RECOMMENDATION

Receive the status update report regarding Legislative and Public Education matters.

ISSUES

This report summarizes recent activities of the Board of Podiatric Medicine ("BPM"). This included legislative, regulatory, and public education activities.

I. LEGISLATION PROGRAM UPDATE

A. LEGISLATIVE UPDATE - 2017

1. The Medical Board of California (MBC) Sunset Report

MBC has indicated in its Sunset Review that the Board of Podiatric Medicine is to be removed from within MBC’s jurisdiction and Doctors of Podiatric Medicine will no longer receive certification of licensure from MBC but from BPM directly. This matter is being discussed and considered in the Executive Officer’s Report under the Executive Management Committee. The language included in MBC’s Sunset Report is included. See Attachment A1.

2. Proposed Legislation 2017

AB 1153 – Low, Podiatry

Existing law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine within the jurisdiction of the Medical
Board of California. Existing law prohibits a doctor of podiatric medicine from personally administering an anesthetic other than local. This bill would make a nonsubstantive change to that anesthetic provision. See Attachment A2.

B. ORAL ARGUMENTS – BOARD DECISION FROM JUNE 3, 2015

On June 3, 2015 the Board reviewed the written submission for the adoption of regulations relating to oral arguments, amicus curie briefs and written argument submitted in response to an order of nonadoption or reconsideration pursuant to the Business and Professions Code, sec. 2336, which mandates that BPM provide such regulations. A motion was made at that meeting that substantively changed the language and was inconsistent with the specific mandates of sec. 2336. This matter is now in the process of being reviewed by Department of Consumer Affairs and Office of Administrative Law staff and it it is approved by BPM it will be allowed to continue in the process. Please see Attachment B.


1. This item is the subject of Item B of this report.

   16 California Code of Regulations (CCR), Division 13.9:
   Article 13, Oral Arguments; Amicus Briefs
   Sec. 1399.730, Procedures for the Conduct of Oral Arguments;
   Sec. 1399.731, Amicus Briefs; and,
   Sec. 1399.732, Written Argument Submitted in Response to an Order of
   Non-adoption or Reconsideration

2. BPM is currently working with legal counsel also in the rulemaking process for amending its regulations to implement the Uniform Standards for Substance-Abusing Healing Arts Licensees pursuant to SB 1441. Drafts are almost ready for BPM’s legal counsel to review. The specifics are as follows:

   16 California Code of Regulations (CCR), Division 13.9:
   Article 11, Disciplinary Guidelines, Sec. 1399.710; Sec. 1399.711; Sec.
   1399.712; Sec. 1399.713; Sec. 1399.714; Sec. 1399.715; and Sec.
   1399.716
3. BPM has filed a Section 100 with OAL regarding a scrivener’s error in the Continuing Education for Acupuncture Section 1399.672. Section 1399.672 specifies continuing education matters as codified in 1399.661 but it should refer to 1399.662. By correcting non-substantive errors in code references, BPM will correctly list the requirements for a licensee practicing acupuncture.

See Attachment C.

D. NEXT STEPS

BPM will continue to monitor and report on proposed legislative and regulatory matters.

E. LEGISLATIVE CALENDAR

Please see the Attachment D.

II. PUBLIC EDUCATION UPDATE

A. BPM NEWSLETTER

BPM is awaiting submission of articles from board members and staff. The deadline for submission is March 10, 2017. Although no submissions are guaranteed to be included, within the discretion of the Public Education Committee Members, any articles submitted by stakeholders will be reviewed and considered for publication if they are newsworthy, timely, and relevant to the mission and vision of BPM. See Attachment E.

B. CONTROLLED SUBSTANCE UTILIZATION REVIEW AND EVALUATION (CURES) UPDATE

On Sunday, March 5, 2017, CURES 1.0 will no longer be available to users. In order to protect confidential and sensitive patient records, CURES 2.0 offers a secure web browser experience. Please see Attachment F.

C. BPM QUARTERLY CALENDAR

Provided for planning and review is a 3-month calendar. See Attachment G.
NEXT STEPS

The Public Education Committee will continue to develop the next edition of the BPM Newsletter, Footnotes, and to report on updates relevant to BPM, its licensees, and stakeholders. Feedback from stakeholders is encouraged.

