

# MEMORANDUM

<b>DATE</b>	November 8, 2024
<b>TO</b>	Physician Assistant Board (Board)
<b>FROM</b>	Kristy Schieldge, Regulations Counsel, Attorney IV Jasmine Dhillon, Legislative and Regulatory Specialist
<b>SUBJECT</b>	<b>17. Discussion and Possible Action to Reconsider Previously Approved Text, and to Consider Initiation of a Rulemaking to Amend Title 16, California Code of Regulations Sections 1399.506, 1399.507, 1399.511, and 1399.546 Regarding Application, Exam Scores, Addresses, and Recordkeeping</b>

## **Background**

Senate Bill (SB) 697 (Stats. 2019, ch. 707) became effective on January 1, 2020 and made numerous changes to the Physician Assistant Practice Act (Act) at Business and Professions Code (BPC) sections 3500 to 3546. In addition, laws were enacted to place limitations on the Board's ability to inquire about criminal history on an application beginning July 1, 2020 (Assembly Bill (AB) 2138, Stats. 2018, ch. 995), require the Board to ask about military service (AB 1057, Stats. 2013, ch. 693, eff. January 1, 2015), and require applications to be expedited, or the initial application and license fee waived, for certain types of applicants at BPC sections 115.4, 115.5, and 135.4.

This rulemaking updates the Board's regulations by setting out the information required in an initial application, removes the Board's obligation to establish a passing score on the written examination administered by the National Commission on Certification of Physician Assistants, clarifies applicants' obligation to provide an address of record that will be released by the Board to the public and posted on the website, and a physical business or residential address to be used by the Board for correspondence and service of documents on the applicant, and repeals 16 California Code of Regulations (CCR) 1399.546, which imposed requirements that are now better determined within a practice agreement between a PA and the supervising physician and surgeon.

At the November 8, 2021 meeting, the Board discussed and approved proposed amendments to the previously approved changes to CCR sections 1399.506, 1399.507, 1399.511, and 1399.546 to better implement the needed changes to these regulation sections required by the passage of SB 697. Agency approved that package on December 12, 2022 and it was filed with the Office of Administrative Law (OAL) on December 20, 2022. Unfortunately, extensive revisions were required by OAL after filing

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and the Board was unable to complete the rulemaking within the 1-year notice period required by Government Code section 11346.4(b).

### **Additional Changes Requested**

The Board approved new Proposed Text at the November 6, 2023 Board meeting and initiated the rulemaking review process. However, upon review by the Board's newly appointed Regulations Counsel, she advised that errors were discovered that need to be corrected. Most notably, the text approved at the November 6, 2023 Board meeting does not reflect the Board's transition to an online application system, but rather still refers to submission of the application "to the Board at its Sacramento office," which is a paper application. In addition, she advised that not all statutorily required elements of the initial application were covered or were covered in a way inconsistent with current law or case law interpreting certain terms used in the proposal. The revised text is included as **Attachment 1** to this proposal and the text approved by the Board at its November 6, 2023 Board meeting is included as **Attachment 2** for the Board's review and consideration.

### **Proposed Changes to text previously approved by the Board at the 11.06.23 Board Meeting**

#### **1399.506 Applications for Licensure.**

Significant amendments were made to clarify the requirements in the initial application for licensure consistent with implementation of the Board's online licensing system ("BreEZe") and recent changes in law. In addition, to formatting, re-numbering and other typographical changes, these changes include the following:

#### **Subsection (a):**

- (1) Strikes references to submission of the initial application to the Board "at its Sacramento office" and replaces it with a requirement that the items on the application be submitted in accordance with this section, including electronic submission of information as specified.
- (2) Adds additional personal information required to be disclosed (not just "legal name") but (A) the applicant's full legal name ((Last Name) (First Name) (Middle Name) and optional (Suffix)) and any aliases ((Last Name) (First Name) (Middle Name) and optional (Suffix)) previously and currently used including maiden names.
- (3) Strikes a requirement to report the "gender" of the applicant as staff reports that it is no longer needed as an identifier and Assembly Concurrent Resolution No. 260 of 2018 (ACR 260) urges state agencies to use gender neutral pronouns and avoid the use of gendered pronouns in drafting regulations.

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(4) In the request for disclosure of malpractice history section, add the words “arbitration awards” as another type of history to be disclosed in accordance with BPC section 801.01(a)(1).

(5) Amends the malpractice history, disciplinary history, and administrative actions (previously referred to as “disciplinary action”) disclosure questions to add additional information required to be disclosed when responding “yes” including: name of the case, court case or arbitration case no. (if any), name and location of court or arbitrator, date of judgment, award or settlement, and disposition of the judgment, award or settlement, and other identifying items to help ensure complete information is provided to allow a more complete investigation into an applicant’s background and any possible disqualifying conditions.

(6) Adds text to all subsections dealing with disclosure of an applicant’s background that would permit submission by an applicant of a statement or documents showing the applicant’s rehabilitation efforts or any mitigating information that the applicant would like the Board to consider related to any event disclosed in the application. This information helps the Board determine substantial relationship of any reported events and evaluate rehabilitation for the purposes of determining possible grounds for denial.

(7) Adds the words “Excluding actions based upon the applicant’s criminal conviction history” to every question that requests disclosure of an applicant’s history of licensing discipline or administrative actions, or a history of denial of permission to take any licensing examinations. Also, strike references to an applicant providing copies of arrest records, registration as a sex offender or court orders related thereto.

BPC section 480(f)(2) prohibits this Board from requiring an applicant for licensure to disclose any information or documentation regarding the applicant’s criminal history. OAL has recently refused to approve rulemakings that ask for such information or do not include this exclusionary text when asking for any type of licensing history from an applicant. Adding the aforementioned changes are needed to avoid what OAL deems a consistency issue with changes enacted by AB 2138 that prohibit requiring disclosure of criminal history in any initial licensure application. Please note this prohibition does not apply to renewal or petition for reinstatement applications.

(8) Strikes the words “citation and fine” from the definition of “disciplinary history” and relocate them to the definition for “administrative action” since citation and fine is not legally considered discipline (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 994).

(9) Adds the following limitation to the definition for “history of discipline” to “within the seven (7) years immediately preceding the date of application to the Board for a license.” This is to conform the question to the requirements of BPC section 480(a)(2), which limits the Board’s denial authority for formal discipline by another licensing board to seven years prior to application.

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(10) Removes subparagraph (iv) in the administrative actions section, which states: “the applicant has been charged with, and/or found to have committed unprofessional conduct, unlicensed activity, or malpractice by any health care licensing board, any other state, any agency of the federal government, another country, or any hospital.” This is duplicative of the other sections that already request information relative to malpractice history, disciplinary history, administrative actions, or denials of permission to take a licensing exam.

(11) Removes subsection (a)(6) (see Attachment 2) relating to conditions that would be a limitation on practice:

(6) As a condition of licensure, the applicant shall disclose whether they have any practice impairments or limitations.

“(A) For purposes of this paragraph, “practice impairments or limitations” means:

(i). the applicant has ever been diagnosed or treated for a mental illness, disease, or disorder that would interfere with their ability to practice medicine;

(ii). the applicant has a current physical or mental impairment related to drugs or alcohol;

(iii). the applicant has been adjudicated by a court to be mentally incompetent or they are currently under a conservatorship....”

Regulations Counsel has raised concerns with the legal defensibility of the scope of the questions as written and recommends removal or, at a minimum, narrowing the scope of the questions. After being sued in 2018 over a similar type of mental health question, the State Bar was legislatively prohibited from requesting or seeking to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose the records (See SB 544 and legislative analysis at Attachments 3 and 4).

PAB Staff can only recall having two affirmative responses for similar types of questions, which were not used to limit or deny any applicant licensure. In addition, the removal of the question would not prohibit the Board from investigating and acting on any information received from other sources (most commonly through criminal convictions, complaints, or communications received from applicants or licensees) that indicates an individual is impaired due to a physical or mental illness affecting competency as authorized at BPC sections 820, 822, and 3527.

Regardless, if the Board believes that these questions should be asked, the following optional text may be considered by the Board in determining the policy direction on this issue:

(6) The applicant shall disclose whether they have any practice impairments or

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limitations.

(A) For purposes of this paragraph, “practice impairments or limitations” means a medical condition which currently impairs or limits the applicant's ability to practice medicine with reasonable skill and safety, and,

(B) If the applicant responds “yes” to any practice impairments or limitations, the applicant shall provide copies of all official medical, psychiatric, and treatment records pertaining to the impairment(s) or limitation(s); evidence of ongoing rehabilitation; and a written narrative describing the impairment or limitation. The applicant shall also provide the Board with any authorization and release of medical or psychiatric records required by their healthcare provider(s) to release records to the Board.

(12) Adds the question required by BPC section 114.5 regarding whether an applicant is serving, or has previously served, in the United States military.

(13) Adds additional detail and documentation requirements consistent with other boards' successful rulemaking packages for expediting applications for the following:

(A) honorably discharged veterans (BPC section 115.4(a)),

(B) active duty members of a regular component of the Armed Forces of the United States (U.S.) enrolled in the U.S. Department of Defense's Skillbridge program (BPC section 115.4(b)),

(C) spouses or domestic partners of an active duty member of the US Armed Forces assigned to a duty station in California who hold a current, comparable license in another state, district or territory of the U.S. (BPC section 115.5), and,

(D) refugees, asylees, and special immigrant visa holders (BPC section 135.4).

