

PHYSICIAN ASSISTANT BOARD

INITIAL STATEMENT OF REASONS

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

Subject Matter of Proposed Regulations: Implicit Bias Training in Approved Continuing Medical Education Programs

Section Affected: Section 1399.616 of Article 8 of Division 13.8 of Title 16 of the California Code of Regulations¹

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Assembly Bill (AB) 241 (Kamlager-Dove, Chapter 417, Statutes of 2019) requires continuing education courses for physicians and surgeons, nurses, and physician assistants to include instruction in the understanding of implicit bias and the promotion of bias-reducing strategies. This bill adds a new requirement that for a course to be approved to meet the continuing medical education (CME) requirements for licensees, it must include curriculum on the understanding of implicit bias.

According to the Stanford Encyclopedia of Philosophy, “implicit bias” can be described as “a term of art referring to relatively unconscious and relatively automatic features of prejudiced judgment and social behavior.” In her 2019 book *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do*, Dr. Jennifer L. Eberhardt explains that “implicit bias is not a new way of calling someone a racist. In fact, you don’t have to be a racist at all to be influenced by it. Implicit bias is a kind of distorting lens that’s a product of both the architecture of our brain and the disparities in our society.” Dr. Eberhardt goes on to describe how “bias is not limited to one domain of life. It is not limited to one profession, one race, or one country. It is also not limited to one stereotypic association.”

AB 241 requires the Board to adopt regulations to require, beginning January 1, 2022, all CME courses for physician assistants that contain a direct patient care component include curriculum that includes instruction in the understanding of implicit bias and the promotion of bias-reducing strategies. It also requires CME providers to ensure compliance beginning January 1, 2023, and requires the Board to audit CME providers at least once every five years to ensure adherence to regulatory requirements, and to withhold or rescind approval from any provider that is in violation. Since the Board has a “deemed approved” program, which means that the programs are deemed approved if they are offered by one of the sponsors and are designated as Category 1 (Pre-approved) as indicated in CCR section 1399.616, the Board will develop a CME

¹ All CCR references are to Title 16 unless otherwise noted.

provider audit at a later date.

2. Anticipated benefits from this regulatory action:

The proposed amendments bring the Board's regulations into compliance with AB 241 by adding a new provision to existing CCR 1399.616 subdivision (a) requiring programs to meet the new implicit bias curriculum requirements in AB 241 to be considered approved by the Board. AB 241 requires the Board to adopt regulations for compliance with the bill by January 1, 2022. Therefore, this new subdivision requires all CME courses for physician assistants that contain a direct patient care component to contain curriculum that includes instruction in the understanding of implicit bias in medical treatment. The bill would require, by January 1, 2023, that CME providers that offer these CME courses ensure compliance with these provisions.

The proposed amendments also add to CCR 1399.616 a new subdivision (b) that states: "Beginning January 1, 2022, any continuing medical education course that includes a direct patient care component shall include curriculum that includes an understanding of implicit bias pursuant to 3524.5 of the Code."

Instruction in understanding implicit bias will increase awareness among physician assistants about issues that can unconsciously influence the care they provide and will help them adjust their practices to better serve their communities. This measure offers a potentially promising step toward addressing costly inequities in healthcare treatment, reducing health disparities among California's diverse population, and aiding in creating a professional environment that provides equal treatment to everyone.

Factual Basis/Rationale

Business and Professions Code (Code or BPC) section 3524.5 instructs the Board to establish by regulation that on or after January 1, 2022, all continuing medical education courses for licensees that include a direct patient care component must contain curriculum that includes instruction in the understanding of implicit bias.

At the Board's April 29, 2019 meeting, Board members discussed the bill's mandate for the specified healing arts boards (including the Physician Assistant Board) to adopt regulations requiring the curriculum for CME for their licensees to include instruction and testing on understanding and reducing implicit bias in medical treatment.

At the Board's August 9, 2019 meeting, Board members discussed an amendment that had been made to AB 241 that incorrectly inserted the phrase "nurses and nurse practitioners" into the Physician Assistant Practice Act. The Board voted to direct staff to contact the author to request the bill be amended to replace the incorrect language with the phrase "physician assistants." On August 28, 2019, per the Board's request, AB 241 was amended to replace the improper reference to nurses and nurse practitioners with the phrase "physician assistants."

At the Board's January 13, 2020 meeting, Board members discussed and approved

proposed changes to CCR section 1399.616 to implement the changes to 3524.5 of the Code. The proposed language requires all CME courses for physician assistants that contain a direct patient care component to contain curriculum that includes instruction in the understanding of implicit bias in medical treatment as set forth in BPC section 3524.5.

