

MEDICAL BOARD ENFORCEMENT REPORT

DATE REPORT ISSUED: July 1, 2009
 DEPARTMENT: Enforcement Program
 SUBJECT: Report to the Legislature on Vertical Enforcement
 STAFF CONTACT: Renee Threadgill

REQUESTED ACTION:

Members adopt staff recommendations.

STAFF RECOMMENDATION:

Staff recommends that you adopt the following recommendations from the Report to the Legislature on Vertical Enforcement (VE):

- The pilot be extended for two more years, and its effectiveness reassessed after two years
- Zero Tolerance of Negative Communication with consideration given to engaging outside consultant to help identify, isolate and eliminate the cause(s) of such negative communications
- Obtain Clarity of Roles, if necessary, legislative changes should be sought to provide additional clarity
- Consistent and Unified VE Process
- Consider Limiting VE to Specified Types or Categories of Cases or Circumstances
- Perform Joint Statewide Training
- Resolve Staffing Vacancies
- Obtain Common Server

EXECUTIVE SUMMARY:

In preparing the vertical enforcement (VE) report, Integrated Solutions for Business and Government, Inc. (ISBG) reviewed data collected by Medical Board of California (MBC) and interviewed staff at all levels from both MBC and Health Quality Enforcement Section (HQUES) of the Department of Justice (DOJ). The Executive Summary and Recommendation sections from the report are attached.

FISCAL CONSIDERATIONS:

To be determined.

PREVIOUS MBC AND/OR COMMITTEE ACTION:

On January 1, 2006, the MBC and the HQUES of DOJ implemented the vertical enforcement model for investigation and prosecution of cases. Pursuant to mandate, the MBC submitted a Report to the Legislature on VE in November 2007. Senate Bill 797 (Ridley-Thomas), Chapter 33, Statutes of 2008, was enacted continuing the VE model until July 1, 2010, and requiring a report by the MBC on the effectiveness of VE model July 1, 2009. MBC commissioned ISBG to review data collected by MBC, pre-VE and post-VE, and report findings and recommendations. On June 18, 2009 ISBG presented a draft report on VE to the Executive Committee of MBC. The Executive Committee directed legislative staff to meet with the authors' office, the AG, and interested parties to determine what could go forward in AB 1070 to extend the pilot during this legislative session. In addition the Executive Committee designated two members to review and approve revisions to the final draft report. Based on input received during the Executive Committee Meeting, ISBG submitted a final draft of the report to the legislature on VE which was subsequently approved by Board President Barbara Yaroslovsky and Vice President Frank Zerunyan.

I. EXECUTIVE SUMMARY

The mission of the Medical Board of California "is to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied health care professions and through the vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality medical care through the Board's licensing and regulatory functions."

To this end, legislation was enacted into law to assist in streamlining the investigation and prosecution of alleged misconduct by physicians and surgeons (P&S).

Senate Bill 1950 (Figueroa), Chapter 1085, Statutes of 2002, mandated the appointment of an Enforcement Program Monitor (Monitor) to "monitor and evaluate the disciplinary system and procedures" of the Medical Board of California (MBC) for a period of two years. Two reports were required: an initial report of the findings and conclusions no later than October 1, 2003, and a final report prior to March 31, 2005.

In both the Initial and Final Reports of the ***Medical Board of California Enforcement Program Monitor***, the Monitor recommended the vertical prosecution model whereby "the trial attorney and the investigator are assigned as the team to handle a complex case as soon as it is opened as a formal investigation". The Monitor stated that the vertical prosecution model would improve efficiency and reduce case cycle time and, thereby, ensure the quality and safety of medical care to the people of California.

Subsequently, Senate Bill 231, Chapter 674, Statutes of 2005, was enacted into law codifying the use of the vertical prosecution model effective January 1, 2006. It also required the MBC to report and make recommendations to the Governor and the Legislature on the vertical prosecution model by July 1, 2007.

As mandated, the MBC and the Health Quality Enforcement Section (HQES) of the Department of Justice (DOJ) implemented the vertical prosecution model for P&S on January 1, 2006. To avoid potential complications that might result from utilizing a different model for the investigation and prosecution¹ of Allied Health Care Professions (AH), cases investigated by the MBC on behalf of sister agencies, MBC and HQES elected to simultaneously implement the vertical prosecution model for AH cases as well. Since not all of MBC's cases lead to prosecution, the name of the new model was changed to vertical enforcement (VE), although statute still refers to a vertical prosecution model.

The MBC's ***Report to the Legislature on Vertical Enforcement*** in November 2007, stated that from January 1, 2006 through April 9, 2007, there was an overall decrease of

¹ For purposes of this report, the term "prosecution" refers to an administrative action commenced by the filing of an accusation with the Office of Administrative Hearings, unless the context indicates otherwise.

10 days in the average time to complete an investigation, excluding all cases pending prior to implementation of the pilot. The report further stated that the statistics showed that the number of cases closed without prosecution was reduced from 145 days to 139 days; obtaining medical records was decreased from 74 days to 36 days; conducting physician interviews reduced from 60 days to 40 days; obtaining medical expert opinions went from 69 days to 36 days; filing of accusations by HQES decreased from 241 to 212 days; and obtaining interim suspension orders or temporary restraining orders decreased from 91 days to 30 days.

