

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 21, 2022
 ATTENTION: Members, Medical Board of California
 SUBJECT: Enforcement Program Summary
 STAFF CONTACT: Jenna Jones, Chief of Enforcement

REQUESTED ACTION

This report is intended to provide the Members with an update on the Enforcement Program at the Medical Board of California (Board). No action is needed at this time.

PROGRAM UPDATE

In early December 2021, the litigation hold regarding Purdue Pharma was lifted. As a result, the entire Enforcement team undertook the process of purging the files that had been retained because of this pending litigation. With everyone's help, the process was completed within a two-week period.

Also, in early December, the Attorney General's Office (AGO) provided three training sessions to all Health Quality Investigation Unit (HQIU) investigative staff and the Central Investigative Office on the following subjects:

1. Effective Subject Interviews,
2. Investigational Subpoenas, and
3. The Expert Review

The feedback has been positive. With the elimination of Vertical Enforcement, the training provided a refresher for long term investigators and a better basis of knowledge for the newer investigators. In addition, in mid-January, a course was provided to the HQIU medical consultants regarding writing good cause memos in support of subpoena enforcement.

The Board has been presented with a number of investigation cases that were completed within a month of the statute of limitations. This short turnaround makes it very difficult for the AGO to have sufficient time for reviewing the matter, requesting additional investigation if needed, or filing an accusation. To address this issue staff continues to hold case reviews with each of the twelve HQIU offices on a rotating basis to address timelines, investigations, and to work towards eliminating the short statute cases. In addition, weekly meetings are held between HQIU and Board management to address general concerns of each and how to improve the overall investigation process within the Memorandum of Understanding between the two organizations.

In response to a recent inquiry involving the number of stipulations reviewed by the Board panels and the panel decisions, we have addressed a breakdown for the past five fiscal years:

	Stipulations	Adopted	Modified	Rejected
FY 2016-2017	330	317	8	5
FY 2017-2018	281	273	7	1
FY 2018-2019	319	317	2	0
FY 2019-2020	316	313	1	2
FY 2020-2021	310	307	2	1

CASE CLOSURES

Each year the Board receives thousands of complaints against physicians and surgeons. Every complaint received is reviewed and many are closed in the Central Complaint Unit (CCU) without referral for investigation, for a variety of reasons. Other files are closed after the conclusion of additional investigation by HQUI or the Complaint Investigation Office (CIO) for many similar reasons. To promote greater understanding of the Board's complaint review process, the Board is including new information in its Annual Report that discusses how and why certain complaints are closed.

A significant portion of the complaints received by the Board each year are considered unactionable, which includes those that are beyond the Board's jurisdiction, are redundant (i.e., duplicative), and those that lack information necessary to proceed.

These complaints are typically closed quickly, often within a few weeks of receipt by the Board. Complaint closures considered to be unactionable by the Board include non-jurisdictional, redundant, and inadequate evidence.

Non-jurisdictional complaints commonly include those about professionals that the Board does not oversee (e.g., registered nurses and osteopathic medical doctors) and matters related to health insurance coverage. The Board closes these complaints and refers them to the relevant licensing board or agency.

Redundant complaints are complaints the Board receives from separate individuals about the same incident, often occurring when a physician is featured in the media. In addition, a complaint is considered redundant if the same complainant files subsequent complaints that are intended to provide additional information to the Board about the same incident.

Complaints closed as ***inadequate evidence*** are complaints from anonymous complainants who do not include enough information for the Board to proceed. Under these and similar circumstances, the Board is unable to investigate the matter further and the complaint must be closed. The Board receives a large number of anonymous complaints and when a patient's name is not identified or the Board staff is unable to get additional specifics regarding the complaint as there is no contact information to follow up on, it has no way to move forward with additional investigation. Each case is

reviewed to determine if there is enough information to proceed but in many anonymous complaints it is not possible.

In addition to unactionable complaints, the Board closes complaints in the following ways.

Complaints closed as ***insufficient evidence*** occur when the evidence received by the Board does not support the legal burden of proof, as required by law. In these complaints, the Board is unable to establish “clear and convincing evidence to a reasonable certainty,” and the complaints must therefore be closed. This may include but not be limited to cases where only one simple departure has been identified by a medical consultant at the CCU level or by a medical expert after the investigation process.

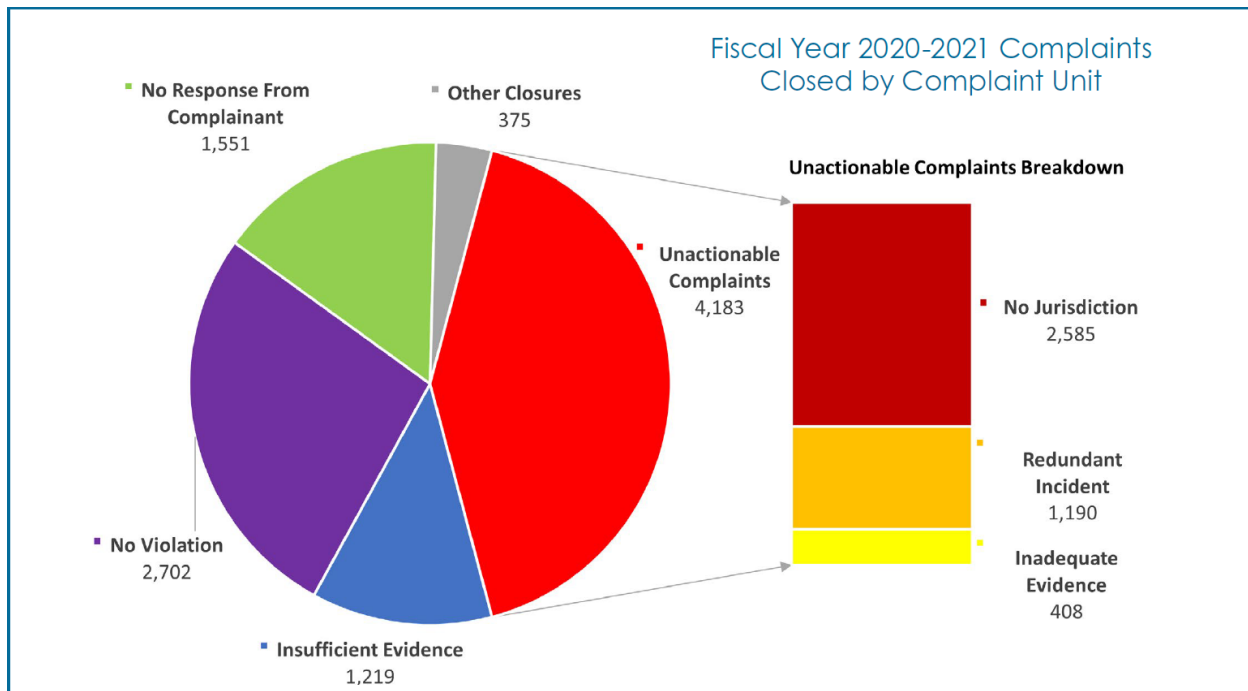
The Board closes many complaints after determining that ***no violation*** of the Medical Practice Act occurred. This may be when the medical consultant at the CCU level finds no possible violations or after investigation by HQIU or CIO when the medical expert finds there were no departures from the standard of care.

