



BOARD OF REGISTERED NURSING
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Louise R. Bailey, MEd, RN, Executive Officer



DIVERSION/DISCIPLINE COMMITTEE MINUTES

DATE: August 6, 2015

SITE: DoubleTree by Hilton San Francisco Airport
835 Airport Boulevard
Burlingame, CA 94010

MEMBERS PRESENT: Cynthia Klein, RN, Chair
Raymond Mallel
Imelda Ceja-Butkiewicz

MEMBER NOT PRESENT: Raymond Mallel left meeting at 1:45 p.m.

STAFF PRESENT: Louise Bailey, M.Ed., RN, Executive Officer
Stacie Berumen, Assistant Executive Officer
Beth Scott, Deputy Chief, Discipline, Probation & Diversion
Shannon Silberling, Deputy Chief, Complaints and Investigations
Ronnie Whitaker, Legislation and Regulation Analyst

The Chair called the meeting to order at approximately 1:34 p.m.

9.0 REVIEW AND APPROVE MINUTES:

Approve/Not Approve: Minutes of March 5, 2015

| | | | |
|--|--------------------|-----------------|--|
| Motion: Imelda Ceja-Butkiewicz to accept the March 5, 2015 DDC meeting minutes. | | | |
| Second: Cynthia Klein | | | |
| CK: Yes | RM: Abstain | ICB: Yes | |

Approve/Not Approve: Minutes of May 7, 2015

| | | | |
|--|----------------|---------------------|--|
| Motion: Raymond Mallel to accept the May 7, 2015 DDC meeting minutes. | | | |
| Second: Cynthia Klein | | | |
| CK: Yes | RM: Yes | ICB: Abstain | |

9.1 Complaint Intake and Investigations Update

PROGRAM UPDATE:

COMPLAINT INTAKE:

Staff

We are currently fully staffed. We will have one case analyst going out on leave for a year beginning in September.

Program

Complaint intake continues to work new complaints, ensuring cases are moving to investigations in a timely manner and that aging cases are worked as a priority.

We have one analyst that is working with the Department of Consumer Affairs (Department) BreZE team and is involved in the Reports User Group, as well as the Enforcement User Group.

The new Controlled Substance Utilization Review & Evaluation System (CURES) had a soft launch July 1, 2015. CURES 2.0 will be rolled out to users in phases over the next several months. The BRN continues to work closely with the Department's Executive team and the Department of Justice (DOJ) to ensure its success.

INVESTIGATIONS:

Staff

Southern California

- We have two (2) vacancies for Special Investigator. Interviews were conducted and we hope to have them filled by end of August.
- We lost our Retired Annuitant Investigator as of June 30, 2015.

Northern California

- We have one Special Investigator out on leave through the end of the year.

Program

Division of Investigation (DOI) has begun the quarterly Managers' Enforcement Consortium and we had our first meeting on April 30, 2015. This is a group of enforcement managers from across the different disciplines that come together to discuss processes, procedures, how to create efficiencies as well as possible barriers that each of us face in processing our cases.

We continue to assign cases based on the Department's Consumer Protection Enforcement Initiative (CPEI). As of July 21, 2015, there were approximately 17 BRN cases over one year old that are still open and there are approximately 48 DOI cases over one year old that are still open.

Investigative staff continues to attend Task Force meetings and develop working relationships with allied agencies.

Statistics

| BRN Investigations | Jan 2015 | Feb 2015 | Mar 2015 | Apr 2015 | May 2015 | June 2015 |
|----------------------------------|----------|----------|----------|----------|----------|-----------|
| Total cases assigned | 333 | 329 | 337 | 344 | 342 | 329 |
| Total cases unassigned (pending) | 134 | 170 | 152 | 162 | 153 | 166 |
| Average days to case completion | 232 | 201 | 212 | 215 | 214 | 247 |
| Average cost per case | \$3,753 | \$2,909 | \$2,779 | \$3,180 | \$3,280 | \$2,810 |
| Cases closed | 43 | 36 | 56 | 57 | 41 | 51 |
| Division of Investigations | Jan 2015 | Feb 2015 | Mar 2015 | Apr 2015 | May 2015 | June 2015 |
| Total cases assigned | 346 | 331 | 316 | 298 | 290 | 311 |
| Total cases unassigned (pending) | 26 | 20 | 33 | 38 | 53 | 36 |
| Average days to case completion | 211 | 270 | 299 | 271 | 271 | 326 |
| Average cost per case | \$4,422 | \$5,365 | \$6,185 | \$5,124 | \$5,896 | \$7,028 |
| Cases closed | 37 | 38 | 36 | 54 | 38 | 40 |

Investigators are focused on clearing all aging cases.

