



**Enforcement Committee
Meeting Minutes
Thursday, February 23, 2012**
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101

Members Present

Chair – Rebecca Downing, Public Member
Vice Chair – Huong Le, DDS
Steven Afriat, Public Member
John Bettinger, DDS
Suzanne McCormick, DDS
Bruce Whitcher, DDS

Members Absent

Staff Present

Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
Teri Lane, Supervising Investigator I
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of Quorum

Rebecca Downing, Chair, called the committee meeting to order at 4:52 p.m. Roll was called and a quorum established.

ENF 1 – Approval of the November 7, 2011 Enforcement Committee Meeting Minutes

M/S/C (Whitcher/Bettinger) to accept the November 7, 2011 Enforcement Committee Meeting Minutes. The motion passed unanimously.

ENF 2 – Enforcement Program – Statistics and Status

Kim Trefry, Enforcement Chief, gave an overview of the Enforcement Program statistics. Highlights included intake of an average 234 complaints per month totaling 3,601 for the last 12 month period. The average caseload for each Consumer Analyst is 132. The Complaint Unit closed 2,601 complaints in the last 12 month period averaging 217 closures per month with the average closing time being 74 days.

The Investigations Unit has approximately 823 open cases averaging 43 per Investigator. Since the November 2011 report there has been a decrease in the percentage of cases over 1 year old from 45% to 41%.

There were a total of 1,245 investigation cases closed, filed with the Attorney General's Office or filed with the District/City Attorney during the last 12 months. This is an increase of 84% from the previous

year due in large part to the efforts of our new CPEI staff. The average number of days to complete an investigation was 389, well below the goal of 18 months set by DCA.

Ms. Trefry reported that in late October, the Department finalized the procedures for Boards and Bureaus to follow when entering into a contract with a dental consultant or subject matter expert (SB 541). Since that time, Enforcement staff has been working diligently to prioritize the needs of the Complaint Intake unit and Investigations to place our expert consultants in consulting contracts before the deadline. This took a significant amount of time and effort.

SB 541 also requires the Board to “establish policies and procedures for the selection and use of expert consultants.” The Enforcement program has revised and updated their existing policies to meet the intent of this regulation. These policies have been forwarded to legal counsel for review.

Ms. Trefry reported that the Enforcement Unit is trying to bring back a previously used procedure by which they can stipulate to a probationary license when an RDA license is denied due to non-violent criminal conviction. The applicant would then have the option to accept the standard terms and conditions for probation instead of going through a Statement of Issues hearing which averages about 600 days. The Board would then make the final decision by mail vote. Ms. Shellans and staff worked on the form that would go out to the RDA’s for this option.

The Enforcement Unit plans to begin a 90 day trial of this process beginning in March. They believe that re-instituting this process allows the Board the discretion to license appropriate applicants, while utilizing its limited AG resources on cases that are more likely to result in meaningful discipline.

Dr. McCormick asked if there is a timeline for the calibration of the experts. Ms. Trefry stated that she met with her managers in January and all agreed that calibration of the Subject Matter Experts that work on their cases is a very high priority. The biggest hurdle to overcome at this time is the restriction to travel. Everything was set up a year ago for six different sites to be used for calibration when the travel restrictions were mandated and the plans had to be put on hold. Ms. Trefry stated that we will have to try to get DCA to give us an exemption to allow staff to travel to provide that training. Greg Salute, Deputy Attorney General, commented that we would want to do some recruitment at the CDA convention in May and include that group in the calibration.

M/S/C (Afriat/ McCormick) to propose that the Board adopt the following motion; The Board finds that recruitment, training and calibration of its subject matter experts is critical to its mission of protecting the public through the Board’s Enforcement program, and therefore urges the Department of Consumer Affairs to facilitate the identification and training of subject matter experts by approving necessary travel for recruitment as well as for training and calibration. The motion passed unanimously.

ENF 3 – Diversion Statistics

Ms. Trefry reported on the diversion statistics for the quarter ending December 31, 2011. She stated that there were no intakes to the program in the month of October. There was one probation referral in November and one investigative and one probation referral in December for a total of 3 intakes for the quarter.

ENF 4 – Discussion Regarding Continued Need for Enforcement Tools to Improve Enforcement Program

Ms. Trefry reported that in March of 2011, the Board provided the Senate Business, Professions and Economic Development Committee staff with three proposed statutory amendments to enhance the Board’s enforcement authority while maximizing consumer protection. These amendments included specific time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. These tools, as proposed to the Senate Business and Professions Committee staff are as follows;

1) Administrative Citation Currently, a citation issued by the Board stays on the website indefinitely. Licensees routinely request an informal hearing to challenge the merits of the allegation as well as question the fairness of a permanent mark against their license for a lesser violation of the Dental Practice Act. The amount of time devoted to the informal hearing process limits the efficiency of the citation as an intermediate disciplinary tool. The Medical Board and Nursing Board are currently issuing administrative citations to address technical violations that do not warrant disciplinary action against the license. The Board is seeking a 3-5 year statute of limitations on the length of time a citation is posted for public disclosure, comparable to the Medical Board and Nursing Board.

2) Letter of Admonishment The intent of this tool is communication with the practitioner when the results of an investigation need to be brought to their attention so that they can take the necessary steps to address any deficiencies. The Board of Pharmacy and Chiropractors Board use a similar Letter of Admonishment when enforcement staff have already performed an investigation and have identified areas of concern that do **not** rise to the level of filing of a formal accusation. This method allows for an additional level of consumer protection without the lengthy administrative hearing process, and would be publically disclosed via the Internet.

3) Notice of Correction The final proposed method is the implementation of a Notice of Correction, as also currently used by the Board of Pharmacy and the Chiropractic Board. This tool would be used as an alternative to an administrative citation if during the inspection of a licensee's workplace, an incident does not warrant a citation and fine, but should be brought to the practitioner's attention. (e.g. name of licensed practitioners not posted in the office, failure to wear a name tag, failure to post auxiliary duties). The notice will serve as internal documentation for the Board in the event of a repeated violation, but is not publically disclosed.

Ms. Shellans stated that the Notice of Correction is exempt from public disclosure but if another violation occurs a citation is issued and the Notice of Correction becomes public information and can be used in future actions.

Ms. Trefry reviewed the analysis done by the managers of how these tools might have been used in the previous calendar year if they had been in place and the value they might have had.

Mr. DeCuir pointed out that the majority of the cases that would fall into these new categories are the quality of care cases that aren't egregious enough to warrant an investigation but would benefit from one of these other enforcement tools.

ENF 5 – Review of Second Quarter Performance Measures from the Department of Consumer Affairs

Ms. Trefry stated that they wanted to include these statistics that are compiled by the Department of Consumer Affairs (DCA) to show the Board that the Enforcement Unit is exceeding almost all of the goals set by the DCA.

There was no public comment.

The Enforcement Committee adjourned at 5:22 p.m.