



MEMORANDUM

DATE	October 13, 2023
TO	Veterinary Medical Board (Board)
FROM	Christina Bradbury, DVM, President
SUBJECT	Agenda Item 10. Discussion and Possible Action on Board Executive Officer Classification Exempt Salary Level Increase

Action Requested

If the Board agrees the Executive Officer Classification Exempt Salary Level should be increased based on the significant Board growth explained below, please entertain a motion to approve changing the Executive Officer Classification Exempt Salary Level from M to L.

Level M (Current)	\$8,942 - \$9,961
Level L	\$9,380 - \$10,449

Background

Throughout the Department of Consumer Affairs (DCA), each Board has statutory authority to appoint an individual exempt from civil service to serve as its Executive Officer (EO)¹. Each EO is assigned an exempt salary level category based on several factors, including, but not limited to, the Board’s complexity, license population, staffing size, budget, and workload. An exempt salary chart with all exempt categories can be found on the California Department of Human Resources’ website [here](#).

Based on a data comparison of Fiscal Year (FY) 1998-99 and FY 2013-14, the exempt salary level for the Board’s Executive Officer (EO) increased from O to M, effective July 1, 2014. In July 2017, the Board discussed the potential need to increase the EO salary level due to the increase in license types, staffing, and workload. At the time, the Board requested information from DCA to determine an appropriate size designation, with the anticipation of discussing this topic further in October 2017. However, no further discussion has occurred.

Board Growth

¹ Also referred to as an Executive Director or Registrar

As indicated in the chart below, the license population has grown roughly 56% since FY 2013-14. In FY 2022-23, the Board received 162% more applications, issued 219% more licenses, and received 147% more complaints. In addition, since the last exempt salary increase, two new license types were created.

The Board currently has 33.7 authorized positions and 7.5 blanket positions (5 of which the Board is seeking permanent funding for). This represents a 36% growth in positions since the last increase (57% increase if the 5 become permanent). The EO oversees all day-to-day operations of the Board and provides oversight to a Deputy Executive Officer (SSMII) and four Staff Services Managers (SSMI). The EO also oversees a 62% larger budget than the Board had in FY 2013-14.

	FY 2013-14 ²	FY 2022-23	Change
License Population	28,310	44,142	+ 56%
Complaint Volume	732	1,807	+ 147%
Applications Received	1,885 ³	4,939	+ 162%
Licenses Issued	1,338	4,264	+ 219%
Authorized PY	24.7	33.7	+ 36%
Budget	\$4,507,000	\$7,312,000	+ 62%

Increased Complexity

The veterinary profession is arguable one of the most complex professions to regulate within the Department of Consumer Affairs (DCA). There is no other regulatory board that oversees a profession where 100% of the patients cannot speak for themselves. Veterinary patients are often compared to human infants. However, unlike human infants, animal patients do not cry when something is wrong. Out of survival instinct, veterinary patients mask pain as long as possible. By the time the owners bring their animals in for veterinary care, something had likely been wrong for a very long time. Unfortunately, cases involving serious injury or patient death is not uncommon, despite the veterinarian doing everything they can. When a veterinarian is found to have provided substandard care, the Board is often the only recourse, as, unlike human infants, the law treats animals as owned property. This adds to the growing complexity, as society exceedingly considers their animals as an infant member of the family.

The veterinary profession is also the only regulated profession under DCA that treats numerous different species, each species with its unique traits, characteristics, and known ailments, etc. In addition, while human physicians may treat the entire patient, there are numerous other health care practitioners who focus treatment on a certain part of the body or otherwise limited scope (e.g., optometrists, podiatrists, acupuncturists, physical therapists, etc). Each of those professions are separately regulated by their respective boards. This means that, if the Medical Board of California received a complaint against an optometrist or a nurse, that complaint

² Based on [DCA's 2013-2014 Annual Report](#)

³ At the time, veterinarians and RVTs had to submit two applications to obtain one license/registration. While 1,885 total applications were reported as received, it represented 1,073 applicants (812 veterinarians/RVTs, 232 premises, 29 interns).

would be referred to the California State Board of Optometry or the Board of Registered Nursing. In contrast, the Veterinary Medical Board is the only board that investigates all complaints related to the treatment of all animals.

Over the past nine years, regulating the veterinary profession has become significantly more complex. The Board, through its EO, has become significantly more involved in state and international issues facing veterinary medicine and the veterinary regulatory boards. These extremely complex issues include, but are not limited to, regulating telemedicine, cannabis, animal physical rehabilitation, animal blood banks, and standards within various practice settings apart from typical brick and mortar locations, such as shelters and racetracks. These issues typically emerge in California before any other state, and the Board serves as an example to all other states on how to address them. As such, it is imperative to participate in state, national and international discussions. When the board is not part of the discussions, international standards could be set that have sweeping negative impact on consumers, their animals, Board licensees, and the Board.

These complex issues also bring a number of powerful, well-funded, stakeholders, many of whom advocate for animals and their animal owners. While these stakeholders are always encouraged to participate in Board discussions, some may decide to go around the Board if they do not agree with the Board direction. In addition, these complex issues bring additional media scrutiny that capitalizes on emotional headlines involving harmed animals or the potential for harm.

Overview of Significant Legislative and Regulatory Changes

Ensuring a strong statutory and regulatory foundation and structure is critical in ensuring the Board can meet the needs of consumers and be responsive to stakeholder needs. The Board has sponsored, supported, and opposed a significant amount of legislative proposals during the prior years, and likewise initiated regulatory proposals that support the Board's consumer protection mission.

The Executive Officer position, with direction from the Board members, assumes a leadership role in guiding the Board through the implementation of legislative mandates, regulatory changes, and business process reengineering resulting from new requirements.

The Board's Executive Officer also must actively participate in discussions with the Legislature, since legislation is often introduced impacting all healing arts professions with only human patients and human practitioners in mind. In addition, there are a growing number of issues that are not considered the practice of veterinary medicine, but outside pressures try to put it under the Board's purview. AB 1282 (described in more detail below) expanded the Board's purview to community-sourced animal blood banks, and the Legislature continues to look at other issues such as pet crematories and pet grooming facilities. Below is an overview of some of the most significant legislative and regulatory changes within the last several years that have increased the

complexity of work within the Licensing and Enforcement Programs, and some have had statewide and/or national impacts.

Legislative Changes

Creation of New Permit

In 2016, the Board implemented SB 304, Lieu (Chapter 515, Statutes of 2013), which required veterinary assistants to obtain a veterinary assistant controlled substances permit (VACSP) from the Board in order to obtain or administer controlled substances. To obtain the permit, veterinary assistants must submit an application, pay a fee and furnish fingerprints for a state and federal criminal background check. As of October 1, 2023, the Board now regulates 12,397 veterinary assistants with the VACSP.

Creation of New License

In 2018, the Board implemented SB 1193, (Chapter 484, Statutes of 2016) which created a University Veterinary License. Prior to SB 1193, veterinarians employed by University of California or the Western University of Health Sciences were exempt from the Veterinary Medicine Practice Act. The bill removed the exemption and required a veterinarian engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences and engaged in the performance of specified duties to be licensed as a veterinarian in the state or be issued a university license. The Board now regulates 228 University licensees.

Cannabis Legislation

AB 2215 (Kalra, Chapter 819, Statutes of 2018) prohibited a licensee of the Board from dispensing or administering cannabis or cannabis products (cannabis) to an animal patient, discussing cannabis if they have a financial interest with a cannabis licensee, and advertising for cannabis. This bill also prohibited the Board, absent negligence or incompetence, from disciplining a veterinarian solely for discussing medicinal cannabis use on an animal patient, required the Board to adopt guidelines by January 1, 2020 for veterinarians to follow when discussing cannabis within the veterinarian-client-patient relationship, and required the Board to post the guidelines on its website. Those guidelines were created and adopted by the Board in October 2019.

AB 1885 (Kalra, Chapter 389, Statutes of 2022) allowed veterinarians to recommend cannabis for use on animal patients; required the Board to adopt guidelines for veterinarians to use when recommending cannabis and post those guidelines to their website by January 1, 2024; included cannabis products intended for use on an animal in the definition of cannabis products; and required any cannabis products intended for use by an animal to conform with any additional standards or regulations.

Authority to Deny, Revoke, or Suspend a License on the Basis of a Criminal Conviction or Professional Misconduct

With the passage of AB 2138 in 2018, boards were required to amend their existing regulations for use when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession regulated, and to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

The Board maintained an oppose position on this proposal; however, staff spent numerous hours in meetings, conference calls, and legislative committee hearings testifying on the impact of the bill and advocating for the Board's position. Due to these efforts, the bill was amended to include provisions that mitigate certain consumer protection risks and delayed the effective date, providing the Board and other boards and bureaus additional time to implement the bill.

Sunset Legislation –Improvements for Consumers, Applicants, Licensees and the Board

In 2020, the Board's Executive Officer led the Board through an evaluation of its statutes and regulations to eliminate unnecessary barriers to licensure, streamline the licensing process, increase access to veterinary care, and improve consumer protection mechanisms. The evaluation resulted in the Board approving legislative proposals that amended 13, repealed nine, and added four statutes. The evaluation also resulted in nine regulations being amended and 16 being repealed. The legislative proposals were included in AB 1535 (Committee on Business and Professions, Chapter 631, Statutes of 2021).

