

**Board of Vocational Nursing  
and Psychiatric Technicians**

**Administrative and Enforcement  
Program Monitor**

**Final Report**

*October 24, 2017*



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MANAGEMENT  
CONSULTANTS

October 24, 2017

Mr. Dean Grafilo, 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 Program Monitor**

*Final Report  
Final Assessments, Status Updates and  
Recommendations for Improvements*

Dear Mr. Grafilo,

We are pleased to present this *Final Report* pursuant to requirements set forth in AB 179 (Bonilla, 2015). AB 179 required that the Department of Consumer Affairs (DCA) appoint an Administrative and Enforcement Program Monitor (Monitor) for the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) and required that the Monitor complete specified reviews and analyses of BVNPT's Enforcement Program and selected administrative processes. Additionally, AB 179 required that the Monitor prepare an *Initial Report*, two (2) *Interim Reports* and this *Final Report*.

*Final Report* integrates and supplements the information provided previously in our *Initial Report* dated June 10, 2016, our *Second Report* dated October 12, 2016, and our *Third Report* dated January 30, 2017. The *Final Report* also includes a summary of the results of our updated assessment of the status of the BVNPT's Enforcement Program and a summary of the results of additional assessments of BVNPT's vacant positions and hiring, staff training, staff oversight, staff performance evaluations, and Board member training and support services. The report also provides updated information regarding the status of the Board's implementation of our prior recommendations. A listing of all of our Final Recommendations is provided as an attachment to this letter. Included in our Final Recommendations are the following recommendations structured to address BVNPT's current Leadership Team and Enforcement Program management deficiencies:

**Final Recommendation No. 38** – *DCA and the Division of Investigation should continue to provide enforcement-related management, supervisory, technical support and training services for at least the next 3 to 6 months and until BVNPT's Leadership and Enforcement Program Management Teams are fully rebuilt and sufficiently trained to enable more autonomous management of the Enforcement Program. During this transition period, the Enforcement Division's Management Team should seek out and accept direction from the Division of Investigation's more knowledgeable and experienced staff with respect to identifying needs for and implementing changes needed to enable improved Enforcement Program performance.*

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**Final Recommendation No. 39** – *BVNPT should request additional support from the Department of Consumer Affairs or through recruitment of a Retired Annuitant with prior executive management experience to bolster BVNPT’s Leadership Team capabilities until a permanent Executive Officer and a permanent Assistant Executive Officer are appointed.*

With respect to this latter recommendation, immediate action is needed to address the Leadership vacuum that currently exists at BVNPT.

On November 29 and December 4, 2017, we met with DCA’s Project Manager, the Division of Investigation’s Enforcement Support Supervising Investigator, and BVNPT staff to review the draft *Final Report*. This review was intended to provide BVNPT with the opportunity to identify potential needs to correct or supplement the data and information contained in the draft *Final Report* and provide feedback to the Monitor prior to finalizing the report. After incorporating required modifications, we prepared the report in final form. Below we provide a summary of the information contained in the full report.

#### **A. Project 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. 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.

During September 2014, BVNPT’s governing Board appointed an Enforcement Task Force to assess 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.

During BVNPT’s 2014/15 Sunset Review, reports surfaced about BVNPT’s organizational and operational problems and the scope and magnitude of these problems became evident to the Legislature and DCA. 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 of legislative staff set forth in their 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. Over the next two (2) months, five (5) key BVNPT executives, managers and supervisors separated from the Board, including:

- ❖ Complaint Unit Supervisor – March 31, 2015
- ❖ Executive Officer (EO) – April 30, 2015
- ❖ Assistant Executive Officer (AEO) – April 30, 2015
- ❖ Chief of Enforcement – April 30, 2015
- ❖ Investigation Section Supervisor – May 29, 2015.

Following the separations of the EO, the AEO and the 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 each of about 800 pending investigations to identify cases for immediate reassignment to the Division of Investigation. 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 enacted (AB 179, Bonilla) which required that the Director of DCA appoint an Administrative and Enforcement Monitor for BVNPT. AB 179 required that the Monitor appointment be accomplished no later than March 1, 2016 and continue for a period of up to two (2) years from the date of appointment. On February 29, 2016, DCA awarded a contract to Benjamin Frank LLC to provide the prescribed Monitor services. Work on the project commenced almost immediately following DCA's notification of contract award. The term of the contract extends through February 28, 2018.

## **B. 2015/16 Enforcement Program Turnaround**

Corrective measures initiated following BVNPT's March 23, 2015, Sunset Review Hearing and continuing during 2015/16 under the stewardship of BVNPT's new Leadership and Enforcement Program Management Teams contained the problems that had been experienced by BVNPT and set into place a foundation for building a sustainable, effective and efficient Enforcement Program that could support fulfillment of BVNPT's consumer protection mission. Improvements made during 2015/16 included:

- ✓ 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 significant reductions in the average elapsed time to complete investigations of these cases
- ✓ A restructuring of the Enforcement Division's Case Intake and Screening Process to enable prompt identification of licensee cases involving serious criminal misconduct or significant patient harm and referral of these cases to DCA's Division of Investigation
- ✓ Completion of significantly larger numbers of licensee arrest/conviction report and complaint investigations, significant reductions in the average elapsed times to complete licensee arrest/conviction report investigations, and significant reductions in the number of pending investigations and 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 number of pending discipline cases, the average age of the pending discipline cases, the average elapsed time to file pleadings and complete disciplinary actions, and the total average elapsed time from case receipt by BVNPT to completion of the discipline process.

However, notwithstanding all of these improvements, there were 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, workflow, backlog, and performance data. Additionally, the amount of calendar time needed to complete investigations and impose discipline remained much too long and the number of pending non-sworn investigations had recently stopped declining. There also appeared to be a high level of non-compliance with BVNPT's Continuing Education (CE) requirements. Finally, during 2015/16 BVNPT's probationer population increased significantly. Related increases in probation monitoring and subsequent discipline workloads were 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 were needed to help address these and other emerging workloads and business process deficiencies and improvement needs.

### **C. Disruption of the 2015/16 Enforcement Program Turnaround**

In March 2016, BVNPT replaced the Acting Executive Officer provided by DCA with a new Executive Officer selected by BVNPT's governing Board. Within a few months of this appointment, the collaborative working relationship that BVNPT had with DCA's Leadership Team throughout the previous year began to break down. Concurrently, the Executive Officer began redirecting the Chief of Enforcement to support other programs and support service areas and otherwise hampering our ability to continue working collaboratively with the Chief of Enforcement to sustain and build on the organizational, staffing, business process and performance improvements achieved during the preceding fiscal year.

Subsequently, during October 2016, the lead member of BVNPT's 2014/15 Enforcement Task Force and Co-Chair of the recently re-established Enforcement Committee resigned from the Board due, in part, to a dispute with the Executive Officer concerning the Board's response to our *Second Report*. Also during October, the Chief of Enforcement began a leave of absence and the Executive Officer began more directly managing the Enforcement Division. Finally, the Executive Officer selected BVNPT's Supervising Nurse Education Consultant (SNEC) to serve as Acting Assistant Executive Officer, a position that, at that point, had been vacant for 18 months. These changes in the Board's Enforcement Program oversight capabilities and in BVNPT's Leadership Team and Enforcement Program management structures set the foundation for a marked decline in BVNPT's overall work environment and workforce morale, a collapse of the Enforcement Program's management structure, accelerated attrition of Enforcement Division staff, and multiple failures of critical Enforcement Program workload, workflow, and workforce management and quality control processes.

Finally, during late-2016, we gathered and analyzed Enforcement Program workload, workflow and performance data for the July to October 2016 period and determined that the 2015/16 Enforcement Program turnaround appeared to have stalled. During this period:

- ✓ There was no further decrease in the number of pending investigations or discipline cases
- ✓ The number of completed licensee arrest/conviction report investigations decreased and the number of completed non-sworn licensee complaint investigations decreased significantly
- ✓ The average age of BVNPT's licensee complaint investigations decreased only marginally and this decrease was entirely accounted for by reductions in the average age of the pending licensee complaint cases assigned to DCA's Division of Investigation.

While the average elapsed time to complete non-sworn licensee complaint investigations decreased by three (3) months for investigations completed during the July to October 2016 period, the resulting average elapsed time (22 months) was still very long.

Separately, in late-2016 we learned that, under the direction of the Executive Officer, BVNPT had launched a large-scale audit of licensee compliance with BVNPT's Continuing Education (CE) requirements. The CE Audit Project involved a mass mailing of CE compliance audit letters to about 57,000 licensees representing more than 40 percent of all BVNPT licensees. There was no clear rationale for abruptly launching compliance audits of more than 40 percent of all BVNPT licensees over a period of just a few weeks, rather than spreading the audits over a longer period of time and there was no clear plan as to how BVNPT would absorb the increased workloads generated by the project. We first voiced our concerns to BVNPT's Executive Officer and Acting Assistant Executive Officer during meetings we had with each of them on December 8, 2016. We voiced our concerns again during a January 20, 2017 meeting with BVNPT's Executive Officer and Acting Assistant Executive Officer and two (2) representatives of BVNPT's governing Board to review the draft *Third Report*. We voiced our concerns a third time at BVNPT's February 8, 2017 Board meeting during which we presented our *Third Report*, and then voiced our concerns again at BVNPT's March 23, 2017 Sunset Review Hearing. Eventually, in mid-May, BVNPT aborted this ill-conceived and poorly managed project.

#### **D. Circumstances Leading Up to Initiation of the June 2017 Enforcement Process Assessment**

During March and April 2017, available statistical data began showing additional anomalous shifts in the Enforcement Program's workloads, workflows and performance. However, it was unclear whether these shifts were due to variability in BVNPT's statistical data capture and reporting processes, business process changes, or changes in performance. On May 2<sup>nd</sup> we participated in a BVNPT Enforcement Committee meeting during which we discussed these shifts in the Enforcement Program's statistical data. The Committee requested that we further review the Enforcement Program's data capture and reporting processes and reconcile differences between the characterizations of Enforcement Program workload, backlogs and performance provided by Board staff and by the Monitor.

Subsequently, at the Board's May 12<sup>th</sup> meeting, we were asked to share the comments we had made previously to the Enforcement Committee. Our comments to the Board paralleled the information provided previously at BVNPT's Sunset Review Hearing during March and at the Enforcement Committee's May 2<sup>nd</sup> meeting. We also highlighted two (2) potential problem areas that had surfaced more recently involving (1) tracking and reporting of about 75 non-sworn investigation "Pilot Project" licensee complaint cases and (2) closure

during Intake of several dozen licensee complaint cases per month, during each of the past several months, without any investigation. Finally, we informed the Board that we were working with DCA to modify the Monitor contract to conduct an additional review of the Board's enforcement-related data capture and reporting processes along with targeted reviews of selected enforcement case intake, investigation, and discipline processes.

On June 20<sup>th</sup> we participated in a second Enforcement Committee meeting during which we advised the Committee that we would be jointly conducting, with the Division of Investigation, targeted reviews and assessments of selected case intake, investigation, and discipline processes beginning the following week. We emphasized that the additional reviews were needed to help ensure that the Enforcement Program was functioning properly during a period when nearly all of the Enforcement Division's supervisory and management positions were vacant.

#### **E. Summary of June/July 2017 Enforcement Process Assessment**

During the last week of June and continuing into early-July 2017, we completed a targeted review of BVNPT's Enforcement Program data capture and reporting processes along with targeted reviews of an evolving set of selected case intake, investigation, and discipline processes. The reviews were completed jointly with DCA's Division of Investigation and in collaboration with Enforcement Division staff. The results of these reviews were both surprising and alarming. A brief summary of major findings resulting from our reviews is provided by **Exhibit 1**, on the next two pages.

Due to the nature and magnitude of the problems shown on Exhibit 1, and the absence of an Enforcement Division Chief and managers for the Complaint, Investigation and Discipline Sections, we were compelled to immediately brief DCA and other oversight authorities regarding our findings. On June 30<sup>th</sup> we met with representatives of DCA and the Division of Investigation to provide a preliminary briefing regarding our findings along with a set of related Immediate Action Recommendations that could be promptly implemented to correct some of the most critical consumer protection problems.



## Summary of June/July 2017 Enforcement Process Assessment Findings

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- **Cessation of Enforcement Program Data Quality Control Processes and Activities** – The review of BVNPT’s Enforcement Program statistical data capture and reporting processes identified more than 200 separate investigation cases containing erroneous case status tracking information that staff subsequently corrected. Additionally, significant problems were identified with the reporting of completed and pending desk investigation statistics and completed and pending subsequent discipline statistics. We also determined that these problems adversely impacted the reporting of aggregate statistical data such as the total number of completed and pending investigations and the total number of completed and pending discipline cases. Finally, some key workload and workforce management reports were not being prepared.
  - **Automatic Closing of Licensee Complaints During Intake without Investigation** – We found that large numbers of complaints were being automatically closed during intake without any investigation, including all complaints submitted anonymously and irrespective of the details provided or the egregiousness of the alleged offenses. Many of these cases involved serious criminal misconduct or significant patient harm for which CPEI guidelines allow referral to DCA’s Division of Investigation. Additionally, most complaints received from inmates at State correctional facilities were automatically closed during intake without any investigation. We also found that a large backlog of licensee complaints had accumulated at intake rather than being promptly screened and referred to either the Investigation Section or DCA’s Division of Investigation. Additional information regarding BVNPT’s automatic closing of complaints during intake is provided in Sections III and IV of the report (see Exhibits III-2 and IV-3).
  - **Loss of Tracking, Monitoring and Control of Criminal Arrest Cases Pending Adjudication** – We found that licensee criminal arrest cases were continuing to be closed pending adjudication of the cases, but that the cases were then not always being properly tracked to ensure that necessary case disposition follow-ups were completed. For example, dozens of these cases continued to be assigned to staff in the Breeze case tracking system after the person had transferred to another job or separated from the Board. Also, we subsequently determined that staff were not always completing timely follow-ups on the status of their assigned cases.
  - **Non-Sworn Investigation Cases Closed with a Notice of Warning without Sufficient Investigation** – During early-2017 about 80 non-sworn investigation cases were closed with issuance of a NOW, in some cases without first sufficiently investigating the cases. Information about the NOW Project was first disclosed at BVNPT’s Sunset Review Hearing during March. Because BVNPT never took any action to review and, where needed, reopen these cases, we did so as part of our review and found that about 25 percent of these cases needed to be reopened and further investigated.
  - **Non-Sworn Investigation Cases Closed without Independent Review** – Beginning during late-2016, BVNPT’s Executive Officer authorized the Investigation Section to close completed cases that were not being referred for discipline rather than forwarding the cases to the Complaint Section for completion of an independent discipline review of the case. Subsequently, in mid-May, the Investigation Section’s sole supervisor separated from BVNPT and the Section’s Special Investigators began closing their completed cases without any supervisory or analyst review.
  - **Cessation of Citation Issuances Along with Most Other Citation Program Functions** – We found that the Citation Desk had not been staffed since the assigned analyst separated from BVNPT in mid-May. Since that time, BVNPT’s issuances of citations, along with a broad range of other Citation Program functions, had been in complete hiatus.
  - **Backlogged Completed Field Investigations** – We found that a large backlog of more than 100 completed field investigation cases had accumulated. Most of these cases involved serious criminal misconduct or significant patient harm that had been investigated by DCA’s Division of Investigation. Cases of this type that we reviewed involved offenses like engaging in non-consensual sexual activities with a patient, diverting and using controlled substances at a work site, and using street drugs, such as methamphetamine, while at work. Rather than being promptly reviewed and referred to the Attorney General to initiate disciplinary action, these cases were languishing for months, with the licensee continuing to practice and, in some cases, committing additional criminal offenses during this period.
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## Summary of June/July 2017 Enforcement Process Assessment Findings

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- **Breakdown of Communications and Morale** – Many staff commented to us during our interviews that there had been a nearly complete cessation of communications regarding organizational, staffing and other changes that were occurring within the Enforcement Division, within BVNPT’s Executive Office, and elsewhere throughout BVNPT. A number of staff indicated that workplace stress levels had diminished somewhat, subsequent to the resignation of BVNPT’s Executive Officer, but that this had been replaced by a sense of hopelessness and despair that the workplace environment might never improve. Additionally, staff expressed a great deal of frustration with their inability to get any direction or even responses to simple questions about how to adjust to or handle the various problems they were experiencing related to turnover of staff and the handling of enforcement cases.
- **Accelerated Staff Attrition and Larger Numbers of Vacant Positions** – As of December 2016 the Enforcement Division had six (6) vacant authorized permanent and limited term positions, equivalent to an 18 percent vacancy rate. By July 2017, 11 of the Division’s authorized permanent and limited term positions were vacant, including four (4) of the Division’s five (5) authorized management positions, and the Enforcement Division’s vacancy rate had increased to an extraordinarily high level (more than 30 percent).
- **Absence of Meaningful, Timely and Effective Corrective Measures** – Throughout the first half of 2017, BVNPT’s governing Board, Enforcement Committee and Leadership Team largely ignored repeated warnings concerning emerging and growing problems in all the following areas:
  - ❖ Incomplete and inconsistent statistical reporting
  - ❖ Extended vacancies in key management positions and increasing numbers of vacant management positions, particularly within the Enforcement Division
  - ❖ Excessive utilization of “Acting” assignments in lieu of filling vacant positions on a permanent basis
  - ❖ Deteriorating staff morale along with increasing staff turnover and higher vacancy rates
  - ❖ Improper handling of complaints and investigations
  - ❖ Deteriorating Enforcement Program performance

Information about these and other Enforcement Program problems was presented to the Board at various public meetings, beginning with BVNPT’s February 26, 2017 Board meeting during which we presented our *Third Report*. Subsequently, during the Board’s March 2017 Sunset Hearing we discussed all of these same problems, the NOW Project, newer inconsistencies and anomalies that had begun surfacing in BVNPT’s Enforcement Program statistical data, and the partial collapse of the Enforcement Program’s management structure which had already occurred. About six (6) weeks later, during the Enforcement Committee’s meeting on May 2<sup>nd</sup> and also at BVNPT’s governing Board’s meeting on May 16<sup>th</sup>, we again discussed some of these same problems along with our additional concerns about recent data showing large numbers of complaints closed during Intake. We specifically noted during the May 2<sup>nd</sup> Enforcement Committee meeting that the most pressing issue was the deterioration of the Enforcement Division’s management structure and that oversight of the Enforcement Division needed “immediate action and attention”. However, no specific actions were initiated by BVNPT’s Leadership, the Committee or the Board in response to this call for action.

BVNPT’s governing Board, Enforcement Committee and Leadership generally expressed little concern or urgency about any of the above problems. Instead, BVNPT’s Leadership and some members of BVNPT’s governing Board generally took the position that the 2015/16 Enforcement Program turnaround had not stalled, vacant positions were all being promptly filled, and Enforcement Program performance was improving. A Special Meeting was never convened to address the unfolding crisis and no representative of BVNPT ever reached out to DCA’s Leadership Team to request additional assistance with overseeing or managing the Enforcement Program during an extended period without any meaningful management or supervision of most of the Enforcement Division’s business units and staff.

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## F. Intervention by the Department of Consumer Affairs

On July 12<sup>th</sup> DCA's Chief Deputy Director, the Chief of the Division of Investigation, the Division of Investigation's Enforcement Support Supervising Investigator, and DCA's Project Manager for the Monitor contract met with BVNPT's Interim Executive Officer to discuss the results of above described reviews. DCA also offered to (1) provide assistance with implementing the Immediate Action Recommendations, (2) help manage the Enforcement Division, and (3) on-board and train BVNPT's prospective new Enforcement Division managers and supervisors. Additionally, DCA provided supporting documentation to BVNPT's Interim Executive Officer and the Board's President and Vice President which included a draft *Discussion Guide* that we had prepared summarizing the Critical Problems that we found with BVNPT's case intake, investigation, and discipline processes and our Immediate Action Recommendations to promptly correct these problems. Subsequently, on behalf of the Board, the Interim Executive Officer accepted DCA's offer of assistance.

On July 17<sup>th</sup> BVNPT's Interim Executive Officer and representatives of DCA and the Division of Investigation met with Enforcement Division staff to announce the collaborative partnership with DCA and the assistance that the Division of Investigation would provide. Following this meeting, representatives of DCA, the Division of Investigation and the Monitor met with the Interim Executive Officer and the Enforcement Division's managers to summarize the results of the previously completed assessments and the related Immediate Action Recommendations. During the next several weeks additional orientation meetings were held with BVNPT's newly hired Chief of Enforcement and other Enforcement Division managers and staff to further review the results of all of the our previously completed assessments and our recommendations for improvement.

On August 11<sup>th</sup> DCA issued a Memorandum to the Board's President summarizing the assistance that DCA was providing with administration of BVNPT's Enforcement Program. Our draft *Discussion Guide* was provided as an attachment to DCA's Memorandum. Subsequently, on August 25<sup>th</sup> DCA's Chief Deputy Director, the Division of Investigation's Supervising Investigator, and the Monitor provided a briefing to BVNPT's governing Board summarizing:

- ✓ The problems identified during the recently completed review
- ✓ The Monitor's Immediate Action Recommendations
- ✓ The actions that had already been taken by DCA or were underway to address these problems
- ✓ Other steps taken by DCA and the Division of Investigation to restore proper functioning to the Board's Enforcement Program.

Following the Board meeting, the Division of Investigation continued assisting BVNPT with managing its Enforcement Program and implementing corrective measures needed to restore properly functioning intake, investigation and discipline processes. This was the Division of Investigation's second Enforcement Program intervention in two (2) years.

## **G. Status of Implementation of the Monitor's Immediate Action Recommendations**

Enforcement Division staff, under the direction of the Division of Investigation, began implementing our Immediate Action Recommendations during late-July and August 2017. In some areas the recommendations were largely implemented within a period of a few weeks. In other areas longer periods of time were needed to fully implement the recommendations.

Subsequently, a set of structural changes to the oversight of BVNPT's Enforcement Program was imposed through enactment of AB 1229 (Low, 2017). These changes, which become effective on January 1, 2018, include requirements that BVNPT provide specified reports to the Director of DCA and the Legislature and that the Division of Investigation complete reviews of the Enforcement Program at specified intervals. Additionally, AB 1229 provides the Director of DCA, through the Division of Investigation, with authority to determine the need for and implement any changes that it determines are necessary to assure the appropriate administration and operation of the Enforcement Program. Together with changes that temporarily strip BVNPT's governing Board of its authority to appoint its Executive Officer, these changes appear clearly aimed at ensuring that our recommendations and other needed corrective measures are fully implemented so that the types of problems recently experienced by BVNPT will not recur. AB 1229 provides a 2-year period, under a gubernatorial-appointed Executive Officer, to stabilize BVNPT's workforce, restore proper and effective business processes, and build the Board's oversight capabilities, after which the Executive Officer appointment authority would revert back to the Board.

## **H. Current Status of the Enforcement Program**

Areas that have improved significantly since BVNPT's last Sunset Review include (1) the handling of license applicant cases, (2) the handling of licensee arrest/conviction report cases, (3) the referral of licensee complaint cases involving serious criminal misconduct or significant patient harm to the Division of Investigation, (4) the Division of Investigation's handling of these cases, and (5) BVNPT's disciplining of licensees for violations of its licensing laws. However, as discussed above, multiple significant problems surfaced during the past year which, unfortunately, over-shadowed these accomplishments.

**License Applicant Cases** – BVNPT no longer unnecessarily opens several thousand license applicant cases involving minor offenses and offenses that occurred in the distant past that have no bearing on the Board's licensing decision. Currently, only about 700 license applicant cases are referred to enforcement per year and the Enforcement Division's Complaint Section analysts now consistently promptly process these cases. In most instances the analyst reviews that case and authorizes issuance of the license, usually in conjunction with issuance of a NOW. Denials of licensure are issued in the remaining cases. On an annual basis a few dozen of the denials are appealed which prompts referral of the case to the AG for hearing. During the first quarter of 2017/18, the average elapsed time to complete these cases, which account for more than one-third of all of the complaint Section's completed desk investigations, was about 1 ½ months.

**Licensee Subsequent Arrest/Conviction Report Cases** – During 2016/17 and continuing into the first quarter of 2017/18, the number of licensee arrest/conviction reports received by BVNPT decreased significantly from prior year levels. Currently, about 1,200 cases are received per year compared to an average of about 1,500 cases per year previously. Up to about 40 percent of these cases require only a very limited review or investigation and are closed either "No Violation" or "Redundant", in many cases because the licensee marked their license renewal form "Yes" in error or self-reported an offense that BVNPT was already aware of from CORI (Criminal Offender Record Information) reporting. These cases continue to account for a significant

portion of all of the cases that BVNPT refers for discipline. However, during 2016/17 and continuing into the first quarter of 2017/18, the number of pending licensee arrest/conviction report investigations increased. Also, the average elapsed time to complete these investigations recently increased. During 2016/17 and continuing into the first quarter of 2017/18, staff turnover in the Complaint Section increased and the Section was without any supervision or management for a 4½ month period extending from mid-March through July 2017. The Complaint Section currently has several vacant analyst positions. Additionally, the Section has a new supervisor with prior Pharmacy Board Enforcement Program experience, but only limited knowledge and experience with the types of criminal cases handled by the Complaint Section and the business processes and technology systems used by Complaint Section staff to complete their investigations.

**Licensee Complaint Cases Referred to DCA's Division of Investigation** – Following the Board's 2015 Sunset Hearing, several hundred high priority licensee complaint cases that had been languishing in BVNPT's Investigation Section were transferred to the Division of Investigation. Concurrently, BVNPT began identifying high priority cases during intake and referring them to the Division of Investigation and, since that time, has been consistently referring about 180 to 200 cases per year to the Division. Initially, during 2015, the transferred legacy cases along with the newly received cases created a large backlog of more than 360 pending cases at the Division and many of these cases were quite old. However, during 2016 and continuing through September 2017, the Division consistently completed these investigations at a rate faster than new cases were being assigned which enabled it to reduce this backlog along with the average age of its remaining pending cases. The Division currently has about 175 pending cases. About one-third of the investigations that the Division completes are referred for discipline and these cases account for most of the licensee complaint cases that BVNPT refers for discipline. The Division's average elapsed time to complete its assigned investigations is currently about 13 months, *including* extended elapsed times for some aged cases that had languished in the Investigation Section before being reassigned to the Division during 2015.

**Non-Sworn Licensee Complaint Investigations** – The area where BVNPT seems to continue to struggle most is with the handling of lower priority licensee complaint cases that are not referred to the Division of Investigation. BVNPT's Investigation Section currently has about 470 pending licensee complaint cases and about 300 of these cases are not assigned to an investigator. The number of non-sworn investigation cases currently pending is significantly greater than the 400 cases that were pending at the start of the 2016/17 fiscal year, notwithstanding the large number of NOW Project cases closed during early-2017. The Investigation Section's increased number of pending non-sworn investigations fully offset the pending case reductions achieved by the Division of Investigation during 2016/17. During 2016/17 the average elapsed time to complete non-sworn investigations decreased significantly, but that improvement is transitory. This lagging performance measure stopped declining during the July to September 2017 quarter and will almost certainly begin increasing during the remainder of 2017/18 due to the Investigation Section's large backlog of aged cases. The Section's average elapsed time to complete its assigned investigations is currently about 18 months, which is five (5) months longer than Division of Investigation's average elapsed time to complete its investigations of BVNPT's higher priority licensee complaint cases.

**Discipline Case Processing** – During the past two (2) years BVNPT significantly reduced its backlog of pending discipline cases and also significantly reduced the average age of its pending cases. Additionally, BVNPT’s average elapsed time to file pleadings decreased from about seven (7) months to about five (5) months and the average elapsed time from referral of discipline cases to the AG to decision by the Board decreased from 20 months to 12 months. During periods prior to 2015/16, BVNPT typically had about 500 to 600 pending discipline cases and the average elapsed time from case receipt to Board decision for discipline cases exceeded three (3) years. As of September 30, 2017, BVNPT had fewer than 300 pending discipline cases and, for discipline cases completed during the July to September 2017 period, the average elapsed time from case receipt to Board decision was 26 months.

**Probation Monitoring** – As a result of BVNPT’s settlement of an especially large number of discipline cases during 2015/16 and 2016/17, BVNPT’s probationer population swelled from 330 probationers to about 480 probationers. However, BVNPT’s probationer population appears to have peaked and recently began to decline. As of mid-October 2017, BVNPT had a total of 448 probationers. BVNPT’s probationer population will mostly likely plateau near current levels for about another year or so before beginning an accelerated decline toward average historical population levels of about 300 to 350 probationers. During the past two (2) years BVNPT has been referring significantly larger numbers of subsequent discipline cases to the AG. As of September 30, 2017, there were about 65 pending subsequent discipline cases. During the remainder of 2017/18, significant decreases are likely to occur in the numbers of new and pending subsequent discipline cases.

**Continuing Education Compliance Audits** – Due to the CE Audit Project’s fundamentally flawed structure and processes, only about 20 CE audit failure cases were ever referred to Enforcement and no enforcement action was taken on any of these cases because the audit processes that were utilized were insufficient for purposes of supporting issuance of either a NOW or a citation. The absence of any resulting enforcement activity is a testament to the worthlessness of the CE Audit Project. Available historical data, including data from the CE Audit Project, have consistently shown that at least 10 to 20 percent of licensees are not compliant with BVNPT’s CE requirements. The CE Audit Project was aborted in mid-May, after completing preliminary reviews of fewer than 8,000 of the responses received to the initial mailing to 57,000 licensees. As of mid-October 2017, BVNPT had not resumed any auditing of licensee compliance with its CE requirements. BVNPT has not conducted any effective auditing or enforcement of licensee compliance with its CE requirements for more than 15 months (since July 2016). Meanwhile, large numbers of BVNPT licensees continue to practice while completing little or no CE.

## **I. Vacant Positions and Hiring**

During periods prior to the Board’s 2014/15 Sunset Review, BVNPT experienced especially high vacancy rates, particularly within its Education, Licensing, and Administration business units where vacancy rates regularly exceeded 25 percent. Subsequently, many of the BVNPT’s vacant positions were filled which reduced total vacancies to 8.5 positions by December 2015, equivalent to an overall vacancy rate of about 13 percent. However, during 2016 staff turnover increased and, as of December 2016, overall vacancy rates rose to about 17 percent. Subsequently, staff turnover increased further and, by mid-July 2017, BVNPT had 18 vacant positions scattered throughout the organization (equivalent to an overall vacancy rate in excess of 20 percent). The Enforcement Division had an especially high vacancy rate (greater than 30 percent). Additionally, during mid-July, only five (5) of BVNPT’s 11 total authorized management and supervisory

positions were filled. For the Enforcement Division, only two (2) of the Division's five (5) authorized management and supervisory positions were filled. During the next several months several Enforcement Division positions were filled through outside recruitments and other positions were filled through internal promotions. Concurrently, some Enforcement Division staff were internally promoted to other business units. Internal promotions have no net impact on BVNPT's overall vacancy rate which, as of mid-October, remained at a relatively high level (about 20 percent).

During the past 18 months we regularly monitored the vacancy status of all of BVNPT's positions, focusing particularly on staffing changes in the Enforcement Division. Additionally, we sometimes met or talked with Enforcement and other staff before their separations to gain a better understanding of the reasons they were either seeking or had accepted employment elsewhere. While some long-term staff separated from BVNPT due to retirement, some newer staff were rejected on probation, and others accepted positions at a higher classification level at another agency (e.g., promoted from the Staff Services Analyst level to the Associate Government Program Analyst level), this was not always the case. For example, the former Chief of Enforcement accepted a position with another DCA-affiliated Board at a lower classification level and the former Investigation Section Supervisor and some former Special Investigators accepted positions that were equivalent to their BVNPT classifications (referred to as lateral transfers). A common sentiment expressed by many of the staff we talked with regarding the reasons that they and others at BVNPT were seeking or had accepted employment elsewhere was that, while they derived a great deal of satisfaction from their jobs at BVNPT and liked and enjoyed working with their peers, they could no longer continue working in what they considered to be an especially difficult work environment. Separating staff also cited specific behaviors and management practices exhibited by members of BVNPT's Leadership Team that supported their statements, such as poor communications, dismissive or contentious behavior, constantly changing work assignments and priorities, lack of direction, and an inability to get answers to questions or a resolution of problems. It is evident that BVNPT's unhealthy work environment accelerated staff attrition during the past year, including attrition of staff who sought out promotional opportunities at other agencies sooner than would otherwise have occurred.

Recently, at least within the Enforcement Division, there has been a notable improvement in the overall work environment, principally as a result of the Division of Investigation's intervention. Secondly, most Enforcement Division staff are hopeful that the newly-appointed Chief of Enforcement will continue to engage constructively with subordinate managers and staff, while getting up to speed with respect to understanding how the Enforcement Program operates. Finally, there is a sense of cautious optimism about having the Governor, rather than the Board, appoint BVNPT's next Executive Officer. However, partially offsetting this recent improvement, there is an undercurrent of skepticism and discontent among Enforcement Division staff, particularly within the Complaint Section which was most impacted by the collapse of the Enforcement Division's management structure and especially high levels of staff turnover during the past year. Additionally, within the Complaint Section, during the past several months the level of discontent has been increasing rather than diminishing, turnover of staff has continued, and the Enforcement Division's Management Team seems not to have effectively addressed the root causes of these problems.

Finally, the recent improvements in BVNPT's overall workplace environment and workforce morale should be understood in the context of the extremely poor environment and very low workforce morale levels that existed throughout much of the organization during most of the 2016/17 fiscal year. Overall, there is still a great deal of room for improvement in BVNPT's overall work environment and the morale of BVNPT's workforce, particularly within the Enforcement Division. Until sustainable improvements are made in both of these areas and a healthy work environment is well-established, elevated levels of staff turnover and high vacancy rates should continue to be

expected. Additionally, BVNPT will continue to experience difficulty recruiting quality outside candidates to fill its vacant positions because BVNPT's reputation as an undesirable place to work will persist. The continued involvement of the Division of Investigation with BVNPT's Enforcement Program, potential additional assistance from DCA in addressing BVNPT's current leadership vacuum, and the prospective appointment of a new Executive Officer effective in early-2018 could help to further address these issues leading to lower levels of staff turnover, reduced vacancy rates, and improved overall program performance.

## **J. Enforcement Division Staffing and Organization**

The total number of positions allocated to the Enforcement Division has changed very little during the past few years, but significant changes in the Division's workloads and backlogs have occurred during this period. Overall, the Enforcement Division has a sufficient number of authorized permanent and blanket positions to address current workload demands and anticipated workload during the next several years. However, some position reclassifications and some redirections of currently authorized positions are needed to better align current resources with current and prospective future workload demands.

**Complaint Section** – BVNPT's 2015/16 restructuring of the license applicant process reduced the number of cases referred for enforcement by several thousand cases per year. Concurrently, BVNPT reduced its backlog of pending licensee arrest/conviction report cases by several hundred cases. More recently, BVNPT has been receiving about 20 percent fewer licensee arrest/conviction reports. Additionally, fewer completed field investigation cases are being completed and forwarded to the Complaint Section for discipline review. Additional analyst positions are not needed by the Complaint Section to conduct desk investigations of license applicant or licensee arrest/conviction report cases, or for completing discipline reviews of completed field investigation cases. These case categories currently account for almost all of the Section's desk investigation workload.

**Investigation Section** – During 2016/17, one (1) of the Section's vacant Supervising Special Investigator positions and one (1) of the Section's vacant Special Investigator positions were reclassified and redirected to the Discipline Section. However, as is evident from the Section's actual historical performance, the Section's remaining eight (8) positions, if properly trained, managed, and supervised, are more than sufficient for the Section's current and anticipated future workload demands. In the past, the Investigation Section completed as many as 70 investigations per year per filled position. However, with the assignment of many licensee complaint cases to the Division of Investigation and closure of other cases during intake and screening, only about 300 to 350 licensee complaint cases are currently assigned to the Section per year (equivalent to about 40 cases per year per position). As demonstrated by the NOW Project, which included appropriate closures of 60 licensee complaint cases with issuance of a NOW, in most cases with little (or no) investigation, a significant portion of the cases currently assigned to the Section clearly do not require field investigation. Even with the retention of 1 to 2 investigator positions for a period of time to help reduce the Section's backlog of unassigned cases, fewer than eight (8) positions are needed by the Section.

**Discipline Section** – During 2016/17, authorized staffing for the Discipline Section, excluding Probation Program positions, was augmented by reclassifying and redirecting two (2) vacant positions from the Investigation Section to the Discipline Section. One (1) of redirected positions was used to create a new Section Manager position so that a separate Probation Section could be established. During 2014/15 and 2014/15, the Discipline Section was responsible for handling more than 500 pending



discipline cases. Subsequently, during 2015/16, the number of pending discipline cases decreased to about 350 cases. Throughout this period the Section had 2.5 authorized Discipline Analyst positions. The additional Discipline Analyst position allocated to the Section during 2016/17 was intended to help reduce and better balance discipline caseloads among staff within the Section. However, due to internal promotions and delays in the hiring process, the number of filled positions in the Section never actually increased while the number of pending discipline cases continued to decline. As of June 30, 2017, the Section had about 300 pending discipline cases and the number of pending discipline cases continued to decline during the first quarter of 2017/18. Finally, during 2015/16, 437 discipline cases were completed, excluding subsequent discipline cases. During 2016/17, with essentially the same staffing, 346 discipline cases were completed, excluding subsequent discipline cases. The number of positions currently allocated to the Discipline Section is more than sufficient to address current and prospective future workload demands.

**Probation Section** – During 2015/16 and 2016/17, as a result of a large increase in the number of cases referred for discipline and a large increase in the number of completed discipline cases, the Probation Program experienced especially high growth in the population of probationers. During this period, BVNPT’s probationer population grew from a total of about 330 probationers, including several dozen tolled probationers, to about 480 probationers, including tolled probationers. However, the Probation Section’s elevated caseloads appear to have recently peaked. As of mid-October 2017, the probationer population had declined to less than 450 probationers, including several dozen tolled probationers. BVNPT’s probationer population is likely to remain at or near these same elevated levels through most of the remainder of 2017/18 before beginning an accelerated decline toward much lower levels (e.g., 300 to 350 probationers). During 2016/17 there was some augmentation of staffing resources available to support the Probation Program as a result of (1) the redirection of the former Discipline and Probation Section Manager to serve as a dedicated Manager for just the Probation Section and (2) the allocation of a second Retired Annuitant Analyst position for the Section. Some additional augmentation of Probation Section staffing or reallocation of probation cases is needed for the next 12 to 18 months to help reduce and better balance probation monitoring caseloads among staff within the Section.

Finally, a new Intake, Screening, Discipline Review and Enforcement Support Section should be established within the Enforcement Division and staffed by redirecting specified positions from other Enforcement Division business units. This new Section is needed to:

- ❖ Reduce the Complaint Section’s scope of responsibilities and the number of staff allocated to the Section
- ❖ Enable development of enhanced screening processes that can be used to identify and complete licensee complaint cases that do not require field investigation
- ❖ Promptly review completed field investigation cases without conflicting with other workload priorities, such as the processing of license applicant and licensee criminal arrest/conviction report cases.

Additionally, responsibility for the Division’s data quality control and statistical reporting functions should be assigned to the new Section. Establishing the new Section should be assigned a high priority and implemented as soon as practicable to mitigate problems currently being experienced within the Complaint Section and help control the Investigation Section’s backlog of aged licensee complaint cases.

## **K. Staff Training**

During 2016, BVNPT significantly boosted the number of staff provided with various types of classroom training and the amount of classroom training provided to these staff. Additionally, much greater emphasis was placed on providing more advanced training in such areas as (1) analytical skills developments and (2) supervision, management and leadership development. Previously, much of BVNPT's staff training emphasized skills development in the use of desktop tools such as Microsoft Word and Excel.

However, BVNPT's case intake, screening, and investigation workforce development and training processes are under-developed, resulting in inconsistency and variability in the completion of specific enforcement functions and activities and the resulting process outputs or work products. While classroom training can be beneficial for purposes of acquiring specific types of knowledge or developing specific skills, there is no substitute for the real world experience that can be provided through intensive, one-on-one, on-the-job training by an experienced supervisor, mentor or co-worker. Supplemental on-the-job training is currently being provided by the Division of Investigation to some Enforcement Division staff to help address this need. Significant additional on-the-job training is needed by nearly all of the Enforcement Division's case intake, screening, and investigation staff.

## **L. Oversight of Board Staff**

During 2016/17, oversight of Enforcement Division staff was adversely impacted by the collapse of the Division's management structure, including:

- ❖ The October 2016 leave of absence and January 2017 separation of the Chief of Enforcement
- ❖ The December 2016 separation of the Probation Unit from the Discipline Section which left the Discipline Section without a Manager
- ❖ The March 2017 separation of the Complaint Section Manager
- ❖ The May 2017 separation of the Supervising Special Investigator.

All of these positions remained vacant through the end of the 2016/17 fiscal year. Subsequently, during July and August 2017, BVNPT filled the Chief of Enforcement position and the Complaint and Discipline Section Manager positions. The Discipline Section Manager position was filled through an internal promotion of one of BVNPT's most experienced staff. The Chief of Enforcement and the Complaint Section Manager positions were filled by external candidates with limited or no prior Enforcement Program management experience that are just now beginning to learn their new jobs. As of mid-October the Supervising Special Investigator position was still vacant.

Oversight of the Education, Licensing and Administration business units was adversely impacted during 2016/17 by staff turnover and constantly shifting management assignments, including:

- ❖ The January 2017 leave of absence and subsequent separation of the Executive Officer
- ❖ The temporary appointment of the Supervising Nurse Education Consultant (SNEC) to serve as Acting Assistant Executive Officer (AEO) and the subsequent appointment of the SNEC to serve as Interim Executive Officer
- ❖ The temporary appointment of the Board Support Analyst from October 2016 to January 2017 to serve as Acting Manager of the Administration and Support Services Section

- ❖ The temporary appointment of the Support Services Unit Office Services Supervisor III (OSS III) from October 2016 to January 2017 to serve as Acting Leg/Reg Analyst and the concurrent temporary appointment of a Support Services Unit Office Technician to serve as Acting OSS III for the Support Services Unit
- ❖ The 2-year Training and Development assignment of the OSS III as a Budget Analyst which left the OSS III position vacant.

Currently, the Assistant AEO, SNEC and OSS III positions remain vacant and the Interim Executive Officer is on an extended leave of absence. There are two filled Staff Services Manager I (SSM I) positions for the Administration and Support Services and Evaluations Sections, but both of the incumbents are relatively new and inexperienced. There is not currently an adequate level of oversight of BVNPT's Education, Licensing and Administration business units. These circumstances increase the risk of problems surfacing in these business units similar to the types of problems that surfaced in the Enforcement Division during 2016/17 when Division's management structure collapsed leaving only one (1) filled SSM I position in the Division. As of mid-October 2017, no meaningful or effective action had been taken by BVNPT's governing Board to bolster management and oversight of BVNPT's Education, Licensing and Administration business units. Immediate action is needed to address the Leadership vacuum that currently exists at BVNPT.

#### **M. Oversight of BVNPT's Executive Officer**

It continues to be very apparent that the members of BVNPT's governing Board have been largely dependent on information provided by the Executive Officer for purposes of performing their oversight responsibilities, including responsibility for overseeing the Executive Officer and evaluating the Executive Officer's performance. Although such dependency is not unique to BVNPT, several Board members noted during our Phase II interviews with them that this dependency can result in the Board being unaware of performance or other problems as occurred during the period preceding BVNPT's 2014/15 Sunset Review. The Board again appeared to not be sufficiently aware of the emergence of significant performance and other problems at the Board during late-2016 and early-2017, and continuing after the Board's March 2017 Sunset Review Hearing. However, in this latter instance, this lack of awareness is somewhat inconsistent with various direct communications to the Board which should have heightened members' awareness of emerging problems at BVNPT.

#### **N. Board Member Training and Support Services**

Some years ago, in addition to DCA's Board Member Orientation Training (BMOT), BVNPT Board members were provided up to two (2) days of BVNPT-specific Board Member Orientation Training by BVNPT staff. However, the BVNPT-specific training was subsequently condensed into a 1-day session and the 1-day training, for various reasons, was not particularly good. Additionally, the collateral and reference materials that were provided to new members were somewhat overwhelming and of limited utility.

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. Subsequently, from July 2013 through January 2014, five (5) new members were appointed. It appears that there were significant deficiencies in the quality and completeness of the BVNPT-specific orientation training that was provided to these members. These deficiencies may have contributed to the Board's limited awareness of the nature and magnitude of the problems that were already being experienced related to BVNPT's Enforcement Program at that time.

During 2016, BVNPT revised some of the BVNPT-specific Board Member Orientation Training curriculum along with the supporting training and reference materials. However, no new members were appointed to the Board to enable assessment of the impacts of these

changes. Subsequently, during 2017, five (5) new members were appointed. Of these, three (3) members attended the BVNPT-specific Board Member Orientation Training. One (1) member attended a 1-day training session and the other two (2) members attended a 2-day training session, with each session starting at about 10 am and concluding at 4 pm, with a 1-hour break for lunch. The members that attended the 2-day session both commented very favorably about the quality of this training. The 2-day orientation training was also offered to the other Board member who requested that training be condensed into a 1-day session which provided the member with much less information about BVNPT's Education, Licensing and Enforcement Programs than would otherwise have been provided. All three (3) participating members commented that a 2-day timeframe is needed to complete the orientation with the member that attended the 1-day session suggesting that a follow-up session should be conducted after a period of time to further orient new members after they have gained experience at the Board.

Based on our discussions with these members, there continues to be some disconnect between the Board Member Orientation Training (BMOT) provided by DCA and the Board-specific orientation training provided by BVNPT with respect to Board member oversight of the Board. DCA's BMOT training addresses this topic at a general level while the Board-specific training seems not to address this topic at all. Consequently, new Board members are left without any training regarding specific strategies and methods for overseeing the Board's Licensing, Education, and Enforcement Programs. This type of training could best be provided to new members concurrent with becoming oriented with each program.

## **O. Licensing and Support Services**

During the past year, various issues, problems and concerns surfaced or were brought to our attention by BVNPT staff involving matters that were not within the scope of the BVNPT Monitor assignment which focused primarily on the Enforcement Program and, secondarily, on the targeted administrative processes delineated in AB 179. As these matters surfaced, and consistent with provisions of AB 179, we relayed the information to DCA's Project Manager and, as appropriate, other members of DCA's Leadership Team.

For example, during July 2016 BVNPT's Executive Officer expressed concerns to us about BVNPT's Licensing and Administration Division and the need for completion of an assessment of the Division. We promptly discussed these concerns with DCA's Project Manager and other members of DCA's Leadership Team. Concurrently, BVNPT's Executive Officer discussed these same concerns with some Legislative staff. However, no decisions were ever made to modify the scope and focus of the Monitor's Phase II and III reviews and assessments to address these concerns. Instead, as mutually agreed during the completion of the Phase I Initial Assessment, our Phase II/III assessments of BVNPT's Licensing Program business processes were limited to areas where there were specific and direct linkages to BVNPT's Enforcement Program business processes.

Subsequently, more specific and detailed additional information regarding various problems involving BVNPT's licensing and licensing support services was brought to our attention. We made very limited efforts to confirm or verify the validity of the information provided to us. Specific problems that were brought to our attention included:

- ❖ Delays in cashiering school applications
- ❖ Delays in processing on-line initial license applications
- ❖ Delays in processing license renewal batch mail received from DCA Central Cashiering
- ❖ Delays in processing address changes (in-house)
- ❖ Issuance of a Temporary License to an applicant that was previously denied licensure for a criminal offense.

Consistent with the provisions of AB 179, we relayed the information provided to us regarding these potential problems to DCA's Project Manager and, as appropriate, other members of DCA's Leadership Team.

During BVNPT's March 2017 Sunset Review Hearing, representatives of BVNPT expressed disagreement with our concerns about possible problems involving BVNPT's cashiering operations. However, following the Sunset Hearing, BVNPT requested that DCA provide assistance with cashiering its backlogged remittances. Then, from late-April through mid-July 2017, DCA provided staff to help BVNPT cashier its backlogged remittances. This was the second consecutive fiscal year that BVNPT received extra end-of-year assistance from DCA with cashiering its backlogged remittances.

After we forwarded the information about possible problems with BVNPT's issuances of Temporary Licenses to the Chief of DCA's Division of Investigation, DCA assigned its Internal Audits Office to assess BVNPT's Temporary License issuance procedures and practices. The Internal Audits Office identified several significant deficiencies and internal control weaknesses with BVNPT's Temporary License issuances. Subsequently, several changes were implemented to prevent improper Temporary License issuances, such as issuances to applicants with criminal offense records, including (1) restricting access to the Temporary Certificates and (2) revising applicable procedures. Additionally, both the responsible staff person and a manager or supervisor must verify the applicant's eligibility to receive a Temporary License.

**P. Final Recommendations**

A listing of 58 Final Recommendations structured to address the above-described problems and other identified needs for improvement is provided as an Attachment to this letter. The listing also provides cross-references to recommendations contained in our prior reports or developed during June/July 2017 as part of our targeted assessment of the Enforcement Program's intake, investigation, and discipline processes and shows the current status of BVNPT's implementation of each recommendation.

\* \* \* \* \*

We are grateful for all of the assistance provided to us throughout the past 18 months by DCA's Project Manager and other members of DCA's Leadership Team, DCA's Office of Information Services, Office of Human Resources, and Division of Investigation, and the Office of the Attorney General. Additionally, we are appreciative of the efforts made by many Enforcement Division staff and others at BVNPT to provide us with information and assistance needed to enable us to complete our reviews and analyses. We would especially like to thank Board staff for their open and candid communications with us during our on-site interviews, particularly during the past 12 months, and we would also like to thank those staff who found ways to continue relaying additional information to us through various other communication channels. The information provided by these staff was invaluable in enabling us to complete our assessments and helped immeasurably to keep us up-to-date regarding changes occurring at the Board. Without this support, completion of this assignment would clearly have been substantially more difficult.

