

## **AVAILABILITY OF MODIFIED TEXT and DOCUMENTS ADDED TO THE FILE**

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians has proposed modifications to the text of sections 2524 (VNs) and 2579.10 (PTs) of Title 16 of the California Code of Regulations. This regulatory proposal was the subject of a regulatory hearing on September 6, 2011. A copy of the modified text is enclosed.

NOTICE IS ALSO GIVEN that the following documents are being added to the rulemaking record for the regulatory proceeding concerning sections 2524 (VNs) and 2579.10 (PTs) of Title 16 of the California Code of Regulations:

- 1. Legislative Counsel Bureau Opinion, October 27, 2011**
- 2. Office of the Attorney General Informal Legal Opinion, February 29, 2012**
- 3. Department of Consumer Affairs Opinion, April 5, 2012**

The above documents are now available for public inspection and/or comment until August 14, 2012, at the location mentioned below.

Any person who wishes to comment on the proposed modifications or the documents added to the file may do so by submitting written comments on or before August 14, 2012, to the following:

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DATED: July 30, 2012

Linda Ruyters  
Linda Ruyters  
Administrative Analyst  
Board of Vocational Nursing and  
Psychiatric Technicians

# Board of Vocational Nursing and Psychiatric Technicians

## MODIFIED TEXT

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

### Vocational Nursing Regulations

California Code of Regulations, Title 16, Division 25, Chapter 1, Article 4, is amended to read:

#### 2524. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled "Disciplinary Guidelines and Uniform Standards Related to Substance Abuse" (Rev. 6/19/076/20/11), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

- (a) Notwithstanding Subject to subsection (b), ~~Deviation from the~~ Disciplinary 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 or aggravating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee for purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.
- (c) 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 Business and Professions 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 315, 315.2, 315.4, 729,

2875, 2876 and 2878, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11425.50(e), and 11500, Government Code.

# Board of Vocational Nursing and Psychiatric Technicians

## MODIFIED LANGUAGE

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

### Psychiatric Technician Regulations

California Code of Regulations, Title 16, Division 25, Chapter 2, Article 4, is amended to read:

#### 2579.10. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled "Disciplinary Guidelines and Uniform Standards Related to Substance Abuse" (Rev. ~~6/19/07~~6/20/11), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

- (a) ~~Notwithstanding~~ Subject to subsection (b), ~~Deviation from these~~ Disciplinary 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 or aggravating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee for purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.
- (c) 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 Business and Professions 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 315, 315.2, 315.4, 729,

4520 and 4521, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11425.50(e), and 11500, Government Code.