

STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

**Board of Vocational Nursing  
and Psychiatric Technicians  
Administrative and Enforcement Monitor**

**Executive Summary  
Diagnostic Review and Initial Assessment**

*June 10, 2016*

**BENJAMIN  
FRANK** LLC  
MANAGEMENT  
CONSULTANTS

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June 10, 2016

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

**Contract No. RFO BVNPT 16-01, Addendum 1**  
**Board of Vocational Nursing and Psychiatric Technicians**  
**Administrative and Enforcement Monitor**  
*Executive Summary*  
*Diagnostic Review and Initial Assessment*

Dear Mr. Kidane,

We are pleased to present this *Executive Summary* of the *Initial Report* which provides a high level summary of the results of our Diagnostic Review and Initial Assessment of the Board of Vocational Nursing and Psychiatric Technicians' (BVNPT) Enforcement Program and specified administrative issues delineated by AB 179 (Bonilla). The *Executive Summary* briefly summarizes a broad range of general background and quantitative information concerning BVNPT's Enforcement Program evolution over the past 5 to 6 years, including:

- ❖ The major organizational and business processes changes made to the Enforcement Program by BVNPT's previous management team during 2011/12 and 2012/13
- ❖ The significant adverse impacts these changes had on Enforcement Program complaint investigations and performance
- ❖ The changes implemented by BVNPT's successor management team during the past 8 to 10 months to reverse these changes and begin restoring effective and efficient complaint intake, screening, investigation and discipline processes
- ❖ The beneficial impacts already realized from implementing these changes

The *Executive Summary* also identifies a set of 10 key issues that will be further assessed during subsequent phases of this project. The companion *Initial Report*, under separate cover, further documents results of the assessment.

In summary, BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented during 2011/12 and 2012/13. Less than two (2) years later, during BVNPT's quadrennial Sunset Review, reports surfaced about the resulting organizational and operational problems and the scope and magnitude of these problems became evident to the Legislature and DCA. However, corrective measures taken during the past year appear to have

contained these problems and set into place a foundation for building a sustainable, effective and efficient Enforcement Program that supports fulfillment of BVNPT's consumer protection mission.

\* \* \* \* \*

We are grateful for all of the assistance provided to us throughout this initial assessment process by DCA's Project Manager, representatives of the Division of Investigation, BVNPT's management team and various BVNPT specialist and support staff. Their responsiveness to our requests for information and assistance were outstanding and, without their support, completion of this Initial Assessment would have been substantially more difficult. We appreciate the opportunity to be of service to the Department of Consumer Affairs. If you have any questions or need additional information, please contact me at 916.425.1475.

Very truly yours,

**BENJAMIN FRANK, LLC**

*Ben Frank*

Benjamin Frank  
Chief Executive Officer

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As the California State Legislature was preparing to complete its quadrennial Sunset Review of the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) during late-2014 and early 2015, reports surfaced concerning (1) alleged mishandling of complaints and investigations and (2) significant internal organizational conflict and staff morale problems within BVNPT. Additionally, inconsistencies were identified in BVNPT's reported Enforcement Program workload and performance data, including discrepancies and differences between the data provided to BVNPT's governing Board, the Department of Consumer Affairs (DCA), the Department of Finance and the Legislature.

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

BVNPT's Sunset Review Hearing was held on March 23, 2015, but BVNPT's responses to participating members' questions during the Hearing did not allay the above issues and concerns. Subsequently, pursuant to a recommendation set forth in the *Background Paper* for the Hearing, the Director of DCA directed the Deputy Director of its Division of Investigation and Enforcement Programs to further review and investigate the activities of the Board to determine the need for immediate intervention. Also, from March 31 to May 29, 2015, five (5) BVNPT executives, managers and supervisors separated from the Board, including the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement, the Complaint Section Supervisor and an Investigation Section Supervisor. Following the separations of the EO, AEO and Chief of Enforcement, the Deputy Director assigned a small team of Division of Investigation investigators and analysts to provide assistance to the Board with management of the Enforcement Program and to begin a review of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of Investigation. At that time there were only about a dozen BVNPT cases assigned to the Division. Over a two-month period extending from early-May to late-June 2015, the Division of Investigation team identified and transferred to the Division about 100 of the BVNPT's Investigation Section's pending cases, including more than 30 cases that had been assigned to the Section for more than two (2) years. Concurrently, DCA provided an Acting Executive Officer for the Board, a new Chief of Enforcement was appointed and new supervisors for the Complaint and Investigation Sections were hired.

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

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

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

AB 179 also requires that the Monitor be available to provide oral reports to DCA, BVNPT and the Legislature, if requested to do so. **Table ES-1**, below, provides an overview of our phased approach and schedule to providing the prescribed Monitor services.

**Table ES-1. Overview of Project Work Plan**

Phase	Schedule
I. Diagnostic Review and Initial Assessment	March through June 2016
II. In-Depth Research and Assessment of Complaint Intake, Screening and Investigation Processes	July through October 2016
III. Administrative and Disciplinary Process Assessments	November 2016 through January 2017
IV. Ongoing Monitoring and Final Project Report	February through December 2017

The Diagnostic Review and Initial Assessment of BVNPT’s Enforcement Program was completed during March and April. The abbreviated timeframe available to complete the initial assessment necessarily limited the breadth and depth of the research and analyses that could reasonably be performed. The *Initial Report*, documenting results of the Initial Assessment, was prepared during May. Additional interviews, research and analyses will be completed during subsequent project phases.

### A. Overview of the Board of Vocational Nursing and Psychiatric Technicians

BVNPT administers licensure programs for both Vocational Nurses (VNs) and Psychiatric Technicians (PTs). The two (2) programs have separate statutes, regulations, budgetary authority, curriculum requirements and licensure examinations. The VN Program was established in 1951. The PT Program was first established as a certification program in 1959 and then converted to a licensing program in 1970. Pursuant to AB 179, the currently separate budgets for the VN and PT Programs will be consolidated effective July 1, 2016. About 136,000 Vocational Nurses and Psychiatric Technicians are currently licensed by BVNPT, including about 120,000 VNs and 16,000 PTs.



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BVNPT has an 11-member governing Board consisting of six (6) public members and five (5) professional members. Nine (9) of the Board's members are appointed by the Governor, one (1) by the Speaker of the Assembly and one (1) by the Senate Pro Tempore. At one point during mid-2013, six (6) of the Board's 11 positions were vacant which disrupted the ability of the Board to meet and conduct business. Additional appointments to the Board were made during late-2013 that enabled the Board to resume regular meetings and conduct disciplinary hearings. As of mid-May 2016, all of the Board's 11 positions were filled.

