



california pharmacists association

October 26, 2020

Maria Serpa, PharmD
Chair, Enforcement and Compounding Committee
Board of Pharmacy
2720 Gateway Oaks Blvd, Ste. 100
Sacramento, CA 95833

Dear Chair Serpa,

On behalf of the California Pharmacists Association (CPhA), I would like to submit some comments addressing agenda item VII on the topic of the creation of an 'alternate disciplinary process' which will be considered at the Enforcement and Compounding Committee Meeting on October 27, 2020.

CPhA would like to thank you for placing this item on the agenda. CPhA has been advocating for the creation of an alternate disciplinary process for over a year now and proposed this initial idea back during the March 14, 2019 Enforcement Committee meeting through the initial idea of a "Pharmacy Advisory Committee". During that meeting, the Committee was not willing to create that new committee but did mention the idea of exploring an alternative option to the current disciplinary process. The Board submitted a statutory proposal to add Section 4300.2 to the Business and Professions Code. CPhA responded to that proposal in a letter dated July 12, 2019, by modifying certain elements of the proposal to eliminate a presumption of guilt by a licensee. This discussion turned out to produce an acceptable agreement in concept that was to be made official at the January 29, 2020 Board meeting. However, during that meeting, former Enforcement Chair Allen Schaad and CPhA were under the understanding that there would be some opportunity to allow licensees to provide mitigating evidence in response to an accusation by the Board and to address the issue then. However, Board Counsel at the time stated that was not the case. As a result, this was to be further worked on by the Committee.

In the meeting materials, the memo from Board Counsel Eileen Smiley to Chair Serpa reflects the same issues that created the confusion at the January meeting:

- This proposal presumes a licensee's guilt as a precursor to participation in this process. The intended purpose of the alternate disciplinary model that CPhA has been advocating for was to allow licensees, who have mitigating evidence that supports no wrongdoing, an opportunity to provide that evidence to the Board. By requiring the licensee to agree to a stipulated agreement in advance of consideration of mitigating evidence, there is no benefit to the licensee to take this route other than saved time. This proposal should reflect a licensee's ability to present this mitigating evidence in advance of any stipulated agreement and independent of any findings of violations by Board staff.
- The proposal requires a licensee to "waive the administrative adjudication provisions of the Administration Procedures Act (APA)." CPhA does not support a blanket waiver of any rights afforded to licensees because they chose this alternate route. CPhA believes that it's appropriate to provisionally waive these

rights, as a condition of expediting the process of this alternate disciplinary route. However, if the licensee is unable to obtain an approved settlement, they should still be able to retain their rights under the Administrative Procedures Act when going through the traditional disciplinary process. This proposal does not reflect that, therefore, CPhA respectfully requests clarification.

- CPhA agrees that the Board should retain full authority to accept or reject a settlement that is presented. However, it should also have the authority to request modifications to the agreement if the Board deems necessary to do so. The current proposal only gives the Board the option to accept or reject and subsequently the Executive Officer to refer to the Attorney General. CPhA would request suggested changes in this proposal to allow the Board to request a modification to the agreement if necessary, maintaining their involvement in the disciplinary process. (Noted in our July 12 letter),
- CPhA would like to reiterate that any settlement which results in disciplinary action by the Board will be consistent with the Board's Disciplinary Guidelines. This allows any settlement which may result in non-disciplinary action (e.g. a cite/fine, letter of admonishment, etc) to not have to be subject to the Disciplinary Guidelines. (Noted in our July 12 letter),

Our members appreciate the potential opportunity to address an alleged serious disciplinary issue in a way that allows for board member involvement before going through the onerous process of the legal system. CPhA believes that our requested changes to this proposal will not only speed up disciplinary cases, but will also save the licensee and the Board time and money and provide a fairer occasion to provide mitigating evidence, if applicable. Many other states, including Arizona, Texas, Florida, Maryland, Washington and others, provide for their board members to be involved in the disciplinary process. This has statistically led to fewer cases being heard by an administrative law judge (ALJ), and quicker resolutions.

Again, CPhA is pleased to see the direction this proposal is going towards and we thank the Board and its staff for the work done on this. Should you have any questions about these suggested changes, please feel free to contact me at (916) 779-4519 or at dmartinez@cpha.com.

Thank you for your consideration of our comments.

Sincerely,



Danny Martinez
Government Relations and External Affairs Manager
California Pharmacists Association.