

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 25

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Disciplinary Guidelines

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 below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, 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 no later than Tuesday, June 4, 2024**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section(s) 2854 of the Business and Professions Code (BPC) and Section 11425.50(e) of the Government Code, and to implement, interpret, or make specific BPC sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Section 44010 of the Education Code; and Sections 11400.20, 11425.50(e) and 11500 of the Government Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

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., collectively “Practice Acts”). 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.)

The document entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. 6/20/11 – “Disciplinary Guidelines” or “Guidelines”) is used to provide guidance to the Board, Administrative Law Judges (ALJs), and other interested parties in determining the terms and conditions of discipline for licensees found to have committed actions warranting administrative discipline. Existing regulations require (at Title 16, Code of California Regulations (CCR), Sections 2524 and 2579.10) the Board to utilize these disciplinary guidelines. “in reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq. -- APA).” The Disciplinary Guidelines are incorporated by reference as a regulation, and therefore any update to the Disciplinary Guidelines will require an update in regulations as required by law in the APA. The Disciplinary Guidelines were last modified in 2011, and this rulemaking would update the Disciplinary Guidelines to better protect California consumers and ensure consistency in the Board’s enforcement actions.

The Board’s proposal includes the following changes:

- Amend the Title of the document and the proposed text throughout to reflect the title of the Substance Abuse Coordination Committee’s document so that the title would refer to “Uniform Standards Regarding Substance-Abusing Licensees” and update the standards consistent with recent changes made by the Substance Abuse Coordination Committee.
- Add a policy statement to the Introduction indicating that the Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases in which the licensee is found to have committed a violation with an explanation for what cost recovery includes and why cost recovery is an important public policy.
- Reflect changes to California law since the last version of the Guidelines were approved by the Board, including the adoption of Substantially Related Criteria and Rehabilitation Criteria as outlined in 16 CCR sections 2521, 2522, 2578 and 2579, respectively, and as required by Business and Profession Code (Code) sections 480, 481 and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138).
- Change the introductory language for the standard conditions of probation from items that will “generally appear” to items that “should appear in every case” to ensure consistency in implementation of probationary orders.
- Add new factors to be considered when determining whether revocation, suspension or probation should be imposed in a given disciplinary action
- Clarify all conditions with time-based deadlines, such as adding the word “calendar” to a 30-day reporting requirement.

- Change the standard compliance (proposed as “cooperation and compliance”) condition to include requirements for timely responding to Board inquiries, that the licensee on probation submit to the Board the contact information for their criminal probation or parole officer and inform their criminal probation or parole officer that they are being monitored by the Board. Also, makes explicit that failure to timely respond is a violation of probation.
- Change the submission of quarterly written reports standard condition to include that the licensee on probation will submit disclosures that include written disclosures regarding whether Respondent has complied with each term and condition of probation contained in this Decision (“complete report”); and, if applicable, (B) if Respondent discloses they are not in compliance with any term or condition, a written statement regarding why Respondent is not in compliance with any term or condition of probation. Revisions to this condition also makes specific the due dates for the quarterly reports and the allowable methods for delivering such reports. Incomplete written reports or reports submitted or postmarked after the listed reporting dates listed would be considered late and not in compliance with this condition.
- Add new reporting requirements to the standard notice of change in address provision to include reporting within 5 calendar days of the effective date of the Decision, Respondent’s current physical address, mailing address(es), email address, and telephone number(s) to the Board or its designee.
- Change the standard notice of change in practice of residency, practice or licensure outside of the state (condition (would include title change to refer to “tolling”) to ensure that the licensee on probation does not remain tolled for more than two years or it would be considered a violation of probation. Adds new requirement to this section that Respondent shall submit annually, within 30 calendar days of the date requested by the Board or its designee, a written document verifying Respondent’s out-of-state residency, practice or licensure outside of California as specified. Would also specify that periods of residency or practice outside of California do not relieve Respondent of the responsibility to maintain a current and active license, and to comply with the terms and conditions of probation.
- Change the standard meeting with Board representatives’ condition to include proof of identity that includes a current state or federal government-issued photo identification (e.g., driver license, passport, or military identification) to the Board or its designee for examination upon request at any meeting.
- Changes the standard notification to employers’ condition to include notice to the employer of the name, title, telephone number and email address for the Board’s staff person who is Respondent’s probation monitor to ensure that the licensees on probation are informing their current employer as soon as they have been placed on probation.

