



**DRAFT Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
Board Meeting Minutes**

Friday 8/25/2023

<https://youtu.be/dU6JhBIGXBE?si=KUolqssiX0-FWgaU>

DATE: Friday August 25, 2023

BOARD MEMBERS

PRESENT:

- Dr. Mountain, President, Education Member
- Mr. Dierking, Vice President, Public Member
- Ms. Carpenter, Public Member
- Mr. Maxey, Public Member (joined in progress)
- Ms. Moore, Psychiatric Technician Member
- Ms. Brown, Public Member
- Ms. Guzman, Licensed Vocational Nurse Member
- Mr. Hill, Psychiatric Technician Member

STAFF PRESENT:

- Ms. Yamaguchi, Executive Officer
- Mr. Ito, Assistant Executive Officer
- Ms. Wood, Enforcement Chief
- Ms. DeYoung, Supervising Nursing Education Consultant
- Mr. Prouty, Discipline Unit Manager
- Ms. Archibald, Intake and Enhanced Screening Unit Manager
- Mr. Weiler, Probation Unit Manager
- Ms. Brown, Licensing Division Manager
- Mr. Hall, Licensing Division Supervisor
- Dr. Fairchild, Nursing Education Consultant
- Ms. Devila, Nursing Education Consultant
- Ms. Gomez, Nursing Education Consultant
- Ms. Barrett, Nursing Education Consultant
- Dr. Thomson, Nursing Education Consultant
- Mr. Gonzalez, Education Analyst
- Ms. Ball, Administration Analyst

DCA STAFF PRESENT:

- Mr. Swenson, Board General Counsel
- Ms. Schieldge, Board Regulations Counsel (joined in progress)

Agenda Item 1 Call to Order, Roll Call, and Establishment of Quorum

Dr. Mountain called the meeting to order at 9:08 a.m. Dr. Mountain shared housekeeping instructions and information.

Agenda Item 2 Pledge of Allegiance

Ms. Carpenter led the attendees in the Pledge of Allegiance.

Agenda Item 3 Introduction of Board Staff

Ms. Yamaguchi introduced Board staff. General Counsel introduced himself.

Agenda Item 4 Review and Approval – Meeting Minutes for May 18-19, 2023

A. Board Meeting Minutes for May 18, 2023

Motion: To approve the May 18, 2023 Board Meeting Minutes.

Moved/Seconded: Ms. Brown / Mr. Dierking

Board Discussion: None.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried

B. Board Meeting Minutes for May 19, 2023

Motion: To approve the May 19, 2023 Board Meeting Minutes.

Moved/Seconded: Mr. Dierking / Ms. Carpenter

Board Discussion: None.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried.

Agenda Item 5 Fiscal and Budgets Update.

A. Fund Condition and Budget Updates

Nikki Brady, Budget Analyst with the DCA Budget Office verbally walked through the resource documents provided in the meeting materials packet. Highlighting the key takeaways of the current fiscal and budget data provided.

Ms. Yamaguchi asked if the recent salary increases have been factored into the projections. Ms. Milano, a manager in the Budget Office responded no, but all projections include a 3% increase annually to account for salary adjustments.

Agenda Item 6 Education - Recommendation, and Possible Actions.

A. Ms. DeYoung shared a high-level overview of the current state of the division, including but not limited to workload, projects, and staffing. She offered to answer any Member questions on her report.

I. Review, Ratification and Approval of Executive Officer Program Decisions for period from April 11, 2023 to June 27, 2023.

Motion: To approve and ratify the Executive Officer Program Decisions for period from April 11, 2023 to June 27, 2023.

Moved/Second: Mr. Dierking/Mr. Hill.

Board Discussion: None.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried.

B. Reconsideration of Provisional Approval.

I. Cypress College, Psychiatric Technician Program

Ms. Devila had no additional information or edits to the report provided in the meeting materials packet.

Mr. Jaime Ramos, Program Director, shared that the program has implemented new strategies to assist the program in reaching its goals. He feels the program is on the right track and has a solid footing. He thanked Ms. Devila for her assistance.

Motion: To approve the report and adopt the NEC recommendations.

Motion/Second: Ms. Carpenter/Mr. Dierking.

Board Discussion:

Mr. Dierking asked Mr. Ramos if he agreed with the NEC Report and Recommendations. Mr. Ramos responded, yes.

Dr. Mountain thanked Ms. Reiland for the administration's support and for providing the program what it needs to be successful.

Public Comment:

Kathleen Reiland, Vice President, Instruction, Cypress College, shared that the Administration at the college is fully committed to this program, to provide the resources to meet the objectives in Ms. Devila’s report. They too agree with the report and are providing additional release time to the Director to accomplish the recommendations.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried.

