other states which license instructors. Additionally, the Board has issued only 11 new licenses for guide dog instructors since its review in 1996 and no new guide dog schools for a number of years.

The Board believes that there is a definite need for this licensing activity because it is essential to the health and welfare of blind persons desiring to use guide dogs. There is some evidence of problems in other states similar to those which caused California to enact licensing in 1947. In the recent past, numerous examples of the kinds of problems which arise, absent regulation, demonstrate the difficulties which can occur. The Board provided the following examples: 1) an organization attempted to gain the school license in California, but could not meet the minimal qualifications. Several years ago the operation moved to the East Coast, but has yet to produce a viable program and apparently there are fiscal irregularities; and 2) a "school" commenced operations in a Southern state but would only provide token training. It took years of effort in the community, but the operation finally closed down.

The Board states that these kinds of events are common across the country. The presence of the Guide Dog Board suffices to avoid such guide dog scams and schemes in California.

ISSUE #6. IS THERE A DISCREPANCY WITH SCHOOL PRACTICES AND THE CALIFORNIA CODE OF REGULATIONS WITH REGARD TO THE ONE YEAR REQUIREMENT OF WORK EXPERIENCE?

QUESTION #6 FOR THE BOARD: *Does the Board still require the one year of experience and do schools currently comply with this requirement?*

BACKGROUND: 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.

ENFORCEMENT ISSUE

ISSUE #7. HAS THE BOARD DEFINED PROFESSIONAL COMPETENCE, NEGLIGENCE, OR APPROPRIATE PROFESSIONAL CONDUCT AS IT RELATES TO LICENSEES?

QUESTION #7 FOR THE BOARD: *What steps does the Board take to assure that competency of licensees?*

BACKGROUND: During their last review, the Board indicated 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. It does not appear that the Board has taken any action to try and define professional competence, negligence or appropriate professional conduct of the licensee.

PRELIMINARY RECOMMENDATION: ***The Board should define professional competence, negligence, and appropriate conduct.***

ARBITRATION PROGRAM ISSUE

ISSUE #8. SHOULD THE PILOT PROJECT FOR ARBITRATION BETWEEN GUIDE DOG USERS AND GUIDE DOG SCHOOLS BE EXTENDED OR SHOULD THE SUNSET DATE BE ELIMINATED ALTOGETHER?

QUESTION #8 FOR THE BOARD: *What has been the outcome of the pilot arbitration project? If it has been successful, should the sunset date be extended or eliminated?*

BACKGROUND: One common area of conflict are disputes between guide dog schools and the blind guide dog users. 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. This pilot project was extended in 1998 and will become inoperative in July of 2002. At their last review, the Board has indicated that one of their legislative goals was to eliminate the sunset of this pilot project. This obviously has not taken place.

PRELIMINARY RECOMMENDATION: ***The Board should report on the outcome of the arbitration program and recommend whether the project should be continued. .***

SCHOOL REPORTING ISSUE

ISSUE #9. ARE THE LICENSED SCHOOLS SUBMITTING REQUIRED REPORTS TO THE BOARD?

QUESTION #9 FOR THE BOARD: *Does the Board continue to receive the required reports by the schools?*

BACKGROUND: Section 7217 of the Business and Professions Code requires that schools submit the following reports to the Board annually: 1) a financial audit; and 2) a list of the number of students accepted for training, those who have competed training, and the number of dogs trained.

PRELIMINARY RECOMMENDATION: ***The Board should provide a copy of these reports to the JLSRC.***