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DATE: October 14, 2016

TO: Board Members

FROM: Kameka Brown, PhD, MBA, NP
Executive Officer

SUBJECT: Report on Administrative and Enforcement Monitor Phase II Results

Attached for your review is the Administrative and Enforcement Monitor Phase II Results Report, pursuant to Business and Professions Code § 2847.5, AB179 (Bonilla).

Agenda Item #4

Board of Vocational Nursing and Psychiatric Technicians Administrative and Enforcement Monitor

Executive Summary
Second Report

Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

BENJAMIN FRANK LLC
MANAGEMENT CONSULTANTS

October 12, 2016

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Mr. Awet Kidane, Director
California Department of Consumer Affairs
1625 North Market Boulevard
Sacramento, CA 95834

Contract No. RFO BVNPT 16-01, Addendum 1
Board of Vocational Nursing and Psychiatric Technicians
Administrative and Enforcement Monitor

Executive Summary
Second Report

Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

Dear Mr. Kidane,

We are pleased to present this *Executive Summary* of the *Second Report* which provides brief overviews of (1) events leading up to the appointment of an Administrative and Enforcement Program Monitor for the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), (2) the scope and focus of the Administrative and Enforcement Program Monitor assignment, (3) the current status of BVNPT's Enforcement Program and (4) recommendations for further improving Enforcement Program performance. Additional information is provided in the *Initial Report* dated June 10, 2016 and the accompanying *Second Report*.

BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented during 2011/12 and 2012/13. These changes included establishing a new non-sworn Investigation Section and assigning all licensee complaint cases to the new section, including cases involving serious criminal misconduct and significant patient harm previously referred to the Department of Consumer Affairs' (DCA) Division of Investigation. Problems resulting from these changes became apparent to DCA which made efforts to encourage BVNPT to utilize the new Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the Division of Investigation's services. Members of BVNPT's governing Board also began developing an awareness of these same problems from reviewing discipline packages. In many instances the discipline cases were quite old which heightened concerns that the licensees were continuing to practice for years without discipline. Additionally, some members were dissatisfied with management's responsiveness to their requests for additional Enforcement Program information.

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During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess the BVNPT's enforcement and discipline processes. The formation of the Enforcement Task Force appears to have occurred, in part, because the Board's Standing Enforcement Committee had not met in many years and possibly did not have any appointed members. In November 2014 the Task Force submitted its report to the Board. The Task Force Report included six (6) recommendations, including a recommendation that BVNPT begin utilizing CPEI case prioritization guidelines and resume utilizing the Division of Investigation's services. This recommendation, along with most of the Task Force's other recommendations, was approved by the full Board. However, BVNPT continued to assign nearly all licensee complaint cases to the Investigation Section.

Concurrently, during BVNPT's 2014/15 Sunset Review, reports surfaced about the resulting organizational and operational problems and the scope and magnitude of these problems became evident to the Legislature and DCA. Corrective measures taken immediately following BVNPT's March 23, 2015, Sunset Review Hearing and during the past year have contained these problems and set into place a foundation for building a sustainable, effective and efficient Enforcement Program that supports fulfillment of BVNPT's consumer protection mission. Improvements made during the past year include:

- A successful restructuring of the License Applicant Arrest/Conviction Report Process
- A restructuring of the Enforcement Division's Case Intake and Screening Process
- Completion of significantly larger numbers of licensee arrest/conviction report and complaint investigations
- Significant reductions in the number of pending investigations along with reductions in the average age of the pending cases
- Significant increases in the number of cases referred to the Office of the Attorney General and in the number of discipline cases completed along with reductions in the average elapsed time to file pleadings and complete disciplinary actions
- Significant reductions in the number of pending discipline cases and the average age of the pending discipline cases.

However, notwithstanding all of these improvements, there are still large legacy backlogs of aged cases in several key areas and continuing problems with the completeness, consistency and quality of BVNPT's workload, backlog and performance data. Additionally, the amount of calendar time needed to complete investigations and impose discipline remains much too long and, during the past several months, there has been very little change in the number of pending non-sworn investigations. There also appears to be a high level of non-compliance with BVNPT's Continuing Education (CE) requirements, with at least 10 to 15 percent of licensees completing very little, or no, continuing education. However, available data suggests that BVNPT conducts CE compliance audits of fewer than 2 percent of renewing licensees per year. Finally, during 2015/16 BVNPT's probationer population increased significantly, to about 430 probationers from about 330 probationers previously. The higher number of probationers subject to monitoring, and related increases in monitoring and subsequent discipline workloads, are expected to persist for the next several years.

Additional changes and further improvements to the Enforcement Division's organizational structure, workforce allocations, and business processes are needed to help address these and other emerging workloads and business process deficiencies and improvement needs. Presented herein are 29 recommended improvements structured to help address these deficiencies and further improve overall Enforcement Program performance.

* * * * * * * * *

We are grateful for all of the assistance provided to us by DCA's Project Manager and other DCA executives, the members of BVNPT's governing Board, the Enforcement Division's management team and staff, DCA's Division of Investigation, Division of Legal Affairs, Office of Information Services, and Bureau of Security and Investigative Services, and the Office of the Attorney General. Their responsiveness to our requests for information and assistance were outstanding and, without their support, completion of this this phase of the project would have been substantially more difficult. We also would like to extend our thanks to the representatives of the Medical Board of California and the Respiratory Care Board who provided helpful information regarding their Enforcement Program business processes. We appreciate the opportunity to be of service to the Department of Consumer Affairs and the Board of Vocational Nursing and Psychiatric Technicians. If you have any questions or need additional information, please contact me at 916.425.1475.

Very truly yours,

BENJAMIN FRANK, LLC

Ben Frank

Benjamin Frank
Chief Executive Officer

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Executive Summary

This *Executive Summary* of the *Second Report* provides brief overviews of (1) events leading up to the appointment of an Administrative and Enforcement Program Monitor for the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), (2) the scope and focus of the Administrative and Enforcement Program Monitor assignment, (3) the current status of BVNPT's Enforcement Program and (4) recommendations for further improving Enforcement Program performance. Additional information is provided in the *Initial Report* dated June 10, 2016 and the accompanying *Second Report*.

A. Project Background

During 2011/12 and 2012/13 BVNPT established and staffed a new Investigation Section within its Enforcement Division. BVNPT later claimed that this organizational restructuring enabled BVNPT to (1) drastically reduce the number of cases referred to the Department of Consumer Affairs' (DCA) Division of Investigation and (2) complete nearly all of its investigations in-house, "despite understaffing and burdensome caseloads". In fact, BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and related workflow restructurings that BVNPT implemented during this period. The scope and magnitude of problems with BVNPT's Enforcement Program became evident to the Legislature and DCA less than two (2) years later when reports surfaced during BVNPT's Sunset Review concerning (1) alleged mishandling of complaints and investigations and (2) significant internal organizational conflict and staff morale problems within BVNPT. Additionally, inconsistencies were identified in BVNPT's reported Enforcement Program workload and performance data. Finally, available data showed that a key measure of BVNPT's Enforcement Program performance, the average timeframe needed to complete cases resulting in formal discipline, was 1½ years longer than the 18-month timeframe targeted for this measure and that, by this measure, BVNPT ranked poorly in comparison to other DCA-affiliated Healing Arts Boards.

BVNPT's Sunset Review Hearing was held on March 23, 2015, but BVNPT's responses to participating members' questions during the Hearing did not allay the above issues and concerns. Subsequently, pursuant to a recommendation set forth in the *Background Paper* for the Hearing, the Director of DCA directed the Deputy Director of its Division of Investigation and Enforcement Programs to further review and investigate the activities of the Board to determine the need for immediate intervention. DCA also initiated an investigation of BVNPT's statistical reporting. Concurrently, from March 31 to May 29, 2015, five (5) BVNPT executives, managers and supervisors separated from the Board, including the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement, the Complaint Section Supervisor and an Investigation Section Supervisor.

Following the separations of the EO, AEO and Chief of Enforcement, the Deputy Director assigned a small team of Division of Investigation investigators and analysts to provide assistance to the Board with management of the Enforcement Program and to begin a review of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of Investigation. At that time there were only about a dozen BVNPT cases assigned to the Division. Over a two-month period extending from early-May to late-June 2015, the Division of Investigation team identified and transferred to the Division about 100 of the Investigation Section's pending cases, including more than 30 cases that had been assigned to the Section for more than two (2) years. Concurrently, DCA provided an Acting Executive Officer for the Board and a new Chief of Enforcement and new supervisors for the Complaint and Investigation Sections were hired.

As a result of all of the above issues, problems, concerns and events, legislation was adopted (AB 179, Bonilla) which required that the Director of DCA appoint an Administrative and Enforcement Monitor for BVNPT. Subsequently, on October 6, 2015, AB 179 was approved by the Governor. AB 179 required that the Monitor appointment be accomplished through a personal services contract no later than March 1, 2016 and continue for a period of up to two (2) years from the date of appointment. On February 2, 2016, DCA issued a Request for Offers (RFO) to obtain the Monitor services specified by AB 179. Subsequently, on February 29, 2016, a contract to provide these services was issued to Benjamin Frank LLC. Work on the project commenced almost immediately following DCA's notification of contract award. The term of the contract extends for 24 months through February 28, 2018.

AB 179 and the contract for Monitor services set forth specific responsibilities of the Monitor, including monitoring and evaluating:

- Specified BVNPT administrative processes, including staff hiring and training procedures, oversight of staff work, evaluation of staff performance, training of Board members, dissemination of information to Board members, assistance of Board members in performing their duties, communication with legislators and legislative staff, and representation of the Board at legislative meetings and hearings
- BVNPT's disciplinary systems and procedures, with specific concentration on improving the overall efficiency and consistency of the Enforcement Program, including the quality and consistency of complaint processing and investigation, the appropriate use of licensed professionals to investigate complaints, BVNPT's cooperation with other governmental entities charged with enforcing related laws and regulations regarding Vocational Nurses and Psychiatric Technicians, the accurate and consistent implementation of the laws and rules affecting discipline, and consistency in the application of sanctions or discipline imposed on licensees
- Submission of an *Initial Report* by July 1, 2016, interim reports by November 1, 2016 and February 1, 2017 and a *Final Report* by January 1, 2018.

AB 179 also requires that the Monitor be available to provide oral reports to DCA, BVNPT and the Legislature, if requested to do so.

We completed an Initial Assessment of BVNPT's Enforcement Program during March and April 2016. The abbreviated timeframe available to complete the Initial Assessment necessarily limited the breadth and depth of the research and analyses that could reasonably be performed. An *Initial Report* documenting results of the Initial Assessment was submitted to the Legislature on July 1, 2016. Following completion of the Initial Assessment, we completed additional reviews, research and analyses of BVNPT's complaint intake, investigation, discipline and targeted administrative processes. The accompanying *Second Report* summarizes results of these efforts.

Further reviews, research and analyses in a few remaining areas included in the scope of work for the project are expected to be completed during the next several months. Additionally, we plan to begin monitoring BVNPT's implementation of the recommendations for improvements presented in the *Second Report*. Concurrently, we plan to collect, compile, summarize and analyze additional case intake, investigation, and discipline workload, workflow, backlog and performance data for the 3-month period from July 1 through September 30, 2015. Results of these latter efforts will be used to support further assessment of the impacts of changes implemented by BVNPT to improve Enforcement Program performance. Finally, we will prepare a *Third Report* documenting results of these efforts and a *Work Plan and Schedule* for completing the final

phase of the project. A draft of the *Third Report* is expected to be completed by mid-December to enable completion of required reviews and preparation and submission of the report in final form to the Legislature by February 1, 2017.

B. BVNPT's Enforcement Program Turnaround

Corrective measures taken during the past year have contained the problems that arose during the preceding four (4) years and set into place a foundation for building a sustainable, effective and efficient Enforcement Program. Improvements made during the past year include:

- A successful restructuring of the License Applicant Arrest/Conviction Report Process which reduced the number of cases referred to Enforcement by about 3,000 cases per year (85 percent) and also reduced the number of Notices of Warning Issued, the number of Letters of Denial issued, the number of appealed denials of licensure, the number of SOIs filed, and the number of appealed cases settled with a granting of licensure in conjunction with issuance of a citation with a fine. However, this restructuring does not appear to have adversely impacted key indicators of the level of consumer protection provided such as the number of license denials upheld following appeal or the number of licenses granted in conjunction with placing the new licensee on probation.
- A restructuring of the Enforcement Division's Case Intake and Screening Process to enable prompt identification of cases involving serious criminal misconduct or significant patient harm to DCA's Division of Investigation. During 2015/16 about 370 enforcement cases, including both aged cases that had languished within the Investigation Section and newly received cases, were referred the Division of Investigation. This compares to zero (0) cases referred to the Division of Investigation during 2013/14 and about 130 cases that were referred to the Division of Investigation during the last several months of 2014/15 following BVNPT's March 2015 Sunset Review.
- Completion of more than 2,100 licensee arrest/conviction report investigations and more than 1,000 licensee complaint investigations during 2015/16. This compares to less than 1,500 licensee arrest/conviction report investigations and about 600 licensee complaint investigations completed during 2014/15. There were also significant reductions in the average elapsed times to complete both license applicant and licensee arrest/conviction report investigations.
- Significant reductions in the number of pending license applicant arrest/conviction report investigations, the number of pending licensee arrest/conviction report investigations, and the number of pending licensee complaint investigations. The total number of pending Enforcement investigations decreased by more than 35 percent, from nearly 1,900 pending cases as of June 30, 2015 to less than 1,200 cases as of June 30, 2016. Concurrently, the average age of the pending licensee complaint investigations decreased from about 17 months as of June 30, 2015, to about 13 months as of June 30, 2016.
- A 23 percent increase in the total number of cases referred to the Office of the Attorney General (AG) for disciplinary action, from about 330 cases referred during 2014/15 to more than 400 cases referred during 2015/16.

- A 23 percent increase in the number of discipline cases completed, from about 390 cases completed during 2014/15 to about 480 cases completed during 2015/16, along with reductions in the average elapsed time to file related pleadings and complete disciplinary actions. Additionally, the average elapsed from case receipt by BVNPT to completion of the discipline process (PM-4) decreased by about six (6) months from about 37 months for cases completed during 2014/15 to about 31 months for cases completed during the second half of 2015/16.
- A significant reduction in the number of pending discipline cases, from about 500 pending cases as of June 30, 2015, to about 342 pending discipline cases as of June 30, 2016. Additionally, the average age of BVNPT's pending discipline cases decreased from about 32 months as of June 30, 2015, to about 26 months as of June 30, 2016.

C. Current Status of the Enforcement Program

Notwithstanding all of the above improvements, there are still large legacy backlogs of aged cases in several key areas (i.e., now-sworn investigations, sworn investigations and discipline) and continuing problems with the completeness, consistency and quality of BVNPT's workload, backlog and performance data. Additionally, the amount of calendar time needed to complete investigations and impose discipline remains much too long. Of particular concern, during the past several months there has been very little change in the number of pending non-sworn investigations. About 400 cases are currently assigned to the Investigation Section, including a large number of legacy cases carried over from prior years. There also appears to be a high level of non-compliance with BVNPT's Continuing Education (CE) requirements, with at least 10 to 15 percent of licensees completing very little, or no, continuing education. However, available data suggests that BVNPT conducts CE compliance audits of fewer than 2 percent of renewing licensees per year. Finally, during 2015/16 BVNPT's probationer population increased significantly, to about 430 probationers from about 330 probationers previously. The higher number of probationers subject to monitoring, and related increases in monitoring and subsequent discipline workloads, are expected to persist for the next several years.

BVNPT's current case backlogs and the extended timeframes still needed to complete investigations and impose discipline provide context for understanding the scope and magnitude of the problems inherited by BVNPT's current management team. Additional changes and further improvements to the Enforcement Division's organizational structure, workforce allocations, and business processes are needed to help address these and other emerging workloads and business process deficiencies and improvement needs.

D. Recommendations for Improvements

Below we present our recommendations to help address current deficiencies and further improve Enforcement Program performance.

1. License Applicant Arrest/Conviction Report Process

During the past year BVNPT successfully implemented a restructuring of the License Applicant Arrest/Conviction Report Process that reduced the number of cases referred to Enforcement by about 3,000 cases per year without any apparent adverse impacts on the number of license denials upheld following appeal or the number of licenses granted in conjunction with placing the new licensee on probation. However, additional improvements are still needed to (1) reduce the frequency that license applicants misreport or over-report convictions and (2) further reduce the number of cases that are unnecessarily referred for desk investigation.

Recommendation IV-1 – *Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that license applicants misreport or over-report prior convictions (see also Recommendation IV-5).*

Recommendation IV-2 – *Develop and implement procedures to enable case intake staff to exercise judgement in determining whether to request records from law enforcement agencies and the courts for license applicant cases based on minor criminal offenses that occurred in the distant past and screen the cases to identify and close cases that do not require desk investigation.*

2. Continuing Education Compliance Enforcement Process

Staffing resources should be realigned to enable a resumption of continuing education compliance audits and an overhaul and expansion of BVNPT's Continuing Education Compliance Enforcement Process is needed to better address high levels of licensee non-compliance with BVNPT's continuing education requirements.

Recommendation IV-3 – *Restructure and expand the CE Compliance Audit Program. Issue an initial standard form 30-day audit letter to a sample of at least 5 percent of renewing licensees in conjunction with issuing their license renewal notifications. If the licensee is non-responsive to the initial request, promptly issue a second/final request. If the license is non-responsive to the final request or confirms that they did not complete any (or completed very little) of the required CE, refer the case to Enforcement for issuance of a citation. Streamline the Certificate of Completion review process by limiting reviews of the documents in cases that appear to show full compliance with BVNPT's CE requirements.*

Recommendation IV-4 – *Assess the feasibility of imaging CE-related document submissions and enabling submission of the documents electronically.*

See also Subsection 5, below (Recommendation V-5).

3. Licensee Arrest/Conviction Report Process

Licensee Arrest/Conviction Report cases currently account for more than one-half of all investigations and disciplinary actions. Additionally, a large proportion of these cases default following filing of the accusation and these defaults account for 30 to 40 percent of the Board's discipline decisions. Improvements to BVNPT's Licensee Arrest/Conviction Report Process are needed to (1) reduce the level of licensee misreporting and over-reporting of prior convictions, (2) reduce the extended timeframes needed to prosecute these "paper-based" cases and (3) enable the Board to delegate authority for approving default decisions to BVNPT's Executive Officer. BVNPT should also further assess needs to increase the use of Orders of Abatement for these cases as an intermediate alternative to assessing larger fines or referring the cases for formal disciplinary action.

Recommendation IV-5 – *Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that licensees misreport or over-report prior convictions (see also Recommendation IV-1). Additionally, develop programming for on-line renewals that requires confirmation by the licensee when the "Yes" box is checked or to prevent further processing of the renewal application until other required fields providing additional information about the self-reported conviction are completed.*

Recommendation IV-6 – *Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases.*

Recommendation IV-7 – *Work collaboratively with the AG to identify ways to expand the Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases to other geographic regions of the state.*

Recommendation IV-8 – *Develop and propose legislation to specifically provide BVNPT's governing Board with the authority to delegate approval of default decisions to the Executive Officer.*

4. Licensee Complaint Intake, Screening and Investigation Process

Significant improvements to BVNPT's licensee complaint intake, screening and investigation processes are needed to (1) reduce the number of cases referred for investigation and (2) differentiate cases where a field investigation is needed from cases which can be investigated by analyst-level staff from their office utilizing desk investigation processes. Also, further improvements are needed to BVNPT's case coding practices to improve the completeness, quality and consistency of BVNPT's statistical reporting.

Recommendation IV-9 – *Develop and implement a structured, sustainable business process for screening licensee complaints to identify cases that do not require field investigation and assign these cases to staff that specialize in completing desk investigations of these types of cases.*

Recommendation IV-10 – *Develop and implement procedures to enable case intake or screening staff (or both) to review and not open new discipline by another state/agency cases or, alternatively, screen and close discipline by another state/agency cases that do not require completion of a desk investigation. Additionally, notify agencies providing "courtesy notices" to stop doing so if the information is available to BVNPT through BreEZe or they routinely post the same information to another professional licensing database that is otherwise queried by BVNPT.*

Recommendation IV-11 – *Continue to refine licensee complaint case coding procedures and practices and provide training to staff to further improve the consistency and completeness of complaint records and the tracking and reporting of Enforcement Program workload, backlog and performance information.*

5. Enforcement Program Organization and Staffing

Exhibit ES-1, on the next page, illustrates the Enforcement Division's current organizational structure and workforce allocations. As shown by Exhibit ES-1, 35.50 positions are authorized for the Enforcement Division, including one (1) half-time AGPA position and two (2) retired annuitant positions that are limited to working 960 hours per year.

In recent years significant changes were made to the Complaint Intake and Desk Investigation Section's scope of responsibility. Prior to formation of the Investigation Section, the Complaint Intake and Desk Investigation Section was responsible for completing desk investigations of licensee complaint cases, except for those cases that were referred to the Division of Investigation. Subsequently, during 2015/16, BVNPT successfully implemented a restructuring of the license applicant arrest/conviction report process that reduced the number of cases referred to Enforcement by nearly 90 percent. Previously, these cases accounted for as much as 65 percent of all cases received. Additionally, this restructuring significantly reduced the number of appealed license denials which previously accounted for nearly 20 percent of cases referred by the Section to the AG. The significantly reduced scope of the Complaint Intake and Desk Investigation Section's responsibilities in conjunction with the reduced workload related to the recent reductions in case intake, screening and desk investigation case backlogs suggests that it should now be possible to:

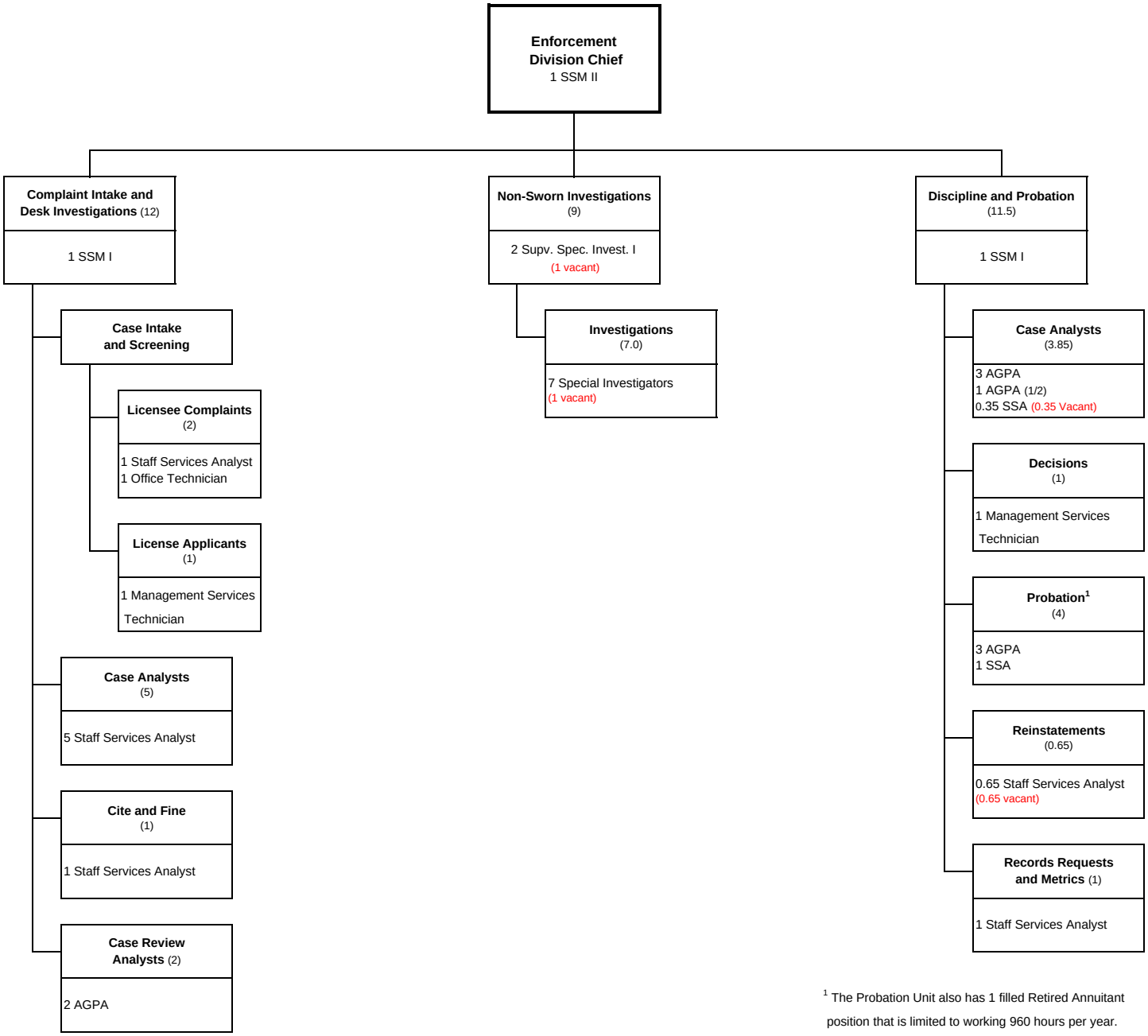
- Redirect some Complaint Intake and Desk Investigation Section positions to better address other Enforcement Program needs or BVNPT needs in other areas, or
- Assign additional responsibilities to some Complaint Intake and Desk Investigation Section staff.

In response to these circumstances, Enforcement Division management recently began re-screening and identifying licensee complaint cases assigned to the Investigation Section that do not require field investigation and re-assigning some of these cases to Complaint Intake and Desk Investigation Section analysts for desk investigation. BVNPT management also plans to redirect the Complaint Intake and Desk Investigation Section's vacant Retired Annuitant position to the Probation Unit.

Exhibit ES-1

Enforcement Division Organization - September 2016

Total Positions = 33.50, Excluding Temporary Help



[1] The Probation Unit also has 1 filled Retired Annuitant position that is limited to working 960 hours per year.

Recommendation V-1 – *Continue identifying and assigning licensee complaint cases to the Complaint Intake and Desk Investigation Section for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations of licensee complaint cases (see Recommendation V-6).*

Recommendation V-2 – *To better address current and emerging Probation Program workload demands for the next 2 to 3 years, continue to utilize Temporary Help to augment Probation Unit staffing (see also Recommendation V-7).*

Also, during 2015/16, significant changes were made to BVNPT's licensee complaint intake and screening processes. Prior to 2015/16, nearly all licensee complaint cases (about 500 to 550 per year) were assigned to the Investigation Section. Currently, nearly 40 percent of these cases (180 to 200 cases per year) are instead referred to the Division of Investigation. Additionally:

- A significant portion of the Investigation Section's remaining cases (possibly about 20 percent, or 100 cases per year) do not require completion of a field investigation and can, instead, be completed by analyst-level staff, thus leaving the Investigation Section with only about 200 cases per year to investigate. This compares to an average of more than 450 investigations completed by the Investigation Section during the past three (3) years.
- During 2015/16 the Investigation Section's pending case backlog decreased from nearly 700 cases to less than 400 cases.

The reduced scope of the Investigation Section's responsibilities, in conjunction with the reduced workload related to the recent reductions in the Section's backlog of pending cases, suggests that it should now be possible to begin redirecting some of the Section's Special Investigator positions to better address other Enforcement Program needs or BVNPT needs in other areas.

Recommendation V-3 – *As Investigation Section case backlogs and new case assignments decrease, redirect vacant positions to address other current and emerging Enforcement Program and BVNPT business needs.*

Additionally, within the Enforcement Division, needs exist to bolster or consolidate workforce capabilities in several areas, including:

- Conducting desk investigations of licensee complaint cases that do not require field investigation
- Further reviewing and, as needed, investigating additional on-line public complaints that BVNPT began receiving during 2015/16, particularly following implementation of BreEZe
- Reviewing additional audit failure cases, issuing larger numbers of CE citations, and tracking and collecting associated fines, assuming that the CE Audit Program is expanded to improve licensee compliance with CE Program requirements (See Section IV-B – *Continuing Education Program*).

Recommendation V-4 – *Redirect and consolidate available resources to enable additional screening and completion of desk investigations of on-line public complaints and licensee complaints that do not require field investigation.*

Recommendation V-5 – *Redirect and consolidate available resources to support expansion of the CE Audit Program, including completing additional case reviews, issuing additional citations, and tracking and collecting fines.*

Finally, needs exist to reduce the scope of responsibility and span of control of the managers of (1) the Complaint Section and (2) the Discipline and Probation Section to improve supervision and management of subordinate staff, the enforcement services that they provide, and the work products they produce in both of those areas, including:

- Completing desk investigations of licensee arrest/conviction report cases (about 1,200 cases per year, excluding "Redundant" cases)
- Reviewing all completed non-sworn and sworn field investigations (more than 650 cases during 2015/16)
- Reviewing all discipline pleadings, negotiating and reviewing related settlements and supporting other aspects of BVNPT's discipline process (about 400 cases per year)
- Monitoring probationers (more than 400) and initiating subsequent discipline actions for probation violations (at least several dozen cases per year)

Exhibit V-2, on the next page, illustrates a proposed Future State Organizational Model for the Enforcement Division. This model establishes a new Desk Investigation and Field Investigation Case Review Section and a new Probation Section. The proposed Future State Organizational Model can be implemented without increasing the total number of positions currently authorized for the Enforcement Division. However, a limited number of reclassifications of current positions would be needed.

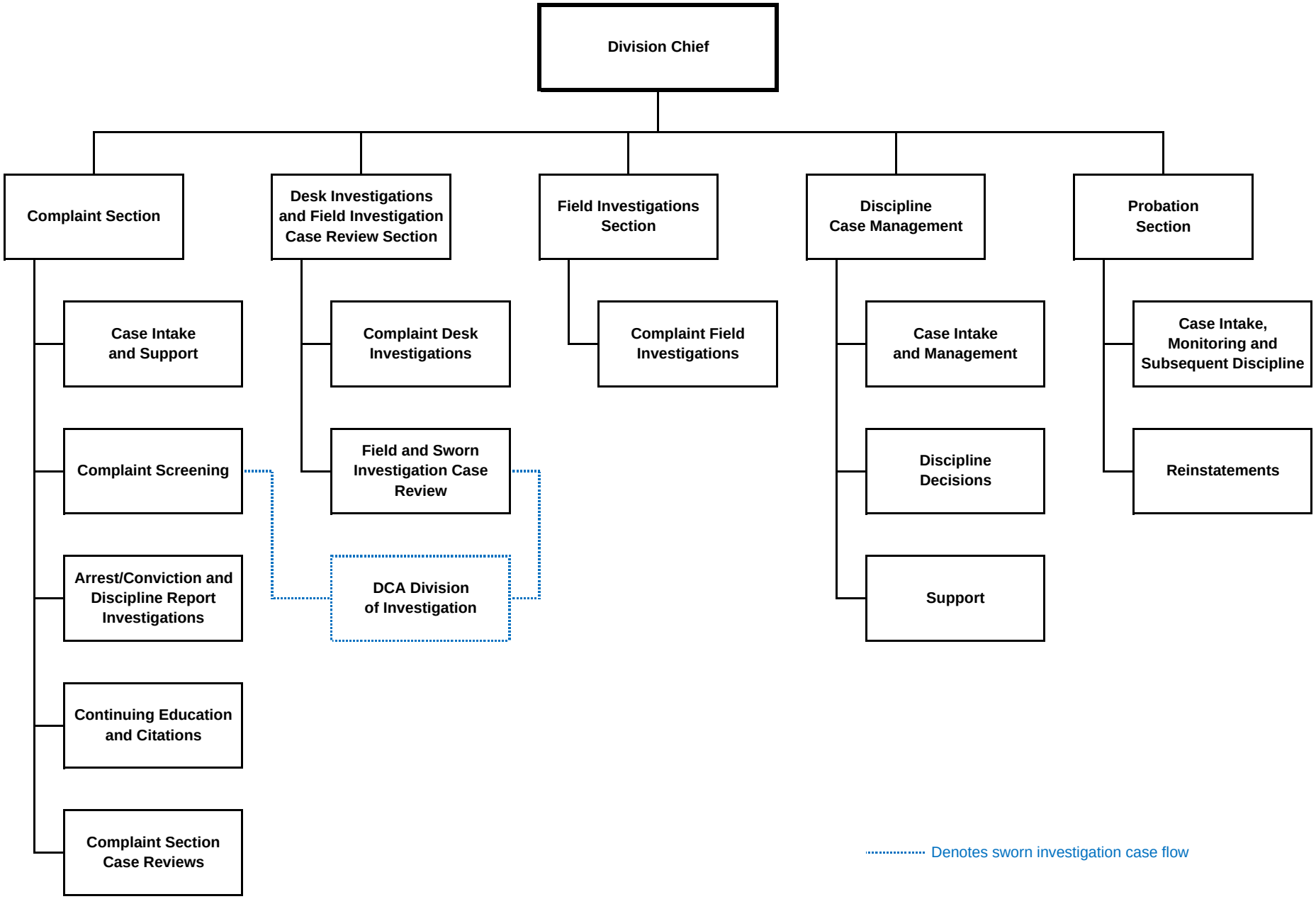
Recommendation V-6 – *Establish a new Desk Investigation and Field Investigation Case Review Section.*

Recommendation V-7 – *Establish a new Probation Section and, concurrently, reduce the utilization of Temporary Help to provide probation monitoring services.*

Finally, there appears to be a good deal of effective communication and collaboration occurring between Enforcement Division management and staff and representatives of both the Division of Investigation and the Office of the Attorney General. All three agencies seem to be working collaboratively together to reduce legacy case backlogs and the average elapsed times to complete investigations and related disciplinary actions. Additionally, during the past year the Enforcement Division, the Division of Investigation and the Office of the Attorney General collectively achieved significant improvements in BVNPT Enforcement Program performance. These improvements could not have occurred in the absence of effective communications and collaboration between Enforcement Program managers and staff at all levels within all three (3) organizations. However, additional improvements are needed to further reduce remaining backlogs and the amount of time needed to complete disciplinary actions where supported by the results of the investigations.

Exhibit ES-2

Future State Enforcement Division Organizational Model



BVNPT's Chief of Enforcement, with the support of BVNPT's prior and current Executive Officers, has been the primary point person during the past 15 months for planning, coordinating and managing the significantly improved relationships that have emerged among these three (3) organizations. To sustain these relationships, it is important that the Chief of Enforcement maintain open lines of communication with key personnel at both the Division of Investigation and the Office of the Attorney General and continue to meet periodically with these counterparts on a regular basis.

Recommendation V-8 – *The Chief of Enforcement should maintain open lines of communication and meet periodically with counterparts at the Division of Investigation and the Office of Attorney General to jointly develop and implement strategies to further reduce BVNPT case backlogs and reduce the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.*

BVNPT's case intake, screening, investigation and workforce development and training processes are under-developed resulting in high levels of inconsistency and variability in the completion of specific enforcement functions and activities and the resulting process outputs or work products. While the magnitude of some of these problems has possibly diminished during the past year, significant additional improvement is needed. The following recommendations are structured to improve BVNPT's workforce development and processes.

Recommendation V-9 – *Conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. Over time, adjust the frequency and duration of the reviews as appropriate to each investigator's development needs.*

Recommendation V-10 – *Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.*

Recommendation V-11 – *Utilize the Division of Investigation to support initial training of newer investigators.*

Recommendation V-12 – *Consider utilizing AG Liaison services at a higher level for a limited period of time to provide additional on-site applied technical assistance and training to BVNPT's investigators.*

Recommendation V-13 – *Assign responsibilities and due dates for completing Annual Performance Reviews and Individual Development Plans during the 2016/17 fiscal year for all Enforcement Division managers and staff.*

6. Enforcement Program Workload, Backlog and Performance Reporting

BVNPT's Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to (1) collect, compile and report Enforcement Program-related management information to BVNPT's governing Board, the Department of Consumer Affairs, control agencies and the Legislature and (2) assist the above recipients in understanding the information that is provided. Data and representations made in the past regarding BVNPT's Enforcement Program workload, workflows, backlogs and performance have generally been significantly overstated, misrepresented, and incorrect. Additionally, BVNPT oftentimes combined metrics regarding its disparate license applicant, licensee subsequent arrest, and licensee complaint workloads, workflows, backlogs and performance that produce results that are essentially meaningless.

To help improve communications between BVNPT's Executive Officer and staff and BVNPT's governing Board, DCA, oversight and control agencies, and the Legislature regarding BVNPT's Enforcement Program workloads, backlogs and performance, we developed a sample 1-page *Executive Summary* template that separately provides key workload and performance information for (1) licensee applicant cases, (2) licensee CE cases, (3) licensee arrest/conviction report cases, and (4) licensee complaint cases. The *Executive Summary* template provides high-level statistical profiles for each of the four (4) categories of cases. With the exception of CE cases where more limited statistical profile information is provided, the profiles include information regarding:

- Cases received
- Investigations completed, the average elapsed time to complete the investigations and investigation outcomes
- Pending investigations and the average age of the pending cases
- Completed discipline cases and the average elapsed time from case referral to discipline imposed
- Pending discipline cases and the average age of the pending discipline cases.

The *Executive Summary* template provides just one (1) composite metric; the Average Elapsed Time from Receipt to Discipline (PM-4).

A sample completed *Enforcement Program Workload and Performance Executive Summary Report* for the final quarter of 2015/16 and the full 2015/16 fiscal year is provided under separate cover. The preparation and presentation of this type of report on a quarterly basis to BVNPT's Enforcement Committee, and through the Enforcement Committee to BVNPT's governing Board, could help to prevent recurrence of some of the types of problems and surprises that surfaced previously. Additionally, the information should be helpful to BVNPT executives and the entire Enforcement Program management team for overall Enforcement Program planning and management purposes. With respect to this latter point, the Executive Summary provides fields for establishing annual workload and performance expectations and goals, in this example for the 2016/17 fiscal year.

Recommendation VI-1 – *Update the Enforcement Program Workload and Performance Executive Summary Report on a quarterly basis within 30 days following the completion of each quarter and provide the report to BVNPT's Enforcement Committee and, through the Enforcement Committee, to BVNPT's governing Board. Also, post the quarterly reports on BVNPT's website.*

Recommendation VI-2 – *On an annual basis, develop goals for each of the key workload and performance measures listed on the Executive Summary of the Enforcement Program Workload and Performance Report and include the goals in all quarterly reports.*

Additionally, we developed sample templates to provide additional workload, backlog, and performance information for each of the Enforcement Program's core business processes: Sample completed Core Business Process Workload and Performance Summaries for the final quarter of 2015/16 and the full 2015/16 fiscal year are provided under separate cover following the Executive Summary template. BVNPT's Enforcement Committee should be responsible for determining needs for more detailed workload and performance information for the above case categories along with determining the specific data that should be provided, the frequency of the reporting (e.g., quarterly, semi-annual, or annual) and, if needed, when such reporting should commence. For example, the Enforcement Committee may only be interested in receiving more detailed reporting for License Applicant and Continuing Education investigations on an annual basis or only "as needed". Conversely, given BVNPT's current circumstances, the Enforcement Committee may be interested in receiving some type of more detailed reporting regarding Licensee Complaint investigations and Formal Discipline cases on a more frequent basis (e.g., semi-annually or quarterly).

7. Board Member Training and Support

The following recommendations are structured to bolster the training provided to the members of BVNPT's governing Board and address long-standing systemic deficiencies with the Board's oversight of BVNPT's Enforcement Program.

