

Agenda Item #10.C.



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: August 25, 2011
TO: Board Members
FROM: Lynne Shively *Lynne Shively*
Licensing Program Manager
SUBJECT: **Proposed Regulatory Action to Implement AB 2699**

The Board of Vocational Nursing and Psychiatric Technicians (Board) staff filed a Notice of Proposed Regulations with the Office of Administrative Law (OAL) on June 10, 2011, to amend the California Code of Regulations, Title 16 by adding sections 2557, 2557.1, 2557.2, 2557.3, 2595, 2595.1, 2595.2 and 2595.3.

The purpose of this regulatory action is to make specific provisions of Assembly Bill 2699, which authorizes the establishment of regulations to allow a health care practitioner, licensed in one or more states, but not in California, to participate in free health care events in California for uninsured or under-insured individuals.

The proposed regulations would implement, interpret, and make specific the provisions of Business and Professions (B&P) Code section 901 by specifying procedures and forms to be used by sponsoring entities and out-of-state practitioners who desire to participate in sponsored events. The Board's highest priority is the protection of the public and these proposed regulations are intended to implement B&P Code section 901 in a manner that will provide the greatest protection for the people of California.

REGULATION HEARING

On August 10, 2011, a public hearing was conducted by the Board in Sacramento. The Board received no written testimony and no one attended the regulator hearing.

RECOMMENDATIONS

1. The Board approve the regulatory proposal to amend Division 25 of Title 16, California Code of Regulations, to add sections 2557, 2557.1, 2557.2 and 2557.3 (VN Regulations); and add sections 2595, 2595.1, 2595.2 and 2595.3 (PT Regulations).
2. Direct staff to submit the rulemaking file to the Department of Consumer Affairs (DCA and to the OAL for final approval; and

3. Authorize the Executive Officer to make non-substantive changes as are required by the Director of the DCA and the OAL.

Attachment A – Specific Language

(9/9/2011)

Attachment A.

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

VOCATIONAL NURSING REGULATIONS

California Code of Regulations, Title 16, Division 25, Chapter 1:

Article 11. Sponsored Health Care Events – Requirements for Exemption

Add Section §2557. Definitions.

For the purposes of section 901 of the Code:

(a) “Community-based organization” means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) “Out-of-state practitioner” means a person who is not licensed in California as a vocational nurse but who holds a current valid and active license or certificate in good standing in another state, district, or territory of the United States to practice.

NOTE: Authority cited: sections 901 and 2854, Business and Professions Code.
Reference: section 901, Business and Professions Code.

Add Section §2557.1. Sponsoring Entity Registration and Recordkeeping Requirements

(a) **Registration.** A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the Board not later than ninety (90) calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsored entity shall register with the Board by submitting to the Board a completed Form 901-A (5/5/11), which is hereby incorporated by reference.

(b) **Determination of Completeness of Form.** The Board may, by resolution, delegate to the Department of Consumer Affairs or its Executive Officer the authority to receive and process Form 901-A (5/5/11) on behalf of the Board. The Board or its delegatee shall inform the sponsoring entity within fifteen (15) calendar days of receipt of Form 901-A (5/5/11), in writing, that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The Board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least thirty (30) days prior to the commencement of the sponsored event.

(c) **Recordkeeping Requirements.** Regardless of where it is located, a sponsoring entity shall maintain, at a physical location in California, a copy of all records required by section 901 of the Code as well as a copy of the authorization for participation issued by the Board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five (5) years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the Board.

(d) **Requirement for Prior Board Approval of Out-of-State Practitioner.** A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsored entity has received written approval from the Board.

(e) **Report.** Within fifteen (15) calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the Board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

(1) The date(s) of the sponsored event;

(2) The location(s) of the sponsored event;

(3) The type(s) and general description of all health care services provided at the sponsored event; and

(4) A list of each out-of-state practitioner granted authorization pursuant to this Article who participated in the sponsored event, along with the license number of that practitioner.

NOTE: Authority: sections 901, 2841.1, and 2854, Business and Professions Code.
Reference: sections 901, Business and Professions Code.

Add Section §2557.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event.

(a) **Request for Authorization to Participate.** An out-of-state practitioner ("applicant") may request authorization from the Board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the Board to provide those services. An applicant shall request authorization by submitting to the Board a completed Form 901-B (5/5/11), which is hereby incorporated by reference, accompanied by a non-refundable, and non-transferrable processing fee of fifty dollars (\$50). The applicant shall also furnish either a full set of fingerprints or submit to a Live Scan process to establish the identity of the applicant and to permit the Board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check. This requirement shall apply only to the first application for authorization that is submitted by the applicant if no more than

four years have passed since the last Request for Authorization, Form 901-B (5/5/11) was received by the Board.

