

Senate Bill 994 (Jones): Vocational Nursing: Direction of Naturopathic Doctors

Requested Amendments

Amendment #1

Section 2859 of the Business and Professions Code is amended to read:

(a) The practice of vocational nursing within the meaning of this chapter is the performance of services requiring those technical, manual skills acquired by means of a course in an approved school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician and surgeon, or registered nurse, as defined in Section 2725, or a naturopathic doctor as defined in and in accordance with this section and Section 2859.1.

(b) A vocational nurse, within the meaning of this chapter, is a person who has met all the legal requirements for a license as a vocational nurse in this state and who for compensation or personal profit engages in vocational nursing, as defined under subdivision (a).

(c) A vocational nurse that is supervised by a naturopathic doctor shall be limited to performing those duties included within the scope of practice of a naturopathic doctor.

(d) A naturopathic doctor working under a physician and surgeon standardized procedure or patient-specific protocol for the furnishing or ordering of drugs as defined within 3640.5, shall identify within the established protocol that the naturopathic doctor is responsible for the supervision of a licensed vocational nurse(s) and provide procedures for assistance and consultation with the supervising physician and surgeon regarding any issues that arise involving the naturopathic doctor's supervision of a licensed vocational nurse or nurses in the furnishing or ordering of drugs.

(e) A naturopathic doctor shall establish a written supervision protocol, listing the practice agreement, which includes all the following:

(1) A description of the duties and responsibilities of the licensed vocational nurse, and, if applicable, disclosure of the procedure or protocol for furnishing or ordering of drugs as described in subdivision (d).

(2) Policies and procedures to ensure adequate supervision of the licensed vocational nurse including, but not limited to, appropriate communication, availability of supervision, location of venue(s) where services are to be provided, and availability of consultations between a

naturopathic doctor and licensed vocational nurse in the practice of vocational nursing.

(3) The methods for the training and continuing evaluation of the competency and qualifications of the licensed vocational nurse.

The written supervision protocol required by this section may be provided by means of an employment agreement or other practice agreement document.

(f) A licensed vocational nurse shall provide a copy of the written supervision protocol prescribed by this section to the board upon request by the board.

(g) In addition to other acts constituting unprofessional conduct within the meaning of this chapter, failure to comply with the requirements for supervision in this chapter or any regulation adopted thereto is considered unprofessional conduct and grounds for disciplinary action.

Amendment #2

Section 2859.1 of the Business and Professions Code is added to read:

Section 2859.1

(a) For the purposes of this chapter, "Naturopathic Doctor" is defined as a person who holds a current, active and unrestricted license pursuant to the Naturopathic Doctors Act.

(b) "Supervision" means the supervision of procedures authorized by this section by the licensed Naturopathic Doctor, within the scope of their practice, and means that a naturopathic doctor oversees the activities of, and accepts responsibility for, those services described in Section 2859 of the Code by a licensed vocational nurse. Supervision, as defined in this subdivision, shall not be construed to require the physical presence of the naturopathic doctor, but does require the following:

(1) Adherence to adequate supervision as agreed to in the practice agreement described in Section 2859 of the Code.

(2) The naturopathic doctor being available by telephone at the time the licensed vocational nurse examines the patient. Nothing in this subdivision shall be construed as prohibiting the board from requiring the physical presence of a naturopathic doctor as a term or condition of a licensed vocational nurse's reinstatement, probation, or imposing discipline.

(c) Nothing in this section authorizes a Naturopathic Doctor to supervise or direct a licensed vocational nurse to start or superimpose intravenous fluids outside of an organized health care system, pursuant to Section 2860.5 of the Code.

(d) Nothing in this section authorizes a licensed vocational nurse to perform any of the following:

(1) Administer Botox, Juvederm, Kybella or glutathione injections;

(2) Perform platelet rich plasma therapy;

(3) Perform skin growth removal procedures;

(4) Perform other cosmetic procedures outside the scope of practice for a vocational nurse as determined by the Board.

