

STATE OF CALIFORNIA



DEPARTMENT OF CONSUMER AFFAIRS

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

**Initial Report
Diagnostic Review and Initial Assessment**

June 10, 2016

**BENJAMIN
FRANK** LLC
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CONSULTANTS

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CONSULTANTS

June 10, 2016

Mr. Awet Kidane, 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 Monitor
Initial Report
Diagnostic Review and Initial Assessment

Dear Mr. Kidane,

We are pleased to present this *Initial Report* which summarizes results of our Diagnostic Review and Initial Assessment of the Board of Vocational Nursing and Psychiatric Technicians' (BVNPT) Enforcement Program and specified administrative issues delineated by AB 179 (Bonilla). The report summarizes a broad range of general background and quantitative information profiling BVNPT's Enforcement Program evolution over the past 5 to 6 years. This information enables identification and assessment of:

- ❖ The major organizational and business processes changes made to the Enforcement Program by BVNPT's previous management team during 2011/12 and 2012/13
- ❖ The significant adverse impacts these changes had on Enforcement Program complaint investigations and performance
- ❖ The changes implemented by BVNPT's successor management team during the past 8 to 10 months to reverse these changes and begin restoring effective and efficient complaint intake, screening, investigation and discipline processes
- ❖ The beneficial impacts already realized from implementing these changes

The report also identifies a set of 10 key issues that will be further assessed during subsequent phases of this project.

Results of the Initial Assessment show that, during 2011/12 BVNPT established a new non-sworn Investigation Section within its Enforcement Division and, over the next 12 months, hired 10 new non-sworn investigators and supervisors to staff the Section. While large numbers of license applicant and licensee arrest/conviction reports continued to be processed and referred by BVNPT's Complaint Section to the Office of the Attorney General for disciplinary action, BVNPT began assigning all of its licensee complaint cases to the new

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Investigation Section. Previously, all of these cases were handled as desk investigations by Complaint Section analysts or were referred to the Department of Consumer Affairs' (DCA) Division of Investigation for investigation by sworn investigators.

This workflow restructuring was implemented before and concurrent with start-up of the new Investigation Section. As a result, the Investigation Section's newly hired and largely untrained workforce inherited a large backlog of older cases, including large numbers of cases that should have been assigned to Complaint Section analysts for desk investigation or referred to the Division of Investigation. Over the next two (2) years the Investigation Section's case backlogs grew significantly in size and age, further compounding the Enforcement Division's workload and workforce management problems. During 2013/14 there were about 900 pending cases assigned to the Investigation Section's eight (8) investigators (more than 110 cases per position) and more than 20 percent of these cases were already more than two (2) years old. In response to these developments, representatives of DCA made efforts to encourage BVNPT to comply with Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and utilize the Division of Investigations' services. However, BVNPT continued to assign all licensee complaint cases to its own investigators.

These problems persisted until, shortly following BVNPT's March 23, 2015 Sunset Review 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. Also, from March 31 through May 29, 2015, five (5) BVNPT executives, managers and supervisors separated from the Board, including the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement, the Complaint Section supervisor and an Investigation Section supervisor. Following the separations of the EO, AEO and Chief of Enforcement, the Deputy Director assigned a small team of Division of Investigation investigators and analysts to provide assistance to the Board with management of the Enforcement Program and to begin a review of all of BVNPT's pending complaints and investigations to identify cases for immediate reassignment to the Division of Investigation. At the time there were only about a dozen BVNPT cases assigned to the Division. Over a two-month period extending from early-May to late-June 2015, the Division of Investigation team identified and transferred to the Division about 100 of the BVNPT's Investigation Section's pending cases, including more than 30 cases that had been assigned to the Section for more than two (2) years. Concurrently, DCA provided an Acting Executive Officer for the Board, a new Chief of Enforcement was appointed and new supervisors for the Complaint and Investigation Sections were hired. A permanent Executive Officer was appointed in March 2016.

BVNPT began restructuring its complaint intake process during July 2015 and began implementing other policy, procedural and organizational changes to restore order to the Enforcement Program. As a result of these changes, there is some evidence of improved Enforcement Program performance. For example:

- ❖ During the first half of 2015/16 (July to December, 2015) the number of complaint investigations completed by Complaint Section and Division of Investigation staff, respectively, increased compared to comparable 6-month periods in prior fiscal year, but some of this improvement was offset by a decrease in the number of non-sworn complaint investigations completed during this same period compared to levels achieved in the prior two (2) years. Complaint Section staff also completed 1,079 investigations of licensee arrest/conviction reports during this 6-month period compared to about 1,400 licensee arrest/conviction report cases completed during the full 2014/15 fiscal year.

- ❖ During the 4-month period from January through April 2016, a combined total of more than 400 complaint investigations were completed, including:
 - 182 desk investigations
 - 235 non-sworn investigations
 - 35 sworn investigations.

This compares to a combined total of 620 complaint investigations completed during the full 2014/15 fiscal year and 390 complaint investigations completed during the first half of 2015/16. Additionally, the number of desk and the number of non-sworn complaint investigations completed over this 4-month period exceeded the numbers of desk and non-sworn complaint investigations completed over the prior 6-month period.

- ❖ During the 4-month period from January through April 2016, the total number of pending complaint investigations decreased by 17 percent from about 1,050 pending complaint cases as of December 31, 2015 to 864 pending complaint cases as of April 30, 2016. Also, the average age of these pending complaint cases decreased by 20 percent from 15 months as of December 31, 2015 to 12 months as of April 30, 2016. Additionally, the total number of pending licensee arrest/conviction report cases decreased by more than 20 percent, from 781 pending cases as of December 31, 2015 to about 600 pending cases as of April 30, 2016.
- ❖ 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. Also, the number of pending formal discipline cases decreased to about 330 cases as of December 31, 2015, from 426 cases pending as of June 30, 2015. As of April 30, 2016, the number of pending formal discipline cases decreased further to just 285 cases, the lowest number of pending formal discipline cases in more than six (6) years.

In summary, 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. Less than two (2) years later, during BVNPT's quadrennial Sunset Review, reports surfaced about the resulting organizational and operational problems and the scope and magnitude of these problems became evident to the Legislature and DCA. However, corrective measures taken during the past year appear to have contained these problems and set into place a foundation for building a sustainable, effective and efficient Enforcement Program that supports fulfillment of BVNPT's consumer protection mission.

* * * * *

We are grateful for all of the assistance provided to us throughout this initial assessment process by DCA's Project Manager, representatives of the Division of Investigation, BVNPT's management team and various BVNPT specialist and support staff. Their responsiveness to our requests for information and assistance were outstanding and, without their support, completion of this Initial Assessment would have been substantially more difficult. We appreciate the opportunity to be of service to the Department of Consumer Affairs. If you have any questions or need additional information, please contact me at 916.425.1475.

Very truly yours,

BENJAMIN FRANK, LLC

Ben Frank

Benjamin Frank
Chief Executive Officer

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I. Introduction

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I. Introduction

As the California State Legislature was preparing to complete its quadrennial Sunset Review of the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) during late-2014 and early 2015, various reports surfaced concerning (1) alleged 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 data, including discrepancies and differences between the data provided to BVNPT's governing Board, the Department of Consumer Affairs (DCA), the Department of Finance and the Legislature.

BVNPT also reported that, in 2011, it had established and staffed a new Investigation Section within its Enforcement Division. BVNPT claimed that this new Section 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 and that, by this measure, BVNPT ranked poorly in comparison to other DCA-affiliated Healing Arts Boards.

BVNPT's Sunset Review Hearing was held on March 23, 2015, but BVNPT's responses to participating members' questions during the Hearing did not allay the above issues and concerns. Subsequently, pursuant to a recommendation 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) 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 BVNPT investigations to identify cases for immediate reassignment to the Division of Investigation. At that time there were only about a dozen BVNPT cases assigned to the Division 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 of Investigation about 100 of the BVNPT's Investigation Section's pending cases, including more than 30 cases that had been assigned to the Section for more than two (2) years. Concurrently, DCA provided an Acting Executive Officer for the Board, a new Chief of Enforcement was appointed and new supervisors for the Complaint and Investigation Sections were hired.

I. Introduction

As a result of all of the above issues, problems, concerns and events, legislation was adopted (AB 179, Bonilla) which required that the Director of DCA appoint an Administrative and Enforcement Monitor for BVNPT. Subsequently, on October 6, 2015, AB 179 was approved by the Governor. AB 179 required that the Monitor appointment be accomplished through a personal services contract no later than March 1, 2016 and continue for a period of up to two (2) years from the date of appointment.

On February 2, 2016, DCA issued a Request for Offers (RFO) to obtain the Administrative and Enforcement Monitor services specified by AB 179. Subsequently, on February 29, 2016, a contract to provide these was issued to Benjamin Frank LLC. Work on the project commenced almost immediately following DCA's notification of contract award. The term of the contract extends for 24 months through February 28, 2018.

AB 179 sets forth specific responsibilities of the Administrative and Enforcement Monitor, including monitoring and evaluating:

- ❖ Specified BVNPT administrative processes, including staff hiring and training procedures, oversight of staff work, evaluation of staff performance, training of Board members, dissemination of information to Board members, assistance of Board members in performing their duties, communication with legislators and legislative staff, and representation of the Board at legislative meetings and hearings
- ❖ BVNPT's disciplinary systems and procedures, with specific concentration on improving the overall efficiency and consistency of the Enforcement Program, including:
 - The quality and consistency of complaint processing and investigation
 - The appropriate use of licensed professionals to investigate complaints
 - BVNPT's cooperation with other governmental entities charged with enforcing related laws and regulations regarding vocational nurses and psychiatric technicians
 - The accurate and consistent implementation of the laws and rules affecting discipline, 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.

AB 179 also requires submission of:

- ❖ An *Initial Report* of findings and conclusions by not later than July 1, 2016
- ❖ Interim reports by not later than November 1, 2016 and February 1, 2017
- ❖ A *Final Report*, including final findings and conclusions, 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.

I. Introduction

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* is expanded to include preliminary recommendations (if any).

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

Report No. 3 – AB 179 requirements related to assessment of specified BVNPT administrative processes are combined with requirements related to submission of the February 1, 2017 report and the scope of the report is broadened to encompass (1) components of BVNPT's Enforcement Program and investigation regarding disciplinary matters or procedures 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 of results of analyses to produce the *Final Report*.

This remainder of this section summarizes our overall technical approach to providing the prescribed Monitor services. Following the overview of our approach we provide an overview of BVNPT's organizational structure and staffing and an overview of BVNPT's Enforcement Program services and the current allocation of staff to provide these services. The section concludes with a summary of significant data inconsistencies, anomalies, and constraints, the effects of these problems on BVNPT's reported Enforcement Program workload, workflows, backlogs and performance, and their impacts on completion of this Initial Assessment. The remainder of this section is organized as follows:

Title

- Section**
- A. Overview of Project Approach and Schedule
 - B. Overview of the Board of Vocational Nursing and Psychiatric Technicians
 - C. Overview of BVNPT Organizational Structure and Staffing
 - D. Overview of BVNPT's Enforcement Program Services and Workforce Allocations
 - E. Data Inconsistencies, Anomalies, Constraints and Effects

Subsequent sections of the report are organized as follows:

Title

- Section**
- II. Evolution of BVNPT's Enforcement Program – 2010/11 through Early-2016
Key Issues
 - IV. Next Steps.

I. Introduction

A. Overview of Project Approach and Schedule

Our approach to providing the prescribed Monitor services is designed to achieve each of the objectives set forth in AB 179. Our overall approach is organized into four (4) major project phases. The project phases are 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.

Figure I-1, below, provides an overall schedule for completing each of the above phases of work.

Figure I-1. 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 an overview of the work that is expected to be performed as part of each of the four (4) project phases.

I. Introduction

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 current Executive Officer and Chief of Enforcement, 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 Investigations, 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. However, we then determined that there were significant differences, discrepancies and anomalies with this data. 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 5½ 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 the following core Enforcement Program workload, workflow, backlog, outcome and performance indicators:

- ❖ Complaints received (e.g., from patients, employers, other states, and other public agencies, such as the California Department of Public Health)
- ❖ Licensee arrest/conviction reports received (i.e., from the Department of Justice and the Federal Bureau of Investigation)
- ❖ License applicant arrest/conviction reports received
- ❖ Complaint and arrest/conviction report cases assigned for desk investigation
- ❖ Complaint and arrest/conviction report cases assigned for non-sworn investigation
- ❖ Complaint and arrest/conviction report cases assigned for sworn investigation
- ❖ Completed desk investigations
- ❖ Completed non-sworn investigations
- ❖ Completed sworn investigations
- ❖ Pending desk investigations
- ❖ Pending non-sworn investigations
- ❖ Pending sworn investigations
- ❖ Notices of Warning (NOWs) issued
- ❖ Citations issued
- ❖ License denials issued
- ❖ Statement of Issues (SOI) filed
- ❖ Discipline cases closed
- ❖ Pending discipline cases.

I. Introduction

In total, more than 120,000 CAS data records were obtained, sorted, filtered, compiled and summarized to support completion of the Initial Assessment. The scope of Phase I precluded development of time series data summaries and recaps for additional types of Enforcement Program workload, workflow, backlog and performance metrics, including data regarding BVNPT's disciplinary and probation processes and outcomes. However, during subsequent project phases we expect to obtain additional CAS data extracts along with data extracts from BreEZe as needed to support completion of supplemental and in-depth assessments of BVNPTs complaint and arrest/conviction report intake, investigation, discipline and probation processes. The CAS data summaries and recaps developed as part of Phase I are presented subsequently in Section II (*Evolution of BVNPT's Enforcement Program – 2010/11 through Early–2016*).

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. Results of these efforts are summarized subsequently in Section III (*Key Issues*). These issues are expected to be further assessed during subsequent project phases.

As part of Phase I we also 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
- ❖ Subcommittees
- ❖ Board meeting structure and effectiveness
- ❖ Disciplinary decisions
- ❖ Effectiveness of training and support
- ❖ Legislative affairs and relations.

The survey responses will be compiled, analyzed and summarized for inclusion in a subsequent phase report.

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*, summarizing results of the Initial Assessment, was prepared during May. Additional interviews, research and analyses will be completed during subsequent project phases.

A draft of the *Initial Report* 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 and submitted to DCA for final review. The Board will be provided an opportunity to submit comments regarding the report. The *Initial Report*, including the Board's comments, will then be submitted to the Legislature.

Finally, we are currently preparing a *Work Plan and Schedule* for completing Phase II. The *Phase II Work Plan and Schedule* will be submitted to DCA's Project Manager and BVNPT's Executive Officer and Chief of Enforcement for review and approval prior to commencing Phase II work. An overview of some of the work expected to be performed as part of Phase II is provided below and in Section IV (*Next Steps*).

I. Introduction

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

In Phase II we expect to complete more in-depth research and assessment of BVNPT’s complaint intake, screening and investigation processes, with emphasis on improving the overall effectiveness and efficiency of BVNPT’s Enforcement Program, including:

- ❖ The quality and consistency of BVNPT’s complaint-handling and investigation processes
- ❖ The utilization of licensed professionals to investigate complaints (e.g., the use of sworn investigators to investigate criminal cases and the use of VNs and PTs to as outside experts, as needed)
- ❖ BVNPT’s cooperation with other governmental agencies charged with enforcement of related laws and regulations governing VNs and PTs (e.g., the California Department of Public Health).

We anticipate that our Phase II efforts will involve:

- ❖ Collecting and reviewing additional process documentation
- ❖ Collecting, compiling, summarizing and analyzing additional workload, workflow, backlog, staffing or performance data
- ❖ Scheduling and conducting additional interviews with BVNPT managers and staff and representatives of other governmental agencies
- ❖ Conducting reviews of targeted samples of enforcement case files.

Results of these efforts will be used to further characterize BVNPT’s organization and business processes and to assess procedural or structural issues as needed to support development of recommendations for improvements to BVNPT’s Enforcement Program organizational structure, staffing, complaint-handling and investigations, and workload and workforce management processes. We also expect to begin monitoring the impacts of changes implemented by BVNPT and may begin in-depth research and analyses of selected components of BVNPT’s disciplinary system and processes. Additionally, we will prepare a *Phase II Report* documenting results of our Phase II efforts. Finally, we will prepare a *Work Plan and Schedule* for completing Phase III.

I. Introduction

Phase III – Administrative and Disciplinary Process Assessments

In Phase III we expect to complete more in-depth research and assessment of the following staff management, Board member assistance, and Legislative relationship processes:

Staff Management

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

Board Member Assistance

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

Legislative Affairs

- ❖ Communications with legislators and legislative staff
- ❖ Representation of the Board at legislative meetings and hearings.

We also expect to complete more in-depth research and analyses of BVNPT’s disciplinary system and processes, including:

- ❖ Consistency in the application of sanctions or discipline imposed on licensees
- ❖ The accurate and consistent implementation of 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
- ❖ Staff concerns regarding disciplinary matters or procedures.

Additionally, we expect to continue monitoring the impacts of changes implemented by BVNPT.

I. Introduction

We anticipate that our Phase III efforts will involve:

- ❖ Collecting and reviewing additional process documentation
- ❖ Collecting, compiling, summarizing and analyzing additional workload, workflow, backlog, staffing or performance data
- ❖ Conducting additional interviews with BVNPT managers and staff and representatives of the Office of the Attorney General
- ❖ Conducting reviews of targeted samples of discipline case files.

Results of these efforts will be used to further characterize BVNPT's administrative and disciplinary processes or to assess structural or procedural issues as needed to support development of recommendations for improvements. Additionally, we will prepare a *Phase III Report* documenting results of these efforts. Finally, we will prepare a *Work Plan and Schedule* for completing Phase IV.

Phase IV – Ongoing Monitoring and Final Project Report

Our efforts during Phase IV are expected to initially focus primarily on periodically monitoring BVNPT's Enforcement Program performance, including performance related to intake, screening, and investigation of complaints, the Board's disciplinary actions, and the impact of changes implemented by BVNPT. Additionally, we will prepare 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. Preliminarily, we expect to deliver the *Final Report* in final form during late-2017, prior to the end of year holiday period.

I. Introduction

B. Overview of the Board of Vocational Nurses and Psychiatric Technicians

BVNPT administers two distinct licensure programs for Vocational Nurses (VNs) and Psychiatric Technicians (PTs). The two (2) programs have separate statutes, regulations, budgetary authority, curriculum requirements and licensure examinations. The VN Program was established in 1951. The PT Program was first established as a certification program in 1959 and then converted to a licensing program in 1970. Pursuant to AB 179, the currently separate budgets for the VN and PT Programs will be consolidated effective July 1, 2016.

Vocational Nurses – VNs provide basic nursing care to clients under the direction of a licensed physician or registered nurse. While VNs are not independent practitioners, there is no requirement that a physician or registered nurse be present on the premises during the performance of their duties. **Exhibit I-1**, on the next page, provides an overview of duties within the scope of practice of a VN. Additionally, upon completion of specialized training, VNs may be employed in specialty care areas such as surgery centers, intravenous therapy teams, critical care units, telemetry units, hemodialysis units, gastroenterology laboratories and genitourinary laboratories. VNs may also be hired to teach VN students, certified nursing assistants, home health aides, or other allied health personnel.

Psychiatric Technicians – PTs provide care for clients diagnosed with mental disorders or development disabilities under the direction of a physician or surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse or other professional personnel. While the PT is not an independent practitioner, there is no requirement that the aforementioned professionals be present during the performance of their duties. PTs are typically employed in state, local and private hospitals, outpatient mental health care centers, residential care facilities, offices of mental health care practitioners, correctional facilities, psychiatric emergency assessment and treatment teams, public and private chemical dependency treatment centers, sheltered workshops and vocational training centers, respite care teams, and group counseling services. **Exhibit I-1**, on the next page, provides an overview of duties within the scope of practice of a PT.

