



# MEMORANDUM

**DATE** October 31, 2022

**TO** Board Members

**FROM** Elaine Yamaguchi  
Executive Officer

**SUBJECT** Executive Officer's Report: November 2022

## Board Structure and Calendar

I am delighted to announce that Governor Newsom has appointed a new PT member to our Board. Lessie D. Moore, 58, of Highland, has been appointed to the Board of Vocational Nursing and Psychiatric Technicians. Moore has been a Senior Psychiatric Technician at Patton State Hospital since 1996. She was a Psychiatric Technician at the Fairview Developmental Center from 1993 to 1996. Please join me in offering a warm welcome to her.

The Governor's Office has been reviewing other candidates for our Board, and it is possible that we could welcome another new member by the end of 2022. As always, if you know of any individual who would bring something to this Board, please encourage them to contact me and to apply. We need one more LVN and a General Public member.

Based on our discussion at the August meeting, staff has prepared a draft calendar for Board meetings in 2023 and 2024. The Executive Committee will make a motion to accept the calendar as drafted.

Please note that the February 2023 is currently slated to be for 2 days here in Sacramento. In addition to Board elections, we plan to present some training and planning sessions for all members.

## Staffing and Operations

AEO Mark Ito has been on the job for just under a month and has been working to shore up our infrastructure and business functions. He's already making a big difference and brings a great energy to the office.

I am absolutely delighted to announce that BVNPT has a **permanent** Supervising Nursing Education Consultant (SNEC). After reviewing applications, and holding interviews, the panel selected Acting SNEC Beth DeYoung for the permanent position. Her leadership, vision and commitment have already helped us to meet our mandates, and I know that the Education Division is in great hands going forward with her at the helm.

I don't say this often enough, but BVNPT is very fortunate to have such a strong team of leaders and staff.

### **Communications**

We have been sending communications to Board members at both email addresses to ensure that the information reaches you as swiftly as possible. If you have not connected with our office to get your DCA email set up, please do so as soon as possible. If you have already done so and would like to receive email only at the DCA address, please let me know. On January 1, 2023, we will transition away from the use of personal accounts. This protects both the Board and the Board members.

### **Budget and Finance**

We have attached the Board's most current Fund Condition report and have invited our colleagues from the DCA Budget Office to provide updates and answer questions. Although our new fee structure went into effect at the end of September, it's unlikely that we will be able to see a significant uptick yet.

### **Department of Consumer Affairs Updates**

The Governor has appointed Ms. Melissa Gear as the new DCA Deputy Director for Board and Bureau Relations. Ms. Gear comes to DCA from the California Department of Insurance, where she worked on insurance-related consumer protections. She also worked for the California State Teachers' Retirement System, the Attorney General's Office, the Legislative Analyst's Office and the Department of Education. We have invited her to attend this Board meeting, and hope that her schedule will allow her to provide our regular DCA report. She also kindly accepted our invitation to come by our office for a meet and greet on November 2 with staff.

### **Implementation of Legislation**

#### **SB 994 (Jones, Chapter 713 of the Statutes of 2022): VN Direction by Naturopathic Doctors.**

Governor Newsom signed this bill on September 28, 2022. Staff and Counsel have been working to prepare to implement this bill, and to promulgate regulations. The first critical step was two advisories, one to the general public and one more specific to our licensing population, to provide some background information on the changes to our Practice Act. These are attached to this memo, and staff requests that the Board discuss and possibly act upon them.

The second step was to draft a Memorandum of Understanding (MOU) between our Board and the Naturopathic Medicine Board (NMB, formerly the Naturopathic Medicine Committee) to ensure information sharing to enable our Enforcement Division to act quickly. This MOU must be reviewed by Counsel, and from there, will be sent to the NMB for discussion and execution.

Third, staff drafted a sample "supervision protocol," as directed in SB 994. This also must be approved by Counsel, and then discussed with the NMB for dissemination to the field.

Finally, staff plans to reach out to the VN schools to discuss this bill and the potential work that LVNs would be allowed to perform.

