

Board of Vocational Nursing and Psychiatric Technicians

Administrative and Enforcement Program Monitor

Second Report

**Case Intake, Investigation, Discipline and Targeted
Administrative Process Assessments**

Board Briefing – October 21, 2016

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A. Administrative and Enforcement Monitor Background

- ❖ 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. These changes included establishing a new non-sworn Investigation Section and assigning all licensee complaint cases to the new section, including cases involving serious criminal misconduct and significant patient harm previously referred to DCA's Division of Investigation.
- ❖ The problems resulting from these changes became apparent to DCA which made efforts to encourage BVNPT to utilize the new Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the Division of Investigation's services.
- ❖ Concurrently, members of BVNPT's governing Board began developing an awareness of these problems from reviewing discipline packages submitted to the Board that, in many cases, were quite old and recognizing that the licensees were continuing to practice for years without discipline. Additionally, some members were dissatisfied with management's responsiveness to their requests for additional Enforcement Program information.

A. Administrative and Enforcement Monitor Background

- ❖ During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess BVNPT's enforcement and discipline processes. In November 2014 the Task Force submitted its report to the Board.
- ❖ The Task Force report included six (6) recommendations, including a recommendation that BVNPT begin utilizing CPEI case prioritization guidelines and resume utilizing the Division of Investigation's services.
 - BVNPT's governing Board approved this recommendation along with most of the Task Force's other recommendations.
 - BVNPT continued to assign nearly all licensee complaint cases to the Investigation Section.
- ❖ Concurrently, reports surfaced during BVNPT's 2014/15 Sunset Review about BVNPT's organizational and operational problems and the scope and magnitude of these problems became apparent to the Legislature.

A. Administrative and Enforcement Monitor Background

- ❖ BVNPT's Sunset Review Hearing was held on March 23, 2015, but BVNPT's responses to questions during the hearing did not allay related issues and concerns.
- ❖ Following the Sunset Review Hearing, DCA initiated a review of BVNPT's Enforcement Program and an investigation of BVNPT's statistical reporting. Concurrently, from March 31 through May 29, 2015, the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement, Complaint Section Supervisor and an Investigation Section Supervisor all separated from the Board.
- ❖ Following the separation of the EO, AEO and Chief of Enforcement, Division of Investigation staff provided assistance to the Board with management of the Enforcement Program and began reviewing all of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of the Investigation.
- ❖ DCA also provided BVNPT with an Acting Executive Officer. Additionally, a new Chief of Enforcement and new supervisors for the Complaint and Investigation Sections were hired.

A. Administrative and Enforcement Monitor Background

- ❖ Subsequently, AB 179 (Bonilla) was enacted requiring that DCA appoint an Administrative and Enforcement Program Monitor for BVNPT for a period of up to two (2) years to assess BVNPT's Enforcement Program and specified administrative processes. Reports are required to be submitted to the Legislature on July 1 and November 1, 2016, February 1, 2017, and January 1, 2018.
- ❖ On February 29, 2016, DCA awarded a contract to Benjamin Frank LLC to provide the Monitor services. An Initial Assessment of BVNPT's Enforcement Program was completed during March and April. The *Initial Report*, documenting results of the Initial Assessment, was presented to BVNPT's governing Board on June 20, 2016, and submitted to the Legislature on July 1, 2016.
- ❖ Additional interviews, research and analyses of BVNPT's Enforcement Program and targeted administrative processes were completed during June, July and August. The *Second Report* documents results of these supplemental assessments. Additional interviews, research and analyses in a few remaining areas are expected to be completed during the next project phase.