9.2 Discipline, Probation, and Diversion Update

PROGRAM UPDATE

Staffing

Currently the probation Unit is fully staffed.

The Discipline Unit filled the vacant Staff Services Analyst position with a promotion of the Discipline Unit Office Technician (OT). The vacant OT position was filled with an existing OT within the Enforcement Unit.

Program – Discipline

The Discipline Unit is working with the Attorney General’s (AG) office to complete our cases in a timely manner and streamline our processes for efficiency.

On July 9, 2015 the BRN began working with the AGs office to fast-track the movement of less complex discipline cases. These cases will be assigned to specific Deputy Attorney General’s and a single discipline analyst to give focused attention to these cases. The AGs office will be able to schedule these cases with the Office of Administrative Hearings on a more expedited schedule which will benefit the Registered Nurses and the BRN.

Discipline staff is diligently reviewing past discipline cases to ensure all discipline documents are present on our website. It is anticipated this process will be completed by September 2015.

Statistics - Discipline

Below reflects FY 14/15 (July 1, 2014 – June 30, 2015) discipline statistics:

| | |
|--------------------------------------|------|
| Decisions Adopted | 1578 |
| Pleadings served | 1067 |
| Petitions to Revoke Probation served | 104 |
| Surrenders signed by E. O. | 291 |

Below reflects FY 15/16 (July 1, 2015 – July 22, 2015) discipline statistics:

| | |
|--------------------------------------|-----|
| Decisions Adopted | 146 |
| Pleadings served | 75 |
| Petitions to Revoke Probation served | 6 |
| Surrenders signed by E. O. | 8 |

The BRN continues to work with the DCA BreEZe team to verify the accuracy of the performance measures statistics, formally the E19 report.

Program – Probation

Effective July 30, 2015, Sheila Granby, the Probation Program Manager retired from state service after 14 years of service. Sheila was a Probation Monitor for 4 years and the Program Manager for 3.5 years. She will be missed and we wish her continued success in her retirement. The Board of Registered Nursing would like to thank Sheila for her service.

We will advertise and recruit for this position and will fill the position in the near future. Information regarding the new Probation Program Manager will be provided at an upcoming DDC meeting.

Statistics - Probation

Statistics – FY July 1, 2014 to June 30, 2015

| Probation Data | Numbers | % of Active |
|----------------------------|---------|-------------|
| Male | 287 | 27% |
| Female | 808 | 73% |
| Chemical Dependency | 707 | 64% |
| Practice Case | 267 | 25% |
| Mental Health | 5 | 0% |
| Conviction (Non CD) | 116 | 12% |
| Advanced Certificates | 113 | 10% |
| Southern California | 601 | 55% |
| Northern California | 479 | 44% |
| Tolled at the AG | 15 | 1% |
| Pending with AG/Board | 113 | 10% |
| License Revoked YTD | 31 | 3% |
| License Surrendered YTD | 89 | 8% |
| Terminated YTD | 30 | 3% |
| Successfully completed YTD | 98 | 9% |

| | | |
|--|--------------|--|
| Active in-state probationers | 1,095 | |
| Completed/Revoked/Terminated/ Surrendered YTD | 248 | |
| Tolled Probationers | 290 | |
| Active and Tolled Probationers | 1,385 | |

Statistics – July 1, 2015 to July 21, 2015

| Probation Data | Numbers | % of Active |
|--|--------------|-------------|
| Male | 293 | 26% |
| Female | 815 | 74% |
| Chemical Dependency | 720 | 65% |
| Practice Case | 267 | 24% |
| Mental Health | 5 | 0% |
| Conviction (Alcohol/Drug = 109) | 116 | 10% |
| Advanced Certificates | 115 | 10% |
| Southern California | 604 | 55% |
| Northern California | 488 | 44% |
| Tolled at the AG | 16 | 1% |
| Pending with AG/Board | 111 | 10% |
| License Revoked YTD | 1 | 14% |
| License Surrendered YTD | 4 | 57% |
| Terminated YTD | 0 | 0% |
| Successfully completed YTD | 2 | 29% |
| Active in-state probationers | 1,108 | |
| Completed/Revoked/Terminated/ Surrendered YTD | 7 | |
| Tolled Probationers | 292 | |
| Active and Tolled Probationers | 1,400 | |

