

**State of California
Office of Administrative Law**

In re:
Board of Registered Nursing

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 16, California Code of Regulations

OAL File No. 2014-0610-02 S

**Adopt sections: 1441
Amend sections: 1403, 1444.5
Repeal sections:**

In this regulatory action, the Board is amending two sections and adopting one section in Division 14 of Title 16 of the California Code of Regulations. The regulatory changes delegate to the Executive Officer the authority to enter into settlement agreements, further define the term "unprofessional conduct," and require an administrative law judge to issue a proposed decision revoking the registered nurse license without stay if the licensee is found to have engaged in sexual contact with a patient or has committed or has been convicted of a sexual offense.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/23/2014.

Date: 7/23/2014



Thanh Huynh
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Louise Bailey
Copy: Ronnie Whitaker

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2013-0716-13	2014-0610-02S	

For use by Office of Administrative Law (OAL) only

2014 JUN 10 PM 4:41

OFFICE OF ADMINISTRATIVE LAW

RECEIVED FOR FILING PUBLICATION DATE

JUL 18 '13 JUL 26 '13

Office of Administrative Law

NOTICE

REGULATIONS

ENDORSED FILED

2014 JUL 23 PM 1:33

Debra Bowen DEBRA BOWEN SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY	AGENCY FILE NUMBER (if any)
BOARD OF REGISTERED NURSING	

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
ENFORCEMENT	16	1403, 1441, 1444.5	July 26, 2013
3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	Ronnie Whitaker	(916) 574-8257	(916) 574-7700
OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		2013, 302	7-26-2013

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Enforcement	

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	1441
	AMEND
	1403, 1444.5
TITLE(S)	REPEAL
16	

3. FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input checked="" type="checkbox"/> Other (Specify) Denise D. Brown, Director, Department of Consumer Affairs			

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Ronnie Whitaker	916 574 8257	916 574 7700	ronnie.whitaker@dca.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
<i>Louise R. Bailey</i>	6/10/2014
TYPED NAME AND TITLE OF SIGNATORY	
Louise R. Bailey, Executive Officer, Board of Registered Nursing	

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ENDORSED APPROVED

JUL 23 2014

Office of Administrative Law

BOARD OF REGISTERED NURSING

ORDER OF ADOPTION

The Board of Registered Nursing hereby amends the following regulation in Division 14 of Title 16 of the California Code of Regulations.

(1) Amend Section 1403, Adopt Section 1441 and Amend Section 1444.5 of Division 14 of Title 16 of the California Code of Regulations to read as follows:

1403. Delegation of Certain Functions.

(a) The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the executive officer, or, in his/her absence from the office of the board, his/her designee.

(b) All settlement agreements for the revocation, surrender, or interim suspension of a license approved pursuant to section 1403(a) shall be reported at regularly scheduled board meetings.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

1441. Unprofessional Conduct.

In addition to the conduct described in Section 2761 (a) of the Code, "unprofessional conduct" also includes, but is not limited to, the following:

(a) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, the documents.

(b) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory

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privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(c) Failure to report to the board, within 30 days, any of the following:

(1) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(d) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2761 and 2765, Business and Professions Code.

1444.5. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (1 0/02), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example, the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

NOTE: Authority cited: Section 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 726, 729, 2750, 2759, 2761 and 2762, Business and Professions Code; Section 44010, Education Code; and Sections ~~11400.20~~ and 11425.50(e), Government Code.


Louise R. Bailey, M.Ed., RN
Executive Officer

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