(14) Adds other requirements for licensure not covered in the prior proposal, including:

(A) Submission of a Self-Query Report from the National Practitioner Data Bank (NPDB) dated within 30 days after the date an application is submitted to the Board through its online services system,

(B) The process for applicants to submit their examination scores from the National Commission on Certification of Physician Assistants (NCCPA),

(C) The process for submission of, and the content of, an acceptable certification of graduation from an approved physician assistant training program, and,

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(D) The process for furnishing fingerprints to the Board to permit the Board to conduct a criminal history record check through the California Department of Justice.

This helps ensure the Board conducts a thorough review and examination of the qualifications of each applicant pursuant to BPC section 3519.

(15) Adds requirements for the Board to provide a “Notice of Collection of Personal Information” in compliance with Civil Code section 1798.17, prescribes the content of such notice and adds the requirement that the Board obtain a written statement signed and dated by the applicant, that they have read the notice.

(16) Adds requirements to the certification to “date” it and otherwise make it compliant with Section 2015.5 of the California Code of Civil Procedure.

(17) Specifies the criteria for submitting application information electronically through the Board’s system, including, creation of a user account, electronic signature, acceptable file formats for uploading documents, acceptable payment methods, and the requirement to pay the convenience fee for card payments processed through the system.

(18) Strikes requirements that indicate an application will be “returned” for being “illegible” and replaces it with requirements indicating an application will be rejected as incomplete.

(19) Adds requirements for completing an application within one year from the date of written notice from the Board of any deficiencies or the application shall be considered abandoned. An applicant who abandons an application must submit a new application meeting the requirements of this section to be considered for licensure as a physician assistant by the Board.

#### **1399.507 Examination Required.**

An amendment to this section is recommended that would add “NCCPA” and to clarify that the National Commission on Certification of Physician Assistants establishes the passing score, not the Board.

#### **1399.511 Address of Record.**

No additional amendments were made to this section.

#### **1399.546 Reporting of Physician Assistant Supervision**

No additional amendments were made to this section, it is being repealed.

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### **Action Requested**

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Staff recommends the Board review and discuss the attached Proposed Regulatory Language in Attachment 1. Staff recommends the Board consider the following motion to initiate the rulemaking process and adopt the proposed text if the Board has no changes to the proposal:

**Option A:** Rescind the motion passed at the Board's November 2023 board meeting regarding this item, approve the proposed regulatory text in **Attachment 1**, and 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. If the Board does not receive any objections or adverse recommendations specifically directed at the proposed action or to the procedures followed by the Board in proposing or adopting this action, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If no objections or adverse recommendations 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 16 CCR sections 1399.506, 1399.507, 1399.511, and 1399.546, as noticed.

**Option B:** If the Board disagrees or has further changes to the text, please entertain a motion to:

Rescind the motion passed at the Board's November 2023 board meeting regarding this item, approve the proposed regulatory text that includes the following changes to **Attachment 1 [describe amendments here]** and, 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. If the Board does not receive any objections or adverse recommendations specifically directed at the proposed action or to the procedures followed by the Board in proposing or adopting this action, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for a hearing if requested. If after the 45-day public comment period, the Board does not receive any objections or adverse recommendations, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt 16 CCR sections 1399.506, 1399.507, 1399.511, and 1399.546, as noticed.

Staff and Regulations Counsel will be available at the meeting to address any questions the Board may have. Please review the following attachments in preparation for discussion of this item at the meeting.

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- Attachments:
1. Proposed Regulatory Language to Amend 16 CCR Sections 1399.506, 1399.507, 1399.511, and 1399.546
  2. Previously Adopted Text (11.06.23 Board Meeting)
  3. Senate Bill 544 (Stats. 2019, ch. 152)

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4. Assembly Committee on Judiciary Legislative Analysis for SB 544,  
dated June 4, 2019

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# **Attachment 1**

# PHYSICIAN ASSISTANT BOARD

## PROPOSED REGULATORY LANGUAGE

<b>Legend:</b> Added text is indicated with an <u>underline</u> . Deleted text is indicated by <del>strikeout</del> .
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Amend Section 1399.506 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations to read as follows:

### **§1399.506. Filing of Applications for Licensure.**

(a) ~~Applications for Applicants seeking~~ Applications for Applicants seeking licensure as a physician assistant shall ~~be filed on a form provided by the board~~ submit all required fees, two (2) distinct fingerprint cards or a Live Scan inquiry to establish the identity of the applicant and to permit the Board to conduct a criminal history record check, and submit a completed application to the Board at its Sacramento office in accordance with this section, and accompanied by the fee required in section 1399.550. A completed application must contain all of the following information and any required supporting documents:

(1) Personal information including:

(A) the applicant's full legal name ((Last Name) (First Name) (Middle Name) and optional (Suffix)) and any aliases ((Last Name) (First Name) (Middle Name) and optional (Suffix)) previously and currently used including maiden names;

(B) the applicant's social security number or individual taxpayer identification number;

(C) the applicant's address of record;

(D) the applicant's date of birth;

(E) the applicant's home telephone number, if any, and mobile telephone numbers;

(F) the applicant's email address, if any;

(G) the name of the physician assistant training program attended by the applicant, the applicant's attendance start and end dates, the address of the physician assistant training program, and the telephone number for the physician assistant training program;

(H) whether the applicant has ever applied for a California physician assistant license; and,

(I) whether the applicant has ever been licensed, certified, or registered in any

state, country, or with any federal agency, in any health care occupation; the status of the applicant's license, certificate, or registration (for example: active, inactive, suspended, revoked, on probation); and the date(s) of issuance of any prior or current license(s), certification(s), or registration(s), and the expiration date(s) of any prior or current license(s), certification(s), or registration(s).

(2) The applicant shall disclose whether they have any malpractice history.

(A) For purposes of this paragraph, "malpractice history" means:

(i). civil judgments or arbitration awards as described in Section 803.1(b)(1) of the Code, or

(ii). malpractice settlements as described in Section 801.01(a)(1) of the Code.

(B) If the applicant responds "yes" to having a malpractice history as defined in paragraph (2)(A), the applicant shall provide a written narrative of each civil judgment, arbitration award or malpractice settlement, including the name of the case, court case or arbitration case no. (if any), name and location of court or arbitrator, date of judgment, award or settlement, and disposition of the judgment, award or settlement. In addition, the applicant may submit a statement or documents showing the applicant's rehabilitation efforts or any mitigating information that the applicant would like the Board to consider related to any event disclosed pursuant to this subsection.

(3) Excluding actions based upon the applicant's criminal conviction history, the applicant shall disclose whether they have a history of discipline.

(A) For purposes of this paragraph, "history of discipline" means:

(i). suspension, expulsion, dismissal, probation, or reprimand imposed by a physician assistant training program, taking a leave of absence from a physician assistant training program for disciplinary reasons, or withdrawal from a physician assistant training program in lieu of the imposition of discipline; or,

(ii). suspension, revocation, probation, limitations on practice, public reprimand, letters of public reprimand or reproof, or any other informal or confidential discipline by the United States military, United States Public Health Service Commissioned Corps, any United States governmental agency, or any authority of any state issuing health care licenses, registrations, or certifications ("licensing jurisdiction") within the seven (7) years immediately preceding the date of application to the Board for a license.

(B) If the applicant responds "yes" to having a history of discipline as defined in

paragraph (3)(A), the applicant shall provide a written narrative of each disciplinary event, including, as applicable, the incident date, name and location of any training program or licensing jurisdiction, charge(s) or violation(s) found by the training program or licensing jurisdiction, license type and license number, and outcome or disposition. The applicant shall also provide copies of all official documents pertaining to the history of discipline, including charging documents, decisions or orders, and, if applicable, letters of explanation from the director or an authorized representative of the physician assistant training program. In addition, the applicant may submit a statement or documents showing the applicant's rehabilitation efforts or any mitigating information that the applicant would like the Board to consider related to any history of discipline disclosed pursuant to this subsection.

(4) Excluding actions based upon the applicant's criminal conviction history, the applicant shall disclose whether they have ever been subject to any administrative action.

(A) For purposes of this paragraph, "administrative action" means:

- (i). the applicant had a health care license or certificate, or narcotics (controlled substance) permit denied by the State of California, any other state, any agency of the federal government, or another country ("licensing jurisdiction");
- (ii). the applicant has pending charges filed against them, or has ever been issued a citation and fine while holding a health care license or certificate by a licensing jurisdiction;
- (iii). the applicant surrendered a health care license or certificate, or narcotics (controlled substance) permit to a licensing jurisdiction.

(B) If the applicant responds "yes" to being subject to any of the administrative actions listed in paragraph (4)(A), the applicant shall provide a written narrative of each administrative action including, as applicable, the incident date, name and location of licensing jurisdiction, charge(s) or violation(s) found by the licensing jurisdiction, license type and license number and outcome or disposition. The applicant shall also provide all official documents pertaining to the administrative action(s), including charging documents or denial letters, and any decisions or orders. In addition, the applicant may submit a statement or documents showing the applicant's rehabilitation efforts or any mitigating information that the applicant would like the Board to consider related to any administrative action disclosed pursuant to this subsection.

