

TITLE 16. MEDICAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Medical Board of California (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at San Francisco Airport Marriott Waterfront, 1800 Old Bayshore Hwy, Burlingame, CA 94010, at 9:10 a.m., on July 31, 2015

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on July 20, 2015, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific section(s) 803.1 and 2027 of said Code, the Board is considering changes to Section 1355.35 Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

Business and Professions Code section 803.1 requires the Board to disclose to the public information regarding any enforcement actions taken against a licensee, including a former licensee, by the Board or by another state or jurisdiction. Additionally, pursuant to Business and Professions Code section 2027, the Board is required to post on the internet information on the current status of the license for all current and former licensees. Under the existing regulation, Title 16 of the California Code of Regulations (CCR), section 1355.35(a), there are no definitions or explanatory information regarding court orders, misdemeanor convictions, licenses issued with a Public Letter of Reprimand, or probationary licenses.

Existing law under section 1355.35(a)(2) lists the address for the Board's Central File Room as 1426 Howe Avenue, Suite 54, Sacramento, CA 95825.

Existing law under section 1355.35(c) provides a chart that defines the terms related to the status of a license for purposes of information released about a license. Currently, there are no descriptions for temporary licenses issued for noncompliance with a judgement or order for family support, or for a suspended license due to noncompliance with a judgement or order for family support.

This rulemaking proposes to amend Title 16 CCR section 1355.35(a) to bring current the list of disclaimers and explanatory information provided with public disclosure information released on the internet to include court orders, misdemeanor convictions, licenses issued with a Public Letter of Reprimand, and probationary licenses. It will also amend section 1355.35(a)(2) to provide the public with the current address for the Board's Central File Room, 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815. Further, it will amend Section 1355.35(c) to add public disclosure screen types for court orders related to family support issues.

This proposal was reviewed and considered at the Board's Quarterly Board Meeting in May 2015 and the members voted to direct staff to notice the proposed regulatory language and hold a hearing to amend these regulations.

This rulemaking will enable the Board to provide healthcare consumers with more complete information regarding definitions and explanatory information related to license status codes and administrative disciplinary action taken against physicians' licenses. It will also reduce timeframes experienced by the public when submitting requests to the Board's Central File Room for public documents related to administrative disciplinary action taken against physicians' licenses.

B. Policy Statement Overview/Anticipated Benefits of Proposal

An anticipated benefit of this proposal will be the public's ability to retrieve more thorough information from the Board's website regarding license disclaimers and administrative disciplinary actions. An anticipated benefit of updating the address of the Board's Central File Room is a decrease in the timeframe experienced by the public when seeking copies of public documents.

C. Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses as it will only add needed license status information to the Board's website.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents, worker safety, and state's environment by providing them with more thorough information regarding definitions and explanatory information related to license status codes and administrative disciplinary action taken against physicians' licenses. It will also reduce timeframes experienced by the public when submitting requests to the Board's Central File Room for public documents related to administrative disciplinary action taken against physicians' licenses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considers to the regulation or that is otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person, below, or by accessing the Board's website at [http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name:	Paulette Romero, Enforcement Program Manager
Address:	2005 Evergreen St, Ste. 1200 Sacramento, CA 95815
Telephone No.:	(916) 263-2437
Fax No.:	(916) 263-2435
E-Mail Address:	paulette.romero@mbc.ca.gov

The backup contact person is:

Name:	Kevin A Schunke, Regulations Manager
Address:	Medical Board of California 2005 Evergreen St, Ste. 1200 Sacramento, CA 95815
Telephone No.:	(916) 263-2368
Fax No.:	(916) 263-8936
E-Mail Address:	regulations@mbc.ca.gov

Website Access Materials regarding this proposal can be found at [http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).

MEDICAL BOARD OF BOARD INITIAL STATEMENT OF REASONS

Hearing Date: July 31, 2015

Subject Matter of Proposed Regulations: Disclaimers and Explanatory Information
Applicable to Internet Postings

Section(s) Affected: CCR, Title 16, Division 13, Chapter 2, Article 1, Section 1355.35

Specific purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Section 1355.35(a) lists disclaimers and explanatory information the Board may provide with public disclosure information released on the Internet. Amendments to this section are needed to add disclaimers and explanatory information regarding court orders, misdemeanor convictions, licenses issued with a Public Letter of Reprimand, and probationary licenses.

