



**BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS**



Enforcement Division
Overview

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Board of Vocational Nursing and Psychiatric Technicians Overview

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) is mandated to protect consumers from dangerous practitioners in the most efficient, effective and timely manner possible. Pursuant to Business and Professions Code 101.6, the Board was established to protect public health, safety, and welfare, and must provide the following:

“. . . a means of redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute the disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. . .”

To this end, the Board has an aggressive enforcement program designed to protect consumers. The goal is to provide a fair and unbiased review and investigation process. Generally, most licensees serve consumers in a safe and professional manner. However, when a licensee fails to uphold their professional or ethical responsibilities, the Board conducts swift and just enforcement to protect the integrity of the profession and the safety of consumers.

Protection of the public is the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.¹

The Board's Enforcement Program serves a critical role in protecting consumers by:

- Enforcing the rules and regulations governing the practice of LVNs and PTs;
- Investigating and taking disciplinary action against licensees who have been unprofessional, incompetent, negligent and/or abusive;
- Monitoring probationers to ensure that they comply with the Board's terms and conditions of probation; and
- Developing innovative methods and procedures to enhance consumer protection, reduce costs and expedite complaint handling.

Applicants

Once a potential vocational nurse (VN) or psychiatric technician (PT) has been determined to meet the minimum educational qualifications for licensure, and passes the required exam, they are subject to a background check.

¹ Bus. & Prof. Code, § 2841.1 & 4501.1

Applicants must submit fingerprints as part of the application process which initiates a criminal background check with the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

An applicant with a criminal background may take the licensure examination once the education and experience requirements are met; however, a final determination on the application regarding a criminal background is made only after the applicant passes the licensure examination. By permitting the applicant to take the exam, the Board does not waive its right to deny licensure based on convictions once the applicant passes the exam.

Applicants with a Criminal History/Board Discipline

The Board gathers information regarding the applicant's criminal history or other Nursing Board discipline by requesting detailed information from the applicant about the conviction(s) including certified court documents, law enforcement reports, a written explanation from the applicant about the circumstances surrounding the crime(s) and documentation regarding rehabilitation.

If the applicant has any issues that fall outside of the AB 2138 parameters and must be investigated, a complaint is generated
AB 2138

Per AB2138, applicants are no longer required disclosed any information or provide any documentation regarding their criminal history. However, the Board may ask questions regarding an applicant's professional licensing disciplinary history as well as questions regarding convictions of crimes resulting in having to register as PC290 sex offender.

The Board can only take into consideration substantially related convictions from the preceding seven years from the date of the application, with the following exceptions – serious felonies under California Penal Code (PC) 1192.7 or convictions requiring sex offender registration per PC290.

License Denial

The Board has authority to deny licensure to a vocational nurse or psychiatric technician applicant whose criminal background is substantially related to the license applied for and/or when there is reason to believe the applicant may jeopardize consumer health and safety.

The Board may deny licensure for any of the following reasons:

- Conviction of a Crime - Includes a plea or verdict of guilty or a conviction following a plea of nolo contendere.

- Dishonesty - Includes the commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit him/herself or another, or substantially injure another.
- Related Criminal Behavior - Commission of any act which, if done by a licensed vocational nurse or psychiatric technician, would be grounds for suspension or revocation of licensure.
- Falsification of Application - Includes knowingly making a false statement of fact in the application for licensure.
- Disciplinary Action Taken by Another Agency or State - Includes other California health care professional licensing boards or other governmental agencies.

The Board evaluates the official criminal documents and supporting information to determine whether a license should be issued or denied. If the Board denies licensure, a Statement of Reasons (denial notice) is mailed to the applicant informing him/her of the right to request an administrative hearing within 60 days from the date of the denial letter.

If a hearing is requested, the application and supporting documentation are transmitted to the Attorney General's Office for the preparation of a Statement of Issues document. The Statement of Issues document is mailed to the applicant, and an administrative hearing is scheduled. At the conclusion of the administrative hearing, the Administrative Law Judge (ALJ) who presided at the hearing, submits a proposed decision to the Board for consideration.

Complaints

Most consumers receive quality care from VNs or PTs. Those that do not, however, are encouraged to file a complaint with the BVNPT.

All complaints received are triaged by the Intake and Enhanced Screening Unit (ISEU). The assigned staff checks for online complaints, mail-in complaints, and handles any telephone complaints.

Complaint Complexity

The complexity of a case is determined by the type of case it is. A criminal case or discipline from another Board would be considered a "paper case" in that no investigation is required. All that is required is the collection of the documents. These cases are handled by ISEU or LACRU.

A complaint in which the practice of the nurse is investigated would be considered a complex case. These cases would require interviews and may

require an expert witness opinion. These cases are handled by SI or the Department of Consumer Affairs Division of Investigations (DOI).

Daily Triage

During the daily triage meeting, the assigned staff determine whether the complaint is within the jurisdiction of the BVNPT. Triage validates the complaint and determines if the analyst needs to obtain enough evidence to warrant an investigation. If there are no reported violations² to warrant an investigation, or if there is insufficient information, the ISEU manager recommends to the Enforcement Chief to close the complaint at Intake as “No Jurisdiction” or “Unactionable.”³

Consumer Protection Enforcement Initiative

The Consumer Protection Enforcement Initiative (CPEI) established prioritization guidelines with 4 different categories. All complaints determined to be Category 1 (Urgent) and Category 2 (High), are referred to the Division of Investigation for investigation. Category 3 and 4, which are classified as Routine, are assigned to either a Special Investigator or desk analyst for desk investigation. Special Investigators investigate more complex complaints involving fieldwork.⁴

Requirements for Nondisclosure

The complaint process is confidential, and any information contained within the complaint, including the identity of the complainant, should not be disclosed. While the case is pending, investigative records should not be disclosed under the Public Records Act or under subpoena. Records contained in the investigative file not available to the public may be shared with another state or federal agency if assurances of confidentiality are given or if the agencies are conducting a joint investigation (Government Code section 11180). The agency receiving the records must be authorized by law to receive such records.

² If the allegations are not a violation of a Practice Act or the regulations, BVNPT has no jurisdiction to take a complaint. An example of this would be a spouse complaining that the licensee is not “supportive enough” during their divorce proceedings. Another example may be that the complainant reported to the incorrect Board. In these cases, the complaint will be referred over to the correct Board.

³ If the complaint does not include information on who the licensee is, as no listed place of employment, and no date range as to when the complaint occurred, and there is no listed contact information for the complainant.

⁴ Please see the appendix for the Screening Criteria for CPEI Category 3-4, which delineates what will be handled by IESU and what will be handled by IESU

If the release of complaint information will not jeopardize an investigation or any other duties of the agency, a DCA agency is required to allow California District Attorneys access to complaint information if the district attorney is investigating possible consumer fraud. (Government Code section 26509).

Obtain written confirmation from the district attorney regarding the purpose of his or her investigation before disclosing complaint information. Once released by an agency, complaint information remains confidential unless the district attorney takes action with respect to the complaint or investigation.

Records obtained under administrative subpoena should never be disclosed to any other outside parties to prevent unauthorized disclosures and criminal sanction. Consult legal counsel for questions about appropriate information sharing with law enforcement or other government agencies.

If records are not maintained confidentially or shared without assurances of confidentiality with another agency, arguments can be made that confidentiality has been waived.

Records can be shared with law enforcement and other governmental agencies Pursuant to Government Code section 11180, et. seq. and Civil Code Procedure section 1798.24, subdivisions (o) and (p).

It should be noted when sharing information/records, the Board is providing this information/report pursuant to Government Code section 11180, et. seq. and Civil Code Procedure section 1798.24, subdivisions (o) and (p). The report and any records provided with it should not be used in any matter other than official proceedings. Additionally, these records should not be made available as a public record or released to any other agency not authorized by law.⁵

Desk Investigations

Once all complaint related information, such as subject/witness statements, employment records, medical records, and evidence, is obtained, the assigned analyst reviews the evidence to determine whether the Board can substantiate or not substantiate whether the licensee violated their corresponding practice act. The analyst develops a case report with their findings. The initial reviewing

⁵ Applicable Government Code: [11180.](#), [11180.5.](#)- [11181.](#)- **Civil Code – 1798.24.**

manager makes a final closure recommendation for management review. The most common recommendations for desk investigation cases are the following:

- No Violation- Investigation revealed the allegation is false, could not have happened, and/or is without a reasonable basis.
 - Obtained proof that the violation did not occur. For example, an allegation of abuse in which the licensee never worked at the facility.
 - A licensee is convicted of a crime that is not substantially related to practice. If it is not substantially related to practice, there is no violation. An example of this is a traffic infraction in which alcohol, dangerous drugs, or controlled substances were not involved, nor the cost of the ticket more than \$1,000.
 - The allegation itself is not possible, such as a licensee accused of being a mind reader who is listening in on someone's thoughts.
- Insufficient evidence- Means that although the allegation may have happened or is valid, there is not a sufficient amount of evidence to prove that the alleged violation occurred or did not occur. This may include conflicting witness statements, because the licensee and the complainant were the only people who provided statements.
 - Cannot prove that the violation did or did not occur. For example, an allegation of sexual misconduct in a prison, because the CDCR responds that there is no discipline in the licensee's file. The lack of a personnel action does not mean that the misconduct didn't happen, it means there is no proof that it occurred.
 - Unable to obtain all documents needed and cannot prove that the allegation occurred.
- Notice of Warning (NOW) to the Licensee
 - Any complaints where administrative action is not warranted, but there is a violation. These types of cases are what Enhanced should be investigating.
 - A NOW is issued if there is an arrest with no conviction, but the alleged behavior is concerning, and if convicted would have led to a citation or disciplinary action.
- Cite and Fine
 - Citations and fines may be issued for violations of the laws and regulations enforced by the Board, beyond a Notice of Warning, but does not meet the standard for Disciplinary Action. Citations are not formal disciplinary actions and are matters of public record.
- Refer to Discipline
 - For cases in which the licensee has been convicted of a crime substantially related to the qualification, functions, and duties of the license.
 - Gross Negligence- A severe departure from the standards of practice that could or did result in patient harm.

- Incompetence- Lack of knowledge or skill in discharging professional obligations.
- These cases are typically handled by SI or DOI. If an analyst in IESU believes a case is headed towards needing discipline, they should loop in their manager and SI.
- No Jurisdiction
 - Anything outside the regulations in the Nursing Practice Act or Psychiatric Technician Law (incidents not related to or involving patient care) (i.e. hostile work environment or personnel issues.)
 - If the licensee identified in the complaint is not an VN or PT.