AB 1535 extended the sunset date of the Board from January 1, 2022, to January 1, 2026. Other notable provisions included: (1) removed the state-specific examinations for veterinarians and veterinary technicians; (2) removed temporary and intern veterinarian licenses; (3) removed the requirement for out-of-state licensees to take an in-person California-specific course for reciprocity purposes; (4) decreased fees by 36% for registered veterinary technicians; (5) prohibited a premises registration holder who is not a California-licensed veterinarian from interfering with, controlling, or otherwise directing the professional judgment of any California-licensed veterinarian or registered veterinary technician; (6) expanded disclosure requirements for veterinary premises registrations; (7) allowed the Board to deem applications abandoned after one year of inactivity; (8) renamed the Diversion Evaluation Committee to the Wellness Evaluation Committee, and (9) exempted a person providing specified care to animals deposited at animal shelters from licensure requirements and exempts animal shelters from the veterinary premises registration requirement if those shelters are solely administering nonprescription vaccinations, nonprescription medications, and medications pursuant to a written treatment plan.

Community-Based Animal Blood Banks

AB 1282 (Bloom, Chapter 752, Statutes of 2021) allowed community-based animal blood banks to commercially sell animal blood from community donors. This bill

expanded the scope of actions constituting veterinary medicine to include the collection of blood from an animal for the purpose of transferring or selling that blood and blood component products, as defined, to a licensed veterinarian for use at a registered premises, except in certain circumstances. It authorized the Board to establish a community-based animal blood bank registration, to be renewed annually, to cover the costs associated with oversight and inspection of community-based animal blood banks. It established specified safety procedures, such as veterinarian supervision and testing of the blood. This bill also required both closed colony and community-based animal blood banks to submit quarterly reports to the Department of Food and Agriculture, which would subsequently be required to phase out licensing of closed colony blood banks within 18 months once the reports show that community-based blood banks are collecting an annual amount equal to the amount sold by closed colony blood banks in four consecutive quarters.

Regulatory Changes

Since the last Exempt Level Salary increase, the Office of Administrative Law has approved 27 regulatory proposals, 70% of which were during the current EO's tenor (which started in July 2018). Regulatory proposals enable the Board to meet the Board's consumer protection mandate, enhance services to stakeholders, and implement new or amended statutes. The following provides an overview of the most significant regulatory changes that were guided by the Executive Officer:

Telemedicine

Effective January 1, 2020, this proposal added subsections (e) and (f) to CCR section 2032.1 to clarify unprofessional conduct in terms of the requirement to establish a VCPR when telemedicine services are provided. This proposal better defined the VCPR and how that relationship must be established through in-person examination before telephone or video services can be rendered to the patient. By adding subsection (f) to section 2032.1, the regulation clarified that telemedicine cannot be provided until a VCPR has been established, apart from emergency situations.

Fee Schedule – Emergency Filing

Effective January 27, 2020, this proposal increased fees to their statutory caps to prevent insolvency and raise the Contingent Fund levels to the mandated months in reserves. The Fee Schedule Certificate of Compliance became effective on June 1, 2021.

Consumer Protection Enforcement Initiative (CPEI)

Effective April 1, 2020, this proposal implemented the Department of Consumer Affairs' (Department) CPEI to overhaul the enforcement process at the healing arts boards and reduce the average enforcement completion timeline. The Department encouraged healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety.

The regulation now provides the Board with the means to expedite the licensure and enforcement process by: (1) delegating to the Board's executive officer settlement agreement authority, applicant investigation and evaluation, and license issuance; (2) permitting the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency; and (3) further defining grounds for discipline. These changes provide the Board with greater ability to protect the public by receiving more timely information from licensees and quicker disciplinary resolution. These changes also provide quicker applicant investigations and subsequent license, registration, and permit issuance.

Substantially Related Rehabilitation Criteria Regarding Criminal Convictions

Effective November 19, 2020, this proposal was mandated by AB 2138 (Chiu, Chapter 995, Statutes of 2018). As specified in the legislative analyses of AB 2138, the regulations intend to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the regulations improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. The Board was the first among all DCA Boards to adopt and implement regulations.

RVT Tasks Under Indirect Supervision

Effective April 1, 2021, this proposal allowed RVTs to perform additional animal health care tasks under indirect veterinarian supervision.

Veterinarian-Client-Patient Relationships (VCPRs)

Effective April 1, 2021, this proposal clarified that a VCPR established by an originating veterinarian can only continue to exist in the absence of client communication when the originating veterinarian designates to a second veterinarian (designated veterinarian) who is providing veterinary medical services to the animal patient at the same location where the animal patient's medical records are kept. This proposal also clarified that that prescribing, dispensing, or furnishing dangerous drugs constitutes unprofessional conduct, unless a VCPR has been established and to clarify the emergency circumstance when a subsequent veterinarian can prescribe, dispense, or furnish drugs for use on an animal patient in the absence of the originating veterinarian who established the VCPR.

RVT Emergency Animal Care

Effective July 1, 2021, this proposal clarified BPC section 4840.5 and the conditions under which an RVT may provide emergency treatment, the emergency treatment that may be provided, and an RVT's authority to administer drugs or controlled substances.

Animal Physical Rehabilitation (APR)

Effective January 1, 2022, this regulatory proposal addressed the growing practice of APR performed by individuals who are not licensed by the Board. Currently, licensed physical therapists and unlicensed individuals are practicing APR on animals. However, licensed physical therapists are only licensed by the Physical Therapy

Board of California to perform physical therapy on humans, not animals, and persons not licensed by the Board to perform veterinary medicine on animals are considered veterinary assistants, who are not licensed or registered with the Board. This proposal established a clear definition of APR in the Board's regulations, clarified who may perform APR, and clarified the circumstances under which a person may perform APR.

Disciplinary Guidelines

Effective April 1, 2022, this proposal made amendments to the Board's Disciplinary Guidelines and CCR section 2006 to update the Guidelines to statutory and probationary changes, clarify the minimum and maximum penalties for a disciplinary decision, and clearly define the terms of supervision for a respondent on probation. The proposal also adopted new supervision requirements and other optional terms for probationers. Further, this proposal also replaced ambiguous terms in the Disciplinary Guidelines with language pre-defined in the Act.

Drug Compounding

Effective April 1, 2022, this regulatory proposal clarified drug compounding enacted under BPC section 4826.5 and was intended to provide guidance and an enforcement mechanism for inspectors to determine whether veterinarians and RVTs are preparing drug compounds in accordance with their scope of practice, experience, and premises. The rulemaking was necessary to provide veterinarians with guidance on the proper procedures for storing, handling, and preparing compounded drugs.

Civil Penalties for Citation

Effective April 1, 2023, this proposal removed the restriction from issuing a citation for only violations performed while engaged in the practice of veterinary medicine.

Sunset Review Process

Every four years, the Legislature performs its Sunset Review process on the Board to evaluate and discuss its value, performance, and to make recommendations for improvement. The California State Legislature created the sunset review process in 1994 to further its oversight responsibilities. Each year, the Assembly Business and Professions (B&P) Committee and the Senate B&P Committee meet in a joint hearing to review the boards and bureaus under the DCA.

The term "sunset" is used because the statutory authority of those DCA boards and bureaus, including the Board, contain a deadline for the legislature to reauthorize the authority of that board or bureau.

BPC section [4800](#), which establishes the Board and its membership, contains the sunset provision. Therefore, if the Legislature does not change that date, the membership of the Board and its authority, would be dissolved. A similar provision is in BPC section [4804.5](#), which establishes the CBA's authority to appoint an Executive Officer.

The Executive Officer guided the Board in the Sunset Review process in 2020, which requires the preparation of an extensive report detailing all activities and statistics from the prior four years. In addition to the report, the Board must participate in legislative hearings and meetings with members of the Legislature. The Board received positive feedback regarding its report and preparedness. Due to the increased complexity in enforcement the Committee Chair requested an additional report detailing the Board's Enforcement Cost Recovery Expenditures and Improvements during the 2021 Sunset Hearing (Attachment 1). In addition, a Senate Committee member requested a separate report speaking to all the BreEZe enhancements that had been made since the last review (Attachment 2).

What Has Changed – Historical Overview

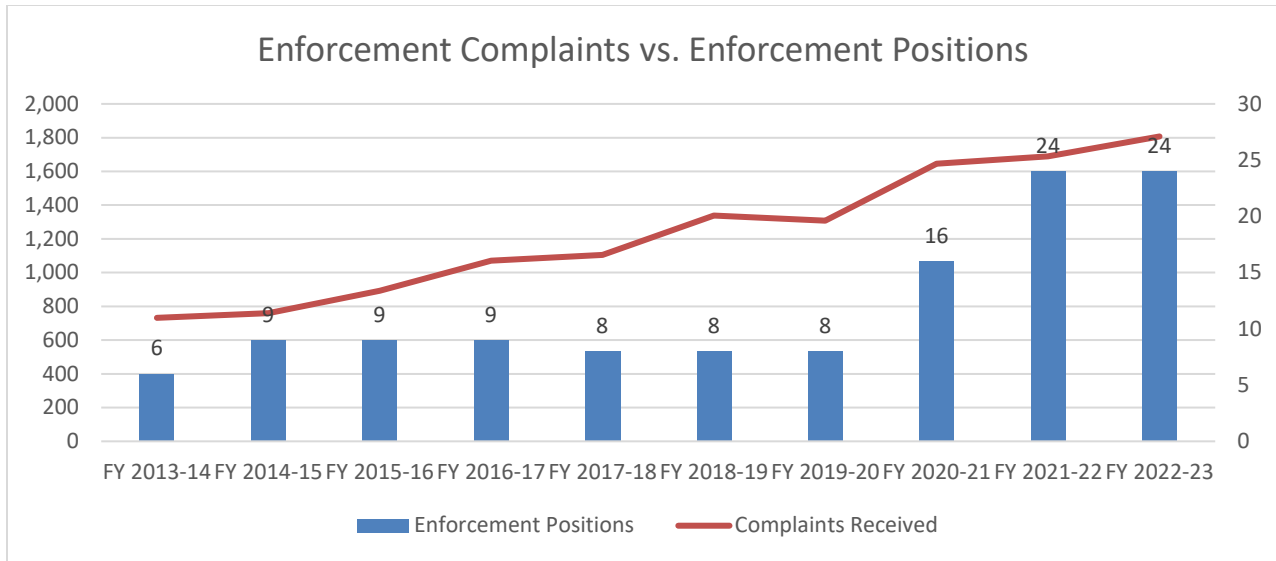
Since July 1, 2014, the Board's EO position has been at Salary Level M. In July 2014, the Board had 24.7 permanent positions, including the EO and two Staff Services Managers (SSMI). At that time, the EO provided oversight of an operating budget of approximately \$4.5 million. The Board currently has 33.7 authorized positions and 7.5 blanket positions (5 of which the Board is seeking permanent funding for). This represents a 36% growth in positions since the last increase (57% increase if the 5 become permanent). In addition, the Board now has a Deputy Executive Officer (SSMII) and four Staff Services Managers (SSMI), which is a 150% increase in management positions.

