

PHYSICIAN ASSISTANT BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: August 10, 2018

Subject Matter of Proposed Regulations: Retired Status

Section Affected: Section 1399.515 of Title 16 of the California Code of Regulations

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Physician assistants are licensed health care practitioners that perform authorized medical services under the supervision of a licensed physician and surgeon. The Physician Assistant Board (Board) licenses and regulates physician assistants pursuant to the Physician Assistant Practice Act (Business and Professions Code sections 3500 and following). Business and Professions Code section 3521.3 authorizes the Board to establish, by regulation, a system for the placement of a license on a retired status. The Board has received inquiries regarding options for those physician assistants who wish to retire from practice. Currently, physician assistants only have the option to allow their licenses to lapse (become delinquent, expire, or cancel), or be placed in an inactive status, which requires payment of a fee.

The problem the Board is addressing with the adoption of this regulation is the current lack of a means for a physician assistant who is retired and no longer practicing to place their license on a retired status and alleviate the expense of license renewal fees for a license they are no longer using. In addition, it is the Board's belief that some retired physician assistants request their license be placed on an inactive status rather than having a "delinquent" or "cancelled" status because they do not like the negative connotation associated with those license statuses. Although an inactive status alleviates the need to complete continuing medical education, the licensees on an inactive status must still pay a license renewal fee. Licenses are placed in a "delinquent" status when the licensee has failed to pay their renewal fees and/or complete the renewal requirements. By providing a means to obtain a retired status, physician assistants who are no longer practicing could avoid the possible stigma in their professional community from having a licensed placed in a "delinquent" or "cancelled status" and be relieved from the expense of renewal fees and continuing medical education for a license they are no longer using.

The purpose of the proposed regulation is to establish a regulation for the placement of a physician assistant license on a retired status, upon application, using proposed Form PAB-RET Oct 2016, which is incorporated by reference at proposed Section 1399.515. This proposal would adopt a new section at 1399.515 to implement minimum eligibility

requirements for a retired license, including, a practice prohibition, an application form, ineligibility criteria if the license is currently canceled, revoked or otherwise punitively restricted or if the licensee is actively practicing, exemption from renewal requirements, and fee waivers for renewal and initial implementation of the program. In addition, proposed Section 1399.515 would create criteria for the restoration of a retired license to active status and authorize the Board to investigate violations of these new proposed standards.

2. Anticipated benefits from this regulatory action:

This proposal would establish a consistent and simple process for obtaining a retired status license and would eliminate barriers for those physician assistants who wish to retire and have the option of placing their license in a retired status. It would also save costs for those selecting this status by not requiring payment of an application fee or renewal fee. Individuals who select this status within one year following adoption would also save costs associated with transitioning from delinquent to retired status. This proposal would also alleviate confusion for the public regarding the true status of an individual who does not wish to abandon his or her license, but rather simply retire from practice.

Factual Basis/Rationale

Adopt Section 1399.515

Factual basis for the determination that each proposed adoption of Section 1399.515 is reasonably necessary to address the problem for which it is proposed:

At the Board's October 24, 2016 meeting, legal counsel advised the Board of their authority through Business and Professions Code section 3521.3 to allow individuals to place their licenses in a retired status. The Board discussed the requirements for a licensee who wishes to place his or her license on a retired status, including the required information the licensee must provide, the criteria the applicants must meet to be granted retired status, the criteria the applicants must meet if applying for retired status after the grace period and the requirements necessary to reactivate a licensee from retired status. The Board also discussed the development of the application necessary for the licensee to complete in order to be granted a retired status, which included application instructions, and personal data supplied by the licensee to be included on the form. Further discussion included whether a fee should be charged for processing the application. Staff was directed to conduct a fee analysis and to return with proposed language, a proposed application, and the results of the fee analysis.

At the Board's January 23, 2017 meeting, proposed text to adopt Section 1399.515 and the application for retired status (Form PAB-RET Oct 2016) was reviewed, discussed and approved by the Board. The Board discussed the possibility of charging a fee to process the retired status application and it was determined that the revenue to the Board would be nominal (\$10 per application). Therefore, it was decided not to charge an application

fee. The text addressed the requirements for retired status as well as the requirements to restore a retired status license to active status.

