

# TITLE 16: OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

## INITIAL STATEMENT OF REASONS

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

**Subject Matter of Proposed Regulations:** Retired License, Petitions and Fees

**Section(s) Affected:** Amends sections 1630, 1636, 1646, 1647, 1656, 1658, and 1690, and adopts section 1648 in Division 16 of Title 16 of the California Code of Regulations (16 CCR).

### **Background and Statement of the Problem:**

The Osteopathic Medical Board of California (Board) was created by the voters of the State of California, who in 1922 passed an initiative measure to enact the Osteopathic Act (“Act” -- Osteopathic Act (Initiative Measure at Stats. 1923, p. xciii), which is reprinted, as amended, at Bus. & Prof. Code, §§ 3600-1 and following). The Act vested the Board with the authority to regulate the practice of medicine by osteopathic physicians and surgeons. Per Business and Professions Code (BPC) section 3600, the law governing licentiates of the Osteopathic Medical Board of California is found in the Act and in Chapter 5 of Division 2 of the BPC (Medical Practice Act).

Per BPC section 2450.1, the Board’s highest priority is to protect consumers through its licensing, regulatory and disciplinary oversight of osteopathic physicians and surgeons and postgraduate training licensees. The Board is authorized by the Act (at Section 1 -- reprinted at BPC § 3600-1) and the Medical Practice Act at BPC section 2018 to establish necessary rules and regulations for the enforcement of the Osteopathic Act and the Medical Practice Act as it applies to osteopathic physician and surgeons (“physicians”) and postgraduate training licensees in accordance with BPC section 2452. The Board currently regulates 16,272 osteopathic physicians and surgeons and 1,174 postgraduate training licensees throughout California.

### **Updates to Requirements for Practice in Good Standing and Active and Inactive Renewal**

Board regulations related to active practice and renewal of licensure (in both active and inactive status) in Division 16 of Title 16 of the California Code of Regulations (hereinafter “CCR”) were last substantively amended in 1995 and do not cover all existing requirements in law or regulations for renewal and practice in good standing. As a result of changes from statutes, regulations, and program recommendations, the Board proposes to update its current renewal requirements for both active and inactive

licenses. This would include repealing the existing incorporated application forms (“License Renewal OMB.2 or OMB.2a Rev.11/94”) and replacing them with a narrative list in the CCR of renewal requirements for renewing in both active and inactive status and outlining options for mail or online completed renewal application submission, as specified.

### Adoption of Retired Status and Process for Restoring to Active Status and Related Application Fees

Assembly Bill (AB) 2859 (Low, Stats. 2016, Ch. 473) created the authority for the Board to establish a retired license status and a process for restoring the license back to active status with the enactment of BPC section 464. However, BPC section 464 does not specify this Board’s process for applying for this status or the process for restoring a retired license to active status. This proposal would establish a new process, fees and forms for a retired license status and for restoring a retired license to active status as specified, and “clean-up” outdated regulatory language, as specified.

### Fee Increases and Adoption of New Fees in CCR section 1690

BPC sections 2455, 2456 and 2456.1 authorize the Board to set fees by regulation and sets forth the minimum and maximum fee ranges for application, biennial license, inactive, renewal, and delinquency for osteopathic physicians and surgeons. The Board is seeking to increase the fees charged for a physician’s original or reciprocity certificate application, a biennial inactive or delinquent certificate renewal, establish a delinquent inactive biennial license or renewal fee, a retired license application fee, an application to restore retired license to active status fee, a petition for reinstatement application fee, a petition for modification of penalty application fee and a fee required to adjudicate a petition for reinstatement or modification of penalty. The fee increases and new fee establishments are necessary to help alleviate the structural imbalance the Board currently faces and ensure the Board can meet its consumer protection goals.

### Amendments to the Board’s CCR Sections and Adoption of Forms and Fees for Petitions for Penalty Relief (Reinstatement or Modification of Penalty)

Pursuant to Business and Professions Code (BPC) section 2307, a disciplined licensee may petition the Osteopathic Medical Board of California (Board) to seek reinstatement of a revoked or surrendered license or to have their probation modified or terminated early. Collectively, such petitions are referred to herein as “petitions for penalty relief.”

BPC section 2307.5 (enacted by Senate Bill 815 -- Stats. 2023, Ch. 294) authorizes

the Board to “establish a fee to be paid by a person seeking a license reinstatement or modification of penalty pursuant to Section 2307; and “(b) [t]he fee established shall not exceed the Board’s reasonable costs to process and adjudicate a petition.” However, those provisions do not specify the process for filing such petitions or what the Board’s reasonable costs to process and adjudicate a petition should be.

This proposal would establish specific requirements for filing a petition for penalty relief on a form prescribed by the Board and submission of the applicable petition application fees and fees required to adjudicate such petitions, as specified. The proposal would also establish a process for providing the petitioner with a possible refund of a portion of the adjudication fees in the event of overpayment, including providing a fee payment statement to the petitioner detailing the reasonable costs incurred by the Board in adjudicating their petition, as specified. If the costs incurred by the Board are less than initially required to be paid to adjudicate the petition, this proposal would add requirements for the Board to provide a statement detailing the refund that will be provided and the anticipated date when the refund will be issued.

**Anticipated benefits from this regulatory action:**

The proposed amendments to the Board’s fee schedule will help to reduce the Board’s structural budget imbalance, recover costs, and allow the Board additional time to seek legislative changes before insolvency, which allows the Board enough time to seek authority to increase statutory fee levels to eliminate the structural imbalance. The proposed fee increases will help to reduce the structural imbalance in the short term and help the Board to recover its administrative costs to ensure the Board has funds to carry out its consumer protection mandate in the near future.

Changes to the Board’s renewal processes would strengthen oversight and provide greater assurances of the accuracy, completeness, and timeliness of applicant submissions. Additionally, the proposal provides clear and consistent requirements for renewal while making specific submission standards for the Board.

This proposal would also establish a consistent and simple process for obtaining retired license status and would eliminate barriers for those who wish to retire and have the option of placing their license in a retired status.

Establishing processes for petitioning for reinstatement or modification of penalty will further the Board’s mission of consumer protection by preserving the Board’s time and financial resources through adding a form to apply for penalty relief to expedite processing and establishing an application fee and also a fee to adjudicate a petition for reinstatement or modification of penalty, which would be paid by individuals seeking to

reinstate their license or modify or terminate their order of probation early. These processes will also help ensure that the Board can more effectively determine whether a physician may be reinstated to practice with safety to the public while ensuring the Board recovers its administrative costs for the services provided.

Finally, this proposal eliminates obsolete regulatory language that would be confusing to all interested stakeholders.

### **Specific Purpose of, and Rationale for, Each Adoption, Amendment or Repeal:**

#### **ARTICLE 8. ACTIVE PRACTICE REQUIREMENTS**

#### **§ 1630 Good Standing Requirements**

##### **Amend subsection (a)**

Purpose: This proposal would strike the words “pay the biennial renewal fees as set forth in Section 1690,” and add the words “the requirements for renewal set forth in this section” to this subsection.

Rationale: Existing regulations require all licensees seeking to maintain an active status license in good standing to comply with the Board’s continuing medical education (CME) rules set forth in Article 9 (starting with CCR section 1635). BPC sections 2456.1 and 2456.3 also permit licensees to renew by applying for renewal on a form prescribed by the Board and paying the prescribed renewal fee. However, existing regulations do not specify the contents of the prescribed form and only mention paying the biennial renewal fees set forth in CCR section 1690. To avoid confusion and potential conflict with the statutory requirements in Sections 2456.1 and 2456.3, the Board proposes to strike the reference to only paying the biennial renewal fees and replace it with a requirement that all licensees comply with “the requirements for renewal set forth in this section.” This would ensure consistency with proposed amendments to subsections (b) and (c), which are proposed to be amended to further specify requirements for paying the renewal fees and the contents of completed renewal application as further described below.

##### **Amend subsection (b)**

Purpose: This regulation amends subsection (b) to strike the words “last day of the birth month of the licensee” to be replaced with the words “expiration date of their license.” In addition, the Board proposes to add the words “nonrefundable” before the word “delinquent” and “certificate renewal” before the word “fee.” A comma would be added to the existing last sentence of this subsection and the words “which must be paid along

with the biennial renewal fee at the time of the submission of the application specified in subsection (c) to renew an active status” to the end of the last sentence in this subsection.

**Rationale:** The proposal to strike the words from subsection (b) is necessary to be consistent with BPC section 2456.1, which sets renewal of licenses as on the date “on or before the dates on which it would otherwise expire.” “Birth date renewal” language is obsolete and was abolished with the passage of Senate Bill (SB) 1443 (Stats. 2022, ch. 625) and replaced with a requirement in BPC section 2456.1 that licenses expire “at midnight on the last day of the month in which the license was issued during the second year of the two-year term if not renewed on or before that day.” Changes to subsection (b) are therefore necessary to avoid confusion and conform to the Board’s regulations with statutory changes implemented by SB 1443.

The Board further proposes adding the words “nonrefundable” before the delinquent certificate renewal fee since BPC sections 2456.1 and 2456.3 both require a licensee to pay the required renewal fee to renew in active status (whether submitted timely or delinquent and paid within 5 years of after their expiration date). Further, the Board bears the administrative costs for processing the renewal applications regardless of the outcome; staff time and resources are expended to review and process the renewal applications (see Underlying Data). This change is also necessary to ensure adequate notice that the fees charged by the Board are non-refundable and considered earned when submitted for processing to the Board to avoid confusion regarding whether the fee may be refunded.

The words “certificate renewal” would be added to conform the title with the title used in Section 1690(g) and ensure consistency in terminology throughout the Board’s regulations.

Current regulations in this subsection specify that the delinquent fee must be submitted but does not say when and how the fee should be submitted to meet the Board’s fee payment requirements. The Board proposes to address this ambiguity by adding the words “which must be paid along with the biennial renewal fee at the time of the submission of the application specified in subsection (c) to renew an active status” to the end of the last sentence in this subsection. This would make the subsection consistent with the payment requirements set forth in BPC section 2456.2, which requires those licensees who do not comply with BPC section 2456.1’s requirements for timely renewal (commonly understood and referred to as “delinquent” licensees) to meet the following fee requirements to renew in active status: (1) pay the renewal fee in effect at the time of renewal, and (2) pay the delinquency fee required by BPC section 2455 (and more specifically set forth in CCR section 1690).

### **Adopt subsection (c)**

**Purpose:** This proposal would add a new requirement that as a condition of renewal in active status on or before the expiration date of their license or within five (5) years after the expiration date of their license (for delinquent licensees still eligible to renew per BPC section 2456.3), a licensee shall submit a completed renewal application as prescribed by this subsection, satisfactory documentation of compliance with CME Rules as prescribe by CCR section 1636 and pay any applicable renewal fees specified in subsection (b).

The proposal also specifies that submission of a renewal application may be completed via mail, in person at the Board's current physical address listed on its website, or at the Board's online portal accessible through the Board's website, which informs applicants of the currently available options for submission. Proposed amendments would also provide a definition for a "completed renewal application" by specifying the required content of a completed application, as more fully described below.

**Rationale:** These changes are necessary to ensure consistency in terminology across the Board's regulations and in implementation of renewal requirements with the renewal requirements listed in BPC sections 2456.1, 2456.2 and 2456.3. Existing regulations do not cover all requirements for renewal of a license, including submission requirements, and the content of a complete renewal application. Consequently, the Board proposes to adopt a complete list of all requirements for renewal as set forth in newly proposed amendments to this subsection. Use of the narrative format rather than a standard form is also necessary to facilitate the consolidation of the application requirements and various methods of submission of the application (online, mail or hand delivery) in a format that is easier for an applicant to understand. This subsection is also necessary to inform licensees regarding what must be submitted to renew their licenses, to provide a complete list of requirements in one convenient location for renewal applicants consistent with current Board processes, laws and regulations and help ensure the Board only receives completed applications for processing license renewals.

In addition to specifying requirements for a completed renewal application, the requirements of completing continuing medical education (using the short hand reference of CME rules consistent with subsection (a)) and submission of the renewal fee prescribed in subsection (b)(which includes any potential delinquency fee as discussed above) is also proposed to be restated here, thereby ensuring the applicant is aware of and complies with all requirements for renewing in active status. Again, this includes compliance with the Board's CME rules that are prescribed in CCR section 1636 and submission of the appropriate fee required to renew their license. To ensure timely receipt of all applications, the Board proposes to add a definition for "submit",

which would mean: delivery by mail or in person at the Board's current physical address listed on its website or through the Board's online portal accessible through the Board's website.

In addition, subsection (a) would specify all requirements for license renewal, including cross-referencing to all the fee requirements for active renewal that would be further specified in subsection (b) for greater notice and consistency of interpretation across the Board's regulations, and defining a "completed renewal application" as including all of the following and for the following reasons:

- **Add collection of personally identifying information as follows: paragraph (1) (the legal name of the licensee), paragraph (2) (the License Number and Expiration Date), paragraph (3) (the licensee's address of record (mailing address), paragraph (4) (the licensee's business or residential (street) address unless already provided in paragraph (3)), paragraph (5) (the licensee's email address), and, paragraph (6) (the licensee's phone number and any alternate phone numbers).** An individual shall apply using their full legal name (Last Name) (First Name) (Middle Name) and/or (Suffix), and the license number and expiration date and provide all of the other personally identifying information listed above. Personal information is necessary to verify the identity of the applicant and help the Board communicate with applicants more effectively and accurately track all information related to the renewal application through this identifying information. Requiring the name of the applicant is the starting point for verifying applicant identity and confirming other related requirements have been met.

For applicants which provide a post office box as their address of record, it is necessary for the Board to have a business or residential (street) address because if the Board needs to serve an applicant or licensee with legal process (e.g., a subpoena which is required by law to be served personally – see Gov. Code, § 11450.20 incorporating Code Civ. Proc., § 1987), a post office box address will not suffice. This is consistent with other state policy in this area at BPC section 27, which requires posting such information on the websites of other agencies in this Department. Applicants who have already provided a street address as their address of record or mailing address to the Board in response to the prior question in paragraph (3), would be exempted from providing this information as it is not necessary to provide the information twice.

- **Add paragraph (7) collection of National Provider Identifier:** A national provider identifier is a unique, 10-digit identification number for covered healthcare providers, mandated by the Health Insurance Portability and

Accountability Act (“HIPAA” -- (42 U.S.C. § 1320d et seq.)) for standard electronic transactions. If renewing online through the Board’s website, the licensee shall provide their individual National Provider Identifier if they have one, per the requirement of BPC section 850.2(b), which states “A healing arts board shall require a licensee or registrant who electronically renews their license or registration to provide to that board the licensee’s or registrant’s individual National Provider Identifier, if they have one”. Consequently, the Board adds this requirement to the renewal application to comply with section BPC section 850.2(b)’s mandate.

- **Add paragraph (8) collection of licensee’s current license status (active or expired (delinquent) and whether the licensee is seeking to renew in active status:** Collecting the licensee’s status is necessary to determine whether the applicant qualifies to renew in active status in accordance with either BPC sections 2456.1 (timely renewals) or 2456.3 (expired (delinquent) active renewals). In the Board’s experience, this confirmation is necessary to avoid licensee and staff confusion regarding eligibility requirements. Asking the applicant to confirm their intent to renew in active status confirms the type of application the applicant is submitting to the Board and ensures that the applicant’s eligibility is analyzed according to the correct regulatory requirements as requirements for active renewal in CCR section 1630 are distinctly different from those for inactive renewal listed in CCR section 1646 (see below for further discussion).
- **Add paragraph (9) question regarding whether the licensee would like to make a voluntary payment contribution per Section 2455.1(b) of the Code for the purposes of the Steven M. Thompson Physician Corps Loan Repayment Program, and, if “yes”, the licensee shall submit any contribution in any amount with the application:** BPC section 2455.1 sets forth the requirements for the Board to set up and fund the Steven M. Thompson Physician Corps Loan Repayment Program (Program). (The Program gives awards to eligible applicants currently licensed and practicing as a physician for loan repayment of up to \$105,000 in exchange for a 36-month service obligation practicing and providing direct patient care in an eligible geographic or approved site.) In particular, BPC section 2455.1(b) states: “On or before July 1, 2015, the board shall develop a mechanism for an osteopathic physician and surgeon to pay a voluntary contribution, at the time of initial application for licensure **or biennial renewal**, for the purposes of this section.” (Emphasis added.) Asking these questions in this manner would provide a convenient way to collect these funds in compliance with the mandate set forth in Section 2455.1. In the Board’s

experience, no limitation on contribution amounts is necessary so the licensee is free to submit any contribution in any amount with the application and the Board will accept it. This provides notice and guidance to those licensees who are interested in contributing to this Program.

- **Add paragraph (10) question regarding whether there is any financial interest that the licensee or a member of the licensee’s immediate family (spouse, child, or parent of a licensee, and spouse of a child of a licensee) may have in a health-related facility. For the purposes of this paragraph, the terms “financial interest”, “immediate family” and “health-related facility” have the meanings set forth in Section 2426 of the Code. If “yes,” the licensee shall disclose the name(s) and physical address(s) of the health-related facility or facilities:** BPC section 2426(a) mandates the following: “A licensee shall report to the board at the time of renewal of a license any financial interest that the licensee or a member of the licensee’s immediate family may have in a health-related facility. The report shall be made on a form provided by the board.” To comply with this statutory mandate, the Board proposes to add these questions to its renewal application.

To avoid confusion regarding what the terms used in this question mean and to show consistency with the governing statute, the Board proposes to cross-reference to the definitions for “financial interest”, “immediate family” and “health-related facility” in BPC section 2426; the Board believes these definitions are self-explanatory. BPC section 2426(c) further requires the Board to make the information reported to the Board available to government agencies and public or private payers. To ensure accuracy in the information reported and effective reporting of the information collected in compliance with Section 2426(c), the Board further requires disclosure the name(s) and physical address(es) of the health-related facility or facilities in response to any affirmative “yes” response to the initial question posed about financial interests.

- **Add paragraph (11) conviction question:** This would include adding a statement indicating whether the licensee, since their last renewal, has been convicted of, pled guilty to, or pled nolo contendere to an infraction, misdemeanor or felony in the United States, any district or territory (consistent with BPC section 21 definition of “state”) or a foreign country. This is necessary and broadly interpreted to include all states or a foreign country for public protection, ensuring that the Board is informed about any crimes potentially substantially related to the qualifications, functions or duties of a licensee. BPC Section 2236(a) provides:

“The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.” BPC section 2236(d) further defines “[a] plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and BPC section 2236.1.”

BPC section 490 also further provides that the Board may take disciplinary action against a licensee for a substantially related conviction as set forth in subdivisions (a) and (b), and further specifies that the Board’s authority to act includes the following:

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

- To conduct a full and complete review of the applicant’s criminal history and in order to help confirm whether the Board has cause to revoke or suspend the license based upon the aforementioned authority, the Board must ask the question on the application. Asking the question helps ensure a complete review as, in the Board’s experience, some convictions that are self-reported are not always reported in the criminal offender record information (“CORI”) provided by the Department of Justice to the Board about its licensees.

This proposed language is also needed to notify renewal applicants that disclosure is required whether they pled guilty or pled nolo contendere (no contest) since applicants often mistakenly believe that a “no contest” plea is not treated the same way for conviction disclosure purposes and that some “expunged” or “dismissed” convictions (per Penal Code sections 1000, 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (or equivalent non-California law) do not need to be disclosed to regulatory agencies, such as the Board.

- A sentence in this paragraph would specify that, for the purposes of this paragraph, convictions expunged or dismissed under sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (or equivalent non-California

law) must be disclosed. This language is necessary to make clear to applicants that convictions, even if they are expunged or dismissed, must be reported and to ensure that the Board has the most accurate information about an applicant's background when determining whether grounds for discipline exist. As a matter of law, convictions expunged pursuant to Penal Code section 1203.4 or other similar expungement or dismissal statutes are still considered "convictions" for purposes of disciplinary actions by the Board. BPC section 490(c) provides the following, in pertinent part:

"An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, **irrespective of a subsequent order under Section 1203.4 of the Penal Code.**" (Emphasis added.)

This means that the Board may use an applicant's criminal history even if that history includes convictions for which an individual obtains a later order of dismissal under Penal Code section 1203.4 or similar expungement or dismissal statute. The California Court of Appeal has found that the use of a conviction that was later expunged by a board in this Department for enforcement of its laws is authorized. In discussing its rationale, the California Court of Appeal in *Meyer v. Board of Medical Examiners* (1949) 34 Cal.2d 62, provided the following:

"The powers possessed by the trial courts under the probation statutes, Penal Code, Sections 1203 et seq., are concerned with mitigation of punishment and confer discretion upon the courts in dealing with a convicted defendant. The power of the court to reward a convicted defendant who satisfactorily completes his period of probation by setting aside the verdict and dismissing the action operates to mitigate his punishment by restoring certain rights and removing certain disabilities. But it cannot be assumed that the legislature intended that such action by the trial court under section 1203.4 should be considered as obliterating the fact that the defendant had been finally adjudged guilty of a crime. This is made clear by the provision that the fact of the defendant's conviction can be used against him in any later prosecution, despite dismissal of the action under section 1203.4. In brief, action in mitigation of the defendant's punishment should not affect the fact that his guilt has been finally determined according to law. Such a final determination of guilt is the basis for the [enforcement action] in this case. **That final judgment of conviction is a fact; and its effect cannot be nullified for the purpose here involved, either by the order of probation or by the later order dismissing the action after**

**judgment.”** Id. at 64-66 and citing *In re Phillips* (1941) 17 Cal.2d 55, 58. (Emphasis added.)

Consequently, for the Board’s purposes, renewal applicants who have obtained Penal Code section 1203.4 orders or other similar dismissals or expungements are still considered to have criminal convictions for purposes of determining whether grounds for discipline exist. Nevertheless, the Board has found that licensees mistakenly believe that a dismissal or expungement order entitles them to not disclose a conviction to the Board. As a result, to avoid confusion, and implement long-standing state policy that requires disclosure of most criminal convictions to licensing agencies, the Board specifies that convictions, even if dismissed or expunged, “must be disclosed.”

- **Add last sentence to end of paragraph (11) to add exclusions to the definition of “conviction” including criminal offenses adjudicated in the juvenile courts in subparagraph (A).** This amendment would add language to specify that “conviction” does not include offenses adjudicated in the juvenile court. This is necessary because many applicants mistakenly disclose these offenses even though these judicial proceedings and actions are by law not considered “convictions.” Welfare and Institutions Code (WIC) section 203 states, “An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.” In addition, WIC section 827 makes these records confidential.
- **Additional exclusions from the definition of conviction in subparagraph (B) of paragraph (11)** that would include specifying that “conviction” does not include “charges dismissed under section 1000.3 of the Penal Code (PC).” This will avoid unnecessary disclosures as PC section 1000.1 allows a defendant subject to “Deferred Entry of Judgment”, who meets certain conditions, to bypass the criminal prosecution process to enter a drug treatment program. Successful completion of the drug treatment program would then lead to a dismissal of the criminal charges and thereby no “conviction” since no judgment is actually entered.
- **Add additional exclusions from the definition of conviction in subparagraph (C) of paragraph (11)** that specifies that “conviction” does not include convictions under California Health and Safety Code (H&S) section 11357, or section 11360(b) which are two years old or older for minor marijuana possession, as specified in these statutes. This will avoid unnecessary disclosures because under the Uniform Controlled Substance Act (H&S Code

section 11000 et seq.), arrests and/or convictions for certain minor marijuana possession charges need not be reported on applications. In addition, H&S Code section 11361.5 requires the destruction of these specific records two years after the conviction. Furthermore, under H&S Code section 11361.7(c), any person convicted of a specified charge may, after the two-year cut-off date indicate in response to any question concerning prior conviction that they were not convicted for the act. As a result, this language is necessary to ensure consistency with these laws and avoid applicant confusion regarding whether they will need to disclose these past actions.

- **Add additional exclusions from the definition of conviction in subparagraph (D) of paragraph (11)** that specify that “conviction” does not include traffic citations or infractions for which a fine of \$500 or less was imposed and not involving alcohol, dangerous drugs, or controlled substances. For purposes of license eligibility, as set forth in BPC section 490, a criminal conviction includes a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Penal Code section 16 classifies crimes and public offenses to include: 1. Felonies; 2. Misdemeanors; and 3. Infractions. In addition, when an individual pays a traffic ticket without contesting it in court, California law treats that as a "forfeiture of bail", which is legally equivalent to an admission of guilt and a conviction for the particular violation charged (see Vehicle Code section 40512, Vehicle Code section 13103).

