



California State Board of Pharmacy
2720 Gateway Oaks Drive, Ste 100
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www.pharmacy.ca.gov

Business, Consumer Services and Housing Agency
Department of Consumer Affairs
Gavin Newsom, Governor



To: Board Members

Subject: Agenda Item IV. Discussion, Consideration and Possible Action Related to Temporary License for Military Spouses, Including Review of Comments Received During 45-Day Comment Period

Background:

At the October 25-26, 2022, Board meeting, the Board approved proposed regulation text to add Section 1706.6 related to the temporary licenses for military spouses and partners. This proposal defines the provisions for military spouses and partners to obtain a temporary license.

As required by the Administrative Procedure Act, Board staff released the proposed text for the 45-day comment period on April 14, 2023, which ended on May 30, 2023.

Attached following this memo are the following:

1. The proposed text released for 45-day public comment.
2. Board staff prepared summarized comments with recommendations.
3. Board staff recommended modified text.
4. Comments received during the 45-day comment period.

At this Meeting:

The Board will have the opportunity to discuss the regulation and determine what course of action it wishes to pursue. Among its options:

1. Adopt the regulation text as noticed on April 14, 2023, for 45-day comment.
2. Amend the regulation as recommended by Board staff.

Possible Adoption Language:

Accept the Board staff recommended comment responses, approve the staff recommended modified regulation language, and initiate a 15-day public comment period. Additionally, if no adverse comments are received during the 15-day comment period, authorize the Executive Officer to take all steps necessary to complete the rulemaking and adopt the proposed regulations at Section 1706.6 as noticed. Further, delegate to the executive officer the authority to make technical or non-substantive changes as may be required by the Control agencies to complete the rulemaking file.

Attachment 1

Title 16. Board of Pharmacy
Proposed Text

Add section 1706.6 to Article 1 of Division 17 of Title 16 of the California Code of Regulations to read as follows:

§ 1706.6. Temporary Licenses for Military Spouses/Domestic Partners

(a) Definitions: For the purposes of this section, the following definitions shall apply:

- (1) “Disciplined” means that the applicant’s license was placed on probation, revoked, suspended, reprobated, censured, reprimanded, restricted, limited, or conditioned.
- (2) “Jurisdiction” shall mean a California or another state’s licensing board or agency, any agency of the federal government, or another territory of the United States.
- (3) “Disciplinary proceeding” shall mean any proceeding or investigation under the authority of the licensing jurisdiction pursuant to which a licensee may be disciplined.
- (4) “Good standing” shall mean that the applicant has not been disciplined, is not the subject of an unresolved complaint or review procedure and is not the subject of any unresolved disciplinary proceeding.
- (5) “Original licensing jurisdiction” shall mean the entity that issued a license to the applicant authorizing the applicant to practice within the same scope for which the applicant seeks a temporary license from the Board.

(b) An applicant for a temporary pharmacist, advanced practice pharmacist, pharmacy technician, designated representative, designated representative-reverse distributor, designated representative-3PL or a designated paramedic license pursuant to section 115.6 of the Business and Professions Code (“Code”) shall submit a completed application to the Board and meet all of the requirements of this section and section 115.6 of the Code to be eligible for a temporary license. A completed application shall provide the following information:

- (1) The applicant’s identifying and contact information:
 - (A) Applicant’s full legal name ((Last Name) (First Name) (Middle Name) and/or (Suffix)).
 - (B) Other name(s) applicant has used or has been known by.
 - (C) Applicant’s address of record (The address of record may be a post office box number or other alternate address.).
 - (D) Applicant’s physical address, if different than the applicant’s address of record.

(E) Applicant's email address,

(F) Applicant's telephone number,

(G) Applicant's Social Security Number or Individual Taxpayer Identification Number, and,

(H) Applicant's birthdate (month, day, and year).

(2) The applicant shall indicate that the applicant is married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active-duty military orders and shall provide the following documentation with the application:

(A) Certificate of marriage or certified declaration/registration of domestic partnership filed with the California Secretary of State or other documentary evidence of legal union with an active-duty member of the Armed Forces, and,

(B) A copy of the military orders establishing their spouse or partner's duty station in California.

