

FINAL STATEMENT OF REASONS

Health and Safety Code sections 1275 and 100275 grant the California Department of Health Services the general authority to adopt, amend, enforce, or repeal any reasonable rules and regulations as may be necessary to enable the Department to exercise the powers and perform the duties conferred upon it. In 2007, the Department of Health Services was legislatively reorganized (Ortiz, S.B. 162, Chapter 241, Statutes of 2006) into two separate departments, the new Department of Health Care Services and the new Department of Public Health. Health and Safety Code (HSC) section 131051 transferred the duties, powers, and responsibilities of the Licensing and Certification (L&C) Program to the Department of Public Health and HSC section 131200 vests rulemaking authority for L&C in the Department of Public Health (Department).

Standards with which healthcare facilities shall comply for licensure are found in Title 22 of the California Code of Regulations (22CCR) Division 5. The Department is proposing regulation amendments to Division 5 of 22CCR. The proposed amendments affirm the rights of a licensed healthcare practitioner acting within the scope of his or her professional licensure, as a member of the medical staff, to assume overall responsibility for the care of a patient. The proposed amendments are necessary to bring the regulations into compliance with Health and Safety Code sections 1315, 1316, and 1316.5 addressing medical staff membership and clinical privileges.

In 1983, the California Association of Psychology Providers (CAPP) challenged the existing regulations in court claiming the regulations violated section 1316.5. After protracted litigation, the California Supreme Court ruled in 1990 that the meaning of Health and Safety Code section 1316.5 was clear on its face in allowing clinical psychologists membership on the medical staff and that they were to be allowed to carry out their professional responsibilities consistent with their licensure in both inpatient and outpatient settings. In articulating the non-discrimination portion of Health and Safety Code section 1316.5 and noting that the regulations attempted to authorize what the statute prohibited, the court stated:

“...in performing such services the two professions [physicians and psychologists], each authorized by law, stand on equal footing; neither is subject to restraints from which the other is free....”

(*CAPP v. Rank* (1990) 51 Cal.3d 1, 12-13.)

The court also addressed the importance of the legislative history behind Health and Safety Code section 1316.5. The court stated that the legislative intent of the statute was to authorize health facilities to make inpatient care available for psychiatric patients by expanding its medical staff to include licensed clinical psychologists with appropriate training and clinical experience.

Following a frustrated attempt to effect conforming amendments through procedures authorized pursuant to 1CCR100, the Department is now making available, for public notice and comment, amendments to remove discriminatory language from the regulations for all licensed healthcare practitioners acting within the scope of their licensure in compliance with Health and Safety Code sections 1315, 1316, and 1316.5. The proposed regulation amendments delete specific references to a physician in those instances when another category of licensed health care practitioner as a member of the medical staff and within the scope of his or her professional licensure is authorized by law to perform the function.

With the proposed amendments, the Department is seeking to avoid any appearance of attempting to regulate the scope of practice of licensed healthcare practitioners, deferring instead to the appropriate boards within the Department of Consumer Affairs. The proposed amendments endeavor to clarify the Department's role as the regulator of licensed healthcare facilities, rather than of healthcare practitioners as licensed by the Department of Consumer Affairs. In proposing these amendments, it is not the Department's intent to venture beyond what is essential to revise regulations that impermissibly restrict a licensed healthcare practitioner acting within the scope of his or her professional licensure.

Punctuation, capitalization, spelling and typographical errors are corrected as non-substantive changes to enhance legibility. Authority and reference citations are updated to reflect current relevant statute.

Section 70055. Personnel.

Proposed non-substantive amendments.

1. In Section 70055 the name of the psychologist licensing board in subsection (a)(29) is changed from “Board of Medical Examiners” to the current name “Board of Psychology.”
2. The authority and reference note is updated.

[Several commenters suggested that the reference to the name of the licensing board for psychologists be changed to reflect the board’s current name.]

Section 70577. Psychiatric Unit General Requirements.

Paragraph (d)(2).

In the proposed amendment to paragraph (d)(2), the phrase “as determined by the patient’s attending psychiatrist” is deleted for the reasons presented in Attachment 2.

[Several commenters questioned whether determining the medical needs of a patient was within the scope of a psychologist’s license, a concern raised by the Department’s wording of the amendment to the section in the 45-day public notice. The Department has found no authority to support the idea that determining the medical needs of a patient is within the scope of a psychologist’s license, but also determined that to leave the paragraph without amendment could result in facilities deciding that psychologists could not be attending clinicians for patients in psychiatric units even though paragraph (d)(1) places psychologists on equal footing with psychiatrists in being “responsible for the diagnostic formulation for their patients and the development and implementation of each patient’s treatment plan.” The Department has therefore made a nonsubstantive post hearing change to the text to eliminate the regulation’s prescriptive specification of a practitioner who needs to determine whether a patient requires a medical examination, and to provide instead that the medical needs of the patient must determine the frequency of medical examinations.]

Paragraph (e)(1).

In paragraph (e)(1), the requirement restricting the admission of patients by clinical psychologists to those patients for whom there are staff physicians who will provide the necessary medical care requires hospitals to limit or condition the admissions by clinical psychologists, and is in contradiction to Health and Safety Code section 1316.5 (a)(2) “...medical staff status shall include and provide the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure”; and section 1316.5 (a)(1) “The rules and regulations shall not

discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the [medical staff member's respective licensure"]; and Health and Safety Code section 1316.5 (b)(2) "If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physician and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination"; and, therefore, the restriction is invalid. The proposed amendments delete language in paragraph (e)(1) found to discriminate against clinical psychologists.

Subsection (f).

The proposed amendment to subsection (f) adds the phrase "or psychologist" to follow the phrase "attending physician" for the reasons presented in Attachment 2.

Paragraph (j)(2).

In paragraph (j)(2):

1. In the first sentence the phrase "the physician" is replaced with non-discriminatory language "a licensed healthcare practitioner acting within the scope of his or her professional licensure."
2. In the last sentence of this paragraph, the word "physician" is replaced with the phrase "licensed healthcare practitioner."

The proposed amendments delete language that restricts the ordering of restraints to physicians only. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 3.

Paragraph (k)(2).

In paragraph (k)(2) the phrase "the physician" is deleted and replaced with non-discriminatory language "a licensed healthcare practitioner acting within the scope of his or her professional licensure." The proposed amendment deletes language that only a physician shall have overall responsibility for a psychiatric unit. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 3.

Proposed non-substantive amendments.

1. In the first sentence of subsection (c), the misspelling of the article "the" preceding the word "diagnosis" is corrected.

2. The change of the wording to paragraph (d)(1) adding the word “acting” renders the language consistent within subsection (d) and a comma is added following the word “psychologists”;
3. In paragraph (e)(2) the (2) designation is removed and the language is relocated to follow the first sentence of subsection (e). The word “only” is deleted as unnecessary.
4. In the last sentence of paragraph (j)(2), adding the feminine objective pronoun results in a gender neutral requirement.
5. In the first sentence of paragraph (k)(2), adding the feminine objective pronoun results in a gender neutral requirement, and in the last sentence of the spelling of the word “therefore” is corrected; and
6. The authority and reference note is updated.

Section 70703. Organized Medical Staff.

Subsection (a).

Subsection (a) is amended to unambiguously require that each member of the organized staff rendering care to patients is equally subject to bylaws, rules and regulations of the hospital. To accomplish this, the word “medical” is deleted as the care could possibly be medical, psychological, podiatric or dental. The phrase “subject to the by laws, rules and regulations of the hospital” is relocated from paragraph (a)(2) to the end of subsection (a) to clearly indicate that the phrase applies to the entire organized medical staff regardless of professional category.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Paragraph (a)(2)

Paragraph (a)(2) is amended by adding a subparagraph (A) to provide that when psychological services within a facility owned and operated by the State are provided by clinical psychologists, clinical psychologist shall be included on the medical staff. It is not within the purview of the Department to require that clinical psychologists be included on the organized medical staff in non-state run acute care hospitals. Therefore, paragraph (a)(2)(B) is added to provide that when clinical psychological services are provided by clinical psychologists in a health facility not owned and operated by the state, the facility may enable the appointment of clinical psychologists to the medical staff.

[Several commenters expressed concern about the Department requiring that psychologists be appointed to the medical staff in non-state owned facilities,

when the statute appears to make such appointments permissive. The Department has therefore made a post hearing change to distinguish state-owned from non-state owned facilities, and to use the statutory language to include the permissive language for non-state owned facilities.]

The proposed amendments are in compliance with statutes cited in Attachment 3.

Subsection (f)

1. In subsection (f) the phrase “or psychologists” is added to the phrase “availability of staff physicians” for whom, in their absence, emergency coverage is provided. The proposed amendment is added for consistency with the proposed amendment requested by Psychology Shield in their [November 8, 2004](#), petition.

The proposed amendment is in compliance with statutes cited in Attachment 3.

2. A proposed amendment to subsection (f) adds the phrase “or psychologist” to the phrase “in the event attending physician or his alternate is not available” following “attending physician” for the reasons presented in Attachment 2.

Proposed non-substantive amendments.

1. In subsection (b) “OR” is deleted and replaced with the conjunction “or” correcting misleading capitalization;

2. In subsection (d), a spelling correction changes the possessive pronoun “my” to the permissive verb “may”;

3. In subsection (f), an “s” is added to “staff physician” as a correction of grammar and the addition of the of the feminine objective case pronoun results in a gender neutral requirement; and

4. The authority and reference note is updated.

Section 70706. Interdisciplinary Practice and Responsibility for Patient Care.

Subsection (b).

In subsection (b) the proposed amendment provides that should there be a psychiatric unit and one or more clinical psychologists admitted to the medical staff, there shall be one or more clinical psychologists on the Committee on Interdisciplinary Practice. Psychology is a specific healthcare category having its own educational preparation and licensed professional practice. The proposed amendment requires representation of the psychology profession to provide psychology based expertise in the discussions and

decision making concerning the interdisciplinary structure of the healthcare facility when that structure includes clinical psychologists.

The proposed amendment is in compliance with statutes cited in Attachment 3.

[Several Commenters objected to this requirement as it might be read to require that psychologists be appointed to a medical staff committee even when they were not members of the medical staff. The Department has made a post hearing change to add the word “medical” to the requirement to make it clear that the appointment requirement only applies when psychologists are members of the medical staff.]

Proposed non-substantive amendments.

1. A punctuation correction in subsection (b) adds a comma to follow the word “designee.”
2. Grammatical corrections in paragraph (c)(2) delete the final “s” in the word sections and replace the preposition “of” with the conjunction “or”; and
3. The authority and reference note is updated.

Section 70707. Patients' Rights.

Paragraph (b)(3).

In paragraph (b)(3) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment removes language that implies only physicians have the primary responsibility of coordinating care. The deletion of the word “other,” preceding the phrase “physicians and nonphysicians,” removes language that implies that the licensed health practitioner acting within in the scope of his or her professional licensure is a physician.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (b)(10).

In paragraph (b)(10) the word “physicians” is deleted and replaced with the phrase “members of the medical staff.” The proposed amendment deletes language that implies only physicians may determine the appropriateness of discharge from the facility. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (b)(12)

In paragraph (b)(12) the phrase “personal physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment removes language that implies only physicians engage in patient care based research. The proposed amendment requires the patient shall be advised if the care provided by any of his or her licensed healthcare practitioners is included in such projects or studies.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. A punctuation correction is made in the first sentence in subsection (b)(3), adding a comma after the word “care”;
2. An “s” is added to “appointment” in paragraph (b)(11) to correct grammar;
3. The article “the” is added before “hospital” in paragraph (b)(12) to correct grammar; and
4. The authority and reference note is updated

Section 70717. Admission, Transfer and Discharge Policies.

Subsection (c).

In subsection (c) the phrase “lawfully authorized to diagnose, prescribe and treat patients” is language that may be used to restrict admission of patients to only those healthcare practitioners who may prescribe medications. This language is deleted and replaced with non-discriminatory language, “a licensed healthcare practitioner acting within the scope of his or her professional licensure.” Rather than listing specific practitioners, the proposed amendment defers to scope of practice

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (f)(2).

In paragraph (f)(2) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within his or her scope of professional licensure, based on his or her assessment of the patient’s clinical condition” and the word “medical” is deleted. These proposed amendments remove language that requires a physician to assess for a potential “medical” hazard prior to patient transfer or discharge regardless of the admitting diagnosis and admitting

licensed healthcare practitioner. The proposed amendment eliminates language that would require physician concurrence with any lawful order to transfer or discharge of a patient made by another category of licensed health practitioner acting within the scope of his or her professional licensure.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 70749. Patient Health Record Content.

Subparagraph (a)(1)(K).

In subparagraph (a)(1)(K) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment eliminates language limiting admission of the patients to physicians.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. Punctuation corrections are made to subparagraphs (a)(1)(C)2 and 3;
2. A grammatical correction is made in paragraph (a)(12) changing “diagnosis” to “diagnoses”;
3. The grammatical correction in paragraph (a)(13) changing “Pathological” to “Pathology”; and
4. The authority and reference note is updated.

Section 70751. Medical Record Availability.

Subsection (a)(1).

In subsection (a)(1) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment removes language that implies only physicians shall admit patients. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (g).

In subsection (g):

1. In the first sentence the words “physician,” “dentist” and “podiatrist” are deleted and replaced with the non-discriminatory language “licensed health practitioner acting within the scope of his or her professional licensure.” The proposed amendment eliminates language that implies only physicians, dentists and podiatrists are held to the requirement of authenticating or signing medical records within two weeks of a patient’s discharge.
2. In the second sentence the word “physician’s” is deleted and replaced with the non-discriminatory language “by a licensed healthcare practitioner acting within the scope of his or her professional licensure,” and the second use of the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” These proposed amendments remove language that implies only physicians may authenticate medical records by using a signature stamp or computer key.

Subsection (h).

The word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure” to make the provisions of this subsection consistent with the changes made to the other subsections.

[Several Commenters noted that the Department had evidently overlooked making this change needed to maintain consistency within the regulation.]

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. In subsection (g) “/she” is added to follow the pronoun “he” and results in a gender neutral requirement.
2. The authority and reference note is updated.

Section 70753. Transfer Summary.

In Section 70753 the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment deletes language that implies

all transfer summaries shall be signed by physicians. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

An authority and reference note is added.

Section 71053. Personnel.

Proposed non-substantive amendments.

1. In Section 71053 the name of the psychologist licensing board in subsection (a)(15) is changed from “Board of Medical Examiners” to the current name “Board of Psychology.”
2. The authority and reference note is updated.

[Several commenters suggested that the reference to the name of the licensing board for psychologists be changed to reflect the board’s current name.]

Section 71203. Medical Service General Requirements.

Subparagraph (a)(3)(B).

In subparagraph (a)(3)(B) language that restricts the admission of patients by clinical psychologists to those patients for whom there are staff physicians who will provide the necessary medical care is deleted.

The proposed amendment is in compliance with statutes cited in Attachment 3.

Subsection (b).

The change to subsection (b) adds the language “Policies and procedures shall be consistent with sections 1316 and 1316.5 of the Health and Safety Code” and is proposed for the reasons presented in Attachment 2.

Proposed non-substantive amendments.

1. Subparagraph (a)(3)(C) is re-designated to (a)(3)(B) and the unnecessary word “Only” is deleted;

2. A punctuation correction is made in the third sentence in subsection (b), adding a comma after the word “staff”; and

3. The authority and reference note is updated.

Section 71205. Medical Service Staff.

Paragraph (d)(1).

In paragraph (d)(1):

1. The word “clinical” is added to precede the word “psychologist.” This proposed amendment reflects the requirements of Health and Safety Code Section 1316.5(d).

2. The word “employed” is deleted and replaced with the word “available.” This amendment is proposed for the reasons presented in Attachment 2.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 71503. Organized Medical Staff.

Subsection (a).

Subsection (a) is amended to unambiguously require that each member of the organized staff rendering care to patients is equally subject to bylaws, rules and regulations of the hospital. To accomplish this, the word “medical” is deleted as the care could possibly be medical, psychological, podiatric or dental. The phrase “subject to the by laws, rules and regulations of the hospital” is relocated from paragraph (b)(2) to the end of subsection (a) to clearly indicate that the phrase applies to the entire organized medical staff regardless of professional category.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Paragraph (b)(2)

Paragraph (b)(2) is amended by adding a subparagraph (A) to provide that when psychological services within a facility owned and operated by the State are provided by clinical psychologists, clinical psychologist shall be included on the medical staff. It is not within the purview of the Department to require that clinical psychologists be included on the organized medical staff in non-state run acute care hospitals. Therefore, paragraph (b)(2)(B) is added to provide that when clinical psychological services are provided by clinical psychologists in a health facility not owned and operated by the

state, the facility may enable the appointment of clinical psychologists to the medical staff.

[Several Commenters expressed concern about the Department requiring that psychologists be appointed to the medical staff in non-state owned facilities, when the statute appears to make such appointments permissive. The Department has therefore amended the language to distinguish state-owned from non-state owned facilities, and to use the statutory language to include the permissive language for non-state owned facilities.]

The proposed amendments are in compliance with statutes cited in Attachment 3.

Subsection (g)

1. In subsection (g) the phrase “or psychologist” is added to the phrase “availability of staff physicians” for whom, in their absence, emergency coverage is provided. The proposed amendment is added for consistency with the proposed amendment requested by Psychology Shield in their [November 8, 2004](#), petition.

The proposed amendment is in compliance with statutes cited in Attachment 3.

2. A proposed amendment to subsection (g) adds the phrase “or psychologist” to the phrase “in the event attending physician or his alternate is not available” following “attending physician” for consistency with the amendment to Section 70703 requested by Psychology Shield in their [November 8, 2004](#), petition.

Proposed non-substantive amendments.

1. In subsection (g), the addition of the of the feminine objective case pronoun results in a gender neutral requirement; and
2. The authority and reference note is updated.

Section 71507. Patients’ Rights.

Subsection (b).

In subsection (b) the word “physician” is replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment removes the language that implies only physicians shall be assigned overall responsibility for the service. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 3.

Proposed non-substantive amendments.

1. In the first sentence in subsection (b) a comma is added to follow the word “service” to enhance readability; and
2. The authority and reference note is added.

Section 71517. Admission, Transfer and Discharge Policies.

Subsection (b).

In subsection (b) the phrase “lawfully authorized to diagnose, prescribe and treat patients” is language that may be used to restrict admission of patients to those healthcare practitioners who may prescribe medications. This language is deleted and replaced with non-discriminatory language “a licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 3.

Subsection (e).

In the subsection (e), the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within his or her scope of professional licensure, based on his or her assessment of the patient’s clinical condition” and the word “medical” is deleted. The proposed amendments delete language that requires a physician to assess for a potential risk of discharge regardless of the admitting diagnosis and admitting licensed healthcare practitioner. The proposed amendment deletes language that requires physician concurrence with any order to transfer or discharge made by another category of licensed healthcare practitioner acting within the scope of his or her professional licensure.

The proposed amendment is in compliance with statutes cited in Attachment 3.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 71545. Restraint of Patients.

Subsection (b).

In subsection (b):

1. The phrase “the physician” in the first sentence is deleted and replaced with non-discriminatory language “a licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that restricts the ordering of restraint to physicians only.
2. The word “physician” in the last sentence is deleted and replaced with non-discriminatory language “licensed healthcare practitioner.” The proposed amendment deletes language that restricts the ordering of restraints to physicians only.

The proposed amendments are in compliance with statutes cited in Attachment 3.

Proposed non-substantive amendments.

1. In the last sentence of subsection (b), the addition of the feminine objective case pronoun makes the requirement gender neutral.
2. The authority and reference note is updated.

Section 71551. Medical Record Availability.

Subsection (a).

In subsection (a) the proposed amendment adds the phrase “or psychologist” to follow the phrase “attending physician” for the reasons presented in Attachment 2.

Subsection (g)

In subsection (g):

1. The words “physician,” “dentist” and “podiatrist” are deleted and replaced with the non-discriminatory language “licensed health practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians, dentists and podiatrists are held to the requirement of authenticating or signing medical records within two weeks of a patient’s discharge.
2. In the second sentence the word “physician’s” is deleted and replaced with the non-discriminatory language “by a licensed healthcare practitioner acting within the scope of his or her professional licensure,” and the second use of the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” These proposed amendments remove language that implies only physicians may authenticate medical records by using a signature stamp or computer key.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (h).

In subsection (h) the word “physician” is deleted and replaced with the phrase “attending member of the medical staff.” The amendment is proposed for the reasons presented in Attachment 2.

Proposed non-substantive amendments.

1. In the first sentence of subsection (g) the misspelling of the word “and” is corrected by adding the “d”; and
2. The authority and reference note is updated.

Section 71553. Transfer Summary.

In Section 71553 the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment deletes language that implies all transfer summaries shall be signed by physicians. Rather than listing specific practitioners, the proposed amendment defers to scope of practice

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

An authority and reference note is added.

Section 72091. Psychologist.

Proposed non-substantive amendments.

1. In Section 72091 the name of the psychologist licensing board in subsection (a) and subsection (b) is changed from “California Board of Medical Quality Assurance” to the current name “California Board of Psychology”.
2. The authority and reference note is updated.

Section 72109. Standing Orders.

In Section 72109 the word “prescribe,” is deleted as it is often solely associated with the directions for the administration of medication, a privilege not universally available to all

members of an organized medical staff. Standing orders may also pertain to non-medication directives. Therefore, the following non-discriminatory language “provided by a licensed healthcare practitioner acting within the scope of his or her professional licensure” is added to follow “specific order for a specific patient.” Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72303. Physician Services – General.

Subsection (a).

The sentence, “Physician services shall mean those services provided by physicians responsible for the care of individual patients in the facility,” is relocated to become the first sentence of subsection (b).

Subsection (b).

The first sentence of subsection (a) is moved to become the first sentence of subsection (b).

[In order to amend subsection (c) as requested by the commenters, this sentence was relocated to make it clear that even if the provision of some physician services was within the scope of professional licensure of practitioners other than physicians, because of the provisions of section 1262.7 of the Health and Safety Code, only physicians are permitted to admit patients to skilled nursing facilities.]

Subsection (c).

Subsection (c) is amended by deleting the current language regarding the provision of services by specific categories of nonphysician licensed healthcare practitioners, and by substituting the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure” to cover the provision of services by all categories of nonphysician licensed healthcare practitioners.

[Several commenters noted that the current language of the section implied that only physicians and the two categories of nonphysician licensed healthcare practitioners specified in subsection (c) could provide services to patients in the facility. They requested that the language be changed to encompass the

provision of services by a greater number of nonphysician licensed healthcare practitioners.]

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72311. Nursing Service—General.

Paragraph (a)(3).

In paragraph (a)(3) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians acting in the capacity of “attending” healthcare practitioner shall be notified of occurrences listed.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subparagraph (a)(3)(D)

In subparagraph (a)(3)(D) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that a change in the patient’s weight of five pounds or more is mandated to be reported only to a physician and that only physicians may stipulate alternative reporting criteria. The proposed amendment requires that this information be reported to the attending licensed healthcare practitioner acting within the scope of his or her professional licensure and that this licensed health care practitioner, if it is within the scope of his or her professional licensure, may stipulate alternative reporting criteria. Therefore the recipients of this information shall not be limited to physicians. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (b).

1. In the first sentence of subsection (b), the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioners acting within the scope of their professional licensure.” The proposed amendment deletes language that implies only attempts to notify physicians shall be documented. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

2. In the second sentence of subsection (b), the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that applies emergency medical care pursuant to Section 72301(g) only upon the unavailability of physician care. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (c).

In subsection (c):

1. The word “prescribed” is deleted and replaced with the word “ordered,”
2. The word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her scope of professional licensure.”

The proposed amendments remove language that implies that only physicians, in their medical capacity, shall request meals for patients. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. Punctuation is added to the section title.
2. In subsection (b) the phrase “or her” is added to precede the word “designee to achieve gender neutrality.
3. A sentence is reordered to enhance clarity.
4. The authority and reference note is updated.

Section 72315. Nursing Services – Patient Care.

Subsection (e).

Subsection (e) is amended to replace the word “physician’s” with the non-discriminatory phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

[Several commenters noted that the Department had amended similar language in a comparable provision for Intermediate Care Facilities, section 73315, and requested that this language also be amended to keep the provisions consistent and to remove the potentially discriminatory restriction in the regulation's requirements.]

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72319. Nursing Service. Restraints and Postural Supports.

Subsection (b).

In subsection (b) the language “physician or other person lawfully authorized to prescribe care” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure” that does not focus on any professional category.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (i)(2).

In paragraph (i)(2) the word “psychologist” is added to follow the word “physician” for the reasons presented in Attachment 2.

Paragraph (k)(1).

In paragraph (k)(1) the word “psychologist” is added to follow the word “physician.” The amendment is proposed for the reasons presented in Attachment 2.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72337. Dietetic Service—Diet Manual.

In section 72337 the phrase “the attending physician, nursing and” is deleted and replaced with non-discriminatory language “and licensed healthcare practitioners acting within the scope of their professional licensure or certification.” The proposed amendment deletes language that was found to discriminate against nonphysician licensed healthcare practitioners. As nursing staff is captured by the phrase

“professional licensure or certification” it is unnecessary duplication to list the nursing staff separately. The proposed language is also relocated to follow, rather than precede, the phrase “dietary service personnel.”

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72413. Occupational Therapy Service Unit.

Subsection (a).

In subsection (a) the phrase “medically prescribed” modifying “services” is deleted. The phrase “ordered by the licensed healthcare practitioner acting within the scope of his or her professional licensure” is added to express that occupational therapy services are also a therapy prescription option for the nonphysician licensed healthcare practitioner acting within his or her scope of professional licensure. The proposed amendment removes language that implies only physicians (as medical prescribers) shall order occupational therapy services. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (b)(1).

In paragraph (b)(1) “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that the occupational therapy service is obligated only to assist physicians in the evaluation of patients’ function.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (b)(2).

In paragraph (b)(2) “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that only physicians shall order occupational therapy services.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72423. Speech Pathology and/or Audiology Service Unit—Services.

Subsection (a).

In subsection (a) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure or certification.” The proposed amendment deletes language that implies only physicians may order speech pathology or audiology services. In this instance the phrase is expanded to capture nurse practitioners who often work with other licensed healthcare practitioners in provision of healthcare services to the skilled nursing facility patient population.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. In subsection (a) the phrase “which provide” is deleted and replaced with the phrase “for the provision of” that more accurately describes the function of the services.
2. The authority and reference note is updated.

Section 72433. Social Work Service Unit—Services.

Paragraph (a)(2).

In paragraph (b)(2) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her licensure.” The proposed amendment removes language that implies that only physicians shall represent the patient as the healthcare practitioner having overall patient care responsibility.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (b)(4).

In paragraph (b)(4), the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her licensure.” This proposed amendment removes language that implies a restriction of an attending role to physicians.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72453. Special Treatment Program Service Unit—Rights of Patients.

Subsection (b).

In subsection (b) the phrase “or psychologist” is added to follow the word “physician.” The amendment is proposed for the reasons presented in Attachment 2.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72461. Special Treatment Program Service Unit—Orders for Restraint and Seclusion.

Subsection (a).

In subsection (a):

1. In the first sentence the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.”
2. In the second sentence the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.”
3. In the third sentence the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.”
4. In the fourth sentence the word “physician” is deleted and, as the sentence refers to the preceding, replaced with the shorter non-discriminatory language “licensed healthcare practitioner.”

The proposed amendments delete language that implies only physicians may order restraints or seclusion. The proposed amendments are in compliance with statutes cited in Attachment 3.

Proposed non-substantive amendments.

1. In subsection (a) grammatical edits (replacing the word “which” with the word “and”) are made to avoid creating a clarity issue; and
2. The authority and reference note is updated.

Section 72471. Special Treatment Program Service Unit—Patient Health Records and Plans for Care.

Subsection (c).

In subsection (c) “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” Because of a restructuring of the sentence, the phrase “the patient” is added to follow the word “attending.” The proposed amendment deletes language that implies only physicians shall approve patient care plans.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72515. Admission of Patients.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72523. Patient Care Policies and Procedures.

Subparagraph (c)(2)(D).

In subparagraph (c)(2)(D) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies the facility is required to report only to physicians any sudden or marked adverse changes in a patient’s condition.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

The authority and reference note is updated.

Section 72525. Required Committees.

Subparagraph (c)(1)(F).

In subparagraph (c)(1)(F):

1. The requirement in subparagraph (c)(1)(F)1, that limits a clinical psychologist's authority to refer patients for admission only if there are physicians who will provide the necessary medical care for the referred patients is deleted because it prevents a clinical psychologist from operating within the scope of his or her license.
2. Subparagraph (c)(1)(F)2 is redesignated (c)(1)(G), the word "physicians" is deleted and replaced with the non-discriminatory language "a licensed healthcare practitioner acting within the scope of his or her professional licensure."

The proposed amendments delete language that discriminates against clinical psychologists based on the degree held and restricts assuming overall care of patients to physicians only. The proposed amendments are in compliance with statutes cited in Attachment 4.

Subparagraph (c)(1)(G).

Subparagraph (c)(1)(G) is deleted. The statute cross reference in (c)(1)(G) is relocated to (c)(1)(F) and the remainder of the subparagraph is deleted as being unnecessarily duplicative of "scope of practice." It is not necessary to specifically address admission of patients by podiatrists, as these functions are addressed by the listing of relevant statute in subparagraph (c)(1)(F) and the non-discriminatory language proposed in language redesignated to subparagraph (c)(1)(G).

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. A capitalization correction is made in subparagraph (c)(1)(A).
2. Capitalization corrections are made in subparagraph (c)(1)(F).
3. A punctuation correction is made to subparagraph (c)(2)(B).
4. The authority and reference note is updated.

Section 72528. Informed Consent Requirements.

Subsection (a).

The changes to subsection (a):

1. In the first sentence of subsection (a) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment removes language that implies only physicians may have overall responsibility for the patient care by assuming the role of the “attending.”

2. In the second sentence of subsection (a) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure performing or ordering the procedure or treatment for which informed consent is required.” The proposed amendments remove language that implies only physicians have the responsibility for obtaining informed consent. The proposed amendment also places the responsibility for the informed consent with the licensed healthcare practitioner performing or ordering the procedure or treatment. Adding this language removes a requirement that may result in a licensed healthcare practitioner providing information or counsel outside his or her scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (e).

In subsection (e) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment is divided into two segments to accommodate the pre-existing structure of the regulation. The proposed amendment removes language that implies only physicians may initiate treatment under the specified conditions without informed consent. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (f)(2).

In paragraph (f)(2) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment removes language that implies only physicians provide or order procedures or treatment requiring informed consent and that only physicians communicate with the patient or patient’s representative to provide information appropriate to the situations described.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (g).

The changes to subsection (g):

1. In the first sentence of subsection (g), the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment removes the delegation to a physician as the sole authority to decide when and when not to require the disclosure of information material to a patient and replaces the language with the reference to healthcare practitioner, when allowed by the scope of his or her professional licensure, to make this determination.

2. In the second sentence of subsection (g), the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment removes language that implies only physicians order nursing care.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (h).

In subsection (h) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment assures that communications from physician and non-physician licensed healthcare practitioners are presented in a manner or language understood by the patient or the patient’s representative.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72543. Patients' Health Records.

Subsection (a).

In the amendment to the fourth sentence of subsection (a) as originally proposed, the phrase “or psychologist” was added to follow the phrase “attending physician” for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase “physician or psychologist” with the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

[Several commenters objected to the Department’s original amendment which added psychologists as practitioners able to request access to the records of skilled nursing facility patients in skilled nursing facilities, as current statute, Health and Safety Code section 1262.7, specifies that skilled nursing facility patients need a physician’s order to be admitted to the nursing facility. In reviewing the language, the Department determined that even with the addition of “psychologist” several other licensed healthcare practitioners, e.g., dentists and podiatrists, might be subject to discrimination if a post hearing change were not made to make sure they were not excluded from the list of licensed healthcare practitioners who might be treating patients in a skilled nursing facility, even though the patients needed a physician’s order for admission, and who would therefore need to be included in the list of practitioners able to request access to patients’ records.]

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 72547. Content of Health Records.

Paragraph (a)(4).

In the amendment to paragraph (a)(4) as originally proposed, the phrase “or psychologist” was added to follow the word “Physicians” for the reasons as presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase “Physicians or psychologist” with the phrase “of a licensed healthcare practitioner acting within the scope of his or her professional licensure.” The sentences are re-structured for clarity.

[Several commenters objected to the Department’s original amendment which added psychologists as practitioners able to enter orders in patients’ health records, as current statute, Health and Safety Code section 1262.7, specifies that skilled nursing facility patients need a physician’s order to be admitted to the nursing home, and also stated the language could be read as authorizing psychologists to enter orders for drugs. In reviewing the language, the Department determined that even though the addition of “psychologist” was appropriate, several other licensed healthcare practitioners, e.g., dentists and podiatrists, might be subject to discrimination if a post hearing change were not made to make sure they were not excluded from the list of licensed healthcare practitioners who might be treating patients in a skilled nursing facility, even though the patients needed a physician’s order for admission, and who would therefore need to be included in the list of practitioners whose orders needed to be entered in patients’ records.]

Paragraph (a)(12).

In the amendment to paragraph (a)(12) as originally proposed, the phrase “or psychologist” was added to follow the word “physician” for the reasons presented in Attachment 2. In response to comments received during the 45-day public comment period, it is proposed to replace the phrase “physician or psychologist” with the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

[Several commenters objected to the Department’s original amendment which added psychologists as practitioners able to enter orders in patients’ health records, as current statute, Health and Safety Code section 1262.7, specifies that skilled nursing facility patients need a physician’s order to be admitted to the nursing home. In reviewing the language, the Department determined that even though the addition of “psychologist” was appropriate, several other licensed healthcare practitioners, e.g., dentists and podiatrists, might be subject to discrimination if a post hearing change were not made to make sure they were not excluded from the list of licensed healthcare practitioners who might be treating patients in a skilled nursing facility, even though the patients needed a physician’s order for admission, and who would therefore need to be included in the list of practitioners whose orders needed to be entered in patients’ records.]

Proposed non-substantive amendments.

1. In paragraph (a)(12) the numeral “2” is deleted and replaced with the word “two.”
2. The authority and reference note is updated.

Section 73077. Patient.

Subsection (a).

In subsection (a) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment removes language that implies only physicians shall be the attending licensed healthcare practitioner. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73089. Psychologist.

In Section 73089 the name of the psychologist licensing board is changed from “California Board of Medical Examiners” to “California Board of Psychology” and the cross-reference to requirements listed in Health and Safety Code section 1316.5(d) is added. The amendments are proposed for the reasons presented in Attachment 2.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73301. Required Services.

In subsection (f) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment removes language that implies only physicians shall be called in an emergency, as the list of practitioners contained in previous subsections is not limited to “physicians.” Rather than listing those specific practitioners, the proposed amendment defers to scope of practice.

[Several commenters requested the amendment to this section to avoid the possibility that the only person the regulation required to be called in an emergency might not be the practitioner needed to address the emergent condition of the patient.]

Section 73303. Physician Services—General.

Subsection (a).

In subsection (a) the requirement “All persons admitted or accepted for care by the intermediate care facility shall be under the care of a physician” is deleted as it imposes medical oversight on nonphysician licensed healthcare practitioners that otherwise may not be required by their scope of practice statute.

Subsection (b).

