

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 early 2018, BRN licenses over 440,000 RNs and certifies approximately 100,000 advanced practice nurses.

By law, the [nine-member Board](#) consists of four public members and five licensees. The licensee members include two direct-patient care nurses, an advanced practice nurse, a nurse administrator, 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. Currently, one of the public member positions, to be appointed by the Governor, is vacant. The Nursing Practice Act also requires BRN's Executive Officer to be a BRN licensee, a unique requirement among all DCA boards.

MAJOR PROJECTS

OAL Rejects Board's Proposed Regulations to Update Nurse Practitioner Standards; Board Tries Again

On December 13, 2017, OAL issued a [decision of disapproval](#) of the Board's proposed regulations to update nurse practitioner standards. The Board initially [noticed](#) its intent to amend sections 1480–1484, and adopt sections 1483.1, 1483.2, and 1486, Title 16 of the CCR in August 2016, and the Board submitted its final rulemaking package to OAL on October 20, 2017. Specifically, the proposed rulemaking sought to (1) update definitions relating to nurse practitioners and nurse practitioner education programs; (2) identify categories of nurse practitioners; (3) update requirements for obtaining certification and evaluating a registered nurse's qualifications to be certified as a nurse practitioner; (4) establish requirements for nurse practitioner education programs in California; (5) establish requirements for reporting nurse practitioner education program changes; and (6) establish requirements for clinical practice experience for nurse practitioner students enrolled in an out-of- state nurse practitioner education program.

In disapproving the proposed regulations, OAL found that BRN failed to comply with the consistency, clarity, and necessity standards of the Administrative Procedure Act, and also found that the Board failed to follow procedural requirements in adopting the proposed regulations.

Specifically, OAL found that the proposed application fees for the Temporary Nurse Practitioner Certificate, Nurse Practitioner Certification, and the Furnishing Number applications were inconsistent with the statutory ranges for such fees as set forth in the Business and Professions Code—all three of these fees in the proposed regulations were lower than the statutory floor.

OAL also declared several of the Board’s proposed amendments and additions to the CCR to be lacking the requisite clarity for OAL approval, such as Board approval of a Nurse Practitioner Education Program (section 1483.1); Nurse Practitioner Education Curriculum and Advance Pharmacology Courses (section 1486); categories of Nurse Practitioners (section 1481); the Certification Application and Furnishing Number Application; the term “Field Related to Nursing” (section 1482); “National Certification Alternative (“section 1482); curriculum Core Competencies as specified by the National Organization of Nurse Practitioner Faculties (section 1484); National Standards (section 1484); Primary Health Care and Clinically Competent definitions (section 1480); and “Lead Nurse Practitioner Faculty Educator” definition (section 1480).

With respect to necessity, OAL found that the Board failed to articulate the necessity for many of the proposed regulations throughout the initial statement of reasons, and that the Board improperly incorporated by reference several documents. It also specifically found that the necessity element was lacking for the following issues: the requirement that applicants sign signing applications under penalty of perjury; the necessity for the amounts of applications fees; the reason the nurse practitioner education program must be consistent with the National Organization of Nurse Practitioner Faculties’ core

competencies as opposed to other standards; and the reason the Board chose the specified time frames for appropriate experience.

During a March 14, 2018 [teleconference meeting](#), Board staff [reported](#) that they modified the proposed regulations, in consultation with OAL and DCA counsel, and the Board unanimously voted to approve staff's language and release the amendments for public comment. Accordingly, on March 26, 2018, the Board issued its [notice](#) of addition of documents and information to the rulemaking file to address OAL's concerns, including [third modified text](#), and a [supplement to the initial statement of reasons](#). The public comment period closed on April 10, 2018.

The Board requested an extension from OAL, which OAL granted on March 29, 2018. The Board must submit the rulemaking file to OAL by August 10, 2018.

