

**BACKGROUND PAPER FOR THE
BOARD OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
(Oversight Hearing, March 14, 2011, Senate Committee
On Business, Professions and Economic Development)**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
REGARDING THE BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS**

**BRIEF OVERVIEW OF THE BOARD OF
VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) is responsible for regulating and enforcing the laws related to the practice of licensed vocational nurses (LVNs) and psychiatric technicians (PTs) in California. There are currently 119,033 LVNs and 13,299 PTs in California, with over 8,000 licenses issued annually, and more than 39,000 licenses renewed annually. The BVNPT also accredits and approves 203 LVN and 16 PT programs. It should be noted that the LVN and PT licensure programs are completely distinct with their own statutes and regulations, budget authority, curriculum requirements, examinations, and staff. Additionally, the BVNPT serves as a policy and decision maker in reinstatement hearings, proposed disciplinary actions, accreditation of new schools, school survey visits, follow up reports on programs, examination development, contracts, budget issues, legislation, and regulatory proposals.

Protection of the public is the highest priority of the BVNPT in exercising its licensing, regulatory, and disciplinary functions. This priority is highlighted in the BVNPT's mission statement adopted in its 2010 Strategic Plan, which states:

**“The mission of the California Board of Vocational Nursing
and Psychiatric Technicians is to protect the public.”**

In order to further this public protection mission, the BVNPT establishes minimum examination and licensure requirements, issues and renews licenses, establishes educational standards for the accreditation of vocational nurse (VN) and PT schools, adopts regulations to clarify education and licensure, school accreditation, practice requirements, and disciplinary standards for its licensees, enforces the regulations governing the continued accreditation of VN and PT schools in California, and takes appropriate disciplinary action against incompetent or unsafe licensees.

The BVNPT is composed of eleven members and is one of three health boards with a public member majority: six public members and five professional members. The Governor appoints nine members, and the Speaker of the Assembly and the Senate Rules Committee each appoint one public member.

Six members constitute a quorum for the BVNPT to conduct business. Currently, there are three vacant positions in the BVNPT, one professional member and two public member appointments. The BVNPT currently meets three times a year for board meetings. The following is a listing of the current members of the BVNPT with a brief biography of each member, their current status, appointment and term expiration dates and the appointing authority:

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
John Vertido, Licensed Vocational Nurse Educator, Board President Mr. Vertido is currently a strategic analyst for the Department of Defense.	September 15, 2005	June 1, 2012	Governor
Todd D'Braunstein, Psychiatric Technician, Board Vice-President Mr. D'Braunstein is currently a program assistant at the Department of Mental Health, Patton State Hospital.	September 15, 2005	June 1, 2012	Governor
Kevin Baucom, Psychiatric Technician Mr. Baucom currently serves as assistant chief of recovery and mall services, substance abuse services, and vocational services at Atascadero State Hospital	September 14, 2007	June 1, 2011	Governor
Ling-Ling Chang, Public Member Ms. Chang currently serves as President and Chief Executive Officer of the Youth Science Center and is a City Councilmember of Diamond Bar.	February 12, 2010	June 1, 2013	Governor
Victor King, Public Member Mr. King currently serves as Legal counsel and as a member of the President's cabinet at California State University, Los Angeles.	February 15, 2010	June 1, 2013	Governor
Jessica Leavitt, Public Member Ms. Leavitt was appointed to the Board in 2009 by the Senate Rules Committee. Prior to serving on the Board she served as a District Consultant at Peralta Community College.	March 19, 2009	June 1, 2011	Senate Rules Committee
Eric Mah, Public Member Mr. Mah was appointed by the Speaker of the Assembly. Mr. Mah is currently employed at UC Davis as Interim Executive Director of Research Compliance and Integrity and as Director of the Institutional Review Board.	October 6, 2010	June 1, 2012	Speaker of the Assembly
Mark Stanfield, Licensed Vocational Nurse Mr. Stanfield currently serves as a licensed vocational nurse at Patton State Hospital.	April 23, 2010	June 1, 2012	Governor

The BVNPT members also comprise four different committees under the BVNPT. They include the Executive Committee, Education and Practice Committee, Enforcement Committee and the Legislative Committee. The Executive Committee develops policies and makes recommendations to the full board on matters regarding attendance and standards of conduct for the Board members. The Education and Practice Committee solicits public input when addressing issues related to accreditation, curriculum, education and practice requirements and makes recommendations to the full board. The Enforcement Committee analyzes enforcement issues and formulates recommendations, considers recommendations of Administrative Law Judges and reviews and revises the Disciplinary Guidelines for proposed decisions and stipulated agreements and makes recommendations to the full board. The Legislative Committee reviews pending legislation impacting the BVNPT, develops BVNPT positions, and submits them to the full board for ratification. According to the BVNPT, due to budget restrictions, these Committees currently do not meet. All policy issues are presented to the full board at its regularly scheduled meetings.

The BVNPT is a “special fund agency” that is self-supported through the collection of examination, licensing and renewal fees from its applicants and licensees. Currently, the licensing and renewal fees for LVNs are at the statutory maximum of \$150. The PT licensing and renewal fees are set at the statutory maximum of \$300. The BVNPT Fund Conditions indicate that the total revenue anticipated by the Board for the VN program for fiscal year (FY) 2010/11 is \$9,097,000, and for FY 2011/12 it is projected at \$9,484,000. For the PT program, the total revenue for FY 2010/11 is \$1,690,000 and for FY 2011/12 it is projected at \$1,699,000. The total expenditure anticipated for the VN program for FY 2010/11 is \$12,605,000 and for FY 2011/2012 it is projected at \$11,622,000. For the PT program, the total expenditure anticipated for FY 2010/11, is \$3,105,000 and for FY 2011/12, it is anticipated at \$2,775,000. The BVNPT Fund Conditions indicate that the VN program would have approximately 1.1 months in reserve for FY 2011/12 and 0.7 months for FY 2012/13, and the PT program would have approximately -3.0 months in reserve for FY 2011/2012 and -5.7 months reserve for FY 2012/2013. Generally, the BVNPT would like to keep a six month reserve fund for unforeseen events, especially in the Enforcement Division.

The BVNPT is currently authorized to employ 84.0 full time staff positions and 14.0 temporary help positions. This staff is divided among three different divisions; the Licensing and Administrative Services Division, the Education Division, and the Enforcement Division. In 2010, the Department of Consumer Affairs (DCA) launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process of healing arts boards. According to DCA, the CPEI is a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12 to 18 months. The BVNPT was authorized to hire 15.5 additional staff under CPEI. However, on August 31, 2010, the Governor implemented a hiring freeze and the BVNPT has not been able to obtain approval for an exemption request nor been able to hire any additional staff.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The BVNPT was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) in 2002. During the previous sunset review, the JLSRC and DCA raised numerous issues. The BVNPT identified five issues and developed a set of recommendations to address the issues. The following are actions that the BVNPT took over the past eight years to address many of these issues. Those items which were not addressed and which may still be of concern to the Committee are addressed and more fully discussed under the “Current Sunset Review Issues” section of this paper.

On October 1, 2010, the BVNPT submitted its required sunset report to the Committee. In this report, the BVNPT described actions it has taken since its prior review to address the recommendations of the JLSRC. The following are some of the more important programmatic and operational changes and enhancements which the BVNPT has taken and other important policy decisions or regulatory changes made by the BVNPT:

- Conducted retroactive fingerprinting of licensees who were licensed prior to January 1, 1998.

- Annually updated its Strategic Plan to identify the strategic issues and trends impacting the BVNPT and the professions it regulates.
- Increased the number of VN & PT Programs by 44% (from 154 in 2004/2005 to 221 in FY 2009/10). Additionally, the BVNPT continues to assist schools in becoming an accredited program by assigning a Nursing Education Consultant (NEC) to the school and by inviting the Program Directors to a “New Director Orientation.” Information presented at these orientations provides clarification regarding the statutes and regulations with which the programs must comply to become accredited. Additionally, the NEC reviews the material from each school in attendance and provides feedback to the Program Director. This information helps schools understand the requirements before directing an inordinate amount of time to development of program elements that are not compliant with regulations.
- Established the Vocational Nurse Education Fund, which helps fund scholarships and loan repayment programs. Each LVN is assessed an additional \$5 fee when they renew their license every two years to fund this program.
- Proposed and obtained budget authority to implement mandatory reporting requirements for employers of LVNs or PTs who have been suspended or terminated for cause. On October 11, 2007, the BVNPT’s regulatory proposal to implement the mandatory reporting statutes became effective.
- Adopted regulations regarding Consumer Complaint Disclosure Policy.
- Participated in the Nurse Workforce Initiative.
- Increased the number of students attending LVN and PT programs.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the BVNPT, or those which were not previously addressed by the BVNPT, and other areas of concern for the Committee to consider, as well as background information concerning the particular issue. There are also recommendations Committee staff have made regarding particular 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.

