

AMENDED IN ASSEMBLY APRIL 24, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 3255

Introduced by Committee on Business and Professions

February 16, 2024

An act to amend ~~Section 2846 of the Business and Professions Code, Sections 2841, 2846, 2847.1, 2881.2, and 2881.3 of,~~ and to add Section 2892.8 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 3255, as amended, Committee on Business and Professions. Vocational ~~nursing~~; *nursing: sunset: licensure.*

Existing law, the Vocational Nursing Practice Act, establishes the Board of Vocational Nursing and Psychiatric Technicians of the State of California, ~~which~~ *which, until January 1, 2025,* is charged with various licensing, regulatory, and disciplinary functions related to vocational nursing. Existing ~~law~~ *law, until January 1, 2025, requires the board to select an executive officer to perform duties as are delegated by the board, as specified. Existing law makes a violation of the act a misdemeanor.*

This bill would extend the operation of the above provisions to January 1, 2029. By extending the operation of an existing crime, the bill would impose a state-mandated local program.

Existing law requires the board to annually elect from its members a president, vice president, and ~~such~~ other officers as it may deem necessary.

This bill would instead require the board to biennially elect those officers from its members.

Existing law, until January 1, 2025, sets forth an approval process for a vocational nursing school or program to be consistent with specified timelines. Under that timeline, existing law requires the board, upon receipt of a letter of intent to submit an application for approval as a school or program of licensed vocational nursing, to notify the proposed school or program of the steps in the approval process and provide an estimated wait time until active assignment to a nursing education consultant. Existing law requires a vocational nursing school or program seeking board approval to respond to the board within 2 weeks of each inquiry or request during all phases.

This bill would extend the operation of the approval process to January 1, 2029. The bill would clarify the above-described board notification requirement is contingent on the board receiving a letter of intent that is complete. The bill would also clarify that the requirement that the school or program seeking board approval respond, within 2 weeks, to the board's inquiries or requests is applicable during all phases of the application process after the school or program has submitted an initial application for approval, as specified.

Existing law prescribes various fees in connection with the issuance of licenses under the act, makes a license expire after 2 years if not renewed, and authorizes an expired license to be renewed at any time within 4 years after its expiration upon filing of an application for renewal and payment of certain fees, as specified.

This bill would, upon application and payment of a prescribed fee, require the board to issue a retired license to a licensee if the licensee holds an unrestricted license on the date of application. The bill would exempt a retired licensee from continuing education requirements and would prohibit a retired licensee from being entitled to practice vocational nursing. The bill would authorize the board to reinstate a retired license to active status if the retired licensee fulfills certain requirements for renewal of a license, including furnishing fingerprints, paying renewal fees, and providing evidence of certain qualifications.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2841 of the Business and Professions*
2 *Code is amended to read:*

3 2841. (a) There is in the Department of Consumer Affairs a
4 Board of Vocational Nursing and Psychiatric Technicians of the
5 State of California, which consists of 11 members.

6 (b) As used in this chapter, “board” means the Board of
7 Vocational Nursing and Psychiatric Technicians of the State of
8 California.

9 (c) This section shall remain in effect only until January 1, 2025,
10 2029, and as of that date is repealed.

11 ~~SECTION 1.~~

12 *SEC. 2. Section 2846 of the Business and Professions Code is*
13 *amended to read:*

14 2846. The board at its first meeting after appointment, and
15 biennially thereafter at its first meeting in every second year, shall
16 elect from its members a president, vice president, and such other
17 officers as it may deem necessary. The officers of the board shall
18 hold their respective positions during its pleasure.

19 *SEC. 3. Section 2847.1 of the Business and Professions Code*
20 *is amended to read:*

21 2847.1. (a) Except as provided in subdivision (f), the board
22 shall select an executive officer who shall perform duties as are
23 delegated by the board and who shall be responsible to it for the
24 accomplishment of those duties.

25 (b) The executive officer shall not be a member of the board.

26 (c) With the approval of the Director of Finance, the board shall
27 fix the salary of the executive officer.

