

BOARD OF PODIATRIC MEDICINE INITIAL STATEMENT OF REASONS

Hearing Date: February 24, 2012

Subject Matter of Proposed Regulations:

To amend the *Manual of Disciplinary Guidelines with Model Disciplinary Orders* to reflect changes in law and make technical changes to reflect the current probationary environment.

Section(s) Affected:

Division 13.9, Article 11 of Title 16

Amend Section 1399.710 – Disciplinary Guidelines

Specific purpose of each adoption, amendment, or repeal:

The current *Manual of Disciplinary Guidelines with Model Disciplinary Orders* referenced in the regulation (revised February 4, 2006) must be made consistent with current law. The proposed regulation will reference the September 23, 2011 revision of the *Manual of Disciplinary Guidelines with Model Disciplinary Orders*, reflecting changes in law, as well as making technical changes to reflect the current probationary environment.

Because of the small licensee population, podiatric medical cases occur far less often than standard medical cases. As a result, while the Board of Podiatric Medicine (BPM) utilizes Medical Board of California (MBC) enforcement staff under a Shared Services agreement, those involved are often not as familiar with the Disciplinary Guidelines held by BPM as they are with those currently employed by MBC. This proposal would make the Board's Manual of Disciplinary Guidelines consistent with MBC's Manual of Disciplinary Guidelines and pending, proposed regulations with respect to licensee rehabilitation as a condition of probation, and would therefore enable the MBC's Central Complaint Unit, investigative staff, Deputy Attorneys General, and Administrative Law Judges to review and apply the BPM's guidelines in a more efficient manner.

The specific benefits anticipated from the proposed amendment, which would improve licensee rehabilitation standards and consistency between enforcement practices, include:

- Greater protection of public health and safety.
- Improved worker safety.

Factual Basis/Rationale:

The factual basis and rationale for the determination that each amendment is reasonably necessary to clarify the purpose for which technical changes are required, together with a description of the problem, administrative requirement, or other condition or circumstance that each amendment is intended to address, is as follows:

Conditions 9-10 Controlled Substances/Alcohol Abstain from Use

- Allows the BPM to impose a “cease practice” order when a positive biological fluid test is received for alcohol or a substance not legally prescribed and requires that an administrative action be filed timely so the respondent is afforded due process.

In accordance with the *Uniform Standards Regarding Substance-Abusing Healing Arts Licensees* developed by the Department of Consumer Affairs pursuant to SB 1441 (http://www.dca.ca.gov/about_dca/sacc/uniform_standards.pdf), the MBC recently revised its disciplinary guidelines to incorporate a specific condition enabling the MBC to order physicians testing positive for drugs or alcohol to cease practice. The most recent revision to BPM’s guidelines establishes consistency with MBC’s Manual of Disciplinary Guidelines and pending, proposed regulations with respect to this matter, enabling BPM to impose a cease practice order in cases in which doctors of podiatric medicine have tested positive for the use of controlled substances while on probation. Consistency between the practices employed by both boards allows for efficient and effective handling of podiatric medical cases.

Condition 11. Biological Fluid testing

- Expands and defines “Biological Fluid Testing” to include blood, urine, breathalyzer, and hair follicle testing and allows the Board to order the respondent to cease practice for failing to cooperate with the required testing. Deletes language stating that the failure to cooperate with the biological fluid testing constitutes a violation of probation. Establishes consistency with MBC’s Manual of Disciplinary Guidelines and pending, proposed regulations, allowing for efficient and effective handling of podiatric medical cases.

In accordance with the *Uniform Standards Regarding Substance-Abusing Healing Arts Licensees* developed by the Department of Consumer Affairs pursuant to SB 1441 (http://www.dca.ca.gov/about_dca/sacc/uniform_standards.pdf), the MBC recently revised its disciplinary guidelines to incorporate a specific condition enabling the MBC to order physicians who fail to cooperate in a random biological fluid testing program in a timely manner to cease practice. The most recent revision to BPM’s guidelines establishes consistency with MBC’s Manual of Disciplinary Guidelines and pending, proposed regulations, enabling BPM to impose a cease practice order in cases in which doctors of podiatric medicine fail to cooperate in a random biological fluid testing program in a timely manner while on probation. Consistency between these practices allows for efficient and effective handling of podiatric medical cases.

Standard Condition #37 states that the failure to comply with any term and condition is a violation of probation; therefore this language is redundant and unnecessary.

Violation of Probation

- Establishes consistency with the MBC’s recommended range of penalties for violations of probation, as identified in its pending regulatory proposal.

Underlying Data:

Documents relied upon include:

- BPM’s Manual of Disciplinary Guidelines with Model Disciplinary Orders (revised February 4, 2006) is referenced in current regulation. The September 23, 2011 revision

of the Manual of Disciplinary Guidelines with Model Disciplinary Orders reflects changes in law and establishes consistency with the Medical Board of California's Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11th Edition, 2010 with respect to licensee rehabilitation as a condition of probation and probation violation penalties.

- Economic Impact Analysis document.

Economic Impact:

- 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.
- This regulation will benefit the health and welfare of California residents, worker safety, and the state's environment by improving the licensee rehabilitation standards employed by California Healing Arts Boards.

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:

This regulation only impacts doctors of podiatric medicine disciplined by the Board of Podiatric Medicine.

Description of alternatives which would lessen any significant adverse impact on business:

Not applicable, as the proposed regulation has no business or economic impact.

Specific Technologies or Equipment:

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

This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

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.