

DEPARTMENT OF CONSUMER AFFAIRS

TITLE 16. MEDICAL BOARD OF CALIFORNIA

NOTICE TO CONSUMERS

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Notice to Consumers

Sections Affected:

- Amend Section 1355.4 of Article 1, Chapter 2, Division 13, Title 16 of the California Code of Regulations (CCR);
- Adopt Section 1378.5 to Article 3, Chapter 3, Division 13, Title 16 of the CCR;
- Adopt Section 1379.4 to Article 1, Chapter 4, Division 13, Title 16 of the CCR; and
- Amend Section 1379.58 of Article 4, Chapter 4.3, Division 13, Title 16 of the CCR.

BACKGROUND AND STATEMENT OF THE PROBLEM

Senate Bill (SB) 798 (Hill, Chapter 775, Statutes of 2017) added Section 2026 to the Medical Practice Act (Act – Bus. & Prof. Code, §§ 2000 et seq.) in the Business and Professions Code (BPC), to become effective January 1, 2018. BPC section 2026 required the Medical Board of California (Board) to initiate rulemaking on or before January 1, 2019, to require “licentiates and registrants to provide notice to their clients or patients that the practitioner is licensed or registered in this state by the board, that the practitioner’s license can be checked, and that complaints against the practitioner can be made through the board’s Internet Web site or by contacting the board.”

On July 26, 2018, the Board reviewed and approved proposed language for this rulemaking, and authorized staff to proceed with the rulemaking process.

This proposed rulemaking implements BPC section 2026 by mandating the required notification to consumers by licensees and registrants of the Board, including physicians and surgeons, research psychoanalysts, licensed midwives, and polysomnographic technologists, technicians, and trainees (“polysomnography registrants” collectively).

Anticipated benefits from this regulatory action:

Public protection is the highest priority of the Board whenever it exercises its regulatory authority. (BPC section 2001.1.) These proposed amendments and additions to the Board’s regulations further its consumer protection mission.

Adoption of the proposed amendments to 16 CCR sections 1355.4 and 1379.58 and the proposed new sections, 16 CCR sections 1378.5 and 1379.4, will implement BPC section 2026 by requiring physicians, research psychoanalysts, licensed midwives, and polysomnographic registrants to provide notice to their patients or clients regarding the Board's role and oversight function. Consequently, the practitioners will be helping the Board to educate consumers that they can contact the Board for information regarding license and registration status and to make complaints against practitioners. The notice will also provide three methods to contact the Board to make it as easy as possible for consumers. Additionally, these regulations will require the Board's licensees and registrants to provide the notice in the patient's or patient representative's primary language to ensure the information is conveyed effectively.

The Board anticipates that consumers will be better informed about the Board's role and providers will be encouraged to stay current and compliant with the laws and regulations impacting their practice.

Specific Purpose of Proposed Changes and Rationale:

Each regulation section being amended or adopted is discussed in turn below.

Amend 16 CCR section 1355.4

Existing law under 16 CCR section 1355.4 requires physicians to provide notice to their patients that medical doctors are licensed and regulated by the Board. The Board's toll-free phone number and website are also required to be included in the notice.

Existing law under section 1355.4 provides physicians three options for complying with the notice requirement:

- (1) Prominently post the notice in an area visible to patients in at least 48-point Arial font;
- (2) Include the notice in a written statement to be signed and dated by the patient or the patient's representative and retained in that patient's medical records; or,
- (3) Provide the notice in at least 14-point type on a document that is given to the patient or the patient's representative where the notice is placed immediately above the signature line.

This rulemaking proposes to amend 16 CCR section 1355.4 subdivision (a) to add additional information to the notice to consumer required by BPC section 2026, namely that a medical doctor's license can be checked, and that complaints against a medical doctor can be made through the Board's website or by contacting the Board. The notice will provide patients with the Board's web address, email address, and phone number to provide several alternative methods for contacting the Board. Additionally, this section will be amended to strike "licensee engaged in the practice of medicine" and replace it with "medical doctor," which is more a more commonly

understood, consumer-friendly term than “physician and surgeon” or “licensee” (as used in the Act) and mirrors existing text in the Notice to Consumers. These amendments are for streamlining purposes only and will not provide a change in requirements for physicians. Those physicians who are not practicing medicine will not have patients requiring this notice, and therefore the Board is striking the reference “licensee engaged in the practice of medicine” as unnecessary.

