

STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

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

**Executive Summary  
Second Report**

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

*October 12, 2016*

**BENJAMIN  
FRANK** LLC  
MANAGEMENT  
CONSULTANTS



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October 12, 2016

Mr. Awet Kidane, Director  
California Department of Consumer Affairs  
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Contract No. RFO BVNPT 16-01, Addendum 1  
Board of Vocational Nursing and Psychiatric Technicians  
Administrative and Enforcement Monitor

*Executive Summary  
Second Report*

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

Dear Mr. Kidane,

We are pleased to present this *Executive Summary* of the *Second Report* which provides brief overviews of (1) events leading up to the appointment of an Administrative and Enforcement Program Monitor for the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), (2) the scope and focus of the Administrative and Enforcement Program Monitor assignment, (3) the current status of BVNPT's Enforcement Program and (4) recommendations for further improving Enforcement Program performance. Additional information is provided in the *Initial Report* dated June 10, 2016 and the accompanying *Second Report*.

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 the Department of Consumer Affairs' (DCA) Division of Investigation. 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. Members of BVNPT's governing Board also began developing an awareness of these same problems from reviewing discipline packages. In many instances the discipline cases were quite old which heightened concerns 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.

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During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess the BVNPT's enforcement and discipline processes. The formation of the Enforcement Task Force appears to have occurred, in part, because the Board's Standing Enforcement Committee had not met in many years and possibly did not have any appointed members. 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. This recommendation, along with most of the Task Force's other recommendations, was approved by the full Board. However, BVNPT continued to assign nearly all licensee complaint cases to the Investigation Section.

Concurrently, during BVNPT's 2014/15 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. Corrective measures taken immediately following BVNPT's March 23, 2015, Sunset Review Hearing and during the past year 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. Improvements made during the past year include:

- ❖ A successful restructuring of the License Applicant Arrest/Conviction Report Process
- ❖ A restructuring of the Enforcement Division's Case Intake and Screening Process
- ❖ Completion of significantly larger numbers of licensee arrest/conviction report and complaint investigations
- ❖ Significant reductions in the number of pending investigations along with reductions in the average age of the pending cases
- ❖ Significant increases in the number of cases referred to the Office of the Attorney General and in the number of discipline cases completed along with 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.

However, notwithstanding all of these improvements, there are still large legacy 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 non-sworn investigations. There also appears to be a high level of non-compliance with BVNPT's Continuing Education (CE) requirements, with at least 10 to 15 percent of licensees completing very little, or no, continuing education. However, available data suggests that BVNPT conducts CE compliance audits of fewer than 2 percent of renewing licensees per year. Finally, during 2015/16 BVNPT's probationer population increased significantly, to about 430 probationers from about 330 probationers previously. The higher number of probationers subject to monitoring, and related increases in 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 help address these and other emerging workloads and business process deficiencies and improvement needs. Presented herein are 29 recommended improvements structured to help address these deficiencies and further improve overall Enforcement Program performance.

\* \* \* \* \*

We are grateful for all of the assistance provided to us by DCA's Project Manager and other DCA executives, the members of BVNPT's governing Board, the Enforcement Division's management team and staff, DCA's Division of Investigation, Division of Legal Affairs, Office of Information Services, and Bureau of Security and Investigative Services, and the Office of the Attorney General. Their responsiveness to our requests for information and assistance were outstanding and, without their support, completion of this this phase of the project would have been substantially more difficult. We also would like to extend our thanks to the representatives of the Medical Board of California and the Respiratory Care Board who provided helpful information regarding their Enforcement Program business processes. We appreciate the opportunity to be of service to the Department of Consumer Affairs and the Board of Vocational Nursing and Psychiatric Technicians. 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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## Executive Summary

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*Executive Summary* of the *Second Report* provides brief overviews of (1) events leading up to the appointment of an Administrative and Enforcement Program Monitor for the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), (2) the scope and focus of the Administrative and Enforcement Program Monitor assignment, (3) the current status of BVNPT's Enforcement Program and (4) recommendations for further improving Enforcement Program performance. Additional information is provided in the *Initial Report* dated June 10, 2016 and the accompanying *Second Report*.

