

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 25.

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Delegation of Certain Functions

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (hereafter “Board”) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, 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 no later than by Monday, December 30, 2024**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 2854 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 2847.1 and 2876, the Board is considering amending section 2503 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Existing law at Business and Professions Code (BPC) section 2847.1 provides in part:

(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.

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 decision entered by default and a stipulation for surrender of a license.” (Emphasis added.) However, Section 2875 does not specify which public officer or officers can perform those delegated tasks in the “Executive Office” and the current regulation does not include identify authority to adopt decisions rendered by default as a prescribed duty of the Executive Officer.

The Board has adopted California Code of Regulations, title 16 (CCR), section 2503 to prescribe the duties delegated to the Executive Officer by the Board, or to the Assistant Executive Officer in the Executive Officer’s absence. However, the Board proposes to update its current Executive Officer delegation regulation to better align the duties of its Executive Officer with statutory changes to the Vocational Nursing Practice Act (Act) and conform CCR section 2503 to the Board’s current enforcement processes. These amendments include the following:

(1) Amend Section 2503 to include the delegated duty “to adopt a decision entered by default” to clarify who can exercise this authority on behalf of the Board in the Board’s “Executive Office” as set forth 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) Repeal 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 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 referenced in the current “Note” section of this regulation has been repealed. As a result, the current proposal is to remove that obsolete reference and update the “Note” section to add new authority in the regulation’s “reference” section consistent with legislative amendments to BPC sections 2847.1 and 2876.

Anticipated Benefits of Proposal

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

The objective of this proposal is to ensure that the Board's regulations accurately reflect the duties delegated to the Board's Executive Officer in compliance with the laws related to the Board's jurisdiction in one convenient location. This helps avoid licensee and staff confusion about who is authorized to make decisions on behalf of the Board involving default decisions and the approval of settlement agreements for the revocation of a license. This helps ensure transparency, legal compliance and accuracy in the Board's operations and a well-informed public.

This regulatory proposal does not affect worker safety or the state's environment.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

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. The proposed regulations do not result in a fiscal impact to the state. This proposal conforms the regulation regarding the Executive Officer's duties to current law and Board enforcement-related practices. The Board does not anticipate additional workload or costs resulting from the proposed regulations.

The proposed regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None.

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Mandate Imposed on Local Agencies or School Districts: None.

Significant Effect on Housing Costs: None.

BUSINESS IMPACT ESTIMATES

The Board has made the 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.

This initial determination is based on the following facts:

The proposed regulatory changes are administrative and help to ensure transparency, legal compliance, and accuracy in the Board's operations. This proposal conforms the regulation regarding the Executive Officer's duties to current law and Board enforcement-related practices. The Board does not anticipate that any businesses, including any businesses employing licensed vocational nurses or psychiatric technicians, would be impacted by what the Board considers to be "clean-up" changes to its current Executive Officer delegation regulation.

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS:

Impact on Jobs / Businesses

The Board has determined that this regulatory proposal will not have any impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

The proposal makes administrative “clean-up” changes to conform with current law and Board enforcement-related practices.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents.

The objective of this proposal is to ensure that the Board’s regulations accurately reflect the duties delegated to the Board’s Executive Officer in compliance with the laws related to the Board’s jurisdiction in one convenient location. This helps avoid licensee and staff confusion about who is authorized to make decisions on behalf of the Board involving default decisions and the approval of settlement agreements for the revocation of a license. This further ensures transparency, legal compliance and accuracy in the Board’s operations and a well-informed public.

This regulatory proposal does not affect worker safety or the state’s environment as it does not involve worker safety or the environment.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Board.

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses as stated in the “Business Impact Estimates” section of this Notice. Any costs of compliance are a result of current law. This proposal simply conforms the regulation regarding the Executive Officer’s duties to current law and Board enforcement practices and would not affect small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), 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 submit comments to the Board in writing relevant to the above determinations at 2535 Capitol Oaks, Suite 205, Sacramento CA 95833, and to the attention of either of the persons listed under the section “Contact Persons” listed

below, during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this Notice.

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 upon request from the Board at 2535 Capitol Oaks, Suite 205, Sacramento CA 95833.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request 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, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the persons designated in this Notice as the Contact Persons and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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 either of the persons 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 Persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Mark Ito
Address: Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7851
Fax No.: (916) 263-7866
E-Mail Address: bvnpt.rulemaking@dca.ca.gov

The backup contact person is:

Name: Elaine Yamaguichi
Address: Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7800
Fax No.: (916) 263-7866
E-Mail Address: bvnpt.rulemaking@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text ,if any, can be accessed through the Board's website at https://www.bvnpt.ca.gov/about_us/bvnpt_regulations.shtml