

## Agenda Item #5.

### **BACKGROUND**

The Board's mandate is the protection of Consumers of the State of California. The Board accomplishes that mission through regulation of the education, licensure, and practice of Licensed Vocational Nurses (LVN) and Psychiatric Technicians (PT); by the timely enforcement of existing disciplinary statutes and regulations; and by proposing new legislation and regulations that strengthen and enhance the protection of consumers.

The Board is comprised of eleven (11) members – six (6) Public Members, and five (5) professional members. The Board has a public member majority. The Governor appoints nine (9) members; one (1) member is appointed by the Senate Rules Committee; and one (1) member is appointed by the Speaker of the Assembly.

#### **Appointing Power: Governor**

1. Tammy Endozo, L.V.N., Professional Member
2. Bernice Bass De Martinez, Ph.D., Public Member
3. Todd D'Braunstein, P.T., Professional Member
4. Samantha James-Perez, P.T., Professional Member
5. Andrew Moreno, M.A., Public Member
6. Donna Norton, L.V.N., Professional Member
7. John Vertido, L.V.N., Professional Member

#### **Appointing Power: Senate Rules Committee**

John Dierking, Attorney at Law, Public Member

#### **Appointing Power: Speaker of the Assembly**

Ken Maxey, Public Member

Currently, there are two (2) Public Member positions vacant.

Public and committee meetings are critical elements in the Board's organizational structure. The Board holds a minimum of four (4) public meetings each year throughout the state.

The Board's committees are comprised of two (2) or more Board members and, effective 2017, each committee will meet a minimum of four (4) times annually. Those committees include:

1. Executive Committee;
2. Education Committee;
3. Enforcement Committee.
4. Evaluation Committee;
5. Legislation and Regulations Committee;
6. Licensing Committee;
7. Practice Committee; and
8. Strategic Outreach Committee.

The Board's committees study and discuss critical issues impacting LVNs and PTs, and make recommendations to the full Board for action. Areas of study by Committees include, but are not limited to:

1. Educational preparation of safe and competent licensees.
2. Practice of Licensed Vocational Nurses (LVNs) and Psychiatric Technicians (PTs).
3. Current utilization of LVNs and PTs in the delivery of healthcare to consumers.
4. Projected workforce needs.
5. Overall delivery of health care.
6. Other issues relative to consumer health care needs.

The Board is authorized to select an Executive Officer who is responsible for the daily operations of the Board's offices, staff and other duties as delegated by the Board. The Executive Officer is responsible and accountable to the Board for the accomplishment of duties so delegated. The current Executive Officer was hired by the Board effective March 2016.

Currently, the Board has a total of 67.9 authorized positions - 50.66% are allocated to the Enforcement Division; 31.66% allocated to the Licensure Division; the remaining 17.68% allocated to the Education and Administrative Divisions.

There are currently 120,041 LVNs and 11,840 PTs in California. Additionally, the Board approves educational programs leading to the licensure of VNs and PTs. Effective February 10, 2017, VN programs totaled 153; PT programs totaled 14. Additionally, there are nine (9) active proposals [VN – 8; PT – 1] seeking approval for commencement of new programs. The VN and PT licensure programs are completely distinct, each with its own set of professional authorizing statutes, regulations, curriculum requirements, and licensure examinations.

Since the last Sunset Review, the Board has implemented a number of critical changes. Briefly, those changes include:

➤ **Successful Transition to New BreEZe Licensing and Enforcement System on January 19, 2016.**

The new system provides enhanced on – line services and accessibility for consumers relative to the submission and processing of applications for initial issuance and renewal of licensure; name and address changes; licensure verification; submission of complaints against licensees and educational institutions; and other critical processes.

➤ **Revised Board Organizational Structure.**

After completion of a workforce and workload analysis, the reorganization was undertaken to improve accountability and enhance staff oversight, day to day operations, and critical Board processes by the Executive Officer.

➤ **Overhauled the Enforcement Division.**

That overhaul included the development and implementation of division – wide policies and procedures. Staff members were provided current desk processes and resources tailored to each desk function. Employee adherence to established procedures is ensured through methods and measures that include, but are not limited to, the following:

- a. Secondary review by management of completed cases;
- b. Utilization of weekly and monthly reports to ensure compliance with established metrics. Reports are distributed to management and staff to identify bottlenecks in the overall process and case aging;
- c. One-on-one case reviews are completed to assess case status, and to set deadlines and goals for case completion;
- d. Continuous education of staff; and
- e. Regular roundtable meetings to discuss case handling and ensure a consistent application of procedures. This creates consistency in case handling and ensures staff remain informed of best practices for case processing.

Division staffing was improved to improve case triaging, tracking, investigation, and closure.

As a result, from July 1, 2014 through June 30, 2016, [\[FY 2014/15 through FY 2015/16\]](#), the Board:

- a. Received 1,622 complaints alleging incompetence and or unprofessional practice by licensees;
- b. Closed investigations of 12,252 licensees;
- c. Referred 654 applicants and licensees for formal discipline;
- d. Revoked or accepted surrender of 408 licenses;
- e. Placed 287 licensees on probation;
- f. Issued 453 citations; and
- g. Collected \$182,278 in citation and fine revenue.

➤ **Established a Probation Unit and Discipline Unit within the Enforcement Division.**

That action was based upon the recommendation of the Administrative and Enforcement Monitor. Previously, these units were combined under a single manager.

**Probation Unit.**

This newly created unit is staffed with: Staff Services Manager I (SSMI); four (4) Associate Governmental Analyst (AGPA); one (1) Staff Services Analyst. All positions are filled.

One (1) AGPA – Retired Annuitant; and one (1) Staff Services Analyst – Retired Annuitant are also assigned to the Probation Unit.

### **Discipline Unit.**

This newly created unit is staffed with: Staff Services Manager I (SSMI); four (4) Associate Governmental Analysts (AGPA); three (3) Staff Services Analysts (SSA); and one (1) Management Services Technician (MST).

#### ➤ **Implemented Home – Based Employment for Nursing Education Consultant.**

The Board had experienced a critical shortage in the Nursing Education Consultant (NEC) classification that dated as early as 2007. Primarily, the shortage resulted from salary inequities among nurses in State service and in comparison with comparable employment in educational institutions and health care facilities. From 2009 through 2013, 80% of the Board's NEC positions were vacant. In November 2014, 60% of the NEC positions remained vacant. That prolonged shortage severely impeded the Board's ability to timely and consistently respond to existing and proposed educational programs, consumer requests for clarification of the VN and PT scopes of practice, and other critical issues.

