

**BOARD OF REGISTERED NURSING
ADDENDUM TO THE FINAL STATEMENT OF REASONS**

Subject Matter of Proposed Regulations: Credit for Military Education/Experience

Sections Affected: Adopt Sections: 1423.1, 1423.2
Amend Sections: 1418, 1424, 1426, 1430

Updated Information

On September 5, 2017, the Office of Administrative Law (OAL) notified the Board of the Registered Nursing (Board) in writing of its disapproval of the proposed rulemaking to adopt sections 1423.1 and 1423.2, and to amend sections 1418, 1424, 1426 and 1430 in title 16 of the California Code of Regulations (CCR). In the Decision of Disapproval of Regulatory Action dated September 12, 2017, OAL provided a written decision detailing the reasons for the disapproval of this regulatory filing.

In the proposed regulation text for 16 CCR sections 1418, 1423.1, 1423.2, 1424, 1426 and 1430, along with the supplemental Initial Statement of Reasons (ISR), the second supplemental ISR and the third supplemental ISR, changes were made in response to the Decision of Disapproval. Provided below is a summary of the issues discussed in the OAL decision and the changes and actions taken by the Board to remedy the identified issues.

The Board proposed additional changes to the proposed text and released a supplemental Initial Statement of Reasons that were noticed for a (second) 15-Day comment period on December 4, 2017 to December 20, 2017. A second supplemental ISR was published for a (third) 15-Day comment period on February 14, 2018 to March 2, 2018, and a third supplemental ISR was published for a (fourth) 15-Day comment period on May 30, 2018 to June 15, 2018.

Second 15-Day comment period, December 4, 2017 – December 20, 2017

The Board received no comments.

Third 15-Day comment period, February 14, 2018 – March 2, 2018

The Board received no comments.

Fourth 15-Day comment period, May 30, 2018 – June 15, 2018

The Board received no comments.

Non-substantive Changes to Language

A few nonsubstantive changes were made in the Order of Adoption that were not reflected in the Second Modified Text. These nonsubstantive changes were made to correct grammatical errors noted in the Authority and Reference citations. In section 1423.1, the Authority cited was corrected to add “and” between 2786.1 and 2788, and the Reference cited was corrected to add “and” between 2786.1 and 2786.6. In 1423.2, the Authority cited was corrected to add “and” between 2786.1 and 2788. In 1426, the Authority cited was corrected to add an “e” to the word Code that was missing in the previous text. In 1430, the Reference cited was corrected to remove “and” after 2736, eliminate the comma after 2786.6, and add “and” between 2786.6 and 2788.

Rationale for Clarity

Issue – The disapproval noted clarity issues throughout the rulemaking file which violated the “clarity” standard of the Administrative Procedures Act (APA). The decision questioned how a nursing program would know that its policies and practices regarding the acceptance of military education and experience are consistent in evaluation and application across California schools. The decision also questioned whether a finding that a nursing program’s policies and practices is inconsistent with other nursing programs could adversely affect licenses previously granted on the basis of military education and experience.

Separately, the decision noted unclear language involving the scope of section 1418’s application. It identified unclear language involving the type of evidence of noncompliance that would cause the Board to act, the scope of “noncompliance,” and the lack of clear standards relating to effective nursing program leadership under section 1423.2. The decision found section 1424’s use of the word “consistent” to be unclear, as well as the section’s description of how schools should display information on their websites. Lastly, the use of the term “individualized instructional plan” in section 1426 was unclear and in conflict with the description of the term.

Solution – The proposed language was updated and revised to address the identified clarity concerns. Section 1418, for instance, was revised in response to OAL’s decision to clarify the scope of the section. Applicants may meet, “in whole or in part,” the education requirements for licensure by submitting evidence of meeting some or all of the minimum standards of competency and the minimum education requirements for licensure. The proposed text was also amended to clarify when the Board may deny or revoke approval, to clarify ambiguous terms such as “sufficient” and “consistent,” and to remove other unclear terms and phrases.

Section 1426 was amended to remove “instructional plan” and clarify that applicable theory and clinical practice requirements will be adjusted through an individualized

process for evaluating and granting equivalency credit that results in meeting the same course objectives and competency standards. No comments were received on this amended text.

Section 1423.2 was amended to refer to “Article 3,” which specifies the requirements that all prelicensure nursing programs must meet to be approved, issued a certificate of approval, and to retain Board approval. Programs are already required to comply with article 3 to be approved by the Board and to retain approval. (Cal. Code Regs., tit. 16, § 1423, subd. (a).) Section 1423.2 reiterates the point. The criteria in Article 3 also define the scope of the Board’s program review and in-depth site visits pursuant to Business and Professions Code (BPC) section 2788. Evidence must be gathered across the entire nursing program to ensure any noncompliance areas are addressed completely.