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**



Benjamin Frank  
Chief Executive Officer

Final Recommendations of the Administrative and Enforcement Program Monitor

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
Enforcement Processes	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 <b>license applicants</b> misreport or over-report prior convictions (see also Final Recommendation 5).	IV.1	Not Implemented
	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 <b>license applicant</b> 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.	IV-2	Partially Implemented
	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 license 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.	IV-3	Not Implemented
	4. Assess the feasibility of imaging CE-related document submissions or enabling submission of the documents electronically.	IV-4	Not Implemented
	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 <b>licensees</b> misreport or over-report prior convictions when renewing their license (see also Recommendation IV-1) . Develop additional programming for on-line renewals that requires confirmation 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.	IV-5	Not Implemented
	6. Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current FT Pilot Program for licensee arrest/conviction report cases and other qualifying cases.	IV-6	Implemented
	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.	IV-7	
	8. 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.	IV-9	Not Implemented
	9. Restore processes for opening and investigating cases involving discipline by another state/agency. 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, from standard BreEZe reports, or the agency routinely posts the information to another professional licensing database that is otherwise queried by BVNPT.	IV-10 <i>(Modified)</i>	Partially Implemented
	10. 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.	IV-11	Partially Implemented
	11. Develop and implemented processes for enhanced screening and completion of licensee complaint cases that do not require field investigation (see also Final Recommendation 36).	V-1 <i>(Modified)</i>	Partially Implemented
	12. 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.	No.1	Implemented
	13. 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.	No. 2	Implemented

Final Recommendations of the Administrative and Enforcement Program Monitor

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
Enforcement Processes <i>(continued)</i>	14. 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 the Investigation Section or DOI as determined appropriate by the Division of Investigation.	No. 3	Implemented
	15. Assign currently pending licensee complaint intake cases to BVNPT's Investigation Section or DOI as determined appropriate by the Division of Investigation.	No. 4	Implemented
	16. 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.	No. 5	Implemented
	17. 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.	No. 6	Implemented
	18. Locate or account for all cases shown in Breeze as Closed Pending Conviction and assign them for ongoing monitoring.	No. 7	Partially Implemented
	19. Develop and implement positive internal controls to ensure that cases Closed Pending Conviction are monitored and tracked by staff on a continuing basis.	No. 8	Partially Implemented
	20. Reopen and further investigate Investigation Section cases closed with a NOW during early-2017 as determined appropriate by the Division of Investigation.	No. 9	Implemented
	21. Complete Division of Investigation reviews of all Investigation Section cases closed since mid-May 2017.	No. 10	Implemented
	22. Transfer all Citation Program responsibilities to the Discipline Section.	No. 11	Implemented
	23. Temporarily redirect one experienced (1) Special Investigator to complete reviews of pending AS05 cases, triage the cases for discipline, prepare case summaries, and refer the cases for issuance of a NOW, citation or to the 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. Improve internal controls and reporting for monitoring the status of these cases and develop procedures for expediting reviews in cases where the responsible investigator believes there is an imminent risk of consumer harm.	No. 12 <i>(Modified)</i>	Partially Implemented with Modifications
24. Modify the Quarterly Enforcement Workload and Performance Report format to more consistently distinguish between license applicant cases, licensee subsequent arrest/conviction report cases, licensee complaint cases, and CE audit failure cases. Additionally, align the Quarterly Report Data with data provided in the Division's Monthly Statistical Reports. Provide both Quarterly and Monthly Reports to the Enforcement Committee within 10 days following each reporting period.	VI-1 <i>(Modified)</i>	Implemented with Modifications	
25. On an annual basis, develop goals for each of the workload and performance measures listed on the Quarterly Enforcement Workload and Performance Report and include the goals in all quarterly reports.	VI-2 <i>(Modified)</i>	Not Implemented	



Final Recommendations of the Administrative and Enforcement Program Monitor

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
Enforcement Organization and Staffing	26.	Continue to redirect and consolidate available resources as needed to enable additional screening and completion of on-line public complaints and licensee complaints that do not require field investigation.	V-4 Partially Implemented
	27.	Continue to utilize available blanket expenditure authorization funding to maintain the availability of a full-time AGPA position to serve as a Lead Analyst for the Intake Unit and provide complaint screening and second level intake and complaint screening review services.	Supplemental Implemented
	28.	Modify the classification of the Intake Unit's authorized permanent SSA position to enable the incumbent to transition to the AGPA level as the incumbent gains experience screening licensee complaint cases and takes on responsibility for screening more complex cases and begins providing enhanced screening for those cases.	Supplemental Not Implemented
	29.	Reclassify a currently vacant Special Investigator position to SSM I and redirect the position to serve as a Manager for the new Intake, Screening, Discipline Review and Enforcement Support Section (see Final Recommendation 36).	V-3 (Modified) Not Implemented
	30.	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	V-3 Not Implemented
	31.	Transfer the Reinstatement Analyst position and related Petition for Reinstatement responsibilities to the Probation Section and assign the Reinstatement Analyst a limited probation monitoring caseload as a supplement to their Petition for Reinstatement cases (e.g., monitoring of some of the Probation Section's Year 3 probationers) or continue utilizing other Discipline Section staff to monitor some probationers until monitoring caseloads decrease to lower levels.	V-7 (Modified) Implemented
	32.	Upgrade the Enforcement Division's Data Quality Control and Statistical Reporting Analyst position to the AGPA level and redirect the position and associated data quality control and reporting responsibilities to the Intake, Screening, Discipline Review and Enforcement Support Section (see Final Recommendation 36).	Supplemental Not Implemented
	33.	Redirect and consolidate available resources as needed to support expansion of the CE Audit Program. Consider transferring responsibility for auditing compliance with BVNPT's CE requirements and the CE Compliance Audit Specialist position to the Discipline Section and utilizing Discipline Section staff to provide assistance with completing additional compliance reviews.	V-5 (Modified) Partially Implemented
	34.	Assign some probation monitoring cases to the Section Manager until monitoring caseloads decrease to lower levels.	V-7 Partially Implemented
	35.	To address elevated Probation Program workload demands for the next 12 to 18 months, continue to utilize Temporary Help to augment Probation Section staffing. Subsequently, as probation monitoring caseloads decrease as a result of either a decrease in the probationer population or redistribution of probation monitoring cases among other Probation Section staff, begin reducing the Section's utilization of Temporary Help services.	V-2 (Modified) Partially Implemented
	36.	Establish a new Intake, Screening, Discipline Review and Enforcement Support Section. Transfer all Complaint Section Intake Unit staff and associated responsibilities to the new Section. Transfer one (1) of the Complaint Section's other Lead Analysts and the Section's discipline review responsibilities to the new Section. Transfer the Division's Data Quality Control and Statistical Reporting Analyst position and associated responsibilities to the new Section.	V-6 Not Implemented
37.	Repeal Section 2847.8(b) requiring that the Board submit a specified report to DCA in advance of each meeting specified in Section 2847.8(a).	Supplemental Not Implemented	

Final Recommendations of the Administrative and Enforcement Program Monitor

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
Enforcement Organization and Staffing (continued)	38. DCA and the Division of Investigation should continue to provide enforcement-related management, supervisory, technical support and training services for at least the next 3 to 6 months and until BVNPT's Leadership and Enforcement Program Management Teams are fully rebuilt and sufficiently trained to enable more autonomous management of the Enforcement Program. During this transition period, the Enforcement Division's Management Team should seek out and accept direction from the Division of Investigation's more knowledgeable and experienced staff with respect to identifying needs for and implementing changes needed to enable improved Enforcement Program performance.	Nos. 1 through 12	Partially Implemented
	39. BVNPT should request additional support from the Department of Consumer Affairs or through recruitment of a Retired Annuitant with prior executive management experience to bolster BVNPT's Leadership Team capabilities until a permanent Executive Officer and a permanent Assistant Executive Officer are appointed.	Supplemental	Not Implemented
	40. Appoint a seasoned Executive Officer to the Board that has prior executive-level management experience, preferably with other California State Government regulatory programs, and including demonstrated success turning around other troubled programs or organizations. Additionally, when making this appointment, consider the candidate's management style and willingness and ability to work collaboratively with DCA.	Supplemental	Not Implemented
Administrative Processes	41. When appointed, BVNPT's Executive Officer and Assistant Executive Officer should review the Board's needs for all of the different AGPA positions currently allocated to BVNPT's Education, Licensing and Administration Business Units.	Supplemental	Not Implemented
	42. BVNPT's Chief of Enforcement should become more actively and directly engaged in addressing issues contributing to poor workforce morale and discontent within the Complaint Section, including needs for additional training and support for the Section Manager targeted to developing (1) more effective working relationships with subordinate staff and (2) a better understanding of the nature of the Section's enforcement cases, how the cases are investigated, the Section's case handling and review processes, and how BreEZe works (e.g., by working some of the licensee arrest/conviction report cases assigned to the Section).	Supplemental	Not Implemented
	43. The Division of Investigation should continue to conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. For training and development purposes, the Chief of Enforcement and the Investigation Section Manager, when appointed, should participate in most (or all) of these reviews for at least the next 6 to 12 months and, over time, Enforcement Division management should assume responsibility for completing these reviews. The frequency and duration of the reviews should be regularly adjusted as appropriate to each investigator's development needs.	V-9	Partially Implemented
	44. Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.	V-10	Implemented
	45. Utilize the Division of Investigation to support initial training of newer investigators.	V-11	Partially Implemented
	46. Utilize 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.	V-12	Not Implemented
	47. Establish an Interagency Work Group comprised of representatives of the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs, the Senate Committee on Business, Professions and Economic Development, the Assembly Committee on Business and Professions, and BVNPT's governing Board to assess needs for development of a 360 degree Executive Officer feedback process and, if needed, the best approach and timeframe for developing and implementing the process.	III-1	Not Implemented
48. Complete required Probation Reviews for all new or internally promoted staff within the timeframes specified by CalHR and, on an annual basis, complete Annual Performance Reviews and Individual Development Plans for all other BVNPT managers and staff	V-13	Not Implemented	

Final Recommendations of the Administrative and Enforcement Program Monitor

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
Administrative Processes <i>(continued)</i>	49. 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 the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.	V-8	Partially Implemented
	50. BVNPT's Chief of Enforcement should work collaboratively with DCA and other DCA-affiliated healing arts boards to develop and implement strategies for further improving awareness among OSLTCO's staff and volunteers, and the patients that they serve, regarding their respective Licensing and Enforcement Programs, including participating every few years in an OSLTCO conference.	Supplemental	Partially Implemented
	51. 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, 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. Require that all new members attend two (2) days of orientation training and offer an optional follow-up day of training to new members within 3 to 6 months of completion of the initial training. Have a representative of DCA participate in the 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. Update the reference materials provided to Board members to include recently completed reviews, evaluations or audits of BVNPT's programs or operations that would be beneficial for purposes of better understanding the Board's historical development and problems currently facing the Board and provide the members with an overview of the information contained in each of these documents.	VII-1 <i>(Modified)</i>	Partially Implemented
	52. In collaboration with DCA, develop and provide BVNPT Board members with a How to Oversee Board Licensing, Education and Enforcement Programs training session and videotape the session so that it can be provided to new Board members on a continuing basis.	Supplemental	Not Implemented
	53. Better define the Enforcement 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 better defining the roles and responsibilities of other Board committees, where necessary.	VII-2	Partially Implemented
	54. 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 matters as determined by the Committee. Assist members in understanding the information that is provided by highlighting trends, ongoing and emerging problems, and changes underway and planned to address these problems and improve Enforcement Program performance.	VII-3 <i>(Modified)</i>	Partially Implemented
	55. Pursue enactment of legislation to provide BVNPT's governing Board with the authority to delegate approval of default decisions to the Executive Officer.	IV-8	Partially Implemented
	56. Update the public documents available from BVNPT's website to include all of the Board's reports to the Legislature related to its March 2017 Sunset Review, all of the Monitor's reports, and other publications and information that should be readily available to all Board members and the public such as BVNPT Strategic Plans and Enforcement Program Quarterly Statistical Reports.	Supplemental	Not Implemented
Licensing and Support	57. To enable prompt identification of emerging problems and potential needs for DCA to conduct more in-depth reviews and evaluations of BVNPT's licensing processes, DCA should request and review monthly statistical reports from BVNPT regarding BVNPT's cashiering and licensing workloads, backlogs and processing times. DCA should request that the monthly statistical reports be provided to DCA within five (5) business days of the end of each month.	Supplemental	Not Implemented
	58. DCA's Internal Audits Office or the Division of Investigation should conduct a follow-up review of BVNPT's Temporary License issuance processes to verify that the measures taken during March to prevent improper issuances of Temporary Licenses remain in place.	Supplemental	Not Implemented

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# I. Introduction

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## I. Introduction

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As the California State Legislature was preparing to complete its Sunset Review of the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) during late-2014 and early-2015, reports surfaced concerning (1) mishandling of complaints and investigations and (2) significant internal organizational conflict and staff morale problems within BVNPT. Additionally, it became apparent that there were inconsistencies in BVNPT's reported Enforcement Program workload and performance metrics.

BVNPT also reported that, in 2011, it had established and staffed a new Investigation Section within its Enforcement Division which it claimed 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 1 ½ years longer than the 18-month timeframe targeted for this measure. By this measure, BVNPT ranked poorly in comparison to other DCA-affiliated Healing Arts Boards.

In response to these developments, representatives of DCA made efforts to encourage BVNPT to utilize Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the DCA 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.

During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess 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. From December 2014 through March 2015, only about 20 cases were assigned to the Division of Investigation. The Task Force report, which also identified four (4) other areas for further study, can be viewed at [www.bvnpt.ca.gov/about\\_us/meetings/materials/20141120\\_12.pdf](http://www.bvnpt.ca.gov/about_us/meetings/materials/20141120_12.pdf).

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 of legislative staff set forth in their 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. Concurrently, DCA began an investigation of the causes of the discrepancies in BVNPT's statistical data.

Over the next two (2) months, five (5) BVNPT executives, managers and supervisors separated from the Board, including:

- ❖ Complaint Unit Supervisor – March 31, 2015
- ❖ Executive Officer (EO) – April 30, 2015
- ❖ Assistant Executive Officer (AEO) – April 30, 2015
- ❖ Chief of Enforcement – April 30, 2015
- ❖ Investigation Section Supervisor – May 29, 2015.

## I. Introduction

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Following the separations of the EO, the AEO and the Chief of Enforcement, the Deputy Director assigned a small team of Division of Investigation investigators and analysts to assist the Board with management of the Enforcement Program and begin reviewing all of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of Investigation. 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 pending cases, including more than 30 cases that had been assigned to the Investigation Section for more than two (2) years. Concurrently, DCA provided an Acting Executive Officer for the Board. Additionally, a new Chief of Enforcement 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 Program 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 Administrative and Enforcement Monitor services specified by AB 179. A contract to provide these was issued to Benjamin Frank LLC on February 29, 2016. 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 sets forth specific responsibilities of the Administrative and Enforcement Program 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 to 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, including adherence to the *Complaint Prioritization Guidelines for Health Care Agencies* established by the Consumer Protection Enforcement Initiative of 2010 (CPEI)
  - Consistency in the application of sanctions or discipline imposed on licensees
  - Staff concerns regarding disciplinary matters or procedures.

## I. Introduction

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AB 179 also requires submission of (1) an *Initial Report* of findings and conclusions by not later than July 1, 2016, (2) interim reports by not later than November 1, 2016 and February 1, 2017, and (3) a *Final Report* by January 1, 2018. Finally, AB 179 requires that the Monitor be available to provide oral reports to DCA, BVNPT and the Legislature, if requested to do so.

DCA's RFO and the contract for Monitor services further define the contents of the four (4) legislatively mandated reports, as follows:

**Report No. 1 (*Initial Report*)** – The scope of the *Initial Report* was expanded to include preliminary recommendations (if any).

**Report No. 2** – AB 179 requirements related to assessment of BVNPT's Enforcement Program and procedures were combined with requirements related to submission of the November 1, 2016 report and the scope of the report was broadened to encompass recommendations for structural or procedural reforms to increase BVNPT's effectiveness.

**Report No. 3** – AB 179 requirements related to assessment of BVNPT's administrative processes were combined with requirements for submission of the February 1, 2017 report and the scope of the report was broadened to encompass (1) the disciplinary components of BVNPT's Enforcement Program and (2) monitoring and measurement of any changes implemented by BVNPT subsequent to the Initial Assessment.

**Report No. 4 (*Final Report*)** – The Monitor is required to integrate all of the previously prepared summaries to produce the *Final Report*.

The remainder of this section summarizes our overall technical approach to providing the prescribed Monitor services. Subsequent sections of the report are organized as follows:

Section	Title
II.	Overview of BVNPT Organization and Staffing
III.	Disruption of the 2015/16 Enforcement Program Turnaround
IV.	Updated Status of the Enforcement Program
V.	Updated Assessment of Enforcement Program Organization and Staffing
VI.	Summary of Targeted Administrative Process Assessments
VII.	Licensing and Support Services.

The report also contains six (6) appendices. **Appendices A and B** provide time series data summaries for BVNPT's case intake and investigation processes and discipline processes, respectively. **Appendix C** provides additional background information pertaining to BVNPT's recent Continuing Education Compliance Audit Project that supplements the information presented in Section IV. **Appendix D** summarizes the major inconsistencies, anomalies and deficiencies that we identified during the first two (2) phases of the project with the availability, completeness and quality of BVNPT's case intake, investigation, and discipline workload, workflow, backlog and performance data. **Appendix E** summarizes our efforts to analyze and correct BVNPT's historical case intake, investigation and discipline workload, workflow, backlog, and performance data to provide meaningful time series data needed to complete our Phase I and II assessments of the Enforcement Program. **Appendix F** contains a copy of a Memorandum from the Director of Consumer Affairs to the President of BVNPT's governing Board, dated August 11, 2017, advising the Board about the assistance that DCA was providing in addressing various problems with BVNPT's Enforcement Program.

# I. Introduction

## A. Updated Overview of Project Approach and Schedule

Our overall approach to providing the prescribed Monitor services was initially organized into the following four (4) major project phases aligned with each of the four (4) reports delineated in AB 179:

Phase I – Diagnostic Review and Initial Assessment

Phase II – In-Depth Research and Assessment of Complaint Intake, Screening and Investigation Processes

Phase III – Administrative and Disciplinary Process Assessments

Phase IV – Ongoing Monitoring and Final Project Report.

Our schedule for completing each of the four (4) major project phases contemplated completion of each phase sequentially by the dates set forth in AB 179 for submission of the various legislatively-mandated reports. However, following completion of the Phase I Diagnostic Review and Initial Assessment and consideration of the limited 3-month timeframe available to complete Phase III, it was jointly determined that the Phase III assessments should be accelerated as much as possible so that the results of the assessments could be included in the Phase II report submitted to the Legislature on November 1, 2016. Conversely, this modified schedule reduced the scope of the assessments completed subsequent to November 1<sup>st</sup> and included in the Phase III report. **Figure I-1**, below, illustrates this revised overall schedule for completing the project.

**Figure I-1. Revised Project Schedule**

Phase	2016											2017				
	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr to Jun	Jul to Sep	Oct to Dec
Phase I - Diagnostic Review and Initial Assessment	■	■	■	■												
Phase II - In-Depth Research and Assessment of Complaint Intake, Screening and Investigation Processes					■	■	■	■	■							
Phase III - Administrative and Disciplinary Process Assessments					■	■	■	■	■	■	■					
Phase IV - Ongoing Monitoring and Final Project Report												■	■	■	■	■

Below we provide a brief overview of the work performed as part of each project phase.



## I. Introduction

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### Phase I – Diagnostic Review and Initial Assessment

Our Phase I efforts initially focused on meeting with DCA’s Director, Chief Deputy Director, and Project Manager, BVNPT’s former Acting Executive Officer, BVNPT’s Executive Officer and Chief of Enforcement at that time, and designated others to review our overall approach and schedule for performing the engagement. Additionally, we collected and reviewed available background information, including historical organizational charts and staffing data, and scheduled and conducted interviews with all BVNPT executives, managers and supervisors and all Enforcement Program staff. We also scheduled and conducted interviews with representatives of DCA’s Division of Investigation, legislative oversight committees, and two recently retired DCA executives (the former Director of DCA and the former Deputy Director of DCA’s Division of Investigation and Enforcement Programs). We also conducted a number of follow-up interviews with Enforcement Program management and staff and others, as appropriate.

As part of Phase I we collected and summarized several sets of available Enforcement Program workload, workflow, backlog, performance, and investigation and disciplinary outcome statistical data summaries and recaps. Following review with DCA’s Project Manager and BVNPT’s Executive Officer and Chief of Enforcement, it was determined that none of the available data summaries and recaps could be relied upon for purposes of supporting completion of the Initial Assessment. Instead, we requested and were provided with 18 sets of original data extracts from BVNPT’s Complaint Tracking System, commonly known as CAS (Consumer Affairs System), covering the 5 ½ year period extending from July 2010 through December 2015, that we could utilize to develop a consistent set of initial time series data recaps and summaries for a broad range of core Enforcement Program workload, workflow, backlog, outcome and performance indicators. In total, more than 120,000 CAS data records were obtained, sorted, filtered, compiled and summarized to support completion of the Initial Assessment.

Additionally, as part of Phase I we worked collaboratively with DCA’s Project Manager and BVNPT’s Executive Officer and Chief of Enforcement to identify and frame a set of 10 key issues related to BVNPT’s complaint intake, screening, investigation, and disciplinary action processes, and specified administrative processes as delineated in AB 179. It was anticipated that these issues would be further assessed during subsequent project phases.

As part of Phase I, during March 2016 we prepared and disseminated a confidential survey to all of the members of BVNPT’s governing Board to obtain their input regarding each of the following topics:

- ❖ Governing Board structure, size and composition
- ❖ Board Committees
- ❖ Board meeting structure and effectiveness
- ❖ Disciplinary decisions
- ❖ Effectiveness of training and support
- ❖ Legislative affairs and relations.

Nine (9) Board members completed the survey. It was anticipated that the survey responses would be compiled, analyzed and summarized for inclusion in a subsequent phase report.

## I. Introduction

A draft of the *Initial Report*, summarizing results of the Initial Assessment, was prepared and submitted to DCA’s Project Manager and BVNPT’s Executive Officer and Chief of Enforcement for their review. Required modifications resulting from this review were then incorporated and the report was prepared in final form. During June 2016, the *Initial Report* was presented to BVNPT’s governing Board and the Board was provided an opportunity to submit comments regarding the report. The *Initial Report*, including the Board’s comments, was submitted to the Legislature on July 1, 2016.

### Phases II/III – Case Intake, Investigation, Discipline and Targeted Administrative Process Assessments

During June 2016, in consultation with DCA’s Project Manager and BVNPT’s Executive Officer and Chief of Enforcement, we prepared an integrated *Work Plan and Schedule* for concurrently completing Phase II and significant portions of Phase III so as to minimize the scope of the reviews and analyses that would need to be completed during November and early-December 2016. **Figure I-2**, below, and **Figure I-3**, on the next page, identifies the major tasks to be completed as part of Phases II and III, respectively, and the initially planned schedules for completing these tasks.

**Figure I-2. Phase II Project Schedule**

Phase II Tasks	2016												2017			
	Jun		Jul		Aug		Sep		Oct		Nov		Dec		Jan	
	30	15	31	15	31	15	30	15	31	15	30	15	31	15	31	
Task II-1 - Phase II Project Management and Administration																
Task II-2 - Schedule and Conduct Additional Interviews																
Task II-3 - Conduct Additional Research and Analyses of Case Initiation/Intake, Investigation Assignment and Selected Discipline Processes																
Task II-4 - Conduct High-Level Integrated Assessment of BVNPT Enforcement Division Workload, Workflow, Staffing and Organization																
Task II-5 - Collect, Compile, Summarize and Analyze Updated Enforcement Program Workload, Workflow and Performance Data																
Task II-6 - Complete Phase II Analyses, Develop Recommendations for Improvements, and Prepare Phase II Summary Report and Updated Phase III Work Plan and Schedule																

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Figure I-3. Phase III Project Schedule

Phase III Tasks	2016												2017				
	Jun		Jul			Aug		Sep		Oct		Nov		Dec		Jan	
	30	15	31	15	31	15	30	15	31	15	30	15	31	15	31		
Task III-1 - Phase III Project Management and Administration																	
Task III-2 - Analyze Responses to Survey of Governing Board Members, Complete Related Analyses and Summarize Results																	
Task III-3 - Assess Other Specified Administrative Processes																	
Task III-4 - Collect, Compile, and Summarize Disciplinary Process and Outcome Data																	
Task III-5 - Assess Disciplinary System and Processes																	
Task III-6 - Collect, Compile, Summarize and Analyze Updated Enforcement Program Workload, Workflow and Performance Data																	
Task III-7 - Complete Phase III Analyses, Develop Recommendations for Improvements, and Prepare Phase III Summary Report and Phase IV Work Plan and Schedule																	

 Denotes ongoing task.

On June 28, 2016, we submitted a draft *Summary of Board Member Survey Responses* to DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement for review. Subsequently, during the next several months, most Phase II and Phase III tasks were completed consistent with the above schedules, except that some Phase III tasks that were expected to be completed after submission of the *Second Report* were further accelerated and substantially completed concurrent with the completion of Phase II. On September 23, 2016, we submitted a complete *Initial Draft Second Report*, including Appendix A (*Summary of Board Member Survey Responses*) and a *Sample Q4 2015/16 Enforcement Program Workload and Performance Report* to DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement for review. An *Initial Draft Executive Summary of the Second Report* was submitted a few days later on September 27, 2016.

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On September 29 and 30, 2016, we met with DCA's Project Manager and BVNPT's Executive Officer, Chief of Enforcement and Supervising Nurse Education Consultant to review the *Initial Draft Second Report* and the accompanying *Executive Summary* and *Sample Q4 2015/16 Enforcement Program Workload and Performance Report*. During the September 30, 2016, review meeting, BVNPT's Executive Officer argued strongly that the Board member survey response information (Appendix A) should be excluded completely from the *Second Report* because the information was incorrect and outdated, and would be confusing to readers because it was not sufficiently clear that the responses did not reflect Leadership Team and other changes that had occurred during the preceding 6-month period. Additionally, the Executive Officer argued that the survey responses should be replaced with Board member responses to a separate survey that the Executive Officer had more recently completed separate from the Monitor Project. Due to concern that including the Board member survey response information could potentially serve as a distraction from the findings, conclusions, recommendations and other information contained in the *Second Report*, we decided to publish the *Second Report* in final form without Appendix A which provided the Board Member Survey response information.

On October 21, 2016, we presented the *Second Report* to BVNPT's governing Board and provided the Board with an opportunity to ask questions about or provide comments regarding the report. The *Second Report* was submitted to the Legislature on November 1, 2016, without any accompanying comments from the Board which it declined to provide.

Two weeks later, on November 4, 2016, we again appeared before the Board to respond to any additional questions or comments that the members had regarding the *Second Report*. During the meeting some members asked about the reporting of their responses to the first and second Board member surveys. In response to the members' comments and questions, we advised the Board that we would not publish their responses to the second Board Member Survey conducted by the Executive Officer separate from the Monitor Project and offered to fulfill our previous commitment to publish a summary of their responses to the confidential survey that we had conducted during Phase I. Several members made comments in support of being provided with a summary of the survey responses and none of the members made comments in opposition to our publication of such a summary.

Subsequently, we modified the previously prepared draft *Summary of Board Member Survey Responses* (Appendix A) to include directly related survey background information contained in Section VII of the *Second Report*. Additionally, in an effort to address BVNPT's concerns related to the publication of the survey response summary information, we modified the summary to further clarify when the survey was conducted and the time periods to which the survey response information was applicable. Finally, we prepared an *Addendum to the Second Report*, dated November 14, 2016, which provided a summary of the Board member responses to the confidential survey and, on November 16, 2016, provided copies of the *Addendum* to BVNPT's Executive Officer, DCA's Contract Manager, the Business, Consumer Services and Housing Agency's Director of Legislation, and staff representing the Assembly Speaker's Office, the Assembly Committee on Business and Professions, and the Senate Committee on Business, Professions and Economic Development.

During November and December 2016 we substantially completed the few remaining Phase III tasks that were not already substantially completed during Phase II. Initially, our efforts focused on conducting additional targeted assessments in the following

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three (3) areas specifically referenced in AB 179:

- ❖ Staff hiring and training procedures
- ❖ Oversight of staff work
- ❖ Evaluation of staff performance.

These additional targeted assessments focused primarily on areas other than the Enforcement Division where the assessments of these areas had already been substantially, or fully, completed (e.g., needs for completion of periodic case review meetings with Investigation Section staff and completion of Individual Development Plans and Annual Performance Reviews for all Enforcement Division management and staff during the 2016/17 fiscal year).

A primary focus of our Phase III efforts was expected to involve collecting, compiling, summarizing and analyzing additional case intake, investigation and discipline workload, workflow, backlog and performance data for the 3-month period extending from July 1 through September 30, 2016. We also planned to complete targeted verifications of key workload, workflow, backlog and performance metrics presented previously in the *Second Report* for the preceding 6-month period (from January 1 through June 30, 2016) to determine whether any BreEZe programming changes or data clean-ups subsequently completed by BVNPT materially impacted the results of our previously completed analyses or any related findings, conclusions, or recommendations for improvements. These data collection and analysis efforts were also expected to be used to support further assessment of the impacts of the various changes implemented by BVNPT to improve Enforcement Program performance, including recommendations for improvement presented previously in the *Second Report*.

To support completion of the above analyses, we prepared and submitted an *Initial Phase III Data Request* to BVNPT on October 28, 2016. As directed by BVNPT, the request was submitted to BVNPT's Executive Officer. As part of the request we indicated that, due to the short time frame available to complete Phase III, the requested data needed to be provided to us by not later than November 18, 2016. Subsequently, BVNPT's Executive Officer provided assurances that the requested data would be provided on a timely basis consistent with our request. However, over the next two (2) weeks, almost none of the requested data was provided. Concurrently, Senate Business, Professions and Economic Development Committee staff scheduled a meeting for November 16, 2016, to address various issues and concerns regarding AB 179 requirements that the Board cooperate in providing data and information to the Monitor. During this meeting, an agreement was reached whereby:

- ❖ DCA would prepare the requested BreEZe data extracts and BVNPT would provide requested data in other areas, including Probation Program data, Continuing Education compliance audit activity data and reports, and Weekly and Monthly Enforcement Statistical Reports.
- ❖ The due date for BVNPT's provision of all *Initial Phase III Data Request* data to the Monitor would be extended by two (2) weeks to December 2, 2016.
- ❖ The due date for DCA's submission of the *Third Report* to the Legislature would be extended by two (2) weeks to February 13, 2017.

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DCA's Office of Information Services (OIS) provided BVNPT with all but two (2) of 33 requested BreEZe data extracts on or before November 22, 2016, and then provided BVNPT with the remaining BreEZe data extracts on December 1, 2016. BVNPT provided us with all of the requested BreEZe data extracts on Friday, December 2, 2016. Subsequently, due to various deficiencies with the completeness and quality of some of the data contained in some of the BreEZe data extracts provided to us, on December 27, 2016 we submitted a *Supplemental Phase III Data Request* for two (2) additional standard BreEZe data extracts. The additional data extracts were provided to us on December 29, 2016. Finally, our October 28, 2016 *Initial Phase III Data Request* included a request for a limited set of Probation Program workload and performance data. However, as of late-December 2016, almost none of the Probation Program data that we requested was provided. Consequently, we were unable to complete an updated assessment of BVNPT's Probation Program.

Additionally, to support completion of the above analyses, on November 10, 2016 we submitted a request to BVNPT's Executive Officer to schedule interviews with selected BVNPT managers, supervisors and staff on Monday, November 21, 2016. Subsequently, due to miscommunications regarding the scheduling of these interviews and continuing delays in receiving the requested Phase III data, we elected to reschedule these interviews for a later date. Subsequently, on December 7 and 8, 2016, we completed individual interviews with 18 Enforcement Division managers and staff, four (4) current or former supervisors and managers of BVNPT's Licensing and Administration business units, BVNPT's Executive Officer and Acting Assistant Executive Officer, and three (3) other specialist staff. With one (1) exception, all of these interviews were conducted at BVNPT's offices. A representative of the Business, Consumer Services and Housing Agency attended all of the on-site interviews as an observer. One (1) additional interview with the Acting Supervisor of the Licensing Support Unit was subsequently conducted by telephone.

A draft of the *Third Report* was prepared and submitted for review to DCA's Project Manager and BVNPT's Executive Officer on January 16, 2017. The Executive Officer elected to provide the draft *Third Report* two (2) representatives of BVNPT's governing Board. On January 20, 2017 we met with BVNPT's Executive Officer, the two (2) representatives of BVNPT's governing Board, BVNPT's Acting Assistant Executive Officer and the managers of BVNPT's Licensing and Administration business units to review the draft *Third Report*. DCA's Chief Deputy Director attended the meeting as an observer. During the meeting BVNPT's Executive Officer disputed various findings and conclusions stated in the report, but provided no supporting information, data or documentation. Because the review was not completed within the allotted time, we provided BVNPT with the opportunity to submit additional comments and supporting information, data, or documentation, but no additional comments were provided. Instead, on January 26, 2017, BVNPT's Executive Officer advised us that "The Board will respond to the Final Report to the Legislature under separate cover." On January 27, 2017, BVNPT's Executive Officer began an extended Leave of Absence. On January 30, 2017, we submitted the *Third Report* in final form to DCA's Project Manager and, on January 31, 2017, we emailed the final *Third Report* to BVNPT's Acting Assistant Executive Officer and each of the members of BVNPT's governing Board.

On February 8, 2017, we presented the *Third Report* to BVNPT's governing Board and provided the Board with an opportunity to ask questions or provide comments regarding the report. On February 13, 2017, the *Third Report* was submitted to the Legislature without any Board comments which it declined to provide.

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### Phase IV – Ongoing Monitoring and Final Project Report

Our efforts during Phase IV were expected to be limited during the first half of 2017 to responding to questions and providing briefings or presentations as part of the Legislature’s 2017 Sunset Review process. Additionally, we expected to:

- ❖ Conduct a limited number of additional targeted reviews and assessments
- ❖ Interview representatives of the California Department of Public Health (CDPH) to gather additional information related to their enforcement case referrals
- ❖ Continue monitoring BVNPT’s Enforcement Program performance and the impact of changes implemented by BVNPT
- ❖ Continue monitoring the status of BVNPT’s implementation of the recommendations made during earlier project phases.

During the second half of CY2017 we expected that our efforts would focus on preparing a *Final Report* summarizing results of analyses completed throughout the project and providing final findings, conclusions and recommendations for improvements pertaining to BVNPT’s Enforcement Program effectiveness and efficiency, disciplinary system and procedures and specified administrative processes.

However, as discussed in Section III (*Disruption of the 2015/16 Enforcement Program Turnaround*), as BVNPT’s March 2017 Sunset Review Hearing was getting underway, evidence of significant new problems involving BVNPT’s Enforcement Program began to surface. Subsequently, during April and May, additional evidence surfaced involving potential problems in other areas. Concurrently, BVNPT’s Enforcement Committee requested that we resume working collaboratively with Enforcement Division staff to reconcile differences between the statistical data and characterizations of enforcement-related workload, backlogs and performance provided by BVNPT staff to the Board and reported by the Monitor. In response to these circumstances and the Committee’s request, DCA approved an amendment to the Monitor contract that enabled provision of additional reviews of BVNPT’s enforcement-related data capture and reporting processes along with additional assessments of BVNPT’s case intake, investigation, and discipline processes. During May, June and early-July 2017, we substantially completed most of this additional work. Results of these efforts led to a second intervention by the Department of Consumer Affairs and DCA’s Division of Investigation, beginning during mid-July, to correct the critical problems that were identified and restore proper functioning to the Board’s Enforcement Program.

On November 20, 2017, we submitted the draft *Final Report* to DCA’s Project Manager, the Division of Investigation’s Enforcement Support Supervising Investigator, and BVNPT staff for review. On November 29, 2017, we met with DCA’s Project Manager, the Division of Investigation’s Enforcement Support Supervising Investigator, and BVNPT staff to review the draft *Final Report*. On December 1, 2017, we submitted the *Final Report* in final form to DCA’s Project Manager, BVNPT’s Interim Executive Officer and Chief of Enforcement, and to the members of BVNPT’s governing Board.

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

Summaries of significant inconsistencies, anomalies, and constraints identified with BVNPT's historical CAS and BreEZe data during Phases I and II of the project, the effects of these problems on BVNPT's reported Enforcement Program workload, workflow, backlog and performance metrics, and their impacts on the completion of research and analysis of the BVNPT's Enforcement Program were provided previously in the *Initial Report* dated June 10, 2016 (see Section I-E), the *Second Report* dated October 12, 2016 (see Section I-B), and the *Third Report* dated January 30, 2017 (see Section I-C). **Appendix D** provides a summary of this same information.

### C. Data Gathering, Analysis and Reporting

Throughout the first two phases of this project, from March through late-September 2016, we worked collaboratively with Enforcement Division management and staff to (1) gather record-level Enforcement Program workload, workflow, backlog, and performance data from periods both before and subsequent to BVNPT's conversion from CAS to BreEZe at the start of 2016 and (2) identify and correct problems with the data. These efforts supported fulfillment of the requirements of AB 179 while concurrently enabling BVNPT staff to begin providing BVNPT's governing Board, DCA, oversight and control agencies, the Legislature and the public with valid and reliable workload, backlog and performance data needed for purposes of determining the status of the Enforcement Program and the nature and magnitude of any program performance deficiencies and improvement needs, all of which helps to support fulfillment of the Board's consumer protection mission. **Appendix E** provides a summary of the purposes and benefits realized from this collaboration. During Phase III of the project and continuing until May 2017, collaboration in these areas was limited. Collaboration in these areas resumed in June 2017 to enable completion of the previously discussed additional reviews of BVNPT's enforcement-related data capture and reporting processes along with additional assessments of BVNPT's case intake, investigation, and discipline processes.



## II. Overview of BVNPT Organization and Staffing

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## II. Overview of BVNPT Organization and Staffing

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**Exhibit II-1**, on the next page, illustrates BVNPT's overall organizational structure, reporting relationships and workforce allocations as of mid-July 2017. BVNPT's July 2017 authorized staffing included 69 budgeted permanent full-time positions, several budgeted part-time positions, and 10.5 positions funded from blanket expenditure authorizations, including

- ❖ Two (2) full-time positions
- ❖ One (1) permanent intermittent (PI) position that is limited to working 1,500 hours per year
- ❖ One (1) half-time position
- ❖ Seven (7) retired annuitant (RA) positions that are limited to working 960 hours per year.

With a few exceptions, BVNPT staff are cross-trained and utilized to support both the VN and the PT Programs.

As shown by Exhibit II-1, BVNPT's Executive Management Team consists of just two (2) positions (an Executive Officer and an Assistant Executive Officer). However, the Assistant Executive Officer (AEO) position has not been filled on a permanent basis since May 1, 2015. The position has been vacant throughout this entire 2½ year period except from late-October 2016 to late-May 2017 when BVNPT's Supervising Nurse Education Consultant (SNEC) was appointed as Acting AEO, thereby leaving the SNEC position vacant. However, during most of this latter period, from late-January through late-May 2017, BVNPT's Executive Officer (EO) was on an extended Leave of Absence leaving the SNEC (Acting AEO) as the sole functioning member of BVNPT's Executive Management Team. Subsequently, in late-May 2017, BVNPT's EO, who had just joined BVNPT in March 2016, resigned and the SNEC was appointed as Interim EO, leaving both the AEO and the SNEC positions vacant. In summary, for most of the past 2½ years only one (1) of BVNPT's two (2) top leadership positions has been filled and, during most of this period, that solo position was temporarily filled through either an Acting or Interim appointment.

In our *Initial Report* we noted that BVNPT's Licensing and Administration Division had only two (2) authorized management and supervisory positions, both of which were filled. We also noted that these two (2) positions were overseeing and managing the services provided by about 30 subordinate staff and that the spans of control of these positions were larger than what is typically seen in the California State Government environment, or at comparable regulatory agencies, especially given the Division's diverse range of Licensing Program and administrative support service responsibilities. During early-2016/17, the Licensing and Administration Division was divided into the following two (2) smaller sections:

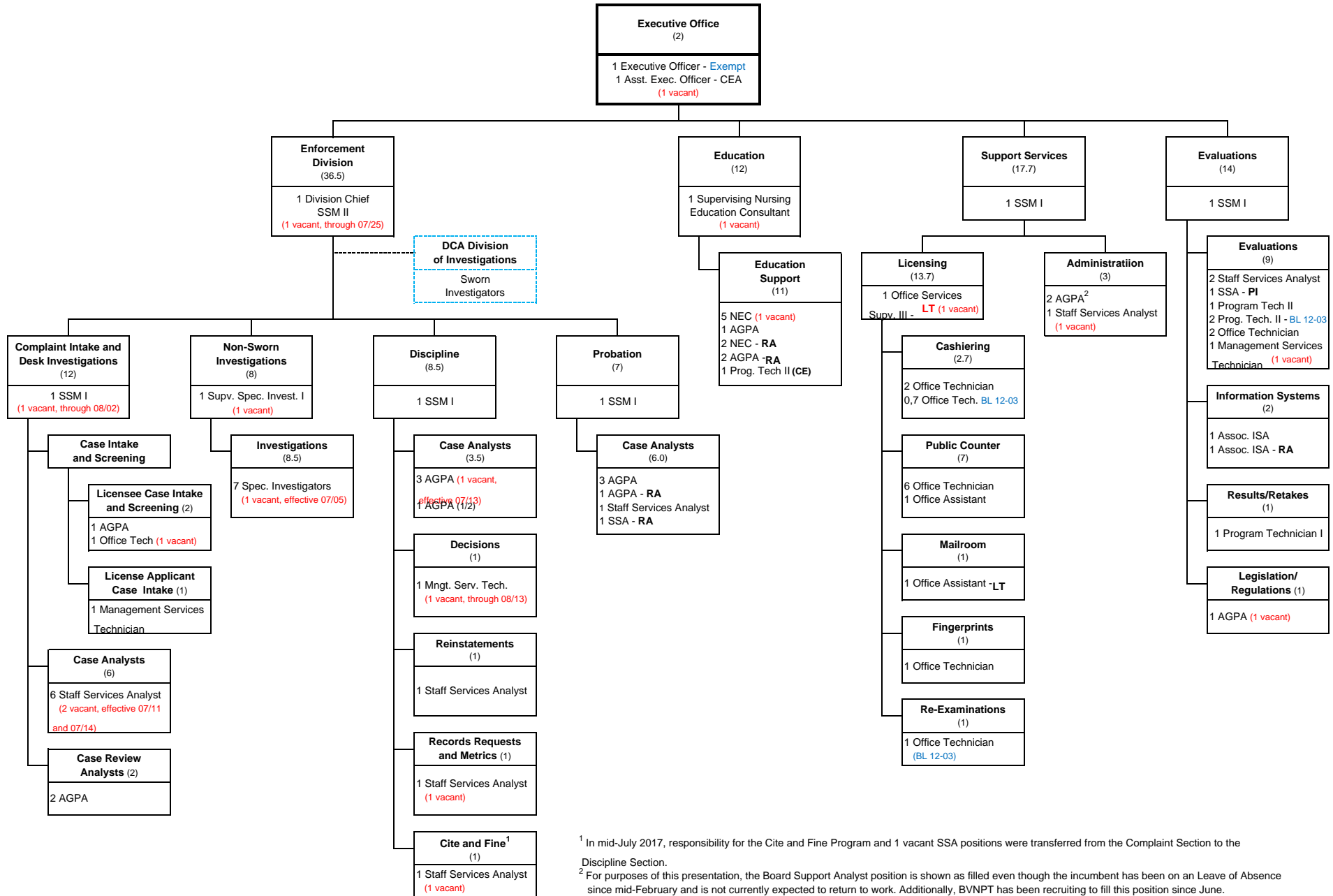
**Support Services Section** – This section was assigned responsibility for various general office support services, including cashiering, public counter, and mailroom services, along with some general administrative support services, such as budgeting, human resources, and Board support services. During early-2016/17, nearly 18 positions were allocated to the Support Services Section, including one (1) Section Manager (an SSM I) and one (1) subordinate Office Services Supervisor III (OSS III).

**Evaluations Section** – This section was assigned responsibility for license application and renewal services, information systems support services, and legislative/regulations support services. During early-2016/17, fourteen (14) positions were allocated to the Evaluations Section, including one (1) Section Manager (an SSM I).

This organizational restructuring added one (1) new Staff Services Manager I (SSM I) position, but the position was not filled until May 2017. This appointment could have bolstered management and supervision of subordinate staff except that the Support Services Section's OSS III was concurrently appointed for a 2-year period to a vacant Budget Analyst position. This temporary appointment left the OSS III position vacant.

## Overview of BVNPT Organization and Staffing - Mid-July 2017

Total Positions, Including 10.5 Blanket Positions = 82.2, Including 18 Vacant Positions



<sup>1</sup> In mid-July 2017, responsibility for the Cite and Fine Program and 1 vacant SSA positions were transferred from the Complaint Section to the Discipline Section.

<sup>2</sup> For purposes of this presentation, the Board Support Analyst position is shown as filled even though the incumbent has been on an Leave of Absence since mid-February and is not currently expected to return to work. Additionally, BVNPT has been recruiting to fill this position since June.

## II. Overview of BVNPT Organization and Staffing

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Consequently, there has not been any increase in the number of staff available to manage and supervise BVNPT's licensing and administration business units. Also, because the current Budget Analyst can potentially return to the OSS III position, BVNPT is attempting to fill the OSS III position on a limited term basis, which could be difficult. As of mid-October 2017 the vacant OSS III position had not been filled.

As shown by Exhibit II-1, BVNPT also has an Education Office with 12 allocated positions, including the SNEC position. As discussed previously, during October 2016 the SNEC was appointed as the Acting AEO and, in late-May 2017, was appointed Interim EO. Consequently, the SNEC position has been vacant for a full year. Because the current Interim EO can potentially return to the SNEC position, BVNPT is attempting to fill the SNEC position on a 1-year limited term basis, which could be difficult. As of mid-October the SNEC position had not been filled.

Throughout the past year the SNEC continued to manage the Education Office and supervise Education Office staff while concurrently serving as either Acting AEO or Interim EO. Subsequently, in late-September the incumbent began an extended leave of absence leaving all three (3) of these key Leadership and Management Team positions vacant. As of mid-October, BVNPT's governing Board had not taken any effective action to address this vacuum in BVNPT's Leadership and Management Team structures.

In our *Third Report* we noted that, during late-2016, BVNPT made a relatively large number of out-of-class assignments involving positions allocated to the Executive Office, Education, and Licensing and Administration business units, including all of the following:

**Acting Assistant Executive Officer (AEO)** – As discussed previously, during October 2016 BVNPT appointed the SNEC to serve as Acting AEO. In this capacity the incumbent continued to manage and supervise a group of about 10 Education Office staff in addition to overseeing BVNPT's Licensing and Administration business units. The Acting AEO assignment continued through late-May 2017 when the incumbent was appointed Interim EO.

**Support Services Section Acting Staff Services Manager I (SSM I)** – After experiencing difficulty filling this newly created position, in mid-September 2016 an Associate Government Program Analyst (AGPA) that was responsible for providing support services to BVNPT's governing Board was appointed to serve as an Acting SSM I for the new Support Services Section with responsibility for BVNPT's Public Counter, Cashiering, Business Services (e.g., mail and supplies procurement), Fingerprinting, and Administration Units. This temporary (4-month) out-of-class assignment expired on January 9, 2017 at which point the incumbent returned to their prior Board Support Analyst position.

**Acting Legislation/Regulations (Leg/Reg) Analyst and Acting Office Services Supervisor III (OSS III)** – During early-December 2016 an OSS III that was responsible for supervising BVNPT's Public Counter, Cashiering, Business Services and Fingerprinting Units was appointed to serve as an Acting Leg/Reg Analyst. Concurrently, an Office Technician (OT) that was responsible for providing public counter and business services (e.g., mail and supplies procurement) was appointed to serve as Acting OSS III to supervise the Public Counter, Cashiering, Business Services, and Fingerprinting Units. After these temporary (4-month) assignments expired, both incumbents returned to their prior positions.

Collectively, the above assignments temporarily boosted the total number of positions involved in managing and supervising staff assigned to BVNPT's Education, Licensing and Administration business units by one (1) position for a limited period of time. However, as we pointed out in our *Second Report*, the potential benefits of these short-term assignments can be partially, or fully, offset by (1) the temporary nature of the out-of-class assignments, (2) reductions in the number of staff available to provide various licensing and administration services, and (3) disruption

## II. Overview of BVNPT Organization and Staffing

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caused by shifting staff back and forth between various positions. In summary, BVNPT's utilization of short-term out-of-class assignments to temporarily fill vacant supervisory and management positions, while possibly providing the appearance of organizational, managerial and staffing improvements, was not a substitute for filling the positions on a permanent basis.

Finally, the OSS III, SNEC and AEO positions are all currently vacant. Additionally, the Interim EO is now on an extended leave of absence. Collectively, these vacancies have left a significant leadership and management vacuum over several of the Board's major business units. The only remaining Education, Licensing and Administration business unit managers are two (2) relatively new, first level managers. However, as of mid-October 2017, no meaningful or effective action had been taken by BVNPT's governing Board to bolster management and oversight of BVNPT's Education, Licensing and Administration business units.

Finally, historically, nearly one-half of all BVNPT positions have been allocated to the Enforcement Division. Currently, about 36 of BVNPT's 82 positions are allocated to the Enforcement Division, including a Division Chief and four (4) subordinate Section Managers. However, by June 2017, all but one (1) of the Division's management positions were vacant, including:

**Chief of Enforcement (SSM II)** – The incumbent began a leave of absence during October 2016 and then separated from BVNPT in late-January 2017. This position was vacant for six (6) months before being filled on July 26, 2017.

**Discipline Section Manager (SSM I)** – This new position was established in early-2017 following the December 2016 reassignment of the Discipline and Probation Section Manager to just the Probation Unit. The Discipline Section Manager position was vacant for six (6) months before being filled on July 13, 2017.

**Complaint Section Manager (SSM I)** – The incumbent separated from BVNPT in mid-March 2017. This position was vacant for more than four (4) months before being filled on August 2, 2017.

**Investigation Section Manager (Supervising Special Investigator)** – The incumbent separated from BVNPT in mid-May 2017. The position has already been vacant for about five (5) months. BVNPT is currently recruiting to fill this position.

BVNPT's overall organizational structure is similar to that of other comparable regulatory agencies. However, it is more common to see nearly all (or all) of an agency's fiscal (budgeting, accounting and cashing), contracting and procurement, human resource, information technology and other general administrative and support services (legislation and regulations, Board support, mail, etc.) grouped together and separated organizationally from the agency's program-focused licensing, education, and enforcement business units. In contrast, BVNPT's IT support and Leg/Reg Analyst positions are organizationally separate from the Budget Analyst, Board Support and HR Liaison positions.

During periods prior to BVNPT's 2014/15 Sunset Review, BVNPT experienced especially high vacancy rates, particularly within its Education, Licensing, and Administration business units where vacancy rates regularly exceeded 25 percent. Subsequently, many of BVNPT's vacant positions were filled which reduced total vacancies to 8.5 positions by December 2015, equivalent to an overall vacancy rate of about 13 percent. However, during 2016 staff turnover increased and, as of December 2016, overall vacancy rates rose to about 17 percent. Subsequently, staff turnover increased further and, as shown by Exhibit II-1, by mid-July 2017 BVNPT had 18 vacant positions scattered throughout the organization (equivalent to an overall vacancy rate in excess of 20 percent). The Enforcement Division had an especially high vacancy rate (greater than 30 percent). Additionally, as of mid-July, only five (5) of BVNPT's 11 authorized management and supervisory positions

## II. Overview of BVNPT Organization and Staffing

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were filled and only two (2) of the Enforcement Division's five (5) authorized management positions were filled. Subsequently, during the next several months, several Enforcement Division positions were filled through outside recruitments and other positions were filled through internal promotions of staff from other business units. Concurrently, some Enforcement Division staff were internally promoted to other business units. The internal promotions have no net impact on BVNPT's overall vacancy rate which, as of mid-October 2017, remained at a relatively high level (about 20 percent).

The remainder of this section provides additional information regarding staff turnover, vacancies and recruiting activity currently underway in each of BVNPT's major business units. The section is organized as follows:

### Title

- Section**
- A. Overview of Executive, Education, and Licensing and Administration Business Unit Organization and Staffing
  - B. Overview of Enforcement Division Organization and Staffing.

Some of the factors contributing to BVNPT's continuing problems with high staff turnover and elevated vacancy rates are further discussed in Section VI (*Summary of Targeted Administrative Process Assessments*).

### A. Overview of Executive, Education and Licensing and Administration Business Unit Organization and Staffing

**Exhibit II-2**, on the next two pages, provides a summary of authorized, filled, and vacant positions from 2012/13 through mid-July 2017 for BVNPT's Executive Office, Education and Licensing and Administration business units. As shown by Exhibit II-2, during periods prior to BVNPT's 2014/15 Sunset Review, BVNPT typically had 1 or 2 vacant Nurse Education Consultant (NEC) positions plus about eight (8) vacant analytical and clerical support positions within various Licensing and Administration Division business units. Subsequently, BVNPT reduced these vacancies, but overall vacancy rates among BVNPT's Licensing and Administration business units remained at elevated levels. As of mid-July 2017, the following eight (8) positions within BVNPT's Executive Office, Education Division, and Licensing and Administration business units were vacant:

**1 Assistant Executive Officer (AEO)** – As discussed previously, the AEO position has not been filled on a permanent basis since May 1, 2015 when the incumbent separated from BVNPT following the Board's 2015 Sunset Review.

**1 Supervising Nurse Education Consultant (SNEC)** – As discussed previously, the SNEC position has been vacant since October 2016 when the SNEC was appointed as Acting AEO.

**1 Nurse Education Consultant (NEC)** – This is one (1) less NEC vacancy than BVNPT had previously. During the latter half of 2016, BVNPT hired three (3) NECs. Concurrently, two (2) NECs separated from BVNPT. Where supported, BVNPT now attempts to obtain approval of "above minimum" starting salaries for newly hired NECs. Additionally, BVNPT now allows the NECs to work from their homes (referred to as "alternative staff headquarters designations"). These changes appear to have helped BVNPT to successfully recruit new NECs. It is unclear at this time whether these changes will also help to improve NEC retention. BVNPT is currently recruiting to fill the vacant NEC position.