At the CCU level, the determination of ***insufficient evidence*** or ***no violation*** is reached after the complaint, including the available evidence, is reviewed by a physician (referred to as a medical consultant) who practices in the same specialty as the physician named in the complaint, and it was determined that no violation of the standard of care occurred, in accordance with Business and Professions Code section 2220.08. If this determination is made after further investigation by HQIU or CIO, this closing code may be used when the Medical Expert’s review of the entire investigation determines that either one simple departure or no departures from the standard of care were made.

No response from complainant is a closure category assigned to complaints where the Board has requested further information from a complainant or requested a release from a patient to obtain their medical records, but did not receive a response, and is therefore unable to continue its investigation. These complaints may be reopened if additional information, including authorization to obtain medical records, is later provided to the Board.

The ***other closures*** category encapsulates several other instances where a complaint is closed without disciplinary action, including when a physician has died either before or after the complaint was filed, or when the Board otherwise no longer can discipline the physician’s license. This may include complaints filed past the statute of limitations, which is usually seven years from the date of incident, unless an exception applies or if the doctor surrenders their license.

The chart below displays the number of complaints closed by CCU in the categories discussed above during FY 2020-2021:



An additional 1,766 complaints were closed in FY 2020-2021 after the investigation process by HQIU and CIO, 1,446 and 320, respectively. In addition, 25 files were referred for criminal action.

EXPERT REVIEWER PROGRAM

There are currently 611 active experts in the Board's expert database. Expert program analysts receive monthly reports of experts with expiring contracts and utilize this information to renew contracts. Expert program analysts routinely process billing submitted by experts and work with HQIU, Expert Procurement Unit (EPU) and Deputy Attorney General staff to provide assistance selecting an expert for cases assigned to their units.

Expert and medical consultant program staff are collaborating to develop an automated contract notification system. The intention is to create an email notification system to alert medical consultants and expert reviewers that their contract will be expiring. The email will include links to necessary forms, or the forms may be attached. Once all information is gathered, expert and medical consultant program staff will submit the information to the Board's Information Systems Branch to develop an online renewal notification with the necessary forms to automate and streamline the process.

In the meantime, to expand the recruitment process for new experts, expert program staff are sending recruitment letters to professional medical societies and organizations. Expert reviewer training is scheduled to be held via WebEx on February 19th, with three additional sessions later this year. Expert program staff are finalizing review of the updated Expert Reviewer Guidelines, once finalized, the updated guidelines will be

posted on the Board's website. Advertisement seeking new experts for the following specialties were in the Board's December 2021 Newsletter:

- Addiction Medicine with added certification in Family or Internal or Psychiatry
- Clinical Genetics
- Colon/Rectal Surgery
- Dermatology
- Family Medicine
- Gastroenterology
- Hematology
- Neurological Surgery
- Neurology
- Obstetrics and Gynecology (with added expertise in Gynecologic Oncology)
- Orthopaedic Surgery
- Pathology (preferably from: Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, and Ventura Counties)
- Pain Medicine
- Pediatric Gastroenterology
- Pediatric Surgery
- Pediatric Cardiac Surgery
- Pediatric Critical Care
- Pediatric Pulmonology
- Plastic Surgery
- Psychiatry (Forensic and Addiction)
- Radiation Oncology
- Surgery (General and Endocrine Surgery)
- Thoracic and Cardiac Surgery
- Urology (General and Gender Reassignment)
- Vascular Surgery
- Midwife Reviewer

CENTRAL COMPLAINT UNIT

The average number of days to initiate a complaint in the CCU is 5 days as of the second quarter of FY 2021-2022, which is within the timeframe mandated by Business and Professions Code section 129(b). The average days to complete the processing of a complaint in CCU is 90 days. CCU staff and management continue to work diligently to ensure communication with consumers is sent out at various milestones throughout the complaint process, review new complaints in a timely manner, send out requests for necessary information in a timely manner, and reduce the overall aging of all complaint types.

Over the last several months, monthly audits have been performed on CCU files, primarily evaluating closed complaints. On average, approximately 4.5% of complaints

closed in CCU since July 2021 have been analyzed. The most recent sample included over 8% of the closed files. Most recently, September and October CCU closures were audited. For September 2021, 3.5% of the audit sample was found to be inconsistent with CCU standards. Metrics for the audit include verification of numerous benchmarks, but more importantly, evaluate the Board's required correspondence for the complaint assessed. For October 2021, 2% of the audit sample was found to be inconsistent with the standard. Additionally, an audit of open complaints was performed for the months of September and October. Combined, 238 open complaints were reviewed to assess the Board's initial correspondence for each complaint. 1.26% of the sample was found to be out of compliance with the Board standards. As reflected in the most recent results, there has been a marked improvement since the beginning of the year, and we are striving to reach a 100% compliance level.