Recommendation VII-1 – *Consistently provide all new Board members with substantive New Board Member Orientations and related training and reference materials specific to BVNPT's Enforcement Program, and other BVNPT programs and services provided, as appropriate, that complements the Board Member Orientation Training (BMOT) provided by DCA and helps new members to better understand and fulfill their program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider requesting that a representative of DCA participate in these BVNPT-specific orientations to help integrate the training with DCA's BMOT training, particularly with respect to helping the member understand and fulfill their oversight responsibilities. Overhaul the reference materials contained in the two "large binders" to make the information more useful and effective for Board member orientation, training and reference purposes.*

Recommendation VII-2 – *Develop and adopt a written charter for the Enforcement Committee delineating the Committee's roles and responsibilities, including roles and responsibilities related to (1) overseeing the Board's Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board's strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider developing similar charters for other Board committees, where appropriate.*

Recommendation VII-3 – *Provide briefings to Enforcement Committee members, initially on at least quarterly basis, to provide information regarding case intake, investigation and discipline workloads, backlogs, and performance, performance improvement initiatives underway and planned, policy matters and other information as determined by the Committee.*

Board of Vocational Nursing and Psychiatric Technicians Administrative and Enforcement Monitor

Second Report

Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

BENJAMIN FRANK LLC
MANAGEMENT CONSULTANTS

October 12, 2016

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BENJAMIN FRANK LLC

MANAGEMENT CONSULTANTS

October 12, 2016

Mr. Awet Kidane, Director
California Department of Consumer Affairs
1625 North Market Boulevard
Sacramento, CA 95834

Contract No. RFO BVNPT 16-01, Addendum 1
Board of Vocational Nursing and Psychiatric Technicians
Administrative and Enforcement Monitor

Second Report
Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

Dear Mr. Kidane,

We are pleased to present this *Second Report* which summarizes results of our assessments of the Board of Vocational Nursing and Psychiatric Technicians' (BVNPT) case intake, investigation, discipline and targeted administrative processes. The report is submitted pursuant to requirements set forth in AB 179 (Bonilla) which required appointment of an Administrative and Enforcement Monitor for BVNPT and completion of assessments in these specific areas.

BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented during 2011/12 and 2012/13. These changes included establishing a new non-sworn Investigation Section and assigning all licensee complaint cases to the new section, including cases involving serious criminal misconduct and significant patient harm previously referred to DCA's Division of Investigation. Problems resulting from these changes became apparent to DCA which made efforts to encourage BVNPT to utilize the new Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the Division of Investigation's services. Members of BVNPT's governing Board also began developing an awareness of these same problems from reviewing discipline packages. In many instances the discipline cases were quite old which heightened concerns that the licensees were continuing to practice for years without discipline. Additionally, some members were dissatisfied with management's responsiveness to their requests for additional Enforcement Program information.

During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess the BVNPT's enforcement and discipline processes. The formation of the Enforcement Task Force appears to have occurred, in part, because the Board's Standing Enforcement Committee had not met in many years and possibly did not have any appointed members. In November 2014 the Task Force

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submitted its report to the Board. The Task Force Report included six (6) recommendations, including a recommendation that BVNPT begin utilizing CPEI case prioritization guidelines and resume utilizing the Division of Investigation's services. This recommendation, along with most of the Task Force's other recommendations, was approved by the full Board. However, BVNPT continued to assign nearly all licensee complaint cases to the Investigation Section. From December 2014 through March 2015, only about 20 cases were assigned to the Division of Investigation.

Concurrently, during BVNPT's 2014/15 Sunset Review, reports surfaced about the resulting organizational and operational problems and the scope and magnitude of these problems became evident to the Legislature and the Department of Consumer Affairs (DCA). Corrective measures taken immediately following BVNPT's March 23, 2015, Sunset Review Hearing and during the past year have contained these problems and set into place a foundation for building a sustainable, effective and efficient Enforcement Program that supports fulfillment of BVNPT's consumer protection mission. Improvements made during the past year include:

- A successful restructuring of the License Applicant Arrest/Conviction Report Process which reduced the number of cases referred to Enforcement by about 3,000 cases per year (85 percent) and also reduced the number of Notices of Warning Issued, the number of Letters of Denial issued, the number of appealed denials of licensure, the number of SOIs filed, and the number of appealed cases settled with a granting of licensure in conjunction with issuance of a citation with a fine. However, this restructuring does not appear to have adversely impacted key indicators of the level of consumer protection provided such as the number of license denials upheld following appeal or the number of licenses granted in conjunction with placing the new licensee on probation.
- A restructuring of the Enforcement Division's Case Intake and Screening Process to enable prompt identification of cases involving serious criminal misconduct or significant patient harm to DCA's Division of Investigation. During 2015/16 more than 300 cases, including both aged cases that had languished within the Investigation Section and newly received cases, were referred the Division of Investigation. This compares to zero (0) cases referred to the Division of Investigation during 2013/14 and about 130 cases that were referred to the Division of Investigation during the last several months of 2014/15 following BVNPT's March 2015 Sunset Review.
- Completion of more than 2,100 licensee arrest/conviction report investigations and more than 1,000 licensee complaint investigations during 2015/16. This compares to less than 1,500 licensee arrest/conviction report investigations and about 600 licensee complaint investigations completed during 2014/15. There were also significant reductions in the average elapsed times to complete both license applicant and licensee arrest/conviction report investigations.
- Significant reductions in the number of pending license applicant arrest/conviction report investigations, the number of pending licensee arrest/conviction report investigations, and the number of pending licensee complaint investigations. The total number of pending investigations decreased by more than 35 percent, from nearly 1,900 pending cases as of June 30, 2015 to less than 1,200 cases as of June 30, 2016. Concurrently, the average age of the pending investigations decreased from about 17 months as of June 30, 2015, to about 13 months as of June 30, 2016.

- A 23 percent increase in the total number of cases referred to the Office of the Attorney General (AG) for disciplinary action, from about 330 cases referred during 2014/15 to more than 400 cases referred during 2015/16.
- A 23 percent increase in the number of discipline cases completed, from about 390 cases completed during 2014/15 to about 480 cases completed during 2015/16, along with reductions in the average elapsed time to file related pleadings and complete disciplinary actions. Additionally, the average elapsed from case receipt by BVNPT to completion of the discipline process (PM-4) decreased by about six (6) months from about 37 months for cases completed during 2014/15 to about 31 months for cases completed during the second half of 2015/16.
- A significant reduction in the number of pending discipline cases, from about 500 pending cases as of June 30, 2015, to about 342 pending discipline cases as of June 30, 2016. Additionally, the average age of BVNPT's pending discipline cases decreased from about 32 months as of June 30, 2015, to about 26 months as of June 30, 2016.

However, notwithstanding all of these improvements, there are still large legacy backlogs of aged cases in several key areas (i.e., now-sworn investigations, sworn investigations and discipline) and continuing problems with the completeness, consistency and quality of BVNPT's workload, workflow, backlog and performance data. Additionally, the amount of calendar time needed to complete investigations and impose discipline remains much too long and, during the past several months, there has been very little change in the number of pending non-sworn investigations. There also appears to be a high level of non-compliance with BVNPT's Continuing Education (CE) requirements, with at least 10 to 15 percent of licensees completing very little, or no, continuing education. However, available data suggests that BVNPT conducts CE compliance audits of fewer than 2 percent of renewing licensees per year. Finally, during 2015/16 BVNPT's probationer population increased significantly, to about 430 probationers from about 330 probationers previously. The higher number of probationers subject to monitoring, and related increases in monitoring and subsequent discipline workloads, are expected to persist for the next several years. Additional changes and further improvements to the Enforcement Division's organizational structure, workforce allocations, and business processes are needed to help address these and other emerging workloads and business process deficiencies and improvement needs.

Attachment A provides a listing of 29 recommended improvements structured to help address these deficiencies and further improve overall Enforcement Program performance. Attachment A also provides a template for the BVNPT to prioritize, sequence, and schedule implementation of these improvement initiatives. In several cases, implementation of the recommended improvements is already underway.

* * * * * * * * *

We are grateful for all of the assistance provided to us by DCA's Project Manager and other DCA executives, the members of BVNPT's governing Board, the Enforcement Division's management team and staff, DCA's Division of Investigation, Division of Legal Affairs, Office of Information Services, and Bureau of Security and Investigative Services, and the Office of the Attorney General. Their responsiveness to our requests for information and assistance were outstanding and, without their support, completion of this this phase of the project would have been substantially more difficult. We also would like to extend our thanks to the representatives of the Medical Board of California and the Respiratory Care Board who provided helpful information regarding their Enforcement Program business processes.

We appreciate the opportunity to be of service to the Department of Consumer Affairs and the Board of Vocational Nursing and Psychiatric Technicians. If you have any questions or need additional information, please contact me at 916.425.1475.

Very truly yours,

BENJAMIN FRANK, LLC

Ben Frank

Benjamin Frank
Chief Executive Officer

Attachment

BVNPT Improvement Portfolio and Implementation Plan

		Improvement Initiative	Priority (1 to 5)	Status	2016/17			2017/18			
					Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun
IV. Integrated Assessment of Targeted Business Processes	IV-1	Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that **license applicants** misreport or over-report prior convictions (see also Recommendation IV-5).									
	IV-2	Develop and implement procedures to enable case intake staff to exercise judgement in determining whether to request records from law enforcement agencies and the courts for license applicant cases based on minor criminal offenses that occurred in the distant past and screen the cases to identify and close cases that do not require desk investigation.									
	IV-3	Restructure and expand the CE Compliance Audit Program. Issue an initial standard form 30-day audit letter to a sample of at least 5 percent of renewing licensees in conjunction with issuing their license renewal notifications. If the licensee is non-responsive to the initial request, promptly issue a second/final request. If the license is non-responsive to the final request or confirms that they did not complete any (or completed very little) of the required CE, refer the case to Enforcement for issuance of a citation. Streamline the Certificate of Completion review process by limiting reviews of the documents in cases that appear to show full compliance with BVNPT's CE requirements.									
	IV-4	Assess the feasibility of imaging CE-related document submissions or enabling submission of the documents electronically.									
	IV-5	Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that **licensees** misreport or over-report prior convictions when renewing their license (see also Recommendation IV-1) . Develop additional programming for on-line renewals that requires confirmation when the "Yes" box is checked or to prevent further processing of the renewal application until other required fields providing additional information about the self-reported conviction are completed.									
	IV-6	Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current FT Pilot Program for licensee arrest/conviction report cases and other qualifying cases.									
	IV-7	Work collaboratively with the AG to identify ways to expand the Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases to other geographic regions of the state.									

BVNPT Improvement Portfolio and Implementation Plan

		Improvement Initiative	Priority (1 to 5)	Status	2016/17			2017/18			
					Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun
IV. Integrated Assessment of Targeted Business Processes *(continued)*	IV-8	Develop and propose legislation to specifically provide BVNPT's governing Board with the authority to delegate approval of default decisions to the Executive Officer.									
	IV-9	Develop and implement a structured, sustainable business process for screening licensee complaints to identify cases that do not require field investigation and assign these cases to staff that specialize in completing desk investigations of these types of cases.									
	IV-10	Develop and implement procedures to enable case intake or screening staff (or both) to review and not open new discipline by another state/agency cases or, alternatively, screen and close discipline by another state/agency cases that do not require completion of a desk investigation. Additionally, notify agencies providing "courtesy notices" to stop doing so if the information is available to BVNPT through BreEZe or they routinely post the same information to another professional licensing database that is otherwise queried by BVNPT.									
	IV-11	Continue to refine licensee complaint case coding procedures and practices and provide training to staff to further improve the consistency and completeness of complaint records and the tracking and reporting of Enforcement Program workload, backlog and performance information.									
V. Enforcement Program Organization and Staffing	V-1	Continue identifying and assigning licensee complaint cases to the Complaint Intake and Desk Investigation Section for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations of licensee complaint cases (see Recommendation V-6).									
	V-2	To better address Probation Program workload demands for the next 2 to 3 years, continue to utilize Temporary Help to augment Probation Unit staffing (see also Recommendation V-7).									
	V-3	As Investigation Section case backlogs and new case assignments decrease, redirect vacant positions to address other current and emerging Enforcement Program and BVNPT business needs.									
	V-4	Redirect and consolidate available resources to enable additional screening and completion of desk investigations of on-line public complaints and licensee complaints that do not require field investigation.									
	V-5	Redirect and consolidate available resources to support expansion of the CE Audit Program, including completing additional case reviews, issuing additional citations, and tracking and collecting fines.									

BVNPT Improvement Portfolio and Implementation Plan

Improvement Initiative			Priority (1 to 5)	Status	2016/17			2017/18			
					Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun
V. Enforcement Program Organization and Staffing *(continued)*	V-6	Establish a new Desk Investigation and Field Investigation Case Review Section.									
	V-7	Establish a new Probation Section and, concurrently, reduce the utilization of Temporary Help to provide probation monitoring services.									
	V-8	The Chief of Enforcement should maintain open lines of communication and meet periodically with counterparts at the Division of Investigation and the Office of the Attorney General to jointly develop and implement strategies to further reduce BVNPT case backlogs and the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.									
	V-9	Conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. Over time, adjust the frequency and duration of the reviews as appropriate to each investigator's development needs.									
	V-10	Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.									
	V-11	Utilize the Division of Investigation to support initial training of newer investigators.									
	V-12	Consider utilizing AG Liaison services at a higher level for a limited period of time to provide additional on-site applied technical assistance and training to BVNPT's investigators.									
	V-13	Assign responsibilities and due dates for completing Annual Performance Reviews and Individual Development Plans during the 2016/17 fiscal year for all Enforcement Division managers and staff.									
VI. Reporting	VI-1	Update the Enforcement Program Workload and Performance Executive Summary Report on a quarterly basis within 30 days following the completion of each quarter and provide the report to BVNPT's Enforcement Committee and, through the Enforcement Committee, to BVNPT's governing Board. Also, post the quarterly reports on BVNPT's website.									
	VI-2	On an annual basis, develop goals for each of the key workload and performance measures listed on the Enforcement Program Workload and Performance Executive Summary Report and include the goals in all quarterly reports.									

BVNPT Improvement Portfolio and Implementation Plan

Improvement Initiative			Priority (1 to 5)	Status	2016/17			2017/18			
					Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun
VII. Survey of Governing Board	VII-1	Consistently provide all new Board members with substantive New Board Member Orientations and related training and reference materials specific to BVNPT's Enforcement Program, and other BVNPT programs and services provided, as appropriate, that complements the Board Member Orientation Training (BMOT) provided by DCA and helps new members to better understand and fulfill their program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider requesting that a representative of DCA participate in these BVNPT-specific orientations to help integrate the training with DCA's BMOT training, particularly with respect to helping the member understand and fulfill their oversight responsibilities. Overhaul the reference materials contained in the two "large binders" to make the information more useful and effective for Board member orientation, training and reference purposes.									
	VII-2	Develop and adopt a written charter for the Enforcement Committee delineating the Committee's roles and responsibilities, including roles and responsibilities related to (1) overseeing the Board's Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board's strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider developing similar charters for other Board committees, where appropriate.									
	VII-3	Provide briefings to Enforcement Committee members, initially on at least quarterly basis, to provide information regarding case intake, investigation and discipline workloads, backlogs, and performance, performance improvement initiatives underway and planned, policy matters and other information as determined by the Committee.									

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I. Introduction

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I. Introduction

As the California State Legislature was preparing to complete its Sunset Review of the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) during late-2014 and early-2015, reports surfaced concerning (1) mishandling of complaints and investigations and (2) significant internal organizational conflict and staff morale problems within BVNPT. Additionally, it became apparent that there were inconsistencies in BVNPT's reported Enforcement Program workload and performance metrics.

BVNPT also reported that, in 2011, it had established and staffed a new Investigation Section within its Enforcement Division which it claimed had enabled BVNPT to (1) drastically reduce the number of cases referred to DCA's Division of Investigation and (2) complete nearly all of its investigations in-house, "despite understaffing and burdensome caseloads". However, available data showed that a key measure of BVNPT's Enforcement Program performance, the average timeframe needed to complete cases resulting in formal discipline, was 1½ years longer than the 18-month timeframe targeted for this measure. By this measure, BVNPT ranked poorly in comparison to other DCA-affiliated Healing Arts Boards.

In response to these developments, representatives of DCA made efforts to encourage BVNPT to utilize Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the DCA Division of Investigation's services. Members of BVNPT's governing Board also began developing an awareness of these same problems from reviewing discipline packages. In many instances the discipline cases were quite old which heightened concerns that the licensees were continuing to practice for years without discipline. Additionally, some members were dissatisfied with management's responsiveness to their requests for additional Enforcement Program information.

During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess BVNPT's enforcement and discipline processes. The formation of the Enforcement Task Force appears to have occurred, in part, because the Board's Standing Enforcement Committee had not met in many years and possibly did not have any appointed members. In November 2014 the Task Force submitted its report to the Board. The Task Force report included six (6) recommendations, including a recommendation that BVNPT begin utilizing CPEI case prioritization guidelines and resume utilizing the Division of Investigation's services. This recommendation, along with most of the Task Force's other recommendations, was approved by the full Board. However, BVNPT continued to assign nearly all licensee complaint cases to the Investigation Section. From December 2014 through March 2015, only about 20 cases were assigned to the Division of Investigation. The Task Force report, which also identified four (4) other areas for further study, can be viewed at www.bvnpt.ca.gov/about_us/meetings/materials/20141120_12.pdf.

BVNPT's Sunset Review Hearing was held on March 23, 2015, but BVNPT's responses to participating members' questions during the Hearing did not allay the above issues and concerns. Subsequently, pursuant to a recommendation of legislative staff set forth in their *Background Paper* for the Hearing, the Director of DCA directed the Deputy Director of its Division of Investigation and Enforcement Programs to further review and investigate the activities of the Board to determine the need for immediate intervention. Concurrently, DCA began an investigation of the causes of the discrepancies in BVNPT's statistical data.

Over the next two (2) months, five (5) BVNPT executives, managers and supervisors separated from the Board, including:

- Complaint Unit Supervisor – March 31, 2015
- Executive Officer (EO) – April 30, 2015
- Assistant Executive Officer (AEO) – April 30, 2015
- Chief of Enforcement – April 30, 2015
- Investigation Section Supervisor – May 29, 2015.

I. Introduction

Following the separations of the EO, the AEO and the Chief of Enforcement, the Deputy Director assigned a small team of Division of Investigation investigators and analysts to assist the Board with management of the Enforcement Program and begin reviewing all of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of Investigation. Over a two-month period extending from early-May to late-June 2015, the Division of Investigation team identified and transferred to the Division of Investigation about 100 pending cases, including more than 30 cases that had been assigned to the Investigation Section for more than two (2) years. Concurrently, DCA provided an Acting Executive Officer for the Board. Additionally, a new Chief of Enforcement and new supervisors for the Complaint and Investigation Sections were hired.

As a result of all of the above issues, problems, concerns and events, legislation was adopted (AB 179, Bonilla) which required that the Director of DCA appoint an Administrative and Enforcement Monitor for BVNPT. Subsequently, on October 6, 2015, AB 179 was approved by the Governor. AB 179 required that the Monitor appointment be accomplished through a personal services contract no later than March 1, 2016 and continue for a period of up to two (2) years from the date of appointment.

On February 2, 2016, DCA issued a Request for Offers (RFO) to obtain the Administrative and Enforcement Monitor services specified by AB 179. A contract to provide these was issued to Benjamin Frank LLC on February 29, 2016. Work on the project commenced almost immediately following DCA's notification of contract award. The term of the contract extends for 24 months through February 28, 2018.

AB 179 sets forth specific responsibilities of the Administrative and Enforcement Monitor, including monitoring and evaluating:

- Specified BVNPT administrative processes, including staff hiring and training procedures, oversight of staff work, evaluation of staff performance, training of Board members, dissemination of information to Board members, assistance of Board members in performing their duties, communication with legislators and legislative staff, and representation of the Board at legislative meetings and hearings
- BVNPT's disciplinary systems and procedures, with specific concentration on improving the overall efficiency and consistency of the Enforcement Program, including:
  - The quality and consistency of complaint processing and investigation
  - The appropriate use of licensed professionals to investigate complaints
  - BVNPT's cooperation with other governmental entities charged with enforcing related laws and regulations regarding vocational nurses and psychiatric technicians
  - The accurate and consistent implementation of the laws and rules affecting discipline, including adherence to the *Complaint Prioritization Guidelines for Health Care Agencies* established by the Consumer Protection Enforcement Initiative of 2010 (CPEI)
  - Consistency in the application of sanctions or discipline imposed on licensees
  - Staff concerns regarding disciplinary matters or procedures.

AB 179 also requires submission of (1) an *Initial Report* of findings and conclusions by not later than July 1, 2016, (2) interim reports by not later than November 1, 2016 and February 1, 2017, and (3) a *Final Report*, including final findings and conclusions, by January 1, 2018. Finally, AB 179 requires that the Monitor be available to provide oral reports to DCA, BVNPT and the Legislature, if requested to do so.

DCA's RFO and the contract for Monitor services further define the contents of the four (4) legislatively mandated reports, as follows:

Report No. 1 *(Initial Report)* – The scope of the *Initial Report* is expanded to include preliminary recommendations (if any).

Report No. 2 – AB 179 requirements related to assessment of BVNPT's Enforcement Program and procedures are combined with requirements related to submission of the November 1, 2016 report and the scope of the report is broadened to encompass recommendations for structural or procedural reforms to increase BVNPT's effectiveness.

Report No. 3 – AB 179 requirements related to assessment of specified BVNPT administrative processes are combined with requirements related to submission of the February 1, 2017 report and the scope of the report is broadened to encompass (1) components of BVNPT's Enforcement Program and investigation regarding disciplinary matters or procedures and (2) monitoring and measurement of any changes implemented by BVNPT subsequent to the Initial Assessment.

Report No. 4 *(Final Report)* – The Monitor is required to integrate all of the previously prepared summaries of results of analyses to produce the *Final Report*.

The remainder of this section summarizes our overall technical approach to providing the prescribed Monitor services. Additionally, we provide a summary of significant data inconsistencies, anomalies, and constraints, the effects of these problems on BVNPT's reported Enforcement Program workload, workflow, backlog and performance metrics, and their impacts on the completion of research and analysis of the Enforcement Program. Subsequent sections of the report are organized as follows:

Section	Title
II.	Updated Overview of Case Intake and Investigations Workload and Performance
III.	Overview of Discipline Workload and Performance
IV.	Supplemental Research and Analysis of Targeted Enforcement Program Business Processes
V.	Enforcement Program Organization and Staffing
VI.	Enforcement Program Workload and Performance
VII.	Survey of Governing Board
VIII.	Next Steps.

I. Introduction

A. Updated Overview of Project Approach and Schedule

Our overall approach to providing the prescribed Monitor services was initially organized into the following four (4) major project phases aligned with each of the four (4) reports delineated in AB 179.

Phase I – Diagnostic Review and Initial Assessment

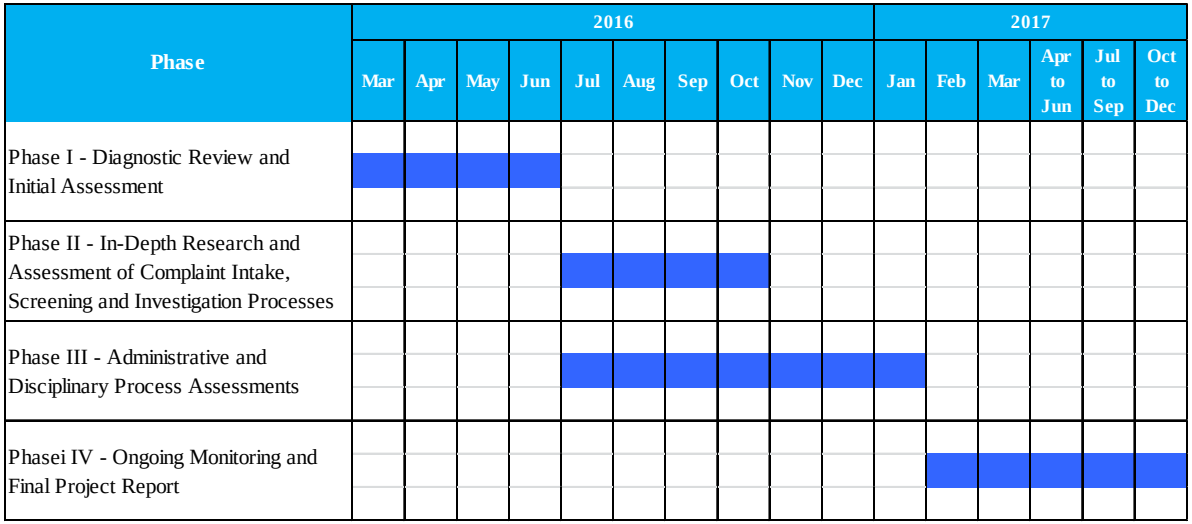
Phase II – In-Depth Research and Assessment of Complaint Intake, Screening and Investigation Processes

Phase III – Administrative and Disciplinary Process Assessments

Phase IV – Ongoing Monitoring and Final Project Report.

Additionally, our schedule for completing each of the four (4) major project phases contemplated completion of each phase sequentially by the dates set for in AB 179 for submission of the various legislatively-mandated reports. However, following completion of the Phase I Diagnostic Review and Initial Assessment and consideration of the limited 3-month timeframe available to complete Phase III, it was jointly determined that the Phase III assessments should be accelerated as much as possible so that the results of the assessments could be incorporated into the Phase II report submitted to the Legislature on November 1, 2016. Conversely, this modified schedule reduced the scope of the assessments completed subsequent to November 1st and included in the Phase III report. **Figure I-1**, below, illustrates this revised overall schedule for completing the project.

Figure I-1. Revised Project Schedule



Below we provide a brief overview of the work that is expected to be performed as part of each of the four (4) project phases.

I. Introduction

Phase I – Diagnostic Review and Initial Assessment

Our Phase I efforts initially focused on meeting with DCA's Director, Chief Deputy Director, and Project Manager, BVNPT's former Acting Executive Officer, BVNPT's current Executive Officer and Chief of Enforcement, and designated others to review our overall approach and schedule for performing the engagement. Additionally, we collected and reviewed available background information, including historical organizational charts and staffing data, and scheduled and conducted interviews with all BVNPT executives, managers and supervisors and all Enforcement Program staff. We also scheduled and conducted interviews with representatives of DCA's Division of Investigation, legislative oversight committees, and two recently retired DCA executives (the former Director of DCA and the former Deputy Director of DCA's Division of Investigation and Enforcement Programs). We also conducted a number of follow-up interviews with Enforcement Program management and staff and others, as appropriate.

As part of Phase I we collected and summarized several sets of available Enforcement Program workload, workflow, backlog, performance, and investigation and disciplinary outcome statistical data summaries and recaps. Following review with DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement, it was determined that none of the available data summaries and recaps could be relied upon for purposes of supporting completion of the Initial Assessment. Instead, we requested and were provided with 18 sets of original data extracts from BVNPT's Complaint Tracking System, commonly known as CAS (Consumer Affairs System), covering the 5½ year period extending from July 2010 through December 2015, that we could utilize to develop a consistent set of initial time series data recaps and summaries for a broad range of core Enforcement Program workload, workflow, backlog, outcome and performance indicators. In total, more than 120,000 CAS data records were obtained, sorted, filtered, compiled and summarized to support completion of the Initial Assessment.

Additionally, as part of Phase I we worked collaboratively with DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement to identify and frame a set of 10 key issues related to BVNPT's complaint intake, screening, investigation, and disciplinary action processes, and specified administrative processes as delineated in AB 179. It was anticipated that these issues would be further assessed during subsequent project phases.

As part of Phase I, during March 2016, we prepared and disseminated a confidential survey to all of the members of BVNPT's governing Board to obtain their input regarding each of the following topics:

- Governing Board structure, size and composition
- Committees
- Board meeting structure and effectiveness
- Disciplinary decisions
- Effectiveness of training and support
- Legislative affairs and relations.

Nine (9) Board members completed the survey. It was anticipated that the survey responses would be compiled, analyzed and summarized for inclusion in a subsequent phase report.

I. Introduction

A draft of the *Initial Report,* summarizing results of the Initial Assessment, was prepared and submitted to DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement for their review. Required modifications resulting from this review were then incorporated and the report was prepared in final form. During June 2016, the *Initial Report* was presented to BVNPT's governing Board and the Board was provided an opportunity to submit comments regarding the report. The *Initial Report*, including the Board's comments, was submitted to the Legislature on July 1, 2016.

Phases II/III – Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

During June 2016, in consultation with the DCA Project Manager and BVNPT's Executive Officer and Chief of Enforcement, we prepared an integrated *Work Plan and Schedule* for concurrently completing Phase II and significant portions of Phase III so as to minimize the scope of the reviews and analyses that would need to be completed during November and early-December 2016. **Figure I-2,** below, and **Figure I-3**, on the next page, identifies the major tasks to be completed as part of Phases II and III, respectively, and the initially planned schedules for completing these tasks.

Figure I-2. Phase II Project Schedule

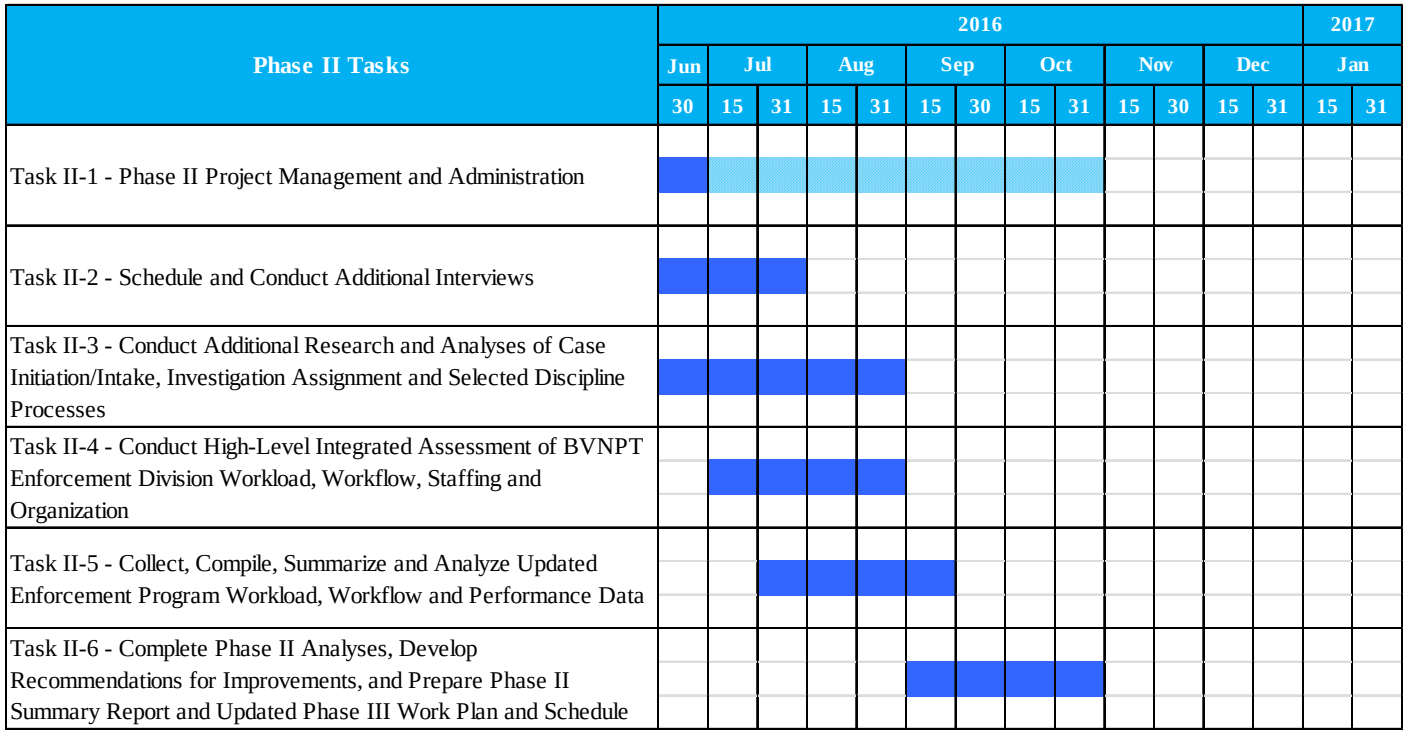
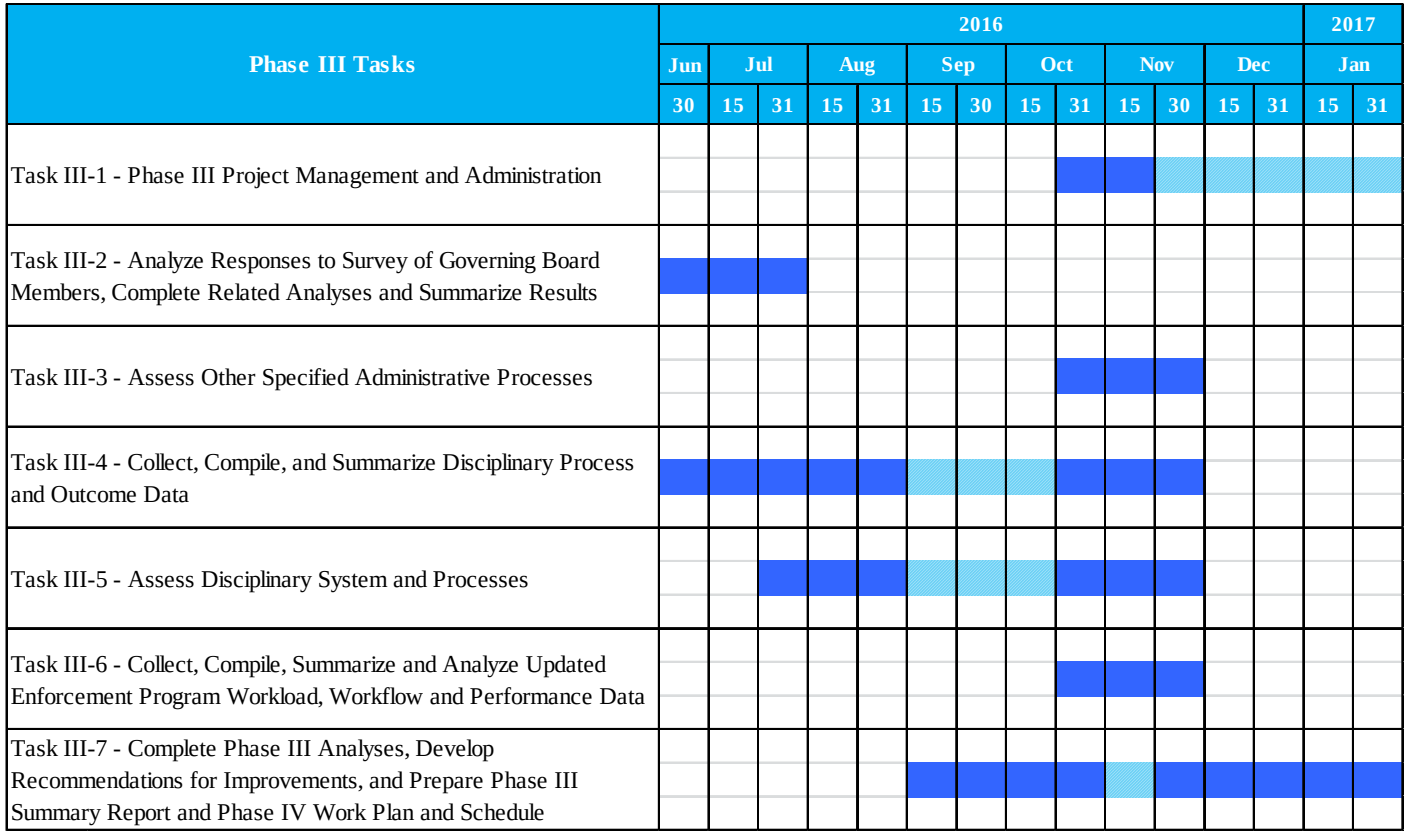


Figure I-3. Phase III Project Schedule



During the past several months, most Phase II and Phase III tasks were completed consistent with the above schedules, except that some Phase III tasks that were not expected to be completed until after submission of the *Second Report* were further accelerated and substantially completed concurrent with the completion of Phase II. It is anticipated that the few remaining Phase III tasks will be completed during the next several months and that the results of these efforts will be included in the *Third Report*. Section VIII (*Next Steps*) provides additional information regarding completion of remaining Phase III tasks.

On June 28, 2016, we submitted a draft *Summary of Board Member Survey Responses* (Appendix A) to the DCA Project Manager and BVNPT's Executive Officer and Chief of Enforcement for review. On September 6, 2016, we submitted drafts of:

- Exhibits II-1 through II-6
- Exhibits III-1 through III-6
- Exhibits IV-1, V-1 and V-1
- The Table of Contents, List of Exhibits and report cover page

On September 23, 2016, we submitted a complete *Initial Draft Second Report* and a *Sample Q4 2015/16 Enforcement Program Workload and Performance Report* to the DCA Project Manager and BVNPT's Executive Officer and Chief of Enforcement for review. An *Initial Draft Executive Summary of the Second Report* was submitted a few days later on September 27, 2016.

On September 29 and 30, 2016, we met with the DCA Project Manager and BVNPT's Executive Officer, Chief of Enforcement and Supervising Nurse Education Consultant to review the *Initial Draft Second Report* and accompanying *Executive Summary* and *Sample Q4 2015/16 Enforcement Program Workload and Performance Report*. Following these review meetings, the complete *Second Report* was prepared in final draft form and submitted to DCA for final review.

Phase IV – Ongoing Monitoring and Final Project Report

Our efforts during Phase IV are expected to initially focus primarily on periodically monitoring BVNPT's Enforcement Program performance, including performance related to intake, screening, and investigation of complaints, the Board's disciplinary actions, and the impact of changes implemented by BVNPT. Additionally, we will prepare a *Final Report* summarizing results of analyses completed throughout the project and providing final findings, conclusions and recommendations for improvements pertaining to BVNPT's Enforcement Program effectiveness and efficiency, disciplinary system and procedures and specified administrative processes. Preliminarily, we expect to deliver the *Final Report* in final form during late-2017, prior to the end of year holiday period.

B. Data Inconsistencies, Anomalies, Constraints and Effects

There are multiple significant inconsistencies, anomalies and deficiencies with the availability, completeness and quality of BVNPT's Enforcement Program case intake, investigation, and discipline workload, workflow, backlog, and performance information. Some of the areas where there is a high level of variability in the data or other significant problems are briefly highlighted below.

1. Case Coding Practices

When opening new complaints, different codes can be entered into BVNPT's case tracking systems (CAS for periods prior to 2016 and BreEZe for subsequent periods) to distinguish the source and type of complaint. Historically, there has been a great deal of inconsistency in the codes that BVNPT used and, to some extent, these problems were compounded with implementation of BreEZe which utilizes somewhat different coding structures than were used with CAS along with additional types of codes. Variability in the extent to which various types of codes were used and inconsistencies in how the codes were used necessarily limits the extent to which analyses can be performed of CAS and BreEZe data to help better understand the nature and composition of the complaints that are received, changes occurring in the mix of BVNPT's cases, and associated impacts on Enforcement Program workload and performance. Variability in BVNPT's case coding practices, rather than actual changes in workload, account for some of the variability and abrupt shifts that have sometimes occurred in BVNPT's reported historical workloads. Since January 2016, BVNPT has devoted a great deal of effort to addressing these problems so that the problems do not persist beyond the 2015/16 fiscal year.