Inmate Complaints

The Board receives Inmate/Patient related complaints from facilities operated by Department of Corrections and Rehabilitation and State Hospitals. California Senate Bill 425 requires health facilities and clinics to report any allegations of sexual abuse or sexual misconduct made against a healing art licensee. Inmate/Patient usually files a healthcare grievance form⁶ with the facility and the facility may file the complaint with the Board if it is sexual abuse related.

Complaints may or may not come contain supporting documentation. It is the responsibility of the assigned analyst/investigator to retrieve the complaint information needed to properly investigate the case.

Special Investigations (SI) Unit

This unit handles cases too complex for the IESU, but do not rise to the level of a DOI investigation.

These are typically CPEI level 3-4 cases which need interviews. Cases that do not need interviews are considered “paper cases” and are typically handled by the IESU.

Division of Investigation

The Division of Investigation (DOI) was established in 1961 to provide centralized investigative and law enforcement services for some regulatory boards and bureaus within DCA. As the police department for DCA, DOI provides law enforcement investigative services for the various regulatory boards, bureaus and programs within DCA pursuant to the authority under Business and Professions Code § 159.5 and 160 and Penal Code § 830.3(a). All DOI peace officers are authorized to conduct criminal and administrative investigations,

⁶ CDCR 602 HC

obtain and execute search warrants, serve legal processes and make arrests anywhere within the State of California. As of July 1, 2014, the DOI consists of three units, the Investigation and Enforcement Unit (IEU) and the Health Quality Investigation Unit (HQIU), each of which provides specialized investigative services to different boards and bureaus within DCA and the Special Operations Unit (SOU) who are tasked with investigating egregious employee misconduct cases (Internal Affairs) and workplace violence incidents involving employees.

Within DOI is the Special Operations Unit (SOU) which performs internal affairs and threat and workplace violence assessments for the Department. The SOU also performs protective and stand-by service, which includes serving adverse actions. Additionally, the SOU is responsible for conducting sworn and non-sworn background investigations, administering the Department's Criminal Offender Record Information, and administering the Infraction Citation Clearance Program. DOI is responsible for all Category 1 and 2 complaints for all boards and bureaus.⁷

Board of Nursing and BVNPT Joint Complaints

When a complaint comes in on a nurse who is licensed as an VN and an RN, jurisdiction is determined on a case by case basis. The RN is the higher license type, and most of the time, the nurse was performing as an RN when the issue occurred. In these cases, DOI notifies the BVNPT, who closes the case, and BRN is the lead licensing agency.

In cases in which the nurse received their RN license after the incident and was licensed as an LVN at the time of the incident, BVNPT becomes the lead licensing agency, and BRN will close out its case.

In both examples, the cases are closed out so that DOI, who is responsible for investigating the case, does not have two cases counted when there is one case. DOI understands it is responsible for letting the non-lead licensing board know the case outcome, so that, if needed, the other licensing board can take action. The Deputy Attorney General (DAG) can represent both boards at hearing, and the ALJ can make a determination on both licenses at hearing.

⁷ Business and Professions Code 328. (a) In order to implement the Consumer Protection Enforcement Initiative of 2010, the director, through the Division of Investigation, shall implement "Complaint Prioritization Guidelines" for boards to utilize in prioritizing their respective complaint and investigative workloads. The guidelines shall be used to determine the referral of complaints to the division and those that are retained by the health care boards for investigation.

An example of a case type that will not have a lead licensing board is drug diversion or patient abuse if the nurse was licensed by both boards at the time of the incident(s).

In the cases of a Subsequent Arrest Report (SAR) both licensing boards will investigate, as the case may be handled differently by each board based on their specific regulations. Boards can share information and documents.

Expert Witnesses

Board expert witnesses provide consultation to staff, analyze case materials, prepare written opinions, and when necessary, testify at administrative hearings as an expert witness. An expert is a licensed practitioner who possesses technical and professional knowledge gained through advanced education and extensive work experience that enables the individual to form a definitive professional opinion regarding the standard of care under investigation.

Experts meet the following qualifications:

- Hold a current active and valid license in California as a registered nurse, vocational nurse or psychiatric technician; be in good standing; have no prior or pending disciplinary actions with the Board or any other state licensing agency; and no pending investigations or enforcement actions.
- Have a minimum of five years post-licensure practice.
- Have worked directly with licensed vocational nurses and/or psychiatric technicians within the last 12 months as either an educator or practitioner in California.
- Have knowledge of standards of professional practice for licensed vocational nurses and /or psychiatric technicians.
- Be able to interpret the Vocational Nursing Practice Act and/or the Psychiatric Technician Law.
- Possess strong written and oral communication skills and the ability to express ideas logically and critically.
- Possess the knowledge and experience required to render an unbiased opinion that reflects current knowledge and standards of professional practice for licensed vocational nurses and/or psychiatric technicians.
- Does not have any open complaints against their license or any closed complaints that have been substantiated.

Experts typically handle the following types of cases:

- Gross negligence
- Scope of practice issues⁸

⁸ For example, cases involving Botox or other cosmetic procedures

A case that needs an expert opinion is assigned to the person closest to the case geographically to save on costs associated with testifying. Once the expert has confirmed that they accept the case and the proposed cost accepted, the expert conducts the work. Upon completion of the work, the expert sends an invoice for payment to the BVNPT.

If the expert determines that the VN/PT was negligent in their duties, the case will be referred to the Attorney General's Office. If the expert determines the VN/PT was not negligent, the case is closed.

Discipline

Once a finding is made that the allegation occurred, and that the issue is serious enough for discipline, the case is turned over to the Discipline Unit. The Discipline Unit has several options it can explore to ensure the health and safety of the consumer. Acts that are subject to disciplinary action (which may result in revocation, suspension and/or probationary status of a license) include, but are not limited to:

- Unprofessional conduct;
- Sexual misconduct;
- Gross negligence;
- Conviction of a crime substantially related to the qualifications, functions, or duties of the licensee;
- Substance abuse and/or use of drugs with a client;
- Intentionally or recklessly causing harm to a client;
- Practicing beyond the scope of the license;
- Failure to maintain confidentiality;
- Failure to adhere to reporting requirements;
- Failure to keep proper medication and/or treatment records, etc.

Filing Formal Charges

Formal charges are almost always filed in cases in which the health and safety of the consumer is compromised, and clear and convincing evidence is established. These formal charges are referred to as pleadings. In each pleading, the Executive Officer is considered the complainant.

Pleadings

There are three types of pleadings. The type of pleading is dependent upon whether the respondent (subject of the case) is licensed with the board, an applicant for licensure, or on probation with the BVNPT.

- **Accusation:** A written statement of charges against the holder of a license or privilege, to revoke, suspend or limit the license, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations.

- **Statement of Issues:** A written statement of the reasons for denial of an application for a license or privilege, specifying the statutes and rules allegedly violated and the acts or omissions comprising the alleged violations.
- **Petition to Revoke Probation:** A written statement to revoke a probationer's license or registration alleging the probationer has violated the terms and conditions of probation. Settlement terms are never offered in this circumstance.

Actions Preceding an Administrative Hearing

Once an Accusation, Statement of Issues, or a Petition to Revoke Probation is filed and the respondent has been served, the respondent may file a notice of defense and request an administrative hearing. All hearings are held before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).

During this process, several outcomes may occur. The respondent may fail to respond to notice of proposed action (default decision). The respondent may wish to settle the matter prior to a formal hearing. The case may proceed to a formal hearing.

Fast Track Cases

A case may be determined to be suitable for the fast track program. For a case to qualify it must be a "paper case" meaning there are no witnesses or attorneys involved in the case. Examples of these cases include but are not limited to:

- Out-of-state cases
- Arrest cases
- Most SOI cases

The cases must have the following documentation in order to participate in the program:

- Certified copies of all documents
- Settlement terms are included
- The AG must be specifically notified of any mitigation documents needed at the time of transmittal

BVNPT can consider offering reduced costs to settle the issue.

Fast track cases typically take four to six months to complete, while a regular transmittal takes much longer.

Penal Code 23 and Interim Suspension Orders

A Penal Code (PC) 23 case is an order regarding suspension, either full or partial, imposed on a criminal defendant licensee by a criminal court judge. The crime

charged must be substantially related to the qualifications, functions, or duties of a licensee.

An Interim Suspension Order is an order of suspension, either full or partial, imposed upon a licensee by an ALJ pending further administrative action.

These two options are used in more serious cases where the Board needs to take immediate action to protect public safety because the licensee poses an immediate danger to the public.

Psychiatric Evaluation Cases

A case in which a licensee's ability to practice safely has been called into question due to mental health issues. These cases may be reported to the Board via:

- Concerned employer who has witnessed erratic behavior on the part of the licensee
- Police and/or arrest reports
- Self-reporting

In these cases, the DAG serves the licensee with an order to undergo an evaluation. The Discipline Analyst is responsible for finding a licensed psychiatrist in the area the licensee resides and handle all costs that result for the evaluation.

If the licensee agrees to an evaluation, and the psychiatrist finds them safe to practice, the matter is closed. If the licensee is found to be unfit to practice, the DAG files an accusation to remove their ability to practice.

If the licensee refuses to submit to an evaluation, the DAG completes an accusation for the licensee failing to comply with an order.

Notice of Defense

Once the licensee is served with an action, they have the opportunity to decide if they want to send in a notice of defense. If the licensee fails to send in a notice, the judgement is entered as a default decision.

Late Defense

If the licensee submits a defense late, the Discipline Manager can pull back the notice if the Board has not voted on it and send the case back to the DAG for processing.

Reconsideration Hearing

If the Board has voted on the default decision, the licensee can petition the board for a Reconsideration hearing.

Motion to Vacate

The licensee can request a motion to vacate the default decision. The Discipline Manager is responsible for determining whether or not to vacate the decision and send it to a hearing.

Settlement

During the course of the case, the licensee may wish to settle. The terms of settlement vary from case to case, and the Discipline Analyst makes a recommendation on appropriate settlement terms. The Discipline Manager is responsible for looking at any terms and conditions outside of the Disciplinary Guidelines 1-14 terms, cost recovery, and the length of the probation.