The Board conducts an in-depth and comprehensive program review once every five years. The criteria found in Article 3 is broad and encompasses the entire program. The Board maintains all evaluation results and works closely with the program directors on the findings and subsequent progress reports for continuing approval, non-compliance and deferred status recommendations. Each fall, the Board communicates directly with the program directors on the upcoming year’s evaluation schedule, along with any updates, including regulatory changes. Once this proposed rulemaking is approved, the Board will work closely with the schools on implementing the regulations. The concern that a program would be found out of compliance with this regulation after the Board’s in-depth, program-by-program, review is highly unlikely.

The proposed regulation requires each program to make their policies and practices publicly available, so they may be reviewed by applicants, the Board, the public, and other schools. For example, the California State University (CSU) policy utilizes the American Council on Education (ACE) Military Guide and is available on their website. In addition, there are Veterans Affairs contacts in place at every CSU campus to help students understand their policy. The proposed regulation also requires every California school to maintain a record that shows applicants and results of transferred and challenged credits, including applicants who applied for a transfer of military education and experience. The Board could review on a case-by-case basis whether licensees are qualified to practice, in the unlikely event a school was found to be out of compliance.

Rationale for Necessity

Issue – The disapproval decision noted that the rulemaking record lacked the Board’s rationale for the determination that certain provisions were reasonably necessary to carry out the purpose and address the problem for which the provisions were proposed. The decision noted that the proposed rulemaking described the primary purpose of the action as the implementation of SB 466, but that the rulemaking also proposed requirements that exceeded SB 466’s scope, without sufficient explanation.

Solution – The Board amended the proposed language and published three additional supplements to the ISR to provide the Board’s rationale and explain why expanded provisions beyond SB 466 are necessary to ensure applicants and veterans with military education and experience have an opportunity to have applicable credit transferred and applied to a California prelicensure nursing program.

1423.1(a)

Requiring every prelicensure program to provide evidence of granting credit, in the field of nursing, for previous education including military education and experience is necessary because BPC section 2786.6, subdivision (a), requires the Board to deny an application for approval and revoke the approval of a school that does not give student applicants credit, in the field of nursing, for previous education and the opportunity to obtain credit for other acquired knowledge. SB 466 expanded this general requirement to include credit of military education and experience.

This evidence allows the Board to determine whether the program complies in granting military education and experience or whether it shall deny an application for approval and revoke the approval. If a program was found to be in non-compliance with this requirement during one of the Board’s in-depth reviews, the Board would utilize the program’s applicant list and transferred/granted credit information to conduct evaluations on a case-by-case basis to ensure section 1426 requirements (relating to the required curriculum) were met and that applicants had the education and experience necessary to practice.

1423.1(a) (1)

Requiring every prelicensure program to have an established policy and procedure to evaluate and grant credit including military education and experience is necessary because the applicants, the public and the Board must be able to determine what process is used in evaluating previous education and experience for credit. California prelicensure programs already have policies and procedures in place regarding awarding credits including military education and experience, and the opportunity to obtain credit for other acquired knowledge by use of challenge examinations or other methods of evaluation.

1423.1(a) (2)

Requiring every prelicensure program to make their information on the evaluation of and granting of credit in the field of nursing for previous education and experience available in published documents and online is necessary so that this information is available to the applicants, the public and the Board. Publishing this information allows those affected persons to be knowledgeable of the program’s standards used in establishing equivalency or granting of credit through previous military education and experience.

1423.1(a) (3)

Requiring every prelicensure program to maintain a record that shows applicants and results of transferred/challenged credits including military education and experience is necessary because the Board must monitor compliance and this record identifies those applicants who were granted credit for previous education and experience. The Board reviews this information at the program review and in-depth site visits pursuant to BPC section 2788. Maintaining this record is necessary because in the event the Board would need to conduct evaluations on a case-by-case basis, this record would facilitate this process.

1423.1(c) & (d) and 1423.2 (c) & (d)

The Board cured the identified necessity concerns with these provisions by deleting them in the Second Modified Text.

1423.2 (a) (1-4)

As explained, section 1423.2 was amended to refer to “Article 3,” which defines specific requirements that all prelicensure nursing programs must meet to be approved, issued a certificate of approval, and to retain Board approval. The Board also relies on article 3 requirements when conducting program reviews and site visits. Programs are already required to comply with article 3 to be approved by the board and to retain approval, the supplemental ISRs also explain the Board’s rationale for the progression of actions that the Board will take when schools fail to comply with article 3.

