



## **BVNPT RESPONSE TO THE LEGISLATURE'S SUNSET REVIEW BACKGROUND PAPER**

On Tuesday, March 9, 2021, the Joint Committee convened a Sunset Review Hearing for the Board of Vocational Nursing and Psychiatric Technicians (BVNPT). The Joint Committee also published a Background Paper, which posed issues and questions for the Board.

This document was reviewed and approved by the appointed Board on Tuesday, March 30, 2021.

**ISSUE #1: BUDGET PROJECTIONS.** The BVNPT's budget projections have been fluid since FY 2017-18, resulting in difficulties with long-term accuracy. Are there ways to improve the accuracy of the BVNPT's budget projections?

**Staff Recommendation:** The BVNPT should discuss identified issues with the current budget accounting process and discuss potential ways to improve budget projections.

**BVNPT RESPONSE:**

The BVNPT agrees with the Staff recommendation. Over the past year, the information from Fi\$Cal and the reports from the DCA Budget Office have improved in quality, quantity and timeliness. Staff will continue to work with DCA to improve communications and expects that the significant variances between FYs and between projections and actuals will decrease dramatically by the end of 2021.

**ISSUE #2: FUND CONDITION.** Despite recent fee increases, the BVNPT is concerned that it may still be operating with a budget deficit. What solutions are available to address the potential deficit?

**Staff Recommendation:** The BVNPT should continue to work with the Committees and stakeholders to determine the best solution to its potential budget deficit, such as instituting fees for any unreimbursed workload.

**BVNPT RESPONSE:**

- The Board authorized staff to start the rulemaking process to raise the applicant, licensee and CE providers fees, as published on our Board's 2021 Rulemaking Calendar. By our analysis, the amount and implementation date of these fee increases depends on several factors, most notably whether fees on educational programs are approved and when they are implemented.

- The 2019 fee increase was the first increase in over a decade. We did not factor in the increased pro rata contribution that accompanied the revenue increase. Finally, the Board was hit with the substantial and unexpected increase from the Attorney General's Office beginning September 1, 2019.
- Increased fees will enable BVNPT to immediately hire in our Licensing Division when a vacancy occurs, rather than the current practice of holding positions open for up to two months to achieve minimal salary savings. Processing times improve when we have a full staff.
- Many efficiencies have been employed this past year. We will examine the pros and cons of decreasing or eliminating our in-person Southern California board meetings and identifying venues that would not carry a cost to the Board. Our Northern California meetings are held in the DCA buildings, where we do not have to rent facilities. This should save approximately \$25,000 per meeting.
- The ability to email our licensees should save us approximately \$20,000 each year in printing and mail processing expenses.
- We project that within two to three years, Enforcement's historic backlog will be completely resolved, and costs should plateau and then decrease.

**ISSUE #3: GOVERNOR APPOINTMENT OF EXECUTIVE OFFICER. Should the Legislature reauthorize the BVNPT the authority to select its executive officer? If so, when?**

**Staff Recommendation: Given the BVNPT's prior history with the appointment of executive officers, the BVNPT should continue to work with the Committees, the Administration, and stakeholders to determine the appropriate timeline for the reinstatement of the BVNPT's authority to appoint an executive officer.**

**BVNPT RESPONSE:**

The current Board and staff work together productively and cooperatively. The Board is already in contact with the DCA to conduct an evaluation of the current EO, to be completed in November 2021. Given the strong improvements of the BVNPT's operations, and in reflection of the need for continued stability, the appointed Board believes that it is appropriate to resume or phase in its authority to appoint its Executive Officer, in consultation with the Governor's Office and the Committees upon the renewal of this Sunset.

**ISSUE #4: ONLINE MATERIALS. What impediments impact the BVNPT's ability to approve and post its online materials?**

**Staff Recommendation: The BVNPT should ensure that the public has accessible access to both current and historical meeting materials and other documents necessary for public participation.**

**BVNPT RESPONSE:**

The BVNPT agrees with the staff recommendation and identified the following:

- All content posted to the BVNPT web site as of July 1, 2019 is ADA-compliant.
- The retention policy for Board Meeting materials is 10 years, yet there is no retention policy for maintaining documents on the web site.

- The costs associated with remediating historical documents is based on a DCA-wide contracted price of \$5 per page.
  - There are approximately 4,747 enforcement documents totaling 70,263 pages uploaded to BreEZe and accessible as public documents. The estimated cost to remediate these documents is \$351,315.
  - Since July 1, 2019, all enforcement documents requested from the Attorney General's Office posted in BreEZe must be ADA-compliant when they are provided to the Board.
  - Since July 1, 2019, all enforcement documents requested from the Office of Administrative Hearings can be retrieved from a secure portal. All documents are ADA-compliant.

The BVNPT continues to do the following:

- Create templates for all reports provided to the Board Members and uploaded to the website.
- Develop and expand staff training to ensure staff create ADA-compliant work products. DCA has provided templates, meeting prep timelines, and staff training with the goal of posting all meeting materials 10 days prior to the meeting. BVNPT has made significant improvements in posting meeting materials to the public website within the ten-day notice period and is committed to improving its accessibility.