Section 1355.35(a)(2) directs the public to contact the Board's Central File Room at its previous address on Howe Avenue in Sacramento to obtain a copy of public documents. An amendment is needed to include the current address of the Central File Room.

Additionally, the Board has received communications from physician attorneys regarding information found on its website related to administrative disciplinary actions. As such, it was determined court-ordered public disclosure screen types were needed to accurately reflect practice restrictions by the courts. Therefore, amendments to the chart found in section 1355.35(c) are necessary. This chart includes descriptions of the license status which is displayed on the Board's website and the public definition of the status code. Amendments are needed to add the status code description and definition for a 150-day temporary license for a Family Support issue, and the status code description and definition for a Family Support Suspension.

2. Anticipated benefits from this regulatory action:

An anticipated benefit from this regulatory action is the public's ability to retrieve more thorough information from the Board's website regarding license disclaimers and administrative disciplinary actions. An anticipated benefit of updating the address of the Board's Central File Room is a decrease in the timeframe experienced by the public when seeking copies of public documents.

3. Specific Purpose of Each Amendment:

The purpose of the amendment to section 1355.35(a) is to bring current the list of disclaimers and explanatory information provided with public disclosure information released on the internet. The amendment to section 1355.35(a)(2) is needed to provide the public with a correct address for the Board's Central File Room. Finally, an amendment to section 1355.35(c) is necessary in order to add public disclosure screen types for court orders related to family support issues.

Factual Basis/Rationale

Section 1355.35(a) pertains to license status definitions and lists disclaimers and explanatory information the Board may provide with information released on the internet. The current list of license status definitions does not include the following:

1. a disclaimer for court orders and explanatory information indicating a physician's practice has been temporarily restricted or suspended pursuant to a court order and directing the public to contact the Central File Room to obtain a copy of the public documents;
2. a disclaimer for misdemeanor convictions and explanatory information indicating California Business and Professions Code section 2027(A)(7) states effective January 1, 2007, any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed shall be posted on the Internet;
3. a disclaimer for licenses issued with a Public Letter of Reprimand and explanatory information indicating the Board has concurrently issued the licensee a medical license and a Public Letter of Reprimand for a minor violation that does not require probationary status or warrant denial of licensure, and that the issuance of a Public Letter of Reprimand is not considered disciplinary action and is not reported to the National Practitioner Databank or the Federation of State Medical Boards; and
4. a disclaimer for probationary licenses and explanatory information indicating the license was issued on a probationary basis subject to terms and conditions and practice is permitted unless otherwise specified or the license expires.

Section 1355.35(a)(2) provides explanatory information related to Administrative Disciplinary Action and directs the public to contact the Central File Room at 1426 Howe Avenue, Suite 54, Sacramento, CA 95825 to obtain a copy of public documents. However, the Central File Room is no longer located at this address. Thus, section 1355.35(a)(2) needs to be amended to include the current address for the Central File Room, now located at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815.

Section 1355.35(c) provides a chart that defines the terms related to the status of a license for purposes of information released about a licensee. This chart does not include status code descriptions and definitions for the following:

1. Status Code “150 Day Temporary License-Family Support,” and a definition indicating the licensee was issued a temporary 150-day license for noncompliance with a judgment or order for support, practice is permitted until the license expiration date, and directing questions to the Department of Consumer Affairs’ Family Support Unit; and
2. “Family Support Suspension,” and a definition indicating the license was suspended for noncompliance with a judgment or order for support, no practice is permitted, and directing questions to the Department of Consumer Affairs’ Family Support Unit.

Underlying Data

These proposed amendments to update the Board’s central file room address and to add disclaimers and explanatory information applicable to internet postings were presented in a staff report at the Board’s Quarterly Board Meeting on May 8, 2015. A copy of the staff report is included in this rulemaking file.

At that same meeting, the Board adopted a motion, directing staff to begin the regulatory process to amend CCR section 1355.35.

