

Board of Vocational Nursing and Psychiatric Technicians

Sunset Review Report

October 1, 2010



Submitted to the Senate Committee
on Business, Professions & Economic Development

California Board of Vocational Nursing and Psychiatric Technicians

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Table of Contents

Part 1. Background Information & Overview of the Current Regulatory Program

I. Background & Description of the Board & Professions

A. Mission, History & Function of the Board	1
B. Board Composition.....	2
C. Committees of the Board	3
D. Professions Regulated.....	3
E. Practice Act vs. Title Act.....	5

II. Major Changes Since the Prior Sunset Review

A. Strategic Planning	6
B. Legislative Actions	6
C. Regulatory Actions.....	9

III. Major Studies Conducted by the Board

A. Psychiatric Technician Occupational Analysis	12
B. Licensed Vocational Nursing Occupational Analysis.....	13
C. Annual School Program & Clinical Facility Surveys	13
D. Vocational Nurse Education Fund.....	16
E. Healthcare Shortages & Job Creation Efforts.....	16

IV. Budget & Staff

A. Current Fee Schedule & Statutory Fee Ranges	18
B. Revenue & Expenditure History	19
C. Expenditures by Program Component	20
D. Fund Conditions	20
E. Organization Chart.....	21

V. Licensing Division Activities

A. Licensure Statistics & Statement of Issues Information	22
B. Education, Experience & Examination Requirements	23
C. Criminal History and/or Past Disciplinary Actions ..	25
D. Examination Requirements.....	25
E. Examination Pass Rates	27
F. Average Processing Times.....	28
G. Licensing Backlog & Reduction Plan	29
H. Continuing Education & Competency Requirements	30
I. Comity/Reciprocity with Other States	30
J. Temporary Licensing Process	31

VI. Education Division Activities

A. California Approved & Accredited Programs 32
B. Program Approval & Accreditation 34
C. Curriculum Development..... 35
D. Program Evaluation 36
E. Provisional Accreditation 36
F. Other Education Division Activities 37
G. NEC Recruitment & Retention Issues..... 40

VII. Enforcement Division Activities

A. Enforcement Division Overview 41
B. Enforcement Initiatives 41
C. Consumer Protection Enforcement Initiatives & Related Activities 42
D. Enforcement Statistics 47
E. Applicant “Record of Conviction” Cases..... 49
F. Complaints Opened, Closed & Referred 50
G. Enforcement Backlog..... 52
H. Case Aging Data..... 53
I. Cite & Fine Program 57

VIII. Enforcement Expenditures, Cost Recovery, Restitution & Complaint Disclosure Policy

A. Average Cost for Disciplinary Cases. 59
B. Cost Recovery Efforts 60
C. Restitution Provided to Consumers... 62
D. Complaint Disclosure Policy... 62

IX. Consumer Outreach, Education & Use of the Internet

A. Consumer Outreach & Education..... 63
B. Use of the Internet..... 63
C. Customer Service Surveys..... 65

Part 2. Board’s Response to Issues Identified at Prior Sunset Review

X. 2002 Sunset Review Recommendations

A. Scope of Practice for LVNs and PTs. 66
B. Shortage of LVNs and PTs..... 67
C. Scholarship Program 68
D. Mandatory Reporting 69
E. Complaint Disclosure Policy... 69

XI. New Issues -- 2010 Board Recommendations

A.	Sunset Review	70
B.	Statutory Fee Range Maximums	70
C.	Mandatory Reporting	70

Table Index

Table #1:	Board Member Appointments	2
Table #2:	VN Scholarship Distribution... ..	16
Table #3:	Comparison of VN Program Distribution	17
Table #4:	Comparison of PT Program Distribution.....	17
Table #5:	Fee Schedules & Statutory Ranges	18
Table #6:	VN Program – Revenues & Expenditures	19
Table #7:	PT Program – Revenues & Expenditures....	19
Table #8:	Expenditures by Program Component	20
Table #9:	VN Program – Analysis of Fund Condition ..	20
Table #10:	PT Program – Analysis of Fund Condition	21
	BVNPT Organization Chart	21
Table #11:	Licensure Statistics & Statement of Issues Information..	22
Table #12:	VN Program – Examination Pass Rates....	27
Table #13:	PT Program – Examination Pass Rates	27
Table #14:	Average Processing Times.. ..	28
Table #15:	School Accreditation Data	32
Table #16:	Growth in Number of VN & PT Schools.....	32
Table #17:	New & Additional Student Admissions Approved Per Year	33
Table #18:	Salary Comparison Among Other State Agencies.....	40
	Chart A: Enforcement Workload	47
Table #19:	Enforcement Statistics.....	48
Table #20:	Complaints Opened, Closed, Referred for Investigation, Etc. ...	50
Table #21:	Case Aging Data – Average Number of Days to Process, Etc. .	54
Table #22:	Case Aging Data – DOI Investigation & Attorney General Time Periods	55
Table #23:	Citations & Fines	57
Table #24:	Average Costs for Disciplinary Cases	59
Table #25:	Cost Recovery Data	60
Table #26:	Complaint Disclosure Information... ..	62

(10/1/2010)

PART 1.

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

I. BACKGROUND & DESCRIPTION OF THE BOARD & PROFESSIONS

A. Mission, History and Function of the Board

The California Board of Vocational Nursing and Psychiatric Technicians (Board) protects the consumer from unprofessional and unsafe licensed vocational nurses (LVNs) and psychiatric technicians (PTs). Public protection is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions.

To protect the public, the Board:

- Establishes the minimum requirements for examination and licensure.
- Establishes educational standards for the accreditation of Vocational Nursing (VN) and PT schools in California.
- Adopts regulations to clarify education and licensure; school accreditation; practice requirements; and disciplinary standards for its licensees.
- Enforces the regulations governing the continued accreditation of VN & PT schools in California.
- Enforces the regulations governing LVNs and PTs by taking appropriate disciplinary action against incompetent or unsafe licensees efficiently and effectively.

Established in 1951 (VN Program) and 1959 (PT Program), the Board is responsible for administering the laws related to the education, practice and discipline of LVNs and PTs. The PT Certification Program was placed under this Board's jurisdiction due to the unique mental health and nursing care functions performed by PTs, i.e., implement procedures and techniques necessary for the treatment of clients with mental disorders and developmental disabilities.

In 1970, the PT Certification Program was changed to a licensure program based upon the passage of Senate Bill (SB) 298. To convert from a certification program to a licensure program, the law specified that Certified PTs would be made eligible for licensure (i.e., grandfathered) upon renewal of their certificate. In addition, any person, including persons employed in State Hospitals for the mentally ill, was made eligible for licensure upon evidence that he/she performed

PT services specified by Business & Professions Code (B&P), Section 4502, of not less than two years employment within the previous five years prior to January 1, 1970. Thereafter, the applicants for a PT license were required to comply with specific education and experience requirements and pass the licensure examination.

In 1998, the name of the Board was changed to the Board of Vocational Nursing and Psychiatric Technicians.

In 2007, due to a legislative mishap, the Assembly adjourned without taking up SB 797 which contained the statutory language required to extend the sunset date for the Board and three other licensing boards within the Department of Consumer Affairs (DCA). As a result, the Board became a Bureau operating under DCA for six months from July 1, 2008 through December 31, 2008. Two legislative bills were signed into law to re-establish the board [i.e., SB 797 and Assembly Bill (AB) 1545] effective January 1, 2009.

The Board oversees two distinct licensure programs. Each program has its own statutes and regulations, budget authority, curriculum requirements, examinations, and staff. The Board currently regulates the practice of approximately 114,040 LVNs and 13,085 PTs (effective 7/1/2010), the largest groups of LVNs and PTs in the nation. The Board also accredits and approves 205 VN Programs and 16 PT Programs in the State of California.

B. Board Composition

The Board is composed of eleven members with a public member majority (i.e., 6 public members and 5 professional members). Nine members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Pro Tempore. Six members of the Board constitute a quorum for transaction of business at any meeting.

Board members serve a critical role as policy and decision makers in disciplinary hearings, proposed disciplinary actions, accreditation of new schools, school survey visits, follow up reports on programs, examination development, contracts, budget issues, legislation, and regulatory proposals.

TABLE #1 -- BOARD MEMBER APPOINTMENTS				
Board Member Names	Composition	Appointed By:	Date Appointed	Term Expires
1. John Vertido, President	LVN Educator	Governor	9/15/2005	6/1/2012
2. Todd D'Braunstein, Vice Pres.	PT	Governor	9/15/2005	6/1/2012
3. Kevin Baucom	PT	Governor	9/14/2007	6/1/2011
4. Ling-Ling Chang	Public	Governor	2/11/2010	6/1/2013
5. Victor King	Public	Governor	2/11/2010	6/1/2013
6. Jessica Leavitt	Public	Senate	3/20/2009	6/1/2011
7. Mark Stanfield	LVN	Governor	4/23/2010	6/1/2012
8. Vacant	LVN	Governor	Vacant Since 7/12/04	
9. Vacant	Public	Governor	Vacant Since 6/1/08	
10. Vacant	Public	Assembly	Vacant Since 6/1/05	
11. Vacant	Public	Governor	Vacant Since 10/8/09	

C. Committees of the Board

Committees serve as an essential component of the full Board to address specific issues referred by the public or recommended by staff. The present committee structure does not require a quorum because any decision of the committee must be voted on by the full Board to become policy. The committees are composed of 2-3 Board Members who are charged with gathering public input; maximizing the use of resource staff and materials; exploring alternative approaches to issues; analyzing the data collected; and making a recommendation to the full Board. This is a cost-effective method for formulating realistic objectives and professional recommendations for timely discussion at the next scheduled Board Meeting. All committee meetings are open to the public.

Executive Committee – Created to develop policies and make recommendations to the full Board on matters regarding attendance and standards of conduct for the Board Members. Issues with the Executive Officer are brought to the Committee.

Education and Practice Committee – Created to solicit public input when addressing issues relative to accreditation, curriculum, education and practice requirements for LVNs and PTs.

Enforcement Committee – 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.

Legislative Committee – Created to review pending legislation impacting the Board, develop Board positions and submit them for Board ratification. Committee members and the Executive Officer represent the Board at legislative hearings.

Due to ongoing budget and travel restrictions and the need to minimize costs, committee meetings are not convened. Currently, any issue requiring Board action is brought before the full board at the next scheduled Board Meeting.

D. Professions Regulated

Licensed Vocational Nurses provide basic nursing care to clients under the direction of a licensed physician or registered nurse. While the LVN is not an independent practitioner, there is no requirement that a registered nurse or physician be present on the premises during the performance of duties.

The LVN utilizes scientific and technical expertise and manual skills to provide nursing care to assigned patients. Such knowledge and expertise is acquired by completion of an accredited school of vocational nursing or the equivalent as determined by the Board. Duties within the scope of practice of an LVN typically include, but are not limited to, provision of basic hygienic and nursing care;

measurement of temperature, pulse, respirations and blood pressure; basic assessment; documentation of data; performance of prescribed medical treatments; nursing interventions; observation and documentation of patient responses to treatments and interventions; participation in the development of nursing care plans; administration and documentation of prescribed medications; supervision of certified nurse assistants and unlicensed personnel; performance of skin testing; patient education; and performance of intravenous therapy and/or blood withdrawal (separate certification by the Board is required).

The LVN provides care for clients in a variety of health care settings. Typically, the LVN is employed in the following types of facilities:

- Skilled Nursing or Long Term Care Facilities
- Home Health Agencies
- Acute Care Hospitals
- Ambulatory Care Clinics
- Surgery Centers
- Physicians' Offices
- Correctional Facilities

Upon completion of additional specialized training, LVNs may also be employed in specialty care areas such as Intravenous Therapy Teams, Critical Care Units, Telemetry Units, Hemodialysis Units, Gastroenterology Laboratories and Genitourinary Laboratories. They may also be hired to teach vocational nursing students, certified nursing assistants, home health aides, or other allied health personnel.

[Note: In states other than California and Texas, the LVN is known as a licensed "practical" nurse (LPN)].

Psychiatric Technicians provide care for mentally disordered or developmentally disabled clients under the direction of a physician, psychologist, rehabilitation therapist, social worker, registered nurse or other professional personnel. While the PT is not an independent practitioner, there is no statutory or regulatory requirement that the aforementioned professionals be present during the performance of duties.

The PT utilizes scientific and technical expertise and manual skills to provide care and training for clients with mental disorders and developmental disabilities. Duties within the scope of practice of a PT typically include, but are not limited to, provision of basic hygienic, grooming and nursing care; measurement of temperature, pulse, respirations and blood pressure; basic assessment; documentation of client assessment data; performance of prescribed medical treatments; participation with the interdisciplinary team in the development of a plan of care that is based upon client need; basic nursing interventions; observation and documentation of client responses to treatments and interventions; administration and documentation of prescribed medications; supervision of pre-licensed or unlicensed personnel; performance of skin testing; behavioral management techniques; crisis intervention; sensory and perceptual development; client social and vocational training and education; and the facilitation of individual and group therapeutic activities. Separate certification is required for blood withdrawal.

The PT also provides care for patients in a variety of health care settings. Typically, the PT is employed in the following types of facilities:

- State Hospitals
- County, City, & Private Inpatient Psychiatric Facilities and Outpatient Mental Health Centers
- State Developmental Centers
- Correctional Facilities
- Psychiatric Emergency Assessment & Treatment Teams
- Public and Private Chemical Dependency Treatment Centers
- Sheltered Workshops & Vocational Training Centers
- Respite Care Teams
- Group Counseling Services

Currently, there is only one other state, Colorado, that licenses PTs. However, that licensure program differs from California's licensure program. Colorado issues a separate license in Developmental Disabilities and a license in Mental Disorders to eligible candidates.

Kansas offers a mental health technician license. Arkansas stopped licensing PTs in 1995 when the last of its PT education programs closed. However, those who were already licensed are allowed to renew their licenses and continue practicing. Also, through the "endorsement" process, the Arkansas Board continues to issue licenses to individuals holding PT licenses from California or Kansas.

E. Practice Act vs. Title Act

Generally, a "practice" act or law specifically defines and restricts certain activities or practices to only those persons who have obtained state approval. In contrast, a "title" act or law restricts the use of designated titles by persons who have obtained state approval.

The VN Practice Act and the PT Law can be characterized as *both practice acts and title acts*. Specifically, the VN Practice Act and the PT Law explicitly provide for the protection and restricted use of their respective occupational titles. In addition, the PT Law defines the PT practice and explicitly restricts performance of those services to licensed PTs.

Insofar as the general practice of medicine is restricted, the VN Practice Act specifically authorizes limited medical services and prohibits persons from assuming to practice as an LVN. Although the VN Practice Act does not prohibit the performance of nursing services by unlicensed persons, it does prohibit persons from assuming to "practice as an LVN." As such, the VN Practice Act can be characterized as a practice law with certain qualifications on the degree of actual practice restrictions.

II. MAJOR CHANGES SINCE THE PRIOR SUNSET REVIEW

A. Strategic Planning

The Board's Strategic Plan is updated annually to identify the strategic issues and trends impacting the Board and the professions it regulates. Successful achievement of the Board's strategic planning goals is measured by completion of applicable objectives, consumer surveys, meetings with licensees, consumer groups, program directors, professional organizations and staff input.

B. Legislative Actions

The following legislative actions were submitted and/or enacted during the past eight years:

1. **Bill Number: AB 2484 (Carter)**

Subject Matter: **Fee Range Change Proposal**

Sections Affected: B&P Code 2895 (VN) and 4548 (PT)

Effective Date: **None**. On 4/6/2010, the Assembly B&P hearing was canceled at the request of the author due to written opposition from two major nursing organizations and one PT organization.

Summary of Action: Existing law requires the Board to set various fees with specified minimum and maximum amounts. This proposal would have increased the maximum fee amounts for the Board's primary revenue categories (i.e., application, re-examination, initial license, biennial renewal and delinquent renewal). According to the DCA Budget Office, the Board is facing a major fund deficit because its current fees are at the statutory maximums.

2. **Bill Number: SB 821 (Senate B&P), Chapter 307, Statutes of 2009**

Subject Matter: **Interim Permits**

Sections Affected: B&P Code 2872.2 (VN) and 4510.1 (PT)

Effective Date: January 1, 2010

Summary of Action: This bill clarified that the application for an interim permit must be submitted no later than 4 months after completion of a board accredited program, and limited the use of the permit to 9 months pending the results of the first examination and 6 months pending the issuance of the initial license.

3. **Bill Number: AB 1416 (Galqiani)**

Subject Matter: **Permissive Site Visits**

Sections Affected: B&P Code 2883 (VN) and 4532 (PT)

Effective Date: **None**. On 8/26/2009, the author dropped the bill due to opposition from a major nursing organization.

Summary of Action: Existing law requires the Board to conduct a physical site visit prior to approval of any new VN or PT Program. This proposal would

specify that the initial site visit is permissive. The Board wants the option of using a written program record survey in lieu of a physical site visit for initial approval of new VN and PT Programs, if warranted.

4. Bill Number: SB 1441 (Ridley-Thomas), Chapter 548, Statutes of 2008

Subject Matter: **Substance Abuse Coordination Committee**

Sections Affected: B&P Code 315

Effective Date: January 1, 2009

Summary of Action: This bill required the establishment of a Substance Abuse Coordination Committee comprised of the executive officers of the DCA healing arts boards. The bill required the committee to formulate by January 1, 2010, uniform and specific standards that each healing arts boards would be required to use in dealing with substance-abusing licensees.

5. Bill Number: AB 2423 (Bass), Chapter 675, Statutes of 2008

Subject Matter: **Applicant Criminal History and Denial of Licenses**

Sections Affected: B&P Code 2879 (VN) and 4522 (PT)

Effective Date: January 1, 2009

Summary of Action: Existing law authorizes the Board to deny a license to an applicant on any of the grounds specified in section 480. This bill requires the Board, several other DCA boards, and the DCA Director to provide a statement of reasons for the denial that evaluates the rehabilitation, gives due consideration to applicants whose convictions have been dismissed, and, if applicable, provide the applicant with a copy of his/her criminal history record.

6. Bill Number: AB 1927 (Galqiani), Chapter 299, Statutes of 2008

Subject Matter: **Credit Granting for Secondary School Courses**

Sections Affected: B&P Code 2881.1 (VN) and 4511.2 (PT)

Effective Date: January 1, 2009

Summary of Action: This bill requires the BVNPT to grant credit for secondary school courses accredited by the Department of Education in any state that are equivalent to VN and PT courses. This bill also specifies that the Board shall deny the application for accreditation or revoke the accreditation given to any VN or PT school that does not give equivalent credit for previous education.

7. Bill Number: AB 1545 (Eng), Chapter 35, Statutes of 2008

Subject Matter: **Board to Bureau to Board Transition**

Sections Affected: B&P Code 2841 & 2847 (VN) and 4501 & 4503 (PT)

Effective Date: January 1, 2009

Summary of Action: Due to a legislative mishap in September 2007, the Assembly adjourned without taking up SB 797 which contained the statutory language required to extend the sunset date for the Board and three other DCA boards. As a result, the Board became a bureau operating under the DCA from July 1, 2008 through December 31, 2008. Two legislative bills were required to re-establish the applicable boards. On June 23, 2008, SB 797 (urgency legislation) extended the executive officers of the various

boards until January 1, 2012. Effective January 1, 2009, AB 1545 re-established the boards until January 1, 2012. AB 1545 also established guidelines to allow the former board members and the executive officers to serve in an interim capacity until board members and executive officers are appointed to the newly resurrected boards.