This proposed language will avoid unnecessary disclosures of minor traffic violations such as running a red light, which the Board views as not substantially related to the qualifications, functions, or duties of a licensee, and using a dollar amount limit would be easier for licensees to understand since these unrelated types of violations normally do not result in fines greater than \$500 (see Underlying Data). This threshold would still allow the Board to capture substantially related violations that involve alcohol, dangerous drugs, or controlled substances, such as a DUI pled down to a “wet reckless”, where such conduct is normally considered related to the practice of medicine (see e.g., BPC section 2239 and *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 759 where the California Court of Appeal found convictions involving the consumption of alcoholic beverages have a logical connection to the fitness to practice medicine. “They reflect a lack of sound professional and personal judgment, a disregard of medical knowledge concerning the effects of alcohol, and an inability or unwillingness to obey the legal prohibition against drinking and driving.”)

- **Add new paragraph (12) (report of disciplinary action against any license or other indicia of authority to engage in any practice).** This new sentence would include a statement indicating whether the licensee, since their last renewal, has had any disciplinary action against any license, registration, certificate, permit or other means to engage in any practice issued to the licensee by any government agency. Under existing law at BPC sections 141 and 2305 when disciplinary action is taken by another licensing board in or outside of California, which would include discipline by another state, by any agency of the federal government or a foreign country, the Board may discipline a license for specified disciplinary action taken by another state, by any agency of the federal government, or by another country” for any act substantially related to the practice of medicine. This question is therefore necessary to ensure that grounds for discipline do not exist according to the aforementioned statutes for the protection of the public, and to assist the applicant with understanding what needs to be disclosed to ensure a completed renewal application.

This new paragraph (12) would also define “Government agency” as any regulatory or licensing board in this State (excluding this board) or any other state, any United States territory, federal agency or another country. Since the Board is aware of every licensee’s record of discipline and the term “government agency” is ambiguous, this is necessary to inform the licensee of the types of agency actions that are relevant to the Board’s inquiry and therefore needs to be disclosed without being unnecessarily broad. The specified types of agencies used in the definition are drafted consistent with the authority conferred upon the Board at BPC sections 141 and 2305.

Finally, paragraph (12) would define “Disciplinary action” as an adverse licensure action that resulted in a restriction or penalty being placed on the license, such as revocation, suspension, probation, voluntary surrender or public reprimand or reproval. This is necessary to clarify what types of actions taken by a government agency against a licensee must be reported to the Board.

This is necessary to ensure applicants fully understand what “disciplinary action” means in responding to this question, and to provide a definition that includes the types of actions government agencies are typically authorized to take (e.g., see the California Administrative Procedure Act, specifically Gov. Code, section 11503).

- **Add new paragraph (13) regarding notice and acknowledgement of CME requirements.** This paragraph would include a statement acknowledging the applicant has read the following notice: “As a condition of renewal, you are

required to comply with the Board’s continuing medical education (CME) requirements in Article 9 of Division 16 of the California Code of Regulations, including submission of a written statement documenting compliance as set forth in Title 16, California Code of Regulations section 1636. Your license will not be renewed if you fail to comply with the Board’s CME requirements. By signing this application, you acknowledge that you have received and read this notice.”

This is necessary to provide notice and remind the licensees of their obligations to comply with the Board’s continuing medical education requirements in Article 9 with particular emphasis on the documentation requirements contained in CCR section 1636 to demonstrate proof of compliance with CME requirements. In the Board’s experience these admonitions are necessary to help avoid deficiencies in the renewal process and to document this notice was received as an aggravating factor in the event of noncompliance with CME rules.

- **Add new paragraph (14) regarding certification under penalty of perjury.**  
This new paragraph would require a statement signed and dated by the licensee under penalty of perjury under the laws of the State of California that all statements made in the application and any attachments are true and correct. These amendments also help ensure that the Board can prosecute any potential perjury cases using legally admissible certifications in accordance with Code of Civil Procedure section 2015.5. Certification under penalty of perjury helps ensure that the application contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications]).

**Amend current subsection (c) (renumbered as (d))**

Purpose and Rationale: This subsection would be renumbered from (c) to (d) to accommodate the addition of a new subsection (c) as noted above.

**ARTICLE 9. CONTINUING MEDICAL EDUCATION**

**§ 1636 Continuing Medical Education Documentation.**

**Amend subsection (a)**

Purpose: This regulation proposes adding the words “renewing in active status” so that the introductory phrase would read “Osteopathic physicians and surgeons renewing in active status...” In addition, the proposal would add the words “specified in Section 1630 to the end of the existing sentence after “renewal application.”

Rationale: As noted above in the rationale for changes to CCR section 1630, continuing medical education (CME) compliance is required for licenses renewing in active status

(see also BPC section 2454.5); license renewed as inactive do not need to meet the requirements for satisfying CME (see BPC sections 701 and 704 and CCR section 1646 requirements). For consistency in interpretation across the Board's regulations and to avoid potential confusion for licensees seeking to renew their licenses, the Board adds the clarifying language "renewing in active status" to the introductory phrase noted above. To ensure consistency with the newly proposed changes to CCR section 1630 and again to avoid potential confusion, the Board adds a cross-reference to CCR section 1630 to ensure notice to licensees regarding where the renewal application requirements are in the Board's regulations.

## **ARTICLE 10. INACTIVE ~~PRACTICE~~ AND RETIRED LICENSES**

### **§ 1646 Procedure for Obtaining an Inactive Certificate or for Restoration to Active Status**

#### **Amend Article 10 title**

Purpose and Rationale: This regulation would strike the reference to "Practice" in the title for Article 10 since licensees in inactive status are prohibited by law from "practicing" per BPC section 701. This regulation would add the words "and Retired Licenses" to increase notice to the regulated community and better reflect the content of the regulations contained in this Article.

#### **Amend subsection (a)**

Purpose: This proposal would strike the in from "an" for grammatical reasons and insert the word "completed" immediately before the word "application." The proposal would also add the words "in compliance with subsection (b)" and repeal the incorporated forms License Renewal OMB.2 or OMB.2a Rev.11/94.

Rationale: To avoid application processing delays and applicant confusion, the Board proposes to add the word "completed" before the word "application" and further specify that an applicant is required to submit a "completed application" as set forth in subsection (b), which would contain an itemized list of requirements (see explanation for the addition of subsection (b) and paragraphs (b)(1)-(13) below).

Current forms License Renewal OMB.2 or OMB.2a Rev.11/94 would be repealed as obsolete and outdated since those forms do not cover all legislative and regulatory changes that have occurred since 1994. Those forms would be replaced by the list set forth in newly proposed subsection (b) of this section and CCR section 1630(c), as follows:

<b>Section of Current Forms OMB.2 or OMB.2a Rev.11/94</b>	<b>Corresponding CCR section 1630 or 1646 subsection proposed to cover similar subject matter or rationale for repeal of the item as proposed by this rulemaking</b>
<p>Refers to 1995-1997 Two-Year License Renewal and 1995 Annual License Renewal.</p> <p>Adds requirements for submission of the renewal application based on prior version of BPC section 2456.1 and refers to expiration “twelve midnight on the last day of his/her birth month” and reports that the “biennial tax and registration fees” are due on or before the expiration date.</p>	<p>Repealed as unnecessary since the current year is 2026. Also, BPC sections 2456.1 and 2456.3 no longer use birth date renewal requirements.</p> <p>BPC section 2455 now uses the terms “biennial license” fee and renewal. The current outdated terminology in CCR 1630 and 1646 has already been updated and CCR 1690 has already been updated to reflect the new terminology. Changes to CCR sections 1630 and 1646 would update and make consistent the terminology adopted in CCR section 1690.</p> <p>CCR section 1630(b) and CCR section 1646(b) contain proposed provisions that would track the current two-year renewal requirements in BPC section 2456.1 and the delinquent licensee renewal requirements for active licensees 2456.3 and uses the updated fee terminology in BPC section 2455 and CCR section 1690.</p>
<p>For 1995-1997 renewals: lists required active license fee of \$600 and \$300 inactive license fee. Refers to required payment of delinquency fee of \$150 for active license and \$75 for inactive license.</p> <p>For 1995 Annual License renewal: lists required active license fee of \$300 and \$150 inactive license fee. Refers to required payment of delinquency fee of \$150 for active license and \$75 for inactive license.</p>	<p>These fees are currently higher (\$400 for active licenses) and are proposed to be increased for inactive licenses (to \$300) per amendments proposed at CCR section 1690. Delinquency fees would be increased to \$200 (Active) and \$299.50 (Inactive) at CCR section 1690.</p> <p>CCR sections 1630(b) and (c), 1646(b) and 1647 would cross-reference to the correct fee amounts in CCR 1690.</p>
<p>CME reporting requirements (Attach all CME documentations for 1/92 thru 12/94 unless previously submitted). “No Practice Privileges in California – No CME required. Available to in-state and out-of-state practitioners.”</p>	<p>Repealed as unnecessary since 12/94 has already passed. Also, the Board’s regulations in Article 8 and CCR section 1636 already specify the documentation and reporting requirements for CME, which no longer require submission of CME documentation</p>

Section of Current Forms OMB.2 or OMB.2a Rev.11/94	Corresponding CCR section 1630 or 1646 subsection proposed to cover similar subject matter or rationale for repeal of the item as proposed by this rulemaking
	<p>(completion certificates) with the renewal application.</p> <p>Amendments to CCR sections 1630(b) include references to CME reporting compliance (for active licenses) and 1646(b) would not require CME compliance for inactive licenses. In the Board's experience, the reference to "practice privileges" was confusing to applicants, so eliminated as unnecessary.</p>
Residency/Fellowship reporting (attach verification from program Director)	This information is collected as part of the application at CCR section 1609.
Collection of personally identifying information (name, business address, home address, specialty/board certified, certifying board).	The Board is collecting the personally identifying information it needs as proposed at CCR sections 1630(c)(1)-(7), 1646(b)(1)-(7)
Reporting of convictions since last renewal	CCR sections 1630(c)(11), 1646(b)(11)
Reporting of administrative actions taken against license since last renewal	CCR sections 1630(c)(12), 1646(b)(12)
Reporting of health, legal or occupational problems associated with alcohol or drug use or been charges or convicted of any act related to drugs or alcohol	In the Board's experience, this question rarely resulted in any useful information and the conviction question already asked (see noted above) currently covers this issue.
Reporting of an investigation or litigation now pending against you involving hospital privileges, medical practice, or membership	The Board now relies on the mandated reporting requirements pursuant to BPC sections, 805, 805.01, and 805.8.
Reporting of DEA number and whether current and unrestricted	<p>There is no requirement for physicians that do not prescribe/dispense/administer controlled substances to obtain a DEA number, so the current question is overly broad for this renewal application.</p> <p>For prescribing physicians, this question is no longer necessary since the Controlled Substance Utilization Review and Evaluation System (CURES) in California contains and tracks DEA numbers for prescribers and dispensers. <a href="#">California Health and Safety Code Section 11165.1</a> requires all California-licensed healthcare practitioners authorized</p>

Section of Current Forms OMB.2 or OMB.2a Rev.11/94	Corresponding CCR section 1630 or 1646 subsection proposed to cover similar subject matter or rationale for repeal of the item as proposed by this rulemaking
	<p>to prescribe, order, administer, or furnish Schedule II-V controlled substances to register for access to the CURES database. Registration is mandatory upon receiving a DEA registration. CURES requires registration, including the DEA certificate number, for authorized users to track prescription history, helping to identify potential drug abuse and therefore ensures that prescribing physicians have a current DEA registration to legally prescribe.</p> <p>Further, the Board is also able to independently verify this information through other means.</p>
<p>Acknowledgement of reading and understanding CME rules and notice license will not be renewed if the CME requirement is not met (for active licensees).</p>	<p>CCR section 1630(c)(13)</p>
<p>Declaration under penalty of perjury that information provided is true and accurate and that the applicant shall notify the Board should a change occur, signed and dated by the applicant</p>	<p>CCR sections 1630(c)(14), 1646(b)(13)</p> <p>The Board would repeal the requirement that, under penalty of perjury, the applicant shall notify the Board should a change occur as the Board has not found this to be useful or necessary and may not technically comply with the format for declarations set forth in Code of Civil Procedure section 2015.5.</p>

**Adopt subsection (b)**

Purpose: This proposal would add a new requirement that as a condition of renewal in inactive status on or before the expiration date of their license or within five (5) years after the expiration date of their license (for delinquent licensees still eligible to renew per BPC section 2456.3), a licensee shall submit a completed renewal application as prescribed by this subsection, and pay any applicable renewal fees required by CCR section 1647.

The proposal also specifies that submission of a renewal application may be completed via mail, in person at the Board’s current physical address listed on its website, or at the Board’s online portal accessible through the Board’s website, which informs applicants of the currently available options for submission. Proposed amendments would also provide a definition for a “completed inactive renewal application” by specifying the required content of a completed application, as more fully described below.

Rationale: These changes are necessary to ensure consistency in terminology across the Board’s regulations and in implementation of renewal requirements with the renewal requirements listed in BPC sections 2456.1, 2456.2 and 2456.3. Existing regulations do not cover all requirements for renewal of an inactive license, including submission requirements, and the content of a completed inactive renewal application. Consequently, the Board proposes to adopt a complete list of all requirements for inactive renewal as set forth in newly proposed amendments to this subsection. This subsection is also necessary to inform licensees regarding what must be submitted to renew their inactive licenses, to provide a complete list of requirements in one convenient location for renewal applicants consistent with current Board processes, laws and regulations and help ensure the Board only receives completed applications for processing inactive license renewals.

In addition to specifying requirements for a completed renewal application, the requirements of completing continuing medical education (using the short hand reference of CME rules consistent with subsection (a)) and submission of the renewal fee prescribed in subsection (b)(which includes any potential delinquency fee as discussed above) is also proposed to be restated here, thereby ensuring the applicant is aware of and complies with all requirements for renewing in active status. Again, this includes compliance with the Board’s CME rules that are prescribed in CCR section 1636 and submission of the appropriate fee required to renew their license. To ensure timely receipt of all applications, the Board proposes to add a definition for “submit”, which would mean: delivery by mail or in person at the Board’s current physical address listed on its website or through the Board’s online portal accessible through the Board’s website.

In addition, subsection (a) would specify all requirements for license renewal, including cross-referencing to all the fee requirements for inactive renewal that would be further specified in CCR section 1647 for greater notice and consistency of interpretation across the Board’s regulations, and defining a “completed renewal application” as including all of the following and for the following reasons:

- **Add collection of personally identifying information as follows: paragraph (1) (the legal name of the licensee), paragraph (2) (the License Number and**

**Expiration Date), paragraph (3) (the licensee’s address of record (mailing address), paragraph (4) (the licensee’s business or residential (street) address unless already provided in paragraph (3)), paragraph (5) (the licensee’s email address), and, paragraph (6) (the licensee’s phone number and any alternate phone numbers).** An individual shall apply using their full legal name (Last Name) (First Name) (Middle Name) and/or (Suffix), and the license number and expiration date and provide all of the other personally identifying information listed above. Personal information is necessary to verify the identity of the applicant and help the Board communicate with applicants more effectively and accurately track all information related to the renewal application through this identifying information. Requiring the name of the applicant is the starting point for verifying applicant identity and confirming other related requirements have been met.

For applicants which provide a post office box as their address of record, it is necessary for the Board to have a business or residential (street) address because if the Board needs to serve an applicant or licensee with legal process (e.g., a subpoena which is required by law to be served personally – see Gov. Code, § 11450.20 incorporating Code Civ. Proc., § 1987), a post office box address will not suffice. This is consistent with other state policy in this area at BPC section 27, which requires posting such information on the websites of other agencies in this Department. Applicants who have already provided a street address as their address of record or mailing address to the Board in response to the prior question in paragraph (3), would be exempted from providing this information as it is not necessary to provide the information twice.

- **Add paragraph (7) collection of National Provider Identifier:** A national provider identifier is a unique, 10-digit identification number for covered healthcare providers, mandated by the Health Insurance Portability and Accountability Act (“HIPAA” -- (42 U.S.C. § 1320d et seq.)) for standard electronic transactions. If renewing online through the Board’s website, the licensee shall provide their individual National Provider Identifier if they have one, per the requirement of BPC section 850.2(b), which states “A healing arts board shall require a licensee or registrant who electronically renews their license or registration to provide to that board the licensee’s or registrant’s individual National Provider Identifier, if they have one”. Consequently, the Board adds this requirement to the inactive renewal application to comply with section BPC section 850.2(b)’s mandate.

- Add paragraph (8) collection of licensee’s current license status (active, inactive or expired (delinquent) and whether the licensee is seeking to renew in inactive status:** Collecting the licensee’s status is necessary to determine whether the applicant qualifies to renew in inactive status in accordance with either BPC sections 2456.1 (timely renewals) or 2456.3 (expired (delinquent) active or inactive renewals). In the Board’s experience, this confirmation is necessary to avoid licensee and staff confusion regarding eligibility requirements. Asking the applicant to confirm their intent to renew in a particular status confirms the type of application the applicant is submitting to the Board and ensures that the applicant’s eligibility is analyzed according to the correct regulatory requirements as requirements for active renewal in CCR section 1630 are distinctly different from those for inactive renewal listed in CCR section 1646 (see below for further discussion).
- Add paragraph (9) question regarding whether the licensee would like to make a voluntary payment contribution per Section 2455.1(b) of the Code for the purposes of the Steven M. Thompson Physician Corps Loan Repayment Program, and, if “yes”, the licensee shall submit any contribution in any amount with the application:** BPC section 2455.1 sets forth the requirements for the Board to set up and fund the Steven M. Thompson Physician Corps Loan Repayment Program (Program). (The Program gives awards to eligible applicants currently licensed and practicing as a physician for loan repayment of up to \$105,000 in exchange for a 36-month service obligation practicing and providing direct patient care in an eligible geographic or approved site.) In particular, BPC section 2455.1(b) states: “On or before July 1, 2015, the board shall develop a mechanism for an osteopathic physician and surgeon to pay a voluntary contribution, at the time of initial application for licensure **or biennial renewal**, for the purposes of this section.” (Emphasis added.) Asking these questions in this manner would provide a convenient way to collect these funds in compliance with the mandate set forth in BPC Section 2455.1. In the Board’s experience, no limitation on contribution amounts is necessary so the licensee is free to submit any contribution in any amount with the application and the Board will accept it. This provides notice and guidance to those licensees who are interested in contributing to this Program.
- Add paragraph (10) question regarding whether there is any financial interest that the licensee or a member of the licensee’s immediate family (spouse, child, or parent of a licensee, and spouse of a child of a licensee) may have in a health-related facility. For the purposes of this paragraph, the terms “financial interest”, “immediate family” and “health-related**

**facility” have the meanings set forth in Section 2426 of the Code. If “yes,” the licensee shall disclose the name(s) and physical address(s) of the health-related facility or facilities:** BPC section 2426(a) mandates the following: “A licensee shall report to the board at the time of renewal of a license any financial interest that the licensee or a member of the licensee’s immediate family may have in a health-related facility. The report shall be made on a form provided by the board.” To comply with this statutory mandate, the Board proposes to add these questions to its inactive renewal application.

To avoid confusion regarding what the terms used in this question mean and to show consistency with the governing statute, the Board proposes to cross-reference to the definitions for “financial interest”, “immediate family” and “health-related facility” in BPC section 2426; the Board believes these definitions are self-explanatory. BPC section 2426(c) further requires the Board to make the information reported to the Board available to government agencies and public or private payers. To ensure accuracy in the information reported and effective reporting of the information collected in compliance with Section 2426(c), the Board further requires disclosure of the name(s) and physical address(es) of the health-related facility or facilities in response to any affirmative “yes” response to the initial question posed about financial interests.

- **Add paragraph (11) conviction question:** This would include adding a statement indicating whether the licensee, since their last renewal, has been convicted of, pled guilty to, or pled nolo contendere to an infraction, misdemeanor or felony in the United States, any district or territory (consistent with BPC section 21 definition of “state”) or a foreign country. This is necessary and broadly interpreted to include all states or a foreign country for public protection, ensuring that the Board is informed about any crimes potentially substantially related to the qualifications, functions or duties of a licensee. BPC Section 2236(a) provides:

“The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.” BPC section 2236(d) further defines “[a] plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and BPC section 2236.1.”

BPC section 490 also further provides that the Board may take disciplinary action against a licensee for a substantially related conviction as set forth in

subdivisions (a) and (b), and further specifies that the Board’s authority to act includes the following:

“(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.”

To conduct a full and complete review of the applicant’s criminal history and in order to help confirm whether the Board has cause to revoke or suspend the license based upon the aforementioned authority, the Board must ask the question on the application. Asking the question helps ensure a complete review as, in the Board’s experience, some convictions that are self-reported are not always reported in the criminal offender record information (“CORI”) provided by the Department of Justice to the Board about its licensees.

This proposed language is also needed to notify renewal applicants that disclosure is required whether they pled guilty or pled nolo contendere (no contest) since applicants often mistakenly believe that a “no contest” plea is not treated the same way for conviction disclosure purposes and that some “expunged” or “dismissed” convictions (per Penal Code sections 1000, 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (or equivalent non-California law) do not need to be disclosed to regulatory agencies, such as the Board.

A sentence in this paragraph would specify that, for the purposes of this paragraph, convictions expunged or dismissed under sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (or equivalent non-California law) must be disclosed. This language is necessary to make clear to applicants that convictions, even if they are expunged or dismissed, must be reported and to ensure that the Board has the most accurate information about an applicant’s background when determining whether grounds for discipline exist. As a matter of law, convictions expunged pursuant to Penal Code section 1203.4 or other similar expungement or dismissal statutes are still considered “convictions” for purposes of disciplinary actions by the Board. BPC section 490(c) provides the following, in pertinent part:

“An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the

judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, **irrespective of a subsequent order under Section 1203.4 of the Penal Code.**" (Emphasis added.)

This means that the Board may use an applicant's criminal history even if that history includes convictions for which an individual obtains a later order of dismissal under Penal Code section 1203.4 or similar expungement or dismissal statute. The California Court of Appeal has found that the use of a conviction that was later expunged by a board in this Department for enforcement of its laws is authorized. In discussing its rationale, the California Court of Appeal in *Meyer v. Board of Medical Examiners* (1949) 34 Cal.2d 62, provided the following:

"The powers possessed by the trial courts under the probation statutes, Penal Code, Sections 1203 et seq., are concerned with mitigation of punishment and confer discretion upon the courts in dealing with a convicted defendant. The power of the court to reward a convicted defendant who satisfactorily completes his period of probation by setting aside the verdict and dismissing the action operates to mitigate his punishment by restoring certain rights and removing certain disabilities. But it cannot be assumed that the legislature intended that such action by the trial court under section 1203.4 should be considered as obliterating the fact that the defendant had been finally adjudged guilty of a crime. This is made clear by the provision that the fact of the defendant's conviction can be used against him in any later prosecution, despite dismissal of the action under section 1203.4. In brief, action in mitigation of the defendant's punishment should not affect the fact that his guilt has been finally determined according to law. Such a final determination of guilt is the basis for the [enforcement action] in this case. **That final judgment of conviction is a fact; and its effect cannot be nullified for the purpose here involved, either by the order of probation or by the later order dismissing the action after judgment.**" Id. at 64-66 and citing *In re Phillips* (1941) 17 Cal.2d 55, 58. (Emphasis added.)

Consequently, for the Board's purposes, renewal applicants who have obtained Penal Code section 1203.4 orders or other similar dismissals or expungements are still considered to have criminal convictions for purposes of determining whether grounds for discipline exist. Nevertheless, the Board has found that licensees mistakenly believe that a dismissal or expungement order entitles them to not disclose a conviction to the Board. As a result, to avoid confusion, and implement long-standing state policy that requires disclosure of most criminal

convictions to licensing agencies, the Board specifies that convictions, even if dismissed or expunged, “must be disclosed.”