(5) Administer laser, light, steam or ultra-violet treatment therapies unless directed by a physician and surgeon or naturopathic doctor for a medically necessary purpose.

(6) Start or superimpose intravenous fluids independently in unsupervised home care or other unauthorized setting.

(e) Nothing in this section authorizes an unlicensed naturopathic practitioner to hire, direct, or supervise a licensed vocational nurse.

(f) Nothing in this section authorizes a licensed naturopathic doctor to hire, direct, or supervise a licensed vocational nurse who has a license that is not current and active.

(g) If a naturopathic doctor provides supervision of a licensed vocational nurse who has a restricted license due to a probationary order, the supervising naturopathic doctor must ensure that they comply and provide supervision within the terms of the probationary order.

Amendment #3

Removed per agreement between NMC/BVNPT. This section has been identified and clarified in the added/amended sections above.

Amendment #4

Section 3663.6 is added to the Business and Professions Code, to read:

3663.6

The committee shall share all complaints and information related to investigations including, but not limited to, data, findings, interviews, and evidence, with the Board of Vocational Nursing and Psychiatric Technicians of the State of California involving the following:

(a) Persons licensed pursuant to Chapter 8.2 (commencing with Section 3630) who supervise persons licensed pursuant to Chapter 6.5 (commencing with Section 2859).

(b) Subordinate persons licensed pursuant to Chapter 6.5 (commencing with Section 2859) who are supervised by persons licensed pursuant to Chapter 8.2.

(c) The data and information provided, pursuant to this section, shall be deemed confidential official information by the Naturopathic Medicine Committee and the Board of Vocational Nursing and Psychiatric Technicians and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

Amendment #5

This section was removed per agreement between NMC/BVNPT. Instead of a joint report to the legislature, if there are any issues identified by either program, they will be reported in the Oversight Review (Sunset) process, along with subset data for enforcement actions resulting from LVN/ND violations.

Amendment #6

Section 3640.1 is added to the Business and Professions Code, to read:

3640.1

Naturopathic doctors may provide supervision and direction to a licensed vocational nurse in accordance with Sections 2859 and 2859.1.

SENATE THIRD READING
SB 994 (Jones)
As Amended April 21, 2022
Majority vote

SUMMARY

Authorizes naturopathic doctors (NDs) to supervise and direct licensed vocational nurses (LVNs), as specified.

Major Provisions

- 1) Adds NDs to the list of healthcare providers who may direct an LVN.
- 2) Provides that an LVN may not perform any function outside the scope of an LVN.
- 3) Authorizes an LVN to perform the functions that currently require physician and surgeon direction under the direction of an ND, which are:
 - a) Administration of medication by hypodermic injections.
 - b) Withdrawal of blood from a patient.
 - c) Starting and superimposing intravenous (IV) fluids.
 - d) Tuberculin skin tests, coccidioidin skin tests, and histoplasmin skin tests within the course of a tuberculosis control program.
 - e) Immunization techniques upon standing orders of a supervising licensed physician and surgeon or naturopathic doctor, or pursuant to written guidelines adopted by a hospital or medical group with whom the supervising licensed physician and surgeon or naturopathic doctor is associated.
- 4) Provides that an LVN practicing solely under the direction of an ND may only perform the aspects of the above functions that are within the ND scope of practice outlined under the Naturopathic Doctors Act and do not require the ND to obtain additional training or develop standardized procedures with a physician and surgeon.
- 5) Adds naturopathic doctor's offices to the list of settings an LVN may start and superimpose IV fluids.
- 6) Provides that an LVN may only start and superimpose IV fluids at the direction of an ND who has completed a qualifying course on IV therapy from a course provider approved by the Naturopathic Medicine Committee (NMC) as required under the Naturopathic Doctors Act.
- 7) Imposes the same supervision and oversight requirements that apply to physician and surgeons to NDs, including that a supervising ND is not required to be physically present for or examine a person being tested or immunized.