ADA Compliance

Discipline is also responsible for ensuring that the following documents are posted on BreZE, and are ADA compliant:

- Stipulations
- Default Decisions
- Accusations

Discipline Process and the Attorney General's Role

The Board utilizes the services of the California Attorney General Office (AG) and the Office of Administrative Hearings (OAH) to ensure that enforcement actions are handled in a fair and judicious manner. The DAGs work with the Board's enforcement staff to determine whether the necessary evidence exists for a successful prosecution. The burden of proof in these matters is clear and convincing evidence. If an individual holds a license with the Board, the burden of proof is the responsibility of the Board. If an individual is an applicant with the Board, the applicant has the burden of proof.

Every board, including the BVNPT, has its legal counsel in attendance at public meetings to not only assist the Board in its decision-making role, but to ensure that the many varied legal requirements are met.

Board Member Role in Discipline

The Board members are excluded from the majority of the enforcement process,⁹ because they must sit as the judge in the final determination. However, the Board must be involved in establishing guidelines for staff, the Deputy Attorney General, and the Administrative Law Judge to utilize when drafting proposed decisions or stipulated agreements. Therefore, the Board sets its policies in regulation via its Disciplinary Guidelines.

⁹ e.g. complaint review, investigations, prosecution

In the legal realm, disciplinary guidelines are just that-guidelines. Judges have the authority to sometimes vary from the guidelines, but, for the most part, they rely on the guidelines from the Board. The Board developed minimum and maximum guidelines to allow for the individual fact patterns in each case. The Executive Officer, board staff and the DAG handling each individual case utilize the guidelines to negotiate appropriate probationary terms and conditions specific to the violations of any case.

Stipulated settlements are the product of careful, deliberate and measured analysis by Board staff and the Office of the Attorney General.

Board Review of Stipulations and Proposed Decisions

The Board Members review and vote on each case where the matter is either settled prior to hearing or the ALJ issues a Proposed Decision. In all cases, the Board Member has the option to adopt, non-adopt, or hold for discussion. The decision on each case is based on a majority vote of the Board.

Proposed Decision

A Proposed Decision is the legal document issued by an Administrative Law Judge (ALJ) after the hearing. When a Proposed Decision is received in the Board's Office, it must be acted on within 100 days. Board staff is also required to provide the respondent and his/her legal counsel a copy of the Proposed Decision within 30 days of its receipt in the office regardless of whether the Board has acted on the Proposed Decision. While the ALJ issues the Proposed Decision, the Board is the final decision maker. At its discretion, the Board may:

- Adopt the Proposed Decision as the Decision (of the Board),
- Non-adopt the Proposed Decision and increase/decrease the penalty,
- Make technical changes,
- Remand to the ALJ for the taking of more evidence.

Petition for Reconsideration

After the Board issues a Decision, either the Respondent or the Petitioner may request reconsideration of all or part of a case. The power of the Board to order reconsideration shall expire 30 days after service of the Decision to the Respondent, or prior to the effective date of the Decision if before 30 days.

If the Petition for Reconsideration (Petition) is not timely received in the Board's office, the Petition shall be deemed denied.

If respondent submits a timely Petition for Reconsideration, a mail vote package is prepared for Board Members to either grant or deny the motion. (This is the request for the Board to reconsider the case only; the merits of the case are not considered at this time.)

If additional time is needed for the Board to act, including time to receive, review and vote on the Petition, the Executive Officer may grant a Stay of the effective date of the Decision. The Stay delays the expiration date for no more than 10 {additional} days. This additional time is solely for the purpose of the Board to consider and act on the Petition.

If the motion is granted, the matter is placed on the agenda for discussion at the next Board meeting.

If the motion is denied, the Decision is effective as originally ordered by the Board, or after the Stay expires.

If the Board fails to act (receive and review package and a quorum of votes render a decision on the Petition) within the time allowed, the Petition is deemed denied.

Review Process

Reconsideration, if granted, does not mean the Board is issuing a new decision; it only means the Board will take a second look at the Decision. The Board is given the following documentation:

- Respondent's Petition to Reconsider
- Order and Decision
- Charging document
- Evidentiary package (if applicable)
- Ballot and instructions

Board Vote by Mail

In order to ensure that cases continue to progress outside of Board meetings, the Board votes by mail. This process happens every two (2) weeks, except during months where there is a Board meeting. The analyst is responsible for tallying the vote, which must be returned to the office within two weeks of the receipt of the documentation. Once the votes are tallied, the manager reviews them to confirm the decision. The decisions are then issued based on the outcome of the voting.

Discipline Tracking Log

Once the decisions have taken effect the following must be completed:

- Close the case in BreEZe
- Report to NURSYS/NPDB

Cite and Fine

A citation is not formal discipline, rather is it an administrative action. As such, the information is not posted on BreEZe, but is available to the public if they request it.

Citations are issued when a violation can be proven.¹⁰ Citations bridge the gap between a notice of warning and the initiation of formal disciplinary action. Board staff drafts the Citation and Fine for the Executive Officer's (EO) signature. Citations identify the codes that were violated and contain a summary of the events and circumstances surrounding the violation. On occasion, citations may include an abatement order to correct a matter.¹¹

The Board implemented the Citation and Fine Program in January 1996. The Program provides the Board an additional enforcement tool to ensure resolution of violations that do not warrant suspension, revocation or probation of a license.

The Board has authority to issue citations for three classes of violations:

- Class A Violations – Class A violations are issued against employers of VNs or PTs who fail to report to the Board, in writing, the suspension or termination for cause of an LVN or PT in its employ within 30 calendar days from the effective date of the suspension or termination. The fine for a Class A violation cannot exceed \$10,000 per violation.
- Class B Violations - Class B violations are issued to licensees and represent the most serious threat to the health and safety of consumers for which citations can be issued. The fine for each Class B violation cannot be less than \$1,001 and cannot exceed \$2,500.
- Class C Violations - Class C violations are issued against licensees and represent the lowest threat to consumer health and safety. The fine for a Class C citation cannot exceed \$1,000.

The Board may issue a citation against a licensee with a fine of no more than \$5,000 if one or more of the following circumstances apply:

- The cited person has a history of two or more prior citations of the same or similar violations.
- The citation involves a violation that has a substantial risk to the health and safety of another person.
- The citation involves multiple violations that demonstrate a willful disregard of the law.
- The citation involves a violation perpetrated against an elder, disabled, or dependent person.

¹⁰ Citations level of evidence is a preponderance of evidence

¹¹ E.g. submitting an address change, documenting patient/client records, completing course work, etc.

The fine assessment worksheet includes a case summary, which defines what class of violation the licensee committed.

- Class B violation- More egregious, and usually is related to on the job issues, including but not limited to falsified timesheets.
- Class C- Less egregious issue, that is often for actions outside of the license, such as being arrested for Driving while Under the Influence (DUI) or working with an expired license.

The analyst from the screening or case review unit is responsible for writing the synopsis of events. This information is included with the case file when it is received at the citation desk. The citation analyst is responsible for writing the Fine Assessment Worksheet, which includes the codes/regulations violated, violation class, and a synopsis of events. It is also used to determine the fine amount, based on the gravity and class of the violation, the history of previous violations, and the extent to which the cited person cooperated with the investigation.¹²

The cite and fine analyst may receive a case for a licensee that is currently being investigated for another matter, and is refusing to cooperate, or has not changed their address. These cases are referred to cite and fine to use the administrative process to gain compliance from a non-compliant licensee.

The fine assessment worksheet includes a list of the Code/Regulation sections violated. The citation order that is sent to the Licensee will include the regulations and/or rules that the licensee has violated, to assist the licensee in better understanding the issue so that it can be corrected/avoided in the future.

Board staff serves the citation to the subject's address of record and tracks the citation for compliance or appeal. The cited individual has 30 days to pay any fine imposed, comply with any abatement order, or appeal the citation. If the fine is paid the matter is closed. If an order of abatement was also incorporated into the citation, the licensee must demonstrate compliance unless a later date for compliance is specified.

If a fine is not paid or appealed within 30-days, Board staff places a hold on the subject's license renewal and initiates a series of demand for payment letters. If the subject fails to respond to the third and final demand letter, the case is referred to the Franchise Tax Board for collection. If an abatement order is not

¹² Since a fine is determined on a case by case basis and a review of specific facts, there is not a cite and fine matrix or other document that specifies what specific fine each type of violation should receive.

complied with, the Board has the option to file an Accusation with the Attorney General's Office (AGO) for failure to comply with the Citation Abatement Order (see disciplinary process).

There are three options to appeal a citation: (1) Request an informal conference with the EO (or his/her designee); (2) Request an administrative hearing; or (3) Request both an informal conference and an administrative hearing.

Informal conferences are held by teleconference or in person. A decision to affirm, modify or dismiss the citation after an informal conference must be mailed to the cited person within 14 calendar days from the conference date. If the citation is dismissed, the citation is closed. If the Citation and Fine is affirmed, the subject is required to pay the fine unless a request for an administrative hearing is filed. If the Citation and Fine is modified, a modified citation will be served. The subject is required to pay the modified citation unless a request for an administrative hearing was filed.

Requests for an administrative hearing are forwarded to the AGO. A DAG is assigned, and a hearing is scheduled with the Office of Administrative Hearings (OAH). After hearing the case, an ALJ issues a Proposed Decision for the Board to consider.

Appeals

The licensee can appeal a cite and fine, using one of two methods. The first is the Informal Citation Review (ICR) process. This process allows for a meeting between the licensee their legal representation if any, the Discipline Manger and the Cite and Fine Analyst. If an agreement is not reached, the Licensee can request to appeal it to an ALJ.

The Discipline Manager may decide to reduce the fine and/or offer a payment plan, modify the citation by changing the wording and removing some of the code sections violated, or even withdraw the citation if new evidence is presented to show it's not warranted.

Cite and Fine Payments

The cite and fine payments are separate from cost recovery. These payments are an administrative fee and not a formal discipline issue, can be waived by the appropriate board staff. The Board staff can also choose to, after three letters have been sent, send the debt to the Franchise Tax Board (FTB) to collect.

Because this is an administrative fee, the State Controller's Office (SCO) has determined the Board can "write off" any debt that has not been paid after five (5) years and has been sent to FTB. The Board still gets the funds from FTB if they are collected but does not have the funds on the expected payments ledger.

The BVNPT maintains any cite and fine documentation unit the debt is written off.

