DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. BOARD OF REGISTERED NURSING

Order of Adoption

Independent Practitioner Supervision in Disciplinary Guidelines

Legend:	Added text is indicated with an underline. Omitted text is indicated by (* * * *) Deleted text is indicated by ~~strikeout~~.

Amend Section 1444.5 of Division 14 of Title 16 of the California Code of Regulations to read as follows:

§ 1444.5. Disciplinary Guidelines.
In reaching a decision on a disciplinary action under the administrative adjudication provisions of 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" (~~10/02~~ Revised 03/26), 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.

(* * * *)

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 11425.50 and 11519, Government Code.

ADOPT

State of California

Board of Registered Nursing



Recommended Guidelines
for
Disciplinary Orders
and
Conditions of Probation

(Revised 03/26)
Effective 01/01/27

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Introduction

In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 29.)

Factors to Be Considered

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Violations and Recommended Actions

The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 18-30 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probation order in addition to the conditions listed below:

Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.

Nursing Practice Act

2761(a)(1) a.) **Incompetence or gross negligence.**

- Recommended discipline:
  Revocation.
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.
- Condition 19 if patient death occurred.

2761(a)(1) b.) **Incompetence or gross negligence.**
To direct another or to personally falsify and/or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record not pertaining to controlled substances.

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(a)(2) **Conviction of practicing medicine without a license.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(a)(3) **Fraudulent advertising.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(a)(4) **Disciplinary action against health care license by another state, government agency, or licensing board.**

- Recommended discipline
  Revocation or Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.
  (Discipline to be determined based on guidelines' recommended discipline for underlying violation(s).)

2761(a) **Other actions which constitute unprofessional conduct include but are not limited to:**
Failure to report client abuse to the appropriate agency.

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

Holding oneself out as any of the following without meeting the BRN standards:

- Nurse practitioner – also a violation of Section 2761(j) and 2835
- Nurse anesthetist – also a violation of Section 2761(j) and 2829
- Certified nurse midwife – also a violation of Section 2761(j)
- Public health nurse – also a violation of Section 2761(j)
- Nurse practitioner with a furnishing number – also a violation of Section 2836.3
- Nurse midwife with a furnishing number – also a violation of Section 2746.51
- Board-listed psychiatric mental health nurse
- Clinical nurse specialist – also a violation of Section 2838

  - Minimum discipline:
    Revocation stayed with 3 years probation.
  - Minimum conditions of probation:
    1-13 and others as appropriate.

2761 (b) **Procuring a certificate by fraud, misrepresentation, or mistake.**

- Minimum discipline:
  Revocation

2761 (c) **Involvement in the procurement of or assisting in a criminal abortion.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(d) **Violating or abetting violation of any section of Nursing Practice Act.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(e) **Furnishing false information.**

(1) In applying for licensure:

- Minimum discipline:
  Denial or revocation of license.

(2) In applying for renewal of license.

- Minimum discipline:
  Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(f) **Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse,** in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).

- Recommended discipline:
  Revocation

2761(g) **Impersonating an applicant in an examination.**

- Minimum discipline:
  Revocation

2761(h) **Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing.**

- Minimum discipline:
  Revocation

2761(i) **Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act).**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(j) **Holding oneself out as a nurse practitioner without meeting the BRN standards.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(k) **Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse.**

No evidence of potential or actual patient harm.

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

Potential or actual patient harm evidenced.

- Minimum discipline:
  Revocation

2762(a) **Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others.**

(1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:

- Minimum discipline:
  Revocation.

(2) In cases of first-time offense, with documented evidence of an on-going rehabilitation program:

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(b) **<u>Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired.</u>**

- Recommended discipline:
  Revocation

In cases of first-time offense with documented evidence of an on-going rehabilitation program:

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(c) **<u>Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs.</u> (See also 2761(f) and 2762 (a), (b) and (e).)**

(1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:

- Minimum discipline:
  Revocation

(2) In cases of first-time offense with documented evidence of an on-going rehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:

- Minimum discipline:
  Revocation stayed with 3 years probation
- Minimum conditions of probation: *1-19*

(3) In cases where the conviction is for falsification of records pertaining to controlled substances:

- Minimum discipline:
  Revocation stayed with 3 years probation
- Minimum conditions of probation:
  1-13 and others as appropriate

2762(d) **<u>Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.</u>**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(e) **Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances.**

- Minimum discipline:
  Revocation stayed with 3 years probation
- Minimum conditions of probation:
  1-13 and others as appropriate

For repeated and similar acts:

- Minimum conditions of probation: *1-19*

2836.3(c) **Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation
- Minimum conditions of probation:
  1-13 and others as appropriate

Additional Business and Professions Code Statutes

119(a) **Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.**

119(b) **Lending license to any person or knowingly permitting the use thereof by another.**

119(c) **Displaying or representing any license not issued to him/her as being his/her license.**

119(d) **Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.**

119(e) **Knowingly permitting any unlawful use of a license issued to him/her.**

119(f) **Photographing, photo stating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.**

- Recommended discipline for 119(a) - (f):
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation
- Minimum conditions of probation:
  1-13 and others as appropriate

125 **Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:**

(a) **Allows his/her license to be used by such person.**

(b) **Acts as his/her agent or partner.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation

- Minimum conditions of probation:
  1-13 and others as appropriate

125.6 **Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with three years probation
- Minimum conditions of probation:
  1-13 and others as appropriate.

480(a) **Acts Disqualifying Applicant:**

(See attached Policy Statement on Denial of Licensure.)

(1) Conviction of a crime.

(2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Any act which if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license.

