

BACKGROUND PAPER FOR THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

**Joint Sunset Review Oversight Hearing, March 9, 2021
Senate Committee on Business, Professions and Economic Development
and the Assembly Committee on Business and Professions**

BACKGROUND, IDENTIFIED ISSUES, AND RECOMMENDATIONS

BRIEF OVERVIEW OF THE BOARD

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) is a licensing entity within the Department of Consumer Affairs (DCA). The BVNPT is responsible for administering and enforcing both the Vocational Nursing Practice Act¹ and the Psychiatric Technicians Law.² 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.

As of October 5, 2020, the BVNPT reported a total of 139,699 active licensees, including 128,332 LVNs and 11,367 PTs. As of March 2, 2021, the BVNPT reported 150 programs approved to offer educational programs leading to an LVN and PT license in California.

The BVNPT's mission is:³

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

¹ Business and Professions Code (BPC) §§ 2840-2895.5.

² BPC §§ 4500-4548.

³ BVNPT, *Strategic Plan 2020-2025*, at 7.

Legislative History

The specific regulation of LVNs in California began in 1951 when the state first enacted the Vocational Nursing Practice Act.⁴ The act was similar to the current act and established the BVNPT's predecessor, the Board of Vocational Nurse Examiners of the State of California (BVNE).

The regulation of PTs followed in 1959 when the state enacted the Psychiatric Technicians Law.⁵ The law established a voluntary certification program within the jurisdiction of the BVNE, prohibiting the use of the titles "certified psychiatric technician" and "C.P.T.," unless certified under the program. While there was no prohibition against the performance of PT services by an uncertified person, the law standardized the education requirements associated with the titles and established disciplinary provisions.

Eventually, in 1968, the state changed the PT certificate program into a licensure program. The new license requirement, effective January 1, 1970, prohibited the performance of PT services by those without a PT license, among other conforming and updating changes.⁶ The updated law also renamed the BVNE to the Board of Vocational Nurse and Psychiatric Technician Examiners (BVNPTE).

The BVNPT's final name change occurred in 1998 when the BVNPTE was renamed the BVNPT through sunset review.⁷ The sunset review legislation also modified board member composition from a professional member majority to the current public member majority.

The BVNPT structure remained stable until 2008 when the BVNPT was temporarily converted into a bureau under the DCA. Due to an oversight, the Assembly adjourned without taking up the BVNPT's 2007 sunset bill, which contained the statutory language required to extend the sunset date for the BVNPT and three other DCA licensing boards.⁸ As a result, the impacted boards operated as bureaus for six months, from July 1, 2008, to December 31, 2008. During the lapse, a pair of bills were passed to 1) maintain operations during the transition⁹ and 2) re-establish the BVNPT and the other boards on January 1, 2009.¹⁰

The next significant changes came out of the BVNPT's 2015 sunset review, which identified severe deficiencies and discrepancies in its fund, enforcement, staffing levels, and overall management. As a result, the BVNPT's sunset legislation: 1) required the DCA internal audit unit to review the BVNPT's finances, 2) required the DCA to appoint a third-party contractor to monitor and evaluate the BVNPT's

⁴ Senate Bill (SB) 1625 (Miller et al.), Chapter 1689, Statutes of 1951.

⁵ SB 732 (Thompson et al.), Chapter 1851, Statutes of 1959.

⁶ SB 298 (Teale), Chapter 1323, Statutes of 1968.

⁷ SB 827 (Greene), Chapter 759, Statutes of 1998.

⁸ California Legislature, *Senate Final History*, 2007-08 Regular Session, at 547.

⁹ SB 797 (Ridley-Thomas), Chapter 33, Statutes of 2008.

¹⁰ Assembly Bill (AB) 1545 (Eng), Chapter 35, Statutes of 2008.

administrative and enforcement processes, and 3) gave the BVNPT a protracted two-year extension.¹¹ The legislation also merged the LVN and PT funds to avoid the need for an immediate fee increase.

At the time, the BVNPT was also having difficulty filling its executive officer position, so an accompanying urgency bill also deleted the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician to open the candidate pool.¹²

The BVNPT's 2017 sunset review focused on the BVNPT's unwillingness to address the numerous issues identified by the DCA-appointed monitor or the ongoing mismanagement. As a result, the BVNPT's sunset legislation temporarily transferred the authority to appoint an executive officer to the Governor until January 1, 2020, and extended the BVNPT until January 1, 2021, giving the authority back to the BVNPT during its next review year.¹³ However, at the request of the administration, the Governor's authority was extended until January 1, 2021.¹⁴ Both dates were further extended until January 1, 2022, due to the inability to perform sunset review during the early months of the COVID-19 pandemic.¹⁵

Board Membership

The Vocational Nursing Act specifies that the BVNPT is composed of eleven members, six public members and five professional members, a public member majority. The Governor appoints all of the professional members and four of the public members, while the Senate Rules Committee and the Speaker of the Assembly appoint the remaining two public members. The professional members must include 2 LVNs, 2 PTs, and one LVN or RN with teaching or school administrative experiences. There are no qualifications for the appointment of public members, except that they may not be licensees of the BVNPT or any other healing arts board.

The BVNPT is required to meet at least twice per year and aims to meet at least four times per year. Meetings are public, pursuant to the Bagley-Keene Open Meetings Act.¹⁶ Members are not paid but receive a per diem of \$100 for each day spent in the discharge of official duties and are reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The current BVNPT members and their backgrounds are listed on the following pages.

¹¹ AB 179 (Bonilla), Chapter 510, Statutes of 2015.

¹² AB 178 (Bonilla), Chapter 429, Statutes of 2015.

¹³ AB 1229 (Low), Chapter 586, Statutes of 2017.

¹⁴ SB 606 (Glazer), Chapter 375, Statutes of 2019.

¹⁵ SB 1474 (Committee on Business, Professions and Economic Development), Chapter 312, Statutes of 2020.

¹⁶ Government Code §§ 11120-11132.

Board Members	Appointment	Term Expiration	Appointing Authority
<p>Carel M. Mountain, President, LVN Educator Member, has been Director of Nursing at Sacramento City College since 2016 and an online instructor at the University of Phoenix since 2006. She was a professor at Shasta College from 1997 to 2016. Dr. Mountain is a director member of the CA Organization of Associate Degree Nursing, National League for Nursing, and Sigma Theta Tau. She earned a Master of Science in nursing administration and education from Sonoma State University and a Doctor of Nursing Practice from California State University, Fresno.</p>	9/25/20	6/1/24	Governor
<p>John Dierking, Vice-President, Public Member, is an attorney and Tax Compliance Officer with the City of Los Angeles. He belongs to Volunteers in Service to Others (VISTO) within the Los Angeles County Probation Department and served as a Speaker appointee on the CA Council on Criminal Justice from 1997 to 2000. He also serves on the Board of Governors of the Engineers and Architects Association/IBEW 11, a labor organization representing approximately 4,700 professional members.</p>	10/20/20	6/1/25	Senate
<p>Taisha Brown, Public Member, has been an Employment Program Representative at the CA Employment Development Department since 2010. She is chair of the CA Democratic Party Black Caucus and Vice-Chair of the Labor Caucus to the CA Democratic Party.</p>	3/2/21	6/1/25	Governor
<p>Aleta Carpenter, Public Member, was a community education specialist at the Shasta County Health and Human Services Agency from 2007 to 2012 and a lobbyist and managing partner at Carpenter Snodgrass and Associates from 1982 to 2003. She is a member of the CA Heritage Youth Build Academy, Women’s Fund, American Women Artists, Youth Violence Prevention Council, and the Shasta County Tobacco Education Coalition. Ms. Carpenter earned a Master of Arts in Communication Studies from CA State University, Sacramento.</p>	9/25/20	6/1/24	Governor
<p>Abraham C. Hill, PT Member, has been a PT Instructor for the CA Department of Developmental Services at Northern STAR Community Crisis Home since 2018 and has served in several positions for the Department since 1990, including as a PT Instructor at Agnews Developmental Center and Sonoma Developmental Center and as a Consultant at the Golden Gate Regional Center. He has been a Direct Support Professional Instructor and Proctor at Eden Area Regional Occupational Program Center since 2008. Hill was a Clerk/Typist at the General Services Administration from 1985 to 1999. He earned Teaching Credentials from San Jose State University and a PT Certificate from Mission College.</p>	10/22/20	6/1/24	Governor
<p>Kenneth Maxey, Public Member, works as a Public Affairs Manager for Comcast. Before his current assignment, Mr. Maxey was employed as a legislative staff member followed by a stint with President Obama’s presidential campaign in 2008. He has also been Deputy Political Director for the Democratic National Committee, GOTV Director for Obama for America in Polk County, Iowa, State Outreach Director for Phil Angelides for Governor, and Grassroots Campaign Coordinator with John Kerry for President. Mr. Maxey holds a Bachelor of Arts in Political Science/History from Notre Dame De Namur University, a Master of Public Administration from Howard University, and a Master of Arts in International Peace and Conflict Resolution from American University.</p>	11/19/20	6/1/24	Assembly

Board Members	Appointment	Term Expiration	Appointing Authority
Donna Norton, LVN Member , has been an LVN since 1986. Since 1989, Ms. Norton has been an LVN at Kaiser Permanente. From 1984 to 1985, she was an LVN and phlebotomist at Oneida Hospital. From 1981 to 1985, she was an LVN at Straub Hospital and served as an LVN in the United States Army at Tripler Army Hospital from 1975 to 1981.	6/9/16	6/1/20	Governor
Tara M. Rooks, LVN Member , has been an LVN at Folsom State Prison since 2007. She was an LVN at the Vintage Faire Nursing and Rehabilitation Center from 2005 to 2006. Rooks is a member of SEIU Local 1000.	10/22/20	6/1/21	Governor
Melissa Rubalcava, PT Member , has been a program nurse at Exodus Recovery since 2015. She was an administrator at Willow Glen Care Center from 2012 to 2016, a program nurse and case manager at Turning Point from 2010 to 2012, and a licensed PT at the Coalinga State Hospital from 2006 to 2010.	11/14/19	6/1/23	Governor
Cheryl Turner, Public Member , has been the principal attorney at the Law Offices of Cheryl C. Turner since 1989. She was the vice-president at the Los Angeles Convention and Exhibition Center Authority in 2015. Attorney Turner earned a Juris Doctor degree from the University of Southern California, Gould School of Law.	5/9/17	6/1/21	Governor
Vacancy, LVN Member			Governor

Committees

The BVNPT has five committees composed of two to four BVNPT members who are charged with gathering public input, exploring approaches to issues, analyzing collected data, and making recommendations to the full board. The following are from the BVNPT's 2019-20 Administrative Manual:

- **Executive Committee:** provides oversight and recommendations regarding the administration of the BVNPT; directs and supervises the executive officer; provides guidance to BVNPT members, provides a confidential avenue for rank and file staff to discuss complaints, and monitors all other Committees.
- **Education and Practice Committee:** evaluates educational programs and policies, such as approval, curriculum, education, and practice requirements for LVNs and PTs. This committee is comprised of four members and therefore meets publicly according to the Bagley-Keene Open Meetings Act.
- **Enforcement Committee:** ensures licensee, program, and applicant compliance with laws and regulations and reviews and evaluates statistical reports and trends in workload to assess performance.
- **Legislation and Regulations Committee:** monitors and reviews proposed and pending legislative and regulatory changes impacting the BVNPT and develops board positions.

- **Licensing and Evaluations Committee:** provides oversight to licensing functions and reviews and oversees complaint trends.

Staffing

Unlike other licensing boards, the BVNPT's Executive Officer is currently appointed by the Governor and was appointed on January 22, 2018. The temporary appointment structure is discussed further on page 21 under Current Sunset Review Issues, Issue #2: Governor Appointment of the Executive Officer.

As of February 25, 2021, the BVNPT has a total of 73.4 authorized staff positions. In 2017, ongoing mismanagement and low staff morale led to a vacancy rate of over 20%, which included the departure of essential managers, including the enforcement chief and supervising investigator positions, and no succession planning. The lack of institutional knowledge exacerbated existing training materials and established protocols.

