



MEMORANDUM

DATE	April 23, 2021
TO	Veterinary Medical Board (Board)
FROM	Enforcement Managers Robert Stephanopoulos and Matt McKinney
SUBJECT	Agenda Item 15.D. Enforcement Report

Staff Update

As discussed during the prior Board meeting, the six limited-term analyst positions acquired via the Board’s 2020/21 Budget Change Proposal have been filled. Two of these new incumbents are Board licensing staff members and will not begin enforcement tasks until their replacements are trained (which should be within the next few weeks). Management continues to work with the newly hired enforcement analysts (as well as the veteran analysts), providing guidance via team meetings, one-on-one sessions, and round table meetings.

As a result of the previously-discussed influx of new staff in the Board’s Enforcement Unit and to avoid a manager bottleneck for reviewing enforcement cases, the Board hired a limited-term enforcement manager, Matt McKinney, who started on February 22, 2021. Mr. McKinney comes to the Board from the California State Board of Optometry where he served in the capacity of the lead enforcement analyst, probation monitor, HR liaison, and Expert Witness liaison. He brings nine years of enforcement experience and is well-versed in both DCA and BreZE enforcement processes.

As noted in the January 2021 enforcement and probation reports, the Probation Unit is understaffed when compared to the number of probationers. After internal discussions regarding enforcement vacancies, one of the Board’s current Enforcement Technicians, Kim Phillips-Francis, expressed interest and was hired for the office technician position within the Probation Unit. Once her replacement is trained, Ms. Phillips-Francis will transition to assist the probation monitor with logging and inputting probation compliance documentation into the BreZE system, processing complaints against probationers, and review of high-level compliance.

Interviews were conducted for the now-vacant enforcement technician position; however, the chosen candidate could not be hired, and the remaining candidates were not as qualified. Therefore, the position will be reposted to get a larger pool of candidates and (hopefully) hire someone who will be a great fit.

Office of the Attorney General (AG’s Office)

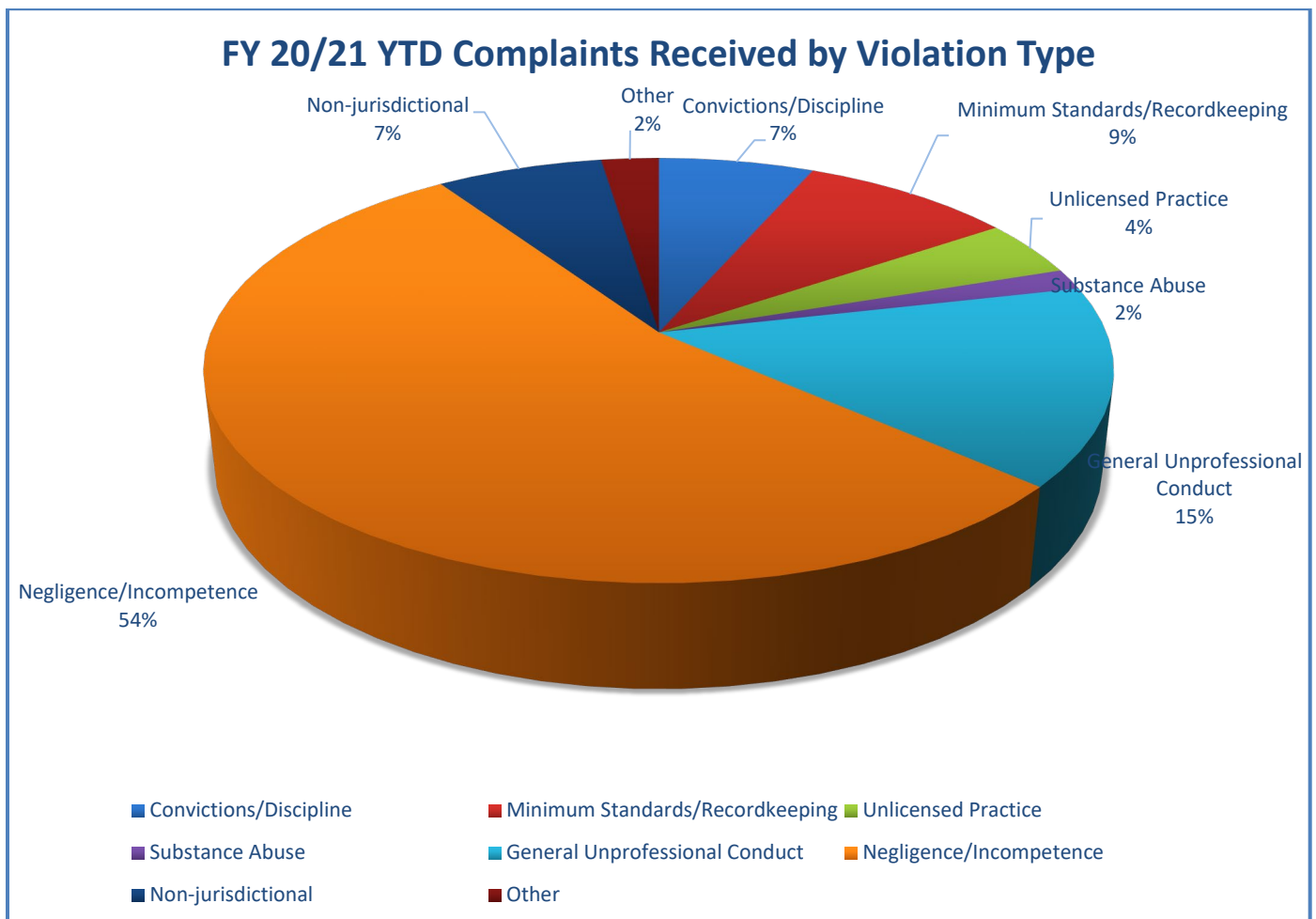
As expected, disciplinary case cycle times continue to rise, consistent with the Board’s focus on investigating the oldest cases. As demonstrated in the performance measures below, discipline cycle times have risen by about 250 days each year since 2018/19. Staff will continue to press forward, investigating these tougher, older cases; however, the time it takes to work these cases directly correlates to the number of cases closed via disciplinary action.

