

BACKGROUND PAPER FOR THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

Joint Oversight Hearing, March 20, 2017

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

BRIEF OVERVIEW OF THE BOARD

The Board of Vocational Nursing was established in 1951 and in 1959 merged with the Psychiatric Technician program to become the California Board of Vocational Nursing and Psychiatric Technicians (BVNPT).

The BVNPT 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 the BVNPT'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, the name of the BVNPT was changed from the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

In 2007, due to a legislative oversight, the Assembly adjourned without taking up SB 797 which contained the statutory language required to extend the sunset date for the BVNPT and three other licensing boards within the Department of Consumer Affairs (DCA). As a result, the BVNPT 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 BVNPT (SB 797 and Assembly Bill (AB) 1545) effective January 1, 2009.

The BVNPT oversees two distinct licensure programs, each with separate statutes, and regulations, curriculum requirements, and examinations. Today, the BVNPT regulates the practice of approximately 120,041 LVNs and 11,840 PTs, the largest groups of LVNs and PTs in the nation. As of August 1, 2016, a total of 172 programs are approved by the BVNPT to offer educational programs leading to a LVN and PT license 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 BVNPT-approved VN program or a BVNPT-approved equivalent. Duties within the scope of practice of an LVN typically include:

- 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 BVNPT requires post-licensure certification to perform IV and/or BW.

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 BVNPT-approved PT program or a BVNPT-approved equivalent. Duties within the scope of practice of a PT typically include:

- 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.

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 BVNPT 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

The BVNPT 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 BVNPT constitute a quorum for transaction of business at any meeting. BVNPT members receive a \$100-a-day per diem. The BVNPT meets four times per year. All meetings are subject to the Bagley-Keene Open Meetings Act. The following is a listing of the current BVNPT members and their background:

Board Members	Appointment	Term Expiration	Appointing Authority
Tammy Endozo, President, Professional Member , has been a licensed vocational nurse (LVN) since 1996. Since 2006, she has served as a LVN at the Richard J. Donovan Correctional Facility. From 2003 to 2011, she served as a LVN at Scripps Mercy Hospital and a residential care leader and LVN at the Veteran's Home of California, Chula Vista, from 2000 to 2006. Ms. Endozo was a LVN at 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	6/1/19	Governor
Bernice Bass De Martinez, Vice-President, Public Member , has been chair of the Department of Foreign Languages at California State University, Sacramento since 2009, where she has served in several positions since 2000, including chair of the Department of Special Education, Rehabilitation, School Psychology, and Deaf Studies, special assistant to the president, team leader and provost. She was senior associate vice president for academic affairs and dean of the School of Graduate Studies at Indiana State University from 1996 to 2000 and associate provost and director of graduate studies at Mills College from 1993 to 1996. Bass de Martinez was dean of the Seton Hall University, College of Education and Human Services from 1991 to 1993 and chair of the Fresno State Department of Teacher Education from 1987 to 1991. She is founding chair of the William V.S. Tubman University Foundation Board and a member of the California State University, Sacramento Foundation Board and the Elk Grove Multicultural Committee. Bass de Martinez earned a Doctor of Philosophy degree in curriculum and instruction with emphases in teacher preparation, bilingual education and reading and languages from the University of Florida and a Master of Arts degree in elementary education with emphases in bilingual education and reading and language arts from the University of Northern Colorado.	5/5/15	6/1/19	Governor
John Dierking, Public Member , is an attorney and Tax Compliance Officer with the City of Los Angeles. He belongs to Volunteers in Service to Others (VISTO) within the Los Angeles County Probation Department, and served as a Speaker appointee on the California Council on Criminal Justice from 1997 to 2000. He also serves on the Board of Governors of the Engineers and Architects Association/IBEW 11, a labor organization representing approximately 4,700 professional members..	6/1/16	6/1/20	Senate

<p>Todd D’Braunstein, Professional Member, has been a licensed psychiatric technician (PT) since 1994. Mr. D’Braunstein has been employed in multiple positions at Patton State Hospital since 1996. Currently, he is a Program Assistant and administratively supervisors approximately 30 clinical staff. Prior to this role, Todd served as a Unit Supervisor and previously held positions including Psychiatric Technician Instructor, Senior Psychiatric Technician and Psychiatric Technician. From 1995 to 1996, he served as Crisis Response Team Member while employed at Tri-City Mental Health Center. From 1993 to 1995, he served as a Psychiatric Technician at Lanterman Developmental Center, following graduation from the Hacienda La Puente Adult Education Psychiatric Technician Program. Todd also serves on the Board of Directors for the Association of California State Supervisors as Vice President of Governmental Affairs. Todd has also served in locally appointed positions with his city.</p>	6/2/12	6/1/16	Governor
<p>Samantha James-Perez, Professional Member, has been a licensed psychiatric technician (PT) since 1997. Ms. James-Perez is currently a professor at Mt. San Antonio College. From 1998 to 2016, she served in multiple positions at Pacific Clinics, including PT, PT-LVN education coordinator and medication services supervisor. From 2006 through 2013, she also served as an expert consultant for psychiatric technician practice. From 2003 to 2006, Ms. James-Perez served as a PT at the Loma Linda University Behavioral Medicine Center, at Canyon Ridge Hospital from 1997 to 2001, and the American Recovery Center from 1997 to 1998.</p>	6/2/15	6/1/15	Governor
<p>Eric Mah, Public Member, is the Assistant Dean for Clinical & Translational Research at the University of California, San Diego. Mr. Mah is also the chief administrative officer of the Clinical and Translational Research Institute; he leads strategic initiatives to attract clinical research, build and foster key internal and external relationships, and facilitate rapid study initiation by simplifying processes in an ever-changing regulatory landscape. In addition, Eric has overall responsibility for the clinical research administrative core which includes the Human Research Protections Program, the Office of Clinical Trial Agreements, and the Office of Coverage Analysis. Eric also serves as regulatory director for UC BRAID (a consortium of the five UC academic medical centers), and provides guidance and direction to address research compliance regulations and policies in clinical research. Eric has held leadership positions in research administration, compliance, and the Institutional Review Board at several campuses in the University of California. He received a master's degree from the Johns Hopkins School of Public Health and a bachelor's degree in philosophy in ethics from UCLA.</p>	6/1/12	6/1/16	Assembly

Andrew Moreno, Public Member , works in the field of immigration at The Moreno Law Group. Mr. Moreno also provides contract grant writing in the areas of economic and community development. Andrew previously served as project manager with the Economic Vitality Corporation of San Luis Obispo County and served on the Workforce Investment Board's Business Council of San Luis Obispo County. Appointed by the Mayor, Andrew previously served on the City of Fresno's Civil Service Board. Andrew holds a Bachelor of Arts in Communication from Saint Mary's College of California, a Master of Liberal Arts from Harvard University, and Master of Arts in Leadership Studies and Communication from Gonzaga University. Andrew is currently attending Northwestern California University School of Law.	7/11/13	6/1/17	Governor
Donna Norton, Professional Member , has been a licensed vocational nurse (LVN) since 1986. Since 1989, Ms. Norton has been a LVN at Kaiser Permanente. From 1984 to 1985, she was a LVN and phlebotomist at Oneida Hospital. From 1981 to 1985, she was a LVN at Straub Hospital and served as a LVN in the United States Army at Tripler Army Hospital from 1975 to 1981.	6/9/16	6/1/20	Governor
John Vertido, Professional Member , has been a licensed vocational nurse (LVN) since 1982. Mr. Vertido 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. Mr. Vertido served in the United States Army Reserve from 1980 to 2000. He was a 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.	6/2/12	6/1/16	Governor
Vacant, Public Member, since 4/7/16.	N/A	N/A	Governor
Vacant, Public Member, since 10/7/16.	N/A	N/A	Governor

Committees

The BVNPT 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. The following are from the BVNPT's 2016 Administrative Manual.

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

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

Enforcement Committee – Created to evaluate the functions and performance of the Enforcement Division. The Committee reviews and evaluates statistical reports and trends in workload to assess performance.

Evaluations Committee – Created to advise the Board on matters regarding approval through different licensing methods, continuing education and competency to impact licensee candidate profile and national standards. Makes recommendations to Board to improve national ratings.

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

Licensing Committee – Created to develop strategies to improve customer service through improved processes.

Practice Committee – Created to review the current scope of practice and advocate for preserving existing scope of practice in the face of competing priorities

Strategic Outreach Committee – Created to develop opportunities to engage stakeholders to achieve BVNPT goals and objectives.

Staffing Levels

The BVNPT's Executive Officer is appointed by the BVNPT. The current Executive Officer was selected in March 2016. The BVNPT has a staff of 67.9 authorized positions, with 34.4 staff dedicated to enforcement and 21.5 to licensing.

Fiscal and Fund Analysis

The BVNPT is a special fund agency, which means it receives no general funds. It is fully funded through the revenues the BVNPT deposits into the fund.¹ The BVNPT's revenues are primarily made up of licensing and administrative fees. The BVNPT has some revenue from fines and enforcement cost recovery, but enforcement revenues tend to be inconsistent.

In FY 2015/16 the BVNPT's total revenue was \$10.94 million with approximately \$7.12 million coming from renewal fees. In addition, other regulatory fees, including application fees, initial license fees and CE course provider fees made up \$3.36 million in revenue. Current budget projections indicate that the VN/PT Program's fund reserve will remain solvent past FY 2018/19, with \$7.9 million, or 6.7 months, in reserve. There have been no general fund loans since the BVNPT's last Sunset Review.

¹ For more information related to state funds, see Department of Finance, *Glossary of Budget Terms*, http://www.dof.ca.gov/budget/resources_for_departments/budget_analyst_guide/glossary.pdf.

Fund Condition (Dollars in Thousands)						
			FY 2015/16	FY 2016/17*	FY 2017/18*	FY 2018/19*
Beginning Balance			\$11,318	\$12,624	\$11,974	\$10,085
Totals, Revenues and Transfers			\$10,945	\$12,683	\$11,697	\$11,675
Totals, Resources			\$22,279	\$25,307	\$23,671	\$21,760
Expenditures			\$9,655	\$13,333	\$13,586	\$13,858
Fund Balance			\$12,624	\$11,874	\$10,085	\$7,902
Months in Reserve			11.4	10.6	8.7	6.7
*Projected						
<i>Note. This table was prepared by the BVNPT on September 5, 2016.</i>						

Expenditures by Program Component – From 2014/15 to 2015/16, for the VN program, the BVNPT expended approximately 48 percent of its budget on enforcement, 27 percent on examinations and licensing, 5 percent on administration and 20 percent on DCA pro rata. For this same period for the PT program, the BVNPT spent 62 percent of its budget on enforcement, 15 percent on examinations and licensing, 5 percent on administration, and 18 percent on DCA pro rata. It should be noted that pro rata costs have increased by almost 10 percent for this Board over the past two years.

Cost Recovery – Pursuant to B&P Code Section 125.3, all DCA boards have the authority to recover costs from licensees related to enforcement activities except for the Medical Board of California. All enforcement cases referred to the AG’s Office that result in 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 BVNPT indicates that it seeks cost recovery in all cases where cost recovery is authorized. The BVNPT seeks the award of costs when settling cases with a stipulation, as well as with decisions provided through an administrative hearing. In 2015/16 the BVNPT spent a total of \$7.2 million on enforcement efforts and said it had 342 cases for potential cost recovery, resulting in cost recovery of \$632,000 ordered for a total of 205 cases. The BVNPT collected a total amount of \$183,000.

Licensing

In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. The programs require anyone who wishes to practice a licensed profession to demonstrate a minimum level of competency. Requirements vary by profession, but usually include specific education, examination, and experience.

The BVNPT licensed approximately 6,100 VNs and 404 PTs in 2015/16. This is a decline of almost 1000 VN licensees and 80 PT licensees from numbers of licenses issued in 2014/15. The BVNPT renewed 50,348 VN and 5,437 licenses in 2015/16.

According to the BVNPT's 2014 Sunset Review Report, applicants for VN licensure in California must be at least 17 years of age and must have completed 12th grade or its equivalent, completed the NCLEX/PN exam or the National League of Nursing State Board Test Pool Examination for Practical Nurses, and have completed either the education or experience, or any combination of both equivalent to that acquired in an approved VN program via one of the following four methods:

- Graduation from an approved program of VN in California;
- Completion of specified months of paid general duty bedside nursing experience in specified areas or an individual may submit formal nursing education in lieu of paid bedside nursing;
- Completion of a least 12 months of verified active duty bedside patient care in the medical corps of any branch of the Armed Forces; proof of completion of a basic course of nursing while in the armed forces; and proof that service has been honorable; or
- Graduation from an out-of-state accredited school of practical/vocational nursing, provided that the course completed is substantially equivalent to a California approved VN program.

Applicants for licensure as a PT must be at least 18 years of age and must have completed 12th grade or its equivalent, successfully completed the California PT Licensure Examination and completed either the education, or a combination of both education and experience, equivalent to that acquired in an approved PT program via one of the following three methods:

- Graduation from an approved PT program in California;
- Completion of specified hours of theory, pharmacology and supervised clinical experience and paid work experience may be substituted for supervised clinical experience; or
- Completion of an armed forces course involving neuropsychiatric nursing and an armed forces or civilian course from an accredited school in the care of developmentally disabled client; one year of verified full time paid work experience, including at least six months in a military clinical facility caring for clients with mental disorders and at least six months in a military or civilian clinical facility caring for clients with developmental disabilities.