Subsection (b) is added to the regulation to allow an intermediate care facility to permit non-physician practitioners, operating within the scopes of their licensure, to provide care for patients that might also be provided by physicians. A similar amendment was made to section 72303, the section that contains comparable requirements for skilled nursing facilities.

[Several commenters noted that the section as written presumed that only physicians could provide the services listed in subsection (a), and this would place a restriction on the scopes of professional licensure of nonphysician

licensed healthcare practitioners that was not within the Department's authority to apply.]

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 73311. Nursing Service—General.

Subsection (b).

In subsection (b) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians acting in the capacity of “attending” healthcare practitioner shall be notified of unusual signs or behavior.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (c).

In subsection (c):

1. The word “prescribed” is deleted and replaced with the word “ordered.”
2. The word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her scope of professional licensure.”

The proposed amendments remove language that implies that only physicians, in their medical capacity, shall request meals for patients. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (d).

In subsection (d) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that a marked or sudden change in the patient’s weight is mandated to be reported only to a physician. The proposed amendment requires that this information be reported to the attending licensed healthcare practitioner. Therefore the recipients of this

information shall not be limited to physicians. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73313. Nursing Service—Drug Administration.

Subsection (j).

In subsection (j) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians act in the capacity of “attending” healthcare practitioner and in the capacity of “attending” it falls only to physicians to review the patient’s medications. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73315. Nursing Service—Patient Care.

Subsection (a).

In subsection (a) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that restricts the admitting of patients to physicians only. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (e).

In subsection (e) the word “physician’s” is deleted and replaced with non-discriminatory language “provided by a licensed healthcare practitioner acting within the scope of his or her professional licensure” to follow the word “orders.” The proposed amendment

deletes language that implies only the orders of a physician need be considered when determining if an activity is contraindicated. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (g).

In subsection (g) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that restricts orders for treatment for minor illness or routine treatments for minor disorders to physicians only. While a physician may be the licensed healthcare practitioner in the case of a minor illness, routine treatments are the purview of a wider selection of licensed healthcare provider. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (h).

In subsection (h) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians act in the attending role and assume overall responsibility for patient care.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (i)

In subsection (i) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians need to be notified if a patient no longer needs intermediate care.

The proposed amendment is in compliance with statutes cited in Attachment 4.

[Several commenters objected to the Department’s original amendment which added psychologists as practitioners who needed to be notified if a patient no longer needed intermediate care. In reviewing the language, the Department determined that even though the addition of “psychologist” was appropriate, several other licensed healthcare practitioners, e.g., dentists and podiatrists, might be subject to discrimination if a post hearing change were not made to make sure they were not excluded from the list of licensed healthcare practitioners who might be treating patients in an intermediate care facility, and

who would therefore need to be included in the list of practitioners who need to be informed if a patient no longer needed intermediate care.]

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73325. Dietetic Service— Food Service.

In subsection (a) the Department is substituting the phrase “of a licensed healthcare practitioner acting within the scope of his or her professional licensure” for “physicians.”

[Several commenters claimed that it was within the scopes of professional licensure of practitioners other than physicians to write orders concerning food required to meet patients’ needs. While the Department is not in a position to determine the accuracy of these statements, it is substituting the non-discriminatory phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure” for “physicians” to eliminate the possibility that the Department might limit a practitioner’s scope of licensure by not allowing a facility to use the services of non-physician practitioners whose scopes of licensure permitted their employment.]

The proposed amendment is in compliance with statutes cited in Attachment 4.

Section 73329. Dietetic Service—Diet Manual.

In section 73329 the phrase “attending physicians and nursing” is deleted and replaced with non-discriminatory language “licensed healthcare practitioners acting within the scope their professional licensure or certification.” The proposed amendment deletes language that was found to discriminate against nonphysician licensed healthcare practitioners. As nursing staff is captured by the phrase “professional licensure or certification” it is unnecessary duplication to list the nursing staff separately. The proposed language is also located to follow, rather than precede, the phrase “dietary service personnel.”

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73399. Special Treatment Program Service Unit—Rights of Patients.

Subsection (b).

In subsection (b) the phrase “or psychologist” is added to follow the word “physician” for consistency with a requested amendment to a similar requirement at Section 72453 (b).

The proposed amendment is in compliance with statutes cited in Attachment 3.

Proposed non-substantive amendments.

1. In subsection (a) the word “his” is deleted and replaced by the phrase “the patient’s” to achieve a gender neutral requirement.
2. In paragraph (a)(1) the phrase “or her” is added to precede the phrases “own clothes,” “own personal possessions,” and “own money” to achieve gender neutral requirement. The word “his” preceding the phrase “toilet articles” is deleted as unnecessary.
3. In paragraph (a)(2) the word “his” preceding the phrase “private use” is deleted as unnecessary.
4. In subsection (b) the phrase “or her” is added to precede the word “rights” to achieve a gender neutral requirement.
5. In subsection (c) the word “his” is deleted preceding the word “attorney” and the word “conservator” and is replaced in both instances with the phrase “the patient’s” for greater clarity and a gender neutral requirement.
6. The authority and reference note is added.

Section 73409. Special Disability Services—Orders for Restraint and Seclusion.

Subsection (a).

In subsection (a):

1. In the first sentence the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.”
2. In the second sentence the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The word “medical” is deleted so not to inadvertently exclude the consideration of psychological manifestations as requiring immediate intervention.

3. In the third sentence the word “physician” is deleted and, as the sentence refers to the preceding sentence, replaced with the shorter version of non-discriminatory language “licensed healthcare practitioner.”

The proposed amendments delete language that implies that only physicians may order restraint or seclusion. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. In subsection (a) grammatical edits (replacing the word “which” with the word “and”) are made to avoid creating a clarity issue; and
2. The authority and reference note is added.

Section 73449. Social Work Service Unit.

Paragraph (b)(1).

In paragraph (b)(1) “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that participation in regular staff conferences as the “attending” is restricted to physicians. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

[Several commenters questioned whether participating in developing a plan for social work services was within the scope of a psychologist’s license. In reviewing the language, the Department determined that even though the addition of “psychologist” was appropriate, several other licensed healthcare practitioners, e.g., dentists and podiatrists, might be subject to discrimination if a post hearing change were not made to make sure they were not excluded from the list of licensed healthcare practitioners who might be treating patients in an intermediate care facility, and who would therefore need to be included in the list of practitioners who need to be included in the list of participants in staff conferences discussing a patient’s social work service plan.]

Paragraph (b)(4).

In paragraph (b)(4) “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that participation in regular staff conferences as the “attending” is restricted to physicians. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73469. Occupational Therapy Service Unit.

Subsection (a).

In subsection (a) the phrase “medically prescribed” modifying “services” is deleted. The phrase “ordered by the licensed healthcare practitioner acting within the scope of his or her professional licensure” is added to express that occupational therapy services are also a therapy prescription option for the nonphysician licensed healthcare practitioner acting within his or her scope of professional licensure. The proposed amendment removes language that implies only physicians (as medical prescribers) shall order occupational therapy services. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (b)(1).

In paragraph (b)(1) “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that the occupational therapy service is obligated only to assist physicians in the evaluation of patients’ function.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. The phrase “or her” is added in paragraph (b)(1) to achieve gender neutrality; and
2. The authority and reference note is added.

Section 73479. Speech Pathology and/or Audiology Service Unit.

Subsection (a).

In subsection (a) the phrase “physician referred” is deleted and replaced with the non-discriminatory language “referred by a licensed healthcare practitioner acting within the scope of his or her professional licensure or certification.” The proposed amendment deletes language that implies only physicians shall refer patients for speech pathology and/or audiology services. The proposed amendment is relocated to follow, rather than precede, the word “services.” In this instance the phrase is expanded to capture nurse practitioners who often work with other licensed healthcare practitioners in provision of healthcare services in intermediate care facilities. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (c)(1).

In paragraph (c)(1) the word “medical” is deleted. The proposed amendment deleting the word “medical” removes language that implies only a medical practitioner shall order speech and audiology services.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. In subsection (a) the phrase “which provide” is deleted and replaced with the phrase “for the provision of” which more accurately describes the function of the services.
2. The authority and reference note is added.

Section 73489. Rehabilitation Service Unit.

Subsection (a).

In subsection (a), the phrase “prescribed by a physician” is deleted and replaced with the non-discriminatory language “ordered by a licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies that only physicians shall order rehabilitation services for a patient. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (c)(1).

In paragraph (c)(1) the words “medical” and “prescribed” are deleted resulting in language consistent with the proposed amendments in subsection (a).

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is added.

Section 73517. Admission of Patients.

Paragraph (a)(1).

In paragraph (a)(1) the word “physician’s” is deleted and replaced with the non-discriminatory language “of a licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment follows, rather than precedes, the word “orders.” The proposed amendment deletes language that implies that only physicians shall admit patients. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (a)(3).

In paragraph (a)(3) the word “physician” is deleted and is replaced with the non-discriminatory language “of a licensed healthcare practitioner acting within the scope of his or her professional licensure” to follow, rather than precede, the word “orders.” The proposed amendment deletes language that implies that only physicians shall admit patients. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. Punctuation is added following the section title.
2. The authority and reference note is updated.

Section 73519. Administrative Policies and Procedures.

Paragraph (a)(1).

In paragraph (a)(1) the adding requirement “Facility policies shall adhere to the requirements of Sections 1316 and 1316.5 of the Health and Safety Code” is proposed for the reasons presented in Attachment 2.

Paragraph (b)(5).

In paragraph (b)(5) the phrase “a physician” is deleted and replaced with the non-discriminatory language “the admitting licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment modifies the language to include nonphysician members of the medical staff. Rather than listing specific practitioners, the proposed amendment defers to scope of practice. The addition of “admitting” and “or his or her designee” does narrow the phrase to exclude nursing care staff employed by the facility.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (f)(1).

In paragraph (f)(1) the requirement allowing clinical psychologists to refer patients for admission only if there are physicians who will provide the necessary medical care for the referred patients is deleted because it is in conflict with Health and Safety Code Section 1316.5 and, therefore, invalid.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (f)(2).

In paragraph (f)(2), redesignated to subsection (g), the word “physicians” is deleted and replaced with the non-discriminatory language “a licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that allows only physicians to assume overall care of patients. The proposed amendment results in the combining of the requirements paragraphs (f)(2), (f)(3) and (g)(1) into subsection (g). Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (f)(3).

Paragraph (f)(3) is deleted as the requirement is absorbed by the nondiscriminatory language proposed for subsection (g). It is not necessary to specifically address admission of patients or duties performed by dentists, as these functions are addressed by the listing of relevant statute in subsection (f) and the non-discriminatory language proposed in subsection (g).

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (g).

With the exception of the relocation of the Health and Safety Code Section to subsection (f), the proposed amendment deletes the existing language as it is unnecessarily duplicative of “scope of practice.” Amended language formerly paragraph (f)(2) is redesignated to subsection (g). It is not necessary to specifically address admission of patients or duties performed by podiatrists, as these functions are addressed by the listing of relevant statute in subsection (f) and the non-discriminatory language proposed in subsection (g).

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. The cross reference, Health and Section Code 1316, is relocated from subsection (g) to subsection (f); and
2. Capitalization changes are made in subsection (f).
3. The authority and reference note is updated.

Section 73523. Patients' Rights.

Subsection (c).

In subsection (c), the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure” is substituted for the word “physician” and the phrase “of the licensed healthcare practitioner acting within the scope of his or her professional licensure” is substituted for the word “physician’s.” Minor structure changes were made to the sentence for clarity.

[Several commenters claimed that it is within the scopes of professional licensure of practitioners other than physicians to determine a patient’s incapacity. While the Department does not have the authority to determine the validity of this contention, it is substituting the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure” for “physician,” to avoid the possibility of limiting the scopes of professional licensure of nonphysician practitioners.]

Paragraph (e)(2).

In paragraph (e)(2) the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure” is substituted for the word “physician.”

[Several commenters claimed that it is within the scopes of professional licensure of practitioners other than physicians to act in consultation with a facility to determine who may serve as a patient’s representative. While the Department does not have the authority to determine the validity of this contention, it is substituting the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure” for “physician,” to avoid the possibility of limiting the scopes of professional licensure of nonphysician practitioners.]

Proposed non-substantive amendments.

1. In paragraph (a)(10) the phrase “the patient’s” is deleted as a redundant and unnecessary restatement of the subject in the list’s introductory sentence; and the phrase “except as authorized by law,” language inadvertently omitted in an earlier rulemaking, is added. These proposed amendments result in language that mirrors an identical requirement for skilled nursing facilities at Section 72527(a)(10).
2. In paragraph (a)(16), the phrase “his/her” is deleted as unnecessary and confusing language and a comma is added following the word “and.”
3. The authority and reference note is updated.

Section 73524. Informed Consent Requirements.

Subsection (a).

1. In first sentence of subsection (a) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians shall have responsibility for determining what information is relevant to the patient to make a decision to accept or reject proposed treatment or procedure.”
2. In the second sentence of subsection (a) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure performing or ordering the procedure or treatment for which informed consent is required.” The proposed amendment deletes language that implies only physicians have the responsibility for obtaining informed consent. The proposed amendment also places the responsibility for the informed consent with the licensed healthcare practitioner performing or ordering the procedure or treatment. Adding this language removes a requirement that may result in a licensed healthcare practitioner forced to provide information or counsel outside his or her scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (e).

In subsection (e) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians shall initiate treatment under the specified conditions without informed consent.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (f)(2).

In paragraph (f)(2) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only physicians provide or order procedures or treatment requiring informed consent and that only physicians shall communicate with the patient or patient’s representative in providing information appropriate to the situations described.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Subsection (g).

1. In the first sentence of subsection (g), the word “physician” is replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that implies only a physician shall have authority to determine when the circumstances do or do not require the disclosure of information material to a patient. The proposed amendment replaces this restrictive language with the provision allowing licensed healthcare practitioners, when permitted by the scope of their licensure, to make this determination.

2. In the third sentence of subsection (g), the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” This proposed amendment removes language that implies only physicians order treatments or procedures. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Subsection (h).

In subsection (h) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment assures that communications

from physician and non-physician licensed healthcare practitioners are presented in a manner or language understood by the patient or the patient's representative.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 73543. Patients' Health Records.

Subsection (a).

In subsection (a) the word "physician" is deleted and replaced with non-discriminatory language "licensed healthcare practitioner acting within the scope of his or her professional licensure." The proposed amendment deletes language that implies only physicians act in the capacity of "attending." Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. A spelling correction is made in the last sentence of subsection (a).
2. The authority and reference note is added.

Section 73547. Content of Health Records.

Subparagraph (a)(5)(E)

In subparagraph (a)(5)(E) the phrase "prescribed by the physician" is deleted. The proposed amendment deletes language that implies only physicians shall order restraints. The proposed amendment is also consistent with the requirement at Section 72547 subparagraph (a)(5)(E) for skilled nursing facilities.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (a)(11).

In paragraph (a)(11) the word "physician" is deleted from both sentences and following the word "Orders" non-discriminatory language "provided by a licensed healthcare practitioner acting within the scope of his or her professional licensure" is added. This proposed amendment deletes language that implies only physicians shall order

treatment and diets for patients. The phrase “acting within the scope of his or her professional licensure” limits the ordering of medications to those licensees whose scope of practice includes this responsibility.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. The article “the” is added to precede the noun “patient” for enhanced clarity of subparagraph (a)(5)(A)3;
2. In subparagraph (a)(5)(E) the verb “used” is added before “the support and protection of the patient” to replace the verb deleted;
3. In paragraph (a)(11) the word “Orders” is capitalized for correct sentence format; and
4. The addition of the authority and reference note to follow the section.

Section 79315. Restraints.

Subsection (c).

In subsection (c):

1. In the first sentence the word “physician’s” is deleted and replaced with non-discriminatory language “of a licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendments delete language that implies only physicians shall order restraints. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.
2. In the second sentence the word “prescriber” is deleted and replaced with the non-discriminatory language “ordering licensed healthcare practitioner” consistent with proposed language used in the first sentence of this subsection.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 79351. Patient Health Record Availability.

Paragraph (a)(1).

In paragraph (a)(1) the word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her licensure.” This proposed amendment removes language that implies only physicians shall assume the “attending” role. Rather than listing specific practitioners who may assume the role of “attending,” the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

Section 79637. Nursing Service – Patient Care.

Subsection (a).

In subsection (a) the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure.” The proposed amendment deletes language that only physicians shall admit patients. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Paragraph (h)(1).

In paragraph (h)(1), the word “physician” is deleted and replaced with non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure or certification.” The proposed amendment deletes language that implies the monitoring of fluid intake and output shall be documented only when ordered by a physician. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendment is in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendments.

1. In paragraph (h)(2) a typographical error is corrected changing “inmate-physician” to “inmate-patient.”
2. The authority and reference note is updated.

Section 79689. Dietary Service Therapeutic Diets.

Subsection (a).

In subsection (a) the word “prescribed” is deleted and replaced with the word “ordered.” The word “physician” is deleted and replaced with the non-discriminatory language “licensed healthcare practitioner acting within the scope of his or her professional licensure. The proposed amendments delete language that allows only physicians to order therapeutic diets. Rather than listing specific practitioners, the proposed amendment defers to scope of practice.

The proposed amendments are in compliance with statutes cited in Attachment 4.

Proposed non-substantive amendment.

The authority and reference note is updated.

STATEMENT OF DETERMINATIONS

ALTERNATIVES CONSIDERED

The California Department of Public Health (Department) has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

LOCAL MANDATE DETERMINATIONS

The Department has determined that the proposed regulation amendments will not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations would not have an affect on small businesses. The proposed amendments implement the California statutory mandate that as members on a healthcare facility's organized medical staff, the rules shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M or doctoral degree in psychology and they may perform any health service they are authorized by law to perform without discrimination. The proposed amendments implement the mandates of state statute, specifically Health and Safety Code Sections 1315, 1316, and 1316.5.

ATTACHMENTS
TO THE
FINAL STATEMENT OF REASONS

ATTACHMENT I

Documents Relied Upon

Available under the heading "DPH-05-010, Scope of Practice in Licensed Health Facilities" at

<http://ww2.cdph.ca.gov/services/DPOPP/regs/Pages/ProposedRegulations.aspx>

ATTACHMENT 2

Standard language acknowledging that the proposed amendment was suggested by Psychology Shield in the November 8, 2004 petition.

ATTACHMENT 3

Standard language explaining that the proposed regulation amendment is to bring the regulation into compliance with Health and Safety Code section 1316.5.

ATTACHMENT 4

Standard language explaining that the proposed regulation amendment is to bring the regulation into compliance with Health and Safety Code sections 1315, 1316 and 1316.5.

ATTACHMENT I
Documents Relied Upon

Available under the heading “DPH-05-010, Scope of Practice in Licensed Health Facilities” at

<http://ww2.cdph.ca.gov/services/DPOPP/regs/Pages/ProposedRegulations.aspx>

- A. November 8, 2004, Petition from Psychology Shield
- B. November 22, 2004, California Department of Health Services acknowledgement of receipt of November 8, 2004, petition
- C. April 26, 2005, California Department of Health Services response to the November 8, 2004 petition

ATTACHMENT 2

The proposed amendment is in response to the November 8, 2004, petition submitted to the Department by Psychology Shield (Attachment 1-A). The Department reviewed the petition and decided that the requested amendment, in addition to a number of other requests for regulation amendment, warranted consideration.

ATTACHMENT 3

The proposed amendments are consistent with Health and Safety Code section 1316.5(a)(2) "...medical staff status shall include and provide the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure"; Health and Safety Code section 1316.5(a)(1) "The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the [medical staff] member's respective licensure"; and Health and Safety Code section 1316.5(b)(2) "If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physician and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination."

ATTACHMENT 4

The proposed amendments are consistent with Health and Safety Code section 1316.5(a)(2) "...medical staff status shall include and provide the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure"; Health and Safety Code section 1316.5(a)(1) "The rules and regulations shall not discriminate on the basis of whether the staff member holds an M.D., D.O., D.D.S., D.P.M., or doctoral degree in psychology within the scope of the [medical staff] member's respective licensure"; and Health and Safety Code section 1316.5 b)(2) "If a health service is offered by a health facility with both licensed physicians and surgeons and clinical psychologists on the medical staff, which both licensed physician and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination." The changes in language also provide consistency with Health and Safety Code section 1316 "The rules of a health facility which include provisions for use of the facility by, and staff privileges for, medical staff shall not discriminate on the basis of whether the staff member holds a M.D., D.O., or D.P.M. degree, within the scope of their respective licensure"; and Health and Safety Code section 1315 "Dental services, as defined in the Dental Practice Act, may be provided patients in health facilities licensed under this chapter. Such services shall be provided by persons licensed by the State of California pursuant to Section 1611 of the Business and Professions Code."

