

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 18, 2022
ATTENTION: Members, Medical Board of California
SUBJECT: Notice to Consumers – Discussion and Possible
Action in Response to Public Comments Received
During the 45-Day Comment Period
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION

After review and consideration of the public comments received during the 45-day comment period on the proposed rulemaking on Notice to Consumers (Title 16 or the California Code of Regulations (CCR) sections 1355.4, 1378.5, 1379.4, and 1379.58) make a motion to

1. Approve the modified text;
2. Direct staff to provide notice of a 15-day comment period on the modified text;
3. If no substantive adverse comments are received during the 15-day comment period, authorize staff to finalize the rulemaking file and submit it to the Office of Administrative Law, including the authority to adopt the modified text and make any technical or non-substantive changes without returning to the Board.

BACKGROUND

At the July 26, 2018, Board meeting, the Board approved proposed regulatory text to amend 16 CCR sections 1355.4 and 1379.58 and to add sections 1378.5 and 1379.4 relating to the requirement for the Board's licensees and registrants to provide notice to their patients and clients regarding the Board's regulatory role and how to contact the Board to verify a license or file a complaint.

As required by the Administrative Procedure Act, Board staff released the proposed text for the 45-day comment period on November 12, 2021, which ended on December 27, 2021. The California Medical Association and the California Hospital Association provided comments during the comment period.

Additionally, upon review of the public comments, Board staff determined that a modification of the proposed text was warranted under subdivision (c) for each section to indicate that the notice provided under this subdivision shall be provided within 90 days of the patient's first visit after January 1, 2023. This modification will allow the Board additional time to do outreach to alert licensees to these changes once the regulations are approved and to provide licensees time to obtain additional translated documents, when necessary.

Attached to this memo are the following:

1. The original proposed text released for the 45-day public comment period.

2. Summarized public comments with Board staff recommendations.
3. Proposed modified text.
4. Public comments received during the 45-day comment period.

At this meeting, the Board has the opportunity to discuss the proposed regulatory text and determine what course of action it wishes to pursue. Among its options, the Board may decide that no changes to the originally proposed text are appropriate; that changes recommended by staff are appropriate; or that other changes to the proposed text are warranted.

STAFF RECOMMENDATION

Make and approve the motion indicated above under Requested Action in support of modifying the language or provide alternative instructions to staff.

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. MEDICAL BOARD OF CALIFORNIA
PROPOSED REGULATORY LANGUAGE
NOTICE TO CONSUMERS

Legend: Added text is indicated with an underline.
 Deleted text is indicated by ~~strikeout~~.

(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 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 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 regulated by the board.~~

(3) Including the notice in the patient's or patient 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 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 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 representative's primary language, signed and dated by the patient or the patient representative and retained in that patient's medical records.

(3) Including the notice in the patient's or patient 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 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 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.

(2) Including the notice and an acknowledgement of receipt and understanding in a written statement in the client's or client 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 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 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 license or 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:

(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 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 is~~

~~registered and regulated by the board.~~

(3) Including the notice in the patient's or patient 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 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.

MEDICAL BOARD OF CALIFORNIA

Proposed regulatory text to amend 16 CCR sections 1355.4 and 1379.58 and to add sections 1378.5 and 1379.4 – Notice to Consumers

Summarized 45-day Comments Regarding Notice to Consumers with Board Staff Recommendations:

Written Comments from the California Hospital Association (CHA) dated December 20, 2021

Comment 1: CHA requests the Board to replace the phrase “primary language” with “language understood by the patient” throughout the regulations, because many patients speak a primary language other than English and also understand English or another language fluently or very well.

Response to Comment 1: Board staff have reviewed this comment and recommend that the language be amended to change the phrase “primary language” to “language understood by the patient or patient representative.” This change will meet the goal of the proposed regulation while reducing the burden on licensees. Board staff have provided recommended modified language within the meeting materials.

Comment 2: CHA requests the Board to add a new subdivision (d) to each regulation to read as follows:

(d) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section with regard to patients seen in a clinic or health facility as defined in Division 2 of the Health and Safety Code if the hospital or clinic posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

Response to Comment 2: Board staff have reviewed this comment and recommend that the language be amended to accommodate this request. Health and Safety Code section 1259(b)(2)(A) defines “Language or communication barriers” to mean:

With respect to spoken language, barriers that are experienced by individuals who are limited-English-speaking or non-English-speaking individuals who speak the same primary language and who comprise at least 5 percent of the population of the geographical area served by the hospital or of the actual patient population of the hospital. In cases of dispute, the State Department of Public Health shall determine, based on objective data, whether the 5 percent population standard applies to a given hospital.

