

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: July 12, 2019
ATTENTION: Members, Medical Board of California
SUBJECT: Proposed Changes to Regulations on Medical and Midwife
Assistant Certifying Organizations and Administration of
Training for Medical Assistants
FROM: Kerrie Webb, Senior Staff Counsel

REQUESTED ACTION:

After review and consideration of the proposed amendments to the attached regulations relating to the administration of training to medical assistants and approved certifying organizations for medical assistants and midwife assistants (Attachment 1), make a motion to direct staff to proceed with the following:

- 1) Prepare the necessary regulatory documents to submit to the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency);
- 2) Upon DCA and Agency approval, submit the documents to the Office of Administrative Law (OAL) to notice the proposed regulatory language to amend the following regulations: Title 16 California Code of Regulations (CCR) sections 1366.3, 1366.31, and 1379.07; and
- 3) Authorize staff to make non-substantive changes to the language and respond to non-substantive comments during the rulemaking process without returning to the Board.

BACKGROUND AND ANALYSIS:

During the January 31-February 1, 2019 Board Meeting, the Board was informed that Patrick Whalen of Ellison Wilson Advocacy, LLC, filed a petition for rulemaking under Government Code section 11340.6 on behalf of the National Healthcareer Association (NHA) to strike the requirement that medical assistant certifying organizations be nonprofit, tax-exempt organizations. (Attachment 2)

NHA contends that “[a]n entity’s status as a nonprofit and/or tax-exempt organization bears no relationship to the quality of a certifying organization or the programs and services it provides.” (NHA Petition for Rulemaking p. 4). Instead, NHA states that requiring each certifying organization to obtain accreditation from the National Commission for Certifying Agencies (NCCA), which is the accrediting body of the Institute for Credentialing Excellence, and undergo psychometric program evaluations will be a better indicator of legitimacy, rather than putting value on the organizations’ status as nonprofit/tax-exempt.

The Board approved the petition for rulemaking in concept, and asked staff to provide information on whether there will be cost implications to medical and midwife assistants upon removing the requirement that the certifying organizations be nonprofit.

A review of six certifying organizations, three nonprofit and three for-profit, shows that an entity’s nonprofit status does not necessarily mean it will be less expensive than a for-profit

organization to obtain and maintain certification. There is variability in fees and benefits, as some nonprofit and for-profit organizations include the cost of continuing education units in their recertification fee, while others do not. Some organizations charge annual membership dues, a recertification fee, plus the cost of continuing education. Additionally, the certifying organizations require recertification at different intervals, ranging from every year to every five years.

While nonprofit versus for-profit status does not appear to be a reliable indicator of costs for certification and recertification, it does affect what financial information is available to the public. Most tax-exempt organizations must file an annual informational return with the Internal Revenue Service (IRS) called a Form 990 (Int. Rev. Code, § 6033). Moreover, according to the IRS, tax-exempt organizations are generally required to make certain annual returns and applications for exemption available for public inspection and must provide copies of such documents to individuals upon request. These disclosure requirements do not apply to for-profit organizations.

It is important to note that medical and midwife assistants are not required to be certified by any organization to provide authorized services to patients in California. Likewise, even if a particular medical or midwifery practice or facility requires assistants to be certified, California law does not require them to be certified by an organization approved by the Board, unless the assistant will be providing training to other medical or midwife assistants (16 CCR sections 1366.3(a)(1) and 1379.06(a)(1)). Significantly, the Board approves for-profit entities in other contexts, such as medical schools. In fact, the Board will be reducing barriers for approval of nonprofit and for-profit international medical schools beginning January 1, 2020.

In light of the above, staff proposes the attached changes to 16 CCR sections 1366.31 and 1379.07 relating to medical and midwife assistant certifying organizations, to strike the requirement that they be nonprofit/tax-exempt, and to require NCCA accreditation. Moreover, staff proposes additional changes to update the regulations for clarity and internal consistency. Finally, staff recommends changes to 16 CCR section 1366.3, regarding the administration of training for medical assistants, for internal consistency, to reflect the current oversight agencies and the current name for the Bureau for Private Postsecondary Education, and to update the statutory references.

