



MEMORANDUM

DATE	October 15, 2021
TO	Veterinary Medical Board (Board)
FROM	<u>Enforcement Managers</u> Matt McKinney Patty Rodriguez Robert Stephanopoulos
SUBJECT	Agenda Item 18.C. Enforcement Report

Enforcement and Inspection Program Merge Update

Since the July 2021 Board meeting, Board management has worked with DCA’s Human Resources to merge the Inspection Program back into Enforcement (as it was several years ago) and is now on the final approval stages. Both programs have been working together and have initiated joint team meetings to discuss and cross-train on various aspects of inspections and enforcement.

Board inspections is now a tool easily accessible to the entire enforcement team. Any enforcement analyst can quickly request an inspection when a complaint alleging unsanitary facility conditions is received. The inspector will handle the inspection and resulting compliance documents, and any appropriate enforcement actions will be performed by the requesting analyst. This significantly streamlined the process and reduced the number of people involved in the investigation. Thus, Board staff anticipates reduced investigative costs and cycle times.

Routine inspections have resumed and are predominately being handled by the enforcement technician and inspector with a goal to educate and obtain/maintain compliance. Routine inspections are only assigned to analysts if compliance is not obtained and further action is required.

This merge enabled the Enforcement Program to grow 50%, from 10 to 15 analysts, without any additional cost to the Board, and will assist in addressing the ever-increasing number of complaints received annually. Management divided all pending cases evenly among the analysts, with each analyst averaging 243 cases. Over the next month, the analysts will perform high level reviews to triage cases that need to be worked immediately. Analysts will also determine if any of their cases have all necessary documents for closure and/or final action. This should help the Board know exactly what is pending and get egregious cases addressed.

Each manager will continue overseeing a specific area of enforcement: Mr. Stephanopoulos will focus on the expert witness program, Mr. McKinney will oversee probation, and Ms. Rodriguez will specialize in inspections.

Staff Update

In July 2021, the Enforcement Program welcomed Jennifer Lee, who gained significant enforcement experience from the Medical Board of California.

Wendy Garske, who worked for the state for many years, retired at the end August. Ms. Garske served three years with the Board and provided valuable training to her colleagues on the

disciplinary process. Her service and dedication are greatly appreciated, and we wish her the best in her retirement. The Board's probation technician, Kim Phillips-Francis, was promoted into the vacant position on September 1, 2021, and management anticipates making a final offer to backfill Ms. Phillips-Francis' position by the end of October.

Board enforcement analyst, Cheryl Douglas, accepted a position in the private sector at the end of August, after serving the Board for seven months. The Enforcement Program further welcomed Mr. Robert Rouch, from the Department of Managed Health Care on September 20, 2021, and Ms. Tara Reasoner, from the Medical Board of California and Ms. Nellie Forget, from the Dental Board of California on October 1, 2021.

The Board's probation lead, Ginger Gerard, accepted a position with the Physician's Assistants Board, effective November 1, 2021. Ms. Gerard served the Board for four years and played an integral role in identifying longstanding probation issues which the Board has addressed through process improvements, probationer outreach, and enhanced disciplinary guidelines. While we are saddened to see her go, we are encouraged to know she will continue protecting consumers and improving probation processes within DCA. Management anticipates filling the position by the end of November.

Inspections

Currently there are 7 Board inspectors. Recruitment efforts will have concluded, and inspector interviews will be completed shortly. The annual Inspector Training session is scheduled for the end of October. Due to ongoing COVID concerns, the training will be virtual again. Two inspectors will attend the Medical Board's Expert Reviewer training this month; once this has been completed, all DVM inspectors will be able to review standard of care cases as well as minimum standard complaint cases.

Intake

The Board continues to meet its intake performance target of 10 days, due to the efforts of enforcement technicians, Terry Perry and Cheng Vang. Pending complaints at intake rose slightly in July but was brought down to normal levels in August.

As mentioned during the prior meeting, the Board received 1,487 complaints and 146 convictions in fiscal year 2020/21, which was a 25% increase over the prior fiscal year (a record high for the Board). Based on the number of complaints received in first quarter of fiscal year 2021/22, the Board will break this record, likely receiving around 1700 total cases (complaints and convictions), double the number of complaints received five years ago.

Complaints alleging negligence and/or incompetence remain the highest category at 30%, which is like prior years. However, the Board has seen a slight increase in cases alleging minimum standards/recordkeeping and general unprofessional conduct, which are currently at 27% and 25% respectively. Board staff continues to prioritize complaints pursuant to Business and Professions Code (BPC) section [4875.1](#).

Investigations

The Board currently has roughly 3,800 pending cases, with approximately 550 of these over three years old. As previously indicated, investigating the extremely old, complex cases takes a much longer time, affecting the overall number of cases that can be closed.

