



DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
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**CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
ENFORCEMENT ADVISORY COMMITTEE (EAC)**

**EAC MEETING
NOTICE & AGENDA**

**Thursday, October 23, 2014
9:00 a.m. – 5:00 p.m.**

Hilton Pasadena
168 South Los Robles Ave.
Pasadena, CA 91101
Telephone: (626) 577-1000

Pasadena Room

- 9:00 - 9:05 I. Roll Call and Call to Order (**Cheryl Gerhardt, Chair**).
- 9:05 - 10:30 II. Review Enforcement Files on Individual Licensees.
[Closed Session: The EAC will meet in closed session to review and deliberate on enforcement files as authorized by Government Code section 11126(c)(2) and Business and Professions Code section 5020.]
- 10:30 - 10:35 III. Report of the Committee Chair (**Cheryl Gerhardt**).
- A. Approval of the July 10, 2014 EAC Meeting Minutes.
- 10:35 - 11:00 IV. Report of the CBA Liaison (**Hershel Elkins**).
- A. Report of the September 18-19, 2014 CBA and Committee Meetings.
- 11:00 - 11:25 V. Report of the Enforcement Chief (**Rafael Ixta**).
- A. Enforcement Activity Report.
B. Discussion Regarding the Survey of EAC Members Conducted in July 2014.
- 11:25 - 11:30 VI. Public Comments for Items not on the Agenda.

LUNCH

1:00 - 5:00 VII. Conduct Closed Hearings.

[The Committee will meet in closed session as authorized by Government Code Sections 11126(c)(2) and (f)(3), and Business and Professions Code Section 5020 to conduct a closed session to interview and consider disciplinary action against an individual licensee or applicant prior to the filing of an Accusation.]

VIII. Adjournment.

Please note: Action may be taken on any item on the agenda. All times are approximate. In accordance with the Bagley-Keene Open Meetings Act, all meetings of the EAC are open to the public. Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the EAC prior to the EAC taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the EAC, but the EAC Chair may, at her discretion, apportion available time among those who wish to speak. Individuals may appear before the EAC to discuss items not on the agenda; however, the EAC can neither discuss nor take official action on these items at the time of the same meeting. (Government Code sec.11125.7(a). CBA members who are not members of the EAC may be attending the meeting. However, if a majority of members of the full board are present at the EAC meeting, members who are not members of the EAC may attend the meeting only as observers.

The meeting is accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Allison Nightingale at (916) 561-1723, or by email at anightingale@cba.ca.gov, or send a written request to the CBA office at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

For further information regarding this meeting, please contact:

Allison Nightingale, Management Services Technician
(916) 561-1723 or anightingale@cba.ca.gov
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

An electronic copy of this agenda can be found at <http://www.dca.ca.gov/cba/calendar.shtml>.

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**DRAFT**

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
ENFORCEMENT ADVISORY COMMITTEE (EAC)

MINUTES OF THE
JULY 10, 2014
EAC MEETING

California Board of Accountancy
 2000 Evergreen Street, Suite 250
 Sacramento, CA 95815
 Telephone: (916) 263-3680

I. Roll Call and Call to Order.

The regularly scheduled meeting of the EAC was called to order at 9:00 a.m. on July 10, 2014 by EAC Chair, Cheryl Gerhardt.

Members

Cheryl Gerhardt, Chair	Present
Jeffrey De Lyser, Vice Chair	Present
Joe Buniva	Absent
Gary Caine	Present
Nancy Corrigan	Present
Mary Rose Caras	Present
Bill Donnelly	Present
Robert A. Lee	Present
Mervyn McCulloch	Present
Joseph Rosenbaum	Present
Seid Sadat	Present
Michael Schwarz	Absent
Dale Best	Present

CBA Member Liaison

Katrina Salazar

CBA Staff and Legal Counsel

Patti Bowers, Executive Officer
 Rafael Ixta, Chief, Enforcement Division
 Paul Fisher, Supervising Investigative CPA
 DeAnn MacConell, Investigative CPA
 David Jones, Investigative CPA
 Dorothy Osgood, Investigative CPA

Marla Weitzman, Investigative CPA
Tina MacGregor, Investigative CPA
Allison Nightingale, Enforcement Secretary
Carl Sonne, Deputy Attorney General, Department of Justice

II. Review Enforcement Files on Individual Licensees.

The EAC adjourned into closed session under provisions of Government Code section 11126(c)(2) and Business and Professions (B&P) Code section 5020. EAC members convened into closed session at 9:03 a.m. and reconvened into open session at 10:30 a.m.