Board staff have provided recommended modified language within the meeting materials that would cover practice settings that may take on the responsibility for posting the sign and brings the translation requirement in line with statutory language promoting similar communication goals.

Comment 3: CHA requests the Board to revise subdivision (b)(2) of reach regulation to make it clear that the acknowledgement of receipt may be retained electronically.

Response to Comment 3: Board staff have reviewed this comment and recommend that the language be amended to allow the notice and acknowledgement of receipt and understanding to be provided and maintained in an electronic format. This change will meet the goal of the proposed regulation while making it clear that providing the notice and maintaining the acknowledgement of receipt and understanding may be done electronically. Board staff have provided recommended modified language within the meeting materials.

Written Comments from the California Medical Association (CMA) dated December 23, 2021

Comment 4: CMA requests the Board to delete the words “in the patient’s or patient representative’s primary language” in section 1355.4(b)(2).

Response to Comment 4: Board staff have reviewed this comment and do not recommend making this change exactly how CMA requested but believe that the regulations can be modified to meet its goals while reducing the burden on licensees by changing the phrase “primary language” to “language understood by the patient or patient representative.”

Comment 5: CMA requests the Board to add language to under 1355.4(b)(2) to allow the acknowledgement and receipt to be retained in the medical record electronically.

Response to Comment 5: Board staff have reviewed this comment and recommend modifying the language consistent with the Response to Comment 3. Board staff have provided recommended modified language within the meeting materials.

Comment 6: CMA requests the Board to delete the words “in the patient’s or patient representative’s primary language” in section 1355.4(b)(3).

Response to Comment 6: Board staff have reviewed this comment and do not recommend making this change exactly how CMA requested but believe that the regulations can be modified to meet its goals while reducing the burden on licensees by changing the phrase “primary language” to “language understood by the patient or patient representative.”

Comment 7: CMA requests the Board to amend section 1355.4[(c)] as follows:

(c) If the licensee chooses to post a sign to comply with this section and the sign is not in the patient's or the patient representative's primary language, the licensee shall also provide the notice as described in subdivision (b)(2) and (b)(3) of this section, if the notice and templates for acknowledgement or receipt and understanding are provided pursuant to Section 1355.4(d) in a language understood by the patient.

Response to Comment 7: Board staff have reviewed this comment and do not recommend making this change exactly how CMA requested, since this modification would only require licensees to provide translated notices and acknowledgements if the Board provided the translation on its website. Board staff believe, however, that the regulations can be modified to meet its goals while reducing the burden on licensees consistent with Response to Comment 2. This modification will not require a licensee to provide a translated notice for every patient, but instead a licensee will have to provide translation for any language meeting the definition of a "language or communication barrier" as defined by Section 1259(b)(2)(A) of the Health and Safety Code, regardless of practice location.

Comment 8: CMA requests the Board to add a new section 1355.4(d) as follows:

(d) Templates for notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website in one of the 12 most common non-English languages that are speaking in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count.

Response to Comment 8: Board staff have reviewed this comment and do not recommend making this change. This request is part of CMA's proposed change to only require licensees to provide notices and acknowledgements of receipt and understanding in languages that have already been translated and posted by the Board. The licensee's practice location, however, may warrant additional translations not provided by the Board. As an alternative, Board staff have provided suggested modified language in the meeting materials that will tie the requirement to translate the notice or acknowledgement of receipt and understanding to the patient population in the area where a licensee practices, as described by Section 1259(b)(2)(A) of the Health and Safety Code, regardless of practice location.

Comment 9: CMA requests the Board to add a new section 1355.4(e) as follows:

(e) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section with regard to patients seen in a clinic or health facility as defined in Division 2 of the Health and Safety Code if the hospital or clinic posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

Response to Comment 9: Board staff have reviewed this comment and recommend that the language be amended to accommodate this request as described in Response

to Comment 2. Board staff have provided suggested modified language in the meeting materials.

Comment 10: CMA indicates that the Board may wish to include a link or a Quick Response (QR) code that patients can access with their mobile devices that links to the Board website where notices are available in non-English languages.

Response to Comment 10: Board staff have reviewed this comment and do not recommend making this change. While it is possible to provide a QR code, if the patient or patient representative does not understand English, then they may not understand that the QR code will provide them with a translated notice.

