

Agenda Item #12.



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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DATE: November 14, 2014

TO: Board Members

FROM: Vivien Avella, Samantha-James Perez
Board Members

SUBJECT: Consideration of Policy, Regulatory or Statutory Changes to Increase Enforcement Processing Efficiencies

Introduction

In recent years, the BVNPT has been unable to prosecute consumer complaints in a timely manner, with the average case taking in excess of three years to complete. These delays allow potentially unsafe practitioners to continue to work for years without discipline.

In fiscal year (FY) 2013-14, according to statistics as published by the Department of Consumer Affairs (DCA), the BVNPT required on average 1,135 days to complete the formal discipline process. This measurement (as referred to as PM4 in DCA enforcement statistics) includes the entire formal discipline process from initial complaint intake through case resolution. BVNPT statistics show this number is overstated, potentially due to the inclusion of days related to reinstatement proceedings. The BVNPT believes that the correct figure for FY 2013-14 is 1,107 vs. 1,135.

Based upon DCA statistics for FY 2012-13, the BVNPT ranked last across all DCA Healing Arts Boards and second to last in all DCA Boards in formal discipline processing performance.

The Consumer Protection Enforcement Initiative (CPEI) calls for Department of Consumer Affairs Healing Arts Boards to streamline enforcement processes, reduce backlogs, and process discipline cases within 12-18 months. Timely processing of disciplinary cases is essential to the Board's mandate of protecting public safety.

In light of this information, the Task Force was formed on September 12, 2013 to study all factors influencing the formal discipline process and to make recommendations to improve the BVNPT's enforcement processing delays.

The Task Force's work has been a collaborative process that has included discussion and information sharing with:

- BVNPT Staff
- Board of Registered Nursing (BRN) Staff and former Board Member
- Board of Pharmacy Staff
- Office of the Governor

- Department of Investigations (DOI)
- DCA, Board and Bureau Relations
- DCA, Finance
- Attorney General's (AG) Office
- Maximus, DCA approved third party contractor for diversion services

The Task Force's work represents an on-going process to improve the formal discipline process, and the recommendations contained herein do not represent the entirety of process improvements. Areas identified for potential further study have been outlined on the final page of this report.

Best Practices Comparisons

Throughout this report, best practices comparisons are made to other DCA Boards, most specifically the BRN. The BVNPT has studied the BRN's enforcement process and its experience in reducing enforcement delays over the past five years. In FY 08-09, the BRN's formal discipline timelines were in excess of three years. Despite substantial increases in caseloads since that timeframe, the BRN has significantly reduced its formal discipline days. BRN PM4 statistics for FY 13-14 are not yet available due to BreEZe implementation issues, but in FY 12-13, the BRN averaged 738 days vs. BVNPT's average of 1,239. BVNPT statistics show a lower figure of 1,069 for FY12-13 due to potential errors in DCA compilation, as previously discussed. In Q1 FY 13-14 (the last quarter that data is available for the BRN), the BRN averaged 677 days vs. BVNPT's 1,105 days.

Staffing and caseloads were briefly studied based upon limited available data. As the following table illustrates, enforcement caseloads (cases per enforcement staff) of the BRN and BVNPT are fairly close in range. This would suggest that the BRN's more timely enforcement performance is based primarily upon greater process efficiencies vs. substantially higher staffing ratios. It should be noted that for the purposes of accurate "apples-to-apples" comparisons to the BRN and Medical Board, the original DCA statistics have been used in this table. This is due to the presumption that the DCA prepares figures using identical standards and data extraction methods across all Boards, and the potential inclusion of reinstatement data would similarly affect the BRN and Medical Board figures.

	Days, FY 12-13	Days, Q1 FY 13-14	Days, FY 13-14	Cases, FY 12-13	Cases, Q1 FY13-14	Cases, FY13-14	Total Enf Staff Positions	Cases/ Staff, based on Q1 FY13-14
BVNPT	1,239	1,105	1,135	5,010	1,243	5,709	38	131
BRN	738	677	NA	7,949	2,323	NA	76	122
Med Bd	778	851	NA	7,459	2,009	8,325	NA	NA

Summary of Formal Discipline Process

The following chart summarizes the significant phases of formal discipline and estimated times for completion. Where available, actual performance statistics for FY 13-14 as included in the BVNPT Draft Sunset Review have been used. Where such data is not compiled or readily

available, estimations have been made based upon discussions with Board staff and the AG's office. This chart is intended to identify areas where delays occur for purposes of further investigation. Recommendations are generally addressed in process order in the remainder of this document.