**Historical Overview of Executive, Education and Licensing and Administration Business Unit Staffing<sup>1</sup>**

Business Unit / Positions		Authorized Positions						Filled Positions						Vacant Positions							
		2012/13	2013/14	2014/15	2015/16	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17		
<b>Total Executive Office, Education, and Licensing and Administration Positions</b>		<b>32.0</b>	<b>32.0</b>	<b>37.5</b>	<b>38.0</b>	<b>38.7</b>	<b>38.2</b>	<b>25.0</b>	<b>20.0</b>	<b>27.5</b>	<b>30.0</b>	<b>31.7</b>	<b>32.2</b>	<b>7.0</b>	<b>12.0</b>	<b>10.0</b>	<b>8.0</b>	<b>6.0</b>	<b>6.0</b>		
<b>Vacancy Rate, Excluding Temporary Help Blankets</b>													<b>22%</b>	<b>38%</b>	<b>27%</b>	<b>21%</b>	<b>16%</b>	<b>16%</b>			
Executive Office	PERM	Executive Officer	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								
		Assistant Executive Officer	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0						1.0	1.0	1.0			
	<b>Total Executive Office</b>		<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>			<b>1.0</b>	<b>1.0</b>	<b>1.0</b>		
Education	PERMANENT	Supervising Nurse Education Consultant	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0							1.0		
		Nurse Education Consultant	3.0	3.0	5.0	5.0	5.0	5.0	1.0	1.0	4.0	3.0	4.0	4.0	2.0	2.0	1.0	2.0	1.0	1.0	
		Assoc. Government Program Analyst					1.0	1.0					1.0	1.0							
		Program Technician II					1.0	1.0					1.0	1.0							
		Management Services Technician	1.0	1.0	1.0	1.0			1.0		1.0					1.0		1.0			
<b>Total Education</b>		<b>5.0</b>	<b>5.0</b>	<b>7.0</b>	<b>7.0</b>	<b>8.0</b>	<b>8.0</b>	<b>3.0</b>	<b>2.0</b>	<b>6.0</b>	<b>4.0</b>	<b>7.0</b>	<b>6.0</b>	<b>2.0</b>	<b>3.0</b>	<b>1.0</b>	<b>3.0</b>	<b>1.0</b>	<b>2.0</b>		
Licensing and Administration	Management and Supervision	Management - Staff Services Manager I	1.0	1.0	1.0	1.0	2.0	2.0			1.0	1.0	1.0	2.0	1.0	1.0			1.0		
		Supervision - Office Services Supervisor and Supervising Program Technician	2.0	2.0		1.0	1.0	1.0	1.0			1.0	1.0			1.0	2.0				1.0
	<b>Total Management and Supervision</b>		<b>3.0</b>	<b>3.0</b>	<b>1.0</b>	<b>2.0</b>	<b>3.0</b>	<b>3.0</b>	<b>1.0</b>	<b>0.0</b>	<b>1.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>3.0</b>			<b>1.0</b>	<b>1.0</b>	
	Public Counter	PERM	Office Technician	3.0	3.0	3.0	3.0	5.0	7.0	1.0		1.0	3.0	4.0	7.0	2.0	3.0	2.0		1.0	
		<b>Total Public Counter Unit</b>		<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>5.0</b>	<b>7.0</b>	<b>1.0</b>	<b>0.0</b>	<b>1.0</b>	<b>3.0</b>	<b>4.0</b>	<b>7.0</b>	<b>2.0</b>	<b>3.0</b>	<b>2.0</b>		<b>1.0</b>	
	Mail Room	PERM	Office Technician / Office Assistant	1.0	1.0	1.0	1.0	2.0			1.0		1.0	2.0			1.0				
		LT	Office Assistant					1.0	0.5					1.0	0.5						
	<b>Total Mailroom Unit</b>		<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>3.0</b>	<b>0.5</b>	<b>1.0</b>	<b>0.0</b>	<b>1.0</b>	<b>1.0</b>	<b>3.0</b>	<b>0.5</b>		<b>1.0</b>					
	Cashiering	PERM	Office Technician	4.0	4.0	5.5	6.0	2.7	2.7	4.0	3.0	3.5	4.0	2.7	2.7		1.0	2.0	2.0		
		<b>Total Cashiering Unit</b>		<b>4.0</b>	<b>4.0</b>	<b>5.5</b>	<b>6.0</b>	<b>2.7</b>	<b>2.7</b>	<b>4.0</b>	<b>3.0</b>	<b>3.5</b>	<b>4.0</b>	<b>2.7</b>	<b>2.7</b>		<b>1.0</b>	<b>2.0</b>	<b>2.0</b>		
Results/ Re-exams	PERM	Program Tech. I / Staff Services Analyst	1.0	1.0	1.0	1.0	1.0	2.0	1.0	1.0	1.0	1.0	2.0								
		Office Assistant	1.0	1.0	1.0	1.0			1.0	1.0	1.0						1.0				
	<b>Total Results/Re-exams Unit</b>		<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>1.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>1.0</b>	<b>1.0</b>	<b>2.0</b>				<b>1.0</b>			
Finger-prints	PERM	Office Technician	1.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	2.0	2.0	2.0	1.0							
	<b>Total Fingerprints Unit</b>		<b>1.0</b>	<b>1.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>1.0</b>							



## Historical Overview of Executive, Education and Licensing and Administration Business Unit Staffing<sup>1</sup>

Business Unit / Positions			Authorized Positions					Filled Positions					Vacant Positions									
			2012/13	2013/14	2014/15	2015/16	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17		
Licensing and Administration (continued)	Evaluations and Endorsements	PERM	Staff Services Analyst					2.0	2.0					1.0	2.0					1.0		
		Program Technician I / II	3.0	3.0	5.0	5.0	3.0	3.0	3.0	2.0	4.0	4.0	3.0	3.0		1.0	1.0	1.0				
		Management Services Technician	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								1.0	
		Office Technician	1.0	1.0	2.0	1.0	2.0	2.0	1.0	1.0	1.0	1.0	2.0	2.0			1.0					
	Total Evaluations & Endorsements Unit			5.0	5.0	8.0	7.0	8.0	8.0	5.0	4.0	6.0	6.0	7.0	7.0		1.0	2.0	1.0	1.0	1.0	1.0
	CE	PERM	Program Technician II	1.0	1.0	1.0	1.0	Transfer to Educ.		1.0	1.0	1.0	1.0									
		Total Continuing Education Unit			1.0	1.0	1.0	1.0		1.0	1.0	1.0	1.0									
	Licensing Services	PERM	Assoc. Government Program Analyst	1.0	1.0		1.0	Transfer to Educ.		1.0	1.0		1.0									
			Staff Services Analyst	1.0	1.0	1.0	1.0	Reclass to SSM I		1.0	1.0		1.0					1.0				
		LT	Assoc. Government Program Analyst			1.0												1.0				
		Total Licensing Services Unit			2.0	2.0	2.0	2.0		2.0	2.0	0.0	2.0					2.0				
	Administration	PERM	Assoc. Government Program Analyst	1.0	1.0	1.0	1.0	2.0	2.0	1.0	1.0	1.0	1.0	1.0	2.0						1.0	
			Staff Services Analyst			1.0	1.0	1.0	1.0				1.0	1.0				1.0				1.0
			Management Services Technician	1.0	1.0						1.0					1.0						
		Total Administration Unit			2.0	2.0	2.0	2.0	3.0	3.0	1.0	2.0	1.0	2.0	2.0	2.0	1.0		1.0		1.0	1.0
	Info. Systems	PERM	Assoc. Information Systems Analyst	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								
		Total Information Systems Unit			1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								
	Total Permanent Positions			25.0	25.0	27.5	29.0	27.7	27.7	20.0	16.0	19.5	25.0	23.7	24.7	5.0	9.0	8.0	4.0	4.0	3.0	
	Total Limited Term Positions					1.0		1.0	0.5						0.5		1.0					
	Total Licensing and Administration			25.0	25.0	28.5	29.0	28.7	28.2	20.0	16.0	19.5	25.0	23.7	25.2	5.0	9.0	9.0	4.0	4.0	3.0	
Licensing and Administration Vacancy Rate															20%	36%	32%	14%	14%	11%		

<sup>1</sup> Excludes positions funded from blanket expenditure authorizations. In mid -July 2017, the Education, Licensing and Administration Business Units had 7.5 positions funded from blanket expenditure authorizations (1 Legislation/Regulations AGPA position, 1 Evaluations Section Permanent Intermittent SSA position, 1 half-time Mailroom Office Assistant position, 2 Education Division Nurse Education Consultant Retired Annuitant positions, 2 Education Division AGPA Retired Annuitant positions, and 1 Associate Information Systems Analyst Retired Annuitant position). Permanent Intermittent positions are limited to working 1,500 hours per year. Retired Annuitants are limited to working 960 hours per year. As of mid-July, all of these positions were filled except for 1 Leg/Reg Analyst (AGPA) position.

## II. Overview of BVNPT Organization and Staffing

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**1 Office Services Supervisor III (OSS III)** – During late-2016, BVNPT’s OSS III was temporarily appointed as Acting Leg/Reg Analyst for a 4-month period from December 2016 through March 2017. Concurrently, a subordinate Office Technician (OT) was temporarily appointed as Acting OSS III, leaving the OT position vacant. Subsequently, in mid-May 2017, the OSS III was temporarily appointed to a vacant Budget Analyst position through a 2-year training and development (T&D) assignment. Since that time the OSS III position has been vacant. Because the Budget Analyst can potentially return to the OSS III position, BVNPT is attempting to fill the OSS III position on a limited term (LT) basis. However, filling this position on a limited term basis is expected to be especially difficult.

**3 Administration Analysts (SSA/AGPA)** – BVNPT’s Leg/Reg AGPA position, established in mid-2016, was vacant until the OSS III was appointed as Acting Leg/Reg Analyst in December 2016 and has again been vacant since the Acting assignment expired in March 2017. BVNPT’s Board Support position has been vacant since the incumbent began a leave of absence in February 2017 shortly following expiration of the incumbent’s Support Services Section Acting Manager assignment. As of mid-October 2017, the incumbent had not returned to work and was no longer expected to do so. BVNPT’s Human Resources Liaison separated from BVNPT on June 30, 2017. In mid-September, BVNPT filled the HR Liaison position. BVNPT recently completed recruitment to backfill the Board Support position on a limited term basis and is currently recruiting to fill the vacant Leg/Reg Analyst position. *It is unclear that BVNPT needs multiple administrative support analyst positions for budgets, legislation regulations and Board support, particularly if the Executive Officer and Assistant Executive Officer positions are both filled on a permanent basis.*

**1 Management Services Technician** – This position has been vacant since the incumbent separated from BVNPT in May 2017. BVNPT recently upgraded the classification of this position and is expecting to fill the position through an internal promotion from within the same business unit.

### B. Overview of Enforcement Division Organization and Staffing

As shown by Exhibit II-1, the Enforcement Division, which was the primary focus of the Monitor assignment, is currently subdivided into four (4) sections with responsibility for (1) complaint intake and desk investigations, (2) non-sworn investigations, (3) discipline, and (4) probation. Each of these sections is currently allocated one (1) first level manager/supervisor position. Prior to 2017, the Enforcement Division’s organizational structure varied somewhat in some areas compared to the structures commonly utilized at comparable agencies. For example, the Cite and Fine Program, which was recently transferred to the Discipline Section, was previously assigned to the Complaint Section and the Discipline and Probation Units were previously grouped together rather than being separate. The current responsibilities of each of the Enforcement Division’s four (4) sections are generally consistent with how similar responsibilities are grouped at comparable agencies, except that complaint intake and screening services are not always grouped together with desk investigation services as currently exists within BVNPT’s Complaint Section.

As discussed in our *Initial Report*, the organization development and staffing history of the Enforcement Division’s Investigation Section is quite different from that of the Division’s Complaint and Discipline/Probation 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 10 authorized Special Investigator positions until

## II. Overview of BVNPT Organization and Staffing

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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 was never able to fill. Finally, normal time lags in the hiring process prevented BVNPT from promptly filling these positions once the hiring freezes were lifted. It was not until 2012/13 that BVNPT reached a nearly full complement of non-sworn investigator 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.

As mentioned above, prior to 2016/17, two (2) supervisor positions were authorized for the Investigation Section. Also, prior to late-2016, the Discipline and Probation Sections were combined into a single section. The separation of the Discipline and Probation Sections and the creation of a new Section Manager (SSM I) position by reclassifying and redirecting a vacant Supervising Special Investigator position helped to reduce supervisory spans of control and improve management and supervision of subordinate Discipline and Probation Section staff. Additionally, at the start of 2016/17, one (1) vacant Special Investigator position was reclassified to AGPA and was redirected to the Discipline Section to bolster the Section's capability to manage discipline cases. At that time, the Investigation Section's backlogs and workloads were decreasing.

As shown by Exhibit II-1, the Division of Investigation's sworn investigators are available to provide 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 determined appropriate and requested by BVNPT (e.g., sensitive cases). Different DCA-affiliated regulatory boards and bureaus utilize the Division of Investigation's services to varying degrees depending on their internal workforce capabilities. In some cases the agencies are highly dependent on the Division of Investigation to provide investigation services while, in other cases, Division of Investigation services are rarely used. During 2016/17 BVNPT assigned about 30 percent of its licensee complaint cases to the Division of Investigation (see Exhibit A-2 in Appendix A).

**Exhibit II-3**, on the next page, shows the Enforcement Division's authorized, filled, and vacant positions for the past five (5) years. As shown by Exhibit II-3, the number of positions authorized for the Discipline and Probation business units recently increased by three (3) positions. As discussed above, a new Section Manager (SSM I) position was established by reclassifying and redirecting a vacant Supervising Special Investigator position to serve as a Manager for the new Probation Section and an additional Discipline Analyst position was established by reclassifying and redirecting a vacant Special Investigator position to the Discipline Section. Additionally, a Citation Desk Analyst position was transferred from the Complaint Section to the Discipline Section along with responsibility for administering the Citation Program. However, overall, over the past five (5) years there has been no change in the total number of positions authorized for the Enforcement Division except for the loss of a half-time Special Investigator position that BVNPT was never able to fill.

As shown by Exhibit II-3, during periods prior to BVNPT's 2014/15 Sunset Review, about three (3) of the Division's 34 authorized permanent and limited term positions were vacant, representing a vacancy rate of less than 10 percent. Subsequently, vacant positions in the Enforcement Division's Complaint Section were filled, which reduced the Division's vacancy rate to less than 5 percent by December 2015. However, during 2016 the number of vacant positions in the Enforcement Division began increasing. During December 2016, six (6) Enforcement Division positions were vacant, including:

### Historical Overview of Enforcement Division Staffing<sup>1</sup>

Business Unit / Positions			Authorized Positions					Filled Positions					Vacant Positions								
			2012/13	2013/14	2014/15	2015/16	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17	
<b>Total Enforcement Division Positions</b>			<b>34.0</b>	<b>34.0</b>	<b>34.0</b>	<b>34.0</b>	<b>33.5</b>	<b>33.5</b>	<b>30.7</b>	<b>31.2</b>	<b>30.9</b>	<b>32.5</b>	<b>27.4</b>	<b>22.5</b>	<b>2.6</b>	<b>2.8</b>	<b>3.0</b>	<b>1.5</b>	<b>6.1</b>	<b>11.0</b>	
<b>Vacancy Rate, Excluding Temporary Help Blankets</b>														<b>8%</b>	<b>8%</b>	<b>9%</b>	<b>4%</b>	<b>18%</b>	<b>33%</b>		
Enforcement Division Chief - SSM II			1.0	1.0	1.0	1.0	1.0	1.0	0.7	0.8	1.0	1.0	1.0		0.3	0.2				1.0	
Staff Services Analyst																					
Complaint Section	Permanent	Staff Services Manager I	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0							1.0	
		Assoc. Govt. Program Analyst	1.0	2.0	2.0	2.0	2.0	2.0	1.0	2.0	2.0	2.0	2.0	2.0							
		Staff Services Analyst	5.0	6.0	5.0	7.0	7.0	6.0	5.0	6.0	4.0	7.0	6.0	4.0			1.0		1.0	2.0	
		Management Services Technician	2.0	2.0	2.0	1.0	1.0	1.0	2.0	2.0	2.0	1.0		1.0					1.0		
		Office Technician	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								1.0
	Limited Term	Assoc. Govt. Program Analyst	1.0						1.0												
		Staff Services Analyst	1.0		1.0										1.0		1.0				
<b>Total Complaint Section</b>			<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>11.0</b>	<b>11.0</b>	<b>12.0</b>	<b>10.0</b>	<b>12.0</b>	<b>10.0</b>	<b>7.0</b>	<b>1.0</b>		<b>2.0</b>		<b>2.0</b>	<b>4.0</b>	
Discipline and Probation Sections	Permanent	Staff Services Manager I	1.0	1.0	1.0	1.0	2.0	1.0	1.0	1.0	1.0	1.0	2.0								
		Assoc. Govt. Program Analyst	5.5	5.5	5.5	5.5	6.5	6.5	5.5	5.5	5.5	5.5	6.4	5.5					0.1	1.0	
		Staff Services Analyst	3.0	3.0	3.0	3.0	3.0	4.0	3.0	2.0	3.0	2.5	2.0	2.0		1.0		0.5	1.0	2.0	
		Management Services Technician	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0								1.0
	<b>Total Discipline Section</b>			<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>11.5</b>	<b>13.5</b>	<b>10.5</b>	<b>9.5</b>	<b>10.5</b>	<b>10.0</b>	<b>10.4</b>	<b>9.5</b>		<b>1.0</b>		<b>0.5</b>	<b>1.1</b>	<b>4.0</b>
<b>Total Enforcement Program Positions, Excluding CPEI Investigation Units</b>			<b>23.5</b>	<b>23.5</b>	<b>23.5</b>	<b>23.5</b>	<b>24.5</b>	<b>25.5</b>	<b>22.2</b>	<b>22.3</b>	<b>21.5</b>	<b>23.0</b>	<b>21.4</b>	<b>16.5</b>	<b>1.3</b>	<b>1.2</b>	<b>2.0</b>	<b>0.5</b>	<b>3.1</b>	<b>9.0</b>	
Business Unit / Positions			Authorized Positions					Filled Positions					Vacant Positions								
			2012/13	2013/14	2014/15	2015/16	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17	07/31/12	07/01/13	09/30/14	12/09/15	Dec-16	07/15/17	
Consumer Protection Enforcement Initiative	Permanent	Supervising Special Investigator I	2.0	2.0	2.0	2.0	2.0	1.0	1.3	1.4	1.9	1.5	1.0			0.6		0.5	1.0	1.0	
		Special Investigator	8.5	8.5	8.5	8.5	7.0	7.0	7.2	7.5	7.5	8.0	5.0	6.0	1.3	1.0	1.0	0.5	2.0	1.0	
	<b>Total CPEI Investigation Units</b>			<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>10.5</b>	<b>9.0</b>	<b>8.0</b>	<b>8.5</b>	<b>8.9</b>	<b>9.4</b>	<b>9.5</b>	<b>6.0</b>	<b>6.0</b>	<b>1.3</b>	<b>1.6</b>	<b>1.0</b>	<b>1.0</b>	<b>3.0</b>	<b>2.0</b>

<sup>1</sup> Excludes positions funded from blanket expenditure authorizations. In mid-July 2017, the Enforcement Division had 3 positions funded from blanket expenditure authorizations (1 Complaint Unit AGPA position and 2 Probation Unit AGPA/SSA Retired Annuitant positions. Retired Annuitants are limited to working 960 hours per year. During mid-July, all of these positions were filled.

## II. Overview of BVNPT Organization and Staffing

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- ❖ **1 Supervising Special Investigator** – This position, which had been vacant since August 2, 2016 when the incumbent separated from BVNPT, was reclassified and redirected in early-2017 to provide a dedicated Section Manager (SSM I) for the Discipline Section following redirection of the Discipline Section SSM I to provide a dedicated Section Manager for the new Probation Section. The new SSM I position was not filled until July 2017
- ❖ **2 Special Investigators** – These two (2) positions had been vacant since August 11 and November 5, 2016, respectively, when the incumbents separated from BVNPT. BVNPT subsequently filled both of these positions during early-2017.
- ❖ **1 Complaint Section Staff Services Analyst (SSA)** – This position, which was responsible for providing complaint screening services, had been vacant since November 11, 2016 when the incumbent separated from BVNPT. Initially, licensee complaint screening responsibilities were reassigned to other Complaint Section analysts. Subsequently, BVNPT filled the position, but the incumbent separated from BVNPT before completing their probationary period. BVNPT is currently recruiting to fill this position.
- ❖ **1 Complaint Section Management Services Technician (MST)** – This position, which was responsible for license applicant case intake and screening, had been vacant since October 29, 2016 when the incumbent separated from BVNPT. These responsibilities were temporarily reassigned to other Complaint Section analysts until the position was filled on March 2, 2017 by promoting the Complaint Section Office Technician (OT) who had previously been responsible for licensee complaint intake functions. For the next five (5) months, until September 2017 when a successor OT was hired and trained, the MST performed case intake functions for both license applicant and licensee cases.
- ❖ **1 Discipline Section Staff Services Analyst (SSA)** – This position, which was responsible for Petitions for Reinstatement and a limited discipline case management caseload, had been vacant since August 2, 2016 when the incumbent was promoted to a new Associate Government Program Analyst (AGPA) Discipline Analyst position within the Discipline Section that was created by reclassifying and redirecting a vacant Special Investigator position. However, the incumbent continued to be responsible for the Section's Petition Desk pending recruitment and training of a successor Petition Desk SSA. Subsequently, on March 2, 2017 a Discipline Section MST that was responsible for Decision Desk functions was appointed to the Petition Desk SSA position, but was unable to begin taking on these new responsibilities until a successor Decision Desk MST was appointed and trained. A successor Decision Desk MST was appointed on August 14, 2017 and is currently being trained which should allow the Section's Petition Desk SSA and the Discipline Case Analyst to begin taking on their correct responsibilities. In summary, a full year elapsed after the Petition Desk Analyst was promoted to the Discipline Analyst (AGPA) position and more than five (5) months elapsed after the MST was promoted to Petition Desk SSA position before either of these staff could assume their new responsibilities.

As discussed in our *Third Report*, during December 2016, 18 percent of the Enforcement Division's authorized permanent and limited term positions were vacant and, while BVNPT was recruiting to fill these positions, turnover of existing staff continued. For example, it was already known that the Division's Chief of Enforcement, who had been on an extended leave of absence since late-October, had given notice and accepted a position with another Board effective January 19, 2017. The extended absence of BVNPT's Chief of Enforcement, turnover of experienced enforcement staff, and higher Enforcement Division vacancy rates already appeared to be adversely impacting overall Enforcement Program performance.

## II. Overview of BVNPT Organization and Staffing

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Additionally, during early-December 2016 we conducted interviews with about two-thirds of the Division's filled permanent and limited term positions, including all of the Division's Special Investigators, all Complaint and Discipline Section AGPAs, and two (2) SSAs that had lead responsibility for preparing the CAS and BreZE data extracts that were used to support completion of Phases I, II and III of the Monitor project. During these interviews some staff indicated that teamwork within their unit was good and a few staff indicated that they were happy with their job. However, nearly all of the remaining staff expressed concerns about poorer communications, higher levels of conflict between management and staff, or lower levels of staff morale within the Division. Several staff specifically commented that the overall work environment had become especially stressful and that staff morale was very poor. Several staff compared the current work environment and staff morale levels with those that existed during periods prior to BVNPT's 2014/15 Sunset Review. During these interviews we learned that some staff in all of the Division's sections were actively seeking jobs at other agencies. The above comments were markedly different from the sentiments expressed by these same staff during the interviews we conducted during March 2016 as part of our Initial Assessment of BVNPT's Enforcement Program. At that time workforce morale within the Division appeared to be much better than was the case prior to 2015/16 (see Section III-G of our *Initial Report*).

Subsequently, in addition to the Chief of Enforcement, during the 6½ month period from December 31, 2016 through mid-July 2017, seven (7) other Enforcement Division staff separated from BVNPT, including:

**1 Discipline Section Staff Services Analyst (SSA)** – This position had been responsible for the Enforcement Division's data quality control and statistical reporting. The incumbent separated from BVNPT effective January 2, 2017 after less than eight (8) months with the Board.

**1 Complaint Section Staff Services Manager I (SSM I)** – This position had been responsible for managing the Complaint Section since mid-2015. The incumbent separated from BVNPT effective March 8, 2017 after less than two (2) years with the Board.

**1 Supervising Special Investigator** – This position had been responsible for managing the Investigation Section since September 2016. The incumbent separated from BVNPT effective May 15, 2017 after about eight (8) months with the Board.

**1 Complaint Section Staff Services Analyst (SSA)** – This position had been the Enforcement Division's Citation Desk Analyst since January 2016. The incumbent separated from BVNPT effective May 19, 2017 after less than 16 months with the Board.

**2 Special Investigators** – Both Investigators separated from BVNPT during the first week of July 2017. One (1) of the Investigators had previously served as a Lead Investigator and Acting Supervisor for the Investigation Section. One (1) of these positions was immediately replaced by a returning former Special Investigator whose limited term appointment at another Board had expired.

**1 Complaint Section Staff Services Analyst (SSA)** – This position shared responsibility, with a pool of four (4) other analysts, for completing desk investigations of license applicant and licensee criminal arrest cases. The incumbent separated from BVNPT effective July 11, 2017 after 12 months as a Complaint Analyst.

Additionally, effective July 13, 2017, BVNPT promoted a Discipline Section Analyst (AGPA) to the newly created Discipline Section Manager (SSM I) position which had been vacant for more than six (6) months. However, this promotion created a newly vacant Discipline Analyst (AGPA) position within the Discipline Section.

## II. Overview of BVNPT Organization and Staffing

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As a result of the above described turnover of Enforcement Division staff, by mid-July 2017, 11 of the Enforcement Division's authorized permanent and limited term positions were vacant and the Division's vacancy rate had increased to an extraordinarily high level (more than 30 percent). Subsequently, during the next several months, several of the Division's vacant positions were filled, including the Chief of Enforcement and the Complaint Section Manager positions. Additionally, several subordinate staff positions were filled. However, as a result of continuing turnover, the Division's vacancy rate remains at a relatively high level (nearly 20 percent as of mid-October 2017).

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### **III. Disruption of the 2015/16 Enforcement Program Turnaround**

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### III. Disruption of the 2015/16 Enforcement Program Turnaround

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As discussed in the *Initial, Second, and Third Reports*, BVNPT's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented by BVNPT during 2011/12 and 2012/13. Subsequently, 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 apparent to DCA and the Legislature. Corrective measures taken following BVNPT's March 2015 Sunset Review Hearing and during 2015/16 contained these problems and set into place a foundation for building a sustainable, effective and efficient Enforcement Program. Improvements made during that period included:

- ✓ 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, as discussed in the *Third Report*, dated January 30, 2017, and presented to BVNPT's governing Board on February 8, 2017, during July to October 2016 the turnaround of the Enforcement Program appeared to have stalled. During this period there was no further decrease in the number of pending investigation or discipline cases. Additionally, on an annualized basis the number of completed licensee arrest/conviction report investigations decreased and the number of completed non-sworn licensee complaint investigations decreased significantly. Also, the average age of BVNPT's licensee complaint investigations decreased only marginally and this decrease was entirely accounted for by reductions in the average age of the pending licensee complaint cases assigned to DCA's Division of Investigation. Finally, while the average elapsed time to complete non-sworn licensee complaint investigations decreased by three (3) months for investigations completed during the July to October 2016 period, the average elapsed time to complete these investigations (22 months) was still very long.

Additionally, as discussed in the *Third Report*, during periods prior to BVNPT's 2014/15 Sunset Review, BVNPT experienced especially high vacancy rates, particularly within its Education, Licensing, and Administration business units where permanent and limited term positions vacancy rates regularly exceeded 25 percent. Subsequently, many of BVNPT's vacant positions were filled which reduced total vacancies to 8.5 positions by December 2015, representing an overall vacancy rate of about 13 percent. However, during 2016 staff turnover increased and, as of December 2016, overall vacancy rates rose to about 17 percent. In contrast with December 2015 when the Enforcement Division had only 1.5 vacant positions, as of December 2016 the Division had six (6) vacant positions representing a vacancy rate of 18 percent. Also, while BVNPT was recruiting to fill all of these positions, turnover of existing staff was continuing. Furthermore, based on interviews conducted during early-December with about two-thirds of all Enforcement Division staff, the overall work environment and workforce morale appeared to have deteriorated since March 2016, at least within the Enforcement Division. Finally, during the presentation of our *Third Report* to BVNPT's governing Board on February 8, 2017, we specifically noted that the level of oversight of Enforcement Division staff had been adversely impacted by the extended leave of absence of the Division's Chief of Enforcement.

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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In the remainder of this section we summarize the continuing degradation in Enforcement Program performance that occurred from late-2016 through mid-2017 and the actions taken by the Monitor, in collaboration with the Department of Consumer Affairs and DCA's Division of Investigation, to arrest these trends and restore properly functioning case intake, investigation and discipline processes. The section is organized as follows:

Section	Title
A.	Summary of March 2017 Sunset Review Hearing Testimony
B.	Circumstances Leading Up to Initiation of the June 2017 Enforcement Process Assessment
C.	Summary of June 2017 Enforcement Process Assessment Findings and Recommendations
D.	Intervention by the Department of Consumer Affairs
E.	Status of Implementation of the Monitor's Immediate Action Recommendations.

#### A. Summary of March 2017 Sunset Review Hearing Testimony

At BVNPT's March 2017 Sunset Review Hearing we testified that the Enforcement Program turnaround that had occurred during 2015/16 appeared to have stalled. Changes that had already become evident by that time which supported this conclusion included:

- ✓ Reduced numbers of completed licensee arrest/conviction report and non-sworn licensee complaint investigations
- ✓ Unchanged numbers of pending licensee arrest/conviction report and non-sworn licensee complaint investigations
- ✓ Reduced numbers of completed discipline cases
- ✓ Increased numbers of pending discipline cases.

Additionally, the average elapsed times to complete investigations and impose discipline, while improved in comparison to earlier periods, remained quite long. For example, the 12 month average elapsed time to complete non-sworn investigations and the 2½ year average elapsed time from case receipt to completion of the discipline process for cases referred for discipline were both still quite long.

We also testified that staff turnover had increased and that, rather than continuing to decline, vacancy rates had risen to about 17 percent as of December 2016. Some of these positions had been vacant for extended periods of time, including the Assistant Executive Officer position which, at that time, had already been vacant for 21 months. Also, the Board's elevated numbers of vacant Enforcement Division positions, the extended absence of the Board's Chief of Enforcement, and turnover of experienced enforcement staff appeared to be adversely impacting overall Enforcement Program performance. Furthermore, at least within the Enforcement Division, the overall work environment and workforce morale appeared to have deteriorated markedly. We also discussed the extent to which the Board was utilizing short-term out of class assignments to temporarily fill its elevated numbers of vacant supervisory and management positions, and noted that these temporary assignments were not a substitute for filling the positions on a permanent basis.

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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During our testimony we also discussed BVNPT's Notice of Warning (NOW) Project. The NOW Project, which was implemented during late-December 2016 and January 2017, involved an abrupt reversal of the conventional investigation process historically utilized by BVNPT for completing non-sworn investigations of licensee complaint cases. The NOW Project resulted in the closure of about 80 non-sworn investigation cases with issuance of a NOW. All of these closures occurred over a period of just a few weeks beginning during mid-January. This outcome contrasted with the closing of a similar number of non-sworn investigation cases over a 6-month period from July through December 2016 with only a handful of the cases closed with issuance of a NOW.

**Overview of Conventional Investigation Process** – As discussed during our testimony, the way that the conventional investigation process usually works is that each case is assigned to an investigator to gather additional information about the case, including information needed to determine whether the alleged violation occurred and to rule out other potential related violations. The results of the investigation are then reviewed by supervisory and management personnel and discipline review analysts to determine whether the investigation was properly completed and whether the investigative findings support issuance of a NOW or a citation or referral of the case for discipline. The benefits of this process are that the investigation is not guided or conducted to achieve any pre-determined outcome and blanket rules are not established regarding the type of discipline imposed for any broad category of cases.

**Overview of NOW Project Investigation Process** – In late-December 2016, at the specific direction of BVNPT's former Executive Officer, Investigation Section staff began a review of the Section's pending cases, including the 200 or so cases that had not yet been assigned to an investigator. The review specifically targeted cases involving sleeping on the job and time sheet fraud, but also encompassed other types of cases. Following this review, and completion of some limited additional information gathering activities for some of the cases, 70 cases were abruptly closed with issuance of a Notice of Warning. Specifically, on January 11<sup>th</sup>, 27 non-sworn investigation cases were closed with issuance of a NOW. On this same day a 45-minute teleconference meeting was held with the Board's Enforcement Committee during which staff disclosed that they had initiated a review of the Section's pending cases and had identified 107 cases that could potentially be closed with a NOW. Contemporaneous minutes were not kept of this meeting, but it is our understanding that there was only a brief discussion of this topic. Then, on January 12<sup>th</sup> and 13<sup>th</sup>, another 31 cases were closed with issuance of a NOW and over the next two (2) weeks another 11 cases were closed with issuance of a NOW. Twenty-four (24) other non-sworn investigation cases were also closed during January without any disciplinary outcome.

In summary, during January 2017, 94 non-sworn investigations were completed, equivalent to more than 20 percent of the Section's 440 pending cases, and about 75 percent of these cases were closed with issuance of a NOW. As discussed previously, this compared to just 75 non-sworn investigations completed during the preceding six (6) months with only a half dozen NOWs issued for all of those cases. Some additional non-sworn investigation cases were closed with issuance of a NOW during February.

The abrupt closure of so many non-sworn investigation cases in such a short period of time, and all with exactly the same outcome, which was issuance of a NOW, caught our attention and prompted us to gather additional information about this surprising development. What we learned was encouraging in some respects and disconcerting in others. For example, it was encouraging that BVNPT had begun to implement our earlier recommendation to screen and triage lower priority licensee complaint cases not referred to the Division of Investigation to identify cases that could be handled as desk investigations and completed more quickly by gathering some additional records or making a few phone calls to confirm or clarify the information provided with the complaint. However, it was also evident that the conventional investigatory process had been

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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reversed to search out cases where the currently available information could be used to support accelerated closure of the cases with issuance of a NOW rather than first investigating the cases and then determining what, if any, disciplinary outcome was supported by the results of the investigation. Additionally, in some cases BVNPT's investigators were pressured to close their cases with issuance of a NOW without sufficiently investigating the cases. Based on these findings, we expressed needs to re-review all of these cases to identify any cases that should be re-opened and further investigated. We also stated that, until this review was completed, caution should be exercised in interpreting any workload, backlog, or performance data provided by BVNPT involving its recent handling of non-sworn investigation cases.

During the hearing we also testified that BVNPT's vacancy rate had recently increased further, to about 20 percent. As of mid-March, excluding the Executive Officer, five (5) of BVNPT's 10 supervisory and management positions were vacant. We noted that we had never before seen these types of vacancy rates, particularly at the supervisory and management levels. It was clearly evident that BVNPT's management structure had partially collapsed, particularly with respect to the Enforcement Program. One adverse consequence of the loss of key management personnel was that the Board had been unable to issue subpoenas for records that were needed to complete its enforcement investigations. Additionally, probation reviews of new staff were no longer being consistently completed on a timely basis. *We cautioned that these circumstances increased the Board's vulnerability to various risks and emphasized that this should be a cause of considerable concern.*

Finally, in response to a question from the Committee Chair, we specifically stated that BVNPT's most critical need was to rebuild its management team. In subsequent months, this did not occur. Instead, BVNPT's management structure continued to collapse with the separation of the Supervisor of the Investigation Section in mid-May after just eight (8) months on the job. By the end of May, four (4) of the Enforcement Division's five (5) authorized supervisor/manager positions were vacant, including the Chief of Enforcement and the Managers of the Complaint, Investigation, and Discipline Sections. Only one (1) Enforcement Division management position was filled, the Manager of the Probation Unit.

#### B. Circumstances Leading Up to Initiation of the June 2017 Enforcement Process Assessment

During March and April 2017, available statistical data began showing additional anomalous shifts in the Enforcement Program's workloads, workflows and performance. However, the causes of these shifts were not clear. For example, it was unclear whether the shifts were due to variability in BVNPT's statistical data capture and reporting processes, business process changes, or changes in performance.

On May 2<sup>nd</sup> we participated by teleconference in a BVNPT Enforcement Committee meeting along with BVNPT's Acting Assistant Executive Officer, the Manager of the Non-Sworn Investigation Section, and DCA's Project Manager for the Monitor contract. During this meeting we discussed some of the differences in the statistical data and characterizations of Enforcement Program workload, backlogs and performance that had previously been provided by BVNPT staff to the Board and by the Monitor. We also discussed some of the recent shifts that were occurring in the Enforcement Program's statistical data. During this discussion the Committee Co-Chairs requested that we work collaboratively with BVNPT staff to further review the Enforcement Program's data capture and reporting processes and reconcile differences between the characterizations of Enforcement Program workload, backlogs and performance provided by Board staff and reported by the Monitor. In response to this request, DCA's Project Manager indicated that he would inquire as to whether the Monitor contract could be amended for these purposes.

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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Subsequently, at the Board's May 12<sup>th</sup> meeting, as part of the Enforcement Committee's report to the Board, we were asked to share the comments we had made previously to the Enforcement Committee regarding the Board's enforcement-related statistical data capture and reporting processes. Our comments to the Board paralleled the information provided previously at BVNPT's Sunset Review Hearing during March and at the Enforcement Committee's May 2<sup>nd</sup> meeting. We also highlighted two (2) potential problem areas that had surfaced more recently involving:

- ❖ Tracking and reporting of about 75 non-sworn investigation "Pilot Project" licensee complaint cases
- ❖ Closure during Intake of several dozen licensee complaint cases per month, *during each of the past several months*, without any investigation.

We also informed the Board that we were working with DCA to modify the Monitor contract to enable us to work collaboratively with BVNPT staff to conduct an additional review of the Board's enforcement-related data capture and reporting processes *along with* targeted reviews of selected enforcement case intake, investigation, and discipline processes.

On June 20<sup>th</sup> we participated by teleconference in a second Enforcement Committee meeting with BVNPT's Acting Executive Officer, an Investigation Section Special Investigator, the Manager of the Probation Unit, and DCA's Project Manager for the Monitor contract. During this meeting we informed the Committee that DCA was amending the Monitor contract to enable performance of the additional reviews that the Enforcement Committee had requested previously, but that the scope of reviews of the Enforcement Program's business processes was being expanded to encompass several additional areas of concern. We also informed the Committee that we had requested that:

- ✓ DCA's Office of Information Services provide additional BreEZe data extracts to support completion of the reviews
- ✓ DCA's Division of Investigation provide technical assistance in completing targeted reviews of selected case intake, investigation and discipline processes.

Finally, we informed the Committee that the reviews would be initiated the following week and emphasized that the additional reviews were needed to help ensure that the Enforcement Program was functioning properly during a period when nearly all of the Enforcement Division's supervisory and management positions were vacant. During the meeting the Committee Co-Chairs expressed support for completing these additional reviews.

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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#### C. Summary of June 2017 Enforcement Process Assessment Findings and Recommendations

During the last week of June and continuing into early-July 2017, we completed a targeted review of BVNPT's Enforcement Program statistical data capture and reporting processes along with targeted reviews of an evolving set of selected case intake, investigation, and discipline processes. The reviews were completed jointly with the Division of Investigation and in collaboration with Enforcement Division staff. The results of these reviews were both surprising and alarming. A brief summary of major findings resulting from our reviews is provided below.

##### 1. Cessation of Enforcement Program Data Quality Control Processes and Activities

The review of the Board's Enforcement Program statistical data capture and reporting processes identified more than 200 separate investigation cases containing erroneous case status tracking information that staff subsequently corrected. Additionally, significant problems were identified with the reporting of completed and pending desk investigation statistics and completed and pending subsequent discipline statistics. We also determined that these problems adversely impacted the reporting of aggregate statistical data such as the total number of completed and pending investigations and the total number of completed and pending discipline cases. Finally, some key workload and workforce management reports were no longer being prepared. Enforcement Program data quality control and some reporting functions were discontinued following the January 2017 separation of the Enforcement Division's Data Quality Control and Reporting Analyst.

##### 2. Automatic Closing of Licensee Complaints During Intake without Investigation

We found that large numbers of complaints were being automatically closed during intake without any investigation, including all complaints submitted anonymously and irrespective of the details provided or the egregiousness of the offenses. Many of these cases involved serious criminal misconduct or significant patient harm for which CPEI guidelines allow referral to DCA's Division of Investigation. Additionally, most complaints received from inmates at State correctional facilities were automatically closed during intake without any investigation. We also found that a large backlog of licensee complaints had accumulated at intake rather than being promptly screened and referred to either the Investigation Section or DCA's Division of Investigation, as appropriate.

##### 3. Loss of Tracking, Monitoring and Control of Criminal Arrest Cases Pending Adjudication

We found that licensee criminal arrest cases were continuing to be closed pending adjudication of the cases, but that the cases were then not always being properly tracked to ensure that necessary case disposition follow-ups were completed. For example, dozens of these cases continued to be assigned to staff in the BreZze case tracking system after the person had transferred to another job or separated from the Board. Also, we subsequently determined that staff were not always completing timely follow-ups on the status of their assigned cases.

##### 4. Non-Sworn Investigation Cases Closed with a Notice of Warning without Sufficient Investigation

As discussed previously, during early-2017 about 80 non-sworn investigation cases were closed with issuance of a NOW, in some cases without first sufficiently investigating the cases. Information about the NOW Project was first disclosed at BVNPT's Sunset Review Hearing during March. Because BVNPT never took any action to review and, where needed, reopen these cases, we did so as part of our review and found that about 25 percent of these cases needed to be reopened and further investigated.



### III. Disruption of the 2015/16 Enforcement Program Turnaround

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#### 5. Non-Sworn Investigation Cases Closed without Independent Review

We found that, during late-2016, BVNPT's Executive Officer authorized the Investigation Section to close completed cases that were not being referred for discipline rather than forward the cases to the Complaint Section for completion of an independent discipline review of the case. Subsequently, in mid-May, the Investigation Section's sole supervisor separated from BVNPT and the Section's Special Investigators began closing their completed cases without any supervisory or analyst review.

#### 6. Cessation of Citation Issuances Along with Most Other Citation Program Functions

We found that the Citation Desk had not been staffed since the assigned analyst separated from BVNPT in mid-May. Since that time, BVNPT's issuances of citations, along with a broad range of other Citation Program functions, had been in complete hiatus.

#### 7. Backlogged Completed Field Investigations

We found that a large backlog of more than 100 completed field investigation cases had accumulated. **Exhibit III-1**, on the next page, shows one (1) example file drawer filled with about a dozen completed field investigation cases pending discipline review. Most of these cases involved serious criminal misconduct or significant patient harm that had been investigated by DCA's Division of Investigation. Cases of this type that we reviewed involved the following types of offenses:

- Engaging in non-consensual sexual activities with a patient
- Diverting and using controlled substances at a work site
- Using street drugs, such as methamphetamine, while at work.

Rather than being promptly reviewed and referred to the Attorney General to initiate disciplinary action, these cases were languishing for months, with the licensee continuing to practice and, in some cases, committing additional criminal offenses during this period.

#### 8. Breakdown of Communications and Morale

Many staff commented to us during our interviews that there had been a nearly complete cessation of communications regarding organizational, staffing and other changes that were occurring within the Enforcement Division, within BVNPT's Executive Office, and elsewhere throughout BVNPT. A number of staff indicated that workplace stress levels had diminished somewhat subsequent to the resignation of BVNPT's Executive Officer, but that this had been replaced by a sense of hopelessness and despair that the workplace environment might never improve. Additionally, staff expressed a great deal of frustration with their inability to get any direction or even responses to simple questions about how to adjust to or handle the various problems they were experiencing related to turnover of staff and the handling of enforcement cases.

Sample File Containing Completed Field Investigation Cases Pending Discipline Review



### III. Disruption of the 2015/16 Enforcement Program Turnaround

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#### 9. Accelerated Staff Attrition and Larger Numbers of Vacant Positions

As discussed previously in Section II (*Overview of BVNPT Organization and Staffing*), as of December 2016 the Enforcement Division had six (6) vacant authorized permanent and limited term positions, equivalent to an 18 percent vacancy rate. By July 2017, 11 of the Division's authorized permanent and limited term positions were vacant, including four (4) of the Division's five (5) authorized management positions, and the Enforcement Division's vacancy rate had increased to an extraordinarily high level (more than 30 percent).

#### 10. Absence of Meaningful, Timely and Effective Corrective Measures

Throughout the first half of 2017, BVNPT's governing Board, Enforcement Committee and Leadership Team largely ignored repeated warnings concerning emerging and growing problems in all the following areas:

- ✓ Incomplete and inconsistent statistical reporting
- ✓ Extended vacancies in key management positions along with increasing numbers of vacant management positions, particularly within the Enforcement Division
- ✓ Excessive utilization of "Acting" assignments in lieu of filling vacant positions on a permanent basis
- ✓ Deteriorating staff morale along with increasing staff turnover and higher vacancy rates
- ✓ Improper handling of complaints and investigations
- ✓ Deteriorating Enforcement Program performance.

Information about these and other Enforcement Program problems was repeatedly presented to the Board at various public meetings, beginning with BVNPT's February 26, 2017 Board meeting during which we presented our *Third Report*. During the February 26<sup>th</sup> meeting, we specifically discussed declining Enforcement Program performance, higher turnover of staff, increased vacancy rates, and lower staff morale, at least within the Enforcement Division. Subsequently, during BVNPT's March 2017 Sunset Hearing we discussed all of these same problems along with the NOW Project, the newer inconsistencies and anomalies that had begun surfacing in BVNPT's Enforcement Program statistical data, and the partial collapse of the Enforcement Program's management structure which had already occurred. About six (6) weeks later, during the Enforcement Committee's meeting on May 2<sup>nd</sup> and also at BVNPT's governing Board's meeting on May 16<sup>th</sup>, we again discussed some of these same problems along with our additional concerns about recent data showing large numbers of complaints closed during Intake. As documented in the Enforcement Committee's May 2<sup>nd</sup> meeting minutes, we specifically noted, in response to a member's question regarding enforcement priorities, that:

- ✓ The most pressing issue is the deterioration of the Enforcement Division's management structure
- ✓ Oversight of the Enforcement Division needs immediate action and attention.

However, no specific actions were initiated by BVNPT's Leadership Team, the Enforcement Committee or the Board in response to this call for action.

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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Finally, at the Enforcement Committee's June 20<sup>th</sup> meeting we informed the Committee that we had sought out assistance from DCA and the Division of Investigation in jointly completing a targeted assessment of BVNPT's complaint intake, investigation and discipline processes. We also informed the Committee that we planned to initiate the assessment the following week.

In summary, throughout the period extending from January through late-June 2017, BVNPT's governing Board, Enforcement Committee and Leadership Team generally expressed little concern or urgency about any of the above problems. Instead, BVNPT's Leadership Team and some members of BVNPT's governing Board generally took the position that the 2015/16 Enforcement Program turnaround had not stalled, vacant positions were all being promptly filled, and Enforcement Program performance was continuing to improve. BVNPT's governing Board never convened a Special Meeting to address the unfolding crisis and no representative of BVNPT ever reached out to DCA's Leadership Team to request additional assistance with overseeing or managing the Enforcement Program during an extended period without any meaningful management or supervision of most of the Enforcement Division's business units and staff.

Because of the nature and magnitude of the above problems, and the absence of an Enforcement Division Chief and managers for the Complaint, Investigation and Discipline Sections, we were compelled to immediately brief DCA and other oversight authorities regarding our findings. We hoped that some action could be promptly initiated to address related consumer protection issues and prevent any more problems from surfacing. On June 30<sup>th</sup> we met with representatives of DCA and DCA's Division of Investigation to provide a preliminary briefing regarding our findings along with a set of related Immediate Action Recommendations that could be promptly implemented to correct some of the most critical consumer protection problems. Some additional research was completed during early-July. **Exhibit III-2**, on the next 3 pages, provides additional information regarding the Critical Problems that we identified with the Enforcement Division's case intake, investigation and discipline processes along with our Immediate Action Recommendations.

## Summary of Critical Consumer Protection Problems and Immediate Action Recommendations

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### 1. Automatic Closure of Licensee Complaints During Intake without Investigation

**Critical Problem Summary** – 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 had 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).

**Immediate Action Recommendation No.1** – 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.

**Immediate Action Recommendation No.2** – 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.

**Immediate Action Recommendation No. 3** – 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.

**Immediate Action Recommendation No.4** – 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.

**Immediate Action Recommendation No. 5** – 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 licensee complaint cases.

**Immediate Action Recommendation No. 6** – 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.

## Summary of Critical Consumer Protection Problems and Immediate Action Recommendations

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### 2. Loss of Tracking, Monitoring and Control of Criminal Arrest Cases Closed Pending Adjudication

**Critical Problem Summary** – A new query was developed by DCA’s Office of Information Services to identify the number of Closed Pending Criminal Conviction (CLPX) cases pending as of June 30, 2017. The report also identified the Responsible Party for each case. This report identified 315 pending CLPX cases. Concurrently, all Complaint Section analysts that were responsible for handling these cases completed a physical count (inventory) of their pending CLPX cases which they retain in their offices. This physical count showed an inventory of 238 cases (a difference of 77 cases). With one (1) 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. Some of the difference was accounted for by cases that are assigned to Discipline analysts. Some of the difference also likely involved coding problems. However, most of the cases shown on the BreEZe report appeared to still be open and apparently were not being tracked or monitored by the Complaint Section analysts. Some of this difference appeared to be traceable to turnover of Complaint Section staff and incomplete reassignment of these cases to others in the Section (e.g., the cases were still showing as assigned to staff that had separated from BVNPT or had 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 had separated from BVNPT during late-2016 or early-2017.

**Immediate Action Recommendation No. 7** – Locate or account for all cases shown in BreEZe as Closed Pending Conviction and assign them for ongoing monitoring

**Immediate Action Recommendation No. 8** – 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.

### 3. Non-Sworn Investigation Cases Closed with a Notice of Warning without Sufficient Investigation

**Critical Problem Summary** – During early-2017, under the direction of BVNPT’s former Executive Officer, 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.

**Immediate Action Recommendation No. 9** – Reopen and further investigate Investigation Section cases closed with a NOW during early-2017 as determined appropriate by the Division of Investigation.

### 4. Non-Sworn Investigation Cases Closed without Independent Review

**Critical Problem Summary** – Prior to late-2016, like all investigations completed by the Division of Investigation’s sworn investigators, all completed non-sworn investigation 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, BVNPT’s former Executive Officer changed the handling of completed Investigation Section cases. Since that time, cases that the Investigation Section supervisor believed did not support discipline were closed within the Investigation Section without any independent review of the cases by Complaint Section analysts. Subsequently, in mid-May 2017, the Investigation Section supervisor separated from BVNPT. Since that time, cases were closed by Investigation Section staff without any supervisory or analyst review of the cases.

**Immediate Action Recommendation No. 10** – Complete Division of Investigation reviews of all Investigation Section cases closed since mid-May 2017.

## Summary of Critical Consumer Protection Problems and Immediate Action Recommendations

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### 5. Cessation of Citation Issuances Along with Most Other Citation Program Functions

**Critical Problem Summary** – 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 had been performed, including issuing new citations, processing in-house, BreZE 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 processed.

**Immediate Action Recommendation No. 11** – Transfer all Citation Program responsibilities to the Discipline Section.

### 6. Backlogged Completed Field Investigations

**Critical Problem Summary** – A backlog of more than 100 completed investigation reports had accumulated within the Complaint Section that were 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 involved complaints against licensees and most of the investigations were completed by the Division of Investigation involving serious criminal conduct or significant patient harm. The results of the investigations for more than one-half of the cases supported disciplinary action. Many of the investigations had been completed at least several months earlier. In nearly all (or all) cases, the licensee was not restricted from continuing to practice.

**Immediate Action Recommendation No. 12** – Temporarily redirect one experienced (1) Special Investigator position to complete reviews of the pending ASO5 (discipline review) cases, triage the cases for discipline, prepare case summaries, and refer the cases for issuance of a NOW, citation or referral to the Office of the Attorney General (AG), as appropriate. Provide a 2<sup>nd</sup> level supervisory level reviewer for all closed cases. Utilize Discipline Section staff, as needed, to assist in preparing and submitting discipline packages to the AG.

### III. Disruption of the 2015/16 Enforcement Program Turnaround

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#### D. Intervention by the Department of Consumer Affairs

On July 12<sup>th</sup>, DCA's Chief Deputy Director, the Chief of the Division of Investigation, the Division of Investigation's Enforcement Support Supervising Investigator, and the Project Manager for the Monitor contract met with BVNPT's Interim Executive Officer to discuss the results of above described reviews. DCA also offered to provide assistance with implementing the Immediate Action Recommendations, help manage the Enforcement Division, and on-board and train BVNPT's prospective new Chief of Enforcement and Section managers. Additionally, DCA provided supporting documentation to BVNPT's Interim Executive Officer and the Board's President and Vice President. The supporting documentation, which included a draft *Discussion Guide* that we had prepared summarizing the Critical Problems that were found with BVNPT's case intake, investigation, and discipline processes and our Immediate Action Recommendations to promptly correct these problems. Subsequently, on behalf of the Board, the Interim Executive Officer accepted DCA's offer of assistance.

On July 17<sup>th</sup>, BVNPT's Interim Executive Officer and representatives of DCA and DCA's Division of Investigation met with Enforcement Division staff to announce the collaborative partnership with DCA and the assistance that the Division of Investigation would provide. Following this meeting, representatives of DCA, the Division of Investigation and the Monitor met with the Interim Executive Officer and the Enforcement Division's managers to summarize the results of the previously completed assessments and the related Immediate Action Recommendations. During the next several weeks additional orientation meetings and briefings were held with BVNPT's newly hired Chief of Enforcement and other Enforcement Division managers and staff to further review the results of all of the our previously completed assessments and recommendations for improvement.

On August 11<sup>th</sup> DCA issued a Memorandum to the Board's President summarizing the assistance that DCA was providing with administration of BVNPT's Enforcement Program. Our draft *Discussion Guide* was provided as an attachment to DCA's Memorandum (see Appendix F). Subsequently, on August 25<sup>th</sup>, DCA's Chief Deputy Director, the Division of Investigation's Supervising Investigator, and the Monitor provided a briefing to BVNPT's governing Board summarizing:

- ✓ The problems identified during the recently completed review
- ✓ The Monitor's Immediate Action Recommendations
- ✓ The actions that had already been taken by DCA or were underway to address these problems
- ✓ Other steps taken by DCA and the Division of Investigation to restore proper functioning to the Board's Enforcement Program.

Finally, following the Board meeting, the Division of Investigation continued assisting BVNPT with managing its Enforcement Program and implementing corrective measures needed to restore properly functioning intake, investigation and discipline processes. This was the Division of Investigation's second Enforcement Program intervention in two (2) years.



