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NIGHTINGALE COLLEGE, LLC d/b/a
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

NIGHTINGALE COLLEGE, LLC d/b/a
NIGHTINGALE EDUCATION GROUP, a Utah
institution of higher education,

Plaintiff and Petitioner,

v.

CALIFORNIA BOARD OF REGISTERED
NURSING; LORETTA MELBY, in her official
capacity as Executive Officer of the Board of
Registered Nursing; and DOES 1 through 100,
inclusive,

Respondents and Defendants.

Case No. 26CV020260

**PETITIONER AND PLAINTIFF
NIGHTINGALE SCHOOL OF NURSING'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER;
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE**

Date: August 28, 2026
Time: 9:00 am
Judge: Honorable Richard K. Sueyoshi
Dept: 16D

Complaint filed: August 24, 2026

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5	<i>Mathews v. Eldridge</i>	
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7	<i>Morning Star Co. v. State Bd. of Equalization</i>	
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11	<i>Morton v. Board of Registered Nursing</i>	
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19	<i>Southern California Edison Co. v. Peevey</i>	
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24	Other Authorities	
25	<i>California's Nursing Shortage Is Getting Worse. Front-Line Workers Blame Management.</i> , Cal. Healthline, October 8, 2025 https://californiahealthline.org/news/article/california-nursing-shortage-medicaid-funding-management-profit-unions-burnout/	23

1	Cal. Dep't of Health Care Access & Info., <i>Supply and Demand Modeling for California's</i>	
2	<i>Nursing Workforce</i> (2025), https://hcai.ca.gov/visualizations/supply-and-demand-	
3	modeling-for-californias-nursing-workforce/	23
4	Tuuli Turja, <i>Overview of Barriers to Healthcare Access: Medical Deserts and Individual</i>	
5	<i>Sandboxes</i> , 14 J. Fam. Med. & Primary Care 2608 (2025);	
6	https://pmc.ncbi.nlm.nih.gov/articles/PMC12349865/	23
7	National Academies of Sciences, Engineering, and Medicine, <i>The Future of Nursing 2020–</i>	
8	<i>2030: Charting a Path to Achieve Health Equity</i> (2021),	
9	https://pubmed.ncbi.nlm.nih.gov/34524769/	24
10	BRN website; https://www.rn.ca.gov/consumers/committees.shtml	5
11	Joanne Spetz, Regional Forecasts of the Registered Nurse Workforce in California (Apr.	
12	2026), https://www.rn.ca.gov/pdfs/forms/forecast2026.pdf	23

1 **I. INTRODUCTION**

2 For the past six years, the California State Board of Registered Nursing (“BRN” or the
3 “Board”) licensed nearly 2,000 graduates of Plaintiff Nightingale College (“Nightingale” or the
4 “College”) as Registered Nurses (“RNs”) in the state of California. During that time and in reliance
5 on the BRN’s actions, thousands of California students enrolled in Nightingale to get the education
6 needed to qualify as an RN in the state. Then, in May 2026, the BRN suddenly stopped approving
7 Nightingale’s graduates for licensure.

8 No new law came into effect, and no new regulation was passed. The BRN staff simply
9 decided that Nightingale’s graduates’ and students’ education—based on the same coursework
10 completed by scores of California graduates whom the BRN had previously approved for licensure—
11 was somehow deficient. They made this decision on their own with no published notice and no
12 rulemaking so that the College or its students could prepare. This sudden course of action was the
13 result of the enforcement of two underground regulations by the BRN—an action they later
14 unlawfully ratified through on the record, un-agendized, binding statements by senior BRN
15 leadership during public committee meetings.

16 For three months, Nightingale met and conferred with the BRN staff to see if they would
17 modify their position to comply with the law; however, in a call on August 21, 2026, the BRN made
18 it clear that further discussion would be futile as it would not reverse course. As a result, thousands
19 of Nightingale’s graduates and current students now find themselves in educational and regulatory
20 limbo—with no way to know if or when they will ever be able to become RNs in California. In this
21 Application, Nightingale asks this Court to enjoin the BRN's unlawful actions, preserve the status
22 quo, and prevent further irreparable harm from befalling its graduates and the College while this
23 matter is adjudicated.

24 Plaintiff meets the well-established criteria for issuance of a temporary restraining order.

25 First, Nightingale can show a likelihood of success on the merits of its suit, in at least two
26 ways. At issue is the BRN’s unlawful imposition of Business and Professions Code section 2786 and
27 the undefined concurrency requirement under 16 CCR section 1426(d) to Nightingale’s current and
28

1 future graduates. By their express terms, both the statute and regulation apply to schools of nursing
2 approved by the BRN, not individuals who apply for licensure, such as the graduates of Nightingale.
3 Nightingale is a Utah college, approved by its home state to offer nursing education, and fully
4 accredited. California law prohibits the BRN from approving Nightingale (an out-of-state institution)
5 as a California nursing school. Because it cannot legally subject Nightingale to its regulatory
6 authority, the BRN instead unlawfully created an underground regulation applying the laws
7 governing California nursing schools to Nightingale's graduates. It then used that new unpublished
8 standard to unfairly prevent those graduates from taking the state's licensure examination and to
9 threaten current students that they would be unable to do so once they complete their education.
10 (Compl. ¶¶ 1–3, 24–32.)

11 The BRN publicly confirmed its unlawful actions and compounded them when BRN staff
12 members made off-agenda statements announcing this new policy during public meetings of two
13 BRN committees on July 29, and August 11, 2026. The published agendas of these meetings made
14 no mention of Nightingale or the imposition of Business & Professions Code section 2786 and a
15 vague, undefined concurrency requirement under 16 CCR section 1426(d) on its current or future
16 graduates. Yet both Executive Officer Loretta Melby ("Ms. Melby" or "Executive Officer Melby")
17 and the BRN's legal counsel publicly committed that the BRN would subject Nightingale's current
18 and future graduates to the requirements of both. These binding, on-the-record commitments, made
19 without advance public notice or a meaningful opportunity for public participation, are independently
20 actionable violations of the Bagley-Keene Open Meeting Act. (Compl. ¶¶ 41-48.)

21 Second, Nightingale can establish that the balance of harms weighs in favor of temporarily
22 enjoining the BRN from the unlawful application of Business & Professions Code section 2786(a)(2)
23 and undefined concurrency requirement under 16 CCR section 1426(d) to Nightingale's graduates.
24 The threat of immediate harm is very real: on Friday, August 21, 2026, 612 more California students
25 graduated from Nightingale's program and expect to apply to the BRN to become RNs. Further, as a
26 direct result of the BRN's unlawful acts, as of early July 2026, approximately 70 Nightingale
27 graduates had already lost employment offers because the BRN has withheld or delayed permission
28

1 for graduates to sit for the state licensure examination approvals, 86 faced imminent rescission of
2 offers absent such approval, and 95 held offers expressly contingent on receiving it. Numerous current
3 students have dropped out of Nightingale rather than face an uncertain future in which the BRN may
4 tell them that they do not qualify to sit for the state’s licensure exam. The College has also suffered
5 a sudden decrease in fall enrollments from California learners, which it attributes to the BRN’s
6 actions. (Compl. ¶ 14.)