### B. Overview of BVNPT Organizational Structure and Staffing

**Exhibit I-2**, in Section I-C of the *Initial Report* (page I-13), illustrates BVNPT's overall organizational structure and workforce allocations as of March 2016. BVNPT's staffing currently includes 70 budgeted permanent full-time positions, two (2) budgeted permanent half-time positions, and nine (9) retired annuitant positions. With a few exceptions, BVNPT staff are cross-trained and utilized to support both the VN and the PT Programs. BVNPT's Executive Management Team consists of just two (2) positions (an Executive Officer and an Assistant Executive Officer). The Assistant Executive Officer position has been vacant since May 1, 2015 (more than a full year).

Most BVNPT staff are allocated to either the Administration and Licensing Division (32 positions, including 3 retired annuitants) or to the Enforcement Division (36 positions, including 2 retired annuitants). Additionally, BVNPT has an Education Office with 11 positions, including four (4) retired annuitants. In addition to BVNPT's Executive positions, BVNPT has eight (8) other authorized management and supervisory positions. Five (5) of these positions are allocated to the Enforcement Division, two (2) are allocated to the Administration and Licensing Division, and one (1) is allocated to the Education Office. This organizational structure is similar to that of other comparable regulatory agencies, although it is less common to have a Board's administrative support services grouped together with its Licensing Program services, particularly at larger organizations which are more likely to have an organizationally separate administrative support services business unit (a Division or Section) with responsibility for fiscal, human resources, information technology and business and general office support services.

As of March 2016, BVNPT had 9.5 vacant positions scattered throughout the organization, but more concentrated in the Education Office than in either of BVNPT's major Divisions. In recent years BVNPT has usually had two (2) or more vacant Nurse Education Consultant (NEC) positions. Currently, two (2) of the Education Office's five (5) authorized NEC positions are vacant. BVNPT has struggled to keep its NEC positions filled and has previously sought to obtain a pay differential for its NECs to help address this problem. However, to date these efforts have not been successful.

#### 1. Overview of the Enforcement Division

The Enforcement Division, which is the focus of this assessment, is subdivided into three (3) sections with responsibility for (1) complaint intake and desk investigations, (2) non-sworn investigations and (3) discipline and probation. The Complaint and Discipline Sections are each allocated one (1) supervisory position, both of which are currently filled. Two (2) supervisory positions are authorized for the Investigation Section. One (1) of these positions is currently vacant. The spans of control of the three (3) filled supervisory positions appear to be about the same as, or possibly somewhat larger than, usually seen at comparable regulatory agencies.

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Additionally, DCA's Division of Investigation provides BVNPT with specialized capabilities to investigate cases involving serious criminal misconduct, significant patient harm, practice by a non-licensee, sexual misconduct and selected other cases as requested by BVNPT. Different DCA-affiliated regulatory boards and bureaus utilize these services to varying degrees depending on their internal workforce capabilities. As discussed subsequently, in recent years there has been a great deal of variability in BVNPT's use of the Division of Investigation's services.

**Exhibit I-3**, in Section I-C of the *Initial Report* (page I-15), shows the Enforcement Division's authorized, filled and vacant positions for the past seven (7) years. During this period the Complaint and Discipline Sections' overall staffing levels changed very little and vacancy rates in these two sections typically fluctuated between about 5 and 10 percent, a level commonly seen throughout California State Government. However, the organizational development and staffing history of BVNPT's Investigation Section is quite different from these other two (2) sections. As part of the Consumer Protection Enforcement Initiative (CPEI), BVNPT was authorized 15.5 new positions to establish the Investigation Section during 2010/11, including two (2) Supervising Special Investigators, 10 Special Investigators and 3.5 limited term Associate Government Program Analysts (AGPAs). However, as a result of the 2008/09 financial crisis and related State hiring freezes, BVNPT was unable to begin filling the Special Investigator positions until 2011/12, excluding two (2) positions that it was not authorized to fill until 2012/13. Additionally two (2) limited term positions expired before they could be filled and two (2) of the Special Investigator positions were subsequently abolished, with one (1) of the positions replaced with a half-time position that BVNPT has never been able to fill. Finally, normal time lags in the hiring process prevented BVNPT from rapidly filling these positions once the hiring freezes were lifted. It was not until 2012/13 that BVNPT reached a nearly full complement of staffing for the Investigation Section. As of March 2016 the Investigation Section had nine (9) filled positions with just one (1) vacant Supervising Special Investigator I position. BVNPT is currently planning to reclassify and redirect the vacant supervisor position to augment the Discipline Section's workforce capabilities.

### 2. Overview of Administration and Licensing Division Organization

The Administration and Licensing Division currently has only two (2) authorized management and supervisory positions, both of which are filled. These two (2) positions oversee and manage the services provided by 30 subordinate staff. The spans of control of these positions are larger than what is typically seen in California State Government, or at comparable regulatory agencies, especially given the Division's diverse range of Licensing Program and administrative support service responsibilities. When filled, BVNPT plans to utilize the current Assistant Executive Officer position to augment the Division's management capabilities.

Over the past four (4) years authorized permanent staffing for the Administration and Licensing Division increased from 25 positions to 29 positions. The Division has sometimes experienced high levels of staff turnover and elevated vacancy rates and, for a period of time, the Division operated with only one (1) filled management/supervisor position. Multiple factors likely contributed to the Division's high vacancy rates, including the Division's limited number of manager and supervisor positions. Recently, the Division filled many of its vacant positions. As of December 2015, four (4) of the Division's positions were vacant (a 14 percent vacancy rate).

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### C. Data Inconsistencies, Anomalies, Constraints and Effects

There are multiple significant inconsistencies, anomalies and deficiencies with the availability, completeness and quality of BVNPT's Enforcement Program workload, workflow, backlog, investigation, disciplinary action, probation and performance information. **Exhibit ES-1**, beginning on page ES-12, summarizes some of the most significant data problems identified to date. In most cases the identified data deficiencies have adversely impacted the ability of BVNPT management, BVNPT's governing Board and others to understand, manage and oversee BVNPT's Enforcement Program performance. BVNPT management recently implemented several significant changes structured to address some of these problems. However, in several important areas, further improvement is still needed.

### D. Evolution of BVNPT's Enforcement Program

During 2011/12 BVNPT established a new Investigation Section within its Enforcement Division and, over the next 12 months, hired 10 new non-sworn investigators and supervisors to staff the Section. While large numbers of license applicant and licensee arrest/conviction reports continued to be processed and referred by the Complaint Section to the Office of the Attorney General (AG) for disciplinary action, BVNPT began assigning all of its licensee complaint cases to the new Investigation Section. Previously, all of these cases were handled as desk investigations by Complaint Section analysts or were referred to the Division of Investigation for investigation by sworn investigators.

This workflow restructuring was implemented before and concurrent with start-up of the new Investigation Section. As a result, the Investigation Section's newly hired and largely untrained workforce inherited a large backlog of older cases, including large numbers of cases that should have been assigned to Complaint Section analysts for desk investigation or referred to the Division of Investigation. Over the next two (2) years the Investigation Section's case backlogs grew significantly in size and age, further compounding the Enforcement Division's workload and workforce management problems. During 2013/14 there were about 900 cases assigned to the Investigation Section's eight (8) investigators (more than 110 cases per position) and more than 20 percent of these cases were already more than two (2) years old.

