



**DATE:** February 1, 2010

**TO:** Board Members

**FROM:** Angelina Martin  
Enforcement Division Chief

**SUBJECT:** Enforcement Report: Consumer Protection Enforcement Initiative Items

## **I. Consumer Protection Enforcement Initiative**

In 2009, various media articles reported that most Department of Consumer Affairs (DCA) health care boards were taking over three years to complete the investigations and take appropriate disciplinary actions against licensees. As a result, Governor Arnold Schwarzenegger directed the State and Consumer Services Agency (SCSA) to conduct an internal review of all the health care board's enforcement programs and the DCA Division of Investigation (DOI). The SCSA found that most of the health care boards face significant complaint investigation backlogs and processing delays. The Governor charged the DCA Director, Brian Stiger, with reforming the current enforcement process for the health care boards.

The DCA moved quickly to implement the Consumer Protection Enforcement Initiative (CPEI). Pending passage of the Fiscal Year (FY) 2010/11 budget, specific DCA health care boards will receive additional staff including non-sworn investigators to address the enforcement backlogs and improve investigative processing times. A separate departmental BCP was also submitted for a state-of-the-art integrated database to support licensing and enforcement, replacing the current Applicant Tracking System and the Consumer Affairs System. Specifically, the following budget change proposals (BCPs) are underway:

- CPEI – Departmental BCP 1A – On January 8, 2010, the Governor's Budget was released and the DCA received tentative approval to hire 138.5 staff to address the enforcement backlogs and improve investigative processing times for various health care boards. The positions are approved in stages over the next two fiscal years. Of the 138.5 positions, the Board received approval for **15.5 positions** (i.e., 13.0 VN positions and 2.5 PT positions). This BCP must be approved by the Legislature and signed by the Governor for FY 2010/11.
- CPEI – Departmental BCP 1B – Additionally, DCA received tentative approval to redirect existing iLicensing Project funds and received a budget augmentation beginning in FY 2011/12 through FY 2014/15 to support the procurement, solution and implementation of an integrated licensing and enforcement system. This BCP must also be approved by the Legislature and signed by the Governor for FY 2010/11.

In conjunction with expanded staff and better tracking systems, the DCA established a new position, Deputy Director of Enforcement & Compliance, to assess each board's enforcement program and to ensure continuous improvements. The DCA is developing enforcement performance measures to determine the effectiveness of efforts to streamline enforcement processes, reduce backlogs and achieve the overall goal to process complaints within 12-18 months. In addition, the DCA is pursuing extensive statutory changes to make the enforcement processes more efficient. Senate Bill 294 (Negrete-McLeod) will address the statutory mandates for these changes. The bill will be known as the Consumer Health Care Enforcement Reform Act.

(See Attachment A – DCA Handout on the CPEI and Frequently Asked Questions)

## **II. Background & Overview of the Board's Enforcement Program**

The Board of Vocational Nursing and Psychiatric Technicians (Board) protects the consumer from unprofessional and unsafe licensed vocational nurses (LVNs) and psychiatric technicians (PTs). Public protection is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions.

The majority of the Board's enforcement cases involve licensees who have violations related to incompetence, gross negligence, physical and sexual abuse, elder abuse, substance and alcohol abuse, drug diversion, prescription forgeries, sale of controlled substances, theft, and fraud.

To pursue disciplinary action against a licensee, the Board utilizes the services of the DCA Division of Investigation (DOI) and the Attorney General's (AG) Office. The DOI investigators conduct the actual investigation, interview witnesses, serve the subpoenas on employers and health care facilities to obtain the necessary medical reports, and gather the relevant evidence to take disciplinary action. The AG's Office prepares the legal pleadings and represents the Board at the administrative hearings.

Therefore, as each enforcement case progresses through the complaint and disciplinary process, numerous case reviews are required dependent upon the complexity of the case and disciplinary action warranted. Multiply these ongoing reviews against the total number of cases received and the enforcement workload becomes enormous. Moreover, without sufficient staff, backlogs and case aging continue to grow.