(5)(A) Excluding actions based upon the applicant's criminal conviction history, the

applicant shall disclose whether they have ever been denied permission to take a health care-related examination in the State of California, any other state, United States federal jurisdiction, or another country ("licensing jurisdiction"), or if any such action is pending.

(B) If the applicant responds "yes" to being denied permission to take a health care-related examination as specified in paragraph (5)(A), the applicant shall provide a written narrative that includes the date of the denial(s) and the reason(s) for the denial(s). In addition, the applicant may submit a statement or documents showing the applicant's rehabilitation efforts or any mitigating information that the applicant would like the Board to consider related to any denial by any licensing jurisdiction disclosed pursuant to this subsection.

~~(b6) Applications for approval of programs for the education and training of physician assistants shall be filed on a form provided by the board at its Sacramento office and accompanied by the fee required in section 1399.556. The applicant shall disclose whether they are serving, or have previously served, in the United States military.~~

(7) The applicant shall disclose whether they have served as an active duty member of the Armed Forces of the United States and was honorably discharged. If the applicant responds "yes" to this inquiry, they shall provide the following documentation with the application to receive expedited review pursuant to Section 115.4(a) of the Code: a certificate of release or discharge from active duty (DD-214) or other documentary evidence showing date and type of discharge.

(8) The applicant shall disclose whether the applicant is an active duty member of a regular component of the United States Armed Forces enrolled in the United States Department of Defense SkillBridge program as authorized under Section 1143(e) of Title 10 of the United States Code. If the applicant responds "yes" to this inquiry, the applicant shall provide a copy of a written approval document or letter from their respective United States Armed Forces Service branch (Army, Navy, Air Force, Marine Corps, Space Force or Coast Guard) signed by the applicant's first field grade commanding officer that specifies the applicant's name, the approved SkillBridge opportunity, and the specified duration of participation (i.e., start and end dates) to receive expedited review in accordance with Section 115.4(b) of the Code.

(9) The applicant shall disclose whether the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders, and if the applicant holds a current physician assistant license in another state, district, or territory of the United States. If the applicant responds "yes" to this inquiry and provides satisfactory evidence of all conditions, the review of their

application will be expedited pursuant to Section 115.5 of the Code. For the purposes of this paragraph, "satisfactory evidence" shall mean the documents required by subsection (c).

(10) The applicant shall disclose whether the applicant was admitted to the United States as a refugee pursuant to Section 1157 of Title 8 of the United States Code, was granted asylum by the Secretary of Homeland Security or the United States Attorney General pursuant to Section 1158 of Title 8 of the United States Code, or has a special immigrant visa (SIV) and was granted a status pursuant to Section 1244 of Public Law 110-181, Public Law 109-163, or Section 602(b) of Title VI of Division F of Public Law 111-8, relating to Iraqi and Afghan translators/interpreters or those who worked for or on behalf of the United States government. If the applicant responds "yes" to this inquiry and provides satisfactory evidence of any of the aforementioned legal statuses, they shall have the review of their application expedited pursuant to Section 135.4 of the Code. For the purposes of this paragraph, "satisfactory evidence" shall mean they shall provide any of the following applicable documentation with the application to receive expedited review:

(A) Form I-94, arrival/departure record, with an admission class code such as "RE" (refugee) or "AY" (asylee) or other information designating the person a refugee or asylee;

(B) Special Immigrant Visa that includes the "SI" or "SQ";

(C) Permanent Resident Card (Form I-551), commonly known as a "green card," with a category designation indicating that the person was admitted as a refugee or asylee; or

(D) An order from a court of competent jurisdiction or other documentary evidence that provides reasonable assurances to the Board that the applicant qualifies for expedited licensure pursuant to Section 135.4 of the Code.

(11) The applicant shall submit a Self Query Report from the National Practitioner Data Bank (NPDB) dated within 30 days after the date an application is submitted to the Board through the online services system specified in paragraph (3) of subsection (b). The Self-Query Report shall be sent directly to the Board by the Federation of State Medical Boards (FSMB) via an email notice that the report is available for download. Applicants shall place a Self-Query order with the FSMB's Practitioner Direct portal by visiting <https://fsmb.org> and follow the instructions and pay any required fees set by the FSMB to have their Self-Query Report sent to the Board.

(12) The applicant shall access online the National Commission on Certification of

Physician Assistants (NCCPA) website at [www.nccpa.net](http://www.nccpa.net), and follow all instructions required by the NCCPA to authorize the electronic release of their Physician Assistant National Certifying Examination (PANCE) score directly to the Board to show passage of the PANCE exam. The Board shall access the applicant's PANCE score and verify compliance with this paragraph through the NCCPA portal.

(13) The applicant shall cause an acceptable certification of graduation from an approved physician assistant training program to be submitted on their behalf in accordance with this paragraph and subparagraphs (A)-(D). An applicant shall request that their approved physician assistant (PA) training program submit an acceptable certification to the Board to certify successful completion of that program in accordance with paragraphs (A)-(D).

(A) The applicant's request to their PA training program shall include a signed written statement that includes:

- (i) The applicant's full legal name ((Last Name) (First Name) (Middle Name) and optional (Suffix)) and any aliases ((Last Name) (First Name) (Middle Name) and optional (Suffix)) previously and currently used including maiden names,
- (ii) The applicant's telephone number,
- (iii) The applicant's mailing address,
- (iv) The applicant's email address; and,
- (v) A written statement requesting that the PA training program provide a completed, acceptable certification directly to the Board by mail or email as specified in subparagraph (D).

(B) An acceptable certification for the purposes of this subsection shall include:

- (i) The applicant's name as shown on the degree,
- (ii) The name of the PA training program,
- (iii) The title of the degree awarded to the applicant by the program,
- (iv) The applicant's PA training program attendance dates showing the start and end dates in the following format: PA Program Start Date (mm) (dd) (yyyy), PA Program End Date (mm) (dd) (yyyy),
- (v) A disclosure regarding whether the applicant had any of the following events occur while attending the PA training program:
  - (aa) was placed on a leave of absence for disciplinary reasons,
  - (bb) was disciplined, under investigation, or placed on disciplinary



probation.

(cc) had any incident reports regarding the applicant ever filed by instructors.

(dd) had any limitations or special requirements imposed on the applicant for disciplinary reasons; and,

(ee) if there is an affirmative response regarding the occurrence of any event specified in subparagraphs (aa)-(dd), the PA training program shall provide a written explanation of the particular event(s) that includes the date(s), specific allegations involved, and outcome of the applicable event(s).

(vi) The name, title, physical address, telephone number and email address of the authorized representative of the PA training program signing the certification.

(vii) A statement, signed and dated by an authorized representative of the PA training program, stating that they hereby certify under penalty of perjury under the laws of the State of California that the information provided in this certification and any accompanying attachments is true and correct; and,

(viii) The seal of the PA training program, if one is used by the PA training program.

(C) For the purposes of paragraph (13) of subsection (a), an “approved physician assistant training program” or “PA training program” shall mean a training program accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA).

(D) An acceptable certification must be either sent to the Board by the PA training program by mail to the attention of the Board’s Licensing Unit at the Board’s office address listed on the Board’s website, or electronically scanned and emailed to the Board directly by the PA training program to [paboard@dca.ca.gov](mailto:paboard@dca.ca.gov).

(14) The applicant shall furnish fingerprints to the Board in compliance with subsection (d) to permit the Board to conduct a criminal history record check through the California Department of Justice.

(15) A written statement signed and dated by the applicant, that they have read the following notice, which is hereby provided for applicants. The Board shall provide all applicants with a copy of this notice through the online services system prior to requiring any submission of the signed statement as part of the application.

## **NOTICE OF COLLECTION OF PERSONAL INFORMATION**

All items in this application are mandatory; none are voluntary.

Failure to provide any of the requested information will delay the processing of your application and will result in the application being rejected as incomplete.

The information provided will be used to determine your eligibility for licensure per Sections 3509 and 3519 of the California Business and Professions Code (BPC) and Title 16, California Code of Regulations section 1399.506, which authorizes the collection of this information.

The information on your application may be transferred to other governmental or law enforcement agencies to perform their statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code section 1798.24. Disclosure of either your Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) is mandatory, and collection is authorized by BPC section 30 and 42 U.S.C.A. § 405(c)(2)(C). Your SSN or ITIN will be used exclusively for tax enforcement purposes, for compliance with any judgment or order for family support in accordance with Section 17520 of the Family Code, or for verification of licensure or examination status by a licensing or examination board and where licensing is reciprocal with the requesting state.

You have the right to review your application and your files except information that is exempt from disclosure as provided in the California Public Records Act (Gov. Code, §§ 7920.000 and following) or as otherwise provided by Civil Code section 1798.40 of the California Information Practices Act (Civ. Code, §§ 1798 and following).

