

TITLE 16 – Board of Vocational Nursing and Psychiatric Technicians

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) proposes taking the action described in the Informative Digest. Any interested person may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail, to the addresses listed under “Contact Persons,” in this Notice, must be received by the BVNPT, at its office on September 14, 2020.

The BVNPT does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, the interested party must make the request, in writing, to the Board. The last day to receive the hearing request is August 31, 2020.

The BVNPT, 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 will be available for 15 days prior to its adoption, from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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 Sections 141, 475, 480, 481, 482, 488, 490, 492 and 493, of said Code, the BVNPT is considering changes to Title 16, Division 25, Chapter 1, Article 4, Sections 2521 and 2522, of the California Code of Regulations (CCR), as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to BPC section 2841.1, the mission of the BVNPT is: “Protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians of the State of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

The goals and objectives of this proposed regulation brings the BVNPT’s current regulations into compliance with the various provisions of Assembly Bill 2138 (AB 2138) (Chiu, Chapter 995, Statutes of 2018). AB 2138 requires the Department of Consumer Affairs’ (DCA) various Boards and Bureaus to:

- develop criteria to determine whether a crime, professional misconduct, or act is substantially related to the qualification, functions, or duties of the business or profession;
- consider whether a person has made a showing of rehabilitation if certain conditions are met;
- follow certain procedures when requesting or acting on an applicant or licensee’s criminal history information; and
- annually submit a report to the legislature and post the report on its internet web site containing specified deidentified information regarding actions taken by a Board based on an applicant or licensee’s criminal history information.

Board of Voc. Nursing & Psych Techs (BVNPT)	Notice of Proposed Changes	Page 1 of 6
Sections Affected: 16 CCR §§2521 and 2522	Substantial Relationship and Rehabilitation Criteria (VN)	BVNPT Revision Date: 3.13.20

BPC, section 2854, authorizes the BVNPT to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Licensed Vocational Nursing Act (Act). In accordance with the statutory amendments implemented by AB 2138, beginning July 1, 2020, BPC sections 481 and 493 will require the BVNPT, when considering the denial, suspension, or revocation of an application or license based on a crime, professional misconduct, or act, to determine whether the crime, professional misconduct, or act is substantially related to the qualifications, functions, or duties of an applicant or licensee by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a licensee.

BPC section 482 requires the BVNPT to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of an application or license. Beginning July 1, 2020, BPC section 482 will require the BVNPT, when considering the denial, suspension, or revocation of an application or license based on a crime, professional misconduct, or act, to consider whether the applicant or licensee is rehabilitated, based on either (1) having completed their criminal sentence without violating parole or probation, or (2) the BVNPT's standard criteria for evaluating the rehabilitation of applicants and licensees. (BPC § 482, as added by AB 2138, § 9.)

Currently, 16 CCR 2521, establishes the criteria for determining when a crime or act is substantially related to the qualifications, functions, and duties of an applicant or licensee, and 16 CCR 2522 establishes the criteria for determining rehabilitation of an applicant or licensee when considering the denial, suspension, or revocation of a license, or a petition for reinstatement of a license.

AB 2138 requires that 16 CCR, sections 2521 and 2522, be updated to clearly specify the criteria the BVNPT uses when making a determination for an applicant or licensee's criminal conviction, or formal discipline by another licensing Board, and evaluating the rehabilitation of an applicant or licensee when considering denial, suspension, or revocation of an application or license.

The BVNPT is proposing the following changes:

Amend 16 CCR 2521 (Substantial Relationship Criteria):

The proposed amendment to this regulation, for purposes of denial, suspension, or revocation of an application or license, will add professional misconduct and disciplinary actions taken by another state, by any agency of the federal government, or by another country as described in BPC section 141, as grounds requiring the BVNPT to consider the substantial relationship criteria, and require the BVNPT, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also clarify that substantially related crimes, professional misconduct, or acts include violating other state laws (including laws of other states) or federal laws governing the practice of licensed vocational nursing.

Amend 16 CCR 2522 (Criteria for Rehabilitation):

Board of Voc. Nursing & Psych Techs (BVNPT)	Notice of Proposed Changes	Page 2 of 6
Sections Affected: 16 CCR §§2521 and 2522	Substantial Relationship and Rehabilitation Criteria (VN)	BVNPT Revision Date: 3.13.20

The proposed amendment to this regulation will clarify that the BVNPT, when considering an application or license denial, suspension, or revocation on the ground that the applicant or licensee was convicted of a crime, professional misconduct, or act, will have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making this determination, the proposal will require the BVNPT to consider the nature and gravity of the crime, professional misconduct, or act, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal will require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial, suspension, or revocation was based on something other than a criminal conviction. Consistent with current CCR section 2521, subdivision (c), the proposal will also require the BVNPT to consider the two sets of criteria, described above, when evaluating whether a petitioner for reinstatement of a license is rehabilitated.

ANTICIPATED BENEFITS OF PROPOSAL

California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of their release. These circumstances play a significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address. One of the root causes of these high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry.