These problems persisted until, shortly following BVNPT's March 23, 2015 Sunset Review Hearing, a small team of Division of Investigation investigators and analysts began a review of all of BVNPT's pending complaints and investigations leading to the reassignment of about 240 pending non-sworn investigation cases to the Division of Investigation over the next six (6) months. Concurrently, newly appointed BVNPT executives, managers and supervisors began restructuring BVNPT's Complaint Intake Process and implementing other policy, procedural and organizational changes to restore order to the Enforcement Program.

#### 1. Enforcement and License Applicant Cases Received

Over the past five (5) full fiscal years, BVNPT received an average of 505 externally-generated complaints per year, including:

- Employer Reports (*about 175 to 200 reports per year*)
- Complaints from the Public and Others (*about 125 to 150 complaints per year*)
- Public Agency Reports (*about 100 reports per year*)
- Discipline by Another State/Agency (*about 40 to 50 reports per year*)

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- Internal – Other Cases, Excluding Internal – Fraud Cases (*about 50 cases per year*).

It does not appear that there has been any significant growth in the total number of externally-generated complaint cases received by BVNPT over the past five (5) full fiscal years.

Additionally, BVNPT staff sometimes open 150 to nearly 200 Internal – Fraud cases per year. Most of these cases are generated from either (1) Continuing Education (CE) compliance audits completed by Licensing Program staff or (2) audits of license renewal applications for compliance with criminal conviction self-reporting requirements completed by Enforcement staff, including querying the Department of Motor Vehicles (DMV) to determine if a licensee had failed to disclose traffic-related offenses on their renewal application. Fluctuations in the number of Internal – Fraud cases are largely a function of whether these audits are completed, the timing of the audits, the number of licensees audited and the criteria utilized for opening new enforcement cases. During 2014/15, BVNPT opened only 13 Internal – Fraud cases.

BVNPT also opens enforcement cases for all licensee arrest/conviction reports and license renewal self-reports of criminal convictions occurring subsequent to the licensee's last renewal. Over the past several full fiscal years, BVNPT opened an average of about 1,500 licensee arrest/conviction report cases per year.

Finally, during 2010/11, 2011/12 and 2012/13 BVNPT opened about 2,000 to 2,500 license applicant arrest/conviction report cases per year. During 2013/14, the number of license applicant arrest/conviction report cases inexplicably increased to nearly 3,800 cases, accounting for 65 percent of all cases opened. Throughout this period there was little change in (1) the number of NOWs issued to license applicants, which fluctuated between 900 and 1,000 per year, or (2) the number of License Denials issued, which averaged less than 90 per year. Results of our preliminary research and analyses of historical license applicant case data suggests that large numbers of these cases were opened by BVNPT for minor offenses (up to 800 to 1,000 per year, or possibly more, especially during 2013/14). It also appears that many of these cases were possibly not investigated to any extent beyond completing an initial review of the applicant's arrest/conviction report or, possibly, the applicant's self-reported information, and then closing the case.

BVNPT recently restructured the License Applicant Arrest/Conviction Report Case Intake Process by transferring various responsibilities to Licensing Program staff. The restructuring was phased in over a period of several months beginning during July 2015. As a result of this restructuring, significantly fewer license applicant cases were opened (about 500 during the first half of 2015/16 compared to an average of more than 3,000 per year during the two (2) preceding fiscal years). Additional refinements and improvements to this process are possibly needed that could further reduce the number of license applicant cases opened per year.

## 2. Enforcement and License Applicant Cases Assigned for Investigation

As BVNPT established its Investigation Section during 2011/12 and then fully staffed the Section during 2012/13, virtually all of the licensee complaints that had previously been assigned to Complaint Section analysts for desk investigation were instead assigned to the Investigation Section. Additionally, BVNPT began reducing and eventually completely discontinued the referral of cases to the Division of Investigation, including cases involving serious criminal misconduct, significant patient harm, practice by non-licensees and sexual misconduct. In response to these developments, representatives of DCA made efforts to encourage BVNPT to comply with CPEI

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case prioritization guidelines and utilize the Division of Investigation's services. However, BVNPT continued to assign all licensee complaint cases to its own investigators.

**Complaint Section Assignments** – During 2010/11, 472 licensee complaint cases were assigned to Complaint Section analysts for desk investigation. After 2010/11, licensee complaint cases assigned for desk investigation were largely limited to cases involving either (1) discipline by another state/agency or (2) Internal – Fraud, such as CE audit cases and licensee failure to disclose a reportable conviction on their renewal application.

**Investigation Section Assignments** – During 2011/12 and 2012/13, nearly 1,100 cases were assigned to the new Investigation Section. The large number of cases initially assigned to the Section during this 2-year period (an average of 135 cases per position) may have overwhelmed the capability of the Section to complete investigations of these cases. Subsequently, during 2013/14 and 2014/15, somewhat fewer cases were assigned to the Investigation Section.

**Division of Investigation Assignments** – During 2010/11, 115 complaint cases were assigned to the Division of Investigation. Then, during 2011/12 only 93 cases were referred AND during 2012/13 only 15 cases were referred, all of which were initiated by the Division of Investigation. During 2013/14, no cases were referred to the Division of Investigation. During early-2015 BVNPT resumed assigning cases to the Division of Investigation. Additionally, between May and December 2015, about 240 cases previously assigned to the Investigation Section were reassigned to the Division of Investigation.

From 2012/13 through 2014/15, nearly all licensee arrest/conviction report cases (an average of about 1,500 cases per year) continued to be assigned to Complaint Section analysts for desk investigation. Also, nearly all license applicant arrest/conviction report cases (up to nearly 3,800 cases during 2013/14) were assigned to Complaint Section analysts for desk investigation.

### 3. Completed Enforcement and License Applicant Investigations

During 2010/11, prior to start-up of the Investigation Section, more than 900 licensee complaint investigations were completed by Complaint Section analysts and the Division of Investigation. Then, over a 2-year period during 2011/12 and 2012/13, concurrent with start-up of the Investigation Section, a total of only 807 licensee complaint investigations were completed by all three (3) business units. Subsequently, during the next two (2) years, a total of about 650 complaint investigations were completed per year by all three (3) business units, nearly 30 percent fewer investigations than were completed during 2010/11, prior to start-up of the Investigation Section. Concurrently, the average elapsed time required to complete these investigations increased by more than 60 percent from about 16 months during 2011/12 to about 26 months during the first half of 2015/16. These elapsed times can also be compared to the average elapsed time required by Complaint Section analysts to complete complaint investigations prior to 2011/12, excluding investigations of Internal – Fraud cases and cases involving discipline by another state/agency. During 2010/11 the average elapsed time required by Complaint Section analysts to complete 472 complaint investigations completed during that year was about 12 months, or less than one-half the average elapsed time needed by the Investigation Section's non-sworn investigators to complete complaint investigations that were completed during the first half of 2015/16.