The case load per probation monitor is approximately 158

Program -Diversion

In a continuous effort to reach out to nurses in need and provide community outreach, the Diversion program has scheduled the following upcoming presentations:

At the request of Dorcas Walton from Kaiser Permanente, the Diversion Program contractor Maximus and BRN staff will be conducting a presentation to the Director of Nursing and

Clinical Practice Peer Group (the ambulatory practice leaders) on August 5, 2015. A second presentation will be conducted on August 6, 2015 for the Chief Nursing Officers Peer group (the hospital/inpatient leaders). Both presentations will be conducted at the Kaiser Regional Offices, 1950 Franklin St. Oakland, CA. The focus of the presentation is to aid front line leaders to develop or hone their ability to recognize, detect and intervene when the subtle and not so subtle signs and indications of potential alcohol and or drug abuse in the work place.

The Board of Registered Nursing's Diversion program will be present at the California State Capitol on September 2, 2015, for the annual Recovery Happens rally. Recovery Happens is the statewide campaign for everyone to celebrate the lives of people who are recovering from alcohol and/or drug addiction. Recovery Happens provides the perfect platform to inform Californians about the positive effects that recovery and treatment have on our communities. The rally brings over 5,000 people together for a day to celebrate recovery.

Due to a consistent increase in probation participants, the BRN is in need of Nurse Support Group facilitators in all geographical areas, specifically in Humboldt, Los Angeles, Orange, and San Francisco counties.

Diversion Evaluation Committees (DEC)

There are currently three physician member vacancies at this time. One vacancy is in Ontario (DEC 9), one is in Oakland (DEC 13) and the third vacancy in north Central (DEC 12). The vacancy in Oakland (DEC 13) will be filled upon approval of the new appointee.

There are currently seven RN member vacancies at this time. One in Sacramento (DEC 1), Two in the Bay Area (DEC 2), one in Orange County (DEC 4), one in Palm Springs (DEC 6), one in San Jose (DEC 7) and one in North Coast Emeryville (DEC 11). Vacancies on DEC 2, 4, 6, and 11 will be filled upon approval of new appointees.

Statistics – Diversion

The Statistical Summary Report for April 1, 2015 through June 30, 2015 is after this update. As of June 30, 2015, there were 1,990 successful completions.

9.2.1 Diversion Evaluation Committee Members

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use disorders and/or mental health.

NEW APPOINTMENTS

Below are the names of the candidates who are being recommended for appointment to the Diversion Evaluation Committees (DEC). If appointed, their terms will begin on October 1, 2015 and expire September 30, 2019.

| <u>NAME</u> | <u>TITLE</u> | <u>DEC</u> | <u>#</u> |
|--------------------|--------------|------------------------|----------|
| Gail Sims | RN | North Coast Emeryville | 11 |
| Cheryl Janus | RN | Palm Springs | 6 |
| Christine Vourakis | RN | Bay Area | 2 |
| Michelle Buckman | RN | Orange Co | 4 |
| Rodney Collins | MD | Burbank | 8 |
| Melody Law | MD | Oakland | 13 |

| | | | |
|--|-------------------|-----------------|--|
| Motion: Imelda Ceja-Butkiewicz to recommend approval of the new appointments to the Board | | | |
| Second: Cynthia Klein | | | |
| CK: Yes | RM: Absent | ICB: Yes | |

RESIGNATIONS

Below is the name of a DEC member who has resigned.

| <u>NAME</u> | <u>TITLE</u> | <u>DEC</u> | <u>#</u> |
|----------------|--------------|--------------|----------|
| Elaine Bradley | RN | Palm Springs | 6 |