ATTACHMENTS

A. MBC 2016 Sunset Review – References to BPM
B. Oral Arguments Item and Board Minutes from 06.03.17
C. BPM Leg/Reg Matrix
D. 2017 Legislative Calendar
E. Draft of Proposed Spring/Summer Newsletter Coverpage: “Footnotes”
F. CURES 2.0 Notice 12.30.16
G. BPM 3-month Timeline

Prepared by: Kathleen Cooper

Kathleen Cooper, Legislative Analyst

Prepared by: Brian Naslund

Brian Naslund, Executive Officer
MEDICAL BOARD OF CALIFORNIA

SUNSET REVIEW REPORT 2016

A Report to the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee

Edmund G. Brown Jr., Governor
Dev GnanaDev, M.D., President, Medical Board of California
Kimberly Kirchmeyer, Executive Director, Medical Board of California
November 29, 2016

The Honorable Jerry Hill, Chair
Senate Business, Professions and Economic Development Committee
State Capitol, Room 2053
Sacramento, CA  95814

The Honorable Rudy Salas, Jr., Chair
Assembly Business and Professions Committee
1020 N Street, Room 383
Sacramento, CA  95814

Dear Senator Hill and Assembly Member Salas:

On behalf of the Medical Board of California (Board), it is my honor and privilege to present to you the Medical Board of California’s 2016 Sunset Review Report. This report has been prepared at the direction of the Senate Business, Professions and Economic Development Committee in preparation for the Board’s 2017 review by the California Legislature.

The Board is a consumer protection agency that licenses and regulates physicians and surgeons and those allied health care professionals in California who fall under the Board’s statutory mandate. The Board’s primary mission is consumer protection. The Board is continually looking at ways to further its goal of increasing and enhancing consumer protection through its licensing and enforcement programs, creating a more efficient organization, providing useful guidance to physicians, empowering patients through education, building better communication and relationships with relevant organizations, and providing assistance to increase access to quality medical care. In addition, the Board continues to monitor emerging trends and issues that affect the quality of medical care, physician education, and public health in general.

The Medical Board’s goals for the future are reflected in the new issues identified in this report, and include the following:

- Licensing Enhancements Requiring Legislative Changes – require all applicants, regardless of school of graduation, to satisfactorily complete a minimum of three years of postgraduate training prior to the issuance of a full unrestricted license to practice medicine; clarify that the Board of Podiatric Medicine is its own board and is completely separate from the Board; require both accredited and licensed outpatient settings to report data to the Office of Statewide Health Planning and Development so the Board is made aware of any areas of concern and can address needed consumer protection enhancements; and authorize the Board to issue a Limited Educational Permit to physicians who are applying for a license and have been out-of-practice for five years or more, thereby allowing them to obtain clinical practice and be assessed prior to obtaining a California license.
Enforcement/Consumer Protection Enhancements Requiring Legislative Changes – allow the existing notice to consumers posting to be changed to include more information about what the Board does, and what information can be learned through contacting the Board, thus encouraging consumers to learn about their medical providers or to make a complaint when warranted; allow the Board to address the under-reporting of Business and Professions Code Section 805.01 reports by authorizing the Board to fine an entity up to $50,000 per violation for failing to submit an 805.01 report to the Board, or $100,000 per violation if it is determined that the failure to report was willful; and require automatic revocation for physicians who are required to register as sex offenders.

The Board believes Sunset Review is an opportunity for the Board to work with the Legislature to review the body of law which governs the Board and the practice of medicine and ensure that it continues to protect consumers and that it evolves with the changes in medical training, practice and technology. The Board looks forward to working with the Legislature, the Administration, and interested parties, as the Board moves through the Sunset Review process.

Sincerely,

Dev GnanaDev, M.D.
Board President
Californians. Following the implementation of a detailed transition plan, the loan repayment program was moved to HPEF on July 1, 2006.

Although the Program moved to the HPEF, AB 920 also required that two members of the HPEF Board be appointed by the Medical Board. However, the law also provided a sunset date of January 1, 2011 for this provision. AB 1767 (Hill, Chapter 451, Statutes of 2010) extended the sunset date of the two members appointed by the Medical Board to the HPEF from January 1, 2011, to January 1, 2016.

There was no subsequent legislation to extend the sunset date from January 1, 2016, and, therefore, the two members appointed by the Medical Board to the HPEF were removed effective January 1, 2016. However, the Board believes that representation by the Medical Board on the HPEF is still necessary. The Board’s physician licensees each provide a mandatory $25 to the HPEF for these student loans. While there is a Board staff member that assists in the scholarship award process, the Board believes that the Board should have a voice on the HPEF. Therefore, the Board would recommend that legislation be introduced to require that two members of the HPEF be appointed by the Medical Board as previously required.