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During this same 5-year period the number of completed licensee arrest/conviction report investigations steadily decreased, from nearly 2,400 completed investigations during 2010/11 to less than 1,500 completed investigations during 2014/15. This decrease is likely attributable to reduced workload following implementation of retroactive fingerprinting in prior years.

Finally, from 2010/11 through 2014/15 the number of license applicant arrest/conviction report investigations completed increased from about 2,100 cases during 2010/11 to nearly 4,700 cases during 2014/15. The 2,600 increase in the number of license applicant arrest/conviction report investigations completed over this period exceeds the combined total of all licensee complaint and licensee arrest/conviction report cases completed per year. Consequently, by 2014/15, completed licensee complaint and licensee arrest/conviction report investigations accounted for only 31 percent of all completed investigations. However, there are significant inconsistencies, anomalies and other problems with the license applicant arrest/conviction report data and, even if these problems did not exist, combining workload or performance data for license applicant arrest/conviction cases with workload or performance data regarding BVNPT's licensee complaint and licensee arrest/conviction report cases is a fundamentally flawed business practice that should not be continued.

As a result of changes implemented during the past 8 to 10 months, there is some evidence of improvement in Enforcement Program performance. For example, during the 4-month period from January through April 2016, a combined total of more than 400 complaint investigations were completed. This compares to a combined total of 620 complaint investigations completed during the full 2014/15 fiscal year and 390 complaint investigations completed during the first half of 2015/16.

#### 4. Pending Enforcement and License Applicant Investigations

Concurrent with and following start-up of the Investigation Section, Enforcement Program performance deteriorated significantly in terms of the number and age of pending complaint investigations. While the total number of pending enforcement investigations decreased significantly during this period, the decrease was entirely the result of a significant decrease in the number of pending licensee arrest/conviction report cases which (1) more than offset a significant increase in the number of pending complaint investigations and (2) completely distorted and obscured workload, backlog and performance metrics related to investigating complaints submitted by patients, employers, other public agencies and others regarding BVNPT's licensees. This outcome again highlights the problem associated with combining data to produce aggregate metrics for multiple disparate categories of cases.

**Pending Desk Complaint Investigations** – Largely as a result of decreases in the number of complaint cases assigned to Complaint Section analysts for desk investigation, the number of pending desk complaint investigations declined significantly over the past five (5) full fiscal years from 554 cases on June 30, 2010 to 108 cases on December 31, 2015.

**Pending Non-Sworn Complaint Investigations** – The number of pending non-sworn complaint investigations exploded concurrent with start-up of the Investigation Section during 2011/12 and 2012/13. During this period the Investigation Section accumulated about 840 open complaint cases and by the end of 2012/13 the Section's investigators had an average of more than 100 assigned complaint cases. The number of pending non-sworn complaint investigations remained static until about 240 pending cases were reassigned to the Division of Investigation between May and December 2015.

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**Pending Sworn Complaint Investigations** – Largely as a result of decreases in the number of complaint cases assigned to the Division of Investigation, the number of pending sworn complaint investigations declined significantly to just 12 pending cases on June 30, 2014. Subsequently, following the resumption of case referrals to the Division of Investigation during 2015 and the above referenced reassignment of about 240 pending non-sworn investigation cases to the Division, the number of pending sworn investigations increased significantly (to 331 pending cases as of December 31, 2015).

Additionally, the average age of all of BVNPT's pending complaint investigations increased by more than 40 percent, from about 12 months on June 30, 2010 to about 17 months on June 30, 2015. Many of the cases inherited by the new Investigation Section during 2011/12 were already quite old. More than 30 percent of the investigations that were pending as of June 30, 2012 were already more than one (1) year old and more than 50 cases were already more than two (2) years old, including some cases that were 3 to 4 years old, or older. The average age of the Section's increasing numbers of pending investigations increased by nearly 60 percent from about 12 months during the Section's start-up in 2011/12 to 19 months by June 30, 2015. This increase occurred notwithstanding an increase in the number of investigations completed during 2013/14 and 2014/15 as compared to the preceding two (2) fiscal years, indicating that Section staff increasingly focused their investigation efforts on newer cases resulting in higher numbers of completed cases, but increasingly older backlogs of pending cases.

During this same period, the number of pending licensee arrest/conviction report cases decreased by more than 50 percent (from 1,764 pending cases as of June 30, 2010 to just 781 pending cases as of December 31, 2015). This decrease exceeded the increase in pending complaint investigations during this same period, resulting in a significant decrease in the combined total number of pending enforcement investigations (from 2,568 pending enforcement investigations as of June 30, 2010 to 1,830 pending enforcement investigations as of June 30, 2015). This outcome further highlights the previously discussed problem with combining data for multiple disparate categories of cases to generate largely meaningless aggregate workload or performance metrics.

Finally, over the 5-year period from 2010/11 through 2014/15, the number of pending license applicant arrest/conviction report investigations increased by nearly 40 percent (from about 2,100 pending cases as of June 30, 2010, to nearly 2,900 pending cases as of June 30, 2014). However, as discussed previously, there are significant inconsistencies, anomalies and other problems with the historical license applicant arrest/conviction report data. Subsequently, during 2014/15 the number of pending license applicant cases declined by nearly 50 percent to under 1,500 cases and during the first half of 2015/16 the number of pending license applicant cases declined further to under 250 cases. This latter decline reflects the impacts of BVNPT's restructuring of the handling of license applicant cases.

### 5. Administrative Discipline Actions

In recent years BVNPT consistently issued about 600 to 660 NOWs to licensees per year. Currently available sample data suggests that about 350 to 450 of these NOWs were issued for a reported arrest/conviction offense. Additionally, in recent years BVNPT consistently issued about 60 to 80 citations to licensees per year for reported arrest/conviction offenses. This compares to an average of about 1,500 licensee arrest/conviction report cases received and investigated per year. On a combined basis, NOWs or citations are issued for about 30 percent of the total licensee arrest/conviction report cases handled by BVNPT.

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Varying numbers of citations are also issued for Internal – Fraud cases which most likely involve either (1) licensee non-compliance with CE Program requirements or (2) licensee failure to disclose on their license renewal application a reportable conviction, including failure to disclose traffic offenses identified by BVNPT by querying DMV. Fluctuating numbers of citations issued for Internal – Fraud cases may reflect (1) variability in the number, scope and timing of CE and license renewal application audits or (2) variability in the criteria utilized for determining whether to open these cases, or both.

In recent years BVNPT issued varying numbers of NOWs and about a dozen or fewer citations to licensees for Other Offenses, and issued few citations to non-licensees. Also, the total amount of fines assessed for all types of offenses decreased during the past several years in parallel with decreases in the total number of citations issued.