III. Report of the Committee Chair (**Cheryl Gerhardt**).

A. Approval of the May 1, 2014 EAC Meeting Minutes.

It was moved by Ms. Caras, seconded by Mr. McCulloch, and unanimously carried to approve the minutes of the May 1, 2014 EAC meeting.

The minutes for this meeting will be submitted to the CBA members for review and adoption at the next CBA meeting.

B. Discussion Regarding Proposed EAC Meeting Dates for 2015.

Ms. Gerhardt discussed the proposed EAC meeting dates for 2015.

It was moved by Mr. Caine, seconded by Mr. Rosenbaum, and unanimously carried to approve the 2015 EAC meeting dates for 2015 as follows:

<u>DATE</u>	<u>LOCATION</u>
January 29, 2015	Northern California
April 30, 2015	Southern California
July 9, 2015	Northern California
October 22, 2015	Southern California
December 10, 2015	Southern California

The dates will be submitted to the CBA for review and adoption at the next CBA meeting.

C. Report of the May 29-30, 2014 CBA and Committee Meetings.

Ms. Gerhardt stated that Ms. Salazar will report the details of the May 29-30, 2014 CBA and Committee Meetings.

IV. Report of the CBA Liaison (**Katrina Salazar**)

Ms. Salazar reported that the CBA members re-appointed Joe Rosenbaum to the EAC.

Ms. Salazar reported that the CBA will undergo a Sunset Review process in 2015. She stated that a legislative committee reviews all consumer-related boards every four years to determine whether consumer-related boards have demonstrated a public need for its continued existence. She stated that the process includes a Sunset Review Report and noted that staff will be providing the CBA with a draft of the report at the July meeting. She further stated that there will be a joint committee hearing, in Spring of 2015, to evaluate the CBA. After the hearing, the joint committee will issue its recommendations.

Ms. Salazar reported that the Fiscal Year (FY) 2014/15 budget currently stands at \$13.4 million. She further stated that all loans to the General Fund are expected to be repaid by FY 2017/18.

Ms. Salazar reported that the CBA approved the draft regulatory language to define how experience in academia would be accepted as qualifying experience for California Certified Public Accountant licensure and directed staff to initiate the rulemaking process upon passage of Senate Bill (SB) 1467.

Ms. Salazar stated that the CBA accepted staff's recommendation of no changes to the Disciplinary Guidelines regarding mandatory suspensions.

V. Report of the Enforcement Chief (**Rafael Ixta**).

A. Enforcement Activity Report.

Mr. Ixta provided an overview of the report. Mr. Ixta stated that the number of complaints received increased by 307 since the previous reporting period. Mr. Ixta also stated that ten investigations have been open for more than 24 months and that those cases were the most complex investigations requiring additional time to resolve. Mr. Ixta also discussed the performances measure report from the Department of Consumer Affairs (DCA) for the quarter ending March 31, 2014. The performance measures report and the Enforcement Activity Report was provided in the EAC packets.

B. Discussion of Newly Developed Committee Member Resource Guide.

Mr. Ixta discussed the CBA Committee Member Resource Guide (Guide). Mr. Ixta stated that the Guide provides important information regarding each committee's scope of work, general committee business procedures, expectations of committee members, and various statutes and regulations governing the conduct of committee business. Mr. Ixta further stated that the Guide is available on the CBA's website. The Guide was provided in the EAC packets.

VII. Public Comments for Items Not on the Agenda.

Mr. Ixta reported that EAC member Robert Lee was appointed Chair to the Peer Review Oversight Committee (PROC).

VIII. Conduct Closed Hearings.

[The Committee will meet in closed session as authorized by Government Code sections 11126(c)(2) and (f)(3) and B&P Code section 5020 to conduct closed sessions to interview and consider possible disciplinary action against an individual licensee or applicant prior to the filing of an accusation.]