VN AND PT EDUCATION AND PROGRAM APPROVAL ISSUES

ISSUE #1: (CLARIFICATION NEEDED IN THE USE OF THE TERM “ACCREDITATION” FOR APPROVAL OF PROGRAMS AND SCHOOLS.) Is there a need to clarify the use of the term “accreditation” when referring to BVNPT’s approval of schools?

Background: Current law states that an accredited school of vocational nursing is one which has been approved by the BVNPT. The use of the term “accredited” to refer to BVNPT program approval can cause confusion, given the general application of that term to educational institutions. A recent report of the Center for American Progress (CAP) indicates that there are about 19 institutional accrediting organizations in the United States that accredit around 7,000 institutions, both for-profit and nonprofit. These private organizations stress a voluntary system of quality control. The idea that higher education institutions should be primarily responsible for their own quality is a core principle of institutional accreditation, according to the Council for Higher Education Accreditation, the leading voice for voluntary accreditation. The accreditation process is built around the idea that an institution’s mission should be the touchstone for judging academic quality. For instance, accreditors ask whether the academic programs are of sufficient quality and integrity to achieve the institution’s mission and similarly whether the institution maintains a faculty to fulfill the mission in terms of qualification, numbers, and performance. The U.S. Department of Education recognizes more than 40 program accrediting agencies, including at least 25 agencies that accredit health-related programs. The Council for Higher Education Accreditation recognizes at least 61 agencies. Additionally, there are independent accreditors for nursing programs that review standards related to the mission of a program, administrative capacity, faculty and staff, students, curriculum, clinical training, resources and outcomes.

In California there may be schools not accredited by a national accrediting body that receive BVNPT accreditation (approval) for programs offered. Similarly, there may be schools approved by Board of Private Postsecondary Education (BPPE), but whose VN or PT program may not receive BVNPT accreditation. Students may not understand the difference between accreditation in the traditional, educational sense of the word and application of the term to BVNPT approved schools. Unaccredited schools offering programs accredited by BVNPT may advertise or promote their “accreditation,” misleading students and potentially leaving them at a serious disadvantage if they are not able to successfully transfer academic credits. Potential participants in VN or PT training programs are required to answer whether they graduated from an accredited school on their licensing exam; students may not know if a school is accredited, despite operating a BVNPT accredited VN or PT training program.

Staff Recommendation: *The BVNPT should clarify its role in the oversight of VN and PT programs by applying the term “approve” or “approval” rather than “accredit” or “accreditation.”*

ISSUE #2: (ADDITIONAL IMPROVEMENTS ARE NEEDED IN THE APPROVAL PROCESS FOR VN and PT PROGRAMS.) Are there ways in which the BVNPT could improve and streamline its approval process for VN and PT programs, facilitating the approval of additional qualified programs?

Background: Approval of VN and PT programs is an integral component of the BVNPT’s operation since LVNs and PTs are integral members of the health care delivery system. Thus, their entry into

practice must be without barriers. The purpose of approval is to ensure a program's compliance with statutory and regulatory requirements. Currently, there are 203 accredited VN programs and 16 accredited PT programs. Additionally, the BVNPT has applications pending for 102 VN and 9 PT programs.

The process for establishing a new program begins when the school notifies the BVNPT of its intent to open a new program by submitting the appropriate application, and requesting the assignment of an NEC. The school also secures the services of a Program Director who meets certain requirements. Then, the school submits a faculty application and required supporting documents, and the BVNPT processes the faculty applications and approves the Program Director. Upon approval of the Program Director, the NEC prepares and sends the Program Director a New Director Orientation document, which he or she must complete.

The school also submits a curriculum proposal to the BVNPT for approval. The curriculum proposal must demonstrate the integration and application of anatomy and physiology, pharmacology, communication, nursing knowledge, nursing care skills and nutrition into the clinical practice of the students. Objectives must be written to measure when each skill is integrated and proficiency in application demonstrated. This process must be accomplished for each new course and content area, and reflected in the subsequent clinical objectives the students must accomplish when caring for patients. The proposed curriculum must also include specific documents including: (1) a conceptual framework that provides the blueprint and contains the content required to build a sound curriculum necessary to educate and train a nurse who is safe and competent to practice; (2) course outlines and objectives that specify essential elements within individual courses and reflect content progression and competencies consistent with the vocational nursing scope of practice; (3) an instructional plan that lays out all course theory and clinical objectives, content, clinical facilities demonstrating a progression of content from simple to complex; (4) evaluation methodologies; (5) faculty who meet certain requirements; and, (6) clinical facilities that both provide clinical experience consistent with the curriculum and meet the requirements of BVNPT regulations.

The NEC conducts a thorough analysis of the proposed curriculum. 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 New Director Orientation materials are completed. Before the first class graduates from a program, the NEC must complete an on-site accreditation 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 accreditation. The BVNPT will notify the program and shall specify areas of noncompliance for correction. If, after the initial period of provisional accreditation, as determined by the full Board, the program shows good faith efforts to correct deficiencies, the BVNPT may extend the provisional period. However, failure to correct the areas of noncompliance is cause for revocation of accreditation.

The BVNPT has indicated that the average length of time from beginning to completing the approval process is about 12 months, but there have been some instances where the approval process has taken much longer, especially if the program is proposed by a for-profit school. The BVNPT has suggested that this extended time period for approval is contingent on the school'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. However, there has 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. The BVNPT may need to give assurances that its staff and NECs are applying those rules, regulations and requirements consistently.

For-profit schools are a growing sector in the arena of training health care workers. In 1985, community colleges comprised 70% of the total number of accredited VN and PT programs. In 2005, community colleges only comprised 32% of the total number of VN programs and that number continued to fall, decreasing to 22% in 2010. In contrast, for-profit schools now comprise 62% of the total number of VN programs. Although PT programs continue to be dominated by community colleges, for-profit schools with PT programs have grown from 7% in 2005 to 19% in 2010. While the for-profit school sector has faced increased scrutiny by state and federal officials in light of rising student debt levels and dubious recruitment practices, they nonetheless can play an important role in filling the void of training providers that has arisen amid budget cuts at public schools. Proper oversight at every level of accreditation and approval must exist for all schools and VN and PT programs. The BVNPT should explore improvements to its current approval process to ensure that all schools have an equal chance of meeting the requirements to provide these programs in California.

Another factor contributing to the length of time required to approve a VN or PT school for accreditation is that the BPPE must also approve certain schools and programs before they receive final approval. Reconstituted in 2010, after being inoperative for the previous three years, BPPE approves schools and programs, while maintaining and enforcing important consumer protections to ensure proper recourse for students. Similar efforts to oversee and approve VN and PT programs may occur at both BVNPT and BPPE, creating a need for the two entities to work together so that viable programs are approved while student protections are maintained. BVNPT lacks the expertise and necessary resources to properly enforce business practices in the manner that BPPE does and NECs currently have large workloads as they process program accreditation. To minimize duplication of efforts and clarify the unique role of each, BVNPT and BPPE may enter into a Memorandum of Understanding (MOU). According to the BVNPT, an MOU was developed and agreed upon prior to the demise of the former BPPVE. An MOU will allow proper oversight of programs from their inception and provide appropriate assurances for students in these programs. BVNPT may refer students to BPPE if complaints arise, while BPPE may rely on findings and review of programs completed by BVNPT staff.

Staff Recommendation: The BVNPT should explore any opportunity to streamline the current program approval process to decrease the amount of time it takes for program approval. The BVNPT should also consider providing training to its staff and NECs involved in program approval to ensure that new rules and regulations are applied consistently to these programs. The BVNPT should enter into a formal MOU with the BPPE to maintain important student protections while potentially bringing about swifter program approval.

ISSUE #3. (THE NEED FOR DIFFERENTIAL PAY FOR NURSE EDUCATION CONSULTANTS.) Should Nurse Educational Consultants (NECs) be granted differential pay so that the BVNPT will be able to recruit and retain an appropriate staffing level of NECs to approve schools?