Finally, from 2010/11 through 2014/15 BVNPT consistently issued about 800 to 1,000 NOWs to license applicants. However, during this period the number of NOWs issued as a proportion of the total number of completed license applicant investigations decreased significantly as the number of license applicant cases received increased. This data further supports previously discussed findings regarding the abrupt and as yet unexplained increase in the number of license applicant arrest/conviction report cases opened in CAS during 2013/14 and, to a lesser extent, during 2014/15. The data also suggests that especially large numbers of cases were possibly opened during 2013/14 for minor offenses and reinforces findings discussed previously that these cases were possibly not investigated to any extent beyond completing an initial review of the applicant’s arrest/conviction report and then closing the case.

### 6. Closed and Pending Formal Discipline Cases

From 2010/11 through December 2015 there were significant fluctuations in the total number of licensee discipline cases closed. These fluctuations are largely attributable to fluctuations in the number of licensee arrest/conviction report cases that were closed. On average, about 220 licensee discipline cases were closed per year. Of these, nearly 70 percent (about 150 cases per year) were licensee arrest/conviction report cases.

Licensee complaint cases account for about 30 percent of the licensee discipline cases closed (about 70 cases per year). In the past, BVNPT assigned most licensee complaint cases involving serious criminal misconduct or significant patient harm to the Division of Investigation and available data and anecdotal information suggest that most of the licensee complaint cases referred to the AG in recent years were investigated by the Division of Investigation. As discussed previously, during and following start-up of the Investigation Section, BVNPT reduced and then completely discontinued assigning licensee complaint cases to the Division of Investigation and instead assigned these cases to the Investigation Section where many of the cases languished until being reassigned to the Division of Investigation during 2015.

Largely as a result of shifts in the number of pending licensee arrest/conviction cases, in recent years the total number of pending licensee discipline cases has fluctuated between about 400 and 550 cases. However, during the first half of 2015/16 about 150 licensee arrest/conviction report cases were closed and the number of pending licensee arrest/conviction report cases, along with the total number of pending licensee discipline cases, decreased significantly to 330 pending cases as of December 31, 2015. This recent reduction in the number of pending licensee discipline cases is largely attributable to changes implemented by BVNPT related to



## Executive Summary

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the negotiation and settlement of cases where probation is sought, rather than revocation, and a settlement of the case can be reached in lieu of unnecessarily carrying the case through to Hearing. As of April 30, 2016, the total number of pending discipline cases was further reduced to just 285 cases, including both licensee cases and several dozen pending license applicant cases, the lowest number of pending disciplinary cases in more than six (6) years.

Additionally, an average of about 50 license applicant discipline cases are closed per year and in recent years there has been little fluctuation in the number of license applicant discipline cases that are closed. However, the annualized rate of license applicant discipline case closures recently increased and, concurrently, the number of pending license applicant discipline cases decreased significantly. These improvements reflect the previously discussed changes implemented by BVNPT related to the negotiation and settlement of cases where probation is sought and a settlement of the case can be reached in lieu of unnecessarily carrying the case through to Hearing.

Finally, the recent increases in number of discipline cases closed, while reducing the backlog of discipline cases, may be impacting Probation Unit workload, where caseloads already appear quite high for some staff, partially due to the redirection of some Probation Unit staff to support implementation of BreZE. Additionally, as discussed previously, there is some evidence of recent improvements in Enforcement Division performance that may be accelerating the flow of licensee arrest/conviction report cases, licensee complaint cases, and license applicant cases to the AG. Assuming a continuation of current efforts to accelerate closures of discipline cases by settling the cases where probation is sought in lieu of carrying the case through to Hearing, the increased flow of cases to the AG may quickly translate to significantly increased workload for BVNPT's Discipline Section.

### E. Key Issues

A number of significant issues surfaced during BVNPT's 2014/15 Sunset Review or came to our attention during completion of the Initial Assessment. In most cases BVNPT's Executive Officer and Chief of Enforcement were already aware of and knowledgeable about these issues and have begun implementing corrective measures structured to address associated problems and concerns. Section III of the *Initial Report* provides relevant background information about each issue so that determinations can be made regarding the need for additional assessment of the issue and additional corrective measures to fully resolve associated problems and concerns. **Exhibit ES-2**, beginning on page ES-15, identifies each of these issues and briefly summarizes the related background information. These issues will be further assessed during subsequent project phases.

## Overview of Data Inconsistencies, Anomalies, Constraints and Effects

### 1. License Applicant Arrest/Conviction Reports

BVNPT's License Applicant Fingerprint Program was first initiated nearly 20 years ago (July 1996). Currently, when applicants submit fingerprints for purposes of a criminal history background check, the California Department of Justice (DOJ) provides BVNPT with a consolidated Criminal Offender Record Information (CORI) report that contains both DOJ and Federal Bureau of Investigation criminal history information. On average, about 11,000 VN and PT examination applications and about 8,000 VN and PT license applications are submitted per year. It is our understanding that, until recently, it was BVNPT's practice to open a new enforcement case in CAS for:

- All license applicant arrest/conviction reports received from DOJ
- All license applicants that indicated on the *Record of Conviction* portion of their license application that they had previously been convicted of, pled guilty to, or pled nolo contendere to ANY offense in the United States or a foreign country, including every citation, infraction, misdemeanor and/or felony, excluding only traffic violations under \$300 not involving alcohol, dangerous drugs or controlled substances (Item No. 9) and convictions that were later set aside or expunged from the records of the court (Item No. 10)
- All license applicants that indicated on the *Record of Conviction* portion of their license application that they had a court action pending against them or were currently awaiting judgement and sentencing following entry of a plea or jury verdict (Item No. 11).

Thus, without first applying any screening criteria, license applicant cases were opened in CAS for all license applicant arrest/conviction reports and all self-reports of prior convictions or pending court actions, irrespective of the nature of the offense or when it occurred. Additionally, with limited exceptions (e.g., applications for an interim permit), until such time as the applicant qualifies to take and passes the license exam and otherwise qualifies for licensure, there is no potential enforcement activity or need for BVNPT to "investigate" these cases. There is no reasonable justification for BVNPT's prior practice of opening cases in CAS for all of these license applicant cases.

During 2010/11, 2011/12 and 2012/13, BVNPT opened about 2,500 to 3,000 license applicant arrest/conviction report cases per year. However, in 2013/14 BVNPT opened about 3,800 such cases. The number of CAS cases opened for license applicant arrest/conviction reports and self-reports significantly exceeded the total number of all of BVNPT's licensee enforcement cases. In the most extreme case, BVNPT reported receiving a total of about 5,800 cases during 2013/14, but about 3,800 of these cases (65 percent) were license applicant arrest/conviction report cases and only about 2,000 of these cases were licensee arrest/conviction report or licensee complaint cases. Currently available data suggests that only about 12 percent of the license applicant cases

resulted in any type of enforcement outcome and that a Notice of Warning (NOW) was issued to the applicant in nearly all of these cases. Only about 1 percent of all license applications were denied, including license denials issued due to (1) an applicant's failure to disclose an arrest/conviction, including failure to disclose an arrest/conviction for traffic offenses and (2) receipt of *Incident Reports* from Pearson View concerning possible cheating by applicants during their license examination. Finally, for most of these cases no substantive investigation of the cases actually occurred. Instead, BVNPT work was limited to:

- Preparing and issuing a request to the applicant to provide a detailed letter of explanation for each offense and certified copies of (1) the arresting agency's arrest record and (2) court records, including the conviction report
- Preparing and issuing a request to the arresting agency for a certified copy of the arrest report, if not provided by the applicant
- Preparing and issuing a request to the court for certified copies of court records, including the conviction report, if not provided by the applicant
- Reviewing the documents provided to determine whether the offense, along with the any other relevant history or pattern of offenses, supports issuance of a NOW or denial of licensure and preparing and issuing an Approval Letter and, if needed, a NOW.

