



BOARD MEETING MINUTES

Monday, December 18, 2017

**Department of Consumer Affairs
HQ1 Hearing Room South – 102
1625 North Market Boulevard
Sacramento, CA 95834
Telephone: (916) 263-7845
Fax: (916) 263-7859**

**10:00 a.m. to 5:00 p.m.
OR UNTIL COMPLETION OF BUSINESS**

BOARD MEMBERS PRESENT:

Tammy Endozo, LVN Member, President
Bernice Bass de Martinez, Public Member, Vice-President
Paula Amezola de Herrera, Public Member
Aleta Carpenter, Public Member
John Dierking, Public Member
Samantha James-Perez, PT Member
Ken Maxey, Public Member
Cheryl C. Turner, Public Member
Donna Norton, Public Member

BOARD MEMBERS ABSENT:

Paul Sellers, Public Member

STAFF PRESENT:

Cheryl Anderson, Executive Officer
Brian Vu, Enforcement Division Chief
Jay Prouty, Enforcement Program Manager (Discipline Unit)
Kelli Williams, Complaint Unit Manager
Rocio Llamas, Enforcement Program Manager (Probation Unit)
Kristine Dano, Discipline Unit
Rochelle Lee, Administration and Support Services Manager
Jen Johnson, Licensing and Evaluations Manager
Siqi Chen, Lead Analyst
Vicki Saavedra, Lead Analyst
Geraldyn Maracino, Associate Governmental Program Analyst
Jenny Penales, Board Analyst
Kenneth Swenson, Legal Counsel, Department of Consumer Affairs

Agenda Item 1 – Call to Order

The meeting was called to order by **Ms. Endozo**, at 10:04 a.m. on December 18, 2017, at the Department of Consumer Affairs, HQ1 Hearing Room South 102, 1625 North Market Boulevard, in Sacramento, California. Board Members introduced themselves, with the announcement that **Mr. Maxey** was to arrive late. Establishment of quorum was confirmed.

Agenda Item 2 – Pledge of Allegiance

Ms. Norton led those assembled in the pledge of allegiance.

Agenda Item 3 – Introduction of Board Members and Staff

Ms. Anderson, Executive Officer, introduced herself and staff present. **Counsel Swenson**, Board Counsel, introduced himself.

Agenda Item 4 – Public Comment on Items Not on the Agenda

Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a)).

Public Comment(s):

Ms. Endozo asked if there were any comments from the public.

- No public comments were made.

Agenda Item 5 – Report and Discussion Regarding Administrative and Enforcement Monitor Final Report, pursuant to Business and Professions Code § 2847.5, AB 179 (Bonilla). Ben Frank, Administrative and Enforcement Monitor

A. Discussion Regarding Administrative and Enforcement Monitor Final Report.

Mr. Ben Frank, Chief Executive Officer of Benjamin Frank LLC, introduced **Mr. Brian Clifford**, Senior Planning and Implementation Manager, as the “Enforcement/Monitor Project Manager”, and **Ms. Stephanie Whitley** from the Division of Investigation (DOI).

Mr. Frank presented the Board Members with an overview of his Final Report, stemming from AB 179’s mandate of appointment of a Board Administrative and Enforcement Monitor.

- A copy of the Benjamin Frank LLC report, Administrative and Enforcement Program Monitor Final Report, dated October 24, 2017, was made available for public viewing at the Board meeting. **Mr. Frank** said this report is based on data and information collected through October 2017 but also incorporates data from November 2017. His 58 recommendations for improvements are found in this report as an Attachment: **Final Recommendations of the Administrative and Enforcement Program Monitor**.

Board Discussion:

Ms. James-Perez stated that she wanted to put on record the following:

- Original task enforcement recommendations are being taken care of and the Enforcement Committee is actively working with both DCA and Board staff to address issues.
- Creation of an Intake Screening Unit in the Enforcement Division has been approved by Human Resources.
- The Board recognizes that not all enforcement cases are suitable for stipulated settlement and that the Board makes decisions based on its best interest to protect the public.

Ms. James-Perez referenced recommendations 38, 43, and 45, regarding Mr. Frank's assessment in relation to the participation and cooperation between the Board and DOI, inquiring why they were not fully implemented recommendations. She asked if there were any problems that needed to be addressed with the working relationship.

