

**TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS**

**INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing scheduled.

**Subject Matter of Proposed Regulations:** Delegation of Certain Functions

**Section(s) Affected:** Amend section 2503 of Division 25 of Title 16 of the California Code of Regulations

**Background and Statement of the Problem:**

The Board of Vocational Nursing and Psychiatric Technicians (Board) licenses, regulates, and investigates complaints against licensed vocational nurses and psychiatric technicians in California, totaling approximately 132,199 vocational nurses and 10,922 psychiatric technician licensees pursuant to the provisions of the Vocational Nursing Practice Act (“VN Act” -- Bus. & Prof. Code, §§ 2840 et seq.) and the Psychiatric Technicians Law (“PT Act” -- Bus. & Prof. Code, §§ 4500 et seq.). Protection of the public is the Board’s highest priority in exercising its licensing, regulatory, and disciplinary functions as specified in Business and Professions Code (BPC) sections 2841.1 and 4501.1.

The Board is authorized to establish reasonably necessary rules and regulations to carry out the provisions of the VN and PT Acts in accordance with the Administrative Procedure Act (APA). (Bus. & Prof. Code, §§ 2854 and 4504.)

Existing law at Business and Professions Code (BPC) section 2847.1 provides in part:

(a) Except as provided in subdivision (f), the board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

In 2021, BPC section 2876(b) was enacted by AB 1536 (Stats. 2021, ch. 632) and provides: “The board shall delegate to its executive office the authority **to adopt a decision entered by default** and a stipulation for surrender of a license.” (Emphasis added.) However, Section 2875 is unclear as it does not specify which public officer or officers can perform those delegated tasks in the “Executive Office” and the current regulation does not specify that the authority to adopt decisions rendered by default is a prescribed duty of the Executive Officer. This proposal would resolve that ambiguity by specifically assigning the task to the Board’s Executive Officer, or in the absence of the Executive Officer, the Board’s Assistant Executive Officer.

Changes also need to be made to update the Board's current Executive Officer delegation regulation to better align the duties of its Executive Officer with statutory changes to the Vocational Nursing Practice Act (Act) and conform CCR section 2503 to the Board's current enforcement processes. These amendments include the following:

- (1) Amend Section 2503 to include the delegated duty "to adopt a decision entered by default" to clarify who can exercise this authority on behalf of the Board in the Board's "Executive Office" as set forth in BPC section 2876. The proposed changes would specify that such acts can be performed by the Executive Officer or, in the absence of the Executive Officer, the Assistant Executive Officer. This would resolve the current ambiguity in the statute and conform the text to current Executive Office management positions and duties.
- (2) Repeal the reference to approving settlement agreements for "revocation" of a license, as such discretionary decisions are currently reviewed by the Board members for action and not the Executive Officer. Removal of that reference would conform the regulation to current enforcement processes, as such discretionary decisions are currently decided by the Board members themselves and not the Executive Officer.
- (3) Finally, the Board's prior delegation statute at BPC section 2847 referenced in the current "Note" section of this regulation has been repealed. As a result, the current proposal is to remove that obsolete reference and update the "Note" section to add new authority in the regulation's "reference" section consistent with legislative amendments to BPC sections 2847.1 and 2876.

**Anticipated benefits from this regulatory action:**

The objective of this proposal is to ensure that the Board's regulations accurately reflect the duties delegated to the Board's Executive Officer in compliance with the laws related to the Board's jurisdiction in one convenient location. This helps avoid licensee and staff confusion about who is authorized to make decisions on behalf of the Board involving default decisions and the approval of settlement agreements for the revocation of a license. This helps ensure transparency, legal compliance and accuracy in the Board's operations and a well-informed public.

**Specific purpose of, and rationale for, each adoption, amendment, or repeal:**

1. Amend CCR Section 2503: Add duty to adopt decisions entered by default

A. **Purpose:** This proposal would add the words "to adopt a decision entered by default for the revocation of a license and" to the list of existing duties formally delegated by the Board to its Executive Officer (or in the absence the assistant executive officer). Existing CCR section 2503 already includes authority to approve settlement agreements (synonymous with "stipulations" for the Board's purposes) for the surrender of a license in accordance with BPC section 2876.

