

**BACKGROUND PAPER FOR THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS**

Joint Oversight Hearing, March 23, 2015

**Senate Committee on Business, Professions and Economic Development
and
Assembly Committee on Business and Professions**

**BRIEF OVERVIEW OF THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**

The Board is responsible for administering the laws related to the education, practice and discipline of Licensed Vocational Nurses (LVNs) and Psychiatric Technicians (PTs). The LVN program was established in 1951 and the PT program was established in 1959. The PT Certification Program was placed under this Board's jurisdiction due to the unique mental health and nursing care functions performed by PTs.

In 1970, Senate Bill (SB) 298 changed the PT Certification Program to a licensure program. To change from a certification program to a licensure program, the law specified that Certified PTs would be eligible for licensure (e.g., grandfathered) upon renewal of their certificate. In addition, it made any person, including persons employed in State Hospitals for the mentally ill and developmentally disabled, eligible for licensure upon evidence that he/she performed PT services specified in Business & Professions (B&P) Code § 4502, for no less than two of five years prior to January 1, 1970. Thereafter, the applicants for a PT license were required to comply with specific education and experience requirements and pass the licensure examination. In 1998, changed to the Board of Vocational Nursing and Psychiatric Technicians.

In 2007, due to a legislative mishap, the Assembly adjourned without taking up SB 797 which contained the statutory language required to extend the sunset date for the Board and three other licensing boards within the DCA. As a result, the Board became a Bureau operating under DCA for six months from July 1, 2008 through December 31, 2008. Two legislative bills were signed into law to re-establish the board (SB 797 and Assembly Bill (AB) 1545) effective January 1, 2009.

The Board oversees two distinct licensure programs, each with separate statutes, regulations, budget authority, curriculum requirements, examinations, and staff. Specifically, the Board regulates the practice of approximately 129,515 LVNs and 13,469 PTs, the largest groups of LVNs and PTs in the nation. The Board also approves 182 VN Programs and 17 PT Programs in the State of California.

Licensed Vocational Nurses provide basic nursing care to clients under the direction of a licensed physician or registered nurse. However, there is no requirement that a registered nurse or physician be present on the premises during the performance of duties.

LVNs use scientific and technical expertise and manual skills to provide nursing care to assigned patients. They gain the skills by completing a Board-approved VN program or a Board-approved equivalent. Duties within the scope of practice of an LVN typically include, but are not limited to:

- Provision of basic hygienic and nursing care;
- Basic assessment of body systems, including measurement of temperature, pulse, respirations, and blood pressure, and documentation of findings;
- Performance of prescribed medical treatments;
- Nursing interventions;
- Observation and documentation of patient responses to treatments and interventions;
- Participation in the development of nursing care plans;
- Administration and documentation of prescribed medications;
- Assessment and documentation of patient responses to administered medications;
- Supervision of certified nurse assistants and other unlicensed personnel;
- Administration of prescribed skin tests and reading the patient's immune system response to the testing agent;
- Administration of prescribed immunizations;
- Patient education; and
- Performance of intravenous therapy (IV) and/or blood withdrawal (BW). The Board requires post-licensure certification to perform IV and/or BW.

LVNs are employed in the following types of facilities:

- Skilled Nursing or Long Term Care Facilities
- Home Health Care Services
- General Medical and Surgical (Acute Care) Hospitals
- Outpatient (Ambulatory) Care Clinics
- Physicians' Offices
- Correctional Facilities
- Employment Services
- Community Care Facilities for the Elderly
- Residential Mental Health Facilities
- Psychiatric & Substance Abuse Hospitals
- Elementary and Secondary Schools

Upon completion of additional specialized training within their scope of practice, LVNs may also work in specialty care areas such as Surgery Centers, Intravenous Therapy Teams, Critical Care Units, Telemetry Units, Hemodialysis Units, Gastroenterology Laboratories and Genitourinary Laboratories. They may also teach VN students, certified nursing assistants, home health aides, or other allied health personnel.

Psychiatric Technicians provide care for clients diagnosed with mental disorders or developmental disabilities under the direction of a physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse or other professional personnel. While the PT is not an independent practitioner, there is no statutory or regulatory requirement that the aforementioned professionals be present during the performance of duties.

PTs utilize scientific and technical expertise and manual skills to provide care and training for clients with mental disorders and developmental disabilities. They learn the skills through a Board-approved PT program or a Board-approved equivalent. Duties within the scope of practice of a PT typically include, but are not limited to:

- Provision of basic hygienic, grooming and nursing care;
- Measurement of temperature, pulse, respirations and blood pressure;
- Basic physical assessment;
- Documentation of client assessment data;
- Performance of prescribed medical treatments;
- Participation with the interdisciplinary team in the development, implementation and evaluation of a plan of care that is based upon client need;
- Basic nursing interventions consistent with the needs of the client;
- Observation and documentation of client responses to prescribed treatments and interventions;
- Administration and documentation of prescribed medications;
- Supervision of pre-licensed or unlicensed personnel;
- Administration of prescribed skin tests and reading the client's immune system response to the testing agent;
- Performance of therapeutic interventions, relative to crisis intervention and management;
- Behavioral management techniques;
- Crisis intervention;
- Sensory and perceptual development;
- Client social and vocational training and education; and
- The facilitation of individual and group therapeutic activities.

PTs are employed in the following types of facilities:

- Hospitals: State, Local, and Private.
- Outpatient Mental Health Care Centers.
- Residential Care Facilities.
- Offices of Mental Health Practitioners.
- Correctional Facilities.
- Psychiatric Emergency Assessment & Treatment Teams.
- Public and Private Chemical Dependency Treatment Centers.
- Sheltered Workshops & Vocational Training Centers.
- Respite Care Teams.
- Group Counseling Services.

Currently, Colorado is the only other state that licenses PTs. However, Colorado also issues a separate license to eligible candidates in two specialty areas: care of clients with developmental disabilities and a license in the care of clients with mental disorders.

The current Board mission statement, as stated in its 2015 Strategic Plan, is as follows:

To accomplish the Board's priority and mission of public protection, the Board regulates VN and PT programs located throughout the State; LVNs and PTs who are employed in hospitals, long term

care facilities, home health, correctional facilities, outpatient, clinic and school settings, military facilities the Board's educational programs; and other practice settings.