STAFF RECOMMENDATION:

Staff recommends the Board grant authorization to proceed with preparing the necessary rulemaking documents to submit to DCA and Agency for approval, prior to sending the documents to OAL to notice the proposed amendments. Staff further recommends the Board authorize staff to make non-substantive changes to the language and respond to non-substantive comments during the rulemaking process without returning to the Board.

MEDICAL BOARD OF CALIFORNIA
APPROVED CERTIFYING ORGANIZATIONS
PROPOSED AMENDMENTS

Legend

Underlined Indicates proposed amendments or additions to the existing regulation.

~~Strikeout~~ Indicates proposed deletions to the existing regulation.

1. Amend Section 1366.3, Chapter 3, Article 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1366.3. Administration of Training.

(a) Training required in Sections 1366, 1366.1 or 1366.2 may be administered in either of these settings:

(1) Under a licensed physician or podiatrist, who shall ascertain the proficiency of the medical assistant; or under a registered nurse, licensed vocational nurse, physician assistant or a qualified medical assistant acting under the direction of a licensed physician or podiatrist who shall be responsible for determining the content of the training and the proficiency of the medical assistant except that training to administer medication by inhalation shall be provided by a licensed physician or respiratory care practitioner; or

(2) In a secondary, ~~postsecondary~~, or adult education program in a public school authorized by the Department of Education, in a community college program provided for in Part 48 of Division 7 of the Education Code, or a postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary and Vocational Education under Sections ~~9413094885~~ or ~~9431194887~~ of the Education Code and all regulations adopted pursuant to those sections. A licensed physician or podiatrist shall serve as advisor to the medical assistant training program. The instructor in a public school setting shall possess a valid teaching credential issued by the Commission on Teacher Credentialing. The instructor in a private postsecondary institution shall meet the requirements of Sections ~~94310 and 9431194885(a)(5)~~ of the Education Code and ~~any all~~ all regulations adopted pursuant to ~~those that section sections~~.

(b) The supervising physician or podiatrist, pursuant to subsection (a)(1) or the instructor pursuant to subsection (a)(2) shall certify in writing the place and date such training was administered, the content and duration of the training, and that the medical assistant was observed by the certifying physician, podiatrist, or instructor to demonstrate competence in the performance of each such task or service, and shall sign the certification. More than one task or service may be certified in a single document; separate certifications shall be made for subsequent training in additional tasks or services.

(c) For purposes of this section only, a "qualified medical assistant" is a medical assistant who:

(1) is certified by a medical assistant certifying organization approved by the ~~division~~Board;

(2) holds a credential to teach in a medical assistant training program at a community college; or

(3) is authorized to teach medical assistants in a private postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary and Vocational Education.

Note: Authority cited: Sections 2018 and 2071, Business and Professions Code. Reference: Sections 2069, 2070 and 2071, Business and Professions Code.

2. Amend Section 1366.31, Chapter 3, Article 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1366.31. Approved Certifying Organizations.

(a) An organization that certifies medical assistants may apply to the ~~division~~Board for approval. This application shall include the following information:

- (1) Name and address of the applicant;
- (2) Applicant's federal employee identification number (FEIN) ~~or social security number;~~
- (3) Name, address and telephone number of a contact person for the applicant;
- (4) ~~Name, address and telephone number of the accrediting organization that accredited the applicant;~~ Documentation establishing that the applicant is accredited by the National Commission for Certifying Agencies (NCCA);
- (5) Name, address and telephone number of the organization that validated the applicant's certifying examination;
- (6) Information sufficient to establish that the certifying organization meets the standards set forth in subsection (b).

(b) For purposes of Section 1366.3(c)(1), an organization that certifies medical assistants shall be approved if it meets all of the following standards:

- ~~(1) Is a non-profit, tax-exempt organization;~~
- ~~(2)~~(1) Requires all applicants for certification to successfully complete a psychometrically valid examination that is secure, is occupationally relevant and tests for the skills and procedures outlined in Section 1366;
- ~~(3)~~(2) Has a requirement for certification of a medical assistant in one or more of the following:
 - ~~(A) Graduation from a medical assistant training program meeting the requirements under section 1366.3(a)(2); accredited by an accreditation agency recognized by the United States Department of Education;~~
 - ~~(B) Graduation from a medical assistant training program in a postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or an institution approved by the Bureau for Private Postsecondary and Vocational Education;~~
 - ~~(C)~~(B) A minimum of two (2) years of experience as a practicing medical assistant within five (5) years immediately preceding the date of examination;
 - ~~(D)~~(C) Military training or schooling equivalent to that described in subsections (A) or (B) above;
 - ~~(E)~~(D) Employment at the time of certification as an instructor in an accredited medical assistant program or institution meeting the requirements under section 1366.3(a)(2) for certification of a medical assistant;