B. **Rationale:** Business and Professions Code (BPC) section 2847.1 provides, in part:

(a) Except as provided in subdivision (f), the board shall select an executive officer **who shall perform duties as are delegated by the board** and who shall be responsible to it for the accomplishment of those duties. (Emphasis added.)

To give proper notice of the duties that have been delegated by the Board and to formally delegate its authority, the Board has adopted CCR section 2503, which is intended to contain all current delegations authorized by the Board. This proposal would add the additional duty of adopting decisions entered by default to this section to maintain currency of all delegations in one convenient location.

In addition, in 2021, BPC section 2876(b) was enacted by AB 1536 (Stats. 2021, ch. 632) and provides: “The board shall delegate to its executive office the authority **to adopt a decision entered by default** and a stipulation for surrender of a license.” (Emphasis added.) However, Section 2875 is unclear as it does not specify which public officer or officers can perform those delegated tasks in the “Executive Office” and the current regulation does not specify that the authority to adopt decisions rendered by default is a prescribed duty of the Executive Officer. This proposal would resolve that ambiguity by specifically assigning the task to the Board’s Executive Officer, or in the absence of the Executive Officer, the Board’s Assistant Executive Officer.

2. Amend CCR Section 2503: Repeal reference to “revocation” in the sentence regarding authority to approve settlements for the revocation of a license

A. **Purpose:** This proposal would strike the word “revocation” before “surrender or interim suspension of a license” that would eliminate the existing delegation to approve settlement agreements for the revocation of a license.

B. **Rationale:** This change is necessary to correct an ambiguity in wording that appears to delegate to the Board’s Executive Officer authority to settle cases involving revocation of a license. Since such discretionary decisions are currently reviewed and acted on by the Board members themselves (collectively referred to as the “Board”) and any decision adopting a settlement agreement is signed by the Board’s President, this word is being proposed to be repealed. Removal of this reference is therefore needed to conform the regulation to current enforcement processes and ensure notice to the public that this is not a duty assigned to the Board’s Executive Officer or Assistant Executive Officer.

3. Amend CCR section 2503: Add new statutory sections to the reference section of the “Note”.

A. **Purpose:** This proposal would add new BPC sections 2847.1 and 2876 to the reference section of the “Note”.

B. **Rationale:** This change is necessary to update the current reference to BPC section 2847, which has been repealed. This proposal would remove that obsolete reference and instead add current relevant statutory references to the Board’s authority to delegate duties to its Executive Officer in BPC sections 2847.1 and 2876.

**Underlying Data**

Technical, theoretical, or empirical studies, reports, or documents relied upon:

Agenda, Relevant Meeting Materials and Minutes from the Board’s August 25, 2023 Board meeting.

**Business Impact:**

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

The proposed regulatory changes are administrative in nature and ensure transparency, legal compliance, and accuracy in the Board’s operations. This proposal conforms the regulation regarding the Executive Officer’s duties to current law and Board enforcement-related practices. As a result, the Board does not anticipate that any businesses, including any businesses employing licensed vocational nurses or psychiatric technicians, would be impacted by what the Board considers to be “clean-up” changes to its current Executive Officer delegation regulation.

**Economic Impact Assessment:**

This Board has determined that this regulatory proposal will have the following effects:

It will not create or eliminate jobs within the State of California because the proposed changes are administrative and conform the regulation regarding the Executive Officer’s duties to current law and Board enforcement-related practices.

It will not create new business or eliminate existing businesses within the State of California because the proposed changes relate only to Board administrative duties.

It will not affect the expansion of businesses currently doing business within the State of California because the proposed changes are considered to be a “clean-up” of current regulation, ensuring transparency, accuracy, and legal compliance with current law and Board administrative operations.

This regulatory proposal benefits the health and welfare of California by ensuring that the Board's regulations accurately reflect the Executive Officer's duties, eliminating licensee and staff confusion about who is authorized to make decisions on behalf of the Board involving default decisions and the approval of settlement agreements for the revocation of a license. This helps ensure transparency, legal compliance, and accuracy in the Board's operations and a well-informed public.

This regulatory proposal does not affect worker safety or the state's environment because it does not involve worker safety or the state's environment.

**Specific Technologies or Equipment:**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

**Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however, the Board welcomes comments from the public.