Board Membership and Committees

The Board has eleven members with a public member majority (six public members and five professional members). Nine members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Pro Tempore. Six members of the Board constitute a quorum for transaction of business at any meeting. Board members receive a \$100-a-day per diem. The Board meets four times per year. All meetings are subject to the Bagley-Keene Open Meetings Act. The following is a listing of the current Board members and their background:

Board Member	Appointment Date	Term Expiration Date	Appointing Authority
Vivien Avella, Public Member , was senior managing director at FTI Consulting, Inc. from 2000 to 2003 and director at Ernst & Young LLP from 1997 to 2000. She earned a Master of Business Administration degree from the University of Chicago, Booth School of Business .	9/20/13	6/1/16	Governor
Todd D’Braunstein, Professional Member , is a unit supervisor at PattanPatton State Hospital. He first began at Patton State in 1996 as a licensed psychiatric technician (PT) and was later elevated to PT instructor in 2001. He was previously a PT at Lanterman Developmental Center.	9/15/05	6/1/16	Governor
Tammy Endozo, Professional Member , has served as a licensed vocational nurse (LVN) at the Richard J. Donovan Correctional Facility since 2006. She was a LVN at Scripps Mercy Hospital from 2003 to 2011 and a residential care unit leader and LVN at the Veteran’s Home of California, Chula Vista from 2000 to 2006. She was a LVN at the University Community Medical Center in San Diego from 1998 to 2004, at the County of San Diego, Edgemoor Hospital from 1998 to 2000 and at Friendship Manor Lakeside Nursing Home from 1996 to 2000 .	9/30/15	6/1/15	Governor
Samantha James-Perez, Professional Member , has served in multiple positions at Pacific Clinics since 1998, including licensed psychiatric technician (PT), PT-LVN education coordinator and medication services supervisor. She was a PT at the Loma Linda University Behavioral Medicine Center from 2003 to 2006, at Canyon Ridge Hospital from 1997 to 2001 and the American Recovery Center from 1997 to 1998 .	9/30/15	6/1/15	Governor
Jessica Leavitt, Public Member , wrote a book on psychological aspects of medical care and is taking care and raising her two	3/19/09	6/1/16	Senate

<p>young children. She is an attorney and holds a Master's of Science degree in Information Science. She was previously employed as the Special Assistant to the Chief Trial Counsel of the State Bar of California.</p>			
<p>Eric Mah, Public Member, served as Interim Executive Director of Research Compliance & Integrity, Office of Research, at the University of California, Davis (UCD) since 2010. He also served as the Director of the Institutional Review Board, Office of Research, UCD. He was Assistant Director-Human Subjects Research, UCLA Office for Protection of Research Subjects during 2008-2009.</p>	10/6/10	6/1/16	Assembly
<p>Andrew Moreno, Public Member, was a project manager at the Economic Vitality Corporation of San Luis Obispo County from 2012 to 2014. He earned a Master of Arts degree in communication and leadership studies from Gonzaga University and a Master of Arts degree in environmental management and sustainability from Harvard University.</p>	7/11/13	6/1/17	Governor
<p>Donna Norton, Professional Member, has been a licensed vocational nurse (LVN) at Kaiser Permanente since 1989. She was a LVN and phlebotomist at Oneida Hospital from 1984 to 1985. She was also a LVN at Straub Hospital from 1981 to 1985 and for the U.S. Army at Tripler Army Hospital from 1975 to 1981.</p>	1/28/14	6/1/16	Governor
<p>Susan Rubin, Public Member, was executive director of the Saban Research Institute at the Children's Hospital, Los Angeles, from 2001 to 2014. She held multiple positions at University of California, Los Angeles, from 2001 to 2011, including managing director of the California Nano Systems Institute and executive officer at the Associate Administrative Vice Chancellor's Office. She was an attorney at the Law Offices of Susan D. Praskin Rubin from 1985 to 2004. She earned a Juris Doctor degree from Southwestern Law School.</p>	12/18/13	6/1/17	Governor
<p>John Vertido, Professional Member, is an instructor at Curam College of Nursing in Sacramento. He was a consultant for Engineering System Consultants and a part-time nursing instructor and clinical coordinator at Western Career College from 2008 to 2012. He was a nursing instructor and clinical coordinator at Western Career College in Sacramento from 1996 to 2008 and a nursing instructor at Sierra College in Rocklin from 2000 to 2002</p>	9/15/05	6/1/16	Governor

and served in the United States Army Reserve from 1980 to 2000. He was a licensed vocational nurse (LVN) at Pediatric Services of America from 1993 to 1996; American River Hospital from 1991 to 1993; and O'Connor Hospital from 1989 to 1991. He is a volunteer nurse for the Haight Ashbury Free Clinics and a member of the California Vocational Nurse Educators.			
Vacant, Public Member	N/A	N/A	Governor

The board has four committees composed of two to three Board Members who are charged with gathering public input, exploring alternative approaches to issues, analyzing any data collected, and making a recommendation to the full Board.

Executive Committee – Created to develop policies and make recommendations to the full Board on matters regarding attendance and standards of conduct for Board Members and issues regarding the Executive Officer.

Education and Practice Committee – Created to solicit public input when addressing issues relative to approval, curriculum, education and practice requirements for LVNs and PTs.

Enforcement Committee – Created to analyze enforcement issues and formulate recommendations for Board consideration, address specific recommendations of Administrative Law Judges (ALJ), and to review and revise the Disciplinary Guidelines for use by the Attorney General's (AG) Office, Office of Administrative Hearings (OAH), and staff.

Legislative Committee – Created to review pending legislation impacting the Board and develop Board positions. Committee members, the Executive Officer and staff represent the Board at legislative hearings.

Due to budgetary problems, committee meetings are currently not convened. Issues requiring Board action are brought before the full board at a scheduled Board Meeting.

Staffing Levels

The Board’s Executive Officer is appointed by the Board. The current Executive Officer, Teresa Bello-Jones, has served as executive officer for 21 years and previously served as Supervising Education Consultant for 7 years. For FY 2014/15, the Board has a staff of 67.9, with 34.4 staff dedicated to enforcement and 21.5 to licensing.

The Board has struggled with filling vacancies, recruiting staff and retaining staff due to state hiring freezes, furloughs, and mandated pay and staff reductions in the years spanning 2010-2012. As such, Board staff has worked overtime, and at times outside of their job classification, to assist with workload.

Fiscal and Fund Analysis

The Board is a self-supporting “special fund agency” It derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees. Its main sources of revenue are:

- Application fees
- Re-Examination fees
- Initial License fees
- Biennial Renewal fees
- Delinquent Renewal fees

Current budget projections indicate that the VN Program’s fund reserve will remain solvent past FY 2020/21. The PT Program’s fund reserve will be exhausted by FY 2017/18. A statutory amendment is required within the next one to two years to ensure the solvency of the PT Program.

On February 13, 2012, the Board approved a merger of the LVN and PT Programs’ funds as an alternative to a statutory amendment to raise the PT Program’s fee ranges. According to the DCA Budget Office, if the LVN Fund and PT Fund are merged through a statutory amendment effective July 1, 2016, it will delay both a deficit and the need to increase fees for three to four years. Additionally, the fund merger would allow the Board to evaluate actual operational costs and factor in combined reversions of both the LVN and PT programs to assess the fee increases fairly for each profession.

There have been no general fund loans since the Board’s last Sunset Review.

