STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.
Medical Board of California
BOARD OF PODIATRIC MEDICINE
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EXECUTIVE MANAGEMENT COMMITTEE
MAY 20, 2015

SUBJECT: **BOARD OF PODIATRIC MEDICINE ("BPM") 2015/16 SUNSET REVIEW PROCESS UPDATE**

ACTION: **RECEIVE AND FILE SUNSET REVIEW PROCESS UPDATE**

8

RECOMMENDATION

Receive and file report on the 2015/2016 Sunset Review Process.

ISSUE

The laws concerning BPM are scheduled to remain in effect until January 1, 2017, unless and until a statute of the Legislature either deletes or extends the date.

DISCUSSION

Section 2460 et seq. of the California Business and Professions Code ("Podiatric Medicine Act") creates BPM within the jurisdiction of the Medical Board of California and establishes the statutory framework for licensure and regulation of doctors of podiatric medicine. The Podiatric Medicine Act is scheduled for automatic repeal on January 1, 2017, unless a Legislature statute extends the date for repeal before conclusion of the 2016 calendar year through a process that has been termed "Sunset Review."

The Sunset Review process was created in 1994. It is as an effort by both chambers of the State Legislature with oversight responsibilities over State licensing, certification, disciplinary and regulatory entities like BPM that license and regulate certain specific professions and occupations under the umbrella of the Department of Consumer Affairs ("DCA") in order to ensure efficiency, effectiveness and protection against incompetent practice or illegal activities of state licensed professionals is properly executed.

Accordingly, a Joint Legislative Sunset Review Committee ("JLSRC") composed of members of the Senate Committee on Business, Professions and Economic Development ("BP&ED") and the Assembly Committee on Business and Professions ("B&P") was established to determine whether the State through its various boards, bureaus, committees and programs ("boards") should continue to regulate, implement and enforce the laws relating to certain professions and occupations or else whether changes should be made to improve consumer protection and program effectiveness if permitted to continue to regulate.

The sunset review process is initiated by the JLSRC. The joint committee typically prepares a letter of invitation to attend a JLSRC hearing with a request for an agency program report ("Sunset Review Report"). JLSRC staff additionally prepare a series of inquiries the committee specifically seeks addressed in the Sunset Review Report that are typically sent to participating boards approximately one year before the hearing date and usually almost two years before the sunset date. BPM first underwent Sunset Review in 1998. Subsequent Sunset Reviews were completed in 2002 and 2011. Once again, with the approach of the January 1, 2017 repeal date, the process draws near to begin once again.

At this juncture, BPM has only just recently received the letter of invitation to participate in the Sunset Review process by memo dated April 30, 2015. (Attachment A). Detailed information regarding the process and instructions for preparation were included. The Report must be completed and submitted to JLSRC by December 1, 2015. There are a total of 62 questions to be addressed by the Board. In addition, BPM must respond to sections querying Board action and response to prior sunset issues and any new issues facing the Board. Draft responses of the report will be submitted for BPM board review, discussion and input at its regularly scheduled meetings. Once approved by the Board, the Sunset Review Report will be finalized and submitted to the JLSRC prior to its requested due date.

Accordingly, the Sunset Review Report will serve as the board's opportunity to respond to issues, problem areas, questions and JLSRC staff recommendations regarding BPM's program. It will also to provide a brief overview of the Board's current regulatory posture, highlight positive board actions taken to address previously identified issues brought to its attention at the 2011 sunset review in addition to submitting new issues to the JLSRC that the board desires to be addressed through state legislation.

Based on the final board reviewed and approved Sunset Review Report, JLSRC staff will in turn prepare a Background Paper for JLSRC member use at the scheduled Sunset Review hearing. The Background Paper will present the issues that committee members explicitly desire the Board to address. As a courtesy the Board will be provided a copy of the Background Paper in advance of the Sunset Review hearing in order to adequately prepare. The hearing is basically designed for the committee to receive input not only from the Board, DCA and the regulated profession, but also from the public as well. Hearings are generally scheduled during the spring of the year prior to sunset. For BPM this translates to a Mar-May 2016 hearing date. The JLSRC expects to announce the dates of the hearing sometime in January. Staff will provide additional details regarding the hearing as information is received.

Both the Board President and Executive Officer will attend the hearing for introductions, opening remarks and agency testimony. Either officer will answer specific questions from JLSRC committee members as appropriate. Members of the board are free to attend the hearing at their discretion or alternately view proceedings via the JLSRC internet webcast.

As mentioned earlier, the hearing is the committee's opportunity to evaluate BPM; examine the board's actions following the previous sunset review; determine whether the board has satisfactorily demonstrated a public need for continued existence; and/or issue recommendations for BPM to address.

As preliminary preparation for the pending BPM sunset review, executive staff have reviewed matters enquired of the board in years past, attended current sunset review hearings of DCA allied health entities undergoing the sunset review process this year and have reviewed matters that are of current interest to JLSRC members.

The following section covers matters drawn from the 2011 BPM Sunset Review as shown in Attachment B and provides their current corresponding status if the issue had not been successfully addressed since that time. BPM was last reviewed on March 12, 2011. At that time, Committee raised 12 issues with attendant recommendations as referenced below.

PAST ISSUES

1) Consideration of amendment to section 2472(d)(1) of the California Business and Professions Code ("BPC") to eliminate reference to "ankle certification [...] on or after January 1, 1984" to confirm a single scope of DPM licensure.

   2012 JLSRC Staff Recommendation
   The Committee should consider amending BPC Section 2472(d)(1) to remove reference to "ankle certification by the BPM on and after January 1, 1984" thereby confirming a single scope of licensure for doctors of podiatric medicine.

   Current Status
   While reference to "ankle certification on and after January 1, 1984" was not removed from BPC Section 2472(d)(1) following the last sunset review, with approval of the current Zapf Motion at the March 6, 2015 meeting of the Board, BPM is once again intently reviewing the issue with a study commissioned to provide in depth data analysis regarding the agency's non-ankle certified licensee population that includes both a detailed OIS data extraction in addition to a targeted research survey. When completed the ankle certification report is expected to provide extremely valuable information regarding BPM's non-ankle certified physicians and a solid basis for supporting removal of continued reference to ankle certification from section 2472 BPC.

2) Consideration of amendment to an obsolete provision of BPC 2472 prohibiting a DPM from performing an admitting history and physical examination.

2012 JLSRC Staff Recommendation

Section 2472 of the Business and Professions Code should be amended to repeal paragraph (f), thereby removing an obsolete provision prohibiting a DPM from performing an admitting history and physical exam at an acute care hospital.

Current Status

BPC 2472 was successfully amended to remove the obsolete provision.

3) Consideration of amendment to BPC 2475 to eliminate the four-year limit on DPM post-graduate training.

2012 JLSRC Staff Recommendation

The BPM should provide more information regarding the proposal to amend BPC Section 2475 to remove the four-year cap on DPM postgraduate resident's license.

Current Status

The four year cap on post-graduate medical education was successfully raised to eight years. Notwithstanding, it has been the Board's position that it is a well-known axiom of medical education that there is no such thing as too much education and training and further efforts to pursue elimination of current limitations on post-graduate education should be pursued as adopted in the Board's 2015-2018 Strategic Plan.

4) Consideration of amendment to BPC 2477 to clarify that a medical license is required to diagnose and prescribe corrective shoes and appliances.

2012 JLSRC Staff Recommendation

The BPM should more thoroughly discuss with the Committee the need for this proposed change. The BPM should document the necessity for this change and further explain the reasons behind its proposal.

Current Status

While the proposed amendment served to underscore that the referenced provision did not authorize the unlicensed practice of medicine, BPM's recommended amendment to BPC 2477 was not incorporated into law.

5) Consideration of amendment to BPC 2493 to eliminate requirement for a specific examination score of one standard deviation of measurement higher than the national passing scale score for licensure.

2012 JLSRC Staff Recommendation

As recommended by the BPM, BPC Section 2493 should be amended to repeal subdivision (b).

Current Status

BPC 2493 was successfully amended to eliminate requirement for a specific examination score of one standard deviation of measurement higher than the national passing scale score.

6) Consideration of amendment to BPC 2335 to eliminate the two-vote requirement for deferring a final disciplinary decision until consideration and discussion by the full Board.

2012 JLSRC Staff Recommendation

The BPM should provide more information regarding the proposal to amend BPC Section 2335 to remove the two-vote requirement for a disciplinary decision to be discussed by the BPM as a whole.

Current Status

BPC 2335 was successfully amended to permit one vote of the Board to defer a final disciplinary decision until consideration and discussion by the full body.

7) Consideration of amendment of BPC 2497.5 granting BPM authority to increase costs when a proposed administrative law judge decision is not adopted.

2012 JLSRC Staff Recommendation

BPC Section 2497.5 should be amended to authorize the BPM to increase costs assessed when a proposed decision is not adopted by the BPM and the BPM finds grounds for increasing the assessed costs.

Current Status

BPC 2497.5 was successfully amended to permit assessment of additional costs when a proposed decision is not adopted by BPM and BPM finds grounds for increasing.

8) Status of BreEZe implementation.

2012 JLSRC Staff Recommendation

The BPM should update the Committee about the current status of its implementation of BreEZe.

Current Status

BPM successfully participated in and implemented Release 1of DCA's BreEZe online database for the Board's licensing and enforcement functions in 2013.

9) Consideration of justification for passing credit card transaction fees to licensees for convenience of online license renewal implementation.

2012 JLSRC Staff Recommendation

The BPM should discuss with the Committee its authority to charge additional fees such as the convenience fees contemplated by the BPM. Does the BPM currently have sufficient authority to charge such a fee? Is any legislative change needed to clarify the authority of the BPM to charge an additional fee to cover the cost of a credit card convenience fee? Should or can the fee be reduced?

Current Status

While some discussion regarding online credit card transaction fees were initiated with DCA following the 2012 Sunset Hearing, online renewal transactions have not yet been implemented by BPM. The Board, however, has previously voted unanimously to pass the 2% assessment for online renewals to licensees and DCA Legal has opined that Government Code section 6159(g) provides the Board the legal authorization to do so. Implementation of online renewals remains a priority and a goal for implementation has been adopted by the Board on March 6, 2015 as an objective to complete in the 2015-2018 Strategic Plan.

10) Consideration of justification for increasing BPM schedule of service fees.

202 JLSRC Staff Recommendation

The BPM should discuss its fund projections, and whether the current fee structure will generate sufficient revenues to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas into the foreseeable future. The BPM should demonstrate the level of need for the proposed fee increase by completing the Committee's "Fee Bill Worksheet."