**Board of Podiatric Medicine**

As legislation was going through in 2015, it became clear that existing law does not accurately portray the Board’s relationship with the Board of Podiatric Medicine (BPM). In existing law it appears that the Board oversees and houses the BPM, when that is not the case. The Board would like to make changes to the laws that regulate the BPM, in Article 22 of the Business and Professions Code to clarify that the BPM is its own board and is completely separate from the Medical Board.

Prior to this issue being brought forward, the Board did not issue licenses for the BPM. In addition the Board does not have any impact on the enforcement decisions of the BPM. For the past two decades, the BPM has been issuing its own podiatric licenses, but with the Medical Board seal, separate and apart from the Medical Board. The Board does provide shared services for the BPM, which means BPM pays Board staff to do some work for BPM. This work includes processing complaints and disciplinary actions for the BPM. If an investigation is warranted, these complaints are sent to the DCA for investigation. The Board provides shared services to BPM under the shared services agreement and the Board is currently working with DCA staff on a memorandum of understanding to formalize this agreement between the Board and BPM. Nothing in the statute requires the Board to perform these services. This is solely done through the shared services agreement.

In discussions with the BPM and DCA, it was determined that since the law states that the BPM recommends applicants to the Board for the issuance of the license, the processes that were followed for the past two decades were changed to have the Board actually issue the license via the BreEZe computer system. The Board has no authority over who is licensed and does not have the ability to deny licensure for any applicant. The Board only provides the update to the BreEZe system to issue the physical license. The Board has been doing this for the past several months. However, the Board does not believe that this is appropriate, as the BPM, who has the authority over the decision as to whether an applicant should have a license or not, should be the entity issuing a podiatrist license.
The Board would like to make these technical, clarifying changes to make it clear that the BPM is its own board that performs its own licensing functions. The Board believes this is important, as it does not have any control over the BPM, and the law should accurately reflect each board’s actual responsibilities. The Board also believes these changes will not have any effect on BPM licensees or their scope, as it is not changing the role of the Board or the BPM or either board’s practices or functions.

**Board Panel Membership**
Section 2001 of the B&P Code states that the Board is comprised of 15 Members, eight physicians and seven public members. In addition, section 2004(c) states that the Board’s responsibilities shall include carrying out the disciplinary actions appropriate to the findings made by a panel or an administrative law judge. Further, section 2008 authorizes the establishment of panels by the Board to fulfill section 2004(c). Section 2008 also includes a requirement that the panel cannot be comprised of less than four members and that the number of public members cannot exceed the number of licensed physician and surgeon members. It also adds that the Board president cannot be a member of a panel unless there is a vacancy on the Board. Unfortunately, the specific requirements in section 2008 have caused a conflict due to the requirement that the Board president cannot be a member if there is full membership, but that there also cannot be more public members than physician members on a panel.

The Board has implemented sections 2004 and 2008 over the past several years by having two panels of the Board, with the number of members on each panel dependent upon the number of members currently appointed to the Board. Depending upon the Board’s membership, the number of individuals on a panel could vary from four to seven. When there is a full complement of members, the Board should have two panels each made up of seven members. The problem arises when the Board has a full complement of members, eight physicians and seven public members, and the Board president is a physician member. In this instance, the Board president cannot sit on a panel pursuant to section 2008, however, this results in there being more public members than physician members on a panel or requiring that a public member also not be on a panel during the tenure of the Board president. For example, if the Board president is a physician, that leaves a remainder of seven physicians and seven public members to be divided between two panels. One panel could be made up of four physicians and four public members, but the other panel would be made up of four public members and three physicians, thus violating of the requirement in section 2008 that the number of public members not exceed the number of physician members on a panel.

Therefore, the Board recommends that the requirement that the Board president not be on a panel be eliminated to resolve this unintended conflict.

**Enforcement Enhancements**
*Business and Professions Code Section 2232*
When physicians are convicted of certain sexual offenses, they are required to register as sex offenders pursuant to Penal Code section 290. In order to protect the public from physicians who may be a threat, the Legislature enacted B&P Code section 2232, which requires the “prompt revocation” of a physician and surgeon’s license when a licensee has been required to register as a sex offender. Allowing physicians who are sex offenders to continue to practice medicine is contrary to this legislative mandate and public policy. Streamlining and expediting
CALIFORNIA LEGISLATURE—2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 1153

Introduced by Assembly Member Low

February 17, 2017

An act to amend Section 2472 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1153, as introduced, Low. Podiatry.

Existing law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine within the jurisdiction of the Medical Board of California. Existing law prohibits a doctor of podiatric medicine from personally administering an anesthetic other than local.

