

# Board of Vocational Nursing and Psychiatric Technicians

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**Administrative and Enforcement Program Monitor**

**Third Report**

**Updated Status of the Enforcement Program and  
Additional Administrative Process Assessments**

Board Briefing – February 8, 2017

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Questions?

## A. Project Background

- ❖ BVNPT's Enforcement Program was thrown into disarray by the organizational and workflow changes that were implemented during 2011/12 and 2012/13. These changes included establishing a new non-sworn Investigation Section and assigning all licensee complaint cases to the new section, including cases involving serious criminal misconduct and significant patient harm that were previously referred to DCA's Division of Investigation.
- ❖ The problems resulting from these changes became apparent to DCA which made efforts to encourage BVNPT to utilize the new Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines and the Division of Investigation's services.
- ❖ Members of BVNPT's governing Board also began developing an awareness of these problems from reviewing discipline packages that, in many cases, were quite old and recognizing that these licensees were continuing to practice for years without discipline. Additionally, some members were dissatisfied with management's responsiveness to their requests for additional information.
- ❖ During September 2014, BVNPT's governing Board appointed an Enforcement Task Force to assess BVNPT's enforcement and discipline processes. In November 2014 the Task Force submitted its report to the Board.

## A. Project Background

- ❖ The Task Force report included six (6) recommendations, including a recommendation that BVNPT begin utilizing CPEI case prioritization guidelines and resume utilizing the Division of Investigation's services.
  - BVNPT's governing Board approved this recommendation along with most of the Task Force's other recommendations.
  - However, BVNPT staff continued to assign nearly all licensee complaint cases to its own Investigation Section.
- ❖ Concurrently, reports surfaced during BVNPT's 2014/15 Sunset Review about BVNPT's organizational and operational problems and the scope and magnitude of these problems became apparent to the Legislature.
- ❖ Following the separation of the EO, AEO and Chief of Enforcement, Division of Investigation staff provided assistance to the Board with management of the Enforcement Program and began reviewing all of BVNPT's pending investigations to identify cases for immediate reassignment to the Division of the Investigation.
- ❖ DCA also provided BVNPT with an Acting Executive Officer. Additionally, a new Chief of Enforcement and new supervisors for the Complaint and Investigation Sections were hired.

## A. Project Background

- ❖ Subsequently, AB 179 (Bonilla) was enacted requiring that DCA appoint a Monitor to assess BVNPT's Enforcement Program and specified administrative processes. On February 29, 2016, DCA awarded a contract to Benjamin Frank LLC to provide the Monitor services.
- ❖ We completed an Initial Assessment of BVNPT's Enforcement Program during March and April. The *Initial Report*, documenting results of the Initial Assessment, was presented to BVNPT's governing Board on June 20, 2016, and submitted to the Legislature on July 1, 2016.
- ❖ Additional interviews, research and analyses were completed during June, July and August. The *Second Report* documenting results of these efforts was presented to BVNPT's governing Board on October 20, 2016, and submitted to the Legislature on November 1, 2016.
- ❖ I also attended the Board's November 4<sup>th</sup> meeting to answer additional questions that the members had. Subsequently, we prepared and submitted an *Addendum* to the *Second Report* summarizing results of the *Board Member Survey* conducted during Phase I.
- ❖ An updated assessment of the status of BVNPT's Enforcement Program was completed during November and December. We also completed targeted assessments in several other areas. The *Third Report*, which is required to be submitted to the Legislature on February 13<sup>th</sup>, documents results of these efforts.