The underlying causes of the 2013/14 spike in the number of license applicant cases have not been determined. However, it is clear from the data that we have reviewed that numerous cases opened during 2013/14 were not investigated because the cases were opened and closed within a period of less than two (2) months, and many of these cases were opened and closed within a period of just a few weeks, an insufficient amount of time for the various parties to respond to BVNPT's document requests. It also appears that this practice occurred in prior years, but to a lesser extent.

In summary, even if there were no problems with the quality of BVNPT's license applicant arrest/conviction report data (which there are) and even if substantive investigations were completed for most of these cases (which is not the case), the combining of large numbers of license applicant arrest/conviction report cases with licensee complaint and licensee arrest/conviction report cases for workload and performance reporting purposes is a fundamentally flawed business practice that misrepresents actual Enforcement Program workload and performance. If license applicant cases are excluded, the resulting metrics show that the number of enforcement cases received by BVNPT has been stable or decreasing in recent years rather than significantly increasing as was previously reported.

## Overview of Data Inconsistencies, Anomalies, Constraints and Effects

### 2. Source Coding

When opening new complaints in CAS, different codes can be entered to specify the source of the complaint. For example, different source codes can be used to distinguish complaints received from the general public (P), such as patients, other DCA-affiliated boards (D), other California State Government agencies (G), licensees (L), and industry (N). Also, an I (Internal) source code can be used to differentiate complaints that are opened based on internally generated information, such as licensee failure to comply with CE requirements which is determined by BVNPT from conducting CE compliance audits. However, BVNPT has generally only used source codes to a limited extent or has used them inconsistently. This practice necessarily limits the extent to which analyses can be performed of CAS data to help better understand the nature and composition of the complaints received and changes occurring in Enforcement Program workload and performance.

Variability in BVNPT's source coding practices, rather than actual changes in workload, accounts for some of the variability and shifts in BVNPT's reported workloads. Also, because of BVNPT's extended case investigation and disciplinary process cycle times, the poor quality source coding that occurred in past years will continue to adversely impact workload and performance information and reporting until (1) BVNPT's case intake coding processes are improved and (2) currently pending case investigations are fully completed and the cases are closed. BVNPT recently implemented improved case intake screening processes and provided training to staff to improve new case source and offense categorizations and coding.

### 3. Internal Complaints

It appears that there has possibly not been a great deal of oversight or control over the opening of Internal (I) complaint cases. In some instances it appears that complaint cases may have been opened irrespective of the need to conduct an actual investigation of the case. While it is common practice for Internal complaints to be opened by DCA-affiliated regulatory agencies for various specific purposes (e.g., CE non-compliance cases, undercover, surveillance and Internet cases, and cases involving non-compliance with terms and conditions of probation), the initiation of new cases by internal staff usually occurs infrequently and is dependent on having a sufficient level of probable cause to support opening of the case. Where appropriate, we separated some Internal complaint cases from the data sets used for purposes of the Initial Assessment. However, the historical Internal complaint workload data may still be somewhat inflated by the inclusion of these types of cases. Better internal controls over the opening of Internal complaint cases appear to be needed.

### 4. Duplicate Assignments of Complaint Investigations

From 2010/11 through 2012/13, concurrent with start-up of the new Investigation Section, BVNPT assigned nearly all complaints to the Investigation Section. Then, after a period of time, some of these cases were reassigned to the Division of Investigation. Concurrently, BVNPT began assigning all the Division of Investigation's completed cases to the Investigation Section. Consequently, the cases are shown within CAS as assigned twice for investigation and also as pending within both business units while the case remained open. While BVNPT's investigators possibly performed some investigative activity either before, or after, the case was investigated by the Division of Investigation, it is impossible to determine to what extent this occurred and, given BVNPT's workloads and backlogs during this period, it is likely that there was very little such activity. In any event, there should rarely be a need for both business units to be involved in investigating the same case. Furthermore, the practice of routinely assigning Division of Investigation cases to the Investigation Section artificially inflates and distorts BVNPT's non-sworn investigation workloads and performance metrics. For purposes of completing this Initial Assessment, we excluded the assignment of such cases to the Investigation Section.

Subsequently, over an 8-month period extending from May through December 2015, about 240 cases that had previously been assigned to the Investigation Section over the previous four (4) years, but were never completed, were reassigned to the Division of Investigation. These latter duplicate case assignments were not excluded from our data summaries and analyses because they help to show the impact of the intervention that occurred. Also, the resulting statistical summaries properly show the approximate level of sworn investigation assignments that should have occurred over the past 4 to 5 years.

### 5. Internal – Fraud Complaints

In recent years BVNPT opened and completed an average of about 120 to 140 Internal – Fraud investigations per year. Currently available data suggests that this single category of cases typically accounts for about 20 percent of all licensee complaint cases. This data also suggests that citations with fines are issued in a very high proportion of these cases (usually \$250, \$500 or \$750) and that these cases account for 25 to 50 percent of all citations that are issued to licensees. However, there is significant variability in the annual data that is not currently understood. It is our understanding that the following two (2) completely different types of cases possibly account for most of BVNPT's Internal – Fraud cases:

## Overview of Data Inconsistencies, Anomalies, Constraints and Effects

- Licensee failure to disclose on their license renewal application a criminal conviction within the preceding two (2) years
- Licensee non-compliance with CE course completion or reporting requirements.

Additional research and analysis is needed to determine (1) the composition of these cases, (2) the appropriateness and consistency of sanctions and discipline imposed for associated violations, and (3) needs for improvements to BVNPT's supporting business processes.

### 6. Licensee Arrest/Conviction Reports

During April 2009 BVNPT implemented fingerprinting requirements retroactively for anyone licensed prior to 1998. The majority of retroactive fingerprints were collected during two (2) renewal cycles between April 1, 2009 and June 30, 2011, prior to start-up of the new Investigation Section. Additionally, licensees are required to self-certify on their license renewal application whether they were convicted of a crime or if disciplinary action was taken in California or any other state or country since their last renewal.

