

Board of Pharmacy Initial Statement of Reasons

Subject Matter of Proposed Regulation: Pharmacists: Requirements for Examination; and
Pharmacist Interns: Application Requirement

Section Affected: Add Section 1727.2. to Article 3 of Division 17 of Title 16 of the California
Code of Regulations
Amend Section 1728. in Article 3 of Division 17 of Title 16 of the California
Code of Regulations

Specific Purpose of the Proposed Changes:

The Board of Pharmacy proposes to add Section 1727.2. to Article 3 of Division 17 of Title 16 of the California Code of Regulations for the purpose of requiring an applicant for a Pharmacist Intern license to submit to the board with his or her application a sealed, original Self-Query Report from the National Practitioner Data Bank – Healthcare Integrity and Protection Data Bank (NPDB-HIPDB). Business and Professions Code section 4207 specifies that the board shall make a thorough investigation to determine whether an applicant is qualified for the license being sought. Existing law does not require an applicant for an Intern pharmacist license to submit an original Self-Query Report from the NPDB-HIPDB; this proposal would make it a condition of licensure for an applicant for an Intern pharmacist license to submit the Self-Query Report with his or her application, as specified. The board has determined that the requirement to submit a Self Query Report, as specified in the proposal, is necessary and pertinent to the board’s investigation and will facilitate the board’s investigation to determine if a Pharmacist Intern applicant has been the subject of discipline in another state prior to making a license decision to grant or deny a license. This proposal is necessary to place an applicant of the requirement to submit a Self-Query Report with his or her application.

Existing regulation in subdivision (a) of Section 1728 specifies requirements for applicants who are seeking board authorization to take the Pharmacist licensure examination. This subdivision requires the applicant to submit to the board proof related to hours of pharmacy practice experience; satisfactory proof of the applicant’s graduation from a recognized school of pharmacy; fingerprints; and a signed copy of the examination security acknowledgement.

This proposed regulation would also require an applicant who is seeking board authorization to take the pharmacist licensure examination to submit to the board with his or her application a sealed, original Self-Query Report from the National Practitioner Data Bank – Healthcare Integrity and Protection Data Bank (NPDB-HIPDB). Existing law does not require an applicant seeking board authorization to take the pharmacist licensure examination to submit an original Self-Query Report from the NPDB-HIPDB; this proposal would make this a requirement and condition for such an applicant. Business and Professions Code section 4207 specifies that the board shall make a thorough investigation to determine whether an applicant is qualified for the license being sought. The board has determined that the requirement to submit a Self-Query Report, as specified in the proposal, is necessary and pertinent to the board’s investigation and will facilitate the board’s investigation to determine if an applicant to take the pharmacist licensure examination has been

the subject of discipline in another state prior to making a license decision on his or her application. This proposal is necessary to place the applicant on notice of the requirement to submit a Self-Query Report with his or her application.

Factual Basis/Rationale

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations necessary for the protection of the public pertaining to the practice of pharmacy and the administration of Chapter 9 of Division 2 of the Business and Professions Code.

Business and Professions Code section 4007 sets forth limitations of rules adopted by the board, and generally authorizes the board to adopt rules and regulations regarding the functions performed under the effective supervision of a pharmacist.

Business and Professions Code section 4200 specifies requirements for applicants seeking a Pharmacist license from the Board of Pharmacy.

Business and Professions Code section 4207 requires the board to conduct a thorough investigation of each applicant to determine whether the applicant is qualified for the license being sought. This section generally specifies that the board may request any information it deems necessary to complete its investigation and that the information requested for this purpose shall not be required to be adopted by regulation.

Business and Professions Code Section 144 specifies that the Board of Pharmacy shall require an applicant to furnish a full set of fingerprints for the purpose of conducting a criminal history record check and further authorizes the board to receive criminal history information from the Department of Justice and the U.S. Federal Bureau of Investigation.

Business and Professions Code section 851 authorizes a healing arts licensure board to require an applicant to successfully complete an examination related to the license being sought.

The board's Licensing Committee discussed the potential requirement for a pharmacist or intern pharmacist applicant to submit to the board with his or her application a Self-Query report from the National Practitioner Data Bank – Health Integrity and Protection Data Bank (NPDB-HIPDB) on June 16, 2010, and then moved to recommend that the board initiate a rulemaking for such a requirement at its October 25, 2010 meeting. The board directed staff to draft language for such a rulemaking at its meeting held July 28-29, 2010, and at its October 20-21, 2010 Board Meeting, moved to initiate the rulemaking.

Underlying Data

1. March 8, 2011 Licensing Committee Meeting Materials and Minutes
2. February 1-2, 2011 Board Meeting Materials and Minutes
3. December 2, 2010 Licensing Committee Meeting Materials and Minutes
4. October 20-21, 2010 Board Meeting Materials and Minutes
5. October 19, 2010 Legislation and Regulation Committee Meeting Materials and Minutes
6. October 5, 2010 Licensing Committee Meeting Materials and Minutes

7. July 28-29, 2010 Board Meeting Materials and Minutes
8. June 16, 2010 Licensing Committee Meeting Materials and Minutes
9. Fact-Sheet on Self-Querying, National Practitioner Data Bank—Healthcare Integrity and Protection Data Bank (NPDP-HIPDB)
10. NPDB-HIPDB *Data Bank News* – April 2011 Newsletter

Business Impact

The board has made an initial determination that the proposed regulatory action would have no 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 fact that the proposed regulation does not affect a business; rather, it affects applicants (individuals) who are seeking licensure from the Board of Pharmacy.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

Section 4207 of the Business and Professions Code requires the board to make a thorough investigation of an applicant for licensure to determine whether the applicant is qualified for the license being sought. Subdivision (d) of this section provides that the information requested by the board for this purpose shall not be required to be adopted by regulation pursuant to the Administrative Procedures Act.

The board has determined that this proposal is necessary and is pertinent to the board's investigation to determine if an applicant to take the pharmacist licensure examination or an applicant for an Intern Pharmacist license has been the subject of discipline in another state prior to making a license decision.

One alternative would be to not pursue this regulation. This alternative is not reasonable because the board needs to be aware of any discipline of a health care provider / applicant in another state or states prior to making a licensing decision.

A second alternative would be to require the board of Pharmacy to query the National Practitioners Data Bank – Healthcare Integrity and Protection Data Bank for each applicant received, instead of requiring the applicant to provide this information to the board upon application for licensure. This requirement would require the board to conduct these searches as an “eligible entity” using an applicant's social security number. The board believes this is not reasonable because (1) it would increase the time it would take the board to process an application for licensure and (2) licensure could be delayed and additional deficiencies could be generated if the applicant did not provide the board with the exact name under which any discipline had been reported to the NPDB-HIPDB. Further, the board does not possess the personnel or resources to absorb this workload and/or related expenses. This alternative would have an impact to the board of approximately \$267,000 for the first year, and

approximately \$258,000 each fiscal year thereafter to cover personal services needed to process NPDB-HIPDB submissions and to pay for query requests. The board cannot absorb these additional costs and would require a license fee increase to cover such expenses.