(3) The applicant shall disclose whether the applicant holds a current, active, and unrestricted license of the same type of license that the applicant is applying for, or comparable authority to practice in another state, district, or territory of the United States and provide written verification from the applicant's original licensing jurisdiction that the applicant's license or other comparable authority ("license") is in good standing in that jurisdiction. The verification shall include all of the following:

(A) the full legal name of the applicant and any other name(s) the applicant has used or has been known by,

(B) the license type and number issued to the applicant by the original licensing jurisdiction, and relevant law(s) and regulation(s) under which the license was issued,

(C) the name and location of the licensing agency,

(D) the issuance and expiration date of the license, and,

(E) information showing that the applicant's license is currently in good standing.

(4) The applicant shall disclose whether the applicant has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license pursuant to Sections 141, 480, or 490 of the Code, or Sections 4300, 4301, 4311 of the Code, or section 1762 of this Division. For applicants for a temporary pharmacist license, those applicants shall also disclose whether the applicant has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license pursuant to Sections 4305 or 4306.5 of the Code.

- (5) The applicant shall disclose whether the applicant has been disciplined by a licensing entity in another jurisdiction or is the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.
- (6) The applicant shall submit fingerprints for use by and accessible to the board in conducting criminal history information record checks through the California Department of Justice.
- (7) For applicants for a temporary pharmacist license, the applicant has successfully completed the California Practice Standards and Jurisprudence Examination (CPJE).
- (8) The applicant shall sign a statement attesting to the fact that the applicant meets all the requirements for the temporary license, and that the information submitted in the application is accurate, to the best of the applicant's knowledge.
- (c) In addition to the above requirements, and prior to submission of the application specified in subsection (b), applicants for a temporary pharmacist license must successfully complete the Board's law and ethics examination designated as the California Practice Standards and Jurisprudence Examination (CPJE) for Pharmacists set forth in Section 4200 of the Code, which tests the applicant's knowledge and proficiency in state and federal laws and provisions of safe patient care, and the items set forth in Section 4200.2 and 4200.3 (d) of the Code.
- (d) Upon issuance of a temporary license in accordance with Section 115.6(a) of the Code, the Board shall provide written notice to the applicant of the following:
- (1) That the temporary license is nonrenewable;
 - (2) That the license expires 12 months after issuance, upon issuance or denial of a standard license, or upon issuance or denial of an expedited license pursuant to Section 115.5 of the Code, whichever occurs first; and,
 - (3) Any holder of a temporary license desiring to continue their licensure or to practice in California after expiration of their temporary license shall apply for and obtain a standard pharmacist, advanced practice pharmacist, pharmacy technician, designated representative, designated representative-reverse distributor, designated representative-3PL or a designated paramedic license, as applicable, in accordance with Sections 4200, 4202, 4210, 4053, 4053.1, 4053.2, and 4202.5 of the Code.

Authority: Sections 115.6 and 4005, Business and Professions Code.

Reference: Sections 30, 31, 115.6, 141, 480, 490, 4200, 4300, 4301, 4301.5, 4305, 4306.5, and 4311, Business and Professions Code.

Attachment 2



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Proposed Regulation to Add Title 16 CCR Section 1706.6, Temporary Licenses for Military Spouses/Domestic Partners

Summarized 45-day Comments with Board Staff Recommendations:

Written Comments from G. Griffin, Pharm.D.

Comment 1: The commenter stated that it was “about time that you did something for military spouses.”

Response to Comment 1: Board staff have reviewed this comment and do not recommend any changes to the text based thereon. Board staff notes that the Board has expedited the licensure process for military spouses and domestic partners since 2012. In addition to expedited processing, the Board began waiving the initial application fee for military spouses and domestic partners in 2022.

Written Comments from K. Scott Guess, Pharm.D.

Comment 2: The commenter states that the definition of “Good Standing” violates the “presumption of innocence because it includes unresolved (inconclusive) complaints or investigations.” Commenter states that the definition should only include “proven misconduct” and the current definition could “cause harm to a potential, or current licensees resulting in financial consequences, defamation, and damage.” Commenter provided the example that if the regulation is enacted as written, any complaint filed would mean his pharmacist license would not be in good standing until the complaint was resolved, which can take months, and could need to third-party contract restrictions or wholesalers restricting purchases.