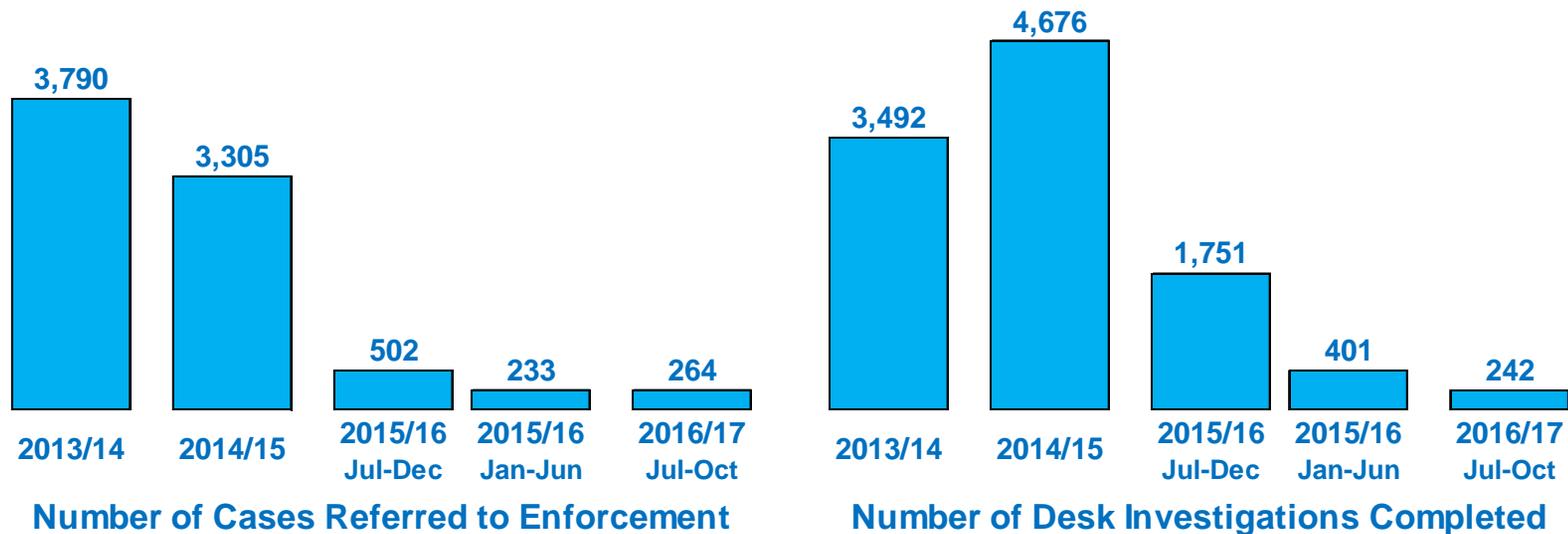
## B. BVNPT's 2015/16 Enforcement Program Turnaround

- ❖ Corrective measures taken during 2015/16 contained the problems that accumulated in prior years and set into place a foundation for building a sustainable, effective and efficient Enforcement Program. Improvements made during 2015/16 included:
  - ✓ A complete restructuring of the License Applicant Arrest/Conviction Report Process
  - ✓ A restructuring of the Case Intake and Screening Process
  - ✓ Significant increases in the number of completed licensee arrest/conviction report and complaint investigations
  - ✓ Significant reductions in the number of pending investigations and in the average age of the pending investigations
  - ✓ Significant increases in the number of cases referred to the AG and the number of discipline cases completed
  - ✓ Significant reductions in the number of pending discipline cases and the average age of the pending discipline cases
  - ✓ Significant reductions in the average elapsed time to file pleadings and complete disciplinary actions.
- ❖ However, during July to October 2016, it appears that BVNPT's Enforcement Program turnaround stalled.

## C. Current Status of BVNPT's Enforcement Program

- ❖ The restructuring of the License Applicant Arrest/Conviction Report Process during 2015/16 reduced the number of cases referred to Enforcement by about 3,000 cases per year along with comparable reductions in the number of completed investigations.

License Applicant Case Flow

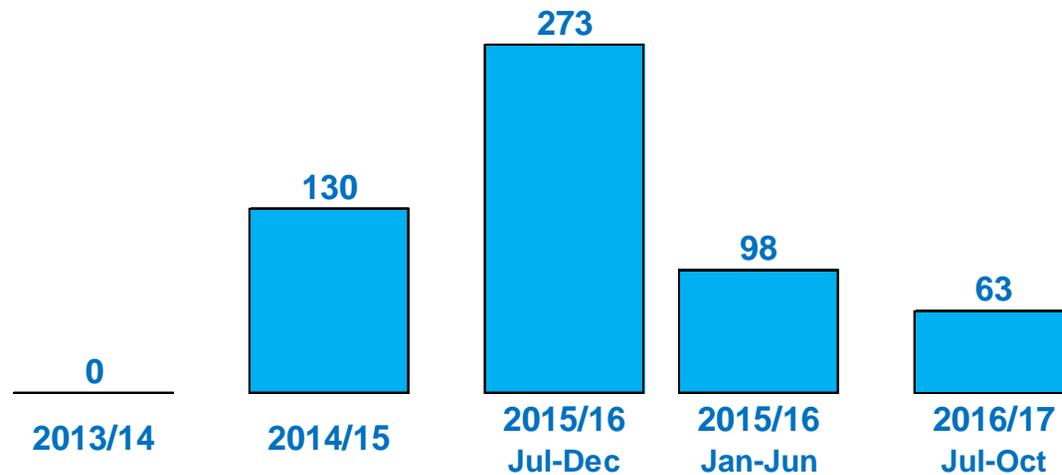


- ❖ Fewer than 800 License Applicant cases per year are now referred to Enforcement. Nearly all of these cases are now handled as desk investigations and more than 80 percent of these cases are reviewed and quickly closed with issuance of a license to the applicant along with a Notice of Warning (NOW).
- ❖ During July to October 2016, these investigations were completed in an average of less than 2 months compared to an average of about 18 months during 2014/15.

## C. Current Status of BVNPT's Enforcement Program

- ❖ During 2014/15, primarily during the last several months of the year following the Board's Sunset Review, about 130 enforcement cases were re-assigned to DCA's Division of Investigation.
- ❖ Subsequently, during 2015/16, about 370 enforcement cases were referred to the Division of Investigation, including both reassigned cases that had languished in the Investigation Section and newly received cases involving serious criminal misconduct or significant patient harm.

