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**To:** Dispensing Optician Committee Members      **Date:** November 2, 2017

**From:** Jessica Sieferman      **Telephone:** (916) 575-7184  
Executive Officer

**Subject:** **Agenda Item 4 – Executive Officer’s Report**

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**A. Outreach Campaign**

During the September 22 meeting, the DOC reviewed and approved the Outreach Plan created with DCA’s assistance. The DOC directed staff to work with counsel and DCA to implement the plan, which included finalizing timelines and developing outreach material. For reference the outreach plan can be viewed [here](#).

With the four additional committee meetings, a stakeholder meeting, and other board activities over the last month, no significant progress has been made on implementation. However, staff will meet with DCA in the coming weeks to finalize and implement the plan. More updates will be provided to members as they are available.

**B. Occupational Analyses**

DCA’s Office of Professional Examination Services (OPES) presented a proposal to conduct an occupational analysis (OA) on the national exams required for registration. For reference, the proposal can be found [here](#).

After reviewing the RDO Program Fund, the DOC recommended the Board proceed with OA for both exams. Considering the fund condition, the DOC recommended conducting the OAs one at a time, starting with the National Contact Lens Examination (NCLE).

In addition, the DOC requested the OPES to determine the soonest they would be able to start the OA. After analyzing their workload and existing resources, the OPES determined they would not be able to start scheduling the OAs until next fiscal year.

**C. Enforcement Program**

*Prepared by Cheree Kimball, Enforcement Lead*  
Pending Caseload

As indicated in the table below, the Board closed the first quarter of FY 17/18 with 224 pending cases (155 Optometry, 69 RDO). Seventy-five cases (58 Optometry, 17 RDO) were pending for more than one year. The six high priority cases, which were expedited, include four alleging unprofessional conduct and negligence (three were settlements), one alleging Medi-Cal fraud, and one alleging sexual misconduct.

Educational, Enforcement and Disciplinary Actions

Out of the 102 cases closed during the first quarter, 31 cases (19 Optometry, 12 RDO) involving unprofessional conduct, unlicensed/unregistered practice and conviction investigations were sent education letters; twenty citations (3 Optometry, 17 RDO) were issued for convictions, unlicensed/unregistered practice, and/or advertising violations - 18 of which have been appealed and are set for Informal Citation Conference. The remaining cases were closed as non-jurisdictional, insufficient evidence, or no violation.