480(c) **Applicant knowingly making a false statement of fact required to be revealed in the application for such license.**

- Recommended discipline for 480(a) and (c):
  Denial of licensure

492 **Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.**

493 **The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.**

496 **Subversion of licensing examinations.**

- Recommended discipline:
  Denial of licensure, actual suspension or revocation.

498 **Securing license by fraud, deceit, or misrepresentation.**

- Recommended discipline:

Denial of licensure, suspension, or revocation.

726 **Sexual abuse, misconduct, or relations with a patient.**

- Recommended discipline:
  Revocation

810 (a)(1) **Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with three years probation
- Minimum conditions of probation:
  1-13 and others as appropriate.

810(a)(2) **Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with three years probation
- Minimum conditions of probation:
  1-13 and others as appropriate.

820 **Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.**

- Recommended discipline:
  Suspension or revocation

Other Situations in which Revocation is the Recommended Penalty

1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.

2. Violation of the conditions of the Board's Probation Program.

3. Substantiated evidence or convictions of physical abuse and/or sexual offenses.

4. Patient neglect by failure to provide competent nursing care.

5. Second offenses unless the respondent can demonstrate that he/she has been rehabilitated.

Cost Recovery for Revocations and Surrenders

When the order is revocation or surrender, cost recovery should be included as follows:

"If and when respondent's license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license."

Drug/Alcohol Rehabilitation Criteria

Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:
    - Chemical-free treatment philosophy
    - Individual and/or group counseling
    - Random, documented biological fluid screening
    - Participation in nurse (or other professionals') support group(s)
    - Education about addictive disease
    - Adherence to a 12-step recovery program philosophy, or equivalent
    - Written documentation of participation in 12-step recovery groups, or equivalent

- For registered nurse licensees, employment in nursing for a minimum of six (6) months with documentation (from the employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.

- For respondents seeking reinstatement of license, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.

Mitigation Evidence

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.

B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.

C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.

D) Recent, dated laboratory analyses or drug screen reports, where appropriate.

E) Recent, dated performance evaluation(s) from respondent's employer.

F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.

G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.**

Conditions of Probation and Rationale

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Registered Nursing.

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

A. Standard conditions that appear in all probation orders; and
B. Optional conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

Listing of Probation Conditions

STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

1) Obey all Laws
2) Comply With Board's Probation Program
3) Report in Person
4) Residency or Practice Outside of State
5) Submit Written Reports
6) Function as a Registered Nurse
7) Employment Approval and Reporting Requirements
8) Supervision
9) Employment Limitations
10) Complete a Nursing Course(s)
11) Cost Recovery (Does not apply to Applicants)
12) Violation of Probation
13) License Surrender

OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

14) Physical Examination
15) Participate in Treatment/Rehabilitation Program for Chemical Dependence
16) Abstain From Use of Psychotropic (Mood-Altering) Drugs
17) Submit to Tests and Samples
18) Mental Health Examination
19) Therapy or Counseling Program
20) Actual Suspension of License

Introductory Language and Standard Probation Conditions

The following introductory language and all standard probation conditions are to be included in probationary decisions/orders. For applicants, Condition 11, Cost Recovery, does not apply. For licensees, all standard probation conditions apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)

INTRODUCTORY LANGUAGE FOR ALL ORDERS –
IT IS HEREBY ORDERED that Registered Nurse License Number ___ issued to Respondent _____ is revoked. However, the revocation is stayed and respondent is placed on probation for _____ years on the following conditions.

SEVERABILITY CLAUSE –
Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

RATIONALE: *The severability clause is required for all decisions and stipulated agreements where there are Conditions of Probation, in order to avoid the possibility of all probation conditions being repealed upon appeal.*

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

RATIONALE: *All licensees are responsible for "abiding by the law" and complying with court orders, should the licensee be subject to court ordered parole or probation. This condition emphasizes the respondent's responsibility and it provides the Board with a means to take more immediate and severe action if another violation occurs.*

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

RATIONALE: *Full compliance with conditions of probation demonstrates the respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.*

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

RATIONALE: *This provides a means for the Board representatives to make periodic personal assessments of the respondent, to give guidance and direction and to require the respondent to appear before the Board, if necessary.*

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

RATIONALE: *This ensures that respondents may not complete probation without being fully monitored for their term in California. This further assures that the Board is aware of all licensure outside of California as a professional nurse.*

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

RATIONALE: *This provides the Board with a mechanism for maintaining communication with the respondent between meetings; gathering pertinent information from the respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies to discipline registered nurses.*

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non- direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

RATIONALE: *This provides the Board with an opportunity to monitor the respondent and determine if he/she can perform the functions and duties of a registered nurse in a competent manner. It also prevents the respondent from merely "sitting out" the probation and avoiding the necessity of demonstrating competence and complying with nursing practice related probation conditions.*

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

RATIONALE: *This condition allows the Board to determine the appropriateness of a setting for which the respondent will be providing registered nursing services and to obtain reports relative to the respondent's registered nursing competency.*

This condition additionally allows the Board to be informed of any employment, termination, or separation of the respondent from a nursing or other health care related position, e.g., as a licensed vocational nurse, respiratory therapist, certified nursing assistant or home health aide. It includes reporting of employment in health care related services not regulated by the state, e.g., surgical technician or cardiac catheterization technician.

