

BACKGROUND PAPER FOR The Board of Vocational Nursing and Psychiatric Technicians

**(Oversight Hearing, March 20, 2017, Senate Committee on
Business, Professions and Economic Development and the Assembly
Committee on Business and Professions)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

BRIEF OVERVIEW OF THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

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 (Board).

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

In 1970, Senate Bill (SB) 298 changed the PT Certification Program to a licensure program. To change from a certification program to a licensure program, the law specified that Certified PTs would be eligible for licensure (e.g., grandfathered) upon renewal of their certificate. In addition, it made any person, including persons employed in state hospitals for the mentally ill and developmentally disabled, eligible for licensure upon evidence that he/she performed PT services specified in Business & Professions (B&P) Code Section 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 a licensure examination. In 1998, the name of the Board 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 (Ridley-Thomas) which contained the statutory language required to extend the sunset date for the Board and three other licensing boards within the Department of Consumer Affairs (DCA). As a result, the Board became a Bureau operating under DCA for six months from July 1, 2008 through December 31, 2008. Two legislative bills were signed into law to re-establish the board (SB 797, Ridley-Thomas, Chapter

33, Statutes of 2008 and Assembly Bill (AB) 1545, Eng, Chapter 35, Statutes of 2008) effective January 1, 2009.

The Board oversees two distinct licensure programs, each with separate statutes, regulations, curriculum requirements and examinations. Today, the Board 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 Board to offer educational programs leading to a LVN and PT license in California.

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

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

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

LVNs are employed in the following types of facilities:

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

- Elementary and Secondary Schools

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

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

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

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

PTs are employed in the following types of facilities:

- Hospitals: State, Local, and Private
- Outpatient Mental Health Care Centers
- Residential Care Facilities
- Offices of Mental Health Practitioners
- Correctional Facilities

- Psychiatric Emergency Assessment & Treatment Teams
- Public and Private Chemical Dependency Treatment Centers
- Sheltered Workshops & Vocational Training Centers
- Respite Care Teams
- Group Counseling Services

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

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

To accomplish the Board’s priority and mission of public protection, the Board regulates VN and PT programs located throughout the State; LVNs and PTs who are employed in hospitals, long term care facilities, home health, correctional facilities, outpatient, clinic and school settings, military facilities the Board’s educational programs; and other practice settings.

Board Membership and Committees

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

Board Member	Appointment Date	Term Expiration Date	Appointing Authority
<p>Todd D’Braunstein, Professional Member, is a unit supervisor at PattanPatton State Hospital. He first began at Patton State in 1996 as a licensed psychiatric technician (PT) and was later elevated to PT instructor in 2001. He was previously a PT at Lanterman Developmental Center.</p>	9/15/05	6/1/16	Governor
<p>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 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.</p>			Senate
<p>Tammy Endozo, Professional Member, has served as a licensed vocational nurse (LVN) at the Richard J. Donovan Correctional Facility since 2006. She was a LVN at Scripps Mercy Hospital</p>	9/30/15	6/1/15	Governor

<p>from 2003 to 2011 and a residential care unit leader and LVN at the Veteran’s Home of California, Chula Vista from 2000 to 2006. She was a LVN at the University Community Medical Center in San Diego from 1998 to 2004, at the County of San Diego, Edgemoor Hospital from 1998 to 2000 and at Friendship Manor Lakeside Nursing Home from 1996 to 2000 .</p>			
<p>Samantha James-Perez, Professional Member, has served in multiple positions at Pacific Clinics since 1998, including licensed PT , PT-LVN education coordinator and medication services supervisor. She was a PT at the Loma Linda University Behavioral Medicine Center from 2003 to 2006, at Canyon Ridge Hospital from 1997 to 2001 and the American Recovery Center from 1997 to 1998 .</p>	9/30/15	6/1/15	Governor
<p>Eric Mah, Public Member, served as Interim Executive Director of Research Compliance & Integrity, Office of Research, at the University of California, Davis (UCD) since 2010. He also served as the Director of the Institutional Review Board, Office of Research, UCD. He was Assistant Director-Human Subjects Research, UCLA Office for Protection of Research Subjects during 2008-2009.</p>	10/6/10	6/1/16	Assembly
<p>Bernice Bass De Martinez, Public Member, has been chair of the Department of Foreign Languages at CSU, 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.</p>			Governor
<p>Andrew Moreno, Public Member, was a project manager at the Economic Vitality Corporation of San Luis Obispo County from 2012 to 2014. He earned a Master of Arts degree in</p>	7/11/13	6/1/17	Governor

communication and leadership studies from Gonzaga University and a Master of Arts degree in environmental management and sustainability from Harvard University.			
Donna Norton, Professional Member , has been a LVN at Kaiser Permanente since 1989. She was a LVN and phlebotomist at Oneida Hospital from 1984 to 1985. She was also a LVN at Straub Hospital from 1981 to 1985 and for the U.S. Army at Tripler Army Hospital from 1975 to 1981.	1/28/14	6/1/16	Governor
John Vertido, Professional Member , is an instructor at Curam College of Nursing in Sacramento. He was a consultant for Engineering System Consultants and a part-time nursing instructor and clinical coordinator at Western Career College from 2008 to 2012. He was a nursing instructor and clinical coordinator at Western Career College in Sacramento from 1996 to 2008 and a nursing instructor at Sierra College in Rocklin from 2000 to 2002 and served in the United States Army Reserve from 1980 to 2000. He was 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.	9/15/05	6/1/16	Governor
Vacant, Public Member			Governor
Vacant, Public Member			Governor

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

Executive Committee – Develops policies and makes recommendations to the full Board on matters regarding attendance and standards of conduct for Board Members and issues regarding the Executive Officer and staff.

Education and Practice Committee – Solicits input from staff and the public when addressing issues relative to approval of schools, curriculum and education requirements, and possible changes or adherence to practice requirements for LVNs and PTs.

Enforcement Committee – Establishes program oversight and key measures to insure timely review of complaints, case closure and coordination with outside agencies such as Division of Investigation (DOI) under the Department of Consumer Affairs (DCA), the Attorney General’s Office (AG) and the Office of Administrative Hearings (OAH). Analyzes enforcement issues and formulates recommendations for Board consideration. Addresses specific recommendations for Administrative Law Judges (ALJ) and reviews and revises the Disciplinary Guidelines for use by the AG, OAH and staff.

Evaluations Committee – Advises the Board on matters related to the approval of endorsement, work equivalence, continuing education (CE) and competency to impact licensee candidate profile and national standards. Makes recommendations to Board improve national ratings.

Legislative and Regulations Committee – Reviews pending legislation impacting the Board and develops Board positions. Committee members, the Executive Officer and staff represent the Board at legislative hearings.

Licensing Committee – Develops strategies to proactive improve consumer service to mitigate complaints and wait times. Reviews the current complaints and devise a mitigation strategy to engage the full Board.

Practice Committee – Reviews current scope of practice and advocates for preserving existing scope of practice in the face of competing priorities.

Strategic Outreach Committee – Develops opportunities to engage stakeholders for the Board to achieve objectives specified in AB 179 (Bonilla, Chapter 510, Statutes of 2015).

Staffing Levels

The Board’s Executive Officer is appointed by the Board. The current Executive Officer was selected in March 2016. The Board 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 Board is a self-supporting “special fund agency.” It derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees. Its main sources of revenue are:

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

In FY 2015/16 the Board’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 Board’s last Sunset Review.

Fund Condition (LVN and PT Program)			(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						

Note. This table was prepared by the Board on September 5, 2016.

Expenditures by Program Component – From 2014/15 to 2015/16, for the VN program, the Board 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 Board 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 Board indicates that it seeks cost recovery in all cases where cost recovery is authorized. The board 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 Board 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 Board collected a total amount of \$183,000.

VN and PT Educational Programs

The Board reviews VN and PT educational and training programs every four years, and approves them for another four years if the program remains in compliance with Board laws and regulations, and has not been the subject of any student or consumer complaints. The Board’s Education Division is responsible for ensuring the development and approval of VN and PT programs that comply with requirements specified in the B&P Code and in the Board’s regulations. According to the Board, the Division ensures that all approved programs develop and offer a curriculum that contains specific complex scientific material that is presented in a sequence that results in the progressive mastery of critical didactic and clinical content relative to clients of all ages in current health care settings. The Division also ensures that each curriculum contains critical professional knowledge, skills, and abilities necessary for the delivery of safe and competent client care. The Division ensures that each program’s curriculum is accurately presented utilizing current established instructional methodologies and techniques necessary to maximize students’ acquisition of professional knowledge, skills, and abilities

necessary to maximize student achievement. The Division and its staff of Nursing Educational Consultants (NECs) are also responsible for inspecting VN and PT programs.

The Board indicates that from April 2014 through September 2016, NECs completed 159 inspections of approved and preapproved VN and PT programs, including 59 onsite inspections and 100 inspections conducted by analyzing critical program records and materials.

The Board also works cooperatively with the Bureau of Private Postsecondary Education (BPPE) in approving and monitoring VN and PT programs and certain providers of CE subject to BPPE approval. In general, the BPPE reviews and approves a physical institution and areas of finance, including salaries and student tuition. The Board is authorized to approve programs offered by institutions in areas directly related to the presentation and effectiveness of the curriculum and student achievement. For VN and PT programs offered by proprietary institutions subject to BPPE approval, the Board notifies these institutions that BPPE approval is required before the start of the first class of a VN and PT program. The Board also notifies BPPE that is considering approval for a new VN and PT program. The Board notifies BPPE of its decisions for VN and PT programs and joint visits between the two entities to institutions are coordinated as necessary. The Board entered into a MOU with BPPE in 2011 which specifies the relationship and agreement between the two agencies.

As of January 27, 2017, the Board'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 Board's Sunset Review Report of 2016 noted that, effective August 1, 2016, there were 172 programs approved by the Board.]

Licensing

The Board 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 Board renewed 50,348 VN and 5,437 licenses in 2015/16.

According to the Board'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;
- 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 Board requires primary source documentation for any educational transcripts, experience records, license verification from other states, and professional certifications. As part of the licensing process, all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the DOJ and Federal Bureau of Investigation (FBI).

Continuing Education

The Board requires 30 hours of 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 Board accepts CE courses for LVNs and PTs from nursing agencies or organizations from California or other states. In addition, the Board approves providers who wish to offer CE specifically for LVNs and PTs. The provider pays a fee to the Board that is submitted with the approval application for the first class. Once approved, the provider may offer as many classes as he/she wishes within a two-year period.

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

From 2010/11 to 2013/14 the Board completed 4,456 CE audits. Information was not provided by the Board on audits completed from 2014/2015 to 2015/16, but on average it appears that the Board audits at least 1,500 licensees per year, representing about 2.5 percent of all license renewals. The Board 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 Board 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

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 Board'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 Board 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 Board 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 Board's average cycle time for 2011/12 was 1,018.

The number of complaints the Board receives is decreasing. In 2014/15 the Board received 561 complaints, including 4,855 arrest/conviction reports, for a total of 5,416 complaints received. In 2015/16 though, the Board 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 Board have been on the rise, with 209 in 2015/2016; there were only 87 in 2014/15. The Board 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 Board'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.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Legislature through sunset review in 2014-2015. During the previous sunset review, 11 issues were raised. In December 2016, the Board submitted its sunset report to the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, the Board described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. For those which were not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under "Current Sunset Review Issues."

1. **The Committees were concerned that the Board was not utilizing its standing committee structure due, as it indicated, to past budgetary considerations. Issues requiring Board action were being brought before the full board at a scheduled Board meeting. This was in spite of the fact that the Board 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.**

Board Response: *The Board indicates that since the last Sunset Review, the Board now has 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 Board’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 Board update the Committees about its preparation for implementing this new system and the total amount of anticipated expenditures for the BreEZe system.**

Board Response: *The Board indicates that in January 2016 it transitioned to the DCA’s new BreEZe licensing and enforcement database. According to the Board, 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 Board was also able to utilize the Quality Business Interactive Reporting Tool system which allows the Board to run various reporting statistics. Previously, reports were limited and sometimes reliant on Board 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 Board 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 Board. (Pro rata charges are assessed to all boards for services that are provided by the DCA.) The Committees asked if the Board understood the calculation of the DCA for pro rata to be paid by the Board, 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 Board**

Board Response: *The Board gave a breakdown of actual services being provided to the Board 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 Board.*

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 Board whether it should consider if the LVN and PT funds should be merged. The Committees also indicated to the Board 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.

