

## MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: October 14, 2019  
ATTENTION: Members, Medical Board of California  
SUBJECT: Proposed Changes to Regulations Regarding Citable Offenses  
FROM: Kerrie Webb, Senior Staff Counsel

### REQUESTED ACTION:

After review and consideration of the proposed amendments to the attached regulations relating to citable offenses, 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 Title 16 of the California Code of Regulations (CCR) section 1364.10 and repeal section 1364.11; 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

Business and Professions Code (BPC) section 125.9 authorizes the Board to establish a system by regulation for the issuance of a citation to the Board's licensees, which may contain an order of abatement or fine.

A citation, with or without a fine and/or order of abatement, is used to address technical or minor violations of the law, and is not considered disciplinary action. The Board's authority to issue a citation furthers public protection, as it allows the Board to take action upon completion of an investigation for non-egregious violations that do not rise to the level warranting discipline, but do raise issues that should be brought to the licensee's attention for correction.

Existing law under 16 CCR section 1364.10 provides, among other things, 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 licensees of the statutes and regulations referred to in 16 CCR section 1364.11.

Existing law under 16 CCR section 1364.11 provides, among other things, that a Board official may issue a citation for a violation of the statutes and regulations specified in that section. The list of statutes and regulations is long, cumbersome, and is routinely out of date due to statutory and regulatory changes. Additionally, this section caps the fine at \$2,500, but permits a fine of up to \$5,000 if the licensee has received two or more prior citations for the same or similar violations, or the citation involves multiple violations that show a willful disregard for the law. Under BPC section 125.9(b)(3), however, after considering certain

factors, the Board is permitted to issue fines of up to \$5,000 for each violation, including for the first violation.

Consequently, to further public protection and streamline the Board's citation regulations, Board staff recommends amending 16 CCR section 1364.10 to permit the Board official to issue citations, including those containing orders of abatement and/or fines, to any licensee for a violation of any statute or regulation which would be grounds for discipline by the Board. With this change, the need for the list of statutes and regulations subject to citation under 16 CCR section 1364.11(a) is eliminated.

This proposed change is consistent with the citation authority of several other health care boards in California. For instance, the Board of Registered Nursing's authority under 16 CCR section 1435(a) states the following: "The Executive Officer of the board or his/her designee, in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine and/or order of abatement against that licensee for any violation of law which would be grounds for discipline or of any regulation adopted by the board pursuant thereto." Similarly, the Dental Board of California's authority under 16 CCR section 1023 states the following: "The executive officer of the board may issue a citation to any person who holds a permit or certificate from the board for a violation of any provision or other law enforced by the board." Further, the Board of Pharmacy's authority under 16 CCR section 1775 indicates that the executive director or his/her designee may issue a citation for a violation of the Pharmacy Law, a violation of any regulation adopted by the board, a violation of the Confidentiality of Medical Information Act, defaulting on a United States Department of Health and Human Services education loan, or a violation of other statutes or regulations for which the board may issue a citation. These other boards do not list every citable offense in regulation, and Board staff recommends aligning the Board's citation regulations accordingly.

Additionally, in order to streamline the citation regulations and improve clarity, Board staff recommends moving the remaining provisions under 16 CCR section 1364.11, to section 1364.10, and repealing section 1364.11 in its entirety.

Further, Board staff recommends amending the provisions relating to fine assessment to indicate that the amount shall not exceed the amount specified in BPC section 125.9(b)(3). This change will update the Board's authority to assess fines to the full extent authorized under this section.

#### 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  
CITABLE OFFENSES  
Proposed Text**

**Underlined:** Indicates proposed additions to the existing regulation.

**~~Strikeout:~~** Indicates proposed deletions to the existing regulation

**Amend Section 1364.10 in Article 6 of Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:**

**§ 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~~ their designee.
- (b) A board official is authorized to determine when and against whom a citation will be issued and to issue citations, and citations containing orders of abatement and or fines, to any person who holds a certificate, registration, or permit (license) from the board for violation of any statute or regulation which would be grounds for discipline by the board. ~~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~~ each statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.
- (d) In their discretion, a board official may issue a citation to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.
- (e) The amount of any fine to be levied by a board official shall not exceed the amount specified in subdivision (b)(3) of Section 125.9 of the code, and when determining the amount of the fine to be assessed, the board official shall consider the factors listed in that subdivision.
- (f) In their discretion, a board official may issue a citation with an order of abatement without levying a fine for the first violation.
- (g) The sanction authorized under this section shall be separate from and in addition to any other administrative, 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.