Background: The Education Division of BVNPT which is responsible for accreditation, curriculum, education and practice requirements is currently staffed only by NECs. A NEC must possess a clear and active Registered Nurse license, a Master's Degree in Nursing or related field, and professional experience in the clinical and academic areas. NECs utilize their expertise to conduct accreditation reviews that include in-depth analysis of program compliance with the VN and PT Rules and Regulations. As a part of these duties, the NECs also provide New Director Orientations for all new Program Directors of VN and PT programs and present Director Forums annually to update directors, faculty, administrators of statutory and regulatory changes that impact VN and PT programs. Program Director Forums also provide a forum for discussion of critical program issues impacting the education of safe and competent practitioners. When a NEC conducts an accreditation review for a new program the NEC may complete the review within 16 hours if the Program Director has adequate expertise in curriculum development, nursing, and the applicable statutes and regulations. However, if the Program Director has little knowledge of the process, the review may take as long as 50-60 hours and may include multiple conversations and correspondence between the NEC and the Program Director over a 6-12 month period. The BVNPT has indicated that this is often the case with private programs, which are a large and increasing portion of available nursing programs.

NECs also provide consultative services to local, state, and national agencies relative to the BVNPT's mandates and authority to regulate licensees for the purpose of consumer protection. Additionally, NECs actively participate in developing and shaping policy by conducting research and analysis and interpreting practice acts for education and health care delivery institutions, health care professionals and other governmental bodies and consumers.

As of March 1, 2011, 4 out of 5 NEC positions are vacant. This is an 80% reduction in nursing staff. Due to the nursing shortage, nurses are in great demand and are able to obtain much higher salaries at other state agencies and in the private sector. For example, the Department of Health Services (DHS) is paying NECs over \$2,000 more per month than BVNPT. Additionally, the salary range at DCA for all NECs, including those working for BVNPT, increased 5.42% from 2003 to 2007; however, the nurse consultant salary ranges at DHS increased 59.21% from 2003 to 2007. The discrepancy is even greater when compared to nurses working in the private sector with the same education and experience required of NECs.

In November 2007, BVNPT submitted a formal separate request to the DCA to secure a recruitment and retention pay differential for its current and future NECs. Due to the State of California's ongoing budget deficit, the 2007 request was returned without consideration and the 2010 request is still under review by the Department of Personnel Administration. BVNPT worked with DCA Office of Human Resources (OHR) to research recruitment and retention pay differential using other statewide nurse classifications or contracting out for nurse consultant services, however, DCA OHR confirmed that the other state agencies would not approve the use of their nurse consultant classifications nor is the BVNPT allowed to contract out for nurse consultant services.

If a pay differential is not granted and NECs cannot be recruited, approval of new nursing programs will be critically delayed because school administrators and Program Directors will not receive guidance from NECs to ensure compliance with state rules and regulations. Also, existing programs that require BVNPT approval for curriculum changes would not receive timely responses, which could result in disruption of classes, patterns of instruction that are out of sequence, and irregular use of faculty and facilities. Lastly, re-accreditation may not be performed in a timely manner. Where re-accreditation is not accomplished within a specific amount of time, the program loses its accredited status and graduating students will not be able to sit for licensure examination.

Staff Recommendation: *The Board should be granted a pay differential for NECs in order to recruit and retain NECs necessary for school program approval.*

NURSING WORKFORCE AND DIVERSITY ISSUES

ISSUE #4: (IS THERE STILL, OR WILL THERE BE A VN AND PT WORKFORCE SHORTAGE IN THE FUTURE?) Will California continue to experience a critical shortage of VNs and PTs, and what can the BVNPT do to address these shortages?

Background: The U.S Bureau of Labor Statistics has projected a 20% increase in the job outlook for RNs through 2020. Based on a 2010 California Public Health data, this 20% national increase correlates to a California deficit of 47,600 nurses. The same U.S Bureau of Labor Statistics data projects a 21% increase in the job outlook for LVNs through 2018. According to the National Occupational Outlook Handbook, this is an expected national deficit of 155,600 LVNs in nursing care facilities, 31,500 in doctor's offices, and 20,600 in home health agencies. Similar deficits are identified in the need for PTs. Although the California specific numbers consider only RNs and do not include LVNs, national statistics suggest that a similar deficit will exist.

National workforce experts in nursing have attributed the projected shortage in the profession to an increasingly aging population, scientific and technological advances that have increased the aging population, and increased aging among today's nurses. This shortage is predicted to be further compounded by the recently enacted Patient Protection and Affordable Care Act (Act) at the federal level and the accompanying expectation that nurses will help fill the gap for primary care and chronic care management as the population continues to age. An example of the Act encouraging and facilitating the growth of the health care workforce is a commitment by the federal government to increase funds available for nursing programs as well as student scholarships and loans. Due to these factors, the DCA director recently sent a memo to all executive officers of the healing arts boards indicating that the boards should prepare for increased activity over the next several years. It should be noted that LVNs play a critical role in addressing the nursing shortage since many LVNs continue on to become registered nurses.

In 2002, the BVNPT and this Committee discussed in depth the increased demand and decreased supply of VNs and PTs in California. The Committee recommended that the BVNPT should continue to work proactively with proposed programs to expedite program approval for schools and colleges, to make reforms where necessary to remove barriers for entry and articulation, and continue its

participation with the Governor's Nursing Workforce Task Force and Advisory Committee of the Board of Registered Nursing.

During the past six years, the BVNPT has increased the number of VN and PT Programs by 44% (from 154 to 221 in FY 2009/10). This equates to a 132% increase in the number of students approved to attend VN programs and a 333% increase in the number of students approved to attend PT programs. Additionally, the BVNPT has streamlined the accreditation process by assigning an NEC to the school and by inviting the Program Director to a "New Director Orientation." Information presented at these orientations provides clarification regarding the statutes and regulations with which the programs must comply with to become accredited. The NEC also reviews the material from each school in attendance and provides feedback to the Program Director. This information helps schools understand the requirements before directing an inordinate amount of resources to develop program elements that are not compliant with regulations.

The BVNPT was also an active participant in the Nurse Workforce Initiative sponsored by Governor Gray Davis. In September 2002, as a result of the work done, Nurse Workforce Initiative grants were awarded to thirteen partnerships. The primary goal of each project was to increase the pool of LVNs and registered nurses (RNs). There was no formal reporting from the initiative to summarize the outcome of the program.

On April 13, 2005, Governor Schwarzenegger announced his Nurse Education Initiative designed to address the critical shortage of nurses in California. Funds from this initiative were designed to be used for expanding enrollment capacity and enhancing support services for the Associate Degree Nursing (RN) Programs that chose to participate. These funds were not available to VN or PT Programs. According to the BVNPT, the lack of public funds for VN and PT programs negatively impacts the ability of many applicants to secure a quality affordable education. In turn, this may negatively impact the state's ability to prepare sufficient numbers of qualified nurses for California's current and future population. In addition to increasing the number of nursing programs and available funding, clinical space for these programs will also be an important consideration in providing for expanded programs. Many nursing programs have already had difficulty obtaining clinical placements with some programs even being terminated or replaced because they cannot find clinical space to help students finish their coursework.

The need for additional VNs and PTs will be apparent in the correctional system as the California Department of Corrections and Rehabilitations (CDCR) plans to open more facilities. According to the BVNPT, on March 8, 2010, it met with representatives from CDCR relative to CDCR's projected staffing needs. CDCR reported that under a federal court order, CDCR was directed to open three new correctional facilities by December 2013. The following facilities have been proposed: Long Term Medical & Mental Health Facility (Receiver Facility); DeWitt Nelson, JF Conversion (CDCR Facility); and, the Northern California Reentry Facility (CDCR Facility). Approximately 122 LVNs and 440 PTs will be required to staff these facilities. CDCR anticipates that recruitment of adequate numbers of PTs will present the greatest challenge. The BVNPT advised that the greatest difficulty would be in the recruitment of qualified faculty, securing sufficient clinical placements, and sufficient financial resources. CDCR was advised to pursue agreements with existing PT Programs in northern and central California.

The BVNPT points out that it is committed to continuing its work with advisory committees, legislators, professional organizations and other interested parties to encourage the inclusion of VNs and PTs in methods and means to resolve or reduce California’s nursing shortage. In order to support their efforts, the Board would encourage future initiatives to include education funding for VN and PT students.

Staff Recommendation: The BVNPT should continue its efforts to increase the number of VN and PT graduates by not only improving on its approval process for nursing programs, but also by working with schools, colleges and universities to promote, create or expand programs; provide for more timely matriculation for students; and, by finding ways to increase access to VN and PT programs, especially for socio-economically disadvantaged students.

ISSUE #5: (SHOULD THE FUNDING FOR THE VOCATIONAL NURSES SCHOLARSHIP PROGRAM BE INCREASED?) It is unclear how well the Board’s scholarship and loan repayment program, which is managed by the OSHPD, is functioning and if it is being fully utilized, and whether the funding should be increased based on the number of potential applicants.