- **Add last sentence to end of paragraph (11) to add exclusions to the definition of “conviction” including criminal offenses adjudicated in the juvenile courts in subparagraph (A).** This amendment would add language to specify that “conviction” does not include offenses adjudicated in the juvenile court. This is necessary because many applicants mistakenly disclose these offenses even though these judicial proceedings and actions are by law not considered “convictions.” Welfare and Institutions Code (WIC) section 203 states, “An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.” In addition, WIC section 827 makes these records confidential.
- **Additional exclusions from the definition of conviction in subparagraph (B) of paragraph (11)** that would include specifying that “conviction” does not include “charges dismissed under section 1000.3 of the Penal Code (PC).” This will avoid unnecessary disclosures as PC section 1000.1 allows a defendant subject to “Deferred Entry of Judgment”, who meets certain conditions, to bypass the criminal prosecution process to enter a drug treatment program. Successful completion of the drug treatment program would then lead to a dismissal of the criminal charges and thereby no “conviction” since no judgment is actually entered.
- **Add additional exclusions from the definition of conviction in subparagraph (C) of paragraph (11)** that specifies that “conviction” does not include convictions under California Health and Safety Code (H&S) section 11357, or section 11360(b) which are two years old or older for minor marijuana possession, as specified in these statutes. This will avoid unnecessary disclosures because under the Uniform Controlled Substance Act (H&S Code section 11000 et seq.), arrests and/or convictions for certain minor marijuana possession charges need not be reported on applications. In addition, H&S Code section 11361.5 requires the destruction of these specific records two years after the conviction. Furthermore, under H&S Code section 11361.7(c), any person convicted of a specified charge may, after the two-year cut-off date indicate in response to any question concerning prior conviction that they were not convicted for the act. As a result, this language is necessary to ensure consistency with these laws and avoid applicant confusion regarding whether they will need to disclose these past actions.

- **Add additional exclusions from the definition of conviction in subparagraph (D) of paragraph (11)** that specify that “conviction” does not include traffic citations or infractions for which a fine of \$500 or less was imposed and not involving alcohol, dangerous drugs, or controlled substances. For purposes of license eligibility, as set forth in BPC section 490, a criminal conviction includes a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Penal Code section 16 classifies crimes and public offenses to include: 1. Felonies; 2. Misdemeanors; and 3. Infractions. This question is necessary to specify what convictions the Board would like disclosed in response to this question. In addition, when an individual pays a traffic ticket without contesting it in court, California law treats that as a "forfeiture of bail", which is legally equivalent to an admission of guilt and a conviction for the particular violation charged (see Vehicle Code section 40512, Vehicle Code section 13103).

This proposed language will avoid unnecessary disclosures of minor traffic violations such as running a red light, which the Board views as not substantially related to the qualifications, functions, or duties of a licensee, and using a dollar amount limit would be easier for licensees to understand since these unrelated types of violations normally do not result in fines greater than \$500 (see Underlying Data). This threshold would still allow the Board to capture substantially related violations that involve alcohol, dangerous drugs, or controlled substances, such as a DUI pled down to a “wet reckless”, where such conduct is normally considered related to the practice of medicine (see e.g., BPC section 2239 and *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 759 where the California Court of Appeal found convictions involving the consumption of alcoholic beverages have a logical connection to the fitness to practice medicine. “They reflect a lack of sound professional and personal judgment, a disregard of medical knowledge concerning the effects of alcohol, and an inability or unwillingness to obey the legal prohibition against drinking and driving.”)

- **Add new paragraph (12) (report of disciplinary action against any license or other indicia of authority to engage in any practice).** This new sentence would include a statement indicating whether the licensee, since their last renewal, has had any disciplinary action against any license, registration, certificate, permit or other means to engage in any practice issued to the licensee by any government agency. Under existing law at BPC sections 141 and 2305 when disciplinary action is taken by another licensing board in or outside of California, which would include discipline by another state, by any agency of the federal government or a foreign country, the Board may discipline a license for

specified disciplinary action taken by another state, by any agency of the federal government, or by another country” for any act substantially related to the practice of medicine. This question is therefore necessary to ensure that grounds for discipline do not exist according to the aforementioned statutes for the protection of the public, and to assist the applicant with understanding what needs to be disclosed to ensure a completed renewal application.

This new paragraph (12) would also define “Government agency” as any regulatory or licensing board in this State (excluding this board) or any other state, any United States territory, federal agency or another country. Since the Board is aware of every licensee’s record of discipline and the term “government agency” is ambiguous, this is necessary to inform the licensee of the types of agency actions that are relevant to the Board’s inquiry and therefore needs to be disclosed without being unnecessarily broad. The specified types of agencies used in the definition are drafted consistent with the authority conferred upon the Board at BPC sections 141 and 2305.

Finally, paragraph (12) would define “Disciplinary action” as an adverse licensure action that resulted in a restriction or penalty being placed on the license, such as revocation, suspension, probation, voluntary surrender or public reprimand or reproval. This is necessary to clarify what types of actions taken by a government agency against a licensee must be reported to the Board.

This is necessary to ensure applicants fully understand what “disciplinary action” means in responding to this question, and to provide a definition that includes the types of actions government agencies are typically authorized to take (e.g., see the California Administrative Procedure Act, specifically Gov. Code, section 11503).

- **Add new paragraph (13) regarding certification under penalty of perjury.** This new paragraph would require a statement signed and dated by the licensee under penalty of perjury under the laws of the State of California that all statements made in the application and any attachments are true and correct. These amendments also help ensure that the Board can prosecute any potential perjury cases using legally admissible certifications in accordance with Code of Civil Procedure section 2015.5. Certification under penalty of perjury helps ensure that the application contains truthful, factual representations made in good faith (see, e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App. 4<sup>th</sup> 1214, 1223 [judicial explanation for the use of certifications]).

**Amend subsection (b) (renumbered as (c))**

Purpose: This proposal would add the terms “nonrefundable biennial renewal” before the word “fee” relating to restoring an inactive certificate to active status. The Board also proposes to add the word “nonrefundable” before “Controlled Substance Utilization Review and Evaluation System (CURES) fee.”

Rationale: BPC section 2455 and 2456.1 refer to a biennial license renewal and the Board’s CCR 1690 regulation similarly refers to this fee as a renewal fee. To ensure consistency with these authorizing statutes and the Board’s own regulations, the Board proposes to add the words “biennial renewal.” The Board further proposes adding the word “nonrefundable” before “biennial renewal” since BPC sections 2456.1 and 2456.3 both require a licensee to pay the required renewal fee to renew in active status (whether submitted timely or delinquent and paid within 5 years of after their expiration date). Further, the Board bears the administrative costs for processing the renewal applications regardless of the outcome; staff time and resources are expended to review and process the renewal applications (see Underlying Data). This change is also necessary to ensure adequate notice that the fees charged by the Board are non-refundable and considered earned when submitted for processing to the Board to avoid confusion regarding whether the fee may be refunded.

Similar changes are proposed for referring to the CURES fee as “nonrefundable” to ensure notice that this fee is mandatory when submitted and will not be refunded. BPC section 208 mandates that the Board collect this fee to fund the CURES program and does not authorize the Board to refund under any circumstance.

**Section 100 Changes renumbering existing subsections (b)-(d) to (c)-(e):** The original text approved by the Board at its November 2025 Board meeting contained numbering errors, which the Executive Director proposes to correct under her authority to make non-substantive changes delegated to her by the Board. These numbering changes do not affect any applicant’s rights, responsibilities or duties under this proposal and would simply renumber existing subsections (b), (c) and (d) to (c), (d), and (e) to accommodate the addition of new subsection (b).

## **§ 1647 Inactive Certificate Issuance, Renewal and Fees**

### **Title Changes**

Purpose and Rationale: This regulation purposes to amend this section to change the title to more accurately reflect the subject matter of this regulation by adding the words “Inactive Certificate”.

### **Amend subsection (a)**

Purpose: This proposal would amend this subsection as follows:

(a) An inactive certificate shall be issued upon payment of the ~~normal~~ nonrefundable biennial inactive certificate renewal fee as set forth in Section 1690, any applicable nonrefundable delinquency fees that have been assessed by the Board as specified in subsection (b), and, submission of a completed inactive renewal application as set forth in Section 1646.

Rationale: Existing regulations in this subsection do not completely cover all aspects required to renew a license in inactive status. The Board proposes to strike the word “normal” as ambiguous and replace it with the terms “nonrefundable” and “inactive certificate” as qualifiers for the term “renewal fee” to more accurately describe the terminology used consistent with CCR section 1690(f) and provide notice that this fee is nonrefundable. BPC sections 2456.1 and 2456.3 both require a licensee to pay the required renewal fee to renew in inactive status (whether submitted timely or delinquent and paid within 5 years of after their expiration date). Further, the Board bears the administrative costs for processing the renewal applications regardless of the outcome; staff time and resources are expended to review and process the renewal applications (see Underlying Data). This change is also necessary to ensure adequate notice that the fees charged by the Board are non-refundable and considered earned when submitted for processing to the Board to avoid confusion regarding whether the fee may be refunded.

The Board adds references to payment of any nonrefundable delinquency fees as specified in subsection (b) to ensure compliance with BPC section 2456.2 (which requires payment of a delinquency fee if not renewed timely), for notice of the amount of the fees required to be paid, and consistency with the proposed amendments cross-referenced in subsection (b). To avoid application processing delays and applicant confusion, the Board proposes to further specify that an applicant is required to submit a “completed inactive renewal application” as set forth in CCR section 1646, which would contain an itemized list of requirements (see explanation for the addition of subsection (b) and paragraphs (b)(1)-(13) above).

### **Amend subsection (b)**

Purpose and Rationale: This proposal would amend subsection (b) by replacing the words “the last day of the birth month” with “or before” and “the expiration date” and delete the “e” from the word “licensee” so that it would read: “An inactive certificate shall be renewed biennially on or before the expiration date of the license.” This is to ensure consistency in interpretation of the requirements for renewal in BPC section 2456.1 and eliminate outdated references to birth date renewal, which were eliminated with the enactment of Senate Bill (SB) 1443 (Stats.2022, ch. 625).

In addition, the Board proposes adding this sentence to the end of this subsection: “The failure to pay the biennial inactive certificate renewal fee by the licensee’s due date will result in the assessment of a delinquent inactive certificate renewal fee as set forth in Section 1690.” This is necessary to provide notice to applicants that a delinquency fee will be required consistent with BPC section 2456.1. However, since BPC sections 2455 and 2456.1 do not specify the fee amount for the delinquent inactive certificate renewal fee, this cross-reference to CCR section 1690 will resolve confusion regarding the fee amount and provide notice and consistency with amendments to the Board’s fee schedule specified in CCR section 1690 (see below rationale for the addition of this new fee type in the explanation below for CCR section 1690 amendments).

### **§ 1648 Adoption of Retired License Status**

Purpose: This proposal would establish minimum eligibility requirements and a consistent and simple process for obtaining retired license status. It would also eliminate barriers for those who wish to retire and have the option of placing their license in a retired status. This further alleviates confusion to the public regarding the true status of a licensee who does not wish to abandon their license by entering delinquent status but would rather simply retire from practice.

These proposed regulations will incorporate by reference two applications: the application to enter retired license “Application for Retired License OMB.31 (New 11/25)” and the “Application to Restore a Retired License to Active Status OMB. 32 (New 11/25)”.

Rationale: Assembly Bill (AB) 2859 (Low, Stats. 2016, Ch 473) created the authority for the Board to establish retired license status and a process for restoring the license back to active status with the enactment of BPC section 464.

Currently, licensees who no longer wish to practice must either utilize the inactive status and pay the biennial renewal fee, let their license expire into delinquent status, or allow it to lapse for five or more years, resulting in cancellation per BPC section 2428 (which cannot be renewed or reinstated per BPC section 2456.3). By providing a means to obtain a retired status, licensees who no longer are practicing avoid the possible stigma in their professional community from having a license placed in a “delinquent” or “cancelled” status and can be relieved from the expense of renewal fees and continuing education costs and requirements.

Generally, the legislative history of AB 2859 acknowledged that licensees disfavor the alternative license status’ because it holds negative connotations and does not

appropriately illustrate the decades of service from the license holder. (See Underlying Data -- Assembly Floor Analysis of AB 2859, 8/24/16).

After a desk audit of costs involved was conducted by the Board's staff that explained the factual basis for the fee amounts proposed, the Board discussed and approved the proposed addition of 16 CCR section 1648 and the amendments of 16 CCR section 1690 to implement BPC section 464 at its November 13, 2025 meeting (see Underlying Data).

**Add new subsection (a)**

Purpose: This proposal will create a new subsection (a) for defining "disciplinary reasons" which may prevent a licensee from entering into a retired license. "Disciplinary reasons" would mean that the applicant's practice was restricted by order of the Board for violations of the Act, the Board's Regulations in this Division, or Section 822 of the Code, including orders resulting from:

- (1) an accusation filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code seeking to revoke, suspend, or place the license on probation; or,
- (2) an interim suspension order filed pursuant to Section 494 of the Code.

Rationale: BPC section 464 authorizes the Board to implement a system for retired category of licensure through regulation and requires the regulation to contain specified criteria listed in subdivisions (a)(1) and (2). This definition implements, interprets or makes specific the provisions of BPC 464(b)(1), "A retired license shall be issued to a person with either an active license or an inactive license that was not placed on inactive status for *disciplinary reasons*" (emphasis added).

Existing law and regulation do not include a definition for "disciplinary reasons," which is subject to multiple interpretations. This definition is therefore necessary for the regulated community to understand the requirements in subdivision (b)(1) of BPC section 464, below. The proposed definition accurately reflects the grounds for disciplining a license for violations of the Act, the Board's Regulations in this Division or pursuant to BPC section 822 and the mechanisms the Board would use to take such actions in compliance with the requirements of the Administrative Procedure Act (accusations initiate action to restrict or limit a license per Government Code section 11503) and BPC section 494 (interim suspension orders). Here, discipline is delineated as a restricted license after the formal administrative hearing process, the results of which could involve revocation or

suspension of a license, or restrictive practice conditions on the license. It includes orders issued by the Board restricting the license under BPC section 822, which could stem from a licensee’s impairment due to mental illness or physical illness affecting competency.

**Add new subsection (b)**

Purpose and Rationale: Currently, there are no existing regulatory requirements that set minimum compliance standards for a licensee to apply for, and upon compliance with the requirements in subdivision (d), be issued a license by the Board in retired license status (“retired license”). This proposal would set such standards by specifying that a licensee may apply for and be issued a license in retired status, provided all eligibility requirements in CCR section 1648 (d)(1)-(5) are met. This subdivision would also create a shorthand reference for “applicant” that would include a licensee applying for retired status for ease of reference and comprehension of the regulatory proposal.

**Add new subsection (c)**

Purpose: This proposal would provide that a holder of a retired license is not required to renew that license or meet the continuing education requirements as set forth in Section 2454.5 of the Code and Article 9 of this Division.

Rationale: BPC section 464 authorizes the Board to implement a system for retired category of licensure through regulation and requires the regulation to contain specified criteria listed in subdivisions (d)(1)-(5). This definition implements, interprets, or makes specific the provisions of BPC 464 (b)(3), which provides: the holder of retired license shall not be required to renew that license. Since renewal requirements typically include meeting the continuing medical education requirements as set forth in BPC section 2454.5 and Article 9 of this Division (commencing with CCR section 1635), this proposal would specify that a holder of a retired license is not required to renew the license and is therefore also exempt from meeting the continuing medical education requirements as specified in these provisions consistent with the intent of BPC section 464 and would avoid licensee confusion about whether continuing medical education prescribed by these provisions would still be required to maintain the retired license.

**Add new subsections (d)(1)– (5)**

Purpose: To add eligibility requirements for a retired license that would include:

- (1) Complete and submit a form to the Board titled “Application for Retired License OMB.31 (New 11/2025),” which is hereby incorporated by reference;
- (2) Pay the nonrefundable retired license application fee as set forth in section 1690;

- (3) Have an active or inactive license issued by the Board;
- (4) Not have been placed on inactive status by the Board due to disciplinary reasons; and,
- (5) Not be actively engaged in practice as an osteopathic physician and surgeon or engaged in any activity that requires them to be licensed by the Board.

**Rationale:** Currently, there are no existing regulatory requirements that set minimum compliance standards for a licensee to apply for and be issued a license by the Board in retired status. This proposal outlines the minimum eligibility requirements for a retired license as follows:

**Add new subsection (d)(1):** Specifies the requirement to use the form titled “Application for Retired License (OMB. 31 (New 11/2025))” to obtain a retired license. The form, incorporated by reference and described below, identifies all requisite information an applicant must provide when applying for a retired license. Providing all required information in this application provides a simple and convenient way for an applicant to determine what information needs to be provided to meet the Board’s eligibility criteria. Applications on a prescribed form are consistent with the Board’s administrative practices and the application’s consolidation of requirements into one convenient format enables the Board to more easily determine whether all minimum criteria for issuance of a retired license are met.

**Add new subsection (d)(2):** This proposal requires the applicant to pay a fee as prescribed in CCR section 1690. The fee covers administrative costs for processing an application for retired license which is justified in the analysis of the Fiscal Impact (Workload Costs) in the Board’s Underlying Data. These fees are necessary for the Board to recover its costs of processing these applications and to implement its responsibilities under BPC section 464(b)(4) to “establish an appropriate application fee for a retired license to cover the reasonable regulatory cost of issuing a retired license.” This subdivision is also necessary to provide notice to the applicant that the required fee must be paid to be eligible for a retired license.

**Add new subsection (d)(3):** This proposal requires the licensee to have either an active or inactive license status at the time of application, which is a requirement of BPC section 464. BPC section 464 authorizes the Board to implement a system for retired category of licensure through regulation and requires the regulation to contain specified criteria listed in subdivisions (b)(1)-(4). This definition implements, interprets, or makes specific the provisions of BPC 464(b)(1), which provides: “[a] retired license shall be issued to a person with either an active license or an inactive license that was not placed on inactive status for disciplinary reasons.” This provision is therefore necessary because the Legislature determined that this provision should be included in the Board’s regulation. In addition, the Board notes that all other license statuses are indicative of

either administrative action by the Board or a lapse in license status. For the reasons described above and below (subsections (a) and (d)(4)), only allowing a license in good standing to be placed in retired status fulfills the Board's consumer protection mandate. Specifying active or inactive allows a licensee who had gone inactive while in good standing to take advantage of the new license status opportunity.

Add new subsection (d)(4): This proposal prohibits eligibility for a retired license if the licensee was placed on inactive status by the Board for disciplinary reasons. As explained in (d)(3)'s rationale above, this provision is necessary because the Legislature determined that this provision should be included in the Board's regulation and would expressly require that the licensee "not have been placed on inactive status by the Board due to disciplinary reasons." The Board believes this is consistent with the Legislature's intent that a licensee who has demonstrated poor judgement by violating the laws and regulations governing the practice of medicine is not a candidate for a retired license.

Add new subsection (d)(5): BPC section 464 authorizes the Board to implement a system for retired category of licensure through regulation and requires the regulation to contain specified criteria listed in subdivisions (b)(1)-(1)(4). This definition implements, interprets, or makes specific the provisions of BPC 464(b)(2), which provides: "[t]he holder of a retired license issued pursuant to this section shall not engage in any activity for which a license is required, unless the board, by regulation, specifies the criteria for a retired licensee to practice his or her profession or vocation." The intent of this proposal is to implement this new category of retired license for those individuals who are truly retired and wish to no longer practice. The Board therefore has established criteria in this subdivision that makes it clear and provides notice to applicants that in order to obtain a retired license the applicant must "not be actively engaged in practice as an osteopathic physician and surgeon or engaged in any activity that requires them to be licensed by the Board." In other words, the applicant must truly be retired to qualify for this retired license. Allowing licensees actively engaged in practice as an osteopathic physician and surgeon to be eligible and apply would conflict with the intent and purpose of BPC section 464(b)(2) and render it unduly burdensome for the Board to investigate and verify at some unknown later date. Including a requirement that the applicant not be actively engaged in the practice of medicine provides clear and consistent direction on the true purpose for the new license category and provides reasonable assurances to the Board that licensees know and understand their responsibilities when applying for this new license category.

**Add Form OMB.31 (New 11/2025) in subsection (d)(1)**:

Purpose and Rationale:

*Introduction and instructions to applicants:*

(a) The form instructs an applicant that to be eligible for a retired license they must have an active or inactive license issued by the Board, complete the form and submit it to the Board by mail to the above address with a check or money order payable to the Osteopathic Medical Board of California for \$200. This instruction is necessary to provide adequate notice to applicants of the minimum requirements for an applicant's submission of an application and to help ensure that the Board receives completed applications.

(b) The form instructs the applicant that failure to provide any requested information or fee may prevent or significantly delay the processing of their request. This instruction is necessary to put applicants on notice that any information that is missing from the application may delay significantly the processing of their application and is provided in accordance with the Information Practices Act requirements of Civil Code section 1798.17(e) (provide on each form "the consequences, if any, of not providing all or any part of the requested information").

(c) The form instructs the applicant that upon approval their current license will be replaced with a retired license. This instruction is necessary to help avoid confusion regarding what occurs from a processing perspective when an individual applies for a retired license and what the consequences are for their existing license.

(d) The form instructs an applicant that they can verify their updated license status on the Board's website under "Verify a License." This instruction is necessary to provide applicants with notice of a simple straightforward method (via the Board's website) of confirming any changes to their license status.

(e) This form instructs applicants that licensees who are inactive for disciplinary reasons do not qualify for a retired license. BPC section 464 and this proposal would prohibit a licensee from qualifying for retired license if they are inactive for disciplinary reasons. Consequently, this instruction is necessary to provide notice to applicants of this disqualifying criterion, which will help ensure that the Board receives more qualified applicants.

(f) This form instructs applicants that licensees issued a retired license are prohibited from engaging in the practice of medicine. This instruction is necessary to place licensees on notice of the compliance requirements of BPC section 464 which prohibits such practice while retaining a retired license. This will help ensure compliance and avoid possible disciplinary action of a retired license for failure to comply.

(g) The form instructs that retired licensees are exempt from the renewal fee and continuing medical education (CME) requirements. This instruction is necessary to inform applicants of the exemptions available to retired licensees, the standards set

forth in proposed CCR section 1648, and to avoid confusion regarding requirements of maintaining a retired license.

(h) This form instructs applicants that they may refer to section 1648 of Title 16 of the California Code of Regulations for full information on retired license requirements. This instruction is necessary to advise applicants where they may consult the actual rules related to retired license requirements with the goal of having a more fully informed and compliant licensee.

This proposed incorporated form requires in Section A (Personal Information) an applicant to list their license type, license number, name (first, middle and last), last four digits of Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN), date of birth, work and best available telephone number, email address, address of record (with direction that states: \*current public/ mailing address. If using a P.O. Box, you must also provide a confidential street address), and confidential street address. This allows staff to match the applicant to the licensee on file, in accordance with subsection (d)(3) to verify eligibility, and provides necessary current contact information should any questions arise. The explanation for the address of record collection is to put applicants on notice that this information is the current publicly available address and address the Board will use to mail information to them. To ensure the ability of the Board to serve legal process (subpoenas and other legal documents), the Board requires the disclosure of a confidential street address if the mailing address used by the applicant is a P.O. Box.

In Section B of the form (Qualification for Retired License), applicants are asked about whether they are actively engaged in the practice of medicine or engaged in any activity that requires them to be licensed by the Board. This is necessary to ensure that the applicant is, in fact, retired and qualifies for a retired license per proposed CCR section 1648(d)(5).

In Section C (Declaration (See Attachment A before signing), applicants declare they are requesting Retired License Status, which is the point of this form. They also declare under penalty of perjury under the laws of the State of California that the information given above is true and correct and that they are the person who was issued the license number listed on this application by the Osteopathic Medical Board of California. This certification is authorized by BPC section 464(b)(5)(B).

The general rule is that licenses are personal and therefore may not be transferred to any other person unless expressly authorized by law (see, e.g., *Teachout v. Bogy* (1917) 175 Cal. 481, 485). As a result, to help further confirm the identity of the applicant and provide notice and confirmation of their status as a current licensee, the Board requires the applicant to declare that they are the person who was issued the

license by the Board. With respect to the certification under penalty of perjury requirement, certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Board relies upon applicants' self-reported information in evaluating applications. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. ["The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true." *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

In addition, Code of Civil Procedure section 2015.5, requires the certification to include "under the laws of the State of California" (when intended for use anywhere in or outside of California) and "signed and dated" by the declarant. This amendment to include these criteria is therefore necessary for compliance with Section 2015.5, which will help ensure the legal admissibility of any declaration executed by an applicant in any possible adjudicative proceeding.

Finally, the application form includes the required notices and disclosures to the applicant for the Board's collection of personal information in compliance with Civil Code section 1798.17 (which applicants are directed to read prior to signing the application in Section C).