Although the initial statistical data from the pilot identified trends which suggested that the VE model can more quickly identify cases for closure, handle certain egregious complaints more expeditiously, and showed a trend of reducing the time frames to complete investigations, the pilot period did not provide sufficient time to address the Monitor's concerns regarding the time to complete prosecutions, since some MBC investigations may take over 12 months to complete and the available statistics at that time only covered a 16 month period.

Consequently, Senate Bill 797 (Ridley-Thomas), Chapter 33, Statutes of 2008, was enacted continuing the VE model until July 1, 2010, and requiring a report by the MBC on the effectiveness of VE model by July 1, 2009. This report is the result of that mandate.

The MBC commissioned Integrated Solutions for Business and Government, Inc. (ISBG) on March 13, 2009, to review data collected by the MBC for the period from January 1, 2005 (pre-VE) through December 31, 2008, and report findings and recommendations.

The statistical conclusions contained in this report are based on data provided to ISBG by MBC, which is consistent with the data provided in the Monitor's reports, the ***Report to the Legislature on Vertical Enforcement*** in November 2007, as well as all other official MBC reports. Due to the limited scope and time available to complete the report, ISBG performed no independent testing or auditing of the provided data to verify its accuracy. In addition, although outside of the scope, data separately collected and maintained by HQES was not received, and therefore, not compared with the data provided by MBC.

The following flow chart summarizes the combined P&S and AH data showing the median days aged and number of cases for select data markers. Since MBC and HQES jointly processed AH cases utilizing the VE model, AH data is included in the evaluation to account for its impact on workload.

MBC Field Investigators	2005	2008	Difference
Filled	55	61	6
Filled Caseload	26	20	-6
Authorized	61	71	10
Authorized Caseload	23	17	-6

P&S and A.H. Combined	2005	2008	Difference
Median Days	8	10	2
No of Cases	35	28	-7

MBC Investigator Requests Suspension Order

Suspension Order Granted

Complaint Assigned to MBC Investigator

MBC Requests Medical Record

P&S and A.H. Combined	2005	2008	Difference
Median Days	32	31	-1
No of Cases	500	276	-224

MBC Subpoenas Medical Record

P&S and A.H. Combined	2005	2008	Difference
Median Days	59	77	18
No of Cases	15	31	16

Medical Records Received

P&S and A.H. Combined	2005	2008	Difference
Median Days	100	36	-64
No of Cases	4	86	82

Submitted to Medical Consultant

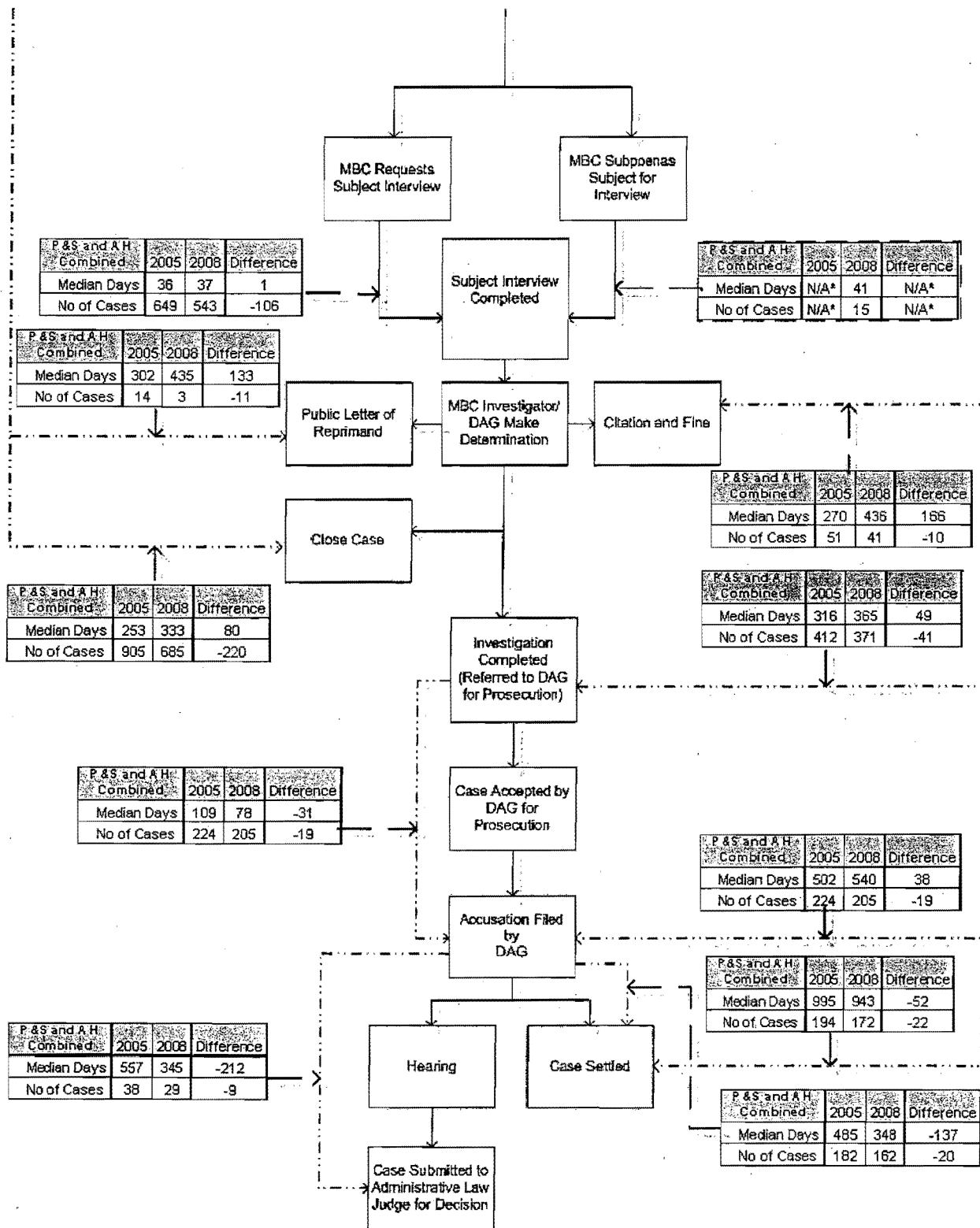
P&S and A.H. Combined	2005	2008	Difference
Median Days	24	44	20
No of Cases	49	328	279

