

Agenda Item #12.



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS

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DATE: February 3, 2011
TO: Board Members
FROM: Angelina Martin
Enforcement Division Chief
SUBJECT: Enforcement Report

A. Consumer Protection Enforcement Initiative (CPEI)

As a result of various media articles published in 2009 which 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, 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 Investigations (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 with reforming the current enforcement process for the health care boards.

The DCA quickly implemented the CPEI. The overall goal of CPEI is to efficiently process complaints and take disciplinary action against licensees within 12-18 months.

Two departmental budget change proposals (BCP) were submitted. BCP 1A was submitted for specific DCA health care boards to receive additional staff including non-sworn investigators. BCP 1B was submitted for a state-of-the-art integrated database to support licensing and enforcement.

On January 8, 2010, the Governor's budget was released and the DCA received 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 Vocational Nursing (VN) positions and 2.5 Psychiatric Technician (PT) positions) as follows:

	<u>VN Program</u>	<u>PT Program</u>
Staff Services Manager II (SSM I)	1.0 (reclassified to SSM I)	-0-
SSM I	1.0	-0-
Special Investigator	8.0 (6 start 10/1/10; 2 start 7/1/11)	2.0 (start 10/1/10)
Associate Governmental Program	<u>3.0</u>	<u>0.5</u>
Analyst (AGPA)	13.0	2.5

Recruitment and hiring to fill the vacancies will be completed in stages. However, due to the Governor's directive on August 31, 2010 issuing a State hiring freeze, recruitment efforts are suspended.

Additionally, DCA received 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. The new system is entitled "BreEze." During October 2010 and November 2010, Alice Delvey-Williams, Enforcement Program Manager, participated in BreEze working sessions as an Enforcement Subject Matter Expert to help develop BreEze.

Enforcement Performance Measures – On July 1, 2010, the Board began collecting data on eight enforcement performance measures developed by the DCA to determine the effectiveness of efforts to streamline enforcement processes, reduce backlogs and achieve the overall goal to process complaints within 12-18 months. The following eight measures were identified:

- PM 1:** Volume – Number of complaints received.
- PM 2:** Cycle Time – Average number of days to complete complaint intake.
- PM 3:** Cycle Time – Average number of days to complete closed cases not resulting in formal discipline.
- PM 4:** Cycle Time – Average number of days to complete cases resulting in formal discipline.
- PM 5:** Efficiency (Cost) – Average cost of intake and investigation for complaints not resulting in formal discipline.
- PM 6:** Customer Satisfaction – Consumer satisfaction with the service received during the enforcement process.
- PM 7:** Cycle Time (Probation Monitoring) – Average number of days from the date a probation monitor is assigned to a probationer to the date the monitor makes first contact.
- PM 8:** Initial Contact Cycle (Probation Monitoring) – Average number of days from the time a violation is reported to a program to the time the assigned probation monitor responds.

The Board was asked to set targets for five of the measures: PM 2, PM 3, PM 6, PM 7, and PM 8. The DCA has delayed data collection for PM 5 until BreEze, the new integrated licensing and enforcement system, is implemented. Additionally, data was not received for PM 6 related to customer satisfaction. The DCA is developing inserts to be sent to consumers to help inform them of the customer satisfaction survey available for their completion.

The first quarter performance report was issued on December 8, 2010 (see Attachment A). The Board met all targets during this quarter except PM 4 (Formal Discipline). Without the additional staff approved through the CPEI BCP, the Board does not anticipate meeting the 540 day target established by the DCA for PM 4.

The second quarter performance report was issued on February 3, 2011 (see Attachment B). The Board met all targets during this quarter except PM 4 (Formal Discipline) and PM 7 (Probation Intake). The increase in PM 7 was due to the additional work created by the Board's implementation of the new Departmental contract with Phamatech, Inc. for drug testing services.

B. Enforcement Division Updates

Contract with Phamatech, Inc. (Phamatech) for Drug Testing Services – Effective July 1, 2010, the DCA executed a departmental contract with Phamatech to provide drug testing services. On July 6, 2010, the Board participated in a conference call with Phamatech representatives to enter into the contract. All probationers who are required by the Board to be tested as part of their terms of probation were required to set up an account with Phamatech for drug testing by September 1, 2010. Approximately 140 probationers are required to be tested.

During the first few months, the Board encountered several problems with Phamatech's services including the lack of sufficient testing sites and reporting of test results. Board staff worked closely with Phamatech to resolve the problems and most have been resolved.

Audit of Enforcement Division – On April 12, 2010, the Board received notice from the DCA Internal Audit Office (IAO) that a comprehensive audit of the Board's Enforcement Program will be conducted by the IAO. The audit will focus on all aspects of the Enforcement Program including the Probation Program and Investigations Unit. The IAO plans to evaluate the efficiency and effectiveness of the enforcement process and make recommendations regarding possible improvements. The audit objectives are to determine if the Board has:

- ❖ Established policies and procedures to guide staff in effectively handling enforcement activities.
- ❖ Complied with applicable laws and regulations.
- ❖ Performed the Enforcement functions efficiently and effectively.
- ❖ Established benchmarks in order to judge if cases are proceeding appropriately and are closed in an expeditious manner.
- ❖ Established a process for management review of critical cases.
- ❖ Appropriately referred cases to experts when needed, on a timely basis.
- ❖ Adequately protected the public through the enforcement process.

