


MEMORANDUM

DATE	April 25, 2018
TO	Psychology Board Members
FROM	 Sandra Monterrubio, Enforcement Program Manager Board of Psychology
SUBJECT	Enforcement Report, Item 14

Please find attached the Overview of Enforcement Activity conveying complaint, investigation, and discipline statistics to date for the current fiscal year. The Performance Measures for the first quarter (Q1) of fiscal year 2017-2018 are also included.

The Board is actively looking to recruit an Enforcement Technician (OT). Interviews will be scheduled within the next few weeks. The OT opens complaints, assigns cases to experts and provides office support to enforcement staff.

Staff conducted an Expert Training on April 13, 2018 in Oakland, CA. The Experts were trained in writing analyses, working with the Board's investigative unit, and testifying at administrative hearings. Board staff, the Office of the Attorney General and the Board's Investigative Unit assisted with the training.

Complaint Program

Since July 1, 2017, the Board has received 926 complaints. All complaints received are opened and assigned to an enforcement analyst.

During the February Board Meeting, there was discussion on how the Board prioritizes complaints. For reference, I have attached the Complaint Prioritization Guidelines for DCA Agencies Regulating Business Services, Design and Construction the Board adheres to when investigating complaints.

Citation Program

Since July 1, 2017, the Board has issued 46 enforcement citations. Citation and fines are issued for minor violations.

Discipline Program

Since July 1, 2017, the Board has referred 55 cases to the Office of the Attorney General for formal discipline.

The Board of Psychology (board) tracks the timeline of its investigations through “Performance Measures,” which illustrate the specific phases of case review from start to finish.

For cases that result in disciplinary action against a license, the Board refers to “Performance Measure (4)”, which is broken out further into four distinct phases as follows:

- PM4a: Intake Only – This represents the length of time between when the board receives a complaint and when the complaint is assigned to an Enforcement Analyst. When the case is assigned to an Enforcement Analyst, this phase ends.
- PM4b: Investigation Only – This represents the length of time that starts when the Enforcement Analyst begins their initial desk review and refers the case to the field for a formal investigation by a sworn investigator. When that field investigation is concluded and the Enforcement Analyst receives the case back from the field, this phase ends.
- PM4c: Pre-AG Transmittal – This represents the length of time that starts when the Enforcement Analyst receives the case back from the field investigator and runs until the Enforcement Analyst refers the case to the AG’s office for discipline. This phase ends when the Enforcement Analyst transmits the case to the AG.
- PM4d: Post-AG Transmittal – This represents the length of time that starts when the case is accepted by the AG’s office. This phase includes the time it takes for the AG to draft an Accusation, set a date for hearing (the number of days that pass before that hearing takes place is counted here as well) and to finally settle the case, either at hearing or through a stipulated settlement negotiated between the board, Respondent and the AG.

For example, as of September 2017, the average* time it took to process a complaint all the way from its inception at the board through its concluding discipline at the AG was approximately (800) days.

PM4a: Intake Only – On average, it took nine (9) days to assign a new case to an Enforcement Analyst once it had been received at the board.

PM4b: Investigation Only – On average, it took (486) days for a case to be investigated in the field by a sworn investigator before being returned to the board to decide its disposition. This also includes the time it took for the Enforcement Analyst to complete their initial desk investigation.

PM4c: Pre-AG Transmittal – On average, it took (2) days from the time the case was returned to the board by the investigation unit before the case was referred to the AG by the board. This includes the time before the AG formally accepts the case in its current form.

PM4d: Post-AG Transmittal – On average, it took (303) days from the time the case was referred to the AG for the AG to settle the case, possibly through a hearing or through a board-

approved stipulation. This phase ends upon the effective date of the case closure or the date the discipline becomes effective.

**These averages represent a snapshot moment in time and don't necessarily reflect the most current information. The sub-PM averages do not always add up to the overall average due to the way BreEZe rounds its data.*

There are different factors that may influence the overall length of time it takes for a case to reach the disciplinary stage.

