

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1536 (Committee on Business and Professions) – As Introduced February 19, 2021

**SUBJECT:** Board of Vocational Nursing and Psychiatric Technicians of the State of California.

**SUMMARY:** Requires the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) to delegate the authority to issue default decisions and stipulated surrenders of licenses to its executive officer, makes non-substantive changes and is intended to include the recommendations that arise from the Joint Sunset Review Oversight Hearings of the BVNPT.

**EXISTING LAW:**

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Provides for the regulation and licensure of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 100-144.5)
- 3) Defines “board,” as used in the BPC, as the board in which the administration of the provision is vested, and unless otherwise expressly provided, includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” (BPC § 22)
- 4) Establishes the BVNPT within the Department of Consumer Affairs (DCA) until January 1, 2022, to license and regulate licensed vocational nurses (LVNs) and psychiatric technicians (PTs) and administer the Vocational Nursing Practice Act and the Psychiatric Technicians Law. (Business and Professions Code (BPC) §§ 2840-2895.5 and §§ 4500-4548)
- 5) Establishes the licensing requirements for LVNs, including that they must be at least 17 years of age, have completed 12th grade or its equivalent, and have passed the National Council Licensure Examination for Practical/Vocational Nurses (NCLEX-PN) examination. (BPC §§ 2866, 2872.2)
- 6) Establishes the licensing requirements for PTs, including that they must be at least 18 years of age, have completed 12th grade or its equivalent, qualify for the California PT licensure examination by completing specified PT education or experience, and have passed the California PT licensure examination. (BPC §§ 4511)
- 7) Requires the BVNPT to discipline a licensee whose default has been entered or whose case has been heard by the BVNPT and was found guilty. (BPC § 2876)
- 8) Required the DCA Director to appoint an administrative and enforcement program monitor to the BVNPT no later than March 1, 2016, and until March 1, 2018. (BPC § 2847.5)

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** Each year, the Assembly Business and Professions Committee and the Senate Business, Professions, and Economic Development Committee hold joint sunset review oversight hearings to review the boards under the DCA. The DCA boards are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the DCA, the Legislature, the boards, and interested parties and stakeholders to discuss the performance of the boards, and make recommendations for improvements.

This bill is one of the six “sunset review bills” authored by the Assembly Business and Professions Committee and the five sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee. Due to the COVID-19 pandemic, some of the boards set to be heard last year were pushed to this year. As a result, there were sixteen boards up for review, and some sunset review bills serve as the vehicles for multiple boards. This bill codifies a recommendation from the BVNPT’s prior sunset review and its performance monitor and will eventually include the remaining recommendations from the Joint Sunset Review Hearings of the BVNPT.

**Background.** The BVNPT is a licensing entity within the DCA. The BVNPT is responsible for administering and enforcing both the Vocational Nursing Practice Act and the Psychiatric Technicians Law. Those laws establish the BVNPT and outline two distinct licensure programs, each with a separate regulatory framework for the practice, licensing, education, and discipline of LVNs and PTs. The BVNPT also approves educational programs for both licenses.

LVNs utilize technical and manual skills to provide basic nursing care under the direction of a licensed physician or registered nurse. PTs utilize technical and manual skills to provide care to clients diagnosed with mental disorders or developmental disabilities under the direction of a physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

As of October 5, 2020, the BVNPT reported a total of 139,699 active licensees, including 128,332 LVNs and 11,367 PTs. As of March 2, 2021, the BVNPT reported 150 programs approved to offer educational programs leading to an LVN and PT license in California.

The BVNPT’s mission is:

The Board serves and protects the public by licensing qualified and competent vocational nurses and psychiatric technicians through ongoing educational oversight, regulation, and enforcement.

*Performance Monitor.* During the BVNPT’s 2015 sunset review, the Committees identified severe deficiencies and discrepancies in the BVNPT’s fund, enforcement, staffing levels, and overall management. As a result, the BVNPT’s sunset legislation: 1) required the DCA internal audit unit to review the BVNPT’s finances, 2) required the DCA to appoint a third-party contractor to monitor the BVNPT’s performance and evaluate the BVNPT’s administrative and enforcement processes, and 3) gave the BVNPT a protracted two-year extension. The legislation also merged the LVN and PT funds to avoid the need for an immediate fee increase.