Background: SB 358 (Figueroa) Chapter 640, Statutes of 2003, established the Vocational Nurse Educational Program within the Health Professions Education Foundation (HPEF) which is administered by the Office of Statewide Health Planning and Development (OSHPD). HPEF administers the scholarship and loan repayment programs for vocational nurses, as well as physicians, nurses, and other health professions. The HPEF is funded, in part, by a \$5.00 assessment collected at the time of LVN license renewal. There are two types of vocational awards; Vocational Nurse Scholarship and Licensed Vocational Nurse to Associate Degree Nurse Scholarship Program. The purpose of these awards is to increase the number of vocational nurses practicing in medically underserved areas of California. Awards are available for students enrolled or accepted into an accredited California VN program or to graduates who are licensed by the BVNPT. The table below summarizes the scholarship funds distributed under the Program and the ethnic breakdown of scholarships awarded. According to HPEF, from 2007 through March 2010, VN scholarship awards have totaled \$348,000 and the number of applicants for the Program far exceeds the number of scholarships awarded, as the table below indicates. However, it should be noted that it is difficult to determine whether OSHPD is fully utilizing the dollars it receives from the BVNPT, since the amounts distributed by the BVNPT to OSHPD do not match with the award cycle of the OSHPD.

VN SCHOLARSHIP DISTRIBUTION						
Administrative Base	2007	2008	2009	2010	TOTAL	
# Applications Received	111	144	144	87	486	
# Scholarships Awarded	28	17	23	19	87	
Total Amount Awarded:	\$112,000	\$68,000	\$92,000	\$76,000	\$348,000	
Ethnic Breakdown	2007	2008	2009	2010	TOTAL# & %	
African American	13	8	7	4	32	37%

Hispanic/Latino American	9	8	7	6	30	35%
Caucasian	2	0	4	3	9	10%
Asian American/Pacific Islander	3	0	1	4	8	9%
Native American & Other	1	1	4	2	8	9%
Totals:	28	17	23	19	87	100%

Staff Recommendation: *It is not clear what commitment will be made to scholarship programs for vocational nursing students in the future. Although it does appear that there will be more dollars available for repayment of loan programs, especially for those students who commit to serve in medically underserved areas. The BVNPT should consider increasing the amount of licensing fee committed to its scholarship program by \$5 to at least increase the availability of funds for those students wishing to attend VN programs. Prior to any increase, however, the BVNPT should report to the Legislature on how the moneys are being expended by OSHPD. Since these are licensing fees they must be expended only for those purposes which would further the nursing profession and not be diverted for other purposes.*

VN AND PT PRACTICE ISSUES

ISSUE #6: (THE NEED FOR THE CONTINUED WORK OF THE BVNPT IN EXPLORING THE ISSUE OF THE AVAILABILITY OF CLINICAL ROTATIONS.) Should the BVNPT conduct a report on the availability of clinical rotations for its VN and PT programs?

Background: Annually, the BVNPT conducts surveys of its external stakeholders including VN and PT schools and the clinical facilities used by the schools. In 2009, the BVNPT mailed surveys to all VN and PT programs. The purpose of the survey was to determine what challenges VNs and PTs may face in education and practice within the next five years as well as to identify possible problems encountered by new graduates of VN and PT programs and their employers. This information is also used to assist in improving the effectiveness and efficiency of the BVNPT. Respondents included programs based in community colleges, adult schools, and private institutions. For VN programs, respondents indicated that there are several factors that continue to impact the focus and content of VN programs: economic decline, decline in funds for educational programs, scholarships, and grants, increase in size of the applicant pool, decrease in the level of academic preparation of the applicant pool, performance of program graduates on the National Licensure Examination for Practical/Vocational Nurses, increase in numbers of VN and RN programs, lack of quality instructors, decline in client census, and loss of clinical sites and closure of doors to LVNs. Additionally, respondents indicated that the increasing number of Registered Nursing and VN programs has resulted in a loss of available clinical rotations. As a result, programs have sought clinical rotations that are up to 200 miles from schools. For some rotations, respondents indicated that students were required to stay in hotels for periods of time. For PT programs, where community colleges exclusively represented the respondents, the economic condition, including deep budget cuts, forced directors to decline enrollment. Students are forced to drop out of programs due to the lack of funding and wages. Furthermore, the surveys also included responses from employers on their assessment of new

graduates for both VN and PT programs and reported deficiencies in some areas including professionalism, critical thinking, basic math calculations and medical terminology.

The BVNPT indicated that a report relating to clinical rotations is projected for completion in 2011 if the Board has the resources to conduct the report.

Staff Recommendation: *The BVNPT is encouraged to complete the report in 2011, or at a later date when resources become available. As part of the report, the BVNPT should explore ways to address the need and sustainability of clinical rotations, including requiring VN and PT programs to secure these clinical rotations for their students. The BVNPT should submit this report to the Legislature and make it available on the Board's Website.*

CONTINUING COMPETENCY ISSUES

ISSUE #7: (INCREASE CONTINUING EDUCATION (CE) AUDITS OF VNs, PTs and CE PROVIDERS.) **Should the BVNPT increase the random audits it performs per year on VNs and PTs and should the BVNPT seek clarification on whether it has existing authority to audit CE providers?**

Background: The BVNPT requires that VNs and PTs fulfill 30 hours of continuing education (CE) every two years as part of their license renewal. To ensure that licensees are in compliance with CE requirements, random CE audits are performed on licensees annually and individual audits are conducted if a problem of false information becomes apparent to the BVNPT. Licensees are required to maintain CE information for a period of four years in case of an audit. This allows the BVNPT an opportunity to check not only CE compliance for the most recent renewal period, but for the prior period as well. The BVNPT also accepts CE courses from nursing agencies or organizations from California or other states. Additionally, VNs and PTs may complete their CE courses from Registered Nursing providers. Last year, the BVNPT audited about 1-2% of its active licensees, which amounts to about 1,200 LVNs and 240 PTs. Of those audited, about 70% were able to prove compliance. The BVNPT states that it is unable to conduct more audits because of its lack of staff and increase in workload demands in other areas. Where a licensee fails to prove compliance, they are given three warning letters before an enforcement action is taken and they are cited.

The BVNPT also approves CE providers which are required to offer CE courses that are related to the scientific knowledge and/or technical, manual skills required for VN or PT practice, related to direct or indirect patient/client care, and learning experiences that would enhance the knowledge of the VN at a level above that required for licensure. The provider pays a fee that is submitted with the approval application for the first class. Once approved, the provider may offer as many classes it wishes within a two-year period. The BVNPT verifies CE providers by checking the validity of individual provider names and numbers with the agency who grants the provider status. A CE provider is required to keep for four years the course outlines of each course given, record of dates and places each course is given, instructor curriculum vitae or resumes and names and license number of VNs and PTs who take any of the courses offered by the provider. Additionally, the BVNPT keeps track of complaints they receive from consumers concerning CE courses and providers. The most common complaint received is that the consumer did not receive all 30 hours of CE courses from the provider. According to the BVNPT,

to further improve compliance with CE requirements, and ensure that providers are offering appropriate CE courses, it would like to be given the statutory authority to conduct random audits of CE providers.

Staff Recommendation: *The BVNPT should submit a Budget Change Proposal to obtain staff dedicated to conducting increased audits of VNs and PTs and begin the audits of CE providers. The BVNPT should only be required to increase audits of VNs, PTs and CE providers if it receives sufficient staffing to conduct such audits. Additionally, the BVNPT should seek legal clarification on whether it has the statutory authority to conduct random audits of CE providers. If there is, then the BVNPT should adopt regulations requiring random audits of CE providers.*

ENFORCEMENT ISSUES

ISSUE #8. (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING AN AVERAGE OF 2 ½ YEARS OR MORE.) **Will the BVNPT be able to meet its goal of reducing the average disciplinary case time frame from over 2 ½ years, to 12 to 18 months?**

Background: For FY 2009/2010, the BVNPT had an enforcement backlog resulting in an average of 1,006 days to process complaints from the date a complaint is received to the final disposition of a disciplinary case for the VN program and 1,017 days in the PT program. This is almost three years from receipt of a complaint to the final disposition of the case where disciplinary action is taken. Additionally, it took 228 days to process a complaint in the VN Program, and 196 for the PT program. Complaints that are referred for investigation to the Division of Investigation (DOI) took 644 days to complete for the VN Program and 693 days for the PT program. Investigations for most cases for the PT and VN programs conclude in two or three years. Moreover, it takes an average of 157 days for the Attorney General's Office (AG's Office) to file an accusation from the time investigation is completed for the VN program and 118 days for the PT program. Generally, most VN and PT cases that are referred to the AG's Office close within two or three years.