Board Resubmits Proposed Rulemaking Package for Previous Military Education and Experience After Initial OAL Rejection

At its [meeting](#) on November 8, 2017, the Board voted to resubmit a modified rulemaking package to OAL containing BRN's proposal to incorporate credit for military education and experience toward the education requirements for licensure as a Registered Nurse. The modified 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 second attempt to implement [SB 466 \(Hill\) \(Chapter 489, Statutes of 2015\)](#), which requires the board, as of January 1, 2017, to adopt regulations requiring nursing schools seeking Board approval to have a process to evaluate and grant credit for military education and

experience. OAL rejected BRN's initial proposal in a September 2017 [Decision of Disapproval of Regulatory Action](#). [[23:1 CRLR 90](#)]

On December 4, 2017, the Board issued its [notice](#) of documents being added to the rulemaking file, including the [second modified text](#), and [supplement to the initial statement of reasons](#), to address OAL's concerns. The public comment period ended on December 20, 2017.

On February 14, 2018, BRN issued a [notice](#) of a [second supplement to the initial statement of reasons](#) being added to the rulemaking file. This supplement adds paragraphs to 1423.2(a) and (b) to address why those sections are necessary. The document was available for inspection and commenting until March 2, 2018.

At this writing, the Board has not taken further action.

Fee Increase

On March 9, 2018, BRN published [notice](#) of its intent to amend section 1417, Title 16 of the CCR to increase the Board's licensing and application fees, which are set forth in the proposed [language](#). According to the [initial statement of reasons](#), the proposed regulations are the Board's efforts to implement [SB 1039 \(Hill\) \(Chapter 799, Statutes of 2016\)](#), which imposes new statutory fee ranges and requires the Board to set fees within a prescribed range. The initial statement of reasons further states that "increases in fees are necessary to support the Board's functions to ensure public protection through licensure and enforcement of the Nursing Practice Act and the Board's regulations."

At its March 29, 2018 teleconference [meeting](#), the Board voted to adopt an interim fee schedule effective April 5, 2018, which comports with the statutory ranges, until such

time as OAL approves the fee schedule through the formal rulemaking process. A hearing on the proposed regulations is set for April 23, 2018.

BRN Progresses in its Efforts to Get Licensee Fingerprints

At the Board's November 2017 meeting, Executive Officer, Dr. Morris, reported that BRN staff has been working to notify licensees who are missing fingerprints in the BreEZe system. These efforts are underway in the aftermath of a December 2016 [audit](#) performed by the Bureau of State Audits, finding that BRN failed to ensure that all its licensees are fingerprinted as the law requires, 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. [[23:1 CRLR 91](#)] Dr. Morris reported that a fingerprint deficiency statement is now printed on RN renewal notices that are sent out 90 days in advance of expiration of the RN licenses, and is also noted on the BreEZe system.

At BRN's January 2017 meeting, shortly after the audit was released, Board staff proposed an emergency regulation to require successful completion of the fingerprint process of all registered nurses who have not previously been fingerprinted. The Board approved the proposed changes to section 1419, Title 16 of the CCR, and submitted the emergency regulation package for DCA review, but it was never formally noticed with OAL. Since doing so, the Board, by notifying affected licensees to submit fingerprints, has reduced the number of licensees requiring fingerprints by 86%.

In light of the improvements made in 2017, the Board voted at its February meeting to withdraw the emergency rulemaking package, finding the emergency no longer exists.

Board Actions in Response to 2016 Audit

At the Board's November 2017 meeting, BRN's Chief of its Complaint Intake and Investigations Unit [reported](#) on the Board's efforts to implement the Bureau of State Audit's recommendations in its December 2016 [audit](#). According to staff, BRN has revised or rewritten all unit policies and procedures manuals; established timeframe guidelines for all critical case processing milestones; established Management Monitoring Plans to manage workload and data reporting; collaborated with the Office of the Attorney General, DCA, and its Division of Investigations (DOI), to establish a formal training curriculum for all sworn and non-sworn staff investigating BRN cases; increased its recruiting efforts for expert practice consultants; eliminated the backlog of unassigned investigations and implemented a procedure so that all cases are assigned within 10 days of referral to the investigation unit; and, in conjunction with DOI, established investigation timeline goals of 240 days.

