THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (Board) has proposed modifications to the text of Vocational Nursing regulations, sections 2509 and 2518.8, and Psychiatric Technicians regulations, sections 2568 and 2576.8, of Division 25, Title 16, of the California Code of Regulations which were the subject of a regulatory hearing on May 11, 2011. A copy of the modified text is enclosed. Any person who wishes to comment on the proposed modifications may do so by submitting written comments postmarked beginning September 6, 2011 and ending September 21, 2011, to the person indicated in this Notice.

> ***Please note:*** *Please focus any comments on the modifications shown in the enclosed language. Other comments may be provided; however, the Board need not and may not respond to comments about previously noticed aspects of the proposed regulations.*

Address written comments to:

Linda Ruyters, Administrative Analyst
Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
(916) 263-7848

All written comments received (or postmarked) by September 21, 2011, which pertain to the modified text will be reviewed and responded to by Board staff as part of the compilation of the rulemaking file.

Dated: September 6, 2011

Linda Ruyters

Linda Ruyters
Administrative Analyst
Board of Vocational Nursing and Psychiatric Technicians

Board of Vocational Nursing and Psychiatric Technicians

Modifications of Proposed Regulatory Language Based on Public Comments Received

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Vocational Nursing Rules and Regulations

Amend Section 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 ~~businesslike~~ 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.

Add Section 2509 Evaluation of Applicants.

(a) In addition to any other requirements for licensure, whenever ~~it appears~~ evidence exists 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.

(c) If after receiving the evaluation report the Board determines that the applicant is unable to safely practice, the Board may deny the application.

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Sections 820, 822, 2841.1, 2866, 2878, 2878.6, 2878.9, and 2879, Business and Professions Code.

Add Section 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, 2878 and 2878.6, Business and Professions Code.

Renumber section 2524.1 to section 2524.5 and amend to read as follows:

~~2524.1.~~ 2524.5. Consumer Complaint Disclosure.

In reaching a decision on the disclosure of a consumer complaint under the Public Records Act (Government Code Section 6250 et seq.), the Board shall follow its "Consumer Complaint Disclosure Policy" which specifies the following:

(a) Public Access to Information – It is the policy of the Board of Vocational Nursing and Psychiatric Technicians (hereafter "Board") that information concerning individuals licensed by this agency be available to members of the public. Among the principal functions of the Board is the investigation of complaints against its licensees to determine whether there is cause for disciplinary action. Information regarding actions taken by the Board in the disposition of such complaints is readily accessible to the consuming public.
(b) Complaint Information System – The Board maintains a system designed to provide information regarding complaints and disciplinary actions against its licensees and information regarding their license status.

(c) Information to be Provided Regarding Complaints – In disclosing the existence of a consumer complaint, the Board will do so in a manner that will not reveal the identity of the complainant. The Board shall disclose details of a consumer complaint if the complaint is substantiated through investigation and/or an Accusation or Statement of Issues is filed. The Board shall disclose the following consumer complaint information to the public, upon ~~written~~ request:
(1) The number of complaints which have been found by the Board to be violations of the licensing law or regulations; and
(2) With respect to each complaint, the following information:
(A) Its date of receipt;
(B) A summary of the violation(s);
(C) Its disposition, by indicating whether the complaint:
(1) Has been or will be referred to formal disciplinary action.
(2) Has been found to involve a minor violation not in itself meriting disciplinary action;
(3) Has been disposed of through any action taken, formal or informal.
(3) Comparative data considered by the Board to be informative to consumers, which could include the average number of complaints received against licensees in a given region, locality or area of practice.
(4) A general disclaimer, if any, as the Board may deem appropriate.
(d) A consumer complaint may not be disclosed if one of the following conditions exists:
(1) The complaint is deemed without merit.
(2) Board jurisdiction cannot be established.
(3) The complaint is unrelated to professional conduct.
(4) The complaint involves a non-consumer matter.
(5) Disclosure is prohibited by statute or regulation.

