

**BOARD OF REGISTERED NURSING
Intervention/Discipline Committee
Agenda Item Summary**

**AGENDA ITEM: 9.1
DATE: April 14, 2016**

ACTION REQUESTED: Information Only: Complaint Intake and Investigations Update

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

PROGRAM UPDATES

COMPLAINT INTAKE:

Staff

Pete Marquez retired at the end of February 2016. He began his career in state service in July 2008 with EDD and came to DCA in May 2009. Pete has been an AGPA in Complaint Intake since June 2011.

We have filled this permanent position with one of our Associate Governmental Program Analysts (AGPA) that was in a limited term position and will be posting to back fill her position for the remainder of the limited term.

We will be posting for a permanent Staff Services Analyst (SSA). This position is currently a limited term position.

We are currently interviewing to fill a limited term Office Technician (OT) position, due to extended medical leave.

Program

We have one analyst that continues to work with the Department of Consumer Affairs (Department) BreZE team and involved in the Reports User Group, as well as the Enforcement User Group.

The Controlled Substance Utilization Review & Evaluation System (CURES) had a soft launch July 1, 2015. CURES 2.0 was rolled out to users on January 8, 2016. Prescribers and furnishers are required to register by July 1, 2016. The BRN continues to work closely with the Department's Executive team and the Department of Justice (DOJ) to ensure its success.

Statistics

As of April 4, 2016

Complaints Received (FY 15/16)	5,822
Complaints Pending	1,997
Arrest/Conviction (CORI & Self Report)	1,104
Complaints over 1 year	312

Complaint intake continues to work new complaints, ensuring cases are moving to investigations in a timely manner, applicants are processed timely and that aging cases are worked as a priority.

INVESTIGATIONS:

Staff

We are currently fully staffed in both Northern and Southern California.

Program

We continue to assign cases based on the Department’s Consumer Protection Enforcement Initiative (CPEI).

As of April 5, 2016, there were approximately 34 BRN investigative cases over one year old and there are approximately 35 DOI cases over one year old, that are still open.

Investigative staff continues to attend Task Force meetings and develop working relationships with allied agencies.

Statistics

BRN Investigations	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016
Total cases assigned	379	374	363	375	383	385
Total cases unassigned (pending)	106	155	142	177	146	147
Average days to case completion	267	265	271	320	301	295
Average cost per case	\$2,728	\$2,968	\$2,722	\$2,769	\$2,766	\$3,648
Cases closed	58	58	67	37	80	49
Division of Investigations	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016
Total cases assigned	359	328	268	274	277	291
Total cases unassigned (pending)	29	30	35	29	16	13
Average days to case completion	220	318	306	261	292	303
Average cost per case	\$4,155	\$6,696	\$7,246	\$4,350	\$5,734	\$5,544
Cases closed	40	33	33	29	21	20

Investigators are focused on clearing all aging cases.

NEXT STEP:

Continue to review and adjust internal processes and work with DCA to create reports to monitor statistics for improvement in case processing time frames. Follow directions given by committee and/or board.

FISCAL IMPACT, IF ANY:

None at this time. Updates will be provided at each IDC meeting for review and possible action.

PERSON TO CONTACT:

Shannon Silberling, Chief
Complaint Intake and Investigations
(916) 515-5265

**BOARD OF REGISTERED NURSING
Intervention/Discipline Committee
Agenda Item Summary**

AGENDA ITEM: 9.2

DATE: April 14, 2016

ACTION REQUESTED: Information Only: Discipline and Probation Program update

REQUESTED BY: Cynthia Klein, RN, Chairperson

Staffing

The Probation Program has one probation monitor vacancy; we are currently recruiting to fill this position.

The discipline unit is in the process of filling three vacancies, interviews have been held and it is anticipated we will obtain approval to hire in the near future.

Program – Discipline

The Discipline Unit is working with the Attorney General’s (AG) office to complete our cases in a timely manner and streamline our processes for efficiency.

On July 1, 2015 the BRN began a pilot project with the San Diego AG Office referred to as “fast track.” The fast track cases consist of less complex cases with a focus on accelerated completion.

Below are the approximate statistics for this pilot project as of March 22, 2016.

Total cases referred	210
Total cases adjudicated	146
Average time from referral to adoption date of decision	88 days
Average cost	\$674

Statistics - Discipline

Below reflects FY 14/15 (July 1, 2014 – June 30, 2015) discipline statistics:

Decisions Adopted	1,578
Pleadings served	1,067
Petitions to Revoke Probation served	104
Surrenders signed by E. O.	291

Below reflects FY 15/16 (July 1, 2015 – March 22, 2016) discipline statistics:

Decisions Adopted	1,119
Pleadings served	930
Petitions to Revoke Probation served	55
Surrenders signed by E. O.	184

The BRN continues to work with the DCA BreZze team to verify the accuracy of the performance measures statistics.

Program – Probation

The Probation Program continues to contribute to the re-design of the DCA-Enforcement Academy which should be available next spring.

Statistics - Probation

Statistics – July 1, 2015 to March 29, 2016

Probation Data	Numbers	% of Active
Male	331	29%
Female	807	71%
Chemical Dependency	753	66.2%
Required Drug-Screening	593	52.1%
Practice	272	23.9%
Mental Health	6	0.5%
Conviction - excluding chemical dependency/alcohol use	107	9.4%
Advanced Certificates	109	10%
Southern California	651	57%
Northern California	484	43%
Pending AG - Tolled	3	0%
Pending AG	81	7%
License Revoked Fiscal YTD	36	
License Surrendered Fiscal YTD	66	
Terminated Fiscal YTD	31	
Successfully Completed Fiscal YTD	111	
Active In-State Probationers	1,138	
Completed/Revoked/Terminated/Surrendered YTD	244	
Tolled Probationers	326	
Active and Tolled Probationers	1,464	

The average case load of active probationers per probation monitor is approximately 142. However, the average number of cases per monitor including Tolled cases is 183. There are 41 Early Termination and 9 Modification of Probation cases waiting to be heard by the Board.

NEXT STEP:

Follow directions given by committee and/or board.

FISCAL IMPACT, IF ANY:

AG’s budget line item will be monitored for Discipline and Probation.

PERSON TO CONTACT:

Beth Scott, Chief of Discipline, Probation, and Intervention
(916) 574-8187

**BOARD OF REGISTERED NURSING
Intervention/Discipline Committee
Agenda Item Summary**

AGENDA ITEM: 9.3

DATE: April 14, 2016

ACTION REQUESTED: Information Only: Intervention Program Update and Statistics

REQUESTED BY: Cynthia Klein, RN, Chairperson

Staffing

The Intervention program is fully staffed.