Currently, about 136,000 Vocational Nurses and Psychiatric Technicians are licensed by BVNPT, including about 120,000 VNs and 16,000 PTs. Additionally, the Board approves 188 Vocational Nurse and 18 Psychiatric Technician educational programs. Currently, only one (1) other state (Colorado) has a PT licensure program.

BVNPT has an 11-member governing Board consisting of six (6) public members and five (5) professional members. Nine (9) of the Board's members are appointed by the Governor, one (1) by the Speaker of the Assembly and one (1) by the Senate Pro Tempore. The Board has six (6) committees; Education, Evaluation, Licensure, Enforcement, Legislation/Regulations and Strategic Outreach. 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. Additional appointments to the Board were made during late-2013 that enabled the Board to resume regular meetings and conduct disciplinary hearings. As of mid-May 2016, all of the Board's 11 positions were filled.

Overview of Duties within the Scope of Practice of Vocational Nurses and Psychiatric Technicians

Duties within the Scope of Practice of a Vocational Nurse	Duties within the Scope of Practice of a Psychiatric Technician
Provision of basic hygienic and nursing care.	Provision of basic hygienic, grooming and nursing care.
Basic assessment of body systems, including measurement of temperature, pulse, respirations, and blood pressure, and documentation of findings.	Measurement of temperature, pulse, respirations, and blood pressure.
	Basic physical assessment.
Performance of prescribed medical treatments.	Documentation of client assessment data.
	Performance of prescribed medical treatments.
Nursing interventions.	Participation with an interdisciplinary team in the development, implementation and evaluation of a plan of care.
	Basic nursing interventions.
Participation in the development of nursing care plans.	Observation and documentation of client responses to prescribed treatments and interventions.
	Administration and documentation of prescribed medications.
Administration and documentation of prescribed medications.	Administration and documentation of prescribed medications.
	Supervision of pre-licensed or unlicensed personnel.
Assessment and documentation of patient response to administered medications.	Administration of prescribed skin tests and reading the client's immune system response to the testing agent.
	Performance of therapeutic interventions.
Supervision of certified nurse assistants and other unlicensed personnel.	Behavioral management.
	Crisis intervention.
Administration of prescribed skin tests and reading the patient's immune system response to the testing agent.	Sensory and perceptual development.
	Client social and vocational training and education.
Administration of prescribed immunizations.	Facilitation of individual and group therapeutic activities.
Patient education.	
Performance of intravenous therapy (IV) and blood withdrawal (BW).	

I. Introduction

C. Overview of BVNPT Organizational Structure and Staffing

Exhibit I-2, on the next page, illustrates BVNPT's overall organizational structure, reporting relationships and workforce allocations as of March 2016. BVNPT's staffing currently includes 70 budgeted permanent full-time positions, two (2) budgeted permanent half-time positions, and nine (9) retired annuitant positions that are limited to working a maximum of 960 hours per year. BVNPT does not currently have any limited term (LT) positions (usually limited to working for a period of two years) or permanent intermittent (PI) positions (limited to working 1,500 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 I-2, BVNPT's Executive Management Team consists of just two (2) positions (an Executive Officer and an Assistant Executive Officer). The Assistant Executive Officer position has been vacant since May 1, 2015 (more than a full year).

Most BVNPT positions are assigned to either the Administration and Licensing Division (32 positions, including 3 retired annuitants) or to the Enforcement Division (36 positions, including two (2) retired annuitants). Additionally, BVNPT has an Education Office with 11 positions, including four (4) retired annuitants. In addition to BVNPT's Executive positions, BVNPT has eight (8) other authorized management and supervisory positions. Five (5) of these positions are allocated to the Enforcement Division, two (2) are allocated to the Administration and Licensing Division, and one (1) is allocated to the Education Office.

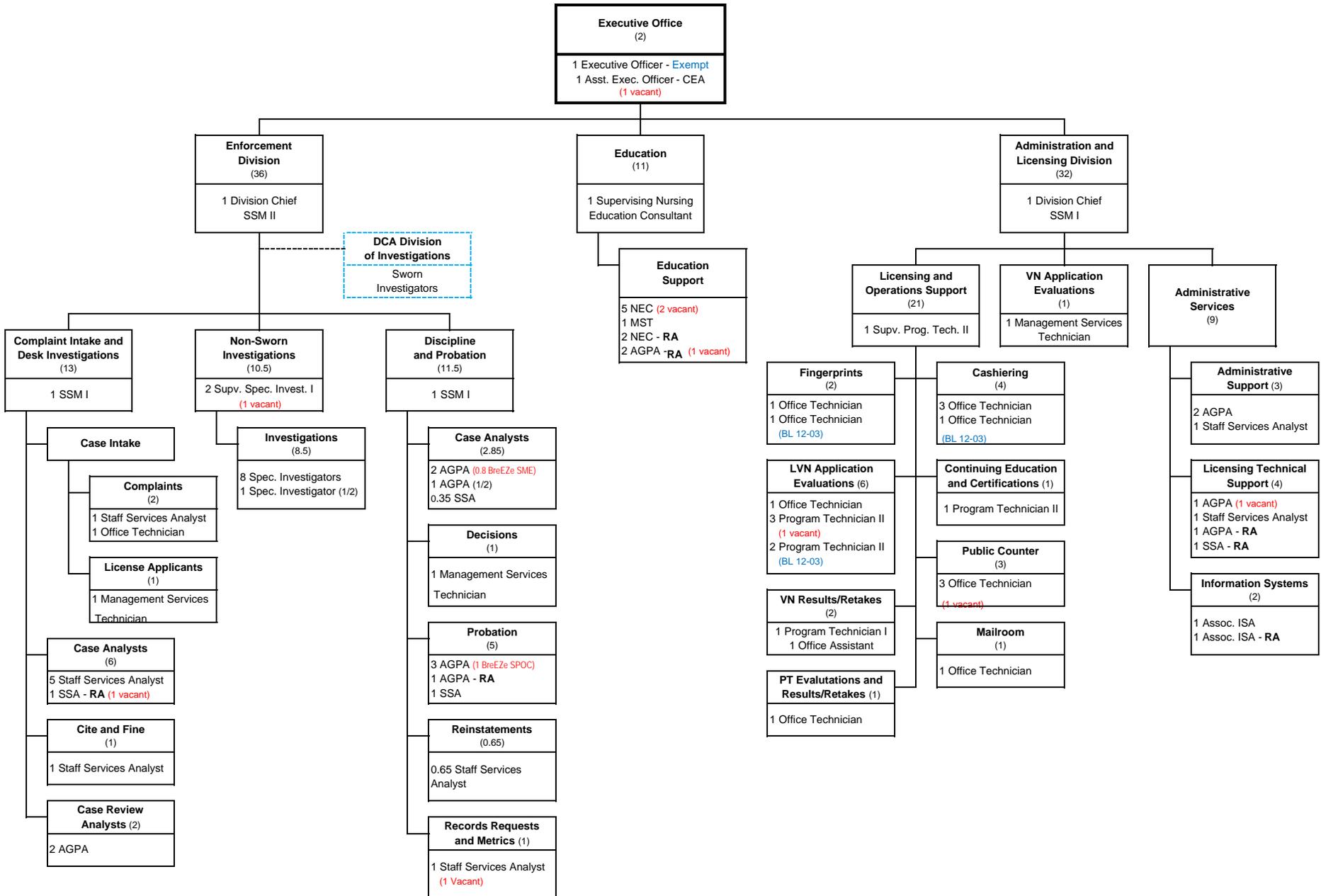
BVNPT's overall organizational structure is similar to that of other comparable regulatory agencies, although it is less common to have the Board's administrative support services grouped together with its Licensing Program services, particularly at larger organizations which are more likely to have an organizationally separate administrative support services business unit (Division or Section) with responsibility for:

- ❖ Fiscal services, including budgeting, accounting, and cashiering services
- ❖ Human resources services
- ❖ Contracting and procurement services
- ❖ Information technology services
- ❖ General office support services, such as public reception and mail.

As of March 2016, BVNPT had 9.5 vacant positions scattered throughout the organization, but more concentrated in the Education Office than in either of BVNPT's major Divisions. In recent years BVNPT has usually had two (2) or more vacant Nurse Education Consultant (NEC) positions. Currently, two (2) of the Education Office's five (5) authorized NEC positions are vacant. BVNPT has struggled to keep its NEC positions filled. To help address this problem BVNPT has previously sought to obtain a pay differential for its NECs but, to date, these efforts have not been successful.

Overview of BVNPT Organization - March 2016

Total Authorized Positions, Including 9 Retired Annuitant Positions = 81, Including 9.5 Vacant Positions



I. Introduction

1. Overview of Enforcement Division Organization and Staffing

As shown by Exhibit I-2, the Enforcement Division, which is the focus of this assessment, is subdivided into three (3) sections with responsibility for (1) complaint intake and desk investigations, (2) non-sworn investigations and (3) discipline and probation. The Complaint and Discipline Sections are each allocated one (1) supervisory position, both of which are currently filled. Two (2) supervisory positions are authorized for the Investigation Section. One (1) of these positions is currently vacant. The spans of control of the three (3) currently filled supervisory positions appear to be about the same as, or possibly somewhat larger than, usually seen at comparable regulatory agencies.

The groupings of specialized functional or programmatic responsibilities within each of the Enforcement Division's three (3) sections vary somewhat from how similar functional or programmatic responsibilities are sometimes grouped at comparable agencies. For example, the Cite and Fine Unit is sometimes grouped together with other discipline services. However, at BVNPT some of the current functional and related organizational groupings may be appropriate because of differences in the composition of BVNPT's caseload. For example, BVNPT has an especially high proportion of arrest/conviction report cases, most of which are handled by desk investigators and generate most of BVNPT's Notices of Warning (NOWs) and citations. These characteristics could support grouping staff providing NOW and citation issuance services together with staff providing desk investigation services.

Additionally, as shown on Exhibit I-2, 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 Division of Investigation 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. As discussed subsequently in Sections II and III, in recent years there has been a great deal of variability in BVNPT's use of the Division of Investigation's services.

Exhibit I-3, on the next page, shows the Enforcement Program's authorized, filled and vacant positions for the past seven (7) years. As shown by Exhibit I-3, the Complaint and Discipline Sections' overall staffing levels have changed very little during this period. For example, in recent years the Complaint Section usually had about 11 to 12 filled full-time-equivalent positions. During March 2016 the Complaint Section had 12 filled positions. Similarly, in recent years the Discipline and Probation Section usually had about 10 to 11 full-time-equivalent positions. During March 2016 the Discipline and Probation Section had 11 filled positions. Additionally, it appears that the vacancy rates in these two sections during this period have typically fluctuated between about 5 and 10 percent, a level commonly seen throughout the California State Government environment, with somewhat higher levels commonly experienced during periods of austerity as occurred for several years following the 2008/09 financial crisis.

Overview of Enforcement Division Staffing - 2009/10 through 2015/16

Business Unit / Positions			Authorized Positions						Filled Positions						Vacant Positions									
			2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	07/01/09	07/01/10	07/01/11	07/31/12	07/01/13	09/30/14	12/09/15	2009/10	2010/11	07/01/11	07/31/12	07/01/13	09/30/14	12/09/15	
Enforcement Division Chief - SSM II			1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.7	0.8	1.0	1.0				0.3	0.2				
Staff Services Analyst			1.0	1.0						1.0	1.0													
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	1.0									
		Assoc. Govt. Program Analyst	2.0	2.0	2.0	1.0	2.0	2.0	2.0	2.0	2.0	2.0	1.0	2.0	2.0	2.0								
		Staff Services Analyst	5.0	5.5	5.5	5.0	6.0	5.0	7.0	3.0	5.5	4.5	5.0	6.0	4.0	7.0	2.0		1.0				1.0	
		Management Services Technician	1.8	2.0	2.0	2.0	2.0	2.0	1.0	1.8	2.0	2.0	2.0	2.0	2.0	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	1.0			1.0					
	Limited Term	Assoc. Govt. Program Analyst				1.0							1.0											
		Staff Services Analyst	2.0	2.0	2.0	1.0		1.0		2.0	2.0	0.3							1.7	1.0		1.0		
	Retired Annuitant	Staff Services Analyst						1.0	1.0													1.0	1.0	
		Management Services Technician			1.0	1.0							1.0	1.0										
		Office Technician			1.0	1.0							1.0	1.0										
Total Complaint Section			12.8	13.5	15.5	14.0	12.0	13.0	13.0	10.8	13.5	11.8	13.0	12.0	10.0	12.0	2.0		3.7	1.0		3.0	1.0	
Discipline 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		1.0							
		Assoc. Govt. Program Analyst	5.5	5.5	5.5	5.5	5.5	5.5	5.5	5.5	4.5	5.5	5.5	5.5	5.5		1.0							
		Staff Services Analyst	2.0	2.0	3.0	3.0	3.0	3.0	3.0	2.0	2.0	3.0	3.0	2.0	3.0	2.5					1.0		0.5	
		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	1.0	1.0								
	RA	Assoc. Govt. Program Analyst						1.0	1.0						1.0	1.0								
Total Discipline Section			9.5	9.5	10.5	10.5	10.5	11.5	11.5	9.5	7.5	10.5	10.5	9.5	11.5	11.0		2.0			1.0		0.5	
Total Enforcement Program Positions, Excluding CPEI Investigation Units			24.3	25.0	27.0	25.5	23.5	25.5	25.5	22.3	23.0	23.3	24.2	22.3	22.5	24.0	2.0	2.0	3.7	1.3	1.2	3.0	1.5	
Business Unit / Positions			Authorized Positions						Filled Positions						Vacant Positions									
			2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	
Consumer Protection Enforcement Initiative (CPEI)	Permanent	Supervising Special Investigator I	A p p l i c a b l e N o t	2.0	2.0	2.0	2.0	2.0	2.0	A p p l i c a b l e N o t		1.3	1.3	1.4	1.9	1.5	A p p l i c a b l e N o t	2.0	0.7			0.6		0.5
		Special Investigator		10.0	10.0	8.5	8.5	8.5	8.5			2.3	7.2	7.5	7.5	8.0		10.0	7.7	1.3	1.0	1.0	0.5	
	Lmt. Term.	Assoc. Govt. Program Analyst		3.5	3.5													3.5	3.5					
	Total CPEI Investigation Units			15.5	15.5	10.5	10.5	10.5	10.5		0.0	3.6	8.5	8.9	9.4	9.5		15.5	11.9	1.3	1.6	1.0	1.0	
Total Enforcement Program Positions			24.3	40.5	42.5	36.0	34.0	36.0	36.0	22.3	23.0	26.9	32.7	31.2	31.9	33.5	2.0	17.5	15.6	2.6	2.8	4.0	2.5	
Enforcement Program Vacancy Rate																8%	43%	37%	7%	8%	11%	7%		

* Retired annuitants are limited to working a maximum of 960 hours per year.

I. Introduction

The organization development and staffing history of the Enforcement Division's Investigation Section is quite different from that of the Complaint and Discipline Sections. As part of the Consumer Protection Enforcement Initiative (CPEI), BVNPT was authorized 15.5 new positions to establish the 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 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 has never been able to fill. Finally, normal time lags in the hiring process prevented BVNPT from rapidly 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. BVNPT is currently planning to reclassify and redirect the vacant Supervisory Special Investigator position to augment the Discipline Section's workforce capabilities.

2. Overview of Administration and Licensing Division Organization

As shown by Exhibit I-2, the Administration and Licensing Division currently has only two (2) authorized management and supervisory positions, both of which are filled. These two (2) positions oversee and manage the services provided by 30 subordinate staff. The spans of control of these positions are 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. When filled, BVNPT plans to utilize the current Assistant Executive Officer position to augment the Administration and Licensing Division's management capabilities.

Exhibit I-4, on the next two (2) pages, shows the Administration and Licensing Division's authorized, filled and vacant positions for the past four (4) years. As shown by Exhibit I-4, during this period authorized permanent staffing for the Division increased from 25 positions to 29 positions. Additionally, during the past two (2) years the Division was authorized several retired annuitant positions. However, the Division has also sometimes experienced high levels of staff turnover and elevated vacancy rates. Exhibit I-4 shows that turnover occurred during this period throughout virtually all of the Division's functionally specialized business units and, at times, was especially high in the Public Counter and Cashiering Units. Also, for a period of time the Division operated with only one (1) filled manager/supervisor position. Multiple factors likely contributed to the Division's high vacancy rates, including the Division's limited number of manager and supervisor positions.

Recently, the Division filled many of its vacant positions. As of December 2015, four (4) of the Division's 28 authorized positions were vacant (a 14 percent vacancy rate).

Overview of Administration and Licensing Division Staffing - 2012/13 through 2015/16

Business Unit / Positions		Authorized Positions				Filled Positions				Vacant Positions			
		2012/13	2013/14	2014/15	2015/16	07/31/12	07/01/13	09/30/14	12/09/15	07/31/12	07/01/13	09/30/14	12/09/15
Management and Supervision	Administration and Licensing Division Chief - SSM I	1.0	1.0	1.0	1.0			1.0	1.0	1.0	1.0		
	Licensing Section - Supervising Program Tech. III				1.0				1.0				
	Office Services Supervisor III	1.0	1.0							1.0	1.0		
	Office Services Supervisor II	1.0	1.0			1.0					1.0		
Total Administration and Licensing Mngt. and Supv.		3.0	3.0	1.0	2.0	1.0	0.0	1.0	2.0	2.0	3.0	0.0	0.0
Public Counter	PERM Office Technician	3.0	3.0	3.0	3.0	1.0		1.0	3.0	2.0	3.0	2.0	
	Total Public Counter Unit	3.0	3.0	3.0	3.0	1.0	0.0	1.0	3.0	2.0	3.0	2.0	0.0
Mail Room	PERM Office Technician	1.0	1.0	1.0	1.0	1.0		1.0	1.0		1.0		
	Total Mailroom Unit	1.0	1.0	1.0	1.0	1.0	0.0	1.0	1.0	0.0	1.0	0.0	0.0
Cashiering	PERM Office Technician	4.0	4.0	5.5	6.0	4.0	3.0	3.5	4.0	0.0	1.0	2.0	2.0
	RA AGPA, SSA, MST, OT or Unknown	2.0				2.0							
	Total Cashiering Unit	6.0	4.0	5.5	6.0	6.0	3.0	3.5	4.0	0.0	1.0	2.0	2.0
Results/Retakes	PERM Program Technician I	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0				
	PERM Office Assistant	1.0	1.0	1.0	1.0	1.0	1.0	1.0					1.0
	Total Result/Retakes Unit	2.0	2.0	2.0	2.0	2.0	2.0	2.0	1.0	0.0	0.0	0.0	1.0
Fingerprints	PERM Office Technician	1.0	1.0	2.0	2.0	1.0	1.0	2.0	2.0				
	RA AGPA, SSA, MST, OT or Unknown	1.0				1.0							
	Total Fingerprints Unit	2.0	1.0	2.0	2.0	2.0	1.0	2.0	2.0	0.0	0.0	0.0	0.0
Evaluations and Endorsements	PERM Program Technician II	3.0	3.0	5.0	5.0	3.0	2.0	4.0	4.0		1.0	1.0	1.0
	PERM Management Services Technician	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0				
	PERM Office Technician	1.0	1.0	2.0	1.0	1.0	1.0	1.0	1.0			1.0	
	RA AGPA, SSA, MST, OT or Unknown	2.0				2.0							
Total Evaluations and Endorsements Unit		7.0	5.0	8.0	7.0	7.0	4.0	6.0	6.0	0.0	1.0	2.0	1.0

Overview of Administration and Licensing Division Staffing - 2012/13 through 2015/16

Business Unit / Positions		Authorized Positions				Filled Positions				Vacant Positions				
		2012/13	2013/14	2014/15	2015/16	07/31/12	07/01/13	09/30/14	12/09/15	07/31/12	07/01/13	09/30/14	12/09/15	
Continuing Education	PERM	Program Technician II		1.0	1.0	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	0.0	0.0	0.0	0.0
Licensing Services	PERM	Assoc. Government Program Analyst		1.0	1.0		1.0	1.0		1.0				
	PERM	Staff Services Analyst		1.0	1.0	1.0	1.0	1.0		1.0		1.0		
	LT	Assoc. Government Program Analyst				1.0						1.0		
	RA	AGPA, SSA, MST, OT or Unknown				2.0	2.0		2.0	2.0				
	Total Licensing Services Unit		2.0	2.0	4.0	4.0	2.0	2.0	2.0	4.0	0.0	0.0	2.0	0.0
Administration	PERM	Assoc. Government Program Analyst		1.0	1.0	1.0	1.0	1.0	1.0					
	PERM	Staff Services Analyst				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	1.0	2.0	1.0	2.0	1.0	0.0	1.0	0.0
Information Systems	PERM	Assoc. Information Systems Analyst		1.0	1.0	1.0	1.0	1.0	1.0					
	RA	Assoc. Information Systems Analyst				1.0	1.0		1.0	1.0				
	Total Information Systems Unit		1.0	1.0	2.0	2.0	1.0	1.0	2.0	2.0	0.0	0.0	0.0	0.0
Totals	Permanent Positions		25.0	25.0	27.5	29.0	20.0	16.0	19.5	25.0	5.0	9.0	8.0	4.0
	Limited Term Positions		0.0	0.0	1.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0
	Retired Annuitant Positions		5.0	0.0	3.0	3.0	5.0	0.0	3.0	3.0	0.0	0.0	0.0	0.0
	Total Administration and Licensing Division		30.0	25.0	31.5	32.0	25.0	16.0	22.5	28.0	5.0	9.0	9.0	4.0
Vacancy Rate										17%	36%	29%	13%	

* Retired Annuitants are limited to working a maximum of 960 hours per year.

