



August 2, 2024

Stephanie Nunez, Executive Officer
Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

Email: rcbinfo@dca.ca.gov

RE: Public Comments on Proposed Rulemaking on Basic Respiratory Tasks and Services (16 CCR 1399.365)

Dear Ms. Nunez and Board Members:

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) submits the attached comment that incorporates a letter including attachments. Since the text that has been noticed is the same as previously noticed in 2022, the BVNPT hereby resubmits the same document filed in December 2022, and raises the same points of concern.

BVNPT wants to express our appreciation for the opportunity to address concerns raised in establishing standards regarding these important services and hope that this Board appreciates the BVNPT's commitment to achieving an outcome which best serves the public. Consistent with the Board's previous position on this issue, I wanted to reiterate an important concern. The Licensed Vocational Nurse (LVN) scope of practice has always been the same in any setting and consistent with the pre-licensure training and scope of practice recognized by this Board pursuant to Business and Professions Code section 2859. All licensees currently have the same opportunity for training and Continuing Education courses acknowledged by the BVNPT. We absolutely support the need for consistent, expert training in this vital patient care area, but we are against specifying standards that are inconsistent with the training received at BVNPT approved schools.

As always, we look forward to working together to achieve an outcome that protects the health and safety of the public we all serve and wish you all the best.

Sincerely,

Elaine Yamaguchi

Elaine Yamaguchi
Executive Officer

CC: Members, Board of Vocational Nursing and Psychiatric Technicians

ATTACHMENT: December 2022 Comment



December 13, 2022

Ms. Stephanie Nunez, Executive Officer
Respiratory Care Board of California
3750 Rosin Court, Suite 100
Sacramento, CA 95834

Dear Ms. Nunez:

The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) met on Friday, December 9, 2022, to discuss the Respiratory Care Board's (RCB's) proposed regulatory action concerning Basic Respiratory Tasks and Services. The BVNPT voted unanimously to file an official comment recommending amendments to the RCB's proposed Title 16 Division 13.6, Article 6, Section 1399.365 that reflect the current Licensed Vocational Nurses' (LVN) prelicensure training and scope of practice.

Specifically, the BVNPT respectfully requests the following amendments, which are highlighted in yellow. Suggested added text is indicated by double underline, deleted text by ~~double strikethrough~~.

Amendment 1

1399.365 Basic Respiratory Tasks and Services

Pursuant to subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services ("basic respiratory tasks") ~~do not require a respiratory assessment, and only~~ require manual, technical skills, or data collection. Basic respiratory tasks do not include manipulation of an invasive or non-invasive ventilator. Basic respiratory tasks include:

Rationale for suggested change:

Basic respiratory assessment is within the scope of the licensed vocational nurse (LVN). The LVN learns how to perform this task during the fundamentals section of their LVN prelicensure program and it is performed throughout the remainder of the program when assessing assigned patients. Basic respiratory assessment is a technical skill to assist with data collection. The term "data collection" is commonly used when assessing a patient, collecting data from any type of assessment or from patient verbally. The term is also within BVNPT's existing regulations:

2518.5. Scope of Vocational Nursing Practice.

The licensed vocational nurse performs services requiring technical and manual skills which include the following:

(a) Uses and practices basic assessment (data collection), participates in planning, executes interventions in accordance with the care plan or treatment plan, and

contributes to evaluation of individualized interventions related to the care plan or treatment plan.

(b) Provides direct patient/client care by which the licensee:

(1) Performs basic nursing services as defined in subdivision (a);

(2) Administers medications;

(3) Applies communication skills for the purpose of patient/client care and education; and

(4) Contributes to the development and implementation of a teaching plan related to self-care for the patient/client.

Amendment 2

(a) Basic respiratory assessment and data collection ~~Basic respiratory tasks do not include assessment and/or evaluation of chest auscultation.~~

Rationale for suggested change:

Chest auscultation is within the LVN scope of practice and is part of the basic respiratory assessment. This is a part of their LVN prelicensure training and practiced in the LVN clinical rotations.

Amendment 3

(c) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator. Basic respiratory tasks do not include pre-treatment assessment, use of medical gas mixtures other than oxygen, preoxygenation, ~~endotracheal or nasal suctioning~~, or post-treatment assessment.

Rationale for suggested change:

Endotracheal or nasal suctioning is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation.