7 The BRN must not be allowed to persist in these unlawful actions. Nightingale seeks a narrow
8 order that requires the BRN to simply apply the same standards to its current graduates that it has
9 previously applied to thousands of others. The balance of interests weighs heavily in favor of the
10 issuance of such a limited Order. No evidence exists suggesting that preventing the BRN from
11 imposing these unlawful new requirements will endanger the public or cause harm to the BRN itself.
12 The BRN’s prior authorization of over 2,200 Nightingale graduates for testing and approval of nearly
13 2,000 of them for RN licensure is the best evidence of this. On the other hand, emergency relief will
14 prevent the BRN from enforcing its unlawful new underground regulations before more graduates
15 lose jobs, offers of employment, and the chance to begin their careers.

16 **II. STATEMENT OF FACTS**

17 **A. Nightingale College**

18 Nightingale is an accredited nursing college based in Utah whose Bachelor of Science in
19 Nursing (“BSN”) program prepares students for RN licensure nationwide. The Northwest
20 Commission on Colleges and Universities (“NWCCU”) accredits Nightingale institutionally, and the
21 Commission on Collegiate Nursing Education (“CCNE”) accredits the BSN program. (Declaration
22 of Mikhail Shneyder [“Shneyder Decl. “] ¶ 3.) Nightingale uses a Concept-Based Curriculum
23 (“CBC”) that covers all required nursing subject areas through approximately 56 core concepts and
24 population threading, and its California BSN cohorts have consistently achieved an overall 91.5%
25 NCLEX licensure rate. (Declaration of Juliet Kolde [“Kolde Decl.”] ¶¶ 5–10.)

26 Since 2020, the BRN has authorized at least 2,230 Nightingale graduates for NCLEX testing
27 and approved at least 1,961 of them for California RN licensure based on the same courses now at
28

1 issue. (Declaration of Mikhail Shneyder [“Shneyder Decl.”] ¶ 7.) Nightingale is not a California-
2 approved school of nursing under Business & Professions Code sections 2785 through 2788.

3 **B. The Process for Nightingale Graduates to Apply for Licensure in California**

4 Many of Nightingale’s students are residents of California and wish to seek licensure in the
5 state. Nightingale designs its curriculum to meet published California standards. The BRN’s approval
6 of thousands of Nightingale graduates shows it has been successful in this effort. (Shneyder Decl.
7 ¶¶ 4, 5, 7.) Nightingale’s graduates who wish to seek licensure in California do so by applying to the
8 BRN for a determination that they qualify for licensure under Business & Professions Code section
9 2736. Section 2736 requires that the applicant have: 1) completed certain preliminary education
10 requirements; 2) “successfully completed courses of instruction in a school of nursing outside of this
11 state that, in the opinion of the board at the time the application is filed with the board, are equivalent
12 to the minimum requirements of the board for licensure established for an approved program in this
13 state”; and 3) not otherwise be subject to a denial of licensure. (Compl. ¶¶ 6, 20; Shneyder Decl. ¶ 7,
14 9.; Bus. & Prof. Code section 2736.) Applicants who meet these requirements receive an
15 “Authorization to Test” (“ATT”) from the BRN. This allows applicants to sit for the National Council
16 Licensure Examination-RN (“NCLEX”). Once a student passes the NCLEX-RN and meets the other
17 requirements of Section 2736, they are fully qualified to be licensed as an RN in California.

18 **C. May 2026: BRN Staff Stops Approving Nightingale Graduates’ Applications for**
19 **ATTs and Informs Nightingale it will Impose Unpromulgated Standards**

20 After approving approximately 2,230 Nightingale graduates to receive their ATTs and
21 licensing approximately 1,961 of them as California RNs since 2020, the BRN suddenly stopped
22 issuing those approvals in or about May 2026 to most Nightingale graduates. No new law took effect,
23 and no new regulation was passed. On May 18, 2026, BRN staff told Nightingale that “the Board is
24 unable to establish equivalency based on the limited information provided, and that further
25 information will indeed be necessary. A more detailed response will be forthcoming.” (Shneyder
26 Decl. ¶ 9.)

27 BRN staff then unilaterally decided—without published notice or rulemaking—to impose on
28 Nightingale’s individual graduates new standards: one drawn from laws governing California-

1 approved nursing schools and the other an undefined term that is impossible to comply with. On June
2 12, 2026, BRN staff wrote to Nightingale indicating that it would apply Business & Professions Code
3 section 2786(a)(2) and an undefined concurrency requirement under 16 CCR section 1426(d) to
4 Nightingale’s graduates. Nightingale responded that Business & Professions Code section 2786(a)(2)
5 applies only to California-approved schools of nursing, **not** individual graduates. Nightingale further
6 pointed out that the BRN must have concluded that its curriculum met 16 CCR section 1426(d)’s
7 concurrency requirements—as evidenced by the thousands of graduates previously licensed by the
8 BRN who took the same curriculum—but all to no avail. In a series of correspondence throughout
9 June and July, Nightingale sought to meet with representatives of the BRN, including Executive
10 Officer Melby and the BRN’s counsel, but BRN staff did not respond to those requests. (Shneyder
11 Decl. ¶ 10.) It was not until after scores of Nightingale’s graduates demanded answers from the BRN
12 staff at a public meeting of the Nursing Education and Workforce Advisory Committee (“NEWAC”)
13 that the BRN agreed to a meeting. (Shneyder Decl. ¶ 11.)

14 **D. BRN Staff Announce at a Public BRN Subcommittee Meetings on July 29 and**
15 **August 11 that they will Impose Unpromulgated Standards**

16 The BRN has several subcommittees, including the NEWAC and the Education/Licensing
17 Committee (“ELC”). Bus. & Prof. Code § 2785.6.¹

18 On July 29, 2026, the NEWAC subcommittee met. The published agenda for the July 29,
19 2026, meeting contained no item relating to Nightingale or its graduates’ qualifications for licensure.
20 During public comment, Nightingale students and graduates described harm that the BRN’s refusal
21 to process their ATT applications caused. Although NEWAC members did not respond, Executive
22 Officer Melby and BRN counsel responded extensively and substantively on the record. (Compl.
23 ¶¶ 43-44²; Shneyder Decl. ¶ 11) Ms. Melby and BRN’s counsel stated that Nightingale graduates
24 must satisfy certain requirements of both Business & Professions Code section 2786 and an undefined

25
26 ¹ BRN website, 8/24/2026, at: <https://www.rn.ca.gov/consumers/committees.shtml>.

27 ² The filed Verified Complaint references a NEWAC meeting date of July 30, 2026. This date was included in error. The
28 NEWAC meeting in fact took place on July 29, 2026. The reference to July 30, 2026, was a typographical error, and
allegations concerning the NEWAC meeting should be understood as referring to the July 29, 2026, meeting. The
Declarations submitted herewith reflect the correct date July 29, 2026. (Shneyder Decl. ¶ 11 fn. 1)

1 concurrency requirement under 16 CCR 1426(d)³ to obtain ATT approval and California RN
2 licensure. (Compl. ¶ 44.)

3 On August 11, 2026, the BRN held a public meeting of the ELC. As with the NEWAC
4 meeting, the published agenda for the meeting contained no references to Nightingale or its graduates'
5 qualifications for licensure. Yet Executive Officer Melby and the BRN's counsel made extensive
6 comments addressing the BRN's ongoing curriculum review of Nightingale. They stated that BRN
7 placed an administrative hold on Nightingale graduates, preventing them from receiving their ATTs,
8 taking the NCLEX licensure examination, or obtaining California licensure. (Shneyder Decl. ¶ 11.)
9 During the meeting, a Nightingale BSN graduate, stated that he had an offer to start as an emergency
10 room RN on August 24, 2026, but could not begin the position because of the BRN's refusal to grant
11 him an ATT. (Shneyder Decl. ¶ 12.)

