



To: Board Members

Subject: Agenda Item VI. Discussion of and Possible Action Regarding Government Code Section 11340.6 Petition Requesting Amendment of California Code of Regulations, Title 16, Section 1709.1 Related to Designation of Pharmacist-in-Charge

Relevant Law

Government Code (GC) section 11340.6 generally provides authority for any interested person to petition a state agency requesting the adoption, amendment, or repeal of a regulation (with limited exceptions).

GC section 11340.7 requires a state agency to (1) notify the petitioner in writing of the receipt of the petition and (2) within 30 days, either deny the petition in writing (indicating why the agency has reached its decision) or schedule the matter for public hearing. The section further provides that an agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition. The section also sets forth reporting requirements on the decision of the agency.

Business and Professions Code (BPC) section 4113 provides that every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the Board in writing of the identity and license number of that pharmacist and the date they were designated. The section further provides that the proposed pharmacist-in-charge shall be subject to approval by the Board.

California Code of Regulations (CCR), title 16, section 1709.1(a) states that the pharmacist-in-charge (PIC) of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy. The section further describes training and other requirements that apply to the PIC position.

Background

On October 7, 2025, the Board received a petition requesting the adoption or amendment of a regulation to clarify CCR, title 16, section 1709.1. Specifically, the petition references the first sentence of 1709.1(a) (stating "[t]he pharmacist-in-charge (PIC) of a pharmacy shall be employed at that location...") and states that the term "employed" can, on its face, be reasonably and logically interpreted to mean both "'hired to work as an employee' or 'hired to work as an independent contractor.'" The petition further states that the term "employed" does not have a meaning generally familiar to those directly affected by the regulation, and the term is neither defined in the regulation nor in the governing statute. The petition concludes that the adoption or amendment of a regulation is needed to clarify whether

engaging the services of an independent contractor constitutes "employed" for purposes of section 1709.1(a).

For Member Discussion and Possible Action

As required by the GC, the Board must take action on the petition. As the petition did not include proposed regulation text, staff recommend that a hearing be set in accordance with the notice and hearing requirements of Article 5 of Chapter 3.5 of the Administrative Procedure Act. Should the Board determine such action is appropriate, the following motion can be used:

Possible Motion:

Authorize the Executive Officer to set the matter for a hearing.

Following this memo is a copy of the petition.

Jenny Chang
23 Corporate Plaza, Suite 215
Newport Beach, CA 92660

October 7, 2025

Via electronic mail to: anne.sodergren@dca.ca.gov

Board of Pharmacy
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

RE: Petition to Amend 16 CCR § 1709.1

To Whom It May Concern:

I am petitioning the Board of Pharmacy (BOP) pursuant to Government Code (GC) section 11340.6 to request the adoption or amendment of a regulation pursuant to Article 5 of the Administrative Procedure Act (APA) (GC sections 11340 et seq.) to clarify California Code of Regulations, title 16, section (Regulation) 1709.1. The BOP is authorized to amend Regulation 1709.1 or adopt a regulation to clarify it under Business and Professions Code section 4005.

Subdivision (a) of Regulation 1709.1 states that, “[t]he pharmacist-in-charge (PIC) of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.” However, the term “employed” can, on its face, be reasonably and logically interpreted to mean both “hired to work as an employee” or “hired to work as an independent contractor.” Additionally, the term “employed” does not have a meaning generally familiar to those directly affected by the regulation, and the term is neither defined in the regulation nor in the governing statute. I work in a capacity that requires me to ensure compliance with Regulation 1709.1 in order to approve applications for certain state benefits; thus, I am directly affected by this regulation. It is unclear whether a pharmacist-in-charge hired as an independent contractor satisfies the requirements of Regulation 1709.1, subdivision (a). For these reasons, Regulation 1709.1 does not meet the clarity standard of the APA under GC section 11349, subdivision (c). (See also Cal. Code Regs., title 1, section 16, subd. (a)(1), (3).)

I have previously requested guidance regarding this question from the BOP’s “Ask an Inspector” program as well as from BOP management, and they did not provide any. Thus, I request that the BOP adopt a regulation or amend Regulation 1709.1 to clarify whether

engaging the services of an independent contractor constitutes “employed” for purposes of Regulation 1709.1, subdivision (a). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Jenny Chang". The script is fluid and cursive, with the first letters of "J" and "C" being capitalized and prominent.

Jenny Chang

cc (via e-email): Office of Administrative Law (staff@oal.ca.gov)