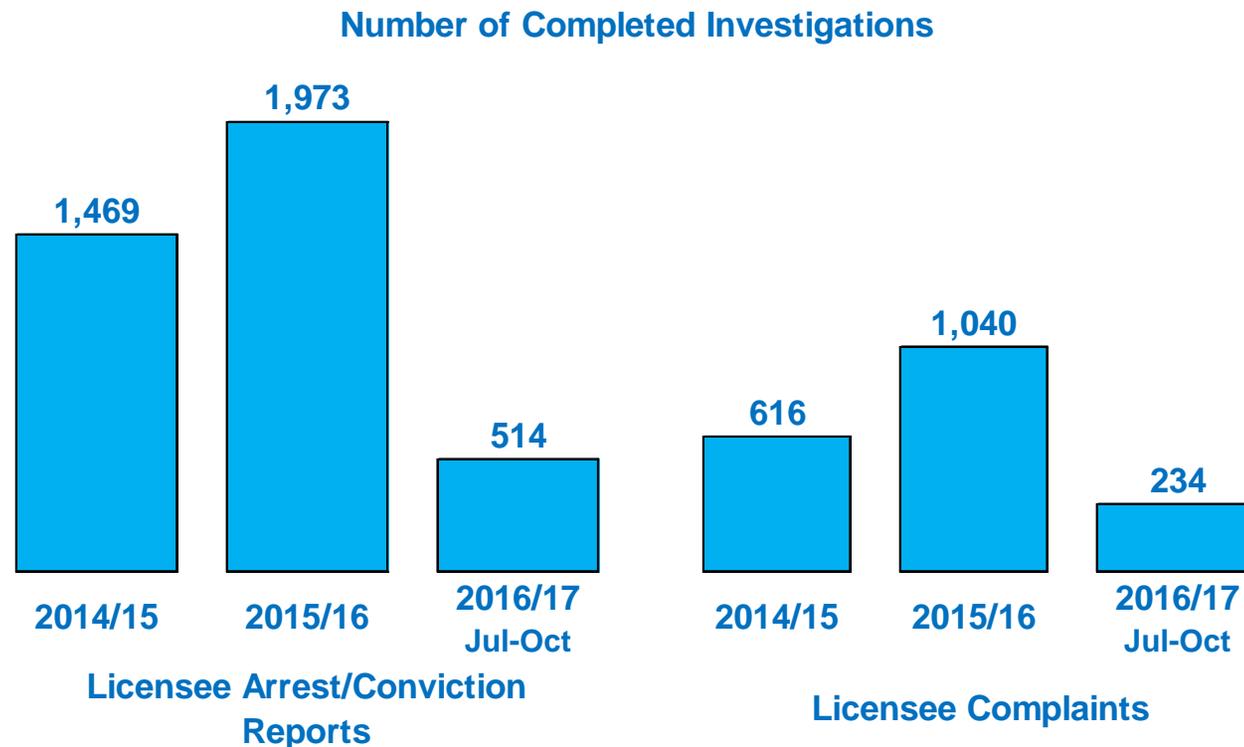
Number of Enforcement Cases Referred to the Division of Investigation



- ❖ BVNPT now assigns about 180 to 200 enforcement cases per year to the Division of Investigation.

