



DATE: May 4, 2010

TO: Board Members

FROM: Angelina Martin
Enforcement Division Chief

SUBJECT: Enforcement Report

A. Consumer Protection Enforcement Initiative (CPEI)

In 2009, various media articles reported that most Department of Consumer Affairs (DCA) health care boards were taking over three years to complete investigations and take appropriate disciplinary actions against licensees. As a result, Governor Arnold Schwarzenegger directed the State and Consumer Services Agency (SCSA) to conduct an internal review of all the health care board's enforcement programs and the DCA Division of Investigation (DOI). The SCSA found that most of the health care boards face significant complaint investigation backlogs and processing delays. The Governor charged the DCA Director, Brian Stiger, with reforming the current enforcement process for the health care boards.

The DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, the DCA launched the CPEI to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas:

- Legislative Changes
- Staffing and Information Technology (IT) Resources
- Administrative Improvements

Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12-18 months.

Enforcement Performance Measures – In conjunction with expanded staff and better tracking systems, the DCA established a new position, Deputy Director of Enforcement & Compliance, to assess each board's enforcement program and to ensure continuous improvements. The DCA is developing enforcement performance measures to determine the effectiveness of efforts to streamline enforcement processes, reduce backlogs and achieve the overall goal to process complaints within 12-18 months.

In July 2010, the DCA will begin collecting data on new external enforcement measures. The first quarter performance reports will be issued in October 2010.

Senate Bill (SB) 1111 (Negrete McLeod) – On February 17, 2010, SB 1111 was introduced by Senator Negrete McLeod and sponsored by the DCA. The proposed legislation was introduced to establish the Consumer Health Protection Enforcement Act and make enforcement processes more efficient. The initial bill contained the following key provisions:

- Allowing an administrative law judge (ALJ) to direct a licensee to pay the Board's reasonable costs of probation.
- Requiring an ALJ to provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs are not ordered.
- Requiring that payment in full for recovery of costs is due and payable in 30 days after the effective date of the order unless the Board agrees to a payment plan.
- Authorizing a board to contract with a collection agency for the collection of outstanding fees, fines, or cost recovery amounts.
- Allowing healing arts boards or committees to hear the appeal of a citation or fine assessment.
- Investigators used by the healing arts boards shall not be required to be employees of the DOI and the healing arts boards may contract for investigative services provided by the Attorney General's Office (AG).
- Establishing within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants from healing arts boards.
- Allowing a healing arts board to delegate to its executive officer (EO) the authority to adopt a proposed default decision to revoke a license.
- Allowing a healing arts board to delegate to its EO the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed and the licensee has agreed to the license revocation or surrender.
- Allowing a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues.
- Allowing the EO of a healing arts board, upon receipt of evidence that a licensee has engaged in conduct that poses an imminent risk of serious harm, to petition the Director of the DCA to issue a temporary order against the licensee to cease practice.
- Requiring the automatic suspension of any licensee incarcerated after conviction of a felony.
- Specifying certain requirements for any applicant or licensee required to register as a sex offender.
- Allowing a healing arts board, its investigators or representatives, to inspect documents relevant to those investigations provided that a patient consent is given.
- A licensee or health facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena mandating the release of records to a healing arts board, shall pay a civil penalty to the board.
- Requiring a state agency to immediately provide to a healing arts board all records in the custody of the state agency upon receiving a written request from the board.
- Requiring the AG to serve or submit for service to a healing arts board an accusation within 60 days after receipt of the case from the healing arts board.
- Requiring the AG to serve or submit for service to a healing arts board a default decision within 5 days after the period allowed for the filing of a notice of defense.
- Requiring the AG to set a hearing date within 3 days of receiving a notice of defense, unless otherwise instructed by the healing arts board.