2. License Applicant Arrest/Conviction Reports

BVNPT's License Applicant Fingerprint Program was first initiated about 20 years ago (July 1996). Initially, only California Department of Justice (DOJ) criminal history background checks were completed. Because the DOJ reports only identified arrests and convictions occurring in California, the program was expanded in 1998 to include Federal Bureau of Investigation (FBI) criminal history background checks which provide arrest and conviction information for the entire United States. Currently, when applicants submit fingerprints for their criminal history background check, the California Department of Justice (DOJ) provides BVNPT with a consolidated Criminal Offender Record Information (CORI) report that contains both DOJ and FBI criminal history information.

Until late-2015, it was BVNPT's practice to open a new enforcement case for:

- All license applicant arrest/conviction reports that were received
- All license applicants that indicated on the *Record of Conviction* portion of their license application (with a "Yes" box checkmark) that they had previously been convicted of, pled guilty to, or pled nolo contendere to ANY offense in the United States or a foreign country, including every citation, infraction, misdemeanor and/or felony, excluding only traffic violations under $300 not involving alcohol, dangerous drugs or controlled substances (Item No. 9) and convictions that were later set aside or expunged from the records of the court (Item No. 10)

- All license applicants that indicated on the *Record of Conviction* portion of their license application (with a "Yes" box checkmark) that they had a court action pending against them or were currently awaiting judgement and sentencing following entry of a plea or jury verdict (Item No. 11).

Thus, until late-2015, without first applying any screening criteria, new license applicant cases were opened for all reported license applicant arrest/conviction reports and all license applicant self-reports of prior convictions or pending court actions, *irrespective of the applicant's application status, the nature of the offense or when it occurred.* Additionally, through various communication channels BVNPT encouraged applicants to self-report all prior arrests/convictions to avoid potential delays in the processing of their license application or denial of licensure for failure to report a reportable arrest/conviction. These communications appear to have contributed to the accelerated growth that occurred in the number of license applicant cases opened, from under 2,500 cases during 2010/11 to nearly 3,800 cases during 2013/14.

Subsequently, during 2015/16 BVNPT restructured the license applicant arrest/conviction report process by increasing the threshold for self-reporting traffic offenses from $300 to $1,000, excluding offenses involving alcohol, dangerous drugs and controlled substances. Additionally, responsibility for accumulating license applicant arrest/conviction reports and records and screening the cases was transferred to the Licensing Program. As a result of these changes, significantly fewer cases are now referred to Enforcement (fewer than 250 cases during the second half of 2015/16, or about 85 percent fewer cases than were previously referred).

3. Licensee Internal – Fraud Cases *(CE Failure to Comply, Exam Cheating, Application Experience Fraud)*

BVNPT enforces licensee compliance with CE requirements by auditing a sample of licensees following renewal of their license. Available historical data show that BVNPT conducts up to about 1,500 CE compliance audits per year representing less than 2.5 percent of license renewals. Up to about 200 of the these audits resulted in a determination that the licensee had falsely certified on their renewal application that they had complied with BVNPT's CE requirements when, in fact, they were either non-responsive to repeated requests to provide substantiating documentation that they had complied with the CE requirements or it became evident from the information provided by the licensee that they had completed little or none of the required CE. However, the Licensing Program staff responsible for completing the audits was oftentimes redirected to provide services in other areas which delayed the completion of the audits and resulted in significantly fewer completed audits and case referrals to Enforcement. For those cases that were referred to Enforcement, citations with fines (nearly always $500) were usually issued for the failure to comply violation. When applicable, additional fines (usually $250) were assessed for failure to cooperate with BVNPT.

Beginning during 2014, problems began surfacing related to the age of the cases being referred to Enforcement, which in some cases covered periods exceeding applicable records retention requirements. Additionally, concerns began surfacing regarding the processes and practices used for conducting the audits and determining compliance with BVNPT's CE requirements. As a result of these problems and concerns, the Enforcement Division largely suspended issuances of citations for CE audit failure cases and, instead, issued NOWs. Subsequently, during 2015/16, the Division adopted a more flexible process for assessing these cases and

adjusted the criteria used for determining (2) the licensee's compliance status and (2) whether to issue a NOW or a citation. This resulted in issuance of a mix of NOWs and citations during 2015/16.

4. Licensee Arrest/Conviction Reports and Complaints

As discussed previously, BVNPT began fingerprinting new license applicants about 20 years ago. Subsequently, beginning during April 2009, BVNPT implemented fingerprinting requirements retroactively for anyone licensed prior to 1998. The majority of retroactive fingerprints were collected during two (2) renewal cycles between April 1, 2009 and June 30, 2011, prior to establishing the new Investigation Section. Additionally, licensees are required to self-certify on their license renewal application whether or not they were convicted of a crime or if disciplinary action was taken in California or any other state or country since their last renewal.

On average, BVNPT opens about 1,500 licensee arrest/conviction report cases per year. Historically, these cases account for about 75 percent of all BVNPT enforcement cases. Historically, no data was captured in CAS that differentiated the licensee arrest/conviction report cases by type of offense (i.e., the offense category is a generic arrest/conviction). The lack of differentiation makes it difficult to characterize the nature of these cases, which, as mentioned previously, account for about 75 percent of all enforcement cases. Currently available sample workflow data and anecdotal information suggest that at least 40 percent of these cases are Driving Under the Influence (DUI) offenses, with about one-half of the DUI cases involving various aggravating circumstances. The remaining cases involve a broad range of other offenses (e.g., controlled substances, domestic violence, battery, assault, burglary, grand theft, theft, and fraud).

As discussed subsequently in Section IV (*Integrated Assessment of Targeted Business Processes*), about 20 percent of these cases are "Redundant". Additionally, up to about 20 percent of these cases result from a licensee marking their renewal form in error. Thus, the actual number of underlying offenses is much less than 1,500 cases per year. However, partially offsetting this, it appears that a number of arrest/conviction report cases are opened and assigned various codes that make it difficult to differentiate these cases from licensee complaint cases. For example, in most instances codes are assigned to indicate that these cases are initiated internally as a result of receiving a subsequent arrest report involving a particular offense, usually from a law enforcement agency or the licensee. However, in some instances these same types of cases are assigned codes to indicate that they were initiated based on receiving a complaint involving a particular offense from a law enforcement agency or the licensee. In the latter case, the cases will be captured as complaints for workload, workflow, backlog and performance reporting purposes when, in fact, they are indistinguishable from other licensee arrest/conviction report cases which are fundamentally quite different from licensee complaint cases.

5. CAS to BreEZe Conversion

On January 1, 2016, BVNPT ceased using CAS to track enforcement cases and transitioned to the new BreEZe system. This transition was still underway during March and April as we began the Phase I Diagnostic Review and Initial Assessment. Accordingly, in consultation with DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement, a decision was made to base the Initial Assessment primarily on historical CAS workload, workflow, backlog and performance data through December 31, 2015, and then update the assessment during Phase II with BreEZe data covering the second half of the 2015/16 fiscal year (January 1 through June 30, 2016). It was expected that any remaining clean-ups of the BreEZe data that were needed would be completed by that point.

Subsequently, during July, when we were provided with the various data extracts from BreEZe for the January through June 2016 period, we began identifying significant discrepancies and anomalies with some of the data. Significant effort was expended researching and further analyzing the data in an effort to determine the cause of these problems. From these efforts, in collaboration with BVNPT Enforcement Division staff, we identified multiple significant problems with the BreEZe data that were previously unknown to BVNPT staff which resulted in significant misstatement of key workload and performance metrics such as the number of investigations completed and the timeframes to complete the investigations. For example, we identified cases where:

- **BreEZe data fields were *incorrectly populated* with CAS data**, such as data showing that field investigations had been completed in one (1) day and that the investigations were completed on that date when, in fact, the investigations were assigned on that date and were not completed until many months later, or were still open.
- **BreEZe data fields were *not populated* with CAS data**, such as data showing that Petitions for Revocation were filed, resulting in significant undercounting of the number of Petitions for Revocation filed.

Additionally, due to conversion problems, some completed investigations were double-counted as both completed non-sworn and sworn investigations. We also found inconsistencies in how staff coded cases and various activity tracking fields. Finally, we identified problems with CAS discipline data including deficiencies with the coding entered for some subsequent discipline cases that resulted in significant under-reporting of the number of petitions for revocation filed.

Throughout July and August, as we identified these and other problems, we prepared and provided data exception listings to BVNPT that were used as punch lists to further research and correct individual case data. Data for more than a hundred active case records was corrected as a result of these efforts. Additionally, throughout this period, BVNPT continued to separately identify other BreEZe data problems that were concurrently cleaned-up on a continuous basis. BreEZe data clean-up will likely continue, hopefully at a reduced level of intensity, at least through the end of the year. However, problems with archived CAS data can never be corrected as that database has been frozen. Additionally, some BreEZe data can never be corrected (e.g., the case type code assigned to a case when it is first opened).

Because of these problems, it was necessary for us to either adjust the data provided previously to correct for the identified problems or request new data extracts and then repeat related data filtering, sorting, compilation and summarization processes. Depending on the specific data set and the nature and magnitude of the problems identified, in some cases we adjusted the previously requested data to the extent practicable and as appropriate to our purposes. In other cases we requested new data extracts, recognizing that even the new data still had some problems and would likely get changed again as BVNPT completed additional data clean-ups. Consequently, it is anticipated that, in many areas, the data contained in this report will be somewhat different from data published in BVNPT's *2016 Sunset Review Report* which is based on data extracts produced at a different point in time and not usually subjected to any type of supplemental filtering and adjustment processes. However, it is also anticipated that the overall workload, workflow, backlog and performance measures contained in both reports will be reasonably consistent and that these metrics will show parallel trends over time. As discussed in Section VIII (*Next Steps*), during the next project phase we plan to complete targeted verifications of key workload, workflow, backlog and performance metrics presented herein for the 6-month period extending from January 1 through June 30, 2016 to determine whether any BreEZe programming changes or data clean-ups subsequently completed by BVNPT materially impacted the results of our previously completed analyses or any related findings, conclusions, or recommendations for improvements. Necessary adjustments to the data, if any, will be incorporated into the *Phase III Summary Report*.

6. Timing Differences and Data Discontinuities

As part of this assessment, BVNPT staff extracted several dozen separate sets of CAS and BreEZe data pertaining to its intake, investigation and discipline processes and other related activities and events. The extracted data sets included information about mandated reports submitted by employers, reports submitted by other government agencies, reports submitted by nursing boards in other states, BVNPT-originated complaints, and other matters that are tracked using CAS and BreEZe, such as Statements of Issues (SOIs) and subsequent disciplinary actions initiated in response to probation violations. We filtered, compiled, summarized and analyzed the data provided as needed for purposes of completing required reviews and analyses of these processes. To the extent practicable consistent with the scope of the project, we corrected significant anomalies in the data and, where appropriate, excluded some records from our analyses. In total, data related to more than 130,000 separately extracted complaint records were incorporated into our compilations, analyses and summaries.

Much of the data that we used for our analyses is dependent on calendar date information that is added to the individual records from the date that a case is first opened until that case is fully completed, with various interim dates entered to track specific activities and other information related to these activities. Consequently, there are oftentimes timing differences between similar related activities because the dates posted for those activities are different, such as the difference between when a case is closed with a specific outcome, such as issuance of a citation, and the date that the citation is actually issued. Similarly, there is a difference between the date a discipline decision is adopted (or imposed) and the effective date of the discipline (usually about a month later). Because of these and other timing differences, data extracts for similar activities can produce somewhat different results.

Normally, these types of timing differences produce minimal differences in associated aggregate data, or none at all, in part because the same system and underlying business process rules are used throughout the period of analysis. However, in this case, BVNPT converted from CAS to BreEZe during the period of the analysis and the workload, workflow, backlog and performance data from these two systems is inherently somewhat different because of significant structural differences between these two systems. Consequently, in some areas there are timing or other types of discontinuities in the time series data. For example, with CAS it was not possible to differentiate pending investigation cases from cases where the investigation is completed but the case is pending discipline review and referral for discipline. In contrast, with BreEZe these two different types of pending cases can be distinguished. However, the coding structures needed to differentiate these two separate processing stages were not developed to enable utilization of this capability. Instead, following completion of a field investigation, cases were incorrectly coded as pending desk investigations, resulting in double counting of these investigations. In this and other instances, after identifying the problem with BVNPT's data, we worked collaboratively with BVNPT, and DCA's Office of Information Services, as appropriate, to help initiate and accelerate completion of additional BreEZe programming or other actions needed to correct the problem and improve the quality, completeness and consistency of BVNPT's workload, workflow, backlog and performance metrics.

Finally, there are timing and other sources of differences between the workload, backlog and performance data generated from BVNPT's case tracking systems and the case tracking systems utilized by the Division of Investigation and the Office of Attorney General. It should be expected that data generated by these different organizations will always be somewhat different.

7. Database Noise

As in any large data set, there is always some incomplete or incorrect data (or "noise"). However, as best we can determine at this point, the aggregate data used for our analyses is reasonably representative of BVNPT's actual license applicant, licensee continuing education, licensee arrest/conviction report and licensee complaint workloads, workflows, backlogs and performance. Also, isolated variances in individual records would generally tend to have offsetting impacts and, even if the variances were not offset, the isolated variances would not significantly impact aggregate annual measures of workload, output, or performance. Additionally, any impacts on the aggregate measures would tend to be consistent over time in both direction and magnitude.

II. Updated Overview of Case Intake, Screening and Investigation Workload and Performance

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II. Updated Overview of Case Intake, Screening and Investigation Workload and Performance

This section provides updated overviews of BVNPT's complaint intake, screening and investigation workloads, workflows, backlogs and performance from 2010/11, immediately preceding start-up of BVNPT's non-sworn Investigation Section, through 2015/16. The section is organized as follows:

Section	Title
A.	Updated Overview of License Applicant and Licensee Enforcement Cases Received
B.	Updated Overview of Licensee Enforcement Cases Assigned for Investigation
C.	Updated Overview of Completed License Applicant and Licensee Enforcement Investigations
D.	Completed Investigations Elapsed Time Performance
E.	Updated Overview of Pending License Applicant and Licensee Enforcement Investigations
F.	Updated Overview of Administrative Disciplinary Outcomes

II. Updated Overview of Case Intake, Screening and Investigation Workload and Performance

A. Updated Overview of License Applicant and Licensee Enforcement Cases Received

Exhibit II-1, on the next page, provides a summary of license applicant and licensee enforcement cases received by BVNPT from 2010/11 through 2015/16. Overviews of the number of cases received, by category, are provided below.

1. License Applicant Arrest/Conviction Reports *(About 500 cases per year, currently)*

During the past year there was a significant decrease in the number of license applicant arrest/conviction report cases opened compared to the number of cases opened per year in prior periods. Prior to 2015/16, BVNPT opened cases for all license applicant arrest/conviction reports, irrespective of the applicant's application status, the nature of the offense or when the offense occurred. As a result, large numbers of license applicant cases were opened for:

- Applicants that never successfully completed their license examination
- Minor offenses that occurred in the distant past that had no relevance to BVNPT's licensure decision.

Additionally, prior to 2015/16, through various communication channels BVNPT encouraged applicants to self-report all prior arrests/convictions to avoid potential delays in the processing of their license application or denial of licensure for failure to report a reportable arrest/conviction. These communications appear to have contributed to the accelerated growth that occurred in the number of license applicant cases opened, from under 2,500 cases during 2010/11 to nearly 3,800 cases during 2013/14. Only about 3 percent of these cases supported issuance of a Letter of Denial (fewer than 100 cases per year).

Over a period of several months beginning during July 2015, BVNPT restructured the license applicant arrest/conviction report case intake and screening process by transferring various responsibilities to Licensing Program staff, including responsibility for:

- Reviewing the license applicant's initial arrest/conviction report, issuing requests for the arrest report, court reports and a letter of explanation from the applicant, and preparing and issuing a deficiency letter to the applicant, if needed
- Maintaining the arrest/conviction report file pending the applicant's successful completion of the license examination and application process
- Screening the license applicant's arrest/conviction record and determining the need to refer cases, including all cases involving substance abuse, dangerous drugs, controlled substances and criminal activity, to the Enforcement Division for further review and, if needed, investigation.

Additionally, BVNPT increased the threshold for self-reporting traffic offenses from $300 to $1,000, excluding offenses involving alcohol, dangerous drugs and controlled substances. As a result of this restructuring, significantly fewer license applicant cases are now referred to Enforcement. During the first half of 2015/16, about 500 cases were referred to Enforcement. Subsequently, as the restructured process matured and case intake and screening improved, the number of cases referred to Enforcement decreased further, to fewer than 250 cases during the second half of 2015/16.

Updated Historical Overview of License Applicant and Licensee Enforcement Cases Received

	Case Category and Type	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16		
							Jul-Dec	Jan-Jun	Total
Arrest/Conviction Reports	License Applicants	2,447	3,027	2,822	3,790	3,305	502	240	742
	Licensees	2,023	1,948	1,485	1,360	1,550	920	743	1,663
	Total Arrest/Conviction Reports Received	**4,470**	**4,975**	**4,307**	**5,150**	**4,855**	**1,422**	**983**	**2,405**
Complaints	Discipline by Another State/Agency	49	40	44	41	52	58	42	100
	Employer Reports - All Offense Categories	391	488	201	195	176	119	98	217
	Public and Other Complaints - All Offense Categories			126	126	157	138	247	385
	Public Agency Reports - All Offense Categories			72	98	115	35	54	89
	Internal - Other than Fraud1			81	28	45	17	7	24
	Total Complaints Received, Excluding Internal - Fraud Cases	**440**	**528**	**524**	**488**	**545**	**367**	**448**	**815**
	Internal - Fraud Cases (primarily CE Audit Cases)[2]	159	122	189	152	13	130	100	230
	Total Complaints Received, Including Internal - Fraud Cases	**599**	**650**	**713**	**640**	**558**	**497**	**548**	**1,045**
Total Cases Received	Total Arrest/Conviction Reports and Complaints	5,069	5,625	5,020	5,790	5,413	1,919	1,531	3,450
	Less: License Applicant Arrest/Conviction Reports	(2,447)	(3,027)	(2,822)	(3,790)	(3,305)	(502)	(240)	(742)
	Total Enforcement and CE Audit Cases Received	**2,622**	**2,598**	**2,198**	**2,000**	**2,108**	**1,417**	**1,291**	**2,708**

[1] Excludes 32 cases involving non-compliance with Mandatory Employer Reporting requirements.

[2] Also includes license examination fraud (cheating) cases and fraudulent application cases, including 18 fraudulent application cases received on June 10, 2016.

Nearly all license applicant case investigations are completed by Complaint Section analysts. BVNPT's Complaint Section analysts are also responsible for completing investigations of about 1,500 licensee arrest/conviction report cases per year, handling continuing education (CE) audit failure cases (up to about 200 cases per year), and investigating a limited number of cases involving discipline by another state/agency (several dozen cases per year). The large reduction in number of license applicant cases handled by the Complaint Section accounts for a significant reduction in the total number of cases handled and investigations completed by Complaint Section staff and would appear to support some related adjustments to the number of positions allocated for provision of these services (see Section V.B – *Current and Anticipated Future Enforcement Division Staffing Requirements*). The License Applicant Arrest/Conviction Report process is further discussed in Section IV (*Integrated Assessment of Target Business Processes*).

2. Continuing Education Audit Failure Cases *(Up to about 200 cases per year)*

Historically, the Board opens up to about 200 Internal – Fraud cases per year. Most of these cases involve licensee failure to comply with continuing education (CE) requirements. Other types of cases typically coded as Internal – Fraud cases include cases involving (1) license examination fraud (cheating) and (2) license application fraud (e.g., misrepresentation of applicant experience). However, these other types of cases usually account for less than about 10 percent of all Internal – Fraud case.

BVNPT enforces licensee compliance with CE requirements by auditing a sample of licensees following renewal of their license. Available historical data suggests that BVNPT audits up to about 1,500 licensees per year. After selecting renewal files to audit, staff requested documentation from each licensee substantiating their compliance with BVNPT's CE requirements (30 credits per 2-year period). Based on BVNPT's citation issuances, on average, about 10 to 15 percent of the licensees (120 to 180 licensees) are either non-responsive to these requests or are unable to provide documentation substantiating completion of any CE during the 2-year audit period. In recent years CE compliance audit staff were oftentimes redirected to address other Licensing Program business needs completed fewer CE compliance audits, resulting in referral of fewer cases to Enforcement. For example, during 2014/15 only 13 CE audit failure (Internal – Fraud) cases were referred to Enforcement compared to an average of more than 150 CE audit failure (Internal – Fraud) cases referred to Enforcement per year during the preceding four (4) years. The CE Compliance Audit Program is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

3. Licensee Arrest/Conviction Reports *(About 1,500 cases per year)*

BVNPT typically opens about 1,500 licensee arrest/conviction report cases per year, including cases opened as a result of receipt of subsequent arrest/conviction reports and licensee self-reports. The larger numbers of licensee arrest/conviction reports received during 2010/11 and 2011/12, as compared to subsequent periods, are possibly related to implementation of retroactive fingerprinting requirements in preceding years. A higher than average number of licensee arrest/conviction report cases opened during the 6-month period extending from July through December 2015 appears to reflect one-time factors related to reducing pending case queues and backlogged arrest/conviction reports. On average, over the past four (4) years, BVNPT received about 1,500 licensee arrest/conviction reports per year. The Licensee Arrest/Conviction Report Process is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

4. Licensee Complaints *(About 500 to 550 cases per year, plus about 200 additional cases)*

Prior to 2015/16, BVNPT consistently opened about 500 to 550 licensee complaint cases per year, including:

- Cases based on reports from employers and other public agencies *(about 275 to 300 cases per year)*
- Complaints submitted by patients and others *(about 125 to 150 cases per year)*
- Cases based on reports involving discipline by another state/agency *(about 40 to 50 cases per year)*
- Cases opened internally by BVNPT Enforcement Program staff *(about 50 cases per year).*

During 2015/16 there was a significant increase in the number of licensee complaint cases opened. This recent increase in licensee complaint cases received is attributable to one-time factors, including efforts to reduce pending case queues and work backlogs, along with implementation of various business process and technology support system improvements during the past year, including the automatic opening of on-line initiated complaints that were previously screened before opening to determine whether sufficient information had been provided by the complainant to support opening a case. These changes appear to have generated about 200 additional licensee complaint cases during 2015/16, most of which were screened and closed without any investigation because there was not sufficient information provided to support referral for investigation or the information provided did not support referral for investigation. Most of the remaining cases are likely to be closed without any further action following completion of a limited desk investigation and determination that no further action is supported.

Based on this recent 2015/16 data, and excluding about 100 cases opened during 2015/16 as a result of one-time pending case queue and backlog reduction efforts, it is anticipated that about 700 to 750 licensee complaint cases will now be opened per year, including:

- About 500 to 550 licensee complaint cases that were historically received
- About 125 cases that are now closed during Intake/Screening, without referral for investigation
- About 75 cases that are likely to be closed without further action following completion of a limited desk investigation of the information submitted.

In summary, the additional 200 licensee complaint cases that are now captured, tracked and reported as received, most of which is not entirely new workload and is not expected to generate significant additional field investigation, discipline case management or probation monitoring workload.

Finally, as discussed previously in the *Initial Report*, BVNPT's licensee complaint case mix appears to be quite different from the mix of cases of many other DCA-affiliated boards and bureaus. An overview of the each of the five (5) major categories of licensee complaints received by BVNPT, excluding Internal – Fraud cases (primarily CE audit failure cases), is provided below.

Discipline by Another State/Agency – About 40 to 50 Reports per Year *(Weekly Average = 1)*

In most cases discipline by another state/agency is identified by BVNPT Complaint Section staff by querying the National Council of State Boards of Nursing's nurse licensure and disciplinary database (NURSYS) or other professional licensing databases. Historically, Complaint Section analysts have completed desk investigations of nearly all of these cases. The larger than average number of Discipline by Another State/Agency reports received during 2015/16 is believed to be largely attributable to one-time efforts to reduce related pending case queues and work backlogs.

Employer Reports – About 175 to 200 Reports per Year *(Weekly Average = 4)*

BVNPT's Mandatory Employer Reporting requirement, which requires that employers of VNs and PTs notify BVNPT whenever a VN or PT is suspended or terminated for cause, was established at the request of BVNPT. Enabling legislation was enacted during 2003 and became effective on January 1, 2004, with implementation contingent on the availability of additional funding. The statute also establishes mandatory reporting requirements for VNs and PTs. During 2006 new fee regulations were approved, effective January 1, 2007, that provided additional funding to support implementation of the statutory requirements. Subsequently, during 2007, BVNPT received approvals of:

- A Budget Change Proposal (BCP), effective July 1, 2007, enabling the hiring of additional Enforcement staff
- Revisions to its regulations, effective October 11, 2007.

Finally, during June 2008, BVNPT conducted one-time regional workshops to inform licensees and their employers about the new mandatory reporting requirements and potential penalties (up to $10,000 for employers) for failure to comply with the requirements. Employer reports now account for about 25 percent of all licensee complaints received.

Complaints from the Public and Others – Currently About 325 to 350 Complaints per Year *(Weekly Average = 7)*

BVNPT receives complaints from patients, family members, friends, caregivers, other licensees (in some cases pursuant to mandatory reporting requirements) and various other sources, such as society/trade organizations, and complaints submitted anonymously. The relatively small number of Public complaints submitted to BVNPT in comparison to the large number of practicing BVNPT licensees (about 130,000) possibly reflects the nature of the services provided by VNs and PTs which are substantively different from the diagnostic and treatment services typically provided by other licensed health care providers. As discussed previously, during 2015/16 about 200 more Public licensee complaints were opened than were opened during previous periods. However, many of these additional cases were previously received, either through the mail, via email, or on-line, but were screened and closed prior to opening a case in CAS. During 2015/16

more structured processes were established for opening all complaints that are received, including automatic opening of all on-line complaints, irrespective of the completeness of the information provided and without any screening of the cases.

Public Agency Reports – About 100 Reports per Year *(Weekly Average = 2)*

Various public agencies have regulatory authority over the facilities where VNs and PTs commonly work, including the California Department of Public Health (CDPH), the California Department of Health Care Services (CDHCS), the California Department of Social Services (CDSS) and other public agencies that administer programs involving the provision of care to the elderly and other targeted populations oftentimes served by BVNPT licensees, such as the Bureau of Medi-Cal Fraud and Elder Abuse within the California Department of Justice (DOJ) and the Center for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services. These agencies serve as an advance guard for the identification and referral of cases to BVNPT concerning possible offenses and violations by BVNPT's licensees.

Internal, Other than Fraud Cases– Currently, About 25 Cases per Year *(Weekly Average = Less than 1)*

Information may be discovered during an investigation that supports opening an investigation of another offense or violation involving the same license or an investigation of another licensee. During 2015/16 BVNPT began implementing improved processes for overseeing and controlling the opening of Internal – Other than Fraud cases resulting in a significant reduction in the number of Internal – Other than Fraud cases that are opened.

B. Updated Overview of Licensee Enforcement Cases Assigned for Investigation

Exhibit II-2, on the next page, provides a summary of the number of complaints assigned for desk, non-sworn and sworn investigation from 2010/11 through 2015/16. A brief summary of BVNPT's arrest/conviction report and complaint case assignments is provided below.

Complaint Section Assignments – As BVNPT established its non-sworn Investigation Section during 2011/12, virtually all of the licensee complaint cases that had previously been assigned for desk investigation were instead assigned to the Investigation Section. After 2010/11, complaint cases assigned for desk investigation were largely limited to cases involving either (1) discipline by another state/agency or (2) CE audit failure. Additionally, the Complaint Section was continuously responsible for completing investigations of nearly all license applicant and licensee arrest/conviction reports. During the past year, additional controls were established to limit the referral of arrest/conviction report cases for non-sworn or sworn field investigation. Consequently, during the second half of 2015/16, less than 2 percent of all licensee arrest/conviction report cases were referred for field investigation and only license applicant cases involving offenses such as license examination (cheating) fraud or application (experience) fraud were referred for field investigation.

Investigation Section Assignments – During 2011/12 and 2012/13, nearly 1,100 cases were assigned to BVNPT's new non-sworn Investigation Section. Subsequently, during 2013/14 and 2014/15, somewhat fewer cases were assigned to the Investigation Section (about 400 cases per year). The large number of cases initially assigned to the Investigation Section during 2011/12 and 2012/13 (an average of 135 cases per position) may have overwhelmed the capability of the Section to complete investigations of these cases. During the most recent 6-month period (January through June, 2016), only 170 licensee complaint cases were referred to the Investigation Section (equivalent to 340 cases per year). During this period, following screening by the Complaint Section, all licensee complaint cases that did not qualify for referral to the Division of Investigation were assigned to the Investigation Section, including cases requiring completion of a field investigation along with many cases that could potentially be completed by utilizing a desk investigation process (e.g., by requesting and reviewing records and interviewing the parties involved by phone).

Division of Investigation Assignments – During 2010/11, 115 complaint cases were assigned to the Division of Investigation. Then, during 2011/12 only 93 cases were referred and during 2012/13 only 15 cases were referred, all of which were initiated by the Division of Investigation. During 2013/14, no cases were referred to the Division of Investigation. As BVNPT established and then fully staffed the Investigation Section during 2011/12 and 2012/13, it began reducing and eventually completely discontinued the referral of cases to the Division of Investigation. In response to these developments, representatives of DCA as well as BVNPT's Governing Board, including members of the Board's Enforcement Task Force, made efforts to encourage Board staff to comply with CPEI case prioritization guidelines and utilize the Division of Investigation's services. However, Board staff continued to assign *nearly all* licensee complaint cases to the Investigation Section. Subsequently, based on results of reviews of BVNPT's pending cases completed by Division of Investigation staff and BVNPT, between May and December 2015 about 240 cases previously assigned to the Investigation Section were reassigned to the Division of Investigation. BVNPT is currently referring about 175 to 200 licensee complaint cases per year to the Division of Investigation.

Updated Historical Overview of Licensee Enforcement Cases Assigned for Investigation

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	2015/16		
							Jul-Dec	Jan-Jun[4]	Total[4]
Licensee Arrest/Conviction Reports	Desk Investigations	1,982	1,761	1,552	1,337	1,560	925	731	1,656
	Non-Sworn Investigations	83	165	61	21	52	4	1	5
	Sworn Investigations	11	3	0	0	3	31	11	42
	Total Licensee Arrest/Conviction Reports Assigned for Investigation	**2,076**	**1,929**	**1,613**	**1,358**	**1,615**	**960**	**743**	**1,703**
Complaints Assigned for Desk Investigation, Including CE Cases (Imputed Values)		472	142	55	217	43	51	170	221
Non-Sworn Complaint Investigations	Discipline by Another State/Agency	15	34	21	3	3	13	1	14
	Employer Reports - All Offense Categories		80	271	181	166	74	59	133
	Public and Other Complaints - All Offense Categories		153	147	124	104	70	80	150
	Public Agency Reports - All Offense Categories		35	84	88	95	24	25	49
	Internal - Other than Fraud[1]		97	94	26	17	22	5	27
	Internal - Fraud (primarily CE audit cases)[2]	2	36	29	4	4	1	0	1
	Total Complaints Assigned for Non-Sworn Investigation	17	435	646	426	389	204	170	374
Sworn Complaint Investigations	Discipline by Another State/Agency	2	0	0	None Assigned	2	9	0	9
	Substance Abuse, Impairment and Drug-Related Offenses	41	25	0		40	65	25	90
	Incompetence/Negligence	43	41	1		27	50	10	60
	Unprofessional Conduct	15	14	0		22	56	10	66
	Internal - Fraud[2]	4	2	10		0	4	18	22
	Sexual Misconduct	3	4	0		5	10	1	11
	Other	7	7	4		31	48	24	72
	Total Complaints Assigned for Sworn Investigation[3]	115	93	15	0	127	242	88	330
Total Complaints Assigned for Investigation		**604**	**670**	**716**	**643**	**559**	**497**	**428**	**925**
Total Enforcement Cases	Desk Investigations	2,454	1,903	1,607	1,554	1,603	976	901	1,877
	Non-Sworn Investigations	100	600	707	447	441	208	171	379
	Sworn Investigations	126	96	15	0	130	273	99	372
	Total Enforcement Cases Assigned for Investigation	**2,680**	**2,599**	**2,329**	**2,001**	**2,174**	**1,457**	**1,171**	**2,628**

[1] Excludes 27 cases involving non-compliance with Mandatory Employer Reporting requirements.

[2] Includes failure to comply with CE requirements, license examination fraud (cheating) cases and fraudulent license application cases, including 18 cases assigned during June 2016.

[3] About 65 percent of the 369 cases assigned for sworn investigation during 2014/15 and the first half of 2015/16 were previously assigned for non-sworn investigation during the 4-year period extending from July 2011 through June 2015.

[4] Excludes 119 complaint cases closed during Intake between January 1 and June 30, 2016, without assignment for investigation.

C. Updated Overview of Completed License Applicant and Licensee Enforcement Investigations

Exhibit II-3, on the next page, provides a summary of the number of license applicant, licensee arrest/conviction report and licensee complaint investigations completed from 2010/11 through 2015/16. A brief summary of these completed investigations is provided below.

1. Completed License Applicant Arrest/Conviction Report Investigations

The number of license applicant arrest/conviction report investigations completed per year increased by more than 120 percent from about 2,100 cases during 2010/11 to nearly 4,700 cases during 2014/15. The 2,600 increase in the number of license applicant arrest/conviction report investigations completed per year over this 5-year period exceeded the combined total of all licensee arrest/conviction report and licensee complaint cases completed per year. Consequently, by 2014/15 completed licensee arrest/conviction report and licensee complaint investigations accounted for only 31 percent of all completed investigations. As discussed previously, during 2015/16 BVNPT restructured the license applicant arrest/conviction report case intake and screening process resulting in a significant reduction in the number of cases referred to Enforcement. The impact of these changes is reflected in the reduction in the number of completed license applicant arrest/conviction report investigations shown in Exhibit II-3. During the most recent 6-month period (January through June, 2016), 385 license applicant arrest/conviction report investigations were completed. The number of completed license applicant arrest/conviction report investigations is expected to decrease further during 2016/17 (e.g., to about 500 completed investigations for the full fiscal year).The License Applicant Arrest/Conviction Report Process is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

2. Completed Licensee Arrest/Conviction Report Investigations

From 2011/12 through 2015/16, licensee arrest/conviction report investigations were completed nearly entirely by Complaint Section analysts. However, during this 5-year period the number of completed licensee arrest/report investigations steadily decreased, from nearly 2,400 completed investigations during 2010/11 to less than 1,500 completed investigations during 2014/15 (a 38 percent decrease). This decrease likely reflects reduced workload following implementation of retroactive fingerprinting in prior years. Subsequently, during 2015/16, the number of completed licensee arrest/conviction report investigations increased significantly (to more than 2,100 completed investigations). This increase is possibly attributable primarily to one-time factors related to (1) reducing pending case queues and backlogs and (2) implementing procedural changes that permit Complaint Section staff to close cases for a period of time pending criminal conviction and then re-open the cases and complete their investigation following adjudication of the case. As discussed previously, on average, about 1,500 licensee arrest/conviction reports are received per year and, over time, the average number of arrest/conviction reports received and the number of arrest/conviction report investigations completed must be the same. The Licensee Arrest/Conviction Report Process is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

Updated Historical Overview of Completed License Applicant and Licensee Enforcement Investigations

	Case Category and Type	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16		
							Jul - Dec	Jan - Jun	Total
License Applicant Investigations	Arrest/Conviction Report Desk Investigations	2,102	2,772	2,896	3,492	4,676	1,751	385	2,136
	Arrest/Conviction Report Non-Sworn Investigations	1	32	0	0	6	0	0	0
	Sworn Investigations	0	1	0	1	1	3	0	3
	Total Completed License Applicant Investigations	**2,103**	**2,805**	**2,896**	**3,493**	**4,683**	**1,754**	**385**	**2,139**
Licensee Arrest/ Conviction Reports	Desk Investigations[3]	2,383	1,781	1,758	1,496	1,416	1,079	1,003	2,082
	Non-Sworn Investigations	0	192	31	60	52	39	4	43
	Sworn Investigations	3	13	2	2	1	6	13	19
	Total Completed Arrest/Conviction Report Investigations	**2,386**	**1,986**	**1,791**	**1,558**	**1,469**	**1,124**	**1,020**	**2,144**
Complaint Investigations – Desk Investigations	Discipline by Another State/Agency	66	21	15	40	33	35	78	113
	Internal - Fraud (primarily CE)	177	68	125	122	103	62	117	179
	All Other Sources and Offense Categories 2010/11 Avg. Elapsed Time = 12.1 Months.	472	129	30	30	23	80	30	110
	Total Completed Desk Complaint Investigations	715	218	170	192	159	177	225	402
Complaint Investigations – Non-Sworn Investigations	Discipline by Another State/Agency	Not Applicable	5	10	15	13	7	8	15
	Employer Reports - All Offense Categories		3	34	102	174	52	165	217
	Public and Other Complaints - All Offense Categories		22	86	170	111	65	78	143
	Public Agency Reports - All Offense Categories		5	24	55	81	36	34	70
	Internal - Other than Fraud[1]		6	35	80	51	18	35	53
	Internal - Fraud (primarily CE)		4	4	6	12	0	0	0
	Total Completed Non-Sworn Complaint Investigations	Not Applicable	45	193	428	442	178	320	498
	Average Elapsed Time to Complete Non-Sworn Investigations (Months)	Not Applicable	16	16	19	19	25	24	24
Complaint Investigations – Sworn Investigations	Discipline by Another State/Agency	0	2	1	0	0	0	3	3
	Substance Abuse, Impairment and Drug-Related Offenses	63	29	20	20	0	13	46	59
	Incompetence/Negligence	53	31	44	23	3	5	24	29
	Unprofessional Conduct	44	20	7	6	5	7	29	36
	Fraud, Including Internal - Fraud	12	2	7	14	6	0	14	14
	Sexual Misconduct	8	4	6	0	1	0	5	5
	Unlicensed Practice and Other	20	4	4	3	0	11	11	22
	Total Completed Sworn Complaint Investigations	200	92	89	66	15	36	132	168
	Total Completed Complaint Investigations[2]	**915**	**355**	**452**	**686**	**616**	**391**	**677**	**1,068**
Total Completed Enforcement Investigations	Desk Investigations	3,098	1,999	1,928	1,688	1,575	1,256	1,228	2,484
	Non-Sworn Investigations	0	237	224	488	494	217	324	541
	Sworn Investigations	203	105	91	68	16	42	145	187
	Total Completed Enforcement Investigations (Unweighted)	**3,301**	**2,341**	**2,243**	**2,244**	**2,085**	**1,515**	**1,697**	**3,212**

[1] Excludes 25 cases involving non-compliance with Mandatory Employer Reporting requirements.

[2] Excludes about 120 cases closed during intake and 35 arrest/conviction reports codes as complaints in BreEZe between January 1 and June 30, 2016.

[3] Includes 168 cases closed pending criminal conviction (CPLX) and 35 arrest/conviction report cases coded as complaints in BreEZe between January 1 and June 30, 2016.

3. Completed Desk Complaint Investigations

During 2010/11, 715 desk complaint investigations were completed by the Complaint Section's analysts, including 66 cases involving discipline by another state/agency, 177 Internal – Fraud cases (primarily CE audit failure cases), and 472 Other complaints. Subsequently, Complaint Section analysts continued to complete investigations of Internal – Fraud (CE) cases and cases involving discipline by another state/agency, but the number of other investigations completed decreased to 129 completed investigations during 2011/12 and then further decreased to just 30 or fewer completed investigations per year during each of the next three (3) years.