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Carolyn Finn Mitchell	Ph.D.		19925 Stevens Creek Boulevard, Suite 171 Cupertino, CA 95014-2358		Unique Support - 1	
Andris Skuja	Ph.D., M.S.C.P.	Andris Skuja, Ph. D., M.S.C.P. Clinical Psychology	6355 Telegraph Avenue, Suite 302 Oakland, CA 94609	Askuja@sbcglobal.net	Unique Support - 2	
Asa John DeMatteo	Ph.D.		4130 21st Street San Francisco, CA 94114-2711	dematteo@pacbell.net	Unique Support - 3	
Guy Albert	Ph.D.		3155 College Avenue Berkeley, CA 94705	guy@guyalbert.com	Unique Support - 4	
Jeff E. Walker	D.Min., Psy.D.		73 Calle De Oro Rancho Mirage, CA 92270	Phone: (760) 302-6065	Unique Support - 5	
Eva Slater	Ph.D.			evaslater@gmail.com	Unique Support - 6	
Annette Holloway	M.A.	Family Service Agency of Marin		acholloway@comcast.net	Unique Support - 7	
Nancy K. Otterness	Ph.D.		1005 40th Street Sacramento, CA 95819	nko@winfirst.com	Unique Support - 8	
Sue Fleckles	Ph.D.		240 Tamal Vista Boulevard Corte Madera, CA 94925	doctorfleckles@comcast.net	Unique Support - 9	
Carlton H. Oler	Ph.D.		-	geneandcarlton@sbcglobal.net	Unique Support - 10	Gene A. Older, Ph.D. 2nd contact
Linda Charles	Ph.D.			drlindacharles@gmail.com	Unique Support - 11	
June Boudreau	Ph.D.			jboudrea@earthlink.net	Unique Support - 12	
Thomas A. Habib	Ph.D.			CABaser@aol.com	Unique Support - 13	
Margreta Klassen	Ph.D.			Drpsyreal8@aol.com	Unique Support - 14	
Edda Schweid	Ph.D.			edda@speed101.com	Unique Support - 15	
Barbara G. Jones	MSN, RN, CS			bjones@san.rr.com	Unique Support - 16	
Carl London		Rose & Kindel	915 L Street, #1210 Sacramento, CA 95814	clondon@rosekindel.com	Unique Support - 17	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Lilli Fridland	Ph.D., A.B.P.P.		2080 Century Park East, Suite 1403 Los Angeles, CA 90067	LilliF@aol.com	Unique Support - 18	
Sandra J. Kearns	Ph.D.		20101 SW Birch Street, Suite 130-B Newport Beach, CA 92660	sandrajkearns@psychafter50.com	Unique Support - 19	
Robert Kahane	Executive Officer	Board of Psychology Executive Office	2005 Evergreen Street, Suite 1400 Sacramento, CA 95815-3894	Robert_Kahane@dca.ca.gov	Unique Support - 20	
Eric Kunkel	Ph.D.	Department of Corrections		e_d_kunkel@yahoo.com	Unique Support - 21	
William W. Kaiser	Ph.D.		14531 Hamlin Street Van Nuys, CA 91411	quirky@roadrunner.com	Unique Support - 22	
Barbara O. Murray	Ph.D.		4595 Fairway Drive Soquel, CA 95073	murrayphd@cruzio.com	Unique Support - 23	
Rosarie J. Hartmeyer	Ph.D.			rosariehartmeyer@sbcglobal.net	Unique Support - 24	
Juliann Wright	Doctoral Candidate	Kinesis North/Mental Health Systems	1106 Second Street, pmb 264 Encinitas, CA 92024	jlnwrght@yahoo.com	Unique Support - 25	
Stan Bunce	Ph.D., A.B.P.P.			jsbunce@pacbell.net	Unique Support - 26	
Diana Trichilo	Ph.D.		455 I Street, Suite 206F Arcata, CA 95521	Phone: (707) 825-0881 Fax: (707) 822-4529	Unique Support - 27	
William L. Wallace	Ph.D.	Ocean Psychological Services	1448 15th Street, Suite 203 Santa Monica, CA 90404	williamlwallace@attglobal.net	Unique Support - 28	
William J. Seefeldt	Ph.D.			billpsy@aol.com	Unique Support - 29	
Bruce Sachs	Ph.D.			drbmsachs@yahoo.com	Unique Support - 30	
Michael K. Linden	Ph.D.	Mission Psychological Consultants, Inc.		MpcCares@aol.com	Unique Support - 31	
Esther E. Sellers	Ph.D.			dresthereb@juno.com	Unique Support - 32	
Seda Gragossiam	Ph.D.			seda.gg@cox.net	Unique Support - 33	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Miguel E. Gallardo	Psy.D.	California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Unique Support - 34	
Robert Kahane	Executive Officer	Board of Psychology Executive Office	2005 Evergreen Street, Suite 1400 Sacramento, CA 95815-3894	Robert_Kahane@dca.ca.gov	Unique Support - 35	
Arthur R. Chenen		Theodora Oringer Miller & Richman PC	2029 Century Park East, Sixth Floor Los Angeles, CA 90067-2907	achenen@tocounsel.com	Unique Support - 36	
William J. Koenig		Koenig Caprile & Berk	1520 River Park Drive Sacramento, CA 95815	Phone: (916) 568-3288 Fax: (916) 568-3292	Unique Support - 37	
Gayle Ulshafer	CRNA, MSN	California Association of Nurse Anesthetists, Inc.	P.O. Box 1426 Boyes Hot Springs, CA 95416	Phone: (206) 984-1624	Unique Support - 38	Kathleen Slijepcevic 2nd contact
Illegible Signature		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 39	
Michi Fu		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 40	
James Peck		California Psychological Association	11075 Santa Monica Boulevard, Suite 200 Los Angeles, CA 90025	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 41	
Barbara L. Short		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 42	
Mort Shaevitz	Ph.D., A.B.P.P.	California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 43	
Michael Pinkston	Ph.D.	California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 44	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Rob Roy Woodman	Ph.D.	California Psychological Association	2655 Portage Bay East, #8 Davis, CA 95616	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 45	
Megibow	Ph.D.	California Psychological Association	1660 Humboldt Road, Suite 3 Chico, CA 95928	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 46	
Dave Hennermen		California Psychological Association	3212 Loma Vista, #260 Ventura, CA 93003	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 47	
Nancy Gardner		California Psychological Association	370 N. Westlake Boulevard Westlake, CA 91362	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 48	
Illegible Signature		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 49	
Linda Bortell		California Psychological Association	625 S. Fair Oaks Avenue, Suite 270 South Pasadena, CA 91030	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 50	
P. Harmell		California Psychological Association	12011 San Vicente Boulevard, Suite 200 Los Angeles, CA 90049	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 51	
Evelyn J. Marchini		California Psychological Association	142 Stambaugh Street Redwood City, CA 94063	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 52	
Mary L. Malik		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 53	
Illegible Signature		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 54	
Illegible Signature		California Psychological Association	1231 I Street, Suite 204 Sacramento, CA 95814	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 55	
William Wallace	Ph.D.	California Psychological Association	1448 15th Street, Suite 203 Santa Monica, CA 90404	Phone: (916) 286-7979 Fax: (916) 286-7971	Template Support - 56	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Thomas Delaney	Ph.D.		1173 N. Dixie Drive, Suite 101 San Dimas, CA 91773	dr.td@juno.com	Template Support - 57	
Nancy Marx	Ph.D.	Integrated Healing Associates	520 S. El Camino, Suite 204 San Mateo, CA 94402	Fax: (650) 627-9353	Template Support - 58	
Aleksandra Drecun	Ph.D.	Association for Compassionate Transformation, Inc.	12526 High Bluff Drive, Suite 300 San Diego, CA 92130	dr.drecun@a4ct.com	Template Support - 59	
Barbara J. Schrock	Ph.D., A.B.P.P.- CN		5989 Cozzens Street San Diego, CA 92122	Fax: (858) 541-6725	Template Support - 60	
Sean Hodges	Ph.D.		3975 Fifth Avenue, Suite 213 San Diego, CA 92103	-	Template Support - 61	
James S. Graves	Ph.D., Psy.D.		572 E. Green Street, Suite 304 Pasadena, CA 91101		Template Support - 62	
Michele DeAntoni	Ph.D.		P.O. Box 581 Santa Cruz, CA 95896		Template Support - 63	
Sandra Harnir	Ph.D.		P.O. Box 1709 Mill Valley, CA 94942-1709		Template Support - 64	
Joseph D. Cummings			609 W. Mountain Ridge Road Lake Almandor, CA 96137		Template Support - 65	
Illegible Signature			668 Quinan Street Pinole, CA 94564		Template Support - 66	
Lara Weyland	Ph.D.		2220 Mountain Boulevard, Suite 240 Oakland, CA 94611		Template Support - 67	
Kenn R. Finkelstein	Psychological Assistant				Template Support - 68	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Sharon A. Rippner	Ph.D.	Department of Corrections and Rehab California Men's Colony	6448 Squire Court San Luis Obispo, CA 93401	Phone: (805) 547-7900 Ext. 7238	Template Support - 69	
Carol S. Winetsky	Ph.D.			Phone: (415) 923-9170 Fax: (415) 752-5312	Template Support - 70	
Rosita Cortizo				Fax: (858) 259-2664	Template Support - 71	
Kendra Weissbein	Ph.D.			Fax: (858) 279-9675	Template Support - 72	
June Boudreau	R.N., B.A., M.A., L.M.F.T., Ph.D., Q.M.E.			Fax: (408) 268-3614	Template Support - 73	
Chuck Leeb	Ph.D.			Fax: (909) 399-9704	Template Support - 74	
Christauria Welland	Psy.D.			Fax: (858) 484-7514	Template Support - 75	
S. M. Eto	Ph.D.			Fax: (310) 320-7708	Template Support - 76	
Thomas Manheim	Ph.D.			Fax: (858) 755-9307	Template Support - 77	
Gary Pesavento	Ph.D.			Fax: (619) 656-0835	Template Support - 78	
Kristin Matteson	Ph.D.			kmattesonphd@roadrunner.com	Template Support - 79	
Dean R. Given	Ph.D.		5901 Encina Road, Suite A Goleta, CA 93117	drq@sbbh.net	Template Support - 80	
Emily Lyon	Ph.D.			mly_lyon@yahoo.com	Template Support - 81	
Robert Perl	Psy.D.		1903 Berkeley Way, #1 Berkeley, CA 94704	Phone: (510) 595-4609	Template Support - 82	
Mark S. Emerson	Psy.D.		11700 Dublin Road, Suite 250 Dublin, CA 94568	markemersonpsyd@earthlink.net	Template Support - 83	
Nicole Erica Berlant	Ph.D.			nicole@webfortis.com	Template Support - 84	
Liz Zed	Ph.D.		1000 Fremont Avenue, Suite 270 Los Altos, CA 94024	lzed@lized.com	Template Support - 85	
Jonathan Horowitz	Doctoral Candidate	University of Texas at Austin	1 University Station A8000 Austin, TX 78712-0187	horowitz@mail.utexas.edu	Template Support - 86	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Mary L. Flett	Ph.D.		P.O. Box 134 El Verano, CA 95433	drmaryflett@sbcglobal.net	Template Support - 87	
Tamara McClintock Greenberg	Psy.D. MS		1801 Van Ness Avenue, Suite 200 San Francisco, CA 94109	tamaragreenberg@gmail.com	Template Support - 88	
Jo Ann Levy	Ph.D.		5535 Balboa Boulevard, Suite 209 Encino, CA 91316	Phone: (818) 775-2959	Template Support - 89	
Sharon Morrison-Velasco	Ph.D.	Velasco Consulting	2501 Angell Avenue San Diego, CA 92122	smvel51@aol.com	Template Support - 90	
Harriet A. Lehman	Ph.D.			HLEHMAN@co.napa.ca.us	Template Support - 91	
Paul Good	Ph.D.		1738 Union Street, Suite 300 San Francisco, CA 94123-4425	PaulRGood@aol.com	Template Support - 92	
Bill Falzett	Ph.D.		423 4th Street, Suite One-West Marysville, CA 95901	Phone: (530) 790-0506 Fax: (530) 741-1265	Template Support - 93	
Grace Rogers	Ph.D.			rogersphd@juno.com	Template Support - 94	
Mary Bogle	Ph.D.			mkjb7@yahoo.com	Template Support - 95	
Alex Kettner	Psy.D.			AKETTNER@earthlink.net	Template Support - 96	
James S. Moran	Ph.D.		621 Forest Avenue, Suite 2 Pacific Grove, CA 93950	Phone: (831) 373-1499 Fax: (831) 375-1030	Template Support - 97	
Colleen H. Daniel	Psy.D.		590 Wellesley Drive, #103 Corona, CA 92879	tarmine@hotmail.com	Template Support - 98	
Andrew Noorollah	Ph.D.	Alvarado Parkway Institute Behavioral Health System	7050 Parkway Drive La Mesa, CA 91942	anoorollah@apibhs.com	Template Support - 99	
A. Joseph Glaser	Ph.D.		4444 W. Riverside Drive, #206 Burbank, CA 91505	aiglaser@sbcglobal.net	Template Support - 100	
Stephen Openshaw	Ph.D.		110 E. Wilshire Avenue, Suite 407 Fullerton, CA 92832	DrSteve@OpenshawPhD.com	Template Support - 101	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Judith M. Larson	Ph.D.		2251 Grant Road, Suite H Los Altos, CA 94024	jm-larson@comcast.net	Template Support - 102	
Gale R. Lipsyte	Ph.D.		908 Tulare Avenue Berkeley, CA 94707	glipsyte@earthlink.net	Template Support - 103	
Gary R. Lewis	Ph.D.		8686 Capricorn Way San Diego, CA 92126	drgary@san.rr.com	Template Support - 104	
Daniel O. Taube	J.D., Ph.D.	CSPP-SF Bay Alliant International University	One Beach Street, Suite 100 San Francisco, CA 94133-1221	dtaube@alliant.edu	Template Support - 105	
Lili Wagner	Psy.D., M.S.C.P.		P.O. Box 800881 Santa Clarita, CA 91380-0881	DrLiliZWagner@aol.com	Template Support - 106	
Pamela K. Braswell	Psy.D.		2481 Clay Street, Suite 202 San Francisco, CA 94115	pamela.braswell@gmail.com	Template Support - 107	
Linda Waters	Ph.D.			lindawat3@att.net	Template Support - 108	
Nicholas H. Ney	Ph.D.	Casa Mills	200 Middlefield Road, Suite 100 Menlo Park, CA 94025	nickney@comcast.net	Template Support - 109	
Todd Schirmer	Ph.D.			todd_schirmer@yahoo.com	Template Support - 110	
Stephen Curtin	Ph.D.			s.curtin@comcast.net	Template Support - 111	
Sheilah Siegel	Ph.D.		4113 Scotts Valley Drive, Suite 208 Scotts Valley, CA 95066	drzoey@earthlink.net	Template Support - 112	
Anthony Francisco	Ph.D.			drtonyf@gmail.com	Template Support - 113	Received this letter three times
Martha Kahanae	Ph.D.			marthakahane@me.com	Template Support - 114	
Edward J. Hyman	Ph.D.			psychologyexpert@hotmail.com	Template Support - 115	
Kimberly A. Gauntlett	Psychology Intern			kimwe@comcast.net	Template Support - 116	
Pam VanAllen	Ph.D.			DrPamVanAllen@aol.com	Template Support - 117	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Sallie E. Hildebrandt	Ph.D.		4130 La Jolla Village Drive, Suite 301 La Jolla, CA 92037	sehphd@cox.net	Template Support - 118	
Thomas P. Delaney	Ph.D.			dr.td@juno.com	Template Support - 119	
David E. Rouslin	Ph.D.	Kaiser, Antioch		David.Rouslin@kp.org	Template Support - 120	
Timothy J. Dering	Ph.D., M.S.Ed.		110 Lafayette Circle, Suite 100 Lafayette, CA 94549	Timderning@aol.com	Template Support - 121	
Doug Cort	Ph.D.			douglas.cort@ucdmc.ucdavis.edu	Template Support - 122	
Robert S. Cull	Psy.D.	NorCal Behavioral Health	P.O. Box 504 Penn Valley, CA 95946-0504	drrobertscull@sbcglobal.net	Template Support - 123	
Misty Chandler	Psy.D.			drmistychandler@gmail.com	Template Support - 124	
Susan Barrett	Psy.D.			dr.scbarrett@gmail.com	Template Support - 125	
Sharon A. Talovic	Ph.D.		23812 Harbor Vista Drive Malibu, CA 92065	sharon@talovic.net	Template Support - 126	
Stephen H. Sulmeyer	J.D., Ph.D.		100 Tamal Plaza, Suite 170 Corte Madera, CA 94925	steve@stevesulmeyer.com	Template Support - 127	
Rolando Espinoza	Ph.D.	NorCal Behavioral Health	P.O. Box 504 Penn Valley, CA 95946-0504	drrobertscull@sbcglobal.net	Template Support - 128	
Andrew C. Butler	Ph.D.		2100 Garden Road, Suite A-102 Monterey, CA 93940-5363	drandybutler@yahoo.com	Template Support - 129	
Claude A. Ruffalo	Ph.D.		2021 Santa Monica Boulevard, Suite 320 E Santa Monica, CA 90404	Phone: (310) 306-6166	Template Support - 130	
Robin Yeganeh	Ph.D.	Cognitive Behavior Therapy & Mindfulness Center	Bishop Ranch 6 2410 Camino Ramon, Suite 354 San Ramon, CA 94583	dr@cbthealth.com	Template Support - 131	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Teo Ernst	Psy.D.			Ternst@dmhsh.state.ca.us	Template Support - 132	
John E. Kincaid	Ph.D.		315 Diablo Road, Suite 222 Danville, CA 94526	Phone: (925) 946-5471	Template Support - 133	
David B. Chamberlain	Ph.D.		10745 Red Dog Road Nevada City, CA 95959	dbchamb@pacbell.net	Template Support - 134	
Daniel N. Berkow	Ph.D.	California State University, Stanislaus	One University Circle Turlock, CA 95382	Dberkow@csustan.edu	Template Support - 135	
Steven J. Hendlin	Ph.D.	Fellow, American Psychological Association		golfdoc@roadrunner.com	Template Support - 136	Deborah Hendlin 2nd contact
Gloria M. Enguidanos	Ph.D.		9940 Starr Road, Suite 100 Windsor, CA 95492	Phone: (707) 836-0440 Fax: (707) 836-0444	Template Support - 137	
Janis L. Dolnick	Ph.D.		659 Cherry Street Santa Rosa, CA 95404	jdolnick@sonic.net	Template Support - 138	
Laura McCormick	Ph.D.	Elpida House, Inc.	7 Mt. Lassen Drive, Suite D-256 San Rafael, CA 94903	Phone: (415) 499-8613 Fax: (415) 499-8620	Template Support - 139	
Evan D. Landrum	Psy.D.			elandrum@vericarepro.com	Template Support - 140	
Maria Moleski	Ph.D.			dr_moleski@child-neuropsychologist.com	Template Support - 141	
Russell Thompson	Ph.D.	California Service Center	P.O. Box 6065 Cypress, CA 90630-0065	Russ.Thompson@valueoptions.com	Template Support - 142	
Virginia Elderkin-Thompson	Ph.D.	UCLA David Geffen School of Medicine		Velderkin@mednet.ucla.edu	Template Support - 143	
Nurit K. Cohen	Ph.D.			drnkcohen@earthlink.net	Template Support - 144	
Ken Bachrach	Ph.D.	Tarzana Treatment Centers	18646 Oxnard Street Tarzana, CA 91356	kbachrach@tarzanatc.org	Template Support - 145	
Diane C. Leroi	Ph.D.		221 N. San Mateo Drive San Mateo, CA 94401		Template Support - 146	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Virginia P. Humphrey	Ph.D.		900 Welch Road, Suite 205 Palo Alto, CA 94304	VPHPHD@aol.com	Template Support - 147	
Haygoush Kaliniam	Ph.D.			onesynapse@yahoo.com	Template Support - 148	
Alice Abarbanel	Ph.D.			aliceaba@sbcglobal.net	Template Support - 149	
Richard North	Ph.D.			rnorthiii@sbcglobal.net	Template Support - 150	
Stephanie Chervinko	Ph.D.	California State University, Chico		schervinko@csuchico.edu	Template Support - 151	
Donna Wolfe	Psy.D.			donnawolfe@yahoo.com	Template Support - 152	
Maelisa McCaffrey	Psy.D.	Pacific Clinics	66 Hurlbut Street Pasadena, CA 91105-3112	Phone: (626) 441-4221 Fax: (626) 441-6479	Template Support - 153	
Bradley A. Schuyler	Ph.D.		1130 E. Shaw Avenue, Suite 105 Fresno, CA 93710	drschuyler@netptc.net	Template Support - 154	
Wendi S. Maurer	Ph.D.		3252 Holiday Court, #220 La Jolla, CA 92122	Wsmaurer@aol.com	Template Support - 155	
Kim Chronister			16801 Cooper Lane Huntington Beach, CA 92647	kimchron2@yahoo.com	Template Support - 156	
Dawn Starr	Ph.D.		P.O. Box 1387 Templeton, CA 93465	Phone: (805) 549-7788	Template Support - 157	
Ellen G. Levine	Ph.D., M.P.H.		P.O. Box 2278 Castro Valley, CA 94546	Fax: (510) 889-7494	Template Support - 158	
Marguery Covarrubias	Doctoral Candidate		208 E. Bay State Street, Apt. M Alhambra, CA 91801	marguerycovarrubias@gmail.com	Template Support - 159	
Bianca Peigler			2215 1/2 20th Street Santa Monica, CA 90405	bianca_p@mac.com	Template Support - 160	
Patricia A. Haire	Ph.D.			Fax: (909) 880-4311	Template Support - 161	
David Narang	Ph.D.	Saint John's Health Center			Template Support - 162	
Ruzanna Agamyan	Ph.D.		P.O. Box 3652 Burbank, CA 91502		Template Support - 163	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Harris S. Halpern	Ph.D.		4727 W. 147th Street, #201 Lawndale, CA 90260		Template Support - 164	
Sharon K. Halpern	Ph.D.		9 Crest Avenue Richmond, CA 94801		Template Support - 165	
Sarah M. Miller	Ph.D.		3063 Arden Way Napa, CA 94558		Template Support - 166	
Shirley Peeke	Ph.D.		P.O. Box 2464 Santa Rosa, CA 95405		Template Support - 167	
Terry Schmitt	Ph.D.	California State University, San Bernardino	5500 University Parkway San Bernardino, CA 92407- 2393	Phone: (909) 537-5241 Fax: (909) 537-7027	Template Support - 168	
James R. Fix	Psy.D.	Psychiatric Emergency Response Team	1094 Cudahy Place, Suite 314 San Diego, CA 92110	Phone: (619) 276-8112 Fax: (619) 276-8230	Template Support - 169	
Jessica Maxwell	Ph.D.		462 Stevens Avenue, Suite 108 Solana Beach, CA 92075		Template Support - 170	
Elizabeth S. Alden	Ph.D.		22 D. West Michel Torena Santa Barbara, CA 93101	Phone: (805) 564-3715	Template Support - 171	
M. Bruce Stubbs	Ph.D.		2181 El Camino Real, Suite 202 Oceanside, CA 92054	Phone: (760) 929-9010	Template Support - 172	
Anne Bisek	Psy.D.		3602 Thornton Avenue, #54 Fremont, CA 94536	Anne@Doc911.net	Template Support - 173	
Rosalie J. Easton	Ph.D.		591 Camino do la Reina, Suite 918 San Diego, CA 92108		Template Support - 174	
Bonnie Wolfe	Ph.D.		1461 Higuera Street, Suite C San Luis Obispo, CA 93401	Phone: (805) 534-9666 Fax: (805) 534-9666	Template Support - 175	
Gregg M. Baringoldz	Ph.D.		3605 Long Beach Boulevard, Suite 329 Long Beach, CA 90807	GreggMBPhD@aol.com	Template Support - 176	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Sari Shepphird	Ph.D.		12304 Santa Monica Boulevard, Suite 300 West Los Angeles, CA 90025		Template Support - 177	
Lynne Cessante	Ph.D.		1390 Temecula Street, #14 San Diego, CA 92107	lynnecessante@yahoo.com	Template Support - 178	
Illegible Signature	Ph.D.				Template Support - 179	
Sharon A. Rippner	Ph.D.	Department of Corrections and Rehab California Men's Colony	6448 Squire Court San Luis Obispo, CA 93401	Phone: (805) 547-7900 Ext. 7238	Template Support - 180	
Lawrence B. Ball	Ph.D.		3333 Wilshire Boulevard, Suite 1000 Los Angeles, CA 90010	Phone: (213) 738-4200 Fax: (213) 351-2744	Template Support - 181	
David M. Lechuga	Ph.D.	The Neurobehavioral Clinic and Counseling Center	13 Orchard Road, Suite 103 Lake Forest, CA 92630	dlechuga@neuroclinic.com	Template Support - 182	
Andrew M. Prokopis	Psy.D.		P.O. Box 733 Sebastopol, CA 95473		Template Support - 183	
Andrea Bernard	Ph.D.		2541 State Street, Suite 210 Carlsbad, CA 92008	Phone: (760) 815-8682	Template Support - 184	
Diana Silver Arsharn	Ph.D.	Arsham Consultants, Inc.	P.O. Box 15608 San Francisco, CA 94115-0608		Template Support - 185	
Steven Kane	Ph.D.		P.O. Box 2348 Avila Beach, CA 93424	Phone: (805) 235-1296	Template Support - 186	
David B. Peterson	Ph.D., CRC, NCC	California State University, Los Angeles	5151 State University Drive Los Angeles, CA 90032-8144	dpeters3@calstatela.edu	Template Support - 187	
Jeffrey Kahn	Ph.D.		829 Sonoma Avenue, Suite 7 Santa Rosa, CA 95404	Phone: (707) 546-4349	Template Support - 188	
James L. Schaefer	Psy.D.		23624 Kivik Street Woodland Hills, CA 91367		Template Support - 189	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Melodie R. Schaefer	Psy.D.		23624 Kivik Street Woodland Hills, CA 91367		Template Support - 190	
Jeana L. Dressel	Ph.D.	University of California, Santa Barbara			Template Support - 191	
Nancy E. Sullivan	Ph.D.	The Children's Health Council	650 Clark Way Palo Alto, CA 94304	nsullivan@chconline.org	Template Support - 192	
Lawrence Havert	Ph.D.	San Bernardino County Department of Behavioral Health/Workforce, Education and Training	850 E. Foothill Boulevard, (E134) Rialto, CA 92376	lhavert@dbh.sbcounty.gov	Template Support - 193	
William Josephs	Ph.D.	Clinical Consultants, Inc.	15456 Ventura Boulevard, Suite 201 Sherman Oaks, CA 91403	Phone: (818) 783-9930 Fax: (818) 783-9915	Template Support - 194	
Mark Zaslav	Ph.D.		21 Tamal Vista Boulevard, Suite 120 Corte Madera, CA 94925	markzaslav@sbcglobal.net	Template Support - 195	
Steven L. Brigham	Ph.D.		12465 Nedra Drive Granada Hills, Ca 91344	stevebrigham@gmail.com	Template Support - 196	Received this letter two times
Lorin Lindner	Ph.D., M.P.H.		P.O. Box 1510 Frazier Park, CA 93225	doclindner@parrotcare.org	Template Support - 197	
Margaret E. Burton	Psy.D.	Tiburcio Vasquez Health Center, Inc.	29800 Mission Boulevard Hayward, CA 94544	mburton@tvhc.org	Template Support - 198	
James S. Moran	Ph.D.		621 Forest Avenue, Suite 2 Pacific Grove, CA 93950	Phone: (831) 373-1499 Fax: (831) 375-1030	Template Support - 199	
Charles A. Filanosky	Ph.D., Ed.M.	San Francisco VA Medical Center	4150 Clement Street San Francisco, CA 94121	Charles.Filanosky@va.gov	Template Support - 200	
James S. Graves	Ph.D., Psy.D.		572 E. Green Street, Suite 304 Pasadena, CA 91101		Template Support - 201	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Edna Esnil	Ph.D.		885 Oak Grove Avenue, Suite #210 Menlo Park, CA 94025	edna@doctoresnil.com	Template Support - 202	
John Guthrie			144 N. Los Robles Avenue, Apt. 2 Pasadena, CA 91101	me2yoo@gmail.com	Template Support - 203	
Stephanie Chervinko	Ph.D.	California State University, Chico		schervinko@csuchico.edu	Template Support - 204	
L. Gourley	Ph.D., PA		3527 Sacramento Street San Francisco, CA 94118		Template Support - 205	
Angela Waldrop			4150 Clement Street San Francisco, CA 94121	angela.waldrop@gmail.com	Template Support - 206	
Barbara Morris Jensen	Psy.D.		336 Mission Drive Camarillo, CA 93010	bamj.psyd@hotmail.com	Template Support - 207	
Judith M. Larson	Ph.D.		2251 Grant Road, Suite H Los Altos, CA 94024	jm-larson@comcast.net	Template Support - 208	
Mary C. Hubbard	Ph.D.		1313 Rosario Circle Placentia, CA 92870	Phone: (714) 524-5224	Template Support - 209	
Gunilla M. Karlsson	Ph.D.		6200 Wilshire Boulevard, Suite 806 Los Angeles, CA 90048		Template Support - 210	
Raphael Ziegler	Ph.D.		225 Avenue I, Suite 204 Redondo Beach, CA 90277	Phone: (310) 855-3288 Fax: (310) 855-3498	Template Support - 211	
Raphael Ziegler	Ph.D.		225 Avenue I, Suite 204 Redondo Beach, CA 90277	Phone: (310) 855-3288 Fax: (310) 855-3498	Template Support - 212	
David Sitzer	Ph.D.		225 Avenue I, Suite 204 Redondo Beach, CA 90277	Phone: (310) 855-3288 Fax: (310) 855-3498	Template Support - 213	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Judith Janaro Fabian	Ph.D., A.B.P.P.		182 Granville Way San Francisco, CA 94127-1134	Phone: (415) 771-7171 Fax: (415) 771-7171	Template Support - 214	
Grace A. Rosales	Ph.D.		3561 Clarington Avenue, #105 Los Angeles, CA 90034	Grace.Rosales@va.gov	Template Support - 215	
Beverly C. Rivera	Ph.D.		15233 Ventura Boulevard, Suite 1204 Sherman Oaks, CA 91403	Fax: (818) 990-5143	Template Support - 216	
Shaun Wehle			159 West Green Street, Unit 204 Pasadena, CA 91105	shaunwehle@hotmail.com	Template Support - 217	
Deborah Weisinger	Psy.D.		2409A Sacramento Street San Francisco, CA 94115	Fax: (415) 668-6302	Template Support - 218	
Alex Mendez	Ph.D.		3730 Laguna Avenue Oakland, CA 94602	amendez@girlsinc-alameda.org	Template Support - 219	
Brittany T. Brizendine	Psy.D.		P.O. Box 342 Lincoln, CA 95648	drbrizendine@yahoo.com	Template Support - 220	
Susan Shapiro	Ph.D., MS, MS, RD, FADA		8306 Wilshire Boulevard, #1518 Beverly Hills, CA 90211	SSHAPRIO@ca.rr.com	Template Support - 221	
Martha Gilmore	Ph.D.		1621 Oak Avenue, Suite B Davis, CA 95616	mlgilmore@ucdavis.edu	Template Support - 222	
Kenneth S. Benau	Ph.D.		1315 Holman Road Oakland, CA 94610	kbenau@comcast.net	Template Support - 223	
Hannah Wedgley Nystrom	Ph.D.		870 Market Street, Suite 1101 San Francisco, CA 94102	hannahnystrom@me.com	Template Support - 224	
Janet A. Farrell	Ph.D.		8842 Halsted Street San Diego, CA 92123	jfarrel3@san.rr.com	Template Support - 225	
Loren Krane	Ph.D.		1939 Divisadero Street, #4, San Francisco, CA 94115		Template Support - 226	
Markley S. Sutton	Ph.D.		2035 Seville Drive Napa, CA 94559	MarkleyS@aol.com	Template Support - 227	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Earl Malarchick	Ph.D.		852 West Orange Street Hanford, CA 93230	earlmalarchick@netzero.net	Template Support - 228	
Edward A. Dreyfus	Ph.D.		1421 Santa Monica Boulevard Santa Monica, CA 90404	ead@docdreyfus.com	Template Support - 229	
Patricia K. Masuda-Story	Psy.D.		17328 Ventura Boulevard, #134 Encino, CA 91316	drmasudastory@nashmetro.com	Template Support - 230	
Leslie Lessenger	Ph.D.		750 W. K Street Benicia, CA 94510	Fax: (707) 751-0857	Template Support - 231	
Drue A. Bogdonoff	Ph.D., SEP, MBA, CFA		7820 Ivanhoe Avenue La Jolla, CA 92037	dbogdonoff@cox.net	Template Support - 232	
Kimberly A. Telesh	Ph.D.		3580 Wilshire Boulevard, Suite 2000 Los Angeles, CA 90010	drtelesh@gmail.com	Template Support - 233	
Alissa Scanlin	Psy.D.		3468 Mount Diablo Boulevard, Suite B203 Lafayette, CA 94549	alissas@pacbell.net	Template Support - 234	
Wendy Brooks	Psy.D.		1015 Tamarisk West Rancho Mirage, CA 92270	wendy.brooks@gmail.com	Template Support - 235	
Robin Sablosky	Ph.D.	Switzer Learning Center	2201 Amapola Court Torrance, CA 90501	rgsabo@roadrunner.com	Template Support - 236	
Karyn Goldberg-Boltz	Ph.D.	Contra Costa Psychological Association	2930 Camino Diablo, Suite 305 Walnut Creek, CA 94597	karyn@drgoldbergboltz.com	Template Support - 237	
Juliette Cutts	M.A.	John F. Kennedy University	6584H Cotton Wood Circle Dublin, CA 94568	judeliette@sbcglobal.net	Template Support - 238	
Grace Malonai	Ph.D.	Alhambra Valley Counseling Associates	1134 Alhambra Valley RoadMartinez, CA 94553	gmalonai@stmarys-ca.edu	Template Support - 239	
Sophie Soltani	Psy.D.		745 Buena Vista Avenue Alameda, CA 94501	sophiesoltani@sbcglobal.net	Template Support - 240	
Diana Samardzic			141 Montecito Avenue, #203 Oakland, CA 94610	dianza79@yahoo.com	Template Support - 241	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Dorothy Pitkin	Doctoral Student		P.O. Box 1012 Davis, CA 95617	DPitkin350@aol.com	Template Support - 242	
Carolyn F. Hokanson	Ph.D.			chokan8708@yahoo.com	Template Support - 243	
Raymond J. Trybus	Ph.D.		6342 Cibola Road San Diego, CA 92120-2124	rtrybus@cox.net	Template Support - 244	
Rich Beaver	Ph.D.		4337 Norwalk Drive, N276 San Jose, CA 95129	rabeav@yahoo.com	Template Support - 245	
Pamela J. McCrory	Ph.D.		6325 Topanga Canyon Boulevard, Suite 305 Woodland Hills, CA 91367	mccroryphd@earthlink.net	Template Support - 246	
Dara Goosby	Psy.D.		3340 Walnut, Suite 140 Fremont, CA 94538	darablue@earthlink.net	Template Support - 247	
Milton E. Harris	Ph.D., A.B.P.P.- CN		95 Montgomery Drive, Suite 222 Santa Rosa, CA 95404	miltonharris@gmail.com	Template Support - 248	
Becky Jandrey	Ph.D.		825 College Avenue Santa Rosa, CA 95404	bjandrey@sonic.net	Template Support - 249	
John C. Williams	Ph.D.		7095 Via del Mar Rancho Palos Verdes, CA 90275	jcwilliamsphd@gmail.com	Template Support - 250	
Michael A. Fraga	Psy.D., M.S.C.P.		37 Quail Court, Suite 201 Walnut Creek, CA 94596	Phone: (925) 210-9846	Template Support - 251	
Walter W. Murrell	Ph.D.		12301 Wilshire Boulevard, Suite 210 Los Angeles, CA 90025	Phone: (310) 204-1950	Template Support - 252	
David E. Rouslin	Ph.D.	Kaiser, Antioch		David.Rouslin@kp.org	Template Support - 253	
Willene V. L. Pursell	Ph.D.		1350 Cherry Street San Carlos, CA 94070	Phone: (650) 596-6535	Template Support - 254	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Steven M. Blankman	Ph.D.		21 11th Street Arcata, CA 95521-5902	smbphd@yahoo.com	Template Support - 255	
Carl H. Shubs	Ph.D.		321 S. Beverly Drive, Suite "L" Beverly Hills, CA 90212-4303	Drcarshu@aol.com	Template Support - 256	
Jennifer Ruff	Ph.D.	California Department of Corrections and Rehabilitation	4001 King Avenue Corcoran, CA 93212	druff@comcast.net	Template Support - 257	
Allison Parelman	Ph.D.		2730 Wilshire Boulevard, Suite 620 Santa Monica, CA 90403		Template Support - 258	
Ralph Kaywin				PTIALSPACE@comcast.net	Template Support - 259	
Dennis Laurents	Ph.D.		4444 Riverside Drive, Suite 110 Burbank, CA 91505	Phone: (818) 559-8700 Fax: (818) 559-8768	Template Support - 260	
Stephen Openshaw	Ph.D.		110 E. Wilshire Avenue, Suite 407 Fullerton, CA 92832	DrSteve@OpenshawPhD.com	Template Support - 261	
Candace Kopel	Ph.D.		16430 Ventura Boulevard, #307 Encino, CA 91436	Fax: (818) 881-7625	Template Support - 262	
Colleen H. Daniel	Psy.D.		590 Wellesley Drive, #103 Corona, CA 92879	colleen.daniel@hotmail.com	Template Support - 263	
Russell F. Fuller	J.D., Psy.D.,D.CEP		4225 Executive Square,Suite 1110La Jolla, CA 92037	fullerpsy@sbcglobal.net	Template Support - 264	
Leslie Pam				leslyann@pacbell.net	Template Support - 265	
Joanne Tortorici Luna	Ph.D.	California State University, Long Beach		jtortori@csulb.edu	Template Support - 266	
Lisa Barry	Psy.D.	Fair Oaks Therapeuticum	4112 Pennsylvania Avenue Fair Oaks, CA 95628	dbarry@therapeuticum.org	Template Support - 267	
Kellie Rollins	Psy.D.		4150 Clement Street San Francisco, CA 94121	kellie.rollins@gmail.com	Template Support - 268	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Andrea S. Kahn	Ph.D.		116 North Robertson Boulevard, Suite 901 Los Angeles, CA 90048	Phone: (310) 855-1251 Fax: (310) 8543084	Template Support - 269	
Art Raisman	Ph.D.		5 Schaaf Court San Rafael, CA 94901	artraisman@msn.com	Template Support - 270	
Stephen B. Bindler	Ph.D.		P.O. Box 268 Visalia, CA 93279-0268	cyberpsych841@netscape.net	Template Support - 271	
Laura McCormick	Ph.D.	Elpida House, Inc.	7 Mt. Lassen Drive, Suite D-256 San Rafael, CA 94903	Phone: (415) 499-8613 Fax: (415) 499-8620	Template Support - 272	
Andrew C. Butler	Ph.D.		2100 Garden Road, Suite A-102 Monterey, CA 93940-5363	drandybutler@yahoo.com	Template Support - 273	
Sandra L. Ceren	Ph.D.		15023 Tierra Alta Del Mar, CA 92014	Phone: (858) 755-0088 Fax: (858) 451-0089	Template Support - 274	Received this letter two times
Samantha Case	Psy.D.			shcase@gmail.com	Template Support - 275	
Armine Ovasapyan	M.A.		425 W. Lomita Avenue, #5 Glendale, CA 91204	aovasapyan@alliant.edu	Template Support - 276	
Doris Penman	Ph.D.		8720 Mulberry Drive Sunland, CA 91040	doris.penman@ca.rr.com	Template Support - 277	
Nicholas J. Zirpolo	Ph.D.		4161 El Camino Way, Suite B Palo Alto, CA 94306	Fax: (650) 494-7272	Template Support - 278	
Ronald M. Bale	Ph.D.		260 Maple Court, Suite 130 Ventura, CA 93003	RONBALE@aol.com	Template Support - 279	
Matthew G. Holden	Ph.D.		20840 Elfin Forest Road Escondido, CA 92029	matthewholden@sbcglobal.net	Template Support - 280	
William Gamard	Ph.D.	Sonoma Develomenta Center	15000 Arnold Drive Eldridge, CA 95431	William.Gamard@sonoma.dds.ca.gov	Template Support - 281	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Bennett Williamson	Ph.D.		2898 Rowena Avenue, Suite 206 Los Angeles, CA 90039	oficinabennett@hotmail.com	Template Support - 282	
Jerry G. Balaban	Ph.D.		3000 Woods Circle Davis, CA 95616	jgb220@yahoo.com	Template Support - 283	
Thomas F. Nagy	Ph.D.		555 Middlefield Road, Suite 212B Palo Alto, CA 94301	tnagy10@comcast.net	Template Support - 284	
Ellen A. Powers	Psy.D.	Pacific Resources Psychological Group	4201 Long Beach Boulevard, Suite 230 Long Beach, CA 90807	drpowers@pacrespsyc.org	Template Support - 285	
Steven Sparta	Ph.D.			Buswork@aol.com	Template Support - 286	
Nancy Canning	Psy.D.	Alta Bates Summit Medical Center	2001 Dwight Way, 5 North Berkeley, CA 94704	canninn@sutterhealth.org	Template Support - 287	
Lynette Bassman	Ph.D.	Alliant International University, Fresno	-	lbassman@alliant.edu	Template Support - 288	
Grace A. Mucci	Ph.D.			jmucci@npsyp.com	Template Support - 289	
Mark McKinley	Doctoral Graduate			bradshaw219@yahoo.com	Template Support - 290	
Anilga Moradkhani	Student			amoradkhani@alliant.edu	Template Support - 291	
Nancy Marx	Ph.D.	Integrated Healing Associates	520 S. El Camino, Suite 204 San Mateo, CA 94402	Fax: (650) 627-9353	Template Support - 292	
Richard B. Addison	Ph.D.		862 Third Street Santa Rosa, CA 95404	Phone: (707) 576-9813 Fax: (707) 576-4087	Template Support - 293	
Laura A. Haynes	Ph.D.		17632 Irvine Boulevard, Suite 240 Tustin, CA 92780	Fax: (714) 665-3333	Template Support - 294	
Jimmy Schrage			26914 Flo Lane, Unit 442 Canyon Country, CA 91351	solidforce@att.net	Template Support - 295	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Anne Cooper	Psy.D.		200 Middlefield Road, Suite 100 Menlo Park, CA 94025	drannecooper@yahoo.com	Template Support - 296	
Elizabeth E. Green	Ph.D.		3921 Goldfinch Street San Diego, CA 92103	Phone: (619) 260-0335 Fax: (619) 260-1682	Template Support - 297	
Lynne A. Steinman	Ph.D.		23504 Lyons Avenue, Suite 401 Santa Clarita, CA 91321	lasteinman@aol.com	Template Support - 298	
Anh D. Weber	Ph.D.		919 Timothy Lane Menlo Park, CA 94025	anhweber@earthlink.net	Template Support - 299	
Neda Safvati			1429 Jonesboro Drive Los Angeles, CA 90049	nedasafvati@gmail.com	Template Support - 300	
Jill Kohn	Ph.D.		1850 Sawtelle Boulevard, Suite 400 Los Angeles, CA 90025	Fax: (323) 856-0080	Template Support - 301	
Monica S. Karbassioun	Psy.D Health Student	California School of Professional Psychology		monicakarbassioun@yahoo.com	Template Support - 302	
Susan Barnes			929 Alleghany Circle San Dimas, CA 91773	csusan25@yahoo.com	Template Support - 303	
Casey E. Clardy	M.A.		296 N. Oakland Avenue, Apt. 2 Pasadena, CA 91101	ceclardy@gmail.com	Template Support - 304	
Gail Frankel	Ph.D.		2801 Moorpark Avenue, Suite 3 San Jose, CA 95128-3103	Phone: (408) 261-2093 Fax: (408) 261-1793	Template Support - 305	
Linda M. Tyrrell	Psy.D.		275 E. California Boulevard, Suite A101 Pasadena, CA 91106	Fax: (626) 229-9980	Template Support - 306	
Ain Roost	Ph.D.			AinRoost@aol.com	Template Support - 307	
Kristen N. Meyers	M.A. Ph.D. Candidate	Fuller School of Psychology	P.O. Box 180 Azusa, CA 91702	meyers.kristen@gmail.com	Template Support - 308	
Jerre L. White	Psy.D.	Vanguard University	55 Fair Drive Costa Mesa, CA 92626	Jwhite@vanguard.edu	Template Support - 309	

