

Alcoholic Beverage Control Appeals Board

2015 SLAA REPORT

December 24, 2015

Alexis Podesta, Acting Secretary
California Business, Consumer Services and Housing Agency
915 Capitol Mall, Suite 350-A
Sacramento, CA 95814

Dear Ms. Podesta,

In accordance with the State Leadership Accountability Act (SLAA), the Alcoholic Beverage Control Appeals Board submits this report on the review of our systems of internal control and monitoring processes for the biennial period ended December 31, 2015.

Should you have any questions please contact Sarah M. Smith, Attorney, at (916) 445-4005, sarah.smith@abcappeals.ca.gov.

BACKGROUND

The Board's mission is to provide quasi-judicial review of decisions of the Department of Alcoholic Beverage Control issuing, denying, suspending or revoking alcoholic beverage licenses. The Board's authority is derived from the California Constitution, and its powers are delineated in the Business and Professions Code sections 23075 through 23089. The Board is comprised of three members appointed by the Governor, and a staff consisting, at the present time, of an Acting Chief Counsel and Chief Executive Officer, an Attorney III, an Attorney I, and two legal secretaries.

The Appeals Board holds monthly hearings in cases which have completed the briefing stage. The Board Members, only one of whom is an attorney, are provided case summaries to assist them when hearing argument in individual cases, and are then provided drafts reflecting the Board's decisions in the cases it has heard. The summaries and draft decisions are prepared by the Board's attorneys, based on their review of the briefs filed by the parties, and the hearing transcripts and exhibits in each case, copies of which are also provided to Board members prior to the hearing, as well as the application of controlling legal principles.

The Board and its staff are keenly aware that the Board's decisions can impact the economic lives of the licensees whose appeals are heard, and the efficacy of the Department's regulatory function that its decisions implement. To that end, the Board and its staff are committed to ensuring that its decisions are soundly based on the law and explanatory in their reasoning. Decisions of the Board are subject to appellate review by way of writ of review to a District Court of Appeal or the Supreme Court.

The Appeals Board is a special-funded agency, its operations funded by a surcharge on alcoholic beverage license fees. The Board has no administrative staff; its administrative functions, are, by statute, assigned to the Department of Alcoholic Beverage Control. These functions include human resource matters and accounting.

RISK ASSESSMENT PROCESS

With a small staff (five full-time employees), housed in a single office, the Appeals Board's internal organization-wide risk assessment is essentially an on-going process that, fortunately, can be conducted on a near-weekly basis and analyzed regularly. Are the staff members performing their day-to-day responsibilities? Is the Board completing its work in a timely fashion? Are actions taken to reduce delay in any given case? To the extent the Board's staff must communicate with employees of the Department of Alcoholic Beverage Control or the general public, are those communications conducted in a cordial and professional manner?

The Board's reliance on two outside agencies for limited services, however, requires additional risk-assessment processes.

With regard to technological support provided by the Office of Technology Services (O-Tech), risk is assessed on a continuous basis by an internal, non-expert information officer appointed from among the Board's staff (currently Sarah M. Smith). Risks in this area center largely on potential for corruption or exploitation of data, or the failure of technological hardware and software. The designated information officer works closely with O-Tech staff, as well as the Board's internal staff, to remain alert to information security risks, to take preventative measures, and to identify appropriate courses of action when specific risks arise in order to protect the Board's data and technological infrastructure.

With regard to human resources and budget support provided by the Department of Alcoholic Beverage Control (ABC HR), the Chief Counsel/Chief Executive, in conjunction with the Board's appointed members, monitors whether the Board's HR needs are being met by ABC HR. Risks in this area are twofold. First, there is the potential for significant delay in processing HR actions, in part because ABC HR is housed separately and in part because ABC HR may prioritize HR actions for its own agency over any actions for the Board. Second, there is the risk of a legal conflict of interest, since this Board regularly hears and sometimes reverses decisions made by ABC's administrative law judges. Delays and conflicts of interest are currently resolved on an ad hoc, case-by-case basis. Additionally, the Board is working to identify potential HR alternatives for resolution of internal staff disputes (for example, EEO consultations, disciplinary processes, or whistleblower actions), as these matters most often trigger conflict-of-interest risks.

EVALUATION OF RISKS AND CONTROLS

Operations- Internal- Staff—Key Person Dependence, Succession Planning

With such a small staff, the impact of any one employee's unavailability to work is sorely felt by the Appeals Board from an operational prospective.