Subsequently, during 2015/16, Complaint Section analysts completed about 400 complaint investigations, including 113 cases involving discipline by another state/agency, 179 Internal – Fraud (CE) cases, and 110 Other complaints. The much larger number of desk complaint investigations completed by the Complaint Section during 2015/16 largely reflects the impacts of (1) increased CE audit failure case referrals to Enforcement, (2) one-time pending queue and backlog reduction efforts, and (3) variability in BVNPT's case coding practices which sometimes results in cases involving a licensee arrest/conviction report or a report regarding discipline by another state/agency being classified as a complaint. Overall, during 2015/16 the Complaint Section completed nearly 2,500 licensee arrest/conviction report and complaint investigations, or 60 percent more than completed during 2014/15 and the largest number of licensee arrest/conviction report and complaint investigations completed since 2010/11.

4. Completed Non-Sworn Investigations

During initial start-up of the Investigation Section (2011/12 and 2012/13), 238 non-sworn complaint investigations were completed. During this period the Section's non-sworn investigators were unable to keep pace with the deluge of cases that were assigned. Subsequently, the Section completed investigations of about as many cases as were assigned (nearly 500 completed licensee arrest/conviction report and complaint investigations per year during 2013/14 and 2014/15). More recently, during 2015/16 about 550 licensee arrest/conviction report and licensee complaint investigations were completed by the Section. This compares to about 375 cases assigned to the Investigation Section during this period.

5. Completed Sworn Investigations

During 2010/11 the Division of Investigation completed 200 investigations. Subsequently, as BVNPT reduced and then completely discontinued the referral of cases to the Division, the number of investigations completed by the Division decreased. During 2011/12 and 2012/13 about 100 investigations were completed per year. During the next two (2) years the number of investigations completed declined to just 68 cases in 2013/14 and just 16 cases in 2014/15. More recently, during 2015/16 as BVNPT transferred backlogged cases to the Division of Investigation and resumed referring new cases to the Division on an ongoing basis, the Division began completing larger numbers of investigations. During the first half of 2015/16 the Division completed about 40 investigations and, during the second half of 2015/16, the Division completed about 150 investigations.

In summary, during 2010/11, prior to start-up of the Investigation Section, more than 900 complaint investigations were completed by BVNPT's Complaint Section analysts and the Division of Investigation's sworn investigators. Then, over a 2-year period during 2011/12 and 2012/13, concurrent with start-up of the Investigation Section, a combined total of only 807 complaint investigations were completed by all three (3) business units. Subsequently, during the next two (2) years, a combined total of about 650 complaint investigations were completed per year by all three (3) business units, nearly 30 percent fewer investigations than were completed during 2010/11 prior to start-up of the Investigation Section. *However, during 2015/16 a combined total of more than 1,000 licensee complaint investigations were completed by all three (3) business units, a much larger number of investigations then were completed at any time during the preceding five (5) fiscal years.*

D. Completed Investigations Elapsed Time Performance

Measures of completed investigation elapsed time performance for license applicant desk investigations, CE desk investigations, licensee arrest/conviction report investigations, and licensee complaint investigations are presented and discussed below.

1. Completed License Applicant Desk Investigations

Table II-1, below, shows the average elapsed time to complete license applicant desk investigations for investigations completed during the past two (2) fiscal years. During this period nearly all license applicant investigations were completed by Complaint Section analysts.

Table II-1
Average Elapsed Time to Complete License Applicant Desk Investigations

Time Period	Number of Investigations Completed	Average Months
Total 2014/15	4,676	16
July to December 2015	1,751	12
January to June 2016	385	6
Total 2015/16	2,136	11

As shown by Table II-1, the average elapsed time to complete these investigations improved markedly during the past year concurrent with restructuring of the license applicant case intake and screening processes. This restructuring significantly reduced the number of license applicant cases referred to the Enforcement Division. Currently, on an annualize basis, only about 500 license applicant cases are referred to Enforcement. Further reductions in the average elapsed time to complete these investigations are expected to occur through the end of the year.

2. Completed Continuing Education Audit Failure Case Investigations

Table II-2, below, shows the average elapsed time to complete CE audit failure case investigations during the past two (2) fiscal years. Throughout this period virtually all CE audit failure case investigations were completed by Complaint Section analysts.

Table II-2
Average Elapsed Time to Complete Continuing Education Desk Investigations

Time Period	Number of Investigations Completed	Average Months
Total 2014/15	103	5.6
July to December 2015	62	1.5
January to June 2016	117	3.4
Total 2015/16	179	2.7

As shown by Table II-2, the average elapsed time to complete these investigations improved markedly during the past year.

3. Completed Licensee Arrest/Conviction Report Investigations

Tables II-3 and II-4, below, show the average elapsed time to complete licensee arrest/conviction report desk and non-sworn investigations completed during the past four (4) fiscal years. Throughout this period nearly all licensee arrest/conviction report investigations were completed by Complaint Section analysts. Very few of these cases are assigned to the Division of Investigation.

Table II-3
Average Elapsed Time to Complete Licensee Arrest/Conviction Report Desk Investigations

Time Period	Number of Investigations Completed	Average Months
Total 2012/13	1,758	9.9
Total 2013/14	1,496	8.6
Total 2014/15	1,416	7.8
July to December 2015	1,079	7.2
January to June 2016	1,003	5.8
Total 2015/16	2,082	6.5

Table II-4
Average Elapsed Time to Complete Licensee Arrest/Conviction Report Non-Sworn Investigations

Time Period	Number of Investigations Completed	Average Months
Total 2012/13	31	20.5
Total 2013/14	60	22.1
Total 2014/15	52	19.7
July to December 2015	39	20.5
January to June 2016	5	19.4
Total 2015/16	44	20.4

As shown by Table II-3, the average elapsed time to complete desk investigations of these cases improved markedly during the past several years. In contrast, there was little change in the elapsed time to complete non-sworn investigations of these types of cases. Currently, fewer than 2 percent of all licensee arrest/conviction report cases are referred for field investigation and, in contrast with prior periods, nearly all of these cases are now referred to the Division of Investigation.

4. Completed Non-Sworn Licensee Complaint Investigations

Exhibit II-3, on Page II-11, provides data showing the average elapsed time required by BVNPT's non-sworn investigators to complete licensee complaint investigations from 2011/12 through 2015/16. During 2011/12 and 2012/13, the non-sworn investigations that were completed took an average of about 16 months to complete. Subsequently, the average duration of completed non-sworn investigations increased to 19 months for investigations completed during 2013/14 and 2014/15, and then further increased to an average duration of 25 months for investigations completed during the first half of 2015/16. In summary, concurrent with and following start-up of the Investigation Section, the average elapsed time needed to complete licensee complaint investigations increased significantly. More recently, as the Investigation Section focused its efforts on completing investigations of cases that are already several years old, there was only minimal improvement in this performance measure, which decreased marginally to about 24 months for investigations completed during the second half of 2015/16. However, a large number of non-sworn investigations were completed during the past year (more than 500) and the backlog of pending cases was reduced significantly. As a result, it is anticipated that this key measure of Enforcement Program performance will continue to improve through the end of the year.

5. Completed Desk and Sworn Licensee Complaint Investigations

Historically, and currently, varying numbers of licensee complaint investigations have been completed by Complaint Section analysts and the Division of Investigation's sworn investigators. However, elapsed time measures for these cases are not particularly meaningful for purposes of assessing performance. In the case of desk investigations of licensee complaints completed during the past few years, there has been considerable inconsistency in how certain types of cases were coded in CAS during periods prior to January 1, 2016, and in BreEZe for subsequent periods, including coding varying numbers and types of licensee arrest/conviction reports as different types of licensee complaints, thereby making this data inherently unreliable. In the case of completed sworn investigations, until recently the Division of Investigation was completing investigations of only a small number of the oldest remaining cases that had been referred to the Division in prior years (e.g., an average elapsed time of about 30 months for 15 investigations completed during 2014/15). More recently, following the reassignment of large numbers of aged cases to the Division during 2015, virtually all of the investigations completed by the Division necessary have extended elapsed times. The average elapsed time to complete 132 sworn investigations completed during the second half of 2015/16 was about 20 months, <u>including</u> all time from initial receipt of the case through completion of the Division's investigation. Division of Investigation data separately shows that the average elapsed time for the Division to complete these investigations, <u>excluding</u> elapsed time from initial receipt of the case to referral to the Division, was about eight (8) months. Beginning during 2016/17, comparative measures of elapsed times to complete both desk and sworn investigations of licensee complaints should become more meaningful for program performance monitoring, assessment and management purposes.

E. Updated Overview of Pending License Applicant and Licensee Enforcement Investigations

Exhibit II-4, on the next page, provides a summary of the number of pending license applicant, licensee arrest/conviction report and licensee complaint investigations from June 30, 2010 through June 30, 2016. A brief summary of the pending investigations data is provided below.

1. Pending License Applicant Arrest/Conviction Report Investigations

Over a period of four (4) years, the number of pending license applicant arrest/conviction report investigations **increased** by nearly 40 percent, from about 2,100 pending cases on June 30, 2010, to nearly 2,900 pending cases as of June 30, 2014. Subsequently, during 2014/15 the number pending license applicant cases **decreased** by nearly 50 percent to less than 1,500 cases and, during 2015/16, the number of pending cases decreased further to just 67 cases. This latter decrease reflects the impacts of BVNPT's restructuring of the License Applicant Arrest/Conviction Report Process.

2. Pending Licensee Arrest/Conviction Report Investigations

The number of pending licensee arrest/conviction report cases decreased during the past six (6) years by more than 70 percent, from 1,764 pending cases as of June 30, 2010 to just 473 pending cases as of June 30, 2016.

3. Pending Licensee Complaint Investigations

Brief summaries of BVNPT's pending desk, non-sworn and sworn licensee complaint investigations is provided below.

Pending Desk Complaint Investigations – The number pending desk complaint investigations decreased significantly during the past six (6) years, from 554 cases as of June 30, 2010 to 61 cases as of June 30, 2016. This reduction largely reflects the redirection of nearly all of these cases to the Investigation Section from 2010/11 through 2014/15.

Pending Non-Sworn Complaint Investigations – The number of pending non-sworn complaint investigations exploded concurrent with start-up of the Investigation Section during 2011/12 and 2012/13. During this period the Investigation Section accumulated about 840 open complaint investigations. By the end of 2012/13, an average of more than 100 complaint cases per investigator was assigned to the Section. The number of pending non-sworn complaint investigations remained static until May 2015 when BVNPT transferred and resumed assigning licensee complaint cases to the Division of Investigation which helped to significantly reduce the number of pending non-sworn investigations. More recently, during the second half of 2015/15, the number of pending non-sworn investigations decreased from nearly 600 cases at the start of the year to about 400 cases as of June 30, 2016, the lowest number of pending non-sworn investigations at any time since start-up of the Investigation Section.

Pending Sworn Complaint Investigations – As BVNPT discontinued referring complaint cases to the Division of Investigation, the number of pending sworn complaint investigations decreased significantly from 236 pending cases on June 30, 2010 to just 12 pending cases on June 30, 2014. Subsequently, reflecting the referral of more than 350 licensee complaint cases to the Division of Investigation during 2015, the number of pending sworn investigations increased to 331

Updated Historical Overview of Pending License Applicant and Enforcement Investigations

		Case Category and Type	06/30/10	06/30/11	06/30/12	06/30/13	06/30/14	06/30/15	2015/16	
									12/31/15	06/30/16
License Applicant Investigations		Desk Arrest/Conviction Report Investigations	2,080	2,391	2,643	2,565	2,870	1,485	244	67
		Non-Sworn Arrest/Conviction Report Investigations	4	31	3	3	4	1	0	0
		Sworn Investigations	4	4	4	4	4	3	0	0
		Total Pending License Applicant Investigations	**2,088**	**2,426**	**2,650**	**2,572**	**2,878**	**1,489**	**244**	**67**
Licensee Arrest/ Conviction Reports		Desk Investigations[1]	1,744	1,334	1,243	1,012	834	925	739	449
		Non-Sworn Investigations	15	91	69	96	52	51	14	0
		Sworn Investigations	5	13	3	1	0	3	28	24
		Total Pending Arrest/Conviction Report Investigations	**1,764**	**1,438**	**1,315**	**1,109**	**886**	**979**	**781**	**473**
Pending Complaints	Desk Investigations	Discipline by Another State/Agency	55	33	21	29	26	41	48	22
		Internal - Fraud (Primarily CE)[2]	32	14	20	73	97	3	70	33
		All Other Sources and Offense Categories	467	267	167	31	29	64	29	6
		Total Pending Desk Complaint Investigations	554	314	208	133	152	108	147	61
	Non-Sworn Investigations	Discipline by Another State/Agency	1	3	32	43	28	17	19	10
		Employer Reports - All Offense Categories	13	32	359	311	390	331	294	177
		Public and Other Complaints - All Offense Categories				189	150	113	110	113
		Public Agency Reports - All Offense Categories				113	147	144	86	67
		Internal - Other than Fraud[3]				156	101	58	51	27
		Internal - Fraud[2]	0	2	34	26	24	15	11	1
		Total Pending Non-Sworn Complaint Investigations	14	37	425	838	840	678	571	395
	Sworn Investigations	Discipline by Another State/Agency	1	3	1	0	0	2	11	8
		Substance Abuse, Impairment and Drug-Related Offenses	68	46	42	22	2	42	94	68
		Incompetence/Negligence	67	57	67	24	1	25	70	52
		Unprofessional Conduct	53	24	18	11	5	22	71	40
		Fraud, Including Internal - Fraud[2]	15	9	11	18	4	16	50	59
		Sexual Misconduct	11	6	6	0	0	4	14	10
		All Other Offense Categories	21	6	7	3	0	14	21	19
		Total Pending Sworn Complaint Investigations	236	151	152	78	12	125	331	256
	Total Pending Complaint Investigations		**804**	**502**	**785**	**1,049**	**1,004**	**911**	**1,049**	**712**
Total Pending Enforcement Investigations		Desk Investigations	2,298	1,648	1,451	1,145	986	1,033	886	510
		Non-Sworn Investigations	29	128	494	934	892	729	585	395
		Sworn Investigations	241	164	155	79	12	128	359	280
		Total Pending Enforcement Investigations (Unweighted)	**2,568**	**1,940**	**2,100**	**2,158**	**1,890**	**1,890**	**1,830**	**1,185**

[1] Value shown from June 30, 2016, excludes 226 cases closed pending criminal conviction (CPLX).

[2] Includes failure to comply with CE requirements, license examination fraud (cheating) cases and license application (experience) fraud cases.

[3] Excludes 25 cases involving non-compliance with Mandatory Employer Reporting requirements.

pending cases as of December 31, 2015. More recently, during the 6-month period ending June 30, 2016, the number of pending sworn complaint investigations decreased by more than 20 percent, to 256 cases.

In summary, the combined total number of pending licensee complaint investigations increased by about 25 percent from 2010/11 to 2013/14 from about 800 pending cases as of June 30, 2010 to about 1,000 pending complaint cases as of June 30, 2014. Subsequently, the total number of pending complaint investigations decreased to about 900 cases as of June 30, 2015, and then further decreased to about 700 cases as of June 30, 2016. *The number of pending licensee complaint investigations as of June 30, 2016, is about 30 percent less than the number of licensee complaint investigations that were pending from 2013 through 2015.*

Exhibit II-5, on the next page, provides an additional summary of pending licensee complaint investigations by age of the cases for the 4-year period from June 30, 2012, through June 30, 2016. A brief summary of the aged case data presented in Exhibit II-5 is provided below.

Average Age of Pending Desk Investigations – The average age of the declining numbers of pending desk investigations decreased significantly from about 11 months for cases pending as of June 30, 2013 to just 4 to 5 months for cases pending during 2015/16.

Average Age of Pending Non-Sworn Investigations – Many of the cases inherited by the new Investigation Section during 2011/12 were already quite old and the average age of the Section's increasing numbers of pending investigations increased continuously during the next several years, eventually reaching an average age of 19 months by June 30, 2015. The increase in the average age of the Section's pending complaint investigations occurred notwithstanding the increase in the number of investigations completed during 2013/14 and 2014/15 as compared to the preceding two (2) fiscal years. This data shows that Section staff increasingly focused their efforts on newer cases resulting in higher numbers of completed cases, but increasingly older backlogs of pending cases. More recently, during 2015/16 the average age of the Investigation Section's pending cases decreased by 37 percent to 12 months as of June 30, 2016. Further reductions in the average age of the Section's pending investigations are largely dependent on further reducing the Section's backlog of pending investigations.

Average Age of Pending Sworn Investigations – The average age of the declining numbers of pending sworn investigations increased following formation of the Investigation Section as case assignments to the Division of Investigation decreased eventually leaving the Division with just a dozen of its oldest cases. Subsequently, reflecting the reassignment of about 240 aged non-sworn investigation cases to the Division during 2015, the average age of the Division's pending cases adjusted to the average 17-month age of the Investigation Section's pending cases. More recently, the average age of the Division's pending cases has begun to decline. Further declines in the average age of the Division's pending cases are expected to occur as investigations are completed of the older cases that were transferred to the Division during 2015.

Finally, Exhibit II-5 shows that the combined total average age of all of BVNPT's pending licensee complaint investigations increased by more than 50 percent from an average age of about 11 months as of June 30, 2012 to an average age of about 17 months as of June 30, 2015. However, during the past year, the combined total average age of all of BVNPT's pending licensee complaint investigations decreased by more than 20 percent to 13 months, *the lowest level in more than three (3) years.*

Updated Historical Overview of Pending Licensee Complaint Investigations, By Age[1]

Investigation and Age Category		06/30/12	06/30/13	06/30/14	06/30/15	12/31/15	06/30/16
Desk Investigations[2]	Less than 1 Year	156	38	43	91	74	28
	1 to 2 Years	23	12	8	13	3	0
	2 to 3 Years	6	6	2	0	0	0
	3 to 4 Years	2	4	2	1	0	0
	More than 4 Years	1	0	0	0	0	0
	Total Pending Desk Complaint Investigations	**188**	**60**	**55**	**105**	**77**	**28**
	Average Age of Pending Complaint Cases (Months)	**8**	**11**	**7**	**5**	**4**	**5**
Non-Sworn Investigations	Less than 1 Year	293	417	342	238	257	245
	1 to 2 Years	80	331	297	209	140	111
	2 to 3 Years	36	63	181	163	101	26
	3 to 4 Years	12	23	18	62	62	11
	More than 4 Years	4	4	2	6	11	1
	Total Pending Non-Sworn Complaint Investigations	**425**	**838**	**840**	**678**	**571**	**394**
	Average Age of Pending Complaint Cases (Months)	**11**	**13**	**16**	**19**	**17**	**12**
Sworn Investigations[3]	Less than 1 Year	61	10	0	57	152	131
	1 to 2 Years	63	35	0	32	82	58
	2 to 3 Years	18	21	11	16	59	39
	3 to 4 Years	8	9	0	20	24	20
	More than 4 Years	2	3	1	0	14	8
	Total Pending Sworn Complaint Investigations	**152**	**78**	**12**	**125**	**331**	**256**
	Average Age of Pending Complaint Cases (Months)	**16**	**23**	**29**	**17**	**17**	**16**
Total Pending Complaint Investigations		**765**	**976**	**907**	**908**	**979**	**678**
Weighted Average Age of Pending Complaint Cases (Months)		**11**	**14**	**15**	**17**	**16**	**13**

[1] Excludes cases involving non-compliance with Mandatory Employer Reporting requirements.

[2] Excludes cases involving licensee failure to comply with Continuing Education (CE) Program requirements

[3] Ages shown include elapsed time from BVNPT's receipt of the complaint to referral to the Division of Investigations. Between May and December 2015, about 240 aged complaints were reassigned from the Investigation Section to the Division of Investigations.

In summary, concurrent with and following start-up of BVNPT's Investigation Section, from 2011/12 through 2014/15, overall Enforcement Program performance deteriorated significantly in terms of the number and average age of pending licensee complaint investigations. While the combined total number of pending licensee arrest/conviction report and licensee complaint investigations decreased significantly during this period, the decrease was entirely a result of a significant decrease in the number of pending licensee arrest/conviction report cases which (1) more than offset a significant increase in the number of pending licensee complaint investigations and (2) completely distorted and obscured workload, backlog and performance metrics related to investigating complaints submitted by the patients, employers, other public agencies and others regarding BVNPT's licensees. This outcome highlights inherent problems with combining data for multiple disparate categories of cases to generate much less meaningful, and in some cases largely meaningless, aggregate workload or performance metrics.

F. Updated Overview of Administrative Disciplinary Outcomes

Exhibit II-6, on the next page, provides a summary of the number of Notices of Warning (NOWs) and citations issued from 2011/12 through 2015/16. A brief summary of these administrative disciplinary outcomes is provided below

1. License Applicant Arrest/Conviction Report Outcomes

From 2011/12 through 2014/15, BVNPT consistently issued about 800 to 1,000 NOWs to license applicants. However, the number of NOWs issued as a proportion of the total number of completed license applicant investigations completed decreased significantly as the number of license applicant cases received and completed increased during this period. For example, during 2011/12 and 2012/13, NOWs were issued for about 33 percent of the 2,850 license applicant arrest/conviction report investigations completed per year during this 2-year period. Subsequently, during 2013/14 and 2014/15, NOWs were issued for only about 22 percent of the nearly 4,100 license applicant arrest/conviction report investigations completed per year. Throughout this period only a small number of citations were issued, reflecting settlements of cases where BVNPT's denial of licensure was appealed. This data confirms that during 2013/14 and, to a lesser extent, during 2014/15, BVNPT opened especially large numbers of cases for minor offenses which oftentimes were not investigated to any extent beyond completing an initial review of the applicant's arrest/conviction report and then closing the case without requesting or receiving (1) certified copies of the arrest report, (2) certified copies of court records or (3) a letter of explanation from the applicant. More recently, during 2015/16, reflecting impacts of BVNPT's restructuring of the License Applicant Arrest/Conviction Report Process, NOWs are issued for 85 to 90 percent of these cases. The License Applicant Arrest/Conviction Report Process is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

Updated Historical Overview of Administrative Disciplinary Outcomes

Type of Case	Type of Administrative Discipline	2011/12	2012/13	2013/14	2014/15	2015/16		
						Jul-Dec	Jan-Jun	Total
License Applicant Arrest/ Conviction Reports	Notice of Warning (estimated)	1,012	883	990	784	354	334	688
	Citation[1]	10	24	18	8	22	6	28
	Total - Applicant Arrest/Conviction Reports	1,022	907	1,008	792	376	340	716
Continuing Education Failure to Comply	Notice of Warning (estimated)	0	0	40	119	30	30	60
	Citation	60	101	42	1	44	66	110
	Total - Continuing Education	60	101	82	120	74	96	170
Licensee Arrest/ Conviction Reports	Notice of Warning (estimated)	624	615	526	368	213	203	416
	Citation[1]	155	61	71	81	84	77	161
	Total - Licensee Arrest/Conviction Reports	779	676	597	449	297	280	577
Licensee Complaints and Other Cases	Notice of Warning (estimated)	40	50	91	109	41	122	163
	Citation[1]	27	10	9	12	13	42	55
	Total Licensee Complaints and Other Cases	67	60	100	121	54	164	218

Type of Discipline	Type of Case (Enforcement Only)	2011/12	2012/13	2013/14	2014/15	2015/16		
						Jul-Dec	Jan-Jun	Total
Notice of Warning	Continuing Education	0	0	40	119	30	30	60
	Arrest/Conviction Reports	624	615	526	368	213	203	416
	Other Licensee Offenses	40	50	91	109	41	122	163
	Total Enforcement Notices of Warning	664	665	657	596	284	355	639
Citation[1]	Continuing Education	60	101	42	1	44	66	110
	Arrest/Conviction Reports	155	61	71	81	84	77	161
	Other Licensee Offenses	27	10	4	12	13	42	55
	Non-Licensees	5	2	5	0	1	2	3
	Total Enforcement Citations	242	172	117	94	141	185	326
Total Amount of Fines Assessed	(Licensing and Enforcement cases)	$129,300	$116,105	$102,038	$70,410	$87,966	$101,306	$189,272

[1] Includes citations issued in connection with formal discipline cases (see Exhibit III-4).

2. Continuing Education Audit Failure Case Outcomes

As discussed previously, most Internal – Fraud cases are CE audit failure cases. The fluctuations shown in the number of citations issued for these cases primarily reflect variability in the number and timing of CE compliance audits completed by Licensing Program staff. Additionally, as a result of concerns regarding the processes and criteria used for conducting CE compliance audits and determining compliance with BVNPT's CE requirements, during 2014 the Enforcement Division largely suspended issuances of citations for these cases and, instead, issued NOWs. Subsequently, during 2015/16, the Enforcement Division adopted a more flexible process for assessing these cases and the criteria used for determining the licensee's compliance status and then determining whether to issue a NOW or a citation. As a result of these changes, a mix of NOLs and citations were issued. The CE Compliance Audit Program is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

3. Licensee Arrest/Conviction Report Outcomes

The declining numbers of NOWs and citations issued from 2011/12 through 2014/15 for licensee arrest/conviction report cases is most likely related to implementation of retroactive fingerprinting requirements for licensees during preceding years and related decreases in the number of licensee arrest/conviction report investigations completed during this period. The subsequent increase in NOWs and citations issued for these cases during 2015/16 are consistent with the increase in number of licensee arrest/conviction report investigations completed during this period. During 2015/16, larger numbers of licensee arrest/conviction report investigations were completed reflecting the impact of efforts to reduce pending case queues and backlogs. The Licensee Arrest/Conviction Report Process is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

4. Licensee Complaints and Other Case Outcomes

From 2012/13 through 2014/15, BVNPT issued about 50 to 100 NOWs and up to about a dozen citations for licensee complaint cases and other types of cases, including cases involving non-licensees for which BVNPT usually issues a citation. More recently, during 2015/16, much larger numbers of NOWs and citations were issued in connection with these types of cases in parallel with the completion of much larger numbers of non-sworn and sworn licensee complaint investigations.

Finally, the total amount of fines assessed for all offenses decreased markedly from 2011/12 through 2014/15 largely as a result of a decrease in the number of citations issued for CE audit failure cases. Recently, the amounts of fines assessed increased by 170 percent from about $70,000 during 2014/15 to about $189,000 during 2015/16, reflecting (1) a resumption of citation issuances for CE audit failure cases and (2) completion of increased numbers of field investigations that supported issuance of a citation. BVNPT rarely issues citations without also assessing a fine.

III. Overview of Discipline Workload and Performance

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III. Overview of Discipline Workload and Performance

This section provides overviews of BVNPT's disciplinary workloads, workflows, backlogs and performance from 2012/13, immediately following start-up of BVNPT's non-sworn Investigation Section, through 2015/16. The section is organized as follows:

Section	Title
A.	Overview of Discipline Case Referrals and Filings
B.	Overview of Discipline Cases Completed
C.	Overview of Pending Discipline Cases
D.	Overview of Disciplinary Outcomes
E.	Overview of Disciplinary Process Elapsed Time Performance
F.	Overview of Probation Monitoring *(if completed)*
G.	Overview of Special Orders and Other Activity
H.	Variability in Discipline Imposed.

III. Overview of Discipline Workload and Performance

A. Overview of Discipline Case Referrals and Filings

Exhibit III-1, on the next page, provides a summary of license applicant and licensee discipline case referrals to the Office of the Attorney General (AG) and filings from 2012/13 through 2015/16. Exhibit III-1 also provides a summary of subsequent discipline (probation) case referrals and petition for reinstatement filings.

1. License Applicant Case Referrals and Filings *(About 30 cases per year, currently)*

Throughout the 3-year period from 2012/13 through 2014/15, BVNPT issued Letters of Denial to about 90 applicants per year and, on average, about 60 of these applicants appealed the denial of licensure, leading to preparation and filing of a Statement of Issues (SOIs) for each of the appealed cases. Subsequently, during 2015/16, BVNPT increased the threshold for reporting traffic offenses not involving alcohol, dangerous drugs or controlled substances from $300 to $1,000, restructured license applicant case intake and screening processes, and strengthened the processes used for review and approval of Letters of Denial prior to issuance. As a result of these changes, significantly fewer Letters of Denial were issued (33) and significantly fewer appeals of the denials were received (30). During 2015/16, 31 SOIs were prepared and filed, including SOIs filed related to receipt of appeals of license denials issued prior to implementation of the 2015/16 process restructuring. Currently, Letters of Denial are issued for about 7 percent of the license applicant cases that are referred to Enforcement and most of the denials of licensure are appealed.

2. Licensee Case Referrals and Filings *(About 300 to 350 cases per year, currently)*

Varying numbers of licensee discipline cases were referred to the AG during the 3-year period from 2012/13 through 2014/15, with somewhat larger numbers of cases referred to the AG during 2013/14 than in either 2012/13 or 2014/15. During 2013/14, larger numbers of arrest/conviction report cases, cases involving discipline by another state/agency, and complaint cases were referred to the AG than in either 2012/13 or 2014/15. Overall, for this 3-year period, an average of about 260 licensee discipline cases was referred to the AG. Concurrently, an average of 245 accusations was filed. During this period, these cases accounted for about 80 percent of the total license applicant and licensee cases referred to the AG and about 80 percent of the total filings for both types of cases.

Subsequently, during 2015/16, larger numbers of licensee discipline cases were referred to the AG, particularly during the second half of the fiscal year when 191 cases were referred to the AG. During 2015/16, more than 200 licensee arrest/conviction report cases were referred to the AG along with larger numbers of cases involving discipline by another state/agency and licensee complaint cases. As a result of the increase in licensee discipline case referrals to the AG during this period, and the concurrent reduction in license applicant discipline case referrals, the proportion of discipline case referrals accounted for by licensee discipline cases increased to more than 90 percent. However, during 2015/16, particularly during the second half of the year, the number of accusations filed did not keep pace with the increased pace of case referrals. During 2015/16, 336 licensee discipline cases were referred to the AG compared to only 262 accusations filed.

Historical Summary of Discipline Case Referrals and Filings

License Applicant and Licensee Case Referrals and Filings		2012/13	2013/14	2014/15	2015/16		Total 2015/16
					Jul-Dec	Jan-Jun	
License Applicant Cases	Denials of Licensure Issued	85	95	84	16	17	33
	License Applicant Cases Referred to AG (Appeals)	63	60	45	15	15	30
	AG Declined to File Statement of Issues (SOI)	0	1	0	0	0	0
	Statement of Issues Filed	68	50	71	15	16	31
	Statement of Issues Withdrawn	3	7	7	1	4	5
Licensee Cases	Arrest/Conviction Reports Referred to AG	175	217	179	107	99	206
	Discipline by Another State/Agency Reports Referred to AG	1	13	5	5	17	22
	Complaint Cases Referred to AG	46	80	61	33	75	108
	Total Licensee Cases Referred to AG	222	310	245	145	191	336
	AG Declined to File Accusation	6	5	4	3	2	5
	Accusations Filed	215	235	286	106	156	262
	Accusations Withdrawn	5	6	11	3	2	5
Total License Applicant and Licensee Discipline Cases Referred to AG		285	370	290	160	206	366
Total SOIs and Accusations Filed		283	285	357	121	172	293

Other Case Referrals and Filings	2012/13	2013/14	2014/15	2015/16		Total 2015/16
				Jul-Dec	Jan-Jun	
Subsequent Discipline Cases Sent to AG	30	37	40	12	27	39
Petitions for Reinstatement Filed	22	25	20	6	26	32

3. Other Case Referrals and Filings *(About 80 to 100 cases per year, currently)*

BVNPT consistently refers about 30 to 40 subsequent discipline (probation) cases to the AG per year. Petitions to revoke probation and voluntary surrenders each account for about one-half of the cases referred, and only a few of the cases referred involve a modification of probation. Additionally, about 20 to 30 petitions for reinstatement are filed per year.

4. Total Case Referrals and Filings *(About 400 to 450 cases per year, currently)*

The recent increase in number of licensee discipline cases referred to the AG was partially offset by a decrease in the number of license applicant cases that was referred. The total number of cases referred to the AG during 2015/16, including subsequent discipline cases and petitions for reinstatement, was nearly identical to the total number of cases referred to the AG two (2) years earlier during 2013/14 (about 450 cases in both years). This compares to a total of about 350 cases referred to the AG during both 2012/13 and 2014/15. On average, about 400 discipline cases are referred to the AG per year, including (1) license applicant cases, (2) licensee cases, (3) subsequent discipline cases, and (4) petitions for reinstatement.

B. Overview of Discipline Cases Completed

Exhibit III-2, on the next page, provides a summary of the number of discipline cases completed from 2012/13 through 2015/16. During the 3-year period from 2012/13 through 2014/15, an average of about 350 discipline cases was completed per year. Subsequently, during 2015/16, 479 discipline cases were completed. A brief summary of BVNPT's completed discipline cases is provided below.

Defaults – A large proportion of BVNPT's discipline cases (30 to 40 percent) are resolved as a result of a licensee's default (the licensee fails to respond to the pleading within 30 days of the filing). Nearly one-half of both licensee arrest/conviction report cases and licensee complaint cases default. License applicant cases have a much lower rate of default (about 10 percent, or less).

Stipulations – Over the 3-year period from 2012/13 through 2014/15, about 100 to 120 stipulated settlements were negotiated and adopted per year. Stipulated settlements accounted for about one-third of all completed license applicant and licensee discipline cases during this period. Subsequently, during 2015/16, more than 200 stipulated settlements were negotiated and adopted, accounting for more than 40 percent of all completed license applicant and licensee discipline cases. The larger number of settlements reached during 2015/16 reflects the impacts of BVNPT efforts to proactively pursue settlements, where appropriate, rather than carrying the cases through to hearing. The larger number of settlements reached during 2015/16 may continue for a limited period of time as pending discipline case backlogs are further reduced.

ALJ Decisions – Throughout the 4-year period from 2012/13 through 2015/16, between 90 and 125 cases were adjudicated per year through the Office of Administrative Hearings (OAH). Historically, these cases accounted for about one-third of all completed license applicant and licensee discipline cases. Subsequently, reflecting the impact of larger numbers of stipulated settlements, during 2015/16 these cases accounted for a much smaller percent of total discipline case completions (22 percent). It is unclear at this time whether BVNPT's efforts to accelerate settlements will have any impact on the number of cases that are not settled and proceed to hearing.

As shown by Exhibit III-2, during the past four (4) years there has been little change in the total number of license applicant, licensee complaint or subsequent discipline cases completed per year. However, the number of licensee arrest/conviction report discipline cases completed increased significantly from about 150 completed cases per year during 2012/13 and 2013/14, to 216 completed cases during 2014/15, and then further increased to 288 completed cases during 2015/16. During 2015/16, completed licensee arrest/conviction report discipline cases accounted for 60 percent of all completed licensee applicant, licensee and subsequent discipline cases.

As a general rule, licensee arrest/conviction report cases are less difficult and time-consuming to prosecute because the primary evidence for the case is the licensee's arrest/conviction record and related law enforcement agency reports and court records. Additionally, prosecution of the case is not dependent upon medical or personnel records or reports or testimony from investigative staff, witnesses, or outside experts. Because of these characteristics, pleadings for these cases are more easily prepared and the cases are more easily settled, where appropriate, as compared to cases involving complaints regarding licensees received from employers, patients or others. These same characteristics are also applicable to most license applicant cases. During 2015/16, more than two-thirds of completed license applicant cases were resolved without a hearing and, during the second half of 2015/16, nearly 90 percent of completed licensee arrest/conviction report cases were resolved without a hearing.

Historical Summary of Discipline Cases Completed[1]

Discipline Cases Completed by Type of Decision (Based on Decision Adoption Date)		2012/13	2013/14	2014/15	2015/16		Total 2015/16
					Jul-Dec	Jan-Jun	
Default Decisions Adopted	License Applicant Cases	3	0	2	2	4	6
	Licensee - Arrest/Conviction Reports	133	86	156	78	74	166
	Licensee - Complaints and Other					14	
	Total Default Decisions Adopted	136	86	158	80	92	172
Proposed Stipulations Adopted	License Applicant Cases	28	15	10	19	16	35
	Licensee - Arrest/Conviction Reports	91	88	108	90	66	168
	Licensee - Complaints and Other					12	
	Total Proposed Stipulations Adopted	119	103	118	109	94	203
Proposed ALJ Decisions Adopted	License Applicant Cases	18	11	15	13	6	19
	Licensee - Arrest/Conviction Reports	106	80	95	61	17	85
	Licensee - Complaints and Other					7	
	Total Proposed ALJ Decisions Adopted	124	91	110	74	30	104
	Proposed ALJ Decisions Not Adopted	0	2	5	1	3	4
Total Final Orders Adopted	License Applicant Cases	49	26	27	34	26	60
	Licensee - Arrest/Conviction Reports	330	254	359	229	157	419
	Licensee - Complaints and Other					33	
	Total Final Orders Adopted	379	280	386	263	216	479

[1] Includes subsequent discipline cases.

Discipline Cases Completed by Type of Case	2012/13[1]	2013/14[1]	2014/15[1]	2015/16		Total 2015/16
				Jul-Dec[1]	Jan-Jun[2]	
License Applicant Cases	64	54	41	49	23	72
Licensee - Arrest/Conviction Reports	160	142	216	152	136	288
Licensee - Complaints and Other	96	59	62	50	33	83
Licensee - Subsequent Discipline	30	37	44	17	10	27
Total Final Orders Adopted	350	292	363	268	202	470

[1] Based on Discipline Effective Date.

[2] Based on Discipline Imposed Date.

Finally, during the first half of 2015/16 the total number of completed license applicant, licensee and subsequent discipline cases (more than 260 cases) significantly exceeded the total number of licensee applicant, licensee and subsequent discipline cases referred to the AG (about 170 cases). Subsequently, during the second half of 2015/16, similar numbers of license applicant, licensee and subsequent discipline cases were both referred to the AG and completed (about 220 cases).

C. Overview of Pending Discipline Cases

Exhibit III-3, on the next page, provides a summary of the number and average age of pending license applicant and licensee discipline cases from June 30, 2013 through June 30, 2016. Prior to 2015/16, an average of about 550 license applicant and licensee discipline cases were pending at the AG and the average age of these cases was more than 30 months.

During the past year the total number of pending license applicant and licensee discipline cases decreased by more than 160 cases to less than 350 cases. The reduced number of pending discipline cases is attributable to a significant reduction in the number of pending license applicant and licensee arrest/conviction report cases. In the case of license applicant cases, the number of pending cases decreased from 77 cases as of June 30, 2015, to 21 cases as of June 30, 2016. In the case of licensee arrest/conviction report cases, the number of pending cases decreased from nearly 300 cases as of June 30, 2015, to fewer than 200 cases as of June 30, 2016.

Finally, during 2015/16 the average age of pending licensee cases decreased significantly, from an average age of 34 months as of June 30, 2015, to an average age of 26 months as of June 30, 2016. During 2015/16, the average age of all pending license applicant and licensee discipline cases also declined significantly, from an average age of 32 months as of June 30, 2015, to an average age of 26 months as of June 30, 2016. Over the past three (3) years the average age of pending license applicant and licensee discipline cases decreased by nine (9) months, from 35 months during 2013/14 to 26 months during 2015/16.