ADDENDUM I

DPH-05-010
August 10, 2009

Phillip Lowe			2893 Queens Way Thousand Oaks, CA 91362	phil_lowe@yahoo.com	Template Support - 310	
R. M. Laudati	Ph.D.		200 Newport Center Drive, #300 Newport Beach, CA 92660		Template Support - 311	
Darlene M. Skorka	Ph.D.		827 Deep Valley Drive, Suite 309 Rolling Hills Estates, CA 90274	Phone: (310) 377-4264 Fax: (310) 541-6370	Template Support - 312	
Jeffrey N. Younggren	Ph.D.		827 Deep Valley Drive, Suite 309 Rolling Hills Estates, CA 90274	Phone: (310) 377-4264 Fax: (310) 541-6370	Template Support - 313	
Teresa M. Fisher	Psy.D.		4200 Chino Hills Parkway, Suite 820 Chino Hills, CA 91709	drtmfisher@verizon.net	Template Support - 314	
Walter Brown				psych_services@earthlink.net	Template Support - 315	
Craig Pfaffl	Ph.D.	Health Care Partners Medical Group		cpfaffl@healthcarepartners.com	Template Support - 316	
Timothea G. McGinley	Ph.D.			tmcginley@livingdreamfarm.com	Template Support - 317	
David C. Lorentzen	Psy.D.		200 E. Del Mar Boulevard, Suite 206 Pasadena, CA 91105	davidlorentzen@gmail.com	Template Support - 318	
Maribel Garcia	Psy.D.		21961 Jinetes Mission Viejo, CA 92691	maribel135f@yahoo.com	Template Support - 319	Received this letter four times
Maribel Garcia	Psy.D.		21961 Jinetes Mission Viejo, CA 92691	maribel135f@yahoo.com	Template Support - 320	
Maribel Garcia	Psy.D.		21961 Jinetes Mission Viejo, CA 92691	maribel135f@yahoo.com	Template Support - 321	
Maribel Garcia	Psy.D.		21961 Jinetes Mission Viejo, CA 92691	maribel135f@yahoo.com	Template Support - 322	
Russell L. Jordan	Ph.D.	Department of Corrections and Rehab Corcoran State Prison	132 W. Deodar Lane Lemoore, CA 93245	Phone: (559) 992-8800 Ext. 6152	Template Support - 323	
Jack Latow	Ph.D.		413 Lincoln Avenue Woodland, CA 95695	Phone: (530) 661-1666	Template Support - 324	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
G. Jean Ghanem-Ybarra	Psy.D.		32605 Temecula Parkway, Suite 303 Temecula, CA 92592	jean@compassionatetherapy.com	Template Support - 325	
Julie A. Nance	M.A.		4461 Campus Avenue San Diego, CA 92116	jnance@alliant.edu	Template Support - 326	
Lynn Davilla Shields	Ph.D.		3468 Mt. Diablo Boulevard, Suite B201 Lafayette, CA 94549	ldshields@earthlink.net	Template Support - 327	Received this letter two times
Grace Malonai	Ph.D.	Alhambra Valley Counseling Associates	1134 Alhambra Valley Road Martinez, CA 94553	gmalonai@stmarys-ca.edu	Template Support - 328	
Lily Bhattacharya	Psy.D.			drswati@roadrunner.com	Template Support - 329	
Joyce A. Kovelman	Ph.D.			ASOUL1@aol.com	Template Support - 330	
Laura A. Haynes	Ph.D.		17632 Irvine Boulevard, Suite 240 Tustin, CA 92780	Fax: (714) 665-3333	Template Support - 331	
Rebecca E. Foo	Ph.D.	Switzer Learning Center	2201 Amapola Court Torrance, CA 90501	drfoo@switzercenter.org	Template Support - 332	
Isidro R. Quiroga			420 Main Street Watsonville, CA 95076		Template Support - 333	
Brenda A. Austin	Ph.D.	Laguna Honda Hospital and Rehabilitation Center	375 Laguna Honda Boulevard San Francisco, CA 94116	Brenda.Austin@sfdph.org	Template Support - 334	
Marjan Moinzadeh	Ph.D.		2303 Camino Ramon, Suite 207 San Jose, CA 95130	drmarjan@sbcglobal.net	Template Support - 335	
Jacqueline Butler	Ph.D.		4180 Marian Street La Mesa, CA 91941	jbphd@aol.com	Template Support - 336	
Lindsay Alt	M.A.			lindsayalt@yahoo.com	Template Support - 337	
Sophia Lin Ott	Psy.D.			drsophialinott@gmail.com	Template Support - 338	
Daniel O. Taube	J.D., Ph.D.	CSPP-SF Bay Alliant International University	One Beach Street, Suite 100 San Francisco, CA 94133-1221	dtaube@alliant.edu	Template Support - 339	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Meg Sandow	Psy.D.		P.O. Box 3596 Santa Cruz, CA 95063-3596	msandow@health.co.santa-cruz.ca.us	Template Support - 340	
William Reese	Ph.D.				Template Support - 341	
Stan Pachter	Ph.D.		3262 Holiday Court, Suite 210 LaJolla, CA 92037	Phone: (858) 643-5190 Fax: (858) 456-9230	Template Support - 342	
Nancy L. Wade	Ph.D.		200 Arroyo TerracePasadena, CA 91103		Template Support - 343	
Eugene S. Urbain	Ph.D.		2564 San Carlos Avenue San Carlos, CA 94070		Template Support - 344	
					Template Support - 345	
Linda J. Hewett	Psy.D.		3313 N. Hilliard Lane Fresno, CA 93726	Fax: (559) 227-4167	Template Support - 346	
William E. Davis	Ph.D.		5412 Yerba Buena Road Santa Rosa, CA 95409		Template Support - 347	
Roseann Hannon	Ph.D.		3031 W. March Lane, Suite 317 East Stockton, CA 95219	Phone: (209) 951-7511 Fax: (209) 474-7421	Template Support - 348	
Lovingly C. Quitania		University of California, Davis Medical Center		lquitania@alliant.edu	Template Support - 349	
Jeffrey Derflinger	Ph.D.			jkderflinger@cox.net	Template Support - 350	
Patricia Frisch	Ph.D.		315 Eldridge Avenue Mill Valley, CA 94941	PFRISCH@pacbell.net	Template Support - 351	
Anna Okonek	Ph.D.		2207 20th Street, #2 Santa Monica, CA 90405	aokonek@verizon.net	Template Support - 352	
Jerry Solomon	Ph.D.		407 Avalon Avenue Santa Cruz, CA 95060	Phone: (831) 425-8785 Fax: (831) 425-2308	Template Support - 353	
Tony Rousmaniere				trousmaniere@yahoo.com	Template Support - 354	
Peter Lambrou	Ph.D.	Scripps Memorial Hospital La Jolla	9834 Genesee Avenue, Suite 321 La Jolla, CA 92037	Phone: (858) 457-3900 Fax: (858) 452-7610	Template Support - 355	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Barbara Sprayregen	Psy.D.		16052 Beach Boulevard, #212 Huntington Beach, CA 92647	Phone: (714) 375-1045 Fax: (714) 375-1046	Template Support - 356	
David L. Lundquist	Ph.D.		73290 Desert Rose Drive Palm Desert, CA 92260	lundkob@dc.rr.com	Template Support - 357	
Jaclyn Sagun	M.A.			jsagun@gmail.com	Template Support - 358	
Arthur M. Bodin	Ph.D.		555 Middlefield Road, Room 210 Palo Alto, CA 94301	Phone: (650) 328-3000 Fax: (650) 328-4334	Template Support - 359	
Barbara Rosen	Ph.D.			brosen@ucsd.edu	Template Support - 360	
E. Peabody Bradford	Ph.D.			peabs@beamishguild.com	Template Support - 361	
Willene V. L. Pursell	Ph.D.		1350 Cherry Street San Carlos, CA 94070	Phone: (650) 596-6535	Template Support - 362	
Elizabeth S. Alden	Ph.D.		22 D. West Michel Torena Santa Barbara, CA 93101	Phone: (805) 564-3715	Template Support - 363	
Floyd O'Brien	Ph.D.			fobrien1@comcast.net	Template Support - 364	
Carl Kerckhoff	Ph.D.			ckerckhoff@socal.rr.com	Template Support - 365	
Roberta Flynn	Psy.D.			drflynn@hotmail.com	Template Support - 366	
John R. Pullen	Ph.D.			drjpullen@chaange.com	Template Support - 367	
Jason Jones				jonesjas@gmail.com	Template Support - 368	
Dorothy Pitkin	Doctoral Student		P.O. Box 1012 Davis, CA 95617	DPitkin350@aol.com	Template Support - 369	
Michelle Cuevas	Doctoral Candidate	Alliant International University		m-a-cuevas@hotmail.com	Template Support - 370	
John K. Russell	Ph.D.		1945 Palo Verde Avenue, Suite 202 Long Beach, CA 90815	jkr101848@aol.com	Template Support - 371	
Nina Akin	Ph.D.		P.O. Box 711165 San Diego, CA 92171	npakin@gmail.com	Template Support - 372	
Gregory Koch	Psy.D.		3255 Fourth Avenue San Diego, CA 92103	drgregorykoch@mac.com	Template Support - 373	
Bert H. Epstein	Psy.D.			bertep@comcast.net	Template Support - 374	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Penny M. Goffman	Ph.D.		P.O. Box 9685 Rancho Santa Fe, CA 92067-4685	Phone: (713) 906-9057	Template Support - 375	
Karen A. Schwarz	Ph.D.		1111 Triton Drive, Suite 101 Foster City, CA 94404	Phone: (650) 340-4505 Fax: (650) 345-0901	Template Support - 376	
Heather Martarella	Psy.D.			drmartarella@mac.com	Template Support - 377	
Ralph Kaywin				PTIALSPACE@comcast.net	Template Support - 378	
Jo Danti	Ph.D.			suprshrink@sbcglobal.net	Template Support - 379	
Stephanie Mason	Psy.D.			smason3488@hotmail.com	Template Support - 380	
Malcolm Gaines	Psy.D.		2538 California Street San Francisco, CA 94115	Fax: (415) 358-4273	Template Support - 381	
Barbara Morris Jensen	Psy.D.		336 Mission Drive Camarillo, CA 93010	bamj.psyd@hotmail.com	Template Support - 382	
A. Tom Horvath	Ph.D.		8950 Villa La Jolla Drive, #B214 La Jolla, CA 92037	tom.horvath@pyrsys.com	Template Support - 383	
Sharon A. Sterne	Ph.D.		404 4th Street Petaluma, CA 94952	sasterne@sbcglobal.net	Template Support - 384	
Becky Jandrey	Ph.D.		825 College Avenue Santa Rosa, CA 95404	bjandrey@sonic.net	Template Support - 385	
Devora Goldberg Lockton	Ph.D.			devoralockton@sbcglobal.net	Template Support - 386	
J. Gilbert	Ph.D.		1303 Jefferson Street, Suite 600A Napa, CA 94559	Phone: (707) 224-2893 Fax: (707) 224-2894	Template Support - 387	
M. Gail Price	Ph.D.		1220 University Drive, Suite 102 Menlo Park, CA 94025	gailprice1@comcast.net	Template Support - 388	
Lori Holt	Ph.D.			curtandlori@sbcglobal.net	Template Support - 389	
Lisa S. Larsen	Psy.D.			weallr1@lmi.net	Template Support - 390	
Peter McKimmin	Ph.D.			peterjmck1@cox.net	Template Support - 391	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Sharon L. Johnson	Ph.D.		1111 E. Herndon, Suite 306 Fresno, CA 93720	Phone: (559) 440-0112 Fax: (559) 440-0114	Template Support - 392	
Robin Sablosky	Ph.D.	Switzer Learning Center	2201 Amapola Court Torrance, CA 90501	rgsabo@roadrunner.com	Template Support - 393	
Joshua Slater	Psy.D.			joshuaslater@comcast.net	Template Support - 394	
C.Hugh Mays	Ph.D.			psychhugh@sbcglobal.net	Template Support - 395	
Stuart Kirschbaum	Ph.D.	Advanced Behavioral Care, Inc.	27001 La Paz Road, Suite 403 Mission Viejo, CA 92691	stuartkb@me.com	Template Support - 396	
Maxine Fenton Gann	Ph.D.		1185 Park Avenue New York, NY 10128	mgann@nyc.rr.com	Template Support - 397	
Eileen M. Terran	Ph.D.		2064 Talbert Drive, Suite 302 Chico, CA 95928-7683	Phone: (530) 895-3279 Fax: (530) 896-0655	Template Support - 398	Received this letter two times
Ida M. Roberts	Ph.D.	Mind Body Integration Svcs	433 Callan Avenue, Suite 306 San Leandro, CA 94577	BOW42@comcast.net	Template Support - 399	
Marc G. Murphy	Ph.D., A.B.P.P.		4550 Kearny Mesa Road, Suite 214 San Diego, CA 92123	Phone: (858) 452-7001 Fax: (858) 481-6299	Template Support - 400	
Tracy Smith	Psy.D.			tsmith@wrighinst.edu	Template Support - 401	
Rebecca E. Foo	Ph.D.	Switzer Learning Center	2201 Amapola Court Torrance, CA 90501	drfoo@switzercenter.org	Template Support - 402	
Lindsey Alper	Ph.D.			Lalperphd@aol.com	Template Support - 403	
Michael Ritz	Ph.D.	Kaiser, Tustin Santa Ana	55 Highland View Irvine, CA 92603		Template Support - 404	
Michael E. Harris	Ph.D.		9200 Colima Road, #206 Whittier, CA 92605	Phone: (562) 945-5454	Template Support - 405	
Haygoush Kaliniam	Ph.D.			onesynapse@yahoo.com	Template Support - 406	
Candace Kopel	Ph.D.		16430 Ventura Boulevard, #307Encino, CA 91436	Fax: (818) 881-7625	Template Support - 407	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Michi Fu	Ph.D.	California School of Professional Psychology	1000 S. Fremont Avenue, Unit 5 Alhambra, CA 91801	mfu@alliant.edu	Template Support - 408	
David M. Lechuga	Ph.D.	The Neurobehavioral Clinic and Counseling Center	13 Orchard Road, Suite 103 Lake Forest, CA 92630	dlechuga@neuroclinic.com	Template Support - 409	
Sandra Peace	Psy.D.	John F. Kennedy University		speace@jfkku.edu	Template Support - 410	
Anne Bisek	Psy.D.		3602 Thornton Avenue, #54 Fremont, CA 94536	Anne@Doc911.net	Template Support - 411	
Susan Chandler	Ph.D.		333 Hayes Street, Suite 210 San Francisco, CA 94117	schndler@pacbell.net	Template Support - 412	
Gita Elgin	Psy.D., Ph.D.		348 Avenida de las Rosas Encinitas, CA 92024	DrElgin@HolisticRenewal.com	Template Support - 413	
Joe Persinger	Ph.D.	Erickson Institute	1144 Sonoma Avenue, Suite 117 Santa Rosa, CA 95405-4812	Phone: (707) 526-7720 Ext. 325 Fax: (707) 526-1913	Template Support - 414	
Edwin P. Jenesky	Ph.D.		P.O. Box 270568 Susanville, CA 926127	Fax: (530) 257-1192	Template Support - 415	
David W. Hindman	Ph.D.	Charles Drew University of Medicine & Science	Research Center in Minority Institutions 2594 Industry Way Lynwood, CA 90262	davidhindman@cdrewu.edu	Template Support - 416	
Carol Piccirillo	Ph.D.			cpiccirillo@socal.rr.com	Template Support - 417	
Deb Burgard	Ph.D.		5050 El Camino Real, Suite 202 Los Altos, CA 94022	debburgard@gmail.com	Template Support - 418	
Paul Fernandez	Ph.D.			paul6375@verizon.net	Template Support - 419	
Thomas D. Stern	Ph.D.		2142 Sutter Street, #2 San Francisco, CA 94115	tdstern@sbcglobal.net	Template Support - 420	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Agnes Dickson	Ph.D.		2030 E. Fourth Street, Suite 140-F Santa Ana, CA 92705	Fax: (714) 569-9976	Template Support - 421	
Neil Rocklin	Ph.D.		21243 Ventura Boulevard, #140 Woodland Hills, CA 91364	neil.rocklin@csuci.edu	Template Support - 422	
Lesley Wilson	Ph.D.			seaotter@ix.netcom.com	Template Support - 423	
Michael R. Pinkston	Ph.D.		862 Third Street Santa Rosa, CA 95404	Phone: (707) 575-7230 Fax: (707) 575-1513	Template Support - 424	
Ginette Perrin	Psy.D.			gperrin10@yahoo.com	Template Support - 425	
Healthier Bryant	Psy.D.			drhbryant@earthlink.net	Template Support - 426	
Paula J. Maness	Psy.D.			pjmaness@gmail.com	Template Support - 427	
Devora Goldberg Lockton	Ph.D.			devoralockton@sbcglobal.net	Template Support - 428	
Louis J. Nidorf	Ph.D.			lnidorf930@roadrunner.com	Template Support - 429	
Bapsi Slali	Ph.D.		3645 Ruffin Road, Suite 205 San Diego, CA 92123	Phone: (858) 569-2055 Fax: (858) 569-2061	Template Support - 430	
Talin Hovsepian	M.A.			thovsepian@gmail.com	Template Support - 431	
Robert Benavides, Jr.	Ed.D.		Waterfall Towers, Suite 210C 2455 Bennett Valley Road Santa Rosa, CA 95404	Phone: (707) 542-2081 Fax: (707) 542-2082	Template Support - 432	
Charles Farrow	Ph.D.	Rady Children's Hospital, San Diego	3020 Children's Way, Mail Code 5081 San Diego, CA 92123-4282	cfarrow@rchsd.org	Template Support - 433	
Robert M. Dosh	Ph.D.		15233 Ventura Boulevard, Suite 1200 Sherman Oaks, CA 91403	Phone: (818) 789-5630 Fax: (818) 789-6740	Template Support - 434	
Mary L. Malik	Ph.D.	Central Coast Psychological Association	1521 Higuera Street, Suite D San Luis Obispo, CA 93401	Phone: (805) 541-2490	Template Support - 435	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Mary Jo Georgier	Ph.D.	Vericare	4715 Viewridge Avenue, Suite 230 San Diego, CA 92123	mjgeorgiev@vericare.com	Template Support - 436	
Michael E. Ogie	Ph.D.		123 W. Padre Street, Suite C Santa Barbara, CA 93105	meogle@mindspring.com	Template Support - 437	
Nancy L. Auger	Ph.D.	Psychiatric Centers at San Diego	221 W. Crest Street, Suite #102 Escondido, CA 92025	Phone: (760) 489-4930 Fax: (760) 489-4933	Template Support - 438	
Genelle I. Weits	Ph.D.	Alvarado Parkway Institute Spanish Behavioral Health Services	7050 Parkway Drive La Mesa, CA 91942	gweits@apibhs.com	Template Support - 439	
William J. Taetzsch	Ph.D.	Feather River Health Center	5125 Skyway Paradise, CA 95969	drbill750@aol.com	Template Support - 440	
Yvette N. Tazeau	Ph.D.		14531 South Bascom Avenue Los Gatos, CA 95032	ytazeau@ix.netcom.com	Template Support - 441	Received this letter two times
Andrew Carman	Ph.D.		550 Water Street, Suite E-2 Santa Cruz, CA 95060	Fax: (831) 429-5202	Template Support - 442	
Bill Zika	Ph.D.			Fax: (831) 647-9446	Template Support - 443	
Sharon A. Talovic	Ph.D.		23812 Harbor Vista Drive Malibu, CA 92065	sharon@talovic.net	Template Support - 444	
David M. Lechuga	Ph.D.	The Neurobehavioral Clinic and Counseling Center	19002 Woodland Way Trabuco Canyon, CA 92679	dlechuga@neuroclinic.com	Template Support - 445	
M. Bruce Stubbs	Ph.D.		2181 El Camino Real, Suite 202 Oceanside, CA 92054	Phone: (760) 929-9010	Template Support - 446	
Penelope McAlmond-Ross	Psy.D.		755 West A Street Dixon, CA 95620		Template Support - 447	
Sarah Miller	Ph.D.	Medical Staff, Veterans Home of California	220 California Drive Yountville, CA 94599		Template Support - 448	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Anders Greenwood	Psy.D., Ph.D.		2434 Milvia Street Berkeley, CA 94704		Template Support - 449	
Amy E. Kline	Ph.D.		720 Main Street, Suite B Woodland, CA 95695	Phone: (530) 666-7434	Template Support - 450	
Virginia Goodwind	Phy.D.		P.O. Box 264 Napa, CA 94559	Phone: (510) 717-5703	Template Support - 451	
Frederick Machado	D.Min., Psy.D.		712 Misty Avenue McFarland, CA 93250		Template Support - 452	
Helen H. Hsu	Psy.D.	Balanced Life Consulting	39803 Paseo Padre Parkway. Suite B Fremont, CA 94538	Phone: (510) 798-7392	Template Support - 453	
Douglas Kasle	Ph.D.		3145 Geary Boulevard, #347 San Francisco, CA 94118		Template Support - 454	
Carrie Jaffe	Ph.D.		12625 High Bluff Drive, #316 San Diego, CA 92130	cjaffephd@sbcglobal.net	Template Support - 455	
Edwin P. Jenesky	Ph.D.		P.O. Box 270568 Susanville, CA 926127	Fax: (530) 257-1192	Template Support - 456	
Carl Kerckhoff	Ph.D.		670 N. Rick Street Orange, CA 92869	ckerckhoff@socal.rr.com	Template Support - 457	
Karl Knobler	Ph.D.		2046 Lincoln Street Berkeley, CA 94709	karl.knobler@gmail.com	Template Support - 458	
Russell Thompson	Ph.D.	California Service Center	P.O. Box 6065 Cypress, CA 90630-0065	Russ.Thompson@valueoptions.com	Template Support - 459	
Margaret Donohue	Ph.D.		25470 Sheffield Land Santa Clarita, CA 91350	donohuema@aol.com	Template Support - 460	
Craig R. Lareau	J.D., Ph.D., A.B.P.P.	Patton State Hospital			Template Support - 461	
Bruce Yanofsky	Ph.D.		3110 Camino Del Rio South, Suite 202-C San Diego, CA 92108	Fax: (619) 284-3720	Template Support - 462	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Gary G. Peterson	Ph.D.		1500 Third Avenue, Walnut Creek, CA 94597		Template Support - 463	
Thomas Delaney	Ph.D.		1173 N. Dixie Drive, Suite 101 San Dimas, CA 91773	dr.td@juno.com	Template Support - 464	
Marc D. Skelton	Ph.D., Psy.D. A.B.P.P.		30131 Town Center Drive, #215 Laguna Niguel, CA 92677	Phone: (949) 495-3701 Fax: (949) 495-1860	Template Support - 465	
Mel-I Chang	Psy.D.	San Diego Family Care DBA Linda Vista Health Care	6979 Linda Vista Road San Diego, CA 92111	Phone: (858) 279-0925 Fax: (858) 279-2327	Template Support - 466	
Aleksandra Drecun	Ph.D.	Association for Compassionate Transformation, Inc.	12526 High Bluff Drive, Suite 300 San Diego, CA 92130	dr.drecun@a4ct.com	Template Support - 467	
Angela K. Willson	Psy.D.		P.O. Box 1679 Travis AFB, CA 94535	angie.willson.ctr@travis.af.mil	Template Support - 468	
Casey E. Clardy	M.A.		296 N. Oakland Avenue, Apt. 2 Pasadena, CA 91101	ceclardy@gmail.com	Template Support - 469	
Louis R. Choquette	Psy.D.		306 S. Pine Street Susanville, CA 95130	LouisChoquette@aol.com	Template Support - 470	
J. Gilbert	Ph.D.		1303 Jefferson Street, Suite 600A Napa, CA 94559	Phone: (707) 224-2893 Fax: (707) 224-2894	Template Support - 471	
Troy Freimuth	Psy.D.	Patton State Hospital	34764 Kite Street, Beaumont, CA 92223	frymuchan@earthlink.com	Template Support - 472	
Joan Pastor	Ph.D.	JPA International, Inc.	9171 Wilshire Boulevard, Penthouse Suite Beverly Hills, CA 90210	DrJoanP@aol.com	Template Support - 473	
Nina Akin	Ph.D.		P.O. Box 711165 San Diego, CA 92171	npa123@sbcglobal.com	Template Support - 474	
Carrie Jaffe	Ph.D.		12625 High Bluff Drive, #316 San Diego, CA 92130	cjaffephd@sbcglobal.net	Template Support - 475	
Lily Bhattacharya	Psy.D.			drswati@roadrunner.com	Template Support - 476	Received this letter two times

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Barbara Seldin	Ph.D.		1528 Gregory Street San Diego, CA 92102	drseldin@gmail.com	Template Support - 477	
David Rice	Ph.D.		801 East Second Street, Suite 101 Benicia, CA 94510	drice2@comcast.net	Template Support - 478	
Robert Epstein	Ph.D.		1676 Solano Avenue Albany, CA 94706	taylorpstein@earthlink.net	Template Support - 479	
Esther E. Sellers	Ph.D.			dresthereb@juno.com	Template Support - 480	
Marisa Mazza	Psychology Intern			mt_mazza@yahoo.com	Template Support - 481	
Rita Magana			1658 Boulder Creek Road Oceanside, CA 92056	urfaithful@sbcglobal.net	Template Support - 482	
Bill Safarjan	Ph.D.	Atascadero State Hospital	5100 Cascabel Road Atascadero, CA 93422	bsafarjan@tcsn.net	Template Support - 483	Mult Illeg Sig
Alison Weber	Ph.D., A.B.P.P.- CN		P.O. Box 7127 Napa, CA 94558		Template Support - 484	
Irving Paul Ackerman	M.D., FACP		1960 N. Edgemont Street Los Angeles, CA 90027-1806	mjackerman@sbcglobal.net	Oppose Unique - 485	
Michelle Devor	M.D., FACP, CMD			mjdevor@san.rr.com	Oppose Unique - 486	
Burt Liebross	Ph.D.			BeLieb@aol.com	Oppose Unique - 487	
George Shmagranoff				gshmag@prodigy.net	Oppose Unique - 488	
Nancy JV Bohannon	M.D., FACP, FACE		1580 Valencia Street, Suite 504 San Francisco, CA 94110-4415	sugarnancy@pol.net	Oppose Unique - 489	
Christopher Sharp	M.D.	Stanford Hospitals and Clinics		Csharp@stanfordmed.org	Oppose Unique - 490	
Andres deLuna				andy_deluna@yahoo.com	Oppose Unique - 491	
Randy Smart	M.D.			rwsmart@pacbell.net	Oppose Unique - 492	
Samuel I Rapaport	M.D.			srapaport@ucsd.edu	Oppose Unique - 493	
Donald E. Williams	M.D.			dnawilliams2@ca.rr.com	Oppose Unique - 494	
George Ma	M.D.			gwkma@yahoo.com	Oppose Unique - 495	
Howard Homler	M.D., FACP			hhomler@ix.netcom.com	Oppose Unique - 496	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Stan Freedman	M.D.			sfreed@post.harvard.edu	Oppose Unique - 497	
Anas Kawayeh	M.D.			AKawayeh@llu.edu	Oppose Unique - 498	
Howard Homler	M.D., FACP			hhomler@ix.netcom.com	Oppose Unique - 499	
John Tysell	M.D.			jtysell@aol.com	Oppose Unique - 500	
Liesbet Joris-Quinton	M.D., FACP	Scripps Clinic Medical Group	Green Hospital-Room 404C 10666 North Torrey Pines Road La Jolla, CA 92037	Quinton.Liesbet@scrippshealth.org	Oppose Unique - 501	
Marcus Kwan	M.D.		1595 Soquel Drive, Suite 340 Santa Cruz, CA 95065	mkwan@pol.net	Oppose Unique - 502	
Jeffrey M. Davidson	M.D.	University of California, San Francisco		mydrd@sbcglobal.net	Oppose Unique - 503	
Marshall T. Morgan	M.D.			MMorgan@mednet.ucla.edu	Oppose Unique - 504	
Terry A. Hollenbeck	M.D.			tahmd@sbcglobal.net	Oppose Unique - 505	
Jack G. Bruner	M.D.			jgbruner@sbcglobal.net	Oppose Unique - 506	
Rick G. Love	M.D.	The Otolaryngology Associates, P.C.	6912 Winton Blount Boulevard Montgomery, AL 36117	Phone: (334) 281-8400 Fax: (334) 284-4537	Oppose Unique - 507	
Debbie Hartley	Director, Medical Staff Services	Eisenhower Medical Center	39000 Bob Hope Drive Rancho Mirage, CA 92270	DHartley@emc.org	Oppose Unique - 508	
Mohammed Molla	M.D.			MMolla@co.kern.ca.us	Oppose Unique - 509	
Stella Feld	M.D.			doclyte@pol.net	Oppose Unique - 510	
Bryan Bohman	M.D.	Stanford Hospitals and Clinics		BBohman@stanfordmed.org	Oppose Unique - 511	
Kurt M. Hafer	M.D.			kmhafer@yahoo.com	Oppose Unique - 512	
Andrei Kondratiev	M.D., Ph.D.	Community Hospital of the Monterey Peninsula	P.O. Box 6333 Carmel, CA 93921	andreikond@sbcglobal.net	Oppose Unique - 513	
Edmund Freund	M.D.			peopleof6@aol.com	Oppose Unique - 514	
Almira Yusi-Lenn	M.D.			almiralenn@yahoo.com	Oppose Unique - 515	
Nicholas Arger	Medical Student	Keck School of Medicine		arger@usc.edu	Oppose Unique - 516	
Richard H. Gurley III	M.D.			Katmanchard@aol.com	Oppose Unique - 517	
Jack Watson	M.D.			jackrobertwatson@yahoo.com	Oppose Unique - 518	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Sharisse Stricat Chavez	M.D.		110 N. La Brea Avenue, Inglewood, CA 90301	Sharisse.A.Stricat@kp.org	Oppose Unique - 519	
Michael Jolley	M. D.			mbjolley@usc.edu	Oppose Unique - 520	
Denise Mueller	M.D.		1601 N. Sepulveda Boulevard, #704 Manhattan Beach, CA 90266	ddmmuellermd@verizon.net	Oppose Unique - 521	
Ronert J. Szarnicki	M.D.			Szarnicki@aol.com	Oppose Unique - 522	
Humberto R. Ravelo	M.D., FACS		2865 Atlantic Avenue, Suite 215 Long Beach, CA 90806	bertr@aol.com	Oppose Unique - 523	
Jerry R. Ainsworth	M.D., Ph.D.		576 Hartnell Street, Suite 300 Monterey, CA 93940		Oppose Unique - 524	
Paul D. Wagner	M.D., FACP	Veterans Home of California, Chula Vista	700 East Naples Court Chula Vista, CA 91911	Paul.Wagner@cdva.ca.gov	Oppose Unique - 525	
M. Nicole Jamali	M.D.			mjamali1@cox.net	Oppose Unique - 526	
Clifford Philip Amoils	M.D.			pamoils@aol.com	Oppose Unique - 527	
Leroy Ounanian	M.D.	Beaver Medical Group		LOunania@epiclp.com	Oppose Unique - 528	
Gordon Wolf	Ph.D.			gordon@wolfconsultinggroup.com	Oppose Unique - 529	
Samuel I. Miles	M.D.		8631 W. Third Street, #425E Los Angeles, CA 90048	doctor@drmiles.net	Oppose Unique - 530	Received this letter two times
Samuel I. Miles	M.D.		8631 W. Third Street, #425E Los Angeles, CA 90048	doctor@drmiles.net	Oppose Unique - 531	
Victor Yalom	Ph.D.		760 Market Street, Suite 945 San Francisco, CA 94102	VYALOM@psychotherapy.net	Oppose Unique - 532	
Tyson Shih				tysonshih@yahoo.com	Oppose Unique - 533	
Robert F. Schreiber	M.D.		36 Eucalyptus Road Berkeley, CA 94705	rfsmds@gmail.com	Oppose Unique - 534	
Daryl W. Burgess	D.O., M.A., FACP			dburgess3@verizon.net	Oppose Unique - 534A	
William Arroyo	M.D.			wmarroyo@pacbell.net	Oppose Unique - 535	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Terence M. Davidson	M.D.	University of California, San Diego		tdavidson@ucsd.edu	Oppose Unique - 536	
David Goldschmid	M.D., FACEP	Seton Medical Center		djgoldschmid@comcast.net	Oppose Unique - 537	
John Faull	Ph.D.		1462 Meridian Avenue San Jose, CA 95125	j.faull@comcast.net	Oppose Unique - 538	
Madeleine Blaurock	M.D., FACP	Kaiser, San Jose	250 Hospital Parkway San Jose, CA 95119	mcbg@comcast.net	Oppose Unique - 539	
Roy Kaplan	M.D., FACP	John Muir Health	2540 East Street Concord, CA 94520	Roy.Kaplan_MD@johnmuirhealth.com	Oppose Unique - 540	
Stanley Frochtz wajg	M.D.			stanleyfrochtz wajgmd@yahoo.com	Oppose Unique - 541	
Peter V. Barrett	M.D.			pbarrett@ucla.edu	Oppose Unique - 542	
Lisa V. Rubenstein	M.D., MSPH	VA Greater Los Angeles at Sepulveda	16111 Plummer Street North Hills, CA 91343	lisar@rand.org	Oppose Unique - 543	
Pervez T. Iranpur	M.D.			iranpur@sbcglobal.net	Oppose Unique - 544	
Rajnish A. Patel	M.D.			rapatel@compulog.com	Oppose Unique - 545	
James Sun	M.D., FACS			jsunbox@hotmail.com	Oppose Unique - 546	
Jeffrey Kaufman	M.D., FACS			uroman@aol.com	Oppose Unique - 547	
Wallace Sampson	M.D.	State of California, Stanford University	841 Santa Rita Avenue Los Altos, CA 94022	Wisampson@aol.com	Oppose Unique - 548	
Craig H. Kliger	M.D.	California Academy of Eye Physicians & Surgeons	425 Market Street, Suite 2275 San Francisco, CA 94105	CaEyeMDs@aol.com	Oppose Unique - 549	
Peggy Pearce		Association of California Neurologists	5380 Elvas Avenue, Suite 216 Sacramento, CA 95819	peggypearce2@sbcglobal.net	Oppose Unique - 550	
Dominick V. Spatafora	Chief Executive Officer	Los Angeles County Medical Association		Fax: (626) 471-7215	Oppose Unique - 551	
Michael D. Maves	M.D., MBA	American Medical Association	515 North State Street Chicago, IL 60610	Phone: (312) 464-5000 Fax: (312) 464-4184	Oppose Unique - 552	Received this letter two times

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Barb Johnston	Executive Director	Medical Board of California	2005 Evergreen Street, Suite 1200 Sacramento, CA 95815-3831	Phone: (916) 263-2389 Fax: (916) 263-2387	Oppose Unique - 553	
Alexandra Klikoff	M.D.		3275 Aptos Rancho Road, Suite E Aptos, CA 95003	chumeia@gmail.com	Oppose Unique - 554	
James R. Missett	M.D., Ph.D.		1187 University drive, Suite 8 Menlo Park, CA 94025-4423	Phone: (650) 326-5564 Fax: (650) 326-5567	Oppose Unique - 555	
Paula A. Johnson	Deputy Director	American Psychiatric Association	1000 Wilson Boulevard, Suite 1825 Arlington, VA 22209	phohnson@psych.org	Oppose Unique - 556	James H. Scully, Jr. M.D.
Firooz Pak	M.D., FACP			firoozpak@yahoo.com	Oppose Unique - 557	
Edward W. Clinite	D.O.	Tuolumne County Medical Society	680 Guzzi Lane, Suite 106 Sonora, CA 95370	clinite@hub3.net	Oppose Unique - 558	Received this letter three times
Randall Hagar	Government Affairs Director	California Psychiatric Association	1029 K Street, Suite 28 Sacramento, CA 95814	Phone: (916) 442-5196 Fax: (916) 442-6515	Oppose Unique - 559	
John H. Shale	M.D., J.D.	California Psychiatric Association	2655 Loring Street San Diego, CA 92109	jhshale@gmail.com	Oppose Unique - 559A	
Martin Leamon	M.D.	California Psychiatric Association	2348 Bryce Lane Davis, CA 95616		Oppose Unique - 559B	
Melinda L. Young	M.D.	California Psychiatric Association	3527 Mt. Diablo Boulevard, #337 Lafayette, CA 94549	myoungmd@earthlink.net	Oppose Unique - 559C	
Ronald C. Thurston	M.D.	California Psychiatric Association	970 South Petit, Suite A Ventura, CA 93004	thurstonrc@verizon.net	Oppose Unique - 559D	
Marc D. Graff	M.D.	California Psychiatric Association	18040 Sherman Way Reseda, CA 91335	marcgraff@earthlink.net	Oppose Unique - 559E	
Daniel Bleman	M.D.	California Psychiatric Association	2100 Napa Vallejo Highway Napa, CA 94558	danielbleman@mac.com	Oppose Unique - 559F	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Gayani Reynolds	M.D.	California Psychiatric Association	17286 Blue Spruce Lane Yorba Linda, CA 92886	gayanireynolds@yahoo.com	Oppose Unique - 559G	
William Arroyo	M.D.	California Psychiatric Association	4034 Witzel Drive Sherman Oaks, CA 91423	wmarroyo@pacbell.net	Oppose Unique - 559H	
Randall Hagar	Director of Government Relations	California Psychiatric Association	1029 K Street, Suite 28 Sacramento, CA 95814	Phone: (916) 442-5196 Fax: (916) 442-6515	Oppose Unique - 559I	
James H. Scully, Jr.	M.D.	American Psychiatric Association	1000 Wilson Boulevard, Suite 1825 Arlington, VA 22209	-	Oppose Unique - 559J	
Daniel H. Willick			1875 Century Park East, Suite 1600 Los Angeles, CA 90067	dwillick@sbcglobal.net	Oppose Unique - 560	
Delilah Clay	Research Associate	California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	DClay@cmanet.org	Oppose Unique - 561	
Carol Tran	M.D.	California Medical Association		Phone: (626) 573-8826 Fax: (626) 573-8861	Oppose Unique - 562	
Deborah Espinal	Managing Director	Kaiser Foundation Health Plan, Inc.	2101 Webster Street, Suite 800 Oakland, CA 95614	Deborah.Espinal@kp.org	Oppose Unique - 563	
Craig H. Kliger	M.D.	California Academy of Eye Physicians & Surgeons	425 Market Street, Suite 2275 San Francisco, CA 94105	CaEyeMDs@aol.com	Oppose Unique - 564	Received this letter three times
Kenneth N. Siegel	Ph.D.	The Impact Group Inc.	415 North Beverly Drive, Suite 206 Beverly Hills, CA 90210	Phone: (310) 274-6755 Fax: (310) 274-6754	Oppose Unique - 565	
Lucia Cheng	M.D.			luciascheng@hotmail.com	Oppose Unique - 566	
Shannon Smith-Crowley	JD, MHA	The American College of Obstetrician and Gynecologists, District IX	2641 Montgomery Way Sacramento, CA 95818-3945	ssmith-crowley@sbcglobal.net	Oppose Unique - 567	Received this letter two times