The notice will also be amended to identify it as a notice to patients and make other changes conforming to the requirements of BPC section 2026. This change is necessary to draw patients’ attention to the notice, so they know it contains information that is directed to them. The Board also adds the words “To check up on a license or to file a complaint go to” to implement the additional notice requirements of BPC section 2026. The notice is also amended to add the Board’s email address and move the Board’s toll free telephone number to the end of the notice for better organization and readability of the notice.

Further, this rulemaking proposes to amend 16 CCR section 1355.4 subdivision (b)(1) to adjust the minimum font size from 48 to 38, which is necessary to account for the additional information required to be included on the posted notice. While retaining the current Arial font requirement, the font is reduced only to allow the text to fit on the page; otherwise, it is as large as possible to allow for reading across a waiting room. A sample of the amended Notice to Patients for 16 CCR 1355.4 is attached to this Initial Statement of Reasons and will also be posted in multiple languages on the Board’s web site for convenience of the regulated community.

This rulemaking proposes to amend 16 CCR section 1355.4 subdivision (b)(2) to reorder the language for streamlining purposes. The phrase “stating the patient understands the physician is licensed and regulated by the board” is being struck from the end of the subdivision, and the phrase “and an acknowledgement of receipt and understanding” is being added to the first line of the subdivision for better syntax and readability of this provision. The notice itself indicates that medical doctors are licensed and regulated by the Board, among other information, so it is duplicative and not necessary to repeat the notice information again in the acknowledgement of receipt and understanding.

Moreover, this rulemaking proposes to amend 16 CCR section 1355.4 subdivision (b)(2) to require physicians using this method to comply with the notice requirement to include the notice and an acknowledgement of receipt and understanding in a written statement in the patient’s or patient representative’s primary language. Reading the mandate of BPC section 2026, a notice that is not in a language that can be understood by the patient or patient’s representative is ineffective. Thus, this amendment is necessary to ensure that the required notice is effectively provided to patients or their representatives in their primary language.

Likewise, this rulemaking proposes to amend section 1355.4 subdivision (b)(3) to require the notice to be provided in the patient’s or patient’s representative’s primary language. As

indicated above, this amendment is necessary to ensure that the required notice is effectively provided to patients or their representatives in their primary language.

As to the use of the word “primary,” it is used in its regular common definition, that is, *main, chief, principal, predominant, or prime*. While a patient may have some limited English proficiency, they may be more comfortable using another language, the use of which would be more effective to provide the notice required by BPC section 2026. As health providers often have patients who do not identify as primarily speaking English; it is common in health settings to have a chart wherein a non-English-speaking patient may point to particular sentence in a list of languages to advise the health care provider which language the patient seeks to use. Telephone system providers have translation services built into many contracts so that the provider may address the patient by using a telephone translator as an intermediary. Some health care providers are already required to provide information in a variety of languages. Because this is a common occurrence in the state, the Board is comfortable requiring this notice be provided in a patient’s “primary” language. Additionally, the Board was asked in its prior rulemaking to consider adding additional languages to the notice requirement. While the Board had not studied the issue at the time and so declined to require postings other than in English, it has now determined that additional languages are needed to properly provide notice to the patient population.

Finally, this proposed rulemaking would add subdivision (c) to 16 CCR section 1355.4, which would provide that if the licensee chooses to post a sign to comply with the notice requirement, then they must also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the patient’s or patient representative’s primary language. Again, this amendment is necessary to ensure that the required notice is effectively provided to patients or their representatives in their primary language. All of these requirements help ensure that the consumer will read and understand the notice, and become informed about who regulates their medical doctor and where to find further information from the Board.

