

TITLE 16. MEDICAL BOARD OF CALIFORNIA
Notice of Proposed Regulatory Action
Change of Location for Public Hearing

The California Regulatory Notice Register dated June 5, 2009 indicated that the Medical Board of California (Board) was proposing a regulation that would adopt Section 1355.4 to **provide notice to consumers** that medical doctors are licensed by the Board and how to contact the Board should patients need assistance.

The Board will conduct a public hearing on this proposed regulation on July 24, 2009, at a different location than stated in the original notice.

The new hearing location is:

Medical Board of California
2005 Evergreen St, Hearing Room
Sacramento, CA 95815

As originally noticed, the hearing will begin at 9:10 a.m.

For additional information, please contact:

Name: Candis Cohen
Address: Medical Board of California
2005 Evergreen St., Ste. 1200
Sacramento, CA 95815
Telephone: (916) 263-2394
Fax: (916) 263-2387
E-Mail: ccohen@mbc.ca.gov

DATED: July 6, 2009



Kevin A. Schunke
Regulations Manager
Medical Board of California

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 **the Sacramento Convention Center, 1400 J Street, Sacramento, California, at 9:10 a.m. on July 24, 2009**. 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 July 20, 2009** 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 Section 138 of said 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 1355.4.

Existing law, Business and Professions Code section 138, requires every board in the Department of Consumer Affairs to adopt regulations to require its licentiates to provide notice to their customers that the practitioner is licensed by the state.

This proposal implements section 138 by mandating notification to consumers by physicians of the fact that they are licensed by the Medical Board of California, with the Board's toll-free number and its Web site.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: minor

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.

AND

The following studies/relevant data were relied upon in making the above determination:
None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any 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.

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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect small businesses, since some licensees work in a small-business practice setting.

This proposed regulation would require physicians to determine which of the three notification options provided would be most appropriate for their practices, and then post a sign where their patients may see it; or put the required language on a piece of paper to be signed by each patient and retained in his/her file; or include the language in another document just above the patient's signature.

However, impact would be *de minimus*, since it is anticipated that most physicians' offices will simply post one sign in the reception area or waiting room.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

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. Copies of the initial statement of reasons and all of the information upon which the proposal is based may be obtained from the person designated in the Notice under Contact Person or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of 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.medbd.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.medbd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

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

Name: Candis Cohen
Address: Medical Board of California
2005 Evergreen St., Ste. 1200
Sacramento, CA 95815
Telephone: (916) 263-2394
Fax: (916) 263-2387
E-Mail Address: ccohen@mbc.ca.gov

The backup contact person is:

Name: Kevin A. Schunke
Address: Medical Board of California
2005 Evergreen St., Ste. 1200
Sacramento, CA 95815
Telephone: (916) 263-2368
Fax: (916) 263-2387
E-Mail Address: kschunke@mbc.ca.gov

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

**MEDICAL BOARD OF CALIFORNIA
INITIAL STATEMENT OF REASONS**

Hearing Date: July 24, 2009

Subject Matter of Proposed Regulations: Notice to Consumers by Physicians

(1) Section Affected: Title 16, Section 1355.4

Specific Purpose of each adoption, amendment, or repeal:

To make consumers aware that medical doctors are licensed by the Medical Board of California (Board) and how to contact the Board should patients need assistance.

Specifically, this proposed regulation will require physicians to notify their patients that they are licensed and regulated by the Medical Board of California. Physicians may provide the notice in one of the specifically enumerated options: prominently posting a sign; including it in a written notice to be signed by the patient and kept in his/her medical record; or including it just above the signature line on a document given to the patient that the patient signs.

This proposed regulation will provide notice of the Medical Board and its contact information prior to, during, or after the provision of medical care. By law, public protection is the highest priority of the Board, and the public protection is enhanced when patients and other interested parties are made aware of the Board's existence at a time close to when medical services are provided.

Factual Basis/Rationale

Factual basis for determination that each proposed change is necessary:

As specified above, public protection is the highest priority of the Board whenever it exercises its regulatory authority, and this proposal is consistent with that objective, as an informed consumer is in a better position to make reasoned choices for him/herself, and also to assist the Board in regulating physicians via our complaint process, should a problem arise. It has long been suggested by public policy advocates, concerned citizens, and other interested parties that too few Californians are aware of the existence and role of the Board or the public services it offers, e.g., the information available about physicians, medical services, laws and regulations, or the complaint process. Anecdotally, oftentimes the Board's investigators will discover during their investigations civil malpractice lawsuits filed by patients who were unaware of the Medical Board's existence. If the public does not know whom to contact when an issue with a physician arises or where to seek information about a physician, the Board's effectiveness is hampered and its public protection mission is compromised. With the adoption of this proposal, patients will be provided with a tangible document with the Board's information or will have the opportunity to see a sign with the Board's information.

This proposed regulation also comports with the provisions of section 138 of the Business and Professions Code, which requires constituent boards within the Department of Consumer Affairs to promulgate regulations regarding notice that a practitioner is licensed by the state. The Medical Board is a constituent board of the Department.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any): none

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

Although many businesses will be required to comply, the economic impact will be minor. Physicians would only be required to prominently post a sign, which will be available on the Board's Web site, or include the brief, written notice in a written statement to be signed by the patient or his/her representative and retained in his/her file; or include the notice on another document given to each patient. The proposed regulation permits the physician to choose how he or she will comply with the notice requirements.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Medical Board has for many years used the traditional methods to try to inform the public of its existence and how to contact it: news releases; outreach at consumer and health fairs; newsletters to the Board's licensees and others; TV, radio, and print media interviews, a comprehensive Web site; and written materials (e.g., pamphlets).

Compliance with Business and Professions Code section 138 would be much more effective than all of these activities combined. While the Board endeavors to inform the public of its roles and functions via various mass marketing methodologies, the proposed regulation would enhance awareness within the point-of-service area. This is a more effective means of educating patients.

MEDICAL BOARD OF CALIFORNIA
Notice to Consumers by Physicians
Specific Language of Proposed Changes

Adopt section 1355.4 in Article 1 of Chapter 2 to read as follows:

1355.4. Notice to Consumers

(a) A licensee engaged in the practice of medicine shall provide notice to each patient of the fact that the licensee is licensed and regulated by the board. The notice shall include the following statement and information:

NOTICE TO CONSUMERS

Medical doctors are licensed and regulated

by the Medical Board of California

(800) 633-2322

www.mbc.ca.gov

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 48-point type in Arial font.

(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's medical records, stating the patient understands the physician is licensed and regulated by the board.

(3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

NOTE: Authority cited: Section 2018, Business and Professions Code; Reference: Sections 138 and 680, Business and Professions Code.

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