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DATE: November 5, 2015  
TO: Board Members  
FROM: Gina Bayless *Gina Bayless*  
Enforcement Division Chief  
SUBJECT: Enforcement Division Report

**Division Update**

We have four analysts who are assigned to work with the Department of Consumer Affairs (DCA) BreEZe team for User Acceptance Testing (UAT). Testing began October 1, 2015 and will continue through November 2015. Enforcement Division staff will begin attending BreEZe training in November 2015.

**Task Force Recommendation Update**

**A. Task Force Recommendation 1 - Meeting with Division of Investigation (DOI)**

We continue to assign cases based on the Consumer Protection Enforcement Initiative (CPEI) case referral acceptance matrix. As previously reported, our intake process has been streamlined to include an initial review of the case to determine the appropriate case assignment. As of October 5, 2015, our two complaint intake positions were filled; the new staff members are currently being trained. Our intake process ensures timely case assignment to the appropriate investigative unit.

Enforcement staff and the Division of Investigation (DOI) meet monthly to discuss pending investigations and to address any case aging issues.

**B. Task Force Recommendation 2 - Meeting with Office of the Attorney General and Office of Administrative Hearings**

In response to the Task Force recommendation to increase communication with the Office of the Attorney General (OAG) and the Office of Administrative Hearings, staff continues to communicate with the OAG on a weekly basis.

Training needs were identified and discussed to focus on improving the overall quality of cases delivered to the OAG. The proposed training included interpretation and application of statutes/regulations, gathering of evidence and the preparation/issuance of subpoenas. All agreed to collaborate on ways to improve the overall quality of cases referred to the OAG and improve adjudication processing times.

DCA has begun a Quarterly Enforcement Consortium to bring all Boards together to collaborate on enforcement issues and share information. Every quarter, staff will be invited to participate in training sessions built around identifying best practices and meeting enforcement measures. The goal is to bring in presenters from internal and external sources to provide resources needed to meet our goals of consumer protection. The Consortium will also provide a forum for Question and Answer sessions with Deputy Director Michael Gomez and Linda Schneider, Senior Assistant Attorney General.

On September 28, 2015, John Brooks, Acting Executive Officer (EO); Gina Bayless, Enforcement Division Chief; Rocio Llamas, Enforcement Manager; Ann Hutchinson, Enforcement Manager; Tricia Yu, Supervising Special Investigator (SSI) and Wayne Brenner, SSI, attended a training session regarding the subpoena process and the DOI's CPEI Case Acceptance Criteria.

On October 8, 2015, Brett Kingsbury, Deputy Attorney General (DAG) and Jonathan Cooper, DAG, provided specified training to Enforcement Division staff; the training focused on proper procedural protocol in obtaining confidential information and associated documents for use in administrative cases. The training also covered procedures for preparing and issuing subpoenas and gathering evidence.

The aforementioned training was identified as a critical training need to ensure efficient, proper record/document retrieval with a focus on decreasing case processing delays. Additional training to expand on this issue will be provided before the end of the year.

**C. Task Force Recommendation 3 - Office of the Attorney General (OAG) Fast Track Pilot Program**

The Board is participating in the Fast Track Pilot Program. The Fast Track Pilot Program, which has been in effect since March 1, 2015, schedules multiple short-cause cases in a single day. To date, 25 cases have been designated as Fast Track cases by the OAG.

**D. Task Force Recommendation 4 - Default Decisions**

Board staff will be presenting proposed language to amend California Code of Regulation sections 2503 and 2563 in order to provide the authority to delegate default decisions to the EO.

**E. Task Force Recommendation 5 - Mail Ballots**

The frequency of mail ballots has been increased to every two and a half weeks on a continuous basis. Holidays and Board meetings are taken into consideration and the mailing is adjusted accordingly.

**F. Task Force Recommendation 6 - Drug Diversion Program**

Board staff will invite Maximus to make a presentation to the Board regarding its drug diversion program services at a future Board meeting.

## **G. Other Process Improvements**

We are actively recruiting qualified individuals to serve as expert consultants for the Board's Expert Witness Program. In an effort to attract the most qualified experts the hourly rate has been increased from \$40 per hour to \$65 per hour and a newly revised application is now available on the Board's website. Interested licensed registered nurses, vocational nurses, and psychiatric technicians are encouraged to apply. More information regarding expert recruitment and qualifications can be found at: [www.bvnpt.ca.gov/enforcement/expert\\_witnesses.shtml](http://www.bvnpt.ca.gov/enforcement/expert_witnesses.shtml).

As of July 2015, the Board was granted delegated subpoena authority. In the past, the inability to get records was a major roadblock to the Board's investigations; now the investigators have a way of obtaining records from entities that are uncooperative or require a subpoena.

Staff received subpoena training in September and October 2015. Further training is scheduled for January 2016.