COMMENTS

NDs are licensed healthcare professionals who practice a form of primary care that focuses on wellness, prevention, and the utilization of natural methods and substances to support and stimulate the body's self-healing process. Aside from natural methods, NDs may also utilize other medical tools, such as pharmaceuticals, medical devices, and diagnostic testing and imaging.

NDs are licensed and regulated by the NMC within the Department of Consumer Affairs (DCA). The latest update on the DCA's data portal shows the NMC reporting 1,268 actively licensed NDs.

ND Support Staff. To assist NDs with their practice, NDs can hire naturopathic assistants who can perform limited tasks in the office with the supervising ND present. According to the sponsor, this limitation means there are still many tasks that the ND must perform themselves, lowering their efficiency and increasing wait times for patients. As a result, the sponsor states that NDs would benefit from being able to utilize medical staff with additional training and a broader scope of practice.

Specifically, the sponsor reports that NDs regularly receive job applications from LVNs who wish to work for them. Currently, however, NDs are not authorized to supervise or direct LVNs. This bill would create that authorization.

LVNs. LVNs are licensed healthcare professionals who provide basic nursing services and who are trained and authorized to perform many functions and procedures that naturopathic assistants cannot. LVNs are licensed and regulated by the Board of Vocational Nursing (BVNPT) within the DCA. The latest update on the DCA's data portal shows the BVNPT reporting 130,090 actively licensed LVNs.

ND vs. LVN Scope of Practice. While naturopathic medicine is defined as a distinct system of health care, NDs can utilize many procedures in their practice that LVNs are trained to perform under the supervision of either a physician and surgeon or registered nurse.

However, LVNs are not trained in naturopathic medicine. To address that, this bill seeks to maintain the structure of the current physician supervision model with NDs. As a result, the ND would remain responsible for the overall care of the patient, and the LVN would be responsible for the functions they are directed to perform.

Because some functions require additional training or supervision for an ND to perform (such as vaccinations or childbirth attendance), this bill also specifies that an LVN who is supervised solely by an ND may only perform the functions that do not require additional certification or supervision.

According to the Author

This bill "simply allows [NDs] to hire [LVNs]. Current law does not allow an ND to be called a 'physician.' However, current law also only allows 'physicians' to hire LVNs. This discrepancy is thought to have been an oversight in the original drafting of an ND's scope of practice. This bill fixes that oversight without changing either party's personal scope of practice."

Arguments in Support

The *California Naturopathic Doctors Association* (sponsor) writes in support, "[This bill] would allow NDs to hire LVNs and allow both providers to work within their existing scope of practice. This bill will allow NDs to hire staff with a higher level of medical training to assist in patient care and assist with triage. It will reduce wait time for patients and increase the number of patients each doctor can serve. This would increase LVNs exposure to the primary care setting and allow them to work more closely with doctors and patients than they might in other settings, including participation in care plan development. This bill does not expand the scope of NDs."

The *Naturopathic Medicine Committee (NMC)* writes in support:

This bill would provide additional staffing to work in naturopathic offices at a greater educational and training level than that of a naturopathic assistant (NA). Currently there is a barrier in that NDs are limited in the assistance they are able to secure in their practices when a physician and surgeon are not involved. This limits the ability of the ND to provide services to their patients at levels that their physician co-parts are able to. In order to resolve these barriers to workforce development and consumer access, we recommend and support this bill which would allow NDs to provide orders and supervision to LVNs. This also provides resolution to NDs who are in an integrated practice with MD/DOs and LVNs, and would allow LVNs to assist the NDs in services that NAs cannot and are prohibited in providing.

We believe that [this bill] will assist in resolving the challenges and barriers outlined above. We note that [this bill] will not broaden practice scope for either the ND or the LVN. NDs who have not met the IV Therapy specialty requirements, would not be allowed to provide direction and supervision to an LVN to provide those services. The NMC is ready and capable of implementing [this bill] should it be successful and is hopeful of seeing this bill become law.

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, no costs to the NMC.