Since then, the BVNPT reports far fewer vacancies, around 4% at the start of March 2021. More importantly, had filled all of its chief and supervising positions as of June 2019. It also notes that nearly all departures are for promotional opportunities or retirement, and it can fill most vacancies within 90 days of posting, assuming no processing delays outside of its control. While the BVNPT and other licensing boards have limited opportunities for career advancement due to their flat organizational structure, it reports that it is working on succession planning and has promoted six internal candidates in 2018 and 2019.

Fiscal and Fund Analysis

The BVNPT is a special fund agency and receives no support from the General Fund.¹⁷ The BVNPT's fund, the Vocational Nursing and Psychiatric Technicians Fund,¹⁸ is primarily funded through licensing fees and administrative fee revenues. The largest and most consistent source of revenue is renewal fees. It may also collect revenue from fines and enforcement cost recovery.

The BVNPT and other licensing boards also try to maintain a healthy fund reserve, a fund balance that can cover economic uncertainties, potential litigation, salary or price increases, and other unexpected expenditures. As of February 24, 2021, DCA budget projections indicate that the BVNPT may be operating at a deficit, roughly projecting a loss of approximately \$1.4 million in FY 2021-22 and \$1.9 million in FY 2022-23.

If the projections hold, the fund reserve may become insolvent past FY 2023-24. The BVNPT's current year fund reserve is estimated to be approximately \$6.5 million (4.0 months of solvency without

¹⁷ For more information related to state funds, see Department of Finance, *Glossary of Budget Terms*, http://www.dof.ca.gov/budget/resources_for_departments/budget_analyst_guide/glossary.pdf.

¹⁸ BPC § 205(a)(22).

revenue). The BVNPT’s fund condition is discussed further on page 20 under Current Sunset Review Issues, Issue #1: Fund Condition.

Fund Condition (Dollars in Thousands)						
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021/22	FY 2022-23
Beginning Balance*	\$11,926	\$8,294	\$6,435	\$5,217	\$6,331	\$4,960
Total revenues	\$12,479	\$15,142	\$16,702	\$19,037	\$17,853	\$17,852
Total resources	\$24,405	\$23,436	\$23,137	\$24,254	\$24,184	\$22,812
Expenditures	\$16,677	\$16,896	\$17,920	\$17,923	\$19,224	\$19,761
Fund Balance	\$7,728	\$ 6,540	\$5,217	\$6,331	\$4,960	\$3,051
Months in Reserve	5.6	4.6	3.5	4.0	3.0	1.8
<i>*May not match prior fund balance due to prior year adjustments.</i>						

Expenditures by Program Component

BVNPT expenditures can be broken down based by its administrative, licensing and education, and enforcement costs. All licensing boards also pay a pro rata contribution to cover various administrative services provided by the DCA, which include training and planning, legal affairs, legislative affairs, information technology, communications, public affairs, and investigative services, among other services.

In FY 2015-16, the BVNPT’s enforcement expenditures were approximately 46% of its total expenditures. Licensing and education expenses were approximately 22%, and administrative expenses were approximately 5%. Its DCA pro rata contribution was approximately 25% of its total expenditures.

In FY 2016-17, enforcement expenses were approximately 47% of the total expenditures. Licensing and education expenses were approximately 22%, and administrative expenses were approximately 6%. The pro rata contribution was approximately 24%.

In FY 2017-18, the enforcement expenses were approximately 57% of the total expenditures. Licensing and education expenses were approximately 18%, and administrative expenses were approximately 5%. The pro rata contribution was approximately 18%.

In FY 2018-19, the enforcement expenses were approximately 55% of the total expenditures. Licensing and education expenses were approximately 18%, and administrative expenses were approximately 5%. The pro rata contribution was approximately 16%.

FY 2019-20 program breakdown was not available when the BVNPT submit its *2019 Sunset Review Report* because it was in the middle of the FY, but the latest fiscal information shows that the BVNPT’s total pro rata contribution was approximately \$5.4 million in FY 2019-20 (32%) and is projected to be

approximately \$5.2 million at the end of FY 2020-21 (30%). In FYs 2017-18 and 2018-19, the BVNPT's enforcement pro rata costs above were calculated by DCA as overall enforcement costs (overall pro rata costs were 35% and 36%, respectively).

The BVNPT reports that the initial change in its enforcement expenses in relation to its pro rata expenses in FY 2017-18 was due to the previous day-to-day presence of the DCA's Division of Investigation (DOI), which resulted from a 2017 sunset review recommendation intended to address ongoing issues in the BVNPT's enforcement program. The BVNPT also notes that, while the DOI presence lessened over the last four FYs, enforcement costs went up due to the Department of Justice and Office of Administrative Hearing costs, which rose sharply in 2018 as staff addressed the backlog of cases that built up since the last sunset review.

The clearing of the enforcement backlog at the board level also resulted in a higher than average number of cases referred to the DOI, so costs of conducting those investigations account for over half of the pro rata costs it pays to the DCA. DCA pro rata enforcement costs may continue to be high until the enforcement cases sent to DOI are cleared.

Further, beginning July 1, 2019, the annual rent increased by approximately \$30,000. At the beginning of FY 2019-20, the BVNPT also received notice that the Office of the Attorney General would be increasing its rates, creating an unexpected added annual cost of more than \$900,000. An augmentation to the Education Division also took effect at the start of FY 2020-21.

Cost Recovery

Pursuant to B&P Code §125.3, all DCA boards have the authority to recover costs from licensees related to enforcement activities except for the Medical Board of California. All enforcement cases referred to the Attorney General's Office that result in the filing of an accusation have the potential for a cost recovery order. If the case goes to an administrative hearing, an Administrative Law Judge may award cost recovery.

The BVNPT indicates that it seeks cost recovery in all cases where cost recovery is authorized. The BVNPT seeks the award of costs when settling cases with a stipulation, as well as in decisions provided through an administrative hearing. The BVNPT notes that there have been no changes implemented in the BVNPT's cost recovery efforts since the last review, but several cost recovery options were presented at the BVNPT's February 19, 2021, board meeting. BVNPT staff is currently working with the Enforcement Committee to determine which options the BVNPT may implement.

BVNPT staff also note one significant barrier to collecting funds, the inability to collect penalties before the reinstatement of the license. In matters that result in revocation, a former licensee may petition for reinstatement of their license. Generally, if reinstatement is granted, all penalties and outstanding costs from any prior disciplinary matter must be paid in full before the reinstatement of the license.

However, if a former licensee never applies for reinstatement, the BVNPT is unable to collect prior costs and penalties. In some cases, the actions of a licensee may be so egregious that they become ineligible for reinstatement. As a result, BVNPT staff note that there is a significant percentage of cost recovery that will never become available to collect.

Licensing

In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. The programs require anyone who wishes to practice in a licensed profession to meet a minimum level of competency and fitness to practice criteria, among other consumer protection requirements.

To that end, all BVNPT license applicants demonstrate competency and fitness to practice by submitting primary source documentation, which includes educational transcripts, experience records, license verification from other states, and professional certifications. As part of the licensing process, all applicants are required to submit fingerprint images to obtain criminal history background checks from the Department of Justice and the Federal Bureau of Investigation.

As of October 5, 2020, the BVNPT reported a total of 139,699 active licensees, including 128,332 LVNs and 11,367 PTs. Between 2017 and 2019, the BVNPT issued new licenses to an average of 6,973 LVNs and 417 PTs per year. It also issued renewals to an average of 47,396 LVNs and 4,520 PTs.

LVN Application Requirements. LVNs in California must be at least 17 years of age, have completed 12th grade or its equivalent, and have passed the National Council Licensure Examination for Practical/Vocational Nurses (NCLEX-PN) examination.¹⁹ LVN applicants seeking authorization to take the NCLEX-PN examination may do so via one of the following five methods:

- 1) Graduate from an approved VN program in California.²⁰
- 2) Graduate from a practical or VN program approved by another state, provided that the course of instruction completed is substantially equivalent to an approved VN program in California.²¹
- 3) Complete education or experience, or a combination, equivalent to that acquired in an approved VN program, including 51 months of paid bedside nursing experience in an acute care facility, verification of skill proficiency, and 54 hours of pharmacology theory.²²

¹⁹ BPC §§ 2866, 2872.2.

²⁰ BPC § 2866(c).

²¹ BPC § 2866(c), CCR, tit. 16 § 2516(a).

²² BPC § 2873, CCR, tit. 16 § 2516(b).

- 4) Complete education and experience as U.S. military medical personnel, including a minimum of 12 months of verified active duty rendering bedside patient care in any branch, a basic course of nursing in a branch, and service or discharge under honorable conditions.²³
- 5) Complete documented equivalent experience from an employer indicating the applicant received credit for paid work experience.²⁴

According to BVNPT staff, methods 3 and 5 are similar, and most applicants for method 3 are international applicants.

The BVNPT also allows equivalent licensees from other states and countries, such as licensed practical nurses, to apply without taking the NCLEX-PN (licensure by endorsement). Endorsement applicants must present proof of active licensure and have obtained a passing score on the NCLEX-PN or Nursing State Board Test Pool Examination for Practical Nurse (SBTPE).²⁵

LVN Scope of Practice. The LVN license authorizes, under the direction of a licensed physician or registered nurse, the performance of services requiring technical and manual skills acquired in a BVNPT approved vocational nursing school. According to the Vocational Nursing Practice Act and the BVNPT's regulations, services requiring technical and manual skills include the following:²⁶

- Basic nursing services, which means basic assessment (data collection), participation in planning, execution of interventions per a treatment plan, and contribution to the evaluation of individualized interventions related to the care plan or treatment plan.
- Administration of medications, including by hypodermic injection when directed by a physician.
- Application of communication skills for patient or client care and education.
- Contribution to the development and implementation of a teaching plan related to self-care for the patient or client.
- The performance of the following when directed by a physician and if additional training requirements are met:
 - The start and superimposition of intravenous fluids.
 - Blood withdrawal.

²³ BPC § 2873.5, CCR, tit. 16 § 2516.5.

²⁴ BPC § 2873, CCR, tit. 16 § 2516(b).

²⁵ BPC § 2872.1, CCR, tit. 16, § 2517.

²⁶ BPC §§ 2859-2860.7; CCR, tit. 16, § 2518.5, 2542-2542.5, 2544-2544.4, 2547-2547.5.

- Tuberculin skin tests, coccidiosis skin tests, and histoplasma skin tests within the course of a tuberculosis control program.
- Immunizations pursuant to written guidelines adopted by a hospital or medical group with whom the supervising physician is associated.

PT Application Requirements. Licensed PTs must be at least 18 years of age, have completed 12th grade or its equivalent, qualify for the California PT licensure examination by completing specified PT education or experience, and have passed the California PT licensure examination. PT applicants seeking authorization to take the California PT licensure examination may do so via one of the following four methods:

- 1) Graduate from an approved PT program in California.²⁷
- 2) Graduate from a PT program that the BVNPT finds equivalent to the minimum requirements of an approved PT program.²⁸
- 3) Complete education or experience, or a combination, equivalent to that acquired in an approved PT program, including 576 hours of classroom theory and 954 hours of supervised clinical experience in pharmacology, nursing science, mental disorders, and disabilities, or similar paid experience.²⁹
- 4) Complete specified education and experience as U.S. military medical personnel, including 1) an armed forces course involving Neuropsychiatric Nursing, 2) an armed forces or civilian course from an approved school in the care of clients with developmental disabilities, and 3) a minimum of 1 year of verified full-time paid work experience, with at least 6 months in a military clinical facility rendering bedside care to clients with mental disorders and at least 6 months to clients with developmental disabilities.³⁰

Currently, there is no national examination that can be used for licensure by endorsement. Arkansas, Colorado, Kansas, and Missouri are the only other states that license PTs in some form. Colorado also issues a separate license to eligible candidates in two specialty areas: care of clients with developmental disabilities and a license in the care of clients with mental disorders.

