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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SACRAMENTO**

NIGHTINGALE COLLEGE, LLC dba  
NIGHTINGALE EDUCATION GROUP, a  
Delaware limited liability company

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 COLLEGE, LLC'S REPLY**  
**IN SUPPORT OF MOTION FOR**  
**PRELIMINARY INJUNCTION**

Date: October 23, 2026  
Time: 02:30 p.m.  
Judge: Hon. Stephen P. Acquisto  
Dept: 3B

Compl. filed: 08/24/2026  
1st Am. Compl. filed: 09/15/2026

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1     **I.       INTRODUCTION**

2             The BRN<sup>1</sup> licensed nearly 2,000 of the College’s graduates under the same curriculum it now  
3     calls deficient, then abruptly stopped in 2026 without adopting a new rule. (Shneyder Decl. ¶ 7.)  
4     Defendants’ Opposition does not deny that reversal. It recasts it. Defendants say Nightingale was on  
5     “notice” since May 2025, but that notice was one official’s oral comment at a legislative meeting held  
6     with representatives of Nightingale (the parent company)—not the College, paired with a promise  
7     not to enforce the underground regulation, followed by another year of approvals. (Melby Decl. ¶ 3;  
8     Declaration of Blake Halladay [“Halladay Decl.”], ¶ 5; Declaration of Chris Kahn [“Kahn Decl.”], ¶  
9     7.) Defendants say each graduate gets an individualized review, but the BRN’s own deficiency letters  
10    repeat the same program-wide findings, graduate after graduate. And Defendants say “concurrent”  
11    has a plain meaning, yet the BRN told Nightingale in August that no definition existed. The  
12    Opposition’s threshold arguments fail, the merits favor Nightingale, and the equities favor restoring  
13    the status quo while the Court decides this case.

14    **II.     NIGHTINGALE IS LIKELY TO PREVAIL ON THE MERITS**

15       **A.     Nightingale Has Standing**

16             Defendants’ standing argument fails for three independent reasons.

17             **First**, Nightingale has its own beneficial interest. (Code Civ. Proc. § 1086; *Save the Plastic*  
18    *Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.) The harm is not “indirect.”  
19    (Opp. at 5:24–6:3.) The BRN’s actions injure Nightingale directly. (Shneyder Decl. ¶¶ 19–23.) Nor  
20    are Nightingale and the College’s graduates adverse: they seek the same relief.

21             **Second**, Nightingale has public-interest standing to enforce public duties to regulate only  
22    through adopted rules and to act only at noticed meetings. (*Save the Plastic Bag Coalition*, 52 Cal.4th  
23    at 166; Gov. Code §§ 11340.5(a), 11125, 11130(a) “[a]ny interested person” may sue[.] )

24             **Third**, Nightingale has associational standing. Its students are “interested person[s]”  
25    “impacted by” the challenged rules. (*Environmental Protection Information Center v. Dept. of*  
26    *Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1018.) Graduates could sue in their own

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27    <sup>1</sup> Capitalized terms, acronyms, and short citations have the same meaning as those in Nightingale’s  
28    moving papers unless otherwise indicated.

1 right, licensure is germane to the College’s purpose, and the system-wide relief sought does not  
2 require individual participation. (See *Ass’n for Los Angeles Deputy Sheriffs v. Macias* (2021) 63  
3 Cal.App.5th 1007, 1019; see also *Anaheim Elementary Education Assn. v. Board of Education* (1986)  
4 179 Cal.App.3d 1153, 1159 [reading “members” broadly].)

5 **B. Nightingale Has Capacity to Maintain This Action**

6 Defendants’ capacity argument fails, and at most it raises a curable administrative issue. Lack  
7 of capacity is not a merits defense; abatement merely pauses a case until the company qualifies, and  
8 the rule aims “to encourage qualification, rather than to penalize the failure to qualify earlier.” (*United*  
9 *Med. Mgmt. Ltd. v. Gatto* (1996) 49 Cal.App.4th 1732, 1741; *Capital Gold Group, Inc. v. Nortier*  
10 (2009) 176 Cal.App.4th 1119, 1132.) A curable issue should not obstruct interim relief. In any event,  
11 no qualification is required.

