

Agenda Item #12.



STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: September 1, 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 the 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 Investigations (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 with reforming the current enforcement process for the health care boards.

The DCA quickly implemented the CPEI. Specific DCA health care boards received additional staff including non-sworn investigators to address the enforcement backlogs and improve investigative processing times. A separate departmental budget change proposal (BCP) was submitted for a state-of-the-art integrated database to support licensing and enforcement.

BCP 1A – On January 8, 2010, the Governor's budget was released and the DCA received approval to hire 138.5 staff to address the enforcement backlogs and improve investigative processing times for various health care boards. The positions are approved in stages over the next two fiscal years. Of the 138.5 positions, the Board received approval for 15.5 positions (i.e. 13.0 Vocational Nursing (VN) positions and 2.5 Psychiatric Technician (PT) positions) as follows:

| | <u>VN Program</u> | <u>PT Program</u> |
|-----------------------------------|--|---------------------|
| Staff Services Manager II (SSM I) | 1.0 (reclassified to SSM I) | -0- |
| SSM I | 1.0 | -0- |
| Special Investigator | 8.0 (6 start 10/1/10; 2 start 7/1/11) | 2.0 (start 10/1/10) |
| Associate Analyst | 3.0 (2 year Limited Term (LT) positions) | 0.5 (LT positions) |
| | 13.0 | 2.5 |

The Board began working with the DCA Office of Human Resources to fill the SSMI positions. Unfortunately, on August 31, 2010, the Governor implemented a State Hiring Freeze and state agencies cannot hire any new staff or fill any vacant positions. **Therefore, implementation of the CPEI is on hold at this time.**

Enforcement Performance Measures (PM) – The DCA developed 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. On May 12, 2010, the final enforcement performance measures were sent to the Board. The following eight measures were identified:

- PM 1:** Volume – Number of complaints received.
- PM 2:** Cycle Time – Average number of days to complete complaint intake.
- PM 3:** Cycle Time – Average number of days to complete closed cases not resulting in formal discipline.
- PM 4:** Cycle Time – Average number of days to complete cases resulting in formal discipline.
- PM 5:** Efficiency (Cost) – Average cost of intake and investigation for complaints not resulting in formal discipline.
- PM 6:** Customer Satisfaction – Consumer satisfaction with the service received during the enforcement process.
- PM 7:** Cycle Time (Probation Monitoring) – Average number of days from the date a probation monitor is assigned to a probationer to the date the monitor makes first contact.
- PM 8:** Initial Contact Cycle (Probation Monitoring) – Average number of days from the time a violation is reported to a program to the time the assigned probation monitor responds.

The Board was asked to set targets for five of the measures: PM 2, PM 3, PM 6, PM 7, and PM 8. The DCA is working with the Office of Administrative and Information Services to develop a method for reporting PM 5, the complaint efficiency measure. Public reporting of this measure will not begin until January 2011.

On June 30, 2010, the Board received an Enforcement Performance Measure Workbook to be used to report the performance measures. The Board must submit the completed workbook to DCA at the end of each quarter. The first report is due October 15, 2010.

On July 1, 2010, the DCA began collecting data on the new external enforcement measures. The first quarter performance reports will be issued in October 2010.

B. Proposed Regulatory Action to Implement Elements of CPEI

On February 17, 2010, Senate Bill (SB) 1111 was introduced by Senator Negrete McLeod and sponsored by the DCA to establish the Consumer Health Protection Enforcement Act and make enforcement processes more efficient. On April 22, 2010, the bill failed to make it out of the Senate Business, Professions and Economic Development Committee. However, the DCA reported that CPEI would continue to be the Department's highest priority and believes that many provisions of SB 1111 can be adopted as regulations. The DCA Legal Affairs Division worked on specific language that might serve as a template for boards/bureaus to use.

The Board developed draft proposed regulatory language to be considered at its September 16, 2010 Board Meeting (see Agenda Item #13.A.).

C. Enforcement Division Updates

Disciplinary Hearings – On July 28, 2010, the Board conducted disciplinary hearings at the Red Lion Hotel in Sacramento to hear petitions for reinstatement of licensure and modification of probation. The Board delegated the hearings to an Administrative Law Judge from the Office of Administrative Hearings. Eight hearings were conducted. Approximately 200 members of the public attended the event.

Expert Witness Training – Angelina Martin, Enforcement Division Chief, Cheryl Anderson, Supervising Nursing Education Consultant, Jane Kreidler, Enforcement Program Analyst, and representatives from the Attorney General's Office conducted Expert Witness Training on August 25, 2010 in Sacramento and September 14, 2010, in Los Angeles. Ten new experts were trained how to review enforcement cases, provide quality expert opinions, and testify at administrative hearings.

