

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: May 1, 2023
ATTENTION: Members, Medical Board of California
SUBJECT: Proposed Changes to Regulations Regarding Citable Offenses
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION:

After review and consideration of the proposed amendments to the attached regulations relating to citable offenses, make a motion to direct staff to proceed with the following:

- 1) Approve the text;
- 2) Direct staff to Prepare the necessary regulatory documents to submit to the Department of Consumer Affairs (DCA) and the Business, Consumer Services and Housing Agency (Agency);
- 3) Upon DCA and Agency approval, submit the documents to the Office of Administrative Law (OAL) to notice the proposed regulatory language to: Amend sections 1364.10 and 1364.11 of Division 13, of Title 16 of the California Code of Regulations; and
- 4) If no substantive adverse comments are received during the 45-day comment period, authorize staff to finalize the rulemaking file and submit it to DCA and Agency, and upon approval, to the Office of Administrative Law, and to make any technical or non-substantive changes without returning to the Board.

BACKGROUND

Business and Professions Code (BPC) section 125.9 authorizes the Board to establish a system by regulation for the issuance of a citation to the Board's licensees, which may contain an order of abatement or fine.

A citation, with or without a fine and/or order of abatement, is used to address technical or minor violations of the law, and is not considered disciplinary action. The Board's authority to issue a citation furthers public protection, as it allows the Board to take action upon completion of an investigation for non-egregious violations that do not rise to the level warranting discipline, but do raise issues that should be brought to the licensee's attention for correction.

Existing law under 16 CCR section 1364.10 provides, among other things, that 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 licensees of the statutes and regulations referred to in 16 CCR section 1364.11.

Existing law under 16 CCR section 1364.11 provides, among other things, that a Board official may issue a citation for a violation of the statutes and regulations specified in that

section. The list of statutes and regulations is long, cumbersome, and is routinely out of date due to statutory and regulatory changes. Additionally, this section caps the fine at \$2,500, but permits a fine of up to \$5,000 if the licensee has received two or more prior citations for the same or similar violations, or the citation involves multiple violations that show a willful disregard for the law. Under BPC section 125.9(b)(3), however, after considering certain factors, the Board is permitted to issue fines of up to \$5,000 for each violation, including for the first violation.

Among other changes, Board staff initially explored eliminating the list of citable offenses by indicating that the Board official could issue citations, including those containing orders of abatement and/or fines, to any licensee for a violation of any statute or regulation which would be grounds for discipline by the Board. However, through further review, Board staff determined that eliminating the entire list could result in the Board's authority to issue the citation being challenged in some circumstances. Consequently, Board staff recommended maintaining a streamlined list of citable offenses and adding additional language to include relevant practice acts, and any other statute or regulation upon which the Board may base a disciplinary action.

In December 2022, the Board approved amended language for sections 1364.10 and 1364.11. Since then, Board staff determined that it is necessary to make further edits to the text to: 1) clarify "licensee" under 1364.10(b); 2) strike references to regulatory sections under 1364.11 that are included in 1364.11(a)(46); and 3) amend section 1364.11(c) to account for other sections of California law that have different limits on the amount of the fine that may be issued and the factors that the Board must consider when determining the amount of the fine to be issued. The proposed amended language is attached for your review.

STAFF RECOMMENDATION:

Make and approve the motion indicated above under Requested Action in support of the proposed rulemaking language to amend the citation and fine regulations.

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. MEDICAL BOARD OF CALIFORNIA

PROPOSED REGULATORY LANGUAGE

Citable Offenses

Underlined: Indicates proposed additions to the existing regulation.

~~Strikeout~~: Indicates proposed deletions to the existing regulation

Amend Section 1364.10 in Article 6 of Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1364.10. Citations and Fines.

(a) For purposes of this article, "bBoard official" shall mean the executive director of the bBoard or ~~his or her~~ their designee.

(b) A bBoard official is authorized to determine when and against whom a citation will be issued and to issue citations, which may containg orders of abatement and/or fines, to any person who holds a license, certificate, registration, or permit from the Board (licensee) for violations ~~by a licensed physician or surgeon, licensed midwife, or polysomnographic technologist, technician, or trainee~~ of the statutes and regulations 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~~ each 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.

Amend Section 1364.11 in Article 6 of Chapter 2, Division 13, of Title 16 of the California Code of Regulations to read as follows:

§ 1364.11. Citable Offenses.

~~The amount of any fine to be levied by a board official shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and shall be within the range set forth below.~~

(a) In ~~his or her~~ their discretion, a bBoard official may issue a citation under Section 1364.10 for a violation of the provisions listed in this section.