Business Impact

The proposed amendments to this regulation will not have a significant adverse economic impact on businesses, because they only will add needed license status information to the Board’s website, and update the Board’s central file room address.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it only will update the Board’s central file room address and require the addition of needed license status information to the Board’s website, a task which is already carried out by existing Board staff.
- It will not create new business or eliminate existing businesses within the State of California because it only will update the Board’s central file room address and require the addition of needed license status information on the Board’s website.

- It will not affect the expansion of businesses currently doing business within the State of California because it only will update the Board's central file room address and require the addition of needed license status information on the Board's website.
- This regulatory proposal benefits the health and welfare of California residents because it provides the public with more thorough information about license disclaimers and administrative disciplinary actions regarding physicians, and it updates the Board's central file room address to which to send requests for public documents.
- This regulatory proposal does not affect worker safety because it will only require the addition of needed license status information on the Board's website, and it updates the Board's central file room address to which to send requests for public documents.
- This regulatory proposal does not affect the state's environment because it will only require the addition of needed license status information on the Board's website, and it updates the Board's central file room address to which to send requests for public documents.

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 law being implemented or made specific.

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 it would limit the information made available to the public with respect to administrative disciplinary action taken against physicians' licenses. It would also cause an unnecessary delay for those individuals submitting requests for public documents to the Board's Central File Room if they are not provided with the current address for the Central File Room.
2. Adopt the proposed regulatory amendments. This alternative was determined to be the most appropriate because it allows the Board to provide healthcare consumers with more thorough information regarding definitions and

explanatory information related to license status codes and administrative disciplinary action taken against physicians' licenses. It will also reduce timeframes experienced by the public when submitting requests to the Board's Central File Room for public documents related to administrative disciplinary action taken against physicians' licenses.

MEDICAL BOARD OF CALIFORNIA

DISCLAIMERS AND EXPLANATORY INFORMATION APPLICABLE TO INTERNET POSTINGS

Specific Language of Proposed Changes

Legend

<u>Underlined</u>	Indicates proposed amendments or additions to the existing regulation
Strikeout	Indicates proposed deletions to the existing regulation.

(1) Amend Section 1355.35 of Article 1, Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

Section 1355.35. Disclaimers and Explanatory Information Applicable to Internet Postings.

License Status Definitions.

(a) In addition to the disclaimer required by Section 803.1(c) of the code, the following disclaimers and explanatory information, as appropriate, shall be provided with information released on the Internet:

(1) Administrative Citation Issued:

A citation and/or fine has been issued for a minor violation of the law. This is not considered disciplinary action under California law but is an administrative action. Payment of the fine amount represents satisfactory resolution of this matter.

(2) Administrative Disciplinary Action:

The Medical Board's public disclosure screens are updated periodically as new information becomes available. Please contact the Central File Room at (916) 263-2525 or at ~~1426 Howe Avenue, Suite 54, Sacramento, CA 95825~~ 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, to obtain a copy of public documents at a minimal charge.

(3) Arbitration Award:

An arbitration award is a payment for damages and does not necessarily reflect that the physician's medical competence is below the standard of care. The Medical Board reviews all such reported arbitration awards and action is taken only if it is determined that a violation of the Medical Practice Act occurred. The Medical Board is prohibited by law from releasing a copy of the arbitration award report or any other information concerning the award.

(4) Administrative Action Taken by Other State or Federal Government:

This information is provided by another state/federal government agency. The Medical Board of California may take administrative action based on the action imposed by

another state/federal government agency. For more information or verification, contact the agency listed below that imposed the action.

(5) Felony Conviction:

The information provided only includes felony convictions that are known to the Board. All felony convictions known to the Board are reviewed and administrative action is taken only if it is determined that a violation of the Medical Practice Act occurred. For more information regarding felony convictions, contact the court of jurisdiction listed below.

(6) Hospital Disciplinary Action:

The action taken by this healthcare facility against this physician's staff privileges to provide healthcare services at this facility was for a medical disciplinary cause or reason. The Medical Board is authorized by law to disclose only revocations and terminations of staff privileges. The Medical Board is prohibited from releasing a copy of the actual report or any other information.