Order of Abatement

An order of abatement is included in the citation order whenever it's appropriate. An order of abatement is used when:

- Someone is responding, within a specific time frame, to the Board's request for information.
- In the case of a continuing education (CE) audit, the licensee needs to provide proof of completion of CE. The example of stopping unlicensed activity is a less common order of abatement.
- When someone is performing VN duties without a license. The board cannot use a "cease and desist order," but the Board can direct the following:

"You are hereby ordered to immediately refrain from working as a licensed vocational nurse within the State of California, or impersonating in any manner or pretending to be a licensed vocational nurse, or using the title "Licensed Vocational Nurse", the letters "L.V.N.", or any name, word or symbol in connection with or following your name so as to lead another or others to believe that you are a licensed vocational nurse."

Records Requests

There are several types of records requests, which include Subpoenas, Public Records Requests, and 800(c) requests.

Business and Professions Code Section 800(c)

Business and Professions Code Section 800(c)¹³ authorizes the Board to provide a comprehensive summary of the substance of the complaint material to the licensee upon request, or a complete copy of the licensee case file. For the request to be processed it must be in writing and, the request must include:

- Signed authorization for the release of confidential information

¹³ (c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or the licensee's counsel or representative, may inspect and have copies made of the licensee's complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

- Using the form provided by the BVNPT can be suggested to licensees to get the correct information but cannot be required.
- A signed letter of representation on letterhead if an attorney is requesting the documents
 - The letter must have enough information to determine the documents they are looking for
- If the request is made orally, staff are to direct them to put the request in writing with the required information.

When this request is made, the assigned employee will:

- Review the request to ensure that all required documentation is present, and that the requestor is either the licensee or a currently licensed attorney.
- Create a case summary and insert it into the letter template. As per 800(c)(1) the letter shall be a “full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.”¹⁴
 - There should be a summary of the allegations in the complaint, and no other information. Do not provide any information that has been obtained during the investigation.
- Sends a copy of the letter template to their manager for review

Information that Cannot Be Divulged

- The complainant's identity remains confidential.
- Consumer, medical or personnel records of persons other than the licensee and any information protected from disclosure under the Information Practices Act.

Approval Process

Once completed, the assigned employee sends the response letter and required supporting documentation to their manager for approval. Once the manager approves the document, it is sent to the Enforcement Chief for final approval.

¹⁴ An attorney may request a copy of the licensee's file under 800 (c). If you encounter this issue, advise the attorney that although 800(c) does state they are permitted to have a copy of the case file, it also states the Board can provide a comprehensive summary in lieu of providing a copy of the licensee's file, which is what the Board has opted to provide.

Reminders

Staff should always:

- Ensure that any document sent to an attorney's office, licensee, or member of the public is saved as a PDF or other locked document, to ensure it is not manipulated. The only exception to this is a document in which the licensee is expected to fill in information and the BVNPT should provide Adobe fillable documents.
- Ensure that the font is correct for any information copied and pasted into the document.
- Ensure that they correctly date and address the letter.
- Consult with the Board's assigned attorney if there is a legal concern prior to the letter being sent.

The Confidentiality of Medical Information Act (CMIA)

The [Confidentiality of Medical Information Act \(CMIA\)](#) is a state law that adds to the federal protection of personal medical records under the Health Information Portability and Accountability Act (HIPAA). CMIA protects the confidentiality of individually identifiable medical information obtained by a health care provider:

- CMIA prohibits a health care provider, health care service plan, or contractor from disclosing medical information regarding a patient, enrollee, or subscriber without first obtaining an authorization, except as specified.
- CMIA requires a health care provider, health care service plan, pharmaceutical company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records to do so in a manner that preserves the confidentiality of the information contained within those records.
- CMIA defines "medical information" to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that reveals the individual's identity.
- Any individual may bring an action against any person or entity that has negligently released confidential information or records, for either or both nominal damages of \$1,000 and the amount of actual damages, if any, sustained by the patient. It shall not be necessary to prove that the

plaintiff suffered or was threatened with actual damages to recovery nominal damages.

- Any person or entity who knowingly and willfully obtains, discloses, or uses medical information in violation of CMIA shall be liable for an administrative fine not to exceed \$2,500 per violation.

Complaint Triage Meeting

The purpose of this meeting is to offer staff and managers an opportunity to discuss specific cases that require assistance. This could be:

- Asking if anyone has had a similar case or seen this issue
- Asking for investigative advice
- Determining which unit is best suited to handle a complaint on a current probationer.

Licensee and Applicant Case Review Unit (LACRU) Manager

All triage cases are due to the LACRU manager the Monday of the week they are discussed.

The staff member presenting a case at triage is responsible for including all documentation for the case in an email, along with their questions so that the Enforcement Managers can review the documentation and efficiently discuss the issue. The LACRU Manager is responsible for sending an email with the documentation they were sent.

If there are no cases for triage, the LACRU Manager cancels the meeting.

During the Meeting

The LACRU manager facilitates the weekly Complaint Triage meeting, if needed, the staff concerns are discussed first, and a confidential manager discussion occurs if needed.

Working with Legal

The BVNPT staff work with two different legal departments: DCA legal, who advises us on day to day work and the Attorney General's Office who handles discipline hearings and petitions.

Conflicts

Consistent with statutes and case law, the attorneys in the Legal Affairs Office do not generally get involved in the investigation or prosecution of specific cases. Their responsibility begins generally after a settlement has been reached or a proposed decision issued and is now pending before the board or Department. They advise the agency (board or Department (Bureau) in their decision-making capacities about the options with the disciplinary decision

before it. They can assist the agency in informal citation conferences but if the matter proceeds to a formal hearing, another attorney must be brought in.

Communications

As a matter of due process, the Administrative Procedures Act (APA) prohibits most types of communications between the Attorney General's Office and the agency (Board Members) about a specific case when a case is being decided. The APA also prohibits communication between enforcement staff and either the Legal Affairs Office or the decision-making agency (Board Members). DCA's Legal Affairs Office would talk to the Agency – the decision-maker, but not to the enforcement staff.

Legal Triage Meeting

The purpose of the meeting is to discuss legal questions with the assigned DCA attorney. This could include, but is not limited to:

- Regulatory and Practice Act interpretation questions
- Implementation of legislation
- Specific case by case questions

Legal Tracking System

The Enforcement Chief is responsible for the legal tracking system and is the facilitator for this meeting. Any questions or discussion items are to be sent to the Enforcement Chief, who, per the request from Legal, will review all emails before forwarding them to ensure that there has been enough research conducted prior to a legal review.

This can be to ensure that the request has all the needed documentation, or that any summaries about the cases are specific and properly reflect the concerns that the Enforcement Division has.

The appropriate unit manager is responsible for ensuring that they have all the needed documentation, and if they need a specific staff to attend that they have invited that staff.

If there are no cases, the Enforcement Chief will cancel the meeting.

If notes are needed, the task of writing the legal meetings notes will rotate between all the managers.

After the completion of each week's notes, the responsible manager will send the documentation to the assigned attorney, to ensure that they agree with the notes.

Legislation and Regulation Promulgation

The Administration Division is tasked with being the Board contact with DCA's Regulations Unit, the Office of Administrative Law, and state Senate and Assembly staff. The Enforcement Division is responsible for the creation of concepts for potential legislation or regulations and works with the assigned staff from the Administration Division to:

- Evaluate program needs for new legislation and rulemaking;
- Define and communicate legislative and rulemaking concepts;
- Identify and communicate purpose, benefit, and rationale for legislative or rulemaking concepts;
- Identify related/authorizing statute;
- Draft language for potential regulations
- Serve as Subject Matter Expert for enforcement-related bills of interest during the legislative season; and
- Work with DCA legal staff to recommend designation of all or part of an administratively adjudicated decision as a Precedential Decision.

Executive Committee Meeting

The Executive Committee meeting is a closed session meeting with the President and Vice President of the Board, Enforcement Chief, and the Supervising Nurse Education Consultant.

The role of the Enforcement Chief is to report on the following:

- Number of vacancies in the Enforcement Division
- Statistics and any direction that they may be going
- New processes for efficiencies
- Compliments for any team members
- Any other issues that rise to the level of reporting to the Board

Enforcement Committee Meeting

This is a public meeting where the Enforcement Committee members discuss enforcement related issues. This can include, but is not limited to:

- Cost recovery
- Statistics for enforcement
- Complaint investigation issues
- Discipline issues
- Probation issues

Sunset Report

Each year, the Assembly Business and Professions Committee and the Senate Business, Professions, and Economic Development Committee hold joint sunset review oversight hearings to review the boards and bureaus under the

Department of Consumer Affairs (DCA). The DCA boards and bureaus are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the DCA, the Legislature, the boards, and interested parties and stakeholders to discuss the performance of the boards and make recommendations for improvements.

In 2020, BVNPT was scheduled to be reviewed, but its review did not occur due to the COVID19 pandemic. BVNTP was reviewed in 2021 and was granted a three (3) year review period.

DRAFT

Appendix

This section includes job aides, which are designed to help staff complete tasks, make decisions, or review their work.

These are fluid documents, which are frequently changed. To ensure that you have the latest job aide, check the G drive.

Screening Criteria Examples for CPEI Category 3 & 4 cases

Below is a list of where cases should be directed to, depending on the circumstances of the case. It should be noted that if you believe a case should be elevated to SI or DOI, you should discuss your concern with your Manager. If after that you still think it should be elevated, you should bring the case to the weekly triage meeting for a discussion.

Triage Cases

- Vague complaints in need of clarification or subject identification
 - Analysts are responsible for calling the complainant to obtain more details. If unable to obtain complainant feedback, re-triage with manager to determine if can close
 - This includes complaints that do not appear to have a violation of the B&PC or the Practice Act.
 - Need to ensure that the LVN/PT is clearly identified, and the complaint is attached to their license in BreZe

Enhanced Screening Desk Investigations

- Time Card Fraud
- Sleeping Nurse – No Patient Harm
- Complaints from inmates that do not involve sexual or physical abuse allegations, or do not include patient harm.¹⁵
- Employee misconduct not involving patients¹⁶
- Adverse actions not involving patient care (excessive sick calls, time sheet fraud, personnel issues, etc.)
- Non-jurisdictional, unactionable
- Referrals to other agencies
- Tracking and monitoring DOI cases
- Working with an expired license that expired within the 12 months- No patient harm

¹⁵ For example, may stated that the nurse was unprofessional or rude without specific examples of their behavior.

