



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR  
**Board of Vocational Nursing and Psychiatric Technicians**  
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**Board of Vocational Nursing  
and Psychiatric Technicians  
Department of Consumer Affairs  
Board Meeting Minutes**

<https://www.youtube.com/watch?v=O4cmLpmINPc>

Please note: If you hover over the time stamp under the agenda item and press the Ctrl key on your keyboard, it will take you to the exact place in the webcast to hear the Board conversation.

**DATE:** Friday, November 19, 2021

**BOARD MEMBERS**

**PRESENT:**

Dr. Mountain, President, Education Member  
Mr. Dierking, Vice President, Public Member  
Ms. Carpenter, Public Member  
Ms. Brown, Public Member  
Mr. Hill, Psychiatric Technician Member  
Ms. Luce, Public Member  
Mr. Maxey, Public Member  
Ms. Nieblas, Public Member  
Ms. Rooks, Licensed Vocational Nurse Member

**STAFF PRESENT:**

Ms. Yamaguchi, Executive Officer  
Ms. Lyman, Assistant Executive Officer  
Ms. Wood, Enforcement Chief  
Ms. Raney, Licensing and Administration Chief  
Ms. Cordeiro, Supervising Nursing Education Consultant  
Ms. Brown, Licensing Manager  
Ms. delaRosa, Nursing Education Consultant  
Ms. DeYoung, Nursing Education Consultant  
Dr. Fairchild, Nursing Education Consultant  
Ms. Gomez, Nursing Education Consultant  
Dr. McLeod, Nursing Education Consultant  
Ms. Silverman, Nursing Education Consultant  
Ms. Maracino, Education Analyst  
Ms. Pires, Legislation and Regulations Specialist  
Mr. Prouty, Discipline Unit Manager  
Ms. Saavedra, Budget Analyst

**DCA STAFF PRESENT:** Mr. Nishimine, DCA Budgets  
Mr. Swenson, Board General Counsel

Ms. Schieldge, Board Regulatory Counsel

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**Agenda Item 1                      Call to Order, Roll Call and Establishment of Quorum**

[\(0:14-6:13\)](#)

Dr. Mountain called the meeting to order at 9:11 a.m. Dr. Mountain took attendance of Board members by roll call and a quorum was established.

**Agenda Item 2                      Introduction of Board Staff**

[\(6:15-7:37\)](#)

Ms. Yamaguchi introduced Board staff and DCA Legal Counsel.

**Agenda Item 3                      Review and Approval of Meeting Minutes**

A. Meeting Minutes for August 20, 2021 – Review and Approval.

[\(7:47-22:52\)](#)

Motion: Approve the minutes from August 20, 2021, if no errors or omissions.  
Moved/Seconded: Ms. Carpenter/Mr. Dierking

**Board Discussion:** None

**Public Comment:** None

| <b>Member Name</b> | <b>Vote</b> |
|--------------------|-------------|
| Dr. Mountain       | NOT PRESENT |
| Mr. Dierking       | YES         |
| Ms. Carpenter      | YES         |
| Mr. Maxey          | YES         |
| Ms. Luce           | ABSTAIN     |
| Ms. Nieblas        | ABSTAIN     |
| Ms. Rooks          | YES         |
| Mr. Hill           | YES         |
| Ms. Brown          | ABSENT      |

Motion carried.

B. Meeting Minutes excerpt for August 21, 2020, Board Meeting Agenda Item 8.A.III – Review and Approval. [\(25:31-28:01\)](#)

Motion: Approve the excerpted minutes from the August 20, 2020.  
Moved/Seconded: Mr. Maxey/Mr. Hill

**Board Discussion:** None

**Public Comment:** None

| <b>Member Name</b> | <b>Vote</b> |
|--------------------|-------------|
| Dr. Mountain       | YES         |
| Mr. Dierking       | YES         |
| Ms. Carpenter      | YES         |
| Mr. Maxey          | YES         |
| Ms. Luce           | ABSTAIN     |
| Ms. Nieblas        | ABSTAIN     |
| Ms. Rooks          | YES         |
| Mr. Hill           | YES         |
| Ms. Brown          | ABSENT      |

Motion carried.

**Agenda Item 4**                      **Fiscal Budgets**  
[\(28:10-50:34\)](#)

A. Fund Condition Updates and Recommendations

Mr. Nishimine, from Department of Consumer Affairs (DCA) Budget Office provided detailed information to the Board members and the public regarding the Board of Vocational Nursing and Psychiatric Technicians' (BVNPT) Fund Condition, and the potential insolvency the Board faces without the new proposed program fees or the applicant and licensee fee increases. He explained BVNPT's expenditures for the 2020-2021 fiscal year. It is estimated that BVNPT spent \$16.6 million dollars in the 2020/2021 fiscal. The BVNPT's share of the DCA statewide pro-rata is \$1.14 million, which is approximately seven to eight percent of cash revenue going through the fund.