**ISSUE #5: NEC RECRUITMENT AND RETENTION. The BVNPT reports difficulty in recruiting and retaining nurse education consultants (NECs) due to non-competitive salaries. What changes are necessary to improve recruitment and retention?**

**Staff Recommendation: The BVNPT should work with the Committees to address identified issues with ongoing NEC recruitment.**

**BVNPT RESPONSE:**

The NECs work at a high level and should be compensated at a level commensurate with the expertise and experience they bring. This will greatly enhance recruitment and retention. The Board of Registered Nursing (BRN) shares this dilemma. Each recruitment for an NEC at both BRN and the BVNPT has required a Hire Above Minimum (HAM) request to ensure that the candidate is compensated at a rate higher than the minimum salary range listed below.

The current maximum salary for the NEC is approximately \$105,600 before benefits. In 2018, a high-level nursing program director at a community college made approximately \$132,800 before benefits. Directors of Nursing for private nursing programs can earn upwards of \$150,000 before benefits. These tend to be the strongest candidates for NECs, but the BRN and BVNPT can't compete with the salaries offered at the community college level, let alone private industry. Maintaining the full team of NECs is essential to BVNPT's ability to provide oversight to existing programs and approve new ones.

There are several nurse categories within state service that offer better compensation for less education and experience. This information may be found in Attachment 1.

- Salary range for NEC: \$7,034 - \$8,804 per month.
- Minimum Qualifications (at least one of the following):
  - Possession of an active, valid, California license as a registered nurse. Five years of active work experience in the field of nursing which must include at least three years as a member of the teaching faculty in a United States State-approved Registered Nurse, Practical Nurse, Vocational Nurse, or Psychiatric Technician program or in a regionally accredited post licensure program.
  - Five years of experience in the field of nursing, which must include at least three years as a clinical specialist, nurse practitioner, or in-service educator in a hospital, clinic, or private practice setting. and minimum education of a Masters' degree in Nursing or a related field from an accredited college or university.
- Knowledge and Abilities:
  - Knowledge of principles, practices, and trends in nursing education and nursing practice; Federal and State laws and regulations and Board policies which impact nursing education, nursing practice, and the health care of consumers.
  - Ability to provide a leadership role in the development, implementation, coordination, and evaluation of policies, programs, standards, and procedures of the Board; perform in-depth analysis of complex data related to nursing education, nursing practice, and the health and safety of consumers; prepare and present clear, concise, and objective reports in written and oral formats; use interpersonal and communication skills to function effectively with a wide range of individuals and groups including consumers, Board members, licensees, staff of other State and Federal agencies, and advocacy groups.

**ISSUE #6: LICENSING PROGRAM IMPROVEMENTS. What is the status of the implementation of the OCM recommendations?**

**Staff Recommendation: The BVNPT should update the Committees on its progress in implementing the OCM recommendations.**

**BVNPT RESPONSE:**

The OCM (now called the Organizational Improvement Office, or OIO) provided 16 recommendations on May 9, 2019, and BVNPT included the complete report with the initial Sunset Report. The BVNPT continues to implement these recommendations, and reports the status as follows:

- Eliminate/reduce the amount of all paper applications received.

- In 2019, Licensing received 4,333 paper applications and reduced that number to 2,397 in 2020; a 55 percent reduction.
- When applicants call the Board for any applications, they are directed to BreEZe to fill out online applications.
- In 2019, the BVNPT had 36,628 pieces of incoming mail and reduced it to 16,525 in 2020; a 45 percent reduction.
- Status: Ongoing.
- Streamline verification of licensure process.
  - The licensing management team increased efficiency by contacting other state boards and obtaining email contacts to eliminate mailing verifications and ensuring timely receipt by the correct entity.
  - Status: Ongoing.
- Consider eliminating licensure by Method 5.
  - Eliminating licensure by Method 5 reduces workforce applicant's ability to qualify for a vocational nurse license. For Method 5, applicants primarily use their work experience plus 54 hours of pharmacology to apply for licensure. The BVNPT does not receive many Method 5 applications and considers it an important factor of access to licensure which should be continued.
  - Status: Completed.
- Resolve the backlog of equivalency applications.
  - Equivalency processing changed after the OCM review. Specifically, equivalency applications are reviewed immediately to identify deficiencies. A letter is mailed to the applicant listing the deficiencies. It is the responsibility of the applicant to provide requested documentation timely. Failure to do so delays licensure.
  - In 2019, it took approximately 20 weeks to process equivalency applications. In 2020, that time was reduced to approximately 3 weeks.
  - Status: Completed.
- Interim permit reporting process (BPC Section 2872.2).
  - Status: Completed.
- False abandonment (applicant schedules test date and postpones test (CCR Section 2512)).
  - This occasionally occurs and does not create a significant backlog. The larger problem is that there is no limit on the number of exams an applicant can take, and if an applicant takes the examination every two years, their application remains valid.
  - The BVNPT would have to propose legislation to limit the number of examination attempts allowed per application filing or set a hard expiration date for the application.
  - Because there is no significant backlog, proposed legislation is not an immediate need.
  - Status: Ongoing.