**Add new subsection (e):** This proposal specifies that a holder of a retired license shall not engage in any activity for which an active license is required. BPC section 464 authorizes the Board to implement a system for retired category of licensure through regulation and requires the regulation to contain specified criteria listed in subdivisions (b)(1)-(1)(4). This definition implements, interprets, or makes specific the provisions of BPC 464(b)(2), which provides: "[t]he holder of a retired license issued pursuant to this section shall not engage in any activity for which a license is required, ...". This provision is therefore necessary to implement the requirement that a holder of a required license shall not engage in any activity for which a license is required because the Legislature determined that this provision should be included in the Board's regulation. The Board adds the word "active" before "license" to make it easier for the regulated community to understand when an activity would be prohibited. An active current license is required to practice osteopathic medicine, as specified in the Act (reprinted at BPC section 3600-1).

**Add new subsection (f):** BPC section 464(b)(5) requires the Board to establish the following eligibility criteria for restoring a retired license to active status, including:

- (A) Pay a fee established by statute or regulation.
- (B) Certify, in a manner satisfactory to the board, that he or she has not committed an act or crime constituting grounds for denial of licensure.
- (C) Comply with the fingerprint submission requirements established by regulation.
- (D) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the board.
- (E) Complete any other requirements as specified by the board by regulation.

This proposal establishes eligibility to restore a retired license to active status pursuant to the authority in BPC section 464(b)(5). This proposal would set forth the minimum eligibility requirements for a retired licensee to safely and competently return to active practice. As further described below, subsections (f)(1)-(f)(4) would establish criteria for restoration of an active license within five (5) years of being issued a retired license. Under the provisions of BPC section 2428, a “person who fails to renew his or her license within five (5) years after its expiration may not renew it, and it shall not be reissued, reinstated, or restored thereafter.” Further, BPC section 2456.3 only permits renewal of a license at any time within five (5) years after its expiration. In recognition of that limitation for individuals who have been out of practice, the Board proposes to treat retired licenses as expired licenses for the purposes of setting criteria for restoring a license. This interpretation balances the need to allow retired licensees the option of returning to practice when they have currency of knowledge (within five (5) years after retiring) and have less stringent restoration criteria, with the need to protect the public from incompetent practitioners.

**Add new subsection (f)(1):** This proposal requires an applicant to complete and submit the “Application to Restore Retired License to Active Status OMB.32 (New 11/2025)” when seeking to return to active status from retired status within five (5) years of being issued a retired license. The form is incorporated into regulation by reference and solicits personal information and an attestation regarding completion of required continuing medical education (CME), which is consistent with the Board’s requirements for license renewal in CCR sections 1630, 1635 and 1636. The form also solicits information to determine whether an applicant is safe to return to practice since being placed in a retired status. Applications on a prescribed form are consistent with the

Board's administrative practices and the application's consolidation of requirements into one convenient format enable the Board to more easily determine whether all minimum criteria for restoration to an active license are met.

**Add Form "Application to Restore Retired License to Active Status", OMB.32 (New 11/2025)** in subsection (f)(1): This proposed incorporated form helps ensure all criteria are met for return to practice and to provide applicants with notice of the eligibility requirements in one convenient location.

**Purpose and Rationale for each item on Form OMB.32 (New 11/2025):**

*Introduction and instructions to applicants:*

(a) BPC 464(f)(1) authorizes the Board to set the fee for restoring a license to active status. The form establishes that payment of the biennial renewal fee is required, consistent with the proposed adoption of the requirement at proposed subsection (f)(2) (as described below) and further specifies the acceptable payment and delivery methods. The form instructs the applicant that to restore their retired license to active within five years of their retired license being issued, complete this form and submit it to the Board at the address above by mail with a check or money order for the renewal fee made payable to the Osteopathic Medical Board of California for \$400. This instruction is necessary to provide adequate notice to applicants of the minimum requirements for an applicant's submission of an application and to help ensure that the Board receives completed applications.

(b) The form instructs applicants that failure to provide any requested information may prevent or significantly delay the processing of their request. This instruction is necessary to put applicants on notice that any information that is missing from the application may delay significantly the processing of their application and is provided in accordance with the Information Practices Act requirements of Civil Code section 1798.17(e) (provide on each form "the consequences, if any, of not providing all or any part of the requested information").

(c) This form instructs applicants that they can verify their updated license status on the Board's website under "Verify a License." This instruction is necessary to provide applicants with notice of a simple straightforward method (via the Board's website) of confirming any changes to their license status.

(d) This form advises applicants that they are not authorized to practice as an osteopathic physician and surgeon until their license has been restored to active status. This instruction is necessary to help alleviate possible confusion regarding when a licensee may again actively practice, and places licensees on notice of the compliance

requirements of BPC section 464 which prohibits such practice while retaining a retired license. This will help ensure compliance and avoid possible disciplinary action of a retired license for failure to comply.

(e) This form instructs applicants that they may refer to Section 1648 of Title 16 of the California Code of Regulations (CCR) for full information on requirements for restoring a retired license to active. This instruction is necessary to advise applicants where they may consult the actual rules related to license restoration requirements with the goal of having a more fully informed and compliant licensee.

Section A (Personal Information) requires an applicant to list their license type, license number, first, middle and last name, last four digits of their social security number (SSN) or Individual Taxpayer Identification Number (ITIN), date of birth, work and best available telephone number, email address, address of record (include City, State, ZIP), confidential street address (\*current public/ mailing address. If using a P.O. Box, you must also provide a confidential street address). This allows staff to match the applicant to the licensee on file, in accordance with subsection (f) to ensure they qualify (applying within five years of being issued a retired license) and provides necessary current contact information should any questions arise. The explanation of the address of record collection is to put applicants on notice that this information is the current publicly available address and address the Board will use to mail information. To ensure the ability of the Board to serve legal process (subpoenas and other legal documents), the Board requires the disclosure of a confidential street address if the mailing address used by the applicant is a P.O. Box.

Sections B (Mandatory Conviction and License Disciplined Disclosure Questions) and C require disclosures about convictions and license discipline since the applicant placed their license in retired status, as well as compliance with the Board's CME requirements. In the Board's experience, such questions are necessary to ensure that a licensee is safe to return to practice as any affirmative answers in Section B or negative answers or deficiencies in Section C could indicate a risk to the public and constitute grounds for denial per BPC section 2221.

Section B Question No.1: This section would request that an applicant disclose whether they have had any license disciplined by a licensing board in or outside of California, another state agency, agency of the federal government or a foreign country since they placed their license in retired status. This question is necessary to examine whether there are any grounds for denial authorized by BPC sections 141 (made applicable by BPC section 2221 (a)), 2221, 2234(f) and 2305 (made applicable to this Board by BPC sections 2451 and 2452), which authorize the Board to deny an application when disciplinary action is taken by another state, by an agency of the federal government, or a foreign country, or for any action that would have warranted discipline or denial of a certificate

(including for the causes set forth in BPC section 480(a)(2) – disciplinary actions by licensing boards in or outside of California), or for general unprofessional conduct. The Board requests current information to evaluate whether any cause arose after issuance of the retired license, which would have been the last time the Board would have investigated or evaluated whether any disciplinary actions or “reasons” existed (see proposed CCR sections 1648(a), (d)(4)).

The question includes a definition for “disciplined” which the Board has defined as meaning revoked, suspended, placed on probation, reprovved, reprimanded, or otherwise restricted from practicing medicine or another business or profession. For example, BPC sections 490, 2221, 2232, 2232.5, 2523, 2305, and 2306, authorize the Board to take various disciplinary actions including revocation, suspension and probation (these provisions are made applicable to the Board by BPC sections 22, 2451 and 2452). BPC section 494 authorizes the Board to publicly reprove a licensee and BPC section 2233 authorizes the Board to publicly reprimand a licensee. These are recognized disciplinary actions, and the Board provides these clarifying terms to help explain what it considers “disciplinary” for purposes of disclosure for this question. Providing this clarifying definition will help ensure applicants are fully informed regarding what information should be provided in response to this question with the goal of receiving more accurate and complete information regarding a licensee’s fitness to return to practice.

To assist the Board in facilitating a more expedient review and investigation of the applicant’s qualifications, the Board requires the applicant to provide details regarding the disciplinary action if the applicant answers this question in the affirmative. This includes copies of the disciplinary order and any documentation of rehabilitation to the Board and a list of the states in which the license was disciplined. This information is necessary for the Board to determine whether further confirmation and investigation from the state board or agency is required, and/or the misconduct was substantially related to the practice of medicine and therefore grounds for denial as provided in BPC section 2221 incorporating BPC sections 141 and 2305 and the Board’s regulations at 16 CCR section 1654 (Board’s substantial relationship criteria).

Section B Question No.2: The next question in section B relates to conviction disclosures and asks whether the applicant has been convicted of or pled guilty or nolo contendere (no contest) to any felony, misdemeanor or other criminal offense under the laws of any state, the United States, or a foreign country, including any conviction which has been dismissed under section 1203.4 of the Penal Code. In the Board’s experience, restoring a person to practice without a thorough review of the licensee’s background presents a substantial risk of harm to the public. Therefore, this additional criminal background question helps protect the public.

BPC section 2221 (made applicable to the Board per BPC sections 2451 and 2452) permits the Board to deny any applicant who is guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension. BPC Section 2236(a) provides:

The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

BPC section 2236(d) further defines “[a] plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and BPC section 2236.1.”

BPC section 490 also further provides that the Board may take disciplinary action against a licensee for a substantially related conviction as set forth in subdivisions (a) and (b), and further specifies that the Board’s authority to act includes the following:

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

To conduct a full and complete review of the applicant’s criminal history and in order to help confirm whether the Board has cause to deny the license based upon the aforementioned authority (BPC section 2221 incorporating the Board’s authority to deny based on criminal convictions as specified in BPC sections 490 and 2236), the Board must ask the question on the application. Asking the question helps ensure a complete review as, in the Board’s experience, some convictions that are self-reported are not always reported in the criminal offender record information (CORI) provided by the Department of Justice.

To assist the Board in facilitating a more expedient review and investigation of the applicant’s qualifications, the Board requires the applicant to provide details regarding any conviction if the applicant answers this question in the affirmative. This includes certified true copies of the court or arrest records for each criminal offense. This information is necessary for the Board to determine whether further confirmation and investigation is required, and/or the conviction was substantially related to the practice of medicine as provided in BPC sections 490 and 2236 and the Board’s

regulations at 16 CCR section 1654 (Board’s substantial relationship criteria). To avoid applicant confusion, the Board further specifies that “if you are awaiting judgment and sentencing following entry of a plea or jury verdict, you must still disclose the conviction.” This ensures that applicants understand that it is the reporting of the conviction that triggers the requirement to disclose and not the entry of judgment or sentencing.

Finally, the form instructs applicants who have answered “yes” to provide details about their response. If the applicant has been convicted, the applicant must provide certified true copies of the court and arrest records for each criminal offense to the Board. The requirement to provide certified copies provides the Board with some assurance as to the authenticity and accuracy of the information provided so that the Board may rely on the information provided in investigating applicant qualifications.

The form further instructs these applicants to mail all documents within 30 days of the date they submitted their application to the Board's physical address. In the Board’s opinion, 30 days has been a reasonable amount of time for applicants to provide this type of information and show due diligence in completion of the application. This also ensures sufficient notice to applicants and more efficient processing of applications for those individuals who may wish to return to active practice.

Section C: Continuing Medical Education (CME) Requirements: This form instructs applicants that physician and surgeon licensees must certify they have completed all continuing medical education (CME) requirements to restore a retired license to active. Proposed section 1648(f)(3) requires an applicant to have completed a minimum of fifty (50) hours of continuing education within the last two years prior to applying to restore the license to active status in compliance with BPC section 2454.5 and Article 9 of this Division (the Board’s regulations regarding continuing medical education requirements). This section is therefore necessary to provide notice to applicants informing them of this requirement.

The form also informs applicants that they do not need to submit proof of completion of these requirements with this request but rather retain proof of completion for their records and provide to the Board only if requested. As the Board requires certification that these requirements have been completed on this form, there is no need for applicants to provide proof unless audited or investigated by the Board, which is consistent with the Board’s requirements in Article 9 (CCR sections 1635 and 1636) for applicants renewing their license in an active status.

CME Compliance Statement: As noted above, this form notifies applicants that by signing below they certify that they have completed at least 50 hours of Board's continuing medical education requirements within the last two years. This is consistent with the Board’s current requirements at Article 9 (16 CCR sections 1635 et seq.) and

provides a simple, straightforward method for the Board to confirm compliance with this requirement and help ensure continued competency upon restoration of the license to active status.

Section D: Declaration (See Attachment A before Signing): In Section D, applicants indicate that by signing below, they are requesting restoration of their retired license status to active license status. This helps avoid confusion regarding the purpose of this application and confirms the licensee’s intention to seek an active license status. Applicants also are required to declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct on the application. Applicants are also required to sign and date the application. Code of Civil Procedure section 2015.5 requires that state certification specific language including:

“I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct”; and “signed and dated” by the declarant. This amendment to include these criteria is therefore necessary for compliance with Section 2015.5, which will help ensure the legal admissibility of any declaration executed by an applicant in any possible adjudicative proceeding.

Also, certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Board relies upon applicants’ self-reported information in evaluating applications. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. If Board staff discover an omission or misstatement, then the applicant’s signature under penalty of perjury can be used in an administrative disciplinary case against the applicant.

#### Attachment A – Personal Information Collection Notice

Finally, the application form includes the required notices and disclosures to the applicant for the Board’s collection of personal information in compliance with Civil Code section 1798.17 (which applicants are directed to read in Attachment A prior to signing the application in Section D).

Add new subsection (f)(2): This proposal requires the payment of the nonrefundable biennial renewal fee as set forth in CCR section 1690. For any licensee to renew in an active status, applicants must pay the biennial renewal fee consistent with CCR

sections 1630 and 1635 and practice in good standing. This proposal is therefore necessary for consistency with these requirements and to implement the requirements for this regulation as set forth in BPC section 464(a)(5)(A), which requires payment of a fee set by regulation to restore to an active status. The basis for setting the fee is discussed further below.

Add new subsection (f)(3): This proposal requires the completion of fifty (50) hours of continuing education within the two years prior to applying to restore the license to active status in compliance with BPC section 2454.5 and Article 9 of this Division (relating to the Board's continuing medical education requirements). This is to conform with the requirements for renewal as set forth in BPC section 2454.5 and Article 9 of the Board's regulations. (commencing with section 1635). This helps provide the Board and the public with some assurances of continuing competency before returning a licensee to active practice after being retired.

Add new subsection (f)(4): BPC section 464(b)(5)(C) requires an applicant to comply with the Board's fingerprint submission requirements established by regulation. This proposal requires an applicant to submit electronic fingerprints if a record does not exist in the Department of Justice's criminal offender identification database and would be provided at the request of the Board pursuant to the requirements set forth in BPC sections 144 and 2042. Many retired licensees would have already been fingerprinted pursuant to sections 144 or 2042 prior to being placed in a retired status. Those licenses would be subject to restoration per BPC section 2456.3, which allows renewal of any license within 5 years after expiration (similar status to those that would be retired since they are not renewable while in that status) and therefore the Board would typically still receive criminal record information (CORI) within 5 years after the license was placed in retired status (Penal Code section 11105.2 requires the Board to notify the Department of Justice when the license can no longer be reinstated). However, in the event that the Board somehow did not have CORI notifications for the particular individual, and it was discovered upon filing this application, this proposal would require the individual to provide fingerprints as an "applicant" for restoration to active license in accordance with the requirements in BPC section 2042 upon written request of the Board. This helps ensure compliance with BPC section 2042 that require the Board to fingerprint every "applicant" and to ensure that there are no grounds for denial of the application based upon criminal convictions (as discussed above) per BPC section 2221.

Add new subsection (g): Subsection (g) would set forth the requirement for licensees who seek an active license who have been retired for more than five (5) years. For retired licensees seeking to restore to active status after being in retired status for more than five (5) years, the Board provides the option of re-application in accordance with BPC section

2428 (which is the same process for applicants who have lapsed or expired for more than five (5) years and made applicable to the Board by BPC sections 2451 and 2452).

BPC section 464 sets forth minimum requirements for the Board's regulation for allowing restoration to active status but does not mention a time frame for when restoration is not permissible. BPC section 2428 prohibits the Board from reinstating or restoring a license to active status within five (5) years after its expiration. To resolve the requirements by treating the retired licensee applicant whose original license expired more than five (5) years prior to application for restoration as a new applicant according to the authority in BPC section 2428 and as further specified in CCR section 1651. This proposal would therefore allow a licensee who has been in retired status for more than five years to obtain an active license by applying for a new license in accordance with CCR section 1651 (which specifies the process for applying for a new license). This helps ensure consistency in treatment of all expired licensees, including those licenses which have expired for reasons other than holding a retired license for more than five (5) years.

## **Article 12. Substantial Relationship and Rehabilitation Criteria; Petitions for Modification of Penalty or Reinstatement**

### **§ 1656. Petition for Reinstatement or Modification of Penalty**

#### **Amend subsection (a)**

Purpose: This proposal would:

- (1) Add an explanatory parenthetical to define "modification of penalty" as "including written requests for modification of the terms and conditions of probation or early termination of probation);
- (2) Delete the existing timeframe for filing a petition of thirty (30) days before any meeting of the Board to one hundred and twenty (120) days;
- (3) Add a new requirement that the petition be filed using the form titled "Petition for Penalty Relief OMB.7 (New 11/2025)" and short form reference for ease of use "Form OMB.7), which is hereby incorporated by reference in this subsection;
- (4) Add a requirement that the filing include either the nonrefundable petition for reinstatement application fee or the nonrefundable modification of penalty fee specified in CCR section 1690, whichever is applicable; and,
- (5) Add a requirement that the petition meet the applicable requirements in subsection (c).

Rationale: BPC section 2307 provides that, except under specified circumstances, a person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on

probation, may petition the Board for reinstatement or modification of penalty, including modification or termination of probation. In the Board's experience an explanatory parenthetical which defines a modification of penalty to include written requests for modification of the terms and conditions of probation or early termination to avoid confusion and provide notice to the regulated community as to what qualifies for petition purposes.

In the Board's experience, the current 30-day timeframe for filing a petition with the Board is insufficient. The existing timeframe for filing is therefore proposed to be deleted and replaced with 120 days to ensure staff have sufficient time to confirm that the petition application is complete, conduct a background investigation, review all information, and prepare the meeting materials before an administrative hearing at a board meeting is held.

This proposal adds in both CCR sections 1656 (in subdivision (a)) and 1658 (a)), that all petitions for either reinstatement of a certificate or modification of penalty or petitions for reinstatement revoked for mental or physical illness shall be filed using the form titled "Petition for Penalty Relief" OMB. 7 (New 11/2025), incorporated by reference in CCR section 1656 ("Form OMB.7"), and the petition shall include the newly established nonrefundable petition for reinstatement or the modification of penalty application fee set forth in CCR section 1690, as applicable. Both fees are proposed to be cross-referenced in subsection (a) to CCR section 1690 respectively to ensure adequate notice to applicants and consistency with the amendments proposed at CCR Section 1690 and as further described in the factual basis below. Finally, petitioners are also required to meet the applicable requirements in subsection (c) as BPC section 2307(c) requires at least 2 verified recommendations from physicians and surgeons in any state who have personal knowledge of the petitioner and those seeking to reinstate are required to fingerprint with the Board as further discussed below in the proposed amendments to subsection (c)(2).

### **New Petition Form**

BPC section 2307 (made applicable to the Board by BPC sections 2451 and 2452) establishes the process for filing a petition before the Board and the time periods before a person whose certificate has been surrendered or revoked or placed on probation may petition the Board for reinstatement of a license. Senate Bill (SB) 815 (Roth, Stats. 2023, Ch. 294) under BPC section 2307.5 also authorizes the Board to establish a fee (proposed to be set in CCR section 1690) to be paid by an individual seeking to reinstate their license or to modify their penalty pursuant to BPC section 2307. Per BPC section 2307.5, the Board is required to adopt regulations to implement these fees.

BPC section 2307(c) also provides:

“The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.”

Existing regulation at CCR 1656 indicates under subdivision (a) that a petition for reinstatement of a certificate, or a modification of penalty shall be filed at the Board’s office in Sacramento no later than thirty (30) days before any meeting of the Board. In the case of a petition for reinstatement of a certificate restricted or revoked due to mental or physical illness under CCR section 1658(a), the petition shall be filed no later than sixty (60) days prior to any meeting of the Board (both sections are proposed to be amended to one hundred and twenty (120) days as noted above). However, neither CCR sections 1656 or 1658 prescribe any of the “facts” that the Board may require to effectively investigate the petition, the method of submitting the petition, the requirements for submitting verified recommendations pursuant to BPC section 2307(c), or if any fee is required to process these petitions as authorized by BPC section 2307.5.

To resolve the above-noted issues, the Board proposes adopting Form OMB.7 and the proposed amendments to existing subsections (a) for CCR sections 1656 and 1658. In addition, proposed Form OMB.7 furnishes the Board with information necessary to effectively investigate whether a petition should be granted or denied and to allow the Board to consider the following criteria in accordance with BPC 2307(e):

- (1) all activities of the petitioner since the disciplinary action was taken,
- (2) the offense for which the petitioner was disciplined,
- (3) the petitioner’s activities during the time the certificate was in good standing; and,
- (4) the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability.

Protection of the public is the Board’s highest priority per BPC section 2450.1. Therefore, collection of the information contained in Form OMB.7 aids the Board in meeting its public protection mandate by requiring competency, accountability, and integrity in the safe practice of medicine by osteopathic physicians and surgeons.

### **Adoption of “Petition for Penalty Relief OMB.7 (New 11/2025)” (Form OMB.7)**

In accordance with those public protection goals, those petitioning for penalty relief (reinstatement or modification of penalty) must submit the “Petition for Penalty Relief” application Form OMB.7, which shall contain the following:

### Purpose and Rationale for Instructions

Form OMB.7 instructs applicants to:

“Please read all instructions prior to completing this package.

1. Prior to completing this form, check that you qualify to submit a Petition at this time. Review the time frames and eligibility requirements for the different types of Petitions in “Attachment A” below prior to completing this application and submitting it as specified in paragraphs 2-6.

2. **Complete all form requirements.** If you meet the eligibility requirements set forth in **Attachment A**, please complete all blanks on this form; if any section on this form is not applicable, enter N/A. **Please type or print neatly.** If more space is needed attach additional sheets.

Rationale: These instructions are necessary to provide notice and direction to petitioners regarding eligibility requirements what an acceptable petition contains and to ensure the petitions are complete and legible. This helps ensure petitioners avoid deficiencies and delays in the processing of their petitions. Petitioners are specifically directed to review “Attachment A Attachment A - Notice of Eligibility Requirements” (rationale discussed in more detail below) sets forth the minimum “wait” times for petitioning and other eligibility limitations for petitioners in BPC sections 2307 and 2273(b). This direction to read the laundry list of requirements restated in this form is necessary to help avoid having petitioners submit applications and fees to the Board when they are ineligible to apply by law.

“3. **Submit Narrative Statement.** In addition to completing the blanks on this form, please provide a written “Narrative Statement” with this form that includes responses to any directives listed on this form.”

Rationale: Since the point of a petition is to provide the petitioner with an opportunity to make their case for reinstatement of their license or modification of their existing disciplinary order, this directive is necessary to furnish the Board with all explanatory information the petitioner would like to provide before their hearing and is necessary to

effectively evaluate responses to items requested in the OMB.7. form. The narrative statements provided will also permit the Board to effectively consider whether a petition should be granted or denied considering the criteria noted above in accordance with BPC section 2307(e).

**“4. Submit letters of recommendation.** Attach to this form **at least two** verified letters of recommendation, signed and dated by and from physicians and surgeons licensed in any state, district or territory who have a current, active and unrestricted license to practice medicine, and personal knowledge of your activities since the effective date of the disciplinary order. The letters shall include the name, title, license number, the name of the state, district or territory of the physician’s licensing jurisdiction and the physician’s direct contact information. The “direct contact information” shall include the physician’s physical address (business or residence), a working phone number and email address. Letters dated more than six months before the date you sign your Petition will not be accepted. Instruct your recommending physicians to verify their letters of recommendation by including the following declaration above the signature line:

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

Letters of recommendation without the above declaration will not be admitted as evidence during the administrative hearing on your Petition. Be sure to submit the original letters; copies will not be accepted. Letters must be submitted with the original Petition application and not submitted separately. All letters are subject to verification by the Board, the Board’s staff or representatives.”

Rationale: BPC section 2307(c) requires petitions to contain at least 2 recommendations from physicians and surgeons licensed in any “state.” Providing an expansive definition of “state” consistent with BPC section 22 will help ensure notice and additional opportunities to provide verifications from recommending physicians and surgeons across the United States, including the District of Columbia and United States territories.