### III. Disruption of the 2015/16 Enforcement Program Turnaround

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#### E. Status of Implementation of the Monitor's Immediate Action Recommendations

Enforcement Division staff, under the direction of the Division of Investigation, began implementing the Monitor's Immediate Action Recommendations during late-July and August 2017. In some areas the recommendations were largely implemented within a period of a few weeks. In other areas, longer periods of time were needed to fully implement the recommendations. By late-September the Immediate Action Recommendations were fully implemented in nearly all areas. Additional information regarding the current status of the Division of Investigation's and BVNPT's implementation of the June/July 2017 Immediate Action Recommendations is provided in Section IV-D (*Status of Implementation of June/July Immediate Action Recommendations*).

Subsequently, a set of structural changes to the oversight of BVNPT's Enforcement Program were imposed through enactment of AB 1229, (Low, 2017). These changes, which we summarize in Section V-C (*AB 1229 Enforcement Program Oversight Enhancements*), include requirements that BVNPT provide specified reports to the Director of DCA and the Legislature and that the Division of Investigation complete reviews of the Enforcement Program at specified intervals. Additionally, AB 1229 provides the Director of DCA, through the Division of Investigation, with clear authority to determine the need for and implement any changes that it determines are necessary to assure the appropriate administration and operation of the Enforcement Program. Together with changes that temporarily strip BVNPT's governing Board of its authority to appoint its Executive Officer, these changes appear clearly aimed at ensuring that the Monitor's recommendations and other needed corrective measures are fully implemented so that the types of problems recently experienced by BVNPT will not recur.

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## **IV. Updated Status of the Enforcement Program**

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## IV. Updated Status of the Enforcement Program

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This section summarizes historical and recent changes and trends in BVNPT's Enforcement Program workload, workflows, backlogs and performance. Overall, the workload, workflow, backlog and performance metrics and trends presented herein show that, during 2016/17, BVNPT's 2015/16 Enforcement Program turnaround either stalled or began to reverse in multiple key areas. For example:

- ✓ **The number of completed licensee arrest/conviction report desk investigations decreased significantly during 2016/17.** During the second half of 2015/16 more than 900 desk investigations of licensee arrest/conviction report cases were completed. Subsequently, during the first half of 2016/17, fewer than 700 licensee arrest/conviction report desk investigations were completed. Then, during the second half of 2016/17, only about 460 licensee arrest/conviction report desk investigations were completed (50 percent fewer than the comparable prior year period).
- ✓ **After decreasing during 2015/16, during 2016/17 the number of pending licensee arrest/conviction report desk investigations increased.** As of December 31, 2015 there were about 740 pending licensee arrest/conviction report desk investigations. Subsequently, as of June 30, 2016 there were about 675 pending licensee arrest/conviction report desk investigations. Then, as of June 30, 2017, there were about 735 pending licensee arrest/conviction report desk investigations. Over the next several months the number of pending licensee arrest/conviction report desk investigations increased further to about 765 pending cases as of September 30, 2017.
- ✓ **The number of completed non-sworn licensee complaint investigations decreased significantly during 2016/17.** During the second half of 2015/16 about 320 non-sworn licensee complaint investigations were completed. Subsequently, during the first half of 2016/17, only about 75 non-sworn licensee complaint investigations were completed. Then, during the second half of 2016/17, about 185 non-sworn licensee complaint investigations were completed, but this included about 80 cases that were closed with issuance of a NOW over a several week period from mid-January through early-February 2017. As discussed previously in Section III (*Disruption of the 2015/16 Enforcement Program Turnaround*), an unconventional process was used to selectively identify and accelerate the closure of these cases. Subsequently, 20 of these cases were reopened because the investigations were not properly completed. Excluding the reopened NOW Project cases, about 240 non-sworn licensee complaint investigations were completed during 2016/17, or about 25 percent fewer than were completed during just the last six (6) months of the prior fiscal year.
- ✓ **During 2016/17 there was no further reduction in the number of pending non-sworn investigations.** Statistical data showing a decline in the number of pending non-sworn investigations during 2016/17 is misleading due to (1) the improper closure of 20 NOW Project cases and (2) the accumulation of a large backlog of unassigned licensee complaint cases within the Complaint Section's Intake Unit during the second half of 2016/17. Subsequently, during late-July and August 2017, the improperly closed NOW Project cases were reopened and the backlogged Intake Unit cases were cleared by assigning the cases for field investigation. As a result, the number of pending non-sworn investigations abruptly increased from about 345 pending cases as of June 30, 2017 to about 470 pending cases as of September 30, 2017. This compares to less than 400 pending non-sworn licensee complaint investigations at the start of the 2016/17 fiscal year. Of the 470 pending non-sworn investigation cases as of September 30, 2017, more than 300 cases were not yet assigned to a specific investigator for investigation.

## IV. Updated Status of the Enforcement Program

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- ✓ **The number of completed sworn investigations changed very little during 2016/17.** During the second half of 2015/16 about 130 sworn investigations were completed. Subsequently, during the first half of 2016/17, about 145 sworn investigations were completed. Then, during the second half of 2016/17, about 130 sworn investigations were completed.
- ✓ **During 2016/17 the number of pending sworn investigations decreased significantly, but this decrease was nearly fully offset by the previously discussed increase in pending non-sworn investigations.** Statistical data showing a significant decrease in the number of pending sworn investigations during 2016/17 is somewhat misleading due to the accumulation of a large backlog of unassigned licensee complaint cases within the Complaint Section's Intake Unit during the second half of 2016/17. Subsequently, during late-July and August 2017 the backlogged Intake Unit cases were cleared by assigning the cases for field investigation. As a result, the number of pending sworn investigations abruptly increased from about 135 pending cases as of June 30, 2017 to about 175 cases as of September 30, 2017. This compares to about 255 pending sworn investigation cases as of June 30, 2016. However, the relatively large 80 case (31 percent) reduction in the Division of Investigation's pending caseload was fully offset by the 75 case increase in the Investigation Section's pending caseload. On a combined basis, for the 15-month period from June 30, 2016 through September 30, 2017, there was virtually no change in the total number of pending field investigations.
- ✓ **The average age of BVNPT's pending licensee complaint investigations was essentially unchanged during 2016/17.** A 1-month decrease in the average age of BVNPT's pending sworn investigation cases during 2016/17 was fully offset by a 1-month increase in the average age of BVNPT's pending non-sworn investigation cases.
- ✓ **During 2016/17 the average elapsed time to complete non-sworn licensee complaint investigations decreased significantly, but that improvement is transitory.** During 2016/17, the average elapsed time to complete non-sworn licensee complaint investigations decreased by six (6) months (from 25 months to 19 months). However, this metric includes the large number of NOW Project cases closed over a several week period during early-2017, including closure of 20 insufficiently investigated cases that were subsequently reopened. This lagging performance measure stopped declining during the July to September 2017 quarter and will almost certainly begin increasing during the remainder of 2017/18 due to the Investigation Section's large backlog of aged cases.
- ✓ **The number of discipline cases completed changed very little during 2016/17.** During the second half of 2015/16, 185 discipline cases were completed, excluding subsequent discipline cases. Subsequently, during the first half of 2016/17, 172 discipline cases were completed, excluding subsequent discipline cases. Then, during the second half of 2016/17, 174 discipline cases were completed, excluding subsequent discipline cases.
- ✓ **During 2016/17 there was no further decrease in the number of pending discipline cases.** Statistical data showing a significant decrease in the number of pending discipline cases, excluding subsequent discipline cases, is misleading due to the accumulation of a large backlog of more than 100 completed field investigation cases within the Complaint Section during the second half of 2016/17. More than 40 of these cases were subsequently referred for discipline. As of June 30, 2016, there were about 340 pending discipline cases. As of June 30, 2017, there were about 300 pending discipline cases, not including the 40+ backlogged cases that were not yet referred for discipline, or more than 340 pending cases if the backlogged cases are included.

## IV. Updated Status of the Enforcement Program

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The remainder of this section further discusses historical and recent changes and trends in the Enforcement Program’s workloads, workflows, backlogs and performance. Additionally, we summarize the current status of BVNPT’s implementation of our Phase II recommendations, most of which BVNPT initially rejected or did not implement. We also summarize the status of BVNPT’s implementation of our June/July 2017 Immediate Action Recommendations, most of which have been implemented under the direction of DCA’s Division of Investigation. Finally, this section provides a listing of our Final Recommendations for Enforcement Program process improvements. The section is organized as follows:

- |                | <b>Title</b>   |
|----------------|--|
| <b>Section</b> | A. Case Intake and Investigations  |
|                | Discipline Cases   |
|                | C. Status of Implementation of Phase II Recommendations                        |
| <b>B.</b>      | D. Status of Implementation of June/July 2017 Immediate Action Recommendations |
|                | E. Final Enforcement Program Process Improvement Recommendations.              |

### A. Case Intake and Investigations

This section summarizes recent changes and trends in BVNPT’s case intake and investigation workload, workflows, backlogs and performance. The section is organized as follows:

- |                | <b>Title</b>   |
|----------------|--|
| <b>Section</b> | 1. License Applicant Arrest/Conviction Reports                                 |
|                | 2. Continuing Education Compliance Audit Cases (2011/12 through December 2016) |
|                | 3. Continuing Education Compliance Audit Project                               |
|                | 4. Licensee Arrest/Conviction Reports  |
|                | 5. Licensee Complaints   |
|                | 6. Administrative Disciplinary Outcomes  |
|                | 7. Total Pending Investigations.   |

## IV. Updated Status of the Enforcement Program

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### 1. License Applicant Arrest/Conviction Reports

As shown by **Exhibit A-1**, BVNPT now opens about 650 to 750 license applicant arrest/conviction report cases per year. As discussed previously in the *Initial, Second, and Third Reports*, BVNPT restructured the License Applicant Arrest/Conviction Report Process during 2015/16. Prior to the restructuring, BVNPT opened several thousand license applicant arrest/conviction report cases per year. As shown by **Exhibit A-3**, during the past two (2) years nearly all of these cases were completed by Complaint Section analysts who consistently promptly processed these cases. During the first quarter of 2017/18, the average elapsed time to complete these cases, which currently account for about one-third of all of the Complaint Section's completed investigations, was about 1 ½ months. As shown by **Exhibit A-6**, BVNPT issues Notices of Warning (NOWs) for about 90 percent of these cases. As shown by **Exhibit B-1**, denials of licensure are issued for about one-half of the remaining cases (fewer than 40 cases per year). These cases currently account for less than 10 percent of all cases referred to the Attorney General (AG). Currently, as shown by **Exhibit A-4**, there are fewer than 100 pending license applicant arrest/conviction report cases.

### 2. Continuing Education Compliance Audit Cases (2011/12 through December 2016)

**Exhibit IV-1**, on the next page, provides a summary of BVNPT's Continuing Education (CE) compliance audit activity from 2013/14 through October 2016. As discussed previously in the *Second Report*, BVNPT has historically enforced licensee compliance with CE requirements by auditing a sample of licensees following renewal of their license. Available historical data suggests that BVNPT audited up to about 1,500 licensees per year. After selecting renewal files to audit, staff requested documentation from each licensee substantiating their compliance with BVNPT's CE requirements (30 credits per 2-year period). Based on the data presented in Exhibit IV-1, only about 75 percent of licensees comply with BVNPT's CE requirements. Additionally, based on BVNPT's citation issuances, about 10 to 15 percent of the licensees are either non-responsive to BVNPT's compliance audit letters or are unable to provide documentation substantiating completion of any CE during the 2-year audit period.

As shown by Exhibit IV-1, in the past CE compliance audit staff was oftentimes redirected to address other Licensing Program business needs and completed fewer CE compliance audits, resulting in fewer case referrals to Enforcement. For example, as shown by **Exhibit A-1**, during 2014/15 only 13 CE audit failure (Internal – Fraud) cases were referred to Enforcement compared to an average of more than 150 cases referred to Enforcement per year during the preceding four (4) years. Subsequently, as shown by Exhibit IV-1, from April through October 2016 there was a nearly complete cessation of CE compliance auditing activity. As shown by Exhibit A-1, from July through December 2016 only four (4) CE audit failure cases were referred to Enforcement.

As discussed previously in the *Second Report* and shown by Exhibit A-6, during 2011/12 and 2012/13 citations were issued for all (or nearly all) CE audit failure cases (60 citations were issued during 2011/12 and 101 citations were issued during 2012/13). Notices of Warning (NOWs) were either very rarely issued, or not issued at all. Subsequently, during 2013/14 Complaint Section staff became concerned about potential deficiencies with some of the CE compliance auditing processes, including concerns that some potentially allowable CE courses were being disallowed (e.g., credits for courses in cases where a Certificate of Completion was provided by the licensee, but was incomplete because it did not include a provider or course number, or both, and inconsistent practices for converting college courses to CE credits). Additionally, there were increasing problems related to the age of the cases which sometimes extended into periods that exceeded BVNPT's 4-year CE records retention requirement. Finally, technical deficiencies



**Summary of Continuing Education Compliance Audit Activity  
July 2013 through October 2016**

Fiscal Year	Period	Continuing Education Compliance Audit Letters							Completion Letters		
		First Letter			Second Letter	Final Letter	Submission Follow-Up Letters	Provider Verification Letters	VN	PT	Total
		VN	PT	Total							
2013/14	First Quarter	0	0	0	0	0	0	0	73	14	87
	Second Quarter	0	0	0	0	45	0	59	78	18	96
	Third Quarter	302	60	362	14	28	39	136	92	22	114
	Fourth Quarter	322	70	392	129	0	44	183	243	46	289
	<b>Total</b>	<b>624</b>	<b>130</b>	<b>754</b>	<b>143</b>	<b>73</b>	<b>83</b>	<b>378</b>	<b>486</b>	<b>100</b>	<b>586</b>
2014/15	First Quarter	312	61	373	0	0	57	178	231	46	277
	Second Quarter	308	70	378	332	0	63	211	185	39	224
	Third Quarter	304	60	364	52	0	58	191	216	36	252
	Fourth Quarter	301	60	361	124	0	40	137	199	29	228
	<b>Total</b>	<b>1,225</b>	<b>251</b>	<b>1,476</b>	<b>508</b>	<b>0</b>	<b>218</b>	<b>717</b>	<b>831</b>	<b>150</b>	<b>981</b>
2015/16	First Quarter	308	60	368	43	153	71	220	206	52	258
	Second Quarter	235	43	278	40	233	39	186	198	46	244
	Third Quarter	89	46	135	148	0	29	165	185	41	226
	April	64	3	67	77		0		0	26	26
	May	0	0	0	0	Discontinued	0	Discontinued	0	0	0
	June	0	0	0	0		3		72	0	72
	<b>Total</b>	<b>696</b>	<b>152</b>	<b>848</b>	<b>308</b>	<b>386</b>	<b>142</b>	<b>571</b>	<b>661</b>	<b>165</b>	<b>826</b>
<b>Total - 2013/14 through 2015/16</b>		<b>2,545</b>	<b>533</b>	<b>3,078</b>	<b>959</b>	<b>459</b>	<b>443</b>	<b>1,666</b>	<b>1,978</b>	<b>415</b>	<b>2,393</b>
<b>Total - January 2014 through June 2016</b>		<b>2,545</b>	<b>533</b>	<b>3,078</b>	<b>959</b>	<b>414</b>	<b>443</b>	<b>1,607</b>	<b>1,827</b>	<b>383</b>	<b>2,210</b>
2016/17	July	0	0	0	0		0		0	0	0
	August	0	0	0	0		0		0	0	0
	September	28	14	42	0	Discontinued	0	Discontinued	0	0	0
	October	0	0	0	0		0		0	0	0

Source: BVNPT Continuing Education audit activity statistical summaries.

## IV. Updated Status of the Enforcement Program

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were identified with some of the notices that were sent to the licensees. In response to these circumstances, Complaint Section analysts began issuing NOWs, rather than citations, in nearly all cases. During 2013/14, 40 citations were issued and a similar number of NOWs were issued. Subsequently, during 2014/15, about 120 NOWs were issued and only one (1) citation was issued.

During 2015/16 various changes were made to the CE audit process, including (1) preparation of listings of the cases to be audited, (2) discontinuation of the need to obtain provider verifications of the information submitted by the licensee, (3) modification of the letters that were sent to the licensee, and (4) limitation of the number of requests sent to the licensee to just an initial request and a single follow-up/final request. Additionally, rather than assigning the cases to multiple Complaint Section analysts, all of the cases were assigned to a single Citation Desk analyst for final review and citation (or NOW) issuance. Also, case-specific determinations began being made as to whether to issue a citation or a NOW, resulting in issuance of 110 citations and about 60 NOWs during 2015/16. Finally, BVNPT established an alternative installment payment process for the payment of fines in cases of financial hardship. Previously, BVNPT sometimes automatically referred cases to the AG whenever a licensee failed to promptly pay their fine in full.

### 3. Continuing Education Compliance Audit Project

During late-2016, under the direction of the Executive Officer, BVNPT launched a large-scale audit of licensee compliance with BVNPT's CE requirements. The CE Audit Project began in late-November with the creation of a mass mailing list, the printing of about 57,000 dated audit letters and the redirection of staff to begin stuffing envelopes. The mass mailing was initially expected to be completed in early-December, but management apparently realized that they would be unable to complete the mailing in that timeframe. However, rather than recognizing that if BVNPT staff were unable to even complete the mailing, then they certainly wouldn't be able to process the responses, management instead requested that DCA's Office of Business Services (OBS) complete the remaining mailings. Then, in early-January, after requesting, expediting and receiving delivery of a large supply of window envelopes from the Office of State Printing, the OBS completed about 50,000 additional mailings. In some cases audit letters dated in early-December with a 30-day response due date were not mailed until early-January, making it virtually impossible for licensees to respond by the required due date.

During the next four (4) months, through mid-May 2017, a pool of about a half-dozen full and part-time BVNPT staff, along with two (2) half-time American Association of Retired Persons (AARP) volunteers, completed *preliminary reviews* of about 7,730 CE submittals and issued compliance letters to the responding licensees. These same staff also completed *preliminary reviews* of about 360 CE submittals that had deficiencies or problems that prevented them from completing the reviews. Submittals with problems were set aside for *secondary review* and processing by BVNPT's CE Audit Specialist who was unable to keep pace with the incoming flow of work generated by all of the staff that were performing the *preliminary reviews*. The CE Audit Specialist was also solely responsible for completing *secondary reviews* of all cases where compliance letters had already been issued by BVNPT's preliminary reviewers.

As of mid-May, BVNPT's CE Audit Specialist had completed *secondary reviews* and BreEZe updates for about 2,100 CE Audit Project cases and, of these, about 400 were determined by the CE Audit Specialist to have deficiencies (**19 percent**). In all of these cases the CE Audit Specialist sent deficiency letters to the responding licensee by certified mail (see **Exhibit C-3** in Appendix C). In some cases the CE Audit Specialist determined that compliance letters had previously been issued to the licensee in error. In these circumstances the CE Audit Specialist's deficiency letter was received by the licensee after the licensee had already received a letter stating that they were found in compliance. This process necessarily created a great deal of confusion among the affected licensees.

## IV. Updated Status of the Enforcement Program

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Very few of the responses to the deficiency letters were ever reviewed by the CE Audit Specialist because most of the responses were routed, along with all of the other incoming CE mail and faxes, to a locked, vacant manager's office where all of the incoming CE mail was stored (see Exhibit C-3 in Appendix C).

BVNPT never processed or responded to most of the CE submittals that were received by mail and fax. BVNPT also never processed or responded to about 5,000 of the 8,000+ emails that were received. Additionally, BVNPT never:

- ❖ Tracked which licensees responded to the initial mass mailings
- ❖ Identified and followed up with licensees that failed to respond to the initial mailings
- ❖ Followed-up on all of the thousands of cases where the initial mailings were returned to BVNPT because they were not deliverable to the address that BVNPT had on file at the time of the mailings (see Exhibit C-3 in Appendix C).

Due to the CE Audit Project's fundamentally flawed structure and processes, only about 20 cases were ever submitted to Enforcement. No enforcement action was taken on any of these cases because the audit processes that were utilized were insufficient for purposes of supporting issuance of either a NOW or citation. Consequently, some of the cases were routed to the Citation Desk without ever being opened. The absence of any resulting enforcement activity is a testament to the worthlessness of the project.

The structure and processes utilized for conducting the CE Audit Project reduced the number of CE audit failure cases handled by Complaint Section's Intake Unit and Citation Desk Analyst. However, as a result of BVNPT's mismanagement its CE compliance auditing processes, during 2016/17 the Enforcement Division assessed only about \$101,000 in fines compared to about \$189,000 in fines assessed during 2015/16. Most of the \$88,000 decrease in fines assessed during 2016/17 is attributable to reductions in the number of CE audit failure cases submitted to Enforcement. Subsequently, during the first quarter of 2017/18, BVNPT assessed less than \$8,000 in fines, none of which was generated from CE audit failure cases.

After ignoring repeated warnings about the inherent structural design and staffing support problems with this project, along with estimates that it would likely take a period of at least 2 to 3 years to complete this project, in mid-May 2017 BVNPT aborted the project. However, the statistical information that Board staff has provided to the Board about this project, which suggests that nearly all of the Board's licensees are compliant with the CE requirements, is not supported. All of the available historical statistical data, including data generated from the CE Audit Project, have consistently shown that at least 10 to 20 percent of the Board's licensees are not compliant with the CE requirements. As of October 2017, BVNPT had not yet resumed any auditing of licensee compliance with BVNPT's CE requirements. The Board has not conducted any effective auditing or enforcement of licensee compliance with its CE requirements for more than 15 months (since July 2016). Meanwhile, large numbers of BVNPT's licensees continue to practice while completing little or no CE.

**Appendix C** provides additional information about the CE Audit Project. This includes additional information about the various warnings that were provided to the Board about this project, the staffing and other resources that were wasted supporting the project and deficiencies with BVNPT's communications with staff, Board members and others regarding the status of the project. **Exhibit C-3**, in Appendix C, shows the locked, vacant manager's office where about 100 overflowing baskets of opened but unprocessed CE mail and faxes are stored.

## IV. Updated Status of the Enforcement Program

### 4. Licensee Arrest/Conviction Reports

As shown by **Exhibit A-1**, during 2016/17 BVNPT received significantly fewer licensee arrest/ conviction reports. During 2016/17 BVNPT received less than 1,200 licensee arrest/conviction reports compared to an average of about 1,500 reports received during the preceding four (4) fiscal years. The causes of this 20 percent decline in the number of licensee arrest/conviction reports received are unknown. The lower volume of licensee arrest/conviction reports received continued during the first quarter of 2017/18 when about 300 reports were received. Up to about 40 percent of these cases require only a very limited review or investigation and are closed either “No Violation” or “Redundant” (e.g., when a licensee marks their license renewal form “Yes” in error or self-reports an offense that BVNPT is already aware of from CORI (Criminal Offender Record Information) reporting).

As shown by **Exhibit A-2** and **A-3**, nearly all of the licensee arrest/conviction report cases continue to be handled as desk investigations by Complaint Section analysts. As shown by **Exhibit A-4**, notwithstanding the significant decrease the number of licensee arrest/conviction report cases received, the number of pending investigations increased during 2016/17 (from about 675 pending cases as of June 30, 2016 to about 735 pending cases as of June 30, 2017).

**Table IV-1**, below, shows BVNPT’s average elapsed times to complete licensee arrest/conviction report desk investigations from 2012/13 through the first quarter of 2017/18. As shown by Table IV-1, during 2016/17 the average elapsed time to complete licensee arrest/conviction report desk investigations decreased from about 6.8 months during 2015/16 to about 5.4 months during 2016/17. However, this improvement was transitory. During the first quarter of 2017/18 the average elapsed time to complete licensee arrest/conviction report desk investigations increased to about 7.4 months, the longest average elapsed time since 2014/15.

**Table IV-1**  
**Average Elapsed Time to Complete Licensee**  
**Arrest/Conviction Report Desk Investigations**

Time Period	Number of Investigations Completed	Average Elapsed Time (Months)
Total 2012/13	1,758	9.9
Total 2013/14	1,496	8.6
Total 2014/15	1,416	7.8
July to December 2015	1,079	7.2
January to June 2016 (Excludes 73 CLPX cases)	926	6.3
<b>Total 2015/16</b>	<b>2,005</b>	<b>6.8</b>
July to December 2016 (Excludes 92 CLPX cases)	681	5.5
January to June 2017 (Excludes 100 CLPX cases)	458	5.3
<b>Total 2016/17</b>	<b>1,139</b>	<b>5.4</b>
July to September 2017 (Excludes 22 CLPX cases)	230	7.4

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As shown by **Exhibit A-6**, BVNPT's licensee arrest/conviction report cases currently account for about 60 percent of all NOWs and citations issued to licensees, even after including the extraordinarily large number of NOWs issued to licensees during early-2017 as part of the NOW Project, including NOWs issued for about 20 cases that were subsequently reopened for further investigation. Historically, as shown by **Exhibit B-1**, BVNPT referred an average of about 200 licensee arrest/conviction report cases to the AG per year for formal disciplinary action. However, during 2016/17 BVNPT referred only about 140 licensee arrest/conviction report cases to the AG. The significantly reduced number of licensee arrest/conviction report cases referred to the AG during 2016/17 reflects:

- ❖ The lagged impacts of prior year reductions to the number of pending cases
- ❖ The lower number of cases received during the 2016/17
- ❖ Growth in the number of pending cases during 2016/17.

During 2016/17, licensee arrest/conviction report cases accounted for only about 45 percent of the cases that BVNPT referred to the AG for discipline compared to more than 55 percent of discipline case referrals in prior years. Subsequently, during the first quarter of 2017/18, licensee arrest/conviction report cases accounted for only about 30 percent of all discipline case referrals to the AG due, in part, to the one-time clearing of a backlog of completed field investigation cases and referral of about 40 of these cases for discipline.

Finally, the workload and backlog metrics presented herein related to the number of licensee arrest/conviction report investigations completed and the number of pending licensee arrest/conviction report investigations are significantly different from the metrics that BVNPT has historically produced for internal program management and external reporting purposes. Beginning during 2016 with implementation of BreEZe, BVNPT Complaint Section staff began closing large numbers of licensee arrest/conviction report cases, pending adjudication of the cases, then re-opening the cases following adjudication to complete the investigation, and then closing the case a second time after the investigation was fully completed. Also, during the period that the cases are closed pending adjudication, the elapsed time from the initial case closure to re-opening of the case following adjudication is excluded from some related elapsed time performance measures. While this modified case tracking process is potentially beneficial for various workload and workforce management purposes, it significantly distorts related workload and performance metrics. For example:

- ❖ With the prior case tracking process, if a case is received, investigated for a period of three (3) months, held open pending adjudication for a period of six (6) months, and then further investigated and completed during a final three (3) month period, the case would be counted as one (1) closure with a total 12 month elapsed time from receipt to closure.
- ❖ With the new case tracking process, if a case is received, investigated for a period of three (3) months, closed pending adjudication (CLPX) for a period of six (6) months, and then re-opened for further investigation and completed during a final three (3) month period, the case would be counted as two (2) case closures, with one case closure having a 3-month elapsed time from receipt to initial closure pending adjudication (CLPX) and a second case closure having a 6-month elapsed time from receipt to final closure, excluding the 6-month period during which the case was closed (CLPX) pending adjudication. This is equivalent to having two (2) case closures with an average elapsed time from receipt to closure of 4.5 months rather than one (1) case closure with an average elapsed time of 12 months from receipt to closure as would previously had been reported.

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As is evident from the above example, the new licensee arrest/conviction report case tracking process results in a significant increase in measurements of the number of investigations completed and decreases the average elapsed time to complete these investigations even where staff productivity or performance are unchanged. Additionally, cases that are closed pending criminal conviction (CLPX) are not included in BVNPT's calculations and reporting of the number of pending licensee arrest/conviction report cases, thereby undercounting the total number of pending cases. Consequently, reporting based on this methodology could suggest to recipients of this information that pending case counts are not increasing when they are or that pending case counts are decreasing when they are not. Workload and performance metrics produced by other DCA boards and bureaus utilizing this same methodology might not be impacted to the same extent as BVNPT in cases where licensee arrest/conviction report cases account for a relatively small proportion of all of the investigations completed by the agency. However, because BVNPT's licensee arrest/conviction report cases account for such a large proportion of all of its investigations, the above described methodology necessarily impacts and distorts BVNPT's aggregate investigation workload and performance metrics.

For purposes of preparing this *Final Report*, we excluded cases that were closed pending adjudication from our measures of the number of completed investigations. Additionally, we included cases that were closed pending adjudication in our measures of the number of pending cases. During July 2017, BVNPT stopped using the CLPX closing code. However, more than 200 cases previously closed using the CLPX closing code remained pending which continued to distort BVNPT's pending investigation statistics. During late-October 2017, BVNPT began reopening all of the previously closed pending adjudication cases which will eliminate remaining problems associated with the use of the CLPX closing code.

### 5. Licensee Complaints

As shown by **Exhibit A-1**, since implementation of BreZE in January 2016, BVNPT has been receiving somewhat larger numbers of licensee complaints. The increase in licensee complaints received is partially due to the automatic opening of on-line complaints irrespective of the completeness of the complaint information. Additionally, beginning during late-2015 and early-2016, BVNPT stepped up efforts to clean-up some case intake backlogs and began regularly reviewing NURSYS to identify cases involving discipline by another state or agency. Finally, some of the larger number of licensee complaint cases received during 2016 may be due to inconsistent past practices involving the opening of inmate complaint cases.

Recent historical data show that BVNPT now receives about 950 licensee complaints per year compared to an average of about 500 to 550 licensee complaints per year prior to 2016. However, Complaint Section case intake and screening staff close many of these cases without referral for field investigation and nearly all cases involving discipline by another state or agency are handled as desk investigations by Complaint Section analysts. As a result, as shown by **Exhibit A-2**, on an annualized basis during the second half of 2015/16 and the first half of 2016/17, about 200 licensee complaint cases were referred to DCA's Division of Investigation and about 300 licensee complaint cases were referred to BVNPT's non-sworn Investigation Section. Subsequently, during the second half of 2016/17, there were significant decreases in the number of complaint cases referred for both sworn and non-sworn field investigation. This decrease is largely attributable to modified case intake practices that were utilized during the second half of 2016/17 (see Section III – *Disruption of the 2015/16 Enforcement Program Turnaround*). As a result of these practices, dozens of cases were improperly closed during intake without investigation. Subsequently, during July and August, these cases were identified,

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reopened and assigned for either sworn or non-sworn investigation, as appropriate. Also during the second half of 2016/17, a backlog of unassigned field investigation cases accumulated in the Complaint Section's Intake Unit. Subsequently, during late-July and August, this backlog was cleared and the cases were assigned to either DCA's Division of Investigation or BVNPT's Investigation Section, as appropriate. In summary, from all of the data and information currently available, it does not appear that there has been any significant shift since implementation of BreEZe in the total number of licensee complaint cases assigned for either sworn or non-sworn field investigation.

As discussed previously, Complaint Section analysts complete desk investigations of two basic types of licensee complaint cases; cases involving discipline by another state or agency and cases involving failure by the licensee to comply with BVNPT's CE requirements. As shown by **Exhibit A-3**, as a result of the cessation of CE compliance auditing activity during mid-2016, significantly fewer of these types of licensee complaint desk investigations were completed. During the 6-month period from January through June 2016, about 200 licensee complaint desk investigations were completed. Subsequently, during the 6-month period from July through December 2016, about 130 licensee complaint desk investigations were completed, including investigations of about 70 cases involving discipline by another state or agency and about 30 cases involving non-compliance with BVNPT's CE requirements. More recently, from January through June 2017, only about 20 licensee complaint desk investigations were completed, nearly all of which involved discipline by another state or agency. During this latter period there was a complete cessation of the utilization of Complaint Section analysts to complete enhanced screening or desk investigations of licensee complaint cases.

Exhibit A-3 also shows a significant decrease in the number of non-sworn licensee complaint investigations completed during July to December 2016. During 2015/16 about 500 non-sworn investigations were completed, including more than 300 investigations completed during the 6-month period from January through June 2016. Subsequently, during the 6-month period from July through December 2016, about 75 non-sworn licensee complaint investigations were completed. During the next 6-month period, from January through June 2017, about 185 non-sworn investigations were completed, but this included about 80 NOW Project cases, including 20 cases that were closed with a NOW without sufficient investigation. Excluding these 20 cases, about 240 non-sworn investigations were completed during the second half of 2016/17. More recently, from July through September 2017, only 29 non-sworn investigations were completed. Finally, as shown by **Exhibits A-4** and **A-5**, as of September 30, 2017, there were about 470 pending non-sworn licensee complaint investigations compared to about 400 pending non-sworn licensee complaint investigations pending at the start of 2016/17. Additionally, as shown by Exhibit A-5, the average age of the Investigation Section's pending investigations stopped decreasing.

In contrast to prior years when BVNPT had stopped referring cases to DCA's Division of Investigation, throughout 2016 the Division of Investigation continued to complete significantly larger numbers of sworn investigations, many of which were reassigned to the Division during 2015 after previously being assigned to BVNPT's non-sworn Investigation Section. During the 6-month period from January through June, 2016, the Division of Investigation completed about 130 investigations (an average of 22 cases per month). Subsequently, during the 6-month period from July through December 2016, the Division of Investigation completed about 150 investigations (an average of 25 cases per month) and from January through June 2017 the Division completed another 130 investigations (an average of 22 cases per month). Concurrently, the number of pending sworn investigations decreased significantly, from about 330 pending cases as of December 31, 2015 to about 135 cases as of June 30, 2017. Also, the average age of the

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Division of Investigation's pending cases decreased from about 17 months as of December 31, 2015, to about 15 months as of June 30, 2017. However, as discussed previously, the reported number of pending sworn investigation cases as of June 30, 2017 is understated by more than 40 cases due to the accumulation of unassigned cases in the Complaint Section's Intake Unit during this period. However, even if these 40+ cases are included, the Division of Investigation's backlog of pending cases still decreased significantly from 2015/16 levels along with steady reductions in the average age of these cases. Historically, about one-third of the licensee complaint cases investigated by the Division of Investigation are referred to the AG for formal disciplinary action and these cases account for about two-thirds of all licensee complaint cases referred to the AG. More recently, nearly all of the licensee complaint cases referred for formal discipline were investigated by the Division of Investigation.

### 6. Administrative Discipline Outcomes

As shown by **Exhibit A-6**, in comparison to 2015/16, during 2016/17, and particularly during the second half of the year, BVNPT issued significantly fewer citations. The recent decrease in citation issuances is attributable largely to

- ✓ BVNPT's 2016/17 CE Audit Project which generated virtually no enforcement activity
- ✓ Decreases in the number of licensee criminal arrest/conviction reports received and completed
- ✓ Decreases in the number of completed non-sworn licensee complaint investigations
- ✓ The accumulation of a large backlog of completed field investigation cases within the Complaint Section pending discipline review
- ✓ The separation BVNPT's Citation Desk Analyst in mid-May 2017 and the complete cessation of citation issuances and most other Citation Program functions from that point through late-September 2017.

Additionally, as shown by Exhibit A-6, there was also a significant decrease in the number NOWs issued during 2016/17 in comparison to NOW issuances during 2015/16. This decrease occurred even with the issuance of an extraordinarily large number of NOWs during early-2017 as part of BVNPT's NOW Project. About 80 of the total 143 NOWs issued to licensees during 2016/17, excluding CE and arrest/conviction report cases, were generated from the NOW Project and 20 of these cases were subsequently reopened because the cases had not been sufficiently investigation.

### 7. Total Pending Investigations

As shown by **Exhibit A-4**, including all licensee arrest/conviction report and complaint investigations assigned for desk, non-sworn or sworn investigation, as of June 30, 2017, BVNPT had a total of about 1,240 pending investigations, or about 170 fewer licensee enforcement investigations than were pending as of June 30, 2016. However, as improperly closed cases were reopened and the accumulated case intake backlogs were cleared during July, August and September 2017, the total number of pending enforcement investigations quickly increased. As of September 30, 2017, BVNPT had about 1,450 pending enforcement investigations, more than it had at the beginning of 2016/17.



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### B. Discipline Cases

This section summarizes recent changes and trends in BVNPT's discipline case workload, workflows, backlogs and performance. The section is organized as follows:

	Title
Section	1. Discipline Case Referrals and Filings
	2. Discipline Cases Completed
	3. Pending Discipline Cases
	4. Discipline Case Outcomes
	5. Discipline Process Elapsed Time Performance Probation Program.

#### 1. Discipline Case Referrals and Filings

6. As shown by **Exhibit B-1**, during 2016/17 the number of discipline cases referred to the AG declined significantly compared to the number of cases referred to the AG during 2015/16. This decrease is entirely attributable to a decrease in the number of cases referred to the AG during the second half of the year. During the second half of 2016/17, about 120 cases were referred to the AG compared to nearly 200 cases referred to the AG during several preceding 6-month periods. Discipline case referral decreases occurred in all three (3) major categories of licensee cases, including arrest/conviction report cases, discipline by another state/agency cases, and complaint cases. Partially offsetting these decreases, during 2016/17 there was a significant increase in the number of subsequent discipline cases referred to the AG. The recent increase in the number of subsequent discipline cases referred to the AG reflects recent increases in BVNPT's probationer population resulting from accelerated settlements of pending discipline cases in prior periods, especially during the first half of 2015/16. Generally, newer probationers are more likely to fail a Bodily Fluid Test (BFT) or engage in other activity that can lead to subsequent discipline than probationers that have successfully completed their first year or two of probation. Given recent increases in BVNPT's probationer population, it is likely that this comparatively higher level of subsequent discipline activity will persist for at least another one (1) to two (2) years. Additionally, some of the recent increase in subsequent discipline activity could be due to larger numbers of referrals of other types of probationer cases, such as cases involving inactive probationers (e.g., cases involving probationers that are not practicing but failed to maintain an active license as required by their conditions of probation).

Exhibit B-1 also shows that about 330 Statements of Issues (SOIs) and Accusations were filed during 2016/17 compared to about 295 SOIs and Accusations filed during 2015/16. However, during the second half of 2016/17 only about 140 SOIs and Accusations were filed compared to about 190 SOIs and Accusations filed during the first half of the year. Most of this decrease is attributable to a decrease in Accusation filings and all of this decrease is attributable to (1) declining numbers of completed licensee

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arrest/conviction report cases and (2) delays in completing discipline reviews of completed field investigation cases. Subsequently, from July through September 2017, as the backlog of discipline review cases was cleared, BVNPT referred a larger number of cases to the AG.

During October 2016, in response to our prompting, BVNPT learned that it had not been identifying cases for referral to the AG's Fast Track (FT) Program since April 2016 when responsibility for transmitting cases to the AG was transferred from BVNPT's Discipline Section to the Complaint Section. In response to these circumstances, Complaint Section staff were provided with information regarding the criteria for identifying and referring cases to the FT Program. Additionally, a Single Point of Contact (SPOC) within the Discipline Section was identified for transmitting FT cases to the AG and serving as the liaison and designated Discipline Case Analyst for these cases. At about this same time, the AG expanded the FT Program from its San Diego office to its San Francisco and Oakland offices. Over the next 6 to 8 weeks, 10 FT cases were referred to the AG's San Diego office, about the same number as were referred to the AG's San Diego office during the entire prior fiscal year. Additionally, four (4) FT cases were referred to the AG's San Francisco and Oakland offices. For the first nine (9) months of 2017, BVNPT referred 33 FT cases to the AG compared to just 18 FT case referrals per year during 2015 and 2016.

### 2. Discipline and Subsequent Discipline Cases Completed

As shown by **Exhibit B-2**, about 174 discipline cases were completed during the second half of 2016/17 compared to about 172 cases completed during the first half of 2016/17 and 186 cases completed during the preceding 6-month period. During 2016/17, the number of discipline cases completed more than kept pace with the number of cases referred for discipline which, as discussed previously, was adversely impacted by (1) declining numbers of completed desk investigations of licensee arrest/conviction report cases and (2) delays in completing discipline reviews of completed field investigation cases. During 2016/17, larger numbers of subsequent discipline cases were completed compared to the number of subsequent discipline cases completed in prior periods.

### 3. Pending Discipline and Subsequent Discipline Cases

As shown by **Exhibit B-3**, during 2016/17 the number of pending discipline cases, excluding subsequent discipline cases, decreased by about 40 cases from about 340 pending cases as of June 30, 2016, to about 300 pending cases as of June 30, 2017. The reduced number of pending discipline cases during 2016/17, excluding subsequent discipline cases, largely reflects the reduced number of cases referred for discipline during this period due to (1) declining number of completed desk investigations of licensee arrest/conviction report cases and (2) delays in completing discipline reviews of completed field investigation cases. Subsequently, during July to September 2017, the backlog of discipline review cases was cleared, but the number of pending discipline cases declined even further to about 270 cases as of September 30, 2017. As of June 30, 2017, the average age of BVNPT's pending discipline cases, excluding subsequent discipline cases, was about 23 months. This compares to an average age of about 26 months as of June 30, 2016 and an average age of 32 months as of June 30, 2015. However, the average age of BVNPT's pending discipline cases as of September 30, 2017 increased by two (2) months to 25 months. This latter increase partially reflects the impact of referral during this period of about 40+ backlogged discipline review cases to the AG.

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During 2016/17, the number of pending subsequent discipline cases likely increased as a result of the relatively large number of subsequent discipline cases that were referred to the AG during that year (see Exhibit B-1). This trend continued during the first quarter of 2017/18 when the number of pending subsequent discipline cases increased to 65 cases as of September 30, 2017 from 60 cases at the start of the fiscal year.

### 4. Discipline Case Outcomes

As shown by **Exhibit B-4**, during 2016/17 the proportion of discipline cases resulting in a probation outcome remained relatively high in comparison to periods prior to 2015/16. The higher proportion of discipline cases with a probation outcome reflects BVNPT's efforts to accelerate the settlement of aged pending discipline cases which helped to reduce the number of pending discipline cases. During both 2015/16 and 2016/17, about one-third of BVNPT's completed discipline cases had a probation outcome and about 35 to 40 percent of BVNPT's discipline cases resulted in revocation of the subject's license.

During 2016/17, larger numbers of BVNPT's discipline cases had a voluntary surrender outcome. During 2016/17 more than 60 cases had a voluntary surrender outcome. This compares to 48 surrenders during 2015/16 and 35 surrenders during 2014/15.

Finally, as shown by Exhibit B-4, in recent years a significant downward shift occurred in the number of other disciplinary case outcomes. This shift likely reflects impacts of changes implemented during 2015/16 to reduce referrals to the AG of cases involving minor offenses. Finally, as shown by Exhibit B-4 and discussed previously, larger numbers of subsequent discipline cases were completed during 2016/17 and about 90 percent of these cases resulted in either revocation or voluntary surrender of the probationer's license. This trend continued during the first quarter of 2017/18.

### 5. Discipline Process Elapsed Time Performance

As shown by **Exhibit B-5**, further decreases were achieved during 2016/17 in the average elapsed time from case referral to filing for both SOIs and accusations. During this period the average elapsed time from referral of the cases to the AG to filing of the pleading was about four (4) months compared to an average elapsed time of about six (6) months during 2015/16. Additionally, the average elapsed time from referral of the cases to the AG to BVNPT's adoption of a disciplinary decision decreased to about 12 months from an average elapsed time of about 16 months during 2015/16. Finally, during 2016/17 the average elapsed time from case receipt to decision for formal discipline cases decreased by about five (5) months to 28 months from an average of about 33 months during 2015/16. During the first quarter of 2017/18 this latter performance metric, which is a proxy for the PM-4 performance measure, decreased further to 26 months, or about 1-year less than the average elapsed times reported for periods prior to 2016.

### 6. Probation Program

During 2016/17 Probation Program staff reclassified all inactive probationers as active probationers. Specifically, in early-2017 several dozen probationers were reclassified from inactive to active status. While this change had no impact on BVNPT's total number of probationers, it did impact statistical data regarding the number of active probationers which is nearly always cited by BVNPT in its reports to BVNPT's governing Board. By including inactive probationers, beginning during early-2017, these reports suggested that BVNPT's active probationer population was increasing faster than was actually occurring.

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During 2015/16, BVNPT's total probationer population, including all active, inactive and tolled probationers, increased by 100 probationers, from about 330 probationers as of June 30, 2015 to about 430 probationers as of June 30, 2016. Subsequently, during 2016/17, the total probationer population increased by 50 probationers to about 480 probationers as of June 30, 2017. During all three (3) years, about 30 to 35 of these probationers were tolled. All of the remaining probationers were classified as either active or inactive. As discussed previously, during the second half of 2016/17 BVNPT discontinued using the inactive classification and all of those probationers were, instead, classified as active.

As is evident from the preceding discussion, *during 2016/17 the growth of BVNPT's probationer population decelerated*. Subsequently, during the first several months of 2017/18, BVNPT's probationer population *decreased*. As of mid-October 2017, BVNPT had a total of about 450 probationers, including 35 tolled probationers. As discussed previously in our *Second Report*:

"The larger size of (BVNPT's) probationer population necessarily adds to the Probation Unit's new case intake and ongoing monitoring workloads. Additionally, it should be expected that the larger numbers of probationers will generate larger numbers of BFT failures and larger numbers of subsequent arrests and convictions for criminal or other offenses that will trigger needs to initiate subsequent disciplinary actions. However, after 2016/17, as the number of pending field investigations and discipline cases diminishes and fewer discipline cases are settled and closed with a probation outcome, Probation Unit workloads will most likely plateau. Subsequently, beginning during 2018/19, the probationer population and related workloads should begin to diminish as the large numbers of probationers that entered the Probation Program during 2015/16 complete the program. Thus, from this point in time, BVNPT's higher than average probationer population and related workloads will most likely persist for a period of about two (2) years (2016/17 and 2017/18) and then begin decreasing to historical average levels."

Available data show that the size of BVNPT's probationer population peaked in June 2017 when it had a total of 482 probationers. Recent decreases in the number pending discipline cases along with relatively high numbers of pending subsequent discipline cases suggest that sustained increases in BVNPT's probationer population are unlikely to occur during the remainder of 2017/18.

### C. Status of Implementation of Phase II Enforcement Program Recommendations

**Exhibit IV-2**, on the next three (3) pages, provides a summary of our assessment of the status of BVNPT's implementation of our Phase II recommendations for Enforcement Program organizational and business process improvements. As shown by Exhibit IV-2, BVNPT has implemented three (3) recommendations (Nos. IV-6, IV-7 and V-2) and has partially implemented eight (8) other recommendations (Nos. IV-2, IV-8, IV-10, IV-11, V-1, V-7, V-8 and V-9). As of late-September, BVNPT has not implemented 11 of the recommendations.

Status of BVNPT's Implementation of Phase II Enforcement Program Recommendations

Recommended Improvement		Implementation Status Assessment	
Phase II Integrated Assessments of Targeted Business Processes	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 <b>license applicants</b> misreport or over-report prior convictions (see also Recommendation IV-5).	<b>Not Implemented</b> - BVNPT has requested DCA's Legal Counsel to review Item No. 9 and suggest possible revisions.
	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.	<b>Partially Implemented</b> - During September 2017, DOI began providing additional training to the Intake Unit's License Applicant Case Intake Technician regarding the policies and procedures to be applied for requesting records for, screening and closing these cases.
	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 license 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.	<b>Not Implemented</b> - BVNPT has not implemented any changes based on this recommendation. Instead, BVNPT launched a large-scale audit of about 57,000 licensees representing more than 40 percent of all active BVNPT licensees. This effort was fundamentally different from the limited 5 percent sampling of licensees spread out over a period of year that was recommended. BVNPT terminated the CE Audit Project in mid-May 2017 without any enforcement outcomes and has not yet resumed any auditing of licensee compliance with the Board's CE requirements.
	IV-4	Assess the feasibility of imaging CE-related document submissions or enabling submission of the documents electronically.	<b>Not Implemented</b> - BVNPT indicated in its Sunset Review Report that it was in the process of implementing digital imaging. However, the draft scope of work for imaging services provided to us by BVNPT in support of this position, which appeared to involve imaging archived files, did not appear to address the specific business needs that this recommendation was intended to address. BVNPT never entered into any contracts for imaging services and has not initiated an assessment of the feasibility of imaging CE-related submissions or enabling submission of the documents electronically.
	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 <b>licensees</b> misreport or over-report prior convictions when renewing their license (see also Recommendation IV-1) . Develop additional programming for on-line renewals that requires confirmation 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.	<b>Not Implemented</b> - BVNPT recently requested DCA's Legal Counsel to review Item No. 9 and suggest possible revisions. Additionally, BVNPT recently initiated discussions with DCA's Office of Information Services regarding the development of BreZE functionalities that would require that licensees provide additional information regarding their criminal conviction disclosures in order to complete an on-line license renewal.
	IV-6	Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current FT Pilot Program for licensee arrest/conviction report cases and other qualifying cases.	<b>Implemented</b> - During October 2016 BVNPT learned that staff <b>had not</b> been identifying cases for referral to the AG's Fast Track (FT) Program since April 2016 when responsibility for transmitting discipline cases to the AG was transferred from the Discipline Section to the Complaint Section. Subsequently, various changes were made to BVNPT's discipline case screening and FT case identification and referral processes. Concurrently, the AG expanded the FT Program from its San Diego Office to its San Francisco and Oakland offices. More recently, the AG's Sacramento office began accepting FT cases on an informal basis. From October 2016 through September 2017, BVNPT referred 47 FT cases to the AG. This compares to just 5 FT cases referred to the AG during the preceding 12-months.
	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.	
	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.	<b>Partially Implemented</b> - As the Legislature was concluding its 2017 Session, proposed language that would have enabled delegation of approval of default decisions to BVNPT's EO was deleted from AB 1229. Legislative staff have indicated that they would be receptive to reconsidering this matter during 2018.

Status of BVNPT's Implementation of Phase II Enforcement Program Recommendations

Recommended Improvement		Implementation Status Assessment	
Phase II Integrated Assessments of Targeted Business Processes <i>(continued)</i>	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.	<b>Not Implemented</b> - Most licensee complaint cases not closed during intake/screening or referred to DCA's Division of Investigation are not further screened to identify and complete cases that do not require a field investigation. DOI recently began working with Intake Unit staff to develop enhanced complaint screening processes.
	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.	<b>Partially Implemented</b> - During late-2016 BVNPT staff contacted the Board of Registered Nursing (BRN) to request that BRN stop providing BVNPT with discipline courtesy notices. Needs continue to exist to assess impacts of this change on the number of discipline by another state/agency cases that are closed "Redundant" and to determine whether additional steps are needed to further reduce the number of redundant cases that are opened. Separately, during the past year Complaint Section staff did not consistently check NURSYS and open new cases involving discipline by other states and California agencies. BVNPT recently reassigned responsibility for checking NURSYS and resumed regularly checking NURSYS for new cases and DOI recently began working with Intake Unit staff to develop improved NURSYS review and case intake processes. A newly developed standard BreEZe report may be helpful for purposes of streamlining BVNPT's processes for identifying new cases involving discipline by another DCA-affiliated Board.
	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.	<b>Partially Implemented</b> - BVNPT's case intake coding practices have continued to improve. However, there are continuing problems with tracking cases through the enforcement process that adversely impact the consistency, completeness and quality of related workload, backlog and performance information. For example, completed field investigation cases continue to sometimes also be coded as completed desk investigation cases. Additionally, there are inconsistencies in how discipline cases are coded, tracked and reported. Workload and performance reports tied to BreEZe source data (i.e. QBIRT Queries and Business Object Reports) presume case events are coded in a consistent manner according to a standard DCA business process and it is especially important when posting disciplinary outcome information that the referral to the AG, pleading filing, decision type, and closing reason Activity Codes are accurately dated and sequenced. Also, the closing Activity Code should tie to key dates on the Discipline Code entered on the case record to prevent potential discrepant results between different reports. Finally, modifications to some standard Discipline Outcome reports and additional staff training and oversight are needed to address continuing problems in these and other related areas.
Phase II Enforcement Program Organization and Staffing Assessments	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).	<b>Partially Implemented</b> - During late-2016 BVNPT stopped a Pilot Project that involved identifying and assigning licensee complaint cases to Intake Unit staff for enhanced screening and desk investigation. Subsequently, during early-2017 BVNPT began a second Pilot Project involving retaining licensee complaint cases at Intake/Screening to obtain records releases and collect records prior to referral of the cases for field investigation. In late-June 2017 the Monitor and DOI, in consultation with BVNPT management and staff, determined that this second Pilot Project was not an effective use of resources and disrupted the flow of cases for investigation. In mid-July 2017 the second Pilot Project was stopped. DOI recently began working with Intake Unit staff to develop and implement sustainable processes for identifying, screening and completing licensee complaint cases that do not require a field investigation.
	V-2	To better address Probation Program workload demands for the next 2 to 3 years, continue to utilize Temporary Help to augment Probation Unit staffing.	<b>Implemented</b> - BVNPT authorized and filled a second Retired Annuitant position for the Probation Section.
	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.	<b>Not Implemented</b> - Since early-2017 new case assignments to the Investigation Section did not decrease and the Section's backlogs grew. None of the Section's Special Investigator positions were redirected to address other current or emerging Enforcement Program or BVNPT business needs.