I. Introduction

D. Overview of Enforcement Program Services and Workforce Allocations

Exhibit I-5, on the next page, provides a graphical overview of the services provided by the Enforcement Division and estimated workforce allocations to each category of services during the first several months of 2016. Currently, the Complaint Intake and Desk Investigation Section is largely responsible for provision of the following four (4) categories of services shown on Exhibit I-5:

- ❖ New Case Intake
- ❖ Desk Investigations
- ❖ Completed Case Review (following completion of both non-sworn and sworn investigations)
- ❖ Administrative Discipline (NOWs and citations).

Within the Complaint Section, a few staff currently have specialized functional responsibilities (i.e., License Applicant Case Intake, Licensee Case Intake, and Citation Issuance). However, most Section staff provide services in multiple areas (i.e., Desk Investigations, Completed Case Reviews and NOW Issuance). Within the Investigation Section, the non-sworn investigators do not have any specialized geographic or case type areas of responsibility. Within the Discipline and Probation Section, there are several staff that have specialized discipline case processing and management responsibilities (i.e., reviewing pleadings and negotiating and reviewing stipulated settlements, processing decisions, and processing petitions for reinstatements). Several other Section staff are dedicated to supporting the Probation Program, to the extent they are not otherwise assigned to various special projects, such as BreEZe (currently allocated about 1.8 positions). Within the Probation Unit, one (1) position is used to provide New Case Intake and Cost Recovery services on behalf of the entire Unit. All Probation Unit staff carry a caseload of probationers that they are responsible for monitoring, with the number of assigned probationers adjusted to reflect each position's availability to provide monitoring services.

As shown by Exhibit I-5, Investigation Section investigators allocated about two-thirds of their time to investigating Mandatory Employer Report cases (5.23 of a total of 8 filled positions). This time allocation appears to reflect the nature of these cases and BVNPT's current case assignment processes whereby cases meeting specified criteria, including cases involving serious criminal misconduct and significant patient harm, are referred to the Division of Investigation. Public cases, which represent a larger proportion of BVNPT's total complaint workload than would be indicated by the workforce allocations shown on Exhibit I-5, may be more likely to meet these criteria and referred to the Division of Investigation. Conversely, Mandatory Employer Report cases, which account for much less than two-thirds of BVNPT's total complaints, may be less likely to meet the criteria for referral to the Division of Investigation (e.g., because many of the cases are triggered by violations of the employer's workplace policies or procedures, but do not appear to involve serious criminal misconduct, significant patient harm or other criteria that would support referral to the Division of Investigation).

Overview of Enforcement Program Services and Estimated Workforce Allocations January through Mid-April, 2016 31.50 Filled Full-Time-Equivalent Positions¹

Licensee Complaint Initial Case Review and Referral for Investigation (0.45) Non-Sworn Sworn	License Applicant Case Review and Disposition (0.51) Issue With Now Deny (SOI)		Mandatory Employer Report Cases (5.23)	Public Agency Cases (1.48) CDPH CDHS CDSS CMS Other	Public Cases (1.08) Patients Family Caregiver Friend Other	Other Cases (0.21)	Serious Criminal Misconduct Cases Controlled Substances Sexual Misconduct Fraud Violence Other	Serious Patient Harm Cases	Sensitive Cases		
Licensee Arrest and Conviction Report Investigations (1.87) DUI Theft Controlled Substance Domestic Violence Other	Desk Investigations ² (3.1)		Non-Sworn Investigations ² (9.0)			Sworn Investigations (DCA Division of Investigations)			Unlicensed Practice Cases		
License Applicant Case Intake (1.00) Arrest and Conviction Reports	New Case Intake ² (2.2)		Enforcement Program Management and Special Projects (3.3) Program Planning and Development Workload and Workforce Management Board and Oversight Agency Liaison and Communications BreEZe (1.83) Metrics (0.23) Records Requests (0.13) Other (0.13)			Completed Case Review ² (2.9)			Non-Sworn Investigation Case Review (0.66)		
Licensee Case Intake (0.95) Complaints SARs									Sworn Investigation Case Review (0.73)		
Cost Recovery (0.21)	Probation ² (4.1)		Formal Discipline² (5.4) Revocation Surrender Probation Other			Administrative Discipline² (1.5)			Notices of Warning (NOW) (0.36)		
Petitions for Revocation (0.54)									License Applicant Arrests and Convictions		
Petitions for Modification or Early Termination (0.21)									Licensee Arrests and Convictions Licensee Complaints		
Monitoring (1.50) Quarterly Report and Employer Evaluation Reviews Violation Notices	Biological Fluid Testing (0.78) Case Set-Up Test Monitoring	New Case Intake (0.41) Case Set-Up and Assignment	Decisions (1.00) Board Vote Service of Decisions	Reinstatements (0.75)	STIPs (0.66) Negotiation Review	Pleadings (0.86) SOIs Accusations	PC 23s ISOs TROs (0.06)	AG Liaison and Case Management (1.48)	Con't Educ. Cite and Fine (0.25) Issuances Appeals Collections	Complaint Cite and Fine (0.40) Issuances Appeals Collections	Licensee Arrest and Conviction Cite and Fine (0.35) Issuances Appeals Collections

¹ Excludes 3 vacant full-time positions and 1 vacant half-time retired annuitant position.

² Figures shown include allocations of 3 first-level supervisory positions.

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E. Data Inconsistencies, Anomalies, Constraints and Effects

There are multiple significant inconsistencies, anomalies and deficiencies with the availability, completeness and quality of BVNPT's historical Enforcement Program workload, workflow, backlog, investigation, disciplinary action, probation and performance information. Some of the most significant problems identified to date are summarized below.

1. License Applicant Arrest/Conviction Reports

BVNPT's License Applicant Fingerprint Program was first initiated nearly 20 years ago (July 1996). Initially, only California Department of Justice (DOJ) criminal history background checks were completed. Because DOJ reports only identify 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.

On average, about **11,000** VN and PT examination applications and about **8,000** VN and PT license applications are submitted per year. It is our understanding that, until recently, it was BVNPT's practice to open a new enforcement case in CAS 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)
- 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, without first applying any screening criteria, new license applicant cases were opened in CAS for all reported license applicant arrest/conviction reports and all license applicant self-reports of prior convictions or pending court actions, *irrespective of the nature of the offense or when it occurred*. Additionally, with limited exceptions (e.g., applications for an interim permit), until such time as the applicant applies for and qualifies to take the license exam, passes the exam, completes the license application process and otherwise qualifies for licensure, there is no potential enforcement activity or need for BVNPT to "investigate" these cases. *There is no reasonable justification for BVNPT's prior practice of opening cases in CAS for all of these license applicant cases without first applying any type of screening criteria regarding (1) the nature and timing of the reported offense and (2) the applicant's eligibility for licensure.*

I. Introduction

During 2010/11, 2011/12 and 2012/13, BVNPT opened about 2,500 to 3,000 license applicant arrest/conviction report cases per year (about 1 case for every 3 license applicants). However, in 2013/14 BVNPT opened about 3,800 such cases (about 1 case for every 2 license applicants). In contrast, BVNPT opened only about 1,500 to 2,000 arrest/conviction report cases for licensees, plus an additional 550 to 700 complaint cases, including cases opened for (1) licensee failure to comply with continuing education (CE) course completion or reporting requirements and (2) licensee failure to disclose convictions on their license renewal application. Typically, BVNPT reported all of the license applicant arrest/conviction report cases together with the licensee complaint and arrest/conviction report cases, and oftentimes combined the data for workload, workflow, backlog and performance reporting purposes. As is evident from the above, the number of CAS cases opened for license applicant arrest/conviction reports and self-reports significantly exceeds the total number of all of BVNPT's enforcement cases. *In the most extreme case, BVNPT reported receiving a total of about 5,800 cases during 2013/14, but nearly 3,800 of these cases (65 percent) were license applicant arrest/conviction report cases. Conversely, only about 2,000 of these cases were licensee enforcement cases (either complaints or arrest/conviction reports).*

Currently available data and anecdotal information suggests that only about 15 to 25 percent of the license applicant criminal history reports and self-reports received by BVNPT potentially justify completing a further review to determine whether the reported offense supports (1) issuance of a Notice of Warning (NOW) in conjunction with issuance of the applicant's license approval or (2) denial of licensure. For 75 to 85 percent of these cases, the license is issued and no type of disciplinary action is ever taken. For example, in recent years BVNPT issued an average of about 8,000 new licenses, but only about 11 percent of the licenses were issued with a NOW (an average of about 900 NOWs per year) and only about 1 percent of the license applications were denied (an average of less than 90 license denials per year), including license denials issued due to:

- ❖ An applicant's failure to disclose an arrest/conviction, including failure to disclose an arrest/conviction for traffic offenses
- ❖ Receipt of *Incident Reports* from Pearson View concerning possible cheating by applicants during their license examination.

Additionally, for most of the license applicant cases no substantive investigation actually occurred. For most of these cases BVNPT work was limited to:

- ❖ Preparing and issuing a request to the license applicant to provide a detailed letter of explanation for each offense and certified copies of (1) the arresting agency's arrest report and (2) court records, including the conviction report
- ❖ Preparing and issuing a request to the arresting agency for a certified copy of the arrest report, if not provided by the applicant
- ❖ Preparing and issuing a request to the court for certified copies of court records, including the conviction report, if not provided by the applicant

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- ❖ Reviewing the documents provided to determine whether the offense, along with the any other relevant history or pattern of offenses, supports issuance of a NOW or license denial
- ❖ Preparing and issuing an Approval Letter and, if needed, a NOW.

As mentioned previously, during 2014/15 BVNPT opened about 3,800 cases in CAS for license applicant arrest/conviction reports. In contrast, an average of only 2,765 license applicant arrest/conviction report cases was opened during the prior three (3) years. Throughout this period the number of new license applicants was static (an average of about 11,000 examination applications and an average of about 8,000 license applications were received per year). Also, there was no change to the \$300 threshold for determining reportable traffic violations. The underlying causes of the 2013/14 spike in the number of license applicant cases opened in CAS have not been determined. However, from the data that we have reviewed it appears that numerous cases opened during 2013/14 were not investigated because the cases were opened and closed within a period of less than two (2) months, and many of these cases were completed within a period of just a few weeks, an insufficient amount of time for the various parties to respond to BVNPT's document requests, assuming that the triggering offense had already been adjudicated. Finally, it appears that this practice may have also occurred in prior years, but to a lesser extent.

In summary, even if there were no problems with the quality of BVNPT's license applicant arrest/conviction report data (which there are) and even if substantive investigations were completed for most of these cases (which is not the case), the combining of large numbers of license applicant arrest/conviction report cases with licensee complaint and licensee arrest/conviction report cases for workload, workflow, backlog and performance reporting purposes is a fundamentally flawed business practice that significantly inflates and distorts actual Enforcement Program workload and performance metrics. If the license applicant cases are excluded, the resulting Enforcement Program metrics would show that the number of enforcement cases received by BVNPT has been stable or decreasing in recent years rather than significantly increasing as was previously reported. Furthermore, the quality of BVNPT's Enforcement Program metrics should not be compromised by combining licensee enforcement cases with license applicant cases where the subject is not yet licensed to practice. Consequently, for purposes of completing the Initial Assessment of BVNPT's Enforcement Program, we have, to the extent practicable, separated the license applicant arrest/conviction report cases from the licensee enforcement cases to provide a better representation of BVNPT's actual Enforcement Program workload, workflows, backlogs and performance.

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2. Source Coding

When opening new complaints in CAS, different codes can be entered to specify the source of the complaint. For example, different source codes can be used to distinguish complaints received from the general public (P), such as patients, family members, caregivers or patient advocates, other DCA-affiliated boards or bureaus (D), such as the Board of Registered Nurses, other California State Government agencies and departments (G), such as the California Department of Public Health, licensees (L), such as self-reports of convictions, and industry (N), such as Mandatory Employer Reports. Also, an I (Internal) source code can be used to differentiate complaints that are opened based on internally generated information, such as licensee failure to comply with CE requirements which are usually determined by BVNPT staff from conducting CE compliance audits. However, BVNPT has generally only used source codes to a limited extent or not used them consistently. This practice necessarily limits the extent to which analyses can be performed of CAS data to help better understand the nature and composition of the complaints that are received, changes occurring in the mix BVNPT's cases, and associated impacts on Enforcement Program workload and performance.

For example, during 2010/11 and continuing into 2011/12, the overwhelming majority of all complaints received, excluding arrest/conviction reports, were coded as either P or I. The other 11 available source codes were used to only a limited extent, or not at all. Subsequently, as BVNPT shifted to using some of the other source codes, it appears there was a great deal of inconsistency in how complaints received from some sources, such as reports from other public agencies, were classified and coded. Also, BVNPT staff periodically query the National Council of State Boards of Nursing's database (NURSUS) to identify whether any of the Board's licensees have been disciplined by another state. It appears that multiple different source codes were used for these types of cases, including State Other than California (S), Internal (I), Employer (N) and Society/Trade Organization (O).

Variability in BVNPT's source coding practices, rather than actual changes in workload, account for some of the variability and shifts in BVNPT's reported workloads. For example, in BVNPT's *2010 Sunset Review Report*, management reported (Table 19) that the number of VN Public (P) complaints received increased from 265 in 2006/07 to 500 in 2009/10. However, Table 19 also shows that the number of VN Internal (I) Miscellaneous complaints decreased from 492 to 128 over this same period. Subsequently, in BVNPT's *2014 Sunset Review Report*, management reported that only 128 Public (P) complaints were received in 2011/12. The abrupt shifts in the number of Public (P) complaints received by BVNPT during this period appear to be largely attributable to variability and inconsistencies in BVNPT's source coding and data reporting practices rather than other factors sometimes cited by BVNPT (e.g., increased consumer awareness levels and the ability of consumers to file complaints on-line).

Finally, once a case is opened in CAS with a particular source code, it is rarely (or never) changed or corrected. Consequently, because of BVNPT's extended case investigation and disciplinary process cycle times, the poor quality source coding that occurred in past years will continue to adversely impact workload, workflow, backlog and performance information and reporting until (1) BVNPT's case intake coding processes are improved and (2) currently pending case investigations are completed and the cases are closed. BVNPT recently implemented improved case intake screening processes and provided training to staff to improve new case source and offense categorizations and coding.

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3. Internal Complaints

From the CAS data that we have reviewed it appears that there has possibly not been a great deal of oversight or control over the opening of Internal (I) complaint cases. In some instances it appears that complaint cases may have been opened irrespective of the need to conduct an actual investigation of the case. For example, over a period of several years several dozen cases were opened against hospitals and other health and residential care facilities for failure to comply with BVNPT's mandatory employer reporting requirements (e.g., BVNPT learned that a licensee was suspended or discharged, but the employer failed to submit a report to BVNPT about the action). For most of these cases, after an extended period of time, BVNPT issued a warning letter to the employer, who is subject to a fine (up to \$10,000) for failure to comply with the reporting requirement. As another example, BVNPT received a single report of a possible examination-related violation. Rather than opening one (1) case and then determining whether additional cases needed to be opened against specific individuals (e.g., splitting the case), BVNPT opened eight (8) individual cases. Subsequently, all of the cases were closed, No Violation.

While it is common practice for Internal complaints to be opened by DCA-affiliated regulatory agencies for various specific purposes (e.g., CE non-compliance cases, undercover, surveillance and Internet cases, and cases involving non-compliance with terms and conditions of probation), the initiation of new cases by internal staff usually occurs infrequently and is dependent on having a sufficient level of probable cause to support opening of the case. Where appropriate, we have separated some Internal cases from the data sets used for purposes of the Initial Assessment. However, BVNPT's historical Internal complaint workloads may still be somewhat inflated by the inclusion of these types of cases. For example, after separating Internal - Fraud cases, which is how CE and Failure-to-Disclose Arrest/Conviction cases would likely be classified, the data show a significant decrease during the past several years in the number of Internal cases received (e.g., from about 80 cases received during 2012/13 to a combined total of about 90 cases over the next 2½ years). Alternatively, as discussed previously, variability in the numbers of Internal cases opened could also reflect changes in BVNPT's source coding practices. Regardless, better controls over the opening of Internal complaint cases appear to be needed.

4. Duplicate Assignments of Complaint Investigations

For a period of several years extending from 2010/11 through 2012/13, concurrent with start-up of the new Investigation Section, it was BVNPT's practice to assign all (or nearly all) complaints to the Section. Then, after a period of time, some of the cases were reassigned to the Division of Investigation. Concurrently, BVNPT also began assigning all of the Division of Investigations' completed cases to the Investigation Section. Consequently, the cases are shown within CAS as assigned twice for investigation and also as pending within both business units while the case remained open. In some cases BVNPT's investigators possibly performed some investigative activity either before, or after, the case was investigated by the Division of Investigation. However, it is impossible to determine the extent to which this occurred and, given BVNPT's workloads and backlogs during this period, it is likely that there was very little such activity. In any event, there should rarely be a need for both business units to be involved in investigating the same case. Furthermore, the practice of routinely assigning Division of Investigation cases to the Investigation Section artificially inflates and distorts BVNPT's non-sworn investigation workloads, workflows, backlogs and performance. Therefore, for purposes of

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completing the Initial Assessment, we excluded the assignment of such cases to the Investigation Section. In total, we excluded from our data compilations and summaries about 125 non-sworn investigation case assignments occurring between 2010/11 and 2012/13.

Subsequently, over an 8-month period extending from May through December 2015, a total of about 350 cases were assigned to the Division of Investigation for sworn investigation, including about 240 cases that had previously been assigned to the Investigation Section over the previous four (4) years (2011/12 through 2014/15), but the investigations were never completed. These latter duplicate case assignments were not excluded from our data summaries and analyses because they help to show the impact of the intervention that occurred. Also, the resulting statistical summaries properly show the approximate level of sworn investigation assignments that should have occurred over the preceding 4 to 5 years (i.e., an average of about 100 cases per year), but continue to overstate BVNPT's actual underlying maximum non-sworn investigation workloads by about 50 cases per year during this same period (i.e., an average of about 400 to 425 cases per year, at the most, rather than an average of about 450 to 475 cases per year actually shown).

