TITLE 16. BOARD OF PHARMACY

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Compounded Drug Products

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (board) proposes taking the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office by June 3, 2024.

The board will hold a public hearing on June 18, 2024, beginning at 9:00 a.m. in the First Floor Hearing Room of the California Board of Pharmacy, 2720 Gateway Oaks Drive, Sacramento, CA 95833. Additionally, attendees may participate via the WebEx meeting platform. To participate via WebEx meeting platform please contact Lori Martinez at PharmacyRulemaking@dca.ca.gov by 4:30 p.m. on June 17, 2024, to request a link to the meeting. The link to the meeting will also be posted on the board's Laws and Regulations webpage no later than 8:00 a.m. the day of the hearing. The hearing will proceed on the date noted above until all testimony is submitted. At the hearing, any person may present oral or written statements or arguments 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 via email.

The board may, after holding a hearing if requested and considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Authority: Sections 4005, 4126.8, and 4127, Business and Professions Code. Reference: Sections 4005, 4076, 4081, 4105, 4123, 4126.8, 4126.9, 4127, 4127.1, 4127.2, 4127.8, 4169, 4301, 4306.5, and 4332, Business and Professions Code; 21 U.S.C. Sections 355 and Part 530.

Informative Digest/Policy Statement Overview

The California State Board of Pharmacy (board) is a state agency vested with the authority to regulate the pharmacy industry, including pharmacies and pharmacists. Pharmacy Law provides for the licensure and regulation of pharmacists and pharmacies by the board. The board's statutory priority is to protect the public (Business and

Professions Code (BPC) section 4001.1). Its stated mission is to protect and promote the health and safety of Californians.

Compounding is the long-standing pharmacy practice of mixing, combining, or altering ingredients. Compounding may involve merely altering an existing drug product or creating an entirely new drug product. Compounded human drugs can serve an important role for patients whose clinical needs cannot be met by an FDA-approved drug. For example, compounding is used when a patient is allergic to an ingredient in an FDA-approved drug, or for when children need a lower strength drug than what is commercially available. Compounded drugs can be preparations such as topical creams, eye drops, capsules or tablets intended for oral ingestion, or injectable solutions. Generally, each time a drug is compounded, it would be a new drug requiring compliance with all United States Food, Drug, and Cosmetic Act (FDCA) requirements, including required approval of an application by the FDA. Compounded drugs, however, may not be FDA approved. While the FDA has a role in approving the ingredients that may be used in compounding human drugs, it is not practical and would effectively prohibit all compounding of human drugs by pharmacists and pharmacies without an exemption under section 503A of the FDCA (21 U.S.C. 353a) from new drug approval and other FDCA requirements (503A exemption).

There are, however, compounding professional standards that are used across the nation known as the United States Pharmacopeia and The National Formulary (USP–NF). USP-NF is a book of public pharmacopeial standards. It contains standards for nonsterile, sterile, hazardous, and radiopharmaceutical compounding. USP–NF is a combination of two compendia, the United States Pharmacopeia (USP) and the National Formulary (NF). The FDCA designates the USP–NF as the official compendia for drugs marketed in the United States. A drug product in the U.S. market must conform to the standards in USP–NF to avoid possible charges of adulteration and misbranding.

States are the primary regulators of pharmacists and pharmacies engaged in compounding human drugs. Thus, pharmacists engaged in compounding are subject to both federal and state law. California has an extensive statutory and regulatory scheme governing compounding by pharmacies. Similar to federal law, section 111550(a) of the California Health and Safety Code prohibits the sale, delivery, or giving away of a new drug that has not has a new drug application approved under Section 505 of the FDCA. Additionally, Business and Professions Code (BPC) section 4126.8 expressly provides that the compounding of drug preparations by a pharmacy for furnishing in this state shall be consistent with “standards established in the pharmacy compounding chapters of the current version of the United States Pharmacopeia-National Formulary....” This section also expressly authorizes the Board to adopt “regulations to impose additional standards for compounding drug preparations.” Existing law also requires the board to adopt regulations establishing standards for compounding sterile drug products (primarily drugs that are injectable) in a pharmacy. (BPC § 4127.) Existing law requires pharmacies to obtain a license from the board, subject to annual renewal, in order to compound these sterile drug products. (BPC § 4127.1.) A similar licensing requirement

applies to nonresident pharmacies compounding injectable sterile drug products for shipment into California. (BPC § 4127.2.)

