

TITLE 16. BOARD OF REGISTERED NURSING

Unprofessional Conduct, § 1441 Substantial Relationship Criteria, § 1444 Disciplinary Guidelines, § 1444.5 Criteria for Rehabilitation, § 1445

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing (hereinafter referred to as “Board”) proposes to adopt amended California Code of Regulations, Title 16, Division 14, Article 4, Sections 1441, 1444, 1444.5, and 1445, as described in the Informative Digest found below.

PUBLIC HEARING

The Board will hold one public hearing on the proposed regulations at the following time and location:

DATE: April 22, 2020
TIME: 9:00 a.m.
LOCATION: Board of Registered Nursing
1747 N. Market Blvd.
Pearl Room
Sacramento, CA 95834

At the time and location listed above, any person(s) may present statements or arguments orally or in writing relevant to this proposal. The public hearing will convene at 8:00 a.m. and will remain open until 11:00 a.m., or until no attendees present testimony, whichever occurs first. Representatives of the Board will preside at the hearing. The Board requests persons who wish to speak to please register before the hearing. Prehearing registration is conducted at the location of the hearing from 8:00 a.m. until the hearing commences. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the security desk, located just inside the building’s public entrance. Please be prepared to show photo identification if requested from security. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

NOTICE PERTAINING TO ACCESSIBILITY & REASONABLE ACCOMMODATION

All documents related to this regulation can be made available in alternate format (i.e., Braille, large print, etc.) in accordance with state and federal law. Further, to ensure the public has equal access to all available services and information, the Board will provide disability-related reasonable accommodations upon request. For assistance, please contact Ronnie Whitaker at 916-574-8257 as soon as possible, but no later than 10 business days prior to the scheduled hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service if needed to request reasonable accommodations.

WRITTEN COMMENT PERIOD

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to the Board in either electronic or hard-copy formats.

Written comments may be submitted to

Ronnie Whitaker
1747 N. Market Blvd., Suite 150
Sacramento, CA 95834
Telephone No.: 916-574-8257
Fax No.: 916-574-7700
E-Mail Address: Ronnie.Whitaker@dca.ca.gov

or

Lashonda Shannon
1747 N. Market Blvd., Suite 150
Sacramento, CA 95834
Telephone No.: 916-515-5269
Fax No.: 916-574-7700
E-Mail Address: lashonda.shannon@dca.ca.gov

The written comment period will close at 5:00 PM Pacific Standard Time on April 21, 2020. Only comments received at the Board office by that date and time will be considered.

The Board, upon its own motion or at the instance 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.

Authority and Reference: Pursuant to the authority vested by Sections 480, 481, 482, 488, 493, and 2715 of the Business and Professions Code (Code), and to implement, interpret, or make specific sections 141, 480, 481, 482, 488, and 493 of the Code, the Board is considering amending sections 1441, 1444, 1444.5, and 1445, of Division 14, of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 2715 of the Code authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Nursing Practice Act (NPA). The primary purpose of this proposal is to implement, interpret, and make specific the provisions of sections 141, 480, 481, 482, 488, and 493 of the Code relative to substantial relationship and rehabilitation criteria as required by Assembly Bill 2138 (2018) (AB 2138). The Board also proposes to make clarifying changes to certain regulations.

The Board is proposing the following changes:

Amend Section 1441 – Unprofessional Conduct.

The existing regulation states that failure to provide to the Board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, shall constitute unprofessional conduct in addition to the conduct described in section 2761(a) of the Code.

Amending section 1441 to be applicable to licensees only is necessary because AB 2138 prohibits the Board from requiring an applicant to disclose or furnish documents related to criminal convictions.

Amend Section 1444 – Substantial Relationship Criteria.

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposed regulation also includes specified crimes and conduct that the Board would consider to be substantially related.

Amend section 1444.5 – Disciplinary Guidelines.

The proposed regulation would clarify that the administrative adjudication provisions of the Administrative Procedure Act are applicable when reaching a decision on a disciplinary action.

Amend section 1445 – Criteria for Rehabilitation.

The proposed regulation would clarify that the Board, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The intent of AB 2138 seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. The proposal seeks to conform existing regulations to the requirements of AB 2138, and to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. The Board anticipates that with amended criteria, fewer applicants will undergo an enforcement review, which will speed licensure for applicants who would be required to undergo enforcement review under current regulations. This will likely benefit consumers as it may increase the number of licensed registered nurses. Further, applicants, licensees, potential applicants, and the public will know the specific criteria that the Board will use.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Board anticipates that there may be an increased cost to the state as a result of amending and adopting the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. Although the increase in workload to the Board is anticipated to be absorbable within existing resources, the Board may request additional resources through the annual budget process for additional staff should the workload prove to be greater than anticipated.

Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in state of California.

Cost Impact on Representative Private Person or Business:

The Board estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board estimates that this proposal may affect small businesses, who would have a greater pool of licensed registered nurses from which to hire.

RESULTS OF ECONOMIC IMPACT ASSESMENT/ANALYSIS

The Board has determined that this regulatory proposal may have impacts on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the state of California. Specifically, the proposal may create jobs, new businesses, and expand businesses to the extent that potential licensees were not able to apply previously because of license barriers and now can.

The Board has determined that this proposal may benefit those applicants with a criminal history who apply to the Board for a registered nursing license because they would be more likely to be licensed without restriction at a rate greater than they are now. This may reduce criminal recidivism and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed registered nurses by ensuring those applicants and licensees with criminal convictions or prior discipline are rehabilitated and fit to practice nursing without undue restriction based on past conduct.

The regulatory proposal does not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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 present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned public hearing or during the written comment period, as described above.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person or by accessing the Board's website, www.rn.ca.gov.

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(s) 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 PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Ronnie Whitaker
Address: 1747 N. Market Blvd., Suite 150
Sacramento, CA 95834
Telephone No.: 916-574-8257
Fax No.: 916-574-7700
E-Mail Address: ronnie.whitaker@dca.ca.gov

The backup contact person is:

Name: Lashonda Shannon
Address: 1747 N. Market Blvd., Suite 150
Sacramento, CA 95834
Telephone No.: 916-515-5269
Fax No.: 916-574-7700
E-Mail Address: lashonda.shannon@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.rn.ca.gov.