Adopt 16 CCR section 1378.5

Existing regulations relating to research psychoanalysts do not provide for a notice to their patients. Accordingly, in order to implement BPC section 2026, the Board proposes to adopt Section 1378.5 to Article 3, Chapter 3, Division 13 of Title 16 of the CCR.

Under the proposed new section, 16 CCR section 1378.5 subdivision (a), research psychoanalysts will be required to provide notice to each patient of the fact that the registrant is registered and regulated by the Board, the registration can be checked and complaints against the registrant can be made through the Board’s website or by contacting the Board. This section provides the details that must be included in the notice pursuant to BPC section 2026, and also includes the Board’s web address, email address, and phone number. These provisions are necessary to implement BPC section 2026, and to provide patients with several alternative ways to contact the Board.

Under 16 CCR section 1378.5 subdivision (b), the proposed language is based on the options already in existing law for physicians and polysomnographic registrants, and provides three ways in which research psychoanalysts may comply with this notice requirement:

- (1) Prominently posting the notice in an area visible to patients in at least 38-point type in Arial font. The font style of Arial was selected because, as a sans serif font, it is easier to read than serif fonts such as Times New Roman or exotic or hard-to-read script-style fonts. It is also readily available across many computer platforms. Specifying Arial provides clarity greater than simply calling for a “readable” font. This size was selected because the full notice will fit on an 8 ½ x 11 piece of paper - it is large enough to allow for reading across a waiting room, and will be visible to patients when prominently displayed in the office;
- (2) Including the notice and an acknowledgment of receipt and understanding in a written statement in the patient’s or patient representative’s primary language signed and dated by the patient or patient’s representative and retained in the patient’s medical records. It is necessary to include the requirement for the notice to be provided in the patient’s or patient representative’s primary language, because a notice that is not in a language that can be understood by the patient or patient’s representative is ineffective; or
- (3) Including the notice in the patient’s or patient representative’s primary language in a statement on letterhead, patient instructions, or other document given to a patient or patient’s representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type. The type size is necessary to assist in ease of reading and to draw attention to this notice language if it appears in a document containing other information in smaller print. Further, as stated above, it is necessary that the notice be provided in the patient’s or patient representative’s primary language in order for the notice to be effective.

All three of the above options help ensure that the consumer will read and understand the notice, and, become informed about who regulates their research psychoanalysts, and where to find further information from the Board. The Board believes this is accomplished through requirements for larger, more readable type (38-point type for the posted office notice and 14-point type for patient documents), and/or through written acknowledgement of receipt of the notice from the patient or the patient’s representative on a specific date.

As to the use of the word “primary” in subdivision (b), it is used in its regular common definition, that is, *main, chief, principal, predominant, or prime*. While a patient may have some limited English proficiency, they may be more comfortable using another language, the use of which would be more effective to provide the notice required by BPC section 2026.

As health providers often have patients who do not identify as primarily speaking English;

it is common in health settings to have a chart wherein a non-English-speaking patient may point to particular sentence in a list of languages to advise the health care provider which language the patient seeks to use. Telephone system providers have translation services built into many contracts so that the provider may address the patient by using a telephone translator as an intermediary. Some health care providers are already required to provide information in a variety of languages. Because this is a common occurrence in the state, the Board is comfortable requiring this notice be provided in a patient's "primary" language.

Providing three different options for conveying this notice to patients or their representatives will allow research psychoanalysts flexibility to choose the method that fits best within their practice. A sample of the proposed Notice to Patients is attached to this Initial Statement of Reasons and will also be posted on the Board's web site in multiple languages for convenience.

Finally, under 16 CCR section 1378.5(c), this proposed rulemaking will provide that if the registrant chooses to post a sign to comply with the notice requirement, then they must also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the patient's or patient's representative's primary language. This language is necessary because a notice that is not in a language that can be understood by the patient or patient's representative is ineffective.