The condition also provides the Board with a mechanism for ensuring that the employer providing nursing or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.
Respondent shall practice only under the direct supervision of a registered nurse, advanced practice registered nurse, physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code that is in good standing [i.e. no disciplinary action within the last five (5) years] with the applicable professional state licensing agency and otherwise meets the requirements of this section.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(e) Independent Practice Setting - If the Respondent is certified by the Board as an advanced practice registered nurse and has a scope of practice to provide patient care without standardized procedures in an independent practice setting which shall be determined by the Board on a case-by-case basis, the Board shall require the respondent, during probation, to have a Board-approved advanced practice registered nurse, physician, dentist, podiatrist, or clinical psychologist who have agreed to provide supervision of the Respondent according to their plan(s) of supervision. The Respondent shall not resume practice until the Board provides written approval of the proposed supervisor(s) and plan(s) of supervision in accordance with this subsection.

Within sixty (60) calendar days of the effective date of the Decision and Order, Respondent shall submit to the Board in writing by email to the address listed on this Board's website, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent would be supervised in accordance with this subsection. The plan for supervision shall describe how the supervisor(s) and supervisee will meet the requirements of this subsection, including duration, type of supervision and access to all patient records. The request shall include each proposed supervisor's license number and license type, and a description of how they meet the criteria for Board approval provided below.

The supervisor shall meet the following criteria to be approved:

1. Has not been subject to any disciplinary action by their licensing Board within the last five (5) years. For the purposes of this section "disciplinary action" shall mean revocation, suspension, probation, public reprimand or reproval or any other form of license restriction imposed on a license. An administrative citation and fine does not constitute discipline and, therefore, in and of itself is not a reason to deny an individual as a supervisor.

2. Does not have a current or prior financial, personal, or business relationship with Respondent.

The Board shall advise Respondent within thirty (30) calendar days whether the proposed supervisor and plan of supervision are approved. Respondent shall not practice nursing until receiving approval by the Board of Respondent's choice of a supervisor and plan of supervision.

The plan of supervision shall be either: *direct and require the physical presence of the supervising provider in the office during the time direct patient care is provided*; or *general and not require the physical presence of the supervising provider during the time direct patient care is provided but does require an occasional random check of the work performed on the patient as well as quarterly monitoring visits at the office or place of practice*. Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of

deficiencies.

Each supervisor shall submit written reports to the Board, on the time frame established in the respondent's plan of supervision, that verify that supervision has taken place as required and include an evaluation of Respondent's performance. Respondent shall complete any required consent forms or Release of Information authorizing the supervisor to communicate with the Board. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner as outlined in the Respondent's plan of supervision. Failure to file the required reports in a timely fashion within the time frames specified by the Board shall be a violation of probation.

If the supervisor is no longer available, Respondent shall notify the Board in writing by email within seventy-two (72) hours of the date the supervisor is no longer available. Within five (5) calendar days of the date the supervisor is no longer available, Respondent shall submit in writing by email to the Board or its designee for its prior approval, the name and qualifications of one or more proposed new supervisor(s) and a plan for supervision by each supervisor as specified in this subsection.

Respondent shall not practice until a new supervisor has been approved by the Board. If Respondent fails to submit a proposed new supervisor and plan for supervision as required or fails to cease practice in accordance with this section when there is no supervisor approved by the Board or its designee, this shall constitute a violation of probation.

All costs of the supervision shall be borne by Respondent.

RATIONALE: This allows the Board to require appropriate supervision and/or collaboration, to monitor the respondent's registered or advanced practice nursing competency and thus protect consumer safety.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board.

Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as

an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

RATIONALE: *The condition prevents the respondent from engaging in the practice of registered nursing in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances. If the respondent is working through a private duty or temporary placement arrangement, there is no assurance that the contracting facility or contracting family is aware of the nurse's probation. Home health agencies are licensed by the state, and are staffed by registered nurse supervisors. On a case-by-case basis, respondents may be permitted to provide home care under specified conditions. RNs disciplined by the Board may not teach approved CE courses pursuant to Section 1457(a)(1)(A), Title 16, California Code of Regulations.*

(10) COMPLETE A NURSING COURSE(S) - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

RATIONALE: *This condition permits the Board to require the respondent to remediate deficiencies in knowledge which affected or may affect his/her practice of registered nursing. This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases.*

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

1. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
2. One year for a license surrendered for a mental or physical illness.

Optional Probation Conditions

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment for physical problems/disabilities which could affect registered nursing practice. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse. This condition protects the public if the physical examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the physical examination requirement.*

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration.

As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added.

Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment, within a specified time period, for problems which could affect her/his registered nursing practice and provides for continued involvement in a support system. The Board supports the need for participation in an ongoing recovery program for a successful recovery from chemical dependency or substance abuse.*

(16) <u>ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS</u> - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment.

Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs.

The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

RATIONALE: *Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.*

(17) SUBMIT TO TESTS AND SAMPLES - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *This condition provides documentation that the respondent is substance or chemical free. It provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol, and/or dangerous drugs when the respondent appears to be in violation of the conditions of probation or appears to be under the influence of mood altering substances. This condition protects the public by giving the Board the discretion to suspend respondent from practice based on the use of any substance that is not legally authorized. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the drug screening requirement.*

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist,

psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the board to require the respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/or could lead to relapse of a chemical dependency problem. This condition protects the public if the mental health examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the mental health examination requirement.*

(19) <u>THERAPY OR COUNSELING PROGRAM</u> - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment and counseling for mental health or chemical dependency problems which could affect her/his nursing practice.*

(20) <u>ACTUAL SUSPENSION OF LICENSE</u> - Respondent is suspended from the practice of registered nursing for ___ months (period of time not to exceed one year) beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except

those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *Business and Professions Code Section 2759(c) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.*

It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation, the public may be better protected if the registered nurse is suspended from the practice of nursing.