While not comprehensive, the following list represents some of the more common factors that may affect the age of a case:

- The size and complexity of the case under initial review by Board staff
- The caseload of the field investigation unit assigned to the case
- Scheduling conflicts when interviewing complainants, subjects and witnesses
- Availability of an expert reviewer to complete a final review of the case
- Subpoena enforcement that sometimes becomes necessary when a subject is resistant
- Scheduling conflicts when setting the matter for administrative hearing

The following agencies may be involved in a typical case that goes on to the disciplinary stage:

- Board of Psychology
- Department of Consumer Affairs Legal Counsel
- Division of Investigation (DOI) or Health Quality Investigation Unit (HQIU)
- Office of the Attorney General
- Office of Administrative Hearings
- Office of the District Attorney

Probation Program

Enforcement staff is currently monitoring forty-nine (49) probationers. Of the forty-nine (49) probationers, eighteen (18) are out of compliance. Being out of compliance can result in a citation and fine or further disciplinary action through the Office of the Attorney General.

Attachments:

Performance Measures

Overview of Enforcement Activity and Legend

Complaint Prioritization Guidelines for DCA Agencies Regulating Business Services, Design and Construction

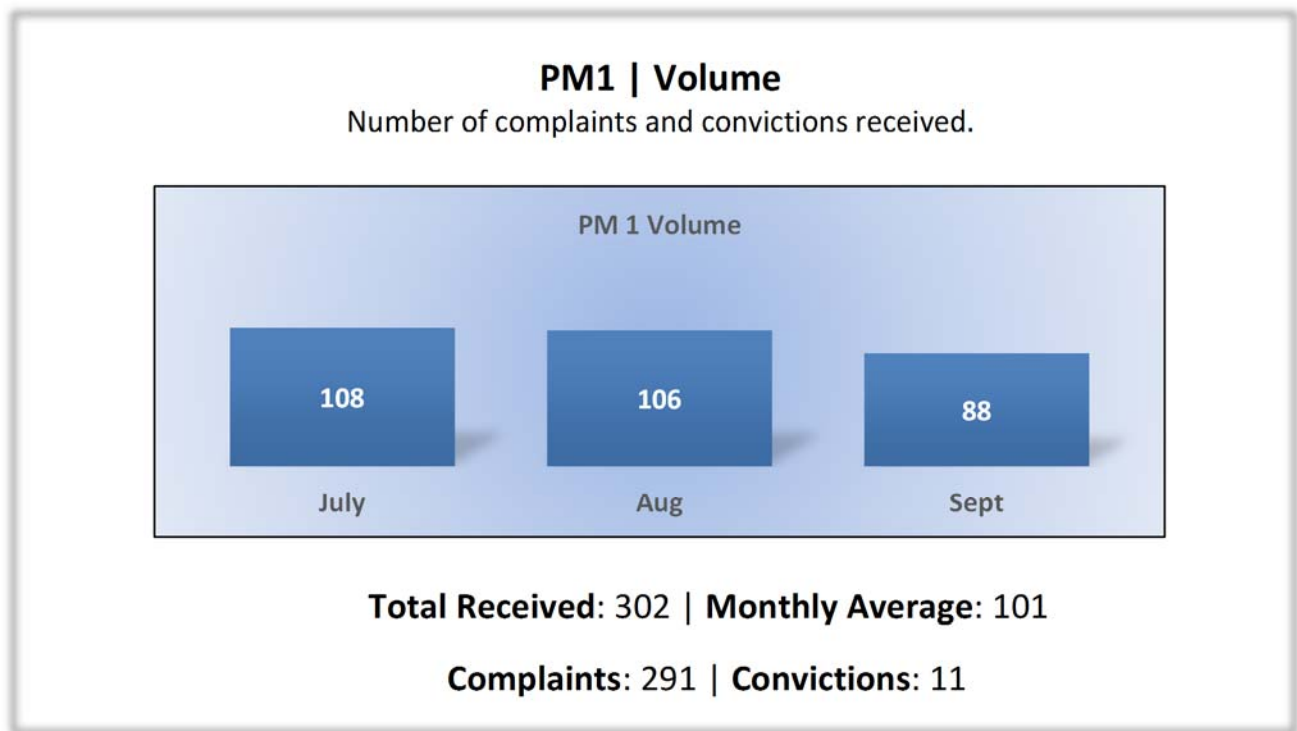
Action Requested

This item is for informational purposes only.