Adopt 16 CCR section 1379.4

Existing law under BPC section 2508 subdivision (a)(11), mandates licensed midwives to include in their required oral and written disclosures to their clients information about the availability of the text of laws regulating licensed midwifery practices on the Board's internet web site and the procedure for reporting complaints to the Board. There currently are no regulations for licensed midwives on the subject of notice to their clients.

Accordingly, in order to implement BPC section 2026, the Board proposes to adopt Section 1379.4 to Article 1, Chapter 4, Division 13 of Title 16 of the CCR.

Under the proposed new section, 16 CCR section 1379.4 subdivision (a), licensed midwives will be required to provide notice to each client of the fact that the licensee is licensed and regulated by the Board, the license can be checked and complaints against the licensee can be made through the Board's website or by contacting the Board. This section provides the details that must be included in the notice, including the Board's web address, email address, and phone number. These provisions are necessary to implement BPC section 2026, and to provide clients with several alternative ways to contact the Board.

Under 16 CCR section 1378.5 subdivision (b), the proposed language is based on the options already in existing law for physicians and polysomnographic registrants, and provides three ways in which the licensee may comply with this notice requirement:

- (1) Prominently posting the notice in an area visible to clients in at least 38-point type in Arial font. The font style of Arial was selected because, as a sans serif font, it is easier to read than serif fonts such as Times New Roman or exotic or hard-to-read script-style fonts. It is also readily available across many computer platforms. Specifying Arial provides clarity greater than simply calling for a “readable” font. This size was selected because the full notice will fit on an 8 ½ x 11 piece of paper - it is large enough to allow for reading across a waiting room and will be visible to clients when prominently displayed in the office;
- (2) Including the notice and an acknowledgment of receipt and understanding in a written statement in the client’s or client representative’s primary language signed and dated by the client or client’s representative and retained in the client’s medical records. It is necessary to include the requirement for the notice to be provided in the client’s or client representative’s primary language, because a notice that is not in a language that can be understood by the client or client’s representative is ineffective; or
- (3) Including the notice in the client’s or client representative’s primary language in a statement on letterhead, client instructions, or other document given to a client or client’s representative, where the notice is placed immediately above the signature line for the client in at least 14-point type. The type size is necessary to assist in ease of reading and to draw attention to this notice language if it appears in a document containing other information in smaller print. Further, as stated above, it is necessary that the notice be provided in the client’s or client representative’s primary language in order for the notice to be effective.

All three of the above options help ensure that the consumer will read and understand the notice, and, become informed about who regulates their research psychoanalysts, and where to find further information from the Board. The Board believes this is accomplished through requirements for larger, more readable type (38-point type for the posted office notice and 14-point type for patient documents), and/or through written acknowledgement of receipt of the notice from the patient or the patient’s representative on a specific date.

As to the use of the word “primary” in subdivision (b), it is used in its regular common definition, that is, *main, chief, principal, predominant, or prime*. While a client may have some limited English proficiency, they may be more comfortable using another language, the use of which would be more effective to provide the notice required by BPC section 2026.

As health providers often have patients or clients who do not identify as primarily speaking English; it is common in health settings to have a chart wherein a non-English-speaking patient or client may point to particular sentence in a list of languages to advise the health care provider which language the client seeks to use. Telephone system providers have translation services built into many contracts so that the provider may address the client by using a telephone translator as an intermediary. Some health care providers are already

required to provide information in a variety of languages. Because this is a common occurrence in the state, the Board is comfortable requiring this notice be provided in a client's "primary" language.

Providing different options for conveying this notice to clients or their representatives will allow licensed midwives flexibility to choose the method that fits best within their practice. A sample of the proposed Notice to Clients is attached to this Initial Statement of Reasons and will also be posted on the Board's web site in multiple languages for convenience.

Finally, under 16 CCR section 1378.5 subdivision (c), this proposed rulemaking would provide that if the licensee chooses to post a sign to comply with the notice requirement, then they must also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the client's or client's representative's primary language. This language is necessary because a notice that is not in a language that can be understood by the client or client's representative is ineffective.

