



ENFORCEMENT COMMITTEE
FEBRUARY 18, 2015

E-3

SUBJECT: PROPOSED REGULATION FOR CONDUCT OF ORAL ARGUMENT BEFORE THE BOARD OF PODIATRIC MEDICINE ("BPM")

ACTION: ADOPT STAFF RECOMMENDATION TO DRAFT PROPOSED REGULATION CONCERNING ORAL ARGUMENT BEFORE BPM

RECOMMENDATION

Direct the Executive Officer to draft proposed regulations concerning the conduct of oral argument before the Board of Podiatric Medicine.

ISSUE

Current BPM regulations do not contain a provision for the conduct of oral argument following the non-adoption of a proposed decision as required by section 2336 of the California Business & Professions Code.

DISCUSSION

In passing Sec. 2336 of the California Business & Professions Code, the Legislature directed BPM to adopt rules governing the conduct of oral argument. Specifically the statute provides:

Sec. 2336 of the Business & Professional Code, Adoption of rules to govern conduct of oral argument

The Division of Medical Quality and the California Board of Podiatric Medicine shall adopt rules, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to govern the conduct of oral argument following nonadoption of a proposed decision. These rules shall preclude oral argument that exceeds the scope of the record of duly admitted evidence. (Attachment A)

The Medical Board of California has adopted Article 8, Section 1364.30, Procedures for the Conduct of Oral Arguments, and the stated procedures have not been incorporated by reference by BPM for use in BPM matters. (See Attachment B)

The Legislature has mandated in Sec. 2336 that the BPM's adopt oral argument procedures, however, this has yet to be accomplished.

Being that the Medical Board has already adopted procedures for oral argument that have been scrutinized and accepted by the Office of Administrative Law, the BPM's could incorporate by reference the procedures used by the Medical Board in Sec. 1364.30. This would allow the BPM to remain consistent with the Medical Board.

BPM matters are handled in conjunction with the Medical Board and it is best practice to remain consistent in procedural matters if there is no compelling reason to distinguish the BPM's procedures from those of the Medical Board. After reviewing the applicable statutes and regulations, staff has not found any reason to remain noncompliant with the legislature's mandate as stated above, or to distinguish the procedural rules from those of the Medical Board.

ALTERNATIVES CONSIDERED

The Board may decline to approve the recommended action and choose to let the matter of noncompliance remain in effect. Such a course is not recommended and may be looked upon unfavorably during the Board's Sunset Review scheduled for 2015-2016 year.

Alternately, the matter could be deferred to a later date. However, it is preferable to address the issue sooner rather than later as it is conceivable that the Board may again have an instance to hold oral argument before the body in the foreseeable future given that only one vote of the Board—rather than two—is required to defer a final disciplinary decision of an administrative law judge until consideration and discussion by the Board as a whole.

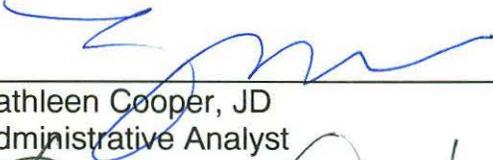
NEXT STEPS

Should the Board adopt staff's recommendation at the March 5, 2015 Board Meeting, the Executive Officer will begin drafting proposed regulations concerning the conduct of oral argument before BPM and return to Committee in May with proposed language.

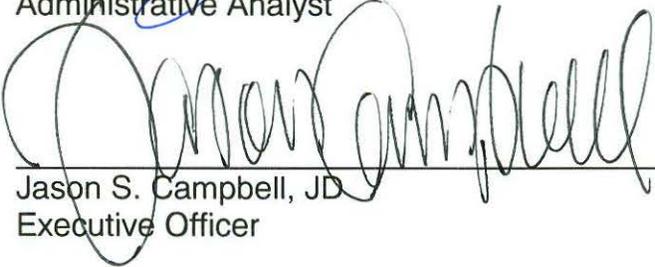
ATTACHMENTS

- A. California Business & Professions section 2336, Adoption of rules to govern conduct of oral argument
- B. Title 16, section 1364.30 California Code of Regulations - Procedures for the Conduct of Oral Arguments

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California

LEGISLATIVE INFORMATION

Code: Section: 

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 5. Medicine [2000 - 2521] (*Chapter 5 repealed and added by Stats. 1980, Ch. 1313, Sec. 2.*)

ARTICLE 13. Medical Adjudication [2330 - 2337] (*Article 13 repealed and added by Stats. 1993, Ch. 1267, Sec. 32.*)

2336. The Division of Medical Quality and the California Board of Podiatric Medicine shall adopt rules, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to govern the conduct of oral argument following nonadoption of a proposed decision. These rules shall preclude oral argument that exceeds the scope of the record of duly admitted evidence.

(Added by Stats. 1995, Ch. 708, Sec. 10.3. Effective January 1, 1996.)

WestlawNext **California Code of Regulations**[Home Table of Contents](#)**§ 1364.30. Procedures for the Conduct of Oral Arguments.**

16 CA ADC § 1364.30

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations [Currentness](#)
 Title 16. Professional and Vocational Regulations
 Division 13. Medical Board of California [FNA1]
 Chapter 2. Division of Medical Quality
 Article 8. Oral Arguments; Amicus Briefs (Refs & Annos)

16 CCR § 1364.30

§ 1364.30. Procedures for the Conduct of Oral Arguments.

(a) A party who wishes to present oral argument to the panel of the board that issued an order of nonadoption or reconsideration shall make a written request for oral argument not later than twenty (20) calendar days after the date of the notice of nonadoption or the order granting reconsideration.

(b) An administrative law judge will preside at oral argument. The administrative law judge may sit with and assist the panel members with their closed session deliberations.

(c) The arguments shall be based only on the existing record and shall not exceed the scope of the record of duly admitted evidence. No new evidence will be heard. The panel members may ask questions of the parties to clarify the arguments, but may not ask questions that would elicit new evidence. The administrative law judge and any panel member may ask a party to support the party's oral argument on a matter with a specific citation to the record.

(d) The administrative law judge shall stop an attorney, a party, or a panel member if the line of questioning or argument is beyond the record or is otherwise out of order.

(e) The administrative law judge shall offer the respondent physician an opportunity to address the panel regarding the penalty. If the respondent elects to address the panel, the administrative law judge shall place the respondent under oath.

(f) The sequence of, and time limitations on, oral argument are as follows:

- (1) First -the respondent licensee and/or his or her legal counsel, who shall be limited to fifteen minutes.
- (2) Second -the deputy attorney general, who shall be limited to fifteen minutes.
- (3) Third -the respondent licensee's rebuttal or that of his or her legal counsel, which shall be limited to five minutes.
- (4) Fourth -the deputy attorney general, who shall be limited to five minutes.

Note: Authority cited: Sections 2018 and 2336, Business and Professions Code. Reference: Section 2336, Business and Professions Code.

HISTORY

1. New article 8 (section 1364.30) and section filed 12-22-98; operative 1-21-99 (Register 98, No. 52).
2. Editorial correction inserting inadvertently omitted article 8 heading (Register 99, No. 33).
3. Amendment of article heading filed 4-7-2000; operative 5-7-2000 (Register 2000, No. 14).
4. Amendment of subsections (a), (c) and (e) filed 5-7-2008; operative 6-6-2008 (Register 2008, No. 19).

This database is current through 1/23/15 Register 2015, No. 4

16 CCR § 1364.30, 16 CA ADC § 1364.30

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