At the time, the BVNPT was also having difficulty filling its executive officer position, so an accompanying urgency bill also deleted the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician to open the candidate pool.

The BVNPT's 2017 sunset review focused on the BVNPT's unwillingness to address the numerous issues identified by the DCA-appointed monitor or the ongoing mismanagement. As a result, the BVNPT's sunset legislation temporarily transferred the authority to appoint an executive officer to the Governor until January 1, 2020, and extended the BVNPT until January 1, 2021, giving the authority back to the BVNPT during its next review year. However, at the request of the administration, the Governor's authority was extended until January 1, 2021. Both dates were further extended until January 1, 2022, due to the inability to perform sunset review during the early months of the COVID-19 pandemic.

*Default Decisions.* This bill codifies a recommendation from the BVNPT's prior sunset review and performance monitor. In 2017, the monitor noted that one of the improvements that could be made is to delegate the authority to approve default decisions and stipulated settlements to the BVNPT's executive officer. Using language consistent with the Medical Practice Act, this bill requires the BVNPT to delegate the authority to approve of default decisions and stipulated surrenders to its executive officer. While the BVNPT already delegates the authority to adopt stipulated surrender of licenses in regulation, this bill clarifies that authority, consistent with the Medical Board.

Default decisions are straightforward cases in which a licensee or respondent does not respond to a disciplinary notice or action within the required timeframe. Currently, the BVNPT staff reviews these cases to determine whether they meet the criteria for a default and then mail them to the BVNPT members. The BVNPT members then approve the recommendation and mail them back. Because the BVNPT staff do not exercise discretion when deciding whether to submit a default decision to the BVNPT members (the respondent is either in default or is not), the BVNPT members never disapprove them. The BVNPT has previously noted that it does not currently have statutory authority to delegate the approval. This bill would enable the BVNPT to begin doing so immediately.

**Current Related Legislation.** AB 1532 (Committee on Business and Professions), which is pending in this Committee, is the sunset review bill for the Board of Registered Nursing.

AB 1533 (Committee on Business and Professions), which is pending in this Committee, is the sunset review bill for the Board of Pharmacy.

AB 1534 (Committee on Business and Professions), which is pending in this Committee, is the sunset review bill for the Board of Optometry.

AB 1535 (Committee on Business and Professions), which is pending in this Committee, is the sunset review bill for the Veterinary Medical Board.

AB 1537 (Low), which is pending in this Committee, is the sunset review bill for the California Massage Therapy Council.

SB 800 (Roth), which is pending in the Senate Committee on Appropriations, is the sunset review bill for the Department of Real Estate and the Bureau of Real Estate Appraisers.

SB 801 (Roth), which is pending in the Senate Committee on Appropriations, is the sunset review bill for the Board of Behavioral Sciences and the Board of Psychology.

SB 802 (Roth), which is pending in the Senate Committee on Education, is the sunset review bill for the Bureau for Private Postsecondary Education.

SB 803 (Roth), which is pending in the Senate Committee on Appropriations, is the sunset review bill for the Board of Barbering and Cosmetology.

SB 806 (Roth), which is pending in the Senate Committee on Appropriations, is the sunset review bill for the Physician Assistant Board, Podiatric Medical Board of California, Osteopathic Medical Board of California, and the Medical Board of California.

**Prior Related Legislation.** SB 1474 (Senate Committee on Business, Professions and Economic Development), which is currently pending in the Senate, extends various DCA boards and bureaus set to sunset this year by one year, including the BVNPT and the Governor's authority to appoint the BVNPT's executive officer until January 1, 2022.

SB 606 (Glazer), Chapter 375, Statutes of 2019, among other things, extended the Governor's authority to appoint the BVNPT's executive officer until January 1, 2021.

AB 888 (Low), Chapter 575, Statutes of 2018 would have required the BVNPT to delegate the authority to issue default decisions and stipulated surrenders of licenses to its executive officer but was substantially amended to address a different topic in the Senate.