The BVNPT 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).

School Approvals

The BVNPT 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 BVNPT is authorized to approve the program curricula and areas directly related to the presentation and effectiveness of the curriculum and student achievement.

As of January 27, 2017, the BVNPT's Education Division Report showed that there are a total of 167 (153 VN and 14 PT) approved and pre-approved programs. In addition, 9 (8 VN and 1 PT) proposed programs are awaiting review. [It should be noted that the BVNPT's Sunset Review Report of 2016 noted that, effective August 1, 2016, there were 172 programs approved by the BVNPT.]

Continuing Education (CE)

The BVNPT requires 30 hours of CE every two years to ensure that its licensees receive current information about new concepts, procedures and practices relative to their respective scopes of practice.

The BVNPT accepts CE courses for LVNs and PTs from nursing agencies or organizations from California or other states. In addition, the BVNPT approves providers who wish to offer CE specifically for LVNs and PTs. The provider pays a fee to the BVNPT 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 BVNPT 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 BVNPT. Licensees are required to maintain CE information for a period of four years for audit purposes. This allows the BVNPT an opportunity to check not only CE compliance for the most recent renewal period, but for the prior period as well.

From 2010/11 to 2013/14 the BVNPT completed 4,456 CE audits. Information was not provided by the BVNPT on audits completed from 2014/2015 to 2015/16, but on average it appears that the BVNPT audits at least 1,500 licensees per year, representing about 2.5 percent of all license renewals. The BVNPT initially indicated that eighty percent of the total licensees audited were found in compliance of the CE requirement, however it appears as if non-compliance may actually be lower, around 15 percent.

Licensees who do not comply with either the CE requirements or with a BVNPT audit are referred to the Enforcement Division for consideration of a citation and fine and, more recently, receive a Notice of Warning (NOW) rather than a citation.

Enforcement

The Practice Act requires the BVNPT to enforce the laws relating to the practice of physical therapy. The BVNPT has the authority to investigate violations of the Practice Act, issue citations, deny or take disciplinary action against a license (e.g. probation, suspension, or revocation), and refer cases for criminal prosecution.

As with other licensing boards, the BVNPT relies on information it receives to initiate investigations, mainly complaints and information drawn from documents submitted by licensees or other agencies. Complaints also include cases which are opened internally on initiative of enforcement staff (rather than a complaint it has received).

Targets and expectations for the enforcement program were set in 2010 by the DCA's Consumer Protection Enforcement Initiative (CPEI). The CPEI introduced Performance Measures and set target cycle times for every stage of the enforcement process in an effort to streamline the enforcement process and reduce backlogs. The major goal of CPEI was for boards to complete formal disciplinary action within 12 to 18 months. This may have been an unrealistic goal, as there are few boards that have been able to meet this target cycle time. However, many boards have been able to at least meet some of their target cycle times for handling complaints and for the initial investigation of cases by both non-sworn investigators (those located within a board's own investigation unit) and sworn investigators (those with the DCA's DOI).

The BVNPT's enforcement program appears to be meeting its target cycle times for complaint handling but investigations are still taking between one year and a year and a half, although backlogs of investigation cases seem to be decreasing. The average number of days for the BVNPT to complete formal discipline has not changed significantly since 2011/12. 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 BVNPT and prosecution by the AG. As of 2015/16, the total target cycle, from the time a complaint is received to the effective date of the formal disciplinary action, is 1,005 days as of 2015/16. The BVNPT's average cycle time for 2011/12 was 1,018.

The number of complaints the BVNPT receives is decreasing. In 2014/15 the BVNPT received 561 complaints, including 4,855 arrest/conviction reports, for a total of 5,416 complaints received. In 2015/16 though, the BVNPT received 1,061 complaints and 2,391 arrest/conviction reports, for a total of 3,452 complaints received. Many of these complaints were handled by desk investigations while about 22 percent were referred for investigation.

Stipulated settlements by the BVNPT have been on the rise, with 209 in 2015/2016; there were only 87 in 2014/15. The BVNPT believes that this is helping to reduce case processing times and allows revocation and high profile cases to proceed to hearing more quickly. It should be noted, however, that the BVNPT's disciplinary outcomes have not changed significantly, except possibly for probation referrals. In 2014/15 there were 163 license revocations and 65 licensees placed on probation. In 2015/16 there were 161 license revocations and 150 licensees placed on probation.

Additional Background Information

For additional information regarding the BVNPT's responsibilities, operations, and functions, please see the BVNPT's *2016 Biennial Sunset Review Report*. The report is available on the BVNPT's website: <http://www.bvnpt.ca.gov/>.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The BVNPT was last reviewed in 2015. A total of 11 issues were raised by the Committees at that time. Below are responses submitted by the BVNPT after their review. However, these responses were submitted to the Committees by the executive staff **at that time**. The BVNPT has since had two different Executive Officers and the responses may not reflect the attitude of the BVNPT today. Current outstanding issues are discussed under Current Sunset Review Issues.

- 1) The Committees were concerned that the BVNPT was not utilizing its standing committee structure due, as it indicated, to past budgetary considerations. Issues requiring BVNPT action were being brought before the full Board at a scheduled BVNPT meeting. This was in spite of the fact that the BVNPT considered its committees as "an essential component of the full Board to address specific issues referred by the public or recommended by staff." The Committees recommended that it provide a plan to reinstate committee meetings in order to address salient issues that impact the profession and consumers.

BVNPT Response: The BVNPT indicates that since the last Sunset Review, the BVNPT had at the time of the response a full complement of Board members and the standing committees were reactivated. They indicate that their committees are meeting on a regular basis.

- 2) The Committees were concerned about the BVNPT's implementation of the DCA's BreEZe IT system which is designed to provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe system was engineered to replace the existing outdated Legacy systems and multiple "work around" systems with an integrated solution based on updated technology. The Committees recommended that the BVNPT update the Committees about its preparation for

implementing this new system and the total amount of anticipated expenditures for the BreEZe system.

BVNPT Response: The BVNPT indicates that in January 2016 it transitioned to the DCA's new BreEZe licensing and enforcement database. According to the BVNPT, this new system not only provides helpful online services for consumers, licensees and applicants, but also provides data conversion and reporting tools that allow the Licensing Division staff to capture data that could not be obtained in the old systems. In addition to BreEZe, as of July 2016, the BVNPT was also able to utilize the Quality Business Interactive Reporting Tool system which allows the BVNPT to run various reporting statistics. Previously, reports were limited and sometimes reliant on BVNPT staff to maintain workload, processing times, pending applications, etc., using Excel or other programs.

Since the implementation of BreEZe on January 19, 2016, licensing processing times have increased, however the processing times for school graduates has decreased from six weeks to as little as one week. The Licensing Division continuously works to improve its current processes.

- 3) The Committee wanted to assure that the BVNPT understood how their pro rata funds were going to be calculated in coming years since 23 percent of its budget was expended on pro rata and the pro rata expenditures had been steadily increasing for the BVNPT. (Pro rata charges are assessed to all boards for services that are provided by the DCA.) The Committees asked if the BVNPT understood the calculation of the DCA for pro rata to be paid by the BVNPT, was it being properly notified of any pro rata charges that will have to be paid to the DCA and if the services received are of direct benefit to the BVNPT

BVNPT Response: The BVNPT gave a breakdown of actual services being provided to the BVNPT by the DCA and indicated that they were properly notified of charges to be assessed for services provided, and seemed to indicate that the services were of direct benefit to the BVNPT.

- 4) The Committees were concerned that the PT program fund reserve would be exhausted by FY 2017/18, while the LVN program fund reserve would remain solvent past FY 2020/21. The Committees asked the BVNPT whether it should consider if the LVN and PT funds should be merged. The Committees also indicated to the BVNPT that it should provide more detailed statistics of how the merger will impact both the licensing groups, e.g., how funds will be allocated for each licensing group.

BVNPT Response: The BVNPT initially indicated that the DCA Budget Office recommended that the BVNPT conduct an independent fee study. The Committees, however, determined that the separate funds should be merged into the Vocational Nursing and Psychiatric Technicians Fund to carry out both the Vocational Nursing Practice Act and the

Psychiatric Technicians Law by July 1, 2016, and that the DCA's internal audit unit should review the BVNPT's financial needs, fee structure, budget, and expenditures, including the estimated costs of meeting staffing and other requirements to implement and provide a copy of this review to the Legislature no later than October 1, 2016. Both the merger and requirement for an internal audit by the DCA were included in AB 179. The BVNPT indicated that, in accordance with AB 179, it engaged a private accounting firm to prepare a detailed cost analysis of their fees.

The Committees were unclear about the status of the BVNPT's fund reserves since BVNPT staff had indicated to the BVNPT at its February 2015 meeting that they were out of money. The Committees requested for the BVNPT to clarify what the actual fund reserve and balance is and what expenses have been incurred to lead to the depletion of funds.

BVNPT Response: According to the BVNPT, the fund condition indicated that the VN program was projected to have approximately 16.0 months in reserve for FY 2015/16, but only 4 months in reserve for the PT program for the same fiscal year, but would be insolvent by FY 2107/18. The VN program fund reserves were projected to remain solvent beyond FY 2020/21. (Thus the case was made for the merger of the two funds.) However, in January 2015 the DCA Budget Office informed the BVNPT that FY 2014/15 expenditure projections showed that the BVNPT would over expend its VN Program appropriation (budget authority). To avoid a budget shortfall, the BVNPT indicated that they would make only mission critical expenditures and submitted a request in January 2015 to augment the VN budget for the shortfall. The BVNPT indicated that they would continue to monitor expenditures closely and work with the DCA Budget Office to identify savings and ensure that projected expenditures are accurate.

- 5) The Committees were concerned that the BVNPT had decided to place a two year moratorium on the approval of all VN and PT programs seeking BVNPT approval for the period of February 2014 to February 2016 due to a backlog of 146 programs still waiting for approval. This was in spite of the fact that the BVNPT had indicated to the Committees that in order to deal with potential workforce issues and potential shortages of VNs and PTs in the future, the BVNPT was actively responding to the workforce shortage by approving new VN and PT programs. The Committees also did not know what relationship existed between the BVNPT and BPPE. The Committees recommended that the BVNPT advise the Committees on its plan to address the backlog of school applications and directed the BVNPT to lift the moratorium and take immediate steps to draft an MOU with the BPPE regarding the joint approval process.

BVNPT Response: The BVNPT indicated that the backlog resulted from a marked increase in the number of programs seeking approval and a prolonged shortage of staff. After consultation with legal counsel, the BVNPT approved a moratorium on the processing of

new proposals for commencement of VN and PT programs that was to be in place from February 2014 until February 2015. By February 2015, there were still 23 proposals remaining so the BVNPT extended the moratorium through February 2016. The moratorium ended on February 28, 2016. As stated by the BVNPT, from 2014 through 2016, the BVNPT approved the commencement of ten new VN programs.

- 6) The Committees were made aware of the fact that the BVNPT's lack of adequate staff was hindering the BVNPT's ability to carry out vital functions such as processing licenses, approving new VN and PT programs, handling complaints, conducting timely enforcement, and responding to licensees and the public, among other duties. Although the BVNPT indicated that the lack of filled vacancies was due to hiring freezes, furloughs, high staff turnover and denied Budget Change Proposals (BCPs), there was some indication that positions were lost due to a failure of the BVNPT to fill these positions in a timely manner. It was also reported that staff had to work overtime, and had been redirected to other units to help ease backlogs and workload. As a result of significant expenditures associated with staff overtime, the BVNPT ceased paying overtime in January of 2015 and many staff were now having to volunteer to complete their work. The Committees wanted to know what the BVNPT's plan was to fill all existing vacancies in order to address the vital functions that the BVNPT is mandated to carry out.

BVNPT Response: The BVNPT initially responded to the Committees in April 2016 and indicated that it strives to fill its vacancies as quickly as possible but continues to struggle and that it planned to continue working with DCA Human Resources to aggressively recruit to fill its vacancies. More recently, the BVNPT has indicated that it was able to fill vacancies for the NEC position necessary for the approval of VN and PT programs. The BVNPT was able to decrease overtime usage by as much as 89.6 percent since 2015. The BVNPT indicated that it has also been able to fill and reclassify some other necessary positions in the areas of licensing and enforcement.

- 7) The Committees were unclear as to why the BVNPT continues to struggle in the area of enforcement. It still had lengthy delays in the handling of disciplinary cases and was unable to meet its performance target dates. The Committees requested the BVNPT to report on steps it can take to ameliorate the lengthy processing of cases and in meeting its performance target dates in order to protect consumers. The Committees indicated that it might be helpful to start with implementing recommendations presented by its Enforcement Task Force in November 2014. The Committees also asked the BVNPT to report on why subpoena authority has not been granted to the appropriate employees within the Enforcement Unit, as this is considered as an important tool in helping staff to complete investigations in a timely manner.

Another issue which came to light at the March 2015 the Committees held to discuss the BVNPT hearing of the BVNPT was the possible “shelving” of BVNPT enforcement cases by staff. The BVNPT was asked to respond to the allegation that the BVNPT shelved cases.