12 **E. BRN Staff Reiterate the BRN Will that they will Impose Unpromulgated**
13 **Standards during Calls with Representatives of the College**

14 Representatives of the College met with Executive Officer Melby and the BRN's counsel on
15 August 4 and 13 in an attempt to resolve the dispute with the BRN. During the calls, the participants
16 discussed the BRN's review of the College's graduates' educational credentials and whether
17 Nightingale graduates must satisfy certain requirements of both Business & Professions Code section
18 2786 and 16 CCR section 1426 to obtain ATT approval and California RN licensure. Specifically,
19 the BRN took the position that Nightingale graduates must satisfy the 500-hour direct patient care
20 and the 30-hour direct care in each nursing specialty area requirements of Business & Professions
21 Code section 2786 and the undefined concurrency requirement of 16 CCR section 1426. During both
22 calls, the BRN Executive Officer and counsel made it clear that the BRN would not approve any

23 _____
24 ³ 16 CCR section 1426(d) requires that the "theory and clinical practice" "shall be concurrent in the following nursing
25 areas: geriatrics, medical-surgical, mental health/psychiatric nursing, obstetrics, and pediatrics." "Clinical practice" is
26 defined as, "the planned learning experiences designed for students to apply nursing knowledge and skills to meet course
27 objectives in a variety of board-approved clinical settings. Clinical practice includes learning experiences provided in
28 various health care agencies as well as nursing skills labs, simulation labs, and computer labs." 16 CCR § 1620(e). It is
important to note that "clinical practice" is not the same as "direct patient care." As explained, *infra*, the BRN amended
16 CCR 1426 to delete the reference to "direct patient care." That term now only appears in Business & Professions
Code section 2786(a)(2), which applies only to a California "approved school of nursing or nursing program," not to
individual applicants for licensure. As stated, Nightingale is not a California approved school of nursing or nursing
program.

1 Nightingale graduate without proof that both requirements were satisfied. During both calls, the
2 representatives of the College reiterated their position that Business & Professions Code Section 2786
3 did not apply to Nightingale's graduates. And, during the call on August 13, the College's
4 representatives asked the BRN representatives to define what was required to meet the concurrency
5 requirements of 16 CCR section 1426 but were told that no such definition or test existed. (Shneyder
6 Decl. ¶ 14.)

7 On August 21, Nightingale's Assistant Vice President, Legal and Compliance, Scott Marston,
8 and outside counsel for Nightingale, Edward Cramp, met with counsel for the BRN, Reza Pejushesh
9 ("Mr. Pejushesh") in a last-ditch effort to reach a resolution. The College's representatives asked Mr.
10 Pejushesh if there was any chance at resolving the matter, but Mr. Pejushesh stated that the BRN had
11 no flexibility with regard to its position that Nightingale graduates must satisfy the 500-hour direct
12 patient care and the 30-hour direct care in each nursing specialty area requirement of Business &
13 Professions Code Section 2786 and the undefined concurrency requirement of 16 CCR section 1426.
14 Mr. Pejushesh reiterated that the BRN was committed to this position. He indicated that the BRN
15 expected the graduates to prove compliance to obtain ATT approval and California RN licensure.
16 The College's representatives concluded from this call that there was no chance of resolving this
17 matter with the BRN staff and that this action would be necessary to protect the rights of the College,
18 its students, and graduates. (Declaration of Scott Martson ["Martson Decl. "] ¶ 4.)

19 **F. The BRN's ATT Holds and Resulting Harm**

20 Since on or about May 2026, when the BRN began placing Nightingale graduates' ATT
21 applications on "administrative hold," approximately 549 Spring graduates have been unable to sit
22 for the NCLEX-RN in the state or obtain California licensure. Another 612 students graduated on
23 August 21, 2026, expecting to apply for licensure in California. Nightingale has approximately 8,777
24 currently enrolled students who expect to apply for California licensure when they complete their
25 education over approximately the next four years. They now face an uncertain future due to the
26 BRN's actions. (Shneyder Decl. ¶ 16.)

27 Approximately 200 current students have withdrawn or have informed the College they are
28

1 considering withdrawing and fall enrollment of California learners has declined. BRN staff told
2 applicants that staff would evaluate each course under the new standard, and Board staff stated that
3 the process could take “weeks, months, or years because they have to finish the investigation [of the
4 college] first.” The BRN has not issued final written determinations while maintaining these holds.
5 (Compl. ¶¶ 37-40.) The BRN also continued to describe Nightingale as “under review” or “under
6 investigation,” even after confirming on March 20, 2026, that it had not initiated a formal institutional
7 investigation. (Compl. ¶ 39; Shneyder Decl. ¶ 8.)

8 Graduates of Nightingale have suffered real and substantial harm. Approximately 642 graduates
9 from the spring 2026 and fall 2025 graduating classes remain without ATTs in California.
10 Approximately 50 other California graduates who obtained their licenses in other states are unable to
11 endorse their license to California. 612 additional California residents graduated on August 21, 2026.
12 None of them can work as an RN in the state. As of early July 2026, approximately 70 graduates had
13 lost job offers, 86 faced imminent rescission of offers without an ATT, and 95 held offers expressly
14 contingent on receiving one. (Shneyder Decl. ¶¶ 13-17, **Exh. C**) These delays continue to prevent
15 graduates from sitting for the NCLEX-RN and begin California nursing employment on their expected
16 timeline. (Compl. ¶ 14; Shneyder Decl. ¶ 13-17, **Exh. C**.) Current students have inquired about
17 withdrawing, some have withdrawn or considered withdrawing, fall enrollment of California residents
18 has materially declined, and other graduates have pursued or considered pursuing licensures in other
19 states rather than wait for California action. (Compl. ¶14; Shneyder Decl. ¶¶ 18-22, **Exh. D-F**.)

20 The BRN’s continuing holds have impaired Nightingale’s enrollment pipeline, relationships
21 with students and graduates, and institutional interests. Nightingale expects that its enrollments of
22 California based students will fall precipitously if the BRN continues to threaten the licensure status
23 of its graduates. If Nightingale’s California graduates cannot be assured that they can apply for
24 licensure in the state, it will endanger Nightingale’s ability to recruit prospective California students,
25 accelerate enrollment losses, and undermine Nightingale’s institutional reputation and accreditation
26 standing it has built over years of demonstrated graduate success. (Compl. ¶¶ 13-13, 71-72; Shneyder
27 Decl. ¶¶ 20-23.)
28

1 **III. LEGAL STANDARD**

2 A temporary restraining order may issue when the applicant shows by affidavit that great or
3 irreparable injury will result before the matter can be heard on notice. (Code of Civ. Proc.
4 § 527(c)(1).) The Court evaluates the likelihood the plaintiff will prevail on the merits and weighs
5 the harm the plaintiff will sustain if relief is denied against the harm the defendants will suffer if it is
6 granted. (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251.)
7 Unlike a preliminary injunction, a TRO may issue ex parte, requires no bond, and is of short duration.
8 (*Chico Feminist Women’s Health Center v. Scully* (1989) 208 Cal.App.3d 230, 237.)

