
INITIAL REPORT

CONTRACTORS STATE LICENSE BOARD ENFORCEMENT PROGRAM MONITOR

A Report on the Enforcement Program of the
Contractors State License Board
With Issues of Concern and Initial Recommendations
Pursuant to Senate Bill 2029 (Figueroa)

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EXECUTIVE SUMMARY

INTRODUCTION

This Executive Summary provides an overview of the concerns and recommendations presented in the Initial Report of the Contractors State License Board (CSLB) Enforcement Program Monitor (Monitor).

As a result of the Legislature's 1999–2000 sunset review of CSLB, Senate Bill 2029 (Figueroa) provided for the appointment of the Monitor and designated as his duty “to evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.”¹

The Monitor project began on April 5, 2001, and will continue through January 31, 2003. The Monitor and his colleagues — with the full cooperation of the management and staff of CSLB and working with fellow consultant Ben Frank of NewPoint Group — have surveyed previous studies and reports, interviewed 81 experts and witnesses, gathered and analyzed statistical data, and conducted extensive research into initial issues and concerns relating to CSLB's disciplinary process.

The findings in the Initial Report are the fruits of only approximately five months of research at the beginning of the two-year project term. Thus this report provides only the *initial* concerns and preliminary recommendations identified by the Monitor in our work to date. Most of the identified issues and potential remedies will require further study and collaboration among the Board, managers and staff of CSLB, the Department of Consumer Affairs and the state Legislature, the construction industry, and the public.

¹ Bus. & Prof. Code § 7092(c)(1).

This Executive Summary presents the essential findings of the Report using the following organizational scheme:

- **Introduction**
- **Overview of the Contractors State License Board**
- **Summary of Previous Studies**
- **The CSLB Enforcement System**
- **Initial Concerns of the Enforcement Program Monitor**
- **Initial Recommendations of the Enforcement Program Monitor**
- **Conclusion**

OVERVIEW OF THE CONTRACTORS STATE LICENSE BOARD

The Contractors State License Board is the California consumer protection agency charged with licensing construction contractors who work in the state, handling consumer complaints, and enforcing state laws pertaining to contractors. CSLB licenses approximately 45 categories of contractors and registers home improvement salespersons.

Created in 1929, and now an independent board within the California Department of Consumer Affairs, CSLB has a 2000–2001 operating budget of \$45.6 million and 466 authorized staff positions. In 2000 the agency regulated more than 278,000 licensees, administered examinations to approximately 41,000 license applicants, received 24,313 complaints, and closed 23,271 complaints. CSLB is governed by a fifteen-member Board consisting of licensed contractors, consumers, and representatives of labor organizations. The Registrar of Contractors, appointed by the Board, administers the agency.

The 1996 mission statement of CSLB indicates the agency's purpose is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. The Contractors State License Board attempts to accomplish this mission by:

- Ensuring that construction is performed in a safe, competent, and professional manner through licensing of contractors and enforcement of the licensing laws.

- Providing resolution to disputes that arise from construction activities.
- Educating consumers so that they may make informed choices.

The Board's principal activities include administering examinations which test prospective licensees, issuing licenses, investigating complaints against licensed and unlicensed contractors, issuing citations and suspending or revoking licenses, and seeking administrative, criminal, and civil sanctions against violators.

SUMMARY OF PREVIOUS STUDIES

Over the past three decades CSLB has been studied extensively and critically in no fewer than fourteen independent (non-CSLB) published reports,² and the findings and concerns of these reports have been remarkably consistent. Although the studies vary in scope and focus — and all reports do not address all these issues — there is a clear consensus on seven issues:

- (1) Additional resources should be directed to CSLB's complaint handling and investigation functions;
- (2) Complaint screening and handling procedures are inadequate and should be standardized;

² See Arthur Andersen & Co., *Report on Management Review of Operations and Personnel Requirements* (1973); Department of Finance, *A Review of the Investigatory Function and Measurement of Productivity of the Contractors State License Board* (1975); Office of the Auditor General, *Contractors State License Board: Need for Improved Administration of the Complaint Processing Program* (1979); Department of Finance, *Report on the Joint Department of Finance/ Contractors State License Board Field Operations Task Force on Complaint Handling* (1980); Department of Finance, *Zero-Based Budget Study* (1982); Price Waterhouse, *Management Review of the Contractors State License Board* (1984); Price Waterhouse, *Report on Interim Workload and Staffing Standards for the Contractors State License Board* (1985); Arthur Young, *Contractors State License Board: Final Report on Field Office Operations, Workload Standards, and Staffing Requirements* (1989); Assembly Consumer Protection Committee Report (1993) (CSLB "critically deficient in protecting consumers from unscrupulous or unqualified contractors"); Joint Legislative Sunset Review Committee, *Contractors' State License Board: Board Overview, Issues, Findings and Recommendations* (1997); Price Waterhouse, *Transition Review of the California Contractors State License Board* (1998); Joint Legislative Sunset Review Committee, *Contractors' State License Board: Joint Legislative Sunset Review Committee 2000 Sunset Review Report* (2000); Bureau of State Audits, *Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection* (2000); NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001).

- (3) Workload standards should be updated and improved;
- (4) CSLB's management information system should be improved so that it regularly generates consistent and comparable performance data;
- (5) Unsatisfactory cycle times and backlogs often mark CSLB's complaint handling, investigation, and prosecution processes;
- (6) A consistent and effective training program for CSLB enforcement staff is needed; and
- (7) Inconsistencies and non-uniformity of complaint handling and enforcement efforts are recurring problems.

THE CSLB ENFORCEMENT SYSTEM

A. Pre-1999 CSLB Enforcement System

Prior to 1999, CSLB maintained 15–17 local offices organized under the supervision of two regional offices. Each CSLB local office was staffed by an office supervisor, investigators called “deputy registrars” (DRs), one or two consumer services representatives (CSRs) who screen and mediate complaints, and clerical employees called office technicians (OTs) who staff the counter, answer the telephone, and set up complaint files.

Prior to March 1999, each local office functioned as a “mini-CSLB.” Each office performed intake, mediation, and investigation of complaints generated by construction activity in the geographic area served by that office. The office supervisor supervised all levels of staff working in that office. He/she reviewed all OT and CSR work, DR investigations, and proposed dispositions, and directly supervised and provided feedback to DRs, CSRs, and OTs.

If a case investigation produces evidence of wrongdoing, the matter may be referred to the Licensing Section of the Attorney General's Office, which prepares and files the formal “accusation” (written statement of charges) against the licensee. If the licensee disputes the charges, an evidentiary hearing is held before an administrative law judge (ALJ) from the Office of Administrative Hearings.

Once all the evidence is submitted, the ALJ drafts a proposed decision including findings of fact, conclusions of law, and recommended discipline. That proposed decision is reviewed by the Registrar of Contractors, who makes the agency's final disciplinary decision. An aggrieved licensee may seek judicial review of the Registrar's decision by filing a petition for writ of mandate in superior court.

Less serious cases may trigger a letter of warning, a citation and/or fine, or referral to one of the Board's arbitration programs.

B. CSLB's 1999 "Reengineering" Project and its Impacts

In 1999, under the direction of its previous Registrar, CSLB significantly "reengineered" the structure of its complaint intake and investigation processes and simultaneously reclassified many of its enforcement staff positions. Promoted as a means of achieving a "better, faster and cheaper" process, the reengineering project involved:

- the *centralization* of complaint intake and mediation to promote consistency in case processing and "triaging," whereby many complaints can be closed quickly and meritorious complaints can be identified and sent to the field for investigation more expeditiously. This proposal involved the physical relocation of the Board's 29 CSR positions to one of two "Intake/Mediation Centers" (IMCs), meaning the Board's existing CSRs were required to move to one of the new centers or find jobs elsewhere. As a result of this mandate, almost all of CSLB's 29 CSRs (then averaging 4.4 years of CSR experience) left the Board entirely or transferred/promoted to different positions;

- the *decentralization* of investigations for greater flexibility. This proposal involved mandatory "home-officing" of most DRs (who were equipped with laptop computers, modems, cell phones, and other technology enabling them to work more easily from home and from the field, without having to report to an office), the closure of several existing CSLB district offices (including the abolition of an equal number of district office supervisor positions), and the establishment of a fewer number of "Investigative Centers" (ICs) which serve as "drop-in sites" housing supervisors and support staff; and

- a *reclassification* of CSLB's investigator series to provide higher salaries for the Board's investigators. Under this proposal, the Board's remaining district office supervisors became "enforcement supervisors" (ES Is), "deputy registrars" became "enforcement representatives" (ERs), and "office technicians" became "program technicians" (PTs).

While many of the concepts underlying reengineering were arguably sound, the poorly managed implementation of the project produced a result disturbingly close to the exact opposite of a “better, faster and cheaper” process. As documented in another SB 2029-required study by the NewPoint Group, on balance the reengineering project reduced efficiency in key respects; increased case backlogs and cycle times (particularly in northern California); badly damaged staff morale; prompted massive staff attrition resulting in dramatically lower staff experience levels; and substantially decreased consumer satisfaction with CSLB’s performance.

Newly appointed Registrar Stephen Sands and his executive staff have now begun a thoughtful and well-managed effort to preserve the benefits of centralizing intake/mediation functions while rebuilding the damaged organizational structure and business process of the enforcement system. The Monitor fully endorses these rebuilding efforts, which have real promise for reducing case backlogs, improving cycle times, and resuscitating staff morale.

INITIAL CONCERNS OF THE ENFORCEMENT PROGRAM MONITOR

A. CSLB Mission and Mandate

CSLB’s statutory mandate is outdated. Consumer protection is the essential purpose of all California’s occupational licensure boards and bureaus in the modern era, but nothing in CSLB’s *statutory* scheme establishes clearly that protecting consumers is the agency’s primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of CSLB’s statutes.

CSLB’s name is anachronistic and somewhat misleading today. CSLB’s current name traces back to an era when the licensing of trades was the primary function of state occupational boards. “Contractors State *License* Board” suggests to the industry and the public that licensing is the sole function of the agency; no mention is made of the *enforcement* function of CSLB, which involves at least 55% of the agency’s resources and personnel and which directly affects protection of the public. Further, the reference to “state” in CSLB’s name is unnecessary and a potential source of confusion, implying incorrectly that there are other sources of contractor licensing. Thus the name “Contractors State License Board” is no longer accurate and may in fact tend to mislead the public as to the modern mission of this agency.

B. Inadequate CSLB Resources

An outdated license fee structure means CSLB resources are inadequate to meet the Legislature's and public's demand for service improvement. CSLB is funded almost exclusively by contractor license fees, and those fees were last adjusted effective January 1, 1994. CSLB has experienced a reduction in *inflation-adjusted* per licensee funding roughly equal to the 21.2% increase in the California Consumer Price Index in the past eight years. New demands by the Legislature and the public for improved speed and quality of service will only be fully met when CSLB hires and trains additional complaint and investigative staff. Substantial industry support exists for updating CSLB's fee structure to support greater enforcement services.

C. CSLB Management Structure and Information System

Unfilled senior management positions in the enforcement program. Recent persistent vacancies in the enforcement chief position and other management positions have caused a leadership vacuum in the enforcement program, undermining decisiveness, clear executive vision, effective performance oversight, and prompt problem-solving among different program areas. New Registrar Sands is moving to fill these vacancies as part of the rebuilding process.

Ameliorating the impacts of the 1999–2000 reengineering project. The previous Registrar's 1999–2000 reengineering project reduced efficiency in key respects; increased case backlogs and cycle times (particularly in northern California); badly damaged staff morale; prompted massive staff attrition resulting in lower staff experience levels; and decreased consumer satisfaction with CSLB's performance. New CSLB senior management has begun a process of rebuilding the enforcement program structure and streamlining the complaint handling process, and these efforts are appropriate and promising.

Inadequacy of the management information system as it relates to enforcement. Effective connection between CSLB's management information system and its enforcement program is lacking, making it difficult to conduct meaningful comparisons of enforcement program performance over time and causing gaps in effective flagging and cross-referencing between the licensing and enforcement functions.

D. Contractor Licensing System and Requirements

The direct relationship of licensing to the enforcement process. Licensing practices control the screening and exclusion of fraudulent and/or incompetent contractors from the marketplace, and thus have a vitally important impact on the enforcement system.

CSLB's current licensing structure and philosophy raise concerns for further study. CSLB's licensure of *businesses* run by "qualifying individuals" sometimes operating under fictitious names — as opposed to the traditional process of licensing *individuals* identifiable by name — obscures and undermines individual accountability, permitting evasion of the enforcement process and frustrating consumer efforts to check on contractors. These concerns go to the core of occupational licensure theory as applied to CSLB, and require extensive further study and consideration.

CSLB licensing generally. CSLB examines and issues licenses to three major categories of contractors: general engineering contractors, general building contractors, and approximately 45 types of specialty contractors. In order to be licensed, an applicant must (1) complete an application form declaring completion of an experience requirement and answering questions regarding prior criminal history; (2) take and pass a trade-specific examination and a "law and business" examination, (3) post a \$7,500 "contractor's bond" (\$10,000 for swimming pool contractors); and (4) demonstrate "financial solvency" in the amount of \$2,500. No education is required for contractor licensure. One prosecutor summarized the consensus on these licensing standards: "The licensing test is not rigorous, the experience is not verified, and a person can be licensed without being identified."

The examination requirement. CSLB administers over 40 different types of licensing exams. Failure to adequately update occupational analyses underlying these exams and to replace overexposed test questions — combined with incidences of suspected cheating by individuals and exam preparation schools — have resulted in exams with high pass rates and the likelihood that some incompetent persons are being licensed. The Legislature and CSLB have taken recent steps to ensure improved exam validation and administration; these and other examination-related issues will be the subject of further discussion in future Monitor reports.

The experience requirement. Under present licensing standards, a first-time applicant for a contractor's license must demonstrate completion of at least four full years of experience as a journeyman, foreman, supervising employee, contractor, or owner-builder (or may substitute specified types of education). CSLB lacks an adequate system for verifying the experienced claimed, and checks

only about 3–6% of licensure applications to verify representations made in applications. Other means of verification are available and should be utilized, and a higher target of verification is needed.

Criminal history verification. CSLB’s application form requires applicants to disclose whether they have been convicted of a crime, but CSLB has no way of verifying applicants’ responses. Unlike most law enforcement agencies (including at least 24 other DCA occupational licensing programs and approximately 20 other licensing programs administered by non-DCA agencies), CSLB fails to require fingerprinting at point of licensure and makes no use of the Department of Justice’s Criminal Identification and Information system (CII) to verify criminal history information. CSLB’s licensing unit uses a “flag” system to identify former licensees with criminal convictions who are reapplying for licensure; however, that system failed in the recent Crown Builders case in San Diego, and elsewhere, permitting persons with prior convictions and revocations to be relicensed. A system permitting ex-convicts to be readily licensed without detection is fundamentally flawed. The Monitor strongly supports fingerprinting for criminal history detection, to enable CSLB to make informed licensing decisions.

The \$7,500 contractor’s bond. California contractors must post a \$7,500 “contractor’s bond,” ostensibly to protect consumers and subcontractors, materials suppliers, or others who are victimized by the misconduct of a contractor. This bond requirement — which applies regardless of the number or size of projects the contractor undertakes — is woefully inadequate and provides essentially no protection for most consumers. For the bond to be a meaningful mechanism to ensure recovery for any intended beneficiary, an increase in the amount of the bond is needed, and changes in the type of bonding and in the payout criteria will be required.

The capitalization requirement. The present capitalization requirement of only \$2,500 is not meaningful and provides no guarantee of solvency or ability to meet judgment obligations.

CSLB’s “Home Improvement Contractor Certification Program” is largely nonsubstantive and may in fact be misleading to consumers. The Legislature recently established a “certification program” for contractors engaging in home improvement work, but the principal component of this certification is the passage of a 20-question, open-book, multiple-choice examination that is available on the Internet and is not trade-specific. It is doubtful that this exam requirement meaningfully improves the competence of home improvement contractors, but this “certification” is now trumpeted by some contractors in their advertising and probably misleads consumers as to the screening and qualifications of these contractors. CSLB should carefully evaluate the impacts of the

“certification” requirement prior to recommending any extension of the program’s sunset on January 1, 2004.

CSLB’s “Home Improvement Salesperson Registration Program” may be inadequate to protect consumers. CSLB’s registration program for “home improvement salespersons” requires no qualifications other than completion of an application form. Legislative hearings have produced numerous complaints about home improvement salespersons (particularly their use of high-pressure sales tactics and small-print lien provisions in financing contracts) and proposals that the existing registration program be converted to a licensure program with background checks, bonding, and public disclosures. This is a subject to be explored in future reports, and CSLB should collect further data and public comment on abuses by home improvement salespersons.

The flow of information into CSLB about licensee misconduct is generally inadequate. CSLB lacks mandatory reporting statutes applicable to other agencies (*e.g.*, Business and Professions Code section 800 *et seq.* applicable to the Medical Board). CSLB and the Legislature should consider such a comprehensive statute, requiring the reporting to CSLB of contractor criminal arrests and convictions, as well as civil judgments and settlements, bankruptcies, debarments by government entities, and private arbitration awards, to enable CSLB to make more informed licensing and enforcement decisions.

CSLB’s use of criminal convictions in enforcement decisionmaking is overly narrow and inadequate. CSLB’s present interpretation of criminal acts “substantially related” to contracting is unduly narrow, allowing licensure of certain contractors despite their convictions for serious felonies. CSLB should rethink and expand the categories of criminal convictions which should affect the licensure and discipline of contractors.

E. Complaint Handling

Many of the Monitor’s initial concerns with CSLB’s complaint intake and mediation program are outgrowths of CSLB’s 1999–2000 reengineering project, and current management is now addressing several of them. Others, however, are longstanding problems that CSLB should recognize and resolve:

There is no agency consensus on the role/responsibilities of CSRs. Since the reengineering project, there appears to be a lack of agency consensus about the role and responsibilities of the CSRs, resulting in inconsistencies in procedure and dissatisfaction with the CSRs' work product. New CSLB management recognizes this problem and is taking steps to streamline the CSR business process and expedite CSR case processing.

CSLB's new, inexperienced CSRs and PTs are receiving little or no training. Many of CSLB's new and relatively inexperienced CSRs and PTs are receiving little or no formalized training when they begin their jobs. Also, the centralization of the intake/mediation function has separated CSRs from investigators, and has hindered investigator feedback to and informal training of CSRs and the overall "teamwork" spirit that once pervaded CSLB district offices. New CSLB management is in the process of addressing these concerns and restoring a geographical focus for CSRs.

Lack of CSR experience and training has contributed to huge case backlogs and excessive case cycle times at the CSR level. Despite a 10% reduction in the number of cases received by CSLB over the past two years, there has been a substantial growth in the backlog of complaints accumulating at the CSR level. Previous management addressed this problem in the south by shifting many cases to the field and requiring ERs to screen and close them. In the northern region, a large and stubborn backlog of 1,200 cases (including 250 cases over 180 days old) persists at the Sacramento Intake/Mediation Center, giving rise to a "holding file" in which unscreened cases await CSRs to handle them. CSRs report feeling overwhelmed by the pressure of 120- to 140-case workloads and the never-ending backlog of complaints awaiting their attention. Although CSRs are expected to close case within 45 days, only 44% of intake/mediation cases were closed within 60 days during 2000-01 (down from 71% during 1998-99).

Excessive backlogs and cycle times hamper initiatives which could result in quick resolution of cases amenable to mediation. The existing case backlogs are preventing CSRs from expeditiously addressing certain disputes amenable to quick resolution. The backlog problem has also resulted in the demise of a promising "face-to-face mediation" pilot program begun at CSLB's Norwalk Intake/Mediation Center during the early part of 2001 which correctly emphasized the importance of attempts at resolution of contractor/consumer disputes at the earliest stage.

Morale is suffering because CSLB's traditional PT-to-CSR and CSR-to-Investigator "career ladders" have been destroyed. Previously, trained PTs would frequently promote to the

CSR level, and experienced CSRs were often promoted to investigator positions, thus creating a strong “career ladder” within CSLB that effectively produced knowledgeable employees and promoted morale. The 1999–2000 reengineering project disrupted this process, requiring many PTs and CSRs to move if they want to promote within the agency, and depriving them of beneficial learning from contact with other job classifications. One result is that CSR morale is generally extremely low.

The span of control of CSR supervisors is excessive. Although reengineering was supposed to decrease the span of control of CSLB supervisors, the reverse has often happened: During most of 2001 to date, the supervisors of CSLB’s IMCs supervised greatly increased staffs of 12–14 CSRs and 7–12 PTs each. Supervisors complain that their case review responsibilities alone are staggering, leaving little time for training, supervision, and evaluation of their staff.

CSLB’s management information system and processes are inadequate to permit quick detection of repeat offenders. To track incoming complaints against repeat offenders, CSLB maintains a so-called “alert board,” but this has historically been a paper document prepared on an irregular basis and lacking adequate cross-referencing. The absence of an automated and updated process reduces the effectiveness of the alert board system. As a more general matter, CSLB’s data management system is inadequately connected with its enforcement tracking information (see “CSLB Management Structure and System” above).

CSLB’s intake system is inconsistent from north to south. Until recently the triage checklist used in the Sacramento IMC differed from the one used at the Norwalk IMC, presenting problems for Norwalk CSRs who must screen complaints received and inputted by Sacramento PTs. This inconsistency is symptomatic of the continuing “north vs. south” culture disparity which reengineering was intended to cure.

F. Investigations

Unsatisfactory cycle times, backlogs, and caseloads. CSLB has hardworking investigators (ERs), but the investigative phase of the enforcement process has been plagued by excessive investigator caseloads, unsatisfactory cycle times, and case backlogs. Current cycle times and case delays are at unacceptable levels: The 2000–2001 average for investigation closure is 221 days (compared with a goal of 110 days) — an increase of 28 days since 1998, and the number of

pending licensee complaints in the system has increased by 30% in the past two years. Investigator caseloads remain at near record levels. The current ER statewide vacancy rate of 19.7% contributes significantly to this problem. Progress toward acceptable caseloads and satisfactory cycle times and backlogs will depend on filling current investigator vacancies and increasing overall investigator resources.

Inadequate legal guidance. While investigating a case, CSLB investigators rarely if ever interact with or receive any legal advice or guidance from the attorneys who may eventually prosecute the cases they are investigating. The attorney/investigator “teamwork” structure that typifies the law enforcement process at most public prosecutors’ offices is not present between CSLB investigators and Attorney General’s Office prosecutors.

Inadequate peace officer staff. CSLB’s criminal cases require careful and thorough investigation by highly skilled investigators, but among its 118 investigators handling 7,000–8,000 investigation referrals per year, CSLB has only *three* sworn peace officers for the entire agency. State and local prosecutors, and managers in CSLB’s enforcement program, uniformly lament the shortage of peace officers trained in criminal casework, capable of serving as affiants on search warrants and able to serve search and arrest warrants.

CSLB’s promising start at major case response teams should be increased substantially, with appropriate expertise and team resources committed to the effort. Major fraud cases and other high-visibility complex matters require an immediate infusion of skilled investigative resources. CSLB’s Statewide Investigation and Fraud Team (SWIFT) concept represents an important step toward addressing this shortcoming, but a greater commitment to “fast response” teams with adequate investigator resources (including peace officers) is needed.

Inadequate investigator training for law enforcement functions, especially for criminal cases. State and local prosecutors recognize the commitment and cooperation of CSLB’s investigators, but also regularly cite the lack of sufficient specialized training to enable CSLB ERs to play an effective role in criminal and civil case investigations. Systematic and professionalized investigator training is needed on such matters as interrogation techniques, elements of key felonies, the Evidence Code, search warrants and administrative subpoenas, and accessing financial records.

The span of control for investigator supervisors has been excessive. The 1999–2000 reengineering project brought seriously excessive spans of control for those supervising CSLB field

investigators. Some supervisors now oversee twice the previous number of supervisees, resulting in inadequate time for case review, mentoring, training, and dealing with the public. Many previously successful managers find it impossible to do their jobs well. Enforcement program structural changes are now under way which seek to address this problem.

The “home-officing” requirement deprived investigators of needed facilities and is unsuitable for some employees. Although beneficial in some work contexts — and perhaps for some employees in the CSLB environment — home-officing in general has created far more problems than it has solved for CSLB. Investigators have inadequate access to office facilities and secretarial support, and have lost beneficial contact and teamwork with colleagues. Some ERs adapted well to home-officing, but other investigators are incapable of home-officing responsibly.

Investigator performance/workload standards are outdated and unrealistic. Current workload standards developed in 1989 are unrealistic and outdated given significant increases in case complexity and the shifting of less time-intensive tasks to others.

Inconsistent early coordination with state and local law enforcement to ensure proper focus and handling of criminal and high visibility matters. Many sources cite inadequate early coordination between CSLB investigators and state and local law enforcement agencies in cases of major fraud or great complexity. There is a wide range of experiences in this regard: Some local prosecutors report excellent communications and early case cooperation; prosecutors in other areas seldom hear from CSLB until long after the critical early stages of a major case investigation. CSLB investigators experience similar inconsistencies in the responses they receive from law enforcement agencies throughout the state.

G. Arbitration

Issues regarding arbitration programs for future reports. CSLB administers both a Mandatory Arbitration Program (MARB) for disputes over contracts of less than \$5,000 and a Voluntary Arbitration Program (VARB) for disputes over amounts between \$5,000 and \$50,000. This arbitration system offers an important alternative dispute resolution mechanism for CSLB complaints, and further analysis of several important issues will appear in subsequent Monitor reports, including: (1) the use of outside contractors and agencies to handle these arbitrations; (2) the appropriate qualifications for arbitrators, including experience requirements; and (3) possible abuse of the arbitration system by repeat or egregious offenders.

H. Prosecutions

- **Prosecution Priorities Generally**

The continuing concern over unlicensed activity. The past several years have seen major efforts by CSLB, including the proactive program of the SWIFT unit, to address the continuing industry and public concern over unlicensed contracting, which remains one of the leading sources of all consumer complaints statewide. Our preliminary evidence supports a continued and increased commitment to this prosecution priority.

Inadequate priority for criminal enforcement of key aspects of contractor fraud and abuse. State and local prosecutors and consumer groups support increased CSLB priority for criminal prosecution of construction industry fraud and abuse; in particular they encourage more frequent investigation and referral for prosecution of cases involving: (1) excessive down payments (Business and Professions Code section 7159); (2) qualifiers on revoked/suspended licenses (Business and Professions Code section 7121.5); and (3) employment of unlicensed executives (Business and Professions Code section 7121), which practices may signal more serious large-scale contractor fraud or evasion of licensure sanctions.

- **Administrative Prosecution by the Licensing Section of the Attorney General’s Office**

Cycle times in Attorney General administrative actions are lengthy and case management is difficult. CSLB perceives a significant source of delay in the legal action process of the Attorney General’s Licensing Section, including lengthy delays in the filing of administrative accusations (up to eight months average in southern California), and further delays between accusation filing and the setting of hearings. Although many factors are at work here — including some beyond the control of either agency — these administrative law matters often move more slowly than all parties wish. As a related matter, the Attorney General’s management staff acknowledges the need for a better management information system to permit better “real time” tracking and management of these administrative cases.

Other continuing issues involving administrative prosecution. Both CSLB enforcement staff and private litigants have noted apparent examples of inconsistency in case handling procedures and disposition standards in the administrative enforcement process in northern and southern California.

Also, CSLB reports dissatisfaction with the level of communication between CSLB staff and deputy attorneys general after cases have been referred for prosecution, and the Monitor perceives a lack of communication and cooperation between investigators and deputy attorneys general during the investigative phase as well.

- **Criminal and Civil Prosecution by District Attorneys and City Attorneys**

Inadequacy or inconsistency of criminal referral process. Both prosecutors and CSLB report inconsistencies, varying especially by region, in the process of referring CSLB cases for potential criminal prosecution. Some local prosecutors complain of few criminal case referrals from CSLB investigators, or an unenthusiastic response from busy CSLB investigators when criminal matters are referred for investigation; other prosecutors report an excellent working relationship and a steady flow of viable criminal cases. CSLB investigators see considerable variation in responsiveness among local prosecutors. We perceive inadequate communications and underdeveloped working relationships among these agencies, which can and should be addressed by CSLB and prosecutor groups such as the California District Attorneys Association.

Inadequate referral of appropriate, large-scale cases for civil unfair competition enforcement. In addition to more familiar administrative and criminal enforcement mechanisms, California law provides powerful civil law enforcement tools to its state and local prosecutors for addressing unfair and deceptive business practices, and these tools are sometimes superior to administrative or criminal actions in large-scale fraud and deception cases. However, prosecutors report few, if any, referrals of such matters from CSLB enforcement staff.

Inadequate early and systematic cooperation between CSLB investigators and local prosecutors in criminal and civil matters. Nearly all state and local prosecutors express an interest in better and more systematic early cooperation between CSLB investigators and the state and local prosecutors to whom major criminal or civil enforcement matters are brought. CSLB investigators today often do not interact with or receive early guidance from the prosecutors who will handle the investigators' cases. This "hand-off" system does not work well in complex white collar crime cases of the sort CSLB frequently handles. While some working relationships among CSLB staff and prosecutors are excellent today, many of these relationships suffer from inadequate or non-existent early investigation cooperation.

The *Terminix* rule may be outmoded. CSLB adheres to the *Terminix* rule (from a 1948 appellate court decision) which is seen as prohibiting the Registrar from disciplining any contractor who stands “ready, willing, and able” to cure defective work which has not yet been paid for by the consumer. More research is appropriate, but the *Terminix* rule may have been superseded in part by subsequent legislation, and has been distinguished in recent appellate decisions. The *Terminix* rule may no longer be valid, and the agency’s reliance on the rule may be misplaced. The Monitor will further explore the issue of the validity of the *Terminix* rule in future reports.

I. Public Disclosure and Public Outreach

CSLB’s complaint disclosure policy. Many victims of contractor fraud criticize CSLB’s “complaint disclosure policy,” which currently precludes CSLB from disclosing pending complaints and investigations until the investigation is concluded and the matter has been “referred for legal action” (*i.e.*, complaints being screened, mediated, arbitrated, or investigated are not disclosed). CSLB’s policy often fails to provide protection at the time consumers need it most — when they are choosing a contractor and checking first with CSLB. After conducting a study of its policy, the Board determined to liberalize disclosure to better protect consumers, beginning with SB 135 (Figueroa), passed by the Legislature and awaiting action by the Governor, which requires disclosure of all complaints referred for investigation after a determination that a probable violation has occurred. The Monitor supports SB 135 and efforts at appropriate disclosure of public information.

Website issues and problems. Although CSLB’s Web site now provides consumers with instant access to information about contractors and an online complaint form, the Web site suffers from a number of problems which make it “consumer-unfriendly,” including use of unclear legal jargon and certain problems with accuracy and completeness. CSLB’s Web site could be of great value to consumers if it were improved.

CSLB’s data system largely ignores unlicensed contractors. Although CSLB’s Web site includes screens on former licensees, it fails to include screens on unlicensed individuals who are known to be engaging in activities for which a license is required. If an unlicensed individual has been complained of multiple times and in fact cited/fined, CSLB should develop a screen on that individual to warn consumers that he/she is unlicensed.

Enforcement alerts to law enforcement and the public are beneficial and should be increased. CSLB has in recent years committed to increased efforts to direct fraud alerts and warnings both to the law enforcement community and to the public at large, although not all of these efforts have sufficiently reached the target audiences. Greater emphasis on full dissemination of this information would likely yield substantial results.

There is a continuing need for targeted consumer education programs for women, the elderly, and non-English-speaking populations. These groups are especially vulnerable to construction industry fraud and abuse, and existing efforts should be continued and expanded.

Continuing concerns exist regarding the adequacy of public access to CSLB information and CSLB staff. Consumers often have difficulty accessing CSLB's telephone system, which can be confusing and can require lengthy delays on hold of 40 minutes or more. In addition, the recent restructuring of CSLB's offices raises issues of the availability of personal contact with CSLB staff for walk-in visitors, which issues will be addressed in subsequent reports.

J. Consumer Remedies

Complete inadequacy of current remedies for consumer victims. Each year California consumers file complaints with CSLB involving allegations of enormous aggregate losses (estimated at \$60–100 million) from unscrupulous or incompetent contractors, but the present remedies for consumers are almost completely inadequate. The principal License Law vehicles for consumer relief — the \$7,500 contractor's bond and the \$2,500 capitalization requirement — are entirely insufficient for any substantial fraud or incompetence cases. The surety bond dollar amount is too small; knowledgeable subcontractors, laborers, and suppliers usually perfect claims and exhaust the bond to the exclusion of consumers; and the payout criteria and claims process are burdensome. Civil litigation remedies are little better for consumers, both because of the expense and difficulty of the civil litigation process, and because many serious contractor cases involve judgment-proof defendants. In general, current remedies fail almost completely to protect the consumers whose interests are CSLB's prime mandate, meaning (in the words of one frustrated former enforcement manager): "Even when we got the bad guys, we couldn't get people their money back."

