

PHYSICIAN ASSISTANT BOARD
FINAL STATEMENT OF REASONS

Hearing Date: January 28, 2019

Subject Matter of Proposed Regulations: Audit and Sanctions for Noncompliance

Sections Affected: 1399.617 of Title 16 of the California Code of Regulations

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

On July 18, 2019, the Board noticed for 15 days Modified Text amending the second sentence of subsection (a) to add “of the date” and “written”, the last sentence of subsection (a) to add “of the date”, “second written”, and “for proof of compliance”, in subsection (b) remove the “,” after the word inquiry, and in subsection (c) change the word “with” to “during”. These changes were made to the proposed language for clarity and consistency as requested by the Office of Administrative Law.

On July 25, 2019 the Board received public comment indicating the number of days required to respond to the Board’s written request should specify “calendar days” instead of just days. At the August 9, 2019 Physician Assistant Board meeting, the Board members rejected the proposed change and comment to the modified regulatory text for section 1399.617 and moved to adopt the proposed regulations as established in the 15-day notice of modified text.

The above-mentioned changes do not affect the purpose or the scope of the originally proposed regulatory changes.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This regulation will not have a significant adverse economic impact on small businesses. This determination is based on the following facts or evidence/documents/testimony:

The Board has approximately 12,280 licensees for the current fiscal year. The Board only has authority to take administrative actions against a licensee and not a business. Accordingly, the initial or ongoing impact to a business at which a licensee works who is the subject of disciplinary or citation action for violating this regulation cannot be projected. Businesses employing licensees who are in compliance with the law will not incur any fiscal impact.

A licensee who is found to be non-compliant with CME regulations enforced by the Board may

also be impacted through the assessment of a citation with an administrative fine pursuant to Section 1399.571, and 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. Only individual licensees who fail to provide accurate, complete and timely information to the Board in response to an audit would be impacted by this regulation. CME audits began in May 2016. For the fiscal year 2016/2017, the Board issued approximately 540 audits. Of those audits, there were twelve (12) licensees who did not respond to the audit. If this regulation were implemented, the Board would typically issue a citation and fine for any potential violation in the amount of \$250 and an order of abatement to comply with the audit. Also, these audits have indicated that five (5) licensees failed the audit (did not complete CME or provide NCCPA certification proof) and failed to provide accurate information to the CME response on their renewal application. If this regulation were implemented, it is anticipated that the Board would issue a citation and fine of \$500 (\$250 for failing to complete the CME requirement during the renewal cycle and \$250 for failing to provide accurate information on their renewal application) for these violations. Based upon past noncompliance statistics, it is estimated that this would generate \$5,500 annually in revenue for the Board if this regulation were implemented.

Anticipated Benefits of this Proposal

Continuing Medical Education (CME) requirements help the Board in its mission of consumer protection by ensuring licensees maintain their professional competency. This regulatory proposal will help to strengthen CME compliance by requiring licensees to respond within specified time frames, provide accurate and complete information in response to CME audits conducted by the Board, and provide the Board with additional enforcement mechanisms for CME audits. Since Section 1399.571 of Title 16 of the California Code of Regulations already authorizes the Board's Executive Officer to issue citations for a violation of any of the Board's regulations, this proposal would allow the Executive Officer to issue a citation for those licensees who fail to respond to the audit inquiry or provide incomplete or inaccurate information when requested, thus ensuring that the Board is better able to obtain CME compliance for the protection of the public. This regulatory proposal will also clear up any confusion for licensees over how to count hours earned to make up any deficiency uncovered by an audit and how those hours are accounted for in the next renewal cycle.

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 reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small business:

1. Not amend the regulation: This alternative was rejected because it would not address current compliance deficiencies. Section 1399.617 does not require licensees to respond to a board inquiry within a certain time frame nor does it characterize as unprofessional conduct the failure to provide accurate or complete information in response to a board inquiry. It also does not clarify that hours required to be earned to make up any deficiency in CME cannot be counted towards compliance with the current or next biennial renewal period.

2. Amend the regulation: The Board determined that amending Section 1399.617 would allow the Executive Officer to discipline, or issue a citation, fine and order of abatement for those licensees who fail to respond to the CME audit inquiry or provide complete or accurate information when requested, as well as set parameters for the licensee as to how much time they have to respond to the audit. This regulatory proposal will also clear up any confusion over how to count hours earned to make up any deficiency uncovered by an audit and how those hours are accounted for in the next renewal cycle.

Objections or Recommendations/Responses

There were no comments, objections, or recommendations concerning the proposed amendment during the 45-day Notice period, or at the January 28, 2019 public hearing.

Comments received during the 15-day Notice period:

Comment from Judith Alvarado, Deputy Attorney General, CA Attorney General's Office on July 25, 2019:

Judith Alvarado, on behalf of the Attorney General's office, requested the originally proposed modified text amended to add the word "calendar" in front of the word days in both the second sentence and last sentence of subsection (a).

Response to comment received during the 15-day Notice period: The comment was rejected.

At the August 9, 2019 Physician Assistant Board meeting, the Board members rejected the proposed comment to the modified regulatory text for section 1399.617 as unnecessary. It is the Board's understanding that when a statute or regulation refers to "days" it is presumed to be calendar days unless specified in the regulation that it is business days. Staff have confirmed with OAL that calendar days is always assumed unless specified in the regulation that it is business days.

Finding of Necessity

There are no reports required by this regulatory proposal.

Incorporation by Reference

There are no documents incorporated by reference.