FINAL RECOMMENDATIONS FOR THE BOARD OF PHARMACY

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION AND THE BOARD?) Should the licensing and regulation of pharmacy profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: ***The Joint Committee and the Department recommend the continued regulation of the pharmacy profession and that a board structure be maintained.***

Comments: Consumers rely upon the oversight provided by the Pharmacy Board to ensure prescription of pharmaceutical drugs (including controlled substances) and devices are responsibly distributed and dispensed by individuals and business establishments holding licenses in good standing. The board structure has proven to be an effective regulatory mechanism for doing this.

ISSUE #2. (CHANGE BOARD COMPOSITION?) The Board currently consists of 11 members: seven professional members and four public members. This composition provides for a super majority of professional members. Almost all health related consumer boards have no more than a simple majority of professional members.

Recommendation #2: ***The Joint Committee and the Department recommend that two public members be added to the composition of the Board to expand public representation.***

Comments: This recommendation was first raised by a number of witnesses at the Department's public hearing. Currently, the board composition results in a super majority of professional members on the board. Given the broad impact the board has on the lives of consumers, the majority of whom regularly interact with a pharmacy or a pharmacist, it is important to ensure that the consuming public has a significant role in board decision-making.

The Department believes that public participation on regulatory boards ensures balanced approach to decision-making and enhances public protection. In recent years, public members have been added to the Accountancy, Contractors, Podiatry, Psychology, Respiratory Care, and Veterinary Medical Boards through the sunset review legislative process. Two additional board members would not substantially increase operational costs.

ISSUE #3. (BOARD MEETINGS OPEN TO THE PUBLIC?) Should all board committee meetings be publicly noticed and open to the public?

Recommendation #3: ***The Joint Committee and the Department recommend that all committee meetings be publicly noticed and open to the public.***

Comments: This year, the Department has made a cross-cutting recommendation that all board committee meetings should be open to the public. Committees often develop significant policy recommendations for the board to consider and adopt. As such, consumers and industry stakeholders should have the opportunity to observe and provide comments and feedback on the committee's deliberations. This practice has been particularly common at the Board of Pharmacy, and the Department strongly urges it be changed to allow for greater public participation.

ISSUE #4. (ADOPT NATIONAL EXAMINATION?) Should the Board adopt the North American Pharmacist Licensure Exam (NAPLEX)?

Recommendation #4: ***The Joint Committee and the Department recommend that the Board adopt the NAPLEX.***

Comments: According to the Board, and witnesses who provided comments at the Department's sunset hearings, California is experiencing a shortage of pharmacists. Many of the same witnesses testified that adoption of the national exam would help to alleviate the shortage by increasing the pool of pharmacists available to work in California. The Board's longstanding policy of declining to accept the national exam has made it more difficult for pharmacists to begin work in California and has hindered efforts to address the pharmacist shortage.

The Department is particularly concerned about pharmacist shortages in rural and underserved areas. During our recent efforts to assist Assembly Member Strom-Martin to meet the demand for state licensed pharmacists on the Hoopa Tribal Reservation in northern California, we learned of the difficulty in securing licensed pharmacists in that area of the state. In spite of impressive recruitment efforts, the Tribal Council was unable to attract California pharmacists and was effectively prohibited from hiring interested pharmacists who had passed the national exam.

It is important to note that California is the only state that does not currently recognize the NAPLEX exam. The Department's Office of Examination Resources has determined that the NAPLEX exam is equivalent to California's exam, so there is no risk of lowering the skill level practiced in California. When national exams are utilized, California typically prepares a supplemental exam that tests applicants for knowledge of applicable state laws, and often results in reduced exam administration costs.

ISSUE #5. (MODIFY CITE AND FINE PROCESS?) Should the Board change its cite and fine process to allow the Executive Officer to issue citations and fines and to exclude the involvement of board members?

Recommendation #5: ***The Joint Committee and the Department recommend that the Board modify its cite and fine process to exclude the involvement of board members.***

Comments: The Department recommends that the Board revise their cite and fine process to allow the Executive Officer or designee to issue citations and fines to a pharmacist or pharmacy, continuing education violations, unlicensed activity, failure of a pharmacy to designate a pharmacist-in-charge or file a discontinuance of business.

The Board has adopted a policy of involving board members in the citation and fine issuance process. This is a staff function, not a function for board members and creates an inherent conflict for board members who are called upon later to adjudicate disciplinary actions. Further, this practice is inconsistent with the practices of other Department regulatory programs in which the Executive Officer has the authority to issue citation and fines. At the Department's public hearings, extensive testimony was provided about the conflict that is created by having board members participate in this process. The Department recommends this practice be discontinued and the Executive Officer be authorized to issue citations and fines.

ISSUE #6. (REMOVE MANDATE THAT INVESTIGATORS BE PHARMACISTS?) Should the Board be given the option of hiring investigators who are not licensed pharmacists?

Recommendation #6: ***The Joint Committee and the Department recommend that investigators should not be required to be licensed pharmacists.***

Comments: The Board should have the option of hiring licensed pharmacists inspectors or other state investigators. Other boards (e.g. Medical, Dental, Psychology, Registered Nursing and others) do not mandate that only individuals licensed within their regulatory profession perform investigation or inspection of suspected violations. In lieu of the licensed professions, the boards and bureaus utilize professionally trained investigators and expert consultants or witnesses as required. The use of professionally trained investigators would reduce the excessive timelines for Pharmacy Board investigations. Additionally, this would result in personnel cost savings to the Board. The Board has indicated in the past that it is difficult to recruit and hire licensed pharmacists for enforcement activities because of the salary levels.

ISSUE #7. (UTILIZE DCA ONLINE COMPLAINT FORM?) Should the Board use the Department's consumer complaint form?