This bill would make a nonsubstantive change to that anesthetic provision.

DIGEST KEY
Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

BILL TEXT
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.
Section 2472 of the Business and Professions Code is amended to read:

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.
ATTACHMENT B

CALIFORNIA BOARD OF PODIATRIC MEDICINE
June 3, 2016

SUBJECT: ENFORCEMENT COMMITTEE – ORAL ARGUMENTS

ACTION: REVIEW AND APPROVE ORAL ARGUMENTS REGULATIONS AS PRESENTED TO THE BOARD OF PODIATRIC MEDICINE ON JUNE 3, 2015

RECOMMENDATION

Review and approve the Oral Arguments proposed regulations as presented to the Board on June 3, 2015, (Attachment A) and to direct the Executive Officer to file for an extension with the Office of Administrative Law.

ISSUE

At the May 21, 2015 Enforcement Meeting, proposed regulations for the adoption of procedures for oral arguments, amicus briefs, and written argument submitted in response to an order of nonadoption or reconsideration. Business & Professions Code (BPC), sec. 2336 mandates the adoption of such regulations and specifically states that these rules shall preclude oral argument that exceeds the scope of the record of duly admitted evidence.

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

The recommendation to approve the proposed regulations was made to the Board of Podiatric Medicine (Board) at the June 3, 2015 Board Meeting. (Attachment B)
During open discussion, a motion was made to alter the proposed regulations and the Board voted to accept the modified language as follows:

Board of Podiatric Medicine, June 3, 2015 Minutes, Item #16:
That the regulation include an explicit provision permitting the admissibility of character and rehabilitation evidence proved by witness testimony about the respondent that does not exceed the scope of duly admitted evidence and based on the record alone.
There have been consultations with an attorney at the Deputy Attorney General's Office and BPM's Legal Counsel from DCA, and it has been made clear to BPM that the substantive changes must be removed if the Oral Arguments regulations are to be promulgated. The Board would need to review the original language and approve it as proposed in order to continue with the rulemaking process as to these proposed regulations.

DISCUSSION

The aforesaid motion that was made at the June 3, 2015 Board Meeting changed the substance of the proposed regulations. BPC sec. 2336 clearly states that, “...[t]hese rules shall preclude oral argument that exceeds the scope of the record of duly admitted evidence.” The legislature contemplated the possibility that proposed rules for oral argument could exceed the scope of duly admitted evidence and this expansion was specifically precluded.

Pursuant to review and advice of counsel, the Board has the opportunity to review the original item as it was presented on June 3, 2015, and to adopt it without substantive changes, deletions, or revisions. If this is done at the March 3, 2017 Board Meeting, the regulatory proposal at the Office of Administrative Law regarding Oral Arguments, will need to receive an extension of time in order for the rulemaking package may remain viable.

The Oral Arguments regulatory package was filed with the Office of Administrative Law (OAL) on April 5, 2016 for official notice. Regulatory proposals must be completed within one year of filing. In order to keep the Oral Argument regulatory proposal active within stated procedural rules, an extension will need to be requested prior to April 5, 2017.

NEXT STEPS

On March 3, 2017, the Board will be presented with the same item it reviewed on June 3, 2015 and it will have the opportunity to accept the proposed language. If the Board votes to accept the language as stated in the item, it will be able to direct the Executive Officer to request an extension of time with the Director of the Department of Consumer Affairs, and continue to work toward adopting the proposed regulations. If the language is not adopted or an extension is not requested or allowed, the Oral Arguments rulemaking package will expire on April 5, 2017 and the process will need to be commenced from the beginning.
ATTACHMENTS

A. Draft Language for Proposed Oral Argument, Enforcement Committee 05.21.15
B. Minutes of the Board of Podiatric Medicine 06.03.15

Prepared by: Kathleen Cooper

Kathleen Cooper, Administrative Analyst

Brian Naslund
Executive Officer
ENFORCEMENT COMMITTEE
MAY 21, 2015

SUBJECT: DRAFT LANGUAGE FOR PROPOSED REGULATIONS 16 CCR, DIVISION 13.9, BOARD OF PODIATRIC MEDICINE ("BPM") OF THE MEDICAL BOARD OF CALIFORNIA CONCERNING CONDUCT OF ORAL ARGUMENT

ACTION: ADOPT STAFF RECOMMENDATION TO ADD SECTIONS TO THE BPM REGULATIONS RELATED TO PROCEDURES FOR ORAL ARGUMENTS, AMICUS BRIEFS, AND WRITTEN ARGUMENT SUBMITTED IN RESPONSE TO AN ORDER OF NONADOPTION OR RECONSIDERATION

RECOMMENDATION

Conduct an open discussion of the proposed text for the board's regulations on procedures for oral arguments, amicus briefs, and written argument. Direct the Executive Officer to make any discussed changes with authorization to make other non-substantive changes and to commence the rulemaking process..