Enforcement Program – Reporting Structure

Since FY 2013-14, the Enforcement Program has grown from 6 to 24 permanent positions, which includes an increase of two manager positions over the past nine years. This resulted from new positions and internal restructuring.

Enforcement Activities

Since FY 2013-14, the Board has seen a significant increase in complaints received year after year. In FY 2013-14, the Board received 732 complaints. In FY 2022-23, Board received 1,807 complaints, which is an 147% increase. As indicated in the chart below, complaints received continued to grow as the number of enforcement positions remained virtually unchanged for seven years. This resulted in a significant backlog in complaints and increased cycle times. This led to increased scrutiny from complainants, respondents, the Legislature, and the Board. Over the last few years, the Board's Enforcement Program went through significant process improvements, and, through Board restructuring and BCPs, the enforcement positions grew to 24.

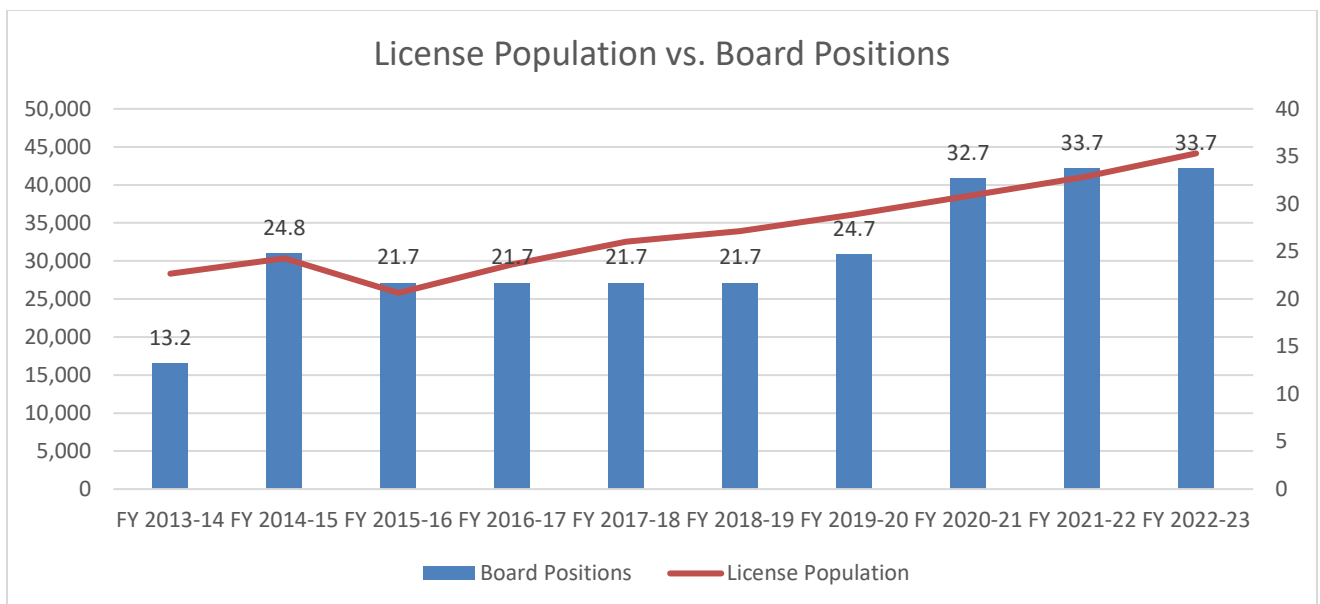


Licensing Program – Reporting Structure

Since FY 2013-14, the Licensing Program decreased from 6 to 5 individuals. Due to significant process improvements, including many BreEZe improvements (as discussed further in Attachment 2), the Board can process more applications and maintain more licenses with less staff and in a significantly less amount of time.

License Population

The Board’s license population has grown from 28,310 individuals and premises in July 2014 to 44,142 individual and premises in July 2023. That represents roughly a 56% population growth since the last exempt level salary increase. The following chart provides a comparison between the Board’s licensee population and its staffing levels for the last ten fiscal years.



Outreach

The Board has significantly expanded its outreach program within the last several years. The Board delivers programs (webinars, newsletters, etc.) to licensees and local association to update them on Board actions and programs. It now offers free interactive and recorded continuing education webinars regarding the Board's enforcement and inspection processes. Each webinar has over 300 attendees who are learning about processes, common violations, and ways to prevent enforcement actions.

The Board has increased licensee outreach on regulatory matters, most common problems/complaints, and topics of interest. It has done this by increasing its social media usage, increasing its use of ListServ, regularly updating the subscriber list with new licensees, encouraging licensees to verify and update their email address upon renewal, and developed an electronic newsletter.

The Board revamped its consumer, licensee, and stakeholder satisfaction survey to identify areas for customer service improvement. In addition, the Board established student liaisons to the Board to increase communication with future licensees and include their perspective during Board discussion.

Projects and Studies

North American Veterinary Licensing Examination and Occupational Analysis

In 2020, DCA's Office of Professional Examination Services conducted a comprehensive review of the North American Veterinarian Licensing Examination (NAVLE). In addition, the Department's Office of Professional Examination Services (OPES) assessed the contents of the California State Board Examination (CSBE) and the Veterinary Law Examination (VLE) in relation to the results of the NAVLE review to evaluate their continued use for veterinary licensure in California. Both studies are found on our website here:

- [Review of the North American Veterinary Licensing Examination 2020](#)
- [2020 Occupational Analysis of the Veterinarian Profession](#)

OPES found that the procedures used to establish and support the validity and defensibility of the components listed above met professional guidelines and technical standards outlined in BPC section 139 and the Standards for Educational and Psychological Testing (2014) (Standards). The results of the linkage study indicated that all practice areas of California veterinary practice are measured by the NAVLE, except for California law, rules, and regulations. During the October Board meeting, OPES presented their findings and recommendations to the Board. During that meeting, the Board voted to eliminate the state examination from the veterinarian licensing requirements.

International Participation

The Board's EO position requires significantly more involvement with international issues facing consumers and the veterinary profession than ever before. The American

Association of Veterinary State Boards (AAVSB) 63 jurisdictions, including all of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the ten Canadian provinces. They also work closely with veterinary jurisdictions in the United Kingdom, Australia, Italy, and Ireland. California is the largest jurisdiction within AAVSB and any jurisdiction AAVSB associates with. As such, the EO must serve as an international leader in the veterinary regulatory world and be available to actively participate in discussions.

The EO serves on the AAVSB Executive Director Advisory Committee (EDAC). The EDAC provides regulatory board operational perspective to assist the AAVSB staff and leadership; provides input for the AAVSB programming that would benefit Member Board executive directors, registrars, and staff; and serves as a think tank for existing and proposed programs that the AAVSB could improve or develop to assist all Member Boards in being more efficient and effective. The EDAC also helps facilitate Executive Director discussions during the AAVSB Annual Conference.

The EO also serves on the AAVSB Conference Committee. This committee assists with the planning, (agenda items, keynote speakers, location, etc). of the annual conference. In addition, the EO actively participates in quarterly meetings with the EOs from all other AAVSB jurisdictions and responds to monthly inquiries regarding California operations.

Attachments

1. April 2021 Legislative Report: Enforcement Cost Recovery, Expenditures, and Improvements
2. April 2021 Legislative Report: BreEZe Enhancements Leading to Better Service

Enforcement Cost Recovery, Expenditures, and Improvements

During the Veterinary Medical Board’s (Board) March 3, 2021 Sunset Review Hearing before the Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee (Committees), Senator Richard Roth requested specific, detailed information related to the Board’s enforcement cost recovery, expenditures and improvements. The Board thanks Senator Roth for his willingness to evaluate the efficacy of cost recovery as it relates to the Board’s enforcement expenditures. The Board looks forward to working with Senator Roth, the Committees, and the Department of Consumer Affairs (DCA) to address issues raised in this report and continuously improve the enforcement process.

Cost Recovery Chart

During the March 3, 2021 Sunset Review hearing, Senator Roth referenced the following chart in the Committees’ [March 3, 2021 Background Paper](#) (Background Paper):

Cost Recovery (list dollars in thousands)				
	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19
Total Enforcement Expenditures	\$2,054	\$2,558	\$2,313	\$2,443
Potential Cases for Recovery *	34	28	26	25
Cases Recovery Ordered	34	28	26	25
Amount of Cost Recovery Ordered	\$251	\$110	\$161	\$203
Amount Collected	\$222	\$204	\$264	\$110
* “Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on violation of the license practice act.				

However, most disciplinary cases incur enforcement expenditures over multiple fiscal years. As such, the amount of cost recovery ordered in a given year should not be compared to the total enforcement expenditures of the same year. In addition, cost recovery was not intended to make licensees, registrants, or permit holders pay for the Board investigating alleged violations when no violations were ultimately found.

In order to determine whether cost recovery is an effective mechanism in meeting its intended purpose, this report analyzes investigative and enforcement expenditures related to 277 disciplinary records closed from July 1, 2015 through January 31, 2021.