Current Status

BPM solvency has been extended for decades through shrewd fiscal management. All things being equal, current financial analysis also projects continued cost savings and a positive fund balance in years to come. However, a number of significant technology contract issues with BreEZe affecting all boards and bureaus DCA wide are expected to more than double BreEZE costs for BPM in the coming fiscal year in addition to

significant expenses for BPM when online renewals are implemented as anticipated if transaction costs are not passed on to licensees. In light of these developments, definitively determining whether BPM's current fee structure is sustainable remains a priority objective and has been adopted as a strategic goal in the 2015-2018 Strategic Plan. Accordingly, executive staff is currently evaluating options for determining the sustainability of its current fee schedule.

11) Consideration of justification for permitting continued licensing and regulation of podiatric medical profession by BPM.

202 JLSRC Staff Recommendation

Recommend that doctors of podiatric medicine continue to be regulated by the current the BPM members under the jurisdiction of the MBC in order to protect the interests of the public and be reviewed once again in four years.

Current Status

BPM concurs with continued regulation of doctors of podiatric medicine by the Board.

12) Consideration of several BPM proposals for technical language cleanup of Podiatric Medical Act.

2012 JLSRC Staff Recommendation

Amendments should be made to make the technical cleanup changes identified by the BPM and recommended by Committee staff.

Current Status

BPM proposals for technical cleanup of several provisions of the Podiatric Medical Act, including BPC sections 2465, 2484, 3496 and 2470 were successfully accepted and implemented.

The following section covers issue items that were either previously addressed in the 2011 BPM Sunset Review or are contemporary issues observed in recent health board Sunset Review hearings that may be of particular interest to JLSRC members. The analysis and findings are provided immediately below.

POTENTIAL CONTEMPORARY ISSUES

1) Implementation of Uniform Standards for Substance Abusing Physicians.

2016 Potential Concerns

In an effort to provide uniform operation standards for all healing arts boards, DCA was mandated to develop Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards) in 2008. The intention was for all healing arts boards to adopt and implement them in their entirety. BPM's effort to pass a regulatory package implementing some of the Uniform Standards failed in early 2012 because it did not incorporate all of the recommended standards.

Current Status

While BPM's early attempt to pass a regulatory package—which was directly patterned after the Medical Board's parallel effort—to incorporate some but not all of the Uniform Standards failed in early 2012, BPM has again taken up the measure at the March 6 meeting of the Board with unanimous approval of a motion for moving forward with amending BPM's model disciplinary guidelines and implementing the Uniform Standards in their entirety. Approval of proposed regulations at the next regularly scheduled meeting of the Board in June will set BPM on a course for full compliance with the legislative mandate to protect the public with a set of standard best practices to deal with health practitioners having alcohol or drug problems as mandated by SB 1441.

2) Convening of regular committee meetings and opportunities for accessibility and engagement with stakeholders at open meetings for increased openness and transparency.

2016 Potential Concerns

Previous BPM Sunset Review Reports have described the various committees of the Board. A review of other health board oversight reports in addition to attendance at their respective Sunset Hearings has shown a tangible JLSRC concern for standing and advisory committees that exist but that do not actually convene in order to offer enhanced opportunities for public engagement; to address salient issues that impact the profession and/or consumers; or to amplify the quality and frequency of advice and recommendations issued to the full Board on matters within the subject matter expertise

of the committee. In each instance and without exception, JLSRC admonished Boards to convene their standing committees.

Current Status

With Board approval of 2015 Board and Committee Schedule at the November 7, 2014 meeting of the Board, the advent of the 2015 calendar year has brought BPM into a quarterly meeting schedule with separate open and noticed committee meetings. This more fully open and transparent posture has brought forth a number of significant benefits not the least of which include greater opportunities for public engagement; increased occasions to address issues that are important to the practice community; and lending toward a more active and engaged standing committee structure which had not separately publicly met in actual fact since 2004. It is recommended that this current posture continue in the future.

3) Consideration of military experience and providing methodology for evaluation of education, training and experience for applicability to medical licensure.

2016 Potential Concerns

The California Department of Veterans Affairs (Cal Vet) anticipates receiving an additional 35,000 to 40,000 discharged members of the armed services each year for the next several years–more than any other state. According to a January 2013 memorandum prepared by the Senate Office of Research (SOR), titled Employment Opportunities for (Semi-Skilled or Unskilled) Veterans, California does not provide a coordinated, integrated system that streamlines employment-related services to veterans. Further, Business and Professions Code § 35 provides in pertinent part that:

> [...] rules and regulations of boards provided for in this code shall provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated. These rules and regulations shall also specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. Each board shall perform the duties required by this section within existing budgetary resources of the agency within which the board operates.

Current Status

It is factually correct to contend that medical practice by podiatric physicians in the military requires state podiatric medical licensure just as other physicians practicing medicine in the military also require state medical licensure. Notwithstanding, a mandate to evaluate and credit military experience and training toward licensure can be said to affirmatively exist. A preliminary review of other state health board actions in this regard appears to indicate with modest exception that most have not taken action on BPC 35.

Current BPM licensee applicants must graduate from a Council on Podiatric Medical Education (CPME) approved doctor of podiatric medicine (DPM) school. While military medical schools and/or training facilities such as the Uniformed Services University do not offer a medical curriculum or equivalent medical training leading to a DPM degree, existing law and regulation under Section 2483 of the Business and Professions Code and section 1399.666 of the California Code of Regulations permit the Board to recognize equivalent accredited medical training programs only if they meet established CPME criteria and guidelines. However, should a prospective military applicant submit non-CPME military training, there would be no feasible way for evaluating equivalency under current regulations.

On this basis a strong argument could be made that BPM should undertake an affirmative effort to formally identify eligible military coursework in consultation with the Department of Veterans Affairs and the Military Department. Alternately, should BPM continue to rely on established CPME criteria and guidelines alone, an exploration into or to what extent colleges of podiatric medicine may provide credit for military education, experience or training may be advisable. Given that BPM also approves colleges of podiatric medicine, failing to do so may also conceivably raise a BPC 35 compliance concern—as it did in the case of an allied health board under Sunset Review this year—in that BPM has effectively delegated its duty of identifying eligible military coursework to approved podiatric colleges which may not have sufficient incentive to accept military credit given the likelihood that a prospective student may in turn spend less time and/or money on the program if permitted to do so.

In conclusion, it is advisable that BPM conduct an evaluation of a veteran's military credentials and training for a determination into what course work may be applicable for satisfying licensure requirements.

NEXT STEPS

There are a total of 62 questions to be addressed by the Board. BPM must also respond to sections querying Board action and responses to prior sunset issues. In addition, any new issues facing the Board must be shared with JLSRC.

Staff will begin drafting responses to questions which will be segregated into sections and reviewed by the respective BPM committees with subject matter jurisdiction over their particular subject areas. Committee recommendations will in turn be incorporated and submitted to the full board for consideration, discussion, input and/or approval at its regularly scheduled meeting in September.

Given that the report is due December 1, 2015, there is an opportunity for BPM to complete two quarterly Board cycles before final approval instead of just one. Staff therefore recommends that consideration be given to advancing the November and December Committee and Board meeting dates, respectively, in order to facilitate two (2) opportunities for full Board review before final approval and submission of the Sunset Review Report.

ATTACHMENTS

A. Senate BP& ED Memorandum – Request for Information and Issues
B. 2015 Board Oversight Report Form
C. BPM Responses to Background Paper – March 12, 2012

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SENATE COMMITTEE ON BUSINESS, PROFESSIONS & ECONOMIC DEVELOPMENT

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Memorandum

To: Boards and Bureaus Subject to Sunset Oversight Review by the Legislature in 2015-2016

From: Senator Jerry Hill and Assemblymember Susan Bonilla

Date: April 30, 2015

Subject: Request for Information and Issues to be Addressed for 2015-2016 Sunset Oversight Review

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This is to inform you that the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions will begin our Sunset Oversight Review in the Fall of 2015. The Committees will review the following boards[1]:

Acupuncture Board
Board of Behavioral Sciences
Court Reporters Board
Board of Pharmacy
Physician Assistant Board
Board of Podiatric Medicine
Bureau for Private Postsecondary Education
Board of Psychology
Bureau of Real Estate
Bureau of Real Estate Appraisers

[1] "Board" refers to board, bureau, commission, program or committee. The Veterinary Medical Board will be reviewed as well but is not subject to completion of the questionnaire.

STATE CAPITOL, ROOM 2053 SACRAMENTO, CA 95814 (916) 651-4104

PRINTED ON RECYCLED PAPER

You are also receiving by email attachment a Report Form that should be completed and submitted to the Committees by December 1, 2015. **PLEASE NOTE: If you have been using a previous draft of the Report Form, you should replace it with the attached form. Changes have been made to the questions and numbering from the earlier draft.**

The first sections of the Report provide an overview of the board's current regulatory program, and contain pre-formatted tables and charts to be completed by the board. The latter sections focus on responses by the board to particular issues raised by the individual board or that are raised by the Committees.

Please complete the tables and charts and provide the appropriate statistical information for the fiscal years indicated. Please respond to all questions in the Report. In the event that some information may not pertain to your particular board, please note it on your response, but be sure to include information that is relevant to your activities and programs.

In completing your Report, please note the following:

Question 21. This is a new question dealing with the board's consideration of military status, training or education.

Section 10- Board Action and Response to Prior Sunset Issues. This should reflect the board's response to each individual issue and recommendation that was raised by the Committee during the prior review of the board.

Section 11 – New Issues. This is the board's opportunity to raise new issues and make recommendations to the Committee. The Committee may also have additional issues that the board will need to address during this review. We encourage the board to request a meeting with staff of the Committees to review possible issues to be addressed within this document for the 2015-2016 review.

Along with the Report Form, you are also being sent a *Guide for Completing Tables in the Oversight Review Questionnaire.* Most of the tables may be completed from data in standard reports that the board already receives. If your board does not use the Department of Consumer Affairs' report and data processes, please report information using the definitions given in the Guide.

Each board should submit 4 printed copies of its final Report to the Senate Committee, and 4 printed copies to the Assembly Committee. You are also asked to submit an electronic copy to each of the Committees (you may submit a PDF version, but we also request a Microsoft Word copy).

Staff of the Committees will be responsible for reviewing and analyzing information provided by the board, and prepare a background paper with issues to be addressed by the board and by interested parties during the public hearings held early in 2016.

We expect to announce the dates for the hearings sometime in January. Once the hearing dates are set, we would request that the board notify (by mail or email) its interested parties list of organizations, groups or individuals regarding the Committees' public hearings.

If you have any questions about the attached documents or the review process, please contact Sarah Mason of the Senate Committee on Business, Professions and Economic Development at (916) 651-4104.