CCU currently has one vacant Management Services Technician (MST) position, one vacant part-time Associate Governmental Program Analyst (AGPA), and one vacant limited-term, full-time AGPA position. Refilling the positions is an ongoing process and each position's status is at a different point in the hiring process.

The medical consultant program receives a monthly report of consultants with expiring contracts and utilizes this information to renew contracts. The medical consultant program staff continue assigning cases that require specialty review to consultants, follow up on cases checked out to consultants for 30 days or more, and routinely process billing submitted by consultants. Advertisement for the following specialties were in the Board's December 2021 newsletter:

- Cardiac Surgery
- Colon and Rectal Surgery
- Dermatology
- Gynecology
- Interventional Cardiology
- Interventional Radiology
- Neonatal/Perinatal
- Neurological Surgery
- Pain Medicine
- Plastic Surgery
- Thoracic Surgery
- Vascular Surgery

COMPLAINT INVESTIGATION OFFICE

These findings are for physician and surgeon cases for the date range of 10/1/2021 through 12/31/2021.

As of January 1, 2022, the CIO non-sworn special investigators have a unit caseload of 227 cases which breaks down into approximately 35 cases each. To determine the average, we excluded the manager's position and counted one investigator as 1/2 position, resulting in 6.5 total positions.

Since the last enforcement summary, CIO has closed 44 cases and transmitted 20 cases to the AGO – 10 criminal conviction cases, 8 malpractice cases, 2 vaccination exemption cases, and 3 petitions for reinstatement. Additionally, the CIO referred 1 case to the Board's cite and fine program and 2 cases for a PLR.

DISCIPLINE COORDINATION UNIT

The Discipline Coordination Unit (DCU) currently has one vacant position. The Associate Governmental Program Analyst vacancy reported in the last summary has been filled but, since that time, the MST position became vacant when the employee accepted a promotion at a different agency. Management completed the recruitment process and the DCU Office Technician (OT) was promoted, effective January 1, 2022, to fill this vacancy. Recruitment efforts are currently underway to fill the vacant OT position.

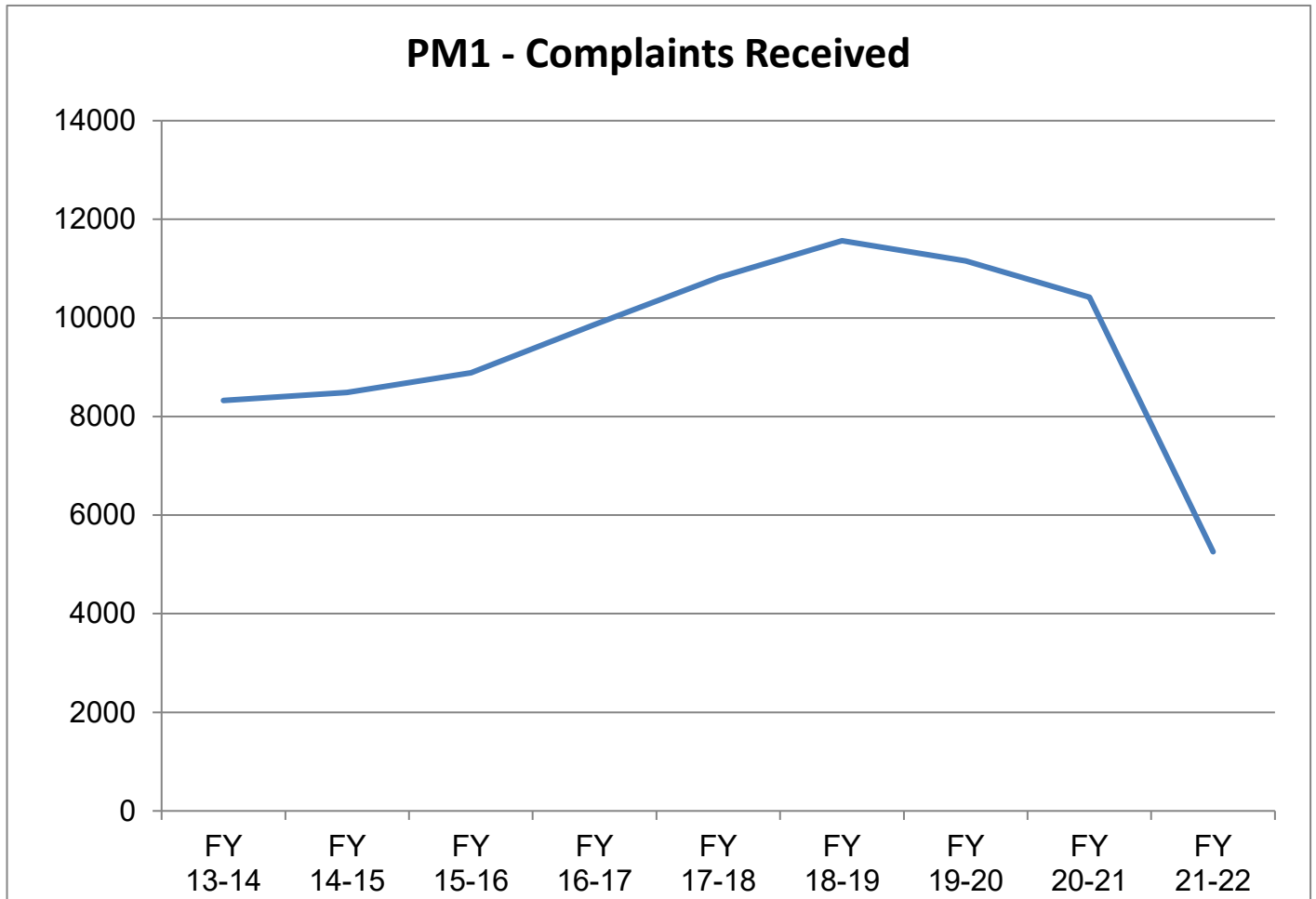
Effective January 1, 2022, the Board gained the authority to seek cost recovery. DCU management and staff continue to work on updates to the procedure manual and needed documents, including the addition of cost recovery.