LEGISLATION

[AB 1612 \(Burke\)](#), as amended March 20, 2018, would amend section 2746.2 of the Business and Professions Code to specify that nurse-midwives who provide evidence of current advanced level national certification by a certifying body that meets standards established and approved by the Board meet the Board's evidentiary requirements for a certificate to practice nurse-midwifery. The bill also would remove the authority of the

Board's nurse-midwife committee to develop standards relating to ratios of nurse-midwives to supervising physicians. *[A. B&P]*

[AB 2682 \(Burke\)](#), as introduced February 15, 2018, would amend Business and Professions Code section 2746.5 to allow nurse-midwives to practice without physician and surgeon supervision in a variety of settings during “normal” childbirth. The bill also specifies criteria, including emergency situations, under which a certified nurse-midwife must consult immediately with a licensed physician and surgeon. *[A. B&P]*

[AB 2143 \(Caballero\)](#), as amended April 2, 2018, as it applies to BRN, would add section 2815.2 to the Business and Professions Code to add nurse practitioners listed as psychiatric-mental health nurses to a list of licensed mental health service providers eligible for grants to reimburse educational loans. The bill would also add BRN to the list of entities from which the Health Professions Education Foundation must solicit advice in developing this program. Lastly, the bill would require the Board to collect an additional \$20 fee at the time of license renewal from a nurse practitioner who is listed by the Board as a psychiatric mental health nurse and would require those funds to be deposited in the Mental Health Practitioner Education Fund. *[A. Health]*

[SB 1109 \(Bates\)](#), as amended April 4, 2018, as it applies to BRN, would amend sections 2746.51 and 2836.1 of the Business and Professions Code to require nurse practitioners and certified midwives who prescribe opioids to take continuing education courses on the risk of addiction. Specifically, 2746.51 would require that certified midwives take a course in pharmacology which includes the risk of addiction and neonatal abstinence syndrome associated with use of opioids. Amended section 2836.1 would

require that nurse practitioners take a mandatory continuing education course on the risk of addiction associated with use of opioids. [*S. BP&ED*]

RECENT MEETINGS

At the Board's February 2018 meeting, the Continuing Education Ad-hoc committee reported on its efforts to implement [SB 799 \(Hill\) \(Chapter 520, Statutes of 2017\)](#), which amends Business and Professions Code section 2811.5 to require the Board to deliver a report to the legislature by January 1, 2019, detailing a comprehensive plan for approving and disapproving continuing education opportunities. [*23:1 CRLR 88-89*] The Board also considered and voted to move forward with, DCA legal counsel's proposed regulatory language to clarify continuing education course requirements. At this writing, the Board has not officially noticed these proposed regulations through OAL.

Also with respect to SB 799 (Hill), Board staff reported at the February meeting that they have been in contact with the California Research Bureau (CRB) to develop a Memorandum of Understanding (MOU) to fulfill the bill's directive that CRB evaluate the extent to which employers voluntarily report disciplined nurses to the Board, and prepare a report on the evaluation, with recommendations for consistent and reasonable reporting mechanisms, by January 1, 2019.

At the Board's April 2018 [meeting](#), the Board voted to approve amendments to its Disciplinary Guidelines and authorize staff to move forward with the rulemaking process. According to the staff report, the proposed amendments to the Disciplinary Guidelines, which had not been amended since 2003, have been underway with support from DCA

legal counsel since the Board's June 2015 meeting. At this writing, the Board has not formally noticed the proposed regulations through OAL.

Also at the April meeting, the Board voted to approve the [2018-2021 Strategic Plan](#). Executive Officer, Dr. Morris, additionally reported that the Board had recently entered a MOU with the Superior Court of California, Los Angeles, to allow the Board to search the Court's criminal calendar, index, and other data that may be relevant to the enforcement unit in order to maintain consumer protection. The Board also has a similar MOU with the California Department of Public Health, which allows the sharing of relevant data.