The BVNPT estimates costs of less than \$150,000 per year for regulatory, enforcement, and other activities required to implement this bill.

VOTES**SENATE FLOOR: 33-0-7**

YES: Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Portantino, Rubio, Skinner, Umberg, Wiecekowski, Wiener

ABS, ABST OR NV: Allen, Dahle, Grove, Pan, Roth, Stern, Wilk

ASM BUSINESS AND PROFESSIONS: 16-0-2

YES: Berman, Flora, Chen, Megan Dahle, Fong, Gipson, Grayson, Irwin, Lee, McCarty, Medina, Cooper, Ting, Akilah Weber, Carrillo, Calderon

ABS, ABST OR NV: Mia Bonta, Cunningham

ASM APPROPRIATIONS: 14-0-2

YES: Holden, Bigelow, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Jones-Sawyer, Akilah Weber

ABS, ABST OR NV: Bryan, Wilson

UPDATED

VERSION: April 21, 2022

CONSULTANT: Vincent Chee / B. & P. / (916) 319-3301

FN: 0003152

AMENDED IN SENATE APRIL 21, 2022
AMENDED IN SENATE MARCH 15, 2022

SENATE BILL

No. 994

Introduced by Senator Jones

February 14, 2022

An act to amend Sections 2859, 2860.5, and 2860.7 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 994, as amended, Jones. Vocational nursing: direction of naturopathic doctor.

Existing law, the Vocational Nursing Practice Act, provides for the licensure and regulation of vocational nurses by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. The act defines the practice of vocational nursing as the performance of services requiring those technical, manual skills acquired by means of a course in an approved school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician or registered professional nurse, as defined.

This bill would revise that definition to additionally include practice under the direction of a naturopathic doctor.

Existing law, among other things, authorizes a licensed vocational nurse to withdraw blood, administer medications, and start and superimpose intravenous fluids, as described, when directed by a physician and surgeon. Existing law also authorizes a licensed vocational nurse to perform certain tests and immunization techniques, as described, when acting under the direction of a physician and surgeon.

This bill would authorize a licensed vocational nurse to perform the above-described actions when acting under the direction of a naturopathic ~~doctor~~. *doctor, as specified.*

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

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

1 SECTION 1. Section 2859 of the Business and Professions
2 Code is amended to read:

3 2859. (a) The practice of vocational nursing within the
4 meaning of this chapter is the performance of services requiring
5 those technical, manual skills acquired by means of a course in an
6 approved school of vocational nursing, or its equivalent, practiced
7 under the direction of a licensed physician and surgeon,
8 naturopathic doctor, or registered nurse, as defined in Section 2725.

9 (b) A vocational nurse, within the meaning of this chapter, is a
10 person who has met all the legal requirements for a license as a
11 vocational nurse in this state and who for compensation or personal
12 profit engages in vocational nursing, as defined under subdivision
13 (a).

14 (c) *The changes made to this section by the act adding this*
15 *subdivision do not authorize a licensed vocational nurse acting*
16 *under the direction of a naturopathic doctor to perform any*
17 *function outside the existing scope of practice of a licensed*
18 *vocational nurse.*

19 SEC. 2. Section 2860.5 of the Business and Professions Code
20 is amended to read:

21 2860.5. ~~A~~(a) *Subject to subdivision (b), a licensed vocational*
22 *nurse when directed by a licensed physician and surgeon or*
23 *naturopathic doctor may do all of the following:*

24 (a)

25 (1) Administer medications by hypodermic injection.

26 (b)

27 (2) Withdraw blood from a patient, if the licensed vocational
28 nurse has been instructed by a licensed physician and surgeon ~~or~~
29 ~~naturopathic doctor~~ and has demonstrated competence to the
30 licensed physician and surgeon ~~or naturopathic doctor~~ in the proper
31 procedure to be employed when withdrawing blood, or has
32 satisfactorily completed a prescribed course of instruction approved

1 by the board, or has demonstrated competence to the satisfaction
2 of the board.