Enforcement Performance Measures

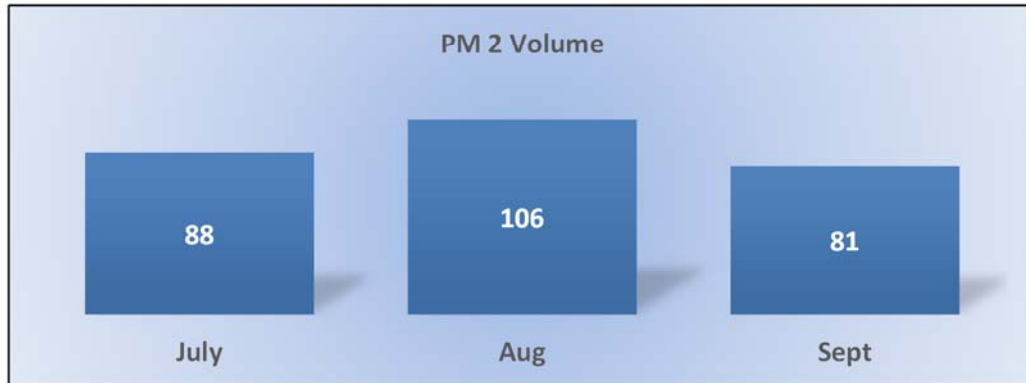
Q1 Report (July - September 2017)

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.



PM2 | Intake – Volume

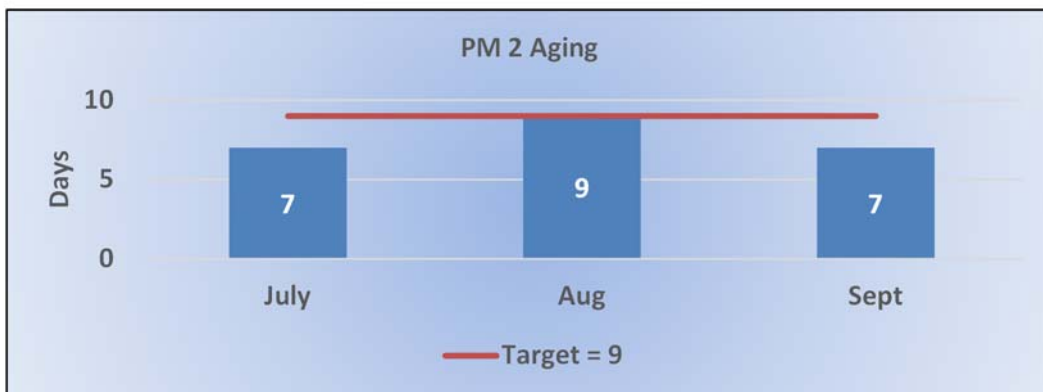
Number of complaints closed or assigned to an investigator.



Total: 275 | Monthly Average: 92

PM2 | Intake – Cycle Time

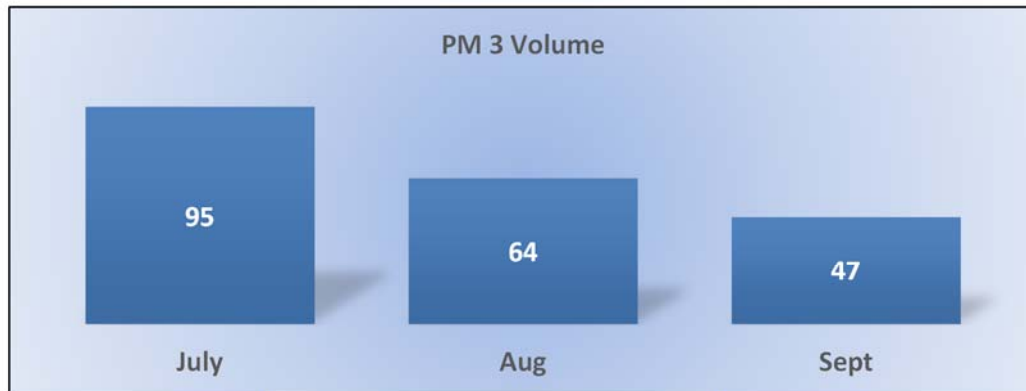
Average number of days from complaint receipt, to the date the complaint was closed or assigned to an investigator.