Implementation of the home – based option resulted in an expansion of the pool of qualified candidates for NEC positions. As a result, the Board filled its four (4) vacancies.

#### ➤ **Increased Meetings with Staff.**

Meetings with staff were increased at the unit and one-on-one levels. Quarterly meetings were instituted for all Board staff. These meetings are attended by the Executive Officer, managers and staff of all Divisions.

#### ➤ **Increased Staff Training.**

The Board increased internal and external training of existing staff. As a result, several staff obtained promotions both with the Board and other agencies.

#### ➤ **Expanded Outreach to Consumers.**

As a part of the Board's outreach to consumers, the Board:

- a. Launched a new and improved website that is user-friendly and provides easier navigation for consumers, licensees, and applicants.
- b. Designed and printed three (3) new brochures as a part of its outreach to consumers: ***Consumer Protection and the Enforcement Program; Enforcement Division; and Protecting California's Healthcare Consumers.***

The Board is committed to continued achievement of its mandate of consumer protection. For Fiscal Year 2016/17, completion of the following operational improvements is projected.

➤ **Complete Development and Revision of Internal Procedure Manuals.**

To date, the Board's Education and Enforcement Divisions have completed procedure manuals. Completion of procedure manuals for the Administrative and Licensing Divisions are in progress. Completion is projected by **June 1, 2017**.

➤ **Enforcement Division.**

The Board's goals for the Enforcement Division include the following:

1. Seek legislation authorizing Board's delegation of approval of default decisions to Executive Officer.
2. Revise the Board's *Record of Conviction* form to enhance, clarify, and reduce the incidence of reporting non-required conviction history, in accordance with recommendation of the Administrative and Enforcement Monitor. Completion is projected by **June 1, 2017**.
3. Complete implementation of procedures relative to screening and assignment of complaints that do not require field investigation. Completion is projected by **June 30, 2017**.
4. Continue refinement of case coding procedures and practices.

➤ **Continue Efforts to Modify BreEZe.**

The Board will continue its efforts seeking approval and modification of BreEZe to enable uploading of official transcripts, CE certificates, etc. This issue is currently under consideration by DCA's Change Control Board.

**BUDGET ISSUES.**

- **ASSEMBLY ISSUE #1: FUND CONDITION.** *What is the status of BVNPT's long term fund condition now that the BVNPT and PT funds have merged?*

**RECOMMENDATION:** The BVNPT should discuss the results of the two audits and the reasons for the differences in the second audit.

**RESPONSE**

- **ASSEMBLY ISSUE #2: FEE INCREASE.** *Should the Practice Acts be amended to increase the statutory cap on the BVNPT's fees?*

**RECOMMENDATION:** The BVNPT should complete the Committees' "Fee Bill Questionnaire" for each of the proposed statutory increases. In

addition, the BVNPT should submit proposed language for the statutory change it believes is necessary to allow it to conduct a fee audit every five years.

### **RESPONSE**

#### **ADMINISTRATIVE ISSUES.**

- **ASSEMBLY ISSUE #3: PROGRAM MONITOR.** *Why is the BVNPT's working relationship with the Monitor strained?*

**RECOMMENDATION:** The BVNPT should discuss the state of its relationship with the Monitor, its plan moving forward, and what it expects for the remainder of the Monitor's contract.

### **RESPONSE**

- ASSEMBLY ISSUE #4: MEETING MINUTES.** *What impediments, if any, impact the BVNPT's ability to approve and post its Board meeting minutes?*

**RECOMMENDATION:** The BVNPT should advise the Committees on the status of the public Board meeting minutes from August onward and discuss any issues, recent, or otherwise, that prevent it from approving and posting its meeting minutes despite being able to complete its committee minutes.

- SENATE ISSUE #6: AVAILABILITY OF BOARD MEETING MINUTES.** *The Board does not approve and provide meeting minutes in a timely fashion.*

**RECOMMENDATION:** The Board should advise the Committees on the status of the public Board meeting minutes from August 2016 onward and discuss any issues, recent or otherwise, that prevent it from approving and posting its meeting minutes on a timely basis on its website.

Historically, Board staff completed minutes of Board meetings manually following each scheduled meeting. This was a slow process that resulted in the lack of adopted and published minutes for Board meetings from August through December 2016. Effective February 17, 2017, assigned staff will complete minutes electronically at the time of the meeting. The minutes will be presented to the Board for adoption at the next scheduled meeting. After final adoption, meeting minutes will be uploaded to the Board's website.

Minutes of all regular Board Meetings conducted during 2016 and 2017 have been completed. Minutes of the following public meetings have been formally adopted by the Board and are posted on the Board's website.

- **Board Meeting.** Date: February 4 - 5, 2016.
- **Board Meeting.** Date: May 12 -13, 2016.
- **Board Meeting.** Date: June 20, 2016.
- **Education Committee Meeting.** Date: October 21, 2016.

Minutes of the following meetings are scheduled for adoption at the May 12, 2017 Board Meeting.

1. **Board Meeting.** Date: August 24 - 26, 2016.
2. **Board Meeting.** Date: October 21, 2016.
3. **Board Meeting.** Date: November 3 - 4, 2016.
4. **Board Meeting.** Date: December 14, 2016.
5. **Board Meeting.** Date: February 8 - 10, 2017.

- **ASSEMBLY ISSUE #5: OVERSIGHT OF THE EXECUTIVE OFFICER. *Should the BVNPT participate in a multi-agency Work Group to assess the potential need to implement a comprehensive executive officer feedback process?***

**RECOMMENDATION:** The BVNPT should discuss the issues it raised in its response to the Monitor’s recommendation relating to the multi – agency workgroup and 360-degree feedback process, including the potential for undue influence by the DCA and others, corruption of the EO position, and the ways in which a 360-degree review of the EO may negatively impact the protection of the consumer.” In addition, given the BVNPT’s concerns with the 360-degree review, the BVNPT should clarify whether it supports the Monitor’s original recommendation of convening a multi-agency workgroup.

