

PHYSICIAN ASSISTANT BOARD

INITIAL STATEMENT OF REASONS

Application, Exam Scores, Addresses, & Recordkeeping

Hearing Date: The Physician Assistant Board (Board) has not scheduled a public hearing on this proposed action.

Subject Matter of Proposed Regulations: Application, Exam Scores, Addresses, & Recordkeeping

Sections Affected: Amend Sections 1399.506, 1399.507, and 1399.511 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations¹ (CCR) and repeal Section 1399.546 of Article 4 of Division 13.8 of Title 16 of the California Code of Regulations

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Senate Bill (SB) 697 (Caballero, Chapter 707, Statutes of 2019) became effective on January 1, 2020 and made numerous changes to the Physician Assistant Practice Act (Practice Act), which provides for licensure and regulation of physician assistants (PAs) by the Physician Assistant Board. Generally, the changes remove requirements that the medical record identify the responsible supervising physician and surgeon, remove requirements that the physician be physically available to the PA for consultation, remove requirements for review and countersignature of patient medical records, and remove requirements that written guidelines for adequate supervision be established. The law now authorizes a PA to perform medical services authorized by the Act if certain requirements are met, including that the medical services are rendered pursuant to a practice agreement, as defined, and the PA is competent to perform the medical services.

The Practice Act now requires that a practice agreement between a PA and a physician and surgeon meet specified requirements, like a practice agreement must contain policies and procedures to ensure adequate supervision of the PA, which include appropriate communication, availability, consultations, and referrals between a physician and surgeon and the PA in the provision of services. In addition, a practice agreement must establish policies and procedures to identify a physician and surgeon who is supervising a PA rendering services in a general acute care hospital.

The prior law authorized a PA to, under the supervision of a physician and surgeon, administer or provide medication to a patient, and transmit orally or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device, subject to specified requirements. The law now authorizes a

¹ All references are to 16 CCR unless otherwise noted.

PA to furnish or order a drug or device subject to specified requirements, such as the PA's educational preparation, that clinical competency has been established and maintained, and that the physician and surgeon shall be available by telephone or other electronic communication method at the time the PA examines the patient.

The Practice Act now authorizes the PA to furnish or order Schedule II or III controlled substances in accordance with the practice agreement or a patient-specific order approved by the treating or supervising physician and surgeon and requires completion of a controlled substances course by the PA's next license renewal, if the PA is authorized by a practice agreement to furnish Schedule II controlled substances and if the PA has a DEA registration.

In addition, the new law provides that any reference to a "delegation of services agreement" in any other law now means "practice agreement," as defined. The Practice Act now provides that supervision does not require the supervising physician and surgeon to be physically present but does require adequate supervision as agreed to in the practice agreement and does require that the physician and surgeon be available by telephone or other electronic communication method at the time the PA examines the patient. However, the Act also prohibits that requirement from being construed as prohibiting the Board from requiring the physical presence of a physician and surgeon as a term or condition of a PA's reinstatement, probation, or imposing discipline.

2. Anticipated benefits from this regulatory action:

The proposed amendments bring the Board's regulations up-to-date and into compliance with SB 697 by adding a new provision to existing CCR 1399.506 subdivision (a) requiring applicants to submit two sets of fingerprint cards or a Live Scan inquiry to permit the Board to conduct a criminal background check. The proposed amendments also list all conditions for initial licensure as established on the application of licensure. This application information was previously not listed in regulation, nor was an application form incorporated by reference. The amendments further change the title of CCR 1399.506 from "Filing of Applications" to "Application for Licensure."

The proposed amendments to CCR 1399.507 comply with recently amended Business and Professions Code (BPC) section 3517, which no longer requires the Board establish the passing score for the examination administered by the National Commission on Certification of Physician Assistants.

The proposed amendments to CCR section 1399.511 change the title from "Notice of Change of Address" to "Address of Record." The proposed amendments add that a mailing address is required to be provided to the Board and will be posted on the Board's public website and used for official correspondence, notices, and orders.

The proposed amendments repeal CCR 1399.546, as the regulation had established procedures in regulation that are now better addressed by the terms agreed upon by the PA and the supervising physician in the practice agreement.