Amend 16 CCR section 1379.58

Existing law under 16 CCR section 1379.58 requires polysomnographic registrants and their supervising physicians to provide notice to their patients that medical doctors and polysomnographic technologists, technicians, and trainees are licensed and regulated by the Board. The Board's toll-free phone number and website are also required to be included in the notice.

Further, existing law provides polysomnographic registrants and their supervising physicians three options for complying with the notice requirement:

- (1) Prominently post the notice in an area visible to patients in at least 48-point Arial font;
- (2) Include the notice in a written statement to be signed and dated by the patient or the patient's representative and retained in that patient's medical records; or
- (3) Provide the notice in at least 14-point type on a document that is given to the patient or the patient's representative where the notice is placed immediately above the signature line.

This rulemaking proposes to amend 16 CCR section 1379.58 subdivision (a) to add the additional information to the notice to consumer required by BPC section 2026, namely that the provider's license or registration can be checked, and that complaints can be made through the Board's website or by contacting the Board.

The notice will also be amended to identify it as notice to "patients" rather than "consumers." This change is necessary to draw patients' attention to the notice, so they know it contains information that is directed to them using a more familiar term for a medical establishment.

Further, this rulemaking proposes to amend 16 CCR section 1379.58 subdivision (b)(1) to adjust the font size from 48 to 38 to account for the additional information required on the posted notice. While retaining the current Arial font requirement, the font is reduced only to allow the text to fit on the page; otherwise, it is as large as possible to allow for reading across a waiting room. A sample is attached to this Initial Statement of Reasons and will also be posted on the Board's web site in multiple languages for convenience.

This rulemaking proposes to amend 16 CCR section 1379.58 subdivision (b)(2) to reorder the language for streamlining purposes. The phrase "stating the patient understands the polysomnographic registrant is registered and regulated by the board" is being struck from the end of the subdivision, and the phrase "and an acknowledgement of receipt and understanding" is being added to the first line of the subdivision. The notice itself indicates that medical doctors and polysomnographers are licensed, registered, and regulated by the Board, among other information, so it is duplicative and not necessary to repeat the notice information again in the acknowledgement of receipt and understanding.

Additionally, this rulemaking proposes to amend 16 CCR section 1379.58 subdivision (b)(2) to require providers using this method to comply with the notice requirement to include the notice and an acknowledgement of receipt and understanding in a written statement in the patient's or patient representative's primary language. Reading the mandate of BPC section 2026, a notice that is not in a language that can be understood by the patient or patient's representative is ineffective. Thus, this amendment is necessary to ensure that the required notice is effectively provided to patients or their representatives in their primary language.

Likewise, this rulemaking proposes to amend section 1379.58 subdivision (b)(3) to require the notice to be provided in the patient's or patient representative's primary language. As indicated above, this amendment is necessary to ensure that the required notice is effectively provided to patients or their representatives in their primary language.

As to the use of the word "primary," it is used in its regular common definition, that is, *main, chief, principal, predominant, or prime*. While a patient may have some limited English proficiency, they may be more comfortable using another language, the use of which which would be more effective to provide the notice required by BPC section 2026.

As health providers often have patients who do not identify as primarily speaking English; it is common in health settings to have a chart wherein a non-English-speaking patient may point to particular sentence in a list of languages to advise the health care provider which language the patient seeks to use. Telephone system providers have translation services built into many contracts so that the provider may address the patient by using a telephone translator as an intermediary. Some health care providers are already required to provide information in a variety of languages. Because this is a common occurrence in the state, the Board is comfortable requiring this notice to be provided in a patient's "primary" language. Additionally, the Board was asked in its prior rulemaking to consider

adding additional languages to the notice requirement. While the Board had not studied the issue at the time and so declined to require the notice be given in languages other than English, it has now determined that additional languages are needed to properly provide notice to the patient population.