9 California courts apply a sliding scale. The stronger the plaintiff’s showing on one factor, the
10 less is required on the other. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678 (en banc).) Where
11 the plaintiff demonstrates strong potential interim harm, the TRO will stand on a showing of “some
12 possibility” of success on the merits. (*Costa Mesa City Employees’ Ass’n v. City of Costa Mesa* (2012)
13 209 Cal.App.4th 298, 309.) Because the TRO merely preserves the status quo, the Court need not
14 resolve the merits definitively. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528; *Gray v.*
15 *Bybee* (1943) 60 Cal.App.2d 564, 571.)

16 A party seeking a preliminary injunction may notice the request under Code of Civil
17 Procedure section 1005 or obtain and serve an order to show cause (“OSC”). An OSC is required
18 when the party also seeks a TRO or when the opposing party has not appeared. A preliminary
19 injunction is proper when the complaint shows that the plaintiff is entitled to relief consisting in whole
20 or in part of restraining the act complained of. (Code of Civ. Proc. § 525(1).)

21 **IV. ARGUMENT**

22 **A. Nightingale Is Likely to Prevail on the Merits**

- 23 1. The BRN’s Application of Section 2786(a)(2) and the Undefined
24 Concurrency Requirement Under 16 CCR § 1426(d) Are Void Underground
 Regulations

25 Government Code section 11340.5(a) prohibits a state agency from issuing, utilizing,
26 enforcing, or attempting to enforce any guideline, criterion, bulletin, manual, instruction, order,
27 standard of general application, or other rule that qualifies as a regulation unless the agency has
28

1 adopted and filed it through the APA. Government Code section 11342.600 defines a regulation
2 broadly as a rule or standard of general application that an agency adopts to implement, interpret, or
3 make specific the law it administers.

4 Under the two-part test that *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th
5 557 established, and that *Malaga County Water District v. Central Valley Regional Water Quality*
6 *Control Board* (2020) 58 Cal.App.5th 418 and *Sandhu v. Board of Administration* (2025) 108
7 Cal.App.5th 1048 applied, a policy qualifies as an underground regulation if (1) the agency intends
8 it to apply generally rather than only to a specific case, and (2) the agency adopts it to implement,
9 interpret, or make specific the law it administers. Nightingale is likely to prove both parts of this test
10 are met here.

11 The BRN's application of Business & Professions Code section 2786(a)(2) and an undefined
12 concurrency requirement under 16 CCR section 1426(d) to Nightingale's graduates satisfies the first
13 *Tidewater Marine* prong. The BRN does not apply these standards as an individualized interpretation
14 limited to one applicant. The BRN has communicated and reaffirmed these thresholds as a categorical
15 requirement for all graduates of out-of-state nursing programs seeking California licensure. The
16 requirements therefore declare how the BRN will evaluate an entire class of applications.

17 The second prong is also met. The BRN derived the 500-hour direct patient care and the 30-
18 hour direct care in each nursing specialty area requirements from Business & Professions Code
19 section 2786(a)(2). It derived the undefined concurrency requirement from 16 CCR 1426(d). It now
20 uses both to implement and make specific Section 2736's equivalency requirement when determining
21 individual licensure eligibility. These are substantive rules governing the licensing decisions of the
22 BRN administrators, not a mere statement of internal procedure.

23 The BRN's application of the requirements of both Business & Professions Code section
24 2786(a)(2) and the undefined concurrency requirement from 16 CCR section 1426(d) to
25 Nightingale's graduates are unlawful, but for different reasons.

- a. The BRN Has No Authority to Impose Bus. & Prof. Code section 2786(a)(2)'s 500 hour and 30-hour in Specialty Areas Direct Patient Care Requirements as a Condition of Licensure For Graduates of Out of State Nursing Programs Such as Nightingale

Business & Professions Code section 2786(c)(1) mandates the BRN to set forth regulations regarding “the required subjects of instruction to be completed in an approved school of nursing for licensure as a registered nurse and shall include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry level of the registered nurse.” Pursuant to this authority, the BRN promulgated 16 CCR section 1426, which contains the “required curriculum of a nursing program,” otherwise known as the required “course of instruction.” (*See* 16 CCR §1420(g) (defining a “course of instruction” as the requirements set forth in Section 1426.)).

Business & Professions Code section 2736 governs the requirements for individual licensure. It provides that an applicant for licensure has met the education requirement to become an RN if the applicant has, “successfully completed courses of instruction in a school of nursing outside of this state that, in the opinion of the board at the time the application is filed with the board, are equivalent to the minimum requirements of the board for licensure established for an approved program in this state.” Bus. & Prof. Code §2736(a)(2) (emphasis added). A “course of instruction” is “the minimum education program that meets the requirements of section 1426 for eligibility to take the licensing examination....” 16 CCR §1420(g) (emphasis added). When assessing whether an applicant’s “courses of instruction” are sufficient to meet this “equivalency” test, the BRN looks to 16 CCR section 1426 (“Section 1426”). In *Excelsior College v. Board of Registered Nursing* (2006) 136 Cal.App.4th 1218, the Court of Appeal confirmed that Section 1426 “identifies the coursework requirements for in-state programs.” (*Id.* at p. 1226.) It therefore supplies the applicable standard for the BRN to evaluate whether out-of-state graduates meet the equivalency required under Business & Professions Code section 2736. (*Id.* at pp. 1225-1226.)

Prior to amendment effective July 1, 2024, Section 1426(g)(1)(2) required that,

The **course of instruction shall** be presented in semester or quarter units or the equivalent under the following formula: (1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit. (2) Three (3) hours of clinical practice each week throughout a semester or quarter equals one (1) unit. With

1 the exception of an initial nursing course that teaches basic nursing skills in a skills lab,
2 75% of clinical hours in a course **must be in direct patient care** in an area specified
in section 1426(d) in a board-approved clinical setting.

3 *Description of regulation to be changed*, Cal. Board of Registered Nursing, Proposed Regulatory
4 Language, 16 CCR 1426, dated 9/20/2023. (Request for Judicial Notice “RJN”, **Exh. D.**)

5 In 2022, the California Legislature made several amendments to the Nurse Practice Act, some
6 of which would compel the BRN to make changes to Section 1426 that directly bear on the present
7 case. (Stats. 2022, ch. 413, § 2 [amending Bus. & Prof. Code, § 2786].) (RJN, **Exh. A.**) These
8 amendments removed the ability of the BRN to require “direct patient care” as a part of the “courses
9 of instruction” for determination of equivalence under Business & Professions Code section 2736.
10 As explained below, the Legislature placed the requirement for “direct patient care” into the section
11 of the statute applicable ***only*** to California approved programs. Pursuant to Government Code section
12 11342.2, this compelled the BRN to amend 16 CCR section 1426 to remove “direct patient care” as
13 a requirement of the “courses of instruction” as it was then in conflict with the statute.

14 Article 4 of the California Nursing Practice Act, Business & Professions Code section 2700,
15 *et seq.*, sets forth the statutory requirements for California nursing schools to be approved by the
16 BRN. It includes Sections 2785–2788 of the Business & Professions Code and covers a variety of
17 subjects, including the publication of a list of approved schools, the establishment of the NEWAC
18 subcommittee, fees that must be paid to the BRN, and other matters applicable only to California
19 approved schools of nursing. Business & Professions Code section 2786 defines an “approved school
20 of nursing,” describes the required subjects for instruction, the minimum units of theory and clinical
21 experience, analysis of practice, and graduation requirements.

