



DRAFT Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
Board Meeting Minutes
 Thursday, 5/18/2023
<https://youtu.be/aJQPe93sOgk>

- DATE:** Thursday May 18, 2023
- BOARD MEMBERS PRESENT:**
- Dr. Mountain, President, Education Member
 - Mr. Dierking, Vice President, Public Member
 - Ms. Carpenter, Public Member
 - Mr. Maxey, Public Member
 - Ms. Moore, Psychiatric Technician Member
 - Ms. Nieblas, Public Member, joined & left in progress
 - Ms. Sonson, Public Member
 - Ms. Brown, Public Member, joined in progress
 - 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 Manager
 - Ms. Brown, Licensing Manager
 - Mr. Hall, Licensing Supervisor
 - Dr. McCleod, Nursing Education Consultant
 - Ms. Silverman, Nursing Education Consultant
 - Ms. dela Rosa, Nursing Education Consultant
 - Ms. Devila, Nursing Education Consultant
 - Ms. Gomez, Nursing Education Consultant
 - Ms. Barrett, Nursing Education Consultant
 - Ms. Thomson, Nursing Education Consultant
 - Mr. Gonzalez, Education Analyst
 - Ms. Maracino, Education Analyst
 - Ms. Dano, Enforcement Analyst
 - Ms. Ball, Administration Analyst
- DCA STAFF PRESENT:**
- Mr. Swenson, Board General Counsel
 - Ms. Schieldge, Board Regulations Counsel

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

Dr. Mountain called the meeting to order at 9:00 a.m. Dr. Mountain shared housekeeping instructions and information. She welcomed our newly appointed member, Ms. Gloria Guzman, appointed March 23, 2023, to the Board. Dr. Mountain invited Ms. Guzman to share an introduction about herself.

Ms. Guzman shared that she is a licensed vocational nurse and is looking forward to serving the on the Board.

Agenda Item 2 Introduction of Board Staff

Ms. Yamaguchi introduced Board staff. Both General and Regulations Counsel introduced themselves.

Agenda Item 3 Legislative and Regulations – Report, Recommendations, and Possible Actions

- A. Ms. Carpenter shared a high-level overview of the first Legislative and Regulations Committee meeting of the year. The meeting included discussion of the current strategic plan as it relates to legislation and regulations, updates from staff on the current bill tracking and updates on regulations packages currently being worked on. SB 544 (Laird) was discussed in more detail as it relates to public meetings; identical to that year's AB 1733 (Quirk) that the Board was in support of. Ms. Carpenter continued to share updates to regulations that the Board has been discussing.
- B. Ms. Yamaguchi shared that unless there were questions or comments on the information shared in the Committee report (3.A.); item 3.B. was covered in the report and need not be discussed further.
- C. Ms. Yamaguchi shared that unless there were questions or comments on the information shared in the Committee report (3.A.); item 3.C. was covered in the report and need not be discussed further.
- D. I. Ms. Schieldge presented an overview of the AB 1536: New School Program Approval Process regulations package, including the intent of the package, the status and the next steps to complete the rulemaking process. She shared details of the current memo provided in the meeting material packet that describes proposed modified text changes for this rulemaking, and included background on the package for newer members. She continued to share additional information and proposed recommendations on his package that are included in the proposed modified language. Ms. Schieldge highlighted specific

pages within the document in the meeting packet to make certain members had a clear understanding of the status of the rulemaking, the need for proposed modifications to the text, and the need for a motion to conclude the current regular rulemaking and adopt the proposed regulations.

Specially, Ms. Schieldge, reported that the Board adopted emergency regulations in June 2022, and those regulations are due to expire on June 28, 2023. The current proposal would propose to adopt those emergency regulations as permanent regulations in a process described as a “Certificate of Compliance.” The proposal before the Board is to make proposed modifications to the text that was originally adopted under emergency rulemaking authority last June. The regular rulemaking was noticed on March 10, 2023; the public comment period ended April 25, 2023 and no public comment was received. However, staff has received informal feedback from applicants who have expressed concerns about certain aspects of the application process while administering the emergency regulations, including an inability to look up and find the narrative statement requirements in the Board’s regulations. As a result, staff are recommending proposed revisions to the currently proposed text. Those proposed modifications have been incorporated in the proposed changes to both the text and forms that are described in the memo to the Board members and provided as attachments to the meeting materials. These changes have been classified mainly as clean-up changes intended to allow for easier comprehension and correcting inconsistencies with existing regulations.

Ms. Schieldge stated that the largest proposed change was to the requirements for submission of a Letter of Intent (LOI). For the benefit of the newer Board members, the LOI process occurs when the proposed school submits a letter of intent to open a new school of vocational nursing or for psychiatric technicians and provides details about the proposed educational program. This LOI process allows staff to understand the scope and depth of each program for the purpose of calculating estimated wait times until active assignment of a nursing education consultant prior to the filing of an initial application under the law. As originally proposed for both school types, the proposed text had the LOI requirements in two places: (1) the 1-page form that collects mainly personal information and identifying information about the program; and (2) written narrative statements required to be provided about essential elements of the program and listed in the regulatory text that were to be included with the 1-page LOI form submission.

