



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
Board of Vocational Nursing and Psychiatric Technicians
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DATE: February 11, 2015
TO: Board Members
FROM: Marilyn Kimble
Enforcement Division Chief
SUBJECT: Enforcement Division Report

A. Enforcement Task Force Progress Update

Vivien Avella and Samantha James-Perez will present their report regarding Task Force activities since the November Board meeting (Attachment A).

B. Meeting with Division of Investigation (DOI) – Task Force Recommendation 1

Teresa Bello-Jones, Executive Officer, Angelina Martin, Assistant Executive Officer, and Marilyn Kimble, Enforcement Division Chief, met with Michael Gomez, Deputy Director, Division of Investigation and Enforcement Programs, Rex Cowart, Northern Area Commander and Stephanie Whitley, Supervising Investigator, Division of Investigation (DOI), on January 15, 2015. The Consumer Protection Enforcement Initiative (CPEI) and the components and intent of the CPEI Budget Change Proposal (BCP) were discussed. The DOI Case Acceptance Guidelines matrix was reviewed as well as the various types of investigations that are best suited for referral.

Ms. Kimble met with Mr. Cowart and Ms. Whitley again on February 10, 2015, for further discussion regarding future case referrals, investigation goals and timelines as well as reports that are available in DOI's Case Administration and Tracking System (CATS).

The first of the monthly meetings between the Board's enforcement staff and Ms. Whitley will be scheduled for early March. These meeting will allow for detailed discussions regarding the referral of specific cases. As the supervisor of DOI's Case Intake Unit, she will be available to respond to questions and provide assistance to Board staff to ensure that investigations performed by DOI staff meet the Board's expectations.

C. Meeting with Office of Administrative Hearings (OAH) – Task Force Recommendation 2

Teresa Bello-Jones, Executive Officer, Angelina Martin, Assistant Executive Officer, and Marilyn Kimble, Enforcement Division Chief, met with Linda Cabatic, Director and Chief Administrative Law Judge and Melissa Crowell, Deputy Director and Assistant Chief Administrative Law Judge, Office of Administrative Hearings on December 10, 2014. Subjects discussed during the meeting included case aging statistics. The Director and Deputy Director shared strategies that are available to the Attorney General’s Office for the efficient scheduling of hearings for the Board’s cases. The strategies include scheduling multiple short-cause cases in a single day or bundling Statement of Issues cases together.

D. Meeting with Office of the Attorney General (OAG) and Board of Registered Nursing (BRN) – Task Force Recommendation 3

Angelina Martin, Assistant Executive Officer, Marilyn Kimble, Enforcement Chief, and Rocio Llamas, Enforcement Manager, met with Linda Schneider, Senior Assistant Attorney General, Linda Sun, Supervising Deputy Attorney General, and Deputy Attorneys General (DAG) Brett Kingsbury and Leslie Brast on January 28, 2015. Louise Bailey, Executive Officer, Stacie Berumen, Assistant Executive Officer, along with Beth Scott and Shannon Silberling, Enforcement Deputy Chiefs also participated in the meeting.

Ms. Schneider outlined plans for the fast-track pilot program. She acknowledged that settling cases aids in public protection and the goal is to complete these actions quickly. She noted that the plan is to develop a dedicated team of DAG’s in one office that will focus on settlements for new cases. If the program is successful it will be expanded to the entire state.

Cases appropriate for settlement currently pending at the AG’s Office will continue to be considered individually. She is concerned about aged cases and will be working with her staff to address them.

New Cases Transmitted to AG’s Office	
Discipline	Potential Settlement Terms Included
25	0
Petitions to Revoke Probation	
4	4

Pending Cases at AG’s Office		
Discipline	Cases Settled	Settlements Pending
206	6	30
Petitions to Revoke Probation		
56	1	6

E. Other Task Force Recommendations

Staff to Increase Frequency and Quantity of Mail Ballots – Recommendation 5

All outstanding cases have been included in the mail ballot packages sent out since the Board issued this directive.