### A. Project Background

During 2011/12 and 2012/13 BVNPT established and staffed a new Investigation Section within its Enforcement Division. BVNPT later claimed that this organizational restructuring enabled BVNPT to (1) drastically reduce the number of cases referred to the Department of Consumer Affairs' (DCA) Division of Investigation and (2) complete nearly all of its investigations in-house, "despite understaffing and burdensome caseloads". In fact, BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and related workflow restructurings that BVNPT implemented during this period. The scope and magnitude of problems with BVNPT's Enforcement Program became evident to the Legislature and DCA less than two (2) years later when reports surfaced during BVNPT's Sunset Review 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. Finally, 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 1 ½ 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. DCA also initiated an investigation of BVNPT's statistical reporting. Concurrently, 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 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 and a new Chief of Enforcement and new supervisors for the Complaint and Investigation Sections were hired.

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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.

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.

We completed an Initial Assessment of BVNPT's Enforcement Program during March and April 2016. 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. An *Initial Report* documenting results of the Initial Assessment was submitted to the Legislature on July 1, 2016. Following completion of the Initial Assessment, we completed additional reviews, research and analyses of BVNPT's complaint intake, investigation, discipline and targeted administrative processes. The accompanying *Second Report* summarizes results of these efforts.

Further reviews, research and analyses in a few remaining areas included in the scope of work for the project are expected to be completed during the next several months. Additionally, we plan to begin monitoring BVNPT's implementation of the recommendations for improvements presented in the *Second Report*. Concurrently, we plan to collect, compile, summarize and analyze additional case intake, investigation, and discipline workload, workflow, backlog and performance data for the 3-month period from July 1 through September 30, 2015. Results of these latter efforts will be used to support further assessment of the impacts of changes implemented by BVNPT to improve Enforcement Program performance. Finally, we will prepare a *Third Report* documenting results of these efforts and a *Work Plan and Schedule* for completing the final

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phase of the project. A draft of the *Third Report* is expected to be completed by mid-December to enable completion of required reviews and preparation and submission of the report in final form to the Legislature by February 1, 2017.

### B. BVNPT's Enforcement Program Turnaround

Corrective measures taken during the past year have contained the problems that arose during the preceding four (4) years and set into place a foundation for building a sustainable, effective and efficient Enforcement Program. Improvements made during the past year include:

- ❖ A successful restructuring of the License Applicant Arrest/Conviction Report Process which reduced the number of cases referred to Enforcement by about 3,000 cases per year (85 percent) and also reduced the number of Notices of Warning Issued, the number of Letters of Denial issued, the number of appealed denials of licensure, the number of SOIs filed, and the number of appealed cases settled with a granting of licensure in conjunction with issuance of a citation with a fine. However, this restructuring does not appear to have adversely impacted key indicators of the level of consumer protection provided such as the number of license denials upheld following appeal or the number of licenses granted in conjunction with placing the new licensee on probation.
- ❖ A restructuring of the Enforcement Division's Case Intake and Screening Process to enable prompt identification of cases involving serious criminal misconduct or significant patient harm to DCA's Division of Investigation. During 2015/16 about 370 enforcement cases, including both aged cases that had languished within the Investigation Section and newly received cases, were referred the Division of Investigation. This compares to zero (0) cases referred to the Division of Investigation during 2013/14 and about 130 cases that were referred to the Division of Investigation during the last several months of 2014/15 following BVNPT's March 2015 Sunset Review.
- ❖ Completion of more than 2,100 licensee arrest/conviction report investigations and more than 1,000 licensee complaint investigations during 2015/16. This compares to less than 1,500 licensee arrest/conviction report investigations and about 600 licensee complaint investigations completed during 2014/15. There were also significant reductions in the average elapsed times to complete both license applicant and licensee arrest/conviction report investigations.
- ❖ Significant reductions in the number of pending license applicant arrest/conviction report investigations, the number of pending licensee arrest/conviction report investigations, and the number of pending licensee complaint investigations. The total number of pending Enforcement investigations decreased by more than 35 percent, from nearly 1,900 pending cases as of June 30, 2015 to less than 1,200 cases as of June 30, 2016. 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.
- ❖ A 23 percent increase in the total number of cases referred to the Office of the Attorney General (AG) for disciplinary action, from about 330 cases referred during 2014/15 to more than 400 cases referred during 2015/16.



