

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 California 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, including 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. It also receives and investigates complaints against its licensees, taking 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 2021, BRN licenses over 450,000 RNs and certifies approximately 100,000 advanced practice nurses.

By law, the nine-member Board consists of four public members and five nurse licensees. The licensee members must 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. The Nursing Practice Act also requires BRN's Executive Officer to be a BRN licensee, a unique requirement among DCA boards.

On December 22, 2021, Governor Newsom [appointed](#) Patricia “Tricia” Wynne, 64, of Aptos to the Board. Wynne was a Deputy State Treasurer in the Office of the State Treasurer from 2006 to 2013; was a Policy Director to State Senate President Pro Tempore Bill Lockyer from 1994 to 1998; and was Senate Judiciary Committee Counsel for Chairman Bill Lockyer from 1983 to 1994. She earned a Juris Doctor degree from the University of San Diego (USD) School of Law and was a member of the Consumer Protection Policy Center (then the Center for Public Interest Law) at USD School of Law.

At this writing, there are three vacancies on the Board, two to be appointed by the Governor—a direct patient care licensee member, and a public member—and one public member to be appointed by the Senate.

HIGHLIGHTS

Board Declaratory Decision with Precedential Effect on Administration of Medicinal Cannabis to Students

At its February 16, 2022 [meeting](#), BRN unanimously voted to adopt a declaratory decision with precedential effect pursuant to section 11425.60 of the Government Code that “a registered nurse does not commit misconduct subject to disciplinary action when the nurse administers medicinal cannabis to a qualified patient student on a school campus pursuant to a physician’s care plan.”

Section 11425.60 provides that a declaratory decision with a precedential effect is a unique administrative power “that contains a significant legal or policy determination of general application that is likely to recur.” It is “not rulemaking” and “not subject to judicial review” and is therefore exempt from traditional rulemaking and adjudicatory procedures.

As set forth in the Board’s [agenda item](#), the law firm of Atkinson, Andelson, Loya, Ruud & Romo first presented this question of policy to the Board on September 17, 2021, on behalf of their client Nevada Joint Union High School District.

The applicant is a public school district that employs registered nurses and presented the question to the Board as a matter of the nursing scope of practice. A high school student enrolled in the Applicant District has a diagnosed severe seizure condition. The student’s physician recommended the use of cannabis as maintenance and rescue medication. The physician’s care plan requires the school’s nurse to regularly administer a CBD/THC tincture and a THC intranasal spray as needed. The student is a qualified patient under section 11362.5 of the Health and Safety Code, entitled the Compassionate Use Act of 1996, which exempts qualified patients and their primary caregivers from criminal statutes prohibiting the possession and administration of cannabis. According to the petition, there is no specific law or regulation arising under the Nursing Practice Act that prohibits an RN from administering medicinal cannabis pursuant to a physician’s treatment plan, regardless of the location of the administration.

At the Board’s November 30, 2021 [meeting](#) (Agenda Item 6.0), it received the petitioner’s formal request pursuant to section 1264, Title 1 of the CCR. The Nursing Practice Committee chair, Elizabeth Woods, presented a [memo](#) to the Board containing the request, as well as the Board’s Nursing Education Consultants’ informal response to the firm. After discussion, the Board made an initial determination to proceed pursuant to Government Code section 11465.10 et seq. On December 30, 2021, the Board sent a [Notice of Declaratory Decision Proceeding](#) to all interested parties and began an open comment period that ended on January 24, 2022.

As defined by regulation, a declaratory decision is a written opinion containing a statement of undisputed fact and a determination of issues relating to the application of a state agency rule,

regulation, order, statute, or administrative decision as it applies to a situation in which the agency has primary jurisdiction. California Code of Regulations, title 1, section 1260. These decisions are used by agencies to provide guidance on the application of statute or regulation to a specific question presented and have precedential power. If a similar question arises in the future, a licensee may look to the Board's decision as a precedent to rely upon.

Board Continues to Undergo Contentious Sunset Review

On March 14, 2022, BRN published its 2022 [Sunset Review Report](#) in preparation for its third Sunset Review Oversight Hearing before the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee (the Committees) in the past year. After the 2021 sunset review process, the Board's enabling act, section 2700, et seq., the Business and Professions Code was extended for only a year, instead of the typical four years, due to outstanding issues. [[27:1 CRLR 93–98](#); [26:2 CRLR 80–85](#)] Currently, the Board's statutory authority to continue operating is scheduled to be repealed on January 1, 2023, if it is not extended during the review. The review is a comprehensive process that allows the Committees to review all current policies and procedures of BRN and determine the Board's effectiveness at both licensee regulation and consumer protection.

