



LEGISLATIVE AND REGULATIONS COMMITTEE MEETING MINUTES

September 18, 2024

**2535 Capitol Oaks Drive, Ste. 205
 Sacramento, CA 95833
 via WebEx Webinar**

Board Members Present:

Ms. Carpenter, Public Member, Chair
 Ms. Sonson, Public Member

Staff Present:

Ms. Yamaguchi, Executive Officer
 Mr. Ito, Assistant Executive Officer
 Ms. Wood, Enforcement Chief
 Ms. Higashi, Supervising Special Investigator
 Ms. Hudson, Intake & Enhanced Screening Manager
 Ms. Vierra, Probation Manager
 Dr. McLeod, Supervising Nursing Education Consultant
 Dr. Fairchild, Nursing Education Consultant
 Ms. Gomez, Nursing Education Consultant
 Ms. Silverman, Nursing Education Consultant
 Ms. DeLa Rosa, Nursing Education Consultant
 Mr. Hall, Licensing Supervisor
 Mr. Weiler, Administration Manager (moderator)
 Ms. Brady, Board Administrative Analyst
 Mr. Gonzales, Education Analyst
 Ms. Maracino, Education Analyst

DCA Staff Present:

Mr. Swenson, Attorney III, Board General Counsel
 Ms. Schieldge, Attorney IV, Board Regulations Counsel

1. Call to Order & Committee Roll Call – Ms. Carpenter, Chair.

Ms. Carpenter called the meeting to order at 8:32 a.m.

Committee members introduced themselves.

2. Introduction of Staff and Counsel – Ms. Yamaguchi, Executive Officer.

Ms. Yamaguchi introduced board staff. Mr. Swenson and Ms. Schieldge introduced themselves.

3. Legislative Wrap Up – Ms. Yamaguchi, Executive Officer.

Status of Sunset Review: AB 3255 (Committee)

Ms. Yamaguchi shared that the board’s Sunset Bill was enrolled. She advised the Board was given a four-year extension, the bill added clarifications to the school approval process, and BVNPT was authorized to establish a cite and fine program for non-compliant schools. Additionally, authorization was given to establish license retirement.

AB 1991 (Bonta) – Licensee and registrant records

Ms. Yamaguchi explained the bill was heavily amended and was no longer applicable to BVNPT.

AB 2862 (Gipson) – Licenses: African American applicants

Ms. Yamaguchi reported the author withdrew the bill.

AB 3127 (McKinnon) – Mandated Reporters

Ms. Yamaguchi updated this bill was held in appropriations.

2024 Rulemaking Update:

California Code of Regulations, Title 16, Division 25, Chapter 1, Article 5 and Chapter 2, Article 5 - review Article 5, Ch. 1 (VN) & Ch. 2 (PT) for recommendations for regulatory revisions

Ms. Yamaguchi shared that the NECs continue to work with Ms. Schieldge to develop the draft language.

2025 Rulemaking Calendar:

Ms. Yamaguchi shared the status of developing the Board’s 2025 Rulemaking Calendar to be reviewed and approved by the full Board, which will include:

- Expedited licensure for underserved areas.
- Creating a license retirement process
- Delegation of certain functions which may be concluded by the end of this calendar year. Ms. Schieldge advised this matter is currently at the Budget Office.

5. BVNPT Response to SB 1451 and RCB Proposed Rulemaking

Ms. Yamaguchi reported that a comment letter was submitted to the Respiratory Care Board (RCB) in advance of their August hearing. Ms. Yamaguchi advised one

remaining point of contention involves the topic of LVNs performing suctioning. Ms. Yamaguchi advised California does not have enough respiratory care practitioners if LVNs are no longer allowed to perform suctioning. RCB will be reviewing and responding to comments received on the proposed regulations at their Board meeting on October 14, and BVNPT has been challenged to provide detailed evidence that the LVNs are trained to perform all the tasks.

Ms. Yamaguchi complimented Mr. Swenson's and Ms. Schieldge's assistance in drafting suggested amendments to RCB's proposed language. It was discussed to set the October Legislative and Regulations Committee Meeting on October 2, 2024, to review and approve the language and the accompanying memo and to make it a public meeting for the purpose of inviting public comment. Ms. Yamaguchi advised there are schools and stakeholders who would like their voices to be heard but may not be able to travel to Sacramento for RCB's meeting on October 14.

