

Date of Hearing: September 15, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1229 (Low) – As Amended September 8, 2017

**SUBJECT:** Healing arts: Board of Vocational Nursing and Psychiatric Technicians of the State of California.

**SUMMARY:** Extends the operation of the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) until January 1, 2021; authorizes the Governor to appoint an executive officer until January 1, 2020; specifies that, if the BVNPT becomes inoperative or is repealed, the director of the Department of Consumer Affairs (DCA) is authorized to assume the duties of the BVNPT; requires the BVNPT to submit specified reports to the Legislature until 2020; authorizes the DCA director to evaluate the BVNPT's licensing program; requires BVNPT staff to meet periodically with the DCA's Division of Investigation; and authorizes the DCA director to determine the need for and to implement necessary changes to the BVNPT's enforcement program.

**EXISTING LAW:**

- 1) Establishes the BVNPT within the DCA until January 1, 2018, to license and regulate licensed vocational nurses (LVNs) and psychiatric technicians (PTs) and administer the Vocational Nursing Practice Act and the Psychiatric Technicians Law. (Business and Professions Code (BPC) §§ 2840-2895.5 and §§ 4500-4548)
- 2) Requires the BVNPT to select an executive officer to perform duties as delegated by the BVNPT and who is responsible for the accomplishment of those duties until January 1, 2018. (BPC § 2847.1)
- 3) Declares that protection of the public shall be the highest priority for the BVNPT in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC §§ 2841.1, 4501.1)
- 4) Requires the DCA director to appoint an administrative and enforcement program monitor to the BVNPT no later than March 1, 2016, and until March 1, 2018; requires the director to supervise the monitor; and authorizes the director to terminate or dismiss the monitor. (BPC § 2847.5(a), 2847.5(e))
- 5) Requires the program monitor to observe, review and evaluate the following:
  - a) BVNPT's administrative processes, with specific concentration on the management of staff, assistance of BVNPT members, and working relationship with the Legislature, as specified. (BPC § 2847.5(b)(1)(A))
  - b) The BVNPT's disciplinary system and procedures, with specific concentration on improving the overall efficiency and consistency of the enforcement program, as specified. (BPC § 2847.5(b)(1)(B))

- 6) Requires the program monitor to submit to the DCA, the BVNPT, and the Legislature a written report of his or her findings and conclusions no later than July 1, 2016, and subsequent written reports no later than November 1, 2016, and February 1, 2017, and be available to make oral reports to each entity if requested to do so, and to issue a final report before January 1, 2018, including the final findings and conclusions on the topics addressed in the initial report. (BPC § 2847.5(c))
- 7) Requires the DCA's internal audit unit to review the BVNPT's financial needs, fee structure, budget, and expenditures, including the estimated costs of meeting staffing and other requirements and requires the DCA director to provide a copy of the review to the Legislature no later than October 1, 2016. (BPC § 2858.5)

**THIS BILL:**

- 1) Extends the operation of the BVNPT and its authority to license and regulate vocational nurses and psychiatric technicians until January 1, 2021.
- 2) Clarifies that the repeal of the BVNPT renders the successor entity subject to review by the appropriate policy committees of the Legislature.
- 3) Specifies that, if the BVNPT becomes inoperative or is repealed, the DCA director may, until December 31, 2024, assume the duties, powers, purposes, responsibilities, and jurisdiction of the BVNPT and its executive officer that are not otherwise repealed or made inoperative.
- 4) Extends the authority of the BVNPT to select an executive officer to January 1, 2021, but temporarily abolishes the position until January 1, 2020, and authorizes the Governor to appoint the executive officer, who must continue to perform duties as are delegated by the BVNPT and shall be responsible for the accomplishment of those duties.
- 5) Requires the BVNPT to submit written reports to the DCA director and Legislature on April 1, July 1 and October 1 of 2018, on January 1 and July 1 of 2019, and on January 1, 2020, demonstrating its progress in implementing the administrative and enforcement monitor's recommendations.
- 6) Authorizes the director to direct DCA staff, including staff of its Strategic Organization, Leadership, and Individual Development (SOLID) Training and Planning Office, to review the BVNPT's licensing systems and procedures to identify deficiencies and recommend improvements until January 1, 2020.
- 7) Requires the staff of the BVNPT to meet, until January 1, 2020, with staff from the DCA's Division of Investigation no later than March 1, June 1, September 1 and December 1 of 2018, and each March 1, June 1, September 1, and December 1 thereafter, for the purpose of ensuring the appropriate function and operation of the BVNPT's enforcement program.
- 8) Requires the BVNPT to submit a report to the DCA in advance of each of the meetings with the Division of Investigation with specified information regarding complaints.
- 9) Requires the BVNPT and its staff to cooperate, until January 1, 2020, with the DCA and comply with the DCA's request to provide access to staff, information, and files, as specified.