Status of BVNPT's Implementation of Phase II Enforcement Program Recommendations

Recommended Improvement		Implementation Status Assessment	
Phase II Enforcement Program Organization and Staffing Assessments (continued)	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.	<b>Not Implemented</b> - During late-2016, after the assigned analyst separated from BVNPT, BVNPT stopped a Pilot Project involving enhanced screening and completion of on-line public complaints and licensee complaint cases. Subsequently, the vacant analyst position was filled and a second analyst position was established under a blanket expenditure authorization and assigned to the Intake Unit. However, both analysts were then directed to support a second Pilot Project involving obtaining records releases and records for licensee complaint cases prior to referring the cases for field investigation.
	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.	<b>Partially Implemented</b> - Except to the extent that Enforcement staff were redirected during January and February 2017 to help open and sort CE Audit Project mail, no additional Enforcement resources were redirected to support expansion of the CE Audit Program. However, during 2016/17 only a few CE Audit-related cases were referred to Enforcement. Subsequently, during July 2017, BVNPT transferred responsibility for the Citation Program to the Discipline Section which, as a result of declining discipline caseloads, has sufficient staffing resources to bolster support for the Citation Program if needed to support an expansion of BVNPT's CE Compliance Auditing Program.
	V-6	Establish a new Desk Investigation and Field Investigation Case Review Section.	<b>Not Implemented</b> - BVNPT recently met with DCA's Office of Human Resources to develop a specific plan for establishing and staffing a new Case Intake, Screening and Discipline Review Section (see Section V).
	V-7	Establish a new Probation Section and, concurrently, reduce the utilization of Temporary Help to provide probation monitoring services.	<b>Partially Implemented</b> - During early-2017 BVNPT separated the Probation Unit from the Discipline Section and redirected the Discipline Section Manager to serve as the Probation Section Manager. However, responsibility for Petitions for Reinstatement and the Reinstatement Analyst position were not transferred to the Probation Unit and no probation monitoring cases were assigned to the Probation Section Manager as were contemplated to occur as part of this recommendation. Additionally, due to continuing high monitoring caseloads and the failure to implement these other related changes, the Probation Section's utilization of Temporary Help was not reduced.
	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 the Attorney General to jointly develop and implement strategies to further reduce BVNPT case backlogs and the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.	<b>Partially Implemented</b> - Due to the collapse of the Enforcement Program's management structure, from January through July 2017 there was a nearly complete cessation of communications between BVNPT management and counterparts at DOI and the AG. BVNPT continues to experience significant problems with completing timely investigations of licensee complaint cases that are not referred to DOI. Also, BVNPT's average elapsed time to impose discipline is quite long. Needs continue to exist to develop and implement additional strategies to reduce the amount of time needed to complete licensee complaint investigations and the amount of time needed to impose discipline when supported by the results of these investigations. BVNPT's newly appointed Enforcement Division managers recently began more frequent and substantive communications with their DOI and AG counterparts.
	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.	<b>Partially Implemented</b> - During late-2016 and early-2017, individual case reviews with the Investigation Section's investigators were sometimes completed, but the types of reviews completed were qualitatively different from the reviews that were conducted by BVNPT's Chief of Enforcement during April 2016 which was the intent of this recommendation. During mid-2017, following the separation of Section's Manager, these types of reviews were discontinued completely. As a result, non-sworn licensee complaint cases again began languishing for extended periods of time as occurred prior to 2015/16. During October 2017, DOI began conducting substantive case reviews with each of the Section's Special Investigators focusing initially on their oldest cases. The reviews are structured to work through the details of the case and specific steps needed to either complete the investigation or disposition the case.

Status of BVNPT's Implementation of Phase II Enforcement Program Recommendations

Recommended Improvement		Implementation Status Assessment	
Phase II Workload and Performance Reporting	VI-1	<p>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.</p>	<p><b>Partially Implemented</b> - BVNPT staff recently developed a new format for quarterly Enforcement Program workload and performance reporting and provided the report to the Enforcement Committee at its October 2017 meeting. However, while the new quarterly reporting format provides better and more complete workload, backlog and performance information, it does not consistently or sufficiently distinguish between license applicant cases, licensee subsequent arrest/conviction cases, licensee complaint cases, and CE audit failure cases. It would be beneficial for BVNPT to align the quarterly report data with data provided in its Monthly Statistical Reports so that more current monthly information can be provided as necessary and to enable assessment of any anomalies in the quarterly reported data. Presumably, BVNPT staff will provide this same report to the Board at its next quarterly meeting and post the report to its website as part of the meeting's posted materials.</p>
	VI-2	<p>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.</p>	<p><b>Not Implemented</b> - BVNPT has not developed any performance goals for the Enforcement Program. The absence of goals makes it difficult for Board members and others to understand and interpret the data presented in the above referenced quarterly statistical reports.</p>



## IV. Updated Status of the Enforcement Program

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### D. Status of Implementation of June/July 2017 Immediate Action Recommendations

**Exhibit IV-3**, on the next page, summarizes the status of the Division of Investigation's and BVNPT's implementation, as of early-October 2017, of the 12 June/July 2017 Immediate Action Recommendations. These recommendations were developed during late-June and early-July 2017 to address a half dozen Critical Problems with the Enforcement Division's complaint handling, investigation, and discipline processes that were identified as part of the targeted review and assessment that we completed at that same time. As shown by Exhibit IV-3, over a 3½ month period extending from late-June through early-October, the Division of Investigation, in collaboration with Enforcement Division management and staff, partially or fully implemented all of these recommendations.

The implementation of the 12 Immediate Action Recommendations appears to have largely corrected each of the six (6) previously identified Critical Problems with BVNPT's enforcement processes. These problems first emerged during late-2016 and early-2017 and continued through late-June and early-July 2017 until the problems were identified and assessed by the Monitor and the Division of Investigation which then triggered an intervention by DCA and the Division of Investigation in mid-July. However, correcting these Critical Problems is analogous to treating the symptoms of an illness rather than treating the underlying causal condition or disease. These problems surfaced and continued without being detected or corrected largely due to the collapse of BVNPT's Enforcement Program management structure. Currently, the Enforcement Division has a new Chief of Enforcement with limited previous Enforcement Program experience and some new managers with limited Enforcement Program or limited management experience. Additionally, BVNPT's Assistant Executive Officer position remains unfilled on a permanent basis, as has been the case for the past 2½ years, and the Board's Interim Executive Officer, who continues to be responsible for managing BVNPT's Education Division, recently began an extended leave of absence. *The absence of fully constituted Leadership and Enforcement Program Management Teams along with the limited experience of most of the BVNPT's key management personnel reflects a continuation of past workforce management practices whereby mission critical gaps in BVNPT's Leadership and Management Team structures are largely ignored.*

Mitigating the inherent risks associated with BVNPT's failure to keep key Leadership and Enforcement Program management positions filled with experienced, fully trained personnel, the Division of Investigation is currently continuing to support the Enforcement Division by providing staff to assist BVNPT with a broad range of enforcement-related management, supervisory, technical support and training services. The continued provision of these services by the Division of Investigation, for a period of at least another 3 to 6 months, is essential to preserve the improvements that were recently made, make additional improvements that are needed, and prevent similar types of problems from recurring in the future. In Section V (*Updated Assessment of Enforcement Program Organization and Staffing*) we provide two (2) Final Recommendations structured to address BVNPT's needs for (1) continued support from the Division of Investigation and (2) additional support from DCA to fill BVNPT's leadership vacuum (see Final Recommendation Nos. 38 and 39).

### Status of BVNPT's Implementation of June/July 2017 Immediate Action Recommendations

Immediate Action Recommendation	Implementation Status Assessment
1. 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.	<b>Implemented</b> - During July 2017, under the direction of DOI, BVNPT stopped closing licensee complaints during intake. Subsequently, DOI provided assistance to BVNPT in developing and implementing guidelines and procedures for closing selected types of licensee complaint cases during intake (e.g., readily identifiable redundant complaints, complaints involving another Board's licensees and complaints involving BVNPT's Licensing and Education Programs). Additionally, all licensee complaints closed at Intake are required to be reviewed by the Unit's Lead Analyst or a Section Supervisor.
2. 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.	<b>Implemented</b> - During July 2017, DOI reviewed <b>110</b> licensee complaint cases closed during intake from February through May 2017 and identified <b>22</b> cases that needed to be reopened and assigned to the Investigation Section and <b>18</b> cases that needed to be reopened and assigned to DOI. Subsequently, BVNPT reopened these cases and assigned them for investigation as directed by DOI.
3. 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 the Investigation Section or DOI as determined appropriate by the Division of Investigation.	<b>Implemented</b> - During July 2017 DOI reviewed selected licensee complaint cases closed during intake from September 2016 through January 2017 and identified <b>7</b> cases that needed to be reopened and assigned to the Investigation Section or DOI. Subsequently, BVNPT reopened these cases and assigned them for investigation as directed by DOI.
4. Assign currently pending licensee complaint intake cases to BVNPT's Investigation Section or DOI as determined appropriate by the Division of Investigation.	<b>Implemented</b> - During July 2017 DOI worked collaboratively with the Intake Unit's Lead Analyst to review, triage and assign for investigation more than <b>80</b> pending licensee complaint cases, including about <b>50</b> cases that were assigned to DOI.
5. 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.	<b>Implemented</b> - During July 2017 BVNPT stopped Pilot Project 2.0, reassigned the cases to the Investigation Section and redirected the Intake Unit's Lead Analyst to focus primarily on completing case reviews, research, screening and triage of newly received licensee complaint cases.
6. 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.	<b>Implemented</b> - During August and September 2017 DOI began working collaborative with BVNPT staff to identify needs for and develop revisions to the Complaint Section's case intake and screening policies and procedures. Concurrently, DOI began providing training to Complaint Section staff to support implementation of the policies and procedures. DOI is continuing to monitor implementation.
7. Locate or account for all cases shown in Breeze as Closed Pending Conviction and assign them for ongoing monitoring.	<b>Partially Implemented</b> - During July and August 2017 DOI began working collaboratively with BVNPT staff to identify and account for all pending CLPX cases and to assign them for ongoing monitoring. However, further follow-up is needed to confirm that all pending CLPX cases are properly assigned and that needed follow-ups are completed.
8. Develop and implement positive internal controls to ensure that cases Closed Pending Conviction are monitored and tracked by staff on a continuing basis.	<b>Partially Implemented</b> - During July 2017 BVNPT stopped utilizing the CLPX closing code and, during October, BVNPT began reopening all previously closed CLPX cases. These changes avoid needs to develop positive internal controls for monitoring pending CLPX cases which BVNPT will no longer have.
9. Reopen and further investigate Investigation Section cases closed with a NOW during early-2017 as determined appropriate by the Division of Investigation.	<b>Partially Implemented</b> - During late-June 2017 DOI worked collaboratively with BVNPT staff to review <b>49</b> selected NOW Project cases. Subsequently, <b>19</b> of the cases were reopened and assigned to the Investigation Section and in October were assigned for further investigation.
10. Complete Division of Investigation reviews of all Investigation Section cases closed since mid-May 2017.	<b>Implemented</b> - During early-August 2017 DOI preliminarily reviewed all Investigation Section cases closed since mid-May and reinstated requirements that all completed non-sworn investigations be reviewed by the Section Supervisor (or DOI) and by a Discipline Review Analyst.
11. Transfer all Citation Program responsibilities to the Discipline Section.	<b>Implemented</b> - Responsibility for the Citation Program was transferred to the Discipline Section during July 2017. During September 2017 a vacant Citation Desk Analyst position was filled and began training. During the last week of September 2017 the Discipline Section resumed issuing citations.
12. Temporarily redirect one experienced (1) Special Investigator to complete reviews of pending AS05 cases, triage the cases for discipline, prepare case summaries, and refer the cases for issuance of a NOW, citation or to the AGO, as appropriate. Provide a 2 <sup>nd</sup> 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.	<b>Implemented with Modifications</b> - During July and August, DOI worked collaboratively with the Complaint Section's Analysts to review and prepare case summaries for more than 100 completed field investigation cases. About 40 of the cases were referred for discipline and about 20 of the cases were referred to experts for review, most of which will likely be referred for discipline after the expert review is completed. Discipline Section staff assisted with preparing and submitting the discipline packages to the AGO. BVNPT also modified its procedures to require that these cases be reviewed within 10 days versus the 30-day timeframe previously allowed. Needs exist to improve internal controls and reporting for monitoring the status of these cases and to develop procedures for expediting reviews in cases where the responsible investigator believes there is an imminent risk of consumer harm.

## IV. Updated Status of the Enforcement Program

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### E. Final Enforcement Program Process Improvement Recommendations

**Exhibit IV-4**, on the next page, provides a listing of our Final Recommendations for improving BVNPT's Enforcement Program processes. Also shown are cross-references to each recommendation's predecessor Phase II and June/July 2017 Immediate Action Recommendations. Finally, Exhibit IV-4 shows the current (October 2017) implementation status for each recommendation as presented previously in Sections IV-C and IV-D. As shown by Exhibit IV-4, as of early-October 2017 BVNPT had fully implemented only one (1) of the 14 process improvement recommendations presented previously in our *Second Report* but, with the assistance of the Division of Investigation, had fully or partially implemented nearly all of the June/July 2017 Immediate Action Recommendations. Final Recommendations for Enforcement Program organizational and staffing improvements are presented in Section V (*Updated Assessment of Enforcement Program Organization and Staffing*). Some prior Phase II Enforcement Program process improvement recommendations (Nos. VI-8, V-8 and V-9) are separately addressed in Section VI (see Final Recommendation Nos. 43, 49 and 55).

Final Enforcement Program Process Improvement Recommendations

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
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 <b>license applicants</b> misreport or over-report prior convictions (see also Final Recommendation 5).	IV-1	Not Implemented
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 <b>license applicant</b> 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.	IV-2	Partially Implemented
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 license 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.	IV-3	Not Implemented
4.	Assess the feasibility of imaging CE-related document submissions or enabling submission of the documents electronically.	IV-4	Not Implemented
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 <b>licensees</b> misreport or over-report prior convictions when renewing their license (see also Final Recommendation 1). Develop additional programming for on-line renewals that requires confirmation 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.	IV-5	Not Implemented
6.	Work collaboratively with the AG to identify ways to increase BVNPT's utilization of the current FT Pilot Program for licensee arrest/conviction report cases and other qualifying cases.	IV-6	Implemented
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.	IV-7	
8.	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 screening and completing these types of cases (see also Final Recommendations 12 and 39).	IV-9 <i>(Modified)</i>	Not Implemented
9.	Restore processes for opening and investigating cases involving discipline by another state/agency. 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, from standard BreEZe reports, or the agency routinely posts the information to another professional licensing database that is otherwise queried by BVNPT.	IV-10 <i>(Modified)</i>	Partially Implemented
10.	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.	IV-11	Partially Implemented
11.	Develop and implement processes for enhanced screening and completion of licensee complaint cases that do not require field investigation (see also Final Recommendation 36).	V-1 <i>(Modified)</i>	Partially Implemented

Final Enforcement Program Process Improvement Recommendations

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
12.	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.	No. 1	Implemented
13.	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.	No. 2	Implemented
14.	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 the Investigation Section or DOI as determined appropriate by the Division of Investigation.	No. 3	Implemented
15.	Assign currently pending licensee complaint intake cases to BVNPT's Investigation Section or DOI as determined appropriate by the Division of Investigation.	No. 4	Implemented
16.	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.	No. 5	Implemented
17.	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.	No. 6	Implemented
18.	Locate or account for all cases shown in Breeze as Closed Pending Conviction and assign them for ongoing monitoring.	No. 7	Partially Implemented
19.	Develop and implement positive internal controls to ensure that cases Closed Pending Conviction are monitored and tracked by staff on a continuing basis.	No. 8	Partially Implemented
20.	Reopen and further investigate Investigation Section cases closed with a NOW during early-2017 as determined appropriate by the Division of Investigation.	No. 9	Partially Implemented
21.	Complete Division of Investigation reviews of all Investigation Section cases closed since mid-May 2017.	No. 10	Implemented
22.	Transfer all Citation Program responsibilities to the Discipline Section.	No. 11	Implemented
23.	Temporarily redirect one experienced (1) Special Investigator to complete reviews of pending AS05 cases, triage the cases for discipline, prepare case summaries, and refer the cases for issuance of a NOW, citation or to the 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. Improve internal controls and reporting for monitoring the status of these cases and develop procedures for expediting reviews in cases where the responsible investigator believes there is an imminent risk of consumer harm.	No. 12 <i>(Modified)</i>	Partially Implemented with Modifications
24.	Modify the Quarterly Enforcement Workload and Performance Report format to more consistently distinguish between license applicant cases, licensee subsequent arrest/conviction report cases, licensee complaint cases, and CE audit failure cases. Additionally, align the Quarterly Report Data with data provided in the Division's Monthly Statistical Reports. Provide both Quarterly and Monthly Reports to the Enforcement Committee within 10 days following each reporting period.	VI-1 <i>(Modified)</i>	Implemented with Modifications
25.	On an annual basis, develop goals for each of the workload and performance measures listed on the Quarterly Enforcement Workload and Performance Report and include the goals in all quarterly reports.	VI-2 <i>(Modified)</i>	Not Implemented

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## V. Updated Assessment of Enforcement Program Organization and Staffing

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## V. Updated Assessment of Enforcement Program Organization and Staffing

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This section summarizes results of assessments performed of the Enforcement Division's organization and staffing. The section is organized as follows:

	Title
<b>Section</b>	
A.	Current and Anticipated Future Enforcement Division Staffing Requirements
B.	Restructured Enforcement Division Organizational Model
C.	AB 1229 Enforcement Program Oversight Enhancements
D.	Other Potential Enforcement Program Organizational Models
E.	Final Enforcement Program Organization and Staffing Recommendations.

### A. Current and Anticipated Future Enforcement Division Staffing Requirements

Overall, the Enforcement Division currently has a sufficient number of authorized permanent and blanket positions to address current workload demands and anticipated workload during the next several years. However, some position reclassifications and some redirections of currently authorized positions are needed to better align current resources with current and anticipated future workload demands.

#### 1. Complaint Section Staffing and Workload

Except for the very recent redirection of one (1) Citation Desk Analyst position, along with associated Citation Program functions, from the Complaint Section to the Discipline Section, the total number of permanent and limited term positions authorized for the Complaint Section has not changed for the past five (5) years. However, during this same period, there have been significant decreases in the Section's workload. For example:

**License Applicant Arrest/Conviction Report Cases** – Prior to 2015/16, the Complaint Section received several thousand license applicant cases per year. In contrast, during 2015/16 and 2016/17 the Section received only about 700 license applicant cases per year. In parallel with the decrease in license applicant cases received, the Section completed fewer license applicant cases. During 2016/17 the Section completed about 630 cases compared to more than 2,100 cases completed during 2015/16 and an average of about 3,500 cases completed per year during the preceding four (4) fiscal years. During the past three (3) years the number of pending license applicant cases decreased by 98 percent, to less than 70 cases as of June 30, 2017 from more than 2,800 cases as of June 30, 2014.

**Licensee Arrest/Conviction Report Cases** – From 2012/13 through 2015/16, the Complaint Section received from about 1,350 to 1,650 licensee arrest/conviction report cases per year. More recently, during 2016/17, the Section received fewer than 1,200 cases. From 2012/13 through 2015/16, the Section consistently completed desk investigations of these cases at a rate that was faster than new cases were received, resulting in continuing declines in the number of pending cases. As of June 30, 2011, there were more than 1,300 pending desk investigations of licensee arrest/conviction report cases. This compares to about 730 pending desk investigations of licensee arrest/conviction report cases as of June 30, 2016. During

## V. Updated Assessment of Enforcement Program Organization and Staffing

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2015/16, when 1,650 new cases were received, the Section completed about 1,900 investigations. Subsequently, during 2016/17, the Section received and completed about 1,160 investigations. During 2016/17 the Section experienced high levels of staff turnover and the Section operated with little or no supervision or management throughout much of the second half of the year. During 2016/17 there was no further reduction in the Section's pending investigations.

During the second half of 2016/17, one (1) additional AGPA position authorized through a blanket expenditure authorization was filled to serve as a Lead for the Complaint Section's Intake Unit and bolster the Section's complaint screening capabilities. Also during the second half of 2016/17, one (1) vacant permanent SSA position authorized for the Intake Unit was filled. These staffing adjustments were consistent with the following recommendation provided in our *Second Report*:

*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 (see Recommendation V-4).*

However, both of these new staff received little training and both were redirected to spend a significant portion of their time obtaining releases and requesting records for non-sworn investigation cases. Additionally, during the second half of 2016/17, the Intake Unit's Applicant Case Intake Technician separated from BVNPT leaving that position vacant. Subsequently, the Unit's Licensee Case Intake Technician was promoted to the vacant License Applicant Case Intake position and began providing both License Applicant and Licensee case intake services on a rotational basis. As a result of staff turnover and vacancies within the Intake Unit, the redirection of Intake Unit staff to provide services in other areas, the absence of supervision and management, and the failure to promptly backfill the Intake Unit's vacant positions and properly train newer staff, some work backlogs accumulated. Subsequently, during July, August and September 2017, with the support of DCA's Division of Investigation, Intake Unit staff were provided with intensive training and directed to cease providing services in other areas. Additionally, during September a vacant Intake Technician position was filled and began training. As a result of these changes, the Intake Unit's backlogs were quickly cleared. BVNPT is currently recruiting to fill the vacant permanent SSA position which continues to be needed to help bolster the Unit's licensee complaint screening capabilities.

**Final Recommendation 26** – *Continue to redirect and consolidate available resources as needed to enable additional screening and completion of licensee complaints that do not require field investigation*

**Final Recommendation 27** – *Continue to utilize available blanket expenditure authorization funding to maintain the availability of a full-time AGPA position to serve as a Lead Analyst for the Intake Unit and provide second level intake review and complaint screening services.*

**Final Recommendation 28** – *Modify the classification of the Intake Unit's authorized permanent SSA position to enable the incumbent to transition to the AGPA level as the incumbent gains experience screening licensee complaint cases, takes on responsibility for screening more complex cases, and begins providing enhanced complaint screening services.*

## V. Updated Assessment of Enforcement Program Organization and Staffing

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### 2. Investigation Section Staffing and Workload

During 2016/17, one (1) of the Investigation Section's two (2) authorized Supervising Special Investigator positions was reclassified to Staff Services Manager I (SSM I) and redirected to the Discipline Section to enable creation of a separate Probation Section. Previously, the Probation Unit was a part of the Discipline Section. Also during 2016/17, one of the Investigation Section's eight (8) Special Investigator positions was reclassified to AGPA and redirected to the Discipline Section to bolster the Section's discipline case management capabilities. As is evident from the actual historical performance of Investigation Section staff, the Section's remaining eight (8) positions, if properly trained, managed, and supervised, are more than sufficient for the Section's current and anticipated future workload demands. For example:

**Licensee Complaint Cases Assigned for Non-Sworn Investigation** – During 2015/16, about 350 cases were assigned to the Investigation Section. Subsequently, during 2016/17, fewer than 250 cases were assigned to the Section. However, the number of cases assigned to the Investigation Section during 2016/17 is significantly understated due to the improper closing of some licensee complaint cases at Intake during the second half of the year. Additionally, a backlog of cases accumulated at Intake that should have been assigned to the Investigation Section. If these problems had not occurred, then about 300 to 350 licensee complaint cases would likely have been assigned to the Investigation Section during 2016/17. Workload data for years prior to 2015/16 is not comparable because BVNPT limited its use of DCA's Division of Investigation to investigate licensee complaint cases involving serious criminal misconduct or significant patient harm.

**Completed Non-Sworn License Complaint Investigations** – During 2013/14 and 2014/15 the Investigation Section completed about 430 investigations. During those years the Section usually had 7 to 8 filled Special Investigator positions plus 1 or 2 filled Supervising Special Investigator positions and, therefore, completed about 50 investigations per year, per position. Subsequently, during 2015/16 the Investigation Section completed nearly 500 investigations. During 2015/16 the Section usually had 5 to 6 filled Special Investigator positions plus 1 filled Supervising Special Investigator position and, therefore, completed more than 70 investigations per position. During 2016/17 the Investigation Section experienced additional staff turnover at the Special Investigator and Supervising Special Investigator levels. A new supervisor for the Section was hired during September 2016, but was never properly or sufficiently trained and separated from BVNPT just eight (8) months later during May 2017. Concurrently, from mid-October 2016 through the end of the fiscal year, BVNPT's Chief of Enforcement was either on a leave of absence or the Chief of Enforcement position was vacant. Thus, for most of 2016/17, the Investigation Section had no effective management or supervision.

Consistent with the above analysis, in our *Second Report* we presented the following recommendation:

*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 (see Recommendation V-3).*

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Currently, one (1) of the Investigation Section's eight (8) authorized positions is vacant. Based on demonstrated historical performance, Investigation Section staff are capable, collectively, of completing at least 50 investigations per year per authorized position. Therefore, assuming continuing assignment of about 300 to 350 licensee complaint cases per year to the Section, seven (7) or fewer authorized positions are needed to provide the Section with the capability to keep pace with current and anticipated future workload demands. With proper training, supervision and management, fewer than seven (7) authorized positions would possibly be needed. However, for at least the next year, all of the Section's seven (7) currently filled positions are needed to reduce the Section's accumulated backlog of pending licensee complaint cases. As of the September 30, 2017, the Section had about 470 pending cases. Of these, about 300 cases were unassigned. Nonetheless, the Section's vacant Special Investigator position should be reclassified and redirected to bolster the Division's triaging and screening of licensee complaint cases which would better help to control the Investigation Section's backlog of aged licensee complaint cases.

**Final Recommendation 29:** *Reclassify a currently vacant Special Investigator position to SSM I and redirect the position to serve as a Manager for the new Intake, Screening, Discipline Review and Enforcement Support Section (see Final Recommendation 36).*

**Final Recommendation 30:** *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*

### 3. Discipline Section Staffing and Workload

As discussed previously, during 2016/17 a Supervising Special Investigator position was reclassified to SSM I and redirected to the Discipline Section to enable creation of a separate Probation Section. Concurrently, four (4) permanent Probation Unit positions (3 AGPAs and 1 SSA) and one (1) Retired Annuitant AGPA were transferred to the newly created Probation Section. Additionally, to bolster the Discipline Section's discipline case management capabilities, a vacant Special Investigator position was reclassified to AGPA and redirected to the Discipline Section. Finally, during July 2017 a Citation Desk Analyst position was transferred from the Complaint Section to the Discipline Section along with all related responsibilities for the Citation Program. As a result of these changes, the total number of permanent staff reporting to the Discipline Section manager decreased by three (3) positions. The Discipline Section currently has about four (4) full-time-equivalent Discipline Case Analyst positions, including:

- ❖ Three (3) full-time permanent AGPA positions
- ❖ One (1) half-time permanent AGPA position
- ❖ One (1) full-time permanent SSA position that is assigned a part-time discipline case management workload because the SSA is also responsible for handling Petitions for Reinstatement.

As discussed below and evident from the Discipline Section's actual historical performance, the number of positions currently allocated to the Discipline Section is more than sufficient to address current and anticipated future workload demands.

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**2016/17 Discipline Case Management Staffing** – From June 30, 2013, through June 30, 2015, the number of pending discipline cases exceeded 500 cases. During this period there were 2.5 authorized full-time-equivalent Discipline Case Analysts. To reduce the Discipline Case Analysts' caseloads, during 2016/17 one (1) additional AGPA position was authorized for the Section by reclassifying and redirecting a vacant Special Investigator position. This position was then filled through an internal promotion of a Discipline Section Staff Services Analyst (SSA) which, because the newly vacant SSA position was not promptly filled, resulted in no net change in the Section's actual staffing levels or their work assignments. Subsequently, the vacant SSA position was filled through an internal promotion of the Discipline Section's Management Services Technician (MST) which, because the newly vacant MST position was not promptly filled, again resulted in no net change in the Section's actual staffing levels or their work assignments. Finally, during mid-August 2017, the vacant MST position was filled. The MST appointment finally made it possible for the recently promoted SSA and AGPA to begin taking on their new work assignments and would have increased the number of staff available to provide Discipline Case Management services except that, during mid-July 2017, one of the Section's Discipline Case Analysts was promoted to the Section's vacant Section Manager position (see below).

**2016/17 Discipline Section Management Staffing** – Throughout the second half of 2016/17 the Discipline Section operated without a manager because a new manager for the Discipline Section was not promptly hired after the Section's former manager was redirected to the newly created Probation Section. During July 2017 the Discipline Section Manager position was filled through an internal promotion of one of the Section's Discipline Case Analysts which then created a vacant Discipline Case Analyst position. As of early-October 2017, the vacant Discipline Case Analyst position had not been filled.

In summary, throughout 2016/17, there was never any net increase in the number of staff available to provide the Discipline Section's core Discipline Case Management, Reinstatement, and Decision Desk services. Instead, the number of staff available to provide these services actually decreased due to the redirection of the Section's manager to the newly created Probation Section. Additionally, an SSA position that had historically been assigned to manage a limited number of discipline cases was unavailable throughout 2016/17 for this purpose. During most of the first half of 2016/17 this SSA was utilized almost exclusively to help complete the conversion from CAS to BreZE and, after the incumbent separated from BVNPT in January 2017, the SSA position remained vacant. As of October 2017, the SSA position, which was previously responsible for the Enforcement Division's data quality control and statistical reporting functions, had not been filled.

Finally, with respect to the Discipline Section's discipline case management workload, during 2015/16 the Section's pending discipline caseloads decreased significantly. During 2015/16 the Section completed about 450 discipline cases or about 100 more cases than were referred for discipline that same year, excluding subsequent discipline cases. As of June 30, 2016, the Discipline Section had about 340 pending cases or 32 percent fewer cases than were pending at the start of the year. During 2016/17 the Section's pending discipline caseloads decreased further to about 300 cases as of June 30, 2017. During 2016/17 the Section completed nearly 350 discipline cases or about 40 more cases than were referred for discipline that same year, excluding subsequent discipline cases. However, the June 30, 2017 pending discipline case statistic is understated by several dozen cases due to the accumulation during the second half of 2016/17 of a backlog of more than 40 completed investigation cases that had not yet been

## V. Updated Assessment of Enforcement Program Organization and Staffing

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reviewed and transmitted to the Attorney General for discipline. Subsequently, during the next several months, with the assistance of DCA's Division of Investigation, this backlog was cleared. As of September 30, 2017, the Discipline Section had about 290 pending discipline cases, the smallest number of pending discipline cases in many years. During October 2017 the Section's pending discipline cases declined further to about 280 cases.

In conclusion, during 2016/17 additional staffing resources were authorized for the Discipline Section, but actual staffing resources available to provide Discipline Case Management, Reinstatement and Decision Desk services actually decreased. Nonetheless, during 2016/17 the number of pending discipline cases decreased significantly. As of September 30, 2017 the Section had fewer than 300 pending discipline cases and 2.5 filled Discipline Case Analyst positions plus one (1) authorized Discipline Case Analyst position that was vacant. However, with respect to expected future discipline case workflows and workloads:

- ❖ During 2015/16, the Complaint Section's licensee arrest/conviction report case backlogs decreased significantly
- ❖ During 2016/17, the number of new licensee arrest/conviction reports received by BVNPT decreased significantly
- ❖ During 2016/17, the Division of Investigation's inherited aged case backlogs were largely eliminated.

These changes in the Enforcement Program's case backlogs and workflows, which account for most of the cases that are referred for discipline, have already impacted the number of cases referred for discipline which helped to accelerate reductions in the number of pending discipline cases. Also, because of these same changes, it is evident that the number of pending discipline cases will either stay the same or decline further during 2017/18 and continuing into the following year. Consequently, fewer Discipline Case Analyst positions may now be needed. Previously, in our *Second Report*, we recommended separating the Probation Unit from the Discipline Section. We also recommended transferring Reinstatement Desk responsibilities and associated staffing to the new Probation Section. Subsequently, BVNPT separated the Probation Unit from the Discipline Section, but the Petition Desk was retained within the Discipline Section. Currently, as a result of a recent internal promotion, one (1) of the Discipline Section's Analysts has continued to be responsible for monitoring a group of more than 80 probationers.

**Final Recommendation 31:** *Transfer the Reinstatement Analyst position and related Petition for Reinstatement responsibilities to the Probation Section and assign the Reinstatement Analyst a limited probation monitoring caseload as a supplement to their Reinstatement cases (e.g., monitoring some of the Probation Section's Year 3 Probationers) or continue utilizing other Discipline Section staff to monitor some probationers until monitoring caseloads decrease to lower levels.*

Additionally, as mentioned above, the Discipline Section's Data Quality Control and Statistical Reporting Analyst position has been vacant since January 2017. Historically, this position was also assigned some discipline case management responsibilities along with responsibility for other Enforcement Program support services, such as responding to Public Records Act (PRA) requests. Conflicts frequently arose in concurrently providing services in all of these different areas and these conflicts escalated following implementation of BreZze. However, it is clearly evident from the data quality control and workload and reporting problems that have surfaced during the past several years that the Enforcement Program's data quality and statistical reporting processes have not been adequately supported on a sustained basis. To address these deficiencies, the Staff Services Analyst (SSA) position allocated for these services should be upgraded and the position should be grouped together with other business units providing support services to the Division.

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**Final Recommendation 32:** *Upgrade the Enforcement Division’s Data Quality Control and Statistical Reporting Analyst position to the AGPA level and redirect the position and associated data quality control and reporting responsibilities to the Intake, Screening, Discipline Review and Enforcement Support Section (see Final Recommendation 36).*

Finally, in our *Second Report* we summarized results of our analyses of BVNPT’s Continuing Education Compliance Auditing Program and recommended (1) increasing the number of CE compliance audits completed each year, from less than 3 percent of licensees to at least 5 percent of licensees, and (2) increasing the number of staff available to support a limited expansion of the program.

*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 (see Recommendation V-5).*

Subsequently, during July 2017, responsibility for the Citation Program and the Complaint Section’s vacant Citation Desk Analyst position were transferred to the Discipline Section. Consequently, given the Discipline Section’s significantly lower discipline case management caseloads, it now appears that sufficient staffing resources are available within the Discipline Section, without any further redirection of staffing resources, to support an increase in citation issuances and related fine tracking and collection activities resulting from any limited expansion of the CE Compliance Auditing Program. BVNPT has not yet resumed its CE Compliance Auditing Program since terminating the CE Compliance Auditing Project in mid-May 2017. If the CE Compliance Auditing Program is re-started and the targeted number of audits completed is increased above the levels completed historically by BVNPT’s Continuing Education Compliance Audit Specialist, then additional staffing resources could still be needed to conduct the additional compliance reviews.

**Final Recommendation 33:** *Redirect and consolidate available resources as needed to support expansion of the CE Audit Program. Consider transferring responsibility for auditing compliance with BVNPT’s CE requirements and the CE Compliance Audit Specialist position to the Discipline Section and utilizing Discipline Section staff to provide assistance with completing additional compliance reviews.*

From January through mid-May 2017, BVNPT regularly used several Education Division AGPAs to complete reviews of CE submittals.

### 4. Probation Section Staffing and Workload

During 2015/16 and 2016/17, as a result of a large increase in the number of cases referred for discipline and a large increase in the number of discipline cases completed, the Probation Program experienced especially high growth in the population of probationers. As of June 30, 2015, there were a total of about 330 probationers, including several dozen tolled probationers. As of June 30, 2017, there were a total of about 480 probationers, including several dozen tolled probationers. As discussed previously in our *Second Report* (see Section III-F), additional increases in the probationer population were expected to occur during 2016/17 and additional staffing resources were expected to be needed during 2016/17 and 2017/18 to provide related probation monitoring services.

“Available data suggests that, historically, the Probation Program’s population of probationers averaged about 250 probationers, with about one-half of the probations subject to bodily fluid testing (BFT). During 2015/16, BVNPT settled about 180 discipline cases with a probation outcome compared to an average of about 80 discipline cases settled with a

## V. Updated Assessment of Enforcement Program Organization and Staffing

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probation outcome in prior periods. As a result, about 200 probationers entered the Probation Program during 2015/16 compared to an average of fewer than 100 new probationers per year during prior periods. The large number of new probationers during 2015/16 swelled the Probation Program's total population to about 430 probationers as of June 30, 2016. Subsequently, the probationer population increased further to 440 probationers as of mid-September 2016. Higher than average numbers of discipline case settlements with probation outcomes may continue to be reached during 2016/17 as a result of (1) continuing efforts to further reduce the number of pending discipline cases and (2) referral of higher than average numbers of cases for discipline as a result of efforts to further reduce the number of pending non-sworn and sworn investigations. To the extent that this occurs, the total population of probationers could increase further (e.g., by another 50 to 100 probationers).

The larger size of the probationer population necessarily adds to the Probation Unit's new case intake and ongoing monitoring workloads. Additionally, it should be expected that the larger numbers of probationers will generate larger numbers of BFT failures and larger numbers of subsequent arrests and convictions for criminal or other offenses that will trigger needs to initiate subsequent disciplinary actions. However, after 2016/17, as the number of pending field investigations and discipline cases diminishes and fewer discipline cases are settled and closed with a probation outcome, Probation Unit workloads will most likely plateau. Subsequently, beginning during 2018/19, the probationer population and related workloads should begin to diminish as the large numbers of probationers that entered the Probation Program during 2015/16 complete the program. Thus, from this point in time, BVNPT's higher than average probationer population and related workloads will most likely persist for a period of about two (2) years (2016/17 and 2017/18) and then begin decreasing to historical average levels. Given the above circumstances, a limited augmentation of the Probation Unit's staffing may be needed for a period of several years."

Consistent with this analysis, in our *Second Report* we presented the following two (2) recommendations involving (1) separating the Probation Unit from the Discipline Section and creating a new Probation Section and (2) bolstering Probation Program staffing for the next 2 to 3 years:

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

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

As discussed previously, during 2016/17 the Probation Unit was separated from the Discipline Section and the Discipline Section's former Manager was redirected to serve as a dedicated Section Manager for the new Probation Section. Additionally, a second Retired Annuitant position was authorized for the Probation Section and filled to augment the Section's probation monitoring capabilities. Finally, clerical support duties that were previously assigned to the Section's SSA were reallocated to the Section's AGPA Probation Monitors. Concurrently, more than 80 lower complexity probation cases were assigned to the SSA (e.g., cases without Bodily Fluid Testing or Worksite Evaluation conditions).



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The Probation Section's elevated caseloads appear to have recently peaked. During July 2017 there were a total of about 475 probationers, including several dozen tolled probationers. Since that time the total number of probationers has decreased marginally. As of September 30, 2017 there were a total of about 465 probationers, including several dozen tolled probationers. As was the case previously, it is expected that the probationer population will remain at or near these same elevated levels through most of the remainder of 2017/18 before beginning an accelerated decline during 2018/19 toward much lower levels. The primary reasons that the probationer population will continue to plateau during 2017/18 and then decline after that are as follows:

**One-Time Backlog Reductions** – Historically, about 100 BVNPT licensees are placed on probation per year and in about 90 percent of these cases the licensee is placed on probation for a period of three (3) years. Almost all of the remaining licensees are placed on probation for a period of five (5) years. This data is consistent with having about 300 to 350 licensees on probation at any one time. However, during 2015/16 nearly 200 licensees were placed on probation and during 2016/17 about 150 licensees were placed on probation. These temporary large increases in number of new probationers resulted largely from focused efforts during 2015/16 and 2016/17 that significantly reduced or eliminated:

- ❖ A large backlog of licensee arrest/conviction report desk investigations
- ❖ A large inherited backlog of licensee complaint cases involving serious criminal misconduct or significant patient harm that were transferred to DCA's Division of Investigation during 2015
- ❖ A large backlog of pending discipline cases.

Since the case backlogs in all three (3) of these areas have already been significantly reduced, or eliminated, the number of new probation cases will necessarily decrease significantly from 2015/16 and 2016/17 levels.

**Declining Numbers of New Licensee Arrest/Conviction Reports** – Historically, BVNPT received about 1,350 to 1,650 licensee arrest/conviction reports per year and these cases typically accounted for about 60 percent of all completed discipline cases, excluding subsequent discipline cases. However, during 2016/17 BVNPT received fewer than 1,200 licensee arrest/conviction reports and only about 300 reports were received during the first quarter of 2017/18. The recent reduction in the number of licensee arrest/conviction reports received will likely lead to parallel reductions in the number of cases referred for discipline and the number of licensees placed on probation during the remainder of 2017/18 and continuing into 2018/19.

**Elevated Numbers of Subsequent Discipline Cases and Unsuccessful Completions** – Newer probationers are generally more likely than more seasoned probationers (e.g., probationers in their third year) to fail Bodily Fluid Testing, get arrested for criminal activity, or fail to comply with other conditions of their probation. Consistent with this, during 2016/17 the Probation Section referred nearly 90 cases for subsequent discipline compared to about 30 to 40 cases referred for subsequent discipline per year from 2012/13 through 2015/16. During 2016/17, about 60 subsequent discipline cases were completed. In most cases, subsequent discipline cases result in either a voluntary surrender or revocation of the licensee's license. Thus, elevated numbers of newer probationers are positively correlated with elevated numbers of subsequent discipline cases and elevated numbers of subsequent discipline cases are positively correlated with elevated

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numbers of unsuccessful completions which then reduces the population of probationers. As of September 30, 2017, the Probation Section had about 65 Pending Subsequent Discipline cases which was a few more cases than were pending as of June 30, 2017. Elevated numbers of unsuccessful completions are likely to persist through the remainder of 2017/18.

**Elevated Numbers of Successful Completions** – As discussed previously, about 90 percent of licensees are placed on probation for a period of three (3) years. Because especially large numbers of licensees were placed on probation during 2015/16 and continuing into 2016/17, there will necessarily be much larger numbers of successful completions beginning during 2018/19. Beginning during 2018/19, the number of successful completions will likely begin regularly exceeding the number of new probationers which will quickly reduce the population of probationers.

In summary, the Probation Program is currently in the midst of a temporary increase in workload that has possibly already reached peak levels and which will quickly decline to much lower levels beginning about 9 to 12 months from now at the start of 2018/19. During 2016/17, staffing resources available to support the Probation Program were augmented by (1) redirecting the Discipline Section Manager to serve as a dedicated first level manager for the new Probation Section and (2) allocating a second Retired Annuitant Analyst position for the Section. However, to further augment the Probation Section's capability to properly monitor the large number of probationers that it currently has, consideration should be given to:

- ❖ Transferring the Discipline Section's Reinstatement Analyst position to the Probation Section along with related Petition for Reinstatement responsibilities and assigning the Reinstatement Analyst a partial probation monitoring workload in lieu of the discipline case management workload that the Analyst would otherwise be assigned or continuing to utilize some Discipline Section staff to monitor some probationers until monitoring caseloads decrease to lower levels (*see Final Recommendation 31*)
- ❖ Assigning some probation monitoring cases to the Section Manager until monitoring caseloads decrease to lower levels.

**Final Recommendation No. 34** – *Temporarily assign some probation monitoring cases to the Probation Section Manager until monitoring caseloads decrease to lower levels.*

**Final Recommendation No. 35** – *To address elevated Probation Program workloads for the next 12 to 18 months, continue to utilize Temporary Help to augment Probation Section staffing. Subsequently, as probation monitoring caseloads decrease as a result of either a decrease in the probationer population or redistribution of probation monitoring cases among other Probation Section staff, begin reducing the Section's utilization of Temporary Help services.*

## V. Updated Assessment of Enforcement Program Organization and Staffing

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### B. Restructured Enforcement Division Organizational Model

**Exhibit V-1**, on the next page, illustrates a proposed Future State Organizational Model for the Enforcement Division. This model, which is a modified version of the Future State Organizational Model presented in our *Second Report*, would establish a new Intake, Screening, Discipline Review and Enforcement Support Section in lieu of the previously proposed Desk Investigation and Field Investigation (Discipline) Case Review Section (see prior Recommendation V-6).

The primary responsibilities of this proposed new Intake, Screening, Discipline Review and Enforcement Support Section would include:

**Case Intake, Screening and Triage** – Intake and initial screening and triaging of all license applicant and licensee cases and enhanced screening of licensee complaint cases as needed to better identify and triage cases for referral to either DCA’s Division of Investigation or the Investigation Section for completion of sworn or non-sworn field investigations, respectively. Four (4) full-time positions currently assigned to the Complaint Section’s Intake Unit (1 AGPA, 1 SSA, 1 MST and 1 OT) would be redirected to the new Section along with responsibility for all of the Complaint Section’s case intake, screening and triage functions.

**Completed Field Investigation Discipline Review** – Review of all completed Division of Investigation and Investigation Section field investigations, including determining needs for subsequent investigations, obtaining outside expert reviews, where required, determining whether to issue a NOW and issuing the NOWs, as needed, and determining whether discipline is supported and, if supported, preparing necessary submission packages and referring the case to either the Discipline Section’s Cite and Fine Desk or to the AG. These services are currently dispersed among multiple Complaint Section analysts at both the SSA and AGPA levels who are also responsible for completing license applicant and licensee arrest/conviction report desk investigations and various providing other services. One (1) permanent, full-time AGPA position currently allocated to the Complaint Section should be redirected to the new Section along with responsibility for all of the Complaint Section’s discipline case review and associated support functions.

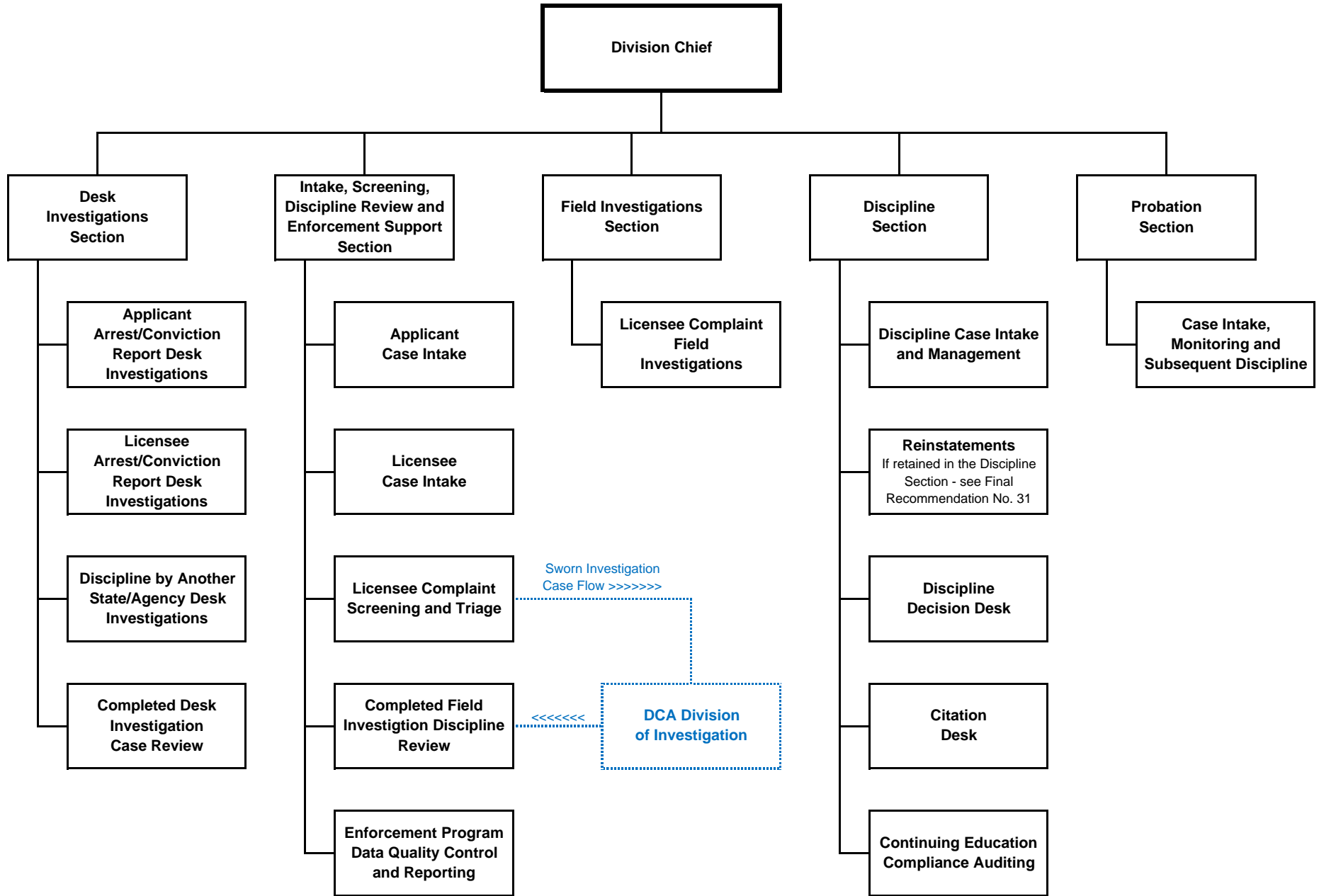
Additionally, the Enforcement Division’s Data Quality Control and Statistical Reporting Analyst should be assigned to the new Section. The functions performed by this SSA fit best with the functions performed by this new Section which would be responsible for all intake functions, assigning cases for desk and field investigation, reviewing all completed field investigations, and referring completed investigations for expert review and discipline.

The proposed Modified Future State Organizational Model can be implemented without increasing the total number of positions currently authorized for the Enforcement Division. However, a new Staff Services Manager I (SSM I) position would need to be established for the new Section.

**Final Recommendation 36** – *Establish a new Intake, Screening and Discipline Review Section. Transfer all currently allocated Complaint Section Intake Unit staff (1 AGPA, 1 SSA, 1 MST and 1 OT) and associated case intake and screening responsibilities to the new Section. Transfer one (1) of the Complaint Section’s other Lead Analysts and the Section’s discipline review responsibilities to the new Section. Transfer the Division’s Data Quality Control and Statistical Reporting Analyst position and associated responsibilities to the new Section.*

*Establishing the new Intake, Screening, Discipline Review and Enforcement Support Section should be assigned a high priority and implemented as soon as practicable.*

## Modified Future State Enforcement Division Organizational Model



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### C. AB 1229 Enforcement Program Oversight Enhancements

AB 1229 (2017, Low), which becomes effective on January 1, 2018, bolsters ongoing oversight of BVNPT's Enforcement Program. In addition to temporarily providing the Governor, rather than the Board, with the authority to appoint the Board's Executive Officer, AB 1229 contains several other provisions that are structured to enhance oversight of the Board's Enforcement Program and ensure that the Enforcement Program is properly administered and operated. Enforcement Program oversight enhancements provided by AB 1229 include all of the following:

**Section 2847.6** – Requires that the Board submit written reports to the Director of Consumer Affairs and the Legislature at specified intervals demonstrating its progress in implementing the Monitor's recommendations.

**Section 2847.8(a)** – Requires that Board staff meet with staff from DCA's Division of Investigation at specified intervals for the purpose of ensuring the appropriate function and operation of the Enforcement Program.

**Section 2847.8(b)** – Requires that the Board submit a report to DCA in advance of each meeting specified in Section 2847.8(a) that includes, as a minimum, specified information for each complaint.

**Section 2847.8(c)** – Requires that the Board and Board staff cooperate with the Director of Consumer Affairs and DCA staff to provide access to staff, data, information and files, as requested.

**Section 2847.8(d)** – Provides the Director of Consumer Affairs, through the Division of Investigation, with the authority to determine the need for and to implement changes necessary for the appropriate administration of the Board's enforcement functions.

This is the first time that these types of changes to the oversight of a DCA-affiliated Board's Enforcement Program have been adopted. Collectively, these changes provide DCA with the authority to closely monitor the operation of the Enforcement Program on a continuous basis for the next two (2) years. Additionally, AB 1229 provides DCA with the authority to make any changes that it determines are necessary to assure the appropriate administration and operation of the Enforcement Program. These changes necessarily supersede the authority that the Board would otherwise have in these areas.

Section 2847.8(b) requires that BVNPT produce listings of **all** complaints received showing specified information about each complaint. This provision appears unnecessary given Section 2847.8(c) requirements that the Board provide DCA staff with access to staff, data, information and files, as requested. Additionally, DCA has the ability, through BreEZe to obtain listings or reports pertaining to complaints that BVNPT has received. It would be better to allow DCA to request from the Board whatever reports it needs rather than requiring production of this particular report which may not be needed.

