

TITLE 16: BOARD OF PHARMACY FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Temporary Licenses for Military Spouses/Domestic Partners

Sections Affected: Title 16, California Code of Regulations (CCR) section 1706.6

Updated Information

The Initial Statement of Reasons is included in this rulemaking file. The information contained therein accurately reflects the position of the Board of Pharmacy (Board) regarding the amendment of the above section. The Initial Statement of Reasons (ISR) is updated as follows:

The Board notes that the definitions within subdivision (a)(1) through (a)(6) are added to the regulation text to clearly define the specific terms as they apply within this section of regulation. These definitions are necessary to ensure that the regulation is easily understood by the regulated public and Military Spouses/Domestic Partners wishing to obtain a temporary license. Further, the Board notes that the list of license types with subdivision (b) is the complete list of individual licenses issued by the Board that are eligible for a temporary military spouse/domestic partner license.

The 45-day public comment period began on April 14, 2023 and ended on May 30, 2023. The Board's notice stated that the Board did not intend to hold a hearing on the matter unless requested. The Board did not receive a request for a hearing during the comment period, and no hearing was held.

During the 45-day comment period, the Board received two comments. At the June 21, 2023 Board meeting, the Board reviewed the comments received and amended the draft regulation text to address an issue with a proposed definition within the draft regulation text. The Board voted to initiate a 15-day public comment period, which commenced on June 28, 2023 and concluded on July 12, 2023.

On October 18, 2023, the final rulemaking package was submitted to the Office of Administrative Law (OAL) for formal review. Following review, edits were necessary to ensure compliance with the Administrative Procedure Act (APA) and Business and Professions Code (BPC) section 115.6.

Specifically, the following edits were made:

- Adding back into the regulation text the definition of "good standing," which mirrors the language of BPC section 115.6 for clarity to the regulated public.
- Relocation of the definition of "license" from subdivision (b)(3) to subdivision (a) so that all definitions are located within the same subdivision.
- Addition of "if applicable" to subdivision (b)(1)(A) before "Suffix", as not all applicants may have a suffix.

- Subdivisions (b)(4) and (b)(5) have been amended. BPC 480(f)(2) prohibits the Board from requiring disclosure of any information or documentation regarding an applicant’s criminal history. As such, the subdivisions were amended and read as follows:
 - (b)(4) The applicant shall attest that the applicant meets all of the requirements for temporary licensure as set forth in Business and Professions Code Section 115.6 (c)(1) through (5), including that the applicant has not committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under the Business and Professions Code or this division at the time the act was committed and that the applicant is aware that a violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the Board of Pharmacy.
The Board has determined that the language within subdivision (b)(4) does not violate BPC 480(f)(2).
 - (b)(5) The applicant shall also attest that the applicant has not been disciplined by a licensing entity in another jurisdiction and is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.
- Addition of “upon issuance or denial of a license by endorsement” to subdivision (d)(2). While the Board does not license by endorsement, the addition of this language is necessary to meet the duplication standard of the APA, as the language is part of the statute.

Additionally, there were non-substantive edits to make with respect to grammar and punctuation of the regulation text.

The Board accepted the edits necessary to ensure compliance with the APA and voted to initiate a 15-day public comment period, which commenced on December 13, 2023 and concluded on December 28, 2023. No comments were received during the comment period, and the regulation was adopted by the Executive Officer on January 18, 2024 per delegated authority granted by the Board.

Nonduplication Statement - 1 CCR § 12

To ensure accuracy, any duplication or overlap with statutory requirements is necessary to effectively implement the regulation in a way that satisfies the “clarity” standard of Government Code section 11349.1(a)(3).

Local Mandate

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

Small Business Impact

While the Board does not have nor does it maintain data to determine whether any of its licensees are “small businesses” as defined in Government Code section 11342.610,

the Board determined that the proposed regulatory action will not have any adverse economic impact on small businesses, as the regulations are establishing the parameters to issue temporary licenses to specific individuals and not businesses.

Consideration of Alternatives

No reasonable alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, as effective and less burdensome to affected private persons than the adopted regulation, or more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board considered not adopting the proposed regulation; however, the Board determined that alternative was not reasonable, as potential applicants would not have the necessary information to complete the application process.

Objections or Recommendations/Responses to Comments

45-Day Comment Period

During the 45-day comment period, which began on April 14, 2023 and ended on May 30, 2023, the Board received two comments. At the February 6, 2023 Board meeting, the Board reviewed the comments received and amended the draft regulation text to address an issue with a proposed definition within the draft regulation text. The Board voted to initiate a 15-day public comment period.

Summary and Response to 45-day Comments:

Written Comments from G. Griffin, Pharm.D.

Comment 1: The commenter stated that it was “about time that you did something for military spouses.”

Response to Comment 1: The Board reviewed this comment and did not make any changes to the text based thereon. The Board noted that the Board has expedited the licensure process for military spouses and domestic partners since 2012. In addition to expedited processing, the Board began waiving the initial application fee for military spouses and domestic partners in 2022.

Written Comments from K. Scott Guess, Pharm.D.

Comment 2: The commenter states that the definition of “Good Standing” violates the “presumption of innocence because it includes unresolved (inconclusive) complaints or investigations.” Commenter states that the definition should only include “proven misconduct” and the current definition could “cause harm to a potential, or current licensees resulting in financial consequences, defamation, and damage.” Commenter provided the example that if the regulation is enacted as written, any complaint filed

would mean his pharmacist license would not be in good standing until the complaint was resolved, which can take months, and could need to third-party contract restrictions or wholesalers restricting purchases.

Response to Comment 2: The Board reviewed this comment and did not make any changes to the text based on the comment. However, the commenter requested an amendment to the proposed definition of “good standing”, and this highlighted an issue with the proposed definition. The Board removed the proposed definition of “good standing” from the proposed text due to a conflict with BPC section 4026.5. The Board noted that “good standing” (defined in BPC section 4026.5) and the additional requirement (“not the subject of an unresolved complaint or review procedure and is not the subject of any unresolved disciplinary proceeding”) within the originally proposed definition of “good standing” within this section are requirements of BPC section 115.6, as well as in the proposed regulation under 16 CCR sections 1706.6(b)(3) and 1706.6(b)(5), respectively and duplication was not necessary. The Board added BPC section 4026.5 to the reference section at the end of the regulatory text for clarity.