Fund Condition (LVN Program)	(Dollars in Thousands)					
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15*	FY 2015/16*
Beginning Balance	6,573	8,611	9,103	10,068	10,646	11,904
Revenues and Transfers	9,554	9,901	10,172	10,307	10,289	10,297
Total Revenue	\$9,554	\$9,901	\$10,172	\$10,307	\$10,289	\$10,297
Budget Authority	11,631	11,217	10,135	10,655	10,647	11,953
Expenditures	7,518	9,534	9,432	9,729	9,031	9,330
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
Fund Balance	\$8,609	\$8,978	\$9,844	\$10,646	\$11,904	\$12,871
Months in Reserve	10.8	11.4	12.1	14.1	15.3	16.0
*Projected						

Note. This table was taken from the BVNPT 2014 Sunset Review Report

Fund Condition (PT Program)		(Dollars in Thousands)				
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15*	FY 2015/16*
Beginning Balance	1,959	1,978	1,847	1,617	1,480	1,147
Revenues and Transfers	1,709	1,730	1,686	1,743	1,749	1,748
Total Revenue	\$1,709	\$1,730	\$1,686	\$1,743	\$1,749	\$1,748
Budget Authority	2,760	2,553	2,162	2,190	1,479	1,097
Expenditures	2,735	1,803	2,004	1,880	2,082	2,135
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
Fund Balance	\$1,933	\$1,905	\$1,529	\$1,480	\$1,147	\$760
Months in Reserve	12.9	11.4	9.8	8.5	6.4	4.2
*Projected						

Note. This table was taken from the BVNPT 2014 Sunset Review Report

Expenditures by Program Component – For the last four fiscal years, the Board has expended approximately 57% on enforcement, 26% on examinations and licensing, 5% on administration, and 12% on DCA pro rata for the VN Program and 64% on enforcement, 20% on examinations and licensing, 5% on administration, and 11% on DCA pro rata for the PT Program.

Pursuant to B&P Code, Section 125.3, all DCA boards have cost recovery authority. All enforcement cases referred to the AG’s Office for the filing of an accusation have the “potential” for a cost recovery order. If the case goes to an administrative hearing, cost recovery may be awarded by an ALJ. The Board seeks cost recovery for all of its cases.

At this time no system is available to document the time the Board’s field investigators spend on each case, which would allow internal investigation costs to be assessed. This function is expected to be available once the new BreEZe system is operational.

The Board can also use the Franchise Tax Board (FTB) once the Board has sent out three “Demand for Payment” letters. Once an account is assigned to the FTB, any tax refunds or lottery winnings due to the individual are intercepted and forwarded to the Board.

The Board has 422 “active” cost recovery cases and 344 “inactive” cost recovery cases. Active cases are those where costs are currently due and payable. Inactive cases are those where costs were ordered upon reinstatement of the license.

VN and PT Educational Programs

There are a total of 199 (182 VN and 17 PT) approved and pre-approved programs by the Board. In addition, 48 (45 VN and 3 PT) proposed programs are awaiting review.

The Board reviews programs every four years, and approves them for another four if in compliance with no student or consumer complaints.

On February 1, 2014, the Board identified a backlog of 145 institutions (135 VN and 10 PT) requesting approval for commencement of VN and PT programs, so it authorized a moratorium on the analysis of new proposals until February 28, 2015. As a result, all proposals received after February 26, 2014 have been retained, in the order of receipt, for processing after the moratorium. Analysis of the remaining proposals in the queue and correspondence advising the submitting director of identified deficiencies and required corrections is projected to be completed by May of 2015.

Program Data		
	VN Program	PT Program
Total Approved Programs:	182	17
Private Schools	113	4
Community Colleges	40	12
Adult Schools	25	1
Regional Occupational Programs	4	0
Hospital-Based Programs	0	0
<i>Note: The Board has applications pending for 45 VN Programs and 3 PT Programs.</i>		

Note. This table was taken from the BVNPT 2014 Sunset Review Report

The Board works cooperatively with the Bureau of Private Postsecondary Education (BPPE) in the approval and monitoring of VN and PT programs, and providers of continuing education that are operated in proprietary settings. In general, the BPPE reviews and approves areas of the school involving the physical institution, and areas of finance, including salaries and student tuition. The Board is authorized to approve the program curricula and areas directly related to the presentation and effectiveness of the curriculum and student achievement.

Licensing

The Board licenses approximately 7,482 VNs and 506 PTs yearly. In July 2013, the LVN Program's Licensing Division experienced a backlog that was over 10 weeks old. An application over 8 weeks old is considered backlogged based on the Board's established processing timelines. The Board received numerous complaints.

Although the Board was experiencing a high vacancy rate at that time (28%), the Board developed a plan to reduce the backlog. First, the Board filled the Manager position in August 2013. Second, the Board redirected staff from other areas to focus on the backlog and work overtime with the goal to eliminate the backlog of applications from Board approved programs by October 31, 2013 which it states it accomplished. Last, the Board continued its efforts to eliminate the backlog of applications filed under equivalent education and/or experience with a goal to eliminate the backlog by December 31, 2013. The Board was unable to achieve that goal until March 2014. Since that time, the Board states that it has not experienced another licensing backlog.

The Board requires primary source documentation for any educational transcripts, experience records, license verification from other states, and professional certifications. As part of the licensing process,

all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the DOJ and Federal Bureau of Investigation (FBI).

Continuing Education

The Board requires 30 hours of continuing education (CE) every two years to assure that its licensees receive current information about new concepts, procedures and practices relative to their respective scopes of practice.

The Board accepts CE courses for LVNs and PTs from nursing agencies or organizations from California or other states. In addition, the Board approves providers who wish to offer CE specifically for LVNs and PTs. The provider pays a fee that is submitted with the approval application for the first class. Once approved, the provider may offer as many classes as he/she wishes within a two-year period.

The Board verifies CE by checking the validity of individual provider names and numbers with the agency who grants the provider status. In addition, random CE audits are performed on licensees monthly and individual audits are conducted if a problem of false information becomes apparent to the Board. Licensees are required to maintain CE information for a period of four years for audit purposes. This allows the Board an opportunity to check not only CE compliance for the most recent renewal period, but for the prior period as well.

The Board completed 4,456 audits over the past four fiscal years. Eighty percent of the total licensees audited were found in compliance of the CE requirement. Licensees who do not comply with the CE requirement or with the audit are referred to the Enforcement Division for consideration of a citation and fine.

Enforcement

Targets and expectations for the enforcement program were set in 2010 by the Consumer Protection Enforcement Initiative. The CPEI introduced Performance Measures (PM) and set target cycle times for every stage of the enforcement process in an effort to streamline the enforcement process, and reduce backlogs. The Board's enforcement program has consistently met all of the target cycle times, with the exception of the formal discipline measure. This measure tracks the average number of days to complete the entire enforcement process for cases resulting in formal discipline, including intake and investigation by the Board and prosecution by the AG. The total target cycle time from receipt of the complaint to the effective date of the formal disciplinary action is 540 days. The Board's average cycle time for FY 2013/14 was 1,107.