Data indicates that current fiscal year revenues are projected to be \$17.8 million and expenditures are estimated to be \$20.9 million, which makes BVNPT's budget structurally imbalanced. The anticipated structural imbalance is expected to accelerate over time because the costs to fund the Board are incrementally increasing which is attributable to several factors, i.e. bargaining unit agreements, staffing, retirement costs, and costs to operate the Board.

Mr. Nishimine further explained the additional baseline Fund Condition with the proposed new program fees and regulatory fee increases of applicant and licensee fees with a target implementation date of January 1, 2023, which would bring \$3.1 million for half a year of revenue in the 2022/2023, and a full year of revenue is about \$6.2 million added to the fund. The fees that are set in regulation are the actual fees charged to the licensees and applicants. The regulatory package that will be presented will eliminate BVNPT's structural imbalance.

**Board Discussion:** [\(40:16-50:33\)](#)

Ms. Rooks inquired as to the cost savings incurred by the Board as the result of not traveling to meetings during the pandemic. She suggested that meeting once per year, in person, when safe to do so, would continue to provide cost savings to the Board.

Mr. Nishimine explained that the Board's estimated \$16.6 million in expenditures in 2020/2021 nearly exhausts its appropriations. The Board was allotted \$152,000 towards travel costs last year, and the Board did not spend any of the allotment, so that provided some savings. However, one of the main drivers in costs are the enforcement cases forwarded to the Office of the Attorney General's Office (AG) and the costs to adjudicate enforcement cases has increased significantly in recent years. The Board has requested AG augmentation for the last three consecutive years. Last year's augmentation request was for \$430,000.

Dr. Mountain stated it was her understanding that AG costs increased due to the backlog in enforcement cases being forwarded to the AG's office. She asked if the costs have remained the same if the backlog had been cleared. She also inquired as to whether the regulatory increase for renewal fees would be to statutory cap.

Mr. Nishimine explained that, if the Board opts to increase its fees to the statutory maximum, the Board will see a revenue increase of approximately six million dollars per year.

Ms. Nieblas asked about the Board's yearly appropriation. Mr. Nishimine responded that the annual appropriation is released every January Tenth, the Legislature reviews and analyzes the Board's proposed budget, and based upon that they may add or subtract to the proposed budget.

Ms. Yamaguchi clarified that the BVNPT is a special fund entity and that there is no appropriation out of the General Fund. The Governor's Budget appropriation for the BVNPT in the current year is approximately 17 million dollars.

Mr. Nishimine reiterated that the BVNPT receives all revenues through licensing-related fees, such as applicant and licensee fees. These revenues are used for Board operations including licensing, administrative, and enforcement-related costs.

**Public Comment:** None

**Agenda Item 5 ([50:52-59:00](#))      Discussion Regarding Fiduciary Responsibilities, Liabilities, and Governing Laws with Respect to the Fiscal State of the Board – Ms. Schieldge**

Ms. Schieldge presented the Board members with information regarding their fiduciary duties and responsibilities under California law. Board members, through their Executive Officer, are responsible for ensuring that the Board remains solvent and does not incur expenditures in excess of the Board's legally authorized spending authority in the Budget Act. The Board members and the Executive Officer are legally responsible for compliance with the provisions of the Budget Act as well as other administrative and statutory requirements controlling expenditures. Board members should ensure that all persons who exercise delegated powers over expenditures are thoroughly knowledgeable about all expenditure requirements and adhere to those requirements.

Failure to do so can result in the Board ceasing operations and/or personal liability in the amount of the unauthorized expenditures for the Board members and its Executive Officer. Board members are advised to take the necessary steps to ensure that they remain informed about the status of the Board's fund and take all necessary steps within their authority to ensure that the Board remains solvent. This may include considering fee increases, seeking legislation, having a standing agenda item regarding all activities the staff and Executive Officer have undertaken to resolve the current funding issues, and possibly more frequent Board meetings to take action to address emergent issues.

**Board Discussion:** [\(54:27-58:59\)](#)

Ms. Luce commented that she appreciates the memo and takes her fiduciary duties seriously.

Ms. Schiedge further commented that the new Board members must understand the obligations, which are covered in the Board Member Orientation Training (BMOT). However, the import or effect of the obligation requires additional discussion.

Ms. Nieblas asked if there is a standing agenda item required to review the budget at every Board meeting.

Ms. Yamaguchi confirmed that the Board members are provided with the Fund Condition at every Board meeting. Once the Governor's Budget is released in January 2022, the information will be provided at the February 2022 Board meeting to show how the \$17 million is allocated for the year.

Ms. Schiedge recommended that, for future Board meetings, the Board President and the Executive Officer include an agenda item specific to the Board's structural imbalance issues and an update or discussion of the steps taken, progress made, and any Board action to correct the imbalance and ensure that BVNPT is spending within its authority.