Specifying the content of the verified recommendations will help ensure that the Board receives all of the information it needs to effectively investigate the authenticity and accuracy of the information provided by recommending physicians who have recognized credentials in good standing (current, active and unrestricted) and personal knowledge to reliably attest to the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability. This necessary information to corroborate credentials and personal knowledge would include: The letters shall include the name, title, license number, the

name of the state, district or territory of the physician’s licensing jurisdiction and the physician’s direct contact information. The “direct contact information” shall include the physician’s physical address (business or residence), a working phone number and email address.

To ensure a recommender’s currency of knowledge about the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability, the Board would not accept any recommendation letters dated more than six months before the date the petitioner signs their Petition.

To ensure truthfulness and accuracy in a document that may be relied upon by the Board in evaluating a petitioner’s rehabilitative efforts, the Board adds a requirement that a petitioner instruct their recommending physicians to verify their letters of recommendation by including a declaration under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. The format required is consistent with Code of Civil Procedure section 2015.5 requirements for admissible certifications in this State and the admonishment that “Letters of recommendation without the above declaration will not be admitted as evidence during the administrative hearing on your Petition,” provides further notice of the requirements of legally admissible certifications and that the Board will not accept it as evidence in any petition hearing if it does not meet these requirements.

To ensure an accurate and complete petition submission, the Board provides the directive to submit the original recommendation letters, copies will not be accepted and the letters must be submitted with the petition application (not submitted separately). This helps avoid application deficiencies and delays in the processing of a petition.

Finally, the Board adds notice that it intends to investigate the validity of any recommendation letters submitted by a Respondent as rehabilitation evidence by including the language “All letters are subject to verification by the Board, the Board’s staff or representatives.”

**“5. Submit proof of compliance with fingerprinting requirements (reinstatements only).** For persons seeking reinstatement of their certificate, please get fingerprinted and include a copy of your completed Live Scan form or the completed fingerprint cards (if you reside outside of California) as required by Title 16, California Code of Regulations sections 1656 or 1658, as applicable, with your Petition application.”

Rationale: Proposed changes to CCR sections 1656(c)(2) and 1658(c) would require all petitioners for reinstatement to submit fingerprints through the California Department of Justice either by electronic through Live Scan or fingerprint cards, as specified.

Repeating these requirements here and directing petitioners to the applicable CCR sections provides more effective notice to reinstatement petitioners of these requirements and helps avoid deficiencies in the application process. Specifying that the form or cards, as applicable, need to be submitted with their petition application helps avoid confusion about the timing and method of showing proof of compliance to the Board.

**“6. Mail completed application and fee.** Once the requirements in paragraphs 2-5 have been met, submit the completed Petition to the Board by mail to the above address with a money order, certified check, cashiers' check, or preprinted personal or company check payable to the Osteopathic Medical Board of California for \$2800 for a reinstatement petition or \$1500 for modification of penalty petition (either modification of the terms and conditions of probation or early termination of probation, or both. No additional fee is required if petitioning for both modification or early termination of probation).”

Rationale: This language is necessary to remind applicants that they need to comply with the requirements listed in the instructions, paragraphs 2-5 prior to submission of the petition application to the Board (i.e., submission of completed forms, provision of narrative statements, submission of verified letters of recommendation, and compliance with fingerprinting requirements). This helps ensure fewer application processing delays and rejection of applications due to incompleteness. To ensure compliance with the fee payment requirements (methods and amounts \$2800 for reinstatements and \$1500 for modification of penalty) outlined in CCR sections 1656(a) and (e) and 1658(a) and (d), the Board repeats the requirements for submission here. This repetition ensures greater notice to the petitioners of these requirements in a convenient location. To avoid confusion about whether separate fees are charged for modification of penalty petitions, the Board adds a sentence advising that “no additional fee is required for petitioning for both modification or early termination of penalty.” This is true because the Board adds no

additional substantive workload to conduct a background check when a petitioner requests that both be considered at a future administrative hearing.

“After completion of the Board’s review, you will be notified in writing whether your Petition has been accepted for processing or whether it has been rejected as incomplete. If accepted for processing, the matter will be set for a petition hearing before an administrative law judge (ALJ) assigned by the Office of Administrative Hearings (OAH) upon payment to the Board of \$20,000, which is required to recover the Board’s costs to hold an administrative hearing and formulate a decision on your Petition (see 16 CCR §§ 1656 and 1658 for specific definition of all “reasonable costs”). Payment of the \$20,000 fee must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sends the written notification of acceptance of the Petition.

Within 120 days of the date of your Petition hearing, the Board will provide you a fee payment statement detailing the following:

- (A) The reasonable costs incurred by the Board in adjudicating your petition calculated in accordance with 16 CCR Section 1690; and
- (B) If the costs incurred by the Board are less than \$20,000, a statement detailing the refund that will be provided to you and the anticipated date when the refund will be issued.

For questions regarding this form or the petition process, please contact the Board’s Enforcement Unit at (916) 928-8390.”

Rationale: To avoid questions and resolve confusion about the processes and procedures already outlined in CCR sections 1656 and 1658 (and repeated here in a more conversational style for greater understanding) regarding when a petition application is accepted for processing, the Board adds the above-referenced notice. In the Board’s experience, this is the most effective way to reduce inquiries from petitioners and put them on notice regarding future requirements and costs that will need to be met before a petition will be considered complete for processing. The rationale for these processes, procedures and fees are covered in more detail in the corresponding sections adopting these standards below. To assist petitioners with obtaining information not addressed in the notice above about the form or the petition process, the Board provides the title of the Unit responsible for processing these applications and the direct telephone number for the Unit.

## I. Type of Petition

Purpose: This proposal would require the petitioner to check a box showing the type of petition for penalty relief being filed with the Board: Reinstatement of Revoked/Surrendered Certificate, Modification of Probation, or Early Termination of Probation. The instructions would also refer to “Business and Professions Code section 2221(b) and 2307 to help provide notice and transparency as to the Board’s statutory authority to accept petitions, modify probation terms, and decide these petitions. This section would also include the following notice:

NOTE: A Petition for Modification and/or Termination of Probation can be filed together. If you are only seeking either modification of your probation terms or conditions or early termination of probation, check the applicable box. If you are requesting early termination of probation, or, in the alternative, modification of probation, check both the modification of probation and early termination of probation boxes (there is no additional fee required when checking both boxes).

Narrative Statement: Please provide the following in your "Narrative Statement": A description of the penalty relief you want and the reasons your request should be granted. If you are requesting Modification of Probation, you must specify which terms and conditions of your probation you want reduced or modified and provide an explanation for your request(s).

Rationale: Since this form has multiple uses it is necessary to indicate which type of relief the petitioner is seeking and further specify what information the Board needs to process a petition for modification of penalty to avoid confusion, and to help ensure accurate and timely processing of the petition. Restating that no additional fee is required for checking both modification and early termination of probation boxes is necessary in the likely event that petitioners do not read the instructions. This helps ensure fewer delays and less deficiencies in the application process. To ensure fully understands the facts and circumstances supporting the petitioner’s application, the Board adds directions regarding the content of the “Narrative Statement”, including required details about what the petitioner wants, the reasons the petitioner’s request should be granted; and, if they are requesting Modification of Probation, petitioners must specify which terms and conditions of their probation they want reduced or modified and provide an explanation for your request(s). In the Board’s experience, this is the minimum the Board needs to help evaluate the petitions it receives according to the criteria set forth in BPC section 2307.

## II. Personal Information

Purpose: The form would require disclosure of the first, middle and last name, home address, email address, best available telephone number, work telephone number, and, California (CA) Physician and Surgeon Certificate Number, Driver's License Number and State of Issuance, Current or prior medical licenses in other states or countries (including license number(s), issue date(s) and status of license(s).

Rationale: This information is used for identification of the licensee applying for penalty relief and to alert the Board of any former enforcement or disciplinary actions effecting the license status, which may be grounds for denial pursuant to BPC sections 2221 and 2307. This information also allows staff to match the petitioner to the licensee on file to determine if the petitioner meets the eligibility criteria in BPC section 2307 (e.g., time periods met per BPC section 2307(a)) and provides necessary current contact information should any questions arise.

## III. Attorney Information (if applicable)

Purpose: This section of the form asks whether the petitioner will be represented by an attorney and requires them to check a box "yes" or "no." If the petitioner checks the box "yes," they are asked to provide the name, address and phone number of their attorney.

Rationale: These provisions are necessary to alert the Board regarding whether a petitioner is represented by counsel, and if so, to allow the Board to confirm with petitioner whether communications should be transmitted through the petitioner's counsel using the information provided on the form.

## IV. Disciplinary Information

Purpose: This section of the form provides introductory instructions that state:

Narrative Statement: Provide a brief explanation in your "Narrative Statement" as to the effective dates and cause for the Board's disciplinary action against you (revocation, suspension, probation) (e.g., prescribing without prior exam, gross negligence, self-use of drugs, sexual misconduct, conviction of a crime, etc.) and, if applicable, give a description of your history of any prior disciplinary action(s) with the Board and the history of any prior petitions you have submitted to the Board.

Rationale: This instruction is necessary to direct the petitioner as to what is expected in their Narrative Statement to avoid the petition from being consequently rejected as incomplete. Parentheticals to help explain “disciplinary action” as “revocation, suspension, probation” and examples of “causes” for disciplinary actions are necessary to help avoid confusion and ensure accuracy in the petition application process. The above-noted information and explanation requested is necessary to effectively investigate whether a petition should be granted or denied and to allow the Board to consider the criteria it uses in evaluating the criteria in accordance with BPC 2307(e), particularly all activities that have occurred since the Board’s action or any prior actions were taken and the petitioner’s rehabilitative efforts. This response would be relevant to the determination whether to grant or deny a petition as any response and any further information provided in the Narrative Statement would help inform the Board regarding a petitioner’s current status as to their rehabilitative efforts, general reputation for truth, and professional ability and whether the petitioner has addressed any prior issues identified by the Board in prior petition actions they have filed with the Board.

#### V. Medical Background

Purpose: This section of the form requests information on the petitioner’s medical background, which includes the petitioner’s experience in practice as an osteopathic physician including:

- A. Total number of years in medical practice,
- B. Medical specialty, if applicable,
- C. Whether the petitioner is Board certified, and if “Yes”, the year certified and the name of the certifying board (a “Note” would be added to define “board-certified” consistent with the understanding of that terminology in the regulated community (see below) and to avoid ambiguity for applicants as to what the Board means when requesting an answer to this question),
- D. Current field of medical practice (e.g., General Practice (GP), OB/GYN (Obstetrics and Gynecology), ENT (Ear, Nose and Throat), IM (Internal Medicine), etc.),
- E. Current type of practice: (e.g., solo, group, HMO, Gov’t, etc.),
- F. Name and location of practice; and,
- G. List of hospital memberships.

Rationale: The list of questions provides the Board with information regarding the petitioner’s practice history, which would help the Board evaluate whether to grant or

deny a petition for penalty relief. It is designed to serve as a guide for the Board in assessing mitigation and rehabilitation as it evaluates an individual’s rehabilitation and fitness for the practice of medicine in a manner consistent with public health, safety, and welfare. The aforementioned information would allow the Board to weigh and consider:

- (A) the years of medical practice,
- (B) specialty practice,
- (C) whether the applicant is “Board certified” (terminology is recognized in the industry for when an osteopathic physician has completed advanced training to demonstrate expertise in a specific medical specialty by private certifying boards – as authorized by the American Osteopathic Association (AOA), American Medical Association (AMA), or the American Board of Medical Specialties (ABMS) or otherwise specified in BPC section 2453.5 – as going beyond the minimum requirements for licensure, current field of medical practice (e.g., GP, OB/GYN, ENT, IM, etc. – common acronyms used to refer to General Practice, Obstetrics and Gynecology, Ear Nose and Throat and Internal Medicine),
- D. current type of practice: (e.g., solo, group, HMO (health maintenance organization), Gov’t, etc.),
- E. name and location of medical practice; and,
- F. list of hospital memberships.

This background would provide the Board with possible evidence of mitigation and rehabilitation or evidence in aggravation, depending upon the petitioner’s length of time in practice, type of practice, healthcare settings and the offense for which the petitioner was disciplined. This information also permits the Board to effectively investigate the petitioner’s qualifications as represented in this section of the petition prior to a formal hearing on the petition before the Board.

VI. Current Occupation Other Than Physician and Surgeon (complete this section only if currently not practicing medicine)

Purpose: This section of the form requests that a petitioner disclose specified information about their current occupation if they are not currently practicing medicine in their Narrative Statement. This would include:

Narrative Statement: If you are petitioning for Reinstatement, include in your Narrative Statement responses to these questions:

- A. During the period of time that your certificate (license) has been revoked or surrendered, how have you earned a living?

- B. What aspect of your rehabilitation do you feel will protect against the recurrence of your prior conduct?
- C. What are your plans if your license is reinstated?
- D. Where will you practice (e.g., at a particular hospital, medical group, clinic, urgent care facility, HMO, etc.)?
- E. What type of medical practice?

For those who have another current occupation as noted above, the Board requires disclosure of their employer, address, e-mail address, phone number, job title and duties.

Rationale: This information offers the Board information to effectively investigate the petitioner's current employment history if the petitioner is not practicing medicine (the standard situation for those who have been revoked and are now petitioning to reinstate their license). Information gathered during the process of verifying the petitioner's employment history, including current employment, aspects of rehabilitation that the petitioner feels will protect against the recurrence of their prior conduct, and plans for reinstatement (including place and type of practice) would give insight into the petitioner's current actions since the original disciplinary action was taken. This would provide the Board with the most relevant information to evaluate the petitioner's rehabilitative efforts in compliance with the criteria the Board may consider in evaluating petitions per BPC section 2307(e).

Further, as the California Supreme Court has found that rehabilitation is a "state of mind," and the law looks favorably on rewarding, with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Also, a truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) These requirements are therefore required to determine whether the petitioner has the requisite state of mind, taken the necessary steps and rehabilitative efforts over an extended period of time, can demonstrate that the circumstances involved in the prior violations that led to the discipline will not recur, and that they have a plan to safely resume the practice of medicine.

The requirement that the Board obtain the information as specified above as it applies to the petitioner "currently" (meaning as commonly understood "now"), also ensures that the Board is making decisions with the most updated, timely information available to make a more fully informed and reasonable decision.

VII. Employment History As a Physician and Surgeon (“current” - list for the past 5 years only)

Purpose: This section would require the petitioner to attach a copy of the following to their narrative statement (for the past 5 years):

- A. Any supervisor's performance evaluations pertaining to your current assignments in the medical field, laboratory studies, and teaching assignments; and
- B. A copy of your current resume/curriculum vitae.

This section would also request employment history for the past 5 years including the disclosure of the company name, address, phone number, contact person and dates of employment. If any of these dates of employment include periods of solo practice, please write “solo practice” and list the dates the petitioner was self-employed in the space provided.

Rationale: This information collected in this section offers the Board information to effectively investigate the petitioner’s employment history as an osteopathic physician and surgeon and their ability to currently practice with safety to the public. As noted in the rationale for the section above, information gathered as a result of verifying the petitioner’s employment history using the information provided in this section would give insight into the petitioner’s rehabilitative efforts and actions since the original disciplinary action was taken in compliance with the criteria the Board may consider in evaluating petitions per BPC section 2307(e).

A copy of the petitioner’s current resume/curriculum vitae would provide the Board with a complete list of all “current” employment in one convenient document, which would allow for more effective investigation into the petitioner’s background and collect information relative to petitioner’s rehabilitative efforts and professional ability. Performance evaluations pertaining to current assignments in the medical field, laboratory studies and teaching assignments offer, objective evidence for the Board to evaluate a petitioner’s ability to practice safely with or without restrictions, which are issues the Board must consider in determining whether to modify terms or conditions of probation or allow early termination of probation.

Requiring the petitioner to provide the company name, address, phone number, contact person, and dates of employment, and information related to “solo practice” is necessary to allow the Board to independently investigate and verify the employment history claims made by the petitioner. Finally, in the Board’s experience, five years is a

reasonable timeframe to help the Board to determine currency of knowledge and to evaluate the petitioner’s activities and progress in their rehabilitative efforts since the original disciplinary action was taken.

### VIII. Rehabilitation

Purpose: This section of the form requests evidence of rehabilitation from the petitioner. Specifically, this section requests that the petitioner:

“Describe any rehabilitative or corrective measures you have taken since your license was revoked, surrendered or placed on probation. This includes a list of any training or education you have received since the most recent disciplinary action was taken, including names of schools, class names, credit hours, certificates earned, dates of attendance, and copies of certificates of completion of any continuing medical education, training programs, seminars, or educational courses. You may also provide a list of any medical journals you have read and describe how often you read these journals.

For any rehabilitation programs attended, psychotherapy completed, or medical treatments received, list the name of any rehabilitation program or course of treatment received, dates of attendance or duration of treatment, nature of programs or courses of therapy or treatment, and current status (e.g., enrolled, treatment or therapy is ongoing, or completed). You may also include a description of any community service or volunteer work (“work”) you have done that includes the type of work, location of work, and dates of work.

For petitioners who have had their certificates restricted or revoked for mental or physical illness, please also describe any evidence of the absence or control of the condition which led to the revocation or restriction.

If additional space is needed to respond to this section, please include additional information in your Narrative Statement.”

Rationale: BPC section 2307 permits the Board to consider the petitioner’s “rehabilitative efforts” in deciding whether to grant or deny a petition for penalty relief. The ability to provide evidence of rehabilitation is essential to the Board to decide whether the petitioner has demonstrated that they have taken corrective measures necessary for ensuring they will not reoffend. The inclusion of the foregoing information is reasonably necessary to provide consistent guidance to individuals about mitigation

or rehabilitation evidence submissions. The types of rehabilitative or corrective measures may be submitted and described at the discretion of the individual and will be reviewed by the Board and considered on a case-by-case basis.

However, the Board does include examples of evidence commonly considered by the Board to help provide guidance to petitioners regarding what has historically been considered “rehabilitation evidence” in this section. In the Board’s experience, these examples provide objective and verifiable information to show the petitioner’s “rehabilitative efforts”. This includes evidence of remediating education, which would be shown by a list of any training or education received since the most recent disciplinary action was taken, including names of schools, class names, credit hours, certificates earned, dates of attendance, and copies of certificates of completion of any continuing medical education, training programs, seminars, or educational courses. Petitioners may also provide a list of any medical journals they have read and describe how often they read these journals to show efforts at continued competency.

For discipline related to mental or physical illness that affected a petitioner’s competency, examples of rehabilitation would include evidence of any rehabilitation programs attended, psychotherapy completed, or medical treatments received, and would list the name of any rehabilitation program or course of treatment received, dates of attendance or duration of treatment, nature of programs or courses of therapy or treatment, and current status (e.g., enrolled, treatment or therapy is ongoing, or completed). To show remediating efforts for the communities they serve, the Board would consider a petitioner’s community service or volunteer work and would advise petitioner that they may also include a description of any community service or volunteer work (“work”) they have done that includes the type of work, location of work, and dates of work.

In the Board’s experience, these items and the guidance provided in this paragraph are reasonably related to the question of whether mitigating or extenuating circumstances exist or should be considered and/or whether the person is rehabilitated (i.e., fit to practice with or without restriction and with safety to the public) and would allow the Board sufficient information to investigate the claims made by a petitioner in this section.

Finally, to ensure petitioners are not limited in their ability to provide as much information as possible, the Board includes the advisement “If additional space is needed to respond to this section, please include additional information in your Narrative Statement.”

## IX. Current Compliance

**Purpose:** This section of the form asks a series of questions designed to determine the petitioner’s level of rehabilitation and current ability to practice with safety to the public. Specifically, the form requests that a petitioner report whether any of a list of specified adverse events have taken place since the effective date of their last Osteopathic Medical Board of California disciplinary action or since they surrendered their license while under investigation or charges pending (which covers the circumstances under which discipline may be considered imposed per BPC section 2307). To facilitate the responses for this section and to provide the applicant an opportunity to explain each adverse event reported, each question contains a check box with a “Yes” or “No” section and a note at the end that indicates that if their answer is “Yes” to any of the above questions, please explain the dates of occurrence and the facts and circumstances surrounding the even in their “Narrative Statement” submitted with this form.

**Rationale:** The list of questions and the rationale for each question is listed below. Each petitioner is asked whether they have (since the date of their last Board disciplinary action or surrender of their license while under investigation or charges pending:

1. Been placed on criminal probation or parole?

BPC section 2307(g), provides, in part: “No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole...” This question is therefore necessary to determine whether these disqualifying conditions exist (probation or parole) and whether the Board has jurisdiction to consider the petition.

2. Been charged in any pending criminal action?

BPC section 2307(e) allows the Board to consider all activities of the petitioner since the original disciplinary action was taken and the petitioner’s rehabilitative efforts. This question is therefore necessary to effectively determine and investigate the petitioner’s background, activities and rehabilitative efforts since the Board’s disciplinary action was taken in order to make an informed decision about whether to grant or deny the petition. This question also helps the Board determine whether further investigation is needed to track the petitioner’s progress while charges are pending.

3. Been convicted of any crime, including an infraction, misdemeanor, or felony in the United States, any district or territory of the United States, or a foreign country? For the purposes of this paragraph, convictions expunged or dismissed under sections 1000, 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (or equivalent non-California law) must be disclosed. For the purposes of this paragraph, “conviction” does not include any of the following:

(A) Offenses that were adjudicated in the juvenile court.

(B) Charges dismissed under Section 1000.3 of the Penal Code.

(C) Convictions under California Health and Safety Code section 11357, or section 11360(b), which are two years old or older.

(D) Traffic citations or infractions for which a fine of \$500 or less was imposed and not involving alcohol, dangerous drugs, or controlled substances.

Rationale: The Board incorporates the rationale provided above for proposed amendments to CCR sections 1630(c)(11) and 1646(b)(11), which add the same exact conviction question as proposed in this section. As noted above, Penal Code section 16 classifies crimes and public offenses to include: 1. Felonies; 2. Misdemeanors; and 3. Infractions. This question would specify what convictions the Board would like disclosed in response to this question.

As noted above in CCR sections 1630(c)(11) and 1646(b)(11)'s rationale, applicants who have obtained Penal Code section 1203.4 orders or other similar dismissals or expungements are still considered to have criminal convictions for purposes of determining whether grounds for discipline exist. Nevertheless, the Board has found that licensees mistakenly believe that a dismissal or expungement order entitles them to not disclose a conviction to the Board. As a result, to avoid confusion, and implement long-standing state policy that requires disclosure of most criminal convictions to licensing agencies, the Board specifies that convictions, even if dismissed or expunged, “must be disclosed.”

BPC section 2307(g), provides, in part: “No petition shall be considered while the petitioner is under sentence for any criminal offense...” Further, BPC section 2307(i) specifies other disqualifying conditions including convictions involving an act of sexual abuse, misconduct, or relations with a patient pursuant to BPC section 726 or sexual exploitation pursuant to BPC section 729(a).

This question is therefore necessary to determine whether these disqualifying conditions exist and whether the Board has jurisdiction to consider the petition. If the

petitioner is no longer under criminal sentence (subject to the punishment or penalties ordered by a court), then this question is necessary to effectively determine and investigate the petitioner's background, activities and rehabilitative efforts since the Board's disciplinary action was taken in order to make an informed decision about whether to grant or deny the petition.

The Board adds a cut off for disclosures of paid traffic offenses at paragraph (D) with a \$500 fine or less that specify that "conviction" does not include traffic offenses for which a fine of \$100 or less was imposed. As set forth in BPC section 490, a criminal conviction includes a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. When an individual pays a traffic ticket without contesting it in court, California law treats that as a "forfeiture of bail", which is legally equivalent to an admission of guilt and a conviction for the particular violation charged (see Vehicle Code section 40512, Vehicle Code section 13103).

This proposed language will avoid unnecessary disclosures of paid (and therefore no longer under criminal sentence/punishment for the offense), minor traffic violations, which the Board views as not substantially related to the qualifications, functions, or duties of a licensee or registrant, and using a dollar amount limit would be easier for applicants to understand since these unrelated types of violations normally do not result in high fine amounts in the Board's experience. This threshold would still allow the Board to capture substantially related violations, such as a DUI pled down to a "wet reckless", where such conduct is normally considered related to the practice of medicine (see e.g., BPC section 2239(a) and *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, where the California Court of Appeal found that a "logical connection" or nexus exists between DUI convictions and the physician's fitness to practice medicine), and fines for these offenses often do exceed \$500.

