

DEPARTMENT OF CONSUMER AFFAIRS
Title 16. OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

PROPOSED REGULATORY LANGUAGE

Continuing Education Requirements and Citations and Fines

The amendment format is as follows: Existing language remains unchanged; proposed changes to regulation text are indicated in single underline for additions and single ~~strike through~~ for deletions.

The Osteopathic Medical Board of California hereby proposes to amend its regulations in Sections 1635, 1636, 1638,1641, 1646, 1659.30, 1659.31, 1659.32, 1659.33, 1659.34 and 1659.35, and repeal Sections 1639 and 1640 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

§1635. Required Continuing Medical Education-(CME).

(a) Each osteopathic physician and surgeon submitting the tax and registration fee shall submit satisfactory proof to the Board of ongoing compliance with the provisions of this article at the times specified herein.

(b) ~~Commencing January 1, 1989, a~~ As a condition of renewal, each osteopathic physician and surgeon shall complete 150 hours within a three-year period shall complete the continuing medical education (CME) requirements set forth in Section 2454.5 of the Code and this section during the two years immediately preceding their license expiration date, unless otherwise provided in this section or a waiver is obtained as provided in Section 1637. to satisfy the CME requirement; †This three-two-year period is defined as the “CME requirement period.” Each osteopathic physician and surgeon shall provide satisfactory documentation of their CME completion or exemption to the Board as specified in Section 1636.

(c) ~~The requirement of 150 hours during the three-year CME requirement period shall include a minimum of 60 hours of CME in Category 1-A or 1-B defined by the American Osteopathic Association (AOA). The balance of the CME requirement of 90 hours may consist of CME as defined by either the American Osteopathic Association (AOA) or the American Medical Association (AMA) and may be completed within the entire three-year CME requirement period.~~ CME courses shall also meet the following criteria to be acceptable:

(1) Any CME course that includes a direct patient care component and is offered by a CME provider located in this state shall contain curriculum that includes cultural and

linguistic competency and an understanding of implicit bias in the practice of medicine as provided in Section 2190.1 of the Code. "Direct patient care" shall have the meaning as set forth in paragraph (2) of subsection (f).

(2) Any CME courses taken that meet the criteria in Section 2190.15 of the Code shall not together comprise more than 15 hours of the total hours of CME completed by an osteopathic physician and surgeon to satisfy the continuing educational requirement established by Section 2454.5 of the Code.

(d) ~~Effective January 1, 1989, the three-year CME period shall commence for those licensed on or before January 1, 1989. For those osteopathic physicians and surgeons licensed subsequent to on or after January 1, 1989~~2023, the initial CME requirement period shall ~~commence their three-year CME requirement period on a prorata basis commencing the first full calendar year subsequent to initial licensure~~shall be from the date of initial licensure to the first license expiration date. Subsequent ~~three~~two-year CME requirement periods shall not include CME earned during a preceding ~~three~~two-year CME requirement period.

(e) In addition to meeting the requirements of subsections (b) and (c), as a condition of renewal, unless otherwise exempted or a waiver is obtained as specified in this section, osteopathic physicians and surgeons shall complete the following:

(1) a one-time, 12-hour CME course in pain management and the treatment of terminally ill and dying patients meeting the requirements of this section and Section 2190.5 of the Code within four years of their initial license or by their second renewal date, whichever occurs first.

(A) At a minimum, course content for a course in pain management and the treatment of terminally ill and dying patients shall include the practices for pain management in medicine, palliative and end-of-life care for terminally ill and dying patients, and the risks of addiction associated with the use of Schedule II drugs.

(B) For the course component involving the risks of addiction associated with the use of Schedule II drugs mentioned in subsection (e)(1)(A), at a minimum, the course content shall include regulatory requirements for prescribers and dispensers, strategies for identifying substance use, and procedures and practices for treating and managing substance use disorder patients.

(C) CME hours earned in fulfillment of this requirement shall be counted by the Board towards the total CME hours each osteopathic physician and

surgeon is required to complete during each CME requirement period as provided by Section 2454.5 of the Code.