12 **First**, a foreign LLC must register only if it transacts intrastate business; interstate commerce  
13 does not count. (Corp. Code, § 17708.07, subd. (a); *id.* § 17708.03, subd. (b), pars. (6), (10).) This is  
14 a narrower test than “doing business” for jurisdictional purposes. (*Thorner v. Selective Cam*  
15 *Transmission Co.* (1960) 180 Cal.App.2d 89, 91.)

16 Nightingale delivers instruction entirely from outside California, which is interstate  
17 commerce. (See *Daghlian v. DeVry Univ., Inc.* (C.D. Cal. 2007) 582 F.Supp.2d 1231, 1259 [cross-  
18 border postsecondary education is interstate commerce].) Corporations Code section 191 confirms  
19 the point: soliciting orders from California is not “doing business” where the contract becomes  
20 binding only upon acceptance outside California. (Corp. Code § 191, subd. (c), par. (6).) Nightingale  
21 accepts and executes its enrollment agreements outside California. (Supplemental Declaration of  
22 Mikhail Shneyder [“Shneyder Supp. Decl.”], ¶ 9; accord *Mediterranean Exports, Inc. v. Superior*  
23 *Court* (1981) 119 Cal.App.3d 605, 617.)

24 Defendants’ arguments do not change this outcome. Recruiting and teaching California  
25 residents from Utah (Opp. at 6:27–7:3) is interstate commerce. Lobbying (*id.* at 7:1–4) is not a  
26 business transaction. And registering with the Bureau for Private Postsecondary Education (*id.* at  
27 7:5–13) is an education law requirement unrelated to the Corporations Code. Defendants’ contention  
28

1 that this action “arises out of” intrastate business is mere conjecture. (*Id.* at 6:18–20.)

2 **Second**, Defendants cannot obtain affirmative relief such as abatement through an opposition  
3 brief. (Cf. *Cuff v. Grossmont Union High Sch. Dist.* (2013) 221 Cal.App.4th 582, 596.)

4 **C. Defendants’ Imposition of the Hourly Programmatic Requirement on Out-of-**  
5 **State Applicants is an Underground Regulation**

6 Defendants confuse *applying* a rule with *adopting* one. They argue that their practice of  
7 applying Section 2786(a)(2)’s programmatic requirement to every out-of-state applicant is not an  
8 underground regulation because the BRN conducts a case-by-case review. (See Opp. at 8.) But the  
9 question is not whether the BRN looks at an individual file. It is whether, before it opens that file, the  
10 BRN has already fixed the standard by which every applicant in the class will be judged. In this case,  
11 it has. The California Supreme Court rejected such maneuvering in *Morning Star Co. v. State Bd. of*  
12 *Equalization* (2006) 38 Cal.4th 324.

13 In *Morning Star*, the Department of Toxic Substances Control read a hazardous materials fee  
14 statute to mean that virtually *any* corporations with 50 or more employees “use, generate, store, or  
15 conduct activities in this state related to hazardous materials,” because they use printer ink, toner,  
16 fluorescent light bulbs, and similar hazardous materials. (38 Cal.4th at 329–330.) As a result, each  
17 qualifying corporation was required to pay a hazardous materials fee. (*Id.*) The Supreme Court held  
18 that the department’s unwritten determination was a regulation of general application subject to the  
19 APA, and that the individualized review did not save it because the determination “supplied both the  
20 first and the last word” on how that class of cases would be decided. (*Id.* at 334.)

21 The BRN’s conduct is like *Morning Star*. The BRN decided that it would apply a  
22 programmatic, 500-hour direct-patient-care requirement to all out-of-state RN applicants, despite the  
23 requirement appearing nowhere in Section 1426. (See, e.g., Melby Decl. ¶ 3 [“I expressly told them  
24 in no uncertain terms that Nightingale’s curriculum did not meet the Board’s licensing requirements  
25 due to insufficient *direct patient care clinical hours*.”], italics added.) Once the BRN made that  
26 judgment, the “case-by-case” review Defendants invoke could only ask whether an applicant came  
27 from a program the BRN had already found deficient. That is not an individualized determination. It  
28

1 is enforcement of an unadopted rule. Defendants’ reliance on case-by-case review does not rebut the  
2 existence of an underground regulation. It confirms it. (Accord *Morning Star*, 38 Cal.4th at p. 334.)