[BOARD NAME]
BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM
As of [date]

Section 1 – Background and Description of the Board and Regulated Profession

Provide a short explanation of the history and function of the board.[1] Describe the occupations/profession that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

1. Describe the make-up and functions of each of the board's committees (cf., Section 12, Attachment B).

Table 1a. Attendance			
[Enter board member name]			
Date Appointed:	[Enter date appointed]		
Meeting Type	**Meeting Date**	**Meeting Location**	**Attended?**
Meeting 1	[Enter Date]	[Enter Location]	[Y/N]
Meeting 2	[Enter Date]	[Enter Location]	[Y/N]
Meeting 3	[Enter Date]	[Enter Location]	[Y/N]
Meeting 4	[Enter Date]	[Enter Location]	[Y/N]

Table 1b. Board/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?
3. Describe any major changes to the board since the last Sunset Review, including:
   - Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)
   - All legislation sponsored by the board and affecting the board since the last sunset review.

[1] The term "board" in this document refers to a board, bureau, commission, committee, department, division, program, or agency, as applicable. Please change the term "board" throughout this document to appropriately refer to the entity being reviewed.

- All regulation changes approved by the board the last sunset review. Include the status of each regulatory change approved by the board.

4. Describe any major studies conducted by the board (cf. Section 12, Attachment C).
5. List the status of all national associations to which the board belongs.
   - Does the board's membership include voting privileges?
   - List committees, workshops, working groups, task forces, etc., on which board participates.
   - How many meetings did board representative(s) attend? When and where?
   - If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

Section 2 – Performance Measures and Customer Satisfaction Surveys

6. Provide each quarterly and annual performance measure report for the board as published on the DCA website
7. Provide results for each question in the board's customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

Section 3 – Fiscal and Staff

Fiscal Issues

8. Describe the board's current reserve level, spending, and if a statutory reserve level exists.
9. Describe if/when a deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.

Table 2. Fund Condition

(Dollars in Thousands)	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance						
Revenues and Transfers						
Total Revenue	$	$	$	$	$	$
Budget Authority						
Expenditures						
Loans to General Fund						
Accrued Interest, Loans to General Fund						
Loans Repaid From General Fund						
Fund Balance	$	$	$	$	$	$
Months in Reserve						

10. Describe the history of general fund loans. When were the loans made? When have payments been made to the board? Has interest been paid? What is the remaining balance?

11. Describe the amounts and percentages of expenditures by program component. Use *Table 3. Expenditures by Program Component* to provide a breakdown of the expenditures by the board in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.

Table 3. Expenditures by Program Component (list dollars in thousands)

	FY 2011/12		FY 2012/13		FY 2013/14		FY 2014/15	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement								
Examination								
Licensing								
Administration *								
DCA Pro Rata								
Diversion (if applicable)								
TOTALS	$	$	$	$	$	$	$	$

*Administration includes costs for executive staff, board, administrative support, and fiscal services.

12. Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the board.

Table 4. Fee Schedule and Revenue (list revenue dollars in thousands)

Fee	Current Fee Amount	Statutory Limit	FY 2011/12 Revenue	FY 2012/13 Revenue	FY 2013/14 Revenue	FY 2014/15 Revenue	% of Total Revenue

13. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

Table 5. Budget Change Proposals (BCPs)

BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	$ Requested	$ Approved	$ Requested	$ Approved

Staffing Issues

14. Describe any board staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.
15. Describe the board's staff development efforts and how much is spent annually on staff development (cf., Section 12, Attachment D).

Section 4 – Licensing Program

16. What are the board's performance targets/expectations for its licensing[2] program? Is the board meeting those expectations? If not, what is the board doing to improve performance?
17. Describe any increase or decrease in the board's average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done by the board to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?
18. How many licenses or registrations does the board issue each year? How many renewals does the board issue each year?

Table 6. Licensee Population

		FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				

[2] The term "license" in this document includes a license certificate or registration.

Table 7a. Licensing Data by Type											
						Pending Applications			Cycle Times		
	Application Type	Received	Approved	Closed	Issued	Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2011/12	(Exam)					-	-	-	-	-	-
	(License)					-	-	-	-	-	-
	(Renewal)			n/a		-	-	-	-	-	-
FY 2012/13	(Exam)										
	(License)										
	(Renewal)			n/a							
FY 2013/14	(Exam)										
	(License)										
	(Renewal)			n/a							
* Optional. List if tracked by the board.											

Table 7b. Total Licensing Data			
	FY 2012/13	FY 2013/14	FY 2014/15
Initial Licensing Data:			
Initial License/Initial Exam Applications Received			
Initial License/Initial Exam Applications Approved			
Initial License/Initial Exam Applications Closed			
License Issued			
Initial License/Initial Exam Pending Application Data:			
Pending Applications (total at close of FY)			
Pending Applications (outside of board control)*			
Pending Applications (within the board control)*			
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):			
Average Days to Application Approval (All - Complete/Incomplete)			
Average Days to Application Approval (incomplete applications)*			
Average Days to Application Approval (complete applications)*			
License Renewal Data:			
License Renewed			
* Optional. List if tracked by the board.			

19. How does the board verify information provided by the applicant?
    a. What process does the board use to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?
    b. Does the board fingerprint all applicants?
    c. Have all current licensees been fingerprinted? If not, explain.

d. Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?

e. Does the board require primary source documentation?

20. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

21. Describe the board's process, if any, for considering military education, training, and experience for purposes of licensing or credentialing requirements, including college credit equivalency.

a. Does the board identify or track applicants who are veterans? If not, when does the board expect to be compliant with BPC § 114.5?

b. How many applicants offered military education, training or experience towards meeting licensing or credentialing requirements, and how many applicants had such education, training or experience accepted by the board?

c. What regulatory changes has the board made to bring it into conformance with BPC § 35?

d. How many licensees has the board waived fees or requirements for pursuant to BPC § 114.3, and what has the impact been on board revenues?

e. How many applications has the board expedited pursuant to BPC § 115.5?

22. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

Examinations

Table 8. Examination Data				
California Examination (include multiple language) if any:				
	License Type			
	Exam Title			
FY 2011/12	# of 1st Time Candidates			
	Pass %			
FY 2012/13	# of 1st Time Candidates			
	Pass %			
FY 2013/14	# of 1st Time Candidates			
	Pass %			
FY 2014/15	# of 1st time Candidates			
	Pass %			
	Date of Last OA			
	Name of OA Developer			
	Target OA Date			
National Examination (include multiple language) if any:				
	License Type			
	Exam Title			
FY 2011/12	# of 1st Time Candidates			
	Pass %			

FY 2012/13	# of 1st Time Candidates			
	Pass %			
FY 2013/14	# of 1st Time Candidates			
	Pass %			
FY 2014/15	# of 1st time Candidates			
	Pass %			
	Date of Last OA			
	Name of OA Developer			
	Target OA Date			

23. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required?
24. What are pass rates for first time vs. retakes in the past 4 fiscal years? *(Refer to Table 8: Examination Data)*
25. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?
26. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

School approvals

27. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?
28. How many schools are approved by the board? How often are approved schools reviewed? Can the board remove its approval of a school?
29. What are the board's legal requirements regarding approval of international schools?

Continuing Education/Competency Requirements

30. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.
    a. How does the board verify CE or other competency requirements?
    b. Does the board conduct CE audits of licensees? Describe the board's policy on CE audits.
    c. What are consequences for failing a CE audit?
    d. How many CE audits were conducted in the past four fiscal years? How many fails? What is the percentage of CE failure?
    e. What is the board's course approval policy?
    f. Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?
    g. How many applications for CE providers and CE courses were received? How many were approved?
    h. Does the board audit CE providers? If so, describe the board's policy and process.

i. Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensee's continuing competence.

Section 5 – Enforcement Program

31. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

32. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

Table 9a. Enforcement Statistics

	FY 2012/13	FY 2013/14	FY 2014/15
COMPLAINT			
Intake (Use CAS Report EM 10)			
Received			
Closed			
Referred to INV			
Average Time to Close			
Pending (close of FY)			
Source of Complaint (Use CAS Report 091)			
Public			
Licensee/Professional Groups			
Governmental Agencies			
Other			
Conviction / Arrest (Use CAS Report EM 10)			
CONV Received			
CONV Closed			
Average Time to Close			
CONV Pending (close of FY)			
LICENSE DENIAL (Use CAS Reports EM 10 and 095)			
License Applications Denied			
SOIs Filed			
SOIs Withdrawn			
SOIs Dismissed			
SOIs Declined			
Average Days SOI			
ACCUSATION (Use CAS Report EM 10)			
Accusations Filed			
Accusations Withdrawn			
Accusations Dismissed			
Accusations Declined			
Average Days Accusations			
Pending (close of FY)			

Table 9b. Enforcement Statistics (continued)			
	FY 2012/13	FY 2013/14	FY 2014/15
DISCIPLINE			
Disciplinary Actions (Use CAS Report EM 10)			
Proposed/Default Decisions			
Stipulations			
Average Days to Complete			
AG Cases Initiated			
AG Cases Pending (close of FY)			
Disciplinary Outcomes (Use CAS Report 096)			
Revocation			
Voluntary Surrender			
Suspension			
Probation with Suspension			
Probation			
Probationary License Issued			
Other			
PROBATION			
New Probationers			
Probations Successfully Completed			
Probationers (close of FY)			
Petitions to Revoke Probation			
Probations Revoked			
Probations Modified			
Probations Extended			
Probationers Subject to Drug Testing			
Drug Tests Ordered			
Positive Drug Tests			
Petition for Reinstatement Granted			
DIVERSION			
New Participants			
Successful Completions			
Participants (close of FY)			
Terminations			
Terminations for Public Threat			
Drug Tests Ordered			
Positive Drug Tests			

Table 9c. Enforcement Statistics (continued)			
	FY 2012/13	FY 2013/14	FY 2014/15
INVESTIGATION			
All Investigations (Use CAS Report EM 10)			
First Assigned			
Closed			
Average days to close			
Pending (close of FY)			
Desk Investigations (Use CAS Report EM 10)			
Closed			
Average days to close			
Pending (close of FY)			
Non-Sworn Investigation (Use CAS Report EM 10)			
Closed			
Average days to close			
Pending (close of FY)			
Sworn Investigation			
Closed (Use CAS Report EM 10)			
Average days to close			
Pending (close of FY)			
COMPLIANCE ACTION (Use CAS Report 096)			
ISO & TRO Issued			
PC 23 Orders Requested			
Other Suspension Orders			
Public Letter of Reprimand			
Cease & Desist/Warning			
Referred for Diversion			
Compel Examination			
CITATION AND FINE (Use CAS Report EM 10 and 095)			
Citations Issued			
Average Days to Complete			
Amount of Fines Assessed			
Reduced, Withdrawn, Dismissed			
Amount Collected			
CRIMINAL ACTION			
Referred for Criminal Prosecution			

Table 10. Enforcement Aging						
	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year						
2 Years						
3 Years						
4 Years						
Over 4 Years						
Total Cases Closed						
Investigations (Average %)						
Closed Within:						
90 Days						
180 Days						
1 Year						
2 Years						
3 Years						
Over 3 Years						
Total Cases Closed						

33. What do overall statistics show as to increases or decreases in disciplinary action since last review.

34. How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's *Complaint Prioritization Guidelines for Health Care Agencies* (August 31, 2009)? If so, explain why.

35. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the board actions taken against a licensee. Are there problems with the board receiving the required reports? If so, what could be done to correct the problems?

36. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the board's policy on statute of limitations?

37. Describe the board's efforts to address unlicensed activity and the underground economy.

Cite and Fine

38. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the board increased its maximum fines to the $5,000 statutory limit?

39. How is cite and fine used? What types of violations are the basis for citation and fine?

40. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?

41. What are the 5 most common violations for which citations are issued?

42. What is average fine pre- and post- appeal?

43. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

Cost Recovery and Restitution

44. Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.
45. How many and how much is ordered by the board for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.
46. Are there cases for which the board does not seek cost recovery? Why?
47. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.
48. Describe the board's efforts to obtain restitution for individual consumers, any formal or informal board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.

Table 11. Cost Recovery (list dollars in thousands)

	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Total Enforcement Expenditures				
Potential Cases for Recovery *				
Cases Recovery Ordered				
Amount of Cost Recovery Ordered				
Amount Collected				

* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.

Table 12. Restitution (list dollars in thousands)

	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Amount Ordered				
Amount Collected				

Section 6 – Public Information Policies

49. How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the board's website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?
50. Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings? How long to webcast meetings remain available online?
51. Does the board establish an annual meeting calendar, and post it on the board's web site?
52. Is the board's complaint disclosure policy consistent with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the board post accusations and disciplinary actions consistent with DCA's *Web Site Posting of Accusations and Disciplinary Actions* (May 21, 2010)?
53. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?

54. What methods are used by the board to provide consumer outreach and education?

Section 7 – Online Practice Issues

55. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate internet business practices or believe there is a need to do so?

Section 8 – Workforce Development and Job Creation

56. What actions has the board taken in terms of workforce development?
57. Describe any assessment the board has conducted on the impact of licensing delays.
58. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.
59. Provide any workforce development data collected by the board, such as:
    a. Workforce shortages
    b. Successful training programs.

Section 9 – Current Issues

60. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?
61. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?
62. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.

Section 10 – Board Action and Response to Prior Sunset Issues

Include the following:

1. Background information concerning the issue as it pertains to the board.
2. Short discussion of recommendations made by the Committees/Joint Committee during prior sunset review.
3. What action the board took in response to the recommendation or findings made under prior sunset review.
4. Any recommendations the board has for dealing with the issue, if appropriate.

Section 11 – New Issues

This is the opportunity for the board to inform the Committees of solutions to issues identified by the board and by the Committees. Provide a short discussion of each of the outstanding issues, and the board's recommendation for action that could be taken by the board, by DCA or by the Legislature to resolve these issues (i.e., policy direction, budget changes, legislative changes) for each of the following:

1. Issues that were raised under prior Sunset Review that have not been addressed.
2. New issues that are identified by the board in this report.
3. New issues not previously discussed in this report.
4. New issues raised by the Committees.

Section 12 – Attachments

Please provide the following attachments:

A. Board's administrative manual.

B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).

C. Major studies, if any (cf., Section 1, Question 4).

D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).

Section 13 – Board Specific Issues

THIS SECTION ONLY APPLIES TO SPECIFIC BOARDS, AS INDICATED BELOW.

Diversion

Discuss the board's diversion program, the extent to which it is used, the outcomes of those who participate, the overall costs of the program compared with its successes

Diversion Evaluation Committees (DEC) (for BRN, Dental, Osteo and VET only)

1. DCA contracts with a vendor to perform probation monitoring services for licensees with substance abuse problems, why does the board use DEC? What is the value of a DEC?
2. What is the membership/makeup composition?

3. Did the board have any difficulties with scheduling DEC meetings? If so, describe why and how the difficulties were addressed.
4. Does the DEC comply with the Open Meetings Act?
5. How many meetings held in each of the last three fiscal years?
6. Who appoints the members?
7. How many cases (average) at each meeting?
8. How many pending? Are there backlogs?
9. What is the cost per meeting? Annual cost?
10. How is DEC used? What types of cases are seen by the DECs?
11. How many DEC recommendations have been rejected by the board in the past four fiscal years (broken down by year)?

Disciplinary Review Committees (Board of Barbering and Cosmetology and BSIS only)

1. What is a DRC and how is a DRC used? What types of cases are seen by the DRCs?
2. What is the membership/makeup composition?
3. Does the DRC comply with the Open Meetings Act?
4. How many meeting held in last three fiscal years?
5. Did the board have any difficulties with scheduling DRC meetings? If so, describe why and how the difficulties were addressed.
6. Who appoints the members?
7. How many cases (average) at each meeting?
8. How many pending? Are there backlogs?
9. What is the cost per meeting? Annual cost?
10. Provide statistics on DRC actions/outcomes.

BOARD OF PODIATRIC MEDICINE RESPONSES TO BACKGROUND PAPER

(Oversight Hearing, March 12, 2012, Senate Committee on Business, Professions and Economic Development)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS FOR BPM OF PODIATRIC MEDICINE

CURRENT SUNSET REVIEW ISSUES

The following are issues pertaining to the BPM, or those which have been raised by the BPM, and other areas of concern for the Committee to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The BPM and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

LICENSING, EXAMINATION AND PRACTICE ISSUES

ISSUE # 1: Should the reference to ankle certification after January 1, 1984 be removed from the Code, thereby confirming a single scope of licensure for doctors of podiatric medicine?

Background: Article 22 (Podiatric Medicine) of the Medical Practice Act essentially provides for a two-tier license system, depending on whether a DPM was ankle certified "on or after January 1, 1984," the date that legislation took effect (Chapter 305, Statutes of 1983) to clarify that a podiatrist may treat the ankle as part of the licensed scope of practice.

Joint Committee staff discussed in 1997 whether this two-tiered system could be eliminated, upon receipt of BPM's first Sunset Review report. The BPM staff commented then it was probably premature. In 1998, SB 1981 (Greene, Chapter 736, Statutes of 1998) repealed the requirement that licensed podiatrists obtain a certificate from BPM in order to perform ankle surgery, and instead, simply authorized a DPM certified by the BPM after January 1, 1984 to perform ankle surgery.

Now, a decade and a half later, and approaching three decades since 1984, the BPM states in its Report that it would support a single scope of practice for DPMs. The useful life of the 1984 two-tier licensing has run its course, according to the BPM.

More than 80-percent of the BPM's licensees are "ankle licensed" and this percentage continues to increase. According to the BPM, it is a small number of older licensees who do not perform ankle surgery, amputations or surgical assisting to MD and DO surgeons that the "ankle license" now allows.

Doctors licensed prior to 1984 were able under the law to become ankle licensed if certified by the American Board of Podiatric Surgery (ABPS) or by passing a sophisticated, rigorous oral ankle examination administered by the BPM. The BPM has discontinued that examination because there is no longer any demand to take the examination.

Following enactment of AB 932 (Koretz, Chapter 88, Statutes of 2004), there was renewed interest in taking the examination because that bill in practice disenfranchised some non-ankle-licensed doctors who had previously performed digital amputations as part of their practices to preserve diabetic limb and life. Those doctors were provided opportunities to take this "Section 2499.5(k) exam," and most who did so passed the examination:

Examination Date	Candidate Number	Pass Rate
12/11/2004	52	75%
10/1/2005	13	73%
2/3/2007*	7	57%
2/18/2010	2	100%

According to the BPM, a single-scope licensure would simplify the statute and its administration without harm to the public.

Staff Recommendation: ***The Committee should consider amending BPC Section 2472(d)(1) to remove reference to "ankle certification by the BPM on and after January 1, 1984" thereby confirming a single scope of licensure for doctors of podiatric medicine.***

BPM Response:

- BPM concurs with amending BPC Section 2472 to strike the reference to January 1, 1984.
- 82% of BPM's licensees are now "ankle licensed," and this percent will continue increasing.

ISSUE # 2: Should the provision prohibiting a DPM from conducting an admitting history and physical examination of a patient in an acute care hospital be repealed?

Background: BPC Section 2472(f) provides that "A doctor of podiatric medicine shall not perform an admitting history and physical examination of a patient in an acute care hospital where doing so would violate the regulations governing the Medicare program." In 2010, a California Attorney General Opinion No. 09-0504, regarding the effect of these provisions regarding the ability of a doctor of podiatric medicine to perform an admitting history and physical (H&P) at an acute care hospital found that "not only is a podiatrist not precluded from performing an admitting H&P by Business and Professions Code section 2472, but failing to do so may fall below the standard of care expected of podiatrists generally."

In stating this opinion, the AG points out that the prohibition of Section 2472 is for performing a H&P "where doing so would violate the regulations governing the Medicare program" and was placed in the statute in response to a former federal rule, which imposed restrictions on federal reimbursements of

podiatric services under Medicare. The federal restriction was superseded by 42 C.F.R. Section 410.25 to provide that "Medicare Part B pays for the services of a doctor of podiatric medicine acting within the scope of his or her license, if the services would be covered as physician's services when performed by a doctor of medicine or osteopathy."

Therefore, the BPM points out, Medicare regulations no longer restrict DPM history and physical examinations, thereby making Section 2472(f) obsolete. The BPM states that the provision is confusing to the public and should be deleted from the Code.

Committee staff agrees with the BPM that the Code should be clarified by removing this obsolete provision from the law.

Staff Recommendation: ***Section 2472 of the Business and Professions Code should be amended to repeal paragraph (f), thereby removing an obsolete provision prohibiting a DPM from performing an admitting history and physical exam at an acute care hospital.***

BPM Response:

- BPM concurs that Section 2472 should be amended to sunset paragraph (f), which is obsolete language concerning history & physical exams that has no regulatory effect.

ISSUE # 3: Should the four-year limit on postgraduate training be eliminated for graduates of podiatric medicine with a residence license.

Background: The law provides that a graduate of an approved school of podiatric medicine may apply for and obtain a resident's license from the BPM, authorizing them to practice podiatric medicine, as specified. A resident's license may be renewed annually for up to four years.

The BPM is proposing that the four-year limitation of the resident's license be deleted, thus ending the four-year cap on DPM postgraduate training. According to the BPM, few individuals may participate in residency and fellowship training for more than four years, but the limit on education is unnecessary. The BPM argues that this limitation is the only known statutory cap on education anywhere in this country for any profession or group. Ultimately, the BPM believes that the four-year cap will interfere with advanced training of some leading practitioners. The BPM states that it is a principle of medical education that there is no such thing as too much education and training.