ISSUE

Current BPM regulations do not contain a provision for the conduct of oral argument following the non-adoption of a proposed decision as required by section 2336 of the California Business & Professions Code. Additionally, the addition of regulations relating to amicus briefs, and the written argument submitted in response to an order of nonadoption or reconsideration will provide needed guidance to future stakeholders presenting evidentiary matters before the BPM

DISCUSSION

The Division of Medical Quality, or the Medical Board ("MBC") has enacted regulations to comply with Sec. 2336.

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

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

The Board of Podiatric Medicine has not done so. Following is the regulation that the MBC adopted in Title 16, Div. 2, Art. 8 relating to the conduct of oral argument.

Sec 1364.30. Procedures for the Conduct of Oral Arguments.

(a) A party who wishes to present oral argument to the panel of the board that issued an order of nonadoption or reconsideration shall make a written request for oral argument not later than twenty (20) calendar days after the date of the notice of nonadoption or the order granting reconsideration.
(b) An administrative law judge will preside at oral argument. The administrative law judge may sit with and assist the panel members with their closed session deliberations.
(c) The arguments shall be based only on the existing records and shall not exceed the scope of the record of duly admitted evidence. No new evidence will be heard. The panel members may ask questions of the parties to clarify the arguments, but may not ask questions that would elicit new evidence. The administrative law judge and any panel member may ask a party to support the party’s oral argument on a matter with a specific citation to the record.
(d) The administrative law judge shall stop an attorney, a party, or a panel member of the line of questioning or argument is beyond the records or is otherwise out of order.
(e) The administrative law judge shall offer the respondent physician an opportunity to address the panel regarding the penalty. If the respondent elects to address the panel regarding the penalty. If the respondent elects to address the panel, the administrative law judge shall place the respondent under oath.
(f) The sequence of, and the time limitations on, oral argument are as follows:
   (1) First – the respondent licensee and/or his or her legal counsel, who shall be limited to fifteen minutes.
   (2) Second– the deputy attorney general, who shall be limited to fifteen minutes.
(3) Third- the respondent licensee’s rebuttal or that of his or her legal counsel, which shall be limited to five minutes

(4) Fourth- the deputy attorney general who shall be limited to five minutes.

For consistency, it makes sense for the oral argument provisions to be the same for the MBC for BPM. Staff is recommending that BPM adopt by incorporating the language of the MBC above, with the only changes consisting of using the proper numbering of the regulation and changing the words “panel” to “board” and “panel members” to “board members.” The following text of the proposed BPM regulation shows those slight modifications.


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

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

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

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

(h) The administrative law judge shall offer the respondent doctor of podiatric medicine an opportunity to address the panel board regarding the penalty. If the respondent elects to address the panel board, the administrative law judge shall place the respondent under oath.

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

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

It is also recommended that BPM mirror the language of the two additional sections immediately following MBC's regulation regarding "oral argument." These include regulations controlling "amicus briefs" and "written argument submitted in response to an order of nonadoption or reconsideration." By mirroring these additional sections in the BPM regulations, BPM will be consistent with the MBC's regulations. This is essential as BPM matters are handled in conjunction with the Medical Board.

Sec. 1364.34. 1399.731 Amicus Briefs.

(a) A non-party with an interest in the outcome of an administrative proceeding may be permitted to file an amicus curiae brief when a panel the board has nonadopted a proposed decision or has received or granted a petition for reconsideration of a decision. The filing of an amicus curiae brief regarding whether a panel- the board should nonadopt a proposed decision is not permitted.

(b) A person who wishes to file an amicus curiae brief shall file with the executive officer of the board a signed request, not to exceed one page, specifying the points to be argued in the brief and indicating why additional argument on those points is necessary or would be helpful to the panel board. The request shall be accompanied by the original and seven copies of the brief. The petitioner shall include a proof of service of the request and brief on the deputy attorney general assigned to the case. The brief shall be limited to matters contained in the records of the proceeding and shall not include or incorporate any attachments. No delay in the proceedings will be granted in order to allow an amicus curiae brief to be filed.