Summary of Steps in Formal Discipline Process	Average Estimated Days to Complete
Intake and Investigation--includes system entry, complaint acknowledgement, initial review, assignment, investigation--does not include DOI cases	249-579
Expert Opinion--in cases of gross negligence and incompetence	30
BVNPT Review--determination of case merit, next steps; cite and fine, warning, dismissal, AG prosecution	30
AG Preparation of Accusation	126-141
Wait Time for Notice of Defense	15-20
AG Request for Hearing Date	56
Wait Time for Hearing Date	216
ALJ Prepares Proposed Decision	30-60
BVNPT processes, mails to Board, awaits decision	100
Potential for Closed Session	60-270
Effective date, petition for reconsideration	30-40
Total Range for Formal Discipline Cases	942-1,542
Average Formal Discipline Days, FY13-14 <i>--as reported by DCA, average # of days to complete the entire enforcement process. BVNPT reports 1,107.</i>	1,135

It should be noted that this table follows a case through all phases of discipline. Not all cases go through the entire process. Default decisions, settlements, cite and fine cases, and cases dismissed without merit typically experience fewer days in processing.

Investigation Process Recommendations--Division of Investigations (DOI)

The DOI was established to provide law enforcement investigative services for the DCA. The DOI utilizes sworn peace officers to: provide criminal and administrative investigative services, obtain and issue search warrants, serve subpoenas, make arrests, and file criminal, administrative and civil actions on behalf of DCA clients.

DOI investigator personnel are required to complete background investigations, medical exams, psychological testing, law enforcement academy training, and weapons and defense tactics. Investigative staff typically have prior experience as law enforcement detectives or as professional investigators.

In 2009, DOI investigation staff numbered approximately 40 professionals, each assigned approximately 100 cases. This resulted in significant delays in investigation completion. Since that time, the DOI has significantly augmented its investigation staff and employs approximately 190 investigators whose case loads range between 15-29 at any given time. DOI statistics indicate that in FY 2013-14, it took an average of 184.5 days to complete BVNPT investigations. Overall, the DCA reports that Q4 FY 13-14 average investigation processing time for all DOI cases averaged 215 days. This represents a significant improvement from FY 2008-10 DOI reported performance of 400-500 days for BVNPT cases.

Historically, the BVNPT has referred a significant number of cases to the DOI. In fiscal years 2008-2012, statistics reported from the DOI indicated that the BVNPT referred over 450 new cases. In that same timeframe, the DOI reported completing nearly 700 BVNPT cases. In the most recent two year period, the BVNPT has referred less than 25 cases to the DOI.

The BVNPT has not referred cases to the DOI due to the hiring of its own investigations staff in recent years. The BVNPT completes nearly all of its investigations in-house and does not typically use the DOI as a resource despite understaffing and burdensome caseloads.

In addition, while the BVNPT still has cases pending at the DOI, communication between the two agencies has been infrequent and should be addressed in a more systematic and regular manner. In an effort to address this, a productive introductory meeting between DOI and BVNPT staff leadership was held in October, 2014 and additional meetings have now been scheduled.

BVNPT field investigation staff includes approximately nine full-time equivalents who routinely carry caseloads of approximately 100 at any given time. In FY 2013-14, average days to close all investigations was 249 days, ranging from an average of 167 days for desk investigations to 579 days for non-sworn field investigations. Due to understaffing, caseloads, and time required to complete investigations, the BVNPT requested an additional two full-time investigative positions in the most recent Budget Change Proposal (BCP) process. This request was denied.