Committee staff believes that the BPM's recommendation to eliminate the four-year cap may have merit; however, it is unclear from the BPM's Report whether this recommendation would instead authorize a person to simply practice as a resident and not progress into full licensure as a doctor of podiatric medicine. The BPM should provide more information to the Committee on this issue.

Staff Recommendation: ***The BPM should provide more information regarding the proposal to amend BPC Section 2475 to remove the four-year cap on DPM postgraduate resident's license.***

BPM Response:

- BPM recommends sunsetting the 4-year cap on postgraduate training in BPC Section 2475.
- The question posed is whether a person could not "simply practice as a resident and not progress to full licensure as a DPM."
- This is an important point, and is provided for already in the existing language of the law in BPC Section 2475(a).
- BPC Section 2475(a) states, "If the graduate fails to receive a license to practice podiatric medicine under this chapter within three years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease."

ISSUE # 4: Should the law be amended to clarify that a medical license is needed to diagnose and prescribe corrective shoes and appliances for medical conditions?

Background: The BPM has proposed that BPC Section 2477 be amended to clarify that a medical license is required in order to diagnose and prescribe corrective shoes or appliances (called orthotics) for the foot.

Orthotics typically refers to custom-made shoe inserts prescribed by a licensed doctor of podiatric medicine, an osteopathic doctor, or a medical doctor after a medical examination and diagnosis. Orthotics are designed to accommodate or correct an abnormal or irregular walking pattern, and ultimately make standing, walking, and running more comfortable and efficient by altering the angles at which the foot strikes the ground. Orthotics placed inside of an individual's shoes can absorb shock, improve balance, and take pressure off sore spots.

The BPM has recommended amending the law to clarify that anyone may offer special shoes and inserts without a license to aid comfort and athletic performance, but that a medical license is needed to diagnose and prescribe for medical conditions. The BPM's recommended amendment is as follows:

> 2477. Nothing in this chapter prohibits the manufacture, the recommendation, or the sale of either corrective shoes or appliances for the human feet **to enhance comfort and performance, or, following diagnosis and prescription by a licensed practitioner in any case involving medical conditions**.

From the materials supplied by the BPM, the necessity of this proposed change is unclear. Committee staff recommends that the BPM document the necessity for this change and further explain the reasons behind its proposal.

Staff Recommendation: ***The BPM should more thoroughly discuss with the Committee the need for this proposed change. The BPM should document the necessity for this change and further explain the reasons behind its proposal.***

BPM Response:

- Under current law, only licensed practitioners may diagnose and prescribe for medical conditions, i.e., practice medicine.

- The proposed amendment to BPC Section 2477 would not prevent unlicensed persons from providing inserts or shoes for comfort or athletic performance, but underscore this is not authorizing unlicensed practice of medicine.

ISSUE # 5: Should the law be amended to no longer require applicants to obtain a specific score on the licensing examination?

Background: Following the BPM's 2001-2002 sunset review, BPC §2484 was amended to reflect the two-year residency requirement by AB 932 (Koretz, Chapter 88, Statutes of 2004). That bill, sponsored by the California Podiatric Medical Association, additionally amended BPC § 2493 to correspond to the changes made in § 2484 by requiring "a passing score one standard error of measurement higher than the national passing scale score" on the American Podiatric Medical Licensing Examination (APMLE) Part III, the national examination administered by the National Board of Podiatric Medicine Examiners (NBPME).

This technical language was added by AB 932 pursuant to Association negotiations with input from the BPM, the National Board of Podiatric Medical Examiners, and the Department's Office of Examination Resources (OER), which raised concern about such technical language being included in the statute.

According to the BPM, NBPME utilizes a national passing scale score of 75, after converting actual raw scores on individual exams to scaled scores allowing comparison with the scores of applicants taking previous administrations of the exam. The scale passing score corresponds to a level of achievement judged by NBPME to represent entry-level competence.

Nationally, passing rates on Part III have ranged between 80-90 percent. During its history from November 1984 to May 2002, the BPM's oral clinical licensing examination had a 76 percent pass rate (1,269 of 1,667).

In the BPM's experience, the California score, one standard error of measurement higher than the national scale passing score, raises the passing score from 75 one or two points, e.g., to 77, and slightly lowers the overall pass rate percentage. Numerically, this means that for each bi-annual Part III exam, one or two California candidates might achieve the national scale passing score of 75, but fall just below California's one standard error of measurement higher, and must retake the examination.

The BPM's requirement by law for a higher score than the national passing score confuses and disappoints applicants, and delays or blocks their entering practice, sometimes losing job offers in the process. In the judgment of the BPM's professional staff it has a marginal if any effect on the quality of licensees and patient care.

In June 2011, the Executive Director of the NBPME informed the BPM that it was revising the Part III examination to reflect the level of competence expected following one year of graduate medical education (residency training), an upgrade from the previous competency level reflecting graduation from podiatric medical school.

In August 2011, NBPME reported to the BPM: "The June 2011 examination and all subsequent forms will include a board-adopted passing score that reflects entry-level competence by a podiatric physician with one year of post-graduate training." The Fall 2011 NBPME Reports (Vol. 21 No.1) states: "The culmination of an effort begun in 2008, with an updated practice analysis survey followed by revised test specifications was the administration of a revised Part III examination in June 2011. The examination is now directed toward the competencies expected of a candidate with at least one year post graduate training."

With this step, the BPM recommends amending BPC Section 2493 to delete paragraph (b) as follows:

> 2493. (a) An applicant for a certificate to practice podiatric medicine shall pass an examination in the subjects required by Section 2483 in order to ensure a minimum of entry-level competence.
> ~~**(b) The board shall require a passing score on the National Board of Podiatric Medical Examiners Part III examination that is consistent with the postgraduate training requirement in Section 2484. The board, as of July 1, 2005, shall require a passing score one standard error of measurement higher than the national passing scale score until such time as the National Board of Podiatric Medical Examiners recommends a higher passing score consistent with Section 2484. In consultation with the Office of Professional Examination Services of the Department of Consumer Affairs, the board shall ensure that the part III examination adequately evaluates the full scope of practice established by Section 2472, including amputation and other foot and ankle surgical procedures, pursuant to Section 139.**~~

Committee staff concurs with the BPM's recommendation, and notes the BPM's citation that DCA's *Examination Validation Policy* developed under BPC §139, requires a licensing examination testing for "entry-level competence."

Staff Recommendation: ***As recommended by the BPM, BPC Section 2493 should be amended to repeal subdivision (b).***

BPM Response:

- BPM concurs that BPC Section 2493(b) is now obsolete and should be sunsetted.
- Given the National Board's upgrade of the National licensing exam, BPM can now accept the National scores without requiring "one standard of error of measurement higher."

ENFORCEMENT ISSUES

ISSUE # 6: Should BPC Section 2335 be amended to remove the two-vote requirement for a disciplinary decision to be discussed by the BPM as a whole?

Background: The BPM licenses doctors of podiatric medicine under the authority of the Medical Board of California. The law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of prosecuting proceedings against licensees and applicants within the jurisdiction of MBC and various other boards, including the BPM. Under these provisions,

a panel of administrative law judges, the Medical Quality Hearing Panel (MQHP) within the Office of Administrative Hearings, conducts disciplinary proceedings against a DPM. BPC Section 2335 provides that all proposed decisions of the MQHP are transferred to the executive officer of the BPM, and sent by Board staff to each Board member within 10 days. The BPM staff then polls each member regarding his or her vote on the proposed decision. By majority vote, the BPM may do any of the following: approve the decision, approve the decision with an altered penalty, refer the case back to the administrative law judge in order to take additional evidence, defer final decision pending discussion of the case by Board as a whole, or non-adopt the decision.

The law provides that the votes of two members of the BPM are required to defer a final decision pending discussion of the case by the BPM as a whole. If two or more members vote to defer the final decision until after a discussion of the entire Board, then the BPM must engage in that discussion before 100 calendar days of the date the proposed decision is received by the BPM.

In its Report, the BPM states that the requirement that, "The votes of two members of the panel or board are required to defer a final decision pending discussion of the case by the panel or board as a whole," effectively prevents the BPM Board Members from discussing a case in closed session as a jury even when one member of the BPM identifies an issue and wishes to have discussion with her or his colleagues prior to voting. The BPM states that there is no such obstacle to jury deliberation in civil or criminal courts, nor was there a problem with too many cases being held by the BPM prior to enactment of the two-votes rule. The BPM has recommended deleting this provision as it relates to the BPM, and believes that doing so, could empower the BPM as a jury in disciplinary matters and make its role more meaningful.

Committee staff believes that the BPM's proposal may have merit relating to the operations of the BPM, and suggests that the BPM provide more information to the Committee on this issue.

Staff Recommendation: ***The BPM should provide more information regarding the proposal to amend BPC Section 2335 to remove the two-vote requirement for a disciplinary decision to be discussed by the BPM as a whole.***

BPM Response:

- SB 609 of 1995 amended BPC Section 2335(c)(2) to require two votes rather than just one for a Medical Board panel to HOLD a disciplinary decision proposed by an Administrative Law Judge (ALJ), so that the panel can discuss the case as a jury rather than just vote by mail ballot.
- This statute, enacted due to issues at the Medical Board, also applies to BPM because of the construction of the law, but to no other board.
- In BPM's experience, this works against Board Members being able to discuss a case with their jury colleagues in those instances when one Member sees important questions or issues they were appointed to weigh.
- It is an unusual event (once every few years) for any Member to vote to hold.
- Two Members voting to hold on the same case is something that almost never happens.
- This undercuts the exercise of this voting option, and frustrates Board Members' efforts to function responsibly and effectively in their central, statutory role as a Jury.

ISSUE # 7: Should the BPM be given authority to increase costs when the BPM does not adopt a proposed ALJ decision, and finds grounds to increase the assessed costs?

Background: As part of the Medical Board, and utilizing MBC staff for enforcement, the BPM has cost recovery authority through BPC § 2497.5. The BPM's *Manual of Disciplinary Guidelines and Model Disciplinary Orders* provides that cost recovery is a standard condition for all cases.

According to the BPM, Administrative Law Judges (ALJs) are inconsistent in the amount of cost recovery they propose from one case to another. In stipulated agreements, the BPM's staff and the Attorney General always seek cost recovery as part of the negotiation.

In its Report, the BPM recommends amending BPC § 2497.5(b) to give the BPM discretion to increase cost recovery in disciplinary cases when it non-adopts a proposed decision from an administrative law judge "and in making its own decision finds grounds for increasing the costs to be assessed." The BPM indicates that it is unusual to non-adopt an ALJ's proposed decision and for the BPM to make its own decision. However, the BPM contends that it should not be prohibited from ordering actual and reasonable cost recovery in such cases.

