

NOTICE PUBLICATION/REGULATION SUBMISSION

EMERGENCY

Instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 01-08)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2008-1112-04E
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Board of Registered Nursing	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
5. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Non-Fingerprinted Licensee Population	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1419, 1419.1, 1419.3
	REPEAL
TITLE(S) 16	

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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 Resubmittal of disapproved or withdrawn emergency filing (Gov.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

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, § 44 and Gov. Code § 11347.1) n/a
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, § 100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> § 100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

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

7. CONTACT PERSON Alcidia Valim	TELEPHONE NUMBER (916) 574-7684	FAX NUMBER (Optional) (916) 574-7700	E-MAIL ADDRESS (Optional) alcidia_valim@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Ruth Ann Terry</i>	DATE 10/27/08
TYPED NAME AND TITLE OF SIGNATORY Ruth Ann Terry, Executive Officer, Board of Registered Nursing	

## BOARD OF REGISTERED NURSING

### ORDER OF ADOPTION

(1) Amend section 1419 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

#### **1419. Renewal of License.**

(a) A renewal application shall be on the form provided by the board, accompanied by the fee specified in Section 1417(a)(3) and required information and filed with the board at its office in Sacramento.

(b) For a license that expires on or after March 1, 2009, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license is grounds for discipline by the board. It shall be certified on the renewal form whether the fingerprints have been submitted. This requirement is waived if the licensee is renewed in an inactive status, or is actively serving in the military outside the country.

(c) As a condition of renewal, an applicant for renewal shall disclose on the renewal form whether he or she has been convicted, as defined in Section 2765, of any violation of the law in this or any other state, the United States, or other country, omitting traffic infractions under \$300 not involving alcohol, dangerous drugs, or controlled substances.

(d) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.

NOTE: Authority cited: Sections 2708.1, 2715 and 2761(f), Business and Professions Code.  
Reference: Sections 2715, 2761(f), 2765 and 2811, Business and Professions Code; and Section 11105(b)(10), Penal Code.

(2) Amend section 1419.1 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

#### **1419.1. Inactive License.**

A license may be maintained in an inactive status by paying the renewal fee as it becomes due. The licensee shall not practice nursing during the time the license is inactive.

To activate an inactive license, the licensee must submit a written request and evidence of 30 hours of approved continuing education taken during the two-year period immediately

preceding the request for activation. A licensee activating a license pursuant to this section shall furnish a full set of fingerprints as required by and set out in section 1419(b) as a condition of activation.

NOTE: Authority cited: Sections 2708.1, 2715 and 2761(f), Business and Professions Code. Reference: Sections 2734 and 2761(f), Business and Professions Code; and Section 11105(b)(10), Penal Code.

(3) Amend section 1419.3 of Division 20 of Title 16 of the California Code of Regulations to read as follows:

**1419.3. Reinstatement of Expired License.**

In the event a licensee does not renew his/her license as provided in Section 2811 of the code, the license expires. A licensee renewing pursuant to this section shall furnish a full set of fingerprints as required by and set out in section 1419(b) as a condition of renewal.

(a) A licensee may renew a license that has not been expired for more than eight years by paying the renewal and penalty fees as specified in Section 1417 and providing evidence of 30 hours of continuing education taken within the prior two-year period.

(b) A licensee may renew a license that has been expired for more than eight years by paying the renewal and penalty fees specified in Section 1417 and providing evidence that he or she holds a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or by passing the Board's current examination for licensure.

NOTE: Authority cited: Sections 2708.1, 2715, 2761(f), and 2811.5, Business and Professions Code. Reference: Sections 2761(f), 2811 and 2811.5, Business and Professions Code; and Section 11105(b)(10), Penal Code.

**BOARD OF REGISTERED NURSING  
FINDING OF EMERGENCY**

**Amend Title 16 California Code of Regulations Sections 1419, 1419.1, and 1419.3.**

The Board of Registered Nursing (Board) hereby specifically finds that adoption of emergency regulations requiring the submission of fingerprints and the disclosure of any convictions as a condition of renewal, activating an inactive license, or reinstatement of an expired license, is necessary for the immediate preservation of public health and safety, and general welfare of the citizens of California.

**Specific Facts Showing the Need for Immediate Action**

The Board currently maintains and tracks approximately 360,000 active Registered Nurse (RN) licenses. The Board began to fingerprint its initial applicants for licensure in 1990. When an applicant for initial licensure has been fingerprinted, the Board receives a criminal history information report, informing the Board of the applicant's criminal history. For a licensee who has been fingerprinted, the Board receives subsequent arrest notifications from the Department of Justice (DOJ), which allows the Board to open a complaint file and track any possible current criminal actions against a licensee. The Board has recently been made aware that it has no fingerprints on record for over 147,000 current, active licensees, who were licensed prior to 1990. This means that the Board did **not** receive information on these licensees' criminal histories during their application process for licensure and currently is **not** able to receive reports of current criminal activity. In addition, the Board has never asked as part of the renewal or activation application whether the licensee has been convicted of any violation of law since he or she last renewed his or her license. Without this knowledge, the Board is unable to take action unless possible criminal activity is received from some other complaint source.