BVNPT Response: The BVNPT indicated that the recommendations of its Enforcement Task Force were adopted and that it was moving forward with implementing those recommendations. The BVNPT also agreed with the Committees that the delegated authority to issue subpoenas is an important tool needed by investigative staff. Although there had been delays in attempting to implement the subpoena authority, the BVNPT indicated that it submitted its first subpoena for review to DCA Legal Counsel on April 1, 2015. In July 2015, the BVNPT obtained delegated subpoena authority to expedite the process of obtaining medical and employee records for use in investigating alleged violations of law. The BVNPT staff was also provided multiple training sessions to ensure correct and proper issuance of subpoenas. The BVNPT also initiated a number of other improvements of its processes to reduce processing times and provide greater consumer protection.

In response to the allegation that BVNPT staff was “shelving” cases, the BVNPT strongly denied the allegation. The BVNPT indicated that it engages all staff to assist with processing of cases. The BVNPT’s sheer volume of cases assigned to each investigator/analyst, and the fact that the BVNPT does not control the inertia occurring while its cases move through the system, prevents the BVNPT from resolving cases as rapidly as it expects, but the “shelving of cases” is unacceptable for any purpose and goes against the very nature of the work the BVNPT does and its commitment to protect the consumer.

- 8) The Committees found that there were discrepancies between the statistics provided to the Committees and those provided to Department of Finance and requested the BVNPT to recalculate all statistics and report the updated statistics to the Committees.

BVNPT Response: The BVNPT indicated that it had made an error when it reported incorrect numbers in its Sunset Review Report of 2014. There were some inconsistencies in reporting between the DCA CAS system and because of this, staff of the BVNPT manually calculated the statistics. The BVNPT relied on the automated report that became part of the Sunset Report. The BVNPT provided the corrections to their Report.

- 9) The Committees raised serious concerns about the BVNPT’s operations and overall management and indicated that both Committees may wish to further investigate the activities of the BVNPT and consider enlisting the support of the DCA’s Internal Audit Office and the DOI for immediate intervention, and consider hiring an enforcement monitor to observe the activities of the BVNPT for one or two years.

BVNPT Response: The BVNPT initially indicated that in December 2014 the DCA Internal

Audit Office began an Internal Operational Audit of the BVNPT to analyze certain aspects of the BVNPT's operations and responsibilities. Initially, the audit period was FY 2013/14 but was expanded. The BVNPT indicated that it seeks assistance from the DCA for a number of services to ensure compliance with requirements, that its activities and statistics are reported regularly to the BVNPT members at every BVNPT meeting and that the BVNPT responds to all requests and surveys of every state agency that requests information.

- 10) The Committees recommended that VN and PT professions should continue to be regulated by the BVNPT in order to protect the interests of the public, but that it be reviewed by the Committees once in again in two years, rather than be granted a four year extension of their sunset date like most boards reviewed by the Committees. In the meantime, the BVNPT should undergo an audit, investigation by the DOI and be reviewed and evaluated by an enforcement monitor.

BVNPT Response: The BVNPT stated that it recognizes that the Committee makes these recommendations in the best interest of the consumers and is aware that such recommendations has been made for other boards in other years and that it has no objection to the Committees recommendations.

RECENT AUDITS AND INVESTIGATION

The Committees had received evidence that enforcement cases were being mishandled by the BVNPT and in March 2015, immediately requested that the DCA's DOI initiate an investigation into any improper or inappropriate activities by BVNPT staff. Under B&P Section 109, the Director of the DCA may intervene in any matter of any board where an investigation by the DOI discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a potential violation of law. The Director also has plenary powers pursuant to B&P Section 310 to investigate matters affecting the interests of consumers and to compel the production of documents and other information as necessary.

The DOI initiated its investigation in April of 2015 and initially found that enforcement cases (including complaints and investigations) were being mishandled, and that the Board's entire discipline process was very inconsistent and misguided. Shortly after the investigation began, the Executive Officer, the Assistant to the Executive Officer, and the Chief of Enforcement resigned.

Pursuant to AB 179, the Legislature also requested the DCA's Internal Audit Office to review the BVNPT's financial needs, fee structure, budget, and expenditures, including the estimated costs of meeting staffing needs, and other requirements necessary to implement the Vocational Nursing Practice Act and the Psychiatric Technicians Law. The bill required the DCA to provide a copy of the review no later than October 1, 2016.

This measure also required the Director of DCA to appoint an administrative and enforcement program monitor (Monitor) no later than March 1, 2016, and specified that the Monitor should monitor and evaluate the BVNPT's administrative processes, with specific concentration on the management of staff, assistance of Board members, and the working relationship with the Legislature, as well as a number of specific areas to be evaluated. The Monitor was also directed to review and evaluate the BVNPT's disciplinary system and procedures, with specific concentration on improving the overall efficiency and consistency of the enforcement program. The bill further provided that the Monitor would not exercise any authority over the BVNPT's management or staff, but that staff should cooperate with the Monitor and provide data, information and files as requested so the Monitor could perform all of his or her duties. The Director of DCA was required to assist the Monitor in performing his or her duties and the Monitor was given the same investigative authority as that of the Director.

The Monitor was required to provide an initial report of his or her findings and conclusions to the DCA, the BVNPT and the Legislature no later than July 1, 2016, and subsequent written reports no later than November 1, 2016, and February 1, 2017. The Monitor was also required to be available to make oral reports to each entity if requested to do so and to provide additional information to either the DCA or the Legislature at his or her discretion, or upon request of the DCA or Legislature. The BVNPT was to be provided with the opportunity to reply to any facts, findings, issues, conclusions or recommendations included in the reports with which the BVNPT may disagree.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the BVNPT and other areas of concern for the Committees to consider along with background information concerning the issues. There are also recommendations the Committee staff have made regarding issues or problem areas which need to be addressed. The BVNPT and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: FUND CONDITION. *What is the status of BVNPT's long term fund condition now that the BVNPT and PT funds have merged?*

Background: On February 24, 2012, the BVNPT approved a merger of the VN and PT funds to ensure the solvency of its programs. At the time, the DCA budget office projections indicated that the VN fund reserve would be exhausted by FY 2017/18 and the PT reserve would be exhausted by FY 2014/15.

During the BVNPT's 2015 sunset review, the updated budget projections indicated that, while the VN fund reserve would remain solvent past FY 2020/21, the PT fund reserve would be exhausted by 2017/18. As a result, AB 177 (Bonilla), Chapter 428, Statutes of 2015, which was another sunset bill, merged the two funds.

In the BVNPT's *2016 Biennial Sunset Review Report*, it wrote, "Since this merger, the [BVNPT] has aggressively reduced costs as well as collected on outstanding accounts receivables. According to the DCA Budget Office, the combined funds delay a deficit and the need to increase fees for 2-3 years."

The BVNPT also "engaged Capital Accounting Partners, LLC (CAP) to prepare a detailed cost analysis of our fees. The [BVNPT]'s objectives for the study were to ensure that the BVNPT is fully accounting for all of our costs and recovering adequate revenues to be reimbursed for our expenses.... The scope of this study included the following objectives:

- 1) Calculate full cost of licenses;
- 2) Determine a fair and equitable method of allocating non-fee expenses, such as enforcement, to each license type;
- 3) Develop revenue projections for 5-10 years to set the cap; and
- 4) Review performance of core business processes."²

At the BVNPT's August 26, 2016, and October 21, 2016, Board meetings, the BVNPT discussed the audit. At the August meeting, there was disagreement between the members of the BVNPT, CAP, and the DCA as to the fee audit, which initially showed deplete reserves and made three recommendations: 1) balance the LVN and PT fees, 2) establish a reserve policy, and 3) establish fees for educational institutions.

In the DCA's September 20, 2016, Internal Audit of the BVNPT, it wrote, "On August 26, 2016 the [BVNPT] accepted the findings of the fee audit; however, the Department identified several inconsistencies with the audit and has since raised these issues to the [BVNPT]."³ At the meeting, the CAP auditor agreed to work with the necessary parties to adjust the audit.

At the subsequent October meeting, CAP published and presented a second audit report. The new report no longer noted depleted reserves and included additional costs requested by executive staff.

Staff Recommendation: *The BVNPT should discuss the results of the two audits and the reasons for the differences in the second audit report.*

² BVNPT, *2016 Biennial Sunset Report* 106, December 2016, http://www.bvnpt.ca.gov/pdf/sunset_2016.pdf.

³ DCA, BVNPT Internal Audit Report 2-3, Sept. 30, 2016 (on file with the Committees).

ISSUE #2: FEE INCREASE. *Should the Practice Act be amended to increase the statutory cap on the BVNPT's fees?*

Background: In the BVNPT's 2016 Biennial Sunset Review Report, the BVNPT has, pursuant to the CAP fee audit, made the following recommendations:

- 1) The [BVNPT] recommends a legislative change to increase [BPC] § 2895 vocational nursing (VN) as presented by CAP in the proposed Fee Schedule.
- 2) The [BVNPT] recommends a legislative change to establish academic institution fees as presented by CAP in the proposed Fee Schedule.
- 3) The [BVNPT] recommends seeking a legislative change to conduct a fee audit five years post the adoption of the new fees.

At the October 21, 2016 Board meeting, the BVNPT also voted to reduce the PT fees. As noted in the CAP report, because the PT fund has historically been smaller, the majority of the PT fees have been twice as high as the LVN fees (300 initial license and renewal fee for PTs vs 150 initial license and 155 renewal fee for LVNs).

Staff Recommendation: *The BVNPT should complete the Committees' "Fee Bill Questionnaire" for each of the proposed statutory increases. In addition, the BVNPT should submit proposed language for the statutory change it believes is necessary to allow it to conduct a fee audit every five years.*

ADMINISTRATIVE ISSUES

ISSUE #3: PROGRAM MONITOR. *Why is the BVNPT's working relationship with the Monitor strained?*

Background: The purpose of the Sunset Review oversight process is to ensure DCA licensing entities are meeting their statutory mandates, operating efficiently, and held accountable to the public. To that end, 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 presented to the Legislature that warrants further investigation. During the BVNPT's 2015 sunset review, Committee staff found this to be the case. Specifically, Committee staff wrote:

There are serious concerns about the [BVNPT's] operations and overall management. As such, the Committees may wish to further investigate the activities of the [BVNPT]. 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 [BVNPT] for one to two years.

Subsequently, the Legislature passed AB 179 (Bonilla), Chapter 510, Statutes of 2015 which, among other things, required the DCA to contract with and appoint an administrative and enforcement program monitor by March 1, 2016.⁴ The bill required the Monitor to examine the following:

- 1) The BVNPT's administrative process, with specific concentration on the management of staff, assistance of Board members, and working relationship with the Legislature, including:
 - a) Staff hiring and training procedures.
 - b) Oversight of staff work.
 - c) Evaluation of staff performance.
 - d) Training of Board members.
 - e) Dissemination of information to Board members.
 - f) Assistance of Board members in performing their duties.
 - g) Communication with legislators and legislative staff.
 - h) Representation of the Board at legislative meetings and hearings.
- 2) The BVNPT's disciplinary system and procedures, with specific concentration on improving the overall efficiency and consistency of the enforcement program, including the following:
 - a) The quality and consistency of complaint processing and investigation.
 - b) Consistency in the application of sanctions or discipline imposed on licensees.
 - c) The accurate and consistent implementation of the laws and rules affecting discipline, including adherence to the DCA's CPEI Guidelines.
 - d) Staff concerns regarding disciplinary matters or procedures.
 - e) The appropriate use of licensed professionals to investigate complaints.
 - f) The Board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding LVNs and PTs.

AB 179 specified that the Monitor must submit three reports to the DCA, the BVNPT, and the Legislature by February 2017. It also specified that the Monitor must submit a final report by January 1, 2018. The final report is intended to include final findings and conclusions on the topics addressed in the initial report submitted by the monitor pursuant to paragraph.

According to the BVNPT's report, it "eagerly anticipated the Monitor partnership as an avenue to document current improvements and benchmark best practices for future improvements."

⁴ BPC § 2847.5.

However, it later expressed disappointment with the Monitor’s findings: “upon review of the Phase II report, nearly all reported an overly negative tone to the report.”⁵ This is echoed in the BVNPT’s response to the Monitor’s third report:

*The [BVNPT] appreciates the opportunity to respond to that report. It is noted that the tone and primary focus of the report is markedly negative and replete with uncorroborated information. Irrespective of that focus, the [BVNPT] is committed to addressing identified concerns and implementing effective solutions that ensure the continued protection of the consumer. We have outlined overarching concerns related to the Phase III report.*⁶

The use of a Monitor, like the Bureau of State Audits, is a last resort used to identify and remedy serious and ongoing issues. As such, it is understood that change takes time and it may be imbalanced to immediately expect drastic improvements—especially not before the Monitor has completed the assessment or provided recommendations.

The BVNPT has continued to express disagreement with many of the Monitor’s recommendations since the Monitor’s second report (while the BVNPT also expressed concerns with the first report, the information was mainly historical). For example, when asked about why the BVNPT felt the information in the Monitor’s third report was “uncorroborated,” it wrote that “A substantial amount of information reported by the [Monitor] was obtained through staff interviews conducted over a two (2) day period. The remainder of the reported information was obtained through secondary source citing (e.g. review of the 2016 Biennial Board's Sunset Review Report).”⁷ It is not clear what additional sources of information the BVNPT expected the Monitor to have utilized for the final report.

