

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: July 2, 2018
ATTENTION: Members, Medical Board of California
SUBJECT: Proposed Changes to Regulations Regarding Notice
to Patients and Clients
FROM: Kerrie Webb, Senior Staff Counsel

REQUESTED ACTION:

After review and consideration of the attached proposed regulations for the posting of signs and providing notice to patients and clients about the Medical Board of California (Board), make a motion to authorize staff to do the following:

- 1) Submit the proposed rulemaking package for review by the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency);
- 2) Upon DCA and Agency approval, submit the rulemaking package to the Office of Administrative Law (OAL) to formally notice the proposed regulations and schedule a hearing on the rulemaking to:
 - a. Amend Section 1355.4 of Article 1, Chapter 2, Division 13, Title 16 of the California Code of Regulations (CCR);
 - b. Add Section 1378.5 to Article 3, Chapter 3, Division 13, Title 16 of the CCR;
 - c. Add Section 1379.4 to Article 1, Chapter 4, Division 13, Title 16 of the CCR; and
 - d. Amend Section 1379.58 of Article 4, Chapter 4.3, Division 13, Title 16 of the CCR.
- 3) Allow staff to make non-substantive changes to the language during the rulemaking process, as needed.

BACKGROUND:

Senate Bill (SB) 798 (Hill, Chapter 775, Statutes of 2017) enacted Business and Professions Code (B&P) section 2026, which directed the Board to initiate the process of adopting regulations prior to January 1, 2019, to require its licensees and registrants to provide notice to their patients or clients that the provider is licensed or registered by the Board, that the license or registration can be checked, and that complaints against the provider can be made through the Board's website, or by contacting the Board.

The Board licenses and registers the following providers: physicians and surgeons; research psychoanalysts; licensed midwives; and polysomnographic technologists, technicians, and trainees. The Board currently has regulations applicable to physicians and polysomnographic registrants that require them to provide notice to patients about the fact that they are licensed or registered and regulated by the Board and to provide the Board's web address and phone number. Those regulations, 16 CCR sections

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1355.4 and 1379.58, will be amended by this rulemaking to include the additional information required by B&P section 2026.

Licensed midwives are required to provide information to their clients about the Board regarding the availability of laws regulating the practice of midwifery and the procedure for reporting complaints to the Board under B&P section 2508(a)(11). This rulemaking will add a new regulation, 16 CCR section 1379.4, for licensed midwives to be compliant with the notice requirements under B&P section 2026.

Finally, this rulemaking will add a new regulation, 16 CCR section 1378.5, applicable to research psychoanalysts, requiring them to meet the notice requirements under B&P section 2026.

The proposed amendments to existing regulations and the proposed new regulations contain three options for providing notice to patients or clients regarding the role of the Board, and how to contact the Board. Each licensee or registrant may choose whether to:

- 1) Post a compliant notice on the premises in a location visible to patients or clients.
- 2) Include a compliant notice and an acknowledgement of receipt and understanding in a written statement to be signed by the patient or patient's representative, and maintained in the patient's medical records.
- 3) Include a compliant notice in a written statement, such as in discharge instructions, given to the patient or patient's representative.

Additionally, this proposed rulemaking will require licensees and registrants to provide the notice in the patient's or patient's representative's primary language. This requirement furthers consumer protection by ensuring the information is provided in the language understood by the patient or his or her representative.

The proposed regulatory text is attached for review and consideration.

STAFF RECOMMENDATION:

Staff recommends the Board approve the proposed amendments and additions to the regulations, authorize staff to submit the proposed rulemaking package to DCA and Agency for review and approval, and then notice the modified language for a 45-day comment period and hearing. Staff further recommends the Board authorize staff to make any non-substantive changes to the proposed language during the rulemaking process, as needed.

**Specific Language of Proposed Additions and Deletions
for Regulations on Signage, Notice to Patients and Clients**

Legend

Underlined Indicates proposed amendments or additions to the existing regulation
~~Strikeout~~ Indicates proposed deletions to the existing regulation.

(1) Amend Section 1355.4 of Article 1, Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1355.4. Notice to Consumers.