K. Summary of Concerns

Our inquiry to date, when considered together with the fourteen previous studies of CSLB, yields the following summary of the Monitor's concerns regarding CSLB's present ability to fulfill its consumer protection mandate:

- **Speed and Output of the Enforcement System (Work Quantity)**

A consistent theme of both the previous studies and our research is that the speed and work output of CSLB has seldom if ever been entirely satisfactory. Fully twelve of the fourteen previous reports highlighted long cycle times for complaint handling and investigations, as well as large case backlogs, as significant problem areas. Substantial increases in delays and backlogs attributable to the reengineering project, including average investigation closure time of 221 days (twice CSLB's own goal) and a 30% increase in case backlogs, underscore this continuing concern. These work quantity concerns are attributable to a variety of causes, many of which are beyond the control of the current hardworking CSLB staff. However, this agency remains a good distance from meeting the work speed expectations of the Legislature and the public.

- **Cost-Efficiency of the Enforcement System (Work Cost-Effectiveness)**

The Monitor project is now conducting an inter-agency analysis to determine the work cost-effectiveness of CSLB's enforcement process. Preliminary indications yield a mixed picture: CSLB handles a high volume of complaints and investigations, and achieves many results for its investment in enforcement, but its overall cost-effectiveness appears to put it among the middle ranks of state agencies charged with similar missions.

- **Consistency of Enforcement Process (Work Consistency)**

Numerous previous studies have noted a historical pattern of inconsistencies and non-uniformity in CSLB's enforcement program. The initial results of our study indicate that non-uniformity of process and results continues as a concern for this agency, with inconsistencies evident in complaint handling and investigative processes between north and south the most prevalent trend. CSLB's new management team is devoting considerable attention to this issue, and the Monitor will seek to evaluate the success of those efforts in subsequent reports.

- **Overall Effectiveness of the Enforcement System (Work Quality/Mission Success)**

The mission of CSLB is “to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction.” The effectiveness of CSLB’s enforcement system is a central component of the work quality and mission success of this agency. Much of the work of CSLB is of good quality, and important contributions to the protection of the public are made every day by this agency. However, its record of mission success as a consumer protection agency is marred by: lapses in effectiveness in screening out undesirable, high-risk contractors (such as the recent Crown Builders matter in San Diego); inadequate effectiveness in detecting and punishing unscrupulous contractors, some of whom continue to prey upon the public; the continuing problem of unlicensed contracting; and an entirely inadequate program of consumer-victim remedies.

Ultimately, in the public sector as well as the private sector, customer satisfaction is the best measure of mission success. Recent consumer satisfaction levels for CSLB have declined from a modest 63% satisfaction rate to a troubling 54% rate. Even given the limitations facing all public agencies combating white collar crime, an agency which satisfactorily serves only about half of its customers should look to improve its mission success.

INITIAL RECOMMENDATIONS OF THE ENFORCEMENT PROGRAM MONITOR

A. CSLB Mission and Mandate

Recommendation #1: Update CSLB’s statutory mandate and agency name by amending Business and Professions Code section 7000 to state clearly that consumer protection is the first priority of CSLB (similar to Business and Professions Code section 2229(a) and (c) applicable to the Medical Board). Also consider adopting a modernized version of the agency’s name (*e.g.*, “Contractors Board of California”) — as many other DCA boards have done — to more accurately describe the modern licensing *and* enforcement mission of the agency.

B. CSLB Resources

Recommendation #2: Increase license fees(unchanged since 1994) by approximately 20% to restore CSLB budget and enforcement resources to 1994 per capita levels and to ensure a sufficient reserve.

C. CSLB Management Structure and Information System

Recommendation #3: Fill key enforcement management positions, including the enforcement chief position and other senior enforcement positions, to ensure appropriate leadership and accountability in the enforcement program.

Recommendation #4: Rebuild the enforcement organizational structureto correct the problems caused by the reengineering project of 1999–2000, including rebuilding of the enforcement organization on a functional basis with appropriate spans of control (especially for senior enforcement managers and enforcement supervisors).

Recommendation #5: Reallocate field resourcesto better reflect the pattern of demand for consumer services (including opening offices in areas of high demand such as the San Fernando Valley and south Orange County).

Recommendation #6: Require consistent annual statistical reporting by the CSLB enforcement programby establishing a new statutory mandate for such reporting (based on Business and Professions Code section 2313 applicable to the Medical Board).

D. Contractor Screening

Recommendation #7: Require fingerprinting and criminal history verification for licensees, with accompanying standards for use and for privacy protection in appropriate cases, and expand use of criminal convictions in licensing and enforcement decisionmaking.

Recommendation #8: Expand the flow of information on contractor misconduct into CSLB for purposes of enhancing licensure and enforcement decisionmaking by (a) seeking enactment

of mandatory reporting statutes (similar to Business and Professions Code section 800 *et seq.* applicable to the Medical Board); and (b) requiring license renewal reporting of relevant criminal convictions by adding a question to the contractor license renewal form regarding convictions since the last renewal.

Recommendation #9: Improve the system of experience verification for license applications, including continuing the applicant screening pilot project using a public records service.

E. Complaint Handling

Recommendation #10: Increase the Consumer Services Representative (CSR) staff to reduce caseloads to manageable levels and enable CSRs to perform more actual case mediation.

Recommendation #11: Institute comprehensive CSR training, including clear statewide case standards and restored interaction with investigators.

Recommendation #12: Improve and fully computerize the internal alert system to ensure a rapid and coordinated response to major and repeat offender cases.

Recommendation #13: Greatly expand early resolution/mediation efforts made during the first 30 days of complaint processing (including reinstatement and expansion of the now-terminated early mediation pilot project attempted in Norwalk).

Recommendation #14: Improve the telephone information system for complainants to promote prompt access to staff, and **improve the consumer complaint form** to promote understanding and ease of use.

Recommendation #15: Eliminate career ladder barriers for Consumer Services Representatives and Program Technicians.

F. Investigations

Recommendation #16: Increase the CSLB peace officer staff from three to a minimum of 8–10 to improve criminal and civil investigative capabilities.

Recommendation #17: Increase the Enforcement Representative staff sufficiently to reduce caseloads and to staff two or more “major fraud” strike forces (each with peace officers assigned) for rapid deployment on major cases.

Recommendation #18: Improve and regularize investigator training, with greatly increased emphasis on criminal and civil enforcement investigation techniques (including systematic professional training on evidence law, search and arrest warrants, administrative subpoenas, witness interviews, financial records, and asset freeze/forfeiture).

Recommendation #19: Ensure early investigation coordination with state and local prosecutors in appropriate cases by jointly developing and implementing an investigative protocol for CSLB investigators and prosecutors’ offices.

Recommendation #20: Restore sufficient office facilities for investigators for interviews, meetings, and cooperation with colleagues, and reevaluate and apply “home-officing” only on an individualized basis.

Recommendation #21: Update workload standards for investigators, to reflect the changed nature and increased complexity of current casework, by conducting a new workload standards study and implementing appropriately changed standards.

G. Prosecutions

Recommendation #22: Establish more consistent statewide case referral criteria to improve enforcement uniformity, and monitor referral patterns to ensure improved compliance.

Recommendation #23: Improve and standardize cooperation between CSLB enforcement staff and state and local prosecutors involved in administrative, criminal, and civil prosecutions.

Recommendation #24: Conduct a study of the present pattern of disciplinary bonds and initiate necessary action to ensure that disciplinary bond amounts are sufficient to promote public safety.

Recommendation #25: Improve prosecution of key aspects of contractor fraud and abuse by working with prosecutors to combine efforts and increase the investigation and criminal prosecution of: (a) **excessive down payments** (Business and Professions Code section 7159); (b) **qualifiers on revoked/suspended licenses** (Business and Professions Code section 7121.5); and (c) **employment of unlicensed executives** (Business and Professions Code section 7121). If necessary, seek appropriate legislation providing for true debarment from any form of employment in the construction industry for repeat or extremely serious law violations (similar to antitrust contractor debarment or three-strikes criminal statutes).

Recommendation #26: Promote increased use of judicial revocation of contractor licenses by educating judges and prosecutors regarding the authority provided by Business and Professions Code section 7106 and Penal Code section 23.

H. Public Disclosure and Public Outreach

Recommendation #27: Improve public disclosure of complaints and actions against contractors, beginning with passage and implementation of SB 135 (Figueroa), but also determining the feasibility of disclosure of public information such as criminal convictions, civil judgments, and bankruptcies.

Recommendation #28: Simplify and clarify the CSLB Web site, explaining technical terminology and providing more user-friendly access to complaint information.

Recommendation #29: Add appropriate information to Web site regarding unlicensed contractors with substantial numbers of complaints or actions.

Recommendation #30: Add a Web site link to Better Business Bureau Web sites, with an appropriate disclaimer that CSLB does not approve, endorse, or take responsibility for information at those sites.

Recommendation #31: Promote the fraud alert system by increasing the use and visibility of the system for alerting other law enforcement agencies and the public.

I. Consumer Remedies

Recommendation #32: Increase bond amount to a realistic contemporary level (a minimum of \$15,000), and **revise bonding and/or payment requirements for home improvement projects to address “double payment” and mechanic’s lien problems** (including either required payment bonds for home improvement projects in excess of \$10,000, mandatory joint control or joint signature payments, or a similar alternative).

Recommendation #33: Promote consumer enforcement of legal limits on excess down payments by requiring a clear and conspicuous consumer disclosure on all home improvement contracts regarding maximum down payments pursuant to Business and Professions Code section 7159(d) (*e.g.*, “DO NOT SIGN THIS CONTRACT, AND DO NOT MAKE ANY PAYMENT, IF YOUR CONTRACTOR IS ASKING YOU FOR A DOWN PAYMENT OF MORE THAN 10% OF THE TOTAL CONTRACT PRICE OR \$1000, WHICHEVER IS LESS”).

Note: A number of other issues and potential recommendations will be addressed in further detail in subsequent Monitor Reports (for a partial listing, *see* Chapter VIII, “Issues and Potential Recommendations for Future Reports”).

CONCLUSION

As mandated by Business and Professions Code section 7092, this Initial Report presents a critical analysis of the Contractors State License Board’s disciplinary process for the purpose of improving that process, and offers a number of initial recommendations for improvement. However, we are also pleased to report that there is much that is good at the Contractors State License Board and that progress is being made on important fronts. In particular, we have found:

- **A dedicated and hardworking CSLB staff** of more than 450 employees;
- **New Registrar Stephen Sands and Chief Deputy Registrar Linda Brooks**, who bring impressive management skill and vision, and who are rapidly responding to the organizational problems facing CSLB, including many of those described in this Initial Report;

- **Experienced senior managers with extensive system knowledge** and an overall constructive attitude toward institutional change and improvement;

- **A conscientious and public-spirited Board** with a commitment to public protection; and

- **Substantial progress on important issues** such as: rebuilding the enforcement program structure after the calamitous 1999–2000 reengineering project; improving public disclosure of complaint information; formation of units to address organizational needs for improved training (EAST) and more proactive enforcement (SWIFT); improvements in meeting licensing time frame guidelines; new occupational analyses and testing materials; needed revisions to key operational and training manuals such as the Complaint Handling Manual; increased efforts at sweep and sting operations; and beneficial public education materials and Web-based public access, among others.

However, CSLB must continue to address substantial shortcomings in meeting its statutory obligation to protect California consumers. If given adequate resources, CSLB should be expected and required to achieve significant improvements in:

- **Screening of licensees** to reduce threats to the public;

- **Timely and efficient handling of consumer complaints** by a well-trained staff utilizing consistent criteria;

- **Effective and consistent enforcement actions** taken against both licensed and unlicensed law violators; and

- **Readily available and adequate remedies for consumer victims** of illegal or substandard contracting.

To help promote and document such improvements, the CSLB Enforcement Program Monitor will continue to work closely for the statutory term with the Legislature, the Department of Consumer Affairs, the CSLB and its management and staff, the construction industry, and the public whose protection is the agency's central mandate.

Chapter I

STATUTORY MANDATE OF THE CSLB ENFORCEMENT PROGRAM MONITOR

The Contractors State License Board Enforcement Program Monitor (the Monitor) was established by Senate Bill 2029 (Figueroa), legislation resulting from the 1999–2000 sunset review of the Contractors State License Board (CSLB) undertaken by the Joint Legislative Sunset Review Committee.³

CSLB licenses contractors in the state of California and is charged with the responsibility of protecting the public by enforcing state laws governing contractor conduct. SB 2029, authored by Senate Business and Professions Committee Chair Liz Figueroa, required the Board to establish as a goal the improvement of its disciplinary system, which has been the subject of extensive legislative debate and substantial critical commentary in recent years.⁴

Effective January 1, 2001, SB 2029 provided for:

- Extension of CSLB’s sunset date to January 1, 2004;
- Expansion of the Board’s membership from 13 to 15, and a concomitant increase in the Board’s quorum from seven to eight;
- A series of four studies to be conducted by the Board (including studies of home equity

³ Cal. Stats. 2000, ch. 1005, approved by Governor Davis September 29, 2000. The full text of SB 2029 appears as an appendix to this report.

⁴ See, e.g., Assembly Consumer Protection Committee Report (1993) (CSLB “critically deficient in protecting consumers from unscrupulous or unqualified contractors”); Joint Legislative Sunset Review Committee, *Contractors’ State License Board: Board Overview, Issues, Findings and Recommendations* (1997); Price Waterhouse, *Transition Review of the California Contractors State License Board* (1998); Joint Legislative Sunset Review Committee, *Contractors’ State License Board: Joint Sunset Review Committee 2000 Sunset Review Report* (2000); Bureau of State Audits, *Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection* (2000); and sources cited in Chapter IV, *infra*.

lending fraud, the impacts of its recent “reengineering” plan, recovery fund programs, and surety bonds) plus a review of its complaint disclosure policy; and

- The appointment of the CSLB Enforcement Program Monitor for a two-year term ending January 31, 2003.

In Business and Professions Code section 7092, SB 2029 provided for the appointment and authority of the Monitor, and established the Monitor’s duty to “monitor and evaluate the Contractors’ State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board’s enforcement program and operations, and the improvement of the overall efficiency of the board’s disciplinary system.”⁵

The Monitor is specifically instructed to direct his efforts to:

- Improving the quality and consistency of complaint processing and investigation, and reducing the time frames for each;
- Reducing any complaint backlog;
- Assuring consistency in the application of sanctions or discipline imposed on licensees; and
- Further addressing: the accurate implementation of disciplinary standards, staff concerns regarding discipline, utilization of licensed professionals to investigate complaints, and the board’s cooperation with other law enforcement agencies.⁶

The Monitor is required to submit a series of four reports of his findings and conclusions, including an initial report due October 1, 2001, and three subsequent reports at six-month intervals. The reports are to be submitted to the Board, the Department of Consumer Affairs, and the Legislature, and are to be made available to the public and the media.⁷

Department of Consumer Affairs Director Kathleen Hamilton appointed the Monitor on April 5, 2001. The Monitor selected Julianne D’Angelo Fellmeth as principal consultant, and work began immediately on the Monitor project. This report is the initial written report required of the Monitor by SB 2029.

⁵ Bus. & Prof. Code § 7092(c)(1).

⁶ Bus. & Prof. Code § 7092(c)(2).

⁷ Bus. & Prof. Code § 7092(c)(4). SB 2029’s original requirement of an initial report by August 1, 2001, is being modified to October 1, 2001, by SB 26 (Figueroa), which is currently awaiting approval by Governor Davis.

Chapter II

SCOPE AND METHOD OF INITIAL INQUIRY AND INITIAL REPORT

A. Scope and Method of the Initial Inquiry

Business and Professions Code section 7092 mandates a broad scope for the Monitor's project as a whole. The mission of the two-year project is to analyze the entire enforcement and disciplinary program of the Contractors State License Board and to assist with efforts to improve the overall performance of that program.⁸

However, our initial inquiry was limited in time to just over four months of research and data gathering. As a result, we planned this first phase of our study to be an efficient *beginning* for the two-year monitoring process mandated by the Legislature. In particular, the initial inquiry was designed: (1) to provide an overview of CSLB's enforcement program, its current structure and process; (2) to identify initial concerns and issues regarding the enforcement program for further study; (3) to begin the development of recommendations for improvement; and (4) to compile baseline data for use in monitoring the enforcement program over time.

The statutory schedule necessarily limited the initial inquiry to the 4½ months from early April to mid-August of 2001, as the drafting of the required Initial Report occupied the balance of August and September of this year. While we believe the four objectives of the initial inquiry have been accomplished within this limited time, we emphasize that this report summarizes the *initial* inquiry of

⁸ Bus. & Prof. Code § 7092(c)(1).

a two-year project. By its nature and because of its required schedule, our initial inquiry does not purport to develop final findings of fact or final recommendations. Rather, this first phase of our study has identified issues of concern on which the Monitor will focus for the balance of the project, and has generated a list of preliminary recommendations intended to begin the reform process.

Our initial inquiry has included five principal components:

(1) **Review and analysis of the extensive existing literature** on the Contractors State License Board, including fourteen independent studies of CSLB and its enforcement program (dating from 1973 to 2001); several lengthy reports of the Joint Legislative Sunset Review Committee (JLSRC) and responses submitted by CSLB to the JLSRC; and materials prepared by CSLB management for Board meetings over the past four years;

(2) **Review and analysis of all relevant CSLB-generated internal and public documents** which address policy, procedure, and training issues, including the *California Contractors License Law and Reference Book* provided to all licensees and exam applicants, the enforcement program's *Complaint Handling Manual*, various training materials, numerous documents published for public education and outreach, and many other related materials;

(3) **Interviews of 81 persons** (to date) with expertise concerning CSLB's enforcement program, including:

- Director Kathleen Hamilton and members of the executive staff of the Department of Consumer Affairs;
- Staffs of the committees of the state Legislature charged with oversight of CSLB, including Bill Gage, Jay DeFuria, Robin Hartley, and Jay Greenwood;
- New CSLB Registrar Stephen Sands and Deputy Chief Registrar Linda Brooks;
- Senior CSLB managers, supervisors, and advisors, including Mike Brown, David Fogt, Ellen Gallagher, Glenn Hair, Ed Lee, Tom Lennan, Mary Anne Moore, Bob Porter, Cruz Reyna, Paige Roush, Peter Sugar, and many others;

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- CSLB enforcement staff representing every job classification involved in the enforcement program, including investigators, consumer services representatives, program technicians, supervisors, and others;
 - Fellow consultants, principally our continuing colleague in this process, Ben Frank, Director of NewPoint Group;

 - State and local prosecutors from twelve offices statewide, as well as other regulators;

 - Consumers, consumer-victims, and consumer groups;

 - Construction industry representatives; and

 - Private sector attorneys and service providers;

(4) **Statistical data compilation and analysis**, especially in support of and in conjunction with Ben Frank, who supervised the compilation and analysis of key performance statistics for the project as a whole; and

(5) **Legal and industry research** utilizing a wide range of research media.

Although we are comparatively early in the Monitor project, we have already identified several obstacles to effective measurement of CSLB enforcement performance: Our preliminary efforts indicate that certain types and formats of data needed for a truly complete analysis of CSLB's enforcement program are simply unavailable today. For example, neither CSLB nor the Attorney General's Office is able to provide full data on the administrative legal action process handled by the Attorney General's Licensing Section. Improved case tracking information, among other types of data, is needed. In addition, much of the historical statistical data on the enforcement system appears to be inconsistent because of differing standards and definitions used in the CSLB management information process over the years. There is a pressing need for consistent and comparable enforcement data here, as discussed in further detail in Chapter VI ("Initial Concerns of the Enforcement Program Monitor") below.

B. Scope of the Initial Report

As detailed above, the Monitor's study of CSLB is an ongoing process today, and this report provides only the initial concerns and preliminary recommendations from the initial inquiry conducted by the Monitor staff.

The main body of the Initial Report is organized as follows:

- Summary of Previous Studies
- Overview of the Contractors State License Board
- The CSLB Enforcement System
- Initial Concerns of the Enforcement Program Monitor
- Initial Recommendations of the Enforcement Program Monitor
- Issues and Potential Recommendations for Future Reports
- Conclusion

We note in particular that our initial concerns represent both certain preliminary findings concerning the enforcement program and also an initial discussion of problems for further study during the balance of the Monitor's term.

Our initial recommendations similarly fall into two categories: Some are consensus ideas for improvement which can serve as the basis for present changes in CSLB's structure or business process. Certain other of the recommendations are less fully developed concepts, but are nevertheless promising and merit a place on the public agenda for discussion and future action. Several of the initial recommendations would require additional legislation, and for this reason we have included them here to ensure full and adequate consideration in time for the introduction of bill proposals at the beginning of the 2002 legislative year.

Finally, as a further reflection of the task ahead, a list of other topics and issues — many of which are not yet addressed even on a preliminary basis in our initial study — is included in Chapter VIII ("Issues and Potential Recommendations for Future Reports").

Chapter III

OVERVIEW OF THE CONTRACTORS STATE LICENSE BOARD

A. CSLB Generally

The Contractors State License Board (CSLB) was established in 1929 as the Contractors License Bureau under the Department of Professional and Vocational Standards. Today, CSLB is part of the Department of Consumer Affairs (DCA). Created in the Contractors State License Law,⁹ CSLB licenses and regulates contractors in more than forty license classifications that constitute the construction industry. CSLB also registers home improvement salespersons. In 2000, the agency regulated more than 278,000 licensees,¹⁰ administered examinations to approximately 41,000 applicants, received 24,313 complaints, and closed 23,271 complaints.

As of January 1, 2001, CSLB is required to consist of fifteen members appointed variously by the Governor and Legislature: eight “public members” (individuals who are neither Board licensees nor closely related to Board licensees or the construction industry), five contractors, one labor representative, and one local building official.¹¹ The Board holds regular meetings across the state. These meetings give licensees and members of the public the opportunity to testify on agenda items and on other issues.

The Board appoints CSLB’s executive officer (called the “Registrar of Contractors”) and directs administrative policy for the agency’s operations. The Registrar oversees approximately 460 employees, who are distributed among CSLB’s Sacramento headquarters office and in field offices throughout the state.

⁹ Bus. & Prof. Code § 7000 *et seq.*

¹⁰ During 2000–01, CSLB reported 213,617 active licensees and 64,190 inactive licensees.

¹¹ Bus. & Prof. Code § 7002.

In 1996, CSLB adopted the following mission statement:

The Contractors State License Board shall protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. The Contractors State License Board will accomplish this by:

- Ensuring that construction is performed in a safe, competent, and professional manner through licensing of contractors and enforcement of the licensing laws.
- Providing resolution to disputes that arise from construction activities.
- Educating consumers so that they may make informed choices.

CSLB's fiscal year 2000–01 budget was approximately \$45.6 million. CSLB receives no funding from the state general fund. Contractor licensing fees support the Board's licensing, enforcement, and other regulatory programs. Biennial license renewal fees are currently capped at \$300, and have not been increased since 1994.

B. CSLB's Enforcement Program

Typically, the justification for governmental regulation (especially licensing) of trades and professions involves a recognition of “external costs” — in particular, “irreparable harm” — to consumers in the absence of regulation.¹² For example, a physician lacking sufficient education and training could irreparably injure a patient; an incompetent attorney could destroy forever the legal rights of a client. The licensing function of state agencies regulating those professions is intended to ensure competence prior to licensure; because of the often-irreparable nature of consumer harm resulting from incompetence, the enforcement role of such agencies is largely to discipline the license — that is, remove it or restrict it to protect the general public.

Because of the nature of the construction industry, however, the goals of CSLB's enforcement program are somewhat different from those of other DCA occupational licensing agencies. Contractors do not always commit the “irreparable harm” which justifies the licensure and regulation of other

¹² Robert C. Fellmeth, *A Theory of Regulation: A Platform for State Regulatory Reform*, 5:2 CAL. REG. L. REP. (Spring 1985) at 3.

professionals and tradespersons; often, the harm committed by contractors is repairable, and one of CSLB's goals is to ensure repairs (or restitution to secure repairs) in appropriate cases. CSLB attempts to accomplish this goal through a form of "mediation" at the complaint intake stage and through two arbitration programs¹³ which are not replicated at many other occupational licensing agencies. Additionally, CSLB maintains an "Industry Expert Program" through which it assesses departures from trade standards and/or project specifications and quantifies damages to promote dispute resolution.¹⁴ Through these programs, CSLB attempts to persuade the contractor and the homeowner to arrive at a mutually agreeable settlement, whereupon the complaint is closed and no disciplinary action is taken by the Board against the contractor. This resolution is appropriate if the contractor is not a repeat or multiple offender, and has not committed serious violations that endanger the health and safety of the homeowner or the public.

If no settlement is reached or if the complained-of contractor is a repeat or egregious offender, the Contractors State License Law vests CSLB with certain enforcement responsibilities and authorities. The Registrar and Board enforcement staff are authorized to investigate complaints against licensees and nonlicensees acting as contractors.¹⁵ If an investigation uncovers evidence of a possible statutory or regulatory violation, the Registrar has a number of options: a warning letter, a citation (which may include a fine and/or an order of abatement or correction),¹⁶ injunctive relief,¹⁷ or the filing of an accusation which may lead to license revocation, suspension, or probation on terms and conditions.¹⁸ CSLB administrative enforcement actions against licensees are prosecuted pursuant to the Administrative Procedure Act,¹⁹ as described more fully in Chapter V. In addition, CSLB may refer appropriate cases involving criminal or anticompetitive activity to local offices of the district attorney, which may prosecute such cases under the Penal Code or the Unfair Competition Law (section 17200 of the Business and Professions Code), respectively.²⁰

¹³ Bus. & Prof. Code § 7085 *et seq.*

¹⁴ *Id.* at § 7019.

¹⁵ *Id.* at §§ 7011.7, 7090.

¹⁶ *Id.* at §§ 7028.6, 7028.7, 7099.

¹⁷ *Id.* at §§ 7028.3, 7028.4.

¹⁸ Gov't Code § 11503.

¹⁹ *Id.* at § 11370 *et seq.*

²⁰ Bus. & Prof. Code §§ 7028.2, 7028.3, 7028.4.

CSLB has other types of enforcement authority which are not dependent upon the existence of a consumer complaint. For example, the Board is authorized to automatically suspend a contractor's license if the licensee fails to maintain an adequate surety bond²¹ or workers' compensation insurance²²; fails to pay a fine or civil penalty,²³ an arbitration award,²⁴ or a construction-related civil judgment issued by a court²⁵; fails to pay family support as ordered by a court²⁶; or is convicted of a crime substantially related to the qualifications, functions, and duties of a contractor.²⁷

Additionally, CSLB is concerned about — and devotes a substantial portion of its enforcement program to — eliminating unlicensed contracting in California. Unlicensed contractors threaten the public because they often act without obtaining building permits, demand cash for payment, and are difficult — if not impossible — to locate when inevitable problems surface. CSLB targets unlicensed activity by working with local law enforcement authorities to set up “sting operations” and “sweeps” of construction sites to ascertain licensure. Generally, 20–25% of CSLB's caseload concerns unlicensed contractors.

In fiscal year 2000–01, CSLB's enforcement program received approximately 24,000 complaints. Only one other DCA agency — the Bureau of Automotive Repair — must handle a similar complaint volume; most others receive and process a small fraction of that number. As such, CSLB's enforcement program is large, complex, and must function consistently throughout a geographically vast and diverse state wherein 278,000 contractors deal with more than 34 million consumers. In 2000–01, the Board's enforcement program consumed 50% of its \$45.6 million budget (\$22.8 million), and utilized 55% of CSLB's employees (261 positions).²⁸

²¹ *Id.* at § 7071.15.

²² *Id.* at § 7125.2.

²³ *Id.* at § 7090.1.

²⁴ *Id.* at § 7085.6.

²⁵ *Id.* at § 7071.17.

²⁶ *Id.* at §§ 29, 31; Family Code § 17520.

²⁷ Bus. & Prof. Code § 7123.

²⁸ NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001) at I-3.

Chapter IV

SUMMARY OF PREVIOUS STUDIES

CSLB has been studied extensively and critically over the past three decades in fourteen independent (non-CSLB) published reports,²⁹ and the findings and concerns of these reports have been remarkably consistent. Although the studies vary in scope and focus — and all reports do not address all these issues — there is a clear consensus on seven issues:

(1) **Additional resources** should be directed to improved complaint handling and investigations.³⁰ Prior studies have cited both substantial vacancy rates in key job classifications, and also the need for increased staffing authorizations in intake/mediation and investigation personnel.

²⁹ See Arthur Andersen & Co., *Report on Management Review of Operations and Personnel Requirements* (1973) (“Arthur Andersen”); Department of Finance, *A Review of the Investigatory Function and Measurement of Productivity of the Contractors State License Board* (1975) (“Dept. of Finance I”); Office of the Auditor General, *Contractors State License Board: Need for Improved Administration of the Complaint Processing Program* (1979) (“Auditor General”); Department of Finance, *Report on the Joint Department of Finance/Contractors State License Board Field Operations Task Force on Complaint Handling* (1980) (“Dept. of Finance II”); Department of Finance, *Zero-Based Budget Study* (1982) (“Dept. of Finance III”); Price Waterhouse, *Management Review of the Contractors State License Board* (1984) (“Price Waterhouse I”); Price Waterhouse, *Report on Interim Workload and Staffing Standards for the Contractors State License Board* (1985) (“Price Waterhouse II”); Arthur Young, *Contractors State License Board: Final Report on Field Office Operations, Workload Standards, and Staffing Requirements* (1989) (“Arthur Young”); Assembly Consumer Protection Committee Report (1993) (CSLB “critically deficient in protecting consumers from unscrupulous or unqualified contractors”); Joint Legislative Sunset Review Committee, *Contractors’ State License Board: Board Overview, Issues, Findings and Recommendations* (1997) (“JLSRC I”); Price Waterhouse, *Transition Review of the California Contractors State License Board* (1998) (“Price Waterhouse III”); Joint Legislative Sunset Review Committee, *Contractors’ State License Board: Joint Legislative Sunset Review Committee 2000 Sunset Review Report* (2000) (“JLSRC II”); Bureau of State Audits, *Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection* (2000) (“Bureau of State Audits”); NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001) (“NewPoint Group”).

³⁰ See *supra* Arthur Young at VI-6 and *passim*; see also Arthur Andersen (up to 13 new DR positions and 13 new CSR positions needed); NewPoint Group.

(2) **Complaint screening and handling procedures are inadequate** and should be standardized, according to at least ten prior studies.³¹ As early as 1979 the Auditor General report was subtitled “Need for Improved Administration of the Complaint Processing Program,” and 22 years later NewPoint Group consultant Ben Frank found “substantially fewer numbers of licensee complaints have been closed over the past two years, and backlogs of pending licensee complaints have accumulated.”³² Most of these prior studies noted inconsistencies in the complaint handling process and substantial delays in complaint resolutions and referrals.

(3) **Workload standards should be modernized and improved;** their absence or obsolescence has been a source of continuing concern for this agency.³³ The 1989 Arthur Young study concluded: “[T]he absence of objective, valid workload standards [is] a principal contributor to the CSLB’s inability to consistently match workload requirements to available resources so as to ensure optimal effectiveness and efficiency.”³⁴ The 1998 Price Waterhouse transition report cited as a principal concern for CSLB “the whole issue of accountability and measurement” and called for “establishing workload standards for enforcement staff that encourage a balance approach to case investigation....”³⁵

(4) **CSLB’s management information system should be improved** so that it regularly generates consistent and comparable performance data.³⁶ Concurring with several other studies, Price Waterhouse recently concluded “no balanced set of performance indicators exists that can measure strategic outcomes, operational efficiency, staff productivity, or cost effectiveness. Furthermore, some [current] measures may encourage staff to work at cross purposes.”³⁷

³¹ See *supra* Dept. of Finance I; Auditor General; Dept. of Finance II; Dept. of Finance III; Arthur Young; Assembly Consumer Protection Committee; JLSRC I; JLSRC II; Bureau of State Audits; NewPoint Group.

³² NewPoint Group, *supra*, at III-1 to III-7.

³³ See *supra* Arthur Andersen; Dept. of Finance I; Auditor General; Dept. of Finance III; Price Waterhouse I; Arthur Young; Price Waterhouse II; Price Waterhouse III; Bureau of State Audits; NewPoint Group.

³⁴ Arthur Young, *supra*, at III-7.

³⁵ Price Waterhouse III, *supra*, at i-3.

³⁶ See *supra* Arthur Andersen; Dept. of Finance I; Auditor General; Arthur Young; Price Waterhouse III; New Point Group.

³⁷ Price Waterhouse III, *supra*, at i-3.

(5) **Unsatisfactory cycle times and backlogs** often mark the complaint handling, investigation, and prosecution phases of CSLB’s enforcement process, according to virtually every previous study of this agency.³⁸ As early as 1979, the Auditor General found that inadequate procedures were causing excessive delays in investigating and resolving consumer complaints. Two decades later, the 2000 Bureau of State Audits study chose as its subtitle “lengthy delays and poor monitoring weaken consumer protection” at CSLB and other agencies, specifically finding “CSLB is not currently meeting its established goals” for case cycle times.³⁹ Similarly, the 2000 Joint Legislative Sunset Review Committee staff found “excessive delay in investigations.”⁴⁰ And the most recent analysis of trends in CSLB productivity has concluded that, within the past two years, “the backlog of pending complaints has increased significantly...and, as a result, the amount of calendar time needed for complaint processing and investigation has increased by nearly a month (28 days).”⁴¹

(6) **A consistent and effective training program for CSLB enforcement staff is needed.**⁴² The consensus of prior studies is that CSLB has never implemented a fully comprehensive and professionalized training program for its enforcement staff. As early as 1979 state auditors concluded CSLB did not have a comprehensive training program for district office supervisors, investigators, or clerical staff.⁴³ By 1998, the Price Waterhouse transition report still found that a “lack of up-to-date complaint handling manuals and training hinders consistency” at CSLB, and called for the creation of a “comprehensive, standardized training program” at the agency.⁴⁴

³⁸ See *supra* Arthur Andersen; Dept. of Finance I; Auditor General; Dept. of Finance II; Dept. of Finance III; Arthur Young; Assembly Consumer Protection Committee; JLSRC I; Price Waterhouse III; JLSRC II; Bureau of State Audits; New Point Group.