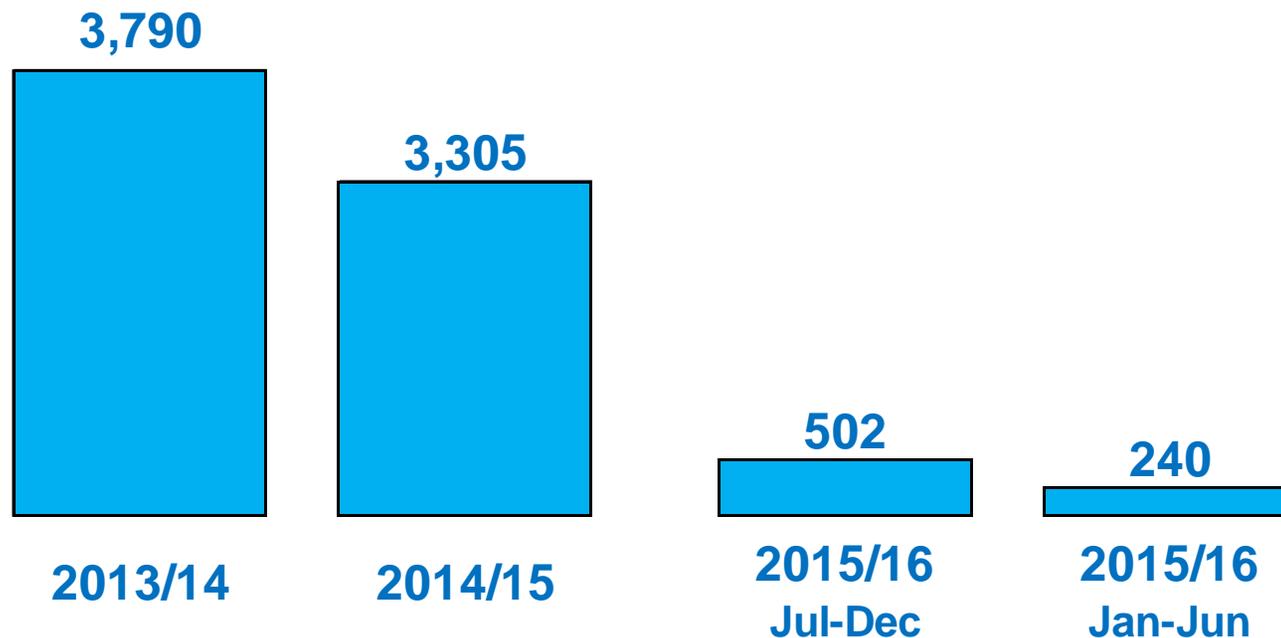
B. BVNPT's Enforcement Program Turnaround

- ❖ Corrective measures taken during the past year have contained the problems that accumulated in prior years and set into place a foundation for building a sustainable, effective and efficient Enforcement Program.
- ❖ Improvements made during the past year include:
 - ✓ A complete restructuring of the Licensee Applicant Arrest/Conviction Report Process
 - ✓ A restructuring of the Case Intake and Screening Process
 - ✓ Significant increases in the number of completed licensee arrest/conviction report and complaint investigations
 - ✓ Significant reductions in the number of pending investigations and in the average age of the pending investigations
 - ✓ Significant increases in the number of cases referred to the AG and the number of discipline cases completed
 - ✓ Significant reductions in the average elapsed time to file pleadings and complete disciplinary actions
 - ✓ Significant reductions in the number of pending discipline cases and the average age of the pending discipline cases.

B. BVNPT's Enforcement Program Turnaround

- ❖ As shown below, the restructuring of the License Applicant Arrest/Conviction Report Process reduced the number of cases referred to Enforcement by about 3,000 cases per year.

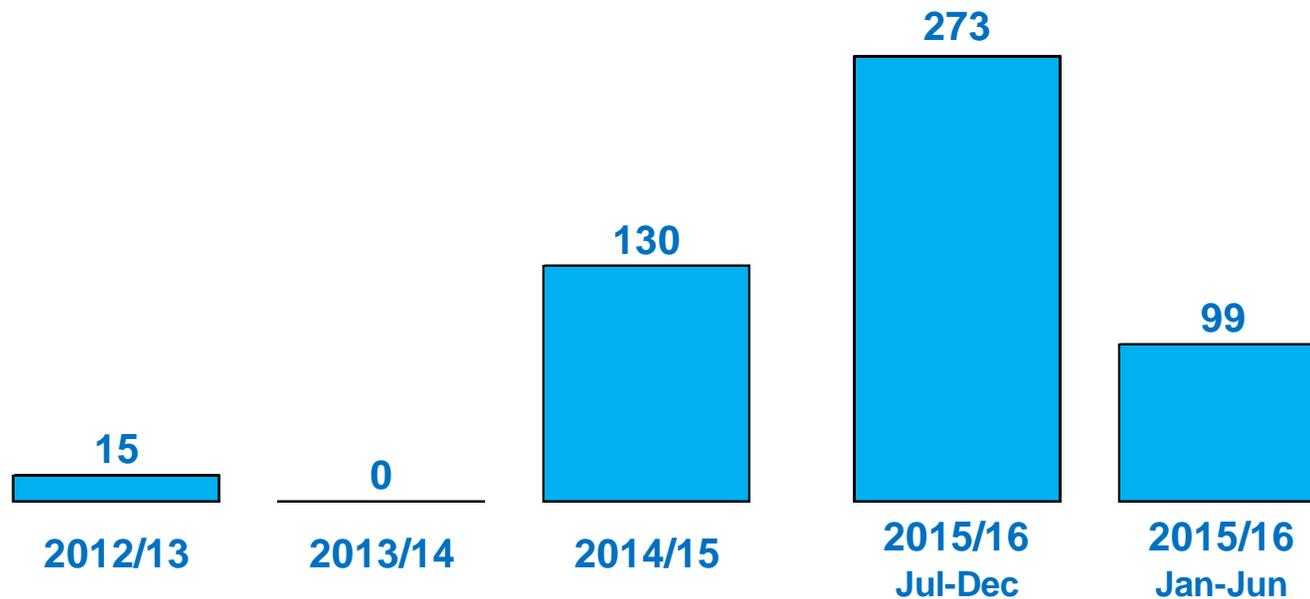
Number of License Applicant Arrest/Conviction Report Cases Referred to Enforcement



