

## **Board of Pharmacy**

### **Final Statement of Reasons**

**Subject Matter of Proposed Regulation:** Pharmacy Technician Application

**Title 16 Sections Affected:** Amend 16 Cal. Code Reg. § 1793.5

#### **Updated Information**

The Initial Statement of Reasons is included in this rulemaking 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's notice indicated that the board did not intend to hold a hearing on the matter, unless requested. No request for hearing was received by the board.

As reflected in the Informative Digest published in the California Notice Register 2011, Volume No. 14-Z published on April 8, 2011, the board is incorporating by reference a "Pharmacy Technician Application" Form 17A-5 (Rev. 01/11). The board feels it would be cumbersome and impractical to print a four-page document filled with multiple lines, text and formatting boxes in the California Code of Regulations; thus, it is incorporated by reference.

The board did not receive any comments to the rulemaking during the 45-day public comment period from April 8, 2011 through May 23, 2011. The board, at its February 1-2, 2011 Board Meeting voted that absent negative comments during the 45-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.

Pursuant to the authority authorized by the board, the Executive Officer adopted the regulation text at Section 1793.5 with only 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.

- To provide for consistency and clarity, in the first sentence of the specific text, the regulation references the "application for a pharmacy technician license" – identified as Form 17A-5 (Rev. 01/11). So as to ensure consistency with the Informative Digest published on April 8, 2011, the name of the application in the specific text was changed from (all lower case letters) "application for a pharmacy technician license" to (initial capital letters, using quotation marks) "Pharmacy Technician Application." The board believes this type of change does not alter the content of the proposal. Also, the board believes this type of change is non-substantial because it makes the name of the form incorporated by reference

consistent with the name of the form described in the Informative Digest published in the California Notice Register. In addition, the board included in the first sentence, after the name, number and revision date of the Pharmacy Technician Application the words “incorporated by reference herein” – along with offsetting punctuation. The board believes this change does not alter the content of the proposal. Also, the board believes this change is non-substantial because the phrase “incorporated by reference herein” is consistent with the requirements of Title 1, Section 20(c)(5).

Additional changes believed to be non-substantial have been made to the form incorporated by reference, as itemized below:

**Form 17A-5 “Pharmacy Technician Application” (Rev. 01/11)**

- On the first page of the application, the title was changed from “Application For A Pharmacy Technician License” to “Pharmacy Technician Application.” The board believes this type of change does not alter the content of the proposal and that it is non-substantial because it makes the printed name of the form consistent with the name of the form as described in the Informative Digest published in the California Notice Register on April 8, 2011.
- On page one (1) of the Pharmacy Technician Application, in the box entitled “Pharmacy Technician Qualifying Method,” a reference in the opening sentence was corrected to read “Section 4202(a)(1), (2), (3) or (4) of the Business and Professions Code or Title 16 California Code of Regulations Section 1793.6(a), (b) or (c).” In this statute, the subparagraphs (listing) are numbered, but the reference to the subdivision “(a)” was not printed on the form. Also, commas, spaces and the word “or” were added to reflect proper punctuation in a listing. The board believes these types of changes are non-substantial because it corrects a reference or citation on the form, as well as punctuation.
- On page one (1) of the Pharmacy Technician Application, in the box entitled “Pharmacy Technician Qualifying Method,” the first bullet (with a check box) has an extra space before the last word “pharmacy.” The extra space has been removed. This change is deemed to be non-substantial because it is revising the format of the spacing in the document and does not alter the content of the proposal.
- On page one (1) of the Pharmacy Technician Application, in the box entitled “Pharmacy Technician Qualifying Method,” in the text of the third bullet (with a check box) the word “certified” was removed. The board deems this change to be non-substantial because the board did not specify in its proposal any requirement or definition of what a “certified copy” of a military training DD214 is, and – in practice – the board accepts a “copy” of a military training DD214 from those applicants who use such a form to demonstrate that he or she has qualified for a pharmacy technician license by completing a training program provided by a branch of the federal armed services (see 16 CCR Section 1793.6(b)).

- On page four (4) of the Pharmacy Technician Application, a “check box” was added that states “Completed a pharmacy technician training program accredited by the American Society of Health-System Pharmacists as specified in Title 16 California Code of Regulations Section 1793.6(a) on \_\_\_/\_\_\_/\_\_\_ (completion date must be included)”. The board believes this addition is considered to be non-substantial because it re-states an existing requirement as found in Section 1793.6(a) of Title 16 of the California Code of Regulations. Also, without this reference, an applicant could be confused because the application would not provide a “check-box” where an applicant would specify the course of training taken to meet the educational requirement as specified in Section 4202(b) of the Business and Professions Code.
- In the page numbering at the bottom of each page, the form number and revision date are referenced. Where the revision date is referenced, a ‘forward slash’ replaces a ‘period’ between the month and year, so that the revision date reads “(Rev. 01/11)” – not “(Rev. 01.11).” Also, where the footer printed the applicable page number, a ‘total page count’ was added (i.e., Page 2 of 4). The footer showing the form number and page numbers was also added to the first page of the application. The board believes this type of change is non-substantial, as the change corrects the formatting of punctuation in the document and the formatting of the document page numbering, and does not alter the content of the proposal. The change is also consistent with the name and revision date of the form as specified in the Informative Digest published on April 8, 2011.