Manual tracking of tasks has been discontinued. Staff members were manually tracking every task they completed and submitted the tracking list weekly to their respective manager. These lists served no purpose nor were they utilized by the managers. We now utilize Consumer Affairs System (CAS) reports to manage workload and view case aging.

Manual gathering of enforcement data has been discontinued. This is not a reliable method of gathering or reporting enforcement statistics. We will utilize standard CAS reports to obtain statistics. The Board statistical report has been revised to provide standard Enforcement Measures data that corresponds with the quarterly and annual DCA Performance Measures reports.

Since July 2015, we have been reviewing existing procedures and reports to identify where the bottlenecks are in the enforcement process. As a result of this review we have implemented streamlined procedures to reduce delays in processing cases.

The following is a list of some of the recent improvements implemented:

### **Complaint Unit**

The intake process has been streamlined to include an initial review of the case to determine the appropriate case assignment. The initial case review determines whether the case should be assigned to a complaint analyst, referred to a Special Investigator or referred to DOI.

Weekly roundtable meetings are held to discuss cases and issues that delay case processing. This creates consistency in case handling and keeps all staff informed of best practices. We have implemented a process for prioritization of top ten aged cases and high profile cases to expedite these to a resolution. Monthly 1:1 meetings with staff are held to assess case status, set deadlines and goals.

One of our more significant changes is the process for referring applicants to the Enforcement Division. The criteria for referral now requires that applicants must meet all eligibility requirements and have passed the examination before referral to the Enforcement Division. The enforcement review will be the final step in the application process.

Applications identified for referral to the Enforcement Division must meet the following criteria before referral:

- Passed all required examinations
- Met all education and experience requirements
- Report of Conviction is complete, with letter of explanation for each offense, certified police and court documents are received

The Mandatory Reporting for Employers form has been revised, approved by legal and posted to the website. The webpage information guide to employer reporting requirements and instructions has been revised.

We have created a citation and fine desk position. The position is designated to handle issuing all citations, informal conferences and appeals. This will create consistency in assessment of fines and streamline the citation process.

We are now conducting informal conferences via telephone and accepting payment plans for payment of fines. This will reduce the number appeals to the OAG.

Reduced response time to Request for Information (RFI) from >90 days to potential maximum of 45 days. This will reduce processing times.

Implemented case file organization plan:

- Created Case Summary form: case review "at a glance"
- Consistent case organization: makes case review easier
- Noted case file closing date: for ease of purging

Began process of hiring "volunteers" (i.e., temporary help) through American Association of Retired Persons (AARP). The temporary help will assist with reducing the filing backlog and general clerical tasks.

Began distributing cases by alternating analysts rather than alphabetically for more equitable caseloads among analysts.

Revised Record of Conviction form due to change in the regulation increasing the threshold for disclosure of traffic violations to \$1,000.

Updated template letters to create consistency for Board correspondence and correct reference of statutes.

Implemented the use of the DOI Client Satisfaction Survey. This survey is used to assess the quality and timeliness of the investigations completed by DOI.

### **Investigation Unit**

On October 19-21, 2015, five Special Investigators attended the National Certified Investigator Training offered by the Council on Licensure, Enforcement and Regulation (CLEAR). The National Certified Investigator Training (NCIT) Basic and Specialized Programs encompass a three-day, hands-on training and certification programs concentrated on investigation techniques and procedures. This training covered the investigative process, interviewing techniques, report writing and testifying in administrative proceedings.

An Investigation Queue was created to ensure that the number of cases assigned to investigators is evenly managed. Investigators are assigned new cases from the queue as they complete their investigations. This process allows for improved monitoring of productivity and enhances the overall quality of the completed investigation.

An Investigative Plan was created and implemented. The investigative plan is required for all field work requests. The plan is used to ensure investigations are conducted in the most efficient manner, while minimizing process delays. The investigative plan includes a summary of the allegations, identifies witnesses and documents needed to complete the investigation.

A travel itinerary was created and implemented. Travel itineraries must be approved by a supervisor and they are added to the travel calendar. This ensures that all travel is conducted in the most cost effective manner. When possible, the investigator will perform field work on multiple cases during one trip.

The investigation report format has been revised. The format now has sufficient details (i.e., including definitions of drugs or medical procedures), but is streamlined so that it flows better and is easy to follow. The new report format includes documentation of the facts and evidence gathered in chronological order. Witnesses are clearly identified and evidence gathered is identified as attachments.

Investigators are now required to enter new cases into a database system called Enforcement Activity Reporting System (EARS). The EAR system helps the investigator track the hours they are working on each case. By tracking the total number of hours worked on each case, the Board can now charge cost of recovery.

### **Discipline Unit**

We have streamlined the process for filing Accusations. We have worked jointly with the OAG to implement a quick review process for filing of Accusations. Draft Accusations are emailed to the assigned discipline analyst for review and preparation for signature by the EO. The signed Accusation is expedited to the DAG for filing.