Target Average: 9 Days | Actual Average: 8 Days

PM3 | Investigations – Volume

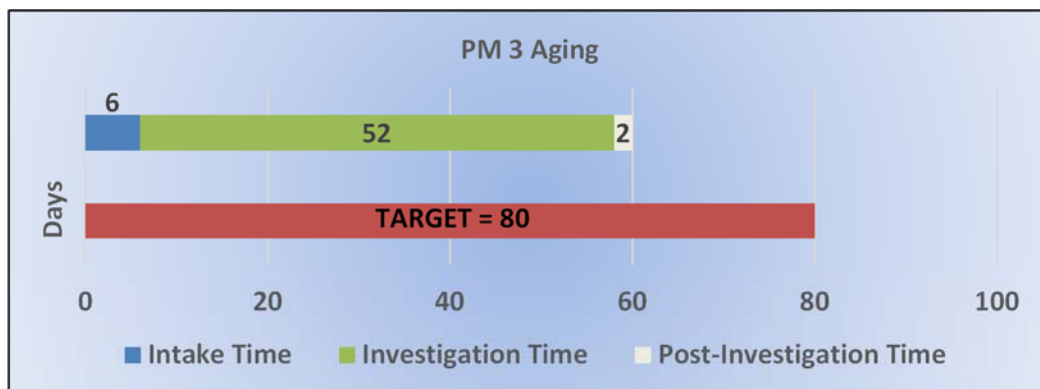
Number of investigations closed (not including cases transmitted to the Attorney General).



Total: 206 | Monthly Average: 69

PM3 | Investigations – Cycle Time¹

Average number of days to complete the entire enforcement process for cases not transmitted to the Attorney General. (Includes intake and investigation)

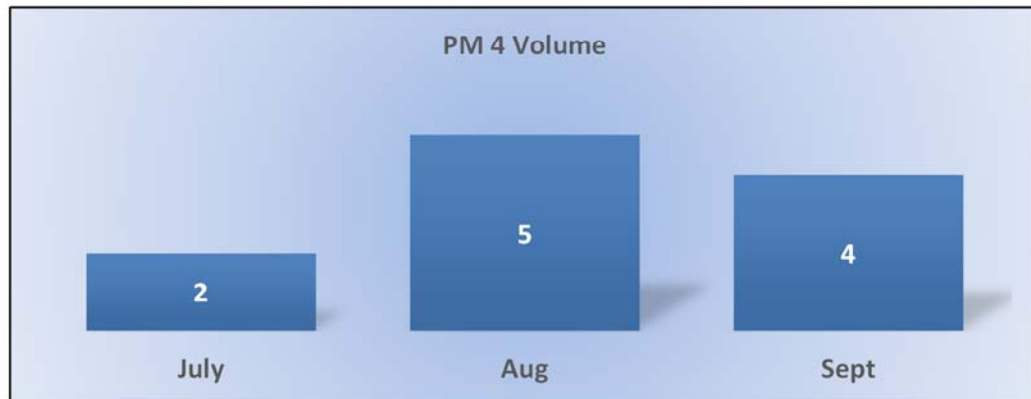


Target Average: 80 Days | Actual Average: 59 Days

¹ Due to rounding, there might be small discrepancies between the PM3 "Actual Average", and the sum of the individual case stages (i.e., Intake time + Investigation time + Post-Investigation time).

PM4 | Formal Discipline – Volume

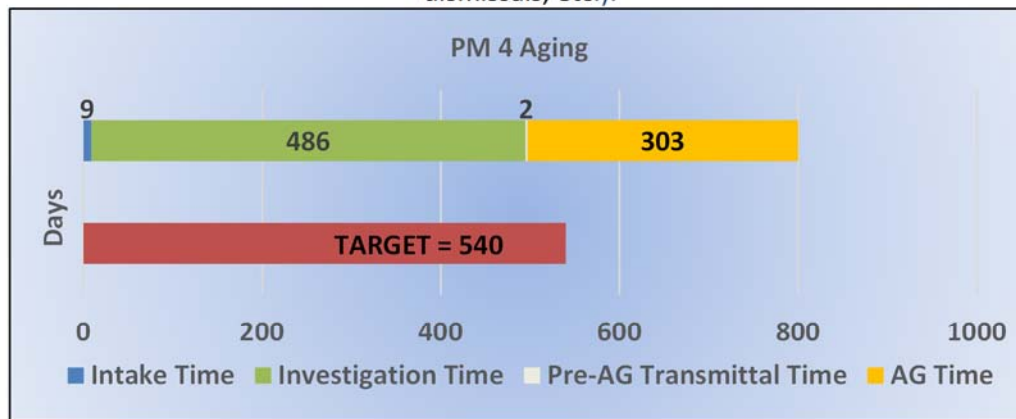
Cases closed after transmission to the Attorney General for formal disciplinary action. This includes formal discipline, and closures without formal discipline (e.g., withdrawals, dismissals, etc.).