(2) a course on the risks of addiction associated with the use of Schedule II drugs that contains, at a minimum, the course content specified in subsection (e)(1)(B).

(A) CME hours earned in fulfillment of this requirement shall be counted by the Board towards the total CME hours each osteopathic physician and surgeon is required to complete during each CME requirement period as provided by Section 2454.5 of the Code.

(B) The Board shall deem this requirement to be met for the applicable CME requirement period if the osteopathic physician and surgeon completed the 12-hour CME course specified in subsection (e)(1) during that CME requirement period.

(3) if applicable, all general internists and family osteopathic physicians and surgeons who have a patient population of which over 25 percent are 65 years of age or older shall complete at least 10 hours in a course required by Section 2190.3 of the Code.

~~(e) Category 1-A, or other CME is defined by the American Osteopathic Association (AOA), set forth in the American Osteopathic Association's "Continuing Medical Education Guide," and is hereby incorporated by reference and can be obtained from the AOA at 142 E. Ontario Street, Chicago, IL 60611; it is published once every three years by the AOA most recently in 1992. Category 1 defined by the American Medical Association is set forth in "Physicians Recognition Award Information Booklet," and is hereby incorporated by reference and can be obtained from the American Medical Association, 515 North State Street, Chicago, IL 60610; it is published on an occasional basis by the AMA, most recently in January, 1986.~~

(f) Osteopathic physicians and surgeons ("physicians") meeting any of the following criteria at the time of renewal shall be deemed exempt from the requirements of subsection (e)(1):

(1) Physicians practicing in pathology or radiology specialty areas as required by Section 2190.5 of the Code;

(2) Physicians not engaged in direct patient care, meaning no personal or face-to-face interaction with the patient, including health assessments, counseling, treatments, patient education, prescribing or administering

medications, or any task authorized by the Act or described in Sections 2051 or 2052 of the Code that involves personal interaction with the patient;

- (3) Physicians that do not provide patient consultations;
- (4) Physicians that do not reside in the State of California;
- (5) Physicians who have completed a one-time continuing education course of 12 credit hours in the subject of treatment and management of opiate-dependent patients, including eight hours of training in buprenorphine treatment, or other similar medicinal treatment, for opioid use disorders; or,
- (6) Physicians who are deemed a “qualifying physician” as specified in Section 2190.6 of the Code, which means a physician meets any of the following conditions:
 - (A) The physician holds a board certification in addiction psychiatry or addiction medicine from the American Board of Medical Specialties,
 - (B) The physician holds an addiction certification from the American Society of Addiction Medicine or the American Board of Addiction Medicine,
 - (C) The physician holds a board certification in addiction medicine from the American Osteopathic Association.
 - (D) The physician has completed not less than eight hours of training (through classroom situations, seminars at professional society meetings, electronic communications, or otherwise) that is provided by the American Society of Addiction Medicine, the American Academy of Addiction Psychiatry, the American Medical Association, the American Osteopathic Association, or the American Psychiatric Association. Such training shall include:
 - (aa) opioid maintenance and detoxification;
 - (bb) appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of opioid use disorder;

(cc) initial and periodic patient assessments (including substance use monitoring);

(dd) individualized treatment planning, overdose reversal, and relapse prevention;

(ee) counseling and recovery support services;

(ff) staffing roles and considerations;

(gg) diversion control; and,

(hh) other best practices.

(E) The physician has participated as an investigator in one or more clinical trials leading to the approval of a narcotic drug in schedule III, IV, or V for maintenance or detoxification treatment, as demonstrated by a statement submitted to the U.S. Secretary of Health and Human Services by the sponsor of such approved drug.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 2018, 2190.5, 2454.5, 2456.1 and 3600-1, Business and Professions Code. Reference: Section 2190.1, 2190.15, 2190.3, 2190.5, 2190.6, 2452, 2454.5, Business and Professions Code.

§1636. Continuing Medical Education Progress Report Documentation.