The BVNPT has previously stated the Monitor’s interviews and data collection have been burdensome and have negatively impacted the BVNPT’s operations.⁸ This was brought to the attention of the Committees in 2016, which clarified that the Monitor was not to manage or direct staff. Therefore, the Monitor is not expected to request more interviews or data than necessary.

The BVNPT also argues that “the report fails to acknowledge that many of the recommendations that are asserted were initiated by the [BVNPT] prior to the Monitor. This has been maintained by staff and the [BVNPT] as a whole.”⁹ Since June of 2016, the BVNPT has consistently made

⁵ BVNPT 2016 Report, *supra* at 98.

⁶ Letter from the BVNPT to Committee Staff *RE: California State Board of Vocational Nursing and Psychiatric Technicians Response to Administrative and Enforcement Monitor Phase III Report 1* (Feb. 24, 2017) (See Appendix B).

⁷ *Id.*

⁸ BVNPT 2016 Report, *supra* at 96-97.

⁹ BVNPT Letter to Committee Staff, *supra* at 1.

statements like these in public Board meetings, in correspondence with Committee staff, and with the Monitor. However, some Board members seemed willing to move forward with solutions at the February 8-10, 2017, meeting.

Staff Recommendation: *The BVNPT should discuss the state of its relationship with the Monitor, its plan moving forward, and what it expects for the remainder of the Monitor's contract.*

ISSUE #4: MEETING MINUTES. *What impediments, if any, impact the BVNPT's ability to approve and post its Board meeting minutes?*

Background: Since the last sunset review, the BVNPT has become an exemplar for consumer outreach. It webcasts all regular Board meetings, publishes outreach videos and materials, and utilizes the latest DCA website.

The BVNPT also usually posts its public Board and committee meeting minutes. The minutes can be helpful to the public; particularly because the BVNPT's recent meetings have been between three to nine hours long. According to the BVNPT's administrative manual, "The minutes are a summary, not a transcript, of each Board Meeting. They shall be prepared by Board staff and submitted for review and approval by Board Members as soon as possible following the actual meeting. Once approved, the minutes shall serve as the official record of the meeting."¹⁰

The BVNPT continues to complete its committee minutes, which are posted and current as of February 10, 2016. However, the last Board meeting minutes that it has approved and posted were the meeting minutes for the June 20, 2016, Board meeting. While the minutes for the August 24-26, 2016, Board meeting were on the agenda at the October 20, 2016 meeting, the BVNPT only approved May 12-13 and June 20, 2016.

The minutes for the August, October, November, and December Board meeting minutes were on the agenda for the February 8-10, 2017, public Board meeting. The BVNPT noted that public viewing drafts would be available at the meeting.¹¹ The BVNPT again tabled the approval for the minutes because they "were not ready."¹² When asked by Committee staff for a draft of the minutes and about the progress of the minutes in March 2017, the BVNPT said the minutes were not complete because the item was tabled until May 12, 2017.

Staff Recommendation: *The BVNPT should advise the Committees on the status of the public Board meeting minutes from August onward and discuss any issues, recent or otherwise, that*

¹⁰ Admin Manual, *supra* at 3.

¹¹ Agenda Item #25, BVNPT Board Meeting (Feb. 10, 2017), http://www.bvnpt.ca.gov/about_us/meetings/materials/20170208_25.pdf.

¹² BVNPT Board Meeting (Feb. 10, 2017).

prevent it from approving and posting its meeting minutes despite being able to complete its committee minutes.

ISSUE #5: OVERSIGHT OF THE EXECUTIVE OFFICER. *Should the BVNPT participate in a multi-agency Work Group to assess the potential need to implement a comprehensive executive officer feedback process?*

Background: Due to the limited ability of board members to meet and oversee day-to-day operations or manage staff, all DCA boards delegate most of this authority to an executive officer (EO). The EO is responsible for carrying out the mission and policies of the board and serves at that board's pleasure. DCA boards rely on an EO because the board members are essentially volunteers. Board members are not paid (other than per diem and travel) and take time away from their personal and professional lives to provide an important and necessary public service.

To assist the BVNPT, the Practice Act provides that the BVNPT "shall select an [EO] who shall perform duties as are delegated by the [BVNPT] and who shall be responsible to [the BVNPT] for the accomplishment of those duties."¹³ The Practice Act authorizes the BVNPT to delegate as much or as little of its authority as it wishes.

Like any other agent or employee, the EO is responsible to the BVNPT when acting on the BVNPT's behalf.¹⁴ Through delegated authority, the EO implements the will of the Board. However, as with other DCA boards, insufficient involvement with or responsibility taken for the administration and operation of program functions can lead to overdependence on the EO.

Following the BVNPT's 2015 Sunset Review, Board members noted, because they were highly dependent on the EO at the time, they were unaware of issues at the staff or daily administration level. This was one of the motivating factors behind placing the Monitor at the BVNPT. As such, the BVNPT can benefit from additional information as the BVNPT is responsible for the actions of its EO via the principal-agent/employer-employee relationship.¹⁵ However, the BVNPT's current policies restrict its avenues for information. On October 21, 2016, the BVNPT approved a new administrative manual, which included significant changes to Board policies and procedures. Some of the new policies relating to Board communication are as follows¹⁶:

- **Access to records**—Board members are prohibited from accessing a school, licensee, applicant, or complaint file without the EO's knowledge and approval of the conditions of access.

¹³ BPC § 2847.1.

¹⁴ See *Mendoza v Continental Sales Co.* (2006) 140 CA4th 1395; see also *Spector v Miller* (1962) 199 CA2d 87, 95.

¹⁵ Civil Code §§ 2330-2339.

¹⁶ Admin manual, *supra* at 6-9.

- **Communication with third parties**—Board members are discouraged from discussing Board actions, policies, or communications that are deemed sensitive or controversial with “any individual or organization.” Board members who are contacted are encouraged to terminate the contact and inform the EO or the Board president (who are the designated spokespersons). In addition, the BVNPT requires that all correspondence must be issued on the letterhead and created and disseminated by the EO’s office.
- **Board administration**—the administrative manual declares that Board members should be concerned primarily with formulating decisions on BVNPT policies rather than decisions concerning the means for carrying out a specific course of action. It further specifies that it is “inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs and staff shall be the responsibility of the [EO] under the supervision of the Board President.”
- **Correspondence**—Board members are required to give all correspondence to the EO, and anything regarding official BVNPT business must be maintained in the BVNPT’s office files.

While requiring all the above information to flow through the EO or Board President can sometimes improve efficiency and assist with record retention, it can also deter rank-and-file Board members from becoming involved with or exploring issues that the collective members are ultimately responsible for resolving. Regardless, if strict structural separation between Board members and staff is necessary, then Board members can benefit from additional sources of information.

In the Monitor’s third report, the Monitor noted that a “360-degree, multi-rater assessment process” could improve the BVNPT’s awareness of its operations. The 360-degree feedback process could be used to solicit feedback from various stakeholders, such as “Board members, DCA executives, representatives of external stakeholder organizations such as the Office of the Attorney General and control agencies, peers at other regulatory agencies that interact with BVNPT’s [EO], and subordinate staff.”¹⁷ The BVNPT could then use the provided feedback as it sees fit.

While the Monitor suggested that additional oversight of the EO could be helpful, the Monitor has said this should be a conversation between the BVNPT and stakeholders. Specifically, the Monitor made the following recommendation:

Establish a multi-agency Work Group comprised of representatives of the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs, the Senate Committee on Business, Professions and Economic Development, the Assembly Committee on Business and Professions, and

¹⁷ Ben Frank, *Third Report: Updated Status of the Enforcement Program and Additional Administrative Process Assessments* III-13, Jan. 30, 2017.

*BVNPT's governing Board to assess needs for development of a 360 degree Executive Officer feedback process and, if needed, the best approach and timeframe for developing and implementing the process.*¹⁸

The BVNPT's position on this recommendation is unclear. At the BVNPT's February 8, 2016, Board meeting, several Board members appeared to express support for a 360-degree review process. One member even suggested that all state agencies should implement a 360-degree review.

The BVNPT seemed to memorialize this sentiment in a letter to the Committees written in response to the Monitor's recommendations:

The [BVNPT] acknowledges its responsibilities in ensuring sound administration. The [BVNPT] recognizes the importance of a thorough, objective process for the evaluation of its [EO]. The [BVNPT] recognizes the significance of consistent evaluation.

*The [BVNPT] supports all State agencies adopt the 360 review process for all state employees including exempt employees. The [BVNPT] welcomes the opportunity to participate in the statewide implementation of this overhaul.*¹⁹

However, the BVNPT also expresses several concerns. First, it suggests that the use of a 360-degree review process exposes the EO to "undue influence by those reviewing them (DCA, etc.)" and the risk of becoming "corrupted."²⁰ Specifically, it noted,

*If additional stakeholders can weigh in on the performance review of the [EO], there is potential for the [EO] to bend to the will of said influences to maintain employment. This reduces the semiautonomous nature of the [BVNPT]. Further, such reviews may negatively impact the protection of the consumer."*²¹

Second, the BVNPT believes that, because its Board members are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly, the members are proxies for the agencies that would participate in the 360-degree review and therefore a 360-degree review is already in practice.²² It also "views the installation of Board Members from the Governor,

¹⁸ *Id.*

¹⁹ Letter from the BVNPT to the Committees *RE: California State Board of Vocational Nursing and Psychiatric Technicians Response to Administrative and Enforcement Monitor Phase III Report 5* (Feb. 17, 2017) (See Appendix A).

²⁰ *Id.* at 4.

²¹ BVNPT Letter to Committee Staff, *supra* at 4.

²² BVNPT Letter to the Committees, *supra* at 5.

Senate, and Speaker as proxy to the workgroup. Each individual volunteers their own time to support the mission of the [BVNPT], without any political allegiances.²³

The BVNPT also listed two articles discussing potential flaws with 360-degree feedback programs.²⁴ The first article notes that, when 360-feedback surveys are designed with questions asking the rater to rate the quality of someone else's behavior, the data is unreliable.²⁵ The solution, according to the author, is to frame the survey so that raters rate their feelings in response to someone else's behaviors ("he is a good listener" vs "I feel listened to").

The second article lists seven features that are necessary for a helpful 360-degree feedback process: supervisor involvement, clear questions, constructive comments, follow-up, post-follow-up, confidentiality, and including strengths and weaknesses.²⁶ "When 360s are done poorly, they can be a disaster; however, when they're done well, they can be a major part of driving accelerated growth for a team and an organization."²⁷

As it stands, it is not clear as to whether the BVNPT supports the multi-agency workgroup, although it has expressed support for the 360-feedback process for all state agencies and DCA boards. A multi-agency workgroup seems like a necessary first step in exploring a change involving multiple agencies.

Staff Recommendation: *The BVNPT should discuss the issues it raised in its response to the Monitor's recommendation relating to the multi-agency workgroup and 360-degree feedback process, including the potential for undue influence by the DCA and others, corruption of the EO position, and the ways in which a 360-degree review of the EO "may negatively impact the protection of the consumer." In addition, given the BVNPT's concerns with the 360-degree review, the BVNPT should clarify whether it supports the Monitor's original recommendation of convening a multi-agency workgroup.*

STAFFING ISSUES

ISSUE #6: VACANCIES. *What is the BVNPT's plan to fill its increasing vacancies?*

Background: During the BVNPT's 2015 Sunset Review, the BVNPT indicated that a lack of staff is hindering its ability to carry out vital functions, such as:

²³ BVNPT Letter to Committee Staff, *supra* at 5.

²⁴ *Id.* at 4.

²⁵ Marcus Buckingham, *The Fatal Flaw with 360 Surveys*, Harvard Business Review (Oct 17, 2011), <https://hbr.org/2011/10/the-fatal-flaw-with-360-survey>.

²⁶ Eric Jackson, *The 7 Reasons Why 360 Degree Feedback Programs Fail*, Forbes (Aug. 17, 2012), <https://www.forbes.com/sites/ericjackson/2012/08/17/the-7-reasons-why-360-degree-feedback-programs-fail/#661b13cc279d>.

²⁷ *Id.*

- 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.

In the Monitor's third report, the Monitor noted that, subsequent to the BVNPT's 2015 sunset review, there was significant improvement. Specifically, the Monitor noted, "many of BVNPT's vacant positions were filled which reduced total vacancies to 8.5 positions by December 2015, including:

- 1 Assistant Executive Officer;
- 1 Supervising Special Investigator;
- 1 half-time Special Investigator that BVNPT had never been able to fill;
- 2 Nurse Education Consultants;
- 2 Cashiering Unit Office Technicians; [and]
- 2 Licensing Unit Program Technicians."²⁸

These changes are reflective of the BVNPT's response to the DCA's Internal Audit 180-day follow-up.²⁹ In addition, the BVNPT noted the following efforts to address staff morale and operations beginning in 2015³⁰:

- The new EO with most staff individually to identify and address concerns in a private forum, which "resulted in unit and [BVNPT] improvement such as a reception area kiosk and desk top scanners."
- BVNPT also performed unit and division reorganization. "Management assessed the needs of the Board based on its size and complexity, and determined critical roles were not apparent (adequate phone staff, a Legislative Analyst, and management), and there was a severe imbalance in management support between the units (4-Enforcement Managers to 1-Licensing Manager and 1-Supervising Nursing Education Consultant). A workforce and workload analysis was conducted, which included updating staff duty statements (job descriptions). The new organizational structure provided additional management and phone staff from the reclassification of existing positions and provided much needed customer service and management support."
- The BVNPT "management proactively engages [staff] in weekly unit meetings, monthly one-on-ones, and quarterly All-Staff meetings to spotlight success and identify areas of

²⁸ Monitor's Third Report, *supra* at III-1.

