

## 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 will hold a public hearing starting at **10:00 a.m. on January 13, 2020**, 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 13, 2020**. 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 sections 141, 480, 481, 482, 490, 493, 2018, and 3510 authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 141, 480, 481, 482, 488, 490, 493, 3527, 3530 and 3531 of the Business and Professions Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Physician Assistant Board (board) licenses physician assistants, who are 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 requires 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.

Effective July 1, 2020, under the provisions of Assembly Bill (AB) 2138 (Stats. 2018, ch. 995), the board's existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. 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.

Effective July 1, 2020, Business and Professions Code section 481(b) will require the board's existing substantial relationship criteria regulations to include all of the following:

- the nature and gravity of the offense,
- the number of years elapsed since the date of the offense, and
- the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

Further amendments to the board's regulations will be needed to address other changes to law enacted by AB 2138. These proposed amendments include the addition of references to "professional misconduct" as this will be considered a legal basis for denial under Business and Professions Code section 480. The proposed language will also add references to discipline under Business and Professions Code section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. In addition, the board proposes to add new rehabilitation criteria to help the board consider whether an applicant or licensee made a "showing of rehabilitation" as required by AB 2138 (Bus. & Prof. Code, §§ 480, 482, as added by AB 2138, §§ 4, 9). This proposal will also implement changes to how the board considers rehabilitation evidence when considering denials, discipline or a petition for reinstatement of a license or modification of a disciplinary penalty (e.g., petition for early termination of probation).

*Anticipated Benefits of the Proposed Regulation:*

The proposed amendments would place applicants and licensees on notice that the board is statutorily authorized to deny, suspend, or revoke a license on the basis of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal would also make relevant parties (e.g., the Deputy Attorneys General, Administrative Law Judges, respondents, and respondent's counsels) aware that when considering denial or discipline of applicants or licensees, the board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially

related to the practice of medicine. AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments would further that goal by adopting criteria that would emphasize an applicant's or licensee's rehabilitative efforts and what would be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed physician assistants in the marketplace, therefore allowing 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: 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:*

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 12,690 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 in the first half of fiscal year 2018/2019 the board has issued 794 licenses and denied one (1). Therefore,

the board has denied 0.17% of all applicants.

Since the board has denied less than 1% of all applicants this proposal will not have an 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, 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 implement new substantial relationship and rehabilitation criteria. As a result, it is anticipated that there may be fewer denials or disciplinary actions based upon criminal convictions 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 or discipline 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:**

This regulatory proposal will not create new business, eliminate existing businesses, or create or eliminate jobs, 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, expand, 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 or discipline 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, expand, or eliminate businesses who hire physician assistants.

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 have been convicted of a crime 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. The proposal will amend regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts or professional misconduct.

This regulatory proposal will not affect the State's environment because it does not

involve environmental issues. The proposal will amend regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts or professional misconduct.

## 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 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  
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## 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 other information which the rulemaking is based, including the Physician Assistant Board's August 10,

2018 meeting minutes, the Physician Assistant Board's November 5, 2018 meeting minutes, the Physician Assistant Board's January 28, 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 dated June 18, 2018, and Assembly Floor Analysis 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 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: [https://www.pac.ca.gov/about\\_us/lawsregs/regulations.shtml](https://www.pac.ca.gov/about_us/lawsregs/regulations.shtml).