Additional rationale for exclusions from disclosure at proposed paragraphs (A)-(D). The conviction question and related exclusions from the definition of "conviction" are adopted for consistency with similar conviction questions proposed at CCR sections 1630(c)(11) and 1646(b)(11). Those exclusions would include:

- (A) Offenses that were adjudicated in the juvenile court.
- (B) Charges dismissed under Section 1000.3 of the Penal Code.
- (C) Convictions under California Health and Safety Code section 11357, or section 11360(b), which are two years old or older.
- (D) Traffic citations or infractions for which a fine of \$500 or less was imposed and not involving alcohol, dangerous drugs, or controlled substances.

The Board hereby incorporates the rationale for these exclusions as set forth in CCR sections 1630(c)(11) and 1646(b)(11) above as the rationale for the adoption of these exclusions.

4. Been required to register as a sex offender in any state? (Attach the court order.)

A person required to register as a sex offender is under a criminal sentence, as registration is a requirement stemming from a conviction for a sex crime and is a form of punishment and supervision that continues after a prison term or jail time is completed. The registration itself is a legal obligation mandated by the court as part of the individual's criminal case, even if they have already been released from incarceration. BPC section 2307(g), provides, in part: "No petition shall be considered while the petitioner is under sentence for any criminal offense,... This question is therefore necessary to determine whether this disqualifying condition exists (sex offender registration) and whether the Board has jurisdiction to consider the petition. A requirement to attach the court order mandating such registration will help the Board to further confirm whether such registration is still a legal obligation of the petitioner.

Also, if the petitioner is no longer required to register as a sex offender (see e.g., Penal Code section 290 where California only requires lifetime sex offender registration for specified offenses for "a tier three offender"), then BPC section 2307(i)(1)(A)-(D) further prohibits the Board from reinstating any person who was a registered sex offender as specified or "was convicted in a court in or outside of this state of any offense that, if committed or attempted in this state, based on the elements of the convicted offense, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290 of the Penal Code, and the person engaged in the offense with a patient or client, or with a former patient or client if the relationship was terminated primarily for the purpose of committing the offense." This question is therefore necessary to determine whether the petitioner meets these disqualifying conditions and whether the Board has jurisdiction to hear the petition and determine whether to grant or deny it.

5. Been charged or disciplined by any other state or country's medical board?

BPC section 2307(e) allows the Board to consider all activities of the petitioner since the original disciplinary action was taken and the petitioner's rehabilitative efforts. This question is therefore necessary to effectively determine and investigate the petitioner's background, activities and rehabilitative efforts since the Board's disciplinary action was taken in order to make an informed decision about whether to grant or deny the petition.

6. Surrendered your license to any other medical board in any other state or country?

BPC section 2307(e) allows the Board to consider all activities of the petitioner since the original disciplinary action was taken and the petitioner's rehabilitative efforts. This question is therefore necessary to effectively determine and investigate the petitioner's background, activities and rehabilitative efforts since the Board's disciplinary action was taken in order to make an informed decision about whether to grant or deny the petition.

7. Had your staff privileges disciplined by any hospital?

BPC section 805 mandates that peer review bodies and health facilities report certain adverse actions taken against osteopathic physicians and surgeons to the Board. These reports, known as "805 Reports," cover actions like the denial or termination of staff privileges or membership, or any disciplinary restrictions, for a "medical disciplinary cause or reason", as specified. Disclosures of such actions taken by a hospital would help the Board to more effectively identify physicians who provide substandard care or who engage in unprofessional conduct with the goal of public protection (as per the policy of this State as codified at Bus. & Prof. Code, § 809(a)(6)) and therefore may not be safe to return to practice, with or without restriction.

Further, BPC section 2307(e) allows the Board to consider all activities of the petitioner since the original disciplinary action was taken and the petitioner's rehabilitative efforts. This question is therefore necessary to effectively determine and investigate the petitioner's background, activities and rehabilitative efforts since the Board's disciplinary action was taken to make an informed decision about whether to grant or deny the petition.

8. Had any civil malpractice or arbitration claims filed against you?

Disclosures regarding civil malpractice or arbitration claims allows the Board to further investigate whether a petitioner is safe or competent to return to practice, with or without restriction. Such claims show a physician was accused of causing patient harm through negligent acts, such as failures in diagnosis, treatment, or informed consent. These legal actions reflect allegations of deviations from the accepted standard of care, and while they do not prove guilt, they can signal a pattern of safety, competency, or other standard of care issues. BPC section 2307(e) allows the Board to consider all activities of the petitioner since the original disciplinary action was taken and the petitioner's rehabilitative efforts. This question is therefore necessary to effectively determine and

investigate the petitioner's background, activities and rehabilitative efforts since the Board's disciplinary action was taken in order to make an informed decision about whether to grant or deny the petition.

9. Do you have any medical condition which currently impairs or limits your ability to practice medicine with reasonable skill and safety?

BPC section 2307(e) allows the Board to consider all activities of the petitioner since the original disciplinary action was taken including the petitioner's rehabilitative efforts and professional ability. This question is therefore necessary to effectively determine and investigate the petitioner's professional ability (competency) and rehabilitative efforts since the Board's disciplinary action was taken to make an informed decision about whether to grant or deny the petition. To ensure only relevant and necessary medical information that could affect public safety is disclosed, the question is limited to a medical condition that currently impairs or limits a petitioner's ability to practice medicine with reasonable skill and safety. Use of the "reasonable skill and safety" standard is necessary to provide notice of how the Board would determine whether the petitioner's competency would be considered "affected" to a degree that they were not safe to return to practice.

Further, BPC section 822 authorizes this Board to revoke an osteopathic physician's and surgeon's certificate or postgraduate trainee's license because either licentiate is mentally ill or physically ill affecting competency. BPC section 823 addresses the process for reinstatement of a certificate or license revoked or surrendered due to a mental or physical illness affecting competency per BPC section 822. BPC section 823 grants the Board, in determining whether reinstatement is appropriate, the authority to impose terms and conditions, such as additional training, exams, or medical evaluations, as part of the reinstatement process to ensure the petitioner's present fitness to practice medicine. This question is necessary to determine whether any terms or conditions would be appropriate based on the petitioner's disclosure and narrative statement and whether further examination of the petitioner is necessary to make these determinations at the petition hearing.

10. "NOTE: if you answer is "Yes" to any of the above questions, please explain the dates of occurrence and the facts and circumstances surrounding the event in your "Narrative Statement."

This language is necessary to enable the Board to effectively evaluate the petitioner's responses and gather pertinent information in its investigation of a petitioner's ability to

safely return to practice, either with or without restrictions, in accordance with BPC sections 823 (as applicable) and 2307. This notice also gives the petitioner an opportunity to provide any mitigating, extenuating or rehabilitative evidence that they would like the Board to consider prior to making a decision on their petition.

#### X. Declaration

Purpose: To require the petitioner to print their name (for legibility) and to sign and date their petition and providing a statement under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that all statements and documents attached in support of this petition are true and correct.

Rationale: Those submitting a Petition for Penalty Relief must declare under penalty of perjury that the information is true and correct for the following reasons. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Board relies upon applicants' self-reported information in evaluating petitions. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. If Board staff discover an omission or misstatement, then the petitioner's signature under penalty of perjury can be used in a criminal case against the petitioner.

Also, Code of Civil Procedure section 2015.5, requires the certification to include "under the laws of the State of California" (when intended for use anywhere in or outside of California) and "signed and dated" by the declarant. This addition is necessary for compliance with Section 2015.5, which will help ensure the legal admissibility of any declaration executed by petitioner in any possible adjudicative proceeding.

Purpose and Rationale for Information Practices Act Privacy Notice: This paragraph below the declaration details the Board's disclosures regarding the authority, collection and use of the personal information collected and provided to the Board on this form in compliance with Civil Code section 1798.17.

#### Attachment A –Notice of Eligibility Requirements

##### Paragraph 1: Time limitations and Eligibility Requirements for Petition Filings

Purpose: The introductory sentence specifies that petitioners may file their petition with the Board after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of their certificate or the decision ordering their disciplinary action as set forth in paragraphs I.-IV., as follows:

**I. Petition for Reinstatement**: At least five years for reinstatement of a certificate surrendered or revoked for unprofessional conduct, unless your disciplinary order specifies that you can file a Petition sooner or your disciplinary order is based in whole or in part upon any findings of violations set forth in BPC section 2273(b) (which requires a mandatory 10-year revocation or surrender penalty). For disciplinary orders based upon findings of violations set forth in BPC section 2273(b) and for which the Board imposed the penalty of outright revocation or surrender for a minimum of 10 years, the Board has no discretion to reinstate a certificate prior to the expiration of this 10-year period.

**II. Petition for Early Termination of Probation (for probation term of 3 years or greater)**: At least two years for early termination of probation or after more than one-half of the probation term has elapsed, whichever is greater.

**III. Petition for Modification of Probation (Modify a Condition or Early Termination of Probation Term of less than 3 years)**: At least one year.

**IV. Petition for Reinstatement of a Certificate surrendered or revoked for mental or physical illness**: At least one year.”

Rationale: This notice is necessary to provide advance notice and avoid confusion regarding when the Board has authority to hear petitions for penalty relief. These notices largely repeat in everyday language the time limitations set by the Legislature for the Board to hear petitions and reflects the mandatory “time out” from active practice or minimum periods of practice under a restricted license required before the Board has authority to hear any penalty relief petition. For most petitions, the required time limitations and eligibility requirements are set forth in BPC section 2307(b), which states:

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least five years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after three years.

(2) At least two years for early termination of probation or after more than one-half of the probation term has elapsed, whichever is greater.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

In addition, BPC section 2273(b) prohibits the Board from reinstating a license revoked for specified insurance fraud-related offenses, as follows:

(b) A licensee shall have the licensee's license revoked for a period of 10 years, or shall stipulate to surrender of the license for 10 years, upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. **After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307.** (Emphasis added.)

In the Board's experience, such notice is necessary to avoid unnecessary time and expense on applications that do not qualify to be heard by the Board as a matter of law.

#### Paragraph 2: Disqualifying Conditions Notices

Purpose and Rationale: The second paragraph specifies that in addition to the criteria in paragraph 1 noted above, no Petition shall be considered under the following circumstances per BPC section 2307 as the Board is legally prohibited from accepting a petition from any individual meeting these criteria. These requirements are listed to provide advance notice to petitioners of these disqualifying criteria through a restatement of the law contained in BPC section 2307, as follows:

(1) You are under sentence for any criminal offense, including any period during which you are on court-imposed probation or parole. (Restatement of BPC 2307(g).)

(2) There is an Accusation or Petition to Revoke Probation pending against you from the Board. (Restatement of BPC 2307(g).)

(3) The Board shall automatically reject any Petition for Early Termination or Modification of Probation if the Board files a Petition to Revoke Probation while your Petition for Early Termination or Modification of the Probation is pending. (Restatement of BPC 2307(g).)

(4) Your Petition is filed within a period of three years from the effective date of a prior decision following a hearing on your prior Petition. (Restatement of BPC 2307(g))

(5) Your certificate has been surrendered because you committed an act of sexual abuse, misconduct, or relations with a patient pursuant to BPC section 726 or sexual exploitation as defined in subdivision (a) of BPC section 729. (BPC section 2307(i)(1)(A).)

(6) Your certificate has been revoked based on a finding by the Board that you committed an act of sexual abuse, misconduct, or relations with a patient pursuant to BPC section 726 or sexual exploitation as defined in BPC section 729(a). (BPC section 2307(i)(1)(B).)

(7) You were convicted in a court in or outside of this state of any offense that, if committed or attempted in this state, based on the elements of the convicted offense, would have been punishable as one or more of the offenses described in Penal Code section 290(c) of Section 290, and you engaged in the offense with a patient or client, or with a former patient or client if the relationship was terminated primarily for the purpose of committing the offense. (BPC section 2307(i)(1)(C).)

(8) You have been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code, regardless of whether the conviction has been appealed, and you engaged in the offense with a patient or client, or with a former patient or client if the relationship was terminated primarily for the purpose of committing the offense. (BPC section 2307(i)(1)(D).)

In the Board's experience, such notice is necessary to avoid unnecessary time and expense on applications that do not qualify to be heard by the Board as a matter of law.

Paragraph 3: Reference to specific sections of the CCR for further information

Purpose and Rationale: Finally, the last paragraph of this form would advise applicants that for further information on the Board's regulatory requirements for petitions for penalty relief, please review Title 16, California Code of Regulations sections 1656, 1658 and 1690. This would provide applicants with notice of where to find further information on regulatory requirements for petitions for penalty relief in the Board's regulations.

**Amend subsection (b)**

Purpose: To strike the word “the” in front of Business and Professions Code for grammatical reasons, add an “s” behind “Section” for grammatical reasons, and to add a reference to “and 2273(b), as applicable.

Rationale: Existing regulation only refers to the time limitations on filing a petition for penalty relief for those petitions qualifying per BPC section 2307. However, as noted above in the rationale for form OMB.7, BPC section 2273(b) prohibits the Board from reinstating a license revoked for specified insurance fraud-related offenses for at least 10 years. A petitioner must wait until after the expiration of this 10-year period, before filing an application for license reinstatement pursuant to BPC section 2307. This addition is therefore necessary for consistency with BPC section 2307 and the notices provided on form OMB.7 regarding eligibility.

### **Amend and renumber existing subsection (c) (proposed to be (c)(1))**

Purpose and Rationale: This proposal would renumber this section from (c) to (c)(1), strike the word “the” and add the words “at least” before the words “two verified recommendations.” BPC section 2307(c) requires the petition to be accompanied by at least two verified recommendations from licensed physicians and surgeons with personal knowledge. These changes are therefore necessary for readability and consistency with the requirements for verified recommendations in Section 2307(c).

### **Adopt new subsection (c)(2)**

Purpose: To require all petitioners for reinstatement to meet specified fingerprinting requirements as described in subparagraphs (A)-(E) prior to submission of Form OMB.7 referenced in subsection (a). It covers the requirements for using the Live Scan process administered by the California Department of Justice in paragraph (A), steps for in-state applicants in paragraph (B), the steps for out-of-state applicants in paragraph (C), the resubmission process if the first fingerprint card or Live Scan fingerprints are rejected in paragraph (D), and the requirement for a petitioner to retain a copy of their completed Live Scan form or completed fingerprint cards and submit it with their Form OMB.7 and all other required information referenced in subsection (a).

Rationale: BPC section 2042 requires this Board to require each applicant to furnish to the Board a full set of fingerprints for purposes of conducting criminal history record checks, which enables the Board to conduct a full background check on all applicants regarding any potential criminal history since the Board’s revocation or surrender action was taken. This fingerprinting requirement includes applicants petitioning for reinstatement of a license.

When applying for initial licensure, the Board retains authority to continue receiving criminal offender record information (CORI) in accordance with subdivision (p) of Section 11105 of the Penal Code on its licensees while they are licensed with the Board (including those petitioning for modification of penalty). However, when an agency's purpose for receiving CORI ends—such as when a licensee retires or is no longer licensed (due to surrender, expiration or revocation of their license) —the agency must immediately submit a No Longer Interested (NLI) Notification Form (BCIA 8302) to the California Department of Justice. This stops subsequent arrest and disposition notifications to the Board. As a result, this regulation is necessary to implement the requirements for fingerprinting of reinstatement applicants so that the Board can obtain CORI information in compliance with Section 2042 and place applicants for reinstatement on notice that this is a condition precedent to submitting the Form OMB.7 to the Board.

### **Adoption of paragraph (A) of subsection (c)(2): Live Scan requirements**

**Purpose:** The proposed subsection notifies petitioner for reinstatement applicants (applicants) that the fingerprints requested by the Board are to be taken using the Live Scan service, unless the applicant resides out of state and cannot use the Live Scan service, as noted in proposed paragraph (C) of this subsection. Applicants residing in California will have to use the Live Scan service as described in subsection (c)(2)(B).

**Rationale:** This change is necessary to specify the requirements by the Department of Justice for processing requests for criminal background checks as provided in BPC section 2042 as they relate to Board applicants for reinstatement as an osteopathic physician and surgeon. Live Scan is a system for the inkless, electronic submission of fingerprints and the subsequent automated background checks and responses conducted through the California Department of Justice's (DOJ) database. Applicants living within the State of California and who are required to complete a criminal history background check by a state agency authorized by law to collect those fingerprints (as the Board is authorized per BPC sections 144 and 2042 and proposed CCR sections 1656 and 1658) must complete the DOJ's "Request for Live Scan Service" to comply with this eligibility requirement (see Underlying Data from DOJ's website guidance document entitled "Fingerprint Background Checks"). The Board does not incorporate the DOJ's form by reference in this regulation as it is not a form that is created by this Board and for which the Board would be able to provide the rationale for each requirement on the form or make any changes to the form in response to public comment it might receive on the contents of the form (see similar approach taken at Cal. Code Regs., tit. 10, § 2034.5 and tit. 16, § 1006). Applicants residing outside of California who cannot be fingerprinted electronically as described in subsection (c)(2)(C) would be excepted from this requirement.

This Live Scan process does not exist in regulation as it applies to the Board's applicants for reinstatement to practice medicine and the Board receives many questions from regular applicants, particularly out-of-state residents, on the process and procedures for submitting fingerprints through the Live Scan process for this Board. This proposal would add such details to give applicants specific directions for completing this application requirement in accordance with DOJ requirements.

### **Adoption of paragraph (B) of subsection (c)(2): In-State Live Scan requirements**

Purpose: The proposed subsection requires petitioner for reinstatement applicants to take a completed Live Scan form to a location that offers the service. The applicant will have to pay all fees charged by the location, including the fees paid to the California Department of Justice, the Federal Bureau of Investigation, and any rolling fee. The subsection also provides a weblink for applicants to check for more information regarding the Department of Justice's fingerprint background check requirements, Live Scan locations and current fee information.

Rationale: Consistent with the requirements of the DOJ, the Board proposes to add this paragraph to subsection (c)(2) to provide reinstatement applicants the information they need to obtain fingerprints from a Live Scan location and provide them to the Board, which includes payment of the fingerprint processing fees through the Live Scan system at an approved Live Scan location (see Underlying Data "Fingerprint Background Checks"). The Board specifies that the applicant will generally be required to pay all processing fees payable to the Live Scan operator, including the "rolling fee" for fingerprint rolling and the DOJ. This requirement is necessary to require applicants to pay whatever fee is required by the Live Scan Operator (which can vary depending on whether offered by a private business or local law enforcement or school district) and the DOJ and to allow for changes in the fees set by the California Attorney General's Office (the fee is currently \$49). To ensure that applicants check with the DOJ for the most recent information regarding fingerprint background requirements and Live Scan locations, the Board directs applicants to visit the DOJ's website at: <https://oag.ca.gov/fingerprints>.

### **Adoption of paragraph (C) of subsection (c)(2): Process for providing fingerprints for out-of-state applicants**

Purpose: The proposed subsection describes how applicants residing outside of California who cannot be fingerprinted electronically through the Live Scan service must comply with the fingerprinting requirements. Out-of-state applicants will need to have their fingerprints taken at a law enforcement agency in their state of residence using fingerprint cards and submit two fingerprint cards to the Board, along with a payment for the fees charged by the California Department of Justice and the Federal Bureau of

Investigation (FBI). The payment method would be required to be made either by personal check drawn on a U.S. bank, money order or certified check, payable to the “California Department of Justice”. The subsection provides the Board’s address where fingerprints cards need to be sent so that the Board may process the fingerprints manually through the DOJ.

Rationale: The Board proposes this subsection to provide out-of-state applicants with the information they need to have fingerprints taken and submitted to the Board in compliance with the current requirements for submission of fingerprints for applicants that cannot be fingerprinted electronically through Live Scan. The Board lacks the authority to waive the fingerprint requirements and fees to be paid to the DOJ to meet the DOJ fingerprint processing requirements for this type of applicant (See Underlying Data from the DOJ Website entitled “Applicant Agencies”). To provide a full criminal background check, applicants are required to pay fees for both DOJ and FBI processing through the two agencies’ databases. To ensure that applicants meet all requirements in a form of payment accepted by the DOJ, the Board specifies how payment needs to be addressed (by check, money order or certified check made out to the DOJ) and where to send the payment.

#### **Adoption of paragraph (D) of subsection (c)(2): Resubmission Process**

Purpose: This proposed subsection would specify how and when an applicant’s fingerprints would be rejected and the Board’s current process for resubmitting fingerprints, either by way of Live Scan processes as outlined in the Board’s rejection letter and the resubmission of fingerprints as described under the process in paragraphs (A) or (B) or, if through hard card by submission of their second fingerprint card on their behalf by the Board.

Rationale: Occasionally, applicants will submit fingerprints through either the Live Scan or hard card processes established by the DOJ and they are rejected due to poor print quality (see Underlying Data from DOJ’s website guidance document entitled “Fingerprint Background Checks”). This subsection is necessary to specify that the resubmission process is considered part of the requirements for “furnishing” fingerprints to ensure that the Board can successfully conduct a criminal background search of the applicant through the DOJ’s and FBI’s respective databases. This process includes notice of the rejection of the applicant’s fingerprints and resubmission of the fingerprints either via the hard card method for applicants outlined in paragraph (C) or via Live Scan as specified in the Board’s rejection letter and resubmission via the Live Scan processes outlined in paragraphs (A) and (B).

#### **Adoption of paragraph (E) of subsection (c)(2): Fingerprinting Record Retention and Submission requirements**

Purpose: This proposal would require petitioners for reinstatement to retain a copy of their completed Live Scan form or completed fingerprint cards referenced in paragraphs (A) and (B) or (C), as applicable, and submit it with their Form OMB.7 and all other required information referenced in subsection (a).

Rationale: This requirement is necessary for petitioners for reinstatement (either in-state or out-of-state, as applicable) to show proof of compliance with BPC section 2042's fingerprinting requirement and for consistency with the directives provided to the applicants on the Form OMB.7 (see "Instructions," paragraph 5). The Board adds that such proof must be submitted with their Form OMB.7 to resolve any ambiguity about the timing of submission and the required delivery method. In addition, the Board further requires that such records be submitted with "all other required information referenced in subsection (a)" to ensure a completed submission. This additional reinforcement is necessary to remind petitioners to submit a completed petition package to enable the Board to more expeditiously process their application.

#### **Adoption of subsection (e)**

Purpose: This subdivision was added to specify that fees paid to the Board for the processing and adjudication of the petition as required by this section shall be submitted in the form of a money order, certified check, cashiers' check, or preprinted personal or company check, which shall clearly indicate the name of the petitioner to whom it applies. It would also require that the processing and adjudication of any petition shall commence only after the applicable initial fee specified in subsection (a) has been received, the payment clears the petitioner's bank, and the funds are deposited in the Board's account within 30 days of the check or money order being deposited.

Rationale: These requirements are necessary to provide notice to petitioners, and to specify the acceptable methods for paying the required fees (petition application and adjudication fees). Since the Board does not currently have the ability to process credit card payments for paper applications, this regulation is necessary to avoid confusion about acceptable payment options and specify the only acceptable payment methods for those submitting a paper application, which include payment by money order, certified check, cashier's check or preprinted personal check, payable to the Board. In addition, these payment methods do not subject the Board to additional transaction fees. The requirement that the check or money order include "the name of the petitioner to whom it applies," ensures that the petitioner's payment is not lost and applied to the correct application when being cashiered.

These amendments are also necessary to clarify that the Board will not begin processing a petition application (Form OMB.7) until the application fee has been received, cleared the petitioner's bank, and been deposited in the Board's account

within 30 days (considered sufficient time to assure the Board that it has been paid). This ensures that the Board does not spend resources on petitions for which payment is not secured.

### **Adoption of subsection (f) and subparagraph (1)**

**Purpose:** This subsection was added to specify that if payment is made in accordance with subsection (e), the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements set forth in Section 2307 of the Code or this section, the petitioner shall be provided written notice that the Board has accepted the petition to be set for a hearing. Paragraph (1) would be added to specify the contents of the written notice, which would include:

- (A) the petition has been accepted by the Board to be set for a hearing,
- (B) the matter will be set for a petition hearing before an administrative law judge (ALJ) assigned by OAH upon payment to the Board of the applicable fee required to adjudicate a petition for reinstatement or modification of penalty as set forth in Section 1690; and
- (C) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

**Rationale:** This proposed rulemaking is necessary to add subsection (f) and paragraph (1) of this subsection to provide notice, and to inform, interested parties that if the required payment is made, and the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements of BPC section 2307, and the petition is eligible to be set for hearing through OAH, then the Board shall provide the petitioner written notice that (A) the Board has accepted the petition to be set for a hearing; (B) it will be set for a petition hearing before an administrative law judge assigned by Office of Administrative Hearings (OAH) upon payment to the Board of the applicable nonrefundable fee for adjudication as set forth in CCR section 1690; and (C) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

This proposed text is necessary to inform petitioners that they will receive a written notice from the Board when their petition for penalty relief has been processed by Board staff and is ready to be set for a hearing with OAH, and that the petitioner will have 90 days from the date of the Board's written notice for the payment to cover adjudication costs to clear the bank and be deposited in the Board's account. The Board determined that 90 days was an appropriate time for petitioners to be able to have the adjudication costs clear their bank and be deposited into the Board's account,

while avoiding keeping a petition pending beyond three months for someone who does not intend to proceed to the adjudication phase for their petition for penalty relief. This will assist the Board, the Office of the Attorney General, and OAH in managing workloads.