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- ❖ A 23 percent increase in the number of discipline cases completed, from about 390 cases completed during 2014/15 to about 480 cases completed during 2015/16, along with reductions in the average elapsed time to file related pleadings and complete disciplinary actions. Additionally, the average elapsed from case receipt by BVNPT to completion of the discipline process (PM-4) decreased by about six (6) months from about 37 months for cases completed during 2014/15 to about 31 months for cases completed during the second half of 2015/16.
- ❖ A significant reduction in the number of pending discipline cases, from about 500 pending cases as of June 30, 2015, to about 342 pending discipline cases as of June 30, 2016. Additionally, the average age of BVNPT's pending discipline cases decreased from about 32 months as of June 30, 2015, to about 26 months as of June 30, 2016.

### C. Current Status of the Enforcement Program

Notwithstanding all of the above improvements, there are still large legacy backlogs of aged cases in several key areas (i.e., now-sworn investigations, sworn investigations and discipline) 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. Of particular concern, during the past several months there has been very little change in the number of pending non-sworn investigations. About 400 cases are currently assigned to the Investigation Section, including a large number of legacy cases carried over from prior years. There also appears to be a high level of non-compliance with BVNPT's Continuing Education (CE) requirements, with at least 10 to 15 percent of licensees completing very little, or no, continuing education. However, available data suggests that BVNPT conducts CE compliance audits of fewer than 2 percent of renewing licensees per year. Finally, during 2015/16 BVNPT's probationer population increased significantly, to about 430 probationers from about 330 probationers previously. The higher number of probationers subject to monitoring, and related increases in monitoring and subsequent discipline workloads, are expected to persist for the next several years.

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. Additional changes and further improvements to the Enforcement Division's organizational structure, workforce allocations, and business processes are needed to help address these and other emerging workloads and business process deficiencies and improvement needs.

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### D. Recommendations for Improvements

Below we present our recommendations to help address current deficiencies and further improve Enforcement Program performance.

#### 1. License Applicant Arrest/Conviction Report Process

During the past year BVNPT successfully implemented a restructuring of the License Applicant Arrest/Conviction Report Process that reduced the number of cases referred to Enforcement by about 3,000 cases per year without any apparent adverse impacts on the number of license denials upheld following appeal or the number of licenses granted in conjunction with placing the new licensee on probation. However, additional improvements are still needed to (1) reduce the frequency that license applicants misreport or over-report convictions and (2) further reduce the number of cases that are unnecessarily referred for desk investigation.

**Recommendation IV-1** – *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 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.*

#### 2. Continuing Education Compliance Enforcement Process

Staffing resources should be realigned to enable a resumption of continuing education compliance audits and an overhaul and expansion of BVNPT's Continuing Education Compliance Enforcement Process is needed to better address high levels of licensee non-compliance with BVNPT's continuing education requirements.

**Recommendation IV-3** – *Restructure and 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 notifications. 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 any (or completed very little) of the required CE, 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.*

See also Subsection 5, below (Recommendation V-5).

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### 3. Licensee Arrest/Conviction Report Process

Licensee Arrest/Conviction Report cases currently account for more than one-half of all investigations and disciplinary actions. Additionally, a large proportion of these cases default following filing of the accusation and these defaults account for 30 to 40 percent of the Board's discipline decisions. Improvements to BVNPT's Licensee Arrest/Conviction Report Process are needed to (1) reduce the level of licensee misreporting and over-reporting of prior convictions, (2) reduce the extended timeframes needed to prosecute these "paper-based" cases and (3) enable the Board to delegate authority for approving default decisions to BVNPT's Executive Officer. BVNPT should also further assess needs to increase the use of Orders of Abatement for these cases as an intermediate alternative to assessing larger fines or referring the cases for formal disciplinary action.