28 (d) The executive officer shall be entitled to traveling and other
29 necessary expenses in the performance of their duties. The
30 executive officer shall make a statement, certified before a duly
31 authorized person, that the expenses have been actually incurred.

32 (e) Commencing January 1, 2018, the executive officer
33 appointed by the board pursuant to subdivision (a) is abolished.
34 Thereafter, until January 1, 2022, the executive officer shall be
35 appointed as set forth in Section 2847.3.

36 (f) Commencing January 1, 2022, the executive officer shall,
37 again, be selected by the board as set forth in subdivision (a),
38 except that any executive officer in office on December 31, 2021,

1 shall continue in the position as executive officer of the board until
 2 the position is vacated or the board selects another executive
 3 officer.

4 (g) This section shall remain in effect only until January 1, ~~2025~~,
 5 2029, and as of that date is repealed.

6 *SEC. 4. Section 2881.2 of the Business and Professions Code*
 7 *is amended to read:*

8 2881.2. (a) The approval process for a school or program shall
 9 be consistent with the following timelines:

10 (1) (A) Upon receipt of a *complete* letter of intent to submit an
 11 application for approval as a school or program of licensed
 12 vocational nursing, the board shall notify the proposed school or
 13 program of the steps in the approval process and provide an
 14 estimated wait time until active assignment to a nursing education
 15 consultant.

16 (B) Upon active assignment of a nursing education consultant,
 17 the school or program shall submit an initial application for
 18 approval within 60 days.

19 (2) (A) Within 30 days of the date the board receives an initial
 20 application for approval, the board shall notify the school or
 21 program whether the application is complete.

22 (B) A notice that an initial application is not complete shall
 23 specify what additional documents or payment of fees the school
 24 or program is required to submit to the board to make the
 25 application complete.

26 (3) Within 60 days from the date the board notifies the school
 27 or program that the initial application is not complete, the school
 28 or program shall provide the missing information. If a school or
 29 program fails to submit the required information, the board shall
 30 take the application out of consideration consistent with subdivision
 31 (c) of Section 2881.3. The board may provide a school or program
 32 with an additional 30 days to complete its application.

33 (4) Within six months of the date the board receives an initial
 34 application for approval as a school or program, the board shall
 35 approve the school or program, deny approval, or notify the school
 36 or program that corrective action is required.

37 (b) A school or program of vocational nursing seeking approval
 38 by the board shall remit to the board for deposit in the Vocational
 39 Nursing and Psychiatric Technicians Fund fees in accordance with
 40 the following schedule:

1 (1) The nonrefundable initial application fee shall be in an
2 amount equal to the reasonable costs incurred by the board in
3 reviewing and processing the application up to five thousand
4 dollars (\$5,000).

5 (2) (A) Except as provided in subparagraph (B), the final
6 approval fee shall be in an amount equal to the reasonable costs
7 incurred by the board in the application approval process up to
8 fifteen thousand dollars (\$15,000).

9 (B) The final approval fee for an applicant program that meets
10 ~~all~~ *both* of the following criteria shall be in an amount equal to the
11 reasonable costs incurred by the board in the application approval
12 process up to five thousand dollars (\$5,000):

13 (i) The program is affiliated with an approved school or program
14 that is in good standing.

15 (ii) The program utilizes the curriculum and policies approved
16 by the board for the approved school or program.

17 (3) The continuing approval fee shall be in an amount equal to
18 the reasonable costs incurred by the board in providing oversight
19 and review of a school or program up to five thousand dollars
20 (\$5,000) once every four years.

21 (c) If the board makes an initial determination that the cost of
22 providing oversight and review of a school or program under this
23 section is less than the amount of any fees required to be paid by
24 that school or program, the board shall decrease the fees applicable
25 to that institution to an amount that is proportional to the board's
26 reasonable costs associated with that school or program.

