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 the Proposed Changes:

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.

Existing regulation at Section 1793.5 requires an applicant for a pharmacy technician registration to submit an application to the board. The application, Form 17A-5 (Rev. 9/94) is incorporated by reference; this proposed regulation repeals this application and incorporates by reference a new Pharmacy Technician Application, Form 17A-5 with a revision date of January 2011. 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.

Existing regulation in subdivision (a) of Section 1793.5 refers to a pharmacy technician “registration.” This proposal would amend that subdivision to refer to a pharmacy technician “license.” This amendment is necessary to make the terminology in this section consistent with the board’s statutory authority to issue a pharmacy technician “license” as specified in Business and Professions Code section 4202.

Existing regulation in subdivision (a)(3) of section 1793.5 requires an applicant for a pharmacy technician license to provide a signed statement as to whether the applicant has ever been convicted of or pled no contest to a violation, as specified. This proposal would remove this requirement in regulation, because this statement has been incorporated into the Pharmacy Technician Application (17A-5) which is incorporated by reference. Thus, the amendment is necessary to remove a statement which is duplicative of information contained in the pharmacy technician application.

This proposal would add a new subdivision (a)(4) to current Section 1793.5 which would require 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). Business and Professions Code section 4207 specifies that the board shall make a thorough investigation to determine whether an applicant is qualified for the license being sought. The board has determined that the requirement to submit a Self Query Report, as specified in the proposal, is necessary and pertinent to the board’s investigation to determine if a pharmacy technician applicant has been the subject of discipline in another state prior to making a license decision to grant or deny a license.

Existing regulation in subdivision (c) of Section 1793.5 specifies time frames in which an applicant will be notified of any deficiency in his or her application, and in which the board will notify an
applicant of a decision on his or her application. This proposal would specify that the time frame in which the board will notify an applicant of a decision applies to the time period after which any investigation conducted by the board is complete. This amendment is necessary because in some cases the board’s investigation cannot be completed and a decision to grant or deny a license cannot be made within 60 days of an application being deemed complete.

Existing regulation in subdivision (d) of Section 1793.5 references the fee that a pharmacy technician must pay to renew a license issued by the board. This proposal would replace the existing regulation reference with a statutory reference. The board’s fee schedule was revised in 2009, and a new fee schedule was effective on January 1, 2010 (see Chapter 270, Statutes of 2009 at section 4400 of the Business and Professions Code). The proposed amendment is necessary to remove an obsolete reference and to provide a current reference to the fee that a pharmacy technician must pay to renew a license issued by the board.

**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 perfumed 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 generally authorizes the board to make a thorough investigation of an applicant for a license issued by the board.

Business and Professions Code section 4400 sets forth the fees and penalties fixed by the board.

Business and Professions Code section 4402 sets forth requirements for the cancellation of a license issued by the board that is not renewed.
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.

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. At the Board Meeting held July 15-16, 2009, the board received information from staff related to Pharmacy Technician application requirements and processing times. At that time, staff summarized the requirements for licensure as a Pharmacy Technician, and addressed educational requirements, criminal history clearance, and common deficiencies in applications received by the board. Also at that meeting, staff presented information related to the National Association of Boards of Pharmacy (NABP) Report of the Task Force on Standardized Pharmacy Technician Education and Training, which included Model Rules applicable to pharmacy technicians and application requirements.

At the Board Meeting held July 28-29, 2010, the board determined it was necessary to repeal the Pharmacy Technician Application incorporated by reference (17A-5, Rev. 9/94) and to establish a new Pharmacy Technician Application, incorporated by reference with a revision date of January 2011. The application would incorporate educational and licensing requirements currently found in Division 2 of Chapter 9 of the Business and Professions Code. The board also determined it was necessary to require that a Pharmacy Technician applicant submit to the board with his or her application a Self-Query report from the National Practitioner Data Bank – Health Integrity and Protection Data Bank (NPDB-HPDB) so that the board would be aware of any reported discipline in another state prior to making a decision on an application.