- The endorsement process needs to be converted to online only (CCR Section 2517).
  - The BVNPT cannot require endorsement applicants to submit their information electronically as this would constitute underground regulations. The licensing technicians are trained to suggest that endorsees apply online and submit documents electronically.
  - The BVNPT will continue working with OIS to allow applicants to upload required documents in BreEZe.
  - Status: Ongoing.
- Lack of consistent training material.
  - The manager/supervisors continue updating training processes to ensure all team members receive consistent training. This is critical for onboarding new employees.
  - Training materials are living documents which need and receive ongoing review and refreshing.
  - Status: Completed and Ongoing.
- Lack of succession planning.
  - The BVNPT reviewed and updated all licensing duty statements and ensured that the entire licensing staff was cross-trained. This greatly reduces/eliminates work sitting on an employee's desk who may be out for a period of time.
  - Succession planning is on-going and continually addressed.
  - Status: Completed and Ongoing.
- Lack of understanding of rules and regulations for approval of VN application process.
  - On-going training for current and new employees addresses all aspects of licensing applications. The on-going cross-training process ensures that staff receive consistent information.
  - Status: Ongoing.
- Communication between first level management and staff.
  - A new licensing manager started February 18, 2020. This manager brought 13 years of licensing experience from another state department and her first undertaking established cross-training for the entire team.
  - Status: Ongoing.
- Limited growth potential within BVNPT leading to a loss of talent and decreased engagement.
  - In July 2020 a Staff Services Manager I position from the Administrative Services Unit was reclassified/redirected to the Licensing Division. This created another Supervising Program Technician II (SPT II) position to right-size the number of licensing technicians assigned to one SPT II. This also created promotional

- opportunities for Program Technicians II (PT II), and a current PT II earned the promotion after a competitive interview process.
- The 2019 all-staff meeting presented information on the hiring process from beginning to end. This information prepared staff to promote within the BVNPT or seek promotional opportunities elsewhere. As with any agency, the key is to offer staff the opportunity for promotion, whether at BVNPT or not, to increase engagement.
- All state agencies encounter this challenge as they are limited on the number of allocated positions.
- Status: Ongoing.
- QBIRT and BreEZe training for licensing leadership to help develop licensing team.
  - The BVNPT leveraged training in developing BVNPT-specific QBIRT reports on September 26, 2019 for all managers and analysts in licensing responsible for creating QBIRT reports.
  - Status: Completed.
- System where first level management can hold staff accountable.
  - The manager and supervisors developed customer service training modules that all licensing staff attend. Additionally, they reviewed all work processes in licensing, and based on position classification, they updated all duty statements to reflect work processes so that all duties were consistent with the classification. This “leveled the playing field” for performance expectations as everyone had the same duty statements.
  - The manager and supervisors use an Access database to log all work assigned to licensing staff. Work is assigned on Monday with a due date of that Friday. This allows complete tracking of all work including assigned/completion dates.
  - Status: Completed.
- BreEZe improvements.
  - Updating BreEZe is a process that can take several months or years as the BVNPT competes with the other DCA Boards and Bureaus that use BreEZe.
  - Status: Ongoing.
- Continuing Education audit process.
  - The restructured CE Audit began June 19, 2019 and halted due to the pandemic in April 2020. The BVNPT audits 2.5% of the renewing licensing population for both VNs and PTs. We audited approximately 1,100 licensees and 52 received citations/fines for non-compliance.
  - Status: Completed.

**ISSUE #7: LICENSEE EMAIL REQUIREMENTS. The BVNPT requests the authority to require an email address for communication with licensees. Should the BVNPT be granted the authority, and would it need a statutory change?**

**Staff Recommendation: The BVNPT should work with stakeholders to determine what size of the population would be unable to comply with an email requirement and what alternatives those licensees may have.**

**BVNPT RESPONSE:**

Currently, the BVNPT receives 98 percent of renewals online, as BreEZe requires an email account. Registration for the NCLEX-PN examination also requires an email address, so the BVNPT is confident that a majority of licensees have and use an email address. Additionally, email addresses may not change as often as home/mailling addresses which reduces the risk of information not reaching the licensee.

Individuals without an email address can contact the BVNPT staff and staff can insert a standard generic email value associated with the Board to allow the individual to proceed through the online application process via BreEZe. This email value would not actually be a real email address where the individual can get messages, and if the person ever obtains a valid email address, the new valid email address can be entered into BreEZe.

The Board will continue to mail enforcement actions or other confidential communications addressed to a specific individual.

The BVNPT intends to notify licensees of the email change via the monthly renewal postcard mailed monthly. This postcard can direct licensees to the BVNPT web site that will have instructions for licensees to obtain a free email address.

Prior to 2018, the BVNPT mailed a seven-page license renewal letter. In 2018, the letter was reduced to one page and beginning January 1, 2020, the renewal was reduced to a postcard. The cost for processing the mailout of the renewals is below, and once the email address requirement is implemented, the cost should be drastically reduced:

FY	Total
2017-18	\$ 57,476.54
2018-19	\$ 57,494.47
2019-20	\$ 55,598.00
2020-21	\$ 32,834.35
<i>(As of 2/28/2021)</i>	

**ISSUE #8: RESPIRATORY CARE FUNCTIONS.** The BVNPT was working with the Respiratory Care Board on a scope of practice issue, but progress has stalled at the regulatory level. Should VNs be authorized to care for ventilated patients and adjust ventilators? Should PTs also be allowed?