AB 1229 (Low), Chapter 586, Statutes of 2017 extended the operation of the BVNPT until January 1, 2021; authorized the Governor to appoint an executive officer until January 1, 2020; specified that, if the BVNPT becomes inoperative or is repealed, the director of the DCA is authorized to assume the duties of the BVNPT; required the BVNPT to submit specified reports to the Legislature until 2020; authorized the DCA director to evaluate the BVNPT's licensing program; required BVNPT staff to meet periodically with the DCA's Division of Investigation; and authorized the DCA director to determine the need for and to implement necessary changes to the BVNPT's enforcement program.

AB 178 (Bonilla), Chapter 429, Statutes of 2015 was an urgent bill that removed the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician to open the candidate pool for executive officers.

AB 179 (Bonilla), Chapter 510, Statutes of 2015 required the DCA internal audit unit to review the BVNPT's finances, required the DCA to appoint a third-party contractor to monitor and evaluate the BVNPT's administrative and enforcement processes, gave the BVNPT a protracted two-year extension until January 1, 2018, and merged the LVN and PT funds to avoid the need for an immediate fee increase.

#### **ARGUMENTS IN SUPPORT/OPPOSITION:**

While the Committee has not received any arguments in support or opposition to the current bill, some comments have been submitted to the Committee that are under review.

**SUNSET ISSUES FOR CONSIDERATION:**

The committee background paper for the BVNPT's sunset review hearing raised 25 issues and may be considered going forward. For additional discussion, please refer to the *2021 Background Paper for the Board of Vocational Nursing and Psychiatric Technicians* ([abp.assembly.ca.gov/jointsunsethearings](http://abp.assembly.ca.gov/jointsunsethearings)).

**AMENDMENTS:**

- 1) *Technical Changes*. There are a number of technical and non-substantive changes submitted by the BVNPT. The Committee may wish to amend the bill as follows:

Page 3, after line 29, insert:

*SEC. 5. Section 2859 of the Business and Professions Code is amended to read:*

**2859. (a)** The practice of vocational nursing within the meaning of this chapter is the performance of services requiring those technical, manual skills acquired by means of a course in an approved school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician, or registered ~~professional~~ nurse, as defined in Section 2725.

*(b)* A vocational nurse, within the meaning of this chapter, is a person who has met all the legal requirements for a license as a vocational nurse in this state and who for compensation or personal profit engages in vocational nursing as *defined under subdivision (a).* ~~the same is hereinabove defined.~~

*SEC. 6. Section 2860.5 of the Business and Professions Code is amended to read:*

**2860.5.** A licensed vocational nurse when directed by a *licensed* physician and surgeon may do all of the following:

(a) Administer medications by hypodermic injection.

(b) Withdraw blood from a patient, if ~~prior thereto such~~ *the licensed vocational* nurse has been instructed by a *licensed* physician and surgeon and has demonstrated competence to ~~such the licensed~~ physician and surgeon in the proper procedure to be employed when withdrawing blood, or has satisfactorily completed a prescribed course of instruction approved by the board, or has demonstrated competence to the satisfaction of the board.

(c) Start and superimpose intravenous fluids if all of the following additional conditions exist:

(1) The *licensed vocational* nurse has satisfactorily completed a prescribed course of instruction approved by the board or has demonstrated competence to the satisfaction of the board.

(2) The procedure is performed in an organized health care system in accordance with the written standardized procedures adopted by the organized health care system as formulated by a committee which includes representatives of the medical, nursing, and administrative staffs. "Organized health care system," as used in this section, includes facilities licensed pursuant to Section 1250 of the Health and Safety Code, clinics, home health agencies, physician's offices, and public or community health services. Standardized procedures so adopted will be reproduced in writing and made available to total medical and nursing staffs.

*SEC. 7. Section 2860.7 of the Business and Professions Code is amended to read:*

**2860.7.** (a) A licensed vocational nurse, acting under the direction of a *licensed* physician *and surgeon* may perform: (1) tuberculin skin tests, coccidioidin skin tests, and histoplasmin skin tests, providing such administration is within the course of a tuberculosis control program, and (2) immunization techniques, providing such administration is upon standing orders of a supervising *licensed* physician *and surgeon*, or pursuant to written guidelines adopted by a hospital or medical group with whom the supervising *licensed* physician *and surgeon* is associated.