3 *Excelsior College* and *West Coast University* do not hold otherwise. *Excelsior* held only that  
4 the BRN may enforce the “actual language” of Section 2736 and its adopted regulation, Section 1426.  
5 (*Excelsior College v. Board of Registered Nursing* (2006) 136 Cal.App.4th 1218, 1239.) The BRN is  
6 doing something different here: importing a program-level hour requirement from Section 2786 that  
7 neither Section 2736 nor Section 1426 contains. And *West Coast University* protects genuinely case-  
8 specific adjudications (*West Coast University, Inc. v. Board of Registered Nursing* (2022) 82  
9 Cal.App.5th 624, 643), not identical outcomes fixed in advance. The record shows the latter. Melby  
10 found Nightingale’s program deficient by 140 direct-patient-care hours and lacking obstetrics and  
11 pediatrics clinicals. (Melby Decl. ¶ 10.) Graduate Jacob Alatorre’s “individualized” deficiency letter  
12 found the same 140-hour shortfall and the same obstetrics and pediatrics gaps, even though the BRN  
13 acknowledged reviewing his LVN transcript from Gurnick Academy, where he completed obstetrics  
14 and pediatrics. (Supplemental Declaration of Jacob Alatorre, ¶¶ 6–9.) Melby’s claim that the Board  
15 lacks information on LVN graduates (Melby Decl. ¶ 8) cannot be squared with the BRN’s own letter.

16 Defendants cannot escape the APA’s rulemaking mandate by laundering a general rule  
17 through the mechanistic application of a predetermined review process.

18 **D. The Legislature Did Not Subject Out-of-State RN Applicants to Section 2786’s**  
19 **Program-Level Hours and Defendants Do Not Show Otherwise**

20 Defendants claim they are pushing for parity. They argue if California approved programs  
21 must provide 500 hours of direct patient care, every out-of-state applicant must satisfy the same. (See  
22 Opp. at 9-11.) That argument does not fit within the text of the Nurse Practice Act (NPA) or its  
23 structure, the BRN’s regulatory conduct, or the way the Legislature crafted other parts of the Business  
24 and Professions Code.

25 **First**, the statutory text forecloses Defendants’ interpretation. Section 2736(a)(2) asks  
26 whether an out-of-state applicant’s “*courses of instruction*” are equivalent. The BRN’s regulations  
27 define that phrase as “the minimum education program that meets the *requirements of section 1426*  
28

1 for eligibility to take the licensing examination and that is not less than two (2) academic years or  
2 equivalent.” (16 Cal. Code Regs. § 1420, subd. (g), *italics added*.) The benchmark is Section 1426,  
3 which contains no 500-hour direct-patient-care requirement. That requirement appears only in  
4 Business and Professions Code section 2786(a)(2), which governs approved schools of nursing.

5 ***Second***, the Legislature drew a deliberate line between schools and applicants, and the BRN  
6 cannot erase it—especially not, as here, without formal rulemaking. The Legislature placed the 500-  
7 hour requirement in Section 2786(a)(2) and nowhere in Section 2736. “[W]hen language is included  
8 in one portion of a statute, its omission from a different portion addressing a similar subject suggests  
9 that the omission was purposeful.” (*In re Ethan C.* (2012) 54 Cal.4th 610, 638 [Court “must [ ] infer”  
10 from the omission that the Legislature did not intend to import the requirement into the other  
11 provision].) The Opposition does not even address, let alone explain, this critical distinction.

12 The text of Section 2786 reveals the weakness of Defendants’ position. The Legislature  
13 measured the 500 hours at the program level and did not require schools to document them student  
14 by student. (See Bus. & Prof. Code § 2786, subd. (a), par. (2), subpar. (B).) The BRN cannot demand  
15 that an individual out-of-state graduate prove they took 500 hours of direct patient care when the  
16 Legislature expressly refused to demand California’s approved programs do the same. The BRN’s  
17 regulatory conduct confirms the point. After AB 2684 (Stats. 2022, ch. 413) was enacted, the BRN  
18 amended section 1426 to delete the only direct-patient-care hours requirement in its regulations  
19 (former § 1426(g)(2)), effective July 1, 2024, and then licensed 1,864 Nightingale graduates after that  
20 amendment took effect. (Shneyder Decl. ¶ 7.) That is not an unadopted proposal of uncertain meaning  
21 (cf. *West Coast, supra*, 82 Cal.App.5th at 641); it is years of consistent agency conduct showing that  
22 the 500-hour requirement governs programs, not applicants. (See *Yamaha Corp. of Am. v. State Bd.*  
23 *of Equalization* (1998) 19 Cal.4th 1, 13 [a “vacillating agency position . . . is entitled to no  
24 deference”].)

