

SB 541 (Price) – Regulatory Boards: Expert Consultants

Introduced February 27, 2011, Chaptered September 26, 2011

Background

DCA boards and bureaus regularly enlist the expertise of their own licensees to assist with evaluating investigative documents, applications, educational and examination materials. Rather than placing these "subject matter experts" on payroll, they are hired as consultants on an as-needed basis. Subject matter experts are paid an hourly fee for the services they provide, which typically include: 1) Providing expert opinion in enforcement matter from the initial review through testifying at a hearing; 2) Evaluating applications for applicant licensure; 3) Evaluating curriculum content and other requirements for school or program approval; and 4) Developing professional licensing exams.

For years, these consultants were not required to enter into formal contract agreements, which can be laborious, cumbersome and time-consuming to execute. The boards and bureaus operated with customized agreements that did not require the review or approval of oversight entities. This process allowed the boards and bureaus to select a consultant and get them started on the services in a matter of days, rather than weeks or months. However, on November 10, 2010, DCA issued a memorandum instructing the boards and bureaus that they are now required to enter into formal consulting services contracts that follow all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public Contract Code.

The memo states that DCA recognized the potential for delays in obtaining consulting services and indicated that a rollout plan will be developed to minimize the impact to licensing and enforcement units.

Difficulties in identifying, hiring and training subject matter experts were identified as a problem and a reason for delays in completing enforcement cases by DCA's own Consumer Protection Enforcement Initiative (CPEI) in June 2010. The CPEI is a comprehensive plan to address long-standing enforcement backlogs, including an intense review of pending cases at the Division of Investigation, recommended regulatory changes, and an enhanced tracking of pending cases. CPEI was created in direct response to a series of articles that ran in the Los Angeles Times, beginning in July 2009, which highlighted extreme delays in investigating and prosecuting enforcement cases at the Board of Registered Nursing. When developing CPEI, DCA conducted a review of existing enforcement processes which identified systemic problems for all of the DCA boards, not just Board of Registered Nursing, that limits the boards' abilities to investigate and act on cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. The CPEI is designed to overhaul the enforcement process at the healing arts boards and to address the following three specific areas: administrative improvements, staffing and information technology improvements, and legislative changes.

Existing law:

1. Provides for the licensing and regulation of various professions and businesses by some 23 boards, four committees, seven bureaus, and one commission within the Department of Consumer Affairs (DCA) under various licensing acts within the Business and Professions Code (BPC).
2. Licenses and regulates chiropractors by State Board of Chiropractic Examiners (SBCE) under the Chiropractic Act, enacted by initiative.
3. Licenses and regulates osteopathic physicians and surgeons by the Osteopathic Medical Board (OMB) under the Osteopathic Act.
4. Generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law.
5. Establishes standards relating to personal service contracts in state employment, and authorizes their use under specified circumstances, including: a) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system; b) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system; and c) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.
6. Requires, under the State Contract Act, state agencies to meet certain conditions before entering into a consulting services contract (personal services contract).

This bill, effective immediately:

1. Authorizes any board, within DCA, the SBCE, and the OMB to enter into an agreement, as specified, with an expert consultant to do any of the following: a) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing; b) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses; and c) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.
2. Specifies that an executed contract between a board and an expert consultant shall be exempt from the State Contract Act.
3. Requires each board to establish policies and procedures for the selection and use of these consultants.
4. Specifies nothing in this bill expands the scope of practice of an expert consultant providing services.



September 8, 2011

The Honorable Edmund G. Brown, Jr.
Office of the Governor
State Capitol
Sacramento, CA 95814

RE: SB 541 (Price)
Position-Board of Psychology support for Governor's signature

Dear Governor Brown,

The Board of Psychology would request your signature on SB541 (Price).

This bill would enable our Board to continue improving our timeframes for resolution of matters involving the consumer by streamlining the process in contracting with subject matter experts. These experts review disciplinary cases, testify at administrative hearings and assist in examination development.

Thank you for your consideration.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert I. Kahane", with a long horizontal flourish extending to the right.

Robert I. Kahane, Executive Officer
California Board of Psychology

Senate Bill No. 541

CHAPTER 339

An act to add Section 40 to the Business and Professions Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2011. Filed with Secretary of State September 26, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 541, Price. Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 40 is added to the Business and Professions Code, to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.

(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

(d) Nothing in this section shall be construed to expand the scope of practice of an expert consultant providing services pursuant to this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.