Historical Summary of Pending Discipline Cases

Case Category and Type[1]		06/30/13	06/30/14	06/30/15	2015/16	
					12/31/05	06/30/16
License Applicant Cases	Number of Pending Cases	93	82	77	38	21
	Average Age of Pending Cases (months)	25	23	23	26	24
Licensee Cases	Arrest/Conviction Reports	321	368	298	230	187
	Discipline by Another State/Agency	7	11	10	14	24
	Complaints	131	134	118	86	110
	Total Pending Cases	459	513	426	330	321
	Average Age of Pending Cases (months)	38	37	34	28	26
Total Pending Discipline Cases		552	595	503	368	342
Average Age of Pending Discipline Cases (months)		35	35	32	28	26

[1] Excludes subsequent discipline cases.

D. Overview of Discipline Case Outcomes

Exhibit III-4, on the next page, provides a summary of discipline case outcomes from 2012/13 through 2015/16. Over this 4-year period, license denials, voluntary license surrenders, and license revocations accounted for about **60 percent** of all discipline outcomes, irrespective of whether subsequent discipline cases are included. Probation outcomes accounted for about **30 percent** of all discipline outcomes and about **10 percent** of discipline cases were resolved by issuing a citation. As shown previously in Exhibit III-1, few discipline cases are resolved by withdrawing the SOI or accusation, which sometimes occurs due to death of the subject or the provision of new information by the subject. *The large number and proportion of license surrender, revocation and probation outcomes reflects the nature of the offenses underlying BVNPT's discipline cases and the strength of the cases that BVNPT refers to the AG for prosecution.*

The percentage of outcomes accounted for by license denials, surrenders and revocations *during 2015/16* is somewhat lower than referenced above (53 percent) and the percentage of outcomes accounted for probation outcomes is somewhat higher than referenced (40 percent). Conversely, *if the 2015/16 data is excluded*, then the percentage of outcomes accounted for by license denials, surrenders and revocations would be higher than referenced and the percentage of outcomes accounted for by probation outcomes would be lower than referenced. The higher number and proportion of probation outcomes during 2015/16 reflects the temporary impacts of recent BVNPT efforts to settle pending license applicant and licensee discipline cases, where appropriate. As discussed previously in Section III-B (*Overview of Discipline Cases Completed)*, a total of about 200 cases were settled during 2015/16, compared to about 100 to 120 cases settled per year during the preceding three (3) fiscal years.

In the remainder of this section we discuss more specifically various categories of disciplinary outcomes.

1. License Applicant Case Outcomes

There was a significant increase during 2015/16 in the number of license applicant cases that were resolved by either (1) granting the applicant a license and placing the subject on probation or (2) granting the applicant a license in conjunction with issuing a citation. During 2015/16, 58 conditional licenses were granted to applicants compared to 25 conditional licenses granted during the preceding year. The increase in the number and proportion of license applicant cases resolved with a probation or citation outcome reflects the impacts of BVNPT's efforts to reduce pending discipline case backlogs by settling the cases, where appropriate. However, as shown by Exhibit III-4, the number of license applicant case outcomes with a citation outcome decreased significantly during the second half of 2015/16 compared to the first half of the year. Additionally, reflecting the impacts of BVNPT's recent restructuring of the License Applicant Arrest/Conviction Report Process, it is anticipated that even fewer license applicant cases will be settled during 2016/17 and subsequent years with a citation outcome because BVNPT no longer denies licensure for some of the types of license applicant cases that previously led to a citation outcome (e.g., failure to disclose a minor offense that occurred in the distant past). Finally, in comparison to prior years, there was virtually no change during 2015/16 to the number of license applicant cases that proceeded to hearing with the Board's denial of licensure decision subsequently upheld by the ALJ (typically about 10 to 15 cases per year). The License Applicant Arrest/Conviction Report Process is further discussed in Section IV (*Integrated Assessment of Targeted Business Processes*).

Historical Summary of Disciplinary Outcomes

Discipline Case Type and Outcome Category		2012/13[1]	2013/14[1]	2014/15[1]	2015/16		Total 2015/16
					Jul-Dec[1]	Jan-Jun[2]	
License Applicant Cases	Denial of Licensure Upheld	10	15	13	8	5	13
	License Granted, Revocation Stayed, Probation (Lic. Granted w/ Conditions)	20	18	17	18	12	30
	License Granted with Citation (Other Outcome)	23	15	8	22	7	29
Licensee Cases[3]	Revocation	159	100	162	91	69	160
	Voluntary Surrender	37	52	35	33	17	50
	Revocation Stayed, Probation with Suspension	2	3	2	1	0	1
	Revocation Stayed, Probation	61	52	65	75	76	151
	Citation (Other Outcome)	43	27	14	8	7	15
Subsequent Discipline Cases	Revocation	17	15	25	8	16	24
	Voluntary Surrender	11	20	16	8	6	14
	Revocation Stayed, Probation	2	2	3	1	1	2
Total License Applicant, Licensee and Subsequent Discipline Case Outcomes		385	319	360	273	216	489
Petition for Reinstatement Denied		14	9	10	6	5	11
Petition for Reinstatement Granted, with Probation		10	12	10	11	6	17

[1] Based on Discipline Effective Date.

[2] Based on Decision Adoption Date.

[3] Does not include Letters of Reprimand. BVNPT issues few Letters of Reprimand.

2. Licensee Case Outcomes

There was little change during 2015/16 in the total number of license revocations or voluntary surrenders for licensee discipline cases. Additionally, there was little change in the relatively small number of licensee cases that are resolved by issuance of a citation (15 citation outcomes compared to a total of more than 375 licensee cases). As discussed previously, there was a large increase during 2015/16 in the number of licensee cases settled with a probation outcome reflecting the impacts of BVNPT's efforts to settle cases, where appropriate, rather than carrying the cases through to hearing.

3. Subsequent Discipline Case Outcomes

Exhibit III-4 also shows outcomes for about 30 to 40 subsequent discipline cases that are completed per year. Most of these cases are initiated as a result of a probationer failing a biologic fluid test (BFT) or the subsequent arrest/conviction of the probationer for an offense that supports termination of their probation and revocation of their license. In about one-half of these cases the licensee voluntarily surrenders their license, oftentimes before a pleading is even filed and in other cases as part of a settlement of the case. For most of the remaining cases the subject's license is revoked.

4. Petition for Reinstatement Outcomes

On average, about one-half of the 20 to 30 petitions for reinstatement that are filed per year are denied and about one-half of the petitions are granted in conjunction with placing the petitioner on probation, usually for a period of 3 to 5 years.

5. Probation Outcomes

Based on above historical outcome data, on a longer term basis it is reasonable to expect that license denials, voluntary surrenders and revocations will account for about 65 percent of total discipline case outcomes. Conversely, it is reasonable to expect that probation outcomes will account for about 25 percent of total discipline case outcomes (e.g., an average of about 100 new probationers per year, assuming referral of about 400 discipline cases per year to the AG). This outcome data suggests that BVNPT's total active and inactive probationer population will average about 400 cases, assuming (1) a 4-year average term of probation, including tolling related extensions and (2) all probationers successfully complete the program. However, many probationers do not successfully complete the program (typically about 30 to 40 subsequent discipline cases per year). Partially offsetting this attrition, an average of about a dozen petitions for reinstatement are granted per year, with the petitioners always placed on probation. Consequently, it is reasonable to expect that the total population of probationers, both active and tolled, will normally range between about 300 and 325 cases (about 400 new cases, less about 140 unsuccessful completions, plus about 50 reinstatements). As of June 30, 2016, BNVPT had 429 probationers. The much higher than average size of the current probationer population reflects the impacts of efforts to accelerate case settlements during 2015/16. During 2015/16, about 180 completed discipline cases had a probation outcome compared to an average of about 80 completed discipline cases per year with a probation outcome during previous periods.

E. Overview of Disciplinary Process Elapsed Time Performance

Exhibit III-5, on the next page, provides multiple measures of disciplinary process elapsed time performance for the period from 2012/13 through the first half of 2015/16 and, where supporting data is currently available, for the second half of 2015/16. The following elapsed time performance measures are shown:

- Average elapsed time from case referral to the AG to filing for both SOIs and accusations, and combined for both types of pleadings
- Average elapsed time from case referral to the AG to decision adoption for (1) defaults, (2) stipulated settlements, and (3) OAH hearings, and combined for all three (3) types of decisions
- Average elapsed time from case receipt to Board decision for (1) license applicant cases, (2) licensee arrest/conviction report cases, and (3) licensee complaints and other cases, and combined for all three (3) types of cases.

Below we briefly discuss each of these measures.

1. Average Elapsed Time from Case Referral to AG to Filing

During the time period shown, the average elapsed time from case referral to filing for SOIs typically fluctuated between about five (5) and six (6) months. In contrast, the average elapsed time from case referral to filing for accusations decreased continuously, from an average of more than nine (9) months during 2012/13 to an average of about 6.5 months during the first half of 2015/16. However, for both types of cases these *average* elapsed times are extended, especially considering the nature and characteristics of the majority of these cases.

2. Average Elapsed Time from Case Referral to AG to Decision Adopted

In recent years there has been significant reduction in the average elapsed time from case referral to decision adoption for both default and ALJ decision cases. The average elapsed time for default decisions decreased from 22 months during 2013/14 to 14 months during the first half of 2015/16 and the average elapsed time for ALJ decision decreased from 26 months during 2013/14 to 20 months during the first half of 2015/16. However, during this period there was only limited improvement in the average elapsed time from referral to decision for stipulated settlement cases (from an average of 19 to 20 months during 2013/14 and 2014/15 to an average of 17 months during the first half of 2015/16). On a combined basis, the average elapsed time from case referral to decision decreased by five (5) months from 22 months during 2013/14 to 17 months during the first half of 2015/16. However, for all three (3) types of cases, these *average* elapsed times are extended, especially considering the nature and characteristics of the majority of these cases.

Exhibit III-5

Historical Summary of Disciplinary Process Elapsed Time Performance

Elapsed Time Performance Measures (License Applicant and Licensee Cases)		2012/13	2013/14	2014/15	2015/16	
					Jul-Dec	Jan-Jun
Case Referred to AG to Filing (months)	Case Referred to AG to SOI Filed	5.5	6.8	5.2	5.8	4.2
	Case Referred to AG to Accusation Filed	9.2	7.8	7.4	6.5	5.8
	Weighted Average Elapsed Time - Case Referred to Filing	8.3	7.6	7.0	6.4	5.7
Case Referred to AG to Decision Adopted[1] (months)	Case Referred to AG to Decision Adopted - Defaults	17	22	18	14	11
	Case Referred to AG to Decision Adopted - Stipulations	16	19	20	17	17
	Case Referred to AG to Decision Adopted - ALJ Decisions	20	26	23	20	18
	Weighted Average Elapsed Time - Case Referred to AG to Decision Adopted	17	22	20	17	15
Case Receipt to Decision[1] (months)	Case Received to Decision - License Applicant Cases	31	30	33	27	26
	Case Received to Decision - Licensee Arrest/Conviction Reports	34	36	36	33	30
	Case Received to Decision - Licensee Complaints and Other	41	42	43	47	37
	Weighted Average Elapsed Time - Case Receipt to Decision	36	36	37	35	31

[1] 2012/13, 2013/14 and 2015 values based on Discipline Effective Date. January to June 2016 values based on Discipline Imposed Date. Excludes subsequent discipline cases.

3. Average Elapsed Time from Case Receipt to Decision

This performance measure captures the total elapsed time from receipt of the case through completion of the disciplinary process. As previously reported during BVNPT's 2014 Sunset Review, the average elapsed time from case receipt to completion of the disciplinary process during 2012/13 was 36 months (3 years), and performance remained at about this same level through each of the next two (2) fiscal years (2013/14 and 2014/15). As shown by Exhibit III-5:

- The average elapsed times during this period for license applicant cases were typically about 3 to 6 months less than the combined average measure
- The average elapsed during this period for licensee arrest/conviction report cases, which account for about one-half of all discipline case completions, were usually about the same as the combined average measure
- The average elapsed times during this period for licensee complaint and other cases were consistently significantly greater than the combined average measure, reaching a peak of 47 months (nearly 4 years) during the first half of 2015/16.

More recently, beginning during the first half of 2015/16 and continuing through the remainder of the fiscal year, the average elapsed time performance measures for both license applicant and licensee arrest/conviction report cases began to decrease (i.e., to an average of 26 months for license applicant cases compared to an average of 33 months previously, and to an average of 30 months for licensee arrest/conviction report cases, compared to an average of 36 months previously). Additionally, during the second half of 2015/16 there was a significant decrease in the average elapsed time from receipt to decision for licensee complaint and other cases (i.e., to an average of 37 months from an average of 47 months during the first half of the fiscal year). **On a combined basis, the average elapsed time <u>from case receipt to decision</u> decreased by six (6) months, from an average of 37 months during 2014/15 to an average of 31 months during the second half of 2015/16.**

While improved, the case receipt to discipline decision average elapsed times remain extended, especially considering BVNPT's case mix which is dominated by license applicant and licensee arrest/conviction report cases, many of which are resolved by default. It is anticipated that significant additional reductions in this average elapsed time performance measure will be realized through the remainder of 2016/17 as backlogs of aged field investigation cases are further reduced and Investigation Section and Division of Investigation efforts increasingly shift to completing timely investigations of current cases which will enable more timely referrals of discipline cases to the AG. Additionally, as the remaining aged case backlogs work their way through the discipline process, additional emphasis can be placed by BVNPT management and staff, in collaboration with AG attorneys, on accelerating the filing of pleadings and settlement of discipline cases (see also Section IV – *Integrated Assessment of Targeted Business Processes*).

F. Overview of Probation Program

Available data suggests that, historically, the Probation Program's population of probationers averaged about 250 probationers, with about one-half of the probations subject to bodily fluid testing (BFT). During 2015/16, BVNPT settled about 180 discipline cases with a probation outcome compared to an average of about 80 discipline cases settled with a probation outcome in prior periods. As a result, about 200 probationers entered the Probation Program during 2015/16 compared to an average of fewer than 100 new probationers per year during prior periods. The large number of new probationers during 2015/16 swelled the Probation Program's total population to about 430 probationers as of June 30, 2016. Subsequently, the probationer population increased further to 440 probationers as of mid-September 2016.

Higher than average numbers of discipline case settlements with probation outcomes may continue to be reached during 2016/17 as a result of (1) continuing efforts to further reduce the number of pending discipline cases and (2) referral of higher than average numbers of cases for discipline as a result of efforts to further reduce the number of pending non-sworn and sworn investigations. To the extent that this occurs, the total population or probationers could increase further (e.g., by another 50 to 100 probationers).

The larger size of the probationer population necessarily adds to the Probation Unit's new case intake and ongoing monitoring workloads. Additionally, it should be expected that the larger numbers of probationers will generate larger numbers of BFT failures and larger numbers of subsequent arrests and convictions for criminal or other offenses that will trigger needs to initiate subsequent disciplinary actions. However, after 2016/17, as the number of pending field investigations and discipline cases diminishes and fewer discipline cases are settled and closed with a probation outcome, Probation Unit workloads will most likely plateau. Subsequently, beginning during 2018/19, the probationer population and related workloads should begin to diminish as the large numbers of probationers that entered the Probation Program during 2015/16 complete the program. Thus, from this point in time, BVNPT's higher than average probationer population and related workloads will most likely persist for a period of about two (2) years (2016/17 and 2017/18) and then begin decreasing to historical average levels.

Given the above circumstances, a limited augmentation of the Probation Unit's staffing may be needed for a period of several years. To address these needs, BVNPT is currently planning to continue to utilize Temporary Help to supplement permanent Probation Unit staffing. Currently, there is one filled (1) Retired Annuitant position assigned to the Probation Unit.

Exhibit III-6

Historical Overview of Probation Program

Key Program Profile Indicators	2012/13	2013/14	2014/15	2015/16
New Probationers	89	86	96	191
Bodily Fluid Tests Ordered	2,140	3,256	3,563	5,978
Positive Bodily Fluid Tests	313	260	278	601
Revocations and Voluntary Surrenders	28	35	41	38
Successful Completions	38	38	41	36
Total Number of Probationers (End of Period)	297	320	329	429
Total Number of Active Probationers (End of Period)	238	256	268	367
Probationers Subject to Bodily Fluid Testing (End of Period)	129	132	217	312

G. Overview of Special Orders and Other Discipline Activity

Table III-1, below, provides a summary of BVNPT's special orders and other disciplinary activity. As shown by Table III-1, BVNPT very rarely seeks Interim Suspension Orders (ISOs) but, pursuant to authority granted in the Business and Professions Code, does sometimes seek judicial intervention during a criminal proceeding involving a licensee to restrict practice by the licensee pending adjudication of the matter. BVNPT's relatively frequent requests for PC 23 Orders reflect the nature of BVNPT's enforcement cases which are dominated by cases involving licensee arrests, and subsequent convictions, for criminal offenses. Conversely, it is very rare for BVNPT to refer cases for criminal prosecution as most BVNPT enforcement cases originate from criminal prosecutions initiated by others. Finally, BVNPT disciplinary decisions are rarely appealed to Superior Court.

Table III-1
Historical Summary of Special Orders and Other Disciplinary Process Activity

Type of Special Order or Activity		2012/13	2013/14	2014/15	2015/16		Total 2015/16
					Jul Dec	Jan Jun	
Speical Orders	ISOs Granted	0	0	0	1	0	1
	PC 23 Orders Issued	9	5	9	3	2	5
	Psychological Examinations Ordered	0	2	0	0	1	1
Other Activity	Cases Referred for Criminal Prosecution	1	7	0	0	0	0
	Decisions Appealed to Superior Court	0	0	0	1	0	1

H. Variability in Discipline Imposed

The number and proportion of disciplinary outcomes involving license denial, in the case of license applicants, or voluntary surrender or revocation, in the case of licensees, are reasonably consistent for the 3-year period from 2012/13 through 2014/15. Also, the number and proportion of disciplinary outcomes involving granting a probationary license to a license applicant, or placing a licensee on probation, are reasonably consistent during this same period. Subsequently, during 2015/16, there was an increase in the number and proportion of license applicants that were granted a probationary license and in the number and proportion of licensees that were placed on probation. *The shifts in the mix of disciplinary outcomes that occurred during 2015/16 appear to reflect the impact of BVNPT efforts to reduce pending discipline case backlogs by accelerating the settlement of pending cases.*

Discipline Imposed on License Applicants and Licensees from 2012/13 through 2014/15 – As discussed previously in Section III-D *(Overview of Disciplinary Outcomes),* during this 3-year period there was a fairly consistent mix in disciplinary outcomes for both license applicant and licensee cases. In the case of license applicant cases, BVNPT's denial of licensure was upheld for about a dozen cases each year, while, on average, about 18 applicants were granted licenses and placed on probation. In the case of licensee cases, during this 3-year period license revocations and voluntary surrenders consistently accounted for about 75 percent of the combined total number of license revocation, surrender, and probation outcomes.

Discipline Imposed on License Applicants and Licensees During 2015/16 – There was a significant increase during 2015/16 in the number and proportion of probation outcomes for both license applicants and licensees. In the case of license applicant cases, 13 denials of licensure were upheld, about the same number as in prior years, but 30 applicants were granted licenses and placed on probation. In the case of licensee cases, more than 150 licensees were placed on probation, compared to an average of about 60 licensees place on probation per year in prior periods. *As a result, probation outcomes accounted for more than 40 percent of the combined total number of license revocation, surrender and probation outcomes during 2015/16.* This shift resulted from BVNPT's efforts to settle pending discipline cases, where appropriate.

Discipline Imposed for Subsequent Discipline Cases from 2012/13 through 2015/16 – With respect to subsequent discipline cases, license revocations or surrenders accounted for nearly all discipline outcomes throughout this 4-year period. In the case of reinstatements, on an annual basis, nearly equal numbers of petitions have usually been denied and granted.

As discussed previously in Section III-A *(Overview of Discipline Case Referrals and Filings*), in recent years there has been variability in BVNPT's issuances of Letters of Denial to license applicants. For example, 33 Letters of Denial were issued during 2015/16 compared to more than 80 Letters of Denial issued during each of the preceding three (3) fiscal years. Consequently, significantly fewer of the denials were appealed and significantly fewer SOIs were filed. Only 20 SOIs were filed during 2015/16 compared to average of about 60 SOIs filed during the preceding three (3) fiscal years. During the second half of 2015/16 only five (5) SOIs were filed (equivalent to an annual rate of just 10 SOI filings per year).

The changes that were implemented during 2015/16 involving Letter of Denial issuances appear not to have impacted the total number of appealed denials that are adjudicated and upheld or the number of cases where the applicant is granted a license and placed on probation. However, these changes do appear to have significantly reduced the number of cases that are appealed and then resolved with a stipulated settlement granting the applicant a license in conjunction with issuance of a citation and assessment of a fine (usually $500). During the second half of 2015/16 only six (6) citations were issued to license applicants compared to an average of about 20 citations issued to license applicants per year over the preceding 3½ years (July 2012 through December 2015).

Prior to 2015/16, BVNPT issued Letters of Denial whenever an applicant failed to disclose a reportable offense on their license application. Oftentimes, the offense that was not reported was minor in nature and occurred in the distant past, such as Minor in Possession of Alcohol, Presenting a False ID, Petty Theft or Larceny Under $100. It is our understanding that BVNPT had a "blanket policy" to deny licensure for all of these types of cases. For denials of licensure involving these types of cases, the applicant could either:

- Appeal the Denial of Licensure and then settle the appeal by agreeing to pay a $500 fine that was usually assessed

  or

- Resubmit their application a year later and provide additional information needed to avoid denial.

BVNPT staff oftentimes communicated with applicants about these options to assist the applicant in making an informed choice regarding which option to pursue to achieve licensure. Given the extended timeframes and costs involved with appealing a license denial and then settling the case, it was potentially better for many applicants to simply wait a year and then resubmit their license application.

During 2015/16 BVNPT increased the threshold for reporting traffic offenses not involving alcohol, dangerous drugs, or controlled substances from $300 to $1,000 and concurrently restructured the license applicant case intake and screening processes. Additionally, Letters of Denial are now required to be reviewed by management prior to issuance. Currently, on an annualized basis, fewer than 500 license applicant cases per year are referred to Enforcement where the cases are further screened and assessed by Enforcement staff, on a case-by-case basis, to identify those cases that clearly support either denial of licensure or, alternatively, granting the applicant a probationary license. Currently, less than 10 percent of the cases referred to Enforcement meet these criteria and, as a result, significantly fewer Letters of Denial are issued than occurred in the past. Additionally, fewer of these cases are appealed and, as a result, fewer SOIs are prepared and filed. Sometimes the filing of an SOI prompts the applicant to provide additional information that supports issuance of a license in conjunction with issuance of a citation. However, these circumstances are now much less likely to occur than was the case in the past. NOWs are currently issued for nearly all of the much smaller number of remaining cases.

Finally, in recent years there has been some variability in BVNPT's issuances of citations for cases involving licensee failure to comply with BVNPT's CE requirements. The results of our assessment of the processes used by BVNPT for enforcing compliance with BVNPT's CE requirements are presented subsequently in Section IV *(Integrated Assessment of Targeted Business Processes).*

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IV. Integrated Assessment of Targeted Business Processes

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IV. Integrated Assessment of Targeted Business Processes

This section summarizes results of our integrated assessments of four (4) core enforcement business processes. The section is organized by business process, as follows:

Section	Title
A.	License Applicant Arrest/Conviction Reports
B.	Continuing Education Compliance Audits and Enforcement
C.	Licensee Arrest/Conviction Reports
D.	Licensee Complaint Intake, Screening and Assignment for Investigation

A. License Applicant Arrest/Conviction Reports

As discussed previously, the number of license applicant arrest/conviction reports received by BVNPT increased by about 55 percent from less than 2,500 reports received during 2010/11 to nearly 3,800 reports received during 2013/14. Throughout this period there was little change in the number of Notices of Warning (NOWs) issued to license applicants. About 900 to 1,000 NOWs were consistently issued per year. Additionally, notwithstanding the large increase in number of license applicant arrest/conviction reports received and investigated, the number of Letters of Denial issued per year changed very little during this period and, consistent with this, there was little change in the number of appealed license denials or Statement of Issues (SOI) filed. Also, there was little change to any of the outcomes resulting from applicant appeals of the denials, including case withdrawals, licenses granted in conjunction with placing the applicant on probation, licenses granted in conjunction with issuance of a citation, or adjudicated denial of the license.

Additional analyses subsequently completed suggested that large numbers of license applicant arrest/conviction report cases were opened by BVNPT (e.g., 800 to 1,000 per year, or possibly more, especially during 2013/14) for minor offenses. Also, preliminary reviews we completed of 2012/13 and 2013/14 CAS data for these cases suggested that many of these cases were possibly not investigated to any extent beyond completing an initial review of the applicant's arrest/conviction report or, possibly, the applicant's self-reported information, and then closing the case. Finally, we learned that during this period, through various communication channels, BVNPT encouraged applicants to fully disclose prior arrests and convictions to avoid potential delays in the processing of their license application, or denial of licensure in the event that a reportable offense was discovered by BVNPT that was not disclosed by the applicant. It appears that these communications prompted a surge in applicant self-reports of minor offenses and offenses that occurred in the distant past, including offenses involving traffic violations with fines or penalties exceeding the $300 reporting threshold that existed at that time.

Prior to 2015/16, BVNPT opened desk investigation cases for all license applicant arrest/conviction reports received and all arrests/convictions self-reported by license applicants before the applicant passed the license examination, and otherwise qualified for licensure, and without any assessment as to whether the nature and timing of the reported offense potentially supported an enforcement outcome. The additional applicant self-reports appear to have been largely responsible for the large increase in number of cases that were opened. In nearly all cases BNVPT assigned these cases to Complaint Section analysts for desk investigation (e.g., to review and obtain certified copies of the arrest report and court records and a letter of explanation from the applicant). In some instances the cases were held open for extended periods of time (up to 2 years, or longer) pending completion of the license application process and, if applicable, the case adjudication process for more recent offenses. Particularly during 2013/14, it appears that large numbers of cases were closed within 45 to 60 days, or less, without completing any investigation of the cases. It also appears that most of the additional offenses that were self-reported by the applicants did not even support issuance of a NOW and were instead closed, oftentimes with little or no actual investigative activity performed.

During 2015/16 BVNPT overhauled the License Applicant Arrest/Conviction Report Process by transferring various responsibilities to Licensing Program staff, including responsibility for:

- Reviewing license applicants' initial arrest/conviction report and preparing and issuing requests for the arrest report, court reports and applicant letter of explanation, and preparing and issuing deficiency letters to the applicant, if needed
- Maintaining the records in the applicant's license application file pending the applicant's successful completion of the license examination and application process
- Screening the applicant's arrest/conviction record, after the applicant has otherwise qualified for issuance of a license, to determine whether the nature and timing of the reported offense(s) that meets criteria for referral to Enforcement.

This organizational and process restructuring was phased in over a period of several months beginning during July 2015. Concurrently, during October 2015, BVNPT increased the threshold for self-reporting traffic offenses not involving alcohol, dangerous drugs or controlled substances from $300 to $1,000.

As a result of the above changes, there were significant successive decreases in the number of license applicant cases opened. About 500 cases were opened during the first half of 2015/16 and about 240 cases were opened during the second half of 2015/16 (equivalent to less than 500 cases per year). Concurrently, there were significant decreases in the number of NOWs issued, the number of Letters of Denial issued, the number of denial appeals submitted to BVNPT, the number of SOIs filed, and the number of licenses granted in conjunction with issuance of a citation. However, this restructuring does not appear to have adversely impacted key indicators of the level of consumer protection provided such as the number of license denials upheld following appeal or the number of licenses granted in conjunction with placing the new licensee on probation. NOWs are now issued for nearly all of the cases, except for those where a Letter of Denial is issued.

In summary, BVNPT's License Applicant Arrest/Conviction Report Process has been successfully overhauled. Most of the workload related to handling and investigating thousands of license applicant cases has been eliminated along with large pending queues and backlogs of license applicant cases. Complaint Section analysts are no longer distracted from meaningful work by opening case records, creating case files and handling thousands

of license applicant cases, all of which absorbs large amounts of available staff time but provides no value. Workload related to issuing larger numbers of NOWs and Letters of Denial for minor offenses, responding to larger numbers of phone calls and appeals, managing larger numbers of license applicant discipline cases, preparing and approving larger numbers of settlement agreements, issuing larger numbers of citations, collecting more fines, and performing related workload and workforce management activities has all been eliminated. The significantly reduced workload associated with implementation of these changes suggests that it should now be possible to either redirect some Complaint Intake and Desk Investigation Section staff to better address other Enforcement Program business needs or BVNPT needs in other areas or (2) assign additional responsibilities to the Complaint Intake and Desk Investigation Section (see also Section V – *Enforcement Program Organization and Staffing*).

One potential area for additional improvement to BVNPT's License Applicant Arrest/Conviction Report Process involves the current unclear and difficult to read and understand wording used in the current *Report of Convictions* requiring the self-reporting of specified convictions by the applicant. This same wording is also used in BVNPT's license renewal application. Needs exist to critically review this specific portion of BVNPT's initial license and license renewal applications and to develop a better overall structure and format and improved wording for this disclosure requirement that is much more readable and understandable by BVNPT's license applicant and licensee populations and which could help to reduce misreporting or over-reporting of prior convictions. As discussed subsequently in Section IV-C, in addition to license applicants, licensees sometimes misreport or over-report convictions when completing their license renewal application (e.g., by incorrectly or unnecessarily checking 'Yes').

Recommendation IV-1 – *Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that license applicants misreport or over-report prior convictions (see Recommendation IV-5).*

Additionally, BVNPT currently opens and requests certified copies of arrest and court records for all license applicant cases that are referred to Enforcement, including cases involving convictions for minor non-traffic criminal offenses that occurred in the distant past (e.g., larceny under $100). In some instances, because of the age of the cases, it difficult for the law enforcement agencies and the courts to retrieve these records and staff spend a disproportionate amount of time attempting to obtain these records along with other related information for these cases (e.g., a letter of explanation from the applicant). Because these types of cases would not support denial of licensure, the cases could instead be opened and screened during intake and closed without requesting records and then referring the case to an analyst for desk investigation.

Recommendation IV-2 – *Develop and implement procedures to enable case intake staff to exercise judgement in determining whether to request records from law enforcement agencies and the courts for license applicant cases based on minor criminal offenses that occurred in the distant past and screen the cases to identify and close cases that do not require desk investigation.*

Finally, during 2015/16 BVNPT modified its guidelines for issuance of Letters of Denials to applicants that had been the subject of a license examination *Incident Report* from Pearson View. Previously, Letters of Denial were automatically issued in all cases. Effective July 2015, BVNPT began reviewing each new case to determine whether the facts and circumstances of the case support denial of licensure. Implementation of these new guidelines is expected to further contribute to reductions in the number of Letters of Denial issued, appeals of the denials, case referrals to the AG, SOI filings, and negotiated settlements or case withdrawals.

B. Continuing Education Compliance Audits and Enforcement

BVNPT's governing statutes and accompanying regulations require that each person renewing their license submit proof satisfactory to BVNPT that the licensee completed the required number of CE hours or equivalent units of credit during the preceding two (2) years. Currently, BVNPT does not require submission of Certificates of Completion for completed CE with the licensee's renewal application because an overwhelming number of documents would be submitted. Instead, BVNPT requires that licensees retain their Certificate of Completion records for a period of four (4) years and conducts compliance audits of a sample of licensees that recently renewed the license. The Certificates of Completion are required to contain an acceptable Provider Identification Number and Course Identification Number.

In recent years responsibility for BVNPT's Continuing Education (CE) Compliance Audit Program has been continuously assigned primarily to a single Program Technician II (PT II) within the Licensing Division. However, at times the PT II has been redirected to provide Licensing Program services in other areas which adversely impacted the number of CE compliance audits completed.

When available to perform CE compliance audits, on a daily basis the PT II would select a handful of license renewal files to audit from among all licensees that renewed their license about six (6) months earlier. Available historical data suggests that BVNPT conducts up to about 1,500 CE compliance audits per year representing less than 2.5 percent of all renewals. However, the Licensing Program staff responsible for completing the audits was oftentimes redirected to provide services in other areas which delayed the completion of the audits and, in some years, adversely impacted the number of audits that were conducted.

Historically, a cumbersome and labor intensive process has been utilized to complete CE compliance audits. Following file selection, the PT II would photocopy the renewal documents, prepare a CE audit file for each licensee, and prepare and mail a letter to the licensee requesting submission of documentation within 30 days substantiating their compliance with BVNPT's CE requirements. If the licensee was non-responsive to the initial request, the PT II would prepare and mail a follow-up letter and, if the licensee was again non-responsive, the PT would prepare and mail a final letter. Alternatively, if the licensee provided documentation to substantiate their compliance with BVNPT's CE requirements, the PT II would review the documents submitted to determine whether:

- ✓ **The claimed CE courses were completed during the 2-year period specified**. Oftentimes documentation is submitted for CE units completed subsequent to the audit period (e.g., CE units completed after receiving the audit request).
- ✓ **The claimed CE courses were allowable.** This included determining whether the CE providers and courses were approved by BVNPT. Additionally, the PT II would verify the information provided by preparing and mailing letters to the licensee's CE providers requesting confirmation of the information provided by the licensee and, as needed, preparing and mailing follow-up letters to the providers if they were not responsive to the initial request. Finally, if the providers were not responsive to the verification requests, the PT II would sometimes contact other parties (e.g., nursing agencies) in an effort to verify the licensee's information.

Finally, the PT II would determine whether the minimum number of required CE units had been completed.

If any compliance deficiencies were identified, then the PT II would prepare and send a letter to the licensee requesting additional information. Subsequently, as needed, the PT II would prepare and send additional follow-up letters to the licensee and providers and complete additional reviews of document submissions until reaching a conclusion that the licensee:

- Had provided documentation substantiating full compliance with BVNPT's CE requirements
- Had responded to BVNPT's requests, but had not substantiated full compliance with BVNPT's CE requirements
- Had not responded to BVNPT's requests and, therefore, had not cooperated with BVNPT's investigation and, by default, also was not in compliance with BVNPT's CE requirements.

With the above described process, the timeframe needed to complete each audit nearly always extended, at a minimum, over a period of many months, and oftentimes for much longer, even if the PT II was not re-directed to other areas. Additionally, various problems hampered the effective and efficient completion of the CE compliance audits. For example, due to the 6-month delay before the renewal files were selected for audit, and as additional time elapsed during the period that the audit was being completed, it became increasingly likely that BVNPT would not have a current address for the licensee making it more difficult to correspond with the licensee and adding to requirements to mail correspondence by both regular and certified mail. Additionally, these same circumstances increased the likelihood that the licensee would have more difficulty producing documentation substantiating their compliance with BVNPT's CE requirements and that providers would have more difficulty verifying the information provided by the licensee. Finally, the case tracking worksheet utilized by the PT II was not consistently maintained, making it more difficult to oversee the work that was being completed, determine the status of the CE Audit Program, and determine the overall level of licensee compliance with BVNPT's CE requirements.

If the PT II determined that a licensee had failed to comply with BVNPT's CE requirements, the case file would be forwarded to the Enforcement Division. Complaint Section staff opened new cases for all of the cases that were referred to Enforcement, all of which were coded as Internal – Fraud cases on the basis that the cases were opened internally by BVNPT staff and the licensee had committed fraud by *falsely* certifying on their license renewal application that they had complied with BVNPT's CE requirements.

In recent years there has been a great deal of variability in BVNPT's issuances of citations for Internal – Fraud cases which consist almost exclusively of CE audit failure cases. Small numbers of licensee complaint cases are also sometimes opened for other types of licensee fraud cases, including license exam (cheating) fraud and license application (experience) fraud discovered by BVNPT subsequent to license issuance. For a period of time it appears that citations were issued for all (or nearly all) CE audit failure cases that were opened. For most cases, results of the audit showed that the licensee had not completed <u>any</u> CE during the 2-year audit period, or very little, but had cooperated with BVNPT staff during the audit process. A $500 fine was usually assessed for these types of cases. However, if the licensee had not cooperated with BVNPT staff during the audit (e.g., by responding to the correspondence that was mailed to the licensee), then an additional $250 fine was usually assessed. Finally, if it was determined that the licensee had changed addresses and not informed BVNPT of their change of address, then an additional $50 fine was sometimes assessed. In a small number of cases the licensee provided documentation substantiating that they had completed some, but not all, of the required CE. In these circumstances a reduced fine was sometimes assessed (e.g., $250).

In the past there has been some inconsistency in the amount of fines assessed for failure to comply with BVNPT's CE requirements, and related offenses identified during the course of completing the CE compliance audits. Some of this variability could be due to assignment of these cases among multiple Complaint Section analysts. For example, in some cases the additional fines for not cooperating with BVNPT during the audit process or not informing BVNPT about a change of address were not always assessed and reduced fines were not always assessed in cases where a licensee completed some, but not all, of the required CE.

During 2011/12 and 2012/13, citations were issued for all (or nearly all) cases involving failure to comply with CE requirements (60 citations were issued during 2011/12 and 101 citations were issued during 2012/13). Notices of Warning (NOWs) were either very rarely issued, or not issued at all. Subsequently, during 2013/14, Complaint Section staff became concerned about potential deficiencies with some of the CE compliance auditing processes, including concerns that some potentially allowable CE courses were being disallowed (e.g., credits for courses in cases where a Certificate of Completion was provided by the licensee, but was incomplete because it did not include a provider or course number, or both, and inconsistent practices for converting college courses to CE credits). Additionally, there were increasing problems related to the age of the cases that were referred to Enforcement which, in some cases, extended into periods that exceeded BVNPT's 4-year CE records retention requirement. Finally, technical deficiencies were identified with some of the notices that were sent to the licensees. In response to these circumstances, the Complaint Section analysts began issuing NOWs, rather than citations, in nearly all cases. During 2013/14, 40 citations were issued and a similar number of NOWs were issued. Subsequently, during 2014/15, about 120 NOWs were issued and only two (2) citations were issued.

During 2015/16 various changes were made to the CE audit process, including (1) preparation of listings of the cases to be audited, (2) discontinuation of the need to obtain provider verifications of the information submitted by the licensee, (3) modification of the letters that were sent to the licensee, and (4) limitation of the number of requests sent to the licensee to just an initial request and a single follow-up/final request. Additionally, rather than assigning these cases to multiple analysts throughout the Complaint Section, all of the CE audit failure cases were assigned to the Section's Citation Desk analyst for final review and citation (or NOW) issuance. Also, case-specific determinations began being made as to whether to issue a citation or a NOW, resulting in issuance of 110 citations and 60 NOWs during 2015/16. Finally, BVNPT established an alternative installment payment process for the payment of fines in cases of financial hardship. Previously, BVNPT sometimes automatically referred cases to the AG whenever a licensee failed to promptly pay their fine in full.

Available historical data covering the 4-year period from 2011/12 through 2015/16 regarding the actual number of CE audit failure-related citations and NOWs issued, along with historical data and anecdotal information regarding the number of CE compliance audits completed, indicates that at least 10 percent of licensees are non-compliant with BVNPT's CE requirements, and some of the available data suggests that the level of non-compliance is possibly much higher (e.g., at least 15 percent). Additionally, in most cases where a licensee is non-compliant with BVNPT's CE requirements, the licensee *falsely* certified on their renewal application that they had complied with the requirements when, in fact, they had not completed any CE units during the audit period, or had completed very few CE units during the audit period. Also, a significant number of licensees simply ignore repeated BVNPT requests to provide documentation substantiating their compliance with the CE requirements.