It should be noted that the BRN also retains its own investigative staff. However, due to high case volume, it estimates it must still refer approximately 50% of its cases to the DOI. While issues with incomplete investigations do occur in approximately 20% of cases sent to the DOI, the BRN provides instant feedback and meets on a regularly monthly basis with the DOI to ensure quality.

The DOI represents a valuable and necessary resource in a successful and timely discipline process. Timeliness of DOI investigations has improved in recent years and should be utilized by the BVNPT to alleviate overburdened investigative staff. In conjunction with the CPEI, the DCA has published a case referral matrix that provides guidance as to what cases should be referred to the DOI. This matrix can be found on the final page of this report. It is believed that in order to meet the enforcement timelines mandated by the CPEI and given staffing

constraints at many Healing Arts Boards, complex criminal cases should be handled by the DOI. The result of referring these cases, according to the DCA/CPEI initiative, should be decreased burdens on the various DCA Board staffs, decreased enforcement processing timelines, and increases to public safety.

As shown on the matrix, category one and two cases are deemed by the DCA as those best investigated by the DOI. Other candidates for referral are at the discretion of the BVNPT and should take into consideration the nature and complexity of the case, as well as staff workloads. The BVNPT has indicated they were not previously aware of this matrix or the need to refer these cases to the DOI, so it was not previously able to comply.

Recommendation #1:

The Task Force recommends the Board to approve the use of the CPEI case referral acceptance matrix in determining investigation referrals to the DOI. BVNPT Board staff should refer incoming category one and two cases to the DOI. Additionally, Board staff will hold regular meetings and develop a system of communication with the DOI to discuss case status and to address quality issues and backlogs that may arise.

Attorney General and Office of Administrative Hearings Process Recommendations

Upon completion of investigation, substantiated cases are referred to the AG's office for prosecution. Significant delays occur in the resolution of these cases. Delays arise due to: understaffing, incomplete investigations and need for further documentation, lack of communication with DCA clients, failure to pursue settlements regularly, and delays in scheduling and executing hearings.

Once a case is referred to the AG's office, it is assigned to a Deputy Attorney General (DAG), who prepares the accusation, or pleading. The target is 90 days for completion. In FY 13-14, BVNPT average days ranged from 126-141. The case is then sent back to the Board to review and approve the accusation. It is then served upon the respondent, who has 15 days to file a Notice of Defense. Once a respondent files a Notice of Defense, the DAG must request a hearing with the Office of Administrative Hearings (OAH).

The DAG must contact the OAH to request the hearing. This is not an immediate process. Scheduling a hearing date requires coordination of attorneys, witnesses, and ALJ scheduling. The DAGs attempt to schedule a hearing date within 20 days. BVNPT FY 2013-14 statistics indicate it is currently taking approximately two months to secure a hearing date, which can then be scheduled six to eight months from that date. In total, the time it takes for a hearing to occur subsequent to accusation finalization is approximately nine months. Delays can also occur if the AG does not promptly set a hearing date due to attempts to settle the case in lieu of a hearing.

As of approximately October 15, 2014, approximately 112 BVNPT cases were awaiting hearing, the last of which is not scheduled until approximately August, 2015. ALJ staffing constraints, coordination of witnesses, high volume of cases proceeding to hearing vs. settlement, and requests for continuances are some of the reasons hearings cannot be scheduled on a more timely basis.

The BVNPT has limited ability to control the accusation preparation, hearing scheduling and wait time processes. This is a critical challenge for all DCA Boards and Bureaus in meeting CPEI recommended enforcement processing deadlines. However, the Task Force believes some avenues are available to reduce delays and exert greater control of this process. One simple yet effective solution is to have more frequent and structured communication with both the AG and OAH offices. The BRN holds regular monthly meetings with DAG staff liaisons to monitor caseload progress and address backlogs.

While regular contact and communication does exist between BVNPT enforcement staff and DAG liaisons, no formal or regular monthly meeting exists. Communication with the OAH appears to be less frequent. BVNPT Staff and the Task Force recently met with the newly appointed Senior Assistant Attorney General, who is supportive of increased and regular communication. A similar introductory meeting with the OAH is currently being scheduled.