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Adam Francis	Legislative Assistant	California Academy of Family Physicians	1520 Pacific Avenue San Francisco, CA 94109	AFrancis@FamilyDocs.org	Oppose Unique - 568	Tom Riley 2nd contact
Alissa Parady	Senior Manager	American Academy of Otolaryngology-Head and Neck Surgery	316 Pennsylvania Avenue, SE, Suite 501 Washington, DC 20003	AParady@entnet.org	Oppose Unique - 569	David Nielson 2nd contact
Kathleen Slijepcevic	Psy.D., LMFT	Hathaway-Sycamores Child and Family Services	210 South DeLacey Avenue, Suite 110 Pasadena, CA 91105-2014	KathleenSlijepcevic@hathaway-Sycamores.org	Oppose Unique - 569A	
Lisa Yu	M.D.			lyu2003@yahoo.com	Oppose Template 1 - 570	
Craig N. Creasman	M.D., FACS			drc@creasman.com	Oppose Template 1 - 571	
Janny Chen	M.D.			jannyhchen@yahoo.com	Oppose Template 1 - 572	
Stuart A. Cohen	M.D., MPH	San Diego County Medical Society	5575 Ruffin Road, Suite 250 San Diego, CA 92123	SDCMS@SDCMS.org	Oppose Template 1 - 573	Received this letter two times
Dirk Baumann	President	San Mateo County Medical Association	777 Mariners Island Boulevard, Suite 100 San Mateo, CA 94404	smcma@smcma.org	Oppose Template 1 - 574	
George Meyer	M.D., FACP	American College of Physicians		geowmeyer1@earthlink.net	Oppose Template 1 - 575	
Ian H. Taras	M.D.		6325 Topanga Canyon Boulevard, Suite 535 Woodland Hills, CA 91367	DrTaras@aol.com	Oppose Template 1 - 576	Received this letter two times
Michelle T. Phillips	M.D.			Phillips.Michelle@scrippshealth.org	Oppose Template 1 - 577	
Anne M. Cummings	M.D.		1300 S. Eliseo Drive, Suite 201 Greenbrae, CA 94904	annemcummingssmd@mindspring.com	Oppose Template 1 - 578	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Allan Pont	M.D., FACP	VPMA - California Pacific Medical Center		PontA@sutterhealth.org	Oppose Template 1 - 579	
John R. Valencia		Wilke, Fleury, Hoffelt, Gould & Birney, LLP	400 Capitol Mall, 22nd Floor Sacramento, CA 95814	Jvalencia@wilkefleury.com	Oppose Template 1 - 580	
E. Hughes-Watkins	M.D.			emhug99@yahoo.com	Oppose Template 2 - 581	
Thomas F. Amato	M.D.			tfamato@yahoo.com	Oppose Template 2 - 582	
Kenneth J. Hoffer	M.D.	St. Mary's Eye Center	1301 20th Street, #250 Santa Monica, CA 90404	khoffermd@aol.com	Oppose Template 2 - 583	
Peter J. Curran	M.D.	St. Mary's Medical Center	2250 Hayes Street, Suite 204 San Francisco, CA 94117	iluvseaurchins@sbcglobal.net	Oppose Template 2 - 584	
Douglas MacGregor	M.D.	Mark Twain St. Joseph's Hospital	222 S. Main Street Angels Camp, CA 95222	Phone: (209) 736-0813 Fax: (209) 736-9088	Oppose Template 2 - 585	
Michael T. Romano	M.D.	Mark Twain St. Joseph's Hospital	768 Mountain Ranch Road San Andreas, CA 95249	Phone: (209) 754-3521 Fax: (209) 754-2552	Oppose Template 2 - 586	
Kevin S. Hirsch	M.D., FACP			khirsch@cox.net	Oppose Template 2 - 587	
V. Morkjaroenpong	M.D.			vilamork@hotmail.com	Oppose Template 2 - 588	
Susan E. Sprau	M.D., FACP	American College of Physicians	9033 Harmony Grove Road Escondido, CA 92029	CalifACP@aol.com	Oppose Template 2 - 589	
Natalie Kaczur	Executive Director	American College of Physicians	9033 Harmony Grove Road Escondido, CA 92029	CalifACP@aol.com	Oppose Template 2 - 589A	
Rodger Orman	M.D.	Mark Twain St. Joseph's Hospital	768 Mountain Ranch Road San Andreas, CA 95249	Phone: (209) 754-2602	Oppose Template 2 - 590	
Peter Oliver	M.D.	Mark Twain St. Joseph's Hospital	768 Mountain Ranch Road San Andreas, CA 95249	Phone: (209) 754-2602	Oppose Template 2 - 591	
Sahnnon M. Linton	M.D.	Mark Twain St. Joseph's Hospital	768 Mountain Ranch Road San Andreas, CA 95249	Phone: (209) 754-2602	Oppose Template 2 - 592	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Sean Anderson	M.D.	Mark Twain St. Joseph's Hospital	768 Mountain Ranch Road San Andreas, CA 95249	Phone: (209) 754-2602	Oppose Template 2 - 593	
Emery H. Chang	M.D.			emerychang@mednet.ucla.edu	Oppose Template 2 - 594	
Matthew Vo	M.D.			m.vo@verizon.net	Oppose Template 2 - 595	
Anita Newman	M.D., FACS	Tower Ear, Nose & Throat	Cedars-Sinai Medical Towers 8631 W. Third Street, Suite 440 E Los Angeles, CA 90048	Phone: (310) 657-7704 Fax: (310) 652-9906	Oppose Template 3 - 596	
Kevin X. McKennan	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 597	
Donald J. Clutter	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 598	
Richard G. Areen	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 599	
Randall A. Ow	M.D.	Sacramento Ear, Nose, and Throat	6555 Coyle Avenue, Suite 340 Carmichael, CA 95608	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 600	
Ernest E. Johnson	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 601	
John R. Macri	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 602	
David J. Kiener	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 603	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Michael Kearns	M.D.	Sacramento Ear, Nose, and Throat	6555 Coyle Avenue, Suite 340 Carmichael, CA 95608	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 604	
Nancy H. Appelblatt	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 605	
David A. Evans	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 606	
Philip Bernstein	M.D.	Sacramento Ear, Nose, and Throat	1111 Exposition Boulevard, Building 700 Sacramento, CA 95815	Phone: (916) 736-3399 Fax: (916) 736-3350	Oppose Template 3 - 607	
Martin L. Hopp	M.D., Ph.D.	Tower Ear, Nose & Throat	Cedars-Sinai Medical Towers 8631 W. Third Street, Suite 440 E Los Angeles, CA 90048	Phone: (310) 657-7704 Fax: (310) 652-9905	Oppose Template 3 - 608	
C. Philip Amoils	M.D., FACS	Santa Clarita E.N.T.	27879 Smych Drive Valencia, CA 91355	santaclaritaent@yahoo.com	Oppose Template 3 - 609	
Satish R. Vadapalli	M.D., FACS	Santa Clarita E.N.T.	27879 Smych Drive Valencia, CA 91355	santaclaritaent@yahoo.com	Oppose Template 3 - 610	
D. David Saadat	M.D.	Santa Clarita E.N.T.	27879 Smych Drive Valencia, CA 91355	santaclaritaent@yahoo.com	Oppose Template 3 - 611	
Alen N. Cohen	M.D.	C/V ENT Surgical Group	7345 Medical Center Drive, Suite 510 West Hills, CA 91307	dracohen@gmail.com	Oppose Template 3 - 612	Jerome D. Vener, M.D. Jerome Dickman, M.D.
Dale Amanda Tylor	M.D.	Children's Speialists of San Diego	3030 Children's Way, Suite 402 San Diego, CA 92123	dtylor@rchsd.org	Oppose Template 3 - 613	
Hamid R. Djalilian	M.D.	University of California, Irvine Medical Center	101 The City Drive Building 56, Suite 500 Orange, CA 92868	hdjalili@uci.edu	Oppose Template 3 - 614	
Dimitry B. Goufman	M.D., FACS			gidrin1@yahoo.com	Oppose Template 3 - 615	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
William H. Slattery III	M.D.	House Clinic	2100 W. 3rd Street, Suite 111 Los Angeles, CA 90057	Phone: (213) 483-9930 Ext. 8242 Fax: (213) 484-5900	Oppose Template 3 - 616	
William M. Luxford	M.D.	House Clinic	2100 W. 3rd Street, Suite 111 Los Angeles, CA 90057	Phone: (213) 483-9930 Ext. 7432 Fax: (213) 484-5900	Oppose Template 3 - 617	
M. Jennifer Derebery	M.D.	House Clinic	2100 W. 3rd Street, Suite 111 Los Angeles, CA 90057	JDerebery@hei.org	Oppose Template 3 - 618	
John House	M.D.	House Clinic	2100 W. 3rd Street, Suite 111 Los Angeles, CA 90057	Phone: (213) 483-9930 Fax: (213) 484-5900	Oppose Template 3 - 619	
Ted Shen	M.D.			tedshen@usc.edu	Oppose Template 3 - 620	
Theresa B. Kim	M.D.			TKim@ohns.ucsf.edu	Oppose Template 3 - 621	
Marcella R. Bothwell	M.D., FAAP	Children's Speialists of San Diego	3030 Children's Way, Suite 402 San Diego, CA 92123	mbothwell@rchsd.org	Oppose Template 3 - 622	
Derald E. Brackmann	M.D.	House Clinic	2100 W. 3rd Street, Suite 111 Los Angeles, CA 90057	dbrackmann@hei.org	Oppose Template 3 - 623	
Kasra Rastani	M.D., Ph.D., FACS	Otolaryngology-Head & Neck Surgery	490 Post Street, Suite 848 San Francisco, CA 94102	Phone: (415) 781-7220 Fax: (415) 781-3513	Oppose Template 3 - 624	
David K. Chen	M.D.		101 E. Beverly Boulevard, Suite 203 Montebello, CA 90640	Phone: (323) 728-7238 Fax: (323) 728-6343	Oppose Template 3 - 625	
Andrew Mester	M.D.	Sansum Clinic	P.O. Box 1200 Santa Barbara, CA 93102-1200		Oppose Template 3 - 626	
James J. Murdocco	M.D., FACS				Oppose Template 3 - 627	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Gene Liu	M.D.	Cedars-Sinai Medical Group	8631 West Third Street, Suite 640 E Los Angeles, CA 90048	Phone: (310) 423-1220 Fax: (310) 423-1230	Oppose Template 3 - 628	
Anita Newman	M.D., FACS	Tower Ear, Nose & Throat	Cedars-Sinai Medical Towers 8631 W. Third Street, Suite 440 E Los Angeles, CA 90048	Phone: (310) 657-7704 Fax: (310) 652-9906	Oppose Template 3 - 629	
George B. Stoneman	M.D., FACS	Los Angeles Ear, Nose & Throat Associates	1245 Wilshire Boulevard, Suite 603 Los Angeles, CA 90017-4887	Phone: (213) 977-1215 Fax: (213) 977-0404	Oppose Template 3 - 630	
M. Jennifer Derebery	M.D., FACS	House Clinic	2100 W. 3rd Street, Suite 111 Los Angeles, CA 90057	JDerebery@hei.org	Oppose Template 3 - 631	Received this letter two times
Hamid R. Djalilian	M.D.	University of California, Irvine Medical Center	101 The City Drive Building 56, Suite 500 Orange, CA 92868	hdjalili@uci.edu	Oppose Template 3 - 632	
Robert J. Andrews	M.D.			randrews1@earthlink.net	Oppose Template 3 - 633	
Kay Durairaj	M.D.		9375 San Fernando Road Sun Valley, CA 91352	nosedoc@hotmail.com	Oppose Template 3 - 634	
Norman F. Cantor	M.D.			cantorbird@cox.net	Oppose Template 3 - 635	
Dinesh Chhetri	M.D.	University of California, Los Angeles Medical Center		dkchhetri@aol.com	Oppose Template 3 - 636	
Nicholas L. Schenck	M.D., FACS	Tower Ear, Nose & Throat	Cedars-Sinai Medical Towers 8631 W. Third Street, Suite 440 E Los Angeles, CA 90048	Phone: (310) 657-7704 Fax: (310) 652-9906	Oppose Template 3 - 637	
John Shale	M.D., J.D.	University of California, San Diego School of Medicine	9500 Gilman Road San Diego, CA 92057	jhshale@gmail.com	Hearing Comments - 700	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Martin Leamon	M.D.	University of California, Davis School of Medicine	2230 Stockton Boulevard Sacramento, CA 95817	mhleamon@ucdavis.edu	Hearing Comments - 701	
Robert McCarron	M.D.	University of California, Davis Medical Center	1408 Carob Place Davis, CA 95616	robeardo@sbcglobal.net	Hearing Comments - 702	
Jody Rawles	M.D.	University of California, Irvine Medical Center	101 City Drive Orange, CA 92868	jrawles@uci.edu	Hearing Comments - 703	
Melinda Young	M.D.	California Psychiatric Association	3527 Mt. Diablo Boulevard, #337 Lafayette, CA 94549	myoungmd@earthlink.net	Hearing Comments - 704	
Michael Meek	M.D.	California Psychiatric Association	3611 17th Street Sacramento, CA 95818	Phone: (916) 444-6387	Hearing Comments - 705	
Daniel Bleman	M.D.	Napa State Hospital	2100 Napa Vallejo Highway Napa, CA 94558	danielbleman@mac.com	Hearing Comments - 706	
Gayani Reynolds	M.D.	CDCR	810 W. LaVeta Avenue Orange, CA 92868	gayanireynolds@yahoo.com	Hearing Comments - 707	
Ronald Thurston	M.D.		970 South Petit, Suite A Ventura, CA 93004	thurstonrc@verizon.net	Hearing Comments - 708	
Marc Graff	M.D.	California Psychiatric Association	18040 Sherman Way Reseda, CA 91335	marcgraff@earthlink.net	Hearing Comments - 709	
Barry Chaitin	M.D.		University of California, Irvine 101 The City Drive, Building 3 Orange, CA 92868	bchaitin@uci.edu	Hearing Comments - 710	
Randall Hagar		California Psychiatric Association	1029 K Street, Suite 28 Sacramento, CA 95814	randal-hagar@calpsych.org	Hearing Comments - 711	
Jo Linder-Crow	M.D.	California Psychiatric Association	1231 I Street, Suite 204 Sacramento, CA 95814	jlindercrow@cpapsych.org	Hearing Comments - 712	
Victor Pacheco	M.D.	Departmento of Psychology California Medical Facility	2212 Santa Fe Drive Santa Rose, CA 95405	ympac@sbcglobal.net	Hearing Comments - 713	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
James Hinsdale	M.D.	California Medical Association	2101 Forest, #108 San Jose, CA 95128	DrHinsdale@aol.com	Hearing Comments - 714	
Astrid Meghrigian		California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	AstridMeg@yahoo.com	Hearing Comments - 715	
Richard Frankenstein	M.D.	California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	RSFRANK@aol.com	Hearing Comments - 716	
Paul Phinney	M.D.	California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	paulphinney@KP.org	Hearing Comments - 717	
Joanne Berkowitz	M.D.	California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	joanneb@pacbell.net	Hearing Comments - 718	
Hilary Brodie	M.D.	University of California, Davis	2521 Stockton Boulevard Sacramento, CA 95817	habrodie@ucdavis.edu	Hearing Comments - 719	
Judy Herman	M.D.	AFSCME	555 Capitol Mall, Suite 1225 Sacramento, CA 95814	drjudi@astound.net	Hearing Comments - 720	
Bill Safarjan	Ph.D.	Atascadero State Hospital	5100 Cascabel Road Atascadero, CA 93422	bsafarjan@tcsn.net	Hearing Comments - 721	
Maureen Testoni		American Psychological Association	750 First Street, NE Washington, DC 20002	Phone: (202) 336-5886	Hearing Comments - 722	
Art Chenen		Psychology Shield	2029 Century Park East, Sixth Floor Los Angeles, CA 90067-2907	achenen@tocounsel.com	Hearing Comments - 723	
Bill Koenig	M.D.	AFSCME	1520 River Park Drive Sacramento, CA 95815	WJK@KCBLAW.com	Hearing Comments - 724	
Nicole Jamali	M.D.		26671 Aliso Creed Road, Suite 205 Aliso Viejo, CA 92656	mjamali1@cox.net	Hearing Comments - 725	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Marcy Zwelling-Aamot	M.D.		3771 Katella Avenue, Suite 108 Los Alimos, CA 90720	marcy@z-doc.com	Hearing Comments - 726	
Carl London		Rose & Kindel	915 L Street, #1210 Sacramento, CA 95814	clondon@rosekindel.com	Hearing Comments - 727	
Patricia White		Napa State Hospital	2100 Napa Vallejo Highway Napa, CA 94558	Phone: (707) 253-5387	Letters Received After 10-27-08 - 800	Mult Illeg Sig
Joseph Gannon	Ph.D.		5250 Claremont Avenue, Suite 114 Stockton, CA 95207	Phone: (209) 472-3759 Fax: (209) 957-6766	Letters Received After 10-27-08 - 801	
Michael Jarvis	Ph.D.		30131 Town Center Drive, #280 Laguna Niguel, CA 92677		Letters Received After 10-27-08 - 802	
Farnaz Khoromi		San Diego City College		jkhoromi@sdccd.edu	Letters Received After 10-27-08 - 803	
Doug Jameson	Psy.D.		121 Diablo Drive Oakland, CA 94611	djam15@earthlink.net	Letters Received After 10-27-08 - 804	
Jon Girvetz	Ph.D.		550 Water Street, Suite F-3 Santa Cruz, CA 95060	gvetz@aol.com	Letters Received After 10-27-08 - 805	
Michael Coulson	M.D.			mcoulson@pmgsc.com	Letters Received After 10-27-08 - 806	
David Chen	M.D.			davekcent@yahoo.com	Letters Received After 10-27-08 - 807	
Mona D. Mosk	Ph.D.	Patton State Hospital	Program 6, Unit 10 3102 E. Highland Avenue Patton, CA 92369	clareau@prodigy.net	Letters Received After 10-27-08 - 808	Mult Illeg Sig
Kamala Allen	Ph.D.		4452 Park Boulevard, Suite 204 San Diego, CA 92116		Letters Received After 10-27-08 - 809	
Sue Benjestorf	Ph.D.		P.O. Box 83912 San Diego, CA 92138		Letters Received After 10-27-08 - 810	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Richard A. Fry	Ph.D.		2228 State College Boulevard Fullerton, CA 92831	Phone: (714) 990-0700	Letters Received After 10-27-08 - 811	
Maury T. Carlin	Ph.D.		16311 Ventura Boulevard, Suite 1050 Encino, CA 91436-4347	Phone: (818) 783-3833 Fax: (818) 783-3832	Letters Received After 10-27-08 - 812	
Laurence J. Mazzotta	M.D.		480 Redwood Street, Suite 14 Vallejo, CA 94590	ljmazzotta@earthlink.net	Letters Received After 10-27-08 - 813	
Stuart A. Cohen	M.D., MPH	San Diego County Medical Society	5575 Ruffin Road, Suite 250 San Diego, CA 92123	SDCMS@SDCMS.org	Letters Received After 10-27-08 - 814	
Herlberto G. Sanchez	Ph.D.	Department of Corrections and Rehab California Men's Colony	P.O. Box 14631 San Louis Obispo, CA 93406- 4631	Phone: (805) 547-7956	Letters Received After 10-27-08 - 815	
					Letters Received After 10-27-08 - 816	
Edward W. Clinite	D.O.	Tuolumne County Medical Society	680 Guzzi Lane, Suite 106 Sonora, CA 95370	clinite@hub3.net	Letters Received After 10-27-08 - 817	
Elizabeth McMahan	Ph.D.		2929 Webster Street San Francisco, CA 94123		Letters Received After 10-27-08 - 818	
Daniel H. Willick			1875 Century Park East, Suite 1600 Los Angeles, CA 90067	dwillick@sbcglobal.net	Letters Received After 10-27-08 - 819	
Charles D. Wemstein	Ph.D., A.B.P.P.		4849 Van Nuys Boulevard, Suite 210 Sherman Oaks, CA 91403		Letters Received After 10-27-08 - 820	
Leah Rosenthal	Ph.D.	Kaiser Permanente	1950 Franklin Street,4th FloorOakland, CA 94612		Letters Received After10-27-08 - 821	
James M. Gronendyke	Ph.D.		1607 Grace Avenue San Jose, CA 95125		Letters Received After 10-27-08 - 822	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Rosalie J. Easton	Ph.D.		591 Camino do la Reina, Suite 918 San Diego, CA 92108		Letters Received After 10-27-08 - 823	
Gabrielle Dawn Lawhon	Ph.D.		1900 Washington Street, Apt. 2 San Francisco, CA 94109	Phone: (415) 292-5425	Letters Received After 10-27-08 - 824	
					Letters Received After 10-27-08 - 825	
Lawrence B. Sullivan	Ph.D.		8 Admiral Drive, #A422 Emeryville, CA 94608-1567		Letters Received After 10-27-08 - 826	
Cheryl Imes	Ph.D.	College of the Desert	43-500 Monterey Avenue Palm Desert, CA 92260		Letters Received After 10-27-08 - 827	
Michael D. Maves	M.D., MBA	American Medical Association	515 North State Street Chicago, IL 60610	Phone: (312) 464-5000 Fax: (312) 464-4184	Letters Received After 10-27-08 - 828	
Sidney K. Nelson	Ph.D.	Scripps Psychological Associates, Inc.	1012 19th Street Sacramento, CA 95811	Phone: (916) 446-3111 Fax:: (916) 446-3131	Letters Received After 10-27-08 - 829	
Stacy McLain	Ph.D.	California Department of Corrections and Rehabilitation California Institution for Men	14901 S. Central Avenue Chino, CA 91710	smclain3993@yahoo.com	Letters Received After 10-27-08 - 830	Mult Illeg Sig
David E. Loberg	Ph.D.		3389 Crestview Way Napa, CA 94558	Phone: (707) 257-3805	Letters Received After 10-27-08 - 831	
Thomas Delaney	Ph.D.		1173 N. Dixie Drive, Suite 101 San Dimas, CA 91773	dr.td@juno.com	Letters Received After 10-27-08 - 832	
Maryam Mortezaiefard	D.O.			mortezaiefard@hotmail.com	Letters Received After 10-27-08 - 833	
Daniel H. Willick			1875 Century Park East, Suite 1600 Los Angeles, CA 90067	dwillick@sbcglobal.net	Letters Received After 10-27-08 - 834	
Marie Blanchard			2450 Peralta Boulevard, Suite 106 Fremont, CA 94536		Letters Received After 10-27-08 - 835	

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Eileen Diaz	Psy.D.		168 Jackson Avenue Tulare, CA 93274	EDiaz@pdc.dds.ca.gov	Letters Received After 10-27-08 - 836	
Robert Ruder	M.D.		8816 Burton Way Beverly Hills, CA 90211		Letters Received After 10-27-08 - 837	
Casey E. Clardy	M.A.		296 N. Oakland Avenue, Apt. 2 Pasadena, CA 91101	ceclardy@gmail.com	Requesting Notification of Changes	
Steven Bykund				Fax: (661) 664-6716	Requesting Notification of Changes	
John Faull	Ph.D.		1462 Meridian Avenue San Jose, CA 95125	j.faull@comcast.net	Requesting Notification of Changes	
Robert Horon		DMH - VPP	1600 California Drive Vacaville, CA 95696	rhoron@dmhvsh.state.ca.us	Requesting Notification of Changes	
Carl London		Rose & Kindel	915 L Street, #1210 Sacramento, CA 95814	clondon@rosekindel.com	Requesting Notification of Changes	
Judith Herman	Ph.D.	AFSCME	1756 Poplaswood Court Concord, CA 94521	drjudi@astound.net	Requesting Notification of Changes	
Troy Szabo		Kaiser Permanente		troy.R.Szabo@KP.org	Requesting Notification of Changes	
Greg Wagner		Department of Developmental Services	1600 9th Street, MS 3-17 Sacramento, CA 95814	Gwagner@dds.ca.gov	Requesting Notification of Changes	
Pam Manwille		AFSCME	555 Capitol Mall, Suite 1225 Sacramento, CA 95814	pam.manwille@CH.AFSCME.org	Requesting Notification of Changes	
Jean Ismail		Department of Veterans Affairs	1227 O Street, Suite 324 Sacramento, CA 95814	Jean.Ismail@cdva.ca.gov	Requesting Notification of Changes	

Addendum II
45-Day Public Notice
Summary of and Responses to Comments

Scope of Practice Concerns

1. **Comment:** Commenters state that the amendments to the regulations leave facilities responsible for determining the scopes of practice¹ of healthcare professionals working in health facilities.

Commenters: 489, 502, 504.2, 516.5, 520.2, 523.5, 525.5, 545.5, 549.7, 550.2, 555.5, 563.5, 564.7, 568.7, 581.5—595.5.

Department Response: The Department is not authorized to determine the scopes of practice of healthcare professionals. That determination is made by statute, and is interpreted and made specific by the boards that the statutes have created to oversee the licensure of those healthcare practitioners.

2. **Comment:** Commenters state that the amendments to the regulations expand the scopes of practice of non-physicians².

Commenters: 485, 486.1, 494.1, 500, 501.1, 503, 504.3, 507.2, 508.1, 509, 526.4, 528.5, 540.5, 541.2, 545.6, 547.1, 550.3, 552.1, 553.6, 556.1, 557.2, 559.1, 559J.1, 560.2, 566.1, 717.1.

Department Response: The amendments to the regulations do not to expand the scopes of practice of nonphysicians. The amendments to the regulations remove any restrictions that would prohibit facilities from allowing nonphysicians to provide services within their scopes of practice.

3. **Comment:** Commenter states that individual institutions must have the authority to define the scope of practice for each discipline and individual.

Commenter: 486.2.

Department Response: Only the statutes that created the various categories of health care practitioners determine the scopes of practice of licensed healthcare practitioners. The licensing boards authorized by statute, not “individual institutions” (interpreted by the Department as licensed health facilities) have the responsibility of implementing and making specific scope of licensure laws.

4. **Comment:** Commenter states that these regulations would make physicians’ assistants independent practitioners.

Commenter: 510.

Department Response: Nothing in the amendments to the regulations changes the scope of practice of any licensed healthcare practitioner.

¹ While the amended regulations refer to “scope of professional licensure,” many commenters refer to “scope of practice.” In Addendum II, the phrases will be used interchangeably.

² Many commenters make reference to “nonphysicians” in their comments, when they refer to licensed healthcare professionals who are not licensed as physicians. For clarity, when the term “nonphysician” is used in Addendum II, it will refer to a licensed healthcare professional who is not a physician; it will not refer to any member of the public who is not licensed as a physician.

5. Comment: Commenter suggests that the amendments to the regulations may unjustifiably increase the scope of practitioners' privileges by changing the way practitioners are credentialed.

Commenter: 547.2.

Department Response: The amendments to the regulations do not make any changes to a facility's credentialing process, other than requiring that the process not discriminate against licensed healthcare practitioners because of their licensure category rather than their professional competency.

6. Comment: Commenters state that the regulations, instead of using the broad designation of licensed healthcare practitioner, need to delineate the specific practitioners covered by the regulations and indicate their scopes of practice.

Commenters: 36.1,³ 37.1, 549.9, 555.11, 564.9, 568.8, 721.⁴

Department Response: The Department believes this would result in the Department needing to define the scopes of practice of all licensed healthcare practitioners working in health facilities which the Department is not authorized to do, and which is the activity that these amendments to the regulations are intended to eliminate.

7. Comment: Commenters state that these regulations contradict state scope of practice laws as well as other state, Medicare, Medicaid, and other federal laws.

Commenters: 552,⁵ 559.2, 711.1.

Department Response: As the amendments to the regulations only remove restrictions that prohibit health facilities from allowing healthcare practitioners from providing care, that it is "within their scope of practice" to provide, the Department is not expanding beyond what is already allowed by law. Medicare, Medicaid, and related federal laws address reimbursement for healthcare services rendered and, to qualify for reimbursement, may require a certain category of provider to render certain services.

8. Comment: Commenters state that the Legislature has not granted the Department the authority to define the scope of practice for any profession.

Commenters: 552, 559.4, 711.3.

Department Response: The Department agrees with commenters. The reason for adopting these amendments is to eliminate any possibility that the Department might expand or restrict individuals' scopes of practice in its regulations.

9. Comment: Commenters state that the California Department of Consumer Affairs licensing boards do not have the authority to define the scopes of practice for the various healing arts.

Commenters: 497,⁶ 508,⁷ 552, 561.7, 562,⁷ 567.⁷

³. In addition to the comments submitted on its own behalf, commenter 36 also expressed support for the comments made by commenter 722.

⁴. Commenter 721 expressed support for the comments made by commenters 34, 36, 37, 722, and 724.

⁵. In addition to the comments submitted on its own behalf, commenter 552 also expressed support for the comments made by commenters 556, 559, 560, and 561.

⁶. In addition to the comments submitted on its own behalf, commenter 497 also expressed support for the comments made by commenter 561.

⁷. Commenters 508, 562, and 567 expressed support for the comments made by commenter 561.

Department Response: The Department agrees with this comment; California statutes define the scopes of practice for practitioners of the various healing arts. However, the Department believes that questions concerning the scopes of practice of practitioners of the various healing arts are best directed to the boards created by statute to license those healthcare practitioners.

10. **Comment:** Commenters state that the Legislature intended that dieticians be reimbursed based upon a referral by a physician as specified in section 2585 of the Business and Professions Code.

Commenters: 497, 508, 552, 561.32, 562, 567.

Department Response: The Department is confident that in those cases in which a physician referral is required for a dietician to be reimbursed, the dietician will make sure that the facility requires a physician referral. These regulations do not address reimbursement of dieticians. The amendments to these regulations do not authorize licensed healthcare practitioners to make referrals to dieticians. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to make referrals to dieticians when it is within their scope of professional licensure to do so.

11. **Comment:** Commenters ask that the Department not propose regulations that would restrict psychologists from working to their fullest capacities in healthcare settings, or that would limit the psychology license.

Commenters: 10, 14.

Department Response: The amendments to the regulations will allow facilities to permit psychologists to work to the fullest capacities of their professional licensure in health facilities licensed by the Department.

12. **Comment:** Commenters support the amendments to the regulations and suggest further amendments to sections 72303, 73301, and 73523 to make them consistent with changes made to similar regulations for other types of facilities.

Commenters: 34,⁸ 36, 721, 722.18,⁹ 722.24, 722.30.

Department Response: The Department agrees that these amendments are appropriate and will amend the regulations.

13. **Comment:** Commenters support the amendments to the regulations and suggest that section 70706.2 be amended to delete the requirement in subsection (b)(8) that a nurse communicate with a physician and to require instead that the communication be with a "licensed healthcare practitioner acting within the scope of his or her professional licensure."

Commenters: 34, 36, 721, 722.7.

⁸. In addition to the comments submitted on its own behalf, commenter 34 also expressed support for the comments made by commenter 722.

⁹. Commenter 722 provided a letter as an exhibit at the hearing that contained a list of recommendations for additional amendments to the regulations. The list provided by commenter 722 was also attached to the letters of comment from commenters 34 and 36.

Department Response: The Department believes that as this section specifically refers to standardized procedures under section 2725 of the Business and Professions Code, it would not be appropriate to make the requested change. Section 2725 of the Business and Professions Code authorizes the use of standardized procedures for registered nurses, and refers to using standardized procedures for physicians and registered nurses under the auspices of the Medical Board and the Board of Registered Nursing.

14. **Comment:** Commenters support the amendments to the regulations and suggest that section 71517(c) be amended to delete the reference to having psychological evaluations performed by physicians and surgeons as well as clinical psychologists.

Commenters: 34, 36, 721, 722.17.

Department Response: The Department is not the agency authorized to determine that it is not within the scope of licensure of physicians and surgeons to perform psychological evaluations, and therefore does not believe a change to the regulation is warranted at this time. The Department does not believe that not making the change at this time would expand or restrict anyone's ability to practice, and that the suggested change, if appropriate, should be deferred to a later rulemaking.

15. **Comment:** Commenters support the amendments to the regulations and suggest that section 73305 be amended to substitute "licensed healthcare practitioners" for "physicians."

Commenters: 34, 36, 721, 722.26.

Department Response: As this section specifically refers to physician services, the Department does not believe the requested change is appropriate.

16. **Comment:** Commenters support the amendments to the regulations and suggest that section 73331 be amended to substitute "licensed healthcare practitioners" for "physicians."

Commenters: 34, 36, 721, 722.28.

Department Response: The Department does not believe that not making the change at this time would restrict anyone's ability to practice, and that the suggested change should be deferred to a later rulemaking.

17. **Comment:** Commenters support the amendments to the regulations and suggest that section 79781 be amended by replacing the word "physician" with the phrase "licensed healthcare practitioner" in subsection (d)(1)(G).

Commenters: 34, 36, 721, 722.41.

Department Response: Subsection (d)(1)(G) addresses the issue of what practitioners need to assume "the overall *medical* care of patients [emphasis added]." The Department believes "physician" is the appropriate word.

18. **Comment:** Commenters request that section 70577(d)(3) be amended to require that a reference to "psychologist" be included.

Commenters: 34, 36, 721, 722.3.

Department Response: As section 70577(d)(3) specifically applies to psychiatric emergencies, the Department does not believe it appropriate to add psychologists to its provisions.

19. **Comment:** Commenters request that section 70579(a) be amended to require that a reference to “psychologist” be included.

Commenters: 34, 36, 721, 722.5.

Department Response: As the section specifically refers for the need to have a psychiatrist available for medical care in the unit, if the unit is administered by someone other than a psychiatrist, the Department does not believe it appropriate to add psychologists to its provisions.

20. **Comment:** Commenters request that section 71203(a)(1)(B) be amended to require that a reference to “psychologist” be included.

Commenters: 34, 36, 721, 722.12.

Department Response: As section 71203(a)(1)(B) specifically applies to psychiatric emergencies, the Department does not believe it appropriate to add psychologists to its provisions.

21. **Comment:** Commenters request that subsections (b)(1) and (2) of section 71205 be amended to require that a reference to “psychologist” be included.

Commenters: 34, 36, 721, 722.13, 722.14.

Department Response: As subsection (b) of section 71205 specifically applies to the psychiatric component of the Medical Service staff, the Department does not believe it appropriate to add psychologists to its provisions. The psychological component is addressed in subsection (d).

22. **Comment:** Commenters suggest that section 79601 be amended in one of two ways that would include psychologists as practitioners within the provision of physician services in a Correctional Treatment Center.

Commenters: 34, 36, 721, 722.36.

Department Response: Because of the unique nature of a Correctional Treatment Center, physician services actually do not address the needs of inmates to which a psychologist would respond. These are addressed as mental health treatment services in sections 79743 et seq., so the changes requested by commenters are not required.

23. **Comment:** Commenter states that Correctional Treatment Center patients need to be monitored medically, and non physicians cannot provide this service.

Commenters: 705.2.

Department Response: Section 79599 requires that all Correctional Treatment Center patients who require medical care be under the care of a physician.

24. **Comment:** Commenter states that emergencies in a psychiatric hospital are primarily medical, and a psychiatrist is needed to determine the appropriate response.

Commenters: 559G.3.

Department Response: The Department believes that if a psychiatrist is required to determine the appropriate response to an emergency, facilities will provide the needed practitioner. The amendments to the regulations, section 71503(f), only require that a psychologist as well as a psychiatrist be available to respond to emergencies, so that the proper response will occur when an emergency requiring a psychological response occurs, presumably with a patient whose attending clinician¹⁰ is a psychologist.

25. Comment: Commenter states that an attorney employed by the Department of Mental Health concluded that psychologists could not be in charge of patients who reside in acute hospitals in the Department of Mental Health.

Commenters: 559I.1.

Department Response: The Department believes that if it is within the scope of licensure for psychologists to be in charge of patients who reside in acute hospitals in the Department of Mental Health, then section 1316.5(a) of the Health and Safety Code requires that the Department of Mental Health not discriminate based upon the licensure status of the practitioners.

26. Comment: Commenter states the psychologists may not order seclusion and restraints, or the administration of psychotropic medication, both of which are needed to treat patients with acute agitation.

Commenters: 559I.2.

Department Response: The Department believes, based upon comments from the Board of Psychology, that the ordering of seclusion and restraint is within the scope of licensure of psychologists. If a patient needs treatment that is not within the scope of licensure of a psychologist, a facility will need to have the treatment ordered by a practitioner whose scope of licensure permits it.

27. Comment: Commenter states that psychologists are not qualified to be in charge of care in acute care hospitals, skilled nursing facilities, or intermediate care facilities in the Department of Mental Health, or in Correctional Treatment Centers.

Commenters: 559I.4.

Department Response: The Department believes that it is up to the governing body and medical staff to determine whether a particular practitioner is qualified to provide a particular service; section 1316.5 of the Health and Safety Code prohibits a state owned facility from eliminating an individual from consideration for a position within his or her scope of licensure simply because of his or her licensure category.