**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 (see also Recommendation IV-1). Additionally, develop programming for on-line renewals that requires confirmation by the licensee when the "Yes" box is checked or to prevent further processing of the renewal application until other required 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.*

### 4. Licensee Complaint Intake, Screening and Investigation Process

Significant improvements to BVNPT's licensee complaint intake, screening and investigation processes are needed to (1) reduce the number of cases referred for investigation and (2) differentiate cases where a field investigation is needed from cases which can be investigated by analyst-level staff from their office utilizing desk investigation processes. Also, further improvements are needed to BVNPT's case coding practices to improve the completeness, quality and consistency of BVNPT's statistical reporting.

**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.*

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**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 if the information is available to BVNPT through BreEZe or they routinely post the same information to another professional licensing database that is otherwise queried by BVNPT.*

**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 complaint records and the tracking and reporting of Enforcement Program workload, backlog and performance information.*

### 5. Enforcement Program Organization and Staffing

**Exhibit ES-1**, on the next page, illustrates the Enforcement Division’s current organizational structure and workforce allocations. As shown by Exhibit ES-1, 35.50 positions are authorized for the Enforcement Division, including one (1) half-time AGPA position and two (2) retired annuitant positions that are limited to working 960 hours per year.

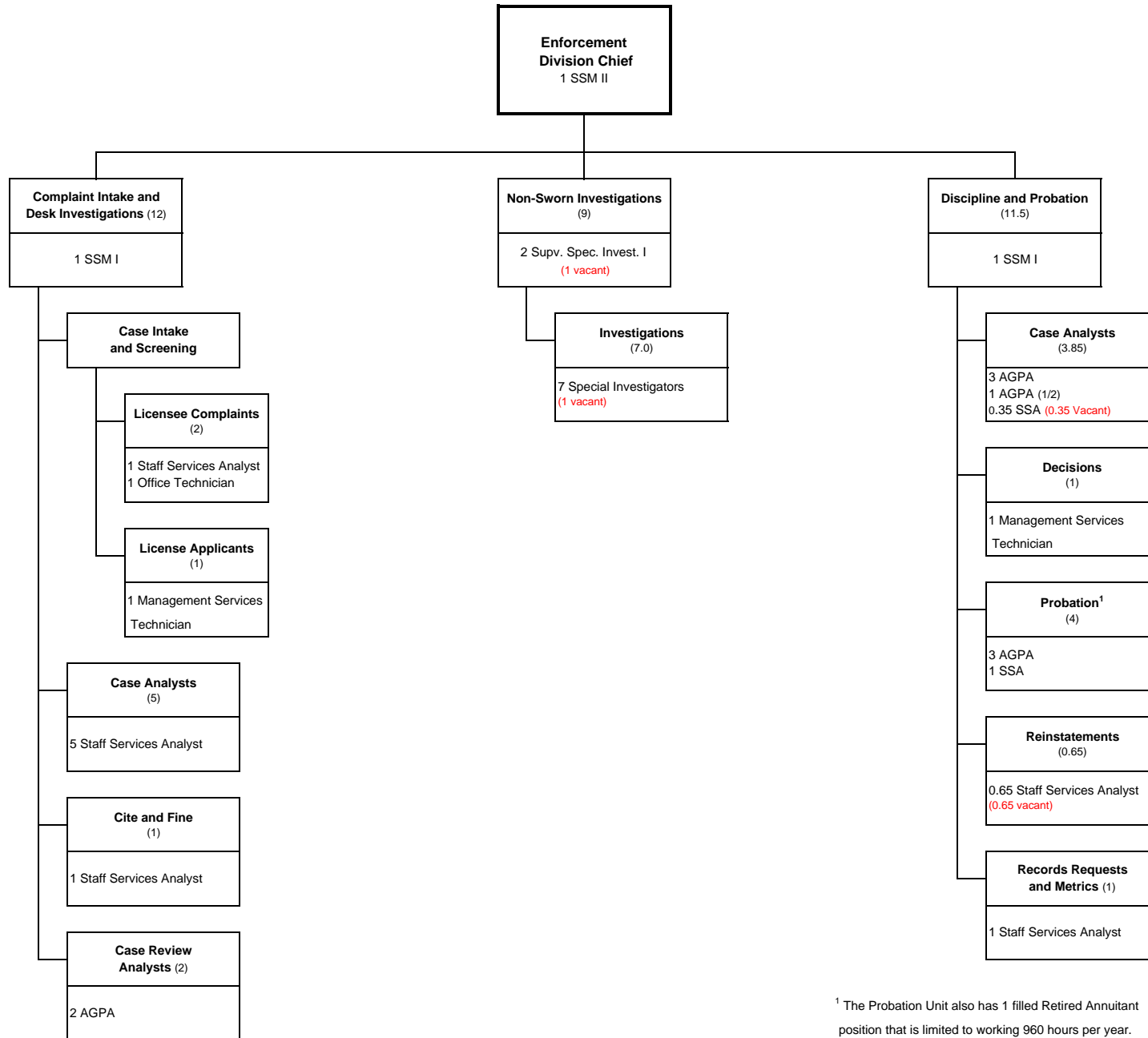
In recent years significant changes were made to the Complaint Intake and Desk Investigation Section’s scope of responsibility. Prior to formation of the Investigation Section, the Complaint Intake and Desk Investigation Section was responsible for completing desk investigations of licensee complaint cases, except for those cases that were referred to the Division of Investigation. Subsequently, during 2015/16, BVNPT successfully implemented a restructuring of the license applicant arrest/conviction report process that reduced the number of cases referred to Enforcement by nearly 90 percent. Previously, these cases accounted for as much as 65 percent of all cases received. Additionally, this restructuring significantly reduced the number of appealed license denials which previously accounted for nearly 20 percent of cases referred by the Section to the AG. The significantly reduced scope of the Complaint Intake and Desk Investigation Section’s responsibilities in conjunction with the reduced workload related to the recent reductions in case intake, screening and desk investigation case backlogs suggests that it should now be possible to:

- ❖ Redirect some Complaint Intake and Desk Investigation Section positions to better address other Enforcement Program needs or BVNPT needs in other areas, or
- ❖ Assign additional responsibilities to some Complaint Intake and Desk Investigation Section staff.

In response to these circumstances, Enforcement Division management recently began re-screening and identifying licensee complaint cases assigned to the Investigation Section that do not require field investigation and re-assigning some of these cases to Complaint Intake and Desk Investigation Section analysts for desk investigation. BVNPT management also plans to redirect the Complaint Intake and Desk Investigation Section’s vacant Retired Annuitant position to the Probation Unit.

## Enforcement Division Organization - September 2016

*Total Positions = 33.50, Excluding Temporary Help*



<sup>1</sup> The Probation Unit also has 1 filled Retired Annuitant position that is limited to working 960 hours per year.

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**Recommendation V-1** – *Continue identifying and assigning licensee complaint cases to the Complaint Intake and Desk Investigation Section for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations of licensee complaint cases (see Recommendation V-6).*

**Recommendation V-2** – *To better address current and emerging Probation Program workload demands for the next 2 to 3 years, continue to utilize Temporary Help to augment Probation Unit staffing (see also Recommendation V-7).*

Also, during 2015/16, significant changes were made to BVNPT's licensee complaint intake and screening processes. Prior to 2015/16, nearly all licensee complaint cases (about 500 to 550 per year) were assigned to the Investigation Section. Currently, nearly 40 percent of these cases (180 to 200 cases per year) are instead referred to the Division of Investigation. Additionally:

- ❖ A significant portion of the Investigation Section's remaining cases (possibly about 20 percent, or 100 cases per year) do not require completion of a field investigation and can, instead, be completed by analyst-level staff, thus leaving the Investigation Section with only about 200 cases per year to investigate. This compares to an average of more than 450 investigations completed by the Investigation Section during the past three (3) years.
- ❖ During 2015/16 the Investigation Section's pending case backlog decreased from nearly 700 cases to less than 400 cases.

The reduced scope of the Investigation Section's responsibilities, in conjunction with the reduced workload related to the recent reductions in the Section's backlog of pending cases, suggests that it should now be possible to begin redirecting some of the Section's Special Investigator positions to better address other Enforcement Program needs or BVNPT needs in other areas.

