

## SUPPLEMENT TO THE FINAL 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. The Final Statement of Reasons as included in the rulemaking file, OAL File No. 2009-0827-02S, remains accurate except for the following statements.

### **Section 70055. Personnel.**

#### **Proposed non-substantive amendment.**

The authority and reference note is updated, and corrections are made to the striking out and underlining of text.

### **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 70707. Patients' Rights.**

### **Proposed non-substantive amendment.**

The authority note is updated, and corrections are made to the striking out and underlining of text.

## **Section 71053. Personnel.**

### **Proposed non-substantive amendment.**

The reference note is updated, and corrections are made to the striking out and underlining of text.

## **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 bylaws, 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.]**

## **Section 79637. Nursing Service – Patient Care.**

### **Proposed non-substantive amendment.**

In paragraph (e)(6) a typographical error is corrected changing “contract” to “contact,” and the word “contact” is underlined.

ADDENDUM V  
List of Commenters  
Second 15-Day Availability

DPH-05-010  
1/2/2010

NAME	POSITION TITLE	ORGANIZATION	ADDRESS	EMAIL	COMMENT & LETTER #	COMMENT
Leah Rosenthal	Ph.D., CEAP		1950 Franklin Street, 4th Floor Oakland, CA 94612	<a href="mailto:Leah.Rosenthal@kp.org">Leah.Rosenthal@kp.org</a>	1	John Rosenthal
John Lang	Ph.D.		4200 18th Street, Suite 104 San Francisco, CA 94114	<a href="mailto:drjohnlang@um.att.com">drjohnlang@um.att.com</a>	2	
Majid Yasaie	Ph.D.			<a href="mailto:dryasaie@gmail.com">dryasaie@gmail.com</a>	3	
Bill Safarjan	Ph.D.	Psychology Shield	5100 Cascabel Road Atascadero, CA 93422	<a href="mailto:bsafarjan@tcsn.net">bsafarjan@tcsn.net</a>	4	Received this letter twice
John R. Faull	Ph.D.		1462 Meridian Avenue San Jose, CA 95125	<a href="mailto:j.faull@comcast.net">j.faull@comcast.net</a>	5	
Maureen Testoni, JD	Senior Director, Legal and Regulatory Affairs Practice Directorate	American Psychological Association	750 First Street, NE Washington, DC 20002	<a href="mailto:matestoni@comcast.net">matestoni@comcast.net</a>	6	
David R. Nielsen	M.D.	American Academy of Otolaryngology - Head and Neck Surgery	1650 Diagonal Road Alexandria, VA 22314		7	
William J. Koenig		Koenig Caprile & Berk	1520 River Park Drive Sacramento, CA 95815	Phone: (916) 568-3288 Fax: (916) 568-3292	8	
Astrid G. Meghrigian	California Medical Association Legal Counsel	California Medical Association	1201 J Street, Suite 200 Sacramento, CA 95814	Phone: (916) 444-5532	9	
Jennifer Orthwein	Ph.D., J.D.		3832 21st Street San Francisco, CA 94114	<a href="mailto:jorthwei@dmhvsh.state.ca.us">jorthwei@dmhvsh.state.ca.us</a>	10	
Jody Rawles	Associate Professor Director of Hospital Services	Department of Psychiatry and Human Behavior	UCI Medical Center Zot 1680 101 The City Drive South Orange, CA 92868	<a href="mailto:jrawles@uci.edu">jrawles@uci.edu</a>	11	
Charles A. Faltz	Ph.D.	California Psychological Association	3615 Evergreen Drive Palo Alto, CA 94303	<a href="mailto:cpadpa@pacbell.net">cpadpa@pacbell.net</a>	12	
Victor Pacheco	Psy.D. Chair, Department of Psychology	California Medical Facility in Vacaville, CA		<a href="mailto:vmpac@sbcglobal.net">vmpac@sbcglobal.net</a>	13	
Daniel H. Willick			1875 Century Park East, Ste. 1600 Los Angeles, CA 90067	<a href="mailto:dwillick@sbcglobal.net">dwillick@sbcglobal.net</a>	14	

**Addendum VI**  
**Second 15-Day Availability of Post-Hearing Changes**  
**Summary of and Responses to Comments**

**1. Comment:** Commenter suggests that section 70703 be amended to include a reference to the psychologist practitioner's doctoral degree, as the section lists other equivalent degrees.