¹⁶ minor incidents – i.e. rude to supervisor, excessive sick call outs, etc

At any point in the investigation, any IESU case that rises to the level of an SI or DOI case should immediately be brought to a manager's attention. The manager may decide either discuss the issues with the appropriate unit manager or to take the case to triage to discuss and reassign if needed.

LACRU

- Disciplinary action taken by another board¹⁷ or out of state agency complaint and does not need additional interview(s), statement or documents to go to the DAG for reciprocal action
- Subsequent arrest notification cases
 - "Yes" on renewals
 - Public/anonymous complaints and self-disclosures notifying the board of the arrest/conviction of a licensee.

Special Investigators

The following cases are at minimum SI cases, but may be DOI cases depending on the circumstances:

- All cases involving or mentioning posts on social media, surveillance videos of incidents, pictures, text messages, etc.¹⁸
- Adverse actions involving patient care
 - Negligence/incompetence, overfamiliarity, medication errors, sleeping while assigned to 1:1 patient observation, etc.
- General negligence
 - Unprofessional conduct, no/minor patient harm
- Medication errors
 - No/minor patient harm
- Patient abandonment
 - i.e. leaving during shift not calling out sick
- Chemical restraint
 - Giving medication to calm down a patient without a doctor's order, or for the purpose to calm the patient but not in accordance with the doctor's orders. For example, a patient may be prescribed Benadryl "as needed" for allergy or itch relief but was given the medication to calm them.
- Physical restraint
 - Using hands on techniques to restrain a patient or stop a patient from entering or exiting a space that did not result in substantial harm.
- Any act that results in the resident having physical marks such as bruising, redness, or swelling

¹⁷ Analysts should gather all of the information and re-triage the case once they have everything

¹⁸ Unless anonymous and no supporting evidence to be found. These cases should still be run past the SI supervisor to ensure that they do not want to take the case.

- HIPPA violations
- Cases that could go to the AG's office and will need interviews.
- Any cases involving tracheotomies

COVID Cases

Cases involving COVID exposure should be handled based on their unique set of circumstances similar to other Negligence/Incompetence cases specifically dealing with infection control issues (Unprofessional Conduct), which would require an expert review before moving forward for discipline. The following are possible scenarios and the probable ways the complaints should be handled. The facts of all COVID cases will be discussed at triage if there are any concerns or uncertainty in how to handle it.

- They know they are COVID positive and infected a patient **(Probably DOI)**
- They suspect they are COVID positive and infect a patient (taken COVID test) **(Possibly DOI or SI)**
- They know or suspect they are COVID positive and there are no patients known to be infected. **(Possibly Enhanced or SI)**

COVID 19 Vaccine Cases

Cases involving COVID-19 vaccinations should be handled based on their unique set of circumstances similar to other unprofessional conduct cases.

- Licensee gave the vaccine to someone that should not have had it. (Elevate to management and discuss at triage)
- Licensee was given vaccine but should not have had it (Elevate to management and discuss at triage)
- Licensee sold vaccine to those who should not have had it (Send to DOI and inform BVNPT executive management team)

Pressure Sores

Decubitus ulcers are an open skin wound sometimes known as a pressure ulcer, bed sore, or pressure sore. A decubitus ulcer forms where the pressure from body the body's weight presses the skin against a firm surface, such as a bed or wheelchair. Pressure cuts off the blood supply to the skin and injures tissue cells.

If we get a complaint like this, we need to determine the wound staging.

- Stage 1- Can stay with Enhanced, or may go to SI
- Stage 2- Can stay with SI, or may go to DOI
- Stage 3, 4, or unstageable- Goes to DOI due to level of patient harm

Education

Any complaints about nursing schools should be sent via email to the Supervising Nursing Education Consultant (NEC), with the Enforcement Chief, Assistant Executive Officer, and Executive Officer cc'd.

Timelines

Cases that are identified as SI/DOI should be sent to SI/DOI within 1 business day.

Any cases that need to go to either SI or DOI, but analysts are unsure where to send it to, should be sent to the Enforcement Chief for review, within 1 business day.

Cases that are sent to triage should be re-triaged within 30 days, at the weekly triage or with the Enforcement Chief to ensure that cases are sent to SI/DOI in a timely manner.

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Intaking the Complaint

When intaking a complaint, try to gather as much information as possible. This may be the only chance we have to speak to the complainant.

Who

- Who is/are the LVN(s) or PT(s) that need to be investigated?¹⁹
- Who are the witnesses to the allegations?
- Who else have you told about this incident?
- Who else saw this happen? What did they do?

What

- What is your relationship with the licensee?
- What is the name of the patient that this happened to?
- What happened?
- What was the date, time and duration of the incident or behavior?
- What did you do in response to the incident or behavior?
- What did you say in response to the incident or behavior?
- What did the facility do when you informed them of the issue?
- What are the licensee's contact information?
- What physical or electronic evidence do you have to substantiate the allegations?²⁰

When

- When did the incident occur? If do not know an exact date, try to narrow it to a month or week.

Where

- Where did it happen?
 - Need the facility name and the location within the facility
- Where did they get the item from?
- Where did they leave the item?
- Where is the licensee employed?

¹⁹ Must establish with certainty who we should be investigating. May need to follow up with the facility to gain more information, such as timecards or other proof that the person was working at the time of the alleged incident.

²⁰ Security video footage like a nanny cam, pictures, social media posts, or physical evidence. An example of this between love letters between an inmate or patient and the VN/PT and pictures they take together in the facility or there are IG posts of the licensee and a patient kissing, emails etc.

How

- How did it happen?
- How many times did this happen?
- How did the subject of the allegation react to your response?

Other Questions

- Did you file a police report? Do you have the report number?
- Was there physical contact? Describe it.
- Did you report this to anyone in management? To whom? When? What they say and/or do?
- Do you know whether the subject of the allegation has been involved in any other incidents? What can you tell me about those incidents?
- Do you know why the incident or behavior occurred?
- Do you know anyone else who can shed light on this incident?

Licensee Questions for Anonymous Complaints

- Who do you think made this complaint?
- Why do you think someone would make a complaint against you?

Always finish with

- Is there anything else you think I should know?

What to say if we cannot take a complaint because there is no violation.

Thank you for informing the Board about these issues. Unfortunately, the Board can only investigate complaints with allegations of violations of the Business and Professions Code, Practice Act or law. The rude/unprofessional behavior is something that should be reported to the LVN/PTs employer, as it is an administrative action that they would need to handle.

Planning and Conducting the Investigation

#	Y/N	Planning and Conducting an Enhanced Investigation
Conducting the Pre-Investigation		
1.		Contact is made with the complainant, and the allegations are reviewed with the complainant for accuracy. Any new allegations are added, with notes articulating when they were added and by who.
2.		LVN or PT file is reviewed for other complaints
3.		Any referrals (to DOI or SI) and cross reports are completed and documented in BreEZe
Planning the Investigation		
4.		All potential document sources are identified, and their contact information is gathered
5.		Investigation Plan is discussed with manager to ensure that nothing is missed
Conducting the Investigation		
6.		Complainant is interviewed first, to ensure that all information has been gathered. As you work, ensure that you keep file notes up to date. File notes should indicate what occurred on what date (made phone call, sent letter, etc.)
7.		Pull any prior cases to see if the complaint is related to current complaint. If another staff is working another case, set up time to have a discussion.
8.		Documents are requested. Documents are reviewed (if needed) prior to interviewing witnesses
9.		Witnesses are contacted and interviewed. Questions are created prior to the interview, to ensure that all elements of the complaint are discussed
10.		The licensee is interviewed.

Required Elements of an Interview Report

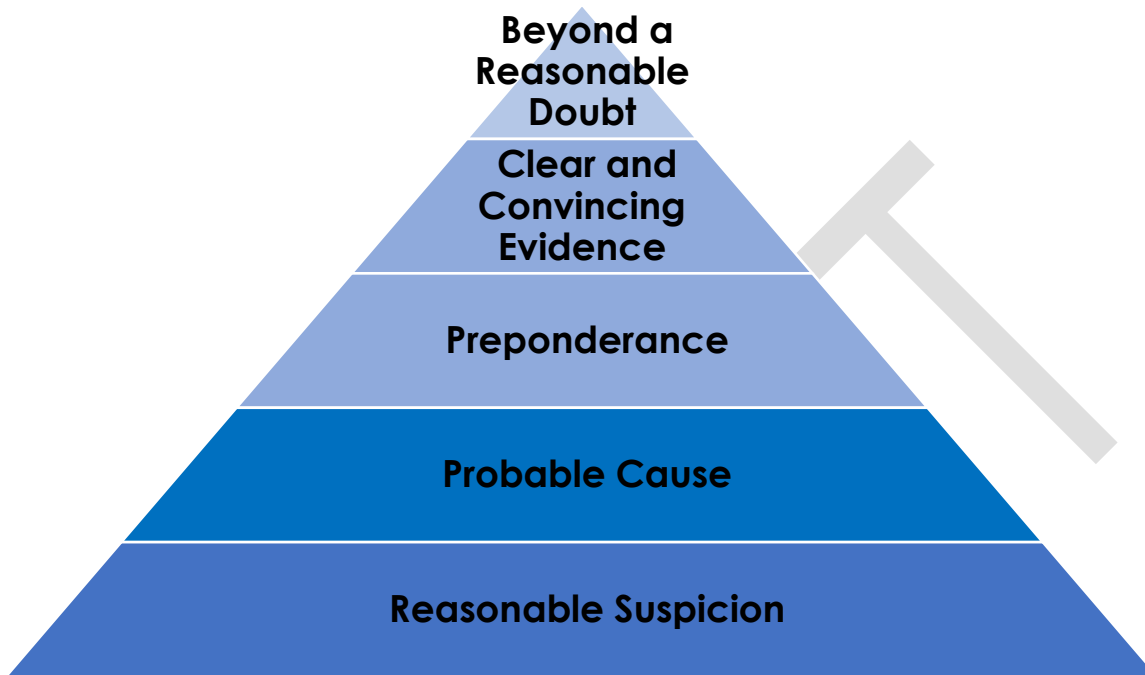
#	Y/N	Writing it Right- The Interview Documentation Checklist
Initial Information (First Paragraph)		
1.		First line of the report discusses which analyst conducted the interview, date and time and location of the interview, who they spoke with, a mailing address and contact number where they can be reached at a later date. ²¹
2.		All persons mentioned in the report have been identified by what their role is (resident, LVN, PT, supervising LVN), their first and last name (correctly spelled),
3.		Background information- Any facts that you feel would be relevant to the interview that are specifically related to the investigation.
Narrative of the Document		
6.		Describes in detail what the witness saw, heard, smelled, experienced, was told or otherwise perceived.
7.		All allegations are addressed in each interview, including any discovered during the investigation. You don't know what they know, so ensure you don't make assumptions. All documents collected are listed. All photographs taken are listed and described.
8.		The analyst has not included any of their own opinions or conclusions
9.		Document the interview within one day of conducting the interview
Finalization (Check before you finalize the document)		
10		All facts have been documented accurately and double checked (Dates, times, spelling of witnesses' names, etc.)
11		Report is free of spelling, grammar, and typing errors; there are no punctuation errors or incomplete sentences. Avoid the use of jargon without explanation
12		Word choice is appropriate, and language is clear. Report includes all evidence.
13		Abbreviations and acronyms (LVN, PT, etc.) are only used after they are correctly spelled out.
14		Report is thorough and after it has been read the reader is not left with any outstanding questions or concerns. Ensure all dates in the report are correct
15		Writing style is consistent (Does not switch between 1 st or 3 rd person, capitalizes words in the same manner, spacing is consistent, etc.)