While the Board has been aware that there were licensees who had never been fingerprinted, recent newspapers articles focused on the criminal history of several such licensees, and highlighted the degree of such a problem. The researched articles packaged information in a different way and in a different light than the Board had done in the past. Moreover, these articles raised the issue with respect to specific licensees with notable criminal histories that the Board had never disciplined. For example in one case, a nurse licensed in 1978 was convicted in 1994 of attempted murder of his wife. Because he had never been fingerprinted, the Board was never notified by the DOJ of his arrest, and he was able to renew his license in an active status while he was in prison for that conviction. In a field devoted to the care of very vulnerable consumers, it is imperative that the Board have the mechanism to allow it to receive current information regarding a licensee's criminal activity for a group that comprises almost 40% (147,000 licensees) of its licensed population.

In addition, only very recently has the Board's contract with the DOJ to receive criminal history reports been amended to include subsequent disposition information in addition to subsequent arrest notifications. In order for this change in the contract to result in a truly

meaningful change in Board practices, it must be allowed to require **all** licensees to have their fingerprints on file with the DOJ.

This necessitates that the Board be allowed to promulgate emergency regulations to require those licensees who have never been fingerprinted to be fingerprinted as a condition of renewing of their license, activating their license, or reinstating an expired license to ensure the protection of public health and safety. In addition, the Board must begin to require all licensees to answer the question of whether they have been convicted of any violation of law since they last renewed their license. The Board is of the opinion that it already possesses the authority to ask that question based upon its authority to discipline a licensee based upon a conviction substantially related to the practice of nursing. A regulatory change, however, more specifically implements that requirement and imposes a consequence for not answering it. The question regarding convictions merely requires a licensee to check a box. With the availability of LiveScan technology for submission of fingerprints, the impact on the licensees is truly minimal; yet the benefit to the public is great and necessary.

### **Authority and Reference**

**Authority:** Business and Professions Code sections 2708.1, 2715, 2761(f), and 2811.5

**Reference:** Business and Professions Code sections 2715, 2734, 2761(f), 2811, and 2811.5; Penal Code section 11105(b)(10)

### **Informative Digest**

Business and Professions Code section 2715 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Nursing Practice Act. The Board is proposing the following changes:

(1) Amend section 1419.

Existing regulations provide that a renewal application shall be on the form provided by the Board, accompanied by the fee and required information, and filed with the Board.

This proposal would also require a licensee who was never fingerprinted by the Board or for whom a fingerprint record no longer exists, as a condition of renewal, to (a) furnish to the Department of Justice (DOJ), as directed by the Board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice. Failure to do so would constitute a ground for disciplinary action by the Board; (b) disclose on the renewal form whether he or she has been convicted of any violation of the law in this state or any other state; and (c) failure to provide all required information may render the renewal application incomplete and therefore not eligible for renewal.

(2) Amend section 1419.1.

Existing regulations specify that if a licensee wants to activate an inactive license, the licensee must submit a written request and evidence of 30 hours of approved continuing education taken during the two-year period immediately preceding the request for activation.

This proposal would require, in addition to the above-mentioned requirement, that a licensee who was never fingerprinted by the Board or for whom a fingerprint record no longer exists furnish a full set of fingerprints as a condition of activating an inactive license.

(3) Amend section 1419.3.

Existing regulations provide for the reinstatement of expired license if the licensee (1) pays the renewal and penalty fees and providing evidence of 30 hours of continuing education taken within the prior two-year period, and (2) provides evidence that he or she holds a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or by passing the Board's current examination for licensure.

This proposal would require, in addition to the above-mentioned requirements, that a licensee who was never fingerprinted by the Board or for whom a fingerprint record no longer exists furnish a full set of fingerprints as a condition of reinstating an expired license.

**Local Mandate:** None

**Specific Agency Statutory Requirements**

Business and Professions Code section 2708.1 specifies that protection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

**Fiscal Impact Estimates**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funds to the State: Fingerprinting 147,000 registered nurses will necessitate adding 12.0 positions with two (2) two-year, limited-term Board positions and the related costs for the Office of the Attorney General and Office of Administrative Hearings. The estimated cost per fiscal year is:

2008-09 = \$ 594,136  
2009-10 = \$1,792,320  
2010-11 = \$1,774,657  
2011-12 and ongoing = \$1,684,284

Nondiscretionary Costs/Savings to Local Agencies: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Significant Adverse Impact on Businesses: None

Impact on Jobs/New Businesses: None

Cost Impact on Private Persons or Businesses Directly Affected: Registered nurses, who have not previously been fingerprinted for the Board or for whom a fingerprint record no longer exists, will be required to be fingerprinted at the time of license renewal, reactivation, or reinstatement. There is a one-time cost for a person to get fingerprinted of approximately \$65.00. The fee breakdown has \$51.00 going to DOJ for conducting the background check and providing the criminal record report with remaining \$14.00 to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00.

Effect on Housing Costs: None

**Identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies.** None

**Facts explaining the failure to address the situation through nonemergency regulations.**

Historically, the Board has known that there is a population of registered nurses that has not been fingerprinted. However, it was only recently that the Board determined that approximately 147,000 registered nurses (40% of registered nurses) had not been fingerprinted. Additionally, there have been recent news articles describing the significant criminal history of several registered nurses, who had not been fingerprinted. The seriousness of the crimes committed by the registered nurses in conjunction with the number of un-fingerprinted nurses affirmed the need to obtain arrests and criminal records for all registered nurses, as soon as possible, to better enable the Board to perform its public protection mandate.

The Board acted swiftly in the cases described in the articles and has already disciplined a registered nurse license, and is pursuing disciplinary action against several other registered nurses licenses based on information disclosed in the news articles. It is imperative that the Board identify as quickly as possible any other licentiates who may be placing the public at risk by requiring all registered nurses be fingerprinted.