TERMS EXPIRED JUNE 30, 2015

Below are the names of the DEC members whose terms have expired

| <u>NAME</u> | <u>TITLE</u> | <u>DEC</u> | <u>#</u> |
|-----------------|--------------|------------------------|----------|
| Leah Monterrosa | RN | North Coast Emeryville | 11 |
| Inna Zelikman | RN | Bay Area Emeryville | 2 |
| Cynthia Rinde | Public | Sacramento | 1 |
| Rosemary Miller | RN | Oakland | 13 |
| Michael Parr | MD | North Central | 12 |
| Patti Velez | Public | Ontario | 9 |
| William Slavin | Public | Burbank | 8 |

9.3 Update: “Uniform Standards Regarding Substance-Abusing Healing Art Licensees” Business and Professions Code, Section 315

As directed by the Board at its November 2013 meeting, staff conducted a comparative analysis of the Uniform Standards, Diversion Program, and Probation Program, including the potential fiscal impact. Staff met with Legal Counsel to discuss a number of issues related to Uniform Standards, including the specific recommendations from Doreathea Johnson, Deputy Director, DCA Legal Affairs. Legal Counsel advised the Board continue with the regulatory process, although the Attorney General’s Office has not rendered its opinion relative to the Uniform Standards. The Board will be notified if changes are necessary as a result of the opinion.

Staff submitted a report of its findings to the Committee at its March 2014 meeting.

The Medical Board of California has promulgated regulations implementing the Uniform Standards. A comparison was made and was provided for the committee's consideration at the May 2014 meeting.

Staff will continue to facilitate discussion of each standard in conjunction with the attachments.

The committee reviewed the following standards:

| | |
|--|---|
| Standard #1 - Clinical Diagnostic Evaluations | Are the BRN evaluations considered "clinical diagnostic evaluations?" |
| Standard #2 - Temporary Removal of Licensee from Practice due to Clinical Diagnostic Evaluation | Public Comment made by ANA/C who opposes testing two times per week. |
| Standard #3 - Ability to Communicate with Licensee's Employer | No issues identified. |
| Standard #4 - Standards for Required Testing | <ul style="list-style-type: none">* Concerns with number of tests for Diversion Program participants when they are not working and have no income.* Cost of testing is \$62.50 plus collection fee. Total of \$10,000 to test each year.* Mandatory testing each week takes away board's discretion and ability to conduct "random" testing.* Public comment made by ANA/C and SEIU relative to opposition of this uniform standard. |
| Standard #5 - Standards for Required Group Meeting Attendance | No issues identified. |
| Standard #6 - Standards for Type of Treatment | How many additional staff would BRN need with appropriate training in chemical dependency and/or mental health? |
| Standard #7 - Standards for Worksite Monitoring | No issues identified. |
| Standard #8 - Procedures when a licensee tests positive for a banned substance | Standard to immediately cease practice for positive drug test for any banned substance does not allow for due process rights of licensee. No parameter set stating what a positive test result is. Incidental exposure to hand sanitizers can result in a low level positive and the licensee will be ordered to cease practice. |

| | |
|--|---|
| Standard #9 - Procedures to follow when a licensee is confirmed to have ingested a banned substance | Public comment by ANA/C that there should be verification of use of a banned substance before removing a RN from work. |
| Standard #10 - Consequences for major and minor violations | No issues identified. |
| Standard #11 - Criteria for a licensee to meet in order to petition to return to full-time practice | No issues identified. |
| Standard #12 - Criteria for a licensee to meet in order to petition for an unrestricted license | Public comment by SEIU that is in favor of the way BRN currently handles this process. |
| Standard #13 – Diversion Program private vendor requirement that sets forth vendor reporting time for major and minor violations; approval process and a variety of criteria. | No issues identified. |
| Standard #14 – Diversion Program private vendor requirement to disclose name and practice restrictions for DP participants. | Applicants and participants along with their records are to remain confidential while participating in the program pursuant to B&P code section 2770.12. Disclosure of names and practice restrictions violations this statute. |
| Standard #15 – Diversion Program private vendor requirement to have external independent audit conducted at least once every three years. | No issues identified. |
| Standard #16 – Reporting criteria for Diversion and Probation to determine whether each method appropriately protects patients from. | Concern with ability to obtain requested information for probationers from BreEZe. If data is not available from BreEZe then this would require manual tracking by staff to report to legislature. |

9.4 Public Comment for Items Not on the Agenda

No public comment for items not on the agenda.

The Chair adjourned the committee meeting at approximately 2:05 p.m.

Approved: 