

## **PHYSICIAN ASSISTANT BOARD**

### **INITIAL STATEMENT OF REASONS**

Hearing Date: July 11, 2016

Subject Matter of Proposed Regulations: Reporting of Supervision by Physician Assistant

Section Affected: 1399.546.

**Specific Purpose of each adoption, amendment, or repeal:**

Business and Profession Code section 3502 authorizes the medical services performable by physician assistants, the supervision requirements of physician assistants, and supervision recordkeeping requirements. Existing law at Title 16, California Code of Regulations (CCR) section 1399.546 requires the physician assistant to enter the name of their supervising physician in the patient's medical record every time they provide care for that patient. Section 1399.546 was adopted prior to the now wide-use of electronic medical records (EMR) and the automated or computerized entry of required medical information in the medical records of patients.

SB 337 Chapter 536, Statutes of 2015 (Pavley), amended Business and Profession Code section 3502. Among the amendments was the requirement that the medical record for each episode of care for a patient identify the physician and surgeon who is responsible for the supervision of the physician assistant. Business and Professions Code section 3502(f) also was amended to state: "Compliance by a physician assistant and supervising physician and surgeon with this section shall be deemed compliance with Section 1399.546 of Title 16 of the California Code of Regulations."

Upon review of its interpretation of Section 1399.546 and the recent amendments to SB 337, the Board determined that Section 1399.546 is not consistent with the intent of Business and Professions Code section 3502 as amended by SB 337.

Specifically, the Board determined that SB 337 was intended to alleviate the need for the physician assistant to manually enter the supervising physician's name in the patient's EMR for each episode of care. However, the current regulation still may be interpreted to require that entry.

This proposal would strike the current requirement that the physician assistant manually "enter" the name of his or her supervising physician in the patient's medical record for each episode of care, and instead require that the physician assistant only "record" the supervising physician in the patient's medical record for each episode of

care. This would permit use of EMRs or other methods of recordation to meet this recordkeeping requirement.

The proposal would also add a paragraph to Section 1399.546 that explicitly permits the use of EMRs to meet this requirement provided that the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the supervising physician assistant for each episode of care into the patient's medical record. Such automatic entry would be deemed sufficient compliance with this recordkeeping requirement.

The purpose is to eliminate duplicative record keeping, thus ensuring that licensees would not be subjected to burdensome regulations in complying with this reporting requirement while still meeting the objective of documenting who is responsible for providing care in the patient's medical record.

#### Factual Basis/Rationale

##### Amend Section 1399.546

Factual basis for determination that each proposed change is reasonably necessary to address the problem for which it is proposed:

Business and Professions Code (BPC) section 3502 references that the supervision record keeping requirements are in compliance with Title 16, California Code of Regulations (CCR) section 1399.546 which specifies how the physician assistant enters the name of the supervising physician in the patient's medical record.

At the Board's November 2, 2015 meeting, members discussed the implementation of SB 337. SB 337 became law on January 1, 2016 and amended BPC 3502. There was concern that CCR section 1399.546 may need to be amended so that it would conform to the legislative intent of SB 337. It was noted that the legislative amendments to BPC 3502 pertain to adequate supervision of physician assistants and not the physician assistant's requirements for entering the name of the supervising physician in the patient record. The Board also indicated that the regulation should be amended to reflect technological changes with regard to patient electronic medical records (EMR) on how supervision is noted using EMRs. EMRs have replaced paper records in most medical practices. These apparent conflicts between statutory intent and regulatory language may result in confusion and lack of compliance with the Board's laws and regulations for the regulated community. These inconsistencies may negatively impact consumer protection since implementation of any standards could be challenged, resulting in possibly inconsistent compliance and enforcement in this area.

At the Board's January 11, 2016 meeting, proposed text to amend Section 1399.546 was reviewed, discussed and approved by the Board. The text addressed the inconsistency with the intent of BPC section 3502, which was to alleviate the need to

manually enter the supervising physician name in the patient electronic medical record each time a physician assistant provides care for a patient and amend it to reflect each episode of care. The proposed text also addresses the use of electronic medical recordkeeping and how the name of the supervising physician would be recorded within those records.