The proposed text lists pre-treatment assessment and post treatment assessment but does not clarify the specific treatment this is in reference to. Basic respiratory assessment is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation. Staff should work with RCB to develop a mutually acceptable definition of pre and post treatment assessment. These definitions may need to list specific treatments

Amendment 4

(d) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation. Basic respiratory tasks do not include the initial setup, change out, or replacement of the breathing circuit or adjustment of oxygen liter flow or oxygen concentration on ventilated patients.

Rationale for suggested change

“On ventilated patients” was added to clarify the task of oxygen therapy and to make it clear this statement is only referring to mechanical ventilation.

Amendment 5

(e) Hygiene care, including replacement of tracheostomy ties and gauze, removal, cleaning, and replacement of inner cannula, and cleaning of the stoma sites, tracheal suctioning, and removal of an external speaking valves. Basic respiratory tasks do not include ~~tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.~~

Rationale for suggested change

Removal and replacement of inner cannula is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation.

Amendment 6

g) Documentation of care provided, which includes documentation of data retrieved from performing a breath count, chest auscultation, or transcribing data from an invasive or non-invasive ventilator interface.

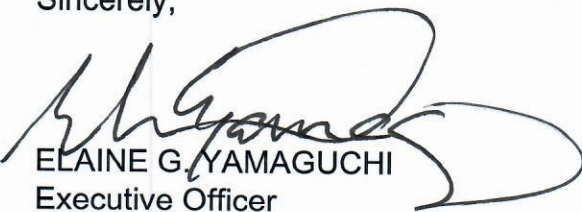
Rationale for suggested change

Chest auscultation is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation.

These six amendments will bring the RCB's proposed regulations into conformity with the Vocational Nursing Practice Act and enable our licensees to continue providing essential patient care. Coupled with other provisions in SB 1436 (Roth, Chapter 624 of the Statutes of 2022), these suggested amendments will allow both Boards to regulate and enforce safe and trained nursing care.

The memo to the BVNPT and the suggested amendments to RCB's proposed rulemaking are attached to this letter. We look forward to working together with RCB.

Sincerely,


ELAINE G. YAMAGUCHI
Executive Officer

ATTACHMENTS:

1. Memo to Board of Vocational Nursing and Psychiatric Technicians, December 9, 2022
2. BVNPT Suggested Amendments to RCB Proposed Text

ATTACHMENT #1



MEMORANDUM

DATE	December 9, 2022
TO	Board Members
FROM	Elaine Yamaguchi Executive Officer Board of Vocational Nursing and Psychiatric Technicians
SUBJECT	Agenda Item 4: Discussion and Possible Action to Consider Submittal of Modified Proposed Text as Public Comment to the Respiratory Care Board: Title 16, California Code of Regulations Section 1399.365, Basic Respiratory Tasks and Services

The purpose of this memo is to provide background and recommendations to the Board regarding the submission of comments and suggested modified proposed text to the proposed rulemaking package from the Respiratory Care Board, attached.

BACKGROUND

Respiratory Care Practitioners (RCPs), who are regulated by the Respiratory Care Board of California (RCB), are skilled health care professionals performing critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. RCPs provide care directly to the patient in hospitals, residential and other clinical sites, or a patient's home. Patients may be suffering from lung cancer, emphysema, asthma, or cystic fibrosis, or may be premature infants whose lungs have not yet fully developed. According to the RCB 2021 Annual Report, there are approximately 23,732 RCP licensees in the State of California.

Thousands of patients in California require nursing that encompasses respiratory care, including mechanical ventilation, especially in home health and residential care settings. This limited respiratory care is mostly provided by Licensed Vocational Nurses (LVNs) and in some settings, by Psychiatric Technicians (PTs). LVNs provide "head to toe" nursing often in around the clock bedside settings, and generally, respiratory issues are part of the patient's care needs. Currently, there are approximately 140,000 LVNs and PTs licensed in California. Over the years, many home health care employers launched their own training programs for their LVNs and other patient care employees. Generally, these programs are designed and administered by a combination of licensed respiratory care practitioners, nurses, and physicians, and are specific to patient needs.

As of January 1, 2023, SB 1436 (Roth, Chapter 624 of the Statutes of 2022) will allow 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. The bill will also allow LVNs employed by a home health agency to perform respiratory tasks and services identified by the Respiratory Care Board, 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 Board. SB 1436 was silent on the role of Psychiatric Technicians. The Board 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. The proposed rulemaking package is attached to this memo.