**Final Recommendation 37** – *Repeal Section 2847.8(b) requiring that the Board submit a specified report to DCA in advance of each meeting specified in Section 2847.8(a).*

## V. Updated Assessment of Enforcement Program Organization and Staffing

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### D. Other Potential Enforcement Program Organizational Models

Throughout most of the past several years the Board has not properly overseen, administered and operated its Enforcement Program. In response to these circumstances, during July 2017, DCA and the Division of Investigation provided staff to (1) help BVNPT implement all of June/July 2017 Immediate Action Recommendations and (2) assist BVNPT with a broad range of enforcement-related management, supervisory, technical support and training services. As discussed previously in Section IV, the continued provision of these services for a period of at least 3 to 6 more months is absolutely essential to preserving the improvements that were recently made and preventing similar types of problems from recurring in the future. The following recommendations are structured to address BVNPT's needs for (1) continued support from DCA's Division of Investigation and (2) additional support to bolster BVNPT's Leadership Team until a permanent Executive Officer and a permanent Assistant Executive Officer are appointed:

**Final Recommendation 38** – *DCA and the Division of Investigation should continue to provide enforcement-related management, supervisory, technical support and training services for at least the next 3 to 6 months and until BVNPT's Leadership and Enforcement Program Management Teams are fully rebuilt and sufficiently trained to enable more autonomous management of the Enforcement Program. During this transition period, the Enforcement Division's Management Team should seek out and accept direction from the Division of Investigation's more knowledgeable and experienced staff with respect to identifying needs for and implementing changes needed to enable improved Enforcement Program performance.*

**Final Recommendation 39** – *BVNPT should request additional support from the Department of Consumer Affairs or through recruitment of a Retired Annuitant with prior executive management experience to bolster BVNPT's Leadership Team capabilities until a permanent Executive Officer and a permanent Assistant Executive Officer are appointed.*

AB 1229 introduced a matrix Enforcement Program organizational structure in which responsibility and accountability for the Enforcement Program is shared in various respects by DCA, BVNPT's Leadership Team, including an Executive Officer appointed by the Governor, and BVNPT's governing Board. In the event that this matrix organizational structure does not adequately address the various problems that prompted enactment of AB 1229, other Enforcement Program organizational structures should be considered that would provide for greater levels of DCA involvement with the oversight, administration and operation of the Enforcement Program. For example, responsibility for selected portions of BVNPT's Enforcement Program could be separated from BVNPT and transferred to DCA's Division of Investigation (e.g., the Enforcement Division's Investigation Section or both the Complaint Section and the Investigation Section could be separated from BVNPT and transferred to the Division of Investigation). Alternatively, the entire Enforcement Division could be separated from BVNPT and transferred to DCA. Hopefully, higher levels of DCA involvement in BVNPT's Enforcement Program will not be necessary and, instead, either (1) the duration of the temporary matrix organizational structure will be extended or (2) a conventional organizational structure will be partially or fully restored consistent with BVNPT's ability to properly oversee, administer and operate the program.

Finally, with respect to stabilizing and building sustainable leadership and management structures for the Enforcement Program, BVNPT would especially benefit from appointment of a seasoned Executive Officer with prior executive-level management experience, preferably with other California State Government regulatory programs, and including demonstrated success turning around other troubled programs or organizations. As evidenced during both of BVNPT's last two (2) Sunset Reviews and by this report, BVNPT is a deeply troubled organization with a longstanding history of problems throughout the organization. Additionally, BVNPT's governing Board, which currently has many new members,

## V. Updated Assessment of Enforcement Program Organization and Staffing

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has historically had great difficulty fulfilling its oversight responsibilities and BVNPT's Leadership and Management Teams are currently incomplete and underdeveloped.

Collectively, these circumstances will make it especially difficult for any newly appointed Executive Officer to successfully address all of the current and emerging problems that are facing the Board. Conversely, the appointment of an inexperienced person to serve as BVNPT's Executive Officer could work at cross-purposes to the objectives of (1) correcting the Board's organizational, staffing, operational performance and emerging financial problems, (2) restoring more autonomous Enforcement Program management and operations, and (3) transitioning the Executive Officer appointment responsibility back to the Board.

**Final Recommendation 40** – *Appoint a seasoned Executive Officer to the Board that has prior executive-level management experience, preferably with other California State Government regulatory programs, and including demonstrated success turning around other troubled programs or organizations. Additionally, when making this appointment, consider the candidate's management style and willingness and ability to work collaboratively with DCA.*

### E. Final Enforcement Program Organization and Staffing Recommendations

**Exhibit V-2**, on the next page, provides a listing of our Final Recommendations for improving BVNPT's Enforcement Program organization and staffing. Also shown are cross-references to each recommendation's predecessor Phase II and June/July 2017 Immediate Action Recommendation. In many cases, there is no cross-reference to a prior recommendation because the recommendations are *supplemental* to those earlier recommendations. Finally, Exhibit V-2 shows the current (October 2017) implementation status for each recommendation as presented previously in Sections IV-C and IV-D. Some of our earlier Phase II and June/July 2017 Immediate Action Recommendations have been partially or fully implemented. A few of the Phase II recommendations and most of the supplemental recommendations have not been implemented.

Final Enforcement Program Organization and Staffing Recommendations

Final Recommendations		Prior Phase II or June/July 2017 Immediate Action Recommendation	October 2017 Implementation Status
26.	Continue to redirect and consolidate available resources as needed to enable additional screening and completion of licensee complaints that do not require field investigation.	V-4	Partially Implemented
27.	Continue to utilize available blanket expenditure authorization funding to maintain the availability of a full-time AGPA position to serve as a Lead Analyst for the Intake Unit and provide complaint screening and second level intake and complaint screening review services.	Supplemental	Implemented
28.	Modify the classification of the Intake Unit's authorized permanent SSA position to enable the incumbent to transition to the AGPA level as the incumbent gains experience screening licensee complaint cases and takes on responsibility for screening more complex cases and begins providing enhanced screening for those cases.	Supplemental	Not Implemented
29.	Reclassify a currently vacant Special Investigator position to SSM I and redirect the position to serve as a Manager for the new Intake, Screening, Discipline Review and Enforcement Support Section (see Final Recommendation 36).	V-3 <i>(Modified)</i>	Not Implemented
30.	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	V-3	Not Implemented
31.	Transfer the Reinstatement Analyst position and related Petition for Reinstatement responsibilities to the Probation Section and assign the Reinstatement Analyst a limited probation monitoring caseload as a supplement to their Petition for Reinstatement cases (e.g., monitoring of some of the Probation Section's Year 3 Probationers) or continue utilizing other Discipline Section staff to monitor some probationers until monitoring caseloads decrease to lower levels.	V-7 <i>(Modified)</i>	Implemented
32.	Upgrade the Enforcement Division's Data Quality Control and Statistical Reporting Analyst position to the AGPA level and redirect the position and associated data quality control and reporting responsibilities to the Intake, Screening, Discipline Review and Enforcement Support Section (see Final Recommendation 36).	Supplemental	Not Implemented
33.	Redirect and consolidate available resources as needed to support expansion of the CE Audit Program. Consider transferring responsibility for auditing compliance with BVNPT's CE requirements and the CE Compliance Audit Specialist position to the Discipline Section and utilizing Discipline Section staff to provide assistance with completing additional compliance reviews.	V-5 <i>(Modified)</i>	Partially Implemented
34.	Assign some probation monitoring cases to the Section Manager until monitoring caseloads decrease to lower levels.	V-7	Partially Implemented
35.	To address elevated Probation Program workload demands for the next 12 to 18 months, continue to utilize Temporary Help to augment Probation Section staffing. Subsequently, as probation monitoring caseloads decrease as a result of either a decrease in the probationer population or redistribution of probation monitoring cases among other Probation Section staff, begin reducing the Section's utilization of Temporary Help services.	V-2 <i>(Modified)</i>	Partially Implemented
36.	Establish a new Intake, Screening and Discipline Review Section. Transfer all Complaint Section Intake Unit staff (1 AGPA, 1 SSA, 1 MST and 1 OT) and associated responsibilities to the new Section. Transfer one (1) of the Complaint Section's other Lead Analysts and the Section's discipline review responsibilities to the new Section. Transfer the Division's Data Quality Control and Statistical Reporting Analyst position and associated responsibilities to the new Section.	V-6	Not Implemented
37.	Repeal Section 2847.8(b) requiring that the Board submit a specified report to DCA in advance of each meeting specified in Section 2847.8(a).	Supplemental	Not Implemented
38.	DCA and the Division of Investigation should continue to provide enforcement-related management, supervisory, technical support and training services for at least the next 3 to 6 months <u>and</u> until BVNPT's Leadership and Enforcement Program Management Teams are fully rebuilt and sufficiently trained to enable more autonomous management of the Enforcement Program. During this transition period, the Enforcement Division's Management Team should seek out and accept direction from the Division of Investigation's more knowledgeable and experienced staff with respect to identifying needs for and implementing changes needed to enable improved Enforcement Program performance.	Nos. 1 through 12	Partially Implemented
39.	BVNPT should request additional support from the Department of Consumer Affairs or through recruitment of a Retired Annuitant with prior executive management experience to bolster BVNPT's Leadership Team capabilities until a permanent Executive Officer and a permanent Assistant Executive Officer are appointed.	Supplemental	Not Implemented
40.	Appoint a seasoned Executive Officer to the Board that has prior executive-level management experience, preferably with other California State Government regulatory programs, and including demonstrated success turning around other troubled programs or organizations. Additionally, when making this appointment, consider the candidate's management style and willingness and ability to work collaboratively with DCA.	Supplemental	Not Implemented



## **VI. Summary of Targeted Administrative Process Assessments**

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## VI. Summary of Targeted Administrative Process Assessments

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This section summarizes the results of our assessments of targeted administrative process assessments delineated in AB 179. We also provide a summary of our assessment of the status of BVNPT's implementation of related Phase II/III recommendations and a listing of our Final Recommendations for administrative process improvements. The section is organized as follows:

	Title
Section	A. Vacant Positions and Hiring
	B. Staff Development and Training
	C. Oversight of Board Staff
	1. Enforcement Division
	2. Education, Licensing and Administration Business Units
	Executive Officer
	D. Evaluation of Staff Performance
	1. Enforcement Division
	2. Education, Licensing and Administration Business Units
	3. E. Communications and Collaboration with Enforcement Partners
1. F. Communications and Collaboration with the Office of the State Long-Term Care Ombudsman	
1. G. Board Member Training and Support	
1. Overview of Board Member Survey Methodology	
2. Board Member Training	
3. Dissemination of Information to Board Members	
4. Assistance to Board Members in Performing Their Duties	
5. Communications with Legislators and Legislative Staff	
H. Status of Implementation of Phase II/III Recommendations	
I. Final Administrative Process Recommendations.	

## VI. Summary of Targeted Administrative Process Assessments

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### A. Vacant Positions and Hiring

As discussed previously in Section II (*Overview of BVNPT Organization and Staffing*), during periods prior to BVNPT's 2014/15 Sunset Review, BVNPT experienced especially high vacancy rates, particularly within its Education, Licensing, and Administration business units where vacancy rates regularly exceeded 25 percent. Subsequently, many of BVNPT's vacant positions were filled which reduced total vacancies to 8.5 positions by December 2015, equivalent to an overall vacancy rate of about 13 percent. However, during 2016 staff turnover increased and as of December 2016 overall vacancy rates rose to about 17 percent. Subsequently, staff turnover increased further and, by mid-July 2017, BVNPT had 18 vacant positions scattered throughout the organization (equivalent to an overall vacancy rate in excess of 20 percent). The Enforcement Division had an especially high vacancy rate (greater than 30 percent). As of mid-July, only five (5) of BVNPT's 11 authorized management and supervisory positions were filled and only two (2) of the Enforcement Division's five (5) authorized management positions were filled. During the next several months several Enforcement Division positions were filled through outside recruitments and other positions were filled through internal promotions. Concurrently, some Enforcement Division staff were internally promoted to other BVNPT business units. Internal promotions have no net impact on BVNPT's overall vacancy rate which, as of mid-October 2017, remained at a relatively high level (nearly 20 percent).

In some cases BVNPT has created positions that have been especially difficult to fill and which, in some cases, may not actually be needed. For example, over a year ago BVNPT created a Legislation/Regulation (Leg/Reg) Analyst (AGPA) position that it has never been able to fill. For a period of time the Support Services Section's Office Service Supervisor III (OSS III) was temporarily assigned to the position in an Acting capacity, but actually provided very little, if any, legislative or regulations services during the 4-month period of this assignment. Subsequently, the OSS III was temporarily assigned for a 2-year training and development (T&D) period to a newly created Budget Analyst (AGPA) which left the OSS III position vacant. Because the incumbent can potentially return to the OSS III position, BVNPT is attempting to fill the OSS III position on a limited term basis, which it has not been able to do. Finally, during late-2016, another AGPA position that had been allocated to the Administration Unit was redirected to the Education Division. However, from mid-January through mid-May 2017, this AGPA, along with two (2) other Education Division Retired Annuitant AGPAs, was assigned to the CE Audit Project. After the CE Audit Project was terminated, the incumbent was temporarily redirected to provide Board Support services, before separating from the Board. Subsequently, during October, a Complaint Section Analyst was internally promoted to the vacant Education Division AGPA position. Currently, it is unclear that the Education Division has a need for this AGPA position. Given the availability of DCA legislative, budgeting and legal services to the Board, is unclear that BVNPT needs the Budget Analyst position, the Legislation/Regulations Analyst position, the Education Division Analyst position, and also a Board Support Analyst position, particularly if BVNPT's Executive Officer and Assistant Executive Officer positions are both filled on a permanent basis.

**Final Recommendation 41** – *When appointed, BVNPT's Executive Officer and Assistant Executive Officer should review the Board's needs for all of the different AGPA positions currently allocated to BVNPT's Education, Licensing and Administration Business Units.*

During the past 18 months we regularly monitored the vacancy status of all of BVNPT's positions, focusing particularly on staffing changes in the Enforcement Division. Additionally, we sometimes met or talked with Enforcement and other staff before their separations to gain a better understanding of the reasons they were either seeking or had accepted employment elsewhere. While some long-term staff separated from BVNPT due to retirement, some newer staff were rejected on probation, and others accepted positions at a higher classification level at another agency (e.g., promoted from the Staff Services Analyst level to the Associate Government Program Analyst level), this was not always the case. For example, the former Chief of Enforcement accepted a position with another DCA-affiliated Board at a lower classification level and the former Investigation Section Supervisor and some former Special Investigators accepted positions that were equivalent to their BVNPT classifications (referred to as lateral

## VI. Summary of Targeted Administrative Process Assessments

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transfers). A common sentiment expressed by many of the staff we talked with regarding the reasons that they and others at BVNPT were seeking or had accepted employment elsewhere was that, while they derived a great deal of satisfaction from their jobs at BVNPT and liked and enjoyed working with their peers, they could no longer continue working in what they considered to be an especially difficult work environment. Separating staff also cited specific behaviors and management practices exhibited by BVNPT's Leadership Team that supported their statements, such as poor communications, dismissive or contentious behavior, constantly changing work assignments and priorities, lack of direction, and an inability to get answers to questions or a resolution of problems. It is evident that BVNPT's unhealthy work environment accelerated staff attrition during the past year, including attrition of staff who sought out promotional opportunities at other agencies sooner than would otherwise have occurred.

Recently, at least within the Enforcement Division, there has been a notable improvement in the overall work environment, principally as a result of the Division of Investigation's intervention. Secondly, most Enforcement Division staff are hopeful that the newly-appointed Chief of Enforcement will continue to engage constructively with subordinate managers and staff, while getting up to speed with respect to understanding how the Enforcement Program operates. Finally, there is a sense of cautious optimism about having the Governor, rather than the Board, appoint BVNPT's next Executive Officer. However, partially offsetting this recent improvement, there is an undercurrent of skepticism and some continuing discontent among staff, especially within the Complaint Section which was most impacted by the collapse of the Enforcement Division's management structure and especially high levels of staff turnover during the past year. Additionally, within the Complaint Section, during the past several months the level of discontent has been increasing, rather than diminishing, turnover of staff has continued, and the Enforcement Division's Management Team seems not to have effectively addressed the root causes of these problems.

**Final Recommendation 42** – *BVNPT's Chief of Enforcement should become more actively and directly engaged in addressing issues contributing to poor workforce morale and discontent within the Complaint Section, including needs for additional training and support for the Section Manager targeted to developing (1) more effective working relationships with subordinate staff and (2) a better understanding of the nature of the Section's enforcement cases, how the cases are investigated, the Section's case handling and review processes, and how BreZE works (e.g., by working some of the licensee arrest/conviction report cases assigned to the Section).*

Finally, the recent improvements in BVNPT's overall workplace environment and workforce morale should be understood in the context of the extremely poor environment and very low workforce morale that existed throughout much of the organization during most of the 2016/17 fiscal year. Overall, there is still a great deal of room for improvement in BVNPT's overall work environment and the morale of BVNPT's workforce, particularly within the Enforcement Division. Until sustainable improvements are made in both of these areas and a healthy work environment is well-established, elevated levels of staff turnover and high vacancy rates should continue to be expected. Additionally, BVNPT will continue to experience difficulty recruiting quality outside candidates to fill its vacant positions because BVNPT's reputation as an undesirable place to work will persist. The continued involvement of the Division of Investigation with the Enforcement Program (see Final Recommendation 41), the potential additional assistance from DCA in addressing BVNPT's current leadership vacuum (see Recommendation 42), and the prospective appointment of a new Executive Officer effective in early-2018 could help to further address these issues leading to lower levels of staff turnover, reduced vacancy rates, and improved overall program performance.

## VI. Summary of Targeted Administrative Process Assessments

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### B. Staff Development and Training

**Exhibit VI-1**, on the next page, provides a summary of the number of training sessions attended by BVNPT managers, supervisors and staff from January 1, 2014 through late-September 2016. As shown by Exhibit VI-1, during 2016 BVNPT significantly boosted the number of staff provided with various types of training and the amount of training provided to these staff. For example, during both 2014 and 2015, about 60 training sessions were attended by about 30 BVNPT staff. Subsequently, during just the first nine (9) months of 2016, about 140 sessions were attended by more than 40 BVNPT staff. Additionally, as shown by Exhibit VI-1, much of BVNPT's staff training previously emphasized training in desktop tools (e.g., Microsoft Word and Excel training). In contrast, during 2016, much greater emphasis was placed on providing more advanced training in such areas as (1) analytical skills development and (2) supervision, management and leadership development.

BVNPT's case intake, screening, and investigation 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. Examples of identified business process and work product deficiencies include:

- ✓ The Critical Problems with BVNPT's case intake, screening and desk investigation processes identified during June/July 2017
- ✓ Re-screening of cases to determine the appropriate assignment for investigation or disposition of the case
- ✓ Requesting records that are not needed to complete the investigation and repetitively requesting medical or other records to obtain records suitable for submission for discipline purposes
- ✓ Incomplete investigations due to turnover of staff and case reassignments, and inadequate documentation of the results of prior investigative activities
- ✓ Repetitive reviews and revisions of investigation reports
- ✓ Problems with completing reviews of completed field investigation cases, maintaining an adequate pool of outside experts and referring cases to the outside experts, and preparing case summaries to submit the cases for discipline.

While classroom types of training can be beneficial for purposes of acquiring specific types of knowledge or developing specific skills, there is no substitute for the real world experience that can be provided through intensive, one-on-one, on-the-job training by an experienced supervisor, mentor or co-worker. For example, during April 2016 BVNPT's Chief of Enforcement conducted individual in-depth case review meetings with all of the Investigation 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*).

**Historical Summary of Training Sessions Attended by BVNPT Staff<sup>1</sup>**  
**January 2014 through September 2016**

**Exhibit VI-1**

Year	Division/Section		Positions		Number of Training Sessions Attended by Type of Training							Total		
			Total Filled	Total Receiving Training	Supervision, Management, & Leadership Development	Analyst Skills	Investigation Skills	Program Administration	Business Services	Workplace Safety	Desktop Tools		Other	
2014	Enforcement	Complaint Section Staff		6		1					14	3	18	
		Investigation Section Staff		4			5				3	1	9	
		Discipline Section Staff		4		3			1			1	5	
		Supervisors and Managers		4	7		2	1			1		11	
		<b>Total</b>		<b>18</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>1</b>	<b>1</b>		<b>18</b>	<b>5</b>	<b>43</b>	
	Licensing & Admin.	Staff		6				1	5		2	2	10	
		Supervisors and Managers		1				1	2				3	
		<b>Total</b>		<b>7</b>				<b>2</b>	<b>7</b>		<b>2</b>	<b>2</b>	<b>13</b>	
	Education	Staff		1							3		3	
		Supervisors and Managers											0	
		<b>Total</b>		<b>1</b>							<b>3</b>		<b>3</b>	
	<b>Total</b>			<b>26</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>3</b>	<b>8</b>		<b>23</b>	<b>7</b>	<b>59</b>	
	2015	Enforcement	Complaint Section Staff		7		7				3		4	14
Investigation Section Staff				6		2	6			1		1	10	
Discipline Section Staff				4		2			1	1	2	2	8	
Supervisors and Managers				3	10		1						11	
<b>Total</b>				<b>20</b>	<b>10</b>	<b>11</b>	<b>7</b>		<b>1</b>	<b>5</b>	<b>2</b>	<b>7</b>	<b>43</b>	
Licensing & Admin.		Staff		6		4		3	2				2	11
		Supervisors and Managers		2	1			1		1			3	
		<b>Total</b>		<b>8</b>	<b>1</b>	<b>4</b>		<b>4</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>14</b>	
Education		Staff		3							7		7	
		Supervisors and Managers		1								1	1	
		<b>Total</b>		<b>4</b>							<b>7</b>	<b>1</b>	<b>8</b>	
<b>Total</b>				<b>32</b>	<b>11</b>	<b>15</b>	<b>7</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>9</b>	<b>10</b>	<b>65</b>	
2016 (January through September <sup>2</sup> )		Enforcement	Complaint Section Staff		10		24	8				5	10	47
	Investigation Section Staff			7			10						10	
	Discipline Section Staff			5		6					2	8	16	
	Supervisors and Managers			5	7	1	2		1	2			13	
	<b>Total</b>			<b>27</b>	<b>7</b>	<b>31</b>	<b>20</b>		<b>1</b>	<b>2</b>	<b>7</b>	<b>18</b>	<b>86</b>	
	Licensing & Admin.	Staff		11		18					13	8	39	
		Supervisors and Managers		1	6	2				2			10	
		<b>Total</b>		<b>12</b>	<b>6</b>	<b>20</b>				<b>2</b>	<b>13</b>	<b>8</b>	<b>49</b>	
	Education	Staff		2									0	
		Supervisors and Managers				1			2				3	
		<b>Total</b>		<b>2</b>		<b>1</b>			<b>2</b>				<b>3</b>	
	<b>Total (through September 2016<sup>2</sup>)</b>			<b>41</b>	<b>13</b>	<b>52</b>	<b>20</b>		<b>3</b>	<b>4</b>	<b>20</b>	<b>26</b>	<b>138</b>	

<sup>1</sup> Excludes all BreZE training.

<sup>2</sup> Additional staff training sessions were scheduled and completed during the remainder of CY2016.

## VI. Summary of Targeted Administrative Process Assessments

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This first round of in-depth case reviews reduced the Section's total number of pending complaint cases by nearly 20 percent, to fewer than 400 pending complaint investigations, and the average age of the pending cases decreased to 13 months from 17 months as of December 31, 2015. However, these initial case reviews also highlighted the need to regularly conduct individual case review meetings with the Section's investigators to provide them with specific feedback and direction regarding their conduct and completion of actual case investigations.

Subsequently, from July 2016 through mid-September 2017, case review meetings with the Section's investigators were sometimes conducted, but these meetings were substantively different from the review completed during April 2016 and were not helpful to the investigators for purposes of determining whether or how to complete their assigned cases. Consequently, the Investigation Section's cases again began languishing with few investigations completed other than the 80 "selected" NOW Project cases completed during late-January and early-February 2017.

In early-October 2017, Division of Investigation staff met individually with each of the Investigation Section's investigators to jointly review each of their 10 oldest cases, and selected other problematic cases. At the time, the Investigation Section had about 470 assigned pending investigations. Of the 59 cases that were reviewed, the Division of Investigation directed the investigators to forward four (4) cases for formal discipline and to complete the remaining 55 investigations by:

- ❖ Issuing a citation (*15 cases*)
- ❖ Issuing a Notice of Warning (*9 cases*)
- ❖ Closing the case due to insufficient evidence or no violation (*31 cases*).

The 59 cases that were reviewed and completed as part of this initial review of the investigators' oldest assigned cases represented about 13 percent of the Investigation Section's total pending cases.

**Final Recommendation 43** – *The Division of Investigation should continue to conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. For training and development purposes, the Chief of Enforcement and the Investigation Section Manager, when appointed, should participate in most (or all) of these reviews for at least the next 6 to 12 months and, over time, Enforcement Division management should assume responsibility for completing these reviews. The frequency and duration of the reviews should be regularly adjusted as appropriate to each investigator's development needs.*

To improve their knowledge and skills, most (or all) of the Investigation Section's investigators have completed training in areas such as (1) properly obtaining confidential records and (2) preparing and issuing subpoenas. Additionally, during October 2015 the Section's investigators attended the National Certified Investigator Training (NCIT) Program offered by the Council on Licensure, Enforcement and Regulation (CLEAR). The 3-day NCIT Basic and Specialized training and certification program focuses on investigation techniques and procedures covering the investigation process, interviewing, report writing, and testifying in administrative proceedings. Also, during October 2016, all of the Section's investigators, along with about one-half of the Complaint Section's analysts, attended the first 1-day DCA Enforcement Academy class. The Enforcement Academy is a series of classes specifically related to enforcement. Many of the Enforcement Division's analysts have completed DCA's Analyst Certification Training Program classes, including classes in project management, completed staff work, effective business writing, interpersonal skills, and research, analysis and problem solving and some of the Division's support staff (e.g., MSTs and OTs) have attended some Analyst Certification Training Program classes. Shortly after joining BVNPT, the former Supervising Special Investigator attended a 4-day National Council of State Boards of Nursing investigator training program.



## VI. Summary of Targeted Administrative Process Assessments

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**Final Recommendation 44** – *Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.*

To help address deficiencies with the processes used to train newer non-sworn investigators, during mid-2016 Enforcement Division management met with representatives of the Division of Investigation to develop a ride along type of training that would pair a BVNPT investigator with a Division of Investigation investigator as they investigate a VN or PT case. This program could help BVNPT investigators gain practical knowledge about interviewing techniques, obtaining records, tracking time in the field, and development of reports. We also previously recommended that BVNPT utilize the Division of Investigation to support initial training of newer investigators. However, from mid-2016 through June 2017, BVNPT did not utilize the Division of Investigation to support initial training of its newer investigators and, to date, has not implemented any type of ride along training.

**Final Recommendation 45** – *Utilize the Division of Investigation to support initial training of newer investigators.*

From time to time, BVNPT's AG Liaison, who is based in San Francisco, meets on site with Investigation Section investigators to help provide direction and assistance with their investigations of specific cases. This type of applied assistance is supplemental to information provided during case review meetings and helps to further develop the investigator's knowledge, skills and abilities. It could be beneficial for BVNPT to schedule regular on-sites with the AG Liaison for a period of time to accelerate the training process. We previously recommended that BVNPT utilize AG Liaison services at a higher level for a period of time to provide additional on-site applied technical assistance and training to BVNPT's investigators. However, to date, BVNPT has not implemented this recommendation.

**Final Recommendation 46** – *Utilize 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.*

## VI. Summary of Targeted Administrative Process Assessments

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### C. Oversight of Board Staff

This section summarizes recent changes involving the oversight of BVNPT staff. The section is organized as follows:

	Title
Section	1. Enforcement Division
	2. Education and Licensing and Administration Business Units Executive Officer.

Currently, there is a Leadership vacuum at the Board which should be addressed immediately.

#### 3. 1. Enforcement Division

During 2016/17, oversight of Enforcement Division staff was adversely impacted by the collapse of the Division's management structure, including:

- ❖ The October 2016 leave of absence and January 2017 separation of the Chief of Enforcement
- ❖ The December 2016 separation of the Probation Unit from the Discipline Section which left the Discipline Section without a Manager
- ❖ The March 2017 separation of the Complaint Section Manager
- ❖ The May 2017 separation of the Supervising Special Investigator.

All of these positions remained vacant through the end of the 2016/17 fiscal year. Subsequently, during July and August 2017, BVNPT filled the Chief of Enforcement position and the Complaint and Discipline Section Manager positions. The Discipline Section Manager position was filled through an internal promotion of one of BVNPT's most experienced staff. The Chief of Enforcement and the Complaint Section Manager positions were filled by external candidates with limited or no prior Enforcement Program management experience that are just now beginning to learn their new jobs. As of mid-October the Supervising Special Investigator position was still vacant. Oversight and management of Enforcement Division staff is currently being supplemented by the Division of Investigation.

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### 2. Education and Licensing and Administration Business Units

During 2016/17, oversight of the Education, Licensing and Administration business units was adversely impacted by staff turnover and constantly shifting management assignments, including:

- ❖ The January 2017 leave of absence and subsequent separation of the Executive Officer
- ❖ The temporary appointment of the Supervising Nurse Education Consultant (SNEC) to serve as Acting Assistant Executive Officer (AEO) and the subsequent appointment of the SNEC to serve as Interim Executive Officer
- ❖ The temporary appointment of the Board Support Analyst, from October 2016 to January 2017, to serve as Acting Manager of the Administration and Support Services Section
- ❖ The temporary appointment of the Support Services Unit Office Services Supervisor III (OSS III), from October 2016 to January 2017 to serve as Acting Leg/Reg Analyst and the concurrent temporary appointment of a Support Services Unit Office Technician to serve as Acting OSS III for the Support Services Unit
- ❖ The 2-year Training and Development (T&D) assignment of the OSS III as a Budget Analyst which left the OSS III position vacant.

Currently, the Assistant AEO, SNEC and OSS III positions remain vacant and the Interim Executive Officer is on an extended leave of absence. There are two filled Staff Services Manager I (SSM I) positions for the Administration and Support Services and Evaluations Sections, but both of the incumbents are relatively new and inexperienced. There is not currently an adequate level of oversight of BVNPT's Education, Licensing and Administration business units. These circumstances increase the risk of problems surfacing in these business units similar to the types of problems that surfaced in the Enforcement Division during 2016/17 when Division's management structure collapsed leaving only one (1) filled SSM I position in the Division. Final Recommendation 42 (see Section V) and Final Recommendation 60 (see Section VII) are intended to help address this issue.

### 3. Executive Officer

It continues to be very apparent that the members of BVNPT's governing Board have been largely dependent on information provided by the Executive Officer for purposes of performing their oversight responsibilities, including responsibilities for overseeing the Executive Officer and evaluating the Executive Officer's performance. Although such dependency is not unique to BVNPT, several Board members noted during our interviews with them during Phase II of the project that this dependency can result in the Board being unaware of performance or other problems as occurred during the period preceding BVNPT's 2014/15 Sunset Review. The Board again appeared to not be sufficiently aware of the emergence of significant performance and other problems during late-2016 and early-2017, preceding BVNPT's March 2017 Sunset Review, and continuing after BVNPT's March 2017 Sunset Review Hearing. However, in this latter instance this lack of awareness is somewhat inconsistent with various direct communications to the Board which should have heightened members' awareness of emerging problems at the Board.

## VI. Summary of Targeted Administrative Process Assessments

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During the presentations of our *Second Report* to BVNPT's governing Board in October and November 2016, some Board members suggested in their public comments that our Phase II recommendations might not sufficiently address improvement needs in this area or that members had limited time available to gather and review supplemental information needed to enable better oversight by the Board. Subsequently, in our *Third Report* we suggested that oversight of BVNPT's Executive Officer and, by extension, BVNPT's programs and operations, could potentially benefit from utilization of a 360 degree, multi-rater assessment process in which feedback regarding the Executive Officer's performance is solicited from a variety of points of view, including Board members, DCA executives, representatives of external stakeholder organizations such as the Office of the Attorney General and control agencies, peers at other regulatory agencies that interact with BVNPT's Executive Officer, and subordinate staff. Such information could be utilized exclusively for developmental purposes or for a combination of developmental and performance assessment purposes. One of BVNPT's former Board members previously suggested that the Board consider utilizing a 360 degree process as part of the Board's annual Executive Officer review process, but that suggestion was never further explored. A related recommendation in our *Third Report* to establish a multi-agency Work Group to assess needs for development of a 360 degree Executive Officer feedback process and, if needed, the best approach and time frame for developing and implementing the process, also was never acted upon. We continue to believe that a 360 feedback process would be mutually beneficial to BVNPT's governing Board and for BVNPT's Executive Officer.

**Final Recommendation 47** – *Establish an Interagency Work Group comprised of representatives of the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs, the Senate Committee on Business, Professions and Economic Development, the Assembly Committee on Business and Professions, and BVNPT's governing Board to assess needs for development of a 360 degree Executive Officer feedback process and, if needed, the best approach and timeframe for developing and implementing the process.*

## VI. Summary of Targeted Administrative Process Assessments

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### D. Evaluation of Staff Performance

This section summarizes recent changes involving reviews and evaluations of staff performance. The section is organized as follows:

#### Title

- Section**
1. Enforcement Division
  2. Education and Licensing and Administration Business Units.

Results of our assessment of BVNPT's Executive Officer performance evaluation process were presented previously in Section VI.C (*Oversight of Board Staff*).

#### 1. Enforcement Division

During periods immediately prior to 2016/17, reviews and evaluations of Enforcement Division staff were not usually completed except for new staff during their probationary period. Annual reviews and evaluations of staff performance in all of the Division's sections were expected to be completed during 2016/17. However, most of these reviews were not completed. During 2016/17:

- ❖ Reviews were not completed for several Complaint Section staff
- ❖ Reviews were completed for only a few Investigation Section staff
- ❖ No reviews were completed for any Discipline Section staff
- ❖ No reviews were completed for any Probation Section staff.

The limited number of reviews completed during 2016/17 is not surprising given the collapse of the Enforcement Division's management structure during this period. Additionally, during 2016/17 probation reviews of new staff were not consistently completed.

#### 2. Education and Licensing and Administration Business Units

During periods immediately prior to 2016/17, reviews and evaluations of staff in BVNPT's Education, Licensing and Administration business units were not usually completed except for new staff during their probationary period. Annual reviews and evaluations of staff performance in all of these business units were expected to be completed during 2016/17. However, during 2016/17, reviews were not completed for more than one-half of the staff in these business units, including (1) some of the staff in the Support Services and Administration Section, (2) most of the staff in the Education Section, and (3) all of the staff in the Evaluations Section. The limited number of reviews completed during 2016/17 is not surprising given the changes in management that occurred during 2016/17 involving these business units. Additionally, during 2016/17 probation reviews of new staff were not consistently completed.

**Final Recommendation 48** – *Complete required Probation Reviews for all new or internally promoted staff within the timeframes specified by CalHR and, on an annual basis, complete Annual Performance Reviews and Individual Development Plans for all other BVNPT managers and staff.*

## VI. Summary of Targeted Administrative Process Assessments

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### E. Communications and Collaboration with Enforcement Partners

The Enforcement Task Force previously recommended that BVNPT develop better systems for communicating with (1) the Division of Investigation to discuss status and address quality issues and backlogs and (2) the AG and the Office of Administrative Hearings, including regular meetings/conference calls to discuss case aging and status. Subsequently, during 2015/16, 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.

During 2015/16, BVNPT's Chief of Enforcement was the primary point person for planning, coordinating and managing the significantly improved relationships that emerged among these three (3) organizations. However, communications and collaboration between the Enforcement Division and the Division of Investigation and the Office of the Attorney General diminished markedly after the Chief of Enforcement began a leave of absence in October 2016 and then separated from the Board in January 2017. Subsequently, after the Complaint Section Manager separated from BVNPT in March 2017, communications and collaboration with the Division of Investigation decreased even further.

Recently, due to the Division of Investigation's intensive involvement in directly managing and supporting BVNPT's Enforcement Program, there is necessarily a great deal more communication and collaboration between the Enforcement Division and the Division of Investigation. Additionally, with the recent appointment of a new Chief of Enforcement, there has been a resumption of communications with between Enforcement Division management, with the support of the Division of Investigation, and the Office of the Attorney General.

Further improvements are needed to reduce remaining Enforcement Program backlogs and the amount of time needed to complete disciplinary actions where supported by the results of the investigations. Currently, there again appears to be a good deal of effective communication and collaboration occurring between Enforcement Division management and staff and counterparts at both the Division of Investigation and the Office of the Attorney General. All three agencies seem to be working collaboratively together to reduce BVNPT's legacy case backlogs and the average elapsed times to complete investigations and related disciplinary actions. However, the Manager of the Complaint Section and the Chief of the Enforcement Division are both new to BVNPT with limited or no prior Enforcement Program experience and a new Supervisor for the Investigation Section has not yet been hired. *Therefore, for at least the next 3 to 6 months, BVNPT's Enforcement Division managers should continue to seek out assistance and accept direction from the Division of Investigation's more knowledgeable and experienced staff with respect to identifying needs for and implementing changes needed to enable improved Enforcement Program performance (see Recommendation 41).*

Over time, as the Enforcement Division becomes more self-sufficient and the Division of Investigation's level of involvement in directing, managing and training Enforcement Division staff diminishes, 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 periodically meet with counterparts at both agencies on a regular basis.

**Final Recommendation 49** – *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 the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.*

## VI. Summary of Targeted Administrative Process Assessments

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### F. Communications and Collaboration with the Office of the State Long-Term Care Ombudsman

As part of our assessment of opportunities for BVNPT to improve communications and collaboration with other public agencies involved in enforcing BVNPT's licensing laws, we contacted representatives of the California Department of Public Health (CDPH) which typically refers several dozen enforcement cases per year to BVNPT. While there did not appear to be significant opportunities for improving communications and collaboration with CDPH's health care facility inspectors, we were encouraged to contact the California Department of Aging's Office of the State Long-Term Care Ombudsman (OSLTCO). BVNPT currently sometimes receives complaints from OSLTCO but does not otherwise communicate or collaborate in any way with that agency.

The OSLTCO administers the California State Long-Term Care Ombudsman Program which is authorized by the federal *Older Americans Act* and its State companion, the *Older Californians Act*. The primary purpose of the program is to investigate and endeavor to resolve complaints made by, or on behalf of, individual residents in long-term care facilities, including nursing homes, residential care facilities for the elderly, and assisted living facilities. OSLTCO also develops policy and provides oversight to the local Long-Term Care Ombudsman Programs. OSLTCO staff confer with State licensing agencies regarding difficult cases, meet with the California Department of Aging Staff Counsels to clarify laws and develop plans for implementing them, define program roles, and provide ongoing statewide Ombudsman training. The Long-Term Care Ombudsman Program is community-supported. Volunteers are an integral part of the program. The OSLTCO and its 35 local Ombudsman Program Coordinators are responsible for recruiting, training, and supervising the volunteer Ombudsman representatives.

The State Long-Term Care Ombudsman Program advocates for the rights of all residents of long-term care facilities. This advocacy role is accomplished by (1) receiving and resolving individual complaints and issues by, or on behalf of, these residents and (2) pursuing resident advocacy in the long-term care system. Residents or their family members can file a complaint directly with the local Long-Term Care Ombudsman or by calling the CRISISline. All long-term care facilities are required to post, in a conspicuous location, the phone number for the local Ombudsman office and the Statewide CRISISline number. This CRISISline is available 24 hours a day, 7 days a week to take calls and refer complaints from residents. Ombudsman services are free and confidential.

Given the obvious commonality of interests between OSLTCO and BVNPT's Enforcement Program, in August we met with OSLTCO's State Long-Term Care Ombudsman who serves as the program's Executive Director. DCA's Project Manager and the Division of Investigation's Supervising Investigator also participated in this meeting. During our meeting we learned that OSLTCO's statewide workforce includes 60 managers, 160 paid staff and 740 volunteers. We also learned that the Office's services focus on long-term care residential facilities ranging from small homes to large assisted living facilities. About 8,750 facilities, including 7,500 residential nursing facilities and 1,250 skilled nursing facilities, with about 300,000 beds are served by OSLTCO. Additionally, we learned that OSLTCO handles about 40,000 complaints per year of which about 20 percent involve dependent adult or elder physical, sexual or verbal/psychological abuse, including resident-to-resident abuse, gross neglect, or financial exploitation.

Finally, we learned that OSLTCO conducts semi-annual conferences for its staff and that OSLTCO would welcome participation of representatives of DCA and DCA-affiliated healing arts boards in these conferences for purposes of sharing information about their Licensing and Enforcement Programs. Following this meeting, DCA contacted all of its affiliated healing arts boards, including BVNPT, to make them aware of the Ombudsman Program and invite them to participate in an upcoming conference. Subsequently, staff from the Medical Board of California,

## VI. Summary of Targeted Administrative Process Assessments

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BVNPT and the Division of Investigation made presentations at OSLTCO's October 18, 2017, conference which was attended by about 70 OSLTCO staff, most of who supervise advocates at long-term care facilities throughout the state.

**Final Recommendation 50** – *BVNPT's Chief of Enforcement should work collaboratively with DCA and other DCA-affiliated healing arts boards to develop and implement strategies for further improving awareness among OSLTCO's staff and volunteers, and the patients that they serve, regarding their respective Licensing and Enforcement Programs, including participating every few years in an OSLTCO conference.*

### G. Board Member Training and Support

This section summarizes results of our targeted assessments of selected Board training and support services, as delineated in AB 179, and our associated recommendations for improvements. The section is organized as follows:

Section	Title
1.	Overview of Board Member Survey Methodology
2.	Board Member Training
	Dissemination of Information to Board Members
4.	Assistance to Board Members in Performing Their Duties
3.	5. Communications with Legislators and Legislative Staff

#### 1. Overview of Board Member Survey Methodology

As part of our assessment of BVNPT's Board member training and support services, during March 2016 we prepared and disseminated a *confidential* survey to the members of BVNPT's governing Board primarily for purposes of obtaining input regarding the following three (3) specific communication and assistance topics delineated in AB 179:

- ❖ Board member training
- ❖ Dissemination of information to Board members
- ❖ Assistance to Board members in performing their duties.

Additionally, a few questions were included in the survey to obtain input regarding (1) reviews and approvals of disciplinary decisions and (2) the responsiveness and effectiveness of BVNPT's Executive Officer in communicating with Legislators and Legislative staff and representing the Board at Legislative meetings and hearings. Finally, the survey sought input in the following three (3) additional areas, primarily for purposes of gathering information for the Board to use for its own purposes:



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- ❖ Board structure, size and composition
- ❖ Board committees
- ❖ Board meeting structure and effectiveness.

The survey was released to all of the members of BVNPT's governing Board on March 23, 2016. A few survey questions were constructed to obtain information from the members that could be helpful for purposes of assessing the impacts of the changes in leadership that occurred at BVNPT during the prior year (April 2015 through March 2016). The survey was not constructed to assess any impacts related to the Board's appointment of a new Executive Officer who joined the Board in March 2016.

Nine (9) Board members completed the survey, in some cases anonymously. Subsequently, we scheduled and completed interviews with each member to further explore and clarify the responses to the survey, focusing primarily on the specific topics delineated in AB 179. Consistent with the survey, our follow-up interviews with the members focused on periods prior to March 2016.

### 2. Board Member Training

With respect to Board member training, the survey specifically asked the members whether they had recently attended DCA's Board Member Orientation Training (BMOT), Ethics training and Sexual Harassment Prevention training and, if so, to evaluate the training that was received. Most members gave favorable evaluations of all three (3) types of training, but the evaluations of the BMOT training were more mixed and some of the comments regarding the BMOT training suggested that there was some misunderstanding or confusion regarding this survey question. Subsequently, during our follow-up interviews with the members we learned that, over the years, the members had received (1) the general Board Member Orientation Training from DCA that is provided to members of all DCA-affiliated Boards and (2) BVNPT-specific new member orientation training that was provided by BVNPT's Executive Officer along with other BVNPT managers and staff. We also learned that the evaluations of the training provided by the members were based in some cases on the DCA BMOT training, in other cases on the BVNPT-specific training, and in other cases on a blend of both types of training. Thus, the responses to those survey questions were largely meaningless.

Overall, with respect to these two different categories of Board Member Orientation Training, the members generally expressed in their interviews favorable evaluations of the DCA BMOT training and much more mixed evaluations of the BVNPT-specific orientation training provided by BVNPT's EO. Based on our interviews, we understand that over a period of several years there was a significant degradation in the quality of the BVNPT-specific orientation training that was provided. For example, it is our understanding that Board members were previously provided up to two (2) days of BVNPT-specific orientation training. Then, the training was condensed into a 1-day session or, at the request of one newer member, broken down into multiple partial day sessions. Also, most members commented that, in recent years, for various reasons, this training was not particularly good (e.g., BVNPT's former Executive Officer seemed disengaged from or unenthusiastic about providing the members with their orientation). Also, some members commented that the two (2) large binders of collateral and reference materials that were provided to new members were somewhat overwhelming and of limited utility. A longer-term Board member specifically commented in their survey and interview that the quality of this training had deteriorated. Several Board members commented that the information provided seemed overwhelming and they were not able to effectively absorb the information.

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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. Subsequently, from July 2013 through January 2014, five (5) new members were appointed. It appears that there were significant deficiencies in the quality and completeness of the BVNPT-specific orientation training that was provided to these members and these deficiencies may have contributed to the Board's limited awareness of the nature and magnitude of the problems that were already being experienced related to BVNPT's Enforcement Program.

Between May 2015 and February 2016, two (2) new members were appointed to the Board. Both members were appointed during the Acting Executive Officer's tenure. Given the structure of the BVNPT-specific orientation training, it is self-evident that the quality of the training will necessarily be highly dependent on determinations made by the Executive Officer regarding how the orientation will be conducted and the information that will be provided to the member. The evaluations of the Board member orientation training conducted by BVNPT's Acting Executive Officer and staff were more positive than the evaluations provided for the orientation training provided by BVNPT's former Executive Officer.

During 2016 BVNPT revised some of the BVNPT-specific Board Member Orientation Training curriculum along with the supporting training and reference materials. However, no new members were appointed to the Board during 2016 to enable assessment of the impacts of these changes. Subsequently, during 2017, five (5) new members were appointed. Of these, three (3) members attended the BVNPT-specific Board Member Orientation Training. One (1) member attended a 1-day training session during April and the other two (2) members attended a 2-day training session in August with each session starting at about 10 am and concluding at 4 pm, with a 1-hour break for lunch. The members that attended the 2-day session in August both commented very favorably about this training. The 2-day orientation training was also offered to the other Board member who requested that the 2-day training be condensed into a 1-day session. The 1-day session provided the member with much less information about BVNPT's Education, Licensing and Enforcement Programs (e.g., processes, workloads, workflows, staffing, performance, etc.) than would otherwise have been provided. All three (3) participating members commented that a 2-day timeframe is needed to complete the orientation with the member that attended the 1-day session suggesting that a follow-up session should be conducted after a period of time to further orient new members after they have gained experience at the Board.

Based on our discussions with these members, there continues to be some disconnect between the Board Member Orientation Training (BMOT) provided by DCA and the Board-specific orientation training provided by BVNPT with respect to addressing Board member oversight of the Board. DCA's BMOT training addresses this topic at a general level, while the Board-specific training, not surprisingly, seems not to address this topic at all. Consequently, new Board members are left without any training regarding specific strategies and methods for overseeing BVNPT's Education, Licensing and Enforcement Programs. This type of training could best be provided concurrent with becoming oriented with each program. Additionally, BVNPT's Board members could potentially benefit from attending a How To Oversee BVNPT's Licensing, Education and Enforcement Programs training session that was structured specifically to address the Board's improvement needs in this area.

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**Final Recommendation 51** – *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, 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. Require that all new members attend two (2) days of orientation training and offer an optional follow-up day of training to new members within 3 to 6 months of completion of the initial training. Have a representative of DCA participate in the 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. Update the reference materials provided to Board members to include recently completed reviews, evaluations or audits of BVNPT’s programs or operations that would be beneficial for purposes of better understanding the Board’s historical development and problems currently facing the Board and provide the members with an overview of the information contained in each of these documents.*

**Final Recommendation 52** – *In collaboration with DCA, develop and provide BVNPT Board members with a How to Oversee Board Licensing, Education and Enforcement Programs training session and videotape the session so that it can be provided to new Board members on a continuing basis.*

### 3. Dissemination of Information to Board Members

The survey of BVNPT’s governing Board members included a number of questions regarding the quality of the materials provided to Board members in advance of Board meetings. Overall, the evaluations provided by the members were favorable. However, during the interviews it became evident that the members’ responses to these questions largely reflected their evaluations of the various “packets” that they routinely receive in advance of Board meetings and that, at least historically, other exchanges of information between the members and the BVNPT’s Executive Officer and subordinate managers had been limited. These circumstances appeared to largely reflect the absence of an active Enforcement Committee, or other program-specific committees, for an extended period of time which became apparent from the members’ survey responses along with additional information provided through our interviews with the members. For example, several survey respondents commented in their surveys about various problems involving the Board’s committees (e.g., “not fully functioning”, “haven’t met in years”, and “not active”). Subsequently we learned that, for a period of years prior to 2011/12, the appointment of Board members to committees was a “paper exercise” and the committees never met. It is our understanding that until early-2016 there were no active committees, other than the Executive Committee. Additionally, it appears that the “paper exercise” of appointing members to the Board’s other “Standing Committees” (e.g., Enforcement) was discontinued.

The above circumstances help to explain, in part, why the Board found it necessary, in September 2014, to appoint an Enforcement Task Force to study BVNPT’s enforcement and discipline processes. These circumstances also lead to the conclusion that, for an extended period of time (possibly as long as 10 years, or longer), BVNPT did not have in place the organizational infrastructure needed to support effective exchanges of additional or supplemental program-specific information with BVNPT executives, managers and staff. As an example of the information gap that this creates, one member commented that they were unable to complete the annual Executive Officer performance evaluation form because they had little information regarding the Executive Officer on which to base a performance evaluation other than the information provided to the full Board by the Executive Officer during the Board’s quarterly meetings.

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During 2016 the Board re-activated the Enforcement Committee, and other previously established, inactive committees, and also established several new committees. However, the Board's expectations with respect to the roles, responsibilities and authority of these committees were not initially well-defined or documented. For example, in the case of the Enforcement Committee, the Committee's roles, responsibilities and authority were defined very generally and without reference to any specific Enforcement Program oversight roles or responsibilities. Subsequently, a revised statement of the Enforcement Committee's role was adopted by the Board along with role statements for all of the Board's other committees. However, at least in the case of the Enforcement Committee, the statement provides only limited direction to the Committee with respect to (1) overseeing the Enforcement Program and (2) communicating Enforcement Program-related information to the full Board to support fulfillment of the Board's program oversight, strategic planning, policy development, Executive Officer performance evaluation and other responsibilities. For example, the Enforcement Committee's role statement does not specifically require that the Committee identify current or emerging problems or needs for improvements and then relay this type of information to the full Board. Additionally, the Enforcement Committee has not been preparing *Summary Reports* for the Board's meetings, as required by the Committee's role statement. Instead the Committee's reports to the Board have usually consisted of just the minutes from the Committee's meeting along with copies of the statistical reports provided by Board staff to the Committee.

**Final Recommendation 53** – *Better define the Enforcement 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 better defining the roles and responsibilities of other Board committees, where necessary.*

### 4. Assistance to Board Members in Performing Their Duties

As with the survey questions regarding the dissemination of information to Board members, the responses to the survey questions regarding provision of assistance to Board members in performing their duties were generally favorable. Additionally, many members commented favorably about the responsiveness of BVNPT's Executive Officer and other managers and staff to questions or requests for additional information that they sometimes have. However, in most cases these responses were again largely made with reference to the various types of "packets" that are provided to the members.

To the extent that the duties of the Board extend beyond acting on the "packets" that are provided to them, then provision of other types of assistance to the Board may be needed to support their performance of these duties. For example, additional assistance might be provided by Enforcement Division management and staff by conferencing or meeting periodically with members of the Enforcement Committee to provide the Committee with additional information that would not routinely be brought before the full Board and also helping the Committee members to fully understand the information that is provided. Such briefings could also be helpful to the Committee members for purposes of identifying needs to surface policy issues for consideration by the full Board. This type of process was either not operational or not fully functional for an extended period of time prior to late-2014 which may have contributed to the various "surprises" that surfaced during BVNPT's 2014/15 Sunset Review.

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However, even after the reactivation of previously established committees and establishment of new committees during 2016, this type of process appears to be very under-developed which may contributed to the new “surprises” regarding a broad range of managerial and operational problems that surfaced in advance of, during, and following BVNPT’s March 2017 Sunset Review. Additionally, at least with respect to the Enforcement Committee, the constantly changing membership of the Committee, as occurred during the past 12 months, clearly works at cross-purposes to the objectives of assisting Committee members to better understand BVNPT’s Enforcement Program so that they can identify and assess potential changes to Board policies and more effectively perform their oversight responsibilities. Finally, as suggested by one member, Board meeting agenda and time allocations may need to be adjusted to support fulfillment of the Board’s oversight responsibilities and enable sufficient discussion and consideration of related issues brought before the full Board.

**Final Recommendation 54** – *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 matters as determined by the Committee. Assist members in understanding the information that is provided by highlighting trends, ongoing and emerging problems, and changes underway and planned to address these problems and improve Enforcement Program performance.*

Finally, there appears to be broad support for delegating authority to approve default decisions to the Executive Officer. To remove opposition to enactment of AB 1229, a provision that would have enabled delegation of authority to approve default decisions to the Executive Officer was deleted from the bill during the final days of the Legislative Session. The opposition to this provision appears to be based on a misunderstanding about how the provision would impact related reconsideration processes. Enforcement Program management is currently working with Legislative staff to address this issue and enact legislation during the 2018 Legislative Session that would provide the Board with this authority.