**Public Comment:**

**Agenda Item 6                      Education**

A. Education Division Report – Ms. Cordeiro. [\(1:35:21-1:36:31\)](#)

**Board Discussion:** None

**Public Comment:** None

- I. Review and Approval of Third Quarter Executive Officer Program Decisions.  
[\(1:36:38-1:39:58\)](#)

**Board Discussion:** None

**Public Comment:** None

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Motion: Approve and adopt the Executive Officer program decisions for the third quarter relating to school programs.

Moved/Seconded: Mr. Dierking/Mr. Hill

| Member Name   | Vote |
|---------------|------|
| Dr. Mountain  | YES  |
| Mr. Dierking  | YES  |
| Ms. Carpenter | YES  |
| Mr. Maxey     | YES  |
| Ms. Luce      | YES  |
| Ms. Nieblas   | YES  |
| Ms. Rooks     | YES  |
| Mr. Hill      | YES  |
| Ms. Brown     | YES  |

Motion carried.

B. Education Committee Report – Dr. Mountain. [\(1:40:31-1:41:22\)](#)

**Board Discussion:** None

**Public Comment:** None

C. Reconsideration of Provisional Approval.

I. Curam College, Vocational Nursing Program, Ms. Gomez, Nursing Education Consultant. [\(1:49:43-1:58:28\)](#)

1. Approve extension of the provisional approval for a six-month period to begin November 19, 2021.
2. Comply with all program requirements.

**Board Discussion:** [\(1:56:25-1:56:58\)](#) Ms. Luce stated that she is concerned about the recurring misrepresentation of fact on page 15 of the Nursing Education Consultant (NEC) report.

**Public Comment:** [\(1:51:08-1:55:54\)](#)

Motion: Approve and adopt the NEC's recommendations.

Moved/Seconded: Mr. Dierking/Ms. Carpenter

| Member Name   | Vote |
|---------------|------|
| Dr. Mountain  | YES  |
| Mr. Dierking  | YES  |
| Ms. Carpenter | YES  |
| Mr. Maxey     | YES  |

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|             |     |
|-------------|-----|
| Ms. Luce    | YES |
| Ms. Nieblas | YES |
| Ms. Rooks   | YES |
| Mr. Hill    | YES |
| Ms. Brown   | YES |

Motion carried.

D. Request to Admit Students.

I. Gurnick Academy of Medical Arts, San Mateo, Vocational Nursing Program, Ms. Silverman, Nursing Education Consultant. [\(1:58:29-2:04:02\)](#)

1. Approve Gurnick Academy of Medical Arts, San Mateo, Vocational Nursing Program's request to begin a full-time, day class of 25 students to commence on January 3, 2022 with an expected graduation date of January 27, 2023 to replace the class which will graduate on January 28, 2022.
2. Approve Gurnick Academy of Medical Arts, San Mateo, Vocational Nursing Program's request to begin a full-time, evening class of 25 students to commence on January 3, 2022 with an expected graduation date of January 27, 2023 to replace the class which will graduate on January 28, 2022.
3. Comply with all program requirements.

**Board Discussion:** None

**Public Comments:** [\(2:01:53-2:02:46\)](#)

Motion: Approve and adopt the NEC's recommendations.

Moved/Seconded: Ms. Carpenter/Ms. Luce

| Member Name   | Vote |
|---------------|------|
| Dr. Mountain  | YES  |
| Mr. Dierking  | YES  |
| Ms. Carpenter | YES  |
| Mr. Maxey     | YES  |
| Ms. Luce      | YES  |
| Ms. Nieblas   | YES  |
| Ms. Rooks     | YES  |
| Mr. Hill      | YES  |
| Ms. Brown     | YES  |

Motion carried.

II. Integrity College of Health, Vocational Nursing Program, Ms. Gomez, Nursing Education Consultant. [\(2:04:03-2:07:14\)](#)

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1. Approve Integrity College of Health, Vocational Nursing Program's request to admit a full-time class of 20 students to commence January 10, 2022, with a graduation date of March 19, 2023.
2. Comply with all program requirements.

**Board Discussion:** None

**Public Discussion:** [\(2:05:11-0:05:49\)](#)

Motion: Approve and adopt the NEC's recommendations.

Moved/Seconded: Ms. Carpenter/Ms. Rooks

| Member Name   | Vote |
|---------------|------|
| Dr. Mountain  | YES  |
| Mr. Dierking  | YES  |
| Ms. Carpenter | YES  |
| Mr. Maxey     | YES  |
| Ms. Luce      | YES  |
| Ms. Nieblas   | YES  |
| Ms. Rooks     | YES  |
| Mr. Hill      | YES  |
| Ms. Brown     | YES  |

Motion carried.

III. Premiere Career College, Vocational Nursing Program, Dr. Fairchild, Nursing Education Consultant. [\(2:07:15-2:12:28\)](#)

1. Approve Premiere Career College, Vocational Nursing Program's request to admit a full-time class of 30 students to commence on December 13, 2021, with a graduation date of April 23, 2023.
2. Place the Program on the February 2022 Board agenda for reconsideration of provisional approval.
3. Comply with all program requirements listed below.

