



## INTERVENTION/DISCIPLINE COMMITTEE MINUTES

- DATE:** January 14, 2016
- SITE:** Hilton Sacramento Arden West  
2200 Harvard Street  
Sacramento, CA 95815
- MEMBERS PRESENT:** Cynthia Klein, RN, Chair  
Imelda Ceja-Butkiewicz  
Raymond Mallel (Arrived at 11:15 a.m.)
- STAFF PRESENT:** Stacie Berumen, Assistant Executive Officer  
Beth Scott, Deputy Chief, Discipline, Probation & Diversion  
Shannon Silberling, Deputy Chief, Complaints and Investigations  
Don Walker, Intervention Program Manager

The Chair called the meeting to order at approximately 11:07 a.m.

### 9.0 REVIEW AND APPROVE MINUTES:

Approve/Not Approve: Minutes of August 6, 2015

<b>Motion:</b> Imelda Ceja-Butkiewicz to approve the minutes			
<b>Second:</b> Cynthia Klein			
<b>CK: Y</b>	<b>RM: Not Present</b>	<b>ICB: Y</b>	

Approve/Not Approve: Minutes of October 8, 2015

<b>Motion:</b> Imelda Ceja-Butkiewicz to approve the minutes			
<b>Second:</b> Ray Mallel			
<b>CK: A</b>	<b>RM: Y</b>	<b>ICB: Y</b>	

### 9.1 Complaint Intake and Investigations Update

#### COMPLAINT INTAKE:

##### Staff

We recently hired a new Limited Term Staff Services Analyst, Robin Matson. She came to us from the Dental Board. She has over 9 years of enforcement and court experience. This new hire puts us at full staffing levels.

## **Program**

There was the second release of BreEZe rolled out to additional Boards on January 19, 2016. Overall, the rollout was a success.

We have one analyst that continues to work with the Department of Consumer Affairs (Department) BreEZe team and involved in the Reports User Group, as well as the Enforcement User Group.

The Controlled Substance Utilization Review & Evaluation System (CURES) had a soft launch July 1, 2015. CURES 2.0 was rolled out to users on January 8, 2016. Prescribers and furnishers are required to register by July 1, 2016. The BRN continues to work closely with the Department's Executive team and the Department of Justice (DOJ) to ensure its success.

As of December 31, 2015, for the period July 1 through December 31, 2015, we received 3,810 complaints, we have 1,018 pending complaints. Of the 1,018 complaints, 35 cases are 1-2 years old and one case over 2 years old.

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

## **INVESTIGATIONS:**

### **Staff**

We are currently fully staffed in both Northern and Southern California.

### **Program**

We continue to assign cases based on the Department's Consumer Protection Enforcement Initiative (CPEI). As of December 28, 2015, there were approximately 43 BRN investigative cases over one year old and there are approximately 38 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	June 2015	July 2015	August 2015	Sept 2015	Oct 2015	Nov 2015
Total cases assigned	329	330	345	373	379	374
Total cases unassigned (pending)	166	176	179	121	106	155
Average days to case completion	247	238	232	275	267	265
Average cost per case	\$2,810	\$2,849	\$2,632	\$3,448	\$2,728	\$2,968
Cases closed	51	44	45	52	58	58
Division of Investigations	June 2015	July 2015	August 2015	Sept 2015	Oct 2015	Nov 2015
Total cases assigned	316	298	290	328	359	328
Total cases unassigned (pending)	33	38	53	71	29	30
Average days to case completion	299	271	271	302	220	318
Average cost per case	\$6,185	\$5,124	\$5,896	\$5,389	\$4,155	\$6,696
Cases closed	36	54	38	28	40	33

Investigators are focused on clearing all aging cases.

## 9.2 Discipline, Probation, and Diversion Update

### Staffing

Elizabeth Elias has been appointed to Probation Program Manager effective December 2015. Prior to manager, she was a probation monitor and has been with the Board since 2008.

### 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.

### Statistics - Discipline

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

Decisions Adopted	1,578
Pleadings served	1,067
Petitions to Revoke Probation served	104
Surrenders signed by E. O.	291

Below reflects FY 15/16 (July 1, 2015 – January 4, 2016) discipline statistics:

Decisions Adopted	666
Pleadings served	570
Petitions to Revoke Probation served	44
Surrenders signed by E. O.	123

The BRN continues to work with the DCA BreZE team to verify the accuracy of the performance measures statistics.