There are a number of reasons for the extremely lengthy process for taking disciplinary action against a VN or PT who has violated the rules and regulations of the BVNPT or been involved in criminal activity. The BVNPT is not alone in its problems related to its lengthy disciplinary process; all other health boards under the DCA are affected as well. The process generally begins with a complaint from a consumer, or information provided possibly by another health care licensee or facility (hospital), a public agency, or local law enforcement. Complaints often take a circuitous route through several clogged bureaucracies; from the health care boards for initial assessment to the DOI of the DCA for investigation, to the AG's office for filing of an accusation and prosecution, to the State Office of Administrative Hearings (OAH) for disciplinary hearings. Lastly, the case goes back to the BVNPT for a final decision.

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards.*" The hearing revealed that the biggest bottleneck occurs at the investigation and prosecution stages of the process as the DOI investigators and the AG's Office prosecutors struggle to handle complaints against a variety of health care practitioners, as well as those against cosmetologists, accountants, engineers, shorthand reporters, funeral directors, private

investigators, and others. Some of the reasons given for delays of almost three years in the investigation and prosecution of cases by boards was that the DOI has high caseloads, a lack of adequate staffing, a lack of management and prioritization of cases by DOI and a lack of training and specialization of investigators, inability to obtain important medical records and other important documents in a timely manner, delay in obtaining needed outside expert or consultant evaluations of complaints, lack of communication and coordination with the client board by the DOI and AG's Office in its handling of cases, lack of accountability, such as reporting of performance measures for both the DOI and the AG's Office, and complicated budgeting mechanisms for using the DOI and AG's Office's services. Also, Deputy AGs within its Licensing Section handle both licensing and health care cases in a similar fashion without any expertise devoted to the prosecution of those cases involving serious health care quality issues. On average, it takes the AG's Office five months to prepare an accusation, petition to revoke probation, or statement of issues for the BVNPT. Moreover, the AG's staff often allows respondents to file a notice of defense long after the 15-day time limit has ended, which lengthens the time a case is processed by the AG's Office. The practice of the AG's Office of not requesting a hearing date when notice of defense is received is also contributing to the delays. The AG's Office often waits for settlement negotiations to break down before requesting a hearing date with OAH. It can then take one to two years to prosecute the case and for a disciplinary decision to be reached. Finally, OAH provides services to over 950 different governmental agencies. DCA's cases are not given a higher priority and are calendared according to available hearing dates and Administrative Law Judges (ALJs) assigned. Cases on average can take up to 12 months or more months to be heard. Also, the DCA's boards and bureaus have over 40 different laws and regulations with which ALJs must be familiar. This lack of specialization and training for the cases referred by health care boards results in inconsistent decisions by the ALJ. Where a board receives a decision that is inconsistent with prior rulings or if the decision does not comport with the action that a board considers necessary, the board is forced to non-adopt the decision of the ALJ, re-review the case and issue a different disciplinary order.

However, the BVNPT also struggles with its own issues due to a lack of staffing as a result of budgetary issues and increased workload. The programs causing particular strain on the enforcement division is the implementation of retroactive fingerprinting and mandatory employer reporting of licensee violations. On October 11, 2007, regulations were approved to implement mandatory employer reporting of LVNs and PTs who are terminated or suspended for cause. Since the regulation's first year of implementation, the BVNPT's enforcement workload has increased by 23%. Also contributing to the enforcement workload has been the implementation of retroactive fingerprinting requirements beginning in April 1, 2009. Prior to 2009, only newly licensed LVNs were subject to fingerprinting requirements. Since the requirements have been applied retroactively, the BVNPT has processed almost 35,000 additional fingerprint documents from April 1, 2009 to June 30, 2010. This resulted in the BVNPT opening 1,652 enforcement cases against licensees with prior convictions. Additionally, the BVNPT also cites: (1) Public awareness of the complaint and disciplinary process, (2) Information technology advances (e.g., the Internet) that allows consumers to file complaints online; (3) The increase in the number of applicants for licensure with a criminal history; (4) The increase in the number of licensees who are required to self-report on their license renewal of any arrests or convictions in the two years immediately preceding each license renewal cycle; and, (5) The implementation of its fingerprint requirements for new licensees in 1996 and the resultant increase in the number of "reports of arrests and prosecutions" (i.e., RAP Sheets)" received as contributing to its increased workload.

According to the BVNPT, the burdens of the increased workload are exacerbated by the lack of staff. The BVNPT received approval in on July 1, 2009 for 15.5 staff positions to implement retroactive fingerprinting and received approval in July 1, 2010 for an additional 15.5 positions to implement the Consumer Protection Enforcement Initiative (CPEI). The CPEI was implemented specifically to overhaul the enforcement process at healing arts boards. However, the Enforcement Division of the BVNPT currently only has 22.0 of its 40.5 total authorized positions filled. Additionally, the BVNPT states that it is scheduled to lose 9.5 limited term positions in 2011 and 3.5 limited term positions in 2012, since they were only authorized for a limited time. These vacancies cannot be filled because the BVNPT is still under order to continue with former Governor Schwarzenegger's directive implementing a state hiring freeze beginning on August 31, 2010, which was extended by the Governor Brown when he reinstated the hiring freeze on February 14, 2011, essentially preventing BVNPT vacancies from being filled.

Without the addition of staff that have already been authorized and recognized as being necessary to efficiently and effectively take administrative disciplinary actions, there will be a direct and negative impact on consumers. The backlog situation will allow an incompetent or negligent practitioner to continue working in the health care sector until formal disciplinary action is taken. Additionally, the BVNPT must constantly move staff from one function to another based upon case aging concerns and this prevents complaints and disciplinary actions from being effectively and efficiently managed. This situation will only become exacerbated as shown by the fact that backlogs and case aging are not diminishing but continue to grow as time passes. In fact, the number of cases pending has risen from 2,279 cases in FY 2006/07 to 4,365 cases in FY 2009/10, a 92% increase.

Staff Recommendation: *It does not appear that the BVNPT will be able to meet its goal of reducing the timeframe for handling disciplinary cases for some time. Lack of adequate staffing, reliance on the DOI and delays at the AG's Office in prosecuting cases and OAH in hearing cases, and the inability to obtain necessary records, all contribute to the current average of over 2 ½ years to complete a disciplinary action. Without additional staff, the investigation and prosecution of BVNPT disciplinary cases and the overall administration of its other programs, including licensing of nurses in an expeditious manner, will be in jeopardy. Backlogs of licensing applications and disciplinary cases will increase and any action on the part of the BVNPT against a VN or PT, who has either violated the law or the Vocational Nurse Practice Act, will be severely delayed. The Committee should also give consideration to auditing both DOI and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of BVNPT's disciplinary cases and coordination between all three agencies.*

ISSUE #9: (EMPLOYER MANDATORY REPORTING FOR VNs OR PTs WHO RESIGN FROM EMPLOYMENT.) Is there a need to require employers to report VNs and PTs who resign from their employment in lieu of suspension or termination for cause?

Background: Current law requires that employers of VNs and PTs report to the BVNPT the suspension or termination for cause of any LVN or PT in its employ. Suspension or termination for cause is defined as: (1) use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice; (2) unlawful sale of a controlled substance or other prescription items; Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client; (3) falsification of medical records; (4) gross negligence or incompetence; and, (5) theft from patients or clients other employees, or the employer. The BVNPT points out that this reporting mechanism has

been an important public protection tool, and the BVNPT continues to receive many reports from employers. (For FY 2009/2010, there were 213 VN and 56 PT employer reports.)

However, in order to further promote patient safety, the BVNPT is recommending that employers also report resignations in lieu of suspension or termination for cause submitted by VNs and PTs. According to the BVNPT, many licensees are permitted to submit resignations in lieu of suspension or termination from employment for gross negligence, incompetence, and unsafe or deceitful acts. As such, the employer is not required to report these types of resignations. When this occurs, the licensee is able to work for an unsuspecting hospital, nursing or convalescent home, or other healthcare facility because no negative employment history exists. Frequently, the licensees continue to commit similar acts of misconduct and this jeopardizes consumer protection. BVNPT also indicates that existing law is unclear if employment agencies and registries are required to report to the BVNPT a licensee who was rejected from assignment at a health facility or home health care due to acts which would normally be cause for suspension or termination. BVNPT points out that it is necessary to require employment agencies and registries to report licensees who are “rejected” for cause as well as suspended, terminated or resigned in lieu of suspension or termination for cause.

