



MEMORANDUM

DATE	November 8, 2021
TO	Physician Assistant Board
FROM	Jasmine Dhillon, Legislative/Regulatory Analyst Karen Halbo, Regulations Counsel, Attorney III
SUBJECT	Agenda Item 15.B. Regulatory Update November 2021

1. 16 CCR 1399.523.5 – AB 2138: Required Actions Against Registered Sex Offenders

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
6/5/2020	6/8/2020	N/A	8/11/2020	10/8/2020	4/2/2021	5/18/2021
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date
N/A	N/A	10/11/2021				

This regulation provides applicants the opportunity to supply evidence to the Board of rehabilitation without being automatically denied a license based on sex offender registration. Assembly Bill (AB) 2138 (Lowe, Chapter 995, Statutes of 2018) was enacted to reduce licensing and employment barriers for people who are rehabilitated. Due to AB 2138, a registered sex offender is eligible for licensure if they have obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, have been granted clemency or a pardon by a state or federal executive, or have made a showing of rehabilitation. The Board needs to vote to adopt the proposed language for 16 CCR section 1399.523.5 which was published for the 45-day public comment period, and on which no public comments were received.

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2. 16 CCR 1399.514, 1399.615 – SB 697: License Renewal and Continuing Medical Education Required

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
2/12/2020	01/13/2020	07/15/2021				
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date

This regulatory proposal will clarify, interpret, and make specific all requirements for license renewal. It consolidates all of the renewal requirements in one location and clarifies that the licensee status for those who do not renew by their expiration date is “expired with no practice permitted.” This proposal also incorporates the new CME requirement imposed by SB 697. At the May 28, 2020 Board meeting, the Board voted to rescind the Board’s prior proposed text, and approved changes to the language of 16 CCR section 1399.514. The Board needs to vote to adopt the proposed language of 16 CCR sections 1399.514 and 1399.615 for publication to start the 45-day public comment period.

3. 16 CCR 1399.616 – AB 241: Implicit Bias Training in Approved Continuing Medical Education Programs

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
6/18/2020	8/7/2020	N/A	8/7/2020	11/17/2020	4/9/2021	5/25/2021
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date
8/9/2021	N/A	10/21/2021				

The proposed amendments bring the Board's regulations into compliance with AB 241 (Kamlanger-Dove, Chapter 417, Statutes of 2019) by adding a new provision to existing 16 CCR 1399.616 subdivision (a) that requires medical continuing education (CME) programs to meet new implicit bias curriculum requirements to be approved by the Board. AB 241 requires the Board to adopt regulations for compliance with the bill by January 1, 2022. The changes require

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all CME courses for physician assistants that contain a direct patient care component to contain curriculum that includes instruction in the understanding of implicit bias in medical treatment. The bill requires, by January 1, 2023, both that CME providers offering CME courses with a direct patient care component comply with AB 241's provisions, and that the Board begin auditing CME providers for compliance at least once every five years. The 45-day public comment period for this regulatory proposal ran from April 9, 2021 to May 25, 2021, and one public comment was received. At the August 9, 2021 Board meeting, the Board voted to reject the public comment, to adopt staff's proposed response to the comment, and adopted the regulatory language.

4. 16 CCR 1399.502, 1399.540, 1399.541, 1399.545 – SB 697: SB 697 Implementation

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
11/8/21						
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date

This regulatory proposal will clarify and interpret changes made to the Physician Assistant Practice Act by Senate Bill (SB) 697 (Caballero, Chapter 707, Statutes of 2019). These amendments concern the practice agreement between a physician assistant and a physician and surgeon or a group of physician and surgeons. These amendments note a practice agreement shall include policies and procedures to ensure adequate supervision of the physician assistant, as well as appropriate communication, availability, consultations, and referrals between a physician and surgeon and the physician assistant in the provision of medical services.

The proposed regulatory language passed by the Board and approved by the Medical Board of California has been revised to address concerns raised by the California Academy of PAs (CAPA) and DCA's Legal Affairs Division.

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5. 16 CCR 1399.506, 1399.507, 1399.511, 1399.546 – SB 697: Applications, Exams, Addresses, & Recordkeeping

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
11/8/21						
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date

This regulatory proposal will update existing regulations and bring them in line with changes made to the Physician Assistant Practice Act by SB 697 (Caballero, Chapter 707, Statutes of 2019, and requirements imposed by AB 2113 (Low, Chapter 186, Statutes of 2020). These amendments will specify the requirements for applications of licensure and remove the regulatory requirement that the Board establish a passing score for the licensure examination. These amendments clarify in regulation the AB 2113 mandated expedited application review for active-duty members and spouses of active-duty members of the Armed Forces of the United States, as well as refugees, asylees, and special immigrant visa holders.

The proposed regulatory language passed by the Board has been revised to address further concerns raised by the California Academy of PAs (CAPA) and DCA's Legal Affairs Division.

6. 16 CCR 1399.515 – AB 2461: Retired Status to Include Fingerprint Requirement

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date

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This regulatory proposal would require retired status licensees who seek to re-activate their license to provide fingerprints to the Department of Justice so that the Board may conduct criminal history background checks. This would eliminate the risk of the Board reactivating a license of a retired PA who got a state or federal arrest or disposition since retiring their license.