The number of complaints received by the Board continues to rise. Over the past four years, the number of complaints received increased by 14% and the number of complaints pending decreased by 15%. In FY 2013/2014, the Board received 5,789 complaints, the highest number ever.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Board was last reviewed in 2011 by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions. During the previous sunset review, the Committees raised 20 issues. Below the Board lists actions taken over the last four years to address the issues. For those which were not addressed and which may still be of concern, they are revisited under “Current Sunset Review Issues.”

1. **The BVNPT should clarify its role in the oversight of VN and PT programs by applying the term “approve” or “approval” rather than “accredit” or “accreditation.”**

BVNPT Response: *There were concerns that students may not understand the difference between accreditation in the traditional, educational sense of the word and application of the term to the Board’s approved/accredited programs. SB 539 (Price), Chapter 338, Statutes of 2011 authorized the Board to change its terminology to indicate that the Board “approves” rather than “accredits” VN and PT Programs. The Board’s regulations to implement this provision were effective October 1, 2013.*

2. **The BVNPT should explore any opportunity to streamline the current program approval process to decrease the amount of time it takes for program approval. The BVNPT should also consider providing training to its staff and NECs involved in program approval to ensure that new rules and regulations are applied consistently to these programs. The BVNPT should enter into a formal MOU with the BPPE to maintain important student protections while potentially bringing about swifter program approval.**

BVNPT Response: *The Board implemented numerous procedures to streamline the approval process for VN & PT Programs. Examples include: the development and use of a Program Record Survey document and the handling of faculty and clinical facility approvals by non-nurse employees. Effective January 1, 2012, the Board obtained statutory authority to have the option of using the Program Record Survey document in lieu of a physical site visit for new programs. Additionally, the Board developed a detailed orientation for all new program directors to inform them of regulatory requirements for all programs and the Board’s expectations for all program directors.*

In regards to the formal Memorandum of Understanding (MOU) with the Bureau of Private Postsecondary Education (BPPE), the Board and BPPE staff met to re-establish the terms of a new MOU. The prior agreement expired with the demise of the previous Bureau. The Board maintains a dialogue with BPPE staff whenever a duplication of efforts is identified.

3. **The BVNPT should be granted a pay differential for NECs in order to recruit and retain NECs necessary for school program approval.**

BVNPT Response: *The Board strongly concurs with this recommendation. Without additional NEC staff, the Board’s ability to efficiently handle the NEC workload is severely limited. Despite numerous staff and Board Member efforts, this was rejected as a bargaining issue.*

4. **The BVNPT should continue its efforts to increase the number of VN and PT graduates by not only improving on its approval process for nursing programs, but also by working with**

schools, colleges and universities to promote, create or expand programs; provide for more timely matriculation for students; and, by finding ways to increase access to VN and PT programs, especially for socio-economically disadvantaged students.

BVNPT Response: The Board records confirm that the number of students approved for new programs as well as existing programs increased by 121% or almost 4,190 students between FY 07/08 and FY 13/14 for VN Programs. PTs increased by 135% between FY 07/08 and FY 12/13.

For Licensed Practical/Vocational Nurses, an increased need of 21% is expected through 2018. The 2010/11 Occupational Outlook Handbook states a deficit of 155,600 LVNs is expected in nursing care facilities; a deficit of 31,500 is anticipated in doctors' offices; and a deficit of 20,600 LVNs is anticipated in home health agencies. Similar deficits are identified in the need for psychiatric technicians and other mental health care technicians. The PTs' projected growth is 21.3%.

- 5. It is not clear what commitment will be made to scholarship programs for vocational nursing students in the future. Although it does appear that there will be more dollars available for repayment of loan programs, especially for those students who commit to serve in medically underserved areas. The BVNPT should consider increasing the amount of licensing fees committed to its scholarship program by \$5 to at least increase the availability of funds for those students wishing to attend VN programs. Prior to any increase, however, the BVNPT should report to the Legislature on how OSHPD is spending the money. Since these are licensing fees they must be expended only for those purposes which would further the nursing profession and not be diverted for other purposes.**

BVNPT Response: The Board did not recommend an increase to the \$5 scholarship fee in 2010 nor did the Office of Statewide Health Planning & Development (OSHPD). OSHPD had not used all of the funds available in the Vocational Nursing Education Fund (VNEF). Per Samantha Lewis, the OSHPD Budget Analyst, the balance in the VNEF for FY 2010/11 was about \$654,000 and OSHPD planned to implement new disbursement policies in the upcoming year. All of the fees collected for the VNEF can only be used for this purpose. None of the money reverts back to the General Fund.

The Board now recommends an increase to the \$5 scholarship fee now due to an increase in students.

- 6. The BVNPT is encouraged to complete the report in 2011, or at a later date when resources become available. As part of the report, the BVNPT should explore ways to address the need and sustainability of clinical rotations, including requiring VN and PT programs to secure these clinical rotations for their students. The BVNPT should submit this report to the Legislature and make it available on the BVNPT's Website.**

BVNPT Response: The Board will complete the report when sufficient NEC resources become available to handle this project. The lack of NECs created a workload backlog which is being addressed by current NECs. Clinical rotation availability continues to be an issue. The issue has changed due to proprietary programs purchasing clinical space.

- 7. The BVNPT should submit a Budget Change Proposal to obtain staff dedicated to conducting increased audits of LVNs and PTs and begin the audits of CE providers. The BVNPT should only be required to increase audits of LVNs, PTs and CE providers if it receives sufficient staffing to conduct such audits. Additionally, the BVNPT should seek legal clarification on whether it has the statutory authority to conduct random audits of CE providers. If there is, then the BVNPT should adopt regulations requiring random audits of CE providers.**

BVNPT Response: At present, the Board has sufficient funds to sustain the LVN and PT Programs. However the PT Program is facing a budget deficit by FY 2017/18. The submission of a BCP to increase the number of CE audits and to conduct CE Provider audits would require statutory authority to raise the statutory fee ranges for both the VN and PT Programs. The programs are at the statutory fee maximums. The Board was unable to obtain a statutory fee increase and is now pursuing a merger of the LVN and PT funds.

- 8. It does not appear that the BVNPT will be able to meet its goal of reducing the timeframe for handling its disciplinary cases for some time. Lack of adequate staffing, reliance on the DOI, and delays at the AG's Office in prosecuting cases and OAH in hearing cases, and the inability to obtain necessary records, all contribute to the current average of over 2 ½ years to complete a disciplinary action. Without additional staff, the investigation and prosecution of BVNPT disciplinary cases and the overall administration of its other programs, including licensing of nurses in an expeditious manner, will be in jeopardy. Backlogs of licensing applications and disciplinary cases will increase and any action on the part of the BVNPT against a LVN or PT, who has either violated the PT law or the Vocational Nurse Practice Act, will be severely delayed. The Committee should also give consideration to auditing both DOI and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of BVNPT's disciplinary cases and coordination between all three agencies.**

BVNPT Response: The Board concurs with the Senate Consultant Staff that it will not be able to meet its goal of reducing the timeframe of handling its disciplinary cases without adequate staff and concurrent processing improvements by the DCA Division of Investigation (DOI), Attorney General's (AG) Office and the Office of Administrative Hearings (OAH). The Board also concurs that an audit of the DCA DOI and the AG's Office should be considered. Case aging continues to be a problem with the same issues as above.