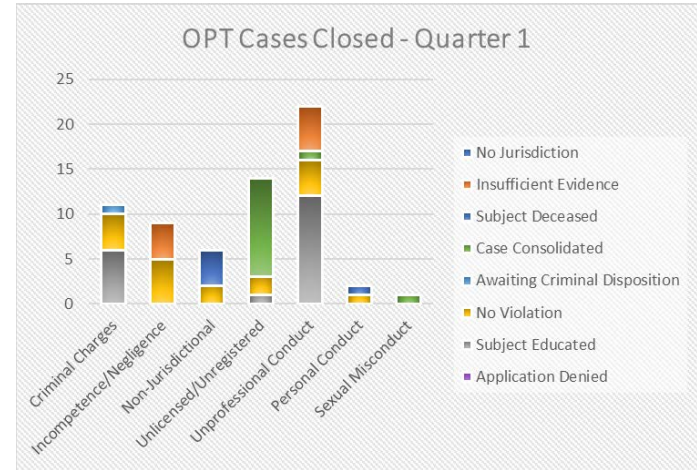
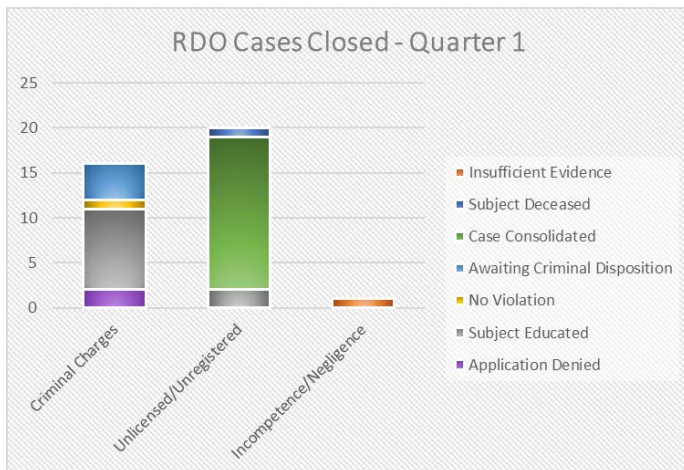
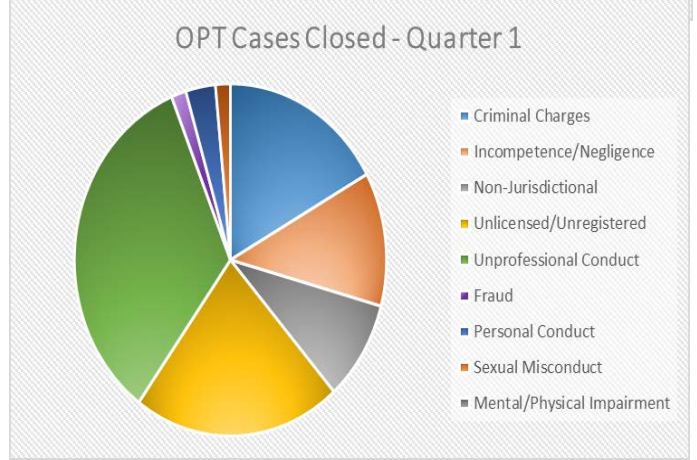
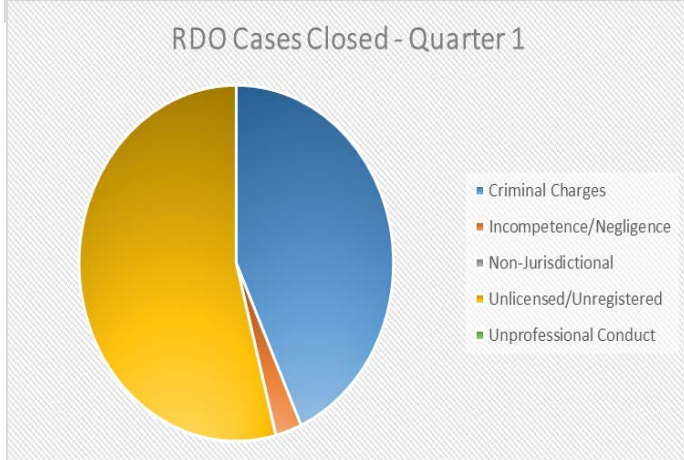
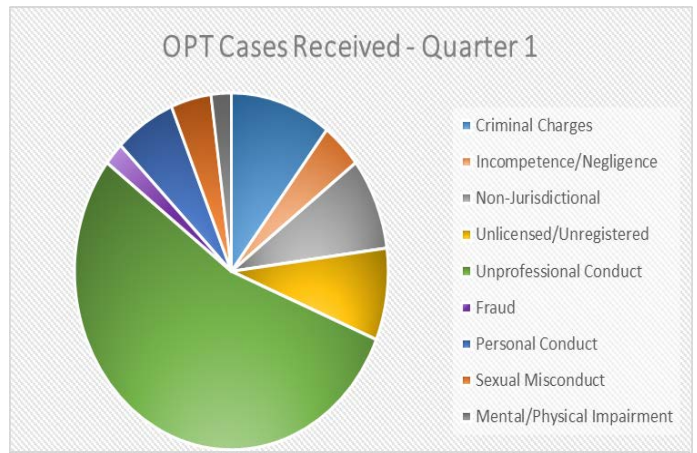
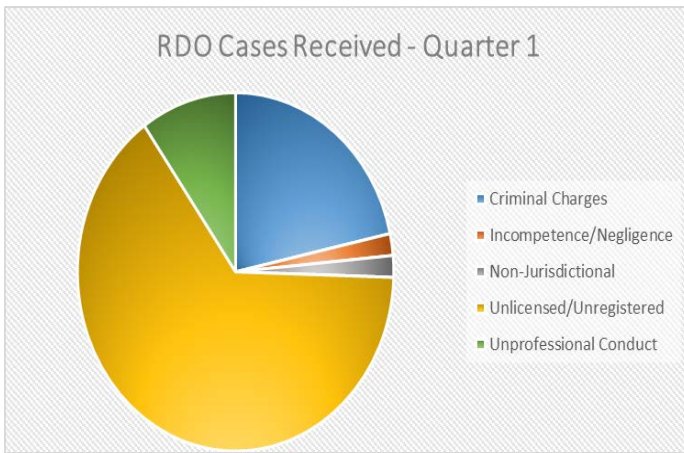
In addition, three cases were referred to the Attorney General's (AG) Office, bringing the total pending AG cases to 22.