F. Enforcement Performance Measures (PM)

Performance Measures were developed by the Department of Consumer Affairs (DCA) to assess the effectiveness of efforts to streamline enforcement processes, reduce backlogs, and achieve the overall goal to process complaints within 12-18 months.

At this time the PM report for the second quarter (October – December 2014) is not yet available.

G. General Statistics

Table #1 summarizes the Enforcement Division's volume over the past six fiscal years.

Table #1: Enforcement Volume	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15 thru 12/31/14
Complaints Received (Licensees)	3,110	2,599	2,610	2,210	1,981	888
Complaints Received (Applicants)	2,041	2,461	3,035	2,806	3,808	1,687
Total Complaints Received	5,151	5,060	5,645	5,016	5,789	2,575
Complaints Pending – Desk	4,123	3,742	3,189	2,658	2,393	2,008
Complaints Pending – Field	0	0	656	1,036	904	886
<i>Field Complaints Pending with DOI¹</i>	242	164	141	60	19	14
Total Complaints Pending		3,906	3,845	3,754	3,316	3,034
Complaints Referred to DOI	113	111	92	0	22	7
Total Complaints Referred to DOI	113	111	92	0	22	0
Complaints Closed - Desk	3,616	5,407	5,464	5,227	5,670	3,327
<i>Licensees – Unsubstantiated/NOW*</i>	-	2,495	2,065	1,616	1,462	795
<i>Substantiated*</i>	-	643	485	369	386	169
<i>Applicants - Approved</i>	1,150	1,757	1,739	2,035	2,461	965
<i>Denied</i>	20	55	78	36	35	36
<i>Other*²</i>	-	457	1,097	1,171	1,326	1,362
Complaints Closed - Field	0	0	5	259	527	265
<i>Licensees – Unsubstantiated/NOW*</i>	-	-	4	172	327	159
<i>Substantiated*</i>	-	-	1	87	200	106
Complaints Closed - DOI	240	204	114	86	56	5
<i>Licensees – Unsubstantiated/NOW*</i>	-	111	31	45	40	4
<i>Substantiated*</i>	-	93	83	41	16	1
Total Complaints Closed	3,856	5,611	5,583	5,572	6,253	2,005
Cases Referred to AG's Office	221	339	412	288	395	180
Accusations Filed	166	168	251	217	237	138
Total Disciplinary Actions Completed	213	175	170	271	250	142
Statement of Issues Filed	18	57	82	68	50	31
Licenses Denied (Adjudicated)	10	7	17	16	16	2
*Started reporting data FY 2010/11						
1. DOI = DCA Division of Investigation.						
2. Other = pending exam, abandoned, referred to Attorney General's (AG) Office.						

Table #2 summarizes the Enforcement Division's processing times over the past six fiscal years.

Table #2: Enforcement Average Processing Times (In days)	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15 thru 12/31/14
Complaint Processing¹						
Desk Investigations	212	295	283	238	211	206
Field Investigations	0	0	197	510	579	606
DOI Investigations ²	775	703	666	783	968	876
Average Days to Close Complaints³	247	310	291	249	249	236
Formal Discipline Processing						
Pre-Accusations ⁴	138	145	175	236	176	232
Post Accusations ⁵	434	275	191	220	252	393
Average Days to Complete Disciplinary Actions	572	420	366	456	428	625
Total Average Processing Time (Days)⁶	819	730	657	715	677	861
Total Average Processing Time (Years)	2.2	2.0	1.8	1.9	1.9	2.4
1. Desk, Field, and DOI: includes intake, investigation, determination of Board action, and preparation of informal action if applicable. 2. DOI = DCA Division of Investigation. 3. Prior to the 9/6/12 Board Meeting, Average Days to Close Complaints was calculated using an average of the three Complaint Processing categories. Beginning with the 9/6/12 Board Meeting, Average Days to Close Complaints was presented as weighted averages. (Weighted average is an average that takes into account the proportional relevance of each component, instead of treating each component equally.) 4. From date transmitted to the Attorney General's (AG) Office to date formal action filed. 5. From date formal action filed to conclusion of the disciplinary case. 6. Total = Average Days to Close Complaints + Average Days to Complete Disciplinary Actions.						