## C. Current Status of BVNPT's Enforcement Program

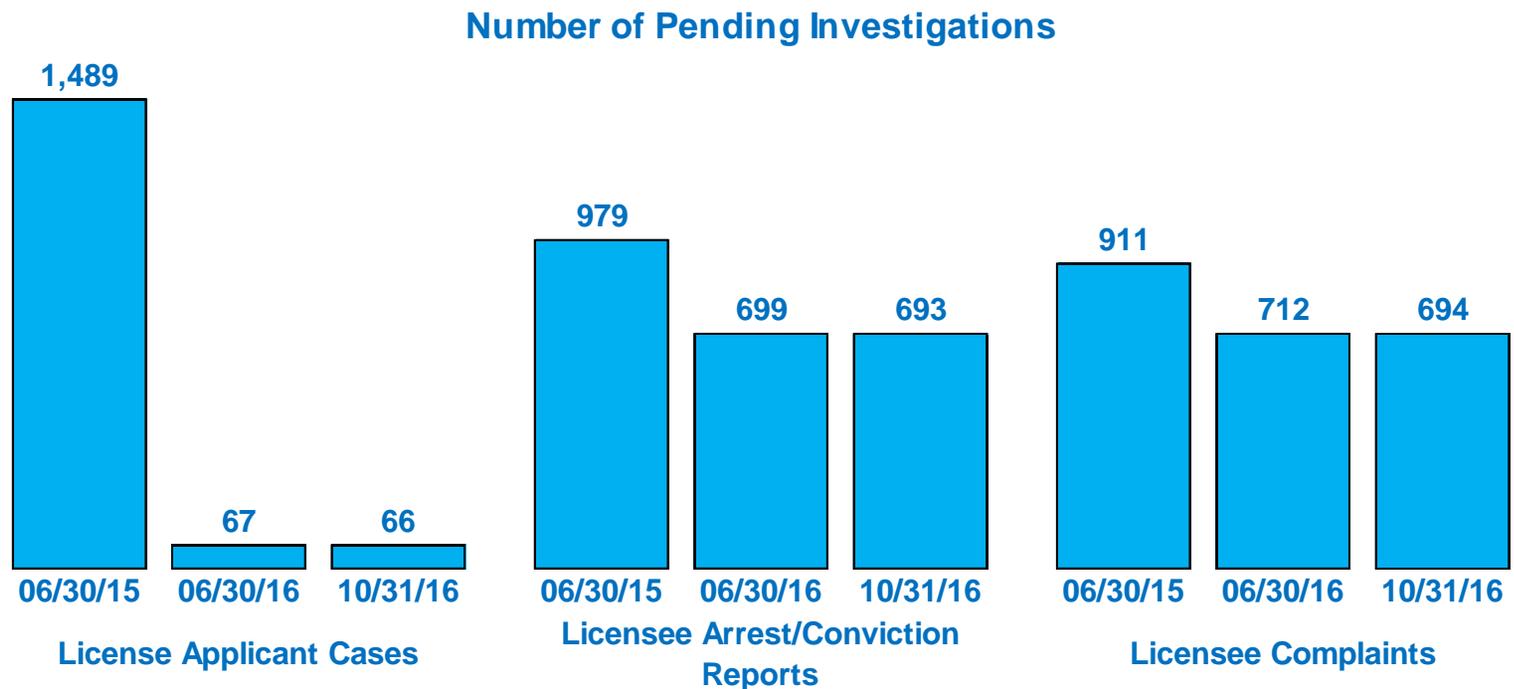
- ❖ During 2015/16, significantly more licensee arrest/conviction report and complaint investigations were completed than were completed during 2014/15.



- ❖ In comparison, on an annualized basis, from July through October 2016, significantly fewer licensee arrest/conviction report and complaint investigations were completed than were completed during the preceding fiscal year.

## C. Current Status of BVNPT's Enforcement Program

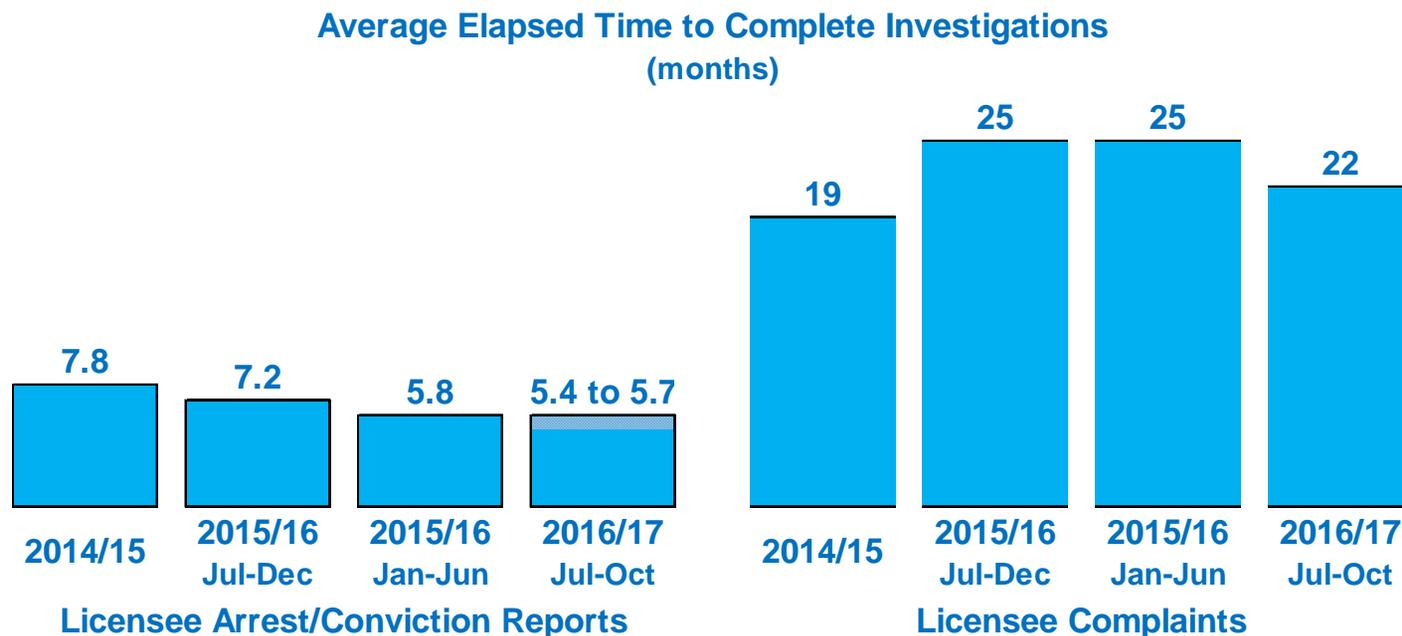
- ❖ During 2015/16, there were significant reductions in the number of pending license applicant, licensee arrest/conviction report, and licensee complaint investigations. Subsequently, from July through October 2016, there was very little change in the number of pending investigations.