The BPM argues that Section 2497.5 prevents it from increasing the cost recovery proposed by an ALJ "in any event" and also prohibits an ALJ from increasing the cost recovery when the BPM remands cases. There is no apparent rationale for these provisions other than to restrict recovery of costs. This undercuts the role of the BPM Members in making the final decision and ultimately has the effect of inflating licensing fees, according to the BPM.

The BPM recommends amending BPC § 2497.5 as follows:

> (b) The costs to be assessed shall be fixed by the administrative law judge and shall not ~~in any event~~ **be increased by the board unless the board does not adopt a proposed decision and in making its own decision finds grounds for increasing the costs to be assessed, not to exceed the actual and reasonable costs of the investigation and prosecution of the case.** ~~When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.~~

Committee staff concurs with the BPM's recommendation to authorize the BPM to increase costs assessed to a disciplined licensee when a proposed decision is not adopted by the BPM and the BPM finds grounds for increasing the costs.

Staff Recommendation: ***BPC Section 2497.5 should be amended to authorize the BPM to increase costs assessed when a proposed decision is not adopted by the BPM and the BPM finds grounds for increasing the assessed costs.***

BPM Response:

BPM concurs.

TECHNOLOGY ISSUES

ISSUE # 8: What is the status of BReEZe implementation by the BPM?

Background: The BreEZe Project will provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. BreEZe will replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

BreEZe will provide all DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve DCA's service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

BreEZe is an important opportunity to improve the BPM operations to include electronic payments and expedite processing. Staff from numerous DCA boards and bureaus have actively participated with the BreEZe Project. Due to increased costs in the BreEZe Project, last year SB 543 (Steinberg, Chapter 448, Statutes of 2011) was amended to authorize the Department of Finance (DOF) to augment the budgets of BPMs, bureaus and other entities that comprise DCA for expenditure of non-General Fund moneys to pay BreEZe project costs within the 2011-2012 Budget Year.

The BPM indicates in its Report that in August 2011, DCA advised the BPM that the BPM budget and fund will be charged assessments of $4,000 in FY 2011-12 followed in succeeding FYs by $11,000, $9,000, $8,000, $9,000 and $9,000 consecutively through FY 2016-17 for BreEZe SPR Funding.

The BPM is scheduled to begin using BreEZe in the Summer of 2012. It would be helpful to update the Committee about BPM's current work to implement the BreEZe project.

Staff Recommendation: ***The BPM should update the Committee about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? What are the costs of implementing this system? Is the cost of BreEZe consistent with what the BPM was told the project would cost?***

BPM Response:

- BPM has met multiple times with the BreEZe team, and provided all the program data requested.
- BPM is participating in configuration sessions to assess the new system "hands on."
- Implementation is scheduled for summer or fall 2012 (FY 2013).
- The cost to BPM is $50,000 through FYs 2012-17.
- This is a $38,000-increase over the $12,000 previously budgeted for i-Licensing.
- Beginning in FY 2018, annual maintenance costs will be about $1,000.

ISSUE # 9: Are the costly credit card fees associated with the BreEZe system justified for the BPM?

Background: The BPM Report states that DCA has advised that it projects deducting another $15,000 annually for BreEZe credit card convenience fees beginning in FY 2012-13. The BPM states that the additional $15,000 annual assessment is problematic.

The $15,000 annual charge is based upon an assumption of a two-percent transaction fee on average for each online renewal fee payment. The BPM states, "Whereas this fee for a Registered Nurse, with a $140 renewal fee, will be $2.80, the transaction fee for each the BPM renewal will be $18.00 (two percent of the $900 renewal fee)."

With fewer than 2,000 licensees, the BPM has less than 1,000 renewals each year. DCA assumes 80 percent will renew online via a credit card, i.e., 833 online renewals annually, times $900, times two percent. That calculation results in the $15,000 that DCA projects being charged to the BPM's budget annually. The BPM argues that the $15,000 amount stands out as difficult to justify for only 833 renewals.

The BPM has the highest professional renewal fee ($900) and one of the smallest budgets and funds in DCA ($960,000 for FY 2011/12). The BPM states that for two decades the BPM has kept its fund in the black by careful, thrifty under-spending of its budget and returning money to its fund for future use. The BPM has kept its fund solvent by cutting expenditures for 20 years, developing a lean operation with minimum staff. Given the small size of the BPM's budget, and the potential volatility of enforcement costs, this budget flexibility remains instrumental, according to the BPM.

With the BPM a high renewal fee, which has been the case for two decades, there may be little if any support for raising the fee to cover the credit card costs. The BPM does not support raising the renewal fee or cutting licensing or enforcement programs.

The BPM Report states that the BPM unanimously approved initiating having BreEze give the licensee the option of online renewal with credit card payments of both the $900 renewal fee and the amount DCA charges to cover the average convenience fee (currently 2 percent, or $18). The current mail-in renewal with check payment will continue to be available for licensees. According to the BPM, this will cover the $15,000 convenience fee assessment that DCA projects being charged to the BPM's budget, and help preserve the BPM's fund balance.

Committee staff recognizes the concerns of the BPM and understands desire to pass the credit card convenience fee on to those licensees renewing their license online. As consumers, licensees are often used to making electronic payments via credit card for online purchases and making other electronic purchase and payments online. No doubt it would be of great benefit to the licensing population and be more efficient for the BPM to be able to make credit card payments for fees online.

Committee staff is concerned whether the BPM has adequate authority to charge a separate convenience fee for renewing a license online by credit card. The BPM should more fully discuss this issue with the Committee.

Staff Recommendation: ***The BPM should discuss with the Committee its authority to charge additional fees such as the convenience fees contemplated by the BPM. Does the BPM currently have sufficient authority to charge such a fee? Is any legislative change needed to clarify the authority of the BPM to charge an additional fee to cover the cost of a credit card convenience fee? Should or can the fee be reduced?***

BPM Response:

- The DCA Legal Affairs office has confirmed that no additional statutory authority is necessary.
- Government Code Section 6159(g) provides authorization.
- BPM defers to the Department on whether the fees can be reduced.
- BPM's Board voted unanimously September 23 to pass this 2% assessment on to licensees who renew online.
- Following BPM's Sunset Hearing March 12, the Department initiated discussions with BPM that are continuing on this matter.

BUDGET ISSUES

ISSUE # 10: Should the fees for services other than for license renewals be increased?

Background: Aside from the BPM's renewal fee, which accounts for more than 90 percent of the BPM's revenue, the fees for other specified services have not been adjusted in two decades. They are at their statutory limits. DCA Budget Office recommended in 2004, when the $900 renewal fee was made permanent, that the BPM's other fees be adjusted to reflect actual costs of service. This was to stabilize the BPM special fund and relieve pressure on the renewal fee, which has been the highest professional renewal fee in DCA for decades.

The BPM recommends following changes to bring fees more in line with current costs:

- Increase the application fee from $20 to $100 (BPC § 2499.5 (a)).
- Delete application and renewal fee discounts for recent graduates (BPC § 2499.5 (c)).
- Add authority to waive the renewal fee for doctors working only as volunteers consistent with MBC statute (Section 2442) (BPC § 2499.5 (d)).
- Increase the duplicate wall certificate fee from $40 to $100 (BPC § 2499.5 (f)).
- Increase the duplicate renewal receipt fee from $40 to $50, and clarify statute to include the issuance of pocket licenses under this provision so that it is consistent with current practice (BPC § 2499.5 (g)).
- Increase the endorsement fee from $30 to $100, and clarify statute to include all of the services that are currently provided under this subsection (BPC § 2499.5 (h), (i)).
- Increase the resident's license fee from $60 to $100 (BPC § 2499.5 (j)).
- Sunset authorization and fees for ankle licensure examination for pre-1984 licensees (BPC § 2499.5 (k)).
- Increase the examination appeal fee from $25 to $100 (BPC § 2499.5 (l)).
- Increase the continuing education course approval fee from $100 to $250 (BPC § 2499.5 (m)).

Given the BPM's close budget management and lean operation, these fees should not require further adjustment for some years. While the renewal fee is the highest professional fee within the Department, DPMs support it to ensure the fiscal and enforcement integrity of a Board dedicated to standards reflecting well on the profession, according to the BPM.

Committee staff agrees that the stability of the BPM's special fund is essential to the long-term regulatory activities of the BPM. However, to this point, the BPM has not sufficiently demonstrated the need for the proposed increases.

Staff Recommendation: ***The BPM should discuss its fund projections, and whether the current fee structure will generate sufficient revenues to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas into the foreseeable future. The BPM should demonstrate the level of need for the proposed fee increase by completing the Committee's "Fee Bill Worksheet."***

BPM Response:

- BPM's completion of the Committee's Fee Bill Worksheet is attached.
- Increasing the service fees will increase BPM revenue about $11,000 a year.
- This will not by itself solve BPM's long-term fund projections, but will help keep the fund in the black for a longer period of time.
- BPM's annual revenues have not equaled its budget or actual expenditures since FY 2007.
- For decades, BPM has extended the solvency of its fund by tight fiscal management and staying under budget every year.
- The $900 renewal fee (the highest in the Department) accounts for more than 90% of BPM's revenue.
- DCA's analysis of the BPM Fund projects a negative balance at the end of FY 2013, but this assumes full spending of budget.
- BPM's analysis projects cost savings and a positive fund balance thru FY 2015.

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE BPM

ISSUE # 11: Should the licensing and regulation of podiatric medicine be continued, and should the profession continue to be regulated by the BPM of Podiatric Medicine under the jurisdiction of the Medical Board of California?

Background: The health, safety and welfare of consumers are protected by a well-regulated medical profession, including podiatric medicine. Podiatric doctors make independent medical judgments with patients including diagnosis, prescription medication, and method of treatment. The BPM continues to be an effective mechanism for licensure and oversight of podiatrists and should be continued. The BPM has shown over the years a strong commitment to improve the BPM's overall efficiency and effectiveness and has worked cooperatively with the Legislature and this Committee to bring about necessary changes. The BPM should be continued under the jurisdiction of the MBC with a four-year

extension of its sunset date so that the Committee may review once again if the issues and recommendations in this Paper and others of the Committee have been addressed.
Staff Recommendation: ***Recommend that doctors of podiatric medicine continue to be regulated by the current the BPM members under the jurisdiction of the MBC in order to protect the interests of the public and be reviewed once again in four years.***

BPM Response:

- BPM concurs.

TECHNICAL CLEANUP OF PODIATRIC ACT

ISSUE # 12: Technical cleanup of the Podiatric Medicine Act proposed by the BPM.