**Commenter:** 1.

**Department Response:** Section 1316.5(d) of the Health and Safety Code specifies the requirements for a clinical psychologist practicing in an acute care hospital. In addition to a doctoral degree, the practitioner also needs two years of experience practicing in another setting. The degree requirement is already included in the definition, and to place it in the section would be redundant.

**2. Comment:** Commenters suggest that the term "licensed healthcare practitioner" be replaced in sections 70577(j)(2), 70577(k)(2), and 72319(b).

**Commenters:** 2.1, 3.1.

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

**3. Comment:** Commenters state that the addition of the reference to section 1180.4(e) of the Health and Safety Code in section 72319(i)(2), will make implementation of the provision's requirements in State facilities with combined Department of Mental Health and Department of Corrections medical staffs difficult.

**Commenters:** 2.2, 3.2.

**Department Response:** As the need to comply with the statute exists even without a regulatory reference to it, compliance with its provisions should already occur in those institutions. The reference is included in the regulation to ensure that facilities understand that even though it is within the scope of licensure of a psychologist to order the application of restraints, under certain circumstances a psychologist may not order restraints.

**4. Comment:** Commenters suggest that the language on recourse and enforcement should not have been deleted from sections 70703(b) and (d), and 71503(c) and (e).

**Commenters:** 2.3, 3.3, 5.3, 5.4, 5.6, 6.2.

**Department Response:** The Department had determined, after reviewing comments from other commenters during the first 15-day availability of 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. The Department believes that the suggested change should be deferred to a later rulemaking for reconsideration.

**5. Comment:** Commenters state that the Department should amend the language in sections 70703(a)(2)(A) and 71503(b)(2)(A) to require that facilities owned and operated by the State grant psychologists full clinical privileges as required by section 1316.5(b) of the Health and Safety Code.

**Commenters:** 4, 6.3.

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

**6. Comment:** Commenter believes the amendments to sections 70577(f), 72453(b), and 73399(b) are appropriate changes to the proposed regulations.

**Commenter:** 5.1, 5.7, 5.8.

**Department Response:** The Department appreciates the commenter's agreement.

**7. Comment:** Commenter states that the language of section 70577(k) should be amended to use language from the Welfare and Institutions Code.

**Commenter:** 5.2.

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

**8. Comment:** Commenters suggest that the Authority and Reference note to section 70703 be amended to include sections 1290, 1293 and 1294 of the Health and Safety Code.

**Commenters:** 5.5, 10.4.

**Department Response:** The statutes cited do not directly address the Department's obligation to develop regulations, and as the Department can rely on section 131200 for authority, the Department is unlikely to use the cited statutes as a basis for authority. As the regulations being amended with this rulemaking pertain to requirements to which the facilities shall adhere to be and remain licensed rather than the licensure, enforcement and penalty processes, the Department believes that the statutes cited are not being made specific; therefore, it is not necessary to add the cited statutes to the list of referenced statutes.

**9. Comment:** Commenter suggests that section 72453 be amended to remove the phrase "licensed health care practitioner" and replace it with "physician or psychologist."

**Commenter:** 6.1.

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

**10. Comment:** Commenter suggests that the amendments to sections 72423 and 73479 be deleted.

**Commenter:** 7.

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

**11. Comment:** Commenter believes that the amendments to sections 70703(a), 71503(a), and 72319 are appropriate.

**Commenter:** 8.1.

**Department Response:** The Department appreciates the commenter's agreement.

**12. Comment:** Commenters state that the Department should not have removed the amendments it had made to sections 70703(b) and 71503(c) after the first 15-day availability of changes.

**Commenters:** 8.2, 10.2, 12.2, 13.1.

**Department Response:** The Department had determined, after reviewing comments from other commenters during the first 15-day availability of 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. The language was therefore not included in the documents the Department submitted to the Office of Administrative Law. Additionally, other commenters at that time had also expressed concerns that the language added by the Department intended to aid the Department in enforcing the provisions of section 1316.5 of the Health and Safety Code placed an obligation on medical staffs with which they might not be able to comply for reasons other than compliance with 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.

**13. Comment:** Commenters state that the Department should not have removed the amendments it had made to sections 70703(d) and 71503(e) after the first 15-day availability of changes.

**Commenters:** 10.3, 13.1.

**Department Response:** The Department had determined, after reviewing comments from other commenters during the first 15-day availability of 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. The language was therefore not included in the documents the Department submitted to the Office of Administrative Law. Additionally, other commenters at that time had also expressed concerns that the language added by the Department intended to aid the Department in enforcing the provisions of section 1316.5 of the Health and Safety Code placed an obligation on medical staffs with which they might not be able to comply for reasons other than compliance with 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.