5. Internal – Fraud Complaints

In recent years BVNPT opened and completed an average of about 120 to 140 Internal – Fraud investigations per year. Currently available data suggests that this category of cases typically accounts for about 20 percent of all licensee complaint cases. Currently available data also suggests that citations with fines are issued in a very high proportion of these cases (usually \$250, \$500 or \$750) and that this category of cases accounts for 25 to 50 percent of all citations that are issued to licensees. However, there is significant variability in the annual data that is not currently understood.

It is our understanding that the following two (2) completely different types of cases possibly account for most of the Internal – Fraud cases:

- ❖ Licensee failure to disclose on their license renewal application a reportable conviction within the preceding two (2) years
- ❖ Licensee non-compliance with continuing education (CE) course completion or reporting requirements.

Additional research and analysis is needed to determine (1) the composition of the Internal – Fraud cases, (2) the appropriateness and consistency of sanctions and discipline imposed for associated violations, and (3) needs for improvements to BVNPT's supporting business processes to reduce the magnitude of associated workload fluctuations and streamline related handling activities.

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6. Licensee Arrest/Conviction Reports

As discussed previously, BVNPT began fingerprinting new license applicants nearly 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 (an average of about 6 cases per day). These cases account for about 75 percent of all of BVNPT's enforcement cases. Until recently, BVNPT staff oftentimes opened new cases in CAS without first querying CAS to determine whether a case had already been opened for the same incident. Currently available data suggests that at least about 10 percent of the cases that were opened were redundant (equivalent to about 150 of the 1,500 total arrest/conviction report cases opened per year). The CAS data extracts utilized to support completion of the Initial Assessment were not adjusted to exclude these identifiable redundant arrest/conviction report cases because additional research and analysis is needed to identify the magnitude of this problem and whether the magnitude of the problem was consistent over time. Consequently, the data summaries overstate BVNPT's arrest/conviction case workloads. BVNPT recently implemented improved case intake screening processes and provided training to staff to reduce the magnitude of (or eliminate) the opening of redundant licensee arrest/conviction report cases.

Finally, no data has been captured in CAS that differentiates 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. Additional information about the composition of these cases could potentially benefit management of this workload. 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).

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7. Database Noise

As part of this assessment BVNPT staff extracted 18 separate sets of CAS data pertaining to the intake and investigation of complaints 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, such as Statements of Issues (SOIs) and probationary license certificates issued to some new licensees in lieu of full licensure. We filtered, compiled, summarized and analyzed the data provided as needed for purposes of completing the Initial Assessment. To the extent practicable consistent with the scope of Phase I, we corrected significant anomalies in the data and, where appropriate, excluded some records from our analyses. In total, data related to more than 120,000 separately extracted complaint records were incorporated into our compilations, analyses and summaries.

As in any large database, there is always some incomplete or incorrect data (or “noise”). This is much more so with BVNPT’s CAS records than is usually the case at DCA-affiliated boards and bureaus. However, as best we can determine at this point, the aggregate data used for our analyses, except as noted above, is reasonably representative of BVNPT’s actual complaint and arrest and conviction report 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 (e.g., as is likely the case with the overstatement of licensee arrest/conviction report cases).

8. Interim Investigation Activities

BVNPT’s non-sworn investigators have not consistently posted updates to CAS for various interim investigation activities, including activities involving (1) issuance of requests for releases of medical and personnel records and receipt of the releases, (2) issuance of requests for records and receipt of the records, and (3) scheduling and completion of complainant, subject and witness interviews. Also, updates to CAS showing the initiation and completion of supervisory case reviews prior to case closure or referral of cases for disciplinary action were not consistently completed. Consequently, our ability to perform analyses of these types of activities is necessarily limited.

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9. Investigation Quality Measures

There are oftentimes concerns about the extent to which measures of Enforcement Program performance focus on outputs without consideration of the quality of the outputs (e.g., measures of the number of cases referred for prosecution, without consideration of the quality of the completed investigations). We anticipate that analyses completed during subsequent phases of the project will encompass various quantitative indicators that reflect the quality of completed investigations, including:

Supplemental Investigations – If a completed investigation does not contain sufficient evidence to meet the burden of proof, the AG can request a supplemental investigation to address the deficiencies or strengthen the case. Currently available data suggests that this occurs infrequently with BVNPT’s cases, possibly because most of BVNPT’s disciplinary action cases are triggered and supported by arrest/conviction reports. Also, currently available data suggests that most of the complaint cases referred for disciplinary action were investigated by the Division of Investigation.

AG Decline to File – If a completed investigation does not contain sufficient evidence to meet the burden of proof that cannot reasonably be corrected with a supplemental investigation, the AG can decline to file the case. Currently available data suggests that this occurs infrequently with BVNPT’s cases, possibly because most of BVNPT’s disciplinary action cases are triggered and supported by arrest/conviction reports. Also, currently available data suggests that most of the complaint cases referred for disciplinary action were investigated by the Division of Investigation.

Accusations Withdrawn or Dismissed – If after an accusation is filed it is determined that there is insufficient evidence to meet the burden of proof, the AG can, with the permission of the Board, withdraw the accusation or, if the case proceeds to hearing, the Hearing Officer can dismiss the case. However, accusations can be, and oftentimes are, withdrawn or dismissed for reasons completely unrelated to the quality of the completed investigation (e.g., death of the licensee, cancellation of the license, etc.).

We also expect to obtain qualitative information regarding the quality of BVNPT’s non-sworn investigations from representatives of the Division of Investigation and the Attorney General’s Office during subsequent project phases.

10. CAS to BreZe Conversion

On January 1, 2016, BVNPT ceased using CAS to track enforcement cases and began transitioning to the new BreZe system. This transition was still underway during March and April as we began the 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 BreZe data covering the second half of the 2015/16 fiscal year (January 1 through June 30, 2016). Early-2016 updates to the CAS data presented herein are limited and targeted to specific critical problems or issues.

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II. Evolution of BVNPT's Enforcement Program 2010/11 through Early-2016

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II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early-2016

This section provides an overview of the evolution of BVNPT's complaint, investigation and discipline workloads, workflows, backlogs and performance from 2010/11, immediately preceding start-up of BVNPT's internal non-sworn Investigation Section, through December 2015 when BVNPT began its conversion from CAS to BreZE. Additionally, in selected areas, additional workload, workflow, backlog and performance information is provided covering the period from January 1 through April 30, 2016. The section is organized as follows:

	Title
Section	A. Overview of Enforcement and License Applicant Cases Received
	B. Overview of Enforcement Cases Assigned for Investigation
	C. Overview of Completed Enforcement and License Applicant Investigations
	D. Overview of Pending Enforcement and License Applicant Investigations
	E. Overview of Administrative Discipline Actions
	F. Overview of Closed and Pending Formal Discipline Cases.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

A. Overview of Enforcement and License Applicant Cases Received

Exhibit II-1, on the next page, provides a summary of complaints received by BVNPT from 2010/11 through December 2015, excluding arrest/conviction report cases. During the past four (4) full fiscal years BVNPT received between 488 and 545 complaints per year. BVNPT's complaint case mix appears to be quite different from the mix of cases of many other DCA-affiliated boards and bureaus. An overview of the each of six (6) major categories of complaints received by BVNPT is provided below.

1. Discipline by Another State/Agency – About 40 to 50 Reports per Year *(Weekly Average = 1)*

In most cases discipline by another state/agency is identified by BVNPT Complaint Section staff by querying the National Council of State Boards of Nursing's nurse licensure and disciplinary database (NURSYS). Historically, the Complaint Section's analysts have completed desk investigations of most of these cases.

2. Employer Reports – About 175 to 200 Reports per Year *(Weekly Average = 4)*

BVNPT's Mandatory Employer Reporting requirement, which requires that employers of VNs and PTs notify BVNPT whenever a VN or PT is suspended or terminated for cause, was established at the request of BVNPT. Enabling legislation was enacted during 2003 and became effective on January 1, 2004, with implementation contingent on the availability of additional funding. The statute also establishes mandatory reporting requirements for VNs and PTs. During 2005 BVNPT submitted proposed regulations to implement the statutory requirements, but was advised that the proposed regulations would not be approved until BVNPT obtained funding to support their implementation. During 2006 new fee regulations were approved, effective January 1, 2007, that provided additional funding to support implementation of the statutory requirements. Subsequently, during 2007, BVNPT received approvals of:

- A Budget Change Proposal (BCP), effective July 1, 2007, enabling the hiring of additional Enforcement staff
- Revisions to its regulations, effective October 11, 2007.

Finally, during June 2008, BVNPT conducted forums in both Sacramento and Los Angeles to inform licensees and their employers about the new mandatory reporting requirements and potential penalties (up to \$10,000 for employers) for failure to comply with the requirements. **Exhibit II-2**, following Exhibit II-1, provides an overview of current mandatory reporting requirements for (1) employers of VNs and PTs and (2) licensees. Employer reports now account for about one-third of all complaints received.

3. Complaints from the Public and Others – About 125 to 150 Complaints per Year *(Weekly Average = 3)*

BVNPT receives complaints from patients, family members, friends, caregivers, other licensees (in some cases pursuant to mandatory reporting requirements) and various other sources, such as society/trade organizations, and complaints submitted anonymously. The relatively small number of Public complaints submitted to BVNPT in comparison to the large number of practicing BVNPT licensees (about 130,000), possibly reflects the nature of the services provided by VNs and PTs which are substantively different from the diagnostic and treatment services typically provided by physicians and surgeons, registered nurses and other licensed health care providers.

Historical Overview of Enforcement and License Applicant Cases Received

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	Jul-Dec 2015
Complaints	Discipline by Another State/Agency	49	40	44	41	52	58
	Employer Reports - All Offense Categories			201	195	176	119
	Public and Other - All Offense Categories	391	488	126	126	157	138
	Public Agencies - All Offense Categories			72	98	115	35
	Internal - Other than Fraud ¹			81	28	45	17
	Total Complaints Received, Excluding Internal - Fraud Cases	440	528	524	488	545	367
	²	159	122	189	152	13	130
	Internal - Fraud						
Total Complaints Received, Including Internal - Fraud Cases	599	650	713	640	558	497	
Arrest/Conviction Reports	License Applicants	2,447	3,027	2,822	3,790	3,305	502
	Licensees	2,023	1,948	1,485	1,360	1,550	920
	Total Arrest/Conviction Reports Received	4,470	4,975	4,307	5,150	4,855	1,422
Total Cases Received	Total Complaints and Arrest/Conviction Reports	5,069	5,625	5,020	5,790	5,413	1,919
	Less: License Applicant Arrest/Conviction Reports	(2,447)	(3,027)	(2,822)	(3,790)	(3,305)	(502)
	Total Enforcement Cases Received	2,622	2,598	2,198	2,000	2,108	1,417

¹ Excludes 32 cases involving non-compliance with mandatory employer reporting requirements.

² Includes both licensee failure to disclose a conviction on their license renewal application and licensee non-compliance with CE course completion or reporting requirements.

Overview of Mandatory Reporting Requirements for Employers and Licensees

Employer Reporting Requirements	Licensee Reporting Requirements
<p>Employers of Vocational Nurses (VN) and Psychiatric Technicians (PT) are required to report to BVNPT within 30 days the rejection from assignment, suspension or termination for cause, or resignation for cause, of any VN or PT in its employ due to any of the following:</p> <ul style="list-style-type: none"> ❖ Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice. ❖ Unlawful sale of a controlled substance or other prescription items. ❖ Patient or client abuse, neglect or physical harm. ❖ Sexual contact with a patient or client. ❖ Falsification of medical records. ❖ Gross negligence or incompetence. ❖ Theft from patients or clients, other employees, or the employer. <p>Employers are defined as including employment agencies and nursing registries which are required to report to BVNPT within 30 days the rejection from assignment of a VN or PT by a health facility or home health care provider due to acts that would be cause for suspension or termination for any of the above listed causes.</p>	<p>Vocational Nurses (VN) and Psychiatric Technicians (PT) are required to report to BVNPT within 30 days any act by another VN or PT that is prohibited by Sections 2878, 2878.1 and 2878.5 of the Business and Professions Code, including:</p> <ul style="list-style-type: none"> ❖ Unprofessional conduct, including incompetence, gross negligence, practicing medicine without a license and illegal use of advertising relating to nursing or psychiatric technician services. ❖ Use of excessive force upon or the mistreatment or abuse of any patient. ❖ Failure to maintain confidentiality of patient medical information. ❖ Commission of any act of dishonesty related to the duties and functions of the licensee, including falsification of medical charts, Medication Administration Records and timesheets. ❖ Knowing failure to protect patients by failing to follow infection control guidelines. ❖ Illegal possession, prescribing or self-administration of controlled substances. ❖ Illegal use of drugs or alcohol posing a danger to themselves, any other person, or the public or impairing ability to practice. ❖ Sexual misconduct with a patient or client.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

4. Public Agency Reports – About 100 Reports per Year (*Weekly Average = 2*)

Various public agencies have regulatory authority over the facilities where VNs and PTs commonly work, including the California Department of Public Health (CDPH), the California Department of Health Care Services (CDHCS) and the California Department of Social Services (CDSS) and other public agencies that administer programs involving the provision of care to the elderly and other targeted populations oftentimes served by BVNPT licensees, such as the Bureau of Medi-Cal Fraud and Elder Abuse within the California Department of Justice (DOJ) and the Center for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services. These agencies serve as an advance guard for the identification and referral of cases to BVNPT concerning possible offenses and violations by BVNPT's licensees.

5. Internal – Other Cases, Excluding Internal – Fraud Cases – About 50 Cases per Year (*Weekly Average = 1*)

During an investigation, information may be discovered that supports opening an investigation of another offense or violation involving the same license or an investigation of another licensee.

6. Internal – Fraud Cases – Up to Nearly 200 Cases per Year (*Weekly Average = Up to 4*)

While BVNPT staff sometimes open 150 to nearly 200 Internal – Fraud cases per year, during 2014/15 only 13 Internal – Fraud cases were opened. It is likely that most of the Internal - Fraud cases were generated from either:

- CE Program compliance audits completed by Licensing Program staff
- Audits of license renewal applications for compliance with conviction self-reporting requirements completed by Enforcement Division staff, including querying the Department of Motor Vehicles to identify cases where a licensee failed to disclose traffic-related offenses on their renewal application.

Fluctuations in the number of Internal – Fraud cases opened per year are, therefore, largely a function of whether these audits are completed, the timing of the audits, the number of licensees audited and the criteria utilized for opening new enforcement cases.

Including Internal – Fraud cases, over the last five (5) full fiscal years, BVNPT opened an average of 632 complaint cases per year. If Internal – Fraud cases are excluded, then BVNPT opened an average of 505 complaint cases per year over the last five (5) full fiscal years (*an average of about 10 cases per week*). Based on the data presented in Exhibit II-1, and taking into consideration various deficiencies in the quality of underlying CAS data upon which the data summary is based, it does not appear that there has been any significant growth in the number of complaint cases received by BVNPT during this period.

As shown by Exhibit II-1, during the past five (5) full fiscal years the total number of arrest/conviction report cases opened by BVNPT fluctuated between 4,300 cases and 5,150 cases (equivalent to about 7 to 8 times the average number of complaint cases opened during this period). However, in all years significantly more *license applicant* arrest/conviction report cases were opened than *licensee* arrest/conviction report cases. During the past several full fiscal years, BVNPT opened an average of about 1,500 *licensee* arrest/conviction report cases per year.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

Exhibit II-1 shows some significant variability in the number of licensee arrest/conviction reports received. The relatively larger numbers of licensee arrest/conviction reports received during 2010/11 and 2011/12, as compared to subsequent periods, are possibly related to implementation of retroactive fingerprinting in preceding years. Exhibit II-1 also shows an increase in the number of licensee arrest/conviction report cases opened during the 6-month period extending from July through December 2015 as compared to the number of licensee arrest/conviction report cases opened for comparable periods of time in prior years. It is unclear at this time whether this recent increase will continue or is a result of as yet undetermined one-time factors.

Exhibit II-1 also shows some significant shifts in the number of complaints received during the 6-month period extending from July through December 2015 as compared to the number of complaints received for comparable periods of time in prior years. For example, there were significant shifts in the distribution of licensee complaint cases, by case category, and an increase in the rate at which licensee complaint cases were opened during this 6-month period. The shifts in the distribution of licensee complaint cases received, by category, may be largely due to recent improvements in BVNPT's new case intake and coding processes. The increase in the total number of licensee cases received may be largely due to various one-time factors, including efforts to reduce pending case intake queues (e.g., by completing more timely reviews of NURSYS and license renewal applications). At this time there is no reason to believe that there has suddenly been any significant change in the total number of complaints received from external sources concerning BVNPT's licensees.

Finally, Exhibit II-1 shows a significant decrease in the number of license applicant arrest/conviction report cases opened during the 6-month period extending from July through December 2015 as compared to the number of license applicant arrest/conviction report cases opened for comparable periods of time in prior years. Over a period of several months beginning during July 2015, BVNPT restructured the license applicant arrest/conviction report case intake process by transferring various responsibilities to Licensing Program staff, including responsibility for:

- Reviewing license applicants' initial arrest/conviction report, issuing requests for the arrest report, court reports and applicant letter of explanation, and preparing and issuing deficiency letters to the applicant, if needed
- Maintaining the arrest/conviction report file pending the applicant's successful completion of the license examination and application process
- Screening the applicant's arrest/conviction record and then referring cases, including all cases involving substance abuse and criminal offenses, to the Enforcement Division for further review and, if needed, investigation.

As a result of this restructuring, significantly fewer license applicant cases are now being opened (about 500 during the first half of 2015/16 compared to an average of more than 3,000 per year during prior periods). However, the restructured process was only recently implemented and some cases are still being referred to Enforcement that do not involve offenses that would support denial of the license or issuance of a NOW in conjunction with approval of the license (e.g., traffic offenses). As the restructured process matures and case intake and screening improve, the number of license applicant cases referred to Enforcement may decrease further.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

B. Overview of Enforcement Cases Assigned for Investigation

Exhibit II-3, on the next page, provides a summary of the number of complaints assigned for desk, non-sworn and sworn investigation from 2010/11 through December 2015. A brief summary of the BVNPT's complaint assignments is provided below:

Complaint Section Assignments – During 2010/11, 472 complaint cases were assigned to Complaint Section analysts for desk investigation. Then, during 2011/12 only 142 cases were assigned for desk investigation and in 2012/13 only 58 cases were assigned for desk investigation. As BVNPT established its non-sworn Investigation Section during 2011/12, virtually all of the complaints that previously had been assigned for desk investigation were instead assigned to the Investigation Section. After 2010/11, cases assigned for desk investigation were largely limited to cases involving either (1) discipline by another state/agency or (2) Internal – Fraud, such as CE audit cases and licensee failure to disclose a reportable conviction on their renewal application.

Investigation Section Assignments – During 2011/12 and 2012/13, nearly 1,100 cases were assigned to BVNPT's new Investigation Section for investigation by non-sworn investigators. Subsequently, during 2013/14 and 2014/15, somewhat fewer cases were assigned to the Investigation Section (about 400 cases per year). The large number of cases initially assigned to the Investigation Section during 2011/12 and 2012/13 (an average of 135 cases per position) may have overwhelmed the capability of the Section to complete investigations of these cases.

