



**ENFORCEMENT COMMITTEE
FEBRUARY 10, 2016**

SUBJECT: PROPOSED DRAFT LANGUAGE FOR NON-SUBSTANTIVE REVISION TO TITLE 16, C.C.R. SECTION 1399.696(c)(61) OF PODIATRIC MEDICINE REGULATIONS RECOGNIZING AUTHORITY TO ISSUE CITATIONS AND FINES FOR FAILURE TO PRODUCE DOCUMENTS

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ACTION: APPROVE PROPOSED DRAFT LANGUAGE FOR NON-SUBSTANTIVE CHANGE WITHOUT REGULATORY EFFECT TO TITLE 16, C.C.R. SECTION 1399.696(c)(61) OF PODIATRIC MEDICINE REGULATIONS RECOGNIZING AUTHORITY TO ISSUE CITATIONS AND FINES FOR FAILURE TO PRODUCE DOCUMENTS

RECOMMENDATION

Approve the proposed draft language for revision to Title 16 California Code of Regulations (“CCR”), Division 13.9, Sec.1399.696(c)(61) to implement a proposed non-substantive change without regulatory effect and to authorize the Executive Officer to make any additional non-substantive changes and to commence the rulemaking process.

ISSUE

Podiatric Medicine Regulation 1399.696(c)(61) references section 2225(d) of the California Business and Professions Code which should in fact reflect section 2225(e) instead.

DISCUSSION

The California Board of Podiatric Medicine’s statutory citation and fine authority contained in section 125.9 of the California Business and Professions Code (B&P) was codified in the board’s podiatric medicine regulations under sections 1399.696 and 1399.697.



Section 2222 B&P authorizes the California Board of Podiatric Medicine (BPM) to enforce and administer Article 12 (Enforcement) of the Medical Practice Act as to doctors of podiatric medicine. Specifically, section 2225 B&P provides, among other things, that a failure to provide requested documents to the Board of Podiatric Medicine within 15 days of a lawful request for same constitutes unprofessional conduct.

BPM, through regulation, updated section 1399.696 in 2008 in order to provide the Executive Officer with, among other things, the regulatory authority to issue citations and fines for a failure to produce medical records as then contained in section 2225(d) B&P. The regulatory authority was specifically codified in 1399.696(c)(61).

However, a subsequent statutory amendment to section 2225 B&P effective January 1, 2014, introduced by SB 670 [Stats. 2013 ch 399 section 1] included revisions to section 2225 which added new sub-paragraphs to the statute which ultimately moved former sub-section (d) to a new sub-section (e). A corresponding revision to Podiatric Medicine Regulation 1399.696(c)(61) to reflect the statutory change was not undertaken.

The board's citation and fine authority is generally used to address conduct or omissions identified in the course of enforcement investigations that do not necessarily rise to the level of disciplinary action but which nevertheless warrant redress. Failure to produce requested medical records is one such example that remains mission critical for enforcement of the Medical Practice Act. Without reference to correct statutory authority in regulation, the board's ability to effectively gain compliance may be curtailed and enforcements efforts may suffer thus negatively impacting consumer protection.

Attachments A & B include the corresponding statutory and regulatory sections for member review.

ALTERNATIVES

The Board may choose not to approve the proposed draft regulatory change and allow the incorrect reference to remain. This option is not recommended as Section 2225(e) is mission critical in BPM's efforts to gain compliance with non-



cooperative licenses in the course of enforcement investigations. Without the necessary regulatory revision, BPM's enforcement efforts could be hampered and/or subject to legal challenge and thus hampering mission effectiveness.

NEXT STEPS

Should the Board approve the proposed draft language for the recommended change, and authorize the Executive Officer to make any non-substantive changes needed, BPM staff will commence the rule making process to make the appropriate revision.

ATTACHMENTS

- A. 16 CCR Sec. 1399.696, Citations and Fines
- B. Business and Professions Code, Section 2225, Privileged communications.

Prepared by: Kathleen Cooper, JD

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Legislative Analyst

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Jason S. Campbell, JD
Executive Officer

HISTORY

1. Change without regulatory effect of subsections (b) and (c) (Register 87, No. 15).
2. Change without regulatory effect repealing section filed 1–6–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).

§ 1399.695. Denial, Suspension or Revocation of Registration of a Preceptor. [Repealed]

NOTE: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2006 and 2484, Business and Professions Code.

HISTORY

1. Change without regulatory effect repealing section filed 1–6–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 12).

Article 8. Citations and Fines

§ 1399.696. Citations and Fines.