Board Response: *The Board initially indicated that the DCA Budget Office recommended that the Board 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 Board'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 Board indicated that, in accordance with AB 179, it engaged a private accounting firm to prepare a detailed cost analysis of their fees. The outcome of this fee study is further discussed under Issue #8 below.*

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

Board Response: *According to the Board, 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 Board that FY 2014/15 expenditure projections showed that the Board would over expend its VN Program appropriation (budget authority). To avoid a budget shortfall, the Board 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 Board 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.*

- 6. The Committees were concerned that the Board had decided to place a two year moratorium on the approval of all VN and PT programs seeking Board 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 Board 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 Board 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 Board and BPPE. The Committees recommended that the Board advise the Committees on its plan to address the backlog of school applications and directed the Board to lift the moratorium and take immediate steps to draft an MOU with the BPPE regarding the joint approval process.**

Board Response: *The Board 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 Board 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 Board extended the moratorium through February 2016. The moratorium ended on February 28, 2016. As stated by the Board, from 2014 through 2016, the Board approved the commencement of ten new VN programs.

- 7. The Committees were made aware of the fact that the Board's lack of adequate staff was hindering the Board'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 Board 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 Board 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 Board 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 Board's plan was to fill all existing vacancies in order to address the vital functions that the Board is mandated to carry out.**

Board Response: *The Board 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 Board has indicated that it was able to fill vacancies for the NEC position necessary for the approval of VN and PT programs. The Board was able to decrease overtime usage by as much as 89.6 percent since 2015. The Board indicated that it has also been able to fill and reclassify some other necessary positions in the areas of licensing and enforcement.*

- 8. The Committees were unclear as to why the Board 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 Board 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 Board 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 Board hearing of the Board was the possible "shelving" of Board enforcement cases by staff. The Board was asked to respond to the allegation that the Board shelved cases.

Board Response: *The Board indicated that the recommendations of its Enforcement Task Force were adopted and that it was moving forward with implementing those recommendations. The Board 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 Board indicated that it submitted its first subpoena for review to DCA Legal Counsel on April 1, 2015. In July 2015, the Board obtained delegated*

subpoena authority to expedite the process of obtaining medical and employee records for use in investigating alleged violations of law. The Board staff was also provided multiple training sessions to ensure correct and proper issuance of subpoenas. The Board 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 Board staff was “shelving” cases, the Board strongly denied the allegation. The Board indicated that it engages all staff to assist with processing of cases. The Board’s sheer volume of cases assigned to each investigator/analyst, and the fact that the Board does not control the inertia occurring while its cases move through the system, prevents the Board 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 Board does and its commitment to protect the consumer.

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

Board Response: *The Board 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 Board manually calculated the statistics. The Board relied on the automated report that became part of the Sunset Report. The Board provided the corrections to their Report.*

- 10. The Committees raised serious concerns about the Board’s operations and overall management and indicated that both Committees may wish to further investigate the activities of the Board 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 Board for one or two years.**

Board Response: *The Board initially indicated that in December 2014 the DCA Internal Audit Office began an Internal Operational Audit of the Board to analyze certain aspects of the Board’s operations and responsibilities. Initially, the audit period was FY 2013/14 but was expanded. The Board 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 Board members at every Board meeting and that the Board responds to all requests and surveys of every state agency that requests information.*

- 11. The Committees recommended that VN and PT professions should continue to be regulated by the Board 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 Board should undergo an audit, investigation by the DOI and be reviewed and evaluated by an enforcement monitor.**

Board Response: *The Board 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 AN INVESTIGATION OF THE BOARD

The Committees had received evidence that enforcement cases were being mishandled by the Board and in March 2015, immediately requested that the DCA's DOI initiate an investigation into any improper or inappropriate activities by Board 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.

Pursuant to AB 179, the Legislature also requested the DCA's Internal Audit Office to review the Board'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 Board'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 Board'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 Board'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 Board 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 Board was to be provided with the opportunity to reply to any facts, findings, issues, conclusions or recommendations included in the reports with which the Board may disagree.

Some of the more important results, findings, conclusions and recommendations of the DOI, DCA and the Monitor are provided below. Also included are some of the responses which were made by the Board in regards to the audits and reports presented to the Board by the DCA and the Monitor.

DCA's DOI Investigation of the Board in April 2015 – Results of Investigation

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 Board Executive Officer, the Assistant to the Executive Officer and the Chief of Enforcement resigned.

The following include investigation findings and subsequent changes and recommendations made by DOI:

Discipline Process Inconsistent and Misguided. It was found that serious cases, including criminal violations which should have warranted formal discipline were being closed with warning letters, while minor violations were being sent to the AG for formal discipline. There appeared to be no guidelines followed for discipline and processing of the case was decided on a person by person basis, therefore cases were being referred on an inconsistent basis. On a serious case, and one that might involve substance abuse, some would get a Notice of Warning (NOW) but another would have their case referred to the AG. Negotiations and consideration of mitigating evidence was virtually non-existent for cite and fine cases. Some cases would get referred onto the AG and even OAH to assure collection of fines, which was costly to the Board.

There was also a lack of knowledge on what should be considered a "high priority" case as designated by CPEI and which should have been referred to DOI. Arrest reports which did not result in a conviction were in most instances ignored. There were numerous complex and criminal cases (some involving sexual misconduct, fraud and substance abuse) that seemed to be left untouched for months and years by the special investigators while simpler cases moved forward. Licensing and enforcement files were being co-mingled and file maintenance was completely disorganized. Even when staff attempted to address concerns regarding moving serious cases forward, upper management was apathetic to their concerns and staff was even met with hostility. At times, it appeared staff would not pursue discipline or citations as a means of avoiding any interaction and/or conflict with management. The investigation also found that there was not a good working relationship between the complaint unit and the special investigations unit, as some believed the special investigations unit is unnecessary and those working in this unit should be transferred to the complaint unit.

Inconsistencies Within the Special Investigations Unit. The investigation also found that decisions were made by the special investigation unit to use NOWs, when the case actually may have needed further investigation to justify that decision. In some instances, staff would not produce a report or close the case but rather move on to a new case, leaving many cases open but not investigated. There were cases that had been close to being closed for several years, but were never completed. There were cases sent for discipline that contained records that had not been obtained in a lawful manner and in turn could not be used by the AG. There were basically two separate teams in the investigations unit and they were held to different standards and provided different information which created confusion as to how cases should be handled. There were also numerous rewrites of reports which wasted time and created confusion for investigators as to what standard they were being held to. Investigators made judgment calls about whether witness statements met the standard of "clear and convincing evidence" or whether witness statements were sufficient in determining the direction of the

case (NOW vs. referral to the Discipline Unit). This was done without further investigation or at least determining the trustworthiness of the information received. Also, the supervision of these cases was not consistent in determining which cases should be referred to discipline or approved for closure. Case reviews did not occur to keep cases moving and provide training to investigators. Cases that should have been closed that were non-jurisdictional were assigned and then sat, waiting to be worked on, rather than reviewed and closed by supervisors. These cases then sat open for years because investigators deemed that they were low priority and they were never reviewed by supervisors again. Supervisors never worked a caseload and it did not appear that supervisors tracked or organized cases in any way.

The Board of Registered Nursing (BRN) actually reached out to the Board to increase open communication, to get staff to work together and to co-train investigators but the Board management was not interested in receiving assistance. Basically, no standardized training was being provided to investigators. Without appropriate training and supervision of investigators, report writing and investigation skills, especially in the area of obtaining important supporting documents, were lacking as well. It was clear that investigators did not have an understanding of their role and responsibilities. Investigators were not provided with an opportunity to have direct communication with the Deputy Attorney General (DAG) handling the case for possible prosecution and investigators were receiving DOI reports which may or may not have recommended prosecution and making their own recommendations for discipline. Experts who were responsible to review cases as directed were not utilized properly and in most instances cases were not sent to an expert until it was requested by the DAG, which slowed down the disciplinary process. Investigators were also sending cases directly to the AG rather than to DOI for investigation, which led to cases having insufficient evidence to take further disciplinary action.

Changes Implemented. The following were some of the more important changes initiated by the DCA/DOI/Board based on this investigation. The Board:

- Redefined case-types would be worked by the Board's Enforcement Analysts and those by Special Investigators and which would be referred to DOI based on the CPEI Case Acceptance Guidelines.
- Created an "Intake Unit" to screen cases and refer them to an appropriate assignment or close them as non-jurisdictional.
- Introduced a new enforcement case filing system and transferred all open enforcement cases into this new filing system.
- Reduced Special Investigator case-loads.
- Introduced new standardized forms and letters.
- Updated the Special Investigator report format to be consistent with other boards.
- Transferred the duty of reviewing DOI reports from the field investigators to the Complaint Unit.
- Between May 2015 and August 2015 referred 248 cases to DOI.
- Identified cases that were erroneously opened as enforcement cases and were actually deficient license applications.
- DCA's legal division provided training on Subpoena Authority Delegation.

Recommended Changes: The following were some of the other recommended changes suggested by DCA/DOI. The Board should:

- Review of staff duty statements to ensure appropriate classifications are used and employees are performing appropriate duties.
- Review and revision of “desk manuals” and internal policies and procedures.
- Review of disciplinary guidelines and staff training on the disciplinary guidelines and disciplinary process to reduce confusion and disparity between cases handled by Enforcement Analysts and Special Investigators.
- Provide additional DCA training for all enforcement staff, in particular the Special Investigators.
- Monitor caseloads to ensure that the oldest cases are being worked.
- Audit licensees that have failed to come into compliance with fingerprinting and issue appropriate discipline.
- Conduct a long-term workload study to determine which units/programs of the Board are under or over staffed and are being utilized appropriately pursuant to their classification and to determine if additional staff is necessary and submit a BCP as needed.
- Provide team building between analysts and special investigators.

DCA’s Internal Operational Audit – Findings, Recommendations and Board’s Responses

On September 30, 2016, the DCA submitted their internal audit report to the Legislature, as required by AB 179, regarding the Board’s financial needs, fee structure, budget and expenditures, including the estimated costs of meeting staffing and other requirements. The DCA indicated that the report provided information regarding the Board’s fund condition, budget projections, up-to-date audit information, and efforts to improve program efficiencies. The audit test period was July 1, 2013, through June 30, 2014 and the last day of field work was December 16, 2015.

The DCA included responses it received from the Board in March of 2016 as part of the audit report and the Board indicated that they concurred with the audit findings and was taking corrective actions to improve its operations. The DCA indicated that it would follow-up with reviews after 180-days and 360-days from the date of the final report to evaluate the Board’s progress in implementing the audit recommendations. The DCA Internal Audit Office completed a 180-day follow-up of their operational audit of the Board and evaluated the status of the Board’s corrective actions on December 16, 2016. The DCA concluded that the Board had made some progress implementing its corrective actions, but was unable to fully implement all of them.

The following are some of the more important findings and recommendations included within DCA’s internal audit report and both the status and progress of the Board in responding to the recommendations of the DCA: **[The Committees only recently received the DCA’s 180-day follow-up operational audit of the Board thus were unable to include the status of the corrective actions taken by the Board pursuant to the audit. As the DCA indicated, some progress had been made on implementing certain corrective actions.]**

1. Strategic Plan Incomplete

Finding: The Strategic Plan is missing key components (i.e. vision, action plan, performance measurements, monitoring and tracking).

Recommendation: The Board should use the Department of Finance Strategic Planning Guidelines to ensure that all components are specified in the strategic plan.

Board Response: (Partially Complete) In August of 2016, the Board met to craft the mission, vision and values statement for the Board and to develop key strategic initiatives for each division within the Board along with measurable outcomes, however, the Board staff is still currently completing metrics to accompany each initiative developed.

2. Policies and Procedures Outdated

Finding: Policies, procedures, and desk procedures are outdated and do not reflect accurate information.

Recommendation: Create and/or update desk procedures, flow charts, policies and procedures.

Board Response: (Partially Complete) Due to unexpected loss of the only manger in Licensing, the procedure project was delayed. The Board anticipates it will complete the policies for this division by December 2016.

