

**State of California
Office of Administrative Law**

In re:
Medical Board of California

Regulatory Action:

Title 16, California Code of Regulations

Amend sections: 1364.10, 1364.11

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2024-0514-05

OAL Matter Type: Regular (S)

This action proposes to clarify who the Medical Board of California can issue citations to, what the basis for the citations can include, and the maximum fee allowed.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2024.

Date: June 26, 2024



Ashita Mohandas
Attorney

For: Kenneth J. Pogue
Director

Original: Kimberly Kirchmeyer, Executive
Director

Copy: Kerrie Webb

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2023-0919-06	REGULATORY ACTION NUMBER 2024-0514-05S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 26 2024
1:20 PM

OFFICE OF ADMIN. LAW
2024 MAY 14 @ 4:59pm

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
Medical Board of California

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2023, 39-2	PUBLICATION DATE 9/29/23	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Citation and Fine	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S) 16	1364.10 and 1364.11

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmission of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmission of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) N/A

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs

7. CONTACT PERSON Kerrie Webb	TELEPHONE NUMBER (916) 263-2389	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kerrie.webb@mbc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <u>Reji Varghese</u>	DATE 5/8/2024
TYPED NAME AND TITLE OF SIGNATORY Reji Varghese, Executive Director, Medical Board of California	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 26 2024

Office of Administrative Law

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. MEDICAL BOARD OF CALIFORNIA
CITATION AND FINE
ORDER OF ADOPTION

§ 1364.10. Citations and Fines.

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

(b) A ~~h~~Board official is authorized to determine when and against whom a citation will be issued and to issue citations, which may contain 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.

§ 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 ~~h~~Board 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 2021~~
- ~~(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~~
- ~~(33) Business and Professions Code Section 2244 (maximum fine \$1000 pursuant to section 2244)~~
- ~~(34) 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~~
(6318) Business and Professions Code Section 3516
(6419) Business and Professions Code Section 3575
(6520) Business and Professions Code Section 3576
(6621) Business and Professions Code Section 4080
(6722) Business and Professions Code Section 4081(a)
(6823) Business and Professions Code Section 4172
(6924) Business and Professions Code Section 17500
(7025) Civil Code Section 56.10
(7126) Health and Safety Code Section 1248.15
(7227) Health and Safety Code Section 11165.1(a)(1)(A)(I)
(7328) Health and Safety Code Section 102795
(7429) Health and Safety Code Section 102800
(7530) Health and Safety Code Section 103785
(7631) Health and Safety Code Section 109275
(7732) Health and Safety Code Section 109277
(7833) Health and Safety Code Section 109278
(7934) Health and Safety Code Section 109282
(8035) Health and Safety Code Section 120250
(8136) Health and Safety Code Section 120370(a)
(8237) Health and Safety Code Section 121362
(8338) Health and Safety Code Section 121363
(8439) Health and Safety Code Section 123110(a), (b)
(8540) Health and Safety Code Section 123148
(8641) Penal Code Section 11166
~~(87) Title 16 California Code of Regulations Section 1338(e)~~
~~(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~~their discretion, a ~~b~~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~~their discretion, a ~~b~~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.