



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR

**Board of Vocational Nursing and Psychiatric Technicians**  
2535 Capitol Oaks Drive Suite 205, Sacramento, CA 95833-2945  
Phone 916-263-7800 Fax 916-263-7855 www.bvnpt.ca.gov



**ENFORCEMENT COMMITTEE MEETING  
AGENDA**

**September 29, 2020**

**2535 Capitol Oaks Drive  
Administrative Conference Room  
Sacramento, CA 95833**

**Time: 3PM –5PM  
OR UNTIL COMPLETION OF BUSINESS**

**Board Members**

**Present**

**Via Teleconference: Mr. Maxey, Board Member, Chair  
Ms. Rubalcava, Board Member**

**Staff Present:**

**Via Teleconference: Ms. Lyman, Assistant Executive Officer  
Ms. Wood, Enforcement Division Chief  
Mr. Prouty, Discipline Program Manager  
Mr. Agar, Enhance & Screen Unit Manager  
Ms. Doss, Licensee & Applicant Review Manager  
Ms. Higashi, Supervising Special Investigator  
Ms. Llamas, Probation Unit Manager  
Ms. Park, Enforcement Analyst  
Mr. Swenson, DCA Legal Counsel  
Ms. Saavedra, Administration Analyst**

**Please note: Time stamps at the end of the agenda items coordinate with the WebEx meeting recording.**

1. Call to Order and Introduction of Committee Members  
  
Mr. Maxey called meeting to order at 3:15 p.m. (9:56)
2. Review, Discussion and Possible Action - Petition process to clear the backlog (16:59)
3. Roundtable with Enforcement Managers

(23:54)

4. Cost Recovery Presentation and Discussion  
(30:45)

5. Strategic Plan Review  
(56:51)

6. Suggestions for Future Agenda Items

There are none. (1:16:00)

7. Schedule next Enforcement Committee Meeting.

January 12<sup>th</sup> 3 p.m. to 5 p.m. (Start at 1:16:19) (Scheduled stated at 1:18:00)

8. Adjournment.

Mr. Maxey adjourned the meeting at 4:22 p.m. (1:18:20)

**Waiver of Bagley-Keene Restriction on Teleconferenced Meetings Related to Declared Emergency–**

**(Executive Order N-29-20, March 4, 2020, paragraph 3.)**

Executive Order N-29-20 waives some requirements regarding the notification and access for teleconferenced public meetings. Specifically, it would allow a Board to conduct Board business via a telephonic meeting and allow the members to call in from private lines without making those numbers public or requiring the sites from which they call to be accessible to the public. One site must be posted as publicly accessible, and this public site need not include an appointed Board member.

***The mission of the California Board of Vocational Nursing and Psychiatric Technicians (Board) is to protect the public. Public protection is paramount to the Board and its highest priority in exercising its licensing, regulatory, and disciplinary functions. Towards this end, the Board ensures that only qualified persons are licensed vocational nurses and psychiatric technicians by enforcing education requirements, standards of practice, and by educating consumers of their rights.***



# Cost Recovery and Cite and Fine Enforcement Division

# Cost Recovery

The process that BVNPT uses to recover costs associated with investigating a complaint, sending it to the DAG for preparation and filing an accusation/petition to revoke probation, and the cost of the hearing.

Under Business and Professions Code section 125.3, an administrative law judge may award an agency the reasonable costs of its investigation and enforcement.

The Board cannot increase the amount of cost recovery beyond the administrative law judges order. The agency only has the power to reduce or eliminate the amount.

# The Board's Authority

BVNPT's statutes do not contain a specific statutory authorization relating to costs.

BVNPT's authority to collect costs in disciplinary cases is provided by Business and Professions Code section 125.3 which authorizes the administrative law judge to award costs in contested cases.

While it is the subject of some debate, this code section has usually been construed as not permitting the award of costs in cases of defaults or stipulations since an administrative law judge does not prepare a proposed decision in those cases.

# The Board's Authority

The disciplinary guidelines and uniform standards, which have the force of law under California Code of Regulations, Title 16, sections 2524 and 2579.10, contain a standard condition, i.e. 12, relating to cost recovery.

This standard condition applies to proposed decisions and not defaults or stipulations.