28. Comment: Commenter states that the amendments to the regulations expand the role of many healthcare practitioners, not just psychologists.

Commenters: 718.3.

Department Response: The amendments to the regulation do not expand the role of any practitioner; the amendments eliminate restrictions on health facilities' ability to allow practitioners to provide the services permitted by their scopes of practice.

¹⁰. Rather than continually refer to "licensed healthcare professional" or physicians, podiatrists, dentists, or clinical psychologists, this document will use "clinician" to refer to one or more "licensed healthcare professionals," usually when discussing their roles as "attending clinicians."

29. **Comment:** Commenter read a portion of a letter authored by the California Medical Association and the California Psychological Association which states that suitably qualified physicians and psychologists may both be attending clinicians in state owned facilities.

Commenters: 727.

Department Response: The Department appreciates the support this letter provides to the amendments it is proposing to adopt.

30. **Comment:** Commenters oppose the amendments to the regulations because the commenters believe the amendments would limit the scope of practice of psychologists and increase the control psychiatrists exercise in health facilities.

Commenters: 529, 532.

Department Response: The amendments to the regulations eliminate current regulatory restrictions on the scopes of practice of psychologists when psychologists are providing care to inpatients in health facilities; the amendments to the regulations do not place limits on a psychologist's scope of practice. The amendments to the regulations also eliminate wording that might allow facilities to discriminate against psychologists simply because of their licensure.

Specific Practice and Procedure Concerns

1. **Comment:** Commenters state that the amendments to the regulations allow non-physicians to perform medical, not just psychological, exams.

Commenters: 497, 506.1, 508, 513.1, 516.1, 520.1, 521.1, 523.1, 524.1, 525.1, 528.1, 534a.1, 539.1, 540.1, 545.1, 549.1, 550.1, 552.4, 553.1, 554.1, 558.1, 559G.1, 560.10, 560.18, 561.4, 561.9, 562, 563.1, 564.1, 567, 568.1, 570.1—580.1, 581.1—595.1, 702.1, 707.2.

Department Response: Nothing in these regulations either allows or authorizes any practitioners to perform any procedures. The amendments to the regulations do nothing more than remove prohibitions in current regulations that limit a health facility's ability to allow nonphysicians to provide treatment within the scope of their professional licensure. The amended regulations allow a health facility to permit a licensed healthcare practitioner, a category that includes physicians, to determine, if the scope of his or her professional licensure allows the practitioner to make such a determination, whether a patient should receive a medical examination.

2. **Comment:** Commenters state that the amendments to the regulations allow non-physicians to order restraint and seclusion, and this will increase the use of physical restraints as non-physicians may not use chemical restraints.

Commenters: 506.2, 516.2, 521.2, 523.2, 525.2, 526.1, 528.2, 534a.2, 535.1, 537.1, 539.2, 540.2, 545.2, 549.2, 552.5, 553.2, 555.1, 558.2, 559.9, 559I.2, 559H.1, 560.11, 560.19, 560.24, 561.11, 563.2, 564.2, 568.2, 570.2—580.2, 581.2—595.2, 702.3, 717.4.

Department Response: The amendments to the regulations do not authorize any licensed healthcare practitioner to order restraint or seclusion. The amendments remove a restriction that prevents facilities from allowing nonphysician licensed

healthcare practitioners, whose scopes of professional licensure permit the ordering of restraint and seclusion, to provide care permitted by their licenses. It is not possible for the Department to predict if removing this restriction will result in a greater use of physical restraints. Likewise, the Department is unable to predict whether removing this restriction will result in the reduced use of chemical restraint.

3. Comment: Commenters state that the amendments to the regulations allow non-physicians to coordinate overall care for patients.

Commenters: 491.1, 506.3, 511.1, 521.3, 525.4, 526.2, 534a.3, 537.2, 539.3, 543.1, 549.3, 552, 555.2, 558.3, 559.6, 560.3, 563.3, 564.3, 568.3, 570.3—580.3, 703, 708, 709, 711.5, 725.1.

Department Response: The amendments to the regulations do not allow nonphysicians to coordinate overall care for patients. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysicians to coordinate overall care for patients, if the scopes of professional licensure of the nonphysicians permit them to coordinate overall care for patients.

4. Comment: Commenters state that the amendments to the regulations allow non-physicians to admit, transfer, and discharge patients.

Commenters: 487, 491.2, 497, 506.4, 508, 516.3, 521.4, 523.3, 524.4, 525.3, 526.3, 528.3, 530.1, 531.1, 534a.4, 535.2, 537.3, 539.4, 540.3, 545.3, 549.4, 552.2, 553.3, 555.3, 557.1, 558.4, 559.8, 559C, 559G.2, 559H.2, 560.5, 560.13, 561.2, 562, 563.4, 564.4, 567, 568.4, 570.4—580.4, 581.3—595.3, 725.2.

Department Response: The amendments to the regulations do not allow nonphysicians to admit, transfer or discharge patients. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysicians to admit, transfer and discharge patients, if the scopes of professional licensure of the nonphysicians permits them to admit, transfer or discharge patients.

5. Comment: Commenters state that the amendments to the regulations allow non-physicians to supervise facilities, including psychiatric units.

Commenters: 497, 508, 534a.5, 539.5, 540.4, 549.5, 552.3, 553.4, 558.5, 559l.4, 561.12, 562, 564.5, 567, 568.5, 570.6—580.6.

Department Response: The amendments to the regulations do not allow nonphysicians to supervise facilities, including psychiatric units. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysicians to supervise facilities, including psychiatric units, if their scope of professional licensure permits licensed healthcare practitioners to provide such supervision. In fact, current regulation, section 70579, allows that some psychiatric units may be supervised by practitioners other than psychiatrists.

6. Comment: Commenters state that the amendments to the regulations allow any practitioners within their scopes of practice to provide a referral for speech pathology and audiology services, and that this undermines the role of physicians in diagnosing problems, but bypasses diagnosis and goes straight to treatment.

Commenters: 507.1, 527, 536, 546, 552, 569.1, 596-637, 719.

Department Response: The amendments to the regulations do not allow any licensed healthcare practitioner to provide a referral for speech pathology and audiology services. The amendments to the regulations remove the restriction that prohibits health facilities from allowing licensed healthcare practitioners, whose scopes of practice permit them, to make such referrals.

7. **Comment:** Commenters state the amendments to the regulations allow facilities to admit patients without having physicians available to provide medical care.

Commenters: 530.3, 531.3, 552, 555.9, 555.15, 560.5.

Department Response: The amendments to the regulations require, e.g., section 70577(e), that staff physicians assume responsibility for those aspects of care that may only be provided by physicians. Additionally, section 70717(d) provides, “[w]ithin 24 hours after admission, or immediately before, every patient shall have a complete history and physical examination performed providing the condition of the patient permits.”

8. **Comment:** Commenter states that allowing licensed healthcare practitioners to supervise care could lead to the ordering of unnecessary testing which would increase the cost of providing healthcare.

Commenter: 552.6.

Department Response: If the scope of practice of a licensed healthcare practitioner allows the licensed healthcare practitioner to supervise care, the Department does not have the authority to prohibit it. The concern that the amendments that remove restrictions that prohibit facilities from allowing nonphysician licensed healthcare practitioners to provide services may increase the cost of providing healthcare is speculative.

9. **Comment:** Commenters state that these amendments indicate that licensed healthcare practitioners may conduct human experimentation, and this would be illegal, as only physicians are authorized to do medical experimentation.

Commenters: 497, 508, 552, 555.13, 561.3, 561.19, 562, 562, 567, 567.

Department Response: Physicians are also licensed healthcare practitioners. Nothing in these amendments to the regulations authorize any practitioner to participate in any activity or provide any service. If human experimentation does not fall within the licensed healthcare practitioner’s scope of professional licensure or if specific statutory authorization is required, these regulations do nothing to set aside those requirements.

10. **Comment:** Commenter states that these regulations delete the requirement that the admitting member of the medical staff must be authorized to diagnose, prescribe, and treat patients.

Commenter: 555.14.

Department Response: The Department agrees with the comment that amendments to Section 70717(c) changed this phrasing. As noted in the Initial Statement of Reasons, usually the word “prescribe” is applied to the ability to prescribe medication. Since not all licensed healthcare practitioners who are authorized to admit patients to licensed health facilities are also allowed to prescribe medication, and not all patients

admitted to licensed health facilities need medications, the amendment was made to avoid the interpretation that admission privileges are restricted to those licensed healthcare practitioners whose scopes of licensure includes prescribing medication.

11. Comment: Commenters note that these regulations would allow licensed healthcare practitioners to write standing orders, although the vast majority are not now allowed to do so.

Commenters: 497, 508, 552, 555.17, 561.26, 562, 567.

Department Response: The amendments to the regulations do not expand the scope of practice of nonphysician licensed healthcare practitioners to include writing standing orders. The amendments to the regulations remove any restrictions that would prohibit facilities from allowing nonphysician licensed healthcare practitioners to write standing orders, if writing standing orders is within their scopes of practice.

12. Comment: Commenters note that section 72547(a)(4) implies that a psychologist may order drugs or determine dietary requirements.

Commenters: 552, 560.7, 563.6, 716.1.

Department Response: Although the amendments to the regulations require that any activity undertaken by a licensed healthcare practitioner be within that practitioner's scope of practice, the Department agrees that the wording of this amendment might lead to misinterpretation and the Department is providing alternative language as a post hearing change.

13. Comment: Commenter states that the Initial Statement of Reasons says that the intent of the amendments to sections 72423 and 73479 is to expand the ability of nurse practitioners in skilled nursing facilities and intermediate care facilities to make referrals for speech pathology and audiology services.

Commenter: 569.2.

Department Response: The Department agrees with this comment. If it is within the scope of practice of nurse practitioners to make such referrals, the Department believes it is in the best interest of patients in skilled nursing facilities and intermediate care facilities to eliminate any prohibition by the Department on that ability.

14. Comment: Commenters state that the Department has interpreted *CAPP v. Rank* (1990) 51 Cal 3d. 1 (CAPP v. Rank) as authorizing psychologists to assume control and authority over direct medical care.

Commenters: 552, 559.6, 717.5.

Department Response: The Department agrees with commenters that some of the language of the amendments might be interpreted as if the Department had interpreted CAPP v Rank as authorizing psychologists to assume control and authority over direct medical care, so the Department is providing alternative language as a post hearing change to section 70577(d)(2).

15. Comment: Commenters state that these regulations allow non-medically trained practitioners to write orders in and to authenticate charts.

Commenters: 552, 559.10, 560.8.

Department Response: The amendments to these regulations do not allow licensed healthcare practitioners to perform any activities. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to participate in activities and provide services that are within their scopes of professional licensure.

16. **Comment:** Commenters state that these regulations allow non-medically trained practitioners to direct nurses, rehabilitation therapists, and social workers.

Commenters: 552, 559.11.

Department Response: The amendments to these regulations do not allow licensed healthcare practitioners to perform any activities. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to participate in activities and provide services that are within their scopes of professional licensure.

17. **Comment:** Commenters state that these regulations allow non-medically trained practitioners to order laboratory tests.

Commenters: 552, 559.12.

Department Response: The amendments to these regulations do not allow practitioners to perform any activities. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to participate in activities and provide services that are within their scopes of professional licensure. Additionally, the only references in these regulations to laboratory tests are that laboratory test results need to be in patients' records.

18. **Comment:** Commenters state that these regulations allow non-medically trained practitioners to decide if and when physical exams are necessary, and to have responsibility and control over medical issues.

Commenters: 497, 508, 519, 530.6,.2 531.6, 534, 552, 555.19, 559.13, 559B.1, 559G.1, 560.10, 561.4, 562, 567.

Department Response: The amendments to these regulations do not allow practitioners to perform any activities. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to participate in activities and provide services that are within their scope of professional licensure. However, to avoid the perception that the Department had interpreted CAPP v. Rank as authorizing non-medically trained practitioners to assume control and authority over direct medical care the Department is providing alternative language as a post hearing change to section 70577(d)(2).

19. **Comment:** Commenters state that these regulations arguably allow non-medically trained practitioners to conduct physical exams.

Commenters: 497, 508, 552, 559.14, 560.10, 561.4, 562, 567.

Department Response: The Department is providing alternative language as a post hearing change to section 70577(d)(2) to eliminate the possibility of this interpretation occurring.

20. Comment: Commenters state that psychologists may not be attending clinicians for patients suffering from or at risk of non-psychological medical illness, or whose treatment involves the use of prescription medication.

Commenters: 552, 560.4.

Department Response: The Department must reject this assertion. Since there is no patient who is not at risk of non-psychological medical illness, this would eliminate a psychologist's ability to be the attending clinician for any patient. Additionally, the Department sees no reason why a clinical psychologist could not be the attending clinician for a patient who might require prescription medication to cure an illness, such as an infection, accessing appropriate intervention through consultation or referral mechanisms.

21. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 20-21), authorize psychologists and other licensed healthcare practitioners to admit, transfer, and discharge patients without providing them with a physical examination, evaluation, and follow up orders, including those concerning medication.

Commenters: 552, 560.5.

Department Response: The amendments to these regulations do not authorize psychologists or other licensed healthcare practitioners to admit, transfer, or discharge patients. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to admit, transfer, or discharge patients if such actions are within the scope of their professional licensure. Section 70717(d) provides, "[w]ithin 24 hours after admission, or immediately before, every patient shall have a complete history and physical examination performed providing the condition of the patient permits."

22. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 21-23), authorize psychologists and licensed healthcare practitioners to act as "attending" providers without requiring that patients be given a physical examination and orders for medication for any non-psychological illness.

Commenters: 552, 560.6.

Department Response: The amendments to these regulations do not authorize psychologists or other licensed healthcare practitioners to act as attending clinicians. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to act as attending clinicians, if the scopes of practice of those licensed healthcare practitioners allow them to act as attending clinicians. Section 70717(d) provides, "[w]ithin 24 hours after admission, or immediately before, every patient shall have a complete history and physical examination performed providing the condition of the patient permits."

23. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at page 23), authorize psychologists and licensed healthcare practitioners to review evaluate and/or order prescription medications.

Commenters: 552, 560.7.

Department Response: The amendments to the regulations do not authorize psychologists and other licensed healthcare practitioners to review evaluate and/or order prescription medications. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to review evaluate and/or order prescription medications, if the scopes of practice of those licensed healthcare practitioners allow them to review evaluate and/or order prescription medications. To avoid any question whether the Department had interpreted CAPP v Rank as authorizing non-medically trained practitioners, regardless of the scope of their professional licensure, to review evaluate and/or order prescription medications, the Department is providing alternative language as a post hearing change to section 72547(a)(4).

24. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 23-24), authorize psychologists and licensed healthcare practitioners to write orders for treatment of physical or organic disorders or for non-psychological illness.

Commenters: 552, 560.8.

Department Response: The amendments to the regulations do not authorize or allow psychologists and other licensed healthcare practitioners to write orders for treatment of physical or organic disorders or for non-psychological illness. The amendments to the regulations remove the restriction that prohibits licensed health facilities from allowing nonphysician licensed healthcare practitioners to write orders for treatment of physical or organic disorders or for non-psychological illness, if the writing of such orders is within the scope of the professional licensure of those licensed healthcare practitioners.

25. Comment: Commenters state that section 70577(d)(2) authorizes psychologists to perform or direct a medical examination for non-psychological conditions.

Commenters: 552, 560.10.

Department Response: The amendments to the regulations do not authorize or allow psychologists to perform or direct a medical examination for non-psychological conditions. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners from performing or directing a medical examination for non-psychological conditions, if it is within the scope of practice of those licensed healthcare practitioners to perform or direct a medical examination for non-psychological conditions. As a result of comments, the Department is providing alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations.

26. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 24-25), authorize psychologists to order restraints without requiring a physical examination to determine whether any danger of injury to the patient exists because of a non-psychological illness.

Commenters: 552, 559l.3, 560.11.

Department Response: The amendments to the regulations do not authorize psychologists to order restraints. The amendments to the regulations remove the restriction that prohibits facilities from allowing psychologists to order restraints when it is within the psychologist's scope of professional licensure to do so .

27. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 25-26), authorize psychologists and licensed healthcare practitioners to have primary responsibility for coordinating care.

Commenters: 552, 560.12.

Department Response: The amendments to the regulations do not authorize or allow nonphysician licensed healthcare practitioners to have primary responsibility for coordinating care. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to have primary responsibility for coordinating care, if it is within the scope of professional licensure of those licensed healthcare practitioners to have such responsibility.

28. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 28-29), violate federal law because they authorize psychologists and licensed healthcare practitioners to admit, transfer, and discharge patients without providing them with a physical examination, evaluation, and follow up orders, including those concerning medication.

Commenters: 552, 560.13.

Department Response: The amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the licensed health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not "violate federal law." The amendments to the regulations do not authorize psychologists and licensed healthcare practitioners to admit, transfer, and discharge patients without providing them with a physical examination, evaluation, and follow up orders, including those concerning medication. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to admit, transfer, or discharge patients if such actions are within the scope of their professional licensure. Section 70717(d) provides, "[w]ithin 24 hours after admission, or immediately before, every patient shall have a complete history and physical examination performed providing the condition of the patient permits."

29. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 29-31), violate federal law because they authorize psychologists and licensed healthcare practitioners to act as attending clinicians without requiring physician orders for medication for any non-psychological illness.

Commenters: 552, 560.14.

Department Response: The amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the licensed health facilities wish to be reimbursed by the Medicare and/or

Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not “violate federal law.” The amendments to the regulations do not authorize or allow nonphysician licensed healthcare practitioners to act as attending clinicians. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to act as attending clinicians, if acting as attending clinicians is within the licensed healthcare practitioner’s scope of professional licensure.

30. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at page 31), violate federal law because they authorize psychologists and licensed healthcare practitioners to review, evaluate and/or order prescription medications.

Commenters: 552, 560.15.

Department Response: The amendments to the regulations do not authorize or allow nonphysician licensed healthcare practitioners to review, evaluate, and/or order prescription medications. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to review, evaluate and/or order prescription medications, if it is within the licensed healthcare practitioners’ scopes of professional licensure to review, evaluate and/or order prescription medications. To avoid any question whether the Department had interpreted CAPP v Rank as authorizing non-medically trained practitioners, regardless of the scope of their professional licensure, to review evaluate and/or order prescription medications, the Department is providing alternative language as a post hearing change to section 72547(a)(4). These amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not “violate federal law.”

31. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 31-32), violate federal law because they authorize psychologists and licensed healthcare practitioners to write orders for treatment of physical or organic disorders for nonpsychological illness.

Commenters: 552, 560.16.

Department Response: The amendments to the regulations do not authorize or allow nonphysician licensed healthcare practitioners to write orders for treatment of organic disorders. The amendments to the regulations remove the restriction that prohibits licensed health facilities from allowing nonphysician licensed healthcare practitioners to write orders for treatment of organic disorders, if it is within their scopes of professional licensure to write orders for treatment of organic disorders. The amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive

reimbursement from the federal government; the failure to comply does not “violate federal law.”

32. Comment: Commenters state that section 70577(d)(2) violates federal law because it authorizes psychologists to perform or direct a medical examination for non-psychological conditions.

Commenters: 552, 560.18.

Department Response: The amendments to section 70577(d)(2) do not authorize or allow psychologists to perform or direct a medical examination for non-psychological conditions. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners from performing or directing a medical examination for non-psychological conditions, if it is within the scope of practice of those licensed healthcare practitioners to perform or direct a medical examination for non-psychological conditions. As a result of comments, the Department is providing alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not “violate federal law.”

33. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 32-33), violate federal law because they authorize psychologists to order restraints without requiring a physical examination to determine whether any danger of injury to the patient exists because of a non-psychological illness.

Commenters: 552, 560.19.

Department Response, The amendments to the regulations do not authorize psychologists to order restraints. The amendments to the regulations remove the restriction that prohibits facilities from allowing psychologists to order restraints when it is within the psychologist’s scope of professional licensure to do so. The amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not “violate federal law.”

34. Comment: Commenters state that several regulations, as listed in the comment (Commenter 560 at pages 33-34), violate federal law because they authorize psychologists and licensed healthcare practitioners to have primary responsibility for coordination of patient care.

Commenters: 552, 560.20.

Department Response: The amendments to the regulations do not authorize or allow nonphysician licensed healthcare practitioners to have primary responsibility for coordination of patient care. The amendments to the regulations remove the restriction that prohibits licensed health facilities from allowing nonphysician licensed healthcare practitioners to have primary responsibility for coordination of patient care, if it is within the scopes of professional licensure of those licensed healthcare practitioners to have primary responsibility for coordination of patient care. The amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not “violate federal law.”

35. Comment: Commenters state that allowing psychologists to order restraint violates the requirement that prohibits the use of restraints for any patient with a known physical or medical condition if the use of the restraints would endanger the patient’s life or exacerbate the patient’s medical condition.

Commenters: 497, 508, 552, 559I.3, 560.23, 561.11, 562, 567

Department Response: The amendments to the regulations do not authorize or allow psychologists to order restraint. They simply remove the restriction that prohibits facilities from allowing psychologists to order restraint when an individual patient’s needs require it, and the use of restraints is legally and medically appropriate.

36. Comment: Commenters state that the Centers for Medicare and Medicaid Services require physician referral for audiology tests.

Commenters: 497, 508, 552, 561.5, 562, 567, 569.4.

Department Response: Nothing in these amendments to the regulations conflict with that requirement. The amendments to the regulations remove the restriction that prohibits facilities from allowing nonphysician licensed healthcare practitioners to make referrals for audiology tests if the making of such referrals falls within the licensed healthcare practitioner’s scope of practice. Facilities or individuals wishing to receive reimbursement from the Centers for Medicare and Medicaid Services will need to continue to comply with the requirements of the Centers for Medicare and Medicaid Services.

37. Comment: Commenters state that rather than providing the patient with the name of the licensed healthcare practitioner who is responsible for coordinating the patient’s care, section 70707(b)(3), the patient should be given the name of the medical staff member who is coordinating care, as only members of the medical staff can coordinate care.

Commenters: 497, 508, 552, 561.17, 562, 567.

Department Response: The regulation language, existing before the amendments to Section 70703(a), stated that physicians, dentists, podiatrists, and clinical psychologists were eligible for membership on the medical staff. The amendments to the regulations

do not change this. Therefore, using the phrase, “licensed healthcare practitioner” captures those categories of members of the medical staff, who may be responsible for the coordination of care, without discrimination.

38. Comment: Commenters state that only a member of the medical staff should be authorized to admit patients, not licensed healthcare practitioners.

Commenters: 497, 508, 552, 561.20, 562, 567.

Department Response: Physicians, dentists, podiatrists and, when applicable, clinical psychologists are licensed healthcare practitioners who are members of the medical staff. If a licensed health facility desires to give admitting privileges to other licensed healthcare practitioners who are not members of the medical staff but whose scope of professional licensure includes admitting patients, the Department does not have the authority to prevent the facility from doing so.

39. Comment: Commenters state that a physician, not a licensed healthcare practitioner, should be the practitioner to decide that a patient’s transfer or discharge would not create a hazard.

Commenters: 497, 508, 552, 559G.4, 561.21, 562, 567.

Department Response: The amendments to the regulations do not eliminate physicians from those who decide whether a patient’s transfer or discharge would not create a hazard, so the response will address the issue of whether nonphysician licensed healthcare practitioners should also have the ability to determine whether a patient’s transfer or discharge would not create a hazard. If it is within the scope of the nonphysician licensed healthcare practitioner’s practice to decide whether a patient’s transfer or discharge would or would not create a hazard, the Department does not have the authority to limit the practitioner’s ability to act within his or her scope of practice in these regulations.

40. Comment: Commenters state that a transfer summary should be done by a physician not a licensed healthcare practitioner as section 1262 of the Health and Safety Code requires that medication requirements be addressed in the patient’s aftercare plan.

Commenters: 497, 508, 552, 561.25, 562, 567.

Department Response: Section 1262 of the Health and Safety Code requires that a list of subjects, including medication requirements, be addressed in the aftercare plan “*to the extent known.*” [Emphasis added.] Therefore, if a patient to be transferred is not taking medication, there would be no need to address medication requirements in his or her aftercare plan, so nonphysician licensed healthcare practitioners whose scopes of practice authorized them to prepare transfer summaries could do so without violating the provisions of section 1262 of the Health and Safety Code.

41. Comment: Commenters state that licensed healthcare practitioners should not be ordering occupational therapy, social work services, speech pathology and/or audiology services, as such orders can only be made by a physician.

Commenters: 497, 508, 552, 561.29, 562, 567.

Department Response: In some cases the only licensed healthcare practitioners authorized to perform certain tasks at this time may be physicians. The amendments to the regulations do not authorize licensed healthcare practitioners to order occupational therapy, social work services, speech pathology and/or audiology services. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to order occupational therapy, social work services, speech pathology and/or audiology services when it is within the scope of their professional licensure to do so.

42. Comment: Commenter supports the amendments but points out that the requirements of the Centers for Medicare and Medicaid Services for patient observation when a patient is both secluded and restrained are more stringent than the requirements in the regulations.

Commenter: 16.

Department Response: Facilities that wish to receive reimbursement from the Medicare and/or Medicaid programs will need to comply with the requirements of the Centers for Medicare and Medicaid Services.

43. Comment: Commenter supports the amendments to the regulations and states that the scope of practice of psychologists permits them to perform the procedures that the amendments would allow facilities to permit psychologists to perform.

Commenter: 20, 35, 712, 721.

Department Response The Department appreciates the commenter's support and its confirmation of the amendments' validity.

44. Comment: Commenters support the amendments to the regulations and suggest amendments to section 73325 to make it consistent with changes made to similar regulations for other types of facilities.

Commenters: 34, 36, 721, 722.27.

Department Response: The Department agrees that these amendments are appropriate and will make the changes as requested.

45. Comment: Commenter states that non-physicians do not have the ability to offer patients the full range of alternatives to restraint and seclusion.

Commenters: 559B.2.

Department Response: If California statutes include the ordering of restraint and seclusion in a practitioner's scope of practice, the Department does not believe it has the authority to require that facilities not allow practitioners to provide care that is within their scopes of practice to provide.

46. Comment: Commenter states that the ordering of fluid intake and output is inappropriate as non-medically trained clinicians cannot interpret this data.

Commenters: 705.3.

Department Response: Section 79637 refers to the ordering of the recording of fluid intake and output by a licensed healthcare practitioner acting within the scope of his or her professional licensure. Physicians are licensed healthcare practitioners, and if it is

not within the scopes of practice for other practitioners to order the recording of fluid intake and output, they may not do so.

47. **Comment:** Commenter questions why facilities should report weight changes to non physicians.

Commenters: 716.5.

Department Response: The amendments to the regulations do not provide for the reporting of weight changes to nonphysicians. They provide for the reporting to licensed healthcare practitioners acting within the scope of their professional licensure, a category that includes physicians.

48. **Comment:** Commenter questions why non physicians need to be aware of changes to medications.

Commenters: 716.6.

Department Response: The amendments to the regulations do not address providing nonphysicians with information about medication revisions. The amendments to the regulations provide for licensed healthcare practitioners acting within the scope of their professional licensure, a category that includes physicians, to be advised of revisions to medications.

49. **Comment:** Commenter questions why non physicians need to be aware of contraindications to physical therapy and rehabilitation services.

Commenters: 716.7.

Department Response: The amendments to the regulations do not address providing nonphysicians with information about contraindications to physical therapy and rehabilitation services. The amendments to the regulations provide for licensed healthcare practitioners acting within the scope of their professional licensure, a category that includes physicians, to be advised of contraindications to physical therapy and rehabilitation services.

50. **Comment:** Commenter questions whether psychologists are practitioners who are able to determine if informed consent need not be obtained from patients prior to treatment.

Commenters: 716.9.

Department Response: Whether the scope of licensure of psychologists would include the ability to determine if informed consent need not be obtained from a patient prior to treatment is not an issue that needs to be resolved at this time, as the amendments to the regulations refer to licensed healthcare practitioners acting within the scope of their professional licensure, a category that includes physicians.

51. **Comment:** Commenter questions why X-ray films should be made available to licensed healthcare practitioners acting within the scope of their professional licensure.

Commenters: 716.10.

Department Response: Physicians are included in the category licensed healthcare practitioners acting within the scope of their professional licensure, and physicians would be able to make use of X-ray films. The Department believes that other licensed

healthcare practitioners acting within the scope of their professional licensure, such as dentists or podiatrists, might also be able to make use of X-ray films.

Competency Concerns

1. **Comment:** Commenters state that the regulations are a medical disaster and would legalize malpractice. Commenters contend the regulations are bad policy, unfair, and will not benefit the quality of care.

Commenters: 488, 493, 515, 517, 518, 544.

Department Response: The Department does not agree with these assertions. The Department believes that it is in the best interests of licensed health facilities and the patients for whom licensed health facilities provide care to have the discretion to choose which licensed healthcare practitioner the patients would prefer to receive care from, and to remove unlawful restrictions on licensed health facilities and patients that limit that choice.

2. **Comment:** Commenters state that the regulations degrade physician responsibility and allow untrained non-physicians to practice medicine without a license which will increase safety risks. Commenters point out that physicians are the most qualified practitioners to handle drug and comorbidity concerns, as non-physicians are not trustworthy, make mistakes and omit needed orders. Commenters state the regulations will cause confusion about who is responsible for a patient's care.

Commenters: 490.2, 491.3, 492, 494.2, 495, 496, 497, 497, 498, 499, 505, 506.6, 508, 508, 511.3, 512.2, 514.1, 516.6, 521.5, 523.6, 526.5, 528.6, 530.2, 531.2, 533, 535.3, 541.3, 542.1, 543.2, 545.7, 548, 552, 553.7, 555.6, 556.2, 557.3, 559.7, 559A, 559B, 559F, 559H.3, 559J.2, 561.1, 561.8, 562, 562, 564.8, 566.2, 567, 567, 569.3, 581.6 – 595.6, 700, 701, 704, 705.1, 706, 707.1, 714, 715.1, 717.2, 726.

Department Response: The amendments to the regulations do not allow any nonphysicians to perform any procedures. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to provide services and care to patients that those licensed healthcare practitioners may provide within their scopes of practice. As the California Supreme Court noted in *CAPP v. Rank*, the legislature chose to allow nonphysician licensed healthcare practitioners to provide care that may also be provided by physicians, without also requiring that the care be provided only when a physician is supervising. Any questions regarding this determination need to be addressed to the Legislature.

3. **Comment:** Commenters state that these regulations could place a physician under the supervision of a non-physician which would be the unlicensed practice of medicine, or could result in allowing a licensed healthcare practitioner to contradict a physician's orders.

Commenters: 549.8, 555.10.

Department Response: The Department agrees that a nonphysician licensed healthcare practitioner may be the attending clinician. A physician may be participating in the care of the patient, perhaps by referral, consultation, or an assignment mechanism specific to the facility. However, nothing in these regulations authorize

participation in any activity or rendering of any service, including supervision, that is outside the licensed healthcare practitioner's scope of professional licensure.

4. Comment: Commenters state that the regulation requirement for obtaining informed consent in skilled nursing facilities is inconsistent with *Cobbs v. Grant* (1972) 8 Cal.3d 229 to the extent it expands informed consent doctrine beyond physicians, as non-physicians can not offer the full range of options to patients.

Commenters: 497, 508, 552, 561.30, 562, 567, 716.4.

Department Response: The amendment to the regulations requires that the obtaining of informed consent be done by a licensed healthcare practitioner acting within the scope of his or her professional licensure. If obtaining informed consent does not fall within the licensed healthcare practitioner's scope of professional licensure, he or she may not obtain informed consent.

5. Comment: Commenter states that the amendments to the regulations will deregulate medical care and cripple the quality control function of the medical staff.

Commenters: 559D.

Department Response: The Department disagrees with the commenter's assertions. The Department does not understand how allowing facilities to permit licensed healthcare practitioners acting within the scope of their professional licensure to provide the care that their licensure status permits them to provide will deregulate medical care. The amendments to the regulations do nothing to eliminate the requirement that hospital medical staffs supervise the quality of the care provided in hospitals.

6. Comment: Commenter states that the Department is creating a system that substitutes regulatory change for education and experience.

Commenters: 559E.

Department Response: The Department does not believe that amending the regulations to remove restrictions on health facilities' ability to allow practitioners to provide services that their scopes of licensure allow them to provide substitutes regulatory change for education and experience. Nothing in the amendments to the regulations addresses, let alone eliminates, the need for practitioners to have the education and experience required to provide the care needed by patients.

7. Comment: Commenter states that non medical clinicians would not be able to take on the responsibilities outlined in the regulations.

Commenters: 710.

Department Response: The amendments to the regulations do not outline any new responsibilities for non medical clinicians; the amendments to the regulations remove restrictions on health facilities' ability to allow practitioners to provide services that their scopes of licensure allow them to provide.

8. Comment: Commenter suggests amending section 70707(b)(5) to enable facilities to expand the categories of licensed healthcare practitioners who may obtain informed consent from a patient.

Commenters: 38.2.

Department Response: The Department does believe that the requested change is necessary, as current regulations do not place restrictions on facilities.

Medical Staff Concerns

1. **Comment:** Commenters state that the amendments to section 70703 and 71503 violate the laws that require the medical staff to be self-governing.

Commenters: 490.1, 497, 504.1, 506.5, 508, 511.2, 512.1, 516.4, 523.4, 528.4, 534a.6, 539.6, 540.6, 541.1, 545.4, 549.6, 551, 552, 553.5, 554.2, 555.4, 558.6, 560.26, 561.13, 562, 564.6, 567, 568.6, 570.5—580.5, 581.4—595.4, 715.3.

Department Response: Commenters appear to believe that amending sections 70703 and 71503 by moving the phrase “subject to the bylaws, rules and regulations of the hospital” from a paragraph of the regulations to a subsection of those regulations violates the laws which require that medical staffs be self-governing. The requirement that medical staffs be self governing is actually contained in the hospital’s bylaws as required by sections 70701 and 71501 of these regulations. The statute does not require that all medical staffs be self governing; it allows non-self governing medical staffs in hospitals with less than five physicians on their staffs (section 2282 of the Business and Professions Code). It is hospital bylaws in implementing the requirements of these licensing regulations that require that all medical staffs be self governing.

2. **Comment:** Commenters state that the regulations require in some cases and allow in others non-medically trained individuals to be placed on the medical staff without having to undergo the vetting provided in medical staff bylaws.

Commenters: 513.2, 524.2, 555.7.

Department Response: Nothing in the amendments to the regulations changes the ability of medical staffs to ensure that their members meet the qualifications required for medical staff membership. The amended regulations require that medical staffs not discriminate against their members or potential members based upon the licensure category of those healthcare practitioners but instead consider their individual qualifications to provide services to patients competently within the scope of their professional licensure.

3. **Comment:** Commenters state that the amendments to sections 70703 and 71503 allow non-medically trained individuals to take part in medical decision-making without having to follow medical staff bylaws or to have medical staff membership.

Commenters: 514.2, 524.3.

Department Response: Nothing in these amendments to the regulations changes the ability of medical staffs to determine membership requirements as long as those requirements do not discriminate against dentists, podiatrists, or clinical psychologists based on their licensure category. The Department does not identify anything in these amendments that authorizes an individual to take part in decision-making that is not within the scope of his or her professional licensure.

4. **Comment:** Commenter supports the amendments to the regulations, but believes enforcement provisions are also necessary. Commenter states that including enforcement provisions need not be done in this filing.