Medical Consultant Review Completed

Request Expert Opinion

P&S and A.H. Combined	2005	2008	Difference
Median Days	41	40	-1
No of Cases	561	414	-147

Expert Opinion Received



*2005 data not available.

The following table summarizes the primary P&S and AH data, showing the increase or decrease in time for the specified data markers between 2005 and 2008.

Misc. Stats	(Pre-VE) 2005	2006	2007	2008	Difference between 2005 & 2008	Associated Table	Page
Attorney Services Hours Billed by AG	53,233.75	61,746.75	72,913.75	73,305.75	20,072.00	B3.1	262
Legal Assistant/Paralegal Hours Billed by AG	2,276.25	2,766.50	2,598.00	3,182.50	906.25	B3.1	262
MBC Enforcement Temp Help Hours Worked (excludes Med. Consultants)	150,380.00	175,438.00	205,056.00	289,914.00	139,534.00	B3.2	262
MBC Enforcement Medical Consultant Hours Worked	13,381.8	13,266.0	14,441.5	13,931.5	549.70	B3.3	263
No. of Filled Enforcement Field Investigator Positions	55	51	51	61	6.00	B3.4	263
Average Caseload per Filled MBC Field Investigator Position	26	25	22	20	-6.00	B3.4	263
No. of Authorized MBC Field Investigator Positions	61	57	59	71	10.00	B3.4	263
Average Caseload per Authorized MBC Field Investigator Position	23	22	19	17	-6.00	B3.4	263
Combined Physician and Surgeon & Allied Health Care Stats							
	(Pre-VE) 2005	2006	2007	2008	Difference between 2005 & 2008	Associated Table	Page
Cases Referred to MBC District Office for Investigation	1,407	1,278	1,109	1,205	-202.00	B7.1a	265
Days Aged from Request to Suspension Order Granted							
Average	35	52	54	18	-17.00	B6.1	264
Median	8	3	7	10	2.00		
No of Cases	35	35	29	28	-7.00		
Days Aged from Assigned to MBC Investigator to Closed No Prosecution							
Average	271	295	333	373	102.00	B7.1	265
Median	253	282	305	333	80.00		
No of Cases	905	783	715	685	-220.00		
Pending at Year End	1,148	1,208	1,203	1,291	143.00		
Days Aged from Assigned to MBC Investigator to Referral for Citation/Fine							
Average	276	332	392	485	209.00	B7.4	267
Median	270	324	405	436	166.00		
No of Cases	51	53	38	41	-10.00		

	Combined Physician and Surgeon & Allied Health Care Stats						
	(Pre-VE) 2005	2006	2007	2008	Difference between 2005 & 2008	Associated Table	Page
Days Aged from Assigned to MBC Investigator to Referral for Public Letter of Reprimand							
Average	344	515	463	387	43.00	B7.7	268
Median	302	555	405	435	133.00		
No of Cases	14	10	6	3	-11.00		
Days Aged from Assigned to MBC Investigator to Referral to District Attorney for Criminal Action							
Average	266	327	291	368	102.00	B7.10	270
Median	203	286	232	309	106.00		
No of Cases	38	27	41	37	-1.00		
Days Aged from Medical Records Release Request to Receipt of Medical Records (No Subpoena)							
Average	57	56	65	59	2.00	B9.1	271
Median	32	30	30	31	-1.00		
No of Cases	500	378	300	276	-224.00		
Days Aged from Subpoena Served to Receipt of Medical Records							
Average	173	64	53	92	-81.00	B9.1	271
Median	100	29	27	36	-64.00		
No of Cases	4	39	49	86	82.00		
Days Aged from Medical Records Release Request and Subpoena Served to Receipt of Medical Records							
Average	129	168	212	210	81.00	B9.1	271
Median	59	125	206	77	18.00		
No of Cases	15	23	24	31	16.00		
Days Aged from Subject Interview Request to Subject Interview Completed							
Average	48	50	49	56	8.00	B10.1	274
Median	36	38	35	37	1.00		
No of Cases	649	502	406	543	-106.00		
Pending at Year End	102	96	139	109	7.00		
Days Aged from Subject Interview Subpoena to Subject Interview Completed							
Average	0	78	144	18	18.00	B10.1	274
Median	0	46	144	41	41.00		
No of Cases	0	5	2	15	15.00		
Pending at Year End	8	7	13	30	22.00		
Days Aged from Case Submitted to District Office Medical Consultant to Review Completed							
Average	21	56	60	88	67.00	B11.1	275
Median	24	28	31	44	20.00		
No of Cases	49	288	375	328	279.00		
Pending at Year End	36	135	178	192	156.00		