8. Bill Number: SB 797 (Ridley-Thomas), Chapter 33, Statutes of 2008

Subject Matter: **Board to Bureau to Board Transition**

Sections Affected: B&P Code 2847 (VN)

Effective Date: June 23, 2008 (Urgency Clause)

Summary of Action: Due to a legislative mishap in September 2007, the Assembly adjourned without taking up SB 797 which contained the statutory language required to extend the sunset date for the Board and three other DCA boards. As a result, the Board became a bureau operating under the DCA from July 1, 2008 through December 31, 2008. Two legislative bills were required to re-establish the applicable boards. On June 23, 2008, SB 797 (urgency legislation) extended the executive officers of the various boards until January 1, 2012. Effective January 1, 2009, AB 1545 re-established the boards until January 1, 2012. AB 1545 also established guidelines to allow the former board members and the executive officers to serve in an interim capacity until board members and executive officers are appointed to the newly resurrected boards.

9. Bill Number: SB 1475 (Senate B&P), Chapter 659, Statutes of 2006

Subject Matter: **PT Fee Reduction & Fund Reserve Restriction**

Sections Affected: B&P Code 4546 and 4548 (PT)

Effective Date: January 1, 2007

Summary of Action: This bill removed the three month fund reserve restriction and allowed B&P Code Section 128.5(b) to govern the PT Program's fund reserve requirements. It also reduced three statutory fee range categories; the initial license and biennial license renewal fees from \$240 to \$200; and the delinquent license renewal fees from \$120 to \$100. This allowed the Board to reduce the PT Program fee assessments for these three revenue categories.

10. Bill Number: SB 358 (Figueroa), Chapter 640, Statutes of 2003

Subject Matter: **Sunrise Legislation, Mandatory Reporting & VN Scholarship Fund**

Sections Affected: B&P Code 2841, 2847, 2878, 2878.1, 2893, 2895 & 2895.5 (VN); and 4501, 4503, 4521 & 4521.2 (PT)

Effective Date: January 1, 2004

Summary of Action: The Board successfully proved its effectiveness as a regulatory body for the VN and PT professions to the Joint Legislative Sunset Review Committee. Senate Bill 358 was signed into law and became effective January 1, 2004, authorizing the Board's continued existence and establishing a four year extension to the Board's sunset date; established mandatory reporting requirements for LVNs, PTs and employers of LVNs and

PTs contingent upon the necessary funding in the budget; and assessed a \$5 fee (effective July 1, 2004) to establish a vocational nurse scholarship fund.

11. Bill Number: SB 2022 (Figueroa), Chapter 810, Statutes of 2002

Subject Matter: **Quorum**

Sections Affected: B&P Code 2851 (VN)

Effective Date: January 1, 2003

Summary of Action: This bill amended the VN Practice Act to require that six, rather than five, members of the Board constitute a quorum for transaction of business.

12. Bill Number: AB 269 (Correa), Chapter 107, Statutes of 2002

Subject Matter: **Priority of the Board; Protection of the Public**

Sections Affected: B&P Code, 2841.1 (VN) and 4501.1 (PT)

Effective Date: January 1, 2003

Summary of Action: The bill specified that "Protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians of the State of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

C. Regulatory Actions

The Board annually reviews its regulations within the California Code of Regulations (CCR), Title 16, for clarity, consistency, necessity, non-duplication, and authority. As such, the following regulatory changes were enacted by the Board during the past six years and/or are currently underway:

1. Subject Matter: Examination Application, Retake Application & Dishonored Check Fees

Sections Affected: CCR 2537 (VN) and 2590 (PT)

Effective Date: October 1, 2010

Summary of Action: These regulations change the fee amounts for three specific revenue categories: examination application fees from \$75 to \$150; retake application fees from \$75 to \$150 and dishonored check fees from \$10 to \$25. The regulations were approved by the Office of Administrative Law (OAL) on August 12, 2010 but became effective October 1, 2010. The fee change was needed to ensure the fiscal solvency of both the VN and PT Programs.

2. Subject Matter: Retroactive Fingerprinting & Fee Change – Certificate of Compliance

Sections Affected: CCR 2504.1, 2517.5, 2537 & 2540.6 (VN) and 2564.1, 2575.5, 2590 & 2592.6 (PT)

Effective Date: August 11, 2009

Summary of Action: Pursuant to OAL's emergency regulation procedures, the Board was required to prepare a Certificate of Compliance to make the emergency retroactive fingerprinting and fee regulations that were approved on January 9, 2009 (copy below) permanent.

3. Subject Matter: Emergency Retroactive Fingerprinting & Fee Change

Sections Affected: CCR 2504.1, 2517.5, 2537 & 2540.6 (VN) and 2564.1, 2575.5, 2590 & 2592.6 (PT)

Effective Date: April 1, 2009 and July 1, 2009 Respectively

Summary of Action: These "emergency" regulations authorized the Board to implement retroactive fingerprinting requirements for anyone licensed prior to January 1, 1998. It also concurrently changed the fee amounts for three specific revenue categories: initial license fee from \$120 to \$150 (VN), biennial renewal fee from \$120 to \$150 (VN), delinquent license fee from \$60 to \$75 (VN), initial license fee from \$200 to \$300 (PT), biennial renewal fee from \$200 to \$300 (PT) and delinquent license fee from \$100 to \$150. In addition, it specified that licensees must respond within 30 days to the Board's request for criminal history information. The emergency regulations were approved by the OAL on January 9, 2010 but became effective April 1, 2009 for the actual "implementation" date for retroactive fingerprinting and July 1, 2009 for implementation of the new fee requirements. The fee change was needed to fund implementation of the retroactive fingerprinting requirements.

4. Subject Matter: Rehabilitation Criteria & Disciplinary Guidelines

Sections Affected: CCR 2522, 2522.5 & 2524 (VN) and 2579, 2579.1 & 2579.10 (PT)

Effective Date: October 29, 2008

Summary of Action: These regulations updated the Board's criteria to evaluate the rehabilitation of a person when considering the denial, suspension or revocation of a license and ensure consistency with the Board's Disciplinary Guidelines. The regulations also updated the Board's Disciplinary Guidelines to update, clarify, and provide consistency regarding the Board's disciplinary orders, conditions of probation, and rehabilitation criteria and included general clean up.

5. Subject Matter: Mandatory Reporting

Sections Affected: CCR 2518.6, 2520.4, 2520.5, 2523, 2523.1, 2523.2, 2523.4, 2523.5 & 2523.6 (VN) and 2576.6, 2577.5, 2577.6, 2579.2, 2579.3, 2579.4, 2579.6, 2579.7 & 2579.8 (PT)

Effective Date: October 11, 2007

Summary of Action: These regulations clarified the performance standards and mandatory reporting requirements for licensees and employers of LVNs and PTs; and updated the citation and fine requirements.

6. Subject Matter: Education Program

Sections Affected: CCR 2502, 2516, 2516.5, 2518.7, 2526, 2526.1, 2530, 2533, 2540.3, 2540.4, 2542.2, 2542.3, 2542.4, 2542.5, 2544, 2544.1, 2544.2,

2544.3, 2544.4, 2547.2, 2547.3, 2547.4, & 2547.5 (VN) and 2562, 2575, 2576.7, 2581, 2581.1, 2585, 2587, 2592.3, 2592.4, 2593, 2593.1, 2593.2, 2593.3, & 2593.4 (PT)
Effective Date: June 3, 2007

Summary of Action: These regulations amended several sections of the VN and PT regulations relative to licensure requirements, military service, private duty nursing, program requirements, curriculum content, continuing education courses, intravenous therapy and/or blood withdrawal certification courses, and provisional accreditation.

7. Subject Matter: VN Program Fee Change

Sections Affected: 2537 and 2537.1 (VN)
Effective Date: January 1, 2007

Summary of Action: These regulatory amendments clarified existing fee amounts, as specified in statute, and changed the fee amounts for three specific revenue categories; initial license fees from \$100 to \$120; license renewal fees from \$100 to \$120 and delinquent license renewal fees from \$50 to \$60. The fee change was required to implement mandatory reporting requirements.

8. Subject Matter: Consumer Complaint Disclosure Policy

Sections Affected: CCR 2524.1 (VN) and 2579.11 (PT)
Effective Date: April 2, 2006

Summary of Action: These regulations set forth specific language relative to the disclosure of information regarding complaints involving LVNs and PTs. The new language incorporated the Board's "Consumer Complaint Disclosure Policy" in regulations.

9. Subject Matter: School Program Requirements

Sections Affected: CCR 2526, 2529, 2532, 2533 & 2534 (VN) and 2581, 2584, 2586, 2587, 2588 & 2588.1 (PT)
Effective Date: January 28, 2005

Summary of Action: These regulations permit VN and PT programs to admit and maintain a specified number of alternate students in a VN or PT program until the start of clinical experience in an actual patient care setting; hire nurses as additional faculty to teach required subjects other than nursing; permit 12-hour clinical experience days for students in facilities that use 12-hour shifts and use evening hours in clinical sites that may be in excess of 50% of the total clinical experience without prior Board approval.

10. Subject Matter: Hemodialysis Regulations

Sections Affected: CCR 2542, 2542.1, 2547 & 2547.1 (VN)
Effective Date: February 28, 2003
Rescinded: November 30, 2005

Summary of Action: On February 28, 2003, regulations were approved by the OAL that permitted LVNs who were Board-certified in intravenous therapy

and blood withdrawal to administer intravenous medications as specified in hemodialysis, pheresis and blood bank settings. The California Nurses Association (CNA) sued the Board stating that the Board lacked statutory authority to promulgate such regulations. On July 14, 2005, the Sacramento Superior Court upheld CNA's position and determined that the Board must set aside these regulations. On July 21, 2005, the Board notified all interested parties of the Court's decision, including individuals, organizations and state regulatory agencies. The regulations were officially rescinded on November 30, 2005. Regulations governing intravenous therapy by LVNs who are Board-certified reverted to the language that existed in 2002.

III. MAJOR STUDIES CONDUCTED BY THE BOARD

A. Psychiatric Technician Occupational Analysis

The Board is authorized to issue a PT license to eligible candidates who demonstrate possession of the minimal level of competence required for safe and effective practice upon entry into the profession. The licensure examination is the method by which such competence is demonstrated and measured.

The Board develops and administers its own licensure examination, the California Psychiatric Technician Licensure Examination (PTLE). The Board contracts with the DCA Office of Professional Examination Services (OPES) for its examination development services. The PTLE is constructed based upon an analysis of occupational findings identified in the PT Occupational Analysis. Board policy requires that an occupational analysis be conducted every five (5) to seven (7) years.

In July 2005, the Board contracted with the OPES to conduct an in depth study of the PT profession. The following goals were established:

- To identify tasks commonly performed by PT licensees upon entry into the profession.
- To identify knowledge, skills, and abilities that are essential to ensure safe and competent performance of the identified tasks at entry-level.
- To determine implications for the current PTLE.
- To develop a new test plan based upon current PT practice as identified in the occupational analysis.

The PT Occupational Analysis and Validation of the PTLE was adopted by the Board in February 2007. In addition, based on the Occupational Analysis Report, the Board adopted a new PT Test Plan in February 2007 as well. This document serves as the blueprint for the ongoing development of the PTLE.

B. Licensed Vocational Nursing Occupational Analysis

The Board is also authorized to issue a VN license to eligible candidates who demonstrate possession of the minimal level of competence required for safe and effective practice upon entry into the VN profession. The licensure examination is the method by which such competence is demonstrated and measured.

The National Council of State Boards of Nursing (NCSBN) develops and administers a national licensing examination called the National Licensure Examination for Practical/Vocational Nurses (NCLEX/PN). The NCLEX/PN is used by all the state licensing boards and those boards in the American territories to ensure a minimum entry-level of competence for practical/vocational nurses. The Board reviews items on this examination annually to ensure compliance with the VN Practice Act and the VN scope of practice in California.

The NCLEX/PN is constructed based upon NCSBN's analysis of occupational findings identified in the LPN/VN Practice Analysis. A new occupational analysis is conducted by NCSBN every three (3) years. The current analysis was conducted in 2007 and the revised test plan was implemented in 2008.

In 2010, NCSBN completed a new analysis of the professional practice of LVNs/LPNs. Participants in the study included entry – level licensees from each jurisdiction within the Council. Critical activities and tasks as identified in the study were included in the new NCLEX/PN test plan. Based upon that study entitled “2009 LPN/VN Practice Analysis: Linking the NCLEX/PN Examination to Practice,” a new test plan was developed. Implementation of the new test plan is scheduled for 2011.

C. Annual School Program & Clinical Facility Surveys

Annually, the Board conducts surveys of its external stakeholders including VN and PT schools and the clinical facilities used by the schools. The surveys are intended to elicit trends in the education and practice of LVNs and PTs.

In 2009, the Board mailed surveys to all VN and PT programs. The purpose of the survey was to determine what challenges LVNs and PTs may face in education and practice within the next five years as well as to identify possible problems encountered by new graduates of VN and PT programs and their employers. This information is also used to assist in improving the effectiveness and efficiency of the Board. The following is a brief summary of the 2009 survey results:

VN Program Respondents – Responses were received from 45% of the accredited and approved VN Programs. Respondents represented programs based in community colleges, adult schools, and private institutions. Respondents reported the following variables have greatly impacted the focus and content of their programs.

- a. Economic decline.
- b. Decline in funds for educational programs, scholarships, grants, etc.

- c. Increase in size of the applicant pool.
- d. Decrease in level of academic preparation of the applicant pool.
- e. Performance of program graduates on the NCLEX/PN®.
- f. Increase in numbers of VN and RN programs.
- g. Lack of quality instructors.
- h. Decline in client census.
- i. Loss of clinical sites and closure of doors to LVNs.

Respondents report that the increasing number of Registered Nursing (RN) and VN Programs has resulted in a loss of available clinical rotations. As a result, programs have sought clinical rotations that are up to 200 miles from the school. For some rotations, respondents report that students are required to stay in hotels for periods of time.

Employers of new graduates report deficits are most frequently identified in the following areas.

- ✓ Professionalism.
- ✓ Critical Thinking.
- ✓ Assessment Skills.
- ✓ Basic Math and Drug Calculations.
- ✓ Documentation.
- ✓ Medical Terminology.
- ✓ Customer Service Skills.
- ✓ Intravenous Therapy and Blood Withdrawal Certification.

PT Program Respondents – Responses were received from 25% of the accredited and approved PT Programs. All respondents represented programs based in community colleges. Respondents reported their programs have been deeply impacted by the current economic condition. Deep budget cuts forced directors to decline enrollment. Students are forced to drop out of programs due to the lack of funding and wages. Some agencies hiring PTs temporarily suspended hiring due to declining revenue. Additionally, all programs report that the increasing number of RN and VN programs has resulted in a loss of available clinical rotations.

All respondents reported that the majority of their graduates found employment. Graduates report the most frequent problem encountered in employment is a lack of familiarization with the culture of the agency and frequent resistance from established workers.

Employers of new graduates report deficits are most frequently identified in the following areas.

- ✓ Professionalism.
- ✓ Critical Thinking.
- ✓ Assessment Skills.
- ✓ Basic Math and Drug Calculations.
- ✓ Documentation.

Survey Results – Based upon the survey results, the Board acted to resolve the identified issues as follows:

1. The Board held meetings with educators of VN and PT programs. The Southern California Directors Forum was held September 16, 2010 in Los Angeles; the Northern California Directors Forum was held September 23, 2010. Critical items discussed included:
 - Effective Strategies for Student Achievement.
 - Effective Strategies for Improving the Performance of Program Graduates on the Licensure Examination.
 - Utilization and Marketing of the LVN and PT in Professional Practice.

Participants included directors, instructors, administrators, and other interested parties from the Board's accredited and approved VN and PT programs.

2. The Board initiated a more in depth questionnaire to identify factors negatively impacting VN and PT programs and student achievement. A survey report was developed to elicit critical information from VN and PT program directors. Input from clinical facilities and other stakeholders is scheduled for submission in late 2010.
3. The Board expanded upon the questionnaire to involve the collection of data from clinical facilities relative to the practice and utilization of VN's and PTs. Input from clinical facilities and other stakeholders is scheduled for submission in late 2010.
4. VN and PT program directors report decreasing availability of clinical rotations. This trend occurred statewide. Directors have identified the increasing number of RN and VN programs as a major contributing factor. Additionally, directors report that numerous schools secure sites by providing financial incentives to clinical facility representatives. Allegedly, such incentives include payment of up to \$250 per student.

The availability of clinical sites was a major topic of discussion at the Board's 2009 and 2010 Director Forums. Educators reported that this situation severely hampers programs within public institutions - community colleges, adult schools, regional occupational centers, and hospital based programs. Some programs have been unable to compete in this arena and have been forced to close due to the absence of sufficient clinical facilities to provide required clinical experience for enrolled students. Unfortunately, some of these closed schools are programs with higher program performance statistics. Other programs have been forced to seek clinical rotations more than 100 miles from the school. As a result, costs to students have escalated for travel, lodging and other related expenses. A report relative to this issue is projected for completion in 2011, resources permitting.

D. Vocational Nurse Education Fund

SB 358 (Figueroa) was chaptered on October 1, 2003. This statute established the Vocational Nurse Educational Fund within the Health Professions Education Foundation (HPEF), effective July 1, 2004.

Under the Office of Statewide Health Planning and Development, the Foundation is responsible for dissemination of information and awarding scholarships and loans to eligible candidates. Under the Vocational Nurse Education Program, all individuals eligible for admission to any VN Program are eligible to apply for funding.

The foundation is funded by a \$5.00 assessment collected at the time of VN license renewal and by donations. Table 2 summarizes the scholarship funds distributed under the Program and the ethnic breakdown of scholarships awarded. According to HPEF, from 2007 through March 2010, VN scholarship awards have totaled \$348,000 as indicated below.

TABLE # 2: VN SCHOLARSHIP DISTRIBUTION					
Administrative Base	2007	2008	2009	2010	TOTAL
# Applications Received	111	144	144	87	486
# Scholarships Awarded	28	17	23	19	87
Total Amount Awarded:	\$112,000	\$68,000	\$92,000	\$76,000	\$348,000
Ethnic Breakdown	2007	2008	2009	2010	TOTAL# & %
African American	13	8	7	4	32 37%
Hispanic/Latino American	9	8	7	6	30 35%
Caucasian	2	0	4	3	9 10%
Asian American/Pacific Islander	3	0	1	4	8 9%
Native American & Other	1	1	4	2	8 9%
Totals:	28	17	23	19	87 100%

More information regarding the HPEF program is available at www.healthprofessions.ca.gov.

E. Healthcare Shortages & Job Creation Efforts

Economists estimate that the largest source of job growth currently and in the coming years will be in healthcare. By 2016, 3.5 million new healthcare jobs are expected. National workforce experts in nursing have projected a shortage in nursing due to the increasing global population, the aging population, and increased aging among today’s nurses. Such growth is consistent with the critical shortage of nurses currently experienced and projected in California.

The Board is actively responding to the shortage with its accreditation and/or approval of 67 more VN & PT Programs since FY 2004/05. This equates to a 44% increase in programs.

By July 1, 2010, the Board accredited and approved 205 VN Programs and 16 PT Programs. Additionally, the Board has applications pending for 118 new VN and PT Programs (i.e., 109 VN and 9 PT).

The greatest area of growth is in private programs. In 1985, community colleges comprised 70% of the total number of accredited and approved VN and PT programs; private programs comprised the smallest number of programs. Table 3 and 4 demonstrate the marked change that occurred from 2005 through 2010.

