

## TITLE 16. BOARD OF REGISTERED NURSING

### Proposed Language

To Amend Sections 1441, 1444, 1444.5, and 1445 in Article 4 of Division 14 of the California Code of Regulations to read as follows:

#### § 1441. Unprofessional Conduct.

In addition to the conduct described in Section 2761 (a) of the Code, “unprofessional conduct” also includes, but is not limited to, the following:

(a) As a licensee, fFailure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, the documents.

(b) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(c) Failure to report to the board, within 30 days, any of the following:

(1) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(d) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2761 and 2765, Business and Professions Code.

**§ 1444. Substantial Relationship Criteria.**

(a) For the purposes of denial, suspension, or revocation of a license or certificate pursuant to section 141 or Division 1.5 (commencing with section 475) of the code, a crime, professional misconduct, ~~A conviction~~ or act shall be considered to be substantially related to the qualifications, functions or duties of a ~~registered nurse~~ person holding a license or certification under the Nursing Practice Act (Chapter 6 of Division 2 of the code), if to a substantial degree it evidences the present or potential unfitness of a person holding a license or certificate to perform the functions authorized and/or mandated by the license or certificate, or ~~registered nurse to practice~~ in a manner consistent with the public health, safety, or welfare. ~~Such convictions or acts shall include but not be limited to the following:~~

~~(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.~~

~~(b) Failure to comply with any mandatory reporting requirements.~~

~~(c) Theft, dishonesty, fraud, or deceit.~~

~~(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of a registered nurse, or the license or certificate type sought or held by the person.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of the Nursing Practice Act and its implementing regulations.

(2) Theft, dishonesty, fraud, deceit, or unprofessional conduct listed in section 2762 of the code.

(3) Child, elder, or dependent adult abuse.

(4) Sex offenses requiring a person to register as a sex offender pursuant to section 290 of the Penal Code.

(5) Lewd conduct or sexual misconduct.

(6) Assault, battery, or other violence including, but not limited to, those violations listed in subdivision (d) of Penal Code section 11160.

(7) Use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.

(8) Harassment, trespass, or stalking.

(9) Failure to comply with any mandatory reporting requirements.

Note: Authority cited: Sections 481 and 2715, Business and Professions Code.  
Reference: Sections 141, 480, 481, 490, 493, 2736, 2761, and 2762 Business and Professions Code; Sections 290 and 11160, Penal Code.

#### **§ 1444.5. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled: “Recommended Guidelines for Disciplinary Orders and Conditions of Probation” (10/02), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 726, 729, 2750, 2759, 2761 and 2762, Business and Professions Code; Section 44010, Education Code; and Section 11425.50, Government Code.

### **§ 1445. Criteria for Rehabilitation.**

(a) When considering the denial of a license under Section 480 of the code on the ground that the applicant was convicted of a crime, the board, ~~in evaluating shall consider whether the applicant has made a showing of rehabilitation of the applicant and his/her has established present eligibility fitness for a license or certification if the applicant completed the criminal sentence at issue without a violation of parole or probation.~~ In making this determination, the board shall ~~will~~ consider the following criteria:

(1) The nature and ~~severity~~ gravity of the ~~act(s) or crime(s)~~, ~~under consideration as grounds for denial.~~

(2) ~~Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.~~ The reason for granting probation and the length of the applicable parole or probation period(s).

(3) ~~The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2) extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.~~

(4) ~~The extent to which the applicant has complied with any terms or conditions of parole, or probation, restitution, or any other sanctions lawfully imposed against the applicant and the extent to which they bear on the applicant's rehabilitation.~~

~~(5) Evidence, if any, of rehabilitation submitted by the applicant~~The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

~~(b) If subdivision (a) is inapplicable for considering the denial of a license under Section 480, or~~When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will determine that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply consider the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

~~(1) The n~~Nature and severity gravity of the act(s) or offense~~crime(s) under consideration as grounds for denial.~~

~~(2) Total criminal record~~Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the code.

~~(3) The time that has elapsed since commission of the act(s) or offense~~crime(s) referred to in subdivisions (1) and (2).

~~(4) Whether the applicant licensee~~has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant licensee.

~~(5) The criteria in subdivision (a)(1) – (5), as applicable~~If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

~~(6) Evidence, if any, of rehabilitation submitted by the applicant.~~

(c) When considering the suspension or revocation of a license or certificate on the ground that the person holding a license or certificate under the Nursing Practice Act (Chapter 6 of Division 2 of the code) has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The reason for granting probation and the length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for the modification.

(d) If subdivision (c) is inapplicable for considering the suspension or revocation of a license or certificate, or the board determines that the licensee or certificate holder did not make the showing of rehabilitation based on the criteria in subdivision (c), the board shall apply the following criteria in evaluating a licensee or certificate holder's rehabilitation. The board shall find that the licensee or certificate holder made a showing of rehabilitation and is presently fit for a license or certificate if, after considering the following criteria, the board finds that the person is rehabilitated:

(1) The nature and gravity of the acts(s) or crime(s).

(2) The total criminal record.

(3) The time that has elapsed since commission of the act(s) or crime(s).

(4) Whether the licensee and/or certificate holder has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

(5) The criteria in subdivision (c)(1) - (5), as applicable.

(6) If applicable, evidence of dismissal pursuant to Penal Code section 1203.4.

(7) Evidence, if any, of rehabilitation submitted by the licensee or certificate holder.

Note: Authority cited: Sections 482 and 2715, Business and Professions Code.  
Reference: Sections ~~480, 483-482~~, 2736, 2761 and 2762, Business and Professions Code.