3. Unfilled Vacancies

Finding: During the audit period, July 1, 2013 through June 30, 2014, the Board had multiple vacancies that had gone unfilled for more than six months. Additionally, positions were redirected and transferred in order to circumvent the abolishment of the positions. This condition results in inaccurate vacancy reporting that can misrepresent the staffing needs of the Board. Lengthy vacancies can impact the effectiveness and efficiency of work completed by the Board and create an increased workload for the remaining employees.

Recommendation: Fill vacant positions within six months. Additionally, avoid circumventing the abolishment of positions by following the requirements of the Government Code to reestablish any lost positions.

Board Response: (Complete) The Board stated that it has aggressively recruited, filled and backfilled all vacancies. To date, only one vacancy is greater than six months – the Assistant Executive Officer position. Since March 4, 2016, the Board has proactively worked with DCA, HR, CalHR and others to reclassify this position.

4. Inaccurate Duty Statements

Finding: Duty statements for employees were not always accurate and properly completed. The lack of current duty statement increases the likelihood that staff are unaware of the tasks, functions, and responsibilities of the position to which the employee is assigned and additionally it is difficult for management to evaluate an employee's performance and training needs. Furthermore, it challenges management's ability to identify employees working in out-of-class situations.

Recommendation: Update duty statements according to the DCAs procedure memorandum and ensure that all employees have received, read, understand and have signed a copy of their current duty statement.

Board Response: (Partially Complete) The Board indicated that all divisions (Education, Enforcement, Administrative and Licensing) will have updated duty statements by December 23, 2016.

5. Excessive Overtime Usage

Finding: The DCA audit identified excessive overtime usage of 6637 hours used during a ten month period from July 2014 to April 2015. The enforcement and licensing units used 91% of the overtime during this period. Additionally, employees were working overtime without prior written approval from a supervisor and/or manager.

Recommendation: Overtime should be kept to a minimum and not used as a regularly scheduled feature of the job. Additionally, create overtime policies and procedures for management and staff to follow and ensure that all overtime usage has prior written approval signed off by a supervisor and/or manager and kept for future reference.

Board Response: (Complete) The Board has developed policies that require all paid and compensatory overtime to be approved by the Executive Officer in writing. To date, the Board has successfully reduced overtime utilization by 78.6%.

6. Inadequate Staff Training

Finding: Employees are not receiving an adequate amount of training to effectively and efficiently do their jobs. Fifty-six percent of the employees surveyed do not believe they have the tools and resources needed to do their jobs. Additionally, employees believe that the Board offers limited training to both new and existing employees. Lastly, the employees receive limited and/or no cross-training when asked to work areas outside of their job descriptions.

Recommendation: Follow the DCA's policy for training and development by providing an efficient amount of training to all employees. Ensure that when employee's job descriptions are updated and/or changed that they receive the proper training that enables them to achieve their minimum job standards.

Board Response: (Partially Complete) The Board has engaged in several activities to promote and increase training opportunities for staff including several training programs provided by DCA and CalHR.

7. Uncollected Funding

Finding: There are multiple deficiencies regarding dishonored checks (i.e., amount of uncollected dishonored checks, inadequate process for collections procedure and fee assessment, etc.). As of August 31, 2015 there was \$88,957 outstanding from dishonored checks. The Board does not monitor the ongoing collection process and status of dishonored checks on a monthly basis. Second and third collection letters are not being sent by employees. There are not written guidelines for processing and collecting dishonored checks. The Board has inconsistencies regarding when late fees are assessed. This all results in lost revenue for the Board.

Recommendation: Establish written policies and guidelines regarding dishonored checks and train employees. Ensure that all collection letters are sent in accordance with the State Administration Manual. Wait for a check to clear before processing any request for verification of licensing for other states.

Board Response: (Not Complete) Procedures and training regarding the processing of dishonored checks was completed on March 2016 and overseen by Central Cashiering

of DCA. Each cashier has a manual at their desk. The Board is reviewing staff submissions of dishonored checks to increase submission rates and expects anticipated improvement by FY 2016/17.

8. *Delays in the Initial and Continued Licensure of VNs and PTs*

Finding: The Board does not process initial licenses for VNs and PT applicants within the maximum period of time allotted and the reporting time for renewals is inaccurate due to unviewed CE documents.

Recommendation: Process licenses within the allotted timeframes and review all CE documents submitted by licensees prior to approving a license renewal.

Board Response: (Partially Complete) Effective June 1, 2016, the Board completed a reorganization and reassignment of staff in the Licensure Division. Additionally, the Board is completing a thorough analysis and revision of all policies and procedures relative to the initial and continued VN and PT licensure.

9. *Deficiencies in CE Oversight*

Finding: There are multiple deficiencies regarding CE (i.e. reviewing of documents, filing, submitting documents for online renewal, policies, procedures and processes, etc.). This jeopardizes the Board's ability to adequately protect consumers from unprofessional and unsafe VNs and PTs. Additionally, it increases the Board's liability for approving and licensing an unqualified licensee.

Recommendation: Ensure that all CE submitted during the renewal process is reviewed and meets all the requirements when determining the renewal approval of a licensee. Create, maintain and monitor tracking document(s) used for CE auditing. File all renewal documents in the appropriate licensee file folder. Lastly, ensure that enforcement and licensing work together to establish uniform policies and procedures for auditing and enforcing fines and citations related to CE.

Board Response: (Not Complete) The Board completes an audit of VN and PT license renewals monthly for compliance with regulatory requirements. The 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. The Board has realigned the CE program within the Education Division. The Board has also initiated work orders to incorporate and automate CE audits within BreEZe to improve reporting and auditing.

10. *Delays in Processing Complaints*

Finding: Complaints filed against licensees are not always processed within one year (12 months). There is no system for prioritizing complaint cases. During the testing period the Board has a total of 1057 complaints that had aged over 12 months. Additionally, the Board does not have an effective system for prioritizing complaint cases. Lastly, there are long delays in posting disciplinary actions on the Board's website.

Recommendation: Ensure that the complaint process is reviewed and reevaluated on a regular basis to allow for effective and efficient processing. Additionally, process all complaints within one year. Lastly, ensure that complaint results are promptly displayed on the website.

Board Response: (Complete) The use of the CPEI case referral acceptance matrix was implemented in May 2015. Implementation required an analysis of the Board's case intake process and resulted in significant changes to the process. In October 2015, the Board filled a new position, an Intake Analyst. The position was created to help streamline the process at intake to include an initial review of the public complaints to determine the appropriate case assignment. The prioritization of each case is determined on a case-by-case basis; depending on the facts, a different level of priority may be warranted. The length of the investigation is dependent upon the complexity of the case. Management monitors the cases on at least monthly basis to ensure the cases are moving through the process effectively and efficiently. In addition, the Board has implemented procedures which specify timeframes for completion of desk investigation activities.

Administrative and Enforcement Monitor's Reports -- Findings, Recommendations and Board Responses

As indicated previously, in response to a number of issues raised by the Committees, combined with the problems, concerns and events identified regarding this Board, AB 179 required the Director of DCA to appoint a Monitor for the Board, primarily to evaluate the Board's enforcement program and to provide recommendations on ways to improve its effectiveness and efficiency. AB 179 required the Monitor appointment to be accomplished through a personal services contract no later than March 1, 2016 and continue for a period of two years from the date of appointment, with the Monitor providing four reports. On February 29, 2016, a contract to provide those services was issued and the work on the project commenced almost immediately. On June 10, 2016 an initial report (due on July 1) was submitted to the DCA and to the Legislature by the Monitor. On October 12, 2016, a Second Report (due November 1) was submitted, and on January 30, 2017, a Third Report (due February 1) was submitted to the DCA and the Legislature by the Monitor. A final report on the Board is due before January 1, 2018.

Initial Report

The Monitor completed his Initial Report on June 10, 2016 which provided a summary of the Monitor's diagnostic review and initial assessment of the Board's enforcement program, while also specifying administrative issues delineated by AB 179. The initial report summarized a broad range of general background and quantitative information concerning the Board's enforcement program evolution over the past 5 to 6 years, including:

- The major organizational and business processes changes made by the Board's previous management team to the enforcement program during 2011/12 and 2012/13.
- The significant adverse impacts these changes had on the enforcement program, complaint investigations and program performance.
- The changes implemented by the Board's successor management team to reverse these changes and begin restoring effective and efficient complaint intake, screening, investigation and discipline processes.
- The beneficial impacts realized from implementing these changes.

The report also identified a set of 10 key issues that would be further assessed during subsequent phases of the project.

In summary, the Monitor found that the Board's complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented during 2011/12 and 2012/13, including the establishment of a new Investigation Section within its Enforcement Division. Less than two years later, during the Board's Sunset Review, reports surfaced about the resulting organizational and operational problems and the scope and magnitude of these problems soon became evident to the Legislature and the DCA. There were significant backlogs and workloads in cases being handled, not pursuing or mishandling of complaints, a lack of utilizing DOI when appropriate, significant increases in timeframes for the handling of cases, inconsistencies in the workload and performance data reported, failure by past management to address severe workforce morale problems, high vacancy rates, to mention a few. However, as pointed out by the Monitor, at least in this Initial Report, "corrective measures taken from 2015 to 2016 appear to have contained those problems and set into place a foundation for building a sustainable, effective and efficient enforcement program that supports fulfillment of the Board's consumer protection mission."

On June 29, 2016, the Board responded to the Monitor's Report by expressing its gratitude to the Monitor for his dedication and collaboration during Phase One of the process. The Board indicated that they were acutely aware of the historical issues plaguing the Board and impacting its mandate of consumer protection. The Board highlighted several steps that have been taken since August of 2013:

- Creation of an Enforcement Taskforce to review excessive enforcement delays and erroneous date reporting in August of 2014.
- Adoption of Taskforce recommendations.
- Appointments of most Board members.
- Hiring of new Enforcement Chief in July 2015.
- Adoption of new case referral criteria.
- Installation of new Executive Officer in March of 2016.
- Board restructuring and the Assistant Executive Officer reclassification as a Branch Chief.
- Request to extend the Monitor's review to the Board's Licensing Division.
- Budget request to digitally scan files.
- Request for additional five staff members for the Education Division of the Board.

Second Report

The Second Report was completed by the Monitor on October 12, 2016, and it provided a brief overview of events leading up to the appointment of the Monitor, the scope and focus of the Monitor's assignment, the current status of the Board's Enforcement Program and recommendations for further improving the Board's Enforcement Program.

As explained by the Monitor, pursuant to a request by the Committees, the Director of DCA directed its DOI to further review and investigate the activities of the Board to determine the need for immediate intervention. The DCA also initiated an investigation of the Board's statistical reporting. Concurrently, from March 31 to May 29, 2015, five Board executives, managers and supervisors separated from the Board, including the Executive Officer (EO), Assistant Executive Officer (AEO), Chief of Enforcement (COE), the Complaint Section Supervisor and an Investigation Section Supervisor.

Following the separations of the EO, AEO and COE, the Deputy Director of DCA assigned a small team of DOI investigators and analysts to provide assistance to the Board in managing the Enforcement Program and as a means of beginning a review of the Board's pending investigations to identify cases for immediate reassignment to the DOI. At that time there were only about a dozen Board cases assigned to the DOI. Over a two-month period, from early-May to late-June 2015, the DOI team identified and transferred about 100 of the Investigation Section's pending cases, including more than 30 cases that had been assigned to the Section for more than two years. Concurrently, the DCA provided an Acting EO for the Board as well as a new COE, and new supervisors for the Complaint and Investigation Sections were hired.

The Monitor identified a number of corrective measures that took place following these changes from 2015 to 2016 in order to deal with the problems that arose during the preceding four years and in an effort to "set into place a foundation for building a sustainable, effective and efficient Enforcement Program." These improvements included:

- Restructuring of the License Applicant Arrest/Conviction Report Process to reduce the overall number of cases being handled by the Enforcement Division.
- Restructuring of the Enforcement Division's Case Intake and Screening Process to enable prompt identification of cases involving serious criminal misconduct or significant patient harm to DCA's DOI.
- Completion of more than 2,100 licensee arrest/conviction report investigations and more than 1,000 licensee complaint investigations during 2015/16, and significant reductions in the average elapsed times to complete both license applicant and licensee arrest/conviction report investigations.
- Significant reductions in the number of pending license applicant arrest/conviction report investigations, the number of pending licensee arrest/conviction report investigations, and the number of pending licensee complaint investigations and the time frame for completing these investigations.
- Increases in the number of cases referred to the AG's Office for disciplinary action.
- Increases in the number of disciplinary cases completed, along with reductions in the elapsed time to file related pleadings and complete disciplinary actions.
- Significant reduction in the number of ending disciplinary cases and in the time frame for pending disciplinary cases.