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

33 (e) (1) Notwithstanding Chapter 3.5 (commencing with Section
34 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
35 the board shall, without taking any further regulatory action,
36 implement, interpret, or make specific this section by means of
37 provider bulletins or similar instructions until emergency
38 regulations are adopted pursuant to paragraph (2). The board shall
39 provide written notice 30 days prior to the adoption of any
40 instruction under this paragraph and post the notice on its internet

1 website. It is the intent of the Legislature that the board have
2 temporary authority as necessary to implement program changes
3 until completion of the regulatory process.

4 (2) The board shall adopt emergency regulations no later than
5 June 30, 2022. The adoption of regulations shall be deemed an
6 emergency and necessary to avoid serious harm to the public peace,
7 health, safety, or general welfare within the meaning of Section
8 11342.545 of the Government Code, and the board need not make
9 a written finding of emergency as required by Section 11346.1 of
10 the Government Code. Notwithstanding subdivisions (e) and (h)
11 of Section 11346.1 of the Government Code, the board may
12 annually readopt any emergency regulation authorized by this
13 section that is the same as or substantially equivalent to an
14 emergency regulation previously adopted pursuant to this section
15 until January 1, 2024.

16 (3) The initial adoption of emergency regulations and the
17 readoption of emergency regulations authorized by this section
18 shall be submitted to the Office of Administrative Law for filing
19 with the Secretary of State. The emergency regulations shall remain
20 in effect for no more than one year from the date any regulation
21 became effective as an emergency regulation.

22 (f) This section shall remain in effect only until January 1, ~~2025,~~
23 ~~2029,~~ and as of that date is repealed.

24 *SEC. 5. Section 2881.3 of the Business and Professions Code*
25 *is amended to read:*

26 2881.3. (a) The board shall maintain a list of inactive
27 vocational nursing schools and programs seeking board approval.

28 (b) A vocational nursing school or program seeking board
29 approval shall respond to the board within two weeks of each
30 inquiry or request during all ~~phases:~~ *phases of the application*
31 *process after the school or program has submitted an initial*
32 *application for approval pursuant to Section 2881.2. A school or*
33 *program that does not respond within two weeks, or fails to pay*
34 *the required fees, shall be designated as inactive.*

35 (c) A vocational nursing school or program seeking board
36 approval that remains on the inactive list for 90 days shall be taken
37 out of consideration for a new program and may only reapply after
38 six months.

39 *SEC. 6. Section 2892.8 is added to the Business and Professions*
40 *Code, to read:*

1 2892.8. (a) *The board, upon application and payment of the*
2 *fee established pursuant to subdivision (h), shall issue a retired*
3 *license to a licensee if the licensee holds an unrestricted license*
4 *on the date of application.*

5 (b) *An applicant may elect to retire upon renewal or upon*
6 *submission of an application to the board as required.*

7 (c) *A retired licensee shall be exempt from continuing education*
8 *requirements.*

9 (d) *A retired licensee shall utilize their professional title only*
10 *with the unabbreviated word “retired” directly preceding or*
11 *directly following the professional title.*

12 (e) *A retired licensee shall not be entitled to practice vocational*
13 *nursing.*

14 (f) *The board may investigate potential violations or take action*
15 *against a retired license for a violation of this chapter.*

16 (g) *The board may reinstate a retired license to active status if*
17 *the retired licensee fulfills the requirements for renewal of a*
18 *license, including furnishing fingerprints, paying renewal fees,*
19 *and providing evidence of the following, as applicable:*

20 (1) *For a retired licensee who has been retired for four years*
21 *or fewer, the amount of continuing education required for the*
22 *renewal of an active license.*

23 (2) *For a retired licensee who has been retired for more than*
24 *four years, either a current valid active and clear registered nurse*
25 *license in another state, a United States territory, or Canada, or*
26 *passing the current examination for licensure.*

27 (h) *The fee to be paid upon filing the application for a retired*
28 *license shall be fifty dollars (\$50) unless a higher fee, not to exceed*
29 *one hundred dollars (\$100), is established by the board.*

30 SEC. 7. *No reimbursement is required by this act pursuant to*
31 *Section 6 of Article XIII B of the California Constitution because*
32 *the only costs that may be incurred by a local agency or school*
33 *district will be incurred because this act creates a new crime or*
34 *infraction, eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section 17556 of*
36 *the Government Code, or changes the definition of a crime within*
37 *the meaning of Section 6 of Article XIII B of the California*
38 *Constitution.*

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Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 3255 (Committee on Business and Professions) – As Introduced February 16, 2024

SUBJECT: Vocational nursing.