6. Outreach

Ms. Yamaguchi suggested that educating legislators on the role and scope of LVNs would benefit the licensee population. Ms. Yamaguchi advised additional outreach was an item identified in the recent BVNPT Environmental Scan performed by DCA. Aside from career fairs, Ms. Yamaguchi advised a possible avenue is resuming BVNPT presentations at schools throughout California.

7. Proposed Legislative Concepts for 2025

Ms. Yamaguchi outlined the goal of approving an annual list of legislative concepts that staff could pursue if opportunities arose to save time. The Committee discussed this draft list which included:

- Limiting the number of times or the number of years after graduation an individual may attempt the NCLEX and CAPTLE.
- Auditing and citing IV-BW and CE providers
- Codifying the future joint BVNPT-RCB training.
- Changing required instructional hours or not differentiating between classroom and clinical hours.
- Creating and assessing an additional fee for school programs on provisional approval.
- Adjusting the existing school fees to cover approximate costs, possibly creating a tiered fee structure.
- Revising alternative pathways to licensure and authorizing BVNPT to regulate preparatory programs
- Requiring a California nexus for Method 3 and Method 5 applicants. Reviewing and codifying the requirements for licensee training and scope specific to cosmetic, dermatological, respiratory and naturopathic services.
- Clarifying the ABC test for LVNs and PTs as independent contractors working without the supervision required.

- Revising the duties of BVNPT's Special Investigators in response to the increased number of cases which DCA's Division of Investigation will no longer accept.
- Changing the PT title
- Sentence enhancement for abuse of developmentally delayed individuals.
- Seeking language be added to bills requiring expediting licensure to omit boards whose license processing times are within a specified number of days.

Ms. Sonson made a motion to recommend that the full board approve and adopt the recommendations in Ms. Yamaguchi's draft. Ms. Carpenter seconded.

8. Suggestion for Future Agenda Items

- Review and approve BVNPT's response to RCB's proposed regulations.
- Provide an opportunity for stakeholders to comment on the RCB proposed regulations through our WebEx meeting.

9. The next committee meeting is scheduled for Wednesday, October 2, 2024.

10. Adjournment.

Ms. Carpenter adjourned this meeting at 9:54 a.m.



LEGISLATIVE AND REGULATIONS COMMITTEE MEETING MINUTES

October 9, 2024

**2535 Capitol Oaks Drive, Ste. 205
Administrative Conference Room
Sacramento, CA 95833
and via Webex Webinar**

**Committee Members
Present:**

Ms. Carpenter, Committee Member, Chair
Ms. Sonson, Committee Member
Dr. Mountain, Committee Member

**Other Board Members
Attending:**

Mr. Dierking, Public Member
Ms. Guzman, LVN Member
Ms. Moore, PT Member
Ms. Nieblas, Public Member

Staff Present:

Ms. Yamaguchi, Executive Officer
Mr. Ito, Assistant Executive Officer
Ms. Wood, Enforcement Chief
Ms. Higashi, Supervising Special Investigator
Ms. Brown, Licensing Manager
Ms. Vierra, Probation Manager
Dr. McLeod, Supervising Nursing Education Consultant
Dr. Fairchild, Nursing Education Consultant
Ms. Silverman, Nursing Education Consultant
Ms. Devila, Nursing Education Consultant
Ms. Barrett, Nursing Education Consultant
Dr. Thomson, Nursing Education Consultant
Mr. Hall, Licensing Supervisor
Mr. Weiler, Administration Manager
Ms. Brady, Board Administrative Analyst (co-moderator)
Ms. Lee, Board Special Projects Analyst
Mr. Gonzales, Education Analyst
Ms. Maracino, Education Analyst

DCA Staff Present:

Mr. Swenson, Attorney III, Board General Counsel
Ms. Schieldge, Attorney IV, Board Regulations Counsel
Ms. Choi, Attorney III, Legal Affairs
Ms. Ganaway, Attorney III, Legal Affairs