³⁹ Bureau of State Audits, *supra*, at 33.

⁴⁰ JLSRC II, *supra*, at 110.

⁴¹ New Point Group, *supra*, at III-1.

⁴² See *supra* Arthur Andersen; Auditor General; Arthur Young; Price Waterhouse III.

⁴³ Auditor General, *supra*, *passim*.

⁴⁴ Price Waterhouse III, *supra*, at i-5 to i-6.

(7) **Inconsistencies and non-uniformity** of complaint handling and enforcement efforts have persisted over the years.⁴⁵ The 1998 Price Waterhouse transition report focused in detail on the “significant operational deficiency” relating to consistency. That report emphasized a continuing concern over the need to “encourage consistency in legal interpretations,” finding that “[t]he decentralized nature of the [enforcement program] poses a real challenge to fostering consistency.”⁴⁶ The most recent study finds that, while some progress has subsequently been made via the centralization of intake/mediation functions, “[i]n other respects, the differences that existed prior to implementation of the [reengineering] project continue to exist, or were replaced with a new type of inconsistency or operating problem.”⁴⁷

In summary, a survey of the past three decades of research on CSLB demonstrates that the enforcement program concerns addressed in this Initial Report are both well-documented and persistent.

⁴⁵ See *supra* Auditor General; Price Waterhouse III; Bureau of State Audits; NewPoint Group.

⁴⁶ Price Waterhouse III, *supra*, at i-5.

⁴⁷ NewPoint Group, *supra*, at IV-2.

Chapter V

THE CSLB ENFORCEMENT SYSTEM

The CSLB enforcement process consists of a number of steps through which cases may pass (described in more detail below): (1) complaint receipt, screening, and mediation to attempt resolution without disciplinary action; (2) complaint investigation; (3) arbitration of cases meeting certain criteria — again, to achieve resolution and avoid disciplinary action in appropriate cases; (4) in relatively minor cases, imposition of a letter of warning or citation and fine by Board enforcement staff; (5) in more serious cases, referral of the completed investigation to the Attorney General’s Office for the filing of an accusation and commencement of the formal disciplinary process; (6) an evidentiary hearing before an administrative law judge (ALJ) from the Office of Administrative Hearings; (7) submission of the ALJ’s proposed decision to the Registrar of Contractors for final agency decision; and (8) potential judicial review of the Registrar’s decision.

For the first seventy years of CSLB’s existence, steps (1) and (2) above — complaint intake/mediation and investigation — were carried out largely through locally-based offices. In 1999, CSLB undertook to “reengineer” the way it receives, handles, and investigates complaints against contractors. The reengineering project significantly affected the intake/mediation and investigation phases — and has negatively impacted (at least temporarily) CSLB’s enforcement program output, cycle times, and cost. CSLB’s reengineering project is the subject of a separate report required by SB 2029 (Figueroa),⁴⁸ which report should be consulted for further detail in this regard. However, the impacts of the reengineering project gave rise to a number of concerns (described in more detail in Chapter VI) and recommendations (described in more detail in Chapter VII). We describe below

⁴⁸ Business and Professions Code section 7021(b), added by SB 2029 (Figueroa), requires the Board to comprehensively evaluate the impacts of its reengineering project on (1) consumer and industry access to Board staff; (2) the number of mediations, investigations, and legal actions; (3) CSLB’s timeframes for complaint processing and investigation; (4) the productivity of staff; and (5) costs of the enforcement system. In April 2001, CSLB (with the Monitor’s concurrence) contracted with Ben Frank of NewPoint Group, a management consulting firm, to conduct the study. NewPoint has recently released the required study, entitled *Contractors State License Board: Reengineering Project Assessment* (2001), which describes in detail the purposes, goals, chronology, and impacts of the Board’s reengineering project.

pertinent aspects of the reengineering project where they are relevant to an understanding of our concerns and recommendations. Reengineering did not significantly impact the other steps of the Board's traditional enforcement process, which are also described below.

The following description applies primarily to the receipt, screening, mediation, investigation, arbitration, and prosecution of a consumer complaint against a CSLB licensee. CSLB's enforcement program also pursues nonlicensees acting in the capacity of licensees, applicants for CSLB licensure whose qualifications are questionable, and licensees who fail to comply with the legal prerequisites for retaining an active license (such as noncompliance with a citation or failure to pay an arbitration award). In these latter types of proceedings, CSLB's procedures vary from the description below.

A. Intake/Mediation and Investigations

1. Pre-1999 Intake/Mediation and Investigations

The initial phase of CSLB complaint handling is called "Intake/Mediation" in CSLB parlance. Prior to 1999, CSLB maintained 15–17 local offices (some were denoted "district offices," while other smaller offices were called "branch offices" or "satellite offices") organized under the supervision of two regional offices (the "Northern Regional Office" and "Southern Regional Office"). Each local CSLB office was staffed by an office supervisor, investigators called "deputy registrars" (DRs), one or two consumer services representatives (CSRs) who screened and mediated complaints, and clerical employees called office technicians (OTs) who staffed the counter, answered the telephone, and set up complaint files. Most local CSLB offices were staffed to handle walk-in traffic from consumers, contractors, and the general public.⁴⁹

In the intake/mediation phase, each local office would receive complaints about contractors (or unlicensed people operating as contractors) working on jobsites in the geographic area served by that office. Complaints were initially processed by OTs, who encoded complaint information into CSLB's computer tracking system, sent a contact letter to the parties involved in the complaint, set up a complaint file, and assigned the complaint to a CSR. The OT's work was reviewed by the office supervisor, who then passed the complaint to the CSR.

⁴⁹ District offices offered full public reception capabilities; branch and satellite offices offered counter service during limited hours or by appointment. A 1989 workload evaluation study documented 26,000 walk-in counter calls annually. Arthur Young, *Contractors State License Board: Final Report on Field Office Operations, Workload Standards, and Staffing Requirements* (1989) at IV-3.

The CSR would then contact both the complainant and the complained-of contractor, and attempt to “mediate” the complaint. As noted by CSLB upper management, CSRs do not actually engage in “mediation” as that term is understood by the alternative dispute resolution community. They simply contact the consumer and the contractor, discern the nature and dollar value of the dispute (to determine whether the Board has jurisdiction and/or whether the case qualifies for referral to one of the Board’s arbitration programs), determine whether the consumer will permit the contractor to return and fix the problem complained of, and act as an intermediary in an attempt to smooth relations between the parties so that an amicable resolution can be reached. If a solution is reached and the contractor performs to the consumer’s satisfaction, the CSR closes the complaint (subject to the review of the district office supervisor). If the matter is not settled, the CSR gathers relevant documents (such as the contract between the consumer and contractor, the project plans, and photographs of the project) and transfers the case file to “the field” (one of the office’s DRs) for formal investigation (again, subject to review by the office supervisor).

The main purposes of the investigative phase are to verify the validity of a complaint and compile evidence to support the key elements of each apparent code violation. Once assigned to a new case, the DR reviews the complaint and the information already collected by the CSR; contacts the parties and interviews them regarding the dispute; and obtains any other relevant documents not already in the investigative file. The DR usually meets with the complainant at the jobsite in order to determine probable code violations and gather evidence of those violations. Finally, the DR prepares an investigative report in which he/she recommends “legal action” (forwarding of the case for the issuance of a citation or the filing of an accusation against the contractor) or a “non-legal closure” (closure of the case because no evidence of a violation has been found, the statute of limitations has passed, or the parties have settled the matter). Prior to 1999, these investigative reports were typed by clerical staff at the DR’s district office.

During the course of the investigation, the DR may determine that an “industry expert” is needed to inspect a jobsite and render an opinion on workmanship issues. Since 1985, and now pursuant to Business and Professions Code section 7019, CSLB has recruited and maintained a list of contractors known as “industry experts” who are qualified to present their opinion on whether a respondent contractor has committed certain acts which would justify discipline of the license, including

a departure from accepted trade standards,⁵⁰ departure from the plans and specifications,⁵¹ failure to complete the work as specified in the contract,⁵² or abandonment.⁵³ The expert visits the site, inspects the work, and prepares a report containing his/her opinions and (where appropriate) an estimate of the cost to make any necessary corrections to bring the project to acceptable trade standards or into compliance with the plans and specifications. CSLB's "Industry Expert Program" (IEP) will be the subject of more in-depth scrutiny in future Monitor reports.⁵⁴

Prior to 1999, field DRs investigated not only complaints against licensees; they also handled other types of cases, including investigations of applicants for licensure, investigations of nonlicensees acting in the capacity of a licensed contractor, and cases in which a bond company had paid out on a contractor's bond. Selected DRs also served in the Underground Economy Enforcement Unit (UEEU), which consisted of proactive teams formed to conduct stings and sweeps against unlicensed contracting activity.

In summary, prior to March 1999, each local office functioned as a "mini-CSLB." All offices performed intake, mediation, and investigation. All office staff (OTs, CSRs, DRs, and the office supervisor) knew each other, saw each other daily, worked together, and gave each other direct and immediate feedback. They dealt with a relatively finite population of contractors operating in a defined geographical area with which they were familiar. The office supervisor supervised all levels of staff working in that office. He/she performed "case reviews" of all CSR work, DR investigations, and proposed dispositions, and directly supervised and provided feedback to DRs, CSRs, and PTs.⁵⁵

⁵⁰ Bus. & Prof. Code § 7109(a).

⁵¹ *Id.* at § 7109(b).

⁵² *Id.* at § 7107.

⁵³ *Id.*

⁵⁴ Among other things, Business and Professions Code section 7092(c)(2) requires the CSLB Enforcement Program Monitor to focus on "the appropriate utilization of licensed professionals to investigate complaints...."

⁵⁵ Following is the description of a pre-1999 CSLB district office by an office supervisor: "I supervised nine investigators, two CSRs, and three clerks. We had busy phones and walk-in traffic. Everyone was well-trained. My job as supervisor was helping staff with their cases and concerns. I had a complete open-door policy — the office was the center of activity. There was a lot of interaction between staff and frequent opportunities to talk, communicate, and exchange ideas. The learning curve was fast, because all staff were always hearing different voices and learning from different perspectives. The CSRs were excellent — we used that position as a training

Prior to 1999, CSLB received an average of 30,000 complaints per year.⁵⁶ Under workload standards developed for CSLB in 1989, OTs were required to process cases and assign them to CSRs within five (5) days. CSRs were given up to 45 days in which to screen and mediate complaints; if they could not be settled within that timeframe, they were to be shipped to a DR for field investigation. CSLB's 1989 standards required CSRs to close 45 cases per month; DRs were expected to close 12.7 cases per month (including three legal actions). Overall, CSRs were to screen and close without disciplinary action 40–45% of their caseloads every year (25–35% through settlement, and the rest through dismissal or referral to arbitration); statistically, they met that goal.⁵⁷ Additionally, they were (and still are) required to “work up” the remaining 55–60% of their caseload for transmission to the field for formal investigation. Case “work-up” involves telephone interviews (often after leaving numerous messages) and document requests of both the complainant and the contractor, and documentation of case details in the investigative file.

2. The Board's Reengineering Project

In October 1997, CSLB appointed C. Lance Barnett, Ph.D., as its new Registrar. Dr. Barnett and his upper management staff perceived several problems with the Board's enforcement system, and outlined those issues to the Board at its September, October, and November 1998 meetings. Those problems included the following:

- Between 1992 and 1998, the Board experienced a 20% decline in the number of complaints received (from 32,000 in 1992 to 26,000 in 1998), but its case processing times had not changed since 1992.

- At the time, the Board's enforcement program was divided into three regions (Northern, Central, and Southern), and it appeared that the three regions were processing enforcement cases in three different ways. Even after CSLB closed the Central Regional Office in 1998 (and merged its

ground. The DRs would teach them and CSRs knew that if they worked hard, they'd get promoted to investigator positions. I managed my in-basket: I thoroughly reviewed all investigated cases and CSR work.”

⁵⁶ CSLB received 30,806 complaints in 1995–96; 30,967 complaints in 1996–97; 31,863 complaints in 1997–98; and 26,076 complaints in 1998–99. Contractors State License Board, *Sunset Review Report* (Oct. 1, 1999) at 15.

⁵⁷ From 1995–96 through 1998–99, CSRs closed an average of 42% of CSLB's incoming cases in mediation. *Id.*

activities into the Southern Region), there appeared to be a marked discrepancy in case processing procedures from the North to the South. A 1998 Price Waterhouse audit concluded that “[t]here are some areas of the law which different regions of CSLB simply interpret differently. Though the upper management of the Enforcement Division has been aware of these differences in interpretation, it has yet to standardize them.”⁵⁸

- Further, there was no consistency in CSR and DR caseloads or output from office to office. Prior to March 1999, the average CSR caseload varied widely by office (and often depended upon the level of construction activity in the geographic area served by that office); some CSRs handled caseloads of 30, while others struggled with caseloads of 200. DR caseloads varied from 30 to 60 cases each. Under workload standards established in 1989, CSRs were expected to close 45 cases per month; however, a 1998 audit by Price Waterhouse found that, in 1997, CSRs closed an average of only 33 cases per month.⁵⁹ Although the Board’s 1989 workload standards called for DRs to close 12.7 cases per month (including three legal actions), monthly DR case closure statistics ranged from 7–15 per month.

- The geographical location of some CSLB district offices added to the problem — some offices were located in areas in which there was little construction activity and little case workload, while others were located in areas of dense construction activity. Thus, enforcement workload varied widely from district office to district office. Some district offices had huge backlogs; others had excess capacity. To paraphrase many staff we interviewed, the offices were not located “where the action is.”

- Although complaint workload varied widely from district office to district office, most offices enjoyed the services of only two CSRs. If either of those positions were vacant for any amount of time (due, for example, to resignation, illness, pregnancy, or vacation), a huge backlog of unscreened cases could quickly build. At some offices, DRs had to leave the field and perform CSR work (resulting in delayed investigations); at other offices, large clusters of unscreened cases were simply sent to the field for “investigation” (resulting in quick and easy case closures for DRs) — both of which skewed the Board’s workload output statistics and made it impossible for management to compare productivity by district office.

⁵⁸ Price Waterhouse LLP, *Transition Review of the California Contractors State License Board* (1998) at VII-12.

⁵⁹ *Id.* at VII-18.

- Due to its “fixed office” structure and the cumbersome state leasing process which may require several years to move an office, CSLB’s enforcement system had “insufficient flexibility” — an inability to deal effectively with mobile, transient scam artists and too few resources for active, complex investigations.

- Additionally, numerous audits and studies documented the excessive workloads of the district office supervisors. Mandated supervisor reviews of all cases at every step in the complaint handling process often resulted in 50- to 60-hour workweeks for most district office supervisors, “short-shrift” review of closed cases (which were not reviewed by anyone else in the agency), limited time for interaction with staff, and inconsistent training of staff.⁶⁰

According to the Board’s former Enforcement Chief, “every office did things differently — for example, some DRs could close easy cases because the CSR was out or they didn’t have a CSR. For most DRs, there was no incentive to tackle tough cases. DRs had to close 12.7 cases per month. A warning letter in an advertising case was treated the same way as a lengthy investigation in complex case going to legal action — the easy cases will rise to the top and be done faster for purposes of statistics. There was a distinct North-South difference. Some offices didn’t know how to stop settling and how to start prosecuting.”

Thus, throughout 1998, Dr. Barnett and CSLB upper management convened teams and task forces of employees to construct a “reengineering” of CSLB’s complaint handling process.⁶¹ As envisioned by Dr. Barnett, the statewide reengineering project would involve:

- centralization of complaint intake and mediation to promote consistency in case processing and “triaging” whereby many minor complaints could be mediated and closed quickly and meritorious complaints could be identified and sent to the field for investigation more expeditiously. This proposal involved the physical relocation of the Board’s 29 CSR positions to one or two centrally-located “intake/mediation centers” (meaning the Board’s existing CSRs would have to move to the new centers or find jobs elsewhere);

⁶⁰ *Id.* at VII-21 through VII-25.

⁶¹ According to many staff we interviewed, CSLB management invited employees to participate in the design of the reengineering project, but their suggestions and input were largely ignored. Several participants stated, “The final product did not look anything like what field staff suggested. Field staff did not want to lose the CSRs, but we were told that was going to happen. We knew they were going to shut down some offices, but they chopped away more than we thought would be workable.”

- decentralization of investigations for greater flexibility. This proposal involved mandatory “home-officing” of most DRs (who would be equipped with laptop computers, modems, cell phones, and other technology enabling them to work more easily from home and from the field, without having to report to an office), the closure of several existing CSLB district offices (involving the abolition of an equal number of district office supervisor positions), and the establishment of a fewer number of “investigative centers” which would serve as “drop-in sites” housing supervisors and support staff. Dr. Barnett theorized that his decentralization concept would have the effect of (as he frequently stated) “putting CSLB’s investigators where consumers want them to be — in the field actively investigating cases, rather than sitting behind a desk at an office”; and

- a reclassification of CSLB’s investigator series to provide higher salaries for the Board’s investigators. Under this proposal, the Board’s district office supervisors became “enforcement supervisors” (ES Is), deputy registrars (DRs) became “enforcement representatives” (ERs), and office technicians (OTs) became “program technicians” (PTs).

According to Dr. Barnett, the idea was to free up resources used on office rent and pour those resources into improved technology, an upgrade in pay for DRs, better training for all enforcement staff, improved consumer education, and proactive investigations. He promised that CSLB’s enforcement program would become “better, faster, and cheaper”:

- “better” — the regional office structure of the Board’s enforcement system would be abolished in favor of a more effective statewide “functional” management structure, whereby the intake/mediation and investigative functions would be separated. The excessive workloads of district office supervisors would be cut and their spans of supervisory control would be narrowed. By focusing on increasing the number of cases closed during intake/mediation, a fewer number of more serious cases could be handled more quickly and efficiently by field investigators.

- “faster” — centralized intake/mediation would enable faster cycle times (the goal was to cut intake/mediation processing time from 42 to 30 days), faster closure of cases that do not warrant investigation, and faster shipment of meritorious cases to the field for investigation. Investigators could spend more time investigating cases and less time staffing an office.

- “cheaper” — the plan would enable CSLB to cut its office space requirements and redirect those savings into improved technology and higher pay for higher-producing investigators.

Apparently confident that the Board would approve his plan, Dr. Barnett announced the commencement of the statewide reengineering project to all CSLB enforcement staff in a memorandum dated November 10, 1998. In the memo, Barnett told all CSLB enforcement staff that “initial process reengineering will be completed by January 1, 1999. A pilot project will begin in March 1999 and final statewide implementation is planned for January 2000. This effort will result in up to three regional mediation centers colocated with up to nine field investigation centers. The final locations have yet to be determined. Intake may be decentralized with the mediation centers to begin the pilot, but these functions will be centralized long-term.”

However, CSLB rejected the statewide reengineering proposal at its November 11, 1998 meeting, and refused to incorporate it into its 1999 Strategic Plan. Board members indicated strong reservations about the proposed closure of any of CSLB’s district offices, stating that licensees prefer the convenience and familiarity of having access to CSLB via a local office.

At the Board’s January 1999 meeting, Dr. Barnett proposed a scaled-back version of the statewide reengineering proposal. Characterized as a “pilot project” limited to the four major counties in the Los Angeles Basin (Los Angeles, Orange, San Bernardino, and Riverside — which generate 65% of CSLB’s enforcement caseload), the plan called for (1) the consolidation of all southern California CSRs into one “intake/mediation center” (IMC) located in Buena Park, (2) the mandatory home-officing of all southern California DRs, (3) the closure of CSLB district offices located in Santa Ana and Moreno Valley, (4) the transformation of the Van Nuys and Inglewood district offices into satellite offices with limited public access, and (5) the establishment of “investigative centers” (ICs) replacing district offices in Azusa, Long Beach, and San Bernardino. The Board approved the pilot project proposal contingent upon legislative support for the office closures, and staff promised to return with the results of the pilot project before expanding it statewide.

As documented in more detail in the NewPoint Group report,⁶² CSLB commenced the southern California “pilot project” on March 1, 1999. In several awkward stages, all of CSLB’s southern California CSR positions were relocated to a new IMC in Buena Park by July 1, 1999 (which office since moved to Norwalk in January 2001). As a result of this mandate, most of CSLB’s southern California CSRs left the Board entirely or transferred/promoted to different positions. New

⁶² NewPoint Group, *Contractors State License Board: Reengineering Process Assessment* (2001) at I-8 to I-10.

complaint handling procedures were implemented, but the newly-hired CSRs were inadequately trained and a large backlog quickly accumulated at the intake/mediation phase. Concurrently, most of CSLB's southern California DRs were required to "home-office" — cutting them off from regular clerical support and interaction with their colleagues. Several southern California district offices were closed; others were converted to ICs.

By the time of the Board's January 18, 2000 meeting, Dr. Barnett hoped CSLB would approve statewide expansion of the southern California "pilot project." He presented the Board with statistics indicating reductions in case investigation costs (\$719 for pilot project cases versus \$1,009 for non-pilot project cases), higher investigator productivity (7.7 case closures per month in the pilot project versus 6.7 case closures per month in non-pilot project areas), higher CSR productivity (30.6 case closures per month in the pilot project versus 26.1 case closures per month in non-pilot project areas), and increased legal actions per investigator (1.4 legal actions per month in the pilot project versus 1.2 legal actions per month in non-pilot project areas), and sought approval of his plans to consolidate all central and northern California intake and mediation functions in Sacramento; consolidate the San Francisco and San Jose district offices into the Oakland Investigation Center; and convert the Ventura district office into a satellite office reporting to the Azusa Investigation Center. However, CSLB lacked a quorum at its January 18 meeting, and the matter was deferred to a special meeting of the Executive Committee on January 27, 2000.

At the Executive Committee's January 27, 2000 meeting, seven CSLB members participated by teleconference. The Committee agreed that the results from the pilot project presented at the January 18 meeting were favorable, and agreed that complaint intake and mediation should be centralized in northern California and that voluntary investigator home-officing could continue. However, the Committee expressed concerns about the impact of further district office closures on public access to the Board, and directed staff to keep all then-existing offices open for public access. Thus, reengineering in northern California has essentially consisted of the consolidation of the intake/mediation function in CSLB's new Sacramento headquarters office. CSLB's plans to consolidate three Bay Area district offices (San Francisco, San Jose, and Oakland) into one IC in Oakland were scrapped, and reengineering was effectively cut off midstream in northern California.

However, when all was said and done, the reengineering project resulted in the closure of nine of 18 CSLB district offices, and the abolition of an equal number of district office supervisor positions. Once it was finally determined how many district offices remained to be supervised, the simultaneous reclassification of CSLB's "deputy registrar" investigator series meant that — much to their

dissatisfaction— all then-district office supervisors were required to pass an examination to qualify for a position in which some had been serving for many years. It further meant that several former supervisors are now working in non-supervisory positions — and several are working under the supervision of someone they once supervised. Finally, the Board’s Enforcement Chief position was in a state of flux during the entire reengineering project; it remains vacant to this day.

As stated by NewPoint, “the net effect of all of the changes was a broad-based, and largely irreversible, restructuring of the Enforcement Program’s facilities, internal management structure, and staffing resource allocations. Beginning during calendar year 1998, and continuing through calendar years 1999 and 2000, staff attrition accelerated sharply. The Enforcement Program’s vacancy rate increased from about 7% to more than 20%.⁶³ The Board’s CSR function was especially hard-hit: By the time reengineering concluded, almost all of CSLB’s 29 CSRs (then averaging 4.4 years of CSR experience) had left or transferred to other positions, leaving the Board with inexperienced and largely untrained CSRs and mounting case backlogs throughout California.

While many of the concepts underlying reengineering were arguably sound, the poorly managed implementation of the project produced a result disturbingly close to the exact opposite of a “better, faster and cheaper” process. As documented in NewPoint’s study, on balance the reengineering project reduced efficiency in key respects; increased case backlogs and cycle times (particularly in northern California); badly damaged staff morale; prompted massive staff attrition resulting in dramatically lower staff experience levels; and substantially decreased consumer satisfaction with CSLB’s performance. These impacts are reflected in Exhibit V-A, which summarizes the NewPoint Group’s findings in this regard. The reengineering project has yet to resolve any of the problems it was intended to correct.

3. Post-1999 Intake/Mediation and Investigations

The “reengineered” structure of CSLB’s enforcement program is reflected in Exhibit V-B (April 2001 Enforcement Program Organization Chart). The Board’s intake/mediation function is now handled in two IMCs staffed as follows: Norwalk has 14 CSR positions (13 of which are filled), nine PT positions, and one OT position. Sacramento has 16 CSR positions and 6.5 PT

⁶³ NewPoint Group, *Contractors State License Board: Reengineering Process Assessment* (2001), Executive Summary at 7.

Ex. V-A. Impacts of the Project on Access, Complaint Processing, Cycle Times, Productivity, and Costs

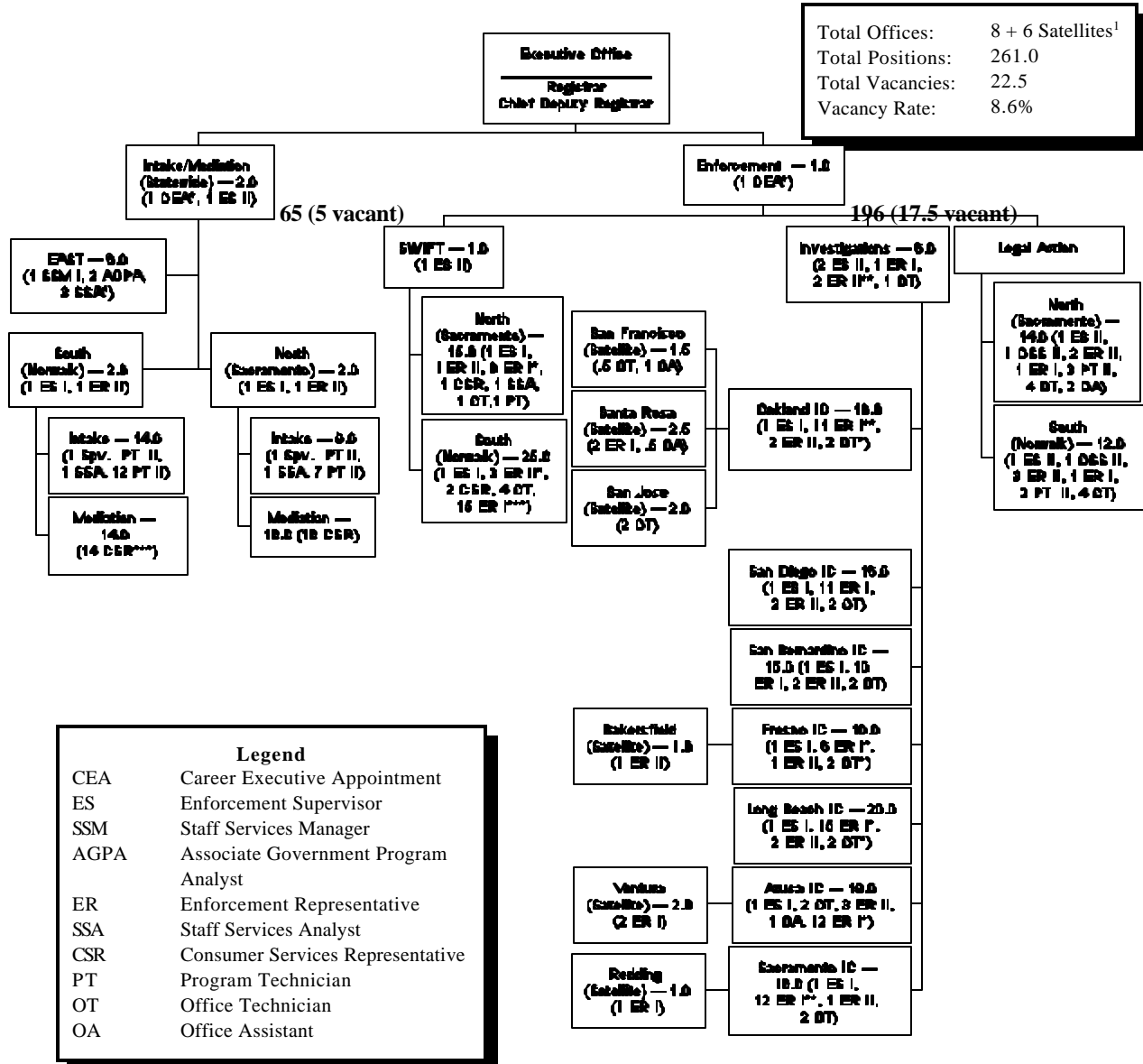
Results of analyses performed as a part of the NewPoint Group study show that the Reengineering Project has adversely impacted access, complaint processing, cycle times, productivity, and costs. A summary of findings in each of these areas is provided below.

Area Impacted	Summary of Findings
Consumer and Industry Access to Board Staff	<ul style="list-style-type: none"> The closure, consolidation, or conversion of 9 out of a total of 18 regional and district offices have adversely impacted access. Access also has been adversely impacted by a significant reduction in the number of filled Enforcement Program supervisory and management positions.
Number of Mediations, Investigations, and Legal Actions	<ul style="list-style-type: none"> The total number of complaints closed during intake/mediation and investigation has decreased by 17% over the past two years. There has been a small increase in the proportion of complaints closed with a settlement disposition during intake/mediation and a small decrease in the proportion of complaints closed with a settlement disposition during investigation. Additionally, there has been a small decrease in the proportion of complaints closed with a "non-positive" closure (<i>i.e.</i>, Insufficient Evidence, No Further Action, No Violation, or No Jurisdiction). There has been a small increase in the total number of complaints closed with a Recommended for Accusation disposition, and also a small increase in the proportion of complaints closed with a legal action disposition (<i>i.e.</i>, complaints closed with either a Recommended for Citation or a Recommended for Accusation disposition).
Timeframes for Complaint Processing and Investigation	<ul style="list-style-type: none"> The backlog of pending complaints has increased significantly since implementation of the Project and, as a result, the amount of calendar time needed for complaint processing and investigation has increased by nearly a month (28 days). As a result of increases in complaint-handling cycle times, the proportion of customers satisfied with CSLB's services has decreased from 63% to 54%.
Productivity of Board Staff	<ul style="list-style-type: none"> Since implementation of the Project, the number of complaints closed per person-year expended has decreased from 111.5 complaints per person-year to 98 complaints per person-year (a 12% decrease). Implementation of the Project also accelerated staff attrition and delayed filling of vacant positions leading, at one point, to a vacancy rate of more than 20%. Many experienced staff left the organization. Current staff have much less experience in their positions than their predecessors.
Overall Costs to the Board	<ul style="list-style-type: none"> Some of the Enforcement Program's increased cost of operations is traceable to implementation of the Project. The full amount of some embedded, structural cost increases has not yet been incurred because of continuing high vacancy rates and associated salary and benefit cost-savings.

Source: Benjamin M. Frank, Director, NewPoint Group

positions. Rather than working under the direction of an investigative supervisor, the CSRs and PTs now work under the supervision of an intake/mediation supervisor classified as an Enforcement Supervisor I (ES I), assisted by one Enforcement Representative II.

Ex. V-B. April 2001 Enforcement Program Organization Chart



¹ Most satellite offices are not open to the public during regular business hours.

* Denotes number of vacancies.

Complaints arrive at the IMCs through the mail and online via CSLB's online complaint submission capability. Within five days of receipt, PTs are expected to screen each incoming complaint and complete a "triage checklist" which requires them to check the prior complaint history of the complained-of contractor and a manually-prepared paper "alert board" list of contractors who are the subject of multiple pending complaints. PTs complete the checklist, prepare the case file, and forward the case for further screening and mediation by a CSR; if the complained-of contractor is on the "alert board," the case is sent directly to the field for investigation.

Upon receiving a new complaint file, the CSR rechecks the triage checklist prepared by the PT (sometimes to ascertain whether new complaints have arrived since the time the PT completed the checklist). The CSR contacts both parties in an attempt to clarify the dollar amount of the dispute (to determine whether it qualifies for referral to one of CSLB's arbitration programs) and determine whether the matter is amenable to mediation. If so, the CSR essentially attempts to smooth out relations between the consumer and the contractor, and persuade the consumer to permit the contractor to return to repair unfinished or defective work. If the parties reach an agreement and the work is completed, the CSR closes the case. If no agreement is reached, the CSR requests documents relevant to the dispute and forwards the case to the field for investigation. Under current policy, a CSR is required to close or forward any given case within a maximum of 30 days from its assignment to the CSR.⁶⁴

Procedurally, investigations are conducted much as they were before 1999, except that most CSLB investigators — now called "enforcement representatives" (ERs) — are based at their homes instead of a CSLB district office.⁶⁵ They have been outfitted with home-office equipment, including laptop computers, printers, modems, and cellular telephones.⁶⁶ "Home-officing" theoretically means that ERs can cover more territory and function in the field rather than behind a desk. However, it also means they lack a professional office setting in which to interview respondents and witnesses. Many note that they are uncomfortable (for any number of legitimate reasons) asking respondents into their homes for meetings, and are forced to meet respondents either at the respondent's "office" (sometimes a trailer or truck at a jobsite), in their cars, or at a fast-food restaurant — none of which

⁶⁴ Contractors State License Board, *Manual of Complaint Handling Procedures* (Apr. 2, 2001) at § 1.2.1.