25 ***Third***, the term “equivalent” does not mean “identical.” Section 2736(a)(2) asks whether the  
26 applicant’s courses of instruction are “equivalent” to California’s minimum requirements. “[I]n using  
27 the term ‘equivalent,’ the Legislature did not intend that the applicant’s training program be identical  
28

1 to that of an . . . accredited program, but rather that it be of *equal value* when measured by the stated  
2 criteria.” (*American Bd. of Cosmetic Surgery v. Medical Bd. of California* (2008) 162 Cal.App.4th  
3 534, 549.) Defendants’ reading collapses equivalence into exactness. Had the Legislature wanted  
4 identical training, it would have required out-of-state graduates to complete an approved program. It  
5 imposed that requirement only on in-state graduates, in the first clause of Section 2736(a)(2). Where  
6 the Legislature uses different words in the same scheme, “it must be presumed that the Legislature  
7 intended a different meaning.” (*Roy v. Superior Court* (2011) 198 Cal.App.4th 1337, 1352.)

8 Defendants also conflate “clinical practice” with “direct patient care,” a narrower, more  
9 specific type of clinical experience. (See 16 Cal. Code Regs. § 1420, subd. (e) [defining clinical  
10 practice to include “learning experiences provided in various healthcare agencies as well as nursing  
11 *skills labs, simulation labs, and computer labs.*”], italics added.) Defendants treat the two as  
12 interchangeable. They are not. Neither the Opposition nor Melby’s declaration explains *how* or *why*  
13 the College’s courses of instruction are of lesser value than an in-state program. (See generally Opp.)  
14 Defendants offer only an hourly threshold the Legislature never applied to individual applicants. That  
15 is not an equivalency analysis.

16 *Excelsior College* is distinguishable. There, the court held applicants must meet the  
17 requirements of Section 1426, the BRN’s adopted coursework regulation. (Compare *Excelsior*  
18 *College, supra*, 136 Cal.App.4th at 1235, with 16 Cal. Code Regs. § 1426.) Equivalence is measured  
19 against Section 1426, not Section 2786. And the BRN has licensed nearly 2,000 of the College’s  
20 graduates trained under the same curricula it now finds deficient. (Shneyder Decl. ¶ 7.)

21 ***Fourth***, the same two-track structure appears elsewhere in the Business and Professions Code,  
22 and where the Legislature wants individual applicants to document hours, it says so. (Compare Bus.  
23 & Prof. Code § 2866, with *id.* §§ 2881.2, 2881.3; see, e.g., *id.*, § 4980.78, subd. (b), par. 1, subpar.  
24 (C) [150 face-to-face practicum hours for *out-of-state* marriage and family therapists].) Section 2736  
25 contains no such command. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725.)

26 **E. Defendants’ Definitions Do Not Save the Concurrency Requirement**

27 Defendants’ preferred definition of “concurrent” offers nothing. Every reading Nightingale  
28

1 identified in its First Amended Complaint, whether the same day, week, course, or term, is a version  
2 of “at the same time.” A definition that fits every competing reading does not resolve the ambiguity.  
3 It confirms it.

4 Worse yet, Defendants abandon their own dictionary. Invoking the “whole act rule,” they  
5 argue that Business and Professions Code section 2786(c)(2)(B) “necessarily implies” that clinical  
6 practice must occur “within the same academic term” as theory. (Opp. at 13.) But sharing an academic  
7 term is not the same as occurring at the same time. A student who completes pediatric theory in week  
8 one and pediatric clinicals in week fifteen satisfies the second test but not the first. Defendants cannot  
9 have it both ways.

