

## Board of Chiropractic Examiners

### Amended Final Statement of Reasons

Hearing Date: None

Subject Matter of Proposed Regulations: Sponsored Free Health Care Events

Sections affected: Adopt Sections 309, 309.1, 309.2, 309.3, and 309.4 in proposed Article 1.5, of Title 16, Division 4 of the California Code of Regulations.

**Updated Information:** Pursuant to the California Code of Regulations section 84, this rulemaking package incorporates by reference, the Board of Chiropractic Examiners (Board) prior Sponsored Free Healthcare Events rulemaking package in its entirety (OAL File No. 2015-0121-01S) submitted to the Office of Administrative Law (OAL) for approval on January 21, 2015, except for the Updated Informative Digest behind Tab 7 and the Final Statement of Reasons behind Tab 8.

On March 12, 2015, the Board received a disapproval opinion from OAL. In response to the disapproval opinion, the Board issued another 15-day Notice of Modified Text and Documents Added to the Rulemaking File and a 2<sup>nd</sup> Addendum to the Initial Statement of Reasons. The 2<sup>nd</sup> Addendum to the Initial Statement of Reasons is included in this file. The information contained therein is updated as follows:

Incorporation by Reference: This rulemaking action incorporates by reference two forms: "Registration of Sponsoring Entity Under Business and Professions Code Section 901", Form 901-A (DCA/2014 – revised) and "Request for Authorization to Practice Without a California License at a Sponsored Free Health Care Event", Form 901-B (BCE/2015). It would be cumbersome, unduly expensive, or otherwise impractical to publish these forms in the California Code of Regulations pursuant to Title 1, Section 20(c)(1) of the California Code of Regulations. The proposed applications reflect revisions incorporated during the rulemaking process and were made available for review and comment during the rulemaking process. These applications will be available for use on the Board's web site at [www.chiro.ca.gov](http://www.chiro.ca.gov) upon approval of this rulemaking package.

- The "Registration of Sponsoring Entity Under Business and Professions Code Section 901", Form 901-A (DCA/2011) was revised by DCA, following the 45-day comment period, and replaced by Form 901-A (DCA/2014 – revised) which includes non-substantive technical changes to this form including the agency name, revision date, and name and contact information of the DCA program responsible for receiving and processing this form. The revised form was made available to the public during the first 15-day comment period in the Notice of

Modified Text and Documents Added to the Rulemaking File, which was mailed to all interested parties and posted on the Board's website on June 27, 2014.

- The "Request for Authorization to Practice Without a California License at a Sponsored Free Health Care Event", Form 901-B (BCE/2013) was revised during the second 15-day comment period; therefore, the form number changed to Form 901-B (BCE/2015) in order to clarify concerns raised in OAL's disapproval opinion. The revised form was made available during the 2<sup>nd</sup> 15-day comment period in the Notice of Modified Text and Documents Added to the Rulemaking File, which was mailed to all interested parties and posted on the Board's website on June 1, 2015.

Updated Specific Purpose and Factual Basis of Each Adoption, Amendment or Repeal:

Adopt Article 1.5 of Division 4 of Title 16 of the California Code of Regulations  
Sponsored Free-Health Care Events – Requirements for Exemption

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons for adoption of Article 1.5 of the California Code of Regulations.

Portions of Section 901, Business and Professions Code are repeated or rephrased throughout the regulations. This was done to satisfy the clarity standard to place all information in one place for applicants.

Adopt Section 309. (Definitions)

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons (or Addendums to the Initial Statement of Reasons) for adoption of Section 309.

Adopt Section 309.1(a) (Sponsoring Entity Registration)

This section, as originally noticed, would establish a timeframe of not less than 90 calendar days prior to the event for submission of a sponsoring entity's registration form and incorporate by reference Form 901-A (DCA/2011), "Registration of Sponsoring Entity Under Business and Professions Code section 901, used for this purpose. This section would also allow the Board to delegate authority to DCA for purposes of reviewing and approving Form 901-A (DCA/2011).