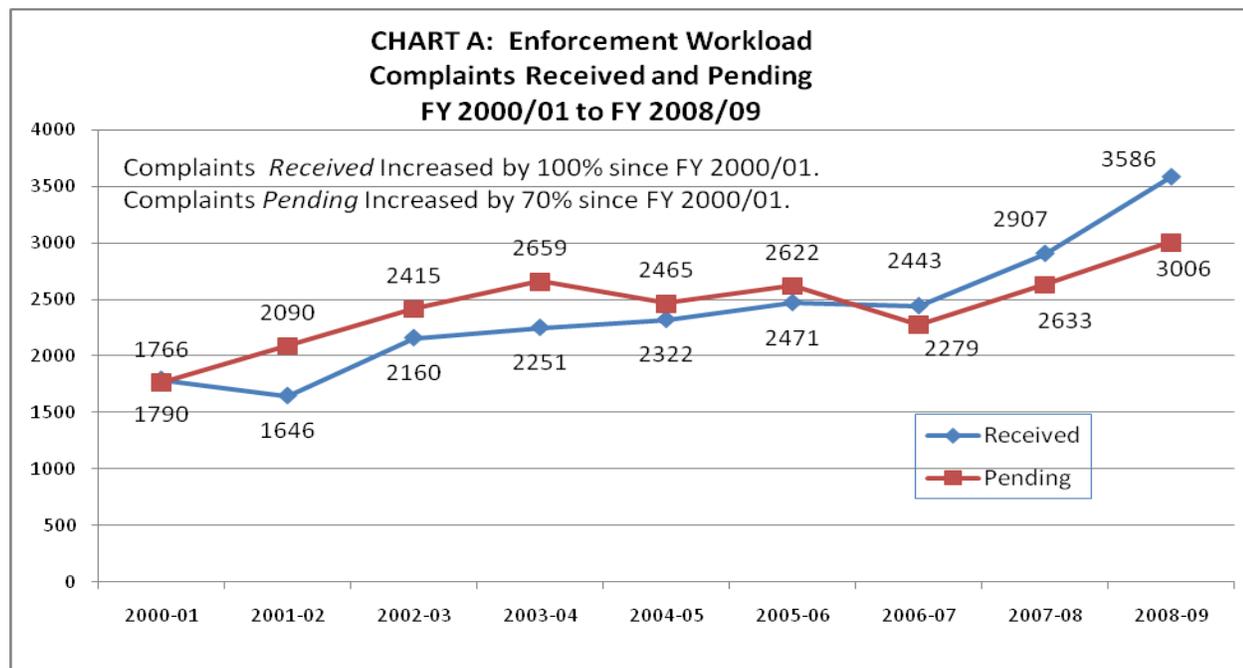
As stated previously, dependent upon the case complexity and disciplinary action warranted, the Board's enforcement analysts must review an enforcement case whenever new documentation is received (e.g., additional evidence from complainant, RAP Sheets, final investigative reports, legal pleadings, settlement hearings, proposed decisions, etc.). Therefore, the enforcement analyst must be able to perform a multitude of very complex enforcement-related activities that include review and analysis of:

- Applicant & Licensee *Criminal Conviction* Reports
- New Complaint Information
- Certified Court Documents & Police Reports
- Department of Justice and Federal Bureau of Investigation RAP Sheets & Subsequent Arrest Reports
- Penal Code 23 and Interim Suspension Orders follow up requirements
- DCA Division of Investigation Requests & Final Investigation Reports

- Expert Opinion Requests & Final Reports
- Attorney General Transmittal Documentation
- Accusations & Statement of Issues
- Criminal Actions Filed & Follow Up Reports
- Subpoena Request Processing
- Administrative Hearings & Witness Requirements
- Proposed Decisions
- Stipulated Settlement Negotiations
- Default Decisions Prepared & Served to Respondents
- Reinstatement Hearings & Petitions to Modify Terms of Probation
- Probation Monitoring, Biological Drug Screens & Petitions to Revoke Probation
- Citation & Fines, Informal Citation Conferences & Remediation Meetings
- Attorney General Request for Case Clarifications & Expanded Expert Testimony Requirements
- Board Member Mail Ballot Voting Requirements
- General correspondence inquiries, Board/Committee Reports, etc.
- Response to numerous telephone inquiries from investigators, attorneys, applicants, licensees and the public

### III. General Statistics

Chart A shows the increase in the enforcement workload for the past nine years (i.e., FY 2000/01 through 2008/09). The number of complaints “received” increased by 100% and the number of complaints “pending (as of June 30<sup>th</sup>)” increased by 70%.



The table below summarizes the volume and processing times involved with the Enforcement Program over the past five fiscal years.