ANALYSIS

The Board’s overriding concern is the care and safety of current and future patients in the health care settings where LVNs and PTs are employed, such as residential care and skilled nursing facilities, school transport nursing and home health care. These patients are relatively stable, and require nursing services for a variety of conditions, some of which encompass respiratory issues. This often includes patients who require mechanical ventilation.

In recent years, acute care hospitals in California have not employed as many LVNs as in the past and have moved to a predominantly Registered Nurse (RN) staffing model. The COVID-19 pandemic, the high incidence of Respiratory Syncytial Virus (RSV) cases and seasonal flu have increased the demand for nursing services particularly in the field of respiratory care. To meet this increased demand, and with the shortage of registered nurses, many acute care hospitals are now employing LVNs more broadly than they have in recent years.

RCB’s proposed language would narrow the existing LVN Scope of Practice in several task areas. Basic respiratory assessment is within the scope of the LVN practice. The LVN learns how to perform these tasks during their basic pre-licensure training, both in the classroom setting and in clinical rotations. Respiratory assessment is a technical skill to assist with data collection. Specifically, chest auscultation, endotracheal or nasal suctioning, removal and replacement of inner cannula, and removal of external speaking valves are all within the LVN scope of practice and part of the basic respiratory assessment performed by LVNs. Moreover, patient assessment is essential to ensuring that the patient’s conditions are not changing or worsening. Assessment does not entail an LVN changing the directed treatment without consultation and direction from the physician or RN supervising the LVN. It does entail basic tasks like suctioning to keep a patient safe and comfortable.

The 2023 test plan for the National Council Licensure Examination for LVN (NCLEX-PN) identified the following factors as essential knowledge for an LVN:

- Provide care for a client with a tracheostomy
- Provide care to client on ventilator

- Intervene to improve client respiratory status (e.g., breathing treatment, suctioning, repositioning)
- Identify signs and symptoms related to acute or chronic illness
- Respond and intervene to a client life-threatening situation (e.g., cardiopulmonary resuscitation)
- Recognize and report change in client condition

SUGGESTED AMENDMENTS TO PROPOSED REGULATORY TEXT

Please see Attachment 1 for the entire proposed regulatory text from RCB, and Attachment 2, which contains BVNPT staff's recommended amendments highlighted in yellow. Suggested added text is indicated by double underline, deleted text by ~~double strikethrough~~.

Amendment 1

Amend section 1399.365 and subsections (a), (c), (d), (e), and (g) to read as follows:

1399.365 Basic Respiratory Tasks and Services

Pursuant to subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services ("basic respiratory tasks") ~~do not require a respiratory assessment, and only~~ require manual, technical skills, or data collection. Basic respiratory tasks do not include manipulation of an invasive or non-invasive ventilator. Basic respiratory tasks include:

Rationale for suggested change:

Basic respiratory assessment is within the scope of the licensed vocational nurse (LVN). The LVN learns how to perform this task during the fundamentals section of their LVN prelicensure program and it is performed throughout the remainder of the program when assessing assigned patients. Basic respiratory assessment is a technical skill to assist with data collection.

The term "data collection" is commonly used when assessing a patient, collecting data from any type of assessment or from patient verbally. The term is also within BVNPT's existing regulations:

2518.5. Scope of Vocational Nursing Practice.

The licensed vocational nurse performs services requiring technical and manual skills which include the following:

- (a) Uses and practices basic assessment (data collection), participates in planning, executes interventions in accordance with the care plan or treatment plan, and contributes to evaluation of individualized interventions related to the care plan or treatment plan.
- (b) Provides direct patient/client care by which the licensee:
 - (1) Performs basic nursing services as defined in subdivision (a);
 - (2) Administers medications;
 - (3) Applies communication skills for the purpose of patient/client care and education; and
 - (4) Contributes to the development and implementation of a teaching plan related to self-care for the patient/client.

Amendment 2

(a) Basic respiratory assessment and data collection ~~Basic respiratory tasks do not include assessment and/or evaluation of chest auscultation.~~

Rationale for suggested change:

Chest auscultation is within the LVN scope of practice and is part of the basic respiratory assessment. This is a part of their LVN prelicensure training and practiced in the LVN clinical rotations.

Amendment 3

(c) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator. Basic respiratory tasks do not include pre-treatment assessment, use of medical gas mixtures other than oxygen, preoxygenation, endotracheal or nasal suctioning, or post-treatment assessment.