²¹ Mailing addresses and contact telephone numbers of witnesses are helpful. If the assigned attorney cannot contact the witness by telephone and does not have a mailing address for a subpoena, then the attorney cannot have the witness testify at hearing. This will likely result in the attorney not being able to allege the specific allegation.)

Required Elements of a Complaint Investigation

#	Y/N	Completing the Complaint
Initial Information (Complaint)		
1.		The complainant was interviewed, and the complaint itself is clear and understandable as to the allegations made by the complainant.
2.		All persons mentioned in the complaint have been identified by what their role is (LVN, PT, resident, supervising PT), their first and last name (correctly spelled).
Complaint Investigation		
3.		The investigation followed the investigative process noted in the Intake and Enhanced Screening Unit/Special Investigations Unit/Probation Unit policies and procedures.
4.		BreEZe is updated with all the activity codes
5.		Supporting documentation is organized, cross referenced, and follows the flow of the analysis.
Complaint Summary		
6.		Interview summary notes all the pertinent information in the case and allows the manager to decide on the case without having to review documentation. All allegations are addressed during the investigation, and in the final report.
		Report is well written and after it has been read the reader is not left with any outstanding questions or concerns
8.		The analyst has not included any of their own opinions; however, the report notes what the regulations surrounding the issue state and juxtaposes the regulations with the facts of the case.

Burden of Proof



Beyond a Reasonable Doubt- Requires elimination of every reasonable doubt.

Clear and Convincing Evidence- Means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable²²

Preponderance of Evidence- The burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

Probable Cause- Reasonable belief that someone has committed a crime

Reasonable Suspicion- Based on specific and articulable facts, taken together with rational inferences from those facts.

²² According to the Supreme Court in *Colorado v. New Mexico*, 467 U.S. 310 (1984)

Case Squibs

Acknowledgment of Wrongdoing

“Fully acknowledging the wrongfulness of [ones] actions is an essential step towards rehabilitation.” (*Seide v. Commission of Bar Examiners* (1989) 49 Cal.3d 933, 940.) However, mere “[r]emorse does not demonstrate rehabilitation. While a candid admission of misconduct and a full acknowledgment of wrongdoing may be a necessary step in the process, it is only a first step.” (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.) Sustained conduct over an extended period of time demonstrating fitness to hold a professional license gives a truer indication of rehabilitation than mere remorse. (*Ibid.*)

Dishonesty at Work

Unlike work performance, dishonesty is not considered an isolated or transient behavioral act but is considered more of a continuing trait of character of an employee. (*Gee v. State Personnel Board* (1970) 5 Cal.App.3d 713, 719.) A healing arts licensee such as a vocational nurse may be subject to disciplinary action notwithstanding their technical competence or skill where their conduct calls their moral character for honesty into question. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.)

Good Conduct During Criminal Probation

Sustained good conduct after the completion of probation in a criminal case provides a truer indication of rehabilitation than compliance with the terms and conditions of probation during probation, since rigorous compliance with the terms of probation in a criminal case does not necessarily prove anything more than good sense on the part of the licensee. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.)

Lack of Prior Discipline

While lack of prior discipline may be significant mitigating factor where a licensee has practiced for a substantial period, this mitigating factor carries little or no weight when a licensee has practiced for only a short time before engaging in misconduct giving rise to discipline. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 (seven and one-half years without prior discipline insufficient to be considered a mitigating factor); *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 708 (four years without prior discipline not a significant mitigating factor).)

Payment of Restitution

Restitution paid under the force of criminal proceedings is not properly considered to have any mitigating effect. (*Hitchcock v. State Bar of California* (1989) 48 Cal.3d 690, 709.) Moreover, payment of “[r]estitution *after* disciplinary proceedings have been initiated is entitled to little weight in selecting the appropriate discipline for professional misconduct.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310 (italics in original.)

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IESU Assigned Intake Staff Checklist

Daily

- Check BVNPT enforcement email to ensure things are being answered timely and not left in the inbox
- Check and respond to voicemail and email
- Check mail and key any complaints
- Check BreEZe for any new complaints
- Send any new complaints to triage team
- Ensure all files are assigned to an analyst or investigator within three (3) days of intake. Remind triage team and cc manager if there are any files not assigned within three (3) days

Weekly

- Have one to one to with manager that includes a case review of any assigned cases
 - Discuss with staff of all complaints over 120 days, and work with manager to determine next steps
 - Discuss any cases that have not been worked in 30+ days
 - Discuss any trends you have seen in incoming complaints and triage cases.
- Check on any cases waiting on documents to be re-triaged with SI or DOI.
 - Should be a 30 day turn around with these cases. Should be updating SI/DOI at 30 days if cannot get information so they can decide how they want it handled.

Handling Complaints

- Check to ensure that all the information is in the complaint
 - This includes checking BreEZe for any past complaints

LACRU Assigned Staff Checklist

Daily

- Check complaint assignments. If assigned a new case, review the file to determine if a letter was sent to the law enforcement agency and the licensee requesting information/documentation.
- Check inbox to see if mail has been received.
 - Process any received mail, and update file
 - If case is ready to close, write up summary
- Request court documents for cases that have been concluded

Weekly

- Review work completed, and set next week's list of tasks

Monthly

- Review caseload to ensure all cases have been "touched" in the last 30 days.

Requesting Documents from a CCLD Facility

Below is a list of the types of documents used by Community Care Licensing (CCLD) to license facilities, inspect facilities, and conduct complaint investigations.

This is not meant to be an exhaustive list of documents to subpoena or request, rather, it is meant to educate the requestor about what types of documents may be available. Requestors can also always check CCLD website for a list of their forms.

Types of Complaint Documentation
LIC 802- Complaint Report
LIC 9099- Complaint Investigation Report
LIC 812- Detailed Supportive
LIC 811- Confidential Names List
LIC 9098- Proof of Correction
Any other documentation related to the complaint
Any documentation that shows the licensees conduct was either a health and safety risk to others, or was conduct inimical

Types of Case Management Documentation
LIC 809- Case Management Documentation
LIC 812- Detailed Supportive
LIC 811- Confidential Names List
LIC 9098- Proof of Correction
Any other documentation related to the incident
Any documentation that shows the licensees conduct was either a health and safety risk to others, or was conduct inimical

Types of Resident Documents
Resident's most current Physician's Report/ Assessment (LIC 602)
Resident's Admission Agreement
Resident's most current Individual Program Plan (IPP) assessment if placed by agency
Resident's Case notes
Resident's Hospice notes
Any documentation related to the staff/resident relationship or other documentation related to this specific incident
Centrally Stored Medication records and destruction logs

Types of Staff File Documentation
Administrators Certificate
Any training they have participated in
Any write-ups: positive or negative
Employment application
Any policies or procedures they have signed or acknowledged
Their personal contact information including phone and address

Types of Facility Documents from the Facility
LIC 200- Application
Current LIC 500 (Personnel Report)
Current staff schedule for the time period in question with contact information listed
Current LIC 501 (Personnel Record)
LIC 999- Facility Sketch (Floor Plan)
LIC 9060- Resident Theft and Loss Record
LIC 9054- Fire Inspection

Types of Facility Documents from CCLD
LIC 200- Application
LIC 215 – Applicant Information
LIC 308 Designation of Administrative Responsibility
LIC 309 Administrative Organization
LIC 400- Affidavit Regarding Client Cash Resources
LIC 500 (Personnel Report)
LIC 501 (Personnel Record)

LIC 999- Facility Sketch (Floor Plan)
LIC 90310 Notice of Temporary Suspension Order of License
LIC 9111- Non-Compliance Conference Summary
LIC 9112- Facility Compliance Plan
Approved Hospice Waiver
Plan of Operation, including <ul style="list-style-type: none">• Dementia plan (if applicable)• Admission policies

