

**SCOPE OF PRACTICE IN
LICENSED HEALTH FACILITIES
DPH-05-010**

PLEASE NOTE
THERE IS A CHANGE OF HEARING DATE
AND REVISED COMMENT PERIOD

**THE PUBLIC HEARING
HAS BEEN RESCHEDULED: OCTOBER 23, 2008**

**THE 45-DAY PUBLIC
COMMENT PERIOD ENDS: OCTOBER 27, 2008, AT 5 PM**

CDPH/Office of Regulations and Hearings
(916) 440-7690



MARK B HORTON, MD, MSPH
Director

State of California—Health and Human Services Agency
California Department of Public Health



ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Scope of Practice in Licensed Health Facilities, **DPH-05-010**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Public Health will conduct a public hearing commencing on October 23, 2008, at 10 a.m. in the Auditorium, 1500 Capitol Avenue, Sacramento, CA, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: 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 California Code of Regulations (CCR) Division 5. The California Department of Public Health (Department) is proposing amendments to Division 5 of the CCR to affirm the rights of a licensed health care practitioner who, acting within the scope of his or her professional licensure and as a member of the medical staff, assumes overall responsibility for the care of a patient. The proposed amendments are necessary to bring the regulations into conformance 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.

The statutory provisions being addressed by the proposed amendments are summarized as follows:

1. Health and Safety Code Section 1315 provides that dental services, as defined in the Dental Practice Act, may be provided patients in licensed health facilities. Such services shall be provided by persons licensed by the State of California pursuant to Section 1611 of the Business and Professions Code. However, this section shall not limit or restrict the right of a licensed physician and surgeon to perform any acts authorized under the Medical Practice Act.

2. Health and Safety Code Section 1316 provides that the rules of a health facility shall include provisions for the use of the facility by, and staff privileges for, duly licensed podiatrists within the scope of their respective licensure, subject to rules and regulations governing such use or privileges established by the health facility. Such rules and regulations 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... medical staff status shall include and provide for the right to pursue and practice full clinical and surgical privileges for holders of M.D., D.O., and D.P.M., degrees within the scope of their respective licensure....If a health service is offered, the facility shall not discriminate between persons holding M.D., D.O., or D.P.M. degrees who are authorized by law to perform such services.

3. Health and Safety Code Section 1316.5 provides that each health facility owned and operated by the state offering care or services within the scope of practice of a psychologist shall establish rules and medical staff by laws that included provisions for medical staff membership and clinical privileges for clinical psychologists within the scope of their licensure as psychologists...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....medical staff status shall include and provide for the right to pursue and practice full clinical privileges for holders of a doctoral degree of psychology within the scope of their respective licensure.

4. For health facilities not owned or operated by the state, Health and Safety Code Section 1316.5 provides "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 physicians and surgeons and clinical psychologists are authorized by law to perform, the service may be performed by either, without discrimination."

Additionally, the Department made punctuation, capitalization and spelling changes, remedying word omissions and the updating of the authority and reference note as non-substantive amendments.

Specifically, the sections in 22CCR Division 5 proposed for amendment are as follows:

Chapter 1. General Acute Care Hospitals. Sections 70577, 70703, 70706, 70707, 70717, 70749, 70751 and 70753.

Chapter 2. Acute Psychiatric Hospital. Sections 71203, 71205, 71503, 71507, 71517, 71545, 71551 and 71553.

Chapter 3. Skilled Nursing Facilities. Sections 72091, 72109, 72303, 72311, 72315, 72319, 72337, 72413, 72423, 72433, 72453, 72461, 72471, 72515, 72523, 72525, 72528, 72543, and 72547.

Chapter 4. Intermediate Care Facilities. Sections 73077, 73089, 73303, 73311, 73313, 73315, 73329, 73399, 73409, 73449, 73469, 73479, 73489, 73517, 73519, 73523, 73524, 73543 and 73547.

Chapter 11. Chemical Dependency Recovery Hospital Licensing Regulations. Sections 79315, and 79351.

Chapter 12. Correctional Treatment Centers. Sections 79637 and 79689.

AUTHORITY: Sections 1267.10(a), 1275, 1275.2, 100275 and 131200, Health and Safety Code.

REFERENCE: Sections 1250(j), 1250.3, 1254, 1254.2, 1255, 1260.3, 1275, 1275.2, 1276, 1285, 1315, 1316, 1316.5, 1320, 1599, 1599.1, 1599.72, 131050, 131051 and 131052, Health and Safety Code; Section 5325, Welfare and Institutions Code; *Valdivia, et al. v. Coye*, US District Court for the Eastern District of California, Case No. CIV S-90-1226; *Cobbs v. Grant* (1972) 8Cal. 3d 229.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on October 27, 2008, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations and Hearings, California Department of Public Health, MS 0507, 1501 Capitol Avenue, P.O. Box 997377, Sacramento, CA 95899-7377. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-5747; or
3. By email to regulations@cdph.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DPH -05-010" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Gina Henning, Chief Policy, Research and Enforcement Branch of Licensing and Certification, at (916) 440-7360.

All other inquiries concerning the action described in this notice may be directed to Barbara Gallaway of the Office of Regulations and Hearings at (916) 440-7689, or to the designated backup contact person, Maureen Miyamura, at (916) 440-7841.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-05-010.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations and Hearings, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations and Hearings.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@cdph.ca.gov, or write to the Office of Regulations and Hearings at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations and Hearings at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS: The Department has determined that the proposed regulations would 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.

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would not affect small business because 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.

The Department has made the initial determination that the adoption of these proposed regulations would not have a significant statewide effect on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine 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.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Barbara Gallaway, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, voice (916) 440-7689 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

DPH -05-010

Date:

8/22/08



Mark Horton, M.D., M.S.P.H.
Director