~~(4)(3)~~ Requires its certificate holders to obtain a minimum of 60 hours of continuing education related to the practice of medical assistants over a five (5)-year period.

~~(c) A medical assistant certifying organization approved prior to the requirement for NCCA accreditation shall reapply for and obtain Board approval by meeting all of the requirements of this section by January 1, 2027, or its approval shall be terminated. The American Association of Medical Assistants and the American Medical Technologists, which were previously referenced in Section 1366.3(a), shall be deemed approved as medical assistant certifying organizations. This approval shall terminate on January 1, 2000 unless prior to that time the above certifying organizations have applied for and been approved by the division. This paragraph shall be automatically repealed on January 1, 2000.~~

Note: Authority cited: Sections 2018 and 2071, Business and Professions Code. Reference: Sections 2069, 2070 and 2071, Business and Professions Code.

3. Amend Section 1379.07, Chapter 3, Article 6, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1379.07. Approved Certifying Organizations.

(a) An organization that certifies midwife assistants may apply to the Board for approval. This application shall include the following information:

- (1) Name and address of the applicant;
- (2) Applicant's federal employer identification number (FEIN);
- (3) Name, address and telephone number of a contact person for the applicant;
- (4) Documentation establishing that the applicant is accredited by the National Commission for Certifying Agencies, ~~or an accrediting organization that is equivalent thereto;~~
- (5) Name, address and telephone number of the organization that validated the applicant's certifying examination;
- (6) Information sufficient to establish that the certifying organization meets the standards set forth in subsection (b).

(b) For purposes of section 1379.06(c)(1), an organization that certifies midwife assistants shall be approved if it meets all of the following standards:

- ~~(1) Is a non-profit, tax-exempt organization;~~
- ~~(2)(1)~~ Requires all applicants for certification as a midwife assistant to successfully complete a psychometrically valid examination that is secure, is occupationally relevant and tests for the skills and procedures outlined in section 2516.5 of the code;
- ~~(3)(2)~~ Requires all applicants for certification as a midwife assistant to have one or more of the following:
 - (A) Graduation from a midwife assistant training program meeting the requirements under section 1379.06(a)(2);
 - (B) A minimum of two (2) years of experience, following receipt of the certificate specified in section 1379.06(b) as a practicing midwife assistant within five (5) years immediately preceding the date of examination;
 - (C) Military training or schooling equivalent to that described in subsections (A) or (B) above;
 - (D) Employment at the time of certification as an instructor in an accredited midwife assistant program or institution meeting the requirements under section 1379.06(a)(2) for certification of a midwife assistant.

~~(4)~~(3) Requires each certificate holder to renew his or her certification at least every five (5) years and obtain a minimum of 60 hours of continuing education related to the practice of midwife assistants over each five (5)-year period.

Note: Authority cited: Sections 2018 and 2516.5, Business and Professions Code. Reference: Sections 2069, 2070 and 2516.5, Business and Professions Code.



November 9, 2018

Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento CA, 95815

Re: Petition for Rulemaking

To Whom It May Concern:

Pursuant to Government Code Section 11340.6, the undersigned hereby submits the instant Petition for Amendment of an Existing Regulation. This petition requests that Title 16, §1366.31 be amended to revise the criteria used by the Board for approval of an organization that certifies medical assistants for the purposes of §1366.3(c)(1). The request is based on the need to ensure that the Medical Board's approval of certifying organizations is based on criteria that accurately establish that the certifying organization is reliable, well-regulated, and trustworthy. The Board has authority to amend the regulations pursuant to Business and Professions Code sections 2018 and 2071.