(a) Osteopathic Pphysicians and surgeons shall report the total number of continuing medical education (CME) hours as provided in subsection (b) to the Board with the renewal application. This may be accomplished by:

(a) The physician sending the Board a copy of their computer printout of CME activity as compiled from documents submitted to the AOA Division of Continuing Medical Education by both sponsors and the physician (Individual Activity Report) which will list the amount of CME credit hours, or

(b) Sending the Board copies of any certificates given for the CME credit hours of attendance at any program approved by the Board, or

(c) Reports from any program approved by the Board, to be furnished by the physician, showing his CME credit hours of attendance hours as verified by the program organizer.

(d) CME categories are defined by Section 1635(e).

(b) For the purposes of Section 1635, satisfactory documentation shall mean a written statement to the Board, signed and dated by the osteopathic physician and surgeon (“licensee”), that includes disclosures of all of the following:

(1) The following personally identifying information:

(A) Licensee’s full legal name (first, middle, last, suffix (if any)),

(B) Licensee’s license number,

(C) Mailing address,

(D) Telephone number; and,

(E) Email address, if any.

(2) Whether during the two years immediately preceding their license expiration date, the licensee completed a minimum of 50 hours of American Osteopathic Association (AOA) CME, of which at least:

(A) 20 hours were completed in AOA Category 1 CME as defined in Section 2454.5 of the Code, and,

(B) the remaining 30 CME hours were earned for coursework accredited by either the AOA or the American Medical Association (AMA).

(3) Whether within four years of their initial licensure or by their second renewal, the licensee completed a one-time 12-hour CME course in the subjects of pain management and the treatment of terminally ill or dying patients (“pain management course”) as specified by Section 1635.

(4) If the licensee has not completed the pain management course referenced in subsection (b)(3), whether the licensee meets any of the following criteria:

(A) The licensee is practicing in pathology or radiology specialty areas,

(B) The licensee is not engaged in direct patient care as defined in Section 1635,

(C) The licensee does not provide patient consultations,

(D) The licensee does not reside in the State of California;

(E) The licensee completed a one-time continuing education course of 12 credit hours in the subject of treatment and management of opiate-dependent patients,

including eight hours of training in buprenorphine treatment, or other similar medicinal treatment, for opioid use disorders; or,

(F) The licensee meets one of the conditions listed in paragraph (6) of subsection (f) of Section 1635 for a “qualifying physician.”

(5) Whether during the two years immediately preceding their license expiration date, the licensee completed a course on the risks of addiction associated with the use of Schedule II drugs as specified in Section 1635, including a course in pain management as referenced in subsection (b)(3).

(6) Whether the licensee obtained a waiver from the Board for all or any portion of the current CME requirements specified in Section 1635 for this CME reporting period in accordance with Section 1637.

(7) A certification by the licensee under penalty of perjury under the laws of the State of California that all statements made in response to disclosures required by subsections (b)(1)-(6) are true and correct.

(c) Licensees who have reported CME compliance as specified in this section shall be subject to random audit of their CME hours. Within 65 days of the date of the Board’s written request, those licensees selected for audit shall be required to document their compliance with the CME requirements of this article and shall be required to respond to any inquiry by the Board regarding compliance with this article and/or provide to the Board the records retained pursuant to subsection (d).

(d) Each licensee shall retain documents demonstrating compliance as provided in this subsection for each CME requirement period for six years from the completion date of the course(s) or condition(s) claimed as credit towards satisfaction of, or exemption from, the requirements of Section 1635. Those licensees selected for audit shall be required to submit documentation of their compliance with the CME requirements as specified by this article. Documents demonstrating compliance include any of the following:

(1) A copy of their individual CME Activity Summary report as compiled from documents submitted to the AOA’s Continuing Medical Education Program by both sponsors and the licensee which includes, at a minimum, all of the following on official AOA letterhead or other document issued by the AOA bearing an AOA insignia:

(A) Licensee’s name;

(B) Licensee's license number, and,

(C) All CME course credits reported to the AOA during the relevant CME reporting requirement period, including: (i) CME course or activity name, (ii) CME sponsor/provider name, (iii) CME credit type (e.g., Category type, for example Category 1A or 1B), (iv) CME credit hours earned on each course or activity by the licensee and submitted by the licensee for AOA approval, (v) all credits applied or accepted by the AOA by course or activity, and, (vi) completion dates for each CME course or activity.