⁶⁵ According to CSLB management, about 60% of the Board's ERs — mostly those located in southern California — are now home-officing. Because reengineering was cut off midstream in northern California, most of its district offices remain open and ERs are based in those district offices.

⁶⁶ Since reengineering commenced, CSLB's cellular telephone expenses have increased by 179%.

convey the authority of the State of California. Some ERs reportedly work primarily from their cars — with laptops powered by car cigarette lighters.

As noted above, the number of field offices has been effectively cut in half. Now, many ERs' homes are located 50–70 miles from the Investigative Center to which they report, meaning long commutes for ERs on days when they must report to the office and similarly long and inconvenient trips for complainants and respondents who are called in for meetings at that office. ERs are also cut off from the clerical support to which they were accustomed; many complain that enhanced typing skills are suddenly a new job requirement to which they are not accustomed, and that they spend inordinate amounts of time typing their investigative reports (when they could be in the field conducting investigations). ERs also contend that they now spend an excessive amount of time documenting their daily activity, mileage, and home use of office equipment and supplies.⁶⁷ Supervisors complain that it is impossible for them to adequately supervise when they do not always know where their employees are and what they are doing.

The time period of the reengineering project also saw changes to CSLB's effort at proactive investigations. In 1999 the Board reorganized the staff of the Underground Economy Enforcement Unit and others into the Statewide Investigative Fraud Team (SWIFT). About 25 positions previously assigned to the UEEU teams, and other staff assigned to specialized investigations of complex or sensitive matters, were combined into SWIFT. The new entity was organized as two teams, ultimately housed in the Sacramento and Norwalk intake/mediation centers, and managed by a statewide supervisor. SWIFT now handles both unlicensed contracting and selected specialized or complex matters. SWIFT teams conduct stings and sweeps to help curtail illegal contracting, employing citations and referrals for prosecution, as appropriate.

The reengineering project — exacerbated by the unusual staff attrition that accompanied it — has worked hardships on CSLB's intake/mediation and investigative staff, and on the Board's statistics. Backlogs have accumulated in intake/mediation in both Norwalk and Sacramento and — typically — have been handled differently by the North and the South. Norwalk CSRs are carrying workloads of 120–140 cases; while Sacramento limited CSR caseloads to 60 cases and created a "holding file" where the rest wait in line.⁶⁸ As documented in Exhibit V-C (Complaint Closure Cycle Times), CSR

⁶⁷ One ER told us he now has to "log out each use of a 34-cent stamp — we are spending \$1.00 to \$1.50 of my time to control the use of a 34-cent stamp. We're a dollar chasing a dime."

⁶⁸ In August 2001, CSLB management took several steps to clear away the backlog in Sacramento's holding file and to otherwise expedite case processing at the intake/mediation phase. The impacts of these steps will be reflected in the Monitor's next report.

case closure cycle times far exceed the agency's 30-day goal: Norwalk's average of 56 days is almost double the agency's goal, and Sacramento's average intake/mediation cycle time has skyrocketed to 114 days. Average investigative closure times have similarly exceeded CSLB's goal of 90 days⁶⁹: They peaked at 203 days in the south but have soared to 265 days in the north, largely aggravated by the agency's inability to hire and retain investigators in the Bay Area. And the backlog continues to grow. Even though the agency is receiving fewer complaints overall than in years past, the total number of complaints closed during intake/mediation and investigation decreased by over 17% in the past two years (see Exhibit V-D: Complaints Received and Closed FY1998–99 Through FY2000–01). The backlog of pending complaints has increased since implementation of the reengineering project; as a result, the amount of calendar time needed for complaint processing and investigation has increased by nearly one month (28 days) — from an average of 95 days in 1998–99 to an average of 123 days in 2000–01 (see Exhibit V-C: Complaint Closure Cycle Times).

B. Arbitration

Pursuant to Business and Professions Code section 7085 *et seq.*, CSLB administers two arbitration programs to encourage the settlement of consumer-contractor and contractor-contractor disputes without disciplinary action. Under section 7085(b), disputes over contracts worth less than \$5,000 *shall* be referred to CSLB's Mandatory Arbitration Program (MARB); under section 7085(a), disputes over contracts worth more than \$5,000 but less than \$50,000 *may* be referred to CSLB's Voluntary Arbitration Program (VARB) with the concurrence of both the complainant and the contractor. The statute specifies that complaints referred to MARB/VARB must meet several criteria, including the following: (1) the complained-of licensee "does not have a history of repeated or similar violations"; (2) the licensee was in good standing at the time of the alleged violation and is in good standing at the time of referral to arbitration; (3) the licensee has no outstanding disciplinary actions filed against him/her; and (4) the parties have not previously agreed to private arbitration in the underlying contract or otherwise. Touted as "fair, fast, and free," CSLB arbitrations are binding — meaning the parties have only a limited ability to challenge the arbitrator's decision in court. CSLB's arbitration decisions are also confidential — meaning they are not disclosed on CSLB's Web site or elsewhere unless a contractor against whom a monetary judgment is entered fails to pay the judgment (at which time CSLB suspends the contractor's license and that action is posted on the Board's Web site).

⁶⁹ Contractors State License Board, *Manual of Complaint Handling Procedures* (Apr. 2, 2001) at § 1.2.4.

Ex. V-C. Complaint Closure Cycle Times

Fiscal Year	Average Complaint Closure Cycle Times By Type of Complaint (Days)												Average Non-Licensee and Licensee Complaint Closure Cycle Times By Stage of Investigation (Days)								
	Applications			Non-Licensee Complaints			Licensee Complaints			Total			Intake/Mediation Closures			Investigation Closures			SWIFT Closures		
	North	South	Total	North	South	Total	North	South	Total	North	South	Total	North	South	Total	North	South	Total			
1998/99	59	57	58	105	116	111	46	54	50	173	191	183	24	17	19						
1999/00	50	54	52	125	131	129	66	60	63	205	203	204	23	28	26						
2000/01	75	60	66	162	132	147	114	56	90	265	196	221	49	35	41						
Change from FY1998/99 to FY2000/01	16	3	8	57	16	36	68	2	40	92	5	38	25	18	22						
Total Cycle Time																					

Fiscal Year	Distribution of Non-Licensee and Licensee Complaint Intake/Mediation Cycle Times												Percentage Distribution of Non-Licensee and Licensee Complaint Intake/Mediation Cycle Times											
	1-60 Days	61-120 Days	121-180 Days	181-240 Days	241-300 Days	301-360 Days	>360 Days	Total Closures	1-60 Days	61-120 Days	121-180 Days	181-240 Days	241-300 Days	301-360 Days	>360 Days	Total								
1998/99	6,437	2,273	282	60	6	1	16	9,075	71%	25%	3%	1%	0%	0%	100%									
1999/00	4,470	2,494	742	117	44	8	8	7,883	57%	32%	9%	1%	1%	0%	100%									
2000/01	3,606	2,455	1,126	840	193	42	18	8,280	44%	30%	14%	10%	2%	1%	100%									
Change from FY1998/99 to FY2000/01	(2,831)	182	844	780	187	41	2	(795)	-27%	5%	10%	9%	2%	0%	0%									

Fiscal Year	Distribution of Non-Licensee and Licensee Complaint Investigation Cycle Times, Excluding SWIFT Closures												Percentage Distribution of Non-Licensee and Licensee Complaint Investigation Cycle Times, Excluding SWIFT Closures											
	1-60 Days	61-120 Days	121-180 Days	181-240 Days	241-300 Days	301-360 Days	>360 Days	Total Closures	1-60 Days	61-120 Days	121-180 Days	181-240 Days	241-300 Days	301-360 Days	>360 Days	Total								
1998/99	1,22	1,771	2,629	2,225	1,117	575	632	10,173	12%	17%	26%	22%	11%	6%	100%									
1999/00	1,01	1,200	1,793	1,887	1,232	692	830	8,647	12%	14%	21%	22%	14%	10%	100%									
2000/01	778	1,096	1,395	1,454	1,148	747	1,05	7,672	10%	14%	18%	19%	15%	10%	100%									
Change from FY1998/99 to FY2000/01	(446)	(675)	(1,234)	(771)	31	172	422	(2,501)	-2%	-3%	-8%	-3%	4%	4%	0%									

Over the past two years, the statewide average complaint closure cycle time has increased by nearly a month (28 days).

Ex. V-D. Complaints Received and Closed, FY1998/99 Through FY2000/01

Complaints Received	Fiscal Year	Active Licensees	Application Investigations, Incl. HISP	Non-Licensee Complaints Received, By Source			Licensee Complaints Received, By Type of Violation						Total Complaints Received, Excluding SWIFT					
				Consumers and Others		SWIFT		Total		Abandonment/Workmanship		Financial		Technical/Other		Total		
				No.	%	No.	%	No.	%	No.	%	No.		%	No.	%	No.	%
	1998/99	210,503	1,093	3,136	42%	4,317	58%	7,453	100%	9,803	56%	2,134	12%	5,640	32%	17,577	100%	20,713
	1999/00	213,588	1,285	2,612	31%	5,746	69%	8,358	100%	9,469	58%	2,123	13%	4,871	30%	16,463	100%	19,075
	2000/01	213,617	1,711	2,270	37%	3,922	63%	6,192	100%	10,001	61%	1,910	12%	4,498	27%	16,409	100%	18,679
	Change from FY1998/99 to FY2000/01	3,114	618	(866)	-28%	(395)	-9%	(1,261)	-17%	198	2%	(224)	-10%	(1,142)	-20%	(1,168)	-7%	(2,034)
Complaints Closed	Fiscal Year	Application Investigations, Incl. HISP	SWIFT	Intake/Mediation		Investigation		Total Complaints Closed, Excluding SWIFT		Non-Licensee Complaints	Licensee Complaints, By Violation			Total Complaints Closed, Including SWIFT				
				Total Complaints Closed, Excluding SWIFT		Abandonment/Workmanship		Financial			Technical/Other							
				No.	%	No.	%	No.	%		No.	%	No.		%			
	1998/99	943	6,285	9,075	47%	10,173	53%	19,248	100%	7,548	100%	9,982	56%	2,158	12%	5,845	32%	25,533
	1999/00	1,323	7,405	7,883	48%	8,647	52%	16,530	100%	8,257	100%	8,867	57%	1,995	13%	4,815	31%	23,934
	2000/01	1,712	5,611	8,280	52%	7,672	48%	15,952	100%	6,150	100%	8,830	57%	1,821	12%	4,756	31%	21,557
	Change from FY1998/99 to FY2000/01	769	(674)	(795)	-9%	(2,501)	-25%	(3,296)	-17%	(1,398)	-19%	(1,152)	-12%	(337)	-16%	(1,089)	-19%	(3,976)

Excluding SWIFT, over the past two years there has been a 10% decrease in the total number of complaints received and a 17% decrease in the total number of complaints closed.

Source: Benjamin M. Frank, Director, NewPoint Group

For the past several years, CSLB has contracted with a private company, ArbitrationWorks, Inc. (AWI) to conduct its arbitration hearings; AWI hears approximately 800–900 CSLB cases per year. CSLB CSRs or ERs refer eligible cases to AWI and then close them (for purposes of CSLB statistics). Thereafter, AWI gathers information about the dispute, sets it for hearing, and assigns one of its arbitrators to hear the case at a relatively informal hearing (which is frequently put on by the parties themselves without the assistance of counsel). CSLB pays for the services of one expert witness to testify at the hearing; the parties may pay for additional experts to testify. Following submission of the case, the arbitrator has 30 days in which to issue his/her decision. The entire process usually takes 120 days or less (according to AWI, most arbitrations are concluded within 90 days of referral).

In 1998, the Legislature enacted Business and Professions Code section 7085.5(b)(3), which requires CSLB to adopt regulations establishing minimum qualifications for CSLB arbitrators. The Board's initial version of the regulations (published in May 1999) would have required all CSLB arbitrators to have at least four years of experience in the construction industry acting in the capacity of a building contractor, or four years of experience handling litigation as an attorney, judge, or arbitrator on construction-related cases. Faced with concerns by DCA Director Kathleen Hamilton over such proposed requirements (which she believed would convey the appearance — if not the actuality — of bias toward the contractor in CSLB arbitration proceedings) and the then-approaching June 30, 2001 expiration of the AWI contract (which has since been extended), CSLB has opted to amend its regulations to give parties to its VARB proceedings a choice between AWI arbitrators (who have considerable construction experience) and administrative law judges from the Office of Administrative Hearings (who have considerable dispute resolution experience). Those regulations await approval by the Office of Administrative Law; their impact and implementation — in addition to other issues related to CSLB's arbitration programs — will be the subject of discussion in future Monitor reports.

C. Prosecution

Once a CSLB investigator completes an investigative report recommending the filing of an accusation in a given case and that recommendation is approved by CSLB upper management, the file is transferred to the Licensing Section of the Attorney General's Office, where it is assigned to a deputy

attorney general (DAG).⁷⁰ The DAG reviews the investigative file and determines whether it is complete and sufficient to prove a disciplinary violation. If so, the DAG prepares the accusation⁷¹ (the written notice of charges) and returns it to CSLB's Case Management Unit (CMU), an internal support unit that tracks and processes all CSLB legal actions. CMU signs the accusation (or, in CSLB terminology, "files" the accusation) and serves it on the complained-of contractor, who is now referred to as the "respondent."⁷²

The filing of the accusation triggers the adjudication process governed by the Administrative Procedure Act (APA),⁷³ which is designed to ensure that an accused licensee is afforded appropriate procedural due process rights before his property right (the license) is taken from him.⁷⁴ According to caselaw interpreting the APA, the agency is the moving party, has the burden of proof, and must prove a disciplinary violation by "clear and convincing proof to a reasonable certainty."⁷⁵

Once the accusation is filed, the respondent may file a notice of defense.⁷⁶ If such a notice is filed, CMU transfers the case file back to the DAG, who secures a hearing date from the Office of Administrative Hearings (see below).⁷⁷ Thereafter, the parties may engage in limited discovery⁷⁸ and,

⁷⁰ If the ER recommends legal action in the form of a citation (instead of an accusation), the ER prepares a rough draft of the citation and transfers the case file to the Case Management Unit. CMU finalizes the citation, serves it on the respondent, and provides a copy of the citation to the homeowner or other complainant. Under Business and Professions Code section 7028.10, the respondent may appeal the citation; if so, the respondent will receive a hearing before an ALJ. If not, the citation becomes effective and CSLB tracks compliance with the citation. If the contractor fails to comply with the citation by the date required, the contractor's license is automatically suspended. If the contractor fails to comply with the citation for one year, his/her license is automatically revoked.

⁷¹ Gov't Code § 11503.

⁷² *Id.* at § 11500(c).

⁷³ *Id.* at § 11370 *et seq.*

⁷⁴ *See, e.g.*, Gov't Code § 11425.10.

⁷⁵ *See, e.g., Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; *Realty Projects v. Smith* (1973) 32 Cal.App.3d 201; *Small v. Smith* (1971) 16 Cal.App.3d 450.

⁷⁶ Gov't Code § 11506.

⁷⁷ If the respondent fails to file a notice of defense, the Case Management Unit prepares a default judgment for the Registrar's signature.

⁷⁸ Gov't Code § 11507.6.

barring settlement, will present their respective cases at a public evidentiary hearing presided over by an administrative law judge (ALJ) from the Office of Administrative Hearings.⁷⁹ During the hearing, CSLB is represented by the Attorney General's Office and the respondent contractor may be represented by counsel of his/her choice (paid for by the respondent). Each party has the right to examine and cross-examine witnesses, present documentary evidence, and present oral argument.⁸⁰ Following submission of the evidence, the ALJ prepares a written decision including findings of fact, conclusions of law, and recommended discipline.⁸¹ At the Board's request, the ALJ may also recommend that the licensee pay "cost recovery" to reimburse the Board for its investigative and enforcement costs incurred up to the first day of the evidentiary hearing.⁸² The ALJ's ruling is a "proposed decision"⁸³ which is forwarded to the CSLB Registrar, who makes the final agency decision (see below).

In filing charges and recommending discipline, the DAG and the ALJ are guided by a set of "disciplinary guidelines" approved by CSLB; these guidelines set forth the Board's preferred range of sanctions for every given violation of the License Law and the Board's regulations.⁸⁴

Exhibits V-E and V-F present the currently available data on administrative prosecutions conducted for CSLB by the Licensing Section.⁸⁵ Exhibit V-E displays accusation filing times in pending cases in which the accusation has been filed, by various Licensing Section offices. These data indicate

⁷⁹ *Id.* at § 11512.

⁸⁰ *Id.* at § 11513.

⁸¹ *Id.* at § 11425.50.

⁸² Bus. & Prof. Code § 125.3.

⁸³ Gov't Code § 11517.

⁸⁴ Effective July 1, 1997, Government Code section 11425.50 requires occupational licensing boards to codify their disciplinary guidelines in their regulations. CSLB has adopted section 871, Title 16 of the California Code of Regulations, which incorporates by reference the December 11, 1996 version of the Board's disciplinary guidelines.

⁸⁵ Attorney General management and CSLB managers agree that the current case tracking system of the Department of Justice is inadequate and cannot readily produce consistent aggregated statistics on CSLB cases handled by the Licensing Section. Data presented here have been compiled by CSLB and are considered the most reliable presently available. For further discussion, *see* Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection H.2. ("Administrative Prosecution by the Licensing Section of the Attorney General's Office").

that, on average throughout the state, it has taken the Licensing Section over five months to file an accusation in CSLB cases. Exhibit V-F, which documents the age of currently pending cases in which no accusation has yet been filed, indicates a growing backlog in at least two offices of the Licensing Section: The average case has been pending in Los Angeles for over 7½ months with no accusation filed; the average San Diego case is still awaiting the filing of an accusation after almost seven months.

**Ex. V-E. Attorney General's Office Case Cycle Times:
Age of Pending Cases at Time of Filing (June 2001)**

Licensing Section Office	Total Number of Cases Pending	Total Number of Days Pending in AG's Office Before Pleading Was Filed	Average Days Per Case Before Pleading Filed
Los Angeles	85	13,975	164.412 (5.48 mos)
San Diego	26	5,446	209.462 (6.98 mos)
Sacramento	9	1,601	177.889 (5.93 mos)
San Francisco	24	1,877	78.208 (2.61 mos)

Source: CSLB enforcement data

**Ex. V-F. Attorney General's Office Case Cycle Times:
Age of Pending Cases With No Pleading Filed (June 2001)**

Licensing Section Office	Total Number of Unfiled Cases	Total Number of Days Pending	Average Days Per Unfiled Case
Los Angeles	48	10,925	227.604 (7.59 mos)
San Diego	36	7,282	202.278 (6.74 mos)
Sacramento	14	1,173	83.786 (2.79 mos)
San Francisco	35	3,684	105.257 (3.51 mos)

Source: CSLB enforcement data

On the bright side, the Licensing Section apparently recognizes its problems in southern California and has assigned Los Angeles Deputy Attorney General Tony Moreno as its liaison to CSLB to assist in expediting the setting of filed cases for hearing. According to CSLB staff, Mr. Moreno's efforts have begun to achieve results in the form of increased settlements and backlog reduction.

To protect consumers, CSLB is authorized to revoke and suspend licenses, or put them on probation (including terms, conditions, and restrictions). In minor cases (and to deter future violations), CSLB may issue citations, fines, and orders of abatement; failure to comply with these orders will result in automatic suspension of the license. Through its formal adjudications and through its arbitration programs, CSLB is authorized to order licensees to pay both civil penalties (which go to the Board) and restitution to consumers. However, these monetary remedies are of little utility if the contractor leaves the profession or files for bankruptcy. In these instances, CSLB has no ability to recompense consumers who have been victims of law violations committed by its licensees. Unlike several other California licensing agencies,⁸⁶ CSLB maintains no "recovery fund" to fully or partially compensate injured victims, no matter how egregious the violation and no matter what steps the consumer took to protect himself. It does not require licensees to carry any sort of liability insurance or to post payment and/or performance bonds. While consumers may attempt to secure compensation from the required \$7,500 contractor's bond, they will likely find that minimal bond exhausted by others.

In addition to CSLB's internal sanctions and the administrative prosecutions handled by the Attorney General's Licensing Section, California law provides for criminal and civil prosecution of unlawful contracting activity. Criminal cases under California law are handled almost exclusively by local prosecutors, including district attorneys and city attorneys, and civil law enforcement cases may be brought by the Attorney General, the district attorneys, or designated city attorneys. CSLB investigators refer felony contracting fraud or diversion cases for prosecution by the staffs of the 58 elected district attorneys in California. Misdemeanor contracting cases, such as unlicensed activity, are prosecuted by both district attorneys and city attorneys. In addition, California's Business and

⁸⁶ For example, the State Bar of California maintains the Client Security Fund (CSF) (Bus. & Prof. Code § 6140.5), which is supported by a \$40 surcharge on the annual licensing fees of California attorneys (*id.* at § 6140.55). Up to a maximum of \$50,000, the CSF compensates clients who have been victimized by the intentional dishonesty of a California attorney where that attorney has been disciplined by the State Bar. The California Department of Real Estate maintains the Real Estate Recovery Account (*id.* at § 10470 *et seq.*) to compensate consumers who are victims of intentional fraud committed by licensed real estate agents. The Recovery Account is funded by 12% of each licensee's licensing fee (*id.* at 10450.6). In order to be compensated, the consumer must obtain a final civil judgment, arbitration award, or criminal restitution order against the licensee; diligently attempt to collect on the award; and fail. Upon application, the Account will compensate the consumer up to \$20,000 per transaction (*id.* at § 10474(c)).

Professions Code provides powerful civil law enforcement tools for public prosecutors to use in cases of unlawful and unfair business practices, including contracting law violations.⁸⁷ In contrast to the practices of other state regulatory agencies, CSLB seldom refers contracting law violations to state or local prosecutors for civil prosecution. Other regulatory agencies in California (including the Bureau of Automotive Repair, the Department of Motor Vehicles, the Medical Board, and many others) regularly refer major or complex matters for these civil enforcement actions, which typically result in effective permanent injunctions, large civil penalties, and substantial consumer restitution.

D. Office of Administrative Hearings

Housed within the Department of General Services, the Office of Administrative Hearings (OAH) is a centralized panel of administrative law judges (ALJs) who preside over state agency adjudicative hearings in a variety of areas. OAH currently employs 44 ALJs based in four California cities.

The APA requires OAH ALJs to preside over CSLB adjudicatory hearings.⁸⁸ Once the accusation is filed, the ALJs attempt to induce settlements through settlement conferences⁸⁹; if their efforts fail, they preside over contested evidentiary hearings as described above. OAH data indicate that most CSLB cases are heard within two to six months of the filing of the accusation. Once all the evidence is submitted, the APA requires the ALJ to issue a proposed decision within 30 days.⁹⁰ For the past four fiscal years, OAH has met this deadline in the vast majority of CSLB cases it has handled.

OAH ALJs will have a new function at CSLB in the near future. As reported in subsection B (Arbitration) above, CSLB has adopted regulations permitting participants in its Voluntary Arbitration Program (VARB) to choose an OAH ALJ as an arbitrator. To facilitate this arbitration function, OAH Director Melissa Meith and her staff have developed a new chapter on CSLB arbitration procedures for OAH's *Benchmark* procedure manual. The progress of CSLB arbitrations and other issues related to OAH will be explored in future Monitor reports.

⁸⁷ See further discussion in Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection H.3 ("Criminal and Civil Prosecution by District Attorneys and City Attorneys").

⁸⁸ Gov't Code § 11502.

⁸⁹ *Id.* at § 11511.7.

⁹⁰ *Id.* at § 11517(c).

E. Registrar of Contractors

Following completion of the evidentiary hearing and transmittal of the ALJ's proposed decision to CSLB headquarters, the Registrar of Contractors reviews the ALJ's ruling and decides whether to adopt it (as the final agency decision, for purposes of judicial review) or "nonadopt" it because it is defective or inappropriate in some way. Business and Professions Code section 7091(d) vests adjudicative decisionmaking authority within the Registrar. This delegation of quasijudicial decisionmaking authority to the CSLB Registrar differs substantially from the adjudicative decisionmaking process at other DCA occupational licensing boards, wherein the multimember board reviews the ALJ's proposed decision and determines whether to adopt it.

Notwithstanding section 7091(d), Business and Professions Code section 7113 specifies that the Board retains the authority to review, sustain, or reverse any action or decision of the Registrar, including Registrar disciplinary decisions on proposed ALJ decisions. However, in practice for at least the past 15 years, the Registrar has made all final disciplinary decisions. The unique role of the CSLB Registrar — as contrasted with the role of the executive officer at other occupational licensing boards — will be the subject of further exploration in future Monitor reports.

F. Judicial Review of Registrar's Decision

An aggrieved licensee whose license has been disciplined by the Registrar of Contractors may seek judicial review of the Registrar's decision by filing a petition for writ of mandate in superior court under Code of Civil Procedure section 1094.5.⁹¹ If requested, the superior court will review whether CSLB exceeded its jurisdiction, the fairness of the adjudicatory process afforded the licensee by CSLB, and whether the Registrar's action is "arbitrary and capricious" and/or constitutes a "prejudicial abuse of discretion."⁹² In conducting its review of the agency's decision, the court does not call witnesses or take new evidence; rather, the court (sitting alone, without a jury) simply reviews the administrative record — including the Board's accusation, the evidence presented by both sides at the evidentiary hearing before the ALJ, and the ultimate decision of the Registrar. In reviewing the evidence and the findings, the court exercises "independent judgment" — meaning the court is not bound by the agency's factual findings or its legal conclusions; the court may substitute its judgment for

⁹¹ *Id.* at § 11523.

⁹² Civ. Proc. Code § 1094.5(b).

that of the agency.⁹³ If the court finds that the agency sustained its burden of proof and that its findings and conclusions are supported by the weight of the evidence,⁹⁴ the court will sustain the Registrar's decision and deny the writ. If not, the court will usually grant the writ and refer the matter back to the agency for further proceedings, or dismiss the case entirely.

If the superior court upholds the Registrar's decision, the respondent contractor may appeal the superior court's decision to a court of appeal.⁹⁵ On appeal, the appellate court reviews the decision of the superior court on a "substantial evidence" basis. If there is "substantial evidence" in the administrative record to support the superior court's decision, the appellate court will not disturb it.⁹⁶ Only if the appellate court finds no substantial evidence in the record to support the superior court's decision will it reverse the superior court's decision and remand the matter.

If the appellate court affirms the superior court's decision, the respondent contractor may petition the California Supreme Court to review the case. Such review is entirely discretionary and is rarely attempted or granted.

G. CSLB Enforcement Program Output

Exhibit V-G presents the output of CSLB's enforcement program for the past five fiscal years. Trends in most categories — including total formal disciplinary actions taken, automatic revocations and suspensions, citations issued (to both licensees and nonlicensees), and referrals of cases to public prosecutors — are down markedly from prior years.

⁹³ *Id.* at § 1094.5(c).

⁹⁴ *Id.*

⁹⁵ Civ. Proc. Code § 904.1.

⁹⁶ *Bixby v. Pierno* (1971) 4 Cal.3d 130, 143 n.10.

Ex. V-G. CSLB Enforcement Program Output

	1996-97	1997-98	1998-99	1999-00	2000-01
Accusations Filed*	306	242	192	224	264
Formal Disciplinary Actions Taken Via Accusation	261	208	170	192	228
Automatic Revocation/Suspension for Failure to Pay Arbitration Award	324	249	226	207	179
Automatic Revocation/Suspension for Failure to Comply with Citation	1,674	1,616	1,171	883	628
Licensee Citations	2,344	1,369	1,023	846	833
Non-Licensee Citations	2,301	1,545	1,657	1,600	1,008
Referrals to Prosecutor for Filing of Criminal Action	664	1,034	1,083	841	764
Cost Recovery Ordered	\$342,586	\$275,829	\$170,166	\$474,052	\$887,912
Cost Recovery Collected	\$62,878	\$99,369	\$88,707	\$85,209	\$170,875

* Multiple cases against the same contractor are frequently combined into one accusation.

Source: CSLB enforcement data

Chapter VI

INITIAL CONCERNS OF THE ENFORCEMENT PROGRAM MONITOR

This chapter presents the Monitor’s initial concerns regarding CSLB’s enforcement program as it exists today. We characterize these as *initial concerns* — rather than findings of fact or conclusions — as a continuing reminder that the Monitor’s project is in the first phase of a two-year project. Study will continue on these and other subjects throughout the Monitor’s term.

However, our preliminary research has identified a number of issues or problems which should be addressed in any effort to improve CSLB’s enforcement program. These concerns are listed below within categories representing the principal aspects of that enforcement program, including intake/mediation, investigations, prosecutions, consumer remedies, and several others.

A. CSLB Mission and Mandate

CSLB’s statutory mandate is outdated. Consumer protection is the essential purpose and first statutory priority of California’s occupational licensing boards and bureaus, including CSLB. The mandate of all consumer-related boards and bureaus within the California Department of Consumer Affairs is to regulate adequately the respective businesses and professions “in order to *protect the people of California*.”⁹⁷ CSLB’s 1996 mission statement presently reflects this priority, providing that “[t]he Contractors State License Board shall *protect consumers* by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction” (emphasis added).

⁹⁷ Bus. & Prof. Code § 101.6 (emphasis added).

However, nothing in CSLB's *statutory* scheme today clearly indicates that protecting California's consumers is the agency's primary mission. (CSLB's mission statement, while laudable, is not binding authority and could be changed unilaterally by another group of Board members.) The Contractors State License Law,⁹⁸ with its origins tracing back to 1929, has not been modernized to reflect the contemporary mandate of the Department of Consumer Affairs and its constituent occupational licensing entities. Other DCA agencies have taken action to update their statutory charters. For example, the statutory mandate of the Medical Board of California has now been changed to indicate that "[p]rotection of the public shall be the highest priority" for the entities within the Medical Board "in exercising their disciplinary authority."⁹⁹

In the modern era of consumer protection, there is little justification for any DCA agency to act under a statutory scheme that does not clearly reflect California's contemporary regulatory policy. This is not simply a matter of symbolism. The absence of a clear statutory mandate could lead to inconsistencies in agency policy and strategy over time and among different Boards; it might also contribute to inaccurate judicial interpretations of CSLB's statutes on such issues as weighing the potential for public harm in a disciplinary matter.

CSLB's name is anachronistic and somewhat misleading today. CSLB's current name traces back to an era when the licensing of trades was the primary — and largely exclusive — function of state occupational boards. "Contractors State *License* Board" suggests to the industry and the public that licensing is the sole function of the agency, or at least that licensing so outweighs any other function that it alone should be included in the agency's name. No mention is made of the *enforcement* function of CSLB, which involves at least 55% of the agency's resources and personnel and which is at least as important as licensing in terms of the agency's first mission of public protection. A name which reflects less than half of the work of an agency is no longer accurate.

The potential for confusing the public is not just hypothetical: Most consumers understand that licensing involves some form of testing for knowledge, and at least some consumers tend to believe this is all that CSLB does. The Monitor has spoken to (non-expert) consumers who have questioned the value of filing fraud complaints with CSLB since fraud is a crime and their complaints did not relate to

⁹⁸ Bus. & Prof. Code § 7000 *et seq.*

⁹⁹ Bus. & Prof. Code § 2229(a).

CSLB's testing or "licensing" process. While many consumers have a more accurate view of the full mission of CSLB, a name which confuses a significant sub-group of the public should be reevaluated.

In addition, the use of the word "state" in CSLB's name is an anomaly among all California occupational licensing agencies. "Contractors *State* License Board" suggests or implies that there are federal or local licensing agencies to be distinguished from this state licensing authority, when of course only the State of California licenses contractors here. At best the reference to "state" is unnecessary; at worst it is a potential source of confusion as to possible multiple sources of licensing.

In sum, "Contractors State License Board" is no longer accurate and may in fact tend to mislead the public as to the modern mission of this agency. This is of special concern to the Enforcement Program Monitor because the present name does not accurately reflect the importance of the enforcement activities of CSLB. As this agency sets out to meet the Legislature's demand for an improved enforcement program, a good place to start would be a more accurate name — one which does not subordinate the enforcement function to the licensing function.

B. Inadequate CSLB Resources

An outdated license fee structure means CSLB resources are inadequate to meet the Legislature's and public's demand for service improvement. CSLB is funded almost exclusively by contractor license fees, and those fees were last adjusted effective January 1, 1994. Service and work requirements associated with regulating each licensee have remained relatively constant since 1994, while the number of licensees and citizens using construction services has increased significantly. Under these circumstances, CSLB has experienced a substantial reduction in *inflation-adjusted* per licensee funding, roughly equal to the 21.2% increase in the California Consumer Price Index in the past eight years. If \$300 was an appropriate license renewal fee in 1994, it is roughly 21% less appropriate today.