10 Realizing their predicament, Defendants try to revive “concurrency” with a new definition.  
11 For the first time, Executive Officer Melby declares that concurrency means the same academic term.  
12 (See Melby Decl. ¶ 11.) Months earlier, Nightingale asked Melby to define concurrency. She said no  
13 definition existed. (See Kolde Decl. ¶ 17; see also Shneyder Decl. ¶ 14; FAC ¶ 61.) A new standard  
14 that did not exist in August cannot be the “plain meaning” the BRN has always enforced. Deference  
15 turns on whether the agency has consistently maintained its interpretation. (*Yamaha Corp. of*  
16 *America, supra*, 19 Cal.4th at 13.) California courts will not let a declarant supply the clarity that a  
17 text lacks. (See, e.g., *Mae M. v. Komrosky* (2025) 111 Cal.App.5th 198, 215 [resolution was not  
18 “sufficiently definite just because a Board member who enacted it stated as much”].) Courts also  
19 reject a gloss on a term not found in the regulatory text. (*Id.* at 216.)

20 Even under her new test, Melby never explains why Nightingale fails. Every Nightingale  
21 clinical course integrates theory, lab, simulation, and clinical care. Simulation runs concurrently with  
22 theory instruction. Each course is designed so that theory and clinical practice occur together. (See  
23 Kolde Decl. ¶¶ 11–13.) Theory and clinical practice delivered within the same course necessarily fall  
24 within the same academic term. Melby says she could not identify pediatric or obstetric direct-patient-  
25 care clinicals. (Melby Decl. ¶ 11.) That is a complaint about direct-patient-care hours, which 1426  
26 does not require. It says nothing about concurrency.

1           *TC Telephone v. Public Utilities Com.* (2026) 2026 WL 2905303,<sup>2</sup> is on point. There, the  
2 Public Utilities Commission argued that the plain meaning of “untimed” barred per-minute  
3 reimbursement. The court rejected that dictionary argument, *id.* at \*8, because due process requires  
4 an agency to give fair notice “through written guidance, regulations, or other activity.” (*Id.* at \*7.)  
5 The commission’s staff had been unsure of the rule. The court found “the only reasonable inference”  
6 was staff “did not know” the rule until the commission adopted a clarifying resolution, which by its  
7 terms applied only “going forward.” (*Id.* at \*4, \*9.) The facts here are stronger. In *TC Telephone*,  
8 staff were uncertain. Here, Defendants *told* Nightingale that no definition existed. Yet the BRN now  
9 applies a new gloss, after the fact, to hundreds of graduates who have already completed their BSN  
10 program. If a formal commission resolution could not reach backward in *TC Telephone*, a litigation  
11 declaration cannot do so either.

12           Concurrency, as the BRN wields it, is a mirage: nothing in August, a dictionary entry in the  
13 Opposition, an academic term in the Melby declaration, and a direct-patient-care requirement by the  
14 end of that same declaration. Due process does not allow such arbitrary and capricious agency fiat.

15           **F.       The Board Acted and Violated the Bagley-Keene Act**

16           Defendants took action. They used committee meetings to announce and then carry out new  
17 policy without notice. Defendants dispute this by arguing there was no vote at the NEWAC and ELC  
18 meetings, thereby ignoring that the Government Code defines “[a]ction [t]aken” as “a collective  
19 decision” and “a collective commitment or promise... to make a positive or negative decision.” (Gov.  
20 Code § 11122.)

21           The NEWAC and ELC meeting agendas did not mention Nightingale or the challenged  
22 requirements. At both meetings, Melby and the BRN’s counsel stated on the record that Nightingale  
23 graduates must meet the 500-hour direct-patient-care requirement to obtain an ATT. At the ELC  
24 meeting, with all three members (each a BRN board member) present, they confirmed the  
25 administrative hold placed on the applications of the College’s graduates.

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26  
27 <sup>2</sup> *TC Telephone v. Public Utilities Com.* (2026), Case No. G065980, was decided by the Fourth  
28 Appellate District of the Court of Appeal of the State of California on September 28, 2026. The  
decision was certified for publication, though it has not yet been added to the Appellate Reports.

1 The BRN then did exactly what was announced. Defendants concede that, “[b]y the time the  
2 court rules on Nightingale’s motion, the Board will have probably already sent deficiency letters to  
3 many of the 900 or so pending applicants.” (Melby Decl. ¶ 13.) That is a decision, not the “non-legal  
4 advice” Defendants describe. (Opp. at 14:13–16.)