Program Update

We continue to have a need for Nurse Support Group facilitators in Humboldt, Los Angeles, Orange, and San Francisco counties. We have sent an email blast to the Board of Registered Nursing's (BRN) email list and have posted a request for facilitators on the BRN's Facebook page. The response has been positive and we are currently in the process of screening applicants.

On March 9th, Virginia Matthews, MAXIMUS Project Manager conducted an outreach presentation at Dignity Health Dominican Hospital for 16 of their newly hired Nurses. The presentation was appreciated and well received.

In an attempt to increase Intervention program participation, we have recently initiated a telephone contact pilot program. In addition to our traditional method of offering the services of the Intervention program, we will also telephone half of the total individuals that we would traditionally mail letters to and track the results. The outcome of this project will be reported at a later date.

Intervention Evaluation Committees (IEC)

There are currently two physician member vacancies at this time. One vacancy is in Burbank (IEC 8), and the second vacancy is in North Central (IEC 12)*.

There are currently three RN member vacancies at this time, one in Orange County (IEC 4)*, one in San Jose (IEC 7) and one in Burbank (IEC 8)*.

***Asterisk denotes pending committee recommendation for Board approval of IEC members included in Agenda Item 9.3.1**

Statistics – Intervention

The Statistical Summary Report for December 1, 2015, through January 31, 2016, is after this update. As of January 31, 2016, there have been 2,038 successful completions.

NEXT STEP: Follow directions given by Committee and/or Board.

FISCAL IMPACT, IF ANY: None at this time.

PERSON TO CONTACT:

Don Henry Walker
Intervention Program Manager
(916) 574-7619

**BOARD OF REGISTERED NURSING
INTERVENTION PROGRAM
STATISTICAL SUMMARY
December 1, 2015-January 31, 2016**

	CURRENT MONTHS	YEAR TO DATE (FY)	PROGRAM TO DATE
INTAKES COMPLETED	25	83	5,088
INTAKE INFORMATION			
Female	20	61	3,971
Male	5	22	1,090
Unknown	0	0	27
Average Age	25-59		
Most Common Worksite	Unemployed		
Most Common Specialty	Critical Care/ER		
Most Common Substance Abused	Alcohol/Norco		
PRESENTING PROBLEM AT INTAKE			
Substance Abuse (only)	12	37	3,189
Mental Illness (only)	1	5	167
Dual Diagnosis	11	38	1,650
Undetermined	1	3	82
REFERRAL TYPE*			
Board	15	64	3,743
Self	10	19	1,345
*May change after Intake			
ETHNICITY (IF KNOWN) AT INTAKE			
American Indian/Alaska Native	0	0	39
Asian/Asian Indian	2	6	120
African American	2	5	165
Hispanic	2	4	216
Native Hawaiian/Pacific Islander	1	2	29
Caucasian	18	64	4,177
Other	0	2	76
Not Reported	0	0	266
CLOSURES			
Successful Completion	18	48	2,038
Failure to Derive Benefit	1	1	122
Failure to Comply	0	4	975
Moved to Another State	0	0	52
Not Accepted by DEC	0	1	59
Voluntary Withdrawal Post-DEC	2	4	335
Voluntary Withdrawal Pre-DEC	6	10	523
Participant Withdrawn-Failure to sign con	0	0	1
Closed Public Risk	5	18	342
No Longer Eligible	0	1	17
Clinically Inappropriate	0	2	32
Client Expired	0	0	40
Sent to Board Pre-DEC	0	1	2
TOTAL CLOSURES	32	90	4,538
NUMBER OF PARTICIPANTS: 423 (as of January 31, 2016)			

BOARD OF REGISTERED NURSING
Intervention/Discipline Committee Meeting
Agenda Item Summary

AGENDA ITEM: 9.3.1

DATE: April 14, 2016

ACTION REQUESTED: Intervention Evaluation Committee Members/ New Appointments & Transfers

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Intervention Evaluation Committees. Each Committee for the Intervention Program is composed of three registered nurses, a physician and a public member with expertise in substance use disorders and/or mental health.

APPOINTMENTS

Below are the names of the candidates who are being recommended for appointment to the Intervention Evaluation Committees (IEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2020.

<u>NAME</u>	<u>TITLE</u>	<u>IEC</u>	<u>NO</u>
Michael S. Parr	Physician Member	North Central (Folsom)	12
Marge A. Meyerhofer	RN Member	Orange County	4
Debra Lloyd	RN Member	Burbank	8

TRANSFERS

For informational purposes, no vote needed.

<u>NAME</u>	<u>TITLE</u>	<u>FROM IEC#</u>	<u>TO IEC#</u>
Alan Abrams, MD	Physician Member	Santa Ana #14	San Diego#10
John Harsany, MD	Physician Member	San Diego #10	Santa Ana #14

NEXT STEP: Continue recruiting efforts.

PERSON TO CONTACT: Don Henry Walker
Intervention Program Manager
(916) 574-7619

BOARD OF REGISTERED NURSING
Intervention/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.4
DATE: April 14, 2016

ACTION REQUESTED: Vote on whether to recommend approval of modified Regulatory Proposal to Modify the Recommended Guidelines for Disciplinary Orders and Conditions of Probation in California Code of Regulations, Article 1, Section 1444.5, Disciplinary Guidelines

REQUESTED BY: Cynthia Klein, RN, Chairperson

BACKGROUND:

The Board of Registered Nursing (BRN) approved a regulatory package to amend the Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Guidelines) at its June 4, 2015 board meeting. The Recommended Guidelines for Disciplinary Orders were last amended in 2003. BRN staff reviewed the Guidelines prior to the overhaul of the board members in 2010 and a regulatory proposal was initiated in March 2011 to incorporate the Uniform Standards as required by SB 1441; however, the board was sunset in December 2011 and the regulatory proposal was not acted upon by the board in time.

The language approved by the board at its June 2015 board meeting was reviewed by a different DCA Legal Counsel who suggested modifying the language. DCA Legal Counsel requests the board consider the following information and choose one of the following options going forward.

(1) Presumption - the board will presume that if a violation involves drugs and/or alcohol, the licensee is a substance abusing licensee, and the uniform standards will be applied. It would be up to the licensee to present evidence to rebut this presumption (most likely, a clinical diagnostic evaluation of some sort).

(2) Clinical diagnostic evaluation - such an evaluation would be ordered by the board if the licensee did not stipulate to being identified as a substance abusing licensee. In order for the standards to apply, the clinician would have to come to the conclusion that the licensee is in fact a substance abusing licensee.

(3) "Hearing" - The AG would have to present evidence at the hearing to establish that the person is a substance abusing licensee. This option is the most onerous and time consuming of the three options.

Staff will provide a recommendation at the April 2016 board meeting.

NEXT STEP: Follow directions given by committee and board.