The processes used to audit compliance with BVNPT's CE requirements need to be restructured. Additionally, an expansion of the CE Compliance Audit Program is needed to reduce the level of non-compliance. An increase in the number of positions allocated for performance of CE compliance auditing and enforcement services is needed to enable completion of additional CE compliance audits, complete intakes of additional CE audit failure cases referred to Enforcement, issue additional citations, and collect additional fines (see also Section V – *Enforcement Program Organization and Staffing*).

Recommendation IV-3 – *Restructure and significantly expand the CE Compliance Audit Program. Issue an initial standard form 30-day audit letter to a sample of at least 5 percent of renewing licensees in conjunction with issuing their license renewal notifications. If the licensee is non-responsive to the initial request, promptly issue a second/final request. If the license is non-responsive to the final request or confirms that they did not complete any (or completed very little) of the required CE, promptly refer the case to Enforcement for issuance of a citation. Streamline the Certificate of Completion review process by limiting reviews of the documents in cases that appear to show full compliance with BVNPT's CE requirements.*

Recommendation IV-4 – *Assess the feasibility of imaging CE-related document submissions and enabling submission of the documents electronically.*

C. Licensee Arrest/Conviction Reports

This subsection presents results of our integrated assessment of licensee arrest/conviction reports which currently account for about one-half of all cases received and more than 50 percent of all discipline cases.

1. Background

Licensee arrest/conviction reports account for more than one-half of BVNPT's entire Enforcement Program workload in terms of:

- Cases opened *(about 1,500 or more cases per year)*
- Investigations completed *(about 1,500 or more cases per year)*
- Notices of Warning issued *(about 400 or more issued per year)*
- Citations issued *(60 to 160 issued per year)*
- Disciplinary actions completed *(150 to 300 cases per year).*

Exhibit IV-1, on the next page, provides a 6-month snapshot showing the distribution of outcomes resulting from completed licensee arrest/conviction report investigations. Nearly all of these investigations are completed by Complaint Section analysts under the supervision of the Complaint Section Manager. Few of these cases are currently referred for either non-sworn or sworn field investigation.

Based on the 6-month snapshot data presented in Exhibit IV-1, about 60 percent of these cases are closed without further action and about 40 percent are closed with:

- Issuance of a NOW (about 23 percent)
- Issuance of a citation (about 9 percent)
- Referral to the AG for formal discipline (about 9 percent).

However, it is possible that the cases that were Closed Pending Criminal Conviction during the snapshot period include a disproportionate number of cases that are less likely to be closed with a non-disciplinary outcome. For example, it is unlikely that the cases that were Closed Pending Criminal Conviction would be subsequently closed "Redundant". Additionally, it is possible that these same cases are more likely to involve more serious criminal cases that were placed in a pending status because an extended period of time was expected to elapse before the case is adjudicated. As a result, these cases are also possibly more likely, following adjudication, to reach an outcome involving issuance of a NOW or a citation, or referral to the AG for formal discipline. Finally, because the Closed Pending Criminal Conviction process was only recently implemented, it is possible that these cases are not fully represented

Licensee Arrest/Conviction Report Case Investigation Outcomes

January 1 through June 30, 2016

Outcome			Number of Cases[1]	Percent
Cases Closed Pending Criminal Conviction *(Partially Completed Investigations)*			117	
Fully Completed Investigations	Non-Disciplinary Outcomes	Closed - Redundant *(Limited Investigation)*	184	21%
		Closed - No Violation *(Possibly, or Likely, Marked Renewal Form in Error)*	167	19%
		Closed - No Further Action[2]	107	12%
		Closed - Consolidated	49	6%
		Total Non-Disciplinary Outcomes	507	59%
	NOWs, Citations and Disciplinary Outcomes	Closed - Notice of Warning Issued	197	23%
		Closed - Citation Issued	82	9%
		Closed - Referred to AG *(Formal Discipline)*	80	9%
		Total NOWs, Citations and Disciplinary Outcomes	359	41%
	Total Fully Completed Arrest/Conviction Report Investigations		866	100%
Total Licensee Arrest/Conviction Cases, Including Cases Closed Pending Criminal Conviction			983	

[1] Excludes 35 Arrest/Conviction Report cases coded in Breeze as various types of complaints (e.g., LRFC, LLMR, GSUB and GLAW).

[2] Includes Opened in Error (29), Retro Rap Too Old (27), Other - Pending Another Case (18), No Jurisdiction (18), 4-Year Expired License (3), Insufficient Evidence (3), No Action Taken (3), Unactionable (3), Subject Deceased (1), Sent for EO/Chief Review (1), and Returned Mail (1).

in the mix of cases with the other outcomes shown in Exhibit IV-1. Consequently, it is possible that the percentage distributions shown in Exhibit IV-1 are somewhat overstated for the non-disciplinary outcomes shown and, conversely, somewhat understated for the NOW, Citation and Referral to the AG outcomes. However, even if all of the Closed Pending Criminal Conviction cases reach an outcome involving issuance of a NOW or citation, or referral to the AG, which is unlikely, those three (3) outcome categories combined would then account for about 50 percent, rather than 41 percent, of the total outcomes for these cases and the changes to the NOW, Citation and Referral to the AG outcome categories would be minimal (e.g., a change of a few percent to each category).

As shown by Exhibit IV-1, about 20 percent of the licensee arrest/conviction report cases are closed "Redundant". "Redundant" closures occur with a high frequency in part because licensees self-report a conviction on their license renewal application for an offense for which a case has already been opened based on prior receipt of a CORI Report from the California Department of Justice. Oftentimes, it is immediately evident from the information provided by the licensee that the self-reported offense is the same as the previously reported offense, in which case the self-reported case is immediately closed "Redundant". However, in some cases it is not immediately clear from the information provided by the licensee on their renewal application that the self-reported offense is the same as the previously reported offense, in which case correspondence is prepared and sent to the licensee requesting additional information needed to make this determination. Then, after the clarifying information is provided and reviewed, the self-reported case is closed "Redundant", in most cases with only a very limited investigation and very little staff time spent performing the investigation. "Redundant" closures also occur when the Department of Justice successively reports case status updates concerning the same offense (e.g., an arrest and a subsequent conviction). These cases are nearly always easily identifiable as "Redundant" and promptly closed.

Also as shown by Exhibit IV-1, about 20 percent of the licensee arrest/conviction report cases are closed "No Violation". "No Violation" closures usually occur when a licensee self-reports a conviction on their license renewal application (by checking "Yes"), but additional information about the offense is not provided with the renewal application and there is not another case already opened concerning the licensee. In these circumstances correspondence is prepared and sent to the licensee requesting additional information regarding the self-reported offense, but the licensee then responds that they incorrectly marked their renewal application or a determination is made by the analyst that this is what occurred. These cases are then properly closed "No Violation". In most cases, very little staff time is needed to complete these investigations.

Assuming that about 40 percent of the licensee arrest/conviction report cases received each year are either closed during initial screening or closed following completion of a very limited investigation, then there are about 900 remaining cases that require completion of a more substantive review, analysis or investigation. As shown by Exhibit IV-1, some of these cases will be consolidated with other cases to further support the issuance of a NOW or citation, or referral for disciplinary action. Most of the remaining cases (about 75 to 80 percent, or possibly more) will be completed with either (1) issuance of a NOW or citation or (2) a referral to the AG for formal disciplinary action.

In summary, while there are significantly fewer licensee arrest/conviction report cases than is apparent from data showing the total number of cases received and investigations completed, which includes large numbers of "Redundant" and misreported "No Violation" cases, the remaining cases are very likely to involve more serious offenses that support issuance of a NOW or citation, or referral for disciplinary action. Furthermore, about one-half of these cases support referral for disciplinary action which, as shown previously in Section III, nearly always results in license revocation or probation.

2. Recommendations for Improvements

As discussed previously in Section IV-A (*License Applicant Arrest/Conviction Reports*), one possible area for improvement to BVNPT's Licensee Arrest/Conviction Report Process involves the current unclear and difficult to read and understand wording used in the current *Report of Convictions* requiring the self-reporting of specified convictions by the licensee. This same wording is also used in BVNPT's license application. Needs exist to critically review this specific portion of BVNPT's license and license renewal applications and to develop a better overall structure and format and improved wording for this disclosure requirement that is much more readable and understandable by BVNPT's license applicant and licensee populations and which could help to reduce the frequency of misreporting and over-reporting by the applicant or licensee. Changes are needed for both paper-based and electronic (on-line) renewals. For example, in the case of on-line renewals, programming could possibly be developed to require confirmation when the "Yes" box is checked or to prevent further processing of the renewal until other required fields providing additional information about the reported conviction are completed.

Recommendation IV-5 – *Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that licensees misreport or over-report prior convictions (see also Recommendation IV-1). Additionally, develop programming for on-line renewals that requires confirmation by the licensee when the "Yes" box is checked or to prevent further processing of the renewal application until other required fields providing additional information about the self-reported conviction are completed.*

As discussed previously in Section III, on average, a significant amount of time elapses (more than 6 months) between BVNPT's referral of licensee cases to the AG and the filing of the accusation, including time for the AG to prepare the pleading and time for BVNPT to review and approve the pleading and return it to the AG for filing. Also, most of the licensee cases referred to the AG are based on arrest/conviction reports and up to about one-half of these cases default 30 days after the accusation is filed.

During March 2015 the AG began implementing a Fast Track (FT) Pilot Program specifically for BVNPT and the Board of Registered Nursing (BRN). The FT Pilot Project is structured specifically to accelerate the discipline process for "paper cases" such as BVNPT's licensee arrest/conviction report cases. The purpose of the FT Pilot Program is to reduce the average case processing time, reduce the number of matters set at the Office of Administrative Hearings (OAH) and to track data for evaluation. FT case acceptance criteria, which a significant portion of BVNPT's discipline cases could potentially meet, are as follows:

- The case must be a "paper case" with no witnesses needed for the complainant (this would include most license applicant arrest/conviction report cases (SOIs), most licensee arrest/conviction report cases, and most discipline by another state/agency cases)
- All documents needed to prove the case must be certified and provided to the AG at the time of referral
- Settlement terms must be specified and included at the time of referral
- Any mitigation or rehabilitation evidence that the Board would like the AG to collect must be specified and included at the time of referral
- If only surrender is acceptable to the Board, the Board must specify and include the surrender terms at the time of referral
- The Board must not request inflammatory terms in the pleading
- The Board should consider offering reduced costs early to inspire early settlement (BVNPT previously agreed to a 25 percent blanket reduction to actual costs to induce settlements).

However, cases with a deferred entry of judgement are not accepted. Additionally, the FT Pilot Program is currently limited to the AG's San Diego office (which extends north to Orange County).

The Enforcement Task Force previously recommended in its November 2014 report to the Board, that BVNPT participate in the AG's FT Pilot Program and, subsequently, BVNPT began participating in the program. However, BVNPT's utilization of the FT Pilot Program has been very limited. During the last several months of 2014/15, only 12 cases were accepted for the FT Pilot Program. Subsequently, of 98 BVNPT cases referred to the AG's San Diego office during 2015/16, only 10 cases were accepted for the FT Pilot Program. In contrast, according to the AG, the Board of Registered Nursing, which has about four times more licensees than BVNPT, had more than 300 accepted FT Pilot Program cases since July 1, 2015. Additionally, according to the AG, prior to implementing the FT Pilot Program, the average elapsed time from case referral to filing for BRN's cases was about six (6) months, including about four (4) months of time for the AG to prepare the pleading and about two (2) months of time for subsequent BRN and AG activities. This compares to an average elapsed time of about four (4) months currently needed to complete all of these same activities. According to the AG, significant reductions were achieved in the time needed to prepare the pleading and also in the time needed for BRN pleading review and approval and AG filing activities.

Given the overall volume and characteristics of BVNPT's licensee arrest/conviction report cases and the default outcomes that frequently occur, it would be beneficial for BVNPT to work collaboratively with the AG to identify ways to (1) increase BVNPT's utilization of the current FT Pilot Program for these and other qualifying cases and (2) expand the FT Pilot Project to other geographic regions of the state where BVNPT has larger numbers of cases. During July 2016, BVNPT's Executive Officer and Chief of Enforcement met with the Supervising DAG for the AG's San Diego Office and discussed whether the FT Pilot Program could be expanded to other geographic regions.

Recommendation IV-6 – *Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases.*

Recommendation IV-7 – *Work collaboratively with the AG to identify ways to expand the Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases to other geographic regions of the state.*

Currently BVNPT's governing Board must approve each default decision and licensee arrest/conviction report cases account for most of these decisions (e.g., more than 75 percent). Current statutes do not provide the Board with the authority to delegate approval of default decisions to BVNPT's Executive Officer. The Enforcement Task Force previously recommended in its November 2014 report to the Board that the Board seek legislative authority to delegate adoption of default decisions to BVNPT's Executive Officer. However, to date, this recommendation has not been implemented. If the authority to approve default decisions is delegated to the Executive Officer, it will significantly reduce the number of decisions that require approval by the full Board (e.g., by 30 to 40 percent). The Medical Board of California currently has this authority:

> B&P 2224(b) Notwithstanding subdivision (a), the board shall delegate to its executive director the authority to adopt a decision entered by default and a stipulation for surrender of a license.

Recommendation IV-8 – *Develop and propose legislation to specifically provide BVNPT's governing Board with the authority to delegate approval of default decisions to the Executive Officer.*

D. Licensee Complaint Intake, Screening and Referral for Investigation

As discussed previously, concurrent with and following start-up of the Investigation Section during 2012/12 and 2012/13, BVNPT reduced and then completely discontinued the referral of cases to the Division of Investigation, including cases involving serious criminal misconduct, significant patient harm, unlicensed practice and sexual misconduct. In November 2014 the Enforcement Task Force recommended that BVNPT apply the Consumer Protection Enforcement Initiative (CPEI) case referral acceptance matrix in determining investigation referrals to the Division of Investigation and begin referring incoming Category 1 and 2 cases to the Division. However, during the next several months (December 2014 through March 2015) BVNPT referred only about 20 cases to the Division of Investigation. Subsequently, following BVNPT's Sunset Review Hearing, between May and December 2015, about 240 cases were reassigned to the Division of Investigation and many of these cases were already more than two (2) years old. Concurrently, BVNPT restructured its Complaint Intake Process. The restructuring was phased in during September and October 2015. As part of the restructuring, guidelines, policies and procedures were developed and implemented to:

- Improve the completeness, consistency and quality of the coding of complaints
- Identify cases requiring immediate intervention and promptly refer the cases to appropriate Complaint Section analysts to initiate appropriate activity by the AG
- Apply the *Complaint Prioritization Guidelines for Health Care Agencies* for identification and referral of cases to the Division of Investigation.

Following initial implementation of the restructuring, the responsibilities of some Complaint Section staff were adjusted and the initially established guidelines, policies and procedures were modified and refined to support further improvements to the restructured process. For example, a Citation Desk was established to consolidate responsibility for preparing and issuing citations, tracking compliance with Orders of Abatement, and collecting fines. Additionally, a structured process was established to screen and close licensee complaint cases that did not require investigation. This enhanced process functionality became especially important following conversion to BreEZe which automatically opens large numbers of complaints that are partially completed on-line by the public, but which oftentimes do not provide sufficient information to enable further research or investigation of the case, such as contact information for the complainant or information needed to identify the subject of the complaint and whether they are a BVNPT licensee.

In some areas the new complaint intake and screening processes are still somewhat underdeveloped and continuing to evolve. For example, throughout 2015/16 nearly all cases involving license applicant arrest/conviction reports, licensee arrest/conviction reports, licensee failure to comply with CE requirements, and licensee discipline by another state/agency were referred to analysts within the Complaint Section for desk investigation. However, all (or nearly all) licensee complaints that were not closed during intake/screening, or referred to the Division of Investigation, were assigned to the Investigation Section without screening the cases to identify those that did not require completion of a field investigation and could, instead, be investigated by collecting records and interviewing the parties by telephone. During 2015/16 the Investigation Section's non-sworn investigators were focusing their efforts on completing investigations of the large number of older backlogged cases that had accumulated during the past several years and, as a result, these more recently assigned cases continued to accumulate within the Section's backlog of pending unassigned cases. More recently, during July and August, BVNPT's Chief of Enforcement began reviewing new license

complaint cases and the Investigation Section's unassigned cases to identify cases that did not require completion of a field investigation. Results of this review show that many of the cases do not require field investigation.

The above described ad-hoc case screening and assignment practices by BVNPT's Chief of Enforcement and other Enforcement Division managers and staff are not sufficient to effectively address the significant ongoing workload associated with screening and completing investigations of relatively large numbers of licensee complaints that do not require a field investigation (about 150 to 200 cases per year). A dedicated pool of trained staff is needed to screen and complete desk investigations of these cases. Additionally, dedicated staff are needed to:

- Complete reviews of completed licensee complaint field investigations, including determining needs for supplemental investigations
- Determine needs for outside expert opinions to provide further support for results of the field investigations
- Determine whether the findings of the field investigations support referral for administrative discipline or formal discipline
- Issue NOWs or package and refer cases to the Citation Desk or the AG, as appropriate.

Responsibility for the above functions is currently dispersed among multiple Complaint Section staff who are also responsible for completing license applicant and licensee arrest/conviction report investigations and investigations of cases involving discipline by another state/agency.

Recommendation IV-9 – *Develop and implement a structured, sustainable business process for screening licensee complaints to identify cases that do not require field investigation and assign these cases to staff that specialize in completing desk investigations of these types of cases.*

Additionally, with respect specifically to the intake, screening and investigation of cases based on discipline by another state/agency reports, we determined that only about 20 percent of these cases are subsequently referred for discipline. Historically, BVNPT receives an average of about 40 to 50 cases per year but, during 2015/16, 100 of these cases were opened. Available data also show that about one-half of these cases are closed "Redundant". According to Complaint Section staff, the Board of Registered Nursing, and possibly other agencies and states, provide BVNPT with "courtesy notices" when they discipline their licensees, which can include denials of licensure or granting an applicant a probationary license. BVNPT opens new cases for all of these reports. However, BVNPT also separately queries NURSYS and other professional licensing databases and opens cases for these same cases based on the originating agency's posting of the case to these systems. All of these cases are forwarded to Complaint Section analysts for desk investigation without any screening to determine whether a case has already been opened for the same report. Additionally, it is our understanding that some other California health care licensing agencies sometimes grant a probationary license for applicants based on an offense that BVNPT is already aware of which does not then require any further action by BVNPT. For all of these reasons, and possibly others, about 80 percent of these cases are closed by Complaint Section analysts without referral for discipline and, in many cases, without completing a substantive desk investigation of the case.

Recommendation IV-10 – *Develop and implement procedures to enable case intake or screening staff (or both) to review and not open new discipline by another state/agency cases or, alternatively, screen and close discipline by another state/agency cases that do not require completion of a desk investigation. Additionally, notify agencies providing "courtesy notices" to stop doing so if the information is available to BVNPT through BreEZe or they routinely post the same information to another professional licensing database that is otherwise queried by BVNPT.*

Finally, there are continuing deficiencies with BVNPT's case coding practices and, recently, the complexity and magnitude of these problems increased significantly as a result of the conversion from CAS to BreEZe. For example, during the conversion, some key data fields were automatically populated with incorrect data and other data fields were not populated with CAS data that should have been. Additionally, BreEZe provides the capability to populate case records with additional types of information, but consistent procedures and practices for utilizing these new capabilities have not yet been fully developed and implemented. Problems with converting from CAS to BreEZe were expected and not all of these problems could be foreseen in advance. Enforcement Division management and staff have spent a great deal of time during the past eight (8) months identifying various problems with the BreEZe data and correcting the data (referred to internally as "data clean-up"). Additionally, Enforcement Division management and staff have been working collaboratively with representatives from DCA's Office of Information Services to complete data queries and extracts and develop new coding structures and reports to better support BVNPT's case tracking and Enforcement Program management information needs. While major improvements have been made by BVNPT, particularly during the last several months, additional procedures and staff training are now needed to further improve the completeness, quality and consistency of BVNPT's workload, workflow, backlog and performance metrics particularly as related to the coding and tracking of licensee complaint cases.

Recommendation IV-11 – *Continue to refine licensee complaint case coding procedures and practices and provide training to staff to improve the consistency and completeness of complaint records and the tracking and reporting of Enforcement Program workload, backlog and performance information.*

V. Enforcement Program Organization and Staffing

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V. Enforcement Program Organization and Staffing

This section provides an overview of the current organization and staffing of BVNPT's Enforcement Division, a summary of the results of our assessment of the Division's current and anticipated future staffing requirements, and a proposed Future State Enforcement Division Organizational Model. Additionally, we summarize results of our assessment of BVNPT's communications and collaborations with DCA's Division of Investigation and the Office of the Attorney General. Finally, we summarize results of our assessment of the Division's workforce development and training needs. The section is organized, as follows:

Section	Title
A.	Current Enforcement Division Organization and Staffing
B.	Current and Anticipated Future Enforcement Division Staffing Requirements
C.	Future State Enforcement Division Organizational Model
D.	Communication and Collaboration with Enforcement Partners
E.	Enforcement Division Workforce Development and Training

V. Enforcement Program Organization and Staffing

A. Current Enforcement Division Organization and Staffing

Exhibit V-1, on the next page, illustrates the Enforcement Division's current organizational structure and workforce allocations. As shown by Exhibit V-1, 33.50 positions are authorized for the Enforcement Division, including one (1) half-time AGPA position. Since completion of the Phase I Diagnostic Review and Initial Assessment:

- One (1) vacant half-time Special Investigator position, that BVNPT was never able to fill, was reclassified and redirected to the Administration and Licensing Division, thereby reducing the total number of positions authorized for the Enforcement Division by 0.50 positions
- One (1) vacant Special Investigator position was reclassified to an AGPA position and redirected to the Discipline and Probation Section to augment discipline case management staffing
- One (1) previously filled SSA position within the Discipline and Probation Section is now vacant.

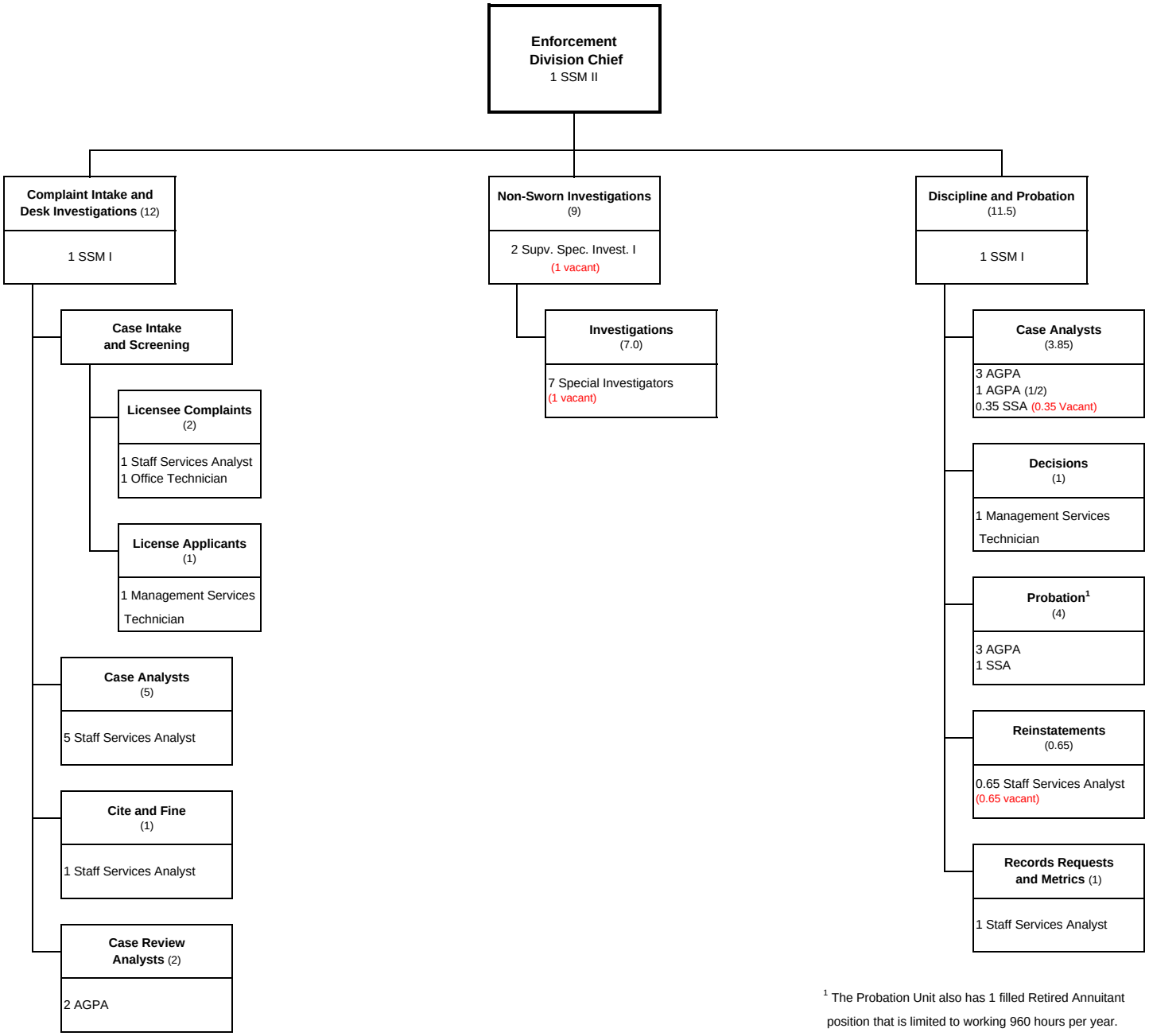
Additionally, during July 2016 the Investigation Section's Supervising Special Investigator separated from BVNPT and, from late-July through mid-September, one of the Section's Special Investigators served as an Acting Supervisor for the Section. In mid-September a new Supervising Special Investigator was appointed for the Section. Within the Investigation Section there continue to be two (2) vacant positions, including one vacant (1) Supervising Special Investigator position and one vacant (1) Special Investigator position.

Enforcement Division staff are organized into three (3) sections; Complaint Intake and Desk Investigations, Investigations, and Discipline and Probation. Primary responsibilities of the Complaint Intake and Desk Investigation Section currently include:

- Intake and screening of (1) license applicant cases, (2) licensee continuing education audit failure cases, (3) licensee arrest/conviction report cases, (4) discipline by another state/agency cases, and (5) licensee complaint cases, including identification of cases, primarily licensee complaint cases, for referral for field investigation (i.e., either the Investigation Section or the Division of Investigation)
- Completing desk investigations of (1) license applicant cases, (2) licensee continuing education audit failure cases, (3) licensee arrest/conviction report cases and (4) discipline by another state/agency cases
- Reviewing completed field investigation cases, including determining needs for supplemental investigations and obtaining outside expert opinions, when needed
- Preparing and issuing Notices of Warning (NOWs)
- Preparing and issuing citations and tracking and collecting fines
- Identifying and referring cases to the AG for discipline
- Responding to discipline document requests.

Enforcement Division Organization - September 2016

Total Positions = 33.50, Excluding Temporary Help



[1] The Probation Unit also has 1 filled Retired Annuitant position that is limited to working 960 hours per year.

V. Enforcement Program Organization and Staffing

Currently, licensee complaint cases that are not referred to the Division of Investigation and do not require a field investigation are assigned to either the Investigation Section or, in selected cases, to the Complaint and Desk Investigation Section. The primary responsibility of the Investigation Section is to investigate licensee complaint cases that are not referred to the Division of Investigation *and* which require a field investigation.

Primary responsibilities of the Discipline and Probation Section include:

- Managing discipline cases, including reviewing pleadings, determining terms for settlement and negotiating settlements, and reviewing settlement agreements
- Processing discipline decisions
- Monitoring probationers, including investigating probation violations and preparing Petitions for Modification or Termination of Probation
- Preparing Petitions for Reinstatement
- Responding to Public Records Act (PRA) requests
- Preparing periodic Enforcement Program workload, backlog and performance data and reports.

During August 2016, all of the Investigation Section's staff were relocated from the Section's physically separate 4th floor offices to 2nd floor offices adjacent to the Complaint Intake and Desk Investigation Section. Concurrently, most Discipline and Probation Section staff were relocated from the 2nd floor to the 4th floor. The co-location of the Complaint and Desk Investigation Section and the Investigation Section is expected to improve the flow of cases from intake through completion of the investigation and improve communications, information sharing, knowledge transfer and teamwork between these two business units.

B. Current and Anticipated Future Enforcement Division Staffing Requirements

During the past year Enforcement Division staff kept pace with current workloads and, concurrently:

- Significantly reduced accumulated work backlogs from prior years, including complaint intake and screening backlogs, desk investigation backlogs, non-sworn investigation backlogs and discipline case backlogs
- Absorbed significant one-time workload related to conversion from CAS to BreEZe
- Absorbed an increase in licensee complaint intake and screening workload.

In recent years significant changes were made to the Complaint Intake and Desk Investigation Section's scope of responsibility. Prior to formation of the Investigation Section, the Complaint Intake and Desk Investigation Section was responsible for completing desk investigations of licensee complaint cases, except for cases that were referred to the Division of Investigation. Subsequently, during 2015/16, BVNPT successfully implemented a restructuring of the license applicant arrest/conviction report process that reduced the number of cases referred to Enforcement by nearly 90 percent. Previously, these cases accounted for as much as 65 percent of all cases received. Additionally, this restructuring significantly reduced the number of appealed license denials which previously accounted for nearly 20 percent of cases referred by the Section to the AG. The significantly reduced scope of the Complaint Intake and Desk Investigation Section's responsibilities in conjunction with the reduced workload related to the recent reductions in case intake, screening and desk investigation case backlogs suggests that it should now be possible to:

- Redirect some Complaint Intake and Desk Investigation Section positions to better address other Enforcement Program needs or BVNPT needs in other areas, *or*
- Assign additional responsibilities to the Complaint Intake and Desk Investigation Section.

In response to these circumstances, Enforcement Division management recently began identifying licensee complaint cases that do not require field investigation and assigning some of the cases to the Complaint Intake and Desk Investigation Section for desk investigation.

Recommendation V-1 – *Continue identifying and assigning licensee complaint cases that do not require field investigation to the Complaint Intake and Desk Investigation Section for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations of licensee complaint cases (see Recommendation V-6).*

Recommendation V-2 – *To better address Probation Program workload demands for the next 2 to 3 years, continue to utilize Temporary Help to augment Probation Unit staffing (see also Recommendation V-7*).

Also, during 2015/16, significant changes were made to BVNPT's licensee complaint intake and screening processes. Prior to 2015/16 nearly all licensee complaint cases (about 500 to 550 per year) were assigned to the Investigation Section. Currently, nearly 40 percent of these cases (180 to 200 cases per year) are instead referred to the Division of Investigation. Additionally:

- A significant portion of the Investigation Section's remaining cases (possibly about 20 percent, or 100 cases per year) do not require completion of a field investigation and can, instead, be completed by analyst-level staff, thus leaving the Investigation Section with only about 200 cases per year to investigate. This compares to an average of more than 450 investigations completed by the Investigation Section during the past three (3) years.
- During 2015/16 the Investigation Section's pending case backlog decreased from nearly 700 cases to less than 400 cases.

The reduced scope of the Investigation Section's responsibilities, in conjunction with the reduced workload related to the recent reductions in the Section's backlog of pending cases, suggests that it should now be possible to begin redirecting some of the Section's positions to better address other Enforcement Program needs or BVNPT needs in other areas.

Recommendation V-3 – *As Investigation Section case backlogs and new case assignments decrease, redirect vacant positions to address other current and emerging Enforcement Program and BVNPT business needs.*

Additionally, within the Enforcement Division, needs exist to bolster or consolidate workforce capabilities in several areas, including:

- Conducting desk investigations of licensee complaint cases that do not require field investigation
- Further reviewing and, as needed, investigating additional on-line public complaints that BVNPT began receiving during 2015/16, particularly following implementation of BreEZe
- Reviewing additional CE audit failure cases, issuing larger numbers of CE citations, and tracking and collecting associated fines, assuming that the CE Audit Program is expanded to improve licensee compliance with CE Program requirements (See Section IV-B – *Continuing Education Program*).

Recommendation V-4 – *Redirect and consolidate available resources to enable additional screening and completion of desk investigations of on-line public complaints and licensee complaints that do not require field investigation.*

Recommendation V-5 – *Redirect and consolidate available resources to support expansion of the CE Audit Program, including completing additional case reviews, issuing additional citations, and tracking and collecting fines.*

We understand that BVNPT plans to fill the Discipline and Probation Unit's currently vacant SSA position to support processing of Petitions for Reinstatement and maintain Discipline Case Management Unit workforce capabilities. We support continued use of the SSA position for those purposes.

Finally, needs exist to reduce the scope of responsibility and span of control of the managers of (1) the Complaint Section and (2) the Discipline and Probation Section to improve supervision and management of subordinate staff, the enforcement services that they provide, and the work products they produce in both of those areas, including:

- Completing desk investigations of licensee arrest/conviction report cases (about 1,500 cases per year, including "Redundant" and "Opened in Error" cases)
- Reviewing all completed non-sworn and sworn field investigations (more than 650 cases during 2015/16)
- Reviewing all discipline pleadings, negotiating and reviewing related settlements and supporting other aspects of BVNPT's discipline process (about 400 cases per year)
- Monitoring probationers (more than 400) and initiating subsequent discipline actions for probation violations (at least several dozen cases per year)

A proposed alternative organizational structure that would address these needs is presented subsequently in Section IV-C (*Future State Enforcement Division Organizational Model*).

C. Future State Enforcement Division Organizational Model

Exhibit V-2, on the next page, illustrates a proposed Future State Organizational Model for the Enforcement Division. This model establishes a new Desk Investigation and Field Investigation Case Review Section and a new Probation Section. The proposed Future State Organizational Model can be implemented without increasing the total number of positions currently authorized for the Enforcement Division. However, a limited number of reclassifications of current positions would be needed.

1. Desk Investigation and Field Investigation Case Review Section

The primary responsibilities of this proposed new Section would include:

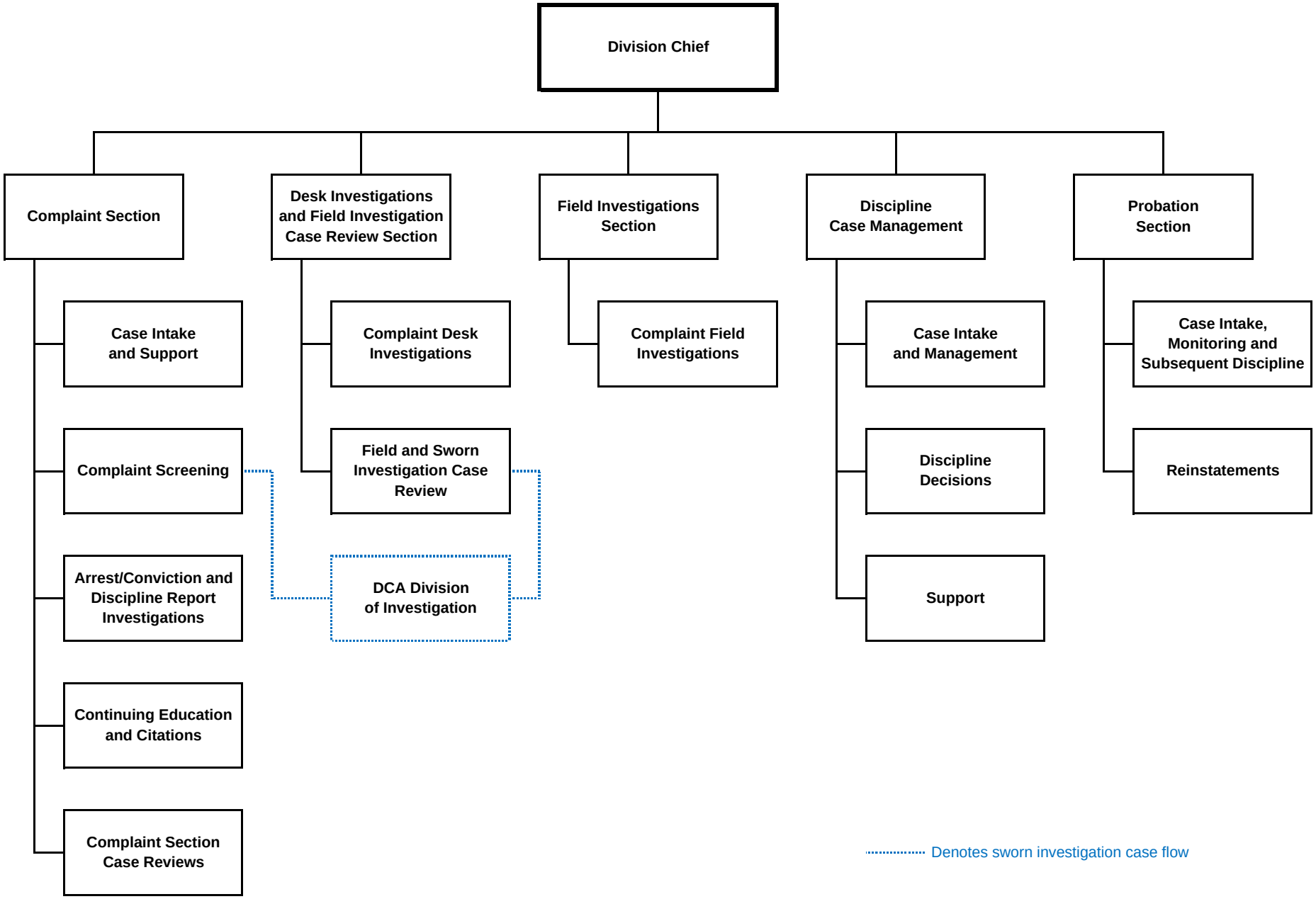
- Completing desk investigations of all licensee complaint cases not requiring a field investigation (about 175 cases per year, including about 100 cases currently assigned to the Investigation Section that do not require field investigation and another 75 licensee complaints received from the public that require a limited level of additional post-screening review, research and analysis or, in some cases, completion of a desk investigation. Currently, responsibility for completion of licensee desk investigations is fragmented and dispersed among multiple staff in both the Complaint Intake and Desk Investigations Section and the Investigation Section.
- Completing reviews of all completed Investigation Section and Division of Investigation field investigations, including determining needs for subsequent investigations, obtaining outside expert reviews, where required, determining whether to issue a NOW and issuing the NOWs, as needed, and determining whether discipline is supported and, if supported, preparing necessary submission packages and referring the case to either the Cite and Fine Desk or to the AG. Currently, these services are dispersed among multiple Complaint Intake and Desk Investigation Section analysts who are also responsible for provision of license applicant and licensee arrest/conviction report desk investigations and various services in other areas.

A first level manager position would need to be established for the new Section along with several subordinate staff positions. These positions could potentially be provided by re-directing positions, when available, from other Enforcement Division business units. Establishing the new Desk Investigation and Field Investigation Case Review Section should be assigned a high priority and implemented as soon as practicable.

Recommendation V-6 – *Establish a new Desk Investigation and Field Investigation Case Review Section.*

Exhibit V-2

Future State Enforcement Division Organizational Model



2. Probation Section

To create a new Probation Section, which would also be responsible for processing Petitions for Reinstatement, a new first level management position would need to be established. This new working supervisor position would also provide the Probation Program with additional workforce capabilities for monitoring BVNPT's large population of probationers, including responding to probation violations which oftentimes prompt subsequent disciplinary actions (i.e., license surrender or revocation in nearly all cases). This position could potentially be provided by re-directing a position, when available, from another Enforcement Division business unit. If this position was established, there would be less of a need to continue utilizing Temporary Help to provide probation monitoring services.

