



DEPARTMENT OF CONSUMER AFFAIRS • PHYSICIAN ASSISTANT BOARD

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MEMORANDUM

DATE	July 28, 2021
TO	Physician Assistant Board (Board)
FROM	Rozana Khan, Executive Officer Karen Halbo, Regulations Counsel, Attorney III
SUBJECT	Agenda Item 10. Return From Retired Status to Include Fingerprint Requirement Amending 16 CCR Section 1399.515. Retired Status.

Background

AB 2461 (Flora, Ch. 300, 2018) amended Penal Code §11105.2(d) so that the Board is required to notify the DOJ when the licensee can no longer renew their license. The DOJ then stops reporting subsequent state or federal arrests or dispositions. The Board’s Retired Status regulation at title 16, California Code of Regulations (CCR), section 1399.515 presently allows licensees with a retired status license to reactivate their license if they complete certain requirements.

In the interests of consumer protection, staff urges the Board to amend 16 CCR 1399.515 to require retired status licensees who seek to re-activate their license to provide fingerprints to the Department of Justice so the Board may conduct criminal history background checks. This would eliminate the risk of the Board reactivating the license of a retired PA who has gotten a state or federal arrest or disposition since retiring their license.

Action Requested

The Board is asked to consider a motion to approve the proposed regulatory text amending title 16, California Code of Regulations, section 1399.515. The Board is also asked to direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, and make any non-substantive changes to

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the package. If no adverse comments are received during the 45-day comment period and no hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at Section 1399.515 as noticed.

Attachments:

1. Proposed language to amend 16 CCR 1399.515
2. AB 2461 (Flora, Ch.300, 2018)

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DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PHYSICIAN ASSISTANT BOARD

PROPOSED REGULATORY LANGUAGE

Retired Status Return To Practice Fingerprint Requirement

Legend:	Added text is indicated with an <u>underline</u> . Omitted text is indicated by (* * * *) Deleted text is indicated by strikeout .
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Amend Section 1399.515 of Article 1 of Division 13.8 of the California Code of Regulations to read as follows:

§ 1399.515. Retired Status.

(a) The board shall issue, upon receipt of a completed Application for Retired Status (Form PAB-RET, 01/19), which is hereby incorporated by reference, a retired license to a physician assistant who meets all of the following requirements:

(1) The applicant has been licensed by the board and is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the board.

(2) The applicant's physician assistant license is not canceled, suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under the Medical Practice Act (commencing with Section 2000 of the Code), Physician Assistant Practice Act (commencing with Section 3500 of the Code), regulations adopted pursuant to those practice acts, and by the board.

(3) Beginning one (1) year from the effective date of this regulation, the applicant's license is not delinquent. If the license is in a delinquent status, the applicant may satisfy this requirement by submitting payment for all outstanding fees with the retirement status application. For the purposes of this subsection, "outstanding fees" includes all accrued renewal fees, a twenty-five dollar (\$25) delinquency fee, and the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as set forth in Section 208 of the Code.

(b) The holder of a retired license:

(1) Shall be exempt from the renewal requirements described in Section 3524.5 of the Code.

(2) May restore his or her their license to active status by: complying with the renewal requirements set forth in Section 1399.514, submitting proof of completion of continuing medical education (CME) as set forth in Section 1399.615 or proof of certification by the National Commission on Certification of Physician Assistants, submitting the license renewal fee as set forth in Section 1399.550, and submitting the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as set forth in

Section 208 of the Code, and furnishing to the Department of Justice a full set of fingerprints for the purposes of the Board conducting criminal history record checks pursuant to Section 144 of the Code.

(c) The board may upon its own determination, and shall upon receipt of a complaint from any person, investigate the actions of any licensee who may be in violation of this section.

Note: Authority cited: Sections 2018, 3510, and 3521.3, Business and Professions Code. Reference cited: Sections 144, 208, 464, 3521.1, and 3521.3, Business and Professions Code.

Assembly Bill No. 2461

CHAPTER 300

An act to amend Section 11105.2 of the Penal Code, relating to criminal history information.

[Approved by Governor September 7, 2018. Filed with Secretary of State September 7, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2461, Flora. Criminal history information: subsequent arrest notification: State Department of Social Services.

Existing law authorizes the Department of Justice to provide subsequent state or federal arrest or disposition notification to an entity authorized by state or federal law to receive state or federal summary criminal history information to assist in fulfilling employment, licensing, or certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of a person whose fingerprints are maintained on file at the Department of Justice or the Federal Bureau of Investigation as the result of an application for licensing, employment, certification, or approval.

This bill would require the department to provide that subsequent arrest or disposition notification to the State Department of Social Services, the Medical Board of California, and the Osteopathic Medical Board of California.

The people of the State of California do enact as follows:

SECTION 1. Section 11105.2 of the Penal Code is amended to read:

11105.2. (a) (1) The Department of Justice shall provide to the State Department of Social Services, the Medical Board of California, and the Osteopathic Medical Board of California, pursuant to state or federal law authorizing those departments to receive state or federal summary criminal history information, and may provide to any other entity authorized by state or federal law to receive state or federal summary criminal history information, subsequent state or federal arrest or disposition notification to assist in fulfilling employment, licensing, or certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the Department of Justice or the Federal Bureau of Investigation as the result of an application for licensing, employment, certification, or approval. This section does not authorize the notification of a subsequent disposition pertaining to a disposition that does

not result in a conviction, unless the department has previously received notification of the arrest and has previously lawfully notified a receiving entity of the pending status of that arrest. If the department supplies subsequent arrest or disposition notification to a receiving entity, the entity shall, at the same time, expeditiously furnish a copy of the information to the person to whom it relates if the information is a basis for an adverse employment, licensing, or certification decision. If the copy is not furnished in person, the copy shall be delivered to the last contact information provided by the applicant.

(2) An entity that submits the fingerprints of applicants for licensing, employment, or certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent state or federal arrests or dispositions pursuant to paragraph (1) shall comply with subdivision (d).

(b) For purposes of this section, “approval” means those duties described in subdivision (d) of Section 309 of the Welfare and Institutions Code for approving the home of a relative caregiver or of a nonrelative extended family member for placement of a child supervised by the juvenile court, and those duties in Section 16519.5 of the Welfare and Institutions Code for resource families.

(c) An entity, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification of subsequent state or federal arrests or dispositions for licensing, employment, or certification purposes.

(d) An entity that submits the fingerprints of applicants for licensing, employment, certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent state or federal arrests or dispositions shall immediately notify the department when the employment of the applicant is terminated, when the applicant’s license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver’s or nonrelative extended family member’s approval is terminated. The Department of Justice shall terminate state or federal subsequent notification on any applicant upon the request of the licensing, employment, certifying, or approving authority.

(e) An entity that receives a notification of a state or federal subsequent arrest or disposition for a person unknown to the entity, or for a person no longer employed by the entity, or no longer eligible to renew the certificate or license for which subsequent notification service was established shall immediately return the subsequent notification to the Department of Justice, informing the department that the entity is no longer interested in the applicant. The entity shall not record or otherwise retain any information received as a result of the subsequent notice.

(f) An entity that submits the fingerprints of an applicant for employment, licensing, certification, or approval to the Department of Justice for the purpose of establishing a record at the department or the Federal Bureau of Investigation to receive notification of subsequent arrest or disposition shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing certification, or approval.

(g) An entity that fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent notification service.

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

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