TITLE 16 OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

(Notice published October 18, 2019)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Osteopathic Medical Board of California (Board) is proposing to adopt the proposed regulation described below in the Informative Digest after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

The Osteopathic Medical Board of California
1300 National Drive, Suite 150, Conference Room
Sacramento, CA 95834

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on December 4, 2019, located at the Osteopathic Medical Board of California Conference Room, 1300 National Drive, Suite 150, Sacramento, CA 95834**.** The conference room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Written comments, including those sent by mail, facsimile, or email should be sent to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on December 3, 2019. Comments submitted by facsimile can be sent to (FAX) at (916)928-8392 or by email to Terri.Thorfinnson@dca.ca.gov. The written comment period closes at 5:00 p.m. on December 3, 2019 or must be received at the hearing. The Board will consider only comments received at the Board office by that time.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Submit comments to:

Terri Thorfinnson, Assistant Executive Director
Osteopathic Medical Board of California
1300 National Drive, Suite 150
Sacramento, CA 95834

AUTHORITY AND REFERENCE

The Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), section 1, and sections 2018 and 3600-1 of the Business and Professions Code, authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 138 and 2026 of the Business and Professions Code (BPC).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action seeks to adopt section 1606 into the California Code of Regulations, Division 16 of Title 16, to require licensed osteopathic physicians and surgeons to notify consumers of their licensure by the Osteopathic Medical Board of California, that consumers can check the status of a license, and file a complaint against a licensee.

Existing law, BPC section 138, requires every board within the Department of Consumer Affairs to initiate on or before June 30, 1999, the process of adopting regulations requiring licensees to provide notification to their clients or customers that the practitioner is licensed by the state.

Existing law, BPC section 2026, requires the Board to initiate on or before January 1, 2019, the process of adopting regulations requiring physicians and surgeons to provide patients with notice that they are licensed by the Osteopathic Medical Board of California, that the practitioner's license can be checked, and that complaints against the practitioner can be made through the Board's website or by contacting the Board.

This proposal implements BPC sections 138 and 2026 that require osteopathic physician and surgeon licensees to notify patients that they are licensed by the Osteopathic Medical Board of California, that the patients can check the status of the osteopathic physician and surgeon license on a specified website, and that they can file a complaint against the osteopathic physician and surgeon online or by contacting the Board. The notice provides the Board's email, phone number, and website address.

The proposal also provides licensees specific requirements for how to comply with these notice requirements. It specifies three options for providing notice. The first option is that the notice is required to be prominently posted in an area visible to patients on the premises where services are provided in at least 48-point Arial type font. The second option is to provide notice to patients or their representatives in writing and have them sign and date the notice confirming their understanding. The third option is to have the notice in a written statement on

letterhead, discharge instructions or other document given to the patient or the patient's representative.

Goals and Objectives of Proposed Regulations

The goal and objective of this proposed regulation is to increase consumer protection through increased consumer awareness of the existence of the Board's various consumer protection tools. Consumer awareness is increased by providing consumers with the contact information for the licensing board and informing them that they can check the status of their osteopathic physician and surgeon on the website provided on the notice. The proposed regulations require osteopathic physicians and surgeons provide notice to each patient of the fact that he or she is licensed and regulated by the Board. It also provides licensees specific requirements for how to comply with these notice requirements.

This proposal requires the notice to include specific wording approved by the Board that must be in every notice. There are three options for licensees to provide this notice: signage, a written and signed disclosure document, or discharge documents from each visit.

Benefit of the Regulation

This regulatory proposal benefits the health and welfare of California residents who seek medical care from an osteopathic physician and surgeon. This regulation will benefit consumers/patients by providing them with a way to check whether the physician and surgeon is licensed, check the status of their license and make the patient aware that the patient can file a complaint with the Board. It will protect against being treated by unlicensed providers and provide consumers with a way to check doctors and file complaints if needed. This consumer awareness will empower and protect consumers and may result in identifying osteopathic physicians and surgeons who are violating the Medical Practice Act or the Osteopathic Act.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that require osteopathic physicians and surgeons in California to provide notice to consumers.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal impact on Public Agencies Including Costs or Savings to State Agencies or Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State.

Any implementation costs to the Board are negligible and absorbable within existing resources. As a result of providing consumer notice, the Board expects to incur additional costs related to providing notice to physicians and surgeons through the mail. Some members of the public will

contact the Board with questions about a physician and surgeon's license status, how to use the online license look-up and file a complaint and obtain forms. Increased consumer awareness may increase the number enforcement complaints the Board receives, which may increase enforcement expenditures for the Board.

Nondiscretionary Costs/Savings to Local Agencies.
None.

Local Mandate.
None.

Cost to Any Local Agency or School District or Which Government Code Sections 17500-17630 Required Reimbursement.
None.

Business Impact.
The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business.
The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs.
None.

Effect on Small Business
The Board has determined that the proposed regulations would affect small businesses, as some licensees may work in small business practice settings.

This proposed regulation would require licensees to determine which of the three notification methods available would be the most appropriate for their practice setting. The three methods include: posting a sign where their patients or patient's representatives may see it; include a written statement signed and dated by the patient or patient's representative and placed in their medical record; or include the notification language on another document just above the patient signature line.

The Board believes that the impact would be minimal, since it is anticipated that most offices will post one sign in an area where their patients may see it.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

- **Analysis of creation/elimination of businesses:**
  This proposal will not create new businesses or eliminate existing businesses within California. This regulatory proposal simply requires offices in which osteopathic physicians and surgeons practice to provide specified notice to patients or their representatives. Since there are only 9,843 licensed D.O.s in the State of California, this notice requirement will only impact a fraction of the business community in California.

- **Analysis of creation/elimination of jobs:**
  This proposal will not create or eliminate any jobs within California. This regulatory proposal simply requires offices in which osteopathic physicians and surgeons practice to provide specified notice to patients or their representatives. Additionally, only osteopathic physicians and surgeons are impacted by this change. There are 9,843 osteopathic physicians and surgeons licensed in California by the Board.

- **Analysis of expansion of business:**
  This regulatory proposal will not expand any business in California for the reason described above.

Benefits of the Regulation to the Health and Welfare of California Residents, Workers Safety, and the State's Environment:

This regulatory proposal is intended to benefit the health and welfare of California residents because it provides consumers with information about their physicians and surgeons including where to file a complaint. The more complaints the Board receives the better it can protect consumers.

The proposal will have no effect on worker safety or the States environment. As part of its Economic Impact Analysis, the Board has determined that the regulatory proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the Board's attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the afore-mentioned hearing.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the contact person named below or by accessing the Board's website: http://www.ombc.ca.gov.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has made available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under "Contact Person" or by accessing the Board's website: http://www.ombc.ca.gov.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Terri Thorfinnson, Assistant Executive Director
1300 National Drive, Suite #150
Sacramento, CA 95834-1991
(916) 928-8390 Office
(916) 928-8392 FAX
Email: Terri.Thorfinnson@dca.ca.gov

The backup contact person is:

Name: Machiko Chong, Executive Analyst
1300 National Drive, Suite #150
Sacramento, CA 95834-1991
(916) 928-8390 Office
(916) 928-8392 FAX
Email: Machiko.Chong@dca.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.ombc.ca.gov