Electronic Ballot Decisions

Between July 1, 2017 and October 19, 2017, the Board voted electronically to adopt two default decisions (Swinney; Anderson) and three stipulated surrender settlements (Kellerman; Anderson)<sup>1</sup> for the RDO Program. All six disciplinary cases were based on allegations involving criminal convictions.

	Q1 – FY17/18						FY Total	
	Routine		Expedite		High		OPT	RDO
Cases by Priority	OPT	RDO	OPT	RDO	OPT	RDO	OPT	RDO
Received	42	50	0	0	6	1	48	51
Closed	63	37	0	0	2	0	65	37
Average Age (days) - Closed	249	82	0	0	22	0	242	82
Pending	149	69	0	0	6	0	155	69
Average Age (days) – Pending	346	278	0	0	81	0	346	278
Referred to AG	1	1	0	0	0	1	1	2
Pending at AG	8	13	0	0	0	1	8	14
Final Disciplinary Orders	3	1	0	0	0	0	3	1

<sup>1</sup> One Respondent name is not publicly disclosable at this time.



## Enforcement Process Overview

### Intake

The Board initiates investigations based on information from a variety of sources, such as consumers, DOJ/FBI, insurance companies, the National Practitioner Databank (NPDB), and other industry stakeholders.

The Board receives an average of 380 cases every year. The most common allegations investigated involve unlicensed or unregistered practice, criminal convictions, advertising violations, personality conflicts, pricing, and misdiagnosis and/or failure to refer. Unlicensed/unregistered practice allegations include subjects operating completely without licensure (optometrist or optician), such as unlicensed cosmetic contact lens sales, or licensees who failed to obtain a Fictitious Name Permit, Branch Office License, Statement of Licensure.

Criminal convictions cases are most often received from the DOJ when an applicant submits to fingerprinting as part of their application requirements. As indicated above, the Board also receives

notification from the DOJ if a licensee has been arrested or convicted subsequent to the initial background check. Additionally, licensees and registrants are required to self-report any convictions on their renewal application.

Once received, the Board determines jurisdiction. Cases with no jurisdiction (e.g., complaints against ophthalmologists, optometrists in another state, labor code violations, etc.) are closed with a referral to the appropriate agency.

#### Investigation

If the matter is within the Board's jurisdiction, the investigation is assigned to an analyst for review and investigation. During the investigation process, the analyst may contact the complainant, the subject, and/or other involved parties to obtain factual evidence. Investigations requiring undercover operations, interviews, or subpoenaed documents are sent to the Department's Division of Investigation (DOI) and assigned to a sworn field investigator.

#### Expert Review

After gathering evidence, cases involving standard of care concerns are transferred to subject matter experts for review and drafting of professional standard of care opinions.

#### Closing with No Administrative/Disciplinary Action

After the evidence, investigative and/or expert reports are gathered, the analysts review the totality of the case and recommends appropriate action. If there is no violation found or there is insufficient evidence establishing the violation, the analyst recommends closing the case. The Board's burden of proof is "clear and convincing evidence" ([Ettinger v. Board of Medical Quality Assurance \(1982\)](#) 135 Cal.App.3d 853, 855-856.), so cases where the investigation fails to meet this burden cannot move forward to disciplinary action.

When evidence substantiates a violation, the Board seeks to resolve the case at the lowest appropriate level. Certain types of less egregious violations, particularly if it's the subject's first offense, may not warrant administrative or disciplinary action. For example, if an optometrist is using a fictitious name without a fictitious name permit (FNP), the optometrist is given the opportunity to obtain the FNP and update their advertising (if applicable). If compliance is obtained, the investigation may be closed with an educational letter to the subject reminding them of the law.