PT Scope of Practice. The PT license authorizes the implementation of procedures and techniques that involve the understanding of cause and effect and are used in the care, treatment, and rehabilitation of clients diagnosed with mental disorders or developmental disabilities. PTs must practice under the

²⁷ BPC § 4511(c)(1).

²⁸ BPC § 4511(c)(3).

²⁹ BPC § 4511(c)(2); CCR, tit. 16, § 2575(a).

³⁰ BPC § 4511(c)(2); CCR, tit. 16, § 2575(b).

direction and responsibility of a physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

According to the Psychiatric Technicians Law and the BVNPT's regulations, the PT scope includes the following:³¹

- Basic nursing services, which means basic assessment (data collection), participation in planning, execution of interventions per a treatment plan, and contribution to the evaluation of individualized interventions related to the care plan or treatment plan.
- Administering or implementing specific therapeutic procedures, techniques, treatments, or medications to enable recipients or patients to make optimal use of their therapeutic regime, their social and personal resources, and their residential care. If working in a mental health facility or developmental disability facility and directed by a physician, a PT may administer medications by hypodermic injection.
- Application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of recipients or patients, for the accurate recording of these symptoms and reactions, and for the carrying out of treatments and medications as prescribed by a licensed physician and surgeon or a psychiatrist.
- Contribution to the development and implementation of a teaching plan related to self-care for the patient or client.
- The performance of the following when directed by a physician and if additional training requirements:
 - Blood withdrawal from a patient with a mental disorder or developmental disability.
 - Tuberculin skin tests, coccidiosis skin tests, and histoplasma skin tests within the course of a tuberculosis control program.
 - Immunizations under written guidelines adopted by a hospital or medical group with whom the supervising physician is associated.

Education

LVN and PT educational programs must have BVNPT approval in order to qualify students for licensure.³² The purpose of BVNPT approval is to ensure that the offered course of instruction is consistent with the requirements for licensure. Educational programs are also subject to periodic

³¹ BPC §§ 4502-4502.3; CCR, tit. 16, §§ 2576.5, 2593-2593.4, 2594.

³² BPC §§ 2880-2884; §§4530-4532.

inspection and review, as determined by the BVNPT. There is currently no fee associated with approval or review.

As of March 2, 2021, the BVNPT reported:

- 150 approved programs, 137 VN and 13 PT.
- 15 provisionally approved active programs, 14 VN and 1 PT.
- 9 VN proposed programs assigned to a nurse education consultant (NEC) for approval review (no PT programs).

The BVNPT also reported a backlog of 54 programs awaiting assignment to an NEC. The school approval backlog is discussed further on page 36 under Current Sunset Review Issues, Issue #13: Program Approval Backlog.

In terms of program approval requirements, both practice acts are vague. The Vocational Nursing Practice Act requires that programs must: 1) offer no less than 1,530 hours or 50-semester units; 2) offer clinical experience in medical, surgical, obstetrical patients, and sick children; and 3) give credit for experience and education earned in other nursing fields. Otherwise, the act broadly authorizes the BVNPT to determine the required curriculum, clinical experiences, and distribution of units and hours.

The Psychiatric Technicians Law similarly gives the BVNPT broad discretion to decide the appropriate standards for PT programs. The law only specifies that the hours are equal to or greater than the requirement for VN programs, that the subjects include the principles of care of the mentally disabled and the developmentally disabled, and that clinical inpatient experience is integral and earned at a state hospital, except as specified.

The BVNPT's additional requirements for both types of programs are outlined in its regulations.³³ The regulations specify application procedures, reporting requirements, curriculum, and clinical experience. They also include faculty, resource, and facility requirements, although both practice acts are silent on the duty to establish the latter requirements.

The California Private Postsecondary Education Act of 2009 also specifies separate requirements for private postsecondary institutions that offer VN and PT programs.³⁴ Private institutions must obtain prior approval from the Bureau for Private Postsecondary Education (BPPE), or an exemption, before becoming eligible for BVNPT approval.

While BVNPT approval is to ensure that the offered course of instruction is consistent with the requirements for licensure, the purpose of the BPPE regulation is to ensure a minimal level of overall

³³ CCR, tit. 16, §§2525-2536, §§ 2580-2589.

³⁴ BPC §§ 94800-94950.

quality. Specifically, the BPPE establishes and enforces standards that: 1) aim to protect consumers and students against fraud, misrepresentation, or other business practices that may lead to loss of students' tuition and related funds and 2) promote ethical business practices, health and safety, fiscal integrity, instructional quality, and institutional stability.

Given the overlap in approval responsibilities, the BVNPT reports that it works cooperatively with the BPPE in the approval and monitoring of educational programs, as well as providers of continuing education that are operated in proprietary settings. Approval overlap is discussed further on page 36 under Current Sunset Review Issues, Issue#13: Program Approval Backlog.

Continuing Education

The BVNPT requires 30 hours of continuing education (CE) every two years to ensure that its licensees receive current information about new concepts, procedures, and practices relative to their respective scopes of practice. The BVNPT accepts CE courses for LVNs and PTs from nursing agencies or organizations from California or other states. It also approves providers who wish to offer CE specifically for LVNs and PTs. The provider pays a fee to the BVNPT that is submitted with the approval application for the first class. Once approved, the provider may offer any number of classes within two years.

The BVNPT verifies CE by checking the validity of individual provider names and numbers with the agency that grants the provider status. In addition, random CE audits are performed on licensees monthly and individual audits are conducted if a problem of false information becomes apparent to the BVNPT. Licensees are required to maintain CE information for four years for audit purposes. This allows the BVNPT an opportunity to check not only CE compliance for the most recent renewal period but also for the prior period as well.

Enforcement

The BVNPT is responsible for enforcing the requirements of the Vocational Nursing Practice Act and the Psychiatric Technicians Law. The purpose of enforcement is to ensure that licensees continue to adhere to licensing requirements and protect the public from those that do not.

To that end, the BVNPT is required to investigate potential violations. Cases without sufficient evidence or that do not allege a violation are closed without further action. If it finds there was a violation, the Enforcement Division may take several types of actions depending on the severity of the violation.

For minor violations, the BVNPT may send a Notice of Warning letter or issue a citation, which may include a fine up to a maximum of \$5,000 or an order of abatement. For more significant violations, it may seek formal disciplinary actions against a license, including probation, suspension, or revocation. The BVNPT can initiate formal disciplinary action by referring the matter to the Office of the Attorney General to prepare a case for prosecution in an administrative proceeding. For violations that also involve criminal conduct, the BVNPT can also refer the case to law enforcement.

Like other licensing boards, the BVNPT relies on complaints and other information submitted by consumers, licensees, employers, and relevant organizations and governmental entities, including arrest and conviction notices from law enforcement. BVNPT enforcement staff may also open a case based on internal information reviewed by staff.

Additionally, the DCA's 2010 Consumer Protection Enforcement Initiative (CPEI) introduced performance measures and set target cycle timelines with the aim of resolving investigations and disciplinary proceedings in a timely manner. Consumers, licensees, and the public benefit from the expedient resolution of investigations and disciplinary proceedings. The CPEI timelines track statistics for every stage of the enforcement process, including the following statistics quarterly:

- New complaint intake and the average number of days to close a complaint or assign it for an investigation (target average of 10 days).
- Investigation cases completed and the average number of days to complete an investigation (target average of 360 days).
- Formal disciplinary actions completed and the average number of days to complete a disciplinary action (target average of 540 days).
- Total probationers and probation completions.
- New probationers and the average number of days from assignment to first contact (target average 15 days).
- Probation violations and the average number of days to initiate appropriate action (target average 30 days).

The statistics reported by the BVNPT indicate that its cycle times have mostly met or exceeded the performance targets since FY 2017-18. However, there were two exceptions.

First, there were four instances where the BVNPT missed the target 10 days to assign or close a complaint. It missed the target in Q1 of FY 2017/18 (12 days), Q2 and Q3 of 2018/19 (both 16 days), and Q1 of 2019/20 (11 days).

Second, the BVNPT has been unable to meet the target 540 days (18 months) to complete formal discipline cases referred to the Office of the Attorney General, also known as Performance Measure 4 (PM4). However, few boards, including the BVNPT, report meeting this target cycle time. PM4 target timelines are discussed further on page 42 under Current Sunset Review Issues, Issue #20: Formal Discipline Timelines.

Additional Background Information

For additional information regarding the BVNPT's responsibilities, operations, and functions, please see the BVNPT's *2019 Sunset Review Report*, *2020 Sunset Review Supplement*, and attachments. The reports are available on the Assembly Committee on Business and Professions website: abp.assembly.ca.gov/reports.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The BVNPT was last reviewed in 2017. Due to the number of ongoing issues, the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions each wrote a separate sunset background paper. While there was some overlap between the two papers, the Senate Committee paper focused more on the enforcement issues, and the Assembly paper focused more on the administrative issues. Both papers identified a total of 16 issues, some of which overlapped. Below are the issues addressed since the last sunset review. Current outstanding issues are discussed under Current Sunset Review Issues.

- **Staffing and Management.** In 2017, the BVNPT had an extremely high vacancy rate, exceeding 20 percent, with no executive team or experienced managers. The Committees and the administration found that this likely resulted from management issues. As of March 2021, the BVNPT reports that its vacancy rate is lower than 4% and that most departures are for promotional opportunities or retirement. The BVNPT reports that it also has a complete leadership team and morale has improved significantly. The BVNPT also reports that it generally fills positions within ninety days of vacancy postings.
- **Utilizing Board Committees.** The Legislature and the Governor's Office in 2016 and 2017 received numerous allegations from rank and file employees alleging abusive and incompetent practices by executive and managerial staff. In response to 2017 sunset review recommendations, the BVNPT appointed a two-member Administrative Committee and charged it with investigating these concerns and improving staff morale. Because staff complaints tapered off heading into 2019, the duties of the Administrative Committee were folded into the Executive Committee.
- **Strategic Plan.** A 2016 DCA internal audit found that the BVNPT's strategic plan was incomplete. Since then, the BVNPT worked with the DCA's Strategic Organizational Leadership Individual Development (SOLID) unit to examine the prior strategic plan and to design and implement an inclusive and comprehensive strategic planning process. In November 2019, the BVNPT approved a new and compliant 2020-2025 Strategic Plan.
- **Policies, Procedures, and Desk Manuals.** The 2017 sunset review found, through the administrative and enforcement monitor, that the BVNPT did not have sufficient training protocols for staff, including process and procedure manuals. Throughout 2018 and 2019, the BVNPT staff leadership reviewed, updated, and created duty statements, policy manuals, including the *Office Expectations*

Manual and desk-specific procedure manuals. The BVNPT reports that new staff members also receive a thorough onboarding orientation and managers expedite training requests wherever possible. The manuals can be found in the attachments to the BVNPT's *2019 Sunset Review Report*.

- **Implementation of BreEZe.** The BVNPT has fully implemented the BreEZe system and states that all staff members are fully trained. The staff in the front office who assist customers on the telephone or at the public counter can easily access licensee account information and answer questions directly and efficiently.
- **Moratorium on New Educational Program Approval.** The Committees had expressed reservations about the BVNPT's prior moratorium on adding new proposals to the list for program approval. In 2015, it had instituted a 2-year moratorium on new applications in order to clear a backlog of 145 schools awaiting approval. While the backlog was reduced during the moratorium, it is unclear whether a moratorium is an appropriate solution to BVNPT's difficulty keeping pace with the number of growing programs.

As of 2019, the BVNPT reports that it has a full complement of NECs, that it has a qualified Supervising Nursing Education Consultant (SNEC), and that the prior backlog is moving in the right direction. Still, some applications have been under consideration for longer than two years, so some applicants have contacted their elected officials about this matter. The executive officer responded personally to inquiries from legislative offices and has often included committee staff. The ongoing backlog is discussed further on page 36 under Current Sunset Review Issues, Issue #13: Program Approval Backlog.