Ms. Rodriguez, Assistant Deputy Director, Legal Affairs
Ms. Christine Lally, Chief Deputy Director, Executive Office
Ms. Dorantes, Assistant Deputy Director, Executive Office
Ms. Gear, DCA Board and Bureau Relations
Ms. Pitt, Analyst, Respiratory Care Board
Mr. Bouilly, SOLID Facilitator & Strategic Planner
Ms. Fisher, SOLID Strategic Business Analyst (moderator)

1. Call to Order & Committee Roll Call – Ms. Carpenter, Chair.

Ms. Carpenter called the meeting to order at 8:38 a.m. Ms. Carpenter advised Dr. Mountain, Board President, had appointed herself to join the committee. Committee members Carpenter and Mountain were present at the Board's office in Sacramento with committee member Sonson participating remotely via Webex.

Ms. Carpenter explained the Board during its August 16, 2024, Board Meeting delegated authority to this committee in order to authorize the preparation and presentation of the Board's position on the Respiratory Care Board of California's proposed rulemaking. Ms. Carpenter advised today's committee meeting was open to the public both in-person at the Sacramento office and via Webex. Ms. Carpenter advised the Webex login information was on the meeting agenda which could be found at www.bvnpt.ca.gov.

Committee members introduced themselves. Ms. Carpenter established a quorum.

2. Introduction of Staff and Counsel – Ms. Yamaguchi, Executive Officer.

Ms. Yamaguchi introduced board staff. Mr. Swenson and Ms. Schieldge introduced themselves.

3. Discussion and Possible Action by the Committee on Behalf of Board to Consider Authorizing Positions or Making Further Comments on the Respiratory Care Board's Rulemaking to Adopt Title 16, California Code of Regulations Section 1399.365, Basic Respiratory Tasks and Services, pursuant to delegation of authority to the Committee at the Board Meeting on August 16, 2024.

Ms. Yamaguchi advised that the Respiratory Care Board (RCB) will meet on October 14, 2024, and will be discussing their proposed rulemaking package which seeks to define basic respiratory tasks and services that do not require a respiratory assessment and only require manual technical skills or data collection.

Specifically, the tasks listed in RCB's proposed modified text are:

- (1) Patient data collection.
- (2) Application and monitoring of a pulse oximeter.

- (3) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator.
- (4) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation.
- (5) Hygiene care including replacement of tracheostomy ties and gauze and cleaning of the stoma sites.
- (6) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
- (7) 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.

Ms. Yamaguchi stated that staff agreed these tasks are appropriate to the LVN scope; however, she explained the controversy is a disagreement over several essential tasks which RCB's modified proposed text states are not considered basic respiratory tasks and services such as pre-oxygenation or nasal suctioning, tracheal suctioning, cuff inflation and deflation, use or removal of an external speaking valve, removal and/or replacement of tracheostomy tube or cannula, and adjusting oxygen as directed.

Ms. Yamaguchi advised the crux of the disagreement between BVNPT and RCB was that RCB fundamentally disagreed that the respiratory tasks discussed are within an LVN's scope of practice even if they are universally taught and part of the licensure examination. Ms. Yamaguchi advised RCB believes these tasks go beyond the manual and technical nature of the LVN's scope; however, BVNPT believes those are common and essential tasks which are manual and technical in nature. Ms. Yamaguchi stated the combination of thorough licensure training and supervised practice of LVNs make these tasks well within an LVN's scope.

Ms. Yamaguchi added that states such as Texas, New York, South Carolina, Illinois, Washington, Kentucky, Oklahoma, New Mexico, Nevada, and Ohio specify those tasks are within the LVN/LPN scope, including tracheostomy care, suctioning (nasal, peritoneal, and endotracheal), pulse oximetry, spirometer, and nebulizer treatments.

Ms. Yamaguchi reported that BVNPT had submitted background information and BVNPT's perspective to RCB and copies of those documents could be found on BVNPT's website.