- Change the employment requirement condition to allow licensees to work with more flexibility, by making the hours needed a 160-hour monthly requirement instead of a 20-hour weekly requirement.
- Change the standard completion of educational coursework condition to mandate that the licensee on probation take a law and ethics class, in addition to any classes deemed necessary to ensure consumer safety. Additional changes were included to ensure that the licensee on probation gave sufficient information to the Board to review and make a decision on whether or not the courses meet the standard for approval. Furthermore, a clarification was made to ensure that the licensee on probation had an understanding that any courses that had not been pre-approved by the Board would not be counted towards fulfillment of the condition.
- Change the standard condition related to maintenance of a current license to ensure that the license is also kept active, and that the licensee pays all fees prior to the license expiration date and that it shall be considered a violation of probation to fail to do so.
- Change the standard cost recovery requirements to align them with the law at Business and Professions Code section 125.3 and the recent cost recovery precedential decisions by the Board.
- Change the standard license surrender condition to include when and how the Board would accept surrender of a license on probation as specified, including considerations of circumstances when the Board would consider not accepting a surrender in the interests of consumer protection.
- Change the standard violation of probation condition to specify that probation may be automatically extended while a Petition to Revoke Probation is pending and has not been acted upon by the Board, and that the original terms and conditions of probation still apply during that extension period.
- Change the optional examination by a physician condition to ensure that the Board is given a release to communicate effectively with the medical practitioner, and that the report contains sufficient information so that the Board can make an informed decision on whether or not to allow the licensee on probation to continue to practice.
- Change the optional psychiatric evaluation condition to ensure that the evaluator is properly licensed and within their scope of practice. Furthermore, changes were made to ensure that the report contains sufficient information so that the Board can make an informed decision on whether or not to allow the licensee on probation to continue to practice.
- Change the optional psychotherapy condition to ensure that the evaluator is properly licensed and within their scope of practice, and to allow for other practitioners who can offer mental health counseling. This will allow the licensees on probation to have more options when choosing a practitioner. Furthermore, the requirement that the licensee on probation share their decision and order and accusation with the practitioner helps ensure that the practitioner has all the

needed information about the licensee on probation to make an informed decision on their ability to practice with safety to the public.

- Change the optional rehabilitation program condition to include in-patient and out-patient options and include recovery programs. This will allow the licensee on probation to have more options when choosing a program.
- Change the optional addictive behavior support group condition to include recovery groups that are facilitated by a mental health professional. Furthermore, changes were made to allow the Board to work with the mental health professional to increase or decrease the attendance requirements, based on the needs of the licensee on probation.
- Change the optional abstain from controlled substances condition to include abstention from alcohol in that condition and remove the separate alcohol condition.
- Change the optional biological fluid condition to a drug and alcohol testing condition. This will ensure that the Board has the flexibility in using other methods of collection so that licensees on probation have flexibility, and consumers are protected.
- Change the optional take and pass the licensure examination condition to ensure that they include information on the reinstatement of a license and the use of the new proposed model orders.
- Update the Violations and Recommended Disciplinary Actions matrix to include specified updates, where applicable, and remove any conditions that were duplicated.
- Add evidence in aggravation of penalty to ensure understanding of what the Board would consider aggravating factors in every case.
- Add evidence in mitigation of penalty to ensure understanding of what the Board would consider mitigating evidence.
- Add rehabilitation evidence to help applicants, petitioners and licensees understand the types of evidence that the Board will consider.
- Add model orders to ensure consistency in the implementation of the Board's probationary orders, and,
- Make other non-substantive, technical clean-up changes including renumbering, punctuation, grammar, and changing gendered pronouns to non-gendered nouns.

Anticipated Benefits of Proposal

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents. 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, provide model orders, and strengthen consumer protection.

The Board anticipates that the updated Disciplinary Guidelines will provide 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. The regulatory proposal will improve the consistency of penalties for violations of the VN and PT Practice Acts and their accompanying regulations.

This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline by clarifying the conditions under which licensees and applicants shall be subject to varying levels of discipline and terms of probation.

This regulatory proposal does not affect worker safety, or the state's environment as it is unrelated to either one of those issues.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

This proposal would incorporate by reference the document entitled "Disciplinary Guidelines and Uniform Standards Regarding Substance-Abusing Licensees (Rev. OAL Insert Effective Date)". The Disciplinary Guidelines are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR.

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. There is no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency. This proposal does not change the fines for violations, so no additional revenues are anticipated. This proposal provides a more accurate overview of the Board's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Board, the Office of the California Attorney General, and the Administrative Law Judges (ALJs) by outlining relevant and transparent standards directly related to violations outlined in law.

The Board does not anticipate additional workload or costs resulting from the proposed regulations.