- Authorizing healing arts boards to require applicants to be examined by one or more physicians or psychologists if the applicant appears to be unable to practice safely due to a mental or physical illness affecting competency.
- Specifying that it is unprofessional conduct for any licensee to fail to furnish information in a timely manner or cooperate and participate in any investigation or other disciplinary proceeding pending against the licensee.
- Requiring a licensee to submit a written report to the board if an indictment or information charging a felony against the licensee is filed; upon any arrest; upon any misdemeanor or felony conviction; and upon any disciplinary action taken by another licensing entity or authority of this state or another state.
- Requiring a licensee of a healing arts board to identify him or herself as a licensee to law enforcement or court officials upon being arrested or charged with a crime.
- Requiring the district attorney, city attorney other prosecuting agency or clerk of the court to notify the appropriate healing arts board if a licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee.

On April 22, 2010, SB 1111 failed to make it out of the Senate Business, Professions and Economic Development Committee. On April 26, 2010, DCA Director Brian Stiger reported that SB 1111 was an important component of CPEI, and DCA was disappointed and perplexed that the committee didn't approve it, given the clear need for legislative reform in this area. Although SB 1111 was an important part of CPEI, the DCA indicated that CPEI will continue to be the Department's highest priority and DCA will move forward implementing process improvements, staff development, performance measures, and adding enforcement resources.

B. Possible Regulatory Action to Implement Elements of CPEI

On April 30, 2010, Paul Riches, DCA Deputy Director, Enforcement & Compliance, reported that DCA is reviewing SB 1111 to determine which provisions can be implemented through regulations. The DCA believes that many provisions can be adopted as regulations. The DCA Legal Affairs Division is working on specific language and the Initial Statement of Reasons that may serve as a template for boards/bureaus to use.

In the meantime, the DCA provided a broad summary of the provisions that may be implemented through regulation (see Attachment A – SB 1111 Proposed Changes through Regulations).

C. Enforcement Division Updates

Substance Abuse Coordination Committee (SACC) – On November 16, 2009, the SACC adopted sixteen uniform standards for substance-abusing healing arts licensees as required by Senate Bill 1441 (Chapter 548, Statutes of 2008). The SACC was tasked with developing these standards by January 1, 2010.

The DCA Director encouraged the boards to promptly implement those standards that do not require legislation or regulatory changes. He also requested that the boards develop proposed statutory and/or regulatory changes, as needed, to fully implement the standards. The Board developed draft proposed regulatory language to implement those standards (see Agenda Item #11).

Audit of Enforcement Division – On April 12, 2010, the Board received notice from the DCA Internal Audit Office (IAO) that a comprehensive audit of the Board's Enforcement Program will be conducted by the IAO. The audit will focus on all aspects of the Enforcement Program including the Probation Program and Investigations Unit. The IAO plans to evaluate the efficiency and effectiveness of the enforcement process and make recommendations regarding possible improvements. The audit objectives are to determine if the Board has:

- ❖ Established policies and procedures to guide staff in effectively handling enforcement activities.
- ❖ Complied with applicable laws and regulations.
- ❖ Performed the Enforcement functions efficiently and effectively.
- ❖ Established benchmarks in order to judge if cases are proceeding appropriately and are closed in an expeditious manner.
- ❖ Established a process for management review of critical cases.
- ❖ Appropriately referred cases to experts when needed, on a timely basis.
- ❖ Adequately protected the public through the enforcement process.

At the conclusion of the audit, the IAO will issue a draft report and request the Board's response to any audit findings and recommendations. The Board's response will be included in the final audit report. The final audit report will be submitted to the DCA Chief Deputy Director and Deputy Director of Enforcement. The IAO will perform 180-day and 360-day follow-up procedures after the final report is issued to determine if proposed corrective actions are implemented.

On April 27, 2010, Teresa Bello-Jones, Executive Officer, Marina Okimoto, Assistant Executive Officer, and Angelina Martin, Enforcement Division Chief, participated in an entrance conference with Cathy Sahlman, DCA Chief Internal Auditor and her staff members.

Enforcement Academy – Karen Newquist, Enforcement Program Manager, is participating in the DCA's first Enforcement Academy which began April 19, 2010. The primary purpose of the Academy is to provide a solid, standard baseline of knowledge and practices for new and existing employees who perform enforcement functions. The Academy is also intended as a venue for individuals from all of DCA's boards, bureaus, and divisions to learn from one another and form valuable, lasting working relationships.