Division of Investigation Assignments – During 2010/11, 115 complaint cases were assigned to the Division of Investigation for sworn investigation. The cases referred included a mix of offenses involving substance abuse, impairment and drugs, incompetence/negligence, unprofessional conduct and sexual misconduct. Then, during 2011/12 only 93 cases were referred and during 2012/13 only 15 cases were referred, all of which were initiated by the Division of Investigation. During 2014/15, no cases were referred to the Division of Investigation. As BVNPT established and then fully staffed the Section during 2011/12 and 2012/13, it began reducing and eventually completely discontinued the referral of cases to the Division of Investigation. In response to these developments, representatives of DCA made efforts to encourage BVNPT to comply with CPEI case prioritization guidelines and utilize the Division of Investigations' services. However, BVNPT continued to assign all licensee complaint cases to its own investigators. Subsequently, based on results of reviews of BVNPT's pending investigation cases completed by Division of Investigation staff and BVNPT, between May and December 2015 about 240 cases previously assigned to the Investigation Section were reassigned to the Division of Investigation. Also during 2015, BVNPT resumed referring selected cases directly to the Division of Investigation.

Historical Overview of Enforcement Cases Assigned for Investigation

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	Jul-Dec 2015
Total Complaints Assigned for Desk Investigation (Imputed Values)		472	142	55	217	43	51
Non-Sworn Complaint Investigations	Discipline by Another State/Agency		34	21	3	3	13
	Employer Reports - All Offense Categories		80	271	181	166	74
	Public and Other - All Offense Categories	15	153	147	124	104	70
	Public Agencies - All Offense Categories		35	84	88	95	24
	Internal - Other than Fraud ¹		97	94	26	17	22
	Internal - Fraud ²	2	36	29	4	4	1
	Total Complaints Assigned for Non-Sworn Investigation²	17	435	646	426	389	204
Sworn Complaint Investigations	Discipline by Another State/Agency	2	0	0	None Assigned	2	9
	Substance Abuse, Impairment and Drug-Related Offenses	41	25	0		40	65
	Incompetence/Negligence	43	41	1		27	50
	Unprofessional Conduct	15	14	0		22	56
	Internal - Fraud	4	2	10		0	4
	Sexual Misconduct	3	4	0		5	10
	Other	7	7	4		31	48
	Total Complaints Assigned for Sworn Investigation³	115	93	15		0	127
Total Complaints Assigned for Investigation		604	670	716	643	559	497
Licensee Arrest/Conviction Reports	Desk Investigations	1,982	1,761	1,552	1,337	1,560	925
	Non-Sworn Investigations	83	165	61	21	52	4
	Sworn Investigations	11	3	0	0	3	31
	Total Licensee Arrest/Conviction Reports Assigned for Investigation	2,076	1,929	1,613	1,358	1,615	960
Total Enforcement Cases	Desk Investigations	2,454	1,903	1,607	1,554	1,603	976
	Non-Sworn Investigations	100	600	707	447	441	208
	Sworn Investigations	126	96	15	0	130	273
	Total Enforcement Cases Assigned for Investigation	2,680	2,599	2,329	2,001	2,174	1,457

¹ Excludes 27 cases involving non-compliance with mandatory employer reporting requirements.

² Includes both licensee failure to disclose a reportable conviction on their license renewal application and licensee non-compliance with CE course completion or reporting requirements.

³ About 65 percent of the 369 cases assigned for sworn investigation during 2014/15 and 2015/16 were previously assigned for non-sworn investigation during the 4-year period extending from July 2011 through June 2015.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

Exhibit II-3 also provides a summary of licensee arrest/conviction report case assignments from 2010/11 through December 2015. As shown by Exhibit II-3, most licensee arrest/conviction report cases continued to be assigned to Complaint Section analysts for desk investigation. However, in 2010/11, 2011/12 and 2012/13, more than 300 licensee arrest/conviction cases were assigned to the Investigation Section, in addition to about 1,100 complaint cases assigned to the Section during this same period. Concurrently, BVNPT began reducing and eventually completely discontinued referring arrest/conviction report cases to the Division of Investigation. In total, more than 1,400 complaint and licensee arrest/conviction report cases were assigned to the Investigation Section over this 3-year period (an average of about 175 cases per investigator) but, as discussed previously in Section I, it was not until 2012/13 that a full complement of non-sworn investigators was available to investigate these cases.

C. Overview of Completed Enforcement and License Applicant Investigations

Exhibit II-4, on the next page, provides a summary of the number of completed desk, non-sworn and sworn complaint investigations completed from 2010/11 through December 2015. A brief summary of the BVNPT's completed investigations is provided below.

Completed Desk Investigations – During 2010/11, 715 desk investigations were completed by BVNPT's Complaint Section analysts, including:

- 66 cases involving discipline by another state/agency
- 177 Internal – Fraud cases
- 472 Other complaints.

Subsequently, Complaint Section analysts continued to complete investigations of Internal – Fraud cases and cases involving discipline by another state/agency, but the number of other cases investigated decreased to 129 cases completed during 2011/12 and then further decreased to just 30 or fewer cases completed per year during each of the next three (3) years.

Completed Non-Sworn Investigations – During 2011/12 and 2012/13, 238 complaint investigations were completed by the Investigation Section's non-sworn investigators. This compares to about 1,080 complaints assigned to the Investigation Section during its initial 2-year start-up period. Therefore, going into 2013/14, there were large numbers of cases with incomplete investigations that had been assigned to the Investigation Section during the preceding two (2) years. During the next two (2) fiscal years, non-sworn investigators completed 874 complaint investigations (an average of 437 completed investigations per year). This compares to 817 complaints assigned to the Investigation Section during 2013/14 and 2014/15 (an average of 408 cases per year). Additionally, over the 5-year period extending from 2010/11 through 2014/15, non-sworn investigators completed 331 licensee arrest/conviction report investigations. This compares to 382 licensee arrest/conviction report cases assigned to the Investigation Section during this same period. In summary, during initial start-up of the Investigation Section during 2011/12 and 2012/13, the Section's non-sworn investigators were unable to keep pace with the deluge of cases that was assigned, but then completed investigations of about as many cases as were assigned during each of the next two (2) years.

Historical Overview of Completed Enforcement and License Applicant Investigations

Case Category and Type		2010/11	2011/12	2012/13	2013/14	2014/15	Jul-Dec 2015		
Complaint Investigations	Desk Investigations	Discipline by Another State/Agency	66	21	15	40	33	35	
		Internal - Fraud ¹	177	68	125	122	103	62	
		All Other Sources and Offense Categories <i>2010/11 Avg. Elapsed Time = 12.1 Months.</i>	472	129	30	30	23	80	
		Total Completed Desk Complaint Investigations	715	218	170	192	159	177	
	Non-Sworn Investigations	Discipline by Another State/Agency	Not Applicable		5	10	15	13	7
		Employer Reports - All Offense Categories			3	34	102	181	52
		Public and Other - All Offense Categories			22	86	170	109	61
		Public Agencies - All Offense Categories			5	24	55	81	38
		Internal - Other than Fraud ²			6	35	80	50	19
		Internal - Fraud ¹			4	4	6	12	0
		Total Completed Non Sworn Complaint Investigations		Not Applicable	45	193	428	446	177
	<i>Average Elapsed Time to Complete Non Sworn Investigations (Months)</i>	<i>Not Applicable</i>	<i>16</i>	<i>16</i>	<i>19</i>	<i>21</i>	<i>26</i>		
	Sworn Investigations	Discipline by Another State/Agency	0	2	1	0	0	0	
		Substance Abuse, Impairment and Drug-Related Offenses	63	29	20	20	0	13	
		Incompetence/Negligence	53	31	44	23	3	5	
		Unprofessional Conduct	44	20	7	6	5	7	
		Fraud, Including Internal - Fraud	12	2	7	14	6	0	
		Sexual Misconduct	8	4	6	0	1	0	
		Unlicensed Practice and Other	20	4	4	3	0	11	
Total Completed Sworn Complaint Investigations		200	92	89	66	15	36		
Total Completed Complaint Investigations		915	355	452	686	620	390		
Licensee Arrest/Conviction Reports	Desk Investigations	2,383	1,781	1,758	1,496	1,416	1,079		
	Non-Sworn Investigations	0	192	31	60	48	39		
	Sworn Investigations	3	13	2	2	1	6		
	Total Completed Arrest/Conviction Report Investigations	2,386	1,986	1,791	1,558	1,465	1,124		
Total Completed Enforcement Investigations	Desk Investigations	3,098	1,999	1,928	1,688	1,575	1,256		
	Non-Sworn Investigations	0	237	224	488	494	216		
	Sworn Investigations	203	105	91	68	16	42		
	Total Completed Enforcement Investigations (Unweighted)	3,301	2,341	2,243	2,244	2,085	1,514		
License Applicant Investigations	Arrest/Conviction Report Desk Investigations	2,102	2,772	2,896	3,492	4,676	1,751		
	Arrest/Conviction Report Non-Sworn Investigations	1	32	0	0	6	0		
	Sworn Investigations	0	1	0	1	1	3		
	Total Completed License Applicant Investigations	2,103	2,805	2,896	3,493	4,683	1,754		

¹ Includes both licensee failure to disclose a reportable conviction on their license renewal application and licensee non-compliance with CE course completion or reporting requirement

² Excludes 25 cases involving non-compliance with mandatory employer reporting requirements. II-10

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

Completed Sworn Investigations – During 2010/11 the Division of Investigation's sworn investigators completed 200 complaint investigations. Subsequently, as BVNPT reduced and then completely discontinued the referral of cases to the Division, the number of investigations completed by the Division decreased. During 2011/12 and 2012/13 about 90 investigations were completed per year. During the next two years the number of investigations completed declined to just 66 cases in 2013/14 and just 15 cases in 2014/15.

In summary, during 2010/11, prior to start-up of the Investigation Section, a combined total of more than 900 complaint investigations were completed by BVNPT's Complaint Section analysts and the Division of Investigation's sworn investigators. Then, over a 2-year period during 2011/12 and 2012/13, concurrent with start-up of the Investigation Section, a combined total of only 807 complaint investigations were completed by all three (3) business units. Subsequently, during the next two (2) years, a combined total of about 650 complaint investigations were completed per year by all three (3) business units, nearly 30 percent fewer investigations than were completed during 2010/11 prior to start-up of the Investigation Section.

Exhibit II-4 also provides a summary of the number of completed desk, non-sworn and sworn licensee arrest/conviction report investigations completed from 2010/11 through December 2015. As shown by Exhibit II-4, these investigations were completed nearly entirely by BVNPT's Complaint Section analysts. However, during the 5-year period shown on Exhibit II-4, the number of completed licensee arrest/report investigations steadily decreased, from nearly 2,400 completed investigations during 2010/11 to less than 1,500 completed investigations during 2014/15 (a 38 percent decrease). This decrease likely reflects reduced workload following implementation of retroactive fingerprinting in prior years.

There is some evidence of recent improvement in Enforcement Program performance in terms of the number of completed investigations. For example, during the first half of 2015/16 (July to December, 2015) the number of desk and sworn complaint investigations completed by Complaint Section and Division of Investigation staff, respectively, increased compared to comparable 6-month periods in prior fiscal years. However, this improvement was partially offset by a decrease in the number of non-sworn complaint investigations completed during this same period compared to levels achieved in the prior two (2) years. Additionally, during this 6-month period, Complaint Section analysts completed 1,079 investigations of licensee arrest/conviction reports compared to about 1,400 licensee arrest/conviction report cases completed during the full 2014/15 fiscal year.

Exhibit II-4 also provides data showing the average elapsed time required by BVNPT's non-sworn investigators to complete complaint investigations. During 2011/12 the non-sworn investigations that were completed took an average of about 16 months to complete. Subsequently, the average duration of completed non-sworn investigations increased significantly to:

- 19 months for investigations completed during 2013/14
- 21 months for investigations completed during 2014/15
- 26 months for investigations completed during the first half of 2015/16, an increase of more than 60 percent from 2011/12.

Furthermore, these elapsed times can be compared to the average elapsed time required by Complaint Section analysts to complete complaint investigations prior to 2011/12, excluding investigations of Internal – Fraud cases and cases involving discipline by another state/agency. During

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

2010/11 the average elapsed time required by Complaint Section analysts to complete the 472 complaint investigations that were completed during that year was about 12 months, or less than one-half the average elapsed time needed by BVNPT's non-sworn investigators to complete complaint investigations that were completed during the first half of 2015/16.

Finally, Exhibit II-4 shows the number of license applicant arrest/conviction report investigations completed, by year, from 2010/11 through December 2015. The number of license applicant arrest/conviction report investigations completed per year increased by more than 120 percent over the 5-year period from 2010/11 through 2014/15 (from about 2,100 cases during 2010/11 to nearly 4,700 cases during 2014/15). The 2,600 increase in the number of license applicant arrest/conviction report investigations completed per year over this period exceeds the combined total of all licensee complaint and licensee arrest/conviction report cases completed per year. Consequently, by 2014/15 completed licensee complaint and licensee arrest/conviction report investigations accounted for only 31 percent of all completed investigations. However, as discussed previously in Section I-E.1, there are several significant inconsistencies, anomalies and other problems with the license applicant arrest/conviction report data and, even if these problems did not exist, combining workload or performance data for license applicant arrest/conviction cases with workload or performance data regarding licensee complaint and licensee arrest/conviction report cases is a fundamentally flawed business practice that should not be continued. For purposes of this Initial Assessment we have consistently differentiated these disparate workloads and separately reported related workload and performance metrics.

In summary, concurrent with and following start-up of BVNPT's Investigation Section, overall Enforcement Program performance deteriorated significantly in terms of the number of completed investigations and the average elapsed time needed to complete these investigations. More recently, as a result of changes implemented during the past 8 to 10 months, there is some evidence of improvement in Enforcement Program performance. For example, during the 4-month period from January through April 2016 a combined total of more than 400 complaint investigations were completed, including:

- 182 desk investigations
- 235 non-sworn investigations
- 35 sworn investigations.

This compares to a combined total of 620 complaint investigations completed during the full 2014/15 fiscal year and 390 complaint investigations completed during the first half of 2015/16. Additionally, the number of desk and the number of non-sworn complaint investigations completed over this 4-month period exceeded the numbers of desk and non-sworn complaint investigations completed over the prior 6-month period.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

D. Overview of Pending Enforcement and License Applicant Investigations

Exhibit II-5, on the next page, provides a summary of the number of pending desk, non-sworn and sworn complaint investigations, by year, from June 30, 2010 through December 31, 2015. A brief summary of the BVNPT's pending complaint investigations is provided below.

Pending Desk Complaint Investigations – The number pending desk complaint investigations declined significantly during this period, from 554 cases on June 30, 2010 to 108 cases on December 31, 2015. This decrease is consistent with the previously discussed reductions in the number of complaint cases assigned to Complaint Section analysts for investigation during this period.

Pending Non-Sworn Complaint Investigations – The number of pending non-sworn complaint investigations exploded concurrent with start-up of the Investigation Section during 2011/12 and 2012/13. During this period the Investigation Section accumulated about 840 open complaint investigations reflecting the difference between the number of complaint cases assigned to the Section during this period (1,081) and the number of complaint investigations completed (238). By the end of 2012/13 an average of more than 100 complaint cases per investigator were assigned to the Section. Subsequently, the number of pending non-sworn complaint investigations remained static until May 2015 when BVNPT began transferring several hundred pending non-sworn complaint cases to the Division of Investigation.

Pending Sworn Complaint Investigations – The number of pending sworn complaint investigations declined significantly prior to 2014/15 from 236 pending cases on June 30, 2010 to just 12 pending cases on June 30, 2014. This decrease is consistent with the previously discussed reductions in the number of complaint cases assigned to the Division of Investigation during this period. Subsequently, reflecting the referral of more than 350 complaint cases to the Division of Investigation during 2015, the number of pending sworn investigations increased significantly (to 331 pending cases as of December 31, 2015).

As shown by Exhibit II-5, the combined total number of pending complaint investigations increased by about 25 percent from about 800 pending cases as of June 30, 2010 to about 1,000 pending cases as of June 30, 2014. Subsequently, the total number of pending complaint investigations decreased to about 900 cases as of June 30, 2015, but then increased to more than 1,000 pending cases as of December 31, 2015.

Exhibit II-5 also provides a summary of the number of pending licensee arrest/conviction report cases from June 30, 2010 through December 31, 2015. Nearly all of these cases were assigned to Complaint Section analysts and the number of cases pending decreased during this period by more than 50 percent (from 1,764 pending cases as of June 30, 2010 to just 781 pending cases as of December 31, 2015). The size of the decrease in pending licensee arrest/conviction report cases significantly exceeded the increase in pending complaint investigations during this same period, resulting in a significant decrease in the combined total number of pending investigations (from 2,568 pending investigations as of June 30, 2010 to 1,830 pending investigations as of June 30, 2015). This outcome again highlights the problem associated with combining data to produce aggregate metrics for multiple disparate categories of cases.

Historical Overview of Pending Enforcement and License Applicant Investigations

Case Category and Type		06/30/10	06/30/11	06/30/12	06/30/13	06/30/14	06/30/15	12/31/15	
Pending Complaints	Desk Investigations	Discipline by Another State/Agency	55	33	21	29	26	41	48
		Internal - Fraud ¹	32	14	23	73	98	4	70
		All Other Sources and Offense Categories	467	267	164	31	28	63	29
		Total Pending Desk Complaint Investigations	554	314	208	133	152	108	147
	Non-Sworn Investigations	Discipline by Another State/Agency	1	3	32	43	28	17	19
		Employer Reports - All Offense Categories				311	390	331	294
		Public and Other - All Offense Categories	13	32	359	189	150	113	110
		Public Agencies - All Offense Categories				113	147	144	86
		Internal - Other than Fraud ²				156	101	58	51
		Internal - Fraud ¹	0	2	34	26	24	15	11
	Total Pending Non-Sworn Complaint Investigations	14	37	425	838	840	678	571	
	Sworn Investigations	Discipline by Another State/Agency	1	3	1	0	0	2	11
		Substance Abuse, Impairment and Drug-Related Offenses	68	46	42	22	2	42	94
		Incompetence/Negligence	67	57	67	24	1	25	70
		Unprofessional Conduct	53	24	18	11	5	22	71
		Fraud, Including Internal - Fraud	15	9	11	18	4	16	50
		Sexual Misconduct	11	6	6	0	0	4	14
		All Other Offense Categories	21	6	7	3	0	14	21
		Total Pending Sworn Complaint Investigations	236	151	152	78	12	125	331
	Total Pending Complaint Investigations	804	502	785	1,049	1,004	911	1,049	
	Licensee Arrest/Conviction Reports	Desk Investigations	1,744	1,334	1,243	1,012	834	925	739
Non-Sworn Investigations		15	91	69	96	52	51	14	
Sworn Investigations		5	13	3	1	0	3	28	
Total Pending Arrest/Conviction Report Investigations		1,764	1,438	1,315	1,109	886	979	781	
Total Pending Enforcement Investigations	Desk Investigations	2,298	1,648	1,451	1,145	986	1,033	886	
	Non-Sworn Investigations	29	128	494	934	892	729	585	
	Sworn Investigations	241	164	155	79	12	128	359	
	Total Pending Enforcement Investigations (Unweighted)	2,568	1,940	2,100	2,158	1,890	1,890	1,830	
License Applicant Investigations	Desk Arrest/Conviction Report Investigations	2,080	2,391	2,643	2,565	2,870	1,485	244	
	Non-Sworn Arrest/Conviction Report Investigations	4	31	3	3	4	1	0	
	Sworn Investigations	4	4	4	4	4	3	0	
	Total Pending License Applicant Investigations	2,088	2,426	2,650	2,572	2,878	1,489	244	

¹ Includes both licensee failure to disclose a reportable conviction on their license renewal application and licensee non-compliance with CE course completion or reporting requirements.

² Excludes 25 cases involving non-compliance with mandatory employer reporting requirements.