(c) The executive officer shall immediately transmit the request to the president of the panel board. The decision whether to grant the request shall be made by the panel president and one member designated by the president. In the event the vote is not unanimous, the request shall be
deemed denied. The request may be granted in whole or in part or may be denied without explanation. In determining whether to grant a request to file an amicus curiae brief, the following factors, among other factors, shall be considered:

(1) whether the matters in the brief will be helpful to the panel board;
(2) the interest of the public and public policy, including the effect of the decision on non-parties; and
(3) the costs to the parties to reply to the amicus curiae brief.
(d) If the request is granted, the executive director shall then transmit a copy of the brief to each panel board member.
(e) Where a decision has been nonadopted or a petition for reconsideration has been granted, a request to file an amicus curiae brief will be considered only if it is received no later than 45 days prior to the date on which oral argument is scheduled or the matter is to be considered by the panel board if no oral argument has been requested.

1364.32 1399.732 Written Argument Submitted in Response to an Order of Nonadoption or Reconsideration.

Written argument submitted in response to an order of nonadoption or reconsideration shall:
(a) State each point under a separate heading or subheading summarizing the point and support each point by argument, and citation of authority if applicable; and
(b) Support any reference to a matter in the records by a citation to the volume and page number of the record or exhibit number where the matter appears.

By becoming compliant with Sec. 2336 above, and mirroring the two additional regulatory sections, BPM will be proactive in addressing regulatory inconsistencies with those of the Medical Board. It is preferable to address the issue sooner rather than later as it is conceivable that the BPM may have instances to hold oral argument in matters where a final disciplinary decision of an administrative law judge is before the Board.

ALTERNATIVES CONSIDERED

The Board may decline to approve the recommended action and choose to let the matter of noncompliance and inconsistencies remain in effect. Such a course is not recommended and may be looked upon unfavorably during the Board’s Sunset Review

Regulations for Oral Argument, Amicus Briefs, and Written Argument, Article 13, 1399.730 et al, Pg. 5
scheduled for 2015-2016 year, as the board is mandated to adopt rules to govern the conduct of oral argument following non-adoption as specified by Sec. 2336 of the Business and Professions Code.

Alternately, the matter could be deferred to a later date.

**NEXT STEPS**

Should the Board adopt staff’s recommendation at the June 5, 2015 Board Meeting, the Executive Officer will commence the formal rulemaking process with the Office of Administrative Law.

**ATTACHMENTS**

A. Enforcement Committee Report to the BPM re: Proposed Regulation for Conduct of Oral Argument before the BPM, March 6, 2015, (Item #9),

Prepared by:  
Kathleen Cooper, JD

Kathleen Cooper, JD  
Administrative Analyst

Jason S. Campbell, JD  
Executive Officer

Regulations for Oral Argument, Amicus Briefs, and Written Argument, Article 13, 1399.730 et al, Pg. 6
SUBJECT: PROPOSED REGULATION FOR CONDUCT OF ORAL ARGUMENT BEFORE THE BOARD OF PODIATRIC MEDICINE ("BPM")

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

RECOMMENDATION

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

ISSUE

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

DISCUSSION

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

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

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

The Medical Board of California has adopted Article 8, Section 1364.30, Procedures for the Conduct of Oral Arguments, and the stated procedures have not been incorporated by reference by BPM for use in BPM matters. (See Attachment B)
The Legislature has mandated in Sec. 2336 that the BPM's adopt oral argument procedures, however, this has yet to be accomplished.

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

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

ALTERNATIVES CONSIDERED

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

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

NEXT STEPS

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

ATTACHMENTS

A. California Business & Professions section 2336, Adoption of rules to govern conduct of oral argument
B. Title 16, section 1364.30 California Code of Regulations - Procedures for the Conduct of Oral Arguments
BUSINESS AND PROFESSIONS CODE - BPC
DIVISION 2. HEALING ARTS [500 - 4999.129] (Division 2 enacted by Stats. 1937, Ch. 399.)
CHAPTER 5. Medicine [2000 - 2521] (Chapter 5 repealed and added by Stats. 1980, Ch. 1313, Sec. 2.)

ARTICLE 13. Medical Adjudication [2330 - 2337] (Article 13 repealed and added by Stats. 1992, Ch. 1267, Sec. 32.)

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

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

16 CA ADC § 1364.30

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

16 CCR § 1364.30


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

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

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

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

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

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

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

Note: Authority cited: Sections 2028 and 2336, Business and Professions Code. Reference: Section 2336, Business and Professions Code.