²⁹ Internal Audit 180-Day Follow-Up, *supra* at 3.

³⁰ BVNPT 2016 Report, *supra* at 3-4.

improvement. Staff reported favorably following our most recent Fall Quarterly All-Staff meeting.” According to the BVNPT’s latest staffing update, the most recent quarterly staff meeting was held on December 13, 2016.³¹

The vacancy rate appeared to see improvement through at least September. In the DCA’s Internal Audit Office 180-day follow-up, the DCA auditor noted the following:

*We reviewed the vacancy report obtained from DCA's Office of Human Resources as of September 16, 2016. The report noted 8 vacant positions. One of the positions is scheduled to be filled on October 3, 2016. Three of the positions have been vacant since early to mid-2015 and currently remain vacant. Two of the positions have been reclassified but remain vacant. A request has been made to reclassify a third position. The [BVNPT] has been and is currently engaged in determining the most effective and efficient use of its resources while filling the vacant positions.*³²

However, at the February 10, 2017, public Board meeting, the BVNPT noted six departures since November, including its enforcement chief (who had been on leave since mid-October), and noted two new staff, one Office Technician and one Retired Annuitant. As of January 27, 2017, BVNPT staff were actively recruiting for 17 positions, 8 of which are noted as new positions and 1 of which was waiting on a selected candidates background check.³³

The increased vacancies may impact the BVNPT’s operations going forward. For instance, the BVNPT rejected 11 of the Monitor’s recommendations because of staffing issues and legacy backlogs.

In addition, when the BVNPT’s Chief of Enforcement left in mid-October, the EO stepped in to serve as the acting chief of enforcement. While the BVNPT notes several improvements the EO made while serving in that position, having the EO stretched to fill two positions is not ideal. Further, now that the EO is on administrative leave, the Acting Assistant EO is now supervising three divisions, Enforcement, Education, and Support Services (Administration and Licensing).

Staff Recommendation: *The BVNPT should update the Committees on its plan to fill its vacancies, provide an update on potential estimates of backlogs due to vacancies (as a result of staff time spent on the hiring processes, redirection of staff, or otherwise), and discuss whether it believes there may be any staff retention or morale issues that need to be addressed.*

³¹ BVNPT, *Executive Officer's Report- Staffing Update 2* (Jan. 27, 2017), http://www.bvnpt.ca.gov/about_us/meetings/materials/20170208_24d.pdf.

³² Internal Audit 180-Day Follow-Up, *supra* at 4.

³³ Staffing Update, *supra* at 1-2.

ISSUE #7: USE OF COMMITTEES. *Should the BVNPT utilize Committees to implement board-directed evaluations of staff and independent review of staffing issues?*

Background: As was the case during the BVNPT’s 2015 sunset review, the Committees have received communications from Board staff who feel there are no other options for assistance. In addition, on January 13, 2017, an anonymous letter from a Board staff member was sent to the BVNPT’s executive staff (and others, potentially). The letter prompted the then-Board president to file a police report with the Sacramento Police Department.

On January 27, 2016, the then-Board president convened a special meeting to receive legal counsel on “pending litigation” in closed session. While pending litigation qualifies for a waiver of certain public notice requirements, the BVNPT was required to make a determination in open session that the severity of the situation merited a waiver of public notice.

The Board members were not told what the meeting was about, so several expressed frustration over the public notice issue and questioned the urgency of the meeting. Eventually, the then-Board president discussed the issue. The then-president stated that BVNPT staff had sent multiple letters, the third of which prompted an investigation by the DCA’s Division of Investigation and the Office of the Attorney General. According to the president, there were complaints relating to physical safety, intimidation, and retaliation from staff and management “at all levels.” The president noted the urgency involved exposure to litigation and the obligation to provide a safe workplace free from hostility.

Several Board members continued to express skepticism over the necessity of the special meeting. At least one Board member wanted specific facts demonstrating whether “actual harm occurred” and whether the risk of litigation or harm would “increase” if they did not take action at that moment. After additional reassurances by the Deputy Attorney General that the situation warranted immediate attention and that the specific facts of the investigation could be discussed in closed session, the BVNPT eventually voted to go into closed session.

This skepticism was further noted at the following February 8, 2017, public Board meeting. One member made the following comment:

I suspect that outside agencies are adding to the workload to create some of this chaos.... Because of the problems that are existing, investigations are being started, for reasons that are not clear, and that’s creating havoc with the leadership because then they have to do additional work to answer allegations or investigations or reports being generated or being caused outside or—allegations being accused at—in the Board. So we are having turmoil having to serve two or three masters from the amount of work being generated. It’s to the point where our executive officer is not here...

...With the communications that we're getting, from various—personnel, we are being asked to—to go certain ways, to consider—to consider—not our own faculty, and our own ability to disseminate information, but we are being advised to go and listen to certain things.³⁴

Comments like this, where Board members have expressed concern over being unaware of what is happening at the staff level, suggest that Board members can benefit from additional information.

One solution the BVNPT can take to resolve this issue is to establish or utilize an existing committee to investigate potential problems, work with staff, and make recommendations to the full Board. Committees are more flexible, can meet more often, and can parse out details the full Board may not have time to explore.

For example, the BVNPT could establish an annual staff check-in where each staff member is scheduled 5-10 minutes to meet with the committee (with or without the EO), submit a confidential questionnaire, and provide an opportunity to discuss anything the staff might feel is relevant. The committee could then share the findings with the full Board during closed session or investigate further.

Alternatively, the BVNPT could establish a suggestion or complaint system that the BVNPT periodically reviews (in closed session or otherwise). The BVNPT could then delegate further investigation to the committee.

Again, it should be acknowledged that Board members take time out of their personal lives to perform this public service. Expanding the use of its executive committee to address staffing issues would take time additional time and require additional participation. Further, it would be unreasonable to expect the BVNPT or individual Board members to handle the daily management of staff. According to the DCA, an effective Board member “avoids becoming involved in the daily functions of staff.”³⁵

It is also unreasonable to allow the BVNPT to absolve itself of any and all responsibility in dealing with staff. A number of Board members have testified that they have visited staff on occasion. While they found that staff did not alert them to issues, that would be expected in situations where staff fear retaliation, as noted above. As such, the executive committee can be used to provide additional open, confidential lines of communication.

³⁴ BVNPT February 8-10, 2017, Board Meeting (Feb. 8, 2017) (Board Member Testimony, <https://youtu.be/LrOCPutzsu8?t=3895>).

³⁵ DCA, *Board Member Orientation Training - 10 Principles for Highly Effective Board Members*, http://www.dcaboardmembers.ca.gov/training/bmot_10principals.shtml.

If the BVNPT is limited in time, it may wish to consider eliminating other unnecessary committees which do not serve its consumer protection purpose, such as its recently established “practice committee.” The recently established practice committee was “Created to review the current scope of practice and advocate for preserving existing scope of practice in the face of competing priorities.”³⁶ However, it could be argued this kind of advocacy is more appropriately left to a professional association.

The BVNPT’s highest priority should be protection of the public: “Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”³⁷ If the Board members are spread thin, the BVNPT may wish to consider shelving its goal of “preserving existing scope of practice” until it is able to address its operational and staffing issues.

Staff Recommendation: *The BVNPT should discuss whether it receives enough information about staff, what it believes is the extent of its responsibility to its rank-file staff, and whether it able to utilize its executive committee or establish an administrative committee to address ongoing staff management issues.*

LICENSING ISSUES

ISSUE #8: WORK-EQUIVALENCY. *Should the BVNPT modify the work-equivalency pathway to qualifying for the licensing examination, or “Method 3”?*

Background: During several recent public Board meetings, the BVNPT debated the repeal of the work-equivalency pathway to licensure, or “Method 3.” Existing law provides that LVN and PT applicants may qualify for licensure based on a combination of education and work experience equivalent to that acquired in an approved school. The applicant must meet the BVNPT’s standards and the applicant must pass the licensing examination. The specific requirements for the examination are specified under the BVNPT’s regulations.

During the August 26 Board meeting, a public member questioned the rationale behind repealing “Method 3,” reiterating that it was the BVNPT’s duty to provide evidence that those who utilize “Method 3” to qualify for licensure. In response, one of the professional members supporting the repeal of Method 3 argued that, in the professional member’s opinion as the educator, they lack the critical thinking skills required to be an LVN.³⁸ He states that they learn through practice, but it’s just “monkey see, monkey do”; they do not understand why they do it. The professional member also provided anecdotes of specific students that the member felt demonstrated the lack of critical thinking skills.

³⁶ Admin Manual, *supra* at 12.

³⁷ BPC § 2841.1.

³⁸ BVNPT Board Meeting, (August 26, 2016) (Board Member Comment, <https://youtu.be/50Kg-b1cJng?t=32339>).

The public member expressed concern over the categorical use of the term “they,” arguing the blanket application of judgement over a category of applicants without specific evidence is troubling. The professional member responded with more anecdotes.

During public comment, a member of the public came up to voice her support for “Method 3” and concern over its repeal, noting that older applicants like herself do not have many other options. She suggested that the BVNPT could consider requiring prerequisites. The professional member responded by correcting her use of a charting term, stating that she was an example of what he was concerned about (although the professional member asked that she not take it as an insult).³⁹

Given the discussions that followed and the recommendations by the Little Hoover Commission,⁴⁰ the BVNPT has decided not to seek repeal of the pathway. Instead, it states in its *2016 Biennial Sunset Review Report* that it “will seek modification of existing regulations to enhance the success of candidates seeking VN and PT licensure based on the completion of equivalent education and experience.”⁴¹ This was also noted at the November 2016 Board meeting.

Still, because this issue was initially raised as requesting the repeal of “Method 3,” Committee staff asked the BVNPT for data and enforcement statistics that would support repealing “Method 3.” Specifically, Committee staff was looking for evidence of demonstrable harms to consumers by licensees who have used work equivalency to qualify for licensure.

Based on the information provided by the BVNPT, it is not clear that there is a consumer protection issue with “Method 3.” The BVNPT wrote, “Published examination statistics confirm that pass rates for candidates seeking licensure based on the completion of equivalent education and experience are substantially lower than that of program graduates.”

The statement provided by the BVNPT suggests applicants utilizing “Method 3” may not be as well prepared for the examination as applicants who go through school. This is not unexpected, however, as schools are incentivized to improve pass-rates and may specifically target topics as they are covered on the exam. For example, in the ongoing debate between the BVNPT and the schools to release examination pass/fail candidate names, the schools have argued that they cannot prepare their students without knowing who has trouble on the exam.⁴²

³⁹ BVNPT Board Meeting, (August 26, 2016) (Board Member Comment on Public Comments <https://youtu.be/50Kg-b1cJng?t=33404>).

⁴⁰ Little Hoover Commission, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, Report #234 (October 2016), available at <http://www.lhc.ca.gov/studies/234/Report234.pdf>.

⁴¹ BVNPT2016 Report, *supra* at 102.

⁴² Agenda Item 18 for the BVNPT’s November 4, 2016, Board Meeting. http://www.bvnpt.ca.gov/about_us/meetings/agendas/20161103.pdf.

The BVNPT also wrote:

Further, analysis of program completion statistics in comparison to the population of applicants seeking VN and PT licensure based on equivalent education and experience indicates increased program utilization for candidates who complete academic requirements but fail exit examinations. Those candidates are unable to pass the licensure examination.

The fact that a number of candidates who utilize “Method 3” to qualify for the examination but are unable to pass the examination does not speak to the issue of whether “Method 3” licensees pose an increased risk to consumers. It suggests that the students who complete an approved program are better equipped for the examination.

The BVNPT also noted that:

[H]owever, in a significant number of cases, the candidate is left with exorbitant expenses as a result of their educational experience. All too frequently, they are unable to repay educational loans, etc. and are forced into default. Often, such defaults result in increased costs to consumers.

It is also not clear how loan defaults resulting from applicants unable to meet licensing requirements increase costs to consumers. While unfortunate for the applicant who defaults, if the applicant does not meet licensing requirements, the applicant does not interact with consumers of LVN or PT services.

Staff Recommendation: *The BVNPT should provide the Committees with specific enforcement data relating to “Method 3” licensees or, if unavailable, work with its enforcement committee, the DCA, the OIS, and any other parties necessary to modify its enforcement processes to begin collecting data before limiting any licensing options available applicants.*

ISSUE #9: LICENSING. *What is the BVNPT’s plan to improve its licensing program?*

Background: The BVNPT has expressed the need to improve its licensing program. In the BVNPT’s report, it wrote it was specifically interested in a review of its Administrative and Licensing Division, “which the [BVNPT] believed warranted external review and the establishment of new workflow processes.”⁴³

On July 28, 2016, the BVNPT contacted Committee staff requesting an amendment to AB 179 and the Monitor’s current contract with the DCA. Specifically, the BVNPT requested the following additions to the Monitor’s duties:

⁴³ BVNPT 2016 Report, *supra* at 95, 97.