7. 16 CCR 1399.523 – SB 1441: Implement Uniform Standards Related to Substance Abusing Licensees and Update of Disciplinary Guidelines

Proposed language for Board discussion	Board Approved Language to Notice	PAB Staff work with DCA Legal on Pre-review of Documents	Submitted to DCA for Initial Phase Review	DCA Submits to Agency for Initial Review	PAB files Notice with OAL	45-Day Comment Period Ended
Board Review Comments from 45 Day Comment Period	Public Hearing Held (optional)	PAB Staff work with DCA Legal on Final Rulemaking Package	Submitted to DCA for Review	Submitted to Agency for Review	Submitted to OAL for Review	Effective Date

This package reflects updates to the Board's Disciplinary Guidelines, which include incorporating relevant portions of the Uniform Standards Regarding Substance-Abusing Healing Arts licensees. It brings Board regulations in line with SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) which required the development of the Uniform Standards.

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PHYSICIAN ASSISTANT BOARD

PROPOSED LANGUAGE

Amend section 1399.523.5 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.523.5. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to ~~deny or~~ discipline a licensee under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to ~~deny or~~ discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) An individual applying for licensure who has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, or who has been granted clemency or a pardon by a state or federal executive.

(4) An individual applying for licensure who has made a showing of rehabilitation pursuant to Section 1399.526.

~~(3)~~ (5) Any administrative proceeding that is fully adjudicated prior to ~~the effective date~~ of this regulation July 1, 2020.

(c) A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this ~~paragraph~~ Section, and the prohibition in subsection (a) against reinstating a license shall govern. Subsection (b)(4) of this Section shall not be interpreted to apply to any individual applying for reinstatement of a license.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 480, 482, 3504.1, 3510, 3527, 3528, 3530, and 3531, Business and Professions Code.

PHYSICIAN ASSISTANT BOARD

PROPOSED LANGUAGE

Legend: Added text is indicated with an <u>underline</u> . Deleted text is indicated by strikeout .
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Amend section 1399.514 of Article 1 and section 1399.615 of Article 8 of Division 13.8 of Title 16 of the California Code of Regulations to read as follows:

1399.514. Renewal of License.

(a) As a condition of renewal, a licensee must submit all required fees and a completed application for renewal to the Board on or before the expiration date of the license that contains all of the following:

- (1) the licensee's name, telephone number, license number, and address of record;
- (2) all of the disclosures required by this Section; and,
- (3) a declaration under penalty of perjury, signed and dated by the licensee, that all of the information submitted on the application is true and correct.

For the purposes of this subsection "required fees" includes the license renewal fee as set forth in Section 1399.550, and the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as set forth in Section 208 of the Code.

~~(a)~~ As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, ~~he or she has~~the licensee has been convicted of any violation of the law in this or any other state, the United States, or other country, omitting traffic infractions under \$500 not involving alcohol, dangerous drugs, or controlled substances.

~~(b)~~ As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, ~~he or she has~~the licensee has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, the licensee has met the Board's continuing medical education (CME) requirement as provided in Sections 1399.615 and 1399.616 by one of the following:

- (1) completion of fifty (50) hours of approved Category 1 CME;
- (2) current certification from the National Commission on Certification of Physician Assistants;
- (3) exemption from the board's continuing medical education requirements by obtaining a waiver pursuant to Section 1399.618; or,

(4) that the licensee seeks renewal in an inactive status pursuant to Section 1399.619.

(e) As a condition of renewal, a licensee who holds an active license, is authorized through a practice agreement to furnish Schedule II controlled substances and is registered with the United States Drug Enforcement Administration shall disclose whether the licensee has completed a one-time controlled substance education course as provided in Section 1399.615.

(ef) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(g) In the event that an individual fails to renew their license as provided in this Section and Section 3523 of the Code, the license shall expire and the individual shall be considered unlicensed until the license is renewed as provided in Section 3524 of the Code.

NOTE: Authority cited: Section 3510, and 3523 Business and Professions Code.
Reference: Sections 141, 208, 490, 3502.1, 3504.1, 3524, 3527 and 3531, Business and Professions Code.

1399.615. Continuing Medical Education Required.

(a) A physician assistant who renews ~~his or her~~their license on or after January 1, 2011, is required to complete fifty (50) hours of approved continuing medical education during each two (2) year renewal period.

(b) The requirements of subdivision (a) shall be deemed satisfied if the physician assistant, at the time of renewal, is certified by the National Commission on Certification of Physician Assistants.

(c) ~~Each~~On or after [OAL to insert effective date of regulations plus one month] a physician assistant ~~in order to renew~~who renews his or her their license ~~at each renewal thereof shall report compliance with the provisions~~ is required to complete a one-time controlled substance education course as provided in Sections 1399.610 and 1399.612 as part of this article by declaring upon application that he or she has complied with the physician assistant's required hours of continuing medical education requirements or that the provisions of in subdivision (a) if all of the following apply:

- (1) the physician assistant holds an active license,
- (2) the physician assistant is authorized through a practice agreement to furnish Schedule II controlled substances,
- (3) the physician assistant is registered with the United States Drug Enforcement Administration; and,

(4) the physician assistant has not previously successfully completed a one-time controlled substance education course in compliance with Sections 1399.610 and 1399.612, as those provisions read on June 7, 2019.

(d) Any physician assistant who does not complete the required hours of approved continuing medical education during the two-year period immediately preceding the expiration date of the license shall be ineligible for renewal of ~~his or her~~ their license under ~~section~~ Section 1399.617, unless such physician assistant applies for and obtains a waiver pursuant to Section 1399.618 ~~below~~.

(e) A physician assistant shall retain, for a period of four years after the acquisition of the necessary continuing medical education, records issued by an approved continuing medical education provider that indicate the title of the course or program attended, the dates of attendance and the hours assigned to the course or program, or if a physician assistant is certified by the National Commission on Certification of Physician Assistants at the time of license renewal, evidence of certification shall be retained for four (4) years after such certification is issued.

NOTE: Authority cited: Section 3510, ~~Business~~ and 3502.1, Business and Professions Code. Reference: Section 3524.5, Business and Professions Code.