Table #3: Comparison of VN Program Distribution				
Administrative Base	Number		% of Total	
	2005	2010	2005	2010
Community College	44	45	32%	22%
Adult Schools	27	29	19%	14%
Regional Occupational Programs	6	5	4%	2%
Hospital Based	-	-	-	-
Private	62	126	45%	62%
TOTALS	139	205	100%	100%

NOTE: Currently, the Board has applications pending for **109** VN Programs.

Table #4: Comparison of PT Program Distribution				
Administrative Base	Number		% of Total	
	2005	2010	2005	2010
Community College	11	12	73%	75%
Adult Schools	2	1	13%	6%
Regional Occupational Programs	-	-	-	-
Hospital Based	1	-	7%	-
Private	1	3	7%	19%
TOTALS	15	16	100%	100%

NOTE: Currently, the Board has applications pending for **9** PT Programs.

On March 8, 2010, the Board met with representatives from the California Department of Corrections and Rehabilitations (CDCR) relative to CDCR’s projected staffing needs. CDCR reported that under a federal court order, CDCR was directed to open three (3) new correctional facilities by December, 2013. The following facilities have been proposed.

- Long Term Medical & Mental Health Facility (Receiver Facility)
- DeWitt Nelson, JJF Conversion (CDCR Facility)
- Northern California Reentry Facility (CDCR Facility).

Approximately 122 LVNs and 440 PTs are required to staff these facilities. CDCR anticipates that recruitment of adequate numbers of PTs will present the greatest challenge. The Board advised that the greatest difficulty would be in the recruitment of qualified faculty, securing sufficient clinical placements, and sufficient financial resources. CDCR was advised to pursue agreements with existing PT Programs in northern and central California.

IV. BUDGET AND STAFF

A. Current Fee Schedule and Statutory Fee Ranges

The Board is a “special fund agency” that is totally self-supporting. The Board derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees. The last fee change occurred on October 1, 2010. The statutory fee ranges are cited in the B&P Code, Sections 2895 (VN) and 4548 (PT) and the specific fee amounts currently charged are cited in the CCR, Title 16, Sections 2537 (VN) and 2590 (PT).

The Board’s main sources of revenue are from the following fee categories:

- ✓ Application
- ✓ Re-Examination
- ✓ Initial License
- ✓ Biennial Renewal
- ✓ Delinquent Renewal

Table 5 reveals that both the VN and PT Programs are at the statutory maximums allowed by law. No further fee increases can be implemented until the statutory fee ranges are raised.

Fee Categories	VN Program		PT Program	
	Current Fees (eff. 10/1/2010)	Statutory Fee Ranges	Current Fees (eff. 10/1/2010)	Statutory Fee Ranges
1. Application	\$150*	\$75 - \$150	\$150*	\$100 - \$150
2. Re-Examination	\$150*	\$75 - \$150	\$150*	\$100 - \$150
3. Initial License	\$150*	\$100 - \$150	\$300*	\$200 - \$300
4. Biennial Renewal (every two years)	\$155*	\$100 - \$150	\$300*	\$200 - \$300
5. Delinquency	\$75*	\$50 - \$75	\$150*	\$100 - \$150
6. Interim Permit	\$40	\$40 - \$50	\$20	\$20 - \$50
7. Duplicate License	\$25	\$25 - \$50	\$20	\$20 - \$50
8. Endorsement	\$75	\$75 - \$100	\$20	\$20 - \$50
9. Continuing Education Provider	\$200	No Range	\$150	\$150 - \$200
10. Blood Withdrawal Certification***	N/A	N/A	\$20	\$20 - \$50

* These fee categories are at the statutory maximums allowed by law. No further fee increases can be implemented until the fee ranges are raised.

**Vocational Nurse Education Fund – Although the Board's renewal fee is \$150, the Board is required to collect an additional \$5.00 at the time of license renewal from its LVNs (i.e., \$155) to fund VN education efforts.

*** Post-licensure certification in blood withdrawal for PTs began in 1999.

B. Revenue and Expenditure History

Tables 6 & 7 reflect the VN & PT Programs' actual and projected revenue and expenditure patterns for six fiscal years.

VN Program Revenue:	ACTUAL				PROJECTED	
	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Licensing Fees	\$5,634	\$6,295	\$6,634	\$7,977	\$9,052	\$9,463
Fines & Penalties	\$75	\$63	\$73	\$54	\$66	\$66
Other	\$39	\$17	\$16	\$15	\$18	\$19
Interest	\$190	\$196	\$82	\$83	\$34	\$22
Total Revenue	\$5,938	\$6,571	\$6,805	\$8,129	\$9,170	\$9,570
Expenditures	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Personal Services	\$2,309	\$2,709	\$2,824	\$2,931	\$4,809	\$4,272
Operating Expenses	\$3,116	\$3,337	\$3,901	\$4,160	\$7,735	\$6,871
Subtotal:	\$5,425	\$6,046	\$6,725	\$7,091	\$12,544	\$11,143
Less Reimbursements	(\$133)	(\$165)	(\$174)	(\$173)	(\$352)	(\$352)
Less Distributed Costs	(\$37)	(\$37)	(\$37)	(\$37)	(\$37)	(\$37)
Total Expenditures	\$5,255	\$5,844	\$6,514	\$6,881	\$12,155	\$10,754

PT Program Revenue:	ACTUAL				PROJECTED	
	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Licensing Fees	\$1,239	\$1,183	\$1,208	\$1,630	\$1,684	\$1,698
Fines & Penalties	\$12	\$9	\$20	\$7	\$12	\$12
Other	\$2	\$1	\$2	\$1	\$2	\$2
Interest	\$70	\$61	\$22	\$52	\$6	\$0
Total Revenue	\$1,323	\$1,254	\$1,252	\$1,690	\$1,704	\$1,712
Expenditures	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Personal Services	\$479	\$561	\$651	\$663	\$966	\$816
Operating Expenses	\$742	\$779	\$1,002	\$1,032	\$2,027	\$1,713
Subtotal:	\$1,221	\$1,340	\$1,653	\$1,695	\$2,993	\$2,529
Less Reimbursements	(\$22)	(\$22)	(\$22)	(\$22)	(\$22)	(\$22)
Less Distributed Costs	-	-	-	-	-	-
Total Expenditures	\$1,199	\$1,318	\$1,631	\$1,673	\$2,971	\$2,507

C. Expenditures by Program Component

The Board’s “Expenditures by Program Component” reveals that the majority of the Board’s costs are related to enforcement. The average percentage spent on enforcement for both the VN & PT Programs is about 62%.

Programs	VN Program					PT Program				
	2006/07	2007/08	2008/09	2009/10	Avg.% Spent	2006/07	2007/08	2008/09	2009/10	Avg. % Spent
Enforcement	\$3,086	\$3,575	\$4,191	\$4,324	60%	\$710	\$842	\$1,111	\$1,057	63%
Exam/Licensing	\$1,480	\$1,572	\$1,643	\$1,818	26%	\$357	\$370	\$421	\$504	28%
Education	\$554	\$584	\$581	\$621	9%	\$105	\$88	\$77	\$92	6%
Administration	\$305	\$315	\$310	\$328	5%	\$47	\$40	\$44	\$42	3%
Totals (1)	\$5,425	\$6,046	\$6,725	\$7,091		\$1,221	\$1340	\$1,653	\$1,695	

(1) This data was derived from the Month 13 CalStars Report. It does not include the adjustments total expenditures listed here are actual expenditures.

D. Fund Conditions

Pursuant to B&P Code, section 128.5, the statutory reserve requirements for the DCA and most of its boards/bureaus specify that:

“Notwithstanding any other provision of law, if at the end of any fiscal year, ... the Board of Vocational Nursing and Psychiatric Technicians, or the ... has unencumbered funds in an amount that equals or is more than the agency’s operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency’s operating budget for the next two fiscal years.”

VN Program	ACTUAL			BUDGET	PROJECTED	
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Total Reserves July 1 (1)	\$4,203	\$4,966	\$4,315	\$6,549	\$3,041	\$906
Total Rev. & Transfer	\$6,571	\$6,825	\$8,085	\$9,097	\$9,487	\$9,484
General Fund Loan & Loan Reimbursement Plus Interest		(\$1,000)	\$1,000 \$43			
Total Resources	\$10,774	\$10,791	\$13,443	\$15,646	\$12,528	\$10,390
Total Expenditures (2)(3)	\$5,848	\$6,520	\$6,894	\$12,605	\$11,622	\$9,767
Reserve, June 30	\$4,926	\$4,271	\$6,549	\$3,041	\$906	\$623
Months in Reserve	9.1	7.1	6.2	3.1	1.1	0.7

(1) This data may include prior year adjustments.
 (2) This data may include “fund direct” costs, such as State Controller’s Office charges, which do not show up in Month 13 CalStars Reports and, therefore, are not included in the Expenditure tables.
 (3) For FY 2010/11 and FY 2011/12 tie to the Governor’s Budget and includes the two year budget bill language to increase the Attorney General expenditure authority.

According to the DCA Budget Office, the PT Program is facing a fund deficit in FY 2011/12 unless additional revenue is generated. As the PT Program fees are at the statutory maximums, a fee increase is not possible until the statutory fee ranges are raised.

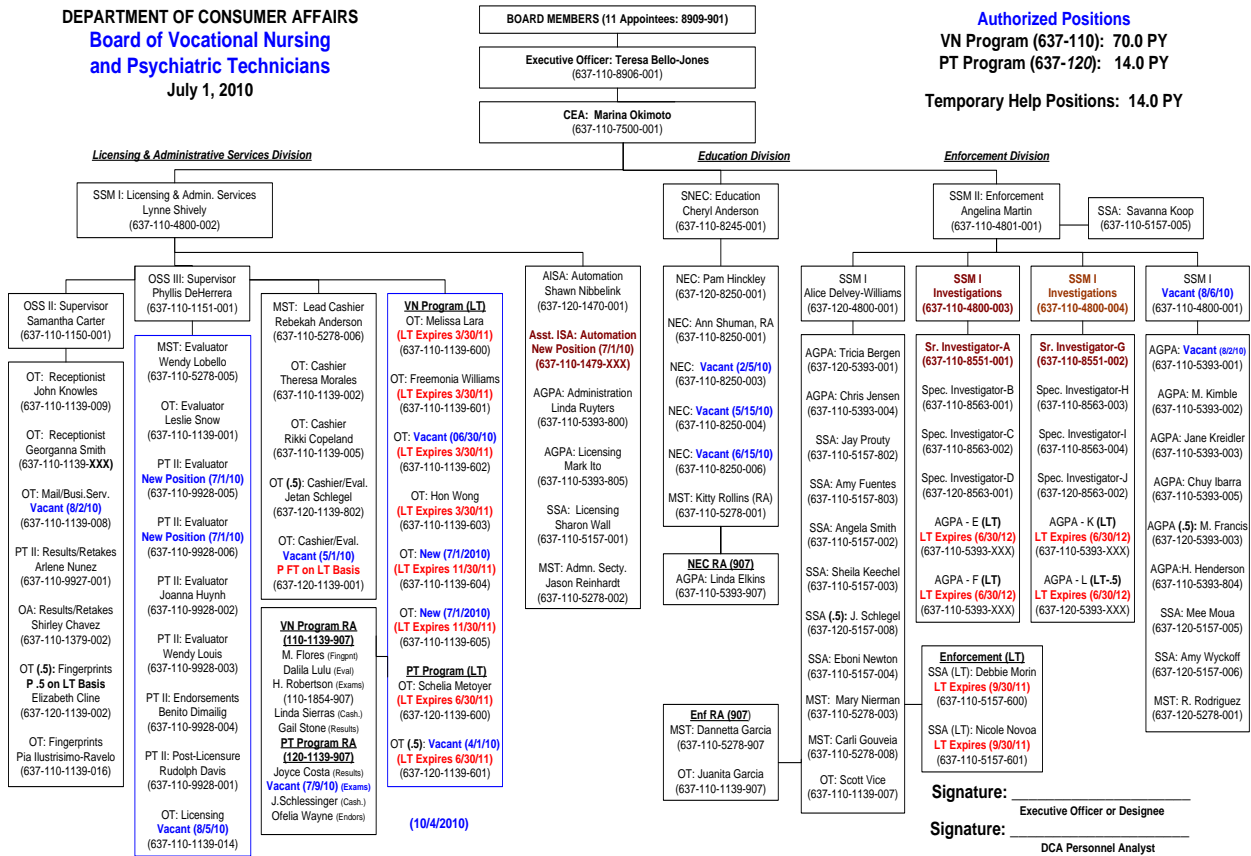
TABLE #10: PT PROGRAM – ANALYSIS OF FUND CONDITION (in thousands)

PT Program	ACTUAL			BUDGET	PROJECTED	
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Total Reserves July 1 (1)	\$1,271	\$1,244	\$899	\$1,934	\$519	(\$557)
Total Rev. & Transfer	\$1,254	\$1,257	\$1,647	\$1,690	\$1,699	\$1,699
General Fund Loan Reimbursement Plus Interest			\$1,000 \$43			
Total Resources	\$2,525	\$2,501	\$3,589	\$3,624	\$2,218	\$1,142
Total Expenditures (2)	\$1,308	\$1,618	\$1,655	\$3,105	\$2,775	\$2,256
Reserve, June 30	\$1,217	\$883	\$1,934	\$519	(\$557)	(\$1,114)
Months in Reserve	9.0	6.2	7.5	2.2	-3.0	-5.7

- (1) This data may include prior year adjustments.
- (2) This data may include "fund direct" costs, such as State Controller's Office charges, which do not show up in Month 13 CalStars Reports and, therefore, are not included in the Expenditure tables.
- (3) For FY 2010/11 and FY 2011/12 tie to the Governor's Budget and includes the two year budget bill language to increase the Attorney General expenditure authority.

E. Organization Chart

The Board is authorized 84.0 staff positions – 70.0 for the VN Program and 14.0 for the PT Program. In addition, the Board also has 14.0 temporary help positions.



V. LICENSING DIVISION ACTIVITIES

A. Licensure Statistics & Statement of Issues Information

Effective July 1, 2010, the Board regulates the practice of approximately 114,040 LVNs and 13,085 PTs. The following chart provides licensing data for the past four fiscal years.

TABLE #11: LICENSURE STATISTICS & STATEMENT OF ISSUES INFORMATION								
	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Total # Licensed (1)	101,830	105,664	109,694	114,040	12,653	12,705	12,916	13,085
Active Licenses (2)	75,406	78,423	81,304	86,700	9,579	9,781	10,058	10,400
California	70,156	73,133	76,176	81,399	9,353	9,546	9,834	10,193
Out-of-State	5,250	5,290	5,128	5,301	226	235	224	207
Applications Received (3)	14,061	15,516	17,056	16,888	1,062	1,136	1,232	1,048
Applications Purged Not Denied (4)	815	450	3,443	2,342	5	36	6	199
Licenses Issued	6,860	7,158	7,554	7,735	485	515	635	641
Renewals Processed (5)	32,441	33,399	34,864	35,366	4,395	4,588	4,536	4,399
Statement of Issues (SOI) Filed	6	26	28	11	2	5	4	7
Statement of Issues (SOI) Withdrawn	0	0	2	0	0	0	0	0
Licenses Denied via Formal (SOI) Process	2	5	6	10	0	0	3	0
Licenses Denied via Informal Process (6)	17	27	21	14	2	7	3	6

- (1) Total number licensed includes active and delinquent licenses.
- (2) An "active" license means that the licensee has paid his/her renewal fee and completed the 30 hours of continuing education required by law.
- (3) Total number of applications received include new applications and retake applications.
- (4) Pursuant to CCR, Sections 2512 (VN) and 2571 (PT), an application shall be deemed abandoned if the applicant fails to complete the application process within two years after last notification of a deficiency. The Board does not issue application denial letters. The data reflects the number of applications that were purged that were over two years old and no action had taken place. The applicant must reapply thereafter. The variance in the volume of applications purged each year is based upon the availability of staff to perform this function.

- (5) Licenses are issued on a biennial renewal cycle (i.e., every two years). Consequently, only 50% of the Board's licensees renew each fiscal year.
- (6) In the "informal process," the applicant did not contest the license denial or did not file a Notice of Defense to contest the Statement of Issues notice. Consequently, an Administrative Hearing was not required.

B. Education, Experience & Examination Requirements

(1) Licensed Vocational Nurses

Applicants for licensure as an LVN in California must meet all of the following requirements:

- Minimum age - 17 years of age;
- Completion of the 12th grade or its equivalent;
- Completion of either the education, or the experience, or any combination of both the education and experience, equivalent to that acquired in an accredited school of vocational nursing via one of the four methods of qualifying for licensure described below;
- Successful completion of the National Council Licensing Examination for Practical (Vocational) Nurses (NCLEX-PN) or the National League for Nursing (NLN) State Board Test Pool Examination for Practical Nurses (SBTPE);
- Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) fingerprint clearance to ensure that the applicant has committed no act which, if committed by an LVN, would be grounds for disciplinary action;
- B&P Code Section 30 requires all applicants to provide the Board with a social security number prior to issuance of a license or license renewal.
- The initial license fee must be submitted after meeting all of the above requirements.

There are ***four different methods to qualify*** for licensure as an **LVN** in California. All applicants for licensure under Section 2873 of the Business and Professions Code must meet the requirements of one of the following qualification methods:

- Graduation from an "Accredited" School of VN in California;
- Completion of 51 months of paid general duty bedside nursing experience consisting of a minimum of 48 months of medical/surgical nursing, 1.3 months of maternity nursing, and 1.3 months of pediatric nursing; and completion of a 54 theory hour course in pharmacology. (Applicants with formal nursing education may submit official transcripts for a determination of possible credit in lieu of paid bedside nursing);
- Completion of at least 12 months of verified active duty bedside patient care in the medical corps of any branch of the Armed Forces of the United States; proof of completion of a basic course of nursing while in the armed forces; and proof that service has been honorable; or

- Graduation from an Out-of-State Accredited School of Practical/Vocational Nursing, provided that the course completed is substantially equivalent to a California Accredited School of VN.

The specific educational requirements vary depending on the method by which the applicant has chosen to qualify. Applicants may qualify either by education, experience, or a combination of education and experience. Work experience must be verified by a registered nurse or supervisor for LVN applicants.

LVNs may also obtain post-licensure certification in intravenous therapy and/or blood withdrawal.

(2) Psychiatric Technicians

Applicants for licensure as a PT in California must meet all of the following requirements:

- Minimum age - 18 years of age;
- Completion of the 12th grade or its equivalent;
- Completion of either the education, or a combination of both education and experience, equivalent to that acquired in an accredited program for PTs via one of the three methods of qualifying for licensure described below;
- Successful completion of the California PT Licensure Examination;
- DOJ and FBI fingerprint clearance to ensure that the applicant has committed no act which, if committed by a PT, would be grounds for disciplinary action;
- B&P Code Section 30 requires all applicants to provide the Board with a social security number prior to issuance of a license or license renewal. The Board is unaware of any other state which has this requirement.
- The initial license fee must be submitted after meeting all of the above requirements.