**Adopt subsection (f)(2)**

**Purpose:** This paragraph would add a definition for “reasonable costs” for the purposes of this section to include the costs charged by the Office of the Attorney General and the Office of Administrative Hearings (OAH) for reviewing, preparing for, and participating in the hearing, and any certified shorthand reporter services related to the preparation of the transcript on the hearing for either a petition for reinstatement or a petition for modification of penalty, as applicable, and costs charged by OAH for the preparation and transmission of the petition decision to the Board after the hearing

**Rationale:** Existing law under BPC section 2307.5 authorizes the Board to establish a fee to be paid by a person seeking a license reinstatement or modification of penalty pursuant to BPC section 2037, which shall not exceed the Board’s “reasonable costs” to process and adjudicate such petition but there is no definition to explain what those costs mean and/or how they are calculated.

The Board proposes to provide such a definition for adjudicating petitions, which includes a list of the costs that it regularly incurs in adjudicating these petitions. These include costs charged by the Office of the Attorney General (“OAG” -- that includes the services of its deputy attorneys general appearing before the Board in accordance with Gov. Code, § 11522) and the Office of Administrative Hearings (OAH) (that provide the services of administrative law judges who oversee these petition hearings, see Bus. & Prof. Code, § 2307). These OAG and OAH costs include reviewing, preparing for, and participating in the hearing. Costs would also include any certified shorthand reporter services related to the preparation of the transcript on the hearing for either a petition for reinstatement or a petition for modification of penalty, as applicable, and costs charged by OAH for the preparation and transmission of the petition decision to the Board after the hearing. In the Board’s experience, all of these services are necessary for the Board to “adjudicate” or render a complete and accurate decision on the issue of whether a petition should be granted or denied in accordance with the criteria specified in BPC section 2307 and are therefore “reasonable costs.”

**Adopt subsection (f)(3)**

**Purpose:** This subsection adds that within 120 days of the date of a petitioner’s hearing on their petition, the Board shall provide the petitioner with a fee payment detailing the reasonable costs (as defined above in subsection (f)(2)), and notice of refund and the

anticipated date when the refund will be issued, if the costs incurred by the Board are less than initially required to be paid adjudicate the petition as specified in subsection (f)(1).

Rationale: These provisions are necessary to provide applicants with advance notice and documentation regarding the final costs to the Board for adjudicating their petition, and to provide an accurate way of documenting the actual costs to the Board of adjudicating each petition according to each individual petition's workload (via a fee payment statement calculated according to CCR section 1690).

Government Code section 13143 authorizes the Board to provide refunds for erroneous or excessive payments. As a result, these provisions are also necessary to provide a method for providing a reduction in fees for those cases where the actual costs incurred by the Board are less than the \$20,000 fee initially charged. To ensure that the Board recovers the fees it earned in processing the petition, Board proposes to provide a fee statement calculating the actual costs and, if applicable, the anticipated date of refund for those applicants that qualify for a fee reduction, if there is a remainder after the Board subtracts its actual costs from the \$20,000 fee charged up front for adjudicating the petition. This process provides government accountability and transparency. Further, it also provides petitioners with additional assurances that fees charged by the Board for adjudication are "reasonable," since they are based on actual costs incurred for adjudicating their petition, rather than estimated costs.

### **Adoption of subsection (g)**

Purpose: This rulemaking proposes to add Subsection (g) to this section to indicate that failure to comply with the requirements of this section shall result in the petition being rejected as incomplete, and states that the Board shall provide written notice of such rejection to the petitioner and the reasons therefore upon making this determination.

Rationale: This proposed rulemaking is necessary to add subsection (g), to advise interested parties that the failure to comply with the requirements of this section will result in the petition being rejected as incomplete. The proposed text is necessary to require the Board to provide written notice to the petitioner if the Board rejects their petition as noncompliant and the reasons for such rejection. This information will provide advance notice of the consequences of failing to comply with the Board's requirements and also will be important to the petitioner to understand their compliance issues in case they choose to submit a new petition for penalty relief.

## **§ 1658. Petitions for Reinstatement of Certificates Restricted or Revoked Due to Mental or Physical Illness**

### **Amend subsection (a)**

Purpose: This proposal would:

- (1) Add the word “surrendered” to list of actions that may qualify a petitioner to file a petition for reinstatement;
- (2) Delete the existing timeframe for filing a petition of sixty (60) days before any meeting of the Board to one hundred and twenty (120) days;
- (3) Add a new requirement that the petition be filed using the form titled “Petition for Penalty Relief OMB.7 (New 11/2025)” and short form reference for ease of use “Form OMB.7), which is incorporated by reference in CCR section 1656; and
- (4) Add a requirement that the filing include the nonrefundable petition for reinstatement application fee or the nonrefundable modification of penalty fee specified in CCR section 1690, whichever is applicable.

Rationale: BPC section 2307 provides that, except under specified circumstances, a person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the Board for reinstatement or modification of penalty, including modification or termination of probation. This proposal would add the word “surrendered” for a more complete list of petitioner types and consistency with BPC section 2307, which allows petitions for reinstatement for a person “whose certificate has been surrendered.”

In the Board’s experience, the current 60-day timeframe for filing a petition with the Board is insufficient. The existing timeframe for filing is therefore proposed to be deleted and replaced with 120 days to ensure staff have sufficient time to confirm that the petition application is complete, conduct a background investigation, review all information, and prepare the meeting materials before an administrative hearing at a board meeting is held.

This proposal adds in CCR section 1658 (a), that a petition for reinstatement of a certificate restricted, surrendered or revoked for mental or physical illness shall be filed using the form titled “Petition for Penalty Relief” OMB. 7 (New 11/2025), incorporated by reference in CCR section 1656 (“Form OMB.7), and the petition shall include the newly established nonrefundable petition for reinstatement or the modification of penalty application fee set forth in CCR section 1690, as applicable. Both fees are proposed to be cross-referenced in subsection (a) to CCR section 1690 respectively to ensure adequate notice to applicants and consistency with the amendments proposed at CCR Section 1690 and as further described in the factual basis for CCR section 1690 below.

**Cross-Reference to the Adoption of “Petition for Penalty Relief OMB.7 (New 11/2025)” (Form OMB.7) in CCR 1656**

Purpose and Rationale: The Board proposes to use one form for petitions for penalty relief, which is incorporated by reference in CCR section 1656. Since both CCR sections 1656 and 1658 use the identical form, the Board hereby incorporates all of the purposes and rationales noted above for incorporating by reference the form and its content listed above in CCR section 1656(a) for this form referenced in CCR section 1658(a).

BPC section 2307 (made applicable to the Board by BPC sections 2451 and 2452) establishes the process for filing a petition before the Board and the time periods before a person whose certificate has been surrendered or revoked or placed on probation may petition the Board for reinstatement of a license. Senate Bill (SB) 815 (Roth, Stats. 2023, Ch. 294) under BPC section 2307.5 also authorizes the Board to establish a fee (proposed to be set in CCR section 1690) to be paid by an individual seeking to reinstate their license or to modify their penalty pursuant to BPC section 2307. Per BPC section 2307.5, the Board is required to adopt regulations to implement these fees.

BPC section 2307(c) also provides:

“The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.”

Existing regulation at CCR 1658 indicates under subdivision (a) that a petition for reinstatement shall be filed at the Board’s office in Sacramento no later than sixty (60) days before any meeting of the Board. However, CCR section 1658 does not prescribe any of the “facts” that the Board may require to effectively investigate the petition, the method of submitting the petition, the requirements for submitting verified recommendations pursuant to BPC section 2307(c), or if any fee is required to process these petitions as authorized by BPC section 2307.5.

To resolve the above-noted issues, the Board proposes adopting Form OMB.7 and the proposed amendments to existing subsections (a) for CCR sections 1656 and 1658. In addition, proposed Form OMB.7 furnishes the Board with information necessary to effectively investigate whether a petition should be granted or denied and to allow the Board to consider the following criteria in accordance with BPC 2307(e):

- (1) all activities of the petitioner since the disciplinary action was taken,
- (2) the offense for which the petitioner was disciplined,
- (3) the petitioner’s activities during the time the certificate was in good standing; and,

(4) the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

Protection of the public is the Board's highest priority per BPC section 2450.1. Therefore, collection of the information contained in Form OMB.7 aids the Board in meeting its public protection mandate by requiring competency, accountability, and integrity in the safe practice of medicine by osteopathic physicians and surgeons.

### **Adopt new subsection (c)**

**Purpose:** To require all petitioners for reinstatement to meet specified fingerprinting requirements as described in subparagraphs (1)-(4) prior to submission of Form OMB.7 referenced in subsection (a). It covers the requirements for using the Live Scan process administered by the California Department of Justice in paragraph (1), steps for in-state applicants in paragraph (2), the steps for out-of-state applicants in paragraph (3), the resubmission process if the first fingerprint card or Live Scan fingerprints are rejected in paragraph (4), and, in paragraph (5) the requirement for a petitioner to retain a copy of their completed Live Scan form or completed fingerprint cards and submit it with their Form OMB.7 and all other required information referenced in subsection (a).

**Rationale:** BPC section 2042 requires this Board to require each applicant to furnish to the Board a full set of fingerprints for purposes of conducting criminal history record checks, which enables the Board to conduct a full background check on all applicants regarding any potential criminal history since the Board's revocation or surrender action was taken. This fingerprinting requirement includes applicants petitioning for reinstatement of a license.

When applying for initial licensure, the Board retains authority to continue receiving criminal offender record information (CORI) in accordance with subdivision (p) of Section 11105 of the Penal Code on its licensees while they are licensed with the Board (including those petitioning for modification of penalty). However, when an agency's purpose for receiving CORI ends -- such as when a licensee retires or is no longer licensed (due to surrender, expiration or revocation of their license) -- the agency must immediately submit a No Longer Interested (NLI) Notification Form (BCIA 8302) to the California Department of Justice. This stops subsequent arrest and disposition notifications to the Board. As a result, this regulation is necessary to implement the requirements for fingerprinting of reinstatement applicants so that the Board can obtain CORI information in compliance with BPC section 2042 and place applicants for reinstatement on notice that this is a condition precedent to submitting the Form OMB.7 to the Board.

### **Adoption of paragraph (1) of subsection (c): Live Scan requirements**

Purpose: The proposed subsection notifies petitioner for reinstatement applicants (applicants) that the fingerprints requested by the Board are to be taken using the Live Scan service, unless the applicant resides out of state and cannot use the Live Scan service, as noted in proposed paragraph (3) of this subsection. Applicants residing in California will have to use the Live Scan service as described in subsection (c)(2).

Rationale: This change is necessary to specify the requirements by the Department of Justice for processing requests for criminal background checks as provided in BPC section 2042 as they relate to Board applicants for reinstatement as an osteopathic physician and surgeon. Live Scan is a system for the inkless, electronic submission of fingerprints and the subsequent automated background checks and responses conducted through the California Department of Justice’s (DOJ) database. Applicants living within the State of California and who are required to complete a criminal history background check by a state agency authorized by law to collect those fingerprints (as the Board is authorized per BPC sections 144 and 2042 and proposed CCR sections 1656 and 1658) must complete the DOJ’s “Request for Live Scan Service” to comply with this eligibility requirement (see Underlying Data from DOJ’s website guidance document entitled “Fingerprint Background Checks”). The Board does not incorporate the DOJ’s form by reference in this regulation as it is not a form that is created by this Board and for which the Board would be able to provide the rationale for each requirement on the form or make any changes to the form in response to public comment it might receive on the contents of the form (see similar approach taken at Cal. Code Regs., tit. 10, § 2034.5 and tit. 16, § 1006). Applicants residing outside of California who cannot be fingerprinted electronically as described in subsection (c)(3) would be excepted from this requirement.

This Live Scan process does not exist in regulation as it applies to the Board’s applicants for reinstatement to practice medicine and the Board receives many questions from regular applicants, particularly out-of-state residents, on the process and procedures for submitting fingerprints through the Live Scan process for this Board. This proposal would add such details to give applicants specific directions for completing this application requirement in accordance with DOJ requirements.

**Adoption of paragraph (2) of subsection (c): In-State Live Scan requirements**

Purpose: The proposed subsection requires petitioner for reinstatement applicants to take a completed Live Scan form to a location that offers the service. The applicant will have to pay all fees charged by the location, including the fees paid to the California Department of Justice, the Federal Bureau of Investigation, and any rolling fee. The subsection also provides a weblink for applicants to check for more information regarding the Department of Justice’s fingerprint background check requirements, Live

Scan locations and current fee information.

Rationale: Consistent with the requirements of the DOJ, the Board proposes to add this paragraph to subsection (c) to provide reinstatement applicants the information they need to obtain fingerprints from a Live Scan location and provide them to the Board, which includes payment of the fingerprint processing fees through the Live Scan system at an approved Live Scan location (see Underlying Data “Fingerprint Background Checks”). The Board specifies that the applicant will generally be required to pay all processing fees payable to the Live Scan operator, including the “rolling fee” for fingerprint rolling and the DOJ. This requirement is necessary to require applicants to pay whatever fee is required by the Live Scan Operator (which can vary depending on whether offered by a private business or local law enforcement or school district) and the DOJ and to allow for changes in the fees set by the California Attorney General’s Office (the fee is currently \$49). To ensure that applicants check with the DOJ for the most recent information regarding fingerprint background requirements and Live Scan locations, the Board directs applicants to visit the DOJ’s website at: <https://oag.ca.gov/fingerprints>.

**Adoption of paragraph (3) of subsection (c): Process for providing fingerprints for out-of-state applicants**

Purpose: The proposed subsection describes how applicants residing outside of California who cannot be fingerprinted electronically through the Live Scan service must comply with the fingerprinting requirements. Out-of-state applicants will need to have their fingerprints taken at a law enforcement agency in their state of residence using fingerprint cards and submit two fingerprint cards to the Board, along with a payment for the fees charged by the California Department of Justice and the Federal Bureau of Investigation (FBI). The payment method would be required to be made either by personal check drawn on a U.S. bank, money order or certified check, payable to the “California Department of Justice”. The subsection provides the Board’s address where fingerprints cards need to be sent so that the Board may process the fingerprints manually through the DOJ.

Rationale: The Board proposes this subsection to provide out-of-state applicants with the information they need to have fingerprints taken and submitted to the Board in compliance with the current requirements for submission of fingerprints for applicants that cannot be fingerprinted electronically through Live Scan. The Board lacks the authority to waive the fingerprint requirements and fees to be paid to the DOJ to meet the DOJ fingerprint processing requirements for this type of applicant (See Underlying Data from the DOJ Website entitled “Applicant Agencies”). To provide a full criminal background check, applicants are required to pay fees for both DOJ and FBI processing through the two agencies’ databases. To ensure that applicants meet all requirements

in a form of payment accepted by the DOJ, the Board specifies how payment needs to be addressed (by check, money order or certified check made out to the DOJ) and where to send the payment.

#### **Adoption of paragraph (4) of subsection (c): Resubmission Process**

**Purpose:** This proposed subsection would specify how and when an applicant's fingerprints would be rejected and the Board's current process for resubmitting fingerprints, either by way of Live Scan processes as outlined in the Board's rejection letter and the resubmission of fingerprints as described under the process in paragraphs (1) or (2) or, if through hard card by submission of their second fingerprint card on their behalf by the Board.

**Rationale:** Occasionally, applicants will submit fingerprints through either the Live Scan or hard card processes established by the DOJ and they are rejected due to poor print quality (see Underlying Data from DOJ's website guidance document entitled "Fingerprint Background Checks"). This subsection is necessary to specify that the resubmission process is considered part of the requirements for "furnishing" fingerprints to ensure that the Board can successfully conduct a criminal background search of the applicant through the DOJ's and FBI's respective databases. This process includes notice of the rejection of the applicant's fingerprints and resubmission of the fingerprints either via the hard card method for applicants outlined in paragraph (3) or via Live Scan as specified in the Board's rejection letter and resubmission via the Live Scan processes outlined in paragraphs (1) and (2).

#### **Adoption of paragraph (5) of subsection (c): Fingerprinting Record Retention and Submission requirements**

**Purpose:** This proposal would require petitioners for reinstatement to retain a copy of their completed Live Scan form or completed fingerprint cards referenced in paragraphs (1) and (2) or (3), as applicable, and submit it with their Form OMB.7 and all other required information referenced in subsection (a).

**Rationale:** This requirement is necessary for petitioners for reinstatement (either in-state or out-of-state, as applicable) to show proof of compliance with BPC section 2042's fingerprinting requirement and for consistency with the directives provided to the applicants on the Form OMB.7 (see "Instructions," paragraph 5). The Board adds that such proof must be submitted with their Form OMB.7 to resolve any ambiguity about the timing of submission and the required delivery method. In addition, the Board further requires that such records be submitted with "all other required information referenced in subsection (a)" to ensure a completed submission. This additional reinforcement is necessary to remind petitioners to submit a completed petition package to enable the Board to more expeditiously process their application.

### **Adoption of subsection (d)**

**Purpose:** This subdivision was added to specify that fees paid to the Board for the processing and adjudication of the petition as required by this section shall be submitted in the form of a money order, certified check, cashiers' check, or preprinted personal or company check, which shall clearly indicate the name of the petitioner to whom it applies. It would also require that the processing and adjudication of any petition shall commence only after the applicable initial fee specified in subsection (a) has been received, the payment clears the petitioner's bank, and the funds are deposited in the Board's account within 30 days of the check or money order being deposited.

**Rationale:** These requirements are necessary to provide notice to petitioners, and to specify the acceptable methods for paying the required fees (petition application and adjudication fees). Since the Board does not currently have the ability to process credit card payments for paper applications, this regulation is necessary to avoid confusion about acceptable payment options and specify the only acceptable payment methods for those submitting a paper application, which include payment by money order, certified check, cashier's check or preprinted personal check, payable to the Board. In addition, these payment methods do not subject the Board to additional transaction fees. The requirement that the check or money order include "the name of the petitioner to whom it applies," ensures that the petitioner's payment is not lost and applied to the correct application when being cashiered.

These amendments are also necessary to clarify that the Board will not begin processing a petition application (Form OMB.7) until the application fee has been received, cleared the petitioner's bank, and been deposited in the Board's account within 30 days (considered sufficient time to assure the Board that it has been paid). This ensures that the Board does not spend resources on petitions for which payment is not secured.

### **Adoption of subsection (e) and subparagraph (1)**

**Purpose:** This subsection was added to specify that if payment is made in accordance with subsection (d), the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements set forth in Section 2307 of the Code or this section, the petitioner shall be provided written notice that the Board has accepted the petition to be set for a hearing. Paragraph (1) would be added to specify the contents of the written notice, which would include:

- (A) the petition has been accepted by the Board to be set for a hearing,
- (B) the matter will be set for a petition hearing before an administrative law judge

(ALJ) assigned by OAH upon payment to the Board of the applicable fee required to adjudicate a petition for reinstatement or modification of penalty as set forth in Section 1690; and

(C) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

Rationale: This proposed rulemaking is necessary to add subsection (e) and paragraph (1) of this subsection to provide notice, and to inform, interested parties that if the required payment is made, and the petition is not withdrawn by the petitioner or rejected by the Board for failing to meet the requirements of BPC section 2307, and the petition is eligible to be set for hearing through OAH, then the Board shall provide the petitioner written notice that (A) the Board has accepted the petition to be set for a hearing; (B) it will be set for a petition hearing before an administrative law judge assigned by Office of Administrative Hearings (OAH) upon payment to the Board of the applicable nonrefundable fee for adjudication as set forth in CCR section 1690; and (C) payment must be made and cleared for deposit of funds with the Board within 90 days of the date the Board sent the written notification of acceptance of the petition to be set for hearing.

This proposed text is necessary to inform petitioners that they will receive a written notice from the Board when their petition for penalty relief has been processed by Board staff and is ready to be set for a hearing with OAH, and that the petitioner will have 90 days from the date of the Board's written notice for the payment to cover adjudication costs to clear the bank and be deposited in the Board's account. The Board determined that 90 days was an appropriate time for petitioners to be able to have the adjudication costs clear their bank and be deposited into the Board's account, while avoiding keeping a petition pending beyond three months for someone who does not intend to proceed to the adjudication phase for their petition for penalty relief. This will assist the Board, the Office of the Attorney General, and OAH in managing workloads.

### **Adopt subsection (e)(2)**

Purpose: This paragraph would add a definition for "reasonable costs" for the purposes of this section to include the costs charged by the Office of the Attorney General and the Office of Administrative Hearings (OAH) for reviewing, preparing for, and participating in the hearing, and any certified shorthand reporter services related to the preparation of the transcript on the hearing for either a petition for reinstatement or a petition for modification of penalty, as applicable, and costs charged by OAH for the preparation and transmission of the petition decision to the Board after the hearing.

Rationale: Existing law under BPC section 2307.5 authorizes the Board to establish a fee to be paid by a person seeking a license reinstatement or modification of penalty pursuant to BPC section 2037, which shall not exceed the Board’s “reasonable costs” to process and adjudicate such petition but there is no definition to explain what those costs mean and/or how they are calculated.

The Board proposes to provide such a definition for adjudicating petitions, which includes a list of the costs that it regularly incurs in adjudicating these petitions. These include costs charged by the Office of the Attorney General (OAG” -- that includes the services of its deputy attorneys general appearing before the Board in accordance with Gov. Code, § 11522) and the Office of Administrative Hearings (OAH) (that provide the services of administrative law judges who oversee these petition hearings, see Bus. & Prof. Code, § 2307). These OAG and OAH costs include reviewing, preparing for, and participating in the hearing. Costs would also include any certified shorthand reporter services related to the preparation of the transcript on the hearing for either a petition for reinstatement or a petition for modification of penalty, as applicable, and costs charged by OAH for the preparation and transmission of the petition decision to the Board after the hearing. In the Board’s experience, all of these services are necessary for the Board to “adjudicate” or render a complete and accurate decision on the issue of whether a petition should be granted or denied in accordance with the criteria specified in BPC section 2307 and are therefore “reasonable costs.”

**Adopt subsection (e)(3)**

Purpose: This subsection adds that within 120 days of the date of a petitioner’s hearing on their petition, the Board shall provide the petitioner with a fee payment detailing the reasonable costs (as defined above in subsection (f)(2)), and notice of refund and the anticipated date when the refund will be issued, if the costs incurred by the Board are less than initially required to be paid adjudicate the petition as specified in subsection (e)(1).

Rationale: These provisions are necessary to provide applicants with advance notice and documentation regarding the final costs to the Board for adjudicating their petition, and to provide an accurate way of documenting the actual costs to the Board of adjudicating each petition according to each individual petition’s workload (via a fee payment statement calculated according to CCR section 1690).

Government Code section 13143 authorizes the Board to provide refunds for erroneous or excessive payments. As a result, these provisions are also necessary to provide a method for providing a reduction in fees for those cases where the actual costs incurred by the Board are less than the \$20,000 fee initially charged. To ensure that the Board recovers the fees it earned in processing the petition, Board proposes to provide a fee statement calculating the actual costs and, if applicable, the anticipated date of refund

for those applicants that qualify for a fee reduction, if there is a remainder after the Board subtracts its actual costs from the \$20,000 fee charged up front for adjudicating the petition. This process provides government accountability and transparency. Further, it also provides petitioners with additional assurances that fees charged by the Board for adjudication are “reasonable,” since they are based on actual costs incurred for adjudicating their petition, rather than estimated costs.

### **Adoption of subsection (f)**

**Purpose:** This rulemaking proposes to add Subsection (f) to this section to indicate that failure to comply with the requirements of this section shall result in the petition being rejected as incomplete, and states that the Board shall provide written notice of such rejection to the petitioner and the reasons therefore upon making this determination.

