



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMONDO BRIDGES, JR.

Board of Vocational Nursing and Psychiatric Technicians
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ENFORCEMENT COMMITTEE MEETING

Wednesday, October 4, 2017

Sacramento, CA

Board Members Present

Via Teleconference: Samantha James-Perez, PT Member
 Ken Maxey, Public Member

Staff Present:

Brian Vu, Enforcement Division Chief
 Kelli Williams, Complaint Program Manager
 Jay Prouty, Discipline Program Manager
 Rocio Llamas, Probation Program Manager
 Matt McLean, Special Investigator
 Savanna Koop, Probation Monitor
 Kevin Narine, Discipline Analyst
 Stephanie Whitley, DCA Supervising Investigator
 Brian Clifford, DCA Executive Staff (via teleconference)
 Ben Frank, Administrative and Enforcement Monitor (via teleconference)

1. Call to Order.

The meeting was called to order at 10:07 a.m., by Brian Vu, Enforcement Division Chief.

2. Staffing Update.

An Enforcement Division staffing update was provided to the Committee Members by Brian Vu, Enforcement Division Chief. Mr. Vu updated the vacancies from 5 to 6 and there is a 14% vacancy rate. The Enforcement vacancies are:

- Complaints Program has three (3) Staff Services Analysts (SSA);
- Special Investigations Program has one (1) Supervising Special Investigator (Sup. SI) and one (1) Special Investigator (SI);
- Discipline Program has one (1) Associate Governmental Program Analyst (AGPA);
- Probation Program has no vacancies.

The Complaint Program is scheduling interviews for the SSAs vacancies. The Sup. SI closed on 10/3/17 and interviews will be scheduled for next week. Possibly reclassing the vacant SI to a Staff Services Manager I (SSM I) for the Complaint Program reorganization. The Discipline Program conducting AGPA interviews on 10/5/17.

3. Review of Enforcement Performance Measures and Statistics.

Mr. McLean provided a simplified overview of the Enforcement Performance Measures and Statistics. Mr. Vu stated that Mrs. Williams and Ms. Whitley are working together and with staff in the Complaint Program. Mr. Frank asked what was the goal to complete investigations. Mr. McLean stated that the goal was 180 days to complete an investigation and the Board was working towards that goal. Mr. McLean indicated that the Citation & Fine Program was started up again and they had closed nine (9) cases. Mrs. Whitley stated that since placement of management in Enforcement this has helped.

4. Discussion of Enforcement Monitor's Recommendations from the Second Report.

Mr. Vu reviewed the Enforcement Monitor's Phase II recommendations along with subsequent Board responses. There were 29 recommendations from Mr. Frank's initial report. Many of the recommendations are either in progress or implemented. Many of the recommendations center around concerns of the Complaint and Non-Sworn unit. To address these concerns, Board staff is looking to create a brand new Intake Unit, which would not require any additional staff. It would only pull from current resources.

The Enforcement Monitor is currently working on draft final report to the Legislature and met with current staff for 1 on 1's to corroborate information as well as processes.

5. Discussion of Enforcement Monitor's Immediate Action Recommendations from July 2017.

The Enforcement Monitor presented the Board with a series of immediate action recommendations from July 2017.

Mrs. Whitley provided an update on the Enforcement Monitor's Recommendations for immediate action from July 2017. Please reference the attached document for these updates.

6. Citations & Fines Protocol.

Mr. Vu presented to the Committee Members, if citations should be posted on the Board's website even though they are not formal discipline. Mrs. James-Perez did not feel comfortable with the recommendation to not post citations for public viewing because the public has the right to know this information. Mrs. James-Perez requested that additional Boards be contacted to see what they do with citations. Mr. McLean stated that most Public Request Act inquiries received are related to citations therefore, it is more feasible to maintain them on the Board's website. Mrs. Koop confirmed that when she handled PRA inquiries for the Board that most of these inquiries were for citation information. Mr. Prouty stated that by having citations posted on the Board's website, it puts a mark on the licensee's record which may make it difficult for them to obtain employment. He further stated citations are informal discipline, and don't involve conduct that rises to the level of formal disciplinary action. Mr. Frank also expressed concerns about not making the citation information available to the public. This item is pending further research.

