

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (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:

Date: September 6, 2011

Time: 10:00 a.m.

Board for Professional Engineers & Land Surveyors
2535 Capitol Oaks Drive, 3rd Floor Conference Room
Sacramento, California 95833

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 5, 2011**, or must be received by the Board at the hearing. 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 fifteen (15) days prior to its adoption from the person designated in this Notice as the 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 sections 2854 and 4504 of the Business and Professions (B&P) Code and section 11425.50(e) of the Government Code; and to implement, interpret or make specific sections 315, 315.2, 315.4, 475, 729, 2875, 2876, 2878, 4520, and 4521 of said Code, as well as sections 11400.20, 11400.25.50(e) and 11500 of the Government Code and section 44010 of the Education Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board's highest priority is protection of California consumers. B&P Code sections 2841.1 of the Vocational Nursing (VN) Practice Act and 4501.1 of the Psychiatric Technician (PT) law mandate that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by licensed vocational nurses and psychiatric technicians. The Board is authorized to discipline licensees and applicants who may jeopardize the health, safety and welfare of the consumer.

B&P Code section 2854 (VN) and section 4504 (PT) authorize the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Vocational Nursing Practice Act and the Psychiatric Technicians Law.

Government Code Section 11425.50(e) requires that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

The Board established its Disciplinary Guidelines to facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known. The Guidelines are intended for use by individuals

involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

Amend Sections 2524 (VN) and 2579.10 (PT)

B&P Code section 315 (Senate Bill 1441, Chapter 548, Statutes of 2008) established a Substance Abuse Coordination Committee (SACC) to develop uniform standards for substance-abusing healing arts licensees. In April 2011, the SACC adopted sixteen uniform standards for use by all healing arts boards.

This proposal would amend Section 2514 (VN) and 2579.10 (PT) to incorporate by reference the new guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. 6/20/11) to implement the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees. The proposed amendments will update and clarify the Board’s recommended disciplinary orders and conditions of probation and include non-substantive, technical changes for grammatical and general clean up.

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 Government Code Sections 17500 – 17630 Require 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.

Impact on Jobs/New Businesses: The Board has determined that this proposed regulatory action 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. By way of its impact on the available workforce, the proposed regulatory action only affects relatively few individual licensees who may be unable to practice safely due to substance abuse, who are sex offenders or who have otherwise violated the Board’s laws. It will require individuals found to be substance-abusing to comply with evaluation and testing requirements.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This proposal will only have an impact on licensees or applicants disciplined by the Board.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal affects licensed vocational nurses, licensed psychiatric technicians, and applicants for licensure.

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 or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

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, any document incorporated by reference, 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 Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833 or on the Board's website listed below.

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:

Name: Linda Ruyters, Administrative Analyst
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The backup contact person is:

Name: Marilyn Kimble, Enforcement Program Manager
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Website Access: Materials regarding this proposal can be found at www.bvnpt.ca.gov