Total: 11 | Monthly Average: 4

PM4 | Formal Discipline – Cycle Time²

Average number of days to close cases transmitted to the Attorney General for formal disciplinary action. This includes formal discipline, and closures without formal discipline (e.g., withdrawals, dismissals, etc.).

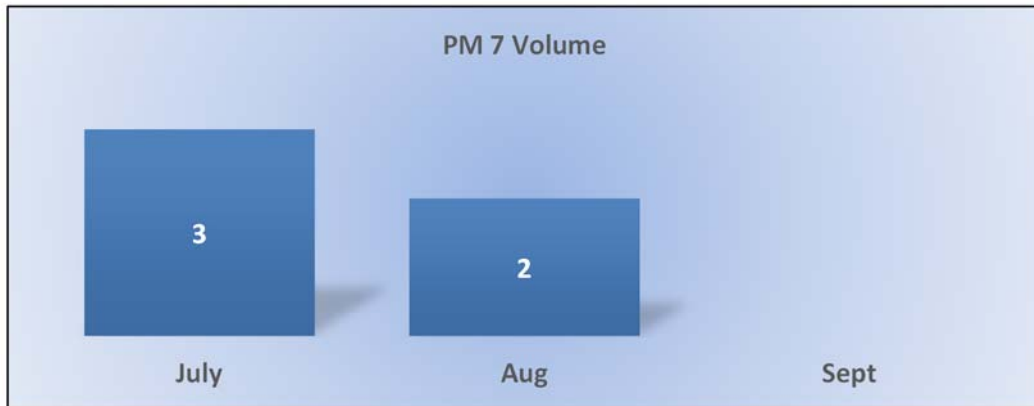


Target Average: 540 Days | Actual Average: 800 Days

² Due to rounding, there might be small discrepancies between the PM4 "Actual Average", and the sum of the individual case stages (i.e., Intake time + Investigation time + Pre-AG Transmittal time + AG time).

PM7 | Probation Intake – Volume

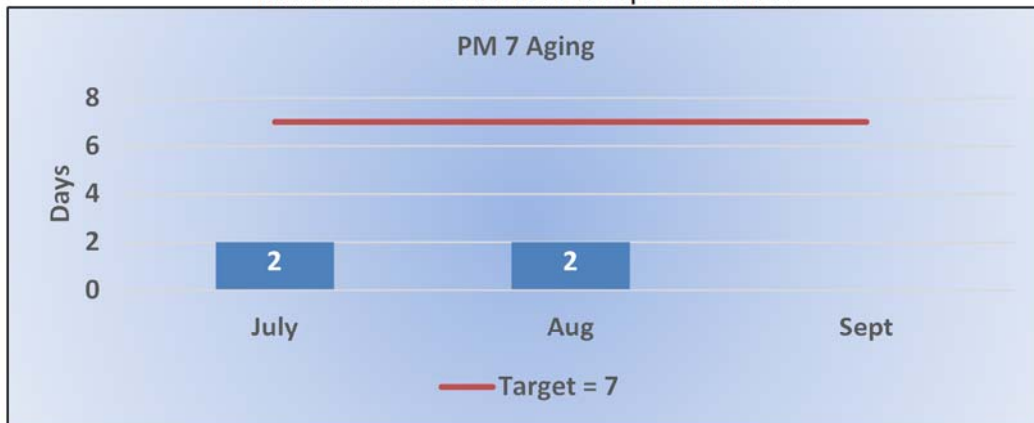
Number of new probation cases.