Recommendation #2:

The Task Force recommends the establishment of increased communications with both of the AG and OAH offices, including a regular monthly meeting/conference call to discuss caseload agings and status.

Use of Settlements

The Task Force believes that a highly significant factor affecting the BVNPT's formal discipline performance may be the failure to pursue settlements regularly as a method of resolving formal discipline cases.

The BVNPT settled 31% and 35% of its formal discipline cases in FY 2012-13 and FY 2013-14, respectively and does not set target goals with regard to the settlement of cases. Furthermore, BVNPT staff does not provide initial specific guidance regarding settlement terms upon case referral to the AG's office.

In comparison, the BRN seeks to settle 60-80% of its formal discipline cases. It aggressively pursues settlement of cases by recommending acceptable terms of settlement on every case it refers to the DAGs office.

The Senior Assistant Attorney General stated in the afore-mentioned meeting that a key element in reducing enforcement delays is the appropriate use of settlements as warranted. Cases involving probation violations, applicant license denials, straightforward conviction or "paper" cases where witnesses, paperwork and additional investigation are not required, are all excellent candidates for settlement (referred to as fast track cases). These cases are estimated to represent approximately 50-60% of the BVNPT's formal discipline cases. Many of these cases are currently not being pursued for settlement and ultimately go to a hearing, with the potential for substantially elongating the enforcement process. Efficiently settling a case avoids the lengthy delays that occur in the hearing scheduling process, and in the preparation and wait time associated with the ALJ's proposed decisions.

The AG is considering the use of a fast-track "pilot" program with selected DCA Healing Arts Boards, where it would work to fast-track appropriate cases for settlement and aggressively

pursue timely resolution. The BVNPT Board Staff and the Task Force are unanimously in favor of participating in this pilot program.

It should be noted that settlement does not preclude revocation and should not be viewed as a compromise of discipline. It is the Task Force's preliminary understanding that the majority of settlement offers include and ultimately result in voluntary surrender or revocation, especially in cases of probation violations, applicant license denials, and straight conviction cases.

Recommendation #3:

The Task Force recommends participation in the AG's fast track pilot program as available. The Task Force recommends BVNPT staff increase its efforts to seek settlements as appropriate and in accordance with its Disciplinary Guidelines. In order to achieve greater settlements, BVNPT staff should provide acceptable terms of settlement for all cases transmitted to the AG, and should target 50-60% of all cases for ultimate settlement.

Delegation of Default Decisions and Stipulated Settlements to Executive Officer

In a 2009 background paper addressing the BRN's problems with enforcement delays entitled "Creating a Seamless Enforcement Program for Consumer Boards", the Former Senior Assistant Attorney General made several recommendations to improve the enforcement processes for the BRN that may be considered by the BVNPT. One recommendation was to delegate authority to the Executive Officer (EO) for both stipulated settlements and default decisions. As asserted in this background paper, delegation of these decisions to the EO would likely result in faster dispositions of cases, which will assist in protecting public safety.

The BVNPT EO has authority to and currently executes stipulated settlements for voluntary license surrenders. The Task Force has investigated the possibility of delegating final approval on default decisions and stipulated settlements to the Executive Officer. BVNPT employs more than one full-time equivalent whose efforts are solely dedicated to the administration of the mail balloting process. Delegating final approval for default and stipulated decisions to the Executive Officer would give the BVNPT an opportunity to better optimize staff resources in this area, and would also result in potentially significant reductions in enforcement days due to these straightforward cases not having to go through formal Board approval.

With regard to the delegation of all stipulated settlements, Board members may have concerns regarding the delegation of such cases, which precludes the opportunity to deliberate these cases in closed session. In light of this, the Task Force recommends further study and consideration with regard to the potential delegation of final approval of stipulated decisions to the EO and does not recommend the Board move forward in this direction.

The Administrative Procedure Act does not give the Board the authority to delegate either default or stipulated settlements (with the exception of voluntary surrender settlements) to the Executive Officer. Government Code sections 11425.10(a)(4) and 11425.30 prohibit the decision maker from being part of the investigation and prosecution of any discipline case. The BVNPT would have to seek approval from the legislature on this measure. The BVNPT has the opportunity to seek the required changes in conjunction with the current Sunset Review.