(2) Copies of any transcripts or certificates of completion from a CME course provider accredited by the AOA or AMA which list, at a minimum, all of the following:

(A) the name of the licensee,

(B) the title of the course(s)/program(s) attended,

(C) the amount of CME credit hours earned,

(D) the dates of attendance,

(E) the name of the CME provider, and,

(F) For AOA accredited courses, CME credit type (e.g., Category type, for example Category 1A or 1B).

(3) For AMA accredited CME course hours earned, reports from any CME course provider accredited by AMA, to be furnished by the licensee, and listing at a minimum:

(A) the name of the licensee,

(B) the title of the course(s)/program(s) attended,

(C) the amount of CME credit hours earned,

(D) the dates of attendance, and,

(E) the name of the CME provider.

(4) For any exemptions from CME requirements claimed by the licensee in paragraph (4) of subsection (b), the following documentation, as applicable:

(A) For claims of practice exemption per paragraph (4), subparagraphs (A)-(C) of subsection (b), copies of employment records or letters or other documents from an employer showing the licensee's name, dates of practice, and confirming the type of practice claimed as represented by the licensee on their report;

(B) For claims of out of state residency per paragraph (4), subparagraph (D) of subsection (b), copies of an unexpired drivers' license or other state-issued identification in the name of the licensee, or utility bills, bank or mortgage statements, vehicle registration or insurance documents, or tax documents showing the licensee's name and out of state address and dated within the last 3 months prior to the date of submission to the Board.

(C) For claims of completion of alternative CME coursework as specified in paragraph (4), subparagraphs (E) or (F) of subsection (b), any of the documents specified in paragraphs (1)-(3) of this subsection.

(D) (i) For claims of exemption as a "qualifying physician" based on specialty certification as specified in paragraph (4), subparagraph (F), certification received directly from the applicable certifying body of the licensee's certification in a specialty that includes a document containing, at minimum, the following:

(aa) Licensee's name;

(bb) Licensee's address,

(cc) Name of the specialty board,

(dd) Name of specialty,

(ee) Date certification in the specialty was issued,

(ff) Date certification in the specialty expires, and,

(gg) on official letterhead or other document issued by the specialty organization bearing their insignia.

Submission of a licensee's Official Physician Profile Report from the American Osteopathic Association directly to the Board electronically that lists the specialty certifications claimed by the licensee shall be deemed compliant with the requirements of this paragraph.

(ii) For claims of exemption as a “qualifying physician” due to the licensee being an investigator in one or more clinical trials leading to the approval of a narcotic drug as specified by Section 1635, a copy of a letter or other document, signed and dated by the sponsor showing submission of a statement from the sponsor to the U.S. Secretary of Health and Human Services that includes the licensee’s name and that the licensee was an investigator in one or more clinical trials leading to the approval of a specified narcotic drug in schedule III, IV, or V for maintenance or detoxification treatment.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 2018 and 3600-1, Business and Professions Code. Reference: Sections 2190.6, 2190.5, and 2452 and 2454.5, Business and Professions Code.

§1638. CME Requirement for Inactive Certificate.

(a) The holder of an inactive certificate is exempt from CME requirements.

(b) In order to restore a certificate to active status the licensee shall ~~have completed a minimum of 20 hours Category 1-A as defined by the American Osteopathic Association (AOA) during the 12-month period immediately preceding the licensee’s application for restoration~~ comply with the requirements for restoring an inactive certificate to an active status in Section 1646.

~~(c) CME categories are defined by sections 1635 (e).~~

NOTE: Authority cited: Osteopathic Act (initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 2454.5, and 3600-1, Business and Professions Code. Reference: Sections 704, and 2454.5, Business and Professions Code.