**Staff Recommendation: The BVNPT should continue to work with the Committees, the Respiratory Care Board, and stakeholders to determine the necessary clarifications surrounding the care of ventilated patients, including distinctions between home care and other settings.**

**BVNPT RESPONSE:**

The BVNPT agrees with the Committees that renewed and regular communication between BVNPT and RCB, the facilities and care providers, and the California Department of Public Health (CDPH) is critically needed. This communication halted during the pandemic. It is our intention and commitment to resume communications and come to an agreement before we make any requests for legislative steps forward.

It comes as no surprise that VNs and PTs have provided ventilator support to patients for many years and that the care provided is well within the respective scopes of practice. This care differs from the care the Respiratory Therapist provides when managing a ventilator. The Respiratory Therapist determines the necessary settings for the patient whereas the VN or PT then assures that the equipment is functioning properly, settings are as ordered, suction patients as needed, and monitors infection prevention. For example, VNs have been managing this aspect of ventilator care, especially for ventilator-dependent children enabling them to attend main stream classes. This interdisciplinary care creates positive patient outcomes.

**ISSUE #9: FAIR CHANCE LICENSING ACT. What is the status of the BVNPT's implementation of AB 2138 (Chiu/Low), the Fair Chance Licensing Act, and are any statutory changes needed to enable it to better carry out the intent of the act?**

**Staff Recommendation: The BVNPT should provide an update on its implementation of the Fair Chance Licensing Act, as well as relay any recommendations it has for statutory changes.**

**BVNPT RESPONSE:**

The BVNPT submitted the regulation package for AB 2138 for final review by Agency on March 10, 2021. The BVNPT Enforcement staff continue to gather the required statistics which will be included in the DCA Annual Report.

**ISSUE #10: INDEPENDENT CONTRACTORS. Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for BVNPT licensees working as independent contractors?**

**Staff Recommendation: The BVNPT should inform the committees of any discussions it has had about the *Dynamex* decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.**

**BVNPT RESPONSE:**

The Board has not had any official discussions on *Dynamex*, but the nature of the work of our licensees is not likely to meet the ABC criteria from AB 5, as they

practice under the supervision and direction of a physician or registered nurse at medical facilities, for home health providers or in other healthcare settings where they are considered employees.

**ISSUE #11: VN AND PT PROGRAM APPROVAL.** The BVNPT is one of a few licensing boards that continues to actively approve educational programs. Should the BVNPT continue to approve VN and PT programs, and if so, are there improvements that should be made?

**Staff Recommendation:** The BVNPT should continue to work with the Committees, the BPPE, accreditation entities, and stakeholders to determine whether overlapping functions and redundancies can be eliminated and whether there are additional improvements to be made.

**BVNPT RESPONSE:**

The BVNPT agrees with the staff recommendation and is committed to working in conjunction with the BPPE and BRN, and the Committee staff to develop efficiencies. At this writing, BVNPT has entered into Memoranda of Understanding with both BPPE and BRN to share information on schools and licensees.

**ISSUE #12: PROGRAM APPROVAL FEE.** The BVNPT currently expends significant resources on the approval of VN and PT educational programs but does not charge a fee. Should the BVNPT be authorized to charge fees for program approval, and if so, what amounts?

**Staff Recommendation:** The BVNPT should continue to work with the Committees, the BPPE, other school approval entities, and stakeholders to determine the appropriate fee amount for educational program approval, if any. The BVNPT should also work with public education institutions to determine ways to reduce the impact on programs that may have limited resources. The Committees may also wish to explore alternative options, such as reimbursement from BPPE for VN and PT program approval it conducts for institutions overseen by BPPE or the elimination of overlapping processes to reduce workload.

**BVNPT RESPONSE:**

The BVNPT agrees with the staff recommendation and plans to resume stakeholder communications before the 2021 House of Origin deadline, and work with the Committees to determine appropriate fee amounts and implementation plans, as well as alternative options. Staff analyzed the NEC workload associated with the major processes, and this information is found in Attachment 2.

**ISSUE #13: PROGRAM APPROVAL BACKLOG.** The BVNPT currently has a large backlog of VN programs awaiting approval. What changes are needed to clear the backlog and prevent future backlogs?

**Staff Recommendation:** The BVNPT should continue to work with the Committees to develop and implement a plan to improve its school approval processes and clear the backlog.

### **BVNPT RESPONSE:**

The BVNPT believes that the following concepts would create a more efficient system, allowing for more schools to operate, and produce more qualified nurses for the workforce. The obstacle is the amount of time these changes would require for legislation and rulemaking. The BVNPT respectfully suggests that the Legislature consider authorizing a three-year pilot program that takes effect immediately.

### **CURRENT PROCESS**

When an organization wants to open a new program, it files a rudimentary letter of intent with the Board. Little detail is required other than the name of the program and the proposed location. Upon receipt, staff acknowledges receipt of the letter, notifies the proposer of their position on the waiting list, an estimated waiting time, forwards the Practice Act, and encourages them to review the laws and regulations to understand the overall process.