**Board Discussion:** [\(2:07:38-2:08:30\)](#) Ms. Rooks asked Dr. Fairchild about the program's current status.

Dr. Fairchild explained that there are no updates from the class with the new curriculum that started last summer. However, there are still a high number of students not passing the exit exam, which means fewer students are testing.

[\(2:10:01-2:11:09\)](#) Ms. Rooks asked to hear from the Director of Premiere Career College regarding his stance on how the program is performing.



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Mr. Bernie Malabanan, Director of Premiere Career College, explained that two cohorts are currently in the process of completing their clinicals at different sites. The Program has lectures on campus and the Program's annual pass rate is 67 percent, which is still within ten percent of the annual state average. The program has adequate faculty and clinical sites.

**Public Discussion:** [\(2:09:12-2:09:44\)](#)

Motion: Approve and adopt the NEC's recommendations.  
Moved/Seconded: Ms. Luce/Mr. Hill

| Member Name   | Vote    |
|---------------|---------|
| Dr. Mountain  | YES     |
| Mr. Dierking  | YES     |
| Ms. Carpenter | YES     |
| Mr. Maxey     | YES     |
| Ms. Luce      | YES     |
| Ms. Nieblas   | ABSTAIN |
| Ms. Rooks     | YES     |
| Mr. Hill      | YES     |
| Ms. Brown     | YES     |

Motion carried.

IV. University of Antelope Valley, Vocational Nursing Program, Ms. delaRosa, Nursing Education Consultant. [\(2:12:30-2:17:24\)](#)

1. Approve University of Antelope Valley, Vocational Nursing Program's request to admit a full-time class of 30 students to commence on December 6, 2021, with a graduation date of March 14, 2023.
2. Comply with all program requirements listed below.

**Board Discussion:** [\(2:14:38-2:15:00\)](#) Ms. Nieblas asked the University of Antelope Valley's Program Director, Ahila Muthaiya, what type of student support the Program has in place to assist with increasing the pass rates for students who are struggling to pass the exam.

[\(2:15:01-2:15:39\)](#) Ms. Muthaiya informed the Board that University of Antelope Valley has the HESI Program which uses adaptive quizzing very similar to the National Council of State Boards of Nursing (NCSBN) test plan with related questions. There are also tutoring session available and they are fine tuning their remediation processes.

**Public Discussion:** [\(2:12:36-2:13:51\)](#)

Motion: Approve and adopt the NEC's recommendations.  
Moved/Seconded: Ms. Luce/Ms. Carpenter

| <b>Member Name</b> | <b>Vote</b> |
|--------------------|-------------|
| Dr. Mountain       | YES         |
| Mr. Dierking       | YES         |
| Ms. Carpenter      | YES         |
| Mr. Maxey          | YES         |
| Ms. Luce           | YES         |
| Ms. Nieblas        | YES         |
| Ms. Rooks          | YES         |
| Mr. Hill           | YES         |
| Ms. Brown          | YES         |

Motion carried.

- E. Discussion and Possible Action – Request for Board opinion regarding Administration of Medical Cannabis in public schools. [\(1:41:24-1:49:42\)](#)

**Board Discussion:** [\(1:44:14-1:48:31\)](#)

Mr. Michael Davis, Attorney, stated that his firm represents a school district in California that has a student with a significant medical condition for which cannabis provides relief. It has been determined that, in order for the child to receive free and appropriate public education, access to medical cannabis under SB 223 is required. A licensed vocational nurse typically performs the treatment. In this case, medicinal cannabis is used as a rescue medication for a particular type of seizure disorder. Mr. Davis contacted the Board to ensure that the licensee is not placing their license in jeopardy by performing this type of treatment. Due to the statewide impact of this issue and the likelihood of a recurrence, the Board is requested to consider the item and adopt a precedential decision to clarify the issue for all stakeholders in California.

Ms. Nieblas asked why the administration of the cannabis to the student is required on an immediate need basis and not set up as a scheduled medication.

Mr. Davis explained that, for certain types of seizure conditions, the cannabis is administered as a rescue medication at the onset of a seizure which can occur at any time.

**Public Comment:** None

Motion: The Supervising Nursing Education Consultant’s Informal Scope of Practice Guidance, entitled Medicinal Cannabis Administration by Licensed Vocational Nurses in Public Schools and dated October 6, 2021, be approved and adopted as a declaratory decision of the board and the decision be designated as precedential.

Recommendation coming from the Education and Practice Committee.

| <b>Member Name</b> | <b>Vote</b> |
|--------------------|-------------|
| Dr. Mountain       | YES         |
| Mr. Dierking       | YES         |
| Ms. Carpenter      | YES         |
| Mr. Maxey          | YES         |
| Ms. Luce           | YES         |
| Ms. Nieblas        | YES         |
| Ms. Rooks          | YES         |
| Mr. Hill           | YES         |
| Ms. Brown          | YES         |

Motion carried.