In addition, while the Background Paper defined “Potential Cases for Recovery” as “those cases in which disciplinary action can be taken based on violation of the license practice act,” the Board believes many cases involve unrecoverable costs due to multiple factors described in this report.

Resources to Create This Report

The Board appreciates the extension granted by the Committees to compile this report. In total, the data compiled to support this report was a combined effort of eight Board staff, three Board managers, DCA Budget Office, DCA Division of Investigation (DOI), Office of Administrative

Hearings (OAH), Office of the Attorney General (AGO), Diamond Court Reporters, and Board's Executive Officer.

It should be noted that, prior to Fall of 2018, Board staff was not fully utilizing BreEZe capabilities to track enforcement activities and related expenditures, such as the use of subject matter experts, Board inspectors, DOI, and AGO costs. Thus, by looking at BreEZe, staff could not determine when or if these activities occurred in each case or their associated costs. When coding was performed in BreEZe, the codes were often inconsistent and inaccurate. As such, a significant amount of Board resources was used over the past two months to manually pull 277 physical disciplinary files. Even when the physical files were obtained, a significant amount of specific expenditure information was not present, resulting in further time-consuming research with little success. Previously, invoices for subject matter experts and Board inspectors were not itemized or tied to specific cases, so even when invoices were found, it was impossible for many invoices to be attributed to a specific case. In late 2018, this process changed to obtain itemized invoices for each case.

This report is based on the information obtained during the Board's research; however, it is apparent additional expenditures were incurred and not properly tracked or documented. While data integrity concerns exist, the overall issues with cost recovery and enforcement expenditures remain. Additional research would result in identifying more enforcement expenditures, but cost recovery amounts ordered and core enforcement expenditure challenges would not change.

Board staff has made considerable improvements, as described in more detail below, to eliminate unnecessary steps and streamline enforcement and disciplinary processes, properly track enforcement activities and expenditures, and fully utilize cost recovery as intended under current law.

Cost Recovery vs. Enforcement Expenditures

Pursuant to Business and Professions Code (BPC) section 125.3, "an administrative law judge [ALJ] may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Cost recovery is intended to ensure those licensees, registrants, and permit holders who practice in compliance with the Veterinary Medicine Practice Act (Act) are not shouldering the investigative and enforcement costs of those who are violating the Act. However, due to multiple factors described in more detail below, compliant licensees, registrants, and permit holders are covering the costs for the most egregious violators of the Act.

Cost recovery is only ordered once disciplinary action is taken. Since most enforcement cases do not result in discipline, cost recovery will never cover the full costs of enforcement expenditures. Of the 277 disciplinary records closed from July 1, 2015 through January 31, 2021, only 26 percent of enforcement expenditures¹ were ordered in cost recovery. Licensees who have their license revoked or surrendered only pay cost recovery if their license is reinstated, so the Board never anticipates recouping those costs. Rather, the only cost recovery the Board anticipates recouping is when the costs are associated with a probation condition. The Board had 107 licensees placed on probation, and cost recovery covered an average of 40 percent of the related enforcement expenditures in those cases.

¹ Does not include Board enforcement personnel expenditures.

Enforcement Expenditures Not Included:

The following enforcement activities are not included as cost recoverable expenditures due to BPC section 125.3 and resource limitations:

Statement of Issues (SOI)

Since BPC section 125.3, subdivision (a), limits cost recovery to licensees, any enforcement expenditures incurred related to denying a license and pursuing SOIs are not recoverable.

Of the 277 closed disciplinary cases, 43 involved SOIs totaling approximately \$330,000.

Petitions to Reinstate

Revocations and surrendered licenses typically occur as a result of the most egregious violations. In order to reinstate the license, those individuals must petition the Board. Petition hearings occur during Board meetings and incur enforcement expenditures for the ALJ, Deputy Attorney General (DAG), and court reporter. However, like SOI cases, these individuals are not licensees. Thus, all petition hearing costs incurred are not recoverable.

Historically, the Board has not tracked these costs, so they are not available for this report. The Board will track these costs going forward.

Petitions to Revoke Probation and Petitions to Modify or Terminate Probation

The Board files Petitions to Revoke Probation when probationers egregiously violate their probation conditions. These cases can incur expenditures equal to the amount in normal disciplinary matters, but when a probationer only violated terms of probation, cost recovery under BPC section 125.3 is not an option. Similarly, probationers who petition to modify or terminate their probation are not found to have violated the Act, so all costs incurred to hear the petition are not recoverable under BPC section 125.3.

The Legislature may want to consider explicitly stating in BPC section 125.3 that probation violations are violations of the licensing acts and subject to cost recovery. Alternatively, the following could be added to BPC section 4876 to authorize the Board to recoup cost recovery when probation conditions are violated:

4876. In addition to its authority to suspend or revoke a license or registration, or assess a fine on a person licensed or registered under this chapter, the board shall have the authority to place a licensee or registrant on probation. The authority of the board to discipline by placing the licensee or registrant on probation shall include, but is not limited to, the following:

- (a) Requiring the licensee or registrant to complete a course of study or service, or both, as prescribed by the board, and to demonstrate renewed competence to the satisfaction of the board.
- (b) Requiring the licensee or registrant to submit to a complete diagnostic examination by one or more physicians appointed by the board. If the board requires a licensee or registrant to submit to that examination, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians of the licensee's or registrant's choice.
- (c) Restricting or limiting the extent, scope, or type of practice of the licensee or registrant.

(d) A violation of probation shall be considered a violation of this chapter, and costs of the investigation and enforcement of the violation shall be recoverable pursuant to Section 125.3.

The Board's system does not currently differentiate regular enforcement cases from petitions to revoke probation or petitions to modify or terminate probation. As such, no specific costs can be determined. However, the Board will work with the DCA Office of Information Services (OIS) to enhance the system to specifically track petition expenditures.

Default Decisions

If a respondent fails to file a Notice of Defense within 15 days of being served an accusation, pursuant to Government Code section 11520, the Board may proceed with a default decision resulting in revocation of the respondent's license. Currently, the Board cannot recover enforcement expenditures in default decision cases because those cases are resolved expeditiously without an ALJ to direct the respondent to pay costs, as required by BPC section 125.3, subdivision (a). This enables respondents in egregious cases to avoid cost recovery completely by defaulting, rather than settling the case or going to hearing. However, according to the Board's DAG liaison, some DCA boards interpret this section differently and order cost recovery in default decisions. To remedy this issue, the Legislature may want to consider amending this section in statute to make it explicit that cost recovery can be included in default decisions.

The Board's system does not currently include codes related to default decisions. As such, no specific unrecoverable costs can be determined. However, the Board will work with OIS to enhance the system to specifically track expenditures in default decision cases.

Hearings

BPC section 125.3, subdivision (c), limits cost recovery to "the amount of investigative and enforcement costs up to the date of the hearing," and does not include hearing costs. Historically, the most egregious cases involving multiple clients, animal patients, experts, DOI, and other witnesses lead to multi-day (often multi-week) hearings. None of the costs related to hearings are recoverable.

Of the 277 closed disciplinary cases, 62 went to hearing and incurred close to \$1.3 million in hearing expenditures. As such, all compliant licensees, registrants, and permit holders covered the costs of these hearings. In one case, total enforcement expenditures reached over \$300,000, with over \$260,000 being spent on an 18-day hearing. The case resulted in revocation with an order to pay \$25,000 in cost recovery (approximately 8percent of the total expenditures), if the license is ever reinstated.

Internal Enforcement Investigations and Management Review

Every enforcement case requires some degree of desk investigation by Board staff. In fact, many cases may only require desk investigations before transmitting cases to the AGO. Cases involving criminal convictions, for example, often are investigated by the Board's intake technicians and enforcement analysts who gather arrest and court documents and mitigating evidence from the respondent. After compiling all necessary evidence, analysts create reports and make recommendations on how to proceed. Board management then reviews and approves the recommendations. When cases are

transmitted to the AGO, Board analysts work closely with the assigned DAG and Board management to assist in filing and completing the disciplinary matters.

As listed in Table 3. Expenditures by Program Component of the Board's 2019 Sunset Review Report, enforcement personnel services totaled over \$2.5 million. However, most enforcement cases do not result in discipline, and cost recovery is only ordered after disciplinary action has been taken. In addition, the Board does not currently track specific enforcement activities performed by enforcement personnel, and, therefore, does not attempt to recover these costs in cost recovery. Board staff will work with DCA to determine if tracking specific personnel enforcement activities is an option in future cases.

Based on the known unrecoverable costs above, the Board estimates compliant licensees, registrants, and permit holders covered over \$6.7 million for egregious violators of the Act from the 277 closed disciplinary cases in July 1, 2015 - January 30, 2021.

Cost Recovery Under the Zuckerman Case

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the California Supreme Court stated that a board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that respondents with meritorious claims or defenses are not deterred from exercising their right to a hearing. A board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. (*Ibid.*)

The *Zuckerman* court stated that in determining the appropriateness and suitability of costs to a matter regarding a respondent, the following factors must be considered in determining the amount of costs to be assessed:

1. The Board must not assess the full costs of prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed;
2. The Board must consider the licensee's subjective good faith belief in the merits of his position;
3. The Board must consider whether the licensee has raised a colorable challenge to the proposed discipline;
4. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation, the Board must determine that the licensee will be financially able to make payments; and
5. Finally, the Board may not assess the full costs of prosecution when it has conducted a disproportionately large investigation or prosecution effort to prove that a licensee engaged in relatively straight-forward misconduct. (*Zuckerman, supra*, at p. 45.)

As a result of the *Zuckerman* cost recovery analysis, most ALJs are significantly reducing cost recovery orders in their proposed decisions.