- ❖ Concurrently, the average age of BVNPT's pending licensee complaint cases decreased from about 17 months as of June 30, 2015, to about 12 months as of October 31, 2016. *However, the 12-month average age of BVNPT's pending licensee complaint cases is still quite old.*

## C. Current Status of BVNPT's Enforcement Program

- ❖ The average elapsed time to complete licensee arrest/conviction report investigations decreased during 2015/16 as compared to the prior year. Subsequently, during July to October 2016, there was little change to average elapsed time to complete these investigations.



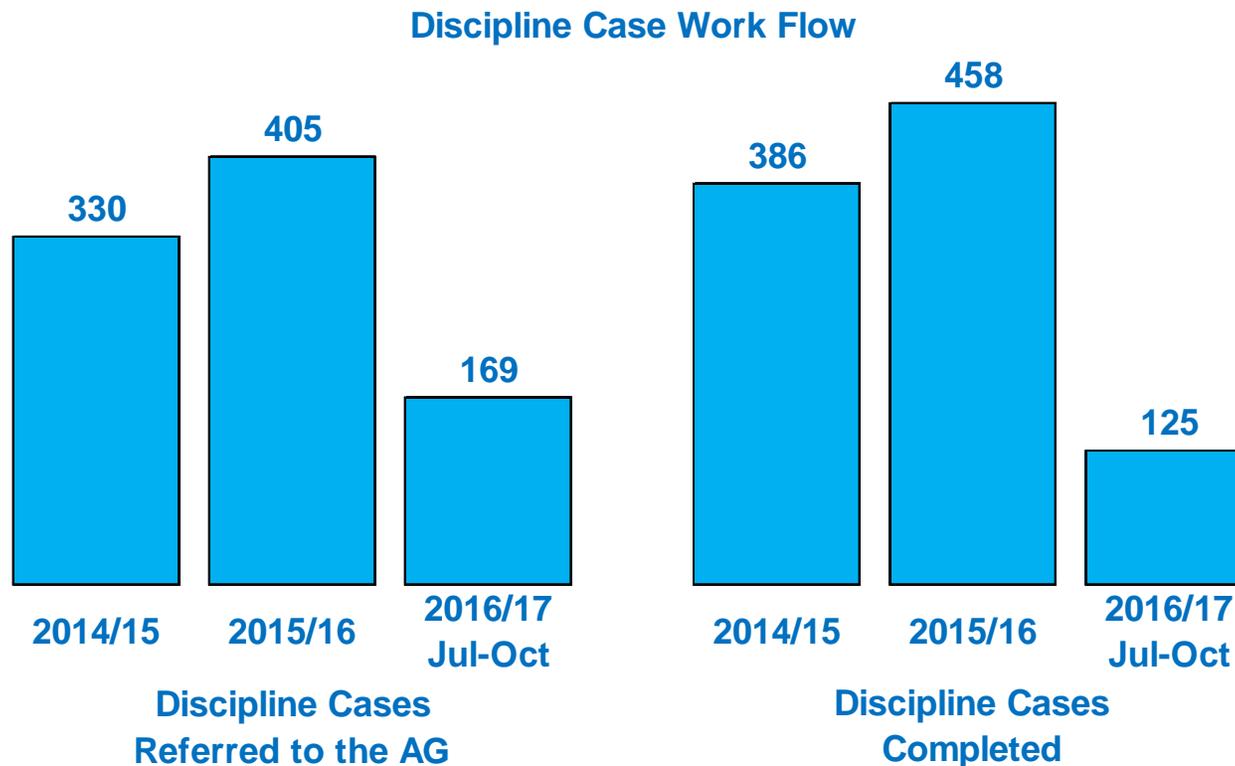
- ❖ Due to the completion of especially large numbers of older cases during 2015/16, the average elapsed time to complete licensee complaint investigations increased significantly during that year. During July to October 2016, the average elapsed time to complete licensee complaint investigations decreased to about 22 months, *but that amount of elapsed time for completing these investigations is still quite long.*