- **Ms. Whitley** commented that she compared the recommendations to when she first assisted with the Board two years ago, as the situation was different because there was no management. The current situation is different, as the Board now has an Enforcement Chief, **Mr. Vu**. She confirmed they have a great working relationship.

Ms. James-Perez asked **Mr. Frank** what it would take for the goal of cooperation with DOI to be fully implemented.

- **Mr. Frank** explained that DOI staff currently play a support role, giving suggestions to staff. Beginning in January 1st with AB 1229, DOI staff has permission to utilize their expertise to implement needed procedural changes in the Enforcement Division.

Ms. James-Perez asked if there were any specific changes **Mr. Frank** expects to implement in the Enforcement Program on January 1st regarding AB 1229.

- **Ms. Whitley** stated that the most important change has taken place, which is the approval of the Intake Screening Unit by DCA's HR.
- **Mr. Frank** stated that he became aware of a resurfacing issue of completed field investigations that were not being promptly reviewed.

Ms. James-Perez asked **Mr. Vu** what is being done to take care of the situation.

- **Mr. Vu** stated that there are procedures that were amended. Once cases come back from Sworn or Non-Sworn staff, they become first priority. Reminders were sent out to all Complaint Unit staff, and procedures have been emphasized to state mandatory time frames. He also stated that management is responsible for pulling reports and understanding the reports that hold their staff accountable.
- **Mr. Frank** said that part of the solution is to separate some responsibility from the Complaint Unit and move it to the new Intake Screening Unit.

Ms. James-Perez asked for clarification if the citation desk position had been filled.

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- **Mr. Frank** commented that his finding was done in May and June.
- **Mr. Vu** confirmed that the citation desk has been filled.

Mr. Frank acknowledged that the Board needs to further develop and implement an additional screening process to determine if a field investigation is needed or it can be completed in screening and closed with a Notice of Warning (NOW).

- **Mr. Vu** and **Ms. Whitley** both agreed that this is the right solution to the problem.

Ms. Anderson stated that the new re-organization and re-classification of a vacant Investigation Unit position was approved by Human Resources and received in writing.

Ms. James-Perez asked if the Board was currently abiding by the Consumer Protection Enforcement Initiative (CPEI) matrix that eliminates what cases will be handled at which level.

- **Ms. Whitley** confirmed that the guidelines are being met to her knowledge.

Ms. Turner let it be known that the Board selected **Ms. Anderson**, who was sworn in, to be the permanent Executive Officer.

Mr. Frank recommended a process for the Continuing Education (CE) Audit. Each month the Board would take a certain number of licensees that are renewing and send out letters requesting them to submit documentation supporting they completed their CE units. Licensees that do not comply should be referred for a citation. He also recommended having one CE audit specialist and/or transfer that position to the Discipline Unit.

- **Ms. Bass de Martinez** stated that the Evaluations Committee will be meeting to re-start the procedural process of the CE Audit.

Ms. Bass de Martinez asked, in reference to AB 1229 effective January 1, 2018, if there was any transition plan in place.

- **Mr. Clifford** answered the question by stating that there were too many variables to have a set plan. It is all contingent on who the Governor appoints and when.

Ms. Carpenter asked **Mr. Frank** how the Board is going to fill positions that he believes are necessary for a sustainable solution if external applicants are hesitant to apply, due to reputation as stated in Mr. Frank's report.

- **Mr. Frank** stated that the Board had difficulties filling positions in the last 21 months. In some cases, selected candidates cancel or do not show up; some vacancies also do not have any qualified candidates. It starts with the Board, as they set the tone and influence the work culture down to management. He also stated that the Board needs a fully rebuilt Executive Management team.
- **Ms. James-Perez** said that there was a plan of restructuring the Org Chart when there was a new Executive Officer that was never implemented due to a complete lack of cooperation with other agencies.
- **Ms. Anderson** stated that she had worked with representatives from the Office of Human Resources in August (2017) to redefine the type of individual needed and the steps required to fill the Assistant Executive Officer position. Candidates were identified, and interviews are currently being scheduled.

Mr. Maxey asked **Mr. Frank** if there were any positions that should be discontinued.

