

TITLE 16. PHYSICIAN ASSISTANT BOARD

(Notice published February 9, 2018)

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 will hold a public hearing starting at **9:00 a.m. on April 23, 2018**, in the Hearing Room located at 2005 Evergreen Street, Suite 1150A, Sacramento, California 95815. The Hearing Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or 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 anita.winslow@mbc.ca.gov. The written comment period closes at **5:00 p.m. on April 23, 2018**. The Board will consider only comments received at the Board offices by that time. Submit comments to:

Anita Winslow, Regulatory Coordinator
Physician Assistant Board
2005 Evergreen Street, Suite 1100
Sacramento, CA 95815-3893

AUTHORITY AND REFERENCE

Business and Professions Code sections 125.9, 148 and 3510 authorize the Board to adopt this proposed regulation. The proposed regulation implement, interpret, and make specific sections 125.9 and 148 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Profession Code section 148 (Section 148) authorizes the Physician Assistant Board (Board) to establish, by regulation, a system similar to that authorized by Business and Professions Code section 125.9, for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the Board. Existing regulation, Title 16, California Code of Regulations (CCR) section 1399.573 (Section 1399.573) limits the executive officer's authority to

issue unlicensed activity citations, fines and orders of abatement only in cases where an individual who was previously licensed by the Board has practiced with a delinquent license (i.e., the license expired).

In 2014, the Board received a complaint that a person who had never been licensed as a physician assistant had seen patients, performed patient exams and identified himself as a licensed physician assistant. A request by the Board for a criminal misdemeanor prosecution was declined. As a result, the Board had no legal recourse to prevent further violations of the law and to protect consumers since the Board had no authority to issue a citation, fine and order of abatement for unlicensed activity to persons who had never been previously licensed by the Board due to the limitations in Section 1399.573.

To avoid a recurrence of the type of problem faced by the Board in 2014, the Board proposes to expand the authority of the executive officer to issue citations and fines to those who have never been licensed and are holding or have held themselves out as a physician assistant. Currently, Section 11399.573 states that a citation may be issued “only in the case of a physician assistant who has practiced with a delinquent license.” This proposal would strike that language and replace it with language that states that a citation may be issued “against any person who is acting in the capacity of a licensee under the jurisdiction of the board and who is not otherwise exempt from licensure.”

Anticipated Benefits of the Proposed Regulation:

The Board’s mission is to protect consumers. It is the Board’s responsibility to set minimum licensing standards for physician assistants in the practice of medicine and to ensure that those standards are continuously met for the protection of the public. This proposal would allow the Board to better protect the health, safety and welfare of consumers by authorizing the Board to issue citations, fines and orders of abatement to any person who is acting in the capacity of a physician assistant without licensure. This would help enforce current law, provide better consumer protection, deter prospective violators, and help provide a fair and competitive environment for the Board’s licensees.

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: None

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:

The Physician Assistant Board has determined that the proposed amendment will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts or evidence, documents, and testimony:

The Physician Assistant Board has approximately 11,044 licensees for the current fiscal year. Physician assistants work in a variety of practice settings and specialties under the supervision of licensed physicians. Aside from the incident in 2014, the Board does not have data on the number of individuals who have never been licensed and are holding themselves out as a physician assistant. However, the regulatory proposal would only affect an individual if they are found to be in violation. A licensee that is found to be non-compliant with statutes and regulations enforced by the Board may be impacted through the assessment of a citation with an administrative fine which may not exceed \$5,000 for each inspection or each investigation made with respect to the violation in accordance with Section 125.9(b)(3) of the Business and Professions Code. In the last three years, the Board has issued four (4) citations to individuals who have practiced without a license with an average cost of \$500 each.

Effect on Small Business:

The Physician Assistant Board has determined that the proposed regulations would not affect small businesses because it would only affect those persons engaging in unlicensed activity under the Board's jurisdiction.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

It will not create or eliminate jobs within the State of California because this proposed regulation will authorize the Board's executive officer to issue citations and orders of abatement and levy fines in cases of unlicensed activity and the potential economic

impact should not be significant if individuals comply, including seeking licensure with the Board. This proposal will update the executive officer's authorization to issue citations and orders of abatement and levy fines in cases of unlicensed activity. However, the regulatory proposal would only affect an individual if they are found to be in violation. A licensee that is found to be non-compliant with statutes and regulations enforced by the Board may be impacted through the assessment of a citation with an administrative fine which may not exceed \$5,000 for each inspection or each investigation made with respect to the violation in accordance with Section 125.9(b)(3) of the Business and Professions Code. In the last three years, the Board has only issued four (4) citations to individuals who have practiced without a license with an average cost of \$500 each.

It will not create new business or eliminate existing businesses within the State of California because the proposal will update the executive officer's authorization to issue citations and orders of abatement and levy fines in cases of unlicensed activity and the proposal should not affect businesses that hire only licensed physician assistants.

It will not affect the expansion of businesses currently doing business within the State of California because the proposal will update the executive officer's authorization to issue citations and orders of abatement and levy fines in cases of unlicensed activity and the proposal should not affect businesses that hire only licensed physician assistants.

This regulatory proposal will benefit the health and welfare of California residents because authorizing the executive officer to issue citations and orders of abatement and levy fines in cases of unlicensed activity enhances consumer protection, by protecting the consumer from receiving substandard care from unlicensed individuals acting in the capacity of a licensee under the Board's jurisdiction. This proposal would also help enforce current law, provide better consumer protection, deter prospective violators, and help provide a fair and competitive environment for the Board's licensees.

This regulatory proposal could affect worker safety because this proposed regulation authorizes the board's executive officer to issue citations and orders of abatement and levy fines in the cases of unlicensed activity which could protect workers from receiving substandard care from unlicensed individuals acting in the capacity of a licensee under the Board's jurisdiction.

This regulatory proposal will not affect the State's environment because updating the executive officer's authority to issue citations and orders of abatement and levy fines in cases of unlicensed activity 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 action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, 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 statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Name: Anita Winslow
Address: 2005 Evergreen Street, Suite 1100
Sacramento, CA 95815-3893
Telephone No.: (916) 561-8782
Fax No.: (916) 263-2671
E-Mail Address: anita.winslow@mbc.ca.gov

The backup contact person is:

Name: Lynn Forsyth
Address: 2005 Evergreen Street, Suite 1100
Sacramento, CA 95815-3893
Telephone No.: (916) 561-8785
Fax No.: (916) 263-2671
E-Mail Address: lynn.forsyth@mbc.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, and the initial statement of reasons, if any, or other information which the rulemaking is based, minutes of the Physician Assistant Board's November 3, 2014 and February 9, 2015 meetings.

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 Anita Winslow 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. Winslow 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: www.pac.ca.gov .