(a) A medical doctor licensee engaged in the practice of medicine shall provide notice to each patient of the fact that the licensee is licensed and regulated by the board, the license can be checked and complaints against the licensee can be made through the board's website or by contacting the board. The notice shall include the following statement and information:

NOTICE TO PATIENTS
Medical doctors are licensed and regulated
by the Medical Board of California.
To check up on a doctor's license or
to file a complaint go to
(800) 633-2322
www.mbc.ca.gov,
email: licensecheck@mbc.ca.gov,
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least ~~48~~38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in the patient's or patient's representative's primary language, signed and dated by the patient or the patient's representative and retained in that patient's medical records, ~~stating the patient understands the physician is licensed and~~

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~~regulated by the board.~~

(3) Including the notice in the patient's or patient's representative's primary language in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

(c) If the licensee chooses to post a sign to comply with this section, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the patient's or patient's representative's primary language.

Note: Authority cited: Sections 2018 and 2026, Business and Professions Code.
Reference: Sections 138 and 2026, Business and Professions Code.

(2) Add Section 1378.5 to Article 3, Chapter 3, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1378.5. Notice to Consumers.

(a) A research psychoanalyst registrant shall provide notice to each patient of the fact that the registrant is registered and regulated by the board, the registration can be checked and complaints against the registrant can be made through the board's website or by contacting the board. The notice shall include the following statement and information:

NOTICE TO PATIENTS

Research psychoanalysts are registered and regulated
by the Medical Board of California.

To check up on a research psychoanalyst's registration or
to file a complaint go to
www.mbc.ca.gov,
email: licensecheck@mbc.ca.gov,
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the registrant provides services as a research psychoanalyst, in which case the notice shall be in at least 38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in the patient's or patient's representative's primary language, signed

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and dated by the patient or the patient's representative and retained in that patient's medical records.

(3) Including the notice in the patient's or patient's representative's primary language in a statement on letterhead, patient instructions, or other document given to a patient or the patient representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

(c) If the registrant chooses to post a sign to comply with this section, the registrant shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the patient's or patient's representative's primary language.

Note: Authority cited: Sections 2018 and 2026, Business and Professions Code.
Reference: Sections 138, and 2026, Business and Professions Code.

(3) Add Section 1379.4 to Article 1, Chapter 4, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1379.4. Notice to Consumers.

(a) A licensed midwife shall provide notice to each client of the fact that the licensee is licensed and regulated by the board, the license can be checked and complaints against the licensee can be made through the board's website or by contacting the board. The notice shall include the following statement and information:

NOTICE TO CLIENTS
Licensed midwives are licensed and regulated
by the Medical Board of California.
To check up on a midwife's license or
to file a complaint go to
www.mbc.ca.gov,
email: licensecheck@mbc.ca.gov,
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to clients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 38-point type in Arial font.

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(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in the client's or client's representative's primary language, signed and dated by the client or the client representative and retained in that client's medical records.

(3) Including the notice in the client's or client's representative's primary language in a statement on letterhead, client instructions, or other document given to a client or the client representative, where the notice is placed immediately above the signature line for the client in at least 14-point type.

(c) If the licensee chooses to post a sign to comply with this section, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the client's or client's representative's primary language.

Note: Authority cited: Sections 2018 and 2026, Business and Professions Code.
Reference: Sections 138, 2026, and 2508, Business and Professions Code.

(4) Amend Section 1379.58 of Article 4, Chapter 4.3, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1379.58. Notice to Consumers.

(a) A polysomnography registrant shall provide notice to each patient of the fact that the registrant ~~person~~ is registered and regulated by the board, the registration can be checked and complaints against the registrant can be made through the board's website or by contacting the board. The notice shall include the following statement and information:

NOTICE TO PATIENTS ~~CONSUMERS~~

Medical doctors and polysomnographic technologists, technicians, and trainees are licensed, registered, and regulated by the Medical Board of California. To check up on a doctor's license or polysomnographic registration or to file a complaint go to
(800) 633-2322
www.mbc.ca.gov,
email: licensecheck@mbc.ca.gov,
or call (800) 633-2322.

(b) The notice required by this section shall be provided by one of the following methods:

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(1) Prominently posting the notice in an area visible to patients on the premises where the registrant provides the services for which registration is required, in which case the notice shall be in at least ~~48~~38-point type in Arial font.

(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in the patient's or patient's representative's primary language, signed and dated by the patient or the patient's representative and retained in that patient's medical records, ~~stating the patient understands the polysomnographic registrant are~~

(3) Including the notice in the patient's or patient's representative's primary language, in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

(c) If the registrant chooses to post a sign to comply with this section, the registrant shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section if the sign is not posted in the patient's or patient's representative's primary language.

Note: Authority cited: Sections ~~138~~ and 2018 and 2026, Business and Professions Code; Reference: Sections ~~138~~ and 2026, Business and Professions Code.