At least two other DCA Healing Boards in California have sought measures to more efficiently control default decisions. The Medical Board of California sought and successfully pursued statutory changes to provide the authority to delegate default discipline decisions to its EO. The BRN brought the preparation of default decisions in-house, and does not use the AG's office to process them. This required additional staffing and specialized training to do so. Given staffing constraints and training considerations, the Task Force does not recommend a similar strategy for the BVNPT, but simply the delegation of final default decision approval to the EO.

Recommendation #4:

Regarding default decisions, the Task Force recommends the Board seek legislative authority to delegate adoption of default decisions to the EO.

Recommendations Regarding Decision Period

Subsequent to Board Staff's receipt of completed proposed and stipulated settlement decision documents from the AG's office, approximately 140 days passes before these cases are considered closed for purposes of enforcement processing statistics. This 140 days assumes a case is not held over for closed session. Holding a case for closed session may add on average anywhere from 60-270 days to complete. The non-adoption case recently deliberated by the Board will require an estimated 270 days to fully complete from the date the case was originally mailed for approval to the effective date.

The Task Force has investigated whether the 140 days can be reduced without compromising the integrity of the Board process or the respondent's right to due process. The first 100 days is the time allotted for the Board staff to process, compile, copy, and distribute to Board members and await the Board's final approval. It is challenging to breakdown the typical allocation of this 100 days to staff vs. Board decision time, due to the "holding" of cases, as described in the next paragraph. The next 30 days is the time allotted to make the decision effective once final approval is received from the Board. The final 10 days is allotted for the respondent to petition for reconsideration.

An opportunity to reduce enforcement days is available within the first 100 days. Proposed decisions must be acted on by the Board within 100 days. The Board is not required to use the entirety of the 100 days, but based upon current practice, this is often the case. Current practice is to manage Board Members schedules and time commitment by limiting both the amount of decisions mailed per package and the frequency of mailings. Board Staff often "holds" cases that may be ready for approval until the next mailing, resulting in unnecessary delays. More frequent mailings and/or more decisions per package would have the impact of receiving decisions faster and reducing enforcement days. Managing the mail ballot process in the most expeditious manner will become increasingly important as the BVNPT caseload grows.

Best practices conversations with BRN staff and a former BRN Board Member indicate that in periods of significant backlog crises and enforcement delays (2008-09 timeframe), Board Members received ballot mailings on a weekly basis. Currently, the BRN estimates it sends

packages approximately every two weeks containing approximately 40-65 decisions per package, or between 80 and 130 decisions per month.

Recommendation #5:

The Task Force's recommendation is to advise or direct the Board Staff to increase the frequency of mailings and number of decisions in each mailing at its discretion to reduce decision processing time. However, the number of decisions per mailing package should not exceed 65.

Other Recommendations: Drug Diversion Program

Drug diversion programs are intended to facilitate and monitor the recovery of health care practitioners experiencing drug or alcohol abuse problems; or those with mental illness. Many states utilize diversion programs for both physicians as well as nurses. Approximately 44 states use diversion programs for nursing, and 47 states for physicians. Diversion programs typically utilize many tools to ensure patient safety and facilitate recovery, including immediate suspension of practice, mandatory participation in formal rehabilitation and therapy programs, frequent and random drug testing, and formal supervision and oversight by a professional committee.

Traditional drug diversion programs represent a true "diversion from discipline", and offenders do not go through the traditional discipline process. If they successfully complete the program, the licensee will not have any formal action taken against his or her license. Diversion programs are confidential and participation in the program is not made public, unless the licensee poses a danger to the public.

Maximus is currently under contract with the DCA to provide drug diversion and probation monitoring services to eight of the DCA Healing Arts Boards. Some of these Boards use the diversion program subsequent to formal discipline as a means of monitoring and continuing the rehabilitation of its probationers. Others, such as the BRN and the Board of Pharmacy, use a more comprehensive program that typically replaces the formal discipline process for those licensees who choose to participate in the program. The Task Force has discussed and received information from both Maximus, DCA Leadership and the BRN regarding the specifics of the Maximus program.

