

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 21, 2016
 ATTENTION: Members, Medical Board of California
 SUBJECT: Citation and Fine Authority and Disclosure
 STAFF CONTACT: Kerrie Webb, Senior Staff Counsel

RECOMMENDED ACTION:

After review and consideration of the proposed citation and fine regulatory language, make a motion to direct staff to prepare the necessary regulatory documents to submit to the Office of Administrative Law (OAL) to formally notice the proposed regulatory amendments and schedule a hearing on the rulemaking to amend Title 16, Division 13, Chapter 2, Article 6, California Code of Regulations (CCR), sections 1364.10, 1364.11, 1364.13 and 1364.15.

BACKGROUND AND ANALYSIS:Summary of Proposed Amendments to 16 CCR section 1364.10

16 CCR section 1364.10 currently states that a Board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed physician or surgeon of the statutes referred to in section 1364.11. Licensed midwives and polysomnographic technologists, technicians, and trainees are not currently covered by the Board's citation and fine regulations, and the Board lacks the authority to issue citations and fines against them where appropriate. These amendments will add licensed midwives and polysomnographic technologists, technicians, and trainees to those to whom a Board can issue a citation. Additionally, the proposed amendments will clarify that citations may be issued for violations of the regulations, as well as the statutes, listed.

Summary of Proposed Amendments to 16 CCR section 1364.11

16 CCR section 1364.11(a) states that a Board official may issue a citation under section 1364.10 for a violation of the provisions listed in this section. Section 1364.11(a) needs to be amended to include the following citation authority:

- B&P section 2234(h), relating to the repeated failure of a certificate holder, in the absence of good cause, to attend and participate in an interview by the board;
- B&P sections 2507, 2508, 2510, 2514, and 2519, relating to licensed midwives;
- B&P sections 3575 and section 3576, relating to polysomnographic technologists, technicians, and trainees;
- B&P section 4172, relating to any prescriber who dispenses drugs and fails to store all drugs to be dispensed in an area that is secure;
- Health and Safety Code section 11165.1(a)(1)(A)(i), requiring health care practitioners authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances to submit an application before July 1, 2016, to the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient maintained in the CURES database; and

- 16 CCR section 1355.4, relating to any licensee that practices medicine and fails to provide proper notice to each patient of the fact that the licensee is licensed and regulated by the Board.

Additionally, this section needs to be reorganized and renumbered so that it is easier for interested parties to locate citable offenses. Also, a section that now falls under the Physical Therapy Board's jurisdiction, B&P section 2630, needs to be stricken. Finally, the proposed amendments clarify that a citation issued under this section is separate from, and in addition to, any other civil or criminal remedies.

Summary of Proposed Amendments to 16 CCR section 1364.13

16 CCR section 1364.13 authorizes a Board official to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a physician and surgeon is required under the Medical Practice Act. Amendments to section 1364.13 are needed to authorize a Board official to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a licensed midwife or registration as a polysomnographic technologist, technician, or trainee is required.

Summary of Proposed Amendments to 16 CCR section 1364.15

16 CCR section 1364.15 states every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public and citations that have been resolved by payment of the administrative fine or compliance with the order of abatement shall be purged five (5) years from the date of resolution. However, Assembly Bill 1886 (Eggman), which amended B&P section 2027, effective January 1, 2015, requires citations that have not been resolved or appealed within 30 days to be posted, and, once the citation has been resolved, to only be posted for three (3) years instead of five (5) years. Section 1364.15 needs to be amended to be in compliance with this new legislation.

STAFF RECOMMENDATION:

Staff recommends the Board authorize staff to prepare the necessary regulatory documents to submit to OAL to formally notice the proposed regulatory amendments and schedule a hearing on the rulemaking to amend 16 CCR sections 1364.10, 1364.11, 1364.13, and 1364.15. The proposed language is included below for the Board's review. The proposed deletions are identified with ~~strikethrough~~ text, and the proposed additions are identified with underlined text.

PROPOSED REGULATORY LANGUAGE:

§ 1364.10. Citations and Fines.