Total: 5

PM7 | Probation Intake – Cycle Time

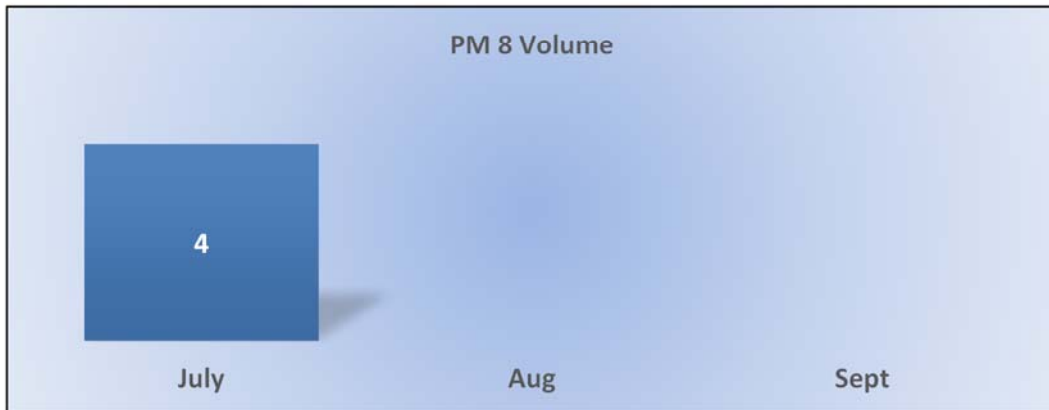
Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.



Target Average: 7 Days | Actual Average: 2 Days

PM8 | Probation Violation Response – Volume

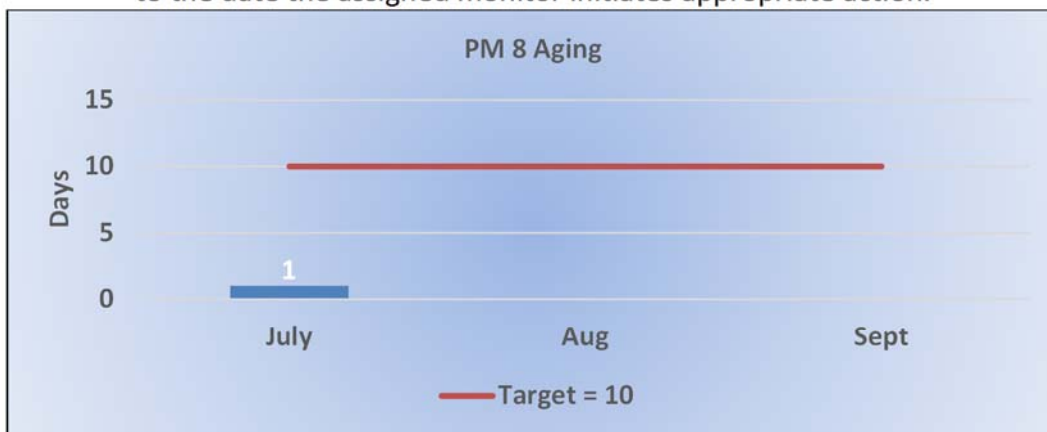
Number of probation violation cases.



Total: 4

PM8 | Probation Violation Response – Cycle Time

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.