There are **three different methods to qualify** for licensure by examination as a **PT** in California. All applicants for licensure under Section 4511 of the Business and Professions Code must meet the requirements of one of the following qualification methods:

- Graduation from an "Accredited" PT Program in California;
- Completion of 576 hours of theory, including a 54-hour course in pharmacology, and 954 hours of supervised clinical experience. Paid work experience may be substituted for supervised clinical experience; or
- Completion of an armed forces course involving neuropsychiatric nursing and an armed forces or civilian course from an accredited school in the care of the developmentally disabled client; one year of verified full time paid work experience, including at least six months in a military clinical facility caring for clients with mental disorders and at

least six months in a military or civilian clinical facility caring for clients with developmental disabilities.

The specific educational requirements vary depending on the method by which the applicant has chosen to qualify. Applicants may qualify either by education, or by a combination of education and experience. Work experience must be verified by a licensed physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse or other professional personnel.

PTs may obtain post-licensure certification in blood withdrawal only.

C. Criminal History and/or Past Disciplinary Actions

All applicants are required to complete a "Record of Conviction" form in which they must self-disclose, under penalty of perjury, any criminal history or prior disciplinary actions by any other state or foreign Board of Nursing. In addition, fingerprint record checks are conducted by the DOJ and the FBI on all applicants.

Court documents, police reports and certified records of disciplinary actions are obtained and reviewed to determine whether the license should be denied. If the applicant falsifies the application and the fingerprint check reveals a criminal history, court documents, police reports and the applicant's full explanation of the conviction(s) and falsification are obtained and reviewed to determine the appropriate course of action.

Out-of-state applicants submit the same application as California residents which include a Record of Conviction form and both DOJ and FBI fingerprints. The applicant who is already licensed out-of-state must also submit a verification of licensure form, which must be received directly from the applicant's state board of nursing. The verification of licensure form must include information regarding disciplinary action, if any. In addition, the Board checks the National Council of State Boards of Nursing (NCSBN) NURSIS database as a secondary source to verify out-of-state licensure information for applicants.

D. Examination Requirements

1. Vocational Nursing Program

The examination administered for VN licensure is the National Council Licensure Examination for Practical Nurses (NCLEX/PN). The Board is able to accomplish this through its membership with the National Council of State Boards of Nursing, Inc. (NCSBN). Since October 1, 2002, the NCSBN contracted with Pearson VUE to develop and administer the NCLEX/PN.

The NCLEX/PN is a computer-adaptive examination that is administered by appointment on a daily basis. There are no filing deadlines, and candidates are allowed to schedule their own appointment to test year-round.

Examination Administration

The NCLEX/PN is administered on a daily basis, up to three times a day, six days a week. A failing candidate may retake the examination a maximum of eight times a year, but not more often than once every 45 days. The NCLEX is a written examination administered by computer using a methodology called “Computer-adaptive” testing.

With computer-adaptive testing, the computer selects each question based on the candidate’s response to the previous questions. Once the minimum number of questions are administered, testing stops when the candidate’s performance is demonstrated as being either above or below the passing standard. Depending on the candidate’s pattern of correct and incorrect answers, candidates will be administered varying numbers of questions and use varying amounts of time.

Candidates are allowed a maximum of 5 hours to complete the examination. All candidates complete a minimum of 85 questions. The maximum number of questions a candidate may be given is 205.

The NCLEX/PN is administered at over 203 testing centers throughout the United States and 10 “International” testing centers in Australia, Canada, China, England, Germany, India, Japan, Mexico, South Korea, and Taiwan. Candidates may schedule their examination at the testing center of their choice. Currently there are 13 testing centers in California: Anaheim, Fresno, Gardena, Oakland, Ontario, Pasadena, Redding, Roseville, San Diego, San Francisco, San Jose, Santa Maria and Westlake Village.

2. Psychiatric Technician Program

The PT examination is the California Psychiatric Technician Licensure Examination (PTLE). The Board has developed and administered its own state licensure examination for PTs since 1970.

In April 1990, the Board implemented computer-administered testing for PTs. There are no filing deadlines and candidates are allowed to schedule their own appointments to test year-round at 13 testing centers within California.

Examination Administration

The PTLE is administered on a daily basis by appointment six days a week. A first-time failing candidate may retake the examination after one month; a repeat failing candidate may retake the examination every six months. Candidates are allowed a maximum of 4 hours to complete the 240 item multiple-choice examination.

The PTLE is administered by Psychological Services, LLC (PSI). Candidates may schedule their examination at the testing center of their choice. Currently there are 13 testing centers in California: Anaheim, Atascadero, Bakersfield, Carson, El Monte, Fresno, Hayward, Redding, Riverside, Sacramento, San Diego, Santa Rosa and Santa Clara.

E. Examination Pass Rates

The examination passage rates for the VN Program in FY 2009/10 was 75% in comparison to the national pass rate of 86%. The examination pass rate for the PT Program in FY 2009/10 was 84% and there is no national examination administered for this profession.

TABLE #12: VN PROGRAM – EXAMINATION PASS RATES					
National Council Licensure Examination for Practical/Vocational Nurses (NCLEX/PN)					
VN Program	NATION-WIDE		CALIFORNIA ONLY		
	TOTAL# CANDIDATES	PASS PERCENTAGE RATE	TOTAL# CANDIDATES (1)	TOTAL# SCHOOL GRADUATES (2)	PASS PERCENTAGE RATE (2)
2006/07	58,693	87%	11,271	5,921	77%
2007/08	76,365	78%	12,376	7,073	74%
2008/09	62,954	85%	13,015	7,498	72%
2009/10	65,571	86%	14,187	8,328	75%

(1) This data reflects the number of applicants that actually took the exam in a given year. This figure is different from the number of applications received annually because once deemed eligible for the exam, the applicant has up to one year to schedule his/her examination.

(2) California is the only state which allows applicants to qualify for the examination based on a variety of methods (e.g., work experience, military experience, etc.). All other states require their applicants to graduate from an “accredited” U.S. or foreign nursing school. Therefore, to accurately compare the passage rates above, the Board has listed the annual pass rates for first-time school graduates. The average annual pass rate for all first time applicants (i.e., school graduates and non-school graduates) is around 72%.

TABLE #13 PT PROGRAM – EXAMINATION PASS RATES					
California Psychiatric Technician Licensure Examination (CAPTLE)					
PT Program	NATION-WIDE		CALIFORNIA ONLY		
	TOTAL# CANDIDATES (1)	PASS PERCENTAGE RATE	TOTAL# CANDIDATES (2)	TOTAL# SCHOOL GRADUATES (3)	PASS PERCENTAGE RATE (3)
2006/07	N/A	N/A	959	486	69%
2007/08	N/A	N/A	1,083	542	71%
2008/09	N/A	N/A	1,168	641	74%
2009/10	N/A	N/A	1,034	644	84%

(1) There is no national licensing examination for PTs.

(2) This data reflects the number of applicants that actually took the exam in a given year. This figure is different from the number of applications received annually because once deemed eligible for the exam, the applicant has up to one year to schedule his/her examination.

(3) California is the only state which allows applicants to qualify for the examination based on a variety of methods (e.g., work experience, military experience, etc.). Therefore, to accurately compare the passage rates above, the Board has listed the annual pass rates for first-time school graduates. The average annual pass rate for all first time applicants (i.e., school graduates and non-school graduates) is around 84%.

F. Average Processing Times

The average processing time to determine examination eligibility, mail out examination results and issue a license to an applicant is about 75 days for the VN applicants and 28 days for the PT applicants. The difference in the total average days between the VN and PT applicants is based upon the volume of applications received for each program. The Board receives approximately 17,000 VN applications and 1,000 PT applications annually.

Both the VN and PT licensure examinations are administered on a year-round basis. Applicants are responsible for scheduling their own appointment to test. VN applicants have up to 6 months, from the date their application is approved, to register for the test with the applicable testing service. When the applicant registers for the exam, he/she can select a test date within a 6 month period from the registration date. Therefore, VN applicants have up to 12 months to actually complete the examination. The PT applicants have up to 12 months, from the date their application is approved, to register and complete the examination.

The examinations are scored by the test vendors and the applicable score reports are mailed to the Board on a daily basis. The Board conducts a final review of all licensure requirements and mails the examination results to the applicants. Upon receipt of the examination results, the applicant must then submit an initial license fee before a license can be issued.

In addition, B&P Code, Section 480, specifies that the board may deny a license on the grounds that the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession for which the application is made. Consequently, all applicants for licensure must undergo fingerprint record checks from the DOJ and the FBI. The examination results for applicants with criminal convictions may be delayed pending enforcement review if the applicant is required to submit certified court documents and police reports relative to his/her conviction history. Also, initial licensure may be delayed pending receipt of the DOJ criminal history clearance report.

TABLE #14: AVERAGE PROCESSING TIMES

Average Number of "Days" to Process Request	VN Program				PT Program			
	06/07	07/08	08/09	09/10	06/07	07/08	08/09	09/10
1. Receipt of Application to Notification of Exam Approval	31	31	63	46	9	10	6	10
Note: Once deemed eligible to take the exam, the applicant has up to 12 months to actually schedule an appointment to test with the applicable testing service.								
2. Actual Test Date to Notification of Exam Results (1)	15	28	29	25	11	13	15	15
Note: Once the examination results are mailed, the applicant has up to 24 months to submit his/her initial license fee.								
3. Receipt of License Fee to Issuance of License (1)	4	5	5	4	4	5	2	3
Total Average Days (1)	50	64	97	75	24	28	23	28

(1) The number of days cited in Item 2, Item 3, and in the Total Average Days does not include the extra days that may be required to receive a DOJ fingerprint report and/or review the applicant's criminal conviction history to determine if the violations are substantially related to the VN or PT scopes of practice.

G. Licensing Backlog & Reduction Plan

Board records confirm that the VN Program's workload is increasing annually at a rapid rate. Due to the demand for healthcare workers, especially nurses, the number of new VN & PT Programs increased by 44% since FY 2004/05 (from 154 to 221 VN Programs). This resulted in a 132% increase in the number of new and additional students approved to attend VN Programs and 333% increase in the number of new and additional students approved to attend PT Programs (see Table 17, page 33). As a result, this increase directly impacts all of the VN & PT Program's licensing functions relative to:

- ✓ Telephone and internet inquiries;
- ✓ Public Counter services;
- ✓ Cashiering services;
- ✓ Evaluations;
- ✓ General correspondence;
- ✓ Examination results; and
- ✓ Licensure.

In July 2009, the VN Program's licensing backlog was over 10 weeks old and growing. Anything over 4 weeks old is considered backlogged based on the Board's established processing timelines. In 2009, to mitigate the growing backlog, the Board obtained approval to hire more Retired Annuitants (RA) from 5 to 14 employees. However, RAs can only work 960 hours in a fiscal year (July 1 through June 30) without the loss of their retirement benefits. This means that RAs can only work 120 work days annually (or about 4 months full-time and about 2 days per week if spread out over a year). Once the 960 hours are exhausted, the RA must stop working until the next fiscal year begins.

In March 2010, the Governor's Office received numerous complaints that the Board was taking too long to process applications and examination results. The Governor's Office authorized the DCA to implement a Licensing Backlog Reduction Plan. The Plan was two-fold: 1) to facilitate job-creation initiative by expending DCA licensing and exam application processing that would allow more individuals to open businesses and/or be in a position to enter the workforce; and 2) to reduce the existing licensing and exam backlogs for "completed" applications by 50% by June 30, 2010.

The Board was authorized to use self-directed furloughs and overtime to reduce backlogs by 50%. Board staff was redirected from other areas to focus on the backlogged areas and evaluators worked overtime during this time period. With this concerted effort, the VN Program was able to achieve the targeted goal. Since that time, the VN Program received budget approval to hire 4.0 employees for the Licensing Division beginning in FY 2010/11. **Unfortunately, on August 31, 2010, the Governor implemented a State Hiring Freeze. As a result, these new positions cannot be filled at this time. In addition, due to the**

State Hiring Freeze, two other recently vacated positions cannot be filled in the Licensing Division.

The VN Program's ability to quickly license its nurses has a direct impact on the State's economy, in general, and more importantly, the nursing shortage.

H. Continuing Education & Competency Requirements

The Board requires 30 hours of continuing education (CE) every two years as a means to assure that its licensees receive information about current concepts and practices relative to their respective scopes of practice.

The Board accepts CE courses from nursing agencies or organizations from California or other states. In addition, the Board approves providers who wish to offer CE specifically for LVNs and PTs. The provider pays a fee that is submitted with the approval application for the first class. Once approved, the provider may offer as many classes as he/she wishes within a two-year period; however, each class must be approved on a form provided by the Board. Approval of each course ensures that the course content and objectives are related to the LVN or PT scope of practice.

The Board verifies CE by checking the validity of individual provider names and numbers with the agency who grants the provider status. In addition, random CE audits are performed on licensees annually and individual audits are conducted if a problem of false information becomes apparent to the Board. Licensees are required to maintain CE information for a period of four years in case of an audit. This allows the Board an opportunity to check not only CE compliance for the most recent renewal period, but for the prior period as well.

I. Comity/Reciprocity with Other States

A VN applicant who is already licensed by a similar board **in another state** shall be eligible for licensure *without examination* provided that the applicant meets all of the requirements for licensure described herein, and

- ✓ Presents satisfactory proof of a current and valid license as an LVN or Licensed Practical Nurse, or in an equivalent capacity, by another state, a territory of the United States, or a foreign country; and
- ✓ Took the NLN State Board Test Pool Examination for Practical Nurses or the NCLEX-PN and passed said examination with a score equal to or above the minimum passing score required by the Board for said exam.

A VN applicant who is already licensed by a similar board **in another country** is required to meet the same criteria as any other applicant. As the NCLEX-PN is not currently administered for licensure by any other country, these applicants are required to successfully complete the examination to be eligible for licensure.

A PT applicant who is already licensed by a similar board **in another state** shall be eligible for licensure *without examination* provided that the applicant meets all of the requirements for licensure as described herein, and

- ✓ Presents satisfactory proof of a current and valid license as a PT in that state; and
- ✓ Took the “California” PT Licensure Examination and passed said examination with a score equal to or above the minimum passing score required by the Board for said examination. (Note: Arkansas administered the California constructed licensure examination to its PT applicants.)

Only two other states license PTs similar to California. They are Colorado and Kansas. There is no national examination.

A PT applicant who is already licensed by a similar board **in another country** is required to meet the same criteria as any other applicant. As the California PT Licensure Examination is not currently administered in any foreign country, these applicants are required to successfully complete the examination to be eligible for licensure.

J. Temporary Licensing Process

Pursuant to B&P Code Section 2867.6 and Section 4510, a temporary certificate may be issued to an applicant who graduated from a California accredited VN or PT Program after receiving the results of having passed the examination and upon receipt of the initial license fee.

VI. EDUCATION DIVISION ACTIVITIES

Another mechanism the Board utilizes to protect the California consumer is by ensuring that the educational programs prepare applicants with the knowledge, skills, and abilities required for safe and competent practice upon entry into professional practice. The Board’s Education Division is comprised of Nursing Education Consultants (NECs). The NECs must possess a clear and active Registered Nurse license and a Masters Degree in Nursing or related field. Additionally, the NEC is required to have professional experience to enable them to analyze, respond to and evaluate complex education, practice, enforcement, legislative and regulatory issues. The NECs are assigned to monitor and ensure that educational programs are compliant with Article 5 of the VN and PT Rules and Regulations.

A. California Approved & Accredited Programs

A major function of the Board is protection of the California consumer through education. Table 15 provides a breakdown of the 205 VN Programs and 16 PT Programs that are accredited by the Board in the State of California.

TABLE #15: SCHOOL ACCREDITATION DATA		
Accreditation Data (eff. 7/1/2010)	VN Program	PT Program
Total# of California Approved & Accredited Programs:	205	16
Private Schools	126 (62%)	2 (13%)
Community Colleges	45 (22%)	12 (75%)
Adult Schools	29 (14%)	1 (6%)
Regional Occupational Programs	5 (2%)	0 (0%)
Hospital-Based Programs	0 (0%)	1 (6%)
Note: Presently, the Board has applications pending for 109 VN Programs and 9 PT Programs.		

Table 16 delineates the 44% increase in the number of VN and PT Programs from FY 2004/05 to FY 2009/10.

TABLE #16: GROWTH IN NUMBER OF VN & PT SCHOOLS							
Programs	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	%Change from 2004/05
# of VN Programs	139	174	195	203	210	205	47%
# of PT Programs	15	15	15	16	17	16	7%
Totals:	154	189	210	219	227	221	44%

Table 17 details the progressive growth in the number of “new and additional” student admissions requested and approved by the Board for admission to its VN and PT Programs statewide.

In FY 2009/10, the Board approved the admission of **4,844** more students for its new and existing VN programs statewide. As the accredited VN programs take about 12-18 months to complete, these students should be applying for their licensure examinations in FY 2010/11 and FY 2011/12.

Table #17: New & Additional Students Admissions Approved Per Year						
VN Programs	Actual FY 04/05	Actual FY 05/06	Actual FY 06/07	Actual FY 07/08	Actual FY 08/09	Actual FY 09/10
#Students Requested for "New" Programs	600	1,218	671	533	264	150
#Additional Students Requested for "Existing" Programs	1,488	1,427	864	3269	3,885	4,694
Total # of <u>New & Additional</u> Student Admissions	2,088	2,645	1,535	3,802	4,149	4,844
% Growth of <u>New & Additional</u> Student Admissions						132%
PT Programs	Actual FY 04/05	Actual FY 05/06	Actual FY 06/07	Actual FY 07/08	Actual FY 08/09	Actual FY 08/09
#Students Requested for "New" Programs	30	0	0	30	30	30
#Additional Students Requested for "Existing" Programs	0	0	45	15	30	100
Total # of <u>New & Additional</u> Student Admissions	30	0	45	45	60	130
% Growth of <u>New & Additional</u> Student Admissions						333%

Pursuant to B&P Code, Sections 2880-2884 and Sections 4530-4532, the Board "accredits" schools of VN and PT preparation.

- **Accredited VN Programs** -- VN Programs offer a course of instruction that is generally completed in twelve (12) to eighteen (18) months or three (3) academic semesters. Full-time and part-time programs have been approved. Accredited programs are required to include minimally 1,530 hours of instruction. That instruction must include a minimum of 576 hours of theory and 954 hours of clinical instruction. Of the required total theory instruction, 54 theory hours of pharmacology are required, to include but not be limited to, knowledge of commonly used drugs and their actions, calculation of drug dosages, preparation and administration of prescribed medications.

Required curriculum content for accredited VN programs includes anatomy and physiology, nutrition, psychology, normal growth and development, nursing fundamentals, nursing process, communication, patient education, pharmacology, medical-surgical nursing, communicable diseases, gerontological nursing, rehabilitation nursing, maternity nursing, pediatric nursing, ethics, critical thinking, culturally congruent care, end-of-life care, leadership, supervision, and supervised clinical experience.

- **Accredited PT Programs** -- PT Programs offer a course of instruction that is generally completed in twelve (12) to eighteen (18) months or three (3) academic semesters. Full-time and part-time programs have been

approved. Accredited programs are required to include minimally 1,530 hours of instruction. That instruction must include a minimum of 576 hours of theory and 954 hours of clinical instruction. Of the required total theory instruction, 54 theory hours of pharmacology are required to include, but not be limited to, knowledge of commonly used drugs and their actions, calculation of drug dosages, preparation and administration of prescribed medications.

Approximately, one third (1/3) of the curriculum of accredited PT programs is devoted to nursing science. The remaining two thirds (2/3) consists of behavioral and developmental science content. Required curriculum content for accredited PT programs includes anatomy and physiology, nutrition, psychology, normal growth and development, nursing process, verbal and written communication, pharmacology, nursing science that includes nursing fundamentals and medical surgical nursing, developmental disabilities, mental disorders, leadership, supervision and supervised clinical experience.