Recommendation #7: ***The Joint Committee and the Department recommend that the Board utilize the Department's online consumer complaint form.***

Comments: In 2002, the Department launched a universal consumer complaint form that allows consumers to complete and submit a complaint online. The use of the online complaint form was offered to all boards and bureaus. At this time, the Board of Pharmacy is not utilizing the Department form. Given the resource limitations and the delay in the processing of complaints, the Board should adopt the Department's online complaint form to receive initial information from consumers. Follow-up communications can be employed to gather additional information from the consumer if necessary to pursue investigation of the complaint.

ISSUE #8. (EXPAND CONSUMER OUTREACH AND EDUCATION?) Should the Board expand consumer outreach and utilize DCA's Consumer Education Division?

Recommendation #8: ***The Joint Committee and the Department recommend that the Board expand consumer outreach and education.***

Comments: The services provided by pharmacists touch upon the lives of practically every California consumer on a regular basis. The Department recommends that Board of Pharmacy review their current consumer education and outreach efforts to determine if they may be expanded. The Department has previously recommended that the Board consult with the Department's Consumer Education Division (CED) to enhance public education. While the Board has noted a lack of resources to increase public outreach, we would note that assistance from CED is a service available to the Board at no additional cost.

ISSUE #9. (IS BOARD'S COMPLAINT SURVEY INSTRUMENT AND PROCESS ADEQUATE?) Should the Board establish make revisions to its complaint survey instrument and process?

Recommendation #9: ***The Joint Committee and the Department recommend that the Board immediately establish a reliable method of communicating with consumers who have filed complaints, and revise a written survey instrument that can provide meaningful data.***

Comments: It is not possible to truly assess the Board of Pharmacy's level of consumer satisfaction or adequacy of consumer complaint handling processes because the Board is inexplicably unable to provide data on the number of surveys distributed. Without that fundamental information, the information provided is meaningless.

The Department recommends that the Board immediately establish a reliable method of communicating with consumers who have filed complaints, and revise a written survey instrument that can provide meaningful data. The Department notes, for instance, that while the Board indicates it asks consumers to rank the level of service received, there is no such information provided on the survey summary provided.

The Department is concerned by the Board's indication that it intends to conduct phone surveys to assess consumer satisfaction. Absent careful training and supervision, phone surveys are often

not reliable. The Committee may recall the unreliable phone survey results that were presented by the Cemetery and Funeral Bureau during its recent sunset review. Additionally, the utilization of telephone staff for this purpose is probably not the most effective utilization of current staff resources. The Board has indicated to the Department in recent months its inability to receive and respond to phone calls regarding license application status. Given that situation, it is unclear how the Board would provide phone staff support for conducting surveys.

The Board should revise its consumer complaint survey instrument, working collaboratively with the Department, to include more questions how the Board can improve their complaint process. To increase consumer response, the Board should make a practice of immediately forwarding the survey to complainants upon closure of their case. The Department makes a similar recommendation relative to the Board of Registered Nursing (BRN) and the Board of Licensed Vocational Nurses and Psychiatric Technicians (BVNPT).

ISSUE #10. (ENSURE PATIENT PRIVACY?) Should the Board collaborate with the DCA Office of Privacy Protection to ensure patient privacy?

Recommendation #10: ***The Joint Committee and the Department recommend that the Board work with the Department's Office of Privacy Protection on ensuring patient privacy.***

Comments: The Pharmacy Board should collaborate with the Department's Office of Privacy Protection in distributing the Office's consumer informational materials on health privacy. The Board should seek to make the materials available in pharmacies. As the new federal health privacy rule to implement the Health Insurance Portability and Access Act (HIPAA) takes effect this year, it is more critical than ever that patients become aware of their right to protect their privacy. The Office of Privacy Protection is preparing new materials that inform California consumers on their rights under state and federal law. The Board can significantly enhance the knowledge of consumers throughout California by helping to distribute this information through its licensee and outreach network.

ISSUE #11. (REVISE PHARMACY TECHNICIAN REGISTRATION AND PROGRAM REQUIREMENTS?) The Board has proposed statutory and regulatory changes would include, among other things, certification by the Pharmacy Technician Certification Board (PTCB) as a qualifying method to becoming a pharmacy technician.

Recommendation #11: ***The Joint Committee supports the Board's proposal to revise registration and program requirements for pharmacy technicians.***

Comments: The original technician registration and program requirements have been in place for over 10 years. Although there have been some program modifications such as technician trainees, a ratio increase for the second pharmacist in the community setting, and mandatory registration of all pharmacy technicians, there has not been a major review or update of the program.

Based on the recommendations of the Pharmacy Manpower Task Force and others, the Board is proposing the following revisions to the pharmacy technician registration and program requirements: 1) accept PTCB certification; 2) accept the associate degree in pharmacy technology and eliminate the other associate degrees; 3) revise the specificity of the theoretical and practical requirements of the training curriculum; 4) accept graduation from a school of pharmacy; and 5) eliminate the "equivalent experience" provision for the clerk-typist and hospital pharmacy technician.

ISSUE #12. (PATIENTS CHARGED FOR ORAL CONSULTATIONS?) There is evidence that patients are being charged for oral consultations on new prescriptions.

Recommendation #12: ***The Joint Committee recommends that the Board should continue to ensure that pharmacists offer oral consultations on new prescriptions. Further, the Joint Committee believes that consumers should not be charged a separate fee for such consultations.***

Comments: Pharmacists are required to offer oral consultations on all new prescriptions. There is evidence that patients are being charged for these consultations. Draft text approved by the Board's Public Education and Communications Committee for the revised Consumer Alert poster originally included language referring to no-charge consultations but that statement was not included in the final version of the poster.