**Final Recommendation 55** – *Pursue enactment of legislation to provide BVNPT’s governing Board with the authority to delegate approval of default decisions to the Executive Officer.*

### 5. Communications with Legislators and Legislative Staff

Most Board members responded “No Opinion” to one or both of the survey questions regarding (1) the Executive Officer’s responsiveness and effectiveness in communicating with Legislators and Legislative staff and (2) the effectiveness of the Executive Officer’s and staff representation of the Board at Legislative meetings and hearings. One of the members that indicated that the Executive Officer had been sufficiently responsive and effective in communicating with Legislators and Legislative staff commented that their response was “Based on the reports provided by the Executive Officer to the Board”. The responses to these survey questions, which were provided with reference to the April 2015 to March 2016 time period and appeared to be reflective of the extent to which BVNPT’s Board members were dependent on BVNPT’s former Executive Officer for their information and reinforced needs to maintain fully functional and engaged committees that can potentially supplement the information otherwise provided to the Board.

Except for the participation of BVNPT’s Acting Assistant Executive Officer at BVNPT’s March 2017 Sunset Review Hearing, during the past year the members of BVNPT’s Leadership Team did not communicate with Senate Business, Professions and Economic

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Development Committee staff. After January 2017, there were minimal communications between members of BVNPT's Leadership Team and Assembly Business and Professions Committee staff.

During the past year, in connection with the Board's Sunset Review, BVNPT submitted several reports to the Legislature which, in some cases, included responses to reports prepared by the Monitor. Some of these public documents and other publications of the Board, such as the Board's most recent *Strategic Plan*, have not been posted on the Publications Section of BVNPT's website. Consequently, the documents are not readily available to members of BVNPT's governing Board or to the public. All of these documents should be readily available through the BVNPT's website. BVNPT should also post its *Quarterly Enforcement Program Statistical Reports* on the Publications Section of its website as the reports are produced and provided to the Board.

**Final Recommendation 56** – *Update the public documents available from BVNPT's website to include all of the Board's reports to the Legislature related to its March 2017 Sunset Review, all of the Monitor's reports, and other publications and information that should be readily available to all Board members and the public such as BVNPT Strategic Plans and Enforcement Program Quarterly Statistical Reports.*

### H. Status of Implementation of Phase II/III Recommendations

**Exhibit VI-2**, on the next two (2) pages, provides a brief summary of our assessment of the status of BVNPT's implementation of our Phase II/III recommendations for improvements involving the administrative processes that are specified in AB 179. As shown by Exhibit VI-2, as of mid-October, most of these recommendations have been partially implemented. Only one (1) of the recommendations has been fully implemented (V-10).

### I. Final Administrative Process Recommendations

**Exhibit VI-3**, following Exhibit VI-2, provides a listing of our Final Recommendations for improving BVNPT's administrative processes. Also shown are cross-references to each recommendation's predecessor Phase II/III Recommendation, if applicable. Finally, Exhibit VI-3 shows the current (October 2017) implementation status for each recommendation as presented previously in Sections VI-G. Most of these recommendations have already been partially implemented.

Status of BVNPT's Implementation of Phase II/III Administrative Recommendations

Recommended Improvement		Implementation Status Assessment	
Phase II Integrated Assessments of Targeted Business Processes	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.	<b>Partially Implemented</b> - Apparently due to a misunderstanding about the Board's reconsideration processes, a provision that would have enabled delegation of authority to BVNPT's Executive Officer to approve default decisions was deleted from AB 1229. Enforcement Division management is currently working with Legislative staff to enact legislation during the 2018 Legislative Session that would provide the Board with this authority.
Phase II Enforcement Program Organization and Staffing Assessments	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 the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.	<b>Partially Implemented</b> - Communications and collaboration between the Enforcement Division and DOI and the AG diminished markedly after the Chief of Enforcement began a leave of absence in October 2016 and then separated from BVNPT in January 2017. Subsequently, after the Complaint Section Manager separated from BVNPT in March 2017, communications and collaboration with DOI decreased even further. Recently, due to DOI's intensive involvement in directly managing and supporting BVNPT's Enforcement Program, there is a great deal more communication and collaboration between the Enforcement Division and DOI. Additionally, with the support of DOI, there has been a resumption of communications between the Enforcement Division and the AG.
	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.	<b>Partially Implemented</b> - From July 2016 through mid-September 2017, case review meetings with the Section's investigators were conducted but were not helpful to the investigators for purposes of determining whether or how to complete their assigned cases. In October 2017, DOI began meeting individually with each of the Section's investigators to jointly review each of their assigned older cases and determine the specific steps needed to complete these investigations.
	V-10	Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.	<b>Implemented</b>
	V-11	Utilize the Division of Investigation to support initial training of newer investigators.	<b>Partially Implemented</b> - From mid-2016 through June 2017, BVNPT did not utilize DOI to support initial training of newer investigators and, to date, has not implemented any type of ride along training program as was previously discussed with DOI in mid-2016. Recently, DOI began providing on-site training and other assistance to BVNPT's Intake and Screening Analysts, Investigators, some of the Division's Section Managers, and the Chief of Enforcement.
	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.	<b>Not Implemented</b> - During the past year BVNPT has occasionally received supplemental on-site technical assistance and training services for its Investigators.
	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.	<b>Not Implemented</b> - Only a limited number of reviews of Enforcement Division staff were completed during 2016/17 and, on a combined basis, reviews were completed for only about one-half of Education and Licensing and Administration staff.

Status of BVNPT's Implementation of Phase II/III Administrative Recommendations

Recommended Improvement		Implementation Status Assessment
Phase III Administrative Process Assessments	<p>III-1 Establish a multi-agency Work Group comprised of representatives of the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs, the Senate Committee on Business, Professions and Economic Development, the Assembly Committee on Business and Professions, and BVNPT's governing Board to assess needs for development of a 360 degree Executive Officer feedback process and, if needed, the best approach and timeframe for developing and implementing the process.</p>	<p><b>Not Implemented</b> - This recommendation was never further explored or acted upon.</p>
Phase II Board Member Training and Support	<p>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.</p>	<p><b>Partially Implemented</b> - During 2016 BVNPT revised some of the BVNPT-specific Board Member Orientation Training curriculum along with supporting training and reference materials and increased the number of sessions offered to each member. There continues to be a lack of integration between the BMOT training provided by DCA and the BVNPT-specific training provided by BVNPT staff, particular with respect to helping members understand their oversight responsibilities and how to oversee BVNPT's Education, Licensing and Enforcement Programs.</p>
	<p>VI-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.</p>	<p><b>Partially Implemented</b> - Role statements were developed for the Enforcement Committee and the Board's other committees. However, further delineation of the Enforcement Committee's roles and responsibilities is needed. Further delineation of the roles and responsibilities of the Board's other committees may also be needed.</p>
	<p>VI-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 matters as determined by the Committee.</p>	<p><b>Partially Implemented</b> - For the past year, briefings have been provided to the Enforcement Committee on at least a quarterly basis. However, during this period the Committee's membership has been constantly changing and staff have not been effective in helping members to understand the information provided to them during the briefings.</p>



Final Administrative Process Recommendations

Final Recommendations		Prior Phase II/III Recommendation	October 2017 Implementation Status
41.	When appointed, BVNPT's Executive Officer and Assistant Executive Officer should review the Board's needs for all of the different AGPA positions currently allocated to BVNPT's Education, Licensing and Administration Business Units.	Supplemental	Not Implemented
42.	BVNPT's Chief of Enforcement should become more actively and directly engaged in addressing issues contributing to poor workforce morale and discontent within the Complaint Section, including needs for additional training and support for the Section Manager targeted to developing (1) more effective working relationships with subordinate staff and (2) a better understanding of the nature of the Section's enforcement cases, how the cases are investigated, the Section's case handling and review processes, and how BreEZe works (e.g., by working some of the licensee arrest/conviction report cases assigned to the Section).	Supplemental	Not Implemented
43.	The Division of Investigation should continue to conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators. For training and development purposes, the Chief of Enforcement and the Investigation Section Manager, when appointed, should participate in most (or all) of these reviews for at least the next 6 to 12 months and, over time, Enforcement Division management should assume responsibility for completing these reviews. The frequency and duration of the reviews should be regularly adjusted as appropriate to each investigator's development needs.	V-9 <i>(Modified)</i>	Partially Implemented
44.	Continue to provide Enforcement Division staff with formal classroom type training as needed to bolster their knowledge, skills and abilities.	V-10	Implemented
45.	Utilize the Division of Investigation to support initial training of newer investigators.	V-11	Partially Implemented
46.	Utilize 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.	V-12	Not Implemented
47.	Establish an Interagency Work Group comprised of representatives of the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs, the Senate Committee on Business, Professions and Economic Development, the Assembly Committee on Business and Professions, and BVNPT's governing Board to assess needs for development of a 360 degree Executive Officer feedback process and, if needed, the best approach and timeframe for developing and implementing the process.	III-1	Not Implemented
48.	Complete required Probation Reviews for all new or internally promoted staff within the timeframes specified by CalHR and, on an annual basis, complete Annual Performance Reviews and Individual Development Plans for all other BVNPT managers and staf	V-13	Not Implemented
49.	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 the amount of time needed to complete investigations and impose discipline when supported by results of the investigations.	V-8	Partially Implemented
50.	BVNPT's Chief of Enforcement should work collaboratively with DCA and other DCA-affiliated healing arts boards to develop and implement strategies for further improving awareness among OSLTCO's staff and volunteers, and the patients that they serve, regarding their respective Licensing and Enforcement Programs, including participating every few years in an OSLTCO conference.	Supplemental	Partially Implemented
51.	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, 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. Require that all new members attend two (2) days of orientation training and offer an optional follow-up day of training to new members within 3 to 6 months of completion of the initial training. Have a representative of DCA participate in the 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. Update the reference materials provided to Board members to include recently completed reviews, evaluations or audits of BVNPT's programs or operations that would be beneficial for purposes of better understanding the Board's historical development and problems currently facing the Board and provide the members with an overview of the information contained in each of these documents.	VII-1 <i>(Modified)</i>	Partially Implemented

Final Administrative Process Recommendations

Final Recommendations		Prior Phase II/III Recommendation	October 2017 Implementation Status
52.	In collaboration with DCA, develop and provide BVNPT Board members with a How to Oversee Board Licensing, Education and Enforcement Programs training session and videotape the session so that it can be provided to new Board members on a continuing basis.	Supplemental	Not Implemented
53.	Better define the Enforcement 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 better defining the roles and responsibilities of other Board committees, where necessary.	VII-2	Partially Implemented
54.	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 matters as determined by the Committee. Assist members in understanding the information that is provided by highlighting trends, ongoing and emerging problems, and changes underway and planned to address these problems and improve Enforcement Program performance.	VII-3 <i>(Modified)</i>	Partially Implemented
55.	Pursue enactment of legislation to provide BVNPT's governing Board with the authority to delegate approval of default decisions to the Executive Officer.	IV-8	Partially Implemented
56.	Update the public documents available from BVNPT's website to include all of the Board's reports to the Legislature related to its March 2017 Sunset Review, all of the Monitor's reports, and other publications and information that should be readily available to all Board members and the public such as BVNPT Strategic Plans and Enforcement Program Quarterly Statistical Reports.	Supplemental	Not Implemented

## VII. Licensing and Support Services

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## VII. BVNPT's Licensing and Support Services

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As discussed in our *Third Report*, during the first half of 2016/17 various issues, problems and concerns surfaced or were brought to our attention by BVNPT staff involving matters that were not within the scope of the BVNPT Monitor assignment. As these matters surfaced, and consistent with provisions of AB 179, we relayed the information to DCA's Project Manager and, as appropriate, other members of DCA's Leadership Team. For example, during July 2016 BVNPT's Executive Officer expressed concerns to us about BVNPT's Licensing and Administration Division and the need for an assessment of the Division. We promptly discussed these concerns with both DCA's Project Manager and other members of DCA's Leadership Team. Concurrently, BVNPT's Executive Officer discussed these same concerns with some Legislative staff. However, no decisions were ever made to modify the scope and focus of the Monitor's Phase II and III reviews and assessments to address these concerns. Instead, as was mutually agreed during the completion of the Phase I Initial Assessment, our Phase II/III assessments of BVNPT's Licensing Program business processes were limited to areas with specific and direct linkages to BVNPT's Enforcement Program business processes (e.g., the processes used for identifying and referring license applicant and licensee arrest/conviction report cases and licensee Continuing Education audit failure cases to the Enforcement Division).

Subsequently, additional information regarding various problems involving BVNPT's licensing and licensing support business processes was brought to our attention. While we did not complete any assessment of these problems, we made very limited efforts to confirm or verify the validity of the information provided to us. In some cases the problems had linkages to, or impacts upon, BVNPT's Enforcement Program. Consistent with the provisions of AB 179, we relayed the information provided to us regarding these potential problems to DCA's Project Manager and, as appropriate, other members of DCA's Leadership Team for their review and consideration and, as needed, follow-up action. Some of the specific problems that were brought to our attention during late-2016 involving BVNPT's licensing and licensing support processes included:

- ❖ **Delays in Cashiering School Applications** - As of mid-December 2016 this category of license applications, which are submitted as a batch by the school that the applicants attended, was not being cashiered by BVNPT's Cashiering Unit for a period of about eight (8) weeks. Also, we were informed that the license application documents that accompany these remittances were not referred to BVNPT's Licensing Program staff for review and processing until after cashiering of the remittances was completed.
- ❖ **Delays in Processing On-Line Initial License Applications** – As of mid-December 2016 this category of license applications was not being processed by BVNPT's Evaluations Unit for a period of about eight (8) weeks. For this category of license applicants, the license fee is paid concurrent with the on-line submission of the license application.
- ❖ **Delays in Processing License Renewal Batch Mail Received from DCA Central Cashiering** – As of mid-December 2016 this category of license renewals was not being processed by BVNPT's Evaluations Unit for a period of about four (4) months. Extended delay in processing renewal applications increases the likelihood that the licensees will be restricted from practicing.
- ❖ **Delays in Processing Address Changes (In-House)** – As of mid-December 2016 these address change requests were not being processed for a period of about three (3) months. Delays in processing address change requests sometimes make it more difficult for Enforcement Program staff to contact the subjects of cases they are investigating.
- ❖ **Issuance of a Temporary License to an Applicant that Was Previously Denied Licensure** – Documentation was provided to us showing that an applicant was previously denied licensure twice, but was issued a Temporary License at the same time that the more recent license denial was pending appeal. The more recent license denial was an active Enforcement Program discipline case based on a criminal offense. It was not determined whether this was a one-time event or reflected a larger, recurrent problem.

## VII. BVNPT's Licensing and Support Services

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During BVNPT's March 2017 Sunset Review Hearing, representatives of BVNPT expressed disagreement with our concerns about possible problems involving BVNPT's cashiering operations. However, following the Sunset Hearing, BVNPT requested that DCA provide assistance with cashiering its backlogged remittances. Then, from late-April through mid-July 2017, DCA provided staff to help BVNPT cashier its backlogged remittances. This was the second consecutive fiscal year that BVNPT received extra end-of-year assistance from DCA with cashiering its backlogged remittances.

AB 1229 (Section 2847.7) provides the Director of Consumer Affairs with the authority to review and evaluate BVNPT's licensing systems and procedures for the purpose of identifying deficiencies and improving the quality and efficiency of BVNPT's licensing processes. AB 1229 also requires that the Board and its staff cooperate with the Director and DCA in providing access to staff, data, information and files as needed to perform the review and assessment. Most of BVNPT's cashiering activity is generated by its Licensing Program so that these support processes could be encompassed within the scope of any review completed by DCA, as determined appropriate by the Director.

**Final Recommendation 57** – *To enable prompt identification of emerging problems and potential needs for DCA to conduct more in-depth reviews and evaluations of BVNPT's licensing processes, DCA should request and review monthly statistical reports from BVNPT regarding BVNPT's cashiering and licensing workloads, backlogs and processing times. DCA should request that the monthly statistical reports be provided to DCA within five (5) business days of the end of each month.*

After we forwarded the information about possible problems with BVNPT's issuances of Temporary Licenses to the Chief of DCA's Division of Investigation, DCA assigned its Internal Audits Office to assess BVNPT's Temporary License issuance procedures and practices. The Internal Audits Office identified several significant deficiencies and internal control weaknesses with BVNPT's Temporary License issuances, including:

- ❖ Pre-signing of Temporary Certificates by the Executive Officer
- ❖ Uncontrolled staff access to the pre-signed Temporary Certificates
- ❖ Incomplete procedures that did not instruct staff to determine the location of the applicant's file (i.e., Licensing versus Enforcement)
- ❖ Failure by staff to notify the Executive Officer or Assistant Executive Officer about the improper issuance of a Temporary License after learning that it had occurred so that corrective measures could be taken.

Subsequently, according to the Auditor's report, several changes were implemented to prevent improper Temporary License issuances, such as issuances to applicants with criminal offense records, including (1) restricting access to the Temporary Certificates and (2) revising applicable procedures. Additionally, both the responsible staff person and a manager or supervisor must verify the applicant's eligibility to receive a Temporary License and BVNPT's receipt of payment for the license. However, given recent changes in BVNPT's Leadership and Management Team personnel, the Interim Executive Officer's extended leave of absence, and the lack of an Assistant Executive Officer, we believe it would be prudent for DCA's Internal Audits Office or Division of Investigation staff to verify that all of these corrective measures remain in place.

**Final Recommendation 58** – *DCA's Internal Audits Office or the Division of Investigation should conduct a follow-up review of BVNPT's Temporary License issuance processes to verify that the measures taken during March to prevent improper issuances of Temporary Licenses remain in place.*

**Appendix A**  
**Updated Case Intake and Investigation**  
**Time Series Date Summaries**

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## Appendix A

### Updated Case Intake and Investigation Time Series Data Summaries

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This appendix provides updated case intake and investigation time series data summaries. The summaries are organized as follows:

#### Title

#### Exhibit

- A-1. Updated Historical Overview of License Applicant and Licensee Cases Received
- A-2. Updated Historical Overview of Licensee Enforcement Cases Assigned for Investigation
- A-3. Updated Historical Overview of Completed License Applicant and Licensee Enforcement Investigations
- A-4. Updated Historical Overview of Pending License Applicant and Licensee Enforcement Investigations
- A-5. Updated Historical Overview of Pending Licensee Complaint Investigations, by Age
- A-6. Updated Historical Overview of Administrative Disciplinary Outcomes.

Updated Historical Overview of License Applicant and Licensee Enforcement Cases Received

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	2015/16			2016/17			2017/18
							Jul-Dec	Jan-Jun	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
Arrest/Conviction Reports	License Applicants	2,447	3,027	2,822	3,790	3,305	502	233	735	350	312	662	135
	Licensees	2,023	1,948	1,485	1,360	1,550	920	736	1,656	617	563	1,180	306
	<b>Total Arrest/Conviction Reports Received</b>	<b>4,470</b>	<b>4,975</b>	<b>4,307</b>	<b>5,150</b>	<b>4,855</b>	<b>1,422</b>	<b>969</b>	<b>2,391</b>	<b>967</b>	<b>875</b>	<b>1,842</b>	<b>441</b>
Complaints	Discipline by Another State/Agency	49	40	44	41	52	58	38	96	71	17	88	10
	Employer Reports - All Offense Categories			201	195	176	119	98	217	119	90	209	62
	Public and Other Complaints - All Offense Categories			126	126	157	138	254	392	239	297	536	119
	Public Agency Reports - All Offense Categories	391	488	72	98	115	35	55	90	57	74	131	48
	Internal - Other than Fraud <sup>1</sup>			81	28	45	17	7	24	2	1	3	0
	<b>Total Complaints Received, Excluding Internal - Fraud Cases</b>	<b>440</b>	<b>528</b>	<b>524</b>	<b>488</b>	<b>545</b>	<b>367</b>	<b>452</b>	<b>819</b>	<b>488</b>	<b>479</b>	<b>967</b>	<b>239</b>
	<sup>2</sup> Internal - Fraud Cases (primarily CE Audit Cases)	159	122	189	152	13	130	101	231	4	7	11	0
<b>Total Complaints Received, Including Internal - Fraud Cases</b>	<b>599</b>	<b>650</b>	<b>713</b>	<b>640</b>	<b>558</b>	<b>497</b>	<b>553</b>	<b>1,050</b>	<b>492</b>	<b>486</b>	<b>978</b>	<b>239</b>	
Total Cases Received	Total Arrest/Conviction Reports and Complaints	5,069	5,625	5,020	5,790	5,413	1,919	1,522	3,441	1,459	1,361	2,820	680
	Less: License Applicant Arrest/Conviction Reports	(2,447)	(3,027)	(2,822)	(3,790)	(3,305)	(502)	(233)	(735)	(350)	(312)	(662)	(135)
	<b>Total Enforcement and CE Audit Cases Received</b>	<b>2,622</b>	<b>2,598</b>	<b>2,198</b>	<b>2,000</b>	<b>2,108</b>	<b>1,417</b>	<b>1,289</b>	<b>2,706</b>	<b>1,109</b>	<b>1,049</b>	<b>2,158</b>	<b>545</b>

<sup>1</sup> Excludes 32 cases involving non-compliance with Mandatory Employer Reporting requirements.

<sup>2</sup> Also includes license examination fraud (cheating) cases and fraudulent license application (experience) cases, including 18 fraudulent license application cases received on June 10, 2016.

Updated Historical Overview of Licensee Enforcement Cases Assigned for Investigation

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	2015/16			2016/17 <sup>5</sup>			2017/18
							Jul-Dec	Jan-Jun <sup>4</sup>	Total <sup>4</sup>	Jul-Dec	Jan-Jun	Total	Jul-Sep
Licensee Arrest/Conviction Reports	Desk Investigations	1,982	1,761	1,552	1,337	1,560	925	727	1,652	589	574	1,163	267
	Non-Sworn Investigations	83	165	61	21	52	4	1	5	0	0	0	0
	Sworn Investigations	11	3	0	0	3	31	10	41	6	2	8	0
	<b>Total Licensee Arrest/Conviction Reports Assigned for Investigation</b>	<b>2,076</b>	<b>1,929</b>	<b>1,613</b>	<b>1,358</b>	<b>1,615</b>	<b>960</b>	<b>738</b>	<b>1,698</b>	<b>595</b>	<b>576</b>	<b>1,171</b>	<b>267</b>
Complaints Assigned for Desk Investigation, Including CE Cases (Imputed Values)		472	142	55	217	43	51	158	209	101	20	121	10
Non-Sworn Complaint Investigations	Discipline by Another State/Agency		34	21	3	3	13	1	14	0	0	0	0
	Employer Reports - All Offense Categories		80	271	181	166	74	54	128	78	54	132	39
	Public and Other Complaints - All Offense Categories	15	153	147	124	104	70	74	144	44	23	67	74
	Public Agency Reports - All Offense Categories		35	84	88	95	24	19	43	23	17	40	14
	Internal - Other than Fraud <sup>1</sup>		97	94	26	17	22	3	25	2	0	2	0
	Internal - Fraud (primarily CE audit cases) <sup>2</sup>	2	36	29	4	4	1	0	1	2	0	2	0
	<b>Total Complaints Assigned for Non-Sworn Investigation</b>	<b>17</b>	<b>435</b>	<b>646</b>	<b>426</b>	<b>389</b>	<b>204</b>	<b>151</b>	<b>355</b>	<b>149</b>	<b>94</b>	<b>243</b>	<b>127</b>
Sworn Complaint Investigations	Discipline by Another State/Agency	2	0	0	None Assigned	2	9	0	9	0	1	1	0
	Substance Abuse, Impairment and Drug-Related Offenses	41	25	0		40	65	26	91	23	11	34	21
	Incompetence/Negligence	43	41	1		27	50	9	59	20	13	33	14
	Unprofessional Conduct	15	14	0		22	56	10	66	27	8	35	17
	Internal - Fraud <sup>2</sup>	4	2	10		0	4	18	22	3	0	3	10
	Sexual Misconduct	3	4	0		5	10	1	11	6	2	8	2
	Other	7	7	4		31	48	24	72	11	21	32	11
	<b>Total Complaints Assigned for Sworn Investigation<sup>3</sup></b>	<b>115</b>	<b>93</b>	<b>15</b>		<b>0</b>	<b>127</b>	<b>242</b>	<b>88</b>	<b>330</b>	<b>90</b>	<b>56</b>	<b>146</b>
<b>Total Complaints Assigned for Investigation</b>		<b>604</b>	<b>670</b>	<b>716</b>	<b>643</b>	<b>559</b>	<b>497</b>	<b>397</b>	<b>894</b>	<b>340</b>	<b>170</b>	<b>510</b>	<b>212</b>
Total Enforcement Cases	Desk Investigations	2,454	1,903	1,607	1,554	1,603	976	885	1,861	690	594	1,284	277
	Non-Sworn Investigations	100	600	707	447	441	208	152	360	149	94	243	127
	Sworn Investigations	126	96	15	0	130	273	98	371	96	58	154	75
	<b>Total Enforcement Cases Assigned for Investigation</b>	<b>2,680</b>	<b>2,599</b>	<b>2,329</b>	<b>2,001</b>	<b>2,174</b>	<b>1,457</b>	<b>1,135</b>	<b>2,592</b>	<b>935</b>	<b>746</b>	<b>1,681</b>	<b>479</b>

<sup>1</sup> Excludes 27 cases involving non-compliance with Mandatory Employer Reporting requirements.

<sup>2</sup> Includes failure to comply with CE requirements, license examination fraud (cheating) cases and fraudulent license application cases, including 18 cases assigned during June 2016.

<sup>3</sup> About 65 percent of the 369 cases assigned for sworn investigation during 2014/15 and the first half of 2015/16 were previously assigned for non-sworn investigation during the 4-year period extending

<sup>4</sup> Excludes 118 complaint cases closed during Intake/Screening between January 1 and June 30, 2016, without assignment for investigation.

<sup>5</sup> Excludes 271 cases closed during Intake between July 1, 2016 and June 30, 2017, without investigation (74 cases between July 1 and December 31, 2016 and 197 cases between January 1 and June 30, 2017). Also excludes 21 cases closed during Intake between July 1 and September 30, 2017 (4 cases during the first half of July and 17 cases during September).

Updated Historical Overview of Completed License Applicant and Licensee Enforcement Investigations

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	2015/16			2016/17			2017/18	
							Jul-Dec	Jan-Jun	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep	
License Applicant Investigations	Arrest/Conviction Report Desk Investigations	2,102	2,772	2,896	3,492	4,676	1,751	401	2,152	352	281	633	126	
	Arrest/Conviction Report Non-Sworn Investigations	1	32	0	0	6	0	0	0	0	0	0	0	
	Sworn Investigations	0	1	0	1	1	3	0	3	0	0	0	0	
	<b>Total Completed License Applicant Investigations</b>	<b>2,103</b>	<b>2,805</b>	<b>2,896</b>	<b>3,493</b>	<b>4,683</b>	<b>1,754</b>	<b>401</b>	<b>2,155</b>	<b>352</b>	<b>281</b>	<b>633</b>	<b>126</b>	
Licensee Arrest/Conviction Reports	Desk Investigations <sup>3 4</sup>	2,383	1,781	1,758	1,496	1,416	1,079	926	2,005	681	458	1,139	230	
	Non-Sworn Investigations	0	192	31	60	52	39	4	43	0	1	1	0	
	Sworn Investigations	3	13	2	2	1	6	14	20	13	8	21	5	
	<b>Total Completed Arrest/Conviction Report Investigations</b>	<b>2,386</b>	<b>1,986</b>	<b>1,791</b>	<b>1,558</b>	<b>1,469</b>	<b>1,124</b>	<b>944</b>	<b>2,068</b>	<b>694</b>	<b>467</b>	<b>1,161</b>	<b>235</b>	
Complaint Investigations	Desk Investigations	Discipline by Another State/Agency	66	21	15	40	33	35	79	114	70	15	85	4
		Internal - Fraud (primarily CE)	177	68	125	122	103	62	123	185	31	7	38	1
		All Other Sources and Offense Categories <small>2010/11 Avg. Elapsed Time = 12.1 Months.</small>	472	129	30	30	23	80	0	80	27	0	27	2
		<b>Total Completed Desk Complaint Investigations</b>	<b>715</b>	<b>218</b>	<b>170</b>	<b>192</b>	<b>159</b>	<b>177</b>	<b>202</b>	<b>379</b>	<b>128</b>	<b>22</b>	<b>150</b>	<b>7</b>
	Non-Sworn Investigations	Discipline by Another State/Agency		5	10	15	13	7	7	14	3	4	7	0
		Employer Reports - All Offense Categories		3	34	102	174	52	163	215	30	90	120	8
		Public and Other Complaints - All Offense Categories	Not Applicable	22	86	170	111	65	80	145	18	43	61	14
		Public Agency Reports - All Offense Categories		5	24	55	81	36	32	68	13	33	46	6
		Internal - Other than Fraud <sup>1</sup>		6	35	80	51	18	35	53	10	13	23	1
		Internal - Fraud (primarily CE)		4	4	6	12	0	0	0	0	2	2	0
	<b>Total Completed Non-Sworn Complaint Investigations</b>	<b>Not Applicable</b>	<b>45</b>	<b>193</b>	<b>428</b>	<b>442</b>	<b>178</b>	<b>317</b>	<b>495</b>	<b>74</b>	<b>185</b>	<b>259</b>	<b>29</b>	
	<b>Average Elapsed Time to Complete Non-Sworn Investigations (Months)</b>	<b>Not Applicable</b>	<b>16</b>	<b>16</b>	<b>19</b>	<b>19</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>21</b>	<b>18</b>	<b>19</b>	<b>18</b>	
	Sworn Investigations	Discipline by Another State/Agency	0	2	1	0	0	0	3	3	3	5	8	0
		Substance Abuse, Impairment and Drug-Related Offenses	63	29	20	20	0	13	46	59	38	34	72	14
		Incompetence/Negligence	53	31	44	23	3	5	23	28	32	25	57	5
		Unprofessional Conduct	44	20	7	6	5	7	29	36	27	23	50	8
		Fraud, Including Internal - Fraud	12	2	7	14	6	0	14	14	33	26	59	3
Sexual Misconduct		8	4	6	0	1	0	5	5	6	6	12	1	
Unlicensed Practice and Other		20	4	4	3	0	11	10	21	10	11	21	1	
<b>Total Completed Sworn Complaint Investigations</b>		<b>200</b>	<b>92</b>	<b>89</b>	<b>66</b>	<b>15</b>	<b>36</b>	<b>130</b>	<b>166</b>	<b>149</b>	<b>130</b>	<b>279</b>	<b>32</b>	
<b>Total Completed Complaint Investigations<sup>2</sup></b>	<b>915</b>	<b>355</b>	<b>452</b>	<b>686</b>	<b>616</b>	<b>391</b>	<b>649</b>	<b>1,040</b>	<b>351</b>	<b>337</b>	<b>688</b>	<b>68</b>		
Total Completed Enforcement Investigations	Desk Investigations	3,098	1,999	1,928	1,688	1,575	1,256	1,128	2,384	809	480	1,289	237	
	Non-Sworn Investigations	0	237	224	488	494	217	321	538	74	186	260	29	
	Sworn Investigations	203	105	91	68	16	42	144	186	162	138	300	37	
	<b>Total Completed Enforcement Investigations (Unweighted)</b>	<b>3,301</b>	<b>2,341</b>	<b>2,243</b>	<b>2,244</b>	<b>2,085</b>	<b>1,515</b>	<b>1,593</b>	<b>3,108</b>	<b>1,045</b>	<b>804</b>	<b>1,849</b>	<b>303</b>	

<sup>1</sup> Excludes 25 cases involving non-compliance with Mandatory Employer Reporting requirements.

<sup>2</sup> Excludes 271 cases closed during Intake between July 1, 2016 and June 30, 2017, without investigation (74 cases between July 1 and December 31, 2016 and 197 between January 1 and June 30, 2017). Also excludes 21 cases closed during Intake between July 1 and September 30, 2017 (4 cases during the first half of July and 17 cases during September).

<sup>3</sup> Includes 30 arrest/conviction report cases coded as other types of complaints in BreZE between January 1 and June 30, 2016. Excludes 73 Closed Pending Criminal Conviction (CLPX) arrest/conviction report cases closed between January 1 and June 30, 2016. The investigations will be re-opened and completed after the cases are adjudicated.

<sup>4</sup> Excludes 192 Closed Pending Criminal Conviction (CLPX) arrest/conviction report cases closed during 2016/17 (92 cases between July 1 and December 31, 2016 and 100 cases between January 1 and June 30, 2017). Also excludes 21 cases Closed Pending Criminal Conviction (CLPX) between July 1 and September 30, 2017. The investigations will be re-opened and completed after the cases are

Updated Historical Overview of Pending License Applicant and Licensee Enforcement Investigations

Case Category and Type		06/30/10	06/30/11	06/30/12	06/30/13	06/30/14	06/30/15	2015/16		06/30/17	09/30/17	
								12/31/15	06/30/16			
License Applicant Investigations	Desk Arrest/Conviction Report Investigations	2,080	2,391	2,643	2,565	2,870	1,485	244	67	63	92	
	Non-Sworn Arrest/Conviction Report Investigations	4	31	3	3	4	1	0	0	0	0	
	Sworn Investigations	4	4	4	4	4	3	0	0	0	0	
	<b>Total Pending License Applicant Investigations</b>	<b>2,088</b>	<b>2,426</b>	<b>2,650</b>	<b>2,572</b>	<b>2,878</b>	<b>1,489</b>	<b>244</b>	<b>67</b>	<b>63</b>	<b>92</b>	
Licensee Arrest/Conviction Reports	Desk Investigations <sup>1 2 3</sup>	1,744	1,334	1,243	1,012	834	925	739	675	734	764	
	Non-Sworn Investigations	15	91	69	96	52	51	14	0	0	0	
	Sworn Investigations	5	13	3	1	0	3	28	24	10	6	
	<b>Total Pending Arrest/Conviction Report Investigations</b>	<b>1,764</b>	<b>1,438</b>	<b>1,315</b>	<b>1,109</b>	<b>886</b>	<b>979</b>	<b>781</b>	<b>699</b>	<b>744</b>	<b>770</b>	
Pending Complaints	Desk Investigations	Discipline by Another State/Agency	55	33	21	29	26	41	48	22	19	21
		Internal - Fraud (Primarily CE) <sup>3</sup>	32	14	20	73	97	3	70	33	0	0
		All Other Sources and Offense Categories	467	267	167	31	29	64	29	6	0	10
		<b>Total Pending Desk Complaint Investigations</b>	<b>554</b>	<b>314</b>	<b>208</b>	<b>133</b>	<b>152</b>	<b>108</b>	<b>147</b>	<b>61</b>	<b>19</b>	<b>31</b>
	Non-Sworn Investigations	Discipline by Another State/Agency	1	3	32	43	28	17	19	10	5	8
		Employer Reports - All Offense Categories				311	390	331	294	177	171	217
		Public and Other Complaints - All Offense Categories	13	32	359	189	150	113	110	113	111	182
		Public Agency Reports - All Offense Categories				113	147	144	86	67	53	63
		Internal - Other than Fraud <sup>2</sup>				156	101	58	51	27	5	0
		Internal - Fraud <sup>3</sup>	0	2	34	26	24	15	11	1	0	0
	<b>Total Pending Non-Sworn Complaint Investigations</b>	<b>14</b>	<b>37</b>	<b>425</b>	<b>838</b>	<b>840</b>	<b>678</b>	<b>571</b>	<b>395</b>	<b>345</b>	<b>470</b>	
	Sworn Investigations	Discipline by Another State/Agency	1	3	1	0	0	2	11	8	1	1
		Substance Abuse, Impairment and Drug-Related Offenses	68	46	42	22	2	42	94	68	34	41
		Incompetence/Negligence	67	57	67	24	1	25	70	52	30	39
		Unprofessional Conduct	53	24	18	11	5	22	71	40	31	39
Fraud, Including Internal - Fraud <sup>3</sup>		15	9	11	18	4	16	50	59	31	43	
Sexual Misconduct		11	6	6	0	0	4	14	10	5	6	
All Other Offense Categories		21	6	7	3	0	14	21	19	3	8	
<b>Total Pending Sworn Complaint Investigations</b>	<b>236</b>	<b>151</b>	<b>152</b>	<b>78</b>	<b>12</b>	<b>125</b>	<b>331</b>	<b>256</b>	<b>135</b>	<b>177</b>		
<b>Total Pending Complaint Investigations</b>	<b>804</b>	<b>502</b>	<b>785</b>	<b>1,049</b>	<b>1,004</b>	<b>911</b>	<b>1,049</b>	<b>712</b>	<b>499</b>	<b>678</b>		
Total Pending Enforcement Investigations	Desk Investigations	2,298	1,648	1,451	1,145	986	1,033	886	736	753	795	
	Non-Sworn Investigations	29	128	494	934	892	729	585	395	345	470	
	Sworn Investigations	241	164	155	79	12	128	359	280	145	183	
	<b>Total Pending Enforcement Investigations (Unweighted)</b>	<b>2,568</b>	<b>1,940</b>	<b>2,100</b>	<b>2,158</b>	<b>1,890</b>	<b>1,890</b>	<b>1,830</b>	<b>1,411</b>	<b>1,243</b>	<b>1,448</b>	

<sup>1</sup> Value shown for June 30, 2016, includes 226 Closed Pending Criminal Conviction (CLPX) cases. Value shown for June 30, 2017, includes 315 CLPX cases. Value shown for September 30,

2017, includes 243 CLPX cases. The investigations will be re-opened and completed after the cases are adjudicated

<sup>2</sup> Includes failure to comply with CE requirements, license examination fraud (cheating) cases and fraudulent license application (experience) cases.

<sup>3</sup> Excludes 25 cases involving non-compliance with Mandatory Employer Reporting requirements.

Updated Historical Overview of Pending Licensee Complaint Investigations, By Age<sup>1</sup>

Investigation and Age Category		06/30/12	06/30/13	06/30/14	06/30/15	2015/16		06/30/17	09/30/17
						12/31/15	06/30/16		
Desk Investigations <sup>2</sup>	Less than 1 Year	156	38	43	91	74	28	17	16
	1 to 2 Years	23	12	8	13	3	0	2	15
	2 to 3 Years	6	6	2	0	0	0	0	0
	3 to 4 Years	2	4	2	1	0	0	0	0
	More than 4 Years	1	0	0	0	0	0	0	0
	<b>Total Pending Desk Complaint Investigations</b>	<b>188</b>	<b>60</b>	<b>55</b>	<b>105</b>	<b>77</b>	<b>28</b>	<b>19</b>	<b>31</b>
	<b>Average Age of Pending Complaint Cases (Months)</b>	<b>8</b>	<b>11</b>	<b>7</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>10</b>	<b>10</b>
Non-Sworn Investigations	Less than 1 Year	293	417	342	238	257	245	182	253
	1 to 2 Years	80	331	297	209	140	111	131	179
	2 to 3 Years	36	63	181	163	101	26	27	32
	3 to 4 Years	12	23	18	62	62	11	3	6
	More than 4 Years	4	4	2	6	11	1	2	0
	<b>Total Pending Non-Sworn Complaint Investigations</b>	<b>425</b>	<b>838</b>	<b>840</b>	<b>678</b>	<b>571</b>	<b>394</b>	<b>345</b>	<b>470</b>
	<b>Average Age of Pending Complaint Cases (Months)</b>	<b>11</b>	<b>13</b>	<b>16</b>	<b>19</b>	<b>17</b>	<b>12</b>	<b>13</b>	<b>12</b>
Sworn Investigations <sup>3</sup>	Less than 1 Year	61	10	0	57	152	131	86	123
	1 to 2 Years	63	35	0	32	82	58	25	29
	2 to 3 Years	18	21	11	16	59	39	10	9
	3 to 4 Years	8	9	0	20	24	20	7	8
	More than 4 Years	2	3	1	0	14	8	7	8
	<b>Total Pending Sworn Complaint Investigations</b>	<b>152</b>	<b>78</b>	<b>12</b>	<b>125</b>	<b>331</b>	<b>256</b>	<b>135</b>	<b>177</b>
	<b>Average Age of Pending Complaint Cases (Months)</b>	<b>16</b>	<b>23</b>	<b>29</b>	<b>17</b>	<b>17</b>	<b>16</b>	<b>15</b>	<b>12</b>
<b>Total Pending Complaint Investigations</b>		<b>765</b>	<b>976</b>	<b>907</b>	<b>908</b>	<b>979</b>	<b>678</b>	<b>499</b>	<b>678</b>
<b>Weighted Average Age of Pending Complaint Cases (Months)</b>		<b>11</b>	<b>14</b>	<b>15</b>	<b>17</b>	<b>16</b>	<b>13</b>	<b>13</b>	<b>12</b>

<sup>1</sup> Excludes cases involving non-compliance with Mandatory Employer Reporting requirements.

<sup>2</sup> Excludes cases involving licensee failure to comply with Continuing Education (CE) Program requirements

<sup>3</sup> Ages shown include elapsed time from BVNPT's receipt of the complaint to referral to the Division of Investigation. Between May and December 2015, about 240 aged complaints were reassigned from the Investigation Section to the Division of Investigation.

Updated Historical Overview of Administrative Disciplinary Outcomes

Type of Case	Type of Administrative Discipline	2011/12	2012/13	2013/14	2014/15	2015/16			2016/17			2017/18
						Jul-Dec	Jan-Jun	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
License Applicant Arrest/Conviction Reports	Notice of Warning (estimated for periods prior to 2016)	1,012	883	990	784	354	340	694	311	252	563	118
	Citation <sup>1</sup>	10	24	18	8	22	3	25	5	2	7	0
	<b>Total - Applicant Arrest/Conviction Reports</b>	<b>1,022</b>	<b>907</b>	<b>1,008</b>	<b>792</b>	<b>376</b>	<b>343</b>	<b>719</b>	<b>316</b>	<b>254</b>	<b>570</b>	<b>118</b>
Continuing Education Failure to Comply	Notice of Warning (estimated for periods prior to 2016)	0	0	40	119	30	26	56	1	1	2	0
	Citation	60	101	42	1	44	66	110	21	0	21	0
	<b>Total - Continuing Education</b>	<b>60</b>	<b>101</b>	<b>82</b>	<b>120</b>	<b>74</b>	<b>92</b>	<b>166</b>	<b>22</b>	<b>1</b>	<b>23</b>	<b>0</b>
Licensee Arrest/Conviction Reports	Notice of Warning (estimated for periods prior to 2016)	624	615	526	368	213	216	429	131	115	246	70
	Citation <sup>1</sup>	155	61	71	81	84	78	162	64	33	97	6
	<b>Total - Licensee Arrest/Conviction Reports</b>	<b>779</b>	<b>676</b>	<b>597</b>	<b>449</b>	<b>297</b>	<b>294</b>	<b>591</b>	<b>195</b>	<b>148</b>	<b>343</b>	<b>76</b>
Licensee Complaints and Other Cases	Notice of Warning (estimated for periods prior to 2016)	40	50	91	109	41	107	148	34	109	143	26
	Citation <sup>1</sup>	27	10	9	12	13	41	54	61	12	73	3
	<b>Total Licensee Complaints and Other Cases</b>	<b>67</b>	<b>60</b>	<b>100</b>	<b>121</b>	<b>54</b>	<b>148</b>	<b>202</b>	<b>95</b>	<b>121</b>	<b>216</b>	<b>29</b>
Type of Discipline	Type of Case (Enforcement Only)	2011/12	2012/13	2013/14	2014/15	2015/16			2016/17			2017/18
Notice of Warning	Continuing Education	0	0	40	119	30	26	56	1	1	2	0
	Arrest/Conviction Reports	624	615	526	368	213	216	429	131	115	246	70
	Other Licensee Offenses	40	50	91	109	41	107	148	34	109	143	26
	<b>Total Enforcement Notices of Warning</b>	<b>664</b>	<b>665</b>	<b>657</b>	<b>596</b>	<b>284</b>	<b>349</b>	<b>633</b>	<b>166</b>	<b>225</b>	<b>391</b>	<b>96</b>
Citation <sup>1</sup>	Continuing Education	60	101	42	1	44	66	110	21	0	21	0
	Arrest/Conviction Reports	155	61	71	81	84	77	161	64	33	97	6
	Other Licensee Offenses	27	10	4	12	13	42	55	60	11	71	3
	Non-Licensees	5	2	5	0	1	2	3	1	1	2	0
	<b>Total Enforcement Citations</b>	<b>242</b>	<b>172</b>	<b>117</b>	<b>94</b>	<b>141</b>	<b>185</b>	<b>326</b>	<b>145</b>	<b>44</b>	<b>189</b>	<b>9</b>
<b>Total Amount of Fines Assessed (Licensing and Enforcement cases)</b>		<b>\$129,300</b>	<b>\$116,105</b>	<b>\$102,038</b>	<b>\$70,410</b>	<b>\$87,966</b>	<b>\$101,306</b>	<b>\$189,272</b>	<b>\$69,124</b>	<b>\$32,158</b>	<b>\$101,282</b>	<b>\$7,755</b>

<sup>1</sup> Includes citations issued in connection with formal discipline cases (see Exhibit B-4).

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**Appendix B**  
**Updated Discipline Case**  
**Time Series Data Summaries**

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## Appendix B

### Updated Discipline Case Time Series Data Summaries

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This appendix provides updated discipline case time series data summaries. The summaries are organized as follows:

#### Title

#### Exhibit

- B-1. Updated Historical Summary of Discipline Case Referrals and Filings
- B-2. Updated Historical Summary of Discipline Cases Completed
- B-3. Updated Historical Summary of Pending Discipline Cases
- B-4. Updated Historical Summary of Discipline Case Outcomes
- B-5. Updated Historical Summary of Disciplinary Process Elapsed Time Performance
- B-6. Updated Historical Summary of Probation Program Workload and Performance

Historical Summary of Discipline Case Referrals and Filings

License Applicant and Licensee Case Referrals and Filings		2012/13	2013/14	2014/15	2015/16			2016/17			2017/18
					Jul-Dec	Jan-Jun	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
License Applicant Cases	Denials of Licensure Issued	85	95	84	16	22	38	16	13	29	2
	License Applicant Cases Referred to AG (Appeals)	63	60	45	15	15	30	9	14	23	2
	AG Declined to File Statement of Issues (SOI)	0	1	0	0	0	0	1	1	2	0
	Statement of Issues Filed	68	50	71	15	15	30	13	5	18	2
	Statement of Issues Withdrawn	3	7	7	1	4	5	0	0	0	0
Licensee Cases	Arrest/Conviction Reports Referred to AG	175	217	179	107	97	204	78	61	139	24
	Discipline by Another State/Agency Reports Referred to AG	1	13	5	5	17	22	27	6	33	2
	Complaint Cases Referred to AG	46	80	61	33	76	109	76	41	117	47
	Total Licensee Cases Referred to AG	222	310	245	145	190	335	181	108	289	73
	AG Declined to File Accusation	6	5	4	3	2	5	2	2	4	4
	Accusations Filed	215	235	286	106	158	264	176	136	312	51
	Accusations Withdrawn	5	6	11	3	2	5	1	1	2	1
Total License Applicant and Licensee Discipline Cases Referred to AG		285	370	290	160	205	365	190	122	312	75
Total SOIs and Accusations Filed		283	285	357	121	173	294	189	141	330	53

Other Case Referrals and Filings		2012/13	2013/14	2014/15	2015/16			2016/17			2017/18
					Jul-Dec	Jan-Jun	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
Subsequent Discipline Cases Sent to AG		30	37	40	12	25	37	54	34	88	8
Petitions for Reinstatement Filed		22	25	20	6	22	28	7	19	26	5

Historical Summary of Discipline Cases Completed

Discipline Cases Completed by Type of Decision (Based on Decision Adoption Date)		2012/13 <sup>1</sup>	2013/14 <sup>1</sup>	2014/15 <sup>1</sup>	2015/16			2016/17 <sup>2</sup>			2017/18 <sup>2</sup>
					Jul-Dec <sup>1</sup>	Jan-Jun <sup>2</sup>	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
Default Decisions Adopted	License Applicant Cases	3	0	2	2	1	3	0	0	0	0
	Licensee - Arrest/Conviction Reports	133	86	156	78	53	136	40	36	76	13
	Licensee - Complaints, Subsequent Discipline and Other					5		17	23	40	6
	<b>Total Default Decisions Adopted</b>		<b>136</b>	<b>86</b>	<b>158</b>	<b>80</b>	<b>59</b>	<b>139</b>	<b>57</b>	<b>59</b>	<b>116</b>
Proposed Stipulations Adopted	License Applicant Cases	28	15	10	19	15	34	7	8	15	2
	Licensee - Arrest/Conviction Reports	91	88	108	90	58	158	35	37	72	5
	Licensee - Complaints, Subsequent Discipline and Other					10		16	19	35	7
	<b>Total Proposed Stipulations Adopted</b>		<b>119</b>	<b>103</b>	<b>118</b>	<b>109</b>	<b>83</b>	<b>192</b>	<b>58</b>	<b>64</b>	<b>122</b>
Proposed ALJ Decisions Adopted	License Applicant Cases	18	11	15	13	5	18	2	3	5	0
	Licensee - Arrest/Conviction Reports	106	80	95	61	17	83	19	13	32	6
	Licensee - Complaints and Other					5		5	6	11	2
	<b>Total Proposed ALJ Decisions Adopted</b>		<b>124</b>	<b>91</b>	<b>110</b>	<b>74</b>	<b>27</b>	<b>101</b>	<b>26</b>	<b>22</b>	<b>48</b>
Voluntary Surrenders and Other	Proposed ALJ Decisions Not Adopted	0	2	5	1	3	4	0	0	0	3
	Licensee - Arrest/Conviction Reports	Included Above	Included Above	Included Above	Included Above	11	11	12	9	21	7
	Licensee - Complaints, Subsequent Discipline and Other					5		19	20	39	7
	<b>Total Voluntary Surrenders and Other</b>						<b>16</b>	<b>16</b>	<b>31</b>	<b>29</b>	<b>60</b>
Total Final Orders Adopted	License Applicant Cases	49	26	27	34	21	55	9	11	20	2
	Licensee - Arrest/Conviction Reports	330	254	359	229	139	393	106	95	201	31
	Licensee - Complaints, Subsequent Discipline and Other					25		57	68	125	22
	<b>Total Final Orders Adopted</b>		<b>379</b>	<b>280</b>	<b>386</b>	<b>263</b>	<b>185</b>	<b>448</b>	<b>172</b>	<b>174</b>	<b>346</b>

<sup>1</sup> For periods prior to 2016, values shown include subsequent discipline cases.

Discipline Cases Completed by Type of Case	2012/13 <sup>1</sup>	2013/14 <sup>1</sup>	2014/15 <sup>1</sup>	2015/16			2016/17 <sup>2</sup>			2017/18
				Jul-Dec <sup>1</sup>	Jan-Jun <sup>2</sup>	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
License Applicant Cases	64	54	41	49	21	70	9	11	20	2
Licensee - Arrest/Conviction Reports	160	142	216	152	138	290	106	95	201	31
Licensee - Complaints and Other	96	59	62	50	27	77	57	68	125	22
<b>Total Completed License Applicant and Licensee Cases</b>	<b>320</b>	<b>255</b>	<b>319</b>	<b>251</b>	<b>186</b>	<b>437</b>	<b>172</b>	<b>174</b>	<b>346</b>	<b>55</b>
Subsequent Discipline Cases	30	37	44	17	Not Available	Not Available	31	28	59	14
<b>Total Final Orders Adopted</b>	<b>350</b>	<b>292</b>	<b>363</b>	<b>268</b>	<b>Not Available</b>	<b>Not Available</b>	<b>203</b>	<b>202</b>	<b>405</b>	<b>69</b>

<sup>1</sup> Based on Discipline Effective Date.

<sup>2</sup> Based on Discipline Imposed Date, except Subsequent Discipline cases.