On average, BVNPT opens about 1,500 licensee arrest/conviction report cases per year. These cases account for about 75 percent of all of BVNPT's enforcement cases. Until recently, BVNPT staff oftentimes opened these new cases in CAS without first querying CAS to determine whether a case had already been opened for the same incident. Currently available data suggests that at least 10 percent of the cases that were opened were redundant. However, we did not exclude these identifiable redundant arrest/conviction report cases from our data compilations and analyses because additional research is needed to identify the magnitude of this problem and whether the magnitude of the problem was consistent over time. BVNPT recently implemented improved case intake screening processes and provided training to staff to reduce the magnitude of (or eliminate) the opening of redundant licensee arrest/conviction report cases.

Finally, data has not been captured in CAS that differentiates licensee arrest/conviction report cases by type of offense. The lack of differentiation makes it difficult to characterize these cases which account for about 75 percent of all enforcement cases. Currently available sample workflow data and anecdotal information suggest that at least 40 percent of these cases are DUI offenses, with about one-half of these DUI cases involving various aggravating circumstances. The remaining cases involve a broad range of other offenses (e.g., controlled substances, domestic violence, assault, theft, and fraud).

### 7. Database Noise

To support this assessment BVNPT staff extracted 18 separate sets of CAS data. We filtered, compiled, summarized and analyzed the data provided, corrected significant anomalies in the data and excluded some records from our analyses. In total, data related to more than 120,000 separately extracted case records were incorporated into our assessment. As in any large database, there is always some incomplete or incorrect data (or "noise"). This is much more so with BVNPT's CAS records than is usually the case at DCA-affiliated boards and bureaus. However, as best we can determine at this point, the aggregate data used for our analyses is reasonably representative of BVNPT's actual Enforcement Program workloads and performance.

### 8. Interim Investigation Activities

BVNPT's non-sworn investigators have not consistently posted updates to CAS for various interim investigation activities, including activities involving (1) issuance of requests for releases of medical and personnel record and receipt of such releases, (2) issuance of records requests and receipt of the records, and (3) scheduling and completion of complainant, subject and witness interviews. Also, updates to CAS showing the initiation and completion of supervisory case reviews prior to case closure or referral of cases for discipline were not usually consistently completed. Consequently, the ability to perform statistical analyses of these types of activities is necessarily limited.

### 9. Investigation Quality Measures

There are oftentimes concerns about the extent to which measures of Enforcement Program performance focus on outputs without consideration of the quality of the outputs (e.g., measures of the number of cases referred for prosecution, without consideration of the quality of the completed investigations). We anticipate that subsequent phase analyses will encompass quantitative indicators that reflect the quality of completed investigations. Additionally, qualitative information regarding the quality of BVNPT's non-sworn investigations will be obtained and incorporated into our subsequent analyses.

### 10. CAS to BreEZe Conversion

On January 1, 2016, BVNPT ceased using CAS to track enforcement cases and began transitioning to the new BreEZe system. This transition was still underway during March and April as we began completing the Initial Assessment of BVNPT's Enforcement Program. Accordingly, a decision was made to base the initial assessment primarily on historical CAS workload and performance data through December 31, 2015, and then update the assessment during Phase II with BreEZe data covering the remainder of 2015/16. Early-2016 updates to the CAS data presented herein are limited and targeted to specific problems or issues.

## Overview of Key Issues

### 1. License Applicant Arrest/Conviction Reports

The number of license applicant arrest/conviction reports received by BVNPT inexplicably increased by about 55 percent from less than 2,500 during 2010/11 to nearly 3,800 during 2013/14. Available data suggests that large numbers of license applicant arrest/conviction report cases were opened by BVNPT (e.g., 800 to 1,000 per year, or possibly more, especially during 2013/14) for minor offenses and that many of these cases were possibly not investigated to any extent beyond completing an initial review of the applicant's arrest/conviction report or the applicant's self-reported information, and then closing the case. Additionally, it is unclear what reporting source was used to generate the large number of additional cases that were opened during 2013/14. The number of cases opened during 2013/14 as a percentage of the total number of license applications received (45 percent) seems almost impossibly high.

BVNPT recently restructured the License Applicant Arrest/Conviction Report Case Intake Process by transferring various responsibilities to the Licensing Program. This restructuring was phased in over a period of several months beginning during July 2015. As a result of this restructuring, only about 500 enforcement cases were opened during the first half of 2015/16 compared to an average of more than 3,000 cases per year during prior periods. However, additional improvements and refinements to the process are possibly needed.

### 2. Complaint Intake Process

During the Initial Assessment, various deficiencies were identified with BVNPT's Complaint Intake Process. BVNPT recently restructured its Complaint Intake Process and has been providing additional training to staff to address these deficiencies. However, in some areas these processes are still somewhat underdeveloped and are continuing to evolve as needs for various refinements and improvements are identified. Further assessment of selected aspects of BVNPT's past and current Complaint Intake Process is needed to support identification and accelerated implementation of needed process improvements.

### 3. Case Referrals to the Division of Investigation

Concurrent with and following start-up of the Investigation Section, BVNPT reduced and then completely discontinued the referral of cases to the Division of Investigation, including cases involving serious criminal misconduct, significant patient harm, unlicensed practice and sexual misconduct. Subsequently, beginning during 2015, BVNPT resumed referring selected cases to the Division of Investigation. Additionally, between May and December 2015, BVNPT reassigned about 240 pending non-sworn investigations to the Division of Investigation.

During late-2015 BVNPT implemented new complaint intake and screening processes to support the identification and referral of cases to the Division of

Investigation. The restructured process utilizes the *Complaint Prioritization Guidelines for Health Care Agencies* to identify these cases. Continuing evolution and maturation of this recently implemented restructuring of BVNPT's Complaint Intake Process will likely result in identification of needed refinements to the process. However, at this point it appears that BVNPT has already addressed the core issue involving needs to identify and refer cases involving serious criminal misconduct, significant patient harm, unlicensed practice, sexual misconduct and selected other cases to the Division of Investigation.

### 4. Legacy Backlogs of Aged Non-Sworn Complaint Investigations

When BVNPT's Investigation Section was established and staffed during 2012, it inherited a large backlog of aged cases from the Complaint Section that continues to persist to this date. At its peak during 2012/13 and 2013/14, there were more than 800 pending non-sworn investigations and, as of June 30, 2015, the average age of these cases had increased by about 60 percent to 19 months from about 12 months during 2012.

Subsequently, from May through December 2015, about 240 pending non-sworn investigation cases were reassigned to the Division of Investigation. As of mid-March 2016, the Investigation Section had about 530 total pending investigations. Of these, about 230 cases were assigned to the Section's investigators and the remaining 300 cases were assigned to the Section's unassigned case queue. To help accelerate the reduction and eventual elimination of the Section's aged case backlog, during April 2016 Enforcement Division management began conducting individual in-depth case review meetings with all of the Section's investigators to determine whether the investigations of each investigator's assigned older cases could be completed more expeditiously. Management directed that staff continue their investigation for 84 of the 178 cases included in the scope of the review (47 percent) and provided each investigator with specific direction as to the steps needed to complete each investigation. For the remaining 94 cases, management directed staff to complete their investigation by:

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

This first round of in-depth case review meetings reduced the Section's total number of pending complaint cases by nearly 20 percent. As of April 30, 2016 there were fewer than 400 pending non-sworn complaint investigations and the average age of the pending cases decreased to 13 months from 17 months as of December 31, 2015. Management plans to continue conducting in-depth case review meetings with each non-sworn investigator on a regular basis.

