

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: May 2, 2022
ATTENTION: Members, Medical Board of California
SUBJECT: Notice to Consumers – Discussion and Possible Action on Modified Text
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION:

After review and consideration of the attached modified text for the proposed rulemaking on Notice to Consumers (Title 16 of 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 public comment period on the modified text;
3. If no substantive adverse comments are received during the 15-day public 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 public 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 public comment period. Staff presented the comments and staff's recommended responses, along with modified text at the February 11, 2022 Board meeting.

Following the discussion and consideration of further public comments made by members of the public at the meeting, the Board requested additional modifications to the proposed language to reflect the following:

- 1) The Board will provide templates for the notice and acknowledgement of receipt and understanding on the Board's website in the 12 most common non-English languages spoken in California per the California Census 2020 Language and Communication Access plan prepared by California Complete Count;
- 2) Licensees will not be required to provide additional translations beyond what is provided by the Board; and

- 3) The templates for the posted notices shall include a QR code, which will take the scanner to the Board's webpage with the translated signs.

The proposed modified language is attached to this memo.

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

MODIFIED TEXT
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 a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain 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'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. 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, if the notice and templates for acknowledgement of receipt and understanding are provided by the board pursuant to subdivision (d) of this section in a language understood by the patient or patient representative, if the sign is not posted in the patient's or patient representative's primary language.

(d) Templates for the notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website 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.

(e) 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 consistent with the requirements of this section.

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 a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain 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 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,
if the notice and templates for acknowledgement of receipt and understanding are
provided by the board pursuant to subdivision (d) of this section in a language
understood by the patient or patient representative. ~~if the sign is not posted in the
patient's or patient representative's primary language.~~

(d) Templates for the notice and acknowledgement of receipt and understanding shall
be provided on the Medical Board of California website 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.

(e) 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 consistent with
the requirements of this section.

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 a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain 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 client or client representative, the licensee shall also provide the notice as described in subdivisions (b)(2) or (b)(3) of this section, if the notice and templates for acknowledgement of receipt and understanding are provided by the board pursuant to subdivision (d) of this section in a language understood by the client or client representative, if the sign is not posted in the client's or client representative's primary language.

(d) Templates for the notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website 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.

(e) 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 consistent with the requirements of this section.

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 a quick response (QR) code that leads to the board's Notice to Consumer webpage, and shall contain 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, if the notice and templates for acknowledgement of receipt and understanding are provided by the board pursuant to subdivision (d) of this section in a language understood by the patient or patient representative, if the sign is not posted in the patient's or patient representative's primary language.

(d) Templates for the notice and acknowledgement of receipt and understanding shall be provided on the Medical Board of California website 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.

(e) 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 consistent with the requirements of this section.

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