Historical Summary of Pending Discipline Cases<sup>1</sup>

Case Category and Type		06/30/13	06/30/14	06/30/15	2015/16		06/30/17	09/30/17
					12/31/15	06/30/16		
License Applicant Cases	Number of Pending Cases	93	82	77	38	21	15	15
	Average Age of Pending Cases (months)	25	23	23	26	24	14	17
Licensee Cases	Arrest/Conviction Reports	321	368	298	230	187	121	111
	Discipline by Another State/Agency	7	11	10	14	24	17	12
	Complaints	131	134	118	86	110	148	146
	Total Pending Cases	459	513	426	330	321	286	269
	Average Age of Pending Cases (months)	38	37	34	28	26	23	26
Total Pending Discipline Cases		552	595	503	368	342	301	284
Average Age of Pending Discipline Cases (months)		35	35	32	28	26	23	25

<sup>1</sup> Excludes subsequent discipline cases. As of June 30, 2017, there were about 60 pending subsequent discipline cases. As of September 30, 2017, there were about 65 pending subsequent discipline cases

Historical Summary of Disciplinary Outcomes

Discipline Case Type and Outcome Category		2012/13 <sup>1</sup>	2013/14 <sup>1</sup>	2014/15 <sup>1</sup>	2015/16			2016/17 <sup>2</sup>			2017/18 <sup>2</sup>
					Jul-Dec <sup>1</sup>	Jan-Jun <sup>2</sup>	Total	Jul-Dec	Jan-Jun	Total	Jul-Sep
License Applicant Cases	Denial of Licensure Upheld	10	15	13	8	4	12	1	2	3	0
	License Granted, Revocation Stayed, Probation (Lic. Granted w/ Conditions)	20	18	17	18	12	30	6	8	14	1
	Other Outcomes, Including License Granted, License Granted with Citation and License Granted with Public Letter of Reprimand	23	15	8	22	5	27	2	1	3	1
Licensee Cases	Revocation	159	100	162	91	69	160	70	68	138	23
	Voluntary Surrender	37	52	35	33	15	48	32	31	63	15
	Revocation Stayed, Probation with Suspension	2	3	2	1	0	1	1	0	1	0
	Revocation Stayed, Probation	61	52	65	75	76	151	57	62	119	13
	Other Outcomes, Including Public Letter of Reprimand and Citation	43	27	14	8	4	12	3	2	5	2
<b>Total Licensee Applicant and Licensee Case Outcomes</b>		<b>355</b>	<b>282</b>	<b>316</b>	<b>256</b>	<b>185</b>	<b>441</b>	<b>172</b>	<b>174</b>	<b>346</b>	<b>55</b>
Subsequent Discipline Cases	Revocation	17	15	25	8	Not Available	Not Available	10	13	23	5
	Voluntary Surrender	11	20	16	8			18	12	30	6
	Revocation Stayed, Probation	2	2	3	1			3	3	6	3
	<b>Total Subsequent Discipline Case Outcomes</b>		<b>30</b>	<b>37</b>	<b>44</b>	<b>17</b>	<b>Not Available</b>	<b>Not Available</b>	<b>31</b>	<b>28</b>	<b>59</b>
<b>Total License Applicant, Licensee and Subsequent Discipline Case Outcomes</b>		<b>385</b>	<b>319</b>	<b>360</b>	<b>273</b>	<b>Not Available</b>	<b>Not Available</b>	<b>203</b>	<b>202</b>	<b>405</b>	<b>69</b>
Petition for Reinstatement Denied <sup>3</sup>		14	9	10	6	5	11	5	4	9	4
Petition for Reinstatement Granted, with Probation <sup>3</sup>		10	12	10	11	10	21	10	5	15	2

<sup>1</sup> Based on Discipline Effective Date.

<sup>2</sup> Based on Discipline Imposed Date, except Subsequent Discipline cases.

<sup>3</sup> It is our understanding that BVNPT now considers a maximum of six (6) Petitions for Reinstatement per quarter. Prior to 2016/17, BVNPT considered a maximum of eight (8) Petitions for Reinstatement per quarter.

Historical Summary of Disciplinary Process Elapsed Time Performance

Elapsed Time Performance Measures (License Applicant and Licensee Cases)		2012/13	2013/14	2014/15	2015/16		2016/17	2017/18
					Jul-Dec	Jan-Jun		
Case Referred to AG to Filing (months)	Case Referred to AG to SOI Filed	5.5	6.8	5.2	5.8	4.3	3.8	2.0
	Case Referred to AG to Accusation Filed	9.2	7.8	7.4	6.5	6.0	4.4	5.5
	Weighted Average Elapsed Time - Case Referred to Filing	8.3	7.6	7.0	6.4	5.9	4.4	5.4
Case Referred to AG to Decision Adopted <sup>1</sup> (months)	Case Referred to AG to Decision Adopted - Defaults	17	22	18	14	12	10	9
	Case Referred to AG to Decision Adopted - Stipulations	16	19	20	17	18	15	15
	Case Referred to AG to Decision Adopted - ALJ Decisions	20	26	23	20	18	16	17
	Undetermined and Other Orders, Including Other Voluntary Surrenders	Not Applicable	Not Applicable	Not Applicable	Not Applicable	16	10	12
	Weighted Average Elapsed Time - Case Referred to AG to Decision	17	22	20	17	16	12	12
Case Receipt to Decision <sup>1</sup> (months)	Case Received to Decision - License Applicant Cases	31	30	33	27	25	23	10
	Case Received to Decision - Licensee Arrest/Conviction Reports	34	36	36	33	30	25	24
	Case Received to Decision - Licensee Complaints and Other	41	42	43	47	42	32	30
	Weighted Average Elapsed Time - Case Receipt to Decision	36	36	37	35	31	28	26

<sup>1</sup> Values shown for 2012/13, 2013/14 and 2015 based on Discipline Effective Date. Subsequent period values based on Discipline Imposed Date. Excludes subsequent discipline cases.



Historical Overview of Probation Program Workload and Performance<sup>1</sup>

Key Program Profile Indicators	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
						Jul-Sep
New Probationers	89	86	96	191	153	21
Bodily Fluid Tests Ordered	2,140	3,256	3,563	5,978	6,926	1,931
Positive Bodily Fluid Tests	313	260	278	601	747	151
Revocations and Voluntary Surrenders	28	35	41	27	54	11
Successful Completions	38	38	41	36	35	23
Total Number of Probationers (End of Period)	297	320	329	429	478	465
Total Number of Active Probationers (End of Period) <sup>1</sup>	238	256	268	367	444	429
Total Number of Inactive and Tolloed Probationers (End of Period) <sup>1</sup>	59	64	61	62	34	36
Probationers Subject to Bodily Fluid Testing (End of Period)	129	132	217	312	261	256

<sup>1</sup> During 2016/17, BVNPT reclassified prospective new probationers, previously assigned an Inactive status, to an Active status. This change increased the number of reported Active probationers and decreased the number of reported Inactive probationers. There was no change to the total probationer population. Several dozen probationers were reclassified from an Inactive status to an Active status. Historically, about 2 to 3 dozen prospective probationers were were assigned an Inactive status. The Inactive status is no longer utilized to designate prospective new probationers that have not yet transitioned into the Probation Program.

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**Appendix C**  
**Additional Continuing Education Compliance Audit**  
**Project Background Information**

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## Appendix C

### Additional Continuing Education Compliance Audit Project Background Information

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This section provides additional information about BVNPT's CE Audit Project, including information about the staffing and other resources that were wasted supporting the project, the early warnings that were provided to the BVNPT's Executive Officer and the Board about this project, and deficiencies with BVNPT's communications with staff, Board members and others regarding the status of the project. The information presented herein is supplemental to the information provided in Section IV.A.2, beginning on Page IV-4.

#### *Staffing and Other Resources Wasted Supporting the CE Audit Project*

BVNPT wasted significant staffing and other resources on the CE Audit Project. Initially, during late-November 2016, a pool of BVNPT staff was assigned to begin stuffing envelopes for the mass mailing. Then, during January, as the mailings were being completed by DCA's Business Services Office, BVNPT began receiving larger volumes of returned and incoming mail, faxes and emails. During January and February overflowing volumes of emails and faxes were received and from mid-January through April BVNPT's public phone lines continuously overflowed.

During January, to help handle the deluge of submittals that were initially received, all of the Enforcement Division's managers along with other BVNPT staff spent a full day together just opening mail. In mid-January BVNPT began offering weekday and weekend overtime to all BVNPT staff to help respond to the increased volumes of CE mail, faxes and email that were being received. Overtime was utilized during late-January and continuing into February to support the CE Audit Project.

From mid-January through early-May, about 3 ½ full-time-equivalent positions were usually assigned to the CE Audit Project, including:

- ❖ Two (2) permanent staff on a full-time basis (1 AGPA and 1 PT II)
- ❖ Two (2) half-time Retired Annuitants (AGPAs)
- ❖ One (1) permanent Office Technician on a half time basis.

Additionally, throughout this period, two (2) half-time volunteers provided through the American Association of Retired Persons (AARP) were assigned to the project (equivalent to another full-time position). Mail Room, Public Counter and other BVNPT staff also continuously supported the project. Finally, the CE Audit Project adversely impacted operations throughout much of the Board and diverted staff, management, Board member, and oversight agency attention from other BVNPT matters.

There also were significant expenses incurred for the CE Audit Project. Tens of thousands of dollars were spent for toner and other office supplies to print letters and envelopes for the mass mailing and to pay DCA's Business Services Office to complete 50,000 of these mailings. Additional expenses were incurred to mail out more than 400 Second Letters by certified mail.

## Appendix C

### Additional Continuing Education Compliance Audit Project Background Information

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#### *Early Warnings Provided to the Board about the CE Audit Project*

From January through March 2017, we repeatedly warned BVNPT about the problems with its CE Audit Project. In each case the information that we provided was questioned and disputed. All of the warnings were ignored.

We first voiced our concerns to BVNPT's Executive Officer and Acting Assistant Executive Officer during meetings we had with each of them on December 8, 2016. We voiced our concerns again during a January 20, 2017 meeting with BVNPT's Executive Officer and Acting Assistant Executive Officer and two (2) representatives of BVNPT's governing Board to review the draft *Third Report*. During the review meeting the Executive Officer disputed the information that was provided in the draft *Third Report* about the CE Audit Project and the representatives of BVNPT's governing Board did not express any disagreement with the positions taken by the Executive Officer. Subsequently, on January 31, 2017, we emailed copies of our *Third Report* in final form to the Board. The draft and finalized versions of the *Third Report* provided essentially the same information about the CE Audit Project. **Exhibit C-1**, on the next page, provides an excerpt of relevant portions of our *Third Report*.

We voiced our concerns about the CE Audit Project a third time at BVNPT's February 8, 2017 Board meeting during which we presented our *Third Report*. An excerpt of that portion of our presentation is provided below:

*"During our on-site interviews with BVNPT staff on December 7<sup>th</sup> and 8<sup>th</sup>, we were surprised to learn that a large-scale audit of licensee compliance with BVNPT's Continuing Education (CE) requirements had been launched. In late-November BVNPT began mass mailing CE compliance audit letters to about 58,000 licensees representing more than 40 percent of all licensees. We were told that the mailings were expected to be completed by mid-December. None of the BVNPT managers or staff that we interviewed were able to articulate specific plans or schedules for staffing or completing all of these audits.*

*We later learned that BVNPT staff contacted DCA's Business Services Office (BSO) on December 9<sup>th</sup> about folding, stuffing and mailing 50,000 of the CE audit letters. We also learned that BSO assisted BVNPT during November and December with submitting and expediting a request to the DGS Office of State Printing to print window envelopes needed for the mailing. In early-January, after receiving the envelopes from the Office of State Printing, BSO completed BVNPT's CE mailing project.*

*Even if very little time is needed by BVNPT staff for each of these audits (e.g., an average of 15 minutes per case), a relatively large workforce could be needed for an extended period of time to complete all of these audits. In mid-January, BVNPT began offering weekday and weekend overtime to all staff to help respond to the increased volumes of CE-related mail and email that was being received.*

Following our presentation, several Board members questioned us at some length about the information we had provided and disputed our findings and conclusions. The Board took no corrective actions during the meeting related to this runaway project.

## Excerpt of CE Compliance Audit Project Discussion from the Monitor's Third Report

Finally, we recently learned from BVNPT staff that a large-scale audit of licensee compliance with BVNPT's CE requirements was launched by BVNPT's Education Division with some support provided by various staff from other business units. In late-November BVNPT began mass mailing CE compliance audit letters to about 53,000 VNs and about 5,000 PTs, representing more than 40 percent of all BVNPT licensees. This mass mailing was expected to be completed by mid-December, but some of the audit letters were not mailed until several weeks later (e.g., some letters dated in early-December with a 30-day response due date were not mailed until early January). It is also our understanding that additional resources needed to support completion of these audits are expected to be provided by various staff that are otherwise assigned other licensing, licensing support, administrative or enforcement responsibilities. We understand that as the daily mass mailings were being completed, BVNPT began receiving significantly larger volumes of returned and incoming mail and that BVNPT's telephone systems, fax machines, and incoming email accounts sometimes overflowed as a result of the higher levels of activity generated from the mailings.

The rationale for abruptly launching compliance audits of more than 40 percent of all BVNPT licensees over a period of just a few weeks, rather than spreading the audits over a longer period of time, is not entirely clear. Additionally, it is unclear how BVNPT plans to absorb increased workloads related to maintaining case tracking and records management systems for all of these additional audits, how workload related to reviewing tens of thousands of Certificates of Completion received by BVNPT will be absorbed, how Enforcement Division staff will absorb related increases in citation issuance, tracking and collections workload, or how BVNPT's already backlogged Cashiering Unit will absorb related citation payment workload. As of early-December, specific staffing resources sufficient to complete reviews of all of the submissions that are received had not been identified and a specific timeline for completing reviews of all of the submissions had not been developed.

As a point of reference, even if only about 15 minutes of staff time is needed to complete each audit, including time to sort and open incoming mail, research and re-send returned mail, maintain case tracking and electronic and physical records management systems, review compliance submittals, answer telephone and email inquiries, and prepare and issue follow-up and closing letters, about nine (9) full-time staff would be needed for a period of a year just to complete all 58,000 audits, excluding time for post-audit activities (e.g., NOW or citation issuance and collection of fines). In mid-January BVNPT began offering weekday and weekend overtime to all staff to help respond to the increased volumes of CE-related mail and email that were being received.

## Appendix C

### Additional Continuing Education Compliance Audit Project Background Information

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Finally, as part of our testimony at BVNPT's March 2017 Sunset Review Hearing, we provided updated information about the CE Audit Project. **Exhibit C-2**, on the next page, provides an excerpt of relevant portions of our testimony. We testified that the CE Audit Project was illustrative of a broad range of problems experienced by the Board and stated that, despite obvious major problems, nothing had been done to restructure or abort the project. Additionally, we recommended that the project be promptly stopped and suggested that, if the Board did not promptly terminate this project, then legislation should be introduced to require such action. During the Sunset Hearing, representatives of the Board again disputed our findings and conclusions and stated that the Board planned to continue forward with the project.

#### *Communications with Staff, Board Members, and Others Regarding the Status of the Project*

BVNPT eventually terminated the CE Audit Project, but not until May 18, 2017, following the Board's meeting during the previous week at which Board staff reported to the Board that the project had already been concluded. From the time that the CE Audit Project was conceived through May 18<sup>th</sup>, and continuing to the present, BVNPT's Leadership Team has repeatedly misinformed subordinate staff, members of BVNPT's governing Board and others about the project. Communications about the project provided by representatives of BVNPT oftentimes included false narratives, half-truths, and incomplete data and information, including communications regarding:

- ❖ Who was responsible for initially mailing out the 57,000 audit letters (*e.g., that there were miscommunications with a third party vendor that was supposed to release the audit letters in "waves"*)
- ❖ The amount of time required by staff to review CE submittals (*e.g., that an average of only 30 seconds to 2 minutes was needed to review each licensee's submittal or that licensees should allow 2 weeks for BVNPT to "process" their submittals*)
- ❖ The projected timeframe for completing the audit (*e.g., that all of the audits would be completed within a period of a few months*)
- ❖ The number of audits completed (*e.g., that 7,730 audits had been completed as of mid-May 2017*)
- ❖ The level of demonstrated licensee compliance with the Board's CE requirements (*95 percent "compliant" and 5 percent "questionable"*)
- ❖ The rationale for terminating the project (*e.g., high licensee compliance with the Board's CE requirements*).

Oftentimes information about the CE Audit Project was provided by BVNPT's Leadership Team to subordinate staff and Board members who then relayed the information along without sufficiently reviewing, confirming or validating the information that was provided.

Most recently, representatives of the Board have stated that a follow-up letter would be mailed to the audited licensees informing them that the CE Audit Project had been concluded and that no further action or their part was needed (similar to the letter that BVNPT has posted on its website). However, because BVNPT never tracked which licensees responded to the initial mailing, which licensees never responded to the initial mailing, and which licensees had their audit letter returned because it was not deliverable, BVNPT has no way to identify which licensees should receive this follow-up letter. Additionally, the 7,730 licensees that already had their submittals preliminarily reviewed and have been issued a letter of compliance or a Second Letter were tracked separately from the mailing list that was used for the initial mailing. These licensees would have to somehow be matched against and removed from the follow-up mailing list. Finally, nearly a full year has now passed since the initial mailing list was generated that would be used for the follow-up mailing. Any address changes that occurred since November 2016 would not be captured in the follow-up mailing. Thus, even larger numbers of returned mail would be generated as a result of any mass follow-up mailing.



## Excerpt of the Monitor's CE Audit Project Testimony from BVNPT's March 2017 Sunset Review Hearing

The CE Compliance Audit Project, which has already been in the news, is illustrative of a broad range of problems that continue to be experienced by the Board. Despite obvious major problems with this project throughout the past 4 months, nothing has been done to restructure or abort this misguided, poorly conceived, runaway project.

The CE Audit Project began in late-November with the creation of a mass mailing list, the printing of about 57,000 dated audit letters, and the redirection of staff to stuff thousands of envelopes. Then, in early-December, management apparently realized that they would be unable to complete the mailing. But rather than recognizing that if BVNPT staff were unable to even complete the mailing, then they certainly wouldn't be able to process the responses, management instead requested that DCA's Office of Business Services complete the remaining mailings. Then, in early-January, after requesting, expediting and receiving delivery of a large supply of window envelopes from the Office of State Printing, the Office of Business Services completed about 50,000 additional mailings. Since that time a group of 2 permanent full-time staff (1 AGPA and 1 PT II), 2 half-time retired annuitant analysts and 1 permanent full-time analyst on a half time basis have been working on this project. This is equivalent to 3½ full-time positions. Additionally, several other staff have been supporting the project on an intermittent basis. Also, overtime was utilized during mid- to late-January to support the project and the use of overtime continued into February. Finally, 2 half-time AARP Volunteers (equivalent to another full-time position) have been assigned to the project. To help handle the deluge of submittals that were initially received, all of the Enforcement Division's managers along with others spent a full day together just opening mail. BVNPT's public phone lines have been continuously overflowing since early-January and during January the Board also received overflowing volumes of both emails and faxes.

The CE Audit Project has adversely impacted operations throughout much of the Board and has diverted staff, management, Board member, and oversight agency attention from other more important business needs. Every passing day this project unnecessarily wastes more money and resources. The problems with this project will not somehow resolve themselves over the next several months as some seem to believe. Two weeks ago I visited BVNPT's offices and interviewed most of the staff that have been substantively involved in supporting the project since its inception. I also requested access to a locked vacant manager's office where I found more than 100 U.S. Postal Service mail baskets with opened but unprocessed CE submittals. In this same office there were just 5 baskets containing submittals that had been preliminarily reviewed, but still needed to be re-reviewed and completed by BVNPT's CE Audit Specialist. To date the equivalent of only about 1 basket of submittals has been fully processed by the CE Audit Specialist. Finally, there were a couple of trays that appeared to contain about 800 pieces of unopened returned mail, but rubber-banded stacks of unopened returned mail were also present in many of the 100+ baskets of opened mail that had not yet been processed. BVNPT does not track the CE submittals as they are received against the initial mailing list. Thus, there is absolutely no way that anybody can provide even a ballpark guesstimate as to how many of the 57,000 targeted licensees have actually responded to the mass mailing. Tracking against the initial mailing list is only completed by BVNPT's CE Audit Specialist after completing a final review of the submittals and updating BreZEe.

For various reasons, staff assigned to complete the preliminary review of the CE submittals sometimes experience problems that prevent them from completing the reviews. Submittals with problems are set aside in separate stacks for subsequent review and handling by the CE Audit Specialist who cannot possibly keep pace with the incoming flow of work generated by all of the different staff involved in performing the preliminary case reviews. To date, the CE Audit Specialist has completed final reviews and BreZEe updates for only about 1,000 CE audit cases. Based on actual performance, it clearly does not take an average of just 30 seconds to 2 minutes to review these submittals as has been stated by the Board. In fact, it probably took about that much time per submission just to open, date stamp, and assemble the documents for subsequent processing.

According to BVNPT's Acting Executive Officer, about 4,000 submittal packages have been preliminarily reviewed to date, as evidenced by BVNPT's issuance of about 4,000 letters of compliance. However, BVNPT's CE Audit Specialist estimates that he has already determined that at least several dozen of these letters were issued in error. In these cases the CE Audit Specialist issues a letter of non-compliance to the licensee after the licensee has already received a letter stating that they were found in compliance. Needless to say, this process necessarily creates a great deal of confusion among the affected licensees.

Assuming that BVNPT continues to process an average of about 3 baskets of CE submittals per month using all of the same staffing resources that have been allocated to the project since the start of the year, it will take 2 to 3 years just to preliminarily review all of the currently accumulated baskets of submittals. This does not account for any of the more time consuming work associated with (1) completing final reviews of the submittals and updating BreZEe, (2) following up with licensees in cases where the submittals do not show compliance with BVNPT's CE requirements, (3) following up with all of the licensees that failed to respond to the initial mailing and who are especially likely to have completed little or no CE, and (4) tracking down thousands of licensees in cases where the initial mailings were returned to BVNPT because they were not deliverable to the address that BVNPT had on file. Additionally, most of the more than 5,000 emails that BVNPT has received have not yet been processed at all.

Finally, in those instances where the submittals do not show compliance with BVNPT's CE requirements, the processes being used may not be producing documentation sufficient to support an actionable enforcement case. If enforcement actions are able to be initiated, then significant additional staffing resources will be needed to perform citation preparation and issuance, fine collection and appeal handling services.

This debacle needs to be stopped and it needs to be stopped now. There is no realistic path forward for this wasteful project. If the Board does not promptly terminate this project, then legislation should be introduced to require such action. Hopefully that would prompt the Board to terminate the project itself.

## Appendix C

### Additional Continuing Education Compliance Audit Project Background Information

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To date, BVNPT has not issued any follow-up letters notifying the licensees that submitted their CE compliance documents, and haven't heard since from the Board, that the CE Audit Project has been completed. Additionally, BVNPT has not responded to most of the licensees that replied back regarding the Second Letters that BVNPT issued. While BVNPT could reasonably complete the audits for the 400 or so cases where deficiencies were identified with their submittals, there is no reasonable path forward for communicating further regarding the status of the CE Audit Project with the remaining 20,000 to 40,000 licensees that responded to the initial mailing.

#### *CE Audit Project Files*

**Exhibit C-3**, on the next page, provides a set of pictures of CE Audit Project files taken during March 2017. The pictures reflect the status of the CE Audit Project at that time and this status changed very little from that point through to termination of the project in mid-May, and beyond. The pictures show the locked vacant manager's office where about 100 baskets of CE compliance submittals that have not yet been reviewed are stored. The baskets also contain stacks of returned mail that have never been opened. Additionally, a picture is provided showing the currently pending Second Letters that were sent by certified mail to licensees in cases where deficiencies were identified with the licensee's CE submittal.

### Continuing Education Compliance Audit Project



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**Appendix D**  
**Data Inconsistencies, Anomalies, Constraints**  
**and Effects**

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## Appendix D

### Data Inconsistencies, Anomalies, Constraints and Effects

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During the first two phases of this project, from March through late-September 2016, we identified multiple significant inconsistencies, anomalies and deficiencies with the availability, completeness and quality of BVNPT's Enforcement Program case intake, investigation, and discipline workload, workflow, backlog, and performance information. Some of the areas where there was a high level of variability in the data or other significant problems are briefly summarized below.

#### 1. Case Coding Practices

When opening new complaints, different codes can be entered into BVNPT's case tracking systems (CAS for periods prior to 2016 and BreEZe for subsequent periods) to distinguish the source and type of complaint. Historically, there has been a great deal of inconsistency in the codes that BVNPT used and, to some extent, these problems were compounded with implementation of BreEZe which utilizes somewhat different coding structures than were used with CAS along with additional types of codes. Variability in the extent to which various types of codes were used and inconsistencies in how the codes were used necessarily limits the extent to which analyses can be performed of CAS and BreEZe data to help better understand the nature and composition of the complaints that are received, changes occurring in the mix of BVNPT's cases, and associated impacts on Enforcement Program workload and performance. Variability in BVNPT's case coding practices, rather than actual changes in workload, account for some of the variability and abrupt shifts that have sometimes occurred in BVNPT's reported historical workloads. Since January 2016, BVNPT has devoted a great deal of effort to addressing these problems so that the problems do not persist beyond the 2015/16 fiscal year.

#### 2. License Applicant Arrest/Conviction Reports

BVNPT's License Applicant Fingerprint Program was first initiated about 20 years ago (July 1996). Initially, only California Department of Justice (DOJ) criminal history background checks were completed. Because the DOJ reports only identified arrests and convictions occurring in California, the program was expanded in 1998 to include Federal Bureau of Investigation (FBI) criminal history background checks which provide arrest and conviction information for the entire United States. Currently, when applicants submit fingerprints for their 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 FBI criminal history information.

Until late-2015, it was BVNPT's practice to open a new enforcement case for:

- All license applicant arrest/conviction reports that were received
- All license applicants that indicated on the *Record of Conviction* portion of their license application (with a "Yes" box checkmark) 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)

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### Data Inconsistencies, Anomalies, Constraints and Effects

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- All license applicants that indicated on the *Record of Conviction* portion of their license application (with a “Yes” box checkmark) 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, until late-2015, without first applying any screening criteria, new license applicant cases were opened for all reported license applicant arrest/conviction reports and all license applicant self-reports of prior convictions or pending court actions, *irrespective of the applicant’s application status, the nature of the offense or when it occurred*. Additionally, through various communication channels BVNPT encouraged applicants to self-report all prior arrests/convictions to avoid potential delays in the processing of their license application or denial of licensure for failure to report a reportable arrest/conviction. These communications appear to have contributed to the accelerated growth that occurred in the number of license applicant cases opened, from under 2,500 cases during 2010/11 to nearly 3,800 cases during 2013/14.

Subsequently, during 2015/16 BVNPT restructured the license applicant arrest/conviction report process by increasing the threshold for self-reporting traffic offenses from \$300 to \$1,000, excluding offenses involving alcohol, dangerous drugs and controlled substances. Additionally, responsibility for accumulating license applicant arrest/conviction reports and records and screening the cases was transferred to the Licensing Program. As a result of these changes, significantly fewer cases are now referred to Enforcement (fewer than 250 cases during the second half of 2015/16, or about 85 percent fewer cases than were previously referred).

### 3. Licensee Internal – Fraud Cases (*CE Failure to Comply, Exam Cheating, Application Experience Fraud*)

BVNPT enforces licensee compliance with CE requirements by auditing a sample of licensees following renewal of their license. Available historical data show that BVNPT conducts up to about 1,500 CE compliance audits per year representing less than 2.5 percent of license renewals. Up to about 200 of these audits resulted in a determination that the licensee had falsely certified on their renewal application that they had complied with BVNPT’s CE requirements when, in fact, they were either non-responsive to repeated requests to provide substantiating documentation that they had complied with the CE requirements or it became evident from the information provided by the licensee that they had completed little or none of the required CE. However, the Licensing Program staff responsible for completing the audits was oftentimes redirected to provide services in other areas which delayed the completion of the audits and resulted in significantly fewer completed audits and case referrals to Enforcement. For those cases that were referred to Enforcement, citations with fines (nearly always \$500) were usually issued for the failure to comply violation. When applicable, additional fines (usually \$250) were assessed for failure to cooperate with BVNPT.

Beginning during 2014, problems began surfacing related to the age of the cases being referred to Enforcement, which in some cases covered periods exceeding applicable records retention requirements. Additionally, concerns began surfacing regarding the processes and practices used for conducting the audits and determining compliance with BVNPT’s CE requirements. As a result of these problems and concerns, the Enforcement Division largely suspended issuances of citations for CE audit failure cases and, instead, issued NOWs. Subsequently, during 2015/16, the Division adopted a more flexible process for assessing these cases and adjusted the criteria used for determining (1) the licensee’s compliance status and (2) whether to issue a NOW or a citation. This resulted in issuance of a mix of NOWs and citations during 2015/16.



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#### 4. Licensee Arrest/Conviction Reports and Complaints

As discussed previously, BVNPT began fingerprinting new license applicants about 20 years ago. Subsequently, beginning 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 establishing the new Investigation Section. Additionally, licensees are required to self-certify on their license renewal application whether or not 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. Historically, these cases account for about 75 percent of all BVNPT enforcement cases. Historically, no data was captured in CAS that differentiated the licensee arrest/conviction report cases by type of offense (i.e., the offense category is a generic arrest/conviction). The lack of differentiation makes it difficult to characterize the nature of these cases, which, as mentioned previously, 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 Driving Under the Influence (DUI) offenses, with about one-half of the DUI cases involving various aggravating circumstances. The remaining cases involve a broad range of other offenses (e.g., controlled substances, domestic violence, battery, assault, burglary, grand theft, theft, and fraud).

As discussed subsequently in Section IV (*Integrated Assessment of Targeted Business Processes*), about 20 percent of these cases are “Redundant”. Additionally, up to about 20 percent of these cases result from a licensee marking their renewal form in error. Thus, the actual number of underlying offenses is much less than 1,500 cases per year. However, partially offsetting this, it appears that a number of arrest/conviction report cases are opened and assigned various codes that make it difficult to differentiate these cases from licensee complaint cases. For example, in most instances codes are assigned to indicate that these cases are initiated internally as a result of receiving a subsequent arrest report involving a particular offense, usually from a law enforcement agency or the licensee. However, in some instances these same types of cases are assigned codes to indicate that they were initiated based on receiving a complaint involving a particular offense from a law enforcement agency or the licensee. In the latter case, the cases will be captured as complaints for workload, workflow, backlog and performance reporting purposes when, in fact, they are indistinguishable from other licensee arrest/conviction report cases which are fundamentally quite different from licensee complaint cases.

#### 5. CAS to BreEZe Conversion

On January 1, 2016, BVNPT ceased using CAS to track enforcement cases and transitioned to the new BreEZe system. This transition was still underway during March and April as we began the Phase I Diagnostic Review and Initial Assessment. Accordingly, in consultation with DCA’s Project Manager and BVNPT’s Executive Officer and Chief of Enforcement, a decision was made to base the Initial Assessment primarily on historical CAS workload, workflow, backlog and performance data through December 31, 2015, and then update the assessment during Phase II with BreEZe data covering the second half of the 2015/16 fiscal year (January 1 through June 30, 2016). It was expected that any remaining clean-ups of the BreEZe data that were needed would be completed by that point.

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Subsequently, during July, when we were provided with the various data extracts from BreEZe for the January through June 2016 period, we began identifying significant discrepancies and anomalies with some of the data. Significant effort was expended researching and further analyzing the data in an effort to determine the cause of these problems. From these efforts, in collaboration with BVNPT Enforcement Division staff, we identified multiple significant problems with the BreEZe data that were previously unknown to BVNPT staff which resulted in significant misstatement of key workload and performance metrics such as the number of investigations completed and the timeframes to complete the investigations. For example, we identified cases where:

- ❖ **BreEZe data fields were *incorrectly populated* with CAS data**, such as data showing that field investigations had been completed in one (1) day and that the investigations were completed on that date when, in fact, the investigations were assigned on that date and were not completed until many months later, or were still open.
- ❖ **BreEZe data fields were *not populated* with CAS data**, such as data showing that Petitions for Revocation were filed, resulting in significant undercounting of the number of Petitions for Revocation filed.

Additionally, due to conversion problems, some completed investigations were double-counted as both completed non-sworn and sworn investigations. We also found inconsistencies in how staff coded cases and various activity tracking fields. Finally, we identified problems with CAS discipline data including deficiencies with the coding entered for some subsequent discipline cases that resulted in significant under-reporting of the number of petitions for revocation filed.

Throughout July and August, as we identified these and other problems, we prepared and provided data exception listings to BVNPT that were used as punch lists to further research and correct individual case data. Data for more than a hundred active case records was corrected as a result of these efforts. Additionally, throughout this period, BVNPT continued to separately identify other BreEZe data problems that were concurrently cleaned-up on a continuous basis. BreEZe data clean-up will likely continue, hopefully at a reduced level of intensity, at least through the end of the year. However, problems with archived CAS data can never be corrected as that database has been frozen. Additionally, some BreEZe data can never be corrected (e.g., the case type code assigned to a case when it is first opened).

Because of these problems, it was necessary for us to either adjust the data provided previously to correct for the identified problems or request new data extracts and then repeat related data filtering, sorting, compilation and summarization processes. Depending on the specific data set and the nature and magnitude of the problems identified, in some cases we adjusted the previously requested data to the extent practicable and as appropriate to our purposes. In other cases we requested new data extracts, recognizing that even the new data still had some problems and would likely get changed again as BVNPT completed additional data clean-ups. Consequently, it is anticipated that, in many areas, the data contained in this report will be somewhat different from data published in BVNPT's *2016 Sunset Review Report* which is based on data extracts produced at a different point in time and not usually subjected to any type of supplemental filtering and adjustment processes. However, it is also anticipated that the overall workload, workflow, backlog and performance measures contained in both reports will be reasonably consistent and that these metrics will show parallel trends over time. As discussed in Section VIII (*Next Steps*), during the next project phase we plan to complete targeted verifications of key workload, workflow, backlog and performance metrics presented herein for the 6-month period extending

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from January 1 through June 30, 2016 to determine whether any BreEZe programming changes or data clean-ups subsequently completed by BVNPT materially impacted the results of our previously completed analyses or any related findings, conclusions, or recommendations for improvements. Necessary adjustments to the data, if any, will be incorporated into the *Phase III Summary Report*.

#### 6. Timing Differences and Data Discontinuities

As part of this assessment, BVNPT staff extracted several dozen separate sets of CAS and BreEZe data pertaining to its intake, investigation and discipline processes and other related activities and events. The extracted data sets included information about mandated reports submitted by employers, reports submitted by other government agencies, reports submitted by nursing boards in other states, BVNPT-originated complaints, and other matters that are tracked using CAS and BreEZe, such as Statements of Issues (SOIs) and subsequent disciplinary actions initiated in response to probation violations. We filtered, compiled, summarized and analyzed the data provided as needed for purposes of completing required reviews and analyses of these processes. To the extent practicable consistent with the scope of the project, we corrected significant anomalies in the data and, where appropriate, excluded some records from our analyses. In total, data related to more than 130,000 separately extracted complaint records were incorporated into our compilations, analyses and summaries.

Much of the data that we used for our analyses is dependent on calendar date information that is added to the individual records from the date that a case is first opened until that case is fully completed, with various interim dates entered to track specific activities and other information related to these activities. Consequently, there are oftentimes timing differences between similar related activities because the dates posted for those activities are different, such as the difference between when a case is closed with a specific outcome, such as issuance of a citation, and the date that the citation is actually issued. Similarly, there is a difference between the date a discipline decision is adopted (or imposed) and the effective date of the discipline (usually about a month later). Because of these and other timing differences, data extracts for similar activities can produce somewhat different results.

Normally, these types of timing differences produce minimal differences in associated aggregate data, or none at all, in part because the same system and underlying business process rules are used throughout the period of analysis. However, in this case, BVNPT converted from CAS to BreEZe during the period of the analysis and the workload, workflow, backlog and performance data from these two systems is inherently somewhat different because of significant structural differences between these two systems. Consequently, in some areas there are timing or other types of discontinuities in the time series data. For example, with CAS it was not possible to differentiate pending investigation cases from cases where the investigation is completed but the case is pending discipline review and referral for discipline. In contrast, with BreEZe these two different types of pending cases can be distinguished. However, the coding structures needed to differentiate these two separate processing stages were not developed to enable utilization of this capability. Instead, following completion of a field investigation, cases were incorrectly coded as pending desk investigations, resulting in double counting of these investigations. In this and other instances, after identifying the problem with BVNPT's data, we worked collaboratively with BVNPT, and DCA's Office of Information Services, as appropriate, to help initiate and accelerate completion of additional BreEZe programming or other actions needed to correct the problem and improve the quality, completeness and consistency of BVNPT's workload, workflow, backlog and performance metrics.

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### Data Inconsistencies, Anomalies, Constraints and Effects

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Finally, there are timing and other sources of differences between the workload, backlog and performance data generated from BVNPT's case tracking systems and the case tracking systems utilized by the Division of Investigation and the Office of Attorney General. It should be expected that data generated by these different organizations will always be somewhat different.

#### 7. Database Noise

As in any large data set, there is always some incomplete or incorrect data (or "noise"). However, as best we can determine at this point, the aggregate data used for our analyses is reasonably representative of BVNPT's actual license applicant, licensee continuing education, licensee arrest/conviction report and licensee complaint workloads, workflows, backlogs and performance. Also, isolated variances in individual records would generally tend to have offsetting impacts and, even if the variances were not offset, the isolated variances would not significantly impact aggregate annual measures of workload, output, or performance. Additionally, any impacts on the aggregate measures would tend to be consistent over time in both direction and magnitude.

**Appendix E**  
**Phase I and Phase II Data Gathering,**  
**Analysis and Reporting**

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## Appendix E

### Phase I and Phase II Data Gathering, Analysis and Reporting

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Throughout the first two (2) phases of this project (I and II), from March through late-September 2016, we worked collaboratively with Enforcement Division management and staff to (1) gather record-level Enforcement Program workload, workflow, backlog, and performance data from periods both before and subsequent to BVNPT's conversion from CAS to BreZe at the start of 2016 and (2) identify and correct problems with the data. Collaboration with BVNPT Enforcement Program management and staff was required for all the following reasons.

- ❖ **The purposes for establishing a BVNPT Monitor were not to simply confirm that there were deficiencies with BVNPT's statistical reporting.** Problems with BVNPT's reported Enforcement Program statistical measures were initially identified during BVNPT's 2014/15 Sunset Review. These problems prompted an investigation of BVNPT's statistical reporting by DCA and were one of the primary reasons why AB 179 was enacted requiring appointment of a BVNPT Administrative and Enforcement Program Monitor. During the first several weeks of the project we compiled and summarized all of BVNPT's available Enforcement Program statistical data and determined that there were numerous significant discrepancies, anomalies, inconsistencies and gaps in the data that made the data largely meaningless and useless for any sort of program assessment and evaluation purpose. Our assessment of BVNPT's Enforcement Program could have been completed at that point if that had been all that was required.
- ❖ **AB179 specifically required completion of an assessment of BVNPT's Enforcement Program, including BVNPT's complaint intake, investigation and disciplinary processes.** Unlike a compliance audit, completion of a defensible assessment requires collection and analysis of data regarding historical and current workloads, workflows and performance which can be used to examine historical and current business processes and identify and evaluate potential improvement strategies and initiatives. Available statistical data can potentially be used to support completion of an assessment, but usually at least some supplemental data is also needed. However, in the case of BVNPT, not only was the available statistical data not usable, but there also were significant problems with the quality and completeness of both the statistical data and with the underlying record-level data. If we had not collaborated with Enforcement Program management and staff to identify and correct problems with BVNPT's Enforcement Program data, then it would not have been possible to produce a defensible assessment of BVNPT's Enforcement Program, which was one of the principle purposes for requiring that a Monitor be appointed.
- ❖ **It would have been irresponsible for us to withhold information from BVNPT Enforcement Program management regarding the data deficiencies that we identified as doing so would have served to perpetuate the already significant problems that BVNPT had with the quality of its statistical data and would have resulted in continued reporting of faulty information to BVNPT's governing Board, DCA, oversight and control agencies, the Legislature and the public.** In many cases the problems we identified with BVNPT's Enforcement Program data were significant and unknown to BVNPT. Throughout the first two phases of the project we promptly disclosed these problems to Enforcement Program management as soon as they were identified and then worked collaboratively with Enforcement Program management and staff to identify the causes of the problems, correct faulty record-level data, and identify and assess alternative corrective measures to prevent recurrence of these same problems during subsequent reporting cycles. At no point did we ever require BVNPT to correct its faulty data. BVNPT's Enforcement Division managers and staff always elected to promptly correct faulty Enforcement Program data because it would have been irresponsible for them not to do so.

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### Phase I and Phase II Data Gathering, Analysis and Reporting

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- ❖ **The problems that were identified with BVNPT's BreEZe data delayed BVNPT's releases of quarterly Enforcement Program data to BVNPT's governing Board and jeopardized our ability to fulfill requirements of AB 179 as well as BVNPT's ability to complete related sections of its 2016/17 Sunset Review Report.** During July 2016 when BVNPT initially provided us with various BreEZe data extracts for the January through June 2016 period, we began identifying significant discrepancies and anomalies with some of the data. At that time BVNPT had already submitted faulty Q3 2015/16 Enforcement Performance Measures data to DCA. Significant effort was expended at that time researching and further analyzing the underlying BreEZe data to determine the causes of these problems. From these efforts, we jointly identified multiple significant problems with the BreEZe data that were unknown to BVNPT and resulted in significant misstatement of key workload and performance metrics such as (1) the number of investigations completed and (2) the timeframes needed to complete the investigations. For example, we identified cases where:
- BreEZe data fields were incorrectly populated with CAS data, such as data showing that sworn field investigations had been completed in just one (1) day when, in fact, the investigations were assigned on that date and not completed until many months later, or were still pending.
  - Field investigations were double-counted as both completed non-sworn and sworn investigations when, in fact, the cases had been first assigned to BVNPT's non-sworn Investigation Section where they had languished, in some cases for years, and then were reassigned to DCA's Division of Investigation which actually completed the investigation.
  - Cases counted as completed field investigations were counted again as completed desk investigations rather than being separately tracked as case reviews completed for purposes of determining whether (1) a supplemental investigation or opinion of an outside expert were needed and (2) results of the investigation supported referral of the case to the Office of Attorney General for disciplinary action.
  - BreEZe data fields were not populated with CAS data, such as data showing that Petitions for Revocation were filed, resulting in significant undercounting of the number of Petitions for Revocation filed.

We also found inconsistencies in how staff coded cases and various activity tracking fields. Throughout July and August, as we identified these and other problems, we prepared and provided data exception listings to Enforcement Program management that were used by staff as punch lists to further research and correct individual case data. Additionally, throughout this period, Enforcement Program management and staff continued to separately identify other BreEZe data problems that were concurrently cleaned-up on a continuous basis. Enforcement Program workload and performance data was not included in the quarterly Enforcement Report provided to BVNPT's governing Board at its August 2016 meeting and it was not until October 2016 that BVNPT released corrected Q3 2015/16 Enforcement Performance Measures data to DCA along with its Q4 2015/16 Enforcement Measures data. Concurrently, we issued our *Second Report* which, for the most part, utilized the same underlying BreEZe data. The nature and magnitude of BVNPT's BreEZe data problems, the short time frame available to complete Phases II and III, and needs for BVNPT to provide accurate Enforcement Performance Measures data to DCA and accurate Enforcement



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### Phase I and Phase II Data Gathering, Analysis and Reporting

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Program data to the Legislature for its Sunset Review all reinforced the need for BVNPT, DCA and the Monitor to all work together collaboratively to correct any identified BVNPT Enforcement Program data problems as quickly as practicable.

- ❖ **We kept DCA’s Contract Manager and BVNPT’s Executive Officer and Chief of Enforcement continuously and fully informed regarding the nature and magnitude of the problems that existed with BVNPT’s Enforcement Program statistical data and underlying data records.** For example, in late-March, following a review of available historical statistical data, it was mutually agreed that record-level CAS data extracts for all time periods through December 2015 would be prepared by BVNPT and provided to the Monitor for use in developing time series statistical data that could be used for purposes of completing required assessments of BVNPT’s Enforcement Program. It was also mutually agreed that BreEZe data would be used for completing required assessments of BVNPT’s Enforcement Program for subsequent periods, beginning with the January to June 2016 period. At that time it was expected that any remaining clean-ups of the BreEZe data that were needed following conversion to the new system would be completed by mid-July when this data would be needed. This approach was reaffirmed during late-June when we met with DCA’s Contract Manager and BVNPT’s Executive Officer and Chief of Enforcement and developed a *Consolidated Phase II/III Work Plan* to guide completion of the next two project phases. Our approach was subsequently further affirmed in mid-July when BVNPT began providing additional CAS data extracts to us for periods prior to 2016 along with BreEZe data extracts for the January through June 2016 period and additional, unanticipated problems were identified with both the CAS and BreEZe data.
  
- ❖ **Disclosures regarding the problems with BVNPT’s Enforcement Program statistical data and underlying data records were provided in our *Initial Report* and also in the *Second Report*.** The above described problems with BVNPT’s historical statistical reporting and CAS data were first disclosed in the *Initial Report* dated June 20, 2016 which was submitted to the Legislature on July 1, 2016. Subsequently, the above described CAS and BreEZe data problems were disclosed in the *Second Report* dated October 21, 2016, which was submitted to the Legislature on November 1, 2016. Following release of the *Initial Report*, we interviewed all of the members of BVNPT’s governing Board. In each case we specifically asked the member whether they had any issues, problems, questions or concerns regarding the overall Enforcement Monitor Project or the *Initial Report*. None of the members expressed any concerns regarding our technical approach to assessing BVNPT’s Enforcement Program. In the case of the *Second Report*, BVNPT’s Leadership Team argued strongly during their review of the draft report on September 29 and 30, 2016, that we had over-emphasized the problems with BVNPT’s Enforcement Program data and that these disclosures were unnecessary since the data problems had since been corrected. However, we made no modifications to the *Second Report* to address these concerns as doing so would have removed or obscured descriptive information that we believed should not be withheld. We also did not modify the *Second Report* to indicate that the Board’s data problems had been resolved as this outcome had not yet been sufficiently or consistently demonstrated to have actually occurred. The statistical data presented in the report was not challenged and no concerns were expressed about the processes used to develop that data.

Finally, in our opinion, Enforcement Program management and staff did not at any time act improperly in working collaboratively with the Monitor to improve the completeness and quality of BVNPT’s Enforcement Program data records and related statistical reporting. Such efforts supported fulfillment of the requirements of AB 179 while concurrently enabling BVNPT staff to begin providing

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### Phase I and Phase II Data Gathering, Analysis and Reporting

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BVNPT's governing Board, DCA, oversight and control agencies, the Legislature and the public with valid and reliable workload, backlog and performance data needed for purposes of determining the status of the Enforcement Program and the nature and magnitude of any program performance deficiencies and improvement needs, all of which helps to support fulfillment of the Board's consumer protection mission.

**Appendix F**  
**Department of Consumer Affairs August 11, 2017**  
**Memorandum to the Board President**

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MEMORANDUM

<b>DATE:</b>	August 11, 2017
<b>TO:</b>	Tammy Endozo, President Board of Vocational Nursing & Psychiatric Technicians
<b>FROM:</b>	Dean R. Grafilo, Director <i>D.R. Grafilo</i> Department of Consumer Affairs
<b>SUBJECT:</b>	Monitor Recommendations & Department Assistance to the Board's Enforcement Program

As you are aware, the Department of Consumer Affairs (Department) is currently assisting the Board of Vocational Nursing and Psychiatric Technicians (Board) with administering its enforcement program. As always, the Department continues to seek ways in which it can assist and support its boards and bureaus. This memo outlines the current efforts of the Department to collaborate with the Board on the issues it faces.

During the last week of June, the Board's Administrative and Enforcement Monitor (Monitor), Benjamin Frank, worked with staff from the Department's Division of Investigation (Division) to conduct a review of Board enforcement statistics and caseload. During the review, the Monitor identified multiple issues in the Board's enforcement program, which Division staff concurred with, and that we wanted to bring to your attention. Additionally, over 50 enforcement complaints were identified that should be referred to the Division for investigation (Division). The issues identified by the Monitor were:

- Licensee Complaint Cases Closed at Intake Without Investigation – Board staff improperly closed complaints that should have been investigated, but were not investigated or reviewed, including cases involving allegations of serious criminal misconduct and significant patient harm.
- Backlogged Completed Field Investigation Reports Pending Analyst Review and Disposition – Completed cases were not being processed and advanced by Board staff (e.g. forwarded to Attorney General's Office for disciplinary action) as they should have been. There was a backlog of approximately 100 completed investigation cases, many of which had been completed by the Division and involved allegations of serious criminal misconduct or significant patient harm.
- Special Investigation Cases Closed with a Notice of Warning (NOW) Without Sufficient Investigation.

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- Special Investigation Cases Closed and Not Reviewed by Complaint Section Analysts – Closed investigations were not reviewed by Complaint Section staff or any supervising staff as previously done to ensure quality control.
- Citation Program Backlogs – There is a backlog in the Citation Program and no citations were being issued as they should be.
- Cases Pending Criminal Conviction Not Properly Tracked – Discrepancies existed between the number of physical case files and the number of files tracked in BreEZe for cases where the Board was waiting for information regarding a criminal conviction before taking disciplinary action. Additionally, cases continued to be assigned in BreEZe to enforcement staff that were no longer working for the Board.

The Monitor's proposed recommendations to address each of the identified issues are attached to this memo. These issues and recommendations from the Monitor were provided to Acting Executive Officer (EO) Cheryl Anderson, Board Vice President Bernice Bass de Martinez, and yourself on July 12, 2017. Staff from the Department also met with Acting EO Anderson that same day to review and discuss the Monitor's findings and recommendations. At this meeting, Acting EO Anderson agreed that due to the identification of these new issues and the significant level of vacancies in the Board's management structure in its enforcement program<sup>1</sup>, staff from the Division would begin working onsite at the Board to provide management, support, and oversight until new enforcement management was onboarded and trained.

On July 17, 2017, Department and Division staff met with all Board enforcement staff to introduce Division staff and announce the assistance that the Division would be providing. The meeting was largely positive and the staff appeared to welcome the presence of Division staff. Board enforcement staff were notified that Division staff would be meeting with each unit individually to review the issues identified by the Monitor and discuss the recommendations for resolving them. The Division committed to working collaboratively with Board enforcement staff to immediately begin resolving the issues identified by the Monitor.

After the meeting with all Board enforcement staff, Department staff again met with the Acting EO, the Board's two enforcement managers, and the Monitor to review the Monitor's issues and recommendations.

As of today, the Division continues to provide support to the Board in implementing the Monitor's recommendations.

The Board's new Enforcement Chief began at the Board on July 26, 2017 and the new Complaints Unit Manager, who supervises both the Intake Unit and the Complaints Unit, began on August 2, 2017. The Department is actively helping with onboarding and training the new staff. Part of the Department's onboarding efforts include:

<sup>1</sup> As of July 1, 2017, six of the seven management positions over enforcement (EO, Assistant EO, Enforcement Chief, Complaints Unit Manager, Discipline Section Manager, and Supervising Investigator) did not have permanent staff in those positions.

- A presentation by Division staff was given on July 27, 2017 focusing on what the Division is and what services they provide as well as on the Consumer Protection Enforcement Initiative (CPEI)<sup>2</sup> and the Division's Case Referral Guidelines.
- One-on-one "Welcome to DCA" training was conducted on July 28, 2017 from the Department's SOLID Training & Planning Solutions.
- A transition binder was provided to the new chief on July 31, 2017 with information regarding the Department's role and the services and oversight the Department provides.
- BreEZe training materials were also provided to the new staff on August 2, 2017. Future board-specific BreEZe training will be facilitated by the Department as needed and requested.
- An introduction to BreEZe enforcement statistics for reporting and tracking purposes was held with staff from the Department's Office of Information Services (OIS) on August 4, 2017.
- An introduction and review of all three of the Monitor's reports and recommendations, in addition to the latest issues and recommendations from the Monitor, was held on August 4, 2017 and August 8, 2017 with the Monitor.
- A meeting with representatives from the Attorney General's Office that work in collaboration with the Board was facilitated by Division staff on August 10, 2017 with the new enforcement management.

The Department is committed to upholding the common mission of consumer protection it shares with the Board. The Division staff will be present at the Board through August, at which point, it will be re-evaluated whether the Division staff need to continue providing onsite support and leadership, and if so, to what degree.

Attachments:

- Monitor's Immediate Action Recommendations – July 2017

<sup>2</sup> CPEI was a multi-pronged response by the Department to lengthy enforcement performance timelines at the Department's boards and bureaus. The central goal of CPEI was to reduce the timeframe for formal discipline to 12 to 18 months.

### Critical BVNPT Enforcement Program Problems and Immediate Action Recommendations

#### 1. Licensee Complaint Case Closures at Intake without Investigation

**Critical Problem Summary** – 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).

**Immediate Action Recommendation No. 1** – 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.

**Immediate Action Recommendation No. 2** – 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.*

**Immediate Action Recommendation No. 3** – 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.

**Immediate Action Recommendation No. 4** – 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.*

**Immediate Action Recommendation No. 5** – 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.

**Immediate Action Recommendation No. 6** – 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.

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**2. Backlogged Completed Field Investigation Reports Pending Analyst Review and Disposition**

**Critical Problem Summary** – 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.

**Immediate Action Recommendation No. 7** – Temporarily redirect one experienced (1) Special Investigator position to complete reviews of pending ASO5s, 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 2<sup>nd</sup> 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.

**3. Special Investigation Cases Closed with a Notice of Warning without Sufficient Investigation**

**Critical Problem Summary** – 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.

**Immediate Action Recommendation No. 8** – 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.*

**4. Special Investigation Cases Closed and Not Reviewed by Complaint Section Analysts**

**Critical Problem Summary** – 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

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staff without any review of the cases by either supervisory-level staff or by Complaint Section analysts.

**Immediate Action Recommendation No. 9** – Complete Division of Investigation reviews of all non-sworn Investigation Section cases closed since mid-May 2017.

**5. Citation Program Backlogs**

**Critical Problem Summary** – 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 processed.

**Immediate Action Recommendation No. 10** – Transfer all Citation Program responsibilities to the Discipline Section.

**6. Criminal Arrest cases that have been Closed Pending Conviction (CPLX)**

**Critical Problem Summary** – 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.

Some of the difference involves cases that are assigned to Discipline analysts. Some of the difference also likely involves coding problems. 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-2017.

**Immediate Action Recommendation No. 11** – Locate or account for all cases shown in BreEZe as Closed Pending Conviction and assign them for ongoing monitoring.

**Immediate Action Recommendation No. 12** – 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.

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