

Board of Vocational Nursing and Psychiatric Technicians

FINAL STATEMENT OF REASONS

Hearing Date: May 12, 2009

Subject Matter of Proposed Regulations:

Retroactive Fingerprinting and Disclosure Requirements, Response to Board Inquiries and Fee Changes for the Vocational Nursing (VN) and Psychiatric Technician (PT) Programs.

Sections Affected:

- Amend Sections 2504.1 and 2517.5 (Vocational Nursing Program)
- Amend Sections 2564.1 and 2575.5 (Psychiatric Technician Program)
- Amend Sections 2537 and 2540.6 (Vocational Nursing Program)
- Amend Sections 2590 and 2592.6 (Psychiatric Technician Program)

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein, which is incorporated by reference, is updated as follows:

- Regulation Sections 2517.5 (b) and 2575 (b) were modified to include the phrase “traffic infractions under \$300”.

Specific Purpose: During the February 20, 2009, Board Meeting, the Board was advised that the Board of Registered Nursing (BRN) received testimony on substantially similar regulations identifying concerns with the phrase “traffic infractions under \$300.” After discussion, the Board removed the terms “traffic” and “under \$300” from the proposed regulation, which would be a change from existing emergency regulations.

Subsequent to the Board Meeting, the Board’s Enforcement Division identified major concerns that the aforementioned amendments will significantly change the intent of the regulation. First of all, as revised, licensees may not disclose an infraction that may lead to discovery of a behavior that would warrant investigation. Secondly, licensees may misinterpret the language to mean that they may omit any conviction not involving alcohol, dangerous drugs or controlled substances. Therefore, the licensee might not disclose convictions involving dishonesty, theft, violence, abuse, fraud, sexual misconduct, etc. This is not the intent of the proposed regulations and would leave the Enforcement Division without the information necessary to make effective decisions. Examples of cases the Board has reviewed that would be omitted under the revised language are licensees initially charged with misdemeanors for assault, battery, disturbing the peace, domestic violence, trespassing, and vandalism who had their charges reduced to infractions as a result of plea bargaining. The underlying acts in many

of these cases did not involve alcohol, dangerous drugs, or controlled substances, yet they are substantially related to the vocational nurse and psychiatric technician licenses.

Board staff subsequently learned that the BRN rejected the comments and retained the phrase “traffic infractions under \$300” in its regulatory language. In addition, there is value to being consistent with other DCA agencies on the requirements for disclosure. The fact that the same language is used for all agencies will also make the language more readily understood, particularly for licensees with multiple health care licenses.

The effect of the change is that licensees must report all infractions, excluding only those that are traffic infractions under \$300, which are not related to alcohol or drugs. As originally proposed, no infractions would have been reportable unless they relate to the use of alcohol or drugs.

- Regulation Sections 2537 and 2590 were modified to replace “for licenses that expire on or after July 1, 2009” with “Effective July 1, 2009 ...” and added “If the license is renewed more than 30 days after its expiration, the renewal fee for the current cycle shall be the renewal fee in effect on the date the renewal fee is paid.”

Specific Purpose: Board Staff recently realized that the language in the proposed regulations may inadvertently require a change in prior practice because the regulations state that the new fees shall be applied only “for licenses that expire on or after July 1, 2009”. This language might be interpreted to prevent the Board from assessing the new fee for *delinquent* licensees who renew for the current cycle after July 1, 2009.

In the past, whenever new fees were established, the delinquent licensee was required to pay the fee for the current license cycle in effect on the date the renewal fee is paid. This requirement is critical because the DCA Consumer Affairs System (CAS) automatically generates the renewal notices and fee assessments based upon a set formula. According to the DCA Office of Information Systems (OIS), it would be very costly to reprogram the CAS system to accommodate multiple fee structures based upon different expiration dates. Furthermore, DCA OIS indicates that it would not be able to reprogram the CAS system by the July 1, 2009 effective date.

In addition to the cost, this discrepancy would cause the Board to have separate fee schedules for *delinquent* licenses based upon the expiration date of the license.

The effect of the change is to make it clear that a licensee renewing after July 1, 2009, even if the license expired prior to July 1, will pay the then current renewal fee.

Additionally, to clearly establish the intent of this change, the Board added language to Section 2537 and 2590 to the effect that “If the license is renewed more than 30 days after its expiration, the renewal fee for the current cycle shall be the renewal fee in effect on the date the renewal fee is paid.”

- Regulation Sections 2504.1 (a) and 2564.1 (a) were modified to clarify when the 30 days begin for a licensee to respond to a Board Inquiry.

Specific Purpose: On May 12, 2009, the Board’s regulatory hearing was held to obtain public comment relative to the proposed action. The Board received one comment at the hearing concerning clarification of Sections 2504.1(a) and 2564.1(a) of the proposed language regarding when the 30 days begin for a licensee to respond to a Board inquiry.

The Board accepted this comment and modified the language to reflect that the 30 days begin to run after service of an inquiry. In addition, the Board clarified that the time is measured by calendar days.

On May 22, 2009, the Board adopted the modified regulatory proposal.

On May 22, 2009, a notice of availability of modified text was published. The public comment period ended June 6, 2009. No written comment was received.

Local Mandate

A mandate is not imposed on local agencies or school districts related to the regulations.

Business Impact

The regulations will not have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service. This may generate additional revenue for those vendors.

Consideration of Alternatives

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. As explained in detail above under Updated Information, the one alternative presented would be less effective than the proposed regulations.

Objections or Recommendations/Responses

There were no objections received at the public hearing on May 12, 2009. Only one suggestion was received at the hearing as follows:

Summary Oral Comment #1

Submitted by Ann Lyles, Consultant, California Association of Psychiatric Technicians (CAPT).

Ms. Lyles requested clarification of Sections 2504.1(a) and 2564.1(a) of the proposed language regarding when the 30 days begin for a licensee to respond to a Board inquiry.

Response #1: The Board accepted this comment and modified the language to reflect that the 30 days begin to run after service of an inquiry. In addition, the Board clarified that the time is measured by calendar days.

(6/8/09)

ADDENDUM TO FINAL STATEMENT OF REASONS

Supplemented Updated Information

Non-substantive revisions were made to the text for clarity which required reverting back to the emergency adopted text in Sections 2401.1, 2537 (c) and (d), 2564.1, and 2590 (c) and (d). Revisions were made to the Authority and Reference Notes for Sections 2517.5 and 2575.5.