(7) Malpractice Judgment:

A malpractice judgment is a payment for damages and does not necessarily reflect that the physician's medical competence is below the standard of care. The Medical Board reviews all such reported judgments and action is taken only if it is determined that a violation of the Medical Practice Act occurred. The Medical Board is prohibited by law from releasing a copy of the judgment report or any other information concerning the judgment. For more information contact the court of jurisdiction listed below.

(8) Malpractice Settlements:

A settlement entered into by the licensee is a resolution of a claim for damages for death or personal injury caused by the licensee's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The Medical Board is required by law to disclose certain information related to the existence of multiple settlements made on or after January 1, 2003 in an amount of \$30,000 or more.

(9) Court Order:

This information would be provided if a physician's practice has been temporarily restricted or suspended pursuant to a court order. Please contact the Central File Room at (916) 263-2525 or at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, to obtain a copy of the public documents.

(10) Misdemeanor Conviction:

California Business and Professions Code section 2027(A)(7) states effective January 1, 2007, any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed shall be posted on the Internet.

(11) License Issued with Public Letter of Reprimand:

The Medical Board of California has concurrently issued the licensee a medical license and a Public Letter of Reprimand for a minor violation that does not require probationary status or warrant denial of licensure. The issuance of a Public Letter of Reprimand is not considered disciplinary action and is not reported to the National Practitioner Databank or the Federation of State Medical Boards.

(12) Probationary License:

License issued on a probationary basis subject to terms and conditions. Practice is permitted unless otherwise specified or license expires.

(b) Information released on the Internet shall be accompanied by a listing of the types of information available from the board on the Internet about physicians licensed by the board and a listing of the types of information that is confidential and not available from the board.

(c) The chart below defined the terms related to the status of a license for purposes of information released about a licensee.

Description Displayed on Web Site	Public Definition of Status Code
License Canceled	License has been voluntarily canceled, or the license has been expired for at least five years and has not been reviewed. No practice is permitted.
License Deceased	Licensee is deceased.
License Delinquent	License renewal fee has not been paid. No practice is permitted.
License Revoked	License has been revoked as a result of disciplinary action rendered by the Board. No practice is permitted.
License Suspended	Licensee has been suspended. No practice is permitted.
License Denied – Family Support	License denied for noncompliance with a judgment or order for support. No practice is permitted. Questions should be directed to the Department of Consumer Affairs' Family Support Unit at (916) 574-8018.
<u>150 Day Temporary License-Family Support</u>	<u>Licensee issued a temporary 150-day license for noncompliance with a judgment or order for support. Practice is permitted until the license expiration date. Questions should be directed to the Department of Consumer Affairs' Family Support Unit at (916) 574-8018.</u>
<u>License Suspended – Family Support</u>	<u>License suspended for noncompliance with a judgment or order for support. No practice is permitted. Questions should be directed to the Department of Consumer Affairs' Family Support Unit at (916) 574-8018.</u>
Licensee in Military	Practice is limited to military service including military dependents.
License Inactive	Licensee is required to pay the full renewal fee but is exempt from complying with the continuing medical education requirements. No practice is permitted.
License Renewed & Current	Licensee meets requirements for the practice of medicine in California.

License Renewal Pending	Licensee failed to certify compliance with the continuing medical education requirements and/or failed to certify that he or she disclosed the names of those health-related facilities in which the licensee and/or family may have a financial interest. Practice is permitted unless license expires.
License Retired	License is in retired status and the licensee is exempt from payment of the renewal fee. No practice is permitted.
License Surrendered	Licensee has surrendered his or her license to resolve a disciplinary action. No practice is permitted.
License in Voluntary Service	License is in voluntary service status with no payment allowed for medical services.
License Disabled	Licensee is unable to practice due to a disability. No practice is permitted.
Voluntary Surrender of License	Licensee has voluntarily surrendered the license and the surrender has been accepted by the Board. No disciplinary action was involved. No practice is permitted.
Voluntary Limitations on Practice	Licensee has signed an agreement in which licensee will limit his or her practice in a manner prescribed by the reviewing physician.

Note: Authority cited: Sections 803.1, 2018 and 2027, Business and Professions Code.
Reference: Sections 803.1 and 2027, Business and Professions Code.