PERSON TO CONTACT: Stacie Berumen
Assistant Executive Officer
Phone: (916) 574-7600

§1444.5. Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under 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” (10/0203/2016), 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 presence of aggravating factors; the age of the case; or evidentiary ~~problems~~ issues.

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.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1445.51, without deviation, for each individual determined to be a substance-abusing licensee.

Authority cited: Section 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

HISTORY:

1. New section filed 6-17-97; operative 6-17-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment of "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (incorporated by reference) and amendment of section filed 6-14-2000; operative 7-14-2000 (Register 2000, No. 24).
3. Amendment of section and Note filed 4-24-2003; operative 5-24-2003 (Register 2003, No. 17).
4. Amendment of section and Note filed 7-23-2014; operative 7-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 30).

§1444.51. Uniform Standards Related to Substance Abuse.

(a) ~~The board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) [hereafter "Uniform Standards"], which are hereby incorporated by reference. The "Uniform Standards" describe the mandatory conditions that apply to a substance~~

abusing licensee, except that the board may impose more restrictive conditions if necessary to protect the public.

(b) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the board finds that the evidence proves that an individual is a substance abusing licensee for the purposes of section 315 of the code, then all relevant terms and conditions contained in the Disciplinary Guidelines and the “Uniform Standards” shall apply as written and be used in the order placing the licensee on probation.

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the government Code (commencing with Sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions in the Standard Language to be Included in Every Probationary Order for Substance-Abusing Licensees contained within the document entitled “Recommended Guidelines for Disciplinary Orders and Conditions of Probation”, revised in March 2016, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) If a licensee signs and agrees to a stipulated settlement he or she must complete a clinical diagnostic evaluation. If the licensee is deemed to be a Substance Abusing licensee he or she will be subject to the Standard Language to be Included in Every Probationary Order for Substance-Abusing Licensees contained within document entitled “Recommended Guidelines for Disciplinary Orders and Conditions of Probation,” revised in March 2016, which are hereby incorporated by reference.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board’s guidelines referenced in Section 1444.5 in any order that the Board determines would provide greater public protection.

Note: Authority cited: Section 2715, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

§1444.5. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under 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” (10/0205/2015), 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 presence of aggravating factors; the age of the case; or evidentiary ~~problems~~ issues.

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.

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HISTORY:

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4. Amendment of section and Note filed 7-23-2014; operative 7-23-2014 pursuant to Government Code section 11343.4(b)(3) (Register 2014, No. 30).

§1444.51. Uniform Standards Related to Substance Abuse.

(a) The board shall also apply, as required, the Department of Consumer Affairs’ Substance Abuse Coordination Committee’s Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) [hereafter “Uniform Standards”], which are hereby incorporated by reference. The “Uniform Standards” describe the mandatory conditions that apply to a substance abusing licensee, except that the board may impose more restrictive conditions if necessary to protect the public.

(b) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the board finds that

the evidence proves that an individual is a substance-abusing licensee for the purposes of section 315 of the code, then all relevant terms and conditions contained in the Disciplinary Guidelines and the “Uniform Standards” shall apply as written and be used in the order placing the licensee on probation.

Note: Authority cited: Section 2715, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 2750, 2759, 2761 and 2762, Business and Professions Code; and Sections 11400.20 and 11425.50(c), Government Code.

DRAFT

APPROVED

State of California

DRAFT

Board of Registered Nursing



**Recommended Guidelines
for
Disciplinary Orders
and
Conditions of Probation**

TABLE OF CONTENTS



	Page Number
Introduction	1
Factors to be Considered	2
Violations and Recommended Actions	3
Other Situations in which Revocation is the Recommended Penalty	42
Cost Recovery for Revocations and Surrenders	43
Drug/Alcohol Rehabilitation Criteria	44
Mitigation Evidence	45
Conditions of Probation and Rationale	46
Listing of Probation Conditions	47
Introductory Language and Standard Probation Conditions / Severability Clause	48
Optional Probation Conditions	24
Suspension of License	27
Recommended Language for Applicants and Reinstatements	28
Time Frames for Petition for Reinstatement and Modification of Penalty	29
Recommended Language for Cost Recovery for Revocations and Surrenders	29
Index of Violations	30
Policy Statement on Denial of Licensure	32

Introduction



In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended with appropriate conditions.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 27.)

Factors to Be Considered



In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

Violations and Recommended Actions



The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-27 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probation order in addition to the conditions listed below:

Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.

Nursing Practice Act



~~2761(a)(1) a.) Incompetence or gross negligence.~~

- ~~• Recommended discipline:
— *Revocation*~~
- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~
- ~~• Condition 19 if patient death occurred.~~

~~2761(a)(1) b.) Incompetence or gross negligence.~~

- ~~— To direct another or to personally falsify and/or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record not pertaining to controlled substances.~~
- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate*~~

~~2761(a)(2) Conviction of practicing medicine without a license.~~

- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~

- ~~2761(a)(3) **Fraudulent advertising:**~~
- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
 - ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~

- ~~2761(a)(4) **Disciplinary action against health care license by another state, government agency, or licensing board:**~~
- ~~• Recommended discipline
— *Revocation or
Revocation stayed with 3 years probation*~~
 - ~~• Minimum conditions of probation:
— *1-13 and others as appropriate*
— *(Discipline to be determined based on guidelines' recommended
discipline for underlying violation(s).)*~~

- ~~2761(a) **Other actions which constitute unprofessional conduct include but are not limited to:**~~
- ~~**Failure to report client abuse to the appropriate agency:**~~
- ~~• Recommended discipline:
— *Revocation*~~
 - ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
 - ~~• Minimum conditions of probation:
— *1-13 and others as appropriate.*~~

~~**Holding oneself out as any of the following without meeting the BRN standards:**~~

- ~~• Nurse practitioner — also a violation of Section 2761(j) and 2835~~
- ~~• Nurse anesthetist — also a violation of Section 2761(j) and 2829~~
- ~~• Certified nurse midwife — also a violation of Section 2761(j)~~
- ~~• Public health nurse — also a violation of Section 2761(j)~~
- ~~• Nurse practitioner with a furnishing number — also a violation of Section 2836.3~~
- ~~• Nurse midwife with a furnishing number — also a violation of Section 2746.51~~
- ~~• Board-listed psychiatric mental health nurse~~
- ~~• Clinical nurse specialist — also a violation of Section 2838~~

- ~~• Minimum discipline:
— *Revocation stayed with 3 years probation.*~~
- ~~• Minimum conditions of probation:
— *1-13 and others as appropriate*~~