IX. Adjournment.

The next EAC meeting is scheduled for October 23, 2014 at the Hilton Pasadena in Pasadena.

Having no further business to conduct, the EAC general meeting adjourned at approximately 11:30 a.m. to reconvene in closed session at 1:00 p.m. Closed session adjourned at approximately 5:00 p.m.

Cheryl Gerhardt, CPA, Chair
Enforcement Advisory Committee

Prepared by: Allison Nightingale, Enforcement Secretary

California Board of Accountancy Enforcement Activity Report

Report as of August 31, 2014

Complaints

1.1 – Complaints/Records of Convictions	FY 2012/13	FY 2013/14	FY 2014/15
Received	3,271	3,255	463
<i>Internal – Peer Review (Failure to Respond)</i>	1,800	1,481	0
<i>Internal – Peer Review (Other)*</i>	508	411	89
<i>Internal – All Other</i>	510	969	290
<i>External</i>	453	394	84
Assigned for Investigation	2,951	2,969	337
Closed – No Action	329	289	120
Average Days from Intake to Closure or Assignment for Investigation	3	4	5
Pending	3	0	9
Average Age of Pending Complaints (days)	3	0	2

* Peer Review (Other) internal complaints typically include investigation of failed peer review reports, failure to comply with peer review citations, filing an incorrect Peer Review Reporting Form, or renewing a license without undergoing a peer review when a peer review is required.

Comments

- All licensees who failed to file the Peer Review Reporting Form (PR-1) were issued a Citation during the three-year phase-in period. To date, a total of 633 licensees still have not complied with the Citation (see Chart 5.1) and an Internal – Peer Review (Other) complaint may eventually be initiated if the licensees fail to comply with the peer review citation. Please note, the three-year phase-in period ended during fiscal year 2013/14, bringing the total Peer Review (Failure to Respond) complaints to zero during the current fiscal year.
- Approximately 73 percent of the total complaints received have been assigned for investigation. This rate projects to approximately 3,380 cases at the end of the current fiscal year, slightly higher than the previous fiscal year.
- The current rate of external complaints remains relatively consistent with the two previous fiscal years: 14, 12, and 18 percent, respectively.