SUMMARY: Requires the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) to elect from its members a president, vice president, and other officers biennially instead of annually.

EXISTING LAW:

- 1) Establishes the BVNPT within the Department of Consumer Affairs (DCA) until January 1, 2025, to license and regulate licensed vocational nurses (LVNs) and psychiatric technicians (PTs) and administer the Vocational Nursing Practice Act and the Psychiatric Technicians Law. (Business and Professions Code (BPC) §§ 2840-2895.5 and §§ 4500-4548)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is the sunset review bill for the BVNPT, authored by the Assembly Business and Professions Committee. This bill is intended to extend the sunset date for the BVNPT and enact technical changes, statutory improvements, and policy reforms in response to issues raised during the BVNPT’s sunset review oversight process.

Background. Each year, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development hold joint sunset review oversight hearings to review the licensing boards under the Department of Consumer Affairs (DCA). The DCA boards are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the Legislature, DCA, boards, and stakeholders to discuss the performance of the boards and make recommendations for improvements.

Each board subject to review has an enacting statute that has a repeal date, which means each board requires an extension before the repeal date. This bill is one of the “sunset” bills that are intended to extend the repeal date of the boards undergoing sunset review, as well as include the recommendations from the sunset review oversight hearings.

This year, there are five sunset review bills authored by the Assembly Committee on Business and Professions and five sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee.

BVNPT. The BVNPT is the licensing entity within the DCA responsible for administering and enforcing both the Vocational Nursing Practice Act and the Psychiatric Technicians Law. Those laws establish the BVNPT and outline two distinct licensure programs, each with a separate regulatory framework for the practice, licensing, education, and discipline of Licensed

Vocational Nurses (LVNs) and Psychiatric Technicians (PTs). The BVNPT also approves educational programs for both licenses.

LVNs utilize technical and manual skills to provide basic nursing care under the direction of a licensed physician or registered nurse. PTs utilize technical and manual skills to provide care to clients diagnosed with mental disorders or developmental disabilities under the direction of a physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

The BVNPT reported a total of 117,576 active, in-state licensees at the end of Fiscal Year (FY) 2022-23, including 108,905 LVNs and 8,671 PTs. It also reported 168 approved LVN and PT educational programs in California, including 157 LVN programs and 11 PT programs.

The BVNPT's mission statement, as stated in its *2020-2025 Strategic Plan*, is:

The Board serves and protects the public by licensing qualified and competent vocational nurses and psychiatric technicians through ongoing educational oversight, regulation, and enforcement.

Current Related Legislation. AB 3251 (Committee on Business and Professions) is the sunset bill for the California Board of Accountancy. *This bill is pending in this committee.*

AB 3252 (Committee on Business and Professions) is the sunset bill for the Court Reporters Board. *This bill is pending in this committee.*

AB 3253 (Committee on Business and Professions) is the sunset bill for the Board for Professional Engineers, Land Surveyors, and Geologists. *This bill is pending in this committee.*

AB 3254 (Committee on Business and Professions) is the sunset bill for the Cemetery and Funeral Bureau. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the California Architects Board and the Landscape Architects Technical Committee. *This bill is pending in the Senate Committee on Judiciary.*

SB 1453 (Ashby) is the sunset bill for the Dental Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1454 (Ashby) is the sunset bill for the Bureau of Security and Investigative Services. *This bill is pending in the Senate Committee on Judiciary.*

SB 1455 (Ashby) is the sunset bill for the Contractors' State License Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation. AB 1536 (Committee on Business and Professions), Chapter 632, Statutes of 2021, extended the BVNPT by three years, delegated the authority to issue default decisions and stipulated surrenders of licenses to its executive officer, required the BVNPT follow a timeline for approving schools, established fees for schools seeking approval, and made other non-substantive and technical changes.