Attachment A: Enforcement Task Force Progress Update

Agenda Item #13.-Attachment A



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DATE: February 6, 2015
TO: Board Members
FROM: Vivien Avella, Samantha James-Perez
Board Members
SUBJECT: Enforcement Task Force Progress Update

Monitoring of Board Approved Task Force Recommendations

At the November Board meeting, the Board approved various proposals designed to improve the timeliness and efficiency of the enforcement process. The Task Force intends to monitor progress on all approved recommendations. Board Staff will provide updates on progress made on recommendations regarding the DOI, AG and OAH initiatives.

The request for statutory authority to delegate the adoption of default decisions was included in the New Issues Section of the recently published Sunset Report. The Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection must review and decide whether to sponsor legislation for this or any Board proposals.

The Task Force will contact Maximus to schedule a presentation on its drug diversion program, to take place at either the May or August Board meeting. The approved enforcement recommendations require substantial time for implementation and assimilation. The Task Force believes that scheduling the presentation for a later date will allow for the appropriate time to focus on and prioritize necessary internal improvements.

Areas for Further Study

The Task Force conducted a conference call with Board Staff in January to discuss potential additional opportunities to improve enforcement performance. These opportunities will be pursued as feasible by the Board Staff. Among the topics discussed include:

Increased Use of Cite and Fine--In FY 2013/14, the BVNPT used cite and fine for less than 3% of total complaints received (148 total cite and fine). The BRN used cite and fine for more than 12% of total complaints received (963 total cite and fine). Increased use of cite and fine for cases not requiring formal discipline may reduce enforcement caseload and create additional revenue to offset costs of the enforcement program. Cite and fine could possibly be used as a pre-emptive tool to deter more serious violations as well as to provide a more expedient route to discipline minor qualifying violations versus the formal discipline process. The Task Force has asked Board Staff to investigate the potential merits and feasibility of

increased use of cite and fine, and to meet with the BRN to discuss its process and experience.

Opportunities to Reduce Investigation Timelines--Delays in obtaining documents required for investigation creates delays in enforcement time lines. Board Staff is in the process of obtaining delegated authority from the DCA to serve administrative subpoenas. This should facilitate more timely investigations. An additional option the Task Force has asked the Board Staff to investigate is the potential for revisions to Penal Code 830.11 that would allow the BVNPT to grant its investigators limited peace officer status as public officers. A number of other DCA Boards and agencies have successfully petitioned for this change, and the BRN is currently pursuing these changes. This would potentially assist investigators in obtaining medical, court and arrest records in a more timely and cost efficient basis.

Internal Improvement Plans--Board Staff has indicated to the Task Force that they are in the process of performing a comprehensive analysis of the Enforcement Division operations, and may make changes to improve performance in the near-term future. Progress updates on this initiative will come directly from Enforcement Staff.

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. The Task Force believes that there are several areas that should be revised or further clarified. These revisions should result in enforcement actions that more accurately reflect the wishes of the Board, better protect public safety, and improve the timeliness and efficiency of the enforcement process.

The Task Force held a preliminary conference call with Board Counsel in February regarding potential revisions, and is scheduling an additional call with Board Staff to discuss. The areas of change include, but are not limited to: elimination of duplicative probation conditions, clarification of work requirements language, conditions precedent to probation, increased clarification and discipline for probation violations, and changes to discipline/probation terms that more closely match those of other Healing Arts Boards. The Board will have the chance to review, discuss and approve any proposed changes. A draft of proposed changes to the Disciplinary Guidelines is anticipated at one of the remaining 2015 Board meetings. As previously mentioned, the Task Force and Board Staff are prioritizing the previously approved recommendations and their implementation prior to taking on immediate additional enforcement projects.