DOI’s Actual vs. Projected Hourly Rates

The Board uses DOI when sworn peace officers are needed to perform undercover operations or interview witnesses. DOI is funded by DCA’s programs using a “2 Year Roll Forward” methodology. Programs are budgeted and pay for DOI based on services rendered two years ago. DOI services rendered in FY 2020/21 will be used to determine the programs’ budgets two years from now, in FY 2022/23. The intent of this payment system was to ensure programs would not need to halt investigations due to their inability to pay for services in that fiscal year. Like cases referred to the AGO, DOI cases can be incredibly expensive and, for programs with smaller budgets or other budgetary constraints, a single case could surpass the program’s budget.

DOI’s hourly rate² is determined by DOI’s total actual year-end expenditures divided by the total investigative annual hours reported in the same fiscal year. Cost recovery, however, is determined by using the total investigative budget divided by the projected total annual investigative hours. This rate will be recalculated at the beginning of each fiscal year for the current fiscal year. The actual hourly and cost recovery rates for the last six fiscal years are listed below.

Fiscal Year	Actual Hourly Rate	Cost Recovery Rate
2019/20	\$296	\$177 (\$195)
2018/19	\$285	\$177 (\$181)
2017/18	\$249	\$177
2016/17	\$236	\$175
2015/16	\$243	\$169
2014/15	\$235	\$140

In Fiscal Years 2018/19 and 2019/20, Boards, Bureaus and DOI staff were not provided the updated projected rate for cost recovery. Although the DCA budget team provided DOI with the updated rates, it appears DOI was still using the \$177 projected hourly rate through FY 2019/20. It should be noted that DOI’s actual hourly rate has not been at or below \$177 since FY 2006/07.

As of the date of this report, the current 2020/21 fiscal year hourly projected rate for cost recovery has been calculated at \$206. DOI’s actual hourly rate has not been at or below \$206 since FY 2011/12.

This actual rate vs. projected rate system becomes problematic when providing cost declarations for purposes of cost recovery. If a disciplinary case is settled or goes to hearing, cost declarations are provided to substantiate investigative and enforcement cost the Board hopes to recover. If actuals are unknown, the projected budgeted rates are used, which is currently 30 percent less than the 2019/20 actual rate. Meaning, the Board is already recouping roughly 30 percent less for actual investigative costs in cost recovery.

² DOI does not bill an actual hourly rate, as the budget established for each participating program is developed in advance of the fiscal year based on prior year workload.

Fortunately, the DCA Director, Executive Team, Budget Office and DOI are aware of these concerns and are actively working to resolve them.

Cost Declarations

In order for investigative and enforcement costs to be considered for cost recovery, all cost declarations must comply with California Code of Regulations (CCR), title 1, section [1042](#). In several recent Board cases, ALJs have awarded AGO expenditures (up until the hearing), but disallowed cost recovery for investigative costs due to the investigative cost declarations not complying with CCR section 1042.

When speaking with the Board's DAG liaison on this issue, it was explained that cost declarations from DOI have been a long-standing issue and something they have been working with DOI to try and resolve. The current DOI cost declarations are not sufficient because they do not break down tasks by date and length of time or provide the level of specificity needed in order for an ALJ or respondent to determine whether the charges are reasonable.

The Board is currently working through its backlog of enforcement cases, with its oldest cases being from 2016. From FY 2015/16 through FY 2019/20, the Board has spent roughly \$2 million for DOI investigations. Without a compliant cost declaration, the Board is at risk of not receiving any cost recovery related to DOI.

Fortunately, within days of raising these concerns to the DCA Director, DOI announced that, "[a]fter months of coordination with the Office of the Attorney General-Licensing Section and DCA's Office of Information Services – Reports Team, [DOI] has submitted the new IEU cost declaration for final legal review to the Office of Attorney General-Licensing Section." DOI anticipates being able to implement the new cost declaration by the end of April 2021.

Cycle Times, Reorganization, and Process Improvements

Cycle Times

As stated in the Board's 2019 Sunset Review Report, the Board's investigation cycle time without discipline target is 365 days. However, the Board believes this target is excessive and is aggressively pursuing improvements to reduce the Board's cycle times to meet a lower performance measure target.

Enforcement cases investigated by the Board, in general, are more complex than most DCA programs. Over half of the cases allege unprofessional conduct or incompetence, and most cases involve either direct patient harm, death, or a significant potential for patient harm. Unlike any other program, the patients cannot speak for themselves and cases rely on the patient owner to act as the primary witness. These cases often involve multiple veterinarians and patients, which can equate to multiple boxes of medical records. Due to the complexity, cycle times will be longer in every step of the process – from investigating allegations to filing a pleading to prosecuting.

Historically, the most complex cases were set aside while staff focused on easier, newer cases. The easier cases were closed more quickly, which kept the reported cycle times and pending case numbers lower, and the number of cases closed higher. While this method improved statistics, the complex cases involving the most egregious allegations were not being investigated.

In 2019, enforcement staff shifted its focus to investigating and resolving the Board's oldest cases – many of which had been pending for over six years. The oldest cases involved not only

multiple veterinarians and multiple patients, but also multiple subject matter experts, Board inspectors, and DOI. In addition, the Board's enforcement unit has had significant turnover in the last six years, so it was not uncommon for one case to be reassigned multiple times throughout the course of the case.

As expected, this shift has led to the Board closing fewer cases, increased cycle times, and increased pending numbers. As of the date of this report, the Board currently has 30 cases still pending from 2016 and 208 cases from 2017. The Board anticipates the number of pending cases and cycle times will continue to grow even with the additional staffing, but they will grow at a much slower rate than what has occurred over the last couple of years.

The Board is monitoring enforcement data closely and analyzing other positions based on operational need. In order to improve cycle times, it is probable that the Board will reallocate existing positions to enforcement over the next year.

Enforcement Reorganization and Additional Staffing

Prior to 2019, two lower level enforcement analysts were responsible for investigating over 600 cases each, and two journey level analysts were responsible for providing oversight of 75 disciplinary cases each. This type of siloed enforcement is common in larger boards; however, it does have several drawbacks, which include: miscommunication of information between analysts and the DAG; loss of physical documents or pertinent information; and overall decreased engagement in the investigation.

To make the workload more manageable, the enforcement unit shifted its siloed enforcement process to a "start to finish" process, permitting a single analyst to handle the investigation and discipline process. This provides better continuity regarding the transfer of information and a better understanding of the information obtained. It also put all analysts on the same level, with the same workload, allowing better collaboration between team members when discussing individual cases, resulting in more consistent thought processes. Perhaps most importantly, it gave the analysts a sense of ownership in their case – as the analysts do not feel like they are simply relinquishing or receiving a portion of a case. They can see the case all the way through, which engages the analyst much more in their work and furthers pride of ownership.

Through the Budget Change Proposal process, the Board was recently authorized six additional limited term enforcement positions starting in FY 2020/21. Those positions were fully filled as of February 2021. The new employees are still in their training phase, but the Board anticipates seeing improvements in the number of cases closed in the coming months.

Process Improvements

Although the Board does not anticipate being able to fully address the long cycle times without additional staffing, the Board has made multiple process improvements since January 2019.

Multiple Subject Matter Experts (SMEs)

Historically, all cases were reviewed by SMEs. First, each case would be reviewed by an in-house SME who would write up a full report opining on whether violations of the Act occurred. If the in-house expert opined the violations were egregious enough to warrant transmittal to the AGO, Board staff would send the case to another SME for review. The second SME would then perform another complete review and write a report. Not only were these double expert reviews costly, but they would significantly delay the process in cases where discipline was warranted. In addition, SMEs often would not identify the same violations or contradict each other. Conflicting opinions often affected the strength and the outcome of the case. In late 2018,

multiple case reviews in most instances stopped. In addition, Board staff stopped sending cases unrelated to standard of care violations, such as cases involving criminal convictions or failing to provide medical records, to SMEs. These changes lead to decreased enforcement expenditures and cycle times.

Mitigation and Settlement

Prior to 2019, once the double SME reviews were completed, Board staff would submit the entire case to the AGO for filing an Accusation. Board staff would direct the AGO to obtain mitigation for the Board to consider settlement. Cases, often involving hundreds of documents, would be transmitted to the AGO with little consistency or organization, and it took the AGO a considerable amount of time to review prior to filing an Accusation.

Once the Accusation was filed, a hearing date would be set (often a year out). Once that occurred, the Board often would not hear back from the AGO until it was time for a mandatory settlement conference days before the hearing. Either right before or during the mandatory settlement conferences, the AGO would work with opposing counsel to obtain the mitigation. This mitigation often included the respondent's response to the allegations, efforts of rehabilitation, and submission of other documents demonstrating the violations would not reoccur. It was not uncommon for cases to be reduced or withdrawn after receiving the mitigating evidence.

Requiring the AGO to organize the complex cases, collect all mitigation evidence, and not discuss settlement until mandatory settlement conferences is incredibly expensive and leads to significant delays in the disciplinary process.

In 2019, Board staff began requesting a response to the allegations and mitigation from respondents prior to making any decisions to transmit to the AGO. This information is vital in determining appropriate level of enforcement action, and ensures the Board only transmits cases to the AGO when the egregiousness of the violations warrants it. In addition, Board staff analyze all evidence of the case, including the respondent's mitigation, in determining potential settlement terms and conditions, pursuant to the Board's Disciplinary Guidelines. The settlement terms are now included in the transmittal to the AGO to accelerate settlement discussions immediately upon receiving a respondent's Notice of Defense.

In 2020, the Board began electronically submitting all cases to the AGO. Now, whenever cases are ready to transmit, a memo with all supporting evidence hyperlinked throughout the document, is electronically submitted to the AGO.

The Board and the AGO believe these changes will positively improve cycle times and AGO expenditures.