### Program – Probation

The probation unit recently contributed to the re-design of the DCA-Enforcement Academy which should be available next spring.

### Statistics - Probation

#### Statistics – July 1, 2015 to December 31, 2015

Probation Data	Numbers	% of Active
Male	309	29%
Female	771	71%
Chemical Dependency	713	66.0%

Probation Data	Numbers	% of Active
Required Drug-Screening	573	53.1%
Practice	263	24.3%
Mental Health	5	0.5%
Conviction - excluding chemical dependency/alcohol use	99	9.2%
Advanced Certificates	101	9%
Southern California	606	56%
Northern California	468	43%
Pending AG - Tolled	6	1%
Pending AG	81	8%
License Revoked Fiscal YTD	29	
License Surrendered Fiscal YTD	45	
Terminated Fiscal YTD	27	
Successfully Completed Fiscal YTD	79	
Active In-State Probationers	<b>1,080</b>	
Completed/Revoked/Terminated/Surrendered YTD	180	
Tolled Probationers	311	
Active and Tolled Probationers	<b>1,391</b>	

The average case load per probation monitor is approximately 135. Currently there are 42 Early Termination and 8 Modification of Probation cases waiting to be heard by the Board.

### **9.3 Intervention Program Update and Statistics**

#### **Staffing**

The Intervention unit filled the vacant Office Technician position with an internal transfer from the licensing unit.

#### **Program Update**

Effective January 1, 2016, Pursuant to Senate Bill 800, the official name of the Diversion program changed to the Intervention Program. In preparation of the name change, Intervention staff worked diligently to update the program's policies, correspondence documents and website to reflect the program's new name.

CPS HR Consulting is conducting a contract and performance audit of MAXIMUS, the Intervention program's contractor. The audit is scheduled to conclude the last week of January, and a draft audit report with findings and recommendations will be submitted to the Department of Consumer Affairs by February 1, 2016.

On November 4, 2015, Intervention staff and Virginia Matthews, MAXIMUS Project Manager provided an educational Intervention Program presentation for the Los Angeles County University of Southern California Medical Center Nursing Leadership's Management Team. The presentation was well attended and the attendees indicated they appreciated the opportunity to learn about the Diversion Program and its role in public protection.

On November 19, 2015, Intervention staff and Virginia Matthews, MAXIMUS Project Manager conducted a presentation for the Association of Kern County Nurse Leaders (AKCNL). An important takeaway to this presentation was that irrespective of ones position in the nursing community whether its management or rank and file, no one is immune to substance use disorders and/or mental illness.

On December 2, 2015, MAXIMUS staff conducted a presentation at California State University of Sacramento (CSUS) to 77 Public Health Nursing students regarding substance use disorders, mental illness and how the Intervention program provides assistance for nurses in need.

### **Intervention Evaluation Committees (IEC)**

There are currently two physician member vacancies at this time. One vacancy is in Burbank (IEC 8), and the second vacancy is in North Central (IEC 12).

There are currently four RN member vacancies at this time, one in Sacramento (IEC 1)\*, one in Orange County (IEC 4), one in Burbank (IEC 8) and one in Santa Ana (IEC 14)\*.

There are currently two Public Member vacancies at this time. One vacancy is in Los Angeles (IEC 3)\*, and the second is in Ontario (IEC 9)\*

**\*Asterisk denotes pending committee recommendation for Board approval of IEC members included in Agenda Item 9.3.1**

### **Statistics – Diversion**

The Statistical Summary Report for September 1, 2015, through November 30, 2015, is after this update. As of November 30, 2015, there were 2,020 successful completions.

### 9.3.1 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 Intervention Evaluation Committees. Each Committee for the Intervention Program is composed of three registered nurses, a physician and a public member with expertise in substance use disorders and/or mental health.

#### APPOINTMENTS

Below are the names of the candidates who are being recommended for appointment to the Intervention Evaluation Committees (IEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2020.