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement: None

Mandate Imposed on Local Agencies or School Districts: None.

Significant Effect on Housing Costs (and, if applicable, including any estimated costs of compliance or potential benefits of a building standard) None

BUSINESS IMPACT ESTIMATES

The Board has made the 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.

This initial determination is based on the following facts/evidence/documents or testimony:

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.

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. The proposed regulations would revise existing disciplinary guidelines but do not change fine amounts. The proposed regulatory action only affects vocational nurses and psychiatric technician licensees and applicants who, through their own conduct, subject themselves to disciplinary action for violations of the laws and 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 and psychiatric technicians in California.

Business Reporting Requirements

The regulatory action requires businesses to file a report with the Board. The regulatory action adds a new quarterly reporting requirement for those probationers who are ordered to abstain from the possession or personal use of a controlled substance or dangerous drug but have been lawfully prescribed a dangerous drug or controlled substance for a bona fide illness or medical condition (see Optional Term No. 21 "Abstain from Controlled Substances and Alcohol"). This new requirement would

require the probationer (respondent) to file a report with the Board prepared by their prescriber containing specified disclosures including:

- (A) the prescriber's name,
- (B) the prescriber's license type and number,
- (C) the medication,
- (D) the dosage,
- (E) the date the medication was prescribed,
- (F) respondent's prognosis,
- (G) the date the medication will no longer be required,
- (H) the effect on respondent's recovery, if any, and,
- (I) if the medication prescribed is considered addictive, a statement regarding whether respondent is safe to practice and any plan for time limited use of the drug.

The new condition of probation would also require a probationer to identify a coordinating physician, nurse practitioner, or physician assistant who shall report to the Board on a quarterly basis the respondent's compliance with this condition.

The Board has determined that it is necessary for the health, safety, or welfare of the people of the State that the regulation apply to businesses. These reports are required to be filed to ensure that all necessary information is provided by respondents to help the Board monitor whether respondent is practicing safely and not impaired for the protection of the public. These reporting requirements are similar to those required by other healing arts boards in the Department for licensees on probation for violations related to the use or possession of drugs or alcohol. As a result, prescribers would be familiar with these disclosures, and therefore should be prepared and able to address these reporting requirements within existing business operations.

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. Although small businesses owned by licensees of the Board may be impacted the Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

Results of Economic Impact Assessment/Analysis Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant

impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

The proposed regulatory action only impacts vocational nurse and psychiatric technician licensees and applicants who, through their own conduct, are subject to disciplinary action for violations of the laws and regulations within the Board's jurisdiction. Therefore, the overall economic impact on businesses and jobs is insignificant. The Board does not have the authority to take administrative action against a business.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents: The Board has determined that updating the Disciplinary Guidelines through this regulatory proposal will benefit the health and welfare of California residents by enhancing the Board's ability to take appropriate action against vocational nurse and psychiatric technician licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the applicable Practice Acts and/or Board regulations. Additionally, this proposal will benefit the assigned Deputy Attorneys General (DAGs), ALJs, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary actions. This regulatory proposal does not affect worker safety and this proposal is not related to the state's environment.

Consideration of Alternatives

In accordance with Government Code section 11346.5, subdivision (a)(13), 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, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2535 Capitol Oaks, Suite 205, Sacramento CA 95833, and to the attention of either of the persons listed under the section "Contact Person" listed below, during the written comment period, or at the hearing if one is scheduled or requested.

Availability of Initial Statement of Reasons and Rulemaking File

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information upon which the proposal is based. This material is contained in the rulemaking file and is

available for public inspection upon request to the contact persons named in this notice.

Text of Proposal

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to upon request from the Board of Vocational Nursing and Psychiatric Technicians at 2535 Capitol Oaks, Suite 205, Sacramento CA 95833.

Availability of Changed or Modified Text

After considering all timely and relevant comments, the Board, upon its own motion or at the request 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 15 days prior to its adoption from the person designated in this Notice as 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.

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: Antoinette Wood
Address: 2535 Capitol Oaks Drive
Suite 205. Sacramento, CA
95833
Telephone No.: (916) 215-5014
Fax No.: (916) 263-7857
E-Mail Address: Antoinette.wood@dca.ca.gov

The backup contact person is:
Name: Jeffery Weiler
Address: 2535 Capitol Oaks Drive
Suite 205. Sacramento, CA
95833

Telephone No.: (916) 263-2042
Fax No.: (916) 263-7857
E-Mail Address: Jeffery.Weiler@dca.ca.gov

Website Access: Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at

https://www.bvnpt.ca.gov/about_us/bvnpt_regulations.shtml.