

TITLE 16: BOARD OF REGISTERED NURSING

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Board of Registered Nursing
1747 N. Market Blvd.
Hearing Room, Suite 186
Sacramento, CA 95834
September 9, 2013
10:00 am to 12:00 pm**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on September 9, 2013. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2715 of the Business and Professions Code (B&P Code), and to implement, interpret or make specific Sections 726, 729, 2708, 2750, 2759, 2761, and 2765 of said Code, Section 11425.50 of the Government Code, and Section 44010 of the Education Code, the Board is considering changes to Division 14 of Title 16 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board's highest priority is consumer protection. The primary methods by which the Board achieves this goal are: issuing registered nurse licenses to eligible applicants; investigating complaints against registered nurses and disciplining licensees for violation of the Nursing Practice Act (NPA); monitoring registered nurses whose licenses have been placed on probation; and managing a Diversion Program for registered nurses, whose practice may be impaired due to chemical dependency or mental illness. In order to enhance its disciplinary function and strengthen its Enforcement Program to better achieve its public protection mandate, the Board is proposing the following changes:

Amend Section 1403 - Delegation of Certain Functions

Existing law authorizes the Board to hire an Executive Officer. Existing regulations delegate certain functions to its Executive Officer relative to actions taken in connection with the Administrative Procedures Act. This regulatory proposal would delegate to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license and would require that such approvals be reported to the Board at regularly scheduled Board meetings.

Adopt Section 1441 - Unprofessional Conduct

Existing law authorizes the Board to take disciplinary action against a certified or licensed registered nurse for unprofessional; however, existing regulations do not include a section defining actions that would constitute unprofessional conduct.

The proposed regulatory change would define the following actions as unprofessional conduct:

1. failure to provide lawfully requested records that are under the licensee's control;
2. failure to cooperate and participate in a Board investigation;
3. failure to report to the Board felony or misdemeanor convictions or disciplinary action by another licensing entity; and
4. refusal or failure to comply with a court order mandating the release of records to the Board.

Amend Section 1444.5 - Disciplinary Guidelines

Existing law authorizes the Board to delegate to an Administrative Law Judge (ALJ) authority to conduct a disciplinary hearing and to issue a proposed decision to the Board for its consideration.

Existing regulation requires that an ALJ rendering a proposed decision on Board disciplinary matters take into consideration the Board's Disciplinary Guidelines. The Guidelines specify revocation of license as the disciplinary action for convictions of rape or lewd conduct and for sexual abuse, misconduct, or relations with a patient; however, the ALJ, at his/her discretion, may recommend in the proposed decision that the revocation be stayed and the registered nurse be placed on probation for a specified time and under specified conditions. Upon successful completion of probation, the license is deemed free and clear; no further action is required by the Board or registered nurse.

The proposed amendment would prohibit an ALJ from including a stay of revocation in a case in which there is a finding of fact that the licensee (1) has had "sexual contact," as defined, with a patient, or (2) has committed an act or been convicted of a sex offense. The registered nurse's license would be revoked.

The anticipated benefit of the preceding three proposed regulatory changes is that the Board will be able to more effectively and efficiently process complaints and will be better able to achieve its goal of case resolution within 12 to 18 months of receipt of the initial complaint.

After conducting a review of regulations that are related to or would affect this area, the Board has determined that the regulatory proposal is not 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: There may be minor cost savings due to facilitation of acquisition of records necessary to complete a Board investigation.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulatory proposal affects registered nurses who are involved in a Board complaint and/or investigation.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The proposed regulatory action affects registered nurses who are the subject of proposed Board disciplinary action.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with any disciplinary order imposed by the Board and legal fees, if the individual is represented by legal counsel. The disciplinary order impact varies and could include loss of registered nurse employment income, if the license is revoked, surrendered, or suspended.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the regulatory proposal will not affect small businesses; the regulatory proposal affects individual registered nurses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

This regulatory proposal affects individual registered nurses who may be or are the subject of a Board complaint. The proposed regulations will expedite the disciplinary process, thus enhancing consumer protection. The proposal will not create or eliminate jobs within the State of California; will not create or eliminate existing businesses within the state; will not affect the expansion of businesses currently doing business within the State of California; will not affect worker safety; and do not affect the state’s environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person or by accessing the Board’s website, www.rn.ca.gov/regulations/proposed.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at www.rn.ca.gov/regulations/proposed.