Staff Recommendation: *As recommended by the BVNPT, employers should be required to also report resignations in lieu of suspension or termination for cause of VNs and PTs. Additionally, there is a need to clarify that employers for purposes of reporting includes employment agencies and nursing registries.*

ISSUE #10: (CONFORMANCE OF PROBATION REQUIREMENTS AND DISCIPLINARY GUIDELINES FOR SUBSTANCE ABUSING VNs AND PTs.) The BVNPT should indicate to the Committee how it will implement the “Uniform Substance Abuse Standards” for those VNs and PTs are on probation for substance abuse issues.

Background: Unlike some healing arts boards of the DCA, the BVNPT does not operate a diversion program. However, licensees who are disciplined due to drug-related offenses can be placed on probation and then required to undergo drug testing and comply with other terms and conditions of probation. In 2008, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) became law and required the DCA to establish a Substance Abuse Coordination Committee (SACC) to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, including those on probation. The intent of SB 1441 was to establish common and uniform standards to govern licensees with substance abuse problems whether they are in diversion or probation. These sixteen standards, at a minimum, include: requirements for clinical diagnostic evaluation of licensees; requirements for the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; all aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. On March 3, 2009, the SACC conducted its first public hearing and the discussion included an overview of diversion programs, the importance of addressing substance abuse issues for health care professionals and the impact of allowing health care professionals who are impaired to continue to practice. During this meeting, the SACC members agreed to draft uniform guidelines for each of the standards. During subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. In November 2009, the DCA adopted the uniform guidelines

for each of the standards required by SB 1441. Last year, SB 1172 (Negrete McLeod) Chapter 517, Statutes of 2010, was passed to give boards the statutory authority to implement certain standards that needed statutory authority.

The most controversial aspect of SB 1441 has been the standard that deals with the frequency of drug testing. Initially, a 104 drug testing frequency for the first year was adopted by the SACC. However, there were concerns raised that these frequency of testing is unreasonable and unnecessary, especially for those licensees entering probation because some licensees demonstrate significant progress toward rehabilitation prior to a board issuing its order to place that licensee on probation. Additionally, concerns were raised about the costs of drug testing. As a result of these concerns, the DCA established a SACC subcommittee to further examine the testing frequency schedule, and on August 4, 2010 adopted a new standard: 48 random tests for the Year One, 24 random tests for year Two, and 12 random tests for Year Three or More. However, the full SACC committee never adopted the subcommittee's new drug testing frequency schedule. In the meantime, in the latter part of 2010, the DCA discovered that MAXIMUS, which has a contract with the DCA to provide oversight and treat those licensees enrolled in a Diversion Program, was recently testing those participants and using inexact standards (i.e., participants were tested at a higher standard and tested negative when they should have been tested at a lower standard and may have potentially tested positive). As a result of this controversy, the SACC committee has not reconvened and has not adopted a new drug frequency schedule, essentially leaving the 104-drug frequency as the standard. The DCA had instructed healthcare boards to begin the process of implementing the SB 1441 standards, including amending disciplinary guidelines to be consistent with SB 1441. However, because of the controversy surrounding the drug testing frequency, some health care boards have taken it upon themselves to not adopt the SACC standard on drug testing frequency in their Disciplinary Guidelines and instead independently determine what is appropriate for regulations, essentially undermining the intent of SB 1441 which was to establish uniformity for substance abusing licensees who are enrolled in a diversion program or on probation because of substance abuse. For example, on February 2, 2011, the Board of Registered Nursing (BRN) adopted a recommendation to notice their proposed regulations seeking comment for two options: the 104 drug testing frequency and another to establish the frequency of testing on a case-by-case basis. According to BVNPT, on February 7, 2011, the DCA Executive Office recommended that the BVNPT's proposed regulatory package implementing SB 1441 be similar to the BRN's and include both options for drug testing frequency. On February 25, 2011, the proposed regulations containing the two options were approved by the BVNPT. Since that time, the BVNPT was advised that the SACC Subcommittee plans to meet on March 9, 2011 to make a final decision of the drug testing frequency.

Staff Recommendation: *The BVNPT should indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not; give a definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards. Additionally, the BVNPT should explain to the Committee whether current terms and conditions of probation will include certain aspects of SB 1441 including the requirement that a VN or PT undergo a clinical diagnostic evaluation; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.*

ISSUE #11: (PROTRACTED PROCESS TO SUSPEND LICENSE OF A VN OR PT.)

The BVNPT must go through a cumbersome process to suspend the license of a VN or PT who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Background: Currently in California, even if a health care provider is thought to be a serious risk to the public, the boards must go through a cumbersome legal process to get permission to stop the provider from practicing, even temporarily. The BVNPT, for example, had only obtained Immediate Suspension Orders (ISO) just six times for VNs and three times for PTs within the past five years. Under existing law, the ISO process (Section 494 of the B&P Code) provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. However, the ISO process currently takes weeks to months to achieve, allowing licensees who pose a serious risk to the public to continue to practice for an unacceptable amount of time. Also the timeframe, in which a future action against a licensee must be taken, where there is only 15 days to investigate and file an accusation, are unreasonable and prevents most boards from utilizing the ISO process to immediately suspend the license of a health care practitioner. Also, there are no uniform requirements for health care boards to automatically suspend the license of a practitioner who has been incarcerated after the conviction of a felony. Existing law allows for physicians and podiatrists to be suspended while incarcerated but not for other health care professionals. The requirement that a license be suspended or permanently revoked while a licensee is incarcerated should apply to all health care practitioners. Some of the other health care boards which license physicians, podiatrists, osteopaths, psychologists, respiratory care therapists, marriage and family therapists, clinical social workers also provide for revocation of a license if there is a judgment that the practitioner was involved in a serious sex offense or a registered sex offender.

Staff Recommendation: *Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, the BVNPT does not have to always rely on an ALJ to conduct the ISO hearing, the BVNPT also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of the nurses license. Provide for automatic suspension of a VN or PT license if the VN or PT is incarcerated and mandatory revocation of their license if they are found to be convicted of acts of sexual exploitation of a patient or if they must register as a sex offender.*

ISSUE #12: (DIFFICULTY IN TRACKING DISCIPLINARY CASES.) The BVNPT along with other health boards have to rely upon an outdated, limited and cumbersome tracking system called the “Consumer Affairs System” (CAS) that is managed by DCA.

Background: For over a decade DCA has struggled to update its licensing and enforcement information system. Due to limitations of the automated information system, boards have created duplicative systems that do not interact with DCA system, therefore staff are required to make multiple entries or forced to track some information manually or with additional small data bases. Also, information sharing between boards is almost non-existent. For example, the BVNPT cannot access the disciplinary records of the BRN. Additionally, current licensees are not able to submit credit card payments online in order to renew their licenses.

In 2010, DCA developed a reporting tool in its current CAS system to capture date and time measures for complaint intake, desk investigations, sworn and non-sworn investigations, as well as information related to disciplinary actions. This new reporting tool has required significant date clean-up in order to capture data. Most recently, a Budget Change Proposal for FY 2010/2011 was approved by the Legislature. It will provide the ability and resources for the DCA to create or adapt an integrated computer data system, known as the BreEZe Project, sometime in 2012/13. The goal of the system is to handle online licensing applications and renewals, electronic document handling, enforcement date, cashiering, and a variety of other department-wide processes. If the computer system provides all that is planned, it should be an efficient, user-friendly tool that can be customized for each board and bureau's use. It is anticipated that the BVNPT will have the ability to create reports and gather data much easier, faster, and with more reliability than with the antiquated CAS system. In order to promote automated systems, the BVNPT has resolved in its Strategic Plan to collaborate with the DCA Office of Information Services to improve online systems for the application, renewal and enforcement processes.

Staff Recommendation: *With the recent concerns raised by the State Auditor regarding a case management system for California's courts, called the "California Court Case Management System," or CCMS, and its cost overruns and questions about the quality of the system, the DCA should be closely monitored in its efforts to implement an integrated licensing and case management system that could have significant impact on its 40 boards and bureaus. The DCA and the boards and bureaus together manage more than 2.5 million licenses, certificates and approvals in more than 100 businesses and 200 professional categories. The failure of such a new program for DCA could have vast impact on professional licensing and consumer enforcement efforts throughout the state and for those trying to enter the state to practice. There is no doubt that a new system is needed. The DCA over several years has made other attempts to implement a new computer system, but for varying reasons have not been able to move forward. An interim system solely for the purpose of processing online credit card payments in order to facilitate the renewal process would greatly alleviate the burden on the understaffed Board. The BVNPT should continue in its role to work collaboratively with the DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.*

EXAMINATION ISSUES

ISSUE #13: (NEED TO CONDUCT AN OCCUPATIONAL ANALYSIS FOR THE CALIFORNIA PSYCHIATRIC TECHNICIAN LICENSURE EXAMINATION.) Is there a need for a new occupational analysis for the California Psychiatric Technician Licensure Examination?