5 Defendants also argue the requirements “already applied” without Board action. (Opp. at  
6 13:24–14:12.) But the issue is whether the BRN adopted a *new* enforcement position outside a noticed  
7 meeting. It did. The BRN previously approved nearly two thousand Nightingale graduates under the  
8 same curriculum, including 1,864 after AB 2684 took effect. The change came in 2026, and the only  
9 public record of it is the off-agenda statements. Even without “action taken,” the BRN violated the  
10 Act because an agenda must describe every item to be “transacted or discussed.”<sup>3</sup>

### 11 **III. THE BALANCE OF EQUITIES SUPPORTS THE MOTION**

12 Defendants contend that the balance of equities heavily favors denying Nightingale’s motion  
13 because granting it would endanger the public. This contention is contrary to the facts.

14 **First**, because Defendants acted without legal authority, irreparable harm is presumed. (See  
15 *California Ass’n for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1275–1276.)

16 **Second**, Defendants offer no evidence of a public-safety risk. Defendants warn of “hundreds  
17 of dangerous patient encounters each day” (Opp. at 14:22–28) but identify none. The BRN has already  
18 licensed nearly 2,000 Nightingale graduates who completed the same curriculum, and the College’s  
19 California graduates have a 90.3 percent licensure exam pass rate. (Shneyder Decl. ¶ 7.) The greater  
20 public-safety risk is that California will lose qualified local nurses like Declarants Thompkins and  
21 Alatorre, who were forced to seek licensure in Nevada. (Thompkins Decl. ¶ 7; Alatorre Decl. ¶ 8.)

22 **Third**, the burden on Defendants is minimal. By Defendants’ own estimate, re-review takes  
23 “about 30 minutes per application” (Melby Decl. ¶ 13), or roughly 450 staff hours for the  
24 approximately 900 pending applications. Defendants do not show that they lack the capacity to  
25 conduct a second review made necessary by their own unlawful actions.

26 **Finally**, the injunction does not change the status quo. It restores it. Where, as here, the

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27 <sup>3</sup> (Gov. Code § 11125, subd. (b).) A body may hear public comment on unlisted topics, but only “if  
28 no action is taken.” (*Id.*, § 11125.7, subd. (a).)

1 injunction would restrain the defendant from repeating past unlawful conduct and simultaneously  
2 adjust the parties' respective rights, the status quo is the last actual, peaceable, uncontested status  
3 preceding the controversy (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th  
4 1030, 1046), and until the BRN's abrupt 2026 reversal, Nightingale graduates were routinely  
5 approved to sit for the NCLEX. The BRN's effort to send deficiency letters to as many pending  
6 applicants as possible before the hearing (Melby Decl. ¶ 13) does not change that baseline. Nor is the  
7 Pearson VUE argument persuasive. Pearson VUE issues an ATT only after it receives "an eligibility  
8 determination from the BRN." (*Id.*, ¶ 12.) The BRN controls that step, and the Court can order it to  
9 make those determinations under lawful standards.

10 Defendants' suggestion that Nightingale sat on its rights since May 2025 also fails. (Opp. at  
11 1; Melby Decl. ¶ 3.) The May 7, 2025 meeting was arranged to discuss Melby's proposed  
12 amendments to AB 1082, not Nightingale's compliance. (Kahn Decl. ¶¶ 3–5.) Melby's oral opinion  
13 there came with assurances that the BRN would not "go public" and would "work with" Nightingale  
14 rather than deny thousands of students ATT. (Halladay Decl. ¶ 5; Kahn Decl. ¶ 7.) Melby concedes  
15 the Board "chose to extend the same grace" to Nightingale (Melby Decl. ¶ 3), identifies no written  
16 notice or follow-up from the BRN, and attributes the 2026 hold to an unrelated transcript issue (*id.*,  
17 ¶ 6). Her claim that Nightingale knew of the requirement through lobbying is only her  
18 "interpretation." (*Id.* ¶ 5.) Most tellingly, the BRN kept licensing Nightingale graduates for a year  
19 after the meeting, through September 11, 2026. (Shneyder Decl. ¶ 7.) An unwritten opinion that the  
20 agency itself declined to act on is not notice of a binding rule. Nightingale moved promptly once the  
21 BRN actually changed course.

#### 22 IV. CONCLUSION

23 For the foregoing reasons, the Court should grant the motion for a preliminary injunction.

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