Information provided on this application may be disclosed to a member of the public, upon request, under the California Public Records Act or pursuant to court order, subpoena, or search warrant. The address of record you list on this application is a public record and will be disclosed on the Board's website and otherwise be made available to the public if and when you become licensed. Individuals using a post office box (P.O. Box) as their address of record are required to provide a physical (street) address to the Board that will not be disclosed to the public pursuant to a public records request or posted on the Board's website.

The Executive Officer is responsible for maintaining the information collected on this application form and may be contacted at 2005 Evergreen Street, Suite 2250, Sacramento, CA 95815, telephone number (916) 561-8780 regarding questions about this notice or access to records.

The Board is required to notify you that under BPC sections 31 and 494.5, the

State California Department of Tax and Fee Administration (CDTFA) and the Franchise Tax Board (FTB) may share taxpayer information with this Board. You are required to pay your state tax obligation. This application may be denied, or your license may be suspended if you have a state tax obligation, the state tax obligation is not paid, and your name appears on the CDTFA or FTB certified list of 500 largest tax delinquencies.

(15) A statement signed under penalty of perjury under the laws of the State of California that the applicant has read the questions in the application and that all information provided is true and correct.

(b) For the purposes of this section:

(1) "Required fees" for an application submitted with a Department of Justice BCIA 8016 Request for Live Scan Service form per subsection (d) shall include the application fee and the initial license fee as set forth in Section 1399.550. The application and initial license fees set forth in Section 1399.550 will be waived if the applicant meets the requirements for waiver of fees specified in subsection (c).

(2) "Required fees" for an application submitted with two (2) distinct fingerprint cards per subsection (d) shall include the application fee and the initial license fee as set forth in Section 1399.550, and an additional \$49.00 fee to cover the cost of processing fingerprint cards through the California Department of Justice. The application and initial license fees set forth in Section 1399.550 will be waived if the applicant meets the requirements for waiver of fees specified in subsection (c).

(3) For the purposes of subsection (a) "submit a completed application to the Board" means to transmit an application containing all applicable information required by subsection (a) and, if applicable, the application and initial license fee required by subsection (b) ("required fees") electronically through a web link to the Department of Consumer Affairs' online licensing system entitled "BreEZe" ("online services system") located on the Board's website in accordance with paragraph (4) unless another method of transmission is provided in subsection (a).

(4) All applications shall be submitted electronically through the online services system according to the following requirements:

(A) The applicant shall first login to or register for a user account by typing in a username and password on the initial registration or public sign-in page to access the online services system.

(B) After a user account has been created and the online services system accessed online, an applicant shall submit all of the information required by subsection (a) through the online services system unless otherwise specified in this section.

(C) Electronic signature. When a signature is required by the particular instructions of any filing to be made through the online services system, including any attestation under penalty of perjury, the applicant shall affix their electronic signature to the filing by typing their name in the appropriate field and submitting the filing via the Board's online services system. Submission of a filing in this manner shall constitute evidence of legal signature by any individual whose name is typed on the filing.

(D) Except as otherwise specified in paragraphs (11), (12), (13) and (14) of subsection (a), any documents required to be submitted by the applicant as part of the application set forth in subsection (a) shall be uploaded as an electronic file attachment through the online services system using one of the following file formats: .txt, .csv, .gif, .bmp, .tif, .tiff, .pdf, .doc, .docx, .rtf, .jpg, .jpeg, .jpe, .xls, .xlsx, .msg, .xps, .docm, .htm, .html, .wpd, .wps, .odt, .png, .wma, .wav, or .mp3.

(E) Required fees shall be paid by credit (Visa, Mastercard, or Discover) or debit card through the online services system and paid in full to the Physician Assistant Board. The applicant shall be required to pay any associated processing or convenience fees to the third-party vendor processing the payment on behalf of the Board and such fees will be itemized and disclosed to the applicant prior to initiating payment through the online services system.

(c) The Board shall waive the application and initial license fees specified in subsection (b) for an applicant qualifying pursuant to paragraph (9) of subsection (a) and who submits the following satisfactory evidence with the application for licensure:

(1) certificate of marriage or certified declaration/registration of domestic partnership filed with the California Secretary of State or other documentary evidence of legal union with an active duty member of the Armed Forces of the United States;

(2) a copy of the military orders establishing their spouse's or partner's duty station in California; and,

(3) a copy of the applicant's current license as a physician assistant in another state, district or territory of the United States.

(d) Fingerprinting Requirements. All applicants shall have met the fingerprinting requirements of this subsection prior to issuance of a license to practice as a physician assistant.

(1) Subject to paragraph (3), all applicants shall submit fingerprints through the California Department of Justice's electronic fingerprint submission Live Scan Service ("Live Scan") by completing the California Department of Justice Form BCIA 8016 "Request for Live Scan Service," and submitting fingerprinting, through Live Scan as described in this subsection.

(2) Each applicant shall take the completed Request for Live Scan Service form to a Live Scan location to have their fingerprints taken by the operator. The applicant shall pay all fingerprint processing fees payable to the Live Scan operator, including the Live Scan operator's "rolling fee," if any, and fees charged by the California Department of Justice and the Federal Bureau of Investigation. For current information about fingerprint background checks and Live Scan locations, applicants may visit the Office of the Attorney General's website.

(3) Applicants residing outside of California who cannot be fingerprinted electronically through Live Scan in California must have their fingerprints taken at a law enforcement agency using fingerprint cards using Form FD-258. Applicants shall complete and mail two distinct fingerprint cards, together with the California Department of Justice and the Federal Bureau of Investigation fingerprinting fees (either personal check drawn on a U.S. bank, money order, or certified check), payable to the "Physician Assistant Board," to:

Physician Assistant Board

Attention: Licensing Unit

2005 Evergreen Street, Suite 2250

Sacramento, CA 95815

(4) Resubmission process. Applicants will be notified if the first fingerprint card or Live Scan fingerprints are rejected. If rejected, applicants submitting under paragraph (3) will have their second fingerprint card resubmitted to the Department of Justice on their behalf by the Board. Applicants submitting fingerprints through Live Scan as set forth in paragraph (1) must follow the instructions on the Board's written rejection notice, and resubmit fingerprints as described under the process in paragraphs (1) and (2).

(e) Applications that are missing any of the requested information or documentation or are not accompanied by the applicable fees, shall be rejected as incomplete. Applications that are not completed within one year from the date of written notice from the Board of any deficiencies shall be considered abandoned. An applicant who abandons an

application must submit a new application meeting the requirements of this section to be considered for licensure as a physician assistant by the Board.

NOTE: Authority cited: Sections 115.4, 115.5, 135.4 ~~2018~~ and 3510, Business and Professions Code. Reference: Sections 30, 31, 480, 114.5, 115.4, 115.5, 135.4, 144, 494.5, 3509, 3519, 3527 and 3513, Business and Professions Code; Sections 1633.2, 1633.7, and 1798.17, Civil Code; Sections 16.5 and 6159, Government Code.

## **Amend Section 1399.507 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations**

### **§1399.507. Examination Required.**

The written examination for licensure as a physician assistant is that administered by the National Commission on Certification of Physician Assistants (NCCPA). Successful completion requires that the applicant ~~has~~ achieved the passing score established by the ~~board~~ NCCPA for that examination. It is the responsibility of the applicant to ensure that certification of ~~his or her~~ their examination score is received by the Board.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 851, ~~3515~~, 3509 and 3517, Business and Professions Code.

## **Amend Section 1399.511 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations**

### **§1399.511. ~~Notice of Change of Address~~ of Record.**

(a) Every applicant submitting an application for licensure as a physician assistant to the Board shall provide an address of record, which shall be used as their mailing address and shall be posted on the Board's website if an applicant is issued a license. An address of record may be a post office box, physical business address, or residential address. If a post office box is used as the address of record, the applicant shall also provide a physical business address or residential address for the Board's administrative use that shall not be posted on the Board's website.

~~(ab) Every~~ each ~~applicant and licensee person or approved program holding a license or approval and each person or program who has an application on file with the board~~ shall notify the ~~b~~Board at its office of any and all changes ~~o~~to their mailing address(es) within thirty (30) calendar days after each change, giving both the old and new address(es).

~~(b) If an address reported to the board is a post office box, the licensee shall also provide the board with a street address, but he or she may request that the second address not be disclosed to the public.~~

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 136 and ~~3522 and 3523~~, Business and Professions Code.