A full drug diversion program initially begins when a participant volunteers for the program, or is offered the opportunity by the Board to do so after an initial complaint has been received. Upon entering the diversion program, the participant's practice is suspended, typically anywhere from one month to one year. In this initial phase, the participant is typically required to attend "twelve step" meetings on a daily basis, attend support groups run by nurses 1-2X per week, and call in daily for random and frequent drug testing. Currently, the BRN drug tests anywhere from 12-45 times per year, with the belief that the effectiveness of the testing is based primarily on its randomness and secondarily by its frequency. However, the frequency of drug testing can be determined by the Board and can adhere to the level of testing required under Uniform Standards. In addition, the participants undergo a specialized treatment plan as designed by a specially appointed Diversion Evaluation Committee (DEC) that may consist of in or out patient rehabilitation treatment.

The DEC is typically comprised of doctors, nurses and public members that specialize and have experience in substance abuse disorders and recovery. They work with Maximus and the Boards to devise treatment programs and monitor the participants throughout the program.

Subsequent to the initial suspension, the DEC evaluates the progress of each participant and decides when the participant can return to practice safely. The DEC also works to develop an on-going program of treatment, support groups, therapy and drug testing after the participant returns to practice. Participation in the program typically ranges anywhere from 3-5 years.

The BRN has indicated that its drug diversion program is a key factor in its success in reducing enforcement delays and in protecting the public safety of its patients. They further indicate that due to the size of their programs and the high number of complaints, the diversion program is a necessary alternative to protect public safety.

BRN staff indicates a success rate of approximately 60-70% for program participants. This means that 60-70% of participants entering the program are deemed to be rehabilitated and return to practice without entering the formal discipline process. This should result in better management of enforcement case loads and reduced delays in enforcement processing. It is estimated that of the remainder, ten 10% voluntarily surrender their license, leave the state, or pass on. The remaining 10-20% do not successfully complete the program, and **only then** proceed through the formal discipline process, resulting in even greater enforcement delays.

Patient rights groups are critical of the program's confidential nature and lack of transparency. These groups believe patients have the right to be notified of a caregiver's substance or mental issues and that the mandate of health boards is to ensure public safety through the formal discipline process.

Further, the Medical Board of California's drug diversion program was discontinued in 2009 due to what it deemed "the human element", which alludes to instances of relapse and errors in program management and supervision. It should be noted that the Medical Board did not use a professional outside contractor to administer its diversion program.

Supporters of drug diversion programs believe that early intervention and treatment of substance abusing practitioners is a key element to a comprehensive enforcement program. Further, diversion program advocates suggest that the immediate suspension of practice and treatment immersion afforded by diversion programs can serve the public safety in a more effective manner than a formal discipline process alone.

It should be noted in comparison that during an elongated formal discipline process, caregivers may not be required to disclose their offense or addiction, and these practitioners have no restrictions on their practice until they are formally disciplined, which can take in excess of three years. It should be noted, however, that Accusations are available to the public on the Board's website.

Statistics and narrative presented in the BRN's 2010 Sunset Review suggest that drug diversion cases cost one-third less than the cost to prosecute a case through the AG's office. The BRN is currently updating this analysis for its upcoming Sunset Review, which is anticipated to be published by year end. According to a publication by the National Council of State Boards of Nursing entitled, *Substance Use Disorder in Nursing*, most regulatory boards

report that the cost of managing a diversion case is significantly less than the cost of prosecuting a traditional discipline case.

Currently, the BRN pays \$315 per month per participant for the diversion program. Maximus indicated that this is in fact the monthly cost they currently charge for full diversion program services. Participants pay \$25 per month plus actual cost of drug testing, which is often in excess of \$100 per month. No further cost analysis has been performed at this point. The Task Force does not recommend allocation of limited Board Staff resources to conduct this detailed analysis at this time.

Drug diversion programs require substantial infrastructure investments and pursuit of legislative changes. The BVNPT is not authorized to conduct a diversion program and would have to seek legislative approval to do so. In addition, while staff reallocation may be possible due to a corresponding decrease in formal discipline case workload, it is likely the BVNPT would have to augment its current enforcement staff by an estimated three to six individuals to support a comprehensive diversion program. The BVNPT would have to formally request additional staff through the BCP proposal process.