§1639. Approved Continuing Medical Education.

~~The following CME programs are approved for credit:~~

~~(a) Those programs certified by the American Osteopathic Association (AOA) as category I and II credit and those certified by the American Medical Association (AMA) as category I.~~

~~(b) Those programs which qualify for prescribed credit from the AOA specialty groups.~~

~~(c) Those programs meeting the criteria set forth in Section 1640 and offered by other organizations and institutions.~~

~~(d) CME categories are defined by Section 1635 (e).~~

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1223, p. xciii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 2190, and 2452, Business and Professions Code.

§1640. Criteria for Approval of CME Programs.

~~(a) Each program in which a license participates shall be administered in a responsible, professional manner.~~

~~(b) Programs referred to in Section 1639 (c) shall be measured on a clock hour to clock hour basis and shall meet the following criterial in order to be approved.~~

~~(1) Faculty: the program organizer shall have a faculty appointment in an educational institution accredited or approved pursuant to the Education Code Section 94310 or 94312, or be qualified in other specialized fields directly related to the practice of medicine. The curriculum vitae of all faculty members and organizers shall be kept on file by the program organizer.~~

~~(2) Rationale: The need for the program and how the need was determined shall be clearly stated and maintained on file by the program organizer.~~

~~(3) Program Content: Program content shall be directly related to patient care, community or public health.~~

~~(4) Education Objectives: Each program shall clearly state educational objectives that can be realistically accomplished within the framework of the program.~~

~~(5) Method of Instruction: Teaching methods for each program shall be described, e.g., lecture, seminar, audio-visual, simulation, workshops or other acceptable modalities.~~

~~(6) Evaluation: Each program shall include an evaluation method which documents that educational objectives have been met, e.g., written evaluation by each participant (questionnaire).~~

~~(7) Course organizers shall maintain a record of attendance of each participant.~~

~~(c) The Board will randomly audit courses or programs submitted for credit in addition to any course or program for which a complaint is received. If an audit is made, course organizers will be asked to submit to the Board:~~

~~(1) Organizer(s) faculty curriculum vitae;~~

- ~~(2) Rationale for course;~~
- ~~(3) Course content;~~
- ~~(4) Educational objectives;~~
- ~~(5) Teaching methods;~~
- ~~(6) Evidence of evaluation;~~
- ~~(7) Attendance records.~~

~~(d) Credit toward the required hours of continuing education will not be received for any course deemed unacceptable by the Board after an audit has been made pursuant to this section.~~

~~Note: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 2190 and 2452, Business and Professions Code.~~

§1641. Sanctions for Noncompliance.

(a) Any osteopathic physician and surgeon who has not satisfied the CME requirements completed 150 hours of approved CME or the prorated share pursuant to Section 1635(d) during the three two-year CME requirement period will be required to make up any deficiency unless a waiver is obtained pursuant to Section 1637. Any physician and surgeon who fails to complete the deficient hours or provide satisfactory documentation of CME completion as provided in Section 1636 shall be ineligible for renewal of ~~his or her~~ their license to practice medicine until such time as the deficient hours of CME are documented to the Board.

(b) It shall constitute unprofessional conduct and grounds for a citation and fine or disciplinary action, including the filing of an accusation, for any osteopathic physician and surgeon to misrepresent ~~his or her~~ their compliance with the provisions of this article, to fail to provide accurate or complete information in response to a Board inquiry, or ~~who~~ to fails to comply with the provisions of this article.

~~(c) Each physician shall retain records for a minimum of four years of all CME programs attended which indicate the title of the course or program attended, dates of attendance, the length of the course or program, the sponsoring organization and the accrediting organization, if any.~~

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), Section 1; and Sections 125.9, 2018, 2454.5 and 3600-1, Business and Professions Code.

Reference: Sections 125.9, 2234, 2452 and 2454.5, Business and Professions Code.