The Board proposes the adoption of the following provisions at Section 1399.515 for the following reasons:

Existing law does not establish a system, by regulation, for the placement of a license in a retired status by the Board upon application by a physician assistant who is not actively engaged in the practice of medicine or the restoration of the license to active status after retired status is obtained. This proposal would establish such a system.

Subdivision (a): Application Form PAB RET Oct 2016

Section (a) adds the application, Form PAB-RET Oct 2016, incorporated by reference, which the licensee will need to complete to request that their license be placed in a retired status. Business and Professions Code section 3521.3, subdivision (a), requires the Board to create an application to implement these retired status regulations. The form ensures that information is collected from licensees in a consistent manner to enable fair and efficient processing of the request. The form collects personally identifiable information (name, address of record, confidential street address, license number, expiration date, last 4 digits of social security number, date of birth, telephone number and email address) to enable identification of the requester and help ensure accuracy in the processing of the application. By statute and proposed section 1399.515, applicants are ineligible to obtain the status if actively engaged in the practice or performing any activity that requires license. As a result, the form requires the applicant to answer whether they are actively engaged in the practice or performing any activity that requires a license. The form also includes a requirement that the applicant certify that they have read and personally completed the form to help ensure that representations made by the applicant contain a truthful factual representation and are made in good faith.

Since Business and Professions Code section 3521.3 does not explicitly provide the minimum criteria for eligibility and a clear explanation for when fees for converting the license to a retired status may be waived, the application provides a convenient way for applicants to understand the minimum qualifications for the status, how to initiate the retired status process, and when fees for converting to retired status may be waived. This includes:

- a notice that informs the applicant that prior to a date certain (as determined by the Office of Administrative Law – it would be one year plus the effective date of the regulations), he or she may have a delinquent license when applying for a retired status and no fees would be required;
- a notice that the applicant's current license may not be canceled, suspended, revoked or otherwise punitively restricted by the Physician Assistant Board or subject to disciplinary action by the Board for the applicant to be eligible for this license status. This criteria is specifically set out in Business and Professions Code section 3521.3,

subdivision (c);

- a notice that after a date certain (as determined by the Office of Administrative Law – it would be one year plus the effective date of the regulations), if the license is delinquent, payment of all accrued renewal fees, delinquent fee, and the mandatory CURES fees must be submitted with the application. Business and Professions Code section 3521.3, subdivision (d) precludes the Board from granting a retired license to a licensee with a delinquent license, beginning one year after the effective date of the regulation. This notice explains to delinquent status licensees how they may cure their delinquent status in order to be eligible for retired status;
- a notice regarding where the applicant can mail the application and any required fees;
- a notice explaining the process for restoring the license to active status, including complying with the Board’s renewal requirements, submitting proof of completion of continuing medical education, submitting a license renewal fee, and the controlled substance utilization review and evaluation system (CURES) fee. Business and Professions Code section 3521.3 requires the Board to establish minimum qualifications for restoration of a license, and this notice simply reinforces the criteria being adopted in Section 1399.515, subdivision (b); and,
- a notice regarding exemption from the renewal fee if granted a retired status.

Finally, the form includes the required notices and disclosures to the applicant for the Board’s collection of personal information in compliance with Civil Code section 1798.17.

The form referenced in proposed Business and Professions Code section 1399.515(a) would be cumbersome, unduly expensive and otherwise impractical to publish in the California Code of Regulations. The form is available on the Board’s website and from the Board upon request.

Subdivision (a)(1)-(a)(3): Minimum Qualifications

These subdivisions are needed to set forth the minimum criteria that an applicant must meet to be issued a retired status license by the Board.

Section (a)(1) of this proposal would require that the applicant be licensed by the Board and not actively engage in practice as a physician assistant or any activity that requires licensure by the Board to qualify for a retired status. This minimum requirement is necessary since Business and Professions Code section 3521.3(a) only allows the Board to create retired license status regulations for these types of licensees. Consistent with Business and Professions Code section 3521.3(a), this proposal makes nonpractice and nonperformance of any physician assistant activities specific eligibility requirements that a licensee must meet prior to issuance of a retired license.

