



October 29, 2024

Members, Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

Email: rcbinfo@dca.ca.gov

RE: Public Comments on Proposed Rulemaking on Basic Respiratory Tasks and Services (16 CCR 1399.365)

Dear Colleagues:

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) appreciates the opportunity to comment on the Respiratory Care Board of California's modified rulemaking proposal, as noticed on October 15, 2024.

At its public meeting on October 28, 2024, BVNPT's Legislation and Regulations Committee discussed and approved this letter and reviewed the attached recommended amendments to RCB's proposed modified regulatory language.

Consistent with BVNPT's previous stated position via letter and testimony on October 14, 2024, I would like to reiterate our concerns that this rulemaking would significantly narrow a long-practiced scope and create a critical workforce shortage. It places tens of thousands of patients who depend on LVNs for care at risk. BVNPT believes that your proposed modified text creates confusion and inefficiency in patient care, as a nurse cares for the patient as a whole and considers all the anatomical systems. It would better serve California consumers to provide well trained LVNs in all possible settings, which is why we support the patient-specific training requirements authorized in SB 1436 (Stats. 2022, ch. 624).

Our specific concerns and suggested amendments (noted in red) are as follows:

COMMENT 1

BVNPT Recommended text: We would recommend the inclusion of a preamble, which would include "safe harbor" language. Without this language, we have concerns that it may be unclear to the regulated community what may be practiced lawfully in accordance with both boards' respective practice acts. We believe that this language is a clearer expression.

1399.365. Basic Respiratory Tasks and Services.

Pursuant to subdivision (a) of section 3702.5 of the B&P code, basic respiratory tasks and services as defined in subdivision (b), are considered tasks that do not require a respiratory assessment by a licensed respiratory care professional

exclusively, and only require manual, technical skills, or patient data collection. Basic respiratory tasks and services shall not be considered the practice of respiratory care by the Board when performed by a licensed vocational nurse meeting the criteria in this section and B&P section 2860.

COMMENT 2

Proposed Modified text as posted 10/14/2024

1399.365. Basic Respiratory Tasks and Services.

(a) For purposes of this section, “assessment” means making an analysis or judgment and making recommendations concerning the management, diagnosis, treatment, or care of a patient or as a means to perform any task in regard to the care of a patient. Assessment as used in this section is beyond documenting observations, and gathering and reporting data to a licensed respiratory care practitioner, registered nurse, or physician.

BVNPT Concern: All healing arts professionals perform assessments. Although this language is specific to this section, it may create confusion. We also believe that the final sentence is redundant.

BVNPT Recommended text:

1399.365. Basic Respiratory Tasks and Services.

(a) For purposes of this section, “respiratory assessment” includes means making an analysis or judgment of a patient’s breathing and making recommendations to a medical doctor concerning the management, diagnosis, treatment, or care of a patient or as a means to perform any task in regard to the care of a patient. Assessment as used in this section is beyond documenting observations, and gathering and reporting data to a licensed respiratory care practitioner, registered nurse, or physician.

COMMENT 3

Proposed Modified text as posted 10/14/2024

1399.365. Basic Respiratory Tasks and Services.

(b) For purposes of Pursuant to subdivision (a) of section 3702.5 of the B&P Business and Professions code, basic respiratory tasks and services (“tasks”), ~~described more specifically below, do not require a respiratory assessment, and only require manual, technical skills, or data collection. Basic respiratory tasks do not include manipulation of an invasive or non-invasive ventilator and do not include assessment or evaluation of chest auscultation. Basic respiratory tasks~~ include the following:

(a1) Patient ~~D~~data collection.

(b2) Application and monitoring of ~~the~~ a pulse oximeter.

- (e3) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator. ~~Basic respiratory tasks do not include pre-treatment assessment, use of medical gas mixtures other than oxygen, preoxygenation, endotracheal or nasal suctioning, or post-treatment assessment.~~
- (d4) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation. ~~Basic respiratory tasks do not include the initial setup, change out, or replacement of the breathing circuit or adjustment of oxygen liter flow or oxygen concentration.~~
- (e5) Hygiene care including replacement of tracheostomy ties and gauze and cleaning of the stoma sites. ~~Basic respiratory tasks do not include tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.~~
- (f6) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
- (g7) Documentation of care provided, which includes data retrieved from performing a breath count or transcribing data from an invasive or non-invasive ventilator interface.
- (8) Observing and gathering data from chest auscultation, palpation, and percussion.