Prior to the 2017 Sunset Review, the BVNPT management imposed a moratorium on accepting new proposals; this policy was broadly criticized, and essentially restricted opportunities for programs to apply for approval.

The existing waiting list policy was intended to ensure fairness and equity, allowing big and small, public and private programs to compete on a first in-first, first-out basis. The BVNPT welcomes a collaborative discussion on a re-structured policy that maintains fairness and equity.

The amount of time involved in approving programs varies widely from proposal to proposal. For example, if a program does not have the required documents, i.e., curriculum, and resources in place when it is their turn, there is a back-and-forth communication between the program and the NEC that can take months and even up to 18 months before the program is approved. If the program has the documents and resources, the approval time may take as little as eight months.

### **POSSIBLE IMMEDIATE CHANGES:**

- Consider public and private programs separately.
  - The public programs tend to have strong results in terms of graduation and NCLEX-PN passage, often located in areas of higher need (rural) and charge considerably lower fees.
  - Private schools generally have greater resources and charge students between \$32,000 and \$38,000 in tuition for their programs. This means that a program with four cohorts of 20 students each year charging \$34,000 makes more than \$2.7 million in gross revenues. Unlike the public programs, private for-profits have the ability to increase their tuition at any time.
  - The amount of work involved does not vary greatly between public and private programs, or even large or small programs. This change would

- move the public programs (i.e., those at Community Colleges or through County Offices of Education) to a separate list, decreasing their wait time. The NECs would be assigned at least one public school at a time until that list is resolved. In other words, when the SNEC assigns three new programs to NECs, they would each receive one public and two private programs to work on until there were no pending public programs.
- This change could be implemented immediately, via Board action.
  - Time frame: Approve final policy at November 2021 Board Meeting.
  - If the BVNPT is authorized to charge the programs a fee, establish a filing fee of 25% of the total approval fee.
    - The BVNPT believes that an active school fee structure, like the one the Board of Registered Nursing (BRN) implemented in 2014, would ensure that proposers have the necessary documentation and resources in place to be successful. The BRN requires the entire school approval fee with the letter of intent. It is likely that the current lack of fees and awareness that such are anticipated, may prompt programs to apply before the fees go into effect.
    - This change would require statutory action, and subsequent rulemaking.
    - Time frame: If the fee is approved via the BVNPT Sunset bill, and chaptered in October 2021, this could be implemented as early as January 2022.
  - The BVNPT must be more transparent with list status and process information.
    - Twice a year, staff reaches out to the programs on the list to provide status updates and ascertain whether they wish to continue to wait. If the Board cannot contact the proposers within 60 days, the proposal is dropped from the list.
    - Once the proposal reaches #10, staff reaches out to inform the applicant that they should start to prepare the curriculum, develop policies and hire a qualified Program Director. Proposers are free to contact the BVNPT any time to inquire about their status.
    - The Approval process starts when an NEC is assigned a program. This approval process moves quickly if the program demonstrates they have the necessary resources and all required documentation is submitted completely, correctly, and in a timely manner. Staff estimates that the best-case scenario at this phase is approximately seven months. The worst-case scenario to date exceeded 18 months. The process slows or comes to a halt when programs do not respond to the NEC with the required information.
    - The Board should upload the waiting list on its website with a comprehensive list of required documents/resources, the region of the proposed programs, and a brief description of the approval process.

- Time frame: Within 30 days.
- The BVNPT should engage with DCA's Organizational Improvement Office to analyze all processes and create new efficiencies.
  - The BVNPT starts this process in June 2021.

### **NEW APPROVAL PROCESS: SCENARIO FOR DISCUSSION**

- Step 1: Initial application: Filing Fee=\$5,000
  - To propose a new program, a school/organization must submit letter of intent and completed questionnaire with fee. The fee reflects the NECs work in assessing the application.
- Step 2: Application Assessment
  - Within 30 days of receipt, the BVNPT will assess and score questionnaire based on an established scale, including but not limited to regional supply and demand, equity considerations, and program readiness.
  - The questionnaire(s) and ranking will be discussed and approved at the next regularly-scheduled Education and Practice Committee meeting.
  - Targeted time from receipt of application to assignment: four to six months
- Step 3: Assignment to an NEC: Fee=\$5,000
  - Assigned NEC provides a list of deliverables with suggested parameters and provides orientation on Practice Act. This list includes the following elements:
    - A qualified Program Director (PD), who is the principal point of contact with the BVNPT.
    - PD completes BVNPT's Orientation.
    - Complete curriculum.
    - Complete set of policies (e.g., admissions, attendance, student tuition, grievances, graduation).
    - When PD training is completed and fee is received, application moves to last phase.
    - Targeted time: six to twelve months
- Step 4: Final Approval: Final fee= \$10,000
  - Assigned NEC works with the Program Director to complete all required information, and confirm finalization of all resources, staffing, facilities and information. Upon confirmation and receipt of fee, program is forwarded to Executive Officer (EO) for approval of an initial cohort admission.
  - Targeted time: Up to three months

### **MANDATORY COMMUNICATION POLICY**

Programs must respond to NECs within two weeks of each inquiry or request during all phases. At a minimum, this response must confirm receipt of request

and provide an estimate of time needed to complete the request. A program should respond within the week to the NEC and provide complete and correct information

**SUGGESTED STEPS:**

- NEC emails specific request with a deadline.
- If the Program Director does not respond within two weeks, the NEC follows up with a phone call.
- If the Program Director does not respond to the phone call within two weeks, they are placed on an Inactive list, and the NEC ceases work on this proposal until all requested information is received and approved.
- If a Program remains on the Inactive list for 90 days, they are taken out of consideration for a new program and may only reapply after six months.
- This must be approved by the Board and established in regulations.
- Targeted time to implement regulations: At least one year.