Background: To be eligible for PT licensure, an applicant must pass a California Psychiatric Technician Licensure Examination (PTLE) which is developed and administered by the BVNPT. The BVNPT contracts with the DCA's Office of Professional Examination Services (OPES) for its examination development services. The PTLE is constructed based upon an analysis of occupational findings identified in the PT Occupational Analysis. BVNPT policy requires that an occupational analysis be conducted every five (5) to seven (7) years. Additionally, in its 2010 Strategic Plan, the BVNPT identifies as one of its core beliefs the regular evaluation of licensure examinations to ensure

their legal defensibility and psychometric soundness for accurate measurement of entry-level competencies. The last occupational Analysis and Validation of the PTLE was adopted by the Board in February 2007. In 2007, the Board also adopted a new PT Test Plan which currently services as the blueprint for the ongoing development of the PTLE.

Staff Recommendation: *The BVNPT should request OPES to conduct the occupational analysis of PTLE in 2012, and ensure that examinations that are developed are legally defensible and psychometrically sound. The BVNPT should start thinking about its goals for this occupational analysis to ensure that the PT examinations developed meet current trends and standards of PT practice.*

LICENSURE ISSUES

ISSUE #14: (LICENSING BACKLOGS.) Is there a need to continue to improve the licensing backlogs at the BVNPT?

Background: One of the core functions of the BVNPT is to process and issue licenses to VNs and PTs who qualify. This task is performed by the Licensing Section of the BVNPT, which also, among other functions, accredits institutions that offer VN and PT programs. The BVNPT points out that in 2009, the VN Program's licensing backlog was over 10 weeks old and growing.

In March 2010, the Licensing Backlog Reduction Plan was implemented after the Governor's Office received numerous complaints that the BVNPT was taking too long to process applications and examination results. The Plan was two-fold: 1) to facilitate job-creation initiative by expediting DCA licensing and exam application processing that would allow more individuals to open businesses and/or be in a position to enter the workforce; and 2) to reduce the existing licensing and exam backlogs for "completed" applications by 50% by June 30, 2010. The BVNPT was authorized to use self-directed furloughs and overtime to reduce backlogs by 50%. BVNPT staff was redirected from other areas to focus on the backlogged areas and evaluators worked overtime during this time period. With this concerted effort, the VN Program was able to achieve the targeted goal. Since that time, the VN Program received budget approval to hire 4.0 employees for the Licensing Division beginning in FY 2010/11. Unfortunately, on August 31, 2010, the Governor implemented a state hiring freeze. As a result, these new positions as well as 2.0 other positions that have been vacated cannot be filled at this time, and the improvements that were achieved in the licensing backlogs will disappear. The BVNPT indicates that the VN Program's ability to quickly license its nurses has a direct impact on the State's economy, in general, and more importantly, the nursing shortage.

Staff Recommendation: *The BVNPT should submit a Budget Change Proposal to obtain staff dedicated to processing licensing examinations.*

ISSUE #15: (REQUIRE APPLICANTS TO RETAKE EXAMINATION REQUIREMENTS.) Should VN and PT applicants who initially passed licensure examinations, but failed to obtain a license within four years, be required to re-take VN and PT licensure examinations?

Background: To be eligible for licensure, VN and PT applicants must pass certain examinations. Vocational nurses must pass the National Licensure Examination for Practical/Vocational Nurses

developed and administered by the National Council of State Boards of Nursing, while PTs must pass the California Psychiatric Technician Licensure Examination which is developed and administered by the BVNPT. Currently, a license that is not renewed within four years after its expiration may not be renewed, restored, reissued or reinstated unless the holder applies for a new license and satisfies certain conditions, including retaking the VN and PT examinations. According to the BVNPT, it would like to apply this re-examination requirement to applicants who previously passed an examination but for other circumstances were not issued a license. The BVNPT points out that this is necessary to ensure that VNs and PTs have the current knowledge, skills and are safe to practice.

According to the BVNPT, it currently lacks the authority to require re-examination of VN and PT applicants who pass the licensing examination but are denied licensure by the BVNPT and must reapply. Individuals whose applications or licenses are denied by the BVNPT have the right to reapply for licensure after one year from the BVNPT's denial. In many cases, several years may elapse before an applicant reapplies for licensure and demonstrates that s/he is sufficiently rehabilitated from the crime(s) or act(s) that was the basis for denial. When full rehabilitation is eventually demonstrated by the applicant, the BVNPT must still ensure that the applicant possesses *current* knowledge, skills, and abilities for safe and competent practice prior to issuing the license. In those cases where several years have elapsed since the applicant passed the examination, the BVNPT cannot be sure that the applicant, upon licensure, can practice safely unless the applicant retakes and passes the licensing examination.

Staff Recommendation: *The BVNPT should explain to the Committee why an applicant who has initially passed the VN or PT examination, must once again retake the examination because of a lapse of time (four years) prior to issuing a license.*

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #16: (ENHANCE THE BVNPT'S INTERNET CAPABILITIES.)

Are there other improvements the Board can make to enhance their internet capabilities?

Background: One of the major changes BVNPT highlights is its increased utilization of Internet and computer technology to provide services and information to the public and Board licensees. These include:

- A Board Website, www.bvnpt.ca.gov, which has been online since September 1997. This website provides information and guidance regarding the BVNPT's roles, functions and services. Consumers may also obtain information regarding board activities, such as Board and Committee meetings, regulatory hearings and other public functions. The BVNPT also posts agendas for upcoming board activities.
- Online license verification for LVNs and PTs, which was implemented in 2001.
- The BVNPT continues to increase the number of downloadable forms it provides online for the convenience of applicants, licensees and consumers. Currently, application forms for VN licensure and renewals are available online. Additionally, applications for address changes are also available online.

- The BVNPT also plans to webcast its next board meeting to be held in February 2011.

The Board's strategic plan states that it will promote automated systems to serve licensees, in-house clients and consumers and collaborate with the DCA Office of Information Services to improve online systems for the application, renewal and enforcement processes. In order to pursue this goal, the Board has resolved to continue to collaborate with DCA, OIS, to develop and implement BreEZe, an integrated licensing and enforcement system, which would also allow for licensure and renewal to be submitted via the internet. Since the implementation of BreEZe is a few years out, licensees cannot submit credit card payments online in order to renew their licenses, and according to the BVNPT, there is a demand for online credit card payments for renewals.

Staff Recommendation: *The BVNPT should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting Board meetings. The BVNPT should explore the viability of an interim system solely for the purpose of processing online credit card payments in order to facilitate the renewal process would greatly alleviate the burden on the understaffed Board.*

ISSUE # 17. (INCLUDE ANNUAL SCHOOL PROGRAM AND CLINICAL FACILITY SURVEYS ON BVNPT'S WEBSITE.) Should the Board computerize their annual school program and clinical facility surveys in order to receive greater number of responses?

Background: The Board's Strategic Plan hopes to continue to optimize and expand the use of information technology for data collection relative to the education practice and discipline of LVNs and PTs. Currently, the Board conducts annual surveys by mail of its external stakeholders including VN and PT schools and the clinical facilities used by the schools. The surveys are intended to elicit trends in the education and practice of LVNs and PTs. This is achieved by asking survey questions that will determine what challenges LVNs and PTs may face in education and practice within the next five years, as well as to identify possible problems encountered by new graduates of VN and PT programs and their employers. This information is also used to assist in improving the effectiveness and efficiency of the Board. In 2009, the Board received responses from 45% of VN programs and 25% of PT programs. Respondents of VN programs represented programs based in community colleges, adult schools, and private institutions. Respondents of PT programs represented only those based in community colleges. This information could provide potential students to these VN and PT programs some indication of both successful programs and those which may have potential problems. It could also indicate the future employability of LVNs and PTs in certain health care settings.

Staff Recommendation: *The BVNPT should attempt to provide its surveys online so that potential students, employers and other interested parties can access this information. The BVNPT should also consider expanding these surveys to provide important information about the status of VN and PT programs, including graduation rates and potential employability.*

BUDGETARY ISSUES

ISSUE #18. (ADEQUATE FUNDING OF THE BVNPT?) Is the BVNPT adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Background: The BVNPT is a self-supporting special fund agency that obtains its revenue from various fees paid by its licensees. The BVNPT’s main sources of revenue are from the following fee categories: applications, applications for re-examination, initial licensing, biennial license renewals, delinquent renewals. The fees are currently set at the statutory maximum for both VNs (\$150) and PTs (\$300). However, since FY 2004/05, the number of new VN and PT programs increased by 44%. This correlates to a 132% increase in the number of new students approved to attend VN programs and a 333% increase in the number of new students approved to attend PT programs. Therefore, the previous fee increases that set the fees at their current rates were authorized to help the BVNPT deal with the exponential increase in students and programs.