	Combined Physician and Surgeon & Allied Health Care Stats						
	(Pre-VE) 2005	2006	2007	2008	Difference between 2005 & 2008	Associated Table	Page
Days Aged from Case Submitted to Expert for Opinion to Receipt of Expert Opinion							
Average	50	47	52	51	1.00	B12.1	277
Median	41	36	37	40	-1.00		
No of Cases	561	475	374	414	-147.00		
Pending at Year End	63	59	60	52	-11.00		
Days Aged from Case Assigned to MBC Investigator to Completed Investigation (Referred to DAG)							
Average	322	320	359	398	76.00	B13.1	278
Median	316	299	344	365	49.00		
No of Cases	412	376	360	371	-41.00		
Pending at Year End	1,148	1,208	1,203	1,291	143.00		
Days Aged from Assigned to MBC Investigator to All Outcomes (Including Disciplinary Outcomes)							
Average	451	476	507	549	98.00	B14.1	280
Median	310	343	380	436	126.00		
No of Cases	1,305	1,164	1,096	1,057	-248.00		
Pending at Year End	1,136	1,196	1,195	1,275	139.00		
Days Aged from Assigned to MBC Investigator to Settlement							
Average	1,015	1,054	936	952	-63.00	B14.4	281
Median	995	983	894	943	-52.00		
No of Cases	194	198	183	172	-22.00		
Pending at Year End	504	472	402	388	-116.00		
Days Aged from Assigned to MBC Investigator to All Disciplinary Outcomes							
Average	978	853	930	973	-5.00	B14.5	282
Median	918	854	875	901	-17.00		
No of Cases	333	318	328	301	-32.00		
Pending at Year End	505	471	402	387	-118.00		
Days Aged from Case Assigned to MBC Investigator to Accusation Filed by DAG							
Average	531	523	522	568	37.00	B14.8	283
Median	502	478	489	540	38.00		
No of Cases	224	197	249	205	-19.00		
Pending at Year End	164	179	121	142	-22.00		
Days Aged from Completed Investigation to Accusation Filed by DAG							
Average	154	175	160	147	-7.00	B15.1	285
Median	109	115	87	78	-31.00		
No of Cases	224	197	249	205	-19.00		
Pending at Year End	164	179	121	142	-22.00		
Days Aged from Accusation Filed to Case Submitted to ALJ for Decision							
Average	624	560	592	479	-145.00	B16.1	286
Median	557	393	504	345	-212.00		
No of Cases	38	15	36	29	-9.00		

	Combined Physician and Surgeon & Allied Health Care Stats						
	(Pre-VE) 2005	2006	2007	2008	Difference between 2005 & 2008	Associated Table	Page
Days Aged from Accusation Filed by DAG to Settlement							
Average	542	594	466	449	-93.00	B17.1	288
Median	485	456	361	348	-137.00		
No of Cases	182	184	170	162	-20.00		
Pending at Year End	11	8	4	18	7.00		
Days Aged from Accusation Filed by DAG to All Disciplinary Outcomes							
Average	583	572	517	532	-51.00	B17.2	288
Median	513	435	377	373	-140.00		
No of Cases	263	245	255	247	-16.00		
Pending at Year End	348	298	293	248	-100.00		
Days Aged from Accusation Filed by DAG to Revocation Outcome							
Average	534	334	606	480	-54.00	B17.5	290
Median	436	167	375	264	-172.00		
No of Cases	25	20	26	22	-3.00		
Days Aged from Accusation Filed by DAG to Surrender Outcome							
Average	410	419	222	349	-61.00	B17.5	290
Median	367	300	183	184	-183.00		
No of Cases	39	39	33	35	-4.00		
Days Aged from Accusation Filed by DAG to Suspension Only Outcome							
Average	0	319	0	0	0.00	B17.5	290
Median	0	319	0	0	0.00		
No of Cases	0	1	0	0	0.00		
Days Aged from Accusation Filed by DAG to Probation Outcome							
Average	599	560	521	467	-132.00	B17.5	291
Median	498	432	391	363	-135.00		
No of Cases	88	74	89	82	-6.00		
Days Aged from Accusation Filed by DAG to Probation with Suspension Outcome							
Average	532	531	499	509	-23.00	B17.5	291
Median	488	505	385	408	-80.00		
No of Cases	29	17	16	12	-17.00		
Days Aged from Accusation Filed by DAG to Public Reprimand Outcome							
Average	687	742	631	609	-78.00	B17.5	291
Median	703	691	490	479	-224.00		
No of Cases	55	68	55	55	0.00		

