

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

<b>In re:</b>	)	
	)	
<b>AGENCY: MEDICAL BOARD OF CALIFORNIA</b>	)	<b>DECISION OF DISAPPROVAL OF REGULATORY ACTION</b>
	)	
	)	<b>(Gov. Code, sec. 11349.3)</b>
<b>RULEMAKING ACTION: Amend section 1321 of title 16 of the California Code of Regulations</b>	)	
	)	<b>OAL File No. 06-0306-03S</b>
	)	
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**SUMMARY OF RULEMAKING ACTION**

This rulemaking action revises an existing regulation that deals with Approved Postgraduate Training. The proposed regulation was submitted by the Medical Board of California ("Board") to the Office of Administrative Law ("OAL") on March 3, 2006. On April 18, 2006, the OAL disapproved the proposed regulation for failure to comply with the Clarity standard required by Government Code section 11349.1.

**SUMMARY OF DECISION**

This rulemaking action revises an existing regulation that deals with Approved Postgraduate Training. International medical school graduates are required to satisfy certain prerequisites before they can enter postgraduate training programs in California. A Division of the Board currently issues a Postgraduate Training Authorization Letter ("PTAL") that serves as proof to program directors that these students are eligible to begin postgraduate training in California. This rulemaking inserts the requirement for a PTAL into the existing regulation by adding the following sentence to the California Code of Regulations, title 16, section 1321, "Prior to commencing any postgraduate training in California, international graduates shall have been issued a 'Postgraduate Training Authorization Letter' (PTAL) by the Division as evidence of satisfying the prerequisites in Section 2102(c)."

## DISCUSSION

The adoption of regulations by the Board must satisfy requirements established by the part of the California Administrative Procedure Act (“APA”) that governs rulemaking by a state agency. Any rule or regulation adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA compliance. No exemption or exclusion applies to the regulatory action under review. Therefore this regulatory action is subject to a review by the OAL for compliance with procedural requirements and substantive standards of the APA. (Gov. Code, sec. 11349.1.)

## CLARITY

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to the persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) For this reason, subdivision (a)(3) of Government Code section 11349.1 requires that the OAL review all regulations for compliance with the Clarity standard. Government Code section 11349, subdivision (c), defines “Clarity” as meaning “. . . written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” Section 16, of title 1 of the California Code of Regulations (CCR) further provides in part that:

“(a) A regulation shall be presumed not to comply with the ‘clarity’ standard if any of the following conditions exists:

- (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
- (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or
- (3) the regulation uses terms which do not have meanings generally familiar to those ‘directly affected’ by the regulation, and those terms are defined neither in the regulation nor in the governing statute; ...”

(b) Persons shall be presumed to be ‘directly affected’ if they:

- (1) are legally required to comply with the regulation;
- (2) are legally required to enforce the regulation; or
- (3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or
- (4) incur from the enforcement of the regulation a detriment that is not common to the public in general.”

The proposed amendment to section 1321 adds language indicating that international medical school graduates must obtain a PTAL prior to beginning any postgraduate training in California. There is no explanation of the procedure required to obtain the PTAL found in either statute or regulation.

The language of the proposed amendment requires international medical school graduates to obtain a PTAL, but fails to specify how to acquire this document. The requirements of this regulation, therefore, are not easily understood by international medical school graduates since they would not know by reading the regulation what standards and/or criteria must be met in order to obtain the PTAL including any potential fees. This regulation is unclear because a directly affected person would not know what is required in order to comply with the regulation.

### **CONCLUSION**

For the reasons described above, the OAL disapproved this regulatory action because it did not comply with the Clarity standard contained in Government Code section 11349.1.

April 24, 2006

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For:

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Director

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