

# Board Of Vocational Nursing and Psychiatric Technicians

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## **Administrative and Enforcement Monitor Initial Report**

Board Briefing – June 20, 2016

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## A. Administrative and Enforcement Monitor Background

- ❖ The need for Administrative and Enforcement Monitor services was prompted by issues, problems and concerns that surfaced during and following BVNPT's 2014/15 Sunset Review.
- ❖ Following BVNPT's Sunset Review Hearing on March 23, 2015, the Director of DCA directed the Deputy Director of DCA's Division of Investigation and Enforcement Programs to review and investigate the activities of the Board.
- ❖ From March 31 through May 29, 2015, the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement, Complaint Section Supervisor and an Investigation Section Supervisor all separated from the Board.
- ❖ Following the separation of the EO, AEO and Chief of Enforcement, Division of Investigation staff provided assistance to the Board with management of the Enforcement Program and began reviewing all of BVNPT's pending investigations and to identify cases for immediate reassignment to the Division of the 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.

## A. Administrative and Enforcement Monitor Background

- ❖ Subsequently, AB 179 (Bonilla) was enacted requiring that DCA appoint an Administrative and Enforcement Monitor for BVNPT for a period of up to two (2) years to conduct an assessment of the Board's Enforcement Program, disciplinary system and procedures and specified administrative processes.
- ❖ Reports are required to be submitted to the Legislature on July 1 and November 1, 2016, February 1, 2017, and January 1, 2018.
- ❖ On February 29, 2016, DCA awarded a contract to Benjamin Frank LLC to provide the Monitor services. Work on the project commenced during early-March. The term of the contract extends through February 28, 2018.
- ❖ The Diagnostic Review and Initial Assessment of BVNPT's Enforcement Program was completed during March and April. The abbreviated timeframe available to complete the initial assessment necessarily limited the breadth and depth of the research and analyses that could reasonably be performed. The Initial Report, documenting results of the Initial Assessment, was prepared during May.
- ❖ Additional interviews, research and analyses will be completed during subsequent project phases.

## B. 2011/12 and 2012/13 Organizational Restructuring

- ❖ Initially, as part of the Consumer Protection Enforcement Initiative (CPEI), BVNPT was authorized 15.5 positions, beginning during 2010/11, for a new non-sworn Investigation Section. Authorized staffing included 2 Supervising Special Investigators, 10 Special Investigators and 3.5 limited-term analysts (AGPAs). However, BVNPT was prevented from filling the Section's vacant positions due to freezes imposed on State hiring following the 2008/09 financial crisis. Also, the limited-term positions expired before they could be filled and reductions were made to the number of permanent positions authorized for the Section.
- ❖ During 2011, BVNPT established the new non-sworn Investigation Section and, after the hiring freezes were lifted in June 2011, BVNPT began filling the vacant positions.
  - The Investigation Section was not fully staffed until 2012/13.
  - Section staffing included two (2) Supervising Special Investigators and eight (8) Special Investigators.
- ❖ Most of the new investigators had little prior experience investigating the types of cases that the Section was responsible for investigating and there were no established policies and procedures governing the Section's investigation processes.

## C. Licensee Complaint Workflow Restructuring

- ❖ Prior to 2011/12, all licensee complaint and licensee arrest/conviction report investigations were completed by Complaint Section analysts or by DCA's Division of Investigation.
- ❖ BVNPT began assigning some licensee complaint and licensee arrest/ conviction report cases to the new Investigation Section during 2010/11 and, during 2011/12, assigned 435 licensee complaint cases to the Investigation Section (plus 165 licensee arrest/conviction report cases).
- ❖ Concurrently, BVNPT began reducing the number of licensee complaint cases assigned to the Division of Investigation.
- ❖ During 2012/13, 650 licensee complaint cases were assigned to the Investigation Section. Only 15 licensee complaint cases were assigned to the Division of Investigation and all of these cases were initiated by the Division of Investigation.

## C. Licensee Complaint Workflow Restructuring

- ❖ During 2011/12 and 2012/13, the Investigation Section completed only about 240 licensee complaint investigations and, as of June 30, 2013, there were about 840 pending non-sworn licensee complaint cases, including about 90 cases that were already more than 2 years old.
- ❖ In response to these developments, representatives of DCA made efforts to encourage BVNPT to utilize CPEI case prioritization guidelines and the Division of Investigations' services. Additionally, during September 2014 BVNPT's governing Board appointed an Enforcement Task Force to assess the Board's enforcement and discipline processes. Subsequently, in November 2014 the Board approved several Task Force recommendations for improvement, including recommendations that the Board begin utilizing the CPEI case prioritization guidelines and the Division of Investigations' services. However, BVNPT continued to assign all licensee complaint cases to its own investigators.