Background: The BPM has raised several cleanup provisions in its Report which should be made to clarify the law.

The following are technical corrections recommended by the BPM:

> 2465. No person who directly or indirectly owns any interest in any college, school, or other institution engaged in podiatric medical instruction shall be appointed to the board **nor** ~~or~~ shall any incumbent member of the board have or acquire any interest, direct or indirect, in any such college, school, or institution.
>
> 2484. In addition to any other requirements of this chapter, before a certificate to practice podiatric medicine may be issued, each applicant shall show by evidence satisfactory to the board, submitted directly to the board by the sponsoring institution, that he or she has satisfactorily completed at least two years of postgraduate podiatric medical and podiatric surgical training in a general acute care hospital approved by the Council ~~of~~ **on** Podiatric Medical Education.

The BPM states that Section 2496 duplicates provisions found in Section 2470 and other provisions of law, and recommends amendments to remove the duplicative wording. Committee staff recommends also amending Section 2470 to more fully cite the Administrative Procedures Act.

> 2496. In order to ensure the continuing competence of persons licensed to practice podiatric medicine, the board shall adopt and administer regulations ~~in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)~~.
>
> 2470. The board may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act **(Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)**, regulations necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine.

Staff Recommendation: *Amendments should be made to make the technical cleanup changes identified by the BPM and recommended by Committee staff*

BPM Response:

- BPM concurs.

BOARD'S PROPOSED LEGISLATIVE CHANGES
BUSINESS & PROFESSIONS CODE DIVISION 2
(HEALING ARTS)
CHAPTER 5 (MEDICINE)
ARTICLE 22

2460. (a) There is created within the jurisdiction of the Medical Board of California the California Board of Podiatric Medicine.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date. The repeal of this section renders the California Board of Podiatric Medicine subject to the review required by Division 1.2 (commencing with Section 473).

2460.1. Protection of the public shall be the highest priority for the California Board of Podiatric Medicine in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

2461. As used in this article:

(a) "Division" means the Division of Licensing of the Medical Board of California.

(b) "Board" means the California Board of Podiatric Medicine.

(c) "Podiatric licensing authority" refers to any officer, board, commission, committee, or department of another state that may issue a license to practice podiatric medicine.

2462. The board shall consist of seven members, three of whom shall be public members. Not more than one member of the board shall be a full-time faculty member of a college or school of podiatric medicine.

The Governor shall appoint the four members qualified as provided in Section 2463 and one public member. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

2463. Each member of the board, except the public members, shall be appointed from persons having all of the following qualifications:

(a) Be a citizen of this state for at least five years next preceding his or her appointment.

(b) Be a graduate of a recognized school or college of podiatric medicine.

(c) Have a valid certificate to practice podiatric medicine in this state.

(d) Have engaged in the practice of podiatric medicine in this state for at least five years next preceding his or her appointment.

2464. The public members shall be appointed from persons having all of the following qualifications:

(a) Be a citizen of this state for at least five years next

preceding his or her appointment.

(b) Shall not be an officer or faculty member of any college, school, or other institution engaged in podiatric medical instruction.

(c) Shall not be a licentiate of the board or of any board under this division or of any board created by an initiative act under this division.

2465. No person who directly or indirectly owns any interest in any college, school, or other institution engaged in podiatric medical instruction shall be appointed to the board nor shall any incumbent member of the board have or acquire any interest, direct or indirect, in any such college, school, or institution.

2466. All members of the board shall be appointed for terms of four years. Vacancies shall immediately be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the board for more than two consecutive terms.

2467. (a) The board may convene from time to time as it deems necessary.

(b) Four members of the board constitute a quorum for the transaction of business at any meeting.

(c) It shall require the affirmative vote of a majority of those members present at a meeting, those members constituting at least a quorum, to pass any motion, resolution, or measure.

(d) The board shall annually elect one of its members to act as president and a member to act as vice president who shall hold their respective positions at the pleasure of the board. The president may call meetings of the board and any duly appointed committee at a specified time and place.

2468. Notice of each meeting of the board shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

2469. Each member of the board shall receive per diem and expenses as provided in Section 2016.

2470. The board may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations
necessary to enable the board to carry into effect the provisions of law relating to the practice of podiatric medicine.

2471. Except as provided by Section 159.5, the board may employ, within the limits of the funds received by the board, all personnel necessary to carry out this chapter.

2472. (a) The certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine.

(b) As used in this chapter, "podiatric medicine" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot.

(c) A doctor of podiatric medicine may not administer an anesthetic other than local. If an anesthetic other than local is required for any procedure, the anesthetic shall be administered by another licensed health care practitioner who is authorized to administer the required anesthetic within the scope of his or her practice.

(d) (1) A doctor of podiatric medicine ~~who is ankle certified by the board on and after January 1, 1984,~~ may do the following:

(A) Perform surgical treatment of the ankle and tendons at the level of the ankle pursuant to subdivision (e).

(B) Perform services under the direct supervision of a physician and surgeon, as an assistant at surgery, in surgical procedures that are otherwise beyond the scope of practice of a doctor of podiatric medicine.

(C) Perform a partial amputation of the foot no further proximal than the Chopart's joint.

(2) Nothing in this subdivision shall be construed to permit a doctor of podiatric medicine to function as a primary surgeon for any procedure beyond his or her scope of practice.

(e) A doctor of podiatric medicine may perform surgical treatment of the ankle and tendons at the level of the ankle only in the following locations:

(1) A licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(2) A licensed surgical clinic, as defined in Section 1204 of the Health and Safety Code, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1) and meets all the protocols of the surgical clinic.

(3) An ambulatory surgical center that is certified to participate in the Medicare Program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1) and meets all the protocols of the surgical center.

(4) A freestanding physical plant housing outpatient services of a licensed general acute care hospital, as defined in Section 1250 of the Health and Safety Code, if the doctor of podiatric medicine has surgical privileges, including the privilege to perform surgery on the ankle, in a general acute care hospital described in paragraph (1). For purposes of this section, a "freestanding physical plant" means any building that is not physically attached to a building where inpatient services are provided.

(5) An outpatient setting accredited pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.

~~(f) A doctor of podiatric medicine shall not perform an admitting history and physical examination of a patient in an acute care hospital where doing so would violate the regulations governing the Medicare program.~~

~~(g) A doctor of podiatric medicine licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of~~

~~Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.~~ [Duplicative--covered by Section 805(a)(2)itself]

2474. Any person who uses in any sign or in any advertisement or otherwise, the word or words "doctor of podiatric medicine," "doctor of podiatry," "podiatric doctor," "D.P.M.," "podiatrist," "foot specialist," or any other term or terms or any letters indicating or implying that he or she is a doctor of podiatric medicine, or that he or she practices podiatric medicine, or holds himself out as practicing podiatric medicine or foot correction as defined in Section 2472, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as provided for in this chapter, is guilty of a misdemeanor.

2475. Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine has been conferred, who is issued a resident's license, which may be renewed annually ~~for up to four years~~ for this purpose by the division upon recommendation of the board, and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric medicine whenever and wherever required as a part of that program and may receive compensation for that practice under the following conditions:

(a) A graduate with a resident's license in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the graduate fails to receive a license to practice podiatric medicine under this chapter within three years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(b) Hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident doctors of podiatric medicine with another approved college or school of podiatric medicine not located in this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in this section, but that practice and compensation shall be for a period not to exceed two years.

2475.1. Before a resident's license may be issued, each applicant shall show by evidence satisfactory to the board, submitted directly to the board by the national score reporting institution, that he or she has, within the past 10 years, passed Parts I and II of the examination administered by the National Board of Podiatric Medical Examiners of the United States or has passed a written examination

that is recognized by the board to be the equivalent in content to the examination administered by the National Board of Podiatric Medical Examiners of the United States.

2475.2. As used in this article, "podiatric residency" means a program of supervised postgraduate clinical training, one year or more in duration, approved by the board.

2475.3. (a) The board shall approve podiatric residency programs, as defined in Section 2475.2, in the field of podiatric medicine, for persons who are applicants for or have been issued a certificate to practice podiatric medicine pursuant to this article.

(b) The board may only approve a podiatric residency that it determines meets all of the following requirements:

(1) Reasonably conforms with the Accreditation Council for Graduate Medical Education's Institutional Requirements of the Essentials of Accredited Residencies in Graduate Medical Education: Institutional and Program Requirements.

(2) Is approved by the Council on Podiatric Medical Education.

(3) Complies with the requirements of this state.

2476. Nothing in this chapter shall be construed to prevent a regularly matriculated student undertaking a course of professional instruction in an approved college or school of podiatric medicine from participating in training beyond the scope of podiatric medicine under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree whenever and wherever prescribed as part of his or her course of study.

2477. Nothing in this chapter prohibits the manufacture, the recommendation, or the sale of either corrective shoes or appliances for the human feet **to enhance comfort and performance, or, following diagnosis and prescription by a licensed practitioner, in any case involving medical conditions**.

2479. The division shall issue, upon the recommendation of the board, a certificate to practice podiatric medicine to each applicant who meets the requirements of this chapter. Every applicant for a certificate to practice podiatric medicine shall comply with the provisions of Article 4 (commencing with Section 2080) which are not specifically applicable to applicants for a physician's and surgeon's certificate, in addition to the provisions of this article.

2480. The board shall have full authority to investigate and to evaluate each applicant applying for a certificate to practice podiatric medicine and to make a determination of the admission of the applicant to the examination and the issuance of a certificate in accordance with the provisions and requirements of this chapter.

2481. Each applicant who commenced professional instruction in podiatric medicine after September 1, 1959, shall show by an official

transcript or other official evidence submitted directly to the board by the academic institution that he or she has completed two years of preprofessional postsecondary education, or its equivalent, including the subjects of chemistry, biology or other biological science, and physics or mathematics, before completing the resident course of professional instruction.

2483. (a) Each applicant for a certificate to practice podiatric medicine shall show by an official transcript or other official evidence satisfactory to the board that is submitted directly to the board by the academic institution that he or she has successfully completed a medical curriculum extending over a period of at least four academic years, or 32 months of actual instruction, in a college or school of podiatric medicine approved by the board. The total number of hours of all courses shall consist of a minimum of 4,000 hours.

The board, by regulation, shall adopt standards for determining equivalent training authorized by this section.