10) Authorizes the DCA director to determine, until January 1, 2020, the need for and to implement changes necessary for the appropriate administration of the BVNPT's enforcement functions.

11) Makes other nonsubstantive, technical and clarifying changes.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, ongoing costs of \$16 million per year for the ongoing operation of the Board of Vocational Nursing and Psychiatric Technicians (Vocational Nursing and Psychiatric Technicians Fund).

**COMMENTS:**

**Purpose.** Unless the BVNPT's sunset date is extended, it will cease to exist on January 1, 2018, and abolish the licensing programs for the professions. This bill extends that date by three years. This bill also ensures the BVNPT will have sufficient resources and oversight to rebuild. Based on current reports from the DCA and the administrative and enforcement program monitor, the BVNPT has an approximate staff vacancy rate of 25% and for the most part, no supervisors in the enforcement division. This lack of institutional knowledge may risk patient harm. Currently, BVNPT staff lacks the direction it needs to properly triage, investigate, or refer high priority complaints. As a result, immediate and ongoing intervention by the DCA's Division of Investigation is necessary. While the DCA has initiated short term interventions to handle immediate cases, this bill is necessary to provide the DCA with the authority needed to ensure that BVNPT staff is properly trained and rebuild the BVNPT's administrative infrastructure.

**Background.** The BVNPT is responsible for administering the laws related to the education, practice and discipline of Licensed Vocational Nurses (LVNs) and Psychiatric Technicians (PTs). The BVNPT regulates over 120,000 LVNs and 11,000 PTs, the largest groups of LVNs and PTs in the nation. The BVNPT has 11 members, with a public member majority (six public members and five professional members). Nine members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Committee on Rules. The majority of the current board members are newly appointed. The BVNPT's executive officer position is currently vacant.

*Sunset Review 2015-2017.* Each year, the Assembly Business and Professions Committee and Senate Business Professions and Economic Development Committee (Committees) conduct joint oversight hearings of various licensing entities under the DCA. In March of this year, the BVNPT was one of the entities reviewed. The BVNPT was last reviewed in 2015. Due to the issues revealed during the 2015 review, the Committees recommended that the BVNPT be extended for two years. Board's without outstanding issues are typically extended by four years, while a two-year extension allows the Committees to observe improvements and the implementation of recommended changes.

In addition, the Committees recommended, among other things, that the DCA 1) review, through its internal audit unit, the BVNPT's financial needs, fee structure, budget, and expenditures and 2) until January 1, 2018, appoint an administrative and enforcement program monitor to monitor and evaluate the BVNPT's administrative process and disciplinary system and procedures.

In March of this year, the Committees conducted the BVNPT's supplemental review. The hearing focused on the outstanding issues noted by the DCA's internal audit, the program monitor, and the updates from the BVNPT.

*Administrative and Enforcement Program Monitor.* During the sunset review oversight process, the Committees may review information that suggests that there are significant issues with the operations of a licensing entity. Where additional scrutiny is necessary, the Committees may respond by recommending a performance audit by the California State Auditor or ongoing program monitoring. Program monitoring usually includes one or more independent consultants who have expertise the assessment of state agencies and provide a longer-term view of potential issues and make recommendations for improvements.