The purpose of the required theory and clinical education is a thorough preparation of the enrolled student to competently care for patients/clients of all ages in all health care settings. To increase the probability of student success, complex scientific theory and clinical knowledge, skills and abilities must be presented at a level consistent with the level of educational preparation of the projected student population. Student learning is most enhanced when information is provided in a format and sequence that evidences simple to complex progression and requires the student to demonstrate progressive mastery of curriculum content.

The student must demonstrate an understanding of normal anatomy and physiology, growth and development, nutrition, pharmacology, psychology and communication. Without this foundation, the student cannot grasp and understand the deviations from normal which occur within clients as a result of illness, disease and an inability to communicate. The student who has a firm grasp of this basic scientific knowledge can better assimilate new more complex scientific information into his/her body of knowledge.

B. Program Approval & Accreditation

When an individual or organization decides to start a new VN or PT program, the contact person must complete and submit the appropriate application to the Board. When the initial application is received by the Board, a NEC is assigned to the program. The next step for the program is approval of a program director. After a program director is approved by the NEC, the director is asked to complete a "Self – Directed Online New Director Orientation." Upon completion, the assigned NEC and new director discuss his/her understanding of the requirements and to clarify any questions. If the director is available, these orientations are held by each NEC in the Board's office in Sacramento.

Directors are encouraged to complete the online and in person orientation before developing the program's curriculum and other required materials. One of the NEC's most critical tasks is the provision of guidance to the director in the

development of curricula and other required components of the proposed program. The assigned NEC works directly with the program director, usually during a period no less than twelve (12) months, until the program's curriculum and other requirements of Article 5 are met. These requirements include sufficient qualified instructors and clinical facilities which provide adequate numbers of patients and variety of diagnoses that will correlate with the presented theory and clinical objectives. In addition, the program must provide documentation to verify adequate library materials, a functional skills laboratory, as well as sufficient classroom and office space with support resources for faculty and students. When all of the requirements of Article 5 are met, the Board approves the program to start with an initial class.

Before that class graduates, the NEC is required to complete an on-site accreditation survey visit. The purpose of the visit is an analysis and evaluation of all program components and to ensure consistency with all previously documented plans as approved by the Board. Upon the completion of the visit, the NEC completes a detailed report with a recommendation for Board action. If compliant, the program is approved for accreditation that is retroactive to the admission of the start date of the first class. Accreditation must be renewed every four years.

C. Curriculum Development

Every health care profession, education, technology and practice must constantly evolve to keep pace with an ever-expanding scientific knowledge base. The NECs work with VN and PT programs on an ongoing basis to identify curriculum content areas that must be updated and expanded in order to facilitate continuous evolution of practice. Additionally, curriculum changes proposed by programs are analyzed by the assigned NEC before the programs may implement those changes.

Thorough analysis is required to ensure the proposed curriculum includes all required content areas as set forth in the VN or PT Rules and Regulations and that content is presented in a manner that promotes learning. The curriculum must be presented in a sequence that results in the students' progressive mastery of required knowledge, skills, and abilities. To achieve this goal, the NEC must ensure the presentation of required curricular content in a sequence from simple to complex. Additionally, the NEC must ensure that the proposed curriculum presents accurate knowledge consistent with the profession, that theoretical content is presented **prior** to correlated clinical experience, and that the proposed curriculum is developed in accordance with established currently accepted principles of curriculum development. Additionally, the curriculum must be analyzed to ensure that sufficient clinical objectives related to theoretical content are incorporated to allow the student to demonstrate proficiency in the application of theoretical knowledge.

In summary, the curriculum is analyzed and evaluated to ensure that students' achievement of objectives will provide the knowledge, skills and abilities critical for safe and competent practice upon entry into the LVN or PT profession. This includes knowledge, skills and abilities related to pathophysiology of disease, signs and symptoms, diagnostic studies, medical treatment, assessment,

problem identification, nursing interventions, pharmacological and nutritional treatment of disease, and patient education.

D. Program Evaluation

When the regulations governing educational programs were amended in July 2000 to establish four-year accreditation periods, the methodology for determining program compliance with the required criteria was developed. Comparing existing program components to each section of Article 5 of the VN and PT Rules and Regulations is a critical part of this task, but also a very labor-intensive and time-consuming process. The "Program Records Survey" (PRS) tool was implemented to make this process more efficient. The PRS lists each requirement from Article 5 and defines the indicators that will document that the program meets each of those requirements. The tool simplifies the process of program review for both the program director and the NEC who is evaluating the program.

When programs apply for continued accreditation, those programs whose licensure examination pass rates are above the state average and have no student, faculty, or consumer complaints, may only be required to complete the PRS. Other programs are required to complete the PRS and an on-site survey visit by the NEC may be required as well. The goal of this process is to document each program's compliance with Article 5 in the most efficient and effective way possible. If areas of non-compliance are found during the survey, the deficiencies are identified in writing to the director, means for correction of identified violations is discussed, and a timeline for required corrections established. The program is given reasonable time to correct all deficiencies.

In addition to Board accreditation, some VN programs hold national accreditation through the National League for Nursing (NLN). NLN accreditation is voluntary and the process is accompanied by a considerable fee. Not all programs choose to obtain NLN accreditation. In addition, the Board does not have the authority to review private accreditation standards to ensure that they are not unreasonably restrictive or anti-competitive. The Board is therefore, mandated to ensure that the California VN and PT programs are in compliance with the Board's statutes and regulations for accreditation and approval.

Unannounced survey visits are conducted when the Board has documented reason to believe that significant problems exist within a program. Grounds for such assumptions may arise from numerous and/or significant consumer complaints about a program, or from information or evidence directly from the school or another state agency indicating non-compliance. An unannounced visit allows the NEC to view the program in its true operational setting.

E. Provisional Accreditation

If new or continuing programs fail in their attempts to remain compliant with the VN or PT Rules and Regulations, the Board may place the programs on provisional accreditation. Areas of noncompliance include: inadequate numbers of faculty to supervise students, inadequate numbers and types of clinical facilities to provide adequate clinical experience for students, failure to adhere to

the instructional plan approved by the Board, failure to provide the minimum number of approved program hours, failure to include required content in the curriculum, failure to hold classes as scheduled and misrepresentation of information submitted to the Board or to student candidates regarding the program. Recently, the most frequent violation identified is failure to meet the minimum pass rate requirement.

Provisional accreditation may be imposed for a period not to exceed two years unless extended by the Board. Any program on provisional accreditation must stay within the Board's restrictions regarding admission of students.

When placed on provisional accreditation, a program receives written notification from the Board defining specific areas of noncompliance and requirements for correction. The program's success in regaining regulatory compliance will result in reinstatement of full accreditation. The program's failure to correct noted deficiencies, after due process, will result in the loss of provisional accreditation and removal from the Board's list of accredited programs. Loss of accreditation means that students prepared by the non-accredited program are not eligible to take the licensure examination for their respective profession.

Provisional accreditation regulations were implemented in July 2000. Public Forums were held to present and clarify the new regulations. The Board considers these regulations to be extremely important in achieving its mandate. The ultimate goal of VN and PT programs is the education of eligible students to be successful on the respective licensure examination. Programs that are unable to consistently achieve this goal must not be permitted to continue admitting students until improvements are made to the curriculum, teaching methodology, and student evaluations. The Programs must be held accountable for the standards they set for themselves in their application and for the failure of its students to pass the licensure examination.

F. Other Education Division Activities

- 1. Approval of Faculty and Facilities** -- New faculty and clinical facilities must be approved for each program **prior** to utilization to assure compliance with regulatory requirements specified in Article 5 of the VN and PT Rules and Regulations. Approximately 100 faculty applications and 65 facility applications are processed each month.
- 2. Director Forums** -- The Education Division conducts annual meetings for all directors, faculty, administrators, and owners during which critical information relative to VN and PT programs is shared. The information includes review of statutes, regulations and legislation that are applicable to all VN and PT programs, updates regarding events in the health care community, solutions and best practices within nursing education, and opportunity for networking.

Additionally, problems common to all VN and PT programs are discussed. In 2010 Director Forums, the availability of clinical facilities was addressed. In response to Board inquiry, a great number of programs have advised of the loss of clinical sites and the difficulty in securing replacement sites. As a

result, those programs are experiencing problems in providing required clinical experience.

3. **Director and Faculty Workshops** -- In addition to Director Forums, the Board convenes workshops with directors and faculty of VN and PT programs when new regulations are implemented, when the licensure examination test plan changes and when pervasive long term problems are identified among the schools.

As an example, the Board conducted a workshop for PT directors and faculty to discuss the low pass rates of many programs during the recent reporting periods. Strategies for improvement were developed and implemented by each program. Based upon these actions, marked improvement has been identified in student achievement. As a result, program performance statistics on the licensure examination have increased significantly.

4. **Expert Witness Workshops & Training** – The Education Division also provides training in the Board’s Expert Witness Workshops. These workshops are presented by the Board’s Enforcement Division to orient and train Subject Matter Experts (SMEs) who review the Board’s cases relative to licensee misconduct. Specifically, the SME must analyze the investigative report and all relevant documents determine if sufficient evidence is presented to substantiate licensee misconduct, the extent to which the misconduct deviates from standard professional practice as a LVN or PT, and the effect of the licensees’ actions or lack thereof on the consumer’s health, safety, and welfare. The SME is required to render a written, objective, and professional opinion. If the case proceeds to administrative hearing, the SME is required to render expert testimony relative to the alleged misconduct.

The SME must be a currently licensed RN, LVN, or PT with extensive knowledge, clinical experience, and experience working with entry - level LVNs and PTs. The SME must be provided training relative to the statutes and regulations governing VN and PT practice. Additionally, SMEs must be provided instruction relative to the preparation of the expert opinion and expert testimony.

SMEs are requested when unprofessional conduct, gross negligence, or incompetence is alleged. The quality of the expert opinion is a critical component in determining required action. Should the case be forwarded to the Office of the Attorney General and proceed to Administrative Hearing, the SME may be required to render expert testimony. Such testimony is critical to proving licensee misconduct.

5. **Legislative Analysis** -- The NECs are asked on an ongoing basis to analyze legislation to determine its policy and fiscal impact to the Board.
6. **Liaison Activities** -- NECs frequently represent the Board on committees, task forces and special projects throughout the state. The Board was represented during meetings with the following:

- Assembly Select Committee for the California Nursing Shortage

- Board of Registered Nursing
- Bureau for Private Postsecondary Education
- California Association of Health Facilities
- California Association of Homes and Services for the Aging
- California Association of Psychiatric Technicians
- California Department of Corrections and Rehabilitation
- California Institute for Nursing and Health Care
- California Nursing Outcomes Coalition
- California Vocational Nurse Educators
- Enloe Medical Center
- Health Professions Education Foundation
- Kaiser Permanente Nursing (north and south)
- Licensed Vocational Nurses League of California
- Little Hoover Commission
- Long Beach Memorial Medical Center
- National Council of State Boards of Nursing
- Office of Statewide Health Planning & Development
- State and Consumer Services Agency (including DCA)

7. **New Director Orientation** -- When applications to begin new VN and PT programs are received by the Board, an NEC is assigned to the applicant. The NEC approves the program director. Documents regarding what is required, sample formats and curriculum are sent to the Program Director. An orientation for the new director is conducted. The director is encouraged to bring faculty and administrators to the orientation. In most cases, the orientation is held prior to development of curriculum materials. This process greatly facilitates the program's regulatory compliance.

8. **Scope of Practice** -- A great deal of NEC time is spent responding to inquiries from consumers, employers licensees, and other state and national governmental agencies relative to LVN and PT scopes of practice. It is not within the Board's authority to publish written guidelines related to scope of practice; therefore, each scope of practice question must be responded to individually. The NECs receive scope of practice questions via telephone, regular mail, electronic mail, facsimile, public counter, and through the Board's webmaster.

The Education Division receives frequent requests to speak to groups to clarify the LVN and/or PT scope of practice. Due to fiscal constraints, Board staff must limit travel; however, conference calls have been held on numerous occasions with groups that have the necessary equipment. The Board considers joint presentations with the Board of Registered Nursing to be ideal since LVN and PT practice interfaces with registered nursing practice.

9. **Stakeholder Surveys** – The Education Division surveys its stakeholders at regular intervals. The stakeholders include the VN and PT program directors and nursing directors of clinical facilities and sites used for clinical experience. Surveys solicit input relative to curriculum, clinical experience, and utilization of VNs and PTs as well as other topics of interest at the time of the survey.

10. **Enforcement Case Reviews** – The NECs are also required to assist with conducting in-house investigations and analyzing data pertaining to

allegations of unprofessional conduct, incompetence, negligence, or other violations of the VN and/or PT statutes and regulations and recommending appropriate disciplinary actions. Their expertise and nursing judgment are critical to the Board’s enforcement process.

G. NEC Recruitment and Retention Issues

At present, the Board has an 80% vacancy in its NEC positions (i.e., 4 out of 5 NEC positions are vacant). The NEC positions are hard to fill. Nurses are in great demand in the private sector as well as other State agencies. Consequently, other agencies are paying NECs over \$2,000 more per month. As a result, the majority of the Board’s former NECs transferred to other state agencies or the private sector.

The Board is working with DCA and the Department of Personnel Administration (DPA) to obtain a pay differential to recruit and retain NECs. The minimum qualifications for an NEC are:

1. Holds current active licensure as a Registered Nurse;
2. Masters Degree in nursing or a related field;
3. Have extensive experience in clinical practice; and
4. Have experience in teaching, curriculum development, and administration.

Table 18 delineates the salaries paid to RNs at CDCR and the Department of Health Care Services (DHCS) in comparison to the Board’s NECs.

TABLE #18. SALARY COMPARISON AMONG OTHER STATE AGENCIES						
Position Classification	Agency	Minimum Qualifications			Current Salary	
		Prof. Lic.	Education	Teaching	Minimum Per Month	Maximum Per Month
Nurse Consultant, Program Review	CDCR	RN	Bachelors Degree	No	\$9,022	\$10,966
Nurse Consultant I	CDCR	RN	Bachelors Degree	No	\$8,677	\$10,548
Nurse Consultant II	CDCR	RN	Bachelors Degree	No	\$8,763	\$10,653
Nurse Consultant II	DHCS	RN	Bachelors Degree	No	\$5,455	\$10,653
Nurse Consultant III (Specialist)	CDCR	RN	Masters Degree	No	\$8,849	\$10,756
Nurse Consultant III (Supervisor)	CDCR	RN	Masters Degree	No	\$9,163	\$11,136
BVNPT: Nursing Education Consultant	DCA	RN	Masters Degree	Yes	\$5,724	\$6,954
BVNPT: Supervising Nursing Educ. Cons.	DCA	RN	Masters Degree	Yes	\$6,040	\$7,301

On June 22, 2010, the DCA submitted documents to the DPA requesting a 36% pay differential for the Supervising NEC and a 30% pay differential for NECs effective July 1, 2010. To date, a decision has not been made as DPA must also work with the applicable unions.

VII. ENFORCEMENT DIVISION ACTIVITIES

A. Enforcement Division Overview

The operation of the Board's Enforcement Division is critical to protecting consumers by:

- enforcing the rules and regulations governing the practice of LVNs and PTs;
- investigating and taking disciplinary action against licensees who are unprofessional, incompetent, negligent and/or abusive;
- monitoring probationers to ensure that they comply with the Board's terms and conditions of probation; and by requiring random body fluid tests when appropriate;
- developing innovative methods and procedures to enhance consumer protection, reduce costs; and expedite complaint handling; and
- developing brochures, newsletters and fact sheets to educate consumers about their health care rights and the disciplinary process.

The Board's responsibility for regulation and enforcement of two health care professions that critically impact consumer health and safety is enormous. The majority of the Board's enforcement cases are replete with licensees who have violations related to incompetence, gross negligence, physical and sexual abuse, elder abuse, substance and alcohol abuse, drug diversion, prescription forgeries, sale of controlled substances, theft, and fraud. It is, therefore, incumbent upon the Board to take appropriate disciplinary action against licensees who do not provide safe and competent care.

B. Enforcement Initiatives

The Board took proactive steps to implement the following consumer protection actions:

1. **Mandatory Reporting** – On October 11, 2007, regulations were approved to implement mandatory reporting requirements. The new mandatory reporting regulations require LVNs, PTs, and employers of LVNs and PTs to report known violations to the Board that are prohibited by the VN & PT rules and regulations.

If a licensee fails to report to the Board within 30 days of knowledge of any act by another licensee that is in violation of the LVN or PT laws, the failure to report constitutes unprofessional conduct and is grounds for the Board to take disciplinary action. If an employer fails to report to the Board within 30 days of an LVN or PT's suspension or termination for cause, the Board may assess the employer a fine of up to \$10,000 per violation.

On October 30, 2007, the Board mailed approximately 119,000 flyers to licensees, employers, associations, and schools advising them of the new Mandatory Reporting requirements. On June 24, 2008 and June 26, 2008, the Board conducted public forums to present and clarify the statute and

regulations. During the first year of implementation, the Board's enforcement workload increased by 23% (from 2,907 cases in FY 2007/08 to 3,586 cases in FY 2008/09). Implementation of the mandatory reporting laws and regulations has enabled the Board to increase consumer protection by being alerted to potentially incompetent and unsafe licensees who may have otherwise remained undetected.

2. **Retroactive Fingerprinting Requirements** – On April 1, 2009, emergency regulations were approved to implement Retroactive Fingerprinting. Board records indicated that about 55,000 licensees needed to be fingerprinted. These individuals were licensed prior to January 1, 1998.

Although the fingerprint requirement was reestablished by the Board on July 1, 1996, after a 15 year lapse, only new applicants for licensure were required to submit their fingerprint records to the DOJ, and out-of-state applicants were required to also submit their fingerprint records to the FBI. The Board began requiring all applicants for licensure to submit both DOJ and FBI fingerprints beginning January 1, 1998. Unfortunately, at that point in time, the Board did not have the regulatory authority or the resources required to pursue retroactive fingerprinting of all licensees.

From April 1, 2009 through June 30, 2010, the Board processed almost 35,000 fingerprint documents (i.e., DOJ Clearance Reports, FBI Clearance Reports, RAP Sheets, Fingerprint Rejection Notices, etc.). This equated to about 22,266 licensees. Of that group, 1,652 enforcement cases were opened against licensees with prior convictions.

3. **Self-Reporting of Criminal Convictions on License Renewal Forms** – In January 1997, the Board implemented this new requirement that all licensees must self-report any criminal convictions sustained during the two years immediately preceding their license renewal on their renewal form every two years. The Board's implementation of this self-reporting requirement provided a mechanism to: 1) ascertain if a licensee has sustained any new convictions during the past two years; 2) use the certification statement as evidence that the licensee failed to truthfully disclose his/her conviction history (if a conviction is later reported through the complaint process); and 3) compare the DOJ Subsequent Arrest Reports to the licensee's certification statement.

In January 2009, the DCA revised the license renewal forms for all of the other healthcare boards to include this same requirement and also added self-reporting if the licensee had been denied a license or disciplined by another licensing authority.

C. Consumer Protection Enforcement Initiative & Related Activities

In July 2009, various media articles reported that most DCA health care boards were taking over three years to complete investigations and take appropriate disciplinary actions against licensees. As a result, Governor Arnold Schwarzenegger directed the State and Consumer Services Agency (SCSA) to conduct an internal review of all the health care board's enforcement programs

and the DCA Division of Investigation (DOI). The SCSA found that most of the health care boards face significant complaint investigation backlogs and processing delays. The Governor charged the DCA Director, Brian Stiger, with reforming the current enforcement process for the health care boards.

The DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas: Legislative Changes; Staffing and Information Technology (IT) Resources; and Administrative Improvements. Once fully implemented, the DCA expects the healing arts boards should reduce the average enforcement completion timeline to between 12-18 months.

To implement and monitor CPEI, the following activities are underway:

1. **Budget Change Proposal** – Effective July 1, 2010, the Board received budget approval to hire 8 investigators (plus 2 more investigators effective July 1, 2011), 2 managers and 3.5 limited term analysts to staff the CPEI over the next two fiscal years. The Board is working with the DCA Office of Human Resources (OHR) to obtain approval of the two manager positions. Upon approval, the managers will commence hiring and training the new investigators. **On August 31, 2010, the Governor implemented a State Hiring Freeze. As a result, the Board is not authorized to fill these positions at this time.**
2. **Enforcement Performance Measures** – In conjunction with expanded staff and better tracking systems, the DCA established a new position, Deputy Director of Enforcement & Compliance, to assess each board's enforcement program and to ensure continuous improvements. The DCA is developing enforcement performance measures to determine the effectiveness of efforts to streamline enforcement processes, reduce backlogs and achieve the overall goal to process complaints within 12-18 months. In July 2010, the DCA began collecting data on new external enforcement measures. The first quarter performance reports was issued in October 2010.
3. **Senate Bill (SB) 1111 (Negrete-McLeod)** – On February 17, 2010, SB 1111 was introduced by Senator Negrete-McLeod and sponsored by the DCA. The proposed legislation was introduced to establish the Consumer Health Protection Enforcement Act and make enforcement processes more efficient.

On April 22, 2010, SB 1111 failed to make it out of the Senate BP&ED Committee. On April 30, 2010, Paul Riches, DCA Deputy Director, Enforcement & Compliance, reported that DCA reviewed SB 1111 and determined that *some of the provisions* could be implemented through regulations. The DCA Legal Affairs Division was directed to develop the specific language and the Initial Statement of Reasons to serve as a template for boards/bureaus to use.

The following provisions were included in SB 1111:

- Allowing an administrative law judge (ALJ) to direct a licensee to pay the Board's reasonable costs of probation.
- Requiring an ALJ to provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs are not ordered.
- Requiring that payment in full for recovery of costs is due and payable in 30 days after the effective date of the order unless the Board agrees to a payment plan.
- Authorizing a board to contract with a collection agency for the collection of outstanding fees, fines, or cost recovery amounts.
- Allowing healing arts boards or committees to hear the appeal of a citation or fine assessment.
- Investigators used by the healing arts boards shall not be required to be employees of the DOI and the healing arts boards may contract for investigative services provided by the Attorney General's Office (AG).
- Establishing within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants from healing arts boards.
- Allowing a healing arts board to delegate to its executive officer (EO) the authority to adopt a proposed default decision to revoke a license.
- Allowing a healing arts board to delegate to its EO the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed and the licensee has agreed to the license revocation or surrender.
- Allowing a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues.
- Allowing the EO of a healing arts board, upon receipt of evidence that a licensee has engaged in conduct that poses an imminent risk of serious harm, to petition the Director of the DCA to issue a temporary order against the licensee to cease practice.
- Requiring the automatic suspension of any licensee incarcerated after conviction of a felony.
- Specifying certain requirements for any applicant or licensee required to register as a sex offender.
- Allowing a healing arts board, its investigators or representatives, to inspect documents relevant to those investigations provided that a patient consent is given.
- A licensee or health facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena mandating the release of records to a healing arts board, shall pay a civil penalty to the board.
- Requiring a state agency to immediately provide to a healing arts board all records in the custody of the state agency upon receiving a written request from the board.
- Requiring the AG to serve or submit for service to a healing arts board an accusation within 60 days after receipt of the case from the healing arts board.

- Requiring the AG to serve or submit for service to a healing arts board a default decision within 5 days after the period allowed for the filing of a notice of defense.
- Requiring the AG to set a hearing date within 3 days of receiving a notice of defense, unless otherwise instructed by the healing arts board.
- Authorizing healing arts boards to require applicants to be examined by one or more physicians or psychologists if the applicant appears to be unable to practice safely due to a mental or physical illness affecting competency.
- Specifying that it is unprofessional conduct for any licensee to fail to furnish information in a timely manner or cooperate and participate in any investigation or other disciplinary proceeding pending against the licensee.
- Requiring a licensee to submit a written report to the board if an indictment or information charging a felony against the licensee is filed; upon any arrest; upon any misdemeanor or felony conviction; and upon any disciplinary action taken by another licensing entity or authority of this state or another state.
- Requiring a licensee of a healing arts board to identify him or herself as a licensee to law enforcement or court officials upon being arrested or charged with a crime.
- Requiring the district attorney, city attorney other prosecuting agency or clerk of the court to notify the appropriate healing arts board if a licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee.

On September 16, 2010, the Board approved regulatory language to address some of the provisions identified in SB 1111. A regulation hearing will be conducted and the matter brought back before the Board for formal adoption in February 2011.

4. **Substance Abuse Coordination Committee (SACC)** – On November 16, 2009, the SACC adopted sixteen uniform standards for substance-abusing healing arts licensees as required by Senate Bill 1441 (Chapter 548, Statutes of 2008). The SACC was tasked with developing these standards by January 1, 2010.

The DCA Director encouraged the boards to promptly implement those standards that do not require legislation or regulatory changes. He also requested that the boards develop proposed statutory and/or regulatory changes, as needed, to fully implement the standards. The Board developed draft proposed regulatory language to implement those standards. However, the regulations are on hold pending final action on the number of drug screens recommended by the SACC.

A status report on the proposed regulations was provided at the September 16, 2010 Board Meeting.

5. **Audit of Enforcement Division** – On April 12, 2010, the Board received notice from the DCA Internal Audit Office (IAO) that a comprehensive audit of the Board's Enforcement Program will be conducted by the IAO. The audit will focus on all aspects of the Enforcement Program including the Probation Program and Investigations Unit. The IAO plans to evaluate the efficiency and effectiveness of the enforcement process and make recommendations regarding possible improvements. The audit objectives are to determine if the Board has:
- ❖ Established policies and procedures to guide staff in effectively handling enforcement activities.
 - ❖ Complied with applicable laws and regulations.
 - ❖ Performed the Enforcement functions efficiently and effectively.
 - ❖ Established benchmarks in order to judge if cases are proceeding appropriately and are closed in an expeditious manner.
 - ❖ Established a process for management review of critical cases.
 - ❖ Appropriately referred cases to experts when needed, on a timely basis.
 - ❖ Adequately protected the public through the enforcement process.

At the conclusion of the audit, the IAO will issue a draft report and request the Board's response to any audit findings and recommendations. The Board's response will be included in the final audit report. The final audit report will be submitted to the DCA Chief Deputy Director and Deputy Director of Enforcement. The IAO will perform 180-day and 360-day follow-up procedures after the final report is issued to determine if proposed corrective actions are implemented.

6. **Enforcement Academy** – Karen Newquist, Enforcement Program Manager, participated in the DCA's first Enforcement Academy which was conducted from April-June 2010. The primary purpose of the Academy is to provide a solid, standard baseline of knowledge and practices for new and existing employees who perform enforcement functions. The Academy is also intended as a venue for individuals from all of DCA's boards, bureaus, and divisions to learn from one another and form valuable, lasting working relationships.

Developed by internal subject-matter experts working in partnership with the DCA's Training & Development Unit, the Academy consists of eight modules designed to provide a broad grounding in all aspects of the enforcement process. The Academy consists of four two-day sessions held every other week. As this program was still under development, the first two Academies were limited to managers and supervisors. Ms. Newquist completed the Academy on June 8, 2010.

D. Enforcement Statistics

Chart A shows the increase in the enforcement workload for the past ten (i.e., Fiscal Year 2000/01 through 2009/10). The number of complaints “received” increased by 188% and the number of complaints “pending” (as of June 30, 2010) increased by 147%.

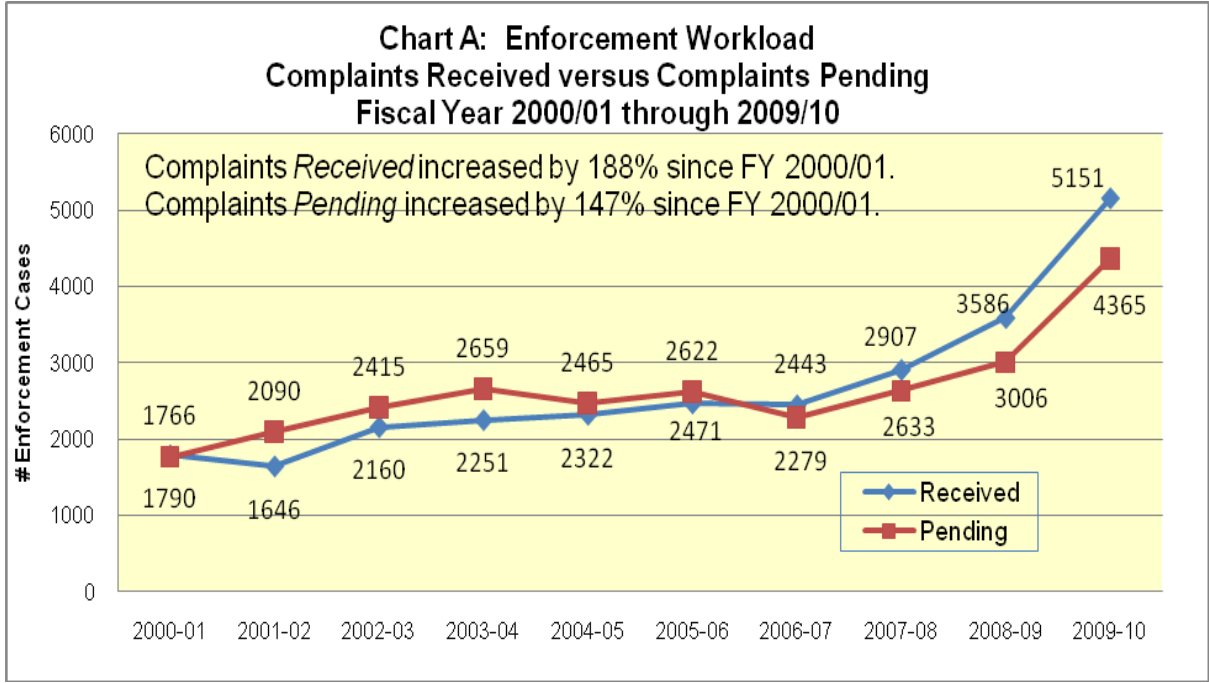


Table 19 provides four fiscal years of data showing the Enforcement Division’s workload as it relates to complaints against licensees and applicants.

The majority of complaints against licensees are initiated by the Board due to criminal history information received against licensees. Complaints received by the Board as a result of criminal convictions accounted for 75% of the total licensee complaints received. The bulk of the remaining licensee complaints were for unprofessional conduct (including incompetence and gross negligence), fraud, and substance abuse.

TABLE #19: ENFORCEMENT STATISTICS								
Enforcement Data	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
1. Licensee Complaint Cases Received (By Source) (1)	1,023	1,231	1,626	2,484	226	275	387	626
Public	265	247	381	500	52	68	67	113
Licensee/Professional Groups	4	35	8	2	6	4	1	2
Governmental Agencies	58	94	54	21	5	25	13	0
Internal – Licensee Convictions (2)	173	714	1,060	1,800	73	154	285	485
Internal – Miscellaneous (3)	492	123	112	128	87	20	18	26
Other	31	18	11	33	3	4	3	0
2. Licensee Complaint Cases Received (By Type) (1)	1,023	1,231	1,626	2,484	226	275	387	626
Incompetence/Negligence	17	103	86	91	1	20	12	24
Unprofessional Conduct	255	169	226	206	58	57	57	65
Fraud	153	131	116	157	23	18	19	28
Health & Safety	1	2	3	0	0	1	1	0
Substance/Drug-Related Abuse	48	61	91	130	2	5	3	11
Sexual Misconduct	4	11	13	6	2	10	4	5
Unlicensed Activity	17	5	14	54	2	1	1	0
Personal Conduct (Misc. Conv.)	528	749	1,077	1,840	138	163	290	493
3. Licensee Complaint Cases Closed (Informal, In-house Investigations)	1,160	1,042	1,123	1,939	327	258	257	507
4. Applicant Complaint Cases Received (Requires Conviction History Reviews)	1,082	1,257	1,387	1,816	112	144	186	225
Rap Sheets (DOI/FBI Reports)	402	558	673	756	89	118	139	143
Applicants Approved/Cleared	903	921	1,292	998	121	102	182	152
Applicants Denied Licensure	17	27	21	14	2	7	3	6
Statement of Issues Filed	6	26	28	11	2	5	4	7
Licenses Denied	2	5	6	10	0	0	3	0
5. Applicant Complaint Cases Closed	930	1,028	1,494	1,299	121	122	201	189
6. Total Cases Received	2,105	2,488	3,013	4,300	338	419	573	851
7. Total Cases Closed	2,090	2,070	2,617	3,238	448	380	830	696
8. Formal Invest. Opened	160	170	127	105	12	20	13	8
9. Compliance Actions	1,247	1,056	1,274	1,148	270	171	195	221
ISOs & PC23s Issued	0	0	4	7	0	0	1	0
Citations and Fines	195	210	180	168	42	34	31	33
Public Letter of Reprimand	0	0	0	1	0	0	1	0
Cease & Desist/Warning	1,050	844	1,085	971	228	137	160	187
Referred for Diversion	0	0	0	0	0	0	0	0
Compel Examination	2	2	5	3	0	0	2	2
10. Criminal Action Cases	6	4	4	3	0	1	0	0
11. Referred to AG's Office	150	255	185	167	38	71	41	54
Accusations Filed	128	161	153	132	48	42	30	34
Accusations Withdrawn	2	7	9	4	1	1	1	0
Accusations Dismissed	0	0	0	1	0	0	0	0

TABLE #19: ENFORCEMENT STATISTICS

Enforcement Data	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
12. Stipulated Settlements	22	64	43	37	7	13	12	7
13. Disciplinary Actions	156	163	161	175	38	33	43	47
Revocation	75	79	82	96	21	20	18	24
Voluntary Surrender	14	13	14	19	2	0	2	4
Suspension Only	0	0	1	0	0	0	0	0
Probation with Suspension	7	1	0	0	0	0	0	0
Probation	46	62	61	52	14	10	21	18
Probationary License Issued	0	0	0	0	0	0	0	0
Other Decisions (4)	14	8	3	8	1	3	2	1
14. Probation Violations	19	21	32	46	7	8	11	13
Petition to Revoke Prob. Filed	12	11	18	23	5	3	7	6
Suspension or Probation	0	1	0	1	1	0	1	1
Revocation or Surrender	7	9	14	20	1	5	3	6

(1) Licensee Complaint Cases Received – This data does not include the 2,041 applicant cases (i.e., 1,816 VN and 225 PT cases) that required record of conviction history reviews by the Enforcement Staff each year (see #4 in this table for applicant cases received). To conduct applicant reviews, enforcement staff must review RAP Sheets, obtain court documents and police reports, and correspond with the applicant to obtain additional information relative to probation compliance and rehabilitation efforts. Prior to licensure, the Enforcement Unit must make a recommendation on whether or not to license an applicant based upon his/her conviction history. If denied, a Statement of Issues must be filed with the Attorney General’s Office, settlement terms considered, a hearing conducted, Proposed Decisions sent to board members for their vote and the final Decision mailed to the applicant.

(2) Licensee Complaint Cases Received (by Source) Subcategory “Internal – Licensee Convictions” -- Licensee conviction cases are filed under regular complaints received. If the licensee self-discloses on the renewal form that he/she sustained a conviction within the two years immediately preceding license renewal, the Board must investigate the matter to ascertain if the conviction(s) was substantially related to the licensee’s practice.

(3) Licensee Complaint Cases Received (by Source) Subcategory “Internal – Miscellaneous” -- Other complaints initiated by the Board typically include cases involving: RAP Sheets & Subsequent Arrest Reports received for applicants/licensees *who failed to truthfully self-disclose* their conviction history on their original application for licensure or their biennial license renewal forms; continuing education audit violations for which citations/fines are issued; etc.

(4) Other Decisions – This data includes decisions resulting from Citation & Fine appeals.

E. Applicant “Record of Conviction” Cases

In FY 2009/10, the Board received 2,041 applicant “record of conviction” cases. Within the past four fiscal years, the number of applicant cases received by the Board increased by 71% from 1,194 cases in FY 2006/07 to 2,041 complaints in FY 2009/10.

The workload associated with record of conviction cases is extensive and time consuming. To conduct these reviews, enforcement staff must:

- ✓ Review RAP Sheets (arrest and conviction reports).
- ✓ Request and review court documents and police reports.
- ✓ Correspond with the applicant to obtain additional information relative to compliance with criminal penalties and rehabilitation efforts.
- ✓ Make a final recommendation on whether or not to license an applicant based upon his/her conviction history and evidence of rehabilitation.

- ✓ Process the Notice of Defense if the applicant requests an administrative hearing
- ✓ Transmit the case to the Attorney General’s Office to prepare the Statement of Issues pleading.
- ✓ Review and consider settlement terms with the applicant and/or his legal counsel.
- ✓ Review the Administrative Law Judge’s Proposed Decision
- ✓ Send mail ballots along with the proposed decisions to board members for consideration.
- ✓ Mail final decision to the applicant.

Consequently, reviewing “applicant” cases is an enforcement function and is critical to consumer protection. B&P Code Section 480 authorizes the Board to deny someone licensure based on convictions substantially related to the license. After thorough reviews of an applicant’s criminal history and rehabilitation efforts, a determination must be made as to whether denial of licensure is warranted. If the Board licenses someone with convictions related to acts of violence, sexual misconduct, or drug and alcohol abuse, California consumers will be at severe risk that injury or death will occur at the work site. If an applicant is denied licensure based upon his/her conviction history, the applicant has the right to “due process” and can request a hearing to contest the denial. This is all part of the disciplinary process that must be handled by staff.

F. Complaints Opened, Closed & Referred

TABLE #20: COMPLAINTS OPENED, CLOSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION								
COMPLAINTS RECEIVED	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Complaint Cases <i>Received</i>	1,023	1,231	1,626	2,484	226	275	387	626
Complaint Cases <i>Closed</i>	1,160	1,042	1,123	1,939	327	258	257	507
Referred for Investigation	160	170	127	105	12	20	13	8
Referred to AG’s Office	150	255	185	167	38	71	41	54
Accusations Filed	128	161	153	132	48	42	30	34
Disciplinary Actions	156	163	161	175	38	33	43	47

All complaints received by the Board that are within its jurisdiction are referred for investigation. The majority of the complaints are investigated by in-house staff analysts who conduct “desk” investigations by gathering data and documents via written communication. Desk investigations do not include field work or interviews. Any investigation that requires field work, interviews, service of subpoenas or a sworn peace officer involved due to safety concerns or criminal activity, is referred to the DCA Division of Investigation (DOI).

