

# BOARD OF PHARMACY

## INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Pharmacy Technician Application

Section Affected: Amend § 1793.5 of Article 11 of Division 17 of Title 16 of the California Code of Regulations

### Specific Purpose of Amendment:

The Board of Pharmacy proposes to amend Section 1793.5 of Article 11 of Division 17 of Title 16 of the California Code of Regulations and to update Authority and Reference citations.

**Section 1793.5:** Existing regulation at Section 1793.5 requires an applicant for a pharmacy technician license to submit an application to the board. The application, Form 17A-5 (Rev. 01/11) is incorporated by reference in that section.

#### 1. Problem being addressed:

The board's Pharmacy Technician Application (Form 17A-5, Rev. 01/11) is incorporated by reference in Section 1793.5 and requires update to conform to changes in current law as a result of recently enacted legislation. This proposed regulation amends this application and incorporates by reference an updated Pharmacy Technician Application, Form 17A-5 with a revision date of October 2015. As proposed, the pharmacy technician application incorporates educational and licensing requirements currently found in Division 2 of Chapter 9 of the Business and Professions Code.

#### 2. Anticipated benefits from this regulatory action:

As proposed, the updated Pharmacy Technician Application, Form 17A-5 with a revision date of October 2015 incorporated by reference in Section 1793.5 would be in compliance with recently enacted legislation. The application would incorporate changes made to facilitate implementation of SB 1159 (Lara, Chapter 752, Statutes of 2014) and SB 1226 (Correa, Chapter 657, Statutes of 2014), and modifications to the criminal conviction question to conform to legal requirement.

**Section 1793.5 (a)(4):** Existing regulation in subdivision (a)(4) of section 1793.5 requires an applicant for a pharmacy technician license to submit to the board with his or her application a sealed, original Self Query Report from the National Practitioner Data Bank – Healthcare Integrity and Protection Data Bank (NPDB-HIPDB).

1. Problem being addressed:

The board has determined the need to clarify the name of the Data Bank in response to recently enacted legislation resulting in consolidated operations of the with the National Practitioner Data Bank (NPDB) with those of the Healthcare Integrity and Protection Data Bank (HIPDB).

2. Anticipated benefits from this regulatory action:

This proposal would amend terminology in that subdivision to properly refer to the National Practitioner Data Bank (NPDB).

Factual Basis/Rationale

Business and Professions Code section 163.5 generally authorizes the board to assess a delinquency, penalty or late fee for any license issued by the board that is not renewed in a timely fashion.

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 4007 sets forth limitations of rules adopted by the board, and generally authorizes the board to adopt rules and regulations regarding the functions performed under the effective supervision of a pharmacist.

Business and Professions Code section 4038 defines the terms “pharmacy technician” and “pharmacy technician trainee.”

Business and Professions Code section 4115 generally defines activities permitted by a pharmacy technician.

Business and Professions Code section 4202 sets forth requirements for the issuance of a pharmacy technician license.

Business and Professions Code section 4207 requires the board to conduct a thorough investigation of each applicant to determine whether the applicant is qualified for the license being sought. This section generally specifies that the board may request any information it deems necessary to complete its investigation and that the information requested for this purpose shall not be required to be adopted by regulation.

Business and Professions Code section 4400 specifies the fee schedule that is fixed by the board. Subdivision (r) specifies the application fee and the renewal fee ranges for a pharmacy technician.

Penal Code section 11105 generally authorizes the Department of Justice to assess a fee for the processing of criminal history information.

Section 1706.2 of Title 16 of Division 17 of the California Code of Regulations generally provides that an application not completed by the applicant be deemed abandoned if not completed within specified periods of time.

Section 1793.6 of Title 16 of the California Code of Regulations sets forth training courses that meet the requirements for a license issued under section 4202(a)(2) of the Business and Professions Code.

At the December 11, 2013 Licensing Committee meeting, the committee discussed the need to review and modify the conviction questions asked on license applications at the request of the Department of Consumer Affairs (DCA) Legal Office in an effort to provide uniformity throughout the DCA boards and bureaus and ensure consistency with legal requirements. The law requires that applicants not be required to disclose certain minor marijuana possession charges under the Uniform Controlled Substance Act (Health and Safety (H&S) Code section 11000 et seq.), and charges subject to Deferred Entry of Judgment ("DEJ") under Penal Code (PC) section 1000.4.