The Monitor indicated, however, that notwithstanding all of the above improvements, there were still large backlogs of aged cases in several key areas (i.e., non-sworn investigations, sworn investigations and discipline) and continuing problems with the completeness, consistency and quality of the Board's workload, backlog and performance data. Additionally, the amount of calendar time needed to complete investigations and impose discipline was still too long. Of particular concern, there was very little change in the number of non-sworn investigations. There also appeared to be a high level of non-compliance with the CE requirements and only about 2 percent of those renewing licenses per year were actually audited. Finally, during 2015/16 the population of Board licensees on probation increased significantly, thus impacting the probation monitoring necessary to provide proper oversight of this population and to take subsequent disciplinary action when necessary.

The Monitor further pointed out that the Board's current case backlogs, as well as the extended timeframes still needed to complete investigations and impose discipline, provide context to

understanding the scope and magnitude of the problems inherited by the Board's current management team. He stated, "Additional changes and further improvements to the Enforcement Division organizational structure, workforce allocations, and business processes are still needed to help address these and other emerging workloads and business process deficiencies and improvement needs."

The Monitor made 29 recommendations to address current deficiencies and to help further improve the Enforcement Program performance. The following are some of the more important issues and recommendations addressed by the Monitor and both the Board's status and progress in responding to these recommendations: (The Board provided its responses to the Second Report in its Sunset Review Report provided to the Committees on December 15, 2016.)

1. License Applicant Arrest/Conviction Report Process

Issues: Additional improvements are necessary to (1) reduce the frequency that licensee applicants misreport or over-report convictions and (2) further reduce the number of cases that are unnecessarily referred for desk investigation.

Recommendations: Change the current Record of Convictions form to make more readable and understandable by license applicants and reduce the frequency of misreporting and enable case intake staff to exercise judgement in determining whether to request records from law enforcement agencies and the courts for license applicant cases.

Board Response: The Board has not changed the Record of Convictions form and indicated that the current intake process enables staff to exercise judgment and is sufficient.

2. Continuing Education Compliance Enforcement Process

Issues: Needed realignment of staffing resources to enable resumption of CE compliance audits and to high levels of non-compliance with the Board's CE requirements.

Recommendations: Restructure and expand the CE Compliance Audit Program as specified and send an audit letter to a sample of at least 5 percent of renewing licensees and assess the feasibility of receiving documents electronically.

Board Response: The Board indicated that they believed the recommendation to increase CE audits was premature since it failed to take into consideration the impact on the Licensing Division and staffing resources and only focused on the Enforcement Program. [It should be noted that the Board decided in December 2016 to proceed with a CE Audit of 58,000 of its licensees, almost 50 percent of its current licensees, with no consideration of the impact that this would have on staffing resources. This is further discussed in the Current Sunset Review Issues regarding this Board.] The Board believed that the recommendation to receive documents electronically was redundant and was already being implemented.

3. Licensee Arrest/Conviction Report Process

Issues: Licensee Arrest/Conviction Report cases account for more than on-half of all investigations and disciplinary actions and a large portion of these cases default after filing an accusation with the AG. Improvements are needed to (1) reduce the level of licensee misreporting and over-reporting of prior convictions, (2) reduce the extended timeframes needed to prosecute these "paper-based" cases and (3) enable the Board to delegate authority to the EO to approve default decisions.

Recommendations: Change the current Record of Convictions form to make more readable and understandable by licensees and develop on-line programming for renewals to prevent further processing of the renewal application until Board receives all necessary information

regarding a conviction. Work collaboratively with the AG to identify ways to better utilize the *Fast Track Pilot Program* and obtain authority for the EO to approve default decisions.

Board Response: The Board indicated that the recommendation to change the Record of Convictions form was outside the scope of the Enforcement Division and any changes to the form should be deferred to an assessment of the Licensing Division. The recommendation regarding participation in the AG's Fast Track Pilot Project is redundant since the Board is participating in the program and is regularly collaborating with the AG's Office regarding ways to improve case processing and reducing processing times. Allowing the EO to approve default decision is something the Board is still reviewing.

4. Licensee Complaint Intake, Screening and Investigative Process

Issues: Significant improvements to the Board's licensee complaint intake, screening and investigation processes are needed to reduce the number of cases referred to for investigation and (2) differentiate cases where a field investigation is needed from cases which can be investigated by analyst-level staff from their office utilizing desk investigation processes. Also, further improvements are needed to the Board's case coding practices to improve the completeness, quality and consistency of the Board's statistical reporting. There are anticipated workload demands and increases in probation cases to be monitored by the Board for future years

Recommendations: Develop and implement business processes 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 and continue to refine licensee complaint case coding procedures and practices and provide training to staff further improve their handling of complaint records and the tracking and reporting of Enforcement Program workload, etc.

Board Response: The Board indicated that it would be unable to implement most of these recommendations due to current workloads and backlogs and lack of staffing resources, but does support improving its case coding since converting to BreEZe. New procedures for case coding have been developed and implemented and staff training was completed.

5. Enforcement Program Organization and Staffing

Issues: In recent years there have been significant changes to the Complaint Intake and Desk Investigation Section's scope of responsibility and a restructuring of the license applicant arrest/conviction report process. Also more cases are now being referred to DOI thus reducing the backlogs and new case assignments for the Investigation Section. There is also a need to expand the CE program to ensure licensee compliance with CE requirements. Because of these changes and additional Enforcement Program needs, certain staffing positions may need to be redirected or reclassified. The Board's Chief of Enforcement has been the primary point person for planning, coordinating and managing the improved relationships with the DOI and the AG; this should continue. The Board's case intake, screening, investigation and workforce development and training processes are still under-developed resulting in high levels of inconsistency and variability in the completion of specific enforcement functions and activities and the resulting process outputs or work products. While the magnitude of some of these problems has possibly diminished during the past year, significant additional improvement is needed.

Recommendations: Establish separate business units that specialize in completing Desk Investigations and Field Investigations Case Review for licensee complaint cases and a new Probation Section with staff dedicated to this new Section rather than utilizing temporary help.

Redirect staffing from the Complaint Intake and Desk Investigation Section to address other Enforcement Program needs. Redirect and consolidate available resources to support expansion of the CE Audit Program. To further improve the Board's workforce development and processes conduct individual case reviews on a semi-monthly basis with each investigator, continue to provide Enforcement Division staff with formal classroom type training, utilize the DOI to support initial training of newer investigators, utilize AG liaison services for technical assistance and training for investigators, and complete Annual Performance Reviews and Individual Development Plans during 2016/17 for all Enforcement Division managers and staff.

Board Response: The Board indicated that it may support some of the recommendations but would be unable to implement most due to current workloads and backlogs and lack of staffing resources, and in some instances did not support a particular recommendation. They also indicated that for some recommendations they were redundant, since the Board believed it was already complying with the recommendation. As to the Probation Program workload recommendation, the Board stated they had assigned a full time person to this position rather than just using temporary help

6. Enforcement Program Workload, Backlog and Performance Reporting

Issues: The Board's Enforcement Program Workload, Workforce and Performance Management processes are under-developed, including the processes used to collect, compile and report Enforcement Program-related management information to the Board, the DCA, control agencies and the Legislature and to assist the recipients in understanding the information that is provided. The information provided and representations made have generally been significantly overstated, misrepresented and incorrect, and in some instances some of the data provided is meaningless.

Recommendation: To help improve communications between the Executive Officer, staff, the Board, the DCA and the Legislature, update the Enforcement Program Workload and Performance Executive Summary Report on a quarterly basis within 30 days following the completion of each quarter and provide the report to the Board's Enforcement Committee and, through the Enforcement Committee, to the Board members. Also post the quarterly reports on the Board's website. On an annual basis, also develop goals for each of the key workload and performance measures listed on the Executive Summary of the Enforcement Program Workload and Performance Report and include the goals in all quarterly reports.

Board Response: The Board does not support updating or utilizing an Enforcement Program Workload and Performance Executive Summary Report and producing on a quarterly basis. Current reports to manage workload, assess performance and identify case aging are sufficient. Reports recommended would require significant staffing resources and those resources should be utilized to work enforcement cases. Developing goals is addressed in the new strategic plan of the Board and listing these performance measures would be an undue burden for the aforementioned reasons.

7. Board Member Training and Support

Issues: Both through a Survey of Board members conducted by the Monitor and through observations of the Monitor, recommendations were made to bolster the training provided to the members of the Board and address long-standing systematic deficiencies with the Board's oversight of its Enforcement Program and with obtaining important information from staff to fulfill their duties and responsibilities.

Recommendations: Provide to all new Board members substantive New Board Member Orientations and related training and updated reference materials specific to the Board's

Enforcement Program and other programs and services provided by the Board and its staff that complements DCA's Board Member Training so they can better understand and fulfill their duties and responsibilities. Develop and adopt a written charter for the Enforcement Committee delineating the Committee's role and responsibilities, as specified, and consider developing for other Board committees, where appropriate. Provide quarterly briefings to Enforcement Committee members to provide information regarding case intake, investigation and discipline workloads, backlogs, and performance improvement initiatives underway and planned, and policy matters and other information as determined by the Committee

Board Response: The Board indicated that a new Board Member General Orientation manual is being revised and developed and that these recommendations are being implemented by the Board.

Third Report

The Third Report was completed by the Monitor on January 30, 2017 and summarizes the results of the Monitor's updated assessment of the Board's status. The report also summarizes results of additional assessments completed of the Board's vacant positions and hiring, staff training, and oversight and evaluation of staff performance. Finally, the report identifies several other issues, problems and concerns that surfaced or were brought to the attention of the Monitor by Board staff involving matters not within the scope of the Monitor's assignments. Since this Report raises current issues regarding this Board, the contents of this Report are reflected in the "Current Sunset Review Issues for the Board."

CURRENT SUNSET REVIEW ISSUES FOR THE BOARD

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

BOARD ADMINISTRATION

ISSUE #1: (ADEQUATE STAFFING, BOARD MANAGEMENT AND LEADERSHIP) *The Board is suffering from a high vacancy rate and loss of key personnel. It appears as if it may be related to the treatment of staff and Board mismanagement. The Board appears to be inattentive to, and not acting on or dealing with important issues that need to be addressed.*

Background:

Staffing Vacancies. During the DCA's audit of the Board from July 1, 2013 through June 30, 2014, the DCA found that the Board had multiple vacancies that had gone unfilled for more than six months. Additionally, positions were redirected and transferred in order to circumvent the abolishment of the positions. This condition resulted in inaccurate vacancy reporting that misrepresented the staffing needs of the Board. Additionally, lengthy vacancies could impact the effectiveness and efficiency of

work completed by the Board and creates an increased workload for the remaining employees.

The DCA recommended that the Board fill vacant positions within six months. Additionally, avoid circumventing the abolishment of positions by following the requirements of the Government Code to reestablish any lost positions. The Board stated that it has aggressively recruited, filled and backfilled all vacancies. To date, only one vacancy is greater than six months – the Assistant Executive Officer position and since March 4, 2016, the Board has proactively worked with DCA, HR, CalHR and others to reclassify this position.

This Board still has a large amount of vacancies and appears to have a high rate of staff turnover as well. A memo provided to the Board by the EO on January 27, 2017 showed a total of 16 vacant positions. With 67.9 authorized positions this is almost a 23 percent vacancy rate and it appears that other staff members are trying to find placements elsewhere.

As of January 27, 2017, the Board EO is on administrative leave. Both DCA's legal offices and the AG's Office requested a special Board Meeting at that time to discuss pending litigation and, the action Committee staff believes was taken by the Board was to place the EO on administrative leave. The Monitor has indicated that this Board is basically rudderless since it now appears as if the Board has lost at least six key executive staff positions and has not yet been able to fill other key positions under its Enforcement Division. The Acting Assistant EO (which has been an open position for nearly two years) was a Supervising NEC, and is now directly supervising the Education Division, Licensing and Support Services and also filling in for the Enforcement Chief and two enforcement supervisors – an impossible task. It also appears as if there have been questionable personnel activities and changes which included several "acting" assignments being made with personnel who had little experience in the areas assigned.

