

TITLE 16. BOARD OF PODIATRIC MEDICINE

NOTICE IS HEREBY GIVEN that the Board of Podiatric Medicine (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 2005 Evergreen Street, Sacramento, CA 95815, Hearing Room 1150, at 10:00 am, on February 24, 2012. 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 not later than 5:00 p.m. on **February 20, 2012** or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals 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 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 Section 2470 of the Business and Professions Code and Section 11400.20 of the Government Code, and to implement, interpret or make specific Sections 11400.20 and 11425.50(e) of the Government Code, the board is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1399.710, Disciplinary Guidelines.

Senate Bill 523 (Stats. 1995, Chapt. 938; Kopp) provided that a penalty in an administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act. The Board adopted the disciplinary guidelines as an administrative regulation, which became effective October 1997. The regulation incorporated by reference the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders," revised November 1, 1996. Subsequent revisions to the guidelines adopted by the Board were later incorporated by reference.

Current law authorizes the Board to have complaints filed against doctors of podiatric medicine investigated and take disciplinary action against a license should a violation of law be proven. Section 2227 of the Business and Professions Code (Code) authorizes the Board to place licensees on probation following an evidentiary hearing, a default decision or the execution of a stipulated settlement. Section 2228 of the Code specifies the terms and conditions that may be included in a licensee's probationary order, including, but not limited to additional training, practice restrictions, and successful completion of diagnostic examinations. Business and Professions Code Section 2229 also requires that, whenever possible, the Board should take action that is calculated to aid in the rehabilitation of the licensee and order actions to include further education, restrictions from practice, or other means, that will remove the identified deficiencies. The *Manual of Disciplinary Guidelines with Model Disciplinary Orders* referenced in

the current regulation contains the approved terms and conditions that can be ordered to rehabilitate physicians as part of a probationary order while allowing the Board to honor its primary obligation of public protection.

On September 23, 2011, the board approved to incorporate by reference its recently revised Manual of Disciplinary Guidelines. The proposed amendment would incorporate by reference the most recent revision to the Board's *Manual of Disciplinary Guidelines with Model Disciplinary Orders*, which reestablishes 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.

The specific benefits anticipated from the proposed amendment include greater protection of public health and safety, as well as improved worker safety through the setting of improved licensee rehabilitation standards employed by California Healing Arts Boards.

The proposed regulation has not been found to be inconsistent or 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: None

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

There are no costs associated with the proposed regulatory action. This rulemaking only relates to doctors of podiatric medicine disciplined by the Board of Podiatric Medicine.

Impact on Jobs/New 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.

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.

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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Podiatric Medicine has determined that the proposed regulations would not affect small businesses. This proposed regulation will only impact doctors of podiatric medicine disciplined by the Board of Podiatric Medicine.

The most recent revision of the *Manual of Disciplinary Guidelines with Model Disciplinary Orders*, incorporated by reference, makes no changes that would result in an increase of costs to licensees or small businesses.

CONSIDERATION OF ALTERNATIVES

The Board of Podiatric Medicine must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board 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 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 the reasons for the proposed action and has available all of the information upon which the proposal is based. Copies of the initial statement of reasons and all of the information upon which the proposal is based may be obtained from the person designated in the Notice under Contact Person or by accessing the Board's website: http://www.bpm.ca.gov/lawsregs/prop_regs.shtml.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website: http://www.bpm.ca.gov/lawsregs/prop_regs.shtml.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of 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 Board's website:
http://www.bpm.ca.gov/lawsregs/prop_regs.shtml.

CONTACT PERSON

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

Name: Mischa Matsunami
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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at
http://www.bpm.ca.gov/lawsregs/prop_regs.shtml.