Developed by internal subject-matter experts working in partnership with the DCA's SOLID Training Solutions, the Academy consists of eight modules designed to provide a broad grounding in all aspects of the enforcement process. The Academy consists of four two-day sessions held every other week. As this program is still under development, the first two Academies are limited to managers and supervisors. Ms. Newquist is scheduled to complete the Academy on June 8, 2010.

Process Action Team: Division of Investigation (DOI) Case Acceptance Criteria – Angelina Martin, Enforcement Division Chief, will participate in a Process Action Team (PAT) to develop standardized case acceptance criteria for the DCA's DOI. The purpose of developing the acceptance criteria is to help identify cases that should be handled by sworn peace officer investigators at DOI versus cases that should be handled by non-sworn field investigators or by a desk investigation. This will help DOI keep a cap on the number of cases they receive so that they can achieve their goal to assign a maximum of 25-30 cases per investigator and, on average, complete all investigations within six months.

The first PAT meeting will be held on May 12, 2010. It is anticipated that several meetings will be conducted before the acceptance criteria is fully developed.

D. Enforcement Division General Statistics

Table #1 below summarizes the volume involved with the Enforcement Division over the past five fiscal years and the current fiscal year through March 30, 2010.

Table #1: Enforcement Division	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10¹
Complaints Received (Licensees)	1,291	1334	1,249	1,506	2,013	2,326
Complaints Received (Applicants)	1,031	1,137	1,194	1,401	1,573	1,522
Total Complaints Received	2322	2471	2,443	2,907	3,586	3,848*
Total Complaints Pending	2465	2622	2279	2633	3006	4,137*
Investigations Referred to DOI ²	113	61	172	190	140	70
Investigations Closed						
Licensee Investigations by Staff	1,192	1,697	1,570	1,394	1,522	1,751
Licensee DOI Investigations	162	111	88	66	137	185
Applicants Approved/Cleared	991	1,258	1,051	1,023	1,474	782
Applicants Denied (In-House)	12	14	19	34	24	16
Total Investigations Closed:	2,357	3,080	2,728	2,517	3,157	2,734
Cases Referred to AG's Office	196	216	188	326	226	158
Accusations Filed	145	124	176	203	183	127
Disciplinary Actions Taken	160	159	179	185	199	130
Statement of Issues Filed	3	2	8	31	32	11
Licenses Denied (Adjudicated)	2	7	2	5	9	8

¹ Data incomplete as it only includes statistics from July 1, 2009 through March 30, 2010.

² DOI = DCA Division of Investigation

* Important Note: The Board's increased workload and pending backlogs continue to increase due to the implementation of two major consumer protection functions (i.e., Mandatory Reporting effective July 1, 2007 and Retroactive Fingerprinting effective July 1, 2009) and the reduction in enforcement staff due to Furlough Fridays (i.e., from February 1, 2009 through June 30, 2010).

Table #2 below summarizes the processing times involved with the Enforcement Division over the past five fiscal years and the current fiscal year through March 30, 2010.

Table #2: Average Complaint Processing Times (In days)	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10¹
Investigations Conducted In-House	122	119	334	154	176	204
Investigations Conducted by DOI ²	388	536	539	475	665	637
Total Investigations ³	510	655	873	629	841	841
Pre-Accusations ⁴	285	324	309	182	150	171
Post Accusations ⁵	542	362	475	336	423	411
Total Average Days	1,337	1,341	1,657	1,147	1,414	1,423
Total Average Years	3.7	3.7	4.5	3.1	3.9	3.9*

¹ Data incomplete as it only includes statistics from July 1, 2009 through March 30, 2010.

² DOI = DCA Division of Investigation

³ Includes informal investigations conducted by Board Staff and formal investigations conducted by DCA DOI. Data does not include applicants.

⁴ From completed investigation to formal charges filed by the Attorney General's (AG) Office.

⁵ From formal charges filed by the AG's Office to conclusion of the disciplinary case.

* Important Note: The Board's processing times continue to increase due to the implementation of two major consumer protection functions (i.e., Mandatory Reporting effective July 1, 2007 and Retroactive Fingerprinting effective July 1, 2009) and the reduction in enforcement staff due to Furlough Fridays (i.e., from February 1, 2009 through June 30, 2010).

(5/4/2010)