	Combined Physician and Surgeon & Allied Health Care Stats						
	(Pre-VE) 2005	2006	2007	2008	Difference between 2005 & 2008	Associated Table	Page
Days Aged from Accusation Filed by DAG to Other Decision Outcome							
Average	525	1,325	509	701	176.00	B17.5	291
Median	525	606	442	494	-31.00		
No of Cases	2	3	5	8	6.00		
Days Aged from Accusation Filed by DAG to Accusation Withdrawn/Dismissed Outcome							
Average	678	508	559	791	113.00	B17.5	292
Median	533	308	324	407	-126.00		
No of Cases	25	23	31	31	6.00		
Other Stats							
Office of Administrative Hearings Initial Hearing Dates Delayed Due to Governor's Executive Order, July - October 2008	2008	Table	Page				
Average Days Delay	119.78	16.4	190				
Median Days Delayed	112.00						
Number of Cases Delayed	23.00						

Since statistical data alone does not fully describe the effectiveness of the VE model, interviews of MBC and HQES staff were conducted from April 9 through 15, 2009. Although the project scope contained relatively few hours to conduct interviews, it was determined that interviewing additional staff at all levels of both departments was necessary to obtain an accurate representation of how VE is being implemented. ISBG voluntarily conducted these additional interviews despite the substantial additional time required. A total of 22 staff from both departments were interviewed. Eleven (11) MBC enforcement staff were interviewed at the management, supervisory and investigative levels, all of whom were present since the onset of VE, with an average of 13 years with MBC. Additionally, 11 HQES staff were interviewed at the management, supervisory, primary and lead levels, all of whom were present since the onset of VE, with an average of 14 years experience with HQES. The following is a synopsis of the interviews:

- All believe that public safety is their number one priority;
- In general, they like their respective professions;
- Most HQES staff indicated that their current caseload is manageable and not much different than prior to VE;
- Most MBC staff stated that their caseload is too heavy;
- Both HQES and MBC are experiencing retention issues;
- MBC continues to experience recruiting problems;
- Both believe that communication between MBC investigators and Deputy Attorney Generals (DAGs) increased, but for different reasons;
- The manner in which VE is implemented is inconsistent from one HQES office to another;
- DAGs believe that VE is a vast improvement from the previous Deputy in District Office (DIDO) program; and
- Some MBC investigators believe that, as implemented, VE may be more effective, but is not more efficient.

While the management and staff of both MBC and HQES are to be commended for their hard work, dedication, professionalism and strong commitment to public protection, and made noteworthy progress in implementing VE, significant work remains before it can be concluded that the departments are able to successfully reduce overall complaint resolution time frames under this model. A summary of the recommendations for a more successful VE model is as follows:

Recommendation #1: Continue the pilot and implement the recommendations noted below and assess its effectiveness and success in two years

Although noteworthy efforts were expended by both HQES and MBC staff toward implementation of the VE model and some successes achieved, it is evident that significant room for improvement exists. Therefore, it is recommended that Recommendations 2 through 8 be implemented, the pilot be continued for two more years, and its effectiveness reassessed after two years.

Recommendation #2: Zero Tolerance of Negative Communication

While both the MBC and HQES have made considerable progress in their working relationship, additional work is necessary to ensure mutual respect and appreciation for the vital roles each bring to the process and, ultimately, to public protection. Staff interviewed identified this as a major and continuing issue directly or indirectly impacting staff statewide. Based on the statements and the level of frustration that was observed during the interviews, it was concluded that this was a major issue impacting the success of VE. In addition, there was a lack of commonly understood and mutually accepted appreciation of each other's roles and professional contributions towards resolving cases in the VE model. Since interpersonal communications between MBC investigators and HQES attorneys is key to the success of VE, it is recommended that the tone be uniformly set by executive management and every manager and supervisor of both departments that all staff work together as partners in a professional and respectful manner, and that all communications demonstrate mutual respect, courtesy and responsiveness, without exception. Any inappropriate communication must be addressed immediately, fairly and effectively.

Consideration should be given to engaging a knowledgeable outside consultant respected by both MBC and HQES to help identify, isolate and eliminate the cause(s) of such negative communications.

Recommendation #3: Clarity of Roles

It is recommended that clear and consistent direction be provided by top management regarding the roles of DAGs and MBC staff at all levels. Although the VPM identifies the VE team members and their respective roles, many of those interviewed from both departments stated that there needs to be a greater clarity and understanding of each others roles.

The meaning of Government Code (GC) Section 12529.6 wording "under the direction of" must be clearly defined and adhered to throughout both departments in a consistent manner that emphasizes teamwork and recognizes the unique training, expertise and contributions of all members of the team. If necessary, legislative changes should be sought to provide additional clarity.

Although HQES management stated that it has been HQES' position that MBC is the client, interview responses indicate that this is neither clearly understood nor accepted. Comments during the interviews indicate there is no common understanding or acceptance of the meaning of these terms at all levels in both departments. Staff interviewed revealed continuing confusion, disagreement or acceptance of the meaning of "direction" and "client", including disagreement as to who is authorized to speak on behalf of the client on a statewide basis. Therefore, management must clarify and ensure a consistent understanding and application of the term, which should be included in the joint training recommended below and incorporated in all appropriate manuals.