**Recommendation V-3** – *As Investigation Section case backlogs and new case assignments decrease, redirect vacant positions to address other current and emerging Enforcement Program and BVNPT business needs.*

Additionally, within the Enforcement Division, needs exist to bolster or consolidate workforce capabilities in several areas, including:

- ❖ Conducting desk investigations of licensee complaint cases that do not require field investigation
- ❖ Further reviewing and, as needed, investigating additional on-line public complaints that BVNPT began receiving during 2015/16, particularly following implementation of BreZE
- ❖ Reviewing additional audit failure cases, issuing larger numbers of CE citations, and tracking and collecting associated fines, assuming that the CE Audit Program is expanded to improve licensee compliance with CE Program requirements (See Section IV-B – *Continuing Education Program*).

**Recommendation V-4** – *Redirect and consolidate available resources to enable additional screening and completion of desk investigations of on-line public complaints and licensee complaints that do not require field investigation.*

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**Recommendation V-5** – *Redirect and consolidate available resources to support expansion of the CE Audit Program, including completing additional case reviews, issuing additional citations, and tracking and collecting fines.*

Finally, needs exist to reduce the scope of responsibility and span of control of the managers of (1) the Complaint Section and (2) the Discipline and Probation Section to improve supervision and management of subordinate staff, the enforcement services that they provide, and the work products they produce in both of those areas, including:

- ❖ Completing desk investigations of licensee arrest/conviction report cases (about 1,200 cases per year, excluding “Redundant” cases)
- ❖ Reviewing all completed non-sworn and sworn field investigations (more than 650 cases during 2015/16)
- ❖ Reviewing all discipline pleadings, negotiating and reviewing related settlements and supporting other aspects of BVNPT’s discipline process (about 400 cases per year)
- ❖ Monitoring probationers (more than 400) and initiating subsequent discipline actions for probation violations (at least several dozen cases per year)

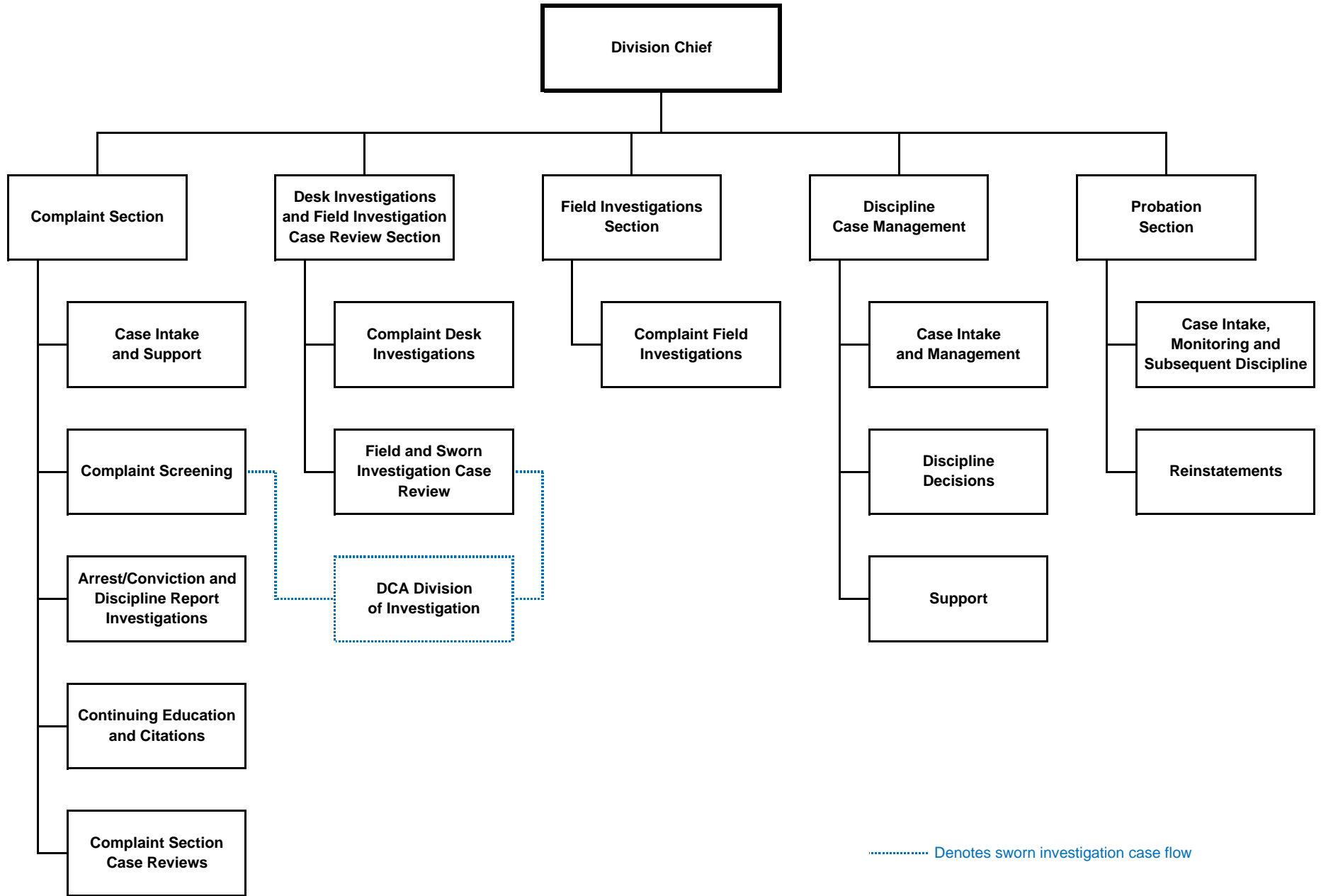
**Exhibit V-2**, on the next page, illustrates a proposed Future State Organizational Model for the Enforcement Division. This model establishes a new Desk Investigation and Field Investigation Case Review Section and a new Probation Section. The proposed Future State Organizational Model can be implemented without increasing the total number of positions currently authorized for the Enforcement Division. However, a limited number of reclassifications of current positions would be needed.