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Finally, Exhibit II-5 shows the number of pending license applicant arrest/conviction report investigations, by year, from June 30, 2010 through December 31, 2015. The number of pending license applicant arrest/conviction report investigations increased by nearly 40 percent over the 5-year period from 2010/11 through 2014/15, from about 2,100 pending cases on June 30, 2010, to nearly 2,900 pending cases as of June 30, 2014. Subsequently, during 2014/15 the number pending license applicant cases declined by nearly 50 percent to under 1,500 cases and, during the first half of 2015/16, the number of pending license applicant cases declined further to under 250 cases. This latter decline reflects the impacts of BVNPT's restructuring of the handling of license applicant cases discussed previously in Section II.A (*Overview of Enforcement and License Applicant Cases Received*). However, as discussed previously in Section I-E.1 and II-C, there are significant inconsistencies, anomalies and other problems with the historical license applicant arrest/conviction report data.

Exhibit II-6, on the next page, provides an additional summary of pending complaint investigations by age of the cases. A brief summary of the aged case data presented in Exhibit II-6 is provided below.

Age of Pending Desk Investigations – The average age of the declining numbers of pending desk investigations decreased significantly from about 10 months for cases pending as of June 30, 2010 to just three (3) months for cases pending as of December 31, 2015. This data reflects the positive correlation that oftentimes occurs between the number and average age of pending cases.

Age of Pending Non-Sworn Investigations – Many of the cases inherited by the new Investigation Section during 2011/12 were already quite old. More than 30 percent of the investigations that were pending as of June 30, 2012 were already more than one (1) year old and more than 50 cases were already more than two (2) years old, including some cases that were 3 to 4 years old, or older. Subsequently, the average age of the Investigation Section's increasing numbers of pending investigations increased by nearly 60 percent from about 12 months during the Section's start-up in 2011/12 to 19 months by June 30, 2015. The increase in the average age of the Section's pending complaint investigations occurred notwithstanding the increase in the number of investigations completed during 2013/14 and 2014/15 as compared to the preceding two (2) fiscal years. This data shows that Section staff increasingly focused their investigation efforts on newer cases resulting in higher numbers of completed cases, but increasingly older backlogs of pending cases.

Age of Pending Sworn Investigations – The average age of the declining numbers of pending sworn investigations increased as case assignments to the Division of Investigation decreased eventually leaving the Division of Investigation with just a dozen of its oldest cases. Subsequently, reflecting the reassignment of about 240 aged non-sworn investigation cases to the Division of Investigation during 2015, the average age of the Division's pending cases adjusted to the average age of the Investigation Section's pending cases.

Finally, Exhibit II-6 shows that the combined total average age of all of BVNPT's pending complaint investigations increased by more than 40 percent, from an average age of about 12 months as of June 30, 2010 to an average age of about 17 months as of June 30, 2015.

Historical Overview of Pending Complaint Investigations, By Age¹

Age Category		06/30/10	06/30/11	06/30/12	06/30/13	06/30/14	06/30/15	12/31/15
Desk Investigations	Less than 1 Year	417	182	176	101	138	94	144
	1 to 2 Years	105	96	23	22	10	13	3
	2 to 3 Years	23	32	6	6	2	0	0
	3 to 4 Years	6	4	2	4	2	1	0
	More than 4 Years	3	0	1	0	0	0	0
	Total Pending Desk Complaint Investigations	554	314	208	133	152	108	147
Average Age of Pending Complaint Cases (Months)	10	12	7	8	5	5	3	
Non-Sworn Investigations	Less than 1 Year	11	19	293	417	342	238	257
	1 to 2 Years	1	15	80	331	297	209	140
	2 to 3 Years	2	1	36	63	181	163	101
	3 to 4 Years	0	2	12	23	18	62	62
	More than 4 Years	0	0	4	4	2	6	11
	Total Pending Non-Sworn Complaint Investigations	14	37	425	838	840	678	571
Average Age of Pending Complaint Cases (Months)	11	13	11	13	16	19	17	
Sworn Investigations ²	Less than 1 Year	76	72	61	10	0	57	152
	1 to 2 Years	92	49	63	35	0	32	82
	2 to 3 Years	50	16	18	21	11	16	59
	3 to 4 Years	14	10	8	9	0	20	24
	More than 4 Years	4	4	2	3	1	0	14
	Total Pending Sworn Complaint Investigations	236	151	152	78	12	125	331
Average Age of Pending Complaint Cases (Months)	19	16	16	23	29	17	17	
Total Pending Complaint Investigations		804	502	785	1,049	1,004	911	1,049
Average Age of Pending Complaint Cases (Months)		12	13	11	13	14	17	15

¹ Excludes non-licensure complaints.

² 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.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early-2016

More recently, as a result of changes implemented during the past 8 to 10 months, there is some evidence of improvement in Enforcement Program performance. For example:

- ❖ During the 4-month period from January through April 2016, the total number of pending complaint investigations decreased by 17 percent from about 1,050 pending complaint cases as of December 31, 2015 to 864 pending complaint cases as of April 30, 2016
- ❖ The average age of these pending complaint cases decreased by 20 percent from 15 months as of December 31, 2015 to 12 months as of April 30, 2016
- ❖ The total number of pending licensee arrest/conviction report cases decreased by more than 20 percent, from 781 pending cases as of December 31, 2015 to about 600 pending cases as of April 30, 2016.

In summary, concurrent with and following start-up of BVNPT's Investigation Section, overall Enforcement Program performance deteriorated significantly in terms of the number and average age of pending complaint investigations. While the total number of pending enforcement investigations decreased significantly during this period, the decrease was entirely a result of a significant decrease in the number of pending licensee arrest/conviction report cases which (1) more than offset a significant increase in the number of pending complaint investigations and (2) completely distorted and obscured workload, backlog and performance metrics related to investigating complaints submitted by the patients, employers, other public agencies and others regarding BVNPT's licensees. This outcome further highlights the previously discussed problem with combining data for multiple disparate categories of cases to generate largely meaningless aggregate workload or performance metrics.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

E. Overview of Administrative Discipline Actions

Exhibit II-7, on the next page, provides a summary of the number of Notices of Warning (NOWs) and citations issued from 2010/11 through December 31, 2015. The high numbers of NOWs and citations issued for licensee arrest/conviction report cases during 2010/11 and 2011/12 may be related to implementation of retroactive fingerprinting requirements for licensees during preceding years.

In recent years BVNPT consistently issued about 600 to 660 NOWs to licensees per year. Also, sample data for 2011/12 and 2013/14 suggests that about 350 to 450 of these NOWs are issued for reported arrest/conviction offense(s). Additionally, in recent years BVNPT consistently issued about 60 to 80 citations to licensees per year for reported arrest/conviction offenses. This compares to an average of about 1,500 licensee arrest/conviction report cases received and investigated per year during this same period. Thus, on a combined basis, NOWs or citations are issued for about 30 percent of the total licensee arrest/conviction report cases handled by BVNPT.

Exhibit II-7 also shows that varying numbers of citations for Internal – Fraud cases are issued by BVNPT. As discussed previously, the Internal – Fraud cases most likely involve either (1) licensee non-compliance with CE Program requirements or (2) licensee failure to disclose on their license renewal application a reportable conviction, including failure to disclose traffic offenses determined by BVNPT staff by querying the Department of Motor Vehicles (DMV). The fluctuations shown in the number of citations issued for Internal – Fraud cases may reflect (1) variability in the number, scope and timing of CE and license renewal application audits completed by BVNPT staff or (2) variability in the criteria utilized by BVNPT staff for determining whether to open these cases, or both.

As shown by Exhibit II-7, in recent years BVNPT issued varying numbers of NOWs and about a dozen or fewer citations to licensees for Other Offenses, and issued few citations to non-licensees. Also, the total amount of fines assessed for all offenses decreased during the past several years in parallel with decreases in the total number of citations issued. BVNPT rarely issued citations without also assessing a fine, except in the case of 2014/15 when up to nine (9) citations may have been issued without a fine.

Finally, Exhibit II-7 shows that BVNPT consistently issued about 800 to 1,000 NOWs to license applicants from 2010/11 through 2014/15. However, the number of NOWs issued as a proportion of the total number of completed license applicant investigations completed decreased significantly as the number of license applicant cases received increased during this period. For example, from 2010/11 through 2012/13, NOWs were issued for about 36 percent of the 2,600 license applicant arrest/conviction report investigations that were completed per year during this 3-year period. Subsequently, during 2013/14 and 2014/15, NOWs were issued for only about 22 percent of the nearly 4,100 license applicant arrest/conviction report investigations that were completed per year during this 2-year period. This data further supports previously discussed findings regarding the abrupt and as yet unexplained increase in the number of license applicant arrest/conviction report cases received during 2013/14 and, to a lesser extent, during 2014/15. The data also suggests that especially large numbers of cases were possibly opened during 2013/14 for minor offenses and reinforces findings discussed previously in Section I-E.1 that these cases were possibly not investigated to any extent beyond completing an initial review of the applicant's arrest/conviction report and then closing the case without requesting or receiving (1) certified copies of the arrest report, (2) certified copies of court records or (3) a letter of explanation from the applicant.

Historical Overview of Administrative Discipline Actions

Notices of Warning (NOW)		2010/11	2011/12	2012/13	2013/14	2014/15 ¹	Jul-Dec 2015
Licensee	Continuing Education (estimated)		0		62		Not Available
	Arrest/Conviction Reports (estimated)	Not Available	353	Not Available	452	Not Available	
	Other Offenses (estimated)		311		143		
	Total Licensee Notices of Warning	873	664	655	657	597	
License Applicant Notices of Warning		947	1,012	883	990	784	354

Citations		2010/11	2011/12	2012/13	2013/14	2014/15 ¹	Jul-Dec 2015
Licensee	Internal - Fraud	141	60	101	42	2	44
	Arrest/Conviction Reports	211	155	61	71	81	84
	Other Offenses	91	27	10	4	11	13
	Total Licensee Citations	443	242	172	117	94	141
Non-Licensee Citations		20	5	2	1	0	1
Total Enforcement Citations		463	247	174	118	94	142
License Applicant Citations		2	10	24	22	8	21
Total Enforcement and License Applicant Citations		465	257	198	140	102	163
Total Amount of Fines Assessed		\$271,552	\$129,300	\$116,105	\$102,038	\$63,155	\$87,966

¹ Includes nine (9) citations possibly issued without a fine.

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

F. Overview of Closed and Pending Formal Discipline Cases

Exhibit II-8, on the next page, provides a summary of the number of closed and pending non-licensee, licensee and license applicant cases referred by BVNPT to the Office of the Attorney General (AG) from 2010/11 through December 2015. A brief summary of the disciplinary case information presented in Exhibit II-8 is provided below.

Total Licensee Discipline Cases Closed

There were significant fluctuations in the total number of licensee discipline cases closed over the 5½ year period shown of Exhibit II-8. On average, about 220 discipline cases were closed per year during this period. Of these, nearly 70 percent (about 150 cases per year) were licensee arrest/conviction report cases. As discussed previously, nearly all investigations of licensee arrest/conviction reports are completed by Complaint Section analysts. Also, these investigations are largely completed by:

- Reviewing the licensee's arrest/conviction record
- Requesting a certified copy of the arrest report
- Requesting certified copies of related court records and reports
- Requesting a letter of explanation from the licensee
- Reviewing these documents to determine whether formal disciplinary action is supported
- Preparing and submitting a Statement of Reasons with the supporting documents to the AG in cases where formal disciplinary action is supported or, alternatively, preparing and issuing a NOW or citation.

Fluctuations in the number of closed arrest/conviction report cases account for most of the fluctuations in the total number of closed licensee discipline cases.

Licensee Complaint Cases Closed

On average over the 5½ year period shown, excluding licensee arrest/conviction report cases, about 70 licensee complaint cases were closed per year. This compares to an average of 500 licensee complaint investigations completed during this period, excluding Internal – Fraud cases which account for very few of the formal discipline cases that BVNPT refers to the AG. This data suggests that, excluding Internal – Fraud cases, about 15 to 20 percent of BVNPT's licensee complaint cases involve offenses that potentially support taking formal disciplinary action against the licensee. Additionally, consistent with BVNPT's past practice of assigning cases involving serious criminal misconduct and significant patient harm to the Division of Investigation where they would be investigated by sworn investigators, available data and anecdotal information suggest that most of the cases referred to the AG in the past were investigated by the Division of Investigation. However, as discussed previously, during 2013/13 and 2013/14 BVNPT reduced and then completely discontinued assigning licensee complaint investigations to the Division of Investigation and instead assigned these types of cases to the Investigation Section where most of the cases languished until reassigned to the Division of Investigation during 2015.

Historical Overview of Closed and Pending Discipline Cases

Discipline Cases Closed		2010/11	2011/12	2012/13	2013/14	2014/15	Jul-Dec 2016
Licensee	Arrest/Conviction Reports	73	85	160	142	216	152
	Discipline by Another State/Agency	4	3	7	7	3	1
	Internal - Fraud	2	1	3	3	10	10
	Substance Abuse, Impairment and Drug-Related Offenses	18	15	30	17	14	6
	Incompetence/Negligence, Unprofessional Conduct and Other Offenses	37	30	55	31	35	33
	Total Licensee Cases Closed	134	134	255	200	278	202
Non-Licensee Cases Closed		0	3	1	1	0	0
Total Enforcement Cases Closed		134	137	256	201	278	202
License Applicant Cases Closed (Primarily Arrest/Conviction Reports)		14	51	64	54	41	49
Total Enforcement and License Applicant Cases Closed		148	188	320	255	319	251

Pending Discipline Cases		06/30/10	06/30/11	06/30/12	06/30/13	06/30/14	06/30/15	12/31/15
Licensee Cases	Arrest/Conviction Reports	166	222	327	321	368	298	230
	Discipline by Another State/Agency	5	11	13	7	11	10	14
	Internal-Fraud	2	5	6	11	14	13	0
	Substance Abuse, Impairment and Drug-Related Offenses	41	55	69	37	30	20	17
	Incompetence/Negligence, Unprofessional Conduct and Other Offenses	93	107	122	80	89	85	69
	Total Pending Licensee Cases	307	400	537	456	512	426	330
Pending Non-Licensee Cases		1	7	3	3	1	0	0
Total Pending Enforcement Cases		308	407	540	459	513	426	330
Pending License Applicant Cases (Primarily Arrest/Conviction Reports)		32	93	111	93	82	77	38
Total Pending Enforcement and License Applicant Cases		340	500	651	552	595	503	368

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

Total Pending Licensee Enforcement Cases

Largely as a result of shifts in the number of pending licensee arrest/conviction cases, in recent years the total number of pending licensee enforcement cases fluctuated between about 400 and 550 cases. However, during the first half of 2015/16 about 150 licensee arrest/conviction report cases were closed and the number of pending licensee arrest/conviction report cases, along with the total number of pending licensee enforcement cases, decreased significantly (from 426 pending cases as of June 30, 2015 to 330 pending cases as of December 31, 2015). This recent reduction in the number of pending licensee cases is largely attributable to changes implemented by BVNPT related to the negotiation and settlement of cases where probation is sought, rather than revocation, and a settlement of the case can be reached in lieu of unnecessarily carrying the case through to Hearing. As of April 30, 2016, the total number of pending discipline cases was further reduced to just 285 cases, including both enforcement cases and several dozen pending license applicant cases, the lowest number of pending disciplinary cases in more than six (6) years.

Closed and Pending Non-Licensee Cases

The historical CAS data shows that BVNPT sometimes referred non-licensee cases to the AG. The rationale supporting the referral of these cases to the AG is not clear, but may have been related to BVNPT's decision to reduce and then completely discontinue the referral of cases to the Division of Investigation. Currently, BVNPT refers non-licensee cases to the Division of Investigation which then coordinates their investigation with local District Attorneys, as appropriate.

Closed and Pending License Applicant Cases

On average, about 50 license applicant cases are closed per year and, in recent years, there has been little fluctuation in the number of license applicant cases that are closed. However, the annualized rate of license applicant case closures recently increased. During the 6-month period extending from July through December 2015, 49 license applicant cases were closed. Concurrently, the number of pending license applicant cases decreased significantly, from 77 cases pending as of June 30, 2015 to just 38 cases pending as of December 31, 2015. These improvements reflect the previously discussed changes implemented by BVNPT related to the negotiation and settlement of cases where probation is sought and a settlement of the case can be reached in lieu of unnecessarily carrying the case through to Hearing.

Finally, the recent increases in the number of discipline cases closed, while reducing discipline case backlogs, may be impacting Probation Unit workload, where caseloads already appear quite high for some staff, partially due to the redirection of some Probation Unit staff to support implementation of BreZE. Additionally, as discussed previously in Sections II-C and II-D, there is some evidence of recent improvements in Enforcement Division performance that may be accelerating the flow of licensee arrest/conviction report cases, licensee complaint cases, and license applicant cases to the AG. For example:

- ❖ During the first half of 2015/16 there was an increase in the number of desk and sworn complaint investigations completed by the Complaint Section and the Division of Investigation, respectively, compared to comparable 6-month periods in prior fiscal years. Additionally, Complaint Section staff completed nearly 1,100 licensee arrest/conviction report investigations compared to about

II. Evolution of BVNPT's Enforcement Program – 2010/11 Through Early–2016

1,400 licensee arrest/conviction report investigations completed during the full 2014/15 fiscal year. On average, about 10 to 15 percent of licensee arrest/conviction report cases are referred to the AG for formal discipline.

- ❖ Subsequently, over the next four (4) months, from January through April 2016, a combined total of more than 400 complaint investigations were completed, compared to a total of 620 complaint investigations completed during the full 2014/15 fiscal year and 390 complaint investigations completed during the first half of the 2015/16 fiscal year. The numbers of desk and non-sworn complaint investigations completed over this 4-month period both exceeded the number of desk and non-sworn complaint investigations completed over the prior 6-month period. Additionally, nearly 800 licensee arrest/conviction report investigations were completed compared to about 1,100 licensee arrest/conviction report investigations completed during the preceding six (6) months.

Assuming a continuation of current efforts to accelerate closures of discipline cases by settling the cases where probation is sought in lieu of carrying the case through to Hearing, the increased flow of cases to the AG may quickly translate to significantly increased workload for BVNPT's Discipline Section, including workload related to:

- ❖ Managing and overseeing discipline cases
- ❖ Reviewing pleadings
- ❖ Negotiating settlements
- ❖ Reviewing settlement agreements
- ❖ Processing Petitions for Reinstatement
- ❖ Completing Board votes
- ❖ Serving Board decisions
- ❖ Monitoring probationers for the full term of their probation, usually for a period of three (3) years.

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III. Key Issues

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III. Key Issues

This section summarizes 10 key issues that surfaced during BVNPT's 2014/15 Sunset Review or came to our attention during completion of the Initial Assessment. In most cases members of BVNPT's Management Team were already aware of and knowledgeable about these issues and have begun implementing corrective measures structured to address associated problems and concerns. Our purpose here is to provide a framework for organizing relevant background information about each issue so that determinations can be made regarding needs for additional assessment of these issues and additional corrective measures to fully resolve associated problems and concerns. The section is organized by issue, as follows:

	Title
Section	A. License Applicant Arrest/Conviction Reports
	B. Complaint Intake Process
	C. Case Referrals to the Division of Investigation
	D. Legacy Backlogs of Aged Non-Sworn Complaint Investigations
	E. Variability in Sanctions or Discipline Imposed
	F. Enforcement Program Guidelines, Policies and Procedures
	G. Organizational Conflict and Turnover of Staff
	H. Enforcement Program Workforce Development and Utilization
	I. Enforcement Program Workload, Workforce and Performance Management Processes
	J. Communication and Collaboration with Board Members, the Legislature and Other Public Agencies.

