

**OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
INITIAL STATEMENT OF REASONS**

Hearing Date: December 4, 2019

Subject Matter of Proposed Regulations: This rulemaking creates regulations that outline the requirements for licensees to provide notice to consumers that: (1) physicians and surgeons are licensed by the Osteopathic Medical Board of California; (2) patients can check the status of their physician and surgeon's license; and, (3) patients can file a complaint against licensees with the Board using an online complaint form or by contacting the Board. These regulations are promulgated pursuant to Business and Professions (BPC) sections 138 and 2026.

Section(s) Affected: Division 16 of Title 16 of the California Code of Regulations (CCR) section 1606.

Specific Purpose of each adoption, amendment, or repeal

The Board currently licenses 9,843 osteopathic physicians and surgeons throughout California. The Board's highest priority is to protect consumers through its licensing, regulatory and disciplinary oversight of the osteopathic medical profession.

The primary purpose of these proposed regulations is to implement, interpret, and make specific the provisions of BPC sections 138 and 2026 relative to providing notification to consumers that osteopathic physicians and surgeons are licensed and regulated by the Board, that consumers can check on the status of a physician and surgeon license, or that they may file a complaint against a physician and surgeon.

The regulation provides three options for providing notice: signage with specific wording and font size; written notice that the patient or patient's representative signs acknowledging notice; or, written notice that appears in discharge and similar paper work provided to the patient or their representative. The proposed action is similar to other regulations adopted by boards within the Department of Consumer Affairs. (See Cal. Code Regs., tit. 16, § 1399.547.)

Problem being addressed

Consumers may not know that their osteopathic physician and surgeon is licensed by a specific regulatory board and that they can check the status of their osteopathic physician and surgeon's license online to make sure they are licensed, their license is current and whether they have been or are currently being disciplined. Additionally, consumers may not know that the Board has an easy access consumer complaint process online where they can file a complaint about their osteopathic physician and surgeon with the Board.

Often, consumers are unaware of the existence and role of the Board or the public services it offers. Although the information is already available online, the Legislature established additional consumer protections via an affirmative consumer notification that osteopathic

physicians and surgeons are licensed by the Osteopathic Medical Board of California, that consumers can check the license status of their osteopathic physician and surgeon, and that they can file a complaint with the Board. To solve this problem the Legislature created BPC sections 138 and 2026 that require the Board to adopt consumer notice regulations

In response, the Board created specific notice requirements, with which all licensed osteopathic physicians and surgeons must comply. The information in the notice is intended to make consumers aware of the license look-up and enforcement tools the Board provides.

Anticipated benefits from this regulatory action

Public protection is the highest priority of the Board and it is enhanced when patients and other interested parties are made aware of the Board's existence at the place of service. The vast majority of enforcement and disciplinary actions are the result of consumer complaints, so providing consumers with the information about filing complaints will assist the Board in its protection of consumers and overall regulatory oversight of osteopathic physicians and surgeons. If consumers are provided the information about filing complaints online, they can protect themselves and others from physicians and surgeons who may violate the Medical Practice Act or Osteopathic Act.

If consumers have the licensing status and disciplinary information, they may choose a different physician and surgeon based on the results of this license search. They would find out whether the osteopathic physician and surgeon is current with their license or even licensed at all. They would find out whether the osteopathic physician and surgeon has been disciplined and the circumstances that resulted in the discipline.

Overall, this new regulation is intended to provide further protection of consumers through an awareness of the Board and the consumer protection tools that are available to assist consumers in making informed choices about the doctors who provide care and treatment. Adoption of this proposed language will promote better communication with the public regarding the Board's contact information, purpose and consumer protection tools for the public. The notice would also promote transparency in both the government and the profession by making information regarding the license status and the Board's responsibility to regulate the profession easily available to the public.

Factual Basis/Rationale

Both BPC sections 138 and 2026 require the Board to adopt consumer notice regulations. BPC section 138 specifies that every Board within the Department of Consumer Affairs shall initiate the process of adopting regulations to require its licensees to provide notice to their patients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The Board is not exempt from this requirement because it does not currently have in statute or regulations, a requirement that provides for consumer notice of a practitioner's status as a licensee in this state. The Board chose to provide licensees with three options for providing such notice.

BPC section 2026 requires the Board to adopt regulations that provide notice to consumers that a licensee is licensed in the state by the Board, that the physician and surgeon's license can be checked and complaints against the physician and surgeon can be made through the Board's internet website or by contacting the Board.

The Board is combining both notice requirements into one notice to consumers. The proposed notice to consumers language includes a specific worded statement that must be contained in visible signage in the physician and surgeon's office, contained in a written document that is signed by the patient or patient's representative and included in their medical file, or contained in discharge and similar paperwork provided to the patient or patient's representative.