#### Proceeding with Administrative/Disciplinary Action

Cases involving substantiated, more egregious violations will move forward for administrative (citation) or disciplinary action (Statement of Issues/Accusation). When determining appropriate action, enforcement staff and the EO reviews multiple factors set forth in CCR §§ [1516](#), [1399.271](#), and [1399.272](#), which include the following:

- the nature and severity of the act or crime,
- whether it was one incident or multiple incidents of the same or similar violations,
- how much time has elapsed since the most recent incident,
- what the subject has done in the way of rehabilitation, and
- whether the subject has come into compliance with the law.

In addition, CCR § [1517](#) or [1399.270](#) are used to determine if a conviction is substantially related to the duties and functions of the profession. While DUI convictions for weekend, evening, or holiday occurrences may not be considered related to their ability to practice on the surface, significant case law demonstrates how these convictions are substantially related to a licensee's ability to practice and violates public trust.<sup>2</sup>

Citations are determined based on CCR §§ [1578](#) and [1399.275](#).

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<sup>2</sup> [Grannis v. Board of Medical Quality Assurance \(1971\)](#) 19 Cal.App.3d 551 [physician disciplined on the basis of two DUI convictions]; *In re Car* (1988) 46 Ca1.3d 1089 [State Bar suspended an attorney for two DUI convictions]; *In Re Kelley* (1990) 52 Ca1.3d 487 [attorney disciplined for two DUI convictions]; [Griffiths v. Superior court \(2002\)](#) 96 Cal.AppAth 757 [physician's license suspended for three DUI convictions].

Once cases are transmitted to the AG's Office, the EO works with the assigned Deputy Attorney General (DAG) to prepare and file an Accusation. If the respondent files a timely Notice of Defense (NOD), a hearing is set at the Office of Administrative Hearings (OAH) before an Administrative Law Judge (ALJ).

Whenever possible, the EO seeks a Stipulated Settlement with the respondent, resulting in quicker, cost effective consumer protection. If an agreement cannot be reached or a hearing is more appropriate, that the case is reviewed by an ALJ. The Executive Officer, DAG, and ALJ use the Board's [Disciplinary Guidelines](#) to determine the appropriate discipline level.

Once a decision is drafted for approval, whether a stipulated settlement, an ALJ proposed decision, or a default decision (where the subject fails to file a NOD after the service of the Accusation), it comes before the Board for consideration. Pursuant to [BPC §3024](#), the Board has the authority to deny a license or registration and to revoke or suspend a registration or license. When reviewing a decision, the Board can adopt or non-adopt the decision based on factors listed in the [Board Member Handbook \(2016\)](#) (page 31).

After adoption, the Decision becomes effective 30 days after the order date, unless the subject seeks other legal relief, such as filing a Petition for Reconsideration or a Petition for Writ of Mandate in Superior Court.

#### **D. Registration Program**

As indicated in attached statistics (Attachment 1), BreEZe utilization continues to exceed paper applications for the majority of optometry license types. Since the RDO Program launched BreEZe's online capabilities in June 2017, the Board has received a steady increase in online applications; in September, online applications exceeded paper applications in each registration type.

DCA recently developed new licensing reporting tools for management to easily monitor pending applications (Sampled below). Management and staff can quickly identify any "unassigned" applications, monitor application processes and address any "bottlenecks" they may occur. In addition, using the tools identifying pending renewal applications, staff can send mass emails to licensees with links to BreEZe encouraging them to renew online.

Management worked with the BreEZe team to add the capability for licensees to change their address of record online. Currently, licensees must submit a written request (email, fax, or regular mail) in order to update their address. However, once the transaction is available online, licensees will be able to update their address without any staff interaction. This enhancement is set to "go-live" in March 2018. The RDO Program registrants are already benefitting from this enhancement.

Over the next several weeks, management will analyze additional BreEZe enhancements to automate certain licensing processes. The Statement of Licensure (SOL), for example, currently requires staff interaction to process the application. However, with some minor enhancements, it may be possible to have the SOLs process automatically – reducing cycle times and resources while increasing the number of SOLs processed each month. Updates will be provided to the members as they are available.