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. MEDICAL BOARD OF CALIFORNIA

**PROPOSED REGULATORY LANGUAGE
 NOTICE TO CONSUMERS**

LEGEND

Proposed changes to the current regulation language are shown by underline for added language and ~~strikeout~~ for deleted language.

Modified changes to the proposed regulation language are shown by double underline for added language and ~~double strikeout~~ for deleted language.

(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 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 a language understood by the patient's or patient representative

~~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 regulated by the board. The notice and acknowledgement of receipt and understanding may be provided and maintained in an electronic format.~~

(3) Including the notice in a language understood by the patient's or patient 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, and the sign is not posted in a language understood by the patient or patient representative, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section within 90 days of the patient's first visit after January 1, 2023. if the sign is not posted in the patient's or patient representative's primary language.

(d) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the licensee is practicing posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code, even if the licensee's practice would not otherwise be covered by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

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 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 a language understood by the patient's or patient representative's primary language, signed and dated by the patient or the patient representative and retained in that patient's medical records. The notice and acknowledgement of receipt and understanding may be provided and maintained in an electronic format.

(3) Including the notice in a language understood by the patient's or patient representative's primary language in a statement on letterhead, patient 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, and the sign is not posted in a language understood by the patient or patient representative, the registrant shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section within 90 days of the patient's first visit after January 1, 2023. ~~if the sign is not posted in the patient's or patient representative's primary language.~~

(d) Notwithstanding subdivision (c), a registrant shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the licensee is practicing posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code, even if the registrant's practice would not otherwise be covered by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

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 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.

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

(3) Including the notice in a language understood by the client's or client 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, and the sign is not posted in a language understood by the patient or patient representative, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section within 90 days of the client's first visit after January 1, 2023, if the sign is not posted in the client's or client representative's primary language.

(d) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the licensee is practicing posts the notice on its premises in an area visible to clients in English and any other language required by Section 1259 of the Health and Safety Code, even if the licensee's practice would not otherwise be covered by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

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 license or 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:

(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 a language understood by the patient's or patient 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 is registered and regulated by the board.~~ The notice and acknowledgement of receipt and understanding may be provided and maintained in an electronic format.

(3) Including the notice in a language understood by the patient's or patient 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, and the sign is not posted in a language understood by the patient or patient representative, the registrant shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section within 90 days of the patient's first visit after January 1, 2023. ~~if the sign is not posted in the patient's or patient representative's primary language.~~

(d) Notwithstanding subdivision (c), a registrant shall be deemed to be in compliance with this section if the hospital, clinic, or other practice location where the registrant is practicing posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code, even if the registrant's practice would not otherwise be covered by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

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



December 20, 2021

Alexandria Schembra
Medical Board of California
2005 Evergreen St., Suite 1200
Sacramento, CA 95815

Via e-mail: regulations@mbc.ca.gov

Re: Proposed Regulation to Amend Title 16, California Code of Regulations, sections 1355.4 and 1379.58; Adopt sections 1378.5 and 1379.4 (“Notice to Consumer”)

Dear Ms. Schembra:

The California Hospital Association (CHA), on behalf of its more than 400 member hospitals and health systems, is pleased to comment on the Medical Board of California’s (MBC) proposed regulation seeking to revise the current “Notice to Consumer” requirement for physicians, research psychoanalysts, licensed midwives, and polysomnography registrants.

CHA supports the proposed updated text for the notices, which will provide additional clarity for consumers. However, the requirement to provide each patient with written notice in their primary language sets an impossible standard for hospitals, which often provide the notice on behalf of licensees.

Ethnologue: Languages of the World publishes an annual reference [document](#) that contains statistics and other information on the living languages of the world. In 2021, the 24th edition listed **7,139** modern languages, including Bengali, Fula, Urdu, Marathi, Telugu, Yue Chinese, Mandarin Chinese, Hausa, Gujarati, Kannada, Amharic, Bhojpuri, Min Nan Chinese, Jim Chinese, Hakka Chinese, Yoruba, Odia, Javanese, Sudanese, Oromo, Tamil, and Pashto. Just listing these languages — which are among the top 50 most frequently spoken languages in the world, not obscure languages spoken by small groups — shows the impossibility of meeting the proposed requirement.

As you know, many physicians and other MBC licensees do not maintain office-based practices. Instead, they practice primarily in hospitals. Some of them — such as pathologists and radiologists — never see patients. They cannot give their patients a handout, and they don’t know which language(s) their patients speak. They probably haven’t reviewed all the signage posted in the hospital to see which signs are posted in which languages. These licensees must, by necessity, rely on the hospital to provide the Notice to Consumers.