Although the number of complaints received within the past four fiscal years has increased, the number of cases the Board has sent to the DOI has steadily decreased. In FY 2006/07, the Board sent approximately 14% of the licensee complaints received (172 of the 1,249 complaints received) to the DOI for

investigation. In FY 2009/10, only 4% of the licensee complaints received (113 of the 3,110 complaints received) were sent to DOI. The decline in the number of cases the Board has forwarded to the DOI is due to the increase in cases that do not require sworn peace officers to investigate and to the increase in the average days it takes for DOI to complete its investigations for the Board. The Board has tried to conduct more desk investigations using in-house staff analysts in an attempt to mitigate DOI's backlog and reduce case aging.

The number of cases the Board transmits to the Attorney General's Office (AG) for the preparation and filing of an accusation fluctuates each year. On average, the Board transmitted approximately 14% of its total complaints each year to the AG. The Board filed accusations against licensees, on average, for approximately 78% of cases transmitted each year to the AG. Within the past four years, the number of disciplinary actions against licensees has increased by 14% (from 194 in FY 2006/07 to 222 in FY 2009/10).

The Board will settle a case when the respondent is willing to stipulate to revocation or voluntary surrender of the license. In addition, the Board will also consider settlement terms when the violation does not necessarily warrant license revocation. These cases include:

- The Board cannot prove to a "clear and convincing" standard at a hearing that revocation is warranted. Sometimes the Board runs into evidence problems. For example: a key witness is no longer available; a witness gives conflicting/contradicting statements to the Board's Deputy Attorney General (DAG) as compared to the investigator during the investigation. If there are "evidence" problems, the DAG usually contacts the Board about the case and may recommend that the Board consider settlement.
- The respondent submits sufficient rehabilitation material to prove partial rehabilitation and probation would still ensure protection of the public. For example: drug abuse related cases where there was no patient harm and the respondent has taken substantial steps towards recovery/rehabilitation; conviction cases where the licensee may still be trying to comply with the criminal penalties (consequently, is not fully rehabilitated).

Approximately 32% of the Board's disciplinary actions result in probation. The average term of probation is three years. The Board monitors approximately 230 licensees on probation per year. When a licensee on probation violates the terms of his/her probation, the Board transmits the case to the AG's Office for the preparation and filing of a petition to revoke probation and subsequent discipline.

Many licensees are on probation with the Board as a result of substance abuse or a drug related violation. Approximately 140 probationers are required to submit to random drug testing as a condition of probation. Prior to July 2010, licensees were required to identify and propose a drug testing vendor or laboratory for Board approval to obtain and process drug tests. However, in July 2010, the Board entered into the DCA master contract with Phamatech, Inc. for drug testing services. All current and future probationers required to be drug tested as a condition of probation will be required to go through Phamatech, Inc.

Participation in this contract will enable the Board to test probationers more frequently.

G. Enforcement Backlog

The increase in the Board's overall enforcement workload is directly attributed to:

- Public awareness of the complaint and disciplinary process.
- Information technology advances (e.g., the internet) that allows consumers to file complaints online.
- The increase in the number of ***applicants for licensure*** with a criminal history that requires enforcement action to obtain and review certified police reports, court documents, rehabilitation efforts, etc.
- The increase in the number of ***licensees*** who are required to self-report on their license renewal form if they sustained any arrests or convictions in the two years immediately preceding each license renewal cycle.
- The Board's implementation of its fingerprint requirements in 1996 and the resultant increase in the number of ***"reports of arrests and prosecutions" (i.e., RAP Sheets)*** received for applicants and licensees.
- The Board's implementation of mandatory reporting requirements **in 2007**.
- The Board's implementation of retroactive fingerprinting requirements **in 2009**.

It is difficult to manage the voluminous workload handled by the Enforcement Division. The Board lacks sufficient resources to timely process cases. Each enforcement case requires numerous reviews as it progresses through the complaint and disciplinary process. A single case is reviewed a *minimum* of 3 times and may require numerous other reviews, dependent upon the disciplinary action being taken. Multiply these ongoing reviews against the total number of cases received and the enforcement workload becomes enormous. A fully trained and efficient enforcement analyst can only review about 175-200 files per month along with the multitude of other critical tasks that must be completed in the Enforcement Division. The Board's enforcement analysts assigned to investigate complaints and review applicant cases currently handle, on average, a caseload of approximately 400 cases each.

From FY 2003/04 through FY 2006/07, the Board was able to reduce the number of complaints pending by 14% from a high of 2,659 to 2,279. However, this reduction was only achieved by requiring mandatory overtime of all enforcement staff, nurse consultants and analysts from other program areas to work on enforcement case processing. This mandatory overtime had a detrimental impact on all of the Board's staff. Thereafter, mandatory reporting and retroactive fingerprinting were implemented and the volume of cases *received* increased by 111% (i.e., 2,443 cases in FY 2006/07 to 5,151 cases in FY 2009/10). Concurrently, the volume of cases *pending* increased by 92% (i.e., 2,279 in FY 2006/07 to 4,365 in FY 2009/10).

Although the Board received approval for 15.5 staff positions to implement retroactive fingerprinting, only 6 positions are permanent. Of those permanent positions, 4 are enforcement positions and 2 are fingerprinting technicians. The majority of the remaining 9.5 limited term (LT) positions will expire on July 1,

2011. Due to the temporary nature of LT positions, most employees transfer to permanent positions as soon as possible. As a result, the Board currently has 4.5 vacant LT positions. **Unfortunately, on August 31, 2010, the Governor implemented a State Hiring Freeze, no exceptions. Consequently, the 4.5 vacant LT positions cannot be filled at this time.**

Additionally, the Board received approval for 15.5 staff positions to implement CPEI and establish a new in-house special investigations unit. This function was previously handled by the DCA DOI. Of the 15.5 positions, only the 2 managers and 10 investigators are permanent. The 3.5 analyst positions will expire on July 1, 2012. **Again, on August 31, 2010, the Governor implemented a State Hiring Freeze, no exceptions. As a result, none of these positions can be filled at this time.**

Consequently, the Board is faced with major workload increases due to the following factors:

- 188% increase in the number of enforcement cases *received*;
- 147% increase in the number of enforcement cases *pending*;
- Loss of productivity due to the State Hiring Freeze and the inability to recruit and train the 4.5 LT positions for retroactive fingerprinting;
- Loss of productivity due to the State Hiring Freeze and the inability to recruit and train the 15.5 positions for CPEI;
- Impending loss of 13.0 LT positions that will expire on July 1, 2011 (i.e., 9.5 positions) and July 1, 2012 (i.e., 3.5 positions); and
- Loss of productivity due to ongoing Furlough Fridays.

H. Case Aging Data

TABLE #21: CASE AGING DATA – AVERAGE NUMBER OF DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES								
	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Complaint Processing/Desk Investigations (in days)	273	210	172	228	394	98	179	196
DOI Investigations (in days) (1)	609	519	537	644	469	430	478	693
Total Average of All Investigations (in days) (2)	441	365	355	436	432	264	329	445
Pre-Accusation (in days) (3)	215	172	143	157	403	191	156	118
Post-Accusation (in days) (4)	369	365	331	413	581	307	514	454
Total Average Days (5)	1,025	902	829	1,006	1,416	762	999	1,017
Total Average Years	2.8	2.5	2.3	2.8	3.9	2.1	2.7	2.8

(1) DOI = DCA Division of Investigation
 (2) Average number of days to complete in-house desk investigations and formal DOI investigations combined.
 (3) From completed investigation to formal charges being filed.
 (4) From formal charges filed to conclusion of disciplinary case.
 (5) From date complaint received to date of final disposition of disciplinary case.

The Board's case aging is directly attributed to the 188% increase in workload over the past ten years and the lack of enforcement staff to meet this workload. Additionally, case aging occurs whenever:

- ✓ The licensee does not respond to the Board requests for certified documents and enforcement staff must track the correct court down to secure the applicable documents.
- ✓ Subsequent violations are discovered that must be "amended" into the ongoing disciplinary action underway.
- ✓ The Board's DAG indicates that the outcome of a pending District Attorney (DA) Criminal Action is needed to substantiate the Board's disciplinary action. Therefore, no action can be taken pending the outcome of the criminal hearing.
- ✓ The DA's Office routinely requests that Board disciplinary action be placed on hold as it may jeopardize the outcome of the DA's criminal case.
- ✓ Confidential medical and/or employment records must be obtained by the Board's investigator using the subpoena process.
- ✓ Expert opinions and expert witnesses are needed for all cases involving gross negligence and/or incompetence.
- ✓ Eye witness testimony and signed declarations must be obtained and the key witnesses must appear at the Administrative Hearing.
- ✓ Psychological evaluations must be ordered by the Attorney General's (AG) Office and obtained on certain cases.
- ✓ The attorneys for the respondent (licensee) request ongoing continuance of hearing dates that are approved by the Office of Administrative Hearings' ALJ.
- ✓ The respondent may decided to pursue settlement terms that must be negotiated and approved by the Board via the AG's Office.
- ✓ The Board votes to non-adopt the ALJ's Proposed Decision and a hearing transcript must be obtained to "increase the penalty" (e.g., from probation to revocation).

TABLE #22: CASE AGING DATA – DOI INVESTIGATION & ATTORNEY GENERAL TIME PERIODS										
Investigations Closed Within	VN Program					PT Program				
	06/07	07/08	08/09	09/10	Avg.%	06/07	07/08	08/09	09/10	Avg.%
90 Days	0	0	0	0	0%	0	0	0	0	0%
180 Days	2	1	2	1	1%	0	0	0	0	0%
1 Year	7	9	22	15	7%	0	1	2	0	0%
2 Years	28	22	50	93	42%	2	2	6	12	57%
3 Years	24	21	27	74	34%	4	1	2	5	24%
Over 3 Years	20	9	22	36	16%	1	0	4	4	19%
Total Cases Closed	81	62	123	219		7	4	14	21	
AG Cases Closed Within	06/07	07/08	08/09	09/10	Avg.%	06/07	07/08	08/09	09/10	Avg.%
1 Year	47	37	45	66	33%	16	31	13	11	20%
2 Years	65	50	87	93	44%	16	37	20	28	50%
3 Years	22	16	16	25	12%	4	13	6	12	21%
4 Years	9	1	4	7	3%	1	1	1	0	0%
Over 4 Years	16	12	18	18	8%	6	7	8	5	9%
Total Cases Closed	159	116	170	209		43	89	48	56	

Disciplinary Cases Pending	206	293	240	224		50	81	60	63	
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Case aging is occurring at every phase of the Board's enforcement process. Case aging has grown beyond acceptable levels and has a detrimental impact on the Board's ability to take administrative disciplinary actions, as these delays compromise evidence and witness availability and thereby affect the overall integrity of the case. The major backlogs and the case aging have a direct impact on California consumers because:

- Consumer protection is not maintained, as the backlog situation allows the incompetent or negligent practitioner to continue working in the health care arena until formal disciplinary action is taken.
- Complaints and disciplinary actions are not processed effectively and efficiently, as the Board must constantly move staff from one function to another based upon case aging concerns.
- The workload backlogs and case aging are not diminishing, but continue to grow as time passes. This is evidenced by the fact that the number of *cases pending* has risen from 2,279 cases in FY 2006/07 to 4,365 cases in FY 2009/10, a 92% increase.

The absence of sufficient staff to handle all of the mandated enforcement, investigative, and legal processes, enables the incompetent or unsafe practitioner, who may have been fired from one hospital for substance abuse or gross negligence, to obtain another position in a variety of other health care settings (e.g., nurse registries, convalescent homes, etc.). The delay in the enforcement process and the current nursing shortage facilitates the licensee's movement from one employer to another without any problem. The Board's failure to take prompt disciplinary action against a licensee creates a high risk that a licensee will seriously harm or kill a patient/[client](#) at his/her next job.

To carry out an enforcement case review, the Board's enforcement analysts must have good judgment, sound knowledge, strong analytical skills, and the capability to perform a multitude of very complex enforcement-related activities that include, but are not limited to the review and disposition of:

- Applicant Criminal Conviction Reviews & Multiple Case Follow Up Reviews.
- New Complaint Reviews & Multiple Case Follow Up Reviews.
- Certified Court Documents & Police Reports Reviews.
- DOJ & FBI RAP Sheet Reviews.
- Division of Investigation Request & Final Report Reviews.
- Expert Opinion Request & Final Report Reviews.
- Attorney General Transmittal Preparations.
- Accusations & Statement of Issues Reviews.
- Criminal Actions Filed & Follow Up Reports.
- Subpoena Request Processing.
- Administrative Hearings & Witness Requirements.
- Proposed Decision Reviews.

- Stipulated Settlement Negotiations & Reviews.
- Default Decisions Prepared & Served to Respondents.
- Reinstatement Hearings & Petitions to Modify Terms of Probation.
- Probation Monitoring, Biological Drug Screens & Petitions to Revoke Probation.
- Citation & Fines, Informal Citation Conferences & Remediation Meetings.
- Attorney General Request for Case Clarifications & Expert Testimony Requirements.
- Board Member Mail Ballot Voting Requirements.
- General correspondence inquiries, Board/Committee Reports, etc.
- Response to numerous telephone inquiries from investigators, attorneys, applicants, licensees and the public.

Furloughs and the State Hiring Freeze negatively impact the Board's ability to handle its enforcement workload.

- On December 19, 2008, the Governor issued Executive Order S-16-08 which required state agencies to implement furloughs of state employees for two days per month regardless of funding source from February 9, 2009 through June 30, 2009.
- On July 2, 2009, the Governor issued Executive Order S-09-12 which required state agencies to close their offices for three Fridays every month through June 30, 2010.
- On August 9, 2010, the Governor issued Executive Order S-12-10 which requires state agencies to close their offices for three Fridays every month until the budget is signed.
- On August 31, 2010, the Governor implemented a State Hiring Freeze.

From February 2009 through June 2010, each employee lost 46 work days or 368 hours due to furloughs. Multiply 368 hours by 25 enforcement positions (in FY 2009/10) and this equates to 1,150 days or 9,200 hours of lost work time. This lost time is equivalent to 5 full-time positions or a 20% reduction in enforcement staff over that time period. The mandatory furloughs are directly impacting the Board's ability to protect the public. The number of cases the staff are able to process is radically reduced, thereby causing the enforcement backlogs to increase accordingly.

Moreover, due to the Governor's State Hiring Freeze, the Board cannot fill two key positions in the Enforcement Division, the Enforcement Program Manager and an Associate Analyst in the Disciplinary Unit that became vacant in early August 2010. In addition, the 15.5 positions for CPEI and the 4.5 LT positions for retroactive fingerprinting cannot be filled. **This equates to 22.0 positions in total.**

I. Cite and Fine Program

TABLE #23: CITATIONS AND FINES								
Citation & Fine Data	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Total Citations	195	210	180	168	42	34	31	33
Total Citations with Fines	195	210	180	168	42	34	31	33
Amount Assessed (1)	\$87,534	\$86,355	\$84,662	\$70,799	\$22,106	\$12,303	\$13,404	\$15,415
Reduced, Withdrawn, or Dismissed	5	20	13	11	0	3	2	1
Amount Collected: (1) (2) (3)	\$75,469	\$63,500	\$72,710	\$53,520	\$12,373	\$10,771	\$21,331	\$7,087

(1) The amount "collected" in a particular fiscal year does not necessarily correlate to the amount assessed in a given year. The amount collected may include prior year assessments.
 (2) This data was derived from the Month 13 CalStars Report.
 (3) The licensee cannot renew his/her license until all fines are paid in full.

The Board may issue an administrative citation and fine pursuant to B&P Code, section 148; and the CCR, Title 16, Division 25, Chapters 1 & 2, sections 2523.3 and 2579.5. There are three classes of violations:

- Class A violations are by employers of LVNs or PTs who fail to report to the Board the suspension or termination for cause of a licensed vocational nurse or psychiatric technician in its employ. The fine amount for a Class A violation shall not exceed \$10,000 per violation.
- Class B includes violations committed by a licensee which results in or could have resulted in patient harm (e.g., patient abandonment, falsifying nursing notes, borrowing money from patient, etc.) but there is no evidence that revocation or other formal disciplinary action is required to ensure consumer safety. The fine amount for a Class B violation is not less than \$1,001 and no more than \$2,500.
- Class C includes minor or technical violations committed by a licensee which are not directly or potentially detrimental to clients (e.g., pre-charting, working on an expired license, failure to disclose criminal convictions, and failure to report address changes, unlicensed practice or working with an expired license, falsification of continuing education courses completed, etc.). The fine amount for a Class C violation shall not exceed \$1,000.

The Board may also include a fine of no more than \$5,000 under specified circumstances.

The majority of citations/fines issued are for violations of unprofessional conduct which typically include failure to perform prescribed nursing care, failure to accurately perform treatments and interventions, failure to complete and document accurate client assessments, unauthorized administration of client medications, misrepresentation of professional credentials or licensure status, and patient abandonment. Fines assessed for such violations typically range from \$500 to \$2,500.

In addition, the Board issued a large number of citations/fines related to applicants and licensees with criminal convictions. These violations typically include, but are not limited to, failure to truthfully disclose a conviction history to the Board, notification that the licensee recently sustained a conviction for petty theft, address change notification requirements, etc. Fines assessed for such violations typically range from \$100 to \$250.

A licensee who fails to pay an uncontested fine cannot renew his/her license until the fine is paid in full. In addition, the Board utilizes the Franchise Tax Board Intercept Program which allows tax returns to be intercepted as payment for any outstanding fines.

VIII. ENFORCEMENT EXPENDITURES, COST RECOVERY, RESTITUTION & COMPLAINT DISCLOSURE POLICY

A. Average Costs for Disciplinary Cases

TABLE #24: AVERAGE COSTS FOR DISCIPLINARY CASES								
Average Cost Per Case Investigated	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Cost of Investigations and Expert Witnesses/Evidence	\$436,253	\$347,900	\$718,386	\$739,354	\$51,867	\$1,140 (3)	\$4,295 (3)	\$76,806
Number of Cases Closed (1)	81	90	123	219	6	8	11	21
Average Cost Per Case (2)	\$5,386	\$3,866	\$5,841	\$3,376	\$8,645	\$143 (3)	\$390 (3)	\$3,657
Average Cost Per Case Referred to AG	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Cost of Prosecution and Administrative Hearings	\$1,162,150	\$1,179,679	\$1,413,997	\$1,389,883	\$243,230	\$301,287	\$475,971	\$402,361
Number of Cases Referred (1)	150	255	185	167	38	71	41	54
Average Cost Per Case	\$7,748	\$4,626	\$7,643	\$8,373	\$6,400	\$4,243	\$11,609	\$7,451
Total Average Cost Per Disciplinary Case	\$6,567	\$4,246	\$6,742	\$5,875	\$7,523	\$4,858	\$6,000	\$5,554

- (1) The number of cases closed and number of cases referred in a particular fiscal year does not necessarily correlate to the actual dollar amount spent for investigations and prosecutions in that same year.
- (2) The average costs per case shown herein are skewed due to roll forward billing methods. The DCA Budget Office uses a two year roll forward billing methodology for the DCA Division of Investigation (DOI) costs. As a result, the amount over-expended or under-expended in a fiscal year is charged to the applicable board/bureau as a debt or credit two years from the date of occurrence. This impacts every DOI cost figure shown.
- (3) Examples: DOI Roll Forward "Credits" were added to the budgeted DOI costs in FY 2007/08 and FY 2008/09 of approximately \$123,000 & \$43,000. Due to the "credit" received the PT Program incurred no DOI costs for FY 2007/08 and FY 2008/09. The amounts shown are for the costs associated with witness/evidence fees only.