(1) Business and Professions Code Section 119

- (2) Business and Professions Code Section 125
- (3) Business and Professions Code Section 125.6
- (4) Business and Professions Code Section 475(a)(1)
- (5) Business and Professions Code Section 496
- (6) Business and Professions Code Section 650
- (7) Business and Professions Code Section 650.1
- (8) Business and Professions Code Section 654
- (9) Business and Professions Code Section 654.1
- (10) Business and Professions Code Section 654.2
- (11) Business and Professions Code Section 655.5
- (12) Business and Professions Code Section 702
- (13) Business and Professions Code Section 730
- (14) Business and Professions Code Section 732
- (15) Business and Professions Code Section 802(a)
- (16) Business and Professions Code Section 802.1
- (17) Business and Professions Code Section 810
- ~~(18) Business and Professions Code Section 2024~~
- ~~(19) Business and Professions Code Section 2052~~
- ~~(20) Business and Professions Code Section 2054~~
- ~~(21) Business and Professions Code Section 2065~~
- ~~(22) Business and Professions Code Section 2066~~
- ~~(23) Business and Professions Code Section 2072~~
- ~~(24) Business and Professions Code Section 2073~~
- ~~(25) Business and Professions Code Section 2168~~
- ~~(26) Business and Professions Code Section 2168.4~~
- ~~(27) Business and Professions Code Section 2216.1~~
- ~~(28) Business and Professions Code Section 2221.1~~
- ~~(29) Business and Professions Code Section 2234(h)~~
- ~~(30) Business and Professions Code Section 2236~~
- ~~(31) Business and Professions Code Section 2238~~
- ~~(32) Business and Professions Code Section 2240~~
- (34) Business and Professions Code Section 2244 (maximum fine \$1000 pursuant to section 2244)
- ~~(33) Business and Professions Code Section 2243~~
- ~~(35) Business and Professions Code Section 2250~~
- ~~(36) Business and Professions Code Section 2255~~
- ~~(37) Business and Professions Code Section 2256~~
- ~~(38) Business and Professions Code Section 2257~~
- ~~(39) Business and Professions Code Section 2259~~
- ~~(40) Business and Professions Code Section 2261~~
- ~~(41) Business and Professions Code Section 2262~~
- ~~(42) Business and Professions Code Section 2263~~
- ~~(43) Business and Professions Code Section 2264~~
- ~~(44) Business and Professions Code Section 2266~~

- ~~(45) Business and Professions Code Section 2271~~
- ~~(46) Business and Professions Code Section 2272~~
- ~~(47) Business and Professions Code Section 2273~~
- ~~(48) Business and Professions Code Section 2274~~
- ~~(49) Business and Professions Code Section 2285~~
- ~~(50) Business and Professions Code Section 2286~~
- ~~(51) Business and Professions Code Section 2305~~
- ~~(52) Business and Professions Code Section 2400~~
- ~~(53) Business and Professions Code Section 2415~~
- ~~(54) Business and Professions Code Section 2426~~
- ~~(55) Business and Professions Code Section 2439~~
- ~~(56) Business and Professions Code Section 2440~~
- ~~(57) Business and Professions Code Section 2441~~
- ~~(58) Business and Professions Code Section 2507~~
- ~~(59) Business and Professions Code Section 2508~~
- ~~(60) Business and Professions Code Section 2510~~
- ~~(61) Business and Professions Code Section 2514~~
- ~~(62) Business and Professions Code Section 2519~~
- ~~(63)18) Business and Professions Code Section 3516~~
- ~~(64)19) Business and Professions Code Section 3575~~
- ~~(65)20) Business and Professions Code Section 3576~~
- ~~(66)21) Business and Professions Code Section 4080~~
- ~~(67)22) Business and Professions Code Section 4081(a)~~
- ~~(68)23) Business and Professions Code Section 4172~~
- ~~(69)24) Business and Professions Code Section 17500~~
- ~~(70)25) Civil Code Section 56.10~~
- ~~(71)26) Health and Safety Code Section 1248.15~~
- ~~(72)27) Health and Safety Code Section 11165.1(a)(1)(A)(i)~~
- ~~(73)28) Health and Safety Code Section 102795~~
- ~~(74)29) Health and Safety Code Section 102800~~
- ~~(75)30) Health and Safety Code Section 103785~~
- ~~(76)31) Health and Safety Code Section 109275~~
- ~~(77)32) Health and Safety Code Section 109277~~
- ~~(78)33) Health and Safety Code Section 109278~~
- ~~(79)34) Health and Safety Code Section 109282~~
- ~~(80)35) Health and Safety Code Section 120250~~
- ~~(81)36) Health and Safety Code Section 120370(a)~~
- ~~(82)37) Health and Safety Code Section 121362~~
- ~~(83)38) Health and Safety Code Section 121363~~
- ~~(84)39) Health and Safety Code Section 123110(a), (b)~~
- ~~(85)40) Health and Safety Code Section 123148~~
- ~~(86)41) Penal Code Section 11166~~
- ~~(87) Title 16 California Code of Regulations Section 1338(c)~~
- ~~(88) Title 16 California Code of Regulations Section 1355.4~~

~~(8942)~~ Title 16 California Code of Regulations Section 1399.545

~~(9043)~~ Title 17 California Code of Regulations Section 2500

~~(44) any provision of the Medical Practice Act (Business and Professions Code section 2000, et seq.)~~

~~(45) any provision of the Licensed Midwifery Practice Act of 1993 (Business and Professions Code section 2505, et seq.)~~

~~(46) any regulation adopted by the Board under Division 13, Title 16 of the California Code of Regulations.~~

~~(47) Any other statute or regulation upon which the Board may base a disciplinary action.~~

~~(b) In his or her discretion, a Board official may issue a citation under Section 1364.10 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.~~

~~(c) The amount of any fine to be levied by a Board official shall not exceed the amount specified in Section 125.9(b)(3) of the Code or other applicable sections of California law. When determining the amount of the fine to be assessed, the Board official shall consider the factors listed in Section 125.9(b)(3) or in other applicable sections of California law.~~

~~A citation may include a fine from \$100 to \$2500. However, a citation may include a fine up to \$5,000 if one or more of the following circumstances apply:~~

~~(1) The cited person has received two or more prior citations for the same or similar violations;~~

~~(2) The citation involves multiple violations that demonstrate a willful disregard for the law.~~

~~(d) In his or her discretion, a Board official may issue a citation with an order of abatement without levying a fine for the first violation of any provision set forth above.~~

~~(e) The sanction authorized under this section shall be separate from and in addition to any other administrative, civil, or criminal remedies.~~

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

Reference: Sections 125.9, 148, 2227, 2228, 2229 and 2234, Business and Professions Code.