Karen Denvir, the Board's Deputy Attorney General (DAG) liaison continues to be a wonderful resource for Board staff, as she has made herself extremely accessible to answer case-specific questions and has even helped with Sunset Review questions related to the AG's Office. She is instrumental in explaining the AG's Office internal processes, which in turn, helps staff understand how best to communicate and work with the assigned DAG.

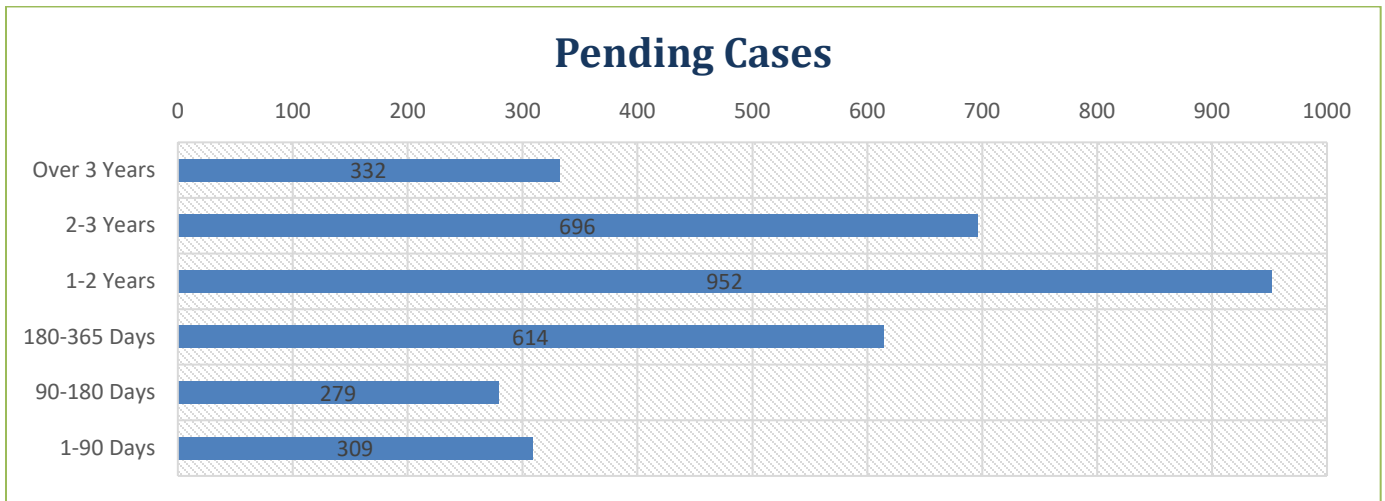
Intake

The Intake Unit continues to meet its performance metric of responding to a submitted complaint within 10 days, averaging eight days for FY 2020/21. However, due to a large and time-consuming request from the legislative Sunset Review Committees, the Intake Unit had to shift their efforts to obtaining data to respond to said request. This has caused a small backlog of pending complaints, which now sits at 40 complaints. The data for this project should be obtained prior to the end of March, after which, the pending complaints will be processed. The Board continues on course to have the highest number of complaints submitted during a fiscal year, exceeding 1,300 complaints.