**14. Comment:** Commenter requests that a sentence be added to the end of sections 70703(d) and 71503(e) that would provide for a fair hearing for practitioners if the medical staff did not comply with the provisions of the language that commenter had asked the Department to add to those sections.

**Commenter:** 8.3.

**Department Response:** The Department has not added the language proposed by commenter and the substance of the suggested language is not sufficiently related to those changes to the regulations as originally noticed to warrant their addition to the filing with only a 15-day notice period.

**15. Comment:** Commenters state that the Department should eliminate the phrase “licensed healthcare practitioner” from this filing, and instead make reference to the appropriate category of licensees specified in the Health and Safety Code.

**Commenters:** 8.4, 12.3.

**Department Response:** The Department has replaced the phrase “licensed healthcare practitioner” in those sections in which the Department believed the specification of particular categories of licensees was appropriate, based on the services provided and the assurance from the licensees’ licensing boards that the procedure was within the licensees’ scopes of practice. The Department believes that the use of the phrase “licensed healthcare practitioner” is appropriate in those sections where more than one category of licensees may perform the procedures, but where any additional specification of the category could result in the Department possibly limiting the scope of licensure of other licensees.

**16. Comment:** Commenters state that the Department needs to restart the regulatory process required to adopt these regulations in its entirety as the Department has not complied with the requirement of section 11346.4(b) of the Government Code to “complete” the adoption of the regulation within one year from the date of the notice of proposed rulemaking, September 5, 2008.

**Commenters:** 9.1, 14.1.

**Department Response:** Section 11346.4(b) of the Government Code requires that the adoption, amendment, or repeal of a regulation proposed in the Department’s notice be completed and transmitted to the Office of Administrative Law within one year from the date of the notice. As commenter notes, the applicable date was September 5, 2008. The Department complied with this requirement by completing the adoption of this filing and transmitting it to the Office of Administrative Law on August 27, 2009. On October 14, 2009, the Department received the notice of disapproval from the Office of Administrative Law which provided the Department with The 120 Day Opportunity For Revisions to correct the deficiencies identified by the Office of Administrative Law, as specified in section 11349.4(a) of the Government Code.

**17. Comment:** Commenter states that the Department has proposed to allow non-physicians to perform activities that are strictly medical in nature.

**Commenter:** 9.2.

**Department Response:** The Department has not proposed to allow any practitioner to perform any procedure. The Department is amending language in the regulations to remove language that restricts health facilities from allowing practitioners to provide services within their scopes of licensure.

**18. Comment:** Commenter states that the amendment to section 70577(d)(2) that allows the medical needs of the patient to determine when a medical examination should be performed, rather than leaving the determination to the patient’s attending psychiatrist, violates the clarity standard of the Administrative Procedure Act.

**Commenter:** 9.3.

**Department Response:** The Department does not believe that requiring medical examination of patients when the patients’ conditions require it, rather than when a specific practitioner determines an examination should be conducted is unclear. The Department believes that it is consistent with Health and Safety Code Section 1316.5 to eliminate a restriction that could adversely affect the ability of facilities to allow healthcare practitioners to practice within the scope of their licensure (see # 31).

**19. Comment:** Commenter asks why the Department rescinded the amendment it had made to sections 70577(f), 72453(b), and 73399(b) that substituted the phrase “licensed health care practitioner acting within the scope of his or her professional licensure” for the phrase contained in the original filing, “physician or psychologist,” and returned to the original amended language.

**Commenter:** 9.4.

**Department Response:** The Department’s original phrasing, “physician or psychologist,” was used as that is the language that had been proposed by Psychology Shield in its Petition for Amendment of Regulations, and that had been granted by the Department. In response to

comments received for the 45-day notice, the Department had amended the language to the more generic phrase. In response to additional comments received for the first 15-day filing, the Department determined that the that the original amendment, proposed in response to the Psychology Shield petition, that added the phrase “or psychologist” to the phrase “attending physician” was more appropriate given the nature of the services provided on the unit, and therefore returned to the original language contained in the granted petition.