## **Repeal Section 1399.546 of Article 4 of Division 13.8 of Title 16 of the California Code of Regulations**

### **~~§1399.546. Reporting of Physician Assistant Supervision.~~**

~~(a) Each time a physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also record in the medical record for that episode of care the supervising physician who is responsible for the patient. When a physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient.~~

~~(b) If the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the supervising physician for each episode of care into the patient's medical record, such automatic entry shall be sufficient for compliance with this recordkeeping requirement.~~

~~NOTE: Authority cited: Sections 2018 and 3510, Business and Professions Code.  
Reference: Section 3502, Business and Professions Code.~~



# **Attachment 2**

# PHYSICIAN ASSISTANT BOARD

## PROPOSED LANGUAGE

<b>Legend:</b> Added text is indicated with an <u>underline</u> . Deleted text is indicated by <del>strikeout</del> .
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Amend Section 1399.506 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations to read as follows:

### **§1399.506. Filing of Applications for Licensure.**

~~(a) Applications for~~ (a) To become licensed as a physician assistant, ~~shall be filed on a form provided by the board~~ an applicant must submit all required fees, two (2) classifiable sets of fingerprint cards or a Live Scan inquiry to establish the identity of the applicant and to permit the Board to conduct a criminal history record check, and a completed application for licensure, to the Board at its Sacramento office, and ~~accompanied by the fee required in section 1399.550.~~ The application for licensure must contain all of the following information and any required supporting documents:

(1) Personal information including:

(A) the legal name of the applicant and any aliases;

(B) the gender of the applicant;

(C) the applicant's social security number or individual taxpayer identification number;

(D) the applicant's address of record;

(E) the applicant's date of birth;

(F) the applicant's home and mobile telephone numbers;

(G) the applicant's email address;

(H) the name of the physician assistant training program attended by the applicant, the applicant's graduation date, the address of the physician assistant training program, and the telephone number for the physician assistant training program;

(I) whether the applicant has ever applied for a California physician assistant license; and

(J) whether the applicant has ever been licensed, certified, or registered in any state, country, or with any federal agency, in any health care occupation; the status of the applicant's license, certificate, or registration (for example: active, inactive, suspended, revoked, on probation); and the date(s) of issuance of any

license(s) and expiration date(s) of any current license(s).

(2) As a condition of licensure, the applicant shall disclose whether they have a malpractice history.

(A) For purposes of this paragraph, “malpractice history” means:

1. civil judgments as described in Section 803.1(b)(1) of the Code; or
2. malpractice settlements as described in Section 801.01(a)(1) of the Code.

(B) If the applicant responds yes to having a malpractice history as defined in paragraph (2)(A), the applicant shall provide a written narrative of each malpractice event, including court jurisdiction, date of ruling or settlement, and outcome of ruling or settlement.

(3) As a condition of licensure, the applicant shall disclose whether they have a history of discipline.

(A) For purposes of this paragraph, “history of discipline” means:

1. suspension, expulsion, dismissal, probation, or reprimand imposed by a physician assistant training program, taking a leave of absence from a physician assistant training program for disciplinary reasons, or withdrawal from a physician assistant training program in lieu of the imposition of discipline; or
2. suspension, revocation, probation, limitations on practice, citation, fine, public reprimand, letters of public reprimand or reproof, or any other informal or confidential discipline by the United States military, United States Public Health Service Commissioned Corps, United States governmental agency, or any authority of any state issuing health care licenses, registrations, or certifications.

(B) If the applicant responds yes to having a history of discipline as defined in paragraph (3)(A), the applicant shall provide a written narrative of each disciplinary event, including the incident date, location, charge, and outcome or disposition. The applicant shall also provide copies of all official documents pertaining to the history of discipline, which may include arrest orders or reports, court orders, or letter of explanation from the director or designee of the physician assistant training program.

(4) As a condition of licensure, the applicant shall disclose whether they have been subject to any disciplinary action.

(A) For purposes of this paragraph, “disciplinary action” means:

1. the applicant had a health care license or certificate, or narcotics (controlled substance) permit denied by the State of California, any other state, any agency of the federal government, or another country;
2. the applicant had charges filed against them while holding a health care license or certificate, including charges that are still pending or charges that were dropped;
3. the applicant surrendered a health care license or certificate, or narcotics (controlled substance) permit; or
4. the applicant has been charged with, and/or found to have committed unprofessional conduct, unlicensed activity, or malpractice by any health care licensing board, any other state, any agency of the federal government, another country, or any hospital.

(B) If the applicant responds yes to being subject to any of the disciplinary actions listed in paragraph (4)(A), the applicant shall provide a written narrative of each disciplinary action, including the incident date, location, charge, and outcome or disposition. The applicant shall also provide all official documents pertaining to the disciplinary action(s), which may include arrest and court orders.

(5) As a condition of licensure, the applicant shall disclose they have ever been denied a license, denied permission to practice medicine or any other health care occupation, or denied permission to take a health care related examination in State of California, any other state, United States federal jurisdiction, or another country, or if any such action is pending.

(B) If the applicant responds yes to paragraph (5), the applicant shall provide a written narrative that includes the date of the denial(s) and reason for denial(s).

(6) As a condition of licensure, the applicant shall disclose whether they have any practice impairments or limitations.

(A) For purposes of this paragraph, “practice impairments or limitations” means:

1. the applicant has ever been diagnosed or treated for a mental illness, disease, or disorder that would interfere with their ability to practice medicine;
2. the applicant has a current physical or mental impairment related to drugs or alcohol;
3. the applicant has been adjudicated by a court to be mentally incompetent or they are currently under a conservatorship; or
4. the applicant is required to register as a sex offender in California, or in another state, territory, or under federal law.

(B) If the applicant responds yes to any practice impairments or limitations, the applicant shall provide copies of all official medical, psychiatric, and treatment records pertaining to the impairment(s) or limitation(s); evidence of ongoing rehabilitation; and a written narrative describing the impairment or limitation. The applicant shall also provide the Board with an authorization and release of medical or psychiatric records.

(b7) Applications for approval of programs for the education and training of physician assistants shall be filed on a form provided by the board at its Sacramento office and accompanied by the fee required in section 1399.556. An applicant who has served as an active-duty member of the Armed Forces of the United States, was honorably discharged, and who provides evidence of such honorable discharge, shall have the review of their application expedited pursuant to Section 115.4 of the Code.

(8) If the applicant is married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders, and if the applicant holds a current physician assistant license in another state, district, or territory of the United States, and provides evidence of both conditions, the review of their application will be expedited pursuant to Section 115.6 of the Code.

(9) An applicant who was admitted to the United States as a refugee pursuant to Section 1157 of Title 8 of the United States Code, or was granted asylum by the Secretary of Homeland Security or the United States Attorney General pursuant to Section 1158 of Title 8 of the United States Code, or has a special immigrant visa and was granted a status pursuant to Section 1244 of Public Law 110-181, Public Law 109-163, or Section 602(b) of Title VI of Division F of Public Law 111-8, relating to Iraqi and Afghan translators/interpreters or those who worked for or on behalf of the United States government, and provides evidence of that status shall have the review of their application expedited pursuant to Section 135.4 of the Code. The Board may assist such an applicant with the initial licensure process.

(10) A statement signed under penalty of perjury that the applicant has read the questions in the application and that all information provided is true and correct. The applicant shall grant the Board or its assignees and agents permission to verify the information provided in the application and to perform any investigation pertaining the information the applicant provides. The applicant's signature on the application shall authorize the National Practitioner Data Bank, the National Commission on Certification of Physician Assistants, and the Federal Drug Enforcement Agency to release all information required by the Board.

(b) For the purposes of this section:

(1) "Required fees" for an application submitted with a Department of Justice BCIA 8016 Request for Live Scan Service form shall include the license application fee and the initial license fee as set forth in Section 1399.550. The required fees set forth in Section 1399.550 will be waived if the applicant meets the requirements for waiver of fees specified in subsection (c).

(2) "Required fees" for an application submitted with two (2) classifiable sets of fingerprint cards shall include the license application fee and the initial license fee as set forth in Section 1399.550, and an additional \$49.00 fee to cover the cost of obtaining a Live Scan report. The fees set forth in Section 1399.550 will be waived if the applicant meets the requirements for waiver of fees specified in subsection (c).

(c) The Board shall waive the fees specified in subsection (b) for an applicant who meets the requirements set forth in Section 115.5(a) of the Code and submits the following satisfactory evidence with the application for licensure:

(1) certificate of marriage or certified declaration/registration of domestic partnership filed with the California Secretary of State or other documentary evidence of legal union with an active-duty member of the Armed Forces of the United States;

(2) a copy of the military orders establishing their spouse's or partner's duty station in California; and

(3) a copy of the applicant's current license and written verification from the applicant's issuing agency/licensing jurisdiction that the applicant's license in another state, district, or territory of the United States is current in that jurisdiction. The verification shall include all of the following:

(A) the full legal name of the applicant and any other name(s) the applicant has used or has been known by;

(B) the license type and number issued to the applicant in another state, district, or territory of the United States;

(C) the name and location of the issuing agency/licensing jurisdiction; and

(D) the issuance date and expiration date of the license.

(d) Applications that are missing any of the requested information or documentation, are illegible, or are not accompanied by the applicable fees, shall be returned.

NOTE: Authority cited: Sections 115.4, 115.5, 135.4 ~~2018~~ and 3510, Business and Professions Code. Reference: Sections 115.4, 115.5, 135.4, 144, 3509 and 3513, Business and Professions Code.

## **Amend Section 1399.507 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations**

### **§1399.507. Examination Required.**

The written examination for licensure as a physician assistant is that administered by the National Commission on Certification of Physician Assistants. Successful completion requires that the applicant ~~has~~ achieved the passing score ~~established by the board~~ for that examination. It is the responsibility of the applicant to ensure that certification of ~~his or her~~ their examination score is received by the Board.

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 851, ~~3515~~, 3509 and 3517, Business and Professions Code.

