Board of Pharmacy

Initial Statement of Reasons

Subject Matter of Proposed Regulation: Dishonest Conduct on a Pharmacist Licensure Examination / Confidentiality

Sections Affected: Amend 16 Cal.Code Reg. §1721
Amend 16 Cal.Code Reg. §1723.1

Specific Purpose of the Proposed Changes:

Existing regulation at Title 16 California Code of Regulations (CCR) section 1721 specifies that an applicant who engages in dishonest conduct during the examination shall not be approved to take the examination for twelve months from the date of the incident, that the applicant shall surrender his or her intern card until eligible to take the examination, and that an applicant may not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

This proposed regulation would amend Section 1721 to increase the period of time that an applicant for examination as a pharmacist is not approved to take the examination from twelve months to three years, if the applicant engages in dishonest conduct during the examination. Further, this proposed regulation would provide that an intern license (not card) shall be surrendered until such time that the applicant is eligible to take the examination. This latter amendment ensures that the terminology in Section 1721 is consistent with the language in Section 4208 of the Business and Professions Code related to an intern pharmacist license.

Existing regulation in 16 CCR 1723.1 declares that examination questions are confidential and provides that an applicant who subverts the licensing examination may be disqualified as a candidate for a license.

This proposed regulation would strengthen the existing penalty provided in Section 1723.1 by adding the following requirements: (1) that the applicant shall not be approved to take the examination for three years from the date of the incident; and, (2) that the applicant shall surrender his or her intern license until he or she is again eligible to take the examination. The proposed regulation would further provide that the applicant would not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

Factual Basis/Rationale

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations necessary for the protection of the public pertaining to the practice of pharmacy and the administration of Chapter 9 of Division 2 of the Business and Professions Code.
Business and Professions Code section 123 sets forth the criminal penalty for a person who engages in conduct which subverts or attempts to subvert any licensing examination or the administration of an examination.

Business and Professions Code section 496 authorizes the board to deny, suspend, revoke, or otherwise restrict applicants or licensees who violate the provisions of Business and Professions Code section 123.

Business and Professions Code section 4200 generally provides for the license requirements of an applicant for a pharmacist license. One of the qualifying criteria is that an applicant must pass the written and practical examination given by the board prior to December 21, 2003, or pass the North American Pharmacist Licensure Examination (NAPLEX).

Business and Professions Code section 4208 generally provides for the requirements and issuance of an intern pharmacist license.

Business and Professions Code section 4300 authorizes the board to discipline a licensee as well as refuse to issue a license to an applicant.

It is necessary for the Board of Pharmacy to amend Sections 1721 and 1723.1 of Division 17 of Title 16 of the California Code of Regulations (CCR) to strengthen the penalties an applicant would incur for dishonest conduct during an examination. The board also needs to make technical changes to terminology regarding an intern license in Section 1721 to make this regulation consistent with statute (see Bus. & Prof. Code, § 4208). This rationale is explained more fully as follows.

The Competency Committee is a subcommittee of the board’s Licensing Committee. The Competency Committee is responsible for the development of the California Practice Standards and Jurisprudence Examination (CPJE) for pharmacists under the direction of an exam contractor, who is a psychometrician. Staff reported in August 2007 that the cost to generate a new test item for the CPJE examination is approximately $2,000 per item and that compromised test items not only pose a financial loss to the board, but also inhibit the board’s ability to test for minimum competency and if an otherwise incompetent applicant passes the exam because the exam has been compromised, such a breach is a public safety issue.

In September 2007, the Licensing Committee considered a report from the Competency Committee regarding alleged breaches of the North American Pharmacist Licensure Examination (NAPLEX) and the National Association of Boards of Pharmacy’s efforts to secure its examination from possible compromise. The Competency Committee submitted these proposed amendments to 16 CCR 1721 and 1723.1 to the Licensing Committee, which would strengthen the penalty an applicant would incur for dishonest conduct during an examination, as well as further clarify the penalty an applicant would incur for conveying or exposing any part of the licensing examination. The Licensing Committee further considered and approved a staff regulation proposal to amend Board of Pharmacy regulations as proposed herein to further protect from compromise or subversion the California Practice Standards and Jurisprudence Examination for pharmacists.
In October 2007, the board considered the Licensing Committee’s report and recommendation. The board determined that the amendments to 16 CCR sections 1721 and 1723.1 to increase the penalties as proposed are necessary to further protect from subversion the CPJE examination.

As a result, this proposed regulation would amend Section 1721 to increase the period of time that an applicant for examination as a pharmacist is not approved to take the examination from twelve months to three years, if the applicant engages in dishonest conduct during the examination. This proposed regulation would also provide that an intern ‘license’ (not card) shall be surrendered until such time that the applicant is eligible to take the examination. This latter amendment ensures that the terminology in Section 1721 is consistent with the language in Section 4208 of the Business and Professions Code related to an intern pharmacist license.

Further, this proposed regulation would strengthen the penalty provided in Section 1723.1 so that the applicant would not be approved to take the examination for three years from the date of the incident and that the applicant would be required to surrender his or her intern license until he or she is again eligible to take the examination. The proposed regulation would further provide that the applicant would not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

Underlying Data

1. October 24-25, 2007 Board Meeting Minutes
2. September 5, 2007 Licensing Committee Report
3. August 31, 2007, Staff’s report on Competency Committee activities; recommendation.

Business Impact

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

There would be no costs to businesses to comply with this regulation. From calendar year 2005 through 2009, the board has denied licensure or eligibility to take the examination due to dishonest conduct or exposure of a qualifying examination to three persons. Applicants for licensure who apply for and take the California Practice Standards and Jurisprudence Examination (CPJE) pay a fee (as specified in 16 CCR §1749(d)) to take the exam. If a person is denied licensure or eligibility to take the examination because they are found to have engaged in dishonest conduct or they expose any part of the qualifying examination to another person they are precluded from again taking that examination for a period of time specified in the regulations. As such, there is no cost to a person or to a business to comply with the regulation. However, the cost to generate a new test item for the CPJE examination is approximately $2,000 per item and compromised test items not only pose a financial loss to the board, but also inhibit the board’s ability to test for minimum competency. Further, if an
otherwise incompetent applicant passes the exam because the exam has been compromised, such a breach is a public safety issue.

Specific Technologies or Equipment

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

Consideration of Alternatives

The only alternative to this proposal is to not amend sections 1721 and 1723.1 of Title 16 of the California Code of Regulations.

It would be contrary to the board's public protection mandate to not pursue the proposed change designed to allow the board to better protect the integrity and deter the subversion of an examination required for an applicant for a pharmacist license in California.

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