

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: July 1, 2014
 ATTENTION: Members, Medical Board of California
 SUBJECT: Citation Regulations
 STAFF CONTACT: Kimberly Kirchmeyer, Executive Director

REQUESTED ACTION:

After review and consideration of the attached proposed amendments to the citation regulatory language, make a motion to direct staff to notice the amended regulatory language and hold a hearing as soon as possible after the 45-day comment period. If no negative comments are received during the 45-day comment period or at the hearing, authorize the Executive Director to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopting Title 16 California Code of Regulations (CCR) section 1364.10, 1364.12, 1364.13, and 1364.14 with the modified text. Lastly, the motion should include a request to the Office of Administrative Law to make the regulations effective immediately upon approval.

BACKGROUND:

On July 1, 2014, pursuant to Senate Bill 304 (Lieu, Chapter 515, Statutes of 2013), the Medical Board of California's (Board) sworn staff and their support staff were transferred to the Department of Consumer Affairs (DCA). Among the positions included in the transfer were the Chief of Enforcement, the Deputy Chief of Enforcement, and the Supervising Investigator IIs.

The Board's regulations pertaining to the issuance of citations authorizes a "board official" to issue a citation, a fine, and an order of abatement. The regulations also require the board official *who issued the citation* to perform certain functions, including holding the informal conference, authorizing an extension, etc. The regulations define "board official" as the Chief, Deputy Chief or Supervising Investigator II of the enforcement program of the Board or the Chief of Licensing.

As of July 1, 2014, the only remaining staff person at the Board authorized to issue a citation is the Chief of Licensing. However, the regulations state that the Chief of Licensing can only issue citations to physicians who practiced on a delinquent, inactive or restricted license or to an individual who practices beyond the exemptions authorized in Sections 2065 and 2066 of the Business and Professions Code.

Therefore, based upon the transfer of staff to DCA, there is no staff person authorized to issue citations for minor violations of the Medical Practice Act. The regulations need to be amended to allow the Executive Director or his or her designee to issue citations and perform the functions once a citation is issued. This amendment needs to be done in a more expeditious manner than the normal rulemaking process usually used by the Board. The Board usually holds regulatory hearings at its regularly scheduled quarterly Board Meetings. However, this is not a requirement and several other boards under DCA do not hold hearings at quarterly meetings. Due to the need to expedite these regulations, the hearing should be held immediately following the 45-day comment period. This will allow staff, if no negative comments are received, to finalize the rulemaking package and submit it to the Office of Administrative Law once the package is

completed. If negative comments are received, the matter will be brought back to the Board at its October meeting.

This regulatory change is consistent with other boards under DCA that state the Executive Director or his or her designee are authorized to issue citations and perform other functions associated with the citation, such as holding informal conferences and authorizing extensions for compliance.

**California Code of Regulations
Title 16, Division 13, Chapter 2, Article 6.**

Section 1364.10. Citations and Fines.

(a) For purposes of this article, “board official” shall mean the ~~chief, deputy chief or supervising investigator II of the enforcement program of the board or the chief of licensing~~ executive director of the board or his or her designee.

(b) A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed physician or surgeon of the statutes referred to in Section 1364.11.

(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.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

Section 1364.12. 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 control after the exercise of reasonable diligence, the person cited may request an extension of time in which to complete the correction from the board official ~~who issued the citation~~. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) 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. 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. Such failure may result in disciplinary action being taken by the ~~Division of Medical Quality board~~ or other appropriate judicial relief being taken against the person cited.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

Section 1364.13. Citations for Unlicensed Practice.

A board official 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 a physician and surgeon is required under the Medical Practice Act. ~~The chief of licensing is authorized to issue citations and orders of abatement and levy fines only in the case of (a) physicians who have practiced medicine with a delinquent, inactive or restricted license or (b) applicants for licensure as a physician and surgeon who practice medicine beyond the exemptions authorized in Sections 2065 and 2066 of the Business and Professions Code.~~ Each citation issued shall contain an order of abatement. Where appropriate, a board official shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of Section 125.9 of the code. The provisions of Sections 1364.10 and 1364.12 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.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

Section 1364.14. 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 ten (10) days after service or receipt of the citation, notify the board official ~~who issued the citation~~ in writing of his or her request for an informal conference with the board official regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The board official ~~who issued the citation~~ shall, within 30 days from the receipt of the request, hold an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the board official may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The board official shall state in writing the reasons for his or her action and serve or mail a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference, as provided in subsection (b) of Section 1364.12. 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 request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by a board official. 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 new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of Section 125.9 of the code.

Note: Authority cited: Sections 125.9, 148 and 2018, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.