## D. Impacts of Organizational and Licensee Complaint Workflow Restructuring

- ❖ The total number of pending licensee complaint investigations increased from about 500 as of June 30, 2011, to about 1,000 as of June 30, 2014, including about 200 cases that were already more than 2 years old.
- ❖ The average age of pending licensee cases assigned to the Investigation Section increased from about 12 months during 2011/12 to 19 months by June 30, 2015.
- ❖ The average elapsed time to complete licensee complaint investigations increased significantly:
  - The average elapsed time required by Complaint Section analysts to complete investigations completed during 2010/11 was about 12 months.
  - The average elapsed time required by the Investigation Section to complete investigations increased from about 16 months for investigations completed during 2011/12 and 2012/13 to about 26 months for investigations completed during the first half of 2015/16.
- ❖ The total number of pending licensee arrest/conviction report cases decreased from more than 1,750 as of June 30, 2010, to less than 1,000 during 2014/15.

## E. License Applicant Arrest/Conviction Report Cases

**Cases Received** – The number of license applicant arrest/conviction report cases received increased from about 2,500 during 2010/11 to about 3,000 per year during 2011/12 and 2012/13. In 2013/14, nearly 3,800 cases were received and in 2014/15, about 3,300 cases were received.

**Cases Completed** – The number of license applicant arrest/conviction report case investigations completed increased from about 2,100 during 2010/11 to about 3,400 during 2013/14 and nearly 4,700 during 2014/15.

**Pending Cases** – The number of pending license applicant arrest/conviction report cases increased from about 2,100 as of June 30, 2010 to about 2,900 as of June 30, 2014, and then decreased to about 1,500 as of June 30, 2015.

**Notices of Warning and Denials of Licensure** – Throughout this period, BVNPT issued about 800 to 1,000 Notices of Warning (NOWs) to license applicants per year and fewer than 100 Denials of Licensure per year.

## E. License Applicant Arrest/Conviction Report Cases

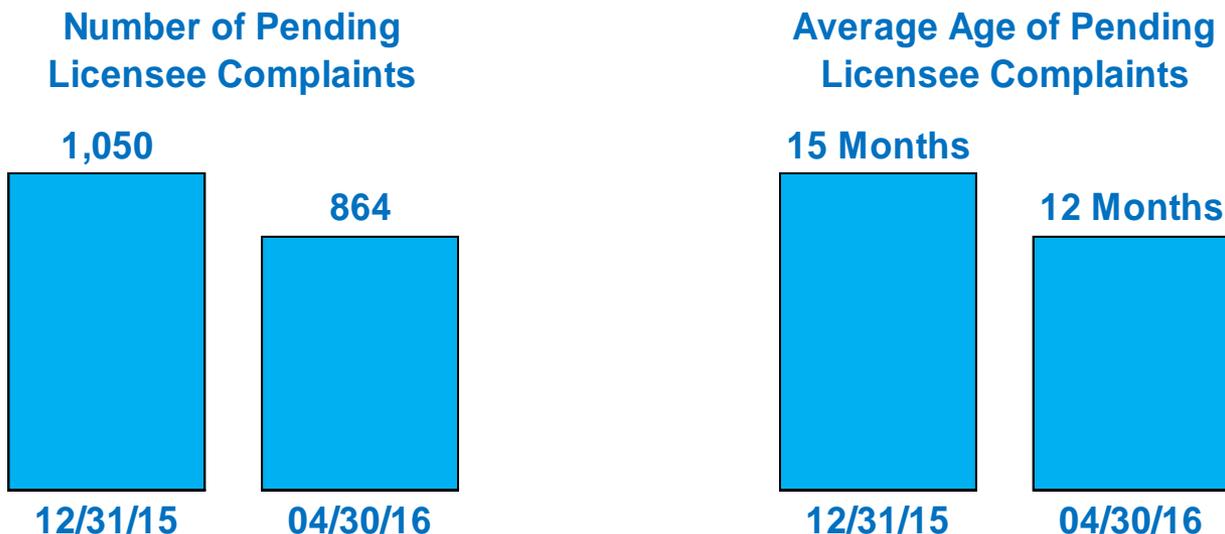
- ❖ It appears that BVNPT opened large numbers of license applicant arrest/conviction report cases, especially during 2013/14, for minor traffic offenses and then closed the cases without completing any investigation of the case.
  - Cases were possibly opened whenever an applicant self-reported on their license application a conviction for a traffic offense and then closed the case after reviewing the information provided by the applicant.
  - The abrupt increase in cases received during 2013/14 may have been the result of an increased propensity of applicants to disclose minor traffic offenses to avoid risks associated with having their application for licensure denied due to failure to self-report a reportable conviction.
  - BVNPT may have prompted larger numbers of applicants to self-report convictions for minor traffic offenses by emphasizing in various communication channels that their application for licensure would be denied if the applicant failed to self-report a reportable conviction.
  
