

SUPPLEMENT TO THE STATEMENT OF REASONS

This document includes information resulting from the review of the rulemaking file by the Office of Administrative Law. Bracketed, bold text contains a description and/or explanation of revisions to the text made following the review of the rulemaking file by the Office of Administrative Law.

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.

[In the amendment to paragraph (d)(2) as originally proposed, the phrase “or psychologist” was added to follow the phrase “attending psychiatrist” for the reasons as presented in the November 8, 2004 petition submitted by Psychology Shield (Attachment 2 of the Initial Statement of Reasons). In response to comments received during the 45-day public comment period, the Department proposed to replace the phrase “attending psychiatrist or psychologist” with the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.” In response to comments received during the first 15-day comment period beginning June 6, 2009, the Department has decided to eliminate any reference to any specific practitioner or any group of practitioners needing to determine whether a patient required a medical examination by deleting the phrase “as determined by the patient's attending psychiatrist” contained in the current version of the section. (The phrase, “licensed healthcare practitioner acting within the scope of his or her professional licensure” was previously eliminated.) The Department has therefore made a 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 determine the frequency of medical examinations.]

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 of the Initial Statement of Reasons.

[In the amendment to paragraph (f) as originally proposed, the phrase “or psychologist” had been added to the phrase “attending physician.” As a result of comments received in response to the 45-day notice, the Department had deleted the phrase “physician or psychologist” and replaced it with the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.” As the result of comments received in response to the first 15-day

notice, the Department has determined that the original amendment that added the phrase “or psychologist” to the phrase “attending physician” was more appropriate given the nature of the services provided in the unit.

Section 70703. Organized Medical Staff.

Subsection (a).

Subsection (a) is amended to delete the word “medical” as the care could possibly be medical, psychological, podiatric or dental. The phrase “in the hospital” is deleted as redundant. The phrase “subject to the bylaws, rules and regulations of the hospital” is deleted.

[In its original proposal, the Department had moved the phrase “subject to the by-laws, rules and regulation of the hospital” from paragraph (a)(2) and inserted it in the opening paragraph. Subsequent to the review by the Office of Administrative Law and in reconsideration of input from commenters, the Department decided that the amendment could be read as subjecting the adequacy and quality of patient care to the bylaws of the hospital and that this would violate statutory requirements that the medical staff be self governing with respect to the professional work performed in the hospital. The requirement that the Department wished to include is already present in section 70701.]

Subsection (b) and (d)

Language added to these subsections intended to provide a framework for consideration of requests for staff privileges, and a mechanism to seek relief when there is a belief that discrimination occurred based on licensure category, is deleted.

[Several commenters expressed concern that these post hearing changes were not sufficiently related to the subject matter of the rulemaking and required an additional 45-day notice. The Department defers to the commenters and is deleting the language from this rulemaking.]

Section 71503. Organized Medical Staff.

Subsection (a).

Subsection (a) is amended to delete the word “medical” as the care could possibly be medical or psychological. The phrase “in the hospital” is deleted as redundant. The phrase “subject to the bylaws, rules and regulations of the hospital” is deleted.

[In its original proposal, the Department had moved the phrase “subject to the by-laws, rules and regulation of the hospital” from paragraph (b)(2) and inserted it in the opening paragraph. Subsequent to the review by the Office of Administrative

Law and in reconsideration of input from commenters, the Department decided that the amendment could be read as subjecting the adequacy and quality of patient care to the bylaws of the hospital and that this would violate statutory requirements that the medical staff be self governing with respect to the professional work performed in the hospital. The requirement that the Department wished to include is already present in section 71501.]

Paragraph (b)(2)(A)

The word “When” is changed to “Where.”

[The non-substantive grammatical correction provides consistent language in sections 70703(a)(2)(A) and 71503(b)(2)(A).]

Subsections (c) and (e).

Language added to these subsections intended to provide a framework for consideration of requests for staff privileges, and a mechanism to seek relief when there is a belief that discrimination occurred based on licensure category, is deleted.

[Several commenters expressed concern that these post hearing changes were not sufficiently related to the subject matter of the rulemaking and required an additional 45-day notice. The Department defers to the commenters and is deleting the language from this rulemaking.]

Section 72319. Nursing Service. Restraints and Postural Supports.

Paragraph (i)(2).

In paragraph (i)(2) the phrase “or, unless the provisions of section 1180.4(e) of the Health and Safety Code apply to the patient, a psychologist” is added to follow the word “physician.”

[In its original amendment, the Department had added “, psychologist” to follow the word “physician.” Subsequent to review by the Office of Administrative Law, the Department noted that section 1180.4(e) of the Health and Safety Code prohibits the use of prone mechanical restraint on specified individuals without written authorization from a physician. The Department’s amendment to the section that authorized the use of behavioral restraints on the written order of a psychologist, in addition to a physician or other person lawfully authorized to prescribe care, could be read as permitting the application of physical restraints based upon the written order of a psychologist in all circumstances in violation of the requirements of section 1180.4(e) of the Health and Safety Code. To avoid that misunderstanding, the current amendment has been made.]

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 of the Initial Statement of Reasons.

[In the amendment to subsection (b) as originally proposed, the phrase “or psychologist” had been added to the phrase “attending physician.” As a result of comments received in response to the 45-day notice, the Department had deleted the phrase “physician or psychologist” and replaced it with the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.” As the result of comments received in response to the first 15-day notice, the Department has determined that the original amendment that added the phrase “or psychologist” to the phrase “attending physician” was more appropriate given the nature of the services provided in the unit.

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).

[In the amendment to subsection (b) as originally proposed, the phrase “or psychologist” had been added to the phrase “attending physician.” As a result of comments received in response to the 45-day notice, the Department had deleted the phrase “physician or psychologist” and replaced it with the phrase “licensed healthcare practitioner acting within the scope of his or her professional licensure.” As the result of comments received in response to the first 15-day notice, the Department has determined that the original amendment that added the phrase “or psychologist” to the phrase “attending physician” was more appropriate given the nature of the services provided in the unit.