(a) The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed doctor of podiatric medicine of the provisions of law referred to in this section. In all cases concerning medical quality of care, or requiring medical judgment, the executive officer shall base his decision on the findings of a board-approved medical consultant or expert.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

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

The fine for a violation of the following provisions shall be from \$100.00 to \$2500.00:

- (1) Business and Professions Code Section 119
- (2) Business and Professions Code Section 125
- (3) Business and Professions Code Section 125.6
- (4) Business and Professions Code Section 496
- (5) Business and Professions Code Section 650
- (6) Business and Professions Code Section 650.1
- (7) Business and Professions Code Section 651
- (8) Business and Professions Code Section 654.1
- (9) Business and Professions Code Section 654.2
- (10) Business and Professions Code Section 655.5
- (11) Business and Professions Code Section 702
- (12) Business and Professions Code Section 810
- (13) Business and Professions Code Section 2021
- (14) Business and Professions Code Section 2052
- (15) Business and Professions Code Section 2054
- (16) Business and Professions Code Section 2221.1
- (17) Business and Professions Code Section 2234
- (18) Business and Professions Code Section 2236
- (19) Business and Professions Code Section 2238
- (20) Business and Professions Code Section 2239
- (21) Business and Professions Code Section 2242
- (22) Business and Professions Code Section 2243
- (23) Business and Professions Code Section 2255
- (24) Business and Professions Code Section 2256
- (25) Business and Professions Code Section 2259
- (26) Business and Professions Code Section 2259.5
- (27) Business and Professions Code Section 2261
- (28) Business and Professions Code Section 2262
- (29) Business and Professions Code Section 2263
- (30) Business and Professions Code Section 2264
- (31) Business and Professions Code Section 2266
- (32) Business and Professions Code Section 2271
- (33) Business and Professions Code Section 2272
- (34) Business and Professions Code Section 2273

- (35) Business and Professions Code Section 2274
- (36) Business and Professions Code Section 2278
- (37) Business and Professions Code Section 2285
- (38) Business and Professions Code Section 2286
- (39) Business and Professions Code Section 2305
- (40) Business and Professions Code Section 2410
- (41) Business and Professions Code Section 2415
- (42) Business and Professions Code Section 2439
- (43) Business and Professions Code Section 2440
- (44) Business and Professions Code Section 2441
- (45) Business and Professions Code Section 2496
- (46) Business and Professions Code Section 2630
- (47) Business and Professions Code Section 2472
- (48) Business and Professions Code Section 2474
- (49) Business and Professions Code Section 4080
- (50) Business and Professions Code Section 4081
- (51) Business and Professions Code Section 17500
- (52) Business and Professions Code Section 17537.11
- (53) Health and Safety Code Section 1795
- (54) Health and Safety Code Section 11167
- (55) Health and Safety Code Section 11190
- (56) Health and Safety Code Section 11191
- (57) Health and Safety Code Section 123110
- (58) Penal Code Section 11166
- (59) Title 16 Cal. Code Reg. Section 1338(c)
- (60) Title 16 Cal. Code Reg. Section 1399.676
- (61) Business and Professions Code Section 2225(d)

In her or his discretion, the executive officer may issue an order of abatement without levying a fine for the first violation of any provision set forth in this subsection.

(d) Notwithstanding the administrative fine amounts specified in subsection (c) of section 1399.696, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate relationship to the health and safety of another person.
2. The cited person has a history of two or more prior citations of the same or similar violations;
3. The citation involves multiple violations that demonstrate a willful disregard of the law.
4. The citation involves a violation or violations perpetrated against a senior citizen or disabled person.

(e) In her or his discretion, the executive officer may issue a citation under Section 1399.696 to a licensee for a violation of a term or condition contained in the decision placing that licensee on probation.

(f) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the executive officer in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(g) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. Such failure may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the person cited.

(h) The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure is required as a doctor of podiatric medicine under the Medical Practice Act but who do not possess a license. Each citation

Business and Professions Code**2225. Privileged communications; Confidential information**

(a) Notwithstanding Section 2263 and any other law making a communication between a physician and surgeon or a doctor of podiatric medicine and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, members of the California Board of Podiatric Medicine, and deputies, employees, agents, and representatives of the board or the California Board of Podiatric Medicine and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and shall not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority of the board or the California Board of Podiatric Medicine and the Health Quality Enforcement Section to examine records of patients in the office of a physician and surgeon or a doctor of podiatric medicine is limited to records of patients who have complained to the board or the California Board of Podiatric Medicine about that licensee.

(b) Notwithstanding any other law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the California Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied if relevant to an investigation of a licensee.

(c) (1) Notwithstanding subdivision (b) or any other law, in any investigation that involves the death of a patient, the board may inspect and copy the medical records of the deceased patient without the authorization of the beneficiary or personal representative of the deceased patient or a court order solely for the purpose of determining the extent to which the death was the result of the physician and surgeon's conduct in violation of the Medical Practice

Act, if the board provides a written request to the physician and surgeon that includes a declaration that the board has been unsuccessful in locating or contacting the deceased patient's beneficiary or personal representative after reasonable efforts. Nothing in this subdivision shall be construed to allow the board to inspect and copy the medical records of a deceased patient without a court order when the beneficiary or personal representative of the deceased patient has been located and contacted but has refused to consent to the board inspecting and copying the medical records of the deceased patient.

(2) The Legislature finds and declares that the authority created in the board pursuant to this section, and a physician and surgeon's compliance with this section, are consistent with the public interest and benefit activities of the federal Health Insurance Portability and Accountability Act (HIPAA).

(d) In all cases in which documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(e) If documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the California Board of Podiatric Medicine, the documents shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(f) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.