II. Healthcare Career College, Vocational Nursing Program

Dr. Thomson had no additional information or edits to the report provided in the meeting materials packet.

Ms. Elizabeth Estrada, Director of Nursing, thanked the NEC for her review. The program has been diligently working on the violations and have corrected three of the four while still working on the fourth item. Everything is slated to be submitted for review no later than the December deadline.

Motion: To approve the report and adopt the NEC recommendations.

Motion/Second: Mr. Hill/Ms. Moore.

Board Discussion:

Dr. Mountain asked Ms. Estrada if she agreed with the report. Ms. Estrada responded with, yes.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried.

III, University of Antelope Valley, Vocational Nursing Program

Ms. Barrett presented on behalf of Ms. De la Rosa, the NEC who created this report. Ms. Barrett had no additional information or edits to the report provided in the meeting materials packet.

Ms. Ahila Muthaiya, Program Director, shared that she reviewed the report and accepts all the recommendations from the NEC. She thanked Ms. de la Rosa for all her support and guidance.

Motion: To approve the report and adopt the NEC recommendations.

Motion/Second: Ms. Moore/Mr. Hill

Board Discussion: None.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried.

C. Education and Practice Committee Report

I, Consideration of Recommendation to Rescind the Program's Pattern of Admission.

a. Unitek College, Hayward, Vocational Nursing Program.

Ms. Gomez has no updates to her submitted report.

Ms. Sophia Brown, Program Director was present with Dr. Janice Holt, Unitek College's National Dean. Ms. Brown thanked the Board for having them and thanks Ms. Gomez for her help and support.

Ms. Brown stated that they were here before the Board to request that the program be allowed to continue to have the rolling starts. She continued to share the changes the program has made since the last Committee meeting.

Ms. Holt shared that the school has taken Ms. Gomez's advice and has been diligently incorporating the recommended changes to the program. She provided statistics as it related to the faculty retention difficulties as shared in the report.

Motion: To approve the report and adopt the NEC recommendations.

Motion/Second: Mr. Dierking/Ms. Carpenter.

Board Discussion:

Dr. Mountain asked Dr. Holt whether the school has a mentorship program for those faculty that were hired as an apprenticeship. Dr. Holt confirmed that the school does have multiple different types of mentorship programs.

Dr. Mountain continued to ask about their pass rates; specifically, if the rates begin to fall, again, what plan is in place to support students being successful taking the NCLEX. Dr. Holt shared their current plan; which includes but is not limited to additional support and assistance from appropriate faculty.

Dr. Mountain asked if the program uses any of the predictor programs. Dr. Holt responded that they do use such a program and included how the program is utilized at this school.

Mr. Dierking asked Ms. Gomez whether the information shared today changed her recommendation. Ms. Gomez confirmed that her report and recommendations do not change and stand as submitted.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Abstain
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Absent

Motion carried.

Agenda Item 7 Executive Officer’s Report.

Ms. Yamaguchi shared a high-level overview of her report that was included in the meeting packet. She highlighted details related to SB 544 and the upcoming Board Sunset Report.

Ms. Yamaguchi thanked board staff for their hard work and dedication.

Ms. Yamaguchi thanked the Board Members for their participation in yesterday’s training day.

Board Discussion:

Dr. Mountain stated for the record, that “cameras on” for online meetings has been a major drain on internet bandwidth, throughout the past few years.

Agenda Item 8 Licensing and Evaluations

A. Ms. S. Brown offered to answer any questions of the members based on the report provided in the meeting packet.

Board Discussion: None

Public Comment: None.

Agenda Item 9

Legislative and Regulations

A. Bill Tracking:

Ms. Yamaguchi shared an update on the current Legislative Session, which is starting to wind down and bills are beginning to be finalized. She continued to share updates on Board specific legislative work plans, including, but not limited to planning for the 2024-2025 session and the Sunset Report, due to the Legislature by January 4, 2024. She highlighted staff workload and expectations as well as how the members are planned to assist and finalize the Sunset Report. Ms. Yamaguchi mentioned that there may be a need for a special meeting to finalize the Sunset Report.

Ms. Yamaguchi continued to share in more detail about the Sunset Report, what to expect, timelines for the report and the hearings, and other key aspects of the report and what the Board can expect.