Recommended Language for Applicants and Reinstatements

In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

- **Exam applicants who are placed on probation:**

"The application of respondent ____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:"

- **Endorsement applicants who are placed on probation:**

"The application of respondent ____licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of
_____ years on the following conditions:"

- **Reinstatement of licensure with conditions of probation:**

"The application of respondent _____for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:"

It is important to note that in many cases, petitioners for reinstatement have not practiced registered nursing in the State Of California for eight years. They must retake the licensing exam before they are eligible for licensure per Section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: "Upon successful completion of the licensure examination, a license shall be issued to respondent."

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: "The respondent shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical

requirements of the required coursework."

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.

Time Frames for Petitions for Reinstatement and Modification of Penalty

Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The board may, in its sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

Recommended Language for Cost Recovery for Revocations and Surrenders

When the order is revocation or surrender, cost recovery should be included as follows:

"If and when respondent's license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license."

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
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POLICY STATEMENT ON DENIAL OF LICENSURE

The California Board of Registered Nursing protects the public by screening applicants for licensure in order to identify potentially unsafe practitioners. Statutory authority for denial of licensure is set out in Business and Professions Code Sections 480-487, 492, 493, 496, 810, 820-828, 2750-2765, and 2795-2797.

The law provides for denial of licensure for crimes or acts which are substantially related to nursing qualifications, functions, or duties. A crime or act meets this criterion if, to a substantial degree, it evidences present or potential unfitness to perform nursing functions in a manner consistent with the public health, safety, or welfare (California Code of Regulations, Section 1444).

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of nursing.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application for license.
- Breach of examination security.

Convictions

The Board considers most convictions involving sex crimes, drug crimes, and crimes of violence to be substantially related to nursing practice. Board regulations list examples of such crimes or acts to include, but not be limited to:

- Conviction of child abuse.
- Violation of Nursing Practice Act.
- Conviction as a mentally disordered sex offender.
- Crime or act involving narcotics, dangerous drugs, or dangerous devices.
- Conviction of assault and/or battery.

Rehabilitation

If the Board determines that an act or crime is substantially related to the practice of nursing, then it is the responsibility of the applicant to present sufficient evidence of rehabilitation.

When considering denial of license, the Board takes into account the following criteria to evaluate the rehabilitation of the applicant. (California Code of Regulations, Section 1445).

1. Nature and severity of the acts or crimes.
2. Additional subsequent acts.
3. Recency of acts or crimes.
4. Compliance with terms of parole, probation, restitution, or other sanctions.
5. Evidence of rehabilitation submitted by applicant.

The Board has developed the following list of suggested evidence of rehabilitation for applicants whose licensure is in question.

It should be noted that the board applies the same denial criteria for applications for interim permits and temporary license as it uses for permanent licensure.

In summary, the Board of Registered Nursing screens applications fairly but cautiously, applying the above criteria. Schools of nursing are encouraged when counseling prospective nursing students to make them aware that there could be potential licensure problems due to serious acts or convictions as described above. In this manner, students have the opportunity to explore other career options prior to investing substantial time in a nursing program if it appears that a prior serious act or conviction may jeopardize licensure due to its substantial relationship to the practice of nursing.

EVIDENCE OF REHABILITATION

At the time of application for licensure, the burden of proof lies with the applicant to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform nursing functions in a manner consistent with public health, safety, and welfare. The following list itemizes types of evidence which the applicant should consider providing to the Board. All items should be mailed directly to the Board by the individual or agency who is providing information about the applicant.

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
2. Letter from applicant describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from nursing program instructors concerning attendance, participation, and performance in nursing program.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the registered nursing profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.

9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
10. For endorsement applicants, copies of:
    a. Formal accusation and determination of other state,
    b. Copies of evidence presented to other state in order to obtain reinstatement of license or reduction or penalty,
    c. Terms of probation and evidence of current compliance if currently on probation in another state.

STATUTORY AUTHORITY FOR DENIAL OF LICENSURE

(Summarized Version of Business & Professions Code)

Grounds for Denial

480 (a) Board may deny a license on the basis of:

(1) Conviction of a crime, after time for appeal, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(2) Any act involving dishonesty, fraud or deceit with intent to substantially benefit self or another, or substantially injure another.

(3) Any act which is grounds for suspension or revocation of registered nurse's license.

(b) May not deny license solely on basis of felony conviction if there is certificate of rehabilitation. (Penal Code 4852.01)

(c) May deny license if applicant knowingly made false statement of fact required in application.

Criteria for Related Crimes Required

481 Board must have criteria to assist in considering denial, revocation, suspension of license in order to determine whether a crime or act is substantially related to nursing qualifications, functions, or duties. (BRN criteria specified in Section 1444 of California Code of Regulations).

Criteria for Rehabilitation Required

482 Board must have criteria to evaluate rehabilitation when considering (a) denial or (b) suspension or revocation of license. Board must consider all competent evidence of rehabilitation furnished by applicant or licensee. (Section 1445 of California Code of Regulations).

Attestations of Good Moral Character Not Required

484 No applicant can be required to submit attestations of good moral character.

Procedure for Board Upon Denial

485 Upon denial the Board must (a) serve a statement of issues or (b) notify the applicant of the denial stating the reasons and the right to a hearing. The right to a hearing is waived if a written request is not received within 60 days.

Reapplication After Denial

486 Upon denial the Board must inform the applicant of the earliest date for reapplication, state that all competent evidence of rehabilitation will be considered upon reapplication, and send a copy of the criteria for rehabilitation.