As a service to their medical staff, hospitals are currently willing to provide these notices to patients on behalf of licensees. Today, most hospitals post signs in their facilities in English as well as other languages required by the myriad state and federal laws regarding interpreter services applicable to hospitals (Health and Safety Code § 1259; 22 CCR § 70721; 42 U.S.C. Section § 18116; 45 CFR part 92, and Title VI of the Civil Rights Act of 1964 as outlined in the U.S. Department of Health and Human Services Office for Civil Rights guidance titled “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”), not to mention contractual obligations passed from Medi-Cal to managed care plans to providers.

However, it is impossible to provide notices in every patient’s primary language. Hospitals cannot comply with the proposed regulation, and as a result, licensees who practice in a hospital setting will be out of compliance. This requirement will also likely result in noncompliance for licensees who practice in jails, prisons, and county clinics. For example, Los Angeles County has a vast network of more than 224 primary care [clinics](#), with providers speaking 28 languages (Arabic, Armenian, Bengali, Burmese, Cantonese, Chinese, English, Farsi, French, German, Greek, Hebrew, Hindi, Hmong, Indonesian, Japanese, Khmer, Korean, Malayalam, Mandarin, Persian, Punjabi, Russian, Samoan, Spanish, Tagalog, Thai, and Urdu) —yet even Los Angeles County would be unable to comply with the proposed requirement.

All the state and federal interpreter services laws listed above recognize this impossibility. Each law establishes a threshold to determine when documents must be translated into a specific non-English language. For example, Health and Safety Code § 1259 requires hospitals to translate documents into a non-English language if that language is spoken by 5% or more of the population of the geographic area served by the hospital or of the actual patient population served by the hospital. Similarly, Medi-Cal uses the term “threshold languages,” meaning primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

With the above information in mind, CHA recommends the following revisions to the proposed regulation:

1. Replace the phrase “primary language” with “language understood by the patient” throughout the regulations. Many patients speak a primary language other than English and also understand English or another language fluently or very well. Given that the information in the Notice to Consumer is fairly straightforward, it should be permissible to provide the notice to patients in any language they understand.
2. Add a new subdivision (d) to each regulation (1355.4, 1379.58, 1378.5, and 1379.4), to read as follows:

(d) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section with regard to patients seen in a clinic or health facility as defined in Division 2 of the Health and Safety Code if the hospital or clinic posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

3. Revise subdivision (b)(2) of each regulation to make it clear that the acknowledgement of receipt may be retained electronically.

Thank you for considering these comments. I may be reached at (916) 834-7611 if you have any questions.

Sincerely,

/s/ Lois J. Richardson

Lois J. Richardson
Vice President & Legal Counsel



December 23, 2021

Alexandra Schembra
 Medical Board of California
 2005 Evergreen Street, Ste. 1200
 Sacramento, CA 95815

Subject: Notice of Proposed Regulatory Action - Amend Title 16 California Code of Regulations §1355.4 and adopt §1378.5.

Dear Ms. Schembra:

The California Medical Association (CMA) respectfully submits the following comments for consideration related to the recent modification to existing regulations to require physicians to post a "Notice to Consumers" that the Medical Board of California ("Board") regulates physicians and provide the phone number and website for the Board. The comments are in response to the solicitation for comments in a notice of proposed rulemaking containing proposed regulation §1355.4 and §1378.5 (the "Proposed Regulations").

The California Medical Association represents more than 50,000 California physicians, residents and medical students. Dedicated to the health of Californians, CMA is active in the legal, legislative, reimbursement and regulatory areas on behalf of California physicians and their patients.

This letter proposes amendments to the regulations to clarify the responsibility of the licensee to provide the notice information in non-English languages.

Background

Senate Bill (SB) 798 (Hill, Chapter 775, Statutes of 2017) added Business and Professions Code § 2026 to the Medical Practice Act (Act – Bus. & Prof. Code, §§ 2000 et seq.) in the Code, to become effective January 1, 2018. BPC §2026 required the Board to initiate rulemaking to require “licentiates and registrants to provide notice to their clients or patients that the practitioner is licensed or registered in this state by the board, that the practitioner’s license can be checked, and that complaints against the practitioner can be made through the board’s Internet Web site or by contacting the board.”

Existing law under 16 CCR §1355.4 requires physicians and surgeons to provide notice to their patients that medical doctors are licensed and regulated by the Board. The Board’s toll-free phone number and website are also required to be included in the notice.