Response to Comment 2: Board staff have reviewed this comment and do not recommend changes to the text based on the comment. However, the commenter requested an amendment to the proposed definition of “good standing”, and this highlighted an issue with the proposed definition. Board staff recommends the proposed definition of “good standing” be removed from the proposed text due to a conflict with BPC section 4026.5. Board staff note that “good standing” (defined in BPC section 4026.5) and the additional requirement (“not the subject of an unresolved complaint or review procedure and is not the subject of any unresolved disciplinary proceeding”) within the originally proposed definition of “good standing” in this section are requirements in BPC section 115.6, as well as in the proposed regulation under 16 CCR sections 1706.6(b)(3) and 1706.6(b)(5), respectively. Additionally, board staff recommend that BPC section

4026.5, defining "good standing", be added to the reference section at the end of the regulatory text for clarity.

Attachment 3

Title 16. Board of Pharmacy
Modified Text

Proposed changes made to the current regulation language are shown by ~~double strikethrough~~ for deleted language and double underline for added language.

Add section 1706.6 to Article 1 of Division 17 of Title 16 of the California Code of Regulations to read as follows:

§ 1706.6. Temporary Licenses for Military Spouses/Domestic Partners

(a) Definitions: For the purposes of this section, the following definitions shall apply:

- (1) “Disciplined” means that the applicant’s license was placed on probation, revoked, suspended, reprovved, censured, reprimanded, restricted, limited, or conditioned.
- (2) “Jurisdiction” shall mean a California or another state’s licensing board or agency, any agency of the federal government, or another territory of the United States.
- (3) “Disciplinary proceeding” shall mean any proceeding or investigation under the authority of the licensing jurisdiction pursuant to which a licensee may be disciplined.
- ~~(4) “Good standing” shall mean that the applicant has not been disciplined, is not the subject of an unresolved complaint or review procedure and is not the subject of any unresolved disciplinary proceeding.~~
- (5) “Original licensing jurisdiction” shall mean the entity that issued a license to the applicant authorizing the applicant to practice within the same scope for which the applicant seeks a temporary license from the Board.

(b) An applicant for a temporary pharmacist, advanced practice pharmacist, pharmacy technician, designated representative, designated representative-reverse distributor, designated representative-3PL, or a designated paramedic license pursuant to section 115.6 of the Business and Professions Code (“Code”) shall submit a completed application to the Board and meet all of the requirements of this section and section 115.6 of the Code to be eligible for a temporary license. A completed application shall provide the following information:

(1) The applicant’s identifying and contact information:

- (A) Applicant’s full legal name ((Last Name) (First Name) (Middle Name) and/or (Suffix)).
- (B) Other name(s) applicant has used or has been known by.
- (C) Applicant’s address of record (The address of record may be a post office box number or other alternate address.).

(D) Applicant's physical address, if different than the applicant's address of record,

(E) Applicant's email address,

(F) Applicant's telephone number,

(G) Applicant's Social Security Number or Individual Taxpayer Identification Number, and,

(H) Applicant's birthdate (month, day, and year).

(2) The applicant shall indicate that the applicant is married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active-duty military orders and shall provide the following documentation with the application:

(A) Certificate of marriage or certified declaration/registration of domestic partnership filed with the California Secretary of State or other documentary evidence of legal union with an active-duty member of the Armed Forces, and,

(B) A copy of the military orders establishing their spouse or partner's duty station in California.

(3) The applicant shall disclose whether the applicant holds a current, active, and unrestricted license of the same type of license that the applicant is applying for, or comparable authority to practice in another state, district, or territory of the United States, and provide written verification from the applicant's original licensing jurisdiction that the applicant's license or other comparable authority ("license") is in good standing in that jurisdiction. The verification shall include all of the following:

(A) the full legal name of the applicant and any other name(s) the applicant has used or has been known by,

(B) the license type and number issued to the applicant by the original licensing jurisdiction, and relevant law(s) and regulation(s) under which the license was issued,

(C) the name and location of the licensing agency,

(D) the issuance and expiration date of the license, and,

(E) information showing that the applicant's license is currently in good standing.

(4) The applicant shall disclose whether the applicant has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license pursuant to Sections 141, 480, or 490 of the Code, or Sections 4300, 4301, or 4311 of the Code, or section 1762 of this Division. For applicants for a temporary pharmacist license, those applicants shall also

disclose whether the applicant has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license pursuant to Sections 4305 or 4306.5 of the Code.

(5) The applicant shall disclose whether the applicant has been disciplined by a licensing entity in another jurisdiction or is the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall submit fingerprints for use by and accessible to the Board in conducting criminal history information record checks through the California Department of Justice.