Recommendation #6:

The Task Force believes an alternative drug diversion program should be considered as a long-term solution to manage its growing enforcement caseload, protect the public safety and reduce enforcement delays. A recommended next step is to invite Maximus to make a presentation to the Board regarding its drug diversion program services at a future Board meeting.

Summary of Recommendations

Recommendation #1:

The Task Force recommends the Board to approve the use of the CPEI case referral acceptance matrix in determining investigation referrals to the DOI. BVNPT Board staff should refer incoming category one and two cases to the DOI. Additionally, Board staff will hold regular meetings and develop a system of communication with the DOI to discuss case status and to address quality issues and backlogs that may arise.

Recommendation #2:

The Task Force recommends the establishment of increased communications with both of the AG and OAH offices, including a regular monthly meeting/conference call to discuss caseload agings and status.

Recommendation #3:

The Task Force recommends participation in the AG's fast track pilot program as available. The Task Force recommends BVNPT staff increase its efforts to seek settlements as appropriate and in accordance with its Disciplinary Guidelines. In order to achieve greater settlements, BVNPT staff should provide acceptable terms of settlement for all cases transmitted to the AG, and should target 50-60% of all cases for ultimate settlement.

Recommendation #4:

Regarding default decisions, the Task Force recommends the Board seek legislative authority to delegate adoption of default decisions to the EO.

Recommendation #5:

The Task Force's recommendation is to advise or direct the Board Staff to increase the frequency of mailings and number of decisions in each mailing at its discretion to reduce decision processing time. However, the number of decisions per mailing package should not exceed 65.

Recommendation #6:

The Task Force believes an alternative drug diversion program should be considered as a long-term solution to manage its growing enforcement caseload, protect the public safety and reduce enforcement delays. A recommended next step is to invite Maximus to make a presentation to the Board regarding its drug diversion program services at a future Board meeting.

Potential Areas of Further Study

- **Optimization of alternative staffing solutions to manage workloads**--The most recent BCP to add permanent BVNPT staff positions was denied. Task Force conversations with DCA Finance personnel indicate that the next opportunity to submit a BCP for more staff will be in June, 2015. If successful, these additional permanent staff could not commence employment until FY 2016-17. In the interim, the BVNPT has discretion to use operating surpluses to utilize temporary workers, retired annuitants, students, limited term positions, and authorize the use of overtime. The Board currently makes use of many of these alternatives and is currently pursuing additional non-permanent enforcement staff. Maximization of efforts in this area will be important given the inability to add permanent staff until FY 16-17.
- **Further diligence regarding investigations processing and timelines**--Non-sworn field investigations (cases that typically result in formal prosecution through the AG's office) take on average 579 days to complete. While implementation of the recommendation to more fully utilize the DOI should assist in reducing investigation timelines, more study is needed as to opportunities to reduce this very time consuming part of the enforcement process.
- **Revisions to Disciplinary Guidelines**--The Board has typically reviewed and revised its Disciplinary Guidelines every few years. The last review and revision took place in 2011. Disciplinary Guidelines provide the framework and direction that Board Staff, DAGs and ALJs need to prosecute BVNPT cases. Based upon recent Board closed session deliberations, the Task Force believes that one opportunity for revision is in the area of probation violations. Currently, the Disciplinary Guidelines do not provide substantial guidance in this area. A cursory best practices review of other DCA Healing Arts Boards Disciplinary Guidelines indicates that other Boards provide more specific guidance on probation violations, including recommended discipline based upon the number and nature of the violations, and the behavior of the respondent. Providing more detailed guidelines on these cases should result in proposed decisions that more accurately reflect the wishes of the Board and in a reduced number of closed session cases.
- **Fees and Fines**--The BVNPT may need to increase or assess fees to help fund rising enforcement costs and augment its non-permanent work force. Various DCA Boards have from time to time experienced mid-year budget shortfalls which force them to halt the prosecution of enforcement cases until the shortfall can be remedied. Board Staff is currently exploring the assessment of fees for new school application reviews, and other potential avenues should be explored.