#### **E. DOC Registered Dispensing Opticians (RDO) Vacancy**

The Board recently received a few applications for the DOC's RDO vacancy. However, none of them possessed an RDO registration. After further review, it was determined that an individual may be considered for the RDO vacancy, if the Board could verify the applicants are RDOs or qualified to act as an agent for an RDO. In order to verify this, the Board requested letters, signed by the President/Secretary of the corporation attesting to the following:

- (1) the RDO corporation agrees that the candidate is authorized to serve as its agent on the DOC; and

(2) due to the candidate's high-level position(s) and employment history, he/she is qualified to participate in making recommendations to the Board regarding the regulation of dispensing opticians.

The Board may consider these candidates during the January meeting.

**Attachments:**

1. Licensing Statistics

### Optometrist License Applications FY 16/17-17/18

OPT: Optometrist License  
 BOL: Branch Office License  
 SOL: Statement of Licensure  
 FNP: Fictitious Name Permit

	FY 16/17	FY 17/18			
	Total	Jul	Aug	Sep	Total
Paper Exam Requests Received	79	2	2	1	5
Online Exam Requests Received	215	12	10	15	37
Approved Paper Exam Requests	77	2	0	2	4
Approved Online Exam Requests	208	11	9	12	32
Paper Exam Request Cycle Time (Avg.)	24	12	N/A	21	16
Online Exam Request Cycle Time (Avg.)	9	3	2	2	2
Expired/Withdrawn/Cancelled Applications	9	0	1	2	3
Exam Requests Pending	14	15	17	17	17
License Applications Opened	319	14	9	15	38
Licenses Issued	307	50	28	7	85
License Application Cycle Time (Avg.)	106	100	107	107	103
Expired/Withdrawn/Cancelled	50	4	2	7	13
License Applications Pending	166	126	105	106	106

### Optometrist License Applications FY 16/17-17/18

**OPT: Optometrist License**

**BOL: Branch Office License**

**SOL: Statement of Licensure**

**FNP: Fictitious Name Permit**

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>BOLs</b>	Paper Applications Received	30	2	1	1	4
	Online Applications Received	46	3	2	2	7
	Paper Applications Approved	24	7	1	0	8
	Online Applications Approved	35	4	0	2	6
	Avg. Cycle Time (Paper)	52	53	68	N/A	55
	Avg. Cycle Time (Online)	33	36	N/A	47	40
	Expired/Withdrawn/Cancelled	8	1	0	2	3
	Pending Apps	12	5	7	6	18

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>SOLs</b>	Paper Applications Received	111	3	9	30	42
	Online Applications Received	134	19	14	10	43
	Paper Applications Approved	112	5	3	9	17
	Online Applications Approved	102	5	30	3	38
	Avg. Cycle Time (Paper)	26	31	22	30	29
	Avg. Cycle Time (Online)	23	46	29	19	31
	Expired/Withdrawn/Cancelled	28	1	8	8	17
	Pending Apps	25	36	18	38	38

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>FNPs</b>	Paper Applications Received	99	6	6	2	14
	Online Applications Received	65	7	4	2	13
	Paper Applications Approved	79	4	5	4	13
	Online Applications Approved	63	2	1	2	5
	Avg. Cycle Time (Paper)	56	90	100	88	93
	Avg. Cycle Time (Online)	54	32	67	94	64
	Expired/Withdrawn/Cancelled	19	1	1	0	2
	Pending Apps	21	27	30	28	28



## Optometrist License Renewals FY 16/17-17/18

**OPT: Optometrist License**  
**BOL: Branch Office License**  
**SOL: Statement of Licensure**  
**FNP: Fictitious Name Permit**

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>OPTs</b>	Paper Renewals Approved	1549	105	123	138	366
	Online Renewals Approved	2298	165	199	179	543
	Avg. Cycle Time (Paper)	12	7	7	9	8
	Avg. Cycle Time (Online)	5	6	5	7	6

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>BOLs</b>	Paper Renewals Approved	231	0	0	0	0
	Online Renewals Approved	120	1	1	0	2
	Avg. Cycle Time (Paper)	9	N/A	N/A	N/A	N/A
	Avg. Cycle Time (Online)	0	0	0	N/A	0

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>SOLs</b>	Paper Renewals Approved	185	8	10	10	28
	Online Renewals Approved	244	15	29	21	65
	Avg. Cycle Time (Paper)	4	6	2	2	3
	Avg. Cycle Time (Online)	0	26	0	0	6