III. Key Issues

A. License Applicant Arrest/Conviction Reports

BVNPT’s handling and reporting of license applicant arrest/conviction reports was discussed previously in Section I.E.1 and Section II. As discussed previously, the number of license applicant arrest/conviction reports received by BVNPT inexplicably increased by about 55 percent from less than 2,500 received during 2010/11 to nearly 3,800 received during 2013/14. Throughout this period there was little change in the number of Notices of Warning (NOWs) issued to license applicants, which fluctuated between about 900 and 1,000 NOWs issued per year. Additionally, as shown by **Table III-1**, below, notwithstanding the large increase in number of license applicant arrest/conviction reports received and investigated, the number of License Denials issued per year changed very little during this period and, consistent with this, there was little change in the number of appealed license denials which prompts the preparation and filing of an SOI (Statement of Issues). Also, there was little change in the total number of citations issued to license applicants or other discipline case dispositions (primarily withdrawal of the case by either the applicant or BVNPT, issuance of a probationary license, or adjudicated denial of the license), even with consideration of the time lags associated with preparing and filing the SOIs and dispositioning the cases.

Table III-1. Historical Overview of License Applicant Case Intake, Investigations and Outcomes

	2010/11	2011/12	2012/13	2013/14	2014/15
Arrest/Conviction Reports Received	2,447	3,027	2,822	3,790	3,305
Percent Change from 2010/11	N/A	24%	15%	55%	35%
Arrest/Conviction Report Investigations Completed	2,102	2,772	2,896	3,492	4,676
Total Notices of Warning (NOW) Issued	947	1,012	883	990	784
Proportion of Completed Investigations Resulting in Issuance of a NOW	45%	37%	30%	28%	17%
Total License Denials Issued	59	81	85	95	84
Proportion of Completed Investigations Resulting in License Denial	2.8%	2.9%	2.9%	2.7%	1.8%
Total Statement of Issues (SOI) Filed	51	80	68	47	69
Total Citations Issued to License Applicants	2	10	24	22	8
Total Other AG License Applicant Case Dispositions (Primarily SOI Withdrawal, Probation or Adjudicated Denial)	12	41	40	32	33
Total AG License Applicant Case Dispositions	14	51	64	54	41

III. Key Issues

Collectively, the above data suggests that large numbers of license applicant arrest/conviction report cases were opened by BVNPT (e.g., 800 to 1,000 per year, or possibly more, especially during 2013/14) for minor offenses. Additionally, this data reinforces results of a preliminary review we completed of 2012/13 and 2013/14 CAS data for these cases which suggests that many of these cases were possibly not investigated to any extent beyond completing an initial review of the applicant's arrest/conviction report or, possibly, the applicant's self-reported information, and then closing the case.

Additionally, it is unclear what reporting source was used to generate the large numbers of additional license applicant arrest/conviction report cases that were opened during 2013/14. It would seem unlikely that the criminal history (CORI) reports generated by the California Department of Justice (DOJ) would suddenly include significantly larger numbers of license applicants with criminal offenses as, during this period, there was no significant change in the number of license applications submitted to BVNPT per year. Additionally, the total number of arrest/conviction report cases opened during 2013/14 as a percentage of the total number of license applications received (*45 percent*) seems almost impossibly high. During 2013/14, 3,790 arrest/conviction report cases were opened compared to 8,447 VN and PT license applications received.

As discussed previously in Section I-E.1, until recently BVNPT opened desk investigations cases for all license applicant arrest/conviction reports received and all arrests/convictions self-reported by license applicants before the applicant passed the license examination, and otherwise qualified for a license, and without any assessment as to whether the nature and timing of the reported offense potentially supported issuance of a NOW with approval of the license or denial of licensure. In nearly all cases BVNPT assigned these cases to Complaint Section analysts for desk investigation (e.g., to review and obtain certified copies of the arrest report and court records and a letter of explanation from the applicant). In some instances the cases were held open for extended periods of time (up to 2 years, or longer) pending completion of the license application process and, if applicable, the case adjudication process for more recent offenses. However, particularly during 2013/14, it appears that large numbers of cases were closed within 45 to 60 days, or less, without completing any investigation of the cases.

BVNPT recently restructured the License Applicant Arrest/Conviction Report Case Intake Process by transferring various responsibilities to Licensing Program staff, including responsibility for:

- ❖ Reviewing license applicants' initial arrest/conviction report and preparing and issuing requests for the arrest report, court reports and applicant letter of explanation, and preparing and issuing deficiency letters to the applicant, if needed
- ❖ Maintaining the arrest/conviction report file pending the applicant's successful completion of the license examination and application process
- ❖ Screening the applicant's arrest/conviction record, after the applicant has otherwise qualified for issuance of a license, to preliminarily determine whether the nature and timing of the reported offense(s) potentially supports license denial or issuance of a NOW and then, if appropriate, referring cases to the Enforcement Division for further review and investigation.

This restructuring was phased in over a period of several months beginning during July 2015. As a result of this restructuring, significantly fewer license applicant cases were opened (about 500 during the first half of 2015/16 compared to an average of more than 3,000 per year during prior periods). However, some cases are still being referred to enforcement that do not involve offenses, such as certain types of traffic offenses, that would support denial of licensure or issuance of a NOW in conjunction with issuance of the license.

III. Key Issues

Finally, during the first half of 2015/16 about 350 NOWs were issued to license applicants compared to 1,124 license applicant arrest/conviction report investigations completed during this period. This recent data suggests that the number of NOWs issued may be decreasing in parallel with the reduction in number of cases referred to Enforcement, but that the proportion of referred cases resulting in issuance of a NOW may be increasing. As the restructured process matures, and improved case screening processes are implemented, the number of license applicant cases referred to Enforcement and the number of NOWs issued for these cases may decrease further. However, an increasingly higher proportion of the referred cases may result in issuance of a NOW (or license denial), assuming no offsetting changes to the criteria and processes used for determining whether to issue a NOW with the license approval or denial of licensure.

In summary, the restructured License Applicant Arrest/Conviction Report Case Intake Process was only recently implemented and additional improvements and refinements to the process are possibly needed. Further assessment of selected aspects of BVNPT's past and current practices related to the handling of these cases is needed to support identification and accelerated implemented of needed process improvements.

B. Complaint Intake Process

Various Complaint Intake Process deficiencies were identified and discussed previously in Sections I and II of this report, including:

- ❖ Inadequate coding of complaints to enable the generation of information needed to better understand and manage BVNPT's complaint and investigation workloads, workflows, backlogs and performance
- ❖ Referrals of virtually all complaints, except complaints involving discipline by another state/agency and Internal – Fraud cases, to the Investigation Section rather than screening the complaints to identify cases that should instead be assigned to (1) Complaint Section analysts for desk investigation or (2) the Division of Investigation for sworn investigation
- ❖ Insufficient oversight and control over the opening of Internal complaints.

Additionally, deficiencies were identified involving the identification of cases where immediate intervention is needed to restrict or suspend the licensee's practice as a VN or PT (e.g., by requesting judicial intervention through a Penal Code 23, Interim Suspension Order or Temporary Restraining Order process). Collectively, these problems:

- ❖ Unnecessarily added to Investigation Section workloads and non-sworn investigator caseloads
- ❖ Adversely impacted staff capabilities to immediately initiate interventions, where needed, and complete investigations of more serious cases
- ❖ Distorted Enforcement Program workload, workflow, backlog and performance metrics.

III. Key Issues

BVNPT recently restructured its Complaint Intake Process and has been providing additional training to staff to address the above deficiencies. The restructuring was phased in during September and October 2015. As part of this restructuring, guidelines, policies and procedures are being developed and implemented to:

- ❖ Improve the completeness, consistency and quality of the coding of complaints
- ❖ Identify cases requiring immediate intervention and promptly refer the cases to appropriate Complaint Section analysts to initiate appropriate activity by the AG
- ❖ Apply the *Complaint Prioritization Guidelines for Health Care Agencies* for identification and referral of cases to the Division of Investigation
- ❖ Identify complaints that do not require investigation by either non-sworn or sworn investigators and can, instead, be handled as desk investigations by Complaint Unit analysts.

However, in some areas these processes are still somewhat underdeveloped and are continuing to evolve as needs for various refinements and improvements are identified. For example, additional refinements and improvements to current guidelines, policies, procedures and practices are needed related to the identification of complaints that can be handled by Complaint Section analysts without referral to either the Investigation Section or the Division of Investigation. Also, additional refinements and improvements are possibly needed related to the opening of Internal complaints and referral of cases to the Division of Investigation. Further assessment of selected aspects of BVNPT's past and current Complaint Intake Process is needed to support identification and accelerated implementation of needed process improvements.

C. Case Referrals to the Division of Investigation

As discussed previously in Sections I and II, concurrent with and following start-up of the Investigation Section during 2012/12 and 2012/13, BVNPT reduced and then completely discontinued the referral of cases to the Division of Investigation, including cases involving serious criminal misconduct, significant patient harm, unlicensed practice and sexual misconduct. Subsequently, between May and December 2015, about 240 cases were reassigned to the Division of Investigation and many of these cases were already more than two (2) years old. Concurrently, new complaint intake and screening processes were established to support the identification and referral of cases to the Division of Investigation on an ongoing basis. The restructured process utilizes the *Complaint Prioritization Guidelines for Health Care Agencies* to identify these cases.

Continuing evolution and maturation of this recently implemented restructuring of BVNPT's Complaint Intake Process will likely result in identification of needed refinements to the process. However, at this point it appears that BVNPT has already addressed the core issue, involving needs to identify and refer cases involving serious criminal misconduct, significant patient harm, unlicensed practice, sexual misconduct and selected other cases to the Division of Investigation.

III. Key Issues

D. Legacy Backlogs of Aged Non-Sworn Complaint Investigations

A large number of aged cases was assigned to and accumulated within BVNPT's Investigation Section during the Section's start-up in 2011/12 and 2012/13. From the Section's inception through to the current fiscal year, many of the backlogged pending cases were two (2) to four (4) years old or, in some cases, more than four (4) years old. Older cases take much more staff time and longer periods of time to investigate than newer cases because it is more difficult and time consuming to locate and contact patients, witnesses, facility administrators and others who may have information relevant to the complaint. Additionally, it is more difficult and time consuming to obtain copies of relevant medical and personnel records, both of which are oftentimes needed. At its peak during 2012/13 and 2013/14, there were more than 800 pending non-sworn investigations and the average age of these cases, as of June 30, 2015, had increased by about 60 percent to 19 months from about 12 months during 2012.

Subsequently, from May through December 2015, about 240 of the most serious pending investigation cases were reassigned to the Division of Investigation. All of the remaining cases were screened multiple times to identify and assign for non-sworn investigation all cases potentially involving patient harm or misconduct that appeared to support initiating disciplinary action against the licensee. Additionally, in an effort to reduce the number of very old pending cases, the oldest lower-priority cases were also assigned for investigation (i.e., cases received during 2011, 2012 and 2013). Concurrently, newer lower priority cases were assigned to a pending queue for subsequent assignment (i.e., lower priority cases received during 2014, 2015 and 2016). Concurrently, as discussed in Section C, Complaint Section staff began screening cases during intake to identify cases for referral to the Division of Investigation. Lower priority cases referred to the Investigation Section were then reviewed by Investigation Section management to determine which cases should be immediately assigned to a non-sworn investigator and which cases should be added to the Section's unassigned case queue. As of mid-March 2016, the Investigation Section had about 530 total pending investigations. Of these, about 230 cases were assigned to the Section's investigators (an average of about 29 cases per position) and the remaining 300 cases (an average of about 37 cases per position) were assigned to the Section's unassigned case queue. If all of the Section's pending cases were assigned to the Section's investigators, the resulting caseloads per position (an average of about 66 cases per position) would possibly be two to three times greater than reasonable for the types of cases involved.

As a result of the above described case screening, sorting and assignment processes, the Investigation Section's investigators were assigned some cases that may support initiating disciplinary action along with many lower priority, older cases that not only take more staff time and lengthier times to investigate, but also are unlikely to support a disciplinary outcome. The utilization of available workforce capabilities to investigate older, lower priority cases diverts these resources from completing timely investigations of newer cases, including cases that may have a higher risk of actual or potential patient harm and are more likely to support a disciplinary outcome, and adversely impacts the Section's overall capability to reduce its legacy aged case backlog.

To help accelerate the reduction and eventual elimination of the Section's aged case backlog, during April 2016 Enforcement Division management began conducting individual in-depth case review meetings with all of the Section's investigators to determine whether any of the investigations of each Investigator's assigned older cases could be completed more expeditiously which would increase their availability to complete more timely investigations of newer cases. A total of 178 assigned cases were included in the scope of this review which initially targeted older cases received during 2012 and 2013 (3 to 4 years old), but oftentimes also encompassed newer cases. 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

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to the steps needed to complete each investigation. In many cases it was determined that only limited additional investigative activity was needed to complete the investigation. For the remaining 94 cases, management directed staff to complete their investigation by:

- ❖ Issuing a citation (*1 case*)
- ❖ Issuing a Notice of Warning (NOW) in cases where there is evidence that supports a determination that a violation occurred but the nature of the violation does not support initiating formal disciplinary action (*64 cases*)
- ❖ Closing the case due to insufficient evidence to support a determination that a violation had occurred (*29 cases*).

By conducting this first round of in-depth case review meetings, Enforcement Division management reduced the Investigation Section's total number of pending complaint cases by nearly 20 percent and most of the cases closed were the Section's oldest cases. As of April 30, 2016 there were fewer than 400 pending non-sworn complaint investigations, a 25 percent reduction from mid-March levels and 30 percent less than the 571 non-sworn complaint investigations that were pending as of December 31, 2015. Additionally, the average age of the pending cases decreased to 13 months from 17 months as of December 31, 2015, comparable to the average age of the Investigation Section's pending cases during start-up of the Section during 2012.

Enforcement Division management plans to continue conducting in-depth case review meetings with each non-sworn investigator on a regular basis. The ongoing case reviews, in conjunction with implementation of additional Complaint Intake Process improvements and other improvement initiatives, are expected to help further reduce the number and age of the Investigation Section's pending cases over the next six (6) to (8) months to a level that will enable assignment of most (or all) pending cases by the end of 2016. As the Section's case backlogs are further reduced (or eliminated), some currently authorized non-sworn investigator positions may be able to be redirected to better address other Enforcement Program workload demands or program development needs.

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E. Variability in Sanctions or Discipline Imposed

1. Sanctions or Discipline Imposed on License Applicants

As discussed previously in Section II-E (*Overview of Administrative Discipline Actions*), available data suggests there has possibly been some variability in the administrative discipline imposed on license applicants. For example, during 2014/15 significantly fewer NOWs were issued than in any of the preceding four (4) fiscal years even though there was little change in the number of applicants and a significantly greater number of arrest/conviction report investigations was completed although, as discussed previously, there are a number of outstanding issues concerning the quality of this data. Additionally, while BVNPT consistently issued 24 or fewer citations to license applicants in each of the past five (5) full fiscal years, there was some variability in the number of citations issued during this period. For example:

- ❖ Two (2) citations were issued to license applicants during 2010/11, eight (8) citations were issued during 2014/15, and 10 citations were issued during 2011/12
- ❖ 22 citations were issued to license applicants during 2013/14, 24 citations were issued during 2012/13 and 21 citations were issued during the first half of 2015/16.

It is our understanding that license applicant citations usually arise as part of a settlement of an appealed license denial and are usually accepted by the applicant in lieu of being placed on probation, which would possibly stigmatize the new licensee along with being much more onerous and costly to them. This variability in the number of citations issued to license applicants may be a function of timing differences, differences in the mix of cases, changes in the number of cases completed by the AG, shifts in BVNPT's license denial or appealed case settlement practices, or other factors. Finally, we understand that the citations usually contain orders of abatement appropriate to the applicant's offense. However, it also appears that BVNPT nearly always assesses a \$500 fine with each citation. There may not be a clear rationale for continuing the practice of nearly always assessing new licensees a fine or nearly always assessing the same \$500 fine for these cases.

Finally, BVNPT recently overhauled its guidelines for issuance of license denials. It is our understanding that, prior to July 2015, BVNPT automatically denied licensure to any applicant that failed to disclose an arrest/conviction on their license application, including an arrest/conviction for traffic offenses. It is also our understanding that, prior to July 2015, BVNPT automatically denied licensure to any applicant that had been the subject of a license examination *Incident Report* from Pearson View. Effective July 2015, BVNPT reviews each new case to determine whether the facts and circumstances of the case support license denial. As a result, fewer Letters of Denial may be issued during 2015/16, in comparison to prior periods, leading to fewer appeals of the denials, fewer referrals of license applicant cases to the AG, fewer SOI filings, and fewer negotiated settlements or withdrawals of license applicant cases.

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2. Sanctions or Discipline Imposed on Licensees

Data presented previously in Section II-E (*Overview of Administrative Disciplinary Actions*) showed significant variability in BVNPT's issuances of citations for Internal – Fraud cases over the 5½ year period extending from 2010/11 through December 2015. Internal – Fraud cases are believed to consist primarily of cases involving either (1) licensee non-compliance with CE requirements or (2) licensee failure to disclose a reportable conviction on their renewal application. The variability in number of citations issued for Internal – Fraud cases appears to be correlated, in part, with the number of Internal – Fraud investigations completed. For example, during 2010/11, 2011/12 and 2012/13, there was significant variability in the number of Internal – Fraud investigations completed and the number of Internal – Fraud citations issued but, in all three (3) years, about four (4) citations were issued for every five (5) completed investigations (a ratio of 4:5, or 80 percent). However, during 2013/14, 128 Internal – Fraud investigations were completed, but only 42 citations were issued (a ratio of 1:3, or 33 percent). Subsequently, during 2014/15, 115 Internal – Fraud investigations were completed, but only two (2) citations were issued (a ratio of 1:58, or 2 percent). This data suggests some possible variability in BVNPT's issuances of citations for one or both of the types of underlying licensee offenses thought to comprise this category of cases (i.e., non-compliance with CE requirements or failure to disclose a reportable conviction).

As discussed previously in Section II-E, sample data for 2011/12 and 2013/14 also suggest considerable variability in BVNPT's issuances of NOWs for non-compliance with CE Program requirements and after concluding investigations of complaints involving licensees. For example, based on sample data it appears that there were few NOWs issued for non-compliance with CE Program requirements during 2011/12 (or possibly none at all). In comparison, based on sample data, we estimate that about 60 NOWs were issued during 2013/14 for non-compliance with CE Program requirements. In the case of NOWs issued for Other Offenses, the sample data for 2011/12 suggests that about 300 NOWs were issued during 2011/12. This compares to an estimate based on sample data that about 140 NOWs were issued for Other Offenses during 2013/14.

Finally, during BVNPT's 2014/15 Sunset Review issues surfaced concerning potential variability in BVNPT's referrals of cases to the AG for formal discipline. For example, it is our understanding that BVNPT sometimes referred cases to the AG whenever a licensee failed to fully pay a fine without first offering the licensee the option of paying their fine in installments. However, BVNPT recently modified this past practice and currently offers installment payment plans for licensees that are unable to pay their fine in full. There is a need to further explore potential issues related to BVNPT's referrals of discipline cases to the AG and handling of the cases following referral. The scope of the Initial Assessment precluded further exploring these issues during this first phase of the project.