The control in place to mitigate this risk is twofold. First, the Appeals Board staff is in the process of updating and/or creating clear and thorough policies, procedures, and work instructions relating to the typical duties performed by Appeals Board personnel on a day-to-day basis. Once the policies, procedures, and work instructions are in their final state, all Appeals Board staff will be trained accordingly.

Compliance- Internal- Staff Not Adhering to Policies, Procedures, or Standards

Given the narrow scope of the Board's responsibilities, another risk factor lies in the potential for one of its decisions to be legally unsound. This is typically, though not always, the result of insufficient or inattentive research and analysis on the part of staff attorneys. A legally unsound opinion opens the door to a number of internal problems. First, the matter is likely to be appealed to a higher court, resulting in additional cost and workload, particularly for internal administrative staff. Second, an unsound opinion invites more appeals from administrative decisions reached by the Department of Alcoholic Beverage Control as licensees attempt to sort out the implications of the unsound ruling. The uptick in appeals significantly increases the workload for all internal staff in all respects. Third, an unsound opinion from the Board risks undermining the legal authority of the Board, resulting in general sense of defiance among licensees toward the Board, and, by extension, toward California's alcoholic beverage law scheme. Finally, a legally unsound opinion may lead Board members to lose faith in internal legal staff, resulting in poor morale and internal disputes.

The work of each attorney in every appeal is scrupulously reviewed and critiqued by the other two attorneys, and by the Board members themselves.

Operations- Internal- Program/Activity—Changes, Complexity

Another risk, more easily handled, is the possibility that an appeal can be overlooked or misfiled.

An electronic record is maintained of each appeal filed and each order entered, and a frequent review of the status of pending cases. In addition to providing the Board rudimentary statistical data, this serves as a continuing record of the status of each case at any time before the Board.

ONGOING MONITORING

Through our ongoing monitoring processes, the Alcoholic Beverage Control Appeals Board reviews, evaluates, and improves our systems of internal controls and monitoring processes. As such, we have determined we comply with California Government Code sections 13400-13407.

Roles and Responsibilities

As the head of Alcoholic Beverage Control Appeals Board, John D. Ziegler, Chief Executive Officer, Attorney, is responsible for the overall establishment and maintenance of the internal control system. We have identified John D. Ziegler, Chief Executive Officer, Attorney, as our designated agency monitor(s).

Frequency of Monitoring Activities

As discussed above, given the small size of the Appeals Board staff and the very narrow nature of the duties involved, internal monitoring activities are performed on a near-weekly basis.

Reporting and Documenting Monitoring Activities

Monitoring activities will be reported to the management team - in other words, the Appeals Board - on a monthly basis, immediately following regularly scheduled Appeals Board hearings. The Chief Counsel/Chief Executive will, in coordination with attorneys and administrative staff, will prepare a statement regarding risks identified during the preceding month. Where monitoring has identified no significant risks, the matter will be discussed verbally in a closed session between Board members and attorneys. Where monitoring identifies significant risks, the Board will be briefed on the identified risks ahead of time via email, the matter will be discussed verbally during the closed session, and finally, an email summarizing the discussion and proposed risk-reduction strategies will be circulated among the Board and its staff during the following week.

Procedure for Addressing Identified Internal Control Deficiencies

Deficiencies producing significant risk and therefore meriting action will be communicated to the Board and staff in writing, via email. Internal deficiencies will typically be remedied within two weeks of notification (unless the deficiency involves an outside agency, such as O-Tech or ABC HR, in which case remediation may require additional time.) Where a deficiency is significant enough to require more detailed remediation efforts, the Chief Counsel/Chief Executive, in consultation with the Board, will prepare a written strategy for resolution, to include an estimate of the time frame for addressing the deficiency. The document will be circulated to all internal staff, including Board members, to ensure prompt cooperation and efficient resolution.

CONCLUSION

The Alcoholic Beverage Control Appeals Board strives to reduce the risks inherent in our work through ongoing monitoring. The Alcoholic Beverage Control Appeals Board accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies. I certify our systems of internal control and monitoring processes are adequate to identify and address material inadequacies or material weaknesses facing the organization.

John D. Ziegler, Chief Executive Officer, Attorney

cc: Department of Finance
Legislature
State Auditor
State Library
State Controller
Secretary of Government Operations