(b) The curriculum for all applicants shall provide for adequate instruction related to podiatric medicine in the following:

Alcoholism and other chemical substance detection
Local anesthesia
Anatomy, including embryology, histology, and neuroanatomy
Behavioral science
Biochemistry
Biomechanics-foot and ankle
Child abuse detection
Dermatology
Geriatric medicine
Human sexuality
Infectious diseases
Medical ethics
Neurology
Orthopedic surgery
Pathology, microbiology, and immunology
Pediatrics
Pharmacology, including materia medica and toxicology
Physical and laboratory diagnosis
Physical medicine
Physiology
Podiatric medicine
Podiatric surgery
Preventive medicine, including nutrition
Psychiatric problem detection
Radiology and radiation safety
Spousal or partner abuse detection
Therapeutics
Women's health

2484. In addition to any other requirements of this chapter, before a certificate to practice podiatric medicine may be issued, each applicant shall show by evidence satisfactory to the board, submitted directly to the board by the sponsoring institution, that he or she has satisfactorily completed at least two years of postgraduate podiatric medical and podiatric surgical training in a general acute care hospital approved by the Council ~~of~~ on Podiatric Medical Education.

2486. The Medical Board of California shall issue, upon the

recommendation of the board, a certificate to practice podiatric medicine if the applicant has submitted directly to the board from the credentialing organizations verification that he or she meets all of the following requirements:

(a) The applicant has graduated from an approved school or college of podiatric medicine and meets the requirements of Section 2483.

(b) The applicant, within the past 10 years, has passed parts I, II, and III of the examination administered by the National Board of Podiatric Medical Examiners of the United States or has passed a written examination that is recognized by the board to be the equivalent in content to the examination administered by the National Board of Podiatric Medical Examiners of the United States.

(c) The applicant has satisfactorily completed the postgraduate training required by Section 2484.

(d) The applicant has passed within the past 10 years any oral and practical examination that may be required of all applicants by the board to ascertain clinical competence.

(e) The applicant has committed no acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475).

(f) The board determines that no disciplinary action has been taken against the applicant by any podiatric licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of podiatric medicine that the board determines constitutes evidence of a pattern of negligence or incompetence.

(g) A disciplinary databank report regarding the applicant is received by the board from the Federation of Podiatric Medical Boards.

2488. Notwithstanding any other provision of law, the Medical Board of California shall issue, upon the recommendation of the board, a certificate to practice podiatric medicine by credentialing if the applicant has submitted directly to the board from the credentialing organizations verification that he or she is licensed as a doctor of podiatric medicine in any other state and meets all of the following requirements:

(a) The applicant has graduated from an approved school or college of podiatric medicine.

(b) The applicant, within the past 10 years, has passed either part III of the examination administered by the National Board of Podiatric Medical Examiners of the United States or a written examination that is recognized by the board to be the equivalent in content to the examination administered by the National Board of Podiatric Medical Examiners of the United States.

(c) The applicant has satisfactorily completed a postgraduate training program approved by the Council on Podiatric Medical Education.

(d) The applicant, within the past 10 years, has passed any oral and practical examination that may be required of all applicants by the board to ascertain clinical competence.

(e) The applicant has committed no acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475).

(f) The board determines that no disciplinary action has been taken against the applicant by any podiatric licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of podiatric medicine that

the board determines constitutes evidence of a pattern of negligence or incompetence.

(g) A disciplinary databank report regarding the applicant is received by the board from the Federation of Podiatric Medical Boards.

2492. (a) The board shall examine every applicant for a certificate to practice podiatric medicine to ensure a minimum of entry-level competence at the time and place designated by the board in its discretion, but at least twice a year.

(b) Unless the applicant meets the requirements of Section 2486, applicants shall be required to have taken and passed the examination administered by the National Board of Podiatric Medical Examiners.

(c) The board may appoint qualified persons to give the whole or any portion of any examination as provided in this article, who shall be designated as examination commissioners. The board may fix the compensation of those persons subject to the provisions of applicable state laws and regulations.

(d) The provisions of Article 9 (commencing with Section 2170) shall apply to examinations administered by the board except where those provisions are in conflict with or inconsistent with the provisions of this article. In respect to applicants under this article any references to the "Division of Licensing" or "division" shall be deemed to apply to the board.

2493. (a) An applicant for a certificate to practice podiatric medicine shall pass an examination in the subjects required by Section 2483 in order to ensure a minimum of entry-level competence.

~~(b) The board shall require a passing score on the National Board of Podiatric Medical Examiners Part III examination that is consistent with the postgraduate training requirement in Section 2484. The board, as of July 1, 2005, shall require a passing score one standard error of measurement higher than the national passing scale score until such time as the National Board of Podiatric Medical Examiners recommends a higher passing score consistent with Section 2484. In consultation with the Office of Professional Examination Services of the Department of Consumer Affairs, the board shall ensure that the part III examination adequately evaluates the full scope of practice established by Section 2472, including amputation and other foot and ankle surgical procedures, pursuant to Section 139.~~

2495. Notwithstanding any other provision of this chapter, the board may delegate to officials of the board the authority to approve the admission of applicants to the examination and to approve the issuance of certificates to practice podiatric medicine to applicants who have met the specific requirements therefor in routine cases where applicants clearly meet the requirements of this chapter.

2496. In order to ensure the continuing competence of persons licensed to practice podiatric medicine, the board shall adopt and administer regulations ~~in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)~~

requiring continuing education of those licensees. The board shall require those licensees to demonstrate satisfaction of the continuing education requirements and one of the following requirements at each license renewal:

(a) Passage of an examination administered by the board within the past 10 years.

(b) Passage of an examination administered by an approved specialty certifying board within the past 10 years.

(c) Current diplomate, board-eligible, or board-qualified status granted by an approved specialty certifying board within the past 10 years.

(d) Recertification of current status by an approved specialty certifying board within the past 10 years.

(e) Successful completion of an approved residency or fellowship program within the past 10 years.

(f) Granting or renewal of current staff privileges within the past five years by a health care facility that is licensed, certified, accredited, conducted, maintained, operated, or otherwise approved by an agency of the federal or state government or an organization approved by the Medical Board of California.

(g) Successful completion within the past five years of an extended course of study approved by the board.

(h) Passage within the past 10 years of Part III of the examination administered by the National Board of Podiatric Medical Examiners.

2497. (a) The board may order the denial of an application for, or the suspension of, or the revocation of, or the imposition of probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with Section 2220) in accordance with Section 2222.

(b) The board may hear all matters, including but not limited to, any contested case or may assign any such matters to an administrative law judge. The proceedings shall be held in accordance with Section 2230. If a contested case is heard by the board itself, the administrative law judge who presided at the hearing shall be present during the board's consideration of the case and shall assist and advise the board.

2497.5. (a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not ~~in any event~~ be increased by the board unless the board does not adopt a proposed decision and in making its own decision finds grounds for increasing the costs to be assessed, not to exceed the actual and reasonable costs of the investigation and prosecution of the case. ~~When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.~~

(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This

right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

2498. (a) The board shall have the responsibility for reviewing the quality of podiatric medical practice carried out by persons licensed to practice podiatric medicine.

(b) Each member of the board, or any licensed doctor of podiatric medicine appointed by the board, shall additionally have the authority to inspect, or require reports from, a general or specialized hospital and the podiatric medical staff thereof, with respect to the podiatric medical care, services, or facilities provided therein, and may inspect podiatric medical patient records with respect to the care, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a doctor of podiatric medicine and shall be subject to the restrictions against disclosure described in Section 2263.

2499. There is in the State Treasury the Board of Podiatric Medicine Fund. Notwithstanding Section 2445, the division shall report to the Controller at the beginning of each calendar month for the month preceding the amount and source of all revenue received by it on behalf of the board, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into the fund. All revenue received by the board and the division from fees authorized to be charged relating to the practice of podiatric medicine shall be deposited in the fund as provided in this section, and shall be used to carry out the provisions of this chapter relating to the regulation of the practice of podiatric medicine.

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be those set forth in this section unless a lower fee is established by the board in accordance with Section 2499.6. Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate to practice podiatric medicine shall pay an application fee of ~~twenty~~ one hundred dollars ~~($20)~~ ($100) at the time the application is filed. If the applicant qualifies for a

certificate, he or she shall pay a fee which shall be fixed by the board at an amount not to exceed one hundred dollars ($100) nor less than five dollars ($5) for the issuance of the certificate.

(b) The oral examination fee shall be seven hundred dollars ($700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required by this section, shall pay an initial license fee. The initial license fee shall be eight hundred dollars ($800). The initial license shall expire the second year after its issuance on the last day of the month of birth of the licensee. ~~The board may reduce the initial license fee by up to 50 percent of the amount of the fee for any applicant who is enrolled in a postgraduate training program approved by the board or who has completed a postgraduate training program approved by the board within six months prior to the payment of the initial license fee.~~

(d) The biennial renewal fee shall be nine hundred dollars ($900). ~~Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.~~ The board may waive this fee for a doctor of podiatric medicine residing in California who certifies to the board that license renewal is for the sole purpose of providing voluntary, unpaid service.

(e) The delinquency fee is one hundred fifty dollars ($150).

(f) The duplicate wall certificate fee is ~~forty~~ one hundred dollars ~~($40)~~ $100.

(g) The fee for a duplicate renewal receipt ~~fee~~ or pocket license is ~~forty~~ fifty dollars ~~($40)~~ ($50).

(h) The endorsement, certification, verification, or letter of good standing fee is ~~thirty~~ one hundred dollars ~~($30)~~ ($100).

(i) The letter of good standing fee or for loan deferment is ~~thirty~~ one hundred dollars ~~($30)~~ ($100).

(j) There shall be a fee of ~~sixty~~ one hundred dollars ~~($60)~~ ($100) for the issuance and renewal of a resident's license under Section 2475.

~~(k) The application fee for ankle certification under Section 2472 for persons licensed prior to January 1, 1984, shall be fifty dollars ($50). The examination and reexamination fee for this certification shall be seven hundred dollars ($700).~~

(l) The filing fee to appeal the failure of an oral examination shall be ~~twenty-five~~ one hundred dollars ~~($25)~~ ($100).

(m) The fee for approval of a continuing education course or program shall be ~~one~~ two hundred fifty dollars ~~($100)~~ ($250).

2499.6. The fees in this article shall be fixed by the board in accordance with Section 313.1.

2499.8. Any licensee who demonstrates to the satisfaction of the board that he or she is unable to practice podiatric medicine due to a disability may request a waiver of the license renewal fee. The granting of a waiver shall be at the discretion of the board and may be terminated at any time. Waivers shall be based on the inability of a licensee to practice podiatric medicine. A licensee whose renewal

fee has been waived pursuant to this section shall not engage in the practice of podiatric medicine unless and until the licensee pays the current renewal fee and does either of the following:

(a) Establishes to the satisfaction of the board, on a form prescribed by the board and signed under penalty of perjury, that the licensee's disability either no longer exists or does not affect his or her ability to practice podiatric medicine safely.

(b) Signs an agreement on a form prescribed by the board, signed under penalty of perjury, in which the licensee agrees to limit his or her practice in the manner prescribed by the reviewing physician.