- **2016 Continuing Education Audit.** In 2016, the BVNPT executive team attempted to perform a continuing education audit of approximately 57,000 licensees. Although initially defensive of the decision, the BVNPT eventually abandoned the project as it was found to be unfeasible. Both the Assembly and Senate Committees urged the BVNPT to issue an apology letter to all affected licensees. BVNPT staff at the time were directed to prepare the letter but were not able to complete the request due to the large, unbudgeted cost and added staff workload. Instead, the BVNPT posted a message on its website.
- **Modification of Equivalency Pathway.** During the 2017 sunset review, the Committees were concerned that the BVNPT was unnecessarily seeking to eliminate pathways to licensure, including the experience equivalency pathway, or "method 3." The BVNPT ultimately chose not to continue seeking to eliminate the pathway.
- **Enforcement Improvements/Implementation of Monitor's Recommendation.** Over the past two years, the BVNPT staff made significant progress in rebuilding and improving the Enforcement Division, in coordination with the DCA's Division of Investigations. Important to that progress is was the implementation of the administrative and program monitor's recommendations regarding the reorganization of the units, prioritizing training for the staff, and hiring and training experienced

leadership. The implementation of the monitor's recommendations is discussed further on page 21 under Current Sunset Review Issues, Issue #2: Governor Appointment of Executive Officer.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the BVNPT and other areas of concern for the Committees to consider along with background information concerning the issues. There are also recommendations the Committee staff have made regarding issues or problem areas that need to be addressed. The BVNPT and other interested parties, including the professions, have been provided with this background paper and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUES

ISSUE #1: BUDGET PROJECTIONS. *The BVNPT’s budget projections have been fluid since FY 2017-18, resulting in difficulties with long-term accuracy. Are there ways to improve the accuracy of the BVNPT’s budget projections?*

Background: The BVNPT’s budget projections have seen several fluctuations in recent years, and its previous budget projections have not aligned with the recent actuals. For example, in the BVNPT’s 2019 *Sunset Review Report*, its estimated FY 2018-19 annual revenue was approximately \$14.3 million and its expenditures were approximately \$17.5 million, suggesting a budget deficit of approximately \$3.2 million.

The 2019 projections also predicted additional losses in the out-years, approximately \$2.4 million in FY 2020-21 and \$2.9 million in FY 2021-22. If that projection held, the BVNPT would have seen a decrease in its reserves from approximately \$8.5 million in FY 2018-19 to \$3.9 million by the end of FY 2019-20, \$1.5 million by the end of FY 2020-21, and -\$1.4 million at the end of FY 2021-22.

2019 Fund Condition (Dollars in Thousands)					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Fund Balance	\$8,478	\$5,345	\$3,923	\$1,482	-\$1,438
Months in Reserve	5.8	3.5	2.4	0.9	-0.9

Instead, the BVNPT’s FY 2019-20 ending balance remained relatively steady at \$5.2 million, slightly down from \$5.3 million in FY 2018-19, and the current year (FY 2020-21) balance is projected to grow to \$6.3 million. The BVNPT reports that the projected growth in the current year is due to an unpredictable windfall resulting from late renewals and delinquent licenses and the associated penalties, which change year to year. As a result, current out-year projections continue to reflect a deficit.

2021 Fund Condition (Dollars in Thousands)				
	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23
Fund Balance	\$5,217	\$6,331	\$4,960	\$3,051
Months in Reserve	3.5	4.0	3.0	1.8

BVNPT staff notes that prior budget projections were thrown off and have remained fluid due to its significant organizational restructuring since its last sunset review in 2017. As a result, budget projections may stabilize further as the BVNPT’s organizational structure settles.

By way of background, much of the BVNPT's accounting processes are not done at the board level. For example, the BVNPT is reliant on the DCA's budget unit for its budget reports, and when there is DCA staff turnover, there may be some loss of continuity. The BVNPT does have a budget analyst that can compare its internal accounting to the reports prepared by the DCA, but the official budget must be completed by the DCA budget unit.

Prior inaccuracies in the budget projections can also be attributed to a delay in the implementation of the Financial Information System for California (FISCal), California's statewide accounting, budget, cash management, and procurement IT system. The delay prevented the BVNPT and many other state agencies from receiving their final accounting for FYs 2017-18 and 2018-19 in a timely manner. BVNPT staff reports that the backlog now appears to be resolved.

Given the multitude of variables that need to be considered during the budget process, it is not uncommon for there to be significant variance between FYs and between projections and actuals. Still, the consistent lack of accuracy of recent BVNPT projections presents difficulties in determining its current budgetary needs from a policy perspective, particularly when proposed fee increases are involved. It may be helpful to identify potential ongoing systemic issues that need to be addressed, potential factors that may contribute to budget volatility, or processes that can be improved.

Staff Recommendation: *The BVNPT should discuss identified issues with the current budget accounting process and discuss potential ways to improve budget projections.*

ISSUE #2: FUND CONDITION. *Despite recent fee increases, the BVNPT is concerned that it may still be operating with a budget deficit. What solutions are available to address the potential deficit?*

Background: The BVNPT writes that fiscal sustainability is a top priority during this sunset review. As discussed under Issue # 1, the BVNPT projects that it may be operating at a significant budget deficit. If the most recent projections hold, the BVNPT may risk insolvency beyond FY 2023-24, despite recent fee increases.

While the BVNPT's prior budget projections have not always matched its actuals, the fact remains that the BVNPT's fund has steadily decreased since FY 2015-16, when the BVNPT had an approximate reserve of \$12.6 million. At the end of FY 2019-20, the BVNPT's reserve was approximately \$5.2 million.

Statutory fee increases went into effect on January 1, 2019, for LVN and PT licenses, CE provider approvals, and other services.³⁵ However, the increases were in response to historical fund issues identified during the BVNPT's last three sunset reviews and multiple fee audits.

The BVNPT reports that the ongoing deficit is due to recent expenditure increases, as well as ongoing unfunded workload. In 2017, the BVNPT experienced staff vacancy rates of 20% or higher, which

³⁵ SB 1480 (Hill), Chapter 571, Statutes of 2018.

provided salary savings that have now diminished. Beginning July 1, 2019, the BVNPT's annual rent increased by approximately \$30,000. At the start of the current FY 2020-21, an augmentation to the Education Division also took effect.

Further, there was a recent and unexpected Department of Justice billing rate increase that impacted all DCA entities. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred without any meaningful notice to any client agencies.

As a result, starting September 1, 2019, the BVNPT's estimated costs increased annually by more than \$900,000 based on its current workload, up from its prior cost of approximately \$220,000. However, BVNPT staff note that the amount may decrease as cases progress to hearings or are settled.

Lastly, a 2016 fee audit noted that the BVNPT continues to approve VN and PT educational programs but does not charge a fee for the service. School approval fees are discussed further on page 34 under Issue #12: Program Approval Fees.

Staff Recommendation: *The BVNPT should continue to work with the Committees and stakeholders to determine the best solution to its potential budget deficit, such as instituting fees for any unreimbursed workload.*

ADMINISTRATIVE ISSUES

ISSUE #3: GOVERNOR APPOINTMENT OF EXECUTIVE OFFICER. *Should the Legislature reauthorize the BVNPT the authority to select its executive officer? If so, when?*

Background: Unlike other DCA licensing boards, the BVNPT does not currently have the authority to appoint its executive officer. Instead, until January 1, 2022, the BVNPT's executive officer is appointed by the Governor. The unique appointment structure was the result of the BVNPT's unwillingness to acknowledge its inability to meet its consumer protection mandate.

During the BVNPT's 2015 sunset review, the Committees found that the BVNPT was suffering from numerous structural issues as the result of ongoing mismanagement, dating back to as early as 2014. As a result, the BVNPT's 2015 sunset bill required a third-party contractor to monitor the BVNPT's administrative and enforcement programs.³⁶ The use of a monitor, like the California State Auditor, is a last resort used to identify and remedy serious structural issues. Given the breadth of the identified issues, the bill also required the DCA to perform an internal audit of the BVNPT's fund condition, budget projections, up-to-date audit information, and efforts to improve program efficiencies.

³⁶ AB 179 (Bonilla), Chapter 510, Statutes of 2015.

Both the monitor and the DCA internal audit found numerous issues. The BVNPT began implementing the DCA's recommendations, although the 180-day follow-up showed that many of the recommendations were partially implemented at best. Following the monitor's recommendations, the BVNPT began actively rejecting recommendations, at one point stating that the monitor's reports were "markedly negative and replete with uncorroborated information"³⁷ While any recommendation is open to debate, the BVNPT's specific reasons for rejecting the monitor's recommendations were questionable.

Throughout the BVNPT's 2017 sunset review, many new problems were identified, including:

- High staff vacancy rates and loss of key personnel, including management and division chiefs, which whistleblower and staff discussions proved to relate to staff morale issues.
- Inadequate utilization of the BVNPT's committee structure.
- Delays in adopting important performance measurements for its enforcement program.
- Lack of updating desk procedures, policies, and procedures.
- Delays in providing the public with meeting minutes.
- Delays in approving educational programs, including a moratorium on approving school applications for almost two years because of a backlog in approving applications.
- Initiation of an extensive continuing education compliance audit of approximately 57,000 of its licensees (almost 50 percent of its licensee population) without any consideration of feasibility. The audit resulted in an immediate and severe backlog, forcing staff to dedicate a vacant office to the storage of numerous boxes of mail that were ignored for months. The BVNPT and executive staff defended this decision until the project was abandoned.
- Insufficient justification for attempting to change educational requirements that could negatively impact those seeking licensure.
- Lack of further changes or progress in complaint handling, investigation of cases, or completion of disciplinary action. Further, the monitor raised concerns about cases being improperly handled and not sufficiently investigated as a means of giving the appearance that the BVNPT was moving through cases rapidly and that there is no backlog of pending cases.

At the time, several board members questioned the existence of these issues. During the 2017 sunset review hearing, several board members were even surprised to hear about the staff morale issues. While

³⁷ Letter from the BVNPT to Committee Staff, *RE: California State Board of Vocational Nursing and Psychiatric Technicians Response to Administrative and Enforcement Monitor Phase III Report 1*, February 24, 2017.

one individual board member proactively sought to implement some of the Committees' recommendations, it was unclear if the remaining board members were interested in taking any corrective action.

Further, in mid-July, the monitor and the DCA discovered several new and serious issues, including:

- Automatic closing of all anonymous complaints and nearly all inmate complaints during intake without any investigation beginning late 2016. It is unclear if this was an attempt to reduce backlogs.
- Loss of tracking, monitoring, and control of criminal arrest cases that were awaiting criminal adjudication.
- Shelving of more than 100 completed investigation cases, most of which involved serious criminal misconduct or significant patient harm that had been investigated by sworn peace officers, without further action.
- Cessation of all citation issuances along with other citation program functions, beginning with the separation of BVNPT's citation desk analyst in May 2017.

Given the seriousness of the cases that were shelved or were closed without investigation, the DCA's DOI intervened in an attempt to minimize the potential consumer harm. This, along with the outstanding issues identified in the Committees' background papers, suggested that the BVNPT continued to experience significant problems that impacted its overall functioning, the oversight of licensees, and the protection of the public.

Eventually, much of the BVNPT's executive team, including its most experienced managers at the time, resigned or left. With a 20% staff vacancy rate and poor staff morale, it was unclear whether the BVNPT was going to be able to recover on its own. In light of these issues, the BVNPT members' resistance towards improvement made it unclear whether the BVNPT would take the necessary steps to fulfill its board governance duties, which included among other things selecting an executive team that could handle the reconstruction of its staff team while implementing the recommendations coming from the Committees, the DCA, and the program monitor.³⁸

The initial recommendations from Committees included replacing the board members or temporarily converting the BVNPT into a bureau under the DCA. However, several board members were relatively new during the review, and it was difficult to judge the BVNPT's ongoing decision-making and willingness to seek assistance.

³⁸ For additional background, see the 2017 sunset background papers produced by the Senate and the Assembly and the *BVNPT 2019 Sunset Report*.