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

(a) Any physician and surgeon desiring an inactive certificate shall submit an application to the Board (License Renewal OMB.2 or OMB.2a Rev.11/94).

(b) In order to restore an inactive certificate to an active status, the licensee shall have completed a minimum of 20 hours of Category 1-A CME as defined by the American Osteopathic Association (AOA) during the ~~preceding~~ 12-month period immediately preceding the licensee's completed application for restoration, submit a completed application for restoration, and pay the fee set forth in Section 1690 of this Division and the Controlled Substance Utilization Review and Evaluation System (CURES) fee currently required by Section 208 of the Code. A completed application for restoration includes the following:

(1) Licensee's Full Name (First), (Middle), (Last), (Suffix, if any),

(2) Licensee's License (Certificate) Number,

(3) Licensee's Address,

(4) Licensee's Email Address,

(5) Licensee's Telephone Number,

(6) An affirmative statement that during the 12-month period immediately preceding the date of the filing of this application, the licensee completed a minimum of 20 hours in AOA Category 1 CME, and,

(7) The following statement, signed and dated by the licensee: "I am requesting that the Osteopathic Medical Board of California activate my license."

(c) The inactive status of a certificate holder shall not deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee on any ground

provided by law or to enter an order suspending or revoking the certificate or otherwise taking disciplinary action against the licensee on any ground.

~~(d) CME categories are defined by Section 1635(e).~~

(ed) The processing times for obtaining an inactive certificate or reactivating an inactive certificate to active status are set forth in Section 1691.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p, xciii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 701, 704 and 2454.5, Business and Professions Code.

§1659.30. Authority to Issue Citations and Fines.

(a) For purposes of this article, “executive director” shall mean the executive director of the Board.

(b) The executive director or their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement, and administrative fines, or both, for violations by a licensed osteopathic physician and surgeon or a postgraduate training licensee of the statutes and regulations referred to in Section 1659.31.

(c) A citation shall be issued whenever any fine is levied, or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally, or by certified mail return receipt requested, or by regular mail at their last known address in accordance with Section 124 of the Code if the cited individual is a licensee.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-4, Business and Professions Code. Reference: Sections 124, 125.9, ~~and~~ 148 and 2064.5, Business and Professions Code.

§1659.31. Citable Offenses. Fine Amounts and Criteria to Be Considered

The amount of any fine to be levied by the executive director or their designee shall take into consideration the applicable factors listed in ~~subdivision section (b)(3) of Section 125.9 of the code and also the extent to which such person has mitigated or attempted~~

to mitigate any damage or injury caused by the violation. The fine shall be within the ranges set forth below in subsections (a) or (c), as applicable.

(a)(1) The executive director or their designee may issue a citation under section 1659.30 for a violation against a licensee of the provisions listed in this section. Unless otherwise provided in this section, ~~the~~ fine for a violation of the following code sections shall not be less than \$100 and shall not exceed \$2500, ~~except as specified in items 34 and 41 below:~~

- (~~1~~A) Business and Professions Code Section 119
- (~~2~~B) Business and Professions Code Section 125
- (~~3~~C) Business and Professions Code Section 125.6
- (~~4~~D) Business and Professions Code Section 475(a)(1)
- (~~5~~E) Business and Professions Code Section 490
- (~~6~~F) Business and Professions Code Section 580
- (~~7~~G) Business and Professions Code Section 581
- (~~8~~H) Business and Professions Code Section 582
- (~~9~~I) Business and Professions Code Section 583
- (~~10~~J) Business and Professions Code Section 650
- (~~11~~K) Business and Professions Code Section 651
- (~~12~~L) Business and Professions Code Section 654
- (~~13~~M) Business and Professions Code Section 654.1
- (~~14~~N) Business and Professions Code Section 654.2
- (~~15~~O) Business and Professions Code Section 655.5
- (~~16~~) ~~Business and Professions Code Section 655.6~~
- (~~17~~) (P) Business and Professions Code Section 702
- (~~18~~) (Q) Business and Professions Code Section 730