Decreased Use of DOI; Increased Use of Inspectors and Board Staff

As indicated below, the Board significantly reduced the amount of cases involving DOI, resulting in significant cost savings:

Fiscal Year	Investigative Hours	Actual Costs
2019/20	426.75	\$126,631
2018/19	1,252.25	\$356,829
2017/18	1,619.75	\$404,075
2016/17	2,569.25	\$605,771
2015/16	1,765.25	\$428,621
2014/15	2,439.75	\$572,980

This decrease was due to two main factors:

- **Elimination of Duplicative Efforts:** It was customary practice to send a Board inspector and DOI investigator together on any cases alleging sanitary conditions and/or minimum standard violations. Scheduling conflicts between inspectors and DOI investigators occurred frequently and delayed investigations. This also led to duplicative report findings and no additional benefit from DOI. In addition, DOI is significantly more expensive than a contracted Board inspector. Board inspectors are paid \$250 per inspection while DOI costs more than that by the hour. Now, only Board inspectors conduct field inspections, and DOI assists in cases needing undercover investigations or witness statements.
- **Arrest/Conviction Related Documents:** Historically, in many cases, the Board staff would use DOI to gather arrest records and court documents from respective agencies when they were having trouble obtaining the documents from respondents. Now, Board staff request the documents directly from the arresting agencies and courts. This process efficiency saves the Board money, and the documents received serve as primary source documents.

SME Guidance, Report Writing, Training, and Feedback

In 2019, the Board’s Complaint Audit Subcommittee (Subcommittee) worked with Board staff and the Board’s DAG liaison to revise the Board’s SME program. This included shifting the SME focus from specific law violations to assessing whether the standard of care was followed and creating new guidance for SME review and report writing.

Also in 2019, the Board’s SMEs began attending Expert Witness Training provided by the Medical Board of California. Although the training is provided by a different healing arts board, the training mostly covered identical tasks all SMEs needed to know, including reviewing cases, writing subject matter expert reports, and testifying.

Complaint Audit Subcommittee

In 2015, the Board created the Subcommittee under the Multidisciplinary Advisory Committee (MDC) to review enforcement cases and identify areas of opportunity for process improvement, focusing on examining SME reports to determine whether the SME correctly applied the standard of care. Until 2019, the Subcommittee reviewed disciplinary cases that were closed multiple fiscal years prior to review. Since disciplinary cases often take multiple years to conclude, the SME reports had likely been written several years prior to the Subcommittee’s

review, and there was a high probability the SME was not currently being used. Thus, the Subcommittee feedback primarily was used for future SME training.

In 2020, the Subcommittee began reviewing citation and disciplinary cases closed for thirty days. The Subcommittee now provides specific feedback for each SME, and that feedback is quickly provided to the SME. The SMEs have reacted positively to this feedback and embrace the opportunity to improve.

The Subcommittee also now reviews all steps taken in the citation and disciplinary cases, including how long a case spent at each step and the associated enforcement costs.

Below is a status update taken from the Subcommittee's March 26, 2021 report to the MDC:

Status Update

On March 1, 2021, the Subcommittee was provided eight cases to review. Usually, the Subcommittee reviews only files for cases that resulted in formal disciplinary action in which a Board subject matter expert provided an opinion. Unlike prior audits, this batch of cases was not limited to those formal disciplinary actions and included citations, petitions to revoke probation, and other disciplinary actions. This selection of various case types was aimed at giving the Subcommittee a look at multiple outcomes of enforcement processes. The Subcommittee was also provided the cycle times for each step in the investigative process, as well as the monetary costs related to those steps.

The Subcommittee found the following when reviewing the five cases that involved subject matter expert review:

- All experts properly identified the standard of care.
- Two of the reviews did not cite sources where it would have been appropriate.
- Four reviews contained biased language.

Consequently, management reached out to all experts to provide constructive feedback based on the findings of the Subcommittee. As was the case during the prior audit, the experts were both receptive and appreciative of the phone calls, stating they thought it was great they are now getting consistent feedback in conjunction with the updates to the expert review process. One expert reported that they now focus on keeping their reports as factually-based as possible. Several experts said they now understood how essential it is to link allegations and violations to the standard of care and stated the feedback was "logical."

In addition, since these finalized cases involved investigations that may have been several years old, the Subcommittee noted several investigative issues that were previously recognized and addressed by Board staff/management (as well as relayed to the Board), which include:

- Cases that involve multiple experts. The Subcommittee noted that these reviews had conflicting opinions, which could affect the strength and outcome of the case.
 - Board staff stopped sending cases to multiple experts in late 2018 and make every attempt to utilize the minimum number of individuals to take a case through the enforcement process.

- Cases involving an expert who is hesitant in their findings or unsure about an opinion. This affects the direction of a case and can result in delayed and/or reduced outcome if the Board is unaware of the expert's hesitation.
 - Board staff have instructed the experts to opine on whether there is a "departure" or "extreme departure" from the standard of care, to help assess whether a case should go to the Attorney General (AG)'s Office. Further, staff frequently contact the Deputy Attorney General (DAG) and the experts to get clarification on the strength of the findings and prospective case outlook.
- Cases which should not require an expert. In cases involving criminal convictions, the Subcommittee questioned why an expert would be necessary.
 - Board staff only utilize an expert witness when it is necessary to opine on the standard of care related to the practice of veterinary medicine. This should not include criminal convictions; however, one of the experts informed management during the recent feedback session that the prior policy was that all of these types of cases were to be reviewed by an expert.

Further, the Subcommittee recognized multiple resource issues (time and cost) related to these cases that Board staff/management have been aware of and have been addressing since 2019, such as:

- The reduction in case cycle time and costs associated with a stipulated settlement.
 - Board staff/management will always seek a stipulated settlement to expedite discipline, save costs, and protect consumers, provided the settlement is consistent with adequate consumer protection based on the violation.
- Long cycle times at the desk and AG's Office.
 - Some of the reviewed cases were transmitted to the AG's Office without Board staff verifying the existence of additional complaints against the same individual. Board staff now ensures all active cases against the individual are investigated and submitted to the AG's Office (whenever possible) to take appropriate action based on all existing violations. Intake staff are directed to inform analysts of newly-submitted complaints involving subjects being actively investigated.
- Large blocks of time at Division of Investigation (DOI) and Inspections Unit.
 - DOI usage has dropped considerably in the past couple of years, and cases submitted to DOI are monitored closely by Board staff to ensure quick turnaround. Complaints that require an inspection are now expedited by the Inspections Unit, and the initial inspection is typically done within a couple of weeks to one month.

It is important to note that Board staff/management implemented these improvements in 2019. However, the Subcommittee and Board staff believe that additional improvements should be made to eliminate duplicative and/or unnecessary steps, streamline the process, reduce costs, and maintain the same level of consumer protection. The Subcommittee will monitor the next steps in improving the enforcement process.

The Subcommittee found that if staff/management had implemented the improvements, discussed above, on the eight cases reviewed by the Subcommittee, the Board would have seen the following savings:

- Limiting cases to a single expert (instead of two experts) could have saved the Board between \$450 and \$1,150 per case.
- Fully vetting cases based on a clear expert opinion and avoiding transmission of lower-level action cases to the AG's Office could have saved the Board a total of \$34,163.
- Utilizing the investigative report from the DEA instead of utilizing the additional, duplicative DOI report could have saved the Board a total of \$6,915.

These unnecessary steps led to a total of \$47,767 in costs to the Board.

Currently, Board staff/management make every attempt to get full cost recovery for all cases. However, in the eight cases reviewed by the Subcommittee, it appears some investigative costs, totaling \$12,761, were not conveyed to the AG's Office when the cases were transmitted. As a result, there was no attempt to recoup those costs through cost recovery. Board staff now include investigative costs in the AG transmittal memo and later cross-checks the drafted cost recovery condition to ensure it captures all investigative costs.

It should be noted that prosecution and investigation costs cannot be recovered for Statements of Issues, Petitions to Revoke Probation, and Board costs associated with a hearing. Further, in cases resulting in revocation or surrender, the Board cannot be reimbursed its prosecution and investigation costs until the license is reinstated, if ever. For these eight cases, \$92,979 in Board prosecution and investigation costs were unrecoverable. Further, in accordance with *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, various factors must be considered in determining the amount of costs to assess against a respondent. Accordingly, cases that are heard before an administrative law judge likely will result in reduced cost recovery.

The complaint audit process remains a powerful and useful tool in ensuring that improvements made to the expert witness review and enforcement processes bear fruit. In addition, the provision of cycle times and enforcement costs to the Subcommittee by Board staff will further clarify the individual resource costs of taking enforcement action and highlight the areas in which staff/management are making improvements. Further, the continued selection of multiple case types for review will give the Subcommittee a more comprehensive understanding of enforcement, permitting insight into other areas which could see improvement.

While it is too early to evaluate the efficacy of all improvements mentioned above, the potential cost savings identified by the Subcommittee proves promising.

The Board continues to work to improve by increasing staffing, streamlining processes, identifying weaknesses and addressing them, working with other agencies and continuously reevaluating the process. The Board does believe there is an opportunity to improve cost recovery in default decisions and petitions to revoke probation if the Legislature considers amending BPC section 125.3 subdivision (a) and/or BPC section 4876, as discussed previously. The Board looks forward to the opportunity to work together with all parties involved in the enforcement process in order to foster a culture of continuous evaluation and improvement.

BreEZe Enhancements Leading to Better Service

During the Veterinary Medical Board's (Board) March 3, 2021 Sunset Review Hearing before the Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee (Committees), Senator Richard Pan requested specific, detailed information related to BreEZe enhancements made since its launch in 2016 and how those enhancements will lead to decreased licensing fees. As described in more detail below, with increased BreEZe usage, system enhancements, statutory amendments, and the resulting decline in Board costs, Board applicants and licensees will be issued their initial and renewed licenses and registrations in a more expeditious manner. While the Board cannot predict the influence these changes may have on licensing fees, the Board firmly believes these system enhancements have and will continue to lead to better service overall.