BRN's 2022 report includes a history and summary of the Board's activities over the past year and an overview of the Board's leadership. The bulk of the report illustrates the Board's efforts to identify process improvements and implement strategies to achieve enhanced efficiencies by reducing redundancies and streamlining their licensing process. Of note, the Board has improved application processing times by transitioning to fully online applications; all applications are now available electronically through BreEZe. Furthermore, during its November 17, 2021

[meeting](#), the Board voted to utilize NURSYS®, an online verification system provided through the National Council of State Boards of Nursing (NCBSN) to provide the license verification service for RNs licensed in California. This aligns the BRN with other states using NURSYS®, allowing for streamlined license verifications of out-of-state nurses. Finally, the Board removed the requirement for the submission of a “passport-like photo” from applicants as a means of establishing identity.

The 2022 Sunset Review Report also provides the legislature with an update on its progress in implementing recommendations made by the California State Auditor in a series of audits— an issue of particular interest to the Committees following the Board’s March 2021 Sunset Review hearing, during which then Deputy State Auditor Mike Tilden reported that BRN executives had falsified data and misrepresented its caseloads to the State Auditor when reporting on implementing recommendations from past audits. [[26:2 CRLR 83–84](#)] In preparation for BRN’s most recent Joint Sunset Review Oversight hearing, the Committees published an updated [background paper](#) for the 2022 sunset hearing. This paper is substantially the same as the background paper published for the 2021 hearing, with updates reflecting changes to the Board’s staffing and statistics. All 38 issues identified in the 2022 paper are identical to the issues in the 2021 paper. Legislative staff again concluded that while BRN has made progress concerning enforcement processes, the “progress was undermined by the misconduct of prior BRN executives,” yet ultimately recommends that BRN should continue to regulate licensees with a future legislative review of their regulation process.

The Board’s [Joint Sunset Review Oversight Hearing](#) on March 18, 2022, was quite contentious, particularly regarding education issues and the artificial restriction on the supply of nurses through regulation. Committee members and representatives from the State Auditor

commented on and asked the Board to address issues regarding attaining clinical hours for nursing students, noting the Board's significant oversight authority over these healthcare facilities. Committee members also expressed concerns over the Board's restrictions on increases to nursing faculty. BRN requires all new faculty members to receive Board approval. When questioned, the Board representatives cited quality assurance as the reason for their approval requirements, while Committee members commented that the faculty shortage is cause for some flexibility and noted that the approval requirements appeared to be duplicative for accredited schools whose deans and administrators have prior accreditation and would therefore select qualified educators.

At the hearing, perhaps the most significant point of contention was the Board's workforce vacancy analysis policy in approving nursing school expansions and new programs. According to testimony at the hearing, BRN is unique in conducting regional workplace vacancy analyses when schools seek expansion or create new nursing programs. When asked why nursing education requires this unique analysis, BRN's Executive Officer responded that the policy is based on studies showing that students typically wish to stay within a 50-mile radius of their school to serve their communities. However, committee members questioned the continued validity of this policy in light of current circumstances where hospitals are filled with travel nurses and struggling to secure nurses to fulfill shifts while also having to comply with strict nurse-to-patient ratios. The Chair of the Senate Business, Professions, and Economic Development Committee commented that there seems to be a disconnect between the Board's policy and the economic reality, particularly considering the current nursing shortage. He expressed his wish to continue this conversation in the future.

On March 24, 2022, the Board reviewed and approved its [response](#) to the identified issues and staff recommendations presented in the legislature's Sunset Review background paper. Like

the initial background paper, the Board’s response was structurally the same as its 2021 response, with updates reflecting changes to the Board’s staffing and statistics; furthermore, the response includes the Board’s efforts after the 2021 Sunset hearing that were previously illustrated in its Sunset Review Report. The response represents efforts to cooperate with audits and implement their recommendations. BRN cooperated with DCA’s Fiscal Office to conduct desk audits regarding workloads not associated with fees; implemented and received DCA confirmation on all recommendations from a 2016 whistleblower audit; and, as of July 2021, implemented five out of nine audit recommendations from a Joint Legislative Audit Committee finding that the BRN fails to use sufficient info when considering enrollment decisions. The Board’s response also highlights its efforts to improve its efficiency and licensing processing times (see above).