It is obvious that a lack of staff, coupled with trying to put employees into positions for which they are not qualified or classified to perform, is going to continue to hinder the Board's ability to carry out vital functions, such as:

- Processing licenses;
- Conducting timely enforcement;
- Conducting appropriate CE audits;
- Conducting school approvals; and
- Responding to consumers, among other duties.

Whistleblower Information – Treatment of Staff. The Committees have heard from both former and current staff who have indicated that serious problems exist between upper levels of management and line staff, who in some instance have served the Board for many years. These individuals have also provided information that upper management has been both disrespectful and abusive toward them, and at times, these staff have observed or been the recipient of intimidating behavior or harassing conduct. Staff also indicated they have received threats and feared for their safety or that of others. One person indicated that an assault and violent behavior was directed toward them. Another said that

“our careers are in jeopardy and our lives our being negatively impacted because of the stress that this is causing. It has become a health issue for many of us. This is not a safe working environment professionally, mentally, physically or emotionally. We already went through audits, investigations and a complete change in upper management a few years back. Just

when we thought we couldn't take it any longer, we find ourselves in this situation. We are about to crack.”

Obviously, current employees fear retaliation for coming forward, but have brought this information to the attention of the Committees regardless. These alleged actions and behavior of certain persons in upper management are currently being investigated by the AG. It is the understanding of Committee staff that numerous complaints have been lodged with the AG's Office and with union representatives.

The Board should note that it is required by law and by policies and procedures within departments and agencies that employees have a right to a safe, secure and violence-free work environment. Employees have the right to work in an atmosphere free from verbal, written, physical and psychological violence. Violent, threatening or intimidating behaviors which involve employees, and especially upper management and supervisors should not be tolerated. Employees should be protected as fully as possible from assaults, threats, intimidation, harassment and/or coercion and have the ability to take appropriate actions when such incidents occur. All employees should treat their co-workers responsibly and respectfully. Any person who exhibits violent, threatening or intimidating behavior, or retaliates against another employee for any reason, should be subject to prompt investigation and corrective action.

It is unknown whether the Board or the DCA HR was aware of these serious management problems, or whether either had received complaints from staff about their treatment from Board upper level management.

In early December of 2016, the Monitor conducted individual interviews with 18 Enforcement Division staff, representing about two-thirds of the Division's filled permanent and limited term positions. During these interviews, some staff indicated that teamwork within their unit was good and a few staff indicated that they were happy with their job. However, nearly all of the remaining staff expressed concerns about worsening communications, higher levels of conflict between upper management and line staff, or lower levels of staff morale within the Division. Several staff specifically commented that the overall work environment had become especially stressful and that staff morale was very poor. Several staff compared the current work environment and staff morale levels with those that existed during the periods prior to the Board's 2014/15 Sunset Review. During these interviews the Monitor learned that some staff in all three of the Division's sections were actively seeking jobs at other agencies. The comments received were markedly different from the sentiments expressed by staff during the individual and small group interviews conducted with all Enforcement Division staff during March 2016 as part of the Monitor's Initial Assessment of the Board's Enforcement Program. At that time workforce morale within the Enforcement Division appeared to be much better than was the case prior to 2015/16.

Strained Relationship with the Monitor. Board comments contained in its 2016 Sunset Review Report and in responses to the Monitors Report and recommendations appear to try and discredit the information provided by the Monitor and to filibuster changes that are needed. It appears as if the Monitor has been in a position of having to justify almost every single step in performing his duties and responsibilities pursuant to his contact with the DCA; the Board should have been more receptive to the suggested changes and recommendations of the Monitor.

Despite the parameters of the Monitor's contract as specified by AB 179, the Board and its EO have continued to opine that there should have been a greater focus on the Board's Administrative and

Licensing Division, which the Board believed warranted external review and the establishment of new workflow processes. The Board and EO seemed to be diverting the Monitor's attention away from the Enforcement Program, which was always intended to be the main focus of his and DCA's statutory responsibility, not other administrative functions that were unrelated to the Board's Enforcement Program and that were basically outside the purview of his contract. There was some discussion with the staff of the Assembly Committee on Business and Professions, the Board EO and the DCA about possible changes to the contract to include a review of the Administrative and Licensing Division, but it appears as there was no further action taken to change the parameters of the contract. The Monitor, however, has been put in a position by the Board to again justify to the Board the constraints placed on his contract; this should not have been necessary. Such discussions should have taken place between the Board and the DCA.

The Monitor was also criticized for not reaching out to Board members during his Initial Report to capture their historical perspective of Board issues. It is unclear why the Monitor should be in the position of obtaining information from individual Board members, when the information received during the Committees during the 2014/15 review of the Board was questionable, and at times falsely provided. Why would the Monitor trust the Board to give him a factual perspective or historical perspective when they had already given the Committees incorrect information in 2014/2015? For example, the EO complained that the Board members did not have an opportunity to highlight their Enforcement Taskforce Initiatives, but this information was provided as part of the Monitor's Initial Report. The Monitor's Initial Report was basically detailing with all the problems this Board has had with its enforcement program going back as far as 2011, and was laying the groundwork for recommended changes that were included in his Second Report, which had numerous recommendations in seven different areas of enforcement.

The EO was also concerned about the Monitor taking up valuable staff time pursuant to his data requests and time commitment and diverting staff away from their current workload to address his needs. The EO indicated that by September 2016 the staff were expressing morale shifting and overload related to the Monitor reporting.

In discussions with the Monitor and certain staff, there did not appear to be this problem with the Monitor's requests to staff. One line staff person responded that the Monitor "has been a welcome addition and a pleasure to work with. Many employees have contacted him outside of scheduled interviews to provide additional, updated information."

The EO also made issue with the Monitor over a confidential Board Survey which was conducted by the Monitor to obtain information about Board member training, dissemination of information to Board members, assistance to Board members in performing their duties, Board structure, size and composition, Board committees, Board meeting structure and effectiveness, reviews and approvals of disciplinary decisions, and communication of the EO with the Legislature. The EO complained to the Monitor that there was not enough focus on current changes and wanted to substitute this survey with one of her own in September, 2016 (as an Appendix A to his Second Report). The Monitor decided not to include the survey of the EO, as this was not something that was requested or approved of by the Monitor. The Monitor subsequently decided to include his survey because it could potentially serve as a distraction from the findings, conclusions, recommendations and other important information that was contained in the Second Report of the Monitor. At the request of the Board, however, the Monitor provided his survey as an Addendum to the Second Report.

Finally, the EO indicated that Board members felt after the Initial Report, it was not as neutral as hoped and after the Second Report, nearly all reported an overly negative tone to it. Committee staff reviewed all reports submitted by the Monitor and found that they appeared to be very factual and extremely relevant regarding the Monitor's review of the Board's Enforcement Program and other activities related to its Enforcement Program, with important recommendations for changes which the Board needed to make.

Monitor and Board Comments Regarding the Third Report. The Monitor stated that, as discussed in its Initial and Second Reports, the Board complaint intake, screening, investigation and discipline processes were thrown into disarray by the organizational and workflow changes that were implemented by the Board during 2011/12 and 2012/13. Subsequently, during the Board's 2014/15 Sunset Review, reports surfaced about the resulting organizational and operational problems and the scope and magnitude of these problems became apparent to the DCA and the Legislature. Corrective measures taken following the Board's March 2015 Sunset Review Hearing and during 2015/16 contained these problems and set into place a foundation for building a sustainable, effective and efficient Enforcement Program. However, as stated by the Monitor, during July to October 2016, this turnaround appears to be stalled. The Monitor gives a number of reasons and examples of why he believes that the Board's efforts to improve its Enforcement Program have now stalled impacting the workload, workflow, backlog and performance metrics of the Board.

The Board responded to the Monitor's Third Report by stating 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." They went on to outline their overarching concerns related to the Third Report. They were not in agreement with the Monitor that their turnaround had stalled and believed that the report minimized the significant progress achieved by the Board in resolution of identified problems.

It should be noted when the Board was questioned about why they believed that the information provided by the Monitor was "uncorroborated" they said the information was received by secondary source information (such as its 2016 Sunset Report) and that the Monitor failed to verify the accuracy of the reported information. As indicated by the Monitor, this is untrue and he was able to obtain primary source workload, workflow, backlog and performance data. Further, the information from the Sunset Report was provided directly from the Board itself. It should also be noted that the Monitor has always had to struggle with obtaining the appropriate, relevant and correct data from this Board, and receiving it on a timely basis when needed. It is unclear why there has been this resistance or delay in providing this necessary information and data. At one point, staff of the Committees have had to intercede to assure that the data and information was provided to the Monitor.

Staff Recommendation: *The Board should share its immediate plan to fill all existing vacancies in order to address the vital functions that the Board is mandated to carry out. The Board should respond to whether it was aware of any disrespectful, abusive behavior or harassing conduct toward staff of the Board and of complaints being filed by staff of the Board. The Board should advise the Committee how it intends to deal with important problems that have come to light regarding the treatment of staff and mismanagement of this Board and its important programs. The Board should respond to whether it believes it is currently capable of making immediate decisions to deal with the issues and problems identified in this Background Paper and by the Monitor and the DCA.*

ISSUE #2 : (UTILIZING COMMITTEES OF THE BOARD) *It does not appear as if the Board is utilizing the structure of its Committees to receive adequate information about the various programs for which it is responsible nor is there the ability to receive adequate staff input when serious management issues may arise ?*

Background: In the Board’s Sunset Review Report, it describes its various committees. The Board indicated that its committees are, “...an essential component of the full Board to address specific issues referred by the public or recommended by staff.” Committees are more flexible, can meet more often and can parse out details the full board may not have time to explore.

The Board had not been utilizing a committee structure up until its last review because, as it indicated, the potential costs of convening meetings of the Committees. During the prior review, the Legislature recommended that it come up with a plan to reinstate the use of Committees, as it stated above, “to address specific issues referred by the public or recommended by staff.” However, in observing the meetings of these Committees, and after hearing from certain members of the Board, it does not appear that there is adequate information being provided to members of these Committees, especially members of the Enforcement Committee, nor are members receiving input from the various staff responsible for these programs, resulting in Board members being unable to understand the proper functioning of these programs they oversee and make decisions regarding changes which may be necessary. While staffing updates relative to each program are provided to Board members during committee meetings, the Board members perform no independent interviews or investigations.

Further, the Board’s Executive Committee also appears underutilized. According to the Board’s administrative manual, the Executive Committee was “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.” However, given the staff issues noted above, the committee could be utilized to implement staff check-ins or a suggestion or complaint system that the Board periodically reviews. Rather than being used as a tool to discipline the Board members themselves, the committee can focus on investigating and resolving staff complaints, suggestions, and morale issues. Investigations and inquires need not always be thorough nor should they be overly burdensome—but, given the Board’s current situation, at least a cursory or preliminary investigation is warranted.

It should be acknowledged that Board members can be viewed as volunteers, taking time away from their personal and professional lives. Still, the Board is responsible for the consumer protection mandate it has agreed to undertake. Committees allow the Board to distribute the workload required to improve among its members. Rather than utilize a practice committee with the sole purpose of “review[ing] the current scope of practice and advocate[ing] for preserving existing scope of practice in the face of competing priorities,” which is antithetical to the Board’s consumer protection mandate, the Board should take that time to investigate its operational and administrative issues and develop solutions.

Staff Recommendation: *The Board members should explain whether they are receiving sufficient information regarding the operation of programs for which the Committee has oversight and if they have adequate access to staff responsible for these programs. The Board should also utilize its Executive Committee to address ongoing staff management issues and eliminate its Practice*

Committee. The Board should explore using teleconference and webcasting capabilities to reduce the expenses of holding committee meetings.