Additionally, BPC Section 4342 provides authority for the board to institute any action provided by law, that in its discretion, is necessary to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength provided in the latest addition of USP or that violate any provisions of the Sherman Food, Drug, and Cosmetic Law. Thus, both state and federal law require compounding pharmacies to comply with the USP chapters on compounding in lieu of compliance with current good manufacturing practices that manufacturers and outsourcing facilities must comply with.

On June 1, 2019, USP published revisions to General Chapter <795> for nonsterile compounding and General Chapter <797> for sterile compounding, as well as a new General Chapter <825> for radiopharmaceutical compounding. After publication of the revised and new compounding standards, USP received appeals on certain provisions in <795>, <797>, and <825>. Therefore, USP postponed the official date of the revised <795> and <797>, and the new general chapter <825> until further notice. General Chapter <800> for hazardous compounding was not subject to any pending appeals and became official on December 1, 2019; however, during the postponement and pending resolution of the appeals of <795> and <797>, USP indicated that <800> was informational and not compendially applicable. USP encouraged utilization of <800> in the interest of advancing public health. On November 1, 2022, USP published the final revised General Chapters of <795> and <797> and new Chapter <825> with an official effective date of November 1, 2023.

The board is required to review any formal revision to General Chapter 797 of the USP-NF relating to the compounding of sterile preparations, no later than 90 days after the revisions become official to determine whether amendments are necessary for the regulations adopted by the board. (BPC § 4127(c).) Upon publication, the board began its review of the revised standards and have worked to update its regulations.

This proposal will implement, clarify, or make more specific requirements related to the respective chapters. For ease of reference to the USP chapters, the board's proposed regulations mirror the structure of the respective chapters. This means the numbering format and section titles of the proposed regulations follow the relative USP chapter. The goal of the board's regulations is not to duplicate provisions of federal law or USP language, but to clarify or make more specific the requirements. If no clarification is needed or no additional requirements are necessary for public safety, requirements are not being added to the board's proposed text. Requirements that are already laid out in the USP chapters or federal law that are not just suggestions or discretionary recommendations, but must be followed, were not duplicated. In addition, USP requirements identified in existing regulations have been repealed to eliminate the duplication with federal law.

The board proposed additional requirements that strengthen the USP requirements. While the board can strengthen federal requirements, it cannot promulgate a lesser standard in its regulations. Section 503A is quite extensive but one of the specific conditions a licensee must meet to be eligible for the exemptions provided under 503A is that the drug product is compounded in compliance with USP chapters on pharmacy compounding. Further, as a consumer protection agency, the board must promulgate regulations through the lens of its consumer protection mandate as the law makes clear whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount (BPC 4001.1).

Anticipated Benefits of the Proposed Regulations

USP General Chapters <795> for nonsterile compounding, <797> for sterile compounding, <800> for hazardous drug handling in healthcare settings, and <825> for radiopharmaceutical preparation, compounding, dispensing, and repackaging establish the minimum national standards for compounding in the United States. This proposal aligns the board's regulations with the revised USP standards and, in some instances where there are patient safety concerns, the proposed regulations build upon the minimum USP standards s to ensure protection of all Californians who require the services of a pharmacist or pharmacy to dispense or furnish to them the compounded drug products that meet their needs. Ensuring compliance with national standards is a benefit to public health and safety, worker safety, and the environment.

Due to the extensive proposed regulatory changes that occurred, the board's proposal repeals the existing articles related to compounding in total. It adds new articles that follow each other for ease of locating and reviewing compounding regulations. It adds section numbers and titles that tend to follow the revised USP chapters for ease of cross-reference. The repeal and replace is being proposed for clarity as the proposed revisions are extensive and the changes are difficult to read and follow when proposed in a strikeout and underline format.