22 In 2022, AB 2684 (Berman) amended Section 2786(a), which defines approved school of
23 nursing, to provide that it “shall meet a minimum of 500 direct patient care clinical hours in a board
24 approved clinical setting with a minimum of 30 hours of supervised direct patient care clinical hours
25 dedicated to each nursing area specified by the board.” (Stats. 2022, ch. 413, § 2 [amending Bus. &
26 Prof. Code, § 2786].) (RJN, **Exh. A.**) It also added a requirement an “approved school of nursing or
27 nursing program shall not be required to track the minimum clinical hours by individual students.”
28

1 Bus. & Prof. Code § 2786(a)(2)(B) (as amended). In so doing, the Legislature specified that both the
2 500-hour direct patient care and the 30-hour direct care in each nursing specialty area requirements
3 apply only to “an approved school of nursing.” (Bus. & Prof. Code § 2786(a).) This terminated the
4 BRN’s authority to require “direct patient care” as a part of the “courses of instruction.”

5 The Legislature’s omission of direct patient care from both the individual licensure provisions
6 of Business & Professions Code section 2736 and the “required subjects of instruction” provisions of
7 Business & Professions Code section 2786(c)(1)⁴ further evidences its intent to limit that requirement
8 to approved schools of nursing. Under the principles of statutory construction, these omissions reflect
9 a deliberate legislative choice. (*Cornette v. Dept. of Transportation* (2001) 26 Cal.4th 63, 73 [“When
10 one part of a statute contains a term or provision, the omission of that term or provision from another
11 part of the statute indicates the Legislature intended to convey a different meaning.”]; *In re Young*
12 (2004) 32 Cal.4th 900, 907, quoting *Craven v. Crout* (1985) 163 Cal.App.3d 779, 783 [“Where a
13 statute referring to one subject contains a critical word or phrase, omission of that word or phrase
14 from a similar statute on the same subject generally shows a different legislative intent.”].)

15 Government Code section 11342.2 provides that “no regulation adopted is valid or effective
16 unless consistent and not in conflict with the statute and reasonably necessary to effectuate the
17 purpose of the statute.” Once the AB 2684 came into effect, placing the “direct patient care”
18 requirement squarely in the requirements for a California approved program, the BRN had to change
19 the individual licensure requirements to remove the direct patient care requirement to ensure
20 consistency with the statute.

21 The BRN did precisely that through rulemaking. The BRN amended 16 CCR section 1426.
22 The amendment recognized the BRN lacked a legal basis to require “direct patient care” as a part of
23 the minimum “course of instruction” required for licensure by placing that requirement only in the
24 section of the statute that applies to California approved schools of nursing. (Bus. & Prof. Code
25 § 2786(a).) Accordingly, the regulatory amendments removed Section 1426’s “direct patient care”

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27 ⁴ As discussed, *sura*, Business & Professions Code section 2786(c)(1) provides the BRN with statutory authority to
28 “determine by regulation the required subjects of instruction to be completed in an approved school of nursing for licensure
as a registered nurse”—it is pursuant to this authority that the BRN promulgated 16 CCR 1426. (*Excelsior College* (2006)
136 Cal.App.4th 1218, at pp. 1225-1226.)

as a “course of instruction” requirement. (See, Cal. OAL Matter No. 2024-0326-02 dated May 1, 2024). (RJN, **Exh. G.**) The amended Section 1426(g)(1)(2) read as follows:

(g) The course of instruction shall be presented in semester or quarter units or the equivalent under the following formula:

(1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(2) Three (3) hours of clinical practice each week throughout a semester or quarter equals one (1) unit. ~~With the exception of an initial nursing course that teaches basic nursing skills in a skills lab, 75% of clinical hours in a course must be in direct patient care in an area specified in section 1426(d) in a board approved clinical setting.~~

Description of regulation to be changed, Cal. Board of Registered Nursing, Proposed Regulatory Language, 16 CCR 1426, dated 9/20/2023, *supra* (Strikeout in original; emphasis added). (RJN, **Exh. D.**) The Office of Administrative Law approved the amendments on May 1, 2024. In so doing, OAL expressly recognized the BRN’s intention in making the change, stating:

This action by the Board of Registered Nursing ("Board") repeals provisions that mandate the minimum percent of clinical hours that a clinical practice course must be in direct patient care, which will allow prelicensure nursing programs to defer solely to Business and Professions Code section 2786(a)(2)'s statutory requirements for a program to meet a minimum of 500 direct patient care clinical hours with at least 30 hours dedicated to each nursing area specified by the Board.

Cal. OAL Matter No. 2024-0326-02 dated May 1, 2024 (emphasis added). (RJN, **Exh. G.**) The changes to the regulations took effect on July 1, 2024. (*Id.*)

OAL’s language here is significant. Using the term “course” refers to the “courses of instruction” found in 16 CCR sections 1420(g) and 1426. It also refers to the individual licensure/equivalence determination found in Business & Professions Code section 2736. On the other hand, the term “nursing program” refers to a California approved nursing program as defined by 16 CCR 1420(b), which defines an approved nursing program as, “program, department or division of nursing in this state approved under the provisions of sections 2785 through 2789 of the [Bus. & Prof.] code and this article.” Business & Professions Code sections 2785-2788 only address California approved programs. The OAL’s internal consistency is the result of the legislative determination that the changes in AB 2684 to Business & Professions Code section 2786(a). In other

1 words, it proves conclusively that the 500-hour direct patient care and 30-hour direct care in specialty
2 areas requirements do not apply to individual equivalence determinations under Section 2736, such
3 as Nightingale’s graduates.

4 Without statutory authority, under Government Code section 11342.2 the Board could not
5 include the 500-hour direct patient care or the 30-hour of direct care in specialty areas requirements
6 as a part of the “course of instruction” required for licensure pursuant to Business & Professions Code
7 section 2786(c). Thus, the statute itself, the legislative history, and the Board’s own rulemaking
8 history dictates that when conducting an individual equivalence review to determine whether an
9 individual applicant’s “courses of instruction” meet the requirements of Section 1426, the BRN lacks
10 the authority to apply the 500-hour direct patient care and the 30-hour of direct care in specialty areas
11 requirements. For this reason, its actions are unlawful.

12 Even assuming, *arguendo*, that the BRN retains the authority to require 500-hour direct
13 patient care and the 30-hour direct care in each nursing specialty area as a part of the “course of
14 instruction,” the regulatory amendments set forth above show that it chose not to do so. In that case,
15 because the BRN failed to adopt either requirement as a condition of establishing equivalence of
16 course of instruction required for licensure under Business & Professions Code section 2736 or 16
17 CCR 1426 through rulemaking, the requirement is void and unenforceable under Government Code
18 section 11340.5(a). Courts afford it no special judicial deference. (*Alvarado v. Dart Container Corp.*
19 *of California* (2018) 4 Cal.5th 542, 564.) Nightingale is therefore likely to prevail on its claim that
20 the BRN may not condition ATT approval on this requirement.