SB 1474 (Senate Committee on Business, Professions and Economic Development), Chapter 312, Statutes of 2020, extended various DCA boards and bureaus set to sunset this year by one

year, including the BVNPT and the Governor's authority to appoint the BVNPT's executive officer until January 1, 2022.

SB 606 (Glazer), Chapter 375, Statutes of 2019, among other things, extended the Governor's authority to appoint the BVNPT's executive officer until January 1, 2021.

AB 888 (Low), Chapter 575, Statutes of 2018, would have required the BVNPT to delegate the authority to issue default decisions and stipulated surrenders of licenses to its executive officer but was substantially amended to address a different topic in the Senate.

AB 1229 (Low), Chapter 586, Statutes of 2017, extended the operation of the BVNPT until January 1, 2021; authorized the Governor to appoint an executive officer until January 1, 2020; specified that, if the BVNPT becomes inoperative or is repealed, the director of the DCA is authorized to assume the duties of the BVNPT; required the BVNPT to submit specified reports to the Legislature until 2020; authorized the DCA director to evaluate the BVNPT's licensing program; required BVNPT staff to meet periodically with the DCA's Division of Investigation; and authorized the DCA director to determine the need for and to implement necessary changes to the BVNPT's enforcement program.

AB 178 (Bonilla), Chapter 429, Statutes of 2015, was an urgent bill that removed the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician to open the candidate pool for executive officers.

AB 179 (Bonilla), Chapter 510, Statutes of 2015, required the DCA internal audit unit to review the BVNPT's finances, required the DCA to appoint a third-party contractor to monitor and evaluate the BVNPT's administrative and enforcement processes, gave the BVNPT a protracted two-year extension until January 1, 2018, and merged the LVN and PT funds to avoid the need for an immediate fee increase.

ARGUMENTS IN SUPPORT:

None on file

ARGUMENTS IN OPPOSITION:

None on file

SUNSET ISSUES FOR CONSIDERATION:

In preparation for the sunset hearings, committee staff publishes background papers that identify outstanding issues relating to the entity being reviewed. The background papers are available on the Committee's website: <https://abp.assembly.ca.gov/jointsunsethearings>. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in the amendments to this bill or otherwise actively discussed:

- 1) *Issue #4: Alternate Pathways to Licensure.* The BVNPT is one of the few boards that offer pathways to licensure through education or experience outside of a typical educational program. Applicants who do not graduate from California-approved pre-licensure training programs have the option of requesting an evaluation of their alternate education and experience (known as "Method 3") or their experience only ("Method 5"), although both

Method 3 and Method 5 applicants must complete a 54-hour pharmacology course. This has resulted in significant processing timelines for these applications.

The BVNPT reports the following equivalency application timelines in days:

	LVNs	PTs
FY 2019-20	232	25
FY 2020-21	209	493
FY 2021-22	87	342
FY 2022-23	79	187

To accommodate as many applicants as possible, the requirements to qualify are relatively open-ended. However, the open-endedness also results in a lack of clarity for applicants as to what might qualify, resulting in larger and more detailed applications. This generates more work for board staff, who may have to go through a significant amount of back-and-forth with the applicant or third parties regarding requirements and application deficiencies.

One stakeholder has complained that the significant timelines and lack of clarity are unfair to applicants. Specifically, they complain that applicants have been unable to qualify because of the following:

- Work experience with a specific employer that may have qualified in the past no longer qualifies.
- In the BVNPT's regulations (CCR, tit. 16, § 2516(b)(3)) regarding verification of work experience, it is unclear that the "R.N." (registered nurse) in "R.N. director or supervisor" applies to both directors and supervisors.
- The BVNPT has been sending follow-up verification emails to supervisors who have already signed the application form.
- The BVNPT does not accept employment verification forms that are not in sealed business envelopes, even if the employer does not have letterhead or business envelopes.
- The verification of work form requires "diabetic urine testing," but the regulations (CCR, tit. 16, § 2516(b)(3)(A)5.) specify "diabetic testing" generally.
- The BVNPT has required work experience to be in a "general acute care facility approved by the Board," when the regulations (CCR, tit. 16, § 2516(b)(1)) say "clinical facility."