Background on Petitioner

National Healthcareer Association (NHA) was founded in 1989. NHA has issued over 750,000 certifications across eight allied health fields, including medical assisting. Each of NHA's certification programs are nationally accredited by the leading, independent accreditor of allied health certifications, the National Commission for Certifying Agencies (NCCA). NHA's certifications are recognized by regulatory bodies throughout the United States and are the first choice of allied health educators, employers and candidates because NHA is the one provider that offers allied health professionals a wholistic pathway to success through (a) innovative certification preparation materials designed for adult learners, (b) analytic insights into a candidate's strengths and weaknesses that point to corrective learning resources, (c) sound and unbiased exams, (d) industry recognized credentials, (e) career resources, (f) ongoing learning content, continuing education and certificate programs, (g) a community of support, and (h) best-in-class service. Please visit our website at www.nhanow.com for general information and specifically, for information about our medical assisting certification at <https://www.nhanow.com/certifications/clinical-medical-assistant>; our research and white papers at <https://www.nhanow.com/about-nha/-case-studies>; and our Care + Career blog at <https://info.nhanow.com/blog>. We also have provided copies of *access*, our annual allied health industry journal.

NHA is a for-profit company, but it is a for-profit that does business the right way. NHA is invested in the allied health profession – its professionals, educators and employers – and it constantly reinvests in order to provide innovative solutions that advance allied health professionals. For example, we learned from medical assistants and their employers that medical practices were trying to move to a coordinated care model, but tools to get them there were not available. NHA developed TEAM Based Care™, a program which is now available to train everyone in the medical practice – physicians, nurses, medical assistants and others – in the concepts of coordinated care and how to implement it successfully. We have seen many positive outcomes from this new program; here are a few: all members of the team now have a common understanding of the goal of coordinated care and how to achieve it; licensed professionals on the team can work at the top of their license, while the role of the medical assistant is elevated and earns more respect; and finally, bringing new people into the coordinated model can be done with ease-saving time and resources. To learn more, please visit <https://www.nhanow.com/team-based-care>. NHA is already at work developing a similar approach to Health Coaching and Medical Math training.

NHA's mission is to empower people to access a better future. This is not just a statement. It is why we do what we do and how we approach our service. We are invested, committed to and an advocate for the continuous movement of elevating allied health, both the professions and the people who serve in them. With better opportunities for all healthcare workers we believe healthcare can be better as a whole.

Introduction to Proposed Rule Change

The Medical Board has defined by regulation a “qualified medical assistant” as a medical assistant who is authorized to train - acting under the direction of a licensed physician or podiatrist - other medical assistants in such skills as venipuncture, injections, inhalation of medication, and additional technical supportive services. (See Cal. Code Regs. tit. 16, § 1366, 1366.1, 1366.2, 1366.3.) The Board has also set forth the requirements to be a “qualified medical assistant.” Among those requirements is the requirement that the medical assistant be “certified by a medical assistant certifying organization approved by the division.” (Cal. Code Regs. tit. 16, § 1366.3(c)(1).) Additionally, the Board has set forth the criteria for a certifying organization to be approved by the Board:

(b) For purposes of Section 1366.3(c)(1), an organization that certifies medical assistants shall be approved if it meets all of the following standards:

- (1) Is a non-profit, tax-exempt organization;
- (2) Requires all applicants for certification to successfully complete a psychometrically valid examination that is secure, is occupationally relevant and tests for the skills and procedures outlined in Section 1366;
- (3) Has a requirement for certification of a medical assistant in one or more of the following:
 - (A) Graduation from a medical assistant training program accredited by an accreditation agency recognized by the United States Department of Education;

- (B) Graduation from a medical assistant training program in a postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or an institution approved by the Bureau for Private Postsecondary and Vocational Education;
- (C) A minimum of 2 years experience as a practicing medical assistant within 5 years immediately preceding the date of examination;
- (D) Military training or schooling equivalent to that described in subsections (A) or (B) above;
- (E) Employment at the time of certification as an instructor in an accredited medical assistant program or institution;
- (4) Requires its certificate holders to obtain a minimum of 60 hours of continuing education related to the practice of medical assistants over a 5 year period.

(Cal. Code Regs. tit. 16, § 1366.31(b).) The first criterion is that the certifying organization be "a non-profit, tax-exempt organization." This petition seeks to amend this element of the criteria, and also to add a new requirement of independent evaluation of the exams used by certifying organizations.