Rationale for suggested change:

Endotracheal or nasal suctioning is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation.

The proposed text lists pre-treatment assessment and post treatment assessment but does not clarify the specific treatment this is in reference to. Basic respiratory assessment is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation. Staff should work with RCB to develop a mutually acceptable definition of pre and post treatment assessment. These definitions may need to list specific treatments.

Amendment 4

(d) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation. Basic respiratory tasks do not include the initial setup, change out, or replacement of the breathing circuit or adjustment of oxygen liter flow or oxygen concentration on ventilated patients.

Rationale for suggested change

“On ventilated patients” was added to clarify the task of oxygen therapy and to make it clear this statement is only referring to mechanical ventilation.

Amendment 5

(e) Hygiene care, including replacement of tracheostomy ties and gauze, removal, cleaning, and replacement of inner cannula, and cleaning of the stoma sites, tracheal suctioning, and removal of an external speaking valves. ~~Basic respiratory tasks do not include tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.~~

Rationale for suggested change

Removal and replacement of inner cannula is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation.

Amendment 6

g) Documentation of care provided, which includes documentation of data retrieved

from performing a breath count, chest auscultation, or transcribing data from an invasive or non-invasive ventilator interface.

Rationale for suggested change

Chest auscultation is a manual, technical skill and part of the LVN prelicensure training, and practiced in the LVN clinical rotation.

STAFF RECOMMENDATIONS

Staff recommends that the Board authorize staff to prepare and present both written and oral public comment and submit the Board's recommendation that the proposed text be revised to reflect the current LVN prelicensure training and scope of practice.

Recommended Motion:

Move to accept and adopt the specific comments and proposed amendments to the proposed text as listed above and direct that the comments and amended proposed text be submitted to RCB on or before the conclusion of its rulemaking comment period, Tuesday, December 27, 2022.

ATTACHMENTS

1. Respiratory Care Board Proposed Rulemaking package
2. Suggested Amendments to Proposed Text

ATTACHMENT #2

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.6. Respiratory Care Board
Article 6. Scope of Practice

PROPOSED LANGUAGE CONCERNING BASIC RESPIRATORY TASKS AND SERVICES

Legend—added text indicated by double underline, deletion by ~~double strikethrough~~.

Add section 1399.365 to read as follows:

1399.365 Basic Respiratory Tasks and Services

Pursuant to subdivision (a) of section 3702.5 of the B&P, basic respiratory tasks and services (“basic respiratory tasks”) ~~do not require a respiratory assessment, and only~~ require manual, technical skills, or data collection. Basic respiratory tasks do not include manipulation of an invasive or non-invasive ventilator. Basic respiratory tasks include:

- (a) ~~Basic respiratory assessment and data collection. Basic respiratory tasks do not include assessment and/or evaluation of chest auscultation.~~
- (b) Application and monitoring of the pulse oximeter.
- (c) Medication administration by aerosol that does not require manipulation of an invasive or non-invasive mechanical ventilator. Basic respiratory tasks do not include pre-treatment assessment, use of medical gas mixtures other than oxygen, preoxygenation, ~~endotracheal or nasal suctioning~~, or post-treatment assessment.
- (d) Heat moisture exchanger (HME) and oxygen tank replacement for patients who are using non-invasive mechanical ventilation. Basic respiratory tasks do not include the initial setup, change out, or replacement of the breathing circuit or adjustment of oxygen liter flow or oxygen concentration on ventilated patients.
- (e) Hygiene care, including replacement of tracheostomy ties and gauze, removal, cleaning, and replacement of inner cannula, and cleaning of the stoma sites, tracheal suctioning, and removal of an external speaking valve. Basic respiratory tasks do not include ~~tracheal suctioning, cuff inflation/deflation, use or removal of an external speaking valve, or removal and replacement of the tracheostomy tube or inner cannula.~~
- (f) Use of a manual resuscitation device and other cardio-pulmonary resuscitation technical skills (basic life support level) in the event of an emergency.
- (g) Documentation of care provided, which includes documentation of data retrieved from performing a breath count, chest auscultation, or transcribing data from an invasive or non-invasive ventilator interface.

Note: Authority cited: Sections 3702.5 and 3722, Business and Professions Code.
Reference: Sections 2860, 3702, 3702.5 and 3702.7, Business and Professions Code.