At the Board Meeting held January 29-30, 2014, the board continued discussion regarding the review of the application questions currently used to ascertain arrest and conviction history as part of its process in evaluating an application for licensure and the need for modification of the conviction questions to conform with legal requirements that may have changed since the questions were originally developed. Unlike other professions, working in a pharmacy or drug wholesaler gives individuals direct access to dangerous drugs, including controlled substances. The board must determine how it will address prior convictions involving drugs and ensure the application questions do not identify the questions regarding specific arrests and convictions that the board cannot consider when making a licensing decision.

The Licensing Committee discussed modifications to the conviction question on the Pharmacist, Pharmacy Technician and other personal license applications at its meeting held June 18, 2014 and recommended that the board amend specific questions on various applications including question seven on the Pharmacy Technician Application, and at the Board Meeting on July 30-31, 2014, the board approved proposed language to amend question seven on the Pharmacy Technician Application (17A-5, Rev. 01/11) .

Senate Bill (SB) 1159 (Lara, Chapter 752, Statutes of 2014) requires the board to begin accepting individual taxpayer identification numbers (ITIN) no later than January 1, 2016. Implementation of SB 1159 requires update of the personal identifying information collected on license applications to allow applicants to submit either a social security number or an individual taxpayer identification number. Senate Bill (SB) 1226 (Correa, Chapter 657, Statutes of 2014) requires the board, on or after July 1, 2016, to expedite the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces and was honorably discharged. In order to implement these provisions, the board must

update the Pharmacy Technician Application (17A-5, Rev. 01/11) incorporated by reference in Section 1793.5 of Title 16 of the California Code of Regulations.

At the Board Meeting held October 28-29, 2014, the board moved to initiate a rulemaking to amend section 1793.5 as described herein and to modify the Pharmacy Technician Application (17A-5, Rev. 01/11), as proposed, which is incorporated by reference in that section. The board considered and approved the content of the proposed Pharmacy Technician Application (Form 17A-5) with a revision date of October 2015 and directed that the rulemaking initiated by the board reflect proposed text. As proposed, the application reflects the updated conviction question approved in July 2014. The application would incorporate changes made to facilitate implementation of SB 1159 (Lara, Chapter 752, Statutes of 2014) and SB 1226 (Correa, Chapter 657, Statutes of 2014), as well as a few additional changes designed to provide more clarification to applicants on what is required.

#### Underlying Data

1. Senate Bill 1159 (Lara, Chapter 752, Statutes of 2014)
2. Senate Bill 1226 (Correa, Chapter 657, Statutes of 2014)
3. Uniform Controlled Substance Act (Health and Safety Code Section 11000 et seq.)
4. October 28-29, 2014 Board Meeting Materials and Minutes
5. July 30-31, 2014 Board Meeting Materials and Minutes
6. June 18, 2014 Licensing Committee Meeting Materials and Minutes
7. January 29-30, 2014 Board Meeting Material and Minutes
8. December 11, 2013 Licensing Committee Meeting Materials and Minutes
9. Pharmacy Technician Application, 17A-5, Rev. 01/11 (Repealed) and Pharmacy Technician Application, 17A-5, Rev. 10/15 (Proposed)
10. Economic Impact Assessment

#### 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 fact that the proposed regulation does not affect a business; rather, it affects applicants (individuals) who are seeking licensure from the Board of Pharmacy.

#### Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed regulation does not affect a business; rather, it affects applicants (individuals) who are seeking licensure from the Board of Pharmacy

- It will not create new business or eliminate businesses within the State of California because the proposed regulation does not affect a business; rather, it affects applicants (individuals) who are seeking licensure from the Board of Pharmacy.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed regulation does not affect a business; rather, it affects applicants (individuals) who are seeking licensure from the Board of Pharmacy.
- This regulatory proposal does not affect the health and welfare of California residents because the proposed regulation only specifies the licensing requirements for applicants applying for a pharmacy technician license with the board.
- This regulatory proposal does not affect worker safety because the proposed regulation only specifies the licensing requirements for applicants applying for a pharmacy technician license with the board.
- The regulatory proposal does not affect the state's environment because the proposed regulation only specifies the licensing requirements for applicants applying for a pharmacy technician license with the board.

#### Specific Technologies or Equipment

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

#### Consideration of Alternatives

No reasonable alternative to the regulatory proposal 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 the affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The only alternative would be to not pursue the conforming changes; however, the board would not be in compliance with current law, as such, this is not a viable option.