**INTERNAL ISSUES TO EXPLORE:**

- Create a Universal Curriculum.
- Focus some NECs solely on Program Approval work, rotating this responsibility allowing for consistency.
- Create a new policy for existing programs to create expansion campuses.
- Set a temporary (two-year) moratorium on accepting new applications.
- Establish a policy aimed at equalizing the system i.e. public programs vs. private programs.
- Create a public service incentive program.
- Explore alternatives such as third-party services to process and approve schools.
- Examine labor-intensive work processes, i.e., programs on provisional status.
- Increase and/or diversify staff involved in the approval process.
- Work with DCA Budgets to establish a system of need-based fee reductions or waivers.

**OTHER FACTORS REQUIRING STATUTE AND RULEMAKING:**

- Maximum proportion of simulation hours allowed for Clinical Experience.
- Policy on admissions and time limits for schools on Provisional Approval.
- School and Program Fees.
- Cite and Fine authority over educational programs.

**EXTERNAL FACTORS OF INTEREST:**

- Work with Legislature and stakeholders to discuss:
  - Budget offset for public program fees.

- Ceiling on student tuition for private institutions.
- Increased/enhanced Cal Grants for Career Technical program students.
- Possible partnerships with nonprofits serving emancipated foster youth or other disadvantaged individuals to encourage career choices.
- Partnerships with all health care licensing entities, workforce investment board and career technical education providers.

**QUESTION OF ACCREDITATION:**

When the BVNPT approves a program, it evaluates new material and information. When an accreditor evaluates a program or school, they receive finished and approved information, and base their decisions on the regulatory board's approval. Schools and programs pay for accreditation, and since the BVNPT has already approved their program, there is a quicker approval process for accreditation.

- Recommendation: Work with BRN and BPPE to establish consistent policies for information sharing, and possible fee waivers for national accreditation.
- Targeted Time frame: No later than September 30, 2021.

**ISSUE #14: BARRIERS TO LICENSURE AND EMPLOYMENT. What barriers currently exist to licensure and workforce pathways? Are there BVNPT policies that could address barriers for students?**

**Staff Recommendation: The BVNPT should discuss whether it is appropriate to establish guidelines or criteria governing tuition costs of VN and PT programs and whether such guidelines and criteria would be more appropriately addressed and enforced by BVNPT or the Bureau for Private Postsecondary Education. Further, the BVNPT should discuss any other statutory or regulatory policy levers that could support the expansion of affordable educational options for students.**

**BVNPT RESPONSE:**

The BVNPT believes that the high tuition at many of the private for-profit programs continues to be a key barrier to access, constricting the pathways to licensure. We are happy to discuss this issue and suggest that this conversation involve at least BRN and BPPE and the Committees. Other avenues to discuss include an examination of the availability of financial aid, incentivizing the schools to create more "earn and learn" opportunities for students, and loan forgiveness programs for public service commitments. The BVNPT suggests partnering with the Health Workforce Initiative, coordinated by the California Community College Chancellor's Office (<https://ca-hwi.org>). The BVNPT would also suggest working or sharing information with other organizations, such as the Healthcare Workforce Development Division (HWDD) in OSHPD that administers student scholarships, loans for professionals, and grants for organizations.

**ISSUE #15: EDUCATION CITE AND FINE.** The Committees have previously recommended against instituting an education cite and fine authority due to overlap with the BPPE. Should the issue be revisited since the Committees are reviewing the BPPE as well?

**Staff Recommendation:** The BVNPT should continue to work with the Committees and the BPPE through this sunset review to determine whether a cite and fine program for educational programs would be beneficial.

**BVNPT RESPONSE:**

The BVNPT believes cite and fine authority gives the NECs a critical tool to work with their assigned programs in resolving serious health and safety issues and other regulatory noncompliance. Most programs cooperate quickly and fully with the NEC's identification and recommendations of violations but there are exceptions. The NECs would exercise the authority to cite noncompliant programs to ensure timely and complete response. Most violations would be subject to orders of abatement. The BVNPT does not view this as a significant source of ongoing revenue and will explore possible methods to utilize the funds in a way that they provide support to the community, like a scholarship program for students in underserved regions, or expansion of the existing Vocational Nurse Scholarship administered by OSHPD.

**ISSUE #16: LACK OF CLINICAL PLACEMENTS.** VN and PT programs are required to ensure that students obtain supervised clinical experiences that correlate to their classroom courses, but clinical placements can be difficult to obtain. Are changes needed to ensure the availability of clinical placements?

**Staff Recommendation:** The BVNPT should work with the Committees and the BRN through this sunset review to determine the clinical placement outlook and determine what steps, if any, are needed to ensure the ongoing availability of clinical placements.

