

## TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

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. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held:

**Date: October 2, 2012**

Time: 10:00 a.m.

Board for Professional Engineers & Land Surveyors  
2535 Capitol Oaks Drive, 3<sup>rd</sup> Floor Conference Room  
Sacramento, California 95833

Written comments, 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 not later than 5:00 p.m. on October 2, 2012, or must be received by the Board at the hearing. 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 fifteen (15) days prior to its adoption from the person designated in this Notice as the 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, 101.6, 108, 2854 and 4504 of the Business and Professions (B&P) Code; and to implement, interpret or make specific sections 2878.1, 2878.5, 4502, 4503, 4504, 4520, 4521, and 4521.2 of the B&P Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR).

### **INFORMATIVE DIGEST**

#### A. Informative Digest

The Board's highest priority is protection of California consumers. B&P Code sections 2841.1 (VN) and 4501.1 (PT) mandate that the protections of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

B&P Code section 2854 (VN) and section 4548 (PT) authorize 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 Vocational Nursing Practice Act and the Psychiatric Technicians Law.

B&P Code sections 2878.1(VN) and 4521.2(PT) require employers of licensed vocational nurses (LVN) and psychiatric technicians (PT) to report the suspension or termination for cause, resignation for cause, or rejection from assignment for cause of any LVN or PT in its employ. These statutes also authorize the Board to issue an administrative fine to employers who fail to comply with the reporting requirements.

This proposal expands and makes specific the statutory conditions of mandatory employer reporting and instances which subject an employer to an administrative fine if compliance with the reporting requirements is not met. In order to enhance the Board's consumer protection mandate, the Board is proposing the following changes:

**(1) Amend Sections 2520.5 (VN) and 2577.6 (PT)**

As they currently exist, Sections 2520.5 (VN) and 2577.6 (PT) require any employer of a LVN or PT to report to the Board the suspension or termination for cause of any LVN or PT in its employ..

This regulatory proposal amends existing regulations to comply with B&P Code Sections 2878.1(VN) and 4521.2(PT) and therefore would also require employers to report LVN and PT resignations for cause; require employment agencies and nursing registries to report LVNs and PTs who are rejected from assignment due to acts that would be cause for suspension or termination; 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.

**(2) Amend Sections 2523.2 (VN) and 2579.4 (PT)**

B&P Code sections 2878.1(e) (VN) and 4521.2(e) (PT) authorizes the Board to issue an administrative fine, not to exceed ten thousand dollars (\$10, 000) per violation, to employers who fail to report to the Board the suspension or termination for cause, resignation for cause, or rejection from assignment for cause of any LVN or PT in its employ. As they currently exist, Sections 2523.2(c) (VN) and 2579.4(c) (PT) specify that a “Class A” violation is the failure of an employer to report to the Board, as specified in Section 2520.5 or 2577.6, the suspension or termination for cause of a LVN or PT.

This regulatory proposal expands the existing regulation’s criteria of a Class “A” violation so that it is consistent with B&P Code sections 2878.1(e) (VN) and 4521.2(e) (PT) and with the proposed amendment to Sections 2520.5 (VN) and 2577.6 (PT) described above by including an employer’s failure to report to the Board the rejection from assignment or resignation for cause of a LVN or PT. In addition, other minor edits are incorporated for clean up purposes.

**B. Policy Statement Overview/Anticipated Benefits of Proposal**

As stated above, public protection is the highest priority of the Board whenever it exercises its regulatory authority. This proposal is consistent with that objective. Employment agencies and nursing registries will be included in the definition of “employers” of vocational nurses and psychiatric technicians and will be subject to the same reporting requirements as other employers, such as skilled nursing facilities and convalescent hospitals.

In addition, the current regulations require employers to report the suspension or termination of licensees for cause, for reasons that include but are not limited to instances of gross negligence, patient abuse or neglect, or use of controlled substances/alcohol that impairs a licensee’s ability to practice safely. The proposed amendment of the regulations adds “resignation for cause” and “rejection from assignment” to the events that must be reported to the Board. This will help ensure that serious violations of the Vocational Nursing Practice Act and Psychiatric Technicians Law come to the Board’s attention.

**C. Consistency and Compatibility with Existing State Regulations**

The Board has evaluated this regulatory proposal and it is not inconcistent nor incompatible with existing state regulations.

**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.

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 business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this proposed regulatory action will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of 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.

Effect on Housing Costs: None

### **EFFECT ON SMALL BUSINESS**

The Board had determined that the proposed regulations would only affect small businesses that are employers of LVNs and/or PTs. Any employer of a LVN or PT must comply with reporting to the Board the suspension or termination for cause, resignation for cause, or rejection from assignment for cause of any LVN or PT in its employ, or be subject to an administrative fine of up to \$10,000.

However, there is no direct cost associated with compliance with the reporting requirement.

### **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 creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulations: Consumer protection will be enhanced when all employers report violations of the practice acts to the Board. The expanded reporting of misconduct by licensees will allow the Board to take disciplinary action in appropriate cases.

### **BUSINESS REPORTING REQUIREMENT**

The Board finds that it is necessary for the health, safety, or welfare of the people of this state that this regulation, which requires a report, applies to businesses.

### **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 hearing.

### **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 of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833 or on the Board's website listed below.

### **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: Linda Ruyters, Administrative Analyst  
Address: 2535 Capitol Oaks Drive, Suite 205  
Sacramento, CA 95833  
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Fax No: (916) 263-7859  
E-Mail Address: [linda.ruyters@dca.ca.gov](mailto:linda.ruyters@dca.ca.gov)

The backup contact person is:

Name: Alice Delvey-Williams, Enforcement Program Manager  
Address: 2535 Capitol Oaks Drive, Suite 205  
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Telephone No: (916) 263-7832  
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**Website Access:** Materials regarding this proposal can be found at [www.bvnpt.ca.gov](http://www.bvnpt.ca.gov)