

Medical Board of California Inactive License – Misdemeanor Convictions Specific Language

Modified Text

Changes to the originally proposed language are shown by double underline for new text and double strikeout for deleted text.

1. Adopt Section 1355.45 of Title 16, Division 13, Chapter 2:

Section 1355.45. (a) For purposes of subdivision (b) of section 2236.2 of the Code, "notice" means a ~~certified copy of a release issued by the applicable local jurisdiction where the licensee was incarcerated which is provided by the licensee either by regular mail or by personal service, at the option of the licensee.~~ statement signed under penalty of perjury and dated by the licensee and provided to the board by means of a facsimile transmission, regular mail, or personal service at the option of the licensee. The statement shall include the date and time of the licensee's release, his or her physician's and surgeon's certificate number, and the name and location of the facility at which the licensee was formerly incarcerated.

(b) Whenever a license is placed on inactive status pursuant to section 2236.2 of the Code, the ~~B~~board shall display the status of the license as follows: "Inactive License - Misdemeanor Conviction. Licensee was convicted of a misdemeanor and is currently incarcerated. No practice is permitted."

NOTE: Authority cited: Section 2018, Business and Professions Code. Reference: Section 2236.2, Business and Professions Code.

TITLE 16. Medical Board of California

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Doubletree by Hilton – Torrance – South Bay, 21333 Hawthorne Boulevard, Torrance, CA 90503 at 9:00 a.m. on May 4, 2012. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 23, 2012 or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific the provisions in Section 2236.2 of the Code, the Board is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 1355.45 in Article 1, Chapter 2, Division 13, defining the notice required of a physician and surgeon in order to restore the license to active status following a period of incarceration after the conviction of misdemeanor; and, the license status description to be posted on Board's Internet site, to reflect current law.

Current law authorizes the Board to automatically place a physician's and surgeon's certificate on inactive status during any period of time that the holder of the certificate is incarcerated after the conviction of a misdemeanor. A physician's and surgeon's certificate which has been placed on inactive status pursuant to this law shall be returned by the Board to its prior or appropriate status within five business days of receiving notice that the physician is no longer incarcerated.

The proposed regulation will implement, interpret, and make specific the type of notice required to be submitted to the Board when the physician is no longer incarcerated. This regulation will also provide a definition to the public of the term "inactive" when posted to the Board's Internet site in connection to a physician who is incarcerated and unable to practice medicine. The Board notes that the status of a physician's and surgeon's certificate must be posted on its Internet site pursuant to the provisions of Sections 803.1 and 2027 of the Code.

The specific benefits of this proposal are two-fold: 1) By identifying the type of notice (certified copy of release), public protection is enhanced because the Board will have good basis for returning an inactive license to its prior status, instead of simply relying on the verbal or written statement of the licensee, and 2) by defining the type of statement that will accompany

the change in license status, the public will know the reason a physician's license was placed on inactive status.

This proposed regulation is not inconsistent or incompatible with existing state regulations. Additionally, providing notice to the Board of a release from incarceration if consistent with the reporting of criminal information to the Board (B&P Sections 803.5, 803.6).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant adverse economic impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. The benefit to the health and welfare of California residents is the enhanced notice to the consumer so the public will know the reason a physician's license was placed on inactive status. This regulation has no benefit to worker safety and to the State's environment.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The Board does not license businesses, the Board licenses individuals; therefore, there is no impact on small businesses or any business.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-

effective to affected private persons and equally effective in implementing the statutory policy or to other provision of law. Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website:

http://www.mebd.ca.gov/laws/regulations_proposed.html.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Board's website: http://www.mebd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Natalie Lowe, Enforcement Analyst
Medical Board of California
Address: 2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2389
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Chris Valine
Medical Board of California
Address: 2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2389
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at:
http://www.mebd.ca.gov/laws/regulations_proposed.html.