**Agenda Item 7**                      **Executive Officer’s Report - Ms. Yamaguchi.**  
[\(2:17:26-2:42:27\)](#)

- A. Discussion and Possible Action to Approve Bulletins, Letter of Intent, Forms, Instructions and Checklists for New School Programs. Implementation of Sunset legislation AB 1536:

[\(2:18:38\)](#) Ms. Yamaguchi informed the Board members and the public that agenda items 7.A.I through 7.A.VIII are related to the Board’s implementation of the requirements of Sunset Bill AB 1536; specifically, to improve the approval process of new school programs. Senate Bill 1536 gives the Board temporary authority to issue bulletins on the process for approval of new school programs without formal rulemaking and permits the Board to create regulations through emergency rulemaking to prior to the expiration of this temporary authority. Ms. Yamaguchi described the bulletins and related documents included in the meeting materials and indicated that the proposed action of the Board would be to approve these documents for use beginning in 2022.

[\(2:26:30\)](#) Mr. Swenson made reference to agenda item 7.A.IX, Bulletin #3, stating that the bulletin has not been published and this item cannot be acted upon by the Board at this time. The majority of the remaining items were published on October 19, 2021, except for Bulletin #2 which was published on October 21, 2021.

**Board Discussion:** [\(2:29:32\)](#) Ms. Nieblas asked for clarification regarding Bulletin #3.

[\(2:29:42\)](#) Mr. Swenson explained that Bulletin #3 has not been posted, nor published; therefore, it cannot be considered by the Board at this time and is not included in the pending motion.

[\(2:30:41\)](#) Ms. Yamaguchi asked for clarification as to whether agenda item will require a separate motion, or if one motion would apply to agenda items 7.A.I through 7.A.VIII.

[\(2:31:01\)](#) Mr. Swenson confirmed that the pending motion is to make a factual finding that items were posted prior to the November 19, 2021 Board meeting, and a follow-up motion with separate recommendations regarding the approval of each item.

Motion: The board finds that Bulletin #1: Processing Applications for Approval of New School Programs in 2022 (Item 7.A.I.), Letter of Intent to Submit Application for Initial Approval of New School Program for Proposed Programs Currently on Waiting List (Item 7.A.III.) , Initial Program Application Instructions Vocational Nursing Program (Item 7.A.IV.), Initial Program Application Instructions for Psychiatric Technician Program (Item 7.A.V.), Application for Initial Approval of New School Programs: Vocational Nursing (Item 7.A.VI.), Application for Initial Approval of New School Programs: Psychiatric Technician (Item 7.A.VII.), and Initial Approval of New School Program Required Document Checklist (Item 7.A.VIII.), were published and posted on its website on October 19, 2021, and that Bulletin #2: New Fees for Education Programs (Item 7.A.II.), was published and posted on its website on October 21, 2021.

**Public Discussion:** None

Moved/Seconded: Mr. Luce/Mr. Hill

| Member Name   | Vote        |
|---------------|-------------|
| Dr. Mountain  | YES         |
| Mr. Dierking  | YES         |
| Ms. Carpenter | YES         |
| Mr. Maxey     | NOT PRESENT |
| Ms. Luce      | YES         |
| Ms. Nieblas   | YES         |
| Ms. Rooks     | YES         |
| Mr. Hill      | YES         |
| Ms. Brown     | YES         |

Motion carried.

- I. Bulletin #1: Processing Applications for Approval of New School Programs in 2022. [\(2:35:12-2:37:05\)](#)

**Board Discussion:** None

**Public Discussion:** None

Motion: The board approves Bulletin #1: Processing Applications for Approval of New School Programs in 2022 (Item 7.A.I.), Letter of Intent to Submit Application for Initial Approval of New School Program for Proposed Programs Currently on Waiting List (Item 7.A.III.) , Initial Program Application Instructions Vocational Nursing Program (Item 7.A.IV.), Initial Program Application Instructions for Psychiatric Technician Program (Item 7.A.V.), Application for Initial Approval of New School Programs: Vocational Nursing (Item 7.A.VI.), Application for Initial Approval of New School Programs: Psychiatric Technician (Item 7.A.VII.), and Initial Approval of New School Program Required Document Checklist (Item 7.A.VIII.) effective immediately.

Moved/Seconded: Ms. Carpenter/Mr. Dierking

| <b>Member Name</b> | <b>Vote</b>    |
|--------------------|----------------|
| Dr. Mountain       | YES            |
| Mr. Dierking       | YES            |
| Ms. Carpenter      | YES            |
| Mr. Maxey          | NOT<br>PRESENT |
| Ms. Luce           | YES            |
| Ms. Nieblas        | YES            |
| Ms. Rooks          | YES            |
| Mr. Hill           | YES            |
| Ms. Brown          | YES            |

Motion carried.

II. Bulletin #2: New Fees for Education Programs. [\(2:37:06-2:39:26\)](#)

**Board Discussion:** None

**Public Discussion:** None

Motion: The board approves Bulletin #2: New Fees for Education Programs (Item 7.A.II.), effective the thirtieth day after it was published and posted on the board's website (November 20, 2021).

