

**TITLE 16. BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulation: Continuing Education Requirements; Exemptions

Section(s) Affected: Section 1452 of Title 16, Division 14, Article 5, California Code of Regulations (CCR)

Background and Statement of the Problem:

The Board of Registered Nursing (Board) licenses registered nurses (RN), and certifies Advanced Practice Registered Nurses (APRN), which include certified nurse-midwives (CNM), nurse practitioners (NP), registered nurse anesthetists (CRNA), clinical nurse specialists (CNS), and public health nurses (PHN). (Business and Professions Code (BPC) Section 2700 et seq.). The Board establishes and maintains standards of conduct within the nursing profession, primarily through its authority to license and enforce minimum standards for the protection of the public. (Nursing Practice Act (Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code (BPC 2708.1)) (Act)) The Board is authorized to establish necessary regulations for the enforcement of the Act and the laws subject to its jurisdiction (Bus. & Prof. Code, § 2715).

BPC section 2811.5(c) and 2811.5(h) authorize the Board to establish standards for continuing education (CE) for RNs and all other licensees under the Board, as well as provide exceptions from CE requirements for licensees who meet certain criteria. Existing regulations require RNs to complete 30 contact hours of CE every two years to maintain an active license (CCR Title 16, Division 14, Article 5, Section 1451).

Existing regulations also state that during the first two years immediately following initial licensure in California or other jurisdictions, licensees shall be exempt from completion of the CE requirements specified in Section 1451, and that a licensee may request an exemption from CE requirements if they are requesting inactive status for the license, the licensee is a resident or employed overseas for over one year, the licensee is employed by a U.S. Federal Institution or Agency or one of the Military Services practicing nursing outside of California, or the licensee has had hardship of one or more years' duration, such as physical disability affecting ability to return to work or being responsible for immediate family who has a total disability (CCR Title 16, Division 14, Article 5, Section 1452).

The Legislature passed Assembly Bill (AB) 1407 (Burke, Chapter 445, Statutes of 2021), amending BPC section 2811.5 to mandate Board licensees to complete one-hour of implicit bias training as part of their CE requirements, and clarify that although licensees are typically exempt from CE requirements during the first two years immediately following their initial licensure in California, the implicit bias training is not part of that standing exemption and must be completed.

However, BPC section 2811.5 still leaves open that the Board may allow an exemption for implicit bias CE in certain circumstances. This regulatory proposal amends 16 CCR 1452 to add that all newly licensed licensees in California (both by exam or endorsing in from out of state) shall complete one-hour of implicit bias training within the first two years of licensure, and that there are no exemptions for the one-hour of implicit bias training.

The Board discussed the matter of implicit bias CE and exemptions at their November 2022 meeting and voted to approve language that licensees would not be allowed to receive an exemption from the new implicit bias training requirement.

Board staff submitted a rulemaking package to the Office of Administrative Law (OAL) pursuant to the procedures outlined in CCR, Title 1, Section 100 (Publication of "Changes Without Regulatory Effect") (OAL Matter Number 2022-1102-02N). OAL determined that the decision to not allow exemptions for the implicit bias training requirement was within the Board's discretion and could not be processed as a change without regulatory effect. Consequently, Board staff chose to pursue a regular rulemaking package and brought proposed text back before the full Board at their February 2023 meeting, when the Board approved the proposed text and directed staff to begin the formal rulemaking process.

Anticipated Benefits from this Regulatory Action:

This regulatory proposal benefits the health and welfare of California residents by ensuring newly licensed licensees fulfill the one-hour implicit bias CE requirement and are not allowed to request any exemptions, which helps to achieve more fair and equal treatment of residents by competent licensees and promotes consumer protection. Implicit bias impacts the health care disparities experienced by members of racial, ethnic, or religious minorities and other groups, and instruction in understanding implicit bias will increase awareness among licensees about issues that can unconsciously influence the care they provide and will help them adjust their practices to better serve California's diverse population. Members of the public will benefit from having a more informed licensee as such education on implicit bias will aid in creating a professional environment that provides equal treatment to patients.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

1. Amend the title of the section to “Continuing Education Requirements; Exemptions”

Purpose:

The purpose of changing the title of 16 CCR Section 1452 from “Exemption from Continuing Education Requirements” to “Continuing Education Requirements; Exemptions” is because the addition of new subsection (a) is a requirement, not an exemption.

Rationale:

It is necessary to change the title of the section to clarify that this section refers to CE requirements, because the new subsection states a requirement, while the later subsections state certain exemptions. The amended title better reflects the contents of the regulation.

2. Add new subsection (a): All licensees shall complete one-hour of implicit bias training specified in section 1456 within the first two years of licensure.

Purpose:

The purpose of adding new subsection (a) is to ensure consistency with the statutory requirement that “licensees shall complete one-hour of direct participation in an implicit bias course offered by a continuing education provider approved by the board” in newly amended BPC section 2811.5(g). Subsection (a) also further elaborates that the training parameters are specified in 16 CCR § 1456, which describes the implicit bias course curriculum that includes the understanding of implicit bias pursuant to BPC Section 2736.5, i.e. at least one or a combination of how implicit bias affects perceptions and treatment decisions of licensees, or strategies to address how unintended biases in decision making may contribute to health care disparities.

Rationale:

This new subsection is necessary to clarify that the statutory requirement of one-hour of implicit bias CE applies to all newly licensed licensees in California (both by exam or endorsing in from out of state or out of country), and that curriculum for the CE is line with other CE statutes and regulations. The regulation language does repeat part of BPC section 2811.5(g) “licensees shall complete one-hour of . . . implicit bias” (BPC section 2811.5 has been added to the authority section), and the overlap is necessary to make the implicit bias CE requirement readily understandable by licensees and that there will be no exceptions, thus providing no other reasonable or logical interpretations for the regulation to have more than one meaning. Without this amendment, licensees could interpret there being an exemption for the implicit bias CE requirement if they are requesting inactive status, a resident or overseas for over one year, employed by a U.S.