Further, existing law under §1355.4 provides physicians three options for complying with the notice requirement: 1) they can prominently post the notice in an area visible to patients in at least 48-point type Arial font; 2) they can include the notice in a written statement to be signed and dated by the patient or the patient's representative and retained in that patient's medical records; or 3) they can provide the notice on a document that is given to the patient or the patient's representative where the notice is placed immediately above the signature line.

This rulemaking proposes to amend §1355.4 subdivision (b)(2), which allows for the provision of a written statement to be signed and dated by the patient or the patient's representative, by requiring physicians using this method to include the notice and an acknowledgement of receipt and understanding in a written statement in the patient's or patient's representative's primary language.

This rulemaking also proposes to amend §1355.4 subdivision (b)(3), which allows the notice to be provided near the signature line on a document given to a patient or the patient's representative, to require the notice to be provided in the patient's or patient's representative's primary language.

Finally, this proposed rulemaking would add subdivision (c) to §1355.4 which would provide that if the licensee chooses to post a sign to comply with the notice requirement, then they must 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 patients representative's primary language.

Notice Availability in Non-English Languages. The proposed regulations require that the notice be provided in the patient's or patient representative's primary language through a written statement and acknowledgment of receipt that is signed by the patient and kept in the medical record or through inclusion of the statement in the patient's or patient representative's primary language in other documentation. CMA supports the intent of the proposed regulations to ensure that the information in the notice is conveyed effectively by making it easier for the patient or the patient's representative to read the notice in a non-English language.

The accompanying Statement of Reasons states that the Board will make signage available on its website for download in the 12 most common non-English languages that are spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count – Census 2020, May 17, 2019. These are Spanish, Chinese (including Mandarin and Cantonese) Vietnamese, Tagalog (including Filipino), Korean, Armenian, Farsi, Arabic, Russian, Japanese, Punjabi, and Khmer. The intent of making the notice available for download is to ensure licensees and registrants will be able to complete the translation and post the notification within normal business operations at no additional cost.

There is, however, an inconsistency between the requirement for the licensee to make the notice available in the “primary language” of the patient or their representative and the planned availability for download of the notice in the 12 most common non-English languages spoken in California. If the primary language is not one of the 12 most common non-English languages, the licensee may be required to translate the notice into any language not provided by the Board. This may result in increased cost, administrative burdens, and cause the licensee to be in violation of the regulations if they are unable to provide the translated notice.

CMA recommends the following amendments to the proposed regulation:

1. Delete the words “in the patient’s or patient representative’s primary language” in §1355.4 (b)(2) and add language to allow the acknowledgement and receipt to be retained in the medical record electronically.

2. Delete the words “in the patient’s or patient representative’s primary language” in §1355.4 (b)(3).

3. Amend §1355.4 (3)(c) as follows:

(c) If the licensee chooses to post a sign to comply with this section and the sign is not in the patient’s or patient representative’s primary language, the licensee shall also provide the notice as described in subdivision (b)(2) and (b)(3) of this section, if the notice and templates for acknowledgement or receipt and understanding are provided pursuant to Section 1355.4(d) in a language understood by the patient.

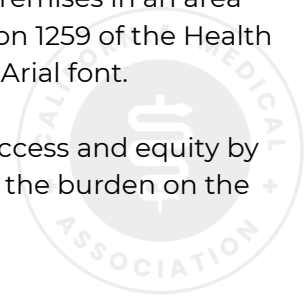
4. Add new §1355.4(d) as follows:

(d) Templates for notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website in one of the 12 most common non-English languages that are spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count.

5. Add new §1355.4(e) as follows:

(e) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section with regard to patients seen in a clinic or health facility as defined in Division 2 of the Health and Safety Code if the hospital or clinic posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

These amendments are consistent with the intent to improve health access and equity by making the notice available in non-English languages and also reduce the burden on the



licensee to make the translated notice and acknowledgement of receipt and understanding available in a language that is not already available from the Medical Board of California.

To facilitate access to the notice in the 12 most common non-English languages and to eliminate the need for the licensee to have a copy of the notice available in these languages, the Medical Board may wish to include a link or a Quick Response (QR) code that patients can access with their mobile devices that links to the Medical Board website where notices are available in non-English languages.

We appreciate the opportunity to comment on these proposed regulations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Yvonne Choong". The signature is fluid and cursive, with a large, stylized "Y" and "C".

Yvonne Choong
Vice-President, Health Policy
California Medical Association