- ~~2761 (b) Procuring a certificate by fraud, misrepresentation, or mistake:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation~~
- ~~2761 (c) Involvement in the procurement of or assisting in a criminal abortion.~~
- ~~• Minimum discipline:~~
 - ~~— Revocation stayed with 3 years probation.~~
 - ~~• Minimum conditions of probation:~~
 - ~~1-13 and others as appropriate.~~
- ~~2761 (d) Violating or abetting violation of any section of the Nursing Practice Act.~~
- ~~• Minimum discipline:~~
 - ~~— Revocation stayed with 3 years probation.~~
 - ~~• Minimum conditions of probation:~~
 - ~~1-13 and others as appropriate.~~
- ~~2761 (e) Furnishing false information.~~
- ~~(1) In applying for licensure:~~
- ~~• Minimum discipline:~~
 - ~~— Denial or revocation of license.~~
- ~~(2) In applying for renewal of license:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.~~
 - ~~• Minimum conditions of probation:~~
 - ~~1-13 and others as appropriate.~~
- ~~2761 (f) Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).~~
- ~~• Recommended discipline:~~
 - ~~— Revocation~~
- ~~2761 (g) Impersonating an applicant in an examination:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation~~
- ~~2761 (h) Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing:~~
- ~~• Minimum discipline:~~
 - ~~— Revocation~~
-

~~2761(i) — Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act):~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation:
1-13 and others appropriate.~~

~~2761(j) — Holding oneself out as a nurse practitioner without meeting the BRN standards:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation:
1-13 and others as appropriate.~~

~~2761(k) — Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse:~~

~~————— No evidence of potential or actual patient harm:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation~~
- ~~• Minimum conditions of probation:
1-13 and others as appropriate.~~

~~————— Potential or actual patient harm evidenced:~~

- ~~• Minimum discipline:
Revocation~~

~~2762(a) — Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others:~~

~~————— (1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:~~

- ~~• Minimum discipline:
Revocation.~~

~~————— (2) In cases of first time offense, with documented evidence of an on-going rehabilitation program:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation: *1-19*~~

~~2762(b) — Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired.~~

- ~~• Recommended discipline:~~

~~*Revocation*~~

~~In cases of first time offense with documented evidence of an on-going rehabilitation program:~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation.*~~

- ~~• Minimum conditions of probation: 1-19~~

~~2762(c) — Conviction of a criminal offense involving the prescription, consumption, or self administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs. (See also 2761(f) and 2762 (a), (b) and (c).)~~

~~(1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:~~

- ~~• Minimum discipline:~~

~~*Revocation*~~

~~(2) In cases of first time offense with documented evidence of an on-going rehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation*~~

~~Minimum conditions of probation: 1-19~~

~~(3) In cases where the conviction is for falsification of records pertaining to controlled substances:~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation.*~~

- ~~• Minimum conditions of probation:~~

~~*1-13 and others as appropriate*~~

~~2762(d) — Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with 3 years probation.*~~

- ~~• Minimum conditions of probation: 1-19~~

~~2762(e) — Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances:~~

- ~~• Minimum discipline:
Revocation stayed with 3 years probation.~~
- ~~• Minimum conditions of probation:
1-13 and others as appropriate~~

~~For repeated and similar acts:~~

- ~~• Minimum conditions of probation: *1-19*~~

~~2836.3(c) — Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices:~~

- ~~• Recommended discipline:
Revocation~~
- ~~• Minimum discipline:
Revocation stayed with 3 years probation~~
- ~~Minimum conditions of probation:
1-13 and others as appropriate~~

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>2761(a)(1) Incompetence</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation – License should be suspended for re-education to remediate knowledge deficits prior to returning to practice. The suspension is followed by 3 years probation.</u>	<u>1-13 and others as appropriate</u>
<u>2761(a)(1) Gross Negligence</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(a)(2) Conviction of practicing medicine without a license</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(a)(3) Fraudulent advertising</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	
<u>2761(a)(4) Disciplinary action against health care license by another state, government agency, or licensing board</u>	<u>Revocation or Revocation stayed with 3 years probation</u>	<u>Public Repeval with Costs</u>	<u>1-13 and others as appropriate</u>
<u>2761(a) Failure to report client abuse to the appropriate agency</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(a) Holding oneself out as any of the following without meeting BRN standards:</u> • <u>Nurse Practitioner</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<ul style="list-style-type: none"> • <u>Nurse Anesthetist</u> • <u>Certified Nurse Midwife</u> • <u>Public Health Nurse</u> • <u>Nurse Practitioner with Furnishing Number</u> • <u>Nurse Midwife with Furnishing Number</u> • <u>Clinical Nurse Specialist</u> • <u>Board-listed Psychiatric Mental Health Nurse</u> 			
<u>2761(b) Procuring a certificate by fraud, misrepresentation, or mistake</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2761(c) Involvement in the procurement of or assisting in a criminal abortion</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(d) Violating or abetting violation of any section of the Nursing Practice Act</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	
<u>2761(e) Furnishing false information (Applying for license)</u>	<u>Denial or Revocation of license</u>	<u>Denial or Revocation of license</u>	
<u>2761(e) Furnishing false information (Applying for renewal license)</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>1-13 and others as appropriate</u>
<u>2761(f) Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(g) Impersonating an applicant in an examination</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2761(h) Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2761(i) Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2220) of Chapter 5, Division 2 (Medical Practice Act)</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(j) Holding oneself out as a nurse practitioner without meeting the BRN standards</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2761(k) Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne</u>	<u>Revocation stayed with 3 years probation</u>	<u>Public Repeoval with Costs</u>	<u>1-13 and others as appropriate</u>

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>infectious diseases from licenses or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse (No evidence of potential or actual patient harm)</u>			
<u>2761(k)</u> <u>Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licenses or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse (Potential or actual patient harm evidenced)</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2762(a)</u> <u>Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others (Selling drugs for personal gain or replaced, withheld or substituted drugs on the job)</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2762(a)</u> <u>Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others (First time offense with documented evidence of on-going rehabilitation)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(b)</u> <u>Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired (Multiple incidents)</u>	<u>Revocation</u>	<u>Revocation</u>	
<u>2762(b)</u> <u>Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired (First time offense with documented evidence of on-going rehabilitation)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(c)</u> <u>Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs (Under the influence, withheld or substituted drugs on the job)</u>	<u>Revocation</u>	<u>Revocation</u>	

<u>Nursing Practice Act Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>2762(c) Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs (First time offense with documented evidence of on-going rehabilitation)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(c) Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs (Conviction for falsification of records pertaining to controlled substances)</u>	<u>Revocation stayed with 3 years probation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>2762(d) Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-19</u>
<u>2762(e) Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances</u>	<u>Should match the minimum and/or recommended action of the primary violation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u> <u>For repeated and similar acts: 1-19</u>
<u>2836.3(c) Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>