Amending section 1423.2 to refer to “Article 3” was necessary because it defines specific requirements that all prelicensure nursing programs must meet to be approved, issued a certificate of approval, and to retain Board approval. Programs are already required to comply with article 3 to be approved the Board and to retain approval and section 1423.2 reiterates the point. (Cal. Code Regs., tit. 16, § 1423, subd. (a).). The Board relies on Article 3 requirements when conducting program reviews and site visits.

Section 1423.2 (a) (1-4) is necessary because upon presenting evidence of noncompliance with Article 3, the Board gives the program warning and sufficient time to correct most deficiencies. This progression is necessary because it avoids a premature or unnecessary displacement of students from the nursing program. The program is given sufficient time to address specific requirements for correction. While the supplemental ISRs explain the Board’s rationale for the progression of actions that the Board will take when programs fail to comply with Article 3, additional detail for each level of denial or revocation is provided below.

1423.2 (a) (1) – Deny approval of a nursing program – This applies to those institutions seeking Board approval of a new prelicensure registered nursing program in California pursuant to BPC section 2786. An instruction document that specifies the

requirements and process is incorporated by reference in CCR, section 1421. Upon presenting evidence of noncompliance with Article 3 and lack of demonstrated corrective actions to remove noncompliance, the Board may deny approval of a nursing program.

1423.2 (a) (2) – Revoke approval from a nursing program – This applies to those nursing programs that are approved by the Board. Upon presenting evidence of noncompliance with Article 3, the program is provided specific requirements for correction of noncompliance findings and a return date for review of the program’s approval status. Should the program fail to provide demonstrated corrective actions to remove noncompliance, the Board may revoke approval from a nursing program.

1423.2 (a) (3) – Place a nursing program on a warning status with intent to revoke approval – This applies to those nursing programs that are approved by the Board. Once a program has presented evidence of noncompliance with Article 3, and after the program is provided specific requirements for corrective action, the Board closely monitors the program and reviews the compliance evidence. If the Board determines the program is not in compliance with the specific action requirements, it may place the program on warning status with intent to revoke approval.

Pursuant to BPC 2788, the Board notifies programs in writing specifying areas of noncompliance and allows a reasonable amount of time for the program to correct deficiencies. This warning status is often one year and is necessary because programs often need that amount of time to obtain additional funding, hire a replacement director or locate clinical facilities. One year is also necessary because the students will need at least that amount of time to find alternative programs for enrollment if the Board believes the program will not be able to correct deficiencies.

1423.2 (a) (4) – Revoke approval when a program has been on a warning status for one year and the program fails to show substantive corrective changes – This applies to those nursing programs that are approved by the Board. Programs that are on warning status for one year are monitored closely by Board. Failure to provide compliance evidence and demonstrated corrective action during this period is grounds for the Board to revoke approval from the nursing program.

1424(b)(4)

BPC section 2786.1, subdivision (c), states that the Board shall post on its internet web site information related to the acceptance of military coursework and experience at each approved prelicensure nursing program. To satisfy the statutory requirement, the Board must be able to access the information that schools post on their websites. This subdivision ensures that schools post the information on their websites so that the Board may comply with its statutory duty.

APA Procedures

The disapproval decision noted that the Board failed to comply with APA procedural requirements, which are discussed below.

Failure to comply with Government Code section 11346.5(a)(3)(A)

The decision indicated that the Board's notice failed to include a clear summary of the effect of the proposed action, and that the Board must provide a clear summary of the effects of the proposed action in its supplemental materials. The notice described the effect of the proposed action as implementation of SB 466, while the proposed action was broader than SB 466. In response, the Board published three supplements to the ISR, updated the informative digest, and produced this Addendum to the Final Statement of Reasons to clarify those provisions that exceed SB 466's scope.

Failure to comply with Government Code section 11346.2(a)(2)

The disapproval decision noted that the Board failed to specify Reference citations following sections 1423.1 and 1423.2, and to list BPC section 2786.1 as a Reference citation for amended section 1430. The proposed language was amended to add these reference citations and noticed in the Second Modified Text.

Failure to comply with Title 1 CCR Section 44(b)

The decision also noted that the Board failed to include in the rulemaking record a certification regarding the availability of modified text which confirmed the Board's compliance with Title 1 CCR Section 44, pursuant to Title 1 CCR Section 44(b). The certification has been completed and added to the rulemaking record.

Updated Informative Digest – The Updated Informative Digest has been updated to reflect all changes to this rulemaking.