Section (a)(2) of this proposal would require that the applicant’s license not be canceled,

suspended, revoked or otherwise punitively restricted by the Board in anyway or subject to any disciplinary action before he or she qualifies for retired status. Business and Professions Code section 3521.3(c) requires the Board to deny any license that is canceled or has a punitive (disciplinary) restriction. To maintain consistency with that requirement, this proposal makes having an unrestricted license (no current discipline or not canceled) a specific eligibility requirement that a licensee must meet prior to issuance of a retired license. Violations of both the Medical Practice and Physician Assistant Practice Act (Acts) and their accompanying regulations are considered unprofessional conduct and grounds for discipline under Business and Professions Code section 3527, which is part of the Physician Assistant Board Practice Act's "chapter." Business and Professions Code section 3521.3(c) requires the Board to deny a retired status applicant if their exiting license is "subject to disciplinary action under this chapter." This proposal would specify that a license that has been disciplined or otherwise punitively restricted under this chapter would include disciplinary violations of both Acts and their regulations to help ensure consistency with Business and Professions Code section 3527 and in interpreting what types of disciplinary actions would render an applicant ineligible for retired status.

Business and Professions Code section 3521.3(d) requires the Board to deny any application for a retired status if it is delinquent (expired due to non-renewal), beginning one-year following the effective date of the retired status regulations. To maintain consistency with that requirement, Section (a)(3) of this proposal would specify that, beginning one (1) year from the effective date of the regulation, the applicant's license cannot be delinquent. This would allow a one-year grace period for individuals seeking to avail themselves of this new retired status without paying any fees. After that grace period, the applicant must pay all outstanding fees with the retired status application, consistent with existing law.

"Outstanding fees" would include all accrued renewal fees, a twenty-five dollar (\$25) delinquency fee, and the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as required by Section 208 of the Business and Professions Code, before their license can be placed in a retired status. Existing law at Business and Professions Codes sections 208, 3521.1, and 3524 of the Business and Professions Code require these fees to be paid prior to reactivation of any delinquent license. However, there are no existing standards that explain that these fees must be paid as part of the eligibility requirements for a retired status license after the grace period ends. Adoption of these fee requirements are necessary to make it clear to an applicant for a retired status what fees are required to be paid after the grace period ends. To facilitate an easier application process, this proposal would clarify that submission of these outstanding fees with this application would be all that is needed to initiate the application process after the grace period ends.

Subdivision (b): Standards for holders of a retired status license

Section (b) of this proposal would specify the requirements a licensee must meet to maintain their license in a retired status, and the requirements to restore a retired license

to an active status.

To make it clearer that a qualification to maintain the retired license includes not performing activities as a physician assistant, the proposal at Section (b)(1) specifies that the holder of a retired license shall not engage in any activity for which a license is required. This criteria is required under Business and Professions Code section 3521.3(b) and is included in the proposed regulation in order to consolidate the requirements in a single place.

Business and Professions Code section 3521.3(f) authorizes the Board to exempt holders of a retired status license from the renewal requirements in Business and Professions Code section 3524.5. Since requiring continuing education for a non-practicing physician assistant is not necessary to protect patients, the Board proposes to eliminate continuing education requirements for retired license holders. Section (b)(2) would specify that the holder of a retired license will be exempt from the continuing education renewal requirements.

Business and Professions Code section 3521.3(g) authorizes the Board to establish minimum qualifications for the restoration of a retired status license. To help ensure that licensees maintain competency and are safe to return to active practice as well as to enable the Board to sustain sufficient funding for oversight, the following minimum requirements for restoration of the license to active status are proposed. Section (b)(3)'s minimum requirements would include compliance with the Board's current renewal application requirements at Title 16 of the California Code of Regulations section 1399.514 of the Board's regulations, completion of continuing medical education requirements as described in Section 1399.615 of the Board's regulations, submission of license renewal fees as set forth in Section 1399.550 of the Board's regulations, and the mandatory CURES fee as required for all active licensees in Section 208 of the Business and Professions Code.