Factual Basis/Rationale

SB 697 made numerous changes to PA practice. At the August 7, 2020, WebEx on-line Board meeting, the Board discussed and voted to amend CCR sections 1399.506, 1399.507, 1399.511, and 1399.546. On July 23, 2021, the California Academy of PAs (CAPA) sent the Board a letter raising additional concerns about the proposed changes and another proposed regulation package also implementing SB 697 changes. On October 13, 2021, Board President Juan Armenta, Board Vice President and PA Sonya Early, Executive Officer Rozana Khan, Analyst Jasmine Dhillon, Staff Services Manager Kirsty Voong, Board Counsel Michael Kanotz, and Regulations Counsel Karen Halbo met with representatives from CAPA to discuss CAPA's concerns. Amended regulatory text was drafted for the Board's consideration. At the Board's 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 changes needed in these regulation sections required by the passage of SB 697.

CCR section 1399.506 – Filing of Applications – Adopt New Title

Purpose: This proposal amends the title from “Filing of Applications” to “Application for Licensure.” The purpose is to provide greater clarity and notice to interested persons as to the location of the Board's requirements for licensure.

Anticipated Benefits/Rationale: Revising the previous title is necessary to provide notice of the information required in a license application, benefitting applicants by setting out the required information that must be provided to the Board to obtain a PA license.

CCR section 1399.506 – Subdivision (a):

Purpose: The amendments to subdivision (a) clearly establish what is required to obtain an initial PA license: all required fees, two sets of fingerprint cards or a Live Scan inquiry and consent to a criminal history record check, and a completed application.

Anticipated Benefits/Rationale: Clearly setting out the requirements to obtain an initial PA license will reduce confusion for applicants and increase transparency in the Board's application process. Presently some application requirements are listed on the form provided by the Board and other requirements are described in the instructions accompanying the form provided by the Board, BPC section 3521.2 authorizes the Board to charge an application fee, and by using the phrase “all required fees,” the Board is ensuring it will not need to amend this section if the Board changes the application fee. BPC section 144 authorizes the Board to require applicants to provide a full set of fingerprints or a Live Scan inquiry and requires and applicant consent to a criminal history background check. Stating this requirement clearly in this section will reduce confusion for applicants. BPC section 3519 requires the Board to issue a license to applicants that meet the qualifications set out in that statute. The Board needs the information requested in a completed application to be able to determine if an applicant meets the statutory

qualifications. The proposed amendments to subdivision (a) will increase clarity and transparency as to everything an applicant must submit to obtain an initial PA license.

CCR section 1399.506 – Subdivision (a), paragraph (1), subparagraphs (A) through (G):

Purpose: The amendments to subdivision (a) that add paragraph (1) and subparagraphs (A) to (G) clarify the personal information required by the Board on an application for initial licensure. An applicant must provide their legal name and aliases, gender, social security number or identifying tax information number (ITIN), address of record or mailing address, date of birth, telephone numbers for both their home and cell phone, and their email address.

Anticipated Benefits/Rationale: Existing law does not specify the contents of an initial application for PA licensure. The proposed addition of subdivision (a), paragraph (1) and subparagraphs (A) through (G) addresses this. Subparagraph (A) requires the applicant provide their legal name and any associated aliases and this information is necessary to establish the identity of the individual applying for an initial PA license. Subparagraph (B) requires the applicant's gender and is also necessary to establish the applicant's identity. Subparagraph (C) requires the last 4 numbers of the applicant's social security number or ITIN which is necessary for staff to create an entry in the Board's records of the applicant's identifying information which will allow staff, with this identifying information, to ascertain for certain they have the correct applicant and/or licensee. Subparagraph (D) requires the applicant's address of record or mailing address, information which is necessary and essential for the Board to communicate with an applicant regarding any issues that arise during the processing of the application, and in connection with possible later communications with a licensee regarding their license, investigation of complaints, and/or issuance of a citation. Subparagraph (E) requires the applicant's date of birth which is necessary for staff to create an entry in the Board's records of the applicant's identifying information that further confirms an applicant's identity by means of their date of birth. Subparagraph (F) requires the applicant's telephone numbers for their home and their cell phone and is necessary and essential for the Board to communicate with the applicant, and for potential later communications with a licensee. Subparagraph (G) requires the applicant's email address, which is necessary for the Board to communicate with the applicant, and for potential later communications with a licensee. Applicants and licensees are required to report an electronic mail address pursuant to BPC section 2021.

CCR section 1399.506 – Subdivision (a), paragraphs (2) and (3):

Purpose: The amendments to subdivision (a) add paragraph (2) requiring an initial applicant to provide all the disclosures required by the section, and paragraph (3) requiring the applicant provide a signed and dated declaration under penalty of perjury that the information submitted on the application is true and correct. Paragraphs (2) and (3), taken together with the requirements set out in subdivision (a) and paragraph (1), establish all of what must be submitted to the Board to constitute a "completed application."