(b) **Response to Request for Authorization to Participate.** Within twenty (20) calendar days of receiving a completed request for authorization, the Board shall notify the sponsoring entity or local government entity administering the sponsored event, whether that request is approved or denied.

(c) **Denial of Request for Authorization to Participate.**

(1) The Board shall deny a request for authorization to participate if:

(A) The submitted Form 901-B (5/5/11) is incomplete and the applicant has not responded within seven (7) calendar days to the Board's request for additional information.

(B) The applicant has not met all of the following educational and experience requirements:

(i) Completion of a course of instruction in vocational or practical nursing in a school accredited by the Board or another United States province, provided that the course completed is substantially equivalent to that prescribed by section 2533 of this chapter.

(ii) Taken the National League for Nursing State Board Test Pool Examination for Practical Nurses or the National Council Licensing Examination for Practical Nurses, and passed said examination with a score equal to or above the minimum passing score required by the Board for said examination.

(C) The applicant has failed to comply with a requirement of this Article or has committed any act that would constitute grounds for denial of an application for licensure by the Board.

(D) The applicant does not possess a current valid license in good standing. The term "good standing" means the applicant:

(i) Has not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency.

(ii) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant's professional conduct or practice, including any voluntary surrender of license.

(iii) Has not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the Board determines constitutes evidence of a pattern of negligence or incompetence.

(E) The Board has not received a criminal history report for the applicant from the California Department of Justice.

(2) The Board may deny a request for authorization to participate if any of the following occurs:

(A) The request is received less than twenty (20) calendar days before the date on which the sponsored event will begin.

(B) The applicant has been previously denied a request for authorization by the Board to participate in a sponsored event.

(C) The applicant has previously had an authorization to participate in a sponsored event terminated by the Board.

(D) The applicant has participated in three (3) or more sponsored events during the twelve (12) month period immediately preceding the current application.

(d) **Appeal of Denial.** An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 2557.3.

NOTE: Authority: sections 144, 901, 2841.1, and 2854, Business and Professions Code. Reference: sections 901, 2859, Business and Professions Code.

Add Section §2557.3. Termination of Authorization and Appeal.

(a) **Grounds for Termination.** The Board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

(1) The out-of-state practitioner has failed to comply with any applicable provision of this Article, or any applicable practice requirement or regulation of the Board.

(2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the Board.

(3) The Board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) **Notice of Termination.** The Board shall provide both the sponsoring entity or a local government entity administering the sponsored event, and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the Board may provide the notice to any representative of the sponsored event on the premises of the event.

(c) **Consequences of Termination.** An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the Board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) **Appeal of Termination.** An out-of-state practitioner may appeal the Board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the Code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act.

(e) **Informal Conference Option.** In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within thirty (30) days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten (10) days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

NOTE: Authority: sections 901, 2841.1, and 2854, Business and Professions Code.
Reference: sections 901, Business and Professions Code.

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

PSYCHIATRIC TECHNICIAN REGULATIONS

California Code of Regulations, Title 16, Division 25, Chapter 2:

Article 10. Sponsored Health Care Events – Requirements for Exemption

Add Section §2595. Definitions.

For the purposes of section 901 of the Code:

(a) “Community-based organization” means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) “Out-of-state practitioner” means a person who is not licensed in California to provide psychiatric technician services but who holds a current valid and active license or certificate in good standing in another state, district, or territory of the United States to provide psychiatric technician services.

NOTE: Authority cited: sections 901 and 4504, Business and Professions Code.
Reference: section 901, Business and Professions Code.

Add Section §2595.1. Sponsoring Entity Registration and Recordkeeping Requirements

(a) **Registration.** A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the Board not later than ninety (90) calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsored entity shall register with the Board by submitting to the Board a completed Form 901-A (5/5/11), which is hereby incorporated by reference.

(b) **Determination of Completeness of Form.** The Board may, by resolution, delegate to the Department of Consumer Affairs or its Executive Officer the authority to receive and process Form 901-A (5/5/11) on behalf of the Board. The Board or its delegatee shall inform the sponsoring entity within fifteen (15) calendar days of receipt of Form 901-A (5/5/11), in writing, that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The Board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least thirty (30) days prior to the commencement of the sponsored event.

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(e) **Informal Conference Option.** In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within thirty (30) days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten (10) days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

NOTE: Authority: sections 901, 4501.1, and 4504, Business and Professions Code.
Reference: sections 901, Business and Professions Code.

(5/5/2011)