ISSUE #3 : (EXECUTIVE OFFICER REVIEW) *Should the Board be part of a multi-agency work group to assess the need for developing a “360 degree” Executive Officer feedback process as recommended by the Monitor to enable additional oversight of the Executive Officer position?*

Background: B&P Section 2847.1 states that the Board shall select an Executive Officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties. Due to the limited ability of the DCA boards to meet and oversee day-to-day operations or manage staff, all boards delegate most of this authority to their EO. As explained by the Monitor, it is evident that the members of the Board have been largely dependent on information provided by their EO for purposes of performing their oversight responsibilities, including responsibilities for overseeing the EO and evaluating the EO’s performance. Although such dependency is not unique to this Board, several Board members noted during the Monitor’s interviews that this dependency can result in the Board being unaware of performance or other problems that occurred during the period immediately preceding the Board’s 2014/15 Sunset Review.

Subsequently, during the Monitor’s presentations to the Board in October and November of 2016, some Board members suggested in their public comments that the recommendations in the Second Report might not sufficiently address improvement needs in this area, or that members had limited time available to gather and review supplemental information needed to enable better oversight by the Board.

The Monitor suggested that oversight of the Board’s EO and, by extension, the Board’s programs and operations, could potentially benefit from utilization of a 360 degree, multi-rater assessment process in which feedback regarding the EO’s performance is solicited from a variety of points of view, including 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 Board’s EO, and subordinate staff.

Such information could be utilized exclusively for developmental purposes or for a combination of developmental and performance assessment purposes. It was the Monitor’s understanding that one of Board’s current members previously suggested that the Board consider utilizing a 360 degree process as part of the Board’s annual EO review process, but that this suggestion was never further explored.

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 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.

The Board responded that they believed that the suggestion of a new type of EO review only offers opportunities for the EO to have undue influence by those reviewing them (DCA, etc.). The Board argued that this would offer opportunities for the EO position to be corrupted and undue influence levied by those responding to the 360. The Board however did support having all State agencies

adopting the 360 review process for all state employees including exempt employees and the Board would welcome the opportunity to participate in the statewide implementation of this overhaul. The Board also believed that with the compilation of individuals appointed from the Governor, Speaker and Assembly, the 360 review is, in essence, currently in practice.

This is nonsensical; the Board represents only a single perspective on the EO's performance. Given the history of this Board, governing members would do well to obtain the widest possible array of input on their management.

Staff Recommendation: *The Committees should consider whether the Board should participate in a multi-agency Work Group to assess the need for developing a "360 degree" Executive Officer feedback process to enable additional oversight of the Executive Officer position.*

ISSUE #4: (STRATEGIC PLAN) *The Board has yet to adopt an updated Strategic Plan which would include performance measurements (setting performance targets) for measuring results and ensuring accountability of the Board in pursuing enforcement actions.*

Background: The DCA audit indicated that the Board's Strategic Plan is missing key components (i.e. vision, action plan, performance measurements, monitoring and tracking) since it was last completed in 2015. The DCA recommended that the Board should use the Department of Finance Strategic Planning Guidelines to ensure that all components are specified in the strategic plan. The Board stated that they had completed a successful Strategic Planning retreat in August of 2016, and met to craft the mission, vision and values statement for the Board and to develop key strategic initiatives for each division within the Board along with measurable outcomes, however, the Board staff is still currently completing metrics to accompany each initiative developed.

Staff Recommendation: *The Board should indicate why there is still a delay in adopting its 2016 Strategic Plan and when it plans to fully adopt its Strategic Plan.*

ISSUE #5: (POLICIES AND PROCEDURES) *The DCA audit indicated that the policies, procedures and desk procedures of the Board were outdated and did not reflect accurate information.*

Background: The DCA recommended that the Board should create and/or update desk procedures, flowcharts, policies and procedures and additionally follow SAM 20050 internal control components as specified. The Board indicated that all policies, procedures and desk procedures would be updated by December 2016 and that it would partner with Cal Gov Ops in a Lean Six Sigma Green Belt pilot program to streamline all aspects of the Board's operations and develop Evaluation Unit procedures.

Staff Recommendation: *The Board should present sufficient evidence that all desk procedures, flow charts, policies and procedures have been updated and that the Board partnered with Cal Gov Ops to streamline all aspects of the Board's operations and develop Evaluation Unit procedures. The Board should respond to the ways this is beneficial to the Board.*

ISSUE #6: (AVAILABILITY OF BOARD MEETING MINUTES) *The Board does not approve and provide meeting minutes in a timely fashion.*

Background: Since the last sunset review, the Board assures that its regular board meetings are webcast but seems to be having problems with posting of its most current meeting minutes on its

website. The minutes can be helpful to the public, particularly because the Board's recent meetings have lasted between three to nine hours long. The Board 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 Board only approved minutes for May 12-13 and June 20, 2016.

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

Staff Recommendation: *The Board should advise the Committees on the status of the public Board meeting minutes from August 2016 onward and discuss any issues, recent or otherwise, that prevent it from approving and posting its meeting minutes on a timely basis on its website.*

BOARD BUDGET AND FINANCING

ISSUE #7 : (IMPLEMENTATION OF BREEZE IT SYSTEM) It is unclear what the impact has been on the Board since the implementation of the BreEZe system in 2016.

Background: The BreEZe Project was 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.

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

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

In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system. Release Two was scheduled to go live in March 2016, three years past the initial planned release date. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014, that the current vendor contract was no longer in place, and those regulatory entities that were scheduled for Release Three would not transition to the BreEZe system.

The Board was part of Release Two for the BreEZe system and in January 2016 the Board transitioned to the new BreEZe licensing and enforcement database. The Board indicates that this new system not only provides helpful online services for our consumers, licensees and applicants, but also provided date conversion and reporting tools that allow the Licensing Division staff to capture data that could not be obtained in the old CAS/ATS systems. In addition, the Board explains, BreEZe, as of July 2016, allows the Board to also utilize the Quality Business Interactive Reporting Tool (QBIRT) system which allows the Board to run various reporting statistics. Previously, reports were limited and sometimes reliant on Board staff to maintain workload, processing times, pending applications, etc., using Excel or other programs. Since implementing BreEZe, the Board states that licensing processing times have increased, however the processing times for school graduates have decreased from six weeks to as little as one week.

The Monitor observed that the implementation of BreEZe imposed additional workload on Board staff to support the transition to the new system, identify and correct data conversion and reporting problems, populate the system on an ongoing basis with data that was not captured by the previous systems, and build new reports to provide better program support and management information. The transition process took longer and required more resources than was expected.

From July through October 2016, the Monitor worked collaboratively with Enforcement Program management and staff to gather record-level enforcement workload, workflow, backlog, and performance data from the BreEZe system and to identify and correct problems with the data. The Monitor identified data problems that were significant and unknown to the Board and resulted in significant misstatement of key workload and performance metrics such as the number of investigations completed and the timeframes needed to complete the investigations. The Monitor also identified inconsistencies in how staff coded cases and various activity tracking fields.

After identifying these problems, the Monitor worked collaboratively with Enforcement Program management and, at times, with DCA's Office of Information Services, to identify the causes of the problems, correct faulty record-level data and identify and assess alternative corrective measures to prevent recurrence of these same problems during subsequent reporting cycles. When requested, the Monitor also provided Enforcement Program management with data exception listings that were used by staff as punch lists to further research and correct record-level case data. Throughout this same period, and continuing afterward, Enforcement Program management and staff continued to separately identify other BreEZe data problems that were concurrently addressed on a continuous basis.

The nature and magnitude of the Board's Enforcement Program data problems, the short time frames available to complete the Second and Third Reports of the Monitor's project, and the Board's requirements to provide accurate Enforcement Measures data to DCA, as well as accurate Enforcement Program data to the Legislature for its Sunset Review, all reinforced the need for the Board, DCA and the Monitor to work together to correct the Board's Enforcement Program data problems as quickly as practicable. According to the Monitor, the Board is continuing to identify and prioritize its remaining enforcement and licensing data conversion clean-up, application development, and data reporting needs and is continuing to work collaboratively with DCA's Office of Information Services to address these needs.

Staff Recommendation: *The Board should update the Committees about any future impacts to the Board's programs in implementing the BreEZe system.*

ISSUE #8: (COSTS FOR VN AND PT PROGRAM APPROVAL) *The Board has indicated that based on a recent fee study conducted by Capital Accounting Partners that it should be given authority to charge for the costs to the Board of approving both VN and PT educational programs.*

Background: Pursuant to AB 179, the Board contracted with Capital Accounting Partners, LLC, a Sacramento firm, to conduct an analysis of its fees. The study was designed to determine whether the Board charges fees that cover the costs incurred in regulating VN and PT licensees. The study recommended the Board receive fees from institutions related to Board costs related to approval of VN and PT education and training programs.

The lengthy process for establishing a new program begins when the school notifies the Board of its intent to open a new program by submitting the appropriate application, and requesting the assignment of Nurse Educational Consultants (NEC). Specifically, CCR, Title 16, Division 25, Chapter 1, Article 5, requires institutions seeking approval for commencement of a VN program to submit a detailed proposal to the Board that demonstrates the application and integration of Anatomy & Physiology, Pharmacology, Communication, Nutrition, Normal Growth and Development, Nursing Theory, Nursing Care Skills, etc., into the clinical practice of the students. Similarly, CCR, Title 16, Division 25, Chapter 2, Article 5, requires institutions seeking approval for commencement of a PT program to submit a detailed proposal that demonstrates the integration and application of didactic content into the clinical practice of enrolled students.

The NEC conducts a thorough analysis of the proposed curriculum. Any deficiencies in the proposed curriculum are identified and communicated to the institution verbally and in writing. Revisions are provided to the NEC for further review and analysis and this process is repeated until all required documents are received. Before the first class graduates from a program, the NEC must complete an on-site accreditation survey visit to ensure consistency with previously approved plans.

The study found that the Board's costs related to VN and PT education and training program approval have increased, in large part because programs are being offered at institutions that require more complex analysis by the Board's NECs. According to the Board in its 2016 Biennial Sunset Review Report, "programs are not up to standard that the traditional 2 or 4-year institutions might produce" which means that "more of these institutions are coming under provisional approval which puts additional requirements" on the Board's NECs.

As noted previously, the Board works with BPPE which has oversight responsibility for private postsecondary educational institutions in the state under the California Private Postsecondary Education Act. The Act provides that if an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in California, the institution must have educational program approval from the appropriate state licensing agency for any student who completes that program to sit for any required licensure exam. The law is intended to deal with the issue of students completing an educational program specifically designed to prepare them for certain occupations that in reality does not meet any requirements for education required for licensure.

BPPE approves *institutions* that may also be subject to *program* approval by other regulatory entities like the Board. While some boards and agencies are required to review the curriculum, and sometimes even the actual institutions offering programs, others require only BPPE approval in order to meet educational requirements to sit for licensure, certification or registration. The Board staff grants

approval to VN and PT programs but does not have oversight of institutions offering these programs in terms of an ability to approve or disapprove a certain institution.

As part of the BPPE approval process, institutions pay significant application fees. Rather than authorize the Board to additionally collect fees from institutions for program approval, it may be appropriate for the Board and BPPE to enhance their current MOU for school oversight provisions to authorize the Board to receive monies from institutional application fees paid to BPPE. Specifically, as the Board has the expertise for ensuring the quality of VN and PT programs, and its work may replace or unnecessarily duplicate that of the BPPE's Quality of Education unit for VN and PT programs, the Committee may wish to explore providing the Board with additional resources for its school approval program from institutional application fees provided to BPPE.

Staff Recommendation: *The Committee should work with the Board and BPPE to determine what steps are necessary for the Board to receive necessary resources to cover its costs of VN and PT program approval. The Committees may wish to authorize the Board to receive reimbursement from BPPE for VN and PT program approval it conducts for institutions overseen by BPPE. The Board should work with public education institutional segments to determine what resources the Board may be provided for VN and PT education and training program approval offered at public institutions.*

APPROVAL AND REVIEW OF EDUCATIONAL PROGRAMS AND CE REQUIREMENTS

ISSUE #9: (APPROVAL OF VN AND PT PROGRAMS). *Is the Board aware of any particular problems that appear to be occurring regarding the approval of VN and PT programs? Should this process be changed in any way to make it more effective and efficient and the Monitor be utilized to provide recommendations on changes which should be made? Is the Board actively collaborating with BPPE to approve schools? What is the status of the moratorium on school applications and why did it have to be extended for one more year for a total of two years (February 2014 to February 2016)? Are there any more delays in the approval of schools?*

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

Upon submission of a request for program commencement, the Board assigns a NEC to assist the school in reaching its goal for development of a proposal that includes a curriculum with critical resources that is presented in a sequence that results in students' progressive mastery of complex scientific knowledge and skills and demonstrated proficiency in performance of skills and procedures. Early in the development process, the VN or PT program director is forwarded an electronic orientation. Information presented provides an orientation and clarification relative to statutory and regulatory requirements with which programs must comply to achieve approval. The electronic orientation is followed by a teleconference with the assigned NEC. At this time, additional clarification is provided as needed. The assigned NEC assists the director in the development of the

necessary curriculum. Specifically, the consultant completes a thorough analysis of the curriculum and provides critical feedback. Following program approval, the Education Division continues to offer assistance relative to new and existing VN and PT programs.