Anticipated Benefits/Rationale: Existing law does not specify what the Board deems a “completed application” for licensure. Paragraph (2) clarifies that the disclosures required of an applicant for an initial license, set out in subdivision (a), are mandatory.

Paragraph (3) requires the applicant to sign a statement under penalty of perjury that the information they have provided on the application is true and correct and is necessary to ensure that applicants provide accurate information. As a part of the Board’s consumer protection mandate and for the benefit of all licensees, the Board does not want to provide licenses to applicants who do not qualify for the license. Applicants need to know that if the information they provide the Board is materially false they could be charged with perjury, a felony offense (Penal Code section 115). In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate, or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete, or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459].

CCR section 1399.506 – Subdivision (a), after paragraphs (1) through (3):

Purpose: The two sentences after paragraphs (1) to (3) define “required fees” for the subdivision and establishes that the applicant must pay any costs for furnishing fingerprints and getting the criminal history record check.

Anticipated Benefits/Rationale: In the proposed amendments to subdivision (a), it is established that as a condition of initial licensure, an applicant must submit all “required fees.” The first sentence after paragraphs (1) through (3) defines the term “required fees” for the purposes of subdivision (a) to be the license application processing fee and the initial licensing fee, as both are defined in the Board’s fee regulation at CCR section 1399.550. Adding the definition of “required fees” is necessary to assist applicants in ascertaining the fees they must pay when submitting an application for initial PA licensure. The second sentence after paragraphs (1) through (3) clarifies that the applicant is responsible for the costs associated with fingerprinting and the criminal record background check. Clarifying that the applicant is responsible for those costs is necessary for applicants to be informed who bears the costs associated with the fingerprinting and criminal record background check requirements.

The proposed amendments to subdivision (a) establish the requirements for licensure and what personal information is required for an application for initial licensure. Taken together, the changes to CCR 1366.506(a) will clarify and improve the transparency of the Board’s requirements for initial licensure.

CCR section 1399.506 – Subdivision (b):

Purpose: Subdivision (b) is amended to delete the requirement of training program approval by the Board and to add language to explain the expedited application review process which is available for honorably discharged active-duty members of the Armed Forces of the United States (Armed Forces) pursuant to BPC section 115.4.

Anticipated Benefits/Rationale: In the proposed amendments the requirement that training programs apply for Board approval is removed so that CCR section 1399.506 covers exclusively the topic of applications for licensure. The removal of this language is consistent with the provisions of BPC section 3513, as revised by SB 697, which now states the Board shall recognize the approval of training programs by a national accrediting organization. The proposed amendments also direct the applicant to BPC section 115.4, which requires the Board to expedite application review for honorably discharged active-duty members of the Armed Forces. It is necessary to add subdivision (b) to state the Board's statutory requirement to expedite application review under BPC section 115.4 so that all of information relevant to an initial license application is presented together in one section. Adding subdivision (b) improves the clarity and transparency of the Board's application process.

CCR section 1399.506 – Subdivision (c):

Purpose: Subdivision (c) adds language explaining the expedited application review process available to spouses, domestic partners, or persons in legal union with an active-duty member of the Armed Forces, pursuant to BPC section 115.5.

Anticipated Benefits/Rationale: The proposed addition of subdivision (c) outlines the expedited application review process available for the spouses, domestic partners, or persons in legal unions with an active-duty member of the Armed Forces pursuant to BPC section 115.5. BPC section 115.5 became operative July 1, 2022, when Senate Bill (SB) 607 (Min, Chapter 367, Statutes of 2021) took effect. It is necessary to add subdivision (c) to state the Board's statutory obligation to expedite application review under BPC section 115.5 so that all of information relevant to an initial license application is presented together in one section. Adding subdivision (c) improves the clarity and transparency of the Board's application process.

CCR section 1399.506 – Subdivision (d):

Purpose: Subdivision (d) adds language explaining the expedited application review process available for any applicant who is a refugee, has been granted asylum, or who holds certain types of special immigration visas pursuant to BPC section 135.4.

Anticipated Benefits/Rationale: The proposed addition of subdivision (d) outlines the expedited application review process available for any applicant who is a refugee, has been granted asylum, or who holds certain types of special immigration visas, pursuant to BPC section 135.4. BPC section 135.4 was added on January 1, 2021, when AB 2113 (Low, Chapter 186, Statutes of 2020) took effect. AB 2113 added BPC section 135.4, that requires any board within the Department of Consumer Affairs, including the Physician

Assistant Board, to expedite the licensure process for any applicant who is a refugee, has been granted asylum, or who holds certain types of special immigration visas. Prior to the effective date of this bill, the BPC simply prohibited the denial of licensure based on immigration or citizenship status. The proposed addition of subdivision (d) conforms the regulation to the requirements outlined in AB 2113. It is necessary to add subdivision (d) to state the Board's statutory requirement to expedite application review under BPC section 135.4 so that all of information relevant to initial license applicants is presented together in one section. Adding subdivision (d) improves the clarity and transparency of the Board's application process.