Ms. Yamaguchi advised the staff recommend the committee authorize the Executive Officer to finalize and transmit the letter included in today's meeting packet with any changes or additions the committee would like to add. Also, Ms. Yamaguchi recommended the committee authorize her to address the RCB meeting on October 14, 2024, with our Board President for the purpose of communicating the tasks

discussed today are taught at the pre-licensure level through clinical rotations and are required knowledge for the national examination. Lastly, Ms. Yamaguchi recommended the committee authorize her to prepare and transmit to RCB a list of groups and individuals who will address the committee at this meeting and continue to reach out to stakeholders to ensure diverse voices and perspectives are conveyed to RCB on this important rulemaking topic.

Ms. Yamaguchi stated a letter was received from the School Nurses Association which shared a unique perspective in that the care for students in school settings are codified by the Education Code and would most likely conflict with the text of RCB's proposed rulemaking.

Dr. Mountain opined the nursing shortage in California would be exacerbated if LVNs were removed from providing care deemed only providable by respiratory therapists. She advised LVNs have been providing basic respiratory tasks and services in a variety of setting successfully for many years. Dr. Mountain advising removing LVNs would be devastating to patients and the healthcare system.

Mr. Swenson stated the recommended form of motion would include the elements Ms. Yamaguchi mentioned as a single motion to include approval of the draft letter to RCB together with the attachment of the proposed revised text. Ms. Yamaguchi reframed the recommended motion in that it allowed the finalization, approval, and transmittal of the draft letter to RCB and include the proposed amendments to RCB's proposed text. Ms. Carpenter called for the motion as described by Ms. Yamaguchi. The motion was moved by Dr. Mountain and seconded by Ms. Sonson.

Prior to opening public comment, Ms. Carpenter asked speakers to clearly identify themselves and the organizations they represent, and to limit their comments to no more than three minutes. Ms. Carpenter advised board members in attendance they may not participate in the committee discussion or vote but may provide public comment as a private citizen.

Public Comment:

Mary Adorno representing the California Association for Health Services at Home advised she supported the recommendations including the various types of suctioning. She advised she sent an alert to home health agencies who have submitted letters to RCB. She advised she will attend the October RCB Board Meeting along with clinicians from home health agencies representing many counties throughout California.

Christine Williams identified herself as a parent of a child with Prime Home Health who agreed with Ms. Adorno's comment.

Timothy Burr, Jr., representing Maxim Health Care Services California advised the majority of his company's workforce are LVNs and he strongly opposes RCB's

proposal to limit the scope of practice for LVNs. He advised skilled private duty nursing relies on the delivery of respiratory assessment, endotracheal suctioning, and tracheostomy care. Mr. Burr advised deviating from the established LVN scope of practice would adversely affect private duty nursing families throughout California. Mr. Burr advised keeping a patient at home would need both an LVN and respiratory technician which would increase costs and complicate delivery and coordination of care. Mr. Burr advised skilled nursing tasks such as suctioning may be necessary six to eight times per hour. He advised Maxim ensures its private duty nursing caregivers are trained and competent in those skills. Mr. Burr opined the proposed RCB regulations would result in increased costs of recruiting and training new staff given the potential displacement of LVNs. He advised the proposed regulations would lead to an increased use of institutional care and higher costs for the state and families. Mr. Burr stated he strongly urged BVNPT to reject the proposed changes to the LVN scope of practice.

Nelly Nieblas identified herself as a BVNPT Board Member and stated she desired to comment as a private citizen. Ms. Nieblas stated she witnessed the impact of the lack of skilled nursing care when her father passed away due to COVID. Ms. Nieblas explained the lack of skilled nursing care available in her father's nursing home. Ms. Nieblas expressed the importance of having sufficient skilled nursing staffing levels including those who can provide suctioning services and those patients served by Medi-Cal.

Kim Tasker representing Prime Home Health located in the Southern California region who serves patients in home health settings advised she will be attending next week's RCB Board Meeting. Ms. Tasker advised there are no other options for families to care for home health patients except for LVNs. Ms. Tasker advised she stands behind the statements made today including Ms. Adorno's.

Jennifer McLelland identified herself as a parent advocate with a child who lives at home with a tracheostomy and needs a ventilator. She advised the home health industry needs access to care without moving patients to institutional settings. She expressed her concern for patients in institutional settings on ventilators if LVNs are no longer able to provide respiratory care.