As a result, the BVNPT's 2017 sunset bill instead transferred the BVNPT's authority to appoint an executive officer to the Governor for two years while extending the BVNPT for three years.³⁹ The first two years provided additional Governor oversight and required the BVNPT to work with the DCA on its enforcement and licensing programs to provide an opportunity to rebuild. The third year was an opportunity to observe the BVNPT's behavior once the executive officer authority was given back.

However, the following year, at the request of the DCA, the Governor's authority was extended until January 1, 2021, to align with the BVNPT's sunset date.⁴⁰ The BVNPT's sunset date and the Governor's appointment authority were extended until January 1, 2022, due to the inability to perform sunset review during the early months of the COVID-19 pandemic.⁴¹

Since the Governor's appointment of the current executive officer, most of the recommendations coming from various sources at the time have been implemented in some fashion. Most recently, in a report to the Committees dated March 6, 2020, the program monitor noted that:

[The] BVNPT made significant progress in restoring a fully functional Enforcement Program. Major accomplishments during the past two years include:

Enforcement Division Organization and Staffing – BVNPT rebuilt its Enforcement Program Management Team, established a new Intake and Enhanced Screening Unit, restored its Citation Desk, stabilized its workforce, and decreased the number of vacant Enforcement Division positions by more than 90 percent, from 12 vacant positions in mid-2017 to just one (1) vacant full-time, permanent position, currently.

License Applicant Cases – BVNPT reduced the number of pending License Applicant case investigations and the average elapsed time to complete these investigations to record low levels. As of December 31, 2019, there were just 27 pending License Applicant cases and, during 2019, the average elapsed time to complete these investigations was just six (6) weeks.

Licensee Subsequent Arrest/Conviction Report Cases – BVNPT continues to receive about 1,000 new Licensee Subsequent Arrest/Conviction Reports per year. During the past two years, the number of pending investigations of these cases has changed very little. The average elapsed time to complete these investigations is currently about eight (8) months, including all of the elapsed time during the period when BVNPT is waiting for the licensee's criminal case to be adjudicated. About 75 percent of the investigations completed within 360 days of initial receipt of the report. These cases continue to account for about one-half of all discipline cases.

³⁹ AB 1229 (Low), Chapter 586, Statutes of 2017.

⁴⁰ SB 606 (Glazer), Chapter 375, Statutes of 2019.

⁴¹ SB 1474 (Committee on Business, Professions and Economic Development), Chapter 312, Statutes of 2020.

Licensee Complaint Cases – Largely due to the establishment of a new Intake and Enhanced Screening Unit and implementation of enhanced complaint screening processes, BVNPT significantly increased the number of Licensee Complaint investigations that it completes. This enabled:

- 1) A 90 percent reduction in the number of pending unassigned Non-Sworn investigations
- 2) A 6-month reduction in the average elapsed time to complete all Licensee Complaint investigations (Desk, Non-Sworn and Sworn), from an average of about 17 months to an average of about 11 months.

Sworn Investigations – BVNPT continues to utilize Consumer Protection Enforcement Initiative (CPEI) case prioritization guidelines to identify high priority cases for referral to DCA’s Division of Investigation (DOI) and continues to consistently refer about 200 cases per year to DOI for Sworn investigation. These cases continue to account for about one-third of all discipline cases.

Discipline Program – While continuing to refer about 350 cases per year to the Office of the Attorney General (AG) for discipline, BVNPT has reduced the number of pending discipline cases and the average elapsed time to complete discipline cases to record low levels. As of December 31, 2019, there were just 221 pending discipline cases and, during 2019, the average elapsed time to complete discipline cases decreased to 26 months.

Probationer Monitoring – While the number of new probationers per year has stabilized at a level of about 100 probationers per year, BVNPT’s total probationer population has decreased by 20 percent, reversing much of the extraordinary growth that occurred during the preceding two years as a result of earlier one-time investigation and discipline case backlog reduction efforts.⁴²

Also, the BVNPT staff continues to work with the DCA to identify and institute other improvements, including the review of the BVNPT’s licensing program and administrative operations by the DCA’s Organizational Improvement Office (OIO) (formerly known as Organizational Change Management (OCM)) (discussed further under Issue #6). These changes are ongoing, and BVNPT staff have been open and communicative throughout the process.

As part of a review with DCA centralized services division leaders, the DCA executive staff wrote, “Overall, it was recognized amongst the division leaders that there have been positive improvements in BVNPT staff morale, staff engagement, communication, and organization with the support and direction

⁴² Benjamin Frank, *Board of Vocational Nursing and Psychiatric Technicians Enforcement Program Performance Update*, submitted by Administrative and Enforcement Monitor, Benjamin Frank LLC, March 6, 2020, at 1-2.

given by both the new Executive Officer and Assistant Executive Officer. BVNPT’s leadership and board staff have expressed tremendous excitement surrounding the change management process and having the opportunity to participate in the review of their daily operations.”⁴³

Still, some board members of the BVNPT have expressed that the authority to appoint an executive officer should be restored to the BVNPT. As a result, the question before the Committees is whether the Legislature should restore the authority at the end of the current sunset review.

One additional question is whether the BVNPT still believes that a 360-degree review of its executive officer, despite being confidential and non-interactive, would offer parties participating “undue influence” over its executive officer. While the BVNPT worked with DCA executive staff to perform a review, after removing the executive officer from the survey process, the BVNPT has only discussed the review in closed session and it is unclear what, if any, recommendations came from the process.

Staff Recommendation: *Given the BVNPT’s prior history with the appointment of executive officers, the BVNPT should continue to work with the Committees, the Administration, and stakeholders to determine the appropriate timeline for the reinstatement of the BVNPT’s authority to appoint an executive officer.*

ISSUE #4: ONLINE MATERIALS. *What impediments impact the BVNPT’s ability to approve and post its online materials?*

Background: As noted in the 2017 sunset review, the BVNPT had become an exemplar for consumer outreach. Even before the COVID-19 pandemic, it was webcasting all regular board meetings, uploading all materials, and utilizing the latest DCA tools. While an issue was raised during the last sunset review regarding the posting of meeting minutes, the BVNPT remediated and has posted all meeting minutes and materials in a timely fashion.

However, AB 434 (Baker), Chapter 780, Statutes of 2017, further required the director of each state agency or entity, and the chief information officer of that state agency or entity, to post on the home page of the agency’s or entity’s website a signed certification that the agency’s or entity’s website complies with specified accessibility standards.

During the early implementation of AB 434, some DCA licensing boards, including the BVNPT, reported difficulty with compliance with the bill. In its *2019 Sunset Review Report*, the BVNPT wrote that it “is in the process of ensuring that its online content is compliant with the Americans with Disabilities Act (ADA) and some archived materials may no longer be available at this writing. New materials, especially those with complex images and tables, may not be posted immediately. Case in point: this report, given

⁴³ *DCA Centralized Services Review and Recommendations for BVNPT*, prepared per AB 1229 (Low), Chapter 586, Statutes of 2017, included in BVNPT, *2019 Sunset Review Report Vol. 2*, attachment 2i, at 207.

the number of tables and graphics, will take a considerable amount of time to make ADA accessible, and will not be posted immediately.”

The BVNPT reports that it has mostly resolved this issue for current and future materials via staff training. A web accessibility certification is available on its front page dated June 30, 2019. However, as of March 2, 2021, the BVNPT’s website no longer contains any information or materials for meetings held before 2019.

Staff Recommendation: *The BVNPT should ensure that the public has accessible access to both current and historical meeting materials and other documents necessary for public participation.*

ISSUE #5: NEC RECRUITMENT AND RETENTION. *The BVNPT reports difficulty in recruiting and retaining nurse education consultants (NECs) due to non-competitive salaries. What changes are necessary to improve recruitment and retention?*

Background: The Education Division of the BVNPT is responsible for the review of VN and PT programs. To accomplish this complex task, the division utilizes subject matter experts, known as NECs. NECs must have an active registered nursing license, a master’s degree in nursing or a related field, and professional experience in the clinical and academic areas. NECs utilize their expertise to conduct approval reviews that include in-depth analysis of program compliance with the VN and PT rules and regulations.

While the BVNPT’s Education Division is currently fully staffed, it has had historical challenges recruiting and retaining NECs. The low NEC salary range creates a barrier to recruiting candidates, who can earn substantially more serving as a school director—the most qualified candidates often have advanced degrees and decades of experience. The NEC salary range is also lower than some state nursing employment classifications. The BVNPT recommends that the position should be reexamined and potentially converted to an exempt classification.

Staff Recommendation: *The BVNPT should work with the Committees to address identified issues with ongoing NEC recruitment.*

LICENSING ISSUES

ISSUE #6: LICENSING PROGRAM IMPROVEMENTS. *What is the status of the implementation of the OCM recommendations?*

Background: AB 1229 (Low), Chapter 586, Statutes of 2017 authorized the Director of Consumer Affairs to “direct department staff, including staff of the Strategic Organization, Leadership, and Individual Development (SOLID) Training and Planning Office, to review and evaluate the board’s licensing systems and procedures, as determined appropriate by the director, for the purpose of identifying deficiencies and improving the quality and efficiency of the board’s licensing processes.”

Pursuant to that authority, the DCA executive team asked the SOLID DCA OCM team (now the Organizational Improvement Office) to work with the BVNPT to identify improvement opportunities and changes that would increase efficiencies in its licensing section. The OCM noted that:

[The] BVNPT has taken steps toward making improvements that have proved to be successful and for which the Board should be recognized. These include the following:

- The addition of a Licensing Service Supervisor has assisted in supervising the front office staff and generated weekly workload reports, monitored the Board’s inbox, and created detailed accountability reports.
- The volume of consumer telephone calls has been significantly reduced due to the development of a more efficient process for returning telephone calls and redirecting more staff to answer incoming calls during high volume times.
- Staff morale has increased as a result of management listening to staff’s concerns and dedicating a space specifically for staff to take breaks and eat their lunches.⁴⁴

The OCM also made recommendations for further improvement in the five methods for licensure that the BVNPT performs, grouped into four primary sections:

- 1) Streamline VN/PT application process.
- 2) Develop an understanding of rules and regulations.
- 3) Improve manager communication and implement staff accountability measures.
- 4) Explore process change opportunities.

The sections covered a total of 18 items for improvement, with several recommendations for each item. The OCM team also provided an implementation strategy.

Staff Recommendation: *The BVNPT should update the Committees on its progress in implementing the OCM recommendations.*

ISSUE #7: LICENSEE EMAIL REQUIREMENTS. *The BVNPT requests the authority to require an email address for communication with licensees. Should the BVNPT be granted the authority, and would it need a statutory change?*

Background: The BVNPT noted in its *2019 Sunset Review Report* that:

⁴⁴ *DCA Centralized Services Review and Recommendations for BVNPT*, prepared per AB 1229 (Low), Chapter 586, Statutes of 2017, included in BVNPT, *2019 Sunset Review Report Vol. 2*, attachment 2i, at 237.

The BVNPT believes that it is essential to require licensees to provide email addresses as our primary source of communication. Although there may be licensees without email access of their own, this is likely a small and dwindling portion of the population.

If the BVNPT had been able to send an email to all licensees, the impacts of the 2016 CE audit might have been blunted, and we would have been able to provide an update and apology to all affected, without the \$30,000 cost incurred by mailing individual letters. Similarly, when the Board implemented the fee increases earlier this year, the ability to send notifications would have mitigated a great many problems and concerns and reduced the number of incoming calls and emails.

Proactively, we plan to develop regular updates for the licensees, such as information on current legislation and other issues.

Staff Recommendation: *The BVNPT should work with stakeholders to determine what size of the population would be unable to comply with an email requirement and what alternatives those licensees may have.*

ISSUE #8: RESPIRATORY CARE FUNCTIONS. *The BVNPT was working with the Respiratory Care Board on a scope of practice issue, but progress has stalled at the regulatory level. Should LVNs be authorized to care for ventilated patients and adjust ventilators? Should PTs also be allowed?*

Background: The BVNPT and the Respiratory Care Board (RCB) began meeting in September 2018 and released a joint statement on April 11, 2019. The initial joint statement clarified the roles of the respective scopes of practice relating to patient care on mechanical ventilators. The feedback from the various types of facilities and organizations expressed a need to further clarify its respective regulations regarding patient care.

