STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: August 13, 2012

TO: Board Members

FROM: Marilyn Kimble
Enforcement Program Manager

SUBJECT: Proposed Regulatory Action to Implement SB 539, Mandatory Reporting Requirements

STATEMENT OF ISSUE

The Board is mandated to protect consumers from licensees who practice in an unsafe, incompetent, or impaired manner. In accordance with Business and Professions Code (Code) Sections 2841.1 and 4501.1, protection of the public shall be the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions.

SB 539 (Price, Chapter 338, Statutes of 2011) amended Sections 2878.1 (VN) and 4521.2 (PT) of the Code by expanding the reporting requirements of employers of licensed vocational nurses (LVNs) and psychiatric technicians (PTs) to include "resignation for cause" under any of the circumstances listed in subdivision (d) of the respective code sections. The statutes were also amended to extend all reporting requirements to employment agencies and nursing registries, by including them within the definition of "employer" and by requiring employment agencies and nursing registries to report when a licensee is rejected from assignment at a health facility or home health care due to the acts that would be cause for suspension or termination as listed in subdivision (d).

The Board must amend its regulations in order to implement these revised mandatory reporting requirements.

BACKGROUND AND SUBJECT REVIEW

Sections 2878.1 (VN) and 4521.2 (PT) of the Code were amended to require employers to report VN and PT resignations for cause; require employment agencies and nursing registries to report VNs and PTs who are rejected from assignment due to acts that would be cause for suspension or termination as listed in subdivision (d); defines "employer" to include employment agencies and nursing registries; and includes "resignation for cause" and "rejection from assignment" among the acts that must be reported directly to the Board.

The acts that would trigger the reporting requirement if they result in a suspension, termination, resignation, or rejection from assignment have not changed and are defined as any of the following:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice vocational nursing / as a psychiatric technician.
(2) Unlawful sale of a controlled substance or other prescription items.
(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
(4) Falsification of medical records.
(5) Gross negligence or incompetence.
(6) Theft from patients or clients, other employees, or the employer.

At its May 11, 2012 Board Meeting, the Board approved draft proposed regulatory language to implement the amendments to sections 2878.1 (VN) and 4521.2 (PT) of the Code and directed staff to prepare a rulemaking file for notice and comment. The notice of proposed regulations was published on August 17, 2012, and a public hearing is scheduled for October 2, 2012.

No Board action is required at this time.

Attachment A – Proposed Regulatory Language

Board of Vocational Nursing and Psychiatric Technicians

PROPOSED LANGUAGE

Vocational Nursing Regulations

2520.5. Employer Mandatory Reporting.

Employers of licensed vocational nurses shall report, in writing, to the Board the rejection from assignment, suspension, ~~or~~ termination, or resignation for cause (as defined in Business and Professions Code Section 2878.1(~~c~~d)) of any licensed vocational nurse in its employ. The resignation for cause provision only applies to a licensed vocational nurse's resignation submitted in lieu of receiving a rejection from assignment, suspension, or termination for cause (as defined in Business and Professions Code Section 2878.1 (d)). An employment agency or nursing registry shall report to the board the rejection from assignment of a licensed vocational nurse by a health facility or home health care provider due to acts that would be cause for suspension or termination (as defined in Business and Professions Code Section 2878.1 (d)). The report shall be made within 30 calendar days from the effective date of the suspension, ~~or~~ termination, or resignation for cause, or, where a licensee was rejected from assignment, within 30 calendar days from the date the health facility or home health care provider first notified the employment agency or nursing registry of the rejection. Failure to make a report to the Board as required under this section shall constitute a violation of Business and Professions Code Section 2878.1.

For purposes of this section, "employer" also includes employment agencies and nursing registries.

Note: Authority cited: Sections 2854, Business and Professions Code. Reference: Sections 2859, 2878, 2878.1, and 2878.5, Business and Professions Code.

2523.2. Violation Classifications.

(a) There shall be three classes of violations:
  (1) Class "A";
  (2) Class "B"; and
  (3) Class "C."

(b) In determining the violation class for licensee violations, the following factors shall be considered:
  (1) Nature and severity of the violation.
  (2) Length of time that has passed since the date of the violation.
  (3) Consequences of the violation, including potential or actual patient harm.
  (4) History of previous violations of the same or similar nature.
  (5) Evidence that the violation was willful.

(c) The fine for each Class "A" violation shall not exceed $10,000 per violation. A Class "A" violation is the failure of an employer to report to the Board, as specified in Section 2520.5, the rejection from assignment, suspension, ~~or~~ termination, or resignation for cause of a licensed vocational nurse.

