

Department of Consumer Affairs
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.
MEDICAL BOARD OF CALIFORNIA

Notice Of Proposed Regulatory Action
Citations and Fines

NOTICE IS HEREBY GIVEN that the Medical Board of California (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under Contact Person in this notice.

COMMENT PERIOD

Written comments relevant to the action proposed, 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 no later than by 5:00 p.m., Tuesday, November 14, 2023**, or must be received by the Board at the hearing, if applicable.

AVAILABILITY OF MODIFICATIONS

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 the 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 Sections 125.9, 148, and 2018 of the Business and Professions Code (BPC), and to implement, interpret, or make specific sections 125.9 and 148 of the BPC, the Board is considering amendments to Sections 1364.10 and 1364.11 of Division 13 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

BPC section 125.9 authorizes the Board to establish a system by regulation for the issuance of citations 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 a 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 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. Note, however, that pursuant to 16 CCR section 1364.11, subdivision (e), citations are separate from and in addition to any other administrative, civil, or criminal remedies.

This proposed rulemaking will update the Board's citation and fine regulations by:

- 1) making them gender neutral;
- 2) making non-substantive changes to improve readability;
- 3) clarifying that the Board is authorized to issue a citation to any of its licensees, which may include an order of abatement and/or fine, for a violation of the statutes and regulations listed in 16 CCR section 1364.11; contained in the Medical Practice Act or the Licensed Midwifery Practice Act of 1993; any regulation adopted by the Board under Division 13, Title 16 of the California Code of Regulations; and any other statute or regulation which would be grounds for discipline by the Board; and
- 4) clarifying that any fine levied by a Board official shall not exceed the amount specified by the applicable statute.

On May 19, 2023, the Board reviewed and approved proposed language for this rulemaking, and authorized staff to proceed with the rulemaking process.

Specifically, this proposed rulemaking will do the following:

Amend 16 CCR section 1364.10

Existing law under 16 CCR section 1364.10 provides 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 individuals of the statutes and regulations referred to in 16 CCR section 1364.11.

This proposed rulemaking will amend section 1364.10, subdivision (a) to make non-substantive changes to capitalize "Board" in reference to the Medical Board of California, and to change "his or her" to "their."

Under section 1364.10, subdivision (b), this proposal will make non-substantive changes to capitalize "Board" in reference to the Medical Board of California and substitute the term "contain" for "containing."

Additionally, this proposal clarifies that the Board may issue citations, which may contain orders of abatement and/or fines to any person who holds a license, certificate, registration, or permit from the Board, and deletes the reference to the individual license and registration types.

Under section 1364.10, subdivision (c), this proposal makes a minor change by replacing “the” with “each” to indicate that the citation shall include a reference to each statute or regulation alleged to have been violated. This proposal also changes “regulations” to “regulation” so that it is grammatically correct.

Amend 16 CCR section 1364.11

Existing law under 16 CCR section 1364.11 provides that a Board official may issue a citation for a violation of the statutes and regulations specified in that section, as well as to a licensee who violates a term or condition of probation. Additionally, existing law 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 if the citation involves multiple violations that show a willful disregard for the law.

This proposed rulemaking will amend section 1364.11 to strike the first paragraph in reference to BPC section 125.9 referring to the determination of the fine, as relevant language is being moved to section 1364.11, subdivision (c).

This proposed rulemaking will amend section 1364.11, subdivision (a) to change “his or her” to “their,” and to capitalize “Board” in reference to the Medical Board of California.

Additionally, this proposed rulemaking will delete section 1364.11, subdivision (a), paragraphs (18) – (62) and (87) – (88), because the code sections referenced in those paragraphs are contained in the Medical Practice Act, the Licensed Midwifery Practice Act of 1993, or the Board’s regulations. The Medical Practice Act, the Licensed Midwifery Practice Act of 1993, and the Board’s regulations are being added in their entirety to this regulation under section 1364.11, subdivision (a), paragraphs (44), (45), and (46), respectively. All of subdivision (a) will be renumbered accordingly.

Further, this proposed rulemaking will amend section 1364.11, subdivision (a), former paragraph (84), renumbered as paragraph (39), to delete the reference to subdivisions (a) and (b) under Health and Safety Code section 123110, to clarify that a violation of any provision of that section is citable.

This proposed rulemaking will also amend section 1364.11, subdivision (a) to add a new paragraph (47) to specify that a violation of any other statute or regulation upon which the Board may base a disciplinary action is a citable offense.

