

## TITLE 16. PHYSICIAN ASSISTANT BOARD

(Notice published November 30, 2018)

### NOTICE OF PROPOSED RULEMAKING

The Physician Assistant Board (Board) proposes to amend section 1399.617 of Title 16 of the California Code of Regulations 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 January 28, 2019, 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/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](mailto:anita.winslow@mbc.ca.gov). The written comment period closes at **5:00 p.m. on January 28, 2019**. The Board will consider only comments received at the Board's office 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 section 3510 authorizes the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 3524.5 and 3527 of the Business and Professions Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 3524.5 permits the Board to require a licensee to complete continuing education as a condition of license renewal. In 2010, the Board adopted Article 8 in Division 13.8 and Sections 1399.615 through 1399.619 in Title 16 of the California Code of Regulations, which sets forth requirements for physician assistant licensees' continuing medical education. Under current Section 1399.615, physician assistant continuing medical education (CME) requirements may be met by completing

50 hours of continuing medical education every two years or demonstrating certification by the National Commission on Certification of Physician Assistants (NCCPA), which also requires CME to maintain the licensee's certification.

The Board is authorized by Title 16, California Code of Regulations section 1399.617 to audit a random sample of physician assistants who have reported compliance with CME. In the Board's 2012 Sunset Review response to issues raised by legislative staff in the Board's background paper, it was reported that the Board planned to conduct CME audits on a scheduled basis to ensure compliance.

The Board has since randomly selected licensees who self-certify CME compliance on their renewal applications. The Board has sent out contact letters asking the licensees to either send in their CME documentation or ask the NCCPA to send a verification that they have maintained their certification. However, in the most recent audits conducted, licensees have failed to respond to the audit inquiry or to provide complete or accurate information when requested, which is not expressly prohibited conduct under the current regulations. Proposed amendments to subsection (a) of Section 1399.617 would expressly require a licensee to respond to any inquiry by the Board regarding compliance with the CME requirements contained in Article 8 or to provide copies of NCCPA certification records when the records cannot be obtained by the Board. Section 1399.617 also does not currently require licensees to respond to a board inquiry or provide NCCPA certification records within a certain time frame (65 days is proposed) or make it unprofessional to fail to provide accurate or complete information in response to a board inquiry. Proposed amendments to subsections (a) and (b) would implement those requirements.

In addition, the Board's staff reported that there appears to be licensee confusion over how to count hours earned to make up any deficiency uncovered by an audit when hours are earned in the next renewal cycle. Section 1399.617(c) specifies only what the licensee must do if they have not completed the required amount of CMEs during their previous renewal cycle and directs them to "make up any deficiency during the next renewal period." It does not clarify that hours required to be earned to make up any deficiency in CME cannot be counted towards compliance with the next biennial renewal period. Proposed amendments to subsection (c) would expressly provide that hours earned to make up the CME deficiency shall not be counted towards compliance with the next renewal period.

Finally, Section 3527 states, in part, that the "board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license ... for unprofessional conduct that includes, but is not limited to ... a violation of the regulations adopted by the board..." Since a violation of Section 1399.617 would be grounds for discipline under Section 3527, the Board proposes to add Section 3527 to the "notes" section of this regulation.

*Anticipated Benefits of the Proposed Regulation:*

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.

*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.

Significant effect on housing costs: None

*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 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.

*Effect on Small Business:*

The Board has determined that the proposed regulation would not affect small businesses because the proposal imposes specific requirements only on a specific set of licensees who are subject to audit and who fail to comply with audit requirements. A business owned by a licensee who faces disciplinary action due to a violation may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the state of California because the proposal imposes specific requirements only on a specific set of licensees who are

subject to audit and who fail to comply with audit requirements. A business owned by a licensee who faces disciplinary action due to a violation may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected.

This regulatory proposal will benefit the health and welfare of California residents because verification that physician assistants have met the mandatory CME requirement ensures that the physician assistant has maintained, developed, or increased their knowledge, skills, and professional performance to provide services for the public, and the profession. This allows for the physician assistant to serve the public to the best of their abilities and live up to professional standards. CME requirements and related enforcement mechanisms help the Board in its mission of consumer protection by ensuring licensees maintain their professional competency.

This regulatory proposal will not affect worker safety because the proposal does not involve worker safety. The proposal only identifies the consequence for noncompliance to the CME audit and how the licensees would also have a clearer understanding of 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.

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 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, the initial statement of reasons, the Physician Assistant Board's January 23, 2017 meeting minutes, the Physician Assistant Board's April 24, 2017 meeting minutes, the Physician Assistant Board's August 11, 2017 meeting minutes, the Physician Assistant Board's October 30, 2017 meeting minutes, and Response From Physician Assistant Committee To Issues Raised By Committee Staff In The Background Paper For Sunset Review 2012.

## 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](http://www.pac.ca.gov) .