CCR section 1399.506 – Subdivision (e), and paragraphs (1) and (2):

Purpose: Subdivision (e) is amended to add language requiring applicants to disclose other licenses, registrations, or certificates held by the applicant.

Anticipated Benefits/Rationale: The proposed addition of subdivision (e) serves the Board's consumer protection mandate. The Board requires disclosure of this information to be disclosed to allow the Board to review an applicant's eligibility with the most current and complete information. If there is a record of a punishment, citation, or an ongoing investigation, connected to any other licenses, registrations, or certifications an applicant has, that could have an impact on the applicant's qualifications for licensure. This requirement allows the Board to consider the status of the applicant's licenses, registrations, and certification when determining eligibility for licensure, furthering the Board's mission of consumer protection.

CCR section 1399.506 – Subdivision (f) and paragraphs (1) and (2):

Purpose: The Board is proposing to add subdivision (f) which defines "malpractice history" so that an applicant must disclose any history of malpractice, which is further defined in BPC sections 801.01 and 803.1.

Anticipated Benefits/Rationale: The amendments adding subdivision (f) add paragraph (1) that requires an initial applicant to disclose all and any civil judgments pursuant to BPC section 803.1(b)(1), and paragraph (2) that requires the applicant disclose any and all malpractice settlements pursuant to BPC section 801.01(a)(1). Taken together paragraphs (1) & (2) clarify what information constitutes an applicant's "malpractice history," information that must be submitted to the Board to constitute a "complete application." Adding subdivision (f) puts potential applicants on notice that disclosure of malpractice history information is required for a complete application for initial licensure. Adding subdivision (f) improves the clarity and transparency of the Board's application process.

CCR section 1399.506 – Subdivision (g):

Purpose: The Board is proposing to add subdivision (g) to require an applicant must disclose any "history of discipline", which is defined in this new subdivision.

Anticipated Benefits/Rationale: The amendments to subdivision (g) add paragraph (1)

which defines the history of discipline required to be disclosed when it relates to a physician assistant training program, and paragraph (2) which defines the history of discipline as it applies to any state authority. History of discipline is a broad term. Since disclosure of a “history of discipline” is required as a condition of licensure, the definitions in paragraphs (1) and (2) clarify sort of information required from the applicant on an initial license application. This subdivision clarifies what information constitutes an applicant’s “history of discipline,” information that must be submitted to the Board to constitute a “completed application.” Adding this subdivision provides notice to potential applicants that disclosure of a history of discipline is required for a complete application licensure and clarifies the meaning of “history of discipline.” Adding subdivision (g) improves the clarity and transparency of the Board’s application process.

Amend Section 1399.507 – Examination Required

Purpose: The Board is proposing to delete the words “established by the board” and to replace the words “his or her” with “their.”

Anticipated Benefits/Rationale: BPC section 3517 had previously provided in part: “The Board shall, however, establish a passing score for each examination” and “The time and place of examinations shall be fixed by the board.” The current PA examination is administered by a private organization. BPC section 3517 was amended with the passage of SB 806 (Roth, Chapter 649, Statutes of 2021) which removed the provisions quoted above, thereby removing the requirement that the Board establish a passing score for the examination and fix the time and place of the examination. This amendment is necessary to make the regulation consistent with BPC section 3517 by removing the words “established by the board.” The proposal also seeks to remove gender-specific language and replaces it with gender-neutral language pursuant to [Assembly Concurrent Resolution No. 260 of 2018](#) (ACR 260), wherein the legislature urged state agencies to use gender neutral pronouns and avoid the use of gendered pronouns in drafting regulations.

Amend Section 1399.511 – Notice of Change of Address – Adopt New Title

Purpose: The Board is proposing changing the title of this section from “Notice of Change of Address” to “Address of Record.”

Anticipated Benefits/Rationale: Revising the title is necessary to better notify applicants of the requirements and will benefit applicants by providing the more informative title than “Address of Record.” The purpose is to provide greater clarity and notice to interested persons that the Board must be kept apprised of any change of address.