At the conclusion of the audit, the IAO will issue a draft report and request the Board's response to any audit findings and recommendations. The Board's response will be included in the final audit report. The final audit report will be submitted to the DCA Chief Deputy Director and Deputy Director of Enforcement. The IAO will perform 180-day and 360-day follow-up procedures after the final report is issued to determine if proposed corrective actions are implemented.

On April 27, 2010, Teresa Bello-Jones, Executive Officer (EO), Marina Okimoto, Assistant Executive Officer, and Angelina Martin, Enforcement Division Chief, participated in an entrance conference with Cathy Sahlman, DCA Chief Internal Auditor, and her staff members.

On July 12, 2010, the IAO informed the Board that the audit was placed on hold and would resume in early September 2010. Vern Hines, DCA Auditor, began the audit on September 22, 2010. On October 20, 2010, the EO and Ms. Martin met with Mr. Hines to discuss the audit. Mr. Hines initially anticipated that the audit would be completed by December 31, 2010. However, due to other priorities the DCA assigned to Mr. Hines, the Board's audit

was delayed. Consequently, the audit is still underway and it is anticipated that the audit will be completed by the end of February 2011.

Enforcement Vacancies – In addition to the CPEI positions, there are three permanent, full-time positions vacant in the Enforcement Division as follows:

- Staff Services Manager I (Discipline/Probation Units) – Vacant since August 9, 2010.
- Associate Governmental Program Analyst (Discipline Unit) – Vacant since July 31, 2010.
- Staff Services Analyst (Complaint/Investigations Unit) – Vacant since November 20, 2010. This position will be filled effective February 25, 2011.

Due to the Governor’s directive on August 31, 2010 issuing a State hiring freeze, recruitment efforts for these positions are limited to lateral transfers within the DCA only.

C. Enforcement Division General Statistics

Table #1 summarizes the volume involved with the Enforcement Division over the past six fiscal years.

Table #1: Enforcement Division	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11 (through 12/31/10)
Complaints Received (Licensees)	1334	1,249	1,506	2,013	3,110	1,415
Complaints Received (Applicants)	1,137	1,194	1,401	1,573	2,041	1,094
Total Complaints Received	2471	2,443	2,907	3,586	5,151	2,509
Total Complaints Pending	2622	2279	2633	3006	4,365	4,289
Investigations Referred to DOI ¹	61	172	190	140	113	54
Investigations Closed						
Licensee Investigations by Staff	1,697	1,570	1,394	1,522	2,446	1,495
Licensee DOI Investigations	111	88	66	137	240	124
Applicants Approved/Cleared	1,258	1,051	1,023	1,474	1,150	769
Applicants Denied (In-House)	14	19	34	24	20	27
Total Investigations Closed:	3,080	2,728	2,517	3,157	3,856	2,415
Cases Referred to AG’s Office	216	188	326	226	221	191
Accusations Filed	124	176	203	183	166	72
Disciplinary Actions Taken	159	179	185	199	213	86
Statement of Issues Filed	2	8	31	32	18	20
Licenses Denied (Adjudicated)	7	2	5	9	10	1

¹ DOI = DCA Division of Investigation

* Important Note: The Board’s increased workload and pending backlogs continue to increase due to the implementation of two major consumer protection functions (i.e., Mandatory Reporting effective July 1, 2007 and Retroactive Fingerprinting effective July 1, 2009) and the reduction in enforcement staff due to Furlough Fridays (i.e., from February 1, 2009 through October 31, 2010).

Table #2 summarizes the processing times involved with the Enforcement Division over the past six fiscal years.

Table #2: Average Complaint Processing Times (In days)	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11 (through 12/31/10)
Investigations Conducted In-House	119	334	154	176	212	300
Investigations Conducted by DOI ¹	536	539	475	665	669	613
Total Investigations²	328	437	315	421	441	457
Pre-Accusations ³	324	309	182	150	138	161
Post Accusations ⁴	362	475	336	423	434	515
Total Average Days	1,014	1,221	833	994	1,013	1,133
Total Average Years	3.7	4.5	3.1	3.9	4.0*	3.1*

¹ DOI = DCA Division of Investigation

² Includes informal investigations conducted by Board Staff and formal investigations conducted by DCA DOI. Data does not include applicants.

³ From completed investigation to formal charges filed by the Attorney General's (AG) Office.

⁴ From formal charges filed by the AG's Office to conclusion of the disciplinary case.

* Important Note: The Board's processing times continue to increase due to the implementation of two major consumer protection functions (i.e., Mandatory Reporting effective July 1, 2007 and Retroactive Fingerprinting effective July 1, 2009) and the reduction in enforcement staff due to Furlough Fridays (i.e., from February 1, 2009 through October 31, 2010).