Increased BreEZe Usage

Although Board licensees and registrants have had the option to renew online since 2016, only 49% of veterinarians and 56% of registered veterinary technicians (RVTs) were renewing online by 2019. In May 2019, the Board launched an online campaign to encourage licensees and registrants to renew online, rather than mailing in the paper renewal. As stated in the Board's 2019 Sunset Review Report, the renewal application was reduced from six pages down to one, and all renewal notifications directed the renewing licensees and registrants to renew online through BreEZe. Now, 99% of veterinarians and 98% of RVTs are renewing online. This increased BreEZe usage significantly reduces the workload created by mail processing, cashiering, and manual data entries.

In addition, in 2020, the Board removed all paper applications from the Board's website, and all applicants now are directed to apply online. These changes further reduce licensure cycle times, mail process, and the workload associated with manually cashiering applications.

BreEZe System Enhancements

Transaction Suitability Questions

Transaction Suitability Questions are preliminary questions at the beginning of an online application to ensure applicants are completing the correct application. If an applicant answers "No" to any of the questions, the applicant would be prevented from continuing the application process.

After analyzing licensing processes in the fall of 2018, it was determined that transaction suitability questions needed to be added to most of the Board's license application transactions. Due to multiple application transactions available in BreEZe for a veterinarian license or RVT registration, it was unclear to applicants which transaction to complete. This resulted in applicants submitting multiple incorrect applications. Staff would spend a significant amount of time responding to frustrated applicant inquiries, walking them through the correct application, transferring fees to correct applications, providing refunds, and closing applications submitted in error.

Adding the transaction suitability questions has significantly diminished this unnecessary workload and improved cycle times. Additional unnecessary workload would be eliminated if the Board's legislative proposal, which would combine all transactions for each license type into one transaction, is enacted.

Improved Board Workflow

In late 2018, Board management began using an existing BreEZe report that identifies the status and age of all pending applications. The report also identified the Board staff responsible for processing the applications. With this report, Board management recognized the need to change how BreEZe was designed to organize workflow. At the time, all applications were placed into queues based on application type. Applications would sit, untouched in those queues until staff was available to process the application. Unfortunately, this led to little accountability of any pending applications, as the applications remained “out of sight, out of mind.”

Shortly after identifying this issue, Board staff worked with the Department of Consumer Affairs (DCA) to enhance the BreEZe design to automatically assign applications to the individual Board technician responsible for processing that specific license type. The technicians now automatically see the workload they are responsible for in their dashboard and can process in order received. This also allows management to quickly identify workload for staff and shift resources as necessary.

Application Expiration Dates

In 2016, BreEZe initially was designed to expire applications after a certain number of days. Some applications would automatically expire after 30 days, 60 days, 90 days, or a year. After applications expired, applicants were told to reapply, or Board staff would manually open new applications on the applicants’ behalf. Board staff would then manually transfer the application fees and all documents to the new application. In many instances, applicants would reapply on their own, pay for both applications, and then staff would need to initiate the refund process. This created a lot of additional workload for staff, frustration for the applicants, and longer licensure cycle times. There was also no statutory authority to expire applications and make applicants reapply.

In late 2019, the Board updated the design to push application expiration dates to one year (the BreEZe system requires an expiration date) from the date the application was submitted. Most licenses, registrations, and permits are issued before the one-year mark, but some applicants choose not to pursue licensure in California. In those scenarios, the Board is seeking legislative authority, through this Sunset review process, to abandon applications after one year of no applicant activity. Updating the expiration date design has eliminated unnecessary reapplication workload, led to better service to applicants, and improved cycle times.

Renewing Inactive Licenses

Prior to 2020, BreEZe renewals were designed to automatically renew licenses into inactive status if a licensee/registrant answered “No” to a question regarding their compliance with the continuing education requirement. Licensees were unaware of the inactive status, because the system accepted their payment and a new license certificate with a new license expiration date was mailed to the licensee. Many licensees did not notice the license status itself had changed from Current-Active to Current-Inactive. This issue was brought to light during the COVID-19 pandemic when the DCA Director issued waivers for continuing education. Licensees were answering the question honestly with “No,” knowing they had an extended amount of time to complete the continuing education, and the system would erroneously renew the license as inactive. Some licensees were not aware of the inactive status until clients attempted to pick up medication for their pets and pharmacies would not fill the prescriptions due to the prescriber’s license being in an inactive status.

This issue was expedited to the DCA Office of Information Services (OIS) and quickly remedied. Now, the BreEZe system is designed to ask licensees whether they want to renew as active or inactive, and the licensee is provided information as to what inactive status means. In addition, while the DCA Director's continuing education waiver is in place, licensees will be asked if they would like to use the waiver. These system enhancements ensure only licensees who intend to be renewed as inactive will be renewed inactive.

Combined RVT Transactions

The original BreEZe system design included two separate online transactions for RVT applicants. This required RVTs to apply for initial exam eligibility, and separately apply for initial registration. Having two separate transactions created a lot of confusion among RVT applicants, who expected to only submit one application to the Board. This led to a significant number of angry applicants calling the Board; Board staff would have to explain how they only applied for examination eligibility and they would still need to apply for the initial registration and pay an initial registration fee. This confusion also led to delays in RVTs obtaining their initial registrations and entering the workforce.

In 2019, the RVT transactions were combined into one, reducing the amount of times an RVT applicant applies with the Board. This enhancement eliminated the confusion, reduced the number of calls with Board staff, and streamlined the process for RVT applicants.

Use of Milestones

When BreEZe was initially launched as part of DCA's Release 1 phase, it came with a capability to add "milestones" to license applications to determine the amount of time spent processing within the Board's control and the amount of time spent outside of the Board's control. For example, an applicant may apply online, but the applicant still must pass an exam or graduate in order to be eligible for a license. The staff processing the application would add a milestone (aka deficiency) to stop the clock for the Board's processing time. Once the milestone is satisfied, the processing time would start again.

Although the Board began using BreEZe in January 2016, the use of milestones was not being utilized by Board staff until 2019. At that time, staff were trained on the use and importance of milestones and began using them with every application. Now, the Board's cycle times truly reflect the amount of time within the Board's control to process an application.

Immediate Access to License Certificates

Once license, registration, and permit applications are approved, BreEZe automatically runs a batch job overnight and sends all the information to the Board's print vendor for printing and mailing the certificates the next morning. It can take up to two weeks for a licensee to receive their certificates once the Board approves the application. The additional wait time becomes problematic for some licensees whose employers require the physical certificate before hiring new employees.

In 2021, the Board began using an existing feature in BreEZe that enables the licensees to print their license as soon as it is issued, rather than wait for the paper license in the mail. For many, this means licensees can begin working immediately, rather than wait for the mail process.

Automatic Transfer of Examination Scores

Currently, all national exam scores are emailed to the Board in a large pdf. The pdf includes a list of names of the individuals who passed the exam and some additional identifying information that allows Board staff to properly identify them. Board staff then manually searches

individuals from the list and enters the passing information into BreEZe. With almost 3,000 veterinarian and RVT applications received each year, searching for and manually entering exam scores into BreEZe is a significant drain on resources.

To improve this process, Board staff worked throughout 2020 with the BreEZe team and the American Association of Veterinary State Boards (AAVSB) to create an interface between AAVSB's system and BreEZe. This interface will allow AAVSB to automatically transfer exam scores into BreEZe with no manual intervention. This interface has been completed, with the first automatic transfer occurring in May 2021.

Immediate Access to Application Deficiencies

Board staff identified one of the biggest drains on resources is the number of applicants calling for the status of their application. The Board receives close to 5,000 applications per year, and a significant number of those applicants contact the Board on a regular basis to expedite their license or registration application. With only three technicians processing applications, these calls divert attention from processing to provide application status updates.

The Board is currently working on enhancing BreEZe to allow applicants to see the real time status of their applications online and any application deficiencies Board staff has identified. Board staff believes this enhancement will significantly reduce the number of calls to the Board and provide applicants with automatic access to the status of their application.

Ability to Electronically Submit Documentation to Resolve Application Deficiency

Currently, once an applicant submits their online application, there is no way to submit any additional documentation if the application is deemed deficient. If the application is deficient, the applicant must mail the appropriate documentation to the Board or email it to the technician processing the application to resolve the application deficiency.

Board staff is working with DCA OIS on a BreEZe design enhancement that allows applicants to submit additional documentation online. Once applicants see their application is deficient, they will be able to quickly submit the documentation, reducing the time it takes to address the deficiency.

Removing VACSP Photograph Requirement

The only requirement for veterinary assistance controlled substance permit (VACSP) applicants to receive their permit is to pay a fee and submit fingerprints for a criminal background check. As such, these applications should be one of the quickest applications to process and requires little to no manual intervention. Nevertheless, after analyzing cycle times for VACSP applications, Board management recognized it was taking longer than it should to process these applications. After further investigation, it was discovered there is a delay related to the application requiring a photograph of the applicant. Many VACSP applicants forget to attach their photograph when initially submitting their online application. This delays the process, as staff had been generating deficiency letters and not completing application review until a photograph was received. However, there is no legal requirement for an applicant photograph to be submitted to the Board to process the VACSP. As such, Board staff is working with DCA OIS to update the BreEZe design to remove all references to the VACSP photograph requirement. In the meantime, Board staff is manually waiving the requirement and resuming processing.

Removing "Board Approval" Hold on VACSP Applications

Any license, registration, or permit applications that have requirements for documentation and/or technician review has an additional "Board Approval" hold placed on the BreEZe

transaction. This automatic hold ensures the BreEZe system does not auto-approve applications when all requirements appear to be met in the system. For example, an applicant may submit a copy of their transcript or a photograph, but Board staff would need to manually verify the photograph is of the individual and/or the transcript meets graduation requirements. Although the applicant has uploaded the documents into the BreEZe system, the system should not have the capability to auto-approve the application and issue a license without staff verification of the sufficiency of the documents.