(a) For purposes of this article, “board official” shall mean the executive director of the board or his or her designee.

(b) A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed physician or surgeon, licensed midwife, or polysomnographic technologist, technician, or trainee of the statutes and regulations referred to in Section 1364.11.

(c) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

§ 1364.11. Citable Offenses.

The amount of any fine to be levied by a board official shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and shall be within the range set forth below.

(a) In his or her discretion, a board official may issue a citation under Section 1364.10 for a violation of the provisions listed in this section.

- (1) Business and Professions Code Section 119
- (2) Business and Professions Code Section 125
- (3) Business and Professions Code Section 125.6
- (4) Business and Professions Code Section 475(a)(1)
- (5) Business and Professions Code Section 496
- (6) Business and Professions Code Section 650
- (7) Business and Professions Code Section 650.1
- (8) Business and Professions Code Section 654
- (9) Business and Professions Code Section 654.1
- (10) Business and Professions Code Section 654.2
- (11) Business and Professions Code Section 655.5
- (12) Business and Professions Code Section 655.6
- (13) Business and Professions Code Section 702
- (14) Business and Professions Code Section 730
- (15) Business and Professions Code Section 732
- (16) Business and Professions Code Section 802(b)
- (17) Business and Professions Code Section 802.1

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~~(16)~~18 Business and Professions Code Section 810
~~(17)~~19 Business and Professions Code Section 2021
~~(18)~~20 Business and Professions Code Section 2052
~~(19)~~21 Business and Professions Code Section 2054
~~(20)~~22 Business and Professions Code Section 2065
~~(21)~~23 Business and Professions Code Section 2066
~~(22)~~24 Business and Professions Code Section 2072
~~(23)~~25 Business and Professions Code Section 2073
~~(24)~~26 Business and Professions Code Section 2097
~~(25)~~27 Business and Professions Code Section 2168
~~(26)~~28 Business and Professions Code Section 2168.4
~~(27)~~29 Business and Professions Code Section 2216.1
~~(28)~~30 Business and Professions Code Section 2221.1
~~(29)~~31 Business and Professions Code Section 2234(h) ~~only for a violation of one of the following:~~

- ~~(A) Business and Professions Code Section 802(b)~~
- ~~(B) Business and Professions Code Section 802.1~~
- ~~(C) Health and Safety Code Section 102795~~
- ~~(D) Health and Safety Code Section 102800~~
- ~~(E) Health and Safety Code Section 103785~~
- ~~(F) Health and Safety Code Section 109275~~
- ~~(G) Health and Safety Code Section 109277~~
- ~~(H) Health and Safety Code Section 109278~~
- ~~(I) Health and Safety Code Section 109282~~
- ~~(J) Health and Safety Code Section 120250~~
- ~~(K) Health and Safety Code Section 121362~~
- ~~(L) Health and Safety Code Section 121363~~
- ~~(M) Title 17 California Code of Regulations Section 2500~~

~~(30)~~(32) Business and Professions Code Section 2236
~~(31)~~(33) Business and Professions Code Section 2238
~~(32)~~(34) Business and Professions Code Section 2240
~~(33)~~(35) Business and Professions Code Section 2244 (maximum fine \$1000 pursuant to section 2244)
~~(34)~~(36) Business and Professions Code Section 2243
~~(35)~~(37) Business and Professions Code Section 2250
~~(36)~~(38) Business and Professions Code Section 2255
~~(37)~~(39) Business and Professions Code Section 2256
~~(38)~~(40) Business and Professions Code Section 2257
~~(39)~~(41) Business and Professions Code Section 2259
~~(40)~~(42) Business and Professions Code Section 2261
~~(41)~~(43) Business and Professions Code Section 2262
~~(42)~~(44) Business and Professions Code Section 2263
~~(43)~~(45) Business and Professions Code Section 2264
~~(44)~~(46) Business and Professions Code Section 2265
~~(45)~~(47) Business and Professions Code Section 2266
~~(46)~~(48) Business and Professions Code Section 2271