BVNPT staff acknowledge that the lack of clarity often leads to the need for additional information. However, staff also note that the need for additional information verification does not mean an application is rejected. As noted above, there will continue to be back and forth with the applicant and additional opportunities to correct any deficiencies. Still, BVNPT staff agrees that additional clarifications may be beneficial to both the BVNPT and future applicants.

Staff Recommendation: The BVNPT should update the Committees on its plans to clarify its regulations and work with committee staff on any potential statutory changes.

Board Response: The BVNPT is strongly committed to ensuring alternate pathways to licensure, but must be vigilant to prevent fraud, and to ensure that only qualified individuals

advance in the processes. In addition to clarifying code and regulations, the BVNPT suggests consideration of statutory and regulatory changes to expand authority to review, approve and regulate teaching and educational materials at programs that offer assistance to prospective Method 3 and Method 5 applicants. This expanded authority would, however, create a significantly increased workload in Education, Licensing and Enforcement.

Sunset Recommendation: None at this time—BVNPT staff have requested additional time to review the proposal.

- 2) *Issue #5: Program Hours of Instruction.* In the October 31, 2023, Federal Register, the U.S. Department of Education promulgated regulations that impact the eligibility requirements for gainful employment programs that receive federal funding under Title IV of the Higher Education Act. The regulations go into effect July 1, 2024.

Stakeholders are specifically concerned about program participation agreement language under § 668.14(b)(26)(ii), which seeks to ensure that gainful employment programs do not engage in “course stretching,” a practice where the program adds education requirements that exceed the state’s minimum requirement for admission into an occupation or profession. While the rule is not intended to include degree programs, many licenses require education that may not confer a degree, including LVN and PT programs.

133 of the 168 BVNPT-approved programs exceed the state minimum requirements of 1,530 hours and would therefore need to obtain approval to change their programs by July 1, 2024, if the effective date is not amended or if the minimum hours are not changed in statute. Stakeholders are concerned that if the programs are not able to obtain approval to change their programs in time, they will lose their Title IV funding.

Staff Recommendation: The BVNPT should update the Committees on any plans to address this issue, including any recommended alternatives to the minimum number of program hours requirement.

Board Response: At this writing, the BVNPT has requested that the US Department of Education (USDOE) delay implementation of the regulatory change for 18-months and is awaiting a response to its request. The Board has also been working to communicate with schools, stakeholders, the National Council for State Boards of Nursing (NCSBN), other states similarly impacted, other DCA Boards similarly impacted and elected officials.

Several programs whose curriculum hours are only slightly in excess of 1530 hours have already begun to work on changes and reductions with their assigned NECs.

The BVNPT hopes for some direction from the USDOE soon and appreciates the support from the DCA and the Committees in discussions for statutory and regulatory changes.

Sunset Recommendation: None at this time—it is not clear that this problem can be resolved via the sunset review process.

- 3) *Issue #6: Examination Retake Limit.* Currently there is no limit on the number of times a student may retake the NCLEX- PN. According to the BVNPT, “an applicant’s skills and knowledge decrease sharply after they complete the training programs, and their possible success taking the NCLEX decreases similarly. Schools and programs are held accountable

for the rate of NCLEX passage for their graduates. Many provide assistance but are not always able to contact individuals who graduated more than a few years ago, especially if the program has changed ownership and/or management. Establishing a reasonable time limit for an individual to test before being required to enroll in remedial courses would save the Board staff time and resources.”

Therefore, the BVNPT has suggested requiring applicants who would like to retake the NCLEX- PN five years after their first authorization to complete a remedial course from a board-approved program or CE course provider.