487 If a hearing is requested it must be conducted within 90 days of request, except for OAH extensions or at applicant's request.

492 Successful completion of any diversion program under the Penal Code or

successful completion of an alcohol and drug problem assessment program under the Vehicle Code does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.

493 The record of the conviction of a crime shall be conclusive evidence of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

Violations of Exam Security

496 Board may deny, suspend, revoke, or restrict license on grounds that applicant for licensure subverted or attempted to subvert administration of examination.

REGULATIONS RELATING TO LICENSE DENIAL

(Summarized Version of California Code of Regulations)

1444. Substantial Relationship Criteria

A crime or act is considered substantially related to the practice of nursing if, to a substantial degree, it evidences the present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare.

Such acts or crimes include, but are not limited to:

(a) Conviction of child abuse.
(b) Violation of Nursing Practice Act.
(c) Conviction as a mentally disordered sex offender.
(d) Crime or act involving sale, gift, administration, or furnishing of narcotics, dangerous drugs, or dangerous devices.
(e) Conviction for assault and/or battery.

1445. Criteria for Rehabilitation

(a) When considering denial of license, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and his/her present eligibility for a license.

(1) Nature and severity of acts or crimes.
(2) Evidence of any additional, subsequent acts which also could be considered grounds for denial.
(3) Time that has elapsed since commission of acts or crimes.
(4) Extent to which applicant has complied with terms of parole, probation, restitution, or other sanctions.
(5) Evidence of rehabilitation submitted by applicant.

03/26 Adopted by Board

State of California

Board of Registered Nursing

Repealed

Recommended Guidelines

for

Disciplinary Orders

and

Conditions of Probation

(Revised 10/02)
Effective 05/24/03

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Repealed

Introduction

In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 27.)

Repealed

Factors to Be Considered

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Repealed

Violations and Recommended Actions

The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-27 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probationary order in addition to the conditions listed below:

Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.

Nursing Practice Act

2761(a)(1) **a.) Incompetence or gross negligence.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.
- Condition 19 if patient death occurred.

2761(a)(1) **b.) Incompetence or gross negligence.**

...t another or to personally falsify and/or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record not pertaining to controlled substances.

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate

2761(a)(2) **Conviction of practicing medicine without a license.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.

Repealed

2761(a)(3) **Fraudulent advertising.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.

2761(a)(4) **Disciplinary action against health care license by another state, government agency, or licensing board.**

- Recommended discipline
  Revocation or
  Revocation stayed with 3 years probation
- Minimum conditions of probation:
  1-13and others as appropriate
  (Discipline to be determined based on guidelines' recommend discipline for underlying violation(s).)

2761(a) **Other actions which constitute unprofessional conduct include but are not limited to:**
Failure to report client abuse to the appropriate agency

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1- 13and others as appropriate.

Holding oneself out as any of the following without meeting the BRN standards:

- Nurse practitioner – also a violation of Section 2761(j) and 2835
- Nurse anesthetist – also a violation of Section 2761(j) and 2829
- Certified nurse midwife – also a violation of Section 2761(j)
- Public health nurse – also a violation of Section 2761(j)
- Nurse practitioner with a furnishing number – also a violation of Section 2836.3
- Nurse midwife with a furnishing number – also a violation of Section 2746.51
- Board-listed psychiatric mental health nurse
- Clinical nurse specialist – also a violation of Section 2838

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate

Repealed

2761 (b) **Procuring a certificate by fraud, misrepresentation, or mistake.**

- Minimum discipline:
  Revocation

2761 (c) **Involvement in the procurement of or assisting in a criminal abortion.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.

2761(d) **Violating or abetting violation of any section of the Nursing Practice Act.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1- 13and others as appropriate.

2761(e) **Furnishing false information.**

(1) In applying for licensure:

- Minimum discipline:
  Denial or revocation of license.

(2) In applying for renewal of license:

- Minimum discipline:
  Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

2761(f) **Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse,** in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).

- Recommended discipline:
  Revocation

2761(g) **Impersonating an applicant in an examination.**

- Minimum discipline:
  Revocation

2761(h) **Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing.**

- Minimum discipline:
  Revocation

Repealed

2761(i) **Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act).**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others appropriate.

2761(j) **Holding oneself out as a nurse practitioner without meeting the BRN standards.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.

2761(k) **Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse.**

No evidence of potential or actual patient harm.

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.

Potential or actual patient harm evidenced.

- Minimum discipline:
  Revocation.

2762(a) **Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others.**

(1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:

- Minimum discipline:
  Revocation.

(2) In cases of first time offense, with documented evidence of an on-going rehabilitation program:

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

Repealed

2762(b) **Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired.**

- Recommended discipline:
  Revocation

In cases of first time offense with documented evidence of an on-going rehabilitation program:

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

2762(c) **Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs. (See also 2761(f) and 2762 (a), (b) and (e).)**

(1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:

- Minimum discipline:
  Revocation

(2) In cases of first time offense with documented evidence of an on-going rehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:

- Minimum discipline:
  Revocation stayed with 3 years probation
  Minimum conditions of probation: *1-19*

(3) In cases where the conviction is for falsification of records pertaining to controlled substances:

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate

2762(d) **Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation: *1-19*

Repealed

2762(e) **Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances.**

- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate

For repeated and similar acts:

- Minimum conditions of probation: *1-19*

2836.3(c) **Incompetence/gross negligence by a nurse practitioner performing functions related to furnishing drugs or devices.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation
  Minimum conditions of probation:
  1-13and others as appropriate

Repealed

Additional Business and Professions Code Statutes

119(a) Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.

