



Item: **Proposed Regulatory Language for Approval: Basic, Intermediate, and Advanced Respiratory Care**

Item Summary: With the exception of “advance respiratory care,” this language comes nearly verbatim from the Respiratory Care Board (RCB) Board of Vocational Nursing and Psychiatric Technicians (BVNPT) Joint Statement (attached), which was developed by attorneys, members, and staff from both boards. The response to the Joint Statement, following its publication, resulted in numerous inquiries. As such, both boards have agreed to move forward with promulgating regulations to ratify the language provided in the Joint Statement that interprets existing law and provide interested parties the opportunity to comment. In the future, the Board may expand all of these sections to be more inclusive of the entire respiratory care scope of practice.

- Board Action:**
1. President calls the agenda item and it is presented by or as directed by the President.
 2. President requests motion on Proposed Regulatory Language:
 - move for board staff to pursue the promulgation of regulatory language establishing sections 1399.365, 1399.366 and 1399.367 identifying basic, intermediate and advance levels of respiratory care and authorize board staff to make non-substantive changes as necessary;
 - any other appropriate motion.
 3. President may request if there is a second to the motion, if not already made.
 4. Board member discussion/edits (if applicable).
 5. Inquire for public comment / further Board discussion as applicable.
 6. Repeat motion and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain

California Code of Regulations, Title 16, Division 13.6 Respiratory Care Board, Article 5
BASIC, INTERMEDIATE AND ADVANCED RESPIRATORY CARE

PROPOSED LANGUAGE

§ 1399.365. Basic Respiratory Tasks.

Basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills, or data collection include:

1) Administration of ordered medications that do not require manipulation of a mechanical ventilator. This does not include pre-treatment assessment beyond data collection, use of medical gas mixtures (other than oxygen), preoxygenation, or post treatment assessment beyond data collection.

§ 1399.366. Intermediate Respiratory Care.

Intermediate respiratory tasks, services, and procedures that require formal respiratory education and training and current licensure as a respiratory care practitioner include, but are not limited to:

a) As it pertains to invasive mechanical ventilation:

- 1) Changing any setting on a ventilator, with or without a physician's order.
- 2) Routine and/or emergent changing of inner and/or outer cannulas.
- 3) Reconfiguring or changing aerosol or ventilator circuits.
- 4) Manipulating ventilator breathing circuits including disconnecting or reconnecting the circuit, for any purpose, including, but not limited to administering bronchodilator or nebulizer treatments.
- 5) Troubleshooting artificial airway problems and ventilator-related controls and alarms.
- 6) Assessment of a patient's response to ventilator adjustments or current settings.
- 7) Assessment for the placement and/or placement of a speaking valve or trach plugging.
- 8) Ensuring the security of an artificial airway while transporting patients intra or inter facility to daily activities and/or scheduled shower days.

b) Educating students, health care professionals or consumers about respiratory care, including, but not limited to, education of respiratory care core courses or clinical instruction provided as part of a respiratory educational program and educating health care professionals or consumers about the operation or application of respiratory care equipment and appliances.

c) Recommending appropriate respiratory care intervention/s, and managing, or modifying, respiratory care interventions based on the patient's response to therapy and written protocols.

§ 1399.367. Advanced Respiratory Care.

Advanced respiratory tasks, services, and procedures that require formal respiratory education and training and current licensure as a respiratory care practitioner, and supplemental education, training or additional credentialing consistent with national standards, as applicable, include but are not limited to:

1) Administration of medical gases and pharmacological agents for the purpose of inducing conscious or deep sedation under physician and surgeon supervision and the direct orders of the physician and surgeon performing the procedure.

2) Performing extracorporeal life support including extracorporeal membrane oxygenation (ECMO) and extracorporeal carbon dioxide removal (ECCO2R).



Respiratory Care Board of California and Board of Vocational Nursing and Psychiatric Technicians Joint Statement - April 2019

The Respiratory Care Board (RCB) and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) began meeting in 2018 to discuss concerns related to reports of scope of practice issues occurring in sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations in California. Board members, staff, legal counsel and experts weighed in on the issues by considering current laws, education and training. Prioritizing both boards' highest priority of public protection, the boards have agreed on a joint statement.

Both boards agree that respiratory care practitioners (RCPs), licensed vocational nurses (LVNs) and psychiatric technicians (PTs) are invaluable members of the patient care team in providing optimum care to patients. Each health care professional relies on others to perform their practice well. They establish a therapeutic interface among all health care personnel that benefits patients in their care and safety.

Both boards' mandates require that "protection of the public shall be the highest priority... 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." (*Business and Professions Code sections 2841.1, 3710.1 and 4501.1*) Each board's oversight responsibility is summarized below:

Respiratory Care Board of California (RCB)	Board of Vocational Nursing and Psychiatric Technicians (BVNPT)
Responsible for licensing and regulating the practice of respiratory care pursuant to the Respiratory Care Practice Act (<i>Business and Professions Code section 3700 et seq.</i>). The RCB is statutorily charged with protecting the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care (<i>Business and Professions Code section 3701</i>).	Responsible for licensing and regulating the practice of vocational nurses and psychiatric technicians pursuant to the Vocational Nursing Practice Act and the Psychiatric Technicians Law (<i>Business and Professions Code Section 2840 et seq. and Section 4500 et seq., respectively</i>).

The boards jointly agree that stakeholders should be aware that RCPs, LVNs and PTs must follow their respective scopes of practice for patient safety. Violating the respective scope of practice could lead to patient harm and the license being formally disciplined by the respective boards.