21 b. The BRN’s Application of an Internal, Undefined Standard for
22 Concurrency is Unlawful

23 Meanwhile, the Board separately contends that Section 1426(d) requires theory and clinical
24 practice to be “concurrent” in five nursing areas, but the regulation does not define that term.
25 “Concurrent” could reasonably refer to instruction in the same academic term, the same course, the
26 same week, or another period of temporal proximity. No provision in the governing regulations
27 resolves the ambiguity.
28

1 The BRN nevertheless developed an internal, undefined definition and applies it uniformly to
2 out-of-state program evaluations under Business & Professions Code section 2736.⁵ That standard
3 satisfies both *Tidewater Marine* prongs: the BRN applies it generally to a class of applicants, and it
4 implements and makes specific Section 1426(d). The BRN never adopted the definition through APA
5 notice-and-comment rulemaking.

6 The BRN cannot invoke the “only legally tenable interpretation” exception in Government
7 Code section 11340.9(f). That exception applies only when the governing law can reasonably be read
8 in one way. (*Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324.) Because
9 “concurrent” is susceptible to multiple reasonable interpretations, the BRN was required to proceed
10 through APA rulemaking before applying a binding definition to every out-of-state applicant.
11 Importantly, Nightingale structures every clinical course to include theory, lab, simulation, and
12 clinical care experiences concurrently. In CBC, concurrency operates differently because clinical
13 experiences are guided by concepts rather than individual disease processes or only narrow nursing
14 specialty areas: theory and clinical practice occur concurrently in every clinical course while concepts
15 are revisited across the curriculum. (Kolde Decl. ¶¶ 11, 14.)

16 The concurrency standard is void and unenforceable for the same reason as the 500-hour and
17 the 30-hour direct care in each nursing specialty area requirements. Under *Alvarado*, courts afford an
18 underground regulation and no special judicial deference. The Court should enjoin the BRN from
19 applying the undefined and unpublished standard while it evaluates Nightingale graduates’ ATT
20 applications under the lawful standards.

21 2. The Off-Agenda Action Violated the Bagley-Keene Open Meeting Act

22 Plaintiff is also likely to prevail on its action under the Bagley-Keene Open Meeting Act.
23 Both the NEWAC and ELC qualify as a “state body” under Government Code section 11121(c)
24 because the Board created them through formal action and the committees consist of at least three
25 persons and therefore must comply with the Bagley-Keene Open Meeting Act. (Compl. ¶¶ 41, 75.)

26
27 ⁵ The BRN’s failure to define “concurrent” means that the term is also unenforceable as it is unconstitutionally
28 vague. *F.C.C. v. Fox Television Stations, Inc.*(2012) 567 U.S. 239, 253 (“This requirement of clarity in regulation is
essential to the protections provided by the Due Process Clause of the Fifth Amendment.”) *citing, United States v. Williams*
(2008) 553 U.S. 285, 304.

Government Code sections 11123 and 11125 require open meetings and advance notice containing a specific agenda describing the business to be transacted or discussed. Section 11125(b) provides that no one may add an item after the state body provides notice. Section 11125.7(a) permits public testimony on an unagendized matter at a nonemergency meeting only if the state body takes no action on that matter at the same meeting. Government Code section 11122 defines “action taken” to include a “collective commitment or promise . . . to make a positive or negative decision.” *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781 confirms that the Act reaches substantive commitments, not merely formal votes. The statute covers the commitment that Melby and BRN counsel made concerning the BRN’s application of Business & Professions Code section 2786 and undefined concurrency requirement under 16 CCR section 1426(d) to Nightingale’s graduates.

The July 29 and August 11 meetings involved that kind of action. The published agenda did not identify the BRN’s application of Business & Professions Code section 2786 and 16 CCR section 1426(d) to Nightingale’s graduates, yet Melby and BRN counsel made a substantive commitment that Nightingale graduates must satisfy the requirement for ATT approval and California licensure. The committee members’ silence does not cure the violation because Melby and counsel acted as authorized representatives of the BRN.

Nor can the BRN avoid relief by invoking substantial compliance. *North Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416 recognizes that concrete prejudice defeats that defense. Here, the BRN actively relies on the off-agenda commitment to withhold and delay ATT applications, causing the concrete employment, licensing, and institutional harms described above.

The Court should declare the action invalid, enjoin the BRN from relying on it, and issue a temporary restraining order prohibiting the BRN from enforcing or applying the off-agenda commitment against Nightingale's graduates.

3. The BRN’s Abrupt Reversal Violates Due Process and Fundamental Fairness

Plaintiff is also likely to succeed on its claims that the BRN’s actions violate the Due Process clause and are fundamentally unfair. The BRN authorized approximately 2,230 Nightingale graduates

1 for NCLEX-RN testing and approved nearly 2,000 of them for California RN licensure based on the
2 same curriculum now at issue. Then, on May 18, 2026, the BRN reversed course and insisted that
3 graduates satisfy the Business & Professions Code section 2786 and an undefined concurrency
4 requirement under 16 CCR section 1426(d). (Shneyder Decl. ¶¶ 9, 14.) Nightingale spent
5 approximately three months in good-faith negotiations, including submitting extensive
6 documentation, disputing claimed deficiencies resulting from the application of Business &
7 Professions Code section 2786 and the undefined concurrency requirement under 16 CCR section
8 1426(d) to Nightingale's graduates, and meeting directly with BRN leadership on August 4, 13,
9 and 21, 2026, all to no avail. (Shneyder Decl. ¶ 14; Marston Decl. ¶ 4.)

10 Due process requires notice and a meaningful opportunity to respond before the government
11 deprives a person of a protected interest. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333; *Horn v.*
12 *County of Ventura* (1979) 24 Cal.3d 605, 612.) Nightingale's graduates hold protected liberty and
13 property interests in pursuing their chosen profession and obtaining BRN review of their licensure
14 applications under lawful standards, yet the BRN deprived them of those interests without notice, a
15 hearing, or any other safeguard.

16 The BRN induced Nightingale and its graduates to rely on its prior approval of thousands of
17 applications for licensure for the proposition that its graduates were qualified pursuant to Business &
18 Professions Code section 2736, that it would process pending applications, and approve completed
19 applications for licensure. The BRN then reversed course without warning and imposed the
20 requirement without notice or rulemaking. That conduct is the very definition of arbitrary and
21 capricious government action. (*Banks v. Dominican College* (1995) 35 Cal.App.4th 1545, 1551.) The
22 reversal cannot stand.

23 4. Traditional Mandamus Relief Is Warranted

24 Code of Civil Procedure section 1085 authorizes traditional mandamus to compel
25 performance of an act that the law specially enjoins as a duty arising from an office, trust, or station.
26 The BRN has a clear, present, and ministerial duty to evaluate and process out-of-state applicants
27 under the governing statutes and duly adopted regulations, including CCR section 1426 and Business
28

1 & Professions Code section 2742.

2 Business & Professions Code section 2742 provides that, “The board shall issue a license to
3 each applicant who passes the examination and meets all other licensing requirements. The form of
4 the license shall be determined in accordance with Section 164.” (Bus. & Prof. Code § 2742.) “Shall
5 issue a license ” is **mandatory**, not discretionary. (*People v. Standish*, (2006) 38 Cal. 4th 858, 869
6 [“the term “shall” is interpreted as mandatory and not permissive].); Cal. Educ. Code. § 75 “Shall” is
7 mandatory and “may” is permissive.”) The BRN must process ATT applications under 16 CCR
8 section 1426’s curriculum requirements and Business and Professions Code section 2742 without
9 adding the unadopted 500-hour, the 30-hours of direct care in specialty areas, or undefined
10 concurrency requirements.