(6) Disclosure might endanger or injure the complainant.
(7) Disclosure might compromise the investigation and/or prosecution.
(e) Information to be Provided Regarding Disciplinary Actions – The Board maintains records showing the disciplinary history of all current license holders and will provide to the public, upon request, whether a current license holder has ever been disciplined and, if so, when and for what offense. A copy of documents related to that action including the accusation, proposed decision, stipulation and/or final decision will be provided to the public upon ~~written~~ request.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 6253.4, Government Code. Reference: Sections 2875, 2876, 2878, 2878.1 and 2878.5, Business and Professions Code; and Sections 6252, 6253, 6253.2, 6253.4, 6254, 6255, 6260, 11503 and 11504, Government Code.

Add Section 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, 2878.6, and 2878.7

Amend Section 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 ~~businesslike~~ 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.

Add Section 2568. Evaluation of Applicants.

(a) In addition to any other requirements for licensure, whenever ~~it appears~~ evidence exists 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.

(c) If after receiving the evaluation report the Board determines that the applicant is unable to safely practice, the Board may deny the application.

NOTE: Authority cited: Section 4504, Business and Professions Code. Reference: Sections 820, 822, 4501.1, 4511, 4521, 4521.1, 4521.6, 4522, and 4523, Business and Professions Code.

Add Section 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 4521, and 4523, Business and Professions Code.

Renumber section 2579.11 to section 2579.20 and amend as follows:

~~2579.11.~~ 2579.20. Consumer Complaint Disclosure.

In reaching a decision on the disclosure of a consumer complaint under the Public Records Act (Government Code Section 6250 et seq.), the Board shall follow its "Consumer Complaint Disclosure Policy" which specifies the following:

(a) Public Access to Information – It is the policy of the Board of Vocational Nursing and Psychiatric Technicians (hereafter "Board") that information concerning individuals licensed by this agency be available to members of the public. Among the principal

functions of the Board is the investigation of complaints against its licensees to determine whether there is cause for disciplinary action. Information regarding actions taken by the Board in the disposition of such complaints is readily accessible to the consuming public.

(b) Complaint Information System – The Board maintains a system designed to provide information regarding complaints and disciplinary actions against its licensees and information regarding their license status.

(c) Information to be Provided Regarding Complaints – In disclosing the existence of a consumer complaint, the Board will do so in a manner that will not reveal the identity of the complainant. The Board shall disclose details of a consumer complaint if the complaint is substantiated through investigation and/or an Accusation or Statement of Issues is filed. The Board shall disclose the following consumer complaint information to the public, upon ~~written~~ request:

(1) The number of complaints which have been found by the Board to be violations of the licensing law or regulations; and

(2) With respect to each complaint, the following information:

(A) Its date of receipt;

(B) A summary of the violation(s);

(C) Its disposition, by indicating whether the complaint:

(1) Has been or will be referred to formal disciplinary action.

(2) Has been found to involve a minor violation not in itself meriting disciplinary action;

(3) Has been disposed of through any action taken, formal or informal.

(3) Comparative data considered by the Board to be informative to consumers, which could include the average number of complaints received against licensees in a given region, locality or area of practice.

(4) A general disclaimer, if any, as the Board may deem appropriate.

(d) A consumer complaint may not be disclosed if one of the following conditions exists:

(1) The complaint is deemed without merit.

(2) Board jurisdiction cannot be established.

(3) The complaint is unrelated to professional conduct.

(4) The complaint involves a non-consumer matter.

(5) Disclosure is prohibited by statute or regulation.

(6) Disclosure might endanger or injure the complainant.

(7) Disclosure might compromise the investigation and/or prosecution.

(e) Information to be Provided Regarding Disciplinary Actions – The Board maintains records showing the disciplinary history of all current license holders and will provide to the public, upon request, whether a current license holder has ever been disciplined and, if so, when and for what offense. A copy of documents related to that action including the accusation, proposed decision, stipulation and/or final decision will be provided to the public upon ~~written~~ request.

Note: Authority cited: Section 4504, Business and Professions Code; and Section 6253.4, Government Code. Reference: Sections 4520, 4521 and 4521.2, Business and

Professions Code; and Sections 6252, 6253, 6253.2, 6253.4, 6255, 6260, 11503 and 11504, Government Code.

Add Section 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, 4523, and 4524.