Cheryl Arnold, Corporate Director of Nursing, representing Institute of Technology's California campuses voiced her support for the BVNPT proposed text.

Mariam Voskanyan representing the Congregate Living Health Facility Association, advised her patients opt out of institutional settings desiring to live in residential homes within neighborhood communities. She advised LVNs care for patients requiring basic respiratory care 24-hours per day under the supervision of an RN and on-call physician. She advised her community would be severely impacted by RCB's proposed rulemaking and she supports the LVN scope of practice remaining as it currently stands.

Member Name	Vote
Ms. Carpenter	Yes
Ms. Sonson	Yes
Dr. Mountain	Yes

Motion carried.

4. Public Comment on Items Not on the Agenda – Ms. Carpenter, Chair.

There were no public comments.

5. Suggestions for Future Agenda Items – Ms. Carpenter, Chair

There were no suggestions for future agenda items.

6. Adjourn Meeting.

Ms. Carpenter adjourned the meeting at 9:15 a.m.



LEGISLATIVE AND REGULATIONS COMMITTEE MEETING MINUTES

October 28, 2024

**2535 Capitol Oaks Drive, Ste. 205
Administrative Conference Room
Sacramento, CA 95833
and via Webex Webinar**

**Committee Members
Present:**

Ms. Carpenter, Committee Member, Chair
Mr. Dierking, Committee Member
Dr. Mountain, Committee Member

**Other Board Members
Attending:**

Ms. Moore, PT Member

Staff Present:

Ms. Yamaguchi, Executive Officer
Mr. Ito, Assistant Executive Officer
Ms. Brown, Licensing Manager
Ms. Wood, Enforcement Chief
Ms. Vierra, Probation Manager
Dr. McLeod, Supervising Nursing Education Consultant
Dr. Fairchild, Nursing Education Consultant
Ms. Silverman, Nursing Education Consultant
Dr. Thomson, Nursing Education Consultant
Mr. Hall, Licensing Supervisor
Ms. Arreola, Licensing Supervisor
Ms. Brady, Board Administrative Analyst (co-moderator)
Ms. Maracino, Education Analyst
Mr. Gonzales, Education Analyst

DCA Staff Present:

Mr. Swenson, Attorney III, Board General Counsel
Ms. Schieldge, Attorney IV, Board Regulations Counsel
Ms. Moreno, DCA Board and Bureau Relations
Ms. Molina, Respiratory Care Board
Ms. Pitt, Respiratory Care Board
Mr. Bouilly, SOLID Facilitator & Strategic Planner (moderator)

1. Call to Order & Committee Roll Call – Ms. Carpenter, Chair.

Ms. Carpenter called the meeting to order at 9:06 a.m. Ms. Carpenter advised Dr. Mountain, Board President, had appointed herself to join the committee. Ms. Carpenter advised Dr. Mountain had appointed Mr. John Dierking, Vice President, to join the committee. Committee members Carpenter and Mountain were present at the Board's office in Sacramento with committee member Dierking participating remotely via Webex. Committee members introduced themselves. Ms. Carpenter established a quorum.

Ms. Carpenter advised the Board delegated authority to this committee during the August 16, 2024, Board Meeting in order to authorize the preparation and presentation of the Board's position on the California Respiratory Care Board's (RCB) proposed rulemaking. Ms. Carpenter advised the meeting was being conducted in-person at the BNVPT office in Sacramento and was open to the public via in-person and Webex. Ms. Carpenter advised the Webex login information was available on the agenda located on the BNVPT website.

2. Introduction of Staff and Counsel – Ms. Yamaguchi, Executive Officer.

Ms. Yamaguchi introduced board staff. Mr. Swenson and Ms. Schieldge introduced themselves.

3. Discussion and Possible Action by the Committee on Behalf of Board to Consider Making Further Comments on the Proposed Modified Regulatory Language of the Respiratory Care Board's Rulemaking to Adopt Title 16, California Code of Regulations Section 1399.365, Basic Respiratory Tasks and Services, during the 15 day comment period, pursuant to delegation of authority to the Committee at the Board Meeting on August 16, 2024. – Elaine Yamaguchi, Executive Officer.

