



<b>DATE</b>	May 12, 2023
<b>TO</b>	Board Members
<b>FROM</b>	Elaine Yamaguchi Executive Officer
<b>SUBJECT</b>	Executive Officer’s Report: May 2023

**Board Structure**

A warm welcome to Ms. Gloria Guzman, our new LVN Board Member, and a sad farewell to Ms. Tara Rooks, LVN Board Member. Our Board now has ten of the eleven statutory members seated. We still need one more LVN Board Member, so please pass the word along if you know of any qualified individuals.

This meeting will be held on both Thursday May 18 and Friday May 19, via WebEx. On Thursday, staff will be presenting some important program information and training for the Board members. Friday will be our regular business meeting.

Board Members must complete the Board Member Orientation Training (BMOT) within one year of appointment and re-appointment. BMOT will be offered in-person on June 20, 2023 and October 10, 2023. Members can register through DCA’s [Learning Management System](#), and BVNPT staff will be happy to help the Board members to register. Information about other mandatory trainings will be sent out as they near the due dates.

**Staffing and Operations**

Management continues to assess our team to ensure that we have the appropriate classifications assigned to the work. This has helped us to fill vacant positions. Under the steady leadership of AEO Mark Ito, we have also been working to clean up our suites and analyze our space usage.

We had some delays in our IT work but are now back to full speed. Board members who need to set up their DCA email accounts should contact AEO Mark Ito as soon as possible.

**Budget and Finance**

We have attached the Board’s most current Fund Condition report and have invited our colleagues from the DCA Budget Office to provide updates and answer questions, as well as report on the Governor’s Budget.

## **Department of Consumer Affairs Updates**

The Department will provide a brief update.

### **New Legislation**

#### 1. SB 544 (Laird): Bagley-Keene Open Meeting Act

The Bagley-Keene Open Meeting Act (Bagley-Keene) protects public access to meetings of state bodies. During the COVID-19 pandemic, the need for social distancing made the usual practices for public meetings under Bagley-Keene—in particular, having people group together in indoor spaces—impossible to continue. Governor Gavin Newsom issued an emergency order, suspending many of the requirements under Bagley-Keene for teleconferenced meetings. SB 544 seeks to indefinitely remove certain requirements under Bagley-Keene related to teleconference meetings that were waived under the Governor’s Executive Order.

Last year, the Board voted unanimously to support AB 1733 (Quirk), to extend the Governor’s Executive Order indefinitely, but it was never heard in Committee. The Executive Order was extended until June 30, 2023, through the 2022-23 Budget Act.

SB 544 is on Senate Third Reading, and given that the existing waiver expires June 30, it is possible that it will be fast tracked through the Assembly to enact by July 1. It does not contain an urgency clause and received bipartisan support in its two Committee hearings.

#### 2. SB 816 (Roth): Professions and Vocations

SB 816 is an omnibus vehicle enacting numerous changes resulting from Sunset hearings.

On June 27, 2022, the Office of Administrative Law approved the Board’s emergency regulations to adopt California Code of Regulations (CCR) sections 2537.2 and 2590.2 and to amend sections 2525, 2526, 2580, and 2581 to implement the provisions of AB 1536 (Committee on Business and Professions, Chapter 632, Statutes of 2021).

As enacted by AB 1536, the above sections imply that a reduction in state funding causes reduced enrollment. However, State appropriation is based on enrollment numbers through its Budget Act—therefore, a reduction in enrollment causes the reduction in funding. Enrollment growth is directly supported by two primary sources of revenue: the tuition paid by the students themselves (less the amount set aside for financial aid) and State funding (General Fund). Together, these funds are intended to fully cover the marginal cost of enrollment growth, excluding any

additional capital requirements (e.g., new classroom space). For the sake of consistency, that same language is expressed in sections 2537.2 (f) and 2590.2 (f) of Title 16 of the California Code of Regulations, but the cause-and-effect relationship between student enrollment numbers and funding is still incorrect. The Office of Administrative Law recommended that the Board seek amendment of BPC sections 2881.2 (d) and 4531.1 (d) to correct the statute and include that correction when filing the regular rulemaking in 2023.