Even without this apparent reduction in inflation-adjusted resources, the California Legislature and public now demand from CSLB increased levels of service speed and service quality. The Legislature has established a statutory goal of six months for the full investigation and handling of most CSLB complaints, and one year for the most complex fraud matters.¹⁰⁰ CSLB has never consistently met such a stringent service standard at its current resource level, and the agency cannot do so today.

¹⁰⁰ Bus. & Prof. Code § 7011.7.

Increased efficiency in the CSLB business process can be achieved, and a concerted effort to do so is under way now. However, as a realistic matter, improvement in the level of public service sufficient to meet the reasonable demands of the Legislature and the public will not occur until CSLB hires and trains an adequate complaint and investigative staff, including additional Consumer Services Representatives and Program Technicians for complaint triage and mediation, and Enforcement Representatives for investigations. As noted in Chapter IV, several previous studies of CSLB's enforcement program support this conclusion.¹⁰¹

Widespread support exists for updating CSLB's fee structure. Representatives of the construction industry have indicated in numerous forums that contractors and industry groups will fully support increased license fees if such increases will be used to improve enforcement efforts against unscrupulous, incompetent, or unlicensed contractors. There is a widespread consensus that CSLB needs more tools to do its job better.

C. CSLB Management Structure and Information System

Unfilled senior management positions in the enforcement program. In the wake of the reengineering project and throughout much of 2001, the CSLB enforcement program has operated without a chief of enforcement operations and with several other senior management positions vacant. These vacancies have caused a leadership vacuum in the enforcement program, depriving the program of decisiveness, clear executive vision, effective performance oversight, and prompt problem-solving among different program areas. New Registrar Sands is moving to fill these vacancies as part of the rebuilding process described in further detail in the 2001 NewPoint Group study.¹⁰²

Ameliorating the impacts of the 1999–2000 reengineering project. NewPoint consultant Ben Frank has skillfully documented the dramatic and troubling impact of the previous Registrar's 1999–2000 reengineering project, and that analysis is incorporated in this report. In summary, the reengineering project reduced efficiency in key respects; increased case backlogs and cycle times (particularly in northern California); badly damaged staff morale; prompted massive staff attrition resulting in lower staff experience levels; and decreased consumer satisfaction with CSLB's

¹⁰¹ See *supra* Ch. IV (“Summary of Previous Studies”) at note 30.

¹⁰² NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001) at VI-1.

performance. New CSLB senior management has begun a process of rebuilding the enforcement program structure and streamlining the complaint handling process, and these efforts are appropriate and promising.

Inadequacy of the management information system as it relates to enforcement.

CSLB appears to have a competent Information Systems Center, headed by a capable management information systems (MIS) chief. However, and perhaps as a function of the prolonged absence of an enforcement program chief, there is a troubling lack of effective connection between CSLB's management information system and its enforcement program. Some existing management information is produced, but seldom reviewed; other aspects of management information — especially key types of data needed to track performance of the enforcement mission — are only available by special request for unique data runs.

In addition, variations in the definitions and categories of enforcement program data collected over the years make it difficult — if not impossible — to conduct meaningful comparisons of CSLB's enforcement performance over time. Further, it is our experience that CSLB's collection and reporting of various enforcement data varies considerably from the collection and reporting of the same information by its enforcement program partners (including the Attorney General's Office and the Office of Administrative Hearings). Each entity uses its own definitions and timeframes, frustrating any attempt to ascertain the facts about the performance of these partners. CSLB and its enforcement partners should attempt to arrive at consensus about data definitions and collection practices. Further, CSLB (and its enforcement partners, the Legislature, and the public) would benefit from a reporting statute similar to Business and Professions Code section 2313 applicable to the Medical Board, to facilitate year-to-year "apples to apples" comparisons in its enforcement performance.

Improvement is also needed in the effectiveness of the linkage between the enforcement information system and the licensing information system. Although certain enforcement results are accessible to the licensing staff, there have been troubling instances of failure to flag or cross-reference effectively between these systems, resulting in cases where the licensing program has permitted the licensure or relicensure of individuals with histories of serious misconduct.¹⁰³

¹⁰³ See *infra* Ch. VII ("Initial Recommendations of the Enforcement Program Monitor") at subsection D ("Contractor Screening").

D. Contractor Licensing System and Requirements

The direct relationship of licensing to the enforcement process. The Monitor believes there exists a direct and inevitable relationship between CSLB's licensure policies and its enforcement program. Licensing principles and practices control the screening and exclusion of fraudulent and/or incompetent contractors from the marketplace, and thus have a vitally important impact on the enforcement system. Improvement in the overall disciplinary process — and CSLB's larger mission of consumer protection — will depend heavily on effective licensing practices.

CSLB's current licensing structure and philosophy raise concerns for further study. The second Monitor's report will address in more detail the challenging issues presented by the current CSLB licensing structure and philosophy. However, it seems clear that CSLB's licensure of *businesses* run by "qualifying individuals" frequently operating under fictitious names — as opposed to the more traditional process of licensing *individuals* identifiable by name — can obscure and undermine individual accountability, permit evasion of the enforcement process by licensees who are determined to do so, and prevent even the most conscientious consumers from adequately checking the background of the individuals in whom they are investing significant amounts of money. Our preliminary evidence indicates that many unscrupulous contractors believe they can readily evade licensure sanctions by relatively easy changes in business organization or entity structure and by utilizing different designated qualifying individuals. These concerns go to the core of occupational licensure theory as applied to CSLB, and require extensive further study and consideration.

CSLB licensing generally. CSLB examines and issues licenses to three major categories of contractors: general engineering contractors, general building contractors, and approximately 45 types of specialty contractors. In order to be licensed, an applicant must (1) take and pass a trade-specific examination and a "law and business" examination, (2) complete an application form declaring completion of an experience requirement and answering questions regarding prior criminal history; (3) post a \$7,500 "contractor's bond" (\$10,000 for swimming pool contractors); and (4) demonstrate "financial solvency" in the amount of \$2,500. No education is required for contractor licensure. Generally, the problems with CSLB's licensure requirements are well-known and were succinctly summed up by a deputy district attorney we interviewed: "The licensing test is not rigorous, the experience is not verified, and a person can be licensed without being identified."

The examination requirement. CSLB administers over 40 different types of licensing exams which have been developed for CSLB by private testing firms, CSLB's own Test Validation Unit, or

DCA's Office of Examination Resources. CSLB's 1997 sunset review revealed that the agency has failed to regularly update the occupational analysis underlying many of its exams and to replace overexposed test questions in the more frequently administered exams. These problems — combined with incidences of suspected cheating and the practices of some exam preparation schools and services to pay examinees to relay actual test questions to them — have resulted in exams with unusually high pass rates and the likely probability that some incompetent people are being licensed. The Legislature's recent infusion of additional resources to CSLB for purposes of updating its occupational analyses and increasing the size of its exam question pools is intended to ensure regular exam validation at five-year intervals. However, CSLB provides numerous opportunities for licensure applicants to become licensed without taking the exam through "exam waivers"; these and other examination-related issues will be the subject of further discussion in future Monitor reports.

The experience requirement. Under Business and Professions Code section 7068 and section 825, Title 16 of the California Code of Regulations (CCR), a first-time applicant for a contractor's license must demonstrate completion of at least four full years of experience as a journeyman, foreman, supervising employee, contractor, or owner-builder. Although CSLB has no education requirement, completion of certain types of education can substitute for experience in certain circumstances. However, CSLB lacks an adequate system for verifying the experienced claimed. Further, it historically checks only 3% of licensure applications to verify any representation made therein. Depending on resources, this verification percentage has hovered between 3–6% in recent years, but is obviously inadequate to ensure that applicants meet statutory requirements for licensure. Other means of verification are available, and current CSLB management is experimenting with the use of an extensive information database to assist its licensure application verification process. Additionally, a higher target of verification is needed.

Criminal history verification. CSLB's application form requires applicants to disclose whether they have been convicted of a crime. Regrettably, CSLB has no way of verifying the answer to that question. Unlike most law enforcement agencies (including at least 24 other DCA occupational licensing programs and approximately 20 other licensing programs administered by non-DCA agencies), CSLB fails to require fingerprinting at point of licensure and makes no use of the Department of Justice's (DOJ) Criminal Identification and Information (CII) system to verify criminal history information. CSLB's licensing unit uses a "flag" system to identify former licensees with criminal convictions who are reapplying for licensure; however, that system failed in the recent Crown Builders case in San Diego, permitting an individual whose former CSLB license had been revoked due to a criminal conviction for contracting fraud to become relicensed (and bilk an estimated 70 families out

of \$50,000–\$130,000 each).¹⁰⁴ Although the agency recently changed its licensing procedures to require double review of any applicant who is flagged, its system will not detect ex-convicts who have not been previously licensed and lie on their application. Nor will the information database with which CSLB is experimenting (see above) detect all prior criminal convictions, and it lacks DOJ’s important subsequent arrest notification feature. A system permitting ex-convicts to be readily licensed without detection is fundamentally flawed. The Monitor strongly supports fingerprinting for criminal history detection, to enable CSLB to make informed licensing decisions.

The \$7,500 contractor’s bond. Business and Professions Code section 7071.5 *et seq.* requires contractors to post a \$7,500 “contractor’s bond,” ostensibly to protect consumers and subcontractors, materials suppliers, and others who are victimized by the misconduct of a contractor. This bond requirement — which applies regardless of whether the contractor is undertaking three projects totaling \$30,000 or 100 projects totaling \$5 million — has been characterized by experienced prosecutors as “laughably low” and “exceedingly insufficient.” In 1997, the Joint Legislative Sunset Review Committee flatly stated, “Surety bonds do not provide protection to consumers.” While the construction and insurance industries have traditionally opposed any increases in the bond amount or changes to the bond requirement, most prosecutors and consumer advocates agree the current bond amount is too low; others (including the former Insurance Commissioner) note that surety companies require all claimants to prove a “willful and deliberate” violation of applicable law in order to recover from the bond (when section 7071.5 requires no such thing). Raising the bond amount may be desirable but may not be sufficient. For the bond to be a meaningful mechanism to ensure recovery for any intended beneficiary, changes in the amount, type, and collection criteria concerning contractor’s bonds are required.

The capitalization requirement. Business and Professions Code section 7067.5 and section 817, Title 16 of the CCR, require CSLB licensure applicants to demonstrate “financial solvency” in the amount of \$2,500. This amount is not meaningful and provides no guarantee of solvency or ability to meet judgment obligations.

CSLB’s “Home Improvement Contractor Certification Program” is largely nonsubstantive and may in fact be misleading to consumers. The Legislature recently enacted Business and Professions Code section 7150.3, which establishes a “certification program” for

¹⁰⁴ See *infra* Ch. VII (“Initial Recommendations of the Enforcement Program Monitor”) at subsection D (“Contractor Screening”).

contractors engaging in home improvement work. To achieve “certification” (which is now required for all contractors performing home improvement activities), a licensee must take and pass a 20-question, open-book, multiple-choice examination that is available on the Internet. The exam is not trade-specific; it merely tests licensees’ knowledge of the requirements of Business and Professions Code section 7159. Exam preparation materials are also available on the Internet; a licensee may take the exam an unlimited number of times until he/she passes. The extent to which passage of this exam improves the competence of home improvement contractors is dubious, and is not yet measurable because of the recency of the requirement. However, the conferral of “certification” (which, like “licensed, bonded, and insured,” is now trumpeted by some contractors in their advertising) based upon passage of such an exam implies to consumers that a contractor has survived enhanced screening and achieved superior status, when such is clearly not the case. CSLB should carefully evaluate the impacts of the “certification” requirement prior to recommending any extension of the program’s sunset on January 1, 2004.

CSLB’s “Home Improvement Salesperson Registration Program” may be inadequate to protect consumers. Under Business and Professions Code section 7152, CSLB registers “home improvement salespersons,” individuals who are employed by contractors to solicit, sell, negotiate, and execute contracts for improvements. Unlike licensure, “registration” requires no qualifications (other than completion of an application form). CSLB’s 1999 sunset hearing was replete with complaints about the conduct of home improvement salespersons (particularly their use of high-pressure sales tactics and financing contracts with small-print provisions conveying a lien interest on the homeowner’s property as collateral for a loan), and with recommendations that the existing “registration” program be converted to a licensure program including a criminal background check, bond requirement, and Internet public disclosure requirements similar to those now applicable to licensed contractors. Although this is a subject which will be explored in more depth in future reports, CSLB should begin to collect data and public comment on abuses perpetrated by home improvement salespersons.

The flow of information into CSLB about licensee misconduct is generally inadequate. As noted above, CSLB lacks authority to require fingerprinting of licensees and is thus deprived of critical criminal background history on applicants for licensure and licensees. CSLB also lacks mandatory reporting statutes applicable to other agencies (*e.g.*, Business and Professions Code § 800 *et seq.* applicable to the Medical Board). CSLB and the Legislature should consider enacting statutes requiring the reporting to CSLB of contractor criminal arrests and convictions, civil judgments and settlements, bankruptcies, debarments by government entities, and private arbitration awards, to enable CSLB to make more informed licensing and enforcement decisions.

CSLB's use of criminal convictions in enforcement decisionmaking is overly narrow and inadequate. Section 868, Title 16 of the CCR, defines the kinds of criminal convictions that are considered "substantially related" to the functions and duties of a contractor for purposes of contractor licensing and discipline. However, the section focuses only on criminal convictions that are directly and narrowly related to construction activity. CSLB should rethink and expand the categories of criminal convictions which should affect the licensure and discipline of contractors.

E. Complaint Handling

CSLB's reengineering project has worked hardships on many of its staff and business processes. However, it is fair to say that no staff and/or function were hit harder by reengineering than were the Board's CSRs and PTs — the staff who initially intake and screen more than 24,000 complaints per year and serve as the Board's first contact with complaining consumers. Our specific concerns with the Board's current Intake/Mediation program are described below; however, a few preliminary comments are warranted.

CSRs screen and attempt to close without disciplinary action (through mediation between the parties to the dispute) an enormous number of complaints every year. They are expected to close 45 cases per month within an average of 30 days from receipt. Overall, they are expected to close 40–45% of their caseload (25–35% through settlement, and the rest through dismissal or referral to arbitration) through their own work and subject to the approval of their supervisor; additionally, they must "work up" the remaining 55–60% of their caseload for transmission to "the field" for formal investigation. Case "work-up" involves telephone interviews (often after leaving numerous messages) and document requests of both the complainant and the contractor, and documentation of case details in the investigative file. One of the goals of CSLB's reengineering project was a higher percentage of cases closed at the CSR level within a faster turnaround time (Registrar Barnett promised a 30-day cycle time) — resulting in fewer and "younger" cases moving to the field, which would theoretically lower investigator caseload and permit investigators to focus greater attention on a fewer number of serious cases that actually warrant investigation.

As described above, CSLB's 1999 reengineering project required the Board's CSRs and PTs to relocate to one of the two new Intake/Mediation Centers (then located in Buena Park and Sacramento) or to find jobs elsewhere. This requirement resulted in an exodus of most of the Board's experienced CSRs from the agency. During the two-year period between November 1998 (when staff was officially notified of the reengineering process) and November 2000, almost all of the Board's 29

CSRs (then averaging 4.4 years of CSR experience) left CSLB entirely or promoted/transferred to different positions. The Board's current CSR staff averages 2.5 years of CSR experience; most have far less. It is fair to say that this exodus decimated a key component of the Board's enforcement system and has been the direct cause of a huge complaint backlog which has in turn triggered — in domino effect — many other problems that continue to plague the agency.

Additionally, prior to reengineering, the CSRs and PTs worked in a particular geographic area on complaints generated by contractors working in that geographic area. They became familiar with the area, its construction projects, and its contractors. They worked daily and directly with the Board's investigators, receiving constant feedback on their work, interacting with the investigators as they gathered evidence on cases they had screened, and readily observing and appreciating their important role in the larger enforcement function of the Board. Post-reengineering, the PTs and CSRs are physically separated from the Board's investigators and from the geographic community and the contractors which generate the complaints they screen. Much more than before, they work in a vacuum — they screen and attempt to mediate cases, and ship those that are unresolved to an unidentified investigator they often do not know. Frequently, they never hear another word about the cases they screened and/or receive feedback on their work from the investigators who use it. They are unable to learn of the outcome of their work, have easy contact with and learn from those higher up in the agency's chain of command, or appreciate their valuable contribution to the Board's enforcement process.

Our interviews with CSLB staff have yielded the following specific concerns with the Board's Intake/Mediation program (several of which are already being addressed by current CSLB management, as described below):

There is no agency consensus on the role/responsibilities of CSRs. Since reengineering, there appears to be a lack of consensus among managers, office supervisors, investigators, and CSRs themselves about the role and responsibilities of the CSRs. Prior to reengineering, CSRs reported directly to the district office supervisors (who were largely former investigators) and indirectly to the line investigators with whom they worked. They conformed their work product to the needs and desires of the people with whom they worked, and we have heard no complaints regarding the pre-reengineering work product of the CSRs.

Now, CSRs work separately and apart from CSLB investigative staff and report to a CSR supervisor. Although most CSLB staff agree that the centralization of intake/mediation is a sound

concept that will eventually improve the overall consistency of the Board's complaint handling process, many investigative staff and supervisors report sudden dissatisfaction with the CSRs' work product. Although most agree that cases closed by CSRs are being properly closed, they complain about the backlog of cases that have accumulated at the CSR step, the age of complaints that eventually make their way to the field, and the fact that CSRs are spending an excessive amount of time carefully documenting all of their conversations with the complainant and respondent and gathering documents relevant to the investigation. Investigative supervisors insist that CSRs quickly review incoming cases, quickly ascertain whether it is capable of being settled, and — if not — request documents (for example, the contract between the parties, copies of checks paid to the contractor, etc.), draft a one- or two-paragraph "statement of the case," and ship the case to the field in expeditious fashion. While this is an ideal goal, it is impossible considering the current backlog confronting CSLB CSRs.

Hopefully, these complaints reflect a transitional problem stemming from (1) the almost complete turnover of experienced CSRs and their replacement with relatively inexperienced CSRs, (2) overall agency unhappiness with the backlog that has accumulated at the CSR level over the past two years, and (3) the sudden transfer of 29 CSRs (who were doing their jobs in 15 different ways under 15 different supervisors) to two locations under the direction of two supervisors. CSLB's new management has recognized the many problem besetting its intake/mediation function and, in consultation with NewPoint Group, has taken a number of steps to streamline the CSR business process and thus expedite CSR case processing. The impacts of these measures will be discussed in the next Monitor report.

CSLB's new, inexperienced CSRs and PTs are receiving little or no training. Current dissatisfaction with CSR work product is not necessarily the fault of the CSRs. Many of CSLB's new and relatively inexperienced CSRs and PTs are receiving little or no formalized training when they begin their jobs. Some newer CSRs have reported that their training consisted essentially of being handed CSLB's *License Law and Reference Book* (containing the Board's enabling act and regulations) and the Complaint Handling Manual, and then being sent to work.

Although CSRs often receive at least some feedback from their immediate supervisors, the post-reengineering system has deprived them of daily interaction with investigative staff, which has historically been a principal means of mentoring and education for the CSRs. The centralization of the intake/mediation function has separated CSRs from investigators, and has hindered investigator feedback to and informal training of CSRs and the overall "teamwork" spirit that once pervaded CSLB district offices. CSRs are no longer able to receive and screen complaints from a finite geographic area

containing a relatively finite contingent of contractors. New CSLB management is in the process of addressing this concern by restoring a geographical focus for the CSRs.

Lack of CSR experience and training has led to huge case backlogs and excessive case cycle times at the CSR level. Despite a 10% reduction in the number of cases received by CSLB over the past two years, the number of complaints closed during intake/mediation during that same time period has decreased by 9%. A principal result has been the growth of a backlog of complaints accumulating at the CSR level. Management addressed the backlog problem at CSLB's Norwalk IMC by transferring a large number of unscreened cases to the field and permitting ERs to screen and close them. However, a large and stubborn backlog of 1,200 cases (including 250 cases over 180 days old) persists at the Sacramento Intake/Mediation Center, causing prior management to create a "holding file" in which unscreened cases await CSRs to handle them. CSRs report feeling overwhelmed by the pressure of 120- to 140-case workloads and the never-ending backlog of complaints awaiting their attention.

The existence of a backlog will affect processing cycle times for any agency, and CSLB's intake/mediation program is no exception. Although CSRs are expected to close cases within 45 days, only 44% of intake/mediation cases were closed within 60 days during 2000–01 (down from 71% during 1998–99).

Excessive backlogs and cycle times hamper initiatives which could result in quick resolution of cases amenable to mediation. Disputes of the sort handled by CSLB can often be resolved if addressed very quickly, before the two sides have become angry and entrenched. Once such disputes are permitted to age and the parties "dig in their heels," compromise resolution is much more difficult. The existing backlogs that plague CSLB are preventing CSRs from expeditiously addressing disputes that are amenable to quick resolution. The backlog problem has also resulted in the demise of a promising "face-to-face mediation" pilot program begun at CSLB's Norwalk Intake/Mediation Center during the early part of 2001. In this experiment, two Norwalk CSRs trained in mediation techniques took an aggressive role in seeking quick meetings of the parties to explore compromise solutions. These CSRs set certain selected cases for immediate mediation hearings, and achieved marked success in prompt complaint resolution: 60% of their cases settled — many without the necessity of a hearing. However, the pilot program was dismantled due to the existence of the backlog and 140-case workloads for all other Norwalk CSRs.

Morale is suffering because CSLB’s traditional PT-to-CSR and CSR-to-Investigator “career ladders” have been destroyed. Previously, trained PTs would frequently promote to the CSR level, and experienced CSRs were often promoted to investigator positions, thus creating a strong “career ladder” within CSLB that effectively produced knowledgeable employees and promoted morale. Now, PTs who work in ICs must move to Norwalk or Sacramento if they want to promote within the agency. Further, under the reclassification that accompanied reengineering, CSRs must now test to qualify for promotion to an ER position, and to date no CSR has been able to pass the test. CSRs note that they no longer have direct contact with or easy access to ERs, and no exposure to the investigative function of CSLB they once enjoyed. Further, the reclassification removed all mediation from the ER’s job description, such that there is no longer any overlap between the CSR and ER job description (enabling the CSR to learn part of the ER role “on the job”). CSR morale is extremely low; more than one has told Monitor staff that, to get a promotion, “my only choice is to leave the agency.”

The span of control of CSR supervisors is excessive. Although reengineering was supposed to decrease the span of control of CSLB supervisors, that has not happened — either with investigative supervisors or CSR supervisors. During most of 2001 to date the supervisors of CSLB’s IMCs supervise 14–16 CSRs and 7–12 PTs each. Every month, those supervisors must review a heavy volume of CSR case closures plus their work on an even greater number of cases that are moving to the field — supervisors complain that their case review responsibilities alone are staggering, leaving little time for training, supervision, and evaluation of their staff.

CSLB’s management information system and processes are inadequate to permit quick detection of repeat offenders. To track incoming complaints against repeat offenders, CSLB maintains a so-called “alert board.” However, as described to Monitor staff, the “alert board” is a manually-prepared document that is updated on an irregular basis (every two to three weeks) and circulated in hard-copy to all PTs and CSRs who are inputting and screening complaints. PTs and CSRs must manually check the “alert board” list to determine whether a new complaint against a contractor should be processed in the ordinary course or — if the contractor’s name appears on the alert board — shipped directly to the field without screening. The absence of an automated process sharply reduces the potential effectiveness of the alert board system. When a PT or CSR enters information on a new complaint against a contractor who is the subject of multiple pending complaints, a “red flag” should immediately notify the employee to ship the new complaint to the field on an expedited basis.

CSLB's data management system is unhelpful in other ways. For example, a given individual may have and operate under a number of different contractor's licenses. When a complaint comes in against a contractor, PTs and CSRs are instructed to check only the record of the contractor complained against—even though that same individual may have multiple complaints against him under a different license number. As noted previously, CSLB's licensing information is inadequately connected with its enforcement tracking information (see "CSLB Management Structure and Information System" above).

CSLB's intake system is inconsistent from north to south. When a new complaint arrives at CSLB, a PT screens the complaint using a "triage checklist." However, until very recently the triage checklist used in the Sacramento IMC differed from the one used at the Norwalk IMC, presenting problems for Norwalk CSRs who must screen complaints received and inputted by Sacramento PTs (*e.g.*, complaints received through the mail or filed online via CSLB's Web site and received at CSLB's Sacramento headquarters). This inconsistency is symptomatic of the continuing "north vs. south" culture disparity which reengineering was intended to cure.

F. Investigations

Unsatisfactory cycle times, backlogs, and caseloads. CSLB has a cadre of dedicated and hardworking investigators (now designated as Enforcement Representatives or ERs), but the investigative phase of the enforcement process is now, and has regularly been, plagued by excessive investigator caseloads, unsatisfactory cycle times, and case backlogs. Investigator managers readily concede these problems. Nearly all those we consulted agreed that current cycle times and case delays are at unacceptable levels: The 2000–2001 average for investigation closure is 221 days (compared with a goal of 90 days)—an increase of 28 days since 1998—and the number of pending licensee complaints in the system has increased by 30% (from 5,308 to 6,976) in the past two years, as reflected in Exhibit VI-A. Investigator caseloads remain at near record levels.

Ex. VI-A. Pending Non-Licensee and Licensee Complaints

Date	Intake/Mediation						Investigation and SWIFT						Total				
	Abandonment/ Workmanship		Financial		Technical/Other		Abandonment/ Workmanship		Financial		Technical/Other			Total			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%		No.	%		
3/31/00	2	1%	0	0%	241	99%	243	100%	9	1%	2	0%	711	98%	722	100%	965
9/30/00	1	0%	0	0%	207	100%	208	100%	12	1%	1	0%	865	99%	878	100%	1,086
6/30/01	0	0%	0	0%	92	100%	92	100%	13	1%	1	0%	1,042	99%	1,056	100%	1,148
Change from 3/31/00 to 6/30/01	(2)	-100%	0	0%	(149)	-62%	(151)	-62%	4	44%	(1)	-50%	331	47%	334	46%	183
Non-Licensee Complaints																	
Date	Intake/Mediation						Investigation and SWIFT						Total				
	Abandonment/ Workmanship		Financial		Technical/Other		Abandonment/ Workmanship		Financial		Technical/Other			Total			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%		No.	%		
3/31/00	1,810	68%	361	14%	493	19%	2,664	100%	1,919	73%	219	8%	506	19%	2,644	100%	5,308
9/30/00	2,460	74%	343	10%	513	15%	3,316	100%	2,145	75%	284	10%	449	16%	2,878	100%	6,194
6/30/01	2,617	74%	459	13%	451	13%	3,527	100%	2,712	79%	287	8%	450	13%	3,449	100%	6,976
Change from 3/31/00 to 6/30/01	807	45%	98	27%	(42)	-9%	863	32%	793	41%	68	31%	(56)	-11%	805	30%	1,668
Licensee Complaints																	

Over the past year, there has been a 30% increase in the number of pending complaints.

Source: Benjamin M. Frank, Director, NewPoint Group

Multiple personnel and business process factors are at work in causing these delays and backlogs. The current ER statewide vacancy rate of 19.7% (23 of 118 positions vacant) — displayed in Exhibit VI-B — is a very serious problem. Filling investigator vacancies will be a prerequisite to improved investigation productivity, and this is a substantial institutional challenge because ER pay is not high enough to permit easy recruitment and retention, especially in high-cost regions such as the Bay Area.

Until current investigator vacancies are filled and increased investigator resources can be brought to bear, the prospects are limited for real movement toward acceptable caseloads and satisfactory cycle times and backlogs.

Inadequate legal guidance CSLB investigators effectively function alone, receiving guidance on the legal aspects of their work only from their investigative supervisors and occasional training courses. Even though they are a key ingredient in a critical law enforcement function, CSLB ERs rarely if ever interact with or receive any legal advice or guidance from the attorneys who may eventually prosecute the cases they are investigating. In other more traditional prosecutorial settings, prosecutors and investigators work together in teams from the day a case is assigned. The attorney is immediately involved in the case and can guide (if necessary) the gathering of evidence that will prove the key elements of the offense; further, the prosecutor is available to prepare subpoenas or secure search warrants to prod uncooperative suspects. Rather than the attorney/investigator “teamwork” structure that typifies the law enforcement process at most public prosecutors’ offices, the enforcement process at most California administrative agencies — and CSLB is no exception — involves (1) investigators with no legal guidance investigating a case, preparing the file, and “handing it off” to (2) attorneys functioning with little or no investigative support.¹⁰⁵ Although the “hand-off” system may work adequately in simple street crime-type cases, it does not work well in complex matters and/or white collar crime cases of the sort frequently handled by CSLB — where time is of the essence, and where critical documentary evidence may be destroyed or lost if not immediately secured and properly handled.

¹⁰⁵ The Medical Board of California is an important exception to this general rule. MBC uses the services of the Health Quality Enforcement Section, a unit of deputy attorneys general who specialize in physician/health care provider discipline matters. Within the past five years, HQES has created the “Deputy in District Office” (DIDO) program, in which HQES prosecutors work from MBC district offices several days a week in order to provide early review of incoming cases and legal guidance to investigators. HQES DAGs become involved in subpoena enforcement to assist investigators in obtaining requested medical records; review all completed investigations before their referral to HQES (to ensure that all “loose ends” are tied up and the matter is ready for pleading); and draft initial pleadings in investigations being transmitted from district offices to HQES for accusation filing. Among other positive results, the DIDO program has dramatically cut the time it takes HQES DAGs to file MBC accusations from well over nine months to approximately 30 days.

Ex. VI-B. Enforcement Program Staffing Profile

Classification	FY1997/98				FY1998/99				FY1999/00				FY2000/01			
	Authorized Positions	Expended Positions	Position Vacancies	Vacancy Rate	Authorized Positions	Expended Positions	Position Vacancies	Vacancy Rate	Authorized Positions	Expended Positions	Position Vacancies	Vacancy Rate	Authorized Positions	Expended Positions	Position Vacancies	Vacancy Rate
Management																
CEA III	1.0	0.0	(1.0)	-100.0%												
CEA I	3.0	2.5	(0.5)	-16.7%	2.0	1.9	(0.1)	-5.0%	2.0	1.5	(0.5)	-25.0%	3.0	0.6	(2.4)	-80.0%
DR IV/ES II	5.0	5.0	0.0	0.0%	5.0	4.5	(0.5)	-10.0%	5.0	5.9	0.9	18.0%	6.0	6.0	0.0	0.0%
Total	9.0	7.5	(1.5)	-16.7%	7.0	6.4	(0.6)	-8.6%	7.0	7.4	0.4	5.7%	9.0	6.6	(2.4)	-26.7%
Professional																
DR III/ER II/ES I	22.0	21.9	(0.1)	-0.5%	22.0	22.1	0.1	0.5%	22.0	14.7	(7.3)	-33.2%	25.0	28.6	3.6	14.4%
DR I & II/ER I	131.0	123.3	(7.7)	-5.9%	131.0	115.1	(15.9)	-12.1%	127.0	116.5	(10.5)	-8.3%	118.0	94.7	(23.3)	-19.7%
CSR	29.0	27.9	(1.1)	-3.8%	29.0	27.2	(1.8)	-6.2%	29.0	26.0	(3.0)	-10.3%	32.0	28.3	(3.7)	-11.6%
Total	182.0	173.1	(8.9)	-4.9%	182.0	164.4	(17.6)	-9.7%	178.0	157.2	(20.8)	-11.7%	175.0	151.6	(23.4)	-13.4%
Analytical Support																
SSMI					0.0	0.6	0.6	NMF	1.0	0.3	(0.7)	-70.0%	0.0	0.6	0.6	NMF
AGPA	0.0	0.1	0.1	NMF					1.0	1.1	0.1	10.0%	1.0	1.7	0.7	70.0%
ISA/SSA	1.0	0.0	(1.0)	-100.0%	1.0	0.4	(0.6)	NMF	2.0	2.8	0.8	40.0%	5.0	4.3	(0.7)	-14.0%
Total	1.0	0.1	(0.9)	-90.0%	1.0	1.0	0.0	0.0%	4.0	4.2	0.2	5.0%	6.0	6.6	0.6	10.0%
Technical Support																
OSSI & II	3.0	1.8	(1.2)	-40.0%	3.0	1.6	(1.4)	-46.7%	3.0	1.7	(1.3)	-43.3%	3.0	1.6	(1.4)	-46.7%
Supv. Prog. Tech.													0.0	1.7	1.7	NMF
Prog. Tech. I & II / OT / CAT	34.0	31.1	(2.9)	-8.5%	32.0	31.0	(1.0)	NMF	43.0	28.8	(14.2)	-33.0%	51.5	47.5	(4.0)	-7.8%
Office Ass't	40.0	34.3	(5.7)	-14.3%	43.0	23.7	(19.3)	-44.9%	30.0	9.6	(20.4)	-68.0%	13.5	4.0	(9.5)	-70.4%
Temp. Help	0.0	0.6	0.6	NMF	0.0	0.9	0.9	NMF	0.0	1.4	1.4	NMF	0.0	0.0	0.0	NMF
Total	77.0	67.8	(9.2)	-11.9%	78.0	57.2	(20.8)	-26.7%	76.0	41.5	(34.5)	-45.4%	68.0	54.8	(13.2)	-19.4%
Total	269.0	248.5	(20.5)	-7.6%	268.0	229.0	(39.0)	-14.6%	265.0	210.3	(54.7)	-20.6%	258.0	219.6	(38.4)	-14.9%

CSLB's investigator vacancy rate has increased from 5.9% to 19.7% since 1998.