- ❖ During October 2015, BVNPT restructured the license applicant arrest/conviction report process resulting in a significant reduction in the number of cases referred to Enforcement (less than 1,000 per year).

## F. BVNPT Case Mix Matrix

Case Type Category	Average Annual Volume	Investigations			Number of Discipline Cases		
		Type of Investigation	Estimated Average Hours per Case	Average Elapsed Time to Complete Investigation (Months)	Administrative		Formal
					Notice of Warning (NOW)	Citation	
<b>Licensee Complaints (Priorities I through IV)</b>							
Employer Reports	175 to 200						
Public, Including Patients and Others	125 to 150						
Reports from Other Public Agencies	70 to 120						
Discipline by Another State/Agency	50 to 60						
Internal - Other than Fraud	25 to 75						
<b>Total Licensee Complaints</b>	500 +/- 10%	Desk Non-Sworn Sworn	<b>Non-Sworn</b> 16 to 32 Hours (2 to 4 Days)	<b>Non-Sworn</b> 2012/13 - 16 2013/14 - 19 2014/15 - 21 2015/16 - 26	150 to 300	Up to About 30	55 to 65
Licensee Internal - Fraud Cases, Mostly CE Non-Compliance or Failure to Disclose Reportable Conviction on Renewal Application	Up to 200	Desk	Possibly 3 to 4 Hours	2012/13 - 3.2 2013/14 - 6.7 2014/15 - 5.6 2015/16 - 1.5	Less than 100	Up to About 100	Up to About 10
Licensee Arrest/Conviction Reports	About 1,500	Desk	Possibly 3 to 5 Hours	2012/13 - 10 2013/14 - 9 2014/15 - 8 2015/16 - 7	350 to 450	About 60 to 160	Up to About 200
License Applicant Arrest/Conviction Reports	Nearly 3,800 in 2013/14	Desk	Less than 3 to 4 Hours	A Few Days to 17 Years	About 800 to 1,000	80 to 95 Total Denials 50 to 80 Total SOIs Up to 24 Citations	

## G. Signs of Recent Improvement

- ❖ From May through December of 2015, BVNPT reassigned about 240 pending licensee complaint cases to the Division of Investigation. BVNPT also established new CPEI-compliant complaint intake processes to identify cases for referral to the Division of Investigation on an ongoing basis.
- ❖ From January through April 2016 (4 months), more than 400 licensee complaint investigations were completed. This compares to:
  - 620 complaint investigations completed during the full 2014/15 fiscal year (12 months).
  - 390 complaint investigations completed during the first half of 2015/16 (6 months).
- ❖ During the first 4 months of 2016 there were significant improvements in the number and age of pending licensee complaint investigations.



## G. Signs of Recent Improvement

- ❖ During the first half of 2015/16, about 250 formal discipline cases were closed. This compares to about 150 to 320 formal discipline cases closed per year during the preceding five (5) full fiscal years.
- ❖ As of April 30, 2016, the number of pending formal discipline cases decreased to 285 cases. This is the lowest number of pending formal discipline cases in more than six (6) years.

## H. Next Steps

- ❖ We are currently developing a Work Plan and Schedule to guide completion of subsequent project phases.
- ❖ During Phase II we expect to conduct interviews with:
  - Members of BVNPT's governing Board.
  - Representatives of other public agencies, including the California Department of Public Health and the California Department of Health Care Services.
- ❖ We also expect to conduct additional analyses of BVNPT's Enforcement Program workload, workflows and workforce requirements and to conduct a survey of a sample of other DCA-affiliated boards and bureaus to identify best practices for handling licensee and license applicant arrest/conviction reports.
- ❖ Additionally, we expect to complete targeted analyses of various complaint intake and investigation process issues identified during the Initial Assessment and may begin collecting, compiling and summarizing additional disciplinary process data and researching and assessing selected components of BVNPT's disciplinary system and processes.

Questions?