**SB 1436 (Roth, Chapter 624 of the Statutes of 2022): Respiratory Therapy**

Governor Newsom signed this bill, which is the Respiratory Care Board's Sunset bill, on September 27, 2022. Among other things, the bill makes provisions for the training of LVNs and authorizes the boards to share information related to investigations.

RCB has indicated that they would reach out to BVNPT to start working together after they had completed other implementation tasks from the bill. Staff will keep the Board informed of new progress.

**Technical bill**

At the August 2022 meeting, the Board authorized staff to seek legislation to correct the problem in AB 1536. It was not possible to amend the language into a bill before the session ended, but the Senate Committee on Business, Professions and Economic Development sent out the questionnaire for the annual technical cleanup bill. We have submitted the language, and our response to the questionnaire is attached to this report.

**Regulations**

Staff and Counsel worked tirelessly to shepherd the packages for our emergency rulemaking on program approval, and our fee structure. Work shifted immediately to the process for our permanent regulations for the program approval process. Elsewhere in the agenda packet, you will find a draft of the annual Rulemaking Calendar for the Board. It is very ambitious, and we look forward to discussing it with the Board.

Please don't hesitate to call or email with any questions or suggestions, or if you need help with anything.

Thanks, everyone. We're looking forward to the meeting.

**Board of Vocational Nursing and Psychiatric Technicians Statement**  
**Regarding Vocational Nursing Under the Direction of Naturopathic Doctors**

The Board of Vocational Nursing and Psychiatric Technicians (Board) acknowledges the 2022 legislation, Senate Bill 994 (Jones, Chapter 713, Statutes of 2022), that specifically authorizes licensed vocational nurses (LVNs) to practice under the direction of licensed naturopathic doctors, effective January 1, 2023.

At its May 20, 2022 board meeting, the Board agreed by motion to accept a neutral position and take action to discuss with the author and sponsor.

Subsequent to that meeting, Board staff and counsel worked with the author's office to add clarifying language to the bill and presented a summary of six amendments to the bill for Board consideration, discussion, and approval.

- The amendments, which were considered and approved by Board vote on August 12, 2022, may be found at the Board's website at:  
[https://www.bvnpt.ca.gov/about\\_us/meetings/materials/20220812\\_9aai.pdf](https://www.bvnpt.ca.gov/about_us/meetings/materials/20220812_9aai.pdf)
- The full text of the bill, as signed by the Governor and chaptered by the Secretary of State on August 28, 2022, may be found at:  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB994](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB994)

While the scope of practice for the licensed vocational nurse has not changed, SB 994 (Jones) revises the definition of oversight of LVNs to additionally include practice under the direction of a naturopathic doctor, as specified.

In 2023 the Board will be promulgating regulations to further clarify the rights and responsibilities of LVNs who choose to work under the direction of naturopathic doctors. To receive updates and information on the Board's progress in drafting these regulations, please subscribe to e-mail updates by selecting "Legislative and Regulation Updates" on the Board's website at:  
<https://www.bvnpt.ca.gov/webapplications/apps/subscribe/index.shtml>

The Board strongly encourages both naturopathic doctors and licensed vocational nurses to carefully study the provisions of the bill, and offer their scope of practice questions and comments to the Board at:

Board of Vocational Nursing and Psychiatric Technicians  
Education Division  
2535 Capitol Oaks Drive, Suite 205  
Sacramento, CA 95833  
[bvnpt.sop@dca.ca.gov](mailto:bvnpt.sop@dca.ca.gov)  
(916) 263-7843

###

## Notice to Licensed Vocational Nurses Regarding Senate Bill 994

The Board of Vocational Nursing and Psychiatric Technicians (Board) acknowledges the 2022 legislation of Senate Bill 994 (Jones, Chapter 713, Statutes of 2022) that specifically authorizes licensed vocational nurses (LVNs) to practice under the direction of licensed naturopathic doctors, effective January 1, 2023.

While the scope of practice for the licensed vocational nurse has not changed, the bill revises the definition of oversight of LVNs to additionally include practice under the direction of a naturopathic doctor.