Moved/Seconded: Ms. Carpenter /Mr. Hill

| <b>Member Name</b> | <b>Vote</b>    |
|--------------------|----------------|
| Dr. Mountain       | YES            |
| Mr. Dierking       | YES            |
| Ms. Carpenter      | YES            |
| Mr. Maxey          | NOT<br>PRESENT |
| Ms. Luce           | YES            |
| Ms. Nieblas        | YES            |
| Ms. Rooks          | YES            |
| Mr. Hill           | YES            |
| Ms. Brown          | YES            |

Motion carried.

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B. Discussion and Possible Action: Board 2022-2024 Calendar. [\(2:42:29-2:49:00\)](#)

**Board Discussion:** None

**Public Comment:** None

Motion: Approve the Board Calendar for 2022-2024.

Moved/Seconded: Mr. Dierking/Ms. Luce

| <b>Member Name</b> | <b>Vote</b>    |
|--------------------|----------------|
| Dr. Mountain       | YES            |
| Mr. Dierking       | YES            |
| Ms. Carpenter      | YES            |
| Mr. Maxey          | NOT<br>PRESENT |
| Ms. Luce           | YES            |
| Ms. Nieblas        | YES            |
| Ms. Rooks          | YES            |
| Mr. Hill           | YES            |
| Ms. Brown          | YES            |

Motion carried.

C. Executive Committee Report – Dr. Mountain. [\(2:49:08-2:49:27\)](#)

**Board Discussion:** None

**Agenda Item 8**                      **Update from DCA – Mr. Brian Clifford.** [\(2:49:28-2:55:55\)](#)

Mr. Clifford welcomed Board members Luce and Nieblas, congratulated them on their appointment, and thanked them for their willingness to serve. Mr. Clifford provided an update to the Board members and the public regarding COVID safety measures and telework. State employees must show proof of vaccination or be subject to regular testing. In October 2021, DCA launched its COVID testing pilot program at DCA Headquarters. Board and Committee members must follow health and safety protocols if they plan to visit a DCA location or attend any in-person Board meeting. Members must verify vaccination or follow safety testing protocols. As the pandemic continues to evolve, remote meetings are allowed until January 31, 2022; after that, meetings will need to be in person in accordance with all aspects of the Open Meetings Act. Additional changes to the law may occur; however, the benefits of having remote meetings have been recognized, such as increased public participation, cost savings, and a lower carbon footprint due to reduced travel. DCA encourages Boards and Bureaus to continue utilizing remote meetings this year to protect the health of staff, Board members, and the public. BVNPT has two Board member vacancies, a licensed vocational nurse and a psychiatric technician, both appointed by the Governor. DCA's Communications Team has been working on a new communications tool kit to assist boards with member recruitment which will be available in multiple languages before the

end of the year. In the meantime, individuals interested in serving as a Board member area encouraged to visit the Board Member Resource Center on DCA's homepage to apply for appointment.

**Board Discussion:** [\(2:54:25\)](#) Ms. Nieblas asked who she can reach out to regarding her DCA email account.

[\(2:55:03\)](#) Ms. Yamaguchi explained that Board staff will be contacting Board members individually to ensure that all members are able to open or reopen their DCA email accounts and access to the Learning Management System (LMS).

## **Agenda Item 9                      Licensing and Evaluations**

A. Licensing Division Report – Ms. Raney. [\(2:58:37-3:05:45\)](#)

**Board Discussion:** [\(3:04:05\)](#) Ms. Nieblas asked Ms. Raney to provide an overview of what her title and her responsibilities are.

[\(3:04:32\)](#) Ms. Raney provided information to the Board members regarding the responsibilities as the Licensing and Administration Chief.

**Public Comment:** None

B. Licensing Committee Report – Ms. Carpenter. [\(3:05:46-3:07:11\)](#)

**Board Discussion:** None

**Public Comment:** None

## **Agenda Item 10                      Legislation and Regulations**

A. Committee Report – Mr. Dierking. [\(3:07:13-\)](#)

I. Rulemaking Update.

- a. AB 2138 (Chiu, Low, Chapter 995, Statutes of 2018) Substantial Relationship and Rehabilitation Criteria for Vocational Nurses
- b. AB 2138 (Chiu, Low, Chapter 995, Statutes of 2018) Substantial Relationship and Rehabilitation Criteria for Psychiatric Technicians

[\(3:07:20\)](#) Mr. Dierking stated that the Office of Administrative Law (OAL) approved changes to the California Code of Regulations sections 2578 and 2579 to comply with the provisions of AB 2138 on September 24, 2021. The amended section and the note were filed on September 24, 2021 and operative on September 24, 2021.

- c. Fee Schedule- Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16 California Code of Regulations Sections 2537, 2357.1, 2590, and 2590.1 (Fees) ([59:09-1:35:11](#))

Note: this item was advanced so it could be taken-up immediately after Item 5 and recorded in the minutes here for continuity and ease of reference.