Proposed Amendment

This petition is requesting the following amendment to § 1366.31(b)(1):

- (1) ~~Is a non-profit, tax-exempt organization;~~ *Is a national certifying body that offers a certification program that is accredited by the National Commission for Certifying Agencies (NCCA) or is a certifying body that was approved by the Board prior to _____ [date] _____, such provider to obtain accreditation by NCCA no later than _____ [date] _____;*
- (2) Requires all applicants for certification to successfully complete a psychometrically valid examination that is secure, is occupationally relevant and tests for the skills and procedures outlined in Section 1366;
- (3) *Participates in certification program evaluations, including validation of the psychometric soundness of its examination, as required by the Board and at the certification organization's cost;*
- (4) Has a requirement for certification of a medical assistant in one or more of the following:
 - (A) Graduation from a medical assistant training program accredited by an accreditation agency recognized by the United States Department of Education;
 - (B) Graduation from a medical assistant training program in a postsecondary institution accredited by an accreditation agency recognized by the United States Department of Education or an institution approved by the Bureau for Private Postsecondary and Vocational Education;

- (C) A minimum of 2 years experience as a practicing medical assistant within 5 years immediately preceding the date of examination;
- (D) Military training or schooling equivalent to that described in subsections (A) or (B) above;
- (E) Employment at the time of certification as an instructor in an accredited medical assistant program or institution;
- (5) Requires its certificate holders to obtain a minimum of 60 hours of continuing education related to the practice of medical assistants over a 5 year period.

Reason for Amendment

The requirement that a certifying organization be a non-profit, tax-exempt organization dates from 1999 and was intended to “exclude those agencies seeking equivalency for the sole purpose of making a profit from applicants while having no real or perceived intent to establish a formal training program in specialized areas of medicine.”¹ In response to a comment objecting to the requirement, the Board stated “the Medical Board believes there is an inherent conflict of interest with respect to the for-profit accreditation agencies.”

It thus appears that in 1999, when the regulation was initially adopted, the requirement of non-profit, tax-exempt status was being used as a proxy for ensuring that the certifying organization is a legitimate entity, dedicated to the assessment of competencies of entry level allied health workers. Whatever the merit of the original decision to permit only non-profit, tax-exempt organizations as approved certifying organizations, the two decades since the regulation’s adoption have demonstrated that the non-profit, tax-exempt proxy is insufficient to meet the goals of the Medical Board in ensuring quality, reliable certifying organizations. There are better criteria to effectuate the Board’s interest in ensuring that medical assistants are properly certified by legitimate organizations.

An entity’s status as a nonprofit and/or tax-exempt organization bears no relationship to the quality of a certifying organization or the programs and services it provides. Nor is there any evidence that for-profit status creates a conflict of interest. Indeed, in an article appearing in the Stanford Social Innovation Review entitled “Ethics and Nonprofits” by Professor Deborah L. Rhode and Amanda K. Packel (Summer 2009), the authors demonstrate that “[t]he last decade has brought an escalating supply of moral meltdowns in both the for-profit and the nonprofit sectors.” They note that “the corporate sector has no monopoly on greed” citing instances of educational charities charging excessive interest on loans to students and lavishing its CEO with excessive salary and perks.

Moreover, the 2007 National Nonprofit Ethics Survey found that just over half of employees had observed at least one act of misconduct in the previous year, roughly the same percentages as in the for-profit and government sectors. (Ethics Resource Center, National Nonprofit Ethics Survey 2007, March 27, 2008: ix, 2-4, 19.)

¹ Medical Board staff provided us with excerpts from the 1999 regulatory file, which contained the justification for the non-profit, tax-exempt requirement.

In other words, in the years since the Medical Board adopted the current proxy test for certifying organizations, it has been demonstrated that the proxy is of little value. Note that there is no evidence that nonprofit entities are more prone to unethical conduct; rather, the fact of their nonprofit, tax-exempt status is simply irrelevant to assessing whether they are good corporate actors.

In order to ensure legitimacy among certifying organizations, it would be much more effective to require them to (a) have and maintain accreditation and (b) submit to an initial and thereafter regular pattern of certification program evaluation.