# Current Discipline Process

The Board's request for recovery is made to the presiding ALJ who decides how much of the Board's expenditures will be remunerated. The ALJ may award the Board full or partial cost recovery, or may reject the Board's request.

The ALJ orders Cost Recovery "due upon reinstatement," or as a part of the probation terms and conditions.

"Due upon reinstatement" means that we only are allowed to collect the funds if the licensee reinstates. The Board may require full payment as a condition precedent to issuance of the reinstated license or, in its discretion, may permit the reinstated licensee to establish a payment plan.

# Current Discipline Process

For those who have been ordered to pay, and have not done so, the Board may enforce the award through the tax refund offset program administered by the Franchise Tax Board (FTB).

BVNPT is required to send debtor three notices prior to sending the matter to FTB for collection

Upon collection, FTB sends the funds back to DCA and into the Board's budget.



# Current Probation Process

For probationers, the licensee can request a payment plan approved by the Board or its designee. Whether or not the licensee establishes a payment plan, they are responsible for paying the entire sum three months prior to the end of probation.

If the licensee fails to pay in full, the Board can revoke the probation as the licensee failed to follow the terms and conditions.

Licensees can request to extend their probation by up to a year to extend the amount of time they have to pay the cost recovery.

# Current Surrender Process

Licensees who are currently on probation are able to surrender their license. Licensees who have had an accusation filed may surrender their license as part of a stipulated settlement. There is no mechanism to surrender if they are not on probation or have an accusation filed.

Current surrender agreements states “Respondent shall pay the agency the balance of its cost of investigation and enforcement still due and owing in the amount of \$XX prior to the issuance of a new or reinstated license.”

This means we cannot collect if they surrender as it becomes due upon reinstatement.

# Current Cite and Fine Process

BPC § 125.9 authorizes the Board to add the amount of the assessed fine to the fee for license renewal. In the event that a licensee fails to pay their fine, a hold is placed on the license and it cannot be renewed without payment of the renewal fee and the fine amount.

This statute also authorizes the Board to take disciplinary action for failure to pay a fine within 30 days from the date issued, unless the citation is appealed. However, because the collection of the fines costs more than the fine itself, the Board is not currently using this method.

The Board also uses the FTB program to collect citation fines.

# Cost Recovery By The Numbers Discipline

	FY 2017/18	FY 2018/19	FY 2019/20
Total Enforcement Expenditures	\$4,834,752	\$5,685,000	\$6,469,028
Amount of Cost Recovery Ordered	\$532,798.76	\$580,111.00	\$897,238.44
Amount of Cost Recovery Collected	\$251,648.70	\$253,553.00	\$233,532.30
Board Reduced Fees	\$10,240.12	\$5,264.00	\$6,840.00

# Cost Recovery By The Numbers Discipline

Total Cost Recovery Currently Owed As of 6/30/20, and does not include FTB	\$4,344,070.63
Total Due Upon Reinstatement This is an approximation, as it changes daily as cases are added or licensees are reinstated	\$3,153,321.02
Total at FTB This is an approximation, as it changes daily as cases are added and funds collected	\$913,710.79

# Cost Recovery By The Numbers Discipline

	FY 2019/20
Potential Cases for Cost Recovery	281
Cases Recovery Ordered	185
Total Cost Recovery Ordered	\$897,238.44

# Cost Recovery By The Numbers Probationers

	Current
Amount Ordered	\$945,236.08
Amount Paid	\$165,55.05

# Cite and Fine By The Numbers

	FY 2017/18	FY 2018/19	FY 2019/20
Total Enforcement Expenditures	\$4,834,752	\$5,685,000	\$6,469,028
Amount of Fines Assessed	\$55,528.00	\$69,516	\$84,369
Amount of Fines Collected	\$90,441.22	\$36,695	\$50,530
Fees Reduced	\$750.00	\$1751.00	\$4,551



# Other Boards

- Accounting - Has regulations allowing costs to be recovered 120 days after decision is adopted.
- Respiratory Care Board- Uses a collection agency.

# Potential Opportunities

Additional regulations that give the Board authority to:

- Collect once the decision has been adopted. This could be for all cases, or for all cases moving forward.
- Update surrender forms to ensure we can continue to collect after surrender.
- Create minimums for payment plans, to ensure it does not cost the board more to process the check than the check is worth