<b>Table #1: Enforcement Program</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>
Complaints Received (Licensees)	1,291	1334	1,249	1,506	2,013
Complaints Received (Applicants)	1,031	1,137	1,194	1,401	1,573
<b>Total Complaints Received</b>	<b>2322</b>	<b>2471</b>	<b>2,443</b>	<b>2,907</b>	<b>3,586</b>
Total Complaints Pending	2465	2622	2279	2633	3006
Investigations Referred to DOI <sup>1</sup>	113	61	172	190	140
Investigations Closed					
Licensee Investigations Conducted by Staff	1,192	1,697	1,570	1,394	1,522
Licensee DOI Investigations	162	111	88	66	137
Applicants Approved/Cleared	991	1,258	1,051	1,023	1,474
Applicants Denied (In-House)	12	14	19	34	24
<b>Total Investigations Closed:</b>	<b>2,357</b>	<b>3,080</b>	<b>2,728</b>	<b>2,517</b>	<b>3,157</b>
Cases Referred to AG's Office	196	216	188	326	226
Accusations Filed	145	124	176	203	183
Disciplinary Actions Taken	160	159	179	185	199
Statement of Issues Filed	3	2	8	31	32
Licenses Denied (Adjudicated)	2	7	2	5	9
<b>Average Complaint Processing Times (in days)</b>					
Investigations Conducted In-House	122	119	334	154	176
Investigations Conducted by DOI	388	536	539	475	665
<b>Total Investigations <sup>2</sup></b>	<b>510</b>	<b>655</b>	<b>873</b>	<b>629</b>	<b>841</b>
Pre-Accusations <sup>3</sup>	285	324	309	182	150
Post Accusations <sup>4</sup>	542	362	475	336	423
<b>Total Average Days</b>	<b>1,337</b>	<b>1,341</b>	<b>1,657</b>	<b>1,147</b>	<b>1,414</b>
<b>Total Average Years</b>	<b>3.7</b>	<b>3.7</b>	<b>4.5</b>	<b>3.1</b>	<b>3.9</b>
<sup>1</sup> DOI = DCA Division of Investigation <sup>2</sup> Includes informal investigations conducted by Board Staff and formal investigations conducted by DCA DOI. Data does not include applicants. <sup>3</sup> From completed investigation to formal charges filed by the AG's Office. <sup>4</sup> From formal charges filed by the AG's Office to conclusion of disciplinary case.					

As shown in Table #1, the Board's enforcement workload continues to increase. Current and projected factors impacting the Board's increased workload and pending backlogs are:

- Retroactive Fingerprinting – Board records currently indicate that over 1,000 enforcement cases were received in 2009 as a direct result of retroactive fingerprinting. Although the Board received approval to hire 5.0 “enforcement” staff for this function, the positions were approved *in stages* over three fiscal years beginning October 1, 2009. The other 10.5 positions were approved for the Licensing Division and were approved in stages over four fiscal years. By FY 2012/13, only 6.0 permanent staff positions will remain. All other positions are limited term and will expire on June 30, 2012.
- Investigations – Currently, the Board's formal investigations are handled by the DCA DOI. Effective July 1, 2010, DCA DOI will only handle cases requiring “sworn” investigators with peace officer status. The Board will handle cases involving “non-sworn” investigators. New program functions relative to the recruitment and training of non-sworn investigators is now required.

- Furlough Fridays – From 2/1/2009 through 6/30/2010, state employee are required to take a total of 46 furlough days. For the Enforcement Division, this equates to the loss of 1,150 work days or 9,200 work hours. This is equivalent to a 20% reduction in enforcement staff.

#### **IV. Upcoming Events**

Substance Abuse Coordination Committee (SACC) – On November 16, 2009, the SACC adopted sixteen uniform standards for substance-abusing healing arts licensees as required by Senate Bill 1441 (Chapter 548, Statutes of 2008). The SACC was tasked with developing these standards by January 1, 2010.

The SACC was comprised of the Executive Officers of all healing arts boards, the Director of DCA and the State Medical Director of the Department of Drug and Alcohol Programs. The Board's Executive Officer was a member of the SACC and attended the required meetings throughout the year. Additionally, a work group was established to assist the SACC. Marilyn Kimble, Probation Monitor, participated as a member of the work group and also attended several group and SACC meetings throughout the year.

The DCA Director has encouraged the boards to promptly implement those standards that do not require legislation or regulatory changes. He also requested that the boards develop proposed statutory and/or regulatory changes, as needed, to fully implement the standards. The Board is working with our DCA Legal Counsel to determine the statutory and regulatory changes needed to implement the uniform standards.

Enclosure:

Attachment A – CPEI Handout

(2/1/2010)