## C. Current Status of BVNPT's Enforcement Program

- ❖ During our on-site interviews with BVNPT staff on December 7<sup>th</sup> and 8<sup>th</sup>, we were surprised to learn that a large-scale audit of licensee compliance with BVNPT's Continuing Education (CE) requirements had been launched.
  - In late-November BVNPT began mass mailing CE compliance audit letters to about 58,000 licensees representing more than 40 percent of all licensees. We were told that the mailings were expected to be completed by mid-December.
  - None of the BVNPT managers or staff that we interviewed were able to articulate specific plans or schedules for staffing or completing all of these audits.
- ❖ We later learned that BVNPT staff contacted DCA's Business Services Office (BSO) on December 9<sup>th</sup> about folding, stuffing and mailing 50,000 of the CE audit letters. We also learned that BSO assisted BVNPT during November and December with submitting and expediting a request to the DGS Office of State Printing to print window envelopes needed for the mailing. In early-January, after receiving the envelopes from the Office of State Printing, BSO completed BVNPT's CE mailing project.
- ❖ Even if very little time is needed by BVNPT staff for each of these audits (e.g., an average of 15 minutes per case), a relatively large workforce could be needed for an extended period of time to complete all of these audits.
- ❖ In mid-January, BVNPT began offering weekday and weekend overtime to all staff to help respond to the increased volumes of CE-related mail and email that were being received.

## C. Current Status of BVNPT's Enforcement Program

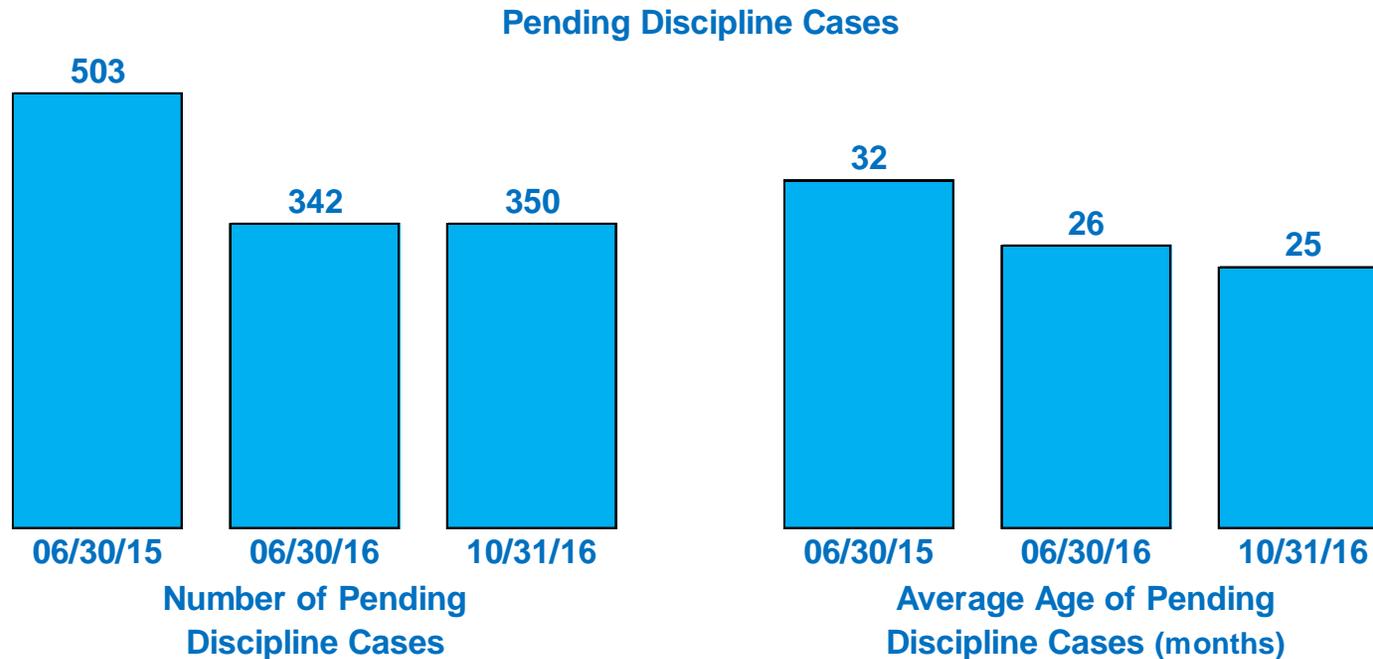
- ❖ During 2015/16, the number of cases referred to the AG and the number of discipline cases completed both increased significantly compared to 2014/15.



- ❖ In comparison, on an annualized basis, from July through October 2016, the number of discipline cases referred to the AG increased while the number of discipline cases completed decreased.

## C. Current Status of BVNPT's Enforcement Program

- ❖ During 2015/16, the number of pending discipline cases decreased significantly along with the average age of the pending discipline cases.
- ❖ Subsequently, during July to October 2016, there was very little change in either the number of pending discipline cases or the average age of the pending discipline cases.