B. BVNPT's Enforcement Program Turnaround

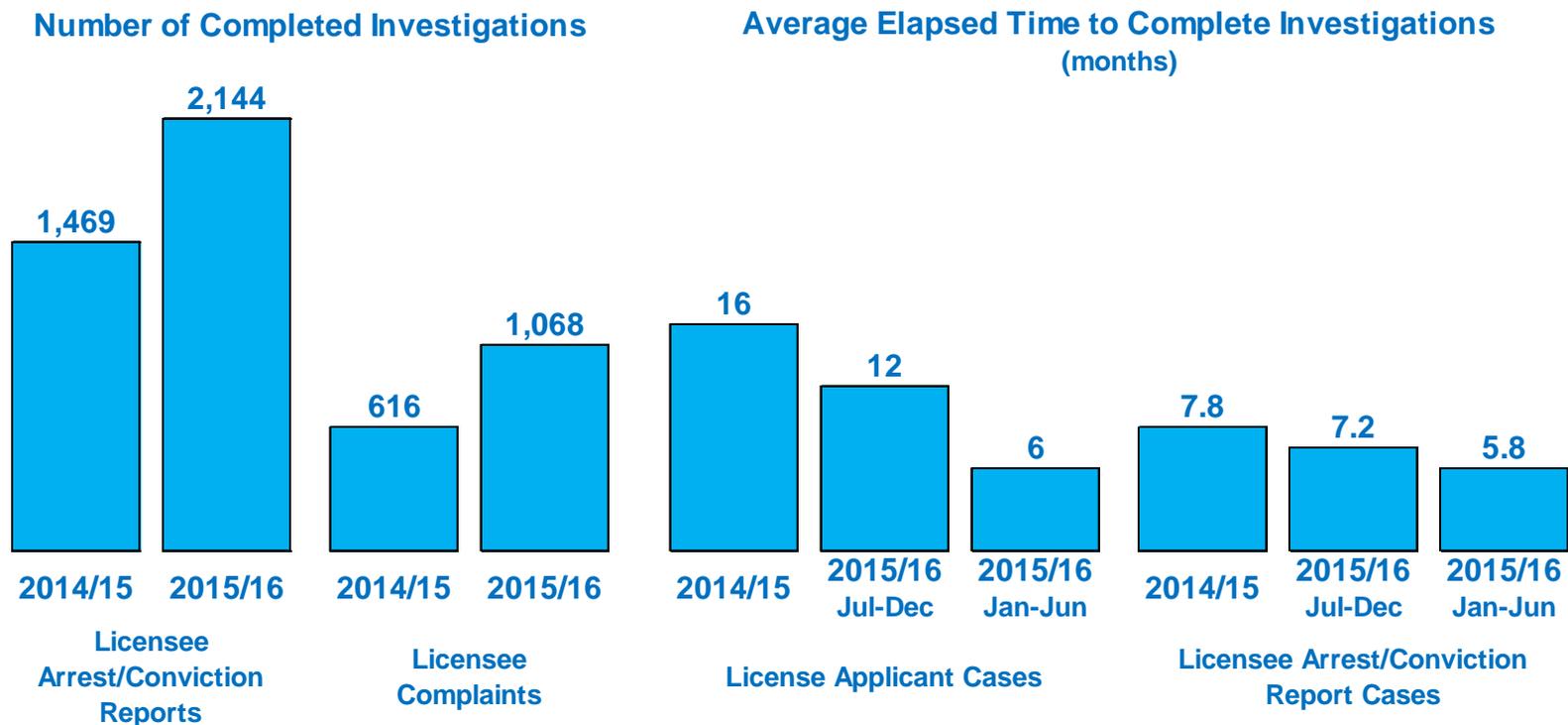
- ❖ As shown below, during 2014/15 more than 100 enforcement cases were re-assigned to the Division of Investigation, primarily during the last several months of the year following the Board's Sunset Review. Subsequently, during 2015/16 about 370 enforcement cases were referred to the Division of Investigation, including both reassigned aged cases that had languished in the Investigation Section and newly received cases involving serious criminal misconduct or significant patient harm.