The [BVNPT] is requesting an amendment of the existing AB 179 with an augmentation to the current contract to allow for an in-depth review of the Administration/Licensing Division:

- 1) Review and evaluation of staff hiring and training procedures*
- 2) Oversight of staff work processes*
- 3) Evaluation of staff performance and morale*
- 4) Staff concerns regarding disciplinary matters or procedures*
- 5) Review and assessment of work process flows*
- 6) Licensing analysis*
- 7) Assessment of initial and renewal licensing process*
- 8) Assessment of school program evaluation; both domestic and international*
- 9) Assessment of licensure through equivalency and experience method*
- 10) Consistency in the application of regulations and legislation*
- 11) Impact of BreEze migration on licensing process*

Staff Recommendation: *The BVNPT should discuss the issues it has found with its licensing program, whether it believes improvements are still needed, whether it still supports an amendment to BPC § 2847.5 to require the Monitor to review its licensing program, or whether it might contract with another vendor on its own.*

ENFORCEMENT ISSUES

ISSUE #10: ENFORCEMENT PROGRAM. *What is the BVNPT's progress on implementing the recommendations from the Committees, Monitor, and DCA?*

Background: During the BVNPT's 2011 Sunset Review, the Committees questioned the BVNPT's ability to reduce its timeframes for handling disciplinary cases. In 2014, Committee staff found that the situation had not improved and that discrepancies in the data provided to the Committees called into question the accuracy of the BVNPT's statistical data.

As noted above, this resulted in a DCA internal audit and the placement of an administrative and enforcement monitor. Since then, the Monitor has found that the BVNPT has made the following improvements:

- Completion of significantly larger numbers of licensee arrest/conviction report and complaint investigations;
- Significant reductions in the number of pending investigations along with reductions in the average age of the pending cases;
- Significant increases in the number of cases referred to the Office of the Attorney General and in the number of discipline cases completed along with reductions in the average elapsed time to file pleadings and complete disciplinary actions; and

- Significant reductions in the number of pending discipline cases and the average age of the pending discipline cases.⁴⁴

Both the DCA auditor and the Monitor have made recommendations to help the BVNPT improve its processes (the auditor also looked at other programs and functions). After the DCA auditor's 180-day follow-up the auditor "concluded that the [BVNPT] has made some progress implementing its corrective actions, but has been unable to fully implement all of them." The auditor will also perform a 360-day follow-up.

The BVNPT has also completed some of the Monitor's recommendations, partially completed some, and it is still working on implementing other. However, it had rejected a number of them as well.

AB 179 provides that the BVNPT should be provided the opportunity to disagree with the Monitor's findings and recommendations. Reasonable minds can differ as to what the best course of action is in any given situation. However, some of the reasons provided are not particularly persuasive. In some instances, the BVNPT used existing backlogs as a reason not to implement changes that could potentially reduce the backlogs. For example, the Monitor recommended the following:

Recommendation IV-9: Develop and implement a structured, sustainable business process for screening licensee complaints to identify cases that do not require field investigation and assign these cases to staff that specialize in completing desk investigations of these types of cases.

This recommendation might help reduce backlogs by developing a complaint intake process. Many DCA Boards and law enforcement agencies use an intake/triage process because it is more efficient than assigning every single complaint for investigation. However, the BVNPT specifically rejected the recommendation and provided the following reason:

The [BVNPT] is unable to implement this recommendation at this time due to current workload and the legacy backlog. We do not have staffing resources at this time to implement this recommendation. In the future we may be able to redirect resources to this once the legacy backlog is eliminated.⁴⁵

⁴⁴ Monitor Third Report (executive summary), *supra* at 2.

⁴⁵ BVNPT 2016 report, *supra* at 13.

The BVNPT's response may need to be revisited based on recent assertions the BVNPT has made on its progress with its backlogs.⁴⁶

Staff Recommendation: *The BVNPT should update the Committees on its progress so far in reducing its legacy backlogs and its timelines for implementing recommendations rejected because of staffing, licensing, labor, or backlog issues.*

ISSUE #11: CE BACKLOG. *What is the BVNPT's plan to resolve its current CE audit backlog?*

Background: In 2014, a DCA internal audit found that there were “multiple deficiencies regarding [CE] (i.e. reviewing of documents, filing, submitting documents for online renewals, policies, procedures and processes, etc.).” At the time, it recommended that the BVNPT perform the following:

- Ensure that all CE information submitted during the renewal process is reviewed and meets all requirements when determining the renewal approval of a licensee.
- Create, maintain and monitor tracking document(s) used for continuing education auditing.
- File all renewal documents in the appropriate licensee file.

The BVNPT accepted this recommendation and noted the following:

*The [BVNPT] completes an audit of VN and PT license renewals monthly for compliance with regulatory requirements. That audit includes a random selection of renewed VN and PT licenses representing all geographic areas of the State. Effective January 1, 2017, the audited volume will be increased to include 200 VN and 100 PT licenses. Licensees for whom noncompliance is identified will be referred to the Enforcement Division for action.*⁴⁷

The Monitor made a similar recommendation, but the BVNPT rejected it.⁴⁸ Instead, it chose to “benchmark” its CE audit non-compliance rate.⁴⁹ It selected a sample of over 51,000 LVNs and 5000 PTs and planned to send the audits out “in thousand letter ‘waves’ spaced two (2) weeks apart.”⁵⁰ However, the BVNPT writes that the audit was not implemented as anticipated. As a result, most of the audits were sent out at once.⁵¹

⁴⁶ See BVNPT, *Executive Officer's Report - Enforcement Division*, January 27, 2017, http://www.bvnpt.ca.gov/about_us/meetings/materials/20170208_24b.pdf; BVNPT Letter to Committees, *supra* at 2-3.

⁴⁷ BVNPT 2016 report, *supra* at 13.

⁴⁸ BVNPT 2016 Sunset Report, *supra* at 78.

⁴⁹ BVNPT Letter to Committee Staff, *supra* at 5-6.

⁵⁰ *Id.*

⁵¹ *Id.*

This has generated a significant amount of mail, faxes, and emails (see Appendix C). Many licensees (Board members included) have stated that they have not heard back and do not know if they are in compliance.⁵² One remedy implemented by the BVNPT was to post a 30-day extension on the front page of its website.

It is not clear that the BVNPT should continue to try to process the audits. First, benchmarking the BVNPT's actual compliance rate, while potentially helpful, is not necessary. Given that many recommendations were rejected on the basis of insufficient staff and legacy backlog, there may be greater priorities.

Further, the BVNPT notes "the current audit may evidence a high degree of noncompliance. If that is confirmed, the [BVNPT] anticipates an audit of approximately 10% of the licensee population per annum."⁵³ If the noncompliance rate ends up being 10%, the complaints unit will have an incoming caseload of at least 5,600 complaints $((\sim 51,000 + \sim 5,000) \times .01 = 5,600)$.⁵⁴

Second, the BVNPT's current process for determining compliance raises due process issues. Due to the volume of letters sent out, the deficiency letters are generic and do not provide sufficient notice to consumers on how to specifically remedy the deficiency. This also creates issues for the complaints unit because it would not know which deficiency to investigate.

This issue was highlighted in the Monitor's third report. At the February 8, 2017, public Board meeting, one member stated the following in response to the Monitor's report on this issue:

We had good leadership. We still do. But the amount of external pressure being put on this Board.... This—this CE. Nobody can find the information; nobody can find the work order. It went fr—could have gone from five hu—thousand to fifty thousand by the stroke of a key. And yet we can't figure out who's the one who added the extra zero? Was it a typo? Any reasonable person knowing the framework, the time to process fifty thousand would never have let it go forward; yet somehow it went forward.

People here—the leadership here have advanced degrees; they are all critical thinkers; they are all good time managers; they are all good human personnel managers. Why would someone let fifty thousand letters go out for an audit—and

⁵² See Sacramento Bee, State Worker, *California nurses scrambling for education records after state board demands them* (Feb. 1, 2017), <http://www.sacbee.com/news/politics-government/the-state-worker/article130162989.html>.

⁵³ BVNPT Letter to Committee Staff, *supra* at 6.

⁵⁴ To clarify, the 10% number used here is a point of reference because the actual compliance rate is unknown. If the number is less, the unit will see less complaints. If the number is more, the unit will see more. For additional context regarding this clarification, see page 7 of the BVNPT's Letter to the Committees in response to the Monitor's Third Report, Question 21 (Appendix B).

not have the expectation of being able to process them in a timely manner? So the question I have to ask is: who did it and why? Where did the error take place? Was it an error, or was it intentional? And yet we don't have either one of the actors—we're looking at—the result, but we're not—but we also have to look at what started it.

Now it may have been time phased for five thousand—but who in their right mind would order fifty thousand and expect to process them in a reasonable amount of time? That's what I want to figure out. What's the source of the problem? We have the problem. We have to deal with that also. But you're—you're—while you make mention of that here, you don't bother to look at who caused it. Why did it occur?⁵⁵

Staff Recommendation: *The BVNPT should cease the current audit project, send out apology letters to licensees, and resume a manageable audit schedule.*

ISSUE #12: CE AUDIT IMPROVEMENTS. *How can the BVNPT improve its CE audit process and management?*

Background: In its responses to the Monitor and the DCA internal audit, the BVNPT has noted it is in the process of implementing digital processing of CE images, BreEZe automation of CEs, and migration of licensee information to a digital shared drive (“cloud”).

Currently, all licensees are required to maintain CE documents for a period of four years, and licensees only submit the documentation when they are audited. Once the above improvements are implemented, a more efficient process might be requiring the submission of CE documents at the time of renewal and then verifying them during the audit.

Staff Recommendation: *The BVNPT should update the Committees on its progress with implementing the BreEZe automation of CE audits, and discuss its thoughts on requiring primary source documentation at the time of renewal and storing licensee records rather than requiring licensees to keep records for four years.*

ISSUE #13: EDUCATIONAL CITE AND FINE. *Should the BVNPT establish a cite and fine program for educational programs?*

Background: The BVNPT is one of the few DCA Boards statutorily required to inspect and approve schools.⁵⁶ It is also authorized to place schools that do not meet the required standards

⁵⁵ BVNPT Board Meeting (Feb. 8, 2017) (Board Member Testimony, <https://youtu.be/LrOCPutzsu8?t=4032>).

⁵⁶ BPC §§ 2883, 4531.

on provisional approval.⁵⁷ If a program fails to meet the requirements at the end of the provisional approval period, the BVNPT may either extend the provisional approval period or revoke the provisional approval.

According to the BVNPT, the ultimate goal of VN and PT programs is the education of eligible students to be successful on the respective licensure examination.

Staff Recommendation: *The BVNPT should discuss why it believes it needs a cite and fine program for educational programs, how a new cite and fine program might impact its enforcement workload and backlogs, and how a cite and fine program will provide benefits beyond provisional approval.*

TECHNOLOGY ISSUES

ISSUE #14: BREEZE COSTS. *Is the BVNPT concerned about ongoing costs and staff redirection for BreEZe implementation?*

Background: The BVNPT successfully transitioned to the new BreEZe licensing and enforcement system on January 19, 2016. It has also has initiated work orders to incorporate and automate CE audits within BreEZe to improve reporting and auditing.

The BVNPT notes, since the implementation of BreEZe, licensing processing times have increased, but the processing times for school graduates has decreased from six weeks to as little as one week. The licensing division is working to improve its current processes.

Staff Recommendation: *The BVNPT should discuss its progress on improving its licensing processes with regard to BreEZe, any cost projections it may have, and discuss any other BreEZe improvements or problems.*

EDITS TO THE PRACTICE ACT

ISSUE #15: TECHNICAL EDITS. *Are there technical changes to the Practice Act that may improve the BVNPT's operations?*

Background: There may be technical changes to the BVNPT Practice Act that are necessary to enhance or clarify the Practice Act or assist with consumer protection, such as the delegation of default decisions to the EO.

Staff Recommendation: *The BVNPT should continue to work with the Committees on potential changes.*

⁵⁷ CCR, tit. 16, §§ 2526.1, 2581.1.

CONTINUED REGULATION OF THE PROFESSION

ISSUE #16: SUNSET EXTENSION. *Should the current BVNPT be continued and continue regulating the practice of LVNs and PTs?*

Background: A review of the issues raised since last review of the BVNPT in 2014 shows that the BVNPT has made strides towards meaningful change. For instance, it has gone above and beyond in terms of consumer outreach and appeared to show improvement in enforcement and vacancies. At the February 8-10, 2017 Board meeting, some Board members set aside their concerns and agreed that moving forward with the Monitor towards solutions is the best course of action.

However, a number of issues still need to be addressed, including whether the BVNPT can show a willingness to acknowledge deficiencies, stop its largescale CE “benchmark,” and move forward with feasible solutions, many of which have already been provided by the Monitor and the DCA. While the BVNPT initially showed progress, it has at times raised questions as to its willingness to move forward with solutions. The BVNPT should strive to demonstrate good faith efforts to address these issues and work with the Legislature, the DCA, the Monitor, and Board staff to craft deliverable, positive change.