**Rationale:** This proposed rulemaking is necessary to add subsection (f), and to advise interested parties that the failure to comply with the requirements of this section will result in the petition being rejected as incomplete. The proposed text is necessary to require the Board to provide written notice to the petitioner if the Board rejects their petition as noncompliant and reasons therefore. This information will provide advance notice of the consequences of failing to comply with the Board’s requirements and also will be important to the petitioner to understand their compliance issues in case they choose to submit a new petition for penalty relief.

## **Article 17. Fees**

### **§ 1690. Fees.**

**Fee increases:** The purpose of amending or adding proposed fees to subsections (a), (b), (f), (g), (h), (j), (k), (l), and (m) is to increase the fees charged to osteopathic physician and surgeon applicants in an amount necessary to better represent the actual cost of processing applications, renewals, and other licensing items. The proposed regulations would increase the Board’s application, renewal and delinquency fees to the statutory maximums as outlined below as well as adopt new fees to recover costs for providing administrative services, as specified below.

The Board is a special fund entity, funded entirely by license fees and disciplinary action assessments, and has historically maintained a health fund balance reserve. However, operational costs, including licensing and enforcement-related costs, have increased in recent years, and actual revenues have simultaneously been lower than projected, which has caused the Board’s fund to become structurally imbalanced with projected revenues less than expenditures.

The structural imbalance is primarily due to an increase in costs related to the operations of the Board and an increase in licensing and enforcement-related costs including, Attorney General and Office of Administrative Law costs related to disciplinary actions. The Board is currently projected to become insolvent in fiscal year (FY) 2028-29, if no action is taken and the Board fully expends its appropriation. Unless additional revenue is raised, the Fund will continue to spend more than it brings in and will become insolvent.

Additionally, future unknown events, such as a large enforcement case, could further deplete the Fund, adding additional pressure to the Board's ability to meet its mandate. This proposal is necessary to help ensure the Board has additional resources to maintain the highest priority of consumer safety and protection and to help to recover costs for administration and enforcement of the Board's regulatory responsibilities over the licensees who practice osteopathic medicine in California.

The Board has conducted a cost analysis of the Board's current fee structure and program administration to justify the increases to these fees (see Underlying Data Fiscal Impact (Workload Costs) tables). The Board's current operating costs exceed the revenue being collected and the Board is using its reserve fund to meet its structural imbalance. This proposed regulatory change will ensure the Board will be able to meet future expenses while incrementally replenishing the reserve fund. The proposed amendments to the Board's fee schedule will help to reduce the Board's structural budget imbalance in the near future, recover costs, and allow the Board additional time to continue operations and analyze future operational needs, which should allow the Board enough time to seek authority to increase statutory fee levels to completely eliminate the structural imbalance. In the interim, the Board is proposing the following increases and new fees to continue operations for the near future (see Underlying Data).

Subsection (a): Physician and surgeon's original certificate application fee increased from \$200 to \$400

Rationale: A workload analysis of administrative costs was completed for the justification to increase the fee for a physician and surgeon's original certificate application fee from \$200 to \$400. The fees charged by the Board are required to be sufficient to support the functions or operational needs of the Board. According to the State of California's State Administrative Manual ("SAM" - which applies to all state agencies and is published by the Department of General Services) SAM section 9210 provides that it is state policy for departments to recover full costs whenever goods or services are provided to others. Section 9210 of the SAM specifies that full costs include "all costs attributable directly to the activity plus a fair share of indirect costs

including central service costs that can be reasonably attributed to the good or service provided.” The analysis reflects the costs for processing the applications are \$518; however, the fees the Board may charge for the recovery of its costs for the applications are capped at \$400 per BPC section 2455.

Subsection (b): Physician and surgeon’s reciprocity certificate application fee increased from \$200 to \$400

Rationale: The Board incorporates the analysis provided above for this fee increase from subsection (a) above. A workload analysis of administrative costs justified the increase in this fee to \$400 since the processing is the same as processing for an original applicant (see Underlying Data).

Subsection (f): Biennial Inactive Renewal fee increases from \$300 to \$399

Rationale: This proposal would also increase the Biennial Inactive Certificate Renewal fee from \$300 to \$399. The workload analysis reflects that the Board’s workload costs for processing the application and issuing the certificate are \$400 (see Underlying Data) but the Board is required to levy a fee that is “less” than what is charged for an active license per BPC section 2455(c), which is currently set at \$400. As a result, the Board is proposing to set the fee at \$399 to recover some of its costs consistent with BPC section 2455’s requirements.

Subsection (g): Delinquent Certificate Renewal fee increases from \$100 to \$200.

Rationale: This proposal would also increase the existing Delinquent Certificate (the word “Certificate” would be added to more clearly identify the license type and for consistency in terminology with other regulations) Renewal fee from \$100 to \$200, which is half the renewal fee, but no greater than \$200, as authorized by BPC section 2455(d). The Board proposes to “do the math” to provide greater notice of the delinquency fee amount for affected licensees.

Subsection (h): Adopt a new “Delinquent Inactive Certificate Renewal Fee” to distinguish from active delinquency fee above and set new fee at \$199.50

Rationale: A new subsection (h) would be added to set a new “Delinquent Inactive Certificate Renewal Fee” at \$199.50. This amount is set in compliance with BPC section 2455(c) and (d) which requires the fee to be less than that charged for active biennial licenses and “half” of the fee charged for renewal (currently proposed to be set at \$399).

The Board proposes to “do the math” to provide greater notice of the delinquency fee amount for affected inactive licensees.

Subsection (h) is renumbered to (i) to accommodate the addition of the new delinquent inactive certificate renewal fee as described above.

Subsection (j): “New” Subsection (j) is added to establish the Retired License Application Fee as \$200.

Rationale: BPC section 464(b)(4) authorizes the Board to “establish an appropriate application fee for a retired license to cover the reasonable regulatory cost of issuing a retired license.” As noted above, this fee is based upon a workload analysis of the Board’s costs of processing the Application for Retired License (OMB.31) (see Underlying Data and proposed to be added at CCR section 1648 as explained above) and is necessary for the Board to recover its reasonable costs in accordance with the authority granted by the Board by BPC section 464.

Subsection (k): New Subsection (k) is added to establish the Application to Restore Retired License to Active Status (OMB.32) processing fee as \$400.

Rationale: BPC section 464(5)(A) authorizes the Board to require the retired license holder to “pay a fee established by statute or regulation.” As noted above, this fee is based upon a workload analysis of the Board’s costs of processing the Form OMB.32 (see Underlying Data and proposed to be added at CCR section 1648 as explained above) and is necessary for the Board to recover its reasonable costs in accordance with the authority granted by the Board by BPC section 464.

Subsection (l): New Petition for Reinstatement application fee set at \$2800

Rationale: Subsection (l) is added to establish the Petition for Reinstatement application fee (proposed to be added as explained above in CCR sections 1656 and 1658) as \$2800. The authority to establish a fee is pursuant to the implementation of SB 815 (Roth, Stats. 2023, Ch. 294) enacted at BPC section 2307.5 which states, in part: “(b) The fee established shall not exceed the board’s reasonable costs to process and adjudicate a petition submitted pursuant to Section 2307.” As noted above, this fee is based upon a workload analysis of the Board’s costs of processing the petition and to adjudicate the petition. This fee was determined based on the amount of time it takes for staff to complete the required tasks to process such petitions, multiplied by the hourly rate for each staff position involved in the tasks (see Underlying Data). This fee

is necessary for the Board to recover its reasonable costs in accordance with the authority granted by the Board by BPC section 2307.5. Historically, those individuals who filed petitions for penalty relief with the Board have historically not had to directly bear any of these costs.

Subsection (m): New Petition for Modification of Penalty application fee set at \$1500

Rationale: New Subsection (m) is added to establish the Petition for Modification of Penalty application fee (proposed to be added as explained above in CCR section 1656) as \$1500. The authority to establish a fee is pursuant to the authority established with the implementation of SB 815, enacted by BPC section 2307.5 which states, in part: “(b) The fee established shall not exceed the board’s reasonable costs to process and adjudicate a petition submitted pursuant to Section 2307.” As noted above, this fee is based upon a workload analysis of the Board’s costs of processing the petition and to adjudicate the petition. This fee was determined based on the amount of time it takes for staff to complete the required tasks to process such petitions, multiplied by the hourly rate for each staff position involved in the tasks (see Underlying Data). This fee is necessary for the Board to recover its reasonable costs in accordance with the authority granted by the Board by BPC section 2307.5. Historically, those individuals who filed petitions for penalty relief with the Board have historically not had to directly bear any of these costs.

Subsection (n): Add Fee Required to Adjudicate a Petition for Reinstatement or Modification of Penalty per Sections 1656 or 1658 to be set at \$20,000 unless the petitioner is entitled to a decrease in fees as provided in subsection (o), in which case the final fee to adjudicate a petition shall be calculated as provided in that subsection.

Rationale for \$20,000 Fee

The authority to establish a fee is pursuant to the implementation of SB 815 (Roth, Stats. 2023, Ch. 294) enacted at BPC section 2307.5 which states, in part: “(b) The fee established shall not exceed the board’s reasonable costs to process and adjudicate a petition submitted pursuant to Section 2307.” The process to evaluate and consider each petition currently involves unreimbursed Board, Attorney General’s Office (AGO), Office of Administrative Hearings (OAH), and court reporters' staff time and results in substantial costs to the Board. The Board’s costs for AGO and OAH costs relating to petitions for penalty relief between Fiscal Years 2023-24 – 2025-26 the following average costs apply:

Average cost for Board staff time to process a petition for modification or early

termination of probation: \$1,522.

Average cost for Board staff time to process a petition for reinstatement following a revocation or a stipulated surrender to settle a disciplinary action: \$2,817.

Average cost for AGO to litigate a petition for penalty relief: \$12,805.

Average cost of OAH to hold a hearing on a petition for penalty relief and issue a proposed decision: \$6,514.

Average cost of Court Reporter including preparing transcript of hearing: \$1,125.

Total average cost for a petition for penalty relief to go to hearing: \$20,444  
(\$12,805 for AGO costs + \$6,514 for OAH costs + \$1,125 Court Reporter costs).

Significantly, those individuals who filed petitions for penalty relief with the Board have historically not had to directly bear any of these costs. Senate Bill 815 (Roth, Chapter 294, Statutes of 2023) added Business and Professions Code section 2307.5 to the Medical Practice Act, giving the Board the authority to establish a fee for petitions for penalty relief. Taking into consideration the foregoing, the average cost for adjudicating a petition for penalty relief is \$20,444 (see Underlying Data). The Board proposes to round down the number for ease of administration while collecting reimbursement for most of the costs to adjudicate these petitions up front.

Rationale possible fee reduction: Government Code section 13143 authorizes the Board to provide refunds for erroneous or excessive payments. To ensure accuracy in the fee amounts charged and to confirm with petitioners that the fees are reasonable and based on actual costs incurred, the Board proposes a process to examine whether the petitioner's payment was excessive and provide for a decrease in the \$20,000 fee charged as provided in subsection (o), in which case the final fee to adjudicate a petition would be calculated as provided in that subsection (see explanation and analysis below). This provision is necessary to provide notice of a sliding scale of the final adjudication fees based on actual costs in accordance with the requirements of subsection (o) and the process and procedures set forth in CCR sections 1656(f)(3) and 1658(e)(3) (for providing an invoice and notice of a refund in the event the actual costs are less than \$20,000).

Subsection (o): Add provision that specifies: In accordance with sections 1656 and 1658, the Board shall provide each petitioner an itemized invoice that shows the initial determination by the Board of the reasonable costs for adjudicating their petition expressed in a total dollar value number. If the total dollar value number for the Board's

reasonable costs is less than the amount set forth in subsection (n), then the final fee required to adjudicate a petition shall be reduced to that total value number and reflected in the invoice provided to the petitioner pursuant to sections 1656 or 1658, as applicable.

**Rationale:** This provision is necessary to provide a method for calculating and providing notice to affected applicant petitioners of the actual costs the Board is charging for the “reasonable costs” of adjudicating their petition. The Board proposes that the determination be based upon the total “reasonable costs” as defined in proposed CCR sections 1656 and 1658, which is the most accurate way for the Board to determine its costs for processing and review as it is based upon actual expenses allocated to the Board for these functions. If this total expense amount is less than the amount charged up front in subsection (n) (\$20,000), then the final fee required to adjudicate the petition would be reduced to the actual costs as set forth in an invoice to the petitioner. Such fee reduction would be provided via refund as provided in CCR Sections 1656 and 1658 (whichever type of petition applies in the given case) and as cross-referenced in this section. This provides a simple way for petitioners to receive notice and understand the actual costs to adjudicate their petition for reinstatement or modification of penalty (via detailed invoice) and how such costs will be calculated.

### **Underlying Data**

1. Agenda, Relevant Meeting Materials and Minutes from August 15, 2024, Board Meeting
2. Agenda, Relevant Meeting Materials and Minutes from the August 14, 2025, Board Meeting
3. Fiscal Impact Workload Costs (Tables) for:
  - (A) Physician and Surgeon Original or Reciprocity Application Fee,
  - (B) Physician and Surgeon Biennial License or Renewal Active Fee,
  - (C) Physician and Surgeon Biennial Inactive Certificate Fee,
  - (D) Physician and Surgeon Retired License Status,
  - (E) Physician and Surgeon Application to Restore Retired License to Active,
  - (F) Petition for Reinstatement (Application Processing Fee)
  - (G) Petitions for Modification of Penalty (Application Processing Fee); and,
  - (H) Petition for Penalty Relief Costs (Fee to Adjudicate Petition).
4. [AB 2859](#) (Low, Stats. 2016, Ch 473)
5. [Assembly Floor Analysis of AB 2859, dated 8/24/16](#)
6. [SB 815](#) (Roth, Stats. 2023, Ch. 294)

7. [Senate Committee on Business, Professions and Economic Development Analysis of SB 815, dated April 24, 2023](#)
8. Agenda, Relevant Meeting Materials and Amended Teleconference Minutes from the November 13, 2025 Board meeting
9. Judicial Council of California’s “Uniform Bail and Penalty Schedules”, 2025 edition (Revised)
10. The California Department of Justice’s website guidance document entitled “Fingerprint Background Checks” (also available at <https://www.oag.ca.gov/fingerprints>)
11. The California Department of Justice’s website guidance document entitled “Applicant Agencies” (also available at: <https://oag.ca.gov/fingerprints/agencies>)

**FISCAL IMPACT ESTIMATES:**

The proposed regulations increase and add (new) various Board fees as follows:

<b>Osteopathic Medical Board of CA Fees</b>				
CCR Section	Type	Current Fee	Proposed Fee*	Incremental Increase
1690 (a)	Original Certificate Application	\$200	\$400	\$200
1690 (b)	Reciprocity Certificate Application	\$200	\$400	\$200
1690 (f)	Biennial Renewal Inactive Certificate	\$300	\$399	\$99
1690 (g)	Delinquent Certificate Renewal	\$100	\$200	\$100
1690 (h)	Delinquent Inactive Certificate Renewal	\$100	\$199.50	\$100
1690 (i)*	Retired License Application	N/A	\$200	\$200
1690 (k)*	Application to Restore Retired License to Active	N/A	\$400	\$400
1690 (l)*	Petition for Reinstatement Application	N/A	\$2,800	\$2,800
1690 (m)*	Petition for Modification Application	N/A	\$1,500	\$1,500
1690 (n)*	Reinstatement/Modification Adjudication	N/A	\$20,000	\$20,000

\*New

**Workload Costs:** The Board already administers the fee types currently being assessed, including the delinquent inactive certificate renewal fee and will (only) incur workload and costs for the newly proposed fee types. The Board estimates the regulations will result in additional workload costs ranging from approximately \$147,000 to \$191,000 and up to \$1.68 million over a ten-year period as follows:

<b>Osteopathic Medical Board of CA Fees - Fiscal Impact (Workload Costs)</b>													
Fee Type	Costs	Applicants Per Year	Years Ongoing <sup>1</sup>										
			1	2	3	4	5	6	7	8	9	10	Total
Retired License Application	\$234	44	\$10,296	\$10,605	\$10,923	\$11,251	\$11,588	\$11,936	\$12,294	\$12,663	\$13,043	\$13,434	\$118,032
Application to Restore Retired License to Active	\$502	4	\$2,008	\$2,068	\$2,130	\$2,194	\$2,260	\$2,328	\$2,398	\$2,470	\$2,544	\$2,620	\$23,019
Petition for Reinstatement Application	\$2,817	2	\$5,634	\$5,803	\$5,977	\$6,156	\$6,341	\$6,531	\$6,727	\$6,929	\$7,137	\$7,351	\$64,587
Petition for Modification Application	\$1,522	4	\$6,088	\$6,271	\$6,459	\$6,653	\$6,852	\$7,058	\$7,269	\$7,487	\$7,712	\$7,943	\$69,792
Penalty Relief Adjudication <sup>2</sup>	\$20,444	6	\$122,664	\$126,344	\$130,134	\$134,038	\$138,059	\$142,201	\$146,467	\$150,861	\$155,387	\$160,049	\$1,406,205
<b>Total Costs:</b>			<b>\$146,690</b>	<b>\$151,091</b>	<b>\$155,623</b>	<b>\$160,292</b>	<b>\$165,101</b>	<b>\$170,054</b>	<b>\$175,156</b>	<b>\$180,410</b>	<b>\$185,823</b>	<b>\$191,397</b>	<b>\$1,681,636</b>

<sup>1</sup>Includes three percent annual growth factor

<sup>2</sup>Attorney General, Office of Administrative Hearings & Court Reporters

Additionally, the Board will incur one-time information technology workload costs of \$600 to update and post three forms on the Board’s website.

**Revenues:** The Board estimates revenues of approximately \$415,000 per year and up to \$4.15 million over a ten-year period as follows:

Osteopathic Medical Board of CA Fees - Fiscal Impact (Revenues)													
Fee Type	Fee Amount	Applicants Per Year	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Original or Reciprocity Certificate Application	\$200	1,259	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$2,518,000
Biennial Renewal Inactive Certificate	\$99	211	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$208,890
Delinquent Certificate Renewal	\$100	19	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$19,000
Delinquent Inactive Certificate Renewal	\$100	3	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$3,000
Retired License Application	\$200	44	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$88,000
Application to Restore Retired License to Active	\$400	4	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$16,000
Petition for Reinstatement Application	\$1,800	2	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$36,000
Petition for Modification Application	\$1,500	4	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$60,000
Penalty Relief Adjudication <sup>2</sup>	\$20,000	6	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$1,200,000
<b>Total Revenues:</b>			<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$414,889</b>	<b>\$4,148,890</b>

<sup>2</sup>Attorney General, Office of Administrative Hearings & Court Reporters

**Other:** The Department of Justice (DOJ) receives \$49 per fingerprint background check of which \$17 is passed onto the Federal Bureau of Investigations (FBI). The Board projects up to six fingerprint background checks will be completed per year, which results in revenues of \$192 to DOJ and \$102 to the FBI.

The DOJ and FBI workload costs are unknown, and the Board does not have a fiscal workload cost estimate at this time.

**BUSINESS IMPACT:**

The Board has made the initial determination that the proposed regulations may have an economic impact on businesses, specifically, the Board’s licensees and applicants. This determination is based upon the following facts. The proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, because the fee increases and proposed fees are considered to be minor compared to the income of most applicants and licensees in this profession (see incremental increases noted above in the “Fiscal Impact Estimates” section).

**Economic Impact Assessment:**

This Board has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposed fees are anticipated to have minimal impact on businesses because the incremental fee increases and proposed new fees are considered to be minor compared to the income of most applicants and licensees in this profession.
- It will not create new businesses or eliminate existing businesses within the State of California because the proposed fees are anticipated to have minimal impact on businesses because the incremental fee increases and proposed new fees are

considered to be minor compared to the income of most applicants and licensees in this profession.

- It will not affect the expansion of businesses currently doing business within the State of California because the incremental fee increases and proposed new fees are considered to be minor compared to the income of most applicants and licensees in this profession.

The regulations will increase current fee types or add new fee types as follows:

<b>Osteopathic Medical Board of CA Fees</b>				
CCR Section	Type	Current Fee	Proposed Fee*	Incremental Increase
1690 (a)	Original Certificate Application	\$200	\$400	\$200
1690 (b)	Reciprocity Certificate Application	\$200	\$400	\$200
1690 (f)	Biennial Renewal Inactive Certificate	\$300	\$399	\$99
1690 (g)	Delinquent Certificate Renewal	\$100	\$200	\$100
1690 (h)	Delinquent Inactive Certificate Renewal	\$100	\$199.50	\$100
1690 (i)*	Retired License Application	N/A	\$200	\$200
1690 (k)*	Application to Restore Retired License to Active	N/A	\$400	\$400
1690 (l)*	Petition for Reinstatement Application	N/A	\$2,800	\$2,800
1690 (m)*	Petition for Modification Application	N/A	\$1,500	\$1,500
1690 (n)*	Reinstatement/Modification Adjudication	N/A	\$20,000	\$20,000

\*New

The regulations are estimated to result in additional costs of approximately \$415,000 per year and up to \$4.15 million over a ten-year period as follows:

<b>Osteopathic Medical Board of CA Fees - Economic Impact (Costs)</b>														
Fee Type	Costs	Applicants Per Year	Years Ongoing										Total	
			1	2	3	4	5	6	7	8	9	10		
Original or Reciprocity Certificate Application	\$200	1,259	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$251,800	\$2,518,000
Biennial Renewal Inactive Certificate	\$99	211	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$20,889	\$208,890
Delinquent Certificate Renewal	\$100	19	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$1,900	\$19,000
Delinquent Inactive Certificate Renewal	\$100	3	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$300	\$3,000
Retired License Application	\$200	44	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$8,800	\$88,000
Application to Restore Retired License to Active	\$400	4	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$1,600	\$16,000
Petition for Reinstatement Application	\$1,800	2	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$3,600	\$36,000
Petition for Modification Application	\$1,500	4	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$60,000
Fingerprint Background Check <sup>1</sup>	\$75	6	\$450	\$450	\$450	\$450	\$450	\$450	\$450	\$450	\$450	\$450	\$450	\$4,500
Penalty Relief Adjudication <sup>2</sup>	\$20,000	6	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$1,200,000
<b>Total Costs:</b>			<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$415,339</b>	<b>\$4,153,390</b>

<sup>1</sup>Fingerprint (\$75); Vendor (\$26); Dept. of Justice (\$32); Federal Bureau of Investigations (\$17)

<sup>2</sup>Attorney General, Office of Administrative Hearings & Court Reporters

The Board notes, any retired licensee opting to restore their license to active status may be required to complete up to 50 hours of continuing education (CE) coursework with estimated costs of \$500 to comply. The Board estimates up to two individuals may need to fulfill the CE requirement, which results in additional costs of \$1,000 per year.

It is difficult to determine the amount of CE tuition fee revenues impacting California businesses because CE coursework can be completed online through an out-of-state provider. As a result, the Board does not have an estimate of CE tuition fee revenues impacting the state at this time.

The Board further notes, \$26 of the fingerprint background check costs (\$75) will be retained by the local business vendor. The Board estimates up to six fingerprint checks will be completed per year, which results in annual revenues of approximately \$156 for these businesses.

### Benefits of Regulation and Effects on Worker Safety and the State's Environment

This regulatory proposal benefits the health and welfare of California residents because proposed amendments to the Board's fee schedule will help to reduce the Board's structural budget imbalance, recover costs, and allow the Board additional time to seek legislative changes before insolvency, which allows the Board enough time to seek authority to increase statutory fee levels to eliminate the structural imbalance. The proposed fee increases will help to reduce the structural imbalance in the short term and help the Board to recover its administrative costs to ensure the Board has funds to carry out its consumer protection mandate in the near future.

Changes to the Board's renewal processes would strengthen oversight and provide greater assurances of the accuracy, completeness, and timeliness of applicant submissions. Additionally, the proposal provides clear and consistent requirements for renewal while making specific submission standards for the Board.

This proposal would also establish a consistent and simple process for obtaining retired license status and would eliminate barriers for those who wish to retire and have the option of placing their license in a retired status.

Establishing processes for petitioning for reinstatement or modification of penalty will further the Board's mission of consumer protection by preserving the Board's time and financial resources through adding a form to apply for penalty relief to expedite processing and establishing an application fee and also a fee to adjudicate a petition for reinstatement or modification of penalty, which would be paid by individuals seeking to reinstate their license or modify or terminate their order of probation early. These processes will also help ensure that the Board can more effectively determine whether a physician may be reinstated to practice with safety to the public while ensuring the Board recovers its administrative costs for the services provided.

This regulatory proposal does not affect workers' safety or the state's environment because the proposed regulations do not relate to worker safety or the 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 regulation 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.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

### **Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however, the Board welcomes comments from the public.