At the August 2022 meeting, the Board directed staff to seek legislation to make this correction, but it was not possible before the 2022 session ended. Staff requested the language change via the annual technical cleanup bill questionnaire from the Senate Committee on Business, Professions and Economic Development, and met with the policy staff.

SB 816 is currently on Senate Third Reading and received bipartisan support in Committee. It was amended on April 20, 2023 to add the language requested by BVNPT. This language will sunset on January 1, 2025, when the BVNPT's next Sunset Bill will take effect.

### **Implementation of 2022 Legislation**

1. SB 994 (Jones, Chapter 713 of the Statutes of 2022): VN Direction by Naturopathic Doctors.

This bill authorized licensed vocational nurses (LVNs) to work under the direction of a naturopathic doctor (ND) as specified. Staff and Counsel are working on sample supervision agreement with the goal of an implementation meeting with the Naturopathic Medicine Board.

2. SB 1436 (Roth, Chapter 624 of the Statutes of 2022): Respiratory Therapy

SB 1436 (Roth, Chapter 624 of the Statutes of 2022) allows LVNs who have received training satisfactory to their employer, and when directed by a physician and surgeon, to perform basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills or data collection. It also allows LVNs employed by a home health agency to perform respiratory tasks and services identified by the Respiratory Care Board (RCB), if the LVN has completed patient specific training satisfactory to their employer. The bill requires RCB to promulgate training guidelines no later than January 1, 2025, in collaboration with the BVNPT. SB 1436 was silent on the role of Psychiatric Technicians. The BVNPT did not take an official position on SB 1436.

To implement SB 1436, the RCB proposed rulemaking that would define “Basic Respiratory Tasks and Services” as those requiring manual and technical skills, or data collection. Under the proposed definition, those tasks would not include manipulation of an invasive or non-invasive ventilator. BVNPT voted unanimously to submit comments regarding RCB’s proposed regulatory language.

RCB received a considerable number of comments, and a public hearing on the proposed regulations was requested. RCB then invited a small group of stakeholders to meet on January 27, including representatives from BVNPT.

At their March 9, 2023 meeting, the Respiratory Care Board voted to propose new legislation to address the immediate need to ensure patients are not in jeopardy of being re-institutionalized by providing additional carve outs to allow LVNs with appropriate training to practice respiratory care in home and community-based settings. This proposal reflected an expansion in the initial proposed regulations, but RCB did not find an author this year. At this point, BVNPT has expressed its readiness to continue working with RCB and stakeholders on the development of training programs for LVNs.

### **Regulations**

Staff and Counsel continue to work on preparation of our Certification of Compliance for AB 1536 regulations and are launching the rulemaking language for a comprehensive update in our Disciplinary Guidelines.

### **Sunset**

The Board’s Sunset Review and Hearing is fast approaching. While no official deadlines have been set by the Legislature yet, senior management started discussing the plan and project schedule to develop the report, which is likely due to the Legislature between Christmas and the New Year. The Sunset Hearing will most likely take place in March of 2024, and work on the resulting legislation will occur throughout the spring and summer of 2024.

This report must be reviewed and approved by the full Board, with the final approval hopefully at the November 2023 meeting. Drafts will be circulated in order to provide review time, and we hope to have some discussion at Committee meetings.

### **National Council of State Boards of Nursing**

As promised, NCSBN will be attending our Friday meeting to provide an overview and updates on the work of the National Council, and our relationship with them. This is an opportunity for Board Members to ask questions and engage with NCSBN.

**Closing**

Please don't hesitate to call or email with any questions or suggestions, or if you need help with anything.

Thanks, everyone. We're looking forward to the meeting.