

TITLE 16: BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
FINAL STATEMENT OF REASONS

Hearing Date: No hearing was scheduled or requested.

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Sections Affected: Amend Title 16 California Code of Regulations (CCR) sections 2524 and 2579.10.

Updated Information

The Initial Statement of Reasons is included in this rulemaking file. The information contained therein accurately reflects the position of the Board of Vocational Nursing and Psychiatric Technicians (Board) regarding the amendment of the above sections. The Initial Statement of Reasons (ISR) is updated as follows:

After notice and publication of the proposed regulatory language in the Notice Register on April 19, 2024, the 45-day public comment period began on April 19, 2024 and ended on June 4, 2024. The Board received no public comments during the 45-day public comment period.

At the Board's August 2023 meeting, the Board approved proposed language for revisions to the Boards Disciplinary Guidelines (Guidelines) regulatory language at Title 16, California Code of Regulations (CCR) sections 2524 and 2579.10, which incorporate the Guidelines by reference. The Board directed staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for a 45-day public comment period, setting the proposed language for a public hearing if requested, and authorizing the Executive Officer to make any non-substantive changes to the rulemaking package and, if no adverse comments were received, to adopt the proposed text as noticed.

The Board did not receive a request to hold a hearing on this rulemaking or any public comments. As a result, the text has been adopted as originally noticed and directed by the Board at its August 2023 Board meeting.

The Board filed the final rulemaking package with the Office of Administrative Law (Office) on July 2, 2024. After review by the Office, the Board is making the following additional changes to address concerns raised by the Office:

- 1) Minor technical changes that would not alter any right, responsibility of duty of any person affected by the proposed regulations to correct grammar, punctuation, and errors in underline and strikethrough to properly show existing text in the Guidelines document and show added text in the title of the proposed text at CCR section 2579.10 (underline the word “licensees” in the title).
- 2) The document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” (Uniform Standards document) published by the Department of Consumer Affairs, Substance Abuse Coordination Committee (SACC) is referenced in the current Guidelines document and the content is replicated throughout the Guidelines in the Uniform Standards terms and conditions section of the Guidelines as mandated by Business and Professions Code (BPC) section 315. However, while the Uniform Standards document content is largely directly stated in the Board’s Uniform Standards sections of the Guidelines, there are two areas where the Board has incorporated the SACC’s standards by reference only (i.e., by merely referencing or pointing to the document itself): Board Uniform Standards Term No. 25 (existing No. 26) “Submit to Drug Testing,” that incorporates by reference SACC Uniform Standard No.4 and Board Uniform Standards Term No. 30 “Worksite Monitor” (existing No. 31) that incorporates by reference SACC Uniform Standard No. 7. To properly incorporate those SACC standards by reference to the Uniform Standards document, the Board is adding the Uniform Standards document to the rulemaking file and adding the words “incorporated by reference” once at the beginning of the document where it is first mentioned in the Guidelines.
- 3) The references in the Guidelines to the “Revised date” were struck to avoid creating confusion over the differences between that date and the “Effective Date” of the Guidelines. Since the Board necessarily relies on the effective date to determine which version of the Guidelines to apply in each case and not the date the Board proposed revisions to the Guidelines, the revision date is being removed as superfluous. Since the proposed effective date is October 1, 2024 for these changes, that date will be added in all the places where “OAL insert effective date” is referenced in the currently proposed text.
- 4) In this rulemaking, the Board has proposed changes to the Standard Terms of Probation, Term No. 10 (COMPLETION OF EDUCATIONAL COURSE(S)) to add the language relative to Board approval of coursework for a course provider “deemed equivalent by the Board or its designee on a case-by-case basis” and to allow “approval of course providers determined equivalent on a case-by-case basis.” The Board hereby adds the following rationale for

allowing determinations of equivalency on a “case-by-case basis.” The Board needs to allow these determinations to be completed on a case-by-case basis so that the Board’s designee has authority to apply the facts of the case to determine the specific education needed to remediate the conduct.

An example of this could be for a licensee who failed to properly act during an emergency evacuation of a care facility. Currently, the Board’s approved providers in Title 16, California Code of Regulations sections 2540.2(b), 2592.2(b), 2540.3 and 2592.3 do not offer this type of emergency training, as this is not a core duty to nursing. That said, the licensee failed to properly act and put consumers in danger, and they need additional training to ensure consumer safety. In this case, having the licensee take training from the US Department of Homeland Security, FEMA, or a similarly situated state, county or city agency that handles disaster preparedness and response would be the most effective way to help remediate this type of violation.

- 5) On page vi of the proposed text of the Guidelines, the Board adds a new title “Substantially Related Criteria” and the following sentence that states:

The Board may deny, suspend, or revoke a license if the applicant or licensee has been convicted of a crime, professional misconduct, or act that is substantially related to the qualifications, functions, or duties of a vocational nurse or psychiatric technician based on the criteria specified in California Code of Regulations title 16 (CCR), sections 2521 or 2578, as applicable.

BPC sections 141 and 480 all require the crime, misconduct or act to be “substantially related” to the functions, duties or qualifications for the particular license (LVN or PT) for the Board to have jurisdiction to deny, suspend or revoke a license. The specific criteria for determining whether those crimes, conduct are acts are substantially related are listed in CCR sections 2521 and 2578, as applicable. This sentence is therefore being added to ensure adequate notice to the users of these Guidelines to consult these provisions of the Board’s regulations to determine whether the crime, misconduct or act is “substantially related” to the particular LVN or PT profession according to Board regulation to help ensure the legal defensibility of any enforcement action taken by the Board.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Board has determined that the proposed regulations will not affect small businesses. The proposed regulatory action only impacts vocational nurse and psychiatric technician licensees and applicants who are disciplined by the Board for violations of the laws and regulations within its jurisdiction. The Board does not have the authority to take administrative action against a business. The proposed regulatory action only affects vocational nurse and psychiatric technician licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the practice of vocational nurses or psychiatric technicians in California.

Anticipated Benefits

Sections 2524 and 2579.10

This proposal aims to update the Board's "Disciplinary Guidelines and Uniform Standards Related to Substance Abuse" ("Disciplinary Guidelines"; to be retitled to "Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees"), which have not been updated since 2011. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, and strengthen consumer protection.

Updating the Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, and the public by providing a more accurate overview of the Board's processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. These judges will benefit from greater understanding of the various nuances of the Board's enforcement provisions and will help improve the consistency of penalties for violations of the Board's laws and regulations. This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and terms and conditions of probation, including the Uniform Standards for Substance-Abusing licensees, as applicable.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board's meetings would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board received no public comments related to this rulemaking. Therefore, no reasonable alternatives were presented or considered by the Board.

Incorporation by Reference

The incorporation by reference method was used because it would be impractical and cumbersome to publish the Disciplinary Guidelines in the California Code of Regulations (CCR). The Guidelines are intended to assist administrative law judges, attorneys, licensees, and others involved in the disciplinary process. The Guidelines were developed to establish consistency and impose the most appropriate penalty in administrative disciplinary actions for similar offenses on a statewide basis. They are extensive and have been printed booklet-style. If the Guidelines were incorporated into the CCR, it would increase the size of Division 25 and may cause confusion to the users. The Guidelines were made available to the public and were posted on the Board's website.