HISTORY

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

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

16 CCR § 1364.30, 16 CA ADC § 1364.30

END OF DOCUMENT


Minutes
Regular Board Meeting
California Board of Podiatric Medicine
2005 Evergreen Street
Sacramento, CA 95815
Hearing Room A

Called to Order & Quorum Established at 10:04AM

Board Members Present
Kristina M. Dixon, MBA, President
John Y. Cha, DPM, Vice President
Neil Mansdorf, DPM
Judith Manzi, DPM
Michael A. Zapf, DPM

Staff
Jason S. Campbell, JD, Executive Officer
Kia-Maria Zamora, Acting Secretary

Board Counsel
Gary Duke, Esq.

“Boards are established to protect the people of California.” – Bus. & Prof. Code §101.6
16. APPROVED draft language for proposed regulations concerning the conduct of oral argument AS AMENDED BY:

ZAPF MOTION: That regulation include an explicit provision permitting the admissibility of character and rehabilitation evidence proved by witness testimony about the respondent that does not exceed the scope of duly admitted evidence and based on the existing record alone.

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17. APPROVED draft language for proposed regulations amending BPM model disciplinary guidelines and implementing the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

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18. APPROVED draft language for proposed regulations correcting scrivener’s errors in section 1399.671 of BPM’s Podiatric Medicine Regulations and directing the Executive Officer to initiate the regulatory process.

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19. APPROVED California Residency Program Applications for the 2015-2016 podiatric medicine residency training year:

A. Cedars-Sinai Medical Center – Los Angeles, CA
B. Chino Valley Medical Center – Chino, CA
C. Doctors Hospital of West Covina – West Covina, CA
D. Department of Veterans Affairs Greater Los Angeles – Los Angeles, CA

(Continued on next page)
(Item 21 – continued from previous page)

- Fee Audit Update
- Quarterly Budget Update
- Legislative Update
- Quarterly Newsletter Update
- CURES 2.0 Guidelines
- Board Administrative Manual Update
  - Per Diem Discussion
- Board Compendium of Policies

22. **CLOSED SESSION:**

A. Pursuant to G.C. 11126(c)(2) – Discussion of Disciplinary Action

B. Pursuant to G.C. 11126(a)(1) – Annual Performance Evaluation of the Executive Officer.

NO REPORT.

CLOSED SESSION ADJOURNED AT 3:17pm.

Prepared by: Kia-Maria Zamora

Approved on:

**APPROVED SEP 18 2015**

Kia-Maria Zamora, Acting Board Secretary

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LEGEND: **Y** = YES, **N** = NO, **A** = ABSENT, **P** = PRESENT, **ABS** = ABSTAIN, **C** = CONFLICT
## LEGISLATION

| Anticipating Leg Proposal from MBC to remove BPM from its jurisdiction |  |

## REGULATIONS

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<tr>
<th>Subject</th>
<th>Current Status</th>
<th>Date Approved by Board</th>
<th>Date Notice Published by OAL</th>
<th>Date of Public Hearing</th>
<th>Date to DCA (and other control agencies for Final Review*)</th>
<th>Date to OAL for Review**</th>
<th>Date to Secretary of State***</th>
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<tbody>
<tr>
<td>Disciplinary Guidelines- Implementation of SB 1441</td>
<td>To BPM Enforcement Committee on 05.20.15</td>
<td>11.13.15</td>
<td>Staff is working with legal counsel to prepare for submission to to DCA for final review, before submitting to OAL</td>
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<td>BPM Regulations for Oral Argument</td>
<td>To BPM Enforcement Committee on 5.20.15</td>
<td>9.18.15</td>
<td>04.15.16</td>
<td>8.17.16</td>
<td>11.14.16 To DCA Budgets Office for Signature. 01.19.17 DCA Legal review received requiring changes</td>
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<td>Continuing Education for Acupuncture Practice</td>
<td>To BPM Licensing Cmte on 5.11.16</td>
<td>06.03.16</td>
<td>Filed with OAL</td>
<td>Section 100 Nonsubstantive No hearing</td>
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Prepared by Kathleen Cooper  
Updated on February 17, 2017  
For questions, call 916-263-0315

* DCA is allowed 30 calendar days for review  
** OAL is allowed 30 working days for review  
*** Rulemakings become effective on a quarterly basis, unless otherwise specified.
### JANUARY

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### DEADLINES

- **Jan. 1**: Statutes take effect (Art. IV, Sec. 8(c)).
- **Jan. 4**: Legislature reconvenes (J.R. 51(a)(1)).
- **Jan. 10**: Budget Bill must be submitted by Governor (Art. IV, Sec. 12(a)).
- **Jan. 16**: Martin Luther King, Jr. Day.
- **Jan. 20**: Last day to submit bill requests to Office of Legislative Counsel.