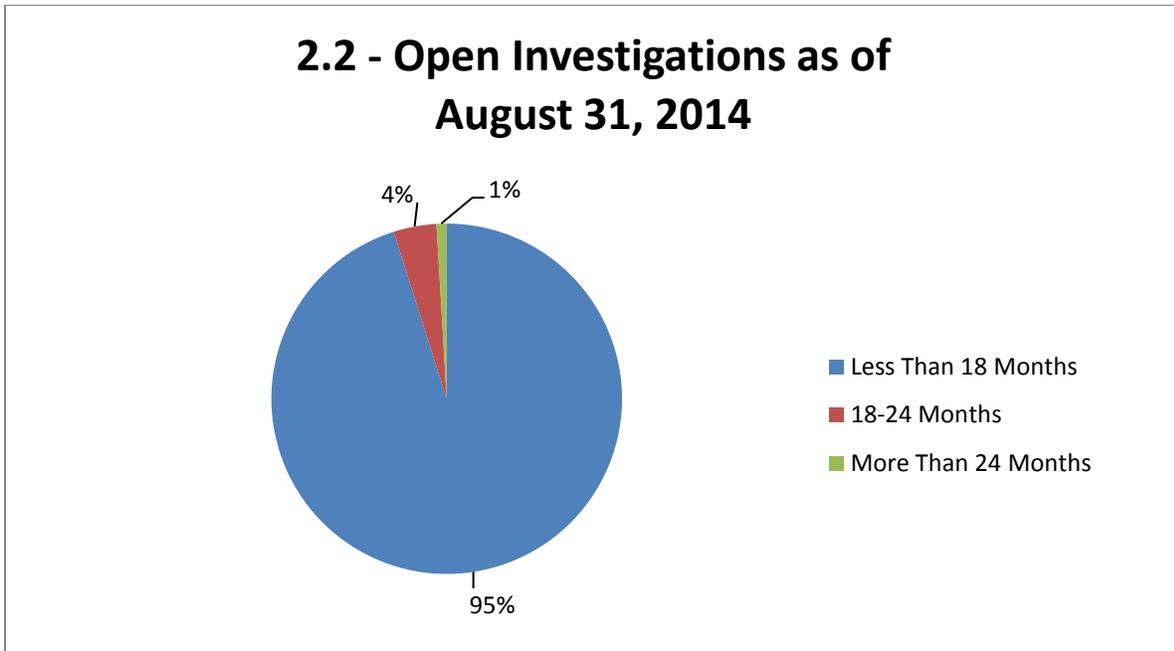
Investigations

2.1 – Investigations	FY 2012/13	FY 2013/14	FY 2014/15
Assigned	2,951	2,969	337
<i>Internal – Peer Review (Failure to Respond)</i>	1,794	1,481	0
<i>Internal – Peer Review (Other)</i>	437	407	89
<i>Internal – All Other</i>	361	740	177
<i>External</i>	359	341	71
Closed	2,872	2,669	307
Average Days to Close	73	74	162
Investigations Pending	518	825	858
<i>< 18 Months</i>	500	774	816
<i>18-24 Months</i>	17	42	34
<i>> 24 Months</i>	1	9	8
Average Age of Open Cases (days)	166	202	202
Median Age of Open Cases (days)	104	153	150

Comments

- The number of Investigations Pending increased from 825 to 858 since the previous report.
- The Average and Median Ages of Open Investigations remain consistent with data reflected during the previous fiscal year.
- The total number of pending investigations that are between 18 and 24 months has decreased from 42 to 34 since the previous report.
- The total number of pending investigations over 24 months decreased slightly from nine to eight since the previous report. These cases are the most complex investigations requiring additional time to resolve. The status of the eight pending investigations over 24 months are as follows:
 - One investigation is on-going.
 - One investigation is pending compliance with a subpoena.
 - Six investigations are pending Investigative Hearings.

Chart 2.2 illustrates the percentage of total open cases by length of time. Approximately 95 percent of investigations have been open for less than 18 months; four percent of investigations have been open for 18 to 24 months; and one percent of investigations have been open for more than 24 months.