Staff Recommendation: The BVNPT should provide the Committees with the number of individuals who have applied to retake the NCLEX five years after their first authorization and provide a description of available remedial courses or, if none exist, what the BVNPT would require in a remedial course.

Board Response: The BVNPT will gather and analyze repeat test-taker information for California and other comparable states and will provide the Committees with findings and recommendations. In addition, staff will research existing assessment and remedial resources in use and recommend best practices to the Board.

Sunset Recommendation: None at this time—BVNPT staff will provide additional information.

- 4) *Issue #7: Education Cite and Fine.* This is a continuation of Issue # 15 from the BVNPT’s 2021 sunset review. Currently, the BVNPT does not have the authority to issue citations or fines to approved educational programs. Instead, it is authorized to place programs that do not meet the required standards on provisional approval. If a program fails to meet the requirements at the end of the provisional program’s approval period, the BVNPT may either extend the provisional approval period or revoke the provisional approval.

BVNPT staff notes that there may still be benefits and cost savings associated with a cite and fine program, particularly for minor violations that can be fixed with an order of abatement. Staff also notes that, while it works closely with the BPPE, there are situations where it is unclear where the jurisdictional lines end, such as when there are substantive issues with a program’s curriculum. In addition, the BPPE only oversees private programs.

Staff Recommendation: The BVNPT should continue to work with the Committees and the BPPE to determine whether cite and fine authority for educational programs is necessary and whether there are alternatives to cite and fine, such as a provisional approval fee.

Board Response: The BVNPT believes that cite and fine authority would provide a critical tool to work with programs in resolving serious health and safety issues and other regulatory noncompliance. Most programs cooperate quickly and fully with the notices of violation issued as part of program reviews but there are exceptions. Cite and fine authority would help ensure timely, complete, and costeffective remediation of violations not warranting programs being placed on provisional approval.

Sunset Recommendation: None at this time—discussions with the BVNPT and schools are ongoing.

- 5) *Issue #9: Audits of CE Providers.* All licensees are required to complete 30 hours of continuing education (CE) every two years to renew their license with an active status. The purpose of CE is to ensure that licensees maintain ongoing competence as healthcare evolves to ensure patient safety. As a result, the competency requirements for courses must be related to the scientific knowledge or technical, manual skills required for VN or PT practice; related to direct or indirect client care; and provide learning experiences expected to enhance the knowledge of the VN or PT at a level above that required for initial licensure.

While the BVNPT approves providers and their continuing education courses for VNs and PTs, it reports that it does not currently have the staff or resources to audit CE providers. As an alternative, it may be more cost-effective to include some additional review of approved CE providers at the time of renewal.

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

Board Response: The need for this regulatory authority, plus cite and fine authority is similar to the need for cite and fine authority over the schools and programs. While BVNPT has some authority over CE providers, these would be critical tools to work with programs in resolving serious regulatory noncompliance, before taking action to remove approval.

BVNPT also regulates providers of the IV and Blood Withdrawal post licensure certification programs. Auditing these providers would protect consumers by ensuring that programs were thorough, applicable, and legitimate, and that the certificated VNs and PTs were safe practitioners.

This expanded authority (audit and cite and fine) would require additional staff

Sunset Recommendation: None at this time—discussions are still ongoing with BVNPT staff.

- 6) *Issue #13: Technical Edits.* There may be technical changes to the BVNPT Practice Act that are necessary to enhance or clarify the Practice Act or assist with consumer protection. For example, the BVNPT has requested technical changes relating to the timing of board member per diem payments, clarification of requirements for inactive education programs, and retired licenses.

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

Board Response: The BVNPT appreciates the Committees' consideration of the changes suggested in the Report, including those already mentioned in this document. The Board will provide updated proposed bill language to the Committees.

Sunset Recommendation: Include uncontroversial technical issues, including clarifications around the school approval process and retiree licenses, but continue to discuss the remainder of the requests with BVNPT staff and interested stakeholders. For the retired licensees, amend the request to match the relevant aspects of the authority of the Board of Registered Nursing for consistency.