The BVNPT and the RCB hosted a meeting for stakeholders on June 27, 2019, to discuss patient care needs and competencies. The BVNPT states that it is using the input to develop guidelines for training and certification for LVNs and PTs to provide care to patients on mechanical ventilators in specified settings. The RCB has also submitted two Legislative proposals for clarifying the LVN respiratory care functions which are under review.

Staff Recommendation: *The BVNPT should continue to work with the Committees, the Respiratory Care Board, and stakeholders to determine the necessary clarifications surrounding the care of ventilated patients, including distinctions between home care and other settings.*

ISSUE #9: FAIR CHANCE LICENSING ACT. *What is the status of the BVNPT's implementation of AB 2138 (Chiu/Low), the Fair Chance Licensing Act, and are any statutory changes needed to enable it to better carry out the intent of the act?*

Background: In 2018, AB 2138 (Chiu/Low), Chapter 995, Statutes of 2018 was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied based on prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, except for serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. The provisions took effect July 1, 2020.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, its implementation requires changes to current regulations for every board impacted by the bill. In its *2019 Sunset Review Report*, the BVNPT wrote that it is in the process of finalizing its regulations to implement the bill. Through that process, the BVNPT may identify potential changes to the law that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public.

Staff Recommendation: *The BVNPT should provide an update on its implementation of the Fair Chance Licensing Act, as well as relay any recommendations it has for statutory changes.*

ISSUE #10: INDEPENDENT CONTRACTORS. *Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for BVNPT licensees working as independent contractors?*

Background: In the Spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly changed the factors that determine whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test comprised of three elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The test, commonly referred to as the “ABC test,” potentially reaches into numerous fields and industries utilizing workers previously believed to be independent contractors, including occupations regulated by entities under the DCA. In the following year, AB 5 (Gonzalez), Chapter 296, Statutes of 2019 codified the *Dynamex* ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. As a result, the new ABC test must be applied and interpreted for all non-exempted licensed professionals.

Staff Recommendation: *The BVNPT should inform the committees of any discussions it has had about the Dynamex decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.*

EDUCATION ISSUES

ISSUE #11: VN AND PT PROGRAM APPROVAL. *The BVNPT is one of a few licensing boards that continues to actively approve educational programs. Should the BVNPT continue to approve VN and PT programs, and if so, are there improvements that should be made?*

Background: The BVNPT is one of the few DCA licensing boards statutorily required to inspect and approve educational programs that offer courses of instruction for professional licensure.⁴⁵ During the BVNPT’s last several sunset reviews, the Committees asked whether the BVNPT’s educational approval process can be updated to make it more effective and efficient.

The BVNPT’s current process requires institutions seeking approval to offer a VN or PT program to submit a detailed proposal that demonstrates the application and integration of the required subjects and clinical skills for licensure. Programs must ensure critical resources and offer a curriculum that is presented in a sequence that results in students’ progressive mastery of LVN- or PT-specific scientific knowledge and demonstrated proficiency in the performance of necessary skills and procedures.

Upon submission of a request for program approval, programs join a significant waitlist (the BVNPT’s program approval backlog is discussed further under Issue #13). Once the program progresses through the waitlist, the BVNPT assigns an NEC to assist the program with its proposal.

Early in the development process, the program director is provided an electronic orientation, containing information and clarification relative to the statutory and regulatory requirements for approval. The electronic orientation is followed by a teleconference with the assigned NEC. During that time, additional clarification is provided as needed. The assigned NEC also assists the director in the development of the necessary curriculum.

⁴⁵ BPC §§ 2883, 4531.

The NEC then completes a thorough analysis of the curriculum and provides critical feedback. Following program approval, the Education Division continues to offer assistance relative to new and existing VN and PT programs. Any deficiencies in the proposed curriculum are identified and communicated to the program director verbally and in writing. The program director completes and submits all required written revisions to the NEC for further review and analysis. This process is repeated until all required documents are received and approved and new director orientation materials are completed. Before the first class graduates from a program, the NEC must complete an on-site survey visit to ensure consistency with previously approved plans.

If a previously approved program fails to comply with the VN or PT rules and regulations, the BVNPT may place a program on provisional approval. The BVNPT will notify the program and specify areas of noncompliance for correction. If the program shows good faith efforts to correct deficiencies after the initial period of provisional approval, the BVNPT may extend the provisional period or grant re-approval. However, failure to correct the areas of noncompliance is cause for revocation of approval.

The underlying question regarding the approval of educational programs is whether the BVNPT or other licensing boards are the most appropriate entities for approving educational programs. The Bureau for Private Postsecondary Education (BPPE) and other private institutional and programmatic accreditors that are approved by the U.S. Department of Education (USDE) may perform many of the same functions.

The only other DCA healing arts licensing board that approves education programs to the extent that the BVNPT does is the Board of Registered Nursing (BRN). There is one other DCA healing arts board that actively approves educational programs, the Acupuncture Board, but it only reviews curriculum content and otherwise relies on a national programmatic accreditor, the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).⁴⁶

Otherwise, most modern licensing boards focus on the regulation of licensees. To ensure programmatic and institutional quality, other practice acts rely on private accreditation or approval by the BPPE. For example, the Medical Board approves national accrediting agencies recognized by the USDE, and medical schools that are accredited by those agencies are deemed approved by the Medical Board.⁴⁷ Neither the BVNPT nor the BRN is recognized by the USDE for the approval of nurse education.⁴⁸

In general, state approval of an educational program means that the institution has satisfied certain minimum requirements and can begin operating. The goal of accreditation is to ensure that postsecondary

⁴⁶ BPC § 4927.5.

⁴⁷ BPC § 2084.

⁴⁸ Only five state agencies have been recognized: the Kansas State Board of Nursing; the Maryland Board of Nursing; the Missouri State Board of Nursing; the New York State Board of Regents, State Education Department, Office of the Professions (Nursing Education); and the North Dakota Board of Nursing. See U.S. Department of Education, *Accreditation in the United States*, last modified February 4, 2021, https://www2.ed.gov/admins/finaid/accred/accreditation_pg20.html.

institutions (higher education) meet acceptable levels of quality.⁴⁹ Institutions must be accredited by a USDE-recognized accreditor for students to receive federal student aid.

According to the USDE, there are two basic types of accreditation, "institutional" (historically known as regional) and the other referred to as "specialized" or "programmatic" (historically known as national). Institutional accreditation applies to an entire institution, indicating that each part contributes to the institution's learning objectives. For example, an institutionally-accredited community college that offers a PT program would have its entire college, along with its educational programs, reviewed for general quality.

Programmatic accreditation normally applies to specific programs, departments, or schools that are parts of an institution. Therefore, a community college that offers a programmatically-accredited VN program would have that specific program reviewed to ensure that it meets standards specific to nursing education.

To qualify for USDE recognition, both institutional and programmatic accreditors must establish expectations for and review the following:

- 1) Success in student achievement relative to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, consideration of state licensing examinations, course completion, and job placement rates.
- 2) Curricula.
- 3) Faculty.
- 4) Facilities, equipment, and supplies.
- 5) Fiscal and administrative capacity as appropriate to the specified scale of operations.
- 6) Student support services.
- 7) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.
- 8) Measures of program length and the objectives of the degrees or credentials offered.
- 9) Record of student complaints received by, or available to, the agency.
- 10) Record of compliance with the institution's program responsibilities under Title IV of the federal Higher Education Act of 1965, based on the most recent student loan default rate data, the results of financial or compliance audits, program reviews, and any other information that the USDE provides to the agency.

In California, all public institutions maintain institutional accreditation, so all VN and PT programs offered at community colleges benefit from Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges accreditation. In addition, all private postsecondary institutions that offer educational programs must have BPPE approval or an exemption. Many of the

⁴⁹ U.S. Department of Education, Overview of Accreditation in the United States, last modified February 4, 2021, <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview>.

criteria reviewed by the BVNPT, including faculty, facilities, and resources are also reviewed by accreditors and the BPPE.

Accreditation can be expensive, so fewer programs have optional programmatic accreditation. Given that BVNPT approval is currently free and offers similar services to programmatic accreditation, there is often no reason to seek additional programmatic accreditation. Also, PT programs are relatively unique to California (the PT profession only exists in a handful of states), so there is no USDE-recognized programmatic accreditor for PT programs.

Both the BRN and the BPPE are undergoing sunset review this year, and there were several recommendations from the BRN's recent education audit.⁵⁰ There may be additional recommendations that arise from the audit or the sunset review process that apply to the BVNPT given the similarities to the BRN's education approval process and the shared jurisdiction with the BPPE.

For example, the State Auditor found that there was overlap in the work of the BRN and nursing programmatic accreditors. The auditor also acknowledged that the purpose of BRN approval is different from accreditation and that the BRN's statutory authority over educational programs allows it to act more quickly than private accreditors. Specifically, the auditor wrote:

Given that some of BRN's oversight of nursing programs might be duplicated by accreditors, we believe the upcoming sunset review in 2021 would be an appropriate setting to consider whether the State would be better served by having BRN revise its regulations to leverage portions of the accreditors' reviews in order to reduce duplication and more efficiently use state resources. For example, it could consider restructuring continuing approval requirements for nursing programs that are accredited and maintain certain high-performance standards for consecutive years (for example, licensure exam pass rates, program completion rates, and job placement rates).⁵¹

Although there are some distinctions between the BVNPT and the BRN, such as fewer VN programs with programmatic accreditation, there are many similarities. Therefore, it may be helpful to revisit the BVNPT's process after the BRN's review and add any relevant findings to the ongoing issues with the BVNPT's Education Division, including the difficulty in recruiting NECs (Issue #5) and the education backlog (Issue #13).

Staff Recommendation: The BVNPT should continue to work with the Committees, the BPPE, accreditation entities, and stakeholders to determine whether overlapping functions and redundancies can be eliminated and whether there are additional improvements to be made.

⁵⁰ Auditor of the State of California, *[The Board of Registered Nursing] Has Failed to Use Sufficient Information When Considering Enrollment Decisions for New and Existing Nursing Programs*, Report 2019-120, July 2020.

⁵¹ State Auditor at 32.

ISSUE #12: PROGRAM APPROVAL FEE. *The BVNPT currently expends significant resources on the approval of VN and PT educational programs but does not charge a fee. Should the BVNPT be authorized to charge fees for program approval, and if so, what amounts?*

Background: As discussed under Issues #5 and #11, the BVNPT performs lengthy and intensive reviews of VN and PT educational programs that require expensive NECs. The amount of work and expertise needed for program approval makes it costly, but programs do not currently pay a fee.

In 2018, the BVNPT performed a workload analysis to estimate the cost of school approvals. The BVNPT found that new program approvals, continuing approvals, new location approvals, and provisional approvals cost between approximately \$5,000 and \$30,000. Substantive change approvals were found to cost around \$5,000 to \$8,000. According to BVNPT staff, the reason for the variation is primarily the result of incomplete or improperly completed applications and documentation.

As discussed under Issue #11, educational program approval by a regulatory licensing board is not common, but the BRN has a similar approval process. The BRN's approval fees were first established in 2013.⁵² The only increase to the BRN's approval fees occurred in 2018.⁵³ The BRN's current school approval fee schedule is as follows:⁵⁴

- Initial approval fee for an institution of higher education or a private postsecondary school of nursing of \$40,000 (up to a statutory maximum of \$80,000). Previously the fee was \$5,000.
- Continuing approval fee of a nursing program established after January 1, 2013, of \$15,000. Previously the fee was \$3,500.
- Substantive change approval fee of \$2,500. Previously the fee was \$500.

Because the fee would be new and potentially substantial, if the BVNPT begins charging a fee, public institutions (community colleges) may have difficulty paying the fee. Unlike non- and for-profit schools, public institutions cannot pass the cost along to the student. In addition, a large fee for substantive changes may prohibit programs from making necessary updates to their curriculum as required by national trends or their programmatic accreditor. To lessen the burden of a new fee, one possibility would be to allow a lower fee structure for public institutions or low-cost institutions.