**SENATE ISSUE #3: EXECUTIVE OFFICER REVIEW. *Should the Board be part of a multi – agency work group to assess the need for developing a “360 degree” Executive Officer feedback process as recommended by the Monitor to enable additional oversight of the Executive Officer position.***

**RECOMMENDATION:** The Committees should consider whether the Board should participate in a multi-agency Work Group to assess the need for developing a “360-degree” Executive Officer feedback process to enable additional oversight of the Executive Officer position.

Existing statutes establish Boards as semi-autonomous entities with a mandate to protect consumers against the incompetent and/or unprofessional practice of its licensees. If the protection of consumers is inconsistent with other interests, Boards are required to ensure the needs of consumers are paramount. Boards are required to refrain from politicizing the needs of the consumers.

The Board is committed to achievement of its mandate to protect consumers against the incompetent or unprofessional practice of its licensees. The Board is fully supportive of participating in a multi-agency workgroup and implementation of a 360-degree review process across all DCA Boards. However, the Board recognizes that such a review offers opportunities for undue influence by those entities participating as reviewers. If adopted, measures must be employed to ensure public protection and prevent attempts of reviewers to exert undue influence on Executive Officers to render decisions that are not in the interest of consumers. Failure to do so could seriously compromise the protection of consumers.

➤ **ASSEMBLY ISSUE #6: VACANCIES.** *What is the BVNPT's plan to fill its increasing vacancies?*

**RECOMMENDATION:** The BVNPT should update the Committees on its plan to fill its vacancies, provide an update on potential estimates of backlogs due to vacancies (as a result of staff time spent on the hiring processes, redirection of staff, or otherwise), and discuss whether it believes there may be any staff retention or morale issues that need to be addressed.

**SENATE ISSUE #1:** **ADEQUATE STAFFING, BOARD MANAGEMENT AND LEADERSHIP.** *The Board is suffering from a high vacancy rate and loss of key personnel. It appears as if it may be related to the treatment of staff and Board mismanagement. The Board appears to be inattentive to, and not acting on or dealing with important issues that need to be addressed.*

**RECOMMENDATION:** The Board should share its immediate plan to fill all existing vacancies in order to address the vital functions that the Board is mandated to carry out. The Board should respond to whether it was aware of any disrespectful, abusive behavior or harassing conduct toward staff of the Board and of complaints being filed by staff of the Board. The Board should advise the Committee how it intends to deal with important problems that have come to light regarding the treatment of staff and mismanagement of this Board and its important programs. The Board should respond to whether it believes it is currently capable of making immediate decisions to deal with the issues and problems identified in this Background Paper and by the Monitor and the DCA.

Members of the Board are personally and collectively committed to addressing all concerns and implementing effective and sustained solutions to ensure the continued protection of consumers of the State of California. Given the combined education, demonstrated expertise, commitment, excellence, and professionalism of current Board Members, the Board **can and will** make immediate decisions that are required to

achieve resolution of issues addressed in the Background Paper and those raised by DCA and the Monitor.

As noted previously, the current Executive Officer was hired by the Board effective March 2016. On January 27, 2017, the Board held a special meeting to consider pending litigation, and following the meeting, the Executive Officer went out on an extended leave of absence, beginning January 30, 2017. That leave continues to date.

The Assistant Executive Officer position is vacant. On March 1, 2017, the Board submitted revised documents to DCA's Office of Human Resources (OHR) seeking approval to advertise its Assistant Executive Officer vacancy. The Board received correspondence advising that approval was granted on Wednesday, March 29, 2017. Preparation of all documents required for preparation of the examination bulletin are in progress. Completion and submission for approval is projected by Friday, April 14, 2017.

While the Executive Officer is on leave, and/or until a new Assistant Executive Officer is hired, the Board's Acting Assistant Executive Officer is responsible for fulfilling the duties and responsibilities typically performed by the Executive Officer.

The Board was not aware of any personnel issues involving staff and management until members of the Board received a series of anonymous letters alleging misconduct. In 2016, Board Members began receiving anonymous correspondence at their personal addresses of record. After reading allegations set forth in the first unsigned letter, Board Members notified the Executive Officer for appropriate action. In December 2016, Board Members received a second letter that was also unsigned. After receipt, the Executive Officer was notified of the allegations for action. Then on January 13, 2017, Board Members were notified that a third letter was in route.

On January 27, 2017, the Board convened a special meeting to consider pending litigation, and at that time heard about complaints that, in summary, alleged that Board staff and management were afraid for their safety, felt intimidated at work, and feared possible retaliatory conduct. As a result of the complaints, DCA's Division of Investigation and Office of the Attorney General, initiated investigations into the allegations. DCA's Division of Investigation subsequently transitioned responsibility for investigating the allegations to the Attorney General's Office. Following the special meeting, the Board's Executive Officer went out on leave. The Attorney General's inquiry and investigations into the allegations are pending.

Pending the Attorney General Offices review, the Board will continue working in conjunction with the Department of Justice (DOJ) and DCA to respond to the allegations. The Board is committed to working with DOJ and DCA at all levels to formulate a plan to respond to any future allegations and/or complaints.

➤ **Division Staffing**

The Board is currently taking actions to fill critical vacancies. The following summarizes actions per division.

**A. Administrative Division.**

The Board received approval of a new position for a **Budget Analyst**. Interviews of eligible candidates were conducted April 4, 2017. Pending verification of eligibility by DCA OHR, the Board projects extension of a conditional offer of employment by **April 7, 2017**.

**B. Licensing Division.**

Interviews of eligible candidates for the Board's new **Staff Services Manager 1** position were conducted on April 4, 2017. Pending verification of eligibility by DCA OHR, the Board projects extension of a conditional offer of employment by **April 7, 2017**.

Interviews of eligible candidates for the Board's **Program Technician** vacancy were conducted on March 14 and 15, 2017. After verification of eligibility by DCA OHR, the Board extended a conditional offer of employment on **April 5, 2017**.

**C. Enforcement Division.**

Initial interviews of eligible candidates for the vacant **Staff Services Manager II** position took place on January 30, 2017 and February 14, 2017.

Upon the recommendation of DCA OHR, the vacancy was reposted effective **April 5, 2017**, with a final filing date of April 10, 2017. Interviews of eligible candidates is projected for April 18 and 19, 2017. After verification of eligibility by DCA OHR, the Board projects extending a conditional offer of employment by **May 1, 2017**.