EMRs refer to the systematized collection of patient and population electronically-stored health information in a digital format. These records can be shared across different health care settings. EMR systems are designed to store data accurately and legibly. Regardless, any concerns about accurate documentation should be addressed with this proposal's addition of the requirement that the EMR software "does" actually record the name of the supervising physician.

Physician assistants are dependent practitioners working in medical practices and/or hospitals that have implemented the use of EMRs. Therefore, it is necessary for the regulation to be updated to reflect changes in technology and the use of EMRs within these work settings.

Therefore, based on the recommendations of the Board and to ensure that CCR section 1399.546 is consistent with the provisions of BPC section 3502, the Board is proposing to amend CCR section 1399.546 to eliminate the apparent inconsistency with the legislative intent of SB 337 and to reflect current medical record keeping practices with regard to the more wide-spread use of EMRs.

#### Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon:

- (1) SB 337 Chapter 536, Statutes of 2015 (Pavley), amended Business and Profession Code section 3502.
- (2) Assembly Committee on Business and Professions Legislative Analysis of SB 337, dated June 23, 2015.
- (3) Minutes of the Physician Assistant Board's November 2, 2015 Board meeting.
- (4) Minutes of the Physician Assistant Board's January 11, 2016 Board meeting.

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The Physician Assistant Board has approximately 10,732 licensees for FY 2015-2016. Physician assistants work in a variety of practice settings and specialties

under the supervision of licensed physicians. The Board does not have data on the number of physicians who supervise physician assistants or the number of businesses that employ them.

Existing law requires that physician assistants manually enter the name of their supervising physician in the patient's record for each episode of care. The proposed amendment would clarify and specifically permit the physician assistant to use computer software programs to automatically enter the information, thus saving costs and time and eliminating duplicative functions within the health care delivery system. This proposal would therefore result in cost savings for any businesses that employ physician assistants or no costs for those businesses already electronically generating the information required by this regulation. The proposal's purpose is to ensure there is no duplicative record keeping while still enabling the patient to reference who their supervising physician is.

### Economic Impact Assessment

This regulatory proposal will have the following effects:

It will not create or eliminate jobs within the State of California because this proposed regulation represents the current evolution of computer technology and practice within the medical community. The regulated community is already using electronic medical records to record information in the patients' medical records. This proposal will merely update the regulation to make conforming changes consistent with current practice in the medical community. It will not affect any physician assistant that works for a business that allows supervision information to be entered manually.

It will not create new business or eliminate existing businesses within the State of California because this proposed regulation represents the current evolution of computer technology and practice within the medical community. The regulated community is already using electronic medical records to record information in the patients' medical records. This proposal will merely update the regulation to make conforming changes consistent with current practice in the medical community.

It will not affect the expansion of businesses currently doing business within the State of California because this proposed regulation represents the current evolution of computer technology and practice within the medical community. The regulated community is already using electronic medical records to record information in the patients' medical records. This proposal will merely update the regulation to make conforming changes consistent with current practice in the medical community.

This regulatory proposal benefits the health and welfare of California residents because it represents the current standard of practice within the medical community and will enhance consumer protection by setting clearer and consistent standards for recording physician supervision in the patient's medical records.

This regulatory proposal does not affect worker safety because this proposed regulation represents current standard of practice within the medical community. It should not affect worker safety, as the physician is still responsible for supervising the PA and the patient standard of care remains unchanged.

This regulatory proposal does not affect the state's environment because it will not affect a change in the environment, but simply update current recordkeeping requirements consistent with the current evolution of computer technology and practice within the medical community.

#### 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 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.

Set forth below are the alternatives which were considered and the reasons each alternative was accepted or rejected:

1. Not amend the regulation: This alternative was rejected because section 1399.546 is inconsistent with the provisions of Business and Professions Code section 3502.
2. Amend the regulation: The Board determined that this alternative was the most feasible because it will update section 1399.546 to reflect current medical record keeping technological changes without affecting patient standard of care.