Federal Institution or Agency or one of the Military Services practicing nursing outside of California, or had a disability hardship. With this amendment, it is clear that there is no exemption the implicit bias CE requirement.

3. Add to subsection (b): Except for the implicit bias training specified in subsection (a)...

Purpose:

This revision renumbers the prior subsection (a) to (b) and clarifies that the exemption to CE during the first two years of licensure does not include implicit bias training. The purpose of adding the opening sentence to the renumbered subsection (b) is to remove the allowance of an exemption from the one-hour of implicit bias training.

Rationale:

While the amendment to BPC section 2811.5 does provide that the Board has discretion to waive or exempt CE requirements, the Board decided that one-hour of implicit bias training would be more beneficial than a burden for licensees, especially considering the importance of the topic and the potential benefits of proactively recognizing potential patient harms. The amendment is necessary to make specific the parameters of exemptions related to BPC section 2811.5, namely that the Board is not exempting implicit bias CE for licensees in their first two years of practice.

4. Add to subsection (c): Except for the implicit bias training specified in subsection (a)...

Purpose:

This revision renumbers the prior subsection (b) to (c) and clarifies that the exemption to CE for inactive status, practice outside of California, or hardship does not include implicit bias training. The purpose of adding the opening sentence to the new subsection (c) is to remove the allowance of an exemption from the one-hour of implicit bias training in the circumstances where a licensee is: requesting inactive status, a resident or overseas for over one year, employed by a U.S. Federal Institution or Agency or one of the Military Services practicing nursing outside of California, or has a disability hardship.

Rationale:

While the amendment to BPC section 2811.5 does provide that the Board has discretion to waive or exempt CE requirements, the Board decided that one-hour of implicit bias training would be more beneficial to licensees than a burden, especially considering the importance of the topic and the potential benefits of proactively recognizing potential patient harms. The amendment is necessary to make specific the parameters of

exemptions related to BPC section 2811.5, namely that the Board is not exempting implicit bias CE for licensees in the circumstances where a licensee is: requesting inactive status, a resident or overseas for over one year, employed by a U.S. Federal Institution or Agency or one of the Military Services practicing nursing outside of California, or has a disability hardship.

5. Amend subsection (c): ~~an applicant~~ a licensee may...

Purpose:

The Board is proposing to delete the term “applicant” and instead add “licensee” for clarity and grammatical consistency.

Rationale:

This amendment is necessary for clarity and consistency because while technically the individual is applying for renewal, and are an applicant in that sense, use of the term “licensee” is also accurate and more consistent with the use of the term throughout this section in (c)(1), (2), (c)(2)(A), (c)(2)(B), and (c)(2)(C).

6. Amend the Note section.

Purpose:

The Authority cited is amended to add BPC section 2736.5, which provides that the Board may adopt regulations regarding implicit bias, and amended BPC section 2811.5, which provides that the Board may adopt regulations regarding CE.

The Reference cited is amended to add BPC sections 2736.5 and 2786, implementing implicit bias requirements.

Rationale:

These amendments are necessary to update the authority section and make the citations accurate.

Underlying Data:

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- [AB 1407 \(Burke, Chapter 445, Statutes of 2021\)](#)
- Board Agenda, Meeting Material, Meeting Minutes November 14-15, 2022, Agenda Item 6.2
- Board Agenda, Meeting Material, Meeting Minutes February 15-16, 2023, Agenda Item 6.2

Business Impact:

The Board has made an initial determination that this proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

AB 1407 imposed a requirement for one-hour of implicit bias training. The amendment to HSC 123630.5 now requires hospitals to provide such training. To the extent that a business that is not a hospital provides or pays for training for a licensee, that business may incur the cost of the one-hour training, which is not significant given the number of hours of training licensees already take.

Economic Impact Assessment Results:

- The proposed amendments are unlikely to create or eliminate jobs within the State of California. Based on the mere one-hour training required by statute, the Board does not anticipate that a lack of an exemption will create or eliminate jobs.
- The proposed amendments are unlikely to create new business or eliminate existing businesses within the State of California. Based on the mere one-hour training required by statute, the Board does not anticipate that a lack of an exemption will create new businesses or eliminate existing businesses.
- The proposed amendments are unlikely to affect the expansion of businesses currently doing business within the State of California. Based on the mere one-hour training required by statute, the Board does not anticipate that a lack of an exemption will significantly affect the expansion of businesses.
- This regulatory proposal benefits the health and welfare of California residents because implicit bias CE will address health care disparities experienced by members of racial, ethnic, or religious minorities and other groups and promote more professional treatment by licensees treating California's diverse patient population.
- The proposed amendments will not affect worker safety because this regulation does not relate to worker safety.
- The proposed amendments will not affect the state's environment because they are not related to any environmental issues.

Specific Technologies or Equipment

While this regulation does not mandate the use of specific technologies or equipment, RNs utilize computers and internet access in their daily duties. Many CE providers offer online courses and training, and a licensee may choose to take the one-hour implicit bias training required by statute via a computer or similar technology. The specification of this proposal that an exemption is not provided may lead some licensees to use technology to fulfill that requirement.

Consideration of Alternatives

The Board has initially determined that no reasonable alternative to the regulatory proposal would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Board invites the public to comment.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No reasonable alternative to the regulatory proposal would lessen any adverse impact on small business.

No such alternatives have been proposed, however, the Board welcomes comments from the public.