11 *Excelsior Coll. v. Bd. of Registered Nursing* (2006) 136 Cal. App. 4th 1218, is distinguishable
12 from the facts here. There, a school sought to compel the Board to prospectively evaluate and
13 recognize its out-of-state nursing program, a discretionary act no statute required the Board to
14 perform. The court held mandamus did not lie because no mandatory duty attached to that prospective
15 program evaluation. (*Id.* at 1237-38.) Nightingale's claim is different. Business & Professions Code
16 section 2736 requires the BRN to form an opinion about an out-of-state applicant's coursework "at
17 the time the application is filed," not a prospective program review. The BRN may retain discretion
18 over the equivalency determination, but it cannot refuse to evaluate a properly filed application.

19 Moreover, once an applicant satisfies Section 2736's requirements and passes the licensing
20 examination, Section 2742 converts the Board's function into a ministerial act. The Board "shall
21 issue" the license. At that point, no discretion remains over whether to grant it. (*Morris v.*
22 *Harper* (2001) 94 Cal.App.4th 52, 62–63 [a refusal to exercise discretion is itself an abuse of
23 discretion; although mandamus will not compel the exercise of discretion in a particular manner, it
24 will compel some action under a proper interpretation of the applicable law].)

25 *Morton v. Board of Registered Nursing* (1991) 235 Cal.App.3d 1560 confirms that traditional
26 mandate is available to compel a licensing agency’s ministerial acts. *CV Amalgamated LLC v. City*
27 *of Chula Vista* (2022) 82 Cal.App.5th 265 likewise recognizes mandamus when an agency fails to
28

1 follow mandatory licensing procedures. Those authorities support an order requiring the BRN to
2 process the applications under the lawful standards.

3 Even if aspects of the BRN's function remain discretionary, mandamus compels the BRN to
4 exercise that discretion rather than refuse to act. (*Ellena v. Dep't of Ins.*, (2014) 230 Cal. App. 4th
5 198.) "A refusal to exercise discretion is itself an abuse of discretion. Accordingly, although
6 mandamus is not available to compel the exercise of the discretion in a particular manner or to reach
7 a particular result, it does lie to command the exercise of discretion to compel some action upon the
8 subject involved under a proper interpretation of the applicable law." (*Morris v. Harper*, (2001) 94
9 Cal. App. 4th 52, 62-63. The Court may therefore require the BRN to receive, evaluate, and process
10 an individual application without dictating the outcome.

11 The abuse-of-discretion branch supports relief. Traditional mandamus corrects action that is
12 "arbitrary, capricious or entirely without evidentiary support" or that "failed to conform to procedures
13 required by law." (*HNHPC, Inc. v. Dep't of Cannabis Control*, (2023) 94 Cal.App.5th 60, 72.)
14 Refusing to process an application, indefinitely failing to act, or applying void, unadopted standards
15 would each deny the individualized evaluation Section 2736 requires.

16 Nightingale does not ask the Court to dictate the result of any application that requires a lawful
17 individualized determination. It asks only that the BRN perform its ministerial duty, stop applying
18 void standards, and promptly reconsider and process pending applications under 16 CCR section
19 1426 and Business & Professions Code section 2736. Traditional mandamus is the appropriate vehicle
20 for that relief. (Compl. ¶¶ 90-101.)

21 **B. Nightingale and its Students Will Suffer Irreparable Harm Absent a TRO**

22 The record demonstrates immediate, ongoing harm. As of early July 2026, approximately 439
23 graduates have informed Nightingale about being notified by the BRN that their ATT is on hold, 70
24 graduates had lost job offers, 86 faced imminent rescission of offers without an ATT, and 95 held
25 offers expressly contingent on ATT issuance. Approximately 1,344 Nightingale graduates in total
26 cannot get licensed in California.⁶ Each additional delay threatens another employment opportunity

27 ⁶ The BRN has approved some Spring and Summer 2026 Nightingale graduates in California for reasons unknown, issuing
28 the last known license to a Nightingale graduate on August 22, 2026

1 and postpones the graduates' ability to sit for the NCLEX-RN. (Shneyder Decl. ¶¶ 13-16.)

2 Money damages cannot adequately remedy these injuries. Graduates cannot recapture lost
3 employment opportunities, delayed professional development, missed patient-care experience, or the
4 disruption of a nursing career after the opportunity has passed. Nightingale likewise cannot fully
5 restore withdrawn students, lost enrollment, or the institutional trust that indefinite and unexplained
6 licensing delays have damaged. (Shneyder Decl. ¶¶ 13-18.)

7 The harm extends beyond recent graduates. Nightingale's records reflect that approximately
8 500 Spring 2026 California graduates currently await Authorization to Test (ATT) in the state, 49
9 additional Spring California graduates who passed the NCLEX in other states await licensure by
10 endorsement, approximately 612 Summer 2026 graduates are expected to apply for California
11 licensure, and the BRN's current position also affects approximately 215 graduates from prior
12 California cohorts who remain unlicensed. Nightingale has approximately 8,777 currently enrolled
13 students who expect to apply for California licensure when they complete their education over the
14 next four years. They now face an uncertain future due to the BRN's actions. (Shneyder Decl. ¶ 16.)
15 Where a government agency acts without legal authority, courts presume irreparable harm.
16 (*California Ass'n for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1275–1276.)
17 Nightingale satisfies the requirement through the documented injuries here. (*Butt v. State of*
18 *California* (1992) 4 Cal.4th 668, 678.)

19 Given this strong showing of irreparable harm, the Court may grant the TRO upon a showing
20 of 'some possibility' of success on the merits. Nightingale exceeds that standard here.

21 **C. The Balance of Harms Favors Nightingale**

22 The purpose of a TRO is to preserve the status quo pending trial on the merits. (*Continental*
23 *Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) The requested relief would maintain existing lawful
24 standards rather than order affirmative action.

25 The balance of harms strongly favors Nightingale. Without relief, graduates will continue
26 losing jobs and career opportunities, current students will face continued uncertainty about California
27 licensure, and Nightingale will suffer further enrollment and institutional harm. The injury
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1 compounds each day the BRN refuses to process applications under the lawful standard. Nor can
2 Nightingale quickly comply with a fundamentally different California requirement: its President of
3 Innovations estimates that compliance would take twelve to twenty-four months, a full redesign could
4 take thirty-six months, and the current curriculum took approximately nine years to develop. (Kolde
5 Decl. ¶ 15.)

6 The BRN, by contrast, suffers no cognizable harm from an order requiring it to follow the
7 statutes and regulations governing its own licensing decisions. The requested relief does not prohibit
8 lawful individualized review or require the Board to approve an applicant who fails to satisfy the duly
9 adopted standards. It merely prevents the BRN from enforcing unlawful requirements and requires
10 processing under Business & Professions Code section 2736. The BRN cannot credibly claim that
11 approving Nightingale nurses poses a public safety concern, given that it has already licensed at least
12 1,961 graduates since 2020 under the same curriculum, with those graduates achieving a 91.5%
13 overall licensure exam pass rate, an 84% employment rate, and securing positions at reputable
14 healthcare providers including Kaiser Permanente, Dignity Health, Sutter Health, Wellpath, and UC
15 Davis Medical Center. (Shneyder Decl. ¶ 7, **Exh. B.**)

16 The BRN has no legitimate interest in enforcing a void underground regulation or relying on
17 an off-agenda commitment to continue indefinite holds. As *IT Corp. v. County of Imperial* (1983)
18 35 Cal.3d 63 explains, the Court should weigh the harm that issuance causes against the harm that
19 non-issuance causes. (*Id.* at 69–70.) That comparison is decisive here.