In 2023, the Board will be amending its regulations to further clarify the rights and responsibilities of LVNs who choose to work under the direction of naturopathic doctors. To receive updates and information on the Board's progress in drafting these regulations, please subscribe to e-mail updates by selecting "Legislative and Regulation Updates" on the Board's website at:

<https://www.bvnpt.ca.gov/webapplications/apps/subscribe/index.shtml>

The Board strongly urges vocational nurses and NCLEX-PN-eligible vocational nursing students, who are considering working for naturopathic doctors, to carefully study the provisions of the bill, and reach out to the Board with their questions and comments:

Board of Vocational Nursing and Psychiatric Technicians

Education Division

2535 Capitol Oaks Drive, Suite 205

Sacramento, CA 95833

[bvnpt.sop@dca.ca.gov](mailto:bvnpt.sop@dca.ca.gov)

(916) 263-7843

**What this means:** LVNs may practice under the supervision of licensed naturopathic doctors, in addition to registered nurses, and physicians and surgeons, starting January 1, 2023.

**How this works:** The Board does not facilitate job placement or clinical opportunities for LVNs with naturopathic doctors. The scope of practice for LVNs may be limited, in some cases, to the scope of practice of the naturopathic doctor (for example, if the naturopathic doctor is not IV therapy certified, an LVN may not practice IV therapy under their direction). The Board's enforcement activities will remain the same for LVNs working with naturopathic doctors as they do for LVNs working in organized healthcare settings (hospitals, skilled nursing facilities, public health clinics).

The Board expects that any LVN considering employment by a naturopathic doctor will verify that the naturopathic doctor is actively licensed and will have a signed written supervision protocol, listing the practice agreement, available for the Board's review at any time the Board requests it.

The text of SB 994 (Jones) *Vocational nursing: direction of naturopathic doctor* is located at:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB994](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB994)

## Frequently Asked Questions

What is a naturopathic doctor?

**“Naturopathic doctor” is a person who holds an active license and practices “naturopathy,” a noninvasive system of health practice that employs natural health modalities, substances, and education to promote health.**

**“Naturopathic medicine” is a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease.<sup>1</sup>**

How can I find out if the naturopathic doctor I interviewed with is licensed?

**Use the DCA license search at <https://search.dca.ca.gov>.**

I am a blood withdrawal-certified psychiatric technician. Can I work for a naturopathic doctor?

**No. The provisions of this bill do not permit oversight of psychiatric technicians by naturopathic doctors.<sup>2</sup>**

I am an intravenous therapy-certified LVN. I received a job offer to do mobile intravenous therapy for a naturopathic doctor. Is this okay?

**No, it is not okay. LVNs may not start or superimpose intravenous fluids independently in unsupervised home care or other unauthorized settings. “Unauthorized settings” includes “wellness parties,” mobile services to private homes, and spas, among others. If you are not in an organized healthcare setting, you may not perform intravenous therapy.<sup>3</sup>**

I just started my new job as an LVN working for a naturopathic doctor. She said I will be “lead” of two naturopathic assistants when she is out of the office. What does this mean?

**We don’t know what this means. However, LVNs do not have authority to supervise naturopathic assistants. A “naturopathic assistant” means a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services for a licensed naturopathic doctor or naturopathic corporation and who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Medical Board of California for a medical assistant pursuant to Business and Professions Code Section 2069. A naturopathic assistant functions under the supervision of a licensed naturopathic doctor, not an LVN.<sup>4</sup>**

I am an LVN and my license is on probation right now. Can I work for a naturopathic doctor?

**Yes, as long as you maintain the conditions of your probation.<sup>5</sup>**

What can an LVN expect for pay from a naturopathic doctor?

**It will vary, and the Board doesn't collect data on this.**

I am working on the requirements to earn my registered nursing license. Will working for a naturopathic doctor help me earn clinical hours toward my registered nursing license?

**Please check with the [Board of Registered Nursing](#) for clinical hours criteria for your registered nursing license.**

Can LVNs working for naturopathic doctors perform respiratory therapy skills?

