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Director and State Public Health Officer

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



EDMUND G. BROWN JR.
Governor

July 27, 2018

SENT VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Philip R. Recht, Esq.
Mayer Brown LLP
350 South Grand Avenue
25th Floor
Los Angeles, CA 90071-1503

Dear Mr. Recht:

Thank you for your petition pursuant to section 11340.6 of the Government Code. The California Department of Public Health (CDPH) received the petition on June 28, 2018. Your petition seeks to amend sections 70701, 70703, and 70529 of Title 22 of the California Code of Regulations (CCR) regarding general acute care hospital (GACH) administration regulations. Per Government Code section 11340.7, CDPH issues the following decision on the petition.

The petition seeks to amend California Code of Regulation, title 22, division 5, chapter 1, article 7, section 70703, subdivision (a), as follows:

Each hospital shall have an organized medical staff responsible to the governing body for the adequacy and quality of the care rendered to patients.

(1) The medical staff shall be composed of physicians and, where dental or podiatric services are provided, dentists or podiatrists. The medical staff may also include certified registered nurse anesthetists...

The petition seeks to amend California Code of Regulation, title 22, division 5, chapter 1, article 7, section 70529, subdivision (b), as follows:

All physicians, dentists and podiatrists providing services in the outpatient unit shall be members of the organized medical staff. Certified registered nurse anesthetists providing services in the outpatient unit may also be members of the organized medical staff. All other health care professionals providing services in



outpatient settings shall meet the same qualifications as those professionals providing services in inpatient services.

The petition seeks to amend California Code of Regulation, title 22, division 5, chapter 1, article 7, section 70701, subdivision (a)(1), as follows:

The governing body shall:

Adopt written bylaws in accordance with legal requirements and its community responsibility which shall include but not be limited to provision for: ...

(E) Membership on the medical staff which shall be restricted to physicians, dentists, podiatrists, and clinical psychologists and certified registered nurse anesthetists competent in their respective fields, worthy in character and in professional ethics. No hospital shall discriminate with respect to employment, staff privileges or the provision of professional services against a licensed clinical psychologist within the scope of his/her licensure, or against a licensed physician and surgeon or podiatrist on the basis of whether the physician and surgeon or podiatrist holds an M.D., D.O. or D.P.M. degree, or against a certified registered nurse anesthetist on the basis of the category of license held by such practitioner.

The regulations that you seek to amend relate to the composition of the organized medical staff who are responsible to the governing body for the adequacy and quality of patient care at a GACH facility. As a result, CDPH is the agency with jurisdiction over the subject matter of your petition.

CDPH is not in a position to grant your petition as requested for the following reasons:

CDPH is currently drafting comprehensive updates to the GACH administration regulations in title 22, division 5, chapter 1, article 7 of the California Code of Regulations. This rulemaking is still in the development phase and has not yet been finalized and published for public comment. As a result, CDPH will consider the request and the background information provided therein as it continues to develop and finalize the rulemaking in progress.

In addition, CDPH received a number of petitions with similar rulemaking requests. All but one of the requests came directly from staff at one health facility. To the extent this is an isolated request, the specific type of change requested is potentially more suitable for a program flex. The licensee may choose to submit a program flex application for CDPH review in accordance with Health and Safety Code section 1276(b) and California Code of Regulations, title 22, section 70129.

As a result, CDPH must deny your petition to amend title 22 CCR section 70703. However, since your petition addresses a subject that is part of an active rulemaking, CDPH will consider the amendments requested, as well as any additional requests, as part of the existing rulemaking.

CDPH appreciates your interest in the rulemaking process. If you have any questions, you may contact me at Keith.VanWagner@cdph.ca.gov or (916) 558-1710.

Sincerely,

A handwritten signature in blue ink, appearing to read "Keith Van Wagner". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Keith Van Wagner
Assistant Chief Counsel