119(b) Lending license to any person or knowingly permitting the use thereof by another.

119(c) Displaying or representing any license not issued to him/her as being his/her license.

119(d) Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.

119(e) Knowingly permitting any unlawful use of a license issued to him/her.

119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.

- Recommended discipline for 119(a) - (f):
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation
- Minimum conditions of probation
  1-13 and others as appropriate

125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:

(a) Allows his/her license to be used by such person.

(b) Acts as his/her agent or partner.

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation
  1-13and others as appropriate

Repealed

125.6 **Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with three years probation
- Minimum conditions of probation:
  1-13and others as appropriate.

480(a) **Acts Disqualifying Applicant:**

(See attached Policy Statement on Denial of Licensure.)

(1) Conviction of a crime.

(2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Any act which if done by a licentiate of the business or profession in question would be grounds for suspension or revocation of license.

480(c) **Applicant knowingly making a false statement of fact required to be revealed in the application for such license.**

- Recommended discipline for 480(a) and (c):
  Denial of licensure

492 **Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.**

493 **The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.**

496 **Subversion of licensing examinations.**

Recommended discipline:
Denial of licensure, actual suspension or revocation.

498 **Securing license by fraud, deceit, or misrepresentation.**

- Recommended discipline:
  Denial of licensure, suspension, or revocation.

726 **Sexual abuse, misconduct, or relations with a patient.**

- Recommended discipline:
  Revocation

Repealed

810 (a)(1) **Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13 and others as appropriate.

810(a)(2) **Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.**

- Recommended discipline:
  Revocation
- Minimum discipline:
  Revocation stayed with 3 years probation.
- Minimum conditions of probation:
  1-13and others as appropriate.

820 **Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.**

- Recommended discipline:
  Suspension or revocation

Repealed

Other Situations in which Revocation is the Recommended Penalty

1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.

2. Violation of the conditions of the Board's Probation Program.

3. Substantiated evidence or convictions of physical abuse and/or sexual offense

4. Patient neglect by failure to provide competent nursing care.

5. Second offenses unless the respondent can demonstrate that he/she has been rehabilitated.

Repealed

Cost Recovery for Revocations and Surrenders

When the order is revocation or surrender, cost recovery should be included as follows:

"If and when respondent's license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license."

Repealed

Drug/Alcohol Rehabilitation Criteria

Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:
    - Chemical-free treatment philosophy
    - Individual and/or group counseling
    - Random, documented biological fluid screening
    - Participation in nurse (or other professionals') support group(s)
    - Education about addictive disease
    - Adherence to a 12-step recovery program philosophy, or equivalent
    - Written documentation of participation in 12-step recovery groups, or equivalent

- For registered nurse licensees, employment in nursing for a minimum of six (6) months with documentation (from the employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.

- For respondents seeking reinstatement of license, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.

Repealed

Mitigation Evidence

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.

B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.

C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurses Support Groups, etc., where appropriate, and sobriety date.

D) Recent, dated laboratory analyses or drug screen reports, where appropriate.

E) Recent, dated performance evaluations from respondent's employer.

F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner or physician assistant.

G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.**

Repealed

Conditions of Probation and Rationale

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Registered Nursing.

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

A. Standard conditions that appear in all probation orders; and
B. Optional conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

Repealed

Listing of Probation Conditions

STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

1) Obey all Laws
2) Comply With Board's Probation Program
3) Report in Person
4) Residency or Practice Outside of State
5) Submit Written Reports
6) Function as a Registered Nurse
7) Employment Approval and Reporting Requirements
8) Supervision
9) Employment Limitations
10) Complete a Nursing Course(s)
11) Cost Recovery (Does not apply to Applicants)
12) Violation of Probation
13) License Surrender

OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involved alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

14) Physical Examination
15) Participate in Treatment/Rehabilitation Program for Chemical Dependence
16) Abstain From Use of Psychotropic (Mood-Altering) Drugs
17) Submit to Tests and Samples
18) Mental Health Examination
19) Therapy or Counseling Program
20) Actual Suspension of License

Repealed

Introductory Language and Standard Probation Conditions

The following introductory language and all standard probation conditions are to be included in probationary decisions/orders. For applicants, Condition 11, Cost Recovery, does not apply. For licensees, all standard probation conditions apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)

INTRODUCTORY LANGUAGE FOR ALL ORDERS –
IT IS HEREBY ORDERED that Registered Nurse License Number ____ is issued to Respondent _____ is revoked. However, the revocation is stayed and respondent is placed on probation for _____ years on the following conditions.

SEVERABILITY CLAUSE –
Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

RATIONALE: *The severability clause is required for all decisions and stipulated agreements where there are Conditions of Probation, in order to avoid the possibility of all probation conditions being repealed upon appeal.*

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and that order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

RATIONALE: *All licensees are responsible for "abiding by the law" and complying with court orders, should the licensee be subject to court ordered parole or probation. This condition emphasizes the respondent's responsibility and it provides the Board with a means to take more immediate and severe action if another violation occurs.*

Repealed

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

RATIONALE: *Full compliance with conditions of probation demonstrates the respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.*

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

RATIONALE: *This provides a means for the Board representatives to make periodic personal assessments of the respondent, to give guidance and direction and to require the respondent to appear before the Board, if necessary.*

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, and will remain he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

RATIONALE: *This ensures that respondent may not complete probation without being fully monitored for their term in California. This further ensures that the Board is aware of all licensure outside of California as a professional nurse.*

