



MEMORANDUM

DATE	November 5, 2021
TO	Board Members Board of Vocational Nursing and Psychiatric Technicians
FROM	<i>Kristy Schieldge</i> Kristy Schieldge, Attorney IV Department of Consumer Affairs, Legal Affairs Division
SUBJECT	Agenda Item 5: Discussion Regarding Fiduciary Responsibilities, Liabilities, and Governing Laws with Respect to the Fiscal State of the Board

Introduction

The purpose of this agenda item is to inform the Board members about their fiduciary duties and responsibilities under California law for the fiscal management and administration of the Board's fund. The discussion will focus on the duties imposed on all Board members and the Board's Executive Officer and the potential liability associated with noncompliance under California law.

Governing Laws

The Board is authorized pursuant to California's Budget Act (Assembly Bill (AB) 128 (Ch. 21, Stats. 2021) and the Department of Finance to spend money ("expenditures") and incur monetary obligations for specific purposes, for example, to pay for personnel and Attorney General costs ("budgetary appropriation"). A budgetary appropriation for a specific purpose is usually limited by the amount and time during which it may be expended (e.g., the current fiscal year), and the Board's ability to spend money is strictly tied to that appropriation.

Board members, through their Executive Officer, are responsible for ensuring that the Board remains solvent and does not attempt to incur expenditures in excess of the Board's legally authorized budgetary appropriation. California law imposes on state officers, including Board members, the following responsibilities and corresponding liability for failing to meet those responsibilities.

Government Code section 13320 requires every state agency, including the Board, to submit to the Department of Finance:

a complete and detailed budget at such time and in such form as may be prescribed by the department, setting forth all proposed expenditures and estimated revenues for the ensuing fiscal year.

Government Code section 13324 provides:

Every person who incurs any expenditure in excess of the allotments or other provisions of the fiscal year budget as approved by the department or as subsequently changed by or with the approval of the department, is ***liable both personally and on his official bond for the amount of the excess expenditures.*** (Emphasis added.)

Section 32.00 of the Budget Act provides, in pertinent part:

(a) **The officers of the various** departments, **boards**, commissions, and institutions, for whose benefit and support appropriations are made in this act, **are expressly forbidden to make any expenditures in excess of these appropriations.** Any indebtedness attempted to be created against the state in violation of this section shall be null and void, and shall not be allowed by the Controller nor paid out of any state appropriation.

(b) **Any member of a** department, **board**, commission, or institution **who shall vote for any expenditure, or create any indebtedness against the state in excess of the respective appropriations made by this act shall be liable both personally and on the member's official bond for the amount of the indebtedness,** to be recovered in any court of competent jurisdiction by the person or persons, firm, or corporation to which the indebtedness is owing. . . .

(c) Neither subdivision (a) nor (b) applies to the expenditure of moneys to fund continuous appropriations, including appropriations made in the California Constitution, and federal laws mandating the expenditure of funds. (Emphasis added.)

Discussion

Based upon the foregoing, the Board's operations and spending must strictly follow the appropriations approved by the Department of Finance and authorized by the Budget Act.

Under the foregoing authorities, expenditures in excess of the appropriations made in the Budget Act will be disallowed by the State Controller and an action to create such indebtedness would trigger personal liability in the amount of the unauthorized indebtedness for the Board's officers, which include the Board members and its Executive Officer. This would be the legal equivalent of writing a check for which no funds are available. An example

might include voting to settle litigation for a monetary amount in excess of what the Board's fund is authorized to spend or for which the Board does not currently have funds available.

Conclusion

In essence, the Board and its Executive Officer have a responsibility to ensure the Board does not vote for or authorize the spending of money in excess of the amounts authorized by the Budget Act, or for unauthorized purposes.

I will be available at the meeting to answer questions the members may have.