Staff Recommendation: *Given the number of outstanding issues and competing perspectives, it would be helpful to hear the testimony of the DCA, the Monitor, the BVNPT, and stakeholders at the hearing before the Assembly Committee on Business and Professions makes a recommendation on the sunset extension date of the BVNPT.*

APPENDIX A: BVNPT LETTER TO THE COMMITTEES IN RESPONSE TO MONITOR'S THIRD REPORT



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February 15, 2017

Senator Jerry Hill, Chair
Business, Professions and Economic Development Committee
State Capitol, Room 2053
Sacramento, CA 95814

Assemblymember Rudy Salas, Chair
Business and Professions Committee
1020 N Street, Room 383
Sacramento, CA 95814

***RE: California State Board of Vocational Nursing and Psychiatric Technicians
Response to Administrative and Enforcement Monitor Phase III Report***

Dear Legislative Members:

On Wednesday, February 8, 2017, Benjamin Frank, Management Consultant and Chief Executive Officer, presented the third report, *"Updated Status of the Enforcement Program and Additional Administrative Process Assessments,"* to the Board of Vocational Nursing and Psychiatric Technicians (Board) at a scheduled public meeting.

The Board appreciates the opportunity to respond to that report. It is noted that the tone and primary focus of the report is markedly negative and replete with uncorroborated information. Irrespective of that focus, the Board is committed to addressing identified concerns and implementing effective solutions that ensure the continued protection of the consumer. We have outlined overarching concerns related to the Phase III report.

CONCERN 1: STATUS of ENFORCEMENT DIVISION PROGRAM

As presented, the report minimizes significant progress achieved by the Board in resolution of identified problems. The Board Enforcement data reflects that there was no stall in cases processed. However, staff turnover did impact the Board. During the July throughout October timeframe cited, staff across the Board participated in a work development program. This resulted in three (3) staff internally promoting and two (2) staff promoting outside the Board. Additionally, two (2) staff were Rejected on Probation (terminated from the Board) due to egregious conduct.

With this flux in work, the next change is less than 10% (see BVNPT Enforcement Data). The data suggests that staff training and newly developed procedures offered stability during this transition.

➤ **Enforcement Division**

The report highlights improvements made in the Enforcement Division during FY 2015/16. Those findings include:

1. Restructuring of the License Applicant Arrest/Conviction Report Process.
2. Restructuring of the Case Intake and Screening Process.
3. Significant increases in the number of completed licensee arrest/conviction report and complaint investigations.
4. Significant reductions in the number of pending investigations and in the average age of the pending investigations.
5. Significant increases in the number of cases referred to the Office of the Attorney General and the number of discipline cases completed.
6. Significant reductions in the number of pending discipline cases and the average age of pending discipline cases.
7. Significant reduction in the average elapsed time to file pleadings and complete disciplinary actions.

The report then states progress stalled during July to October 2016. Relative to the Number of Completed Investigations, the report cites the following statistics:

➤ **Licensee Arrest/Conviction Reports.**

1. **2014/15** - 1,469
2. **2015/16** - 1,973
3. **Jul-Oct** – 514

➤ **Licensee Complaints.**

1. **2014/15** - 616
2. **2015/16** - 1,040
3. **Jul-Oct** – 234

Relative to the Number of Pending Investigations, the report cites the following statistics:

➤ **License Applicant Cases.**

1. **June 30, 2015** - 1,489
2. **June 30, 2016** - 67
3. **October 31, 2016** – 66

➤ **Licensee/Arrest/Conviction Reports**

1. **June 30, 2015** - 979
2. **June 30, 2016** - 699
3. **October 31, 2016** – 693

➤ **Licensee Complaints.**

1. **June 30, 2015 - 11**
2. **June 30, 2016 - 712**
3. **October 31, 2016 – 694**

The report fails to note the impact of the Board's steps in addressing the backlog of previously reported cases and the correlation with reported statistics. Statistics reported for 2014/15 and 2015/16 reflect the progress achieved. Addressing the backlog resulted in a concomitant reduction in the numbers of completed and pending investigations.

Similarly, the report notes the average elapsed number of months to complete investigations decreased from 25 during Jan – Jun 2015/16 to 22 during July – Oct 2016/17 and cites additional decrease is required.

The report fails to note that a significant number of cases involved allegations of criminal misconduct. As a result, the Board is unable to resolve the case until resolution of the criminal misconduct.

CONCERN 2: OVERSIGHT OF STAFF AND HIRING

➤ **Vacant Positions and Hiring**

The report cites the elevated numbers of vacant positions in the Enforcement Division, Education Division, and Administrative/Licensing Division.

The report failed to note that the Board had pursued restructuring with an overhaul of its organizational structure. That restructuring was based on an analysis and evaluation of the Board's legislative mandate, required processes, licensee populations, and numbers, classifications, and distribution of approved staff positions. That analysis confirmed the inadequacy of the existing organizational structure to achieve required workload. The report fails to note that that out-of-class (OOC) positions were leveraged as opportunities for difficulty to hire positions as an opportunity for onsite training. This increased the Board's internal promotions and retention of intellectual capital.

The report failed to note the unexpected leave of the Enforcement Chief, effective October 2016, and subsequent departure, effective January 20, 2017. Further, the report failed to note that a number of vacancies occurred as a result of unsatisfactory performance resulting in staff terminations due to rejections during the probationary period. Additionally four (4) positions were upwardly promoted, in part, due to the Board's participation in the DCA Mentoring Program aimed at improving both soft and hard skills for State employees. Many need assistance with resume writing and how to interview.

The Executive Officer has made sure all staff have participated in the Analyst Academy, and Upward Mobility. Additionally, quarterly staff meetings include

mandatory training to insure staff get needed enrichment. Further, the staff are participating in a DCA Mentoring Pilot which accounts for soft skills. Staff currently use Excel and Word daily so, these trainings are basic and within their daily tasks. The Board has requested and received approval from the Department of Consumer Affairs' Office of Human Resources for several critical positions including management. Additionally, the Board has implemented processes to ensure maximize utilization of existing staff. Several existing staff have also received promotions. Effective February 6, 2017, the Board had seven (7) vacancies in approved positions. Recruitment, interviews and hiring of qualified staff to fill those positions is in progress.

CONCERN 3: STAFF TRAINING and DEVELOPMENT

➤ Staff Evaluation and Training.

The report states the failure of the Board to complete annual reviews and evaluations of the performance of existing staff. Further, the report states that prior to 2016/17, reviews and evaluations were not usually completed except for new probationary staff.

Personnel records confirm the inaccuracy of those statements. Except for the period during 2015, the Board has completed an evaluation and individual development plan for all existing staff annually. During that time, training needs are identified to enhance staff performance and ability to meet programmatic needs. In addition such training improves staff morale and promotes upward mobility, while enhancing the Board's ability to meet its work force needs.

The Board was one of nine (9) participating Boards acting in the DCA Mentoring program aimed at providing staff additional resources beyond the in-class and online resources. In addition, the Board partnered with Gov Ops to participate in a Lean Six Sigma training to streamline the business process. No other DCA Board has participated to date. As a last reminder of the strides the Board continues to make, the Board donated 20 computers to local youth when they retired antiquated surplus.

CONCERN 4: OVERSIGHT OF EXECUTIVE OFFICER

The report states a lack of oversight of the Executive Officer by the Board. It states the Board is dependent on the Executive Officer for its training and information relative to staff, processes, and issues directly under the Board's purview. The purposed recommendation does not provide new information to the Board as it does not change the reporting structure for the Board. However, the suggestion of a new review only offers opportunities for the Executive Officer to have undue influence by those reviewing them (DCA, etc.). This would offer opportunities for the Executive Officer position to be corrupted and undue influence levied by those responding to the 360.

The Board was set up as semi-autonomous to ensure that the needs of the consumers were not politicized. Board members are installed by the respective Bodies the Monitor is suggesting that review the Executive Officer.

The Monitor's report offers a different methodology for the evaluation of the Executive Officer. The report notes that a 360 assessment would enhance the Board's evaluative process.

The Board acknowledges its responsibilities in ensuring sound administration. The Board recognizes the importance of a thorough, objective process for the evaluation of its Executive Officer. The Board recognizes the significance of consistent evaluation.

The Board supports all State agencies adopt the 360 review process for all state employees including exempt employees. The Board welcomes the opportunity to participate in the statewide implementation of this overhaul.

In summary, the Board is committed to achievement of its mandate to protect consumers against the incompetent or unprofessional practice of its licensees. It should be noted that with the compilation of individuals appointed from the Governor, Speaker and Assembly, the 360 review is, in essence, currently in practice.

CONCERN 5: CONTINUING EDUCATION (CE) AUDIT PROGRAM

The Board acknowledges that the implementation of the CE audit was not executed as anticipated. However, the Board is conflicted with the opinions of the Monitor. During last phase, the Enforcement Monitor strongly suggested that our CE program was flawed and he did not have faith in the data provided by staff. Additionally, he reported that the 5% sampling was a guess and was not based off of any industry standard.

Note: Recommendation IV - 3: Restructure and expand the CE Compliance Audit Program. Issue an initial standard form 30-day audit letter to a sample of at least 5 percent of renewing licensees in conjunction with issuing their license renewal notifications. If the licensee is non – responsive to the initial request, promptly issue a second/final request. If the license is non-responsive to the final request or confirms that they did not complete any (or completed very little) of the required CE, refer the case to Enforcement for issuance of a citation. Streamline the Certificate of Completion review process by limiting reviews of the documents in cases that appear to show full compliance with BVNPT's CE requirements.

Recommendation IV – 4: Assess the feasibility of imaging CE – related document submissions and enabling submission of the documents electronically.

During the most recent meeting, the Monitor suggested "I made it up" when discussing the 15 minute estimated time frame discussed to complete a CE application. The Board has consulted partnering Boards of equal size and has benchmarked the following:

1. The total licensees audit is 52,000. It takes 0.5 - 2 minutes to process a CE app.
2. Three (3) full – time staff are assigned to the unit not including four (4) AARP volunteer staff.
3. The total days required to complete the process is 77 days.

52,000 apps X 2 minutes = 104,000 minutes
104,000 apps/450 min in 1 (7.5) work day = 231 apps/day
231 app/3 staff = 77 days or 3 - 4 months.

As Board Members have stated, consumer protection is the highest priority of the Board. To ensure the protection of the consumer, it is imperative that LVNs and PTs possess current knowledge, skills, and proficiency necessary to provide for the health care needs of the consumer. Such knowledge, skills, and proficiency are critical to ensure the delivery of safe and competent client care to consumers of the State of California.

The Board of Vocational Nursing and Psychiatric Technicians continues to thank Mr. Frank, Governor Brown, Assembly Member Salas Senator Hill, and Speaker Rendon. We are pleased with the amazing strides the Board has made since 2014 and we welcome opportunities to discuss in person.

Sincerely,



TAMMY ENDOZQ, L.V.N.
President



JOHN DIERKING, Esq.
Co-Chairman, Enforcement Committee

APPENDIX B: BVNPT LETTER IN REPONSE TO COMMITTEE STAFF EMAIL



BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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Phone (916) 263-7800 Fax (916) 263-7855 Web www.bvnpt.ca.gov



February 24, 2017

Vincent Chee, Consultant
Committee on Business and Professions
California State Assembly
1020 N Street, Room 383
Sacramento, CA 95814

**RE: California State Board of Vocational Nursing and Psychiatric Technicians
Response to Administrative and Enforcement Monitor Phase III Report**

Dear Mr. Chee:

The Board of Vocational Nursing and Psychiatric Technicians (Board) acknowledges receipt of your electronic correspondence dated February 16, 2017. Specifically, clarification of the Board's responses submitted on February 15, 2017 was requested.

Specific responses to your questions follow.

QUESTION 1: On Page 1, in the introduction, the Board notes that "the tone and primary focus of the report is...replete with uncorroborated information." Can you please explain what you mean by "uncorroborated"?

A substantial amount of information reported by the Administrative and Enforcement Monitor was obtained through staff interviews conducted over a two (2) day period. The remainder of the reported information was obtained through secondary source citing (e.g. review of the 2016 Biennial Board's Sunset Review Report).

The Board had provided the Administrative and Enforcement Monitor a dedicated office and badge authorizing access. Despite that accommodation, the report evidences heavy reliance on the responses of eleven (11) staff interviews. The Monitor failed to verify the accuracy of the reported information.

Additionally, the report fails to acknowledge that many of the recommendations that are asserted were initiated by the Board prior to the Monitor. This has been maintained by staff and the Board as a whole.

Conversely, the DCA Internal Auditor was on site for several weeks reviewing, analyzing and evaluating Board files, policy manuals, and interviewing staff. The auditor's "180-Day Follow up Report" notes improvement in nearly all areas previously reviewed.

QUESTION 2: *On Page 1, in paragraph 1 under "CONCERN 1: STATUS of ENFORCEMENT DIVISION PROGRAM," the Board notes that two staff were terminated due to "egregious contact." Without unnecessarily discussing details specific to the terminated staff, can you please explain what "egregious contact" means? Specifically, it is not clear whether this is a battery, harassment, or some other contact that goes beyond what is acceptable in everyday interactions. More importantly, do violations like this involve interaction with a licensee or member of the public?*

Both staff members were rejected on probation due to performance issues that negatively impacted their ability to successfully complete their assigned duties as specified in approved duty statements. While at no time was a licensee harmed, it should be noted that the Board's Enforcement Division staff is responsible for the accurate, thorough, conscientious, ethical and timely completion of investigatory and disciplinary matters. In both instances, the performance of involved staff threatened such completion and ultimately undermined achievement of the Board's mission.