Recommendation #4: Consistent and Unified VE Process

The Monitor stated that: "MBC investigators and HQE prosecutors should work together in a true vertical prosecution system featuring case teams established at the initiation of the investigation and remaining together until the case is fully litigated or resolved." As implemented, according to the *Vertical Prosecution Manual* (VPM), there is a lead prosecutor and a primary prosecutor assigned to each case. "The Lead Prosecutor shall be assigned to, and shall review, each complaint referred to the District Office for investigation. In addition to the Lead Prosecutor, a second deputy attorney general shall be assigned by the Supervising Deputy Attorney General to each complaint as well. The Lead Prosecutor shall act as the primary deputy attorney general on the case for all purposes until and unless replaced by the second deputy attorney general....." Whenever, the Lead Prosecutor determines, either upon review of the original complaint or as the investigation progresses, that it is a likely a violation of law may be found, the second deputy attorney general shall replace the Lead Prosecutor as the primary deputy attorney general on the case for all purposes."

Interviewees stated that this process causes confusion and unnecessary or repetitive assignments because it is not uncommon for the lead DAGs to request different investigative tasks than the primary DAGs. This also causes delays in the interview process because it is frequently not readily known if the primary or the lead prosecutor will participate in the interviews and the process as implemented varies from office to office.

Therefore, since the current VE model is not a true vertical process as recommended by the Monitor, varies from one office to the other, and results in confusion and delays in the investigation, it is recommended that a consistent and uniform statewide true VE process, with appropriate levels of approval, be adhered to in every office. Exceptions, if any, should require an appropriate basis and level of approval and be clearly documented and published to avoid the appearance of being arbitrary or unfair. It is further recommended that consideration be given to replacing the existing multiple manuals and implementing a single joint manual that addresses the entire VE process, based on input from all who are part of the VE process through a joint task force or committee, to ensure consistency and uniform understanding of the VE model and each person's role in the VE process. In addition, the VE process itself should be reviewed for efficiency to determine if there are unnecessary duplications and methods for streamlining the overall process.

Recommendation #5: Consider Limiting VE to Specified Types or Categories of Cases or Circumstances

The data provided indicates that although there is a decrease in the time to complete a case once it is referred to the AG for prosecution, there is an overall increase in the investigatory phase of cases in the VE model.

As the Monitor noted, the vertical prosecution model is widely and successfully used by law enforcement, district attorney offices and others for specialized or complex cases. However, not all cases necessarily require handling under the VE model. To improve efficiency and effectiveness in light of the demonstrated increase in the time to complete the investigatory phase that has resulted from inclusion of all cases in the VE model, it is recommended that consideration be given to identifying specific types or categories of cases or circumstances under which VE would likely be of benefit and limit its use to those situations.

A working group consisting of management and staff from both departments should evaluate and recommend the categories of cases, circumstances or guidelines for determining which cases warrant handling in the VE process. In addition, consideration should be given to designating an intake officer(s) in the field offices to determine cases warrant VE handling in accordance with the final guidelines. An outside consultant experienced in vertical prosecution should be considered to assist in this process.

Recommendation #6: Joint Statewide Training

Although MBC management states that joint statewide training has been previously attempted, it is recommended that a mandated joint statewide training for all DAGs and investigators, regardless of their level, experience or past training, be held to assist in team building and ensure a common and consistent knowledge base. Based on the comments received from interviewees, such training should, at a minimum, include:

- Effective and efficient communication;
- Workload prioritization;
- Roles, background and training of investigators, supervisors, lead and primary DAGs and Supervising Deputy Attorney Generals (SDAGs), and the needs of each to efficiently and appropriately perform their functions;
- Definition of "client" and "direction";
- Interviews and interview strategies;
- Obtaining appropriate expert witnesses;
- Subpoena use and preparation;
- Administrative hearing process and investigator's role at a hearing; and
- The role and purpose of the Central Complaint Unit (CCU).

The primary purpose of the statewide training is to achieve a common foundation and understanding, as well as to foster team building between the staffs of both departments and their various field offices. Unless the training is designed and implemented to accomplish both of these critical goals, it will not be effective.

Recommendation #7: Staffing Vacancies

Staff interviewed indicated that there were recruitment and retention issues. It is recommended that the departments continue to give priority to resolving any current staffing vacancy issues. Areas to pursue include:

- Methods to increase investigators' salaries;
- Use of overtime pay;
- Use of telecommunication and alternate work schedules; and/or
- Wage subsidization in high turnover, hard to fill vacancy locations.

Consideration should be given to engage a knowledgeable consultant with experience in state government and in working with control agencies to survey past and current employees to identify and, if appropriate, help resolve areas of dissatisfaction that are contributing to the problem.

Recommendation #8: Common Server

One of the recommendations of the Monitor's reports and the previous *Report to the Legislature, Vertical Enforcement*, was to implement an "information technology system interoperable with the current system used at DOJ". The MBC and AG have agreed to an interoperable database and are in the process of obtaining necessary control agency approvals. Although immediate implementation may consequently not be feasible at this time, there was significant support from many of those interviewed for implementation of a common or shared server accessible to both DAGs and investigators for storage of common documents and their calendars as an interim measure.

It is recommended that a working group of both AG and MBC staff be established to explore an effective and efficient method of sharing documents and information to eliminate repetitive duplication of documents and unnecessary delays in scheduling and rescheduling of subject interviews.