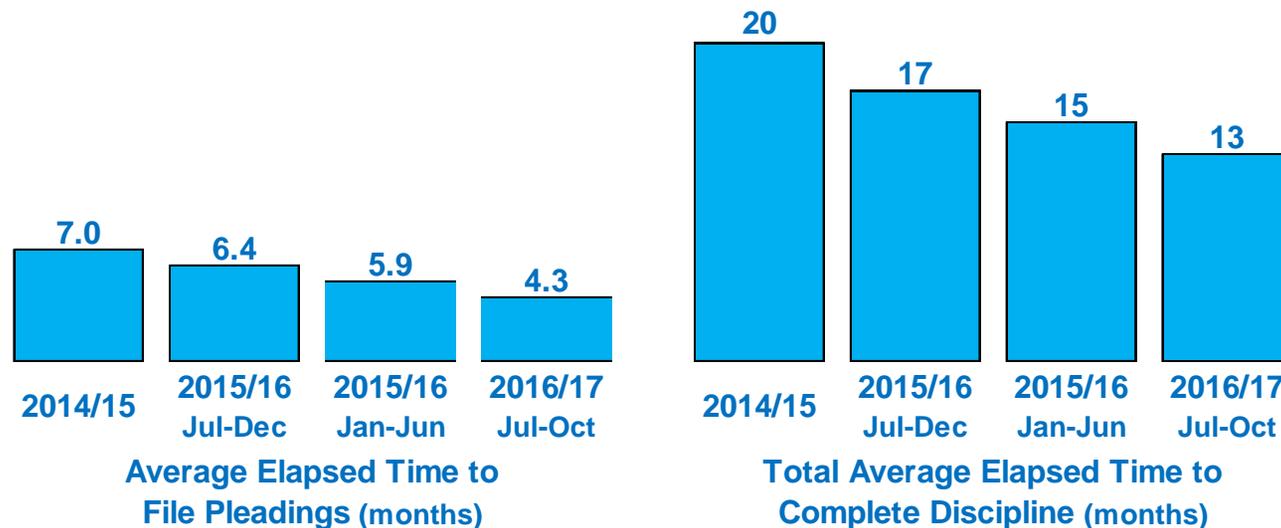


- ❖ *The total number of pending discipline cases is still very large and many of these cases are quite old.*

## C. Current Status of BVNPT's Enforcement Program

- ❖ Finally, during 2015/16, the average elapsed time to file pleadings and the total time to complete disciplinary actions decreased. Both of these measures decreased further during July to October 2016. These latter decreases partially reflect the lagged impacts of the large number of discipline cases completed during 2015/16 and related reductions in the number and age of BVNPT's pending discipline cases.

Discipline Case Elapsed Time Measures



- ❖ During 2015/16, the average elapsed time from case receipt to completion of the discipline process (PM-4) decreased to about 2½ years from about 3 years for cases completed during 2014/15. Subsequently, for the July to October 2016 period, this key elapsed time performance measure was unchanged. *BVNPT's 2½ year average timeframe to complete its discipline cases remains quite long.*

## D. Vacant Positions and Hiring

- ❖ During periods immediately prior to its 2014/15 Sunset Review, BVNPT experienced especially high vacancy rates, particularly within its Education, Licensing and Administration business units where vacancy rates regularly exceeded 25 percent. In contrast, vacancy rates within the Enforcement Division were relatively low (less than 10 percent).
- ❖ Subsequently, many of BVNPT's vacant positions were filled which reduced total vacancies to 8.5 positions by December 2015. As of December 2015, BVNPT's overall vacancy rate was about 13 percent.
- ❖ Subsequently, during 2016, staff turnover increased. As of December 2016, the overall vacancy rate rose to about 17 percent, including 6 vacant Enforcement Division positions and 6 vacant positions within other business units. Some of these positions have been vacant for extended periods of time, including:
  - Assistant Executive Officer (21 months)
  - Licensing and Administration PT II/SSA (19 months)
  - Licensing and Administration MST/AGPA (13 months)
  - Licensing and Administration OT (7 months)
  - Licensing and Administration SSA/SSM I (6 months)
  - Enforcement Supervising Special Investigator and Staff Services Analyst (6 months).

Additionally, turnover of existing staff is continuing across the organization.

## D. Vacant Positions and Hiring

- ❖ Elevated numbers of vacant Enforcement Division positions, the extended absence of BVNPT's Chief of Enforcement, and turnover of experienced enforcement staff appear to be adversely impacting overall Enforcement Program performance.
- ❖ Additionally, based on interviews conducted during early-December with about two-thirds of Enforcement Division staff, the overall work environment and workforce morale appear to have deteriorated since March 2016, at least within the Enforcement Division.
- ❖ In our *Initial Report* we noted that BVNPT's Licensing and Administration Division had only 2 authorized management and supervisory positions, both of which were filled. We also noted that these 2 positions had large spans of control. Establishing and filling an additional SSM I position for a new Licensing Support Services business unit and reclassifying and filling the AEO position, or filling the existing AEO position and utilizing it primarily to bolster management of licensing and administration business units, would help to reduce these spans of control and improve oversight and management of subordinate staff. However, to date, neither of these positions has been filled on a permanent basis.
- ❖ Finally, since mid-September 2016, BVNPT has made 4 temporary, out-of-class assignments involving positions allocated to the Executive Office, Education, and Licensing and Administration business units. Collectively, these assignments boosted the total number of positions involved in managing and supervising staff assigned to these business units by 1 position for a limited period of time. However, the utilization of short-term, out-of-class assignments to temporarily fill vacant supervisory and management positions is not a substitute for filling the positions on a permanent basis.