- 9. As recommended by the BVNPT, employers should be required to also report resignations in lieu of suspension or termination for cause of LVNs and PTs. Additionally, there is a need to clarify that employers for purposes of reporting includes employment agencies and nursing registries.**

BVNPT Response: Effective January 1, 2012, SB 539 (Price), Chapter 338, Statutes of 2011 expanded reporting requirements for employers to include reporting resignations in lieu of suspension or termination for cause and clarified reporting requirements to include employment agencies and nursing registries. The Board submitted a regulatory proposal to implement the provision which was approved effective January 1, 2014.

- 10. The BVNPT should indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not give a**

definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards. Additionally, the BVNPT should explain to the Committee whether current terms and conditions of probation will include certain aspects of SB 1441 including the requirement that a LVN or PT undergo a clinical diagnostic evaluation; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.

BVNPT Response: *The Board implemented the Uniform Standards effective December 29, 2012.*

11. **Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, the BVNPT does not have to always rely on an ALJ to conduct the ISO hearing, the BVNPT also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of the nurse's license. Provide for automatic suspension of a LVN or PT license if the LVN or PT is incarcerated, and mandatory revocation of their license if they are found to be convicted of acts of sexual exploitation of a patient or if they must register as a sex offender.**

BVNPT Response: *Effective June 3, 2012, the Board implemented regulations which delegate to the Board's Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license. They require an applicant for a LVN or PT license to undergo an evaluation and/or examination if it appears the applicant may be unable to practice due to mental and/or physical illness. The regulations specify the disciplinary action to be taken against a person who is required to register as a sex offender and specifies when the provision does not apply. Additionally, these regulations specify additional acts that constitute unprofessional conduct as follows:*

- 1) *In a civil settlement agreement, including or permitting to be included provisions prohibiting a party in the dispute from contacting, cooperating with, or filing a complaint with the Board, or requiring another party to the dispute to attempt to withdraw any complaint filed with the Board;*
- 2) *Failure to provide to the Board lawfully requested documents under the licensee's control, within the specified timeframe;*
- 3) *Failure to cooperate and participate in any Board investigation, as long as such action does not infringe upon the licensee's constitutional or statutory privileges;*
- 4) *Failure of a licensee to notify the Board within the specified timeframe of felony charges or indictment, arrest, conviction, or disciplinary action by another licensing entity;*
- 5) *Failure to comply with a court ordered subpoena to release records.*

12. **With the recent concerns raised by the State Auditor regarding a case management system for California’s courts, called the “California Court Case Management System,” or CCMS, and its cost overruns and questions about the quality of the system, the DCA should be closely monitored in its efforts to implement an integrated licensing and case management system that could have significant impact on its 40 boards and bureaus. The DCA and the boards and bureaus together manage more than 2.5 million licenses, certificates and approvals in more than 100 businesses and 200 professional categories. The failure of such a new program for DCA could have a vast impact on professional licensing and consumer enforcement efforts throughout the state and for those trying to enter the state to practice. There is no doubt that a new system is needed. The DCA over several years has made other attempts to implement a new computer system, but for varying reasons have not been able to move forward. An interim system solely for the purpose of processing online credit card payments in order to facilitate the renewal process would greatly alleviate the burden on the understaffed Board. The BVNPT should continue in its role to work collaboratively with the DCA’s Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.**

BVNPT Response: The Board utilizes DCA’s Enforcement Tracking System to monitor the progress of its enforcement cases. That system presents a major challenge. The increased complexity and volume of complaints have rendered the current system ineffective to track and monitor cases. Replacement of this antiquated system is critical to maximize efficiency and reduce case aging.

Further, the DCA Division of Investigation (DOI) and the Attorney General’s Office utilize a different tracking system. Their system does not interact with DCA’s Enforcement Tracking System. Consequently, it is even more difficult to monitor cases that have been transmitted to these agencies. The Board is forced to use internal spreadsheets and other measures to assist in tracking case progression.

The Board is participating in the development of BreEZe, DCA’s new integrated information system. The Board will continue to collaborate with DCA to assist in creating an efficient and user-friendly integrated computer system.

13. **The BVNPT should request OPES to conduct the occupational analysis of PTLE in 2012, and ensure that examinations that are developed are legally defensible and psychometrically sound. The BVNPT should start thinking about its goals for this occupational analysis to ensure that the PT examinations developed meet current trends and standards of PT practice.**

BVNPT Response: The Board commenced a new Occupational Analysis of PT practice during 2012. The Analysis and validation of the PT licensure examination is scheduled for presentation to the Board Members in February 2015.

14. **The BVNPT should submit a Budget Change Proposal to obtain staff dedicated to processing licensing examinations.**

BVNPT Response: The BVNPT submitted a dedicated BCP to obtain additional licensing staff in FY 2010/11. The BCP was approved and allows the BVNPT to hire four (4) additional employees

to assist with the licensing workload. Unfortunately, the positions could not be filled until a Freeze exemption request was approved in November 2011. The Board continued to experience a very high vacancy rate during FYs 2011/12 and 2012/13 resulting in continued backlogs. However, the backlog in the Licensing Division was fully eliminated in March 2014. The Board has not experienced a licensing backlog since then.

- 15. The BVNPT should explain to the Committee why an applicant who has initially passed the VN or PT examination, must once again retake the examination because of a lapse of time (four years) prior to issuing a license.**

BVNPT Response: *The Board currently lacks the authority to require re-examination of LVN and PT applicants who pass the licensing examination but are denied licensure by the BVNPT and must reapply. Individuals whose applications or licenses are denied by the BVNPT have the right to reapply for licensure after one year from the Board's denial. In many cases, several years may elapse before an applicant reapplies for licensure and demonstrates that s/he is sufficiently rehabilitated from the crime(s) or act(s) that was the basis for denial. When full rehabilitation is eventually demonstrated by the applicant, the Board must still ensure that the applicant possesses current knowledge, skills, and abilities for safe and competent practice prior to issuing the license. In those cases where several years have elapsed since the applicant passed the examination, the Board cannot be sure that the applicant, upon licensure, can practice safely unless the applicant retakes and passes the licensing examination. This issue has not changed since the Board's last Sunset Review.*

- 16. The BVNPT should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting BVNPT meetings. The BVNPT should explore the viability of an interim system solely for the purpose of processing online credit card payments in order to facilitate the renewal process would greatly alleviate the burden on the understaffed Board.**

BVNPT Response: *The Board implemented the Online License Renewals effective December 27, 2011. In addition, it began webcasting its regular board meetings in February 2011.*

- 17. The BVNPT should attempt to provide its surveys online so that potential students, employers and other interested parties can access this information. The BVNPT should also consider expanding these surveys to provide important information about the status of VN and PT programs, including graduation rates and potential employability.**

BVNPT Response: *The Board will implement this recommendation when sufficient Nursing Education Consultant resources become available to handle this project.*

- 18. The BVNPT should explain to the Committee whether its current fund condition will sustain the functions of the BVNPT, especially the Enforcement Program, and whether fee increases would be necessary if the hiring freeze is lifted.**

BVNPT Response: *The Board needs statutory authority to raise the maximum fee amounts for its five main revenue categories. The Board was unable to obtain a statutory fee increase and is now pursuing a merger of the LVN and PT funds to ensure that sufficient funds are available to pursue*

implementation of any expanded functions.