The BVNPT's current administrative and enforcement program monitor assisted the Committees in this year's review, providing information and producing extensive reports. The program monitor was tasked with observing and evaluating the BVNPT's administrative processes and the BVNPT's disciplinary system and procedures and to make recommendations to the BVNPT, the DCA, and the Legislature on ways the programs could be improved.

During this year's review, the BVNPT appeared to make many improvements beginning in April of 2015. While there were many necessary changes outstanding, the BVNPT began to reject recommendations from the monitor and staff of the Committees. While recommendations are open to debate, the BVNPT's specific reasons often questionable. Further, many new problems were raised, including:

- High staff vacancy rates and loss of key personnel, including management and division chiefs. While the reason is not clear, it appears to be related to morale.
- Inadequate utilization of the BVNPT's committee structure.
- Delays in adopting important performance measurements for its Enforcement Program.
- Lack of updating desk procedures, policies and procedures.
- Delays in providing the public BVNPT meeting minutes.
- Delays in approving educational programs, including a moratorium on approving school applications for almost two years because of a backlog in approving applications.
- Initiation of an extensive continuing education compliance audit of over 56,000 of its licensees (almost 50 percent of its licensee population) that significantly increased staff workload without any consideration of feasibility.
- Insufficient justification for attempting to change education requirements that could negatively impact those seeking licensure.
- Lack of further changes or progress in complaint handling, investigation of cases, or completion of disciplinary action. Further, the monitor raised concerns about cases being improperly handled and not sufficiently investigated as a means of giving the appearance that the BVNPT was moving through cases rapidly and that there is no backlog of pending cases.

At the time, several board members questioned the existence of these issues. During the sunset hearing, several board members were even surprised to hear about the staff morale issues. However, after the hearing, there seemed to be some acknowledgement of potential issues and at

least one individual board member proactively sought to implement some of the Committees' recommendations. However, the BVNPT is a deliberative body, and it was unclear if the remaining board members were taking the necessary actions.

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

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

Given the seriousness of the cases that were shelved or were closed without investigation, the DCA's Division of Investigation has intervened to reduce the impact of these issues. Further, the BVNPT's enforcement division as a whole has lost necessary supervisors and institutional knowledge.

This along, with the outstanding issues identified in the Committees' background papers, suggests that the BVNPT continues to experience significant problems that impact its overall functioning, the oversight of licensees, and protection of the public. Therefore, long-term training, evaluation, and oversight are necessary.

The initial recommendations from Committees included removing the current board members and replacing them with new appointees or converting the BVNPT into a bureau for a short period of time. However, the current board membership is already relatively new, and it may be difficult to judge the BVNPT's decisions and willingness to ask for help without the opportunity to make decisions on its own.

As a result, this bill extends the BVNPT for three years. The first two years provide the authority and oversight to provide a period to rebuild. In the third year, DCA's duties return to normal and the executive officer authority is transferred back to the BVNPT. The third year will coincide with sunset review and provide the opportunity to observe the BVNPT under existing law.

*Executive Officer Appointment.* This bill also grants authority to the Governor to appoint a new executive officer. The BVNPT has had four executive officers since 2014, two of whom were interim executive officers. The current interim executive officer has been in place since late January of this year when the prior executive officer was placed on administrative leave. The BVNPT is currently seeking a new permanent executive officer, but has so far been unsuccessful and has needed to extend its application period.

**Current Related Legislation.** AB 1705 (Low) of the current Legislative Session establishes title protection for guide dog instructors upon the sunset of the State Board of Guide Dogs for the Blind on January 1, 2018. *STATUS: Pursuant to Assembly Rule 77.2, AB 1705 is also set to be heard in this Committee today.*

AB 1706 (Low) of the current Legislative Session requires legislative review of the Board of Chiropractic Examiners (BCE) before January 1, 2022; extends the operation of the Speech-Language Pathology Audiology and Hearing Aid Dispensers Board (SLPAHADB), Physical Therapy Board of California (PTBC) and California Board of Occupational Therapy (CBOT) until 2022; and makes technical changes to the entities' practice acts requested by the entities to improve their efficiency and effectiveness. *STATUS: Pursuant to Assembly Rule 77.2, AB 1706 is also set to be heard in this Committee today.*