BVNPT Comments: BVNPT recognizes that this language is an improvement upon prior versions. However, we continue to have serious concerns that the language still narrows our long-standing interpretation of LVN practice scope and puts patients at risk. Preoxygenation or nasal suctioning; tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula, and adjusting O2 are necessary LVN skills, common and essential tasks specifically included in their licensure training, and are part of the National Licensing Examination-PN, or NCLEX-PN.

BVNPT Recommended text:

To address the above-noted concerns, we would suggest amending the text by adding the following:

(b) (9) Preoxygenation, or endotracheal or nasal suctioning.

(10) Tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.

(11) Adjusting oxygen as directed.

COMMENT 4

Proposed Modified text as posted 10/14/2024

1399.365. Basic Respiratory Tasks and Services.

(a) (c) For purposes of subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services do not include the following:

(1) Manipulation of an invasive or non-invasive ventilator.

(2) Assessment or evaluation of observed and gathered data from chest auscultation, palpation, and percussion.

(3) Pre-treatment or post-treatment assessment.

(4) Use of medical gas mixtures other than oxygen.

(5) Preoxygenation, or endotracheal or nasal suctioning.

(6) Initial setup, change out, or replacement of a breathing circuit or adjustment of oxygen liter flow or oxygen concentration.

(7) Tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.

BVNPT Comments:

We believe that this section is unnecessary, and that it would be more appropriate to concentrate the regulation on what may be performed, and not call out what may not be performed. BVNPT recommends striking subsection (c) altogether.

Additional Comments

We believe that it is counterproductive to restrict our licensees from performing these tasks, and then create exceptions in specified employment settings. In California, the need for respiratory care is expected to grow in the coming years, with the after-effects of long-COVID, exposure to wildfires, rise in asthma and allergies, and the silvering of our population. These restrictions will only exacerbate problems with healthcare access for the consumers in this state by further restricting these health care services to one profession when these services have historically been provided by numerous other professions who have received training and education in these areas, and when such services are provided by both professions under the supervision of other licensed healthcare professionals (doctors and nurses). It is analogous to the myriad legislative attempts to establish priorities for expediting licensure for specific groups. Eventually, if one exception exists, others will follow if public policy dictates the need, e.g., schools, retirement communities, state department facilities.

Consistency with Other Jurisdictions

Other states, including Texas, New York, South Carolina, Illinois, Washington, Kentucky, Oklahoma, New Mexico, Nevada and Ohio include the following tasks in their LVN/LPN scope of practices:

- Tracheostomy care
- Suctioning (nasopharyngeal, endotracheal)
- Pulse Oximetry
- Incentive Spirometer
- Nebulizer treatment

Closing

Our licensees can't replace the focused expertise of the Respiratory Care Therapists, but they care for patients with general or stable respiratory needs, so that RCTs are able to provide specialized care to patients with serious specific respiratory conditions. The proposed additional changes seem like an efficient way to meet the need for healing arts professionals to address patient care needs throughout our state.

We hope that the RCB will consider this information and move forward accordingly. Our goal, like yours, is to ensure that California consumers are provided with safe, consistent health care.

Respectfully,

Aleta Carpenter

ALETA CARPENTER, CHAIR
Legislative and Regulations Committee

Cc: Members, Board of Vocational Nursing and Psychiatric Technicians
Kimberly Kirchmeyer, Director, Department of Consumer Affairs
Christine Lally, Chief Deputy Director, Department of Consumer Affairs
Grace Arupo Rodriguez, Assistant Deputy Director for Legal Affairs,
Department of Consumer Affairs
Stephanie Nunez, Executive Officer, RCB
Elaine Yamaguchi, Executive Officer, BVNPT

Attachments: (1) Mark-up Version of Recommended Changes to Modified Regulatory
Text at 16 CCR 1399.365