**Repeal Section 1364.11 in Article 6 of Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:**

**~~§ 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 702~~

~~(13) Business and Professions Code Section 730~~

~~(14) Business and Professions Code Section 732~~

~~(15) Business and Professions Code Section 802(a)~~

~~(16) Business and Professions Code Section 802.1~~

~~(17) Business and Professions Code Section 810~~

~~(18) Business and Professions Code Section 2021~~

~~(19) Business and Professions Code Section 2052~~

~~(20) Business and Professions Code Section 2054~~

~~(21) Business and Professions Code Section 2065~~

~~(22) Business and Professions Code Section 2066~~

~~(23) Business and Professions Code Section 2072~~

~~(24) Business and Professions Code Section 2073~~

~~(25) Business and Professions Code Section 2168~~

~~(26) Business and Professions Code Section 2168.4~~

~~(27) Business and Professions Code Section 2216.1~~

~~(28) Business and Professions Code Section 2221.1~~

~~(29) Business and Professions Code Section 2234(h)~~

~~(30) Business and Professions Code Section 2236~~

~~(31) Business and Professions Code Section 2238~~

~~(32) Business and Professions Code Section 2240~~

~~(33) Business and Professions Code Section 2244 (maximum fine \$1000 pursuant to section 2244)~~

~~(34) Business and Professions Code Section 2243~~

~~(35) Business and Professions Code Section 2250~~

~~(36) Business and Professions Code Section 2255~~

~~(37) Business and Professions Code Section 2256~~  
~~(38) Business and Professions Code Section 2257~~  
~~(39) Business and Professions Code Section 2259~~  
~~(40) Business and Professions Code Section 2261~~  
~~(41) Business and Professions Code Section 2262~~  
~~(42) Business and Professions Code Section 2263~~  
~~(43) Business and Professions Code Section 2264~~  
~~(44) Business and Professions Code Section 2266~~  
~~(45) Business and Professions Code Section 2271~~  
~~(46) Business and Professions Code Section 2272~~  
~~(47) Business and Professions Code Section 2273~~  
~~(48) Business and Professions Code Section 2274~~  
~~(49) Business and Professions Code Section 2285~~  
~~(50) Business and Professions Code Section 2286~~  
~~(51) Business and Professions Code Section 2305~~  
~~(52) Business and Professions Code Section 2400~~  
~~(53) Business and Professions Code Section 2415~~  
~~(54) Business and Professions Code Section 2426~~  
~~(55) Business and Professions Code Section 2439~~  
~~(56) Business and Professions Code Section 2440~~  
~~(57) Business and Professions Code Section 2441~~  
~~(58) Business and Professions Code Section 2507~~  
~~(59) Business and Professions Code Section 2508~~  
~~(60) Business and Professions Code Section 2510~~  
~~(61) Business and Professions Code Section 2514~~  
~~(62) Business and Professions Code Section 2519~~  
~~(63) Business and Professions Code Section 3516~~  
~~(64) Business and Professions Code Section 3575~~  
~~(65) Business and Professions Code Section 3576~~  
~~(66) Business and Professions Code Section 4080~~  
~~(67) Business and Professions Code Section 4081(a)~~  
~~(68) Business and Professions Code Section 4172~~  
~~(69) Business and Professions Code Section 17500~~  
~~(70) Civil Code Section 56.10~~  
~~(71) Health and Safety Code Section 1248.15~~  
~~(72) Health and Safety Code Section 11165.1(a)(1)(A)(i)~~  
~~(73) Health and Safety Code Section 102795~~  
~~(74) Health and Safety Code Section 102800~~  
~~(75) Health and Safety Code Section 103785~~  
~~(76) Health and Safety Code Section 109275~~  
~~(77) Health and Safety Code Section 109277~~  
~~(78) Health and Safety Code Section 109278~~  
~~(79) Health and Safety Code Section 109282~~  
~~(80) Health and Safety Code Section 120250~~  
~~(81) Health and Safety Code Section 120370(a)~~  
~~(82) Health and Safety Code Section 121362~~

- ~~(83) Health and Safety Code Section 121363~~
- ~~(84) Health and Safety Code Section 123110(a), (b)~~
- ~~(85) Health and Safety Code Section 123148~~
- ~~(86) Penal Code Section 11166~~
- ~~(87) Title 16 California Code of Regulations Section 1338(c)~~
- ~~(88) Title 16 California Code of Regulations Section 1355.4~~
- ~~(89) Title 16 California Code of Regulations Section 1399.545~~
- ~~(90) 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.~~
- ~~(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 administrative, 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.~~