Ms. Schieldge indicated that staff have received feedback that applicants are having problems with the requirements for the LOI being in two separate locations and that they have requested that all requirements be placed in one location. Ms. Schieldge shared both verbally and with on-screen visuals those areas in attachments B and D (of this agenda item resource document) to

highlight where proposed language is proposed to be removed from the regulations section and to be moved onto the LOI form (attachment D) to allow applicants to have all the information necessary to complete the LOI in one convenient form. These changes are being requested for applications for both schools for Vocational Nursing and Psychiatric Technicians.

There were a few other additional substantive changes as described in the memo, but the other changes were mainly typographical, and clean-up as described in the memo. The changes are shown in double-underline and double-strikethrough on the attachments to the agenda item memo.

Ms. Schiedge ended her update by notifying the Board that staff will be re-adopting the emergency regulations to allow sufficient time to complete the Office of Administrative Law (OAL – the agency responsible for reviewing and approving state agency regulations) reviews and takes action on this current proposal.

There were no comments or questions from the Board members or from the public.

Motion: Approve the proposed modified text as provided in Attachments B and D and direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations and adopt the proposed regulations at Title 16, California Code of Regulations sections 2525, 2526, 2580, 2581, 2537.2 and 2590.2 as provided in the modified text notice.

Moved/Seconded: Ms. Carpenter / Mr. Dierking

Board Discussion: None.

Public Comment: None.

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

Mr. Maxey	Yes
Ms. Nieblas	Yes

Motion carried unanimously.

Agenda Item 4 Enforcement - Recommendation, and Possible Actions.

- A. Ms. Wood welcomed any comments or questions on the Enforcement Division Report that was provided in the meeting materials packet. She had no updates to the report. She shared an update on cost savings efforts the Division has implemented and how much money they have saved by each opportunity.
- B. I. Mr. Maxey shared that the Board Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees document has not been updated since 2011. At the request of the Committee, staff has made proposed updates to this document. Following review and discussion, the Committee has moved the proposed changes to the full Board for discussion and possible action. Mr. Maxey referred this agenda item to Ms. Schieldge to discuss the proposed changes, the necessary actions to begin the rulemaking process of adopting the proposed changes, and to answer any questions the Board may have on this item.

Ms. Schieldge shared a high-level informational explanation of disciplinary guidelines, the purpose of adopting disciplinary guidelines and how this proposal effects the Board and its decision-making process. She further explained how proposed amendments to the Guidelines are shown in the attached materials: underlined or strikethroughs are proposed changes, and existing language that has no markings is recommended to remain as written. She reiterated that this document has not been updated since 2011 though laws and the Boards regulations have changed so the existing Guidelines have not kept pace with those changes. Therefore, this document is outdated and this document not only needs be updated to reflect changes in laws and regulations but also to address Board policy changes in the Board’s enforcement environment and the current standards for how enforcement cases are handled.

Ms. Schieldge shared that the most significant policy changes include adding new criteria; specifically, aggravation, mitigation and rehabilitation criteria. These include things like the factors used to determine whether a penalty should be increased or decreased and/or what rehabilitation evidence would be considered by the Board in a matter.

Ms. Schieldge also addressed the rehabilitation criteria; specifically bringing to the Board’s attention the proposed added text that includes the criteria to

consider when determining whether the minimum or maximum penalty is issued for any given case. She started on page 55 of the agenda item resource document and directed the Board's attention to that list of criteria. She explained that "Evidence in Aggravation of Penalty" are items identified to consider when determining if the penalty should be increased and asked if there were any concerns regarding that list. She read the proposed list out loud. She continued to explain that the proposed text listing "Evidence in Mitigation of Penalty" are items identified to consider when determining the penalty should be lessened. She read them out loud.

She directed the Board to the list of criteria to address the "Rehabilitation Evidence" proposed text that was added to the Guidelines, which allows applicants and/or licensees to have a better understanding of what the Board is looking for and/or would accept and consider for rehabilitation. These are just examples to be considered but does not guarantee Board acceptance of all listed evidence as showing rehabilitation is proven or completed. She read these options out loud. These are examples, and not meant to be exact and/or cover all options the Board might consider in specific cases. However, this text would help the regulated community understand what the Board is typically looking for and reduce the number of inquiries to staff on this issue.

Ms. Schieldge continued to review the "Model Orders" that have been added to the proposed text. She went through each order and gave additional information about how each one would be used. These model orders help users to write and keep orders consistent. The purpose of these model orders are also to ensure that the intent of the Board is properly reflected in each order that is issued; that discipline proceeds in the manner directed by the Board, and Board is implemented correctly.