Finally, this proposed rulemaking would add subdivision (c) to 16 CCR section 1379.58, which would provide that if the licensee or registrant chooses to post a sign to comply with the notice requirement, then they must also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the patient's or patient's representative's primary language. Again, this amendment is necessary to ensure that the required notice is effectively provided to patients or their representatives in their primary language. All of these requirements help ensure that the consumer will read and understand the notice and become informed about who regulates their healthcare provider and where to find further information from the Board.

Underlying Data:

1. SB 798 (Hill, Chapter 775, Statutes of 2017), which added BPC section 2026 to the Code.
2. July 27-28 Board Meeting Agenda, Relevant Meeting Materials, and Meeting Minutes
3. California Complete Count – Census 2020, May 17, 2019

Business Impact

The Board has made an initial determination that the proposed regulatory action would 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 upon the following facts.

The Board anticipates the vast majority of licensees and registrants would implement this regulation via the easiest means of posting a sign in a visible place, such as a reception/check-in area or waiting room. Licensed midwives, however, who often see clients in the clients' homes, would likely implement this regulation by using a portable sign.

The Board will make signage available on its website for download in the 12 most common non-English languages that are spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count – Census 2020, May 17, 2019. These are Spanish, Chinese (including Mandarin and Cantonese) Vietnamese, Tagalog (including Filipino), Korean, Armenian, Farsi, Arabic, Russian, Japanese, Punjabi, Khmer.

Licensees and registrants will be able to complete the translation and post the notification within normal business operations at no additional costs.

Economic Impact Assessment

The Board has made the initial determination that this regulatory proposal will have the following impact:

- It is not likely to create or eliminate jobs within the State of California. This initial determination is based on the fact that the proposed amendments and additions impose a minor and absorbable cost on licensees and registrants to print a one-page notice to consumers and post it in their place of business and/or provide it in another written format if desired, or when required.
- It is not likely to create new businesses or eliminate existing businesses within the State of California. This initial determination is based on the fact that the proposed amendments and additions impose a minor and absorbable cost on licensees and registrants to print a one-page notice to consumers and post it in their place of business and/or provide it in another written format if desired, or when required.
- It will not likely affect the expansion of businesses currently doing business within the State of California. This initial determination is based on the fact that the proposed amendments and additions impose a minor and absorbable cost on licensees and registrants to print a one-page notice to consumers and post it in their place of business and/or provide it in another written format if desired, or when required.
- It will benefit the health and welfare of California residents because this regulatory proposal will implement the provisions of BPC section 2026 and will better inform consumers about the Board's role and its oversight function. This rulemaking is consistent with the Board's primary mission of consumer protection.
- It will not have a significant impact on worker safety because this regulatory proposal does not address issues relevant to worker safety.
- It will not have an impact on the state's environment because this regulatory proposal does not address issues relevant to the state's environment.

Specific Technologies or Equipment

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

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The public is invited to submit such alternatives during the public comment period.

Set forth below is the alternative that was considered and the reason it was rejected:

1. Do not seek a change. This alternative was rejected because the Board is mandated to move forward with regulations to implement the notice requirements set forth in BPC section 2026.

NOTICE TO PATIENTS

Medical doctors are licensed and regulated by the Medical Board of California.

To check up on a license or to file a complaint go to

www.mbc.ca.gov,

email: licensecheck@mbc.ca.gov,

or call (800) 633-2322.

NOTICE TO PATIENTS

Research psychoanalysts are registered
and regulated by the
Medical Board of California.

To check up on a registration or
to file a complaint go to

www.mbc.ca.gov,

email: licensecheck@mbc.ca.gov,

or call (800) 633-2322.

NOTICE TO CLIENTS

Licensed midwives are licensed and regulated by the Medical Board of California.

To check up on a license or to file a complaint go to

www.mbc.ca.gov,

email: licensecheck@mbc.ca.gov,

or call (800) 633-2322.

NOTICE TO PATIENTS

Medical doctors and polysomnographic technologists, technicians, and trainees are licensed, registered, and regulated by the Medical Board of California.

To check up on a license or registration or to file a complaint go to

www.mbc.ca.gov,

email: licensecheck@mbc.ca.gov,

or call (800) 633-2322.