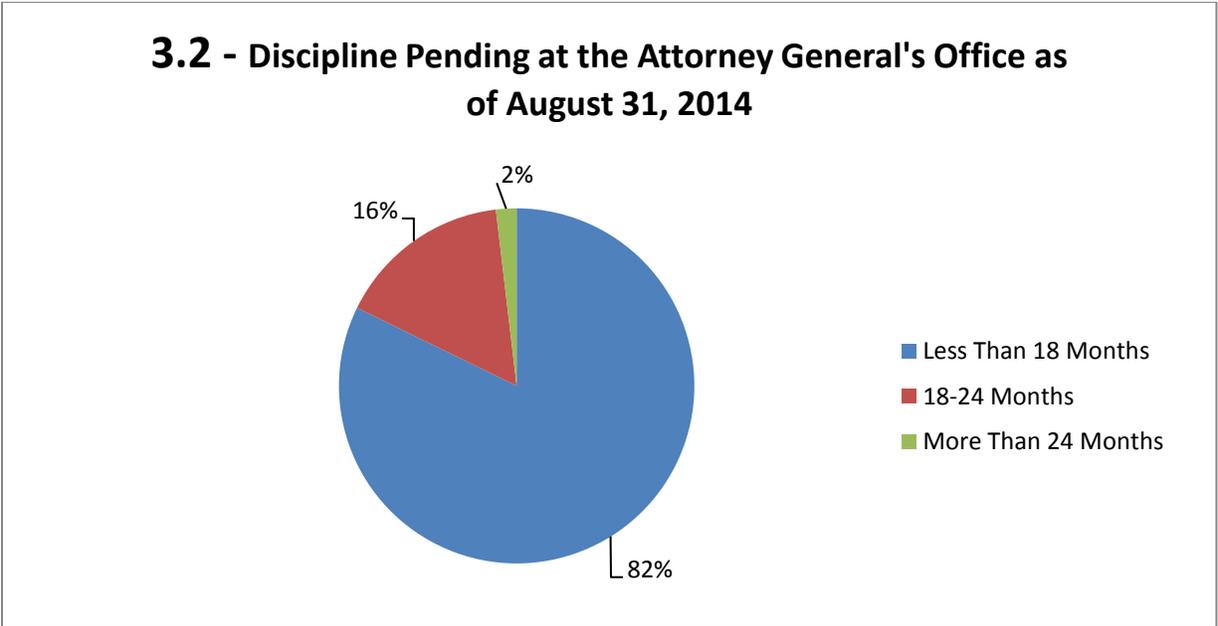
Discipline

3.1 - AG Referrals	FY 2012/13	FY 2013/14	FY 2014/15
Referrals	62	74	24
Accusations Filed	50	34	7
Statements of Issues Filed	3	8	1
Petitions for Revocation of Probation Filed	3	2	0
Closed	58	31	23
<i>Via Stipulated Settlement</i>	39	21	21
<i>Via Proposed Decision</i>	5	4	0
<i>Via Default Decision</i>	14	6	2
Discipline Pending	57	95	107
<i>< 18 Months</i>	52	82	88
<i>18-24 Months</i>	2	10	17
<i>> 24 Months</i>	3	3	2

Comments

- There are 23 disciplinary matters that became effective during this fiscal year: 21 via Stipulated Settlement and two via Default Decision.
- The number of investigations pending at the AG has increased from 57 in FY 2012/13 to 107 during the current fiscal year.
- There are two cases that have been at the AG's Office for more than 24 months:
 - A writ was filed with the California Superior Court in August 2012 following adoption of a proposed decision and denial of a Petition for Reconsideration in July 2012. A Superior Court hearing was held in June 2013. The Court issued a tentative decision in September 2013. However, additional testimony was taken on February 27, 2014. Arguments were heard on March 27, 2014 and the tentative decision is currently pending.
 - An administrative hearing is scheduled for September 2014.

Chart 3.2 illustrates the number of cases pending at the AG's Office by percentage. Approximately 82 percent of all CBA cases at the AG's Office have been open less than 18 months, 16 percent have been pending 18-24 months, and two percent have been pending more than 24 months.



Citations and Fines

4.1 – Citations	FY 2012/13	FY 2013/14	FY 2014/15
Total Citations Issued	1,883	1,522	7
Total Fines Assessed	\$532,400	\$399,020	\$3,800
<i>Peer Review (Failure to Respond)</i>	<i>1,800</i>	<i>1481</i>	<i>---</i>
<i>Peer Review Fines Assessed</i>	<i>\$450,000</i>	<i>\$370,250</i>	<i>---</i>
<i>Other Citations</i>	<i>83</i>	<i>41</i>	<i>7</i>
<i>Other Fines Assessed</i>	<i>\$82,400</i>	<i>\$28,770</i>	<i>\$3,800</i>
<i>Other Fines Average</i>	<i>\$993</i>	<i>\$702</i>	<i>\$543</i>
Average number of days from receipt of a complaint to issuance of a citation	67	33	259
Top 3 Violations			
1:	Response to CBA Inquiry (Reg 52)	Response to CBA Inquiry (Reg 52)	Response to CBA Inquiry (Reg 52)
2:	CE Basic Requirements (Reg 87)	CE Basic Requirements (Reg 87)	Name of Firm (BPC 5060)
3:	Practice Without Permit (BPC 5050)	Name of Firm (BPC 5060)	CE Basic Requirements (Reg 87)

Comments

- A total of seven Other Citations were issued since the previous report, with fines totaling \$3,800.
- The Other Fines Average amount of \$543 is lower than the two previous fiscal years. The fine amount assessed varies from \$100 to \$5,000 and is determined on a case-by-case basis. Factors that may increase or decrease the fine amount include aggravating or mitigating circumstances, and length of time the violation existed.
- During the previous two fiscal years, the majority of the citations were related to Peer Review (Failure to Respond). The average days to issue the peer review citation was five days, which reduced the overall average days to issue a citation. The three-year phase in period associated with peer review citations ended during fiscal year 2013/14. Thus, the current average number of days to issue a citation is higher than the two previous fiscal years.

Probation Monitoring

Upon completion of the disciplinary process, matters are referred to a CBA Probation Monitor for tracking and compliance with the terms of probation. There are 77 licensees on probation, with four residing out-of-state.