Additional Business and Professions Code Statutes



- 119(a) Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.
- 119(b) Lending license to any person or knowingly permitting the use thereof by another.
- 119(c) Displaying or representing any license not issued to him/her as being his/her license.
- 119(d) Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.
- 119(e) Knowingly permitting any unlawful use of a license issued to him/her.
- 119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code:
- ~~Recommended discipline for 119(a)-(f):~~
Revocation
 - ~~Minimum discipline:~~
Revocation stayed with 3 years probation
 - ~~Minimum conditions of probation~~
1-13 and others as appropriate
- 125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:
- (a) Allows his/her license to be used by such person.
- (b) Acts as his/her agent or partner.
- ~~Recommended discipline:~~
Revocation
 - ~~Minimum discipline:~~
Revocation stayed with 3 years probation:
 - ~~Minimum conditions of probation~~
1-13 and others as appropriate

~~125.6~~ ~~**Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.**~~

- ~~• Recommended discipline:~~

~~*Revocation*~~

- ~~• Minimum discipline:~~

~~*Revocation stayed with three years probation*~~

- ~~• Minimum conditions of probation:~~

~~*1-13 and others as appropriate.*~~

~~480(a)~~ ~~**Acts Disqualifying Applicant:**~~

~~(See attached Policy Statement on Denial of Licensure.)~~

~~(1) Conviction of a crime.~~

~~(2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or~~

~~(3) Any act which if done by a licensee of the business or profession in question would be grounds for suspension or revocation of license.~~

~~480(c)~~ ~~**Applicant knowingly making a false statement of fact required to be revealed in the application for such license.**~~

- ~~• Recommended discipline for 480(a) and (c):~~

~~*Denial of licensure*~~

~~492~~ ~~**Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.**~~

~~493~~ ~~**The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.**~~

~~496~~ ~~**Subversion of licensing examinations:**~~

- ~~• Recommended discipline:~~

~~*Denial of licensure, actual suspension or revocation.*~~

~~498~~ ~~**Securing license by fraud, deceit, or misrepresentation:**~~

- ~~• Recommended discipline:~~

~~*Denial of licensure, suspension, or revocation.*~~

~~726~~ ~~**Sexual abuse, misconduct, or relations with a patient:**~~

- ~~• Recommended discipline:~~

~~*Revocation*~~

810 (a)(1) — Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

810(a)(2) — Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.

- Recommended discipline:
Revocation
- Minimum discipline:
Revocation stayed with 3 years probation.
- Minimum conditions of probation:
1-13 and others as appropriate.

820 — Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.

- Recommended discipline:
Suspension or revocation

<u>Business and Professions Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
<u>125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:</u> (a) <u>Allows his/her license to be used by such person.</u> (b) <u>Acts as his/her agent or</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>

<u>Business and Professions Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>partner.</u>			
125.6 <u>Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
480(a) <u>Acts Disqualifying Applicant:</u> (1) <u>Conviction of a crime.</u> (2) <u>Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another;</u> <u>or</u> (3) <u>Any act which if done by a licensee of the business or profession in question would be grounds for suspension or revocation of license.</u>	<u>Denial of Licensure</u>		
480(c) <u>Applicant knowingly making a false statement of fact required to be revealed in the application for such license.</u>	<u>Denial of Licensure</u>		
496 <u>Subversion of licensing examinations.</u>	<u>Denial of licensure, or Revocation</u>		
498 <u>Securing license by fraud, deceit, or misrepresentation.</u>	<u>Denial of licensure, or Revocation</u>		
726 <u>Sexual abuse, misconduct, or relations with a patient.</u>	<u>Revocation</u>		
810(a)(1) <u>Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
810(a)(2) <u>Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.</u>	<u>Revocation</u>	<u>Revocation stayed with 3 years probation</u>	<u>1-13 and others as appropriate</u>
820 <u>Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.</u>	<u>Revocation</u>		
821 <u>Failure of the licensee to comply with an order issued under</u>	<u>Revocation</u>		

<u>Business and Professions Code Section</u>	<u>Recommended Discipline</u>	<u>Minimum Discipline</u>	<u>Conditions of Probation</u>
<u>Section 820.</u>			

Other Situations in which Revocation is the Recommended Penalty



1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
2. Violation of the conditions of the Board's Probation Program.
3. Substantiated evidence or convictions of physical abuse and/or sexual offenses.
4. ~~Patient neglect by failure to provide competent nursing care.~~
5. ~~Second~~Subsequent offenses unless the respondent can demonstrate that he/she has been rehabilitated.

Cost Recovery for Revocations and Surrenders



When the order is revocation or surrender, cost recovery should be included as follows:

“If and when respondent’s license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

Drug/Alcohol Rehabilitation Criteria



Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of an appropriate drug/alcohol treatment program (~~a minimum of six (6) months duration~~). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program ~~will~~may include at least the following elements:
 - Chemical-free treatment philosophy
 - Individual and/or group counseling
 - Random, documented biological fluid screening
 - Participation in nurse (or other professionals') support group(s)
 - Education about addictive disease
 - Adherence to a 12-step recovery program philosophy, or equivalent
 - Written documentation of participation in 12-step recovery groups, or equivalent

- For registered nurse licensees, if employed ~~in as a nurse, ing for a minimum of six (6) months~~ with documentation (from the employer) ~~that the employer was aware of the previous drug or alcohol abuse problems. Documentation~~ must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.

- For respondents seeking reinstatement of license, if employed, ~~ment for a minimum of six (6) months with~~ documentation from the employer that while employed, there was no evidence of alcohol or drug use.

Mitigation Evidence



The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) Recent, dated and signed ~~Written~~ statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated and signed letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated and signed performance evaluation(s) from respondent's employer.
- F) Recent, dated and signed ~~physical examination~~ mental health evaluation or assessment report by a licensed physician, nurse practitioner, or physician assistant.
- G) Recent proof of compliance with any board or criminal court orders.
- ⒺH) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.**

Conditions of Probation and Rationale



The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Registered Nursing.

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. Optional conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

Listing of Probation Conditions



STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

- 1) Obey all Laws
- 2) Comply With Board's Probation Program
- 3) Report in Person
- 4) Residency or Practice Outside of State
- 5) Submit Written Reports
- 6) Function as a Registered Nurse
- 7) Employment Approval and Reporting Requirements
- 8) Supervision
- 9) Employment Limitations
- 10) Complete a Nursing Course(s)
- 11) Cost Recovery (Does not apply to Applicants)
- 12) Violation of Probation
- 13) License Surrender

OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

- 14) Physical Examination
- 15) Participate in Treatment/Rehabilitation ~~Program~~ for ~~Chemical Dependence~~
Substance Use Disorder
- ~~16) Participate in Support Groups~~
- ~~16) Abstain From Use of Psychotropic (Mood-Altering) Drugs~~
- ~~17) Submit to Tests and Samples~~
- 18) Mental Health Examination

- 19) Therapy or Counseling Program
- 20) Actual Suspension of License

Introductory Language and Standard Probation Conditions



The following introductory language and all standard probation conditions are to be included in probationary decisions/orders. For applicants, Condition 11, Cost Recovery, does not apply. For licensees, all standard probation conditions apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)



INTRODUCTORY LANGUAGE FOR ALL ORDERS –

IT IS HEREBY ORDERED that Registered Nurse License Number ____ issued to Respondent ____ is revoked. However, the revocation is stayed and respondent is placed on probation for ____ years on the following conditions.