19. **The BVNPT should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.**

BVNPT Response: *The Board is very frustrated with its inability to hire sufficient staff to ensure that enforcement complaints are handled quickly and that consumer protection is maintained.*

Without sufficient staff and an efficient Automated Tracking System, the Board will not be able to achieve the targeted goal of the Consumer Protection Enforcement Initiative to reduce case processing times to 12-18 months total. During the Senate Committee hearings in 2009, it was found that all of the DCA healing arts boards were taking over 3 years to take disciplinary action.

20. **With other health boards only averaging around a 50% satisfaction rate the BVNPT should explain to the Committee how they have been able to achieve a 90% satisfaction rate from those consumers who have filed complaints against LVNs and PTs.**

BVNPT Response: *The Board routinely distributes a “general” Customer Service Survey to its licensees, applicants and the public at its Public Counter and at all Board Meetings. Survey respondents have the opportunity to rate the Board in the following areas: Board/Committee Meetings; Interaction with Board Staff; Consumer Education & Outreach; Examination & Licensing; Enforcement; School Accreditation & Scope of Practice; and Overall Satisfaction with the Board. In FY 2013/14, 90% of the survey respondents were either very satisfied or satisfied with the Board’s performance. A total of 259 surveys were received that FY.*

For more detailed information regarding the responsibilities, operation and functions of the Board please refer to the Board’s “2014 Sunset Review Report.” This report is available on its Website at: <http://www.bvnpt.ca.gov/>

CURRENT SUNSET REVIEW ISSUES FOR THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

The following are unresolved issues pertaining to the Board, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues and recommendations.

MEETINGS

ISSUE #1: COMMITTEE MEETINGS. *Why are the Board's committees not meeting?*

Background: In the Board's Sunset Review Report, it describes the various committees of the Board. The Board indicated that its committees are, "...an essential component of the full Board to address specific issues referred by the public or recommended by staff." However, the Board also noted in its report that due to "...past budgetary problems that required fee increases" the board minimized costs by not convening committee meetings. The Board further noted that it just created a new Enforcement Committee. It is unclear what the cost of convening a committee meeting is and if there are less expensive ways to get the business of the Board via committee meetings without exhausting the Board's budget.

Staff Recommendation: *The Board should explain to the Committees the cost of conducting committee meetings and its plan to reinstate committee meetings in order to address salient issues that impact the profession and consumers.*

TECHNOLOGY ISSUE

ISSUE #2: TERMINATION OF THE BReZE CONTRACT: RELEASE THREE. *How does this impact the Board?*

Background: The "BreZE Project" was designed to provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreZE system was engineered to replace the existing outdated Legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

According to the DCA, BreZE is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreZE is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information, when the program is fully operational.

According to the original project plan, BreZE was to be implemented in three releases. The budget change proposal that initially funded BreZE indicated the first release was scheduled for FY 2012–13, and the final release was projected to be complete in FY 2013–14.

In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system. Release Two is scheduled to go live in March 2016, three years past the initial planned release date. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014, that the current vendor contract is no longer in place, and those regulatory entities that were scheduled for Release Three will not transition to the BreEZe system. Currently, the technology upgrade, intended by BreEZe, is on hold as the DCA, Caltech and DGS determine the appropriate next steps.

The Board was scheduled for Release Two, and with the cancellation of the BreEZe contract, it is unclear when the Board will undergo technology upgrades that aim to increase efficiencies for licensees and Board staff. A recent audit report conducted by the California State Auditor, *California Department of Consumer Affairs' BreEZe System*, found that "the future implementation of BreEZe is uncertain at best and, as it relates to the regulatory entities originally included in the final release (Release Three), likely unfeasible." The auditor's report also noted that "Consumer Affairs is not responsible for funding the project costs; rather, the total costs of the project are funded by regulatory entities' special funds, and the amount each regulatory entity pays is based on the total number of licenses it processes in proportion to the total number of licenses that all regulatory entities process." It is unclear what that amount is, and how much the Board has paid, to date, towards this technology project.

The Board reported that it has lost valuable staff expertise as several employees were asked to participate in various workgroups. From June of 2014 to August of 2014, the Executive Officer, Assistant Executive Officer and five subject matter experts attended approximately 50 BreEZe meetings. The Board reported that the subject matter experts spent an average of 780 hours each working on the project since the Release Two kickoff in December of 2013.

Staff Recommendation: *The Board should update the Committees about its preparation for BreEZe and what processes have been implemented in preparation for a new system. The Board should update the Committees on the total amount they anticipated spending on the BreEZe system. What are the current costs that the Board has already expended in anticipation of BreEZe and can any of those costs be recovered?*

PRO RATA

ISSUE #3: PRO RATA EXPENDITURES. *Does the Board understand how the pro rata funds are calculated and expended?*

Background: Through its various divisions, the DCA provides centralized administrative services to all boards and bureaus in the Department. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. The DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other cost center specific distributions. In 2014, the DCA provided information to the Assembly Business and Professions Committee, in which the Director of the DCA reported that "the majority of the [DCA's] costs are paid for by the programs based upon their specific usage of these services." The DCA does not break out the cost of its individual services (cashiering, facility management, call center volume, etc.).

The Board spent roughly 23% of its budget on pro rata for FY 2013/14. Although other entities under the DCA are charged a higher percentage of pro-rata costs, the pro rata expenditures have steadily increased during the past 3 FYs.

Staff Recommendation: *The Board should advise the Committees about the basis upon which pro rata is calculated. Is the Board receiving any direct benefits or services from the DCA that are being paid for by the pro rata dollars that are sent to the DCA? If so, what are those services and what is the cost for each? What sort of notice is the Board given, if any, before pro rata funds are withdrawn from the Board's account?*

BOARD FINANCES

ISSUE #4: FUND MERGER. *Should the LVN and PT funds be merged?*

Background: Both the LVN and PT programs are at the statutory maximums for the fees they charge licensees. In July of 2012, the Board submitted a Budget Change Proposal (BCP) requesting the merger of the LVN and PT funds. The BCP was denied as the PTs fund condition was expected to remain solvent through FY 2015/16. The Board was advised to seek a statutory proposal to merge the funds versus a BCP.