Contract with Phamatech, Inc. for Drug Testing Services – On July 6, 2010, Teresa Bello-Jones, Executive Officer, Angelina Martin, the Enforcement Division Chief, and Karen Newquist, Enforcement Program Manager, participated in a conference call with representatives from Phamatech, Inc. to enter into the recently executed departmental contract for drug testing services. The Board is working with Phamatech to set up accounts for current probationers to be tested by Phamatech. All current and future probationers required to be tested as part of their terms of probation will be required to go through Phamatech for drug testing. All probationers have been notified and are in the process of setting up an account with Phamatech. The Board anticipates that all accounts will be created and ready for testing effective September 1, 2010. Approximately 140 probationers are required to be tested.

Audit of Enforcement Division – On April 27, 2010, Teresa Bello-Jones, Executive Officer, Marina Okimoto, Assistant Executive Officer, and Angelina Martin, the Enforcement Division Chief met with Cathy Sahlman, DCA Chief Internal Auditor, and her staff members. The DCA Internal Audit Office (IAO) advised that a comprehensive audit of the Board's Enforcement Program will be conducted by the IAO in September 2010. 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 the audit findings. 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 DCA 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.

Enforcement Academy – Karen Newquist, Enforcement Program Manager, participated 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 completed the Academy on June 8, 2010 and indicated that the information provided was good but recommended that the number of days be reduced from eight to four days.

Process Action Team: Division of Investigation (DOI) Case Acceptance Criteria – Beginning in May 2010, the Board participated in three meetings of the 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. Additional meetings are still required before the acceptance criteria are fully developed by PAT.

D. Enforcement Division General Statistics

| Table #1: Enforcement Division | 2004/05 | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|---|----------------|----------------|----------------|----------------|----------------|----------------|
| Complaints Received (Licensees) | 1,291 | 1334 | 1,249 | 1,506 | 2,013 | 3,110 |
| Complaints Received (Applicants) | 1,031 | 1,137 | 1,194 | 1,401 | 1,573 | 2,041 |
| Total Complaints Received | 2322 | 2471 | 2,443 | 2,907 | 3,586 | 5,151 |
| Total Complaints Pending | 2465 | 2622 | 2279 | 2633 | 3006 | 4,365 |
| Investigations Referred to DOI ¹ | 113 | 61 | 172 | 190 | 140 | 113 |
| Investigations Closed | | | | | | |
| Licensee Investigations by Staff | 1,192 | 1,697 | 1,570 | 1,394 | 1,522 | 2,446 |
| Licensee DOI Investigations | 162 | 111 | 88 | 66 | 137 | 240 |
| Applicants Approved/Cleared | 991 | 1,258 | 1,051 | 1,023 | 1,474 | 1,150 |
| Applicants Denied (In-House) | 12 | 14 | 19 | 34 | 24 | 20 |
| Total Investigations Closed: | 2,357 | 3,080 | 2,728 | 2,517 | 3,157 | 3,856 |
| Cases Referred to AG's Office | 196 | 216 | 188 | 326 | 226 | 221 |
| Accusations Filed | 145 | 124 | 176 | 203 | 183 | 166 |
| Disciplinary Actions Taken | 160 | 159 | 179 | 185 | 199 | 213 |
| Statement of Issues Filed | 3 | 2 | 8 | 31 | 32 | 18 |
| Licenses Denied (Adjudicated) | 2 | 7 | 2 | 5 | 9 | 10 |

¹ 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 six fiscal years.

| Table #2: Average Complaint Processing Times (In days) | 2004/05 | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|---|----------------|----------------|----------------|----------------|----------------|----------------|
| Investigations Conducted In-House | 122 | 119 | 334 | 154 | 176 | 212 |
| Investigations Conducted by DOI ¹ | 388 | 536 | 539 | 475 | 665 | 669 |
| Total Average Days All Investigations ² | 255 | 328 | 437 | 315 | 421 | 441 |
| Pre-Accusations ³ | 285 | 324 | 309 | 182 | 150 | 138 |
| Post Accusations ⁴ | 542 | 362 | 475 | 336 | 423 | 434 |
| Total Average Days | 1,082 | 1,014 | 1,221 | 833 | 994 | 1,013 |
| Total Average Years | 3.0 | 2.8 | 3.3 | 2.3 | 2.7 | 2.8 |

¹ DOI = DCA Division of Investigation

² Includes informal investigations conducted by Board Staff and formal investigations conducted by DCA DOI. Data does not include applicants.

³ From completed investigation to formal charges filed by the Attorney General's (AG) Office.

⁴ 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).

(9/1/2010)