Currently, the hourly rates for investigative and legal services are as follows:

- DCA DOI Investigator \$159/hour
- Deputy Attorney General \$170/hour
- Paralegal Service \$120/hour
- Witness Appearance Fee \$35/day plus travel expenses
- Expert Witness Opinion \$40/hour (for written testimony)
- Expert Witness Appearance Fee \$250/day plus travel expenses
- Court Reporter Appearance Fee \$160/day up to \$375/day
- Administrative Law Judge \$187/hour and \$1,496/day

Furthermore, the costs for prosecution and administrative hearings increase if:

- The respondent’s attorney asks to postpone or continue the scheduled hearing date(s);
- The key witnesses are unavailable for the scheduled court hearing;
- The Board wants to non-adopt the Proposed Decision submitted by the ALJ and increase the sanctions imposed. To non-adopt a Proposed Decision, the Board is required to order and pay for the hearing transcript and allow the respondent to comment on his/her case; and
- The Board’s final disciplinary decision is contested by the respondent and an appeal is filed with the Superior Courts.

B. Cost Recovery Efforts

TABLE #25: COST RECOVERY DATA								
Cost Recovery Data	VN Program				PT Program			
	2006/07	2007/08	2008/09	2009/10	2006/07	2007/08	2008/09	2009/10
Total Enforcement Expenditures (1)	\$1,598,403	\$1,527,579	\$2,132,383	\$2,198,614	\$295,097	\$302,427	\$480,266	\$407,712
#Potential Cases for Recovery (2)	140	172	171	155	53	45	37	40
#Cases Recovery Ordered	59	34	73	85	15	7	25	23
Amount of Cost Recovery Ordered	\$259,929	\$144,820	\$326,614	\$414,598	\$53,665	\$24,093	\$105,356	\$86,729
Amount Collected (3)	\$88,350	\$119,147	\$139,975	\$117,353	\$23,477	\$31,286	\$33,316	\$46,692

(1) These figures represent the “actual” expenditures for DCA Division of Investigation, Evidence/Witness, Attorney General, Office of Administrative Hearings and Court Reporter costs.
 (2) The number of potential cases for recovery includes the number of cases referred to the AG’s Office excluding the petitions for reinstatement cases and statement of issues cases.
 (3) This data was derived from the Month 13 CalStars Report. The amount of cost recovery collected in a particular fiscal year does not necessarily correlate to the actual cost recovery ordered in that same year. The amount collected may include prior year cost recovery orders.

Almost all of the enforcement cases referred to the AG’s Office have the “potential” for a cost recovery order. The reason the actual number of cases awarded cost recovery are lower than the potential number of cases is that:

- In the administrative hearing process, cost recovery must be awarded by the ALJ unless a stipulated settlement is reached prior to the hearing. However, quite a few of the judges opt not to award cost recovery based upon facts presented at the hearing (e.g., the respondent claims financial hardship, the ALJ deems the costs unreasonable, the ALJ fails to cite the costs accrued during the hearing and/or fails to include the cost in his/her proposed decision to the Board, etc.).
- The Board cannot order cost recovery for cases which are categorized as “default decisions.” These cases involve respondents that fail to file a Notice of Defense or fail to appear at his/her scheduled hearing. As noted above, only an ALJ can award costs unless a stipulated settlement is reached.

- Cost recovery is negotiable when trying to settle a case and, at times, the Board agrees to settle a case with no or reduced cost recovery requirement if the respondent is willing to stipulate to revocation or voluntary surrender.

Pursuant to B&P Code, Section 125.3, all DCA boards have cost recovery authority. The Board seeks cost recovery for all of its cases. However, the Administrative Law Judge has the discretionary authority to grant the cost recovery or not. Section 125.3 specifies, in part that:

...

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representatives shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) *The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award.* The board may only reduce or eliminate the cost award, or remand the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

...

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

...

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

...

Many of the individuals ordered to pay cost recovery are placed on probation and payment is considered a condition of probation. Payment plans are established to ensure that all costs are paid prior to the end of the probationary period. Failure to pay cost recovery by the end of the probationary period results in license revocation.

Additionally, the Board utilizes the Franchise Tax Board's Intercept Program to attempt collection of any outstanding cost recovery orders. Under this program, tax returns or lottery winnings can be seized and sent to the Board as payment of monies owed. Respondents who failed to pay the ordered cost recovery are sent Demand Letters when an account is 30 days delinquent. If payment in full is not made within 30 days or if the respondent fails to contact the Board to make

payment arrangements, the Board will send a second notice at 60 days delinquent. If no response is received from the first or second letters, a third and final notice will be sent notifying the individual that his/her file has been sent to FTB and that any tax refunds or lottery winnings will be intercepted and sent to the Board. The FTB will continue to intercept tax refunds and lottery winnings until payment in full has been made.

C. Restitution Provided to Consumers -- The Board has no authority to mandate restitution to consumers. However, a licensee placed on probation must adhere to any terms of criminal probation which may include a requirement to provide restitution.

D. Complaint Disclosure Policy

On March 2, 2006, the Board’s Consumer Complaint Disclosure Policy was approved by the Office of Administrative Law and was filed with the Secretary of State’s Office. The regulations became effective April 2, 2006.

TABLE #26: COMPLAINT DISCLOSURE INFORMATION		
TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed	X	
Citation	X	
Fine	X	
Letter of Reprimand	X	
Pending Investigation (1)	X	
Investigation Completed (2)	X	
Arbitration Decision	Not Applicable	
Referred to AG: Pre-Accusation		X
Referred to AG: Post-Accusation	X	
Settlement Decision	X	
Disciplinary Action Taken	X	
Civil Judgment	X	
Malpractice Decision	Not Applicable	
Criminal Violation: Felony or Misdemeanor (2)	X	
(1) Details of the complaint/investigation are not disclosed while the case is pending.		
(2) Information disclosed only if included in the disciplinary action decision.		

IX. CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

A. Consumer Outreach & Education

The Board considers consumer outreach extremely important as a means to educate and protect the consumer. Methods used for this process include:

1. **Internet** – The Board established its website in September 1997. The site contains comprehensive information regarding the education, licensure, practice and discipline of its licensees. The Board also includes important informational links.
2. **Brochures** – The Board has developed five brochures dealing with patient care rights, the disciplinary and enforcement process, and helpful information for individuals who wish to hire LVNs or PTs in a home care setting. The Board encourages individuals to reproduce or request additional copies of the Newsletter and brochures from the Board.
3. **Dissemination of Board Information at Various Events** – Staff disseminate printed Board materials when attending meetings and public functions.
4. **Individual Responses to Questions** – Individuals may call, write, send electronic mail or meet in person with Board staff to ask questions and get responses related to particular issues.
5. **Newsletter** – The Board publishes a newsletter annually.
6. **Public Forms** – Board staff present and clarify new rules and regulations to the public, school programs, licensees and other agencies.
7. **Public Speaking Engagements** – Consumers may request Board speakers to address groups about specific topics.
8. **Representation at Job Fairs** – Board staff attend job fairs upon invitation to explain requirements to become LVNs and PTs.

B. Use of the Internet

1. **Online Consumer Information** – The Board's internet website has been online since September 1997. The web page provides information and guidance regarding the Board's roles, functions, and services, as well as issues and concerns pertaining to healthcare.

Consumers may obtain information regarding board activities, such as Board and committee meetings, regulatory hearings, and other public functions. The Board also publishes a semi-annual Disciplinary Action List which is available on the website along with information regarding the disciplinary process and how to file a complaint.

An online License Lookup system was implemented in April 2001, which enables consumers, employers and licensees to verify the status of an LVN or PT license 24-hours a day, 7 days a week.

2. **Online Business with Consumers & Licensees** – The Board does not conduct online business with consumers or licensees at this time. Although several DCA Boards, Bureaus and Programs were selected to participate in the Governor's initial eGovernment Pilot Project for online license renewal, this Board was not selected to participate at that time. Since then, the DCA iLicensing Project is now underway which will allow licensees to renew their licenses online beginning in FY 2007/08.
3. **Online Application & License Information** – Licensure and renewal information, as well as address change requirements are available on the Board's website. The Board is currently in the process of converting its forms to a format that can be downloaded from the website. Currently the VN application forms and the request for replacement license forms are available on the website. The PT applications are online and other applicable forms will be added as the conversions are completed.

Address changes are not accepted via email at this time, as the Board must have a written document bearing the licensee's official signature in order to change the address of record. However, a downloadable address change form is available for licensees and applicants to print and mail to the Board.

4. **Online Testing & Examination Services** – The Board does not offer online testing or examination services for initial licensure due to examination security issues. The Board must positively identify each examination applicant via photo and signature bearing identification, signature and fingerprint verification to ensure that the person taking the examination is, in fact, the applicant to which the license will be issued.
5. **Plans to Regulate Internet Business Practices** – The practice of California LVNs and PTs does not occur on the Internet, therefore the Board has no plans to regulate Internet business practices.
6. **Recommendations to Improve Services** – The Board continues to increase the number of downloadable forms it provides online for the convenience of its applicants, licensees and consumers.
7. **Telemedicine & Telenursing (Practice without Presence)** – Telemedicine and telenursing have evolved over the past several years to encompass practitioners and clients from multiple states. The Board has authority only over LVNs and PTs that practice in California. During the time that legislation was being considered to establish telephone medical advice services in California, the Board examined the possibility of including LVNs and PTs. It was determined that telephone medical advice services consist largely of independent decision-making. Thus, allowing LVNs and PTs to participate in such practice would not be in keeping with their respective scopes of practice. These two classifications of providers are not independent practitioners.

They must function under the direction of the registered nurse or physician. Based on this determination, LVNs and PTs were not included in the "Telephone Medical Advice Service" legislation that was chaptered in 1997.

8. **Webcasting Board Meetings** – Due to the budget impasse, the Board's plan to implement webcasting of its September 16, 2010 Board Meeting was put on hold. The Board plans to implement webcasting at its next Board Meeting in February 2011.

C. Customer Service Surveys

The Board routinely distributes Customer Service Surveys at its Public Counter and at Board Meetings. The respondents are asked to rate the Board's services regarding specific performance categories. The rating scale ranged from Very Satisfied, Satisfied, Marginally Satisfied, Dissatisfied and Very Dissatisfied.

In FY 2009/10, survey results indicated that 98.5% were either very satisfied or satisfied with the Board's performance. A total of 203 survey form responses were received that year.

PART 2.

BOARD'S RESPONSE TO ISSUES IDENTIFIED AT PRIOR SUNSET REVIEW

X. 2002 SUNSET REVIEW RECOMMENDATIONS

During the Board's last sunset review hearings in FY 2002/03, the Joint Committee provided recommendations and comments on five issues.

- A. There may be situations in which the BVNPT should adopt regulations to more clearly define the scope of practice for vocational nurses or psychiatric technicians.

Joint Committee Recommendation: *The BVNPT should assure that any "advisory opinions" or statements issued regarding the scope of practice for vocational nurses or psychiatric technicians would not be considered as underground rule making, and should consider adopting regulations when there is serious controversy regarding any opinions or statements issued by the BVNPT regarding their respective scopes of practice.*

Board Response: The Board is aware that Government Code, Section 11340.5(a) states:

"No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

When the Board considers a VN or PT issue to be one of general applicability, a regulatory package is developed in accordance with guidelines from the DCA and the Office of Administrative Law. Board interpretations of statutes and regulations are made on a case-by-case basis.

B. California is experiencing and will continue to experience a shortage of vocational nurses and psychiatric technicians.

Joint Committee Recommendation: *The BVNPT should continue to work proactively with proposed programs to expedite program approval, with schools and colleges to make reforms where necessary remove barriers for entry and articulation, and continue its participation with the Governor's Nursing Workforce Task Force and Advisory Committee of the Board of Registered Nursing.*

Board Response: During the past six years, the Board has increased the number of VN & PT Programs by 44% (from 154 to 221 in FY 2009/10). The number of requests for information regarding initiation of new VN programs has increased tremendously since the current nursing shortage began. When a school submits a request to begin a VN or PT program, a Board NEC is assigned to assist the school in reaching its goal. Early in the development process, the VN or PT program director is invited to attend a "New Director Orientation" at the Board's office in Sacramento. The school is also invited to send faculty and administrators. Information presented at these orientations provides clarification regarding the statutes and regulations with which the programs must comply to become accredited. In addition, the Board NEC reviews the material from each school in attendance and provides feedback to the director. The Board's implementation of the "New Director Orientation" saves time and money for proposed programs by explaining the materials that are needed and giving samples of content and format. Schools that use this information will understand the requirements before directing an inordinate amount of time to development of program elements that are not compliant with regulations.

The Board was an active participant in the Nurse Workforce Initiative sponsored by Governor Gray Davis. In September 2002, as a result of the work done, Nurse Workforce Initiative grants were awarded to thirteen partnerships. The primary goal of each project was to increase the pool of LVNs and registered nurses (RNs). There was no formal reporting from the initiative to summarize the outcome of the program; however, the Board received informal reports indicating that a number of vocational nursing programs benefited from this initiative.

On April 13, 2005, Governor Schwarzenegger announced his Nurse Education Initiative designed to address the critical shortage of nurses in California. The funds from this initiative were to be used for expanding enrollment capacity and enhancing support services for the Associate Degree Nursing (RN) Programs that chose to participate. These funds were not available to VN or PT Programs.

The Board would encourage future initiatives to include education funding for VN & PT students. These professions play important roles in California's healthcare environment as well as provide an interim step in the healthcare career mobility ladder.

C. The BVNPT currently has no scholarship or loan repayment program similar to that of the Board of Registered Nursing and eliminated a similar program several years ago due to inadequate funding.

Joint Committee Recommendation: *The BVNPT should work with the Joint Committee and the Department to consider increasing the licensing fee for vocational nurses and psychiatric technicians by \$5.00 to support scholarship and grants for students in vocational nursing or psychiatric technician programs.*

Board Response: Effective July 1, 2004, SB 358 (Chapter 640, Statutes of 2003) established the Health Professions Education Foundation (HPEF) under the auspices of the Office of Statewide Health Planning and Development. HPEF was given the authority and responsibility to establish funding sources to assist various levels of nursing students with their education in return for a contractual commitment to work in an underserved area of the state following licensure. The Vocational Nurse Education Fund (VNEF) was established for VN candidates. Each LVN is assessed an additional \$5 fee when they renew their license every two years. Although the Board collects the \$5 fee, the funds are immediately transferred to the HPEF.

According to the HPEF, the Office of Administrative Law approved the regulations effective July 24, 2006. The Board has been disseminating information about the VNEF since the passage of SB 358. The Board also invited HPEF administrators to address the board and to speak to groups of VN educators regarding its progress on two occasions. In addition, the Board annually disseminates information to the California accredited VN Programs regarding this program.

D. The BVNPT recommended that a new mandatory reporting statute be added specifying that employers must report to the BVNPT applicable licensing violations committed by its licensees.

Joint Committee Recommendation: *The BVNPT should seek statutory authority to require employers of vocational nurses or psychiatric technicians to report to the Board when the licensee has been suspended or terminated for cause.*

Board Response: The Board obtained statutory authority for mandatory reporting effective January 1, 2004 (SB 358, Statutes of 2003, Chapter 640). However, the statute specified that implementation of the mandatory reporting requirements was “**contingent upon the necessary funding in the annual Budget Act.**”

On March 1, 2005, a Notice of Proposed Regulatory Changes was filed with the Office of Administrative Law (OAL) regarding the mandatory reporting regulations necessary to implement these new statutes. A hearing was held on May 3, 2005, and the Board adopted the proposed regulations at its May 2005 Board Meeting. The rulemaking file was submitted to DCA for review and approval. However,

DCA returned the rulemaking file indicating that it would not approve the regulations unless or until the budget authority to implement the mandatory reporting statutes is approved.

The Board was finally able to get budget authority to implement this program in FY 2007/08. As such, on October 11, 2007, the Board's regulatory proposal to implement the mandatory reporting statutes became effective.

E. The BVNPT Complaint Disclosure Policy may need to be updated because of the Department's recently issued "Recommended Minimum Standards for Consumer Complaint Disclosure."

Joint Committee Recommendation: *The BVNPT should review its current disclosure policies in light of the recent "Recommended Minimum Standards for Consumer Disclosure" issued by the Department.*

Board Response: On July 16, 2002, the DCA distributed its "Recommended Minimum Standards for Consumer Complaint Disclosure." In 2003, the Board approved its "revised" Consumer Complaint Disclosure language. On November 17, 2003, an Executive Order (S-2-03) was enacted prohibiting the approval of new regulations by the Office of Administrative Law (OAL) for six months (i.e., through May 15, 2004) or unless an exemption was approved by the Department of Finance. On June 10, 2004, the DCA notified all boards/bureaus that it could not process any regulations relative to its citation/fine and its consumer complaint disclosure policy until the new Administration developed its own policy on these issues. All regulations were on hold pending this decision.

On October 19, 2004, the DCA issued its official position regarding the Consumer Complaint Disclosure Policy and *informally* distributed a document entitled "Department of Consumer Affairs Complaint Disclosure Policy (Revised 9/22/04)." On March 11, 2005, the Board re-noticed its Consumer Complaint Disclosure regulations. On June 16, 2005, the Board submitted its final rulemaking file to the DCA for review and approval. On June 30, 2005, the DCA Executive Staff recommended amendments to the proposed regulations.

On September 16, 2005, the Board adopted changes to the language and directed staff to submit the final rulemaking file to the DCA and OAL for approval. The regulations were finally approved by OAL on March 2, 2006, and were effective on April 2, 2006.

XI. NEW ISSUES -- 2010 BOARD RECOMMENDATIONS

The Board recommends that the Senate Committee author legislation to implement the following:

- A. Sunset Review** – The Board recommends amending B&P Code, Sections 2841 and 2847 (VN) and Sections 4501 and 4503 (PT) to provide for the Board's continued regulation of LVNs and PTs; and to protect the public's health, safety and welfare.
- B. Statutory Fee Range Maximums** – The Board recommends amending B&P Code, Sections 2895 (VN) and 4548 (PT), to ensure that the statutory fee range maximums are raised for the five major revenue categories. According to the DCA Budget Office, the PT Program is facing a fund deficit in FY 2011/12 unless additional revenue is generated.
- C. Mandatory Reporting** – Existing law requires employers to report to the Board the suspension or termination for cause of any LVN or PT in its employ. Suspension or termination for cause is defined as:
- (1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.
 - (2) Unlawful sale of a controlled substance or other prescription items.
 - (3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
 - (4) Falsification of medical records.
 - (5) Gross negligence or incompetence.
 - (6) Theft from patients or clients, other employees, or the employer.

The Board recommends amending B&P Code, Sections 2878.1 (VN) and 4521.2 (PT) to also require employers to report "resignations in lieu of suspension or termination for cause" submitted by LVNs or PTs. Many licensees are permitted to submit resignations in lieu of suspension or termination from employment for gross negligence, incompetence, and unsafe or deceitful acts. As such, the employer is not required to report these types of resignations. When this occurs, the licensee is able to work for an unsuspecting hospital, nursing or convalescent home, or other healthcare facility because no negative employment history exists. Frequently, the licensees continue to commit similar acts of misconduct and this jeopardizes consumer protection.

Additionally, existing law, does not currently require employment agencies and registries to report that a licensee was rejected from assignment at a health facility or home health care due to acts which would normally be cause for suspension or termination. An amendment is needed to require employment agencies and registries to report licensees who are "rejected" for cause as well as suspended, terminated or resigned in lieu of suspension or termination for cause.