**20. Comment:** Commenter agrees with the proposed revisions to section 70703 and 71503.

**Commenter:** 9.5.

**Department Response:** The Department appreciates the commenter’s agreement.

**21. Comment:** Commenter states that even with the addition of the language referencing the requirements of section 1180.4(e) of the Health and Safety Code to section 72319(i)(2), the section violates California and federal law

**Commenter:** 9.6.

**Department Response:** As the Department has been informed that ordering restraints is within the scope of licensure of a psychologist, the Department is not able to identify what provisions of the section might violate California law. If the provisions of the section remove any restrictions on facilities’ ability to permit practitioners to provide services within the scope of their licensure, but the providing of these services might conflict with the requirements with which facilities must comply to participate in the Medicare and/ Medicaid program, the Department expects that facilities will act in a way that assures they maintain compliance with the conditions of participation.

**22. Comment:** Commenter suggests that the Department should abandon the proposals to amend the regulations contained in this filing.

**Commenter:** 9.7.

**Department Response:** The Department cannot agree with commenter’s suggestion, as to do so would continue to leave illegal restrictions on health care practitioners’ scopes of licensure in the Department’s regulations, and would eliminate the amendments to the regulations required to bring to an end medical staffs’ illegal discrimination against psychologists.

**23. Comment:** Commenter believes that the changes to section 70577(f), 70703(a), 71503(a), 72453(b), and 73399(b) are appropriate.

**Commenter:** 10.1.

**Department Response:** The Department appreciates the commenter’s agreement.

**24. Comment:** Commenter expresses concerns about the provisions of section 70577(e).

**Commenter:** 11.

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

**25. Comment:** Commenter states that the Department should not have deleted language in sections 70703(b) and 71503(c) that would have required medical staffs to award all clinical privileges that are within the scope of practice of each category of licensee represented on the medical staff to those licensees.

**Commenter:** 12.1.

**Department Response:** Commenter notes in the discussion of the issue that the statute, section 1316.5(a)(2) of the Health and Safety Code, only requires the award of full clinical privileges to clinical psychologists on the medical staffs of state-owned institutions.

Commenter suggests that rather than deleting the language the Department should amend the language to repeat the statute's requirements. As the provisions of section 1316.5 of the Health and Safety Code are already referenced in the section, the Department does not believe it necessary to repeat this additional statutory text within the regulation section.

**26. Comment:** Commenter expresses concern about the wording of section 70577(d)(1).

**Commenter:** 13.2.

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

**27. Comment:** Commenter expresses concern about the permissive nature of the language in section 70703(a)(2)(B) that does not require that psychologists be appointed to the medical staffs in non state-owned facilities.

**Commenter:** 13.3.

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

**28. Comment:** Commenter expresses concern about the addition of the language, "[t]he medical staff shall abide by and establish a means of enforcement of its by-laws," to section 70703(b).

**Commenter:** 13.4.

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

**29. Comment:** Commenter states that the Department failed to respond to comments submitted by other State agencies.

**Commenter:** 14.2.

**Department Response:** The responses to the concerns expressed by the comments from those agencies are contained in Addenda II and IV.

**30. 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:** 14.3.

**Department Response:** The Department believes that the elimination of the requirement that the attending psychiatrist, rather than the needs of the patient, determines when a medical examination of the patient is required is sufficiently related to the subject matter of the rulemaking as it eliminates a restriction that could adversely affect the ability of facilities to allow healthcare practitioners to practice within the scope of their licensure.

**31. Comment:** Commenter states that the amendments to sections 73301(f), 73303(b), 73315(i), 73325(a), 73449(b), 73523(c), and 73523(e) are not sufficiently related to the

subject matter of the rulemaking. Commenter states that a 45-day public notice period was required.

**Commenter:** 14.4.

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

**32. Comment:** Commenter states that sections 70577(d)(1) [referred to by commenter as 70577(d)], 70577(e), 70577(j)(2), 70577(k), 70703(f), 70707, 70707(b)(3), 70717(c),(f)(2), 70749(a)(1)(K), 70751(a)(1), 70753, 71203(a)(3), 71503(g), 71507(b), 71517(b),(e), 71545(b), 71551, 71551(h), 71553, 72109, 72303(c), 72311, 72311(a)(3), 72311(b), 72311(c), 72315(e), 72319, 72319(b), 72319(k), 72337, 72413, 72423, 72433, 72433(b), 72461, 72461(a), 72471, 72515, 72523, 72525(c)(1), 72528, 72543, 72543(a), 72547(a), 73077(a), 73301(f) , 73303, 73311, 73313(j), 73315, 73315(a), 73315(e), 73315(g), 73315(h), 73315(i), 73325(a), 73329, 73409(a), 73449, 73449(b) , 73469, 73479, 73489, 73517, 73519, 73519(b), 73519(f), 73519(g), 73523(c), 73523(e)(2), 73524, 73543, 73543(a), 73547(a), 73547(a)(11), 79315(c), 79637, and 79689, violate a number of State and federal laws for a variety of reasons.