Commenter: 538.

Department Response: The Department appreciates the commenter's support of the amendments to the regulations. The Department has added language to several of the amendments to aid in enforcement.

5. **Comment:** Commenter suggests that the amendments to the regulations may unjustifiably increase the scope of practitioners' privileges by changing the way practitioners are credentialed.

Commenter: 547.2.

Department Response: The amendments to the regulations do not make any changes to a facility's credentialing process, other than requiring that the process not discriminate against licensed healthcare practitioners because of their licensure category rather than their professional competency.

6. **Comment:** Commenters state that the regulations require the appointment of clinical psychologists to the medical staff Committee on Interdisciplinary Practice, and that the Department does not have the authority to impose that requirement.

Commenters: 497, 508, 552, 555.12, 561.16, 562, 567.

Department Response: The Department agrees that it does not have the authority to require the appointment of individuals who are not members of the medical staff to a medical staff committee, and is therefore amending the regulation, section 70706, to require the appointment of clinical psychologists to the medical staff Committee on Interdisciplinary Practice only when clinical psychologists are members of the medical staff. The Department believes it has the authority to require the appointment of clinical psychologists to the medical staff Committee on Interdisciplinary Practice when psychologists are members of the medical staff to assure compliance with section 1316.5 of the Health and Safety Code.

7. **Comment:** Commenters state the Department has interpreted CAPP v Rank to require mandatory medical staff membership for clinical psychologists in all hospitals, not just state-owned.

Commenters: 497, 497, 508, 508, 552, 555.21, 559.5, 560.25, 561.6, 561.14, 562, 562, 567, 567, 711.4.

Department Response: The Department agrees with commenters, and has made post hearing changes to the amendments as originally proposed to regulation sections 70703 and 71503 to eliminate the application of this mandate to non-state owned hospitals.

8. **Comment:** Commenters state that the patient's right under section 70707(b)(10) to leave the hospital against the advice of "members of the medical staff" is confusing as it suggests that any member of the medical staff may provide advice about whether a particular patient may leave.

Commenters: 497, 508, 552, 561.18, 562, 567.

Department Response: The Department does not believe the phrase “members of the medical staff” is any more confusing than the current term, “physicians.” The Department believes that specifying “members of the medical staff” provides the medical staff with the ability to require that its members not provide advice to patients for whom they are not responsible.

9. **Comment:** Commenters state that the name of the attending clinician in a patient’s record should be a medical staff member not a licensed healthcare practitioner.

Commenters: 497, 508, 552, 561.22, 562, 567.

Department Response: The Department believes that most licensed healthcare practitioners who may act as attending clinicians will be members of the medical staff. At the same time, if it is within the scope of practice of the nonphysician licensed healthcare practitioner’s professional licensure to act as attending clinician, the Department does not believe it has the authority to limit the practitioner’s ability to act within his or her scope of practice in these regulations. Section 70703(a) states that physicians and dentist, podiatrists and clinical psychologists were eligible for membership of the medical staff and the amendments to the regulations do not change this. Therefore, stating that the name of the attending clinician in a patient’s record should be a “licensed healthcare practitioner” does not conflict with a requirement that they also be a member of the medical staff.

10. **Comment:** Commenters state that the patient’s medical record should be available to the admitting medical staff member, not a licensed healthcare practitioner.

Commenters: 497, 508, 552, 561.23, 562, 567.

Department Response: Section 70703(a) states that physicians and dentist, podiatrists and clinical psychologists are eligible for membership on the medical staff and the amendments to the regulations do not change this. Therefore, stating that the name of the attending clinician in a patient’s record should be a “licensed healthcare practitioner” does not conflict with the requirement that they also be a member of the medical staff.

11. **Comment:** Commenters state that the authentication of medical records should not be by a licensed healthcare practitioner but should specify a medical staff member, a physician, podiatrist, dentist, or, if applicable, clinical psychologist.

Commenters: 497, 508, 552, 561.24, 562, 567.

Department Response: The Department believes that most licensed healthcare practitioners as listed in the comment (Comment 561) authorized to authenticate a medical record will be members of the medical staff. At the same time, if it is within the scope of practice of nonphysician licensed healthcare practitioners to authenticate medical records, the Department does not believe it has the authority to limit the practitioners’ ability to act within their scopes of practice in these regulations.

12. **Comment:** Commenters support the amendments to the regulations and suggest section 70529 be amended to require that psychologists who provide services in the outpatient unit be members of the medical staff.

Commenters: 34, 36, 721, 722.2.

Department Response: The Department is not able to require that psychologists be members of the medical staff in non state owned facilities. In state owned facilities psychologists are already required to be members of the medical staff, although the Department is not aware of any state owned facilities with outpatient services.

13. **Comment:** Commenters suggest that section 79611(e) be amended by eliminating the medical staff as one of the entities to which the psychiatric/psychological service in a Correctional Treatment Center is accountable.

Commenters: 34, 36, 721, 722.38.

Department Response: As the medical staff of a health facility is responsible for the quality of the care provided to the facility's patients, any service that provides care to patients must be accountable to it. Additionally, as Correctional Treatment Centers are state-owned facilities, they must include psychologists as members of their medical staffs. This eliminates the concern expressed by commenters.

14. **Comment:** Commenters support the amendments to the regulations and suggest that further amendments be made to sections 70703 and 71503 to include enforcement provisions for facilities that fail or refuse to comply with these amendments and also provide suggested language to be added to the sections concerning medical staff committees.

Commenters: 34.1, 37.2, 721, 724.

Department Response: The Department agrees that these amendments are appropriate and will make the changes as requested.

15. **Comment:** Commenter suggests amending sections 70701 and 70703 to enable health facilities to place licensed practitioners other than physicians, dentists, podiatrists, and clinical psychologists on their medical staffs

Commenters: 38.1.

Department Response: The amendments to the regulations are designed to eliminate illegal discrimination against practitioners specifically required by statute to be members of a health facility's medical staff. The amendments to the regulations are not intended to enable or require that all licensed healthcare practitioners be allowed medical staff membership. If a health facility desires to place licensed healthcare practitioners, other than those currently specified to be eligible for membership, on its medical staff, the facility may use the regulations' program flexibility procedures, section 70129, to accomplish its aims.

Emergency Care Concerns

1. **Comment:** Commenters question the legality of allowing a psychologist to provide emergency care if the attending physician or psychologist is not available.

Commenters: 552, 555.16, 559G.3, 560.9.

Department Response: The Department believes that if a hospital patient's attending clinician is a psychologist, and the emergency care required is psychological, it is appropriate to require that a psychologist be available to render that care.

2. **Comment:** Commenters state that several regulations, as listed in the comment (Commenter 560 at page 24), authorize psychologists and licensed healthcare practitioners to render emergency care for non-psychological illness.

Commenters: 552, 560.9.

Department Response: The amendments to the regulations require hospitals to have a psychologist available to render emergency care to the hospital's patients, if the attending clinician for those patients is a psychologist, and if the emergency care required is psychological. As noted in the Department's response #1 above, the Department believes that if a hospital patient's attending clinician is a psychologist, and the emergency care required is psychological, it is consistent with licensing statutes that a psychologist render that care.

3. **Comment:** Commenters state that several regulations, as listed in the comment (Commenter 560 at page 32), violate federal law because they authorize psychologists and licensed health healthcare practitioners to evaluate and deliver emergency care.

Commenters: 552, 560.17.

Department Response: Initially, the Department must correct the misconception held by these commenters and several others that these amendments to the regulations discuss emergency care as that term is used in state and federal law to describe the care an individual requires when he or she presents to a hospital emergency room. The amendments require hospitals to have a psychologist available to render emergency care to the hospital's patients, if the attending clinician for those patients is a psychologist, and if the emergency care required is psychological. It has nothing to do with the care that a hospital is obliged to provide to a non-hospital patient seeking treatment for an emergent condition. These amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not "violate federal law."

4. **Comment:** Commenters state that the regulations violate emergency room requirements.

Commenters: 552, 560.21.

Department Response: As noted in response #3 above, the amendments to the regulations do not address or make any changes to emergency room requirements.

5. **Comment:** Commenters state that the regulations violate transfer and discharge requirement of patients requiring or receiving emergency treatment.

Commenters: 552, 560.22.

Department Response: As noted in response #3 above, the amendments to the regulations do not address or make any changes to emergency room requirements, including any requirements that discuss the transfer and discharge of patients requiring or receiving emergency treatment.

6. **Comment:** Commenters state that the regulations violate the requirement that the discharge of an emergency room patient who is receiving medication include directions to have a physician to perform after care treatment.

Commenters: 552, 560.23.

Department Response: As noted in response #3 above, the amendments to the regulations do not address or make any changes to emergency room requirements, including any requirements that discuss the medication after care treatment needs of discharged patients who received emergency treatment.

7. **Comment:** Commenters state that psychologists may not provide emergency care as defined in section 1317.1 of the Health and Safety Code.

Commenters: 497, 508, 552, 561.15, 562, 567, 702.2.

Department Response: The Department agrees. Nothing in the amendments to the regulations addresses the provision of emergency care as defined in section 1317.1 of the Health and Safety Code Section.

8. **Comment:** Comment states that in an emergency the most qualified practitioner should be called.

Commenters: 716.2 .

Department Response: The Department agrees with this comment, and believes the amendments to the regulations permit this by allowing emergency responses by a larger number of providers, whose scopes of practice permit them to provide the care required, than current regulations do.

Skilled Nursing Facility and Intermediate Care Facility Concerns

1. **Comment:** Commenters state that the amendment to section 72303(a) is not authorized by statute and is detrimental to skilled nursing facility patients.

Commenters: 497, 508, 530.5, 531.5, 552, 555.22, 559B, 560.27, 561.27, 562, 567, 701, 716.3, 718.1, 725.3.

Department Response: The Department agrees that current statute, section 1262.7 of the Health and Safety Code requires that skilled nursing facilities admit patients only upon a physician's order, and has deleted the amendment as requested.

2. **Comment:** Commenter states that these regulations require a skilled nursing facility to notify a licensed healthcare practitioner rather than the attending physician when needed by the patient.

Commenter: 555.18.

Department Response: Physicians are licensed healthcare practitioners. The requirement for "notification of the licensed healthcare practitioner acting within the scope of his or her professional licensure" does not require the notification of a nonphysician licensed health practitioner rather than a physician. The amendment to the regulation does remove language that restricts the notification to physicians only.

3. **Comment:** Commenters state that the regulations violate state and federal law that requires all patient care in a skilled nursing facility be directly controlled by a physician.

Commenters: 552, 560.27.

Department Response: Section 1262.7 of the Health and Safety Code, requires that skilled nursing facilities admit patients only upon a physician's order, and the Department has deleted the amendments in the regulations that conflicted with that requirement. The Department is unaware of any requirement in California statutes, the United States Code, or the Code of Federal Regulations that requires that all patient care in a skilled nursing facility be "directly controlled" by a physician. Section 72307 requires that each patient admitted to a skilled nursing facility be under the continuing supervision of a physician who evaluates the patient as needed, and at least every 30 days.

4. **Comment:** Commenters state that the regulation violates federal law which requires physician oversight of all medical care rendered in an intermediate care facility that is certified as a nursing facility, since the regulations do not require care to be rendered in collaboration with a physician.

Commenters: 552, 560.28.

Department Response: The Department is confident that any intermediate care facilities that are certified to provide care as federally certified Nursing Facilities will continue to implement State regulatory requirements in a manner that maintains their ability to remain certified. These amendments to the regulations do not violate the federal laws cited, which are those that specify the requirements that licensed health facilities must meet if the health facilities wish to be reimbursed by the Medicare and/or Medicaid programs. The failure of licensed health facilities to comply means that those licensed health facilities may not receive reimbursement from the federal government; the failure to comply does not "violate federal law."

5. **Comment:** Commenters state that the notification requirement contained in section 72311 should be to the physician, not licensed healthcare practitioner, as the Legislative scheme concerning skilled nursing facilities only includes physicians.

Commenters: 497, 508, 552, 561.28, 562, 567.

Department Response: In some cases the Department believes the only licensed healthcare practitioners authorized to perform certain tasks at this time may be physicians. Additionally, although only physicians are authorized to admit patients to skilled nursing facilities, physicians are not the only licensed healthcare practitioners who may treat skilled nursing facility patients. If a licensed healthcare practitioner other than a physician is the person needed to respond to a patient's need, he or she should be the person notified.

6. **Comment:** Commenters support the amendments to the regulations and suggest that section 72523 be amended to delete the reference to "physicians" in the requirement placed on skilled nursing facilities to establish policies and procedures, and replace it with "licensed healthcare practitioners acting within the scope of his or her professional licensure."

Commenters: 34, 36, 721, 722.23.

Department Response: As section 1262.7 of the Health and Safety Code requires that skilled nursing facility admission authority be limited to physicians, the Department does not believe the requested change would be appropriate.

7. **Comment:** Commenters request that section 72307 be amended to require that a reference to “psychologist” be included.

Commenters: 34, 36, 721, 722.19.

Department Response: As section 1262.7 of the Health and Safety Code requires that skilled nursing facility admission authority be limited to physicians, the Department does not believe the requested change would be appropriate.

8. **Comment:** Commenters request that section 72520 be amended to require that a reference to “psychologist” be included.

Commenters: 34, 36, 721, 722.22.

Department Response: As section 1262.7 of the Health and Safety Code requires that skilled nursing facility admission authority be limited to physicians, the Department does not believe the requested change would be appropriate.

9. **Comment:** Commenters request that section 73521 be amended to require that a reference to “psychologist” be included.

Commenters: 34, 36, 721, 722.29.

Department Response: Section 73521 addresses the need for an intermediate care facility to have a patient care policy committee that develops policies that address a number of services, including such psychological services that may be provided. It also requires that the committee’s personnel include such other personnel as may be appropriate. The Department believes that this section already addresses commenters’ concerns, as it includes section 1316.5 of the Health and Safety Code as a reference.

10. **Comment:** Commenters support the amendments to the regulations and suggest that amendments similar to the ones contained in this filing be made to two additional types of healthcare facilities, Intermediate Care Facilities/Developmentally Disabled and Intermediate Care Facilities/Developmentally Disabled-Habilitative.

Commenters: 34, 36, 721, 722.31.

Department Response: As the regulations governing Intermediate Care Facilities/Developmentally Disabled and Intermediate Care Facilities/Developmentally Disabled-Habilitative are not part of this filing, the Department is not able to make the requested amendments.

11. **Comment:** Commenter questions why communicable diseases in skilled nursing facility patients should be reported to a licensed healthcare practitioner acting within the scope of his or her professional licensure.

Commenters: 716.8.

Department Response: Physicians are licensed healthcare practitioners acting within the scope of their professional licensure, and physicians need to be aware of the occurrence of communicable diseases in skilled nursing facility patients; other licensed

healthcare practitioners acting within the scope of their professional licensure might also need to have this information.

12. Comment: Commenter states that removing the requirement in section 73303 that all persons admitted to an intermediate care facility be under the care of a physician endangers patients as they might need services that only a physician is allowed to provide within his or her scope of professional licensure.

Commenter: 555.23.

Department Response: Under section 73301, the attending clinician for a patient in an intermediate care facility may be a physician, podiatrist, dentist, or clinical psychologist. The amendment to section 73303 removes the conflicting requirement that a physician be the admitting clinician when he or she is not the attending clinician. If the patient requires care that is beyond the scope of professional licensure or the medical qualifications of the patient's attending clinician, that expertise may be accessed through referral or consultation.

Facility Concerns

1. Comment: Commenters state that these regulations will cause hospital staff to become confused about responsibility for patient care between physicians and allied health professionals.

Commenters: 494.3, 522, 526.6, 542.2, 552, 555.8, 560.3, 717.3, 718.2.

Department Response: The scenario is not different from when more than one physician provides care to the same patient. Licensed health facilities provide policies as to the mechanism of providing appropriate notifications. The Department believes that hospitals are now, and will continue to be able to provide adequate guidance so that hospital staff will understand which licensed healthcare practitioner is responsible for and shall be notified about what aspects of a patient's treatment.

2. Comment: Commenters support the amendments to the regulations and suggest that section 70707 be amended to require that hospitals provide patients with the names and professional relationships of other licensed healthcare practitioners and non licensed healthcare practitioners who will see those patients, rather than the current requirement that hospital provide the names of other physicians and nonphysicians.

Commenters: 34, 36, 721, 722.8.

Department Response: The Department believes that imposing such a requirement on hospitals would be too burdensome, as it would not be practicable to provide a list of all potential unlicensed practitioners.

3. Comment: Commenter states that facilities need a multidisciplinary team headed by a psychiatrist to treat inpatients.

Commenters: 559F.

Department Response: Nothing in these amendments to the regulations eliminate the ability of a facility to provide for a multidisciplinary team headed by a psychiatrist when needed to treat inpatients. The amendments to the regulations only remove language which prohibits a facility from allowing other licensed healthcare practitioners acting

within the scope of their professional licensure from performing these duties when appropriate.

Wording Suggestions

1. **Comment:** Commenter states that deleting the word “medical” from sections 70717(f)(2) and 71517(e) makes these sections vague.

Commenter: 530.4, 531.4.

Department Response: The Department believes that the deletion of the word “medical” from these sections does not make them vague, but instead clarifies the need to assure that a transfer or discharge would not cause any type of hazard to the patient, not just a medical hazard.

2. **Comment:** Commenters ask why “psychologist” rather than “licensed healthcare practitioner” is specified as a person to whom a skilled nursing facility patient’s record may be made available.

Commenters: 497, 508, 552, 561.31, 562, 567.

Department Response: The Department has changed the amendment to “licensed healthcare practitioner” from “psychologist.”

3. **Comment:** Commenters support the amendments to the regulations and suggest further amendments to sections 70751 and 72315 to make them consistent with changes made to similar regulations for other types of facilities.

Commenters: 34, 36, 721, 722.9, 722.20.

Department Response: The Department agrees that these amendments are appropriate and will amend the regulations.

4. **Comment:** Commenters support the amendments to the regulations and suggest that section 79313 be amended by replacing the word “physician” with the phrase “licensed healthcare practitioner.”

Commenters: 34, 36, 721, 722.33.

Department Response: The Department does not believe that not making the change at this time would restrict anyone’s ability to practice, and that the suggested change should be deferred to a later rulemaking.

5. **Comment:** Commenters support the amendments to the regulations and suggest that section 79349 be amended by replacing the word “physician” with the phrase “licensed healthcare practitioner.”

Commenters: 34, 36, 721, 722.34.

Department Response: The Department does not believe that not making the change at this time would restrict anyone’s ability to practice, and that the suggested change should be deferred to a later rulemaking.

6. **Comment:** Commenters support the amendments to the regulations and suggest that section 79351 be amended by replacing the word “physician” with the phrase “licensed healthcare practitioner” in subsection (b).

Commenters: 34, 36, 721, 722.32.

Department Response: The Department does not believe this change is necessary as it believes the inclusion of the phrase “the staff” in the subsection is sufficient.

7. **Comment:** Commenters support the amendments to the regulations and suggest that section 79351 be amended by adding the phrase “or psychologist” in subsection (g).

Commenters: 34, 36, 721, 722.32.

Department Response: The Department does not believe that not making the change at this time would restrict anyone’s ability to practice, and that the suggested change should be deferred to a later rulemaking.

8. **Comment:** Commenters support the amendments to the regulations and suggest that section 79351 be amended by replacing the word “physician” with the phrase “licensed healthcare practitioner” in subsection (h).

Commenters: 34, 36, 721, 722.32.

Department Response: The Department does not believe that not making the change at this time would restrict anyone’s ability to practice, and that the suggested change should be deferred to a later rulemaking.

9. **Comment:** Commenters support the amendments to the regulations and suggest that a reference to sections 1316 and 1316.5 of the Health and Safety Code be added to section 70579(b).

Commenters: 34, 36, 721, 722.6.

Department Response: As this section address the requirements for “psychiatric unit staff” in a general acute care hospital, the Department does not believe the provisions of section 1316 of the Health and Safety Code would have any applicability to its provisions. The Department also believes that it is not necessary to repeat the reference to section 1316.5 of the Health and Safety Code within the section as section 1316.5 is listed as a reference.

10. **Comment:** Commenters support the amendments to the regulations and suggest that a reference to section 1316.5 of the Health and Safety Code be added to section 71203(a)(1)(A),

Commenters: 34, 36, 721, 722.11.

Department Response: The Department does not believe that the addition of this sentence is necessary, as the requirement that a facility comply with the statute is contained in subsection (a)(3)(A).

11. **Comment:** Commenters support the amendments to the regulations and suggest that a reference to sections 1316 and 1316.5 of the Health and Safety Code be added to section 71503.

Commenters: 34, 36, 721, 722.15.

Department Response: The Department does not believe that it is necessary to repeat the reference to sections 1316 and 1316.5 of the Health and Safety Code within the section as sections 1316 and 1316.5 are already listed as references.

12. **Comment:** Commenters support the amendments to the regulations and suggest that a reference to sections 1316 and 1316.5 of the Health and Safety Code be added to section 71517(a).

Commenters: 34, 36, 721, 722.16.

Department Response: The Department does not believe that it is necessary to repeat the reference to sections 1316 and 1316.5 of the Health and Safety Code within the section as sections 1316 and 1316.5 are already listed as references.

13. **Comment:** Commenters support the amendments to the regulations and suggest that a reference to section 1316.5 of the Health and Safety Code be added to section 79611(c).

Commenters: 34, 36, 721, 722.37.

Department Response: The Department does not believe that not making the change at this time would restrict anyone's ability to practice, as Correctional Treatment Centers are state-operated facilities that are required to have psychologists on their medical staffs which are responsible and accountable for the Psychiatrist/Psychologist Service.

14. **Comment:** Commenters support the amendments to the regulations and suggest that a reference to sections 1316 and 1316.5 of the Health and Safety Code be added to section 79781(d)(1)(A).

Commenters: 34, 36, 721, 722.40.

Department Response: The requirement that facilities comply with these statutory provisions is already contained in section 79781(d)(1)(F).

15. **Comment:** Commenters request that section 72319 be amended to require that a reference to "psychologist" be included.

Commenters: 34, 36, 721, 722.21.

Department Response: The language quoted by commenters did not accurately reflect the language in the proposed amendment. As the reference to "physician" in the regulation has been replaced by a reference to "licensed healthcare practitioner acting within the scope of his or her professional licensure," the amendment suggested by commenters is not required.

16. **Comment:** Commenters request that section 73523(c) be amended to require that a reference to "psychologist" be included.

Commenters: 34, 36, 721, 722.30.

Department Response: As the reference to "physician" in the regulation has been replaced by a reference to "licensed healthcare practitioner acting within the scope of his or her professional licensure" in a post hearing change, the amendment suggested by commenters is not required.

17. **Comment:** Commenters request that section 73523(e)(2) be amended to require that a reference to "licensed healthcare practitioner" be included.

Commenters: 34, 36, 721, 722.30.

Department Response: The amendment requested by commenters has been made to the section.

18. Comment: Commenters support the amendments to the regulations and suggest that further amendment be made to sections 72303 and 73303 to include a reference to licensed healthcare practitioners.

Commenters: 37.3, 721, 724.

Department Response: The Department agrees that these amendments are appropriate and will amend these sections.

19. Comment: Commenters support the amendments to the regulations and suggest additional amendments to correct incorrect references to the licensing board for psychologists in sections 70055, 71053 and 76131.

Commenters: 34, 36, 721, 722.1, 722.10, 722.31.

Department Response: The Department agrees that these requested amendments are appropriate and will make the changes as requested to sections 70055 and section 71053. As the regulations that apply to the facilities to which section 76161 applies are not part of this filing, the Department may not make the corrections to section 76161 requested by commenters.

Uncategorized

1. Comment: Commenter states that the regulations will adversely affect recruiting efforts at facilities.

Commenter: 497.1

Department Response: The amendments to these regulations do not change existing scope of practice laws for licensed healthcare practitioners. The amendments remove any restrictions that would prohibit facilities from allowing licensed healthcare practitioners to provide services that are within the scope of their professional licensures. The Department is not aware of any affect that removing these illegal restrictions might have on a health facility's recruiting efforts, or the category of licensed healthcare practitioners whose recruitment might be affected.

2. Comment: Commenter suggests that the Department ask accreditation bodies for assistance in helping to define and ensure proper and comprehensive supervision of allied health professionals by physicians.

Commenter: 526.7.

Department Response: The Department believes that it is the responsibility of the licensing boards created by statute to supervise their licensees to determine what supervision, if any, is required of nonphysician licensed healthcare practitioners.

3. Comment: Commenter suggests that the Department should disallow the employment of physician extenders in hospital settings.

Commenter: 526.8.

Department Response: The Department is not sure what categories of practitioners would be considered "physician extenders." Two professions the Department believes

might fall into this category are nurse practitioners and physicians assistants, and as long as the “physician extenders” work within the requirements of their professional licensure when providing care to patients, it is not within the Department’s authority to restrict where “physician extenders” may provide care.

4. **Comment:** Commenters state that these regulations would not be acceptable to the Joint Commission on the Accreditation of Healthcare Organizations.

Commenters: 552, 559.3, 711.2.

Department Response: Without more specific identification of the “unacceptable” regulations, the Department is not able to respond to this comment. However, as the Joint Commission on the Accreditation of Healthcare Organizations is concerned with activities that take place within healthcare organizations, the Department does not believe the amendments to the regulations authorizing healthcare organizations to expand patients’ choices of healthcare providers would conflict with any requirements of the Joint Commission on the Accreditation of Healthcare Organizations.

5. **Comment:** Commenters state that these regulations would make oversight authority for psychologists the Board of Psychology.

Commenters: 552, 559.15.

Department Response: The Department is not aware of any provision in these amendments to the regulations that addresses the issue of oversight authority for psychologists. The only mention of the Board of Psychology in these regulations is to correct the name of the licensing board for psychologists in the definition of psychologist in sections 70055 and 71053.

6. **Comment:** Commenters state that these regulations will create two tiers of healthcare; that controlled by physicians and that controlled by non-physicians.

Commenters: 552, 559.16.

Department Response: In today’s healthcare environment, the Department does not believe any single entity “controls” healthcare. While licensed healthcare practitioners certainly exercise a certain amount of control over the provision of healthcare to patients, licensed healthcare practitioners share that control with insurers, health maintenance organizations, licensing agencies, health facilities, and federal and state reimbursement providers. The amendments to these regulations do not change the activities that licensed healthcare practitioners are currently allowed by law to perform. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to provide services that are within their scopes of professional licensure.

7. **Comment:** Commenters state that these regulations violate CAPP v. Rank because they conflict with state statutes and federal regulations.

Commenters: 552, 560.1.

Department Response: The amendments to these regulations do not change the activities that licensed healthcare practitioners are currently allowed by law to perform. The amendments to the regulations remove the restriction that prohibits facilities from allowing licensed healthcare practitioners to provide services that are within their

scopes of professional licensure. Since the Department does not believe these amendments conflict with any laws, it also does not believe they conflict with CAPP v. Rank.

8. Comment: Commenters state that the regulations may not be adopted until the Department receives the approval of the courts currently governing state prisons and hospitals.

Commenters: 552, 560.29.

Department Response: The Department is not required to receive court approval in cases to which it is not a party in order to implement regulations that do not and can not conflict with any orders directed to the institutions subject to the courts' jurisdiction.

9. Comment. Commenters support the amendments the Department is proposing to make to the regulations.

Commenters: 1-9, 11-13, 15, 17-19, 21-33, 39-484, 565, 713, 720, 723.

Department Response: The Department appreciates commenters' support.

10. Comment: Commenter suggests that the amendments to the regulation could jeopardize facilities' reimbursement from the Medicare program.

Commenters: 715.2.

Department Response: As long as facilities continue to meet the conditions for participation in the Medicare program, they will continue to receive reimbursement from the program. The Department does not believe any of the provisions in the filing require that a facility not meet those conditions.

11. Comment: Commenter states that the amendments to sections 70703(a), 70706, 70707, 70717, 70749, 70751, and 70753 are appropriate.

Commenters: 38.3.

Department Response: The Department appreciates the commenter's support.

ADDENDUM III

DPH-05-010
August 10, 2009

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Daniel H. Willick			1875 Century Park East, Suite 1600 Los Angeles, CA 90067	dwillick@sbcglobal.net	Unique - 1	
William J. Koenig		Koenig Caprile & Berk	1520 River Park Drive Sacramento, CA 95815	Phone: (916) 568-3288 Fax: (916) 568-3292	Unique - 2	
Barb Johnson	Executive Director	Medical Board of California	2005 Evergreen Street, Suite 1200 Sacramento, CA 95815-2831	Phone: (916) 263-2389 Fax: (916) 263-2387	Unique - 3	Received this letter two times
Robert Kahane	Executive Officer	Board of Psychology	2005 Evergreen Street, Suite 1400 Sacramento, CA 95815-3894	Phone: (916) 263-1617 Fax: (916) 263-1099	Unique - 4	Received this letter two times
Delilah Clay	Research Associate	California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	DClay@cmanet.org	Unique - 5	
Arthur R. Chenen		Theodora Oringher Miller & Richman PC	2029 Century Park East, Sixth Floor Los Angeles, CA 90067-2907	Phone: (310) 557-2009 Fax: (310) 551-0283	Unique - 6	Received this letter two times
Katherine Nordal	Ph.D.	American Psychological Association	750 First Street NE, Washington, DC 20002-4242	Phone: (202) 336-5800	Unique - 7	
Jo Linder-Crow	Ph.D.	California Psychological Association	1231 J Street Suite 204 Sacramento, CA 95834	Phone: (916) 286-7979 Fax: (916) 286-7971	Unique - 8	
Jim Sun	M.D., FACS			jsunbox@hotmail.com	Unique - 9	
Alison Weber	Ph.D., ABPP		P.O. Box 7127 Napa, CA 94558	aweber@dmhns.state.ca.us	Unique - 10	
				-	No Comment - 11	
				-	No Comment - 12	
				-	No Comment - 13	
				-	No Comment - 14	

ADDENDUM III

DPH-05-010
August 10, 2009

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
William R. Safarjan	Ph.D.	Atascadero State Hospital	5100 Cascabel Road Atascadero, CA 93422	bsafarjan@tcsn.net	Template - 15	
Elaine L. Mura	Ph.D.		2318 Holt Avenue Los Angeles, CA 90034	drmura@sbcglobal.net	Template - 16	
Russell L. Jordan	Ph.D.		132 W. Deodar Lane Lemoore, CA 93245	DOCRJPHD@aol.com	Template - 17	
Glenn Potts	Ph.D.	The Central Coast Psychological Association	9410 Calle Miano Atascadero, CA 93422	Fax: (805) 461-0674	Template - 18	

Addendum IV

15-Day Availability of Post-Hearing Changes Summary of and Responses to Comments

1. Comment: Commenter requests that the Department add additional paragraphs, as it had suggested in its 45-day comments, to the paragraphs the Department had added to sections 70703(b) and (d), and 71503(c) and (e) in response to commenter's original comments.

Commenter: 2.1.¹

Department Response: The Department is unable to comply with this request, as it has determined that it will need to remove the paragraphs it had added to sections 70703(b) and (d) and 71503(c) and (e) as changes to the amended regulations as originally noticed. The Department has determined, after reviewing comments from other commenters during the 15-day availability of the changes, that the substance of these paragraphs was not sufficiently related to its original notice to warrant their addition to the filing with only a 15-day notice period. Additionally, the requested amendments to sections 70703(d) and 71503(e) basically repeat the requirements already contained in subsections (a)(4) and (b)(4) of section 1316.5 of the Health and Safety Code. The Department believes that the suggested change should be deferred to a later rulemaking for reconsideration.

2. Comment: Commenters suggest that the Department abandon its use of the phrase "licensed healthcare practitioner" and substitute the specific practitioner categories in the affected regulations. In the alternative, the commenters ask that, if the Department wishes to continue to refer to licensed healthcare practitioners, it also refer to physicians and clinical psychologists in the appropriate regulations.

Commenters: 2.2, 6.1.

Department Response: The Department does not believe that it would be acceptable to remove all references to licensed healthcare practitioners in the amendments made by this filing. While the initial impetus for the filing was to correct discrimination against psychologists and remove language that limits a licensed health facility's ability to allow licensed health care practitioners to provide treatment that is within their scope of professional licensure to provide, thus bringing the regulation into compliance with section 1316.5 of the Health and Safety Code, the Department realized during its review of the regulations that some of the restrictions contained in the regulations also discriminated against podiatrists and dentists in violation of sections 1315 and 1316 of the Health and Safety Code. As these other licensed healthcare practitioners might have the scopes of their professional licensure unlawfully restricted by the limitations placed on licensed health facilities in the Department's current regulations, the Department decided that eliminating restrictions on licensed health facilities' ability to allow all of the licensed healthcare practitioners providing services in those facilities to provide services that were within the scopes of their professional licensure was required. To accomplish this, the regulations need to continue to address actions affecting all licensed healthcare practitioners. At the same time, the Department

¹. In addition to the comments submitted on its own behalf, commenter 2 also expressed support for the comments made by commenters 7 and 8.

understands that the primary reasons for the adoption of these regulations, in addition to statutory requirements, were the decision of the Supreme Court in *Capp v. Rank* (1990) 51 Cal.3d 1 (CAPP v Rank), and the petition filed by Psychology Shield for the adoption of regulations. The Department will therefore include specific references to psychologists in the appropriate sections.

3. Comment: Commenter states that instead of referring to a practitioner’s “scope of licensure” in the amendments to the regulations, the department should refer to “scope of license.”

Commenter: 3.1.

Department Response: As no changes to this phrasing occurred in the 15-day filing, the Department is unable to make the suggested change.

4. Comment: Commenters state that the amendments in the 15-day filing to sections 70703(b) and (d) and 71503(c) and (e) are not sufficiently related to the subject matter of the rulemaking. Commenters state that a 45-day public notice period was required.

Commenters: 1.1, 3.2, 5.1.

Department Response: The Department defers to the commenters, and will remove the language added to sections 70703(b) and (d) and 71503(c) and (e) from those sections.

5. Comment: Commenters state that only a physician, not a licensed healthcare practitioner, is authorized by his or her practice act to perform a medical examination. Commenter states that the reference to the performance of a medical examination by a licensed healthcare practitioner in section 70577 needs to be amended.

Commenters: 3.3, 5.2.

Department Response: Physicians are licensed healthcare practitioners who are authorized to perform medical examinations. The amendment to the regulations does not permit the performance of a medical examination by any licensed healthcare practitioner if that service is not within the scope of his or her professional licensure. However, the Department has now reworded section 70577 to remove language that might have indicated that the Department believed conducting a medical examination was within a psychologist’s scope of licensure, and is providing alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations.

6. Comment: Commenter suggests that the Department amend section 73303 to require that only physicians be permitted to admit patients to intermediate care facilities, a requirement now only applicable to skilled nursing facilities under section 1262.7 of the Health and Safety Code.

Commenter: 5.3.

Department Response: No changes to this requirement occurred in the 15-day filing, and, therefore, the comment is outside the scope of the 15-day availability of changes.

7. Comment: Commenters state that the Department should not have modified the amendment to section 70577(d)(2) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 -17.²

Department Response: The Department agrees that its modification to section 70577(d)(2) might be interpreted as eliminating the ability of a psychologist to be an attending clinician since a psychologist’s scope of licensure does not include the ability to perform medical examinations or to determine if a patient needs to have a medical examination. The Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. This should eliminate any potential that the requirements of paragraph (2) of section 70577(d) might be interpreted as restricting a psychologist’s ability to be the attending clinician for a patient as specified in paragraph (1) of that section, 70577(d).