- **Mr. Frank** stated that his scope of work did not include a complete staff analysis for the entire Board. His scope was predominantly enforcement. He advocated for the recommendation of the new Intake Screening Unit by reclassifying and redirecting positions. Enforcement has sufficient positions in the next couple of years. **Mr. Frank** acknowledged that the transition process will take 1–2 years for the Board to be successful.

Ms. Amezola de Herrera asked if there was any action that the Board is not doing.

- **Mr. Frank** stated that the Board depends on the Executive Officer to build and sustain a supporting management structure. There are big holes in the management structure. The Board's responsibility is to make sure that there is a management structure to depend on.

Mr. Dierking asked for clarification if there will be any additional allocated positions to create the new Intake Screening Unit with the existing Org Chart.

- **Mr. Frank** stated that the field investigation case review function is being done by staff in the Complaints Unit, which includes the intake and screening functions. The Board is to take those positions and responsibilities and place them in the new unit. DCA has already approved reclassification of a special investigator position to become a manager position for the new Intake Screening Unit.

Public Comment:

SEIU Local 1000 representative **Mr. Tim Camer** thanked Board Members and staff and recognized all the work put in. He noted that it will take time for the staff issues to get resolved. He encouraged the Board to maintain its due diligence and to keep up the efforts being done.

Mr. Chen, Lead Evaluation Analyst in the Board's Licensing Evaluation Unit, said he wanted to make a comment in support of Executive Officer **Ms. Anderson**. He stated that she is a very knowledgeable person and works hard in her given capacity. He wanted to thank her for the hard work and the pleasure of working with her.

Ms. Saavedra, Lead Evaluation Analyst in the Board's Licensing Evaluation Unit, stated that she can come to Executive Officer **Ms. Anderson** with questions and concerns and knows that she will be treated with respect and dignity. She also said that **Ms. Anderson** has taken on the Executive Officer role with grace and that she has the upmost respect for her.

Board Member Vote:

The Administrative and Enforcement Program Monitor Final Report was voted on.

Motion: To accept/file Ben Frank's Enforcement Monitor Report
Moved/Seconded: Mr. Maxey/Ms. Norton

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Member Name	Yes	No	Abstain	Absent	Recusal
Tammy Endozo	X				
Bernice Bass de Martinez	X				
Aleta Carpenter	X				
Paul Sellers				X	
John Dierking	X				
Paula Amezola De Herrera	X				
Samantha James-Perez	X				
Cheryl Turner	X				
Ken Maxey	X				
Donna Norton	X				

B. Recommendations and Possible Action Regarding Administrative and Enforcement Monitor Final Report.

Ms. James-Perez stated that the Enforcement Committee drafted written responses to **Mr. Frank's** report to present and then to solicit Board member feedback. She provided a draft copy of the document titled, Response to the Administrative and Enforcement Monitor Final Report, and dated November 30, 2017. The Board agreed with the majority of the 58 Final Recommendations. **Ms. James-Perez** briefly read through the agreed, partially-agreed and disagreed recommendations, as follows:

Numbers 1–8: agreed

- **Mr. Frank** responded to **Ms. Carpenter's** questions by reassuring that the full-length report gives credit to staff and shows the extent of their implementations.

Number 9: partially-agreed

Number 10: disagreement (specifically regarding the CLPX closure code)

- **Mr. Frank** stated, this recommendation was for all closure codes not just CLPX.

Numbers 11–17: agreed

Number 18: disagreed (issue was resolved)

Numbers 19-32: agreed

Numbers 33–34: disagreed (issues were resolved)

Number 35: agreed

Number 36: disagreed (major issue was resolved)

Number 37: agreed

Number 38: agreed (the "disagreed" typo on the hardcopy should read "agreed")

Number 39: agreed

Number 40: disagreed (issue of hiring **Ms. Anderson** as EO was implemented)

Number 41: agreed

Number 42: disagreed (major issues were or are being resolved)

Numbers 43–47: agreed

Number 48: disagreed (major issues were or are being resolved)

Number 49: partially-agreed

Number 50: disagreed (major issues were or are being resolved)

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- Numbers 51–53: agreed
- Number 54: disagreed (major issues were or are being resolved)
- Number 55: agreed
- Number 56: disagreed (major issue was resolved)
- Numbers 57–58: disagreed (major issues were or are being resolved)

Ms. Endozo asked if there was any discussion or recommendations to the responses for the Monitor's report.