## Overview of Key Issues

### 5. Variability in Sanctions or Discipline Imposed

BVNPT recently overhauled its guidelines for issuance of license denials. It is our understanding that, prior to July 2015, BVNPT automatically denied license issuance to any applicant that failed to disclose an arrest/conviction on their license application, including arrest/conviction for traffic offenses, and also to any applicant that had been the subject of a license examination *Incident Report* from Pearson View. During July 2015, BVNPT began reviewing new failure to disclose and *Incident Report* cases to determine whether the facts and circumstances of the case support license denial. This change is expected to reduce the number of license denials issued, appeals of the denials, referrals of license applicant cases to the AG, SOI filings, and negotiated settlements of these types of cases.

Available data suggests there has possibly been some variability in the administrative discipline imposed on license applicants. It is our understanding that license applicant citations usually arise as part of a settlement of an appealed license denial and are usually accepted by the applicant in lieu of being placed on probation. Variability in the number of citations issued to license applicants may be a function of timing differences, differences in the mix of cases, shifts in BVNPT's license denial or appealed case settlement practices, or other factors. Additionally, we understand that the citations usually contain orders of abatement appropriate to the applicant's offense. However, it also appears that BVNPT nearly always assesses a \$500 fine with each citation. There may not be a clear rationale for continuing the practice of nearly always assessing new licensees a fine or nearly always assessing the same \$500 fine for these cases.

There has also been significant variability in BVNPT's issuances of citations for Internal - Fraud cases and in BVNPT's issuances of NOWs for non-compliance with CE Program requirements and after concluding investigations of complaints involving licensees. Additionally, during BVNPT's 2014/15 Sunset Review issues surfaced concerning potential variability in BVNPT's referrals of licensee cases to the AG for formal discipline. There is a need to further explore potential issues related to BVNPT's issuances of citations and NOWs to licensees, referrals of licensee discipline cases to the AG and handling of the cases following referral.

### 6. Enforcement Program Guidelines, Policies and Procedures

BVNPT does not have an *Enforcement Program Policies and Procedures Manual*. The absence of a fully documented set of Enforcement Program guidelines, policies and procedures contributes to variability and inconsistencies in the services provided and less consistent and lower quality work products. Additionally, it is more difficult to orient and train new staff, develop existing staff and establish accountability for performance. It may be possible to address BVNPT's *Enforcement Program Policy and Procedures Manual* development needs by obtaining process documentation currently utilized by other DCA-affiliated boards or bureaus, and then customizing the guidelines, policies and procedures

to address BVNPT's specific needs. This approach could significantly reduce the level of effort that would otherwise be needed for this purpose.

### 7. Organizational Conflict and Turnover of Staff

BVNPT's high vacancy rates during the past several years are largely attributable to excessive workloads and backlogs and a failure by past management to address severe workforce morale problems resulting from high levels of organizational conflict within the Enforcement Division and between the Enforcement Division and other BVNPT business units and outside organizations. It also appears there were similar types of problems and levels of organizational dysfunction within the Administration and Licensing Division.

While still high, BVNPT's vacancy rates are currently much lower than they have been in several years and management is attempting to further reduce vacancy rates by promptly filling vacant positions. Additionally, the Enforcement Division's workforce has stabilized and management is reclassifying positions as needed to better align the Division's workforce capabilities with current and emerging workload demands. Also, workforce morale within the Enforcement Division appears to be much better than was the case prior to 2015/16. Finally, BVNPT management is planning to restructure the Administration and Licensing Division to reduce the spans of control of the Division's manager and supervisor.

### 8. Enforcement Program Development and Workforce Utilization

BVNPT's case intake and investigation processes are under-developed resulting in inconsistency and variability in the completion of specific functions and activities and the resulting process outputs or work products. Additionally, BVNPT's non-sworn investigators oftentimes do not sufficiently adjust the scope and depth of their investigations and the level of documentation produced consistent with the variable nature and outcomes of the individual cases.

The processes used by the Enforcement Division for on-boarding new non-sworn investigators are unstructured and under-developed. Also, until recently, the Section's investigators were not required to track their time which provides information that can be used for accountability and cost recovery purposes. Additionally, periodic staff performance reviews and Individual Development Plans (IDPs) are rarely, or never, completed for any Enforcement Division staff.

Finally, there is possibly some misallocation of available resources among the Enforcement Division's various business units. Currently, all of the Investigation Section's positions are needed to complete investigations of the Section's large backlog of pending cases. However, the number of backlogged cases is decreasing and, over a period of time, the number of positions needed to investigate cases assigned to the Section should diminish and enable the redirection of some positions to support other current and emerging Enforcement Program or BVNPT business needs.

**9. Enforcement Program Workload, Workforce and Performance Management Processes**

BVNPT’s Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to collect, compile and report Enforcement Program-related management information and assist recipients in understanding the information that is provided. Data and representations made in the past regarding BVNPT’s Enforcement Program workload, backlogs and performance have generally been significantly overstated, misrepresented, and incorrect. Additionally, BVNPT has oftentimes combined metrics regarding its disparate license applicant, licensee subsequent arrest, and licensee complaint workloads, workflows, backlogs and performance which produces results that are essentially meaningless.

**10. Communication and Collaboration with Board Members, the Legislature and Other Public Agencies**

During BVNPT’s 2014/15 Sunset Review, issues surfaced regarding the adequacy of Executive staff’s communications and collaboration with Board members, DCA, the Legislature and other public agencies. For example, representatives of the Legislature were surprised when reports surfaced during the Sunset Review which suggested significant organizational and workload problems within BVNPT’s Enforcement Program. These reports were not consistent with information presented in BVNPT’s *2014 Sunset Review Report*.

To begin assessment of BVNPT’s communication and collaboration deficiencies and improvement needs, during March we interviewed Legislative Committee staff and prepared and disseminated a confidential survey to members of BVNPT’s governing Board to obtain their input regarding a range of issues. The Board survey responses will be compiled, analyzed and summarized for inclusion in a subsequent phase report. Additionally, during Phase II we expect to conduct interviews with members of BVNPT’s governing Board and representatives of other public agencies that regulate facilities where BVNPT licensees oftentimes work or administer programs involving the provision of care to the elderly or other targeted populations oftentimes served by BVNPT licensees.

During the past year BVNPT management has been working to establish improved communication processes to address deficiencies related to providing information to Board members, DCA, control agencies and Legislative oversight committees regarding the status of the Board’s programs and operations. These efforts are also intended to help rebuild BVNPT’s credibility with these stakeholders and oversight authorities.