

**State of California
DEPARTMENT OF STATE HOSPITALS**

UPDATED INFORMATIVE DIGEST

ALIENIST GUIDELINES REGULATION

Sections Affected:

Proposed adoption of new article 7.5 and sections 4750, 4751, and 4752, title 9, California Code of Regulations (CCR).

Background and the Effect of the Rulemaking:

Assembly Bill (AB) 1962 (2016) added a provision to Penal Code section 1369 mandating that the Department of State Hospitals (DSH or the Department) adopt guidelines for the education and training standards for a psychiatrist or licensed psychologist to be considered for appointment by the court to evaluate a defendant whose mental competence is in question. AB 1962 also provided for when there is no reasonably available expert who meets the Department's guidelines; in that case, the court has discretion to appoint an expert who does not meet the guidelines.

This proposed rulemaking adopts the Alienist Guidelines to provide guidance to the court in its consideration of experts to evaluate individuals whose mental competency is at issue. This proposed rulemaking specifies the education and training that the Department believes reflect best practices for an expert to evaluate a defendant and reliably advise the court on the issue of mental competency to stand trial. Further, DSH anticipates that the best practices reflected in this proposed rulemaking will result in more reliable competency evaluations, increasing the likelihood that the court will commit to the Department only the individuals who are incompetent to stand trial.

Description of Regulatory Action:

On January 18, 2019, the Notice of Proposed Regulatory Action for the proposed regulation was posted, marking the beginning of a 45-day comment period. The 45-day comment period closed on March 4, 2019. DSH has considered all timely and relevant comments received during that period and responded to them in the Final Statement of Reasons.

DSH did not receive a request for a public hearing as outlined in the Notice of Proposed Action.

Comparable Federal Regulations:

There are no federal regulations comparable to the Alienist Guidelines regulation.

Non-Substantive Modifications to the Regulation Text:

Modifications made to the originally proposed text are indicated as follows: added text is in underline and deleted text is in ~~strikeout~~.

DSH amended section 4750 to:

- **Text:** ~~These~~ This regulations are is established pursuant to Penal Code section 1369, subdivision (h), to create ~~standards~~ guidelines for education and training ~~that for the courts shall to~~ consider in the appointment of a ~~psychiatrists or licensed psychologists who are~~ to provide forensic evaluations in cases where a question has been raised, under Penal Code sections 1370, 1370.01, or 1370.1, as to a defendant's competency to stand trial. ~~Upon consideration of these standards, if~~ the court is unable to locate a reasonably available expert who meets the ~~standards~~ guidelines or who has equivalent experience and skills, the court has discretion to appoint an expert who does not meet these ~~standards~~ guidelines.
- **Rationale:** These non-substantive changes are necessary to clarify and better reflect the language in AB 1962. Further, these changes make more uniform this proposed section as they are more consistent with the language used in the entire section.

DSH amended section 4751, subdivision (e) to:

- **Text:** "Psychiatrist" means an allopathic physician licensed by the Medical Board of California who has completed a Board-approved residency-training program in psychiatry or an osteopathic physician licensed by the Osteopathic Medical Board of California ~~and~~ who has completed a Board-approved residency-training program in psychiatry.
- **Rationale:** This non-substantive change is necessary to clarify that the completion of a Board-approved residency-training program in psychiatry applies to the allopathic physician or the osteopathic physician.

DSH amended section 4752, subdivision (a) to:

- **Text:** The court shall appoint a psychiatrist or licensed psychologist to evaluate whether a criminal defendant is incompetent to stand trial. This evaluation shall include: the nature of a defendant's mental disorder; a defendant's ability or inability to understand the nature of the criminal proceedings or ~~to assist counsel~~ in a rational manner in the conduct of a defense; and, if within the scope of his or her license, whether treatment with antipsychotic medication is medically

appropriate and likely to restore the defendant to mental competence. In considering an appointment, the court shall appoint an expert who meets the provisions in subsection (1), (2), **or** (3) of this section **and** who meets the provision in subsection (4) of this section, or an expert with equivalent experience and skills.

- **Rationale:** This non-substantive change of removing a space before the word “to” is necessary for clarity and correct grammar.

DSH amended section 4752, subdivision (a)(2)(C) to:

- **Text:** -completion of a post-doctoral training in forensic psychology.
- **Rationale:** This non-substantive change of removing a space before the word “completion” is necessary for clarity and correct grammar.

DSH amended section 4752, subdivision (a)(3) to:

- **Text:** If a psychiatrist or psychologist who does not meet ~~the provision in either subsection (1) or (2) above,~~ the expert shall have training or experience consisting of:
- **Rationale:** This non-substantive change of removing “the provision in” is necessary for clarity and brevity.

DSH amended section 4752, subdivision (a)(3)(B) to:

- **Text:** Experience in drafting forensic reports submitted to a court. If a peer review panel composed of members who are experienced in the criminal justice system and familiar with the issues of competency and criminal responsibility ~~are~~ is available, the court may require a psychiatrist or licensed psychologist to provide proof, prior to appointment, that three of a psychiatrist or licensed psychologist’s redacted reports have been reviewed by such a panel.
- **Rationale:** This non-substantive change from “are” to “is” is necessary for clarity and correct grammar.

DSH amended section 4752, subdivision (b)(1) to:

- **Text:** If, within a reasonable period of time, the court is unable to locate a reasonably available psychiatrist or licensed psychologist who meets these guidelines or who has equivalent experience and skills, the court shall have the discretion to appoint an expert who does not meet these guidelines.

- **Rationale:** This non-substantive change from “the” to “these” is necessary to make more uniform this proposed section as the phrase “these guidelines” is more consistent with the language used in the entire section.

DSH amended section 4752, subdivision (b)(2) to:

- **Text:** In cases wherein the court may benefit from an evaluation by an expert with a specialized area of expertise to ~~inform on the opinion of~~ evaluate competency, the court may appoint a specialized expert who does not meet these guidelines.
- **Rationale:** This non-substantive change of removing “inform on the opinion of” is necessary for clarity and brevity.

Changes to Underlying Laws or Effect of the Regulation:

There have been no other changes in applicable laws or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Action.