

## TITLE 16. OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

**NOTICE IS HEREBY GIVEN** that the Osteopathic Medical Board of California (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:

**Department of Consumer Affairs – HQ2  
1747 North Market Blvd.  
Hearing Room  
Sacramento CA 95834  
Thursday, September 17, 2015  
10:00 a.m.**

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 **September 17, 2015** 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 sections 2018, 2451, and 3600-1 of the Business and Professions Code (Initiative Measure, Stats. 1923, p. xciii), and to implement, interpret or make specific sections 315, 726, 729, and 2366 of the Business and Professions Code, section 11425.50 (e) of the Government Code, and sections 261.5, 290, 313.1, 647b, and 647 subdivision (a) and (b) of the Penal Code, the Board is considering changes to Title 16, Division 16, of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Amend Section 1661.2 in Article 12.5, Division 16, of Title 16 of the California Code of Regulations entitled “Diversion Evaluation Committee Duties & Responsibilities” (Rev 08/89) and Section 1663 in Article 12.7, Division 16, of Title 16 of the California Code of Regulations entitled “Disciplinary Guidelines” (Rev 06/97).

The Board currently regulates approximately 7,500 physicians and surgeons a number that is rapidly increasing. The board’s highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees; disciplining licensees for violations of the Medical Practice Act (Act); and monitoring licensees whose licenses have been placed on probation for substance abuse, focusing on the areas of intake and how licensees are monitored as they come into probation and compliance.

Existing law requires the Department of Consumer Affairs (DCA) to establish Uniform Standards regarding substance-abusing licenses, focusing on the areas of intake and how licensees are monitored as they come into probation and compliance.

Existing law, Business and Professions Code (Code) section 2018 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Medical Practice Act.

Existing law, Code section 315, established the Substance Abuse Coordination Committee (SACC) within the DCA and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Existing law, Code section 315.2, specifies that a healing arts board within the DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The cease-practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Code section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under section 315. The cease-practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Government Code section 11400.20, authorizes an agency to adopt regulations to govern an adjudicative proceeding.

The main purpose for this proposal is to amend sections 1661.2 and 1663 of Title 16 of the California Code of Regulations. The proposed language is necessary to aid the Board in the discipline of substance-abusing licensees to provide better public protection to the people of California.

This regulation will incorporate the Uniform Standards for Substance Abusing the Healing Arts Licensees (04/2011), as required by SB 1441 (2007-2008, Ridley-Thomas) by proposing to add the standards, which shall be adhered to in all cases in which a licensee is placed on probation due, in part, to a substance abuse problem. These standards shall be followed in all instances, but will also allow the Board to impose more restrictive conditions, if necessary, to protect the public.

The proposed regulations would also incorporate by reference the Board's disciplinary guidelines entitled "Osteopathic Medical Board of California Disciplinary Guidelines of 2014" (Rev 08/14).

### **ANTICIPATED BENEFITS OF THE PROPOSAL**

The Board has determined that this regulatory proposal will provide increased consumer protection for consumers, and to ensure that minimum standards are met and to ensure

uniformity among the standards established by the SACC for the healing arts licensing boards under the DCA.

The Board uses the Disciplinary Guidelines when taking action to suspend, revoke, or place a license on probation. This proposal requires an Administrative Law Judge (ALJ) to apply the mandatory conditions in the Uniform Standards Related to Substance Abusing Licensees when an applicant or licensee has a substance abuse disorder and to also consider the disciplinary guidelines for all other disciplinary matters. This proposal would allow the Board to impose more restrictive conditions if necessary to protect the public from unsafe, incompetent, or negligent practitioners when exercising its licensing, regulatory, and disciplinary functions, unless a specific order is required by statute.

### **CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

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

### **INCORPORATION BY REFERENCE**

- “Uniform Standards Regarding Substance-Abusing and Healing Arts Licensees” (04/ 2011)
- Osteopathic Medical Board of California Disciplinary Guidelines of 2014 (Rev 08/14)

### **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.

Cost Impact on Representative Private Person or Business: This regulation would impact only those physicians on probation who are identified as “substance abusing” and subject to the Uniform Standards for Substance-Abusing Licensees. Once so designated, this subset of licensees on probation could be impacted by a temporary removal from practice based on either a positive biological fluid test and/or the requirement to undergo the clinical diagnostic evaluation. Under the proposed regulation, no licensee shall be returned to practice until the Board determines that he or she is able to safely practice either full-time or part-time, and has had at least 30 days of negative drug test results.

The Board also anticipates that this proposed regulation could create an additional fiscal impact to licensees on probation who test positive for a banned substance in that another clinical diagnostic evaluation can be ordered to ensure the licensee is considered “safe to practice.”

The cost of the “Clinical Diagnostic Evaluation” and Diversion services provided by MAXIMUS is estimated to be approximately \$338.15 per participant monthly. Resulting in an annual cost of \$4,057.80 in addition to charges incurred for biological fluid testing.

Therefore, the Board estimates that the impact to licensees on probation over a 5 year period (average timeframe of licensee participation) in the Diversion program will result in \$20,289 per participant.

Effect on Housing Costs: None

### **EFFECT ON SMALL BUSINESS**

The Board has determined that the proposed regulations would not affect small businesses. The Board does not license businesses, the Board licenses individuals; therefore, there is no impact on small businesses or any business.

### **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 business or the elimination of jobs or existing businesses or the expansion of business in the State of California.

Benefits of the Regulation: The Board has determined that this proposed regulation will benefit California consumers by enhancing and strengthening the Board’s ability to closely monitor physicians with substance-abuse issues and quickly remove them from practice, when appropriate, thus providing the consumer with enhanced protection from physicians with substance abuse problems.

### **CONSIDERATION OF ALTERNATIVES**

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 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 the information upon which the proposal is based.

## **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.ombc.ca.gov>.

## **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 Board's website: <http://www.ombc.ca.gov>.

## **CONTACT PERSON**

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

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Website Access: Materials regarding this proposal can be found at [www.ombc.ca.gov](http://www.ombc.ca.gov).