Ms. Yamaguchi discussed the Board's potential risk of insolvency in early 2023. The August 20, 2020 meeting minute excerpt including in the Board packet contains detailed information to move forward in the regulatory process for a proposed fee increase. Ms. Yamaguchi discussed the economies and efficiencies the Board might make to reduce or eliminate the necessity of the fee increase. She explained that, although there have been some cost savings attributed to non-travel over the last two years, these savings are insufficient to avoid insolvency. The majority of BVNPT expenditures come from enforcement case adjudication and staffing costs. She explained that, in 2018, enforcement staff began addressing an extensive backlog and the costs associated with these efforts were not realized until one to two years out. In 2021, the costs for the work the enforcement staff performed in 2019 are now apparent in BVNPT's Division of Investigation (DOI) and AG costs.

Ms. Yamaguchi further explained that, in 2019, the AG suddenly and significantly increased fees by approximately 30 percent. She stated that the fee schedule increase regulatory package would increase the license, renewal, exam application, and any ancillary fees to statutory maximum. The fee schedule increase will begin to restore the Board's reserves for unexpected expenses to an appropriate level. The anticipated fee schedule for the schools was not realized by legislation; therefore, without the fee revenue from the fee schedule regulatory package, the Board cannot expand operations to fulfill the directives of AB 1536. BVNPT staff completed an audit of the Board's actual costs of processing transactions. The audit revealed that the costs to the Board to process transactions are significantly higher than the fees currently being charged for the transactions. The fee revenues pay for Board obligations such as rent, enforcement costs, Education Division costs. Ms. Yamaguchi explained that approval to move forward with the fee schedule regulatory package to increase the fees to the statutory maximum brings BVNPT's operations out of the red and provides a modest reserve.

Ms. Yamaguchi further explained that the Board is working to authorize a third-party contract to perform a fee analysis that will look at the current structure and determine the appropriate levels of fees for individuals and schools.

**Board Discussion:** ([1:13:36-1:32:44](#))

Ms. Schiedge stated that a motion on this matter would provide a short-term fix for a potentially long-term structural imbalance. She explained that the BVNPT is subject to different entities approval when filing regulations, e.g. DCA's Director, Business, Consumer Services and Housing Agency, and the OAL. A motion by the Board would show those entities that the Board has approved the regulatory text. Each of these



have the authority to disapprove or refuse to authorize the filing of these regulations. That is why the motion contains language that if authorized and nothing adverse is received from them, then the rulemaking will proceed along as indicated. If no adverse comments are received from the public, then the rules would be adopted as written in your packet.

Mr. Nishimine commented that the proposal will eliminate the structural imbalance in the near term and ensures that the Board remains solvent. Mr. Nishimine noted, for the record, that there are mischaracterizations in the memo provided to the Board. Specifically, the reference indicating that the Budget Office has recommended that the Board increase the license fees. He explained that this statement is incorrect, the Budget Office did not make this recommendation. The Budget Office provides options based on information presented to them. In addition, the budget office would not have included the references to the impact of AB 1536 on page two because it is not germane to the proposal. The fact is that the existing fee structure is what is being proposed.

He reiterated that the Board is facing insolvency in approximately 16 months and regulatory packages typically take 18 to 24 months, so the fastest course of action is to move the regulations along to eliminate the structural imbalance. Mr. Nishimine also reminded the Board that there are a number of factors that account for the significant amount of time required before any actual revenue is realized.

Ms. Rooks asked about the third-party review of the fees, and if the fees are only partially increased or raised to the maximum allowed, and if at some point the BVNPT is looking at insolvency again, will there be another need to raise the fees again.

Ms. Yamaguchi stated the hope is that the fee study will provide the ability to project out, with a fair amount of confidence, the number of licensees the BVNPT will have in the next two, five or ten years and what changes can be made. She stated that she is hoping to get a good data set that shows what changes are possible under different scenarios from a fee analysis.

Ms. Schieldge reassured the Board that she is working closely with Board staff to prepare the documents in anticipation of the Board's action and to initiate the process as soon as possible after authorization by the Board.

Ms. Rooks expressed concern because licensees are currently having a difficult time coming up with the money to renew their licenses and raising the fees could increase late fees and that would add an additional fee on top of the renewal charge.

Dr. Mountain concurred with Ms. Rooks and stated that the entire Board and Board staff share the same concerns.

Ms. Schieldge reiterated that her goal is to ensure that the Board members understand that this proposal will raise the fees to the full authority under the current law to help address the structural imbalance in the short term, as Mr. Nishimine pointed out. The staff has done the fee analysis for what it actually costs to provide services and BVNPT

will still be losing revenue because the costs exceeds what the Board is allowed to collect under existing law. The fee study would examine what needs to be done long-term to address the structural imbalances that the Board will still face. The Board will need to seek potential legislative changes to address the long-term structural imbalance that the Board will face even if the current proposal is successful. The Board members will need to be engaged on this issue because it could potentially have disastrous consequences.

