

BOARD OF REGISTERED NURSING

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Protection of the public shall be the highest priority for the Board of Registered Nursing 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.

— Business and Professions Code § 2708.1

The Board of Registered Nursing (BRN) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 *et seq.*, BRN licenses registered nurses (RNs), and certifies advanced practice nurses, which include certified nurse-midwives (CNMs), nurse practitioners (NPs), registered nurse anesthetists (CRNAs), clinical nurse specialists (CNSs), and public health nurses (PHNs). In addition to licensing and certification, BRN establishes accreditation requirements for California nursing schools and reviews nursing school criteria; receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR). As of 2017, BRN licenses approximately 430,000 RNs and certifies approximately 100,000 advanced practice nurses.

By law, the nine-member Board consists of four public members and five RNs. The five RNs include two direct-patient care nurses, an advanced practice nurse, a nurse administrator of a nursing service, and a nurse educator. Seven of the members (including

all of the RN members) are appointed by the Governor and two of the public members are appointed by the legislature. The Nursing Practice Act also requires BRN's Executive Officer to be a BRN licensee, a unique requirement among all DCA boards.

On June 1, 2017, Governor Brown [reappointed](#) Imelda Ceja-Butkiewicz, a public member, to the Board. Ms. Ceja-Butkiewicz has served on the Board since 2014. She is a prior legal secretary and has served in multiple positions at the Kern County Department of Public Health since 1999.

On June 1, 2017, Governor Brown reappointed Michael Deangelo Jackson to the Board, where he has served since 2012. Mr. Jackson is a clinical nurse, in the Department of Emergency Medicine at UC San Diego.

MAJOR PROJECTS

BRN Survives Sunset Review

On October 5, 2017, Governor Brown [signed SB 799 \(Hill\)](#), BRN's "sunset bill" that extends the Board's existence through January 1, 2022 and concludes BRN's [sunset review](#) process. After an [extensive hearing](#) before the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee in March 2017, the Bill imposes a series of amendments to the Nursing Practice Act to strengthen BRN's public protection mandate, and improve efficiencies at the operational level (see LEGISLATION).

Of note, the sunset process resulted in reforms to the Board's "intervention program" for substance-abusing licensees; requires BRN to submit a report to the legislature with a comprehensive plan to improve the Board's continuing education (CE)

process; and requires the California Research Bureau to prepare a report by January 1, 2019 evaluating the extent to which employers voluntarily report disciplined nurses to BRN, and providing options for consistent and reasonable reporting mechanisms.

Early versions of SB 799 would have imposed mandatory employer reporting of disciplined nurses, which was heavily opposed by several major nurse trade associations. Ultimately, the bill was amended to require a study of employer reporting.

Regulations Updating Nurse Practitioner Standards

On May 22, 2017, BRN released the [second modified text](#) of its proposed amendments to sections 1480–1484, and proposed adoption of sections 1483.1, 1483.2, and 1486, Title 16 of the CCR, to update its standards for nurse practitioners. The proposed regulations were originally [noticed](#) in August 2016. The second modified text deletes subdivision (f)(2) of section 1484, which would have defined the term “clinical preceptor.” The Board approved this modification at its November 2016 meeting, but the changes were inadvertently omitted from the modified text released in December. The 15-day written comment period ended on June 6, 2017. At BRN’s June 8, 2017 meeting, Board member Trande Philips reported that no comments were received. At this writing, the rulemaking package is under review by the Office of Administrative Law (OAL).

OAL Rejects Board's Proposed Rulemaking Action for Previous Military Education and Experience

On September 12, 2017, OAL issued a [Decision of Disapproval of Regulatory Action](#), rejecting BRN's proposed regulations regarding credit for previous military education and experience toward BRN's license requirement. The rulemaking package, which seeks to adopt sections 1423.1 and 1423.2 and amend sections 1418, 1424, 1426, and 1430, Title 16 of the CCR, constitutes BRN's efforts to implement [SB 466 \(Hill\) \(Chapter 489, Statutes of 2015\)](#) by expanding requirements for RN education programs to award students credit for military education and experience toward the education requirements for licensure as an RN.

OAL disapproved the proposed rulemaking action for failure to comply with the clarity and necessity standards of the Administrative Procedure Act (APA), as well as certain APA procedural requirements, pursuant to Government Code sections 11349, 11349.1, and 11346.2.

Of note, OAL found that BRN's proposal to add sections 1423.1 and 1423.2 exceeded the scope of SB 466, observing that the proposed language expanded the requirements for evidence, policies and procedures, information, and applicant records beyond the scope of military education and experience addressed by SB 466. According to OAL, the Board did not include a statement in the rulemaking file justifying the need to broaden the scope of the regulations beyond those required by SB 466.

Per the Administrative Procedure Act, the Board has 120 days from receipt of the Decision of Disapproval to correct the errors and resubmit its proposal.

BRN Continues to Reconcile Fingerprint Discrepancies in its database

At the Board's June 2017 meeting, Executive Officer Morris reported that BRN staff is continuing to reconcile its fingerprint database and has been notifying licensees of the need to submit fingerprints in compliance with the Board's fingerprint requirement. The Board's compliance effort comes after the Bureau of State Audits [reported](#) in December 2016 that BRN was failing to ensure that all its licensees are fingerprinted as the law requires. Specifically, the audit found that the Board's records as to which licensees were fingerprinted did not match up with the California Department of Justice's database, and BRN is thus not always notified if a licensee is arrested or convicted, placing the public at risk.