**Commenter:** 14.5.

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

**33. Comment:** Commenter states that the amendments to sections 70577(d)(2), 70577(f), 72319(i)(2), 72453(b), and 73399(b) violate State and federal requirements for the operation of emergency rooms and the provisions of emergency care by hospitals.

**Commenter:** 14.6.

**Department Response:** As none of the regulations in this filing address emergency rooms or the provision of emergency services by General Acute Care Hospitals, the only facilities that have emergency rooms or provide emergency services, the Department must reject the commenter's contention.

**34. Comment:** Commenter states that the amendments to section 70577(d)(2) violate State scope of practice laws and federal requirements for the treatment of Medicare and Medicaid patients by arguably allowing psychologists to direct or perform medical examinations.

**Commenter:** 14.7.

**Department Response:** The amendments to section 70577(d)(2) only remove the restriction on the person responsible for determining whether a patient in an acute care hospital's psychiatric unit requires a medical exam. The amendments do not allow or authorize any practitioner to take any action or perform any procedure, so they cannot violate the laws cited by commenter. Additionally, the Department must note, as it applies to this comment as well as any others that contend that the regulations violate federal law, 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 prohibits facilities from complying with federal requirements.

**35. Comment:** Commenter states that the amendments to section 70577(f) violate State scope of practice laws and federal requirements for the treatment of Medicare and Medicaid patients by allowing psychologists to admit, transfer, and discharge patients; to act as attending practitioners; and, to have primary responsibility for coordinating patient care.

**Commenter:** 14.8.

**Department Response:** The only change that the amendments to the regulations make to section 70577(f) is to remove the restriction that would not permit facilities to allow psychologists to request the rendering of social services by social workers. Section 70577(f) and the amendments to section 70577(f) do not address admissions, transfer, discharge or attending privileges or the primary responsibility for coordinating patient care.

**36. Comment:** Commenter states that the amendments to section 72319(i)(2) violate State law and federal requirements for the treatment of Medicare and Medicaid patients by allowing psychologists to coordinate care; by allowing psychologists to order the restraint of patients without physician involvement; and, by not requiring that physicians have primary oversight of patients in a skilled nursing facility.

**Commenter:** 14.9.

**Department Response:** The only change to section 72319(i)(2) being noticed at this time is the addition of the reference to Health and Safety Code section 1180.4(e) to ensure that facilities understand that even though it may be within the scope of licensure of a psychologist to order the application of restraints, under certain circumstances a psychologist may not order restraints. The amendments to section 72319(i)(2) do not address the coordination of patient care, do not in any manner eliminate statutory restrictions on the restraint of patients, and do not eliminate the statutory requirement that skilled nursing facilities may only admit patients on the orders of a physician.

**37. Comment:** Commenter states that the amendments to section 72453(b) violate State scope of practice laws and federal requirements for the treatment of Medicare and Medicaid patients by allowing psychologists to act as attending practitioners and by not requiring that physicians have primary oversight of patients in a skilled nursing facility.

**Commenter:** 14.10.

**Department Response:** The only change that the amendments to the regulations make to section 72453(b) is to remove the restriction that would not permit facilities to allow psychologists, if a psychologist was the attending practitioner of a patient in a special treatment program service unit in a skilled nursing facility, to deny a patient certain of his or her rights for good cause. The amendments do not address Medicare or Medicaid participation and do not eliminate the statutory requirement that skilled nursing facilities may only admit patients on the orders of a physician.

**38. Comment:** Commenter states that the amendments to section 73399(b) violate State scope of practice laws and federal requirements for the treatment of Medicaid patients by allowing psychologists to act as attending practitioners and by not requiring that physicians have primary oversight of patients in an intermediate care facility.

**Commenter:** 14.11.

**Department Response:** The only change that the amendments to the regulations make to section 73399(b) is to remove the restriction that would not permit facilities to allow psychologists, if a psychologist was the attending practitioner of a patient in a special

disability program in an intermediate care facility, to deny a patient certain of his or her rights for good cause. The amendments do not address Medicare or Medicaid participation requirements.

**39. Comment:** Commenter states that the proposed regulations require approval of the courts that oversee inpatient care for the mentally ill.

**Commenter:** 14.12.

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