Staff is actively pursuing settlement, if appropriate, for all cases set for hearing within three months.

The Discipline Unit is continuing to work with the OAG to complete our cases in a timely manner and streamline our processes.

### **Probation Unit**

We have discontinued the practice of sending out letters confirming receipt of probation documents and quarterly status reports. Staff resources are now focused on handling the increased number of active probationers.

The petition for early termination or reduction of penalty process has been revised to include the preparation of a probation report. The probation report will be included in the petition packet sent to all parties. This will give the assigned DAG and the Board members a complete summary of the petitioner's compliance or non-compliance of all terms and conditions of probation.

### **Enforcement Progress**

	<b><u>5/1/2015</u></b>	<b><u>10/26/2015</u></b>
<b>Desk Investigations</b>		
Open Cases	2915	1312
Average Days Open	403	178
<b>Non-Sworn Investigations</b>		
Open Cases	880	586
Average Days Open	544	560
<b>Sworn Investigations</b>		
Open Cases	39	350
Average Days Open	385	507
Average Days Open w/DOI	139	105
<b>Total Investigations</b>		
Open Cases	3834	2248
Average Days Open	435	328
<b>Discipline</b>		
Open Cases	552	371
Discipline Average Days Open		
Open	396	317

## H. General Statistics

Summary of the Enforcement Division's volume over the past six fiscal years.

Enforcement Volume	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16 <sup>1</sup>
<b>Intake</b>						
Complaints Received	605	673	717	647	545	329
Arrest/Conviction Reports	4,470	4,975	4,307	5,150	4,852	1,028
<b>Total Complaints Received</b>	<b>5,075</b>	<b>5,648</b>	<b>5,024</b>	<b>5,797</b>	<b>5,397</b>	<b>1,357</b>
<b>Investigations Assigned</b>						
Desk Investigations Assigned	4,987	5,301	4,637	5,413	5,319	1,475
Non-Sworn Investigations Assigned	134	759	712	451	443	130
Sworn/DOI Investigations	126	97	15	0	130	244
<b>Total Complaints Assigned for Investigation</b>	<b>5,247</b>	<b>6,157</b>	<b>5,364</b>	<b>5,864</b>	<b>5,892</b>	<b>1,849</b>
<b>Investigations Pending</b>						
Desk Investigations Pending	4,049	4,105	3,667	3,745	2,296	1,306
Non-Sworn Investigations Pending	159	514	954	911	731	586
Sworn/DOI Investigations Pending	166	157	81	14	129	350
<b>Total Complaints Pending</b>	<b>4,374</b>	<b>4,776</b>	<b>4,702</b>	<b>4,670</b>	<b>3,156</b>	<b>2,242</b>
<b>Investigations Closed</b>						
Complaints Closed - Desk	5,196	4,768	4,876	5,249	6,338	2,318
Complaints Closed - Non-Sworn	1	272	251	494	513	140
Complaints Closed - DOI	203	106	91	68	16	25
<b>Total Complaints Closed</b>	<b>5,400</b>	<b>5,146</b>	<b>5,218</b>	<b>5,811</b>	<b>6,867</b>	<b>2,483</b>
<b>Average Days to Complete Investigations</b>						
Desk Investigations	288	289	246	224	416	314
Non-Sworn Investigations	134	315	509	584	601	742
DOI Investigations <sup>2</sup>	704	682	771	899	996	1,210
<b>Overall Average Days to Complete Investigations</b>	<b>303</b>	<b>298</b>	<b>267</b>	<b>262</b>	<b>431</b>	<b>347</b>
Closed Without Discipline	5,109	4,813	4,950	5,400	6,568	2,352
<b>Average Days to Close</b>	<b>289</b>	<b>281</b>	<b>253</b>	<b>242</b>	<b>429</b>	<b>342</b>
<b>Formal Discipline</b>						
Cases Referred to AG's Office	340	401	285	370	290	113
Cases Pending at AG	498	648	549	593	502	371
Accusations Filed	168	251	217	237	285	77
Statement of Issues Filed	57	82	68	50	69	10
Petition to Revoke	22	20	15	14	15	6
Disciplinary Actions Completed <sup>3</sup>	175	189	320	255	326	204
<b>Average Days to Complete Discipline</b>	<b>1,051</b>	<b>1,018</b>	<b>1,080</b>	<b>1,103</b>	<b>1,130</b>	<b>1,084</b>
<ol style="list-style-type: none"> <li>1. Volume from July 1, 2015 to October 30, 2015.</li> <li>2. DOI = DCA Division of Investigation.</li> <li>3. Does not include Subsequent Discipline, Petition for Reinstatement, Petition for Reduction of Penalty/Early Termination, or Citation Appeals.</li> </ol>						