B.I. & II. Update on rulemakings to readopt emergency regulations and adopt permanent regulations for AB 1536: New School Approval Process

Ms. Schieldge provided an updated status on the re-adoption of emergency regulations in June and the Board's progress on completing the rulemaking package for AB 1536 Certificate of Compliance to make those emergency regulations permanent. Her update included a high-level overview/reminder of the timeline to complete the rulemaking to make the regulations permanent and process in which the Board has been working under. She requested that the staff provide the final rulemaking file as soon as possible to avoid delays that can occur when submitting packages near the end of the calendar year when it typically becomes harder to move packages through internal review at DCA and Agency.

B.III Consideration of Changes to Previously Approved Text and Initiation of a Rulemaking to Amend Title 16 CCR sections 2524 and 2579.10 (Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees).

Ms. Schieldge presented the agenda item materials for this item and read her legal analysis from the memo into the record. She advised that this package was discussed at the May 18th Board meeting; however, following the meeting, Ms. Schieldge noticed that there was a significant policy change as it relates to marijuana use by probationers in the proposed amendments to the Guidelines, therefore, she asked that this change be brought back to the Board members for discussion to ensure the members are aware of it, and are comfortable with the change in policy as it relates to the abstention term in the Disciplinary Guidelines. She reviewed the meeting materials memo regarding the proposed amendments in the Abstention term (No. 21) and related attachments provided in the meeting packet to ensure members were aware of the

purpose of the policy discussion and to give the members an opportunity to ask staff or counsel questions regarding any issues documented in the materials. Ms. Schiedge noted that the two issues to be discussed are whether to allow the use of medicinal marijuana for probationers who are on probation for a substance use disorder or drug related offense, and whether the Board should place any conditions on such use while on probation for the protection of the public.

She noted that Attachment A shows the results of a survey conducted by staff to determine practices for other nursing boards in other states and Attachment B includes examples of abstention terms from other DCA healing arts boards. A review of Attachment B shows that no healing arts boards in the DCA explicitly allow the use of medicinal marijuana while on probation. However, many of the other healing arts boards do have reporting requirements for allowing a substance abusing licensee to be monitored while taking a prescription drug that are not currently reflected in this Board's Disciplinary Guidelines. These include requirements for reporting probation status to the prescriber, quarterly reports from the prescriber to the board that the probationer is safe to practice while taking the drug, a plan for the time-limited use of the drug during the period of probation, and a coordinating physician who is aware of all drugs the probationer is taking. All of these requirements are part of monitoring for safe practice and to ensure the protection of the public. The problem with the Board's current abstention term is that it allows use upon proof of a lawfully prescribed drug without any monitoring or reporting to the prescriber that the respondent is on probation and with no assurances that the respondent is safe to practice while taking the drug. She reviewed the options for amending the Abstention term in Attachment F and recommended that whichever way the Board proceeded to include some reporting and additional monitoring requirements for the protection of the public.

Motion: Approve the proposed regulatory text for Sections 2524 and 2579.10 and incorporated guidelines as provided in Attachments D and E, but replace the proposed text in the "Abstain from Controlled Substances and Alcohol" Term with the text described in Option No 1 in Attachment "F". In addition, submit the approved text as amended to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR sections 2524 and 2579.10.

Motion/Second: Mr. Dierking/Mr. Maxey.

Board Discussion:

Mr. Dierking asked Ms. Schieldge if she was aware of any legal presumptions as far as impairment levels of the drugs in question. She responded that the Board does test for any THC levels but at this time, she has been unable to locate any information as to when someone would be considered impaired, but she would defer to the medical professionals on this Board. In her research, Ms. Schieldge indicated that there appears to be difficulty in setting any acceptable standards because the federal government has determined that marijuana has no legitimate medical purpose and placed it on Schedule I (appeared in 1971), alongside other drugs like cocaine, heroin and LSD. It is illegal under federal law to possess it for testing unless authorized by permit by the DEA and only seven or eight labs are currently testing marijuana to determine whether there is any medical use option that could be considered for policy changes at the federal level. However, no changes in federal law and to the federal scheduling of marijuana has occurred as of today. Also, she noted that there are a lot of different species and varieties of marijuana and her research revealed that the amounts and dosing have not been universally accepted making it challenging for physicians to recommend safe amounts for medical use. However, California made a policy decision in 1996 to declare by initiative that medicinal marijuana has efficacies for certain things like chemotherapy or AIDS and the Board could choose to follow that lead in making its decision on this issue.