- (19) (R) Business and Professions Code Section 732
- (20) (S) Business and Professions Code Section 802(b) (a)
- (21) (T) Business and Professions Code Section 802.1
- (22) (U) Business and Professions Code Section 810
- ~~(23) Business and Professions Code Section 2021~~
- ~~(24) Business and Professions Code Section 2052~~
- ~~(25) Business and Professions Code Section 2054~~
- ~~(26) Business and Professions Code Section 2216~~
- ~~(27) Business and Professions Code Section 2216.1~~
- ~~(28) Business and Professions Code Section 2216.2~~
- ~~(29) Business and Professions Code Section 2221.1~~
- ~~(30) Business and Professions Code Section 2236~~
- ~~(31) Business and Professions Code Section 2238~~
- ~~(32) Business and Professions Code Section 2240~~
- ~~(33) Business and Professions Code Section 2243~~
- ~~(34) Business and Professions Code Section 2244 (\$1,000)~~
- ~~(35) Business and Professions Code Section 2250~~
- ~~(36) Business and Professions Code Section 2255~~
- ~~(37) Business and Professions Code Section 2256~~
- ~~(38) Business and Professions Code Section 2257~~
- ~~(39) Business and Professions Code Section 2259~~
- ~~(40) Business and Professions Code Section 2261~~

~~(41) Business and Professions Code Section 2262 (\$500)~~

~~(42) Business and Professions Code Section 2263~~

~~(43) Business and Professions Code Section 2264~~

~~(44) Business and Professions Code Section 2266~~

~~(45) Business and Professions Code Section 2271~~

~~(46) Business and Professions Code Section 2272~~

~~(47) Business and Professions Code Section 2276~~

~~(48) Business and Professions Code Section 2285~~

~~(49) Business and Professions Code Section 2415~~

~~(50) Business and Professions Code Section 2454.5~~

~~(51) Business and Professions Code Section 2456.1~~

~~(52) (V) Business and Professions Code Section 17500~~

~~(53) (W) Health and Safety Code Section 123110~~

~~(54) Title 16 Cal. Code Regs. 1604~~

~~(55) Title 16 Cal. Code Regs. 1633~~

~~(56) Title 16 Cal. Code Regs. 1685~~

(X) Civil Code Section 56.10

(Y) Any provision of the Act

(Z) Any provision of the Medical Practice Act (Business and Professions Code section 2000, et seq.) relating to persons holding or applying for physician's and surgeon's certificates issued by the Board under the Act

(AA) Any regulation adopted by the Board under Division 16 of Title 16 of the California Code of Regulations

(BB) Any other statute or regulation upon which the Board may base a disciplinary action.

(2) For fines issued for violations of Sections 2244 and 2262 of the Code and Civil Code section 56.10, the amount of any fine to be levied by the Executive Director or their designee shall not exceed the amounts specified in Sections 2244 or 2262 of the Code, or Section 56.36(c) of the Civil Code, as applicable.

(b)(1) Except for fines assessed for a violation of Section 56.10 of the Civil Code, the following factors shall be considered by the Executive Director or their designee when determining the amount of an administrative fine:

(A) The good or bad faith of the cited person.

(B) The gravity of the violation.

(C) Evidence that the violation was willful.

(D) History of previous violations.

(E) The extent to which the cited person has cooperated with the Board.

(F) The extent to which the cited person has mitigated or attempted to mitigate any danger or injury caused by the violation.

(2) When determining the amount of the fine to be assessed for a violation of Civil Code section 56.10, the Executive Director or their designee shall consider the factors listed in Section 56.36(d) of the Civil Code.

(bc) Notwithstanding the administrative fine amounts specified in subsection (a)(1), a citation may include a fine between \$2501 and \$5000, if at least one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate ~~relationship~~threat to the health and safety of another person;
2. The cited person has a history of two or more prior citations of the same or similar violations;
3. The citation involves multiple violations that demonstrate a willful disregard of the law;

4. The citation involves a violation or violations perpetrated against a senior citizen or a disabled person.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code; Section 56.36, Civil Code.