In conclusion, it is recommended that the most prudent course of action at this time is the continuation of the pilot with the modifications contained in Recommendations 2 through 8 to improve the implementation of the VE model, and a reassessment of its success after two years. It is important to note that additional commitment to the VE process by executive management and every manager and supervisor in each department is essential to the success of this modified VE model.

XX. RECOMMENDATIONS

Recommendations are based on independent review of the data provided data and comments received during staff interviews. Although noteworthy efforts were expended by both HQES and MBC staff toward implementation of the VE model and some successes achieved, it is evident that room for improvement exists. Recommendations for a more successful implementation of the VE model include the following:

Recommendation #1: Continue the pilot and implement the recommendations noted below and assess its effectiveness and success in two years

Although noteworthy efforts were expended by both HQES and MBC staff toward implementation of the VE model and some successes achieved, it is evident that significant room for improvement exists. Therefore, it is recommended that Recommendations 2 through 8 be implemented, the pilot be continued for two more years, and its effectiveness reassessed after two years.

Recommendation #2: Zero Tolerance of Negative Communication

As noted by the Monitor, teamwork is based on "mutual respect and collegueship" and "doesn't mean attorneys become dictatorial or inflexible" or that "investigators lose reasonable professional independence in handling their fieldwork or are asked to do tasks beneath their job descriptions".

While both the MBC and HQES have made considerable progress in their working relationship, additional work is necessary to ensure mutual respect and appreciation for the vital roles each bring to the process and, ultimately, to public protection. Staff interviewed identified this as a major and continuing issue directly or indirectly impacting staff statewide. Based on the statements and the level of frustration that was observed during the interviews, it was concluded that this was a major issue impacting the success of VE. In addition, there was a lack of commonly understood and mutually accepted appreciation of each other's roles and professional contributions towards resolving cases in the VE model. Since interpersonal communications between MBC investigators and HQES attorneys is key to the success of VE, it is recommended that the tone be uniformly set by executive management and every manager and supervisor of both departments that all staff work together as partners in a professional and respectful manner, and that all communications demonstrate mutual respect, courtesy and responsiveness, without exception. Any inappropriate communication must be addressed immediately, fairly and effectively.

Consideration should be given to engaging a knowledgeable outside consultant respected by both MBC and HQES to help identify, isolate and eliminate the cause(s) of such negative communications.

Recommendation #3: Clarity of Roles

It is recommended that clear and consistent direction be provided by top management regarding the roles of DAGs and MBC staff at all levels. Although the VPM identifies the VE team members and their respective roles, many of those interviewed from both departments stated that there needs to be a greater clarity and understanding of each others roles.

For example, many DAGs were unclear as to the need for both a Sup I and Sup II and the Assistant Chief of Enforcement and stated that the chain of command needs to be clearly delineated. Some questioned the need for both a medical consultant and an expert witness. On the MBC side, some investigators stated that the roles between the lead and primary DAGs must be clarified because each HQES office appears to manage the roles differently. Some investigators also stated that it is not uncommon for the lead and primary DAG to give conflicting directions and that the role of the SDAG varies depending on which HQES office or team is handling a case.

The meaning of GC Section 12529.6 wording "under the direction of" must be clearly defined and adhered to throughout both departments in a consistent manner that emphasizes teamwork and recognizes the unique training, expertise and contributions of all members of the team. If necessary, legislative changes should be sought to provide additional clarity.

Although HQES management stated that it has been HQES' position that MBC is the client, interview responses indicate that this is neither clearly understood nor accepted. Comments during the interviews indicate there is no common understanding or acceptance of the meaning of these terms at all levels in both departments. Staff interviewed revealed continuing confusion, disagreement or acceptance of the meaning of "direction" and "client", including disagreement as to who is authorized to speak on behalf of the client on a statewide basis. Therefore, management must clarify and ensure a consistent understanding and application of the term, which should be included in the joint training recommended below and incorporated in all appropriate manuals (see AG letter, Appendix C).

Recommendation #4: Consistent and Unified VE Process

The Monitor stated that: "MBC investigators and HQE prosecutors should work together in a true vertical prosecution system featuring case teams established at the initiation of the investigation and remaining together until the case is fully litigated or resolved." As implemented, according to the *Vertical Prosecution Manual* (VPM), there is a lead prosecutor and a primary prosecutor assigned to each case. "The Lead Prosecutor shall be assigned to, and shall review, each complaint referred to the District Office for investigation. In addition to the Lead Prosecutor, a second deputy attorney general shall be assigned by the Supervising Deputy Attorney General to each complaint as well. The Lead Prosecutor shall act as the primary deputy attorney general on the case for all purposes until and unless replaced by the second deputy

attorney general.....” Whenever, the Lead Prosecutor determines, either upon review of the original complaint or as the investigation progresses, that it is a likely a violation of law may be found, the second deputy attorney general shall replace the Lead Prosecutor as the primary deputy attorney general on the case for all purposes.”

Interviewees stated that this process causes confusion and unnecessary or repetitive tasks because it is not uncommon for the lead DAGs to request different investigative tasks than the primary DAGs. This also causes delays in the interview process because it is frequently not readily known if the primary or the lead prosecutor will participate in interviews and the process as implemented varies from office to office.