(5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

Repealed

RATIONALE: *This provides the Board with a mechanism for maintaining communication with the respondent between meetings; gathering pertinent information from the respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies to discipline registered nurses.*

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

RATIONALE: *This provides the Board with an opportunity to monitor the respondent and determine if he/she can perform the functions and duties of a registered nurse in a competent manner. It also prevents the respondent from merely "sitting out" the probation and avoiding the necessity of demonstrating competence and complying with nursing practice related probation conditions.*

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

RATIONALE: *This condition allows the Board to determine the appropriateness of a setting for which the respondent will be providing registered nursing services and to obtain reports relative to the respondent's registered nursing competency.*

This condition additionally allows the Board to be informed of any employment, termination, or separation of the respondent from a nursing or other health care related position, e.g., as a licensed vocational nurse, respiratory

Repealed

therapist, certified nursing assistant or home health aide. It includes reporting of employment in health care related services not regulated by the state, e.g., surgical technician or cardiac catheterization technician.

The condition also provides the Board with a mechanism for ensuring that the employer providing nursing or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during work days. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

RATIONALE: *This allows the Board to require appropriate supervision and/or collaboration, to monitor the respondent's registered nursing practice nursing competency and thus protect consumer safety. The level of supervision and/or for advanced practice collaboration will be determined by the Board at probation meetings.*

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Repealed

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

RATIONALE: *The condition prevents the respondent from engaging in the practice of registered nursing in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances. If the respondent is working through a private duty or temporary placement arrangement, there is no assurance that the contracting facility or contracting family is aware of the nurse's probation. Home health agencies are licensed by the state, and are staffed by registered nurse supervisors. On a case-by-case basis, respondents may be permitted to provide home care under specified conditions. RNs disciplined by the Board may not teach approved CE courses pursuant to Section 1457(a)(1)(A), Title 16, California Code of Regulations.*

(10) <u>COMPLETE A NURSING COURSE(S)</u> - Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

RATIONALE: *This condition permits the Board to require the respondent to remediate deficiencies in knowledge which affected or may affect his/her practice of licensed nursing. This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases.*

(11) <u>COST RECOVERY</u> Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

Repealed

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

Repealed

Optional Probation Conditions

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone the suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment for physical problems/disabilities which could affect registered nursing practice. The physical examination can also be conducted to determine if there is physical evidence of alcohol/ drug abuse. This condition protects the public if the physical examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the physical examination requirement.*

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Repealed

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment, within a specified time period, for problems which could affect her/ his registered nursing practice and provides for continued involvement in a support system. The Board supports the need for participation in an ongoing recovery program for a successful recovery from chemical dependency or substance abuse.*

(16) <u>ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUG</u> Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

RATIONALE: *Abstinence from mood altering substances (alcohol/ drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.*

(17) <u>SUBMIT TO TESTS AND SAMPLES</u> - Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as

Repealed

the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *This condition provides documentation that the respondent is substance or chemical free. It provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol, and/ or dangerous drugs when the respondent appears to be in violation of the conditions of probation or appears to be under the influence of mood altering substances. This condition protects the public by giving the Board the discretion to suspend respondent from practice based on the use of any substance that is not legally authorized. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the drug screening requirement.*

(18) **MENTAL HEALTH EXAMINATION.** The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to

Repealed

obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

RATIONALE: *This condition permits the board to require the respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/ or could lead to relapse of a chemical dependency problem. This condition protects the public if the mental health examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the mental health examination requirement.*

(19) **THERAPY OR COUNSELING PROGRAM** - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

RATIONALE: *This condition permits the Board to require the respondent to obtain appropriate treatment and counseling for mental health or chemical dependency problems which could affect her/his nursing practice.*

(20) **ACTUAL SUSPENSION OF LICENSE** - Respondent is suspended from the practice of registered nursing for ____ months (period of time not to exceed one year) beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

RATIONALE: *Business and Professions Code Section 2759(b) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.*

It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation the public may be better protected if the registered nurse is suspended from the practice of nursing.

Repealed

Recommended Language for Applicants and Reinstatements

In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

- **Exam applicants who are placed on probation:**

"The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:"

- **Endorsement applicants who are placed on probation:**

"The application of respondent _____licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:"

- **Reinstatement of licensure with conditions of probation:**

"The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. The license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following conditions:"

It is important to note that in many cases petitioners for reinstatement have not practiced registered nursing in the State Of California for eight years. They must retake the licensing exam before they are eligible for licensure per section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: "Upon successful completion of the licensure examination, a license shall be issued to respondent."

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: "The respondent shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical requirements of the required coursework."

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.

Repealed

Time Frames for Petitions for Reinstatement and Modification of Penalty

Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The board may, in its sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation if less than three years.

Repealed

Recommended Language for Cost Recovery for Revocations and Surrenders

When the order is revocation or surrender, cost recovery should be included as follows:

"If and when respondent's license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license."

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Repealed

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Repealed

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
BOARD OF REGISTERED NURSING
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POLICY STATEMENT ON DENIAL OF LICENSURE

Repealed

The California Board of Registered Nursing protects the public by screening applicants for licensure in order to identify potentially unsafe practitioners. Statutory authority for denial of licensure is set out in Business and Professions Code Sections 480-487, 492, 493, 496, 810, 820-828, 2750-2765, and 2795-2797.

The law provides for denial of licensure for crimes or acts which are substantially related to nursing qualifications, functions, or duties. A crime or act meets this criterion if, to a substantial degree, it evidences present or potential unfitness to perform nursing functions in a manner consistent with the public health, safety, or welfare (California Code of Regulations, Section 1444).

