



**California State Board of Pharmacy**

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

**To: Board Members**

**Subject: Agenda Item X - Formation of a Committee to Hear Petitions for Reduction of Penalty Pursuant to Business and Professions Code section 4309(c)**

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Relevant Statutes

Business and Professions Code Section 4309 sets forth the requirements for a person whose license has been disciplined by the board to petition the board for reinstatement of a revoked license or to petition the board for a modification of penalty, including early termination of the probationer period. Further subdivision(c) of this section allows for a petition to be heard in three ways:

1. Board members sitting with an administrative law judge
2. A committee of the board sitting with an administrative law judge
3. The board may assign the petition to an administrative law judge

Background

Currently, petitions hearings are held in conjunction with board meetings and are presided over by an administrative law judge. There are many times when petitioners must wait several board meetings before having their petitions heard because of other board business. When possible the board typically dedicates about four to five hours each meeting for this purpose.

During its January 2014 Board Meeting, the board considered a recommendation to change its policy to have petitioners heard by a committee of the board sitting with an administrative law judge. At that time the board did not approve the change. Members noted their preference was to continue to have the full board hear petitioner request and indicated their preference to schedule additional meetings to hear petitions.

Since that time the board has heard 16 petitioner requests, 14 of which were heard during special board meetings. The board will be hearing an additional three petitioners during this meeting as well. Despite these additional meetings, the board currently has 12 petition requests pending.

Recommendation

The board president is recommending a change in the board's policy to allow for more timely consideration of petitioners. There are three options provided below for consideration and discussion.

**Option 1:** It is the board's policy that, for purposes of hearing petitions for reinstatement of a license or petitions for reduction of penalty, including modification or termination of probation, a third day shall be added to all quarterly board meetings which shall be used for this purpose. Board members available shall attend the additional day and the hearings will be presided over by an administrative law judge. A quorum of the board will not be required to hear petitions, however all board members will have the opportunity to vote on the decision made when a quorum of the board is not present.

**Option 2:** It is the board's policy that, for purposes of hearing petitions for reinstatement of a license or petitions for reduction of penalty, including modification or termination of probation, a third day shall be added to all quarterly board meetings which shall be used for this purpose. Board members available shall attend the additional day and the hearings will be presided over by an administrative law judge. A quorum of the board will be required to hear petitions.

**Option 3:** It is the board's policy that, for purposes of hearing petitions for reinstatement of a license or petitions for reduction of penalty, including modification or termination of probation, board meeting shall occur every two months to accommodate petitioner requests.

Attached is a copy of Business and Professions Code Section 4309 as well as an excerpt from the January 2014 Board Meeting.

# **Attachment 1**

**4309. Petition for Reinstatement, etc. of Disciplined License: Time for Filing; Contents; Investigation; Hearing; Factors to be Considered; Effect of Ongoing Criminal Sentence, Accusation, or Petition to Revoke Probation**

(a) A person whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a revoked license.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board sitting with an administrative law judge, or a committee of the board sitting with an administrative law judge, or the board may assign the petition to an administrative law judge. Where the petition is heard by a committee of the board sitting with an administrative law judge or by an administrative law judge sitting alone, the decision shall be subject to review by the board pursuant to Section 11517 of the Government Code.

(d) In considering reinstatement or modification of penalty, the board, committee of the board, or the administrative law judge hearing the petition may consider factors including, but not limited to, all of the following:

(1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability.

(e) The hearing may be continued from time to time as the board, committee of the board, or the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The board, committee of the board, or administrative law judge may impose necessary terms and conditions on the licensee in reinstating the license.

(g) No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) Nothing in this section shall be deemed to amend or otherwise change the effect or application of Sections 822 and 823.

(i) The board may investigate any and all matters pertaining to the petition and documents submitted with or in connection with the application.

# **Attachment 2**

## Excerpt of January 29-30, 2014 Board Meeting Minutes

### **c. Discussion and Possible Action on Recommendation for Board Policy to Delegate Hearing of Petitions for Reinstatement of a License and Petitions for Modification of Penalty to a Committee of the Board**

President Weisser provided an overview of how the board currently handles petitions for license reinstatement and modification of penalties. Currently petitioners have to wait many months to be heard due to the board's full schedule. President Weisser proposed two options. The first option is to have an administrative law judge hear the petitioners without board members present. The second option is for the board to create a committee to review (with an administrative law judge) petitions and make recommendations to the full board for the board to ratify.

Mr. Brooks expressed his concern that the committee structure would not actually streamline the process as the committee's recommendation would still have to be ratified by the board.

Mr. Santiago noted that using the committee structure would actually lengthen the process time required to make corrections to the decisions. Mr. Room noted that a few years ago the board had more problems with errors in the decisions, they have since changed the procedures and have had fewer errors.

Mr. Room noted that he sees more quality decisions come from administrative law judges when they sit with the full board rather than conducting the hearing alone. President Weisser agreed and expressed his preference to have the judge sit with the committee to hear petitioners.

Ms. Sodergren provided that there are currently about 15 petitioners waiting to be heard by the board. Currently the board hears two to three petitioners per board meeting.

Ms. Veale said that she feels that a committee structure could be advantageous as they could have set meeting dates to allow staff to schedule petitioners as they make requests to seek modification. Ms. Veale added that using a committee may also help add consistency in the decisions.

Mr. Brooks expressed that he would not support the use of the committee structure as he feels the full board has such diverse backgrounds and experience it adds value to the decision making process. Mr. Brooks recommended that extra full board meetings be conducted to handle petitioners.

Dr. Law commented that perhaps simple cases could be brought before the committee and more complex cases could come before the full board for consideration.

Mr. Brooks and Mr. Lippe commented that the current petition process allows for the board to judge the character of the petitioner in a face to face forum.

Mr. Room responded that he was not aware of any boards that used a committee structure for petitions and reinstatements.

Dr. Wong commented that he would like to see the full board schedule additional meetings to hear petitioners.

Steve Gray, individual, commented that he would like to make sure that the committee meetings would be public meetings. Mr. Room confirmed that if two or more board members are present in a meeting it is required to be public. President Weisser added that the purpose of creating a committee is to reduce processing time not to hinder the board's transparency in any way.

Mr. Room added that the Registered Nursing Board schedules 9-12 petitioners for each of their board meetings.

**Motion:** Create the committee and evaluate the efficiency of the committee process after one year (or sooner if problems become apparent).

M/S: Veale/Gutierrez

Support: 0 Oppose: 10 Abstain: 0