**Recommendation V-6** – *Establish a new Desk Investigation and Field Investigation Case Review Section.*

**Recommendation V-7** – *Establish a new Probation Section and, concurrently, reduce the utilization of Temporary Help to provide probation monitoring services.*

Finally, there appears to be a good deal of effective communication and collaboration occurring between Enforcement Division management and staff and representatives of both the Division of Investigation and the Office of the Attorney General. All three agencies seem to be working collaboratively together to reduce legacy case backlogs and the average elapsed times to complete investigations and related disciplinary actions. Additionally, during the past year the Enforcement Division, the Division of Investigation and the Office of the Attorney General collectively achieved significant improvements in BVNPT Enforcement Program performance. These improvements could not have occurred in the absence of effective communications and collaboration between Enforcement Program managers and staff at all levels within all three (3) organizations. However, additional improvements are needed to further reduce remaining backlogs and the amount of time needed to complete disciplinary actions where supported by the results of the investigations.

### Future State Enforcement Division Organizational Model





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BVNPT's Chief of Enforcement, with the support of BVNPT's prior and current Executive Officers, has been the primary point person during the past 15 months for planning, coordinating and managing the significantly improved relationships that have emerged among these three (3) organizations. To sustain these relationships, it is important that the Chief of Enforcement maintain open lines of communication with key personnel at both the Division of Investigation and the Office of the Attorney General and continue to meet periodically with these counterparts on a regular basis.

**Recommendation V-8** – *The Chief of Enforcement should maintain open lines of communication and meet periodically with counterparts at the Division of Investigation and the Office of Attorney General to jointly develop and implement strategies to further reduce BVNPT case backlogs and reduce the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.*

BVNPT's case intake, screening, investigation and workforce development and training processes are under-developed resulting in high levels of inconsistency and variability in the completion of specific enforcement functions and activities and the resulting process outputs or work products. While the magnitude of some of these problems has possibly diminished during the past year, significant additional improvement is needed. The following recommendations are structured to improve BVNPT's workforce development and processes.