(b) The supervising *licensed* physician *and surgeon* under whose direction the licensed vocational nurse is acting pursuant to subdivision (a) shall require ~~such~~ *the licensed vocational nurse to do all of the following:*

(1) Satisfactorily demonstrate competence in the administration of immunizing agents, including knowledge of all indications and contraindications for the administration of such agents, and in the recognition and treatment of any emergency reactions to such agents which constitute a danger to the health or life of the person receiving the *immunizations*. ~~immunization; and~~

(2) Possess such medications and equipment as required, in the medical judgment of the supervising *licensed* physician and surgeon, to treat any emergency conditions and reactions caused by the immunizing agents and which constitute a danger to the health or life of the person receiving the immunization, and to demonstrate the ability to administer such medications and to utilize such equipment as necessary.

(c) Nothing in this section shall be construed to require physical presence of a directing or supervising *licensed* physician *and surgeon*, or the examination by a *licensed* physician *and surgeon* of persons to be tested or immunized.

*SEC. 8. Section 2866 of the Business and Professions Code is amended to read:*

**2866.** An applicant for a ~~licensed~~ vocational nurse license shall comply with each of the following:

[(a)-(d) are unchanged]

*SEC. 9. Section 2867 of the Business and Professions Code is amended to read:*

**2867.** An applicant for a license authorizing ~~him to~~ *the* practice of vocational nursing in this State under this chapter, upon the filing of ~~his~~ *an* application *for a vocational nurse license on a form prescribed by the board*, shall pay the fee required by this chapter.

*SEC. 10. Section 2867.6 of the Business and Professions Code is amended to read:*

**2867.6.** After receiving the results of having passed the examination and upon receipt of the initial license fee required by subdivision ~~(e)~~ *(h)* of Section 2895, the board shall issue a receipt or temporary certificate which will serve as a valid permit for the licensee to practice under this chapter.

*SEC. 11. Section 2878.1 of the Business and Professions Code is amended to read:*

**2878.1.** (a) If a licensed vocational nurse has knowledge that another person has committed any act prohibited by Section 2878, the licensed vocational nurse shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a licensed vocational nurse shall report to the board the suspension or termination for cause, or resignation for cause, of any licensed vocational nurse in its employ. In the case of licensed vocational nurses employed by the state, the report shall not be made until after the conclusion of the review process specified in Section ~~52.3~~ *52.6* of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (d) and shall not be subject to discovery in civil cases.

[(c)-(h) are unchanged]

Page 4, after line 17:

*SEC. 15. Section 4502.1 of the Business and Professions Code is amended to read:*

**4502.1.** A psychiatric technician, working in a mental health facility or developmental disability facility, when prescribed by a *licensed* physician and surgeon, may administer medications by hypodermic injection.

*SEC. 16. Section 4502.2 of the Business and Professions Code is amended to read:*

**4502.2.** A psychiatric technician, when prescribed by a *licensed* physician and surgeon, may withdraw blood from a patient with a mental illness or developmental disability if the psychiatric technician has received certification from the board that the psychiatric technician has completed a prescribed course of instruction approved by the board or has demonstrated competence to the satisfaction of the board.

*SEC. 17. Section 4502.3 of the Business and Professions Code is amended to read:*

**4502.3.** (a) A psychiatric technician, when prescribed by a *licensed* physician and surgeon, may perform the following activities on a patient with a mental illness or developmental disability:

(1) Tuberculin, coccidioidin, and histoplasmin skin tests, providing the administration is within the course of a tuberculosis control program.

(2) Immunization techniques, providing the administration is upon the standing orders of a supervising *licensed* physician and surgeon or pursuant to written guidelines adopted by a hospital or medical group with whom the supervising *licensed* physician and surgeon is associated.