**1. Complaint Unit.**

- a. Effective March 8, 2017, the manager of the Complaint Unit left the staff of the Board.

Advertisement of that vacancy commenced March 9, 2017. The final date for submission of applications was March 23, 2017. Interviews of eligible candidates are projected for **April 10, 2017**.

- b. Interviews of eligible candidates for two (2) Staff Services Analyst (SSA) vacancies were completed March 28 and 29, 2017. Pending verification of eligibility by DCA HR, the Board projects extending a conditional offer of employment by **May 1, 2017**.
- c. Effective **March 3, 2017**, the unit's Office Technician (OT) was promoted to the position of Management Services Technician in the Complaint Unit.

Due to that internal promotion, advertisement of the vacant OT position began on March 13, 2017. The final date for submission of applications is March 28, 2017.

Interviews of eligible candidates is projected for April 19 and 20, 2017. Pending verification of eligibility by DCA OHR, the Board projects extending a conditional offer of employment by **May 1, 2017**.

## **2. Discipline Unit.**

In accordance with the recommendation of the Administrative and Enforcement Monitor, the Board established a separate and distinct Discipline Unit.

Interviews of eligible candidates for the Discipline Unit were conducted on March 22 and 23, 2017. Pending verification of eligibility by DCA OHR, the Board projects extending a conditional offer of employment by **May 1, 2017**.

## **D. Education Division.**

The final filling date for submission of applications for the position of Nursing Education Consultant is March 23, 2017. Interviews of eligible candidates are scheduled for April 25 and 26, 2017. Pending verification of eligibility by DCA OHR, the Board projects extending a conditional offer of employment by **May 5, 2017**.

### **➤ Was the Board aware of any disrespectful, abusive behavior or harassing conduct toward staff and of complaints being filed by staff of the Board?**

The Board was not aware of any personnel issues involving staff and management until members of the Board received the anonymous letters alleging misconduct.

Upon receipt of an unsigned letter alleging issues of concern, the Executive Officer was contacted for appropriate action. In December 2016, Board Members received a second letter that was also unsigned. Again, the Executive Officer was notified for action. Then in January 2017, Board Members were notified that a third letter was in route. Additionally, on January 27, 2017, the Board held a special meeting where it heard about allegations that staff and management were afraid for their safety, felt intimidated at work, and feared retaliatory conduct.

### **➤ How does the Board intend to deal with important problems that have come to light regarding the treatment of staff and management of this Board and its important programs?**

The Board is committed to providing a safe work environment for staff and management. Pending the Attorney General's review of the various allegations, the Board will formulate its response, working in conjunction with the Department of

Justice (DOJ) and DCA. The Board is committed to working with DOJ and DCA at all levels to formulate a plan to respond to any future allegations and/or complaints.

➤ **Does the Board believe it is currently capable of making immediate decisions to deal with the issues and problems identified in this Background Paper and by the Monitor and the DCA?**

Members of the Board are individually and collectively committed to addressing all concerns and implementing effective and sustained solutions to ensure the continued protection of consumers of the State of California. Given the combined education, demonstrated expertise, commitment, excellence, and professionalism of current Board Members, the Board **can and will** make immediate decisions required to achieve resolution of issues addressed in the Background Paper and those raised by DCA and the Monitor.

➤ **ASSEMBLY ISSUE #7: USE OF COMMITTEES. *Should the BVNPT utilize Committees to implement board-directed evaluations of staff and independent review of staffing issues?***

**RECOMMENDATION:** The BVNPT should discuss whether it receives enough information about staff, what it believes is the extent of its responsibility to its rank-file staff, and whether it [is] able to utilize its executive committee or establish an administrative committee to address ongoing staff management issues.

**SENATE ISSUE #2: UTILIZING COMMITTEES OF THE BOARD. *It does not appear as if the Board is utilizing the structure of its Committees to receive adequate information about the various programs for which it is responsible nor is there the ability to receive adequate staff input when serious management issues may arise?***

**RECOMMENDATION:** The Board members should explain whether they are receiving sufficient information regarding the operation of programs for which the Committee has oversight and if they have adequate access to staff responsible for these programs. The Board should also utilize its Executive Committee to address ongoing staff management issues and eliminate its Practice Committee. The Board should explore using teleconference and webcasting capabilities to reduce the expenses of holding committee meetings.

As noted previously, each of the Board's committees are comprised of two (2) or more Board members. Further, a staff member is assigned to each Committee. Effective 2017, each Committee will meet a minimum of four (4) times annually.

The Board currently utilizes its Committees to study and discuss critical issues impacting LVNs and PTs, and make recommendations to the full Board for action. Effective May

2017, Board Committees will also be asked to consider information relative to staff issues impacting the delivery of services that negatively impact the Board's ability to protect the public.

- **SENATE ISSUE #4: STRATEGIC PLAN.** The Board has yet to adopt an Updated Strategic Plan which would include performance measurements (setting performance targets) for measuring results and ensuring accountability of the Board in pursuing enforcement actions.

**RECOMMENDATION:** The Board should indicate why there is still a delay in adopting its 2016 Strategic Plan and when it plans to fully adopt its Strategic Plan.

On August 24, 2016, the Board completed a successful Strategic Planning retreat. With the full board present, our Mission, Vision and Values were crafted collaboratively with engaged stakeholders from the public. The Board established strategic pillars that will serve as the underpinning for key operational priorities over the next three (3) to five (5) years.

The final document is scheduled for presentation and adoption at the May 12, 2017 Board meeting.

- **ASSEMBLY ISSUE #9: LICENSING.** *What is the BVNPT's plan to improve its licensing program?*

**RECOMMENDATION:** The BVNPT should discuss the issues it has found with its licensing program, whether it believes improvements are still needed, whether it still supports an amendment to BPC § 2847.5 to require the Monitor to review its licensing program, or whether it might contract with another vendor on its own.

- **SENATE ISSUE #5: POLICIES AND PROCEDURES.** *The DCA audit indicated that the policies, procedures, and desk procedures of the Board were outdated and did not reflect accurate information.*

**RECOMMENDATION:** The Board should present sufficient evidence that all desk procedures, flow charts, policies and procedures have been updated and that the Board partnered with Cal Gov Ops to streamline all aspects of the Board's operations and develop Evaluation Unit procedures. The Board should respond to the ways this is beneficial to the Board.