Source: Benjamin M. Frank, Director, NewPoint Group

Inadequate peace officer staff. Many of CSLB’s most serious and visible enforcement cases require criminal prosecution, and criminal cases require careful and thorough investigation by highly skilled investigators. Among its 118 investigators handling 7,000–8,000 investigation referrals per year, CSLB has only *three* sworn peace officers for the entire agency. State and local prosecutors, and managers in CSLB’s enforcement program, uniformly lament the shortage of peace officers trained in criminal casework, capable of serving as affiants on search warrants, and able to serve search and arrest warrants. The agency’s ability to play an appropriate role in serious criminal law enforcement work will be directly affected by its capacity to bring sworn officers to bear on these cases.

CSLB’s promising start at major case response teams should be increased substantially, with appropriate expertise and team resources committed to the effort. The Statewide Investigation and Fraud Team (SWIFT) concept of the past two years is a promising beginning in addressing a significant issue of CSLB investigative capacity. The experience of other prosecutorial agencies demonstrates that major fraud cases and other high-visibility complex matters require an immediate infusion of skilled investigative resources. Complex fraud cases often succeed or fail based on the quality of the investigative work done in the first thirty days after the case breaks. Suspect flight issues, key witness interviews, document and evidence preservation or seizure, asset location or preservation, service of search warrants and administrative subpoenas, acquisition of financial records — all these issues and more must be addressed by trained criminal investigators within days of the first knowledge of the suspected crimes.

With only three peace officers, and with modest levels of investigator training in these matters, CSLB has historically lacked many of the tools needed to participate effectively in this process. As a result, CSLB has been subjected to public and law enforcement criticism in a number of high-visibility fraud cases in recent years. SWIFT represents an important step toward addressing this shortcoming, but a commitment to “fast response” teams with adequate investigator resources and training is needed.

Inadequate investigator training for law enforcement functions, especially for criminal cases. Few in the California law enforcement community question the commitment and cooperativeness of CSLB’s investigative staff. However, both state and local prosecutors, and many of CSLB’s own staff, regularly lament the lack of sufficient specialized training to enable CSLB ERs to play an effective role in criminal and civil case investigations. California prosecutors widely share the view that CSLB investigators are well-motivated public servants who often do not know how to

handle a criminal investigation. Among other issues, these law enforcement officials cite: inadequate witness interrogation and investigation techniques; unfamiliarity with the elements and essential components of relevant Penal Code violations; inadequate knowledge of evidence rules (including inadequate provision for evidence preservation and chain of custody issues); reluctance or unfamiliarity with administrative subpoenas, search warrant affiant information, and financial records issues; inadequate investigative reports which fail to connect the evidence with the case elements; insufficient witness and suspect follow-up; and reluctance or institutional resistance to playing the full role of the investigating officer through the Superior Court trial stage.

One senior CSLB enforcement manager summarized the history of the agency's investigator training as follows: "This organization has always believed training is a luxury, not a necessity. A systematic training program for all functional units is absolutely needed." If CSLB is to significantly improve its track record in the handling of major fraud cases and complex matters, a systematic and professionalized training program for its field investigators is required.

The span of control for investigator supervisors has been excessive. A legacy of the 1999–2000 reengineering project was a serious problem of excessive spans of control for those supervising the work of CSLB's field investigators. After the reengineering changes of the past two years, some enforcement supervisors charged with managing investigation centers had responsibility for up to 16–17 investigators — often double the number of supervisees from previous years. This yielded entirely inadequate time for case review, mentoring, training, and dealing with the public. Some very dedicated and capable supervisors found themselves in a situation where, to quote one such excellent manager: "It's now impossible to do my job well." Enforcement program structural changes are now under way which seek to address this problem.

The "home-officing" system deprived investigators of needed facilities and is unsuitable for some employees. A featured component of the reengineering project was the elimination of office space for CSLB investigators in favor of home-officing, where investigators equipped with cellular phones and laptop computers work entirely from home. Although clearly beneficial in some work contexts — and perhaps for some employees in the CSLB environment — home-officing in general has created far more problems than it solved for the agency.

Investigators no longer have easy access to a CSLB office for official meetings, confidential witness meetings, or suspect interviews (many of which were now conducted in cars or fast-food

restaurants). Many investigators with limited typing skills sorely miss the ready availability of clerical assistance. Beneficial contact and teamwork with colleagues has been undermined, and supervisors complain of insufficient contact to permit adequate supervision.

CSLB managers report that while some ERs have adapted well to home officing, other investigators are incapable of home-officing responsibly. Many ERs performed better with daily supervision and ready assistance from clericals. As has been found in other public employment environments, home-officing works well only for those well suited to it, and works badly for many others.

Investigator performance/workload standards are outdated and unrealistic. Many CSLB managers and investigators report that current workload standards developed in 1989 are unrealistic and outdated. These employees contend that the complexity of cases has increased dramatically in recent years, beginning with the 1994–95 Northridge earthquake cases. And with changing case duties, such as the shifting to other staff of bond cases, nonlicensee cases, and applicant investigations, the remaining casework is more complex and requires greater time and effort. The criteria for case closure statistics, and thus measures of investigator performance, have now changed sufficiently that it may be misleading to compare statistics from different time periods. There appears to be substantial evidence that updated workload and performance standards are in order.

Inconsistent early coordination with state and local law enforcement to ensure proper focus and handling of criminal and high visibility matters. Both the Joint Legislative Sunset Review Committee and prosecutors throughout the state have raised the issue of the adequacy of early coordination between CSLB investigators and state and local law enforcement agencies in cases of major fraud or great complexity. Our preliminary information indicates a great disparity in the pattern of practices of CSLB staff and prosecutors in this regard: Some local prosecutors report excellent communications and early case cooperation with CSLB investigators; prosecutors in other areas complain of seldom hearing from CSLB investigators until long after the critical early stages of a major case investigation have passed. CSLB investigators, in turn, report similar inconsistencies in the responses they receive from the various law enforcement agencies throughout the state. Increased early case cooperation in appropriate types of investigations can only benefit all concerned agencies.

G. Arbitration

Issues regarding arbitration programs for future reports. CSLB administers two arbitration programs to encourage the settlement of consumer-contractor and contractor-contractor disputes without disciplinary action (Business and Professions Code section 7085 *et seq.*). The Mandatory Arbitration Program (MARB) resolves disputes over contracts worth less than \$5,000; the Voluntary Arbitration Program (VARB) addresses disputes over contracts worth more than \$5,000 but less than \$50,000. To be eligible for referral, a dispute must meet several statutory criteria; of importance, the complained-of contractor must not have a “history of repeated or similar violations.” Touted as “fair, fast, and free,” CSLB arbitrations are binding — meaning the parties have only a limited ability to challenge the arbitrator’s decision in court. CSLB’s arbitration decisions are also confidential — meaning they are not disclosed on CSLB’s Web site or elsewhere unless a contractor against whom a judgment is issued fails to pay the judgment (at which time CSLB suspends the contractor’s license and that action is posted on the Board’s Web site).

This arbitration system offers an important alternative dispute resolution mechanism for CSLB complaints, and further analysis of several important issues will appear in subsequent Monitor reports. Those issues will include: (1) the use of outside contractors and agencies, including ArbitrationWorks, Inc. and the state Office of Administrative Hearings, to handle these arbitrations; (2) the appropriate qualifications for arbitrators, including the issue of the desirability of a requirement of substantial construction industry experience; and (3) the possibility of repeat or egregious offenders abusing the privilege of arbitration and its confidentiality by “buying off” persistent complainants.

H. Prosecutions

1. Prosecution Priorities Generally

The continuing concern over unlicensed activity. The past several years have seen major efforts by CSLB, including the proactive program of the SWIFT unit, to address the continuing industry and public concern over unlicensed contracting. Local and state prosecutors cite unlicensed contracting as perhaps the top source of consumer complaints in their jurisdictions, and Better Business Bureau representatives see a similar, continuing pattern of this misconduct. Our preliminary evidence would support a continued and increased commitment to this prosecution priority.

Inadequate priority for criminal enforcement of key aspects of contractor fraud and abuse. State and local prosecutors, and consumer groups, uniformly stress the need for an increased CSLB priority for supporting effective criminal prosecution of construction industry fraud and abuse.

In addition to increased criminal and civil deceptive business practices enforcement generally, there is widespread prosecutor support for increased emphasis on the investigation and prosecution of particular Contractors License Law violations of special importance to reducing contractor fraud. Many local prosecutors encourage more frequent investigation and referral for prosecution of cases involving: (1) excessive down payments (Business and Professions Code section 7159); (2) qualifiers on revoked/suspended licenses (Business and Professions Code section 7121.5); and (3) employment of unlicensed executives (Business and Professions Code section 7121). These three practices are seen as potential “bellwether” violations — unlawful practices the presence of which may signal the potential for more serious large-scale contractor fraud or evasion of licensure sanctions by bad actor businesses.

In the case of the latter two violations (qualifiers on revoked licenses and employment of unlicensed executives), there is a consensus that if existing statutes do not sufficiently deter repeat misconduct, then it would be appropriate to consider additional legislation providing for true debarment from any form of employment in the construction industry for repeat or extremely serious law violations (similar to antitrust contractor debarment or three-strikes criminal statutes).

2. Administrative Prosecution by the Licensing Section of the Attorney General’s Office

Cycle times in Attorney General administrative actions are lengthy and case management is difficult. CSLB managers and investigators perceive a significant source of delay in the legal action process of the Attorney General’s Licensing Section, and this is a source of substantial frustration within CSLB. Exhibits V-E and V-F indicate lengthy time delays in the filing of administrative accusations in fully investigated CSLB cases (up to eight months average in southern California).

Both CSLB and the Licensing Section point to a number of factors beyond their individual agency control, such as the complexity of cases, the frequent necessity of additional investigative work

in fraud matters, certain inherent delays in the administrative law process, and others. However, the net result is that these administrative law matters often move more slowly than all parties would wish.

Case tracking capabilities and data from the Attorney General's Office are generally inadequate (as all relevant parties concede¹⁰⁶). The Attorney General's management staff readily acknowledges the need for a better management information system to permit better "real time" tracking and management of these administrative cases. For several years, the Attorney General's Office has been engaged in design and implementation of an office-wide MIS system ("ProLaw") which is intended to greatly improve case information and case management.

Other continuing issues involving administrative prosecution. Both CSLB enforcement staff and private litigants have noted apparent examples of inconsistency in the administrative enforcement process in northern and southern California. Case handling procedures and case disposition standards are reported to have varied substantially between the two regions over the years. In addition, many CSLB investigators and managers report dissatisfaction with what they perceive as inadequate communication between CSLB staff and deputy attorneys general once cases have been referred for prosecution, and the Monitor perceives a lack of communication and cooperation between investigators and deputy attorneys general during the investigative phase as well.

3. Criminal and Civil Prosecution by District Attorneys and City Attorneys

Inadequacy or inconsistency of criminal referral process. Both state and local prosecutors and CSLB staff report inconsistencies in the process for referring CSLB cases for potential criminal prosecution. These reported inconsistencies appear to vary considerably by region. Some local district attorneys and city attorneys complain of a disappointing number of criminal case referrals from CSLB investigators, or an unenthusiastic response from busy CSLB investigators when potential criminal matters are referred for investigation. Other local prosecutors report an excellent working relationship with local CSLB staff, and a steady flow of viable criminal cases. Conversely, CSLB investigators see considerable variation in responses from local prosecutors. Some deputy district attorneys or city prosecutors enthusiastically welcome contractor case referrals; others plead heavy caseloads of violent crime and show little receptivity.

¹⁰⁶ See Ch. V ("The CSLB Enforcement Process") at note 85.

Much of this perceived inconsistency appears to stem from inadequate communications and underdeveloped working relationships among these colleagues in consumer protection. The California District Attorneys Association's Consumer Protection Committee offers a valuable forum for developing a uniform statewide enforcement protocol on these matters, and efforts should be directed to using this and similar vehicles to achieve improved cooperation on these important enforcement matters.

Inadequate referral of appropriate, large-scale cases for civil unfair competition enforcement. In addition to more familiar administrative and criminal enforcement mechanisms, California law provides powerful civil law enforcement authority to its state and local prosecutors. Business and Professions Code sections 17200 (unfair competition) and 17500 *et seq.* (false advertising) provide the Attorney General and district attorneys with powerful sanctions of permanent injunctions, large civil penalties, asset freeze and restitutionary powers, and recovery of investigative agency costs. These tools are sometimes actually superior to administrative or criminal remedies in large-scale fraud and deceptive practices cases. However, state and local prosecutors report few, if any, referrals of such matters from CSLB enforcement staff. The Attorney General's Consumer Law Section contends CSLB has not brought them such a case in over twenty years. Education and improved mutual understanding of this valuable additional enforcement tool appears to be appropriate.

Inadequate early and systematic cooperation between CSLB investigators and local prosecutors in criminal and civil matters. Nearly all state and local prosecutors expressed an interest in better and more systematic early cooperation between CSLB investigators and the state and local prosecutors to whom major criminal or civil enforcement matters are brought. As noted above, significant variation by region exists in this regard, and some working relationships among CSLB staff and prosecutors are excellent today. (See further discussion in "Investigations" above.)

The *Terminix* rule may be outmoded. CSLB adheres to a 1948 Second District Court of Appeal decision in *Terminix Co. v. CSLB* (1948) 84 Cal.App.2d 167, which purports to prohibit the Registrar from disciplining any contractor who stands "ready, willing, and able" to cure defective work which has not yet been paid for by the consumer. Although more legal research is appropriate, we believe the *Terminix* rule has been superseded in part by the Legislature's 1953 enactment of Business and Professions Code section 7090.5; further, it was appropriately distinguished in the Fourth District Court of Appeal's decision in *Tellis v. CSLB* (2000) 79 Cal.App.4th 153. *Terminix*'s interpretation of the role of the occupational licensing agency may no longer valid, and the agency's reliance on the

rule in *Terminix* may be misplaced. The Monitor will further explore the continuing validity of the *Terminix* rule in future reports.

I. Public Disclosure and Public Outreach

CSLB’s complaint disclosure policy. Many victims of contractor fraud who testified at CSLB’s 1999 sunset review hearing and with whom we have spoken have complained bitterly about CSLB’s “complaint disclosure policy,” which is contained in section 863, Title 16 of the California Code of Regulations. Section 863, which addresses the information that the Board will disclose to an inquiring consumer about pending disciplinary actions or complaints against a contractor, and requires the Registrar to “establish a system whereby members of the public may obtain from board records information regarding complaints made against licensed contractors, their history of legal actions taken by the board, and license status....For purposes of this section, ‘complaint’ means a written allegation which has been investigated and referred for legal action against the licensee. For purposes of this section, ‘legal action’ means referral of the complaint for the issuance of a citation, accusation, statement of issues, or for the initiation of criminal action or injunctive proceedings.” Under section 863, complaints that are in the process of being screened, mediated, arbitrated, or investigated are not disclosed.

In other words, CSLB will not disclose a pending complaint until it has been fully investigated and referred to the Attorney General’s Office or a public prosecutor for the filing of a legal action. Although relatively progressive in comparison with the complaint disclosure policies of other occupational licensing boards (which routinely refuse to disclose a pending complaint until the legal action has actually been filed), CSLB’s complaint disclosure policy has been a thorny issue for years — partly because CSLB’s investigation process is so lengthy and no complaint (including multiple complaints against the same contractor which are on the verge of being referred) may be disclosed until the investigation is completed and the matter has been “referred for legal action.” Consumer victims complain that CSLB’s policy fails to provide protection at the time they need it most — when they are choosing a contractor and have the initiative to ask the Board for information.

Under a mandate in SB 2029 (Figueroa), the Board recently undertook a comprehensive study of its policy, and determined that it should be liberalized to better protect consumers. The Board’s proposal is embodied in SB 135 (Figueroa), which has been passed by the legislature and is awaiting

approval by the Governor. SB 135 would require CSLB to disclose to the public the date, nature, and status of all complaints on file that have been referred for investigation after a determination by Board enforcement staff that a probable violation has occurred; the bill would further require the Board to adopt regulations creating a disclaimer to accompany the disclosure of a complaint. SB 135 would also provide that formal CSLB disciplinary actions shall be disclosed for a minimum of seven years, and citations must be disclosed for five years after the date of compliance with the citation. The Monitor supports SB 135 (Figueroa).

Website issues and problems. Although CSLB's Web site now provides consumers with instant access to information about contractors and an online complaint form (which can be completed and returned to CSLB online), the Web site suffers from a number of problems which make it decidedly "consumer-unfriendly." The information provided is laden with legal jargon which may have meaning to CSLB staff but has no meaning to consumers (*e.g.*, "legal action," "accusation," "V/S," "RMO," "P/S/T"); at the very least, the Web site needs a "glossary of terms" to help consumers navigate it. Additionally, some of the definitions it provides are inaccurate or misleading, and it omits to include pieces of information that would be helpful and relevant to consumer choice (*e.g.*, the date of the filing of an accusation). CSLB's Web site could be of great value to consumers if it were improved.

CSLB's data system largely ignores unlicensed contractors. Although CSLB's Web site includes screens on former licensees, it fails to include screens on unlicensed individuals who are known to be engaging in activities for which a license is required. CSLB tracks these individuals and issues citations and fines to some of them; if an unlicensed individual has been complained of multiple times and in fact cited/fined, CSLB should develop a screen on that individual to warn consumers that he/she is unlicensed.

Enforcement alerts to law enforcement and the public are beneficial and should be increased. CSLB has in recent years committed to increased efforts to direct fraud alerts and warnings both to the law enforcement community and to the public at large. Recent examples include warnings of the arrival in southern California of the "Travelers," an itinerant gang of fraud artists employing scams involving roofing or road repair. Police agencies, public prosecutors, and consumers all clearly benefit from greater awareness regarding particular construction fraud artists and schemes. Unfortunately, not all of these efforts have sufficiently reached all the target audiences (only three of twelve district attorney fraud units consulted indicated they had seen such alerts). Valuable steps have

been taken in this regard, but greater emphasis on full dissemination of this information would likely yield substantial results.

There is a continuing need for targeted consumer education programs for women, the elderly, and non-English-speaking populations. These groups are especially vulnerable to construction industry fraud and abuse, and existing efforts should be continued and expanded.

Continuing concerns exist regarding the adequacy of public access to CSLB information and CSLB staff. The Monitor's staff has received numerous individual reports of difficulties accessing CSLB's telephone system, including complaints about confusing automated telephone answering systems and lengthy delays on hold of 40 minutes or more. In addition, the recent restructuring of CSLB's offices raises issues of the demand for and the ease of personal contact with CSLB staff by walk-in visitors (including both industry members and consumers). These issues will be addressed in greater detail in subsequent reports.

J. Consumer Remedies

Complete inadequacy of current remedies for consumer victims. Each year, California consumers file complaints with CSLB involving allegations of enormous aggregate losses from unscrupulous or incompetent contractors. Estimates of annual consumer loss — measured as the value of complaints to CSLB each year — range from \$60 million to \$100 million. This estimated dollar value of harm almost certainly understates the actual consumer loss, as many consumers do not know to file formal complaints with CSLB, or choose not to do so. (The Better Business Bureau reports that many private attorneys advise clients that complaints to CSLB are worthless in terms of recovering losses.)

In light of the scope of annual consumer losses in this industry, it is especially troubling that the present system of potential remedies for consumers is almost completely inadequate.

The principal Licensing Law vehicles for consumer relief — the \$7,500 contractor's bond and the \$2,500 capitalization requirement — are entirely insufficient for any substantial fraud or incompetence cases. The surety bond of \$7,500 required of most contractors offers no realistic prospect of recovery in most cases of consumer loss. First, the dollar amount is so small as to be

exhausted by virtually any claim by a subcontractor or other unpaid claimant in a contemporary home remodeling or similar project. In addition, current law provides superior claims for laborers, subcontractors, and materials suppliers, leaving the consumer at the end of a long line of unsatisfied claimants in most contexts. Finally, both the payout criteria and the claims process are sufficiently burdensome that few consumer victims have the fortitude to perfect a claim. Perhaps the clearest statistical indicator of the inadequacy of contemporary remedies is that in most recent years California surety companies have paid no more than \$4–\$5 million in claims against contractor bonds, despite the likely \$60–\$100 million annual value of consumer losses.

Unfortunately, civil litigation remedies based on contract theories are generally little better for consumer victims, both because of the expense and difficulty of the civil litigation process, and because many of the most serious contractor cases involve judgment-proof defendants. The insignificant capitalization requirement of \$2,500 for most contractors is entirely inadequate to ensure fiscal solvency or responsibility for contractors who commit to hundreds of thousands of dollars worth of projects, and then renege or fail to perform.

In general, the present remedial provisions fail almost completely to protect the consumers whose interests are CSLB's prime mandate. One veteran senior enforcement manager summarized a career's worth of frustration as follows: "Even when we got the bad guys, we couldn't get people their money back."

General Liability Insurance. To the surprise of many consumers, contractors are not required to carry general liability insurance. GLI does not guarantee workmanlike performance or payment to subcontractors, but instead covers consequential damages caused by a contractor's negligence (which otherwise must be covered by homeowners' insurance or paid out-of-pocket). Although some segments of the construction industry support mandatory GLI as a condition of licensure, the insurance industry currently opposes such a requirement. In 2000, SB 2029 (Figueroa) added a statutory provision requiring CSLB to adopt a regulation containing a statement that "emphasizes the value of commercial general liability insurance and encourages the owner or tenant to verify the contractor's insurance coverage and status." Three months after the Board adopts such a regulation, all home improvement contractors and contractors building single-family residences must include the Board-adopted statement in their estimates and contracts; those estimates and contracts must also include a check box indicating whether the contractor carries GLI and, if so, the name and telephone number of the insurer. CSLB has recently completed its rulemaking proceeding to adopt

such a regulation, which — if approved by the Office of Administrative Law — will require all home improvement contracts to notify consumers about the GLI disclosure requirement and instruct them to call the insurance company to verify that the policy is in effect and will cover the project. As proposed by the Board, the notice will also include the statement: “CSLB strongly recommends that all contractors carry [GLI]. The Board cautions you to evaluate the risk to your family and property when contracting with a contractor who is not insured.”

K. Summary of Concerns

A review of the fourteen previous studies of CSLB, and our own independent inquiry, together yield the following summary of the Monitor’s concerns regarding CSLB’s present ability to fulfill its consumer protection mandate:

1. Speed and Output of the Enforcement System (Work Quantity)

A consistent theme of both the previous studies and our research is that the speed and work output of CSLB has seldom if ever been entirely satisfactory. Fully twelve of the fourteen previous reports highlighted long cycle times for complaint handling and investigations, as well as large case backlogs, as significant problem areas.¹⁰⁷ Substantial increases in delays and backlogs attributable to the reengineering project, including average investigation closure time of 221 days — or twice CSLB’s own goal — and a 30% increase in case backlogs, underscore this continuing concern. These work quantity concerns are attributable to a variety of causes, many of which are beyond the control of the current hardworking CSLB staff. However, this agency remains a good distance from meeting the work speed expectations of the Legislature and the public.

2. Cost-Efficiency of the Enforcement System (Work Cost-Effectiveness)

The Monitor project is now conducting an inter-agency analysis to evaluate the work cost-effectiveness of CSLB’s enforcement process; the results of this analysis will appear in subsequent reports. Preliminary indications yield a mixed picture: CSLB handles a high volume of complaints and investigations, and achieves many results for its investment in enforcement, but its overall cost-effectiveness appears to put it among the middle ranks of state agencies charged with similar missions.

¹⁰⁷ See sources cited in note 38.

3. Consistency of Enforcement Process (Work Consistency)

Numerous previous studies have noted a historical pattern of inconsistencies and non-uniformity in CSLB's enforcement program.¹⁰⁸ The initial results of our study indicate that non-uniformity of process and results continues as a concern for this agency, with inconsistencies evident in complaint handling and investigative processes between north and south the most prevalent trend. The new CSLB management team is devoting considerable attention to this issue, and the Monitor will seek to evaluate the success of those efforts in subsequent reports.

4. Overall Effectiveness of the Enforcement System (Work Quality/Mission Success)

The mission of CSLB is "to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction." The effectiveness of CSLB's enforcement system is a central component of the work quality and mission success of this agency. Much of the work of CSLB is of good quality, and important contributions to the protection of the public are made every day by this agency. However, the record of mission success as a consumer protection agency is marred by: lapses in effectiveness in screening out undesirable, high-risk contractors (such as the recent Crown Builders matter in San Diego); inadequate effectiveness in detecting and punishing unscrupulous contractors, some of whom continue to prey upon the public; the continuing problem of unlicensed contracting; and an entirely inadequate program of consumer-victim remedies.

Ultimately, in the public sector as well as the private sector, customer satisfaction is the best measure of mission success. As reflected in Exhibit VI-C, recent consumer satisfaction levels for CSLB have declined from a modest 63% satisfaction rate to a troubling 54% rate. Even given the limitations facing all public agencies combating white collar crime, an agency which satisfactorily serves only about half of its customers should look to improve its mission success.

¹⁰⁸ See sources cited in note 45.

Ex. VI-C. CSLB Customer Satisfaction Survey Summary

Questionnaire Statements	1994	1995	1996	1997	1998	1999	2000
1. The Board contacted me promptly after I filed my complaint.	70%	71%	74%	75%	77%	73%	69%
2a. Before hiring, I thoroughly checked my contractor's qualifications.	48%	49%	50%	46%	48%	49%	NA
2b. Before hiring, I inquired about my contractor's qualifications with the Contractors State License Board.	NA	NA	NA	NA	NA	NA	29%
3. The procedures for investigating my complaint were clearly explained to me.	64%	66%	70%	70%	71%	69%	65%
4. The Board kept me informed of my case's progress during the investigation.	49%	56%	60%	62%	64%	59%	54%
5. I was treated courteously by the Board's representative(s).	78%	78%	82%	82%	84%	82%	78%
6. My case was processed in a timely manner.	51%	56%	60%	61%	64%	59%	54%
7. I understand the outcome of the investigation (whether or not I agree with the action taken).	55%	62%	65%	66%	68%	66%	61%
8. The action taken in my case was appropriate.	45%	50%	53%	53%	54%	53%	49%
9. I am satisfied with the service provided by the Board.	50%	56%	58%	61%	63%	59%	54%

Customer satisfaction with the Board's complaint investigation services has declined from 63% to 54% since 1998.

Source: Benjamin M. Frank, Director, NewPoint Group

Chapter VII

INITIAL RECOMMENDATIONS OF THE ENFORCEMENT PROGRAM MONITOR

This chapter presents the Monitor’s initial recommendations for strategies to improve the performance of CSLB’s enforcement program. The following are a total of 33 initial recommendations organized in nine categories representing the major aspects of CSLB’s enforcement program, including CSLB’s mission and mandate, resources, management structure and information system, contractor screening, complaint handling, investigations, prosecutions, public disclosure and outreach, and consumer remedies.

These are intended as *initial* recommendations to advance the reform process. Specific details of strategy and implementation should be the product of a dialogue among all the concerned stakeholders — including CSLB, its management and staff, the Department of Consumer Affairs, the Legislature, the construction industry and the public, among others. The Monitor will participate in this dialogue and, as appropriate, offer specific details for implementation of these recommendations, including draft language for legislative proposals in a timely fashion.

A. CSLB Mission And Mandate

Recommendation #1: Update CSLB’s statutory mandate and agency name by amending Business and Professions Code section 7000 to state clearly that protection of the public is the first priority of CSLB (similar to Business and Professions Code subsections 2229(a) and (c) applicable to the Medical Board). Also consider adopting a modernized version of the agency’s name (*e.g.*, “Contractors Board of California”) — as many other DCA boards have done — to more accurately describe the modern licensing *and* enforcement mission of the agency.

Discussion: As described above,¹⁰⁹ consumer protection is the first statutory priority of California’s occupational licensure boards and bureaus, yet CSLB’s enabling act does not clearly reflect this priority today. The Legislature could easily modernize CSLB’s mandate by the addition of language similar to that enacted by the Legislature for the Medical Board (*i.e.*, “protection of the public shall be the highest priority” of the agency) to the Contractors State License Law. Such a statement of CSLB’s mandate would most logically appear in or near the current provision establishing the Board (Business and Professions Code section 7000.5), or in an adjacent provision.

This clarification of CSLB’s mandate would be important both as a visible symbol of the agency’s commitment to consumers, and as an aid to statutory construction in legal matters involving CSLB. A clear statutory statement of the primacy of public protection will assist courts in interpreting the balance of the License Law, and would quite likely have made a significant and pro-consumer difference in appellate opinions such as that in *Terminix Co. v. CSLB* (1948) 84 Cal.App.2d 167.¹¹⁰

In the same spirit of modernization and accuracy, consideration should be given to changing the name “Contractors State License Board,” which is at best an outdated description of a dynamic modern agency and at worst a misleading indicator of the agency’s functions.

The clear trend among CSLB’s sister agencies is toward modernization of agency names to reflect the more general missions of DCA regulatory bodies. In the past 25 years, no fewer than 17 of the current 38 DCA boards and bureaus have modernized their names, usually to delete the term “examiners,” “examining,” or “registration,” which were analogous to “license” in CSLB’s name. Included among these are most of our boards regulating the health sciences, as well as those governing architects, engineers, court reporters, geologists, and others. For example, the Medical Board of California — an agency with a closely analogous mix of licensing and enforcement duties — took action to change its name from “Board of Medical Examiners” to “Board of Medical Quality Assurance,” to its current more accurate and general name.

In the same spirit, CSLB should strongly consider “Contractors Board of California” or a similar name of a more general nature, in order to better describe itself as a modern consumer

¹⁰⁹ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection A (“CSLB Mission and Mandate”).

¹¹⁰ See discussion in Ch. VI (“Initial Concerns of Enforcement Program Monitor”) at subsection H (“Prosecutions”).

protection agency with both licensing *and* enforcement functions. The new name would improve accuracy for the benefit of the industry and the public, and would symbolize in an important way the coming of a new era for this agency.

B. CSLB Resources

Recommendation #2: Increase license fees(unchanged since 1994) by approximately 20% to restore CSLB budget and enforcement resources to 1994 per capita levels and to ensure a sufficient reserve.

Discussion: This recommendation addresses the Monitor’s fundamental concern that the resources CSLB needs to do its enforcement job have not kept pace with either inflation or the increased legislative and public demands for improvements in service.¹¹¹ Because CSLB is virtually entirely fee-funded, any significant delay in adjusting the fee structure will necessarily mean a reduction in per licensee funding roughly equivalent to the rate of inflation. This in turn means a reduction in inflation-adjusted funding available for the enforcement program, measured on a per licensee basis. This would be troubling even if CSLB were meeting all relevant expectations of enforcement performance; it is alarming in light of the reality of unsatisfactory cycle times and backlogs, and increased demands from the Legislature for improvements, such as the new cycle time guidelines embodied in Business and Professions Code section 7011.7.

The Monitor recommends an average increase in all relevant CSLB licensing fees of 20%, which would closely approximate the 21.2% increase in the California Consumer Price Index since January 1, 1994, when fees were last adjusted. Examples of fee increases in this range would include:

<u>Fee Schedule Item</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Examination fee	\$250	\$300
Initial license fee	\$150	\$180
Additional class fee	\$ 50	\$ 60
Active renewal fee (2 year)	\$300	\$360
Inactive renewal (4 year)	\$150	\$180

¹¹¹ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection B (“Inadequate CSLB Resources”).

Based on CSLB's 2000–01 budget of \$45.6 million, a weighted average fee increase of 20% would yield an increase in annual budget resources of approximately \$9 million. It is beyond the scope of this Initial Report to propose specific budget item increases. However, by way of illustration only, an increase in total budget resources of \$9 million per year could increase the agency's complement of investigators, CSRs, and program technicians by as much as 50%. Even if we assume that half of any revenue increase would necessarily be required for other expenses such as the DCA pro rata contribution (8%), administration, facilities, the required budget reserve, and other CSLB programs, the proposed fee increase could generate an additional \$4.5 million for added enforcement personnel. This increment would support 55 additional ER I investigators, 16 additional CSRs, and 13 additional PT II clerical staff — a net 50% increase in each of these personnel categories.¹¹² Enforcement staff increases of this magnitude would dramatically enhance the likelihood that CSLB can meet the guidelines for improved enforcement cycle times recently imposed by the Legislature.

As detailed above, there is a remarkable and encouraging consensus among all relevant stakeholders, including trade associations representing the construction industry, in support of appropriate fee increases if those increases would be used to improve enforcement.

All current CSLB fees are presently set at their statutory limits, so appropriate authorizing legislation will be required, and should be planned for the earliest feasible legislative session.

C. CSLB Management Structure and Information System

Recommendation #3: Fill key enforcement management positions, including the enforcement chief position and other senior enforcement positions, to ensure appropriate leadership and accountability in the enforcement program.

