

Board of Vocational Nursing and Psychiatric Technicians Joint Statement/Discussions

The attached Joint Statement (July 2019) is the third revision/update that was initially developed by legal counsel, experts, board presidents and members and staff of both the Respiratory Care Board (RCB) and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT).

Discussions began in May 2018 with several meetings including all of the above personnel. Representatives of the Department of Consumer Affairs and/or the California Business, Consumer Services and Housing Agency were also in attendance at these meetings. The meetings were facilitated by the Department of Consumer Affairs' SOLID Training and Planning Solutions.

The goal for the Respiratory Care Board (RCB) was to have an agreed upon interpretation of existing law concerning which services LVNs are authorized to perform. Specifically, the RCB had noticed up-ticks in complaints, primarily in Southern California, of subacute facilities using LVNs to perform respiratory care. Incidents which included failure to respond timely or appropriately to emergencies to failing to plug in a ventilator, all leading to the deterioration of patients. It was also found that employers were asking the one or two licensed RCPs on staff to co-sign or sign for work that was not performed by them. Employers had given new titles to LVNs calling them respiratory nurses. Employers were caught telling their employees to lie to our investigators about LVNs performing respiratory care. All of these acts violate the Business and Professions Code. Respiratory tasks require comprehensive assessment, formal education and training, and competency testing. Both boards agreed and repeated on numerous occasions that consumer protection was the utmost priority in developing the Joint Statement.

The main focus throughout the discussions was on long-term care, specifically subacute facilities. In these meetings, it was suggested that home care be included. While home care was ultimately included in the Joint Statement, the RCB understands that it is unique and has a different set of circumstances. But the RCB also has evidence of five separate incidents of child deaths that occurred as a result of incompetence and/or negligence of the LVN care provider and therefore it did not object to its inclusion.

The Joint Statement was not pursued as a regulation, because it was understood to interpret existing law. However, once the Joint Statement was published in April 2019, several entities came forward in objection to the Joint Statement, primarily home care and adult and pediatric day care facilities. As a result, the Department of Consumer Affairs suggested that the items in the Joint Statement be placed in regulation allowing the public to comment. An update to the Joint Statement was released in May 2019 which read in part:

“In the next few months, both the RCB and the BVNPT intend to pursue regulations on the issues identified on the joint statement. As part of the rulemaking process, draft regulatory language will be issued and considered at upcoming board meetings. The RCB plans to consider such regulatory language as part of its June 2019 meeting, and the BVNPT plans to do the same at its August 2019 board meeting.”

In June 2019, the RCB reviewed and considered regulations to this effect. There were numerous homecare providers at the RCB’s teleconference board meeting who provided comment. It was noted that approving or not approving the regulations did not change the existing law. By passing the regulations, it would have given the appearance that the Board was not moved by the testimony. As a result, the Board did not approve the regulations and instead passed a motion to “exclude home care from [the] language and continue to work with the BVNPT to modify the Joint Statement accordingly.”

The RCB minutes from its June 2019 meeting reflect, “While the Joint Statement still stands as written, because of the way home care is set up, there appears to be a need for some type of exemption or certification training for LVNs to perform some respiratory tasks in home care only. The proposed language was based on communication prior to receiving much feedback from the home care industry. The legislation passed last year, which this regulatory language is based on, allows the Board to define basic, intermediate, and advanced tasks and creates an avenue to allow for public comment. Currently, the language does not include or exclude home care. It has however picked up the momentum that it is tied to home care.”

In June 2019, the BVNPT and the RCB held a stakeholder meeting. Those in attendance were overwhelmingly from the home care industry, adult and pediatric day care facilities and congregate living.

Following the RCB and stakeholder meetings in June, the Joint Statement was revised in July 2019 to include in part, the following:

“It was noted at all meetings that services provided in home care, as well as Adult Day Health Care Facilities, Congregate Living Health Facilities, and Pediatric Day Health & Respite Care Facilities [including transport to/from and care during daily outside activities (e.g. school)] serve a population who may need greater access to care and may hold different expectations for care given consideration to patients’ quality of life and health care reimbursement allowed. For this reason, both the BVNPT and the RCB will continue conducting research in this area to determine how greater consumer protection safeguards may be put in place such as possible standardization of training in some areas. Any such actions are expected to be addressed through regulations and/or legislation where public comment is encouraged.”

In August 2019, an issue arose that hinted the BVNPT had changed course. On September 25, 2019 RCB staff was made aware that the BVNPT was preparing language for a *legislative* change though it was presented as a regulation change up to the date of release. On October 1, 2019, the BVNPT confirmed that they had changed course after the release of the Joint Statement in April 2019 in response to objections to the Joint Statement.

On October 9, 2019, the BVNPT and the RCB held its final stakeholder meeting. The sole focus of the meeting was to get feedback from the stakeholders on the attached BVNPT proposed legislation. The proposed draft legislation would provide an avenue for LVNs and Psychiatric Technicians to take a continuing education course to qualify to provide mechanical ventilator care. The legislation does not specify or limit any tasks or any locations. It does not require formal education or training or competency testing. Currently LVNs formal education consists of a cursory course that includes an overview of respiratory care.