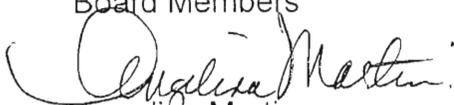


# Addendum: Agenda Item # 10.



STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER GOVERNOR  
**BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**  
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DATE: May 5, 2010  
TO: Board Members  
FROM:   
Angelina Martin  
Enforcement Division Chief  
SUBJECT: Enforcement Report

The following information is an addendum to the Enforcement Report, Section B, Possible Regulatory Action to Implement Elements of the Consumer Protection Enforcement Initiative (CPEI).

On May 5, 2010, the Department of Consumer Affairs' Legal Office emailed a preliminary draft of the proposed amendments (see Attachments A & B).

Enclosures:

- Attachment A – DCA Email dated April 30, 2010 with SB 1111 Reg. Outline
- Attachment B – Draft Proposed Language dated May 4, 2010

(5/5/2010)

ATTACHMENT A



Paul Riches/EXEC/DCANotes

04/30/2010 09:36 AM

To Healing Arts Boards

brian\_stiger@dca.ca.gov@DCANotes, Shayne  
cc Wilson/EXEC/DCANotes@DCANotes,  
kimberly\_kirchmeyer@dca.ca.gov@DCANotes, Bill

bcc

Subject Enforcement Regulations

History:

This message has been forwarded.

Good Morning,

The Department has been reviewing SB 1111 to determine which provisions could be implemented through regulation. Our initial review indicates that many can be adopted as regulations. Attached is a summary document of those provisions. We are requesting that each board place an item on their next agenda for the board to consider authorizing the initiation of a rulemaking to implement these provisions.

The Legal Affairs Division has been working on specific language for particular boards that will be available to serve as a template for each of you use as you see fit. In addition, the legislative office is preparing a stock initial statement of reasons that each board can work from.

Thanks for your help on this. If you have any questions, feel free to get in touch with me.



SB 1111 Regs Outline.doc

Paul Riches  
Deputy Director -- Enforcement and Compliance  
Department of Consumer Affairs  
916-574-8214.

SB 1111 (4/12/2010 version) Proposed Changes through Regulations

Business and Professions Code:

1. **§720.2(b) - Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license:** Permit the Board to delegate to the Executive Officer the authority to adopt a "stipulated settlement" if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement. **Recommend: Amend 16 CCR 1403.**
2. **§720.10 - Revocation for sexual misconduct:** Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. **Recommend: Amend regulations/disciplinary guidelines.**
3. **§720.12 - Denial of application for registered sex offender:** Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. **Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.**
4. **§712.14 - Confidentiality agreements regarding settlements:** Confidentiality agreements regarding settlements can cause delay and thwart a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public. **Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.**
5. **§720.16(d) and (f) - Failure to provide documents and 718 (d) - Failure to comply with court order:** Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records. **Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.**
6. **§720.32 - Psychological or medical evaluation of applicant:** Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice. **Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.**
7. **§726(a) & (b) - Sexual misconduct:** Currently defined in B&P Code §726. **Recommend: Define in regulation that sexual misconduct is unprofessional conduct.**
8. **§737 - Failure to provide information or cooperate in an investigation:** Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation. **Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.**
9. **§802.1 - Failure to report an arrest, conviction, etc.:** Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction. **Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.**



Board of Vocational Nursing and Psychiatric Technicians  
Specific Language of Proposed Changes  
Title 16, California Code of Regulations, Division 25  
5-4-2010 Draft

VOCATIONAL NURSING

1. Amend section 2503 to read as follows:

2503. Delegation of Certain Functions.

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in the absence of the executive officer from the office of the Board, the assistant executive officer.

Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2847, Business and Professions Code.

2. Amend section 2524 to read as follows:

2524. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines", (Rev. 6/19/07), which are hereby incorporated by reference. Deviation from these guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems. Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 729, 2875, 2876 and 2878, Business and Professions Code; Section 44010 of the Education Code; and Sections 11400.20 and 11425.50(e), Government Code.

3. Existing section 2524.1, Consumer Complaint Disclosure, is renumbered to section 2524.5.

4. A new section 2524.1 is added to Article 4 of Division 25 to read as follows:

2524.1. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: 2841.1, 2866, 2876, 2878, and 2878.7

5. Section 2518.8 is added to Article 4 of Division 25 to read as follows:

2518.8. Unprofessional Conduct.

In addition to the conduct described in Section 2878(a) of the Code, "unprofessional conduct" also includes, but is not limited to, the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) 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, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Sections 490, 2841.1 and 2878, Business and Professions Code.

6. Add section 2509 to Article 2 to read as follows:

2509. Evaluation of Applicants.

(a) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.

(b) The report of the evaluation shall be made available to the applicant.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Sections 820, 822, 2841.1, 2866, 2878, 2878.9, and 2879, Business and Professions Code.

PSYCHIATRIC TECHNICIANS

1. Amend section 2563 to read as follows:

2563. Delegation of Certain Functions.

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, in the absence of the executive officer from the office of the Board, the assistant executive officer.

Note: Authority cited: Section 4504, Business and Professions Code. Reference: Section 4503, Business and Professions Code.

2. Amend section 2579.10 to read as follows:

2579.10. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines", (Rev. 6/19/07), which are hereby incorporated by reference. Deviation from these guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems. Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 4504, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 729, 4520 and 4521, Business and Professions Code; Section 44010 of the Education Code; and Sections 11400.20 and 11425.50(e), Government Code.

3. Existing section 2579.11, Consumer Complaint Disclosure, is renumbered to section 2579.20.

4. A new section 2579.11 is added to Article 4 of Division 25 to read as follows:

2579.11. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: 4501.1, 4511, 4521.6, 4522, and 4524.

5. Section 2576.8 is added to Article 4 of Division 25 to read as follows:

2576.8. Unprofessional Conduct.

In addition to the conduct described in Section 4521(a) of the Code, "unprofessional conduct" also includes, but is not limited to, the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) 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, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: Sections 490, 4501.1 and 4521, Business and Professions Code.

6. Add section 2568 to Article 2 to read as follows:

2568. Evaluation of Applicants.

(a) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.

(b) The report of the evaluation shall be made available to the applicant.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: Sections 820, 822, 4501.1, 4511, 4521, 4521.1, 4521.6, and 4522, Business and Professions Code.