Discussion: This recommendation reflects the pressing need for clear leadership and managerial responsibility in CSLB's enforcement program. The administration of the previous Registrar left the key post of chief of the enforcement program vacant and this vacancy extended for much of 2000 and 2001. This is roughly analogous to a U.S. President foregoing the selection of an Attorney General for

¹¹² Total annual additional wage and benefit expense of \$4,611,476, based on the following average annual personnel wage and benefit expenses, effective as of September 27, 2001: ER I: \$59,028; CSR: \$52,152; PT II: \$41,808. (Source: Cheryl Maudsley, CSLB Human Resources Manager.)

two years, but expecting new vision and improved productivity from the U.S. Department of Justice. Similarly, several other senior management posts have gone unfilled, contributing to the strategic uncertainties and span of control problems detailed above.¹¹³

New CSLB Registrar Stephen Sands has recognized this high-priority personnel issue, and has begun the civil service recruitment process to ensure prompt appointment of the newly designated CEA II post entitled “Chief of Enforcement.” The CEA position announcement describes the position as “report[ing] to the Registrar/Chief Deputy Registrar and...responsible for the overall management and operations of the Board’s enforcement programs.” The appointment of a capable senior executive with full authority to direct and coordinate the disparate activities of CSLB’s enforcement program is an essential prerequisite to any attempt to improve the program.

Recommendation #4: Rebuild the enforcement organizational structure to correct the problems caused by the reengineering project of 1999–2000, including rebuilding of the enforcement organization on a functional basis with appropriate spans of control (especially for senior enforcement managers and enforcement supervisors).

Discussion: Our colleague Ben Frank, of NewPoint Group, has described in detail the organizational problems and inefficiencies resulting from the poorly executed reengineering project of 1999–2000.¹¹⁴ Among other deficiencies, the Frank study notes “the Enforcement Program lacks a full management team” which “is contributing to a broad range of organizational issues and operating performance problems.”¹¹⁵ Working in conjunction with Mr. Frank and in consultation with the Monitor, new Registrar Sands has sought and obtained Board approval for a reorganization along functional lines for the enforcement program’s upper management structure, including a Chief of Enforcement (see Recommendation #3 above) and a clarified operational structure with adequate senior and first-level managers to ensure adequate program supervision and reasonable spans of

¹¹³ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection C (“CSLB Management Structure and Information System”).

¹¹⁴ See *supra* Exhibit V-A; NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001) at III-1 and *passim*; Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection C (“CSLB Management Structure and Information System”).

¹¹⁵ NewPoint Group, *supra*, at VI-1.

supervisory control. The Monitor has endorsed this effort to rebuild the enforcement program's organizational structure, and the rebuilding effort is now well under way.

Recommendation #5: Reallocate field resources to better reflect the pattern of demand for consumer services (including opening offices in areas of high demand such as the San Fernando Valley and south Orange County).

Discussion: The combination of demographic changes in California and the closure of numerous CSLB offices during the reengineering project has created an apparent misallocation of field resources and offices in the enforcement program. As a result, populous California regions appear to be underserved — or inconveniently served — by CSLB.

As illustrated in Exhibit VII-A (Geographic Distribution of Complaints Received by Job Site Location), 12% of all 2000 CSLB complaints involved job sites in Orange County, where CSLB has no office. As indicated, the appropriate pro rata share of CSLB's 82 ER I positions would be *ten* investigators for Orange County, but CSLB has no staff of any kind in Orange County. Thus the 1,765 complainants in Orange County in 2000 had no truly local CSLB office or staff. Industry representatives and law enforcement officials describe south Orange County as among the state's fastest growing areas in terms of construction activity and fraud complaints, yet the nearest CSLB offices (Norwalk and San Diego) are up to a three-hour round-trip drive for a Laguna Niguel or San Clemente resident.

Similarly, 24.7% of all complaints to CSLB arise from Los Angeles County, and our interviews indicate a heavy concentration of residential construction complaints emanating from the San Fernando Valley.¹¹⁶ Yet CSLB closed its Van Nuys office as part of the reengineering project. Today the thousands of complainants in the San Fernando Valley are required to drive to Norwalk (in south Los Angeles County) for intake/mediation matters, or to Long Beach or Azusa to pursue matters under investigation. A Porter Ranch or Woodland Hills resident faces a daunting round-trip drive of up to four hours to visit the nearest CSLB office today.

Recommendation #6: Require consistent annual statistical reporting by the CSLB enforcement program by establishing a new statutory mandate for such reporting (based on Business and Professions Code section 2313 applicable to the Medical Board).

¹¹⁶ See Exhibit VII-A (Geographic Distribution of Complaints Received by Job Site Location).

Ex. VII-A. Geographic Distribution of Complaints Received by Job Site Location

San Francisco Bay Area				North Region / Sacramento				Central Region / Fresno			
County	Number of Complaints	Percent of Total	ERI Allocation	County	Number of Complaints	Percent of Total	ERI Allocation	County	Number of Complaints	Percent of Total	ERI Allocation
Alameda	533	3.6%	2.98	Amador	29	0.2%	0.16	Fresno	178	1.2%	1.00
Contra Costa	471	3.2%	2.64	Butte	61	0.4%	0.34	Inyo	5	0.0%	0.03
Marin	130	0.9%	0.73	Calaveras	29	0.2%	0.16	Kern	167	1.1%	0.93
Mendocino	29	0.2%	0.16	Colusa	1	0.0%	0.01	Kings	31	0.2%	0.17
Monterey	86	0.6%	0.48	Del Norte	9	0.1%	0.05	Madera	40	0.3%	0.22
Napa	61	0.4%	0.34	El Dorado	196	1.3%	1.10	Mariposa	6	0.0%	0.03
San Francisco	213	1.5%	1.19	Glenn	5	0.0%	0.03	Merced	47	0.3%	0.26
San Mateo	290	2.0%	1.62	Humboldt	23	0.2%	0.13	Mono	7	0.0%	0.04
Santa Clara	721	4.9%	4.04	Lake	32	0.2%	0.18	San Benito	20	0.1%	0.11
Santa Cruz	71	0.5%	0.40	Lassen	11	0.1%	0.06	Stanislaus	129	0.9%	0.72
Solano	170	1.2%	0.95	Nevada	51	0.3%	0.29	Tulare	74	0.5%	0.41
Total	2,775	18.9%	15.53	Placer	256	1.7%	1.43	Tuolumne	31	0.2%	0.17
Los Angeles				Plumas	3	0.0%	0.02	Total	735	5.0%	4.11
Los Angeles	3,620	24.7%	20.26	Sacramento	844	5.8%	4.72	Riverside / San Bernardino			
San Luis Obispo	117	0.8%	0.65	San Joaquin	224	1.5%	1.25	Riverside	932	6.4%	5.22
Santa Barbara	138	0.9%	0.77	Shasta	73	0.5%	0.41	San Bernardino	778	5.3%	4.35
Ventura	423	2.9%	2.37	Siskiyou	18	0.1%	0.10	Total	1,710	11.7%	9.57
Total	4,298	29.3%	24.05	Sutter	38	0.3%	0.21	San Diego / Imperial			
Orange				Tehama	22	0.2%	0.12	Imperial	30	0.2%	0.17
Orange	1,765	12.0%	9.88	Trinity	3	0.0%	0.02	San Diego	1,328	9.1%	7.43
Total	1,765	12.0%	9.88	Yolo	57	0.4%	0.32	Total	1,358	9.3%	7.60
Yuba				Yuba	26	0.2%	0.15				
				Total	2,011	13.7%	11.25				

Total Complaints: 14,652¹ Authorized ERI Positions: 82

¹ Excludes complaints with no job site city identified, including complaints initiated by SWIFT Units, and all out-of-state complaints (most of which are in Nevada). No complaints were received with job sites located in Alpine, Modoc, or Sierra counties.

Source: Benjamin M. Frank, Director, NewPoint Group

Discussion: The greatest single difficulty for the Monitor's project and the Legislature in evaluating CSLB's enforcement program is the absence of a consistent set of annual performance statistics. Much data is accumulated by CSLB, and much has been reported in the sunset review process and elsewhere, but reliable and consistent statistics on even basic work outputs (such as license revocations or accusations filed) are often unavailable, or unavailable without extraordinary effort. And substantial variations in the definitions and categories used for the enforcement program data accumulated over the years make meaningful comparisons over time very difficult.

The Medical Board of California faced a similar problem of unreliable and inconsistent reporting of performance data until 1990, when the Legislature imposed on the Board the annual statistical reporting requirements of Business and Professions Code section 2313.¹¹⁷ Now each October 1 the Medical Board provides a detailed report to the Legislature containing the mandated enforcement performance data, using statutorily defined categories, including statistics on: temporary restraining orders or interim suspension orders (both sought and granted), number and types of actions for unprofessional conduct of specified kinds, various categories of consumer complaints, licensee sanctions and convictions, complaint referrals and resolutions, accusations filed and resolved, final acts of physician discipline by category, number of cases in process more than six months from receipt of initiating information, processing times for complaints, and investigator caseload statistics, among other specified categories.¹¹⁸

The Monitor strongly recommends passage of legislation imposing on CSLB a similar statutory requirement of annual statistical reporting of various performance indicators reflecting CSLB's complaint handling, arbitration and mediation, investigations, and prosecutions of all kinds. Once a baseline of performance data is established, and consistent annual reports are generated using the same reporting parameters, the Legislature and the Department will have the ability to perform meaningful evaluations of CSLB's enforcement program.

D. Contractor Screening

Recommendation #7: Require fingerprinting and criminal history verification for licensees, with accompanying standards for use and for privacy protection in appropriate cases, and expand use of criminal convictions in licensing and enforcement decisionmaking.

¹¹⁷ Cal.Stats.1990, c. 1597 (S.B. 2375), § 21; amended in Cal. Stats.1994, c. 1206 (S.B. 1775), § 21.

¹¹⁸ See Bus. & Prof. Code § 2313(a)-(c).

Discussion: Perhaps the single greatest problem with the enforcement program is CSLB's inability to ascertain with certainty whom it is licensing. All effective law enforcement — and especially criminal enforcement — is based on suspect identification and accurate criminal history information. False identities and identification documents can be easily manufactured, making it imperative that law enforcement agencies use biometric identifiers. Required fingerprinting and criminal history verification are the primary means of police agency identification used throughout the country today. In California, the Department of Justice maintains the Criminal Identification and Information (CII) system which all state police and prosecutorial agencies utilize daily. It is time for CSLB to join the community of law enforcement agencies which can positively identify those whom they license.

Sadly, the need for positive criminal history verification is now well-documented. Perhaps the most troubling current example is the recent San Diego case of Mark Lee Ross and Crown Builders. Ross, a longtime residential home improvement contractor in southern California, was convicted of felony diversion of contracting funds in San Diego in 1981, and CSLB duly revoked his contractor's license. By 1986, Ross was back in business in San Diego, using business associates as the necessary qualifiers to permit his contracting firm, Crown Builders, to function. In 1992, Ross, using his correct name, applied for *and was granted* a new contractor's license by CSLB; Ross simply supplied a Social Security number with two digits changed from his correct number.

Since no fingerprinting or other form of absolute identification was in place, Ross was able to reacquire his license — with the full public legitimacy a license confers — despite his record of felony contracting fraud. In November 2000, Ross absconded and his Crown Builders firm left an estimated 70 victims with losses of \$50,000 to \$130,000 each. Many of those victims had carefully checked with CSLB to be sure Ross was a licensed contractor.¹¹⁹

Equally sadly, the Crown Builders case is not unique: Prosecutors in both northern and southern California have told us of other examples of contractors convicted of contracting fraud who were subsequently licensed by the agency mandated to protect the public from that fraud.

¹¹⁹ As a further illustration of the absence of effective connection between the enforcement and licensing processes at CSLB, on March 2, 2001, a former Crown Builders salesperson obtained from CSLB his home improvement salesperson's registration, notwithstanding his direct participation in the Crown Builders failure which occurred only *five months* earlier.

Fully 24 other DCA regulatory agencies are already authorized to use fingerprinting in connection with their licensing and/or enforcement activities. Business and Professions Code section 144 provides the statutory authority for those agencies “to require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks.” Section 144 is the logical vehicle for enabling CSLB to require fingerprints as a condition of obtaining or renewing a contractor’s license. To their credit, previous Boards (and members of the current Board) have recognized this need and have sought this authority for CSLB.¹²⁰ One further effort is needed to realize this vital law enforcement goal for this agency.

The benefits of required fingerprinting and criminal history verification are numerous and compelling. Fingerprinting permits positive identification of those with relevant convictions, thus enabling the agency to exercise appropriate discretion in licensing. A fingerprinting requirement also holds significant potential as a deterrent — potential bad actors are much less likely to try to obtain the valuable public credibility of a license if they know that their disqualifying records will be revealed. Most consumers readily assume that the State of California screens fraud artists and convicted felons when it licenses contractors. CSLB must now meet that highly reasonable expectation.

Any requirement of mandatory fingerprinting and criminal history verification should be undertaken carefully and with all appropriate safeguards. Appropriate CSLB policy must be established governing which crimes are “substantially related to the qualifications, functions and duties of a contractor,” within the meaning of section 7123 of the License Law, to disqualify an applicant or serve as ground for disciplinary action, and how such factors as the recency of the conviction or efforts at rehabilitation are to be weighed. Appropriate safeguards for privacy protection must be designed and implemented. And the costs of fingerprinting and verification must be minimized and equitably shared. The Monitor is available to assist in the development of all necessary safeguards and implementation strategies relating to a fingerprinting requirement for CSLB.

Recommendation #8: Expand the flow of information on contractor misconduct into CSLB for purposes of enhancing licensure and enforcement decisionmaking by (a) seeking enactment of mandatory reporting statutes (similar to Business and Professions Code section 800 *et seq.*

¹²⁰ In 2000, CSLB sponsored AB 2370 (Honda), which would have added CSLB to the section 144 list of agencies required to obtain fingerprints from all applicants for CSLB licensure and registration. The bill died in committee.

applicable to the Medical Board); and (b) requiring license renewal reporting of relevant criminal convictions by adding a question to the contractor license renewal form regarding conviction of crime since the last renewal.

Discussion: Unlike other occupational licensing agencies, CSLB appears to rely almost solely upon consumers as the source of complaints against its licensees.¹²¹ This is unwise for several reasons,¹²² and other agencies have recognized the value of alternative (and sometimes overlapping) sources of information about licensee misconduct.

For example, Business and Professions Code section 800 *et seq.* requires a variety of government entities and other social actors to provide the Medical Board with information about physician misconduct.¹²³ Section 801 requires malpractice insurers to file a report with the Medical Board when they pay a settlement or arbitration award on behalf of an insured physician; section 802 requires the covered physician or his/her counsel to additionally report such settlements or arbitration awards to the Board. Section 803 requires court clerks and malpractice insurers to report the issuance of malpractice judgments against physicians. Criminal charges and convictions against physicians must be reported to the Board by the accused/convicted physician (section 802.1), court clerks (sections 803 and 803.5), and prosecutors (section 803.5). Coroners who perform autopsies and suspect that physician gross negligence or incompetence is the cause of death are required to report to the Board under section 802.5. Finally, section 805 requires hospitals and other health care facilities that have denied, revoked, or restricted a physician's admitting privileges to file a report with the Medical Board.

This flow of information is simply that — information. Not all of it is immediately disclosed to the public, and the Medical Board does not necessarily take disciplinary action against each reported licensee in every circumstance. However, this flow of information greatly enhances the Board's ability to detect patterns of misconduct and make more informed licensing and discipline decisions.

¹²¹ CSLB's SWIFT unit operates "sweeps" and "stings" to detect unlicensed practice; however, we are unaware of similar significant efforts targeting CSLB licensees.

¹²² Some consumers are unaware of the existence of CSLB; even if they are aware of its existence, they may not be familiar (or may have had prior unsatisfactory experience) with its enforcement role and responsibility. Other consumers may not wish to "get involved" by filing a complaint. Some may be incapable of articulating a complaint because they lack proficiency with the English language. Most importantly, consumers are not necessarily in a position to judge competence or compliance with laws unknown to them. This, obviously, is why the Board exists.

¹²³ This statutory scheme also applies to other health care regulatory agencies in addition to the Medical Board.

CSLB's enabling act lacks effective mandatory reporting provisions.¹²⁴ Its application and renewal forms require applicants and licensees to answer questions about convictions and other misconduct, but (as noted above) it is currently unable to check the veracity of answers to those questions. To better protect the public, CSLB and the Legislature should strongly consider a statutory scheme requiring reporting to the Board of the following information which is relevant to contractor performance and solvency: civil judgments, settlements, and arbitration awards; criminal arrests and convictions; bankruptcy filings; and debarments by government entities.

In addition, once CSLB secures fingerprinting authority (see Recommendation #7 above), it should add a question to its license renewal form regarding convictions since the last renewal. The fingerprinting requirement will enable CSLB to verify the answer to that question.

Recommendation #9: Improve the system of experience verification for license applications, including continuing the current applicant screening pilot project using a public records service.

Discussion: An applicant for a contractor's license must attest to specific levels of required experience, as described above.¹²⁵ However, in recent years CSLB has verified only a small fraction — generally ranging from 3% to a maximum of 6% — of these experience claims, with the result that any savvy applicant knows he or she can misrepresent prior experience or other qualifications with little chance of detection. Cost and staffing considerations have no doubt limited CSLB's willingness to attempt more comprehensive verification. But modern information technology has brought access to new computerized databases for cost-efficient background checks on matters such as work experience and education. Many contemporary law enforcement agencies use public records services of this kind as an investigative tool and a complement to the use of fingerprinting and criminal record verification.

¹²⁴ Business and Professions Code section 7071.17(b) requires licensees to report unsatisfied construction-related civil judgments to the Registrar "within 90 days from the date of judgment," effectively giving the contractor 90 days to pay the judgment and avoid notification to the Registrar. Section 7071.17(a) requires licensure applicants to declare on CSLB application forms, under penalty of perjury, whether they are subject to any unsatisfied judgments; however, as noted above, CSLB is usually unable to check the veracity of applicants' responses to this question.

¹²⁵ See Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection D ("Contractor Licensing System and Requirements").

CSLB has begun a pilot project using one such public records service. This experiment should be continued, and further consideration given to modern cost-efficient means of verifying experience and background claims. And with reduced cost should come a commitment to verifying a much greater percentage of all applications. As with fingerprinting, an effective system of verification will not only assist the agency in proper licensing determinations, but will also send an important deterrent signal to those who would be tempted to misrepresent their qualifications to CSLB.

E. Complaint Handling

Recommendation #10: Increase the Consumer Services Representative (CSR) staff to reduce caseloads to manageable levels and enable CSRs to perform more actual case mediation.

Discussion: The discussion above has demonstrated the problems associated with high CSR caseloads of 120–140, large backlogs, and case closure cycle times two to four times longer than the agency’s 30-day goal.¹²⁶ Current CSLB management is in the process of implementing an improved business process for CSRs, aimed at reducing redundant and unnecessary tasks and expediting case handling. However, there is no realistic scenario of business process changes alone which would permit CSLB to meet its own goal of 30-day case closure, when average closure times are presently ranging from 56 days to 114 days. Only a significant increase in CSR personnel will permit service improvement of this order of magnitude. An increase from 2000-2001 authorized staffing of 32 CSRs is imperative; a 50% increase of 16 additional CSRs (see Recommendation #2 above) would by definition reduce caseloads by one-third, all else equal, which would facilitate comparable 33% reductions in case cycle times.

And as detailed in Recommendation #13 below, enhanced early case mediation using properly trained CSRs is a promising mechanism for improving public service. But this high-potential program will require an increase in CSR staff sufficient to permit designation of a number of specialist “mediating CSRs” or to reduce caseloads so that all CSRs could perform this specialized function.

Recommendation #11: Institute comprehensive CSR training, including clear statewide case standards and restored interaction with investigators.

¹²⁶ See Ch. V (“The CSLB Enforcement System”) at subsection A.3. (“Post-1999 Intake/Mediation and Investigations”).

Discussion: In recent years, CSR training has been minimal in the best situations and often entirely nonexistent.¹²⁷ Comprehensive CSR training is a prerequisite for improved public service quality and case outputs. CSLB management must make a priority of standardizing and mandating both introductory training for new CSRs and systematic in-service training for veterans. Such a comprehensive, systematic CSR training program is also an ideal opportunity to improve work consistency statewide through the implementation of clear statewide case handling and triage standards. If all CSRs, north and south, receive the same consistent training on the use of the same standards, the corporate culture of distinct case handling procedures will disappear. Restored close interaction with ERs will also provide an important source of practical training for CSRs.

Recommendation #12: Improve and fully computerize the internal alert system to ensure a rapid and coordinated response to major and repeat offender cases.

Discussion: As noted above, PTs and CSRs utilize a “triage checklist” when screening incoming complaints.¹²⁸ Among other things, the checklist requires them to consult the “alert board,” a multi-page hard-copy document containing names of contractors who are the subject of multiple pending complaints. The “alert board” list is prepared and circulated on an irregular basis (every two to three weeks) and must be manually consulted; the CSRs with whom we spoke could not access the list online.

The “alert board” system should be fully automated. When a PT or CSR inputs new complaint information and the complained-of contractor is on the alert board, a “red flag” should instantly appear and prompt the PT/CSR to ship that complaint to the field without delay. Additionally, the “red flag” should appear not only on the screen of the complained-of contractor, but also on the screens of any other licenses under which that contractor is working.

Recommendation #13: Greatly expand early resolution/mediation efforts made during the first 30 days of complaint processing (including reinstatement and expansion of the now-terminated early mediation pilot project attempted in Norwalk).

¹²⁷ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection E (“Complaint Handling”) and sources cited in notes 42–44.

¹²⁸ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection E (“Complaint Handling”).

Discussion: Once CSLB has cleared up the backlog of cases that currently prevents CSRs from even looking at cases until they are two to four months old,¹²⁹ CSLB should reinstate its now-terminated “face-to-face mediation program” and other efforts that will enable CSRs to resolve incoming complaints within 30 days of receipt (consistent with the agency’s goal). Mediation and settlement in appropriate cases are much more likely outcomes if the case is addressed before it “ages” and the parties become angry and entrenched. Parties to litigation often balk at settlement negotiations until the trial date is set; the mere setting of the trial often prompts parties to “come to the table” where settlements are reached. It appears that CSLB’s experimental “face-to-face mediation program” was based on the same premise and was successful: Once the CSRs set their mediation cases for hearing, 60% of those cases settled — many without the necessity of the hearing. CSLB should renew this program and emphasize the importance of early attention to cases amenable to mediation.

Recommendation #14: Improve the telephone information system for complainants to promote prompt access to staff, and **improve the consumer complaint form** to promote understanding and ease of use.

Discussion: Both consumers and CSLB complaint handling staff report numerous complaints about the difficulty in using the CSLB telephone system, and in particular about the difficulty of reaching a CSLB staff person by telephone within a reasonable time.¹³⁰ CSLB should take action to improve both its automated telephone response system and the availability of sufficient staff to permit prompt personal responses to public contacts. This recommendation would involve both modification of the operating technology and restructuring of personnel assignments to permit adequate staffing for this function. This problem is commonplace in both the public and private sectors, and there are private consultants, specializing in budget-conscious solutions to this problem, who are readily available and should be utilized.

In addition, the existing public complaint form is less than user-friendly. The form is fairly complex; it employs jargon terms; and many consumers find it daunting. CSLB has recently developed a revised version of its complaint form, and this new form appears to be a significant improvement.

¹²⁹ See Ch. V (“The CSLB Enforcement System”) at subsection A.3. (“Post-1999 Intake/Mediation and Investigations”).

¹³⁰ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection I (“Public Disclosure and Public Outreach”).

However, further follow-up will be required to gauge customer reaction and determine whether the new form has achieved the goals of simplicity and ease of use.

Recommendation #15: Eliminate career ladder barriers for Consumer Services Representatives and Program Technicians.

Discussion: As detailed above,¹³¹ the traditional career ladder for CSRs and PTs was based on interaction with and learning from more senior colleagues among the CSR and ER staff, and amounted to a positive corporate culture of planned advancement for capable employees. This beneficial system of team contacts and mentoring was largely eliminated through the reengineering project, effectively disrupting promotional prospects for most PTs and CSRs. A return to a system offering contact with potential mentors is an important start, and new CSLB management has begun modest first steps in this direction by restoring the concept of geographical focus for CSRs.

In addition to restoring collegial contact and learning, CSLB should study its personnel policies with the goal of developing an explicit system providing CSR and PT staff with training, educational opportunities, and clearer guidance on promotional standards. The goal should be the re-establishment of a system that positively and visibly encourages advancement up the ladder of job classifications from PT to CSR to ER. The benefits of this policy will include better trained and motivated CSRs and PTs, improved recruitment and retention, and higher morale.

F. Investigations

Recommendation #16: Increase the CSLB peace officer staff from three to a minimum of 8–10 to improve criminal and civil investigative capabilities.

Discussion: Effective law enforcement work — especially criminal enforcement work — requires sufficient peace officer staff for the variety of tasks for which peace officer training is both a legal and practical necessity, including preparation of search warrant affidavits, the service of search

¹³¹See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection E (“Complaint Handling”).

and arrest warrants, surreptitious recording of undercover operations, and other tasks.¹³² CSLB's current complement of three peace officers is entirely inadequate for an agency which addresses more than 24,000 complaints, and literally thousands of potential criminal violations, each year.

Prosecutors throughout the state are unanimous that a significant increase in this staffing capability is essential for CSLB to move to the next level of effectiveness in handling complex and major fraud-type matters. The Monitor proposes an increase to a level of 4–5 peace officers each for the northern and southern California regions. This staffing level would permit CSLB investigators and prosecutorial agencies to have improved access to CSLB peace officers for cases requiring those capabilities. This increase would also permit formation of strike forces with the capacity to play a truly effective role in handling complex and large-scale criminal fraud investigations (see Recommendation #17, immediately below).

Recommendation #17: Increase the Enforcement Representative staff sufficiently to reduce caseloads and to staff two or more “major fraud” strike forces (each with peace officers assigned) for rapid deployment on major cases.

Discussion: The pressing problem of investigator staff shortages, and the resulting long case cycle times and backlogs, are documented extensively above.¹³³ A minimum first step is to fill the current 23 ER staff vacancies (representing almost 20% of authorized ER staff). However, even the full currently-authorized complement of 118 CSLB investigators will be insufficient to meet demands for improved service, especially where CSLB's own internal standard for investigation closure is 90 days, but recent average closure times of 200 days or more are today's norm, and where caseloads of 60–80 cases per investigator have been reported in some Investigation Centers.

CSLB field investigators now handle a case mix with an increasing proportion of highly complex cases, with fewer simple matters (such as bond cases and application inquiries) and more complex fraud-type matters. Experienced major fraud prosecutors and investigators tell us that caseloads of more than 30–40 such complex cases per investigator are unrealistic and unworkable; CSLB's present

¹³² See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection F (“Investigations”).

¹³³ See *id.* and sources cited in notes 30, 38.

maximum ER caseload (per the *Complaint Handling Manual*) of 60 cases¹³⁴ is well outside of accepted standards for such work.

Given current excessive case cycle times and caseloads, CSLB must increase its Enforcement Representative staff significantly. A 50% increase in currently ER staff (an addition of 55 ER I positions as projected in Recommendation #2 above) would permit a 33% reduction in caseloads and would be likely to yield comparable reductions in case cycle times.

Also, to the extent that CSLB plans a more effective role in the handling of high-impact large-scale fraud cases, it will need additional investigators sufficient to staff a minimum of two “major fraud strike force” teams (one such team for each of northern and southern California). A single complex contractor fraud case may involve 100 victims, scores of witnesses, 50 bankers’ boxes of documents, and millions of dollars of takings. Such a case requires immediate resource-intensive investigative work within the first thirty days of the opening of the investigation. This is only possible where a team of skilled investigators, peace officers, forensic auditors, and prosecutors can be brought into play immediately. To accomplish this, CSLB strike force teams of ERs, peace officers, and other staff should be designated to handle such special investigations on an emergency roll-out basis. This will also require additional ER and peace officer staff.

Recommendation #18: Improve and regularize investigator training, with greatly increased emphasis on criminal and civil enforcement investigation techniques (including systematic professional training on evidence law, search and arrest warrants, administrative subpoenas, witness interviews, financial records, and asset freeze/forfeiture).

Discussion: CSLB investigators receive inadequate training for law enforcement matters, especially for work on criminal cases.¹³⁵ Comprehensive training is needed on a broad range of investigative and legal topics and tactics relevant to administrative, criminal, and civil enforcement actions. In the modern era of complex white collar crime casework, improved ER training is not a luxury but a necessity for CSLB. A comprehensive, systematic, and professional-grade training curriculum must be instituted. This can be accomplished utilizing both in-house resources and outside

¹³⁴ Contractors State License Board, *Manual of Complaint Handling Procedures* (Apr. 2, 2001) at § 1.2.1.

¹³⁵ See Ch. VI (“Initial Concerns of the Enforcement Program Monitor”) at subsection F (“Investigations”), and sources cited in notes 42–44.

experts and trainers from allied law enforcement organizations, including the California District Attorneys Association, the California Attorney General's Office, federal law enforcement agencies, and others.

Recommendation #19: Ensure early investigation coordination with state and local prosecutors in appropriate cases by jointly developing and implementing an investigative protocol for CSLB investigators and prosecutors' offices.

Discussion: As described above,¹³⁶ the earliest phase of many major cases is critical and requires early coordination of investigative efforts by all involved law enforcement agencies. In the CSLB context, the proper team to respond to such matters consists of CSLB investigators, peace officers, industry experts, forensic auditors, and prosecutors. Such a team is essential to address the immediate demands for asset seizure, search warrants, vital victim or witness interviews, tactics for arrests and flight issues, and many others. Historically, CSLB and other agencies have often failed to fully coordinate their efforts until after this critical phase has passed, endangering the viability of the prosecution and reducing prospects for victim relief.

This recommendation proposes that CSLB, working with appropriate law enforcement entities such as the California District Attorneys Association and the Attorney General's Office, develop a mutually agreed protocol for early coordination of these investigations among state and local officials. This protocol would include case selection criteria and procedures for early coordination immediately after appropriate cases are identified. Using such a protocol as the starting point, CSLB must then establish and maintain good liaison relationships with the other investigative and prosecutorial agencies to ensure that the protocol is followed and cooperation is fostered. A systematic and active working relationship of this kind will yield markedly improved results in the investigation and prosecution of major contracting law violations.

Recommendation #20: Restore sufficient office facilities for investigators for interviews, meetings, and cooperation with colleagues, and reevaluate and apply "home-officing" only on an individualized basis.

¹³⁶ See Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection F ("Investigations").

Discussion: The adverse impacts of mandatory “home-officing” on investigator efficiency have been documented in detail above.¹³⁷ This recommendation envisions both restored office facilities and a fundamental change in CSLB’s home-officing policy from a mandatory program to a voluntary and earned opportunity.

The Monitor recommends that CSLB restore minimum necessary investigator access to office space for interviews, meetings, and improved interaction with colleagues and supervisors. At a minimum, each investigator should have assured and convenient access to an office space, including office equipment and file storage, adequate conference or meeting room space for interviews and meetings, and secretarial support. For most investigators, a return to a more traditional office-based work environment will mean improved access to needed support services, greater consistency of practices, and more interaction with colleagues. In addition, supervisors will be better able to direct, train, and evaluate their subordinates. Use of an official setting for interviews and meetings with witnesses, suspects, and the public also will project a more professional and credible law enforcement image.

The Monitor also recommends that CSLB convert the investigator home-officing program to a voluntary option to be earned by demonstrated responsibility and independent productivity. Some investigators thrive in the independent mode of home-based work. Others perform better and more responsibly in a more structured environment. As in other public agency settings, home-officing is likely to work well only when it is offered as an employment privilege (as opposed to a right), which privilege is a reward for productive employees who choose it. Home-officing should be handled on an individual basis and permitted only where it improves the overall efficiency of the agency’s operations.

Recommendation #21: Update workload standards for investigators, to reflect the changed nature and increased complexity of current casework, by conducting a new workload standards study and implementing appropriately changed standards.

Discussion: Many CSLB investigators and supervisors feel strongly that the investigator case mix has changed dramatically in recent years, and that CSLB’s current workload standards do not

¹³⁷ See *id.*

accurately reflect those changes.¹³⁸ The present standards were developed in 1989, well before changes in procedure reduced or eliminated ER work on such simpler matters as bond cases and applicant investigations. The Monitor perceives substantial evidence that the typical caseload of today's ER contains a much greater proportion of complex or large-scale matters than a decade ago. A final conclusion on the revision of workload standards should only be reached after an appropriate workload standards study. The Monitor sees sufficient indication of changed duties to warrant such a study. Efficient operations, sound staffing decisions, and employee morale all depend on a consensus within the agency that contemporary standards for CSLB investigators accurately reflect the complexity and difficulty of their casework.

G. Prosecutions

Recommendation #22: Establish more consistent statewide case referral criteria to improve enforcement uniformity, and monitor referral patterns to ensure improved compliance.

Discussion: This recommendation addresses the concerns expressed above relating to inconsistency of the criminal referrals from CSLB, inconsistency of the responsiveness of CSLB to criminal referrals, and inadequate CSLB referral of certain matters appropriate for civil enforcement action.¹³⁹ As discussed above, these inconsistencies and questions of case referral all seem to stem from inadequate communications and underdeveloped working relationships among CSLB and its colleagues in prosecutors' offices throughout California.