In an effort to reduce application processing time, the Board requested and received approval for additional training through the California Government Operations Agency (Cal Gov Ops). The mission of that agency is the improvement and accountability of

government programs, to increase efficiency, and promote better and more coordinated operation decisions. The goal was 95% application processing completion within 15 calendar days.

The Executive Officer, Evaluation Manager and staff, and information technology staff attended the agency's Lean Six Sigma training through the Lean Academy. Lean Six Sigma is a methodology that relies on a collaborative team effort to improve performance by systematically removing waste, combining **lean** manufacturing/**lean** enterprise and **Six Sigma** to eliminate the eight kinds of waste in business practices. The initial training commenced on February 7, 2017.

Completion of this training will enhance the revision of existing procedures and completion of procedure manuals for the Administrative and Licensing Divisions.

To date, the Board's Education and Enforcement Divisions have completed procedure manuals. Completion of Administrative and Licensing Division procedure manuals are in progress. Completion is projected by **June 1, 2017**.

**SENATE ISSUE #12:** **LICENSING AND LICENSING SUPPORT BUSINESS PROCESSES.** *Issues, problems and concerns have surfaced or were brought to the attention of the Monitor by Board staff involving matters that were not within the scope of the Monitor's assignment*

**RECOMMENDATION:** The Board should advise how it intends to address these other problems and concerns that have been raised regarding its licensing and licensing support business processes.

As reported in the Background Paper, the Monitor reported delays in cashiering school applications, delays in processing on-line initial license applications, and changing addresses.

The majority of the identified areas resulted from the implementation of BreEZe and staffing changes and will be addressed and corrected by:

1. Increased experience and utilization of the new system;
2. Identification and correction of identified areas of concern; and
3. Securing of staff.

A significant contributing factor in delays in the Cashiering Unit resulted from staff changes. Previously, the Unit's staffing included four (4) Office Technicians. As a result of reassignments and promotions, Unit personnel is currently reduced to two (2) staff.

The final date for submission of applications to fill vacancies is April 6, 2017. Interviews of eligible candidates is scheduled for April 27, 28, 2017. After verification of eligibility by DCA OHR, extension of a conditional offer of employment is projected by **May 5, 2017**.

The most troubling incident reflected in the Background Paper is the unauthorized issuance of a Temporary License to an applicant that was previously denied licensure for a criminal offense.

Relative to the unauthorized issuance of a Temporary License, the Board's Acting Assistant Executive Officer (AEO) received notification from the Chief of DCA's Office of Internal Audits on Friday, March 10, 2017, advising that she would arrive on Monday, March 13, 2017 to begin an investigation. Based upon her information, the Acting AEO confirmed that the incident had occurred; however, corrective action **had not** been taken.

On Monday, March 13, 2017, Licensing Division managers confirmed that the incident included inappropriate actions by Reception Unit staff from October 27 through November 4, 2016. The Division supervisor was notified of the incident on December 9, 2016. On December 12, 2016, the Board forwarded correspondence per certified and first - class priority mail, informing the temporary licensee to cease practicing on the Temporary Certificate and return the document to the Board immediately. The Board received the issued certificate on December 22, 2016.

Staff had failed to inform the Executive Officer of the incident.

The following corrective actions were taken.

1. Effective immediately, authorized issuance of temporary licenses by staff ceased.
2. Effective immediately, **only** Managers/Supervisors are authorized to issue temporary licenses.
3. A detailed checklist that includes staff and issuance by Managers/Supervisors was developed.
4. A training instrument relative to the new procedure was developed.
5. A meeting with staff was held on Tuesday, March 14, 2017, to advise and train staff regarding the new procedure.

➤ **ASSEMBLY ISSUE #11: CE BACKLOG. *What is the BVNPT's plan to resolve its current CE audit backlog?***

**RECOMMENDATION:** The BVNPT should cease the current audit project, send out apology letters to licensees, and resume a manageable audit schedule.

**SENATE ISSUE #11: EXTENSIVE AUDIT OF COMPLIANCE WITH CE REQUIREMENTS. *The Board decided to send out a mailer to 58,000 of its licensees to verify whether or not they had completed their CE requirements for a 2 year period. (This is almost 50 percent of the licensee population. This audit of CE will increase workload of staff and overtime usage to such an extent that staff will be pulled away from more important responsibilities they may have regarding other programs and they will be incapable of completing this CE audit within a reasonable time frame.***

**RECOMMENDATION:** The Board should send a letter of apology to all of the affected licensees, informing them that the CE compliance auditing project is being terminated and that in the future, the Board will develop and implement a responsible CE compliance auditing process that is consistent with the Monitor's recommendations and supports fulfillment of the Board's consumer protection mission.

- **Why did the Board undertake such an extensive and massive audit of current licensees to assure CE compliance? This seemed in direct conflict with responses the Board gave to the Monitor prior to December of 2016 regarding the need to evaluate the impact of future audits on staffing.**

Based on prior reports from the Monitor and interviews with involved staff, the Board became aware that prior administrations had discontinued audits to ensure the compliance of LVNs and PTs with the continuing education requirements for re-licensure. Additionally, the Monitor's report specified significant noncompliance in the population audited.

Those actions positively impacted the number of cases referred to and the number closed by the Enforcement Division; however, those actions also impacted the Board's achievement of its mandate of consumer protection. Based upon such actions, the continued licensure of a safe and competent workforce of LVNs and PTs was an issue of significant concern.

As a result, the Executive Officer implemented significant changes.

- a. The EO directed an audit of approximately 30% of the population of LVNs and PTs licensed between 2012 and 2016. That audit was to be completed in a staggered fashion.
- b. The audit process was revised. Additional staff were assigned to parts of the process.
- c. Historically, the Board's audits were completed by the Post Licensure Education unit of the Licensure Division. The unit was staffed by one (1) Program Technician.
- d. Effective December 2016, the Post Licensure Education Unit was moved to the Education Division.

The compliance audit continues in progress.

Based on work completed to date:

- 1) Confirmed Licensee Compliance - 99.69%;
- 2) Questionable Licensee Compliance – 0.27%

3) Confirmed Licensee Noncompliance - 0.04%

- Was the Board aware that the EO had decided to send out this 58,000 mailer through December and that DCA's Business Services was being utilized for that purpose?