The Licensing Committee discussed the Pharmacy Technician Application at its meeting held October 5, 2010 and then at a subsequent Board Meeting on October 20-21, 2010, where the board moved to initiate a rulemaking to amend section 1793.5 as described herein and to propose modifications to the Pharmacy Technician Application (Form 17A-5) with a revision date of January 2011.

At its meeting held February 1-2, 2011, the board again considered the content of the proposed Pharmacy Technician Application (17A-5, Rev. 01/11) which is incorporated by reference and
directed that the rulemaking initiated by the board reflect the proposed text as approved in October 2011, as well as the Pharmacy Technician Application considered and approved at the February 2011 meeting.

Underlying Data
1. February 2-3, 2011 Board Meeting Materials and Minutes
2. October 20-21, 2010 Board Meeting Materials and Minutes
3. October 5, 2010 Licensing Committee Meeting Materials and Minutes
4. July 28-29, 2010 Board Meeting Materials and Minutes
5. Fact-Sheet on Self-Querying, National Practitioner Data Bank—Healthcare Integrity and Protection Data Bank (NPDP-HIPDB)
6. Pharmacy Technician Application, 17A-5, Rev. 9/94 (Repealed) and Pharmacy Technician Application, 17A-5, Rev. 01/11 (Proposed)

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.

The board determined that up to 50 percent of pharmacy technician applications have one or more deficiencies, which delays the processing of license applications. By incorporating by reference a Pharmacy Technician Application (17A-5) that reflects existing laws and regulations, the board believes that deficiencies will be reduced and that applications will be processed more timely.

Section 4207 of the Business and Professions Code requires the board to make a thorough investigation of an applicant for licensure to determine whether the applicant is qualified for the license being sought. Subdivision (d) of this section provides that the information requested by the board for this purpose shall not be required to be adopted by regulation pursuant to the Administrative Procedures Act.

This proposal includes a requirement that a pharmacy technician applicant shall submit with his or her application a Self Query Report from the National Practitioner Data Bank – Healthcare Integrity and Protection Data Bank (NPDB-HIPDB). The Self Query Report will allow the board to determine if the applicant has been disciplined in another state prior to making a licensing decision.

Existing regulation in subdivision (c) specifies timeframes in which the board will notify an applicant of any deficiency of an application, and of the board’s decision to grant or deny a license. This proposal will specify that once an application is deemed complete, and upon completion of any investigation conducted, as specified, the board will then notify the applicant of a licensing decision.

Existing regulation at subdivision (d) of Section 1793.5 provides a regulatory reference related to the renewal fee a pharmacist technician must pay. This proposal would provide a more
current reference, as the board’s fee schedule was amended effective January 1, 2010. (See Chapter 270, Statutes of 2009, at section 4400 of the Business and Professions Code.)

**Specific Technologies or Equipment**

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

**Consideration of Alternatives**

One alternative would be to not pursue this regulation. This alternative is not reasonable because the board needs to be aware of any discipline of a health care provider / applicant in another state or states prior to making a licensing decision; terminology is not consistent with related pharmacy law statutes; it is necessary to remove text that is duplicated on the pharmacy technician application; and the application incorporated by reference does not reflect all current requirements for licensure as a Pharmacy Technician.

A second alternative would be to require the board of Pharmacy to query the National Practitioners Data Bank – Healthcare Integrity and Protection Data Bank for each applicant received, instead of requiring the applicant to provide this information to the board upon application for licensure. This requirement would require the board to conduct these searches as an “eligible entity.” The board believes this is not reasonable because it would increase the time it would take the board to process an application for licensure; licensure could be delayed and additional deficiencies could be generated if the applicant did not provide the board with the exact name under which any discipline had been reported to the NPDB-HIPDB; and the board does not possess the personnel or resources to absorb this workload and/or related expenses. This alternative would have an impact to the board of approximately $267,000 for the first year, and approximately $258,000 each fiscal year thereafter to cover personal services needed to process NPDB-HIPDB submissions and to pay for query requests. The board cannot absorb these additional costs and would require a license fee increase to cover such expenses.