Consistency and Compatibility with Existing State Regulations

While developing these regulations, the board conducted a search of similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Incorporation by Reference

Controlled Environment Testing Association (CETA) Certification Guide for Sterile Compounding Facilities (CAG-003, October Revised 2022).

Fiscal Impact and Related Estimates

Fiscal Impact on Public Agencies Including Costs/Savings to State Agencies or Costs/Savings in Federal Funding to the State: The proposed regulation does not result

in a fiscal impact to the state. The board currently ensures compliance with its regulation through its robust routine inspection program.

The regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact:

The board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other States.

This initial determination is based on the absence of testimony to that effect during the public discussion and development of the proposed regulation. Additionally, the proposal aligned the board's regulation with the national minimum standard. While the board does, in some instances, establish a higher standard, the board determined that this standard will not have a significant adverse impact.

Cost Impact on Representative Private Person or Business:

The board is not aware of any negative cost impacts that a representative private person or business would necessarily incur in reasonable compliance with proposed action.

Effect on Housing Costs: None

Effect on Small Business:

While the board does not have, nor does it maintain, data to determine if any of its licensees (pharmacies and clinics) are a "small business," as defined in Government Code section 11342.610, the board has made an initial determination that the proposed regulatory action will not affect small businesses as the proposal aligns the board's regulation with the national minimum standard. While the board does, in some instances, establish a higher standard, the board determined that this standard will not have a significant adverse impact.

Results of Economic Impact Assessment/Analysis:

Impact on Jobs/New Businesses:

The Board concludes that:

(1) this proposal will not create jobs within California;
(2) this proposal will not eliminate jobs within California;
(3) this proposal will not create new businesses within California;
(4) this proposal will not eliminate existing businesses within California; and,
(5) this proposal will not expand businesses currently doing business in the State of California.

This proposal will not create or eliminate jobs and/or businesses within California. Additionally, this proposal will not expand businesses because this regulatory proposal only establishes requirements for certain individuals to obtain a temporary license to practice pharmacy in California. The regulations are aimed at providing clarity to members of the board's regulated public on the requirements specific to compounded drug products. While national standards apply to all compounding, this proposed set of compounding regulations addresses areas where the board is requiring standards that go above the minimal established by USP guidelines. The higher standards do not impact the creation or elimination of jobs or businesses within the state.

This regulatory proposal benefits the health and welfare of California residents because the proposed regulations increase the safety standards for all Californians relying on compounded and sterile compounded drug products.

This regulatory proposal benefits worker safety because the proposed regulations will increase the incentive for innovation in products, materials, or processes as those involved in the sterile compounding industry seek ways to improve products and materials as well as processes required for compounding and sterile compounding.

The regulatory proposal does not impact the state's environment. The proposal impacts the safety standards on all businesses performing compounding and sterile compounding; however, those safety standards should not impact the state's environment.

Consideration of Alternatives

The Board must determine that no reasonable alternative that it considered to the regulation, or that has otherwise been identified and brought to its attention, would either 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 proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments in writing relevant to the above determinations at the address listed for the Contact Person during the written comment period.

Availability of Text of Proposal and Initial Statement of Reasons

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 2720 Gateway Oaks Drive, Ste. 100, Sacramento, California 95833, or from the Board of Pharmacy's website at http://www.pharmacy.ca.gov.

Availability and Location of the Final Statement of Reasons and Rulemaking File

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

Contact Person

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Lori Martinez
Address:	2720 Gateway Oaks Drive, Ste. 100 Sacramento, CA 95833
Phone No.:	(916) 244-6648
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E-Mail Address:	PharmacyRulemaking@dca.ca.gov

The backup contact person is:

Name:	Anne Sodergren
Address:	2720 Gateway Oaks Drive, Ste. 100 Sacramento, CA 95833
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Website Access

Materials regarding this proposal can be found at the Board of Pharmacy's website: https://www.pharmacy.ca.gov/laws_regs/pending_regs.shtml.