

## Compliance and Enforcement Committee Minutes

June 25, 2010

Department of Consumer Affairs  
El Dorado Room  
1625 N. Market Blvd, #N220  
Sacramento, CA 95834

via Teleconference:  
6405 S. Halm Ave.  
Los Angeles, CA 90056

925 Harbor Plaza  
Long Beach, CA 90802

### Members Present

Patricia Lock-Dawson, Chair, Public Member  
Samara Ashley, Public Member  
Harry Douglas, Public Member

### Staff Present

Kim Madsen, Executive Officer  
Marsha Gove, Examination Analyst

### Members Absent

None

### Guest List

On file

Patricia Lock-Dawson, Compliance and Enforcement Committee (Committee) Chair, called the meeting to order at 10:10 a.m. Marsha Gove called roll, and a quorum was established.

### I. Introductions

The Committee, Board of Behavioral Sciences (BBS) staff, and meeting attendees introduced themselves.

### II. Review and Approval of the March 25, 2010 Meeting Minutes

*Harry Douglas moved to approve the March 25, 2010 Compliance and Enforcement Committee meeting minutes. Samara Ashley seconded. The Committee voted unanimously (3-0) to pass the motion.*

### III. Update on Retroactive Fingerprinting Requirement

Kim Madsen reported that as a result of the adopted regulations in 2009, all licensees and registrants who have previously not submitted fingerprints as a condition of licensure or registration for the BBS, or for whom fingerprints do not exist in the California Department of Justice's (DOJ) criminal offender record identification database, must do so prior to their next renewal date occurring on or after October 31, 2009. Staff began this project in August 2009. Staff identified over

34,000 individuals in the BBS licensing population affected by this requirement. To date, about half of those individuals have been fingerprinted.

BBS staff has compiled a list identifying individuals with deadlines to comply ranging from October 31, 2009 to May 31, 2010 who failed to submit fingerprints. Failure to comply with this requirement can result in disciplinary action or the issuance of a citation, which may include a fine of up to \$5,000. To date, the enforcement unit has issued approximately 80 citations; 20 citations were withdrawn because those individuals complied with the requirement.

Ms. Madsen stated that staff has one more year to complete the project, and no problems are anticipated.

#### **IV. Update on Enforcement Performance Measures and Process Improvements**

Ms. Madsen reported that beginning February 2010, the Board began submitting its enforcement statistics in a new report format to the Department of Consumer Affairs (DCA), Director of Compliance and Enforcement. The report has a dual purpose: 1) it provides statistical information to DCA regarding each Board and Bureau's enforcement program; 2) it's a tool for each board and bureau to monitor its progress to reduce the average investigation and adjudication time lines of enforcement cases from 36 months to 12 to 18 months.

The Board's enforcement statistics from January 1, 2010 through May 30, 2010 and from July 1, 2009 through December 31, 2009 were provided. Ms. Madsen explained that the Board's benchmarks differ from DCA's benchmarks. Some categories in the new standardized report are defined differently from the Board's definition in previous reports. Those categories reflect "N/A." Additionally, the "N/A" designation is reflected during this same time period if the data is captured in another category or was not previously captured.

Ms. Madsen added that year-to-date, the Board has over 1200 consumer complaints as of May 2010. Along with the increase in consumer complaints, there is also an increase in arrest reports and convictions, in part due to the retro-fingerprint program and large application volume.

To date, over 1300 cases are assigned to the investigative analysts; over 600 cases are pending. Currently, it is taking staff an average of 100 days to close a case, which is within the target goal.

Year-to-date, the Board's two field investigators have received 52 cases and closed 49 cases. The bulk of the field work is conducted by staff. About 10 cases are referred to the Division of Investigation (DOI).

Overall, the Board has closed over 1600 cases and averaging just over 100 days to close. Over 100 cases have been referred to the Attorney General's office, and they have close to 150 cases pending.

Ms. Madsen reported on process improvements. Board enforcement staff is nearing the completion of its review of the current procedures. To date several duplicative steps have been eliminated; several forms were consolidated or eliminated; procedures were revised for efficiency; and a review of all pending cases at the Attorney General was completed. Ongoing the enforcement staff will review the changes to its procedures to identify further areas for efficiency or revision.

Enforcement Manager Pearl Yu is participating in the Process Action Team Committee (PAT). The PAT Committee is comprised of representatives from each Board, Bureau, and the DOI. This cooperative effort is representative of DCA's efforts to resolve the procedural challenges identified during its review of the entire enforcement process. The PAT Committee initially was tasked with establishing criteria to refer cases to DOI. DOI and DCA expanded the PAT Committee's role to conduct an analysis of DCA's complaint process in order to improve the effectiveness and efficiency of the intake, investigation, and resolution phases of the process. The PAT Committee anticipates submitting a draft proposal to DCA Director Brian Stiger within 90 days.

Ms. Madsen reported on DCA's Enforcement Academy. Several members of the enforcement staff have attended the academy. This eight day training academy is designed to share best practices from various enforcement programs. The Board's enforcement staff that participated in the academy presented their experiences with the Committee.

Mr. Douglas requested a presentation of the Enforcement Academy and the training content at a future meeting.

## **V. Presentation on the Probation Process**

Ms. Madsen reported on the probation process. She explained that it is a process applied to a licensee or registrant who has gone through the administration process and either through a proposed decision issued by an administrative law judge or through settlement negotiations, the individual's license or registration is revoked but the revocation is stayed. The individual must comply with specific terms and conditions outlined in the disciplinary order.