The Board should require each certification body to obtain accreditation from the National Commission for Certifying Agencies (NCCA), a division of the Institute for Credentialing Excellence. NCCA is an independent accreditor that provides impartial, third-party validation that a program meets recognized national credentialing industry standards for the development, implementation, and maintenance of certification programs. NCCA requires programs holding its accreditation to provide annual reports, submit to audits whenever NCCA requires and to apply for reaccreditation every five years. Each program is required to have an independent certification governing board made up of industry stakeholders and subject matter experts. If any currently-approved certifying bodies are not accredited, the Board could allow a grace period during which such certifying body can obtain accreditation from NCCA.

Also, the Board should require all certifying bodies, including both those that are currently approved and any other interested certification organizations, to undertake an independent psychometric program review, the costs to be borne by the certifying bodies. This will provide the Board with valuable information about the psychometric soundness of each program. Typically, this type of review is conducted by a panel of two or three independent psychometricians selected by the Board. The panel will select a commonly accepted set of exam development standards and will ask each certifying body to submit program information that aligns with the objectives of each standard. The panel will score each certification program against each standard and present its findings to the Board. The Board can then determine whether any of the certifying bodies have failed to meet a minimum standard.

Alternatively, the Office of Professional Examination Services (OPES), a division of the California Department of Consumer Protection, may be able to conduct such a review. Again, the certifying bodies can be required to offset the cost of the evaluation. OPES provides psychometric consulting services for the management of occupational examination programs. OPES' services include occupational analysis, standard setting, program evaluation, and statistical analysis of examination performance. OPES follows the highest technical and professional standards in the industry to ensure that examinations are valid, job-related, and legally defensible. Unlike an accreditor or a psychometric panel, OPES goes a step further to include an occupational assessment. The occupational assessment of the certification program ensures that the content of the examination is relevant and appropriate for the target audience, in this case entry-level medical assistants.

The combination of accreditation and program evaluations will ensure that approved providers are investing in and constantly improving the certification exam content and administration. The current requirement of non-profit, tax-exempt status does little to ensure that the Board's approval of certifying organizations is focused on quality providers and limited to "good actors." The Board currently lists five approved certifying organizations on its website.² However, the examinations offered by two of them are developed and administered by for-profit organizations that have established non-profit entities, in name only, to get around the Board's non-profit, tax exempt requirements.

For example, if you use the link for Multiskilled Medical Certification Institute ("MMCI") provided on the Board's list of approved certification organizations, you will learn that MMCI provides certification to medical assistants "in the state of California through contractual arrangements with National Center for Competency Testing" ("NCCT"). MMCI has a single, static page website (<http://www.mmciinc.com>), the sole purpose of which is to redirect California candidates to NCCT's website to sign up for an exam. To the best of our knowledge, NCCT is a reputable and accredited certification provider, but it is a for-profit organization. Indeed, NCCT was the organization that challenged the Board's initial proposal to require certification providers to be not-for-profit, tax exempt organizations.³ When, in 1999⁴, the Board did not agree with NCCT's request to remove the requirement, NCCT created MMCI in 2000⁵. MMCI does not perform any function except to meet the Board's not-for profit, tax exempt requirement.⁶

The Board recently approved the American Medical Certification Association, a for-profit LLC registered in New Jersey since 2010⁷ (the "LLC"). The link listed on the Board's website takes you to the LLC's website. (Please note that the LLC chose the URL "amcaexams" for its for-profit business.) Using the same path used by NCCT, a separate company, AMCA Exams, was formed years after the LLC started offering certifications in New Jersey and surrounding states. AMCA Exams was registered in New Jersey as a non-profit in 2014⁸ and as a Section 501(c)(3) charitable organization with the IRS in 2015⁹. (At least MMCI selected the more credible tax-exempt path of a Section 501(c)(6) trade association, the same tax-exempt status used by the other two national, truly non-profit, certification providers listed by the Board: the American Association of Medical Assistants and the American Medical Technologists.) In the two tax years since its formation, AMCA Exams has filed Form 990-N e-postcards, claiming "Gross

² See http://www.mbc.ca.gov/Licensees/Physicians_and_Surgeons/Medical_Assistants/

³ Per the regulatory excerpts provided to NHA by the Board's staff.