**BVNPT RESPONSE:**

While this is out of BVNPT's jurisdiction, the BVNPT agrees that it is appropriate and essential to take an active role in the statewide discussion of this matter as long as this is consistent with the Board's regulatory authority.

The paucity of clinical placements was problematic before 2020, and the pandemic exacerbated the problem with many facilities closing their doors to students. Neither BVNPT nor BRN regulate the clinical facilities, and do not have access to a database of the resources available.

**POSSIBLE SOLUTIONS:**

- Work in cooperation with BRN and other healing arts programs that require clinical placements to partner with the California Community Colleges to create a regional system of supply and demand coordination of these resources.
- Work with the Legislature to suggest concepts, such as a tax incentive program, to encourage facilities in underserved areas to accept students.



- Work in partnership with BRN and the National Council of State Boards of Nursing (NCSBN) to standardize and clarify appropriate experiences that will satisfy clinical requirements and examine potential new experiences to meet requirements.
- Work with BRN and the California Department of Public Health to suggest new possibilities for placements especially in underserved areas. Explore creating new partnerships with tribal governments and rural county governments to address the lack of resources in these areas.
- Consider assessing and prioritizing regional needs in the approval of new programs.
- Work in partnership with the BRN and NCSBN to clarify scope-appropriate types of clinical experience utilizing telehealth, and possibly examining the overall scope of practices for possible modification.

**ISSUE #17: CLINICAL SIMULATION. The use of simulated clinical experiences is becoming more common, particularly during the COVID-19 pandemic. Should there be standards for the use of clinical simulation?**

**Staff Recommendation: The BVNPT should discuss its current process for overseeing simulation and whether standards can and should be established.**

**BVNPT RESPONSE:**

The use of simulation to supplement clinical experience is viable and a necessary factor for nursing schools. The BVNPT agrees that programs should be able to provide both to their students, and currently monitors programs with the NECs working with the schools on a case-by-case basis. Unlike BRN, the BVNPT does not have a maximum percentage of hours that a program may provide but has stated that it is inappropriate for a student to graduate without actual hands-on experience with live patients. This will require regulatory changes and BVNPT is currently working on rulemaking to establish a ceiling as part of a comprehensive package to update and clarify the regulations pertaining to the nursing education programs.

The BVNPT held two in-service sessions about simulation for the Board Members and stakeholders and interested parties. These sessions provided a thorough understanding of medical simulation technology and its application in nursing education to aid the Board in developing and implementing policy.

Moving forward, the BVNPT suggests a partnership to create a coordinated system for simulation education and management, such as regional coordination centers, and creation of incentives for programs to share their simulation facilities with neighboring programs.

**ISSUE #18: ENFORCEMENT CASE BACKLOG. Due to recent staff turnover, the BVNPT experienced a case backlog. Now that the positions are filled, what is the status of the backlog?**

**Staff Recommendation: The BVNPT should provide an update on its progress in clearing the backlog.**

**BVNPT RESPONSE:**

BVNPT is working diligently to clear its backlog. All internal BVNPT investigative cases from 2019 are closed. We believe that all 2020 cases will be closed no later than August of 2021. The time to close cases for our Intake and Enhanced Screening and Special Investigations units is consistently lower than it has been since the Monitor's report.

*Expert Witness*

There was a tremendous effort to recruit more expert witnesses due to a backlog in cases that require expert review. A fully staffed expert witness program will enable BVNPT to get cases to the AG's office faster.

The recently created marketing/outreach plan was successful. We hope to have a robust expert witness program with experts that specialize in the following by August of 2021:

- Pandemic/Blood borne pathogens
- Medical Spas/Botox/Fillers
- State hospitals
- State Prisons

**ISSUE #19: AUDITS OF CE PROVIDERS. The BVNPT does not currently audit continuing education providers. Should the BVNPT implement a process for doing so?**

**Staff Recommendation: The BVNPT should continue to work with the Committees to discuss the possibility of auditing CE providers going forward.**

**BVNPT RESPONSE:**

The BVNPT has encountered incidents of Continuing Education Provider (CEP) fraud and disciplined the bad actors. For example, in 2018, the BVNPT received reports about two Intravenous Treatment and Blood Withdrawal certification providers who had deliberately failed to provide the mandatory number of instruction hours. The complaints were investigated, and the CEPs were ordered to cease and desist, losing their authorization to provide CE.

Auditing the Continuing Education Providers provides a better quality and compliance control, and this is especially true of online providers. The BVNPT currently contracts with 97 CE Providers. The initial work would involve research and analysis on appropriate audit criteria, and some surveying of other nursing boards. This creates significant initial impact on staff resources, and the BVNPT would need to assess whether the ongoing impact would be absorbable or whether additional staff resources would be needed.

The BVNPT has also discussed the practicality of contracting with a third-party CE system, which would take over the responsibility of managing providers. We assume this would entail auditing functions. These services charge a direct fee to

the licensees or charge a fee to the providers. We continue to be interested in this concept if it does not charge licensees

During its March 9, 2021 hearing, the Board was asked about the inclusion of a conflict of interest policy in CE provider agreements. The BVNPT is committed to working with the Department of Consumer Affairs and the Committees to develop and enforce such a policy.

