

TITLE 16. PHYSICIAN ASSISTANT BOARD

(Notice published TBD)

NOTICE OF PROPOSED RULEMAKING

The Physician Assistant Board (Board) proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or his/her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 263-2671 or by e-mail to jasmine.dhillon@dca.ca.gov. The written comment period closes at **5:00 p.m. on Tuesday, May 18, 2021**. The Board will consider only comments received at the Board's office by that time. Submit comments to the persons listed under "Contact Persons" below.

AUTHORITY AND REFERENCE

Business and Professions Code section 3510 authorizes the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 480, 482, 3504.1, 3510, 3527, 3528, 3530 and 3531 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board licenses physician assistants, who are licensed health care practitioners that provide medical services under the supervision of a licensed physician and surgeon (Business and Professions Code section 3502). Existing law (Business and Professions Code sections 480 and 490) presently authorizes the Board to deny an application for licensure or discipline a physician assistant based on a conviction for a crime or act substantially related to the licensed business or profession. Business and Professions Code section 481 authorizes the Board to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the physician assistant profession. Business and Professions Code section 482 requires the Board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering

the denial or discipline of a physician assistant license. Consistent with that authority, the Board has adopted regulations that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a physician assistant licensee.

In July 2009, the Los Angeles Times published an article indicating that the Board of Registered Nursing often takes years to take disciplinary action on complaints of egregious misconduct, while the licensees were still practicing. As a result of the article, the Department of Consumer Affairs (Department) held an informational hearing and investigated the problems that were addressed in the Los Angeles Times article. The Department developed a report (Department of Consumer Affairs “Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010”) regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards.

In 2011 the Department encouraged this Board to adopt its recommendations to enhance consumer protection, including this regulation that requires the Board to deny an application or petition for reinstatement, or promptly revoke the license of any individual who is required to register as a sex offender in every case as provided in subsection (a). The regulation also includes a few exceptions to these prohibitions in subsection (b); mainly exceptions in cases where an individual was relieved of the requirement to register, the requirement for registration was terminated, or the individual was convicted of a misdemeanor under Penal Code section 314 (indecent exposure). However, the Board explicitly retained its discretion to deny or discipline a licensee under any other provision of state law for this conduct.

Effective July 1, 2020, under the provisions of Assembly Bill (AB) 2138 (Stats. 2018, ch. 995), the Board’s existing authority to deny an initial applicant a license based upon a substantially related criminal conviction significantly changed. This proposal seeks to update the Board’s current regulations consistent with this recently enacted legislation and to more accurately reflect the Board’s authority to consider denials, discipline or petitions for reinstatement or modification of penalty for individuals required to register as a sex offender under California law or its equivalent in another state or territory, or under military or federal law.

Effective July 1, 2020, Business and Professions Code section 480 (Section 480), subdivision (b) prohibits the Board from denying a license to a person on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Business and Professions Code section 482. As a result, the Board needs to revise 16 CCR 1399.523.5 to make it consistent with the aforementioned changes to the law enacted by AB 2138. This includes permitting an individual who is required to register as a sex offender to be eligible for licensure if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or made a “showing of rehabilitation.”

Anticipated Benefits of the Proposed Regulation:

The proposed amendment would allow applicants the opportunity to supply evidence to the Board of rehabilitation without automatically being denied a license based on sex offender registration. AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. This includes permitting an individual who is required to register as a sex offender to be eligible for licensure if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or made a showing of rehabilitation. These proposed amendments would further that goal by adopting criteria that would remove restrictions for an initial applicant to qualify for licensure under the aforementioned conditions, provide notice to applicants of these new eligibility requirements, and emphasize an applicant's rehabilitative efforts. This may lead to fewer denials and an increase in the number of licensed physician assistants in the marketplace. Therefore, this may allow for more health care providers to treat increasing numbers of California consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: The Board anticipates increased costs to the state as a result of adopting and amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see increased workload to research convictions and to substantiate rehabilitation has been achieved. Any workload and costs are anticipated to be minor and absorbable within existing resources.