In summary, this proposal would clarify, interpret, and make specific the requirement that CME courses that include a direct patient care component must contain curriculum that includes instruction in the understanding of implicit bias.

Specifically, the Board proposes the adoption of the following amendments to CCR section 1399.616 for the following reasons:

- (1) Subdivision (a): add to the first sentence “meet the requirements of subdivision (b), and...”

Existing law does not specify any requirement for instruction in the understanding of implicit bias. New subsection (b) is added to ensure that all programs deemed approved by the Board include instruction in the understanding of implicit bias in all CME courses that include a direct patient care component. Adding this as a requirement in subdivision (a) clarifies that even the listed preapproved sponsors must follow this new requirement imposed by AB 241.

- (2) Adopt a new subdivision (b):

(b) Beginning January 1, 2022, any continuing medical education course that includes a direct patient care component shall include curriculum that includes an understanding of implicit bias pursuant to 3524.5 of the Code.

By adding this new subdivision, the regulation specifies if there is a direct patient care component within a CME course, the curriculum must include an understanding of implicit bias pursuant to BPC section 3524.5.

- (3) Relabel existing subdivision (b) to become subdivision (c).

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 April 29, 2019 meeting.
2. Agenda, relevant Meeting Materials, and Minutes of the Physician Assistant Board’s August 9, 2019 meeting.
3. Agenda, relevant Meeting Materials, and Minutes of the Physician Assistant Board’s November 4, 2019 meeting.

3. Agenda, relevant Meeting Materials, and Minutes of the Physician Assistant Board's January 13, 2020 meeting.
4. AB 241 (Kamlager-Dove, Chapter 417, 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 following facts:

The requirements of this regulation are already imposed by statute, and any economic impact is not the result of this regulation. The Board accepts CME certificates from five agencies as well as certificates that are recognized by one of those agencies. The agencies may well incur a cost to change their curriculum to conform to the requirements of BPC section 3524.5, but they would have to do so whether or not the Board adopts this regulation. The Board does not have any data on how many classes this would affect or the cost the agencies may incur in complying with the law.

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 clarifies the statutorily mandated requirement that to obtain Board approval, by January 1, 2022, all CME courses that have a direct patient care component must have curriculum that includes instruction on implicit bias pursuant to BPC section 3524.5.

It will not create new businesses or eliminate existing businesses within the state of California because the proposal only clarifies the statutorily mandated requirement that to obtain Board approval, by January 1, 2022, all CME programs that have a direct patient care component must have curriculum that includes instruction on implicit bias pursuant to BPC section 3524.5.

It will not affect the expansion of businesses currently doing business within the state of California because the proposal clarifies the statutorily mandated requirement that to obtain Board approval, by January 1, 2022, all CME programs that have a direct patient care component must have curriculum that includes instruction on implicit bias pursuant to BPC section 3524.5.

This regulatory proposal will benefit the health and welfare of California residents because instruction in understanding implicit bias will result in improved decision-making by better educated physician assistants, which will in turn benefit the public by providing better health care to minorities and stereotyped groups. By adopting this regulation, the Board seeks to support physician assistants who serve an increasingly more diverse public, and to uphold the Board's highest priority, which is to protect an

increasingly more diverse public.

This regulatory proposal may have a positive impact on worker safety if reducing implicit biases towards minority and stereotyped patients and providing strategies to address unintended biases also reduces biased decision making in the workplace, contributing to better worker safety and health. This regulatory proposal will not affect the state's environment because it does not involve environmental issues.

Fiscal Impact:

The Board does not anticipate any increased costs to the state as a result of amending 16 CCR section 1399.616 as described in this proposal.

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 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.

Set forth below are the alternatives which were considered, and the reason the alternative was rejected:

1. Not amend the regulation: This alternative was rejected because AB 241 expressly requires the Board adopt regulations for compliance with the bill by January 1, 2022. Therefore, as of January 1, 2022, the Board is compelled by law to require all physician assistant CME courses with a direct patient care component contain curriculum that includes instruction in the understanding of implicit bias in medical treatment.
2. Amend the regulation: The Board determined that AB 241 requires CME courses for physicians and surgeons, nurses, and physician assistants that have a direct patient care component must include specified instruction in understanding implicit bias and the promotion of bias-reducing strategies. This bill adds a new requirement that for a course to be approved to meet the CME requirements for licensees, if it contains a direct patient care component, the course must include curriculum that includes an understanding of implicit bias.