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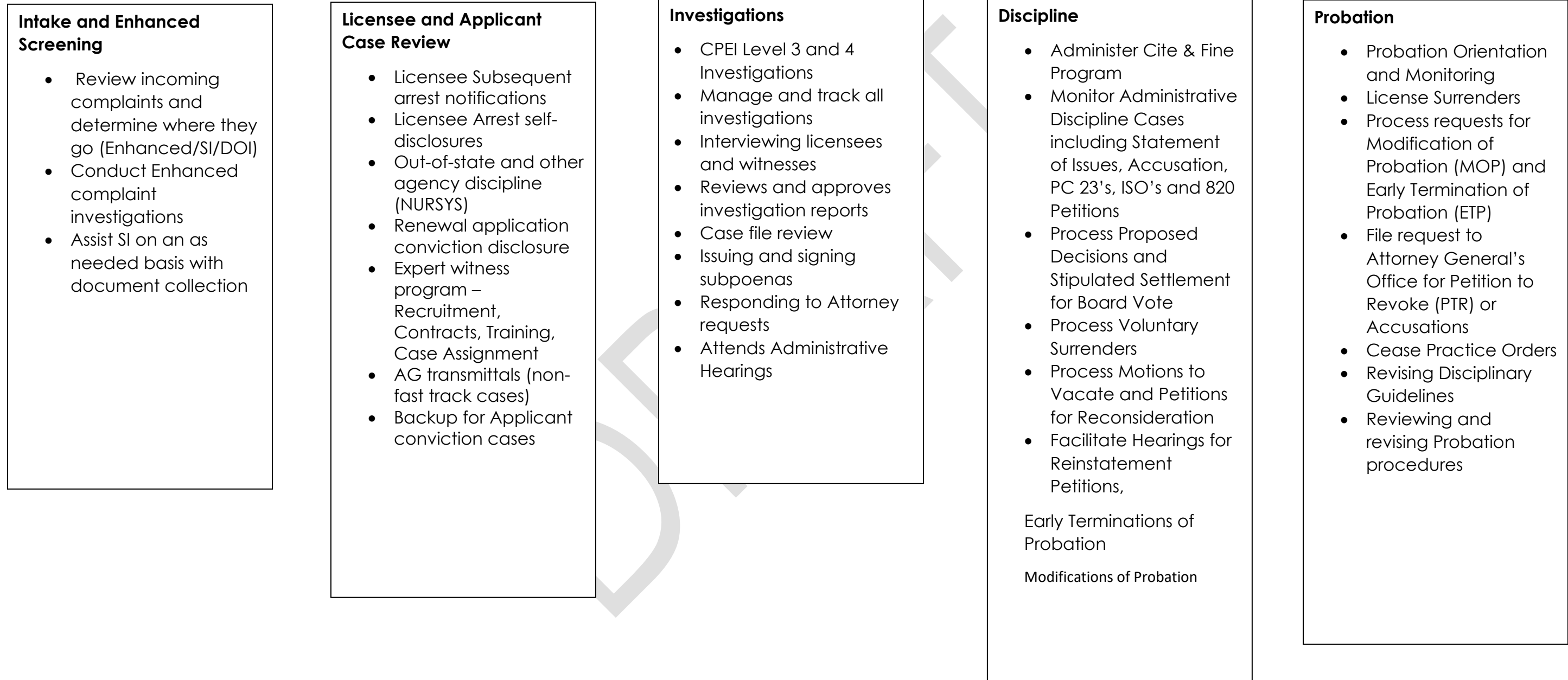
VN Laws	PT Laws	Brief Description of BP / CCR Code Sections
2878(a)	4521(a)	Unprofessional conduct
2878(a)(1)	4521(a)(1)	Incompetence or gross negligence
2878(a)(2)	4521(a)(2)	Conviction of practicing medicine without a license
2878(a)(3)	4521(a)(3)	False or misleading advertising
2878(a)(4)	4521(i)	Use of excessive force, mistreatment, or abuse of any patient
2878(a)(5)	4521(k)	Failure to maintain confidentiality of patient medical information
2878(a)(6)	4521(l)	Failure to report prohibited acts
2878(b)	4521(b)	Procuring a license by fraud, misrepresentation, or mistake
2878(c)	4521(c)	Assisting with criminal abortion
2878(d)	4521(d)	Violating terms of licensing chapter
2878(e)	4521(e)	Making false statements on application for initial licensure
2878(f)	4521(f)	Conviction of crime substantially related to practice
2878(g)	4521(g)	Impersonating or acting as proxy for applicant in any exam
2878(h)	4521(h)	Impersonating a licensee or permitting others to use license
2878(i)	4521(j)	Assisting another person to violate medical practice act
2878(j)	4521(n)	Commission of any act involving dishonesty
2878(k)	4521(m)	Sexual misconduct related to practice
2878(l)	4521(o)	Knowing failure to follow infection control guidelines
2878.1(a)	4521.2(a)	Mandatory reporting – licensee
2878.1(b)	4521.2(b)	Mandatory reporting – employer
2878.1(c)	4521.2(c)	Mandatory reporting – employment agency or nursing registry
2878.5(a)	4521(a)(4)	Illegal possession, prescribing, self-administration of controlled substance
2878.5(b)	4521(a)(5)	Illegal use of drugs/alcohol posing danger to public and impairing practice
2878.5(c)	4521(a)(6)	Conviction of drug or alcohol related crime
2878.5(d)	4521(a)(7)	Confinement or committal for addiction by court
2878.5(e)	4521(a)(8)	Falsify, make incorrect, inconsistent or unintelligible entries re: drugs
2878.8	4521.6(a)	Disciplinary action by another state, agency or licensing board
2879	4522	Statement of Reasons for Denial
2885	4541	Unlicensed practice/use title without licensure

VN Laws	PT Laws	Brief Description of BP / CCR Code Sections
2886	4542	Impersonate in connection with examination
136(a)	136(a)	VN: CCR 2504 / PT: CCR 2564 <i>Notify board of address change</i>
2878(a)	4521(a)	VN: CCR 2504.1 / PT: CCR 2564.1 <i>Respond to board inquiry</i>
2878(a)	4521(a)	VN: CCR 2518.5(a) / PT: CCR 2576.5(a) <i>Use and practice basic assessment, participate in planning, execute interventions in accordance with care or treatment plan, contribute to evaluation of individualized interventions related to the care or treatment plan</i>
2878(a)	4521(a)	VN: CCR 2518.5(b)(1) / PT: CCR 2576.5(b)(1) <i>Perform basic nursing services</i>
2878(a)	4521(a)	VN: CCR 2518.5(b)(2) / PT: CCR 2576.5(b)(2) <i>Administer medications</i>
2878(a)	4521(a)	VN: CCR 2518.5(b)(3) / PT: CCR 2576.5(b)(3) <i>Apply communication skills for the purpose of patient/client care and education</i>
2878(a)	4521(a)	VN: CCR 2518.5(b)(4) / PT: CCR 2576.5(b)(4) <i>Contribute to the development and implementation of a teaching plan related to self-care for the patient/client</i>
2878(a)	4521(a)	VN: CCR 2518.6(a)(1) / PT: CCR 2576.6(a)(1) <i>Report prohibited acts to the board</i>
2878(a)	4521(a)	VN: CCR 2518.6(a)(2) / PT: CCR 2576.6(a)(2) <i>Document patient/client care in accordance with professional standards</i>
2878(a)	4521(a)	VN: CCR 2518.6(a)(3) / PT: CCR 2576.6(a)(3) <i>Perform services in accordance with BP 125.6</i>
2878(a)	4521(a)	VN: CCR 2518.6(b)(1) / PT: CCR 2576.6(b)(1) <i>Maintain current knowledge and skills</i>
2878(a)(5)	4521(k)	VN: CCR 2518.6(b)(2) / PT: CCR 2576.6(b)(2) <i>Maintain patient/client confidentiality</i>
2878(a)	4521(a)	VN: CCR 2518.6(b)(3) / PT: CCR 2576.6(b)(3) <i>Maintain professional boundaries with the patient/client</i>
2878.5(b)	4521(a)(5)	VN: CCR 2518.6(b)(4) / PT: CCR 2576.6(b)(4) <i>Abstain from chemical/substance abuse</i>
2878(a)	4521(a)	VN: CCR 2518.6(b)(5) / PT: CCR 2576.6(b)(5) <i>Cooperate with board during investigation</i>