Therefore, since the current VE model is not a true vertical process as recommended by the Monitor, varies from one office to the other, and results in confusion and delays in the investigation, it is recommended that a consistent and uniform statewide true VE process, with appropriate levels of approval, be adhered to in every office. Exceptions, if any, should require an appropriate basis and level of approval and be clearly documented and published to avoid the appearance of being arbitrary or unfair. It is further recommended that consideration be given to replacing the existing multiple manuals and implementing a single joint manual that addresses the entire VE process, based on input from all who are part of the VE process through a joint task force or committee, to ensure consistency and uniform understanding of the VE model and each person's role in the VE process. In addition, the VE process itself should be reviewed for efficiency to determine if there are unnecessary duplications and methods for streamlining the overall process.

Recommendation #5: Consider Limiting VE to Specified Types or Categories of Cases or Circumstances

The data provided indicates that although there is a decrease in the time to complete a case once it is referred to the AG for prosecution, there is an overall increase in the investigatory phase of cases in the VE model.

As the Monitor noted, the vertical prosecution model is widely and successfully used by law enforcement, district attorney offices and others for specialized or complex cases. However, not all cases necessarily require handling under the VE model. To improve efficiency and effectiveness in light of the demonstrated increase in the time to complete the investigatory phase that has resulted from inclusion of all cases in the VE model, it is recommended that consideration be given to identifying specific types or categories of cases or circumstances under which VE would likely be of benefit and limit its use to those situations.

A working group consisting of management and staff from both departments should evaluate and recommend the categories of cases, circumstances or guidelines for determining which cases warrant handling in the VE process. In addition, consideration should be given to designating an intake officer(s) in the field offices to determine cases

warrant VE handling in accordance with the final guidelines. An outside consultant experienced in vertical prosecution should be considered to assist in this process.

Recommendation #6: Joint Statewide Training

Although MBC management states that joint statewide training has been previously attempted, it is recommended that a mandated joint statewide training for all DAGs and investigators, regardless of their level, experience or past training, be held to assist in team building and ensure a common and consistent knowledge base. Based on the comments received from interviewees, such training should, at a minimum, include:

- Effective and efficient communication;
- Workload prioritization;
- Roles, background and training of investigators, supervisors, lead and primary DAGs and SDAGs, and the needs of each to efficiently and appropriately perform their functions;
- Definition of “client” and “direction”;
- Interviews and interview strategies;
- Obtaining appropriate expert witnesses;
- Subpoena use and preparation;
- Administrative hearing process and investigator’s role at a hearing; and
- The role and purpose of the Central Complaint Unit (CCU).

The primary purpose of the statewide training is to achieve a common foundation and understanding, as well as to foster team building between the staffs of both departments and their various field offices. Unless the training is designed and implemented to accomplish both of these critical goals, it will not be effective.

Recommendation #7: Staffing Vacancies

Staff interviewed indicated that there were recruitment and retention issues. It is recommended that the departments continue to give priority to resolving any current staffing vacancy issues. Areas to pursue include:

- Methods to increase investigators’ salaries;
- Use of overtime pay;
- Use of telecommunication and alternate work schedules; and/or
- Wage subsidization in high turnover, hard to fill vacancy locations.

Consideration should be given to engage a knowledgeable consultant with experience in state government and in working with control agencies to survey past and current employees to identify and, if appropriate, help resolve areas of dissatisfaction that are contributing to the problem.

Staff from both departments also recommended, during the interviews, revisiting the MBC Investigator Assistant classification to reduce reliance on sworn investigators performing tasks that could be accomplished by non-sworn personnel.

Recommendation #8: Common Server

One of the recommendations of the Monitor's reports and the previous *Report to the Legislature, Vertical Enforcement*, was to implement an "information technology system interoperable with the current system used at DOJ". The MBC and AG have agreed to an interoperable database and are in the process of obtaining necessary control agency approvals. Although immediate implementation may consequently not be feasible at this time, there was significant support from many of those interviewed for implementation of a common or shared server accessible to both DAGs and investigators for storage of common documents and their calendars as an interim measure.

It is recommended that a working group of both AG and MBC staff be established to explore an effective and efficient method of sharing documents and information to eliminate repetitive duplication of documents and unnecessary delays in scheduling and rescheduling of subject interviews.

XXI. CONCLUSION

One of the primary goals leading to the implementation of VE was the perception that doing so would significantly reduce the time to investigate and resolve complaints against licensees of MBC, thereby providing for increased public protection. While the data collected suggests overall reductions have occurred in the prosecution phase of such matters, the investigation phase has not realized such benefits, and, as a result, the overall time to resolve complaints with a disciplinary outcome has only minimally improved. Furthermore, the time to resolve all complaints regardless of the type of outcome has actually increased.

The results suggest improvement is possible if the recommended modifications are made to the current model, staff receives appropriate training in interpersonal communications and concerted efforts are made towards team building, complemented by a unified effort to provide joint oversight and consistent direction by the executive levels of both agencies.

It is, therefore, recommended that the pilot be continued with the modifications contained in Recommendations 2 through 8 to improve its implementation with a reassessment of its success after two years as the most prudent course of action at this time. It is important to note that additional commitment to the VE process by executive management and every manager and supervisor in each department is essential to the success of this modified VE model.