Another option would be to reduce fees based on workload or establish separate fees for programs that utilize more of the BVNPT's services. For example, the BRN is authorized to reduce fees at its discretion: "If the board determines that the annual cost of providing oversight and review of a school of nursing, as required by this article, is less than the amount of any fees required to be paid by that institution

⁵² SB 122 (Price), Chapter 789, Statutes of 2012.

⁵³ SB 1039 (Hill), Chapter 799, Statutes of 2016.

⁵⁴ BPC § 2786.5.

pursuant to this article, the board may decrease the fees applicable to that institution to an amount that is proportional to the board's costs associated with that institution."⁵⁵ However, the BRN reports that it has not used this authority because none of its fees are technically annual fees.

The BVNPT also shares some of its program approval duties with the BPPE and private accreditors, and the BPPE is also currently undergoing sunset review. As discussed under Issue #11, there may be opportunities to eliminate duplicative duties or find other efficiencies to reduce the potential cost of the fees.

Regardless of the amount, an educational program approval fee may be necessary. In terms of general fairness, the program approval process should be funded by the programs benefiting from approval. Currently, it is subsidized by licensees. A fee will also help stabilize the BVNPT's fund, as discussed under Issue #2. Further, a fee may help reduce the backlog of programs awaiting approval by deterring the programs that are less serious or prepared from taking advantage of the BVNPT's approval services (discussed further under Issue #13).

Staff Recommendation: *The BVNPT should continue to work with the Committees, the BPPE, other school approval entities, and stakeholders to determine the appropriate fee amount for educational program approval, if any. The BVNPT should also work with public education institutions to determine ways to reduce the impact on programs that may have limited resources. The Committees may also wish to explore alternative options, such as reimbursement from BPPE for VN and PT program approval it conducts for institutions overseen by BPPE or the elimination of overlapping processes to reduce workload.*

ISSUE #13: PROGRAM APPROVAL BACKLOG. *The BVNPT currently has a large backlog of VN programs awaiting approval. What changes are needed to clear the backlog and prevent future backlogs?*

Background: Since at least 2011, the BVNPT has dealt with a large backlog in its program approval waitlist. During the BVNPT's 2011 sunset review, the Committees noted that there were 102 VN and 9 PT program applicants awaiting approval. During the BVNPT's 2014 sunset review, the BVNPT reported 135 VN and 10 PT programs awaiting approval. In 2015, it instituted a 2-year moratorium on new applications to get through its backlog. By the start of 2017, the BVNPT reported 23 VN and 1 PT program applicants awaiting assignment to an NEC, and 8 VN programs and 1 PT program that were actively working with an NEC.

As of March 2, 2021, the BVNPT had a backlog of 54 VN and PT programs awaiting the assignment of an NEC to begin the approval process. The anticipated wait times for the schools at the end of the line

⁵⁵ BPC § 2786.5(b).

are difficult to calculate because it depends on how quickly NECs can approve the programs ahead in line, and even when fully staffed the BVNPT only has 6 NECs.

Since 2011, the BVNPT has indicated that the length of time for the approval process varies greatly. This is due to the lack of formal deadlines. For example, the Accreditation Commission for Education in Nursing (ACEN) has deadlines at various stages of the process, such as requiring the submission of the candidacy presentation within 1 year.⁵⁶ The BVNPT imposes no similar requirement.

While the BVNPT has internal target times, approval is largely contingent on a program's ability to submit appropriate materials, as well as resubmit materials if necessary, in a timely fashion. The BVNPT cites inadequate curriculum as the most common reason that a school must resubmit materials.

There has also been some criticism directed at the BVNPT's approval process, suggesting that the rules, regulations, and requirements for approval have not always been clear, nor have they been applied consistently. In 2011, committee staff noted that the BVNPT may need to give assurances that its staff and NECs were applying rules, regulations, and requirements consistently.

During the BVNPT's last two sunset reviews, the issues relating to overall mismanagement and enforcement issues were prioritized, so the issue of program approvals was not raised. Still, BVNPT staff have acknowledged the problem and submit the following ideas for potential improvements that can help with its backlog going forward:

- 1) Maintaining separate lists for public and private programs.
- 2) Breaking the waiting period into active phases.
- 3) Developing a questionnaire that requires specific feasibility information in the initial application.
- 4) Analyzing and scoring applications as they are received, and ranking placement on the list by the questionnaire score.
- 5) Implementing a "preapproval" phase, where proposers must provide a qualified program director, complete curriculum, and complete set of policies.
- 6) Setting limits on communication lapses with an "inactive list" policy.
- 7) Creating a universal curriculum.
- 8) Focusing some NECs solely on program approval work.
- 9) Creating a policy for existing programs that create expansion campuses.
- 10) Setting a temporary (2-year) moratorium on accepting new applications.
- 11) Establishing a policy aimed at equalizing the system.
- 12) Creating a public service incentive program.
- 13) Exploring alternatives, such as third-party service to process and approve schools.
- 14) Examining other labor-intensive work processes, i.e., programs on provisional status.

⁵⁶ Accreditation Commission for Education in Nursing (ACEN), *The Timeline to Candidacy: How Long Does It Take?*, August 22, 2019, www.acenursing.org/timeline-to-candidacy/.

15) Increasing or diversifying staff involved in the approval process.

Many of these changes would improve the process and can be implemented without legislation or rulemaking, while some, such as the universal curriculum, are likely longer-term conversations. In addition to the above, a new program fee (Issue #12) may help prune less serious applicants from applying before they are ready. At the very least, the BVNPT can improve its transparency by establishing deadlines and providing those timelines on its website.

Staff Recommendation: *The BVNPT should continue to work with the Committees to develop and implement a plan to improve its school approval processes and clear the backlog.*

ISSUE #14: BARRIERS TO LICENSURE AND EMPLOYMENT. *What barriers currently exist to licensure and workforce pathways? Are there BVNPT policies that could address barriers for students?*

Background: The BVNPT writes that it “considers cost of and access to the education programs to be the most critical barriers to licensure.”⁵⁷ LVNs and PTs are required to complete BVNPT-approved educational programs of at least 1530 hours or 50-semester units.

Currently, there are 127 approved VN educational programs in California. Approximately 60% are private colleges, 25% are community colleges, and 15% are adult schools, which operate under a local school district. Program costs range significantly, from approximately around \$4,000 for community colleges and \$35,000 at a private, for-profit college. According to the Employment Development Department’s Labor Market Information (LMI), 2020 annual wages for LVNs range from \$51,737-\$70,654.

There are also 12 approved PT programs in California, and 9 are offered through community colleges. Program costs similarly range from \$4,000 at a community college but more than \$30,000 at a private, for-profit college. According to the EDD LMI, 2020 annual wages for PTs range from \$46,609-\$75,475.

According to BVNPT, most private, for-profit programs are well-run and produce skilled healing arts professionals. Unfortunately, no guidelines or criteria specify what private, for-profit institutions may charge a student, and the value may be inconsistent school to school. BVNPT notes that the programs run through public education systems, most notably the California Community Colleges, charge much less than their private counterparts, but their enrollment is limited, and students must either wait or turn to another costlier program.

Staff Recommendation: *The BVNPT should discuss whether it is appropriate to establish guidelines or criteria governing tuition costs of VN and PT programs and whether such guidelines and criteria would be more appropriately addressed and enforced by BVNPT or the Bureau for Private*

⁵⁷ BVNPT, 2019 Sunset Report, at 70.

Postsecondary Education. Further, the BVNPT should discuss any other statutory or regulatory policy levers that could support the expansion of affordable educational options for students.

ISSUE #15: EDUCATION CITE AND FINE. *The Committees have previously recommended against instituting an education cite and fine authority due to overlap with the BPPE. Should the issue be revisited since the Committees are reviewing the BPPE as well?*

Background: As noted above, the BVNPT is one of the few DCA licensing entities statutorily required to inspect and approve educational programs. As an approval entity, it is authorized to place programs that do not meet the required standards on provisional approval.⁵⁸ If a program fails to meet the requirements at the end of the provisional 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. Further, the BPPE only oversees private programs.

Staff Recommendation: *The BVNPT should continue to work with the Committees and the BPPE through this sunset review to determine whether a cite and fine program for educational programs would be beneficial.*

ISSUE #16: LACK OF CLINICAL PLACEMENTS. *VN and PT programs are required to ensure that students obtain supervised clinical experiences that correlate to their classroom courses, but clinical placements can be difficult to obtain. Are changes needed to ensure the availability of clinical placements?*

Background: The Committees have previously raised, and continue to work on, the issue of the availability of clinical placements for all nursing students, including registered nurses and LVNs. The BVNPT reports that it has little to no control over this issue, but it plans to be part of the ongoing discussion.

The availability of student placements for clinical experiences is dependent on clinical facilities, such as hospitals, clinics, and other facilities, that are willing to accept and teach students. While there are no requirements that facilities accept students, many willingly accept students because it is necessary for the workforce and can help with recruitment. The facilities must have staff that is qualified to teach and supervise students, and often develop contracts with partner educational programs to outline responsibilities, liability, and expectations.

⁵⁸ BPC §2883; CCR, tit. 16, §§ 2526.1, 2581.1.

In 2009, the BVNPT surveyed educational programs and found that clinical placement opportunities were decreasing due to the increasing number of VN and other nursing programs. Currently, if students are unable to obtain their clinical experiences, they must repeat their courses or drop out. This issue was significantly amplified as a result of the COVID-19 pandemic, particularly early on, as facilities began closing their doors to students amid fears of further spreading the virus.

While the BVNPT has no control of clinical sites, there have been discussions of alternatives to in-person clinical experiences. For instance, in VN and other nursing programs, the required clinical experience for the introductory course, fundamentals of nursing, is obtained primarily in a “skills laboratory,” using simulated clinical scenarios and patients to learn the basics.

The BVNPT does not currently impose limits or requirements on the amount of simulated clinical experiences that can be used. As a result, programs that are unable to obtain in-person clinical placements, or that lose existing placements, may be able to work with their NEC to substitute simulated clinical hours.

An additional option is the use of live telehealth in place of in-person experiences. Early in the COVID-19 pandemic, the BRN reported that registered nursing programs were able to successfully implement telehealth clinical experiences. The BVNPT has not traditionally recognized telehealth as direct patient care because much of the VN and PT scope of practice is manual and technical skills, with most options for telehealth being centered around assessment and data gathering, monitoring, or patient education. However, BVNPT staff report that this is something the BVNPT will be discussing

This issue is ongoing for both the BVNPT and the BRN, so there may be additional recommendations that arise from the BRN’s sunset review, although the BRN’s clinical experience requirements are more prescriptive. The BRN’s recent audit report also recommended additional data collection and reports, so the BVNPT may wish to work with the BRN to help create a more comprehensive picture.

Staff Recommendation: *The BVNPT should work with the Committees and the BRN through this sunset review to determine the clinical placement outlook and determine what steps, if any, are needed to ensure the ongoing availability of clinical placements.*

ISSUE #17: CLINICAL SIMULATION. *The use of simulated clinical experiences is becoming more common, particularly during the COVID-19 pandemic. Should there be standards for the use of clinical simulation?*

Background: Historically, clinical experiences were considered those that took place in clinical facilities with live patients. While faculty may have used videos, mannequins, and role-playing in the school setting, these were not considered to be true clinical experiences. Even the term “simulation” is relatively new when used to describe non-direct patient care clinical experiences.

The use of simulated clinical experiences has increased as educational programs and faculty gain expertise in the use of simulation as a pedagogy. Clinical training in the fundamentals of nursing course is now generally taught in skills laboratories. Further, new technologies allow for simulated experiences that were not possible in the past. Newer high-fidelity laboratories, complex mannequins, computer and online programs, virtual reality, and other modalities allow students to experience cases or scenarios that they may never see in a real clinical setting. Further, these simulated experiences allow students to learn from their mistakes and offer the opportunity for significant debriefings. Simulation can also allow individual students to focus on areas that they may have difficulty with.