Following the mailing of the 45-day Notice, the Department of Consumer Affairs (DCA) made minor, non-substantive changes to Form 901-A (DCA/2011) including the name of the letterhead agency, revision date, and name of the DCA program responsible for receiving and processing this form. This form was adopted and is used by other Boards within DCA prior to the Governor's Reorganization Plan. Under Government Code section 8523, the Government Reorganization Plan changed the name of the State and Consumer Services Agency to the Business, Consumer Services and Housing Agency effective July 1, 2013. Since that time, DCA has also changed their internal procedure

for processing this form. As a result, the Board replaced this form with “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, Form 901-A (DCA/2014 revised). A 15-day public notice was mailed to all interested parties reflecting these changes in the proposed language and the Addendum to the Initial Statement of Reasons, which would incorporate by reference, Form 901-A (DCA/2014 – revised), “Registration of Sponsoring Entity Under Business and Professions Code Section 901”. Additionally, a minor technical change was made to the punctuation in the proposed language of section 309.1(a). Specifically, the placement of the comma was moved after the parentheses in the form name.

Lastly, a technical non-substantive change was made to this form under the portion titled, “Personal Information Collection, Access and Disclosure.” The underline which appears under the first line of this section should be placed under the title of this section. This was a technical formatting error that appeared when viewing this form on the department’s website. DCA noticed this error after the Board’s 15-day notice was completed and a revised copy of this form has been included in the file. These changes are necessary to ensure the form for “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, is consistent among all boards who utilize this form.

Adopt section 309.1 (b) (Determination of Completeness of Form)

This subsection would allow the Board to, by resolution, delegate to DCA the authority to receive and process “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, Form 901-A (DCA/2011) on behalf of the Board. This subsection would also specify that the Board shall inform the sponsoring entity within 15 days of receipt that the entity is registered or that the form is deficient and what specific information or documentation is required. The proposed subsection would allow the Board or its delegatee to reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the event.

Following the mailing of the 45-day Notice, DCA made minor, non-substantive changes to Form 901-A (DCA/2011) including the name of the letterhead agency, revision date, and name of the DCA program responsible for receiving and processing this form. A 15-day public notice was mailed to all interested parties reflecting these changes in the proposed language and the Addendum to the Initial Statement of Reasons, which would incorporate by reference, “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, Form 901-A (DCA/2014 – revised). Additionally, a minor technical change was made to the punctuation in the proposed language of section 309.1(b). Specifically, the placement of the comma was moved after the parentheses in the form name. These changes are necessary to ensure the form for “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, is consistent amongst all boards who utilize this form.

Adopt Section 309.1(c) (Recordkeeping Requirements)

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.1(c).

Adopt Section 309.1(d) (Requirement of Prior Board Approval of Out-of-State Practitioner)

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.1(d).

Adopt Section 309.1(e) (Report)

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.1(e).

Adopt Section 309.2(a) (Request for Authorization to Participate)

Clarifying and technical changes were made to the “Request for Authorization to Practice Without A License at A Registered Free Health Care Event”, Form 901-B (BCE/2013) during the 2<sup>nd</sup> 15-day comment period in response to OAL’s disapproval opinion, thereby resulting in a technical change to the title of the form from Form 901-B (BCE/2013) to Form 901-B (BCE/2015). Additional changes to this application include:

Page 1, Part 1 – Application Instructions, the first bullet was amended to clarify that the \$59 processing fee and \$49 fingerprint fee is non-refundable. This amendment was necessary to provide consistency between the proposed language and this application.

On Page 3, Part 3 – Licensure Information, Question 1, the word “license” was added to correct a grammatical omission.

On Page 4, Part 3 – Licensure Information, Question 4, the phrase, “that you currently hold or held in the past” was added at the end of the question to clarify that the license referred to in this question is that of the applicant rather than actions taken by the applicant against licenses held by other licensees.

