



TO: The Professional Practice Committee

FROM: David H. Hamilton *David H. Hamilton*

SUBJECT: Proposed Amendment of Section 17.6 of the Rules of the Board of Regents Relating to the Regulation of Surrender Orders in Disciplinary Proceedings in the Professions

DATE: February 27, 2025

AUTHORIZATION(S): *Donna* *Bell*

SUMMARY

Issue for Discussion

Should the Board of Regents amend section 17.6 of the Rules of the Board of Regents relating to the regulation of surrender orders in disciplinary proceedings in the professions?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for discussion at the March 2025 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on March 26, 2025. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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

A licensee who is under investigation or against whom charges have been voted and seeks to surrender their license to practice any of the professions enumerated in Title VIII of the Education Law must notify the Office of the Professions' Professional Conduct Officer (PCO).

An application to surrender a license is processed as follows. First, the licensee must affirmatively or implicitly admit guilt to at least one of the acts of misconduct alleged or charged.¹ Next, the PCO or their designee, a designated member of the State Board for the applicable profession, and the licensee review and approve the licensee's admission. Thereafter, a member of the Board of Regents reviews the proposed surrender and, if they approve, the proposal is presented to the Committee on the Professions (COP). If the COP agrees, a written application, signed by the licensee, must be submitted to the full Board of Regents. Upon approval, the Commissioner or their designee issues an order in accordance therewith.

The profession of pharmacy is the only profession where the executive secretary of a State Board must also agree to the licensee's or registrant's statement before a surrender order can be presented to the Board of Regents for its consideration and action. This requirement can result in delays in the surrender order process and the resolution of disciplinary matters involving licensed pharmacists and/or registered pharmacy establishments.

Proposed Amendment

The proposed amendment to subdivision (b) of section 17.6 of the Board of Regents eliminates potential delays by removing the requirement that the executive secretary of the State Board of Pharmacy must also agree to the licensee's or registrant's statement before a surrender of licensure order can be presented to the Board of Regents for its consideration and action. Eliminating this requirement will further the protection of the public by enabling the surrender order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more expeditiously.²

Related Regents Items

[September 2016: 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](https://www.regents.nysed.gov/meetings/2016/2016-09/meeting-board-regents)

(<https://www.regents.nysed.gov/meetings/2016/2016-09/meeting-board-regents>)

Recommendation

Not applicable.

¹ In lieu of admitting guilt, licensees may indicate that they do not contest the allegations or charges or cannot successfully defend against at least one of the acts of misconduct alleged or charged.

² In 2016, the Board of Regents removed an additional approval requirement similarly imposed upon the Executive Secretary for the Board of Pharmacy in connection with the process for consent orders (i.e., settlements of disciplinary charges). The elimination of this requirement has expedited the consent process for disciplinary matters involving pharmacists/pharmacy establishments without compromising the rigor of the review process.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the July 2025 Regents meeting, after publication in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the July 2025 meeting, the proposed amendment will become effective as a permanent rule on July 30, 2025.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

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

1. Section 17.6 of the Rules of the Board of Regents is amended to read as follows:

§17.6. Surrender of license

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 wishes to surrender his or her license to practice any of the professions enumerated in title VIII, shall notify the director of the Office of Professional Discipline or that officer's designee.

(b) An application to surrender a license shall be based upon a statement that the licensee admits guilt to at least one of the acts of misconduct alleged or charged, in full satisfaction of all allegations or charges, or does not contest the allegations or charges, or cannot successfully defend against at least one of the acts of misconduct alleged or charged. If the director or the director's designee, a designated member of the State Board for the applicable profession, and the licensee agree to such statement, and if a designated member of the Board of Regents thereafter agrees to such statement, and if the Committee on the Professions thereafter agrees to such statement, a written application, signed by the licensee, shall be submitted to the Board of Regents. The application shall be in such form and shall contain such substance as is acceptable to the director of the Office of Professional Discipline or the director's designee. 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 the Commissioner of Health or his or her designee to the statement, and their signature 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 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 his or her signature on the application shall also be required.]

(c) ...

(d) ...