Once again, at 54%, negligence/incompetence allegations continue to be the lion's share of the complaints submitted to the Board. This makes triaging complaints difficult, as the majority of complainants allege that the death or serious harm to their pet was due to the negligence and/or incompetence of the treating veterinarian; those complaints must be prioritized pursuant to Business and Professions Code (BPC) section [4875.1](#).



Investigation



The number of pending investigations is nearly at 3,300 cases, with around 10% of these over three years old. Unfortunately, investigating these extremely old, complex cases takes a much longer time (likely why they were not previously completed), which affects the overall number of cases that can be closed. It is estimated that once the newly hired staff is fully trained and begins to process cases quickly, the number of cases over three years will begin to reduce drastically.

Division of Investigation (DOI)

DOI usage remains consistent with the prior fiscal year; DOI is only utilized when absolutely necessary. Should a case require an undercover investigation or interviews of involved parties, DOI will be called. However, cases that require records and/or allege facility/practice concerns can quickly be addressed via the Board's Inspection Unit. The Inspections Unit has committed to prioritizing inspection requests related to older cases that are being investigated, to avoid allowing these cases to age more than they should.

Expert Witness Program

In March, the Complaint Process Audit Subcommittee (Subcommittee) of the Multidisciplinary Advisory Committee (MDC) reviewed eight finalized enforcement actions, some of which involved expert witness reviews. This audit process ensures expert reports are consistent with the expert witness guidelines, examines timeframes to identify bottlenecks, and identifies opportunities to save money. The most recent review noted many areas in which Board staff/management have already implemented changes to improve the process and conserve resources. The results of this audit can be reviewed in the meeting materials for the April 21, 2021 MDC meeting.

Strategic Plan Accomplishments for FY 2020/21

Streamline the enforcement process to shorten cycle time, expedite consumer protection, and lower costs. (Strategic Plan Objective 1.1)

The Enforcement Unit is finalizing the enforcement process maps with DCA's Organizational Improvement Office, which will be used to streamline existing processes, training, procedure manuals, and increase enforcement efficiency.

As mentioned above and in the MDC report, the Subcommittee process has been updated to provide all finalized case files electronically and now includes review of additional forms of enforcement action, such as citations, petitions to revoke, and discipline based on convictions.

The findings of the Subcommittee have been used to provide feedback to the Board's expert witnesses and improve their report writing.

Expand citation authority and increase usage to resolve less egregious violations through non-disciplinary actions. (Strategic Plan Objective 1.2)

The Enforcement Unit is in the process of coordinating training with the Inspections Unit on the process to issue a citation. This will be an extremely useful tool to the Inspections Unit, as they will no longer have to submit an inspection case to an Enforcement analyst to issue a simple citation.

Increase the utilization of existing tools to combat unlicensed practice. (Strategic Plan Objective 1.3)

The Enforcement Unit continues to expand investigations of unlicensed individuals. Instead of relying on DOI to visit an alleged unlicensed individual upon receipt of a complaint, staff first determine the validity of the claim via an undercover phone call or alternative method of contact. By eliminating initial DOI involvement, this could save the Board money if it appears unlicensed practice is not occurring. Further, it can potentially give DOI more information if an undercover operation is warranted.

Analyze effectiveness of current complaint prioritization defined in BPC section 4875.1. (Strategic Plan Objective 1.4)

Complaints continue to be prioritized in accordance with BPC section [4875.1](#) and are investigated based on the age of these high-priority complaints. BPC section 4875.1 requires the Board to prioritize negligence or incompetence cases involving death or serious bodily injury to an animal patient. As noted above, those cases total over half of all cases (54%) investigated by the Board. Given the significant number of first priority cases, the statutory priority list should be re-examined.

