

## BOARD OF REGISTERED NURSING

### FINAL STATEMENT OF REASONS

**Hearing Date:** December 12, 2011

**Subject Matter of Proposed Regulations:** Sponsored Free Health Care Event – Requirements for Exemption

**Sections Affected:** Title 16, Division 14, California Code of Regulations, Article 10, Sections 1500, 1501, 1502, 1503, 1504

**Updated Information:** The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

Modifications to the initially proposed text and the applications that were incorporated by reference, addition of a document to the rulemaking file, and revision of the Initial Statement of Reasons were noticed and made available for a 15-day public comment period on July 31, 2012. The Board received written comments from one person during the 45-day public comment period; none were received during the 15-day comment period.

The following modifications have been made to the initially proposed text and applications:

**1501(a) Registration and (b) Determination of Completeness of Form.** The title of the registration form to be used by the sponsoring entity, form number, and edition date were added to the text of the regulation. The form is “Registration of Sponsoring Entity Under Business & Professions Code Section 901,” Form 901-A (DCA/2011); the form is incorporated by reference. The registration form was modified for congruency with the proposed regulation modification. Additionally, a “personal information collection, access, and disclosure statement” was added and other minor changes were made for conformity with the Department of Consumer Affairs (DCA) registration form, which is to be used by healing arts boards choosing to delegate to DCA the authority for reviewing and processing sponsoring entity registration applications. Subsequent to the public comment period, a minor grammatical change was made to the regulation text. Specifically, “under” was capitalized in the form name.

**Section 1501(d) Requirement for Prior Board Approval of Out-of-State Practitioner.** The regulation specifies that a sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the Board. For purposes of clarity, “such practitioner” was added after “written approval.”

**Section 1502(a) Registration.** Three changes were made in the regulation text: 1) added the title of the form to be completed by the out-of-state applicant; 2) changed the form date; and 3) revised the last sentence to clarify that the fingerprint or Live Scan inquiry requirement applies only to the first application in a twelve-month period. The application form is “Request For Authorization To Practice Without A California License At A Sponsored Free Health Care Event” Form 901-B (BRN/2011), and is incorporated by reference. Additionally, the form was revised to include more detailed information about fingerprinting and Live Scan inquiry and a “personal information collection, access, and disclosure statement;” other minor technical

changes were also made. Subsequent to the public comment period, a minor grammatical change was made to the form. Specifically, all words in the form title were capitalized.

**Section 1502(c)(1)(D) Denial of Request for Authorization to Participate.** Added that the license must be “active,” for purposes of clarity and consistency with the requirement specified on page 3 of the authorization to participate application form.

**Section 1502(d) Appeal of Denial.** The section 1504 citation was changed to 1503(d) for accuracy.

The document, “Data Supporting Fee for Request for Authorization to Practice without a California License,” provides additional justification for the \$50 application fee for the out-of-state registered nurse applicant, and was added to the rulemaking file.

The factual basis/rationale on the Initial Statement of Reasons for Section 1502(c)(2), which specifies the discretionary reasons for which the Board may deny an applicant’s request to participate in a sponsored health care event, was revised for clarity.

**Local Mandate:** None

**Small Business Impact:** This regulation will not have a significant adverse economic impact on small businesses. The proposed regulations affect community-based organizations that sponsor free health care events and out-of-state registered nurses who wish to volunteer their services at these events.

**Consideration of Alternatives:** No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board/bureau/commission/program would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**Summary of Comments, Including Recommendations/Responses Received During the 45-Day Public Comment Period and Board Responses:** No comments were presented at the hearing; an e-mail was received from Elliot Hochberg pertaining to Section 1503 and is summarized below with the Board’s responses.

1. In Section 1503(a)(3), the term “credible complaint” is an addition to the statute; the Board may not be able to act quickly in these matters, and the sponsoring entity should be permitted by regulation to order a person to cease practice; if the Board’s final decision to terminate authorization to practice is a public record, the BRN Complaint Disclosure Policy should be amended; the regulations go beyond the statute by requiring that all terminations be deemed a disciplinary action reportable to the national practitioner data banks. **Board Response: *Reject comments.***

Section 1503(a)(3) is necessary for clarification and implementation of the statute, and, as stated in the Initial Statement of Reasons, is necessary for the Board to act consistently with its mandate that protection of the public be its highest priority. Section (a)(2) states that commission of an act that would constitute grounds for discipline if done by a licensee is grounds for termination. The starting point for Board action is receipt of a complaint. There will be a delay between receipt of the

complaint and the Board's final decision on the complaint. Section 1503(a)(3) enables the Board to intervene immediately and require the registered nurse to cease practicing, if the complaint is credible and such action is necessary to protect consumers.

The Board's response to credible complaints will be a high priority and action can and will be expeditious. The procedures for processing of such complaints and issuance of termination of authorization to practice notices (Notice) have not been developed. However, the procedures do not have to mirror those for license-related discipline since the authorizing statutes are different. There is nothing that would preclude the sponsoring entity from requiring that the registered nurse cease practice immediately, if warranted. However, as the respondent indicated, only the Board can terminate the authorization to practice, and this is a function the Board will not relegate to another entity.

The termination of authorization to practice is a public record, which would be made public only after all appeals have been exhausted. Board policies and procedures, such as the "BRN Complaint Disclosure Policy," will be modified, as necessary and appropriate. The Board addressed the issue related to reporting to the national practitioner data basis in the Initial Statement of Reasons; it is necessary for public protection. The grounds for termination of authorization to practice are the same as those for disciplining a California registered nurse license. The Board does not have disciplinary authority over the out-of-state practitioner RN license; its only remedy is to report the termination action to the licensee's home state, other states of licensure, and the national practitioner data base. The licensing entities may impose disciplinary action against the RN's license, as they deem appropriate.

2. The proposed regulations create a "deeming standard" for imposing a disciplinary action on an out-of-state licensee. **Board Response: Reject comment.**

As provided in the statute, the out-of-state practitioner who provides health care services in violation of the statute is *deemed* to be practicing in violation of the statute. (Emphasis added.) Neither the statute nor proposed regulations create a "deeming" standard for imposing of disciplinary action. The Board terminates the authorization to practice; the state issuing the license makes the determination on disciplinary action against the registered nurse's license, if any.

3. The consumer should be informed that there are two appeal options available. **Board Response: Reject comment.**

The regulatory proposal is clear and identifies the two options: 1503(d) a hearing under the Administrative Procedures Act as provided in Section 901(j)(2) of the Code; and 1503(e) an informal conference option with the executive officer or his/her designee.

4. The reporting requirements in subsection (c) do not state when they are to occur, and this can have unintended consequences; data banks may be given information before a final appeal decision is rendered. **Board Response: Reject comment.**

Board actions would be reported to the national practitioner data bank only after they have been finalized, i.e. after appeal option(s) has been exhausted. This is consistent with the Board's citation and fine reporting procedures. The Board will continue to use its routine reporting procedures, which at the present time is through Nursys. The reporting mechanism is subject to change, and the Board does not wish to limit its options via regulatory codification.

**Summary of Public Comments Received during the 15-Day Comment Period for Modification of Proposed Text, Adding A Document to the Rulemaking File, and Revising the Initial Statement of Reasons**

Notice was given of proposal to modify the text, add a document, “Data Supporting Fee for Request for Authorization to Practice without a California License,” to the rulemaking file, and revise the Initial Statement of Reasons on July 31, 2012. The public comment period was from August 1, 2012, to August 16, 2012; no comments were received during this period.