- **Feb. 17**: Last day for bills to be introduced (J.R. 61(a)(1), J.R. 54(a)).
- **Feb. 20**: Presidents' Day.

- **Mar. 31**: Cesar Chavez Day.

- **Apr. 6**: Spring Recess begins upon adjournment (J.R. 51(a)(2)).
- **Apr. 17**: Legislature reconvenes from Spring Recess (J.R. 51(a)(2)).
- **Apr. 28**: Last day for policy committees to hear and report fiscal bills for referral to fiscal committees (J.R. 61(a)(2)).

- **May 12**: Last day for policy committees to hear and report to the floor nonscience bills (J.R. 61(a)(3)).
- **May 19**: Last day for policy committees to meet prior to June 5 (J.R. 61(a)(4)).
- **May 26**: Last day for fiscal committees to hear and report bills to the floor (J.R. 61(a)(5)). Last day for fiscal committees to meet prior to June 5 (J.R. 61(a)(6)).
- **May 29**: Memorial Day observed.
- **May 30-June 2**: Floor session only. No committee may meet for any purpose except for Rules Committee and Conference Committees (J.R. 61(a)(7)).
### JUNE

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**June 2** Last day to pass bills out of house of origin (J.R. 61(a)(8)). Committee meetings may resume (J.R. 61(a)(9)).

**June 15** Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)(3)).

### JULY

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**July 4** Independence Day.

**July 14** Last day for policy committees to hear and report fiscal bills for referral to fiscal committees (J.R. 61(a)(19)).

**July 21** Last day for policy committees to hear and report bills (J.R. 61(a)(11)).

*Summer Recess begins upon adjournment, provided Budget Bill has been passed (J.R. 51(a)(3)).*

**Aug. 21** Legislature reconvenes from Summer Recess (J.R. 51(a)(3)).

### AUGUST

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### SEPTEMBER

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**Sept. 1** Last day for fiscal committees to meet and report bills to the Floor (J.R. 61(a)(12)).

**Sept. 4** Labor Day.

**Sept. 5–15** Floor session only. No committee may meet for any purpose (J.R. 61(a)(13)).

**Sept. 8** Last day to amend on the Floor (J.R. 61(a)(14)).

**Sept. 15** Last day for any bill to be passed (J.R. 61(a)(15)). Interim Recess begins on adjournment (J.R. 51(a)(4)).

### IMPORTANT DATES OCCURRING DURING INTERIM RECESS

**2017**

- Oct. 15 Last day for Governor to sign or veto bills passed by the Legislature on or before Sept. 15 and in the Governor’s possession after Sept. 15 (Art. IV, Sec.10(b)(1)).

**2018**

- Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 3 Legislature reconvenes (J.R. 51(a)(4)).
Message from the Board President

Article one goes here

DEADLINE FOR SUBMISSION 3/10/2017
December 30, 2016

RE: CURES 1.0 Decommission

The Department of Justice and the Department of Consumer Affairs are pleased to provide the following update regarding California’s Controlled Substance Utilization Review and Evaluation System (CURES).

On Sunday, March 5, 2017, the legacy “CURES 1.0” system will no longer be available to users attempting to access the database with unsupported browser software. In December 2015, Attorney General Harris sent a letter to members of the medical community outlining the risks of using unsupported web browsers to access confidential and sensitive patient records. Decommissioning CURES 1.0 is a necessary step towards protecting this information.

The CURES 2.0 system has been live since January 2016 and currently accounts for over 90% of patient activity report requests. As such, the retirement of CURES 1.0 should only affect a small number of CURES users who have unsecure web browsers that do not meet the CURES 2.0 minimum security requirements. The CURES 2.0 system features a significantly improved user experience, cutting-edge analytics for flagging at-risk patients, and other enhancements. This state-of-the-art system requires the use of a modern web browser to help protect against cyber security threats.

To ensure continued access to the CURES database, all remaining 1.0 users must update their web browsers prior to March 5. Users who have not updated their browsers will no longer be redirected to the old system but will instead view a message containing information as to why they cannot access the site with an unsecure browser.

The secure browser requirements for CURES 2.0 are as follows:

- Microsoft Internet Explorer, version 11.0 or higher
- Mozilla Firefox
- Google Chrome
- Apple Safari

To learn more, visit oag.ca.gov/cures-pdpmp/faqs
For assistance, contact the CURES helpdesk at (916) 227-3843 or cures@doj.ca.gov