MEDICAL BOARD OF BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: October 28, 2016

Subject Matter of Proposed Regulations: Requirements for Physicians on Probation

Section(s) Affected: Title 16, Division 13, Chapter 2, Article 3, California Code of Regulations (CCR), Section 1358

Introduction:

The Medical Board of California (Board) licenses and regulates physicians and surgeons. Through this proposed rulemaking, the Board seeks to amend CCR section 1358 to improve the clarity of the regulation, as described below. These changes support the Board's mission of consumer protection.

Specific Purpose of Each Amendment and Factual Basis/Rationale:

Existing law under CCR section 1358 provides the following:

> Each physician and surgeon who has been placed on probation by the division shall be subject to the division's Probation Surveillance Compliance Program and shall be required to fully cooperate with representatives of the division and its investigative personnel. Such cooperation shall include, but is not necessarily limited to, submission to laboratory testing for the purpose of determining the existence of alcohol, narcotics, other controlled substances and/or dangerous drugs in his or her system. Such tests shall be made at the times and places required by the division or its duly authorized representative. Any monetary fees incurred as a result of such laboratory tests shall be borne by the physician-probationer.

Reference to the terms "division," "Probation Surveillance Compliance Program," and "laboratory testing" are obsolete, and are no longer used by the Board. Moreover, this section indicates that physicians on probation are required to fully cooperate with the "division" and personnel, and indicates that cooperation shall include submission to "laboratory testing" for the purpose of determining the existence of alcohol or drugs in the physician's system. The requirement for cooperation is more expansive, and extends to all terms and conditions in the order placing the physician on probation.

Accordingly, this proposed rulemaking seeks to remove obsolete language referencing the "division" and the "Probation Surveillance Compliance Program" and replace it with current references to the "Board" and "Probation Program." It also replaces "laboratory"

with “biological fluid” testing, which is the term currently used by the Board. The proposed amendments further specify that probationers are required to bear the costs and be in compliance with all of the terms and conditions of the order placing them on probation, in addition to referrals for biological fluid testing. These are existing requirements for probationers pursuant to the Board’s Manual of Model Disciplinary Orders and Disciplinary Guidelines incorporated by reference into 16 CCR section 1361.

The proposed changes are necessary to eliminate obsolete language and to clarify the Board’s requirements for probationers.

Anticipated benefits from this regulatory action:

The proposed language will eliminate confusion to the reader of the regulation, as the current language referencing the “division” and the “Probation Surveillance Compliance Program” is not used by staff or stakeholders in written or verbal communication. It further updates the term “laboratory” with “biological fluid” testing. Moreover, the proposed amendments specify that probationers are required to bear the costs and be in compliance with all of the terms and conditions of the order placing them on probation, in addition to referrals for biological fluid testing. These are existing requirements for probationers pursuant to the Board’s Manual of Model Disciplinary Orders and Disciplinary Guidelines incorporated by reference into 16 CCR section 1361. This provides clarity and consistency to the Board’s requirements for probationers.

Underlying Data

At the May 6, 2016 quarterly Board meeting, Board staff requested the Board to authorize staff to prepare the necessary regulatory documents to formally notice the proposed regulatory amendment to submit the documents to the Office of Administrative Law (OAL) for approval, and to schedule a hearing on the rulemaking. The Board adopted a motion to approve staff to begin the regulatory process to formally notice the proposed regulatory amendments and schedule a hearing on the rulemaking to amend Title 16, Division 13, Chapter 2, Article 3, California Code of Regulations, section 1358.

Business Impact

This regulation will not have any adverse economic impact on businesses. This initial determination is based on the following facts: The proposed changes do not affect businesses within the State of California, as the proposed amendments merely change obsolete language and create consistency with the requirements for physicians on probation. No additional requirements are being created by the proposed amendments.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- Analysis of creation/elimination of jobs: The Board has made an initial determination that this regulatory proposal will not likely have any impact on the creation of jobs or the elimination of jobs in the State of California. This initial determination is based on the fact that the proposed changes simply eliminate obsolete language from CCR section 1358, and clarify the Board's requirements for physicians on probation. They do not add any new requirements not already in existence.

- Analysis of creation/elimination of businesses: The Board has made an initial determination that this regulatory proposal will not likely have any impact on the creation of new businesses or the elimination existing businesses or the expansion of businesses in the State of California. This initial determination is based on the fact that the proposed changes simply eliminate obsolete language from CCR section 1358, and clarify the Board's requirements for physicians on probation. They do not add any new requirements not already in existence.

- Analysis of expansion of business: This proposal is not expected to lead to the expansion of new businesses within California. This initial determination is based on the fact that the proposed changes simply eliminate obsolete language from CCR section 1358, and clarify the Board's requirements for physicians on probation. They do not add any new requirements not already in existence.

- Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents because the proposed amendments eliminate obsolete language from CCR section 1358, and clarify the Board's requirements for physicians on probation. Improved clarity in the Board's regulations furthers consumer protection.

  This proposed rulemaking is not anticipated to have an impact on worker safety or the state's environment.

Economic Impact for "Major Regulations" (If applicable)

Non-Applicable.

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 action 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 current law.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Do not seek a change. This alternative was rejected because the language in the regulation is outdated and not consistent with the terminology used by the Board, stakeholders, and the public. Further, the requirements for physicians on probation needed to be clarified to specify they are required to be in compliance with all of the terms and conditions of the order placing them on probation, in addition to referrals for biological fluid testing.

2. Adopt the proposed regulatory amendments. This alternative was determined to be the most appropriate, because the proposed language will eliminate confusion to the reader of the regulation, as the language in the regulation referencing the “division,” “Probation Surveillance Compliance Program,” and “laboratory testing” is not currently used by the Board, stakeholders, or the pubic in written or verbal communications. It will also clarify requirements for physicians on probation.