## E. Staff Training

- ❖ During the past year BVNPT has significantly boosted the number of staff that are provided with various types of training and the amount of training that is provided to these staff.
  - During both 2014 and 2015, about 60 training sessions were attended by about 30 BVNPT staff
  - In comparison, during just the first 9 months of 2016, about 140 training sessions were attended by more than 40 BVNPT staff.
- ❖ Additionally, much greater emphasis has been placed on providing more advanced training in such areas as (1) analytical skills development and (2) supervision, management and leadership development.

## F. Oversight of Staff and Evaluation of Staff Performance

- ❖ Recently, the level of oversight of Enforcement Division staff was adversely impacted by (1) the separation of the sole supervisor of the Investigation Section and (2) an extended leave of absence of the Division's Chief of Enforcement.
- ❖ With respect to BVNPT's Licensing and Administration business units, various changes in BVNPT's organizational structure, position allocations and staff assignments were initiated to improve workload and workforce oversight and management. However, these changes have not yet been fully implemented.
- ❖ Needs exist for BVNPT to (1) fill currently vacant management positions and (2) avoid needs to temporarily assign supervisors and managers to these positions.
- ❖ Finally, it is our understanding that annual reviews and evaluations and staff performance in all of BVNPT's business units have been initiated. During the periods immediately prior to 2016/17, reviews and evaluations of BVNPT staff were not usually completed except for new staff during their probationary period.

## G. Oversight of BVNPT's Executive Officer

- ❖ It is evident that the members of BVNPT's governing Board have been largely dependent on information provided by the Executive Officer for purposes of performing their oversight responsibilities.
- ❖ Although such dependency is not unique to BVNPT, several members noted during our interviews with them that this dependency can result in the Board being unaware of performance or other problems as occurred during periods immediately preceding BVNPT's 2014/15 Sunset Review.
- ❖ Oversight of BVNPT's Executive Officer and, by extension, BVNPT's programs and operations, could potentially benefit from utilization of a 360 degree, multi-rater assessment process in which feedback regarding the Executive Officer's performance is solicited from a variety of points of view. Such information could be utilized exclusively for developmental purposes or for a combination of developmental and performance assessment purposes.
- ❖ The *Third Report* contains just 1 recommendation involving establishing a multi-agency Work Group to assess needs for development of a 360 degree Executive Officer feedback process and, *if needed*, the best approach and timeframe for developing and implementing the process.

## H. Implementation of Phase II Recommendations

- ❖ In our *Second Report* we presented 29 recommendations for consideration by the Board. As of late-December, BVNPT had implemented 4 of these recommendations:
  - V-2 involving continued utilization of Temporary Help to augment Probation Unit staffing
  - V-10 involving continued provision of formal classroom type training to Enforcement Division staff
  - VII-2 involving development and adoption of a written charter for the Enforcement Committee
  - VII-3 involving provision of briefings to Enforcement Committee members.
- ❖ As of late-December, BVNPT had also partially implemented 8 other recommendations:
  - IV-2, IV-10 and IV-11 involving BVNPT's case intake and screening procedures and practices
  - IV-6 and IV-7 involving working collaboratively with the AG to identify ways to increase utilization of and expand the Fast Track Program
  - IV-8 involving development of legislation to enable delegation of default decision approvals
  - V-7 involving establishing a new Probation Section
  - VII-1 involving provision of training to new Board members.

## I. Other Issues

- ❖ During the past 6 months various issues, problems and concerns surfaced or were brought to our attention by BVNPT staff involving matters that were not within the scope of the Monitor assignment. As these matters surfaced, and consistent with provisions of AB 179, we relayed the information to DCA's Project Manager and, as appropriate, other members of DCA's Leadership Team.
- ❖ More specifically, information regarding various problems involving BVNPT's licensing and licensing support business processes surfaced or were brought to our attention by BVNPT staff. While we have not completed any assessment of these problems, we have made very limited efforts to confirm or verify the information provided to us.
- ❖ Specific problems that were brought to our attention subsequent to completion of our Phase I Initial Assessment included:
  - Delays in cashiering school applications
  - Delays in processing on-line initial license applications
  - Delays in processing license renewal batch mail received from DCA Central Cashiering
  - Delays in processing address changes (in-house)
  - Issuance of a Temporary License to an applicant that was previously denied licensure for a criminal offense.

Questions?