

## **The following regulatory changes became effective 11/5/2011**

### **§ 1399.503. Delegation of Functions.**

Except for those powers reserved exclusively to the “agency itself” under the Administrative Procedure Act, Section 11500, et seq. of the Government Code, the board or Medical Board of California, as the case may be, delegates and confers upon the executive officer of the board, or in his or her absence, the designee of the executive officer, all functions necessary to the dispatch of business of the board or Medical Board of California in connection with investigative and administrative proceedings under their jurisdiction, including, the ability to accept default decisions and to approve settlement agreements for the surrender or interim suspension of a license.

Note: Authority cited: Sections 2018 and 3510, Business and Professions Code.  
Reference: Sections 3528 and 3529, Business and Professions Code; and Section 11415.60, Government Code.

### **§ 1399.507.5. Physical or Mental Examination of Applicants.**

In addition to any other requirements for licensure, whenever it reasonably appears that an applicant for a license may be unable to perform as a physician assistant safely because the applicant's ability to perform may be impaired due to mental illness or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The applicant shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the Committee may deny the application.

Note: Authority cited: Sections 3504.1 and 3510, Business and Professions Code.  
Reference: Sections 3514.1 and 3519.5, Business and Professions Code.

### **§ 1399.521.5. Unprofessional Conduct.**

In addition to the conduct described in Section 3527 of the Code, “unprofessional conduct” also includes the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) The commission of any act of sexual abuse or misconduct.

(d) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(e) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3504.1 and 3510, Business and Professions Code.

### **§ 1399.523. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Physician Assistant Board shall consider the disciplinary guidelines entitled "Physician Assistant Board Manual of Model Disciplinary Guidelines and Model Disciplinary Orders" 3rd Edition 2007, which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Physician Assistant Committee, in its sole discretion, determines that the facts of the particular case warrant such a deviation-for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Sections 3510, 3527, 3528, 3529, 3530, 3531, 3532 and 3533, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 11400.20 and 11425.50(e), Government Code; and Sections 729, 3527, 3528, 3529, 3530, 3531, 3532 and 3533, Business and Professions Code.

### **§ 1399.523.5. Required Actions Against Registered Sex Offenders.**

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a licensee under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3504.1, 3510, 3527, 3528, 3530 and 3531, Business and Professions Code.