

## Title 16. California Board of Pharmacy

**NOTICE IS HEREBY GIVEN** that the California State Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments only in writing relevant to the action proposed.

Written comments must be received by the Board of Pharmacy at its office not later than 5 p.m. on January 15, 2001.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office no later than 5 p.m. on December 29, 2000.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify the proposal if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person. The notice also will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: The Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations pursuant to the authority vested by section 4005 of the Business and Professions Code and section 11425.50(e) of the Government Code and to interpret or make specific Business and Professions Code sections 4300 and 4301, and Government Code section 11425.50(e). These changes are discussed below.

### INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

#### **Amend section 1760 Disciplinary Guidelines**

Business and Professions Code (B&P Code) section 4005 generally authorizes the board to amend rules and regulations pertaining to the practice of pharmacy. Government Code section 11425.50(e) states that a penalty in an administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act.

B&P Code section 4300 provides that any license issued by the board may be suspended or revoked. Further, it directs the board to discipline a licensee who has been found guilty of a violation of pharmacy law either by default, or as a result of a hearing. While the methods of discipline are listed, not all violations of California Pharmacy Law warrant the most stringent

punishment listed -- revocation. The range of penalties including suspension and probation are appropriate in those instances when the nature and severity of the offense warrants lesser action by the board.

B&P code section 4301 directs the board to take action against any holder of a license whose license has been procured by fraud or misrepresentation or issued by mistake. Further the above-referenced section directs the board to take action against any licensee who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

- Gross immorality;
- Incompetence;
- Gross negligence;
- Clearly excessive furnishing of controlled substances in violation of the Health and Safety Code;
- Commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption; and
- Use of controlled substances, drugs or alcohol in such a manner as to be dangerous or injurious to a person licensed by the board or to the public.

Unprofessional conduct also includes the conviction of a crime substantially related to the qualifications, functions and duties of a licensee under pharmacy law.

The objective of this proposal is to assure that those who rely upon the board's disciplinary guidelines in matters related to administrative action taken against a licensee can rely upon a well-organized and straightforward document that is consistent with current Pharmacy Law.

This proposal would repeal the existing disciplinary guidelines, which are incorporated by reference in section 1760 and were adopted by the board in 1997 as an administrative regulation, and replace them with a newly revised and updated version

In 1997 the Board of Pharmacy adopted regulations that incorporated by reference disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 1/22/97). This document contained some minor drafting errors. Moreover, subsequent use of these guidelines during the course of disciplinary proceedings (e.g., by defense attorneys, licensees, board staff, deputies attorney general, administrative law judges and board members) has pointed out the necessity for a reordering of various sections into a document that is more user-friendly. In addition, there have been changes to Pharmacy Law that are not reflected in the current version of the guidelines.

The board proposes to repeal the existing document, Disciplinary Guidelines (Rev. 1/22/97), and to replace it with Disciplinary Guidelines (Rev. 1/2001) to be incorporated by reference with this action.

A copy of "Disciplinary Guidelines" (Rev. 1/2001) is available from the board upon request and it is available at the board's web site – [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov).

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None  
Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Significant Adverse Economic Impact on Business: The board has determined that the proposed regulatory action would have no significant adverse impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

The following relevant information was relied upon in making the above determination. While no formal studies were conducted, the board is confident that the proposal does not have a significant adverse economic impact on business because: 1) the number of people who rely upon the document is limited, and 2) use of the document is not related to business in general.

The proposed regulatory action is the result of a review of the existing Disciplinary Guidelines (Rev 1/22/97) made by the board's enforcement unit staff and the Enforcement Committee of the board. In addition, the board received constructive feedback from the deputies attorney general who represent the board's interests in administrative matters where licensees of the board are being disciplined for violations of Pharmacy Law.

Impact on Jobs/New Businesses: None

The Board of Pharmacy has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Statement of Potential Cost Impact on Private Persons or Businesses Directly Affected: None

Effect on Housing Costs: None

## PLAIN ENGLISH REQUIREMENT

The Board of Pharmacy has determined that the proposed regulations would not affect small businesses. This proposal would affect only individual licensees.

The express terms of the proposed action are available in plain English from the agency contact person named in this notice.

#### CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no alternative which it considered would either be more effective in carrying out purpose for which the action is proposed or would be as effective as and less burdensome on affected private persons than the proposal described in this Notice.

#### STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared a statement of the reasons for the proposed actions and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the statement of reasons and other information, if any, may be obtained upon request from the Board of Pharmacy at 400 R Street, Suite 4070, Sacramento, California 95814.

#### AVAILABILITY AND LOCATION OF THE RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the board mentioned above.

#### CONTACT PERSON

Inquiries concerning the proposed administrative action may be addressed to Patricia Harris at the above address or at (916) 445-5014.