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VIA ELECTRONIC MAIL

Attn: Sandra Bordi, DNP, CRNA
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DENIAL OF CANA PETITION (P-23-002) TO AMEND REGULATIONS

Thank you for your petition on behalf of the California Association of Nurse Anesthesiology (CANA) requesting that the California Department of Public Health (CDPH) amend California Code of Regulations, title 22, sections 70529, subdivision (b), 70701, subdivision (a)(1)(E), and 70703, subdivision (a)(1), to expand organized medical staff membership in general acute care hospitals to include licensed independent practitioners. As set forth below, CDPH is denying the petition pursuant to Government Code section 11340.7.

Under Government Code section 11340.6, any interested person may petition a state agency to request the adoption, amendment, or repeal of a regulation. CANA submitted its petition to CDPH by a December 8, 2023 letter. (CDPH petition no. P-23-002.) CDPH received public input on this petition during the May 8, 2024 public hearing and the related public comment period.

Discussion

1. Authority

Health and Safety Code section 1275 authorizes CDPH to adopt, amend, or repeal regulations related to the licensure of general acute care hospitals. CANA seeks to amend regulations relating to the composition of the organized medical staff at general acute care hospitals. As a result, CDPH has jurisdiction over the petition's subject matter.

2. Petitioner's Request

CANA requests that CDPH amend the below regulations to expand organized medical staff membership to include licensed independent practitioners, as follows:

a. Section 70529, subd. (b)

All physicians, dentists, and podiatrists, **and licensed independent practitioners competent in their respective fields and worthy in professional ethics**, providing services in the outpatient unit shall 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.

b. Section 70701, subd. (a)(1)(E)

Membership on the medical staff which shall be restricted to physicians, dentists, podiatrists, and clinical psychologists, **and licensed independent practitioners** 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 non-physician practitioner on the basis of the category of license or certification held by such practitioner**. Wherever staffing requirements for a service mandate that the physician responsible for the service be certified or eligible for certification by an appropriate American medical board, such position may be filled by an osteopathic physician who is certified or eligible for certification by the equivalent appropriate American Osteopathic Board.

c. Section 70703, subd. (a)(1)

The medical staff shall be composed of physicians, **independent licensed practitioners**, and, where dental or podiatric services are provided, dentists or podiatrists.

The petition asserts several statutory and policy arguments. First, the petition states that Business and Professions Code (BPC) sections 2282, subdivision (b), and 2283, subdivision (a), give hospitals the flexibility to determine the composition of, and to include non-physicians on, their medical staff. The petition claims the identified regulations are no longer consistent with statute due to Assembly Bill 890¹ (AB 890) and its changes to the BPC as reflected in BPC sections 650.01, 805, 805.5, and 2837.103. As a result, the petition argues, these conflicts render the regulations void and unenforceable under Government Code section 11342.2.

The petition also states that at the federal level, the Centers for Medicare and Medicaid Services (CMS) has promulgated policy statements that support medical staff privileges

¹ (Assem. Bill No. 890, approved by Governor, September 29, 2020 (2019-2020 Reg. Sess.).)

for non-physician practitioners. Finally, the petition asserts that the requested regulatory changes are necessary to ensure the medical staff benefit from the expertise and experience of non-physician practitioners, especially in the case of Certified Registered Nurse Anesthetists (CRNAs), who may be the only anesthesia provider at some rural health facilities.

3. Bases for Denial

CDPH recognizes the importance and complexity of the issues CANA raised and the information CANA, other interested parties, and the public have presented. Additionally, CDPH acknowledges that it may need to revise certain title 22 medical staffing regulations to align with AB 890.

The petition's specific proposed regulatory language changes are not, however, consistent with AB 890's statutory updates to the BPC. BPC sections 2837.103 and 2837.104 establish a new certification process for nurse practitioners (NPs) that satisfy certain experience, training, and other requirements. These BPC sections also specifically enumerate medical staffing eligibility rights for the NPs who satisfy this new certification process.

Contrary to the specific and targeted medical staffing provisions in BPC sections 2837.103 and 2837.104, the petition's proposed language would extend medical staff privileges to all independent licensed practitioners, directly undermining the legislative intent in AB 890 to restrict medical staffing eligibility to those select nurse practitioners certified for meeting elevated experience, training, and other requirements. As such, CDPH lacks authority to amend the medical staffing regulations as CANA requests to expand beyond what the Legislature has enacted.

Accordingly, CDPH denies the petition's specific language requests to expand staff privileges to include independent licensed practitioners. CDPH will determine whether it needs to amend its medical staff regulations to conform with the BPC statutory updates discussed above. In doing so, CDPH will consider the overall concerns raised in your petition, as well as any additional input of stakeholders during the rulemaking process set forth under the Administrative Procedure Act (Chapter 3.5 of the Government Code, section 11340 et seq.).

Availability of the Petition

Under Government Code section 11340.7, subdivision (d), any interested person has the right to obtain a copy of the petition submitted to the agency. Copies of this petition for regulatory action are available at the CDPH Office of Regulations website at: https://www.cdph.ca.gov/Programs/OLS/Pages/Petitions_for_Regulatory_Action.aspx. A copy of this decision will be posted on this same web page.

Interested persons may also request a copy of the petition by contacting the CDPH Office of Regulations by email: regulations@cdph.ca.gov, by phone: (916) 558-1710, or by mail: California Department of Public Health, 1415 L Street, Suite 500, Sacramento, CA 95814. When submitting such a request, please reference Petition P-23-002.

CDPH Contact Person

CDPH appreciates your interest in the rulemaking process. If you have any questions, please contact me by email: keith.vanwagner@cdph.ca.gov, by phone: (916) 558-1710, or by mail: California Department of Public Health, 1415 L Street, Suite 500, Sacramento, CA 95814.

Sincerely,

Keith Van Wagner

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