PROBATION UNIT

The Probation Unit currently has three vacant Inspector positions, one in Cerritos, one in Fresno and one in San Dimas. A conditional offer has been made to an applicant for the position in Cerritos, pending fingerprint clearance and medical evaluation. Interviews have been conducted for the Fresno vacancy, but top candidates were ineligible. This position is being advertised until filled in an effort to find a suitable candidate. Management in San Dimas is working with human resources to advertise the position in that office by the end of January 2022.

During this quarter, seven Petitions to Revoke Probation and five Accusations/Petitions to Revoke Probation have been transmitted to the AGO. Four Petitions to Revoke Probation and four Accusations/Petitions to Revoke Probation have been filed.

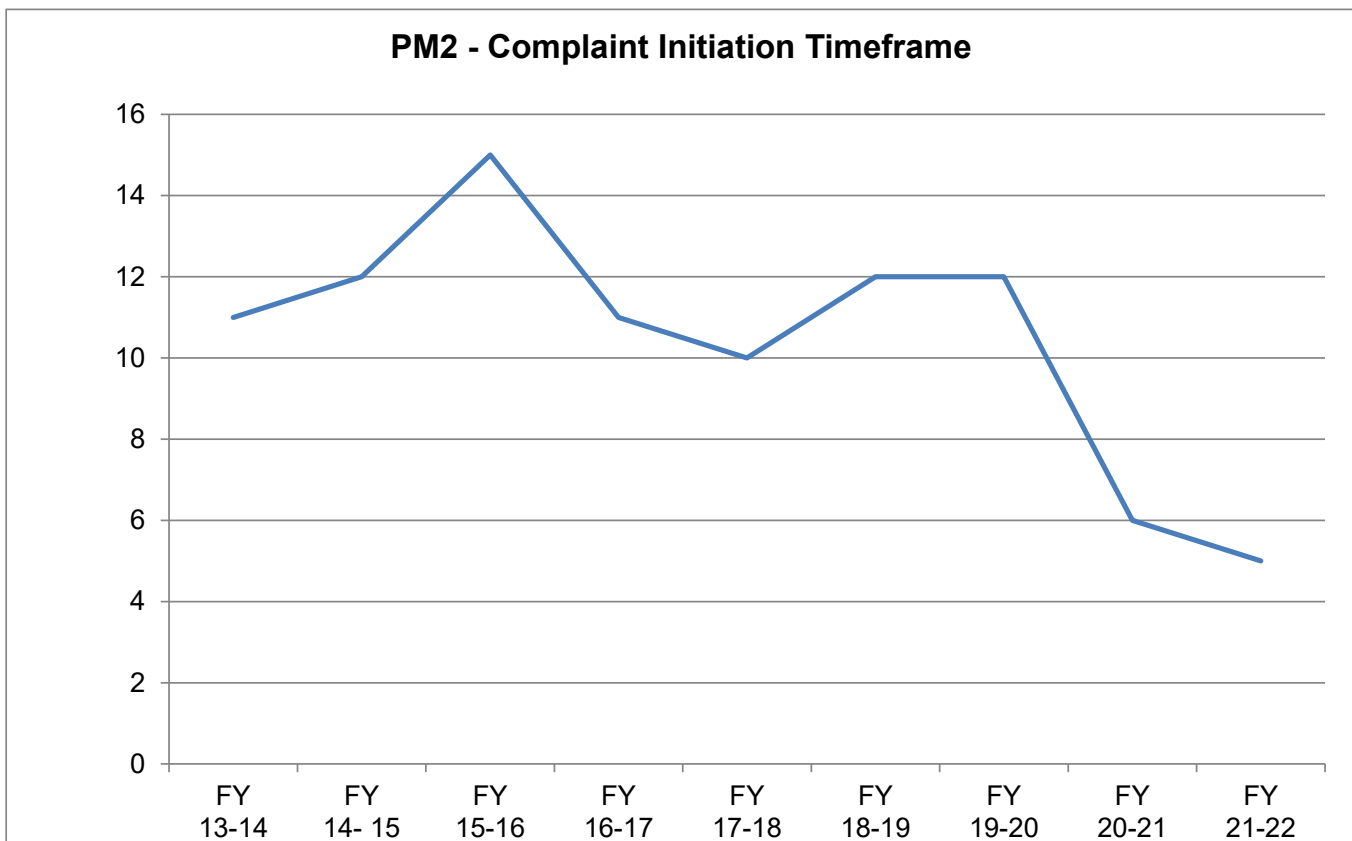
**Medical Board of California Enforcement Program
PM1 - Complaints Received**



Month	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Volume	8325	8490	8885	9862	10817	11565	11155	10418	5257

This chart displays the number of complaints received for all license types under the Medical Board (Licensed Midwife, Physician's and Surgeon's, Research Psychoanalyst, Fictitious Name Permit, Special Programs – Individual, Special Programs – Organization, Special Faculty Permit, Polysomnographic, BPC 853 Pilot Program Physician, Postgraduate Training License, and Medical Expert). When reporting Performance Measures data, the inclusion of all license types under the Medical Board is mandated by DCA. FY 21-22 figures are calculated based on reports run January 11, 2022 for date range July 1, 2021 through December 31, 2021.