<u>NAME</u>	<u>TITLE</u>	<u>IEC</u>	<u>NO</u>
Darryl Levin	Public Member	Los Angeles	3
Cynthia Schick	Public Member	Ontario	9
Wendy Prothro	RN	Santa Ana	14

<b>Motion:</b> Cynthia Klein to approve recommendation of the appointments			
<b>Second:</b> Imelda Ceja-Butkiewicz			
<b>CK: Y</b>	<b>RM: Y</b>	<b>ICB: Y</b>	

#### RESIGNATIONS

Below are the names of the IEC members who have resigned.

<u>NAME</u>	<u>TITLE</u>	<u>IEC</u>	<u>NO</u>
Tonia Jones	RN	Santa Ana	14
Bill Frantz	RN	Sacramento	1
Rodney Collins	MD	Burbank	8

#### TRANSFERS

Below are the names of the IEC members who are being recommended for transfer.

<u>NAME</u>	<u>TITLE</u>	<u>FROM IEC #</u>	<u>TO IEC #</u>
David Aust	RN	Bay Area #2	Sacramento #1
Sara Cardiner	RN	Burbank #8	Bay Area #2

### 9.3.2 Intervention Program Policy Revisions submitted at September 24, 2015, Diversion Liaison Committee Meeting

On September 24, 2015, voting member attendees at last year's annual Diversion Liaison Committee meeting unanimously voted in favor of approving one new policy (\*) and revising eight of the existing Intervention program policies. The purposes of the new and revised policies are to strengthen the program, increase administrative flexibility, and provide added consumer protection.

## **Policies**

- Intervention Evaluation Committee Applicant Criteria (DIV-F-02)
- Intervention Program Transition Phase Minimum Monitoring Parameters (DIV-P-06)
- Intervention Program Criteria for Approval of Nurse Support Group Facilitators/Co-Facilitators (DIV-P-11)
- Board of Registered Nursing Procedures for Investigation of Complaints Against Nurse Support Group Facilitators/Co-Facilitators (DIV-P-15)

### **The following policies will be presented for Discussion at the March 10, 2016, Intervention Discipline Committee meeting:**

- Intervention Program Criteria for Successful Completion (DIV-P-08)
- Nurse Support Group Facilitator/Co-Facilitator Procedural Requirements (DIV-P-10)
- Intervention Program Criteria for Successful Completion: Mental Health (DIV-P-13)
- Intervention Program Criteria for Selection of Treatment Providers (DIV-P-17)
- \*Consequences for Intervention Program Violations (DIV-P-31)

On September 24, 2015, voting member attendees at this year's annual Diversion Liaison Committee meeting unanimously voted in favor of seeking approval to establish a Mental Health Ad Hoc Committee. The purpose of this committee would be to develop best practice strategies to meet the unique needs of nurses with mental illness and to develop a model rehabilitation plan for use by all the Diversion Evaluation Committees.

### **9.3.3 Intervention Evaluation Committee Applicant Criteria (DIV-F-02/Attached)**

Intervention Program staff proposes revising the Intervention Evaluation Committee applicant criteria to include a five (5) year recovery requirement. There currently is no recovery criteria so this revision will serve to reinforce the integrity of the program and provide a greater level of public safety. In addition, this will be consistent with the current five (5) year recovery requirement of Nurse Support Group Facilitators/Co-Facilitators.

### **9.3.4 Intervention Program Transition Phase Minimum Monitoring Parameters (DIV-P-06/Attached)**

Intervention staff proposes revising language in the above listed policy to reflect requirements that participants in the transition phase of the Intervention Program do the following:

- Participants will be in the Transition phase of the program for a minimum of one year (1) as opposed to "a period of time" as currently noted in (DIV-P-06). This will eliminate any confusion and ensure a consistent minimum duration.
- Requiring participants to complete an approved relapse prevention workbook. This was not a requirement, but has been intermittently requested by the Intervention Program

Committee (IEC). It is the IEC's position that a relapse prevention workbook is of great value to the participants and will serve to strengthen the program.

- Submission of quarterly work-site monitors reports. This revision is an update as reports were formerly submitted monthly, but are now required quarterly.
- Attend Nurse Support Group meetings as approved by the IEC. Participants were formerly not required to attend Nurse Support Group in Transition.
- Attend 12-step meetings as approved by the Intervention Evaluation Committee. Participants were formerly not required to attend 12-step meetings in Transition.