## **Amend Section 1399.511 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations**

### **§1399.511. ~~Notice of Change of Address of Record.~~**

(a) Every applicant submitting an application for licensure as a physician assistant to the Board shall provide an address of record, which shall be used as their mailing address and shall be posted on the Board's website if an applicant is issued a license. An address of record may be a post office box, physical business address, or residential address. If a post office box is used as the address of record, the applicant shall also provide a physical business address or residential address for the Board's administrative use that shall not be posted on the Board's website.

(ab) ~~Every~~ ~~each~~ applicant and licensee person or approved program holding a license or approval and each person or program who has an application on file with the board shall notify the bBoard at its office of any and all changes oto their mailing address(es) within thirty (30) calendar days after each change, giving both the old and new address(es).

(b) ~~If an address reported to the board is a post office box, the licensee shall also provide the board with a street address, but he or she may request that the second address not be disclosed to the public.~~

NOTE: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 136 and ~~3522~~ and 3523, Business and Professions Code.

## **Repeal Section 1399.546 of Article 4 of Division 13.8 of Title 16 of the California Code of Regulations**

### **~~§1399.546. Reporting of Physician Assistant Supervision.~~**

~~(a) Each time a physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also record in the medical record for that episode of care the~~



~~supervising physician who is responsible for the patient. When a physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient.~~

~~(b) If the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the supervising physician for each episode of care into the patient's medical record, such automatic entry shall be sufficient for compliance with this recordkeeping requirement.~~

~~NOTE: Authority cited: Sections 2018 and 3510, Business and Professions Code.  
Reference: Section 3502, Business and Professions Code.~~

# **Attachment 3**

## Senate Bill No. 544

### CHAPTER 152

An act to amend Section 6060 of the Business and Professions Code, relating to attorneys.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 544, Umberg. State Bar: admission: license: moral character review: mental health medical records.

The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees. Existing law provides for the creation of an examining committee within the State Bar with specified powers, which include the power to examine applicants for admission to practice law. The act imposes specified requirements for a person to be certified to the Supreme Court for admission and a license to practice law, including a requirement that an applicant be of good moral character.

This bill would prohibit the staff of the State Bar or members of the examining committee, in reviewing whether an applicant is of good moral character, from reviewing or considering the person's medical records relating to mental health, except as specified. The bill would prohibit the staff of the State Bar or members of the examining committee from requesting or seeking to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose the records, except as specified.

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

SECTION 1. Section 6060 of the Business and Professions Code is amended to read:

6060. To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

(a) Be at least 18 years of age.

(b) (1) Be of good moral character.

(2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person's medical records relating to mental health, except

if the applicant seeks to use the record for either of the following purposes:

- (i) To demonstrate that the applicant is of good moral character.
- (ii) As a mitigating factor to explain a specific act of misconduct.

(B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose such records, except as requested by an applicant and for a purpose specified in subparagraph (A).

(c) Before beginning the study of law, have done either of the following:

(1) Completed at least two years of college work, which college work shall be at least one-half of the collegiate work acceptable for a bachelor's degree granted on the basis of a four-year period of study by a college or university approved by the examining committee.

(2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking examinations in subject matters and achieving the scores as are prescribed by the examining committee.

(d) Have registered with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon a showing of good cause, may permit a later registration.

(e) Have done either of the following:

(1) Had conferred upon them a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.

(2) Studied law diligently and in good faith for at least four years in any of the following manners:

(A) (i) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.

(ii) A person who has received their legal education in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that the person's education, experience, and qualifications qualify them to take the examination.

(B) In a law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the examining committee as the committee may require.

(C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the examining committee as the committee may require.

(D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.

(E) By any combination of the methods referred to in this paragraph.

(f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.

(g) Have passed the general bar examination given by the examining committee.

(h) (1) Have passed a law students' examination administered by the examining committee after completion of their first year of law study. Those who pass the examination within its first three administrations upon becoming eligible to take the examination shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within its first three administrations upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for one year of legal study only.

(2) (A) This requirement does not apply to a student who has satisfactorily completed their first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

(B) The law students' examination shall be administered twice a year at reasonable intervals.

# **Attachment 4**

Date of Hearing: June 4, 2019

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SB 544 (Umberg) – As Amended April 22, 2019

As Proposed to be Amended

**SENATE VOTE:** 37-0

**SUBJECT:** ATTORNEYS: MORAL CHARACTER: MENTAL HEALTH

**KEY ISSUE:** SHOULD THE STAFF OF THE STATE BAR AND MEMBERS OF THE EXAMINING COMMITTEE, WHEN REVIEWING WHETHER AN APPLICANT IS OF GOOD MORAL CHARACTER, BE PROHIBITED BY LAW FROM OBTAINING, REVIEWING, AND CONSIDERING AN APPLICANT'S MEDICAL RECORDS RELATING TO MENTAL HEALTH, EXCEPT UPON THE APPLICANT'S REQUEST?

**SYNOPSIS**

*This bill seeks to prohibit the State Bar from seeking information about an applicant's mental health history or considering such information in its determination of a person's qualification of good moral character, a precondition for the applicant to be licensed as an attorney. Once a person seeking to be licensed as an attorney successfully completes the Bar Exam, the applicant must undergo a process to determine whether they have "good moral character". (B&P Code Section 6060 (b).) The process is supposed to identify dishonorable or unscrupulous behavior in the applicant's past which may preclude the applicant from engaging in the fair and impartial practice of law and requires the applicant to participate in informal interviews and questioning by a panel from the Committee of Bar Examiners' Subcommittee on Moral Character. The panel makes a positive, negative, or other recommendation to the full Committee, which then reaches a final determination regarding the applicant's moral character. As part of the good moral character assessment process, a person must sign an extremely broad "Authorization and Release" form that allows the Committee of Bar Examiners to obtain any document, record, or data regarding the person, including records regarding the applicant's medical and mental health diagnoses and treatment, with legal impunity.*

*The analysis discusses how judgments about a person's moral character and whether it is "good" are inherently subjective and subject to implicit bias, including—at least in theory—well-established bias against persons with a history of mental health treatment. It also discusses how the Bar's good moral character evaluation process has been shown, in a non-scientific analysis by this Committee, to have disproportionately find that persons of color do not have good moral character. The analysis also discusses how the federal Americans with Disability Act protects the rights of individuals with disabilities—including mental disabilities—to, among other things, access State services (such as the licensure as an attorney) and, according to guidance from the U.S. Department of Justice, prohibits a licensing agency that is assessing a prospective attorney's fitness to practice law from inquiring about or obtaining mental health information unless the information is directly connected to conduct that is relevant to their determination and, even then, only allows the information to be "considered when raised [by the applicant] as a mitigating factor to explain misconduct." DOJ made these points in a letter to the State of Louisiana, holding that the state's system for inquiring about and obtaining mental*



*health history, and routinely placing attorneys with a history of mental health treatment on “probation” because of that history, violated the ADA. It also pointed out that broad waivers of the right to have medical and mental health records are inappropriate because they can lead to the disclosure of highly personal and completely irrelevant information. Other states—Virginia, Washington, and Louisiana—have already taken action to end this type of inquiry. The American Bar Association (ABA) suggested that state bars re-evaluate bar application inquiries about applicants’ mental health histories.*

*While it is unknown whether the staff of the State Bar or members of the examining committee do, in practice, obtain such personal mental health information from applicants in California, the breadth and scope of its Authorization and Release, as described above, means that they could do so. Given the evidence of disparate and apparently discriminatory outcomes from the current process for the evaluation of moral character, the analysis observes that it may be appropriate for the Legislature to codify limits on the State Bar’s ability to consider highly sensitive (and in most cases completely irrelevant) information about mental health.*

*The author has proposed to amend the bill in a number of ways to ensure that mental health information is generally irrelevant to a determination of a person’s good moral character and is only reviewed, requested, or considered by the State Bar when requested by the applicant. The author’s amendments, which are discussed and incorporated into the analysis, do the following: (1) Clarify that staff of the State Bar and members of the examining committee shall not either review or consider irrelevant mental health information; (2) Allow the State Bar to only consider mental health information in a case where the applicant seeks to use the record to either demonstrate that the applicant is of good moral character, or as a mitigating factor to explain a specific act of misconduct; (3) Eliminate exceptions in the bill in print that allow the Bar to consider mental health information upon consent of the applicant, or when the information is public; and (4) Prohibit the State Bar from requesting or seeking to review any medical records relating to mental health, including by obtaining consent of the applicant, other than as expressly allowed by the bill. Disability Rights California supports the bill as it is proposed to be amended. The bill has no opposition on file.*

**SUMMARY:** Limits the ability of the staff of the State Bar and the members of the examining committee to obtain, review, and consider an applicant’s medical records relating to mental health when reviewing whether an applicant is of good moral character. Specifically, **this bill:**

- 1) Provides that in reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person’s medical records relating to mental health.
- 2) Prohibits the staff of the State Bar or the members of the examining committee from requesting or seeking to review any medical records relating to mental health, including by obtaining consent of the applicant to disclosure of such records, other than as requested by an applicant for a use permitted by 1), above.
- 3) Provides an exception to 1), above, in a case where the applicant seeks to use the record to demonstrate that the applicant is of good moral character or as a mitigating factor to explain a specific act or acts of misconduct.