**Medical Board of California Enforcement Program
PM2 - Complaint Initiation Timeframe**

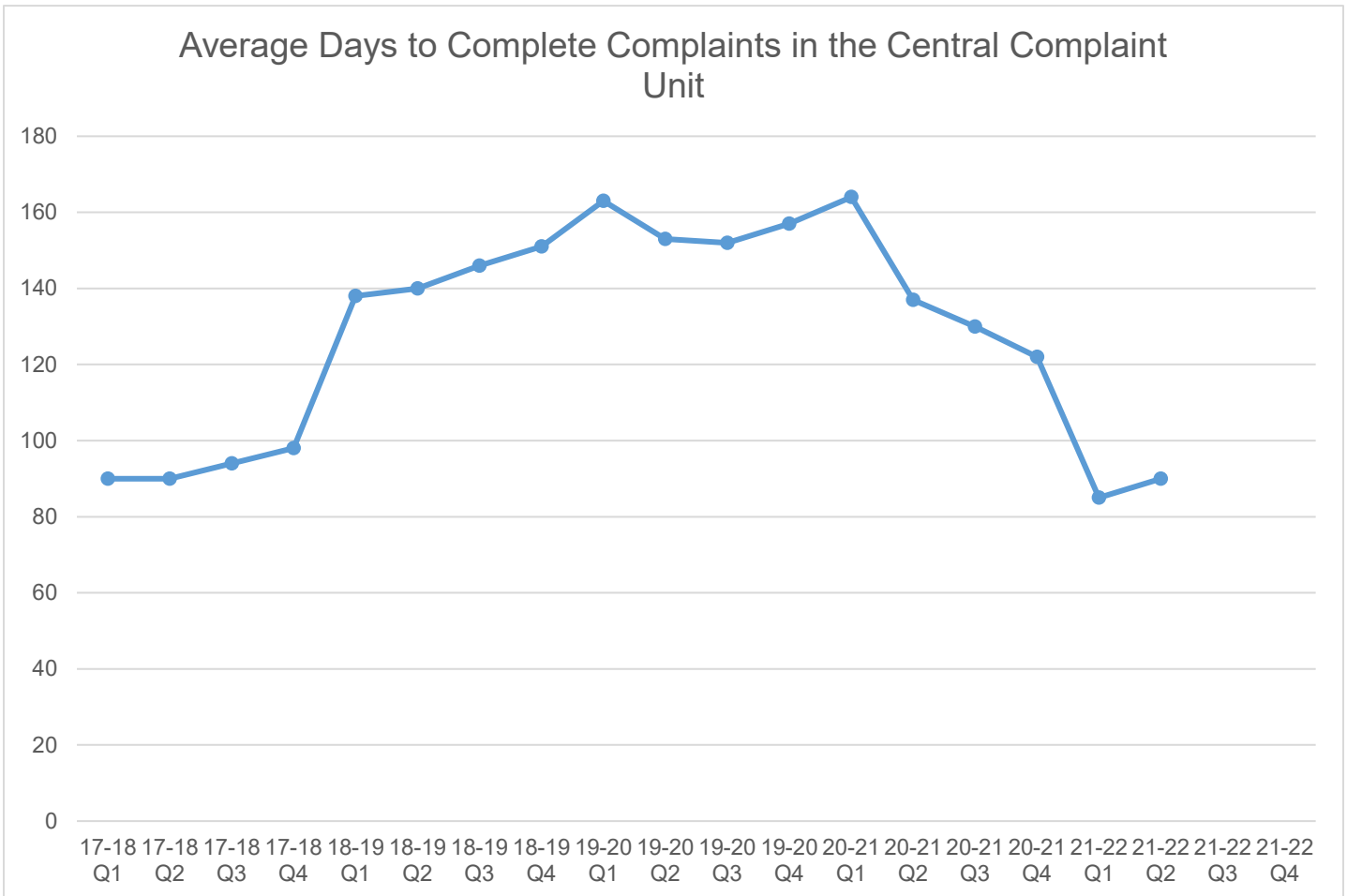


Month	FY 13-14	FY 14- 15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Cycle Time	11	12	15	11	10	12	12	6	5

This chart displays the average number of days to open/process a complaint received for all license types under the Medical Board (Licensed Midwife, Physician's and Surgeon's, Research Psychoanalyst, Fictitious Name Permit, Special Programs – Individual, Special Programs – Organization, Special Faculty Permit, Polysomnographic, BPC 853 Pilot Program Physician, Postgraduate Training License, and Medical Expert). When reporting Performance Measures data, the inclusion of all license types under the Medical Board is mandated by DCA. FY 21-22 figures are calculated based on reports run January 11, 2022 for date range July 1, 2021 through December 31, 2021.