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F. Enforcement Program Guidelines, Policies and Procedures

BVNPT does not currently have an *Enforcement Program Policies and Procedures Manual*. Documented guidelines, policies and procedures do not currently exist for most of the following major categories of Enforcement Program services:

Case Intake, Screening, Prioritization and Referral for Investigation

- License Applicant Cases (Arrest/Conviction Reports, Other Cases)
- Licensee Subsequent Arrest Record (SAR) Cases
- NURSYS Database Reviews and Other State/Agency Discipline Cases
- Continuing Education Cases
- Licensee Renewal Failure to Disclose Cases
- Mandatory Employer Report Cases
- Public Agency Complaint Cases
- Public and Other Complaint Cases

Desk Investigations

- License Applicant Cases (Arrest/Conviction Reports, Other Cases)
- Licensee Subsequent Arrest Report (SAR) Cases
- Other State/Agency Discipline Cases
- Continuing Education Cases
- Licensee Renewal Failure to Disclose Cases
- Other Complaints
- Case File Management
- Interim and Completed Case Reviews

Non-Sworn Complaint Investigations

- Case Intake, Screening, Prioritization and Assignment
- Investigation Planning
- Complainant, Witness and Subject Interviews
- Medical Record Requests
- Personnel Record Requests
- Outside Expert Reviews
- Interventions (PC 23s, ISOs and TROs)
- Special Situations (Companion Cases, Redundant Cases and Consolidations of Unrelated Cases Involving the Same Licensee)
- Investigation Reports
- Case File Management
- Interim and Completed Case Reviews

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Discipline Case Handling and Management

- Case Intake
- Citations
- AG Liaison
- Case Management
- Pleading Review
- Negotiations
- Stipulated Settlement Agreement Reviews
- Decisions

Probation

- Case Intake
- Bodily Fluid Testing
- Monitoring
- Petitions
- Cost Recovery

The absence of a fully documented set of Enforcement Program guidelines, policies and procedures contributes to variability and inconsistencies in the services provided and less consistent and lower quality work products. Additionally, it is more difficult to orient and train new staff, develop existing staff and establish accountability for performance.

It may be possible to address BVNPT's *Enforcement Program Policy and Procedures Manual* development needs by obtaining process documentation currently utilized by other DCA-affiliated boards or bureaus, and then customizing the guidelines, policies and procedures to address BVNPT's specific needs and circumstances. This approach could significantly reduce the level of effort that would otherwise be needed for this purpose.

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G. Organizational Conflict and Turnover of Staff

BVNPT's high vacancy rates during the past several years are largely attributable to excessive workloads and backlogs and a failure by past management to address severe workforce morale problems resulting from high levels of organizational conflict within the Enforcement Division and between the Enforcement Division and other BVNPT business units and outside organizations. It also appears there were similar types of problems and levels of organizational dysfunction within the Administration and Licensing Division.

While still high, BVNPT's vacancy rates are currently much lower than they have been in several years and management is attempting further reduce vacancy rates by promptly filling vacant positions. Additionally, the Enforcement Division's workforce has stabilized and management is reclassifying positions as needed to better align the Division's workforce capabilities with current and emerging workload demands. Also, workforce morale within the Enforcement Division appears to be much better than was the case prior to 2015/16. Finally, BVNPT management is planning to restructure the Administration and Licensing Division to reduce the spans of control of the Division's manager and supervisor. As discussed previously in Section I-C (*Overview of BVNPT Organizational Structure and Staffing*), the Division currently has:

- 1 authorized Staff Services Manager I position
- 1 authorized Supervising Program Technician II position
- 27 authorized permanent, full-time subordinate staff positions
- 3 retired annuitant positions.

Finally, at times during the 3-year period extending from 2012/13 through 2014/15, the Administration and Licensing Division had no filled manager/supervisor positions or only one (1) manager/supervisor position was filled. These circumstances likely contributed to the workload and workforce management problems that the Division experienced during this period. The large spans of control of the Division's two (2) currently authorized managers/supervisors may be contributing to these problems and impeding BVNPT's capability to resolve them. Additionally, insufficient supervision and management of BVNPT's administrative support service functions, including budgeting, accounting, cashiering, procurement and contracting, human resources, information technology and business services) may have adversely impacted other BVNPT business units and the services that they are responsible for providing.

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H. Enforcement Program Development and Workforce Utilization

BVNPT's case intake and investigation processes are under-developed resulting in high levels of inconsistency and variability in the completion of specific functions, activities and the resulting process outputs or work products. For example:

- ❖ Cases have sometimes been screened and then rescreened, in some cases multiple times, to determine the appropriate assignment of the cases for investigation or disposition of the case
- ❖ Medical and personnel records have sometimes been re-requested to obtain records suitable for submission for disciplinary action purposes
- ❖ Cases have sometimes been reinvestigated, in some cases multiple times, due to turnover of staff, case reassignments, and inadequate documentation of the results of prior investigative activities
- ❖ Investigation reports have sometimes been repetitively reviewed and revised
- ❖ Case files have sometimes been misplaced and unable to be located when needed.

Additionally, BVNPT's non-sworn investigators oftentimes do not sufficiently adjust the scope and depth of their investigations and the level of documentation produced consistent with the variable nature and outcomes of the individual cases. Instead, most cases are investigated and documented to a level that would support a disciplinary outcome even though, as becomes apparent during the course of completing the investigation, many (perhaps most) of the cases are unlikely to result in a disciplinary outcome. Consequently, time is unnecessarily spent completing investigative activities, documenting these activities, and reporting the results of the investigation after it is already evident that a disciplinary outcome will not be sought. This is particularly the case when cases that are already more than two (2) years old are being investigated and BVNPT has not subsequently received any other complaints regarding the same licensee. Cases involving allegations that are not supported, and regarding events that occurred several years in the past, are highly unlikely to have any value at some future point in time. The investment of resources to thoroughly document the results of these investigations is not an optimal use of available staff time.

The processes used by the Enforcement Division for on-boarding new non-sworn investigators are unstructured and under-developed. While staff are scheduled to complete various formal training programs, these programs are not a substitute for experience gained working actual cases. The Enforcement Division does not currently pair new staff with other investigators for training or mentoring purposes. Instead new staff are assigned cases to investigate on their own, and instructed to shadow other Section investigators on trips into the field so that they can observe how the different investigators conduct complainant, witness, and subject interviews. Also, until recently the Section's investigators were not required to keep track of their time, by case, which provides information that can be used for accountability and cost recovery purposes. Additionally, periodic staff performance reviews and Individual Development Plans (IDPs) are rarely, or never, completed for any Enforcement Division staff.

Finally, there is possibly some misallocation of available resources among the Enforcement Division's various business units. Currently, all of the Investigation Section's positions are needed to complete investigations of the Section's large backlog of pending cases. However, the number of backlogged cases is decreasing and, over a period of time, the number of positions needed to investigate cases assigned to the Section should

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diminish. Additionally, the principal benefit of having non-sworn investigators is that they can complete field investigations, but not all of the cases currently assigned to the Section require field investigation. Some of the cases currently assigned to the Section could possibly be handled as desk investigations as occurred in the past prior to the Section's formation. Additionally, as the need for non-sworn investigators diminishes, resources could potentially be redirected to support other current and emerging Enforcement Program or other BVNPT business needs.

To improve their knowledge and skills, Enforcement Division management plans to provide staff with the following additional training during the remainder of 2016:

Investigative Subpoena Preparation – This training is scheduled to be completed on June 16, 2016.

DCA Enforcement Academy – This is a comprehensive set of classes specifically related to enforcement that was completely updated earlier this year. Classes are scheduled beginning during August 2016.

Analyst Certification Training – This is a series of classes for analysts to develop analytical skills and includes classes in project management, completed staff work, effective business writing, interpersonal skills, and research, analysis and problem solving.

Additionally, Enforcement Division management recently met with representatives of the Division of Investigation to develop a ride along type of training for BVNPT's non-sworn investigators. This training would pair a BVNPT investigator with a Division of Investigation investigator as they investigate a VN or PT case and would enable BVNPT investigators to gain practical knowledge about interviewing techniques, obtaining records, tracking time in the field, and report development.

I. Enforcement Program Workload, Workforce and Performance Management Processes

BVNPT's Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to:

- ❖ Collect, compile and report Enforcement Program-related management information to BVNPT's governing Board, the Department of Consumer Affairs, control agencies and the Legislature
- ❖ Assist the above recipients in understanding the information that is provided.

Data and representations made in the past regarding BVNPT's Enforcement Program workload, backlogs and performance have generally been significantly overstated, misrepresented, and incorrect. Additionally, BVNPT has oftentimes combined metrics regarding its disparate license applicant, licensee subsequent arrest, and licensee complaint workloads, workflows, backlogs and performance that produce results that are essentially meaningless. For example, BVNPT has oftentimes combined metrics regarding the following four (4) disparate types of cases:

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License Applicant Arrest/Conviction Reports – These cases typically require relatively little staff time to investigate and oftentimes the cases were closed relatively quickly, possibly without any substantive investigation. However, in many other instances the cases were kept open from receipt of the report through the applicant’s completion of the examination and license application process (up to 2 years) and, if applicable, the adjudication of any recently committed offenses. Very large numbers of both of these types of cases were sometimes included in BVNPT’s reported Enforcement Program workload, workflow, backlog and performance metrics, thereby dominating the results that were produced. However, with limited exceptions, there is no relationship between the processing of these cases and protection of patients served by BVNPT licensees.

Licensee Arrest/Conviction Reports – These cases also usually require relatively little staff time to investigate. While a large proportion of these cases results in disciplinary action, in most cases such action cannot be initiated until adjudication of the reported offense which is entirely outside of BVNPT’s control. Large numbers of these cases were sometimes included in BVNPT’s reported Enforcement Program workload, workflow, backlog, and performance measures. The inclusion of these cases in aggregate statistical measures significantly influenced the results that were produced or dominated the results in instances where license applicant arrest/conviction report cases were not included in the calculations.

Licensee Internal – Fraud Cases – These cases require relatively little staff time to investigate and can usually be processed very quickly because the cases are generated from internal audits of licensee compliance with CE or license renewal disclosure requirements. In most years a significant proportion of the total number of complaints received and investigations completed were accounted for by these types of cases. Thus, even in cases where license applicant and licensee arrest/conviction report cases were separately reported from BVNPT’s complaints, the metrics for these cases significantly influenced the results that were produced.

Externally-Generated Licensee Complaints – This category includes:

- Complaints received from patients and related parties
- Mandatory Employer Reports that a VN or PT was suspended or terminated for cause
- Reports received from other public agencies, such as the California Department of Public Health, regarding a possibly actionable offense or violation known to have been committed by a BVNPT licensee
- Reports that a licensee was disciplined by another state or public agency.

These cases oftentimes require full investigation by either a sworn or non-sworn investigator and, even in the case of desk investigations, there is oftentimes a need to conduct interviews and obtain copies of medical, personnel, or other records. Also, a significant proportion of these cases support disciplinary action. However, the number of externally-generated licensee complaints received is relatively small (usually about 500 to 550 per year). In most cases the metrics for these cases were combined with metrics for some (or all) of the other above identified case categories which obscured and distorted, and sometimes completely masked, BVNPT’s performance related to the investigation of these cases and the outcome of these investigations.

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As is evident from the above, even though some of the performance metrics produced by BVNPT showed the accumulation of large case backlogs and extremely poor performance, those metrics are largely meaningless because it is not possible to use such measures as a guide for determining actual workload, workflow, backlog or performance levels or trends or the impacts of changes made to improve performance. In summary, such composite metrics are largely useless for overall Enforcement Program planning, monitoring and evaluation purposes. For this reason, many law enforcement and other case-based service providers utilize *weighted caseload* workload measurement systems to support their workload and workforce management processes.

Finally, as a result of recent changes made in the opening of license applicant arrest/conviction cases, the referral of cases to the Division of Investigation, and the reduction of legacy case backlogs, some key measures of Enforcement Program performance are likely to show deteriorating performance when, in fact, legacy problems are being addressed and performance is actually improving. Due to the size of BVNPT's legacy backlogs and the extended timeframes associated with BVNPT's complaint handling, investigation and disciplinary processes, it will likely take a period of at least 6 to 12 months before valid measures of Enforcement Program performance begin to surface that can be used for ongoing planning, monitoring and evaluation purposes. In the interim, BVNPT's governing Board and management, the Department of Consumer Affairs, and representatives of the Legislature and other oversight and control agencies are encouraged to focus most closely on metrics related to BVNPT's pending non-sworn complaint investigations and the Division of Investigations pending sworn investigations, including (1) the number of pending cases and (2) the average age of these cases. As the number of pending cases and the average age of these cases decreases, other key measures of Enforcement Program performance will subsequently reflect the impacts of these improvements (e.g., the average elapsed time to complete investigations will decrease as staff are increasingly able to focus their efforts on promptly investigating newer cases).

J. Communication and Collaboration with Board Members, the Legislature and Other Public Agencies

During BVNPT's 2014/15 Sunset Review, issues surfaced regarding the adequacy of Executive staff's communications and collaboration with Board members, the Department of Consumer Affairs, the Legislature and other public agencies. For example, representatives of the Legislature were surprised when reports surfaced during the Sunset Review which suggested significant organizational and workload problems within BVNPT's Enforcement Program. These reports were not consistent with information presented in the *2014 Sunset Review Report* which highlighted:

- ❖ A 14 percent increase in enforcement workload from 2010/11 to 2013/14, as measured by the number of complaints received along with a 15 percent reduction in the number of pending complaints during this same period
- ❖ A 19 percent increase in the total number of closed investigations from 2010/11 to 2013/14 along with a 14 percent reduction in pending investigations during this same period
- ❖ A 49 percent increase in the number of cases transmitted to the AG seeking formal discipline, comparing the 4-year period ending 2013/14 with the preceding four (4) fiscal years (2006/07 through 2009/10)
- ❖ A 64 percent increase in disciplinary outcomes from 2010/11 to 2013/14

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- ❖ An 18 percent decrease in Special Investigator caseloads, to 103 cases from 125 cases or more prior to 2013/14
- ❖ Achievement of all targeted Consumer Protection Enforcement Initiative (CPEI) cycle time performance measures, except Performance Measure No. 4, the average number of days to complete the entire enforcement process for cases resulting in formal discipline, for which BVNPT reported that its average cycle time was about 1 ½ years longer than the 1 ½ year target established for this measure.

The *Sunset Review Report* also highlighted (1) the Board's establishment of an Enforcement Task Force to work with BVNPT staff to review the formal discipline process and identify changes needed to maximize efficiency and reduce case aging and (2) plans to submit a Budget Change Proposal (BCP) for 2015/16 to obtain additional Enforcement Division staff. BVNPT indicated that additional Enforcement positions were needed to address continuously growing workloads, reduce the use of overtime (over 4,000 hours during 2013/14), and reduce case aging and backlogs. BVNPT's growing workloads were attributed to mandatory reporting requirements, required self-disclosures of criminal convictions, increased consumer awareness of the complaint and disciplinary process, and the ability of consumers to file complaints on-line. In summary, little information was provided suggesting significant organizational, workload, or performance problems within the Enforcement Division.

To begin assessment of BVNPT's communication and collaboration deficiencies and improvement needs, during Phase I we interviewed Legislative staff and prepared and disseminated a confidential survey to members of BVNPT's governing Board to obtain their input regarding a range of issues, including communications with BVNPT executives and staff. The responses will be compiled, analyzed and summarized for inclusion in a subsequent phase report. Additionally, during Phase II we expect to conduct interviews with members of BVNPT's governing Board and representatives of other public agencies that regulate facilities where BVNPT licensees oftentimes work (e.g., the California Department of Public Health, the California Department of Health Care Services and the California Department of Social Services) or administer programs involving the provision of care to the elderly or other demographic groups oftentimes served by BVNPT licensees (e.g., the Bureau of Medi-Cal Fraud and Elder Abuse within the California Department of Justice and the Centers for Medicare and Medicaid Services within the U.S. Department of Health and Human Services).

During the past year BVNPT management has been working to establish improved communication processes to address deficiencies related to providing information to Board members, DCA and Legislative oversight committees regarding the status of the Board's programs and operations. These efforts are also intended to help rebuild BVNPT's credibility with these stakeholders and oversight authorities.

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IV. Next Steps

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IV. Next Steps

As discussed previously in Section I-A (*Overview of Project Approach and Schedule*), during Phase II we expect to complete more in-depth research and assessment of BVNPT's complaint intake, screening and investigation processes, with emphasis on improving the overall effectiveness and efficiency of the Enforcement Program. We anticipate that our Phase II efforts will involve:

- ❖ Collecting and reviewing additional process documentation
- ❖ Collecting, compiling, summarizing and analyzing additional workload, workflow, backlog, staffing and performance data
- ❖ Scheduling and conducting additional interviews with BVNPT managers and staff and representatives of other governmental agencies, including other public agencies that regulate facilities where BVNPT licensees oftentimes work (e.g., CDPH, CDHCS, and CDSS) or administer programs involving the provision of care to the elderly or other demographic groups oftentimes served by BVNPT licensees (e.g., DOJ's Bureau of Medi-Cal Fraud and Elder Abuse and CMS)
- ❖ Conducting reviews of targeted samples of enforcement case files.

We expect to focus our efforts on the following specific issues and potential improvement needs identified during the completion of the Initial Assessment:

License Applicant Arrest/Conviction Report Cases – The source and causes of the spike in the number of license applicant arrest/conviction report cases opened during 2013/14 and current license applicant case screening, intake and investigation processes.

Internal Complaints – The guidelines, policies, procedures and practices currently used for controlling the opening of Internal complaints and differentiating the different types of cases that are opened within CAS.

Case Coding Guidelines and Practices – The guidelines, policies, procedures criteria and practices currently used to differentiate complaint sources and alleged offenses within BreEZe.

Internal – Fraud Complaints – The number and composition of Internal – Fraud cases handled in the past and currently, the business processes that generate these cases, the processes used by Complaint Section analysts to further investigate and close these cases, and the resulting disciplinary outcomes.

Licensee Arrest/Conviction Report Cases – Historical and current levels of redundancy in the opening of these cases, the guidelines, policies, procedures, criteria and practices used for determining when to open these cases, the processes used to complete desk investigations of these cases, and the resulting disciplinary outcomes.

Discipline by Another State/Agency Cases – The overall processes used for identifying and completing desk investigations of cases involving discipline by another state/agency.

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General Public, Employer and Public Agency Complaint Intake and Screening – The guidelines, policies, procedures and practices used for case intake and screening to determine the need for supplemental screening and, following screening, the type of investigation needed (desk, non-sworn or sworn).

Non-Sworn Investigations – The overall guidelines, policies, procedures and practices used for planning and conducting investigations of complaints received from employers, other public agencies, patients and others, maintaining records and case files, documenting results of the investigation, completing periodic case reviews and on-boarding and training new staff.

Workload, Workflow and Workforce Requirements – Additional analyses of the overall number and flow of complaint and arrest/conviction report cases through the Enforcement Division’s business units, associated workload demands and workforce allocations, and enabling organizational and staffing structures.

Criminal History Background Checks – On-site surveys of a sample of other DCA-affiliated boards and bureaus that require completion of criminal history background checks to identify the processes utilized by those agencies to handle license applicant and licensee arrest/conviction report cases and associated workloads, workforce allocations and performance. Results of the survey will be used to identify *best practices* for possible adoption by BVNPT.

We also expect to conduct interviews with members of BVNPT’s governing Board and representatives of other public agencies that regulate facilities where BVNPT licensees oftentimes work or administer programs involving the provision of care to the elderly or other targeted populations oftentimes served by BVNPT licensees. Additionally, we may begin collecting, compiling, and summarizing additional disciplinary process data and researching and assessing selected components of BVNPT’s disciplinary system and processes, including:

- ❖ The historical and current flow of cases through the formal disciplinary action processes
- ❖ Disciplinary outcomes, including variability in the sanctions or discipline imposed
- ❖ Current and anticipated future discipline case management and probation monitoring workload and staffing demands.

Finally, we plan to develop a template for use on an ongoing basis for capturing, summarizing and reporting Enforcement Program workload, workflows, backlogs and performance and we will continue to monitor the impacts of changes implemented by BVNPT.

Results of these efforts will be used to further characterize BVNPT’s Enforcement Program organization and business processes and to assess procedural or structural issues as needed to support development of recommendations for improvements to the Enforcement Program’s organizational structure, staffing, complaint-handling and investigation processes, and workload and workforce management processes. Finally, we will prepare a *Phase II Report* documenting results of our Phase II efforts and a *Work Plan and Schedule* for completing Phase III.