[no changes to subdivision (b)]

Page 4, after line 23:

*SEC. 18. Section 4510 of the Business and Professions Code is amended to read:*

**4510.** (a) The board shall issue a psychiatric technician's license to each applicant who qualifies ~~therefor~~, and, if required to take it, successfully passes the examination given pursuant to this chapter. The board shall also issue a psychiatric technician's license to each holder of a psychiatric technician license who qualifies for renewal pursuant to this chapter and who applies for renewal.

(b) After the applicant passes the examination and upon receipt by the board of the initial license fee required by subdivision ~~(e)~~ (h) of Section 4548, the board may issue a receipt or temporary certificate that shall serve as a valid permit for the licensee to practice under this chapter.

*SEC. 19. Section 4521.2 of the Business and Professions Code is amended to read:*

**4521.2.** (a) If a psychiatric technician has knowledge that another person has committed any act prohibited by Section 4521, the psychiatric technician shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.



(b) Any employer of a psychiatric technician shall report to the board the suspension or termination for cause, or resignation for cause, of any psychiatric technician in their employ. In the case of psychiatric technicians employed by the state, the report shall not be made until after the conclusion of the review process specified in Section ~~52.3~~ 52.6 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. The reporting required herein shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (d), and shall not be subject to discovery in civil cases.

[no changes to subdivisions (c)-(h)]

- 2) *Education Program Backlog.* Since at least 2011, the BVNPT has dealt with a large backlog in its program approval waitlist. During the BVNPT's 2011 sunset review, the Committees noted that there were 102 VN and 9 PT program applicants awaiting approval. During the BVNPT's 2014 sunset review, the BVNPT reported 135 VN and 10 PT programs awaiting approval. In 2015, it instituted a 2-year moratorium on new applications to get through its backlog. By the start of 2017, the BVNPT reported 23 VN and 1 PT program applicants awaiting assignment to an NEC, and 8 VN programs and 1 PT program that were actively working with an NEC.

As of March 2, 2021, the BVNPT had a backlog of 54 VN and PT programs awaiting the assignment of an NEC to begin the approval process. The anticipated wait times for the schools at the end of the line are difficult to calculate because it depends on how quickly NECs can approve the programs ahead in line, and even when fully staffed the BVNPT only has 6 NECs.

Since 2011, the BVNPT has indicated that the length of time for the approval process varies greatly. This is due to the lack of formal deadlines. For example, the Accreditation Commission for Education in Nursing (ACEN) has deadlines at various stages of the process, such as requiring the submission of the candidacy presentation within 1 year. The BVNPT imposes no similar requirement.

While the BVNPT has internal target times, approval is largely contingent on a program's ability to submit appropriate materials, as well as resubmit materials if necessary, in a timely fashion. The BVNPT cites inadequate curriculum as the most common reason that a school must resubmit materials.

There has also been some criticism directed at the BVNPT's approval process, suggesting that the rules, regulations, and requirements for approval have not always been clear, nor have they been applied consistently. In 2011, committee staff noted that the BVNPT may need to give assurances that its staff and NECs were applying rules, regulations, and requirements consistently.

During the BVNPT's last two sunset reviews, the issues relating to overall mismanagement and enforcement issues were prioritized, so the issue of program approvals was not raised. Still, BVNPT staff have acknowledged the problem. While many of the BVNPT staff recommendations are under review, it may be beneficial to ensure that programs on the

waiting list are engaged in the process, and if not, to allow other more engaged programs to progress. Therefore, the Committee may wish to amend the bill as follows:

Page 4, after line 10, insert:

***SEC. 13.** Section 2881.2 of the Business and Professions Code is added to read:*

***2881.2.** (a) The board shall maintain a list of inactive vocational nursing schools and programs seeking board approval.*

*(b) A vocational nursing school or program seeking board approval shall respond to the board within two weeks of each inquiry or request during all phases. A school or program that does not respond within two weeks shall be designated as inactive.*

*(c) A vocational nursing school or program seeking board approval that remains on the inactive list for ninety days shall be taken out of consideration for a new program and may only reapply after six months.*

**REGISTERED SUPPORT:**

None on file

**REGISTERED OPPOSITION:**

None on file

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