§1659.32. Compliance with Orders of Abatement.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond ~~his or her~~their control after the exercise of reasonable diligence, the person cited may request an extension of time in which to complete the correction from the executive director or their designee. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and a failure to comply with the order of abatement. Such failure may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

§1659.33. Citations for Unlicensed Practice.

(a) The executive director or their designee is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as an osteopathic physician and surgeon or postgraduate training licensee under the Medical Practice Act is required. ~~The executive director is authorized to issue citations and orders of abatement and levy fines only in the case of (a) an osteopathic physician and surgeon who has practiced with a delinquent license or (b) an applicant for licensure who practices prior to issuance of a license.~~ Each citation issued shall contain an order of abatement. Where appropriate, the executive director or their designee shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of Section 125.9 of the code.

(b)(1) If any fine amount remains unpaid after the effective date of the final citation order, the executive director or their designee shall send a written notice at intervals of 30, 60 and 90 days from the effective date of the final citation order to the cited person containing, at a minimum, the following statements:

“Our records show that you have a \$[insert citation amount owed] delinquent debt due to the Osteopathic Medical Board of California. You have 30 days to voluntarily pay this amount before we submit your account to the Franchise Tax Board (FTB) for interagency intercept collection.

FTB operates an intercept program in conjunction with the State Controller's Office, collecting delinquent liabilities individuals owed to state, local agencies, and colleges. FTB intercepts tax refunds, unclaimed property claims, and lottery winnings owed to individuals. FTB redirects these funds to pay the individual's debts to the agencies, including this Board. (Government Code Sections 12419.2 and 12419.5.)

If you have questions or do not believe you owe this debt, contact us within 30 days from the date of this letter. A representative will review your questions/objections. If you do not contact us within that time, or if you do not provide sufficient objections, we will proceed with intercept collections.”

After the initial 30-day notice, any subsequent notices shall contain references to any prior notice(s), including the date any prior notice was sent, and what further actions, including collection fees, may be taken in the collection process.

(b)(2) If, after providing notice in accordance with paragraph (1), any fine amount remains unpaid six months after the effective date of the final citation order, the executive director or their designee shall submit to the FTB a request for interagency intercept collection of any tax refund due the cited person pursuant to Government Code sections 12419.2 and 12419.5 that includes the cited person's name, social security number and the amount of their unpaid fine.

(c) The provisions of Sections 1659.30 and 1659.32 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

(d) “Final” for the purposes of this section shall mean: (a) the Board's contested citation decision is effective and the cited person has exhausted all methods for contesting the citation under section 1659.34, or, (b) the cited person did not contest the citation decision and the timeframes for contesting a citation under section 1659.34 have passed.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 125.9, ~~and 148 and 2064.5~~, Business and Professions Code; Sections 12419.2 and 12419.5, Government Code.

§1659.34. Contest of Citations.

(a) In addition to requesting a hearing as provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within 15 calendar days after service of the citation, notify the executive director in writing of ~~his or her~~their request for an informal conference with the executive director regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served.

(b) The executive director shall, within 30 calendar days from the receipt of the request, hold an informal conference with the person cited ~~and/or his or her~~their legal counsel or authorized representative. The conference may be held telephonically. At the conclusion of the informal conference the executive director may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The executive director shall state in writing the reasons for ~~his or her~~their action and serve or mail a copy of ~~his or her~~their findings and decision to the person cited within 15 calendar days from the date of the informal conference, as provided in subsection (b) of section 1659.32. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive ~~his or her~~their request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the executive director. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 calendar days in accordance with subdivision (b)(4) of Section 125.9 of the code.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

§1659.35. Public Disclosure; Records Retention.

Every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public. Citations that have been resolved, by payment of the administrative fine or compliance with the order of abatement, shall be purged ten (10) years from the date of ~~resolution~~issuance. A citation that has been withdrawn or dismissed shall be purged immediately upon being withdrawn or dismissed.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Sections 125.9 and 803.1, Business and Professions Code.