

DEPARTMENT OF CONSUMER AFFAIRS

TITLE 16. MEDICAL BOARD OF CALIFORNIA

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

NOTICE TO CONSUMERS

**Amend Title 16 California Code of Regulations  
Sections 1355.4 and 1379.58; Adopt sections 1378.5 and 1379.4**

**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. The Board will, however, 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**

Any person interested may present statements or arguments relevant to the action proposed in writing. 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 no later than Monday, December 27, 2021**, or 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 2018 and 2026 of the Business and Professions Code (BPC or Code), and to implement, interpret or make specific Sections 138, 2026 and 2508 of said Code, the Board is considering changes to Title 16, Division 13, California Code of Regulations (CCR) sections 1355.4 and 1379.58, and is considering adopting sections 1378.5 and 1379.4.

## **INFORMATIVE DIGEST**

Senate Bill (SB) 798 (Hill, Chapter 775, Statutes of 2017) added BPC section 2026 to the Medical Practice Act (Act – Bus. & Prof. Code, §§ 2000 et seq.) in the Code, to become effective January 1, 2018. BPC section 2026 required the Board to initiate rulemaking 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.”

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 trainees, technicians, and technologists.

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

### **Amend 16 CCR section 1355.4**

Existing law under 16 CCR section 1355.4 requires physicians and surgeons 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.

Further, existing law under section 1355.4 provides physicians three options for complying with the notice requirement: 1) they can prominently post the notice in an area visible to patients in at least 48-point type Arial font; 2) they can 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) they can provide the notice 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 the 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 also be amended to identify it as a notice to patients.

Further, this rulemaking proposes to amend section 1355.4 subdivision (b)(1) to adjust the font size from 48 to 38-point type in Arial font to account for the additional information required to be included on the posted notice.

Additionally, this rulemaking proposes to amend 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’s representative’s primary language.

This rulemaking also 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.

Finally, this proposed rulemaking would add subdivision (c) to 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's representative's primary language.

### **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 add 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, including the Board's web address, email address, and phone number.

Under 16 CCR section 1378.5 subdivision (b), the proposed regulation provides three ways in which the registrant 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; (2) including the notice and an acknowledgment of receipt and understanding in a written statement in the patient's or patient's representative's primary language signed and dated by the patient or patient's representative and retained in the patient's medical records; or (3) including the notice in the patient's or patient's 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.

Finally, under 16 CCR section 1378.5 subdivision (c), this proposed rulemaking would 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.

### **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 requiring them to provide notice to their clients consistent with BPC section 2026.

Accordingly, in order to implement BPC section 2026, the Board proposes to add 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.

Under 16 CCR section 1379.4 subdivision (b), the proposed regulation 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; (2) including the notice and an acknowledgment of receipt and understanding in a written statement in the client's or client's representative's primary language signed and dated by the client or client's representative and retained in the client's medical records; or (3) including the notice in the client's or client's 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.

Finally, under 16 CCR section 1379.4 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.

#### **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) they can prominently post the notice in an area visible to patients in 48-point type in Arial font ; 2) they can 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) they can provide the notice 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 required by BPC section 2026 to the notice to consumer, namely that the provider's license or registration can be checked, and that complaints against a medical doctor or polysomnographic registrant can be made through the Board's website

or by contacting the Board. The notice will also be amended to identify it as a notice to patients.

Further, this rulemaking proposes to amend 16 CCR section 1379.58 subdivision (b)(1) to adjust the font size from 48 to 38-point type in Arial font to account for the additional information required on the posted notice.

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's representative's primary language.

This rulemaking also proposes to amend section 1379.58 subdivision (b)(3) to require the notice to be provided in the patient's or patient's representative's primary language.

Finally, this proposed rulemaking would add subdivision (c) to 16 CCR section 1379.58 which would provide that if the provider 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.

### **Policy Statement Overview/Anticipated Benefits of Proposal**

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

Adopting 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 oversight function. Consequently, the providers will be helping to educate consumers about the Board and its role in consumer protection. The notice will also provide three methods to contact the Board to make it as easy as possible for consumers to check up on their provider's license or registration. Additionally, these regulations will require the Board's licensees and registrants to provide the notice in the patient's or patient's 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.

### **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.

### **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 proposed regulations do not result in any fiscal impact to the state, including costs or savings to state agencies or costs or savings in federal funding to the State.

The Board plans on posting the revised notification text, including various non-English languages, on its website, to inform licensees of the new requirements. However, these actions are not anticipated to increase workload or costs to the Board because any information technology website modifications and/or translation services can be made during routine updates, which would not increase costs to the state.

Additionally, licensees are currently required to provide notification, as specified, to patients or otherwise have the required information currently available to patients. As a result, the proposed regulations are anticipated to increase the Board's inspection or enforcement workload or costs.

**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 businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on 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.

**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.

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 could use a portable sign when they are seeing a client at the client's home.

The Board will make signage available on its website for download in English and 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.

While the Board will provide translations for the 12 most common non-English languages spoken in California, for purposes of this rulemaking, it assumes the licensees and registrants will be required to obtain one additional translation. It is also assumed licensees and registrants will be able to complete the translation and post the notification within normal business operations at no additional costs.

**Effect on Housing Costs:** None.

**EFFECT ON SMALL BUSINESS**

The Board has determined that the proposed rulemaking would have a minor impact on small businesses since many licensees and registrants work in a small business practice setting.

This proposed rulemaking would require licensees and registrants to determine which of the three notification options provided would be most appropriate for their practices, and then 1) prominently post a sign in a conspicuous location in 38-point type in Arial font; 2) put the required language on a piece of paper to be signed by each patient or patient's representative and retained in the patient's file; or 3) include the language in another document just above the patient's or patient's representative's signature line.

Licensees and registrants will have to ensure the notice is provided in the primary language of the patient or the patient's representative. While the Board will provide translations for the 12 most common non-English languages spoken in California, it assumes the licensees and registrants will be able to make modifications to existing

notifications to comply with the regulations as part of normal business operations at no additional costs.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

### **Impact on Jobs/Businesses:**

The Board has determined that this regulatory proposal will not create or eliminate jobs within California, create new businesses or eliminate existing businesses and will not affect the expansion of businesses currently doing business within the State of California. This determination has been made based upon the fact that the proposed amendments and additions will require licensees and registrants to print a one-page notice to consumers and post it in their place of business or provide it in another written format if desired, or when required, which can be completed within normal business operations at no additional costs.

### **Benefits of Regulation:**

The benefit of this proposed rulemaking is that its adoption will implement the provisions of Business and Professions Code section 2026 and will better inform consumers about the Board's role and its oversight function. This rulemaking furthers the Board's primary mission of consumer protection.

**Benefits to the health and welfare of California Residents:** This proposed rulemaking will benefit the health and welfare of California residents because they will be better informed about the Board's role and its oversight function.

**Benefits to worker safety, and the state's environment:** None.

## **CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative it considered 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 or would be as effective as 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 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 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 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 person designated in the Notice under Contact Person, below, or by accessing the Board's website at [http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](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 PERSON**

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

Name: Alexandria Schembra  
Address: Medical Board of California  
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E-Mail Address: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

The backup contact person is:

Name: Kerrie Webb  
Address: Medical Board of California  
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E-Mail Address: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

Website Access: Materials regarding this proposal can be found at [http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).