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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 6.5. Vocational Nursing [2840 - 2895.5] (*Chapter 6.5 added by Stats. 1951, Ch. 1689.*)

ARTICLE 3. Disciplinary Proceedings [2875 - 2879] (*Article 3 added by Stats. 1951, Ch. 1689.*)

2875. Every licensee may be disciplined as provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(*Added by Stats. 1951, Ch. 1689.*)

2876. (a) The board shall discipline the holder of any license, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing the licensee on probation.
- (3) Suspending the licensee's right to practice vocational nursing for a period not exceeding one year.
- (4) Revoking the licensee's license.
- (5) Taking such other action in relation to disciplining the licensee as the board in its discretion may deem proper.

(b) The board shall delegate to its executive office the authority to adopt a decision entered by default and a stipulation for surrender of a license.

(*Amended by Stats. 2021, Ch. 632, Sec. 20. (AB 1536) Effective January 1, 2022.*)

2877. If the holder of a license is suspended, the licensee shall not be entitled to practice vocational nursing during the term of suspension and shall return the license to the board.

Upon the expiration of the term of suspension, the licensee shall be reinstated by the board and shall be entitled to resume the practice of vocational nursing unless it is established to the satisfaction of the board that the licensee has practiced vocational nursing in this state during the term of suspension. In this event, the board shall revoke the license.

(*Amended by Stats. 2021, Ch. 632, Sec. 21. (AB 1536) Effective January 1, 2022.*)

2878. The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

- (1) Incompetence, or gross negligence in carrying out usual nursing functions.
- (2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence of the conviction.
- (3) The use of advertising relating to nursing which violates Section 17500.
- (4) The use of excessive force upon or the mistreatment or abuse of any patient. For the purposes of this paragraph, "excessive force" means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(5) The failure to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(6) Failure to report the commission of any act prohibited by this section.

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

(c) Procuring, aiding, abetting, attempting, or agreeing or offering to procure or assist at, a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

(e) Making or giving any false statement or information in connection with the application for issuance of a license.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(h) Impersonating another practitioner, misrepresenting professional credentials or licensure status, or permitting another person to use the licensee's certificate or license.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

(k) The commission of any act punishable as a sexually related crime, if that act is substantially related to the duties and functions of the licensee.

(l) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Podiatric Medical Board of California, the Board of Dental Examiners, and the Board of Registered Nursing, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(Amended by Stats. 2021, Ch. 632, Sec. 22. (AB 1536) Effective January 1, 2022.)

2878.1. (a) If a licensed vocational nurse has knowledge that another person has committed any act prohibited by Section 2878, the licensed vocational nurse shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

(b) Any employer of a licensed vocational nurse shall report to the board the suspension or termination for cause, or resignation for cause, of any licensed vocational nurse in its employ. In the case of licensed vocational nurses employed by the state, the report shall not be made until after the conclusion of the review process specified in Section 52.6 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (d) and shall not be subject to discovery in civil cases.

(c) An employment agency or nursing registry shall report to the board the rejection from assignment of a licensed vocational nurse by a health facility or home health care provider due to acts that would be cause for suspension or termination as described in subdivision (d).

(d) For purposes of this section, "suspension, termination, or resignation for cause" or "rejection from assignment" are defined as suspension, termination, or resignation from employment, or rejection from assignment, for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice vocational nursing.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

(6) Theft from patients or clients, other employees, or the employer.

(e) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

(f) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(g) The board shall implement this section contingent upon the necessary funding in the annual Budget Act.

(h) For purposes of this section, "employer" includes employment agencies and nursing registries.

(Amended by Stats. 2021, Ch. 632, Sec. 23. (AB 1536) Effective January 1, 2022.)

2878.2. The board shall share all complaints and information related to investigations involving respiratory care services, as described in Chapter 8.3 (commencing with Section 3700), including, but not limited to, data, findings, interviews, and evidence, with the Respiratory Care Board of California.

(Added by Stats. 2022, Ch. 624, Sec. 2. (SB 1436) Effective January 1, 2023.)

2878.5. In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to the licensee or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the licensee, any other person, or the public, or to the extent that the use impairs the licensee's ability to conduct with safety to the public the practice authorized by their license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to narcotics or dangerous drugs as specified in subdivision (b).

(Amended by Stats. 2021, Ch. 632, Sec. 24. (AB 1536) Effective January 1, 2022.)

2878.6. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Amended by Stats. 1978, Ch. 1161.)

2878.7. (a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that the petitioner is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

(Amended by Stats. 2021, Ch. 632, Sec. 25. (AB 1536) Effective January 1, 2022.)

2878.8. The board may deny any application or may suspend or revoke any license issued under this chapter based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline.

(Added by Stats. 1992, Ch. 1289, Sec. 23. Effective January 1, 1993.)

2878.9. (a) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any term of this chapter, but who has met all other requirements for licensure and who has successfully completed the examination for licensure within four years of the date of issuance of the initial license.

(b) Specific terms and conditions may include, but are not limited to, the following:

(1) Continuing medical, psychiatric, or psychological treatment.

(2) Ongoing participation in a specified rehabilitation program.

(3) Abstention from the use of alcohol or drugs.

(4) Compliance with all provisions of this chapter.

(c) (1) Notwithstanding any other provision of law, and for purposes of this section, when deciding whether to issue a probationary license, the board shall request that an applicant with a dismissed conviction provide proof of that dismissal and shall give special consideration to applicants whose convictions have been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(2) The board shall also take into account and consider any other reasonable documents or individual character references provided by the applicant that may serve as evidence of rehabilitation as deemed appropriate by the board.

(d) The board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee.

(e) For purposes of issuing a probationary license to qualified new applicants, the board shall develop standard terms of probation that shall include, but not be limited to, the following:

(1) A three-year limit on the individual probationary license.

(2) A process to obtain a standard license for applicants who were issued a probationary license.

(3) Supervision requirements.

(4) Compliance and quarterly reporting requirements.

(Amended by Stats. 2008, Ch. 675, Sec. 1. Effective January 1, 2009.)

2879. (a) Notwithstanding Section 2878 or any other law, the board may revoke, suspend, or deny at any time a license under this chapter on any of the grounds for disciplinary action provided in this chapter. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denial of an application for a license, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(3) If the board's decision was based on the applicant's prior criminal conviction, justifies the board's denial of a license and conveys the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a licensed vocational nurse.

(d) Commencing July 1, 2009, all of the following shall apply:

(1) If the denial of a license is due at least in part to the applicant's state or federal criminal history record, the board shall, in addition to the information provided pursuant to paragraph (3) of subdivision (c), provide to the applicant a copy of the applicant's criminal history record if the applicant makes a written request to the board for a copy, specifying an address to which it is to be sent.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The criminal history record shall be provided in such a manner as to protect the confidentiality and privacy of the applicant's criminal history record and the criminal history record shall not be made available by the board to any employer.

(C) The board shall retain a copy of the applicant's written request and a copy of the response sent to the applicant, which shall include the date and the address to which the response was sent.

(2) The board shall make this information available upon request by the Department of Justice or the Federal Bureau of Investigation.

(e) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

(Amended by Stats. 2021, Ch. 632, Sec. 26. (AB 1536) Effective January 1, 2022.)