**Medical Board of California Enforcement Program
Average Days to Complete Complaints in the Central Complaint Unit**

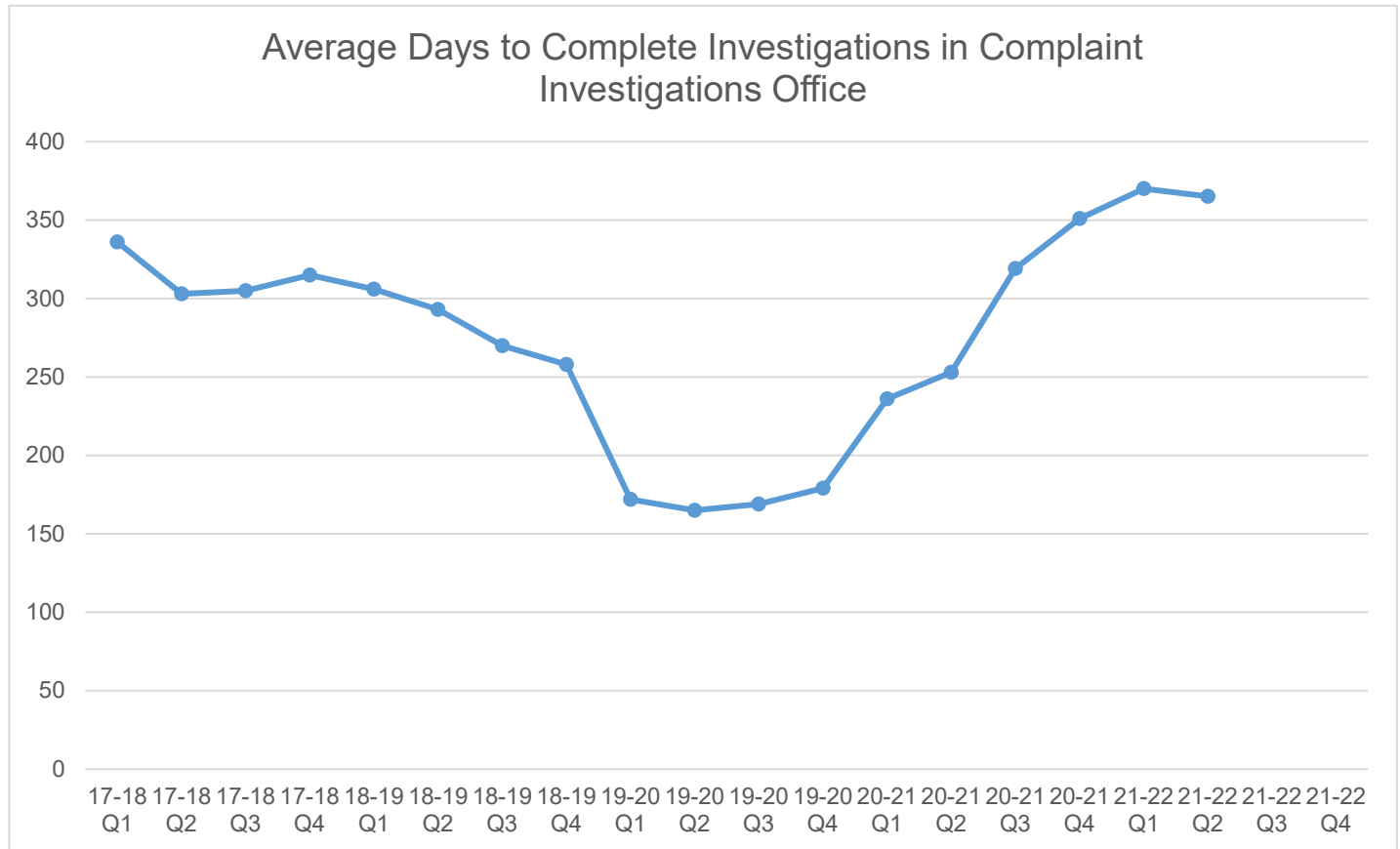
Quarter	Fiscal Year 17-18	Fiscal Year 18-19	Fiscal Year 19-20	Fiscal Year 20-21	Fiscal Year 21-22
Quarter 1	90	138	163	164	85
Quarter 2	90	140	153	137	90
Quarter 3	94	146	152	130	
Quarter 4	98	151	157	122	



Average Days to Complete Complaints in Complaint Unit includes complaints resolved by Complaint Unit and Complaint Unit processing days for cases completed at field investigation.

Medical Board of California Enforcement Program
Average Days to Complete Investigations in Complaint Investigations Office

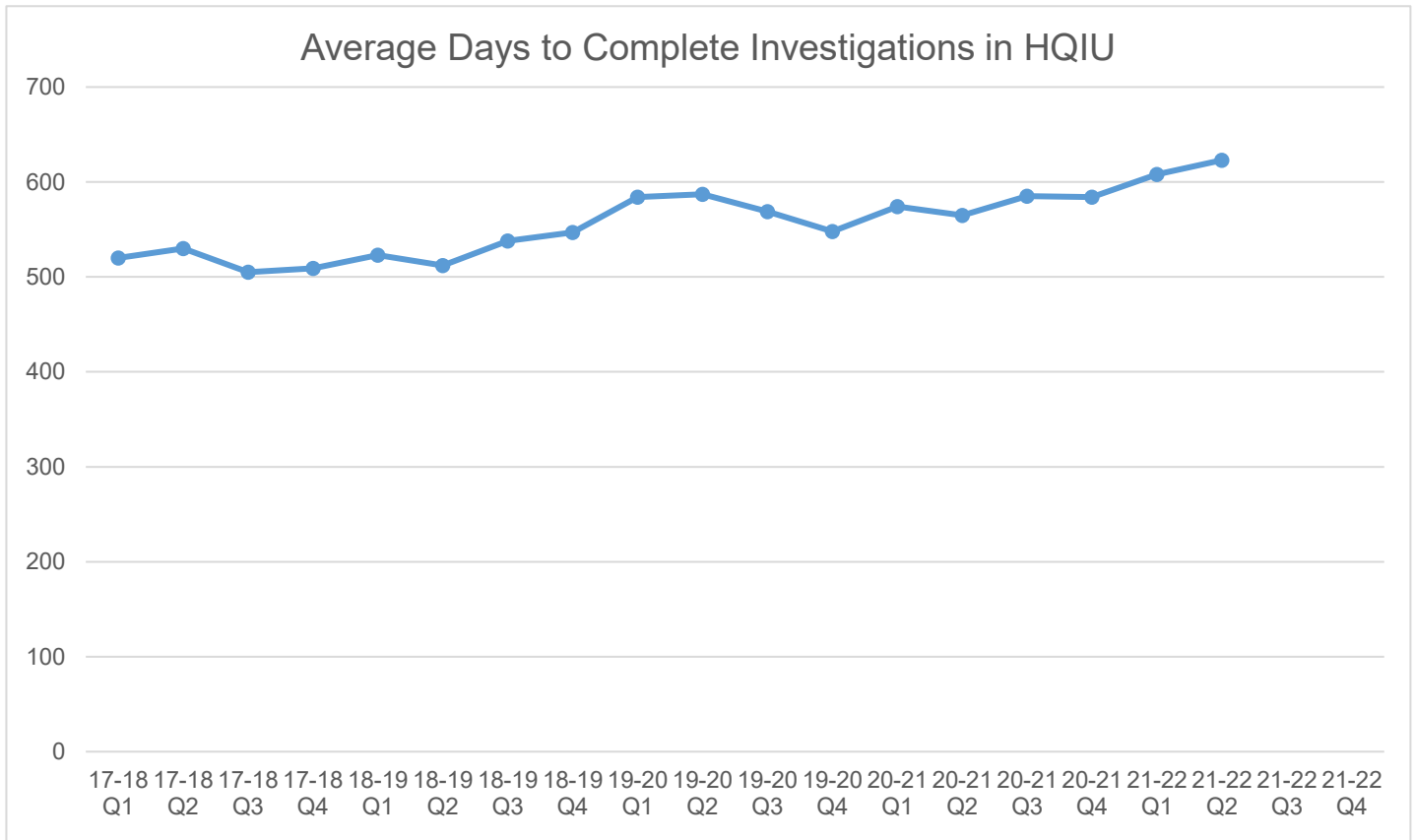
Quarter	Fiscal Year 17-18	Fiscal Year 18-19	Fiscal Year 19-20	Fiscal Year 20-21	Fiscal Year 21-22
Quarter 1	336	306	172	236	370
Quarter 2	303	293	165	253	365
Quarter 3	305	270	169	319	
Quarter 4	315	258	179	351	