It is not common practice that Board Members be notified of bulk mailings issued by the Board in regards to the day to day operations.

- Does the Board believe, as is recommended in the Background Paper, that all future work on this audit should cease and that it move ahead with setting up a more responsible and realistic CE compliance program?

The Board does not concur with the recommendation that all future work on the audit should cease. Given prior actions and presented reports, it is imperative to establish a baseline of compliance.

Existing regulations require licensees to:

1. Submit proof of completion, during the preceding two years of 30 hours of continuing education acceptable to the Board as a condition of licensure renewal; and
2. Maintain a record of continuing education courses taken during the preceding four (4) years.

Thus the current audit includes individuals holding VN and PT licensure between 2012 and 2016.

- **ASSEMBLY ISSUE #10: ENFORCEMENT PROGRAM.** *What is the BVNPT's progress on implementing the recommendations from the Committees, Monitor, and DCA?*

**RECOMMENDATION:** The BVNPT should update the Committees on its progress so far in reducing its legacy backlogs and its timelines for implementing recommendations rejected because of staffing, licensing, labor, or backlog issues.

**SENATE ISSUE #15: ENFORCEMENT IMPROVEMENTS.** *It does not appear as if the initial efforts by the Board to make improvements in its enforcement program (and possibly its other programs such as licensing and school approval) and to address many of the recommendations of the Administrative and Enforcement Monitor are being implemented.*

**RECOMMENDATION:** The Board should report to the Committees on what steps it is taking and what improvements it believes it has made to its Enforcement Program since its last review in 2015 and

pursuant to the recommendations of the Monitor, and why it appears as if many of these changes are not taking place as indicated by the Monitor. The Board need only highlight the most critical changes it is making or plans to make to comply with the recommendations of the Monitor. The Board should also indicate whether or not it is aware of cases being closed with a NOW Memorandum and not being sufficiently investigated.

**1. Does the Board believe that its turnaround of its Enforcement Program has stalled as indicated by the Monitor? If not, why not?**

The Board recognizes the impact of staff changes on progress in correcting identified problems in the Enforcement Division. The Board is committed to continue problem correction.

Final selection of critical Division staff will be completed by March 30. Hiring of staff and onboarding will be completed as soon as possible thereafter.

**2. Is there a reason why the Board decided to only partially implement, or refused to implement recommendations of the Monitor to improve its Enforcement Program?**

Prior to the Monitor's report, the Board's Enforcement Task Force had identified and directed a number of critical changes in the Enforcement Division. Additional changes were recommended by the Monitor, some of which duplicate those directed by the Task Force.

The Board is in the process of completing several of the Monitor's identified recommendations. However, as noted in the Board's Sunset Report, implementation of some recommendations is prohibited due to bargaining and human resource considerations.

**3. Does the Board intend to comply with the recommendations of the Monitor in the future? The Board need only focus on the most critical changes that need to be brought about.**

The Board confirms its intention to work cooperatively with the Monitor to correct deficiencies in its Enforcement and Licensing programs. As noted previously, by June 30, 2017, the Board projects accomplishment of the following goals.

- a. Seek legislation authorizing Board's delegation of approval of default decisions to Executive Officer.
- b. In accordance with the Monitor's recommendation, the Board's Record of Conviction form will be revised to enhance clarity and reduce incidence of reporting non-required conviction history. Completion is projected by June 1, 2017.

- c. Complete implementation of procedures relative to screening and assignment of complaints that do not require field investigation. Completion is projected by June 30, 2017.
- d. Continue refinement of case coding procedures and practices.

➤ **ASSEMBLY ISSUE #8: WORK-EQUIVALENCY.** *Should the BVNPT modify the work-equivalency pathway to qualifying for the licensing examination, or “Method 3”?*

**RECOMMENDATION:** The BVNPT should provide the Committees with specific enforcement data relating to “Method 3” licensees or, if unavailable, work with its enforcement committee, the DCA, the OIS, and any other parties necessary to modify its enforcement processes to begin collecting data before limiting any licensing options available applicants.

**SENATE ISSUE #13: EQUIVALENT EDUCATION AND EXPERIENCE LICENSURE.** *Should the current requirements for licensing VN and PT applicants based on equivalent education and/or work experience be modified and enhanced as recommended by the Board?*

**RECOMMENDATION:** There does not appear to be sufficient justification presented by the Board at this time to make any changes to the equivalent education and/or work experience pathway for licensure.

Pursuant to existing statutes [Business and Professions Code §§ 2841.1 (VN) and 4501.1 (PT)], the Board is mandated to ensure consumer protection. Consumers include patients, families, and students. The Board achieves its mandate through the education, licensure, and professional practice of safe and competent LVNs and PTs. When licensees fail to practice safely, and competently, the Board takes disciplinary action to address the licensee’s noncompliance and continue consumer protection.

Nationally and statewide, significant changes have been identified in the incidence and classification of illnesses, diseases, and disorders, escalating population growth, and scientific and technological advancements. Such changes necessitate an increasingly competent workforce to ensure protection of the consumer

Under current law, applicants may qualify for licensure based on the possession of either education or experience, or any combination of both education and experience that is equivalent to the minimum requirements for an approved program. Eligibility for testing is determined based upon the regulatory requirements set forth in sections 2516 and 2575 of title 16 of the California Code of Regulations, often referred to as the “equivalency method” or “Method 3.”

Moreover, as presented in the Little Hoover Commission report, “**Jobs for Californians: Strategies to Ease Occupational Licensing Barriers, Report #234, October 2016,**” the removal of barriers to occupational licensing is recommended. Specifically, Recommendation #8 states,

“The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths.”

The Board supports this recommendation.

The Board also acknowledges and supports the desires of individuals seeking career advancement. However, published examination statistics confirm that pass rates for candidates seeking licensure based on the completion of equivalent education and experience are substantially lower than that of program graduates. Further, analysis of program completion statistics in comparison to the population of applicants seeking VN and PT licensure based on equivalent education and experience indicates increased program utilization for candidates who complete academic requirements but fail exit examinations. Those candidates are unable to pass the licensure examination; however, in a significant number of cases, the candidate is left with exorbitant expenses as a result of their educational experience. All too frequently, they are unable to repay educational loans, etc. and are forced into default. Often, such defaults result in increased costs to consumers. Those consumers include clients and students.