**EXISTING LAW:**

- 1) Provides that to be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall meet all of the following requirements:
  - a) Be of the age of at least 18 years;
  - b) Be of good moral character;
  - c) Prior to beginning the study of law, complete at least two years of college work, which college work shall be not less than one-half of the collegiate work acceptable for a bachelor's degree granted upon the basis of a four-year period of study by a college or university approved by the examining committee; or have attained in apparent intellectual ability the equivalent of at least two years of college work by taking any examinations in subject matters and achieving the scores thereon as are prescribed by the examining committee;
  - d) Register with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon good cause being shown, may permit a later registration;
  - e) Obtain a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association; or study law diligently and in good faith for at least four years in one of the following venues:
    - i) A law school authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year, as specified;
    - ii) A law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law, as specified;
    - iii) The chambers and under the personal supervision of a judge of a court of record of this state, as specified;
    - iv) A correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years; or
    - v) Any combination of the methods above;
  - f) Pass an examination in professional responsibility or legal ethics as the examining committee may prescribe;
  - g) Pass the general bar examination given by the examining committee;
  - h) Pass a law students' examination administered by the examining committee after completion of his or her first year of law study, unless the student has either satisfactorily

completed his or her first year of law study at a law school accredited by the examining committee and at least two years of college work prior to matriculating in the accredited law school or passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence. (Business and Professions Code Section 6060. All further statutory references are to this code, unless otherwise indicated.)

- 2) Pursuant to federal law, the Americans with Disabilities Act (ADA), provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. Section 12182.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** This bill seeks to prohibit the State Bar from seeking information about an applicant's mental health history or considering such information in its determination of a person's qualification of good moral character, a precondition for the applicant to be licensed as an attorney.

***The State Bar's Assessment of "Good Moral Character"***. Once a person seeking to be licensed as an attorney successfully completes the Bar Exam, the applicant must undergo a process to determine whether they have "good moral character". (Section 6060 (b).) The purpose of the evaluation is to identify dishonorable or unscrupulous behavior in the applicant's past which may preclude the applicant from engaging in the fair and impartial practice of law. The State Bar reviews each moral character application for indications of "serious issues" by exploring such factors as criminal convictions, drug and alcohol abuse, debt, and violations of school honor codes. If an application is flagged for potential issues, the applicant is then referred to the Committee of Bar Examiners for consideration. According to the State Bar, this process requires the applicant to participate in informal interviews and questioning by a panel from the Committee of Bar Examiners' Subcommittee on Moral Character. The panel makes a positive, negative, or other recommendation to the full Committee, which then reaches a final determination regarding the applicant's moral character.

As of March 2018, as part of the good moral character assessment process, a person must sign an *extremely* broad "Authorization and Release" form that allows the Committee of Bar Examiners to obtain *any* document, record, or data regarding the person, including records regarding the applicant's medical and mental health diagnoses and treatment, with legal impunity. Portions of the Authorization and Release reads as follows (with emphasis added to the original):

I authorize and request every person, organization, association, firm, company, corporation, school, employer (past or present), bank, financial institution, franchise tax board, consumer or credit reporting agency, law enforcement agency, governmental agency or instrumentality, court, or any other third party (collectively, "Third Party") having an opinion about me or knowledge or control of *any documents, records, or data pertaining to me*, including, but not limited to, any *confidential or sealed records*, public or private disciplinary records, or any criminal history record information (collectively, "Information") to reveal, furnish, and release to the Committee any such Information. . . . I further authorize and request any Third Party to answer *any and all inquiries, questions, or interrogatories asked by the Committee concerning me or such Information about me*

and to appear before the Committee or the State Bar Court and give full and complete testimony concerning me or such Information about me.

...

I hereby release, discharge, and exonerate the State Bar of California, including its Board of Trustees and the Committee, and all officers, employees, agents and representatives (as the same may be constituted from time to time) and any Third Party from and against any and *all claims, demands, causes of action, damages, judgments, debts, obligations, or liabilities of every nature and kind arising out or in connection with any Information furnished to the Committee or used by the Committee pursuant to this Authorization and Release.*

***Author's Statement.*** The Bar's unchecked authority to request and review mental health information is concerning to the author, who states the following:

During the moral character process . . . if an applicant has an "incident" on their record, like committing theft or a DUI, the State Bar will inquire about the incident. During this inquiry, the applicant has an opportunity to explain the incident to the State Bar. The State Bar claims that some applicants use this opportunity to provide medical reasons for their incident, like a lapse in judgement caused by PTSD. In allowing the applicant to do this, the State Bar will require the applicant to sign a medical waiver. . . . Applicants have expressed distress regarding the practice because it opens up the applicant's medical history to scrutiny. The practice can also deter future applicants from seeking mental health care. The inquiry also has a negative impact on survivors of sexual assault and veterans with PTSD. People in these groups may not feel comfortable disclosing this information to the State Bar but are required to provide the State Bar with a waiver to disclose the information if they wish to explain their applicants.

...

Senate Bill 544 will prohibit the California State Bar (State Bar) from asking applicants to sign a medical waiver for a mental health history evaluation during the application process to be admitted to practice law in California. Currently, the State Bar has unchecked authority to review an applicant's mental health history, which the State Bar says it only does under certain circumstances. . . . The author of this bill would like to make clear that the State Bar should not consider mental health history, except for in very limited and very narrow circumstances.

***Evidence of Possible Discrimination by the State Bar in its Assessment of Good Moral Character.*** Due to the inherently subjective nature of judging whether a person is of "good moral character," judgments about the person's moral character are likely affected by a variety of implicit biases, especially when there is evidence of conduct other than criminal history. In fact, a recent analysis by this Committee of a random sampling of 100 persons who were denied admission by the Bar in the past ten years on the basis of their moral character revealed that people of color with no criminal history were significantly more likely to be unqualified on the basis of moral character than white applicants. Fully 42 percent of people of color in the sample who were found unqualified on the basis of moral character did not have a criminal history, compared with 30 percent of white applicants. These results suggest that the assessment of moral character based on factors *other than* criminal behavior *may* present additional obstacles to

applicants of color. It should be noted, however, that a larger sample of persons found to be unqualified due to moral character is necessary to confirm these preliminary findings.

While the Committee's analysis did not consider the impact of mental health history on the Bar's determinations of good moral character, there is no reason to believe that well-documented bias against persons with a history of mental health issues does not affect such determinations.

"Commonly held stereotypes about people with mental illness that have been consistently identified in surveys of the general public include incompetence (e.g., incapable of independent living or competitive work), blame (e.g., weak character is responsible for the disorder), and dangerousness (e.g., potentially violent)." (Stull, Laura G, et al. "Implicit and Explicit Stigma of Mental Illness: Attitudes in an Evidence-Based Practice." *The Journal of Nervous and Mental Disease*, U.S. National Library of Medicine, Dec. 2013, [www.ncbi.nlm.nih.gov/pmc/articles/PMC4031039/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4031039/).)

The State Bar's 2019-2020 Diversity & Inclusion Plan highlights the Bar's plans to expand its ongoing efforts to provide staff involved in the moral character determination with training to mitigate implicit bias. Whether such training is effective in eliminating bias in the moral character review process remains to be seen. Given the evidence of disparate and apparently discriminatory outcomes from the current process for the evaluation of moral character, it may be appropriate for the Legislature to codify limits on the State Bar's ability to consider highly sensitive (and in most cases completely irrelevant) information about mental health.

***Americans With Disabilities Act and Unlawful Discrimination on the Basis of Disability, Including Mental Health Disability.*** The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life. (42 U.S.C. Section 12182.) Title II of the ADA applies to State and local government entities, and protects qualified individuals with disabilities from discrimination on the basis of disability in all services, programs, and activities provided by a State or local government entity, regardless of whether these entities receive Federal financial assistance. (42 U.S.C. Section 12131B65.) Thus, the ADA applies to state licensing programs such as licensure of attorneys by the State Bar of California. More specifically, the ADA prohibits the State Bar from discriminating against persons with a history of mental illness and a history of mental health treatment, including in the Bar's administration of the moral character evaluation process. According to guidance from the U.S. Department of Justice (DOJ), described below, the ADA prohibits the consideration of mental health information—or even the request for disclosure of such information—in the assessment of a person's eligibility to practice law, including their moral character, unless the information is directly connected to *conduct* that affects their fitness to practice law.

In response to complaints filed by the Bazelon Center for Mental Health Law on behalf of a number of Louisiana attorneys on whom onerous conditions were imposed when they were admitted to the bar on a "conditional" basis due to their mental health diagnosis and treatment, the DOJ wrote to the Louisiana Supreme Court on February 5, 2014, advising the Court that Louisiana's bar admissions process—requiring applicants to answer questions about their mental health history, obtain regular progress reports from mental health professionals even when they were no longer under treatment, and obtain stigmatizing probationary reports from employers—violated Title II of the ADA by needlessly screening out or discouraging applicants with disabilities. (Samuels, Jocelyn. Re: The United States' Investigation of the Louisiana Attorney Licensure System Pursuant to the Americans with Disabilities Act, Feb. 5, 2014 (DJ No. 204-

32M-60, 204-32-88, 204-32-89) available at <https://www.ada.gov/louisiana-bar-lof.pdf>.)