- 7) *Issue #14: Sunset Extension.* The BVNPT and its staff continue to work well with the Legislature in implementing its consumer protection mission. This is demonstrated by its implementation of prior committee recommendations, including the educational program approval changes, and its proactive efforts to address ongoing issues. While the outstanding issues noted in this background paper still need to be addressed, the BVNPT and its staff are aware and communicating with the Committees and their staff on next steps.

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

Board Response: BVNPT thanks the Committees and their staff and looks forward to continuing to work together in the coming years.

Sunset Recommendation: Extend the BVNPT by four years.

AMENDMENTS:

- 1) *Issue #14: Sunset Extension.* To extend the BVNPT by four years, amend the bill as follows:

On page 1, before line one insert:

2841. (a) There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, which consists of 11 members.

(b) As used in this chapter, "board" means the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(c) This section shall remain in effect only until January 1, ~~2025~~, 2029, and as of that date is repealed.

- 2) *Issue # 13: Technical Edits.* To incorporate the technical edits described above, amend the bill as follows:

On page 2, after line 2, insert:

SEC. X. Section 2881.2 of the Business and Professions Code is amended to read:

2881.2. (a) The approval process for a school or program shall be consistent with the following timelines:

(1) (A) Upon receipt of a *complete* letter of intent to submit an application for approval as a school or program of licensed vocational nursing, the board shall notify the proposed school or program of the steps in the approval process and provide an estimated wait time until active assignment to a nursing education consultant.

(B) Upon active assignment of a nursing education consultant, the school or program shall submit an initial application for approval within 60 days.

(2) (A) Within 30 days of the date the board receives an initial application for approval, the board shall notify the school or program whether the application is complete.

(B) A notice that an initial application is not complete shall specify what additional documents or payment of fees the school or program is required to submit to the board to make the application complete.

(3) Within 60 days from the date the board notifies the school or program that the initial application is not complete, the school or program shall provide the missing information. If a school or program fails to submit the required information, the board shall take the application out of consideration consistent with subdivision (c) of Section 2881.3. The board may provide a school or program with an additional 30 days to complete its application.

SEC. X. Section 2881.3 of the Business and Professions Code is amended to read:

2881.3. (a) The board shall maintain a list of inactive vocational nursing schools and

programs seeking board approval.

(b) A vocational nursing school or program seeking board approval shall respond to the board within two weeks of each inquiry or request during all phases *of the application process*. A school or program that does not respond within two weeks, or fails to pay the required fees, shall be designated as inactive.

(c) A vocational nursing school or program seeking board approval that remains on the inactive list for 90 days shall be taken out of consideration for a new program and may only reapply after six months.

SEC. X. Section 2892.8 is added to the Business and Professions Code, to read:

2892.8. (a) *The board, upon application and payment of the fee established pursuant to subdivision (h), shall issue a retired license to a licensee, if the licensee holds an unrestricted license on the date of application.*

(b) An applicant may elect to retire upon renewal or upon submission of an application to the board as required.

(c) A retired licensee shall be exempt from continuing education requirements.

(d) A retired licensee shall utilize their professional title only with the unabbreviated word "retired" directly preceding or directly following the professional title.

(e) A retired licensee shall not be entitled to practice vocational nursing.

(f) The board may investigate potential violations or take action against a retired license for a violation of this chapter.

(g) The board may reinstate a retired license to active status if the retired licensee fulfills the requirements for renewal of a license, including furnishing fingerprints, paying renewal fees, and providing evidence of the following, as applicable:

(1) For a retired licensee who has been retired for four years or less, the amount of continuing education required for the renewal of an active license.

(2) For a retired licensee who has been retired for more than four years, either a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or passing the current examination for licensure.

(h) The fee to be paid upon filing the application for a retired license shall be fifty dollars (\$50.00) unless a higher fee, not to exceed one hundred dollars (\$100) is established by the board

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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