

## PHYSICIAN ASSISTANT COMMITTEE

### INITIAL STATEMENT OF REASONS

Hearing Date: 26 February 2009.

Subject Matter of Proposed Regulations: Renewal of License.

Section Affected: 1399.514.

Specific Purpose of each adoption, amendment, or repeal:

Business and Professions Code Section 3524 provides that a renewal application shall be on a form provided by the Committee, accompanied by the payment of all accrued and unpaid renewal fees.

This proposal would also require that the licensee respond to a question included on the renewal form which asks if the licensee, since the last renewal, has had any license disciplined by a government agency or other disciplinary body; or, been convicted of any crime in any state, the USA and its territories, military court, or a foreign country.

Convictions for infractions with a fine of less than \$300 would not need to be reported by the licensee unless the infraction involved alcohol or controlled substances.

Failure to provide all of the information required would render the application for renewal incomplete and the licensee would not be eligible for renewal.

The regulatory proposal affects physician assistant licensees. It does not affect small businesses.

Factual Basis/Rationale

Factual basis for determination that each proposed change is necessary:

Business and Professions Code Section 3504.1 specifies that the protection of the public shall be the highest priority of the Physician Assistant Committee in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Section 144 of the Business and Professions Code requires applicants for licensure to furnish to the Committee a full set of fingerprint cards for purposes of conducting criminal background checks prior to issuing a physician assistant license.

The Committee receives background information from the California Department of Justice (DOJ) for in-state criminal actions and the Federal Bureau of Investigation (FBI) for out-of-state criminal actions.

The Physician Assistant Committee also receives from the DOJ subsequent notifications for convictions that take place in California.

Recent newspaper articles have focused on other licensing boards within the Department of Consumer Affairs with respect to how those agencies have addressed fingerprinting of applicants, continued licensure status upon the agency learning of criminal convictions, and the process by which the agency disciplines those licensees with criminal convictions.

In light of this article, the Committee reviewed its licensing and enforcement programs specific to the concerns raised in the newspaper articles.

After the review, staff of the Physician Assistant Committee learned the following:

- All applicants for licensure as physician assistants have been fingerprinted for both DOJ and FBI clearances. Fingerprinting of applicants began in 1976 when the first physician assistant applications were received and the first licenses were issued.
- While the DOJ makes every effort to send the Committee subsequent arrest notifications, often, for technical or other reasons the Committee may not receive this information.
- The DOJ only provides subsequent arrest notifications for convictions that occur in California. They do not provide notifications for convictions that take place out-of-state.

Committee staff were especially concerned that out-of-state subsequent arrest notifications are not provided by the DOJ. Often, licensees possess other health care-related licenses, including physician assistant licenses, in other states. Given the transitory nature of American society, it is vital that the Committee receive important information regarding its licensees.

To address this area of concern, the Committee is proposing the adoption of Section 1399.514 of the California Code of Regulations to place on the licensure renewal notice a question asking the licensee if they have had any criminal convictions since their last renewal.

This proposal will provide the Committee with an additional mechanism by which to receive criminal activity information about licensees.

Receipt of this information will permit the Committee to take appropriate disciplinary action against licensees in appropriate circumstances.

The Department of Consumer Affairs has developed model language which they encourage all health-related agencies within its jurisdiction to include on the renewal notices.

The proposed question developed by the Department of Consumer Affairs to be included on the renewal notice will state:

Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body; or, have you been convicted of any crime in any state, the USA and its territories, military court or a foreign country?  Yes  No

Adoption of this proposed regulation will provide the Committee an additional tool to further enhance its mandate to protect the health and safety of California consumers.

#### Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any): None.

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses because it only affects individual licensees who are renewing their physician assistant licenses. Licensees are merely required read the question and to check a box on the renewal application.

#### 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 and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulation. This alternative was rejected because the committee would not be able to obtain subsequent arrest information from licensees who have been convicted of crimes since their last renewal.

The Committee would be denied an additional tool to further enhance consumer protection.

2. Adopt the regulation. The Committee determined that this alternative was the most feasible because the proposed regulatory change would enhance the Committee's mandate of consumer protection. Additionally, the Department of Consumer Affairs has encouraged agencies within its jurisdiction to place this language on renewal forms.