The Enforcement Program continues to focus on investigating the oldest, most egregious cases; however, it should be noted that even with this directive, the majority of the desk investigations closed are less than three years old (105 out of 172), and the vast majority of those cases were

received in 2021 (80 out of 105). This is due, in part, to the fact that subjects involved in our older cases seem to reoffend, and, as all cases against a subject are worked at the same time, newer cases against the same subject are also being closed.

In addition, intake fast-tracks cases which involve straightforward complaints, such as failure to comply with a records request, as well as extremely egregious cases, permitting these newer complaints to be closed much more quickly.

Division of Investigation (DOI)

DOI is only utilized when absolutely necessary; however, due to the concerning nature of some of the Board's recent investigations and the need for DOI intervention, cases pending at DOI have risen slightly over the prior fiscal year. The Board also clarified with DOI that an inspector is no longer needed to accompany a DOI investigator to a facility to simply pull records; DOI can pull records as an agent of the Board.

Expert Witness Program

As mentioned in the October 2021 MDC Complaint Audit Subcommittee (Subcommittee) memorandum, the Board's Deputy Attorney General Liaison, Ms. Karen Denvir is finalizing the training for our Board experts, which focuses on veterinary-specific issues, as well as questions and concerns that have arisen via the Subcommittee's complaint audit process.

Probation

Over the past few months, the probation monitors and technicians focused on enhancing and fully utilizing BreEZe functionalities. They are reviewing all current probation files to ensure disciplinary orders are entered and properly coded in BreEZe. Once these updates are finalized, the Board will be able to run BreEZe reports for Board meetings and the public without having to manually calculate the data.

Five licensees completed their probation last quarter, leaving 72 total probationers. The probation monitors are actively investigating 114 pending enforcement complaints against 35 of the probationers. Two probationers were referred to the Attorney General's Office for a Petition to Revoke Probation last quarter.

Attorney General's Office

Board staff continues to turn to Ms. Denvir when it comes to cases with potential issues. Ms. Denvir provides the Enforcement Program with a legal perspective to clarify evidentiary questions and concerns with case communications from other DAGs.

As shown in the enforcement statistics below, disciplinary case cycle times continue to rise over the prior three fiscal years, averaging 689 days this fiscal year. This is due to the Board's focus on investigating our oldest cases, which are usually the most complex. Further, the complexity of these cases has also reduced the number of cases resulting in discipline over the prior three fiscal years, with four cases ending in disciplinary action.

SF SPCA, et al. v. Jessica Sieferman Costs

During the July 2021 Board meeting, Board members requested future reports include the cost breakdown of the pending federal lawsuit. As indicated in the breakdown below, the Board has spent \$22,275 in Attorney General costs through September 2021.

2021 Costs	
May	\$9,955
Jun.	\$2,365
Jul.	\$7,040
Aug.	\$2,640
Sep.	\$275
Total	\$22,275

Disciplinary Action Vote Results

DEFAULT DECISION	VOTE	RESULT
Samuel Alarcon, VACSP (Case No. 4602020000351)	5 – Adopt	Adopt
PETITION FOR REINSTATEMENT (Draft Decision)	VOTE	RESULT
Rebecca Diaz, DVM (Case No. 4602021001011)	6 – Approve	Approve