Subdivision (c): Complaint Investigations of Retired Status Violations

Existing law at Section 108 of the Business and Professions Code generally authorizes the Board, in its discretion, to investigate violations of laws under its jurisdiction. Business and Professions Code section 464(c) authorizes Boards establishing retired licensure regulations to, upon their own determination, investigate a retired license. Business and Professions Code section 464(c) requires such Boards to investigate retired licenses upon receipt of a complaint. Subdivision (c) of the proposed regulation conforms to these statutory requirements. However, existing law does not specifically require the Board to investigate compliance with this regulation relating to qualifications for retired status licenses. This proposal at Section (c) would authorize the Board to investigate the actions of any licensee, upon its own determination or upon complaint from a person, who may be in violation of this regulation. Since complaints associated with violation of the Board's proposed standards could involve prohibited practice, risks associated with violations of these provisions is high. As a result, this regulatory proposal is necessary to prioritize investigation of this type of complaint, to authorize the Board to independently investigate

eligibility or compliance with the proposed standards, and to remove any question regarding whether complaints involving violations of the Board's retired licensee standards should be investigated.

Underlying Data

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

- (1) Minutes of the Physician Assistant Board's October 24, 2016 meeting.
- (2) Minutes of the Physician Assistant Board's January 23, 2017 meeting.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts:

There is no business impact because this proposed regulation will establish a regulation for the placement of a license on a retired status for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the Board. Since physician assistants currently choose to go inactive, or allow their licenses to lapse or cancel when they retire, there would be no effect on businesses when an individual chooses merely to change their license title to "retired."

The Physician Assistant Board has approximately 11,735 licensees for the 2016/2017 fiscal year. The Board anticipates approximately 3 percent of licensees to request retired status. Individuals that place their license in a retired status would have a bi-annual savings of the cost to renew their license and the cost of continuing medical education.

The initial savings for an individual would be \$312 if they were renewing their license in an active status and \$300 if they were renewing their license in a current-inactive status. This would be a bi-annual savings for the remainder of their lives. The licensee would also see savings relating to the cost of continuing medical education (CME), which varies between home study, specific focus courses, and in person meetings. CME costs an average of \$46 per credit at 50 credits bi-annually, which could be a potential savings of \$2,300 per renewal cycle.

To restore a retired status license to active, the licensee would have to pay the renewal fee of \$300, as well as the \$12 CURES fee. The \$312 would be a bi-annual cost for the duration of the active status. However, existing law already requires that licensees who wish to reactivate their license have to pay these fees. As a result, this regulation will not cause any individual to incur any additional costs as a result of this regulatory proposal.

Economic Impact Assessment

This regulatory proposal will have the following effects:

It will not create or eliminate jobs within the State of California because this proposed regulation will allow individuals already retired from working as a physician assistant or considering retirement the opportunity to place a license on a retired status. Since physician assistants currently choose to go inactive, or allow their licenses to lapse or cancel when they retire, there would be no effect on the workforce related to a mere change in title to “retired.”

It will not create new business or eliminate existing businesses within the State of California because the proposal will establish a regulation for the placement of a license on a retired status for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the Board and meets other requirements.

It will not affect the expansion of businesses currently doing business within the State of California because the proposal will establish a regulation for the placement of a license on a retired status for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the board and meets other requirements.

This regulatory proposal will benefit the health and welfare of California residents because if a consumer is searching for a physician assistant that they have seen through the public data base and a “retired” status is shown, the consumer would know the physician assistant is no longer allowed to practice. This proposal would also alleviate confusion for the public regarding the true status of an individual who does not wish to abandon his or her license, but rather simply retire from practice.

This regulatory proposal would not affect worker safety because this proposal does not involve worker safety. The proposed regulation establishes a regulation for the placement of a license on a retired status for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the board and meets other requirements.

This regulatory proposal will not affect the state’s environment because this proposed regulation does not involve the environment. This proposed regulation establishes a regulation for the placement of a license on a retired status for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the board and meets other requirements.

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 would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less

burdensome 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.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulation: This alternative was rejected because, in order to establish a system to place a license on a retired status, a regulation must be adopted.
2. Adopt the regulation: The Board determined that this alternative is the most feasible because it establishes a regulation, including a simplified application process, for the placement of a license on a retired status for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the Board and meets other requirements. Without this regulation if a physician assistant is no longer working, their options for renewal are to renew as if they were still working, place their license in an inactive status, which still requires them to pay the renewal fee, or not renew at all, which places their license in a delinquent status and will be cancelled in five (5) years. If this regulation is adopted it would eliminate the expense of renewal and remove the negative connotation of delinquent, inactive or cancelled status.