Ms. Carpenter advised the purpose of today's meeting was to follow up on the letter and information approved at the October 9, 2024, committee meeting, and for the Executive Officer to provide a report on the October 14, 2024, RCB Board Meeting.

Ms. Yamaguchi provided a summary of her attendance at the October 14, 2024, RCB Board Meeting which was also attended by Dr. Mountain. Ms. Yamaguchi advised a variety of educators, employers, and advocates spoke at the RCB Board Meeting as did Dr. Mountain who spoke on behalf of the Board. Ms. Yamaguchi advised RCB's 15 day comment period is scheduled to close on October 31, 2024. Ms. Yamaguchi said a new letter to RCB will reiterate BNVPT's concerns corresponding point by point to RCB's new modified text to include safe harbor language, pointing out the ambiguity of defining and applying "assessments" as it relates to making recommendations for treatment or care, and the impact from narrowing the longstanding interpretations of the essential tasks LVNs can do.

Ms. Yamaguchi acknowledged RCB's movement toward addressing BVNPT's expressed concerns regarding essential tasks; however, the proposed language would still adversely impact LVNs and place patients at risk. Ms. Yamaguchi said that the BVNPT's letter will urge the RCB to consider adding tasks such as preoxygenation or nasal suctioning, tracheal suctioning, cough inflation/deflation, use of removal of external speaking valves, replacement or removal of tracheostomy or inner canula, and adjusting oxygen levels as necessary. Ms. Yamaguchi advised these are necessary, common, and essential tasks performed by LVNs which are specifically included in licensure training and examination.

Additionally, Ms. Yamaguchi recommended inclusion of a comment addressing section C of the proposed rulemaking which she believes is an unnecessary section. The proposed recommendation is to strike section C entirely.

Ms. Yamaguchi advised RCB may introduce a subsequent package specific to home health care services which would include the basic tasks and services BVNPT would like to see generally; however, its scope would not encompass all LVNs and may exacerbate access to care for non-home health LVNs for conditions such as exposure to wildfires, long COVID, rising asthma and allergies, and the aging population. Ms. Yamaguchi reiterated there would be a shortage of respiratory therapists to adequately address California's patient needs. Additionally, Ms. Yamaguchi was wary of RCB creating carve-outs for certain healthcare settings as those could become inconsistent and problematic, an example being the Education Code which expressly allows LVN school nurses to provide the respiratory tasks and services, thus conflicting with RCB's proposed regulations.

Ms. Yamaguchi discussed the potential adverse impact to healthcare in rural settings.

Committee Discussion: Dr. Mountain agreed with Ms. Yamaguchi about the potential impact to rural healthcare settings. Mr. Dierking stated he agreed with the recommendations by BVNPT staff as expressed by Ms. Yamaguchi. He advised the concept of consumer protection is embedded in BVNPT's functions and given RCB's competing interest he opined advocacy is needed in that limiting the scope of trained and qualified licensees will do little to contribute to consumer protection and will result in limiting the availability of critical services to consumers.

Motion: Mr. Swenson advised the recommended form of motion would be to approve the draft comment letter and the proposed amendments to RCB's proposed modified text language as an enclosure to the draft comment letter, both of which can be accessed on the BVNPT website. Dr. Mountain moved and Mr. Dierking seconded.

Public Comment:

Prior to opening for public comment, Mr. Swenson advised it would be helpful if the commenters indicated whether they support the comments in the comment letter and proposed amendments. Ms. Carpenter asked commenters to identify themselves and limit their time to three minutes. Ms. Carpenter advised board members in attendance may offer public comment as private citizens but may not participate in the committee discussion or vote.

There was no public comment.

Member Name	Vote
Ms. Carpenter	Yes
Mr. Dierking	Yes
Dr. Mountain	Yes

Motion carried.

4. Public Comment on Items Not on the Agenda – Ms. Carpenter, Chair.

There were no public comments.

5. Suggestions for Future Agenda Items – Ms. Carpenter, Chair

There were no suggestions for future agenda items.

6. Adjourn Meeting.

Ms. Carpenter adjourned the meeting at 9:33 a.m.