Currently, Probation Unit staff are supervised and managed by the Manager of the Discipline and Probation Section. This organizational arrangement, while less than optimal, could be continued or, alternatively, the Probation Unit could be included as another business unit within the proposed new Desk Investigation and Field Investigation Case Review Section. However, with either of these latter alternatives, the respective Section Managers would necessarily have a broader scope of responsibility that will limit their capability to provide sufficient management and supervision of subordinate Probation Program staff, the services they provide and the work products that they produce. While establishing a Probation Section would be beneficial for BVNPT's Enforcement Program, this is a less urgent and lower priority need than establishing the new Desk Investigation and Field Investigation Case Review Section discussed above.

Recommendation V-7 – *Establish a new Probation Section and, concurrently, reduce the utilization of Temporary Help to provide probation monitoring services.*

D. Communication and Collaboration with Enforcement Partners

The Enforcement Task Force previously recommended that BVNPT develop better systems for communicating with (1) the Division of Investigation to discuss status and address quality issues and backlogs and (2) the AG and the Office of Administrative Hearings, including regular meetings/conference calls to discuss case aging and status. Currently, there appears to be a good deal of effective communication and collaboration occurring between Enforcement Division management and staff and representatives of both the Division of Investigation and the Office of the Attorney General. All three agencies seem to be working collaboratively together to reduce legacy case backlogs and the average elapsed times to complete investigations and related disciplinary actions.

As discussed previously, during the past year the Enforcement Division, the Division of Investigation and the Office of the Attorney General have collectively achieved significant improvements in BVNPT Enforcement Program performance. These improvements could not have occurred in the absence of effective communications and collaboration between Enforcement Program managers and staff at all levels within all three (3) organizations. However, additional improvements are needed to further reduce remaining backlogs and the amount of time needed to complete disciplinary actions where supported by the results of the investigations.

During the past year, BVNPT's Chief of Enforcement, with the support of the prior and current Executive Officers, has been the primary point person for planning, coordinating and managing the significantly improved relationships that have emerged among these three (3) organizations. To sustain these relationships, it is important that the Chief of Enforcement maintain open lines of communication with key personnel at both the Division of Investigation and the Office of the Attorney General and continue to periodically meet with these counterparts on a regular basis.

Recommendation V-8 – *The Chief of Enforcement should maintain open lines of communication and meet periodically with counterparts at the Division of Investigation and the Office of Attorney General to jointly develop and implement strategies to further reduce BVNPT case backlogs and the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.*

E. Enforcement Division Workforce Development and Training

BVNPT's case intake, screening, investigation and workforce development and training processes are under-developed resulting in high levels of inconsistency and variability in the completion of specific enforcement functions and activities and the resulting process outputs or work products. While the magnitude of some of these problems has possibly diminished during the past year, significant additional improvement is needed. Examples of identified business process and work product deficiencies include:

- Re-screening of cases to determine the appropriate assignment for investigation or disposition of the case
- Repetitive requests for medical or other records to obtain records suitable for submission for discipline purposes
- Incomplete investigations due to turnover of staff and case reassignments, and inadequate documentation of the results of prior investigative activities
- Repetitive reviews and revisions of investigation reports.

During April 2016 Enforcement Division management began conducting individual in-depth case review meetings with all of the Investigation Section's investigators to determine whether the investigations of each investigator's assigned older cases could be completed more expeditiously. Management directed that staff continue their investigation for 84 of the 178 cases included in the scope of the review (47 percent) and provided each investigator with specific direction as to the steps needed to complete each investigation. For the remaining 94 cases, management directed staff to complete their investigation by:

- Issuing a citation *(1 case)*
- Issuing a Notice of Warning *(64 cases)*
- Closing the case due to insufficient evidence *(29 cases).*

This first round of in-depth case review meetings reduced the Section's total number of pending complaint cases by nearly 20 percent, to fewer than 400 pending complaint investigations, and the average age of the pending cases decreased to 13 months from 17 months as of December 31, 2015. However, these initial case reviews also highlighted the need to regularly conduct individual case review meetings with the Section's investigators to provide them with specific feedback and direction regarding their conduct and completion of actual case investigations. While classroom types of training can be beneficial for purposes of transferring specific types of knowledge or developing specific skills, there is no substitute for the real world experience that can be provided through intensive, one-on-one, on-the-job training by an experienced supervisor, mentor or co-worker.

During August 2016 the Enforcement Division's new acting supervisor for the Investigation Section began conducting regular individual case review meetings with each of the Section's investigators. Enforcement Division management plans to continue conducting regular individual case review meetings with all of the Section's investigators, varying the frequency of the meetings according to each investigator's development needs. Over time, as workforce capabilities mature, needs for frequent (weekly, bi-weekly, or semi-monthly) individual case review meetings will likely

diminish along with the amount of time needed to complete the reviews. However, as a general rule, individual case review meetings with all of the Section's investigators should be completed on at least a monthly basis.

Recommendation V-9 – *Conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. Over time, adjust the frequency and duration of the reviews as appropriate to each investigator's development needs.*

To improve their knowledge and skills, all of the Investigation Section's investigators have completed training in areas such as (1) properly obtaining confidential records and (2) preparing and issuing subpoenas. Additionally, during October 2015 the Section's investigators attended the National Certified Investigator Training (NCIT) Program offered by the Council on Licensure, Enforcement and Regulation (CLEAR). The 3-day NCIT Basic and Specialized training and certification program focuses on investigation techniques and procedures covering the investigation process, interviewing, report writing, and testifying in administrative proceedings. Also, all of the Section's investigators, along with about one-half of the Complaint Section's analysts, are scheduled to attend the first 1-day DCA Enforcement Academy class on October 13, 2016. The Enforcement Academy is a series of classes specifically related to enforcement that was completely updated earlier this year. Many of the Enforcement Division's enforcement analysts have completed, or are attending, DCA's Analyst Certification Training Program classes, including classes in project management, completed staff work, effective business writing, interpersonal skills, and research, analysis and problem solving and Division support staff (e.g., MSTs and OTs) have attended some Analyst Certification Training Program classes. Finally, the recently hired Supervising Special Investigator is scheduled to attend a 4-day National Council of State Boards of Nursing investigator training program during mid-October.

Recommendation V-10 – *Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.*

To help address deficiencies with the processes used to train newer non-sworn investigators, Enforcement Division management met several months ago with representatives of the Division of Investigation to develop a ride along type of training that would pair a BVNPT investigator with a Division of Investigation investigator as they investigate a VN or PT case. This program could help BVNPT investigators gain practical knowledge about interviewing techniques, obtaining records, tracking time in the field, and development of reports. However, to date, this program has not been implemented.

Recommendation V-11 – *Utilize the Division of Investigation to support initial training of newer investigators.*

From time to time, BVNPT's AG Liaison, who is based in San Francisco, meets on site with Investigation Section investigators to help provide direction and assistance with their investigations of specific cases. This type of applied assistance is supplemental to information provided during case review meetings and helps to further develop the investigator's knowledge, skills and abilities. It could be beneficial for BVNPT to schedule regular on-sites with the AG Liaison for a period of time to accelerate the training process.

Recommendation V-12 – *Consider utilizing AG Liaison services at a higher level for a limited period of time to provide additional on-site applied technical assistance and training to BVNPT's investigators.*

Finally, Annual Performance Reviews (APRs) and Individual Development Plans (IDPs) have possibly not been completed for any Enforcement Division staff during the past year and we understand that the APRs and IDPs were not consistently completed for staff during previous periods. However, part of the reason for this is that the Enforcement Division Chief and the Managers of two (2) of the Division's three (3) Sections were all newly appointed at the beginning of the 2015/16 fiscal year which limited their ability to assess subordinate staff performance during the 2015/16 fiscal year. It is our understanding that Quarterly Performance Reviews have been completed for all newly appointed Enforcement Division managers and staff during the period of their probation.

Recommendation V-13 – *Assign responsibilities and due dates for completing Annual Performance Reviews and Individual Development Plans during the 2016/17 fiscal year for all Enforcement Division managers and staff.*

VI. Enforcement Program Workload and Performance Reporting

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VI. Enforcement Program Workload and Performance Reporting

BVNPT's Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to (1) collect, compile and report Enforcement Program-related management information to BVNPT's governing Board, the Department of Consumer Affairs, control agencies and the Legislature and (2) assist the above recipients in understanding the information that is provided. Data and representations made in the past regarding BVNPT's Enforcement Program workload, workflows, backlogs and performance have generally been significantly overstated, misrepresented, and incorrect. Additionally, BVNPT oftentimes combined metrics regarding its disparate license applicant, licensee subsequent arrest, and licensee complaint workloads, workflows, backlogs and performance that produce results that are essentially meaningless. For example, BVNPT oftentimes combined metrics regarding the following four (4) disparate types of cases:

License Applicant Arrest/Conviction Reports – Currently, about 500 license applicant arrest/conviction reports are received per year. These cases typically require relatively little staff time to investigate and only a small percent of these cases support denial of licensure. NOWs are issued for 85 to 90 percent of these cases.

Licensee Arrest/Conviction Reports – BVNPT consistently receives about 1,500 licensee arrest/conviction reports per year. These cases also usually require relatively little staff time to investigate, but a relatively large percentage of these results in a disciplinary outcome. However, such action cannot usually be initiated until adjudication of the reported offense, a process that is outside of BVNPT's control. A large proportion of the cases referred for discipline default following filing of the accusation.

Licensee Continuing Education Audit Failure Cases – Historically, the Licensing Program staff refer up to about 200 of these cases to Enforcement per year. These cases can usually be processed especially quickly because the cases are based on the Licensing Program's audits of licensee compliance with BVNPT's CE requirements. In nearly all cases the only outcomes resulting from these cases are issuance of a citation or a NOW.

Externally-Generated Licensee Complaints – This category includes (1) reports that a licensee was disciplined by another state or public agency, (2) Mandatory Employer Reports that a VN or PT was suspended or terminated for cause, (3) reports received from other public agencies, such as the Department of Public Health and the Department of Health Care Services, regarding a possibly actionable offense or violation known to have been committed by a BVNPT licensee, and (4) complaints received from patients and related parties. Historically, about 500 to 550 externally-generated licensee complaint cases are received per year. Many of these cases require full investigation by either a sworn or non-sworn investigator and, even in the case of desk investigations, there is oftentimes a need to conduct interviews and obtain copies of medical, personnel, or other records. Also, a significant proportion of these cases support referral of the case for discipline.

As is evident from the above, if the workload, backlog and performance metrics for all of the above categories of BVNPT enforcement cases are combined into composite metrics, the resulting values will not be especially useful for overall Enforcement Program planning, monitoring and evaluation purposes. Therefore, to help improve communications between BVNPT's Executive Officer and staff and BVNPT's governing Board, DCA, oversight and control agencies, and the Legislature regarding BVNPT's Enforcement Program workloads, backlogs and performance, we developed a sample 1-page *Executive Summary* template that separately provides key workload and performance information for (1) licensee applicant cases, (2) licensee CE cases, (3) licensee arrest/conviction report cases, and (4) licensee complaint cases. The *Executive Summary* template, provides high-level

statistical profiles for each of the four (4) categories of cases. With the exception of CE cases where more limited statistical profile information is provided, the profiles include information regarding:

- Cases received
- Investigations completed and the average elapsed time to complete the investigations
- Investigation outcomes
- Pending investigations and the average age of the pending cases
- Completed discipline cases and the average elapsed time from case referral to discipline imposed
- Pending discipline cases and the average age of the pending discipline cases.

The *Executive Summary* template provides just one (1) composite metric; the Average Elapsed Time from Receipt to Discipline (PM-4).

A sample completed *Enforcement Program Workload and Performance Executive Summary Report* for the final quarter of 2015/16 and the full 2015/16 fiscal year is provided under separate cover. The preparation and presentation of this type of report on a quarterly basis to BVNPT's Enforcement Committee, and through the Enforcement Committee to BVNPT's governing Board, could help to prevent recurrence of some of the types of problems and surprises that surfaced previously. Additionally, the information should be helpful to BVNPT executives and the entire Enforcement Program management team for overall Enforcement Program planning and management purposes. With respect to this latter point, the *Executive Summary* provides fields for establishing annual workload and performance expectations and goals, in this example for the 2016/17 fiscal year.

Recommendation VI-1 – *Update the Enforcement Program Workload and Performance Executive Summary Report on a quarterly basis within 30 days following the completion of each quarter and provide the report to BVNPT's Enforcement Committee and, through the Enforcement Committee, to BVNPT's governing Board. Also, post the quarterly reports on BVNPT's website.*

Recommendation VI-2 – *On an annual basis, develop goals for each of the key workload and performance measures listed on the Enforcement Program Workload and Performance Executive Summary Report and include the goals in all quarterly reports.*

Additionally, we developed the following sample templates to provide additional workload, backlog, and performance information for each of the Enforcement Program's core business processes:

License Applicant and Continuing Education Workload and Performance Summary – This 1-page template provides additional statistical data concerning license applicant cases, such as number of NOWs and Letters of Denial issued and number of cases referred to the AG. This same template also provides additional statistical information concerning CE cases, such as number of NOWs and citations issued.

Licensee Arrest/Conviction Report Workload and Performance Summary – This 1-page template provides additional statistical data concerning licensee arrest/conviction report cases, including number of completed desk and field investigations, number of pending desk and field investigations, average elapsed time to complete each type of investigation, number of cases closed pending criminal conviction, number of pending criminal conviction cases, number of NOWs and citations issued, and number of cases referred to the AG.

Licensee Complaint Workload and Performance Summary – This 1-page template provides additional statistical data concerning licensee complaint workload and performance, including number of cases received by source, number of cases closed during intake/screening, number of completed desk and field investigations, average elapsed time to complete each type of investigation, number of pending desk and field investigations, average age of the pending investigations for each type of investigation, number of NOWs and citations issued, and number of cases referred to the AG.

Formal Discipline Workload and Performance Summary – The first page of this 2-page template provides additional statistical data concerning discipline case referrals and filings, discipline cases completed, and pending discipline cases. The second page of the template provides additional statistical data regarding disciplinary outcomes and various elapsed time performance measures. Statistical information is also provided regarding the number of Special Orders granted or issued. Finally, statistical information is provided that profiles the Probation Program.

Sample completed *Core Business Process Workload and Performance Summaries* for the final quarter of 2015/16 and the full 2015/16 fiscal year are provided under separate cover following the *Executive Summary* template.

BVNPT's Enforcement Committee should be responsible for determining needs for more detailed workload and performance information for the above case categories along with determining the specific data that should be provided, the frequency of the reporting (e.g., quarterly, semi-annual, or annual) and, if needed, when such reporting should commence. For example, the Enforcement Committee may only be interested in receiving *more detailed* reporting for License Applicant and Continuing Education investigations on an annual basis or only "as needed". Conversely, given BVNPT's current circumstances, the Enforcement Committee may be interested in receiving some type of *more detailed* reporting regarding Licensee Complaint investigations and Formal Discipline cases on a more frequent basis (e.g., semi-annually or quarterly).

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VII. Board Member Training and Support

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VII. Board Member Training and Support

As part of our assessment of BVNPT's communication deficiencies and improvement needs, during March 2016 we prepared and disseminated a confidential survey to the members of BVNPT's governing Board primarily for purposes of obtaining input regarding the following three (3) specific communication and assistance topics that were delineated in AB 179:

- Board member training
- Dissemination of information to Board members
- Assistance to Board members in performing their duties.

Additionally, a few questions were included in the survey to obtain input regarding (1) reviews and approvals of disciplinary decisions and (2) the responsiveness and effectiveness of BVNPT's Executive Officer in communicating with Legislators and Legislative staff and representing the Board at Legislative meetings and hearings. Finally, the survey sought input in the following three (3) additional areas, primarily for purposes of gathering information for the Board to use for its own purposes:

- Board structure, size and composition
- Board committees
- Board meeting structure and effectiveness.

The survey was released to all of the members of BVNPT's governing Board on March 23, 2016. A few survey questions were constructed to obtain information from the members that could be helpful for purposes of assessing the impacts of the changes in leadership that occurred at BVNPT during the prior year (April 2015 through March 2016). The survey was not constructed to assess any impacts related to appointment of the Board's current Executive Officer who joined BVNPT three (3) weeks earlier on March 2, 2016.

Nine (9) Board members completed the survey, in some cases anonymously. Subsequently, we scheduled and completed interviews with each member to further explore and clarify the responses to the survey, focusing primarily on the specific topics delineated in AB 179. Consistent with the survey, our follow-up interviews with the members focused on periods prior to March 2016.

The remainder of this section summarizes results of the above efforts as related to the specific requirements set forth in AB 179. The section is organized as follows:

- Board Member Training
- Dissemination of Information to Board Member
- Assistance to Board Members in Performing their Duties
- Discipline Decisions
- Legislative Affairs and Relations.

VII. Board Member Training and Support

Board Member Training

With respect to Board member training, the survey specifically asked the members whether they had recently attended DCA's Board Member Orientation Training (BMOT), Ethics training and Sexual Harassment Prevention training and, if so, to evaluate the training that was received. Most members gave favorable evaluations of all three (3) types of training, but the evaluations of the BMOT training were more mixed and some of the comments regarding the BMOT training suggested that there was some misunderstanding or confusion regarding this survey question. Subsequently, during our follow-up interviews with the Board members we learned that, over the years, the members had received (1) the general Board Member Orientation Training from DCA that is provided to members of all DCA-affiliated Boards and (2) BVNPT-specific new member orientation training that was provided by BVNPT's Executive Officer along with other BVNPT managers and staff. In one case, the Board President at the time also attended the member's BVNPT-specific Board Member Orientation Training. We also learned that the evaluations of the training provided by the members were based in some cases on the DCA BMOT training, in other cases on the BVNPT-specific training, and in other cases on a blend of both types of training. Thus, caution should be exercised is interpreting the responses to that specific survey question.

Overall, with respect to these two different categories of Board Member Orientation Training, the members generally expressed in their interviews favorable evaluations of the DCA BMOT training and much more mixed evaluations of the BVNPT-specific orientation training provided by BVNPT's EO. Based on our interviews, we understand that over a period of several years there was a significant degradation in the quality of the BVNPT-specific orientation training that was provided. For example, it is our understanding that Board members were previously provided up to two (2) full days of BVNPT-specific orientation training. Then, the training was reduced to a 1-day session or, at the request of one newer member, broken down into multiple partial day sessions. Also, most members commented that, in recent years, for various reasons, this training was not particularly good (e.g., BVNPT's former Executive Officer seemed disengaged from or unenthusiastic about providing the members with their orientation). Also, some members commented that the two (2) large binders of collateral and reference materials that were provided to new members are somewhat overwhelming and of limited utility. A longer-term Board member specifically commented in their survey and interview that the quality of this training had deteriorated. Several Board members commented that the information provided seemed overwhelming and they were not able to effectively absorb the information.

At one point during mid-2013, six (6) of the Board's 11 positions were vacant which disrupted the ability of the Board to meet and conduct business. Subsequently, from July 2013 through January 2014, five (5) new members were appointed. It appears that there were significant deficiencies in the quality and completeness of the BVNPT-specific orientation training that was provided to these members and these deficiencies may have contributed to the Board's limited awareness of the nature and magnitude of the problems that were already being experienced related to the BVNPT's Enforcement Program.

Since 2013/14, two (2) new members have been appointed to the Board. Both of these members were appointed during the Acting Executive Officer's tenure and prior to appointment of BVNPT's current Executive Officer. Given the structure of the BVNPT-specific orientation training, it is self-evident that the quality of the training will necessarily be highly dependent on determinations made by the Executive Officer regarding how the orientation will be conducted and the information that will be provided to the member. The evaluations of the Board member orientation training conducted by BVNPT's Acting Executive Officer and staff were more positive than the evaluations provided for the orientation training provided by BVNPT's former Executive Officer.

VII. Board Member Training and Support

Recommendation VII-1 – *Consistently provide all new Board members with substantive New Board Member Orientations and related training and reference materials specific to BVNPT's Enforcement Program, and other BVNPT programs and services provided, as appropriate, that complements the Board Member Orientation Training (BMOT) provided by DCA and helps new members to better understand and fulfill their program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider requesting that a representative of DCA participate in these BVNPT-specific orientations to help integrate the training with DCA's BMOT training, particularly with respect to helping the member understand and fulfill their oversight responsibilities. Overhaul the reference materials contained in the two "large binders" to make the information more useful and effective for Board member orientation, training and reference purposes.*

We understand that BVNPT's Executive Officer has already begun restructuring the BVNPT-specific Board Member Orientation Training along with the supporting training and reference materials provided to new Board members.

Dissemination of Information to Board Members

The Survey of BVNPT's governing Board members included a number of questions regarding the quality of the materials provided to Board members in advance of Board meetings. Overall, the evaluations provided by the members were favorable. However, during the interviews it became evident that the members' responses to these questions largely reflected their evaluations of the various "packets" that they routinely receive in advance of Board meetings and that, at least historically, other exchanges of information between the members and the BVNPT's Executive Officer and subordinate managers have been limited. These circumstances appear to reflect the absence of an active Enforcement Committee, or other program-specific committees, for an extended period of time which became apparent from the members' survey responses along with additional information provided through our interviews with the members. For example, several survey respondents commented in their surveys about various problems involving the Board's committees (e.g., *"not fully functioning", "haven't met in years",* and *"not active"*). Subsequently we learned that, for a period of years prior to 2011/12, the appointment of Board members to committees was a *"paper exercise"* and the committees never met. It is our understanding that until a few months ago there were no active committees, other than the Executive Committee. Additionally, it appears that the *"paper exercise"* of appointing members to the Board's other "Standing Committees" (e.g., Enforcement) was discontinued. These circumstances may explain, in part, why the Board found it necessary, in September 2014, to appoint an Enforcement Task Force to study BVNPT's enforcement and discipline processes.

These circumstances lead to the conclusion that, for an extended period of time (possibly as long as 10 years, or longer), BVNPT has not had in place the organizational infrastructure needed to support effective exchanges of additional or supplemental program-specific information with BVNPT executives, managers and staff. As an example of the information gap that this creates, one member commented that they were unable to complete the annual Executive Officer performance evaluation form because they had little information regarding the Executive Officer on which to base a performance evaluation other than the information provided to the full Board by the Executive Officer during the Board's quarterly meetings.

While the Board recently re-activated an Enforcement Committee, along with other previously established but inactive committees, and also established some new committees, the Board's expectations with respect to their roles, responsibilities and authority are not especially well-defined or documented. In the case of the Enforcement Committee, the documents provided to us regarding the Committee's roles, responsibilities and authority are, in some cases, very general and lack any specific references to any type of Enforcement Program oversight roles or responsibilities. For example, a 2010 dated document defines the purpose for creating the Enforcement Committee as follows:

> *"Created to analyze enforcement issues and formulate recommendations for Board consideration, address specific recommendations of the Administrative Law Judges, and review and revise the Disciplinary Guidelines for proposed decisions and stipulated agreements for use by the Attorney General's Office and the Office of Administrative Hearings."*

An earlier 2007 dated document defines the role of the Enforcement Committee as follows:

- *Education of the public on the Board's enforcement role*
- *Development of legislation and regulations that authorize prompt and fair action against applicants and licensees who endanger the health and safety of the consumer*
- *Annual assessment and revision (if required) of the disciplinary guidelines, policies and procedures*
- *Exploration of innovative strategies and methodologies to address the problems of substance abuse in licensees*
- *Identification of rehabilitation procedures and techniques for utilization in conditions of probation and reinstatement of licensees*
- *Conduct annual workshop for Board members regarding disciplinary procedures and actions.*

Finally, a not yet adopted BVNPT *Board Member Administrative Procedure Manual* narrowly defines the Enforcement Committee's purpose and responsibilities as follows:

> *"Created to evaluate the functions and performance of the Enforcement Division. The Committee reviews and evaluates statistical reports and trends in workload to assess performance."*

Given the troubled recent history of BVNPT's Enforcement Program and the long-standing absence of an active Enforcement Committee, the recently re-activated Committee and, by extension, the full Board, could potentially benefit from developing and adopting a charter that more fully delineates the Enforcement Committee's roles, responsibilities and authorities, including the Committee's roles, responsibilities and authorities related to (1) overseeing the Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board's program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities.

> **Recommendation VII-2** – *Develop and adopt a written charter for the Enforcement Committee delineating the Committee's roles and responsibilities, including roles and responsibilities related to (1) overseeing the Board's Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board's strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider developing similar charters for other Board committees, where appropriate.*

Assistance to Board Members in Performing Their Duties

As with the survey questions regarding the dissemination of information to Board members, the responses to the survey questions regarding provision of assistance to Board members in performing their duties were generally favorable. Additionally, many members commented favorably about the responsiveness of BVNPT's Executive Officer and other managers and staff to questions or requests for additional information that they sometimes have. However, in most cases these responses were again largely made with reference to the various types of "packets" that are provided to the members.

To the extent that the duties of the Board extend beyond acting on the "packets" that are provided to them, then provision of other types of assistance to the Board may be needed to support their performance of these duties. For example, additional assistance might be provided by Enforcement Division management and staff by conferencing or meeting periodically with members of the recently re-activated Enforcement Committee to provide the Committee with additional information that would not routinely be brought before the full Board and also helping the Committee members to fully understand the information that is provided. Such briefings could also be helpful to the Committee members for purposes of identifying needs to surface issues for consideration by the full Board. It appears that this type of process was either not operational or not fully functional for an extended period of time prior to late-2014 which may have contributed to the various "surprises" that surfaced during BVNPT's 2014/15 Sunset Review. Additionally, as suggested by one member, Board meeting agenda and time allocations may need to be adjusted to support fulfillment of the Board's oversight responsibilities and enable sufficient discussion and consideration of related issues brought before the full Board.

Recommendation VII-3 – *Provide briefings to Enforcement Committee members, initially on at least quarterly basis, to provide information regarding case intake, investigation and discipline workloads, backlogs, and performance, performance improvement initiatives underway and planned, policy matters and other matters as determined by the Committee.*

Discipline Decisions

There continues to be broad support for delegating authority to approve default decisions to the Executive Officer (see Recommendation IV-8). Most Board members are not supportive of delegating other types of disciplinary decisions to the Executive Officer.

Legislative Affairs and Relations

Most Board members responded "No Opinion" to one or both of the survey questions regarding (1) the Executive Officer's responsiveness and effectiveness in communicating with Legislators and Legislative staff and (2) the effectiveness of the Executive Officer's and staff representation of the Board at Legislative meetings and hearings. One of the members that indicated that the Executive Officer had been sufficiently responsive and effective in communicating with Legislators and Legislative staff commented that their response was "Based on the reports provided by the Executive Officer to the Board". The responses to these survey questions, which were provided with reference to the April 2015 to March 2016 time period, prior to appointment of BVNPT's current Executive Officer, are possibly reflective of the extent to which BVNPT's Board members have been dependent on BVNPT's former Executive Officer for their information and reinforces needs to maintain fully functional and engaged committees that can potentially supplement the information otherwise provided to the Board.

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VIII. Next Steps

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VIII. Next Steps

To the extent not already addressed during previous project phases, during the next two (2) months we expect to complete additional targeted assessments in the following three (3) areas specifically referenced in AB 179:

- Staff hiring and training procedures
- Oversight of staff work
- Evaluation of staff performance.

It is anticipated that these additional assessments will focus on areas other than the Enforcement Division where the assessments of these areas have already been substantially, or fully, completed (e.g., needs for completion of periodic case review meetings with Investigation Section staff and completion of Annual Performance Reviews and Individual Development Plans for all Enforcement Division management and staff during the 2016/17 fiscal year).

Additionally, we plan to schedule and complete interviews with representatives of the California Department of Health Care Services (CDHCS) and the California Department of Public Health (CDPH) to gather additional information related to their enforcement case referrals. These interviews will also be structured to support assessment of the Board's cooperation in enforcing laws and regulations regarding the Board's licensed VNs and PTs.

A primary focus of our Phase III efforts is expected to involve monitoring BVNPT's implementation of the various recommendations for improvement presented previously in this report. Concurrently, we plan to collect, compile, summarize and analyze additional case intake, investigation and discipline workload, workflow, backlog and performance data for the 3-month period from July 1 through September 30, 2016. Additionally, we plan to complete targeted verifications of key workload, workflow, backlog and performance metrics presented herein for the 6-month period extending from January 1 through June 30, 2016 to determine whether any BreEZe programming changes or data clean-ups subsequently completed by BVNPT materially impacted the results of our previously completed analyses or any related findings, conclusions, or recommendations for improvements. Results of our data collection and analysis efforts will be incorporated into an updated *Enforcement Program Workload and Performance Report* for the first quarter of the 2016/17 fiscal year and used to support further assessment of the impacts of the various changes implemented by BVNPT to improve Enforcement Program performance.

Finally, we will prepare a *Phase III Summary Report* documenting results of these remaining Phase III efforts and a *Work Plan and Schedule* for completing Phase IV. A draft of the *Phase III Summy Report* is expected to be completed by mid-December to enable completion of required reviews and submission of the final *Phase III Report* to the Legislature by February 1, 2017.

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Agenda Item #4

Board of Vocational Nursing and Psychiatric Technicians

Sample
Enforcement Program
Workload and Performance Report

Fourth Quarter – 2015/16

October 12, 2016

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Executive Summary
Enforcement Program Workload and Performance

License Applicant and Continuing Education Cases		Total 2014/15	2015/16 Jul-Dec	2015/16 Jan-Jun	Total 2015/16	2016/17 Jul-Sep	2016/17 Oct-Dec	2016/17 Jan-Mar	2016/17 Apr-Jun	Total 2016/17	2016/17 Goal
License Applicant Cases Referred to Enforcement		3,305	502	240	742						
Completed License Applicant Investigations		4,683	1,754	385	2,139						
Applicant Investigation Outcomes	Notices of Warning Issued (estimated)	784	354	334	688						
	Denials of Licensure Issued	84	16	17	33						
	Cases Referred to AG (Appeals of Denials)	45	15	15	30						
Pending Applicant Cases	Pending Investigations (End of Period)	1,489	244	67							
	Average Age of Pending Investigations (months)	11	8	3							
Average Elapsed Time to Complete Investigations[1] (months)		16	12	6							
Applicant Discipline	Completed Statement of Issues (SOI) Cases	38	48	24	72						
	Average Elapsed Time From Receipt to Discipline (months)	33	27	26							
Continuing Education	Completed Continuing Education (CE) Investigations	115	62	125	187						
	Notices of Warning (NOWs) Issued	109	30	30	60						
	Citations Issued	2	44	66	110						

Licensee Arrest/Conviction Report Cases		Total 2014/15	2015/16 Jul-Dec	2015/16 Jan-Jun	Total 2015/16	2016/17 Jul-Sep	2016/17 Oct-Dec	2016/17 Jan-Mar	2016/17 Apr-Jun	Total 2016/17	2016/17 Goal
Arrest/Conviction Reports Received		1,550	920	743	1,663						
Completed Arrest/Conviction Report Investigations		1,469	1,124	1,018	2,142						
Investigation Outcomes	Notices of Warning Issued (estimated)	368	213	203	416						
	Citations Issued	81	84	77	161						
	Cases Referred to AG (Formal Discipline)	179	107	99	206						
Pending Cases	Pending Investigations (End of Period)	979	781	473							
	Average Age of Pending Investigations (months)	8	5	5							
Average Elapsed Time to Complete Investigations[1] (months)		8	8	6							
Discipline	Completed Arrest/Conviction Report Cases	216	152	113	265						
	Pending Arrest/Conviction Report Cases	298	230	187							
	Average Elapsed Time From Receipt to Discipline (months)	36	33	32							
	Average Age of Pending Cases (months)	29	25	22							

Licensee Complaint Cases		Total 2014/15	2015/16 Jul-Dec	2015/16 Jan-Jun	Total 2015/16	2016/17 Jul-Sep	2016/17 Oct-Dec	2016/17 Jan-Mar	2016/17 Apr-Jun	Total 2016/17	2016/17 Goal
Licensee Complaints Received		545	367	457	824						
Completed Licensee Complaint Investigations		501	329	560	889						
Investigation Outcomes	Notices of Warning Issued (estimated)	109	41	122	163						
	Citations Issued	11	13	42	55						
	Cases Referred to AG (Formal Discipline)	66	38	92	130						
Pending Cases	Pending Investigations (End of Period)	892	968	687							
	Average Age of Pending Investigations (months)	17	16	13							
Average Elapsed Time to Complete Investigations[1]		18	17	19							
Discipline	Completed Licensee Complaint Cases	62	50	35	85						
	Pending Licensee Complaint Cases	128	100	134							
	Average Elapsed Time From Receipt to Discipline (months)	43	47	43							
	Average Age of Pending Cases (months)	44	36	31							

Weighted Average Elapsed Time from Receipt to Discipline (months)	37	35	33							

[1] Includes cases not transmitted to the AG (PM 3b) and cases transmitted to the AG (no PM).

Core Business Process
Workload and Performance Summaries

A. License Applicant and Continuing Education Workload and Performance Summary

License Applicant Cases		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Cases Referred to Enforcement		3,305	502	240	742					
Investigations	Completed Desk Investigations	4,676	1,751	385	2,136					
	Completed Field Investigations	7	3	0	3					
	Total Number of Completed Investigations	4,683	1,754	385	2,139					
Outcomes	Notice of Warning Issued (estimated)	784	354	334	688					
	Denial of Licensure Issued	84	16	17	33					
	Cases Referred to AG	45	15	15	30					
Pending Cases (End of Period)	Pending Desk Investigations	1,485	244	67						
	Pending Field Investigations	4	0	0						
	Total Number of Pending Investigations	1,489	244	67						
	Average Age of Pending Investigations (months)	11	8	3						
Average Elapsed Time to Complete Investigations (months)		16	12	6						

Continuing Education Cases		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Number of Cases Referred to Enforcement		13	130	100	230					
Investigations	Number of Completed Desk Investigations	103	62	117	179					
	Number of Completed Field Investigations	12	0	0	0					
	Total Number of Completed Investigations	115	62	117	179					
Outcomes	Number of Notices of Warning Issued (estimated)	119	30	30	60					
	Number of Citations Issued	2	44	66	110					
Pending Cases (End of Period)	Number of Pending Desk Investigations	4	70	33						
	Number of Pending Field Investigations	15	11	1						
	Total Number of Pending Investigations	19	81	34						
	Average Age of Pending Investigations (months)	25	6	3						
Average Elapsed Time to Complete Investigations (months)		7	2	3						

B. Licensee Arrest/Conviction Report Workload and Performance Summary

Licensee Arrest/Conviction Report Case Flow		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Arrest/Conviction Reports Received		1,550	920	743	1,663					
Cases Closed During Intake/Screening		0	0	4	4					
Assignments	Cases Assigned for Desk Investigation	1,560	925	731	1,656					
	Cases Assigned for Non-Sworn Investigation	52	4	1	5					
	Cases Assigned for Sworn Investigation	3	31	11	42					
	Total Cases Assigned for Investigation	1,615	960	743	1,703					
Cases Closed Pending Criminal Conviction (CPLX)		0	0	168	168					
Investigations	Completed Desk Investigations, Including CPLX	1,416	1,079	1,003	2,082					
	Completed Non-Sworn Investigations	52	39	4	43					
	Completed Sworn Investigations	1	6	13	19					
	Total Number of Completed Investigations	1,469	1,124	1,020	2,144					
Outcomes	Notices of Warning Issued	368	213	203	416					
	Citations Issued	81	84	77	161					
	Cases Referred to AG	179	107	99	206					

Pending Licensee Arrest/Conviction Report Investigations (End of Period)		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Pending Cases	Pending Desk Investigations	925	739	449						
	Pending Non-Sworn Investigations	51	14	0						
	Pending Sworn Investigations	3	28	24						
	Total Number of Pending Investigations	979	781	473						
	Cases Closed Pending Criminal Conviction	N/A	N/A	226						
	Total Number of Pending Cases	979	781	699						
Average Age of Pending Investigations		8	5	5						

Elapsed Time Performance (months)	Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
		Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Average Elapsed Time to Complete Desk Investigations	8	7	6						
Average Elapsed Time to Complete Non-Sworn Investigations	20	20	19						
Average Elapsed Time to Complete Sworn Investigations	6	7	9						
Weighted Average Elapsed Time to Complete Investigations	8	8	6						

C. Licensee Complaint Workload and Performance Summary[1]

Complaint Case Flow		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Intake	Other State/Agency Discipline Reports Received	52	58	42	100					
	Employer and Public Agency Reports Received	291	154	152	306					
	Internally-Originated Cases	45	17	7	24					
	Public and Other Complaints Received	157	138	247	385					
	Total Licensee Complaints Received	545	367	448	815					
Complaint Cases Closed During Intake/Screening		0	0	119	119					
Assignments	Cases Assigned for Desk Investigation	43	51	70	121					
	Cases Assigned for Non-Sworn Investigation	389	204	170	374					
	Cases Assigned for Sworn Investigation	127	242	88	330					
	Total Complaint Cases Assigned for Investigation	559	497	328	825					
Investigations	Completed Desk Investigations	56	115	108	223					
	Completed Non-Sworn Investigations	430	178	320	498					
	Completed Sworn Investigations	15	36	132	168					
	Total Completed Complaint Investigations	501	329	560	889					
Outcomes	Notices of Warning Issued	109	41	122	163					
	Citations Issued	11	13	42	55					
	Cases Referred to AG (Formal Discipline)	66	38	92	130					

Pending Complaint Investigations (End of Period)		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Pending Cases	Pending Desk Investigations	103	77	28						
	Pending Non-Sworn Investigations	663	560	394						
	Pending Sworn Investigations	125	331	256						
	Total Pending Complaint Investigations	891	968	678						
Average Age (months)	Average Age of Pending Desk Investigations	5	4	5						
	Average Age of Pending Non-Sworn Investigations	19	17	12						
	Average Age of Pending Sworn Investigations	18	18	16						
	Weighted Average Age of Pending Investigations	17	16	13						

Elapsed Time Performance (months)	Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
		Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Average Elapsed Time to Complete Desk Investigations	9	2	6						
Average Elapsed Time to Complete Non-Sworn Investigations	19	25	24						
Average Elapsed Time to Complete Sworn Investigations	30	22	20						
Average Elapsed Time to Complete Investigations	18	17	19						

[1] Excludes Continuing Education (CE) cases.

D. Formal Discipline Workload and Performance Summary

Discipline Case Referrals and Filings		Total 2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Applicant Cases Referred to AG	Denials of Licensure Issued	84	16	17	33					
	Applicant Cases Referred to AG (Appeals)	45	15	15	30					
	AG Declined to File SOI	0	0	0	0					
	SOIs Filed	71	15	16	31					
	SOIs Withdrawn	7	1	4	5					
Licensee Cases Referred to AG	Arrest/Conviction Reports Referred to AG	179	107	99	206					
	Discipline by Another State/Agency Reports	5	5	17	22					
	Complaints	61	33	75	108					
	Total Licensee Cases Referred to AG	245	145	191	336					
	AG Declined to File Accusation	4	3	2	5					
	Accusations Filed	286	106	156	262					
	Accusations Withdrawn	11	3	2	5					
Total Applicant and Licensee Cases Referred to AG		290	160	206	366					
Total SOIs and Accusations Filed		357	121	172	293					
Other Cases	Subsequent Discipline Cases Referred to AG	40	12	27	39					
	Petitions for Reinstatement Filed	20	6	26	32					

Discipline Cases Closed		2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Type of Decision[1]	Default Decisions Adopted	158	80	92	172					
	Proposed Stipulations Adopted	118	109	94	203					
	Proposed ALJ Decisions Adopted	110	74	30	104					
	Total Final Orders Adopted	386	263	216	479					
Type of Case[2]	License Applicant Cases	41	49	23	72					
	Licensee - Arrest/Conviction Reports	216	152	136	288					
	Licensee - Complaints and Other	62	50	33	83					
	Licensee - Subsequent Discipline Cases	44	17	10	27					
	Total Final Orders Adopted	319	251	202	443					

[1] Includes subsequent discipline cases. Based on Decision Adoption Date.