Number of Enforcement Cases Referred to the Division of Investigation



B. BVNPT's Enforcement Program Turnaround

- ❖ As shown below, during 2015/16 significantly more licensee arrest/conviction report and licensee complaint investigations were completed.

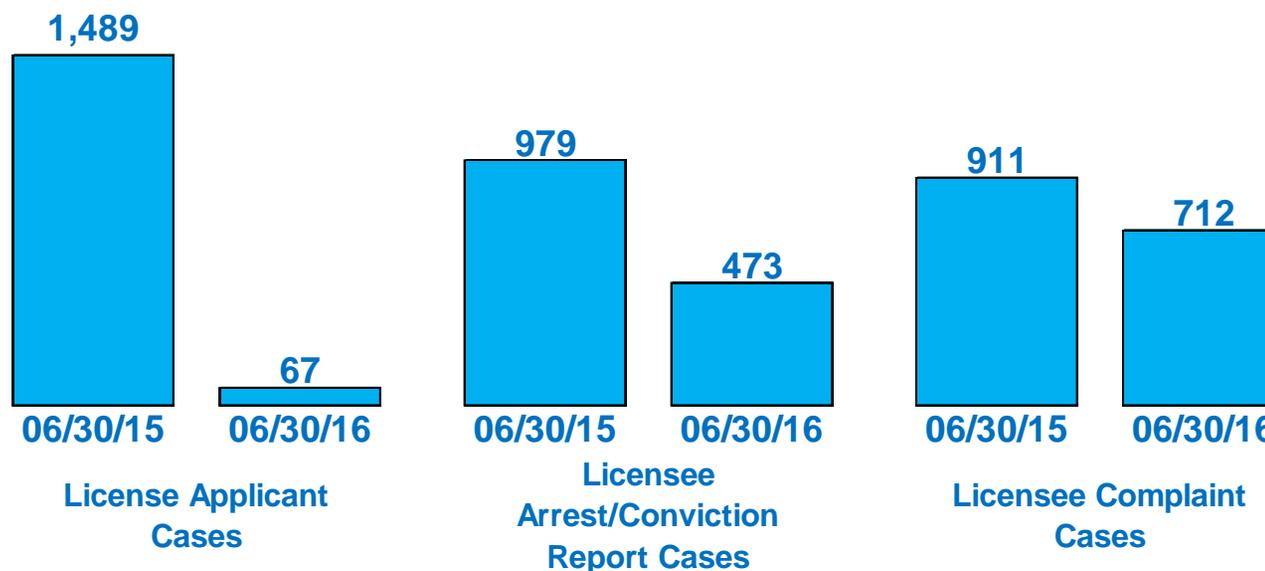


- ❖ There also were significant reductions in the average elapsed times to complete both license applicant and licensee arrest/conviction report investigations.

B. BVNPT's Enforcement Program Turnaround

- ❖ As shown below, during 2015/16 there were significant reductions in the number of pending license applicant arrest/conviction report, licensee arrest/conviction report, and licensee complaint investigations. The total number of pending enforcement investigations decreased by more than 35 percent.