(7) For applicants for a temporary pharmacist license, the applicant has successfully completed the California Practice Standards and Jurisprudence Examination (CPJE).

(8) The applicant shall sign a statement attesting to the fact that the applicant meets all the requirements for the temporary license, and that the information submitted in the application is accurate, to the best of the applicant's knowledge.

(c) In addition to the above requirements, and prior to submission of the application specified in subsection (b), applicants for a temporary pharmacist license must successfully complete the Board's law and ethics examination designated as the California Practice Standards and Jurisprudence Examination (CPJE) for Pharmacists set forth in Section 4200 of the Code, which tests the applicant's knowledge and proficiency in state and federal laws and provisions of safe patient care, and the items set forth in Section 4200.2 and 4200.3 (d) of the Code.

(d) Upon issuance of a temporary license in accordance with Section 115.6(a) of the Code, the Board shall provide written notice to the applicant of the following:

(1) That the temporary license is nonrenewable;

(2) That the license expires 12 months after issuance, upon issuance or denial of a standard license, or upon issuance or denial of an expedited license pursuant to Section 115.5 of the Code, whichever occurs first; and,

(3) Any holder of a temporary license desiring to continue their licensure or to practice in California after expiration of their temporary license shall apply for and obtain a standard pharmacist, advanced practice pharmacist, pharmacy technician, designated representative, designated representative-reverse distributor, designated representative-3PL, or a designated paramedic license, as applicable, in accordance with Sections 4200, 4202, 4210, 4053, 4053.1, 4053.2, and 4202.5 of the Code.

Authority: Sections 115.6 and 4005, Business and Professions Code.

Reference: Sections 30, 31, 115.6, 141, 480, 490, 4026.5, 4200, 4300, 4301, 4301.5, 4305, 4306.5, and 4311, Business and Professions Code.

Attachment 4

From: Doc Jerry <k6md@aol.com>

Sent: Monday, April 17, 2023 3:44 PM

To: PharmacyRulemaking@DCA <PharmacyRulemaking@dca.ca.gov>

Subject: see below...

WARNING: This message was sent from outside the CA Gov network. Do not open attachments unless you know the sender: k6md@aol.com

It is about time that you did something for military spouses!.....G.Griffin,
PharmD, MD,FACFE

-----Original Message-----

From: Scott Guess <KSG.PharmD@outlook.com>

Sent: Monday, April 17, 2023 12:14 PM

To: PharmacyRulemaking@DCA <PharmacyRulemaking@dca.ca.gov>

Subject: Public comment on proposed test of 16 CCR 1706.6

WARNING: This message was sent from outside the CA Gov network. Do not open attachments unless you know the sender: ksg.pharmd@outlook.com

Lori Martinez
California State Board of Pharmacy
2720 Gateway Oaks Drive Ste: 100
Sacramento, CA.

Re: Rule change proposal to 16 CCS § 1706.36 public comment

Proposed 16 CCR §1706.6 (a) (4) “Good standing” shall mean that the applicant has not been disciplined, *is not the subject of an unresolved complaint or review procedure* and is not the subject of any unresolved disciplinary proceeding.

The proposed regulation’s definition of “Good Standing” violates the primary legal tenet of *Presumption of Innocence* which is considered to be a fundamental human right (Coffin v. United States 1895) because it includes **unresolved** (inconclusive) complaints or investigations. This has the potential of causing considerable harm to a potential, or current licensee resulting in financial consequences, defamation, and damage. The proposed definition needs to be rewritten to include **only** proven misconduct.

Were this regulation to be enacted as written, every complaint to the Board would sanction a pharmacist’s license to “NOT in good standing” status. As an example, a former customer makes a complaint to the BOP because I refuse to fill her (obviously fraudulent) prescription. It can take many months for an inspector to resolve the issue. If this regulation were in place, my license would NOT be in good standing by this proposed definition and would remain NOT in good standing for the entire time of the investigation due to a spurious, fraudulent, and malicious complaint. This could cost my pharmacy third-party contract approval, wholesaler restriction of purchases, and countless other restrictions of business and practice over an un-proven accusation. It would not take long for bad actors to use the complaint process to attempt to leverage control over pharmacists.

Respectfully,

K. Scott Guess, PharmD, MS Pharm, RPh, APh.