Peer Review

5.1 - Peer Review						
License Ending In	Reporting Deadline	Peer Review Required	Peer Review Not Required	Not Applicable (Non-firms)	Total	Licensees Still Needing to Report
01-33	7/1/11	2,634	4,304	15,776	22,714	0
34-66	7/1/12	2,182	4,011	13,180	19,373	0
67-00	7/1/13	2,143	3,921	14,255	20,310	633
		6,959	12,236	43,211	62,397	633

Comments

- The above data represents the results and status of the initial three-year phase-in period associated with Peer Review. A total of nine licensees reported their peer review information to the CBA since the last report.
- A total of 633 licensees still need to file the Peer Review Reporting Form (PR-1). Please note, a citation has already been issued to these licensees and an Internal – Peer Review (Other) complaint may be initiated for failure to comply with the peer review citation.

Performance Measures

The CBA presently meets four of its five performance measures, including *Intake*, *Intake Through Investigation*, *Probation Intake*, and *Probation Violation Response*.

While the CBA does not currently meet the 540-day performance measure associated with *Formal Discipline*, it has seen improvements in the timeframes associated with this measure. The discipline performance measure metric has steadily decreased over the past four fiscal years from an annual average of 924 days in FY 2010-11 to 888 days in FY 2011-12, 835 days in FY 2012-13, and 813 days in FY 2013-14. This is a decrease of 12 percent while at the same time increasing the volume of referrals to and filings by the AG's Office.

The fourth quarter average reflects nine closed disciplinary cases during the period of April 1, 2014 to June 30, 2014. Of those cases, two matters went to hearing at the Office of Administrative Hearings (OAH). One was non-adopted by the CBA and one was granted a petition for reconsideration. Also, two matters were scheduled for OAH hearings and were settled immediately prior to the commencement of the hearing.

The CBA works to close all cases as expeditiously as possible. Upon conclusion of the investigation, the matter is referred to the AG's Office for preparation and filing of a pleading which takes, on average, 160 to 190 days. After the filing of a pleading, it takes an average of 170 to 204 days to resolve a matter via a stipulated settlement or 325 to 379 days to resolve a matter via a formal OAH hearing. When a matter is set for hearing, the wait to secure a hearing date from OAH can exceed one year and can consume approximately two-thirds of the performance measure time. These indirect, but unavoidable, timeframes with the AG and OAH impact the timeframe in which formal disciplinary cases are resolved.

The CBA will continue to work internally and externally to reduce investigative timeframes and work cooperatively with outside agencies to identify and reduce inefficiencies. With the addition of new ICPA positions, it is expected that the Enforcement Division will further decrease its investigative time and be closer to DCA's *Formal Discipline* performance measure.

Mobility

Effective July 1, 2013, the CBA implemented a no notice, no fee practice privilege model in California. The table below depicts the enforcement aspects of mobility, including the receipt and investigation of Practice Privilege Pre-Notification Forms and Notification of Cessation Event Forms.

6.1 - Mobility	FY 2013/14	FY 2014/15
Pre-Notification Forms Received	15	1
Cessation Event Forms Received	0	0
SEC Discipline Identified	37	6
PCAOB Discipline Identified	11	3
Out-of-State Accounting Firm Registrants That Reported Other Discipline	10	0
Complaints against Practice Privilege Holders	2	3

Comments

- Only one Pre-Notification Form was received this current fiscal year.
- Staff sent letters to all CPAs who were disciplined from either the Securities and Exchange Commission or the Public Company Accounting Oversight Board to inform them that they must seek CBA authorization prior to practicing in California.

Division Highlights and Future Considerations

- Enforcement management has welcomed Jenny Sheldon as the Manager of the newly established Discipline and Probation Monitoring unit in the Enforcement Division. Ms. Sheldon previously served as the Manager of the CBA Examination and Practice Privilege Programs unit.
- Enforcement staff was successful in obtaining a Penal Code 23 Restriction after the CPA was arrested for committing embezzlement, grand theft, fraud, and check forgery.
- The Retroactive Fingerprinting has transitioned from the License Renewal and Continuing Competency Unit to the temporary Criminal Offender Record Information (CORI) Unit.