7. **Suggestion for Future Agenda Items.**

No one had future items for agenda. Mr. Vu asked Committee Members when they would like to schedule the next Committee meeting. Committee Members did not have their calendars, therefore Mr. Vu will follow-up with each of them later.

8. **Adjournment.**

The meeting adjourned at 12:05 p.m.

The mission of the California Board of Vocational Nursing and Psychiatric Technicians (Board) is to protect the public. Public protection is paramount to the Board and its highest priority in exercising its licensing, regulatory, and disciplinary functions. Towards this end, the Board ensures that only qualified persons are licensed vocational nurses and psychiatric technicians by enforcing education requirements, standards of practice, and by educating consumers of their rights.

BVNPT Monitor Issues & Recommendations - July 2017 - DCA Response Tracking

(As of September 20, 2017)

| Issue | Recommendation | Status | Notes |
|--|--|-----------------|---|
| <p>Licensee Complaint Case Closures at Intake without Investigation</p> <p>During September/October 2016, BVNPT began closing all anonymously reported licensee complaints at intake without any investigation, irrespective of whether the licensee was specifically identified, the nature and severity of the allegations, and the specificity of the information provided. Additionally, BVNPT began closing all inmate reported licensee complaints without investigation unless the inmate first provided BVNPT with documentation substantiating that they had completed CDCR's grievance process and irrespective of whether the licensee was specifically identified, the nature and severity of the allegations, and the specificity of the information provided. Finally, BVNPT began closing cases involving incidents occurring in advance of subsequently imposed disciplinary actions by BVNPT involving other previously occurring violations. Currently, the decision to close the above cases is made by the Intake Unit's Management Services Technician (MST) and then reviewed by a recently hired AGPA who has been largely dependent on the MST for training regarding BVNPT's case intake and triage processes, policies and procedures. Since September 2016, BVNPT has closed more than 250 cases during intake compared to a handful of cases closed during intake per month previously (e.g., complaints regarding BVNPT's Licensing and Education Programs).</p> | <p>With limited exceptions, stop closing licensee complaint cases during intake without investigation and ensure supervisory reviews are completed of all licensee complaint cases closed during intake without investigation.</p> | <p>Complete</p> | <p>The intake OT only opens cases and creates the initial complaint folder. All cases now go to the Intake AGPA for review who then makes a determination on how to proceed. The Intake AGPA will ask for Complaint Manager and/or DOI Intake on cases in question.</p> |
| | <p>Reopen licensee complaint cases previously closed during intake from February through May 2017 as determined appropriate by the Division of Investigation and assign the re-opened cases to BVNPT's Investigation Section or the Division of Investigation as determined appropriate by the Division of Investigation. During the last week of June 2017, DOI reviewed 110 cases closed during intake between February and May 2017 and identified 22 cases that should be reopened and assigned to the Investigation Section and 18 cases that should be reopened and assigned to DOI.</p> | <p>Complete</p> | <p>All cases to go to DOI have been re-opened and submitted to DOI. Cases to go to the Board's SIs are reopened and are in the "queue" awaiting assignment.</p> |
| | <p>Complete Division of Investigation reviews of all licensee complaint cases closed during intake from September 2016 through January 2017, re-open any cases previously closed during intake as determined appropriate by the Division of Investigation, and transfer the re-opened cases to BVNPT's Investigation Section or the Division of Investigation as determined appropriate by the Division of Investigation</p> | <p>Complete</p> | <p>Identified 7 to reopen and send to SI, none to DOI. Cases have been reopened and are in the "queue" awaiting assignment.</p> |
| | <p>Assign currently pending licensee complaint intake cases to BVNPT's Investigation Section or the Division of Investigation as determined appropriate by the Division of Investigation. During the last week of June, DOI reviewed BVNPT's currently pending intake cases and identified approximately 50 cases that should be assigned to DOI, including some cases that had been closed during intake.</p> | <p>Complete</p> | <p>All cases to go to DOI have been re-opened and submitted to DOI. Cases to go to the Board's SIs are reopened and in the "queue" awaiting assignment.</p> |

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| | <p>Assign currently pending licensee complaint intake cases to BVNPT's Investigation Section or the Division of Investigation as determined appropriate by the Division of Investigation. During the last week of June, DOI reviewed BVNPT's currently pending intake cases and identified approximately 50 cases that should be assigned to DOI, including some cases that had been closed during intake.</p> | Complete | <p>All cases to go to DOI have been re-opened and submitted to DOI. Cases to go to the Board's SIs are reopened and in the "queue" awaiting assignment.</p> |