		FY 16/17	FY17/18			
		Total	Jul	Aug	Sep	Total
<b>FNPs</b>	Paper Renewals Approved	945	1	1	0	2
	Online Renewals Approved	459	0	0	2	2
	Avg. Cycle Time (Paper)	7	2	251	N/A	127
	Avg. Cycle Time (Online)	4	N/A	N/A	0	0

## Registered Dispensing Optician Applications FY 16/17-17/18

**RDO: Registered Dispensing Optician**

**CLD: Contact Lens Dispenser**

**SLD: Spectacle Lens Dispenser**

**NRCLD: Non-Resident Contact Lens Dispenser**

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>RDOs</b>	Paper Applications Received	124	2	16	6	24
	Online Applications Received	0	3	10	10	23
	Paper Applications Approved	81	7	16	4	27
	Online Applications Approved	0	0	0	7	7
	Avg. Cycle Time (Paper)	103	101	102	145	108
	Avg. Cycle Time (Online)	N/A	N/A	N/A	30	30
	Expired/Withdrawn/Cancelled	32	0	2	0	2
	Pending Apps	45	43	51	56	56

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>CLDs</b>	Paper Applications Received	101	8	7	6	21
	Online Applications Received	2	4	3	8	15
	Paper Applications Approved	70	14	12	1	27
	Online Applications Approved	0	1	0	1	2
	Avg. Cycle Time (Paper)	87	83	48	84	68
	Avg. Cycle Time (Online)	N/A	33	N/A	98	66
	Expired/Withdrawn/Cancelled	9	1	2	0	3
	Pending Apps	34	30	26	38	38

## Registered Dispensing Optician Applications FY 16/17-17/18

**RDO: Registered Dispensing Optician**

**CLD: Contact Lens Dispenser**

**SLD: Spectacle Lens Dispenser**

**NRCLD: Non-Resident Contact Lens Dispenser**

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>SLDs</b>	Paper Applications Received	365	16	32	9	57
	Online Applications Received	4	9	16	15	40
	Paper Applications Approved	304	24	25	9	58
	Online Applications Approved	N/A	0	0	2	2
	Avg. Cycle Time (Paper)	89	81	99	89	90
	Avg. Cycle Time (Online)	N/A	N/A	N/A	85	85
	Expired/Withdrawn/Cancelled	18	2	8	2	12
	Pending Apps	99	98	113	124	124

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>NRCLDs</b>	Paper Applications Received	5	0	0	0	0
	Online Applications Received	0	0	0	0	0
	Paper Applications Approved	2	0	0	0	0
	Online Applications Approved	0	0	0	0	0
	Avg. Cycle Time (Paper)	86	N/A	N/A	N/A	N/A
	Avg. Cycle Time (Online)	N/A	N/A	N/A	N/A	N/A
	Expired/Withdrawn/Cancelled	2	0	0	0	0
	Pending Apps	2	2	2	2	2

## Registered Dispensing Optician Renewals FY 16/17-17/18

RDO: Registered Dispensing Optician

CLD: Contact Lens Dispenser

SLD: Spectacle Lens Dispenser

NRCLD: Non-Resident Contact Lens Dispenser

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>RDOs</b>	Paper Renewals Approved	454	8	53	45	106
	Online Renewals Approved	0	5	7	7	19
	Avg. Cycle Time (Paper)	68	27	61	27	44
	Avg. Cycle Time (Online)	N/A	10	148	148	112

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>CLDs</b>	Paper Renewals Approved	445	19	28	42	89
	Online Renewals Approved	3	17	17	9	43
	Avg. Cycle Time (Paper)	26	107	71	52	70
	Avg. Cycle Time (Online)	97	1	0	18	4

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>SLDs</b>	Paper Renewals Approved	987	40	61	68	169
	Online Renewals Approved	9	28	28	38	94
	Avg. Cycle Time (Paper)	30	43	49	46	46
	Avg. Cycle Time (Online)	82	2	4	11	6

		FY 16/17	FY 17/18			
		Total	Jul	Aug	Sep	Total
<b>NRCLDs</b>	Paper Renewals Approved	7	0	0	0	0
	Online Renewals Approved	0	0	0	0	0
	Avg. Cycle Time (Paper)	51	N/A	N/A	N/A	N/A
	Avg. Cycle Time (Online)	N/A	N/A	N/A	N/A	N/A