The Monitor recommends that CSLB staff work on a consensus basis within CSLB and with prosecutors to develop a set of case selection and referral criteria for use in determining which cases should be referred for administrative, criminal, and/or civil enforcement, and to whom those referrals should be made. CSLB staff will find ready allies in developing such consensus standards in the California District Attorneys Association Consumer Protection Committee, the California Attorney General's Office, and many of the district attorneys' offices and city attorneys' offices in the state.

¹³⁸ *See id.*

¹³⁹ *See* Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection H ("Prosecutions").

For CSLB's part, internal policies should be developed regarding administrative, criminal *and* civil case enforcement priorities and referral standards.¹⁴⁰ Clearly articulated guidelines should be developed for CSLB staff governing when the differing forms of enforcement action should be sought, and providing guidance on determining the appropriate prosecutor for CSLB case referrals. CSLB staff can then begin a continuing dialogue with the prosecutors' offices and organizations in an attempt to develop a consensus on the handling of the various contractor-related enforcement matters. Although some variability in policy is inevitable among diverse enforcement agencies, a clear understanding of the respective policies and priorities is a realistic goal. Such an understanding among consumer protection colleagues will greatly improve the efficiency and consistency of case referrals to the various agencies.

Once CSLB develops standards on various types of case referrals, supervisors and managers should monitor referrals to ensure improved consistency. For example, a random sample of cases drawn periodically from the pool of investigated matters could reveal whether cases are consistently referred for the various types of prosecution.

Recommendation #23: Improve and standardize cooperation between CSLB enforcement staff and state and local prosecutors involved in administrative, criminal, and civil prosecutions.

Discussion: The Monitor sees evidence of inadequate early and systematic cooperation between CSLB investigators and local prosecutors in criminal and civil enforcement matters involving contractors.¹⁴¹ Especially in major fraud cases and similar complex matters, early coordination and cooperation is often vital to effective enforcement action. If CSLB staff waits until weeks or months after initiating a major matter to coordinate with the likely prosecution agency or agencies, key opportunities to develop a stronger case or better protect consumer interests may be lost.

As with the early case investigation protocol proposed in Recommendation #19 above, CSLB staff should take the initiative to work with prosecutors to develop a system of improved case

¹⁴⁰ In the process of evaluating standards for referral of all three types of enforcement matters, CSLB can better address concerns that civil enforcement matters are seldom referred to state or local prosecutors. *See* Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection H.3. ("Criminal and Civil Prosecution by District Attorneys and City Attorneys").

¹⁴¹ *See id.*

communication and cooperation on major matters where joint action is needed or case referrals are likely. Not every case will require early coordination with the prosecutor's office, but many types of CSLB investigations can be identified where prosecutor referral is likely or certain, and these should be the subject of communication and cooperation from the outset.

All levels of prosecutors, including those from the Attorney General's Office as well as district attorneys' offices and city attorneys' offices, should be included in a dialogue to improve coordination of efforts in appropriate cases. A number of the prosecutors' offices and organizations described in Recommendation #19 above can be counted on in this effort. Consistent cultivation of smooth working relationships is necessary, and this can be achieved by CSLB staff participation in such activities as the frequent California District Attorneys Association meetings and conferences established for this purpose.¹⁴²

Investigative agencies, such as CSLB, and state and local prosecutors have a mutual obligation to work together smoothly and consistently to better serve the public. High quality communication among investigators and prosecutors — both during cases and between cases — requires consistent effort but pays real dividends in increased enforcement effectiveness.

Recommendation #24: Conduct a study of the present pattern of disciplinary bonds and initiate necessary action to ensure that disciplinary bond amounts are sufficient to promote public safety.

Discussion: As provided in Business and Professions Code section 7071.8, CSLB may require as a condition of issuance, reissuance, renewal, or restoration of a license that a special disciplinary bond be posted by designated licensees or others who were subject to various kinds of disciplinary action by the Board. The disciplinary bond is “fixed by the registrar based upon the seriousness of the violation” and “shall not be less than fifteen thousand dollars nor more than 10 times the amount” of the basic contractor's bond of \$7,500 (\$10,000 for swimming pool contractors).¹⁴³ Disciplinary bonds are a useful tool for individualized deterrence of contractors who have been

¹⁴² Bi-monthly meetings of CDAA's Consumer Protection Council, held in both northern and southern California, are examples of existing opportunities to meet prosecutors and develop these working relationships.

¹⁴³ Bus. & Prof. Code § 7071.8(b).

disciplined, and are a potentially meaningful increased source of consumer remedies in the event of other misconduct.

The Monitor recommends that CSLB conduct an internal study to determine the extent of its present and past use of disciplinary bonds, including gathering data reflecting the types of violations triggering the bonds, the typical bond amounts imposed, and any patterns of repeat misconduct by those posting the bonds. Our initial indications are that disciplinary bonds are often set at or near the statutory minimum of \$15,000. In light of the minimal remedial value for consumers of the basic contractor's bond,¹⁴⁴ CSLB should evaluate its use of this additional bonding authority to ensure that it has properly emphasized substantial disciplinary bonds in appropriate cases, including seeking bonds up to the statutory maximum of \$75,000 (or \$100,000) where significant misconduct has occurred.

Recommendation #25: Improve prosecution of key aspects of contractor fraud and abuse by working with prosecutors to combine efforts and increase the investigation and criminal prosecution of: **(a) excessive down payments** (Business and Professions Code section 7159); **(b) qualifiers on revoked/suspended licenses** (Business and Professions Code section 7121.5); and **(c) employment of unlicensed executives** (Business and Professions Code section 7121). If necessary, seek appropriate legislation providing for true debarment from any form of employment in the construction industry for repeat or extremely serious law violations (similar to antitrust contractor debarment or three-strikes criminal statutes).

Discussion: In addition to improving the overall levels of criminal and civil prosecution of contractor misconduct, CSLB staff should work with prosecutors to increase the prosecution of the several specific forms of contractor conduct listed in this recommendation.¹⁴⁵ Excessive down payments are often an important indicator of more serious large-scale fraud, as problem home improvement contractors frequently try to prop up failing businesses by pressuring new customers to make improper early payments. Violations of the laws governing qualifiers on revoked licenses and employment of unlicensed executives often signal efforts by repeat offenders to evade CSLB sanctions.

¹⁴⁴ See Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection J ("Consumer Remedies").

¹⁴⁵ See Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection H.1. ("Prosecution Priorities Generally").

Alert early misdemeanor prosecution of these “bellwether” offenses should deter the further and more serious violations threatened by this misconduct. It should also provide a better warning signal to consumers (via the program of public disclosure) and other enforcement officials.

To the extent that sections 7121 and 7121.5 are not satisfactory to discourage repeat offenses, CSLB should consider seeking additional legislative authority to accomplish true industry debarment for appropriate recidivists. There are numerous precedents for such sanctions for repeat offenders, including bid rigging and antitrust debarment provisions and the three-strikes punishment enhancements for career criminals.

Recommendation #26: Promote increased use of judicial revocation of contractor licenses by educating judges and prosecutors regarding the authority provided by Business and Professions Code section 7106 and Penal Code section 23.

Discussion: Business and Professions Code section 7106 provides: “The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee’s performance of his legal obligation as a contractor.” Penal Code section 23 provides standing for state licensing agencies such as CSLB to appear in criminal proceedings against licensees to provide information to the court, make recommendations regarding probation, or provide other assistance to protect the public (presumably including urging the court to require license surrender or other behaviors as terms of probation).

These provisions together authorize California superior courts to take immediate action affecting the licenses of California contractors in the specified contexts, up to and including suspension or revocation of licenses, as appropriate. This authority is seldom used in public enforcement matters and appears to be unfamiliar to many California bench officers and prosecutors, although appellate cases reflect the periodic use of and apparent validity of these statutes.¹⁴⁶ If used more regularly in public enforcement contexts, these provisions hold real potential as powerful tools for public protection and deterrence of contracting fraud and abuse. A criminal court judge, upon finding violations of law

¹⁴⁶ See *Buzgheia v. Leasco Sierra Grove* (1997) 60 Cal.App.4th 374 (party in civil action may challenge contractor’s license of opposing party, notwithstanding fact that CSLB declined to discipline the relevant licensee); *Judson Pacific-Murphy Corp. v. Durkee* (1956) 144 Cal.App.2d 377.

involving a licensee's obligations as a contractor, should in every case at least consider whether to immediately revoke or suspend the contractor's license, in addition to other sentencing terms. In conjunction with a policy of adequate disclosure of complaints and enforcement actions against contractors (see Recommendation # 27 below), this immediate action could help protect potential future customers of the defendant and add to the effectiveness of the court's other sanctions.

CSLB should take steps to familiarize courts and prosecutors with the availability of these specialized licensure sanctions, and work with prosecutors in contractor matters to encourage increased use of these enforcement tools.

H. Public Disclosure and Public Outreach

Recommendation #27: Improve public disclosure of complaints and actions against contractors, beginning with passage and implementation of SB 135 (Figueroa), but also determining the feasibility of disclosure of other public information such as criminal convictions, civil judgments, and bankruptcies.

Discussion: CSLB's current complaint disclosure policy (embodied in section 863, Title 16 of the California Code of Regulations) prohibits the Board from disclosing the existence of any complaint or investigation until the investigation is complete and the matter has been referred for the filing of a legal action. As reflected in testimony during 1998 CSLB hearings on the policy and at CSLB's 1999 sunset review hearing, CSLB's complaint disclosure policy has worked a hardship on many consumers who have in good faith consulted with CSLB in an attempt to check on the background of a contractor before hiring him/her. In many notorious cases, CSLB has informed consumers that a contractor's license is "clear" or "in good standing" when, in reality, a large number of complaints were pending and under investigation. Understandably, consumers become quite upset when they are later victimized by such a contractor.

As directed in SB 2029,¹⁴⁷ CSLB recently appointed a task force to review the impacts of its complaint disclosure policy. The task force's final report, issued in April 2001, analyzes the various steps of a complaint moving through the Board's enforcement system. Those steps include (1)

¹⁴⁷ See Bus. & Prof. Code § 7021(e).

intake/mediation, (2) arbitration (referred after intake/mediation), (3) investigation, (4) arbitration (referred after investigation), (5) referred for legal action, and (6) legal action taken. Currently, complaints are disclosed only after they reach step (5) of the process, and—if they reach step (6)—they are disclosed forever. The Task Force recommended that CSLB sponsor legislation providing that complaints that (a) have not been settled in the Board's Intake/Mediation Unit, (b) are non-technical in nature and should be further investigated for legal action, and (c) have not been referred to arbitration should be disclosed if a Board investigator finds that probable violation has occurred, the investigator's supervisor agrees, and the alleged violation would warrant a legal action. Such a complaint would be disclosed with a disclaimer that the complaint is only an allegation and is under investigation. The Task Force also recommended that the Board limit the time period during which CSLB disciplinary actions are disclosed. The Task Force suggested that the Board disclose revocations and suspensions for a minimum of seven years, and citations for a period of five years.

The Task Force's recommendations, which were approved by the Board, have been amended into SB 135 (Figueroa), a CSLB-sponsored bill which has been passed by the Legislature and is currently awaiting the Governor's approval. Under SB 135, effective July 1, 2002, CSLB is required to disclose complaints that "have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution."

CSLB and Senator Figueroa appear to have arrived at a solution that is more protective of consumers yet fair to contractors. Under SB 135, not every pending complaint will be disclosed. Complaints that are resolved or referred for arbitration will not be disclosed, thus preserving the ability of legitimate contractors to resolve disputes without disclosure. Only those complaints containing allegations that, if true, "would present a risk of harm" justifying suspension, revocation, or criminal prosecution will be disclosed; minor complaints will remain confidential unless referred for legal action. Further, prior to disclosure, those complaints must be investigated, reviewed by a CSLB supervisor, and referred for further investigation because the supervisor is persuaded that evidence of a "probable violation" exists. Finally, the required disclaimer will inform consumers that the complaint is still in the allegation stage. The Monitor supports SB 135.

In addition to expanding its complaint disclosure policy, CSLB should explore the possibility and desirability of disclosing other information about contractor behavior that is relevant to consumer

choice and consumer protection. At CSLB's 1998 hearings on its complaint disclosure policy, many consumers expressed keen interest in learning of civil judgments and settlements, criminal convictions, and bankruptcy filings by contractors. Currently, CSLB does not disclose any of this information to inquiring consumers, despite the fact that it is *public information*. Nor does the Board inform inquiring consumers that it does not disclose convictions, civil judgments/settlements, or bankruptcies, possibly giving consumers a false sense of security that these events have not occurred. The Monitor supports collection and disclosure of public information about contractor misconduct.

Recommendation #28: Simplify and clarify the CSLB Web site, explaining technical terminology and providing more user-friendly access to complaint disclosure information.

Discussion: Consistent with Business and Professions Code section 27(b)(11), CSLB has established an Internet Web site to provide information about its licensees. The site discloses identifying information about contractors, including name, address, telephone number, license number, types of license(s) held and license expiration date(s), and bonding and workers' compensation insurance information. It also contains an online complaint form that can be completed and returned to CSLB online.

While helpful, CSLB's Web site suffers from a number of problems which make it decidedly "consumer-unfriendly." It fails to explain terms of art which may have meaning to CSLB but which have no meaning whatsoever to consumers (*e.g.*, "V/S," "RMO," "P/S/T"). At the very least, it should contain a "glossary of terms" with understandable definitions of these acronyms. The Web site also uses undefined legal jargon and several incorrectly defined legal terms. For example, an "accusation" is not a "disciplinary action that has been referred to the Attorney General"; it is a statement of written charges filed by the Attorney General after a completed Board investigation. While the term "legal action" sounds to a consumer like an "action taken," CSLB uses that term to mean a completed investigation that has been "referred for legal action." Further, the Web site fails to provide the dates of any accusation filed and/or legal action taken — an important omission. Perhaps with the assistance of a consumer focus group, CSLB should undertake a full review of the information provided on its Web site and revise it accordingly. The site could be extremely valuable to consumers if it were improved in several critical areas.

Recommendation #29: Add appropriate information to Web site regarding unlicensed contractors with substantial numbers of complaints or actions.

Discussion: Both consumers and law enforcement officials have called for improved information on CSLB's Web site regarding *unlicensed* contractors who have been the subjects of sanctions or substantial numbers of complaints.¹⁴⁸ CSLB already invests considerable resources in tracking and/or punishing these unlicensed operators, and accurate information indicating a pattern of problems with particular contractors would be important to consumers in making wise choices among contractors. There is no valid public policy reason not to include an appropriate computerized category of those unlicensed contractors with substantial records of complaints and/sanctions, which information could be accessed by consumers checking the backgrounds of contractors. Benefits would include improved consumer awareness of problem contractors, and increased deterrence of unlicensed contracting.

Recommendation #30: Add a Web site link to Better Business Bureau Web sites, with an appropriate disclaimer that CSLB does not approve, endorse, or take responsibility for information at those sites.

Discussion: The goal of CSLB's public disclosure and outreach effort should be a better informed public capable of protecting itself from fraudulent or incompetent contractors. CSLB's Web site serves this goal in important ways, but other information now accessible on the Internet can also help educate and protect consumers. The Better Business Bureau (BBB) affiliate organizations in California today have their own consumer-friendly Web sites which convey a great deal of useful information to consumers regarding the reputations of contractors and other businesses in their communities.

BBB information on complaints and actions against contractors is highly relevant and useful to California consumers. CSLB should consider providing an Internet link to its Web site to the appropriate California BBB Web sites. Careful attention should be given to developing an adequate disclaimer notice, so that consumers understand that CSLB is not responsible for and does not verify, approve, or endorse the BBB information. But with adequate disclaimers to minimize misunderstandings, this convenient linkage to other important consumer information from a proven source would greatly assist consumers who are engaging in the careful research and contractor screening behavior that CSLB encourages.

¹⁴⁸ See Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at section I ("Public Disclosure and Public Outreach").

Recommendation #31: Promote the fraud alert system by increasing the use and visibility of the system for alerting other law enforcement agencies and the public.

Discussion: In recent years CSLB has made efforts to provide fraud alerts and warnings regarding known contractor frauds and scams to the public and to the law enforcement community.¹⁴⁹ These previous efforts have been beneficial, but our information suggests that many law enforcement agencies and much of the public are unaware of these warning messages. Consumer fraud is a uniquely preventable form of crime, and additional efforts to provide advance alerts are well worth CSLB's resource investment. Consideration should be given to various cost-effective means of improving the dissemination of this valuable information, including programs with the mass media, such as regular public service announcements, and linkage with pre-existing information networks, such as the California District Attorneys Association Consumer Protection Information Network (CPIN).

I. Consumer Remedies

Recommendation #32: Increase bond amount to a realistic contemporary level (a minimum of \$15,000), and **revise bonding and/or payment requirements for home improvement projects to address "double payment" and mechanic's lien problems** (including either required payment bonds for home improvement projects in excess of \$10,000, mandatory joint control or joint signature payments, or a similar alternative).

Discussion: As described previously, a primary concern regarding CSLB's enforcement program is the near complete inadequacy of existing remedies for consumers victimized by contractor misconduct.¹⁵⁰ Reform of consumer remedies in the contracting industry is an issue of great complexity; it has been the subject of numerous previous and ongoing evaluations.¹⁵¹ The Monitor's project is conducting its own continuing inquiry into the various options for reform, and the final results of that inquiry will appear in subsequent reports.

¹⁴⁹ *See id.*

¹⁵⁰ *See* Ch. VI ("Initial Concerns of the Enforcement Program Monitor") at subsection J ("Consumer Remedies").

¹⁵¹ *See, e.g.,* California Law Revision Commission, *Mechanic's Liens: General Statutory Revision* (Study H-820), under way since June 28, 1999; Contractors State License Board, *The Use of Surety Bonds and Insurance to Compensate Homeowners for Losses Caused by Licensed Contractors* (Oct. 1, 2001); Contractors State License Board, *Analysis of State Recovery Funds* (Oct. 1, 2001); and sources cited in note 29.

The clear consensus of all those we have consulted is that this complex issue is of paramount importance to consumers and warrants CSLB's highest possible commitment to identifying and implementing concrete solutions. This commitment will almost certainly need to take the form of support for new legislation providing viable remedies for consumer victims.

Although our inquiry is still preliminary, we have identified both key aspects of this problem and promising potential solutions for consideration in the public dialogue on reform proposals. There are two fundamental aspects of consumer harm in construction matters:

(1) The problem of potential double payments when consumers have already paid unscrupulous or incompetent contractors who have failed to pay subcontractors, materials suppliers, and laborers, giving rise to mechanic's liens or demands for duplicative payment; and

(2) The problem of consumer losses, damages, or needed repairs when a contractor fails to perform properly.

In order for there to be adequate prospects for consumer redress in cases of fraud or misconduct, each of these keys aspects must be addressed.

The Monitor believes there are promising potential solutions for the problems of double payments and mechanic's liens. Any viable solution must address the legitimate needs of third parties, including innocent subcontractors, materials suppliers, and laborers, as well as those of the consumer victims. CSLB should focus consideration on revisions to present bonding requirements applicable to home improvement and residential contracting, and/or revisions of payment systems required for such contracting. In particular, CSLB should strongly consider seeking authority to require, for specified forms of consumer contracting (such as home improvement projects in excess of \$10,000), that its licensees either post appropriate payment bonds, thus guaranteeing payment for those who provide goods or services and freeing consumers from potential mechanic's lien liability, or use joint control or joint signature payment methods to ensure that consumer payments reach the appropriate third parties. One or both of these solutions, or similar alternatives, would provide far improved protection to consumers for the first aspect of potential consumer harm in contracting matters.

If a solution of this kind can be implemented to address third-party claims against consumers, then an increase in the contractor's license bond to a realistic level would hold out a meaningful prospect of consumer recovery for losses and damages. Today's \$7,500 contractor's bond does not

generally provide a significant remedy in part because third-party claimants often stand in line ahead of consumers. If third parties are already paid, then the contractor's bond could be accessible to consumers on a practical level. The Monitor believes the current \$7,500 bond amount should be increased to a more realistic contemporary amount of a minimum of \$15,000. Even this comparatively modest bond amount becomes more relevant if consumers are the primary claimants on the bond. Such an increase would represent only a minimal adjustment for inflation to the existing bond requirement, and is clearly justified.

These and other remedial alternatives will be the subjects of extended analysis in later Monitor reports,¹⁵² but viable alternatives to the unsatisfactory status quo have already been identified and the public dialogue on consumer remedies should go forward with a sense of renewed urgency.

Recommendation #33: Promote consumer enforcement of legal limits on excess down payments by requiring a clear and conspicuous consumer disclosure on all home improvement contracts regarding maximum down payments pursuant to Business and Professions Code section 7159(d) (*e.g.*, “DO NOT SIGN THIS CONTRACT, AND DO NOT MAKE ANY PAYMENT, IF YOUR CONTRACTOR IS ASKING YOU FOR A DOWN PAYMENT OF MORE THAN 10% OF THE TOTAL CONTRACT PRICE OR \$1000, WHICHEVER IS LESS”).

Discussion: Business and Professions Code section 7159 governs excess down payments in home improvement contexts and limits those payments to 10% of the contract price or \$1,000, whichever is less. Unfortunately many consumers remain unaware of this limitation and many succumb to contractor requests for improper excess down payments. Abuse of the down payment is a principal means by which unscrupulous or failing contractors victimize consumers.

The problem of consumer overpayment of deposits is one for which a consumer information remedy could be effective. A clear, conspicuous, and simple disclosure, placed immediately above the consumer's signature line on a contractor's contract, would materially reduce the number of consumers who overpay contractors in violation of the law.

Note: A number of other issues and potential recommendations will be addressed in further detail in subsequent Monitor reports (for a partial listing, *see* Chapter VIII, “Issues and Potential Recommendations for Consideration in Subsequent Reports”).

¹⁵² *See* Ch. VIII (“Issues and Potential Recommendations for Future Reports”).

Chapter VIII

ISSUES AND POTENTIAL RECOMMENDATIONS FOR FUTURE REPORTS

A number of additional issues and potential recommendations are the subject of continuing study by the Monitor's project and will be addressed in subsequent Monitor reports. The following partial listing of additional issues is intended only to solicit further input and stimulate public dialogue on these subjects; no inference should be drawn from the presence of issues on this list or the absence of other issues.

Other issues to be addressed by our continuing inquiry include:

- Contractor licensing system: The philosophy and structure of California contractor licensing and its emphasis on entity rather than individual licensing and responsibility.
- Contractor licensing system: Exceptions to current licensing requirements and the continuing validity of those exceptions.
- Contractor licensing system: The substance and benefits/shortcomings of the current home improvement contractor certification program.
- Contractor licensing system: Contractor education and proposals for continuing education or training requirements.
- Contractor licensing system: The sufficiency of the existing registration program for home improvement salespersons.

- Management structure and information systems: Adequacy of use of modern technology in enforcement process.
- Investigations: The ratio of home improvement/residential complaints to commercial complaints.
- Investigations: Contractor file access authority.
- Investigations: Tracking of contractor/owner payments received and work performed; including potential tracking of deposit payments and patterns of problems in payments to third parties; potential for developing problem contractor profiles.
- Investigations: The Industry Expert Program.
- Arbitration: The use of outside arbitrators; qualifications of arbitrators; possible abuse of the arbitration system by repeat or egregious offenders.
- Prosecutions: Analysis of relationship with and service from Attorney General's Licensing Section.
- Prosecutions: *Terminix* rule and notice policy.
- Prosecutions: Role of Registrar in disciplinary decisionmaking.
- Consumer remedies: Recovery fund proposals and alternatives such as escrow fund-type requirements or similar programs.
- Consumer remedies: Bond requirement alternatives; mechanic's lien issues.
- Consumer remedies: Service and repair contracts (including issues raised by AB 264 (Correa); right of rescission and issues concerning applicable dollar limits.
- Consumer remedies: General liability insurance and workers' compensation insurance issues.

Chapter IX

CONCLUSION

As mandated by Business and Professions Code section 7092, this Initial Report has presented a critical analysis of the Contractors State License Board's disciplinary process for the purpose of improving that process, and has offered a number of initial recommendations for improvement. However, we are also pleased to report that there is much that is good at the Contractors State License Board and that progress is being made on important fronts. In particular, we have found:

- **A dedicated and hardworking CSLB staff** of more than 450 employees;
- **New Registrar Stephen Sands and Chief Deputy Registrar Linda Brooks**, who bring impressive management skill and vision, and who are rapidly responding to the organizational problems facing CSLB, including many of those described in this Initial Report;
- **Experienced senior managers with extensive system knowledge** and an overall constructive attitude toward institutional change and improvement;
- **A conscientious and public-spirited Board** with a commitment to public protection; and
- **Substantial progress on important issues** such as: rebuilding the enforcement program structure after the calamitous 1999–2000 reengineering project; improving public disclosure of complaint information; formation of units to address organizational needs for improved training (EAST) and more proactive enforcement (SWIFT); improvements in meeting licensing time frame guidelines; new occupational analyses and testing materials; needed revisions to key operational and training manuals such as the Complaint Handling Manual; increased efforts at sweep and sting operations; and beneficial public education materials and Web-based public access, among others.

However, CSLB must continue to address substantial shortcomings in meeting its statutory obligation to protect California consumers. If given adequate resources, CSLB should be expected and required to achieve significant improvements in:

- **Screening of licensees** to reduce threats to the public;
- **Timely and efficient handling of consumer complaints** by a well-trained staff utilizing consistent criteria and procedures;
- **Effective and consistent enforcement actions** taken against both licensed and unlicensed law violators; and
- **Readily available and adequate remedies for consumer victims** of illegal or substandard contracting.

To help promote and document such improvements, the CSLB Enforcement Program Monitor will continue to work closely for the statutory term with the Legislature, the Department of Consumer Affairs, CSLB and its management and staff, the construction industry, and the public whose protection is the agency's central mandate.

APPENDIX

Full Text of Senate Bill 2029 (Figueroa)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SEC. 1. Section 7000.5 of the Business and Professions Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 7001 of the Business and Professions Code is amended to read:

7001. All members of the board, except the public members, shall be contractors actively engaged in the contracting business, have been so engaged for a period of not less than five years preceding the date of their appointment and shall so continue in the contracting business during the term of their office. No one, except a public member, shall be eligible for appointment who does not at the time hold an unexpired license to operate as a contractor.

The public members shall not be licentiates of the board.

SEC. 3. Section 7002 of the Business and Professions Code is amended to read:

7002. (a) One member of the board shall be a general engineering contractor, two members shall be general building contractors, two members shall be specialty contractors, one member shall

be a member of a labor organization representing the building trades, one member shall be an active local building official, and eight members shall be public members, one of whom shall be from a statewide senior citizen organization.

(b) No public member shall be a current or former licensee of the board or a close family member of a licensee or be currently or formerly connected with the construction industry or have any financial interest in the business of a licensee of the board. Each public member shall meet all of the requirements for public membership on a board as set forth in Chapter 6 (commencing with Section 450) of Division 1. Notwithstanding the provisions of this subdivision and those of Section 450, a representative of a labor organization shall be eligible for appointment to serve as a public member of the board.

(c) Each contractor member of the board shall be of recognized standing in his or her branch of the contracting business and hold an unexpired license to operate as a contractor. In addition, each contractor member shall, as of the date of his or her appointment, be actively engaged in the contracting business and have been so engaged for a period of not less than five years. Each contractor member shall remain actively engaged in the contracting business during the entire term of his or her membership on the board.

(d) Each member of the board shall be at least 30 years of age and of good character. In addition, each member shall have been a citizen and resident of the State of California for at least five years next preceding his or her appointment.

(e) For the purposes of construing this article, the terms “general engineering contractor,” “general building contractor,” and “specialty contractor” shall have the meanings given in Article 4 (commencing with Section 7055) of this chapter.

SEC. 4. Section 7003 of the Business and Professions Code is amended to read:

7003. Except as otherwise provided, an appointment to fill a vacancy caused by the expiration of the term of office shall be for a term of four years and shall be filled, except for a vacancy in the term of a public member, by a member from the same branch of the contracting business as was the branch of the member whose term has expired. A vacancy in the term of a public member shall be filled by another public member. Each member shall hold office until the appointment and qualification of his

or her successor or until the office is deemed to be vacant pursuant to Section 1774 of the Government Code, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint four of the public members, including the public member who is from a statewide senior citizen organization, the local building official, the member of a labor organization representing the building trades, and the five contractor members qualified as provided in Section 7002. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members.

SEC. 5. Section 7007 of the Business and Professions Code is amended to read:

7007. Eight members constitute a quorum at a board meeting. Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by the bylaws.

SEC. 6. Section 7011.7 of the Business and Professions Code is amended to read:

7011.7. (a) The registrar shall review and investigate complaints filed in a manner consistent with this chapter and the Budget Act. It is the intent of the Legislature that complaints be reviewed and investigated as promptly as resources allow.

(b) The board shall set as a goal the improvement of its disciplinary system so that an average of no more than six months elapses from the receipt of a complaint to the completion of an investigation.

(c) Notwithstanding subdivision (a), the goal for completing the review and investigation of complaints that, in the opinion of the board, involve complex fraud issues or complex contractual arrangements, should be no more than one year.

SEC. 7. Section 7021 is added to the Business and Professions Code, to read:

7021. The board shall conduct the following studies and reviews, and shall report to the department and the Legislature no later than October 1, 2001.

(a) The board shall conduct a comprehensive study of the issues surrounding home improvement contracts that involve home equity lending fraud and scams, and provide recommendations to deal with this problem.

(b) The board shall conduct a comprehensive study of its reorganization (“reengineering”) plan to restructure intake, mediation, and investigation services, and evaluate the impact this effort has had on consumer and industry access to board staff, its ability to reduce timeframes for complaint processing and investigations, increasing mediations, investigations, and legal actions, productivity of staff, and overall costs to the board.

(c) The board shall conduct a comprehensive study and review of recovery fund programs in California and other states which provide compensation to consumers for financial injury caused by a licensed professional. It should evaluate the effectiveness of these programs and whether such a recovery fund could benefit consumers who are harmed as a result of contractor fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts.

(d) The board shall conduct a comprehensive study in consultation with the Department of Insurance, on the use of surety bonds to compensate homeowners for financial injury sustained as a result of a contractor’s fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts. This study shall include consideration of the payout criteria of bonds, increasing the bond amount, a “step-bonding” approach based on the amount of the prime contract, and the requirement of performance or payment bonds. This study shall additionally consider whether to require contractors to carry general liability insurance and whether to establish a guarantee program in order to provide the appropriate insurance and bond coverage in connection with a homeowner's employment of a contractor.

(e) The board shall review its current disclosure policy and provide recommended changes.

SEC. 8. Section 7065.05 of the Business and Professions Code is amended to read:

7065.05. (a) The board shall periodically review and, if needed, revise the contents of

qualifying examinations to insure that the examination questions are timely and relevant to the business of contracting. The board shall, in addition, construct and conduct examinations in such a manner as to preclude the possibility of any applicant having prior knowledge of any specific examination question.

(b) The board shall establish a priority list and schedule for the completion of an occupational analysis of its current examinations. The board shall complete this analysis with respect to those examinations having the highest and moderately high need for revision by July 1, 2001, and complete this analysis with respect to all remaining examinations for revision by July 1, 2002.

SEC. 9. Section 7092 is added to the Business and Professions Code, to read:

7092. (a) (1) The director shall appoint a Contractors' State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary

matters or procedures, appropriate utilization of licensed professionals to investigate complaints, the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than August 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until January 31, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 31, 2003, deletes or extends that date.

SEC. 10. Section 7159.3 is added to the Business and Professions Code, to read:

7159.3. (a) A home improvement contract and an estimate for home improvement work shall be accompanied by and include all of the following:

(1) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner or tenant to verify the contractor's insurance coverage and status.

(2) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(3) A checklist prepared by the board through regulation setting forth the items that an owner contracting for home improvement should consider when reviewing a proposed home improvement contract.

(b) This section shall become operative three months after the board adopts the regulations referenced in paragraph (1) of subdivision (a).

SEC. 11. Section 7164 of the Business and Professions Code is amended to read:

7164. (a) Notwithstanding Section 7044, every contract and any changes in a contract, between an owner and a contractor, for the construction of a single-family dwelling to be retained by the owner for at least one year shall be evidenced in writing signed by both parties.

(b) The writing shall contain the following:

(1) The name, address, and license number of the contractor.

(2) The approximate dates when the work will begin and be substantially completed.

(3) A legal description of the location where the work will be done.

(4) The language of the notice required pursuant to Section 7018.5.

(5) (A) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner to verify the contractor's insurance coverage and status.

(B) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(c) The writing may also contain other matters agreed to by the parties to the contract. The writing shall be legible and shall clearly describe any other document which is to be incorporated into the contract. Prior to commencement of any work, the owner shall be furnished a copy of the written agreement, signed by the contractor.

The provisions of this section are not exclusive and do not relieve the contractor from compliance with all other applicable provisions of law.

(d) Every contract subject to the provisions of this section shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.

(e) The requirements in paragraphs (5) of subdivision (b) shall become operative three months after the board adopts the regulations referenced in subparagraph (A) of paragraph (5) of subdivision (b).