

BOARD OF REGISTERED NURSING
Administrative Committee
Agenda Item Summary

AGENDA ITEM: 4.0
DATE: January 10, 2017

ACTION REQUESTED: Regulatory Proposal to Modify California Code of Regulations, Article 1, Section 1419, Renewal of License

REQUESTED BY: Michael Jackson, MSN, RN
President, Chairperson, Administrative Committee

BACKGROUND:

The Board is proposing an emergency regulation change that requires successful completion of the fingerprint process of all registered nurses who have not previously been fingerprinted by the Board or for whom a record of the submission of fingerprints no longer exists.

Upon the Board's approval of the proposed changes to the California Code of Regulation Section 1419, the Board will submit the emergency regulation package for review and approval to all the various approving offices within the Department of Consumer Affairs and Business, Consumer Services, and Housing Agency. On or about January 18, 2017, the Board will send a notice to all stakeholders and interested parties announcing the emergency regulation is in process before filing with the Office of Administrative Law (OAL).

By February, the Board will file the emergency regulation package with OAL and they have ten (10) working days in which to approve the emergency regulation package.

NEXT STEPS: If approved by Board, prepare and submit regulation package to DCA, BCSH and OAL

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16 CCR § 1419

§ 1419. Renewal of License.

(a) A renewal application shall be on the form provided by the board, accompanied by the fee specified in Section 1417(a)(3) and required information and filed with the board at its office in Sacramento.

(b) For a license that expires on or after March 1, 2009, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license is grounds for discipline by the board. It shall be certified on the renewal form whether the fingerprints have been submitted. The board shall not renew a license until the board receives from the Department of Justice the results of the renewal applicant's criminal history record check. This requirement is waived if the license is renewed in an inactive status, or the licensee is actively serving in the military outside the country.

(c) As a condition of renewal, an applicant for renewal shall disclose on the renewal form whether, since he or she last renewed his or her license, he or she has been convicted of any violation of the law in this or any other state, the United States or its territories, military court, or other country, omitting traffic infractions under \$1,000 not involving alcohol, dangerous drugs, or a controlled substance.

(d) As a condition of renewal, an applicant for renewal shall disclose on the renewal form whether, since he or she last renewed his or her license, he or she has had a license disciplined by a government agency or other disciplinary body. Discipline includes, but is not limited to, suspension, revocation, voluntary surrender, probation, reprimand, or any other restriction on a license held.

(e) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

Authority cited: Sections 144, 2708.1, 2715, 2761(a)(4) and 2761(f), Business and Professions Code.

Reference: Sections 2715, 2761(f), 2765 and 2811, Business and Professions Code; and Section 11105(b)(10), Penal Code.

FINDING OF EMERGENCY

The Board of Registered Nursing (Board) hereby finds that the adoption of regulations on an emergency basis is required to regulate the practice of nursing in California. The Board specifically finds that these emergency regulations are necessary for the immediate preservation of public health and safety, and general welfare of the citizens of California.

AUTHORITY AND REFERENCE CITATION

Authority cited: Sections 144, 2708.1, 2715, 2761(a)(4) and 2761(f), Business and Professions Code.

Reference: Sections 2715, 2761(f), 2765 and 2811, Business and Professions Code; and Section 11105(b)(10), Penal Code.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

These regulations are being submitted as emergency regulations pursuant to an immediate need to preserve public health and safety, and general welfare of Californians. The current regulation, which was implemented on an emergency basis in 2008, only requires that a license renewal applicant submit fingerprints to the Department of Justice for the purpose of conducting a criminal history background check in order to obtain a renewed license. The regulation is silent regarding the Board's receipt of the results of the criminal history background check. The Board is unable to require, as a condition of licensure renewal, that applicants await the results of the criminal history background check, leaving consumers open to potential harm. This regulation would explicitly require licensees to submit fingerprints and for the results of those fingerprints to be received by the Board in order for a renewed license to be issued.

The Board has been working with the Department of Justice to reconcile the fingerprint records that it has on file to determine how many licensees are missing fingerprint records and how many of those records did not transfer accurately to the Board. Recently, it has become clear as a result of this reconciliation that the number of licensees missing fingerprints on record with the Department of Justice is significant; approximately 4,600 licensees do not have fingerprints on record with the Department of Justice. Licensees are required to sign an affidavit attesting to the fact that they have submitted fingerprints, but given the significant number of licensees that do not have fingerprint records on file with the Department of Justice, it is clear that this has not occurred in all cases.

In addition, the Bureau of State Audits recently released a report about the Board that highlighted the Board's practice of renewing licenses based upon an applicant's signed affidavit that he or she submitted fingerprints to the Department of Justice, without ascertaining from the Department of Justice the results of the criminal history record

check. It is clear from the Bureau's findings that submission of an affidavit is not enough to ensure that licensees have, in fact, submitted fingerprints to the Department of Justice. This regulation is needed to ensure these 4,600 individuals do not have any criminal violations that should prevent them from continuing to practice. If this regulation does not move forward California consumers are at risk of treatment by an unqualified nurse.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board administers and enforces the Nursing Practice Act (Act) and, in doing so, licenses and regulates more than 400,000 nurses. The Board implements regulatory programs and performs a variety of activities to protect consumers. These programs and activities include setting registered nursing educational standards for pre-licensure and advanced practice nursing programs, approving California registered nursing programs, issuing and renewing registered nurse licenses, issuing certificates for advanced practice nurses and public health nurses, taking disciplinary action for violation of the Act, and managing a diversion program for registered nurses whose practice may be impaired due to chemical dependency or mental illness.