Investigation processing days are from the date case was assigned to Complaint Investigation Office (CIO) Investigator by Complaint Unit until closure or referral (does not include Complaint Unit processing days for complaints completed at CIO). Includes physician and surgeon data only.

**Medical Board of California Enforcement Program
Average Days to Complete Investigations in HQIU**

Quarter	Fiscal Year 17-18	Fiscal Year 18-19	Fiscal Year 19-20	Fiscal Year 20-21	Fiscal Year 21-22
Quarter 1	520	523	584	574	608
Quarter 2	530	512	587	565	623
Quarter 3	505	538	569	585	
Quarter 4	509	547	548	584	



Effective 7/1/18 investigation processing days are from the date the case was referred to HQIU until closure or referral (this does not include Complaint Unit processing days for complaints completed at HQIU). This includes post-investigation processing time by HQIU, and review time by the Attorney General and Board after the investigation is completed, which is an average of 9 days through December 2021. Includes physician and surgeon data only.

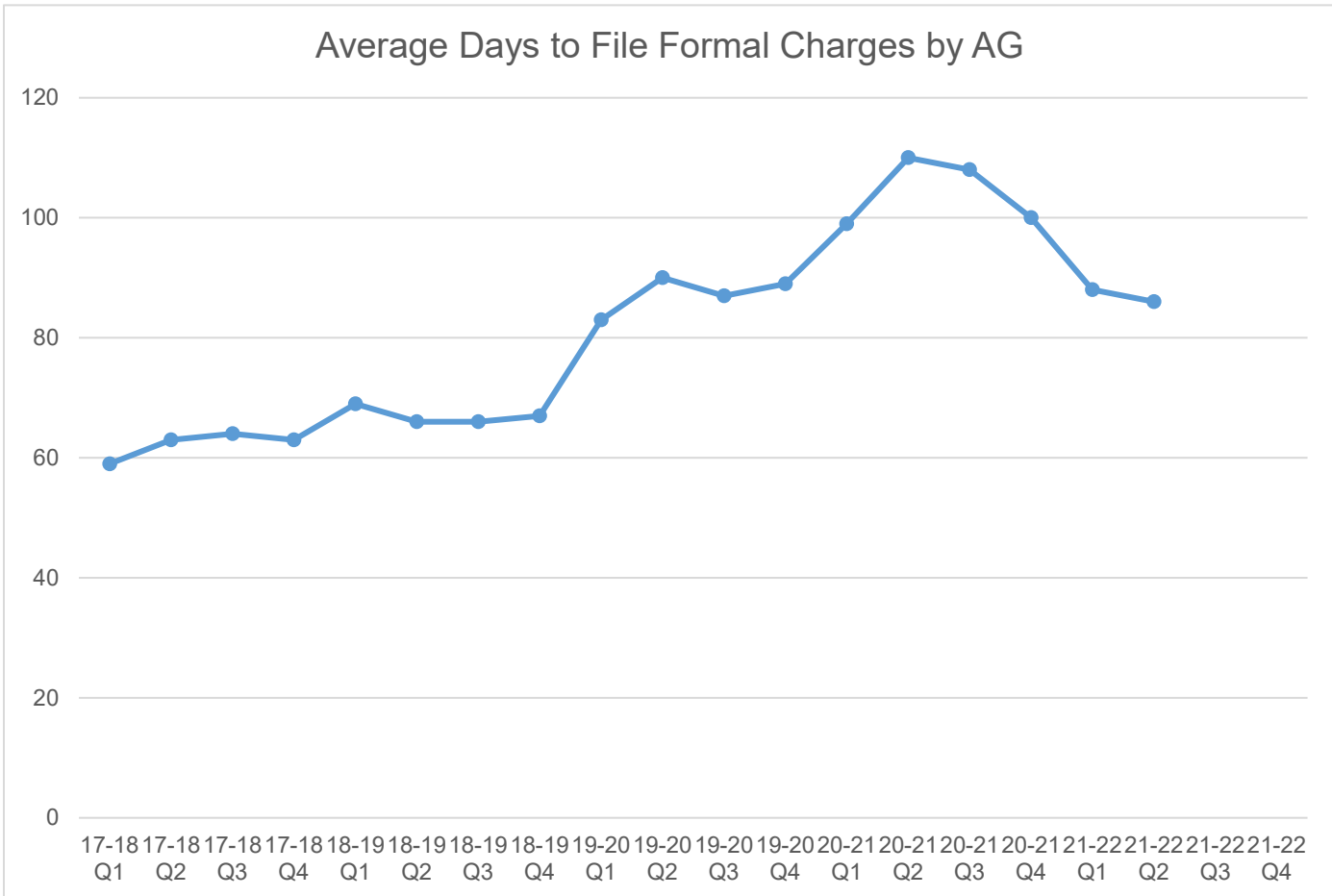
California Enforcement Program
Average HQIU Investigation Days by Case Type

Case Type by Fiscal Year	17-18	18-19	19-20	20-21	21-22
Overall	509	548	548	584	623
Gross Negligence/Incompetence	549	597	561	588	629
Inappropriate Prescribing	564	548	665	651	729
Unlicensed Activity	450	482	529	659	607
Sexual Misconduct	493	494	426	460	531
Mental/Physical Illness	399	460	481	476	529
Self-Abuse of Drugs/Alcohol	528	413	417	416	473
Fraud	328	661	469	560	483
Conviction of a Crime	396	585	528	444	426
Unprofessional Conduct	504	565	492	483	573

Effective 7/1/18 investigation processing days are from the date the case was referred to HQIU until closure or referral (this does not include Complaint Unit processing days for complaints completed at HQIU). This includes post-investigation processing time by HQIU, and review time by the Attorney General and Board after the investigation is completed, which is an average of 9 days through December 2021. Includes physician and surgeon data only.