Self-Query from the National Practitioners Data Bank-Healthcare Integrity and Protection Data Bank

The Initial Statement of Reasons stated that the proposed regulation would require an applicant for a pharmacy technician license to submit to the board with his or her application a sealed Self Query Report from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank (NPDB-HIPDB). As part of the underlying data, the board – in part – relied on the NPDB-HIPDB “Fact Sheet on Self-Querying” (Fact Sheet dated March 2010, NPDB-00937.10.02) for information related to the procedure, cost, and process by which a practitioner could request and receive a self-query to satisfy the requirement. In December 2010, the NPDB-HIPDB redesigned its Web site and deleted the Fact Sheet referred to in the board’s Initial Statement of Reasons. The board learned following the adoption of this regulation, that the NPDB-HIPDB Web site was expanded to assist practitioners to understand the information available from the NPDB-HIPDB, answer frequently asked questions, instruct practitioners on the process to submit a request for a self-query report, and other information.

As further background, the NPDB-HIPDB Web site is comprised of information related to both the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB). The Web site refers to itself as the Data Banks.

The National Practitioner Data Bank (NPDB) is one of a number of efforts to inform the health care community about what is required to comply with the requirements established by the *Health Care Quality Improvement Act of 1995, Public Law 99-660*.

Authorized users of information reported to NPDB include state licensing authorities, medical malpractice payers; hospitals and other health care entities; and physicians, dentists, and other licensed healthcare practitioners.

The Healthcare Integrity and Protection Data Bank (HIPDB) was established through the *Health Insurance Portability and Accountability Act of 1996 (HIPPA), Public Law 104-191*. The HIPDB is a national data collection program for reporting and disclosing certain final adverse actions taken against health care practitioners, providers, and suppliers.

To alleviate the burden on entities that must report to both the NPDB and the HIPDB, a system was created to allow an entity that must report the same adverse action to both Data Banks to submit the report only once.

Sections 1921 and 1128E of the Social Security Act require the Board of Pharmacy, as a state licensing authority, to submit adverse licensing and certification actions, as well as negative actions and findings taken against health care practitioners. The Board of Pharmacy reports this information electronically through the NPDB-HIPDB Web site. The Data Banks determine in which system (HIPDB or NPDB) the information resides.

The NPDB-HIPDB Web site guides a practitioner on how to request a Self-Query. From the NPDB-HIPDB main Web page, a person would select services for a "Practitioner" or for an "Organization." The person seeking a self-query report of information on themselves would begin by selecting services from the "Practitioner" section of the Web site. As indicated on the former Fact Sheet, the practitioner initiates a self-query request through the NPDB-HIPDB Web site. The practitioner must indicate as part of the self-query request that he/she elects to receive a paper copy (in addition to an electronic response). The practitioner must print the self-query request, sign and date it in the presence of a notary public, and mail the notarized self-query to the address specified by the NPDB-HIPDB. Upon receipt of the notarized self-query request, the NPDB-HIPDB would then process the self-query and electronically alert the practitioner via e-mail that the self-query is available for on-line viewing. Also, if so elected, the NPDB-HIPDB would issue a paper copy of the self-query to the practitioner. As specified in the regulation adopted by the board, the applicant must include with his or her application a sealed, original Self-Query from the NPDB-HIPDB dated no earlier than 60 days of the date an application is submitted to the board.

The Data Bank's Web includes information on its Web site, including:

The Data Bank (Main Web site)                    <http://www.npdb-hipdb.hrsa.gov/>

Practitioners. Perform a Self-Query (Has a Report Been Filed on You?)

<http://www.npdb-hipdb.hrsa.gov/pract/hasAReportBeenFiledOnYou.jsp>

Practitioners. How to Get Started.

<http://www.npdb-hipdb.hrsa.gov/pract/helpfulHints.jsp>

National Practitioner Data Bank (NPDB) Guidebook

<http://www.npdb-hipdb.hrsa.gov/resources/NPDBGuidebook.pdf>

Healthcare Integrity and Protection Data Bank (HIPDB) Guidebook

<http://www.npdb-hipdb.hrsa.gov/resources/HIPDBGuidebook.pdf>

**Local Mandate:**

None.

**Business Impact:**

This regulation will not have a significant adverse economic impact on businesses. This determination was based on the absence of comments or testimony indicating adverse economic impact regarding this rulemaking proposal.

**Specific Technologies or Equipment:**

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

**Consideration of Alternatives:**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to the affected persons than the proposed regulation.

**Summary of Comments Received During the 45-Day Comment Period (Objections or Recommendations/Responses):**

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