Ms. Schieldge shared more sections that have been updated, including the "Uniform Standards"; these standards have been updated based on the Substance Abuse Coordination Committee Standards (most recently updated in 2019), which is a committee charged by law to implement these standards for the healing arts Boards. The Board must follow them exactly as written.

Motion: Approve the proposed regulatory text and incorporated guidelines for Sections 2524 and 2579.10 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 sections 2524 and 2579.10.

Moved/Seconded: Mr. Dierking / Ms. Nieblas

Board Discussion: Mr. Maxey requested confirmation of what action is being requested at this meeting. Ms. Schieldge confirmed that the request is to vote on this item to initiate the rulemaking process and if there is no adverse public comment, staff would proceed as proposed in the motion outlined in the memo unless adverse comments are received.

Dr. Mountain requested clarification on what the proposed updates to “Take and Pass Licensure Examination” (page 40 of meeting packet document) do and/or mean exactly. Ms. Schieldge shared what a Statement of Issues is (issued when there are grounds for denying an application) and the process for reinstating a licensee (under a petition for reinstatement) who has been out of practice to ensure new members and all members were fully aware of what the proposed new text was meant to accomplish. That said, she clarified that this proposed text requires the person writing the order to use the “model language” provided in the Guidelines to ensure consistent orders that implement the Board’s intent. Historically, the Board has seen Administrative Law Judges write the orders so that re-taking and passing the exam is a condition subsequent to issuance or reinstatement (reissuance) of a license. This proposed text and model language will require re-taking and passing the exam to precede the issuance or re-issuance of a license. The intent is to provide proof the applicant or licensee (petition for reinstatement) is competent to hold their license prior to license issuance or re-issuance. These conditions are in proposed text for both applicants and licensees looking for re-instatement. The proposed text also notifies petitioners that they shall not resume practice until they receive written notice from the Board that they have passed the examination to ensure that any potential loopholes on practicing until competency-based evidence is received are addressed and Respondents are on notice that they should not resume practice until written notice is received for the protection of the public.

Ms. Sonson asked how much evidence would be appropriate as it relates to the proposed list of documentation of rehabilitation. Should the Board set a specific minimum number for the types of evidence: submit one, submit two, what is sufficient? Ms. Schieldge confirmed that rehabilitation evidence considerations are based on the facts of each case and the type of violation involved. She recommended not setting an exact number of documents needed to be submitted in regulation as it will vary based upon the violations and facts of the case (example for competency issues, examinations and education obtained may be considered rehabilitative in certain cases). Recognizing that the process can be confusing for individuals, the examples listed can generally help

individuals navigate the process, and help them to determine, based on their specific violations and facts of their case, what may be suitable to submit. These proposed examples are common types of evidence accepted among many other Boards in the Department, but this proposal is tailored to this Board’s regulated professions. Many Boards in the Department have added these lists because they get questions from Respondents about “what types of evidence are you looking for?” This is an attempt to give users a consistent answer to that question, and it adds a resource for staff and the regulated community. The Board would still be permitted to evaluate that evidence and its credibility and determine whether to accept it as proof of complete rehabilitation.

Public Comment: None.

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

Motion carried unanimously.

- B. II. Mr. Maxey shared an update from the Committee on the Enforcement Outreach Plan. Specifically, the planned next public service announcement. The intent of this outreach is to keep licensees from having to participate in the enforcement process. This plan included emails to licensees, updates to the website, and these PSA’s. The script for the PSA on Substance Abuse was provided in the meeting material packet for all members to review. Mr. Maxey welcomed any comment or question on the script. He continued to share the next topics to be addressed via PSA are “Licensees and Enforcement Process” and “Probation: Licensee Roles and Responsibilities”.

Board Discussion: None.

Public Comment: None.

Agenda Item 5

Public Comment on Items Not on the Agenda

Board Discussion: None

Public Comment: None.

Agenda Item 6 Closed Session

Prior to retiring to closed session:

Dr. Mountain made a motion: The Board will convene in closed session pursuant to Government Code section 11126 subdivision (c)(3); the open session will be adjourned prior to retiring to closed session allowing the Board to not return to open session upon the completion of closed session.

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. Sonson	Yes
Ms. Carpenter	Yes
Ms. Guzman	Yes
Ms. Moore	Yes
Mr. Hill	Yes
Mr. Maxey	Yes
Ms. Nieblas	Absent

Motion carried unanimously.

Agenda Item 7 Adjourn Meeting

Dr. Mountain adjourned the open session at 10:13 a.m. Meeting moved to closed session.

Prepared by: _____ Date: _____

Elaine Yamaguchi
Executive Officer

Approved by: _____ Date: _____

Dr. Carel Mountain, Education Member
Board President