Executive Director Morris reported that, to implement the recommendations of the audit, BRN staff have been working with DCA to identify necessary modifications in BreZE to display fingerprint data on the licensee's online renewal record.

Board Approves Stipulation Process for Petitioners for Early Termination from Probation

At its June 2017 meeting, the Board voted to approve staff's recommendation that the Board implement a stipulation process for petitioners seeking early termination from probation. After consultation with the Attorney General's Office and DCA legal counsel, staff proposed to first review the probation history of each petitioner for early termination, and then provide recommendations to the Attorney General's Office to enter into a stipulated settlement for petitioners with limited minor violations or no violations during

probation. Under this policy, the Board would still make the final decision as to whether or not to enter into the stipulated settlement. According to staff, the new proposal will reduce the time it takes for petitioners for early termination of probation to receive a Board decision by approximately six months. The Board unanimously approved the proposal.

LEGISLATION

[SB 799 \(Hill\)](#), as amended August 24, 2017, amends Business and Professions Code section 2701 to extend the Board’s sunset date to January 1, 2022.

The bill also amends section 801 to require insurers that provide professional liability insurance to a person licensed under the Nursing Practice Act to send a complete report to BRN as to any settlement or arbitration award over \$10,000 of a claim or action for damages for death or personal injury caused by that person’s negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services; the report must be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties. For purposes of section 801, the term “insurer” means (1) the insurer providing professional liability insurance to the licensee; (2) the licensee, or his or her counsel, if the licensee does not possess professional liability insurance; and (3) a state or local governmental agency, including, but not limited to, a joint powers authority, that self-insures the licensee (expressly including the University of California).

Of note, the bill adds section 2761.5 to the Business and Professions Code to require the California Research Bureau to prepare and deliver a report to the legislature by January 1, 2019, that evaluates the extent to which employers voluntarily report disciplined nurses

to the Board and offers options for consistent and reasonable reporting mechanisms going forward. The report must include (a) a review of existing mandatory reporting requirements that alert the Board to nurses who may have violated the Nursing Practice Act; (b) a review of existing laws permitting, prohibiting, encouraging, or discouraging voluntary reporting to the Board; (c) an analysis of the number of employer reports to the Board, the number of those reports investigated by the Board, and the final action taken by the board for each report; (d) employer reporting requirements of other boards within DCA; and (e) nursing reporting requirements of other states.

SB 799 also amends section 2770.7 to delete the requirement that BRN close investigations related to certain causes of action if an RN is accepted into the Board's intervention program for substance-abusing licensees, and instead authorizes BRN to investigate at its discretion complaints against RNs participating in the intervention program. Section 2770.7 also now prohibits BRN from taking disciplinary action with regard to acts committed before or during participation in the intervention program unless the licensee withdraws or is terminated from the program.

With respect to the Board's CE program, the bill amends section 2811.5 to require BRN to deliver a report to the appropriate legislative policy committees detailing a comprehensive plan for approving and disapproving CE opportunities by January 1, 2019, and to report on its progress by January 1, 2020. It also requires BRN to consider including palliative care among those subjects considered in establishing CE standards. Governor Brown [signed](#) SB 799 on October 5, 2017 (Chapter 520, Statutes of 2017).

[SB 554 \(Stone\)](#), as amended June 14, 2017, as it applies to BRN, adds section 2836.4 to the Business and Professions Code to establish buprenorphine prescribing privileges for NPs. New section 2836.4 permits an NP to furnish or order buprenorphine, provided that he/she complies with the [federal Comprehensive Addiction and Recovery Act of 2016 \(Public Law 114-198\)](#). Specifically, section 2836.4 requires that the NP complete at least 24 hours of prescribed initial training or demonstrate equivalent training, and is supervised by or works in collaboration with a licensed physician. Governor Brown signed SB 554 on September 11, 2017 (Chapter 242, Statutes of 2017).

[SB 547 \(Hill\)](#), as amended September 11, 2017, as it pertains to BRN, amends section 2760.1 of the Business and Professions Code to specify the process for RNs to petition the Board for reinstatement of a revoked or suspended license or for modification of the penalty. Specifically, section 2760.1 now authorizes the Board to either hear the petition or to assign the petition to an administrative law judge (ALJ) of the Office of Administrative Hearings, and requires the ALJ to submit a proposed decision in a specified manner. The bill also amends section 2715 to permit the Board to employ legal counsel. Governor Brown [signed](#) SB 547 on October 2, 2017 (Chapter 429, Statutes of 2017).

RECENT MEETINGS

On June 8, 2017, the Board unanimously elected Trande Philips to serve as Board President. BRN also elected, on a 5–3 vote, public member Donna Gerber to serve as Vice-President.

At the Board’s September 2017 meeting, Board member Michael Jackson reported that the Continuing Education (CE) ad hoc committee, consisting of Jackson and public

member Donna Gerber, met on July 11, 2017. The committee's purpose is to work with the Board to establish a process for continuing education, and to make recommendations to the Board's Education/Licensing Committee. The ad hoc Committee reviewed data from two surveys: one was administered to other state boards of nursing regarding RN CE requirements for licensure renewal and procedures for Continuing Education Providers (CEP), while the second survey was administered to CEPs holding a current CEP number issued by BRN. The Committee provided the results of the survey to the Board for review.