### **9.3.5 Intervention Program Criteria for Approval of Nurse Support Group Facilitators/Co-Facilitators (DIV-P-11/Attached)**

Intervention staff proposes revising language in the above listed policy to give the Board flexibility to increase the pool of qualified candidates.

The proposed changes will allow a Registered Nurse or an individual that is certified by the state or other nationally certified organization with three (3) years of stated experience to be considered for appointment.

### **9.3.6 Board of Registered Nursing Procedures for investigation of Complaints Against Nurse Support Group Facilitators/Co-Facilitators (DIV-P-15/Attached)**

Intervention staff proposes revising language in the above listed policy to streamline the procedure for investigation of complaints against Nurse Support Group Facilitators/Co-Facilitators. In addition, language has been added outlining causes that may result in the Intervention Program Manager rescinding the approval of the Facilitators/Co-Facilitators.

### **9.4 Vote on whether to recommend approval of modified Regulatory Proposal to Modify the Recommended Guidelines for Disciplinary Orders and Conditions of Probation in California Code of Regulations, Article 1, Section 1444.5, Disciplinary Guidelines**

The Board of Registered Nursing (BRN) approved a regulatory package to amend the Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines) at its June 4, 2015 board meeting. The Recommended Guidelines for Disciplinary Orders were last amended in 2003. BRN staff reviewed the Guidelines prior to the overhaul of the board members in 2010 and a regulatory proposal was initiated in March 2011 to incorporate the Uniform Standards as required by SB 1441; however, the board was sunset in December 2011 and the regulatory proposal was not acted upon by the board in time.

The language approved by the board at its June 2015 board meeting was reviewed by DCA Legal Counsel who suggested modifying the language. Attached you will find the suggested language as modified by DCA Legal Counsel for your consideration and approval.

### **§1444.5. Disciplinary Guidelines.**

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled: “Recommended Guidelines for Disciplinary Orders and Conditions of Probation” (10/0205/2015), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the presence of aggravating factors; the age of the case; or evidentiary ~~problems~~ issues.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1445.51, without deviation, for each individual determined to be a substance-abusing licensee.

Authority cited: Section 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

#### **HISTORY:**

1. New section filed 6-17-97; operative 6-17-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment of "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (incorporated by reference) and amendment of section filed 6-14-2000; operative 7-14-2000 (Register 2000, No. 24).
3. Amendment of section and Note filed 4-24-2003; operative 5-24-2003 (Register 2003, No. 17).
4. Amendment of section and Note filed 7-23-2014; operative 7-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 30).

### **§1444.51. Uniform Standards Related to Substance Abuse.**

(a) The board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) [hereafter "Uniform Standards"], which are hereby incorporated by

reference. The “Uniform Standards” describe the mandatory conditions that apply to a substance abusing licensee, except that the board may impose more restrictive conditions if necessary to protect the public.

(b) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the board finds that the evidence proves that an individual is a substance-abusing licensee for the purposes of section 315 of the code, then all relevant terms and conditions contained in the Disciplinary Guidelines and the “Uniform Standards” shall apply as written and be used in the order placing the licensee on probation.

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the government Code (commencing with Sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders,” New February 2016, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board’s guidelines referenced in Section 1444.5 in any order that the Board determines would provide greater public protection.

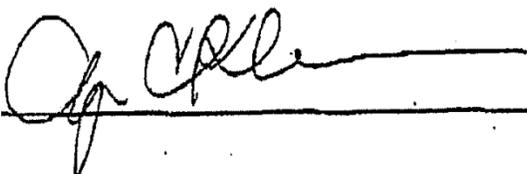
Note: Authority cited: Section 2715, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

<b>Motion:</b> Cynthia Klein to approve the modified regulatory proposal			
<b>Second:</b> Ray Mallel			
<b>CK: Y</b>	<b>RM: Y</b>	<b>ICB: Y</b>	

### **9.5 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 11:37 a.m.

Approved: 

## **ATTACHMENTS FOR ITEMS:**

**9.3.3**

**9.3.4**

**9.3.5**

**9.3.6**