SEVERABILITY CLAUSE –

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

***RATIONALE:** The severability clause is required for all decisions and stipulated agreements where there are Conditions of Probation, in order to avoid the possibility of all probation conditions being repealed upon appeal.*

- (1) **OBEY ALL LAWS** - Respondent shall obey all federal, state including but not limited to the NPA and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence.

To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision; ~~unless previously submitted as part of the licensure application process.~~

CRIMINAL COURT ORDERS: If respondent is under criminal or regulatory agency court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

***RATIONALE:** All licensees are responsible for “abiding by the law” and complying with court orders, should the licensee be subject to court ordered parole or probation. This condition emphasizes the respondent’s responsibility and it provides the Board with a means to take more immediate and severe action if another violation occurs.*

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

***RATIONALE:** Full compliance with conditions of probation demonstrates the respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.*

(3) REPORTING IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings and shall be available by telephone for interviews/contact as directed by the Board or its designated representatives. Respondent must provide the Board a current telephone number at all times.

***RATIONALE:** This provides a means for the Board representatives to make periodic personal assessments of the respondent, to give guidance and direction and to require the respondent to appear before the Board, if necessary.*

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency ~~or~~ and practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board's Probation Program within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

Respondent shall maintain a current license while in a tolled status.

***RATIONALE:** This ensures that respondents may not complete probation without being fully monitored for their term in California. This further assures that the Board is aware of all licensure outside of California as a professional nurse.*

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license active or otherwise and provide proof to the Probation Program.

RATIONALE: *This provides the Board with a mechanism for maintaining communication with the respondent between meetings; gathering pertinent information from the respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies to discipline registered nurses.*

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the competent practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in competent advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has ~~presented sufficient documentation of~~ demonstrated his or her good faith efforts to comply with this condition, ~~and if no other conditions have been violated~~, the Board, in its discretion, may grant an extension of the respondent’s probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

RATIONALE: *This provides the Board with an opportunity to monitor the respondent and determine if he/she can perform the functions and duties of a registered nurse or advanced practitioner in a competent manner. It also prevents the respondent from merely “sitting out” the probation and avoiding the necessity of demonstrating competence and complying with nursing practice related probation conditions.*

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary including orientation, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related ~~reports~~ documents as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any non-nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

A refresher course may be required prior to employment as determined by the Board.

RATIONALE: *This condition allows the Board to determine the appropriateness of a setting for which the respondent will be providing registered nursing services and to obtain reports relative to the respondent’s registered*

nursing competency. If an RN refresher course is assigned it must be completed prior to employment in order to validate clinical competency and protect the consumer.

This condition additionally allows the Board to be informed of any employment, termination, or separation of the respondent from a nursing or other health care related position, e.g., as a licensed vocational nurse, respiratory therapist, certified nursing assistant or home health aide. It includes reporting of employment in health care related services not regulated by the state, e.g., surgical technician or cardiac catheterization technician.

The condition also provides the Board with a mechanism for ensuring that the employer providing nursing or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of ~~supervision and/or collaboration~~ monitoring before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the ~~direct supervision~~ monitoring of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of ~~supervision and/or collaboration~~ monitoring (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of ~~supervision and/or collaboration~~ monitoring may include, but is not limited to the following:

- (a) Maximum - The individual providing ~~supervision and/or collaboration~~ monitoring is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing ~~supervision and/or collaboration~~ monitoring is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing ~~supervision and/or collaboration~~ monitoring has person-to-person communication with respondent at least twice during each shift worked.
- (d) Advanced Practice – Registered nurses functioning in the advanced practice role will have the level of monitoring individualized as approved by the Board.
- ~~(d)~~ Home Health Care - If respondent is approved to work in the home health care setting, the individual providing ~~supervision and/or collaboration~~ monitoring shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing ~~supervision and/or collaboration~~ monitoring as required by the Board during each work day. The individual providing ~~supervision and/or collaboration~~ monitoring shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

RATIONALE: *This allows the Board to require appropriate ~~supervision and/or collaboration~~, to monitor monitoring of the respondent's registered or advanced practice nursing competency and thus protect consumer safety. The level of ~~supervision or need for advanced practice collaboration~~ will be determined by the Board at probation ~~meetings~~.*

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

~~If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work. The maximum hours of work will be defined during the job approval process, additional hours may be approved upon written request by the employer.~~

***RATIONALE:** The condition prevents the respondent from engaging in the practice of registered nursing in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances. If the respondent is working through a private duty or temporary placement arrangement, there is no assurance that the contracting facility or contracting family is aware of the nurse's probation. Home health agencies are licensed by the state, and are staffed by registered nurse supervisors. On a case-by-case basis, respondents may be permitted to provide home care under specified conditions. RNs disciplined by the Board may not teach approved CE courses pursuant to Section 1457(a)(1)(A), Title 16, California Code of Regulations.*

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) assigned by the Board relevant to the practice of registered nursing ~~no later than six months prior to the end of his or her probationary term~~ by the date determined by the Board.

~~Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.~~

***RATIONALE:** This condition permits the Board to require the respondent to remediate deficiencies in knowledge which affected or may affect his/her practice of registered nursing. ~~This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases.~~*

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$ _____. Respondent shall be permitted to pay these costs in a payment plan approved

by the Board, with payments to be completed no later than three months prior to the end of the probation term.

~~If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.~~

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until ~~the accusation or petition has been acted upon by the Board~~ a final decision has been rendered by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

Optional Probation Conditions



(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board ~~shall~~ may request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

***RATIONALE:** This condition permits the Board to require the respondent to obtain appropriate treatment for physical problems/disabilities which could affect registered nursing practice. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse. This condition protects the public if the physical examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the physical examination requirement.*

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE SUBSTANCE USE DISORDER - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved appropriate treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program treatment provider on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program treatment. If a program treatment is not successfully completed within the first nine

months of probation, the Board shall may consider respondent in violation of probation. Respondent shall continue with the recovery plan recommended by the treatment provider(s).