While experts agree that simulation is never a replacement for direct patient care experiences, when done properly it can be a useful tool to supplement nursing education and fill potential gaps in traditional clinical experiences. However, the traditional lack of use of simulation means that there are no uniform standards for how simulation should be utilized. Several organizations have promulgated best practices for the use of simulation, such as the International Nursing Association for Clinical Simulation and Learning (INACSL) and the Society for Simulation in Healthcare.

A 2014 study by the National Council of State Boards of Nursing (NCSBN) concluded that clinical simulation, using the INACSL standards with sufficient numbers of faculty members formally trained in simulation pedagogy, could be effectively used “in all prelicensure core nursing courses” under the study conditions.⁵⁹ The INACSL standards used to ensure high-quality simulation include terminology, professional integrity of the participant, participant objectives, facilitation, facilitator, the debriefing process, and participant assessment and evaluation.⁶⁰ Following the study, the NCSBN also established simulation guidelines.⁶¹ On February 17, 2021, the BVNPT also held an informational forum on simulation and clinical experience, although it did not take any official action.

Staff Recommendation: *The BVNPT should discuss its current process for overseeing simulation and whether standards can and should be established.*

ENFORCEMENT ISSUES

ISSUE #18: ENFORCEMENT CASE BACKLOG. *Due to recent staff turnover, the BVNPT experienced a case backlog. Now that the positions are filled, what is the status of the backlog?*

Background: The BVNPT reports turnover in two high-level enforcement staff positions, its intake and enhanced screening manager and its enforcement chief. Although both positions have since been filled, the BVNPT found that the two transitions created significant case management problems. The new

⁵⁹ NCSBN, *The NCSBN National Simulation Study: A Longitudinal, Randomized, Controlled Study Replacing Clinical Hours with Simulation in Prelicensure Nursing Education*, July 2014, at S38.

⁶⁰ INACSL, *INACSL Standards of Best Practice: Simulation*SM, last accessed March 2, 2021, www.inacsl.org/inacsl-standards-of-best-practice-simulation.

⁶¹ NCSBN, *NCSBN Simulation Guidelines for Prelicensure Nursing Education Programs*, 2016.

enforcement chief found that numerous cases had not been properly closed or referred in a timely manner.

The BVNPT reports that it immediately reported the issue to the DCA's Division of Investigation and developed a plan to mitigate the issue. Once the cases were moved to the correct units, the result was a backlog of 30 cases in the special investigations unit. Staff then redirected an analyst to special investigations to assist with the backlog.

Staff Recommendation: *The BVNPT should provide an update on its progress in clearing the backlog.*

ISSUE #19: AUDITS OF CE PROVIDERS. *The BVNPT does not currently audit continuing education providers. Should the BVNPT implement a process for doing so?*

Background: 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 does not currently have the resources to audit CE providers but is willing to discuss the issue going forward. Between 2016 and 2019, the BVNPT received between 40 and 90 initial applications and 45 and 92 renewals.

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

ISSUE #20: FORMAL DISCIPLINE TIMELINES. *The BVNPT is unable to meet its target cycle times for cases referred for formal discipline, also known as Performance Measure 4 (PM4). Can the BVNPT improve its processes to meet its target, and should PM4 be modified to better reflect the different stages of an enforcement case?*

Background: All licensing boards under the DCA have target cycle timelines to ensure the timely resolution of complaints and disciplinary cases. One measure, PM4, looks at the timelines for cases that rise to the level of formal discipline, such as license suspension or revocation. The target timeline is 540 days, and boards aim to resolve cases within 12-18 months.

However, PM4 is a difficult goal because it includes investigation and prosecutorial timelines that are often extended due to the serious nature of cases that are referred to the Attorney General, and PM4 does not distinguish between the amount of time a case spends at the BVNPT, the DCA's Division of Investigation, or the Attorney General's office.

This was also true for BVNPT’s enforcement program, despite recent improvements. The BVNPT has reported consistent statistics that generally meet or exceed its targets for all established performance measures in the past four FYs except for cycle times for formal discipline cases. Because PM4 does not track cases based on the amount of time spent at any given agency, it is difficult to identify the source of potential delays.

Staff Recommendation: *The BVNPT should discuss whether it can work with the DCA to parse out PM4 in a way that allows a better accounting of case timelines.*

ISSUE #21: MEDICAL SPAS. *The BVNPT reports an increase in the improper provision of dermatological procedures by LVNs in medical spas. Are there changes needed to ensure patient safety and the proper delegation of procedures?*

Background: LVNs can work in a variety of settings under supervision by a physician or registered nurse. One of those settings includes outpatient settings that offer elective cosmetic medical procedures or treatments, often referred to as “medical spas” or “medi-spas.”⁶² Any services offered that are not taught in VN educational programs and do not include basic nursing services, the administration of medication, the use of intravenous therapies, blood withdrawal, skin tests, or vaccinations, would be outside the scope of an LVN and therefore should not be delegated to an LVN. Potential services that are currently not within an LVNs scope include laser treatments and medical-grade skin peels. However, it is less clear whether certain dermatological injections count as the administration of “medications by hypodermic injection” per BPC § 2860.5(a).

In a recent precedential decision,⁶³ the BVNPT found that an LVN’s operation of a skincare salon and related medical, as well as the performance of various treatments at those facilities, violated the Vocational Nursing Practice Act.⁶⁴ In that case, under physician supervision, the LVN administered Botox, Juvederm, and Kybella injections; performed platelet-rich plasma therapy and vitamin drips without the necessary IV certification; performed skin growth removal procedures; and injected glutathione to various patients and clients.

The LVN also intentionally maneuvered around professional corporations shareholder requirements, utilizing a sibling who was a registered nurse. For approximately two years, the LVN also ordered various cosmetic medications through a CA licensed dentist who “expressed an interest in receiving Botox injection treatments” and administered the medications to the dentist.⁶⁵

⁶² Medical Board of California, *Medical Spas – What You Need to Know*, Medical Board of California Newsletter vol. 100, January 2007, at 10.

⁶³ Government Code § 11425.60.

⁶⁴ BVNPT, *In Re Lobenaria SIA*, Precedential Decision No. 2020-01, December, 1, 2020, <https://www.bvnpt.ca.gov/enforcement/precedential/20201201.pdf>.

⁶⁵ BVNPT at 7.

In that case, there was only one instance of documented patient harm. The harm was related to the injection of glutathione, in which the complainant “reported that during the injection she felt weird and tasted something in her mouth. Afterward, she felt severe dizziness and headaches.”⁶⁶ The case does not discuss any other harms to the complainant, but a subject matter expert noted that “‘tasting’ something in her mouth... suggests that the drug was administered intravenously into the vein. This fell outside the scope of practice for a vocational nurse.”⁶⁷

Staff Recommendation: *The BVNPT should discuss any ambiguities in the training and scope of LVNs relating to cosmetic and dermatological procedures, its partnership with the Medical Board of California in investigating physician supervision issues, and whether there are changes needed to prevent consumer harm.*

COVID-19 ISSUES & RESPONSE

ISSUE #22: *COVID-19. Since March of 2020, the DCA has approved waivers through the Governor’s executive orders, which affect licensees and future licensees alike. Do any of these waivers warrant an extension or statutory changes?*

Background: In response to the COVID-19 pandemic, the Governor issued executive orders to address the immediate COVID-19 pandemic, including impacts on the state’s healthcare workforce stemming from the virus. On, March 4, 2020, the Governor issued a State of Emergency declaration, as defined in Government Code § 8558, which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to allow licensed healthcare professionals from outside of California to practice in California without a California license. Under BPC § 900, licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the EMSA director.

Following that executive order, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the DCA director to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic, including rules relating to examination, education, experience, and training. Examples of waivers affecting the BVNPT and its licensing population include:

- DCA-20-57 waives any statutory or regulatory requirement that an individual seeking to reactivate or restore a license meet CE requirements in order to reactivate or restore a retired, inactive, or canceled license; and pay any fees in order to reactivate or restore a retired, inactive, or canceled license (including renewal, delinquency, penalty, or late fees, or any other statutory or regulatory fees). This is only applicable to an individual’s license that is in a retired, inactive, or canceled status for no longer than five years.

⁶⁶ BVNPT at 9.

⁶⁷ BVNPT at 14.

- DCA-20-69 waives for individuals whose active licenses expire between March 31, 2020, and December 31, 2020, any statutory or regulatory requirement that individuals renewing a license take and pass an examination to renew a license; and any statutory or regulatory requirement that an individual renewing a license must complete continuing education requirements for license renewal. These do not apply to any continuing education, training, or examination required under a disciplinary order.

Staff Recommendation: *The BVNPT should advise the Committees on the use of the COVID-19 waivers and the ongoing necessity of the waivers.*

ISSUE #23: **COVID-19 PROVIDER MENTAL HEALTH.** *Under ordinary circumstances, the work of frontline healthcare providers is mentally and emotionally challenging. Are there new issues arising from or, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?*

Background: Throughout the COVID-19 pandemic, frontline healthcare workers and first responders, such as physicians, nurses, respiratory care therapists, paramedics, and more, have been caring for COVID-19 patients through multiple deadly surges, including a record-shattering death toll in December of 2020.

The Centers for Disease Control notes that “[p]roviding care to others during the COVID-19 pandemic can lead to stress, anxiety, fear, and other strong emotions.... Experiencing or witnessing life threatening or traumatic events impacts everyone differently. In some circumstances, the distress can be managed successfully to reduce associated negative health and behavioral outcomes. In other cases, some people may experience clinically significant distress or impairment, such as acute stress disorder, post-traumatic stress disorder (PTSD), or secondary traumatic stress (also known as vicarious traumatization). Compassion fatigue and burnout may also result from chronic workplace stress and exposure to traumatic events during the COVID-19 pandemic.”⁶⁸

Frontline healthcare workers are essential to the state of California. Given the length and the unique conditions of the COVID-19 pandemic, it may be beneficial to track trends and identify potential challenges and solutions in delivering mental health care and support for frontline healthcare workers who have been under extreme physical and mental pressure since the start of the coronavirus pandemic.

Staff Recommendation: *The BVNPT should discuss any findings related to the mental and behavioral healthcare needs of frontline healthcare providers arising from the COVID-19 pandemic.*

⁶⁸ Centers for Disease Control, *Healthcare Personnel and First Responders: How to Cope with Stress and Build Resilience During the COVID-19 Pandemic*, last updated December 16, 2020, www.cdc.gov/coronavirus/2019-ncov/hcp/mental-health-healthcare.html.

EDITS TO THE PRACTICE ACT

ISSUE #24: TECHNICAL EDITS. *Are there technical changes to the Practice Act that may improve the BVNPT's operations?*

Background: 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.

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

CONTINUED REGULATION OF THE PROFESSION

ISSUE #25: SUNSET EXTENSION. *Should the current BVNPT be continued and continue regulating the practice of LVNs and PTs?*

Background: A review of the issues raised since the last review of the BVNPT in 2017 shows that the BVNPT has made significant improvements. The administrative and enforcement program monitor placed at the BVNPT pursuant to AB 179 has reported that the BVNPT has worked well with the DCA's DOI to restructure its enforcement program and implement the monitor's recommendation.

The BVNPT has also implemented most prior committee recommendations and addressed many of the vacancy and morale issues. The BVNPT has demonstrated good faith efforts to address these issues and continues to work with the Legislature, the DCA, and board staff to efficiently meet its consumer protection mandate.

Still, there is room for improvement. The BVNPT needs to continue to implement improvements and continue to work with the DCA's OIO unit on its licensing and administration programs, as well as clear its recent enforcement case backlog. Discussions around the BVNPT's educational program approval and potential approval fees are still ongoing, and it needs to develop and implement a plan to reduce its educational program approval backlog. Given the BVNPT's troubled history, there are also still questions about the sustainability of the current improvements, the appointment authority of the executive officer, and the BVNPT's fund condition.

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