






TO: The Honorable the Members of the Board of Regents

FROM: Douglas E. Lentivech


SUBJECT: Proposed Amendment of Section 17.5 of the Rules of the Board of Regents Relating to the Regulation of Consent Orders in Disciplinary Proceedings in the Professions

DATE: September 1, 2016

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend subdivision (b) of section 17.5 of the Rules of the Board of Regents relating to the regulation of consent orders in disciplinary proceedings in the professions?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption at the September 2016 Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents.

Procedural History

The proposed amendment was discussed by the Professional Practice Committee at the June 2016 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on June 29, 2016 for a 45-day public comment period. The Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed.

Background Information

As part of the disciplinary proceedings conducted pursuant to the provisions of Title VIII of the Education Law, one of the ways in which disciplinary matters may be disposed of is pursuant to a consent order, which must be approved by the Board of Regents.

Before consent orders are presented to the Board of Regents for final consideration and action, the following steps are taken. The complaints are reviewed by staff of the Office of Professional Discipline (OPD) in consultation with a board member of the relevant profession.

After that initial consultation, a determination is made by the Office of the Professions' Professional Conduct Officer, often upon the advice of an expert consultant in the applicable profession, to proceed with disciplinary action and to seek the appropriate penalties.

The consent orders are then negotiated with the respondents/professional licensees charged with professional misconduct.

A member for the State board for the applicable profession then reviews and approves the consents, including the penalty, often after a face-to-face discussion with the respondent during an informal settlement conference. In disciplinary matters involving licensed pharmacists and New York State registered pharmacy establishments, the agreement of the executive secretary of the State Board of Pharmacy to the proposed licensee's or registrant's statement and proposed penalty is also required.

The proposed agreements are then reviewed and approved by a three-member panel of the Committee on the Professions after discussing each with the Professional Conduct Officer.

The proposed consent orders are then reviewed and approved by a single member of the Board of Regents, typically after discussion with the Office of the Professions' Director of Prosecutions.

The profession of pharmacy is the only profession where the executive secretary of the State Board must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action. This requirement can result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates these potential delays by removing this requirement. Eliminating this requirement will further the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (b) of section 17.5 of the Rules of the Board of Regents be amended, as submitted, effective September 28, 2016.

Timetable for Implementation

If adopted at the September 12-13, 2016 Regents meeting, the proposed rule will take effect on September 28, 2016.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 207, 6504, 6507, 6509, 6510 and 6511 of the Education Law

Section 17.5 of the Rules of the Board of Regents is amended, effective September 28, 2016, as follows:

§17.5 Consent orders.

Disciplinary proceedings conducted pursuant to the provisions of title VIII of the Education Law may be disposed of in accordance with the following procedure:

(a) A licensee who is under investigation, or against whom charges have been voted, who admits guilt to at least one of the acts of misconduct alleged or charged, in full satisfaction of all allegations or charges, or who does not contest the allegations or charges or who cannot successfully defend against at least one of the acts of misconduct alleged or charged, shall notify the director of the Office of Professional Discipline or the director's designee.

(b) If the director of the Office of Professional Discipline or the director's designee, a designated member of the State Board for the applicable profession, and the licensee agree to a statement by the licensee admitting guilt to one or more of the allegations or charges or setting forth a decision not to contest the allegations or charges or stating that the licensee cannot successfully defend against such allegations or charges and agreeing to a proposed penalty, and if a designated member of the Board of Regents thereafter agrees to such statement and proposed penalty, and if the Committee on the Professions thereafter agrees to such statement and proposed penalty, a written application, signed by all the above except the Committee on the Professions, shall be submitted by the licensee to the Board of Regents based upon the statement and proposed penalty consenting to the issuance of an order of the

Commissioner of Education or his or her designee effectuating such penalty. The provisions of this section shall apply to licensees subject to disciplinary proceedings conducted pursuant to title VIII of the Education Law. They shall be applicable to individuals licensed or registered pursuant to article 131 or 131-B of title VIII of the Education Law for those cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991. They shall also be applicable to licensees and registrants subject to article 137 of the Education Law. With respect to such licensees subject to article 131 or 131-B of title VIII of the Education Law, the agreement of the director of the Office of Professional Medical Conduct or that officer's designee, and of the Commissioner of Health or his or her designee, to the statement and proposed penalty and their signatures on the application shall be required in lieu of the agreement and signature of the director of the Office of Professional Discipline. With respect to such licensees subject to the provisions of article 131 or 131-B of title VIII of the Education Law, the term State Board as used in this section means the State Board for Professional Medical Conduct. [With respect to licensees and registrants subject to article 137 of the Education Law, the agreement of the executive secretary of the State Board of Pharmacy to the statement and proposed penalty and his or her signature on the application shall also be required.]

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