⁴ *Id.*

⁵ Per IRS "ruling year" designation for MMCI.

⁶ Nor does MMCI operate independently of NCCT. Please see MMCI's most recent filing with the IRS at https://apps.irs.gov/pub/epostcard/cor/431855387_201712_9900_2018081615591461.pdf. Page 7 of this form lists the amount of compensation paid by MMCI to various people who are officers of NCCT. Nancy Graham is listed with the Better Business Bureau as the President of NCCT; according to his LinkedIn profile, Lantz Brackett is the VP of Operations for NCCT; LinkedIn shows that Vincent Brackett is the VP of Marketing for NCCT; LinkedIn lists Kay Bertrand as the VP for Exam Development at NCCT; April Goble is listed by LinkedIn as the Controller of NCCT; and Matt Reishus is listed by LinkedIn as the Director of Information Systems at NCCT.

⁷ Exhibit 1, the formation of the LLC with the State of New Jersey.

⁸ Exhibit 2, the formation of AMCA Exams as a non-profit with the State of New Jersey.

⁹ Exhibit 3, the IRS designation of AMCA Exams as a 501(c)3 charitable organization.

receipts not greater than \$50,000.”¹⁰ There is no separate link to an AMCA Exams website for the purpose of collecting charitable donations or to provide a description of its charitable mission. Nor does the LLC website or its other documents provide a means to collect donations, any information concerning charitable efforts or any suggestion to purchasers that the exam fees for the 12 different allied health certifications offered by the LLC support a charity or even a trade association, which they do not.¹¹ It is difficult to give credence to the tax-exempt front of this for-profit certification provider.

Moreover, in other related policy areas, the State of California has turned away from using non-profit or tax-exempt status as a proxy for legitimacy. For example, in the context of post-secondary education, California has eschewed the emphasis on for-profit or non-profit status in favor of factors that actually measure the outcomes that policy-makers want to achieve. Thus, schools are now evaluated based on graduation rates, job placement rates, and cohort default rates. These criteria measure the actual levels of completion of a program, the frequency with which graduates actually find work in the field in which they studied, and the ability of those students to pay their student debt (which likely correlates to their job and income earning potential as a result of their education.) The Legislature has determined that schools which demonstrate good outcomes in these metrics are worthy of investment with tax dollars, whether they are for-profit or non-profit schools.

Similarly, the Medical Board should evaluate certifying organizations based on factors that actually measure the performance of the organization, not merely its tax status. The proposed amendment does that by ensuring that all recognized certifying organizations are accredited by a reputable accrediting body, and that they all are regularly evaluated by independent organizations to ensure the psychometric soundness of their examinations.

Conclusion

It is in the interest of the public, the Medical Board, and the allied health professions to have reliable certifying organizations. The proposed amendment will allow more consumer choice, while at the same time enhancing the Medical Board’s ability to ensure that the certifying organizations it recognizes are actually delivering high quality services. Moreover, the amendment offers these improvements at no cost to the Medical Board or to the public, as the certifying organizations would bear the cost for meeting the new standards. For the foregoing

¹⁰ *Id.*

¹¹ As with NCCT, both the purported non-profit and for-profit enterprises have the same officers. Compare Exhibit 2 at page 2, with Exhibit 4, the LLC’s “About AMCA” document (excerpted from the full version available at <https://www.amcaexams.com/wp-content/uploads/2017/09/About-AMCA1.pdf>) at page 2. The trustees listed for AMCA Exams are Edward Davies, Danielle Sadighi and Cynthia Orr. Exhibit 2. Mr. Davies is listed as the only “Members/Managers” on the LLC’s formation document filed with the State of New Jersey (Exhibit 1) and listed as the Director of Finance & Operations in Exhibit 4 at page 2. Ms. Sadighi is listed as the Vice President of Sales and Marketing for the LLC, and Ms. Orr is listed as the Vice President of Compliance and Accreditation. *Id.* The not-for-profit, tax exempt charitable organization is not independent from the for-profit LLC.

reasons, we respectfully request the Medical Board promulgate the proposed changes to the regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Whalen". The signature is fluid and cursive, with the first name "Patrick" and last name "Whalen" clearly distinguishable.

Patrick Whalen