**ISSUE #20: FORMAL DISCIPLINE TIMELINES. The BVNPT is unable to meet its target cycle times for cases referred for formal discipline, also known as Performance Measure 4 (PM4). Can the BVNPT improve its processes to meet its target, and should PM4 be modified to better reflect the different stages of an enforcement case?**

**Staff Recommendation: The BVNPT should discuss whether it can work with the DCA to parse out PM4 in a way that allows a better accounting of case timelines.**

**BVNPT RESPONSE:**

With regard to the PM 4 Statistics, the BVNPT is still processing the backlog of cases sent to the AG's office. As these older cases close, the PM 4 continues to rise. Specifically, the PM 4 statistic is based on the average days open of the cases that close out during the specific time frame being measured.

For example, if we close out a case that's been open for 200 days, and one that's been open for 1,000 days, the PM 4 would be 600 days. This leads to high PM 4 numbers as we work through our backlog of older cases. Another possible scenario is if the BVNPT closes out several cases in our Fast Track Program during the measured time frame, which generally move much faster, the PM 4 could drop noticeably due to no older cases closing during that time.

Currently, BreEZe will not allow us to break up the PM 4. There are some possible changes that could be made in the system, and possibly some internal coding workarounds. The BVNPT will raise that with DCA, its Change Control Board, and other affected Boards. The DCA has also started an intensive review of the DOI case aging and has reached out to all the Boards and Bureaus to request input and suggestions.

The BVNPT is making significant progress in reducing aging of cases currently in our hands, but that reduction may not be fully seen in the statistics until the majority of the older cases are closed. At the rate we are going, the PM 4 will begin to stabilize within this calendar year, and we should be completely current during the 2022 year

The biggest unknown barrier is that, since our licensees may be requesting hearing delays that the Administrative Law Judges and Deputy Attorney Generals are not able to deny, there may be delays that are outside BVNPT's control.

**ISSUE #21: MEDICAL SPAS.** The BVNPT reports an increase in the improper provision of dermatological procedures by VNs in medical spas. Are there changes needed to ensure patient safety and the proper delegation of procedures?

**Staff Recommendation:** The BVNPT should discuss any ambiguities in the training and scope of VNs relating to cosmetic and dermatological procedures, its partnership with the Medical Board of California in investigating physician supervision issues, and whether there are changes needed to prevent consumer harm.

**BVNPT RESPONSE:**

The Board recently adopted a Precedential Decision with regard to improper dermatological procedures by VNs in medical spas, which allows us to act upon similar complaints going forward. This decision is narrowly constructed and would not be applicable to new cases, unless they are circumstantially similar. For that reason, the Board needs to pursue statutory language to give a broader enforcement authority, which will be followed by rulemaking. In so doing, we plan to work with the Medical Board of California, the Osteopathic Medical Board of California, and other interested parties to clarify the roles and responsibilities.

**ISSUE #22: COVID-19.** Since March of 2020, the DCA has approved waivers through the Governor's executive orders, which affect licensees and future licensees alike. Do any of these waivers warrant an extension or statutory changes?

**Staff Recommendation:** The BVNPT should advise the Committees on the use of the COVID-19 waivers and the ongoing necessity of the waivers.

**BVNPT RESPONSE:**

On March 4, 2020, the Governor issued a State of Emergency declaration, as defined in Government Code § 8558, which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to allow licensed healthcare professionals from outside of California to practice in California without a California license. Under BPC Section 900, licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the Director of EMSA. This enabled the state to swiftly move qualified VNs into the workforce.

The Board recently requested a new waiver from the Department Director allowing the Psychiatric Technicians to participate in the efforts to provide COVID-19 vaccinations.

**ISSUE #23: COVID-19 PROVIDER MENTAL HEALTH.** Under ordinary circumstances, the work of frontline healthcare providers is mentally and emotionally challenging. Are there new issues arising from or, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?

**Staff Recommendation: The BVNPT should discuss any findings related to the mental and behavioral healthcare needs of frontline healthcare providers arising from the COVID-19 pandemic**

**BVNPT RESPONSE:**

The BVNPT has not had any organized discussions on this topic to date and is keenly interested in participating in such conversations and developing solutions. The Board's Legislative and Regulations Committee will review AB 642 (Low) and possibly recommend a position to the full Board.

**ISSUE #24: TECHNICAL EDITS. Are there technical changes to the Practice Act that may improve the BVNPT's operations?**

**Staff Recommendation: The BVNPT should continue to work with the Committees on potential changes.**

**BVNPT RESPONSE:**

The BVNPT reviewed both Practice Acts and prepared a list of BPC sections that should be updated. These lists were approved by the Board and attached to this response as Attachments 3 and 4.

**ISSUE #25: SUNSET EXTENSION. Should the current BVNPT be continued and continue regulating the practice of VNs and PTs?**

**Staff Recommendation: The BVNPT's current regulation of VNs and PTs should be continued, to be reviewed again on a future date to be determined.**

**BVNPT RESPONSE:**

The BVNPT agrees with the Committee staff's recommendation, and thanks the Committees for their support.