At this writing, the legislature has not yet amended the Board’s enabling act to extend the Board’s existence past the January 1, 2023, sunset date.

MAJOR PUBLICATIONS

The following reports/studies/guidelines have been conducted by or about BRN during this reporting period:

- [*Board of Registered Nursing Strategic Plan – 2022–2025*](#), Board of Registered Nursing, 2022 (BRN adopted its strategic plan, a tool to “shape the Board’s direction and form an action plan with measurable goals during the next four years. The plan lists the Board’s mission, vision, values, and seven goals for the next four years. The goals reflect the plan’s themes of increased transparency, reduced redundancy, increased efficiency, and re-evaluation.).
- [*California Board of Registered Nursing 2020–2021 Annual School Report*](#), University of California, San Francisco, February 25, 2022 (This report, commissioned by BRN

pursuant to Business and Professions Code section 2717(c), is formed from data collected during the academic year beginning August 1, 2020, and ending July 31, 2021. This survey is developed to support nursing, nursing education, and workforce planning in California.).

- [*\[Sunset Review\] Board Responses to Background Paper for the Board of Registered Nursing*](#), Board of Registered Nursing, March 24, 2022 (approved by the Board on March 24, 2022, this paper illustrates the Board’s responses to identified issues and staff recommendations from the joint sunset review oversight hearing) (see HIGHLIGHTS).

- [*Sunset Review Report – 2022*](#), Board of Registered Nursing, December 2021, (the bulk of the report illustrates the Board’s efforts to identify process improvements and implement strategies to achieve enhanced efficiencies by reducing redundancies and streamlining their licensing process) (see HIGHLIGHTS).

RULEMAKING

- **Nurse Practitioner Education:** On February 8, 2022, OAL [approved](#) DBC’s [proposed amendments](#) to section 1484, Title 16 of the CCR, to clarify that it is acceptable for a nurse practitioner education program to exceed the minimum requirement of 500 clinical hours. The Board originally published notice of its proposed rulemaking on November 2, 2021. This regulatory action becomes effective on April 1, 2022.

LEGISLATION

- [*AB 2684 \(Committee on Business and Professions\)*](#), as introduced on February 18, 2022, would amend sections 2701, 2706, and 2708 of the Business and Professions Code to specify that an appointed BRN member serves at the pleasure of their appointing authority. This bill modifies section 2706 to rescind the Governor’s current removal power from any Board

member to just those appointed by the Governor. Stating that each appointing authority has the power to remove from office any member it appoints. *[A. B&P]*

- [AB 2397 \(Megan Dahle\)](#), as introduced on February 17, 2022, would add section 2718 to the Business and Professions Code to require, on or before July 1, 20203, BRN to consult with DCA and develop recommendations to implement the Nursys online license verification to verify licenses of California nurses seeking to practice outside of the state. *[A. B&P]*

- [SB 1375 \(Atkins\)](#), as introduced on February 18, 2022, would amend sections 2725.4, 2837.101, and 2837.103 of the Business and Professions Code and section 123468 of the Health and Safety Code to authorize independent nurse practitioners (NPs) to provide abortion services by aspiration techniques in the first trimester without having to work under standardized procedures prescribed in existing law. This bill is sponsored by the California Association for Nurse Practitioners and supported by numerous organizations, including Planned Parenthood. Organizations opposing this bill include the California Catholic Conference and the California Medical Association. *[S. Jud]*

- [SB 1031 \(Ochoa Bogh\)](#), as introduced on February 15, 2022, and as it applies to BRN, would amend sections 701, 703, 1006.5, and 2734 of the Business and Professions Code. This bill would reduce the renewal fee for an inactive license to be half the amount of the renewal of an active license. According to the author, financial flexibility for healthcare workers who choose to take a temporary pause on their profession is merited by the worsening healthcare labor shortage. *[S. BP&ED]*

- [AB 2637 \(Blanca Rubio\)](#), as introduced on February 18, 2022, would amend section 2786 and add section 2786.4 to the Business and Profession Code. Currently, the law requires approved nursing schools and programs to be affiliated or conducted in connection with

one or more hospitals and be an institution of higher education. This bill will create an “exempt” status for which some qualified schools can apply. This status would allow more flexibility for the institutions; they would not be required to pay fees or seek board approval for changes to faculty, enrollment, clinical simulation hours, or clinical experience placements. *[A. B&P]*