A concern to both boards is unlicensed and/or unqualified vendors instructing health care professionals to provide ventilator care. Both boards agree this is an unsafe practice. Further, section 3702.7 of the Business and Professions Code provides that the education of health care

professionals about respiratory care, including clinical instruction and the operation or application of respiratory care equipment and appliances is within the respiratory care scope of practice and would require licensure as an RCP.

Given that numerous patients admitted to sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations require respiratory care, with some dependent upon ventilators to sustain life, and given concerns for care that is being provided at some facilities in California, the RCB and the BVNPT issues this joint statement to inform administrators and staff at sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations on the following issues:

PATIENT CARE PRACTICES

Invasive Mechanical Ventilation

Invasive mechanical ventilation is a lifesaving intervention for patients with respiratory failure and is at the core of respiratory care practitioners' education, training, and competency testing. Given the clinical knowledge of the hazards, indications, contraindications of mechanical ventilation, and complexity associated with invasive mechanical ventilation, and that extensive and formal education and training is required to provide such care.

<p>Respiratory Care Practitioners are authorized to provide the following types of care (LVNs and PTs are not authorized to provide this care):</p> <ul style="list-style-type: none"> • Changing any setting on a ventilator, with or without a physician's order. • Routine and/or emergent changing inner and/or outer cannulas. • Reconfiguring or changing aerosol or ventilator circuits. • Manipulating ventilator breathing circuits including disconnecting or reconnecting the circuit, for any purpose, including, but not limited to administering bronchodilator or nebulizer treatments. • Troubleshooting artificial airway problems and ventilator-related controls and alarms. • Assessment of a patient's response to ventilator adjustments or current settings. • Assessment for the placement and/or placement of a speaking valve or trach plugging. • Transporting patients intra or inter facility to daily activities and/or scheduled shower days. 	<p>Licensed Vocational Nurses and Psychiatric Technicians role in patient care:</p> <p>The LVN and PT are authorized to provide care to the patient receiving invasive mechanical ventilation when the care is not specifically related to the mechanical ventilation but is within the LVN or PT's scope of practice. That care includes but is not limited to:</p> <ul style="list-style-type: none"> • Basic Assessment (data gathering) of <u>total</u> patient. • Administration of ordered medications that do not require manipulation of the mechanical ventilator. • Provision of ordered treatments. • Hygiene care. • Comfort care. • Patient and family education. • LVNs and PTs are <u>not</u> responsible for ensuring the security of the artificial airway and related functionality of the ventilator before, during and after transport. However, LVNs and PTs can go as part of the team, but they are not responsible for the ventilator or related care.
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CARE/TREATMENT PLANS

Respiratory Care Practitioner	Licensed Vocational Nurses and Psychiatric Technicians
Recommend appropriate respiratory care intervention/s, and manage, or modify, respiratory care interventions based on the patient's response to therapy and written protocols approved by the medical staff.	Contribute data to the registered nurse needed for the evaluation process. However, LVNs and PTs cannot make clinical diagnosis of the patient's respiratory condition, and/or make respiratory care recommendations based on their clinical findings.

Both boards recognize that working titles using any derivative or synonymous meaning of the word "respiratory" for LVNs and PTs is prohibited. This includes but is not limited to: Respiratory Aide, Respiratory Nurse, Inhalation Nurse, etc.

Scope of Practice Questions and Information

Both Boards prefer written inquiries to ensure accurate and complete responses. Phone calls are accepted, and you will be requested to submit the inquiry in writing. Responses to written inquiries may take up to five business days depending on the complexity of the question.

Respiratory Care Board	Board of Vocational Nursing and Psychiatric Technicians
E-mail: rcbinfo@dca.ca.gov Telephone: 916.999.2190 Toll-free: 866-375-0386 Website: www.rcb.ca.gov	Email: bvnpt.sop@dca.ca.gov Telephone: 916.263.7843 Website: www.bvnpt.ca.gov

FACT SHEET

Given that numerous patients admitted to sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations require respiratory care, with some dependent upon ventilators to sustain life, and given concerns for care that is being provided at some facilities in California, the RCB and the BVNPT issues this joint statement to inform administrators and staff at sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations on the following issues:

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Respiratory Care Board of California and Board of Vocational Nursing and Psychiatric Technicians Joint Statement Update – May 2019

The Respiratory Care Board (RCB) and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) have met throughout 2018 and identified various scope-of-practice issues that may be impacting patients in sub-acute facilities, long-term care, skilled nursing facilities, and at-home care locations in California. This led to the release of the April 2018 RCB / BVNPT Joint Statement, available [here](#).

Since the release of the joint statement, both boards have received numerous inquiries related to allowable duties and patient standard of care for Licensed Vocational Nurses and Respiratory Care Practitioners.

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.

Public input is a critical component of the rulemaking process, and both boards encourage stakeholder participation in these upcoming discussions. The boards will post updates on the regulation process on their respective websites at www.RCB.ca.gov and www.BVNPT.ca.gov

If you would like to be on an email list and receive notices/updates, or if you have any additional technical inquiries regarding the joint statement, please send an email to either address listed below and request that your email address be added to the public comment list.

Please note that emails will only be sent to notify actual progress and/or upcoming important events for the regulatory process concerning the joint statement.

The Respiratory Care Board and the Board of Vocational Nursing and Psychiatric Technicians thank you in advance for your support and patience.

Respiratory Care Board	Board of Vocational Nursing and Psychiatric Technicians
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