3 ~~(e)~~

4 (3) Start and superimpose intravenous fluids if ~~both~~ *all* of the
5 following additional conditions ~~exist~~: *are satisfied*:

6 ~~(1)~~

7 (A) The licensed vocational nurse has satisfactorily completed
8 a prescribed course of instruction approved by the board or has
9 demonstrated competence to the satisfaction of the board.

10 ~~(2)~~

11 (B) The procedure is performed in an organized health care
12 system in accordance with the written standardized procedures
13 adopted by the organized health care system as formulated by a
14 committee which includes representatives of the medical, nursing,
15 and administrative staffs. "Organized health care system," as used
16 in this section, includes facilities licensed pursuant to Section 1250
17 of the Health and Safety Code, clinics, home health agencies,
18 physician's offices, naturopathic doctor's offices, and public or
19 community health services. Standardized procedures so adopted
20 will be reproduced in writing and made available to total medical
21 and nursing staffs.

22 (C) *If the licensed vocational nurse is directed by a naturopathic*
23 *doctor, the naturopathic doctor is qualified to administer*
24 *intravenous therapy under Section 3640.8.*

25 ~~(d)~~

26 (b) A licensed vocational nurse acting solely under the direction
27 of a naturopathic doctor shall only perform the functions specified
28 in this section that are within the scope of authorized activities for
29 a licensed naturopathic doctor under Section 3640.

30 (c) *The changes made to this section by the act adding this*
31 *subdivision do not authorize a licensed vocational nurse acting*
32 *under the direction of a naturopathic doctor to perform any*
33 *function outside the existing scope of practice of a licensed*
34 *vocational nurse.*

35 SEC. 3. Section 2860.7 of the Business and Professions Code
36 is amended to read:

37 2860.7. (a) (1) A licensed vocational nurse, acting under the
38 direction of a licensed physician and surgeon or naturopathic doctor
39 may perform any of the following:

1 (A) Tuberculin skin tests, coccidioidin skin tests, and
2 histoplasmin skin tests, providing such administration is within
3 the course of a tuberculosis control program.

4 (B) Immunization techniques, providing such administration is
5 upon standing orders of a supervising licensed physician and
6 surgeon or naturopathic doctor, or pursuant to written guidelines
7 adopted by a hospital or medical group with whom the supervising
8 licensed physician and surgeon or naturopathic doctor is associated.

9 (2) A licensed vocational nurse acting solely under the direction
10 of a naturopathic doctor shall only perform the functions specified
11 in this subdivision that are within the scope of authorized activities
12 for a licensed naturopathic doctor under Section 3640.

13 (b) The supervising licensed physician and surgeon or
14 naturopathic doctor under whose direction the licensed vocational
15 nurse is acting pursuant to subdivision (a) shall require the licensed
16 vocational nurse to do all of the following:

17 (1) Satisfactorily demonstrate competence in the administration
18 of immunizing agents, including knowledge of all indications and
19 contraindications for the administration of such agents, and in the
20 recognition and treatment of any emergency reactions to such
21 agents which constitute a danger to the health or life of the person
22 receiving the immunizations.

23 (2) Possess such medications and equipment as required, in the
24 medical judgment of the supervising licensed physician and
25 surgeon or naturopathic doctor, to treat any emergency conditions
26 and reactions caused by the immunizing agents and which
27 constitute a danger to the health or life of the person receiving the
28 immunization, and to demonstrate the ability to administer such
29 medications and to utilize such equipment as necessary.

30 (c) This section does not require physical presence of a directing
31 or supervising licensed physician and surgeon or naturopathic
32 doctor, or the examination by a licensed physician and surgeon or
33 naturopathic doctor of persons to be tested or immunized.

34 (d) *The changes made to this section by the act adding this*
35 *subdivision do not authorize a licensed vocational nurse acting*
36 *under the direction of a naturopathic doctor to perform any*
37 *function outside the existing scope of practice of a licensed*
38 *vocational nurse.*

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