Target Average: 10 Days | **Actual Average: 1** Day

BOARD OF PSYCHOLOGY
Overview of Enforcement Activity

License & Registration	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Psychologist	20,307	21,019	21,527	22,020	22,688	****	20,575	20,024	20,596	20,977
Registered Psychologist	324	320	312	320	349	****	280	278	249	188
Psychological Assistant	1,397	1,429	1,507	1,635	1,727	****	1,701	1,466	1,442	1,350
Cases Opened	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Complaints Received	786	712	785	747	707	643	900	798	1042	891
Arrest Reports**	72	54	48	70	42	133	72	50	39	35
Investigations Opened	88	79	83	107	73	505	736	602	771	673
Cases referred to DA	2	3	3	5	6	0	0	0	0	0
Cases referred to AG	23	38	37	34	38	41	46	33	45	55
Filings	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Accusations	8	23	21	27	31	27	30	23	27	15
Statement of Issues	9	8	4	4	2	4	10	5	7	6
Petition to Revoke Probation	0	0	0	3	1	2	2	3	1	6
Petitions to Compel Psych. Exam	0	0	1	1	0	1	0	1	0	0
Petitions for Penalty Relief	3	1	0	1	1	2	0	0	3	6
Petition for Reinstatement	1	1	0	2	1	1	0	0	2	1
Petitions for Reconsideration	0	1	0	0	2	0	0	0	0	2
Filing Withdrawals/Dismissals	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Accusations Withdrawn	0	0	2	0	0	2	0	5	0	0
Accusations Dismissed	0	1	0	1	1	0	1	4	1	0
Statement of Issues Withdrawn	5	0	2	1	0	0	0	0	1	3
Citations	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Citations Ordered	5	10	9	18	10	6	11	27	32	46
Disciplinary Decisions	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Revocations	1	3	2	4	2	4	2	4	2	9
Revocation, Stayed, Probation	7	9	12	11	11	11	12	24	16	7
Revoked, Stayed, Probation, Susp.	3	0	0	0	0	0	0	0	0	0
Surrender	8	3	2	11	10	10	9	12	26	11
Reprovals	0	0	1	2	0	2	1	3	3	4
ISO/TRO/PC23 Ordered	3	4	1	4	3	2	2	2	1	2
Statement of Issues-License Denied	1	1	0	1	1	0	2	0	0	0
Total Disciplinary Decisions	23	20	18	33	27	29	28	45	48	33
Other Decisions	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Statement of Issues-License Granted	4	5	4	3	6	3	1	1	0	0
Petitions for Penalty Relief Denied	1	0	0	0	0	0	0	0	2	4
Petitions for Penalty Relief Granted	3	1	1	1	1	1	0	0	1	2
Petition for Reinstatement Granted	1	0	0	0	1	0	0	0	0	0
Petition for Reinstatement Denied	0	0	1	1	1	0	0	0	2	1
Reconsiderations Denied	0	0	1	0	1	0	0	1	0	2
Reconsiderations Granted	0	1	0	0	1	0	0	0	0	0
Orders Compelling Psych. Evaluation	0	0	0	1	0	1	0	0	0	3
Total Other Decisions	9	7	7	6	11	5	1	2	5	12
Violation Types	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	*17/18
Gross Negligence/Incompetence	5	4	4	3	5	9	7	23	29	20
Improper Supervision	0	0	1	0	0	1	0	1	0	1
Repeated Negligent Acts	0	0	0	1	0	6	6	22	31	21
Self Abuse of Drugs or Alcohol	2	3	3	12	1	8	3	7	15	7
Dishonest/Corrupt/Fraudulent Act	0	3	0	2	2	3	3	6	8	9
Mental Illness	1	0	0	0	2	1	0	4	5	2
Aiding Unlicensed Practice			0	0	0	1	0	1	0	0
General Unprofessional Conduct	1	1	1	0	2	14	2	5	2	13
Probation Violation	1	0	0	2	1	2	0	3	26	29
Sexual Misconduct	6	1	2	6	9	1	1	6	14	2
Conviction of a Crime	7	9	8	5	5	11	12	18	23	1
Discipline by Another State Board	1	0	1	1	0	0	0	5	5	2
Misrepresentation of License Status						1	1	1	1	1
Professional Standards - Findings						13/14	14/15	15/16	16/17	*17/18
Abandonment						1	0	0	0	0
Confidentiality						1	1	1	4	0
Failure to provide medical records						0	2	1	2	1
Outside of area of competence						1	0	3	5	5

*Statistics through April 23, 2018

****Statistics unavailable

**Previously "Criminal Conviction Reports Received"

Cases Opened

Complaints Received:

Complaints are received at the Board of Psychology through many different forms of submission, the most common being via the BreEZe online system and through regular mail. There is no fee to file a complaint.

Arrest Reports (Previously "Criminal Conviction Reports Received"):

Department of Justice (DOJ) is required to notify the Board any time a Board licensee is arrested. When the Board receives a notice of arrest from DOJ, the Board opens a complaint and begins an investigation into the circumstances surrounding the arrest.

Investigations Opened:

Most, but not all, complaints submitted to the Board are assigned to an Enforcement Analyst and fall under this category. Cases that are closed immediately upon intake are not included in this number. Cases that may be closed immediately upon intake would typically be cases where the Board has no jurisdiction, such as a complaint involving the licensee of another board or bureau.

Cases referred to DA:

When the Board directly refers a complaint to the Office of the District Attorney (DA), that referral would be counted here. However, most referrals to the DA are made by the Office of the Attorney General (AG) or by the investigation unit conducting the field investigation. If the Board reports 'zero' referrals to the DA, this only refers to action on the Board's part and not what another agency may have done independently as part of their law enforcement duties.

Cases referred to AG:

When a case is determined to contain one or more egregious violations of the laws relating to the practice of psychology in California, the case may be referred to the AG. This number reports how many cases were transmitted to the AG by the Board requesting that an Accusation be filed against the licensee.

Filings

Accusations:

If the AG accepts the case that the Board transmitted, the AG will draft an Accusation, which is the charging document to be used to determine the allegations arising from the complaint. An Accusation can only be filed against a licensee of the Board and is administrative in nature, not criminal or civil.