Nearly 30 percent of California jobs require licensure, certification, or clearance, by an oversight Board or agency, for approximately 1,773 different occupations. All too often, qualified people are denied occupational licenses or have licenses revoked or suspended based on prior arrests and/or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.

For further discussion of the benefit analysis, see “Results of the Economic Impact Assessment” below.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

Board of Voc. Nursing & Psych Techs (BVNPT)	Notice of Proposed Changes	Page 3 of 6
Sections Affected: 16 CCR §§2521 and 2522	Substantial Relationship and Rehabilitation Criteria (VN)	BVNPT Revision Date: 3.13.20

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The BVNPT has made an initial determination that the proposed regulations will not have a fiscal impact on public agencies, State agencies or in federal funding to the State.

Nondiscretionary Costs/Savings to Local Agencies: The BVNPT has made an initial determination that the proposed regulations will not have a fiscal impact to local agencies.

Local Mandate: The BVNPT has made an initial determination that the proposed regulations will not have an impact on local mandates.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: The BVNPT has made an initial determination that the proposed regulations will not have a fiscal impact on any local agency or school district for which Government Code sections 17500-17600 require reimbursement.

Business Impact: The BVNPT has made an initial determination that the proposed regulatory action will 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 premise that these regulations may increase access to licensure, potentially increasing the number of psychiatric technicians, which would provide businesses a greater pool of employees from which to hire.

Business Reporting Requirements: The regulatory action does not require businesses to file a report with the Board.

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.

The Board estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

Results of the Economic Impact Assessment: The BVNPT has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Proposed Action: The BVNPT has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

This proposal will allow individuals greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed vocational nurses, which will potentially benefit the overall health and welfare of Californians. Health care

Board of Voc. Nursing & Psych Techs (BVNPT)	Notice of Proposed Changes	Page 4 of 6
Sections Affected: 16 CCR §§2521 and 2522	Substantial Relationship and Rehabilitation Criteria (VN)	BVNPT Revision Date: 3.13.20

businesses will likely benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

Protection of the public is the BVNPT's highest priority in exercising its licensing, regulatory and disciplinary functions. Also, the BVNPT ensures that only qualified persons are licensed vocational nurses by enforcing education requirements, standards of practice and by educating consumers of their rights. The proposed regulation change will, most likely, not endanger the public and will allow the BVNPT to continue carrying out these mandates.

EFFECT ON SMALL BUSINESS

The BVNPT has determined that the proposed regulations will not affect business because the proposed actions do not directly affect businesses including small businesses. In complying with AB 2138, the regulatory changes seek to reduce barriers to licensure for applicants and licensees with criminal histories or licensure discipline. The BVNPT anticipates that the proposed regulations will only impact businesses to the extent that individual applicants or licensees are able to be licensed or retain licensure under the proposal. The BVNPT does not know how many applicants will gain or retain licensure but does not anticipate the number to significantly impact businesses.

EFFECT ON HOUSING

The BVNPT has determined that the proposed regulations will not affect housing in the State of California.

CONSIDERATION OF ALTERNATIVES

The BVNPT must determine that no reasonable alternative that it considered to the regulation, or that has otherwise been identified and brought to its attention, would be effective in carrying out the purpose for which the action is proposed, would be more effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

INITIAL STATEMENT OF REASONS AND INFORMATION

The BVNPT has prepared an initial statement of the reasons for the proposed action and has available all the information, on which the proposal is based, upon request from the contact person designated below.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained upon request from the person designated in the Notice under Contact Person, with the Board of Vocational Nursing and Psychiatric Technicians, at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND

Board of Voc. Nursing & Psych Techs (BVNPT)	Notice of Proposed Changes	Page 5 of 6
Sections Affected: 16 CCR §§2521 and 2522	Substantial Relationship and Rehabilitation Criteria (VN)	BVNPT Revision Date: 3.13.20

RULEMAKING FILE

All the information upon which the proposed regulations is based is contained in the rulemaking file, which is available for public inspection by contacting the person 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 person, named below, or by accessing the BVNPT website at www.bvnpt.ca.gov.

CONTACT PERSON

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

Name: Doris Pires, *Regulations Coordinator*
Address: Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone: (916) 263-7800
Fax Number: (916) 263-7855

The backup contact person is:

Name: Vicki Lyman, *Assistant Executive Officer*
Address: Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone: (916) 263-7800
Fax Number: (916) 263-7855

E-Mail: To submit any comments via email, please send to:
BVNPT.Rulemaking@dca.ca.gov.

Website Access: Materials regarding this proposal can be found at www.bvnpt.ca.gov.

END OF DOCUMENT

Board of Voc. Nursing & Psych Techs (BVNPT)	Notice of Proposed Changes	Page 6 of 6
Sections Affected: 16 CCR §§2521 and 2522	Substantial Relationship and Rehabilitation Criteria (VN)	BVNPT Revision Date: 3.13.20