**Public Discussion:** None

Motion for 10.A.I.c: Approve the proposed regulatory text and changes to Sections 2537, 2537.1, 2590, and 2590.1 as provided in the materials and direct staff to submit all approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review. If no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any nonsubstantive changes to the package, and set the matter for a hearing. If no adverse comments are received during the 45-day comment period or at the hearing, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at Section(s) 2537, 2537.1, 2590, and 2590.1, as noticed.

Moved/Seconded: Mr. Dierking/Ms. Luce

| <b>Member Name</b> | <b>Vote</b> |
|--------------------|-------------|
| Dr. Mountain       | YES         |
| Mr. Dierking       | YES         |
| Ms. Carpenter      | YES         |
| Mr. Maxey          | YES         |
| Ms. Luce           | YES         |
| Ms. Nieblas        | YES         |
| Ms. Rooks          | YES         |
| Mr. Hill           | YES         |
| Ms. Brown          | YES         |

Motion carried.

d. Emergency Regulations Concepts to Implement the Provisions of AB 1536

[\(3:09:46\)](#) Ms. Yamaguchi explained the Board's responsibility to respond to the Sunset Bill AB 1536. The Board needs to draft emergency regulations to clarify and forward the remaining policies and procedures to confirm the 2022 actions already underway and to plan for 2023 and 2024. She stated that staff has been working with counsel to begin drafting the concepts for emergency regulations for presentation to the Board at the February 2022 Board meeting and possible adoption at the May 2022 Board meeting.

Mr. Dierking expressed concern regarding the proposed rulemaking for program pass rates.

Ms. Yamaguchi explained that staff has been working on developing language and preparing documents to move this matter forward. She stated that, as soon as the Fee Schedule rulemaking file is finalized as well as a couple other matters, Board staff will return to the proposed rulemaking for program pass rates.

- e. Program Pass Rate Standards for Vocational Nursing Programs and Schools for the Preparation of Psychiatric Technicians  
[\(3:11:18-3:12:31\)](#)

**Board Discussion:** None

- f. Rulemaking Calendar for 2022. [\(3:12:33-3:16:13\)](#)

[\(3:12:37-3:13:17\)](#) Mr. Dierking stated that on November 18, 2021 the Legislative and Regulations Committee moved to approve the proposed rulemaking calendar for 2022 with a referral to the full Board.

**Board Discussion:** None

**Public Discussion:** None

Motion: Approve the proposed rulemaking calendar for 2022 as submitted.

Motion came out the Committee.

| Member Name   | Vote |
|---------------|------|
| Dr. Mountain  | YES  |
| Mr. Dierking  | YES  |
| Ms. Carpenter | YES  |
| Mr. Maxey     | YES  |
| Ms. Luce      | YES  |
| Ms. Nieblas   | YES  |
| Ms. Rooks     | YES  |
| Mr. Hill      | YES  |
| Ms. Brown     | YES  |

Motion carried.

**Agenda Item 11                      Enforcement**

- A. Enforcement Division Report – Ms. Wood. [\(3:16:15-3:24:00\)](#)

- I. Public Service Announcement: Suicide Prevention Video

**Board Discussion:** None

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**Public Comment:** None

Motion: Approve to proceed with the production of the suicide prevention public service video.

Moved/Seconded: Ms. Nieblas/Mr. Maxey

| <b>Member Name</b> | <b>Vote</b> |
|--------------------|-------------|
| Dr. Mountain       | YES         |
| Mr. Dierking       | YES         |
| Ms. Carpenter      | YES         |
| Mr. Maxey          | YES         |
| Ms. Luce           | YES         |
| Ms. Nieblas        | YES         |
| Ms. Rooks          | YES         |
| Mr. Hill           | YES         |
| Ms. Brown          | YES         |

B. Enforcement Committee Report – Mr. Maxey. [\(3:24:01-3:32:47\)](#)

**Board Discussion:** None

**Public Comment:** None

**Agenda Item 12**                      **Public Comment on Items Not on the Agenda**

[\(3:32:48-3:33:06\)](#)

**Board Discussion:** None

**Public Comment:** None

**Agenda Item 13**                      **Suggestions for Future Agenda Items**

[\(3:33:08-3:35:20\)](#) Place the implementation of AB 1536 on calendar for the February 2022 agenda in order to revisit the Bulletins and forms that were approved as the ability of the Board to actually adopt the Bulletins and forms is granted after January 1, 2021. Out of an abundance of caution, Mr. Swenson recommended revisiting the issue after the first of the year and, at that time, ratify its actions from today and to adopt the bulletins and related documents.

**Board Discussion:** None

**Public Comment:** None

**Agenda Item 14**                      **Closed Session**

[\(3:35:22-3:36:07\)](#)

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*The Board convened in closed session pursuant to Government Code section 11126, subdivision (c)(3) to deliberate and vote on disciplinary matters.*

**Agenda Item 15                      Meeting adjourned after conclusion of Closed Session.**

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

**Elaine Yamaguchi**  
Executive Officer

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

**Dr. Carel Mountain, Education Member**  
Board President