Lastly, on Page 7, under Notice of Collection of Personal Information, the Board listed the authority to transfer information collected on this application to other governmental and enforcement agencies. This change was necessary to provide clarification of the Board’s responsibilities regarding sharing personal information on applicants.

Adopt Section 309.2(b) (Response to Request for Authorization to Participate) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.2(b).

Adopt Section 309.2(c) (Denial of Request to Participate) -

A change was made to section 309.2(c)(1)(E) by adding the word “or” at the end of the reason for denial. This change was necessary to clarify that a request for authorization to participate shall be denied for any one of the reasons listed in this section. Similarly, the word “or” was added at the end of section 309.2 (c)(2)(B) to clarify that the request for authorization to participate may be denied for any one of the discretionary reasons listed in this section.

Under section 309.2(c)(2)(C), the word “or” was removed and a period was added at the end of this provision as a result of the elimination of subparagraph 309.2(c)(2)(D). This provision would have authorized the Board to deny a request for authorization to participate if an applicant had participated in three sponsored events during the 12-month period immediately preceding the current application. At the advice of the Board’s Legal Counsel, this proposed language was modeled after the California Dental Board, another healthcare Board under the Department of Consumer Affairs, whose Sponsored Free Healthcare Events proposal was approved by OAL. To date, the Board has not received any requests from chiropractors to participate in a sponsored free health care event. As such, the Board believes it is highly unlikely that a chiropractor would participate in more than three such events within a 12-month period and believes this restriction is unnecessary for this Board.

Adopt Section 309.2(d) (Appeal of Denial) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.2(d).

Adopt Section 309.3(a) (Grounds for Termination of Authorization) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.3(a).

Adopt Section 309.3(b) (Notice of Termination) -There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.3(b).

Adopt Section 309.3(c) (Consequences of Termination) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.3(c).

Adopt Section 309.3(d) (Appeal of Termination) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.3(d).

Adopt Section 309.3(e) (Informal Conference Option) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.3(e).

Adopt Section 309.4 (Additional Practice Requirements for Out-of-State Practitioners Authorized to Participate in Sponsored Free Health Care Events) -

There were no changes made during the rulemaking process which affect the purpose or rationale stated in the Initial Statement of Reasons or Addendums to the Initial Statement of Reasons for adoption of Section 309.4.

**Underlying Data**

- Three items were added to the underlying data of this rulemaking file during the 15-day comment period:
  1. An addendum to the Initial Statement of Reasons was added to clarify the revisions to “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, Form 901-A (DCA/2011) and replace this form with Form 901-A (DCA/2014 – revised), and the fees an out-of-state applicant would incur as a result of applying for approval to volunteer at a sponsored free health care event.
  2. Fiscal Impact Estimates which disclose the full range of fees an out-of-state applicant may incur.
  3. “Registration of Sponsoring Entity Under Business and Professions Code Section 901”, Form 901-A (DCA/2014 - revised) was included to replace the prior version which was revised to reflect the new agency name and contact information for the DCA unit who processes this form.
  
- Two items were added to this rulemaking file during the 2<sup>nd</sup> 15-day comment period:
  1. It was an inadvertent error in identifying the April 16, 2015 Board of Chiropractic Examiners Meeting Minutes (Draft) as a “Document Relied Upon” as the minutes are included in the record pursuant to Government Code Section 11347.3(b)(8).
  2. “Request for Authorization to Practice Without a License at A Registered Free Health Care Event, Form 901-B (BCE/2015) was added to replace the former version (Form 901-B (BCE/2013) and show amendments made to this form in response to OAL’s disapproval opinion.

**Updated Economic Impact Assessment:**

Due to the addition of the Fiscal Impact Estimates added to the rulemaking file during the first 15-day comment period, the following portion of the Economic Impact Assessment is updated to clarify the full range of costs that may be incurred by out-of-state applicants.