This proposed rulemaking will also amend section 1364.11, subdivision (b) to change “his or her” to “their,” and to capitalize “Board” in reference to the Medical Board of California.

Further, this proposed rulemaking will amend section 1364.11, subdivision (c) to delete existing language setting forth the range for any fine amount to be levied and factors to

be considered when determining the amount, and to add language to indicate that the Board official shall not exceed the fine amount specified under applicable code sections and shall consider the factors listed under those code sections when levying a fine.

Finally, this proposed rulemaking will amend section 1364.11, subdivision (d) to change “his or her” to “their,” and to capitalize “Board” in reference to the Medical Board of California.

Anticipated Benefits of Proposal

This proposed rulemaking will further consumer protection by updating the Board’s cite and fine regulations to clarify that the Board may issue a citation to any of its licensees which may contain a fine and/or order of abatement for a violation of any provision in the Medical Practice Act, the Licensed Midwifery Practice Act of 1993, any regulation adopted by the Board, and any other statute or regulation upon which the Board may base a disciplinary action, in addition to certain specified statutes and regulations contained in the existing regulation. These amendments will help keep the list of citable offenses current, as statutes and regulations are added, repealed, and modified.

Further, this proposed rulemaking clarifies the Board’s authority to assess fines to the full extent outlined by applicable code sections, and updates the regulations to make them gender neutral.

Updating the cite and fine regulations will enhance public protection by improving this administrative tool allowing the Board to take action for 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.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Board has conducted a search for any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

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

The Board anticipates annual workload and costs related to issuing approximately 88 additional citations per year to total approximately \$15,620. Out of those 88 additional citations, the Board anticipates approximately 25 informal conferences will be requested per year at a cost of approximately \$3,359. Further, out of those 88 additional citations, the Board anticipates that there will be three formal appeals per year at a cost of

approximately \$20,118. Therefore, the total annual cost relating to this rulemaking is estimated at \$39,097 per year, and up to \$390,975 over a 10-year period.

With regard to revenues, the Board currently issues an average of 88 citations a year under existing law with an average fine of \$771. The Board anticipates that the average amount of fines will double from \$771 to \$1,542. Consequently, between the increase in fine amounts for the current number of citations issued on average, and the 88 additional citations with an average fine amount of \$1,542 anticipated under this rulemaking, the Board estimates the average amount of additional revenues to be \$203,544 per year and up to \$2,035,440 over a 10-year period under this proposal.

The proposed regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

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

Significant Effect on Housing Costs (and, if applicable, including any estimated costs of compliance or potential benefits of a building standard) None.

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

This initial determination is based on the fact that individuals who are in compliance with the law will not be impacted by the proposed amendments. The Board also only issues citations to individuals not businesses. Over the last two fiscal years, 2020-2021 and 2021-2022, the Board received an average of 10,054 complaints across all license types per fiscal year. Over that same period the Board issued an average of 88 citations with an average fine of \$771 assessed. The Board anticipates that the number of citations issued may double as a result of this rulemaking to an average of approximately 176 citations each fiscal year, as there will be additional license types that may receive a citation, and there will be more citable offenses under this proposal.

The average amount of the fine may increase to approximately \$1,542 as a result of this rulemaking package, since the Board is modifying section 1364.11 to refer to BPC section 125.9, which authorizes a fine of up to \$5,000, even for a first offense, unless another limit applies.

Cost Impact on Representative Private Person or Business

There may be a cost impact to a licensee for committing a citable violation. Individuals in compliance with the law will not be impacted by these proposed amendments. Based on data over a two-year period, the average assessed fine amount is \$771.

The average amount of the fine is expected to increase to approximately \$1,542 as a result of this rulemaking package, since the Board is modifying section 1364.11 to refer to BPC section 125.9, which authorizes a fine of up to \$5,000, even for a first offense.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / 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.

Benefits of Regulation

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents by updating and clarifying the citation and fine regulations as described above which will improve this administrative tool and enhance public protection. This regulation does not impact worker safety or the state's environment.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Board.

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. The Board issues citations and fines to individuals who violate the law and does not issue citations to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a), paragraph (13), 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 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 proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Medical Board of California in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, during the written comment period, or at the hearing if one is requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board by contacting the person named below, or by accessing the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

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 website listed below.

CONTACT PERSONS

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

Name: Alexandria Schembra
Address: Medical Board of California
2005 Evergreen Street, Ste. 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2466
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

The backup contact person is:

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.