Attachments

1. Enforcement Statistics

ENFORCEMENT STATISTICS

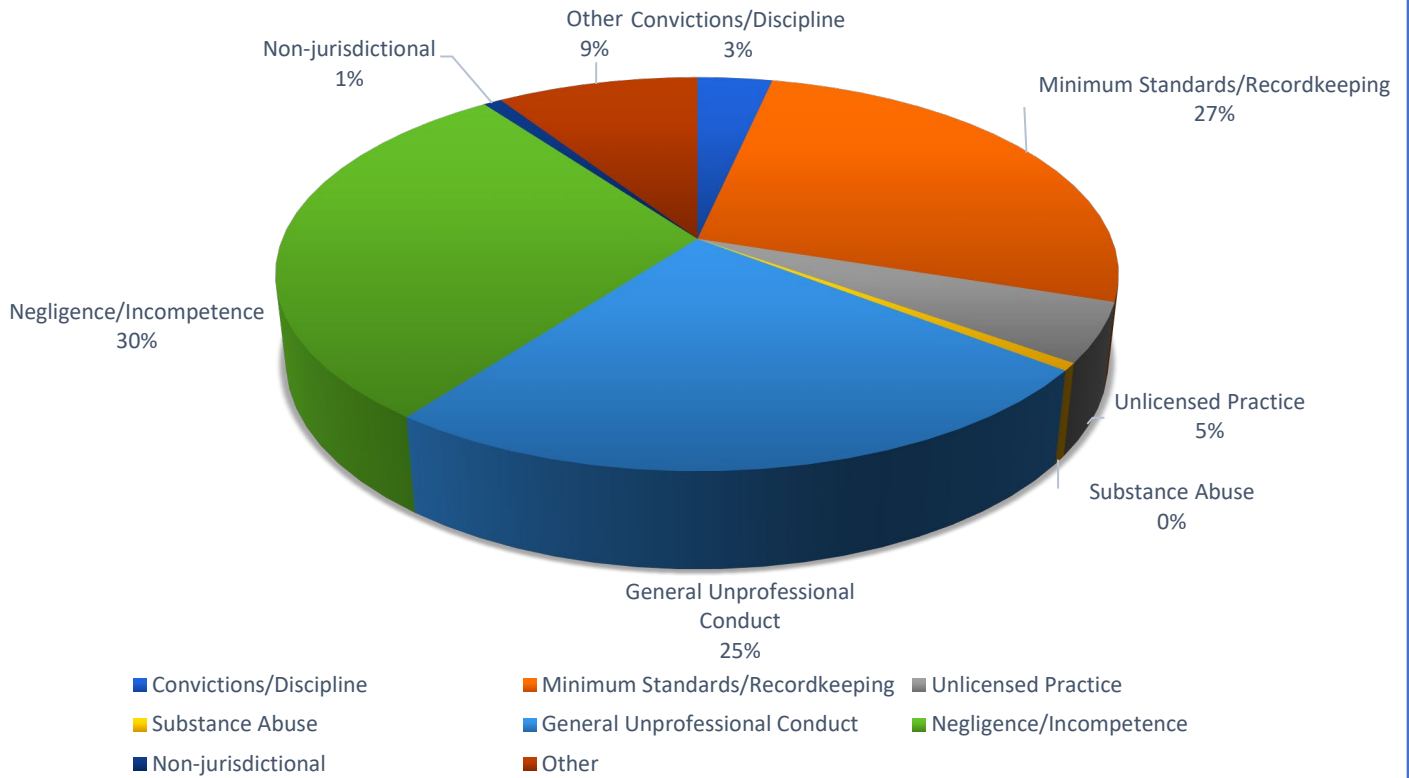
COMPLAINTS AND CONVICTIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Complaints Received	1139	1487	155	147	99	401
Convictions Received	166	146	11	20	11	42
Average Days to Intake	10	11	8	6	7	7
Closed without Investigation	1	4	0	7	4	11
Pending at intake	6	18	38	36	10	10
UNLICENSED ACTIVITY COMPLAINTS RECEIVED						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Received	60	68	15	17	15	47
DESK INVESTIGATIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Assigned	1332	1583	150	160	143	453
Closed	625	524	47	53	72	172
Average Days to Complete	309	338	611	574	825	689
Pending	2416	3501	3614	3721	3783	3783
SWORN INVESTIGATIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Assigned	11	12	1	0	9	10
Closed	11	11	1	0	0	1
Average Days to Complete	550	159	215	N/A	N/A	215
Pending	12	13	14	14	23	23
ALL TYPES OF INVESTIGATIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Closed Without Discipline	639	555	48	54	72	174
Cycle Time - No Discipline	277	290	540	643	538	571
All pending cases	2434	3532	3666	3771	3851	3851
COMPLAINT RELATED INSPECTIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Performed	52	24	1	2	1	4
Closed	19	33	3	0	1	4
Pending	68	51	49	50	50	50
Average Days to Complete	524	401	913	867	867	867
ROUTINE INSPECTIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Performed	52	24	1	2	1	4
Closed	19	33	3	0	1	4
Pending	68	51	49	50	50	50
Average Days to Complete	524	401	913	867	867	867

ENFORCEMENT STATISTICS

CITATIONS						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Closed with Citation	24	17	1	2	30	33
Avg Days to Complete Cite	1316	1579	1568	1554	1195	1228
Citations appealed	1	2	0	0	0	0
ATTORNEY GENERAL CASES						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Initiated / Referred to the AG	34	38	3	3	0	6
Pending at the AG	99	54	58	59	54	54
Statement of Issues Filed	3	1	0	0	0	0
Accusations Filed	16	10	1	0	2	3
Pet. to Revoke Probation Filed	7	1	1	0	0	1
ATTORNEY GENERAL CASES CLOSURES						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Closed Without Discipline	8	2	0	0	3	3
Closed With Discipline	46	74	2	0	2	4
Average Days to Close (Discipline)	929	1253	1090	N/A	1552	1321
PROBATION						
	FY 2019/20	FY 2020/21	FY 2021/22			
	YTD	YTD	Jul.	Aug.	Sep.	YTD
Initiated	-	8	1	0	1	2
Completed	-	27	2	3	0	5
Tolled	-	12	10	10	10	10
Total Probationers	-	75	74	71	72	72
Biological Fluid Testing	-	22	23	23	2	23

ENFORCEMENT STATISTICS

FY 21/22 YTD Complaints Received by Violation Type



Pending Cases