20 **D. The Public Interest Favors Granting the TRO**

21 The public has a strong interest in ensuring that government agencies follow the law, use only
22 properly adopted regulations, and do not impose binding licensing requirements through
23 correspondence or informal commitments. A TRO enforcing those basic limits protects the public's
24 interest in lawful, accountable administration.

25 *First*, the BRN cannot genuinely argue that approving Nightingale nurses is a public safety
26 concern. The Board of Registered Nursing (“BRN”) first approved a Nightingale graduate in 2020
27 and has since licensed approximately 1,961 graduates under the same curriculum. California
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1 graduates have a 91.5% overall licensure exam pass rate, an 84% employment rate, and have obtained
2 positions from reputable healthcare providers such as Kaiser Permanente, Dignity Health, Sutter
3 Health, Wellpath, and UC Davis Medical Center. (Shneyder Decl. ¶ 7, **Exh. B.**)

4 *Second*, the BRN’s own April 2026 Regional Forecasts of the Registered Nurse Workforce in
5 California, which Joanne Spetz, Ph.D., prepared for the Board, reports that every California region
6 except the Central Coast faces an RN shortage in 2026, ranging from 1.4% to 8.1% under the report’s
7 age and vacancy adjusted demand estimate.⁷ The report places California 42nd nationally, with only
8 766 full-time equivalent RNs per 100,000 people versus the national median of 947. HRSA estimated
9 in 2023 that the nation faced a shortage of 320,000 RNs, leaving nearly 10% of current demand
10 unfilled. Moreover, the Department of Health Care Access and Information (“HCAI”) projects
11 California’s statewide shortage will reach 16% by 2033, or approximately 60,000 RNs, and California
12 had 16,917 open RN job postings in February 2026, a 4.9% vacancy rate.⁸ The BRN’s conduct is
13 arbitrary and self-defeating because its own data proves California cannot afford to exclude qualified
14 nurses, yet it blocks them from taking the NCLEX-RN under requirements that California law does
15 not impose.

16 *Third*, distance education like Nightingale supplies nurses in the United States and California.
17 In many parts of the country, a shortage of healthcare professionals, including RNs, severely limits
18 access to basic healthcare. Most nursing programs operate at colleges in major cities, compounding
19 the problem. (Shneyder Decl. ¶ 5.) Researchers often call this combination of limited healthcare and
20 limited educational access in rural communities a healthcare or educational “desert.”⁹ California faces
21 its own acute shortage. The California Department of Health Care Access and Information found that,
22 “In 2025, 50 counties are projected to face a shortage of one or more nursing role groups, with the
23

24 ⁷ Joanne Spetz, Regional Forecasts of the Registered Nurse Workforce in California (Apr.
25 2026), <https://www.rn.ca.gov/pdfs/forms/forecast2026.pdf>.

26 ⁸ Hart, Angela, *California's Nursing Shortage Is Getting Worse. Front-Line Workers Blame Management.*,
Cal. Healthline, October 8, 2025 <https://californiahealthline.org/news/article/california-nursing-shortage-medicare-funding-management-profit-unions-burnout/>.

27 ⁹ Tuuli Turja, *Overview of Barriers to Healthcare Access: Medical Deserts and Individual Sandboxes*, 14 J.
28 Fam. Med. & Primary Care 2608 (2025); <https://pmc.ncbi.nlm.nih.gov/articles/PMC12349865/>

1 highest shortages in the Northern & Sierra, Central Coast, and Los Angeles County CHIS regions.”¹⁰

2 Traditional brick-and-mortar programs force students to relocate or commute long distances.
3 Nightingale offers a solution. Workforce studies consistently show that healthcare professionals with
4 rural backgrounds who are educated in rural communities are significantly more likely to practice
5 there after graduation. (Shneyder Decl. ¶ 5.)¹¹ Yet students who leave for school and become licensed
6 elsewhere rarely return—whether because their hometowns lack healthcare facilities or because they
7 have built new lives in the city. The result is a vicious cycle: aspiring nurses leave rural communities
8 and never come back. Distance education breaks this cycle by allowing students to remain in their
9 home communities and support local healthcare delivery where it is needed most.

10 These graduates completed accredited nursing programs and years of rigorous classroom and
11 clinical training. They chose this profession, and they stand ready to sit for the NCLEX-RN, obtain
12 licensure, and serve California patients. The BRN denies them that opportunity by imposing
13 requirements that California law does not contain. In doing so, it keeps willing, qualified nurses away
14 from patient care through invented bureaucratic barriers that do nothing to improve patient safety.
15 Every delayed ATT does more than postpone a career. It removes a nurse from the workforce when
16 a patient may need that nurse most.

17 The human cost is immediate. People who dedicated years to nursing education cannot serve
18 the communities that need them. They lose jobs, income, professional momentum, and the chance to
19 begin caring for patients. California loses the nurses prepared to serve its communities.

20 The Court should not allow an agency’s invented barriers to deepen a shortage that already
21 threatens patient access. A TRO would remove those barriers, permit qualified graduates to take the
22 state licensure examination (the NCLEX), and move trained nurses toward the practice. That relief
23 serves patients, facilities, communities, and the public interest. The public also has a substantial
24

25 ¹⁰ Cal. Dep’t of Health Care Access & Info., *Supply and Demand Modeling for California’s Nursing*
26 *Workforce* (2025), [https://hcai.ca.gov/visualizations/supply-and-demand-modeling-for-californias-nursing-](https://hcai.ca.gov/visualizations/supply-and-demand-modeling-for-californias-nursing-workforce/)
[workforce/](https://hcai.ca.gov/visualizations/supply-and-demand-modeling-for-californias-nursing-workforce/).

27 ¹¹ National Academies of Sciences, Engineering, and Medicine, *The Future of Nursing 2020–2030: Charting a Path to*
28 *Achieve Health Equity* (2021), *Recommendations on expanding educational access for rural students and improving the*
geographic distribution of the nursing workforce; <https://pubmed.ncbi.nlm.nih.gov/34524769/>

1 interest in transparent government. The Bagley-Keene Act exists to ensure that state bodies provide
2 notice, permit public participation, and do not take substantive action on matters hidden from the
3 public agenda. Enjoining reliance on the July 29 and August 11 off-agenda commitment vindicates
4 those transparency and participation requirements.

5 **V. CONCLUSION**

6 Nightingale demonstrates a strong likelihood of success on the merits. The College and, more
7 importantly, its graduates, will continue to suffer severe, irreparable harm, absent immediate relief.
8 Nightingale respectfully requests that this Court issue a Temporary Restraining Order and an Order
9 to Show Cause why a Preliminary Injunction should not issue, enjoining the BRN from unlawfully
10 applying Business & Professions Code section 2786(a)(2) and an undefined concurrency requirement
11 under 16 CCR section 1426(d) to Nightingale's graduates, thereby preserving the status quo for the
12 current graduates who enrolled in and completed their programs in reliance on the BRN's prior
13 position while the Court adjudicates this matter.

14 Dated: August 27, 2026

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