In October 2008, emergency regulations were enacted requiring fingerprinting of all licensed registered nurses who were not fingerprinted by the Board prior to 1990. The regulation requires fingerprint submission upon licensure renewal. The change also requires nurses to disclose any criminal convictions or discipline against any health care related license when renewing their license. These regulations have been interpreted to mean that a licensee only needs to submit their fingerprints upon renewal, but is silent on the successful completion of a state and federal level criminal offender record information search.

The Board has been working with the Department of Justice to reconcile what fingerprints are on record with the Department of Justice and which fingerprints are missing. The final results of this reconciliation demonstrated that approximately 4,600 individuals do not have fingerprints on record with the Department of Justice. This gap in criminal background information is due to the Board's inability to require receipt of fingerprint results prior to issuing a renewal to a licensee. The lack of controls that the Board is able to exert over the receipt of fingerprint results was highlighted in the Bureau of State Audits audit report of the Board as a major deficiency.

These emergency regulations would require that not only shall a licensee submit their fingerprints to the Department of Justice, but they shall successfully complete a state and federal level criminal offender record information search, and the Board shall receive the results of such search, prior to the renewal of a license.

Anticipated Benefits of the Proposal

All Californians will benefit from this proposal, as the Board will be ensuring that license renewals moving forward will be contingent upon the successful completion of a state and federal level criminal offender record information search, thus increasing consumer

protection. This requirement will help ensure that licensees are completely qualified to practice nursing throughout California.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Fiscal Impact Estimates

Fiscal impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Section 17561 -17630 Require Reimbursement: None

Business Impact:

The Board has determined that there are no costs directly associated with this regulatory proposal, as it provides clarity to existing law. Some businesses may no longer be able to employ licensees who fail to submit fingerprints in time for the Board to receive the results prior to the renewal deadline.

Impact on Jobs/New Business:

The Board has determined that there are costs directly associated with the submission of fingerprints for a state and federal level criminal offender record information search; however, that requirement is in statute and not in the clarifying regulations. Currently, licensees are statutorily mandated to submit their fingerprints for a criminal record information search, and this clarifying regulation would have no impact on that requirement. In addition, some licensees may lose their ability to work as a licensed professional should they fail to submit their fingerprints in time for the Board to receive the results prior to the renewal deadline.

Cost Impact on Private Person or Business: None

Effect on Housing Costs: None

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AGENDA ITEM: 5.0
DATE: January 10, 2017

ACTION REQUESTED: Regulatory Proposal to Modify California Code of Regulations, Article 5, Section 1456, Continuing Education Courses

REQUESTED BY: Michael Jackson, MSN, RN
President, Chairperson, Administrative Committee

BACKGROUND:

The Board is proposing a regulation change that continuing education courses required as a condition of RN license renewal be evidence based and peer journal reviewed at a level above what is required for initial licensure.

If approved by the Board, the regulation package will be reviewed and approved by the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency prior to being filed with the Office of Administrative Law (OAL). OAL has 30 working days in which to approve a regulation package.

NEXT STEPS: If approved by Board, prepare and submit regulation package to DCA, BCSH and OAL

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16 CCR § 1456

§ 1456. Continuing Education Courses.

The content of all courses of continuing education ~~must~~ shall be relevant to the practice of nursing and ~~must~~ shall:

(a) be evidence-based education and practice that is supported by peer reviewed evidence-based healthcare research publications as it relates to the related to the scientific knowledge and/or technical clinical skills required for the practice of nursing, and/or

(b) evidence-based education and practice be related to direct and/or indirect patient/client care.

(c) ~~Learning experiences are expected~~ shall ~~to enhance the Registered Nurse knowledge, practice, education, administration, and research of the Registered Nurse at a level above the knowledge and education that is required for licensure to improve the health of the public. Courses related to the scientific knowledge for the practice of nursing include basic and advanced courses in the physical, social, and behavioral sciences, as well as advanced nursing in general or specialty areas. Content which includes the application of scientific knowledge to patient care in addition to advanced nursing courses may include courses in related areas, i.e., human sexuality; death, dying, and grief; foreign languages (conversational); therapeutic interpersonal relationship skills; pharmacology; and those related to specialty areas of nursing practice~~

~~Courses in nursing administration, management, education, research, or other functional areas of nursing relating to indirect patient/client care would be acceptable.~~

~~Courses which deal with self-improvement, changes in attitude, financial gain, and those courses designed for lay people are not acceptable for meeting requirements for license renewal.~~

(d) Advanced courses, including but not limited to, interprofessional education, leadership, management, research, education, informatics, safety/risk reduction, population health management, primary care, care across the lifespan, transcultural nursing, psychiatric/mental health care, hospice and palliative care, teamwork and collaboration, quality, legal-ethical issues, nursing practice act, patient-centered care, quality improvement, advanced pharmacology, and other nursing practice related courses may be considered acceptable as determined by the board.