Ultimately, current enforcement statistics available to the Board do not provide the ability to collect data specific to the method by which the licensee qualified for licensure. The Board will seek approval from DCA’s Change Control Board to modify BreEZe to allow the collection of data relative to the method of qualification for licensure. Such modification is required to afford the capability to obtain statistics on licensees who practice in an incompetent or unprofessional manner.

- **SENATE ISSUE #8: COSTS FOR VN AND PT PROGRAM APPROVAL.** *The Board has indicated that based on a recent fee study conducted by Capital Accounting Partners that it should be given authority to charge for the costs to the Board of approving both VN and PT educational programs.*

**RECOMMENDATION:** The Committee should work with the Board and BPPE to determine what steps are necessary for the Board to receive necessary resources to cover its costs of VN and PT program approval. The Committees may wish to authorize the Board to receive reimbursement from BPPE for VN and PT program approval it conducts for institutions overseen by BPPE. The Board should work with public education institutional segments to determine what resources the Board may be provided for VN and PT education and training program approval offered at public institutions.

The Board's sole sources of revenue are licensee and applicant fees. The Board receives no monies from the State's General Fund. Historically, the Board has provided services and absorbed all costs associated with the approval of VN and PT programs. Neither new nor existing programs have been required to pay for services provided.

The Board has identified an increase in the time and costs required for program approval. That increase results from the increased growth in the number of programs.

VN and PT programs are offered by Community Colleges, Adult Schools, and Regional Occupational Centers, or may be based in hospitals. Due to decreased funding, many public institutions were forced to cease program operation. Concurrently, the number of private institutions has escalated. Conversely, the Board has also identified a sharp decline in the quality of proposals submitted for approval.

In 1985, community colleges comprised 70% of the total number of approved and pre-approved VN and PT programs; private programs comprised the smallest number of programs. As of January 27, 2017, of the total programs, 57.49% are proprietary programs; 28.47% are community college based programs; 2.99% are based in regional occupational centers; and 10.78% are based in adult schools.

Based on a thorough analysis of proposals including detailed curriculum proposals, the Board's consultant staff identify areas of noncompliance and elements that will negatively impact student achievement. Such proposals typically are 500 to 2000 pages in length. The consultant also ensures the curriculum contains required complex scientific content that is presented in a sequence that results in students' progressive mastery. The consultant staff then is required to communicate required corrections to the submitting individual or institution and ensure correction. Such actions are required to ensure the approval of programs that provide the knowledge, skills, and abilities required to ensure a safe and competent workforce. As the quality of proposals has declined, costs and time necessary to complete required processes have escalated.

Following approval, such programs utilize the approved curriculum to obtain approval of accrediting agencies. Such accreditation is required to obtain access to other State and Federal funding for students.

The Board communicates and works collaboratively with the BPPE in the review and monitoring of VN and PT programs offered by private postsecondary institutions. The Board notifies individuals seeking initial approval that approval by BPPE is also required prior to commencement of the initial class of students.

BPPE approves the institution's overall operations including the financial structure, physical building, etc. That approval specifies types of programs institutions may offer. However, the Board is solely responsible for the analysis and approval of the discipline specific curricula by which the institution educates VN and PT students.

The Board actively inspects such programs to identify areas of noncompliance and specifies corrective actions. For those programs that fail to correct identified noncompliance, the Board takes action up to and including revocation.

The Board is willing to meet with the Bureau to resolve issues related to the provision of services and costs incurred for program approval.

- **SENATE ISSUE #9:** **APPROVAL OF VN AND PT PROGRAMS.** *Is the Board aware of any particular problems that appear to be occurring regarding the approval of VN and PT programs? Should this process be changed in any way to make it more effective and efficient and the Monitor be utilized to provide recommendations on changes which should be made? Is the Board actively collaborating with BPPE to approve schools? What is the status of the moratorium on school applications and why did it have to be extended for one more year for a total of two years (February 2014 to February 2016)? Are there any more delays in the approval of schools?*

**RECOMMENDATION:** The Board should not place any further moratoriums on the approval of VN or PT programs. The DCA should expand the Monitor's contract to include a review of the processes and operation of the Education Division and the use of Nurse Education Consultants for the review, evaluation, and recommendations to the Board for provisional or full approval of VN or PT programs.

As noted in the Board's 2014 Sunset Report, the Board experienced a critical shortage in the Nursing Education Consultant (NEC) classification that dates as early as 2007. From 2009 through 2013, 80% of the Board's NEC positions were vacant. In November 2014, 60% of the NEC positions remained vacant. That prolonged shortage severely impeded the Board's ability to timely and consistently respond to existing and proposed educational programs, consumer requests for clarification of the VN and PT scopes of practice, and other critical issues. Actions taken by the Board and DCA were unsuccessful in achieving resolution.

At that time, there was a backlog of 146 applications seeking approval to commence new programs. After consultation with the assigned DCA legal counsel, the Board approved a moratorium on the approval of new programs. That moratorium ended February 28, 2016. During that time, the backlog was reduced to three (3) applications.

Since that time, seventeen (17) new applications and six (6) proposals have been submitted. As of January 15, three (3) proposals awaited analysis. Five (5) educational institutions [VN – 4; PT – 1] reported continued development of the curriculum and securing educational resources required for submission of a complete proposal for program commencement.

As stated in the Board's 2016 Sunset Report, the Board was able to fill all NEC vacancies after implementing 'home – based' employment.

➤ **ASSEMBLY ISSUE #13: EDUCATIONAL CITE AND FINE. *Should the BVNPT Establish a cite and fine program for educational programs?***

**RECOMMENDATION:** The BVNPT should discuss why it believes it needs a cite and fine program for educational programs, how a new cite and fine program might impact its enforcement workload and backlogs, and how a cite and fine program will provide benefits beyond provisional approval.

**SENATE ISSUE #10: CITE AND FINE VN AND PT PROGRAMS. *The Board Is requesting that the legislature establish a citation and fine program to be used by the Board against VN and PT programs that are failing in their attempts to remain compliant with VN and PT regulations for which they may be placed on provisional approval.***

**RECOMMENDATION:** The Board should be not be given authority to cite and fine provisionally approved VN and PT programs but rather should work with BPPE, which has cite and fine authority, to quickly initiate action against institutions not meeting the requirements for quality of a VN or PT program.

