

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: May 7, 2015
ATTENTION: Members, Medical Board of California
SUBJECT: Disclaimers and Explanatory Information Applicable to
Internet Postings
STAFF CONTACT: Paulette Romero, Enforcement Program Manager

REQUESTED ACTION:

After review and consideration of the attached proposed amendments to the regulatory language regarding disclaimers and explanatory information applicable to Internet postings, make a motion to direct staff to notice the proposed regulatory language and hold a hearing to amend Title 16, Division 13, Chapter 2, Article 1, California Code of Regulations (CCR), section 1355.35.

BACKGROUND AND ANALYSIS:

The proposed amendments to the regulations would allow the Board to provide disclaimers and explanatory information with public disclosure information released on the Internet. as appropriate, regarding court orders, misdemeanor convictions, licenses issued with a Public Letter of Reprimand, and probationary licenses. The amended regulations would also update the Board's address, where applicable, and update the chart defining the terms related to the status code of a license to include status codes regarding the issuance of a temporary license for noncompliance with a judgment or order for support and a license suspension for noncompliance with a judgment or order for support.

CCR section 1355.35(a) lists disclaimers and explanatory information the Board may provide with information released on the Internet. Section 1355.35(a) needs to be amended to 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1, 2007, any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed shall be posted on the Internet;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.

These amendments will provide the public with further clarification regarding these types of disclosures.

CCR 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.

CCR 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. Section 1355.35(c) needs to be amended to include the following status code descriptions and definitions:

- 1) “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.

STAFF RECOMMENDATION:

Staff recommends the Board authorize staff to proceed with preparing the necessary regulatory documents for amending CCR sections 1355.35(a), 1355.35(a)(2), and 1355.35(c), and hold a regulatory hearing.

PROPOSED REGULATORY LANGUAGE:

The suggested modifications are identified with underlined text for new language and ~~strikethrough text~~ for deleted language.

**California Code of Regulations
Title 16, Division 13, Chapter 2, Article 1**

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.