**Recommendation V-9** – *Conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. Over time, adjust the frequency and duration of the reviews as appropriate to each investigator's development needs.*

**Recommendation V-10** – *Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.*

**Recommendation V-11** – *Utilize the Division of Investigation to support initial training of newer investigators.*

**Recommendation V-12** – *Consider utilizing AG Liaison services at a higher level for a limited period of time to provide additional on-site applied technical assistance and training to BVNPT's investigators.*

**Recommendation V-13** – *Assign responsibilities and due dates for completing Annual Performance Reviews and Individual Development Plans during the 2016/17 fiscal year for all Enforcement Division managers and staff.*

## Executive Summary

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### 6. 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, the Department of Consumer Affairs, control agencies and the Legislature and (2) assist the above recipients in understanding the information that is provided. Data and representations made in the past regarding BVNPT's Enforcement Program workload, workflows, backlogs and performance have generally been significantly overstated, misrepresented, and incorrect. Additionally, BVNPT oftentimes combined metrics regarding its disparate license applicant, licensee subsequent arrest, and licensee complaint workloads, workflows, backlogs and performance that produce results that are essentially meaningless.

To help improve communications between BVNPT's Executive Officer and staff and BVNPT's governing Board, DCA, oversight and control agencies, and the Legislature regarding BVNPT's Enforcement Program workloads, backlogs and performance, we developed a sample 1-page *Executive Summary* template that separately provides key workload and performance information for (1) licensee applicant cases, (2) licensee CE cases, (3) licensee arrest/conviction report cases, and (4) licensee complaint cases. The *Executive Summary* template provides high-level statistical profiles for each of the four (4) categories of cases. With the exception of CE cases where more limited statistical profile information is provided, the profiles include information regarding:

- ❖ Cases received
- ❖ Investigations completed, the average elapsed time to complete the investigations and investigation outcomes
- ❖ Pending investigations and the average age of the pending cases
- ❖ Completed discipline cases and the average elapsed time from case referral to discipline imposed
- ❖ Pending discipline cases and the average age of the pending discipline cases.

The *Executive Summary* template provides just one (1) composite metric; the Average Elapsed Time from Receipt to Discipline (PM-4).

A sample completed *Enforcement Program Workload and Performance Executive Summary Report* for the final quarter of 2015/16 and the full 2015/16 fiscal year is provided under separate cover. The preparation and presentation of this type of report on a quarterly basis to BVNPT's Enforcement Committee, and through the Enforcement Committee to BVNPT's governing Board, could help to prevent recurrence of some of the types of problems and surprises that surfaced previously. Additionally, the information should be helpful to BVNPT executives and the entire Enforcement Program management team for overall Enforcement Program planning and management purposes. With respect to this latter point, the Executive Summary provides fields for establishing annual workload and performance expectations and goals, in this example for the 2016/17 fiscal year.

**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 and provide the report to BVNPT's Enforcement Committee and, through the Enforcement Committee, to BVNPT's governing Board. Also, post the quarterly reports on BVNPT's website.*

## Executive Summary

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

Additionally, we developed sample templates to provide additional workload, backlog, and performance information for each of the Enforcement Program's core business processes: Sample completed Core Business Process Workload and Performance Summaries for the final quarter of 2015/16 and the full 2015/16 fiscal year are provided under separate cover following the Executive Summary template. BVNPT's Enforcement Committee should be responsible for determining needs for more detailed workload and performance information for the above case categories along with determining the specific data that should be provided, the frequency of the reporting (e.g., quarterly, semi-annual, or annual) and, if needed, when such reporting should commence. For example, the Enforcement Committee may only be interested in receiving more detailed reporting for License Applicant and Continuing Education investigations on an annual basis or only "as needed". Conversely, given BVNPT's current circumstances, the Enforcement Committee may be interested in receiving some type of more detailed reporting regarding Licensee Complaint investigations and Formal Discipline cases on a more frequent basis (e.g., semi-annually or quarterly).

### 7. Board Member Training and Support

The following recommendations are structured 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, that complements the Board Member Orientation Training (BMOT) provided by DCA 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 BVNPT-specific orientations to help integrate the training with DCA's BMOT training, particularly with respect to helping the member 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.*

**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.*