The Board has requested establishment of a Citation and Fine Program to correct noncompliance **prior** to placement of VN and PT programs on provisional approval. The requested Citation and Fine Program is **not** requested for VN and PT programs on provisional approval.

Existing statutes authorize the Board to approve educational programs leading to VN and PT licensure. The Board is also authorized to inspect such programs to ensure compliance with statutory and regulatory requirements. Upon receiving a report of program noncompliance, if the Board determines that any approved VN or PT program is not maintaining standards required by the Board, notice thereof in writing specifying defects shall be immediately given to the program. If those defects are not corrected within a reasonable time, the Board is authorized to revoke approval and remove the program from the approved list.

The Board has identified an increased incidence of program noncompliance. Programs knowingly fail to comply due to the absence of consequences. Such noncompliance results in a monetary benefit to the program. However, noncompliance reduces educational quality and impairs student achievement of educational objectives. As a result, the student incurs expenses as a result of the decreased program quality, is frequently unable to pass the applicable licensure examination, and thus lacks the ability to repay state and federal loans. The student then defaults on payment. That default results in increased costs to consumers.

Establishment of a Citation and Fine Program would provide an effective tool to reduce program noncompliance **prior** to placement on provisional approval.

This proposal was included with the Fee Audit Report presented to the Board on August 26, 2016, and October 21, 2016. On October 21, 2016, the Board accepted the report and adopted a motion to seek an author for legislation to establish fees for educational programs.

- **Does the Board believe that being able to cite and fine those programs that have provisional approval will be the best way to assure that the program is meeting the requirements for approval established by the Board or does it believe, as indicated in the Committees Background Paper, working with the BPPE to assure compliance may be a better approach?**

The Board has requested establishment of a Citation and Fine Program to address noncompliance of VN and PT programs **prior** to placement on provisional approval. Establishment of a citation and fine program would provide an effective tool to reduce program noncompliance **prior** to placement on provisional approval.

Establishment of a Citation and Fine Program would not reduce the individual or joint collaborative efforts of the Board and BPPE.

- **SENATE ISSUE #14**      **CLINICAL ROTATION AVAILABILITY. *As indicated by the Board, programs have identified difficulties in the adequacy of available clinical programs that provide clinical experience, especially for VN programs.***

**RECOMMENDATION:** The Board should contact existing schools that will share clinical placement space with a potential new or expanding program to comprehensively evaluate the impact of new programs prior to approval. The Board should also consider prohibiting program payment for clinical placements, and work with the Board of Registered Nursing in its discussions with programs and facilities to determine a long- term solution to managing clinical placements.

#### **RESPONSE**

#### **TECHNOLOGY ISSUES.**

- **ASSEMBLY ISSUE #14: BREEZE COSTS. *Is the BVNPT concerned about ongoing costs and staff redirection for BreZE implementation?***

**RECOMMENDATION:** The BVNPT should discuss its progress on improving its licensing processes with regard to BreZE, and cost projections it may have, and discuss any other BreZE improvements or problems.

- **SENATE ISSUE #7: **IMPLEMENTATION OF BreZE. *It is unclear what the Impact has been on the Board since the implementation of the BreZE system in 2016)*****

**RECOMMENDATION:** The Board should update the Committees about any future impacts to the Board's programs in implementing the BreEZe system.

The Board successfully transitioned to the new BreEZe licensing and enforcement system on January 19, 2016. The new system provides enhanced on – line services and accessibility for consumers relative to the submission and processing of applications for initial issuance and renewal of licensure; name and address changes; licensure verification; submission of complaints against licensees and educational institutions; and other critical processes.

Boards implementing the new system have identified positives as a result of BreEZe; however, negatives have also been identified. As noted in the Board's Sunset Report, staff have reported that implementation has resulted in increased time required to run various reports, process requests and applications for initial licensure and renewal of licensure.

The Board recognizes that some of the voiced concerns result from implementation and lack of familiarity with a new system. Based on more recent staff feedback, some of those concerns have decreased as staff have become familiar with the system.

The Board and other Boards have submitted requests to DCA's Change Control Board seeking modifications and enhancements. If approved, those modifications and enhancements will improve completion of required processes. At this time, the Board does not anticipate a negative impact from further implementation.

### EDITS TO THE PRACTICE ACT.

- **ASSEMBLY ISSUE #15: TECHNICAL EDITS.** *Are there technical changes to the Practice Act that may improve the BVNPT's operations?*

**RECOMMENDATION:** The BVNPT should continue to work with the Committees on potential changes it may have, and discuss any other BreEZe improvements or problems.

### RESPONSE

### CONTINUED REGULATION OF THE PROFESSION.

- **ASSEMBLY ISSUE #16: SUNSET EXTENSION.** *Should the current BVNPT be continued and continue regulating the practice of LVNs and PTs?*

**RECOMMENDATION:** Given the number of outstanding issues and competing perspectives, it would be helpful to hear the testimony of the DCA, the Monitor, the BVNPT, and stakeholders at the hearing before the Assembly Committee on Business and

Professions makes a recommendation on the sunset extension date of the BVNPT.

**SENATE ISSUE #16:** **CONTINUED REGULATION BY THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS. *Should the current Board be continued and be allowed to continue regulating the practice of Vocational Nurses and Psychiatric Technicians?***

**RECOMMENDATION:** Unless the Committees have confidence that this Board will be able to deal with both the staffing issues and other issues as identified in this Background Paper, as identified by the Monitor and as identified by the DCA, the Committees may wish to consider recommending to the Governor and Legislative leaders that the current Board members be removed and replaced with new appointee, and that the newly reconstituted Board immediately move to have both the Executive Officer and Assistant Executive Officer positions filled. In addition, the responsibilities of the current Administrative and Enforcement Monitor should be expanded to review and evaluate both the licensing and educational responsibilities of the Board. If the Board is not immediately reconstituted, and the Committees do not believe that the Board is adequately addressing the issues and problems, that have been identified, then the Committees should consider removing the extension of the sunset date for the Board and allowing it to become a bureau for a period of one year so that the DCA can deal with the problems and issues as identified by the Committees, and to allow sufficient time for appointments to be made to a newly reconstituted Board which would become operational on January 1, 2019.

### **RESPONSE**