



DATE	August 22, 2023
TO	Board Members
FROM	Elaine Yamaguchi Executive Officer
SUBJECT	Agenda Item 9.B.IV Discussion and Possible Action to Initiate a Rulemaking to Amend 16 CCR section 2503 (Delegation of Certain Functions)

Background

Business and Professions Code (BPC) section 2847.1 provides:

- (a) Except as provided in subdivision (f), the board shall select an executive officer **who shall perform duties as are delegated by the board** and who shall be responsible to it for the accomplishment of those duties.
- (b) The executive officer shall not be a member of the board.
- (c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.
- (d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of their duties. The executive officer shall make a statement, certified before a duly authorized person, that the expenses have been actually incurred.
- (e) Commencing January 1, 2018, the executive officer appointed by the board pursuant to subdivision (a) is abolished. Thereafter, until January 1, 2022, the executive officer shall be appointed as set forth in Section 2847.3.
- (f) Commencing January 1, 2022, the executive officer shall, again, be selected by the board as set forth in subdivision (a), except that any executive officer in office on December 31, 2021, shall continue in the position as executive officer of the board until the position is vacated or the board selects another executive officer.
- (g) This section shall remain in effect only until January 1, 2025, and as of that date is repealed. (Emphasis added.)

In 2021, BPC section 2876(b) was enacted by AB 1536 (Stats. 2021, ch. 632) and provides: “The board shall delegate to its **executive office** the authority to adopt a

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decision entered by default and a stipulation for surrender of a license.” (Emphasis added.) However, Regulations Counsel advises that Section 2875 is unclear as it does not specify which public officer or officers can perform those delegated tasks in the “Executive Office.”

The Board has adopted California Code of Regulations, title 16 (CCR), section 2503 to prescribe the duties delegated to me by the Board, or to the assistant executive officer in my absence. Section 2503 currently provides:

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearings, 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 calendar cases for hearing and perform other functions necessary to the 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.

Problems That Need to Be Addressed

Regulations Counsel advises that the following areas of the regulation cited above need to be amended to conform Section 2503 to existing statutory authority requirements and current enforcement processes:

(1) It is recommended that the Board amend Section 2503 to include the delegated duty “to adopt a decision entered by default” to clarify who can exercise this authority and the reference to “Executive Office” in BPC section 2876. The proposed changes would specify that such acts can be performed by the Executive Officer or, in the absence of the Executive Officer, the Assistant Executive Officer. This would resolve the current ambiguity in the statute and conform the text to current Executive Office management positions and duties.

(2) Regulations Counsel recommends repealing the reference to approving settlement agreements for “revocation” of a license, as such discretionary decisions are currently reviewed by the Board members for action and not the Executive

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Officer. Removal of that reference would conform the regulation to current enforcement processes.

(3) Finally, the Board's prior delegation statute at BPC section 2847 has been repealed. The current proposal is to add references to update that authority in the regulation's "Note" section consistent with legislative amendments to BPC sections 2847.1 and 2876.

Proposed revisions are shown in Attachment A to this memorandum.

Action Requested

The Board should review the proposed regulatory text and consider whether they would support it as written or if there are suggested changes. After review, Regulations Counsel requests that the Board consider one of the following motions:

Motion A: (The Board has no suggested changes for the proposed regulatory text.) Approve the proposed regulatory text for Section 2503 in Attachment A and submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR Section 2503.

Motion B: (The Board has suggested changes for the proposed regulatory text.) Approve the proposed regulatory text for Section 2503 as provided in Attachment A, with the following changes. (Describe the proposed changes to the proposed text). In addition, submit this revised approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received, and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations as noticed for 16 CCR Section 2503.

Attachment A: Proposed Regulatory Text for Amendment of 16 CCR section 2503

CALIFORNIA CODE OF REGULATIONS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 25. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

PROPOSED REGULATORY LANGUAGE

Legend:	Added text is indicated with an <u>underline</u> . Omitted text is indicated by (* * * *) Deleted text is indicated by strikeout .
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Amend section 2503 of Division 25 of Title 16 of the California Code of Regulations to read as follows:

§ 2503. Delegation of Certain Functions

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearings, 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 calendar cases for hearing and perform other functions necessary to the 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 adopt a decision entered by default for the revocation of a license and 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: Sections 2847.1 and 2876, Business and Professions Code.