

BOARD OF PHARMACY
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Pharmacy Technician Application

(1) Section Affected: Amend § 1793.5 of Article 11 of Division 17 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 accurately reflects the board's position regarding the adoption of the above sections, but is updated to include the following information.

The Board of Pharmacy is clarifying the following information in the Final Statement of Reasons. The Initial Statement of Reasons referenced the Economic Impact Assessment as underlying data when in fact this was included as part of the Initial Statement of Reasons, not as an additional attachment pursuant to Government Code sections 11346.2 and 11346.3. The board determined this typing error to be non-substantive pursuant to Government Code Section 11346.8. As the board is unable to correct the typographical error in the Initial Statement of Reasons, the board notes the error in the Final Statement of Reasons. The reference has been removed from the Table of Contents and Underlying Data in this rulemaking file.

The board's notice indicated that the board did not intend to hold a regulation hearing on the matter, unless requested. No request for hearing was received by the board.

The board did not receive any comments to the rulemaking during the 45-day public comment period from February 20, 2015 through April 6, 2015.

The board identified the following changes to the Pharmacy Technician application incorporated by reference that required a 15-day notice of modified text. Additional changes were made to the application questions as suggested by staff and legal counsel including modification of questions one and two and addition of question number three. Question one was modified to conform to language found in California Code of Regulations section 1769. The phrase found in question two that requires disclosure if someone is "currently" engaged in the illegal use of controlled substances was removed as it violates the applicant's Fifth Amendment right of protection against self-incrimination. Additionally, question two was modified to eliminate the two year time restriction on past illegal use of controlled substances that must be disclosed in order to encompass any previous illegal use of controlled substances. The board determined this change necessary as an applicant may be currently participating in a monitoring program as a result of engagement in the illegal use of controlled substances more than two years prior to the time of application. The question did not specify disclosure of this; however, such information must be considered when making a licensing decision.

Question three was added to the application to request information about participation in a substance abuse program to provide the board with additional information and possible mitigation to consider. The attestation on the application as found in the Applicant Affidavit box on page three (3) was amended to specify that the applicant understands that the application may be denied, or any license disciplined, for fraud or misrepresentation. The revision date of the application was updated to coincide with the revision date referenced in the Proposed Language approved by the board and in the Informative Digest published in the California Notice Register.

At the board meeting held April 21-22 2015, the board voted to incorporate the proposed changes into the pending rulemaking; that absent negative comments during the 15-day public comment period, direct that the rulemaking process be completed, including the filing of the final rulemaking package with the Office of Administrative Law, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulation at Section 1793.5 as described in the minutes.

The modified text was mailed on May 26, 2015; however, the modified text was sent by electronic communication and noticed on the board's website May 28, 2015. Therefore, the original comment period deadline of June 10, 2015 was extended until June 15, 2015. The 15-day public comment period began on May 26, 2015, and ended on June 15, 2015. The board did not receive any comments in response to the 15-day comment period. At the direction of the board (in its motion April 21-22, 2015), the Executive Officer adopted the regulation language as reflected in the modified text notice, with the addition of a change to the form incorporated by reference necessary to conform with statute, as well as minor grammatical or formatting changes, or changes deemed to be non-substantial to the specific text or to the form incorporated by reference, as specified below.

Form 17A-5 "Pharmacy Technician Application" (Rev. 10/15)

On page two (2) of the Pharmacy Technician application, the criminal conviction question has been corrected to reflect the proposed language to amend question seven on the Pharmacy Technician Application (17A-5, Rev. 01/11) that was approved by the board at the Board Meeting held July 30-31, 2014. In particular, the language of the second paragraph was corrected to include reference to violations of California Health and Safety Code section 11357, subdivisions (b), (c), (d), or (e), in addition to violations of California Health and Safety Code section 11360, subdivision (b), under item (3) identifying convictions more than two years old on the date of application that need not be disclosed. The reference to violations of California Health and Safety Code section 11357, subdivisions (b), (c), (d), or (e) was omitted in error when the language was incorporated into the proposed application brought before the board at the Board Meeting held October 28-29, 2014. This error is an issue of both clarity and consistency because it can cause misinterpretation of the question leading applicants to believe they are required to disclose this type of conviction; however, the board is mandated by law to not request such information pursuant

to sections 11361.5 and 11361.7, subdivisions (b) and (c), of the California Health and Safety Code. The board believes this change to be non-discretionary as it is necessary to ensure the question is consistent with statute. An additional change believed to be non-substantial has been made to the to the last sentence of this paragraph. The word “involved” was changed to “involve”. This change is deemed to be non-substantial because it revises the sentence to be grammatically correct and does not alter the content of the proposal.

On page two (2) of the Pharmacy Technician application, quotation marks were added around the word “yes” appearing in the last sentence of question seven and the sentence was changed to bold font style to provide consistency across the application questions. This change is deemed to be non-substantial because it is revising punctuation and format in the document and does not alter the content of the proposal.

Local Mandate

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

Small Business Impact

The board has determined that the proposed regulations would not have a significant adverse economic impact on small businesses. This determination was based on the absence of comments or testimony indicating adverse economic impact regarding this rulemaking proposal.

The anticipated benefits of this regulatory proposal are:

This proposal would benefit applicants applying for a pharmacy technician license with the board as well as the regulated public. By incorporating by reference a Pharmacy Technician Application (17A-5) that reflects current laws and regulations and helps clarify the educational and licensing requirements, the board believes that applicant inquires and deficiencies will be reduced which will streamline the application process and facilitate processing of the application.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which it was proposed or 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. No other alternatives were identified by the board or brought to the attention of the board during the course of the rulemaking.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.

Summary of Comments Received During the 45-Day Comment Period

The board did not receive any comments to the proposed regulation during the 45-day public comment period.

Summary of Comments Received During the 15-Day Comment Period

The board did not receive any comments to the modified proposal during the 15-day public comment period.

Incorporation by Reference – 1 CCR 20

As reflected in the Informative Digest published in the California Notice Register 2015, Volume No. 8-Z published on February 20, 2015, the board is incorporating by reference a “Pharmacy Technician Application” Form 17A-5 (Rev. 10/15).

The incorporation by reference method was used because it would be impractical and cumbersome to publish the application form in the California Code of Regulations (CCR).

The application form is a four-page document filled with multiple lines, text and formatting boxes and is the mechanism by which applicants apply for a pharmacy technician license. This form collects information regarding an applicant’s qualifications so that the board may ensure he/she has met the requirements for licensure.

If application form was incorporated into the CCR, it would increase the size of Division 17 and may cause confusion to the user. The application form was made available to the public and was posted on the board’s website.