Disciplinary Action Vote Results

STIPULATED SETTLEMENT	VOTE	RESULT
Nicholas Macy (Case No. 4602016000434)	6 – Adopt	Adopted
PROPOSED DECISION	VOTE	RESULT
Robin Ceballos (Case No. 4602017000300)	4 – Adopt 1 – Recuse 1 – Hold for Discussion	Adopted
Jessica Portela, DVM (Case No. 4602019000224)	8 – Adopt	Adopted

Petition Hearings

PETITION FOR REINSTATEMENT / TERMINATION OF PROBATION*	VOTE	RESULT
Dale Cotton, DVM (Case No. 1002074894)	7 – Approve 1 - Recuse	Approved

**As a reminder, these matters were provided to ensure they accurately reflected the Board's decision.*

Performance Measures

COMPLAINTS AND CONVICTIONS												
	FY 2018/19	FY 2019/20	FY 2020/21									
Complaints and Convictions	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Complaints Received	1215	1139	112	132	103	142	90	101	117	118	67	982
Convictions Received	123	166	6	13	14	18	6	11	11	13	8	100
Average Days to Intake	44	10	9	13	10	13	3	5	4	5	9	8
Closed at Intake	2	1	0	0	0	3	2	0	0	0	0	5
Pending at intake	26	6	45	67	22	12	14	9	22	31	40	40
<i>Average Days to Intake - Average cycle time from complaint received, to assignment to an investigator.</i>												
UNLICENSED ACTIVITY COMPLAINTS RECEIVED												
	FY 2018/19	FY 2019/20	FY 2020/21									
Unlicensed Activity Complaints Received	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
	72	60	6	8	3	9	6	3	2	7	2	46
DESK INVESTIGATIONS												
	FY 2018/19	FY 2019/20	FY 2020/21									
Desk Investigation	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Assigned	1133	1332	84	123	161	170	94	119	116	126	102	1095
Closed	512	625	28	21	49	76	26	49	46	33	22	350
Average Days to Complete	269	309	272	6	279	202	243	414	277	358	192	263
Pending	1790	2416	2530	2632	2744	2839	2907	2977	3047	3140	3220	3220
<i>Average Days to Complete Desk Investigations - Average cycle time from complaint receipt to closure.</i>												
SWORN INVESTIGATIONS												
	FY 2018/19	FY 2019/20	FY 2020/21									
Sworn Investigations	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Assigned	20	11	0	0	2	1	0	1	1	1	2	9
Closed	60	11	1	1	1	3	2	0	0	0	1	9
Average Days to Complete	378	550	137	50	148	210	182	N/A	N/A	N/A	154	165
Pending	40	12	11	10	11	9	7	8	9	10	11	11
<i>Average Days to Complete Sworn Investigations - Average cycle time from complaint receipt to closure.</i>												
ALL TYPES OF INVESTIGATIONS												
	FY 2018/19	FY 2019/20	FY 2020/21									
All Types of Investigations	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Closed Without Discipline	509	639	25	24	50	77	29	42	51	34	23	355
Cycle Time - No Discipline	285	277	228	85	265	200	241	392	242	307	184	245
All pending cases	1779	2434	2586	2709	2777	2860	2928	2994	3078	3181	3271	3271
CITATIONS												
	FY 2018/19	FY 2019/20	FY 2020/21									
Citations	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Issued	13	24	0	0	3	0	0	0	1	1	0	5
Avg Days to Complete Cite	1038	1316	N/A	N/A	1492	N/A	N/A	N/A	1525	1620	N/A	1524
Citations appealed	0	1	0	0	0	0	0	0	0	0	0	0
<i>Average Days to Issue a Citation - Average cycle time from complaint receipt to the effective date of the citation.</i>												
ATTORNEY GENERAL CASES												
	FY 2018/19	FY 2019/20	FY 2020/21									
Attorney General Cases	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Initiated / Referred to the AG	77	34	5	2	1	0	0	2	4	4	3	21
Pending at the AG	114	99	92	85	81	69	68	56	59	61	64	64
Statement of Issues Filed	7	3	0	0	0	0	0	0	0	0	0	0
Accusations Filed	22	16	0	1	0	0	0	0	0	3	1	5
ATTORNEY GENERAL CASES CLOSURES												
	FY 2018/19	FY 2019/20	FY 2020/21									
AG Case Action	YTD	YTD	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	YTD
Closed Without Discipline*	5	5	0	2	1	0	0	0	0	0	0	3
Closed With Discipline	53	33	3	4	1	6	0	3	2	1	3	23
Average Days to Close (Discipline)	888	1148	971	1356	1523	1697	0	1399	1725	1759	971	1405
<i>Average Days to Close a Discipline Case - Average cycle time from complaint receipt to the effective date of disciplinary order.</i>												
<i>*Closed without discipline relates to cases which have been withdrawn, dismissed, or declined by the AG's office.</i>												