- **Implementation Costs for Out-of-State Practitioners:**

During the 45-day comment period, average costs for out-of-state practitioners were provided to the public. Subsequent to the 45-day comment period, DCA requested that the costs be shown in a range format for clarity of total costs which may be incurred by out-of state practitioners. The range of costs was included for public comment during the 15-day comment period in a document titled, "Fiscal Impact Estimates". The range in fees is dependent upon whether the out-of-state practitioner completes their fingerprint background check outside of California via fingerprint cards (\$108) or in California via Live scan (\$108 - \$180).

**Local Mandate:** 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 business, including the ability of California businesses to compete with businesses in other states and the creation, elimination or expansion of California businesses. This proposal would impact non-profit organizations sponsoring free health care events and practitioners licensed out-of-state who wish to volunteer at such events. This rulemaking proposal establishes an application fee for out-of-state practitioners wanting to volunteer at a sponsored free healthcare event in California. This fee is necessary to cover the cost of a background check by the DOJ, FBI, and the Board to ensure public protection of patients who utilize services offered at sponsored free healthcare events.

**Consideration of Alternatives:**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons than the adopted regulation and equally effective in implementing the statutory policy or other provision of law. The Board is directed by statute to develop these regulations and there is no other method of developing the forms and procedure for registration of sponsoring entities and granting authorization for requests by out-of-state practitioners to participate in sponsored events.

**Summary of Public Comments Received During the 45-Day Comment**

**Period:** None

**Summary of Public Comments Received During the 15-Day Comment**

**Period:** None

**Summary of Public Comments Received During the 2<sup>nd</sup> 15-Day Comment Period:**

Comment 1.1

Steven Ross, M.D., Chair, Allied Health Committee of the California Orthopaedic Association, opposes the need to bring chiropractors from out-of-state who are

unlicensed in California, to participate in sponsored free health care events due to their wide range of practice experience.

#### Response 1.1

The Board rejects this comment as it does not pertain to the changes made to the proposed language for the second 15-day comment period. Further, Business and Professions Code (BPC) Section 901 was a legislative mandate through Assembly Bill 2699 (Chapter 270, Statutes of 2010) which requires healing arts boards under Division 2 of the Business and Professions Code or an Initiative Act to promulgate regulations to allow out-of-state healthcare professionals to participate in a sponsored free healthcare event, in order to provide care to uninsured or underinsured individuals in California.

#### Comment 1.2

The California Orthopaedic Association asserts that it is unnecessary and burdensome for the Board to set up a new process to accommodate the out-of-state chiropractors.

#### Response 1.2

The Board rejects this comment as it does not pertain to the changes made to the proposed language for the second 15-day comment period.

#### Comment 1.3

The California Orthopaedic Association recommends adding a definition of a “Sponsored Free Health Care Event” as “An event sponsored by an approved community-based organization which lasts no longer than 3 days.”

#### Response 1.3

The Board rejects this comment as it does not pertain to the changes made to the proposed language for the second 15-day comment period. Further, the recommended definition is in conflict with the definition provided in BPC Section 901(a)(3), which states, ““Sponsored event” means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.”

#### Comment 1.4

The California Orthopaedic Association recommends that the sponsor should be required to submit their event to be registered with the Board, each time it is held, rather than have a continuous approval.

#### Response 1.4

The Board rejects this comment as it does not pertain to the changes made to the proposed language for the second 15-day comment period.

#### Comment 1.5

The California Orthopaedic Association recommends that the “Request for Authorization to Practice Without a License at a Registered Free Health Care Event” should be

changed to 3 days rather than 10 days to limit the out-of-state chiropractor's ability to practice in California only during the event.

#### Response 1.5

The Board rejects this comment as it does not pertain to the changes made to the proposed language for the second 15-day comment period. Further, the recommended limitation is in conflict with the definition provided in BPC Section 901(a)(3), which states, "Sponsored event" means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.