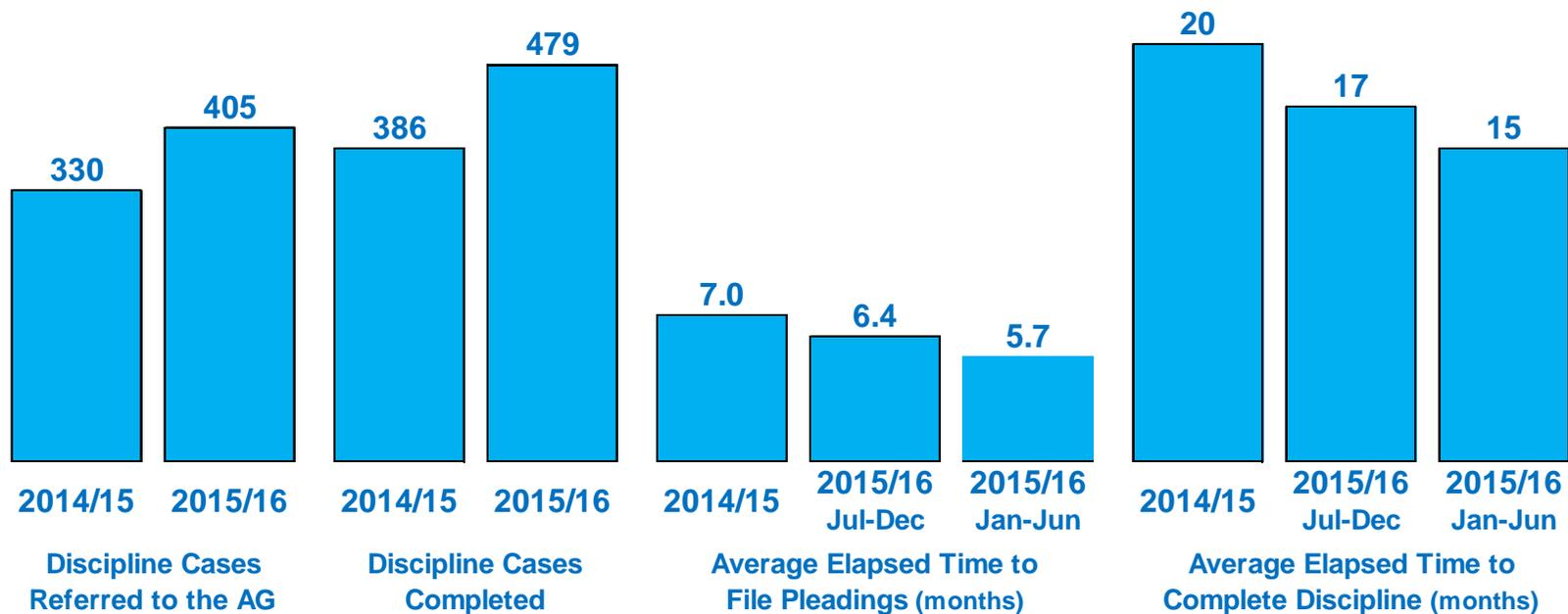
Number of Pending Investigations



- ❖ Concurrently, the average age of the pending licensee complaint investigations decreased from about 17 months as of June 30, 2015, to about 13 months as of June 30, 2016.

B. BVNPT's Enforcement Program Turnaround

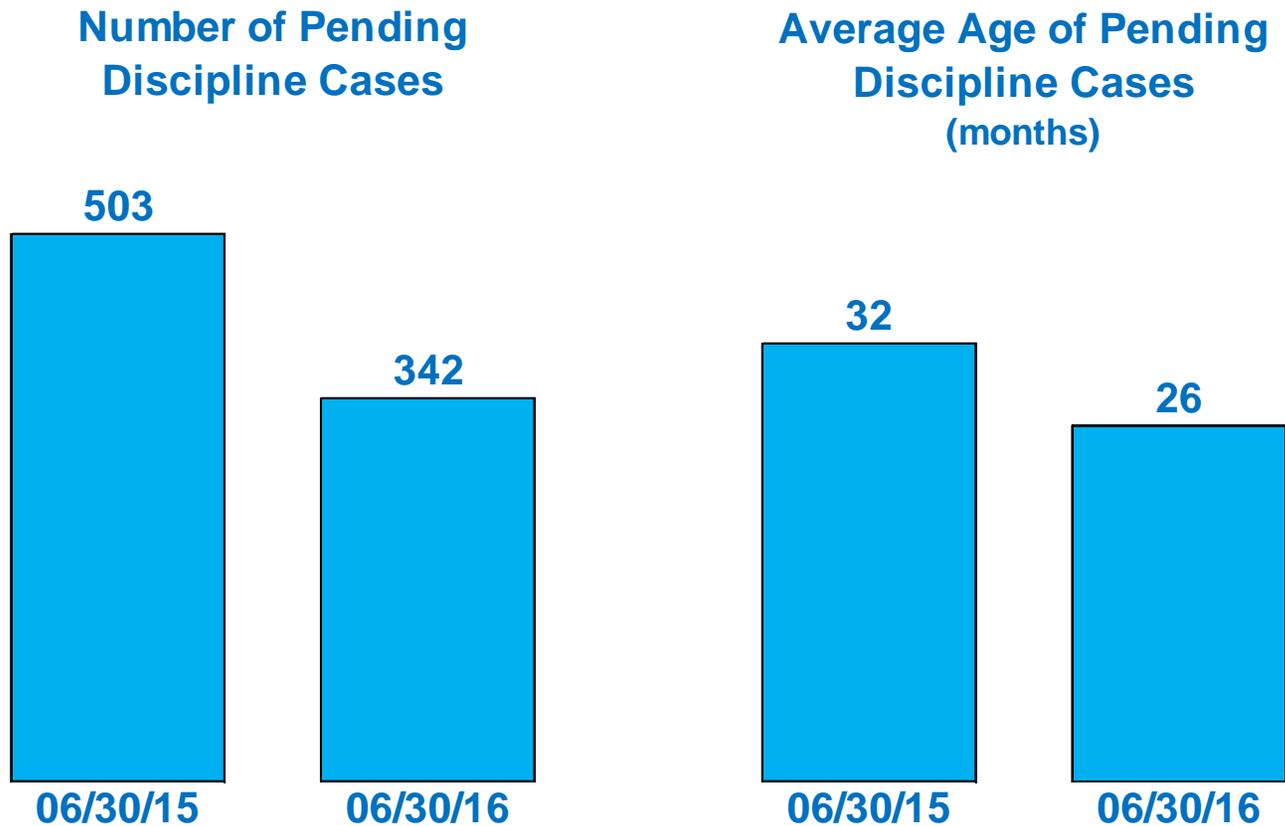
- ❖ As shown below, the number of cases referred to the AG and the number of discipline cases completed both increased significantly during 2015/16. Concurrently, the average elapsed time to file pleadings and complete disciplinary actions decreased.