According to the Board, current budget projections indicate that the LVN program fund reserve will remain solvent past FY 2020/21. The PTs program fund reserve will be exhausted by 2017/18. On February 13, 2012, the Board approved a merger of the funds as an alternative to a statutory amendment to raise the PTs fee ranges. The Board has been advised by the DCA Budget Office that the merger would delay a deficit and the need to increase fees for three to four years.

Staff Recommendation: *The Committees should consider if the LVN and PT funds should be merged. The Board should provide more detailed statistics of how the merger will impact both licensing groups e.g. how will funds be allocated for each licensing group? If the Committees agree to merge the funds, a statutory change will be necessary.*

ISSUE #5: STATUS OF FUNDS. *What is the balance of the Board's funds?*

Background: Based on Committee staff's tracking of the Board's meetings, expense reports, etc., the current status of the Board's funds is unclear. In the Sunset Review Report, the Board indicated that the fund reserve is in good shape. Additionally, the Committee has been advised that, in the Spring of 2014, the Board reported that the fund was healthy enough to cover the cost of operating expenses and equipment. However, at the February 2015 Board meeting, Board staff told the Board that it was out of money. When Board members questioned Board staff about it, the Board staff indicated that the funds were spent on postage.

Staff Recommendation: *The Board should clarify to the Committees what the actual fund reserve and balance is and what expenses have been incurred to lead to a depletion of funds.*

SCHOOL APPROVAL

ISSUE #6: BOARD AND BPPE SCHOOL APPROVAL PROCESS. *Is the Board actively collaborating with BPPE to approve schools? What is the status of the moratorium on school applications?*

Background: The Board conducts its own school approval process. CCR, Title 16, Division 25, Chapter 1, Article 5, requires institutions seeking approval for commencement of a VN program to submit a detailed proposal that demonstrates the application and integration of Anatomy & Physiology, Pharmacology, Communication, Nutrition, Normal Growth and Development, Nursing Theory, Nursing Care Skills, etc., into the clinical practice of the students. Similarly, CCR, Title 16, Division 25, Chapter 2, Article 5, requires institutions seeking approval for commencement of a PT program to submit a detailed proposal that demonstrates the integration and application of didactic content into the clinical practice of enrolled students.

According to the Board's 2014 Sunset Review Paper, once the Board deems a school as approved it,

Notifies programs seeking approval that approval by the BPPE is also required prior to commencement of the initial class. Additionally, the Board notifies the BPPE of the Board's consideration of the approval of new VN and PT programs, commencement of the initial class, and the date on which program approval will be considered. A Memorandum of Understanding specifies premises and terms of the Board's agreement with the BPPE.

In the 2011 Sunset Review Background Paper written to the Board, the Committees identified the Board's school approval process as an area that needed attention. Specifically, the Committees noted, "The BVNPT should continue its efforts to increase the number of VN and PT graduates by not only improving on its approval process for nursing programs, but also by working with schools, colleges and universities to promote, create or expand programs..."

There appear to be conflicting statements within the Sunset Review Report in regards to the school approval process as outlined in the regulations. For example, the Board noted in the report, "From 2001/2002 to 2011/2012, the number of VN programs increased 140.28% the number of PT programs increased 14.38%." In response, the Board indicated, "The Board is actively responding to the [workforce] shortage with its approval of new VN and PT programs." However, in another section of the report, the Board noted,

On February 1, 2014, a backlog of 145 institutions (135 VN and 10 PT) requesting approval for commencement of VN and PT programs was identified. The Board authorized a moratorium on the analysis of new proposals until February 28, 2015...Pursuant to the Board's decision, the review and analysis of newly proposed programs will not commence during the moratorium. As a result of the Board's decision, all proposals received after February 26, 2014 have been retained, in the order of receipt, for processing after the moratorium. All previously existing proposals where the applicant confirmed continued interest in program commencement remained in the queue for review by the Board. Analysis of the remaining proposals in the queue and correspondence advising the submitting director of identified deficiencies and required corrections is projected to be completed by May 2015.

In addition, the Board indicated in another section of the report that the prior MOU “expired” with the demise of the previous Bureau. However, “the Board maintains a dialogue with BPPE staff.”

It appears that the Board continues to struggle with the school approval process so much so that there is now a moratorium on reviewing applications- despite the Board’s statement that it is “actively responding” to the workforce shortage. Also concerning is the fact that the Board has not reinstated a formal MOU with the BPPE. It remains unclear if all Board approved schools have completed the BPPE’s school approval process.

Staff Recommendation: *The Board should provide a list of schools that have been approved to date and also provide evidence that these schools have been approved by the BPPE. The Board should take immediate steps to draft a MOU with the BPPE regarding the joint approval processes. The Board should advise the Committees on its plan to address the backlog of school applications and lift the moratorium.*

STAFF

ISSUE #7: INADEQUATE STAFFING LEVELS. *What is the Board’s plan for filling positions in order to conduct business in the interest of serving licensees and protecting the public?*

Background: Throughout the Sunset Review Report, the Board indicated that a lack of staff is hindering the Board’s ability to carry out vital functions, such as:

- Processing licenses;
- Conducting timely enforcement;
- Conducting CE audits;
- Computerizing annual school program and clinical facility surveys;
- Conducting school approvals;
- Completing the requested 2011 report on availability of clinical rotations; and
- Responding to consumers, among other duties.

Stakeholders have complained publicly at Board meetings and the Committees have been alerted of deficiencies in these areas since the Board’s last review.

The Board reported in the Sunset Review Paper that the lack of filled vacancies was due to hiring freezes, furloughs, high staff turnover rate, and denied BCPs. However, in the Committee staff’s tracking of the Board since its last Sunset Review Hearing in 2011, it appears that some authority for positions may have been lost due to a failure to timely fill the positions, including not advertising all available positions.

The Board reported in the Sunset Review Paper that staff has had to work overtime, and has been redirected to other units to help ease backlogs and workload. As a result of the significant expenditures associated with staff overtime, the Board ceased paying overtime as of January 31, 2015 resulting in many staff having to volunteer in order to complete their work.

Staff Recommendation: *The Board should share its immediate plan to fill all existing vacancies in order to address the vital functions that the Board is mandated to carry out.*

ENFORCEMENT ISSUES

ISSUE #8: ENFORCEMENT DELAYS. *What steps can the Board take to meet performance targets?*

Background: In the 2011 Background Paper to the Board, the Committees questioned the Board's ability to reduce the timeframe for handling disciplinary cases. At that time, a lack of adequate staffing, reliance on the DOI, and delays at the AG's office in prosecuting cases and at OAH in hearing cases were the impediments identified that hindered the Board. In some cases, it took over two and one half years to complete disciplinary action.