**No. Effective January 1, 2023, LVNs may only provide perform respiratory tasks and services expressly identified by the Respiratory Care Board of California, and only when directed by a physician and surgeon.<sup>6</sup>**

I'm an intravenous therapy-certified LVN. I'm going to work for a naturopathic doctor for their IV private event parties. I'll only be working 20 hours a month. They said I'll be a "1099 employee." Do I have to sign a Supervision Protocol, even though I'm "on call" and not working full-time?

**LVNs may not be independent contractors for naturopathic doctors.<sup>7</sup> You must have a signed Supervision Protocol, listing the practice agreement, with the naturopathic doctor, and make that Supervision Protocol available to the Board, if requested.<sup>8</sup>**

When can I start working for a naturopathic doctor?

**You may enter into a Supervision Protocol agreement with the naturopathic doctor on or after January 1, 2023.**

---

<sup>1</sup> Business and Professions Code Section 3613

<sup>2</sup> [Senate Bill 994](#) (Jones, Chapter 713, Statutes of 2022)

<sup>3</sup> Business and Professions Code Section 2859.1(c)(6)

<sup>4</sup> Business and Professions Code Section 3613

<sup>5</sup> Business and Professions Code 2859.1(f)

<sup>6</sup> [Senate Bill 1436](#) (Roth, Chapter 624, Statutes of 2022)

<sup>7</sup> [State of California Department of Industrial Relations](#) on [Assembly Bill 5](#) (Gonzalez, Chapter 296, Statutes of 2020)

<sup>8</sup> Business and Professions Code Section 2859



## MEMORANDUM

**DATE** July 26, 2022

**TO** Legislation and Regulations Committee Members

**FROM** Elaine Yamaguchi  
Executive Officer

**SUBJECT** AB 1536 Technical Clean-up

### **SUMMARY**

The purpose of this memo is to provide updates and recommendations to the Legislation and Regulations Committee and the full Board regarding a technical amendment to Business and Professions Code (BPC) Sections 2881.2 and 4531.1.

### **BACKGROUND**

On June 27, 2022, the Office of Administrative Law approved the Board's emergency regulations to adopt California Code of Regulations (CCR) sections 2537.2 and 2590.2 and to amend sections 2525, 2526, 2580, and 2581 to implement the provisions of AB 1536 (Committee on Business and Professions, Chapter 632, Statutes of 2021).

The Office of Administrative Law recommended that the Board seek legislative amendment of BPC sections 2881.2 (d) and 4531.1 (d). As written, these sections imply that a reduction in state funding *causes* reduced enrollment. However, State appropriation is based on enrollment numbers through its Budget Act—therefore, a reduction in enrollment causes the reduction in funding. Enrollment growth is directly supported by two primary sources of revenue: the tuition paid by the students themselves (less the amount set aside for financial aid) and State funding (General Fund). Together, these funds are intended to fully cover the marginal cost of enrollment growth, excluding any additional capital requirements (e.g., new classroom space).

For the sake of consistency, that same language is expressed in sections 2537.2 (f) and 2590.2 (f) of Title 16 of the California Code of Regulations, but the cause-and-effect relationship between student enrollment numbers and funding is still incorrect. The Office of Administrative Law recommends that the Board seeks amendment of BPC sections 2881.2 (d) and 4531.1 (d) to correct the statute and include that correction when filing the regular rulemaking in 2023.

If this is not corrected, the Board's ability to proceed with the permanent rulemaking process to implement AB 1536 may be impeded.



## **PROPOSED AMENDMENTS TO BUSINESS AND PROFESSIONS CODE SECTIONS**

New language is underlined.  
Deleted language is shown in ~~strikeout~~.

2881.2 (d) The board may reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity~~state funding~~ that directly leads to a reduction in state funding~~enrollment capacity~~. The board shall require a program to provide documentation for the purposes of issuing the fee reduction~~delay~~.

4531.1 (d) The board may reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity~~state funding~~ that directly leads to a reduction in state funding~~enrollment capacity~~. The board shall require a program to provide documentation for the purposes of issuing the fee reduction~~delay~~.