Medical Board of California Enforcement Program
Average Days to File Administrative Charges Prepared by the
Office of the Attorney General

Quarter	Fiscal Year 17-18	Fiscal Year 18-19	Fiscal Year 19-20	Fiscal Year 20-21	Fiscal Year 21-22
Quarter 1	59	69	83	99	88
Quarter 2	63	66	90	110	86
Quarter 3	64	66	87	108	
Quarter 4	63	67	89	100	



Average Days to File Formal Charges are the days from the date the case is referred to the AG's Office until formal charges are filed. Includes physician and surgeon data only.

ENFORCEMENT TIMEFRAMES

Fiscal Year	17-18 Average	17-18 Median	18-19 ¹ Average	18-19 ¹ Median	19-20 Average	19-20 Median	20-21 Average	20-21 Median	21-22 ² Average	21-22 ² Median
COMPLAINT PROCESSING	98	58	151	122	157	111	122	54	90	49
INVESTIGATION PROCESSING - MBC - CIO (Complaint Investigation Office)	316	251	258	127	179	133	351	283	365	311
INVESTIGATION PROCESSING - HQIU (Health Quality Investigation Unit)	510	483	547	502	548	517	584	585	623	659
TOTAL MBC & HQIU DAYS	119	68	179	141	171	127	143	68	110	58
TOTAL MBC & HQIU YEARS	0.33	0.19	0.49	0.39	0.47	0.35	0.39	0.19	0.30	0.16
AG PREP - Attorney General Preparation for Accusation/Petition to Revoke/Accusation & Petition to Revoke/Statement of Issues	63	51	67	55	89	70	100	72	86	66
POST - Accusation/Petition to Revoke/Accusation & Petition to Revoke/Statement of Issues	322	285	333	311	369	345	384	351	381	354
ACCUSATION DECLINED BY AG	114	19	53	32	48	29	45	30	51	36
TOTAL AG DAYS	327	286	339	312	374	354	470	447	473	448
TOTAL AG YEARS	0.90	0.78	0.93	0.85	1.02	0.97	1.29	1.22	1.30	1.23
TOTAL MBC & AG DAYS	926	939	1016	1057	1090	1110	1129	1193	1127	1217
TOTAL MBC & AG YEARS	2.54	2.57	2.78	2.90	2.99	3.04	3.09	3.27	3.09	3.33

Years calculated using 365 days per year

¹ Effective 7/1/18 investigation processing days are from the date the case was referred to HQIU for investigation until closure or referral (this does not include Complaint Unit processing days for complaints completed at HQIU).

² Data through 12/31/21.

Includes physician and surgeon data only.

Pending Enforcement Caseload Summary¹

Data Current as of 01/20/2022

	0-3 Months	4-6 Months	7-9 Months	10-12 Months	1 Year	2 Years	3 Years	4 Years	Over 4 Years	Total by Group	Previous Quarter Data	Variance	% Variance
Central Complaint Unit	1,284	793	506	113	40	0	0	0	0	2,736	2,533	203	8%
Complaint Investigation Unit	50	44	24	16	23	12	0	0	0	169	172	-3	-2%
Health Quality Investigation Unit	166	162	204	189	428	179	4	0	0	1,332	1,378	-46	-3%
Completed Investigations Awaiting Disposition²	31	2	1	0	0	0	0	0	0	34	16	18	113%
Citation and Fine Desk	18	27	28	29	83	26	0	0	0	211	256	-45	-18%
Out-of-State Desk	49	28	6	1	0	0	0	0	0	84	64	20	31%
AG Services³	28	19	11	6	6	0	0	0	0	70	58	12	21%
AG-Pre⁴	90	40	23	14	56	8	11	0	2	244	244	0	0%
AG-Post⁵	61	84	76	69	97	12	7	5	3	414	440	-26	-6%
Total by Age	1,777	1,199	879	437	733	237	22	5	5	5,294	5,161	133	3%

¹ Includes physician and surgeon data only.

² Represents the number of completed investigations returned by HQIU to the Board for review and determination of outcome.

³ AG Services includes petitions to compel, subpoena enforcement, and referrals for citation appeals.

⁴ AG-Pre includes cases transmitted to the AG but the Accusation/Petition to Revoke/Accusation & Petition to Revoke/Statement of Issues is not yet filed.

⁵ AG-Post includes Accusation/Petition to Revoke/Accusation & Petition to Revoke/Statement of Issues that have been filed.

* Probation Monitoring caseload removed at the request of the Board.

Administrative Outcomes for Physicians and Surgeons by Quarter

Agenda Item 9B

Types of Outcomes	FY 21/22				
	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
Administrative Outcomes					
License Revoked	11	6			17
License Surrendered (in Lieu of Accusation or with Accusation Pending)	25	26			51
License Placed on Probation with Suspension	0	3			3
License Placed on Probation	39	37			76
Probationary License Issued	4	4			8
Public Reprimand	30	33			63
Other Action	1	0			1
Referral and Compliance Actions					
Citation and Administrative Fines Issued	28	36			64

Types of Outcomes	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Administrative Outcomes				
License Revoked	59	60	35	49
License Surrendered (in Lieu of Accusation or with Accusation Pending)	98	95	96	125
License Placed on Probation with Suspension	5	2	4	4
License Placed on Probation	139	158	144	132
Probationary License Issued	16	22	22	19
Public Reprimand	133	135	108	154
Other Action	0	0	0	2
Referral and Compliance Actions				
Citation and Administrative Fines Issued	150	158	62	51