According to the Board, once it deems a school as approved the Board,

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

In the Board's 2011 Sunset Review Background Paper, the Committees identified the Board's school approval process as an area that needed attention and was most concerned with its efforts to deal with possible workforce shortages or lack of needed programs. Specifically, the Committees noted, "The BVNPT should continue its efforts to increase the number of VN and PT graduates by not only improving on its approval process for nursing programs, but also by working with schools, colleges and universities to promote, create or expand programs..." In response, the Board indicated, "The Board is actively responding to the [workforce] shortage with its approval of new VN and PT programs."

However, on February 1, 2014, the Board identified a backlog of 145 institutions (135 VN and 10 PT) requesting approval for commencement of VN and PT programs, so it authorized a moratorium on the analysis of new proposals until February 28, 2015. Additionally, the Board authorized staff to send follow-up letters to those non-responsive proposed programs advising that the Board would remove them from the queue effective April 18, 2014. At that time, 146 requests for commencement of new vocational nursing and psychiatric technician programs awaited initial analysis. That backlog resulted from the prolonged shortage of NECs the Board experienced from 2009 through January 7, 2014. Subsequently, the Board extended the moratorium through February 28, 2016. Effective February 28, 2016, the moratorium ended. The Board indicates that effective September 21, 2016 it has filled all of its authorized NEC positions. Since that time, three additional proposals and ten applications have been received. Effective January 15, 2017, three proposals await analysis. Five educational institutions have reported continued development of the curriculum and securing educational resources required for submission of a complete proposal for program commencement

It appears that, after two years, the Board has finally been able to deal with the backlog of institutions which were seeking approval of their VN and PT programs from the Board. However, the process of approving these programs seems to take up an inordinate amount of time when the Board meets to discuss whether programs should receive provisional approval and/or be able to admit students, or possibly even reconsideration of a provisional approval. There may be an opportunity to streamline this process and possibly provide other approaches to reviewing and approving these programs to curtail both staff workload and the Board's considerable time commitment.

Staff Recommendation: *The Board should not place any further moratoriums on the approval of VN or PT programs. The DCA should expand the Monitor's contract to include a review of the processes and operation of the Education Division and the use of Nurse Education Consultants for the review, evaluation and recommendations to the Board for provisional or full approval of VN or PT programs.*

ISSUE #10: (CITE AND FINE VN AND PT PROGRAMS) *The Board is requesting that the Legislature establish a citation and fine program to be used by the Board against VN and PT programs that are failing in their attempts to remain compliant with VN and PT regulations for which they may be placed on provisional approval.*

Background: As part of its VN and PT program approval authority, if a previously approved program fails to comply with the necessary rules and regulations established by the Board for these programs, the Board may place a program on provisional approval status. The Board notifies the program and specifies areas of noncompliance for correction. If, after the initial period of provisional approval, as determined by the full Board, the program shows good faith efforts to correct deficiencies, the Board may extend the provisional period. However, failure to correct the deficiencies is cause for revocation of approval.

The Board cites the following as the most frequent areas of noncompliance:

- Inadequate Faculty to Supervise Students;
- Utilization of Unapproved Faculty;
- Utilization of Unapproved Clinical Facilities;
- Inadequate number and types of clinical facilities to provide adequate clinical experience for students;
- Failure to adhere to the instructional plan approved by the Board
- Failure to provide the minimum number of approved program hours;
- Failure to include required content in the curriculum;
- Failure to hold classes as scheduled;
- Misrepresentation of information submitted to the Board or to student candidates regarding the program;
- Failure to provide required resources, including textbooks, instructional materials and aids, to achieve educational goal.

These are all violations that directly impact the ability of students to successfully complete a program and may negatively impact students' opportunities to be qualified for successful completion of a licensure exam and safe practice as a licensee. As such, it appears that violations like these would be the exact type the Board would work with BPPE to take action against an *institution* for.

While due process is inherent in administrative licensure and inherent in the steps the Board and BPPE take to allow for corrective action where necessary, authorizing the Board to simply cite and fine *institutions* offering *programs* that are still only provisionally approved, thus still not up to par with Board program approval requirements, might only be delaying necessary swift action against a problematic program offered by a problematic institution. Students and the eventual consumers receiving services from VN and PT graduates of any Board approved program should be assured that the Board is providing quality program oversight and that action is taken when program quality is substandard and potentially harmful.

Staff Recommendation: *The Board should be not be given authority to cite and fine provisionally approved VN and PT programs but rather should work with BPPE, which has cite and fine authority, to quickly initiate action against institutions not meeting the requirements for quality of a VN and PT program.*

ISSUE #11: (EXTENSIVE AUDIT OF COMPLIANCE WITH CE REQUIREMENTS) *The Board decided to send out a mailer to 58,000 of its licensees to verify whether or not they had completed their CE requirements for a 2 year period. (This is almost 50 percent of the licensee population.) This audit of CE will increase workload of staff and overtime usage to such an extent that staff will be pulled away from more important responsibilities they may have regarding other programs and they will be incapable of completing this CE audit within a reasonable time frame.*

Background: The Monitor had originally recommended that the Board restructure and significantly expand the CE Compliance Audit Program as specified in its Second Report that the Board should send an audit letter to a sample of at least 5 percent of renewing licensees and assess the feasibility of receiving documents electronically. The Board indicated that they believed the recommendation to increase CE audits was premature since it failed to take into consideration the impact on the Licensing Division and staffing resources and only focused on the Enforcement Program. The Board also indicated that effective January 1, 2017, the audited volume would be increased to include 200 VN and 100 PT licenses.

The Monitor recently learned from Board staff, however, that a large-scale audit of CE compliance was launched by Board's Education Division. In late-November the Board began mass mailing CE compliance audit letters to about 58,000 licensees, representing about one-half of all active licensees. This mass mailing was expected to be completed by mid-December, but some of the audit letters were not mailed until several weeks later (e.g., some letters dated in early-December with a 30-day response due date were not mailed until early-January). It is also the Monitor's understanding that additional resources needed to support completion of these audits are expected to be provided by various staff that are otherwise assigned other licensing, licensing support, administrative or enforcement responsibilities.

The rationale for abruptly launching compliance audits of about one-half of all Board licensees over a period of just a few weeks, rather than spreading the audits over a longer period of time, is not entirely clear. Additionally, it is unclear how the Board plans to absorb increased workloads related to maintaining case tracking and records management systems for all of these additional audits, how workload related to reviewing tens of thousands of Certificates of Completion received by Board will be absorbed, how Enforcement Division staff will absorb related increases in citation issuance, tracking and collections workload, or how the Board's already backlogged Cashiering Unit will absorb related citation payment workload. As of early-December, staffing resources sufficient to complete reviews of all of the submissions that are received had not been identified and a specific timeline for completing reviews of all of the submissions had not been developed. As a point of reference, the Monitor indicated that even if only about 15 minutes of staff time is needed to complete each audit, including time to maintain case tracking and records management systems, review compliance submittals, answer inquiries, and prepare and issue follow-up and closing letters, about nine full-time staff would be needed for a period of a year just to complete all 58,000 audits.

The Board has argued this point about the time it will take to complete this CE audit of approximately 58,000 licensees. In its recent response to the Committees, 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. The Board indicated that they have consulted partnering boards of equal size and believes that it will only take 0.5 – 2 minutes to process and check a CE application and with full time staff and AARP volunteer staff they will be able to complete the process in

77 days, or 3 to 4 months. The Board further argued that the Monitor's recommended 5 percent audit for CE compliance was not based on any standard, neither for other healing arts board nor for DCA and indicated that in the current audit may evidence a high degree of noncompliance and it that is confirmed, the Board anticipates an audit of approximately 10 percent of the licensee population per annum.

Information was received by the Committees however, from those who have worked on CE audits similar to the one which this Board is currently involved with, and it is clear that each individual CE audit will take more than just 15 minutes, and certainly more than the 0.5 – 2 minutes claimed by the Board. One estimate the Committees received is that it could take up to **24.17 years to do 58,000 CE audits**. It should also be realized that those staff now performing the CE audit are not trained in the procedures and processes necessary to check for verification of CE and to follow-up with the licensee, especially if there might be some disciplinary action (such as a cite and fine) taken against the licensee for non-compliance. This will certainly also have an additional impact on the Board's Enforcement Program. Committee staff is aware that the initial screening of documents received to verify CE audits and then forwarding for further processing is running at about a 7 percent error rate which only compounds the time in which it will take to complete these CE audits.

Staff Recommendation: *The Board should send a letter of apology to all of the affected licensees, informing them that the CE compliance auditing project is being terminated and that in the future, the Board will develop and implement a responsible CE compliance auditing process that is consistent with the Monitor's recommendations and supports fulfillment of the Board's consumer protection mission.*

LICENSING

ISSUE #12 : (LICENSING AND LICENSING SUPPORT BUSINESS PROCESSES) *Issues, problems and concerns have surfaced or were brought to the attention of the Monitor by Board staff involving matters that were not within the scope of the Monitor's assignment.*

Background: While the Monitor's assignment focused primarily on the Board's Enforcement Program and, secondarily, on the targeted administrative processes delineated in AB 179, more specific and detailed additional information regarding various problems involving Board's licensing and licensing support business processes was brought to the Monitor's attention. The Monitor was unable to complete any assessment of these problems and could only make very limited efforts to confirm or verify the validity of the information provided to him. In some cases these potential problems have linkages to, or impacts upon, the Board's Enforcement Program.

Specific problems that were brought to Monitor's attention included:

- Delays in cashiering school applications;
- Delays in processing on-line initial license applications;
- Delays in processing license renewal batch mail received from DCA Central Cashiering;
- Delays in processing address changes (in-house);
- Issuance of a Temporary License to an applicant that was previously denied licensure for a criminal offense.

In the Monitor's Third Report, each of these problem areas were more fully discussed and presented to the Board for review. Consistent with the provisions of AB 179, the Monitor also relayed the information provided to him regarding these potential problems to DCA's Project Manager and, as appropriate, other members of DCA's Leadership Team for their review and consideration and, as needed, follow-up action.

Staff Recommendation: *The Board should advise how it intends to address these other problems and concerns that have been raised regarding its licensing and licensing support business processes.*

ISSUE #13: (EQUIVALENT EDUCATION AND EXPERIENCE LICENSURE) *Should the current requirements for licensing VN and PT applicants based on equivalent education and/or work experience be modified and enhanced as recommended by the Board.*

Background: During several recent public board meetings, the Board debated the repeal of the work-equivalency pathway to licensure, or what is considered as the "equivalency method" or "Method 3." It was evident that professional members questioned the continued need for the pathway to licensure and were at times insulting to those testifying in support of keeping the pathway for licensure.

However, given the Board discussions that followed, and the recent recommendation of the Little Hoover Commission in its report, "*Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*" the Board cited, in October 2016, the Board decided not to seek repeal of the pathway. Instead, in the Board's 2016 Biennial Sunset Review Report, the Board stated 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."

Specifically the Little Hoover Commission stated that "The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths."

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 Board's standards and the applicant must pass the licensing examination. Requirements for the examination are specified under the Board's regulations.

Because this issue was initially raised as requesting the repeal of "Method 3," Committee staff asked the Board 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.

The Board was unable to provide specific data or statistics. Instead, the Board wrote that, "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 Board suggests that applicants utilizing "Method 3" may not be as well prepared for the examination as applicants who go through school. This isn't 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 Board 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.

The Board also wrote in its Sunset Review Report:

“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; however, 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.”

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 simply reiterates the fact the students who complete an approved program are better equipped for the examination itself.