Mr. Dierking commented that the work of the committee is terrific, and it fairly reflects his sentiments regarding the responses.

Ms. Turner also stated that she agrees. It is professionally done, and she is glad that they were able to turn it around so quickly. It was a great report.

Ms. Norton agreed with the sentiments of fellow Board Members. She stated that they did a great job relating the implementation status of the recommendations. She asked if there was anything from discussions and committees that came up that we do not know about.

- **Ms. James-Perez** responded that the committee provided some supporting data to the things that have not been implemented and why. Recommendations that are not yet implemented will continue to be worked on actively. Enforcement Division issues involve plans to work collaboratively with Board staff and DOI. Some issues cannot be implemented because they involve other agencies.

Ms. Amezola de Herrera stated that she was thankful for the thorough assessment of the recommendations and wanted to put on record that there is a 33% disagreement with the report by the Monitor and a 67% accuracy. It is important for all the stakeholders to take that into account because it seems like the Board is doing a lot of great work and the current report by the Monitor does not present the work being done. The Board is on the right path, and it just needs time.

Ms. James-Perez stated that, if there were no comments or changes, she would move to approve the response to the administrative enforcement monitor. The Enforcement Committee's draft report would become the final response to the Administrative and Enforcement Program Monitor Final Report, with the correction of number 38 saying that it is "agree" instead of "respectfully disagree". **Ms. James-Perez** moved to approve and to make it the final report to be sent to Executive Committee for Board President signature.

Ms. Bass de Martinez thanked her colleague that went through and identified the percentage of agrees and disagrees. She stated that the percentage be included in the final comments, which would be helpful.

Mr. Frank commented that some of the disagreements of progress of select recommendations was due to the timing. His report reflected work up until the end of October. He acknowledged that the Board had made progress after, however, he had

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absolute timeframes to meet. As a result, the Board's percentage of accurate to inaccurate responses does not take into account his due dates.

Ms. Amezola de Herrera confirmed that the Board based its responses according to the deadline date it was given. She suggested that **Mr. Frank**, going forward, should always make mention of time delay in the body of his report for clarification purposes.

Roll Call Vote:

Motion: To accept the Enforcement Committee's report, with the caveat of the changes agreed upon by this Board of the minor non-substantive changes only to be made in the future, and the agreed upon correction of number 38 that should say the Board agrees with the partially implemented status.

Moved/Seconded: Ms. James-Perez/None required

Member Name	Yes	No	Abstain	Absent	Recusal
Tammy Endozo	X				
Bernice Bass de Martinez	X				
Aleta Carpenter	X				
Paul Sellers				X	
John Dierking	X				
Paula Amezola De Herrera	X				
Samantha James-Perez	X				
Cheryl Turner	X				
Ken Maxey	X				
Donna Norton	X				

This initial, open-session meeting was adjourned at 2:34 pm.

CLOSED SESSION

The Board will convene in closed session pursuant to Government Code section 11126, subdivision (c)(3) to deliberate and vote on disciplinary matters.

Adjourn Closed Session.

Agenda Item 6 – RETURN TO OPEN SESSION

Agenda Item 7 – Suggestions for Future Agenda Items

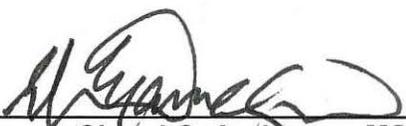
Agenda Item 8 – Adjournment

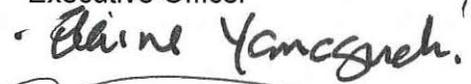
The meeting was adjourned at **xxxxx** pm.

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. The Board plans to webcast this meeting on its website at <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limited resources. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification to participate in the meeting may make a request by contacting: Jenny Penales, Administrative Assistant at (916) 263-7845, email: Jenny.penales@dca.ca.gov or send a written request to the Board of Vocational Nursing and Psychiatric Technicians, 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945. Providing your request is a least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.

Prepared by:  Date: 3-5-2018
Cheryl C. Anderson, MS, RN,
Executive Officer

Approved by:  Date: 3-8 3-5-18
Tammy Endozo, LVN
Board President