



July 28, 2021

Seung Oh, PharmD  
President  
Board of Pharmacy  
2720 Gateway Oaks Blvd, Ste. 100  
Sacramento, CA 95833

Dear President Oh,

On behalf of the California Pharmacists Association (CPhA), I would like respectfully request that the Board table the proposal on the pre-filing settlement conference which will be considered at the full Board meeting on July 29, 2021.

CPhA would like to thank the Enforcement and Compounding Committee's continuing work on this issue

### **Background**

CPhA has been advocating for the creation of an alternate disciplinary process since the March 14, 2019 Enforcement Committee meeting through the initial idea of a "Pharmacy Advisory Committee". The Committee rejected that recommendation but did discuss the idea of exploring an alternative option to the current disciplinary process. The Board submitted a statutory proposal to add Section 4300.2 to the Business and Professions Code. In CPhA's response (dated July 12, 2019) we suggested modifying certain elements of the proposal to eliminate a presumption of guilt by a licensee. This discussion resulted in an acceptable agreement in concept, which would allow licensees to provide mitigating evidence in response to an accusation by the Board. It was our our understanding, this would be made official at the January 29, 2020 Board meeting. However, during that meeting, we were informed by Board Counsel, at the time, that was not the case. As a result, there was to be further work done by the Committee.

The committee met again on April 22, 2021 to discuss the issue under Item XII. During that time, the committee introduced the idea of a 'pre-settlement conference' that is currently used by the Board of Accountancy. As a result of the discussion during that meeting, the committee met again on July 15 and brought forth a proposal modeled after the Board of Accountancy's conference. This was the first opportunity for CPhA to review the Board's proposal. Unfortunately, CPhA must regretfully oppose this proposal for the following reasons:

- CPhA continues to believe that having the Attorney General's (AG) office participate in any sort of alternate disciplinary process was antithetical to the original purpose.
- This flowchart being put forth still presumes a licensee's guilt as a precursor to participation in this process. The intended purpose of an alternate disciplinary model that CPhA has been advocating for was to allow licensees, who have mitigating evidence that supports no wrongdoing, an opportunity to provide that evidence to the Board. By requiring the licensee to agree to a stipulated pleading in advance of consideration of mitigating evidence, there is no benefit to the

licensee to take this route. Additionally, this proposal essentially trades a licensee's rights afforded under the Administrative Procedure Act (APA), which include but are not limited to the right to full discovery and due process, in exchange for the perceived benefit of expediency. The ability for licensees to plead guilty to an accusation for the sake of expediency already exists in current law without the deprivation of their rights.

- A closer look at this flowchart shows that the first eight steps are identical to the current AG general case process. The only real change that the flowchart is proposing to make is that instead of setting a hearing for a settlement, which would then go to trial, a "pre-conference" would be set up to have both parties sign the settlement. None of this is prohibited in current law or regulation and could currently be done at the desire of the Attorney General, the Board and the licensee.

CPhA believes that this proposal is more detrimental to licensees than the current process being used by the Board and the AG for disciplinary issues.

Lastly, as the Sunset Review bill, AB 1533 (Committee on Business and Professions), currently would require the Board to study how to move the profession of pharmacy into a "standard of care" model, we believe that this issue would fall into the purview of this model. As such, we would respectfully request that the Board table this item.

Should you have any questions about our stance, please feel free to contact me at (916) 779-4519 or at [dmartinez@cpha.com](mailto:dmartinez@cpha.com).

Thank you for your consideration of our comments.

Sincerely,



Danny Martinez  
Director of Regulatory Affairs and Policy Development  
California Pharmacists Association.