

TITLE 16: BOARD OF PHARMACY

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Pharmacy Technician Application, Training Courses, and Pharmacy Technician Certification Programs

Section Affected: Amend Title 16 California Code of Regulations (CCR) sections 1793.5 and 1793.6, and adopt Section 1793.65 of Article 11 of Division 17 of Title 16, California Code of Regulations (CCR)

Updated Information

The Initial Statement of Reasons is included in this rulemaking file. The information contained therein accurately reflects the position of the Board of Pharmacy (board) regarding the amendment of the above section. The Initial Statement of Reasons (ISR) is updated as follows:

The 45-day public comment period began on October 22, 2021 and ended on December 6, 2021. The board's notice indicated that the board did not intend to hold a hearing on the matter, unless requested. No request for a hearing was received by the board during the 45-day comment period.

During the 45-day comment period no comments were received. At its January 27, 2022 board meeting, the board voted to amend the pharmacy technician application, incorporated by reference, and release the modified application for a 15-day comment period.

The board amended the pharmacy technician application (17A-5) to reduce the number of application deficiencies identified following receipt of an application for licensure. The amendments are as follows:

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The board amended the "For Board Use" section to add "Self-Query" to that section. The self-query is required by 1793.5(a)(4). Adding this information to the "For Board Use" section provides an area for board staff to record whether this document was submitted, which provides quick identification for secondary review of the application.

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The board split the "United States high school graduate or foreign equivalent" into two categories: "United States High school graduate" and "Foreign Equivalent to United

States High School.” This was separated for clarity to the applicants. Being a high school graduate is required by Business and Professions Code (BPC) section 4202(a). The board determined that foreign high school graduates can submit a notarized copy of the transcript or diploma as it can be difficult to obtain high school diplomas from foreign countries while within the United States. As such, the board determined that a notarized copy of the transcript would also be acceptable. Additionally, the document must be translated into English, if not originally in English, in order for board staff to review and validate that it meets the high school equivalent criteria required by BPC 4202(a).

The board also provided clarifying information on the application that documents should be in a sealed envelope or be notarized, which is necessary to ensure documents are not altered by the applicant.

The board also added “in a sealed envelope” with respect to the Self-Query to remind applicants that the self-query must be in a sealed envelope, as required by CCR 1793.5(a)(4).

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The board added “course” after the name of the pharmacy technician training program to mirror the addition of “a training course” in the coursework section on the form. The addition of this term is for consistency with respect to the coursework types available.

The board added space for the training course provider to document the pharmacy and/or pharmacist license number. While this is currently listed on the form in bold at the bottom of page 8, this item is frequently overlooked by applicants, causing numerous deficiencies. The board hopes that including the space to record the information will remind applicants to provide the information.

The 15-day public comment period began on January 28, 2022 and ended on February 12, 2022. During the 15-day comment period no comments were received. As no comments were received, the regulation was adopted by the Executive Officer per the delegation issued by the board on January 27, 2022.

During post adoption review, a conflict was identified within section 1793.6(c)(2) with a provision of the California Education Code (EDC), enacted in 2021, that states, “a postsecondary educational institution shall not inquire about a prospective student’s criminal history on an initial application form or at any time during the admissions process before the institution’s final decision relative to the prospective student’s application for admission” (EDC § 66024.5(b)). As previously drafted, the board’s proposal at subdivision 1793.6(c)(2) would have required an administrator or instructor

of a pharmacy technician training program to conduct a criminal background check on the applicant prior to enrollment, which appears to be inconsistent with section 66024.5(b) of the EDC. The language was modified to address the possible inconsistency while maintaining the board's goal to ensure an individual enrolling in a training is aware, at a minimum, of possible application denial if a criminal background reveals that such action is appropriate. The new language reads: *"Prior to enrollment in any classes or admission into the course of training, an administrator or instructor shall inform applicants of the criminal background check required for a pharmacy technician license per Business and Professions Code section 4202(c). An administrator or instructor shall counsel applicants about the negative impact to securing licensure if the criminal background check reveals that the applicant has committed acts that would constitute grounds for denial of licensure."*

In addition to the above change, a non-substantive change was made to update the revision date of the application to 12/2021, which is the most current version of the application.

At its July 27, 2022 board meeting, the board voted to amend the pharmacy technician regulation as noted above and release the modified language for a 15-day comment period. The 15-day public comment period began on August 2, 2022 and ended on August 17, 2022. During the 15-day comment period no comments were received. As no comments were received, the regulation was adopted by the Executive Officer per the delegation issued by the board on July 27, 2022. **Local Mandate**

A mandate is not imposed on local agencies or school districts.

Small Business Impact

While the board does not have, nor does it maintain, data to define if any of its licensees (pharmacies) are a "small business" as defined in Government Code section 11342.610, the board has made the determination that this proposal will not have a significant adverse impact directly affecting small businesses. The board has determined that the proposed regulation would have little effect on small businesses. Existing law allows a training course as one of the pathways to licensure for pharmacy technicians. The board is not aware of any small businesses that provide pharmacy technician training programs.

Consideration of Alternatives

No reasonable alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more

cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The board considered the continued use of the current pharmacy technician application, but that would not be consistent with current laws and was rejected. An alternative to the amendments to section 1793.6 would be to maintain current training course requirements, but that would fail to protect consumers and potential students and was rejected. An alternate to section 1793.65 was not to add a regulation specifying the board approved pharmacy technician certification training programs, but that was rejected because the proposal makes that information available to the public in a way that permits individuals and employers who pay for such training to be aware that such programs meet the board's standards.

Incorporation by Reference

Existing regulation incorporates pharmacy technician application by reference. This rulemaking continues the incorporation by reference of this form. Continued incorporation is appropriate because the 8-page form is cumbersome and contains formatting that would not be publishable in the CCR.

Objections or Recommendations/Responses to Comments

No comments received.