After the BVNPT authorized the last fee increase, but before they went into effect, the BVNPT was authorized to hire 4.0 employees in the licensing division and 31.0 employees in the enforcement division to help manage their burgeoning workload. However, due to a former Governor’s Directive implementing a state hiring freeze beginning in August 31, 2010, 32.0 positions remain vacant. If the 32.0 positions are eventually filled, the BVNPT states that both the VN and PT programs will face a fund deficit in FY 2011/12 unless there are fee increases. Generally, DCA’s health care boards keep a three month reserve fund in order to ensure that funds are available for unforeseen events, especially for the enforcement program. As such, if positions are filled, the VN program’s reserve would only be able to support 1.1 months in FY 2011/12 and 0.7 months in FY 2012/13. Similarly, the PT program’s reserve would face a deficit of -3.0 months in FY 2011/12 and -5.7 months in FY 2010/13 (see Tables below). Therefore, BVNPT would need to seek statutory authority to raise its licensing fees for both VNs and PTs in order to maintain a fund reserve and prevent it from facing a fund deficit.

VN PROGRAM – ANALYSIS OF FUND CONDITION						
VN Program	ACTUAL			BUDGET	PROJECTED	
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Total Reserves July 1 (1)	\$4,203,000	\$4,966,000	\$4,315,000	\$6,549,000	\$3,041,000	\$906,000
Total Rev. & Transfer	\$6,571,000	\$6,825,000	\$8,085,000	\$9,097,000	\$9,487,000	\$9,484,000
General Fund Loan & Loan Reimbursement Plus Interest		(\$1,000,000)	\$1,000,000			
Total Resources	\$10,774,000	\$10,791,000	\$13,443,000	\$15,646,000	\$12,528,000	\$10,390,000
Total Expenditures (2)(3)	\$5,848,000	\$6,520,000	\$6,894,000	\$12,605,000	\$11,622,000	\$9,767,000
Reserve, June 30	\$4,926,000	\$4,271,000	\$6,549,000	\$3,041,000	\$906,000	\$623,000
Months in Reserve	9.1	7.1	6.2	3.1	1.1	0.7

(1) This data may include prior year adjustments.
(2) This data may include “fund direct” costs, such as State Controller’s Office charges, which do not show up in Month 13 CalStars Reports and, therefore, are not included in the Expenditure tables.
(3) For FY 2010/11 and FY 2011/12 tie to the Governor’s Budget and includes the two-year budget bill language to increase the Attorney General expenditure authority.

PT PROGRAM – ANALYSIS OF FUND CONDITION						
PT Program	ACTUAL			BUDGET	PROJECTED	
	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Total Reserves July 1 (1)	\$1,271,000	\$1,244,000	\$899,000	\$1,934,000	\$519,000	(\$557,000)
Total Rev. & Transfer	\$1,254,000	\$1,257	\$1,647,000	\$1,690,000	\$1,699,000	\$1,699,000
General Fund Loan Reimbursement Plus Interest			\$1,000,000 \$43,000			
Total Resources	\$2,525,000	\$2,501	\$3,589,000	\$3,624,000	\$2,218,000	\$1,142,000
Total Expenditures (2)	\$1,308,000	\$1,618,000	\$1,655,000	\$3,105,000	\$2,775,000	\$2,256,000
Reserve, June 30	\$1,217,000	\$883,000	\$1,934,000	\$519,000	(\$557,000)	(\$1,114,000)
Months in Reserve	9.0	6.2	7.5	2.2	-3.0	-5.7

(1) This data may include prior year adjustments.
(2) This data may include “fund direct” costs, such as State Controller’s Office charges, which do not show up in Month 13 CalStars Reports and, therefore, are not included in the Expenditure tables.
(3) For FY 2010/11 and FY 2011/12 tie to the Governor’s Budget and includes the two year budget bill language to increase the Attorney General expenditure authority.

On January 24, 2011 the DCA Budget Office prepared an updated fund condition for the VN and PT programs. The projected fund reserve in January was projected to be slightly higher due to savings from furlough Fridays as well as a mandated 5% salary savings for staff. However, both the VN and PT program fund reserves would still be in critical condition with 2.5 months for FY 2011/12 and 1.6 months for FY 2012/13 for the VN program and 1.8 months for FY 2011/12 and -0.4 months for FY 2012/13 for the PT program even with these savings.

On February 14, 2011, the current Governor reinstated a state hiring freeze which will leave the 32.0 staff positions vacant. If the current vacant positions are not filled the VN program would have a fund reserve of 4.6 months in FY 2011/12 and 5.1 months in FY 2012/13 and the PT program would have a fund reserve of 3.4 months in FY 2011/12 and 2.3 months in FY 2012/13. A statutory fee range increase would not be necessary.

Staff Recommendation: *The BVNPT should explain to the Committee whether its current fund condition will sustain the functions of the Board, especially the Enforcement Program, and whether fee increases would be necessary if the hiring freeze is lifted.*

ISSUE #19: (THERE IS STILL A SEVERE LACK OF STAFFING FOR THE BVNPT’S ENFORCEMENT PROGRAM.) The BVNPT is still suffering from backlogs in critical program areas and is still having difficulty shortening its time frame for pursuing disciplinary action against licensees because of the lack of staffing and the inability to hire for any new positions, even though additional staffing has been granted to the BVNPT and it appears to have sufficient funding to cover any additional staffing needs.

Background: According to the BVNPT, over the past decade, multiple hiring freezes, denial at different departmental levels for staff positions requested in Budget Change Proposals (BCPs), mandatory staff reductions, and furloughs have all impeded the BVNPT efforts in obtaining adequate staffing to provide the most effective public protection and consumer services and meet there program needs.

The BVNPT received approval in on July 1, 2009 for 15.5 staff positions to implement retroactive fingerprinting and received approval in July 1, 2010 for an additional 15.5 positions to implement the CPEI. The CPEI was implemented specifically to overhaul the enforcement process at healing arts boards. However, the Enforcement Division of the Board currently only has 22.0 of its 40.5 total authorized positions filled. Additionally, the BVNPT is scheduled to lose 9.5 limited term positions in 2011 and 3.5 limited term positions in 2012. These vacancies cannot be filled because the BVNPT is still under order to continue with a former Governor's Directive implementing a state hiring freeze beginning on August 31, 2010. On February 14, 2011, the current Governor reinstated the state hiring freeze preventing these vacancies from being filled and continues with a 5% staff reduction. This effectively means that the BVNPT has been unable to hire anyone into the new positions which were granted to deal with the severe lack of resources and staffing from which the BVNPT suffers. Without the ability to hire new staff the BVNPT will continue with the downward spiral of its enforcement program and it will prevent the BVNPT from handling complaints and disciplinary cases more effectively and expeditiously.

Staff Recommendation: *The BVNPT should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.*

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE BVNPT

ISSUE #20. (CUSTOMER SATISFACTION WITH THE BVNPT IS HIGH.) A Consumer Satisfaction Survey performed by the BVNPT in 2009/2010 indicated that 90% were satisfied with the Board's performance.

Background: According to the BVNPT, it routinely distributes Customer Service Surveys at its Public Counter and at Board Meetings. The respondents are asked to rate the Board's services regarding specific performance categories. The rating scale ranged from Very Satisfied, Satisfied, Marginally Satisfied, Dissatisfied and Very Dissatisfied. According to the BVNPT, in FY 2009/2010, survey results indicated that 90% were either very satisfied or satisfied with the Board's performance. A total of 203 surveys from responses were received that year.

Staff Recommendation: *With other health boards only averaging around a 50% satisfaction rate the BVNPT should explain to the Committee how they have been able to achieve a 90% satisfaction rate from those consumers who have filed complaints against VNs and PTs.*

ISSUE #21. (CONTINUED REGULATION OF THE BVNPT.) Should the licensing and regulation of VN and PT professionals be continued and be regulated by the current board membership?

Background: The health and safety of consumers are protected by a well-regulated VN and PT professions. The BVNPT protects the consumer from unprofessional and unsafe licensed vocational nurses and psychiatric technicians. The BVNPT has been an effective regulatory body for these professions. The BVNPT should be continued with a four-year extension of its sunset date.

Recommendation: *Recommend that the VN and PT professions should continue to be regulated by the current BVNPT members in order to protect the interests of consumers and be reviewed once again in four years.*