With the advent of the Consumer Protection and Enforcement Initiative (CPEI) in 2010, the Board was allocated staff to work in-house as part of its Enforcement Division. In July of 2011, the Board created an Investigations Unit within the Enforcement Division. The Board reported that the Investigations Unit staff has assisted in "drastically reducing the number of cases referred to the DOI" and only those cases involving potential safety issues and criminal charges are referred to the DOI. In the materials provided at the Board's November 2014 meeting, the Board further indicated, "The BVNPT has not referred cases to the DOI due to the hiring of its own investigations staff in recent years. The BVNPT completes nearly all of its investigations in-house and does not typically use the DOI as a resource despite understaffing and burdensome caseloads."

In recent years, the DCA developed eight performance measures to determine the Boards' efforts to streamline enforcement processes, reduce backlogs, and process complaints within 12-18 months. The Board reported that it is meeting the targets for several measures except the Formal Discipline Cycle Time which measures the average number of days to complete cases resulting in formal discipline. Specifically, the Board ranked second to last among all DCA boards for formal discipline processing performance.

Unfortunately, the Board continues to exceed the timeframe established for it to meet its target. For example, though the target time frame is 540 days, the time frames across the past four years range from approximately 1100 days to 1400 days. A review of the DCA's enforcement statistics for FY 2012/13 reveals that the Board ranked last across all Healing Arts Boards. For FY 2013/14, the average number of days, as indicated in the DCA enforcement statistics, was 1135, but the Board reported at its November meeting that they believe the accurate figure is 1107- still far exceeding the target. The Board indicated that it does not anticipate meeting the target without improvements to the segments of the enforcement process handled by the AG's office and the OAH. The number of complaints received by the Board continues to rise. The Board reported that in FY 2013/14, the number of complaints was 5,789- the highest number ever received by the Board.

Though the Board is subject to the process of OAH and the AG's office, there are tools that may help the staff within the Board's Enforcement Division process cases more quickly. For example, the DCA holds Administrative Subpoena Training Sessions for specified Board staff. In 2009, staff from the Board attended a training session. However, it appears that the former Chief of Enforcement, now Assistant Executive Officer, did not complete the required subpoena sample for DCA Legal to review. As a result of the delay in completing requirements, when the Board inquired in 2014 about the subpoena authority, the Executive Officer, Assistant Executive Officer and Enforcement Division Chief were required to attend a new training which was completed in October of 2014. The

Committees have been advised that the subpoena authority has not been provided to staff within the Enforcement Unit to date.

In September of 2014, the Board created an Enforcement Task Force in response to its formal case aging timelines. At its November 2014 meeting, the Enforcement Task Force produced a report that included the several recommendations. The following may help the Board meet the DCA's target enforcement timeline:

- Increased communications with both of the AG and OAH offices, including a regular monthly meeting/conference call to discuss caseload aging and status.
- Participation in the AG's "fast track" pilot program. This program will work with selected DCA Healing Arts Boards to fast-track appropriate cases for settlement and aggressively pursue timely resolution.
- Consider utilizing the DOI to assist with egregious cases such as those involving criminal violations and high potential for consumer harm.
- Revise the Board's Disciplinary Guidelines. The Disciplinary Guidelines provide the framework and direction that Board staff, Deputy AGs, and Administrative Law Judges need to prosecute cases. The Disciplinary Guidelines have not been revised since 2011.

Staff Recommendation: *As predicted in the 2011 Background Paper, the Board continues to struggle in the area of enforcement. What remains unclear is the reason why. Though the involvement of the AG and OAH undoubtedly impact the timeline, as with several other boards within the DCA, there remain questions about what other factors are contributing to such significant delays. The Board should report to the Committees what steps it can take to work with the OAH and the AG's office to ameliorate the lengthy processing of cases and ensure the Board meets its performance target in order to protect consumers. It may be helpful to start with the recommendations outlined by the Enforcement Task Force. The Board should also advise the Committees why the subpoena authority has not been granted to the appropriate employees within the Enforcement Unit as this is an important tool in helping staff to complete investigations in a timelier manner.*

ISSUE #9: DISCREPANCIES IN ENFORCEMENT STATISTICS. Why are there discrepancies between the statistics provided to the Committees and those provided to the Department of Finance?

Background: The Board provided enforcement statistics to the Committees that indicate that 53 non-sworn investigations were closed. However, the enforcement statistics provided to the Department of Finance, during the Consumer Protection Enforcement Initiative survey, reflect that there were 272 non-sworn investigations closed.

The November 2014 Board meeting materials noted that the Board had different enforcement statistics than those reported by the DCA. However, the Board utilized the DCAs figure in its Sunset Review Report.

This admission, combined with the discrepant enforcement statistic provided to the DOF, is concerning and calls to question the accuracy of all other statistics that the Board has reported within the Sunset Review Report.

Staff Recommendation: *The Board should revisit the Sunset Review Report, recalculate all statistics, and report the updated statistics to the Committees.*

MANAGEMENT

ISSUE #10: MANAGEMENT AND OPERATIONS OF THE BOARD. *Should the Board undergo further investigation?*

Background: Since the inception of the Sunset Review Oversight process, there have been occasions when the operations of a licensing entity are called into question and require additional scrutiny. This is typically in response to information that is presented to the Legislature that warrants further investigation. The Committee staff believes that this is the case with the BVNPT Board.

Staff Recommendation: *There are serious concerns about the Board's operations and overall management. As such, the Committees may wish to further investigate the activities of the Board. Specifically, the Committees should seriously consider enlisting the support of the DCA's Internal Audit Office and the DOI for immediate intervention. In addition, it may be beneficial to also consider hiring an enforcement monitor to observe the activities of the Board for one to two years.*

CONTINUED REGULATION OF THE PROFESSION BY THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

ISSUE #11: CONTINUED REGULATION BY THE BVNPT. *Should the current Board be continued and be allowed to continue regulating the practice of Vocational Nurses and Psychiatric Technicians?*

Background: A review of the issues raised during the last review of the Board in 2011 reveals that the Board has made some strides towards meaningful change. However, the outstanding issues also reveal that the Board has experienced some significant problems that have impacted its overall functioning, the oversight of licensees and protection of the public. As highlighted above, the Board has shown deficiencies and discrepancies in the areas of enforcement and management of funds. Due to these continuing problems as well as potential issues concerning the management and operations of the Board, it appears that this Board requires additional oversight and direction.

Staff Recommendation: *Recommend that the licensed vocational nursing and psychiatric technician professions continue to be regulated by the current Board in order to protect the interests of the public and be reviewed once again in two years. In addition, the Board should undergo an audit, investigation by the DOI and involvement of an enforcement monitor. The Board should update the appropriate policy committees of the Legislature in two years of their improvements in the following critical areas: 1) enforcement, 2) management, 3) staff and 4) funding.*