### **STAFF RECOMMENDATION**

Staff recommends that the Legislation and Regulations Committee consider this issue and make the following recommendations to the full Board at the August 12, 2022 meeting.

1. Authorize the Executive Officer and staff to coordinate with Assembly and Senate staff to ascertain whether it is possible to amend this language into an existing omnibus bill.
2. Authorize the Executive Officer and staff to coordinate with the Department of Consumer Affairs Division of Legislative Affairs to identify an omnibus bill in 2023 which could accommodate this language.

**Senate Business, Professions and Economic Development Committee**  
**COMMITTEE BILL: PROPOSED LEGISLATION**

**Note:** Submit the completed form to the Committee electronically by email and attach any additional information or documentation as necessary.

**REQUESTOR & CONTACT INFORMATION:**

Elaine G. Yamaguchi, Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
2535 Capitol Oaks Drive, Suite 205  
Sacramento, CA 95833  
(916) 576-4212

**DATE SUBMITTED:**

October 14, 2022

**SUMMARY:**

Non-substantive technical change to Business and Professions Code (BPC) sections 2881.2(d) and 4531.1(d).

**IDENTIFICATION OF PROBLEM:**

The causal relationship between funding and enrollment is incorrectly expressed in BPC sections 2881.2(d) and 4531.1(d). As written, these sections imply that a reduction in State funding causes reduced enrollment. However, State appropriation is based on enrollment numbers through its Budget Act—therefore, a reduction in enrollment causes the reduction in funding. Enrollment growth is directly supported by two primary sources of revenue: the tuition paid by the students themselves (less the amount set aside for financial aid) and State funding (General Fund). Together, these funds are intended to fully cover the marginal cost of enrollment growth, excluding any additional capital requirements (e.g., new classroom space).

**PROPOSED SOLUTION:**

Amend BPC sections 2881.2(d) and 4531.1(d) as proposed.

**PROGRAM BACKGROUND & LEGISLATIVE HISTORY:**

On June 27, 2022, the Office of Administrative Law approved the Board's emergency regulations to adopt California Code of Regulations (CCR) sections 2537.2 and 2590.2 and to amend sections 2525, 2526, 2580, and 2581 to implement the provisions of AB 1536 (Committee on Business and Professions, Chapter 632, Statutes of 2021).

**JUSTIFICATION:**

The Board was forced to express the erroneous text of BPC sections 2881.2(d) and 4531.1(d) in sections 2537.2 (f) and 2590.2 (f) of Title 16 of the California Code of Regulations to satisfy the Consistency standard of Government Code 11349(d).

The Office of Administrative Law recommends that the Board seek amendment of BPC sections 2881.2(d) and 4531.1(d) to correct the statute and include that correction when filing the regular rulemaking.

**ARGUMENTS PRO & CON:**

Not applicable. This is a non-substantive technical change.

**PROBABLE SUPPORT & OPPOSITION:**

At its August 12, 2022 Board meeting, the Board voted to authorize the Executive Officer and staff to coordinate with Assembly and Senate staff to ascertain whether it is possible to amend this language into an existing or future omnibus bill.

There is no anticipated opposition, as this is a non-substantive technical change.

**FISCAL IMPACT:**

Not applicable. This is a non-substantive technical change.

**ECONOMIC IMPACT:**

Not applicable. This is a non-substantive technical change.

**FINDINGS FROM OTHER STATES:**

Not applicable. This is a non-substantive technical change.

**PROPOSED TEXT (use underline & strikeout):**

New language is underlined. Deleted language is shown in ~~strikeout~~.

2881.2 (d) The board may reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity~~state funding~~ that directly leads to a reduction in state funding~~enrollment capacity~~. The board shall require a program to provide documentation for the purposes of issuing the fee reduction~~delay~~.

4531.1 (d) The board may reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity~~state funding~~ that directly leads to a reduction in state funding~~enrollment capacity~~. The board shall require a program to provide documentation for the purposes of issuing the fee reduction~~delay~~.