QUESTION 3: *What steps (if any) has the Board taken to prevent the occurrence of "egregious contact," other than terminating the employees? For instance has the Board established a new policy or training? If this was a unique situation specific to those employees, please feel free to disregard this question.*

The Board believes this was an isolated incident related to prior hiring practices. The Board has implemented several steps to enhance its hiring processes and insure increased vetting to mitigate such instances. The Board has revamped interview questions as well as introduced an interdisciplinary interview panel. This affords the Board the opportunity to review potential employees from a multi – lens approached. Lastly, the Board requires all new employees complete an orientation and onboarding specific to their position. Such enhancements are expected to improve the probability of staff success and maximize achievement of assigned tasks.

QUESTION 4: *On page 1, in paragraph 2 under "CONCERN 1: STATUS OF ENFORCEMENT DIVISION PROGRAM," the Board states, "With this flux in work, the next change is less than 10% (see BVNPT Enforcement Data)." Which report is the Board referring to, the BVNPT's report or the Monitor's report? The page number would be helpful as well.*

The Board's response references its most recent Enforcement Month-Over-Month statistical report. This report is included in the Executive Officer's Enforcement Division Report. The referenced sentence should read: "the net change is less than 10%". A copy of the report is attached for reference.

QUESTION 5: *Regarding the previous statement, which change is the Board referring to when it states that "the next change is less than 10%"?*

The Board's response references its most recent Enforcement Month-Over-Month statistical report. This report is included in the Executive Officer's Enforcement Division Report. The referenced sentence should read: "the net change is less than 10%"?

QUESTION 6: *On page 3, in paragraph 3 under "CONCERN 2: OVERSIGHT OF STAFF AND HIRING," the Board states that "The report failed to note the unexpected leave of the Enforcement Chief." However, it is specifically noted on page III-5 of the Targeted Administrative Process Assessments section, on page 17 of the Monitor's Feb 8, 2017 presentation, and again on page 3 of the Monitor's executive summary. Is there a reason for this discrepancy?*

While the report does mention the Enforcement Chief's leave, the Monitor does not note the impact of that absence. Such an absence resulted in the Executive Officer serving as the acting Enforcement Chief. In so doing, the Executive Officer completed the following:

1. Supported the Division's Investigative Unit providing critical required reviews of nearly 200 cases that could be closed with Notices of Warning/Memorandums;
2. Restructured the Probation/Discipline Unit;
3. Increased authorization of subpoenas required to complete investigations;
4. Screened and evaluated expert witnesses for the Discipline Unit; and
5. Expanded utilization of the Fast Track Program.

The absence was mentioned; however, the report failed to note the volume of work absorbed, its impact on the Board at large, and that the work was managed successfully.

QUESTION 7: *On page 4, in paragraph 2 under "CONCERN 3: STAFF TRAINING and DEVELOPMENT," the Board notes that "Personnel records confirm the inaccuracy of [the Monitor's] statements. Except for the period during 2015, the Board has completed an evaluation and individual development plan for all existing staff annually." Were evaluations performed for any existing staff in 2015? If not, why?*

During 2015, the Board was led by an Acting Executive Officer who was installed to stabilize the Board. While it is unclear why individual development plans were not completed, it is hypothesized that due to Board flux and transition, there was an increase in Board stabilization.

QUESTION 8: *Do members of the Board participate in the evaluations? If not, why?*

For all DCA Boards and Bureaus, Board Members do not participate in the review and evaluation of rank and file staff. However, if there are compliments or concerns that Board Members desire to provide, those compliments or concerns are considered during the review process.

QUESTION 9: *On page 4, in paragraph 1 under "CONCERN 4: OVERSIGHT OF EXECUTIVE OFFICER," the Board wrote:*

The purposed [sic] recommendation does not provide new information to the Board as it does not change the reporting structure for the Board. However, the suggestion of a new review only offers opportunities for the Executive Officer to have undue influence by those reviewing them (DCA, etc.). This would offer opportunities for the Executive Officer position to be corrupted and undue influence levied by those responding to the 360.

If the Board is referencing Recommendation III-1 on page III-13 of the Monitor's third report, can you please clarify whether the Board is referring to the 360 process or the multi-agency workgroup?

The Board is supportive of implementing 360 reviews across all DCA Boards.

QUESTION 10: *Can you please explain what the Board means by "undue influence"?*

The Monitor contends that the 360 review will offer the Board an opportunity to obtain information from more than just the Executive Officer. However, the 360 review is ultimately the performance review that is attached to the Executive Officer's employment and salary compensation/raises. If additional stakeholders can weigh in on the performance review of the Executive Officer, there is potential for the Executive Officer to bend to the will of said influences to maintain employment. This reduces the semi-autonomous nature of the Board. Further, such reviews may negatively impact the protection of the consumer.

QUESTION 11: *Can you please explain what the Board means by "corrupted"?*

QUESTION 12: *On page 5, in the third paragraph from the top, the Board wrote that the "Board supports all State agencies adopt the 360 review process for all state employees including exempt employees." Does this mean the Board supports the 360 review process?*

The 360 assessment and review process is an excellent tool for a balanced review. However, it is unclear how this will achieve the desired results the Monitor is asserting. Based on the Board's structure, the Board will still relay on information from the Executive Officer. However, the Executive Officer may now be influenced by players that weigh in on the 360 assessment and review. Additional information referencing this process may be found in the following published articles:

<https://hbr.org/2011/10/the-fatal-flaw-with-360-survey>

<http://www.forbes.com/sites/ericjackson/2012/08/17/the-7-reasons-why-360-degree-feedback-programs-fail/#370dd3064b98>

QUESTION 13: Does the Board support the multi-agency workgroup?

The Board views the installation of Board Members from the Governor, Senate, and Speaker as proxy to the workgroup. Each individual volunteers their own time to support the mission of the Board, without any political allegiances. The Board is supportive of implementing 360 reviews across all DCA Boards.

QUESTION 14: On page 5, in the last paragraph under "CONCERN 4: OVERSIGHT OF EXECUTIVE OFFICER," the Board wrote: "It should be noted that with the compilation of individuals appointed from the Governor, Speaker and Assembly, the 360 review is, in essence, currently in practice."

Is Board saying that the Board performs a 360 review each time it reviews its EO because its members are appointed? If not, can you please clarify?

The Board views the installation of the Board Members from the Governor, Senate, and Speaker as proxy to the workgroup. Each individual volunteers their own time to support the mission of the Board; without any political allegiances. The Board is supportive of implementing 360 reviews across all DCA Boards.

The Board has confidence in the thoughtfulness and the dedication of the Board Members that were interviewed and selected to serve.

Question 15: On page 5, in paragraph 1 under "CONCERN 5: CONTINUING EDUCATION (CE) AUDIT PROGRAM," the Board wrote that "the implementation of the CE audit was not executed as anticipated." What was the Board's anticipated implementation plan?

The National Council of State Boards of Nursing (NCSBN) offers its 54 member boards and 44 associate boards query opportunities to survey best practices. Additionally, each Executive Officer has a peer mentor to help with operation questions. In late October, the Board reached out to the NCSBN via this tool to isolate best practices for a Continuing Education (CE) Program. This is the most ideal benchmark as these are nursing regulatory boards auditing similar programs. From the query information, the Board ascertained that the Board was "pulling" audit requests that were artificially depressed due to 1) staffing levels (i.e. CE staff levels); and 2) staff time available to audit (i.e. pulled to cover phones). This results in less than 1% of licensee population being audited. Conversely, more mature boards "push" audit requests and are staffed accordingly.

The Board reorganized the Education Division including the addition of two (2) new positions, an Associate Governmental Program Analyst and Program Technician, to support the CE Program. Further augmentation of Division staffing was accomplished by the addition of an Associate Governmental Program Analyst -- Retired Annuitant. The Board also sought to add a CE/Citation Licensing position. This work was currently being managed in the Discipline Unit by a Staff Services Analyst. Finally, Discipline Unit staffing was increased with the addition of a permanent intermittent position for a Staff Services Analyst to support the workload related to citations.

Benchmarking the second largest vocational nursing board, the audit process implementation plan included initial 30 – day letters, sent in thousand letter “waves” spaced two (2) weeks apart. This would insure orderly completion of the audit without negatively impacting staff workflow. Following the completion of all weeks, the 60 – day letter would be sent, also in “waves”.

Question 16: *In the same paragraph, the Board wrote that the Monitor “reported that the 5% sampling was a guess and was not based off of any industry standard.” What standard does the Board normally use when it determines its sampling rate? How did it determine the past standard?*

The Board leveraged the standards supported by NCSBN for initiating a Continuing Education Program. As stated, the Board has artificially suppressed the program for well over a decade. To ensure achievement of its mandate, the Board initiated a staggered implementation to right – side the Board.

By the Monitor’s own acknowledgement repeatedly, the recommended 5% sample size is not based on any standard, neither healing arts board nor DCA wide.

Question 17: *What standard will the Board use going forward? How did it/will it determine the standard?*

Similar to other nursing boards, the determining factor is based on lack of compliance. After determining the degree of compliance of the licensee populations during the current audit, the Board will establish a threshold.

The Board acknowledges that the audit of 5% of the licensee population is acceptable as an aspirational goal. However, it is important to note that based on available records and other sources, many LVNs and PTs have not been audited despite holding current licensure and continuing to practice. In so doing, the licensees’ actions may negatively impact the health and safety of the consumer.

Given the foregoing, the Board anticipates the current audit may evidence a high degree of noncompliance. If that is confirmed, the Board anticipates an audit of approximately 10% of the licensee population per annum.

Question 18: *At the bottom of page 5, the Board wrote that it “has consulted partnering Boards of equal size and has benchmarked [the CE audit process].” Which Boards did the Board consult with?*

The Board leveraged the standards supported by NCSBN for initiating a Continuing Education Program. Texas is of similar size. California, Louisiana, and West Virginia are the only states with separate vocational/practical nursing boards.

Question 19: *Where the benchmarks performed using the Board’s own audit staff?*

Education Division staff was used exclusively during business hours. Due to the unforeseen mailing error, staff were offered opportunities to assist with email responses during nonbusiness hours. This is a similar response as has been used to address

cashiering, renewal, and mail backlogs. This response has an additional benefit. The Board's backlog is addressed and staff are provided rare opportunities for incentive overtime.

Question 20: Do CE audits need training to perform properly?

The Board designed and tested an instrument used to audit licensee compliance with the CE requirement for relicensure. Utilization of that instrument allows staff to evaluate and determine compliance or lack thereof in less than 20 seconds. A single file requires less than two (2) minutes to audit.

Assigned staff were provided hands - on training that include, but was not limited to:

1. California Code of Regulations §§ 2540.1 [VN] and 2592.1 [PT].
2. Categories of course content that may satisfy the regulatory requirement for relicensure.
3. CE audit procedure.
4. Utilization of the CE audit instrument.
5. Post audit follow - up
6. Questions and discussion.

Any file requiring additional investigation is referred to a Nursing Education Consultant for further investigation, review, and decision.

Question 21: At the bottom of page 5, the Board wrote that it takes 30 seconds to 2 minutes to process a CE app. Can you please describe the steps involved in processing a typical, compliant CE audit (no follow-up letters other than close out letters), from start to finish? It would be helpful if you could include the approximate amount of time needed for each step.

The Monitor acknowledged repeatedly that he "made up" the 15 minute calculation reportedly required to complete an audit. It is disturbing that this was published without being vetted.

The Board receives documents from licensees per electronic or U.S. Mail. Irrespective of the manner of submission, all mail is opened by the mailroom. Consequently, staff receive CE documents that have been opened. Utilization of the checklist allows staff to validate licensee compliance in less than 30 seconds. The remaining time is dedicated to printing the confirmation letter and updating BreZE. The time required for completion of that step ranges from 30 to 90 seconds. The total process requires less than two (2) minutes.

➤ Total Licensee Population Sampled:	52,000.
➤ Time Required to Process Documents/Licensee:	0.5-2 min.
➤ Number of Assigned Staff Excluding Four AARP Volunteers:	3
➤ Total Time Required to Complete Project:	77 Days

- 52,000 licensees X 2 minutes = 104,000 minutes
- 104,000 minutes/450 min in 1 work day (7.5 hours per day) = 231 licensees/day

- 231 licensees/3 staff = 77 days or 3-4 months.

Please advise if further information is desired.

Sincerely,

Sincerely,



TAMMY ENDOZO, L.V.N.
President



JOHN DIERKING, Esq.
Co-Chairman, Enforcement Committee

*Attachment: Executive Officer's Report – Enforcement Division, Dated January 27, 2017;
Presented at Board Meeting, February 10, 2017.*

cc: Senator Jerry Hill, Chair
Business, Professions and Economic Development Committee
State Capitol, Room 2053
Sacramento, CA 95814

Assemblymember Rudy Salas, Chair
Business and Professions Committee
1020 N Street, Room 383
Sacramento, CA 95814

APPENDIX C: CE AUDIT PHOTOS (MARCH 6, 2017)



Photo 1: CE Audit Pile



Photo 2: CE Audit Pile Second View