On the other hand, if requirements are straightforward, such as only requiring payment of a fee, the “Board Approval” hold is an unnecessary barrier in the process. In this transaction, the BreEZe system is designed to identify if the appropriate fee was paid and does not require manual staff intervention.

With that in mind, Board management reviewed the requirements for the VACSP and determined the “Board Approval” hold should be removed. The BreEZe system can identify the correct fee has been paid and if applicant fingerprints come back from the Department of Justice as “Clear”. Applicants who have delayed or rejected fingerprints or require further investigation due to a criminal background would be held. Otherwise, VACSP applications should be approved automatically with no further staff intervention.

Once this enhancement is launched, cycle times for issuing the VACSP should dramatically improve.

Reallocation of Existing Staff

Due to limited licensing resources, the Board’s Inspections Unit was assisting the Licensing Unit by processing premises registration applications. After making many processing improvements in the Licensing Unit, Board management was able to reallocate an existing licensing staff member to other necessary tasks within the Licensing Unit. Now, the reallocated staff member is responsible for running the Board’s new Continuing Education (CE) Audit Program and processing premises registration applications. This enables the Board to use existing resources, rather than request additional budget allocation for staff, saving the Board money.

Better Service

The Committee’s March 3, 2021 Background Paper correctly identifies how, in January 2020, the Board was processing applications within 18 to 20 weeks of receipt. This processing time did not reflect the total amount of time it took to complete processing applications and issue licenses, registrations, or permits. With all the system enhancements mentioned above, the Board is now approving most exam applications within six to seven weeks, on average, and initial license applications within two and a half weeks. It should be noted that these improved cycle times were despite the pandemic, during which the Board’s entire Licensing Unit has been working from home.

If Assembly Bill (AB) 1535 (Committee on Business and Professions, 2021) is enacted, the Board can condense eight different veterinarian transactions down to one, and applicants would not apply until they have graduated and passed their national exam. This streamlined application process will dramatically decrease cycle times.

In a commitment to further identify BreEZe enhancements and improve licensing processes, the Board’s Executive Officer is a Co-Chair of DCA’s new Enlighten Licensing Project (ELP). The ELP recently was created by the DCA Director to review licensing processes and learn best

practices from all DCA programs. After the first ELP meeting, Board staff identified multiple BreEZe enhancements to streamline the licensing process even more.

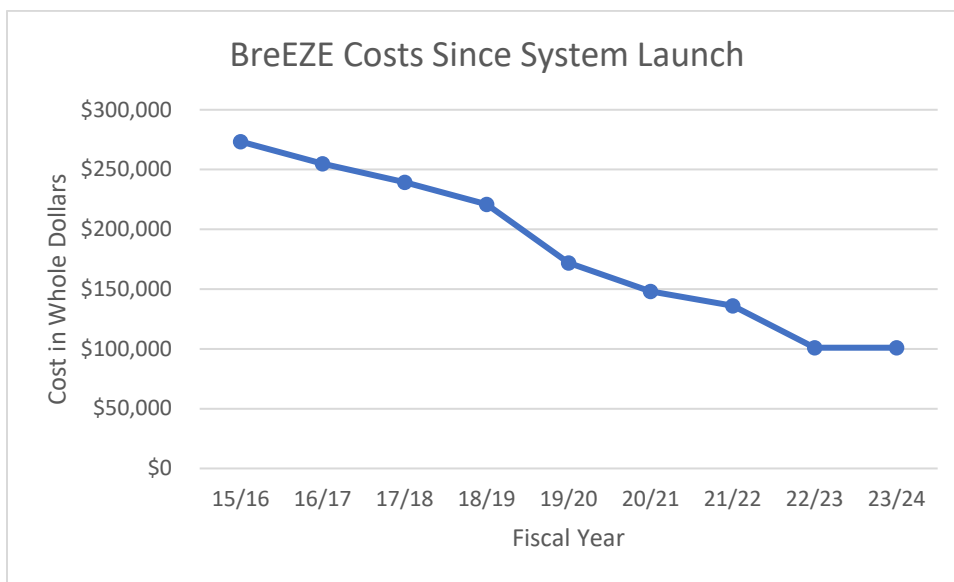
In addition, as mentioned in the Board's 2019 Sunset Review Report, Board staff worked throughout 2020 with the DCA Organizational Improvement Office (OIO) (recently renamed from Organizational Change Management team) to map out existing processes. Board staff and DCA OIO will start identifying Board process efficiencies in the coming months.

As demonstrated above, the Board's focus on improving BreEZe and other licensing processes has and will continue to lead to better service for Board applicants, licensees, staff, consumers, and animal patients.

Decreasing BreEZe Costs

Despite all of the system enhancements mentioned in this report, BreEZe system costs have continuously decreased since the Board launched BreEZe in January 2016, with the annual maintenance costs projected to become static in FY 22/23.

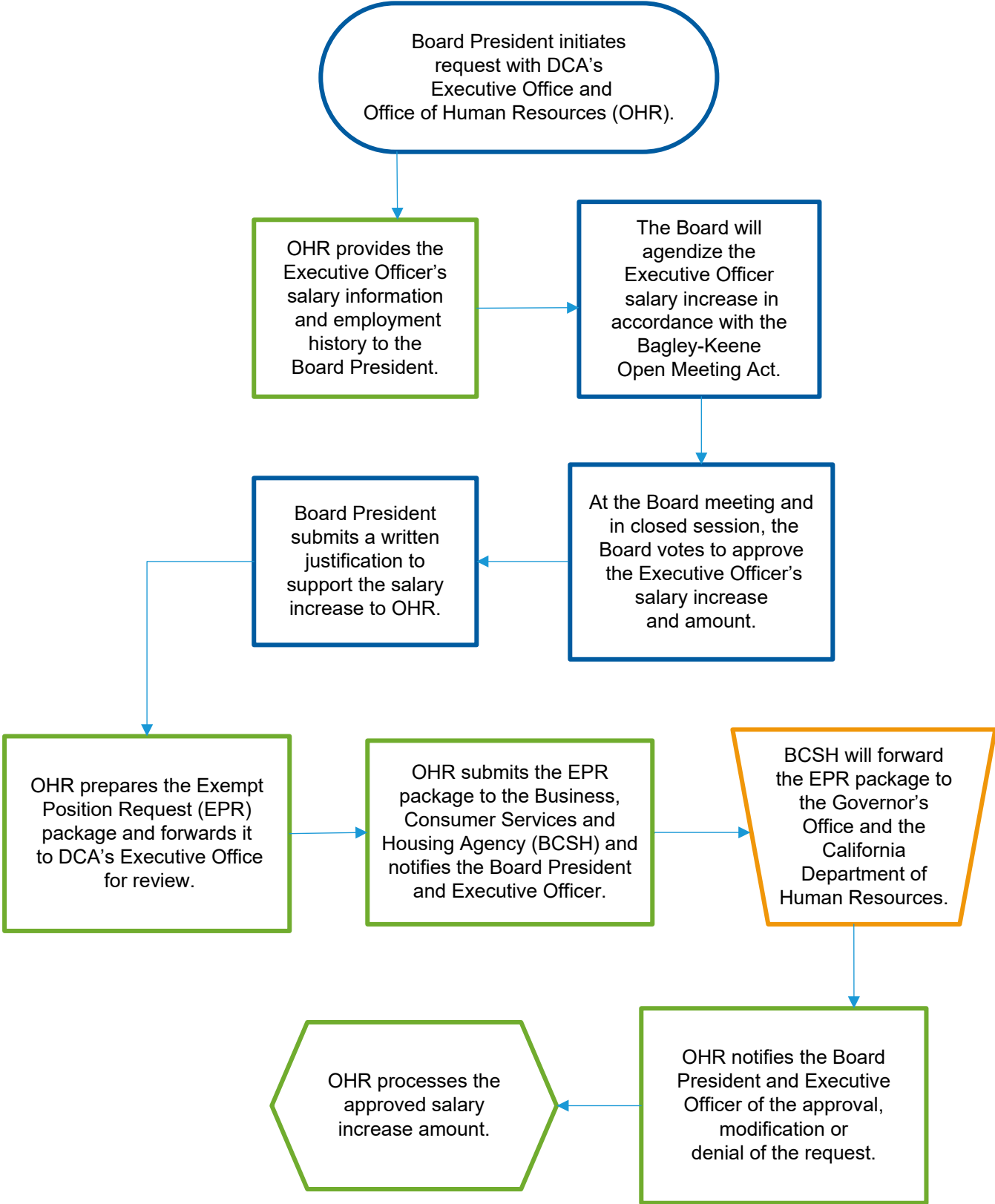
Veterinary Medical Board BreEZe Costs (Amounts in Whole Dollars)								
FY 15/16	FY 16/17	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
\$273,395	\$255,050	\$239,476	\$221,000	\$172,000	\$148,000	\$136,000	\$101,000	\$101,000



The Board's decreased BreEZe costs are directly linked to the overall decrease in DCA BreEZe costs. Since DCA's contract with Accenture concluded in April 2020, DCA staff now maintain the system without assistance of a system integrator. The number of DCA staff necessary to maintain the BreEZe system also has decreased from 43 positions to 37 positions in FY 2020-21. It should be noted that annual maintenance costs are not unique to the BreEZe system. All DCA programs pay annual system maintenance costs, regardless of platform.



Department of Consumer Affairs Executive Officer Salary Increase Request Process



Green box: OHR roles and responsibilities.
 Blue box: Board roles and responsibilities.
 Orange box: Other entity roles and responsibilities