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment within a specified time period, for problems which could affect his/ her registered nursing practice and provides for continued involvement in a support system.*

(16) SUPPORT GROUP ATTENDANCE - Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. ~~If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added.~~ Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment, within a specified time period, for problems which could affect her/his registered nursing practice and provides for continued involvement in a support system. The Board supports the need for participation in an ongoing recovery program for a successful recovery from chemical dependency or substance abuse support groups for treatment of substance use disorder.*

(167) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS -

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

RATIONALE: *Abstinence from mood altering substances (alcohol/ drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.*

(17A) SUBMIT TO TESTS AND SAMPLES - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. ~~The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times.~~ Respondent

~~shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.~~

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, ~~and the Board files a petition to revoke probation or an accusation,~~ the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

There will be no confidentiality in test results. Confirmed positive test results will be immediately reported to the Board, Respondent's employer and worksite monitor, if any.

If respondent fails to participate in a random, biological fluid testing or drug screening program ~~within the specified time frame as directed by the Board,~~ the Board may suspend respondent ~~shall immediately cease~~ from practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

***RATIONALE:** This condition provides documentation that the respondent is substance or chemical free. It provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol, and/or dangerous drugs when the respondent appears to be in violation of the conditions of probation or appears to be under the influence of mood altering substances. This condition protects the public by giving the Board the discretion to suspend respondent from practice based on the use of any substance that is not legally authorized. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the drug screening requirement.*

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board ~~shall~~ may request that the Attorney General's office prepare an accusation or petition to revoke probation. ~~Respondent~~ The Board shall immediately ~~cease suspend Respondent's practice and Respondent~~ may not resume practice until notified by the Board.

During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, ~~respondent~~ the Board shall immediately ~~cease~~ suspend Respondent's practice and Respondent shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the board to require the respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/ or could lead to relapse of a ~~chemical dependency problem~~ substance use disorder. This condition protects the public if the mental health examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the mental health examination requirement.*

(19) THERAPY OR COUNSELING PROGRAM - Respondent, at his/her expense, shall participate in an on-going counseling program by a licensed mental health provider until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

If the counselor identifies issues of concern related to Respondent's ability to practice the counselor shall immediately notify the Board. Further mental health evaluation may be required by the Board.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment and counseling for mental health or ~~chemical dependency problem~~ substance use disorders which could affect her/his nursing practice.*

(20) ACTUAL SUSPENSION OF LICENSE - Respondent is suspended from the practice of registered nursing for ____ months (period of time not to exceed one year) beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *Business and Professions Code Section 2759(c) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.*

It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation, the public may be better protected if the registered nurse is suspended from the practice of nursing.

Recommended Language for Applicants, ~~and~~ Reinstatements and Licensees



In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for licensees, exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

- **Rule-Out Substance Abuse Assessment:** If the examiner conducting the physical and/or mental health evaluation determines that the respondent is dependent upon drugs or alcohol, or has had problem with drugs or alcohol that might reasonably affect the safe practice of nursing, then the respondent must further comply with the following additional terms and conditions of probation:
 - A. Participate in Treatment/Rehabilitation for Substance Use Disorder (condition #15)
 - B. Abstain from Use of Psychotropic (Mood-Altering) Drugs (condition #17)
 - C. Submit to Tests and Samples (condition #17A)
 - D. Therapy or Counseling Program (condition #19)

- **Exam applicants who are placed on probation:**

“The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

- **Endorsement applicants who are placed on probation:**

“The application of respondent _____ licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

- **Reinstatement of licensure with conditions of probation:**

“The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:”

It is important to note that ~~in many cases,~~ petitioners for reinstatement who have not practiced registered nursing in the State Of California for eight years. ~~They~~ must retake the licensing exam before they are eligible for licensure per Section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: “Upon successful completion of the licensure examination, a license shall be issued to respondent.”

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: “The respondent shall enroll in and successfully complete a refresher course that validates clinical competency or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical requirements of the required coursework.”

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.

Time Frames for Petitions for Reinstatement and Modification of Penalty



Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The board may, in its sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

Recommended Language for Cost Recovery for Revocations and Surrenders



When the order is revocation or surrender, cost recovery should be included as follows:

“If and when respondent’s license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

Index of Violations



<u>B & P Code Section</u>	Page Number
2761 (a)(1) Incompetence or Gross Negligence	3
2761 (a)(2) Conviction of Practicing Medicine Without a License	3
2761 (a)(3) Fraudulent Advertising	4
2761 (a)(4) Disciplinary Action by Another State, Government Agency, or Licensing Board	4
2761 (a) Unprofessional Conduct, Including but not Limited to Failure to Report Client Abuse and Holding out as a Certified Practitioner.	4
2761 (b) Procuring a Certificate by Fraud, Misrepresentation or Mistake	5
2761 (c) Involvement in Procurement of or Assisting in Criminal Abortion	5
2761 (d) Nursing Practice Act	5
2761 (e) False information on application for licensure.	5
2761 (f) Conviction of Substantially Related Felony or Offense.	5
2761 (g) Impersonating an Applicant in an Exam	5
2761 (h) Impersonating Another RN	5
2761 (i) Violating or Assisting in the Violation of the Medical Practice Act	6
2761 (j) Holding out as a Nurse Practitioner, Nurse Anesthetist, Nurse Midwife or Public Health Nurse When not Certified.	6
2761 (k) Knowingly Fail to Follow Infection Control Guidelines	6
2762 (a) Illegally Obtain, Possess or Administer Controlled Substances or Dangerous Drugs	6
2762 (b) Abuse of Drugs or Alcohol	7
2762 (c) Criminal Conviction Related to Drugs or Alcohol	7

2762 (d)	Commitment/Confinement by Court for Abuse of Drugs or Alcohol	7
2762 (e)	Falsify Records Pertaining to Controlled Substances or Dangerous Drugs	8
2836.3(c)	Incompetence/Gross Negligence by Nurse Practitioner in Performing Functions Related to Furnishing Drugs or Devices.	8
119 (a)	Display or Possess Invalid or Fraudulent License.	9
119 (b)	Lend License to Another	9
119 (c)	Display License not Issued to Self	9
119 (d)	Failure to Surrender License	9
119 (e)	Knowingly Permit Unlawful use of License	9
119 (f)	Unlawfully Duplicate License	9
125	Conspire with an Unlicensed Person to use License Unlawfully	9
125.6	Refusal to Perform Licensed Activity	10
480 (a)	Acts Disqualifying Applicant	10
480 (c)	False Statement on Application	10
492	Disciplinary Action or Denial Notwithstanding Diversion Program	10
493	Record of Convictions Related to Qualifications, Functions and Duties of Licensee.	10
496	Conduct Which Violates Security of Exam Materials	10
498	Secure a License by Fraud, Deceit, or Misrepresentation	10
726	Sexual Abuse, Misconduct, or Relations with a Patient	10
810 (a)(1)	Present False Insurance Claims	11
810 (a)(2)	Prepare False Insurance Claims	11
820	Inability to Practice due to Mental/Physical Illness	11

**BOARD OF REGISTERED NURSING**

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Ruth Ann Terry, MPH, RN
Executive Officer

POLICY STATEMENT ON DENIAL OF LICENSURE

The California Board of Registered Nursing protects the public by screening applicants for licensure in order to identify potentially unsafe practitioners. Statutory authority for denial of licensure is set out in Business and Professions Code Sections 480-487, 492, 493, 496, 810, 820-828, 2750-2765, and 2795-2797.