According to the letter, it was improper for the State of Louisiana to even *inquire* about an applicant's mental health history (presumably even if the applicant voluntarily consented to comply with the request): such inquiry "violates the ADA because these questions are eligibility criteria that screen out or tend to screen out individuals with disabilities based on stereotypes and assumptions about their disabilities and are not necessary to assess the applicants' fitness to practice law." (*Id.*, at p. 18.) The letter also pointed out that "other forms of discrimination flow" from improper inquiry into an applicant's mental health history, including the following;

1) imposing additional burdens on applicants with disabilities in the form of expansive and intrusive requests for medical records; 2) making admissions recommendations that are based on the mere existence of a mental health disability rather than on conduct; 3) placing burdensome conditions upon applicants' legal licenses because of mental health diagnosis or treatment; 4) imposing additional financial burdens on applicants and attorneys with disabilities; and 5) failing to protect the confidentiality of the medical information of applicants with disabilities. (*Ibid.*)

The letter also pointed out that broad waivers of the right to have medical and mental health records such as those used by Louisiana are inappropriate because they can lead to the disclosure of highly personal and completely irrelevant information. In the case of Louisiana, the DOJ observed:

The documentation requested by the Admissions Committee can contain information of an extremely personal nature which is irrelevant to the applicant's ability to practice law. For example, the Admissions Committee reviewed TQ's psychiatrist's treatment notes, which describe each therapy session since she began treatment. These notes include details of intimate information discussed in therapy, such as her upbringing, relationships with members of her family, sexual history, body image, and romantic relationships. (Samuels letter to Louisiana Supreme Court., *supra*, at p. 10.)

While it is unknown whether the staff of the State Bar or members of the examining committee *do*, in practice, obtain such personal mental health information from applicants in California, the breadth and scope of its Authorization and Release, as described above, means that they *could* do so.

Rather, according to DOJ, information about an applicant's mental health condition or disability—like information about physical disability or illness—should be "treated as generally irrelevant to evaluating an applicant's eligibility for bar admission" and only "considered when raised [by the applicant] as a mitigating factor to explain misconduct." (*Id.*, at p. 4, fn. 9.) Furthermore, according to the DOJ, "Given the liberty interest . . . in the privacy of highly personal medical information, the presumption should be to protect confidentiality." (*Id.*, at p. 30.) Even when disclosure of highly personal medical information, including mental health records, is necessary to support a compelling government interest, those objectives must be achieved in the least intrusive manner. (*Id.*, at p. 30, fn 65, citing *Wolfe v. Schaefer* (7th Cir. 2010) 619 F.3d 782, 785; see also *F.E.R.*, 58 F.3d at 1535 [even when interest in preventing dissemination of psychiatric records yields to compelling governmental interest of preventing Medicaid fraud, objectives must be achieved *in the least intrusive manner*].) In other words, licensing agencies should not request, obtain, review, or consider mental health information

unless there is a compelling need to do so (i.e. it is necessary to explain or mitigate specific conduct that affects the applicant's qualifications for licensure).

**Response from the ABA and Other States.** In response to the DOJ's directive to the State of Louisiana, the American Bar Association (ABA) suggested that state bars re-evaluate bar application inquiries about applicants' mental health histories. (See American Bar Association, National Task Force on Lawyer Well-Being, *Creating a Movement To Improve Well-Being in the Legal Profession*, Aug. 14, 2017, available at: <https://www.americanbar.org/content/dam/aba/images/abaneews/ThePathToLawyerWellBeingReportRevFINAL.pdf>.)

Likewise, several states—Virginia, Washington, and Louisiana—have already taken action to end this type of inquiry. For example, Virginia “will no longer ask students to disclose mental health treatment on their application.” (Mattingly, Justin. *Richmond Times-Dispatch*, *Virginia panel scraps mental health question after law student push*, Feb. 8, 2019, available at: [https://www.richmond.com/news/local/education/virginia-panel-scraps-mental-health-question-after-law-school-student/article\\_36ece9b3-078c-5e12-b748-762555b8f081.html](https://www.richmond.com/news/local/education/virginia-panel-scraps-mental-health-question-after-law-school-student/article_36ece9b3-078c-5e12-b748-762555b8f081.html).) According to news reports, law students across Virginia organized to remove the disclosure requirement, asserting that “students who need mental health counselling aren't getting it for fear they will be denied admission to the state bar.” (*Ibid.*)

**Author's amendments.** While clearly well intentioned, the bill in print may not go far enough to ensure that the State Bar staff and Committee of Bar Examiners does not request or consider private and irrelevant mental health information about a person seeking to be licensed as an attorney. As in print, SB 544 prohibits the State Bar from “reviewing” mental health information (except in certain circumstances, including with the applicant's consent or when the information is a matter of public record), in its evaluation of the moral character of a prospective attorney. But the bill in print does not explicitly prohibit the Bar from *requesting* mental health information, or basing a decision regarding an applicant's moral character on such information. Furthermore, two of the exceptions to the prohibition on reviewing mental health information that are in the bill in print and allow the Bar to review mental health information—when the applicant consents or when the information is public—may conflict with the 2014 guidance regarding use of mental health information by the DOJ described above.

**Consent.** If a person applies for Bar admission, they may feel obliged to consent to allow the Bar to review their mental health history out of the belief that failure to consent would affect their likelihood of being cleared for admission (and indeed it may, either overtly or implicitly). This could manifest as a check box on the application that says, “I consent to...” which, as a practical matter, would be obligatory. Furthermore, a situation where the applicant is truly motivated to provide access to their mental health information would seem to be covered by an exception where they approve access to the information to prove their good moral character. Furthermore, a system/process where mental health information is provided to the Bar by consent is similar to the unlawful process used in Virginia, in which applicants were asked, but not required, to provide information about their mental health treatment (see *Virginia panel scraps mental health question after law student push*, above) until advocates forced the state to change it.

**Public Records.** It is unclear why mental health records which happen to be public are more appropriately considered by a licensing agency than records which are confidential and obtained via consent (albeit potentially coerced as a practical matter because consent is either a real or

perceived condition for qualifying as having good moral character) by the applicant. The legal issue of concern to DOJ regarding the State of Louisiana's process for determining an applicant's moral character was based upon the records being *irrelevant and unnecessary* to a licensing decision, not their status as either *confidential or public*. Allowing the Bar to review and consider mental health records that happen to be public raises many of the most serious issues that the DOJ raised about Louisiana's review of confidential mental health records, including the biggest: that such information can be used to discourage a person from obtaining mental health treatment and to inappropriately "screen out or tend to screen out individuals with disabilities based on stereotypes and assumptions about their disabilities and are not necessary to assess the applicants' fitness to practice law." (Samuels letter to Louisiana Supreme Court, *supra*, at p. 18.) Therefore, regardless of how the Bar obtained the mental health information—whether disclosed voluntarily or obtained as a public record—it would seem inappropriate, according to the rationale expressed in the DOJ letter, for the Bar to consider the information (except when requested to do so by the applicant).

In order to address these issues and ensure that mental health information is generally irrelevant to a determination of a person's good moral character and is only reviewed, requested, or considered by the State Bar when requested by the applicant, the author proposes the following clarifying amendments:

(2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review *or consider* the person's medical records relating to mental health, except to the extent that any of the following conditions apply:

(A) ~~The records are public records.~~

(B) ~~The applicant consents.~~

(C) ~~The~~ *in a case where the* applicant seeks to use the record to *either* demonstrate that the applicant is of good moral character, *or as a mitigating factor to explain a specific act of misconduct.*

*(B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining consent of the applicant to disclosure of such records, other than as requested by an applicant and for a use permitted by subparagraph (A).*

**ARGUMENTS IN SUPPORT:** Disability Rights California writes that it supports the bill as it is proposed to be amended for a number of reasons:

A prohibition on the use of mental health records for determining eligibility to practice law would be consistent with existing California law severely restricting the nonconsensual disclosure of mental health records. (E.g., Welf. & Instit. Code § 5328.) This bill would also meet requirements of federal civil rights law. . . . The State Bar may inquire into prior misconduct, including an applicant's academic, employment, and criminal history; however, inquiries into mental health records, as DOJ notes, are based on "mere speculation, stereotypes, or generalizations about individuals with disabilities," and are prohibited by the ADA." to include to ensure the intent that mental health histories not be used to discriminate against individuals with disabilities in violation of the ADA. . . .

The clarification in the proposed amendments that the State Bar also not seek consent from the applicant to disclose mental health records is critical to include to ensure the intent that



mental health histories not be used to discriminate against individuals with disabilities in violation of the ADA. Applicants for the State Bar are under intense pressure to not take any action that may jeopardize their application to be able to practice a lifetime vocation. Indeed, there may be pressure on an applicant to refuse to provide a waiver because of a legitimate concern that the act of not consenting could be used detrimentally on acting on their Bar application. As DOJ has noted, mental health records can be used to support speculation, stereotypes and generalizations about individuals with disabilities and are not permitted.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Disability Rights California

**Opposition**

None on file

**Analysis Prepared by:** Alison Merrilees / JUD. / (916) 319-2334