- ❖ The average elapsed from case receipt to completion of the discipline process (PM-4) decreased to about 2½ years for cases completed during the second half of 2015/16 from about 3 years for cases completed during 2014/15.

B. BVNPT's Enforcement Program Turnaround

- ❖ Finally, as shown below, during 2015/16, there were significant decreases in the number of pending discipline cases and in the average age of BVNPT's pending discipline cases.



C. Current Enforcement Program Status

- ❖ Notwithstanding all of the improvements already made, there are still large backlogs of aged cases in several key areas and continuing problems with the completeness, consistency and quality of BVNPT's workload, backlog and performance data.
- ❖ Additionally, the amount of calendar time needed to complete investigations and impose discipline remains much too long and, during the past several months, there has been very little change in the number of pending investigations.
- ❖ BVNPT's current case backlogs and the extended timeframes still needed to complete investigations and impose discipline provide context for understanding the scope and magnitude of the problems inherited by BVNPT's current management team.
- ❖ There also appears to be a high level of non-compliance with BVNPT's continuing education requirements and only limited enforcement of licensee compliance with these requirements.
- ❖ Additionally, BVNPT's probationer population recently increased significantly. Associated increases in probationer monitoring and subsequent discipline workloads are expected to persist for the next several years.
- ❖ Additional changes and further improvements to the Enforcement Division's organizational structure, workforce allocations and business processes are needed to better address current and emerging workload demands and business process deficiencies and improvement needs.

D. Recommendations for Improvements

License Applicant Arrest/Conviction Reports

Recommendation IV-1 – Critically review and overhaul Item No. 9 of the Record of Convictions form to make it more readable and understandable and reduce the frequency that license applicants misreport or over-report prior convictions (see also Recommendation IV-5).

Recommendation IV-2 – Develop and implement procedures to enable case intake staff to exercise judgement in determining whether to request records from law enforcement agencies and the courts for license applicant cases based on minor criminal offenses that occurred in the distant past and screen the cases to identify and close cases that do not require desk investigation.

D. Recommendations for Improvements

Continuing Education Compliance Enforcement

Recommendation IV-3 – Overhaul and significantly expand the CE Compliance Audit Program.

- Issue an initial standard form 30-day audit letter to a sample of at least 5 percent of renewing licensees in conjunction with issuing their license renewal notification.
- If the licensee is non-responsive to the initial request, promptly issue a second/final request.
- If the licensee is non-responsive to the final request or confirms that they did not complete the required CE, promptly refer the case to Enforcement for issuance of a citation.
- Streamline the Certificate of Completion review process by limiting reviews of the documents in cases that appear to show full compliance with BVNPT's CE requirements.

Recommendation IV-4 – Assess the feasibility of imaging CE-related document submissions and enabling submission of the documents electronically.

D. Recommendations for Improvements

Licensee Arrest/Conviction Reports

Recommendation IV-5 – Critically review and overhaul Item No. 9 of the current Record of Convictions form to make it more readable and understandable and reduce the frequency that licensees misreport or over-report prior convictions. Develop programming for on-line renewals that requires confirmation by the licensee when the “Yes” box is checked *or* to prevent further processing until other fields providing additional information about the self-reported conviction are completed.

Recommendation IV-6 – Work collaboratively with the AG to identify ways to increase BVNPT’s utilization of the current Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases.

Recommendation IV-7 – Work collaboratively with the AG to identify ways to expand the Fast Track Pilot Program for licensee arrest/conviction report cases and other qualifying cases to other geographic regions of the state.

Recommendation IV-8 – Develop and propose legislation to specifically provide BVNPT’s governing Board with the authority to delegate approval of default decisions to the Executive Officer.