AB 1708 (Low) of the current Legislative Session extends the operation of the California Board of Optometry (CBO) and the authority to appoint an executive officer to January 1, 2022; clarifies the Board's inspection authority; permits the CBO to query the National Practitioner Data Bank (NPDB) and collect a fee for that purpose; revises the CBO's review for out-of-state applicants; subjects the Optometry Fund to appropriation by the Legislature; and deletes the CBO's requirement to issue a Letter of Sponsorship. *STATUS: Pursuant to Assembly Rule 77.2, AB 1708 is also set to be heard in this Committee today.*

SB 547 (Hill) of the current Legislative Session, among other technical changes requested by various DCA entities, extends the operation of the California Council for Interior design until January 1, 2022, and raises the fees for several DCA entities projecting budget deficits, including the BCE. *STATUS: As of September 14, 2017, SB 547 is pending on the Assembly Floor.*

SB 796 (Hill) of the current Legislative Session requires the DCA to review and update its uniform standards for substance-abusing healing arts licensees; extends the Respiratory Care Board until January 1, 2022; extends the Naturopathic Medicine Committee (NMC) until January 1, 2022; updates continuing education (CE) requirements for Naturopathic Doctors (NDs) and CE providers; requires naturopathic medical programs to evaluate an ND applicant's military training for credit; and codifies the NMC's fees established in regulation. *STATUS: As of September 14, 2017, SB 796 is pending engrossment and enrollment.*

SB 797 (Hill) of the current Legislative Session would have allowed the BVNPT to sunset as of January 1, 2018. *STATUS: SB 797 was substantially amended and no longer deals with the BVNPT.*

SB 798 (Hill) of the current Legislative Session extends the operation of the Medical Board of California (MBC) and Medical Practice Act until 2022 and subjects the Osteopathic Medical Board of California (OMBC) and Osteopathic Act (OMBC Act) to review by the appropriate policy committees of the Legislature, to be performed as if the OMBC Act were scheduled to be repealed as of 2022, and makes various changes to the MBC Act and OMBC Act intended to improve oversight of physicians and surgeons and osteopathic physicians and surgeons. *STATUS: As of September 14, 2017, SB 798 is pending engrossment and enrollment.*

SB 799 (Hill) of the current Legislative Session extends the operation of the Board of Registered Nursing (BRN) until January 1, 2022; increases the threshold for insurers that provide liability insurance to Registered Nurses (RNs) to report specified settlement or arbitration awards to the

BRN; defines "insurer" to include a licensee or the licensee's counsel; requires the California Research Bureau to prepare and deliver a report to the Legislature by January 1, 2019, that evaluates RN complaint reporting mechanisms; requires the BRN to report to the Legislature its plan for the approval of continuing education opportunities and its progress implementing the plan; and makes other technical and clarifying changes. *STATUS: As of September 14, 2017, SB 799 is pending engrossment and enrollment.*

**Prior Related Legislation.** AB 1707 (Low), Chapter 174, Statutes of 2017 delayed the date by which the Dental Board of California (DBC) must determine an alternative way, other than the current exam, to measure registered dental assistant (RDA) competency and included an urgency clause. *NOTE: AB 1707 was substantially amended to delete the SLPAHADB extension contained in this bill and inserted the current language.*

AB 178 (Bonilla), Chapter 429, Statutes of 2015 initially contained the BVNPT's sunset date extension but, due to the included urgency measure, was amended to only include language that removed the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician.

AB 179 (Bonilla), Chapter 510, Statutes of 2015 extended the sunset date for the BVNPT and the Dental Board of California, contained various sunset recommendations related to the Dental Board, and required the DCA director to appoint an enforcement and program monitor, as specified.

**REGISTERED SUPPORT:**

None on file.

**REGISTERED OPPOSITION:**

None on file.

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301