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of nursing.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application for license.
- Breach of examination security.

Convictions

The Board considers most convictions involving sex crimes, drug crimes, and crimes of violence to be substantially related to nursing practice. Board regulations list examples of such crimes or acts to include, but not be limited to:

- Conviction of child abuse.
- Violation of Nursing Practice Act.
- Conviction as a mentally disordered sex offender.
- Crime or act involving narcotics, dangerous drugs, or dangerous devices.
- Conviction of assault and/or battery.

Rehabilitation

If the Board determines that an act or crime is substantially related to the practice of nursing, then it is the responsibility of the applicant to present sufficient evidence of rehabilitation.

When considering denial of license, the Board takes into account the following criteria to evaluate the rehabilitation of the applicant. (California Code of Regulations, Section 1445).

1. Nature and severity of the acts or crimes.
2. Additional subsequent acts.
3. Recency of acts or crimes.
4. Compliance with terms of parole, probation, restitution, or other sanctions.
5. Evidence of rehabilitation submitted by applicant.

The Board has developed the following list of suggested evidence of rehabilitation for applicants whose licensure is in question.

It should be noted that the board applies the same denial criteria for applications for interim permits and temporary license as it uses for permanent licensure.

In summary, the Board of Registered Nursing screens applications fairly but cautiously, applying the above criteria. Schools of nursing are encouraged when counseling prospective nursing students to make them aware that there could be potential licensure problems due to serious acts or convictions as described above. In this manner, students have the opportunity to explore other career options prior to investing substantial time in a nursing program if it appears that a prior serious act or conviction may jeopardize licensure due to its substantial relationship to the practice of nursing.

EVIDENCE OF REHABILITATION

At the time of application for licensure, the burden of proof lies with the applicant to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform nursing functions in a manner consistent with public health, safety, and welfare. The following list summarizes the types of evidence which the applicant should consider providing to the Board. All items should be mailed directly to the Board by the individual or agency who is providing information about the applicant.

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
2. Letter from applicant describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from nursing program instructors concerning attendance, participation, and performance in nursing program.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. Current examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the registered nursing profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
10. For endorsement applicants, copies of:
    a. Formal accusation and determination of other state,
    b. Copies of evidence presented to other state in order to obtain reinstatement of license or reduction or penalty,
    c. Terms of probation and evidence of current compliance if currently on probation in another state.

Repealed

STATUTORY AUTHORITY FOR DENIAL OF LICENSURE
(Summarized Version of Business & Professions Code)

Grounds for Denial

480 (a) Board may deny a license on the basis of:

(1) Conviction of a crime, after time for appeal, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(2) Any act involving dishonesty, fraud or deceit with intent to substantially benefit self or another, or substantially injure another.

(3) Any act which is grounds for suspension or revocation of registered nurse's license.

(b) May not deny license solely on basis of felony conviction if there is certificate of rehabilitation. (Penal Code 4852.01)

(c) May deny license if applicant knowingly made false statement of fact required for application.

Criteria for Related Crimes Required

481 Board must have criteria to assist in considering denial, revocation, suspension of license in order to determine whether a crime or act is substantially related to nursing qualifications, functions, or duties. (BRN criteria specified in Section 1444 of California Code of Regulations).

Criteria for Rehabilitation Required

482 Board must have criteria to evaluate rehabilitation when considering (a) denial or (b) suspension or revocation of license. Board must consider all competent evidence of rehabilitation furnished by applicant or licensee. (Section 1445 of California Code of Regulations).

Attestations of Good Moral Character Not Required

484 No applicant can be required to submit attestations of good moral character.

Procedure for Board Upon Denial

485 Upon denial the Board must (a) serve a statement of issues or (b) notify the applicant of the denial stating the reasons and the right to a hearing. The right to a hearing is waived if a written request is not received within 60 days.

Reapplication After Denial

486 Upon denial the Board must inform the applicant of the earliest date for reapplication, state that all competent evidence of rehabilitation will be considered upon reapplication, and send a copy of the criteria for rehabilitation.

487 If hearing is requested it must be conducted within 90 days of request, except for OAH extensions or at applicant's request.

492 Successful completion of any diversion program under the Penal Code or successful completion of an alcohol and drug problem assessment program under the Vehicle Code does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.

493 The record of the conviction of a crime shall be conclusive evidence of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

Violations of Exam Security

496 Board may deny, suspend, revoke, or restrict license on grounds that applicant for licensure subverted or attempted to subvert administration of examination.

Repealed

REGULATIONS RELATING TO LICENSE DENIAL
(Summarized Version of California Code of Regulations)

1444. Substantial Relationship Criteria

A crime or act is considered substantially related to the practice of nursing if, to a substantial degree, it evidences present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare.
Such acts or crimes include, but are not limited to:

(a) Conviction of child abuse.
(b) Violation of Nursing Practice Act.
(c) Conviction as a mentally disordered sex offender.
(d) Crime or act involving sale, gift, administration, or furnishing of narcotics, dangerous drugs, or dangerous devices.
(e) Conviction for assault and/or battery.

1445. Criteria for Rehabilitation

(a) When considering denial of license, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and his/her present eligibility for license:

(1) Nature and severity of acts or crimes.

(2) Evidence of any additional, subsequent acts which also could be considered grounds for denial.

(3) Time that has elapsed since commission of acts or crimes.

(4) Extent to which applicant complied with terms of parole, probation, restitution, or other sanctions.

(4) Evidence of rehabilitation submitted by applicant.

Repealed

12/95 Adopted by Board