

# REGULAR

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

ENDORSED FILED  
IN THE OFFICE OF

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-2012-0807-02</b>	REGULATORY ACTION NUMBER <b>2013-0808-01S</b>	EMERGENCY NUMBER
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2013 SEP 17 PM 3:36

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

2013 SEP 16 PM 12:33  
OFFICE OF ADMINISTRATIVE LAW

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY Board of Vocational Nursing and Psychiatric Technicians	AGENCY FILE NUMBER (if any)
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### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Enforcement - Mandatory Reporting	TITLE(S) 16	FIRST SECTION AFFECTED VN 2520.5/PT 2577.6	2. REQUESTED PUBLICATION DATE August 17, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Alice Delvey-Williams	TELEPHONE NUMBER (916) 263-2032	FAX NUMBER (Optional) (916) 263-7857
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2012, 332	PUBLICATION DATE 8/17/2012

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Employer Mandatory Reporting Requirements	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 2520.5, 2523.2, 2577.6, 2579.4
REPEAL
TITLE(S) 16

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  §100 Changes Without Regulatory Effect  Effective other (Specify) \_\_\_\_\_

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify) Denise Brown, Director, Department of Consumer Affairs *Denise Brown*

7. CONTACT PERSON Alice Delvey-Williams	TELEPHONE NUMBER (916) 263-2032	FAX NUMBER (Optional) (916) 263-7857	E-MAIL ADDRESS (Optional) alice.delvey-williams@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE  
*Teresa Bello-Jones*  
TYPED NAME AND TITLE OF SIGNATORY  
Teresa Bello-Jones, Executive Officer

DATE  
9/6/13

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 17 2013

Office of Administrative Law

## ORDER OF ADOPTION

The Board of Vocational Nursing and Psychiatric Technicians hereby amends the following regulations in Title 16, Division 25 of the California Code of Regulations as follows:

### ***VOCATIONAL NURSING REGULATIONS***

Amend section 2520.5 Employer Mandatory Reporting:

#### **2520.5. Employer Mandatory Reporting.**

(a) 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(ed)) 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.

(b) 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.

Amend section 2523.2 Violation Classifications:

#### **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 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 2854, Business and Professions Code. Reference: Sections 125.9, 148, 2878, and 2878.1, Business and Professions Code.

## **PSYCHIATRIC TECHNICIAN REGULATIONS**

Amend section 2577.6 Employer Mandatory Reporting:

### **2577.6. Employer Mandatory Reporting.**

(a) 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(ed)) 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.

(b) 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.

Amend section 2579.4 Violation Classifications:

### **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:

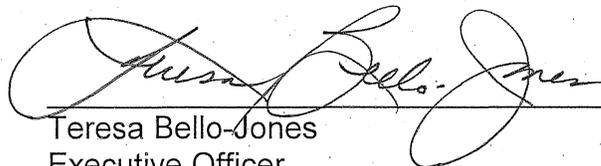
- (1) Nature and severity of the violation.
- (2) Length of time that has passed since the date of the violation.
- (3) Consequences of the violation, including potential or actual patient harm.
- (4) History of previous violations of the same or similar nature.
- (5) Evidence that the violation was 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 not less than \$1,001 and not 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.

Dated: April 15, 2013



Teresa Bello-Jones  
Executive Officer  
Board of Vocational Nursing and Psychiatric  
Technicians