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: *There does not appear to be sufficient justification presented by the Board at this time to make any changes to the equivalent education and/or work experience pathway for licensure.*

ISSUE #14 : (CLINICAL ROTATION AVAILABILITY) *As indicated by the Board, programs have identified difficulties in the adequacy of available clinical programs that provide clinical experience, especially for VN programs.*

Background: Board regulations require VN students to have clinical education, and the Board confirms the adequacy of program clinical placements prior to program approval. Programs are required to secure clinical facilities that provide an adequate daily census of clients sufficient to afford a variety of clinical experiences that are consistent with competency-based objectives.

The Board has identified difficulties in the adequacy of available clinical placements in obstetrical nursing and pediatric nursing for both new and existing programs. Discussions among program administrators confirms that a number of programs obtain clinical placement based on financial incentives, which places public programs at a particular disadvantage.

Unfortunately, the Board has no authority over the facilities housing the clinical placements, only those programs needing the placements, and it has no authority to enforce agreements between programs and facilities.

Board representatives have been meeting with clinical facilities, private entities, and governmental representatives to clarify the theoretical and clinical preparation of VNs and PTs and corresponding utilization in the clinical setting.

Staff Recommendation: *The Board should contact existing schools that will share clinical placement space with a potential new or expanding program to comprehensively evaluate the impact of new programs prior to approval. The Board should also consider prohibiting program payment for clinical placements, and work with the Board of Registered Nursing in its discussions with programs and facilities to determine a long-term solution to managing clinical placements.*

ENFORCEMENT AND DISCIPLINARY ACTION

ISSUE #15: (ENFORCEMENT IMPROVEMENTS) *It does not appear as if the initial efforts by the Board to make improvements to its enforcement program (and possibly its other programs such as licensing and school approval) and to address many of the recommendations of the Administrative and Enforcement Monitor are being implemented.*

Background: During the Board's 2014/15 Sunset Review, issues surfaced regarding the adequacy of Board Executive staff communications and collaboration with the Board members, the DCA and the Committees of the Legislature. For example, the Committees were surprised when reports surfaced during the Sunset Review which suggested organizational and workload problems with the Board's Enforcement Program. These reports were not consistent with information presented in the Board's 2014 Sunset Report.

It was found that, for some cases, it was taking over two and one half years to complete disciplinary action. The Board indicated that it was not referring cases to the DOI due to the hiring of its own investigations staff in recent years. The Board completed nearly all of its investigations in-house and did not typically use the DOI as a resource, despite understaffing and having burdensome caseloads.

The Board indicated that they had developed eight performance measures to determine the Boards' efforts to streamline enforcement processes, reduce backlogs, and process complaints within 12-18 months, a goal of CPEI. The Board reported that it was meeting the targets for several measures except for the Formal Discipline Cycle Time. Unfortunately, the Board continued to exceed the timeframe established for it to meet its targets. For example, though the target time frame was 540 days, the time frames across the past four years range from approximately 1100 days to 1400 days. A review of the DCA's enforcement statistics for FY 2012/13 revealed that the Board ranked last across all Healing Arts Boards. The Board indicated that it did not anticipate meeting the target without improvements to the segments of the enforcement process handled by the AG's office and the OAH. The number of complaints received by the Board continued to rise. The Board reported that in FY 2013/14, the number of complaints was 5,789- the highest number ever received by the Board. The Board ranked second to last among all DCA boards for the Formal Discipline Cycle Time which measures the average number of days to complete cases resulting in formal discipline.

Also, it was found that enforcement staff was not receiving appropriate training. For example, the DCA holds Administrative Subpoena Training Sessions for specified Board staff. In 2009, staff from the Board attended a training session. However, it appears that the former Chief of Enforcement, now Assistant EO, did not complete the required subpoena sample for DCA's Legal office to review. As a result of the delay in completing requirements, when the Board inquired in 2014 about the subpoena authority, the EO, Assistant EO and Enforcement Division Chief were required to attend a new

training which was completed in October of 2014. Committee staff was advised that the subpoena authority has not been provided to staff within the Enforcement Unit.

Because of these failures by the Board in its Enforcement Program, and to determine what may be the best course of action to take in making improvements to the overall operation and functioning of one of the most important programs maintained by the this Board, it was determined by the Legislature to appoint an Administrative and Enforcement Program Monitor to monitor and evaluate the Board's enforcement process, with specific concentration on the management of staff, assistance of board members, and the working relationship with the Legislature and included a number of specific areas to be evaluated by the Monitor, primarily the Board's disciplinary system and procedures, with specific concentration on improving the overall efficiency and consistency of the enforcement program.

The Monitor made numerous recommendations on improvements which could be made to the Board's enforcement program. The more critical changes which were suggested included:

- Restructure the handling of lower priority licensee complaints not referred to DOI by developing and implementing a structured process for screening licensee complaints that do not require field investigation and assigning the cases to staff that specialize in completing investigation of those types of cases. Also, continue identifying and assigning licensee complaint cases to Complaint Section analysts for desk investigation pending establishment of a separate business unit that specializes in completing desk investigations of licensee complaint cases. Establish a new Desk Investigation and Field Investigation Case Review Section.
- Conduct individual case reviews on at least a semi-monthly basis with each of the Investigation Section's investigators.
- The Chief of Enforcement should maintain open lines of communication and meet periodically with counterparts at DOI and AG to jointly develop and implement strategies to further reduce Board case backlogs and the amount of time needed to complete investigations and impose discipline. Work collaboratively with the AG to identify ways to increase utilization of and expand the Fast Track Pilot Program for licensee arrest/conviction report and other qualifying cases.
- Provide briefings to Enforcement Committee members.
- Update the Enforcement Program Workload and Performance Executive Summary Report on a quarterly basis.

The Monitor has indicated that between July 2016 and October 2016, the turnaround of the Enforcement Program has been stalled. He said only four of his 29 recommendations for improvement presented in his Second Report have been implemented (this is reflected in the Board's Sunset Report it is Responses) and is also reflected in this Background Paper, and only eight others have been partially implemented. As of December 2016, the Board has not begun implementing the remaining 17 recommendations for improvements.

From the information provided from the Board on its Enforcement Program, it does not appear as if any major changes or progress is being made with its complaint handling, investigation of cases or completion of disciplinary action.

There has been even more concern recently about cases being improperly handled and not sufficiently investigated as a means of giving the appearance that the Board is moving through cases rapidly and that there is no backlog of pending cases. As indicated by the Monitor, beginning in late-December and continuing for about a month there were a large number of pending non-sworn investigation cases which resulted in closing over 75 cases during mid to late-January with issuance of a Notices of Warning/Memorandums (NOWs). Potential concerns with this process include: (1) the quality and completeness the investigations completed during this abbreviated period for all of these cases and (2) the possible application of a blanket disciplinary outcome for specific categories of cases based primarily on the allegation (e.g., sleeping on the job and time sheet fraud) without sufficient consideration of the nature and circumstances of each specific case (doctor orders, patient level of care, characteristics of violation, licensee history, etc.). Because of the timing of this event, as indicated by the Monitor, which occurred as the Third Report was being completed, he did not have an opportunity to assess either of these potential issues.

As a general rule, the Monitor supports the idea of triaging and completing desk investigations of licensee complaint cases where appropriate, rather than referring all of the cases to the non-sworn investigation section for field investigation, but not to the point of not sufficiently investigating these cases or opting to issue NOWs rather than citations or other discipline where the facts and circumstances support doing so. Finally, the Monitor states that the large number of cases closed in January with issuance of a NOW will necessarily impact a number of other workload, workflow and performance measures during the current quarter. For example, he expects to see a decrease in the average elapsed time to complete the non-sworn investigations completed during this period and an increase in the average of the remaining pending non-sworn investigations which could then lead to an increase in the average of non-sworn investigations completed during subsequent periods.

Staff Recommendation: *The Board should report to the Committees on what steps it is taking and what improvements it believes it has made to its Enforcement Program since its last review in 2015 and pursuant to the recommendations of the Monitor, and why it appears as if many of these changes are not taking place as indicated by the Monitor. The Board need only highlight the most critical changes it is making or plans to make to comply with the recommendations of the Monitor. The Board should also indicate whether or not it is aware of cases being closed with a NOW Memorandum and not being sufficiently investigated.*

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

ISSUE # 16: (CONTINUED REGULATION BY THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS) *Should the current Board be continued and be allowed to continue regulating the practice of Vocational Nurses and Psychiatric Technicians?*

Background: The Board is tasked with regulating individuals who provide services and care to some of the most vulnerable patient populations, in a wide range of settings. LVNs work in skilled nursing facilities, in community care facilities for the elderly, in schools and in hospitals. PT clients have mental and developmental health needs and interact with PTs in state hospitals and residential care facilities. These are key allied healthcare providers interacting with California patients on a daily basis. When the Board struggles in its oversight responsibilities and is challenged in effectively managing its programs, patients, health care consumers and the public are harmed. Licensees striving to positively impact the lives of the individuals they work with are harmed. Millions of people in the state, including the hundreds of thousands of Board licensees are directly impacted by the many shortcomings of this Board.

It appears as if a majority of the Board members are turning a blind eye to the issues that have been raised by the Monitor and others, and continue to ignore ongoing mismanagement of this Board. Beginning with the last Board meeting on February 8, 2017, the Board seemed more concerned with the time it may take to actually complete each CE audit, arguing over how many minutes it might take to complete each audit, rather than trying to address the enormity of the problem, as indicated by the Monitor, and the adverse impacts that it has had. No other board has ever attempted such an undertaking, nor should it. The Board members also argued with the Monitor about his contract and whether he should have reviewed other programs of the Board. As indicated, this was possibly an issue to be brought up with the DCA program manager early on, but not at this point in time. The Monitor was adhering to his contractual responsibilities.

The Board still seems unwilling to pursue other recommendations the Monitor made at this meeting, as well as prior meetings, and seems to be rejecting much of the information and recommendations provided by the Monitor. In some instances, these were recommendations that were originally initiated by the Board and its former staff, but never implemented. For example, rather than developing and implementing improved, sustainable licensee complaint desk investigation and CE compliance auditing processes, as recommended by the Monitor, the Board instead chose to implement misguided, ill-conceived special projects that worked at cross-purposes and disrupted fulfillment of the Board's consumer protection mission. Additionally, Board staff and others outside the Board with relevant experience, such as DCA and the AG were not included in the planning of these projects, and information about these projects was not properly and fully disclosed to the Board's committees, the full Board, or other stakeholders in advance of implementation of the projects. These projects are especially illustrative of the continuing failures of the Board, yet there are others as well.

The Board does not appear to be focusing on the tasks at hand and in addressing issues and problems that need immediate attention. It appeared as if the Board was moving in the right direction beginning in April of 2015 and was on track to make some important improvements but somehow got derailed in its efforts to make strides toward meaningful change. As the Monitor indicated in his Third Report, at this point, the turnaround for this Board appears to have stalled. The Board continues to show deficiencies and discrepancies in the management of its programs and especially that of its staff. The

outstanding issues identified in this Background Paper reveal that the Board continues to experience significant problems that are impacting its overall functioning, the oversight of licensees and the protection of the public. Due the immediate need to at least address staffing concerns and their well-being, as well as potential issues concerning the management and operations of the Board, it appears as if this Board requires immediate oversight and direction from the Legislature and the Governor.

Staff Recommendation: *Unless the Committees have confidence that this Board will be able to deal with both the staffing issues and other issues as identified in this Background Paper, as identified by the Monitor and as identified by the DCA, the Committees may wish to consider recommending to the Governor and Legislative leaders that the current Board members be removed and replaced with new appointees, and that the newly reconstituted Board immediately move to have both the Executive Officer and Assistant Executive Officer positions filled. In addition, the responsibilities of the current Administrative and Enforcement Monitors should be expanded to review and evaluate both the licensing and educational responsibilities of the Board. If the Board is not immediately reconstituted, and the Committees do not believe that the Board is adequately addressing the issues and problems that have been identified, then the Committees should consider removing the extension of the sunset date for the Board and allowing it to become a bureau for a period of one year so that the DCA can deal with the problems and issues as identified by the Committees, and to allow sufficient time for appointments to be made to a newly reconstituted Board which would become operational on January 1, 2019.*