D. Recommendations for Improvements

Licensee Complaint Intake, Screening and Investigation

Recommendation IV-9 – Develop and implement a structured, sustainable business process for screening licensee complaints to identify cases that do not require field investigation and assign these cases to staff that specialize in completing desk investigations of these types of cases.

Recommendation IV-10 – Develop and implement procedures to enable case intake or screening staff (or both) to review and not open new discipline by another state/agency cases or, alternatively, screen and close discipline by another state/agency cases that do not require completion of a desk investigation. Additionally, notify agencies providing “courtesy notices” to stop doing so in cases where they routinely post the same information on a professional licensing database (e.g., NURSYS) or the information is otherwise available from BreEZe.

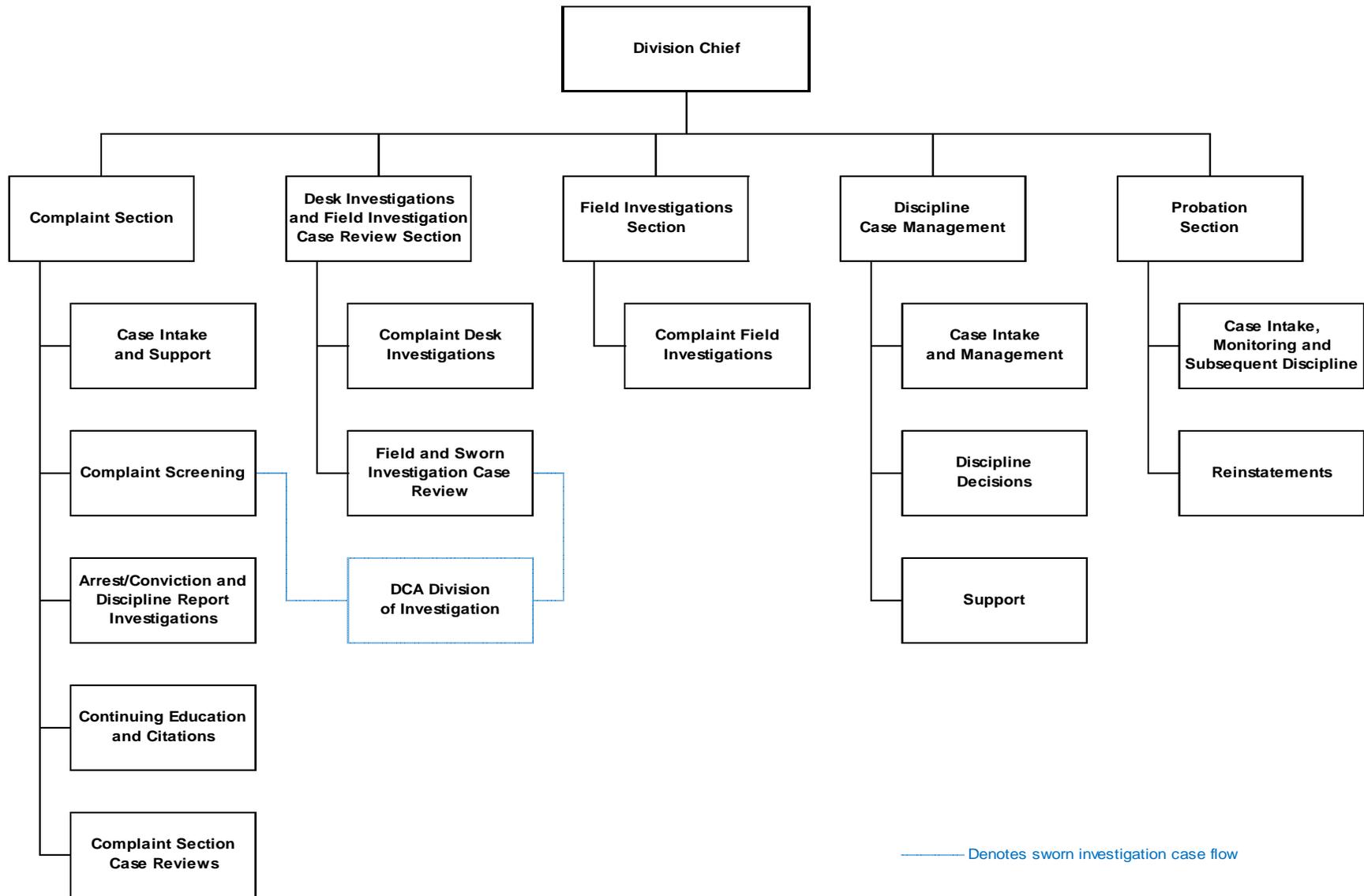
Recommendation IV-11 – Continue to refine licensee complaint case coding procedures and practices and provide training to staff to further improve the consistency and completeness of licensee complaint records and the tracking and reporting of related Enforcement Program workload, backlog and performance information.