The Board's probation monitor, Julie McAuliffe, performs a multitude of functions including coordinating and reviewing the disciplinary document, setting up the probationary file, mailing probation packets to probationers, holding initial telephone conferences to discuss probation terms and conditions, securing psychological evaluators and reviewing psychological evaluations, approving and monitoring supervisors, therapists, billing monitors, remedial education, rehabilitation programs, biological fluid test sites, and probation costs. A file review is performed on a quarterly basis to ensure compliance and document any requirement completed. Once a probationer completes probation, the license or registration is restored without restrictions.

Ms. Madsen explained that if a probationer violates any term of his or her probation, the probationer is given notice and the opportunity to clear the violation(s). If the

probationer continues to be non-compliant, the Board forwards the case back to the Attorney General to impose the previously stayed discipline of revocation.

Ms. McAuliffe monitors 67 probationers. Of those, 39 are in compliance, 6 are in violation of their terms and conditions, 8 have been referred back to the Attorney General to revoke their probation for failure to comply, and 14 are tolled. Tolling of probation is a condition that allows a probationer to put the probation on hold during a period of time in which he or she is out of state or not currently practicing in California. Once he or she returns to California and begins to practice or resumes practice in state, the probation becomes active and the period of tolled probation is added to the probation term thereby extending the probation expiration date. During a tolling period, the probationer must obey all laws, maintain a current registration/license and continue to submit Quarterly Reports. The average length of probation is five years.

Ms. Madsen explained that the statute allows a probationer to petition for modification of a condition after one year and petition for early termination of probation after at least two years for those whose probation period is three years or more. Petitions are held at Board meetings and may include an Administrative Law Judge. After a probationer presents their case, the Board meets in closed session to decide whether to grant or deny the request.

Ms. Madsen anticipates the number of probationers to increase to over 100 very soon.

A probation program overview and the Disciplinary Guidelines were provided for review.

Mr. Douglas requested a brief orientation at a future meeting on what criteria to follow when deciding whether to grant or deny a probationer's petition for modification.

## **VI. Presentation of Legal Options to Suspend a Licensee From Practice**

### **a. Penal Code 23**

Ms. Madsen provided an overview of Penal Code Section 23 (PC 23). The Board's mandate is consumer protection, to ensure that licensees provide services to consumers in a safe and ethical manner. This is mandated in Business and Professions Code (BPC) Section 4990.16. The legislative intent is noted in BPC 4980.34, that the Board must utilize all the resources available to achieve the consumer protection mandate. The first resource available is PC 23.

PC 23 allows a state agency to voluntarily appear and provide information related to the protection of the public at any criminal proceeding. Typically, these proceedings are conducted in Superior Courts throughout the state.

PC 23 provides the Board a procedure to immediately remove a licensee from practice. Following notification of a licensee or registrant's arrest, the Board reviews the arresting charges to determine if the licensee or registrant presents

an immediate threat to the public. If the Board determines the charges warrant immediate removal of a licensee from practice, the Attorney General is contacted to discuss and initiate the PC 23 process.

Business and Professions Code section 320 allows a state agency to voluntarily appear at any proceeding, (state commission, regulatory agency, department, other state agency, any state or federal court or agency) to present evidence and arguments for the effective protection of consumers.

During the proceeding, the Deputy Attorney General provides the court information regarding the qualifications, duties, and functions of a Board licensee, the relationship to the charges, and the Board's mandate to protect the public. The presiding judge determines if the licensee will be suspended from practice and for what time period. The suspension may be a condition of bail, probation, or release on one's own recognizance.

Since July 1, 2006, six (6) licensees were suspended from practice utilizing the provisions of Penal Code Section 23.

#### **b. Interim Suspension**

Ms. Madsen presented on interim suspension. Business and Professions Code Sections 4982, 4989.54, 4992.3, and 4999.90 provide the Board the authority to suspend any license or registration if the licensee or registrant is guilty of unprofessional conduct.

Business and Professions Code Section 494, provides the Board authority to file a petition for an interim order to suspend the license if:

- The licensee has engaged in acts or omissions which violate the Board's law or has been convicted of a crime substantially related to the licensed activity,
- And the licensee presents a threat to the public's health, safety, and welfare.

The Board works with the Deputy Attorney General to initiate the Interim Suspension process.

The Interim Suspension process is an administrative action conducted before an Administrative Law Judge and has specific time lines that must be followed. Except in cases in which from the supporting documentation it appears that serious injury to the public would occur, the licensee must be given at least 15 days notice of the hearing on the petition for the Interim Suspension. In cases where notice is not provided, the licensee is entitled to a hearing within 20 days of the issuance of the order.

The licensee has the right to receive copies of the documents in support of the Board's petition, legal representation and present oral arguments and evidence. The evidentiary standard in a petition for an interim suspension hearing is a

preponderance of the evidence. The Administrative Law Judge must issue the decision on the petition within five (5) days.

If an Interim Suspension Order is issued, the Board has 15 days to file an accusation. If the licensee files a Notice of Defense (response to the accusation), an administrative hearing must be held within 30 days of the receipt of the licensee's response. During this hearing, the evidentiary standard is clear and convincing. A decision on the accusation must be rendered within 30 days.

Due to the specified time lines, required documentation, and subsequent filing of an accusation, the decision to pursue this action is determined in consultation with the Attorney General.

Since 2004, three licensees were issued and Interim Suspension Order. Two of the licensees surrendered their license. The matter is still pending for the third.

## **VII. Future Meeting Dates**

Future 2011 meeting dates are:

- March 24 in Sacramento
- June 16, location to be determined
- September 15, location to be determined

## **VIII. Suggestions for Future Agenda Items**

California Association of Marriage and Family Therapists (CAMFT) suggested discussions related to single conviction of driving under the influence (DUI) with no prior DUI convictions.

CAMFT suggested further discussions regarding the Board's authority to utilize PC 23.

## **IX. Public Comment for Items Not on the Agenda**

No public comments were made.