Statement of Issues:

A Statement of Issues is issued when an applicant for Board licensure appeals the Board's decision to deny that applicant licensure. The due process under a Statement of Issues closely mirrors the Accusation process with one key distinction – that the Statement of Issues is only used for unlicensed individuals who are applying for licensure.

Petition to Revoke Probation:

When a licensee whose license is currently on probation with the Board violates probation or is subjected to a new Accusation arising from a new complaint, the Board may, at its discretion, request that the AG draft an Accusation and Petition to Revoke Probation. Probation occurs when a licensee has their license revoked, but that revocation is stayed for as long as the licensee complies with the terms of their probation, including to obey all laws. A licensee on probation having their probation revoked via this Petition to Revoke Probation suffers the loss of their license entirely and can no longer practice.

Filing Withdrawals / Dismissals:

When an Accusation or Statement of Issues is withdrawn by the Board or dismissed, there is no discipline imposed.

Disciplinary Decisions:

Revocation

When the Board prevails against a licensee who has violated the laws relating to the practice of psychology in California to an egregious degree, the most extreme administrative penalty the Board may impose is revocation of that license. A licensee who has their license revoked is not permitted to practice psychology.

Revocation, Stayed, Probation:

When the Board revokes a license, the Board has the option of staying that revocation and imposing probation instead. For the entire duration of the probation period, the probationer must comply with all standard and optional terms of probation, including to obey all laws, administrative, civil or criminal. Failure to comply with all terms and conditions may result in probation being revoked and the revocation that was stayed being reimposed, with the result being that the licensee will lose their license and be unable to practice psychology.

Surrender:

By stipulated agreement between the Board and the licensee who is the subject of an Accusation, the Board may accept the surrender of the license as an alternative to pursuing revocation. The end result in either case is that the licensee loses their ability to practice psychology in California.

Reprovals:

In cases where an extreme departure from the standard of care has occurred, but where other mitigating factors reduce the severity of the allegations, especially when there was little or no patient harm, the Board may impose the administrative discipline of a Public Letter of Reprimand through the AG. This Reprimand becomes a permanent part of a licensee's enforcement file and has some of the same conditions imposed through it as though the licensee were on probation.

**Complaint Prioritization Guidelines
for DCA Agencies Regulating
Business Services, Design and Construction**

As complaints are received, a staff person should immediately review each complaint to determine the appropriate course of action based on the complaint prioritization guidelines. The table below represents true guidelines - depending on the facts, a different level of priority may be warranted. For example, a complaint based on a report of out of state discipline (normally routine) may be re-prioritized to a higher level based on the nature of the underlying acts. In addition, each agency may have complaint categories unique to its subject area.

Agencies should continue to review complaints warranting urgent or high attention to determine whether to seek an Interim Suspension Order, a Penal Code section 23 request or other interim action as described in Deputy Director for Legal Affairs Doreatha Johnson's memorandum dated December 15, 2008.

Priority Level	Complaint Category
Urgent (Highest Priority)	Allegations which indicate the licensee poses an immediate danger to the public health, safety or welfare Imminent or on-going criminal activity Unlicensed activity posing an immediate danger to the public health, safety or welfare Aiding and abetting unlicensed activity posing an immediate danger to the public health, safety or welfare Multiple complaints of fraud that affect a substantial number of people or a substantial amount of money Arrests or convictions substantially related to the area of practice (Note: May be re-categorized based on the nature of the underlying acts)
High	Significant financial harm to a person which might be avoided or mitigated When evidence will likely be destroyed or unavailable When victim may not be available later as a witness Unlicensed activities <u>not</u> posing an immediate danger to the public health, safety or welfare Aiding and abetting unlicensed activity <u>not</u> posing an immediate danger to the public health, safety or welfare

	<p>Exam subversion (where exam may be compromised)</p> <p>Complaints with multiple prior complaints</p> <p>Complaints about licensees on probation</p> <p>Project abandonment</p> <p>Fraud</p>
Routine	<p>Quality of services</p> <p>Advertising (unlicensed and otherwise)</p> <p>Record keeping violations</p> <p>Non-compliance with a citation</p> <p>Continuing education</p> <p>Exam subversion (exam not compromised)</p> <p>Applicant misconduct</p> <p>Reports of out-of-state discipline (Note: May be re-categorized based on the nature of the underlying acts)</p>