[2] Based on Discipline Effective Date.

Pending Discipline Cases[1] (End of Period)		2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Applicant Cases	Number of Pending Cases	77	38	21						
	Average Age of Pending Cases (months)	23	26	24						
Licensee Cases	Arrest/Conviction Reports	298	230	187						
	Discipline by Another State/Agency	10	14	24						
	Complaints	118	86	110						
	Total Pending Cases	426	330	321						
	Average Age of Pending Cases (months)	34	28	26						
Total Pending Applicant and Licensee Cases		503	368	342						
Average Age of Pending Cases (months)		32	28	26						

[1] Excludes subsequent discipline cases.

D. Formal Discipline Workload and Performance Summary *(continued)*

Disciplinary Outcomes		2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
License Applicant Cases	Denial of Licensure Upheld	13	8	5	13					
	License Granted with Probation (Other Outcome)	17	18	12	30					
	License Granted with Citation (Other Outcome)	8	22	7	29					
Licensee Cases	Revocation	162	91	69	160					
	Voluntary Surrender	35	33	17	50					
	Revocation Stayed, Probation with Suspension	2	1	0	1					
	Revocation Stayed, Probation	65	75	76	151					
	Citation	14	8	7	15					
Subsequent Discipline	Revocation	25	8	16	24					
	Voluntary Surrender	16	8	6	14					
	Revocation Stayed, Probation	3	1	1	2					
Petition for Reinstatement Denied		10	6	5	11					
Petition for Reinstatement Granted with Probation		10	11	6	17					

Elapsed Time Performance Measures (License Applicant and Licensee Cases)		2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Referred to Filing (months)	Case Referred to AG to SOI Filed	5.2	5.8	4.2						
	Case Referred to AG to Accusation Filed	7.4	6.5	5.8						
	Weighted Average Elapsed Time	7.0	6.4	5.7						
Referred to Decision[1] (months)	Defaults	18	14	11						
	Stipulations	20	17	17						
	ALJ Decisions	23	20	18						
	Weighted Average Elapsed Time	20	17	15						
Received to Decision[1] (months)	License Applicant Cases	33	27	26						
	Licensee - Arrest/Conviction Reports	36	33	30						
	Licensee - Complaints and Other Cases	43	47	37						
	Weighted Average Elapsed Time	37	35	31						

[1] 2014/15 and July to December 2015 values based on Discipline Effective Date. January to June 2016 value based on Decision Adoption Date.

Special Orders and Other Activity		2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
			Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
Special Orders	ISOs Granted	1	1	0	1					
	PC 23 Orders Issued	8	3	2	5					
	Psychological Examinations Ordered	0	0	1	1					
Other Activity	Cases Referred for Criminal Prosecution	0	0	0	0					
	Decisions Appealed to Superior Court	0	1	0	1					

Probation Program	2014/15	2015/16		Total 2015/16	2016/17				Total 2016/17
		Jul-Dec	Jan-Jun		Jul-Sep	Oct-Dec	Jan-Mar	Apr-Jun	
New Probationers	96	Not Available		191					
Drug Tests Ordered	3,563			5,978					
Positive Drug Tests	278			601					
Revocations and Voluntary Surrenders	41	16	12	28					
Successful Completions	41	Not Available		36					
Total Number of Probationers (End of Period)	329	Not Available	429						
Probationers Subject to Drug Testing (End of Period)	217		312						

Board of Vocational Nursing and Psychiatric Technicians

Administrative and Enforcement Program Monitor

Second Report

Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

Board Briefing – October 21, 2016

Order of Presentation

A. Project Background

B. BVNPT's Enforcement Program Turnaround

C. Current Enforcement Program Status

D. Recommendations for Improvements

1. License Applicant Arrest/Conviction Reports
2. Continuing Education Compliance Audits and Enforcement
3. Licensee Arrest/Conviction Reports
4. Licensee Complaint Intake, Screening and Investigations
5. Enforcement Program Organization and Staffing
6. Enforcement Program Workload, Backlog and Performance Reporting
7. Board Member Training and Support

E. Next Steps

Questions?

A. Administrative and Enforcement Monitor Background

- BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented during 2011/12 and 2012/13. These changes included establishing a new non-sworn Investigation Section and assigning all licensee complaint cases to the new section, including cases involving serious criminal misconduct and significant patient harm previously referred to DCA's Division of Investigation.

- The problems resulting from these changes became apparent to DCA which made efforts to encourage BVNPT to utilize the new Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the Division of Investigation's services.

- Concurrently, members of BVNPT's governing Board began developing an awareness of these problems from reviewing discipline packages submitted to the Board that, in many cases, were quite old and recognizing that the licensees were continuing to practice for years without discipline. Additionally, some members were dissatisfied with management's responsiveness to their requests for additional Enforcement Program information.

A. Administrative and Enforcement Monitor Background

- During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess BVNPT's enforcement and discipline processes. In November 2014 the Task Force submitted its report to the Board.

- The Task Force report included six (6) recommendations, including a recommendation that BVNPT begin utilizing CPEI case prioritization guidelines and resume utilizing the Division of Investigation's services.
  - BVNPT's governing Board approved this recommendation along with most of the Task Force's other recommendations.
  - BVNPT continued to assign nearly all licensee complaint cases to the Investigation Section.

- Concurrently, reports surfaced during BVNPT's 2014/15 Sunset Review about BVNPT's organizational and operational problems and the scope and magnitude of these problems became apparent to the Legislature.

A. Administrative and Enforcement Monitor Background

- BVNPT's Sunset Review Hearing was held on March 23, 2015, but BVNPT's responses to questions during the hearing did not allay related issues and concerns.

- Following the Sunset Review Hearing, DCA initiated a review of BVNPT's Enforcement Program and an investigation of BVNPT's statistical reporting. Concurrently, from March 31 through May 29, 2015, the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement, Complaint Section Supervisor and an Investigation Section Supervisor all separated from the Board.

- Following the separation of the EO, AEO and Chief of Enforcement, Division of Investigation staff provided assistance to the Board with management of the Enforcement Program and began reviewing all of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of the Investigation.

- DCA also provided BVNPT with an Acting Executive Officer. Additionally, a new Chief of Enforcement and new supervisors for the Complaint and Investigation Sections were hired.

A. Administrative and Enforcement Monitor Background

- Subsequently, AB 179 (Bonilla) was enacted requiring that DCA appoint an Administrative and Enforcement Program Monitor for BVNPT for a period of up to two (2) years to assess BVNPT's Enforcement Program and specified administrative processes. Reports are required to be submitted to the Legislature on July 1 and November 1, 2016, February 1, 2017, and January 1, 2018.

- On February 29, 2016, DCA awarded a contract to Benjamin Frank LLC to provide the Monitor services. An Initial Assessment of BVNPT's Enforcement Program was completed during March and April. The *Initial Report*, documenting results of the Initial Assessment, was presented to BVNPT's governing Board on June 20, 2016, and submitted to the Legislature on July 1, 2016.

- Additional interviews, research and analyses of BVNPT's Enforcement Program and targeted administrative processes were completed during June, July and August. The *Second Report* documents results of these supplemental assessments. Additional interviews, research and analyses in a few remaining areas are expected to be completed during the next project phase.

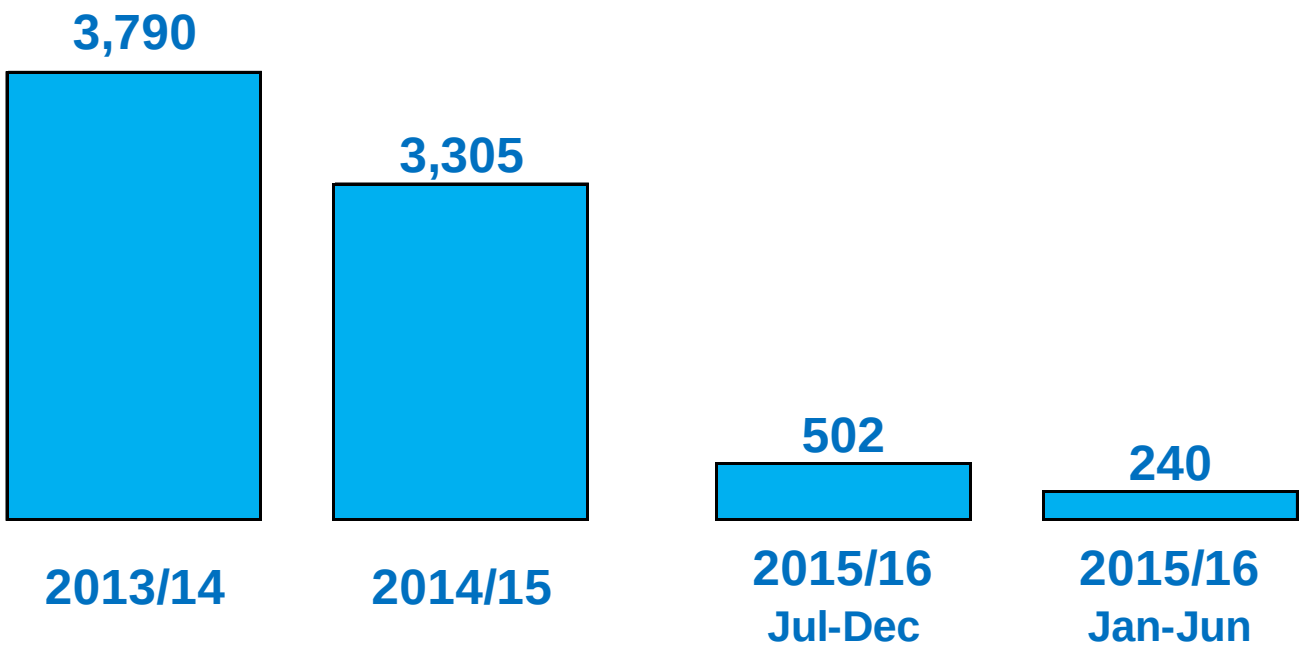
B. BVNPT's Enforcement Program Turnaround

- Corrective measures taken during the past year have contained the problems that accumulated in prior years and set into place a foundation for building a sustainable, effective and efficient Enforcement Program.
- Improvements made during the past year include:
  - ✓ A complete restructuring of the Licensee Applicant Arrest/Conviction Report Process
  - ✓ A restructuring of the Case Intake and Screening Process
  - ✓ Significant increases in the number of completed licensee arrest/conviction report and complaint investigations
  - ✓ Significant reductions in the number of pending investigations and in the average age of the pending investigations
  - ✓ Significant increases in the number of cases referred to the AG and the number of discipline cases completed
  - ✓ Significant reductions in the average elapsed time to file pleadings and complete disciplinary actions
  - ✓ Significant reductions in the number of pending discipline cases and the average age of the pending discipline cases.

B. BVNPT's Enforcement Program Turnaround

- As shown below, the restructuring of the License Applicant Arrest/Conviction Report Process reduced the number of cases referred to Enforcement by about 3,000 cases per year.

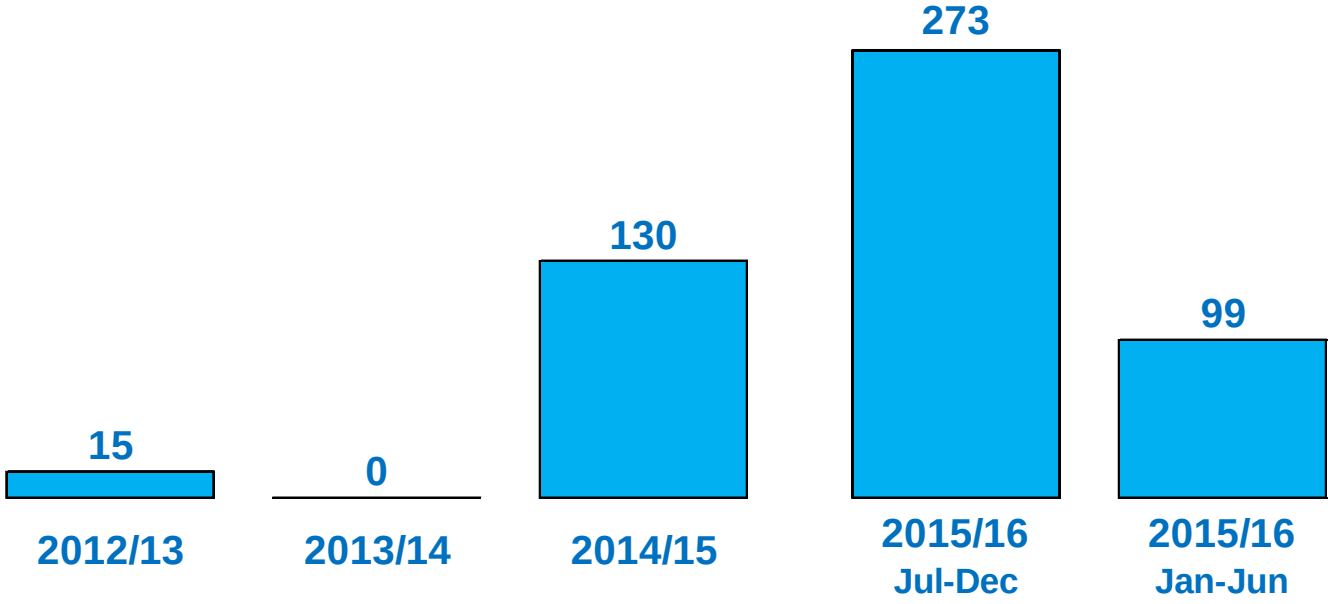
Number of License Applicant Arrest/Conviction Report Cases Referred to Enforcement



B. BVNPT's Enforcement Program Turnaround

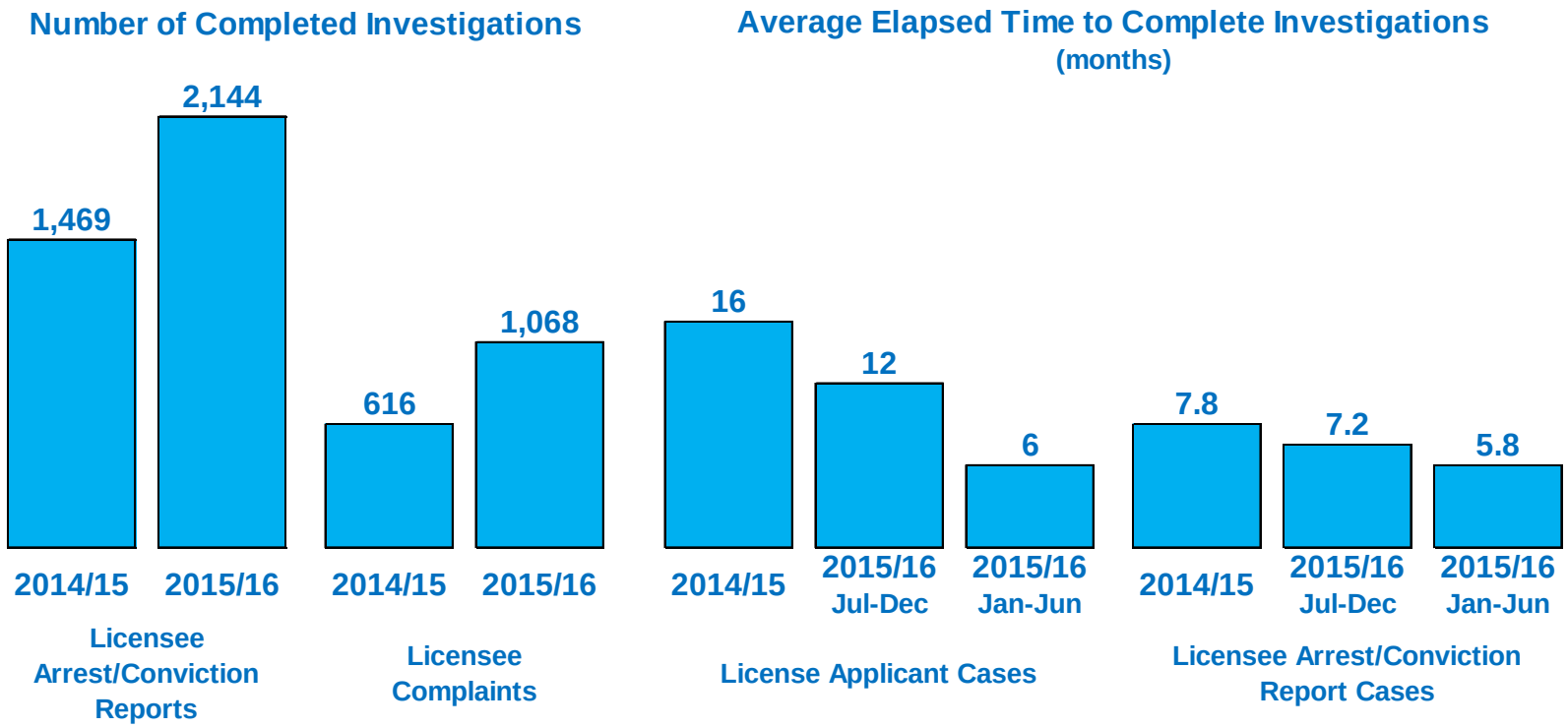
- As shown below, during 2014/15 more than 100 enforcement cases were re-assigned to the Division of Investigation, primarily during the last several months of the year following the Board's Sunset Review. Subsequently, during 2015/16 about 370 enforcement cases were referred to the Division of Investigation, including both reassigned aged cases that had languished in the Investigation Section and newly received cases involving serious criminal misconduct or significant patient harm.

Number of Enforcement Cases Referred to the Division of Investigation



B. BVNPT's Enforcement Program Turnaround

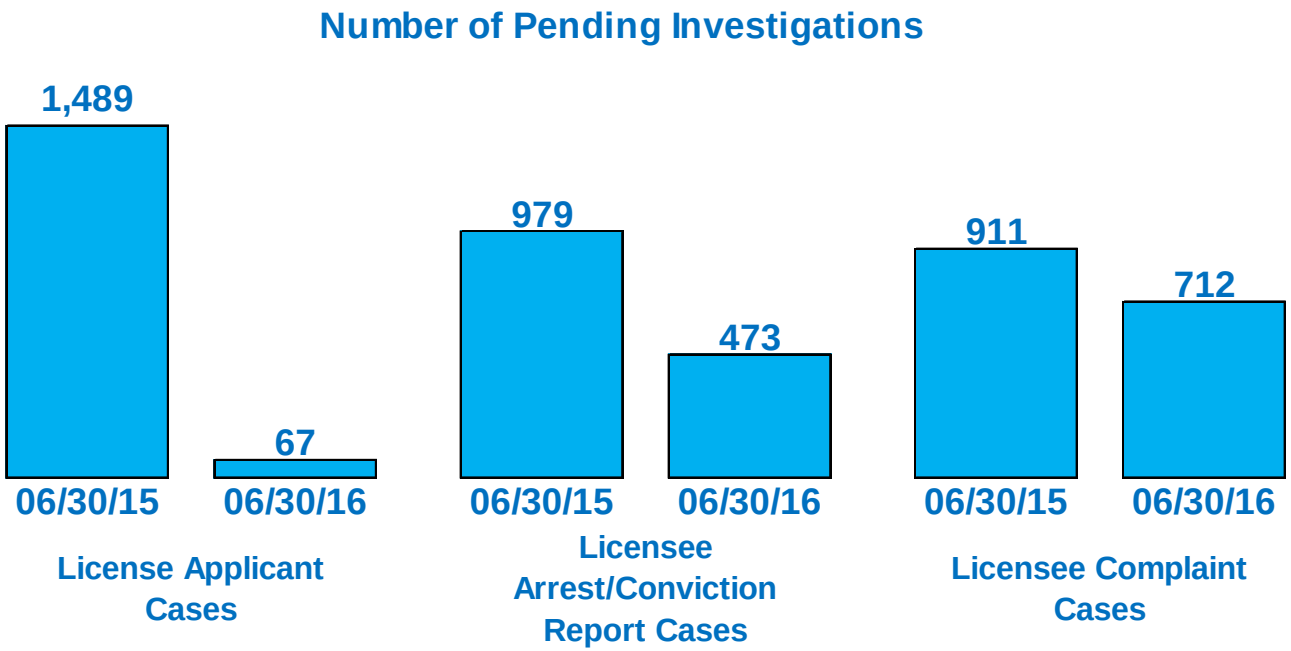
- As shown below, during 2015/16 significantly more licensee arrest/conviction report and licensee complaint investigations were completed.



- There also were significant reductions in the average elapsed times to complete both license applicant and licensee arrest/conviction report investigations.

B. BVNPT's Enforcement Program Turnaround

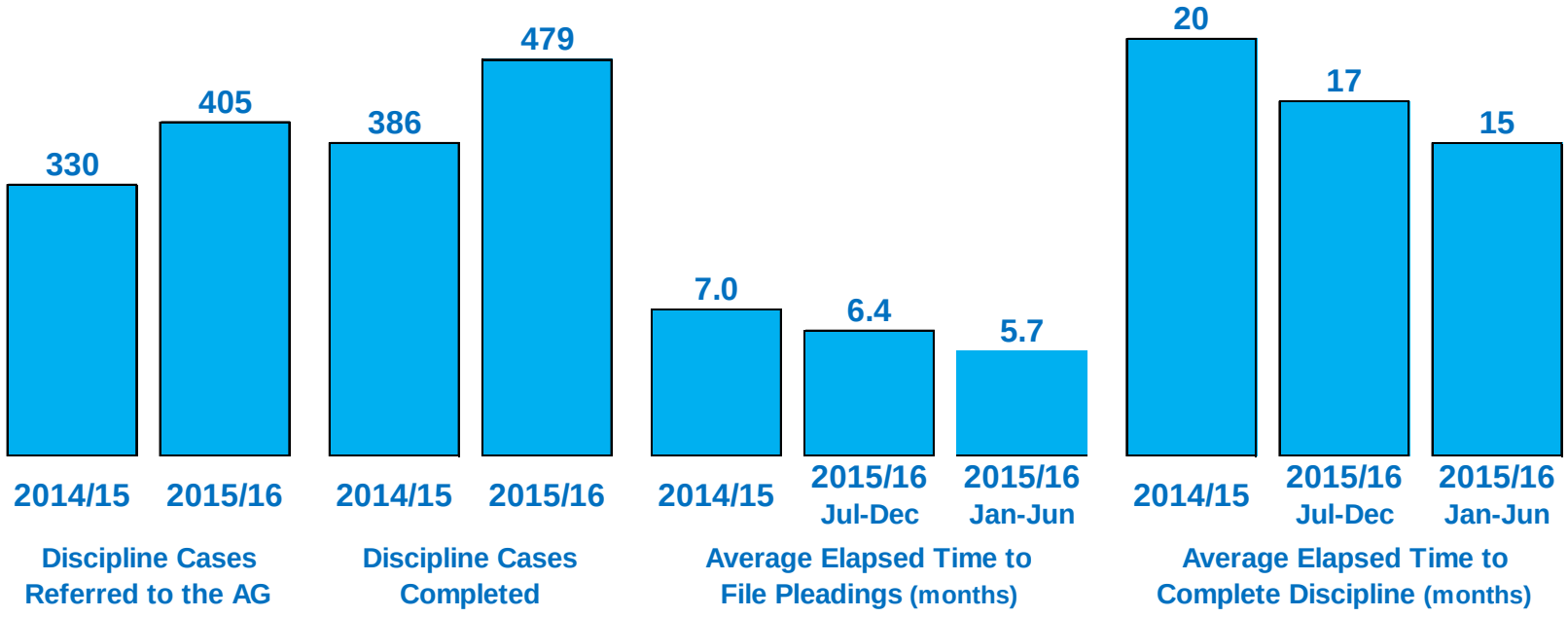
- As shown below, during 2015/16 there were significant reductions in the number of pending license applicant arrest/conviction report, licensee arrest/conviction report, and licensee complaint investigations. The total number of pending enforcement investigations decreased by more than 35 percent.



- Concurrently, the average age of the pending licensee complaint investigations decreased from about 17 months as of June 30, 2015, to about 13 months as of June 30, 2016.

B. BVNPT's Enforcement Program Turnaround

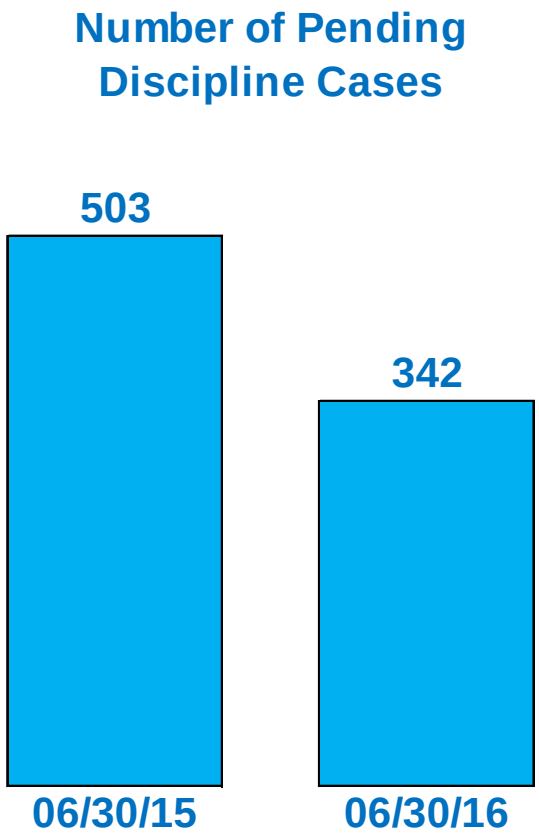
- As shown below, the number of cases referred to the AG and the number of discipline cases completed both increased significantly during 2015/16. Concurrently, the average elapsed time to file pleadings and complete disciplinary actions decreased.

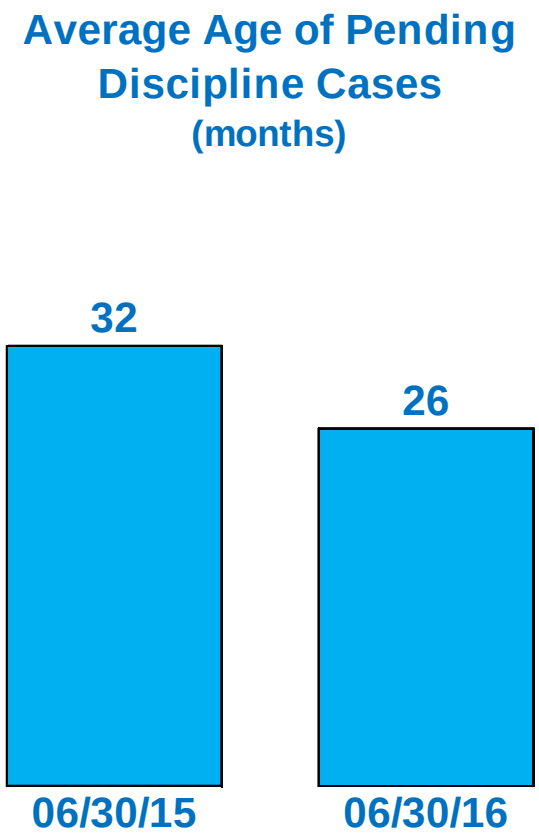


- The average elapsed from case receipt to completion of the discipline process (PM-4) decreased to about 2½ years for cases completed during the second half of 2015/16 from about 3 years for cases completed during 2014/15.

B. BVNPT's Enforcement Program Turnaround

- Finally, as shown below, during 2015/16, there were significant decreases in the number of pending discipline cases and in the average age of BVNPT's pending discipline cases.





C. Current Enforcement Program Status

- Notwithstanding all of the improvements already made, there are still large backlogs of aged cases in several key areas and continuing problems with the completeness, consistency and quality of BVNPT's workload, backlog and performance data.
- Additionally, the amount of calendar time needed to complete investigations and impose discipline remains much too long and, during the past several months, there has been very little change in the number of pending investigations.
- BVNPT's current case backlogs and the extended timeframes still needed to complete investigations and impose discipline provide context for understanding the scope and magnitude of the problems inherited by BVNPT's current management team.
- There also appears to be a high level of non-compliance with BVNPT's continuing education requirements and only limited enforcement of licensee compliance with these requirements.
- Additionally, BVNPT's probationer population recently increased significantly. Associated increases in probationer monitoring and subsequent discipline workloads are expected to persist for the next several years.
- Additional changes and further improvements to the Enforcement Division's organizational structure, workforce allocations and businesses processes are needed to better address current and emerging workload demands and business process deficiencies and improvement needs.

D. Recommendations for Improvements

License Applicant Arrest/Conviction Reports

Recommendation IV-1 – Critically review and overhaul Item No. 9 of the Record of Convictions form to make it more readable and understandable and reduce the frequency that license applicants misreport or over-report prior convictions (see also Recommendation IV-5).

Recommendation IV-2 – Develop and implement procedures to enable case intake staff to exercise judgement in determining whether to request records from law enforcement agencies and the courts for license applicant cases based on minor criminal offenses that occurred in the distant past and screen the cases to identify and close cases that do not require desk investigation.

D. Recommendations for Improvements

Continuing Education Compliance Enforcement

Recommendation IV-3 – Overhaul and significantly expand the CE Compliance Audit Program.

- Issue an initial standard form 30-day audit letter to a sample of at least 5 percent of renewing licensees in conjunction with issuing their license renewal notification.
- If the licensee is non-responsive to the initial request, promptly issue a second/final request.
- If the licensee is non-responsive to the final request or confirms that they did not complete the required CE, promptly refer the case to Enforcement for issuance of a citation.
- Streamline the Certificate of Completion review process by limiting reviews of the documents in cases that appear to show full compliance with BVNPT's CE requirements.

Recommendation IV-4 – Assess the feasibility of imaging CE-related document submissions and enabling submission of the documents electronically.

D. Recommendations for Improvements

Licensee Arrest/Conviction Reports

Recommendation IV-5 – Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that licensees misreport or over-report prior convictions. Develop programming for on-line renewals that requires confirmation by the licensee when the "Yes" box is checked *or* to prevent further processing until other fields providing additional information about the self-reported conviction are completed.

Recommendation IV-6 – Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases.

Recommendation IV-7 – Work collaboratively with the AG to identify ways to expand the Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases to other geographic regions of the state.

Recommendation IV-8 – Develop and propose legislation to specifically provide BVNPT's governing Board with the authority to delegate approval of default decisions to the Executive Officer.

D. Recommendations for Improvements

Licensee Complaint Intake, Screening and Investigation

Recommendation IV-9 – Develop and implement a structured, sustainable business process for screening licensee complaints to identify cases that do not require field investigation and assign these cases to staff that specialize in completing desk investigations of these types of cases.

Recommendation IV-10 – Develop and implement procedures to enable case intake or screening staff (or both) to review and not open new discipline by another state/agency cases or, alternatively, screen and close discipline by another state/agency cases that do not require completion of a desk investigation. Additionally, notify agencies providing "courtesy notices" to stop doing so in cases where they routinely post the same information on a professional licensing database (e.g., NURSYS) or the information is otherwise available from BreEZe.

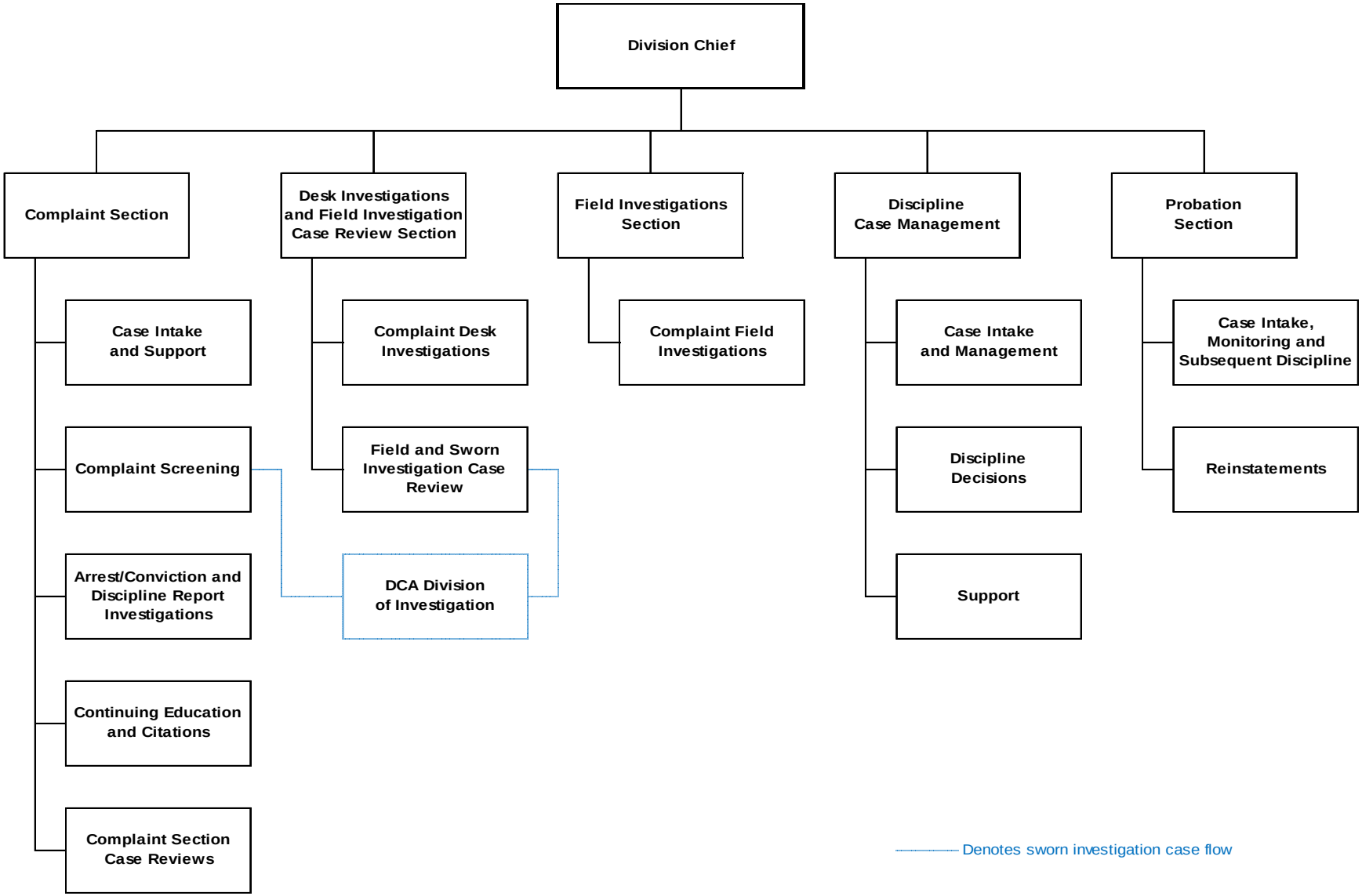
Recommendation IV-11 – Continue to refine licensee complaint case coding procedures and practices and provide training to staff to further improve the consistency and completeness of licensee complaint records and the tracking and reporting of related Enforcement Program workload, backlog and performance information.

D. Recommendations for Improvements

Enforcement Program Organization and Staffing

- The *Second Report* provides 13 recommendations for Enforcement Division organizational and staffing improvements, including recommendations to:
  - ✓ Continue identifying and assigning licensee complaint cases to the Complaint Section for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations (Recommendation V-1 and V-6)
  - ✓ Continue utilizing Temporary Help to augment Probation Unit staffing for the next 2 to 3 years and establish a new Probation Section (Recommendations V-2 and V-7)
  - ✓ Redirect vacant Investigation Section positions as case backlogs and new case assignments continue to decrease (Recommendation V-3)
  - ✓ Redirect and consolidate resources to (1) enable additional screening and completion of desk investigations of on-line public complaints and licensee complaints that do not require field investigation and (2) support expansion of the CE Audit Program (Recommendations V-4 and V-5)
  - ✓ Maintain open lines of communication and meet periodically with counterparts at the Division of Investigation and the AG to develop strategies to further reduce case backlogs and the amount of time needed to complete investigations and impose discipline (Recommendation V-8)
  - ✓ Bolster investigator case review and performance review processes and the training provided to the investigators (Recommendations V-9 through V-13).

Future State Organizational Model



D. Recommendations for Improvements

Enforcement Program Workload, Backlog and Performance Reporting

BVNPT's Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to (1) collect, compile and report Enforcement Program-related management information to BVNPT's governing Board, DCA, control agencies and the Legislature and (2) assist the above recipients in understanding the information that is provided.

Recommendation VI-1 – Update the *Enforcement Program Workload and Performance Executive Summary Report* on a quarterly basis within 30 days following the completion of each quarter, provide the report to BVNPT's Enforcement Committee and, through the Enforcement Committee, to BVNPT's governing Board. Also, post the report on BVNPT's website.

Recommendation VI-2 – On an annual basis, develop goals for each of the key workload and performance measures listed on the *Enforcement Program Workload and Performance Executive Summary Report* and include the goals in all quarterly reports.

D. Recommendations for Improvements

Board Member Training and Support

Needs exist to bolster the training provided to the members of BVNPT's governing Board and address long-standing systemic deficiencies with the Board's oversight of BVNPT's Enforcement Program.

Recommendation VII-1 – Consistently provide all new Board members with substantive New Board Member Orientations and related training and reference materials specific to BVNPT's Enforcement Program, and other BVNPT programs and services provided, as appropriate.

- Structure the training so that it complements DCA's BMOT training and helps new members to better understand and fulfill their program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities.
- Consider requesting that a representative of DCA participate in these orientations to help integrate BVNPT's orientation training with DCA's BMOT training, particularly with respect to helping members understand and fulfill their oversight responsibilities.
- Overhaul the reference materials contained in the two "large binders" to make the information more useful and effective for Board member orientation, training and reference purposes.

D. Recommendations for Improvements

Board Member Training and Support

Recommendation VII-2 – Develop and adopt a written charter for the Enforcement Committee delineating the Committee's roles and responsibilities, including roles and responsibilities related to (1) overseeing the Board's Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board's strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider developing similar charters for other Board committees, where appropriate.

Recommendation VII-3 – Provide briefings to Enforcement Committee members, initially on at least quarterly basis, to provide information regarding case intake, investigation and discipline workloads, backlogs, and performance, performance improvement initiatives underway and planned, policy matters and other information as determined by the Committee.

E. Next Steps

- During the next two (2) months we expect to complete additional targeted assessments of the following three (3) areas specifically referenced in AB 179:
  - Staff hiring and training procedures
  - Oversight of staff work
  - Evaluation of staff performance.

  These additional assessments are expected to focus on areas other than the Enforcement Division.
- We also plan to complete interviews with representatives of CDHCS and CDPH to gather additional information related to their enforcement case referrals and to support assessment of the Board's cooperation in enforcing laws and regulations regarding BVNPT's licensees.
- A primary focus of Phase III is expected to involve monitoring BVNPT's implementation of the previously presented recommendations for improvements.
- We also plan to complete targeted verifications of key case intake, investigation and discipline workload, backlog and performance data for the 6-month period from January 1 through June 30, 2016 and collect, compile, summarize and analyze additional data for the 3-month period from July 1 through September 30, 2016.
- Finally, we will prepare a *Phase III Summary Report* and a *Work Plan and Schedule* for completing Phase IV.

Questions?