To comply with BPC sections 138 and 2026 and ensure the required information of the notice is properly conveyed to consumers, the Board created specific wording that must be contained in the notice to consumers. Thus, any missing information would constitute a violation of this requirement. The wording of the notice includes the Board's contact information, the link to look-up the status of the licensee and the link to where they can file a complaint. As a result, the notice guarantees that consumers are made aware that they can check the status of the physician and surgeon's license or file a complaint against a physician and surgeon. The Board provides three options for how the notice is provided to consumers in order to ensure that consumers receive the notice in a way that is not overly burdensome to licensees. The options reflect the most effective ways to reach consumers, including either signage, written disclosure, or a discharge notice.

The Board felt that licensees should have some flexibility in how osteopathic physicians and surgeons provide notice to their patients, while also ensuring that consumers would be effectively notified. Providing the three options, any of which are effective in providing notice to consumers, is in the Board's view, the best way to make consumers aware of the Board and its consumer protection tools, while not being overly burdensome to licensees.

First, posting the notice in an area most likely to be seen by affected individuals is a common method for communicating information. The Board chose 48 point font size as the widely accepted font size large enough to be read a short distance away would provide effective notice to patients or their representatives. The Board chose arial font because that is the font chosen by government as a font that can be clearly read and wanted to preclude other fonts that may not be clear to a reader.

Second, having the written notice statement that is signed by the patient or patient's representative, and is included in their medical file, is also an effective option for providing notice to consumers. The patients or representatives signature would provide added accountability that the notice was provided to the patient. Maintenance of the document will assist the Board in ensuring compliance with the notice requirement.

Third, adding the notice to medical visit printouts is another effective way to provide patients with the required information. Typically, after each visit patients receive a printout of their visit details. This printout would be a good reference for patients or their representatives to have

the required information. The medical record would also provide the Board with a record that the information is contained in the medical record printout given to the patient or patient's representative.

Underlying Data

- January 18, 2018 Board meeting minutes

Business Impact

The Board has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation has an estimated expense of less than \$10.00 per office, which would be minor and absorbable. The Board anticipates that most offices will post a sign in areas where patients may see it. In addition, those businesses impacted by this regulation would be limited to businesses with osteopathic physicians and surgeons. The narrow scope of who this regulation impacts also minimizes the impact on business and competition. Even among those businesses impacted, the minimal cost is outweighed by the benefits to the public of providing accessible information that fully informs consumers about the license status of their osteopathic physician and surgeon and the regulatory Board responsible for regulating osteopathic physicians and surgeons.

Cost Impact on Representative Private Person or Business

Those businesses impacted would be required to provide notice to consumers by one of the three specified options, and the choice is left to the licensees. Being provided a choice for complying with the notice requirement allows impacted businesses to choose the option that is most convenient or least costly for them. For example, the signage option may be the most costly of the three, but may also be the most convenient. Incorporating the wording into written documents may be more convenient and less costly than signage. The signage is estimated to include a printed page (\$.05 per page) and a document frame (estimated to be \$5-\$9.50), for a total cost of less than \$10. The estimated amount is both minor and absorbable. The Board does not maintain data relating to the number or percentage of licensees who own a business. Therefore, a number or percentage of businesses that may be impacted cannot be predicted.

Implementation Costs for the Board

Any implementation costs 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.

Economic Impact Assessment

Creation or Elimination of Jobs Within the State of California

The Board has determined that this regulatory proposal will not create new businesses or eliminate existing businesses within the State of California because the proposed regulations will not be a burden to businesses nor have any impact in creating businesses. This regulatory proposal only requires D.O.s to provide minor notice to their patients at the location they provide their health care to patients. Since there are only 9843 licensed D.O.s in the State of California, this notice requirement will only impact a fraction of the business community in California.

Creation of New or Elimination of Existing Businesses Within the State of California

The Board has determined that this regulatory proposal will not create new businesses or eliminate existing businesses within the State of California because the proposed regulations will not be a burden to businesses nor have any impact in creating businesses. This regulatory proposal only requires minor notice be provided to patients at the location they receive their health care. Since there are only 9843 licensed D.O.s in the State of California, this notice requirement will only impact a fraction of the business community in California.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

This regulatory proposal will not affect the expansion of businesses currently doing business within the State of California because the proposed regulations will not be of sufficient amount to have the effect of creating or eliminating businesses.

Benefits for the Health and Welfare of California Residents

This regulatory proposal benefits the health and welfare of California residents because it requires the osteopathic physicians and surgeons to make their patients aware that they are licensed by the Osteopathic Medical Board of California and they can check the status of the licensee's license, discipline and file a complaint. 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 Osteopathic Act.

Benefits for Worker's Safety

This regulation does not affect worker safety because the proposed regulations are not relative to worker's safety.

Benefits for the State's Environment

This regulatory proposal does not affect the State's environment because the proposal is not relevant to the State's environment.

Economic Impact for "Major Regulations"

These regulations do not constitute major regulations. Thus, this analysis is not applicable.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the proposed regulations. The Board is directed by statute to develop these regulations.