(d) The fine for each Class "B" violation shall be no less than $1,001 and ~~nor~~ more than $2,500. A Class "B" violation includes:

(1) A violation that results in or could have resultsed in patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure consumer safety. Such violations include but are not limited to patient abandonment and falsifying nursing notes~~.~~;

(2) Any violation that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care. Such violations include, but are not limited to, a violation committed for personal and/or financial gain, or fraud~~.~~;

(3) A minor or technical violation that continues for six months or more in duration; or

(4) A minor or technical violation with one or more Class "C" citations.

(e) The fine for each Class "C" violation shall not exceed $1,000. A Class "C" violation is a minor or technical violation that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care and which continues for less than six months duration. Such violations include but are not limited to practicing with an expired license, precharting, charting errors, or verbal abuse.

(f) Notwithstanding the administrative fine amounts specified in subsections (d) and (e), a Class B or Class C citation may include a fine of no more than $5,000 if one or more of the following circumstances apply:

(1) The cited person has a history of two or more prior citations of the same or similar violations.

(2) The citation involves a violation that has a substantial risk to the health and safety of another person.

(3) The citation involves multiple violations that demonstrate a willful disregard of the law.

(4) The citation involves a violation perpetrated against an elder, disabled, or dependent person.

Note: Authority cited: Sections 125.9, 148, and 2854, Business and Professions Code. Reference: Sections 125.9, 148, 2878, and 2878.1, Business and Professions Code.

Board of Vocational Nursing and Psychiatric Technicians

PROPOSED LANGUAGE

Psychiatric Technicians Regulations

2577.6. Employer Mandatory Reporting.

Employers of psychiatric technicians shall report, in writing, to the Board the rejection from assignment, suspension, ~~or~~ termination, or resignation for cause (as defined in Business and Professions Code Section 4521.2(~~c~~d)) of any psychiatric technician in its employ. The resignation for cause provision only applies to a psychiatric technician's resignation submitted in lieu of receiving a rejection from assignment, suspension, or termination for cause (as defined in Business and Professions Code Section 4521.2 (d)). An employment agency or nursing registry shall report to the board the rejection from assignment of a psychiatric technician by a health facility or home health care provider due to acts that would be cause for suspension or termination (as defined in Business and Professions Code Section 4521.2 (d)). The report shall be made within 30 calendar days from the effective date of the suspension, ~~or~~ termination, or resignation for cause, or, where a licensee was rejected from assignment, within 30 calendar days from the date the health facility or home health care provider first notified the employment agency or nursing registry of the rejection. Failure to make a report to the Board as required under this section shall constitute a violation of Business and Professions Code Section 4521.2.

For purposes of this section, "employer" also includes employment agencies and nursing registries.

Note: Authority cited: Sections 4504, Business and Professions Code. Reference: Sections 101.6, 108, 4502, 4503, 4520, 4521, and 4521.2(b), Business and Professions Code.

2579.4. Violation Classifications.

(a) There shall be three classes of violations:
  (1) Class "A";
  (2) Class "B"; and
  (3) Class "C."

(b) In determining the violation class for licensee violations, the following factors shall be considered:
  (1) Nature and severity of the violation.
  (2) Length of time that has passed since the date of the violation.
  (3) Consequences of the violation, including potential or actual patient harm.
  (4) History of previous violations of the same or similar nature.
  (5) Evidence that the violation was willful.

(c) The fine for each Class "A" violation shall not exceed $10,000 per violation. A Class "A" violation is the failure of an employer to report to the Board, as specified in Section 2577.6, the rejection from assignment, suspension, ~~or~~ termination, or resignation for cause of a psychiatric technician.

(d) The fine for each Class "B" violation shall be no less than $1,001 and no~~r~~ more than $2,500. A Class "B" violation includes:

(1) A violation that results in or could have resulted in patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure consumer safety. Such violations include but are not limited to patient abandonment and falsifying nursing notes~~.~~;

(2) Any violation that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care. Such violations include, but are not limited to, a violation committed for personal and/or financial gain, or fraud~~.~~;

(3) A minor or technical violation that continues for six months or more in duration; or

(4) A minor or technical violation with one or more Class "C" citations.

(e) The fine for each Class "C" violation shall not exceed $1,000. A Class "C" violation is a minor or technical violation that is neither directly or potentially detrimental to patients nor directly or potentially impacts their care and which continues for less than six months duration. Such violations include but are not limited to practicing with an expired license, precharting, charting errors, or verbal abuse.

(f) Notwithstanding the administrative fine amounts specified in subsections (d) and (e), a Class B or Class C citation may include a fine of no more than $5,000 if one or more of the following circumstances apply:

(1) The cited person has a history of two or more prior citations of the same or similar violations.

(2) The citation involves a violation that has a substantial risk to the health and safety of another person.

(3) The citation involves multiple violations that demonstrate a willful disregard of the law.

(4) The citation involves a violation perpetrated against an elder, disabled, or dependent person.

Note: Authority cited: Sections 125.9, 148, and 4504, Business and Professions Code. Reference: Sections 125.9, 148, 4521, and 4521.2, Business and Professions Code.