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| | <p>Stop Pilot Project 2.0 involving the collection of releases and administrative/personnel records for newly received licensee complaint cases by Intake Unit staff and redirect Intake Unit staff to focus exclusively on completing case reviews, research and triage of newly received license complaint cases.</p> | <p>Complete</p> | <p>Cases that were assigned to the Intake AGPA are reassigned to SI and in the "queue" awaiting assignment.</p> |
| | <p>Revise BVNPT's licensee complaint intake policies and procedures consistent with the above recommendations, provide training to Complaint Section staff to support implementation of the recommendations, and monitor implementation to assure that all of the recommendations are fully and consistently implemented.</p> | <p>Complete</p> | <p>Staff have been informed and are implementing changes. We have reviewed current policies and procedures and are in the process of updating desk manuals to correspond.</p> <p>Update as of 9/20/17: Desk manual procedures related to case intake have been updated. Staff have been notified of changes and have been given replacement sheets for their desk manuals.</p> |
| <p>Backlogged Completed Field Investigation Reports Pending Analyst Review and Disposition</p> <p>A backlog of more than 90 completed investigation reports has accumulated within the Complaint Section that are pending review and disposition by the Section's analysts (e.g., no further action, issuance of a Notice of Warning, issuance of a citation, or referral to the Attorney General for formal discipline). Most of these cases involve complaints against licensees and more than one-half of the investigations were completed by the Division of Investigation involving serious criminal conduct or significant patient harm. It is likely that the results of the investigations for more than one-half of the cases support disciplinary action. Many of the investigations were completed at least several months ago. In nearly all (or all) cases, the licensee is not restricted from continuing to practice.</p> | <p>Temporarily redirect one experienced (1) Special Investigator position to complete reviews of pending AS05s, triage the cases for discipline, prepare case summaries, and refer the cases for issuance of a NOW, citation or to the Attorney General's Office (AGO), as appropriate. Provide a 2nd level supervisory level reviewer for all closed cases. Utilize Discipline Section staff, as needed, to assist in preparing and submitting discipline packages to the AGO.</p> | <p>Complete</p> | <p>All 90+ cases have been reviewed by DOI and the assigned analyst and determined the next step of action (AG, expert, C&F, close, etc.) Cases for discipline are being routed to the Discipline section to prepare for the AG or c&f. All action has either already been taken or is in progress. A handful of cases to go to the AG were determined by discipline staff as needing to go to expert first.</p> <p>16 refer to cite and fine 19 close Insufficient Evidence/No Violation 10 closed with a NOW 41 need to go to the AG 18 need to go to expert review</p> <p>Update as of 9/20/17: All cases have been reviewed and processed. A couple are still pending PT expert review due to the low number of available PT experts. Enforcement Chief Brian Vu is currently working with BRN to utilize their pool of experts with PT supervision background.</p> |

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| <p>Special Investigation Cases Closed with a Notice of Warning without Sufficient Investigation</p> <p>During early-2017, under the direction of BVNPT's former Executive Officer, Special Investigation Section staff closed about 80 licensee complaint cases with issuance of a Notice of Warning (NOW) based solely on the information that was available at the time and, in many cases, without first investigating or fully investigating the case to determine what violations occurred and then, based on results of the investigation, determining the discipline that should be imposed.</p> | <p>Reopen and further investigate Investigation Section cases closed with a NOW during early-2017 as determined appropriate by the Division of Investigation. During the last week of June 2017, DOI reviewed 49 cases closed with a NOW during early-2017 and identified 19 cases that should be reopened and further investigated.</p> | <p>In Progress</p> | <p>Cases have been reopened, letters have been sent out, and cases have been assigned to Investigation and are in the "queue" awaiting assignment.</p> |
| <p>Special Investigation Cases Closed and Not Reviewed by Complaint Section Analysts</p> <p>Prior to late-2016, like all investigations completed by the Division of Investigation's sworn investigators, all completed non-sworn Investigation Section cases were forwarded to the Complaint Section for independent review of the cases by an analyst, identification of needs for completion of a supplemental investigation, and disposition of the case (e.g., closure, issuance of a citation, referral to the Attorney General for discipline). However, during late-2016, the handling of completed non-sworn Investigation Section cases was changed by BVNPT's former Executive Officer. Since that time, cases that the Investigation Section supervisor believed did not support discipline have been closed within the Investigation Section without any independent review of the cases by Complaint Section staff. Subsequently, in mid-May 2017, the Investigation Section supervisor separated from BVNPT. Since that time, cases have been closed by Investigation Section staff without any review of the cases by either supervisory-level staff or by Complaint Section analysts.</p> | <p>Complete Division of Investigation reviews of all non-sworn Investigation Section cases closed since mid-May 2017.</p> | <p>In Progress</p> | <p>Cases have received an initial review. Still need to review corrections and/or additional steps to complete with SI's.</p> <p>Update as of 9/20/17: Cases have all been reviewed (approx. 25) DOI has worked with special investigative staff and Enforcement Chief to submit a subpoena package to DCA Legal to receive delegated authority from the DCA Director. Legal has reviewed and approved.</p> |