Dr. Mountain confirmed that this is for a licensee on probation and raised concerns about a licensee on probation taking a drug while they are likely still working. Ms. Schieldge confirmed that is true that the person on probation would still be in practice but noted that the exception to the abstention term for lawful prescriptions has been universally accepted by most healing arts boards for medical care and treatment. She did note that where the Board's Guidelines differ is in the lack of any current requirements for reporting to the Board and monitoring by the prescriber to ensure safe practice while on probation for a substance abuse disorder, which could mean unfettered use unless or until a DUI occurs or a patient is harmed due to the licensee's impairment. Dr. Mountain clarified that there is no policy in the current Guidelines for the Board to have any communications with prescribers.

Ms. Yamaguchi inquired whether options for the use of medicinal marijuana while on probation could be explored if a case were ever brought before the Board and the Board designated it as a precedential decision. Ms. Schieldge advised that any such standards be included in the Disciplinary Guidelines.

Mr. Swenson agreed that precedential decisions are not intended as a substitute for rulemaking and there are administrative difficulties with administrative law judges accepting or recognizing how a precedential decision should be incorporated into a

proposed decision or considered. He advised that the most effective policy option is to pursue changes through the rulemaking process.

Mr. Dierking confirmed that both recommendations in Attachment F would include monitoring and reporting. He also asked to consider using the requirement to have a single coordinating physician, nurse practitioner or physician assistant to be a specialist in addictive medicine or to consult with a specialist in addictive medicine (see p. 2 of Option 1, Attachment F). Ms. Schieldge explained that it would be an “optional” requirement for ALJs to use in those cases where the ALJs determined that such specialty was warranted. She also noted that the use of “may” in another board’s guidelines document might be considered vague as to when that specialty option would be exercised and recommended using “shall” to avoid clarity problems.

Mr. Maxey asked how this will affect current probationers. Ms. Schieldge confirmed that this language could be used for proposed decisions prospectively not retroactively and only after the regulation is approved by OAL and effective.

Mr. Maxey thanked Ms. Schieldge for her work on this important topic.

Motion/Second: Mr. Dierking/Mr. Maxey.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Absent
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Yes

Motion carried.

B.IV. Discussion and Possible Action to Initiate a Rulemaking to Amend 16 CCR section 2503 (Delegation of Certain Functions)

Ms. Schieldge shared a high-level overview of the technical clean-up needed to correct the current ambiguity and to update the regulation with current practice. She reviewed each recommendation and the problems that needed to be addressed as outlined in the meeting memo and read it into the record.

Motion: Approve the proposed regulatory text for Section 2503 in Attachment A and submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR Section 2503.

Motion/Second: Ms. Moore/Mr. Hill.

Board Discussion:

Mr. Dierking noted he believed that the Legislative history from the bill that enacted the change that the words in the statute should read “Executive Officer” in the law but it appears that a typo occurred. He asked whether this regulatory proposal would change how we do business in the interim. Ms. Schieldge does not believe it will since the Executive Officer resides in the Executive Office. However, this change will help ensure there is no ambiguity as to who resides in that office and that further delegation to the Assistant Executive Officer is permitted if the Executive Officer is absent from the office for any reason.

Public Comment: None.

Member Name	Vote
Dr. Mountain	Yes
Mr. Dierking	Yes
Ms. Brown	Absent
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Yes

Motion carried.

Agenda Item 10 Enforcement

This agenda item was taken out of numerical order and was presented before agenda item 9.

A. Ms. Wood highlighted key points within the Enforcement Division report to ensure that members were made aware of any abnormalities of the report.

B. In the absence of the Enforcement Committee Chair, Member Ms. Moore provided the Enforcement Committee Update. She shared highlights of their committee meeting(s) that had been held since the last full Board Meeting. This included status updates and future projects to be accomplished; these topics have been discussed at previous topics the Board has discussed at previous meetings. She closed her report with an update on Division staffing.

Board Discussion:

Dr. Mountain asked Ms. Wood if she had any thoughts on why there was a spike in cases. Ms. Wood shared that staff believes it is a combination of multiple factors that are being monitored and reviewed to determine if more permanent solutions need to be put into place.

Public Comment: None.

Agenda Item 11 Public Comment on Items Not on the Agenda

Mr. Dierking made a public comment related to the current healthcare worker strike and worker's compensation injuries.

Agenda Item 12 Suggestions for Future Agenda Items

None received.

Agenda Item 13 Closed Session

Motion: This meeting to adjourn at the ending of the closed session.

Motion/Second: Mr. Maxey/ Mr. Dierking.

Board Discussion: None.

Public Comment: None.

Agenda Item 14 Adjourn Meeting

The closed session ended at approximately 12 noon.

Prepared by: _____ Date: _____
Elaine Yamaguchi
Executive Officer

Approved by: _____ Date: _____
Dr. Carel Mountain, Education Member
Board President