Because the Board historically denies less than one initial application per year, no increase in the number of initial applications approved per year is anticipated. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to any expansion of the licensee population.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Cost impacts on a representative private person or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals: None

Significant effect on housing costs: None

Business Impact:

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

The Board has approximately 12,980 licensees for the current fiscal year. During the 2016/2017 fiscal year the Board issued 1,064 licenses and denied two (2), in fiscal year 2017/2018 the Board issued 1,096 licenses and denied two (2), and during the 2018/2019 fiscal year the Board has issued 1,189 licenses and denied one (1). The Board has denied 0.15% of all applicants. The Board has never received an initial application for licensure from a registered sex offender. However, in fiscal year 2018/2019 the Board received a request for reinstatement from a former licensee whose license had been revoked and that reinstatement was denied because the former licensee was a registered sex offender.

Since the Board has denied less than 1% of all applicants this proposal will not have a significant statewide adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, or made a showing of rehabilitation, or the conviction was dismissed or expunged. These amendments will further assist in that effort through adoption of standards designed to permit an initial applicant who is required to register as a sex offender to be eligible for licensure if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation. As a result, it is anticipated that there may be fewer denials based upon these types of criminal convictions requiring sex offender registration, and therefore, no significant or statewide adverse economic impacts.

Effect on Small Business:

The Board has determined that the proposed regulation would not affect small businesses because the proposal is not of sufficient magnitude to expand businesses. Historically, similar regulations adopted by the Board resulted in less than one percent (1%) of all applicants being denied. Even assuming that the number of denials would decrease as a result of these amendments, the Board believes that this data demonstrates that it would not be significant enough to expand businesses who hire physician assistants.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

It will not create new business or eliminate existing businesses and will not affect the expansion of businesses currently doing business within the State of California because the proposal is not of sufficient magnitude to create or eliminate businesses. Historically, similar regulations adopted by the Board resulted in less than one percent (1%) of all applicants being denied. Even assuming that the number of denials would decrease as a result of these amendments, the Board believes that this data demonstrates that these amendments would not be significant enough to create or eliminate businesses who hire physician assistants.

This regulatory proposal may have an incremental impact on the creation of jobs within the State of California, because the proposal amends the regulation to add explicit exemptions for applicants meeting the specific criteria which may result in having fewer license denials based on sex offender registration. However, the Board does not have data to project the number of jobs that may be created as a result of these efforts.

This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, it will create an opportunity for employment for people who are required to register as a sex offender and are able to make a showing of rehabilitation. This may lead to an increase in physician assistants in the marketplace, therefore allowing for more health care providers to treat increasing numbers of California consumers.

This regulatory proposal will not affect worker safety because the proposal does not involve worker safety.

This regulatory proposal will not affect the State's environment because it does not involve environmental issues.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present written comments to the Contact Persons below during the written comment period. The Board further invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the hearing, if any is scheduled.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Name: Jasmine Dhillon
Address: 2005 Evergreen Street, Suite 2250
Sacramento, CA 95815-3893
Telephone No.: (279) 666-2838
Fax No.: (916) 263-2671
E-Mail Address: jasmine.dhillon@dca.ca.gov

The backup contact person is:

Name: Kristy Voong
Address: 2005 Evergreen Street, Suite 2250
Sacramento, CA 95815-3893
Telephone No.: (916) 561-8787
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E-Mail Address: kristy.voong@dca.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and, if any, other information which the rulemaking is based, including the Physician Assistant Board's April 29, 2019 meeting minutes, Assembly Bill 2138 (as amended in Assembly April 2, 2018), Assembly Bill 2138 (as amended in Senate June 20, 2018), Assembly Bill 2138 (chapter 995, Statutes of 2018), Senate Committee on Business, Professions and Economic Development Analysis for AB 2138, dated June 18, 2018, and Assembly Floor Analysis for AB 2138 dated August 24, 2018.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Jasmine Dhillon at the address indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Dhillon at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at: .
[Proposed Regulations - Physician Assistant Board \(ca.gov\)](https://www.pab.ca.gov/Proposed_Regulations_-_Physician_Assistant_Board_(ca.gov))
[https://www.pab.ca.gov/about_us/lawsregs/regulations.shtml]