The law provides for denial of licensure for crimes or acts which are substantially related to nursing qualifications, functions, or duties. A crime or act meets this criterion if, to a substantial degree, it evidences present or potential unfitness to perform nursing functions in a manner consistent with the public health, safety, or welfare (California Code of Regulations, Section 1444).

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of nursing.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application for license.
- Breach of examination security.

Convictions

The Board considers most convictions involving sex crimes, drug crimes, and crimes of violence to be substantially related to nursing practice. Board regulations list examples of such crimes or acts to include, but not be limited to:

- Conviction of child abuse.
- Violation of Nursing Practice Act.
- Conviction as a mentally disordered sex offender.
- Crime or act involving narcotics, dangerous drugs, or dangerous devices.
- Conviction of assault and/or battery.

Rehabilitation

If the Board determines that an act or crime is substantially related to the practice of nursing, then it is the responsibility of the applicant to present sufficient evidence of rehabilitation.

When considering denial of license, the Board takes into account the following criteria to evaluate the rehabilitation of the applicant. (California Code of Regulations, Section 1445).

1. Nature and severity of the acts or crimes.
2. Additional subsequent acts.
3. Recency of acts or crimes.
4. Compliance with terms of parole, probation, restitution, or other sanctions.
5. Evidence of rehabilitation submitted by applicant.

The Board has developed the following list of suggested evidence of rehabilitation for applicants whose licensure is in question.

It should be noted that the board applies the same denial criteria for applications for interim permits and temporary license as it uses for permanent licensure.

In summary, the Board of Registered Nursing screens applications fairly but cautiously, applying the above criteria. Schools of nursing are encouraged when counseling prospective nursing students to make them aware that there could be potential licensure problems due to serious acts or convictions as described above. In this manner, students have the opportunity to explore other career options prior to investing substantial time in a nursing program if it appears that a prior serious act or conviction may jeopardize licensure due to its substantial relationship to the practice of nursing.

EVIDENCE OF REHABILITATION

At the time of application for licensure, the burden of proof lies with the applicant to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform nursing functions in a manner consistent with public health, safety, and welfare. The following list itemizes types of evidence which the applicant should consider providing to the Board. All items should be mailed directly to the Board by the individual or agency who is providing information about the applicant.

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
2. Letter from applicant describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from nursing program instructors concerning attendance, participation, and performance in nursing program.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the registered nursing profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
10. For endorsement applicants, copies of:
 - a. Formal accusation and determination of other state,
 - b. Copies of evidence presented to other state in order to obtain reinstatement of license or reduction or penalty,
 - c. Terms of probation and evidence of current compliance if currently on probation in another state.

STATUTORY AUTHORITY FOR DENIAL OF LICENSURE

(Summarized Version of Business & Professions Code)

Grounds for Denial

- 480 (a) Board may deny a license on the basis of:
- (1) Conviction of a crime, after time for appeal, irrespective of a subsequent order under Section 1203.4 of the Penal Code.
 - (2) Any act involving dishonesty, fraud or deceit with intent to substantially benefit self or another, or substantially injure another.
 - (3) Any act which is grounds for suspension or revocation of registered nurse's license.
- (b) May not deny license solely on basis of felony conviction if there is certificate of rehabilitation. (Penal Code 4852.01)
- (c) May deny license if applicant knowingly made false statement of fact required in application.

Criteria for Related Crimes Required

- 481 Board must have criteria to assist in considering denial, revocation, suspension of license in order to determine whether a crime or act is substantially related to nursing qualifications, functions, or duties. (BRN criteria specified in Section 1444 of California Code of Regulations).

Criteria for Rehabilitation Required

- 482 Board must have criteria to evaluate rehabilitation when considering (a) denial or (b) suspension or revocation of license. Board must consider all competent evidence of rehabilitation furnished by applicant or licensee. (Section 1445 of California Code of Regulations).

Attestations of Good Moral Character Not Required

- 484 No applicant can be required to submit attestations of good moral character.

Procedure for Board Upon Denial

- 485 Upon denial the Board must (a) serve a statement of issues or (b) notify the applicant of the denial stating the reasons and the right to a hearing. The right to a hearing is waived if a written request is not received within 60 days.

Reapplication After Denial

- 486 Upon denial the Board must inform the applicant of the earliest date for reapplication, state that all competent evidence of rehabilitation will be considered upon reapplication, and send a copy of the criteria for rehabilitation.
- 487 If a hearing is requested it must be conducted within 90 days of request, except for OAH extensions or at applicant's request.
- 492 Successful completion of any diversion program under the Penal Code or successful completion of an alcohol and drug problem assessment program under the Vehicle Code does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.
- 493 The record of the conviction of a crime shall be conclusive evidence of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

Violations of Exam Security

- 496 Board may deny, suspend, revoke, or restrict license on grounds that applicant for licensure subverted or attempted to subvert administration of examination.

REGULATIONS RELATING TO LICENSE DENIAL
(Summarized Version of California Code of Regulations)

1444. Substantial Relationship Criteria

A crime or act is considered substantially related to the practice of nursing if, to a substantial degree, it evidences present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare.

Such acts or crimes include, but are not limited to:

- (a) Conviction of child abuse.
- (b) Violation of Nursing Practice Act.
- (c) Conviction as a mentally disordered sex offender.
- (d) Crime or act involving sale, gift, administration, or furnishing of narcotics, dangerous drugs, or dangerous devices.
- (e) Conviction for assault and/or battery.

1445. Criteria for Rehabilitation

- (a) When considering denial of license, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and his/her present eligibility for a license.
 - (1) Nature and severity of acts or crimes.
 - (2) Evidence of any additional, subsequent acts which also could be considered grounds for denial.
 - (3) Time that has elapsed since commission of acts or crimes.
 - (4) Extent to which applicant has complied with terms of parole, probation, restitution, or other sanctions.
 - (5) Evidence of rehabilitation submitted by applicant.