Amend Section 1399.511 – Subdivision (a)

Purpose: The Board proposes adding subdivision (a) which requires: “Each person submitting an application for licensure to the Board must include a mailing address which will be released by the Board to the public and posted on the Board’s website. The mailing

address is used for service of all official correspondence, notices, and orders from the Board.” This information is required to be submitted to the Board and will be released to the public. The Board wishes to make that public disclosure clear in regulation and is proposing these changes to clarify that a mailing address is required by the Board, will be posted on the Board’s website, and will be used for official documentation from the Board.

Anticipated Benefits/Rationale: This amendment provides clarity as to the address information that must be submitted to the Board, and that the address provided will be released to the public, the Board wishes to make that clear in regulation the public nature of any address provided to the Board, that the address will be posted on the Board’s website, and that the address so provided is where official documents from the Board will be sent. This amendment explains the purposes for which a licensee’s mailing address will be used.

Amend Section 1399.511 – Subdivision (b)

Purpose: The Board proposes moving the existing text from CCR section 1399.511, subdivision (a) to become subdivision (b) and to remove a reference to approved programs, as the Board does not license or approve programs.

Anticipated Benefits/Rationale: This amendment is in accordance with the amendments proposed in Section 1399.506 above, as the Board is no longer authorized by law to approve or license training programs. The Board does not have applications on file for “approved programs,” only for individual persons. This amendment is consistent with the provisions of BPC section 3513, which states the Board shall recognize the approval of PA training programs by a national accrediting organization.

Repeal Section 1399.546 – Reporting of Physician Assistant Supervision

Purpose: The Board proposes to repeal all of CCR section 1399.546 as it can no longer be enforced after to the passage of SB 697.

Anticipated Benefits/Rationale: The Board proposes to repeal CCR section 1399.546, that provides that a PA shall record who is their supervising physician who is ultimately responsible for that patient every time a PA provides their name, signature, initials, or computer code on a patient’s record, chart, or written order. The changes to PA practice brought about by SB 697 increased the importance of the practice agreement. Now when the identity of the supervising physician must be recorded in the written or electronic medical record is a matter to be discussed by the supervising physician and the PA and included in the practice agreement. This regulation now stands in contradiction to the law concerning PA practice and needs to be repealed to remove any confusion.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):

1. Agenda, relevant Meeting Materials, and Minutes of the Physician Assistant Board's August 7, 2020, meeting.
2. Agenda and Minutes of the Physician Assistant Board's November 9, 2020, meeting.
3. Agenda, Minutes, and relevant Meeting Materials of the Physician Assistant Board's February 8, 2021, meeting.
4. Agenda, Minutes, and relevant Meeting Materials of the Physician Assistant Board's November 8, 2021, meeting.
5. SB 697 (Caballero, Chapter 707, Statutes of 2019)

Business Impact

This regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the requirements of this regulation are already imposed by the statutory changes created by the passage of SB 697, so that any economic impact is not the result of this regulation.

Economic Impact Assessment

This regulatory proposal will have the following effects:

It will not create or eliminate jobs within the state of California because the proposal only lists what is required for initial applications for licensure, removes language about the Board establishing a passing score for the licensure examination, clarifies the requirement to provide the Board with an address of record, and eliminates recordkeeping requirements that conflict with statute since the passage of SB 697, all changes needed to align the Board's regulations with prevailing law.

It will not create new businesses or eliminate existing businesses within the state of California because the proposal only lists what is required for initial applications for licensure, removes language about the Board establishing a passing score for the licensure examination, clarifies the requirement to provide the Board with an address of record, and eliminates recordkeeping requirements that conflict with statute since the passage of SB 697, all changes needed to align the Board's regulations with prevailing law.

It will not affect the expansion of businesses currently doing business within the state of California because the proposal only lists what is required for initial applications for licensure, removes language about the Board establishing a passing score for the licensure examination, clarifies the requirement to provide the Board with an address of record, and eliminates recordkeeping requirements that conflict with statute since the passage of SB 697, all changes needed to align the Board's regulations with prevailing law.

It will benefit the health and welfare of California residents by aligning the Board's regulations with the changes to statute resulting from the passage of SB 697. By adopting this regulation, the Board seeks to support PAs who serve an increasingly diverse public, and to uphold the Board's highest priority, which is to protect an increasingly diverse public.

This regulatory proposal will not affect worker safety or the state's environment because aligning the Board's regulations with the changes to statute caused by the passage of SB 697 does not impact worker safety or involve environmental issues.

Fiscal Impact:

The proposed regulations do not result in a fiscal impact to the state because the amendments align the Board's regulations with current law and/or with existing practice.

The proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal that was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. All recommendations provided during this rulemaking were considered by the Board.