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- ~~(47)~~(49) Business and Professions Code Section 2272
- ~~(48)~~(50) Business and Professions Code Section 2273
- (49)(51) Business and Professions Code Section 2274
- ~~(50)~~(52) Business and Professions Code Section 2285
- ~~(51)~~(53) Business and Professions Code Section 2286
- ~~(52)~~(54) Business and Professions Code Section 2305
- ~~(53)~~(55) Business and Professions Code Section 2400
- ~~(54)~~(56) Business and Professions Code Section 2415
- ~~(55)~~(57) Business and Professions Code Section 2439
- ~~(56)~~(58) Business and Professions Code Section 2440
- ~~(57)~~(59) Business and Professions Code Section 2441
- (60) Business and Professions Code Section 2507
- (61) Business and Professions Code Section 2508
- (62) Business and Professions Code Section 2510
- (63) Business and Professions Code Section 2514
- (64) Business and Professions Code Section 2519
- ~~(58) Business and Professions Code Section 2630~~
- ~~(59)~~(65) Business and Professions Code Section 3516
- (66) Business and Professions Code Section 3575
- (67) Business and Professions Code Section 3576
- ~~(60)~~(68) Business and Professions Code Section 4080
- ~~(61)~~(69) Business and Professions Code Section 4081(a)
- ~~(62)~~(70) Business and Professions Code Section 17500
- ~~(65)~~(71) Civil Code Section 56.10
- ~~(66)~~(72) Health and Safety Code Section 1248.15
- (73) Health and Safety Code Section 11165.1(a)(1)(A)(i)
- (74) Health and Safety Code Section 102795
- (75) Health and Safety Code Section 102800
- (76) Health and Safety Code Section 103785
- (77) Health and Safety Code Section 109275
- (78) Health and Safety Code Section 109277
- (79) Health and Safety Code Section 109278
- (80) Health and Safety Code Section 109282
- (81) Health and Safety Code Section 120250
- (82) Health and Safety Code Section 121362
- (83) Health and Safety Code Section 121363
- ~~(67)~~(84) Health and Safety Code Section 123110(a), (b)
- ~~(68)~~(85) Health and Safety Code Section 123148
- ~~(69)~~(86) Penal Code Section 11166
- ~~(63)~~(87) Title 16 California Code of Regulations Section 1338(c)
- ~~(64)~~(88) Title 16 California Code of Regulations Section 1399.545
- ~~(M)~~(89) Title 17 California Code of Regulations Section 2500

(b) In his or her discretion, a board official may issue a citation under Section 1364.10 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.

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(c) A citation may include a fine from \$100 to \$2500. However, a citation may include a fine up to \$5,000 if one or more of the following circumstances apply:

(1) The cited person has received two or more prior citations for the same or similar violations;

(2) The citation involves multiple violations that demonstrate a willful disregard for the law.

(d) In his or her discretion, a board official may issue a citation with an order of abatement without levying a fine for the first violation of any provision set forth above.

(e) The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9, 148, 2227, 2228, 2229 and 2234, Business and Professions Code.

§ 1364.13. Citations for Unlicensed Practice.

A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a physician and surgeon licensed under Chapter 5 of the code (commencing with section 2000) or as a licensed midwife licensed under Chapter 5 of the code (commencing with section 2505), or registration as a polysomnographic technologist, technician, or trainee registered under Chapter 7.8 (commencing with section 3575) is required. ~~under the Medical Practice Act.~~ Each citation issued shall contain an order of abatement. Where appropriate, a board official shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of Section 125.9 of the code. The provisions of Sections 1364.10 and 1364.12 shall apply to the issuance of citations for unlicensed or unregistered activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

§ 1364.15. Public Disclosure; Record Retention.

Every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public. Citations that have been resolved, by payment of the administrative fine or compliance with the order of abatement, shall be purged ~~five (5)~~ three (3) years from the date of resolution. A citation that has been withdrawn or dismissed shall be purged immediately upon being withdrawn or dismissed.

Note: Authority cited: Sections 125.9, 148, ~~and~~ 2018, and 2027, Business and Professions Code. Reference: Sections 125.9, ~~and~~ 148, and 2027, Business and Professions Code.