DOI Case Referral Matrix

CATEGORY	HEALING ARTS BOARDS	PROFESSIONAL SERVICES BOARDS/BUREAUS
<p>URGENT</p> <p>CATEGORY 1</p>	<p>ISO/PC 23</p> <p>Media/politically sensitive cases</p> <p>Cases where there has been intentional violations, great bodily injury or death (i.e. abuse that constitutes a felony, any violent misdemeanor, severe injury with likely reoccurrence or continuance of the activity)</p> <p>Unlicensed practice in healing arts/health care professions</p> <p>Sexual misconduct with a patient</p> <p>Actively practicing while under the influence of drugs/alcohol or while impaired</p> <p>Repeated acts of over-prescribing</p>	<p>ISO/PC 23</p> <p>Allegations that pose an immediate danger to public safety including unlicensed activity with potential for substantial harm</p> <p>Felony criminal activity (ongoing)</p> <p>Multiple complaints of substantial fraud (i.e. selling counterfeit or falsified training certificates, financial elder abuse)</p>
<p>HIGH</p> <p>CATEGORY 2</p>	<p>Criminal violations (i.e. theft of controlled substances, diverting narcotics, possession of narcotics, prescription forgery, major fraud [financial - monetary loss, no consumer injury or harm], insurance fraud, etc.)</p> <p>High potential for consumer harm such as repeated narcotic abuse (multiple case offender)</p> <p>Medication tampering</p> <p>Narcotic diversion - diversion drop out and deemed a public safety risk</p> <p>Exam subversion (where exam is compromised)</p>	<p>Unlicensed practice - no apparent harm</p> <p>Fraud</p> <p>Exam subversion (where exam is compromised)</p> <p>Aiding/abetting unlicensed activity</p>
<p>ROUTINE</p> <p>CATEGORY 3</p>	<p>Narcotic diversion - diversion drop out for other than successful completion not deemed a public risk.</p> <p>Minor injury/harm - no intentional act, non-life threatening related to the licensee's practice</p> <p>Falsified financial records</p> <p>Misdemeanor - non-violent violation</p> <p>Negligence/incompetence without injury (multiple incidents)</p> <p>Exam subversion (individual cheating where exam is not compromised)</p> <p>Law Enforcement Security/Safety standby only</p>	<p>Minor advertising violations (unlicensed or misleading)</p> <p>Non-compliance with administrative citations</p> <p>Recordkeeping violations (meeting criminal violations)</p> <p>Project abandonment</p> <p>Arrest convictions substantially related to practice</p> <p>Exam subversion (individual cheating where exam is not compromised)</p> <p>Law Enforcement Security/Safety standby only</p>
<p>ROUTINE</p> <p>CATEGORY 4</p>	<p>Request for serving investigative subpoenas for records</p> <p>Negligence/incompetence without injury (single incident)</p> <p>Minor departure from standard of care with administrative remedy</p> <p>801 Cases (that don't meet category 1 or 2)</p> <p>Administrative recordkeeping violations</p> <p>Other general unprofessional violation - (admin only)</p> <p>Complaints of "poor bedside manner"</p> <p>Additional complaint against license on probation for only an administrative violation</p> <p>Anonymous complaints (unless Board is able to corroborate with preliminary information to be in category 1 or 2; or there is significant details in the complaint assuring that the allegations will meet category 1 or 2)</p> <p>Unsanitary conditions</p>	<p>Request for serving investigative subpoenas for records</p> <p>Unsanitary conditions</p> <p>Collect medical records, send out declaration for complaints, send out declarations for establishment owners requesting employment records and identify subject</p> <p>Administrative recordkeeping violations</p> <p>Other general unprofessional violation - (admin only)</p> <p>Additional complaint against licensee on probation for only an administrative violation</p> <p>Anonymous complaints (unless Board/Bureau is able to corroborate with preliminary information to be in category 1 or 2; or there is significant details in the complaint assuring that the allegations will meet category 1 or 2)</p> <p>Quality of service</p>