8. Comment: Commenters state that the Department should not have modified the amendment to section 70577(f) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 6.1, 15 -17.

Department Response: The Department agrees, and will reword the amendment.

9. Comment: Commenters state that the Department should not have modified the amendment to section 71551(g) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: As no changes to this section occurred in the 15-day filing, the comment is outside the scope of the noticed changes.

10. Comment: Commenters state that the Department should not have modified the amendment to section 72453(b) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees with commenters that even though a psychologist is not authorized to admit a patient to a skilled nursing facility, a psychologist could be providing treatment to a skilled nursing facility patient. The Department will reword the amendment to make it clear that a psychologist is included in its provisions.

². In addition to the comments submitted on their own behalf, commenters 15 - 17 also expressed support for the comments made by commenters 6, 7, and 8.

11. Comment: Commenters state that the Department should not have modified the amendment to section 72543(a) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees with commenters that even though a psychologist is not authorized to admit a patient to a skilled nursing facility, a psychologist could be providing treatment to a skilled nursing facility patient. However, other licensed healthcare practitioners may also provide treatment to a patient in a skilled nursing facility, therefore the choice of the phrasing of the amendment.

12. Comment: Commenters state that the Department should not have modified the amendment to section 72547(a)(4) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees that orders of a psychologist, or other licensed healthcare practitioners treating skilled nursing facility patients need to be included in the patients’ records. However, other licensed healthcare practitioners may also provide treatment to a patient in a skilled nursing facility, therefore the choice of the phrasing of the amendment.

13. Comment: Commenters state that the Department should not have modified the amendment to section 72547(a)(12) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees that records of reports of therapists treating skilled nursing facility patients made to psychologists or other licensed healthcare practitioners who are also treating skilled nursing facility patients need to be included in the patients’ records. However, other licensed healthcare practitioners may also provide treatment to a patient in a skilled nursing facility, therefore the choice of the phrasing of the amendment.

14. Comment: Commenters state that the Department should not have modified the amendment to section 73315(i) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees that when an intermediate care facility patient requires services which are not considered to be intermediate care services, the attending clinician, whether a physician, psychologist, or other licensed healthcare practitioner, needs to be notified. However, other licensed healthcare practitioners may also provide treatment to a patient in an intermediate care facility, therefore the choice of the phrasing of the amendment.

15. Comment: Commenters state that the Department should not have modified the amendment to section 73399(b) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees that the change should not have occurred and has modified the language to the way it was in the original filing.

16. Comment: Commenters state that the Department should not have modified the amendment to section 73449(b)(1) by deleting the word “psychologist” and replacing it with “licensed healthcare practitioner acting within the scope of his or her professional licensure.”

Commenters: 2, 6.1, 7.1, 15 - 17.

Department Response: The Department agrees that anyone providing treatment to an intermediate care facility patient, physician, psychologist, or “other appropriate staff,” should participate in the development of a social work service plan. However, other licensed healthcare practitioners may also provide treatment to a patient in an intermediate care facility, therefore the choice of the phrasing of the amendment.

17. Comment: Commenters state that the Supplemental Statement of Reason said that if a patient required a medical exam, a psychologist could not be the attending provider.

Commenters: 6.2, 15 - 17.

Department Response: The Department has reworded the provision in question, section 70577(d)(2), to eliminate the possibility of this misconception reoccurring.

18. Comment: Commenters state that the California Board of Psychology informed the Department that all of the procedures and activities outlined by the Department in its original filing were within the scope of practice of licensed psychologists in California.

Commenters: 2, 6.3, 7.3, 8.4, 15 - 17.

Department Response: While the Department agrees that this statement was included as the closing sentence in the comment on the original filing submitted by the Board of Psychology, the Department does not believe that the Board of Psychology realized that the wording of some of the regulations in the original filing might have been interpreted as authorizing psychologists to direct or perform medical exams or order drugs for patients. The amendments to those regulations are designed to avoid having this misunderstanding occur.

19. Comment: Commenters state that the amendments made to sections 70577(d)(2), 71551(g), 72453(b), 72543(a), 72547(a)(4), 72547(a)(12), 73315(i), 73399(b), and 73449(b)(1) undermine health facilities’ obligation to recognize psychologists as attending clinicians and to recognize and incorporate psychologists into the medical record system.

Commenters: 2, 7.1, 15 - 17.

Department Response: As section 71551(g) was not amended as part of the 15-day filing the Department is unable to make the requested change. The Department believes the changes it has made to 70577(d)(2), 70577(f), 72453(b), and 73399(b) will

help to correct this problem. However, as psychologists are licensed healthcare practitioners the phrasing of the amendments to sections 72543(a), 72547(a)(4), 72547(a)(12), 73315(i), and 73449(b)(1) is proper.

20. Comment: Commenters state that a psychologist may be the attending clinician to a patient who also has medical needs.

Commenters: 2, 7.2, 8.1, 15 - 17.

Department Response: The Department agrees, and believes the changes it has made to the regulations make that clear.

21. Comment: Commenters state that the Department should not modify the amendments contained in the original filing unnecessarily.

Commenters: 2, 7.4, 15 - 17.

Department Response: The Department believes the changes it has made to the regulations to specifically name “psychologists” when appropriate will eliminate this concern.

22. Comment: Commenters state that psychologists should be able to enter orders into and look at skilled nursing facility patients’ records, even if a physician is required to admit the patients.

Commenters: 2, 7.5, 15 - 17.

Department Response: The Department agrees, and believes the use of the phrase “licensed healthcare practitioner,” a category that includes psychologists, makes that clear.

23. Comment: Commenters state that the Department should not exclude psychologists from teams that survey hospitals’ medical staffs’ compliance with the law.

Commenters: 2, 8.2, 15 - 17.

Department Response: This is not an issue addressed in this filing. As the comment is outside the scope of this rulemaking, the Department is not required to respond.

24. Comment: Commenters state that the Department should not have stripped “psychologist” from the regulations’ enforcement-relevant language.

Commenters: 2, 8.3, 15 - 17.

Department Response: The Department has amended the regulations to include “psychologist” where appropriate.

25. Comment: Commenters state that the Department should not include psychologists in the generic term licensed healthcare practitioner.

Commenters: 2, 8.5, 15 - 17.

Department Response: The Department believes the changes it has agreed to make to the regulations by specifying “psychologist” when appropriate will alleviate this concern. As psychologists are licensed healthcare practitioners the Department cannot exclude them from the phrase when “psychologist” is not specifically named in a regulation.

26. Comment: Commenter states that the Department should not allow nonphysicians to refer patients for speech and audiology services in nursing facilities.

Commenter: 9.

Department Response: As no changes to the regulations addressing this issue occurred in the 15-day filing, the Department is unable to respond to the concern.

27. Comment: Commenter states that as the phrase “licensed healthcare practitioner” is not defined in the regulations, it is meaningless.

Commenter: 10.1.

Department Response: The Department believes that as words used in the regulations have the usual meaning unless circumstances mandate otherwise, see, e.g., section 70001 ([w]ords shall have their usual meaning unless the context or a definition clearly indicates a different meaning), the phrase “licensed healthcare practitioner” does not require its own definition.

28. Comment: Commenter states that the terms physician and psychiatrist are used confusingly.

Commenter: 10.2.

Department Response: As no changes to any regulations addressing this issue occurred either in the original or in the 15-day filing, the comment is outside the scope of this rulemaking and the Department is not required to respond

29. Comment: Commenter states that as section 70706 requires that an equal number of nurses and physicians be appointed to the Committee on Interdisciplinary Practice, an equal number of psychologists should also be required.

Commenter: 10.3.

Department Response: While the Department believes that the committee needs to have a psychologist on it when psychologists are members of the medical staff to eliminate any concern about a licensed health facility’s compliance with section 1316.5 of the Health and Safety Code, the Department also believes that a licensed health facility is in the best position to determine the staffing required by the committee based upon the services provided by the licensed health facility.

30. Comment: Commenters state that the Department should not replace “psychologist” with “licensed healthcare practitioner.”

Commenters: 15.1 -17.1, 18.

Department Response: The Department believes the changes it has agreed to make to the regulations by specifying “psychologist” when appropriate will alleviate this concern. As psychologists are licensed healthcare practitioners the Department cannot exclude them from the phrase when “psychologist” is not specifically named in a regulation, and “licensed healthcare practitioner” is the correct term.

31. Comment: Commenter states that the amendments in the 15-day filing to section 70577(d)(2) are not sufficiently related to the subject matter of the rulemaking.

Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking. The Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations.

32. Comment: Commenter states that the amendments in the 15-day filing to section 73301(f) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking, particularly since it removes the restriction on the licensed healthcare practitioners an intermediate care facility may call in an emergency to physicians, and instead makes it consistent with section 73301(d).

33. Comment: Commenter states that the amendments in the 15-day filing to section 73303(b) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking. The amendment simply allows licensed healthcare practitioners providing care in an intermediate care facility to provide care that is within their scopes of their professional licensure, even if the care is also within the scope of professional licensure of a physician; it does nothing to suggest that licensed healthcare practitioners may provide any services that are not within their scopes of professional licensure.

34. Comment: Commenter states that the amendments in the 15-day filing to section 73315(i) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking. The amendments make it consistent with the references to licensed healthcare practitioners in subsections (e), (g), and (h).

35. Comment: Commenter states that the amendments in the 15-day filing to section 73325(a) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking, as it simply removes the language that restricts the ordering of food required by a patient to a physician and provides that a licensed health facility may allow a licensed healthcare practitioner to issue orders that address a patient's food requirements, if it is within the scope of licensure of the licensed healthcare practitioner to do so. The amendment conforms the provisions of the section to those of other sections such as 72311, 73311, and 79689.

36. Comment: Commenter states that the amendments in the 15-day filing to section 73399(b) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: The Department agreed with other commenters that the change was not needed, and has reinstated the original language.

37. Comment: Commenter states that the amendments in the 15-day filing to section 73449(b) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking, particularly since it removes language that might be read to restrict licensed healthcare practitioners, other than physicians, if it is within the scope of their professional licensure, from participating in the development of a social work services plan for an intermediate care facility patient.

38. Comment: Commenter states that the amendments in the 15-day filing to section 73523(c) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking, particularly since it removes language that might be read to restrict licensed healthcare practitioners, other than physicians, if it is within the scope of their

professional licensure, from determining if an intermediate care facility patient has the capacity to understand his or her rights as a patient.

39. Comment: Commenter states that the amendments in the 15-day filing to section 73523(e)(2) are not sufficiently related to the subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

Commenter: 1.1.

Department Response: As the Initial Statement of Reasons stated that one of the aims of the Department in proposing these amendments was to remove any restrictions on licensed healthcare practitioners' scopes of professional licensure, the Department believes that the amendment to this section is sufficiently related to the subject matter of the rulemaking, particularly since it removes language that might be read to restrict licensed healthcare practitioners, other than physicians, if it is within the scope of their licensure, from determining who will serve as the patient's representative if an intermediate care facility patient does not have the capacity to understand his or her rights as a patient.

40. Comment: Commenter states that the regulations amended in the 15-day notice violate the Administrative Procedure Act as they will cause confusion among the regulated public.

Commenter: 1.2.

Department Response: The Department must note as an initial point that no members of the regulated public, i.e., licensed health facilities, expressed any concerns about the amendments to the regulations; the Department expects that if health facilities were confused about the regulations they would not have hesitated to comment on them. The Department, because of concerns raised by other commenters, has deleted some of the changes it made and reinstated the language contained in the original filing, and has reworded others to remove any questions about which practitioners are addressed by the regulations.

41. Comment: Commenter states that although the Department may contend that one of the purposes of these regulatory changes was to bring the regulations into compliance with *CAPP v Rank*, the Department's amendments violate *CAPP v Rank*'s requirements because they violate a multitude of California and federal laws.

Commenter: 1.3.

Department Response: Initially, the Department must note that the only federal laws cited by commenter are those with which facilities must comply to receive reimbursement from the Medicare and Medicaid programs. It would therefore be impossible for these regulations to violate those laws. Only facilities can fail to comply with federal requirements. Nothing in the amendments to the regulations prohibit facilities from complying with federal requirements. The Department will discuss commenter's concerns about which specific regulations violate which laws below.

42. Comment: Commenter states that the following regulations violate federal laws requiring physician oversight for care provided to Medicare and Medicaid patients because they:

(a) authorize psychologists and/or other limited license providers to admit, diagnose, transfer, and discharge patients without requiring a physician's examination and orders, including those concerning the patients' medications – sections 70577(d) and (f), 72303(c), 72315(e), 73303, and 73315(i);³

(b) authorize psychologists and/or other limited license providers to act as "attending" providers controlling the treatment of hospital inpatients without physician examination and orders for medication and for any nonpsychological illness – sections 70577(d) and (f), 72303(c), 72453, 72543, 73399(b), and 73449(b);⁴

(c) authorize psychologists and/or other limited license providers to review, evaluate and/or order prescription medications – section 72547(a);⁵

(d) authorize psychologists and/or other limited license providers to write orders for treatment of physical and organic disorders or for nonpsychological illness – sections 72315(e), 72547(a), 73315(i), and 73325(a);⁶

(e) authorize psychologists and/or other limited license providers to evaluate or deliver emergency care for nonpsychological illness – section 73301(f);⁷

(f) authorize psychologists and/or other limited license providers to control, perform or direct a medical examination for nonpsychological conditions – section 70577(d)(2);

(g) authorize psychologists and/or other limited license providers to order that a patient be held in restraints without a physician's examination to determine if there is danger to the patient due to nonpsychological medical illness;⁸ and,

(h) permit psychologists or nonphysicians to have primary responsibility for coordinating care – sections 70577(d) and (f), and 73325(a).⁹

Commenter: 1.3A.

Department Response: (a) The amendments to sections 70577(d) and (f), 72303(c), 72315(e), 73303, and 73315(i) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to admit, diagnose, transfer, and discharge patients without requiring a physician's examination and orders, including those concerning the patients' medications. The amendments remove language which prevents licensed health facilities from allowing psychologists or other licensed healthcare practitioners to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the

³. Commenter's list contains many additional sections. As these were not amended in the 15-day notice filing, the Department may not address them.

⁴. See footnote 3., *supra*.

⁵. See footnote 3., *supra*.

⁶. See footnote 3., *supra*.

⁷. See footnote 3., *supra*.

⁸. None of the sections listed by commenter have been amended in the 15-day notice filing, so the Department may not address them.

⁹. See footnote 3., *supra*.

Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17). The amendments to sections 72303(c), 72315(e), 73303, and 73315(i) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the licensed healthcare practitioners' professional licensure, even though those services may also be provided by a physician.

(b) The amendments to sections 70577(d) and (f), 72303(c), 72453, 72543, 73399(b), and 73449(b) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to act as "attending" providers controlling the treatment of hospital inpatients without physician examination and orders for medication and for any nonpsychological illness. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17). The amendments to section 72303(c) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the licensed healthcare practitioners' professional licensure, even though those services may also be provided by a physician. While a physician is required to admit a patient to a skilled nursing facility, the amendments to section 72453(b) remove the restriction that would prevent licensed health facilities from allowing psychologists, who might also be treating the patient, to provide services within the scopes of their professional licensure. If it is within a psychologist's scope of professional licensure to deny or limit a patient's rights for good cause, the Department does not have the authority to prohibit licensed health facilities from allowing the psychologist to do so. The Board of Psychology agrees that this is within a psychologist's scope of professional licensure. Since the current wording of section 72543(a) provides that "the facility staff or any authorized officer, agent, or employee of either, or any other person authorized by law to make such request" may request that a record be made available to them, the amendment that adds licensed healthcare practitioners to authorized requesters does not change any requirements addressing "attending" providers. The amendments to section 73399(b), which has been reworded to return the language to that contained in the 45-day filing, remove the restriction that prohibits licensed health facilities from allowing psychologists to deny a patient's rights for good cause. The Board of Psychology agrees that this is within a psychologist's scope of professional licensure. The amendments to section 73449(b) allow a licensed health facility to include licensed healthcare practitioners acting within the scope of their professional licensure as participants in developing a social work service plan to the "patient's physician, the supervisor of health services and other appropriate staff."

(c) The amendments to section 72547(a) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to review, evaluate, and/or order prescription medications. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within the scopes of their professional licensure.

(d) The amendments to sections 72315(e), 72547(a), 73315(i), and 73325(a) do not authorize nonphysician licensed healthcare practitioners to write orders for treatment of physical and organic disorders or for nonpsychological illness. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within the scopes of their professional licensure. The amendments to section 72315(e) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the healthcare practitioners' professional licensure, even though those services may also be provided by a physician. The amendments to section 72547(a) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to review, evaluate, and/or order prescription medications. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within the scopes of their professional licensure. The amendments to section 73315(i) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the healthcare practitioners' professional licensure, and to inform those licensed healthcare practitioners of changes to their patients' conditions. The amendments to section 73325(a) remove the language that restricts the ordering of food required by a patient to a physician and provides that a licensed health facility may allow a licensed healthcare practitioner to issue orders that address a patient's food requirements, if it is within the scope of professional licensure of the licensed healthcare practitioner to do so. The amendment conforms the provisions of the section to those of other sections such as 72311, 73311, and 79689.

(e) The amendments to section 73301(f) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to evaluate or deliver emergency care for nonpsychological illness. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within their scopes of professional licensure. The amendments to section 73301(f) remove language that would restrict a licensed health facility's ability to call the appropriate licensed healthcare practitioner to treat a patient's emergent needs rather than a physician, even if that licensed healthcare practitioner was already caring for the patient as provided in section 73301(d).

(f) The amendments to section 70577(d)(2) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to control, perform, or direct a medical examination for nonpsychological conditions. The amendments remove language which prevents licensed health facilities from allowing psychologists to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a

medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations.

(h) The amendments to sections 70577(d) and (f), and 73325(a) do not permit psychologists or other nonphysician licensed healthcare practitioners to have primary responsibility for coordinating care. The amendments remove language which prevents licensed health facilities from allowing psychologists and other licensed healthcare practitioners, other than physicians, to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17). The amendments to section 73325(a) remove the language that restricts the ordering of food required by a patient to a physician and provides that a licensed health facility may allow a licensed healthcare practitioner to issue orders that address a patient's food requirements, if it is within the scope of professional licensure of the licensed healthcare practitioner to do so. The amendment conforms the provisions of the section to those of other sections such as 72311, 73311, and 79689.

43. Comment: Commenter states that the following regulations violate federal and state law regarding hospital evaluation and/or admission of emergency room patients because they:

(a) authorize psychologists and/or other limited license providers to admit, discharge or transfer patients without requiring a physician's examination, evaluation, and orders, including concerning the patients' medications – section 70577(d) and (f);¹⁰

(b) authorize psychologists and/or other limited license providers to act as "attending" providers controlling the treatment of hospital patients without physician examination and orders for medication and for any nonpsychological illness – section 70577(d) and (f);¹¹

(c) authorize psychologists and/or other limited license providers to review, evaluate and/or order prescription medications;¹²

(d) authorize psychologists and/or other limited license providers to write orders for treatment of physical and organic disorders or for nonpsychological illness;¹³

¹⁰. Commenter's list contains many additional sections. Many of these were not amended in the 15-day notice filing, so the Department may not address them; the others in the list regulate skilled nursing facilities and intermediate care facilities which are not authorized to provide emergency services, and the Department will not address those.

¹¹. See footnote 10., *supra*.

¹². Only one of the sections listed by commenter has been amended in the 15-day notice filing, so the Department may not address the others; the one listed that was amended regulates skilled nursing facilities which are not authorized to provide emergency services.

¹³. See footnote 10., *supra*.

(e) authorize psychologists and/or other limited license providers to evaluate or deliver emergency care for nonpsychological illness;¹⁴

(f) authorize psychologists and/or other limited license providers to control, perform or direct a medical examination for nonpsychological conditions – 70577(d)(2).

Commenter: 1.3B.

Department Response: Nothing in the amendments to the regulations, either in the original notice or in the 15-day notice, address emergency services in general acute care hospitals, the only licensed health facilities referred to in those notices that may have emergency rooms or provide emergency services to individuals who are not patients in those facilities. Additionally, the Department does not believe that amendments made to regulations governing psychiatric units in general acute care hospitals change the requirements for emergency services in those general acute care hospitals permitted to provide emergency services. The Department will still respond to the commenter's concern by pointing out that the amendments to sections 70577(d) and (f) do not permit psychologists or other nonphysician licensed healthcare practitioners to have primary responsibility for coordinating care. The amendments to the regulations remove language which prevents licensed health facilities from allowing psychologists to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17).

44. Comment: Commenter states that the following regulations violate Federal and California law concerning the transfer or discharge of emergency patients because they:

(a) authorize psychologists and/or other limited license providers to admit, discharge or transfer patients without a physician's examination, evaluation, and orders, including concerning the patients' medications – section 70577(d) and (f);¹⁵

(b) authorize psychologists and/or other limited license providers to act as "attending" providers controlling the treatment of hospitalized patients without physician examination and orders for medication and for any nonpsychological illness – section 70577(d) and (f);¹⁶

(c) authorize psychologists and/or other limited license providers to review, evaluate and/or order prescription medications;¹⁷

¹⁴. Only one of the sections listed by commenter has been amended in the 15-day notice filing, so the Department may not address the others; the one listed that was amended regulates intermediate care facilities which are not authorized to provide emergency services.

¹⁵. See footnote 10., *supra*.

¹⁶. See footnote 10., *supra*.

¹⁷. See footnote 12., *supra*.

(d) authorize psychologists and/or other limited license providers to write orders for treatment of physical and organic disorders or for nonpsychological illness;¹⁸

(e) authorize psychologists and/or other limited license providers to evaluate or deliver emergency care for nonpsychological illness;¹⁹

(f) authorize psychologists and/or other limited license providers to control, perform or direct a medical examination for nonpsychological conditions – 70577(d)(2).

Commenter: 1.3C.

Department Response: Nothing in the amendments to the regulations, either in the original notice or in the 15-day notice, address emergency services in general acute care hospitals, the only facilities referred to in those notices that may have emergency rooms or provide emergency services to individuals who are not patients in those facilities. Additionally, the Department does not believe that amendments made to regulations governing psychiatric units in general acute care hospitals change the requirements for emergency services in those general acute care hospitals permitted to provide emergency services. The Department will still respond to the commenter's concern by pointing out that the amendments to sections 70577(d) and (f) do not permit psychologists or other nonphysician licensed healthcare practitioners to have primary responsibility for coordinating care. The amendments remove language which prevents facilities from allowing psychologists to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17).

45. Comment: Commenter states that the regulations violate California law by authorizing a psychologist and/or limited license provider to place a patient in restraint without a physician's involvement.

Commenter: 1.3D.

Department Response: None of the sections listed by commenter to support this assertion have been amended in the 15-day notice, so the Department is not required to respond.

46. Comment: Commenter states that the amendments to the regulations endanger patients because they authorize psychologists and other nonphysicians to act beyond the scope of their licensure. Commenter states that the following regulations authorize psychologists and other nonphysician limited license healthcare practitioners to act beyond the scope of their licensure because they:

(a) authorize psychologists and/or other limited license providers to admit, discharge or transfer patients without a physician's examination, evaluation, and orders,

¹⁸. See footnote 10., *supra*.

¹⁹. See footnote 14., *supra*.

including concerning the patient's medications – sections 70577(d) and (f), 72303(c), 72315(e), 73303, and 73315(i);²⁰

(b) authorize psychologists and/or other limited license providers to act as “attending” providers controlling the treatment of hospitalized patients without physician examination and orders for medication and for any nonpsychological illness – sections 70577(d) and (f), 72303(c), 72453, 72543, 73399(b), and 73449(b);²¹

(c) authorize psychologists and/or other limited license providers to review, evaluate and/or order prescription medications – section 72547(a);²²

(d) authorize psychologists and/or other limited license providers to write orders for treatment of physical and organic disorders or for nonpsychological illness – sections 72315(e), 72547(a), 73315(i), and 73325(a);²³

(e) authorize psychologists and/or other limited license providers to evaluate or deliver emergency care for nonpsychological illness – section 73301(f);²⁴

(f) authorize psychologists and/or other limited license providers to control, perform or direct a medical examination for nonpsychological conditions – 70577(d)(2);

(g) authorize psychologists and/or other limited license providers to order that a patient be held in restraints without a physician's examination to determine if there is danger to the patient due to nonpsychological medical illness;²⁵ and,

(h) permit psychologists or nonphysicians to have primary responsibility for coordinating care – sections 70577(d) and (f), and 73325(a).²⁶

Commenter: 1.4.

Department Response: (a) The amendments to sections 70577(d) and (f), 72303(c), 72315(e), 73303, and 73315(i) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to admit, transfer, and discharge patients without requiring a physician's examination and orders, including those concerning the patients' medications. The amendments remove language which prevents licensed health facilities from allowing psychologists or other licensed healthcare practitioners to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17). The amendments to sections 72303(c), 72315(e), 73303, and 73315(i) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the

²⁰. See footnote 3., *supra*.

²¹. See footnote 3., *supra*.

²². See footnote 3., *supra*.

²³. See footnote 3., *supra*.

²⁴. See footnote 3., *supra*.

²⁵. See footnote 6., *supra*.

²⁶. See footnote 3., *supra*.

services are within the scopes of the licensed healthcare practitioners' professional licensure, even though those services may also be provided by a physician.

(b) The amendments to sections 70577(d) and (f), 72303(c), 72453, 72543, 73399(b), and 73449(b) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to act as "attending" providers controlling the treatment of hospital inpatients without physician examination and orders for medication and for any nonpsychological illness. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17). The amendments to section 72303(c) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the licensed healthcare practitioners' professional licensure, even though those services may also be provided by a physician. While a physician is required to admit a patient to a skilled nursing facility, the amendments to section 72453(b) remove the restriction that would prevent licensed health facilities from allowing psychologists, who might also be treating the patient, to provide services within the scopes of their professional licensure. If it is within a psychologist's scope of professional licensure to deny or limit a patient's rights for good cause, the Department does not have the authority to prohibit licensed health facilities from allowing the psychologist to do so. The Board of Psychology agrees that this is within a psychologist's scope of professional licensure. Since the current wording of section 72543(a) provides that "the facility staff or any authorized officer, agent, or employee of either, or any other person authorized by law to make such request" may request that a record be made available to them, the amendment that adds licensed healthcare practitioners to authorized requesters does not change any requirements addressing "attending" providers. The amendments to section 73399(b), which has been reworded to return the language to that contained in the 45-day filing, remove the restriction that prohibits licensed health facilities from allowing psychologists to deny a patient's rights for good cause. The Board of Psychology agrees that this is within a psychologist's scope of professional licensure. The amendments to section 73449(b) allow a licensed health facility to include licensed healthcare practitioners acting within the scope of their professional licensure as participants in developing a social work service plan to the "patient's physician, the supervisor of health services and other appropriate staff."

(c) The amendments to section 72547(a) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to review, evaluate, and/or order prescription medications. The amendments remove language which prevents licensed

health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within the scopes of their professional licensure.

(d) The amendments to sections 72315(e), 72547(a), 73315(i), and 73325(a) do not authorize nonphysician licensed healthcare practitioners to write orders for treatment of physical and organic disorders or for nonpsychological illness. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within the scopes of their professional licensure. The amendments to section 72315(e) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the healthcare practitioners' professional licensure, even though those services may also be provided by a physician. The amendments to section 72547(a) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to review, evaluate, and/or order prescription medications. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within the scopes of their professional licensure. The amendments to section 73315(i) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the healthcare practitioners' professional licensure, and to inform those licensed healthcare practitioners of changes to their patients' conditions. The amendments to section 73325(a) remove the language that restricts the ordering of food required by a patient to a physician and provides that a licensed health facility may allow a licensed healthcare practitioner to issue orders that address a patient's food requirements, if it is within the scope of professional licensure of the licensed healthcare practitioner to do so. The amendment conforms the provisions of the section to those of other sections such as 72311, 73311, and 79689.

(e) The amendments to section 73301(f) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to evaluate or deliver emergency care for nonpsychological illness. The amendments remove language which prevents licensed health facilities from allowing licensed healthcare practitioners, other than physicians, to provide services within their scopes of professional licensure. The amendments to section 73301(f) remove language that would restrict a licensed health facility's ability to call the appropriate licensed healthcare practitioner to treat a patient's emergent needs rather than a physician, even if that licensed healthcare practitioner was already caring for the patient as provided in section 73301(d).

(f) The amendments to section 70577(d)(2) do not authorize psychologists and/or other nonphysician licensed healthcare practitioners to control, perform, or direct a medical examination for nonpsychological conditions. The amendments remove language which prevents licensed health facilities from allowing psychologists to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations.

(h) The amendments to sections 70577(d) and (f), and 73325(a) do not permit psychologists or other nonphysician licensed healthcare practitioners to have primary responsibility for coordinating care. The amendments remove language which prevents licensed health facilities from allowing psychologists and other licensed healthcare practitioners, other than physicians, to provide services within their scopes of professional licensure. The change made to section 70577(d) in the 15-day notice has been rescinded, and the Department has reworded this section to provide alternative language as a post hearing change to remove the prescriptive language that requires the attending clinician to determine how often a medical examination of a patient must occur. The amendment makes it clear that the medical needs of the patient determine the frequency of medical examinations. The amendments to section 70577 pertaining to the request of social services by a psychologist as addressed in section 70577(f), were endorsed by both the Board of Psychology (45-day commenter 20) and the California Medical Association (45-day commenter 561 at page 17). The amendments to section 73325(a) remove the language that restricts the ordering of food required by a patient to a physician and provides that a licensed health facility may allow a licensed healthcare practitioner to issue orders that address a patient's food requirements, if it is within the scope of professional licensure of the licensed healthcare practitioner to do so. The amendment conforms the provisions of the section to those of other sections such as 72311, 73311, and 79689.

47. Comment: Commenter states that the amended regulations, sections 70703(a), (b), (d) and 71503 (a), (c), (e), violate California law requiring medical staff self governance.
Commenter: 1.5.

Department Response: The Department, in response to concerns expressed by other commenters, has agreed to remove the language added to sections 70703(b) and (d) and 71503(c) and (e) from those sections. The provisions in sections 70703(a) and 71503(a) addressing medical staff self governance have been not amended in the 15-day notice, making the comments outside the scope of the 15-day notice; therefore, the Department is not required to address them.

48. Comment: Commenter states that the amended regulations, sections 72303(c), 72315(e), 72453, 72515, 72543(a), and 72547(a),²⁷ violate federal and California law requiring physician oversight and direction of all medical care rendered in skilled nursing facilities.

Commenter: 1.6.

Department Response: The only federal laws cited by commenter are those with which licensed health facilities must comply to receive reimbursement from the Medicare and Medicaid programs. It would therefore be impossible for these regulations to violate those laws. Only licensed health facilities can fail to comply with federal requirements. Nothing in the amendments to the regulations prohibits licensed health facilities from complying with federal requirements. The amendments to sections 72303(c) and 72315(e) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the practitioners' professional licensure, even

²⁷. See footnote 3., *supra*.

though those services may also be provided by a physician. While a physician is required to admit a patient to a skilled nursing facility, the amendments to section 72453(b) remove the restriction that would prevent a facility from allowing psychologists, who might also be treating the patient, to provide services within their scopes of professional licensure; if it is within a psychologist's scope of professional licensure to deny or limit a patient's rights for good cause, the Department does not have the authority to prohibit licensed health facilities from allowing a psychologist to do so. The Board of Psychology agrees that this is within a psychologist's scope of professional licensure. Since the current wording of section 72543(a) provides that "the facility staff or any authorized officer, agent, or employee of either, or any other person authorized by law to make such request" may request that a record may be made available to them, the amendment that adds licensed healthcare practitioner, acting within the scope of his or her professional licensure, to authorized requesters does not have any effect on physician oversight of the care provided in the licensed health facility. The amendments to section 72547(a) remove language which prevents licensed health facilities from allowing practitioners, other than physicians, to provide services within their scopes of professional licensure, even if those services may also be provided by a physician. The amendment to section 72515 returns the regulation to its current state by requiring that skilled nursing facilities only admit patients on a physician's order, consistent with section 1262.7 of the Health and Safety Code. As the commenter's concern is directed to skilled nursing facilities that are certified to participate in the Medicare and/or Medicaid program as skilled nursing facilities or nursing facilities, the facilities will need to make sure they comply with the conditions of participation; again, nothing in the amendments to the regulations would require their noncompliance.

49. Comment: Commenter states that that the amended regulations, sections 73303, 73315(e), 73325(a), 73399, 73449, and 73523(c), (e)(2),²⁸ violate federal law requiring physician oversight and direction of all medical care rendered in an intermediate care facility.

Commenter: 1.7.

Department Response: The only federal laws cited by commenter are those with which facilities must comply to receive reimbursement from the Medicare and Medicaid programs. It would therefore be impossible for these regulations to violate those laws. Only licensed health facilities can fail to comply with federal requirements. Nothing in the amendments to the regulations prohibits licensed health facilities from complying with federal requirements. The amendments to section 73303 remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the licensed healthcare practitioners' professional licensure, even though those services may also be provided by a physician. The amendments to section 73315(i) remove the restrictions on licensed health facilities' ability to allow nonphysician licensed healthcare practitioners to provide services to patients, if the services are within the scopes of the practitioners' professional licensure, and to inform those licensed healthcare practitioners of changes to their patients' conditions. The amendments to section 73325(a) remove the language that restricts the ordering of food required by a patient to

²⁸. See footnote 3., *supra*.

a physician and provides that a licensed health facility may allow a licensed healthcare practitioner to issue orders that address a patient's food requirements, if it is within the scope of professional licensure of the licensed healthcare practitioner to do so. The amendment conforms the provisions of the section to those of other sections such as 72311, 73311, and 79689, and has no effect on physician oversight of patient care. The amendments to section 73399(b), which has been reworded to return the language to that contained in the 45-day filing, removes the restriction that prohibits licensed health facilities from allowing psychologists to deny a patient's rights for good cause. The Board of Psychology agrees that this is within a psychologist's scope of licensure. The amendments to section 73449(b), allow a licensed health facility to include a nonphysician licensed healthcare practitioner to participate in developing a social work service plan to the "patient's physician, the supervisor of health services and other appropriate staff." This does not have any effect on physician oversight of patient care; the amendments simply increase the possible participants in a meeting to develop a social work service plan. The amendments to section 73523(c), remove language that might be read to restrict licensed healthcare practitioners, other than physicians, if it is within the scope of their professional licensure, from determining if an intermediate care facility patient has the capacity to understand his or her rights as a patient; the amendments do not violate any laws that might require physician oversight in an intermediate care facility. The amendment to section 72523(e)(2) that removes language that might be read to restrict licensed healthcare practitioners, other than physicians, if it is within the scope of their professional licensure, from determining who will serve as the patient's representative if an intermediate care facility patient does not have the capacity to understand his or her rights as a patient, does not violate any laws that might require physician oversight in an intermediate care facility. As the commenter's concern is directed to intermediate care facilities that are certified to participate in the Medicaid program as nursing facilities, the facilities will need to make sure they comply with the conditions of participation; again, nothing in the amendments to the regulations would require their noncompliance.

50. Comment: Commenter states that the amended regulations require court approval.
Commenter: 1.8.

Department Response: As no changes to this requirement occurred in the 15-day filing, the Department is unable to make the suggested change.