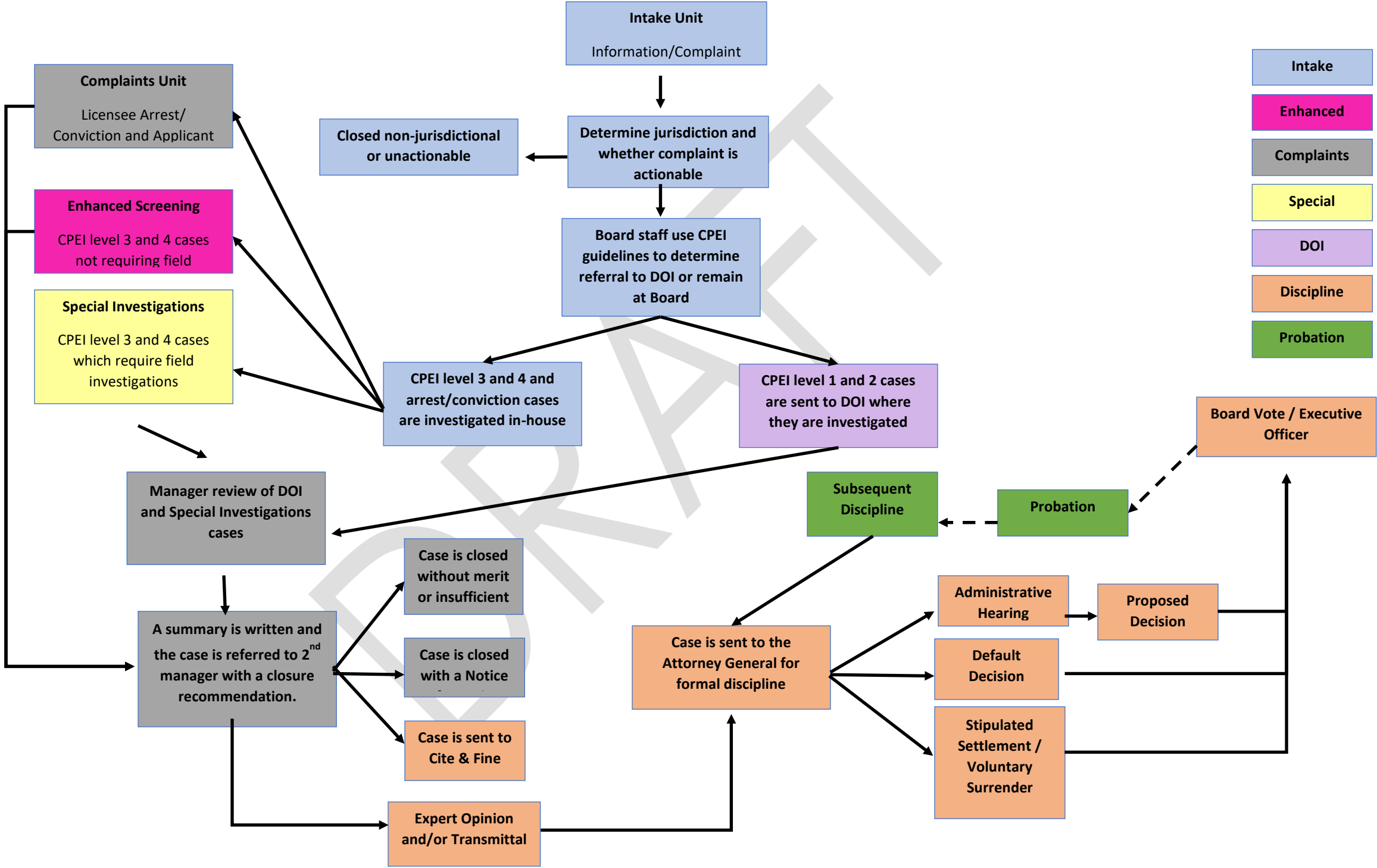
VN Laws	PT Laws	Brief Description of BP / CCR Code Sections
2878(a)	4521(a)	VN: CCR 2518.8(a)(1) / PT: CCR 2576.8(a)(1) <i>Prohibit another party from contacting, cooperating, or filing a complaint with the board</i>
2878(a)	4521(a)	VN: CCR 2518.8(a)(2) / PT: CCR 2576.8(a)(2) <i>Require another party to withdraw their complaint filed with the board</i>
2878(a)	4521(a)	VN: CCR 2518.8(b) / PT: CCR 2576.8(b) <i>Failure to provide requested documents to board within specified time frame</i>
2878(a)	4521(a)	VN: CCR 2518.8(c) / PT: CCR 2576.8(c) <i>Failure to cooperate in board investigation</i>
2878(a)	4521(a)	VN: CCR 2518.8(d)(1) / PT: CCR 2576.8(d)(1) <i>Failure to report indictment or felony charge within 30 days</i>
2878(a)	4521(a)	VN: CCR 2518.8(d)(2) / PT: CCR 2576.8(d)(2) <i>Failure to report arrest within 30 days</i>
2878(a)	4521(a)	VN: CCR 2518.8(d)(3) / PT: CCR 2576.8(d)(3) <i>Failure to report conviction within 30 days</i>
2878(a)	4521(a)	VN: CCR 2518.8(d)(4) / PT: CCR 2576.8(d)(4) <i>Failure to report disciplinary action within 30 days</i>
2878(a)	4521(a)	VN: CCR 2518.8(e) / PT: CCR 2576.8(e) <i>Failure to comply with court order mandating release of records to board</i>
2878(a)(1)	4521(a)(1)	VN: CCR 2519 / PT: CCR 2577 <i>Gross negligence</i>
2878(a)(1)	4521(a)(1)	VN: CCR 2520 / PT: CCR 2577.1 <i>Incompetence</i>
2878(a)(6)	4521(l)	VN: CCR 2520.1 / PT: CCR 2577.2 <i>Failure to report child abuse</i>
2878(a)(6)	4521(l)	VN: CCR 2520.2 / PT: CCR 2577.3 <i>Failure to report elder abuse</i>
2878(a)(6)	4521(l)	VN: CCR 2520.3 / PT: CCR 2577.4 <i>Failure to report dependent adult abuse</i>
2878.1(a)	4521.2(a)	VN: CCR 2520.4 / PT: CCR 2577.5 <i>Mandatory reporting – licensee</i>
2878.1(b)	4521.2(b)	VN: CCR 2520.5 / PT: CCR 2577.6 <i>Mandatory reporting – employer</i>
2878.1(b)	4521.2(b)	VN: CCR 2521/ PT 2578 <i>Substantial Relationship Criteria</i>
2878(b)	4521(b)	VN: CCR 2521(a) / PT: CCR 2578(a) <i>Procuring a license by fraud, misrepresentation, or mistake</i>
2878(a)(2)	4521(a)(2)	VN: CCR 2521(b) / PT: CCR 2578(b) <i>Conviction of practicing medicine without a license</i>

VN Laws	PT Laws	Brief Description of BP / CCR Code Sections
2878(d)	4521(d)	VN: CCR 2521(c) / PT: CCR 2578(c) <i>Violating terms of licensing chapter</i>
2878(i)	4521(j)	VN: CCR 2521(d) / PT: CCR 2578(d) <i>Aid or assist in the violation of Article 13, Chapter 5, Division 2 of BP code</i>
2878(f)	4521(f)	VN: CCR 2521(e) / PT: CCR 2578(e) <i>Conviction of crime involving fiscal dishonesty</i>
2878.5	4521	VN: CCR 2521(f) / PT: CCR 2578(f) <i>Crime or act involving narcotics or dangerous drugs or devices</i>
2892.5(a)	4517	VN: CCR 2540.1(a) / PT: CCR 2592.1(a) <i>Continuing education standards</i>
2892.5(a)	4517	VN: CCR 2540.5(c) / PT: CCR 2592.5(c) <i>Maintain record of continuing education for 4 years</i>
480(a)(1)	480(a)(1)	Application denial – Convicted of a crime within the preceding 7 years
480(a)(1)(A)	480(a)(1)(A)	Application denial- Convicted of a serious felony or PC290 sex offense (no time limit)
480(a)(2)	480(a)(2)	Application denial – Formal Discipline by a licensing board in or outside California

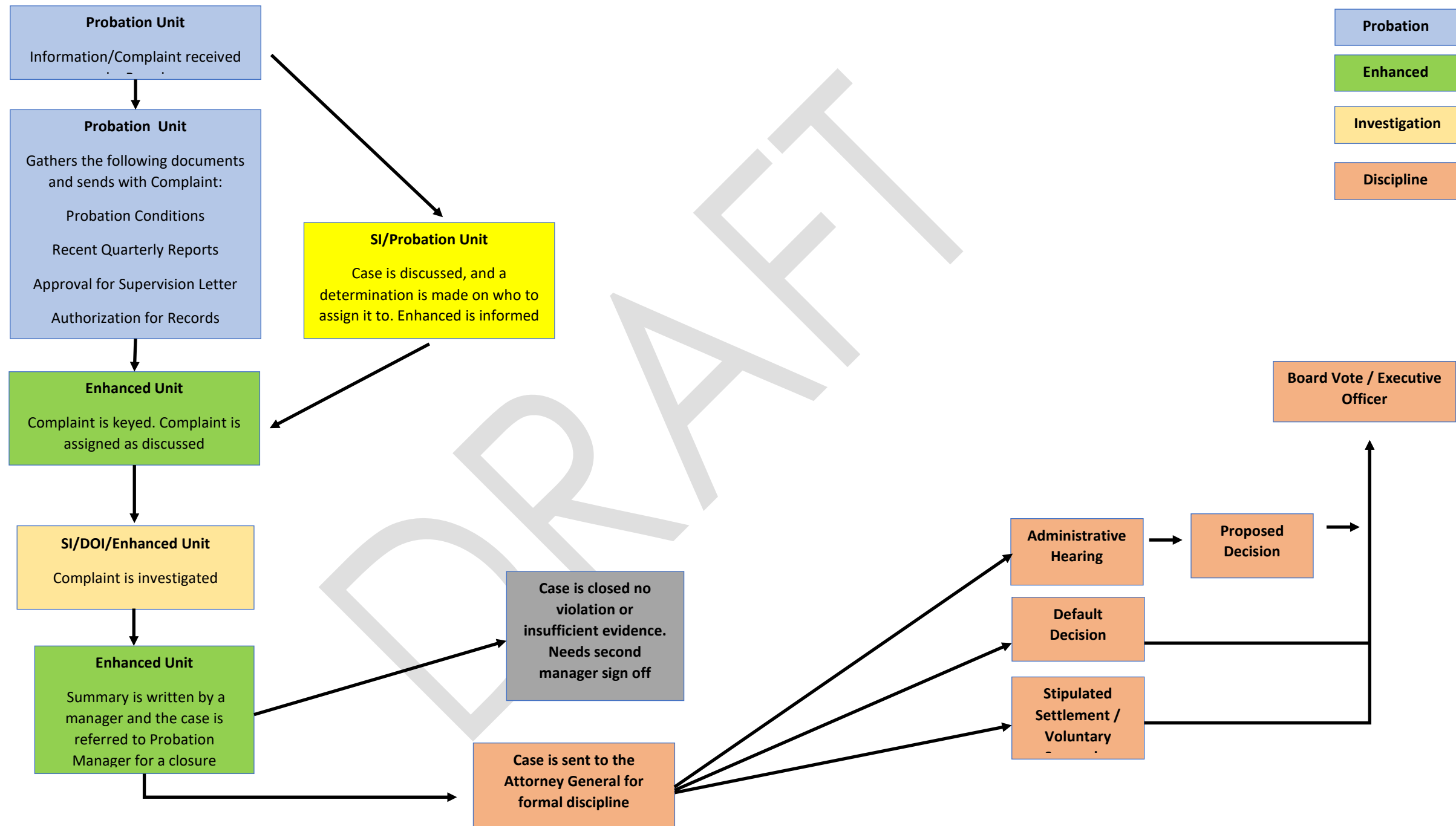
Enforcement Division Functional Organizational Chart



BVNPT Enforcement Division Case Flow



BVNPT Complaint Subsequent to Probation Flow



Definitions

Closure Letters: Complainants and Respondents will receive a letter from BVNPT regarding the outcome of the investigation along with the case being closed.

National Council of State Boards of Nursing NURSYS database: An online verification for endorsement for nurses who want to practice in another state. This is overseen by the National Council of State Boards, which BVNPT sits on. Includes information on nursing licensing and disciplinary information system for Member Boards and is the only national database.

Public Records Act Request (PRA): The California Public Records Act protects the rights of journalists and members of the public to request information from government agencies and ensures that BVNPT provides public records in an appropriate and timely fashion. The act is to further government transparency.

Subsequent Arrest Reports (SARS): Notification for Licensees who have been arrested, have a warrant, have been to court, or have a disposition.

Renewals: Using Qualify Business Interactive Reporting Tool (QBIRT), I would run the report of licensees who are renewing their license. Licensees who reported that they have been convicted since their last renewal, will select "yes" for conviction/discipline. A case will be open.

Complaints (Online/Mail): Complaints are received online, mail, email, and phone. All complaints are opened through Breeze and assigned to analysts. Complaints can be received from the public, licensees, students, applicants, facilities, agencies, and employers.

Division of Investigation (DOI) Refer for Service (RFS): For cases that are being referred to DOI, information will be entered through Case Administration and Tracking System (CATS), and documentation will be forwarded to DOI if applicable.

Mandated Reporting- Employers are mandated reporters.