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| <p align="center">Citation Program Backlogs</p> <p>During 2015/16, all Citation Program responsibilities were consolidated and assigned to a single analyst within BVNPT's Complaint Section. In mid-May 2017 the Citation Desk analyst separated from BVNPT. Since that time, almost none of the Citation Desk Analyst's functional responsibilities have been performed, including issuing new citations, processing in-house, Breeze and Franchise Tax Board (FTB) citation payments, monitoring outstanding citations, including orders of abatement, following-up returned mail, and managing cases that are appealed and referred to the Attorney General. As of late-June 2017, there were 11 citations pending issuance, about 150 cases subject to monitoring, and more than 30 pending payments that had not been</p> | <p align="center">Transfer all Citation Program responsibilities to the Discipline Section.</p> | <p align="center">Complete</p> | <p>Position has been transferred to the discipline section. However, the position is currently vacant. Interviews have been conducted and the position should be filled soon.</p> <p>Update 9/20/2017: Position has been filled and duties are being transferred to the new analyst.</p> |
| <p align="center">Criminal Arrest cases that have been Closed Pending Conviction (CPLX)</p> <p>A new query was developed by DCA's Office of Information Services (OIS) to identify the number of CLPX cases at BVNPT and run as of June 30. It identified 315 cases. Concurrently, all Complaint Section analysts (SSA/AGPAs) who are responsible for handling these cases completed a physical count (inventory) of their pending CLPX cases which they retain in their offices. This physical count reflected 238 cases (a difference of 77 cases). With one minor exception, the number of BreEZe cases shown on the listing was larger than the number of cases counted by staff, in some cases significantly larger.</p> <p>Some of the difference involves cases that are assigned to Discipline analysts. Some of the difference also likely involves coding problems.</p> | <p align="center">Locate or account for all cases shown in BreEZe as Closed Pending Conviction and assign them for ongoing monitoring.</p> | <p align="center">Complete</p> | <p>All cases have been located and accounted for. It appears that none were actually missing, rather they were miscounted during the audit. Additionally, because the CLPX code actually closes the case in breeze, due to staff turnover, the closed case assignments did not match who physically had the case file.</p> |

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| <p>But, most of the cases shown of the BreEZe listing appear to still be open and apparently are not being tracked/monitored by Complaint Section analysts. Some of this difference appears to be traceable to turnover of Complaint Section staff and presumably incomplete reassignment of these cases to others in the Section (e.g., cases are still showing as assigned to staff that have separated from BVNPT or transferred to other BVNPT business units and did not take the cases with them). In some cases the person shown in BreEZe as the Responsible Party separated from BVNPT during late-2016 or early-</p> | <p>Develop and implement positive internal controls to ensure that cases that are Closed Pending Conviction are monitored and tracked by staff on a continuing basis.</p> | <p>In Progress</p> | <p>Need to determine best practices on how to continue tracking Subsequent arrest cases that are pending (sometimes for months or years) and waiting on a conviction. Perhaps either continue using CLPX and giving a report to each analyst monthly, or abandoning the CLPX code altogether and using a new code. Will be meeting to discuss on Wednesday 8/16.</p> <p>Update as of 9/20/2017: Use of CLPX has been discontinued on new cases. OIS is working on a patch that will not close the case, but will show that the case is pending adjudication from an outside agency. Cases are not being reopened at this time, as they are waiting on the patch from OIS so the cases aren't double counted.</p> |
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