D. Recommendations for Improvements

Enforcement Program Organization and Staffing

- ❖ The *Second Report* provides 13 recommendations for Enforcement Division organizational and staffing improvements, including recommendations to:
 - ✓ Continue identifying and assigning licensee complaint cases to the Complaint Section for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations (Recommendation V-1 and V-6)
 - ✓ Continue utilizing Temporary Help to augment Probation Unit staffing for the next 2 to 3 years and establish a new Probation Section (Recommendations V-2 and V-7)
 - ✓ Redirect vacant Investigation Section positions as case backlogs and new case assignments continue to decrease (Recommendation V-3)
 - ✓ Redirect and consolidate resources to (1) enable additional screening and completion of desk investigations of on-line public complaints and licensee complaints that do not require field investigation and (2) support expansion of the CE Audit Program (Recommendations V-4 and V-5)
 - ✓ Maintain open lines of communication and meet periodically with counterparts at the Division of Investigation and the AG to develop strategies to further reduce case backlogs and the amount of time needed to complete investigations and impose discipline (Recommendation V-8)
 - ✓ Bolster investigator case review and performance review processes and the training provided to the investigators (Recommendations V-9 through V-13).

Future State Organizational Model



D. Recommendations for Improvements

Enforcement Program Workload, Backlog and Performance Reporting

BVNPT's Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to (1) collect, compile and report Enforcement Program-related management information to BVNPT's governing Board, DCA, control agencies and the Legislature and (2) assist the above recipients in understanding the information that is provided.

Recommendation VI-1 – Update the *Enforcement Program Workload and Performance Executive Summary Report* on a quarterly basis within 30 days following the completion of each quarter, provide the report to BVNPT's Enforcement Committee and, through the Enforcement Committee, to BVNPT's governing Board. Also, post the report on BVNPT's website.

Recommendation VI-2 – On an annual basis, develop goals for each of the key workload and performance measures listed on the *Enforcement Program Workload and Performance Executive Summary Report* and include the goals in all quarterly reports.

D. Recommendations for Improvements

Board Member Training and Support

Needs exist to bolster the training provided to the members of BVNPT's governing Board and address long-standing systemic deficiencies with the Board's oversight of BVNPT's Enforcement Program.

Recommendation VII-1 – Consistently provide all new Board members with substantive New Board Member Orientations and related training and reference materials specific to BVNPT's Enforcement Program, and other BVNPT programs and services provided, as appropriate.

- Structure the training so that it complements DCA's BMOT training and helps new members to better understand and fulfill their program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities.
- Consider requesting that a representative of DCA participate in these orientations to help integrate BVNPT's orientation training with DCA's BMOT training, particularly with respect to helping members understand and fulfill their oversight responsibilities.
- Overhaul the reference materials contained in the two "large binders" to make the information more useful and effective for Board member orientation, training and reference purposes.

D. Recommendations for Improvements

Board Member Training and Support

Recommendation VII-2 – Develop and adopt a written charter for the Enforcement Committee delineating the Committee’s roles and responsibilities, including roles and responsibilities related to (1) overseeing the Board’s Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board’s strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. Consider developing similar charters for other Board committees, where appropriate.

Recommendation VII-3 – Provide briefings to Enforcement Committee members, initially on at least quarterly basis, to provide information regarding case intake, investigation and discipline workloads, backlogs, and performance, performance improvement initiatives underway and planned, policy matters and other information as determined by the Committee.

E. Next Steps

- ❖ During the next two (2) months we expect to complete additional targeted assessments of the following three (3) areas specifically referenced in AB 179:
 - Staff hiring and training procedures
 - Oversight of staff work
 - Evaluation of staff performance.

These additional assessments are expected to focus on areas other than the Enforcement Division.

- ❖ We also plan to complete interviews with representatives of CDHCS and CDPH to gather additional information related to their enforcement case referrals and to support assessment of the Board's cooperation in enforcing laws and regulations regarding BVNPT's licensees.
- ❖ A primary focus of Phase III is expected to involve monitoring BVNPT's implementation of the previously presented recommendations for improvements.
- ❖ We also plan to complete targeted verifications of key case intake, investigation and discipline workload, backlog and performance data for the 6-month period from January 1 through June 30, 2016 and collect, compile, summarize and analyze additional data for the 3-month period from July 1 through September 30, 2016.
- ❖ Finally, we will prepare a *Phase III Summary Report* and a *Work Plan and Schedule* for completing Phase IV.

Questions?